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12 *Class Counsel*

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

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

18 Plaintiff,

19 vs.

20 AMERICAN GENERAL LIFE
INSURANCE COMPANY,

21 Defendant.

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: February 13, 2023
Time: 1:30 p.m.
Ctrm: 10A
Judge: Stephen V. Wilson

Fourth Am. Comp. filed: January 20, 2023

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TABLE OF AUTHORITIES

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Cases

Amador v. Baca,
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Boyd v. Bank of Am. Corp.,
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In re Banc of Cal. Secs. Litig.,
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In re Heritage Bond Litig.,
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1 *In re Mego Fin. Corp. Secs. Litig.*,
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22 *Taylor v. Shippers Transp. Express, Inc.*,
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24 *Wal-Mart Stores, Inc. v. Dukes*,
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1 Plaintiff LSIMC, LLC, individually and on behalf of the proposed Settlement
2 Class,¹ has entered into a settlement agreement (the “Settlement”) with Defendant
3 American General Life Insurance Company (“AmGen”). Pursuant to Federal Rule of
4 Civil Procedure 23, Plaintiff moves for an order:

- 5 • That the Court is likely to certify the Settlement Class, and appointing
6 LSIMC as class representative and Susman Godfrey as Class Counsel for
7 settlement purposes;
- 8 • Preliminarily approving the Settlement and Plan of Allocation, and
9 scheduling a hearing for consideration of final approval and Class
10 Counsel’s motion for fees, costs, and service awards;
- 11 • Approving the form and manner of notice, appointing JND as Settlement
12 Administrator, and directing notice;
- 13 • Staying proceedings; and
- 14 • Preliminarily enjoining Settlement Class Members who do not timely
15 submit a Request for Exclusion from filing litigation related to the claims
16 alleged in this action.

17 AmGen does not oppose this motion.

18 **I. INTRODUCTION**

19 After two years of litigation and months of negotiations with the assistance of
20 experienced mediator the Hon. Gary A. Feess (ret.), the parties agreed on the eve of
21 trial to settle this complex, first-of-its-kind, class action involving the credited
22 interest rates of universal life insurance policies. The proposed Settlement Class
23 consists of owners of approximately 40,569 life insurance policies (the “Policies”)
24 issued by AmGen nationwide (as opposed to the California-only class initially
25 pursued in this litigation). The Settlement provides the following benefits, totaling
26
27

28 ¹ Unless noted, all capitalized terms mean the same as in the Settlement Agreement,
attached as Exhibit 2 to the Declaration of Glenn Bridgman.

1 approximately \$55.5 million in cash and additional accumulation value, as well as
2 additional benefits:

3 **SETTLEMENT RELIEF:**

- 4 • **CASH:** A \$13 million Settlement Fund, reduced for opt-outs, Class
5 Counsel’s attorneys’ fees and costs, and service award to Plaintiff as
6 ordered by the Court. This is not a claims-made settlement; checks will be
7 mailed directly to Settlement Class Members without need to submit claim
8 forms. Settlement funds never revert to AmGen.
- 9 • **INCREASED ACCUMULATION VALUE FOR IN FORCE**
10 **POLICIES:** For In Force Policies, over the next four years, AmGen will
11 increase the interest rate bonus that applies to Settlement Class Members’
12 policies (the “Interest Rate Bonus”):

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

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18 A Policy that *otherwise* (absent the settlement) would have earned interest
19 at 3.00% will now earn credited interest on the accumulation value at a rate
20 of at least 3.80% for the first year after the Settlement, 3.70% the second
21 year, and so on.

22 Additionally, for four years, AmGen has agreed to provide a
23 “Portfolio Rate Benefit” that locks in the spreads between its benchmark
24 earned rates (what Plaintiff alleges are AmGen’s “expectations of future
25 investment earnings”), and the interest rates it credits to Policy
26 accumulation values. Whenever AmGen changes the Portfolio Rate for the
27 at-issue products listed below, any new rate will not be less than American
28 General’s rate of projected future investment earnings minus the Spread

1 Temporary amount set forth below:

Marketing Name	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

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10 **Total Increased Accumulation Value:** The total increase in accumulation
11 value for Settlement Class Members’ Policies from the Interest Rate Bonus
12 and Portfolio Rate Benefit over the next four years will be approximately
13 \$42.5 million as of November 2022, without discounting and assuming no
14 change in the number of Policies that remain in force over that 4-year
15 period. Bridgman Decl. Ex. 2 ¶ 50 (Settlement Agreement).²

16 **NON-MONETARY RELIEF:**

- 17 • **NON-CONTESTABILITY BENEFIT & STOLI WAIVER:** AmGen
18 has also agreed to not void or otherwise deny coverage of Class Members’
19 death claims on grounds of a lack of insurable interest or stranger originated
20 life insurance (“STOLI”).

21 The total value of the cash and increased accumulation value offered by this
22 Settlement is approximately \$55.5 million.

23 This result is outstanding for Class Members. Plaintiff’s expert, Robert Mills,
24 analyzed nationwide data and estimated that the Settlement Class was allegedly
25 under-credited a total of \$125.7 million in interest. Mills Decl. ¶ 7. The combined
26 value of the cash and increased accumulation value represents over 44% percent of
27 that under-credited interest, on a non-discounted basis. What’s more, the Settlement

28 ² Unless otherwise noted, all referenced exhibits are attached to the Declaration of Glenn Bridgman.

1 Class is receiving \$13 million of that value in cash before opt-outs, Class Counsel’s
2 Fees and Expenses, incentive payment to Plaintiff, and the Settlement
3 Administrator’s costs are deducted. The Interest Rate Bonus and Portfolio Rate
4 Benefit result in Settlement Class Members with In Force Policies receiving
5 additional accumulation value, which could reduce the premiums needed to keep
6 their Policies in force.

7 The Settlement is especially robust given the difficulties Plaintiff faced in this
8 litigation. Following the Court’s class certification order, trial was to proceed on the
9 issue of AmGen’s liability for breach only—with damages to be determined
10 separately. Receiving actual relief could have required additional individual
11 proceedings. Even if Plaintiffs prevailed on liability, each Settlement Class Member
12 would have had to pursue individual follow-on proceedings on damages and possibly
13 other issues. By contrast, the Settlement provides immediate and substantial relief,
14 without the need to even file a claim form.

15 When the Settlement’s guaranteed benefits are compared to the significant
16 risks from continued litigation, the Court should conclude that it is likely to find the
17 Settlement “fair, reasonable, and adequate” under Rule 23(e)(2). At the final
18 approval hearing, the Court will have before it even more extensive submissions in
19 support of the Settlement. At this time, Plaintiff requests only that the Court grant
20 preliminary approval so that Settlement Class Members can receive notice of the
21 Settlement and the final approval hearing.

22 **I. BACKGROUND**

23 **A. The Litigation**

24 LSIMC is the owner of a universal life insurance policy issued by AmGen.
25 Universal life insurance policies combine the insurance element with a savings
26 element known as the “accumulation value.” The accumulation value helps pay for
27 the Policy’s insurance element and can grow by earning interest at rates set by
28 AmGen. But AmGen’s discretion in changing rates is limited. Like every Policy,

1 Plaintiff’s policy contains a section titled “Changes in Rates, Charges and Fees,” with
2 specific limitations on how AmGen can redetermine interest rates:

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

7 Ex. 4 at 9.

8 On December 21, 2020, Plaintiff filed a class action lawsuit on behalf of a class
9 of current and former owners of certain policies AmGen issued in California,
10 asserting a claim against AmGen for breach of contract for not redetermining interest
11 rates “based only on” expectations of future investment earnings (“EFIE”). Each
12 year, AmGen issues statements to policyholders summarizing their accounts. The
13 annual statements disclosed a “New Premiums” interest rate applied to the
14 accumulation value. Plaintiff alleged that AmGen redetermined interest rates not
15 based *only* on EFIE because the “New Premiums” rate did not correlate with
16 AmGen’s publicly reported investment income earnings. AmGen vigorously
17 disagreed with each part of that contention.

18 The parties then spent over 140 pages briefing AmGen’s three motions to
19 dismiss. AmGen filed its first motion to dismiss (“MTD”) on February 12, 2021.
20 Plaintiff filed an Amended Complaint in response. AmGen next moved to dismiss
21 the Amended Complaint, which the Court granted with leave to amend. Plaintiff filed
22 a Second Amended Complaint on June 22, 2021. The parties then briefed AmGen’s
23 final MTD, which the Court denied on September 28, 2021.

24 The parties then engaged in extensive discovery, during which Class Counsel
25 uncovered significant facts regarding AmGen’s process for crediting interest. These
26 included that AmGen uses *two* types of interest rates to credit Policies—a “New
27 Money” (or “New Premiums”) rate applicable to premiums paid within the past 36
28 months that was disclosed to policyholders, and a “Portfolio” rate applicable to
premiums that had been in accumulation values for longer than 36 months, and which
AmGen did not disclose until after the lawsuit was filed. Through discovery, Plaintiff

1 also learned about the process AmGen uses to analyze credited rates. These facts
2 prompted Plaintiff to file a Third Amended Complaint on February 9, 2022. Dkt. 81.

3 On February 10, 2022, Plaintiff moved to certify a class of current and former
4 owners of Policies issued in California (the “California Class”). Dkt. 85. Plaintiff
5 submitted twenty exhibits in support, totaling over 400 pages. Bridgman Decl. ¶ 8.
6 AmGen filed an opposition, along with a request for the Court to take judicial notice
7 of over 150 pages of documents. On August 4, the Court certified the California
8 Class on the issue of AmGen’s liability for breach. Dkt. 113. The Court set trial for
9 November 29, 2022.

10 The parties subsequently agreed to a briefing schedule for summary judgment
11 motions, and undertook expert discovery. Plaintiff designated two experts: Mr. Mills
12 to opine on AmGen’s historical data on earned and credited rates; and Mr. Kevin Fry
13 as an insurance expert to opine on universal life insurance policy mechanics. AmGen
14 designated Mr. Craig Reynolds as an insurance and actuarial expert. Plaintiff then
15 designated Ms. Linley Baker as a rebuttal expert to Mr. Reynolds’s actuarial
16 opinions. In total, the parties produced eight expert reports and took and defended
17 the depositions of all four experts. Bridgman Decl. ¶ 7.

18 AmGen moved for summary judgment on September 29, 2022, and the parties
19 also filed competing *Daubert* motions. While these motions were pending, each party
20 filed its memorandum of contentions of fact and law and witness list, and also
21 submitted a joint exhibit list. The parties also agreed on a briefing schedule for
22 motions in *limine*, and collectively filed thirteen such motions.

23 However, on the eve of trial, the parties reached an agreement-in-principle to
24 settle the matter on November 10, 2022, after which they signed a binding Term
25 Sheet to resolve this action. Bridgman Decl. ¶ 3, 15.

26 **B. Settlement Negotiations**

27 The Settlement is the result of the parties’ arms-length negotiations with the
28 assistance of the Hon. Gary A. Feess (Ret.) as mediator. Feess. Decl. ¶¶ 6–10. The

1 parties conducted an all-day mediation session on September 29, 2022. Although that
2 session was unsuccessful, the parties continued negotiating. Over the following
3 months, the parties exchanged various proposals, offers, and counteroffers. The
4 difficulty of negotiations was heightened, at least in part, due to the posture of the
5 case and the certification of a liability-only class. However, the parties discussed
6 various structures for a possible settlement, and AmGen also provided additional data
7 that permitted Plaintiff to evaluate a potential nationwide settlement. Bridgman Decl.
8 ¶ 16. It was not until the week of November 7, 2022 that the parties had agreement
9 on a settlement structure that provided for substantial relief in cash and additional
10 accumulation value for In Force Policies over a four-year period, totaling
11 approximately 44% of the alleged historical under-crediting. Upon reaching an
12 agreement-in-principle, the parties immediately informed the Court. The parties then
13 negotiated and agreed to a long-form settlement agreement.

14 Throughout negotiations, Class Counsel analyzed all of the contested legal and
15 factual issues to thoroughly evaluate AmGen’s contentions, and advocated for a fair
16 and reasonable settlement that serves the best interests of the Settlement Class. The
17 mediator, Judge Feess, believes that the Settlement is a highly successful result for
18 Class Members, and is fair and reasonable. Feess Decl. ¶ 10.

19 **1. The Settlement Class**

20 The Settlement Class consists of:

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

This definition is nearly identical to the California Class the Court already
certified. The Settlement Class includes Policies issued nationwide on the same

1 policy forms. Plaintiff has filed an unopposed Fourth Amended complaint to amend
 2 the proposed class definition for purposes of settlement.

3 **2. Consideration**

4 The Settlement provides significant value for the Settlement Class.

5 *First*, there is a \$13 million, non-reversionary Settlement Fund that will be
 6 reduced proportionally for any opt outs based upon the proportion of the Fund that
 7 would have been allocated to those Policyowners. Ex. 2 at ¶ 47. For example, if 1%
 8 of the Fund would have originally been allocated to Class Members who opt out, the
 9 Settlement Fund will be reduced by 1%. No portion of the Final Settlement Fund (the
 10 post-reduction amount) will revert to AmGen. Checks from the Final Settlement
 11 Fund will be sent directly to Settlement Class Members—they do not need to submit
 12 claims to receive relief.

13 *Second*, for a period of four years, AmGen will increase the credited interest
 14 rate applied to the accumulation values of Settlement Class Members’ In Force
 15 Policies not offset by a policy loan as follows:

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

20 This bonus is applicable to both the New Money and Portfolio credited rates, and is
 21 additional to any interest rate bonus already applied. *Id.* at ¶ 48.

22 AmGen has also agreed to effectively “lock in” the spread it earns between its
 23 Portfolio benchmark earned rate and its Portfolio credited interest rate such that the
 24 spread cannot exceed those below for a period of four years:

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

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

8 AmGen represented, and Plaintiff’s expert confirmed, that these two benefits
9 will result in approximately \$42.5 million in additional interest credited to the
10 accumulation value of In Force Policies (on a non-discounted basis) over the next
11 four years. *See id.* at ¶ 50; Mills Decl. ¶ 13.

12 This increased accumulation value may allow Settlement Class Members with
13 In Force Policies to reduce their premium payments while maintaining the same
14 accumulation value. And because the additional interest credited to Settlement Class
15 Members’ accumulation values compounds over time, the benefits may extend
16 beyond the four-year period for certain Settlement Class Members.

17 *Third*, AmGen has also agreed to not seek to deny coverage of any Settlement
18 Class Members’ death claims because of an alleged lack of insurable interest or
19 because the Policy is allegedly a STOLI. Settlement Class Members benefit by
20 having more security in knowing that any future claims will not be denied.

21 *Fourth*, AmGen has agreed that it will not seek to recoup the cost of this
22 Settlement through a cost of insurance increase or by adjusting its methodology for
23 calculating its benchmark earned rates. Settlement Class Members therefore do not
24 face a risk of increased cost of insurance rates or reduced credited interest rates due
25 to this Settlement. Ex. 2 at ¶¶ 52, 53.

26 In total, the Settlement provides approximately \$55.5 million of combined
27 value in the form of the cash and increased accumulation value components of the
28 relief.

1 **3. Release**

2 The Settlement Class will release AmGen from all claims “arising out of or
3 relating to the redetermination of credited interest rates on the Policies,” including
4 any claims “that were or could have been alleged in the Action that are from the same
5 factual predicate, including but not limited to (a) the redetermination of New Money
6 or Portfolio credited interest rates, including the use of a spread when redetermining
7 any New Money or Portfolio credited interest rates and the amount of any such
8 spread; and (b) any under-crediting of interest on the Policies.” *Id.* at ¶ 69. The
9 Settlement Class will not release any claims that arise more than 4 years after the first
10 redetermination of interest rates that occurs after Settlement Approval “related to the
11 redetermination of interest rates.” *Id.* The Settlement Class will also not release any
12 claims related to “any claim for payment of a death benefit” or “any claims or rights
13 to otherwise enforce the terms of a Policy unrelated to crediting of interest.” *Id.*

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

15 The Settlement provides that LSIMC may seek a service award for its duties
16 as class representative, and that Class Counsel may seek an award of attorneys’ fees
17 plus reimbursement of litigation expenses. *Id.* at ¶ 77. The amounts approved by the
18 Court will be paid out of the Final Settlement Fund. LSIMC does not intend to seek
19 a service award of more than \$25,000, and Class Counsel will not seek more than the
20 lesser of \$8 million or 33.3% of the combined value of the cash and increased
21 accumulation value components of the settlement relief. Bridgman Decl. ¶ 25.

22 Class Counsel will file a motion seeking reimbursement of costs, fees, and
23 service awards to be heard at the final approval hearing. Class Members will have
24 the opportunity to object to that motion before the hearing.

25 **5. Notice**

26 The Court should approve substantially the same notice plan it previously
27 approved after certifying the California Class, including appointing the same
28

1 administrator, JND, as the Settlement Administrator.³ Dkt. 119. The proposed plan
2 provides that within 14 days of the Court’s order granting preliminary approval,
3 AmGen will provide JND with a list of names and last known addresses of all
4 Settlement Class Members. Ex. 2 at ¶ 60. Within 35 days of the Court’s order, JND
5 will mail the notice attached as Exhibit 1 to the Settlement Agreement to all addresses
6 on the class list (the “Notice Date”). *Id.* JND will maintain the website created after
7 the California Class certification, which will be updated to include Settlement
8 information. JND will also continue operating the toll-free number to allow
9 Settlement Class Members to get information about the Settlement by phone. The
10 parties will jointly approve the website and scripts for automated and live operator
11 calls. Class Members who wish to be excluded from the Class must send a letter to
12 JND requesting exclusion postmarked no later than 30 days after the Notice Date.
13 Bridgman Decl. ¶ 31.⁴

14 **6. Plan of Allocation**

15 The proposed Plan of Allocation provides that the Final Settlement Fund will
16 be distributed on a *pro rata* basis. This ensures that proceeds will be distributed
17 equitably and that all Settlement Class Members who do not opt out will receive a
18 cash distribution. Each Settlement Class Member’s *pro rata* share of the Settlement
19 Fund will be calculated as follows: (1) the Settlement Class Member’s alleged under-
20 credited interest shall be calculated in accordance with the methodology set forth in
21 the February 10, 2022 Declaration of Robert Mills; (2) the resultant under-credited
22 interest amount for each Class Member will be divided by the total amount of under-
23 credited interest on Settlement Class Member Policies to obtain a percentage; and (3)
24 the resultant percentage will be multiplied by the Final Settlement Fund to obtain the
25 amount owed to each Settlement Class Member. Ex. 3.

26
27 ³ AmGen has approved JND as the Settlement Administrator and has agreed to the
28 proposed form and manner of notice. *See* Ex. 2 at ¶ 60.

⁴ A Policyowner who owns multiple Policies may stay in or opt-out of the Settlement
Class separately for each Policy. Ex. 2 at ¶ 66.

1 Settlement Class Members will not need to file a claim. Checks will be sent
2 automatically, using addresses that AmGen maintains on file. Within one year plus
3 30 days after the date the Settlement Administrator mails the proceeds, and to the
4 extent feasible in light of the costs of administering subsequent payments, any funds
5 remaining will be re-distributed *pro rata* to Settlement Class Members who
6 previously cashed their checks. *Id.*

7 Likewise, the Interest Rate Bonus and Portfolio Rate Benefit *automatically*
8 result in additional interest credited to accumulation values of Settlement Class
9 Members' In Force Policies, without the need for them to take additional action.

10 **II. ARGUMENT**

11 **A. The Proposed Settlement Warrants Preliminary Approval**

12 **1. Legal Standard**

13 Rule 23(e) requires court approval for a class action settlement. Approval
14 “involves a two-step process in which the Court first determines whether a proposed
15 class action settlement deserves preliminary approval and then, after notice is given
16 to class members, whether final approval is warranted.” *Nat'l Rural Telecomms.*
17 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004). “Preliminary
18 approval of a class settlement is warranted when it is sufficiently likely that a court
19 will be able to grant final approval of the settlement” because the court determines
20 that the settlement is “fair, reasonable, and adequate” after considering the factors
21 outlined in Rule 23(e)(2). *In re YayYo, Inc.*, 2022 WL 423390, at *1 (C.D. Cal. Jan.
22 13, 2022) (Wilson, J.). These factors include whether:

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

24 (B) the proposal was negotiated at arm's length;

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

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

1 Fed. R. Civ. P. 23(e)(2).

2 Courts may also consider additional factors⁵: (1) the strength of the plaintiffs’
3 case; (2) the risk, expense, complexity, and likely duration of further litigation; (3)
4 the risk of maintaining class action status throughout the trial; (4) the amount offered
5 in settlement; (5) the extent of discovery completed, and the stage of the proceedings;
6 (6) the experience and views of counsel; (7) the presence of a governmental
7 participant; and (8) the reaction of the class members to the proposed settlement.
8 *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003).

9 In this Circuit, “[t]here is a strong judicial preference for pre-trial settlement
10 of complex class actions as settlement of class actions is favored as a matter of ‘strong
11 judicial policy.’” *Evans v. Wal-Mart Store, Inc.*, 2020 WL 886932, at *1 (D. Nev.
12 Feb. 24, 2020). In approving a settlement, a court “need not reach any ultimate
13 conclusions on the contested issues of fact and law which underlie the merits of the
14 dispute, for it is the very uncertainty of outcome in litigation and avoidance of
15 wasteful and expensive litigation that induce consensual settlements.” *Class*
16 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992) (cleaned up). “Thus,
17 at the preliminary approval stage, courts largely focus on whether ‘the proposed
18 settlement appears to be the product of serious, informed, non-collusive negotiations,
19 has no obvious deficiencies, does not improperly grant preferential treatment to class
20 representatives or segments of the class, and falls within the range of possible
21 approval.’” *YayYo*, 2022 WL 423390, at *1 (citation omitted).

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28 ⁵ Introduced in 2018, the factors outlined in Rule 23(e)(2) were designed to
supplement, rather than displace, the existing factors courts used to evaluate
settlement proposals. See Fed. R. Civ. P. 23, 2018 Advisory Note, Subdivision (e)(2).

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

3 a) Plaintiff and Class Counsel Have Adequately Represented
4 the Class

5 To determine adequacy of representation, “courts must resolve two questions:
6 (1) do the named plaintiffs and their counsel have any conflicts of interest with other
7 class members and (2) will the named plaintiffs and their counsel prosecute the action
8 vigorously on behalf of the class?” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970,
9 985 (9th Cir. 2011) (cleaned up). Here, the Court has already held that Plaintiff and
10 Class Counsel are adequate representatives when it certified the California Class:
11 “there are no apparent conflicts of interest between Plaintiff and any other class
12 members” and “Plaintiff has prosecuted the action vigorously through its experienced
13 counsel Susman Godfrey, which has been appointed as class counsel in a number of
14 similar cases.” Dkt. 113 at 22. Indeed, “[t]his analysis is ‘redundant of the
15 requirements of Rule 23(a)(4)’ and the Court’s finding of adequacy earlier in this
16 litigation should control. *Hudson v. Libre Tech. Inc.*, 2020 WL 2467060, at *5 (S.D.
17 Cal. May 13, 2020) (citation omitted).

18 The result of LSIMC’s and Class Counsel’s efforts is a meaningful recovery
19 worth approximately \$55.5 million in cash and increased accumulation value.
20 Proceeds of the Final Settlement Fund will be distributed on a *pro rata* basis, meaning
21 that Class Members share an overriding interest in obtaining monetary recovery. *See*
22 1 Newberg on Class Actions § 3:58 (6th ed. 2022) (adequacy “as the phrase ‘absence
23 of conflict’ suggests—is such sufficient similarity of interest that there is no
24 affirmative antagonism between the representative and the class”).

25 b) The Settlement was Negotiated at Arm’s Length

26 In the Ninth Circuit, a “strong presumption of fairness” attaches to a class
27 action settlement reached through arm’s-length negotiations between “experienced
28 and well informed counsel.” *de Rommerswael v. Auerbach*, 2018 WL 6003560, at *3

1 (C.D. Cal. Nov. 5, 2018); *see also Taylor v. Shippers Transp. Express, Inc.*, 2015
2 WL 12658458, at *10 (C.D. Cal. May 14, 2015) (“A settlement following sufficient
3 discovery and genuine arms-length negotiation is presumed fair.” (citation omitted)).

4 Here, the parties negotiated at arm’s-length over several months after the Court
5 set a trial date. The parties held an all-day mediation session on September 29, 2022,
6 before which the parties submitted detailed mediation statements with exhibits. Feess
7 Decl. ¶ 6. Although the parties did not settle at the mediation session, they continued
8 negotiating with Judge Feess’s assistance until they reached a resolution. AmGen
9 also produced additional information related to a potential nationwide settlement
10 after the session, and Class Counsel—who has extensive experience litigating
11 complex class actions involving life insurance products—drew on their experience
12 to assess the value of the Settlement against the risks and challenges of trial. The
13 parties reached an agreement on November 10, 2022, just days before the summary
14 judgment hearing, and just over two weeks before trial. *Id.* ¶ 8. “The assistance of
15 an experienced mediator in the settlement process confirms that the settlement is non-
16 collusive.” *Williams v. Brinderson Constructors, Inc.*, 2017 WL 490901, at *2 (C.D.
17 Cal. Feb. 6, 2017) (citation omitted).

18 If the Court is satisfied that the Settlement was negotiated at arm’s length, it
19 will “afford the parties the presumption that the settlement is fair and reasonable.”
20 *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 324 (C.D. Cal. 2016); *see also In re*
21 *Heritage Bond Litig.*, 2005 WL 1594403, at *9 (C.D. Cal. June 10, 2005) (“A
22 presumption of correctness is said to attach to a class settlement reached in arm’s
23 length negotiations between experienced capable counsel after meaningful
24 discovery.” (cleaned up)).

25 c) The Relief Provided is Adequate

26 The Settlement provides approximately \$55.5 million of benefits in the form
27 of cash to the Settlement Class and additional accumulation value for Settlement
28 Class Members with In Force Policies, which is approximately 44% of Plaintiff’s

1 estimate of alleged under-crediting of interest on the Policies of Settlement Class
2 Members. *See* Mills Decl. ¶ 7; *see also, e.g., In re Mego Fin. Corp. Secs. Litig.*, 213
3 F.3d 454, 459 (9th Cir. 2000) (affirming approval of settlement worth “roughly one-
4 sixth of the potential recovery, which, given the difficulties in proving the case, is
5 fair and adequate”); *Martinez v. Helzberg’s Diamond Shops*, 2021 WL 4730914, at
6 *8 (C.D. Cal. Apr. 12, 2021) (approving settlement value that was “approximately
7 eleven percent of Defendant’s absolute exposure”).

8 These benefits are substantial especially in light of the Court’s order certifying
9 a California Class on the issue of liability only. Because of this ruling, there was
10 substantial risk that Plaintiff’s theory of the damages element of breach (and thus
11 liability) could have been rejected at summary judgment and at trial.

12 For example, in *Amador v. Baca*, 2020 WL 5628938, at *3 (C.D. Cal. Aug. 11,
13 2020) (Wilson, J.), this Court approved a Settlement despite it previously certifying
14 “the class solely with regard to liability under Rule 23(c)(4)” because the settlement
15 provided significant cash relief. The cash settlement was approved in light of the fact
16 that “no clear procedure had been developed to present the damages claims to a jury
17 on a classwide basis” and “the class faced the possibility that no workable
18 arrangement for establishing classwide damages would be developed.” *Id.* The same
19 principle favors preliminary approval, here.

20 Even if Plaintiff prevailed at summary judgment and trial, AmGen would
21 surely have sought to decertify the class post-trial on the grounds that various
22 evidence adduced at trial was specific to individual class members. *See Heritage*
23 *Bond Litig.*, 2005 WL 1594403, at *10 (noting that “the Court acknowledges that
24 some risk exists with respect to Plaintiffs not being able to maintain class action status
25 throughout trial” as a factor favoring approval).

26 *Second*, even if Plaintiff prevailed on liability at trial, similar relief—especially
27 a cash component—was far from certain. AmGen would fiercely contest any effort
28 to convert that liability verdict into a damages award. It would have likely demanded

1 full-scale damages trials for *any* Class Member who sought to enforce the liability
2 verdict. And even assuming Class Members proved they were entitled to damages,
3 that would not end the matter. A final judgment in any Plaintiff’s favor would likely
4 have faced a long appellate process that would have significantly delayed any
5 substantive relief. *See Amador*, 2020 WL 5628938, at *3 (noting that “the possibility
6 that any final judgment would lead to reversal on appeal” was a factor favoring
7 approval); *Schaffer v. Litton Loan Servicing, LP*, 2012 WL 10274679, at *11 (C.D.
8 Cal. Nov. 13, 2012) (“Estimates of what constitutes a fair settlement figure are
9 tempered by factors such as the risk of losing at trial, the expense of litigating the
10 case, and the expected delay in recovery (often measured in years).”).

11 It would likely not be until *after* any appeals that any Class Member could
12 even hope to receive any damages for their claim. Yet, the Settlement provides for
13 approximately \$55 million in settlement benefits, including cash for the Settlement
14 Class and additional accumulation value for Settlement Class Members with In Force
15 Policies, and each Settlement Class Member is assured significant relief without
16 needing to file a claim. Settlement Class Members will receive a cash distribution
17 and those with In Force Policies will have additional accumulation value that may
18 allow them to make smaller premium payments. The Settlement removes substantial
19 uncertainties about Plaintiffs’ chances of success and recovery, and *guarantees* relief.
20 This factor supports approval because, “without a settlement, Plaintiffs would risk
21 recovering nothing after a lengthy and costly litigation.” *Dyer v. Wells Fargo Bank,*
22 *N.A.*, 303 F.R.D. 326, 331 (N.D. Cal. 2014).

23 *Third*, relief will be distributed equitably across the Settlement Class and the
24 Plan of Allocation is fair and reasonable.⁶ Settlement Class Members’ share of the
25 Final Settlement Fund will be the *pro-rata* share of AmGen’s total alleged under-

26
27 ⁶ “A plan of allocation is governed by the same standards of review applicable of the
28 settlement as a whole; the plan must be fair, reasonable, and adequate.” *Laster v.*
Hartford Life and Accident Life Ins. Co., 2019 WL 12529140, at *6 (C.D. Cal. Jan.
14, 2019) (cleaned up).

1 crediting. A plan that distributes funds on a *pro-rata* basis “need only have a
2 reasonable, rational basis, particularly if recommended by experienced and
3 competent counsel” to be approved. *In re Aftermarket Auto. Lighting Prods. Antitrust*
4 *Litig.*, 2014 WL 12591624, at *4 (C.D. Cal. Jan. 10, 2014) (cleaned up). Each
5 Settlement Class Member with an In Force Policy will also have the spread between
6 the benchmark earned rate and the credited rate frozen at the pricing spread for their
7 Policy (or the current spread, if lower) for four years and will receive the same
8 Interest Rate Bonus for interest credited to their accumulation value.

9 *Fourth*, Class Counsel intends to move for fees not exceeding the lesser of \$8
10 million or 33.3% of the combined value of the cash and increased accumulation value
11 components of the settlement relief. Awards of this magnitude have been deemed
12 reasonable in comparable class actions with similar relief. *See In re Banc of Cal.*
13 *Secs. Litig.*, 2020 WL 1283486, at *1 (C.D. Cal. Mar. 16, 2020) (awarding Lead
14 Counsel 33% of the settlement); *Boyd v. Bank of Am. Corp.*, 2014 WL 6473804, at
15 *12 (C.D. Cal. Nov. 18, 2014) (awarding 33.3%); *Fernandez v. Victoria Secret*
16 *Stores, LLC*, 2008 WL 8150856, at *16 (C.D. Cal. July 21, 2008) (awarding 34%).

17 *Fifth*, there are no agreements beyond the Settlement that require identification
18 under Rule 23(e)(3). Fed. R. Civ. P. 23(e)(2)(C)(iv).

19 d) The Settlement Treats Class Members Equitably

20 The Settlement treats class members equitably. Each Settlement Class Member
21 receives a *pro-rata* share of the Final Settlement Fund depending on the amount of
22 alleged under-crediting of interest to the accumulation value over the life of the
23 Policy. Ex. 2 at ¶ 47. Settlement Class Members with In Force Policies will also share
24 the same Interest Rate Bonus benefit, and AmGen has agreed to effectively “lock in”
25 the spreads on its Portfolio Interest Rate on *all* In Force Policies for a four-year
26 period. They will also benefit equally from AmGen’s agreement to not challenge any
27 Policy for lack of insurable interest or as a STOLI.

28

1 Similarly, the scope of the release treats Settlement Class Members equitably
2 because all Class Members are granting AmGen an identical release; tied to the
3 theory of liability asserted in this Action. *Id.* at ¶ 69.

4 e) Ninth Circuit Factors Not Included in Rule 23(e)(2) Favor
5 Approval

6 “The amendments to Rule 23 do not displace any factor previously announced
7 by the Ninth Circuit, but instead focus the court and the lawyers on the core concerns
8 of procedure and substance that should guide the decision whether to approve the
9 proposal.” *Amador*, 2020 WL 5628938, at *4 (cleaned up). Many of the non-Rule
10 23(e)(2) factors have been discussed as part of Rule 23(e)(2)—like the strength of
11 the plaintiffs’ case; the risk and duration of further litigation; the risk of maintaining
12 class action status; the amount offered in settlement; the extent of discovery
13 completed and the stage of proceedings and the experience and views of counsel.
14 The remaining non-Rule 23(e)(2) factors are irrelevant at this stage. There is no
15 governmental participant, and Class Members have not reacted to the Settlement
16 because notice has not been issued. *Id.* at *4 (noting that “[o]ther factors not expressly
17 included in Rule 23(e)(2) favor final approval”).

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

19 Rule 23(e)(1)(B)(ii) requires the parties demonstrate that the Court “will likely
20 be able to . . . certify the class for purposes of judgment on the proposal.” However,
21 the standard for certification for a settlement class is less stringent than for litigation
22 purposes. *See* 2018 Advisory Committee Notes to Fed. R. Civ. P. 23(e)(1).

23 This Court has already certified a class of owners of California Policies for a
24 liability determination. Dkt. 113. The California Class is a *subset* of the Settlement
25 Class. The Settlement Class simply includes current and former owners of Policies
26 issued *nationwide*. AmGen does not oppose certification of the Settlement Class.

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

2 a) Numerosity

3 Numerosity is satisfied because “the class is so numerous that joinder of all
4 members is impracticable.” 40,569 Policies fall under the proposed Settlement Class
5 definition. Mills Decl. ¶ 5.

6 b) Commonality

7 Commonality is satisfied where a classwide proceeding may “generate
8 common answers apt to drive the resolution of the litigation.” *Wal-Mart Stores, Inc.*
9 *v. Dukes*, 564 U.S. 338, 350 (2011). “For the purposes of Rule 23(a)(2), ‘even a single
10 common question’ is sufficient.” *In re Snap Inc. Secs. Litig.*, 334 F.R.D. 209, 226
11 (C.D. Cal. 2019). The Court has already certified a Rule 23(c)(4) class for
12 determining AmGen’s liability for breach, meaning that the common issue of
13 AmGen’s liability can be resolved identically for all Settlement Class Members.

14 c) Typicality

15 Typicality is “satisfied when each class member’s claim arises from the same
16 course of events, and each class member makes similar legal arguments to prove the
17 defendant’s liability.” *Taylor*, 2015 WL 12658458, at *4 (citation omitted). As the
18 Court has noted, “Plaintiff’s claim is ‘reasonably coextensive’ with putative class
19 members.” Dkt. 113 at 21. That the Settlement Class expands to include owners of
20 Policies issued nationwide makes no difference for this analysis.

21 d) Adequacy

22 As the Court already noted: “there are no apparent conflicts of interest between
23 Plaintiff and any other class members,” and “Plaintiff has prosecuted the action
24 vigorously through its experienced counsel Susman Godfrey, which has been
25 appointed as class counsel in a number of similar cases.” *Id.* at 22.

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

27 Common issues predominate and—like the class already certified—would
28 resolve AmGen’s alleged liability except with respect to damages caused by the

1 alleged breach. The issues that resulted in the Court certifying a Rule 23(c)(4) class
2 are not apparent here because Plaintiff and AmGen now *agree* on the methodology
3 to be applied class-wide for settlement purposes to determine the amount of the Final
4 Settlement Fund that each Settlement Class Member is entitled to on a *pro-rata* basis.
5 *Scott v. Cal. Forensic Med. Grp.*, 2020 WL 10501243, at *7 (C.D. Cal. Sept. 30,
6 2020) (granting unopposed motion for class certification conditioned on settlement;
7 explaining “[i]n any event, it is well-established that, where damages can be or are
8 ultimately agreed to, damages certification is appropriate.”). While each Class
9 Member may receive a different *pro-rata* share of the cash fund, it is well settled that
10 differing damages suffered by class members does not preclude certification. *Blackie*
11 *v. Barrack*, 524 F.2d 891, 905 (9th Cir. 1975).

12 Courts, including this one, approve settlements where class members would
13 receive *pro-rata* distributions of a common cash settlement fund despite earlier
14 certifying a Rule 23(c)(4) liability class. *See, e.g., Amador*, 2020 WL 5628938, at *3;
15 *McGaffin v. Argos USA, LLC*, 2020 WL 3491609, at *5 (S.D. Ga. June 26, 2020)
16 (approving settlement including a \$6.7 million cash fund despite earlier certifying
17 only a Rule 23(c)(4) class).

18 Resolution of this litigation as a class action meets the superiority requirement.
19 Settlement permits Settlement Class Members to obtain substantive relief despite
20 there being no individual actions filed against AmGen concerning redeterminations
21 of interest rates. If any Settlement Class Member wishes to pursue an individual
22 action, they can opt out. Concentrating Settlement Class Members in this forum is
23 desirable because there are 40,569 Policies affected. As the Court noted: “[a] class
24 action is the most efficient method of resolving the liability claim at issue” and the
25 parties have now agreed on a damages methodology for the cash relief portion of the
26 Settlement. Dkt. 113 at 20.

27 **C. The Proposed Notice is Appropriate**

28 Rule 23(e)(1)(B) requires that notice be directed “in a reasonable manner to all

1 class members who would be bound by the proposal.” “The standard for the adequacy
 2 of a settlement notice in a class action under either the Due Process Clause or the
 3 Federal Rules is measured by reasonableness.” *Wal-Mart*, 396 F.3d at 113. The
 4 proposed form and manner of notice is substantially similar to the one this Court
 5 already approved following certification of the liability class. Dkt. 119; *see also*
 6 *Intrepido-Bowden Decl.* ¶¶ 9–24.

7 *First*, the parties agree that the proposed notice satisfies the requirements of
 8 Rule 23(c)(2)(B) because it apprises Settlement Class Members, in plain English, of
 9 the terms of the Settlement, the Plan of Allocation, the amount of attorneys’ fees
 10 Class Counsel will seek, information about the opt-out process, how to file an
 11 objection, and the date of the final approval hearing. *See Bridgman Decl.* ¶¶ 28–30.
 12 *Second*, the parties agree to appoint JND as Settlement Administrator, whom the
 13 Court previously approved as notice administrator for the California Class, and who
 14 adequately discharged its duties in that role. *Third*, mailing notice to Settlement Class
 15 Members is particularly effective because Settlement Class Members with In Force
 16 Policies are expected to maintain their current address with AmGen. *Fourth*, a
 17 website and toll-free number will be maintained so anyone can read about the
 18 Settlement and find pertinent documents. The opt-out period of 30 days is the same
 19 as previously approved.

20 **D. Proposed Schedule for Future Proceedings**

21 Plaintiff proposes the following schedule:

Event	Days from Preliminary Approval
Deadline for AmGen to provide Settlement Class Member addresses to JND	14 days
Deadline for JND to mail notice and update website and toll-free number	35 days
Deadline to file motion for attorneys’ fees, expenses, and service awards	45 days
Deadline to request exclusion from the Settlement Class or object to the Settlement	65 days

1	Deadline to file motion for final approval	28 days prior to Final Approval Hearing
2	Final Approval Hearing	No earlier than 120 days after Preliminary Approval

4 **III. CONCLUSION**

5 Plaintiff requests the Court (i) find that it is likely to certify the proposed
6 Settlement Class; (ii) preliminarily approve the Settlement, Plan of Allocation, and
7 set a hearing date for final approval; (iii) appoint JND as Settlement Administrator
8 and approve the form and manner of notice; (iv) stay proceedings in this action; and
9 (v) preliminarily enjoin Settlement Class Members who do not execute a timely
10 Request for Exclusion.

12 Dated: January 20, 2023

Respectfully submitted,

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Class Counsel

CERTIFICATE OF COMPLIANCE

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The undersigned, counsel of record for the Class, certifies that this brief contains 7,000 words, which complies with the word limit of L.R. 11-6.1.

Dated: January 20, 2023

/s/ Steven G. Sklaver
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