Steven G. Sklaver (237612)
ssklaver@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, 14th Floor
Los Angeles, California 90067
Telephone: (310) 789-3100
Facsimile: (310) 789-3150

Seth Ard (*pro hac vice*)
sard@susmangodfrey.com
Ryan Kirkpatrick (243824)
rkirkpatrick@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, New York 10019
Telephone: (212) 336-8330
Facsimile: (212) 336-8340

Kevin Downs (331993)
kdowns@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1000 Louisiana Street, Suite 5100
Houston, Texas 77002
Telephone: (713) 651-9366
Facsimile: (713) 654-6666

Attorneys for Plaintiff and the Class

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JOE S. YEARBY, on behalf of himself and all others similarly situated, Plaintiff, v. AMERICAN NATIONAL INSURANCE COMPANY, Defendant.	Case No. 3:20-cv-09222-EMC **PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARD** Date: November 2, 2023 Time: 1:30 PM Location: Courtroom 5, 17th Floor Judge: Honorable Edward M. Chen

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 2, 2023, at 1:30 PM, in Courtroom 5 of the United States District Court for the Northern District of California, Phillip Burton Federal Building and United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, the Honorable Edward M. Chen presiding, Plaintiff Joe S. Yearby will and hereby does move for an award of attorneys' fees, expenses, and a service award. This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the declarations in support of the motion, argument by counsel at the hearing before this Court, any papers filed in reply, such oral and documentary evidence as may be presented at the hearing of this motion, and all papers and records on file in this matter.

STATEMENT OF ISSUES

Whether this Court should approve (1) an award of attorneys' fees in the amount of $1,250,000 to Plaintiff's counsel, which equals 23.3 percent of the $5,362,289 in total gross benefits to the Settlement Class; (2) reimbursement of $182,413.25 in expenses incurred by counsel on behalf of the Class, and payment of $62,520 in notice and claims administration fees; and (3) a service award of $25,000 for the named plaintiff, Joe S. Yearby.

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I. INTRODUCTION

Susman Godfrey's years of tireless work culminated in an outstanding Settlement[1] for the Class, providing cash relief of $5,000,000—equal to ***88%*** of all cost of insurance ("COI") overcharges collected by American National Insurance Company ("ANICO") through February 28, 2023. Payments will be sent by check directly to Class Members, who will not have to fill out claim forms. No money will revert to ANICO.

The Settlement also includes significant non-monetary benefits, worth $362,289 as valued by a life insurance expert. The non-monetary benefits include (1) a freeze on any COI rate scale increase for five years, and (2) ANICO's agreement not to challenge the validity of any class policies on the grounds of lack of an insurable interest, or misrepresentations in the application for such policies. That means ANICO will not raise COI rate scales for 5 years even if ANICO has a change in cost factors during that time that it contends would otherwise permit a COI rate increase under the terms of the policies. That is significant relief given the increase in mortality that ANICO might claim due to COVID-19. As a result, Class Members will have the ability to predict, with certainty, what their COI obligations will be for 5 years. These benefits would not have been achievable even had the Class prevailed at trial.

This Settlement is outstanding by any measure, especially under the "foremost" element courts consider in awarding fees: the result obtained for the Class. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). The Settlement Fund, equal to 88% of the alleged COI overcharges, represents a larger percentage of COI overcharges than the COI settlement in what another judge called "one of the most remunerative settlements this court has ever been asked to approve." *Fleisher v. Phoenix Life Ins. Co.*, No. 11-cv-8405 (CM), 2015 WL 10847814, at *11, *13 (S.D.N.Y. Sept. 9, 2015) ("*Phoenix COI*") (cash fund equal to 68.5% of the COI overcharges) (McMahon, J.). There, the court approved a fee award equal to 33-1/3% of the cash portion of the settlement, considered in isolation from the non-monetary benefits, and a 4.87 multiplier—both

[1] Unless otherwise noted, all Capitalized Terms mean the same as in the Settlement Agreement, Dkt. 82-2 at 25.

higher figures than what is requested here. *Id.* at *18. In another COI case providing for recovery of 42% of the COI overcharges, the court remarked that the result was "quite extraordinary" and approved a fee of 30% of the settlement benefits, equal to a lodestar multiplier of 6.92. *37 Besen Parkway, LLC v. John Hancock Life Ins. Co.*, 15-cv-9924 (PGG), Dkt. 164 at 20:10 (S.D.N.Y. Mar. 18, 2019) ("*Hancock COI I*"). The recovery here—***88% of the alleged historical COI overcharges***—strongly supports Susman Godfrey's request for an attorneys' fee award of $1.25 million, which equals just 23.3% of the Settlement's total value (or using a less-accepted and more conservative methodology, 25% of the cash component of the settlement in isolation) and a lodestar multiplier of just 1.91.

The quality of this result is even more exceptional considering the challenges this litigation posed and the substantial contingency risk Susman Godfrey bore. Not long after Plaintiff filed his complaint, ANICO moved to transfer the case away from the Northern District of California to its home forum. Dkt. 43. ANICO separately moved to dismiss on several grounds: lack of personal jurisdiction; *res judicata* due to a prior COI settlement involving the very same Class Policies; statute of limitations; and that the key policy language did not restrict ANICO only to mortality expectations when determining its COI charges. Dkt 39. After extensive briefing, and oral argument, Plaintiff prevailed on both motions, in a 30-page written Order that denied the motion to transfer, and denied the motion to dismiss in all parts, except granted it in part with leave to amend for claims that arose from facts that occurred before December 18, 2016. Dkt. 56, 57. Pursuant to that Order, Plaintiff filed an amended complaint within 30 days asserting claims that arose from facts going back to January 1, 2010. Dkt. 61. Rather than seeking dismissal of these claims, ANICO answered that amended complaint. Dkt. 69.

Despite prevailing at the pleading stage, substantial challenges and risks remained. By its nature, this case was highly technical and complex, requiring discovery and analysis of actuarial documents, policy data, pricing memoranda, and other documents dating back decades. ANICO would have contested Plaintiff's methodology and conclusions quantifying the alleged COI overcharges, making liability and damages an inherently unpredictable "battle of the experts." ANICO would have also contested class certification and continued to attack Plaintiff's interpretation of the key policy language at issue, and Plaintiff would have surely encountered post-trial challenges and appeals even if successful at trial. That would have potentially added years of delay before the Class could enjoy the benefit of a verdict, if any, obtained in its favor.

This risk of a lower-than-expected recovery is real. In a recent COI class trial in *Meek v. Kansas City Life Insurance Co.*, No. 19-CV-472 (W.D. Mo.), the class sought $18 million in damages for COI overcharges but the jury returned a verdict of only $5 million, which was reduced even further to approximately $900,000 in post-trial proceedings. *See* June 23, 2023 Sklaver Decl., Dkt. 82-2 at 168 (*Meek* Tr. at 69:9-16); Dkt. 82-2 at 80 (*Meek* verdict form); Dkt. 82-2 at 84 (*Meek* Dkt. 329, post-verdict Order). *See also State of W. Va. v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970) ("[N]o matter how confident one may be of the outcome of litigation, such confidence is often misplaced."), *aff'd*, 440 F.2d 1079 (2d Cir. 1971). In comparison, the 88% of COI overcharges achieved here is outstanding.

This result was due to counsel's extensive efforts in this case, undertaken with full contingency risk. This was not a case where a prior governmental investigation, criminal conviction, whistleblower, or news exposé paved the way. Instead, Susman Godfrey performed the initial factual and legal investigation before filing this lawsuit and spent over $182,413.25 in expert fees and other expenses, all with no assurance that it would receive any payment for its services. Susman Godfrey, among other things:

- Drafted the initial complaint after investigating the polices at issue and analyzing the key policy language;
- Filed an Amended Complaint, adding allegations to further support personal jurisdiction and venue in response to ANICO's motions seeking to dismiss for lack of personal jurisdiction and to transfer, and took jurisdictional discovery to respond to ANICO's motion to dismiss, serving 12 requests for production related to ANICO's activity in California, Dkt. 25, 26, 31;
- Researched, briefed, argued, and prevailed on Plaintiff's opposition to ANICO's second motion to transfer venue and mostly prevailed on the motion to dismiss, with leave to replead on the one issue on which the motion to dismiss was granted, giving Plaintiff

30 days to add allegations for claims based on facts that occurred before December 18, 2016;

- Filed a Second Amended Complaint within 30 days pursuant to the court's Order that asserted claims based on conduct dating back to January 1, 2010;
- Served 41 document requests and 13 interrogatories on ANICO, leading to the collection and analysis of 18,000 pages of documents and data sets, which included actuarial tables and policy-level data of all class members' policies, while repeatedly pressing ANICO to remedy deficiencies in its productions;
- Served third-party subpoenas on ANICO's independent auditors, Deloitte & Touche LLP and KPMG LLP, yielding other relevant and helpful documents in the case; and
- Prepared mediation briefing and attended a full-day mediation conducted under the supervision of Judge Vaughn Walker (Ret.), and after that first mediation was unsuccessful, continued to negotiate with ANICO with the assistance of Judge Walker over the next nine months, including a second mediation which was successful.

All told, the firm's investment totaled about $837,598.25, all of which could have been wiped out with a loss in the litigation.

Plaintiff therefore moves for an award of attorneys' fees of $1.25 million, which represents approximately 23.3% of the Settlement's total gross benefits, valued at $5,362,289 (or, using a less accepted and more conservative methodology, 25% of the cash fund in isolation). That request is below the 25% "benchmark" award approved by courts in this Circuit. *See, e.g.*, *In re Bluetooth*, 654 F.3d at 942 ("[C]ourts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award, providing adequate explanation in the record of any 'special circumstances' justifying a departure."). It is also below the range approved in other COI cases by district courts around the country. *See, e.g.*, *Rogowski v. State Farm Life Ins. Co.*, 2023 WL 5125113, at *5 (W.D. Mo. Apr. 18, 2023) ("*State Farm COI*") (approving fee award of 1/3 of $325 million cash fund); *Phoenix COI* (approving fee award of 1/3 of the $40.5 million cash portion of the settlement); *Hancock COI I* (approving fee of 30% of $91.25 million cash fund). This motion also seeks reimbursement of

$182,413.25 in expenses, payment of expenses incurred by the Settlement Administrator, and a $25,000 service award for the named Plaintiff.

The requested award is warranted by the successful result achieved for the Class through Susman Godfrey's skilled work, and the risks taken and overcome in litigation that lasted for years brought entirely on a contingency fee basis.

II. BACKGROUND

Pursuant to the local rules, Plaintiff refers to the factual background set out in Plaintiff's Motion for Preliminary Approval of Class Action Settlement, Dkt. 82, and in Plaintiff's forthcoming motion for final approval of the Settlement, to be filed by October 13, 2023. *See* Northern District of California's Procedural Guidance for Class Action Settlements (requests for attorneys' fees "should not repeat the case history and background facts"; rather, the "motion for attorneys' fees should refer to the history and facts set out in the motion for final approval").

III. ARGUMENT

A. Susman Godfrey's fee request is reasonable.

1. Susman Godfrey is entitled to fees as a percentage of overall settlement benefits, and its requested percentage fee is below the Ninth Circuit's benchmark.

The Supreme Court has long recognized that a lawyer who obtains a recovery "for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). In the class action context, Rule 23 of the Federal Rules of Civil Procedure provides that "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). "[A]wards of attorneys' fees serve the dual purpose of encouraging persons to seek redress for damages caused to an entire class of persons and discouraging future misconduct." The Court has discretion to use either a percentage-of-recovery method or a lodestar method to award fees, but the "use of the percentage method in common fund cases appears to be dominant" in the Ninth Circuit. *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (collecting authorities).

For the percentage-of-recovery method, 25% of the recovery is the benchmark that is considered presumptively reasonable in the Ninth Circuit. *See, e.g.*, *In re Bluetooth*, 654 F.3d at 942 ("[C]ourts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award, providing adequate explanation in the record of any 'special circumstances' justifying a departure."); *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990) ("[W]e established 25 percent of the fund as the 'benchmark' award that should be given in common fund cases."); *Reyes v. Experian Info. Sols., Inc.*, 856 F. App'x 108, 111 (9th Cir. 2021) (court abused discretion when it awarded only 16.67% instead of 25% of recovery because a 2.88 multiplier was not unreasonable and "similar lodestars are routinely approved").

Here, despite the excellent result secured, Susman Godfrey is requesting a fee that is *lower* than the 25 percent benchmark. Susman Godfrey's $1,250,000 fee request represents 23.3% of the Settlement's $5,362,289 overall value. It is well-settled that in calculating the overall settlement value for purposes of the "percentage of the recovery" approach, courts include the value of both the monetary and non-monetary benefits conferred on the Class when the value of the non-monetary benefits can be accurately ascertained. *See Staton v. Boeing*, 327 F.3d 938, 974 (9th Cir. 2003) (noting that when non-monetary relief "can be accurately ascertained," courts may "include such relief as part of the value of a common fund for purposes of applying the percentage method of determining fees"); *Hamilton v. Juul Labs, Inc.*, No. 20-CV-03710-EMC, 2021 WL 5331451, at *12 (N.D. Cal. Nov. 16, 2021) (Chen, J.) ("Because the minimum value of the injunctive relief can be accurately ascertained (it is at least $956,140.91), that sum is included in determining the size of the common fund for fee purposes."); *see also* Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges 35 (3d ed. 2010) (stating that, under the percentage approach, the fee "is based on a percentage of the actual value to the class of any settlement fund plus the actual value of any nonmonetary relief"). In COI litigation, that includes the value of what was achieved here: the COI Rate Increase Freeze and the Validity Confirmation. *See Phoenix COI*, 2015 WL 10847814, at *15 & nn.7-8 ("In calculating the overall settlement value for purposes of the 'percentage of the recovery' approach, Courts include the value of both the monetary and non-monetary benefits conferred on the Class.") (collecting authorities).

Even if no specific monetary value were attributed to the prospective relief, the fee request would still be presumptively fair and reasonable under the percentage approach. A $1.25 million award compared only to the cash component of the Settlement is 25% of that fund, and is therefore presumptively reasonable. *See, e.g.*, *Hernandez v. Dutton Ranch Corp.*, No. 19-CV-00817-EMC, 2021 WL 5053476, at *6 (N.D. Cal. Sept. 10, 2021) (Chen, J.) (recognizing that "the Ninth Circuit uses 25 percent of the fund as the presumptively reasonable 'benchmark' for awarding fees" and granting upward departure to 33%).

2. The requested fee is reasonable, considering the results achieved, the significant risks successfully navigated by counsel, and similar awards.

Susman Godfrey's requested fee is also reasonable under the factors courts consider when awarding an upward departure from the 25% benchmark, which Susman Godfrey does not seek here. Courts in this district consider: "(1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases." *McLeod v. Bank of Am., N.A.*, No. 16-CV-03294-EMC, 2019 WL 1170487, at *5 (N.D. Cal. Mar. 13, 2019) (Chen, J.) (quoting *Viceral v. Mistras Grp., Inc.*, No. 15-CV-02198-EMC, 2017 WL 661352, at *3 (N.D. Cal. Feb. 17, 2017) (citation omitted)). "Foremost among these considerations, however, is the benefit obtained for the class." *In re Bluetooth*, 654 F.3d at 942.

i. The results achieved are exceptional.

First, the results achieved are outstanding. Historical alleged COI overcharges from January 1, 2010 through February 28, 2023 were a total of $5,704,128. Dkt. 82-6 at 5. The $5 million cash recovery represents ***88%*** of those alleged COI overcharges. Compared to other COI class actions, this settlement-to-maximum damages ratio exceeds the amount obtained in *Phoenix COI*, which was called "one of the most remunerative settlements this court has ever been asked to approve," *Phoenix COI,* 2015 WL 10847814, at **10-11, as well as the 42% recovery obtained in *Hancock COI I*. And when compared to other class action settlements outside the COI context, the recovery here is an even higher percentage of the total potential recovery. *See, e.g.*, *In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of settlement worth "roughly one-sixth of the potential recovery, which, given the difficulties in proving the case, is fair and adequate"); *Betorina v. Randstad US, L.P.*, No. 15-CV-03646-EMC, 2017 WL 1278758, at *8 (N.D. Cal. Apr. 6, 2017) (Chen, J.) (preliminarily approving settlement value that was "49% of the calculated damages estimated by Plaintiffs"), *final approval granted* Aug. 15, 2017, Dkt. 49.

Courts in this Circuit have noted that similar (and even materially lower) percentage recoveries than that obtained here weigh in favor of an upward departure from the Ninth Circuit's 25 percent benchmark. *See, e.g.*, *Anthem, Inc. Data Breach Litig.*, 2018 WL 3960068, at *9–10 (N.D. Cal. Aug. 8, 2018) (14.5% recovery justified a percentage fee of 27%); *Deaver v. Compass Bank*, No. 13-222, 2015 WL 8526982, at *11 (N.D. Cal. Dec. 11, 2015) (14.2% recovery justified a percentage fee of 33%); *Marshall v. Northrop Grumman Corp.*, No. 16-CV-6794 AB (JCX), 2020 WL 5668935, at *2–3 (C.D. Cal. Sept. 18, 2020) (citing cases where recoveries between 10% to 27.6% of maximum recovery justified upward departure from benchmark). Here, despite the 88% recovery, Susman Godfrey requests a 23.3% fee award.

The Settlement's non-monetary benefits bolster the excellent result for the Class. The COI freeze is particularly valuable because insurance companies might claim that the spike in mortality due to the COVID-19 pandemic justifies increasing COI rates. *See, e.g.*, Henry Montag, "Life Insurance During the Pandemic," July 14, 2020, available at *https://www.wealthmanagement.com/insurance/life-insurance-during-pandemic* (COVID-19 "will result in many insurers using this pandemic as a valid reason to increase their cost of insurance (COI), which will result in some insurers charging a higher premium than another, for a similar condition."). ANICO's separate promise not to challenge the validity or enforceability of Class Policies on stranger-originated life insurance ("STOLI") grounds provides even more certainty for Class Members in their investments, especially considering that ANICO has brought such challenges before. *See, e.g.*, *Am. Nat'l Ins. Co. v. Sherlock*, No. 1:23-cv-03754 (D.S.C. Aug. 2, 2023) (STOLI challenge to enforceability of policy in South Carolina).

Finally, the recovery is also exceptional given how easily Class Members will receive compensation. This is not a claims-made settlement. Class Members will automatically receive checks through the addresses that ANICO keeps on file. The first and "foremost" factor, the result obtained for the Class, *In re Bluetooth*, 654 F.3d at 942, supports Susman Godfrey's fee request.

ii. Susman Godfrey successfully navigated a high degree of risk on a fully contingent basis.

The risks Susman Godfrey faced here were high in this fully contingent case. Policyowners lose COI cases on the pleadings, *see, e.g.*, *Slam Dunk I, LLC v. Connecticut General Life Ins. Co.*, 853 F. App'x 451 (11th Cir. 2021), class certification, *see, e.g.*, *Taylor v. Midland Nat'l Life Ins.*, 2019 WL 7500238 (S.D. Iowa May 3, 2019), summary judgment, *see e.g.*, *Norem v. Lincoln Ben. Life. Co.*, 737 F. 3d 1145 (7th Cir. 2013), and recently lost 95% of damages at trial, *Meek v. Kansas City Life Ins. Co.*, No. 19-CV-472 (W.D. Mo.).

Here, ANICO's motion to dismiss, supported by a declaration and exhibits totaling 175 pages, demonstrated those risks well. Dkt. 39, 39-1. First, ANICO contended that its interpretation of the key language at issue in the policies was right as a matter of plain language, and supported dismissal. In ANICO's motion to dismiss, ANICO argued that the "based on" language in the Class Policies' COI provision does not mean based "solely" on, and that it allows ANICO to calculate COI charges to include factors other than only its expectations as to future mortality experience, citing *Slam Dunk I, LLC v. Connecticut Gen. Life Ins. Co.*, 853 F. App'x. 451 (11th Cir. 2021). Dkt. 39 at 27–28. After extensive briefing and argument, the Court rejected this argument at the motion to dismiss stage, finding that Plaintiff's interpretation of the Policy language was "an entirely reasonable interpretation of the phrase 'based on.'" Dkt. 57 at 28–29. Had the Court sided with ANICO, it could have resulted in complete dismissal.

ANICO's motion to dismiss also raised a *res judicata* defense that would have eliminated Plaintiff's claim. ANICO argued that claim preclusion barred Plaintiff's claims because he was a class member in a previously settled class action lawsuit against ANICO (called the *Albanoski* Action) that supposedly raised the same claims. *See* Dkt. 39 at 24. After briefing and argument, the Court rejected this argument at the pleading stage, which would have been fatal to Plaintiff's claim. Dkt. 57 at 28.

ANICO also raised a statute of limitations defense in its motion to dismiss that, if successful, could have eliminated most of the Class's damages. ANICO argued that policyholders knew, from allegations and notices from a prior COI class action (resolved for the same policyholders in 2006), that ANICO's COI rates included non-mortality factors. Dkt. 39 at 18. ANICO maintained that the clock began running when policyholders received notice of the allegation that ANICO COI rates included non-mortality factors in the prior case. Dkt. 49 at 10–11. Because the Class period here began in 2010, if the Court had applied limitations to claims arising before December 2016, it could have reduced Plaintiff's damages by almost 60%. After briefing and argument, the Court largely rejected these arguments, but held that claims based on facts that occurred before December 18, 2016, were dismissed with leave to amend. Dkt. 57 at 22. Plaintiff amended its complaint within 30 days of that Order to add allegations for claims beginning on January 1, 2010. Dkt. 61. Rather than moving to dismiss that amended complaint, ANICO answered. Dkt. 69.

ANICO also sought to dismiss for lack of personal jurisdiction. ANICO argued in its motion to dismiss that because it was located and headquartered in Galveston, Texas and issued Plaintiff's policy *from* Galveston, and because Plaintiff had moved away from California before 2010, that the Court lacked personal jurisdiction over ANICO. Dkt. 39 at 11–17. Susman Godfrey conducted jurisdictional discovery and obtained a favorable ruling that denied the motion to dismiss for lack of personal jurisdiction. Dkt. 57 at 20.

The nature of the claims in this case, which involved complicated actuarial issues that courts have labeled "indisputably complex," *Phoenix COI*, 2015 WL 10847814, at *6, meant that both liability and damages would likely come down to dueling expert opinions about actuarial standards, insurance principles, technical actuarial assumptions, documents, and data. For example, the correctness of Plaintiff's but-for COI rates would have been the subject of extensive, competing expert testimony about the correct actuarial assumptions to use and the reasonableness of the but-for redetermination methodology. *See id.* ("The complaint alleged the breach of an insurance contract, the resolution of which would require conflicting testimony by experts as to actuarial standards."). ANICO would have also argued that basing COI rates on expectations of future "mortality experience" is actuarily insupportable, in that professional actuarial principles and standards require insurers to consider provision for operating expenses, reserves, and funds to ensure continued operations, and must test rates to assure sufficiency for longevity. Without those considerations, ANICO maintained, the Policies could never have been issued from an actuarial or regulatory perspective. Dkt. 84 at 3–4. ANICO also pointed to COVID-related impacts on mortality expectations and argued that Plaintiff's damages model ignored those impacts. Such a "battle of the experts" would have been a jury issue and is inherently unpredictable. *See In re Extreme Networks, Inc. Sec. Litig.*, No. 15-CV-04883-BLF, 2019 WL 3290770, at *8 (N.D. Cal. July 22, 2019) (finding that the plaintiff faced "significant obstacles," including "the risks inherent in a 'battle of the experts' of complex economic theories in a jury trial"); *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744–45 (S.D.N.Y. 1985) ("In this 'battle of experts,' it is virtually impossible to predict with any certainty which testimony would be credited[.]"), *aff'd*, 798 F.2d 35 (2d Cir. 1986).

Susman Godfrey faced other risks, too. ANICO would have vigorously opposed class certification, which by no means would have been a certainty. Even getting to trial in a timely manner itself was a risk. And even if Plaintiff had prevailed at every risky stage in this Court—class certification, summary judgment, and trial—there was a real risk that the damages awarded could have been far less than the amount sought. *See, e.g.*, *Meek v. Kansas City Life Ins. Co.*, 19-cv-472, Dkt. 311, 329-30 (W.D. Mo. May 25 & June 20, 2023) (the Class sought $18 million but recovered less than $1 million, *i.e.*, less than 6%, with partial decertification granted post-trial). The risk would have continued after that with the inevitable filing of decertification motions, post-verdict motions, and appeals. *See Phoenix COI*, 2015 WL 10847814, at *6 ("Even if the Class could recover a judgment at trial and survive any decertification challenges, post-verdict and appellate litigation would likely have lasted for years.").

Susman Godfrey did not have the benefit of government investigations, let alone indictments, consent decrees, or guilty pleas. Thus, this is not an instance where a plaintiff was merely following the lead of the government, "arriving on the scene after some enforcement or administrative agency has made the kill." *In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 142 F.R.D. 588, 597 (S.D.N.Y. 1992).

Susman Godfrey also bore enormous financial risk in taking on this case—over $182,418 in advanced expenses and 864.2 hours in attorney time over the almost three years in which this case has been litigated to date—all of which could have resulted in no compensation had the case been lost. All in, Susman Godfrey invested about $837,598 of its own time and capital (using *no* outside litigation funding), with no guarantee that the firm would receive any compensation.

Courts in this district have found that this type of contingent risk is an important factor in evaluating the reasonableness of a fee, and that successfully navigating such risk supports fee awards higher than the 23.3 percent recovery sought here. *See O'Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2019 WL 4394401, at *7 (N.D. Cal. Sept. 13, 2019) (Chen, J.), *aff'd*, No. 19-17073, 2019 WL 7602362 (9th Cir. Dec. 20, 2019) (the contingent nature of the case supported the fee request when "counsel accepted this case on a fully contingent arrangement, with no payment up front, and have borne the expenses, costs, and risks associated with litigating this case," supporting a 25% award); *In re Oracle Sec. Litig.*, 852 F. Supp. 1437, 1451 (N.D. Cal. 1994) (significant risk in litigation supported upward departure to 30% fee award). Indeed, a 23.3% recovery on a fully contingent basis is less than what Susman Godfrey could obtain on the open market. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 955 (9th Cir. 2015) (listing "the market rate for the particular field of law" as a relevant factor under the percentage-of-recovery method). Class Counsel regularly takes high-stakes non-class commercial cases on a contingent fee basis (*e.g.*, patent, legal malpractice, antitrust, etc.), and it typically negotiates contingent fee arrangements in such cases, where the firm advances expenses, starting at 40% of the gross sum recovered, with further increases based on the time of settlement and trial. Sklaver Decl. ¶¶ 26, 27. The delay in payment from a case filed in late-2020 also weighs strongly in favor of the requested fee. *See In re Domestic Drywall Antitrust Litig.*, 2018 WL 3439454, at *20 (E.D. Pa. July 17, 2018) ("A significant factor in awarding the full one-third [33-1/3%] requested is the delay in payment."). The only certainty from the outset of this litigation was that there would be no fee or expense award, and a write-off, if the case were lost.

Here, the risk presented by the case, the contingent nature of the fee, the financial burden carried by Susman Godfrey, and the skilled work, by which Plaintiff successfully navigated the case's challenges, all support the requested 23.3% fee award.

iii. The quality of the representation also supports the fee award.

The Court may also consider the experience, skill and reputation of plaintiffs' counsel. *Crommie v. Pub. Utils. Comm'n*, 840 F. Supp. 719, 725 (N.D. Cal. 1994). Susman Godfrey has significant experience with insurance litigation and class actions, including COI class actions and settlements thereof. Sklaver Decl. ¶ 3. Susman Godfrey has represented numerous classes of policyowners seeking recovery of COI overcharges against insurers, recently including against John Hancock Life Insurance Company, AXA Equitable Life Insurance Company, Voya Life Insurance Company, and Security Life of Denver Insurance Company. *Id.* The lawyers working for the Class have substantial experience prosecuting large-scale class actions and life settlement litigation. *Id.*

The reputation, experience and skill of Susman Godfrey's lawyers were essential to the success in this litigation. From the outset, they used their expertise and skill to obtain maximum recovery for the Class, given the particular factual and legal complexities of this litigation. Had the parties not reached a settlement, they would have continued to litigate complex legal issues before this Court. At no time has ANICO conceded liability, the appropriateness of certification other than for settlement purposes, or the existence of damages. In pressing its arguments, ANICO was vigorously represented by highly-regarded litigation counsel from Wagstaffe, Von Loewenfeldt, Bush & Radwick LLP and Greer Herz & Adams LLP. *Cf. In re Gen. Motors LLC Ignition Switch Litig.*, 2020 WL 7481292, at *3 (S.D.N.Y. Dec. 18, 2020) (fact that "Class Counsel faced worthy adversaries of high caliber" is "relevant to evaluating the quality of Class Counsel's work"). Given the significant risks and uncertainty associated with this complex class action, it is a testament to the Susman Godfrey lawyers' skill, creativity and determination that they were able to negotiate an excellent settlement providing substantial economic relief.

iv. Courts have approved similar awards in other COI cases.

Susman Godfrey's request for 23.3% of the gross benefits is at the low end of the range that courts have awarded in other cases involving breach-of-contract claims against life insurers in COI cases. *See, e.g.*, *Feller v. Transamerica Life Ins. Co.*, 2019 WL 6605886, at *13 (C.D. Cal. Feb. 6, 2019) (approving 25% of monetary benefits); *Phoenix COI*, 2015 WL 10847814, at *11 (approving award equal to 33.3% of monetary benefits); *Hancock COI I*, Dkt. 164 at 20:08–10 (S.D.N.Y. Mar. 18, 2019) (approving 30% of monetary benefits); *Leonard, et al. v. John Hancock Life Ins. Co. of N.Y., et al.*, No. 18-CV-4994 (S.D.N.Y. May 17, 2022) ("*Hancock COI II*")*,* Dkt. 226 at 14-15 (approving fee representing 29.5% of cash fund and 19% of benefits, net of expenses ($27 million fee, on $93 million cash fund, and $143 million settlement benefit, less $1.5 million in expenses), even after opt-outs decreased settlement fund by about 25%); *Hanks v. Lincoln Life & Annuity Co. of N.Y*, 16-civ-6399 (PKC) (S.D.N.Y. June 29, 2022), Dkt. 306 at 4, 14 (approving fee representing 22% of cash fund, where the NYDFS had already found the insurer's COI increase to be unlawful, which was stopped in New York but then imposed in the rest of the country); *State Farm COI*, 2023 WL 5125113, at *2 (awarding 1/3 of $325 million on 760,000 policies, with average payout of less than $300 per policy).

3. The requested fee is reasonable under the lodestar crosscheck.

"The lodestar figure is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer." *In re Bluetooth*, 654 F.3d at 941. "[C]ourts have discretion to apply a positive multiplier after considering factors such as: the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment." *In re TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 1010 (N.D. Cal. 2015) (Chen, J.).

A court may "decline[] to conduct a lodestar cross-check in [a] case, given that under the percentage-of-the-fund method the fee request [is] significantly below the 25% benchmark." *Ebarle v. Lifelock, Inc.*, 2016 WL 5076203, at *11 (N.D. Cal. Sept. 20, 2016); *Glass v. UBS Fin. Servs., Inc.*, 2007 WL 221862, at *15 (N.D. Cal. Jan. 26, 2007) (no cross-check in approving an $11.25

million fee because the fee was 25% of the recovery). Moreover, when using the lodestar as a cross-check, "courts 'have generally not been required to closely scrutinize each claimed attorney-hour, but have instead used information on attorney time spent to focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys.'" *De Leon v. Ricoh USA, Inc.*, 2020 WL 1531331, at *15 (N.D. Cal. Mar. 31, 2020) (quoting *Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 505 (2016)).

Here, Class Counsel's request of 23.3% is below the 25% benchmark and is presumptively reasonable, making a lodestar cross-check unnecessary. But with a lodestar multiplier of just 1.91 for the work completed through August 18, 2023, which will further decrease through settlement administration, *see* Sklaver Decl. ¶ 28, a cross-check confirms the reasonableness of the requested award.

The requested fee award is equal to a lodestar multiplier of 1.91. *See* Sklaver Decl. ¶ 28. In this entirely contingent action, Susman Godfrey spent 864.2 hours, representing a lodestar of $655,185.00, and advanced $182,413.25 in expenses. *See* Sklaver Decl. ¶¶ 28, 35.[2] Susman Godfrey litigated this complicated case efficiently to obtain the highest possible settlement value given the overcharges at issue.

The 1.91 lodestar multiplier is well below the range of multipliers that courts in this Circuit have approved, where multipliers under four are "frequently awarded." *E.g.*, *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6 (9th Cir. 2002) (noting that "multiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied" in approving fee award with a 3.65 multiplier) (cleaned up); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 1365900, at *13 (N.D. Cal. Apr. 3, 2013) (approving multiplier of up to 5.22); *Gutierrez v. Wells Fargo Bank N.A.*, No. C 07-05923 WHA, 2015 WL 2438274, at *7 (N.D. Cal. May 21, 2015) (noting that "this order allows a multiplier of 5.5 mainly on account of the fine

[2] The lodestar is calculated here at current hourly rates for 2023. *See, e.g.*, *Missouri v. Jenkins*, 491 U.S. 274, 283–84 (1989) (endorsing "an appropriate adjustment for delay in payment" by applying "current" rate); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) ("The lodestar should be computed either using an hourly rate that reflects the prevailing rate as of the date of the fee request, to compensate class counsel for delays in payment inherent in contingency-fee cases, or using historical rates and compensating for delays with a prime-rate enhancement.").

results achieved on behalf of the class, the risk of non-payment they accepted, the superior quality of their efforts, and the delay in payment"); *Steiner v. Am. Broad. Co.*, 248 F. App'x 780, 783 (9th Cir. 2007) (affirming fee award equal to 6.85 multiplier because it fell "well within the range of multipliers that courts have allowed").

A 1.91 multiplier is also well within the range of crosscheck multipliers approved in other COI cases obtaining outstanding results. *See State Farm COI*, 2023 WL 5125113, at *5 & n.8 (approving fee award of 1/3 of $325 million, with lodestar multiplier of 5.75); *Phoenix COI*, 2015 WL 10847814, at *18 (noting that courts "regularly award lodestar multipliers from 2 to 6 times lodestar," and approving 4.87 multiplier) (cited with approval in *In re Gen. Motors LLC Ignition Switch Litig.*, 2020 WL 7481292, at *3); *Hancock COI I*, Dkt. 164 at 19:14–20:11 (approving multiplier of 6.92 in light of "extraordinary" result). It is also within the range of reasonable multipliers approved in the Ninth Circuit and by this Court, as well as by district courts around the country. *See McLeod*, 2019 WL 1170487, at *7 (awarding attorneys' fees of $3 million, for a lodestar multiplier of 3.5); *Van Vraken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (3.6 multiplier); *Vizcaino*, 290 F.3d at 1051 n.6 (surveying class actions settlements nationwide, and noting 54 percent of lodestar multipliers fell within the 1.5 to 3.0 range, and that 83 percent of multipliers fell within the 1.0 to 4.0 range); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002) (4.65 multiplier); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998) (3.97 multiplier: '"In recent years multipliers of between 3 and 4.5 have become common."') (internal citation omitted); *In re Combustion, Inc.*, 968 F. Supp. 1116 (W.D. La. 1997) (3.0 multiplier); *Behrens v. Wometco Enters. Inc.*, 118 F.R.D. 534, 549 (S.D. Fla. 1988) ("[T]he range of lodestar multiples in large and complicated class actions runs from a low of 2.26 . . . to a high of 4.5."); *In re Cenco, Inc. Secs. Litig.*, 519 F. Supp. 322, 327 (N.D. Ill. 1981) (4.0 multiplier).

As set forth in the accompanying Declaration of Steven Sklaver, the 864.2 hours Susman Godfrey has spent litigating over almost three years are reasonable, given the work performed, which included:

- Pre-complaint research, investigation, and analysis of policy language;

- Drafting two amended complaints;
- Legal research, drafting, and oral argument preparation in responding to ANICO's motion to transfer venue and motion to dismiss;
- Service of 41 Requests for Production of documents, 13 Interrogatories, and extensive negotiation over the scope of production and ESI protocol;
- Numerous meet and confer efforts with both ANICO and its auditors over the scope of the discovery requests, including Rule 30(b)(6) deposition topics, and third-party subpoenas;
- Production and review of over 18,000 pages of documents and data sets, including documents produced pursuant to third-party subpoenas served on ANICO's independent auditors, Deloitte & Touche LLP and KPMG LLP, actuarial tables, policy-level data of all class members' policies, while repeatedly pressing ANICO to remedy deficiencies in its productions; and
- Preparing mediation briefing and attending a full-day mediation conducted under the supervision of Judge Vaughn Walker (Ret.), with continuing negotiations following the first mediation; and
- Lengthy negotiations over the Settlement Agreement, and work in support of obtaining preliminary settlement approval.

All told, Susman Godfrey spent approximately 864 hours of work at hourly rates ranging from $400 to $1,300. Of that amount, approximately 44.1 hours ($41,150.00) were spent on work related to the complaint and amended complaints; 196.9 hours ($131,410.00) were spent on discovery-related work; 236.9 hours ($180,850.00) were spent opposing ANICO's motion to dismiss and motion to transfer; 95.3 hours ($91,790.00) were spent performing work related to mediations; 166.1 hours ($129,390.00) were spent working on the proposed settlement and related motions; 87.4 hours ($57,745.00) were spent on general case management work; and 37.5 hours ($22,850.00) were spent performing legal research unrelated to the motions to dismiss and transfer. *See* Sklaver Decl. ¶¶ 17, 29.

Susman Godfrey's hourly rates are also reasonable. The rates for Susman Godfrey and its staff who billed significant amounts of time to this case are lower than peer law firms litigating matters of similar magnitude. In a survey of AmLaw 50 law firms performed by PwC Product Sales, LLC and issued in June 2022, the median standard billing rate for equity partners was $1,374 and for associates was $895. *See* Sklaver Decl. ¶¶ 33, 34. Here, all of the partners who worked on the case bill at rates below the 2022 median rate for equity partners, and the billing rate of the associate who has worked on this case is also below the 2022 median standard billing rate for associates. *See id*. Given those comparisons, courts routinely find Susman Godfrey's rates reasonable. *See, e.g.*, *Meta Platforms, Inc. v. Social Data Trading Ltd.*, 2022 WL 18806267 at *5 (N.D. Cal. Nov. 11, 2022) (Susman Godfrey's rates were "reasonable" and "consistent with the prevailing market rates for attorneys of similar skill, experience, and reputation"); *Hancock COI I*, Dkt. 164 at 19:6–13 (accepting SG's rates as reasonable); *Phoenix COI*, 2015 WL 10847814, at *18 (finding SG's rates "reasonable" and "comparable to peer plaintiffs and defense-side law firms litigating matters of similar magnitude"); *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, No. CV13-5693 PSG (GJSX), 2017 WL 4685536, at *8 (C.D. Cal. May 8, 2017) (finding Susman Godfrey's rates reasonable).

Finally, the current 1.91 multiplier does not account for the *future* hours that Susman Godfrey will need to work to ensure that all Class Members receive the Settlement relief, including time that will be spent preparing papers in support of final approval, shepherding the notice and disbursement process, and administering the Settlement until all funds are distributed. Courts consider these expected future hours worked when assessing the reasonableness of a lodestar cross-check. *See Perez v. Rash Curtis & Assocs.*, 2020 WL 1904533, at *20 (N.D. Cal. Apr. 17, 2020) (considering counsel's averment that there will be an additional 5,450 hours spent on the case when awarding fees equaling multiplier of 13.42); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, and Prods. Liab. Litig.*, 746 F. App'x 655, 659 (9th Cir. 2018) ("The district court did not err in including projected time in its lodestar cross-check).

In a Class of over 3,000, from experience in handling class action settlements of similar size, Susman Godfrey anticipates being required to respond to multiple inquiries from Class

Members during administration. That additional work would bring the effective lodestar multiplier in this matter even lower than the current 1.91 multiplier. *See Reyes*, 856 F. App'x at 111 (2.88 multiplier was reasonable). Sklaver Decl. ¶ 28.

B. Susman Godfrey's expenses are reasonable, were necessarily incurred to achieve the Settlement, and should be reimbursed.

Susman Godfrey requests reimbursement of $182,413.25 for expenses incurred in connection with this action. Sklaver Decl. ¶ 35. These expenses, including filing fees, legal research charges, deposition costs, and expert fees, are all of the sort that would "normally be charged to a fee paying client." *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

The vast majority of these expenses were due to expert work performed by Robert Mills and Demeter Capital. Both Mr. Mills and Demeter Capital were closely involved in the discovery and mediation process, to help ensure that ANICO had provided all the information needed to accurately calculate what Plaintiff contends are the total COI overcharge for the Class.

Consultants from Demeter Capital, a firm with deep COI and life insurance experience, reviewed ANICO's mortality data as well as data related to COI charges for the Class policies to help confirm what Plaintiff contends are ANICO's best estimate of future mortality experience for the Class policies. Demeter Capital also performed a valuation analysis of the noncash benefits to the Class in the proposed Settlement, as was required for and presented on preliminary approval. (*See* Decl. of Keith McNally, Dkt. 82-3).

Robert Mills, an economist with Micronomics Inc., reviewed and analyzed ANICO's policy data and COI charge data, as well as the expectations as to future mortality experience calculated by Demeter Capital, to help calculate what Plaintiff contends are the COI charges that ANICO should have charged if it had based them on its expectations as to future mortality. Mr. Mills then determined the total COI overcharges at issue for the Class on a policy-by-policy basis. As set forth in the accompanying Declaration of Steven Sklaver, Mr. Mills' and Demeter Capital's work accounted for $159,223.00 in expenses for approximately 226 hours of work. Sklaver Decl. ¶¶ 37–38.

Susman Godfrey advanced these expenses without any assurance they would ever be reimbursed given the contingent nature of the case. That it was willing to spend its own money (without using outside funding), and where reimbursement depended entirely on this litigation's success, is perhaps the best indicator that expenditures were reasonable, necessary, and economical where appropriate.

Susman Godfrey also requests the Court approve payment of Settlement Administration Expenses under paragraph 34 of the Settlement. The Settlement Administrator has incurred $9,137.73 through August 20, 2023, and will incur additional expenses as Settlement payments are distributed, with total Settlement Administration Expenses estimated at $62,520. *See* Declaration of Gina Intrepido-Bowden ("Intrepido-Bowden Decl.") ¶¶ 3, 4.

C. A service award for Plaintiff is appropriate.

Plaintiff requests a service award of $25,000 for being the class representative. A service award is meant to compensate class representatives "for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009). Factors considered are: "1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation." *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

An award that is higher than the presumptively reasonable $5,000 amount is appropriate where the class representative, among other factors, "expend[ed] significant time and effort on the litigation," "where the class overall has greatly benefitted from the class representatives' efforts; and where the incentive awards represent an insignificant percentage of the overall recovery." *In re Wells Fargo & Co. S'holder Derivative Litig.*, 445 F. Supp. 3d 508, 534 (N.D. Cal. 2020), *aff'd*, 845 F. App'x 563 (9th Cir. 2021) (finding two separate $25,000 incentive awards reasonable); *see also Mostajo v. Nationwide Mut. Ins. Co.*, No. 2:17-CV-00350-DAD-AC, 2023 WL 2918657, at

*14 (E.D. Cal. Apr. 12, 2023) (awarding two $25,000 incentive awards); *Van Vranken*, 901 F. Supp. at 299 (awarding $50,000 incentive award); *Marshall*, 2020 WL 5668935, at *11 (awarding six $25,000 incentive awards, which combined was 1.2% of the total fund).

Mr. Yearby—who is 92 years old—has devoted significant time to pursuing this class action. With the assistance of his family, he reviewed and researched his policy language, spent hours locating and collecting the necessary policy documents that dated back decades, conferred with numerous lawyers about the potential claims at issue, reviewed drafts of pleadings and provided factual detail to support both the initial and amended complaints, scrutinized and approved the language of the Settlement Agreement, and, during the almost three years of this litigation, spent hours reviewing policy-related correspondence with ANICO in case it was relevant to the litigation. His financial risk in bringing this action was greater than normal, given his advanced age and the risk that his policy might mature before resolving the case. Mr. Yearby should also be rewarded for his role in seeking out counsel after discovering the potential overcharges and reaching a settlement that compensates Class Members for 88% of the total alleged COI overcharges. *See Moses v. New York Times Co.*, No. 21-2556-CV, 2023 WL 5281138, at *13 (2d Cir. Aug. 17, 2023) ("Such incentive awards often level the playing field and treat differently situated class representatives equitably relative to the class members who simply sit back until they are alerted to a settlement."). Declaration of Joe S. Yearby ("Yearby Decl.") ¶¶ 4–11.

Without Plaintiff bringing this case, or his involvement in helping settle the case, most Class Members would not be receiving any relief. Nor will Mr. Yearby receive any other personal benefit as a result of the settlement aside from the relief available to all class members. *See Marshall*, 2020 WL 5668935, at *11 (the fact that "[a]bsent an incentive award, the Class representatives in this action will receive no relief beyond that available to Class members" supported paying six $25,000 awards). Overall, the requested incentive award is a miniscule fraction of the common fund—only 0.5% of the Settlement's monetary benefits. The factors set out above therefore support the requested award.

The $25,000 request is also in line with those awarded in other complex COI class actions involving universal life insurance policies. *See, e.g.*, *Hancock COI I*, 15-cv-9924, Dkt. 164 at 21:2–

4 (approving $40,000 service awards); *Phoenix COI*, 2015 WL 10847814, at *24 ($25,000). And district courts within the Ninth Circuit have approved similar and larger incentive awards in complex class actions. *See, e.g.*, *Trujillo v. City of Ontario*, No. 04-1015-VAP, 2009 WL 2632723, at *5 (C.D. Cal. Aug. 24, 2009) ($30,000 each to six class representatives); *Carlin v. DairyAmerica, Inc.*, 380 F.Supp.3d 998, 1026 (E.D. Cal. 2019) ($45,000 each to four current class representatives); *Nitsch v. DreamWorks Animation SKG Inc.*, No. 14-4062, 2017 WL 2423161, at *16 (N.D. Cal. June 5, 2017) ($90,000 each to three class representatives); *Pan v. Qualcomm Inc.*, No. 16-1885, 2017 WL 3252212, at *14 (S.D. Cal. July 31, 2017) ($50,000 each to seven class representatives). Plaintiff therefore respectfully requests that the Court approve the single $25,000 service award to Mr. Yearby.

IV. CONCLUSION

For the foregoing reasons, Susman Godfrey respectfully requests that this Court award (1) its requested attorneys' fees in the amount of $1,250,000, plus a *pro rata* share of the interest earned on the Settlement Fund; (2) reimbursement of $182,413.25 in litigation expenses; (3) payment of settlement administration expenses to be incurred by the Settlement Administrator, including $9,137.73 through August 20, 2023; and (4) a $25,000 service award for Plaintiff Joe S. Yearby.

Dated: August 25, 2023

By: /s/ *Steven G. Sklaver*

Steven G. Sklaver
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, 14th Floor
Los Angeles, California 90067
Telephone: (310) 789-3100
Facsimile: (310) 789-3150
ssklaver@susmangodfrey.com

Seth Ard (*pro hac vice*)
Ryan Kirkpatrick
SUSMAN GODFREY L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, New York 10019
Telephone: (212) 336-8330
Facsimile: (212) 336-8340
sard@susmangodfrey.com
rkirkpatrick@susmangodfrey.com

Kevin Downs
SUSMAN GODFREY L.L.P.
1000 Louisiana Street, Suite 5100
Houston, Texas 77002
Telephone: (713) 651-9366
Facsimile: (713) 654-6666
kdowns@susmangodfrey.com

Attorneys for Plaintiff and the Class