

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Bonnie Berthiaume, Robert Berthiaume,
Doris Burnham, Richard Burnham, Nancy
Mayer-Gosz, Fletcher Lewis, and Carole
Lewis,

Court File No.: 27-CV-17-15118
Case Type: Other Contract / Other Civil
Judge Laurie J. Miller

Plaintiffs,

vs.

Allianz Life Insurance Company of North
America and Imeriti, Inc. d/b/a Imeriti
Financial Network,

**MEMORANDUM OF LAW IN
SUPPORT OF UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS SETTLEMENT AND ORDER
DIRECTING ISSUANCE OF CLASS
SETTLEMENT NOTICE**

Defendants.

Class Representatives, by counsel and on behalf of the Class, respectfully submit this memorandum of law in support of their unopposed motion for an order preliminarily approving the settlement, including the proposed notice provisions, and directing issuance of the class settlement notice.

INTRODUCTION

Class Representatives served Allianz Life Insurance Company of North America and Imeriti, Inc. ("Defendants") with a Complaint on October 4, 2016. On October 3, 2017, Class Representatives filed an Amended Complaint. The Court issued an order certifying this litigation as a class action on February 15, 2019.

Following three prior unsuccessful mediations, beginning in late 2019, the parties began extensive negotiations and mediation and have reached a proposed settlement.

The Stipulation of Settlement¹ provides for resolution of all claims or potential claims relating to the annuity Contracts issued by Allianz Life to Class Members and Class Members' interactions with Sean Meadows, whether or not those claims were asserted in the Action. Decl. of Jennifer Olson in Supp. of Pls.' Unopposed Mot. ("Olson Decl.") Ex. 1. In return, Class Members who submit a timely and valid Claim Form by the Claim Deadline in the manner required in the Stipulation of Settlement will be eligible to seek and receive compensation with two components – the Annuity Loss Component and the MFG Investment Loss Component, as defined in the Stipulation of Settlement.

The proposed form of notice of the class action settlement (Olson Decl. Ex. 1 at Ex. A), and dissemination of such notice by first-class mail directly to Class Members' last known names and addresses as reflected in Allianz Life's electronic records is the best notice practicable under the circumstances. Accordingly, it complies with Minnesota Rules of Civil Procedure 23.03(b)(2) and 23.05 and the Due Process Clauses of the United States and Minnesota Constitutions.

At this juncture, the Court need only determine whether the proposed settlement is sufficiently fair, reasonable, and adequate to allow the Class Settlement Notice to be disseminated. Class Counsel submits that the proposed Settlement amply satisfies the required standards, and respectfully requests that the Court authorize dissemination of notice pursuant to Minnesota Rules of Civil Procedure 23.02(b)(2) and 23.05.

¹ To the extent that defined terms of the Stipulation of Settlement are used within this memorandum and the motion it accompanies, it is intended that such terms shall have the meaning set forth in the Stipulation of Settlement.

FACTUAL BACKGROUND

I. The Parties

A. Allianz Life

Defendant Allianz Life is a Minnesota corporation with its executive offices located at 5701 Golden Hills Drive, Golden Valley, Hennepin County, Minnesota 55416. Allianz Life is organized and exists under the laws of the State of Minnesota and is authorized to transact the business of insurance in Minnesota. Allianz Life sells fixed index, variable, and index variable annuities, in addition to life insurance products in Minnesota and across the United States.

B. Imeriti

Defendant Imeriti is a Minnesota corporation with its principal place of business located at 4134 Deegan Court, Suite 300, Monticello, Wright County, Minnesota 55362. Imeriti is an independent marketing organization (“IMO”).

C. The Class Representatives

The Class Representatives are Robert Berthiaume, Doris and Richard Burnham, Nancy Mayer-Gosz, and Fletcher Lewis.² The Class Representatives each purchased and surrendered Allianz Life annuities at former agent Sean Meadows’ direction.

² For purposes of this motion and settlement only, the allegations in the Amended Complaint are stated as facts. Defendants deny any wrongdoing alleged in the Amended Complaint and do not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged against them in the Action.

II. Class Representatives' Position

The allegations in the Amended Complaint focus on Meadows, a former financial advisor previously associated with Defendants, who sold all of the Allianz Life annuities at issue in this matter. The Class Representatives purchased Allianz Life annuities through Meadows, and Imeriti received compensation for each policy purchased by the Class Representatives. The Class Representatives allege that they and Class Members were injured because Meadows directed them to buy and surrender annuities in what the Amended Complaint characterizes as a pattern of churning, leading them to pay surrender charges, and to invest funds into Meadow's fraudulent investment scheme ("Meadows' Ponzi Scheme"). The Amended Complaint further alleges that Defendants allowed Meadows to operate with impunity.

The Amended Complaint asserts six causes of action against Allianz Life: (i) Count One – Minn. Stat. § 325F.69, Consumer Fraud Act; (ii) Count Two – Minn. Stat. § 325F.67, False Statement in Advertising Act; (iii) Count Three – Minn. Stat. § 325D.44, Uniform Deceptive Trade Practices Act; (iv) Count Four – Minn. Stat. § 325F.71, Deceptive Acts Perpetrated Against Senior Citizens and Disabled Persons; (v) Count Five – Negligence; and (vi) Count Six – Aiding and Abetting Fraud. It asserts two causes of Action against Imeriti, Count Seven – Negligence and Count Eight – Aiding and Abetting Fraud.

Before serving the Complaint, Class Counsel conducted a thorough investigation of the facts relating to the claims asserted in the Action. Class Counsel interviewed numerous Class Members and collected and analyzed documents provided by the Class

Representatives and other Class Members. Additionally, they worked with the Minnesota Department of Commerce and the United States Attorneys' Office to review and analyze documents collected as part of the criminal and civil investigations into Meadows' conduct. Finally, they interviewed Meadows himself in order to obtain details of his scheme.

After the Amended Complaint was filed, the parties engaged in extensive litigation, including motions to dismiss, the exchange of more than 16,000 documents, 18 fact depositions, expert discovery involving the exchange of seven expert reports and three expert depositions, a motion for class certification, two requests for review by the Minnesota Court of Appeals, and a Petition for Review by the Minnesota Supreme Court. Throughout the course of the litigation, the parties engaged in multiple rounds of settlement talks, including four mediations with two retired federal magistrate judges. With the assistance of retired Judge Arthur Boylan, the parties reached an agreement on class settlement relief on May 8, 2020.

Class Counsel have evaluated the relevant law and facts to assess the merits of the asserted claims, and the likelihood of success at trial. Based upon their extensive investigation, litigation, and evaluation of the facts and the law, the Class Representatives have agreed to settle the Action pursuant to the provisions of the Stipulation of Settlement, after considering, among other things: (a) the fairness, reasonableness, and adequacy of the relief provided for under the Stipulation of Settlement; (b) the substantial risks and uncertainties of protracted litigation and trial, especially in a complex class action such as this, as well as the difficulties, delays, and

risks of adverse results inherent in such litigation; (c) the needs and interests of the Class; and (d) the desirability of consummating the Stipulation of Settlement promptly, in order to provide timely, effective relief to the Class Members.

The Class Representatives and Class Counsel agree that the proposed Stipulation of Settlement is fair, reasonable, and adequate because it provides substantial benefits to the Class, is in the best interests of the Class, and fairly resolves the claims alleged in the Action.

III. Defendants' Position

Defendants deny any wrongdoing alleged in the Amended Complaint and do not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged against them in the Action. Defendants contend that Class Representatives would suffer failures of proof at trial that would be fatal to their claims, in part because it is impossible to prove some of the elements of the claims on a class-wide basis.

Further, Defendants contend that persons in the Class have not suffered any damage or loss as a result of the alleged conduct attributed to Defendants in the Amended Complaint. Defendants further contend that the offers and sales of all Allianz Life annuities issued were and are legal and appropriate in all respects.

Nonetheless, Defendants consider it desirable for this Action to be settled and dismissed because this Settlement will: (i) provide substantial benefits to Class Members; (ii) put the class's claims and the underlying matters to rest; and (iii) avoid

the substantial expense, burdens, risks, and uncertainties associated with the continued litigation of the Action.

IV. Settlement Negotiations

The proposed Settlement is the product of extensive and intensive negotiations. The Parties worked with a mediator, the Honorable Arthur J. Boylan, a retired United States Magistrate Judge in the District of Minnesota who has served as a mediator in hundreds of cases. The settlement negotiations included three full-day mediation sessions and numerous telephone conferences between the Parties.

V. The Settlement Terms and Agreement

A. Basic Terms of the Settlement Relief

Class Members who submit a timely and valid Claim Form by the Claim Deadline in the manner required in the Stipulation of Settlement shall be eligible to receive compensation with two components – the Annuity Loss Component and the MFG Investment Loss Component. Class Members who demonstrate entitlement to recovery of the Annuity Loss Component will receive 50% of their net out-of-pocket loss during the class period. Class Members who demonstrate entitlement to recovery of the MFG Investment Loss Component will receive a percentage of the total MFG Investment Loss – 40% of the loss for Class Members who surrendered before October 1, 2013 and supply the qualifying documentation with their Claim Form, 50% for Class Members who surrendered after October 1, 2013 and supply the qualifying documentation with their Claim Form, and 12% for Class Members who submit their Claim Form without the qualifying supporting documentation.

B. Notice Generally

Subject to the requirements of any orders entered by the Court, the Settlement Claims Administrator shall send the Notice of Class Action Settlement and Fairness Hearing (the “Class Settlement Notice”) (Olson Decl. Ex. 1 at Ex. A) by first-class mail, postage prepaid, to Class Members’ last known addresses as reflected in Allianz Life’s electronic records. The Class Settlement Notice will be mailed to Class Members no later than 21 days after the Court issues an order preliminarily approving the proposed Stipulation of Settlement. In the case of Class Settlement Notices undelivered and returned by the U.S. Postal Service, the Settlement Claims Administrator will make reasonable efforts to determine a current address for the Class Member and resend the returned Class Settlement Notice to the current address. Class Members may object to the proposed Settlement by following the prescribed process.

C. Claim Process

The Class Settlement Notice explains that Class Members who wish to participate in the Claim Process must complete and timely return a Claim Form that will be sent to Class Members if and when the Court gives final approval to this proposed Settlement. The Claim Form must be postmarked by the Claim Deadline to be valid. The Claim Deadline will be 60 days after the date on which the Claim Packets are mailed.

Upon the Settlement Claims Administrator’s receipt of a Claim Form, the Settlement Class Administrator shall review the submitted Claim Forms for completeness pursuant to the requirements of the Stipulation of Settlement. Claim

Forms meeting the requirements of the Stipulation of Settlement shall be forwarded to Allianz Life to review and calculate settlement relief, if any. Allianz Life will process eligible Claims and remit settlement payments by check to Class Members. Payments shall be made within 30 days of the date upon which (i) Allianz Life provides counsel for each Party with the Calculated Settlement Amount for each eligible Class Member as to which no Party files a notice of disagreement within the 14-day period; (ii) counsel for the Parties resolve any notice of disagreement as to the Calculated Settlement Amount for any eligible Class Member if such a notice is provided and resolved; or (iii) the Presiding Neutral makes a final determination as to the Calculated Settlement Amount for any eligible Class Member if a request for review to the Presiding Neutral is made by counsel for any Party.

D. Objections to Settlement

Class Members may object to the proposed Settlement by filing with the Court and sending to the Parties' Counsel a written statement of objection postmarked no later than 45 days after the date of the Class Settlement Notice.

Each such statement of objection must: (1) set forth the Class Member's full name, current address, telephone number, and applicable Contract number(s); (2) state that the Class Member objects to the Settlement, in whole or in part; (3) set forth a statement of the legal and factual basis for the objection; and (4) be accompanied by copies of any and all documents that the objecting Class Member has and will submit in support of his/her position.

A Class Member who does not submit a timely objection in accordance with the Stipulation of Settlement and the Class Settlement Notice, and as otherwise ordered by this Court, shall not be treated as having filed a valid objection to the Settlement. The Class Settlement Notice informs the Class of this requirement. Class Counsel will file copies of all objections with the Clerk prior to the Fairness Hearing so that the Court may appropriately consider them. Class Members may object either on their own or through an attorney hired at their own expense. If a Class Member hires an attorney to represent him or her, the attorney must (i) file an entry of appearance with the Clerk of the Court no later than 45 days after the date of the Class Settlement Notice, and (ii) send a copy of the same to the Parties' Counsel, postmarked no later than 45 days after the date of the Class Settlement Notice.

F. Notice of Intention to Appear at Fairness Hearing

A Class Member who has filed and served a written objection to the proposed settlement may, if he or she so requests, appear at the Fairness Hearing, either in person or through an attorney hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of the proposed settlement, or to the Unopposed Fees and Costs. A Class Member who wishes to appear must mail a Notice of Intention to Appear and Object to the Parties' Counsel, postmarked no later than 45 days after the date of the Class Settlement Notice, and file the Notice of Intention to Appear and Object with the Court no later than 45 days after the date of the Class Settlement Notice.

A Class Member who appears at the Fairness Hearing will be permitted to argue only those matters that were set forth in a written objection filed by such Class Member

in accordance with the Stipulation of Settlement. The Class Settlement Notice explains that Class Members will not be permitted to raise matters at the Fairness Hearing that the Class Member could have raised in a written objection but did not, and that all objections to the settlement that are not set forth in such a written objection are deemed waived. It further explains that any Class Member who fails to comply with the applicable provisions of the Stipulation of Settlement and the Class Settlement Notice, and as otherwise ordered by this Court, shall be barred from appearing at the Fairness Hearing.

The Parties may serve and file responses to written objections at any time prior to the Fairness Hearing, or as otherwise directed by the Court.

7. Proposed Schedule Following Preliminary Approval

The Parties propose that along with granting preliminary approval of the Stipulation of Settlement, the Court adopt the schedule set forth below in its Preliminary Approval Order, to allow the Parties to effectuate the various steps in the settlement approval process under the Stipulation of Settlement.

Event	Timing
Deadline for Mailing of Class Settlement Notice Package	No later than 21 days after Court issues an order preliminary approving the settlement
Deadline for Filing Objections to the Settlement	No later than 45 days after the date of the Class Settlement Notice
Final Fairness Approval Hearing	TBD (but not earlier than 75 days after Preliminary Approval Order)
Deadline for Mailing Claim Form Packets	No later than 30 days after the Final Settlement Date

Deadline for Claims to be Postmarked	No later than 60 days after the date on which the Claim Packets were mailed (the "Claim Deadline")
Deadline for Allianz Life to Process Valid Claims	No later than 60 days after the Claim Forms are provided from the Settlement Claims Administrator to Allianz Life for review

ARGUMENT

I. **Because the Court has already certified the class, it can preliminarily approve the settlement without re-certifying.**

As the Court concluded in its February 15, 2019 order certifying this case as a class action, the Class satisfies each of Minnesota Rule of Civil Procedure 23.01's requirements. As in the Court's order certifying the class, the Class is defined as:

National Class

All residents of the United States who, during the Class Period, purchased an Allianz annuity or other Allianz life insurance product from Sean M. Meadows and were defrauded of some or all of their investment. The Class Period commences on January 1, 2004 and continues through August 5, 2014. Excluded from the class is any parent, subsidiary, affiliate, controlled person, officer, director, agent, servant, employee, or immediate family member of Defendants.

Minnesota Subclass

All residents of the State of Minnesota who, during the Class Period, purchased an Allianz annuity or other Allianz life insurance product from Sean M. Meadows and were defrauded of some or all of their investment. The Class Period commences on January 1, 2004 and continues through August 5, 2014. Excluded from the class is any parent, subsidiary, affiliate, controlled person, officer, director, agent, servant, employee, or immediate family member of Defendants.

Senior Citizens and Disabled Persons Subclass

All residents of the State of Minnesota who are senior citizens or disabled, who during the Class Period, purchased an Allianz annuity or other Allianz life insurance product from Sean M. Meadows and were

defrauded of some or all of their investment. The Class Period commences on January 1, 2004 and continues through August 5, 2014. Excluded from the class is any parent, subsidiary, affiliate, controlled person, officer, director, agent, servant, employee, or immediate family member of Defendants.

Because the Court has already determined that this class satisfies the requirements of Rule 23, it need not re-certify the class in order to preliminarily approve the Class Settlement and to direct issuance of the Class Settlement Notice. *See* Minn. R. Civ. P. 23.05(a).

II. The Proposed Form and Dissemination of Notice is Adequate.

Minnesota Rule of Civil Procedure 23.05(a)(2) provides that “[t]he court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.” Minnesota Rule of Civil Procedure 23.03(b)(2) further provides that in any class action maintained under Rule 23.02(c), the Court shall “direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Here, the Parties propose providing individual first-class mailed notice to all reasonably identifiable Class Members, based on last known addresses in Allianz Life’s records.

Notice by mail satisfies the due process requirements in the Minnesota and United States Constitutions, and Minnesota Rule of Civil Procedure 23. In *Grunin v. International House of Pancakes*, the Eighth Circuit relied on the Supreme Court to find that “individualized notice by mail to the last known address was the ‘best notice practicable’ in a class action contest.” 513 F.2d 114, 121 (8th Cir. 1975) (citing *Eisen v.*

Carlisle & Jacquelin, 417 U.S. 157, 174-77 (1974)).³ The Court also concluded that “notice by publication was unnecessary in this case for due process purposes and probably would have been of little value in alerting members of the class and subclass that were previously uninformed.” *Id.*⁴ Similarly, the United States District Court for the District of Minnesota has determined that where individualized notice by mail would reach a large majority of class members, supplemental notice by publication was not required. *In re Wholesale Grocery Prods. Antitrust Litig.*, Case No. 09-MD-2090 ADM/TNL, 2017 WL 826917, at *4 (D. Minn. Mar. 1, 2017). Here, where Allianz Life has had a direct customer relationship with each class member, it is likely that a large majority of (if not all) Class Members will be reached by individualized mailings, rendering the proposed notice by mailing adequate.

The content of the proposed Class Settlement Notice also fulfills the requirements of Minnesota Rules of Civil Procedure 23.05(a)(2) and 23.03(b)(2), as well as the due process clauses of the United States and Minnesota Constitutions. The Class

³ “Because of the substantial similarity between Minnesota’s rule 23 and Fed. R. Civ. P. 23, federal precedent is instructive in interpreting our rule.” *Whitaker v. 3M Co.*, 764 N.W.2d 631, 635 (Minn. Ct. App. 2009) (internal quotation and citation omitted).

⁴ See also *Peters v. Nat’l R.R. Passenger Corp.*, 966 F.2d 1483, 1486 (D.C. Cir. 1992) (“It is beyond dispute that notice by first class mail ordinarily satisfies [the] requirement that class members receive ‘the best notice practicable under the circumstances.’”); *Gonzalez v. City of New York*, 396 F. Supp. 2d 411, 418 (S.D.N.Y. 2005) (“Individual mailings, even when only calculated to reach one third of prospective plaintiffs, and even without supplemental publication in newspapers, have been found to constitute adequate notice.”); *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, No. MDL 1559 4:03-MD-015, 2004 WL 3671053, at *8 (W.D. Mo. Apr. 20, 2004) (“there is no question that individualized notice by mail to the last known address is the best notice practicable in a class action.”).

Settlement Notice concisely and clearly describes the nature of the Action, the Class definition, and the Class claims and issues. *See* Minn. R. Civ. P. 23.03(b)(2). It also explains that a Class Member may enter an appearance through counsel if the member so desires, that a Class Member may object to the Settlement, how Class Members may elect to be excluded, and that the class judgment will be binding on Class Members. *See id.* Additionally, the Class Settlement Notice includes all of the information and deadlines Class Members need to make an informed decision regarding participation in the settlement. The Class Settlement Notice is thus “reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford[s] them an opportunity to present their objections.” *See In re Wholesale Grocery Prods.*, 2017 WL 826917, at *3 (quoting *Grunin*, 513 F.2d at 120).

III. The Proposed Settlement is Sufficiently Fair, Reasonable, and Adequate to Authorize Dissemination of the Class Settlement Notice.

In complex class actions such as this, there is strong public policy favoring voluntary resolution through settlement. *See George v. Uponor Corp.*, Civ. No. 12-249 (ADM/JJK), 2015 WL 5255280, at *6 (D. Minn. Sept. 9, 2015) (citing *White v. Nat'l Football League*, 822 F. Supp. 1389, 1416 (D. Minn. 1993)). As a result, “courts should approach [class settlements] with a presumption in their favor.” *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1148 (8th Cir. 1999).

Approving a class action settlement typically follows a two-step process. *See Dryer v. NFL*, Civ. No. 09-2182 (PAM/AJB), 2013 WL 1408351, at *1 (D. Minn. Apr. 8, 2013). “[F]irst, the Court must enter a preliminary approval order, and second, after

providing notice of the proposed settlement to the class and a final fairness hearing is conducted, the Court must enter a final approval order.” *Id.* When determining whether a settlement is fair, reasonable, and adequate, courts consider four factors: (1) the merits of the plaintiffs’ case, weighed against the terms of the settlement; (2) the defendant’s financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement. *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 932 (8th Cir. 2005). The fourth factor is analyzed at the final approval stage, after notice of the class settlement has been distributed. *Id.* In other words, at this initial stage, the Court need only “make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing.” *See* The Manual for Complex Litigation (Fourth) § 21.632.

While Class Counsel believes the Settlement is entitled to final approval, at this stage they are only requesting that the Court take the first step in the approval process by granting preliminary approval of the Settlement and by approving the proposed form and manner of providing notice of the proposed settlement and the date of the final fairness hearing to the Class Members.

A. As a threshold matter, the settlement is entitled to a presumption of fairness.

Courts find “a presumption of fairness when a settlement is negotiated at arm’s length by well-informed counsel.” *Beaver Cnty. Emps. Ret. Fund v. Tile Shop Holdings, Inc.*, Case No. 0:14-cv-00786-ADM-TNL, 2017 WL 2574005, at *2 (D. Minn. June 14, 2017)

(internal quotation and citations omitted); see *In re Zurn Pex Plumbing Prods. Liab. Litig.*, Civ. No. 08-MDL-1958 ADM/AJB, 2013 WL 716088, at *6 (D. Minn. Feb. 27, 2013) (observing that settlement agreements are presumptively valid when negotiated at arm's length by counsel experienced in similar matters). In particular, when as here, the settlement was negotiated at arm's length, discovery is sufficient, the settlement proponents are experienced in similar matters, and there will likely be few objectors, courts presume settlements to be valid. See *In re Zurn*, 2013 WL 716088, at *6. The presumption in favor of such settlements reflects courts' understanding that vigorous negotiation between seasoned and experienced counsel protects against collusion and satisfies the fairness requirements of Minnesota Rule of Civil Procedure 23.05. *Yarrington v. Solvay Pharm. Inc.*, No. 09-CV-2261 (RHK/RLE), 2010 WL 11453553, at *7 (D. Minn. Mar. 16, 2010) (the "presumption in favor of such settlements reflects courts' understandings that vigorous negotiations between experienced counsel protect against collusion and advance the fairness concerns underlying" the rules governing class settlements).

As described above, the Settlement reached here is the product of extensive arm's length negotiations undertaken in good faith for many months, with the assistance of a well-respected former federal judge as mediator for multiple mediation sessions, as well as in numerous telephone conferences between the Parties' Counsel.

Furthermore, the Settlement was negotiated on behalf of the Class by counsel who have extensive experience in similar matters, including Amy S. Connors, Jennifer L. Olson, and Thomas B. Heffelfinger, each of whom have significant experience

handling class actions and complex litigation. Amy Conners has extensive experience litigating complex class action lawsuits, including defending securities class actions and consumer class actions. *See* Olson Decl. Ex. 2. Jennifer Olson has successfully settled multiple class action lawsuits. *See id.* ¶ 4. Thomas Heffelfinger served as the United States Attorney for the State of Minnesota from 1991-1993, and again from 2001-2006. *See* Olson Decl. ¶ 5; *id.* Ex. 4. On the basis of a thoroughly informed assessment of their case, Class Counsel have concluded that the proposed settlement is fair, reasonable, and adequate. *See George*, 2015 WL 5255280, at *6 (“courts give ‘great weight’ to and may ‘rely on the judgment of experienced counsel in its evaluation of the merits of a class action settlement’”) (quoting *Welsch v. Gardebring*, 667 F. Supp. 1284, 1295 (D. Minn. 1987)). Because the arm’s length nature of the negotiations and the participation of experienced advocates throughout the process strongly supports the conclusion that the proposed settlement is fair, reasonable, and adequate to the Class applying the presumption of fairness is appropriate.

B. The merits balanced against the terms of the settlement weigh in favor of settlement.

The first factor, which is also the most important, weighs in favor of approval of the Settlement because the certainty of the immediate benefits provided in the Stipulation of Settlement outweighs the uncertainty of a litigated resolution. *See In re Wireless*, 396 F.3d at 933. The Settlement provides considerable financial benefits to the Class. The crux of the Class Representatives’ claims is that Meadows churned their annuity policies with Defendants’ knowledge, causing them to incur early surrender

charges, and that he defrauded them by selling them fictitious investment products as part of a long-running Ponzi scheme. The Stipulation of Settlement directly addresses the damage alleged. Under the Settlement, Class Members will be eligible to receive compensation for two types of losses – the Annuity Loss Component and the MFG Investment Loss Component. Additionally, the Claims Process does not require Class Members to undertake a long or contested effort to obtain Settlement Relief. So long as Class Members timely file a properly completed Claim Form, they will be eligible to receive Settlement Relief. This Settlement therefore substantially addresses the concerns of the Class Members and provides them with relief for two categories of losses.

Class Representatives and Class Counsel have assessed the probability of ultimate success on the merits, including surviving summary judgment and establishing liability at trial. Defendants vigorously dispute the allegations set forth in the Amended Complaint and would contest all material issues. Although Class Representatives are confident in the merit of their claims, they recognize that they are not without challenges and that protracted litigation would continue if the case proceeds. Accordingly, when the complexity of the issues involved and the expense and duration of the litigation are considered, the immediate benefits of an early and certain resolution weigh heavily in favor of settlement.

C. Defendants' financial condition weighs in favor of approval.

With respect to Defendants' financial condition, Defendants have the ability to fully comply with the Settlement. Simply being able to "pay more" in a settlement, however, "standing alone, does not render the settlement inadequate. *Petrovic*, 200 F.3d

at 1152. Setting aside whether Defendants could pay a larger sum, Class Representatives' prospects of recovering a substantially greater award at trial are by no means guaranteed and would involve lengthy, expensive litigation followed by inevitable appeals. In contrast, the Settlement eliminates any risk for the Class Members and provides quick and substantial compensation.

D. The complexity and expense of further litigation weighs in favor of settlement.

Finally, "class actions place an enormous burden of costs and expense upon parties." *Beaver Cnty.*, 2017 WL 2574005, at *3 (internal quotation, citation, and alteration omitted). If this Settlement is not approved, this Action will "likely drag on for years, [and] require the expenditure of" substantial additional resources, "all the while class members would receive nothing." *In re Wireless*, 396 F.3d at 933.

The Class Representatives assert multiple statutory and common law claims that involve complex legal and factual issues, including the statute of limitations, scienter, duty, and numerous elements of several statutory claims. The Parties would need to brief additional motions regarding expert witnesses, a motion to decertify the class, and summary judgment before a trial. All of those motions would require extensive briefing, hearings, and a substantial investment of the Parties' and Court's time and resources. And, even if the Class Representatives prevailed at trial, which is uncertain, they still would face the risk of reversal on appeal. As a result, and "as has been noted in other class action cases, the various procedural and substantive defenses likely to be argued to the hilt by the [] Defendants, the expense of proving class members' claims,

the certainty of resolution under this Settlement forecloses any subsequent appeals, and the fear that the ultimate resolution of the action . . . could well extend into the distant future, all weigh in favor of the Settlement's approval." *George*, 2015 WL 5255280, at *7 (internal quotation and citation omitted).

CONCLUSION

Because the requirements of Minnesota Rule of Civil Procedure 23 are satisfied, and the settlement is fair, reasonable, and adequate, the Parties respectfully request that the Court grant their joint motion for preliminary approval of settlement and issue an order directing issuance of Class Settlement Notice.

BEST & FLANAGAN LLP

Dated: September 1, 2020

By: /s/Jennifer L. Olson
Amy S. Conners (#387375)
Thomas B. Heffelfinger (#0043228)
Jennifer L. Olson (#391356)
Brian Linnerooth (#0400162)
60 South Sixth Street, Suite 2700
Minneapolis, MN 55402
(612) 339-7121
aconners@bestlaw.com
theffelfinger@bestlaw.com
jolson@bestlaw.com
blinnerooth@bestlaw.com

Class Counsel