**UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF VIRGINIA**
**RICHMOND DIVISION**

| | |
|---|---|
| MARTIN SILVERSTEIN,<br>Plaintiff,<br><br>v.<br><br>GENWORTH LIFE INSURANCE COMPANY,<br>Defendant. | Civil No. 3:23-cv-00684 (DJN) |

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

**TABLE OF CONTENTS**

# TABLE OF AUTHORITIES

**Page(s)**

**Cases**

**Statutes and Rules**



**Other Authorities**

## I. INTRODUCTION

The Settlement—achieved after more than a year of active litigation and following arm's-length negotiations at three different mediations including the last one that culminated in the Settlement before Magistrate Judge Mark Colombell—is an outstanding result for the Settlement Class. The monetary and nonmonetary benefits combined result in a Settlement value of over $8 million for the Settlement Class. The $5.1 million cash fund on its own is equal to 71.5% of past COI overcharges that Defendant Genworth Life Insurance Company ("GLIC") imposed on the Settlement Class through June 2024. *See* Declaration of Steven Sklaver in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement ("Sklaver Final Approval Decl.") ¶ 4. The Settlement also provides nonmonetary benefits with an estimated value of $3,097,438 to the Settlement Class, including (1) a guarantee by GLIC through October 25, 2029 not to impose a new COI rate scale increase, and (2) a guarantee that GLIC will not challenge the validity and enforceability of any eligible policies owned by participating Settlement Class members on the grounds of lack of an insurable interest or misrepresentation in the application for such policies, thereby ensuring that the death benefits will be paid when a policy matures after a claim for the policy proceeds is submitted. *Id.* ¶¶ 4, 22. The terms of the Settlement are set forth in a Stipulation, finalized on August 2, 2024. *Id.*, Ex. 2.

Preliminary approval of the Settlement was granted on October 11, 2024, and Notice to the Settlement Class was mailed on October 25, 2024. Dkts. 64–65. The opt out and exclusion deadline was December 10, 2024. Although there are over 3,000 policies in the Settlement Class, not a single objection was filed and not a single exclusion request has been received as of December 11, 2024. Declaration of Gina Intrepido-Bowden ("Intrepido-Bowden Decl.") ¶¶ 12, 14. Class Counsel

will update the Court if any opt-out or exclusions are filed between now and the January 3, 2025 final approval hearing.

The Settlement resulted from the tenacious prosecution of this case. Class Counsel previously litigated and settled a case against GLIC's affiliate Genworth Life & Annuity Insurance Company ("GLAIC"), *Brighton Trustees, LLC, et al. v. Genworth Life and Annuity Ins. Co.*, Case No. 3:20-cv-00240-DJN (E.D. Va.) ("GLAIC Action"). GLAIC, however offered no money to the victims of the GLIC COI increase, and refused to produce discovery about the impact of the COI increase on GLIC owners. GLIC owners were never within the proposed class in that case.

The GLAIC Action plaintiffs owned *only* GLAIC-issued policies, *id.*, Dkt. 1 (GLAIC Action Compl.) ¶¶ 19–20, and therefore had no privity with nor class standing to sue GLIC, or settle with GLAIC, for GLIC's breach of contract. *See, e.g., Pryce v. Progressive Corp.*, 2022 WL 1085489, at *9 (E.D.N.Y. Feb. 17, 2022) ("[E]ven despite closely interconnected business entities, a class action plaintiff does not have standing to sue defendants for a breach of contract to which the plaintiff was not a party.") (cleaned up) *report and recommendation adopted as modified*, 2022 WL 969740 (E.D.N.Y. Mar. 31, 2022); *see also Mahon v. Ticor Title Ins. Co.*, 683 F.3d 59, 61, 65 (2d Cir. 2012) (no class standing for breach-of-contract claims against affiliates of insurer despite allegations they were affiliated entities that shared resources and engaged in same wrongful conduct). GLIC policyholders—*i.e.*, the Settlement Class in this case—were not included in the GLAIC Action settlement and received no relief from it either, a fact made express in the settlement itself and class notice. GLAIC Action, Case No. 3:20-cv-00240-DJN, Dkt. 143-3 (Settlement Agreement) ¶¶ 51, 62, 79. The Settlement here means that GLIC policyholders will finally, for the first time, receive relief for the improper COI overcharges leveled against their policies.

In light of the recovery for the Settlement Class and the risks to continued litigation, Class Representative Martin Silverstein respectfully submits that the Settlement is fair, reasonable, and adequate, and warrants final approval by the Court.

## II. BACKGROUND

### A. The COI Increase

The Settlement Class consists of owners of approximately 3,000 universal life policies ("Class Policies") insured by GLIC and issued on GE Gold I and GE Gold II policy forms, that were subject to a 2019 COI increase. Dkt. 64 (Preliminary Approval Order). Each Class Policy contains a section titled "Changes in Rates, Charges, and Fees," with limitations on when and how monthly risk rates used to calculate the monthly COI charges can be adjusted. Plaintiff's policy, which is representative of the language included in all Class Policies, states in relevant part:

> The Company will base any change on its expectations as to future investment earnings, mortality, persistency, expenses and taxes. The Company will not make any change in order to recoup prior losses. Any change in the monthly risk rates will apply to all insured with the same combination of the following: attained age; number of years of insurance in force; net amount at risk; and premium class.

*See* Sklaver Final Approval Decl., Ex. 3. In September 2019, GLIC adjusted COI rates on the Class Policies.

### B. The GLAIC Litigation

In April 2020, Brighton Trustees, LLC and Bank of Utah filed a putative class action lawsuit, asserting a breach of contract claim against GLAIC. GLAIC Action, Case No. 3:20-cv-00240-DJN, Dkt. 1. GLIC and GLAIC are separate legal entities. *Id.* ¶ 22. GLIC policyholders were not included in the putative class in the Complaint or when the motion for class certification was filed. GLAIC refused to provide any discovery specific to the GLIC policies or any relief to GLIC policyholders when that case settled. *See* Sklaver Final Approval Decl. ¶¶ 12–14, Ex. 6;

GLAIC Action, Case No. 3:20-cv-00240-DJN, Dkt. 143-3 (Settlement Agreement) ¶¶ 51, 62, 79. Instead, GLAIC would only agree to make explicit that, because it was not offering any money to owners of GLIC policies nor providing notice of the settlement to those owners, those owners were excluded from the class definition and not subjected to nor bound by the release.

### C. The Present Litigation

Plaintiff owns a GLIC policy. He filed this action for breach of contract on October 20, 2023. Dkt. 1. Plaintiff alleges that GLIC's September 2019 COI rate increase breached the terms of the GLIC policies. *Id.* ¶¶ 1–24. The complaint alleges multiple theories of breach, including that GLIC's mortality expectations had improved; GLIC's investment earnings, persistency, expenses, and tax expectations had not materially changed; the COI increase recouped prior losses; and the increase was not applied to "all insureds with the same combination of the following: attained age; number of years of insurance in force; net amount of risk; and premium class," which the contract required. *Id.*

The Court held an initial status conference on January 9, 2024. Dkt. 35. The Court proposed a "fast settlement conference," with discovery to be produced in advance. Dkt. 36 at 7. The parties scheduled a mediation for March 4, 2024. Sklaver Final Approval Decl. ¶ 17. On February 7, 2024, GLIC produced detailed policy-level data for the approximately 3,000 GLIC policies. *Id.* ¶ 16. Class Counsel then worked diligently with its expert to process and analyze the data and generate damages models in advance of the mediation. *Id*. After that mediation was unsuccessful, the Court issued a scheduling order on March 8, 2024. Dkt. 41. The deadline for serving opening expert reports was August 12, 2024. *Id.* The close of fact discovery was September 12, 2024. *Id.* Trial was set for January 10, 2025. *Id.*

Over the ensuing months, the parties engaged in extensive additional discovery. *Id.* ¶¶ 8–11. The parties agreed to the reproduction in this action of the documents and discovery produced in the GLAIC Action (with an exception for GLAIC-specific policy-level data). *Id.* ¶ 8. Plaintiff worked closely with its experts to analyze these documents to develop and investigate GLIC-specific theories of liability and damages. *Id.* ¶¶ 8–9, 11. As part of this additional investigation, on May 30, 2024, Plaintiff subpoenaed documents from GLIC's New York entity, known as GLICNY, in support of his uniformity theory of breach. *Id.* ¶¶ 8, 11. Plaintiff served additional third-party document subpoenas on May 7, May 14, and June 25. *Id*. These subpoenas included a request for MG-ALFA actuarial modeling software from Milliman. *Id*. Plaintiff served five deposition notices on GLIC on June 14, 2024. *Id*. Plaintiff also served deposition subpoenas on third-parties Milliman and Willis Towers Watson on July 2, 2024. *Id*. Also on July 2, Plaintiff served 14 interrogatories, 43 requests for production, and 431 requests for admission. *Id*.

**D. Settlement Negotiations, Preliminary Approval, and Class Notice**

The Settlement is the result of extensive, arms-length negotiations between the parties with the assistance of an experienced mediator, Rodney Max Esq. of Upchurch Watson White & Max, and Magistrate Judge Cololmbell. The parties first mediated with Mr. Max, a distinguished fellow and past president of the American College of Civil Trial Mediators. The mediation took place in person in Miami, Florida on March 4, 2024. Sklaver Final Approval Decl. ¶ 17. The parties then held a second mediation via videoconference on April 9, 2024. *Id*. The parties were unable to reach agreement at those mediations, but they continued to meet and confer regarding settlement. *Id.*

A few months later, the parties mediated again to try and resolve the dispute. This mediation occurred at the request of Class Counsel to the Court to assist in overseeing settlement negotiations, given the unsuccessful results of the two prior private mediations. Dkt. 38. On June

26, 2024, the parties mediated with Judge Colombell in Richmond, Virginia. Sklaver Final Approval Decl. ¶ 19. Plaintiff and his wife traveled from Ohio to attend the mediation. *Id.* After a full day of mediation with Judge Colombell, the parties were unable to reach an agreement. *Id.* ¶ 20. At the end of the day, Judge Colombell made a mediator's proposal. *Id.* On July 8, 2024, Judge Colombell informed the parties that both sides accepted his proposal, and the parties reached an agreement to settle the case. *Id.* The parties then drafted the settlement agreement, which was executed on August 2, 2024. *Id.*, Ex. 2.

Throughout the process, the Settlement negotiations were conducted by highly qualified and experienced counsel on both sides at arm's length. Sklaver Final Approval Decl. ¶¶ 4, 15, 27–28. Class Counsel analyzed all the contested legal and factual issues to thoroughly evaluate GLIC's contentions, advocated in the settlement negotiation process for a fair and reasonable settlement that serves the best interests of the Settlement Class, and made fair and reasonable settlement demands of GLIC. *Id.*

On October 11, 2024, the Court issued the Order Preliminarily Approving Class Action Settlement. Dkt. 64. The Order stated that "Pursuant to Fed. R. Civ. P. 23(e), the terms of the Agreement (and the Settlement provided for therein) are preliminarily approved and likely to be approved at the Final Approval Hearing because" the class representative and class counsel adequately represented the class, the proposal was negotiated at arms length, the relief to the class is adequate, and the proposal treats class members equitably. *Id.* ¶ 2. The Court also approved the Settlement "as being fair, reasonable, and adequate, and in the best interest of the named plaintiff and the Settlement Class, subject to further consideration at the Final Approval Hearing . . . The Settlement meets the considerations set forth in Rule 23(e) and *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155 (4th Cir. 1991)." *Id.* ¶ 13. In the hearing on preliminary approval, the Court further noted,

"[t]here's obviously significant risk in this kind of litigation. In fact, I've repeated that risk during my calls, giving [Plaintiff's counsel] a hard time. So, obviously, getting this kind of recovery in the face of a potential tough row to hoe here is significant." Sklaver Final Approval Decl., Ex. 8 (Preliminary Approval Hearing Trans.) at 8:24–9:3. The Court set a final approval hearing for January 3, 2025. Dkt. 64 ¶ 24.

The Court also approved the proposed class notice plan. The Court noted that the Notice Program:

> (a) is the best notice practicable under the circumstances, (b) constitutes notice that is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the Release contained therein), and of their right to object to any aspect of the proposed Settlement, to exclude themselves from the Settlement Class, and to appear at the Final Approval Hearing; (c) constitutes due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (d) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, the Rules of this Court, and all other applicable law and rules.

*Id.* ¶ 26. The Court appointed JND Legal Administration, LLC ("JND") as the Settlement Administrator and provided deadlines for mailing, the website, and the toll-free number. *Id.* ¶ 25.

The Notice Program proceeded consistently with the Preliminary Approval Order and therefore met the requirements of Rule 23 and due process. JND mailed the approved short-form notice to potential Settlement Class members on October 25, 2024, using mailing addresses provided by GLIC. *See* Dkt. 65 (Proof of Mailing and Supporting Declaration). Only 31 notices were returned as undeliverable without a forwarding address, and JND conducted skip tracing for those returned notices to forward 17 notices to updated addresses, none of which were returned as undeliverable. *See* Intrepido-Bowden Decl. ¶ 5. Through these methods, the direct mailing notice effort successfully reached an outstanding 99.7% of potential Settlement Class Member addresses.

*See id.* ¶ 6. The long-form Settlement notice was posted on the class website (www.genworthcoisettlement.com) and a call-in line was established on October 25, 2024. Dkt. 65 at 1–2. As of December 11, 2024, the website has more than 617 page views. *See* Intrepido-Bowden Decl. ¶ 8.

On September 20, 2024, GLIC sent Class Action Fairness Act ("CAFA") notices to the Attorney General of the United States and the State Attorneys General as required by 28 U.S.C. § 1715(b). *See* Sklaver Final Approval Decl. ¶ 32. GLIC did not receive any objections to the Settlement from any Attorney General. *See id.*

On November 15, 2024, Class Counsel filed its Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Incentive Awards. Dkts. 67–68. Pursuant to Federal Rule of Civil Procedure 23(e)(4) and the Court's Preliminary Approval Order (Dkt. 64) potential Settlement Class Members could opt out of the Settlement or object to the Settlement by December 10, 2024. As of December 11, 2024, no potential Settlement Class Member has objected or opted-out. *See* Sklaver Final Approval Decl. ¶ 34; Intrepido-Bowden Decl. ¶¶ 12, 14.

### E. The Settlement Agreement

#### 1. Settlement Class

The Settlement defines the Settlement Class as:

> [A]ll Owners of Gold and Gold II universal life insurance policies issued, insured, or assumed by GLIC, or its predecessors or successors, whose COI Rate Scales were changed as a result of the 2019 COI Rate Adjustment.

Sklaver Final Approval Decl., Ex. 2, ¶¶ 51, 87. "Specifically excluded from the class are Class Counsel and their employees, GLIC, its officers and directors and their immediate family members; the Court, the Court's staff, and their immediate family members; and the heirs, successors or assigns of any of the foregoing. Also excluded from the Class are owners of Gold

and Gold II policies that have terminated as a result of the death of the insured on or before June 30, 2024, where the 2019 COI Rate Adjustment did not result in an Incremental COI Deduction before the death of the insured." *Id.*

**2. Monetary and Nonmonetary Relief for Settlement Class Members**

The Settlement awards both cash relief and non-cash relief to the Settlement Class. With respect to the cash relief, a $5.1 million Settlement Fund will be funded for the benefit of the Settlement Class. *See* Sklaver Final Approval Decl., Ex. 2 ¶ 2. This amount will be reduced if there are any opt-outs (which has not occurred to date), on a pro-rata basis by an amount that is calculated by multiplying the amount of the Settlement Fund (i.e., $5,100,000) by a fraction where (i) the numerator is the combined Specified Amount, as of June 30, 2024 (as that term is defined in the Policies) of the Policies that opt out of the Settlement Class and (ii) the denominator is the total Specified Amount, as of June 30, 2024, of all Policies owned by members of the Class. *Id.* ¶ 2. By way of example, if 1% of the total Specified Amount of all Policies owned by members of the Class are attributable to Opt-Outs, the Settlement Fund will be reduced by 1%. *Id.* No portion of the Final Settlement Fund (i.e., the post-reduction amount) will revert to GLIC. *Id.* ¶ 66. Checks will be sent automatically to Class members using GLIC's database of their addresses without requiring Class members to submit claim forms. Sklaver Final Approval Decl. ¶¶ 36–39, Ex. 9.

The Settlement Agreement also provides two forms of significant non-cash relief. First, "GLIC agrees that COI rates on the Class Policies will not be increased above the COI Rate Scales adopted under the 2019 COI Rate Adjustment until after October 25, 2029." *See* Sklaver Final Approval Decl., Ex. 2 ¶ 7. Second, "GLIC agrees to not take any legal action (including asserting as an affirmative defense or counterclaim), or cause to take any legal action, that seeks to void, rescind, cancel, have declared void, or seeks to deny coverage under or deny a death claim for any

Class Policy based on: (1) an alleged lack of valid insurable interest under any applicable law or equitable principles; or (2) any misrepresentation allegedly made on or related to the application for, or otherwise made in apply for the policy." *Id.* ¶ 9. The estimated value of the nonmonetary relief is $3,097,438, which results in a total estimated settlement value of $8,197,438. Sklaver Final Approval Decl. ¶¶ 22–23.

**3. Release**

Once the settlement becomes final, the Settlement Class and certain related parties (referred to as the "Releasing Parties" in the Settlement Agreement) will release GLIC and certain related parties (referred to as the "Released Parties) in the Settlement Agreement) from "all Claims asserted in the Action or arising out of the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act that were alleged or could have been alleged in the Action related to the 2019 COI Rate Adjustment." Sklaver Final Approval Decl., Ex. 2 ¶ 81. The Settlement Class will not release "new claims that could not have been asserted in the Action because they are based upon a future COI Rate Scale increase that occurs after July 8, 2024 ("New COI Increase Claims")." *Id.* ¶ 62.

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

The Settlement provides for an incentive award of up to $25,000 for Plaintiff for his services on behalf of the Settlement Class. Sklaver Final Approval Decl., Ex. 2 ¶ 16. The Settlement Agreement also provides for attorneys' fees in an amount not to exceed 33 1/3% of the Final Settlement Fund as well as reimbursement for all expenses incurred or to be incurred. *Id.* ¶ 17. The amounts as approved by the Court will be paid out of the Final Settlement Fund. *Id.* ¶¶ 16–17.

Class Counsel filed its motion for fees, expenses, and incentive awards on November 15,

2024. Dkt. 67. Class Counsel sought 33 1/3% of the Final Settlement Fund, litigation expenses, and a $25,000 service award for the Class Representative, consistent with the Preliminary Approval Order. *Id.*; Sklaver Final Approval Decl. ¶ 33. Settlement Class Members were given the opportunity to object to the fee, expense, and incentive awards motion. No potential Settlement Class Member filed an objection or otherwise objected to the fee, expense, and incentive awards motion, either by the objection deadline or since. *See id.* ¶¶ 33–34; Intrepido-Bowden Decl. ¶¶ 12, 14.

**5. Distribution Plan**

The proposed plan of allocation, as set forth in the notice papers and which is described in Dkt. 56-5 and Exhibit 9 to the Sklaver Final Approval Declaration, distributes proceeds directly to Settlement Class Members on a *pro rata* basis after a minimum settlement payment is made to all Settlement Class Members, without the need for a claim form. The Court already preliminarily approved the proposed plan of allocation. Dkt. 64, ¶ 2. The allocation plan ensures that the proceeds will be distributed equitably and as many claimants as possible will receive a distribution. Each Class Member's pro rata share is calculated by multiplying (a) the percentage of estimated Incremental COI Deductions (i.e., the estimated additional COI charges imposed as a result of the 2019 COI increase as compared to the COI charges that would have been imposed but for the 2019 COI increase) attributable to that Class Member's policy as of June 30, 2024, by (b) the Final Settlement Fund. Sklaver Final Approval Decl. ¶¶ 36–39, Ex. 9. So if the estimated Incremental COI Deductions associated with a Class Member's policy represent .1% of the total estimated Incremental COI Deductions for the Settlement Class as a whole, that Class Member will receive $5,100 before reduction for expenses and fees. There will be a floor of $100 payment for all participating Class Members. All in-force policies will also benefit from the guarantee of policy

validity and the COI freeze.

Class members will not need to fill out claim forms. Money will be sent to them automatically in the mail, using the addresses that GLIC maintains on file. Proceeds will be mailed within 30 days after the Final Settlement Date. Sklaver Final Approval Decl. ¶¶ 36–39, Ex. 9. Within one year plus 30 days after the date the Settlement Administrator mails the proceeds, to the extent feasible and practical in light of the costs of administering such subsequent payments, any funds remaining in the Settlement Fund shall be re-distributed on a pro rata basis to Class Members who previously cashed their checks, unless the amounts involved are too small to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair. *Id.*

## III. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL

### A. Legal Standard

Federal Rule of Civil Procedure 23(e) provides that a class-action settlement must be presented to the Court for approval, and should be approved if the Court finds it "fair, reasonable, and adequate." *See* Fed. R. Civ. P. 23(e)(2). "[T]he district court has a fiduciary responsibility to ensure that the settlement is fair and not a product of collusion, and that the class members' interests were represented adequately." *1988 Trust for Allen Children Dated 8/8/88 v. Banner Life Ins. Co.*, 28 F.4th 513, 521 (4th Cir. 2022) ("*Banner COI*") (quoting *Sharp Farms v. Speaks*, 917 F.3d 276, 293-94 (4th Cir. 2019)).

In the Fourth Circuit, "[t]here is a strong judicial policy in favor of settlement to conserve scarce resources that would otherwise be devoted to protracted litigation." *Robinson v. Carolina First Bank NA*, 2019 WL 719031, at *8 (D.S.C. Feb. 14, 2019) (citing *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158–59 (4th Cir. 1991) and *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d

654, 663 (E.D. Va. 2001)). Settlement is particularly favored "in the class action context." *West v. Cont'l Auto., Inc.*, 2018 WL 1146642, at *3 (W.D.N.C. Feb. 5, 2018); *see also Lomascolo v. Parsons Brinckerhoff, Inc.*, 2009 WL 3094955, at *10 (E.D. Va. Sept. 28, 2009) ("There is an overriding public interest in favor of settlement, particularly in class action suits.").

Pursuant to the amendments to Rule 23(e)(2), a court may approve a settlement as "fair, reasonable, and adequate" after considering the following four factors:

> (A) class representatives and counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> > (i) the costs, risks, and delay of trial and appeal;
> >
> > (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> >
> > (iii) the terms of any 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.

The Rule 23 amendments, which became effective in December 2018, have not changed the overall standard for approving a class action settlement, *i.e.*, whether or not the settlement is fundamentally fair, adequate, and reasonable.

Historically, the Fourth Circuit has held that district courts should consider the factors set forth in *Jiffy Lube* when evaluating a class action settlement. *See, e.g.*, *In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 839–41 (E.D. Va. 2016); *In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 254 (E.D. Va. 2009). The *Jiffy Lube* factors are consistent with the Rule 23(e)(2) factors. Under *Jiffy Lube*, to assess the threshold factor of the fairness of a settlement, courts consider, "(1) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been

conducted; (3) the circumstances surrounding the negotiations; and (4) the experience of counsel in the area of the class action litigation." *Banner COI*, 28 F.4th at 525. Analyzing these factors enables the Court to determine that "the settlement was reached as a result of good-faith bargaining at arm's length, without collusion[.]" *Jiffy Lube*, 927 F.2d at 159.

Under the second *Jiffy Lube* threshold factor of the adequacy of the proposed settlement, courts consider, "(1) the relative strength of the plaintiffs' case on the merits; (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial; (3) the anticipated duration and expense of additional litigation; (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment; and (5) the degree of opposition to the settlement." *Banner COI*, 28 F.4th at 526.

The Advisory Committee Notes to the 2018 amendments to the Federal Rules of Civil Procedure indicate that the factors set forth in Rule 23(e)(2) are not intended to "displace" any factor previously adopted by the court of appeals, but "rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Fed. R. Civ. P. 23(e)(2) Advisory Committee Notes to 2018 Amendments. And the Fourth Circuit has itself observed that the Rule 23(e)(2) factors largely overlap with the *Jiffy Lube* factors. *See In re Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg. Sales Practices & Prod. Liab. Litig.*, 952 F.3d 471, 484 n.8 (4th Cir. 2020) (noting that the *Jiffy Lube* "factors for assessing class-action settlements almost completely overlap with the new Rule 23(e)(2) factors"); *see also In re Peanut Farmers Antitrust Litig.*, 2021 WL 3174247, at *2 (E.D. Va. July 27, 2021) ("Taking this substantial overlap into consideration, the Court will examine Plaintiffs' Motion for Settlement based upon the Rule 23(e)(2) factors."). In any event, each Rule 23(e)(2) and *Jiffy Lube* factor readily supports approval of the proposed Settlement.

In granting preliminary approval under Rule 23(e), the Court already held that the Settlement likely meets the fair, reasonable, and adequate standard required by the Federal Rules and the Fourth Circuit. *See* Dkt. 64, ¶ 2 ("Pursuant to Fed. R. Civ. P. 23(e), the terms of the Agreement (and the Settlement provided for therein) are preliminarily approved and likely to be approved at the Final Approval Hearing because (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate . . . (D) the proposal treats class members equitably relative to each other."). The Court should now grant final approval of the Settlement.

### B. Application of Rule 23(e)(2) and *Jiffy Lube* Factors

#### 1. Plaintiff and Class Counsel Have Zealously Represented the Settlement Class.

In deciding whether to approve a class-action settlement, the Court should consider whether "the class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). This requirement is "met when (1) the named plaintiff does not have interests antagonistic to those of the class; and (2) plaintiff's attorneys are qualified, experienced, and generally able to conduct the litigation." *Solomon v. Am. Web Loan, Inc.*, 2020 WL 3490606, at *2 (E.D. Va. June 26, 2020) (quoting *In re Neustar Inc. Sec. Litig.*, 2015 WL 5674798, at *4 (E.D. Va. Sept. 23, 2015)).

Consistent with his obligations, Plaintiff Silverstein has remained active and informed in this litigation effort and was consulted on, and approved, the terms of the Settlement. Indeed, he and his wife travelled to Virginia to attend the mediation in-person with Judge Colombell. Further, Plaintiff's interests continue to be aligned with other Settlement Class Members. Settlement Class Members and Plaintiff are all in contractual privity with GLIC and share an overriding, common interest in obtaining the largest monetary and nonmonetary recovery possible. *See* William B.

Rubenstein, 1 Newberg on Class Actions § 3:58 (6th Ed., June 2022 Update) ("All that is required—as the phrase 'absence of conflict' suggests—is such sufficient similarity of interest such that there is no affirmative antagonism between the representative and the class." Plaintiff is part of the Settlement Class and suffered similar injuries as other Settlement Class Members: monetary losses associated with COI overcharges. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348–49 (2011) (the "class representative must be part of the class and possess the same interest and suffer the same injury as the class members) (citation and internal quotation marks omitted). There are no antagonistic interests here.

In preliminarily approving the class-action settlement, the Court has already found that Susman Godfrey was fit to serve as class counsel. Dkt. 64 ¶ 12. Class Counsel developed a deep understanding of the facts of the case and merits of the claims through: (i) a comprehensive investigation that involved, among other things, a review of publicly available information regarding the Company and input from industry experts regarding the contract language; (ii) engaging in extensive discovery efforts that included serving 43 requests for production, 14 interrogatories, and 431 requests for admission, issuing subpoenas to Genworth Life Insurance Company of New York ("GLICNY") on May 30, 2024, issuing subpoenas to three actuarial consultants, and serving five deposition notices. Class Counsel has a comprehensive understanding of the methodologies, assumptions, and data used to increase COI rates, and obtained key liability evidence, such as emails in which Genworth employees criticized their own actuarial consultant's work and "abstain[ed]" from voting on mortality assumption changes. Sklaver Final Approval Decl. ¶ 9, Exs. 4–5.

Since the Court encouraged the parties to settle this case, Class Counsel has continued to adequately represent the Class in both their vigorous prosecution of the Action and in their

negotiation and achievement of the Settlement. The Court previously recognized Counsel's efforts in the Order Granting Preliminary Approval, stating that Class Counsel "has expended a great deal of time, effort, and expense investigating Genworth's COI increase prior to and since filing this action" Dkt. 64 ¶ 12. Class Counsel have been assisted by able and experienced local counsel, Holmes Costin & Marcus PLLC. Accordingly, as previously found in preliminarily approving the Settlement, Plaintiff and Class Counsel have adequately represented the Settlement Class.

**2. The Settlement is the Product of Good Faith, Informed, and Arm's Length Negotiations by Experienced Counsel.**

In weighing a class-action settlement at final approval, the Court must consider whether the settlement "was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). Similarly, under the *Jiffy Lube* "fairness factors," the Court's analysis of whether the settlement was reached through good faith bargaining at arm's length includes considering the following four factors: "(1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel [in the relevant subject matter]." *Neustar Inc. Sec. Litig.*, 2015 WL 5674798, at *10 (quoting *Jiffy Lube*, 927 F.2d at 159). Consideration of all these factors demonstrates that the Settlement here was reached through arm's-length negotiations after vigorous litigation and with no hint of collusion.

The settlement negotiations were conducted at arm's length by experienced class-action litigators with the assistance of experienced mediators and the Court. In March 2024, Class Counsel and GLIC's counsel participated in an in-person mediation session in Miami with Mr. Max. In advance of the mediation, the parties filed mediation statements, along with exhibits. Although the initial session did not result in settlement, a subsequent mediation session took place via videoconference on April 9, 2024. Although these mediations were unsuccessful, the parties

continued meeting and conferring regarding settlement. After the two mediation sessions were unsuccessful, Class Counsel requested that the Court oversee settlement discussion. Dkt. 38. The Court agreed and referred the matter to a magistrate judge to assist, Dkt. 39, and on June 26, 2024, the parties mediated in person with Magistrate Judge Colombell in Richmond, Virginia. Sklaver Final Approval Decl. ¶ 19. In advance of the mediation, GLIC provided updated policy-level data on May 24. *Id.* Class Counsel worked with its expert to analyze this data. *Id.* The parties were unable to reach an agreement at the mediation, but Judge Colombell made a mediator's proposal at the end of a full-day of negotiations. *Id.* ¶ 20. On July 8, 2024, Judge Colombell informed the parties that the mediator's proposal had been accepted. *Id.* The parties then drafted a long-form settlement agreement and executed it on August 2, 2024. *Id.*, Ex. 2.

Regarding the experience of counsel, Class Counsel is among the most highly qualified firms in the country in prosecuting cost of insurance class actions. "The final *Jiffy Lube* 'fairness' factor looks to the experience of Class Counsel in this particular field of law." *Mills*, 265 F.R.D. at 255 This Court recognized Class Counsel's extensive experience in the Order Granting Preliminary Approval. Dkt. 64 ¶ 12 ("It is clear from their track-record of success, as outlined in their resumes, that Class Counsel are highly skilled and knowledgeable concerning class-action practice."). Indeed, Class Counsel have a wealth of experience litigating and resolving COI class actions across the country and have been appointed to represent plaintiffs in numerous COI class actions. *See* Sklaver Final Approval Decl. ¶ 3, Ex. 1; *see also, e.g.*, *Brach Family Fund, Inc. v. AXA Equitable Life Ins. Co.*, No. 16-cv-740-JMF, Dkt. 145 (S.D.N.Y. Nov. 13, 2017); *Fleisher v. Phoenix Life Ins. Co.*, 2013 WL 12224042, at *12 (S.D.N.Y. July 12, 2013) ("*Phoenix COI*") (in appointing Susman Godfrey as class counsel in *Phoenix COI*, noting that "[c]ounsel for plaintiffs is more than capable of representing the interest of the proposed Classes in this case, and defendant

does not contend otherwise"). Courts recognize that the opinion of experienced and informed counsel favoring a settlement should be afforded substantial consideration in determining whether a class settlement is fair and adequate. *See Microstrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d at 665.

**3. The Relief Provided by the Settlement is Adequate.**

The proposed Settlement readily satisfies Rule 23(e)(2)(C) (and the *Jiffy Lube* adequacy factors).[1] Under Rule 23(e)(2)(C), the Court must consider whether "the relief provided for the class is adequate, taking into account . . . the costs, risks, and delay of trial and appeal," as well as other relevant factors. Fed. R. Civ. P. 23(e)(2)(C).

To determine whether a proposed settlement is fair, reasonable, and adequate, courts balance the continuing risks of litigation against the benefits afforded to class members through settlement. *See, e.g.*, *Neustar*, 2015 WL 5674798, at *11 (the *Jiffy Lube* adequacy analysis "weighs the likelihood of the plaintiff's recovery on the merits against the amount offered in settlement"). The total estimated Settlement value is $8,197,438. Sklaver Final Approval Decl. ¶ 23. This includes $5,100,000 in monetary relief to the Settlement Class, equal to 71.5% of COI overcharges for Settlement Class Members through June 2024. *Id.* ¶ 4. This monetary relief compares favorably to other approved COI class action settlements. *See, e.g., 37 Besen Parkway, LLC v. John Hancock Life Ins. Co.*, Case No. 15-cv-9924 (PGG), Dkt. 164 at 20:08–10 (S.D.N.Y. Mar. 18, 2019) ("*Hancock COI*") (cash fund equal to 42% of COI overcharges with no nonmonetary benefits a "quite extraordinary" result); *Phoenix COI*, 2015 WL 10847814, at *10–11 (S.D.N.Y. Sept. 9,

[1] This factor under Rule 23(e)(2)(C) encompasses four of the five factors of the traditional *Jiffy Lube* adequacy analysis: "(1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, [and] (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment." *Jiffy Lube*, 927 F.2d at 159.

2015) (granting final approval to a class action settlement with a cash award amount equal to 68.5% of past damages, which was "one of the most remunerative settlements this court has ever been asked to approve"). This also compares favorably to the GLAIC Action, which had a monetary value representing an estimated 70.3% of past overcharges when projected through June 2024. Sklaver Final Approval Decl. ¶ 12.

This is an excellent recovery for the Settlement Class, particularly in light of the risks of litigation and potential outcomes at trial. As discussed below, assuming that this Action were to continue to be litigated, the Court has already indicated that Plaintiff would continue to face significant legal challenges. Although Plaintiff believes that the claims asserted against Defendant were strong and that substantial evidence supports his allegations, he recognizes the views of the Court that the Action presented several risks to establishing both liability and damages.

a. Risks of Establishing Liability and Damages Support Approval of the Settlement.

There are risks to establishing liability and damages. In the GLAIC Action, the carrier there (represented by the same counsel here) argued in its motion for summary judgment that that there was no evidence supporting the claim that it had increased COI rates "in order to" recoup prior losses and argued that plaintiffs' theories of breach "rely on alleged actuarial meanings or attempts to enforce constraints that are not in the subject policies." GLAIC Action, Dkt. 119. The carrier there also mounted challenges to plaintiffs' damages model and moved to exclude plaintiffs' experts. *See* GLAIC Action, Dkt. 58. Although the Court denied the motions to strike, it concluded that the defendant had raised this challenge "prematurely" and opined that "whether any decrease should offset the damages constitutes a merits question for the Court to address at a later stage." GLAIC Action, Dkt. 109 at 7.

Plaintiff in this case expected to face similar challenges. The challenges that the Class

Representative expects to face at summary judgment, trial, and in further appeals in this case creates uncertainty and risks that weigh in favor of final approval, especially given the large percentage of the COI overcharges returned to Settlement Class Members as a result of the Settlement Fund.

b. Costs and Delay of Continued Litigation Support Approval of the Settlement.

In addition to the substantial risks and uncertainty inherent in continued litigation, the parties face the certainty that further litigation would be expensive, complex, and time consuming. The fact that the Settlement eliminates the substantial delay and expense of depositions, discovery motions, summary judgment motions, *Daubert* motions, *in limine* motions, trial, and likely appeals, a process that could possibly extend for years and might lead to a smaller recovery when compared to the COI overcharge data at issue, or no recovery at all, strongly weighs in favor of approval. *See Winingear v. City of Norfolk*, 2014 WL 3500996, at *5 (E.D. Va. July 14, 2014). In sum, the proposed Settlement would satisfy Rule 23(e)(2)(C)(i).

c. There is an Effective Process for Distributing Relief to the Settlement Class.

Rule 23(e)(2)(C) also instructs courts to consider whether the relief provided for the class is adequate in light of "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." The proposed "claims processing method should deter or defeat unjustified claims," but should not be "unduly demanding" on potential claimants. 2018 Advisory Committee Notes to Fed. R. Civ. P. 23(e)(2).

Here, the Court already preliminarily approved the proposed plan of allocation and distribution. Dkt. 64. Funds will be mailed to Settlement Class Members using GLIC's database of Settlement Class member addresses. Sklaver Final Approval Decl. ¶¶ 36–39, Ex. 9. This plan

of allocation and distribution, where funds are automatically distributed to class members on a *pro-rata* basis tied to a defensible and unbiased allocation plan without a claims process, has frequently been determined to be fair, adequate, and reasonable. *See, e.g.*, GLAIC Action, Dkt. 148; *In re Peanut Farmers Antitrust Litig.*, 2021 WL 3174247, at *4 ("This type of distribution plan is commonly referred to as a *pro rata* distribution plan which has been previously approved by the Court in similar class action litigation."). The Court-appointed Claims Administrator, JND Settlement Administration, has successfully reached an outstanding 99.7% of potential Settlement Class Member addresses through the direct mailing notice effort. Intrepido-Bowden Decl. ¶ 6. Given the success of this Notice campaign, Class Counsel respectfully submits that the checks that will be provided to the Settlement Class through the same delivery method, without the need for a claim form, is adequate, accounting for the effectiveness of distributing the relief. Accordingly, the proposed Settlement satisfies Rule 23(e)(2)(C)(ii).

d. The Settlement Does Not Excessively Compensate Class Counsel.

As discussed in the previously filed Memorandum of Law in Support of Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Incentive Awards, the requested fee award of 33 1/3 percent of the Final Settlement Fund (i.e., the cash fund considered in isolation, exclusive of and not including the value of benefits provided by the nonmonetary relief), which is 20.7% of the gross settlement benefits, is well-within the percentages that courts in the Fourth Circuit have approved in class actions with comparable recoveries. Dkt. 68. No Settlement Class Member objected to the fee request. Class Counsel is also seeking payment of litigation expenses incurred during the prosecution of the Action and a service award for the class representative, which are routinely approved in the Fourth Circuit. *See, e.g.*, GLAIC Action, Dkt. 148; *Berry v. Schulman*, 807 F.3d 600, 613 (4th Cir. 2015) (observing that service awards are

"fairly typical in class action cases"). Accordingly, the proposed Settlement satisfies Rule 23(e)(2)(C)(iii).

e. The Relief Provided in the Settlement is Adequate Taking Into Account All Agreements Related to the Settlement.

Rule 23(e)(2)(C)(iv) also requires the disclosure of any agreement between the Parties in connection with the proposed Settlement. The Settlement Agreement, signed by the Parties on August 2, 2024, identifies all agreements made in connection with the proposed settlement. Pursuant to the Settlement Agreement, the Parties agreed to conditions under which GLIC had the option to terminate the Settlement in the event that requests for exclusion from the Settlement Class exceeded a certain agreed-upon threshold, which was not triggered given the positive reaction to the Settlement by all eligible policy owners. Pursuant to the agreement, these (now mooted) terms may be submitted to the Court *in camera* or under seal.

**4. Settlement Class Members Are Treated Equitably Relative to One Another.**

Rule 23(e)(2)(D) addresses whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2). The proposed distribution of the Settlement Fund treats Settlement Class members equitably because each Settlement Class member will receive a *pro-rata* share of the Settlement Fund depending on the amount that the Settlement Class Member was overcharged calculating using a reasonable and reliable damages methodology, with a minimum floor payment assured. Sklaver Final Approval Decl. ¶¶ 36–39, Ex. 9. Similarly, the Releases treat all Settlement Class Members equitably relative to one another because, subject to Court approval, all Settlement Class Members will be giving GLIC identical releases tied to the theory of liability asserted in this Action and no individual who does not receive a Cash Award will be providing any release of individual claims.

**5. Reaction of the Settlement Class Supports Approval of the Settlement.**

"The degree of opposition to the settlement" should also be considered on final approval of a settlement. *See Genworth*, 210 F. Supp. 3d at 842; *Mills*, 265 F.R.D. at 257 (explaining that the fifth *Jiffy Lube* factor "looks to the reaction of the Class to the proposed settlement and '[t]he attitude of the members of the Class, as expressed directly or by failure to object, after notice to the settlement . . . ."). "A lack of objections to settlement by class members and opt-outs from the class demonstrates low opposition and weighs in favor of approving a settlement." *Genworth*, 210 F. Supp. 3d at 842.

Pursuant to the Preliminary Approval Order, the Court-appointed Settlement Administrator, JND, mailed copies of the short-form notice to potential Settlement Class Members. Intrepido-Bowden Decl. ¶ 5. The short-form notice described the terms of the Settlement in plain language. JND's records show that 99.7% of potential Settlement Class Member addresses being successfully reached by direct mail. *See id.* ¶ 6. As of December 10, 2024 opt-out deadline and since, no policy opted out of the Settlement and no Settlement Class member had objected. *Id.* ¶¶ 12, 14.

The Class Member reaction supports final approval. *See, e.g.*, *In re: Lumber Liquidators*, 952 F.3d at 485–86 (affirming approval of class-action settlement where 94 of the 178,859 class members who responded to the class-action settlement notice opted out of the settlement (about 0.05%), and 12 class members objected (about 0.06%)) (citing *Does 1–2 v. Déjà Vu Servs., Inc.*, 925 F.3d 886, 899 (6th Cir. 2019) (explaining that opt-out rate of about 0.2% and objection rate of about 0.02% supported ruling that the settlement is adequate), and *Flinn v. FMC Corp.*, 528 F.2d 1169, 1174 (4th Cir. 1975) (affirming approval of class-action settlement where 5 of 253 class members objected thereto)).

## IV. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE

In addition to seeking final approval of the Settlement, Plaintiff seeks final approval of the proposed Plan of Allocation for the Settlement Proceeds. Approval of a plan of allocation for settlement proceeds is governed by the same standards of fairness and reasonableness applicable to the settlement as a whole. *See, e.g.*, *Microstrategy*, 148 F. Supp. 2d at 668 ("To warrant approval, the plan of allocation must also meet the standards by which the . . . settlement was scrutinized—namely, it must be fair and adequate.").

The proposed Plan of Allocation for the proceeds of the Settlement is set forth in Exhibit 6 to the Declaration of Steven Sklaver, filed at Dkt. 56-5, and is re-submitted to the Court as Exhibit 9 to the Sklaver Final Approval Declaration. There were no objections to the proposed Plan of Allocation. The Court has already preliminarily approved the Plan. Dkt. 64 ¶ 36. The proposed Plan of Allocation was developed by Class Counsel in consultation with Class Representative's damages expert. The Plan provides that each Settlement Class Member who is the current or most recent owner of a policy according to GLIC's records will be issued a check for that policy equal to the minimum settlement relief payment of $100.00, plus that Recipient's *pro-rata* share of the Net Settlement Fund calculated using that class members' damages resulting from the 2019 COI Increase. No claim forms or claim processes shall be used; the cash funds will be directly mailed to all Settlement Class Members.

## V. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

The Court has already conditionally certified this Class and appointed Plaintiff as Class Representative and Susman Godfrey as Class Counsel. Dkt. 64 at ¶¶ 3–12. In accordance with the Settlement, Plaintiff respectfully requests that the Court finally certify the Settlement Class for settlement purposes. For the reasons set forth in connection with Plaintiff's motion for preliminary

approval (Dkt. 55), and Court's Preliminary Approval Order (Dkt. 64), the proposed Settlement Class satisfies the requirements for certification.

## VI. NOTICE SATISFIED RULE 23 AND DUE PROCESS

The Notice to the Settlement Class satisfied the requirements of Rule 23, which requires "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). The Notice also satisfied Rule 23(e)(1), which requires that notice of a settlement be "reasonable"—*i.e.*, it must "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Wal-Mart Stores, Inc. v. Visa U.S.A.*, 396 F.3d 96, 114 (2d Cir. 2005).

Both the substance of the Notice and the method of its dissemination to potential members of the Settlement Class satisfied these standards. The Notice included all the information required by Federal Rule of Civil Procedure 23(c)(2)(B). In accordance with the Preliminary Approval Order, JND began mailing copies of the Short-Form Notice to potential Settlement Class Members on October 25, 2024. Intrepido-Bowden Decl. ¶ 4. In addition, JND caused the Long-Form Notice to be published on the class action website (www.genworthlifecoisettlement.com) and set up a toll-free telephone number. *Id.* ¶ 7. This combination of individual mail to all Settlement Class Members who could be identified with reasonable effort, supplemented by a website and phone number, was "the best notice . . . practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B).

## VII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the Settlement, approve the Notice Program as compliant with Rule 23 and due process, and approve the plan of distribution as fair, reasonable, and adequate.

Dated: December 13, 2024

Respectfully submitted,

*/s/ Kathleen J.L. Holmes*

Ellen D. Marcus (Virginia Bar No. 44314)
Kathleen J.L. Holmes (Virginia Bar No. 35219)
HOLMES COSTIN & MARCUS PLLC
908 King Street, Suite 330
Alexandria, VA 22314
Tel: 703-260-6401
Fax: 703-439-1873
emarcus@hcmlawva.com
kholmes@hcmlawva.com

Steven G. Sklaver (*pro hac vice*)
Glenn C. Bridgman (*pro hac vice*)
Nicholas N. Spear (*pro hac vice*)
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067-6029
Tel: 310-789-3100
Fax: 310-789-3150
ssklaver@susmangodfrey.com
gbridgman@susmangodfrey.com
nspear@susmangodfrey.com

Seth Ard (*pro hac vice*)
Ryan Kirkpatrick (*pro hac vice*)
Zachary B. Savage (*pro hac vice*)
William J. Melsheimer (*pro hac vice*)
SUSMAN GODFREY L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel.: 212-336-8330
Fax: 212-336-8340
sard@susmangodfrey.com
rkirkpatrick@susmangodfrey.com
zsavage@susmangodfrey.com
jmelsheimer@susmangodfrey.com

*Attorneys for Plaintiff Martin Silverstein*

**CERTIFICATE OF SERVICE**

I certify that on this 13th day of December 2024, I electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record.

*/s/ Kathleen J.L. Holmes*

HOLMES COSTIN & MARCUS PLLC
908 King Street, Suite 330
Alexandria, VA 22314