



**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

    A. The Underlying Allegations..... 1

    B. Settlement Background..... 2

II. DEFINITIONS AND CONVENTIONS ..... 4

III. SETTLEMENT RELIEF ..... 8

IV. SETTLEMENT ADMINISTRATOR..... 10

V. NOTICE TO THE CLASS AND COMMUNICATIONS WITH CLASS MEMBERS . 11

    A. Preliminary Approval by the Court ..... 11

    B. Class Notice Package ..... 11

    C. Class Notice Content ..... 11

    D. Address Verification; Re-mailing ..... 13

    E. Notice Under the Class Action Fairness Act ..... 14

    F. Communication with Settlement Class Members, Claimants, and Policyholders ..... 14

VI. REQUESTS FOR EXCLUSION..... 15

VII. OBJECTIONS TO THE SETTLEMENT ..... 16

VIII. RELEASE AND WAIVER ..... 17

IX. ATTORNEYS’ FEES AND LITIGATION EXPENSES ..... 20

X. INCENTIVE AWARDS ..... 21

XI. FINAL APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT ..... 21

XII. MODIFICATION OR TERMINATION OF THIS SETTLEMENT AGREEMENT .... 22

XIII. GENERAL MATTERS AND RESERVATIONS ..... 24

Subject to Court approval and pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiff Vivian Farris, trustee for the Wirt Adams Yerger, Jr. Legacy Trust, individually and on behalf of the proposed Settlement Class, and Defendant U.S. Financial Life Insurance Company (“USFL”), through their respective undersigned counsel and/or authorized representatives, enter into this Settlement Agreement and Release.

## **I. INTRODUCTION**

### **A. The Underlying Allegations**

1. On June 19, 2017, Plaintiff filed her Original Class Action Complaint against USFL individually and on behalf of the putative class bringing claims for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and conversion premised on the 2015 COI Rate Increase<sup>1</sup> to Nova and Supernova policies. Doc. 1. Plaintiff alleged that USFL improperly raised the COI rate in 2015. USFL maintained that the 2015 COI Rate Increase was proper and moved to dismiss all but the breach of contract claim. Doc. 10.

2. On October 16, 2017, Plaintiff filed a First Amended Class Action Complaint adding claims for fraudulent misrepresentation and fraudulent suppression still stemming from the 2015 COI Rate Increase. Doc. 19. USFL again moved to dismiss. Doc. 21. On May 4, 2018, the Court entered an Order dismissing the unjust enrichment claim and partially dismissing the fraud claims. Doc. 31. USFL answered the First Amended Class Action Complaint, Doc. 38, and subsequently filed a First Amended Answer. Doc. 41.

3. The parties engaged in written discovery, produced numerous documents, and completed at least nine depositions of the parties, the insured, and the parties’ experts.

4. On July 15, 2020, Plaintiff filed a Motion for Class Certification. Doc. 51-1. Plaintiff’s Motion for Class Certification alleged, among other things, that the 2015 COI Rate Increase was a result of improper underwriting and table shaving when the policies were issued, improper actuarial actions, and impermissible considerations, including spread compression, in

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<sup>1</sup> All defined terms are defined in Section II, Definitions and Conventions, below.

determining the reasonableness of the 2015 COI Rate Increase. *Id.* at PageID 1366-75. On October 14, 2020, USFL filed its opposition to class certification. Doc. 53. Plaintiff then filed a reply in support of her motion for class certification. Doc. 55. The Court has not ruled on the Motion for Class Certification.

5. On February 26, 2021, USFL filed a motion for summary judgment on Plaintiff's individual claims. Doc. 60. In light of the proposed Settlement, Plaintiff has not filed a response.

**B. Settlement Background**

6. This Settlement was reached through extended arm's-length negotiations between Class Counsel and USFL's Counsel under the auspices of highly regarded mediator Marc E. Isserles, with JAMS in New York City. Numerous telephone mediation calls and meetings were conducted over a period of many months, with three days of mediation conducted before Mr. Isserles.

7. Before agreeing to settle the Lawsuit, Plaintiff, through Plaintiff's Counsel and their experts, conducted extensive formal discovery and a thorough investigation of the claims, defenses, and underlying events and transactions that are the subject of the Lawsuit. The investigation included, among other things: (i) review and analysis of the evidence and applicable law, including the review and analysis of documents produced by USFL; (ii) consultation with actuarial and other experts retained by Class Counsel; (iii) taking and defending numerous depositions of fact and expert witnesses; and (iv) engaging in extensive motion practice, including motions to dismiss, a motion for class certification, and a motion for summary judgment.

8. Class Counsel have thoroughly evaluated the relevant law and facts to assess the merits of Plaintiff's and the Settlement Class Members' claims. Class Counsel believe that the claims asserted in the Lawsuit have merit and that the evidence developed to date supports the claims asserted. However, based upon their extensive discovery, investigation, and evaluation of the applicable facts and the law, Class Counsel have agreed to recommend approval of the settlement of the Lawsuit pursuant to the terms of this Settlement Agreement, after considering, among other things: (a) the fairness, reasonableness, and adequacy of this Settlement Agreement;

(b) the substantial risks and uncertainties of protracted litigation and trial and appeals, especially in complicated class actions 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 Settlement Class Members, many of whom are retired, are reliant on their Policies' benefits, and by virtue of age or health status are unable to secure an adequate replacement policy; and (d) the desirability of consummating this Settlement Agreement promptly, in order to provide timely substantial relief to the Settlement Class Members.

9. Class Counsel agree that this Settlement Agreement is fair, reasonable, and adequate, because it provides millions of dollars in immediate benefits to the Settlement Class Members, protects the Settlement Class Members from future COI rate increases over the next five (5) years and from certain claim denials by USFL, is otherwise in the best interests of the Settlement Class Members, and fairly resolves the claims alleged in the Lawsuit.

10. USFL denies any and all allegations of wrongdoing and does not admit or concede any actual or potential fault, wrongdoing, liability, or damage of any kind to Plaintiff or the Settlement Class Members in connection with any facts or claims that have been or could have been alleged against them arising from the factual allegations in the Lawsuit. USFL denies that it acted improperly or wrongfully in any way and believes that the claims asserted in the Lawsuit have no merit. USFL further contends that its decision to implement the 2015 COI Rate Increase was, at all times, in accordance with the Policies' terms and accepted actuarial standards.

11. USFL has agreed to class action treatment of the claims alleged or potentially asserted solely for the purpose of effecting the compromise and settlement of those claims on a class basis as set forth in this Settlement Agreement. USFL considers it desirable for the Lawsuit to be settled and dismissed because this Settlement will: (i) provide substantial benefits to the Settlement Class Members; (ii) finally put to rest Plaintiff's claims, the Settlement Class Members' claims, and the underlying dispute; and (iii) avoid the substantial expense, burdens, risks, and uncertainties associated with the continued litigation of the Lawsuit.

## II. DEFINITIONS AND CONVENTIONS

For the purposes of this Agreement:

12. “2015 COI Rate Increase” means the COI rate increase on the Policies beginning after August 31, 2015, which increased the COI rates for the Policies.

13. “Account Values” means the Policies’ respective account values, as defined in the Policies.

14. “COI” means the cost of insurance as defined in the Policies.

15. “COI Collected” means the total monthly COI charged by USFL on the Policies and withdrawn from the Policies’ Account Values.

16. “Class Notice” means the notice concerning the Settlement sent to the Settlement Class as a part of the Class Notice Package.

17. “Class Notice Package” means the package of documents concerning the Settlement to be sent to the Settlement Class, as described in Section V.

18. “Class Counsel” means, collectively, W. Daniel “Dee” Miles, III, Rachel N. Minder, and Paul W. Evans of BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C., serving as Lead Class Counsel with support from Jeffrey S. Goldenberg of GOLDENBERG SCHNEIDER, L.P.A. and Geoffrey R. McDonald and Frank H. Hupfl, III of GEOFF MCDONALD & ASSOCIATES, P.C..

19. “Class Fee and Expense Order” means the Court’s ruling on the contemplated Class Fee and Expense Application, as described in Section IX.

20. “Class Period” means the period from September 1, 2015, through and including the Final Approval Date.

21. “Class Policy” or “Class Policies” means a Policy or Policies owned by a Settlement Class Member.

22. “Class Representative” means Plaintiff Vivian Farris, as trustee for the Wirt Adams Yerger, Jr. Legacy Trust.

23. “Confidential Information” means material designated as “Confidential” in

accordance with the terms of the Stipulated Protective Order entered on July 19, 2018. Doc. 32.

24. “Court” means the United States District Court for the Southern District of Ohio.

25. “Day” or “day” means a calendar day; provided however, that the computation of time periods under this Settlement Agreement will be made in accordance with Section XIII.

26. “Execution Date” means the date on which this Settlement Agreement is fully executed by the Parties.

27. “Fairness Hearing” means the hearing held by the Court on any motion for final approval of the proposed Settlement following the entry of the Preliminary Approval Order and the Notice Date, for the purposes of: (a) determining whether the Settlement Agreement should be approved as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (b) determining that the Settlement Class should be certified pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure; (c) entering the Final Approval Order approving the Settlement and dismissing the Lawsuit with prejudice; (d) entering the Class Fee and Expense Order; and (e) ruling on any other matters as may be raised before the Court.

28. “Final Approval Date” means the date on which the Court enters judgment on the Final Approval Order.

29. “Final Approval Order” means the Court’s order fully and finally approving the Settlement Agreement, and dismissing the Lawsuit with prejudice, as described in Section XI.

30. “Final Settlement Date” means the date on which the Court’s judgment entered on the Final Approval Order under Rule 58 of the Federal Rules of Civil Procedure becomes final. For purposes of this Settlement Agreement:

- a. if no appeal is taken from the judgment entered upon the Final Approval Order, “Final Settlement Date” means the date on which the time to appeal therefrom has expired; or
- b. if an appeal has been taken from the judgment entered upon the Final Approval Order, “Final Settlement Date” means the date on which all appeals therefrom, including petitions for rehearing or re-argument, petitions for rehearing *en banc*, and petitions for

*certiorari* or any other form of review, have been fully disposed in a manner that affirms the Final Approval Order.

31. “Lawsuit” means the suit styled as: *Vivian Farris, trustee for the Wirt Adams Yerger, Jr. Legacy Trust, individually and on behalf of all those similarly situated v. U.S. Financial Life Insurance Company*, Civil Action No. 1:17-cv-417, pending in the Southern District of Ohio.

32. “Lead Class Counsel” means W. Daniel “Dee” Miles, III, Rachel N. Minder, and Paul W. Evans of BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C.

33. “Mediator” means Marc E. Isserles, of JAMS New York.

34. “Notice Date” means the date on which the Class Notice is mailed.

35. “Parties” means, collectively, Plaintiff and USFL.

36. “Parties’ Counsel” means, collectively, Plaintiff’s Counsel and USFL’s Counsel.

37. “Plaintiff” means Vivian Farris, as trustee for the Wirt Adams Yerger, Jr. Legacy Trust.

38. “Plaintiff’s Counsel” means, collectively, W. Daniel “Dee” Miles, III, Rachel N. Minder, and Paul W. Evans of BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C. serving as Lead Plaintiff’s Counsel with Jeffrey S. Goldenberg of GOLDENBERG SCHNEIDER, L.P.A. and Geoffrey R. McDonald and Frank H. Hupfl, III of GEOFF MCDONALD & ASSOCIATES, P.C. as support.

39. “Policy” or “Policies” means one or more Nova or SuperNova policies that experienced a COI rate increase beginning on their policy anniversary after August 31, 2015.

40. “Policyholder” means the owner of a Policy, whether a person or entity.

41. “Preliminary Approval Date” means the date on which the Court enters the Preliminary Approval Order.

42. “Preliminary Approval Order” means an order of the Court granting preliminary approval of the proposed Settlement and directing that the Class Notice be sent to the Settlement Class, as described in Section V.



43. “Request for Exclusion” means a properly completed and timely postmarked request from a Policyholder to be excluded from the Settlement Class, as described in Section VI.

44. “Released Claims” has the meaning set forth in Section VIII.

45. “Releasees” means, individually and collectively, USFL and USFL’s past and present parents (including intermediate and ultimate parents), direct and indirect subsidiaries, affiliates, predecessors, joint ventures, successors and assigns, together with each of their past and present officers, directors, shareholders, employees, representatives, insurers, attorneys, general agents, agents and producers (including but not limited to, those acting on behalf of USFL and within the scope of their agency), and all of such Releasee’s heirs, administrators, executors, insurers, predecessors, successors and assigns, or any of them, and including any person or entity acting on behalf or at the direction of any of them.

46. “Releasers” means the Plaintiff and Settlement Class Members, on behalf of themselves, their heirs, assigns, executors, beneficiaries, beneficiaries designated under Policies, administrators, predecessors, and successors, and any other person or entity purporting to claim on their behalf.

47. “Settlement” means, collectively, the terms and conditions set forth in this Settlement Agreement.

48. “Settlement Administrator” means such firm as may be retained by USFL to assist USFL with Class Notice and administration of the Settlement, as described in Section IV.

49. “Settlement Agreement” means this Settlement Agreement and Release, including its exhibits.

50. “Settlement Class” means the following opt-out plaintiff settlement class to be certified for the purposes of settlement by the Court pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure: All persons who purchased, contributed to, participated in the purchase of, or own the Nova and Supernova policies at issue and who received coverage from those named insurance policies issued by USFL that experienced a cost of insurance rate increase beginning on their policy anniversary after August 31, 2015. Excluded from the Settlement Class

are (a) the Honorable Matthew W. McFarland, United States District Court Judge of the Sothern District of Ohio and court personnel employed in Judge McFarland’s chambers or courtroom; (b) USFL and its parents, affiliates, subsidiaries, successors, predecessors, and any entity in which USFL has a controlling interest and their current or former officers and directors (except to the extent USFL or such other entity is the owner of a Policy held for the benefit of an individual who is not otherwise excluded from membership in the Settlement Class); (c) any officer or director of USFL reported in its Annual Statements during the Class Period, or entity in which USFL had a controlling interest at any relevant time, any member of those persons’ immediate families and legal affiliates, heirs, controlling persons, agents, successors and predecessors in interest or assigns of any such excluded person or entity; (d) Policyholders who properly execute and timely file a Request for Exclusion from the Settlement Class; and (e) the legal representatives, successors, or assigns of any such excluded Policyholders (but only then in their capacity as legal representative, successor, or assignee).

51. “Settlement Class Members” means all Policyholders encompassed by the definition of the Settlement Class.

52. “Settlement Computation Period” means the period between the effective date of the COI rate increases for each Class Policy and April 30, 2021.

53. “Settlement Relief” means, collectively, all forms of relief made available to Settlement Class Members under this Settlement Agreement, as described in Section III.

54. “USFL” means Defendant U.S. Financial Life Insurance Company, and its respective predecessor and successor entities.

55. “USFL’s Counsel” means MCDOWELL HETHERINGTON LLP.

### **III. SETTLEMENT RELIEF**

56. Pursuant to and in accordance with this Settlement Agreement and subject to Court approval at or after the Fairness Hearing, USFL will make available to Settlement Class Members the following benefits (collectively, the “Settlement Relief”):

- a. Settlement Common Fund: USFL pay into a common settlement fund the amount of \$11,500,000.00 (Eleven Million Five Hundred Thousand Dollars), less the amount of any reduction computed in accordance with the provisions of subdivision (b) of this Paragraph (“the Settlement Common Fund”). The “Remaining Fund” (the Settlement Common Fund net of the amounts approved by the Court’s Fee and Expense Order), will be distributed to Settlement Class Members based on the proportion of the COI Collected for each Class Policy during the Settlement Computation Period in relation to the total amount of the COI Collected by USFL during the Settlement Computation Period for all Class Policies; provided, however, that the minimum payout for each Class Policy will be \$100. To assist the Settlement Administrator in determining the amount of the Remaining Fund to be paid to each Settlement Class Member, USFL agrees to provide the Settlement Administrator and Lead Class Counsel with the total monthly COI charged and withdrawn from any Class Policy on a monthly basis during the Settlement Computation Period. The Remaining Fund will be distributed to the Settlement Class Members by check.
- b. Reduction: The Settlement Common Fund will be reduced by the amounts that would have been distributed under the formula set forth in subdivision (a) to this Paragraph to those Policyholders requesting exclusion from the Settlement Class. After consulting with USFL’s Counsel, Lead Class Counsel will petition the Court for approval of the proposed manner in which any unclaimed or unpayable distributions of the Common Settlement Fund will be further distributed or paid.
- c. COI Rate Increase Protection Benefit: USFL agrees that it will not impose any additional COI rate increase(s) on any Class Policy within five (5) years of the Execution Date, unless ordered to do so by a state regulatory body. Plaintiff

and/or her experts have attributed a value of between \$14,643,000 and \$17,571,600 for this benefit. The Parties acknowledge and agree that, notwithstanding the foregoing, USFL will maintain the COI rates implemented through the 2015 COI Rate Increase.

- d. Non-Contestability Benefit: USFL agrees it will not seek to void, rescind, cancel, have declared void, or otherwise deny coverage of death claims submitted by Settlement Class Members based on any alleged lack of insurable interest or misrepresentations made in connection with the original application process (the “Non-Contestability Benefit”). This benefit does not apply to any alleged lack of insurable interest or misrepresentations made in connection with an application to reinstate coverage.
- e. Illustrations Benefit. If a Class Member has not already availed themselves of this right in 2021, USFL agrees to provide in-force illustrations to a Settlement Class Member, upon request and at no cost to the Settlement Class Member, depicting up to three scenarios regarding the respective Class Policy until October 1, 2021. In the event that applicable regulations restrict the illustration depiction of certain benefits or future performance, the illustration will provide an explanation of such restriction.

#### **IV. SETTLEMENT ADMINISTRATOR**

57. Lead Class Counsel may at their discretion retain a Settlement Administrator and delegate to it all responsibilities with respect to the Class Notice and administration of the Settlement before or after Court approval. USFL agrees to pay the first \$25,000 in fees and costs associated with the Settlement Administrator. Any remaining cost of notice or cost of administration shall be paid from the Settlement Common Fund.

**V. NOTICE TO THE CLASS AND COMMUNICATIONS WITH CLASS MEMBERS**

**A. Preliminary Approval by the Court**

58. Within a reasonable time before the Preliminary Approval Hearing set for April 28, 2021 at 2:00 P.M., Plaintiff will submit the proposed Settlement to the Court and request the entry of the Preliminary Approval Order: (a) preliminarily certifying the Settlement Class, appointing the Class Representative for the Settlement Class, appointing Class Counsel as counsel for the Settlement Class, (b) preliminarily approving the proposed Settlement as appearing sufficiently fair, adequate, and reasonable to warrant the dissemination of the Class Notice Package, and (c) preliminarily enjoining all Settlement Class Members who do not execute and timely file a Request for Exclusion from the Settlement Class from filing, prosecuting, maintaining or continuing litigation based on or related to the claims or facts alleged in the Lawsuit.

**B. Class Notice Package**

59. Subject to the requirements of any orders entered by the Court, and no later than 60 days after the Preliminary Approval Date, the Settlement Administrator will send a Class Notice Package by first-class mail to the last known address (to be provided by USFL) of each reasonably-identifiable person and entity in the Settlement Class and, in cases of pending litigation against USFL relating to the Released Claims, also to any legal counsel (other than Plaintiff's Counsel) known by USFL as of the Preliminary Approval Date to represent such a person or entity. The Class Notice Package will consist of (a) the Class Notice described below; and (b) if desired, a cover letter upon which Lead Class Counsel and USFL's Counsel mutually agree.

60. The mere mailing of a Class Notice Package to a person or entity that is not in the Settlement Class, as defined herein, will not render such person or entity a part of the Settlement Class or otherwise entitle such person to participate in this Settlement.

**C. Class Notice Content**

61. Each Class Notice Package will contain a Class Notice, which will in turn:

- a. contain a short, plain statement of the background of the Lawsuit and the proposed Settlement;

- b. describe the category of persons and entities in the Settlement Class and inform such persons and entities that, if they do not exclude themselves from the Settlement Class, they may be eligible to receive relief under the proposed Settlement;
- c. describe the proposed Settlement Relief;
- d. explain the impact of the proposed Settlement on the pending Lawsuit;
- e. describe the effect of the release included in the proposed Settlement;
- f. state that any relief to Settlement Class Members is contingent on the Court's final approval of the proposed Settlement Agreement as fair, reasonable, and adequate;
- g. explain that a Settlement Class Member may request exclusion from the Settlement Class by mailing a written Request for Exclusion to Class Counsel postmarked no later than 45 days after the Notice Date;
- h. explain that a Settlement Class Member who has not submitted a written Request for Exclusion may, if he or she desires, object to the proposed Settlement by filing a written statement of objections with the Court no later than 45 days after the Notice Date;
- i. explain that a Settlement Class Member who has filed a timely and proper objection to the proposed Settlement may appear at the Fairness Hearing, either personally or through counsel, provided that notice of the intention to appear must be both filed with the Court and served by mail on Class Counsel and USFL's Counsel, all postmarked no later than 14 days before the Fairness Hearing;
- j. explain that any judgment entered in the Lawsuit whether favorable or unfavorable to the Settlement Class, will include, and be binding on, all

Settlement Class Members, even if they have objected to Court approval of the proposed Settlement Agreement and even if they have any other claim, lawsuit, or proceeding pending against USFL based on the same factual predicate as alleged in the First Amended Class Action Complaint or in the Motion for Class Certification;

- k. explain that a Settlement Class Member should consult their own tax advisors regarding the tax consequences of the proposed Settlement, including but not limited to, any payments, credits, and payment periods provided hereunder, and any tax reporting obligations they may have with respect thereto; and
- l. explain the provisions of this Settlement Agreement relating to attorneys' fees, expenses, and costs including those in Section IX, and explain that individual Settlement Class Members will be responsible themselves for the fees and costs of any persons they may retain to represent them for any reason, including, but not limited to, counsel retained in connection with the filing of an objection or attendance at the Fairness Hearing.

62. The Class Notice will conform to the manner and form agreed on by the Parties and approved by the Court.

63. The Class Notice will also be supplemented through the establishment of a website with more information and links to important documents relating to the Lawsuit and the proposed Settlement. Lead Class Counsel and USFL's Counsel will mutually agree upon the content of any such website. Such website will be established and maintained by the Settlement Administrator.

**D. Address Verification; Re-mailing**

64. Prior to the mailing of the Class Notice, the Settlement Administrator will run the mailing list for the Class Notice through the U.S. Postal Service's National Change of Address Database for verification and correction of addresses to attempt to reduce the number of returned mail items. In the case of Class Notices undelivered and returned by the U.S. Postal Service, the

Settlement Administrator will: (a) re-mail any Class Notice so returned with a forwarding address, and (b) (1) make reasonable efforts to attempt to find an address for any returned Class Notice that does not include a forwarding address, or (2) retain a commercial address verification service for this purpose. The Settlement Administrator will re-mail the Class Notice to each person and entity in the Settlement Class for which it or the address research service provides an updated address.

**E. Notice Under the Class Action Fairness Act**

65. Within 10 days following the filing of this Settlement Agreement for preliminary approval by the Court, USFL will serve notices of the proposed Settlement upon the appropriate officials in compliance with the requirements of the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715. The identities of such officials and the content of the materials will be subject to the mutual agreement of the Parties’ Counsel.

**F. Communication with Settlement Class Members, Claimants, and Policyholders**

66. USFL will not be privy to or respond to inquiries between Settlement Class Members and their counsel (including Plaintiff’s Counsel). However, USFL reserves the right to communicate with, and to respond to inquiries directed to it from insureds, beneficiaries, policyholders, and Settlement Class Members, orally and/or in writing, regarding matters not involving the Lawsuit or the proposed Settlement in the normal course of administering the Class Policies or otherwise in the ordinary course of business and may do so through any appropriate agents or agencies. If, however, USFL receives any inquiry from a Settlement Class Member specifically relating to the Lawsuit or the Settlement, USFL will refer the Settlement Class Member to Class Counsel. Nothing in this Paragraph will preclude USFL or USFL’s Counsel from communicating with an attorney representing any Policyholder.

67. Lead Class Counsel will provide responses to inquiries received from persons and entities in the Settlement Class, subject to review and comment by USFL’s Counsel should Lead Class Counsel deem it helpful or necessary.

68. USFL may continue to process and respond to insured, beneficiary, or policyholder



complaints, including complaints submitted to USFL by regulators, notwithstanding that some complaints may originate with Settlement Class Members and may concern claims relating to Class Policies that otherwise could be eligible for Settlement Relief under the Settlement Agreement; provided however, that, after the Class Notice mailing and before the implementation of Settlement Relief for a particular Class Policy, any offer of relief by USFL in response to any such complaint concerning such Class Policy will be accompanied by a copy of the Settlement Agreement and a statement explaining to the Settlement Class Member that acceptance of USFL's offer may bar or otherwise affect the Settlement Class Member's rights to participate in the proposed Settlement. If USFL makes an offer of relief in response to any such written complaint after the Class Notice is mailed and before the implementation of Settlement Relief for the subject Class Policy, and the offer of relief differs from the Settlement Relief, a copy of the written complaint and USFL's offer of relief will be provided to Class Counsel in advance of any agreement. Nothing within this Paragraph shall apply to Policyholders who timely and properly exclude themselves from the Settlement in accordance with Section VI, or to Policyholders who commenced separate individual actions against USFL prior to the Effective Date of this Agreement.

## **VI. REQUESTS FOR EXCLUSION**

69. Any Settlement Class Member who wishes to be excluded from the Settlement Class must submit to Class Counsel a written request for exclusion ("Request for Exclusion") sent by U.S. mail and postmarked no later than 45 days from the Notice Date. Class Counsel will file a list of all valid Requests for Exclusion with the Court 14 days prior to the Fairness Hearing, or as otherwise directed by the Court.

70. To be in proper form, the Request for Exclusion must (a) state the identity of the Policyholder; (b) state one or more of the Policyholder's Class Policy numbers; (c) state that the Policyholder desires to be excluded from the Settlement Class; and (d) be signed by the Policyholder or by a person providing a valid power of attorney to act on behalf of such person or entity. If there are multiple Policyholders with respect to a single Class Policy (such as spouses),

all owners must sign unless the signatory holds and submits a copy of a valid power of attorney to act on behalf of all owners of the Class Policy.

71. Class Counsel will maintain the Post Office Box to which Requests for Exclusion are required to be sent, monitor exclusion requests for accuracy and completeness, request any needed clarifications, and provide copies of all such materials to USFL's Counsel upon request.

72. Every Settlement Class Member who does not file a timely and proper written Request for Exclusion in accordance with this Section VI will be bound by all subsequent proceedings, orders, and judgments in the Lawsuit.

## **VII. OBJECTIONS TO THE SETTLEMENT**

73. Any Settlement Class Member who has not filed a timely and proper written Request for Exclusion and who wishes to object to the fairness, reasonableness, or adequacy of the proposed Settlement must file with the Court a statement of objection, postmarked no later than 45 days after the Notice Date. Each such statement of objection must: (a) state the Settlement Class Member's full name, current address, telephone number, and applicable Class Policy number(s); (b) state that the Settlement Class Member objects to the Settlement, in whole or in part; (c) set forth a statement of the legal and factual basis for the objection; and (d) be accompanied by copies of any and all documents that the objecting Settlement Class Member has and will submit in support of his/her position. A Settlement Class Member who does not submit a timely and proper objection in accordance with this Settlement Agreement and the Class Notice, and as otherwise ordered by the Court, will not be treated as having filed a valid objection to the Settlement. The Class Notice will inform the Settlement Class of this requirement. Settlement Class Members may so object either on their own or through an attorney hired at their own expense. If a Settlement Class Member hires an attorney to represent him or her, the attorney must (a) file a notice of appearance with the Clerk of the Court no later than 14 days before the Fairness Hearing, and (b) send a copy of the same to Lead Class Counsel and USFL's counsel by U.S. mail postmarked no later than 14 days before the date of the Fairness Hearing.

74. Any Settlement Class Member who timely files a proper written objection may

appear at the Fairness Hearing in support of the objection, provided the notice of the intention to appear is given as specified in this Paragraph. Settlement Class Members or their attorneys who intend to make an appearance at the Fairness Hearing must file a notice of intention to appear with the Court no later than 14 days before the date of the Fairness Hearing. A Settlement 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 preceding Paragraph. No Settlement Class Member will be permitted to raise matters at the Fairness Hearing that the Settlement Class Member could have raised in such a written objection, but failed to do so, and all objections to the Settlement that are not set forth in such a written objection are deemed waived. Any Settlement Class Member who fails to comply with the applicable provisions of this Settlement Agreement and the Class Notice, and as otherwise ordered by the Court, will be barred from appearing at the Fairness Hearing.

75. Any Settlement Class Member who fails to comply with the provisions of this Section VII will waive and forfeit any and all rights he or she may have to appear separately and/or object and will be bound by all the terms of this Settlement Agreement and by all proceedings, orders, and judgments in the Lawsuit.

76. A Settlement Class Member's objection to the Settlement will not affect his or her rights to participate in the Settlement Relief.

77. Settlement Class Members may not both object and submit a Request for Exclusion.

78. The Parties may serve and file responses to written objections at least 14 days prior to the Fairness Hearing, or as otherwise directed by the Court.

### **VIII. RELEASE AND WAIVER**

79. In consideration of the promises and covenants of settlement between and among the Parties and as further contained in this Settlement Agreement (including, but not limited to, the consideration to the Settlement Class Members), the Releasors hereby expressly release and discharge Releasees from and against any and all claims, liabilities, demands, causes of action or lawsuits, known or unknown, whether legal, statutory, equitable or of any other type or form,

whether under federal or state law, and whether brought in an individual, representative or any other capacity, that in any way relate to or arise out of or in connection with acts, omissions, facts, statements, matters, transactions, or occurrences that have been alleged or referred to or could have been alleged in any pleading or motion in this action and based on the same factual or legal predicate, including but not limited to claims arising out of, or based upon allegations that USFL or any of its predecessors at any time improperly raised COI rates, considered non-mortality factors, improperly recovered lost profits, engaged in improper underwriting, employed “table shaving” practices, utilized unreasonable pricing assumptions, inappropriately marketed the policies, failed to adjust or decrease COI rates or any other charge to reflect changing mortality expectations, or engaged in any impermissible conduct discussed in any expert report produced in this case. Notwithstanding the foregoing, for purposes of clarification only, Releasors are not releasing claims arising from any failure by USFL to pay future death benefits owed under a Class Policy.

80. No member of the Settlement Class will institute, maintain, prosecute, sue, or assert in any action or proceeding any claim based on conduct occurring after, or any liability or damages relating to the matters released in the preceding paragraph allegedly arising after the date of Preliminary Approval.

81. In connection with the forgoing releases, Releasors acknowledge that they are aware that they may hereafter discover claims or damages presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, with respect to the Released Claims. Nevertheless, Releasors understand and agree that this release will fully, finally, and forever settle and release all claims and causes of action described in this Section VIII, known or unknown, and which now exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the Released Claims.

**82. RELEASORS EXPRESSLY UNDERSTAND THAT SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA PROVIDES:**

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”**

**TO THE EXTENT THAT CALIFORNIA OR OTHER SIMILAR FEDERAL OR STATE LAW MAY APPLY (BECAUSE OF OR NOTWITHSTANDING THE PARTIES’ CHOICE OF LAW IN THIS AGREEMENT), RELEASORS HEREBY AGREE THAT THE PROVISIONS OF SECTION 1542 AND ALL SIMILAR FEDERAL OR STATE LAWS, RIGHTS, RULES, OR LEGAL PRINCIPLES, TO THE EXTENT THEY ARE FOUND TO BE APPLICABLE HEREIN, ARE HEREBY KNOWINGLY AND VOLUNTARILY WAIVED AND RELINQUISHED BY RELEASORS, AND RELEASORS HEREBY AGREE THAT THIS IS AN ESSENTIAL TERM OF THE RELEASE.**

83. The Parties agree and acknowledge that the release provisions of this Section VIII together constitute an essential term of the Settlement Agreement.

84. Nothing in the foregoing releases will preclude any action to enforce the terms of this Settlement Agreement.

85. Nothing in this Settlement Agreement will be deemed to alter the Policies’ contractual terms, except to the extent such are altered or affected by the award and/or implementation of Settlement Relief under this Settlement Agreement.

86. The Parties expressly agree that the provisions of this Section VIII shall be, and may be raised as, a complete defense to and will preclude any action or proceeding encompassed by the Released Claims.

87. It is the intention of Plaintiff, on behalf of herself and the Settlement Class, in executing this Agreement, to fully, finally, and forever settle and release all Released Claims as defined under this Section VIII.

**IX. ATTORNEYS' FEES AND LITIGATION EXPENSES**

88. Class Counsel contemplates an application to the Court seeking approval of a common fund award of attorneys' fees, plus reimbursement of litigation expenses and costs, plus an incentive award described in Section X ("the Class Fee and Expense Application") to be deducted from the Settlement Common Fund. Class Counsel will file the Class Fee and Expense Application in accordance with the applicable Local Rules of Civil Procedure. USFL agrees not to take a position with respect to Plaintiff's Class Fee and Expense Application, provided it complies with the standards established in recent cases.

89. The attorneys' fees, litigation expenses, and incentive awards approved by the Court based on the Class Fee and Expense Application will be set forth in a fee and expense order (the "Class Fee and Expense Order") separate from the Final Approval Order, so that any appeal of one will not constitute an appeal of the other. No order or proceedings relating to the Class Fee and Expense Application, nor any appeal from the Class Fee and Expense Order, or reversal or modification thereof, will operate to terminate or cancel this Settlement Agreement or otherwise delay the Final Approval Date or the Final Settlement Date.

90. Lead Class Counsel will, in a manner that Lead Class Counsel in good faith believes reflects the respective contributions of Plaintiff's Counsel to the prosecution and Settlement of the Lawsuit, allocate and distribute among Plaintiff's Counsel and any other counsel, if applicable, the fees and reimbursed expenses that they receive pursuant to the Class Fee and Expense Order. Disagreements, if any, among Plaintiff's Counsel and any other counsel, if applicable, relating to their respective shares of any such fee and expense award will have no impact on the effectiveness or the implementation of this Settlement Agreement, nor will such disagreements increase, modify, or otherwise affect the obligations imposed upon USFL by this Settlement Agreement. Any such disagreements will be resolved by the Court.

91. No Party or Parties' Counsel will be liable or obligated to pay any fees, expenses, costs, or disbursements to any person, either directly or indirectly, in connection with the Lawsuit, this Settlement Agreement, or the proposed Settlement, other than those expressly provided in this

Settlement Agreement as being payable by such party.

**X. INCENTIVE AWARDS**

92. As part of the Class Fee and Expense Application, Class Counsel may apply to the Court for an incentive award for Plaintiff to be deducted from the Settlement Common Fund. The purpose of such incentive award will be to reward Plaintiff for her efforts undertaken on behalf of the Settlement Class. No such incentive award will in any way diminish or prejudice any Settlement Relief which Plaintiff is otherwise eligible to receive as a member of the Settlement Class.

**XI. FINAL APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT**

93. At or after the Fairness Hearing, and upon the Court's approval of this Settlement Agreement, the Parties will request from the Court entry of both (a) the Final Approval Order, and (b) the Class Fee and Expense Order.

94. The Final Approval Order proposed by the Parties will, among other things: (a) approve the proposed Settlement and the Settlement Relief as fair, reasonable, and adequate; (b) dismiss the Lawsuit with prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure, with jurisdiction retained by the Court to enforce the terms of the Settlement Agreement; and (c) permanently enjoin all Settlement Class Members who do not execute and timely file a Request for Exclusion from the Settlement Class from filing, prosecuting, maintaining, or continuing litigation based on or related to the claims or facts alleged in the Lawsuit.

95. The Class Fee and Expense Order will award Plaintiff's Counsel attorneys' fees and litigation expenses to be paid from the Settlement Common Fund, and approve the incentive award to Plaintiff, with jurisdiction retained by the Court to enforce the terms of the Class Fee and Expense Order.

96. USFL will fund the Common Settlement Fund, less the deductions for the amounts that would have been distributed set forth in Paragraph 55(a) to Policyholders submitting a valid Request for Exclusion, within 45 days of the Final Settlement Date.

97. The Settlement Administrator will distribute the Remaining Fund, as set forth

herein, to the Settlement Class Members within 75 days of the Final Settlement Date.

## **XII. MODIFICATION OR TERMINATION OF THIS SETTLEMENT AGREEMENT**

98. The Settlement Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided however, the Parties may by agreement effect such amendments, modifications, or expansions of this Settlement Agreement and its implementing documents (including the exhibits hereto) without notice to or approval by the Court if such changes (a) are consistent with the Court's Preliminary Approval Order, the Court's Final Approval Order, or the Court's Class Fee and Expenses Order, and (b) do not unreasonably limit the rights of Settlement Class Members under this Settlement Agreement.

99. The Parties may agree to implement the terms of the Settlement prior to the Final Settlement Date in accordance with the terms, conditions, dates, and time periods specified in this Settlement Agreement; provided however, that (a) all related procedures and matters will be suspended upon the filing of a notice of appeal of the Final Approval Order; and (b) USFL will in no event have any obligation to pay, credit, implement, or otherwise effect any Settlement Relief prior to the Final Settlement Date, except as otherwise provided herein or agreed by the Parties.

100. This Settlement Agreement will terminate at the sole option and discretion of USFL or Plaintiff if: (a) the Court or an appellate court(s) with jurisdiction over any appeal taken from the Court, rejects, modifies, or denies approval of any material portion of this Settlement Agreement; or (b) the Court, or any appellate court(s) with jurisdiction over any appeal taken from the Court, does not enter or completely affirm, or modifies, alters, narrows or expands, any material portion of the Final Approval Order. The terminating Party must exercise the option to withdraw from and terminate this Settlement Agreement, as provided in this Paragraph, in writing no later than ten (10) days after receiving notice of the event prompting the termination. The Parties will be returned to their *status quo ante*. If an option to withdraw from and terminate this Settlement Agreement arises under this Paragraph: (a) neither USFL nor Plaintiff is required for any reason or under any circumstance to exercise that option; and (b) any exercise of that option must be made in good faith.



101. Notwithstanding the preceding paragraph, no Party may terminate this Agreement based solely on the amount of attorneys' fees and expenses awarded or approved by the Court or any appellate court(s).

102. If this Agreement is terminated pursuant to the preceding paragraphs in this Section XII, then:

- a. This Settlement Agreement will be null and void and will have no force or effect, and no party to this Agreement will be bound by any of its terms;
- b. All Parties will bear their own costs and expenses incurred in connection with the terminated settlement approval process, including specifically the Class Notice and administrative costs incurred by USFL under Section III;
- c. Releasees, including USFL, expressly and affirmatively reserve all defenses, arguments, and motions as to all claims that have been or might later be asserted in the Lawsuit, including but not limited to, any applicable statutes of limitation, any objections to personal jurisdiction, and the argument that the Lawsuit may not be litigated as a class action;
- d. Plaintiff expressly and affirmatively reserves all arguments, assertions, and all motions as to all claims that have been or might later be asserted in the Lawsuit.
- e. All provisions of this Settlement Agreement, and all negotiations, statements, and proceedings relating to this Settlement Agreement, will be without prejudice to the rights of USFL, Plaintiff, or any Settlement Class Member, all of whom will be restored to their respective positions existing immediately before the Execution Date;
- f. This Settlement Agreement, the fact of its having been made, the negotiations leading to it, and/or any action taken by a Party or Settlement Class Member pursuant to this Agreement will not be admissible or entered into evidence for any purpose whatsoever in any other legal proceeding other than the Lawsuit.

### **XIII. GENERAL MATTERS AND RESERVATIONS**

103. USFL's consent to the Court's exercise of personal jurisdiction is limited to the Lawsuit and is strictly made for the limited purpose of implementing this nationwide class Settlement. USFL's consent to jurisdiction shall not operate as a waiver in any other litigation. In the event this Settlement Agreement is terminated in accordance with Section XII or if the Final Settlement Date is not attained for any reason, USFL's consent to the Court's exercise of personal jurisdiction will be considered withdrawn.

104. The Parties and the Parties' Counsel agree that their discussions and the information exchanged in the course of negotiating this Settlement are confidential. Such exchanged information was made available on the condition that neither the Parties nor their counsel may disclose it to third parties (other than experts or consultants retained by the Parties in connection with the Lawsuit), and that it not be publicly disclosed or used by the Parties or their counsel in any way in the Lawsuit should it not settle, or in any other proceeding; provided, however, that nothing contained herein will prohibit the Parties from seeking such information through formal discovery if not previously requested through formal discovery or from referring to the existence of such information in connection with the Settlement of the Lawsuit. In any event, the terms of the 2015 COI Rate Increase at issue in the Lawsuit will remain confidential.

105. The Parties and the Parties' Counsel agree that the Confidential Information made available to them through the discovery process was made available on the condition that neither the Parties nor their counsel may disclose it to third parties except in accordance with the terms of the Stipulated Protective Order. The Parties agree to comply with the Stipulated Protective Order with respect to the return or destruction of Confidential Information.

106. The Parties will attempt to resolve any disputes that may arise concerning the interpretation of this Settlement Agreement in good faith. The Parties agree to mediate any disputes regarding the interpretation of this Settlement Agreement or exhibits attached hereto with the Mediator prior to seeking Court involvement. If the Parties fail to resolve the dispute after mediation, the Court retains jurisdiction to resolve such disputes without regard to any mediator

recommendation.

107. Lead Class Counsel represent that they (a) are authorized to enter into this Settlement Agreement on behalf of Plaintiff and (b) are doing so to protect the best interests of the Settlement Class.

108. Plaintiff represents and certifies that: (a) she has agreed to serve as representative of the Settlement Class proposed to be certified for settlement purposes herein; (b) she remains willing, able, and ready to perform all of the duties and obligations of a representative of the Settlement Class; (c) she is familiar with the allegations in the Lawsuit, or have had the contents of such allegations described or conveyed to them; (d) she has consulted with Plaintiff's Counsel about the Lawsuit (including discovery conducted in the Lawsuit), this Settlement Agreement, and her obligations as class representative; (e) she has authorized Class Counsel to execute this Settlement Agreement on her behalf; and (f) she will remain and serve as a representative of the Settlement Class until the terms of this Settlement Agreement are effectuated and fully implemented, this Settlement Agreement is terminated in accordance with its terms, or the Court at any time determines that Plaintiff cannot represent the Settlement Class.

109. The undersigned USFL representative represents that he is authorized to enter into this Settlement Agreement on behalf of USFL.

110. This Settlement Agreement, including any exhibits hereto, which are an integral part of this Settlement Agreement, sets forth the entire agreement among the Parties with respect to its subject matter, and it may not be altered or modified except by written instrument executed by all Parties' Counsel or authorized representatives. The Parties expressly acknowledge that no other agreements, arrangements, or understandings not expressed or referred to in this Settlement Agreement exist among or between them.

111. The terms "he or she" and "his or her" include "it" or "its," where applicable. Defined terms expressed in the singular also include the plural form of such term, and vice versa, where applicable.

112. This Settlement Agreement and any ancillary agreements will be governed by and

interpreted in accordance with the laws of the State of Ohio, without reference to its choice of law or conflict of laws rules.

113. Whenever this Settlement Agreement requires or contemplates that one Party will or may give notice to the other, notice will be provided by e-mail and/or next-day (excluding Saturday and Sunday) express delivery service as follows:

If to USFL, then to:

David T. McDowell  
MCDOWELL HETHERINGTON LLP  
1001 Fannin St. Ste. 2700  
Houston, TX 77002  
Tel: 713-337-5580  
Fax: 713-337-8850  
E-mail: [david.mcdowell@mhllp.com](mailto:david.mcdowell@mhllp.com)

If to Plaintiff, then to:

W. Daniel "Dee" Miles, III  
BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C.  
272 Commerce Street  
Post Office Box 4160 (36103)  
Montgomery, Alabama 36104  
Tel: 334-269-2343  
Fax: 334-954-7555  
E-mail: [dee.miles@beasleyallen.com](mailto:dee.miles@beasleyallen.com)

114. All time periods set forth herein will be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Settlement Agreement or by order of court, the day of the act, event, or default from which the designated period of time begins to run will not be included. Each other day of the period to be computed will be included, including the last day thereof, unless such last day is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the Clerk of the Court inaccessible, in which event the last day of the period will be the next day that is not one of the aforementioned days. As used in this Paragraph, "legal holiday" includes New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of

the United States.

115. The Parties reserve the right to agree between themselves on any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

116. The Parties agree that (a) this Settlement Agreement is clear and unambiguous, has been drafted and negotiated by counsel for the Parties at arm's length, and will not be construed more strictly against any of the Parties; and (b) no parol or other evidence may be offered to explain, construe, contradict, or clarify the terms of this Settlement Agreement, the intent of the Parties or their counsel, or the circumstances under which this Settlement Agreement was made or executed.

117. USFL considers it desirable for the Lawsuit to be settled and dismissed, because this Settlement will: (a) provide substantial benefits to Settlement Class Members through processes that provide fair and adequate procedural and substantive protections both to Settlement Class Members and to USFL; (b) put to rest Plaintiff's claims and the underlying matters; and (c) avoid the substantial expense, burden, and uncertainties associated with the continued litigation of those claims. In no event may this Settlement Agreement, any of its provisions or any negotiations, statements, or court proceedings relating to them in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Lawsuit, any other action, or in any judicial, administrative, regulatory, or other proceeding, except in a proceeding to enforce this Settlement Agreement. Without limiting the foregoing, neither this Settlement Agreement nor any related negotiations, statements, or court proceedings will be construed as, offered as, received as, used as, or deemed to be evidence or an adjudication, admission, or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, USFL or Plaintiff, or as a waiver by USFL or Plaintiff of any applicable claims or defenses.

118. Neither this Settlement Agreement nor any of the relief to be offered under the proposed Settlement will be interpreted to alter in any way the contractual terms of any Policy, or to constitute a novation of any Policy, except as expressly provided by this Settlement Agreement

or the relief granted in accordance with the terms of this Settlement Agreement. This Settlement Agreement does not, and will not be deemed to, create any fiduciary or similar relationship between USFL and any of its current, past, or prospective policyholders or contract owners. This Settlement Agreement does not impose, and will not be deemed to impose, any fiduciary or other similar duty on USFL, and USFL expressly disclaims any fiduciary or other similar duties. The duties and obligations assumed by USFL as a result of this Settlement Agreement are limited to those expressly set forth in this Settlement Agreement.

119. Punitive or exemplary damages are not available to any Settlement Class Member under the proposed Settlement described in this Settlement Agreement, and none of the proposed Settlement Relief shall include or constitute, or be deemed to include or constitute, punitive or exemplary damages.

120. No opinion concerning the tax consequences of the proposed Settlement to any person or entity in the Settlement Class is given or will be given by USFL, counsel for USFL, or counsel for Plaintiff or for the Settlement Class, nor are any representations or warranties in this regard made by virtue of this Settlement Agreement. The Class Notice will direct persons and entities in the Settlement Class to consult their own tax advisors regarding the tax consequences of the proposed Settlement, including the tax consequences of any payments, credits, and payment periods provided for hereunder, and any tax reporting obligations they may have with respect thereto. The tax obligations of each Settlement Class Member, and the determination thereof, are the sole responsibility of each such person and entity, and it is understood that the tax consequences of the Settlement may vary depending on the particular circumstances of each such person and entity.

121. The Parties, their successors and assigns, and their attorneys undertake to implement the terms of this Settlement Agreement in good faith, and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Agreement.

122. The Parties, their successors and assigns, and their attorneys agree to cooperate fully with one another in seeking court approval of this Settlement Agreement and in preparing all

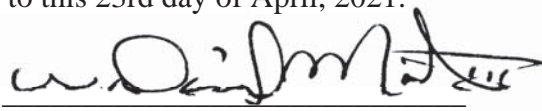
final approval papers and to use their commercially reasonable best efforts to affect the prompt consummation of this Settlement Agreement and the proposed Settlement.

123. This Settlement Agreement may be signed in counterparts, each of which will constitute a duplicate original.

**For Plaintiff Vivian Farris, trustee for the Wirt Adams Yerger, Jr. Legacy Trust,  
individually and on behalf of the proposed Settlement Class:**

Agreed to this 23rd day of April, 2021.

By:

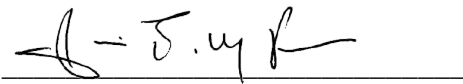


W. Daniel "Dee" Miles  
BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C  
**Lead Class Counsel**

**For Defendant U.S. Financial Life Insurance Company:**

Agreed to this 23rd day of April, 2021:

By:



David T. McDowell  
MCDOWELL HETHERINGTON, LLP  
**U.S. Financial Life Insurance Company**



**Settlement Agreement and Release**

**Exhibit 1: Class Notice**

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO**

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

**If you own, purchased, or contributed to the purchase of a Nova or Supernova insurance policy issued by U.S. Financial Life Insurance Co. and experienced a policy rate increase, you may be eligible for benefits from a class action settlement.**

*A federal court authorized this Notice. It is not a solicitation from a lawyer.*

- A settlement has been reached with U.S. Financial Life Insurance Company (“USFL”) in a class action lawsuit about the cost of insurance rate increase that USFL implemented in 2015.
- You are included in this settlement as a Settlement Class Member if you (1) purchased, contributed to, participated in the purchase of, or own a Nova or Supernova policy, (2) received coverage from the Nova or Supernova insurance policies issued by USFL, and (3) experienced a cost of insurance rate increase beginning on your policy anniversary after August 31, 2015.
- Your rights are affected whether you act or don’t act. Read this Notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>ASK TO BE EXCLUDED DEADLINE: [DATE]</b>	This is the only option that allows you to sue, continue to sue, or be part of another lawsuit against USFL related to the legal claims this settlement resolves. However, you will give up the right to get a payment from this settlement.
<b>OBJECT TO THE SETTLEMENT DEADLINE: [DATE]</b>	If you do not exclude yourself from the settlement, you may object to it by writing to the Court about why you don’t like the settlement. If you object, you will still be eligible for the settlement benefits.
<b>GO TO A HEARING ON [DATE]</b>	You are not required to hire your own lawyer and/or speak at the Fairness Hearing. If you timely and properly object to the settlement, you may ask the Court for permission to speak at the Fairness Hearing about your objection.
<b>DO NOTHING</b>	If the settlement is approved and becomes final, you will receive a settlement payment and other settlement benefits further explained in this Notice, but you will give up the right to sue, continue to sue, or be part of another lawsuit against USFL about the legal claims resolved by this settlement.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the settlement.

**WHAT THIS NOTICE CONTAINS**

**BASIC INFORMATION** ..... PAGE #

- 1. Why was this Notice issued?
- 2. What is this Lawsuit about?
- 3. What is a class action?
- 4. Why is there a settlement?

**WHO IS INCLUDED IN THE SETTLEMENT** ..... PAGE #

- 5. How do I know whether I am part of the settlement?
- 6. Are there exceptions to being included?

**THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY** ..... PAGE #

- 7. What does the settlement provide?
- 8. Tell me more about the Settlement Common Fund.
- 9. How much will my payment from the Settlement Common Fund be?
- 10. When will I get my payment from the Settlement Common Fund?
- 11. Tell me more about the COI Rate Increase Protection Benefit.
- 12. Tell me more about the Non-Contestability Benefit.
- 13. Tell me more about the Illustrations Benefit.
- 14. What rights am I giving up to get a payment and stay in the Settlement Class?
- 15. What are the Released Claims?

**THE LAWYERS REPRESENTING YOU** ..... PAGE #

- 16. Do I have a lawyer in this case?
- 17. How will the lawyers be paid?

**EXCLUDING YOURSELF FROM THE SETTLEMENT** ..... PAGE #

- 18. How do I get out of the settlement?
- 19. If I exclude myself, can I still get a payment from this settlement?
- 20. If I do not exclude myself, can I sue the Defendant for the same legal claims later?

**OBJECTING TO THE SETTLEMENT** ..... PAGE #

- 21. How do I tell the Court that I do not like the settlement?
- 22. May I come to Court to speak about my objection?
- 23. What is the difference between objecting to the settlement and asking to be excluded from it?

**THE COURT’S FAIRNESS HEARING** ..... PAGE #

- 24. When and where will the Court decide whether to approve the settlement?
- 25. Do I have to come to the hearing?
- 26. May I speak at the hearing?

**IF YOU DO NOTHING** ..... PAGE #

- 27. What happens if I do nothing at all?

**GETTING MORE INFORMATION** ..... PAGE #

- 28. How do I get more information?

## BASIC INFORMATION

### 1. Why was this Notice issued?

A court authorized this Notice because you have a right to know about the proposed settlement of this class action lawsuit and about all of your options before the Court decides whether to grant final approval to the settlement. This Notice explains the lawsuit, the settlement, your legal rights, what benefits are available, and who can get them.

The Honorable Matthew W. McFarland of the United States District Court for the Southern District of Ohio is overseeing this class action. The case is known as *Farris, et al. v. U.S. Financial Life Insurance Company*, Case No. 1:17-cv-417 (the “Lawsuit”). The person that filed this Lawsuit is called the “Plaintiff” and the company she sued, U.S. Financial Life Insurance Company, is called the “Defendant.”

This Notice describes the claims asserted in the Lawsuits, the proposed Settlement, your legal rights, the benefits that are available, and when they will be made available. This Notice is only a summary. If you wish to review the full terms and conditions of the Settlement, you can obtain a copy of the Settlement Agreement by contacting the Settlement Administrator or visiting the Settlement website.

### 2. What is this Lawsuit about?

The Lawsuit alleges that the Defendant improperly raised the cost of insurance (“COI”) rate on certain universal life policies in 2015 (the “2015 COI Rate Increase”). The Plaintiff claims that the 2015 COI Rate Increase was a result of improperly underwriting and table shaving when the policies were issued, improper actuarial actions (compiling and analyzing statistics to calculate insurance risks and premiums), and impermissible considerations, including interest spread compression, in determining the reasonableness of the 2015 COI Rate Increase. The Lawsuit also alleges breach of contract, breach of the implied covenant of good faith and fair dealing, and unjust enrichment. The Defendants deny all of the claims made in the Lawsuit.

### 3. What is a class action?

In a class action, one or more people called the Class Representative (in this case, Vivian Farris, as trustee for the Wirt Adams Yerger, Jr. Legacy Trust) sue on behalf of other people with similar claims. Together, the people included in the class action are called a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

### 4. Why is there a settlement?

The Court did not decide in favor of the Plaintiff or Defendant. Instead, the Class Representative and Defendant have compromised and agreed to a settlement after participating in mediation before an experienced and highly qualified mediator. Class Counsel has advised the Court that the Settlement is the result of extensive, arm’s-length negotiations between the parties, with the assistance of an experienced mediator, and is based upon a thorough examination of the legal and factual issues raised in the Lawsuits, the information obtained over the course of the litigation, the inevitable costs and delays associated with continued litigation, and the risk that Settlement Class members might receive nothing if the litigation were to proceed. By agreeing to settle, both sides avoid the cost and burden of a trial and the people affected can get benefits. The Class Representative and her attorneys think the settlement is best for all Class Members.

## WHO IS INCLUDED IN THE SETTLEMENT

### 5. How do I know whether I am part of the settlement?

The settlement includes everyone who purchased, contributed to, participated in the purchase of, or own the Nova and Supernova policies at issue (*i.e.*, policies that experienced a COI rate increase beginning on their policy anniversary after August 31, 2015) and received coverage from those named insurance policies issued by USFL.

**6. Are there exceptions to being included?**

Yes. The settlement does not include (a) the Honorable Matthew W. McFarland, United States District Court Judge for the Southern District of Ohio and court personnel employed in his chambers or courtroom; (b) USFL and its parents, affiliates, subsidiaries, successors, predecessors, and any entity in which USFL has a controlling interest and their current or former officers and directors (except to the extent USFL or such other entity is the owner of a Policy held for the benefit of an individual who is not otherwise excluded from membership in the Settlement Class); (c) any officer or director of USFL reported in its Annual Statements during the Class Period, or entity in which USFL had a controlling interest at any relevant time, any member of those persons' immediate families and legal affiliates, heirs, controlling persons, agents, successors and predecessors in interest or assigns of any such excluded person or entity; (d) Policyholders who properly execute and timely file a Request for Exclusion from the Settlement Class; and (e) the legal representatives, successors, or assigns of any such excluded Policyholders (but only then in their capacity as legal representative, successor, or assignee).

**THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY**

**7. What does the settlement provide?**

The settlement provides a variety of benefits, including payments by check to Settlement Class Members from the Settlement Common Fund, COI Rate Increase Protection Benefit, Non-Contestability Benefit, and Illustrations Benefit.

**8. Tell me more about the Settlement Common Fund.**

USFL has agreed to create a \$11,500,000 Settlement Common Fund. After deducting attorneys' fees and expenses, the Class Representative's service award, any notice and administration costs that exceed \$25,000, and any amounts that would have been paid to Settlement Class Members who exclude themselves from the Class, the balance of the fund will be distributed to Settlement Class Members by check.

**9. How much will my payment from the Settlement Common Fund be?**

The actual amount available for each eligible Settlement Class Member will not be determined until after the Settlement Fairness Hearing and may not be determined until after the Settlement is final (that is, until there is no possibility of the Court's approval of the Settlement being reversed on appeal).

The minimum payment for each Policy will be \$100. However, actual payment amounts will be based on the proportion of the COI Collected for each Settlement Class Member Policy between the COI rate increase for each policy and April 30, 2021 (the "Settlement Computation Period") in relation to the total amount of the COI Collected by USFL during the Settlement Computation Period for all Settlement Class Member Policies.

You may want to consider consulting your own tax advisor regarding the tax consequences of the proposed Settlement, including the tax consequences of any payments, credits, and payment periods provided, and any tax reporting obligations.

**10. When will I get my payment from the Settlement Common Fund?**

The Court will hold a hearing on [Fairness Hearing date] to decide whether to grant final approval to the settlement. If the Court approves the settlement, there may be appeals. It is always uncertain whether appeals will be filed and, if so, how long it will take to resolve them. Payments will be distributed as soon as possible, if and when the Court grants final approval to the settlement and after any appeals are resolved.

**11. Tell me more about the COI Rate Increase Protection Benefit.**

USFL has agreed not to impose any additional COI rate increases on any Policies owned by Settlement Class Members for five years after the settlement is approved and becomes final, unless ordered to do so by a state regulatory body. This benefit is valued between \$14,643,000 and \$17,571,600. USFL will maintain the COI rates implemented through the 2015 COI Rate Increase.

**12. Tell me more about the Non-Contestability Benefit.**

USFL has agreed not to void, rescind, cancel, have declared void, or otherwise deny coverage of death claims submitted by Settlement Class Members based on any alleged lack of insurable interest or misrepresentations made in connection with the original application process. This benefit does not apply to any alleged lack of insurable interest or misrepresentations made in connection with an application to reinstate coverage.

**13. Tell me more about the Illustrations Benefit.**

USFL has agrees to provide in-force illustrations to Settlement Class Members, upon request and at no cost to the Settlement Class Member, depicting up to three scenarios regarding the respective Settlement Class Member Policy until October 1, 2021. If applicable regulations restrict the illustration depiction of certain benefits or future performance, the illustration will provide an explanation of the restriction.

**14. What rights am I giving up to get a payment and stay in the Settlement Class?**

Unless you exclude yourself (*see* Question 18), you are staying in the Settlement Class. If the settlement is approved and becomes final, all of the Court’s orders will apply to you and legally bind you. You won’t be able to sue, continue to sue, or be part of any other lawsuit against the Defendant and other Releasees (*see* next question) about the legal issues resolved by this settlement. The rights you are giving up are called Released Claims.

**15. What are the Released Claims?**

If and when the settlement becomes final, Settlement Class Members will release and discharge USFL and USFL’s past and present parents (including intermediate and ultimate parents), direct and indirect subsidiaries, affiliates, predecessors, joint ventures, successors and assigns, together with each of their past and present officers, directors, shareholders, employees, representatives, insurers, attorneys, general agents, agents and producers (including but not limited to, those acting on behalf of USFL and within the scope of their agency), and all of such Releasee’s heirs, administrators, executors, insurers, predecessors, successors and assigns, or any of them, and including any person or entity acting on behalf or at the direction of any of them (“Releasees”) from and against any and all claims, liabilities, demands, causes of action or lawsuits, known or unknown, whether legal, statutory, equitable or of any other type or form, whether under federal or state law, and whether brought in an individual, representative or any other capacity, that in any way relate to or arise out of or in connection with acts, omissions, facts, statements, matters, transactions, or occurrences that have been alleged or referred to or could have been alleged in any pleading or motion in this action and based on the same factual or legal predicate, including but not limited to claims arising out of, or based upon allegations that USFL or any of its predecessors at any time improperly raised COI rates, considered non-mortality factors, improperly recovered lost profits, engaged in improper underwriting, employed “table shaving” practices, utilized unreasonable pricing assumptions, inappropriately marketed the policies, failed to adjust or decrease COI rates or any other charge to reflect changing mortality expectations, or engaged in any impermissible conduct discussed in any expert report produced in this case.

Settlement Class Members will not release claims arising from any failure by USFL to pay future death benefits owed under their policy.

More details about the claims you will be releasing are described in Section VIII of the Settlement Agreement and Release, available at [www.Website.com](http://www.Website.com).

**THE LAWYERS REPRESENTING YOU**

**16. Do I have a lawyer in this case?**

Yes. Judge McFarland appointed W. Daniel “Dee” Miles, III, Rachel N. Minder, and Paul W. Evans of BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C. (together “Lead Counsel”) as Lead Class Counsel with support from Jeffrey S. Goldenberg of GOLDENBERG SCHNEIDER, L.P.A. and Geoffrey R. McDonald and Frank H. Hupfl, III of GEOFF MCDONALD & ASSOCIATES, P.C. to represent you and other Settlement Class Members. These law firms and their lawyers, referred collectively to as Class Counsel, are experienced in handling similar cases. You

will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

### **17. How will the lawyers be paid?**

Class Counsel undertook this litigation knowing that they would be paid attorneys' fees and litigation expenses only in the event of a successful recovery and only to the extent approved by the Court. The Court will therefore determine how much Class Counsel will be paid from the Settlement Fund for their fees and expenses. You are not individually responsible for payment of any attorneys' fees and expenses.

Class Counsel will ask the Court for an award of attorneys' fees of up to \$4,600,000 of the Settlement Fund, plus reimbursement of expenses and costs of up to \$450,000. They will also ask the Court to approve a \$15,000 incentive award to be paid to the Class Representative. The Court may award less than these amounts. If approved, these fees, expenses, costs, and award will be paid from the Settlement Fund before making payments to Settlement Class Members.

Class Counsel will file a "Class Fee and Expense Application" with the Court on or before [Date]. A copy of the application will be made available at [www.\[website\].com](http://www.[website].com).

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you want to keep the right to sue or continue to sue the Defendant or other Releasees about the legal claims in this case, and you do not want to receive a payment from this settlement, you must take steps to get out of the settlement. This is called excluding yourself from or opting out of the settlement.

### **18. How do I get out of the settlement?**

To exclude yourself from the settlement, you must submit a written request for exclusion by mail. Your request for exclusion must include: (a) your full name; (b) your Policy number(s); (c) a statement indicating that you would like to be excluded from the Settlement Class; and (d) your signature or the signature of a person providing a valid power of attorney to act on your behalf. If there are multiple Policyholders listed on a single policy (such as spouses), all owners must sign unless the signatory holds and submits a copy of a valid power of attorney to act on behalf of all owners of the policy. Your request for exclusion must be mailed to Class Counsel at the address below so it is postmarked by [Date]:

W. Daniel "Dee" Miles, III  
BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C.  
P.O. Box 4160  
Montgomery, AL 36103

### **19. If I exclude myself, can I still get a payment from this settlement?**

No. If you exclude yourself, you are telling the Court that you don't want to be part of the settlement. You can only get a payment if you stay in the settlement.

### **20. If I do not exclude myself, can I sue the Defendant for the same legal claims later?**

No. Unless you exclude yourself, you are giving up the right to sue the Defendant and other Releasees for the claims that this settlement resolves. You must exclude yourself from *this* Lawsuit to start or continue with your own lawsuit or be part of any other lawsuit against the Defendant or any of the other Releasees.

## **OBJECTING TO THE SETTLEMENT**

You can tell the Court if you don't agree with the settlement or any part of it.

### **21. How do I tell the Court that I do not like the settlement?**

If you are a Settlement Class Member, you can object to the settlement if you do not like it or a portion of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. Your objection must include: (1) the case name and number (*Farris v. U.S. Financial Life Insurance Company*, Case No. 1:17-cv-417); (2) your full name, current address, telephone number, and applicable Class Policy number(s);

**QUESTIONS? CALL 1-XXX-XXX-XXXX TOLL-FREE OR VISIT [WWW.WEBSITE.COM](http://WWW.WEBSITE.COM)**

(3) a statement that you object to the Settlement, in whole or in part; (4) a written statement of your Objection and any legal support for it; (5) copies of any documents that support your objection; and (6) your signature.

Your written objection must be mailed to the Court, and copies must be mailed to Lead Class Counsel and Defense Counsel at the addresses below, postmarked by **[14 days prior to FH]**. If you hire an attorney to represent you in this matter, your attorney must file a notice of appearance with the Clerk of the Court and send copies to Lead Class Counsel and Defense counsel by **[14 days prior to FH]**.

Court	Lead Class Counsel	Defense Counsel
Clerk of the Court Potter Stewart U.S. Courthouse Room 103 100 East Fifth Street Cincinnati, OH 45202	W. Daniel “Dee” Miles, III BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C. 272 Commerce Street Post Office Box 4160 (36103) Montgomery, AL 36104	David T. McDowell MCDOWELL HETHERINGTON LLP 1001 Fannin St. Ste. 2700 Houston, TX 77002

### **22. May I come to Court to speak about my objection?**

Yes. You or your attorney may speak at the Fairness Hearing about your objection. To do so, you must include a statement in your objection indicating that you or your attorney intend to appear at the Fairness Hearing.

### **23. What is the difference between objecting to the settlement and asking to be excluded from it?**

Objecting is simply telling the Court that you don’t like something about the settlement. You can object only if you remain in the Settlement Class (that is, do not exclude yourself). Excluding yourself is telling the Court that you don’t want to be part of the settlement. If you exclude yourself, you cannot object because the settlement no longer affects you.

## **THE COURT’S FAIRNESS HEARING**

The Court will hold a hearing to decide whether to approve the settlement, Class Counsel’s requests for fees and expenses and the proposed incentive awards to the Class Representative. You may attend and you may ask to speak, but you don’t have to.

### **24. When and where will the Court decide whether to approve the settlement?**

The Court will hold a Fairness Hearing at **:\_:\_\_.m.** on **[date]** in Courtroom 838 at the Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202. Sometimes, a Court will change the scheduled date or time for a hearing to a different date or time. If this occurs, the changed hearing date or time will be posted on the Settlement website.

At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. It will also consider whether to approve Class Counsel’s request for an award of attorneys’ fees, expenses, and costs, as well as the Class Representative incentive award. If there are objections, the Court will consider them. Judge McFarland will listen to people who have asked to speak at the hearing (*see* Question 22 above). After the hearing, the Court will decide whether to approve the settlement.

At or following the hearing, the Court will rule on all issues before it. We do not know when the Court will make that decision. The Court will enter one or more written orders containing its rulings on issues presented to it at the Fairness Hearing. Copies of such orders will be posted on the Settlement website.

### **25. Do I have to come to the hearing?**

No. Class Counsel will answer any questions Judge McFarland may have. However, you are welcome to come to the hearing at your own expense. If you send an objection, you do not have to come to court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.



**26. May I speak at the hearing?**

Yes. You may ask the Court for permission to speak at the Fairness Hearing (*see* Question 22 above).

**IF YOU DO NOTHING**

**27. What happens if I do nothing at all?**

If you are Settlement Class Member and you do nothing, you will remain included in the Settlement Class and be eligible to receive all Settlement benefits to which you are entitled once the Settlement is approved and becomes final. You will also give up the rights explained in Question 15, including your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendant and other Releasees about the legal issues resolved by this settlement.

**GETTING MORE INFORMATION**

**28. How do I get more information?**

This Notice summarizes the proposed settlement. Complete details are provided in the Settlement Agreement and Release. The Settlement Agreement and Release and other related documents are available at [www.Website.com](http://www.Website.com). Additional information is also available by calling 1-XXX-XXX-XXXX or by writing to *Farris v. U.S. Financial Life Insurance Company* Settlement Administrator, [address] [city] [state] [zip]. Publicly-filed documents can also be obtained by visiting the office of the Clerk of the United States District Court for the Southern District of Ohio or reviewing the Court's online docket.