



Court of Cook County, Illinois, County Department, Chancery Division (the “Action”). Plaintiff brings this lawsuit on his own behalf and on behalf of a class of owners of certain life insurance policies issued by the Company between January 29, 1992 and May 20, 2004. Plaintiff alleges that the Company improperly charged premiums on these Policies for the period of time between the “Policy Dates” stated in the Policies and the dates the Policies went into effect. Plaintiff claims the Company breached its contracts with its policy owners by charging annual premiums for the first policy years but providing less than 365 days of coverage. Plaintiff also claims the Company was unjustly enriched and violated the Illinois Consumer Fraud and Deceptive Business Practice Act.<sup>1</sup>

The Company disputes Plaintiff’s claims and denies any wrongdoing. It contends the Policies expressly stated that the insurance would not take effect until all conditions for such insurance had been satisfied, including payment of the first premium. It further contends that since November 17, 1997, the Company issued a “Special Notice” with each Policy, which (i) alerted policy owners that the Policy Dates and the dates on which the insurance went into effect did not necessarily coincide; (ii) informed policy owners that the Policies could be re-dated; and (iii) explained that changing the Policy Date could have consequences.

**B. Plaintiff’s Litigation Efforts**

Counsel for Plaintiff (“Co-Lead Counsel”) has thoroughly examined and evaluated the relevant law, facts, and allegations to assess the merits of Plaintiff’s claims and to determine the strength of the Company’s defenses and its potential liability for the relief sought in the Action. As part of this examination, counsel for Plaintiff reviewed records produced by Defendants, and conducted other formal and informal discovery, presented Plaintiff for his deposition, and took

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<sup>1</sup> On August 27, 2002, this Court dismissed the Illinois Consumer Fraud Act claim with prejudice. In the pending Amended Complaint, Plaintiff re-alleges that claim to preserve the issue for any appeal.

the deposition of the VFLIC director responsible for policyholder services. Counsel for Plaintiff also retained and consulted with actuarial experts concerning the merits of Plaintiff's claims and the defenses raised by the Company. In addition, during the settlement negotiations and before final execution of the Settlement Agreement, Co-Lead Counsel conducted confirmatory discovery to verify that the terms of the Settlement Agreement are fair and adequate. Among other things, Co-Lead Counsel reviewed complete policy files for a random sampling of more than 300 policies issued by the Company and a data summary relating to 1000 additional life insurance policies issued by the Company. In addition, Co-Lead Counsel deposed the VFLIC director responsible for policyholder services, who is knowledgeable about the Company's efforts to identify the policies at issue in the Action and its practices regarding policy issuance and dating.

### **C. Settlement Considerations**

Plaintiff and Defendants have agreed to settle the Action under the terms and conditions set forth in this Agreement. Based upon discovery conducted to date, and an investigation and evaluation of the facts and law relating to the matters alleged in the Action, Plaintiff – in his individual and representative capacities – has recommended that the Action be settled on the terms set forth in this Stipulation of Settlement after considering, among other things, (i) the benefits available to Plaintiff and the Class under this Settlement Agreement, (ii) the risks that the merits of the claims would be decided against Plaintiff and the Class; (iii) the risks, uncertainty, and disruption of litigation, especially in complex actions such as this, and the difficulties and delays inherent in such litigation, (iv) the uncertainty of being able to overcome potential defenses to class certification, including but not limited to the risk that the Court would conclude that individual questions of fact or law predominate over any common questions of fact

or law, and (iv) the desirability of consummating this Settlement Agreement promptly to provide effective relief to Plaintiff and the Class. Based on their discovery and investigation, Co-Lead Counsel and Plaintiff have assured themselves that the proposed Settlement Agreement is fair, reasonable, and adequate because it provides substantial benefits to the Class, is in the best interests of the Class, and fairly resolves the claims alleged.

Defendants have denied and still deny any liability, wrongdoing, and damages with respect to the matters alleged in the Action and do not admit or concede any actual or potential fault, wrongdoing or liability in connection with any facts or claims that have been, or could have been, alleged against them in this Action. Rather, Defendants consider it desirable for the Action to be settled and dismissed because the proposed settlement will: (i) bring to an end the expense, burden, and uncertainty associated with continued litigation of the alleged claims, (ii) finally put to rest those alleged claims and the underlying matters, and (iii) avoid further expense and disruption of the management and operation of their business due to the pendency and defense of litigation. Defendants also specifically state that this case is not proper to be certified as a contested class action based on the prerequisites of Section 2-801 of the Illinois Code of Civil Procedure. Neither this Settlement Agreement, nor the fact or terms of the Settlement, shall be construed or used as (i) an admission of liability, wrongdoing or damages by Defendants in this Action or in any other case; (ii) as evidence of the validity of any of the claims asserted against Defendants in this Action or in any other case; or (iii) as evidence or basis for argument in this Action or in any other case that class certification would be appropriate.

## **II. DEFINITIONS**

As used in this Settlement Agreement, the following terms have the following meanings, unless a Subsection of this Settlement Agreement expressly provides otherwise:

A. “Action” means the lawsuit captioned *Goodman v. Valley Forge Life Insurance Company, et al.*, Case No. 2 CH 002221 in the Circuit Court of Cook County, Illinois, County Department, Chancery Division.

B. “Active Class Members” means those Class Members whose Policies are in-force on the Final Settlement Date.

C. “Administrator” means any agent(s) or administrator(s) that Defendants shall retain or specially employ after consultation with and with the approval of Co-Lead Counsel to help implement the notice terms of this Settlement Agreement.

D. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement and any Exhibits attached to this Agreement, including any subsequent amendments and any exhibits to such amendments.

E. “Attorneys’ Fees and Expenses” means such funds as may be awarded to Co-Lead Counsel to compensate them (and any other attorneys for Plaintiff or Class Members who are currently counsel of record in this Action) for their fees and all litigation expenses in connection with the Action, as provided in Section IX below.

F. “Claim Form” means the Claim Form appended at Exhibit C, which must be satisfactorily and timely completed and submitted by eligible Class Members, with a certified death certificate, as provided in Section III(D).

G. “Claims” means all claims, actions, causes of action, proceedings, offsets, obligations, judgments, suits, reckonings, demands (whether written or oral), controversies, and losses of whatever kind (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liabilities), whether based on federal, state, local, statutory or common law or any other law, rule or regulation,

whether fixed or contingent, accrued or not accrued, liquidated or not liquidated, at law or in equity, matured or not matured, whether class, individual or derivative in nature, including any known or Unknown Claim.

H. “Class” or “Class Members” means all current or former owners of Policies issued by Defendants between January 29, 1992 and May 20, 2004 whose “Policy Dates” may have preceded the dates on which their Policies went into effect. Notwithstanding the foregoing, the Class does not include any person who: (i) adjudicated to finality or released a claim involving premium charged during the first policy year for a Policy whose Policy Date may have preceded the date on which the Policy went into effect; (ii) requested a particular Policy Issue Date for any reason;<sup>2</sup> (iii) owned a Policy under which a death claim was paid before the Final Settlement Date; (iv) purchased the Policy as part of a transaction where Defendants provided continuous insurance, including, without limitation, a conversion, an internal 1035 exchange, a paid up policy under a Celebration life insurance or similar policy, or a Personal Security Plan (“PSP”) policy; (v) terminated the Policy before the Company’s conversion to the LifePro management system; (vi) made an initial premium payment or deposit with the application for the Policy; (vii) did not take the Policy; (viii) rescinded the Policy with premiums refunded; or (ix) makes a timely and valid election to be excluded from the proposed Class with respect to a particular Policy. If a Policy is jointly owned, the joint owners shall be considered one Class Member. If a member of the Class owns, or owned, more than one Policy, then such Class Member’s membership in the Class will be determined on a Policy-by-Policy basis (except as stated otherwise below, for purposes of the maximum and minimum payment provisions in

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<sup>2</sup> For purposes of this definition, policy owners who were issued Policies with a Policy Issue Date during the last two weeks of December 1999, and whose applications were received by Defendants on or before January 15, 2000, will not be deemed to have requested a particular Policy Issue Date. To the extent such Policies

Section III(E)). If a Policy has had different owners over time, the last or most current owner shall be given notice under the terms of this Settlement Agreement.

Class Members are further categorized as follows:

1. “Active Class Members” means those Class Members whose Policies are in-force on the Final Settlement Date.

2. “Deceased Terminated Class Members” means Terminated Class Members who died before the Final Settlement Date.

3. “Pre-Special Notice Class Members” means those Class Members whose Policies were not delivered with a Special Notice in the form attached as Exhibit E (or a form substantially similar to that form).

4. “Special Notice Class Members” means those Class Members whose Policies were delivered with a Special Notice in the form attached as Exhibit E (or a form substantially similar to that form).

5. “Terminated Class Members” means Class Members whose policies terminated before the Final Settlement Date other than through payment of a death claim.

I. “Class Notice” means the Notice sent to Class Members regarding the Settlement Agreement pursuant to Section IV of the Settlement Agreement and in the form attached as Exhibit A to the Settlement Agreement.

J. “Class Period” means the period from January 29, 1992, to May 20, 2004, which is the last date on which the Company issued new Policies.

K. “Co-Lead Counsel” means the law firms of Goldman Scarlato & Karon, P.C. and Goodkind Labaton Rudoff & Sucharow LLP.

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were assigned particular Policy Issue Dates, such dating may have been necessitated by the large number of policy applications received at the end of 1999.

L. "Company" means, collectively, Defendants and any or all of their present or former predecessors, successors, parents, affiliates, subsidiaries, agents, representatives, employees, agents, co-insurers, and reinsurers.

M. "Complaint" means the Class Action Complaint filed by Plaintiff in this Action on January 29, 2002, and the Amended Class Action Complaint filed by Plaintiff in this Action on or about September 17, 2002.

N. "Deceased Terminated Class Members" means Terminated Class Members who died before the Final Settlement Date.

O. "Defendants" means defendants CNA Financial Corp., Valley Forge Life Insurance Company, Continental Assurance Company, and any or all of their present or former predecessors, successors, parents, affiliates, subsidiaries, directors, officers, employees, representatives, agents, co-insurer, and reinsurers.

P. "Defendants' Counsel" means the law firm of Wildman, Harrold, Allen & Dixon LLP.

Q. "Execution Date" means the first date on which the Settlement Agreement has been executed by all of the undersigned persons.

R. "Fairness Hearing" means the hearing at or after which the Court will make a final decision whether to approve this Settlement Agreement as fair, reasonable, and adequate.

S. "Final Judgment" means the Final Judgment and Order Approving Settlement, as contemplated in Section XI of this Settlement Agreement.

T. "Final Settlement Date" means the date on which the Final Judgment and Order Approving Settlement become final. For purposes of this definition, the Final Judgment and Order Approving Settlement shall become final:



1. if no appeal is taken, on the date on which the time to appeal (including any potential extension of time) has expired;
2. if any appeal is taken, on the date on which all appeals, including petitions for rehearing or reargument, petitions for rehearing *en banc*, and petitions for *certiorari* or any other form of review, have been finally disposed of, such that the time to appeal (including any potential extension of time) has expired, in a manner resulting in an affirmance of the Final Judgment and the Order Approving Class Action Settlement; or
3. on a date after entry of the Final Judgment and Order Approving Settlement, which counsel for the Parties agree to in writing.

U. “Hearing Order” means the Order to be entered by the Court concerning notice, administration, and the Fairness Hearing, as contemplated in Section X of this Settlement Agreement, and in substantially the same form as the Order attached as Exhibit B.

V. “Parties” or “Party” means Plaintiff (in his individual and representative capacities) or Defendants, individually or collectively, as the case may be.

W. “Plaintiff” means Grant Adam Goodman, in his individual and representative capacities.

X. “Policies” or “Policy” means any individual life insurance policy issued by Defendants, whether in force, lapsed, or otherwise terminated.

Y. “Policy Face Amount” means the base amount of life insurance purchased by a Class Member on the Policy Issue Date, excluding any riders.

Z. “Policy Issue Date” or “Policy Date” means the Policy Date specified on the Policy’s Schedule of Policy Benefits, which is the anniversary date for the Policy.

AA. “Preliminary Approval Hearing” means the hearing at or after which the Court will make a decision whether notice of the Action and the proposed Settlement Agreement may be given to the Class Members.

BB. “Pre-Special Notice Class Members” means those Class Members whose Policies did not include a Special Notice in the form attached as Exhibit E (or a form substantially similar to that form).

CC. “Release” means the release and waiver set forth in Section VIII of this Settlement Agreement.

DD. “Released Claims” means all claims, actions, causes of action, proceedings, offsets, obligations, judgments, suits, reckonings, demands (whether written or oral), controversies, and losses of whatever kind (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liabilities), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or not accrued, liquidated or not liquidated, at law or in equity, matured or not matured, whether class, individual or derivative in nature, including but not limited to both known and Unknown Claims that: (1) have been, or could have been, asserted in the Action by Plaintiff, the Class Members, or any of them against Defendants; or (2) arise out of or relate to the acts, omissions, facts, matters, transactions, occurrences, sales presentations, advertisements, applications, or any oral or written statements, disclosures or representations allegedly made in connection with or directly or indirectly relating to (a) the premium charged during the first policy year on Policies whose the Policy Date may have preceded the dates on which the Policies went into effect, (b) practices with respect to the dating, issuance or delivery of any Policies by the Company, (c) any performance, servicing, and/or

administration relating to the dating, issuance or delivery of any Policies by the Company, or (d) the restrictions, disclosures, advertisements, applications or other materials informing or allegedly failing to inform policy owners of information relating to the premium charged by the Company during the first policy year or the Company's Policy dating practices.

EE. "Releasees" means Defendants and each of their past, present, and future parents (including intermediate and ultimate parents), subsidiaries, affiliates, predecessors, successors and assigns (including, without limitation, Swiss Re Life & Health America, Inc.), and each of their respective past, present, and future officers, directors, employees, general agents, agents, producers, brokers, solicitors, representatives, attorneys, accounts, heirs, administrators, executors, insurers, predecessors, successors, assigns, co-insurers and reinsurers, or any of them, including any persons or entities acting on behalf or at the direction of any of them.

FF. "Settlement" means the resolution of the Action by amicable agreement of the Parties on the terms and conditions provided in this Settlement Agreement.

GG. "Special Notice" means the Notice that Defendants included with Policies issued on or after November 17, 1997, in the form attached as Exhibit E (or substantially similar to that form).

HH. "Special Notice Class Members" means those Class Members whose Policies included a Special Notice in the form attached as Exhibit E (or a form substantially similar to that form).

II. "Stipulation and Order of Confidentiality" means the Stipulation and Order to which Class Members (or their attorneys) who wish to have access to the confirmatory discovery materials in this case must agree before they are provided access to the materials.

JJ. "Supplemental Benefit" means the relief described in Section III below.

KK. “Terminated Class Members” means Class Members whose policies terminated before the Final Settlement Date other than through payment of a death claim.

LL. “Unknown Claim” means any claim that any Class Member does not know or suspect to exist in such Class Member’s favor at any time on or before the date that the Class Member’s Release becomes effective, and that, if known by that Class Member, might have affected that Class Member’s Settlement with the Releasees or decision not to request exclusion from the Class or not to object to the Settlement Agreement.

Capitalized terms used in this Settlement Agreement shall have the meaning ascribed to them in this Settlement Agreement and any attached exhibits.

### **III. RELIEF FOR THE CLASS**

#### **A. Supplemental Benefit for Eligible Terminated Class Members and Special Notice Class Members.**

As relief for eligible Terminated Class Members and Special Notice Class Members, Defendants will provide a one-time, lump sum Supplemental Benefit on each Policy in the amount of 3.56% of the Policy Face Amount, provided the eligibility requirements in Section III(D) are satisfied and subject to the maximum/minimum requirements in Section III(E).

#### **B. Supplemental Benefit for Eligible Active Pre-Special Notice Class Members**

As relief for eligible Active Pre-Special Notice Class Members, Defendants will provide a one-time, lump sum Supplemental Benefit on each Policy in the amount of 7.11% of the Policy Face Amount, provided the eligibility requirements in Section III(D) are satisfied and subject to the maximum/minimum requirements in Section III(E).

#### **C. Supplemental Benefit for Eligible Deceased Terminated Class Members**

As relief for eligible Deceased Terminated Class Members, Defendants will provide a one-time, lump sum Supplemental Benefit on each Policy in the amount of 3.56% of the Policy

Face Amount, provided the eligibility requirements in Section III(D) are satisfied and subject to the maximum/minimum requirements in Section III(E).

**D. Eligibility Requirements**

Class Members will be eligible to receive the Supplemental Benefit identified above for such Class Members if all the following conditions are met:

- (1) The policy owner is a member of the Class with respect to such Policy;
- (2) The insured under the Policy dies, other than by suicide, within 90 days immediately following the Final Settlement Date (or, in the case of Deceased Terminated Class Members, within 90 days of the termination of the Policy), and the beneficiary or owner satisfactorily and timely completes and submits the Claim Form appended at Exhibit C (including a certified death certificate evidencing the insured's death other than by suicide during such 90-day period), so that it is received by the Company within 180 days immediately following the death of the insured (or, in the case of Deceased Terminated Class Members, so that it is received by the Company within 180 days immediately following the Final Settlement Date);
- (3) A death benefit is otherwise payable under the Policy or, in the case of a Terminated Class Member, would have been payable if that Class Member's Policy had not terminated; and,
- (4) There is no information in the Company's records relating to such Policy (including, but not limited to, a dated delivery receipt, dated payment documentation, or a Health Statement dated and executed by the insured) that shows the Policy was delivered to the owner on or before the Policy Date.

**E. Maximum/Minimum Payments**

With respect to any particular insured, the Supplemental Benefits paid in connection with the death of the insured will be no more than \$80,000, and no less than \$7,500, regardless of the number of Policies on that insured. If there is more than one Policy that provides insurance benefits on an insured, and there are different beneficiaries designated under the Policies, the minimum or maximum Supplemental Benefit to be paid to all designated beneficiaries under the Policies is \$7,500 or \$80,000, respectively, to be divided in proportion to each respective

beneficiary's portion of the total Policy Face Amount for all of the Policies providing life insurance on that insured.

**F. Procedure For Determining Whether The Supplemental Benefit is Payable and to Whom**

For each Supplemental Benefit claim submitted in accordance with the deadlines and procedures set forth in this Settlement Agreement, the Company or its claims administrator(s) will review the Company's policy files and other records to determine whether the Policy is eligible for payment of a Supplemental Benefit under all the terms and conditions of this Settlement Agreement. If a Supplemental Benefit is due in connection with an in-force Policy, then the Company will pay the Supplemental Benefit to the person listed as the beneficiary of record at the time the Company receives the Claim Form. If the Supplemental Benefit is due in connection with a Terminated Policy, then the Company will pay the benefit to either: (1) the policy owner, if different from the insured; or (2) if not different from the insured, the current, living spouse of the policy owner/insured, if there is one; but if none, then to the living lawful children of the policy owner/insured, if any; but if none, then to the estate of the policy owner/insured.

**G. Co-Lead Counsel's Oversight of the Claims Process**

For a 12-month period immediately following the Final Settlement Date, the Company or its claims administrator(s) shall provide Co-Lead Counsel with a monthly report identifying the Supplemental Benefit claims received since the Final Settlement Date and whether a Supplemental Benefit was paid on such claims. For each claim, the Company or its claims administrator(s) shall make available to Co-Lead Counsel, upon request, the documents or data relied upon by the Company or its claims administrator(s) to determine whether to pay a Supplemental Benefit.

#### **IV. NOTICE TO CLASS MEMBERS AND COMMUNICATIONS WITH CLASS MEMBERS**

##### **A. The Class Notice**

1. Subject to the requirements of the Hearing Order in the form attached as Exhibit B and no later than sixty (60) days before the Fairness Hearing, the Company shall send a Class Notice in the form attached as Exhibit A by first-class mail, postage prepaid, to each person who the Company has determined with reasonable effort could potentially be a Class Member and, in cases of pending litigation against Defendants involving the premium charged during the first policy year for a Policy whose Policy Date may have preceded the date on which the Policy went into effect, also to the legal counsel known to represent the Class Member. For owners of Terminated Policies, notice shall be made by first-class mail to the last known addresses of the last or most current owners of those Policies as reflected in the Company's records. Defendants shall also re-mail any Class Notices returned with a forwarding address. Defendants will pay for the costs associated with producing and mailing the Class Notice.

2. No later than fifty-five (55) days before the Fairness Hearing, Co-Lead Counsel shall cause the Class Notice to be published on their Web site.

3. The Class Notice shall, among other things,

a. contain a short, plain statement of the background of the Action and the Class that will be certified for settlement;

b. state that any receipt of relief by a Class Member is contingent on the Court's approval of the proposed Settlement Agreement;

c. state that a Class Member who does not validly exclude himself or herself from the Class will be eligible to receive relief pursuant to the terms of the Settlement Agreement;

d. explain how a Class Member may request exclusion from the Class;

e. explain that, if a Class Member does not request exclusion from the Class, that Class Member shall be bound by all subsequent proceedings, orders, and judgments in this Action relating to the Settlement Agreement, even if the Class Member has pending, or subsequently initiates, litigation, arbitration or any other proceeding against the Company relating to the Released Claims;

f. explain how a Class Member may object to any term or aspect of the Settlement Agreement; and,

g. identify the date, time, and location of the Fairness Hearing and explain that the date and time may change without further notice.

4. The Class Notice shall conform to all applicable requirements of the Illinois Code of Civil Procedure, the Illinois State and United States Constitutions (including the Due Process Clauses), the Rules of the Court, and any other applicable law, and shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court.

**B. Right to Communicate With Class Members**

Plaintiff and Co-Lead Counsel acknowledge and agree that Defendants expressly reserve the right to communicate orally and in writing with, and to respond to inquiries from, Class Members.

**V. RETENTION OF ADMINISTRATOR**

A. Upon consultation with and approval of Co-Lead Counsel (which approval shall not be unreasonably withheld), Defendants shall at their own cost retain, or specially employ,



one or more Administrators to help implement the notice terms of the proposed Settlement Agreement.

B. The Administrator(s) may assist with various administrative tasks, including, without limitation, (i) mailing or arranging for the mailing or other distribution of the Class Notice to Class Members, (ii) handling returned mail not delivered to Class Members, (iii) making any additional mailings required under the terms of this Settlement Agreement, (iv) answering written inquiries from Class Members and forwarding such inquiries to Co-Lead Counsel or its designee, (v) receiving and maintaining on behalf of the Court any Class Member correspondence regarding requests for exclusion, (vi) responding to Class Member inquiries concerning the Settlement Agreement; (vii) staffing a telephone number to respond to policy owner inquiries concerning the Settlement; and (viii) otherwise assisting Defendants with administration of the notice aspects of the Settlement Agreement.

## **VI. REQUESTS FOR EXCLUSION**

A. Any potential Class Member who wishes to be excluded from the Class must mail or deliver a written request for exclusion, care of the address provided in the Class Notice, postmarked no later than twenty (20) days before the Fairness Hearing, or as the Court otherwise may direct. Either the Class Member, or a representative who has legal authority to sign for the Class Member, must sign the written request for exclusion. Defendants shall make available a list of all persons who requested exclusion to the Court at or before the Fairness Hearing.

B. Any potential Class Member who does not file a timely written request for exclusion as provided in this Section shall be bound by all subsequent proceedings, orders, and judgments in this Action relating to the Settlement Agreement, even if such Class Member has

pending, or subsequently initiates, litigation, arbitration or any other proceeding against Defendants relating to the claims released in this Action.

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

A. Any Class Member who has not filed a timely written request for exclusion and who wishes to object to the fairness, reasonableness or adequacy of this Settlement Agreement or the proposed settlement, or to the award of Attorneys' Fees and Expenses, must, no later than twenty (20) days before the Fairness Hearing or as the Court otherwise may direct, deliver to Co-Lead Counsel and Defendants' Counsel and file with the Clerk of the Court a statement of the objection, as well as the specific reason(s), if any, for the objection, including any legal support the Class Member wishes to bring to the Court's attention and any evidence the Class Member wishes to introduce in support of the objection. Class Members may so object either on their own or through an attorney hired at their own expense.

B. Class Members and their personal attorneys may obtain access at their own expense to the documents disclosed through discovery to Co-Lead Counsel by Defendants in this Action, and also to deposition transcripts and exhibits generated in this Action, but must first agree in writing to be bound by the Stipulation and Order of Confidentiality attached to the Settlement Agreement as Exhibit D.

C. Discovery documents shall be made available to Class Members by appointment during regular business hours at the offices of Goldman Scarlato & Karon, P.C., 101 West Elm Street, Suite 360, Conshohocken, Pennsylvania 19428. Co-Lead Counsel shall inform Defendants' Counsel promptly of any requests by Class Members or their attorneys or other persons or entities for access to such documents.

D. If a Class Member hires an attorney to represent him or her, the attorney must, no later than twenty (20) days before the Fairness Hearing, or as the Court otherwise may direct, (i) file a notice of appearance with the Clerk of Court and (ii) deliver to Co-Lead Counsel and Defendants' Counsel a copy of the same.

E. Any Class Member who files and serves a written objection, as described in this Section, may appear at the Fairness Hearing, either in person or through personal counsel hired at that Class Member's expense, to object to the fairness, reasonableness or adequacy of this Settlement Agreement or the proposed settlement, or to the award of Attorneys' Fees and Expenses. Class Members or their attorneys intending to make an appearance at the Fairness Hearing must, no later than twenty (20) days before the Fairness Hearing, or as the Court otherwise may direct, (i) file a notice of intention to appear with the Clerk of the Court and (ii) deliver to Co-Lead Counsel and Defendants' Counsel a copy of the same.

F. Any Class Member who fails to comply with this Section shall waive and forfeit any and all rights that Class Member may have to appear separately or object, or to take any appeal of the orders of judgments in this action, and shall be bound by all the terms of this Settlement Agreement and by all proceedings, order, and judgments in this Action.

## **VIII. RELEASE AND WAIVER, AND ORDER OF DISMISSAL**

### **A. Release and Waiver**

1. Without further action by anyone, on and after the Final Settlement Date, any and all Class Members (including those who are parties to any other litigation, arbitration or other proceedings involving any Released Claims pending on the Final Settlement Date), on behalf of themselves, their heirs, executors, administrators, predecessors, successors, assigns, or any person claiming by or through any of the Class Members, for good and sufficient

consideration, the receipt and adequacy of which are hereby acknowledged, shall be deemed to have, and by operation of law and of the Final Judgment shall have, fully, finally, and forever released, relinquished, settled, and discharged:

a. all Released Claims against each and every one of the Releasees, including such Released Claims as already may have been asserted in any pending litigation, arbitration or other proceeding, or other Released Claims; and

b. all claims against Plaintiff and any or all Releasees that relate in any way to any or all acts, omissions, nondisclosures, facts, matters, transactions, occurrences or oral or written statements or representations in connection with or directly or indirectly relating to this Settlement Agreement or the Settlement of the Action, and any and all claims for attorneys' fees, costs or disbursements incurred by Co-Lead Counsel or other counsel representing Plaintiff or the Class Members in the Action, or any of them, in connection with or related in any manner to the Action, the Settlement of the Action, the administration of the Action or the administration of this Settlement except to the extent otherwise specified in this Settlement Agreement.

2. Nothing in the Final Judgment shall bar any action or claim by the Parties to enforce the terms of this Settlement Agreement or the Final Judgment.

3. With respect to any and all Released Claims, the Parties stipulate and agree that, by the terms of the Final Judgment, each Class Member shall have, and shall be deemed to have, waived and relinquished, to the fullest extent permitted by law, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code or any federal, state or foreign law, rule, regulation or common law doctrine that is similar, comparable,

equivalent or identical to, or which has the effect of, Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Notwithstanding the provisions of Section 1542 and all similar provisions in California or in any other State of the United States or the District of Columbia or in any foreign jurisdiction, Class Members understand and agree that this Release is intended to include all Released Claims that Class Members may have, including those which Class Members do not now know or suspect to exist in their favor against the Releasees, and that this Release extinguishes those Released Claims. Class Members may hereafter discover facts in addition to or different from those that they know or believe to be true with respect to the subject matter of the Released Claims, but Class Members hereby stipulate and agree that they have, and shall be deemed to have, on or after the Final Settlement Date, fully, finally, and forever settled and released any and all Released Claims and without regard to subsequent discovery or existence of such different or additional facts.

4. The foregoing waiver was separately bargained for and is a material element of the Settlement Agreement.

**B. Order of Dismissal**

The Parties will seek and obtain from the Court the Final Judgment (for which, as a condition of settlement, the time for appeal has expired without any modifications in the Final Judgment and Order Approving Settlement) as further described below in Section XI. The Final Judgment shall, among other things, (i) approve this Settlement Agreement as fair, reasonable,

and adequate, (ii) dismiss the Action with prejudice and on the merits, and (iii) incorporate the terms of the Release.

#### **IX. ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARD**

A. After extensive negotiation, which did not commence until agreement on the substantive terms of the Settlement were reached, the Parties have agreed to an award of all Attorneys Fees' and Costs as follows: Defendants agree to pay an award of Attorneys' Fees and Expenses in the Action up to but not in excess of \$1.3 million for all Attorneys' Fees and Expenses, including costs of court, incurred on behalf of the Class. The Attorneys' Fees and Expenses awarded by the Court will be paid by the Company within twenty-one (21) days after the Final Settlement Date. Defendants shall not be required to compensate Co-Lead Counsel or Plaintiff for any legal or administrative services or as reimbursement for any costs, including any costs incurred by Co-Lead Counsel in the implementation of this Settlement, except as provided in this Section.

B. The Attorneys' Fees and Expenses awarded by the Court will be paid by check payable to Goldman Scarlato & Karon, P.C. ("GS&K"). GS&K shall bear sole responsibility for allocating and distributing the award of Attorneys' Fees and Expenses among other counsel for the Class.

C. Neither Defendants nor their past, present and future parents, subsidiaries, predecessors, successors and assigns, nor any of their respective past, present and future officers, directors, employees, general agents, agents, producers, brokers, solicitors, representatives, attorneys, heirs, administrators, executors, insurers, predecessors, successors and assigns, or any of them, shall be liable for or obligated to pay any fees, expenses, costs or disbursements to, or incur any expense on behalf of, any person, either directly or indirectly, in connection with this

Action, this Settlement Agreement, or the proposed Settlement, other than the amount or amounts expressly provided for in this Settlement Agreement.

D. The undersigned Co-Lead Counsel waive and release Defendants from any and all claims for attorney's fees, by lien or otherwise, for legal services rendered in connection with the cause entitled *Goodman v. Valley Forge Life Insurance Company, et al.*, Docket No. 2 CH 002221, pending in the Circuit Court of Cook County, Illinois, County Department, Chancery Division, including any efforts on behalf of any Class Member. The undersigned Co-Lead Counsel further certify and represent that no other person is entitled to any sum for attorneys' fees or otherwise in connection with same, and the undersigned Co-Lead Counsel agree to indemnify and to save harmless Defendants and their officers, directors, shareholders, agents, employees, attorneys, successors, beneficiaries, parents, subsidiaries, representatives, divisions, affiliates, assigns, co-insurers, and reinsurers, if any person shall assert any claim against Defendants for attorney's fees or any other sum in connection with the foregoing matter.

E. Defendants shall not object to Plaintiff seeking an award not exceeding \$10,000 for his efforts on behalf of the Class. If authorized by the Court, payment of this award will be made out of the Attorney's Fees and Expenses Award, as set forth in Section IX(A).

**X. ORDER OF NOTICE, FAIRNESS HEARING AND ADMINISTRATION**

A. The Parties will apply to the Court for an order substantially in the form and substance attached as Exhibit B (the "Hearing Order") that will, among other things:

1. Preliminarily approve this Settlement Agreement as sufficiently fair and reasonable to warrant sending notice to the Class;
2. Preliminarily certify that the Class, as defined in this Settlement Agreement, and designating Plaintiff as the class representative and Co-Lead Counsel as counsel

for the Class on the condition that the certification and designations shall be automatically deleted if this Settlement Agreement is terminated or is disapproved in whole or in part by the Court, any appellate court, or any of the Parties, in which event this Settlement Agreement or the fact that it was entered into shall not be offered, received or construed as an admission or as evidence for any purpose, including as a basis for any argument that certification of any class is appropriate;

3. scheduling the Fairness Hearing to be held on such date as the Court may direct to consider the fairness, reasonableness, and adequacy of the proposed Settlement and whether it should be approved by the Court;

4. approving the notice methodology described in this Settlement Agreement and the proposed Class Notice in the form attached as Exhibit A;

5. directing the Parties to cause the Class Notice to be mailed to each Class Member who can be identified through reasonable effort (and, in cases of pending litigation against the Company involving the premium charged during the first policy year for a Policy whose Policy Date may have preceded the date on which the Policy went into effect, also to all legal counsel known to represent the Class Member in connection with such litigation) by first class, postage prepaid, to such Class Member's last known address no later than sixty (60) days before the Fairness Hearing;

6. directing Co-Lead Counsel to cause the Class Notice to be published on its Web site no later than fifty-five (55) days before the Fairness Hearing;

7. determining that the notice to be provided to Class Members in this case, including both the Class Notice and the methodology by which the Class Notice will be disseminated, (i) is the best practicable notice, (ii) is reasonably calculated, under the



