

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

BRIGHTON TRUSTEES, LLC, AS TRUSTEE, at
al.,

Plaintiffs,

vs.

GENWORTH LIFE AND ANNUITY
INSURANCE COMPANY,

Defendant.

Case No. 3:20-cv-00240 (DJN)

JOINT STIPULATION AND SETTLEMENT AGREEMENT

IT IS HEREBY STIPULATED AND AGREED, subject to the Court’s approval and pursuant to Rule 23 of the Federal Rules of Civil Procedure, by and between: (i) Plaintiffs Brighton Trustees, LLC, on behalf of and as trustee for Diamond LS Trust; Bank of Utah, solely as securities intermediary for Diamond LS Trust, and Ronald L. Daubenmier (collectively “Plaintiffs”), individually and on behalf of the Class; and (ii) Defendant Genworth Life and Annuity Insurance Company (“GLAIC”), that the causes of action and matters raised by and related to this lawsuit, as captioned above, are hereby settled and compromised on the terms and conditions set forth in this Joint Stipulation and Settlement Agreement.

This Agreement is made and entered into by and between Plaintiffs and GLAIC and is intended to fully, finally, and forever resolve, discharge, and settle the Action and the Released Claims (both as described below) upon and subject to the terms and conditions hereof.

Capitalized terms in this Agreement shall have the meaning set forth at Section VII below.

I. SETTLEMENT RELIEF

A. Cash Consideration to the Settlement Class

1. GLAIC agrees to fund the Settlement Fund in the amount of \$25,000,000. GLAIC shall deposit the Settlement Fund into the Settlement Fund Account no later than seven (7) business days after the date that the Court grants preliminary approval of this Settlement. The Settlement Fund shall be reduced due to Opt-Outs as provided in Paragraph 2 below.

2. For all Owners who submit timely and valid requests for exclusion from the Settlement Class, the Settlement Fund shall be reduced on a pro rata basis by an amount that is calculated by multiplying the amount of the Settlement Fund (*i.e.*, \$25,000,000) by a fraction where (i) the numerator is the combined Specified Amount, as of March 31, 2022, (as that term is defined in the Policies) of the Policies that opt out of the Settlement Class and (ii) the denominator is the total Specified Amount, as of March 31, 2022, of all Policies owned by members of the Class. By way of example, if 1% of the total Specified Amount of all Policies owned by members of the Class are attributable to Opt-Outs, the Settlement Fund will be reduced by 1%.

3. Any disputes regarding the reduction of the Settlement Fund as provided in Paragraph 2 above shall first be presented to the Mediator for potential resolution, and, absent voluntary resolution, to the Court for a determination. The Owners of Policies that do not timely and validly opt out during the Opt-Out Period constitute the Settlement Class. For the avoidance of doubt, if an Owner (such as a securities intermediary or trustee) owns multiple policies on behalf of different principals, that Owner may stay in the Settlement Class as to some Policies and opt out of the Settlement Class for other Policies. The Parties agree that the opt-out reduction methodology set forth in Paragraph 2 above is proposed solely for settlement purposes and may not be used as an admission or evidence of the validity of any damages model regarding any alleged wrongdoing by GLAIC.

4. Simultaneously herewith, Plaintiffs and GLAIC are executing a “Supplemental Agreement” setting forth certain conditions under which this Agreement may be withdrawn or terminated at GLAIC’s sole discretion if Owners who meet certain criteria exclude themselves from the Settlement Class. The Supplemental Agreement shall not be filed with the Court, except that the Supplemental Agreement and/or its contents may be brought to the attention of the Court, *in camera*, if so requested by the Court or as otherwise ordered by the Court. The Parties will keep the terms of the Supplemental Agreement confidential, except if compelled by judicial process to disclose them. Should the Court require that the Supplemental Agreement be filed with the Court, Plaintiffs and GLAIC shall jointly request that it be filed under seal.

5. The Net Settlement Fund shall be distributed to the Settlement Class pursuant to a distribution formula or other process to be developed by Class Counsel and approved by the Court. GLAIC will not oppose any such proposed plan of allocation.

6. Under no circumstances shall GLAIC be liable or obligated to pay any fees, expenses, costs, or disbursements to any person in connection with the Action, this Agreement, or the Settlement other than the Final Settlement Fund amount, which represents GLAIC’s total and maximum contribution to this Settlement, inclusive of all relief to the Settlement Class, Class Counsel’s Fees and Expenses, Incentive Awards, and Settlement Administration Fees.

B. Non-Cash Consideration to the Settlement Class

7. For a period of seven (7) years following the Final Approval Date, GLAIC agrees that COI rates on the Class Policies will not be increased above the COI Rate Scales adopted under the 2019 COI Rate Adjustment. Subject to and without waiving the provision provided for in the preceding sentence, nothing in this Agreement shall otherwise restrict GLAIC from making

adjustments or recommending adjustments to the COI Rates that comply with the terms of any Class Policy.

8. Plaintiffs and the Settlement Class agree that GLAIC may continue to implement the 2019 COI Rate Adjustment and further agree not to take any legal action or cause to take any legal action challenging (i) any COI Rates and/or COI Rate Scales adopted under the 2019 COI Rate Adjustment or (ii) GLAIC's continued implementation of the 2019 COI Rate Adjustment. The covenant set forth in this paragraph shall not be interpreted to limit the scope of the Released Claims.

9. GLAIC agrees to not take any legal action (including asserting as an affirmative defense or counterclaim), or cause to take any legal action, that seeks to void, rescind, cancel, have declared void, or seeks to deny coverage under or deny a death claim for any Class Policy based on: (1) an alleged lack of valid insurable interest under any applicable law or equitable principles; or (2) any misrepresentation allegedly made on or related to the application for, or otherwise made in applying for the policy. The covenant set forth in this paragraph is solely prospective and does not apply to any actions taken by GLAIC in the past. With the exception of the foregoing, nothing contained in this Agreement shall otherwise restrict GLAIC from: (i) following its normal procedures and any applicable legal requirements regarding claims processing, including but not limited to confirming the death of the insured; determining the proper beneficiary to whom payment should be made in accordance with applicable laws, the terms of the policy, and policy-specific documents filed with GLAIC; and investigating and responding to competing claims for death benefits; (ii) enforcing contract terms and applicable laws with respect to misstatements regarding the age or gender of the insured; (iii) complying with any court order, law or regulatory requirements or requests, including but not limited to, compliance with regulations relating to the

Office of Foreign Asset Control, Financial Industry Regulatory Authority, and Financial Crimes Enforcement Network; (iv) taking action with respect to any alleged misrepresentations made in connection with an application to reinstate a Class Policy that was made after the date this Agreement is executed; or (v) refusing to pay a death claim on a policy that is determined to be invalid or void through no action by GLAIC.

II. PRELIMINARY APPROVAL AND CLASS NOTICE

10. The Parties agree that Plaintiffs shall move for an order seeking preliminary approval of the Settlement in compliance with the Court-ordered deadline, which shall include a request to notify the Class of the Settlement and provide a period during which Owners can request exclusion from the Class. Plaintiffs will share a draft of the motion seeking approval of the Settlement (and all other settlement related filings, including proposed Class Notice forms, but excluding Class Counsel's Motion for Plaintiffs' Incentive Awards and Class Counsel's Fees and Expenses) with GLAIC no less than three (3) business days before it is filed (except for the papers in support of Preliminary Approval, which shall be shared no less than one (1) business day before it is filed). GLAIC will not oppose the motion or any proposed Class Notice plan. To the extent the Court finds that the Settlement does not meet the standard for preliminary approval, the Parties will negotiate in good faith to modify the Settlement directly or with the assistance of the Mediator and endeavor to resolve the issue(s) to the satisfaction of the Court.

11. Plaintiffs' form of Class Notice will include direct mailing on a short-form postcard sent to Owners using address information that is available from GLAIC's files as well as publication of a long-form notice on a settlement website.

12. The Class Notice shall advise Owners of their right to opt out of the Settlement Class and the last date of the Opt-Out Period. A request to opt out must be in writing and served on the Settlement Administrator, postmarked no later than the last date of the Opt-Out Period.

13. A request to opt out must (i) clearly state the Owner's desire to opt out from the Settlement Class; (ii) identify the Policy or Policies to be excluded by policy number; and (iii) be signed by the Owner or by a person providing a valid power of attorney to act on behalf of the Owner.

14. Settlement Class Members may object to this Settlement by filing a written objection with the Court and serving any such written objection on counsel for the respective Parties (as identified in the Class Notice) no later than forty-five (45) calendar days after the Notice Date, or as otherwise determined by the Court. Unless otherwise ordered by the Court, the objection must contain: (1) the full name, address, telephone number, and email address, if any, of the Settlement Class Member; (2) the Policy number; (3) a written statement of all grounds for the objection accompanied by any legal support for the objection (if any); (4) copies of any papers, briefs, or other documents upon which the objection is based; (6) a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing; and (7) the signature of the Settlement Class Member or his/her counsel. If an objecting Settlement Class Member intends to appear at the Fairness Hearing through counsel, the written objection must also state the identity of all attorneys representing the objecting Settlement Class Member who will appear at the Fairness Hearing. Unless otherwise ordered by the Court, Settlement Class Members who do not timely make their objections as provided in this paragraph will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the Settlement. The Class Notice shall advise Settlement Class Members of their right to object and the manner required to do so.

15. Within ten (10) calendar days following the filing of this Agreement with the Court, GLAIC shall serve notices of the proposed Settlement upon appropriate officials in compliance with the requirements of the Class Action Fairness Act (“CAFA”), 28 U.S.C. §1715.

III. INCENTIVE AWARD AND FEES AND EXPENSES

16. Plaintiffs may move for the payment of Incentive Awards from the Final Settlement Fund in an amount up to but not more than \$25,000 for each plaintiff. GLAIC will not oppose Plaintiffs’ motion. The Incentive Awards shall be made to Plaintiffs in addition to, and shall not diminish or prejudice in any way, any settlement relief which they may be eligible to receive.

17. Class Counsel may move for an award of attorneys’ fees not to exceed 33 1/3% of the Final Settlement Fund, in addition to reimbursement for all expenses incurred by them or to be incurred by them, payable only from the Final Settlement Fund. Class Counsel’s Fees and Expenses, as awarded by the Court, shall be paid from the Final Settlement Fund, and may be paid, at Class Counsel’s option, immediately upon entry of an order approving such fees and expenses, or at a later date if required by the Court. GLAIC agrees not to oppose Class Counsel’s motion for Class Counsel’s Fees and Expenses to the extent Plaintiffs’ request does not exceed the amounts set forth above.

18. Neither Plaintiffs nor GLAIC shall be liable or obligated to pay any fees, expenses, costs, or disbursements to any person, either directly or indirectly, in connection with the Action, this Agreement, or the Settlement, other than those expressly provided in this Agreement.

19. The Parties agree that the Settlement is not conditioned on the Court’s approval of the Incentive Award or Class Counsel’s Fees and Expenses.

IV. TAX REPORTING AND NO PREVAILING PARTY

20. Any person or entity receiving any payment or consideration pursuant to this Agreement shall alone be responsible for the reporting and payment of any federal, state, and/or

local income or other form of tax on any payment or consideration made pursuant to this Agreement, and GLAIC shall not have obligations to report or pay any federal, state, and/or local income or other form of tax on any payment or consideration made pursuant to this Agreement.

21. All taxes resulting from the tax liabilities of the Settlement Fund shall be paid solely out of the Final Settlement Fund.

22. No Party shall be deemed the prevailing party of this Action for any purpose.

V. RELEASES AND WAIVERS

23. Upon the Final Settlement Date, the Releasing Parties shall be deemed to have, and by operation of the Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Parties of and from all Released Claims. The Released Claims do not include any Excluded Claims.

24. The Releasing Parties hereby expressly further agree that they shall not now or hereafter institute, maintain, assert, join, or participate in, either directly or indirectly, on their own behalf, on behalf of a class, or on behalf of any other person or entity, any action or proceeding of any kind against the Released Parties asserting Released Claims.

25. With respect to any Released Claims under this Agreement, the Parties stipulate and agree that, upon the Final Settlement Date, the Releasing Parties shall be deemed to have, and by operation of the Order and Judgment shall have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The Releasing Parties shall upon the Final Settlement Date be deemed to have, and by operation of the Order and Judgment shall have, waived any and all provisions, rights, or benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. The Releasing Parties may hereafter discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Released Claims, but the Releasing Parties upon the Final Settlement Date, shall be deemed to have, and by operation of the Order and Judgment shall have fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or noncontingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct relating to the Released Claims that is negligent, intentional, with or without malice, or any breach of any duty, law, or rule without regard to subsequent discovery or existence of such different or additional facts.

26. Nothing in this Release shall preclude any action to enforce the terms of this Agreement.

27. The scope of the Released Claims or Released Parties shall not be impaired in any way by the failure of any Settlement Class Member to actually receive the benefits provided for under this Agreement.

28. Notwithstanding the foregoing, for purposes of clarification only, this Agreement shall not release GLAIC from paying any future death benefits that may be owed and is not a release of any kind to any class or individual claims at issue in *TVPX ARS Inc, v. Genworth Life*

and Annuity Insurance Company, Case No. 3:18-cv-637-JAG (E.D.V.A.) and Case No. 00-CV-217 (CDL) (M.D. Ga.), appeal filed, 22-11185-A (11th Cir.) (collectively, the “TVPX Action”).

VI. OTHER PROVISIONS

29. The Parties: (i) acknowledge that it is their intent to consummate this Agreement, (ii) agree to cooperate in good faith to the extent reasonably necessary to effect and implement all terms and conditions of the Agreement and to exercise their best efforts to fulfill the foregoing terms and conditions of the Agreement, and (iii) agree to cooperate in good faith to obtain preliminary and final approval of the Settlement and to finalize the Settlement. The Parties agree that the amounts paid in the Settlement and the other terms of the Settlement were negotiated in good faith, and at arm’s length by the Parties, with the assistance of the Mediator, following numerous mediation sessions including before the Mediator on March 25, 2022, and additional follow-on communications, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

30. No person or entity shall have any claim against Class Counsel, the Settlement Administrator, GLAIC’s counsel, or any of the Released Parties based on actions taken substantially in accordance with the Agreement and the Settlement contained therein or further orders of the Court.

31. GLAIC specifically and generally denies any and all liability or wrongdoing of any sort with regard to any of the Claims in the Action and makes no concessions or admissions of liability of any sort. Neither this Agreement, nor the Settlement, nor any drafts or communications related thereto, nor any act performed or document executed pursuant to, or in furtherance of, the Agreement or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Claims, or of any wrongdoing or liability of the Released Parties, or any of them; or (ii) is or may be deemed to be or may be used as an admission of, or evidence

of, any fault or omission of the Released Parties, or any of them, in any civil, criminal or administrative proceeding in any court, administrative agency, or other tribunal. Nothing in this paragraph shall prevent GLAIC and/or any of the Released Parties from using this Agreement and Settlement or the Order and Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

32. GLAIC agrees promptly to provide, or cause to be provided, all data reasonably necessary for Class Counsel to effectuate the distribution of the Class Notice, to determine the payment allocations to Settlement Class Members, and to send payments to Settlement Class Members.

33. The Parties agree that if this Agreement or the Settlement fails to be approved, fails to become effective, otherwise fails to be consummated, is declared void, or if there is no Final Settlement Date, then the Parties will be returned to *status quo ante*, as if this Agreement had never been negotiated or executed, except that no incurred Settlement Administration Expenses shall be recouped. Each Party will be restored to the place it was in as of the date this Agreement was signed with the right to assert in the Action any argument or defense that was available to it at that time.

34. Except as expressly provided herein, nothing in this Agreement shall change the terms of any Policy. Nothing in this Agreement shall preclude any action to enforce the terms of this Agreement.

35. The Parties agree, to the extent permitted by law, that all agreements made and orders entered during the course of the Action relating to confidentiality of information shall

survive this Agreement. To the extent Class Counsel or the Settlement Administrator requires Confidential Information to effectuate the terms of this Agreement, the terms of the Stipulated Confidentiality Agreement and Protective Order and Addendum entered in the Action on October 5, 2020 (Dkt. 38) shall apply to any information necessary to effectuate the terms of this Agreement.

36. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest. No waiver of any provision of this Agreement or consent to any departure by either Party therefrom shall be effective unless the same shall be in writing, signed by the Parties or their counsel, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No amendment or modification made to this Agreement pursuant to this paragraph shall require any additional notice to the Settlement Class Members, including written or publication notice, unless ordered by the Court. Plaintiffs and Class Counsel agree not to seek such additional notice. The Parties may provide updates on any amendments or modifications made to this Agreement on the website as described in Paragraph 11.

37. Each person executing the Agreement on behalf of any Party hereby warrants that such person has the full authority to do so.

38. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Furthermore, electronically signed PDF versions or copies of original signatures may be accepted as actual signatures and will have the same force and effect as the original. A complete set of executed counterparts shall be filed with the Court.

39. The Agreement shall be binding upon, and inure to the benefit of, the successors, heirs, and assigns of the Parties hereto. This Agreement is not designed to and does not create any third-party beneficiaries either express or implied, except for the Settlement Class Members.

40. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any Party. No Party shall be deemed the drafter of this Agreement. The Parties acknowledge that the terms of this Agreement are contractual and are the product of arms-length negotiations between the Parties and their counsel. Each Party and its respective counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement shall not be construed against any Party.

41. Other than necessary disclosures made to the Court or the Settlement Administrator, this Agreement and all related information and communication shall be held strictly confidential by Plaintiffs, Class Counsel, and their agents until such time as the Parties file this Agreement with the Court.

42. The Parties and their counsel further agree that their discussions and the information exchanged in the course of negotiating this Settlement are confidential under the terms of the mediation agreement signed by the Parties in connection with the mediation sessions with the Mediator and any follow-up negotiations between the Parties' counsel. 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 Action and subject to confidentiality restrictions), that it not be the subject of public comment, and that it not be publicly disclosed or used by the Parties or their counsel in any way in the Action should it not settle, or in any other proceeding; provided however, that nothing

contained herein shall 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 Action.

43. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia, without reference to its choice-of-law or conflict-of-laws rules.

44. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement and any discovery sought from or concerning objectors to this Agreement. All Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Agreement.

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

(a) If to GLAIC, then to:

Brian E. Pumphrey
Elizabeth F. Tyler
McGuireWoods LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219-3916
Phone: 804-775-1000
Fax: 804-775-1061
bpumphrey@mcguirewoods.com
etyler@mcguirewoods.com

Patrick J. Gennardo
ALSTON & BIRD LLP
90 Park Avenue, 15th Floor
New York, NY 10016-1387
Phone: 212-210-9400
Fax: 212-210-9444
patrick.gennardo@alston.com

(b) If to Plaintiffs or the Class, then to:

Seth Ard
Ryan C. Kirkpatrick
Susman Godfrey L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel: 212-336-8330
Fax: 212-336-8340

Steven G. Sklaver
Lora Krsulich
Susman Godfrey L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067-6029
Tel: 310-789-3100
Fax: 310-789-3150

sard@susmangodfrey.com
rkirkpatrick@susmangodfrey.com

ssklaver@susmangodfrey.com
lkrsulich@susmangodfrey.com

46. The Parties reserve the right to agree between themselves (with approval of the Court, if necessary) on any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

47. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Agreement or by order of any court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Each other day of the period to be computed shall 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 on a day in which the court is closed during regular business hours. In any event, the period runs until the end of the next day that is not a Saturday, a Sunday, a legal holiday, or a day on which the court is closed. When a time period is less than seven (7) business days, intermediate Saturdays, Sundays, legal holidays, and days on which the court is closed shall be excluded from the computation. As used in this paragraph, legal holidays include New Year's Day, Dr. Martin Luther King Jr. Day, Lincoln's Birthday, Washington's Birthday, Presidents' Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Columbus Day, Election Day, Veterans Day, Thanksgiving Day, Christmas Day and any other day appointed as a holiday by Federal law or Virginia Law.

VII. DEFINITIONS AND CONSTRUCTION

48. "Action" means the lawsuit, captioned *Brighton Trustees, LLC, As Trustee, et al. v. Genworth Life and Annuity Insurance Company*, Case No. 3:20-cv-00240 (DJN), currently pending in the United States District Court for the Eastern District of Virginia.

49. "Agreement" means this Joint Stipulation and Settlement Agreement.

50. “Claims” means all suits, claims, cross-claims, counter-claims, controversies, liabilities, demands, obligations, debts, indemnities, costs, fees, expenses, losses, liens, actions, or causes of action (however denominated), including Unknown Claims, of any nature, character, or description, whether in law, contract, statute, or equity, direct or indirect, whether known or unknown, foreseen or not foreseen, accrued or not yet accrued, present or contingent, for any injury, damage, obligation, or loss whatsoever, including but not limited to compensatory damages, statutory damages, liquidated damages, exemplary damages, punitive damages, losses, costs, expenses, or attorneys’ fees.

51. “Class” means all Owners of Gold and Gold II universal life insurance policies issued, insured, or assumed by GLAIC, or its predecessors or successors, whose COI Rate Scales were changed as a result of the 2019 COI Rate Adjustment. Specifically excluded from the Class are Class Counsel and their employees, GLAIC, its officers and directors and their immediate family members; the Court, the Court’s staff, and their immediate family members; and the heirs, successors or assigns of any of the foregoing. Also excluded from the Class are owners of Gold and Gold II policies that have terminated as a result of the death of the insured on or before March 31, 2022, where the 2019 COI Rate Adjustment did not result in an Incremental COI Deduction before the death of the insured. For purposes of clarification only, the Class also does not include any policies issued by or insured by Genworth Life Insurance Company or its predecessors or successors.

52. “Class Counsel” means Susman Godfrey L.L.P., the attorneys appointed as interim class counsel by the Court.

53. “Class Counsel’s Fees and Expenses” means the amount of the award approved by the Court to be paid to Class Counsel from the Final Settlement Fund for attorneys’ fees and reimbursement of Class Counsel’s costs and expenses.

54. “Class Notice” means the notice of the Settlement approved by the Court to be sent by the Settlement Administrator to the Class.

55. “Class Policy” means any Policy for which an Owner is a Settlement Class Member. “Class Policies” means all of the Policies for which the Owners are Settlement Class Members.

56. “COI” means cost of insurance.

57. “COI Deduction” means the amount deducted from a Policy’s value each month for COI.

58. “COI Rate(s)” means the rates used to calculate the COI Deduction. For the purpose of this Agreement, “COI Rates” include Monthly Risk Rates, as that term is defined in the Policies.

59. “COI Rate Scale(s)” means the schedule of COI Rates applicable to each Policy for all years that the Policy is in force.

60. “2019 COI Rate Adjustment” means the change in COI Rate Scales applicable to the Policies, announced in 2019 and effective beginning December 1, 2019, in which new COI Rate tables were adopted for the Policies.

61. “Court” means The United States District Court for the Eastern District of Virginia, Hon. David J. Novak.

62. “Excluded Claims” means (i) new claims that could not have been asserted in the Action because they are based upon a future COI Rate Scale increase that occurs after March 25, 2022 (“New COI Increase Claims”), (ii) claims relating to the COI Rate Scale increases imposed

by Genworth Life Insurance Company, on Gold and Gold II policies issued, insured, and/or assumed by it, and (iii) claims at issue in the TVPX Action. New COI Increase Claims are limited to claims and damages that could not have been included in the Action because a future COI Rate Scale increase has not yet taken place, but do not include any claims challenging the COI Rates and/or COI Rate Scales adopted under the 2019 COI Rate Adjustment. To the extent that a Settlement Class Member is an owner of both a GLAIC Policy and a Genworth Life Insurance Company policy (or any other policy that is not a Policy), this release will only be applicable for the GLAIC Policy and not any other policy.

63. “Fairness Hearing” means the hearing at which the Court considers final approval of the Settlement.

64. “Final Approval Date” means the date on which the Court enters its Order and Judgment approving the Settlement.

65. “Final Settlement Date” means the date on which the Order and Judgment becomes final, which shall be the latest of: (i) the date of final affirmance on any appeal of the Order and Judgment; (ii) the date of final dismissal with prejudice of the last pending appeal from the Order and Judgment; or (iii) if no appeal is filed, the expiration of the time for filing or noticing any form of valid appeal from the Order and Judgment.

66. “Final Settlement Fund” means the cash fund after any reductions in the amount of the Settlement Fund pursuant to Paragraph 2 of this Agreement. The Final Settlement Fund will be a single qualified settlement fund pursuant to 26 U.S.C. § 468B that will be used to pay: (i) Settlement Administration Expenses; (ii) any Incentive Awards; (iii) any of Class Counsel’s Fees and Expenses awarded by the Court; (iv) all payments to the Settlement Class; and (v) any other payments provided for under this Agreement or the Order and Judgment. There will be no

reversion of any portion of the Final Settlement Fund to GLAIC. All funds held in the Final Settlement Fund and all earnings thereon, shall be deemed to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall have been disbursed pursuant to the terms of this Agreement or further order of the Court.

67. “GLAIC” means Genworth Life and Annuity Insurance Company and its predecessor and successor entities.

68. “Incentive Awards” means the aggregate amount of any awards approved by the Court to be paid to Plaintiffs from the Final Settlement Fund, in addition to any settlement relief they may be eligible to receive, to compensate Plaintiffs for their efforts undertaken on behalf of the Settlement Class.

69. “Incremental COI Deduction” means the difference between the COI Deduction from a Policy as determined under the COI Rate Scale applied to a Policy under the 2019 COI Rate Adjustment and the COI Deduction that would have existed under the COI Rate Scale that applied to the Policy before the 2019 COI Rate Adjustment, where the COI Deduction under the 2019 COI Rate Adjustment is higher than the COI Deduction that would have applied under the previous COI Rate Scale.

70. “Mediator” means Rodney A. Max, Esq.

71. “Net Settlement Fund” means the Final Settlement Fund less (i) Settlement Administration Expenses; (ii) any Incentive Awards; (iii) any Class Counsel’s Fees and Expenses awarded by the Court; and (iv) any other payments provided for under this Settlement or the Order and Judgment.

72. “Notice Date” means the earliest date on which any form of the Class Notice is first mailed, published, or appears online.

73. “Opt-Outs” means the Owners of Policies who timely elect to opt out of the Settlement Class during the Opt-Out Period.

74. “Opt-Out Period” means a period that begins on the Notice Date and ends forty-five (45) days after the Notice Date, or as otherwise determined by the Court. The deadline for the Opt-Out Period will be specified in the Class Notice.

75. “Order and Judgment” means the Court’s order approving the Settlement and entering final judgment. The judgment will include a provision for the retention of the Court’s jurisdiction over the Parties and Releasing Parties to enforce the terms of the judgment and for a bar order (consistent with the provisions of Paragraphs 23-28 above) prohibiting claims by the Releasing Parties against Released Parties for the Released Claims.

76. “Owner” or “Owners” means each Policy’s owner or owners of record in GLAIC’s files, whether a person or entity and whether in an individual or representative capacity.

77. “Parties” means, collectively, Plaintiffs and GLAIC. The singular term “Party” means any of Plaintiffs or GLAIC, as appropriate.

78. “Plaintiffs” means Brighton Trustees, LLC, Bank of Utah, and Ronald L. Daubenmier, individually and as representatives of the Class, and their assigns, successors-in-interest, and representatives.

79. “Policy” or “Policies” means any Gold and Gold II universal life insurance policy issued, insured, or assumed by GLAIC, or its predecessors or successors, for which the applicable COI Rate Scales were changed by the 2019 COI Rate Adjustment. For clarity, this does not include any policies issued, insured, and/or assumed by Genworth Life Insurance Company.

80. “Released Claims” means all Claims asserted in the Action or arising out of the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act

that were alleged or could have been alleged in the Action related to the 2019 COI Rate Adjustment. Released Claims do not include Excluded Claims.

81. “Released Parties” means GLAIC and its past, present, and future parent companies, direct and indirect subsidiaries, affiliates, predecessors, joint ventures, successors and assigns, together with each of their respective past, present, and future officers, directors, shareholders, employees, representatives, insurers, attorneys, and agents, and including any person or entity acting on behalf or at the direction of any of them.

82. “Releasing Parties” means Plaintiffs and each Settlement Class Member, on behalf of themselves and their respective agents, heirs, relatives, attorneys, successors, predecessors, payors, trustees, grantors, securities intermediaries, beneficiaries, principals, subrogees, executors, and assignees, and all other persons or entities acting by, through, under, or in concert with any of them.

83. “Settlement” means the settlement set forth in this Agreement.

84. “Settlement Administration Expenses” means all Class Notice and administrative fees, costs, or expenses incurred in administering the Settlement, including the fees charged by the Settlement Administrator, as well as the fees, costs, and expenses incurred by the Settlement Administrator. Settlement Administration Expenses shall be paid from the Final Settlement Fund.

85. “Settlement Administrator” means the third-party settlement administrator of the Settlement who is selected and approved by the Parties. Plaintiffs shall be responsible for selecting the Settlement Administrator and consent from GLAIC will not be unreasonably withheld. The Settlement Administrator’s fees, as well as the costs, fees, and expenses incurred by the Settlement Administrator, shall be paid from the Final Settlement Fund.

86. “Settlement Class” means the Class, excluding any Opt-Outs.

87. “Settlement Class Member(s)” means all persons and entities that are included in the Settlement Class.

88. “Settlement Fund” means a cash fund consisting of the consideration paid for the benefit of the Settlement Class.

89. “Settlement Fund Account” means the escrow account from which all payments out of the Settlement Fund will be made. The Settlement Fund Account shall be established under terms acceptable to the Parties at a depository institution and such funds shall be invested exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation (“FDIC”) or (b) secured by instruments backed by the full faith and credit of the United States Government. The Parties and their respective counsel shall have no responsibility for or liability whatsoever with respect to investment decisions made for the Settlement Fund Account. All risks related to the investment of the Settlement Fund shall be borne solely by the Settlement Class.

90. “Unknown Claims” means any claims asserted, that might have been asserted, or that hereafter may be asserted arising out of the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act that were alleged in the Action with respect to the Released Claims that the Releasing Parties do not know or suspect to exist in his or her favor at the Final Approval Date, and which if known by him or her might have affected his or her decision to opt out of the Class or to object to the Settlement.

91. 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.

92. All references herein to paragraphs refer to paragraphs of this Agreement, unless otherwise expressly stated in the reference.

AGREED TO BY:

Plaintiffs

Brighton Trustees, LLC

By: Ardun Plevis

Title: Managing Member

Date: 5/6/2022

Bank of Utah

By: [Signature]

Kade Baird
Assistant Vice President

Title: _____

Date: 5/6/2022

Ronald L. Daubenmier

Date: _____

Defendant

Genworth Life and Annuity Insurance Company

By: _____

Title: _____

Date: _____

91. 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.

92. All references herein to paragraphs refer to paragraphs of this Agreement, unless otherwise expressly stated in the reference.

AGREED TO BY:

Plaintiffs

Brighton Trustees, LLC

By: _____

Title: _____

Date: _____

Bank of Utah

By: _____

Title: _____


Date: _____

Ronald L. Daubenmier

Date: _____

Defendant

Genworth Life and Annuity Insurance Company

By:  _____

Title: President

Date: 05/06/2022

91. 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.

92. All references herein to paragraphs refer to paragraphs of this Agreement, unless otherwise expressly stated in the reference.

AGREED TO BY:

Plaintiffs

Brighton Trustees, LLC

By: _____

Title: _____


Date: _____

Bank of Utah

By: _____

Title: _____

Date: _____


Ronald L. Daubenmier

Date: 5-6-2022

Defendant

Genworth Life and Annuity Insurance Company

By: _____

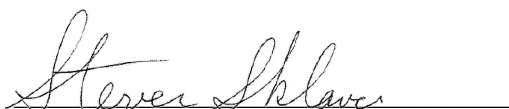
Title: _____

Date: _____

APPROVED ONLY AS TO FORM:

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Class Counsel and Attorneys for Plaintiffs