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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

14 ROSALIE VACCARINO AND DAVID)
LEE TEGEN, on behalf of themselves and)
15 all others similarly situated,)

16 Plaintiffs,)

17 v.)

18 MIDLAND NATIONAL LIFE)
INSURANCE COMPANY; and)
19 DOES 1-100, Inclusive.)

20 Defendants.)

CASE NO.: 11-CV-5858-CAS(MANx)
Assigned to: Hon. Christina A. Snyder

**NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CONDITIONAL
APPROVAL OF SETTLEMENT
CLASS, ISSUANCE OF NOTICE
TO THE CLASS, AND SETTING
OF FAIRNESS HEARING;
MEMORANDUM OF POINTS AND
AUTHORITIES**

21 DATE: June 2, 2014
22 TIME: 10:00 a.m.
PLACE: Courtroom 5

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TABLE OF CONTENTS

	<i>Pages</i>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
MEMORANDUM OF POINTS AND AUTHORITIES	1
I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION	2
A. Plaintiffs’ position	3
B. Midland’s position	3
C. Procedural posture of the action as of the Settlement	3
D. Mediation and negotiation of the Settlement	5
III. SUMMARY OF SETTLEMENT	5
A. The proposed Settlement Class	5
B. Relief made available to Class Members	6
1. Surrender-Related Payments: fully or partially surrendered policies	6
2. Active policies: Annuitization Bonus	8
3. Enhanced Annuity Payments: previously annuitized policies	8
C. Class notice	9
D. Release and waiver	10
E. Appointment of class representatives and class counsel	9
F. Payment of attorneys’ fees and expenses and class representative service awards	10
IV. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL	10
A. The Settlement is fair, adequate, and reasonable and falls within the range of final approval	10
1. The Settlement is the product of informed, non-collusive negotiations	12
2. The proposed Settlement has “no obvious deficiencies”	12
3. The proposed relief does not “grant preferential treatment to class representatives”	13
4. The proposed relief is within the “range of possible approval”	13

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- B. The Court should conditionally certify the Settlement Class..... 15
 - 1. The requirements of Rule 23(a) are met..... 15
 - a. Rule 23(a)(1) is satisfied..... 15
 - b. Rule 23(a)(2) is satisfied..... 15
 - c. Rule 23(a)(3) is satisfied..... 16
 - d. Rule 23(a)(4) is satisfied..... 16
 - 2. The requirements of Rule 23(b)(3) are met..... 16
 - a. Common questions of law and fact predominate..... 17
 - b. A class action is superior to individual actions..... 17
 - c. The Court should appoint Plaintiffs’ counsel as class counsel..... 18
 - d. The proposed class notice satisfies Rule 23 and all due process requirements..... 19

V. CONCLUSION..... 20

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<i>Cases</i>	<i>Pages</i>
<i>Adams v. Inter-Con Sec. Sys., Inc.</i> 2007 WL 3225466 (N.D. Cal. 2007)	12
<i>Amchem Products, Inc. v. Windsor</i> 521 U.S. 591 (1997)	15, 18
<i>Blackie v. Barrack</i> 524 F.2d 891 (9th Cir. 1975)	16
<i>Class Plaintiffs v. Seattle</i> 55 F.3d 768 (3d Cir. 1995)	10, 11
<i>In re Adobe Sys., Inc. Sec. Litig.</i> 139 F.R.D. 150 (N.D. Cal. 1991)	15
<i>In re American Equity Annuity Practices and Sales Litig.</i> 05-CV-6735 CAS(MANx) (C.D. Cal.)	14
<i>In re CV Therapeutics, Inc. Sec. Litig.</i> 2007 WL 1033478 (N.D. Cal. 2007)	13
<i>In re Emulex Corp. Sec. Litig.</i> 210 F.R.D. 717 (C.D. Cal. 2002)	15, 17
<i>In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.</i> 294 F.R.D. 529 (C.D. Cal. 2013)	11, 18
<i>In re Indep. Energy Holdings PLC</i> 2003 WL 22244676 (S.D.N.Y. 2003)	12
<i>In re Midland Nat'l Life Ins. Co. Annuity Sales Practices Litig.</i> MDL No. 07-1825 CAS(MANx) (C.D. Cal.)	14
<i>In re National Western Insurance Deferred Annuities Litig.</i> 05-CV-1018 GPC(WVG) (S.D. Cal.)	14
<i>In re NVIDIA Corp. Derivative Litig.</i> 2008 WL 5382544 (N.D. Cal. 2008)	10, 11
<i>In re Rubber Chems. Antitrust Litig.</i> 232 F.R.D. 346 (N.D. Cal. 2005)	18
<i>Hanlon v. Chrysler Corp.</i> 150 F.3d 1011 (9th Cir. 1988)	11
<i>HCL Partners Ltd. Partnership v. Leap Wireless Int'l, Inc.</i> 2010 WL 4156342 (S.D. Cal. 2010)	19
<i>McPhail v. First Command Fin. Planning, Inc.</i> 247 F.R.D. 598 (S.D. Cal.)	16

1	<i>Mullane v. Central Hanover Bank & Trust Co.</i>	19
	339 U.S. 306 (1950)	
2	<i>Negrete v. Allianz Life Ins. Co. of N. Am.</i>	17
3	238 F.R.D. 482 (C.D. Cal. 2006)	
4	<i>Officers for Justice v. Civil Serv. Comm’n.</i>	1
5	688 F.2d 615 (9th Cir. 1982)	
6	<i>Satchell v. Fed. Express Corp.</i>	11
7	2007 WL 111410 (N.D. Cal. 2007)	
8	<i>Schlagal v. Learning Tree Int’l</i>	16
9	1999 WL 672306 (C.D. Cal. 1999)	
10	<i>Staton v. Boeing</i>	16
11	327 F.3d 938 (9th Cir. 2003)	
12	<i>Valentino v. Carter-Wallace, Inc.</i>	17, 18
13	582 F.Supp.2d 1209 (N.D. Cal. 2008)	
14	<i>West-ways World Travel, Inc. v. AMR Corp.</i>	16
15	218 F.R.D. 223 (C.D. Cal. 2003)	
16	<i>Yokoyama v. Midland National Life Ins. Co.</i>	17
17	97 F.3d 1227 (9th Cir. 1996)	
18	<i>Young v. Polo Retail</i>	12
19	2006 WL 3050861 (N.D. Cal. 2006)	
20	<i>Zhu v. Fujitsu Group 401(K) Plan</i>	15
21	2004 WL 3252573 (N.D. Cal. 2004)	
22	<i>Zinser v. Accufix Research Inst., Inc.</i>	18
23	253 F.3d 1180 (9th Cir. 2001)	
24	<i>Statutes</i>	<i>Pages</i>
25	California Insurance Code	
26	§ 10127.13	3
27	California Business & Professions Code	
28	§ 17200	3
29	Federal Rules of Civil Procedure	
30	Rule 23(a)(1).....	15
31	Rule 23(a)(4).....	16

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Rule 23(b)(3).....15, 17, 18
Rule 23(c)(2)(B).....19
Rule 23(g)(1).....18

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 After an extensive mediation before the Honorable Ronald M. Sabraw (Ret.),
4 Plaintiffs Rosalie Vaccarino and David Lee Tegen and defendant Midland National Life
5 Insurance Company (“Defendant” or “Midland”) agreed to settle this Action (the
6 “Settlement”) on the terms set forth in the Settlement Agreement (“Agreement”). For the
7 reasons stated below, Plaintiffs respectfully request that the Court preliminarily approve
8 the proposed Settlement, which will provide various types of relief to the Settlement Class
9 members without having to submit a claim form. The relief includes surrender-related
10 payments for certain Class members who incurred surrender charges; a bonus for those
11 who annuitize their policies after the Settlement becomes final; and enhanced payments for
12 those who have already annuitized their policies.

13 At the preliminary approval stage, the Court makes only a preliminary
14 determination of the settlement’s fairness, reasonableness, and adequacy so that
15 notice of the settlement may be given to the Class and a fairness hearing may be scheduled
16 to make a final determination about the settlement’s fairness. See 4 Rubenstein, Conte &
17 Newberg, *Newberg on Class Actions*, § 11:25 (4th ed. 2002); *Manual for Complex*
18 *Litigation* (4th ed. 2004) § 21.632. In so doing, the Court simply reviews the settlement to
19 determine that it is not collusive and, taken as a whole, is fair, reasonable, and adequate to
20 all concerned. *Officers for Justice v. Civil Serv. Comm’n.*, 688 F.2d 615, 625 (9th Cir.
21 1982).

22 The proposed Settlement meets this standard. It is the product of lengthy
23 negotiations between the Parties, was assisted by an experienced, well-respected mediator,
24 and will fairly resolve this Action. The Settlement Class, which the Parties ask the Court to
25 conditionally certify, is comprised of owners of certain products issued in California to
26 purchasers under age 65, specifically, Bonus 5, Bonus 10, Bonus 11, Legacy Bonus 5,
27 Legacy Select, Legacy Bonus 11, and Veridian Plus deferred annuity products
28 (collectively, the “Annuities”). The Settlement Class does not include owners who make a

1 valid request for exclusion, nor those subject to other exclusions set forth in Section
2 II.A.14 of the Agreement.

3 As detailed below, the proposed Settlement compares favorably with class
4 settlements approved in similar cases involving the sale of deferred annuities. The
5 Settlement appropriately reflects the strengths and weaknesses associated with Plaintiffs’
6 claims, and provides finality and certainty to Midland and the Settlement Class Members.
7 The proposed Settlement Class also satisfies all requirements for certification under
8 Federal Rule of Civil Procedure 23, and the proposed Class Notice satisfies all the
9 requirements of Rule 23(c)(2)(B) for providing the best notice practicable under the
10 circumstances.

11 Plaintiffs therefore respectfully request that the Court enter the [Proposed]
12 Findings and Order Preliminarily Approving Class Settlement, Directing Issuance of
13 Notice to the Class, and Setting of Fairness Hearing (the “Order”) that: (1) preliminarily
14 approves the Settlement; (2) conditionally certifies the Settlement Class; (3) directs the
15 dissemination of Notice of the Settlement and the Fairness Hearing to the members of the
16 Settlement Class; and (4) schedules the Fairness Hearing for September 22, 2014 (or as
17 soon thereafter as the Court is available) to consider whether to grant final approval of the
18 Settlement, and the application by Plaintiffs’ counsel for an award of attorneys’ fees and
19 expenses.

20 **II. SUMMARY OF THE LITIGATION**

21 **A. Plaintiffs’ position.**

22 On May 3, 2012, Plaintiffs filed the operative third amended class action
23 complaint, making allegations regarding various Midland fixed deferred annuity
24 products sold in California, and sought certification of a class of California residents
25 age 64 and under at the time of purchase and a subclass of purchasers age 60 to 64 at
26 the time of purchase. Plaintiffs alleged, among other things, that Midland made
27 misrepresentations of “bonuses” and “growth” with respect to its products but failed to
28 disclose that it shifted the cost of the bonuses and high sales commissions back to

1 purchasers through lower interest and index credits over time. Plaintiffs further alleged
2 that Midland failed to comply with surrender charge disclosure requirements under
3 California law, Insurance Code section 10127.13, for a subclass of purchasers age 60-
4 64, and that the policies' Interest Adjustment feature was "indecipherable" and
5 amounted to an unenforceable surrender charge. Plaintiffs asserted causes of action for
6 violation of the Unfair Competition Law (California Business & Professions Code
7 section 17200 et seq., hereinafter, "UCL"), fraud, breach of contract, breach of the
8 implied covenant of good faith and fair dealing, and declaratory relief.

9 Plaintiffs sought damages and restitution in connection with the bonus and sales
10 commissions, surrender charges, and Interest Adjustments, plus legal interest, punitive
11 damages, and legal fees and costs. Plaintiffs also sought injunctive relief limiting or
12 precluding Midland from continuing to engage in the alleged practices. (Dkt. No. 85 at ¶¶
13 7-22, 33-66.)

14 **B. Midland's position.**

15 Midland denies all of the allegations and any liability to Plaintiffs and the
16 Settlement Class. Midland has asserted numerous legal and factual defenses to the Action.
17 It contends its annuity products are lawful and beneficial and provide the promised
18 benefits. Midland contends that Plaintiffs received adequate notice of any applicable
19 surrender charges and Interest Adjustments. Midland also contends that its written
20 disclosure and, in most instances, oral disclosures by independent agents, further informed
21 Plaintiffs of any applicable surrender charges and the manner in which any Interest
22 Adjustment would affect a surrender or partial withdrawal. Midland denies that it
23 improperly lowers interest credits and that it failed to comply with the applicable law
24 regarding descriptions of premium bonuses or agent compensation. It further contends that
25 it would be inappropriate to certify a litigation class in this Action.

26 **C. Procedural posture of the action as of the Settlement.**

27 From its inception in June 2011, this Action has been vigorously litigated. Midland
28 filed multiple motions to dismiss, resulting in a yearlong battle over the sufficiency of the

1 pleadings. (Dkt. Nos. 7, 55, 90.) Midland finally filed its answer on July 11, 2012. (Dkt.
2 No. 108.) Discovery was also intensive, spawning numerous discovery proceedings,
3 production of more than 55,000 pages of documents, and 28 depositions. (Dkt. Nos. 60,
4 109, 116, 128, 177, 240, 301.)

5 On September 24, 2012, Plaintiffs filed a motion for class certification, to which
6 Midland filed its opposition on December 5, 2012. (Dkt. Nos. 130 and 153.) As a result of
7 numerous discovery disputes, the briefing schedule on the certification motion was
8 extended. (Dkt. No. 168.) Midland was also granted leave to file a supplemental
9 opposition, which it filed on April 29, 2013. (Dkt. Nos. 174 and 197.) The following
10 month, Plaintiffs filed a reply brief. (Dkt. No. 205.) The Court heard the certification
11 motion on June 17, 2013. It found that all of Rule 23's requirements as to liability had
12 been met, but denied the motion without prejudice on the ground that Plaintiffs had not
13 presented a damages model tethered to their theory of liability. (Dkt. No. 239 at 30.)

14 On July 24, 2013, Plaintiffs filed a renewed a renewed certification motion. (Dkt.
15 No. 251.) On September 5, 2013, Midland filed its opposition to the renewed motion,
16 introducing evidence of a survey conducted by Kent Van Liere, along with a motion to
17 exclude the declaration of Plaintiffs' damages expert, Jeffrey Dellinger. (Dkt. Nos. 271
18 and 274.) Plaintiffs filed a reply brief on November 4, 2013, which included an expert
19 declaration (from Stanley Presser) to refute Mr. Van Liere's survey, and, on November 8,
20 filed an opposition to the motion to exclude the Dellinger declaration. (Dkt. Nos. 310, 310-
21 1, and 322.) On December 16, 2013, Midland filed a reply to the motion to exclude the
22 Dellinger declaration. (Dkt. No. 352.) Plaintiffs filed a motion to strike arguments and
23 evidence in Midland's reply to the motion to exclude the Dellinger declaration as an
24 improper sur-reply to the renewed certification motion. (Dkt. No. 371.) Meanwhile,
25 Midland filed a motion to strike the Presser declaration. (Dkt. No. 372-1.) The parties filed
26 their oppositions to these motions, after which the Court ordered no further briefing on any
27 of the motions. (Dkt. Nos. 377, 378, and 381.)
28

1 On February 3, 2014, the Court held a hearing on the renewed certification and
2 related motions. The Court took the matter under submission and, on February 12, 2014,
3 issued an order certifying the breach of contract claims as to the recoupment, surrender
4 penalty, and interest adjustment theories, the “unlawful prong” Unfair Competition Law
5 claim on the surrender penalty theory and the “unfair prong” claim on the interest
6 adjustment theory; denying Midland’s motion to strike the Dellinger declaration; and
7 denying the parties’ other motions to strike. (Dkt. Nos. 389 and 392.)

8 **D. Mediation and negotiation of the Settlement.**

9 The Agreement is the product of intense, arms-length negotiations, including a
10 mediation session before the Honorable Ronald Sabraw (Ret.). Under Judge Sabraw’s
11 guidance, the Parties negotiated the essential settlement terms and subsequently worked
12 many hours to finalize the entirety of the Agreement’s terms.

13 The Parties conducted their own investigation and evaluation of the relevant law
14 and facts necessary to assess the strengths and weaknesses of Plaintiffs’ allegations and
15 claims for damages, as well as Midland’s defenses. Based on these investigations, the
16 Parties have independently concluded that entering into this Settlement is in their best
17 interests.

18 **III. SUMMARY OF THE SETTLEMENT**

19 **A. The proposed Settlement Class.**

20 Plaintiffs request conditional certification of a Settlement Class¹, which includes
21 any current or most recent Owner, as defined in Section II.A.14 of the Agreement, of an
22 Annuity who has not made a valid request for exclusion from the Class.² Excluded from
23 the Settlement Class is any Owner who: (a) is or was a member of the Board of Directors,
24 or an officer, shareholder or employee, of Midland; (b) is an affiliate, legal representative,
25

26 ¹ On February 12, 2014, the Court certified a class for certain claims. (Dkt. No. 389.)

27 ² As defined in Section II.A.13 of the Agreement, the Benefit Determination Date is not
28 more than 30 days after the Effective Date, which is the date on which the Final Order
and Judgment approving the Settlement becomes final for all purposes, including
appeal. (Ex. 1 at Sections II.A.13 and II.A.20.)

1 attorney, successor, or assign of Midland; (c) is a judge, justice, or judicial officer
2 presiding over the Action or is with the staff of immediate family of such judge, justice, or
3 official; or (d) is a person or entity hired to administer the terms of the Settlement.

4 Annuity is defined as one of the seven Midland deferred annuities with the
5 marketing name Bonus 5, Bonus 10, Bonus 11, Legacy Bonus 5, Legacy Select, Legacy
6 Bonus 11, or Veridian Plus that was issued in California to at least one Owner who was
7 under age 65 at the time of issue. Excluded from the definition of Annuity are policies (i)
8 as to which a death benefit has been provided or is in the process on or before the Benefit
9 Determination Date, (ii) that were issued but not accepted or was returned to Midland as
10 part of the exercise of the free-look provision in the Annuity or were otherwise rescinded,
11 (iii) that were surrendered in full without incurring any Surrender Charge on or before the
12 Benefit Determination Date, (iv) that were Annuitized and the Annuity Payments have
13 ceased on or before the Benefit Determination Date, (v) as to which claims were released
14 pursuant to settlement of prior litigation, or (vi) as to which the rights and claims have
15 been finally adjudicated in a court of law.

16 **B. Relief made available to Class Members.**

17 Under the Agreement, each member of the Settlement Class who chooses not to be
18 excluded will receive valuable benefits depending on the status of the member's Annuity
19 as of the Benefit Determination Date. Class Members with Annuities issued to owners age
20 60-64 at time of purchase who have incurred a surrender charge on any full or partial
21 surrender before the Benefit Determination Date, and Class Members with Annuities
22 issued to owners age 0-59 at time of purchase who fully surrender, will receive a
23 Surrender-Related Payment. For those whose policies were in deferral as of the Benefit
24 Determination Date and thereafter annuitize their policy under a Qualifying Period, they
25 will receive an Annuitization Bonus. And for those who have annuitized their policies
26 before the Benefit Determination Date, they will receive Enhanced Annuity Payments.
27 (Ex. 1 at Section IV.) These benefits address Plaintiffs' allegations concerning the shifting
28 of the costs associated with the bonus and sales commissions and surrender charge

1 disclosure allegations. Each Settlement Class Member may receive one of the following
2 benefits for each Annuity he or she owns, owned, or is a designated beneficiary.

3 **1. Surrender-Related Payments: fully or partially surrendered**
4 **policies.**

5 Under the Settlement, Class Members who have fully or partially surrendered their
6 Annuity as of the Benefit Determination Date will *automatically* receive a total of
7 \$5,550,000 in benefits without the burden of having to claim in.

8 For Class Members with Annuities issued to owners age 60-64 at time of purchase
9 that have incurred a surrender charge on any full or partial surrender before the Benefit
10 Determination Date, Midland will provide \$3,550,000 in Surrender Charge Reduction
11 Payments. The amount of each such Surrender Charge Reduction Payment will be
12 calculated as follows: (a) divide the amount of \$3,550,000 by the total amount of the Net
13 Surrender Charges incurred on Annuities with issue ages 60-64 owned by Class Members
14 as of the Benefit Determination Date to arrive at a Refund Percentage Rate; then (b) for
15 each Annuity with an issue age from 60-64 owned by the Class Member, multiply the Net
16 Surrender Charge by the Refund Percentage Rate.

17 For Class Members age 0-59 at time of purchase who incurred a surrender charge on
18 any full surrender, Midland will provide \$2,000,000 in Enhanced Surrender Payments. The
19 amount of each eligible Class Member's enhancement of the difference between the
20 Accumulation Value at the time of full surrender and the applicable Surrender Charge will
21 be calculated as follows: (a) divide the amount of \$2,000,000 by the difference between
22 the total amount of the Accumulation Values at the time of full surrender and the total
23 amount of the applicable Surrender Charges to arrive at an Enhancement Percentage Rate;
24 then (b) for each Class Member owning an Annuity in this group, multiply the difference
25 between the Annuity's Accumulation Value as of the date of the full surrender and the
26 applicable Surrender Charge by the Enhancement Percentage Rate.³

27
28 ³ Under the Settlement, any settlement checks that are not cashed within 180 days after
issuance will be paid in *cy pres*. (Ex. 1 at Section IV.B.3.) The parties have agreed to
designate the Congress of California Seniors as the *cy pres* beneficiary.

1 **2. Active policies: Annuitization Bonus.**

2 A Settlement Class Member who has an active Annuity, and Annuitizes the policy
3 after the Benefit Determination Date selecting a life annuitization with a 10-year, 15-year,
4 or 20-year guaranteed period will automatically receive an Annuitization Bonus. The
5 Annuitization Bonus directly enhances the value of the Settlement Class Members'
6 Annuities. If the policy is Annuitized (meaning that payments will continue for a
7 guaranteed period of at least 10 years and thereafter for the Class Member's life), Midland
8 will increase the Accumulation Value of the Annuity by the amount of the applicable
9 Annuitization Bonus. The increased Accumulation Value will be used to determine the
10 amount of the periodic annuity payments.

11 The Annuitization Bonus will be an amount equal to a percentage of the Annuity's
12 Accumulation Value on the date of Annuitization, and the applicable percentage will be
13 determined by the duration of the Annuity, as set forth in the following table:

<u>Policy Year</u>	<u>Bonus Percentage</u>
Up to and including 9th year	4.3%
10	5.4%
11	6.5%
12	7.6%
13	8.7%
14	9.8%
15	10.9%
16+	12%

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23 (Ex. 1 at Section IV.C.2.)

24 **3. Enhanced Annuity Payments: previously annuitized policies.**

25 If a Settlement Class Member has Annuitized his or her Annuity before the Benefit
26 Determination Date, then each remaining Annuity Payment paid after the Benefit
27 Determination Date will be increased by 1% relative to the amount scheduled to be paid
28 absent the Settlement benefits.

1 **C. Class notice.**

2 The Parties agree that the Class Administrator shall act as the Settlement
3 Administrator and provide notice to the Settlement Class Members, and assist in
4 implementing the terms of the Agreement. (Ex. 1 at Section V.C.) The Parties agree that
5 the Settlement Administrator shall send to each Settlement Class Member by first-class
6 mail, postage prepaid, the Class Notice attached as Exhibit A to the Agreement, no later
7 than 21 days after the Court enters the Preliminary Approval Order. (*Id.* at Section V.A.)

8 **D. Release and waiver.**

9 It is the Parties' intent to forever settle and resolve this Action through the
10 Settlement. Accordingly, Plaintiff and all Settlement Class Members who choose not to be
11 excluded agree to a full and final release of all claims that arise out of or could have been
12 raised in this Action. This includes: (a) the offering of any advice in any matter related to
13 the Annuities; (b) the design, marketing, solicitation, sale, appropriateness, or
14 administration of the Annuities; (c) any disclosures or advertising related to the Annuities,
15 whether written or oral; (d) non-compliance with statutory and regulatory requirements;
16 (e) the computation crediting of interest to policy accounts; and (f) the calculation and
17 availability of any accumulation or surrender values, or annuity payments, or the exercise
18 of any rights under the Annuities. (Ex. 1 at Section VIII.A.)

19 Without limiting the foregoing, Released Claims also includes, but are not limited
20 to, all claims asserted in the Action or that could have been asserted against Midland in
21 any court, arbitration panel, or regulatory or administrative agency based on or related to
22 facts alleged in any of the complaints filed in this Action, whether or not brought directly,
23 indirectly, on a representative basis, or otherwise. (*Id.*)

24 The Agreement also provides that Plaintiffs and the Settlement Class Members
25 expressly waive any and all rights and benefits conferred under California Civil Code
26 section 1542. (*Id.* at Section VIII.C.)

27 ///

28 ///

1 **E. Appointment of class representatives and class counsel.**

2 The Agreement contemplates that the Court designate Plaintiffs Rosalie Vaccarino
3 and David Lee Tegen as class representatives of the Settlement Class. (Ex. 1 at Section
4 II.A.18.) The Court previously found that Plaintiffs were adequate representatives in its
5 June 17, 2013 order. (Dkt. No. 239 at 15-16.)

6 The Agreement also contemplates the appointment of Gianelli & Morris and the
7 Law Offices of Ronald A. Marron as Class Counsel. (Ex. 1 at Section II.A.15.) The Court
8 previously found that Gianelli & Morris and the Law Offices of Ronald A. Marron were
9 adequate to represent the class. (Dkt. No. 239 at 15-16.)

10 Nothing has changed since the June 17, 2013 order to warrant a contrary conclusion
11 now.

12 **F. Payment of attorneys' fees and expenses and class representative service**
13 **awards.**

14 If the Court approves the Settlement, Plaintiffs' counsel will apply for an award of
15 attorneys' fees and costs. Midland agrees to pay Plaintiffs' counsel no more than
16 \$5,850,000 as an award of attorneys' fees and \$622,000 as an award of costs incurred in
17 prosecuting this case, subject to Court approval. (Ex. 1 at Section IX.B.)

18 The class representatives will also apply for service award payments in the amount
19 of \$15,000 each (for a total of \$30,000) for their work as class representatives on behalf of
20 the Settlement Class. (*Id.* at Section IX.A.)

21 **IV. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY**
22 **APPROVAL**

23 **A. The Settlement is fair, adequate, and reasonable and falls within the**
24 **range of final approval.**

25 So long as there are no indicia of collusion or unfairness among the negotiating
26 parties, strong judicial policy favors settlement of class actions. *Class Plaintiffs v.*
27 *Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). Settlements are particularly favored "in class
28 actions and other complex cases where substantial judicial resources can be conserved by
avoiding formal litigation." *In re NVIDIA Corp. Derivative Litig.*, 2008 WL 5382544 at *2

1 (N.D. Cal. 2008), *quoting*, *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55
2 F.3d 768, 784 (3d Cir. 1995)).

3 The “universally applied standard” for approval of a proposed class action
4 settlement under Rule 23(e) is “whether the settlement is fundamentally fair, adequate, and
5 reasonable.” *Class Plaintiffs, supra*, 955 F.2d at 1276, 1291. The factors for making this
6 determination include: (1) the strength of the plaintiffs’ case; (2) the risk, expense,
7 complexity, and likely duration of further litigation; (3) the risk of maintaining class action
8 status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery
9 completed and the stage of the proceedings; (6) the experience and views of counsel; (7)
10 the reaction of the class members to the proposed settlement. *Hanlon v. Chrysler Corp.*,
11 150 F.3d 1011, 1026 (9th Cir. 1988); *Class Plaintiffs, supra*, 955 F.2d at 1291.

12 At the preliminary approval stage, the court’s inquiry is whether there is a
13 reasonable possibility of final approval under this standard. If a proposed settlement falls
14 within the range of possible final approval and does not suffer from any obvious
15 deficiency or reason to doubt its fairness (e.g., unjustifiable preferential treatment of class
16 representatives or some segment of the defined class, excessive compensation for attorneys
17 at the expense of the class, etc.), a court should generally grant preliminary approval and
18 direct that notice of the settlement and fairness hearing should be disseminated. Newberg
19 & Conte, *Newberg on Class Actions, supra*, § 11.25, pp. 38-39, *citing Manual for Complex*
20 *Litigation 3d* (1997) § 30. This is a minimal threshold. *See, e.g., Satchell v. Fed. Express*
21 *Corp.*, 2007 WL 111410 (N.D. Cal. 2007) (granting preliminary approval after finding
22 proposed settlement was non-collusive, had no obvious defects, and was within range of
23 possible settlement approval).

24 Here, the proposed Settlement satisfies the standard for preliminary approval, as
25 there is no question about its fairness, adequacy, or reasonableness, placing it squarely
26 within the range of possible approval.

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1 **1. The Settlement is the product of informed, non-collusive**
2 **negotiations.**

3 The Court is familiar with the litigation history of this Action. From the outset,
4 motion practice has been extensive, with no less than three motions to dismiss having been
5 heard. (Dkt. Nos. 7, 55, 90.) The class certification process was no less intensive.
6 Spanning nearly a year and a half, two class certification motions were filed, which
7 spawned related motions to strike and evidentiary challenges. (Dkt. Nos. 130, 251, 274,
8 312, 371, 372.) Discovery has been vigorous and contentious, resulting in numerous
9 discovery proceedings and the production of more than 55,000 pages of documents and 28
10 depositions. And each side has amassed substantial factual and expert testimony in support
11 of their positions, as reflected on the Court’s docket. As a result, the Parties have had
12 ample opportunity to evaluate the respective strengths and weaknesses of the Action.

13 Beyond the duration and intensity of the Action, the mediation and subsequent
14 settlement negotiations demonstrate the absence of any collusion. After the March 13,
15 2014 mediation before the Honorable Ronald M. Sabraw (Ret.), where the Parties
16 negotiated the basic terms of the Settlement terms, the Parties engaged in numerous
17 discussions to draft the actual terms of the Settlement over the course of many weeks.
18 *Adams v. Inter-Con Sec. Sys., Inc.*, 2007 WL 3225466 at *3 (N.D. Cal. 2007) (“The
19 assistance of an experienced mediator in the settlement process confirms that the
20 settlement is non-collusive.”); *In re Indep. Energy Holdings PLC*, 2003 WL 22244676 at
21 *4 (S.D.N.Y. 2003) (“[T]he fact that the Settlement was reached after exhaustive arm's-
22 length negotiations, with the assistance of a private mediator experienced in complex
23 litigation, is further proof that it is fair and reasonable.”). The Settlement is the product of
24 good faith, arms-length negotiations.

25 **2. The proposed Settlement has “no obvious deficiencies.”**

26 The proposed Settlement “has no obvious deficiencies.” *Young v. Polo Retail*, 2006
27 WL 3050861 at *5 (N.D. Cal. 2006). To the contrary, as described in detail below, the
28 Settlement favorably compares to other settlements of similar claims, yet is structured to

1 address Plaintiffs’ concerns about Defendant’s annuities—providing valuable economic
2 benefits, tailored to the circumstances of Settlement Class Members, to remediate those
3 alleged shortcomings.

4 **3. The proposed relief does not “grant preferential treatment to class**
5 **representatives.”**

6 Plaintiffs do not receive any unduly preferential treatment under the Settlement.
7 With the exception of a service award of \$15,000 each (for a total of \$30,000) to
8 compensate them for the time and effort devoted to prosecuting the common claims,
9 Plaintiffs are treated the same as every other member of the Settlement Class. *See, e.g., In*
10 *re CV Therapeutics, Inc. Sec. Litig.*, 2007 WL 1033478 at *2 (N.D. Cal. 2007) (awarding
11 \$26,000 to lead plaintiff).

12 Nor does the proposed Settlement provide for excessive compensation to Class
13 Counsel. The proposed Settlement contemplates a fee and expense award not to exceed
14 \$6,472,000—\$5,850,000 in fees and \$622,000 in expenses. Plaintiffs will demonstrate at
15 the Fairness Hearing that the requested \$6,472,000 fee and expense award is reasonable in
16 light of the lodestar fees and expenses incurred to date by Plaintiffs’ counsel. The
17 proposed award is especially reasonable in that it encompasses all future post-approval
18 work that Plaintiffs’ counsel must perform to effectuate the Settlement, such as responding
19 to class member inquiries, objections, or any appeals.

20 As the record will demonstrate, Plaintiffs’ requested fee and expense award is
21 appropriate and reasonable in light of the time, effort, and resources expended to resolve
22 this Action and the substantial benefits that Plaintiffs’ counsel will have achieved for the
23 benefit of the Settlement Class.

24 **4. The proposed relief is within the “range of possible approval.”**

25 The proposed Settlement also falls well within the “range of possible approval,” as it
26 provides carefully tailored economic benefits to all Settlement Class Members without the
27 risk and delays of continued litigation, trial and, appeal, and without the burden of having
28 to claim in to receive the benefits. The proposed relief offered under the Settlement

1 specifically addresses Defendant's alleged deceptive practices, including its alleged failure
2 to disclose certain purported costs of the Annuities and its alleged use of a product spread
3 to recover those purported costs. The proposed Settlement also addresses the surrender
4 penalties associated with the Annuities. Settlement Class Members will be able to receive
5 settlement relief through the Surrender-Related Payments, Annuitization Bonus, and
6 Enhanced Annuity Payment.

7 The proposed Settlement here is similar in structure to the class action settlements
8 approved in *In re Midland Nat'l Life Ins. Co. Annuity Sales Practices Litig.*, MDL No. 07-
9 1825 CAS(MANx) (C.D. Cal.) ("MDL Action") (Dkt. No. 463), *In re American Equity*
10 *Annuity Practices and Sales Litig.*, 05-CV-6735 CAS(MANx) (C.D. Cal.) (Dkt. No. 251),
11 and *In re National Western Insurance Deferred Annuities Litig.*, 05-CV-1018 GPC(WVG)
12 (S.D. Cal.) (Dkt. No. 429) (all of which involved the sale of deferred annuities and similar
13 allegations regarding cost-shifting and unenforceable surrender penalties) and contains
14 more advantageous provisions. No claims process or claim form is required for Surrender-
15 Related Payments, the total Surrender-Related Payments is higher per capita, and the
16 Annuitization Bonus is higher. (Ex. 1 at Section IV.B. and C.)

17 Importantly, the proposed Settlement recognizes the inherent risks, costs, and delay
18 associated with the continued prosecution of this complex Action. If this Action were to
19 proceed to trial, there is no guarantee against a defense verdict. Even if a judgment were
20 obtained against Midland at trial, the recovery might be of no greater value to the Class
21 and may even be substantially less valuable than the proposed Settlement. And even if
22 Plaintiffs ultimately prevailed, it could be years before the Settlement Class received any
23 recovery, given the likelihood of appeals. Moreover, in negotiating the proposed
24 Settlement, Plaintiffs were mindful of Midland's contractual obligations to its existing
25 policyholders. The proposed Settlement is the best vehicle to assure Settlement Class
26 Members receive valuable relief in a prompt and efficient manner.

27 The Parties have worked long and hard to achieve a comprehensive settlement that
28 provides valuable and far-reaching benefits for the Settlement Class. There is no reason to

1 doubt the fairness, adequacy, and reasonableness of the proposed Settlement, which amply
2 falls within the range of possible approval.

3 **B. The Court should conditionally certify the Settlement Class.**

4 The Settlement Class is defined on page 9 of the Settlement Agreement and includes
5 certain Owners of seven Midland annuities (Bonus 5, Bonus 10, Bonus 11, Legacy Bonus
6 5, Legacy Select, Legacy Bonus 11, and Veridian Plus) issued in California to purchasers
7 under age 65. It excludes those owners of an Annuity for which a death benefit became
8 payable and the full Accumulation Value was paid.

9 The Settlement Class meets all the criteria for certification of a settlement class
10 under *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997). The Settlement Class
11 should thus be conditionally certified under Federal Rules of Civil Procedure 23(a) and
12 23(b)(3).⁴

13 **1. The requirements of Rule 23(a) are met.**

14 **a. Rule 23(a)(1) is satisfied.**

15 Rule 23(a)(1) requires that a class be sufficiently numerous such “that joinder of all
16 members is impractical.” The Settlement Class encompasses approximately 18,000
17 annuity policies, which satisfies the impracticability standard. Dkt. No. 239 at 9; *see, e.g.*,
18 *Zhu v. Fujitsu Group 401(K) Plan*, 2004 WL 3252573 at *5 (N.D. Cal. 2004) (class of
19 approximately 139 members sufficient to meet numerosity requirement); *In re Emulex*
20 *Corp. Sec. Litig.*, 210 F.R.D. 717, 719 (C.D. Cal. 2002); *In re Adobe Sys., Inc. Sec. Litig.*,
21 139 F.R.D. 150, 153 n.4 (N.D. Cal. 1991) (numerosity requirement clearly satisfied by
22 allegation that “hundreds if not thousands” of class members traded Adobe securities
23 during class period).

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26 ⁴ As stated, on February 12, 2014, the Court certified the breach of contract claims as to
27 the recoupment, surrender penalty, and interest adjustment theories, the “unlawful
28 prong” of the Unfair Competition Law claim on the surrender penalty theory, and the
“unfair prong” claim on the interest adjustment theory. (Dkt. No. 389.) However, the
settlement occurred before notice was disseminated to the class.

1 **b. Rule 23(a)(2) is satisfied.**

2 Commonality is readily satisfied because Plaintiffs’ claims are based on an alleged
3 common course of conduct by Midland to sell its deferred annuities using standardized
4 written sales materials. Dkt. No. 239 at 9-11; *see McPhail v. First Command Fin.*
5 *Planning, Inc.*, 247 F.R.D. 598, 608 (S.D. Cal.) (“The Ninth Circuit applies a ‘common
6 course of conduct’ test to determine whether to certify a class in a fraud case.”), *citing*
7 *Blackie v. Barrack*, 524 F.2d 891, 903-04 (9th Cir. 1975); *West-ways World Travel, Inc. v.*
8 *AMR Corp.*, 218 F.R.D. 223, 238-39 (C.D. Cal. 2003) (common questions include whether
9 “the common omissions and misrepresentations made by the [defendants] were material”).

10 **c. Rule 23(a)(3) is satisfied.**

11 The typicality requirement is easily met because Plaintiffs and the members of the
12 proposed Settlement Class assert precisely the same claims, all arising from the alleged
13 overarching scheme. Dkt. No. 239 at 11-14; *see McPhail, supra*, 247 F.R.D. at 610 (“The
14 same sales pitch, strategy, and scheme that injured the named plaintiffs likewise injured
15 the absent class members.”); *Schlagal v. Learning Tree Int’l*, 1999 WL 672306 at *5 (C.D.
16 Cal. 1999) (typicality met where the plaintiff’s claims “stem from the same event or course
17 of conduct as other class members’ claims and are based on the same legal theory as the
18 absent members”).

19 **d. Rule 23(a)(4) is satisfied.**

20 Rule 23(a)(4) requires that “the representative parties will fairly and adequately
21 protect the interests of the class.” In the Ninth Circuit, Rule 23(a)(4) is satisfied where: (i)
22 counsel for the class is qualified and competent to vigorously prosecute the action; and (ii)
23 the interests of the proposed class representatives are not antagonistic to the interests of the
24 Class. *See, e.g., Staton v. Boeing*, 327 F.3d 938, 957 (9th Cir. 2003). The requirements of
25 Rule 23(a)(4) are plainly met in this Action.

26 First, Plaintiffs’ counsel are qualified and experienced in class action litigation and
27 have performed extensive work to date in identifying and investigating potential claims in
28 this Action, pursuing extensive discovery, successfully obtaining class certification, and

1 successfully mediating and negotiating the proposed Settlement. *Emulex, supra*, 210
2 F.R.D. at 720 (court evaluating adequacy of counsel's representation may examine “the
3 attorneys’ professional qualifications, skill, experience, and resources ... [and] the
4 attorneys’ demonstrated performance in the suit itself”); Dkt. No. 239 at 15-16.

5 Second, there is no conflict between Plaintiffs’ interests and the interests of the
6 Settlement Class Members. Plaintiffs and the Class Members assert the same legal claims
7 and their alleged losses arise out of the same alleged course of conduct by Defendant
8 during the Settlement class period, thereby rendering them adequate representatives. (Dkt.
9 No. 239 at 15-16.)

10 **2. The requirements of Rule 23(b)(3) are met.**

11 The Court may certify a class if it determines that: (1) questions of law or fact
12 common to the members of the class predominate over any questions affecting only
13 individual members; and (2) a class action is superior to other available methods for the
14 fair and efficient adjudication of the controversy.

15 **a. Common questions of law and fact predominate.**

16 This case falls within the category of cases traditionally found suitable for class
17 certification because Plaintiffs allege the existence of a pattern and practice of selling
18 deferred annuities using uniform written sales materials that gives rise to classwide
19 damages. Dkt. No. 239 at 24-30; Dkt. No. 389 at 13, 21-22; *see Negrete v. Allianz Life Ins.*
20 *Co. of N. Am.*, 238 F.R.D. 482, 496 (C.D. Cal. 2006) (certifying annuity class action based
21 on misrepresentations in company's standardized sales materials); *Yokoyama v. Midland*
22 *National Life Ins. Co.*, 594 F.3d 1087, 1093-1094 (9th Cir. 2008) (reversing denial of class
23 certification in case involving sale of deferred annuities because common questions
24 predominated, as claims were based on written marketing materials, not agents’ oral
25 presentations).

26 **b. A class action is superior to individual actions.**

27 Superiority is demonstrated where “classwide litigation of common issues will
28 reduce litigation costs and promote greater efficiency.” *Valentino v. Carter-Wallace, Inc.*,

1 97 F.3d 1227, 1234 (9th Cir. 1996). Rule 23(b)(3) sets forth factors for determining
2 whether “a class action is superior to other available methods for fairly and efficiently
3 adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). As the Ninth Circuit explained in
4 *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1190 (9th Cir. 2001), “consideration
5 of these factors requires the court to focus on the efficiency and economy elements of the
6 class action so that cases allowed under subdivision (b)(3) are those that can be
7 adjudicated most profitably on a representative basis.”

8 Three of Rule 23(b)(3)’s four “superiority” factors weigh heavily in favor of class
9 certification here.⁵ Liability in this Action turns on whether Midland engaged in a common
10 course of to sell its deferred annuities. As demonstrated by the dearth of individual
11 lawsuits, it is neither economically feasible nor judicially efficient for thousands of
12 purchasers to pursue their claims individually against Midland. Dkt. No. 239 at 30-31; *see*
13 *GMC Pick-Up Truck, supra*, 55 F.3d at 784.

14 Accordingly, the proposed Settlement of the Action on a classwide basis is a fair
15 and efficient method to resolve the Settlement Class Members’ claims without burdening
16 the judiciary system with throngs of duplicative lawsuits.

17 **c. The Court should appoint Plaintiffs’ counsel as class counsel.**

18 Rule 23(g)(1) requires the Court to appoint counsel to represent the interests of the
19 class. *In re Rubber Chems. Antitrust Litig.*, 232 F.R.D. 346, 355 (N.D. Cal. 2005). For the
20 reasons stated above in connection with the adequacy requirements of Rule 23(a)(4), and
21 as has been demonstrated thus far in this Action, the law firms retained by Plaintiffs to
22 prosecute this class action are well equipped to vigorously, competently, and efficiently
23 represent the proposed Settlement Class. The Court should thus appoint Gianelli & Morris
24 and the Law Offices of Ronald A. Marron as counsel for the Settlement Class.

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27 _____
28 ⁵ Manageability under Rule 23(b)(3)(D) is not relevant in the settlement context.
Amchem, supra, 521 U.S. at 593.

1 **d. The proposed class notice satisfies Rule 23 and all due**
2 **process requirements.**

3 Plaintiffs request that mailed notice be given in the form of the Class Notice,
4 attached as Exhibit A to the Agreement. Notice to the Class in the form and in the manner
5 set forth in the proposed notice will fulfill any due process requirements that may apply; it
6 complies with the Federal Rules of Civil Procedure; and it alerts and informs Settlement
7 Class Members of the Settlement and their opportunity to appear and be heard at the
8 Fairness Hearing.

9 Notice must be “reasonably calculated, under all the circumstances, to apprise
10 interested parties of the pendency of the action and afford them an opportunity to present
11 their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314
12 (1950). Plaintiffs here propose to give notice by first-class mail, addressed to all
13 Settlement Class Members who can reasonably be identified and located through
14 Midland’s records (as updated through the National Change of Address database and
15 Social Security number searches, as necessary). In addition, the Parties will make
16 information about the Settlement, including the Notice, the Preliminary Approval Order,
17 and other pertinent documents, available via a dedicated website. Courts have regularly
18 approved similar notice arrangements. *See, e.g., HCL Partners Ltd. Partnership v. Leap*
19 *Wireless Int’l, Inc.*, 2010 WL 4156342 at *3 (S.D. Cal. 2010) (direct mailing of notice,
20 along with posting settlement information on administrator’s website, provides due and
21 adequate notice). The Parties’ notice process, which is intended to give all Settlement
22 Class Members direct notice of the Settlement, is reasonably calculated and satisfies all
23 due process requirements.

24 The content of the Class Notice also meets all of the requirements of Rule 23(c).
25 The Class Notice “clearly and concisely state[s] in plain, easily understood language,” in
26 accordance with Rule 23(c)(2)(B): the nature of the Action; the definition of the class
27 certified; the class claims, issues, and defenses; that Settlement Class Members may
28 appear at the Fairness Hearing through an attorney at their own expense; that the Court
will exclude from the Class any Settlement Class Member who requests exclusion; the

1 time and manner for requesting exclusion; and the binding effect of a class judgment on
2 Settlement Class Members under Rule 23(c)(3). Fed. R. Civ. P. 23(c)(2)(B).

3 The Class Notice also describes the terms of the Settlement, the considerations that
4 caused Plaintiffs' counsel to conclude that the Settlement is fair and adequate, the release
5 of claims, the maximum class counsel fees and expenses that will be sought, the procedure
6 for objecting to the Settlement, and the date and place of the Fairness Hearing. In short, the
7 Class Notice will fairly apprise Settlement Class Members of the Settlement and their
8 options with respect thereto.

9 **V. CONCLUSION**

10 For the reasons set forth above, Plaintiffs respectfully request that the Court: (1)
11 preliminarily approve the Settlement; (2) conditionally certify the Settlement Class; (3)
12 direct dissemination of the Class Notice of the Settlement and Fairness Hearing to the
13 members of the Settlement Class; and (4) schedule the Fairness Hearing for September 22,
14 2014 (or as soon thereafter as the Court is available) to consider whether to grant final
15 approval of the Settlement, and the application by Class Counsel for an award of attorneys'
16 fees and expenses. In addition, in connection with the approval of the Settlement and Class
17 Notice, the Parties request approval of the following schedule:

18 <u>Event</u>	<u>Event Date</u>
19 Mailing of the Class Notice	21 days after entry of the Preliminary Approval Order
20 21 Petition for Class Counsel Payment and Awards	24 days after the mailing of the Service Class Notice
22 Requests for Exclusion (opt outs) must be postmarked and mailed to the Administrator	45 days after the mailing of the Class Notice
23 24 Objections and Requests to Be Heard at the Fairness Hearing must be filed with the Court and copies mailed to counsel for the Parties	45 days after the mailing of the Class Notice
25 26 27 Plaintiffs file with the Court a notice specifying those who have objected, requested exclusion, and requested to be heard at the Fairness Hearing	60 days after mailing of the Class Notice
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Filing of the Motion for Final Approval

Three weeks before the Fairness Hearing

Fairness Hearing

September 22, 2014 (or as soon thereafter as the Court is available)

DATED: May 15, 2014

GIANELLI & MORRIS
LAW OFFICES OF RONALD A. MARRON

By:

/s/ July C. Pae
ROBERT S. GIANELLI
JOSHUA S. DAVIS
JULLY C. PAE
Attorneys for Plaintiffs

EXHIBIT 1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ROSALIE VACCARINO AND DAVID LEE)	CASE NO.: 11 CV-5858-CAS(MANx)
TEGEN, on behalf of themselves and all)	
others similarly situated;)	Hon. Christina A. Snyder
)	
Plaintiffs,)	
v.)	SETTLEMENT AGREEMENT
)	
MIDLAND NATIONAL LIFE INSURANCE)	
COMPANY; and DOES 1-100, Inclusive,)	
)	
Defendants.)	
_____)	

IT IS HEREBY STIPULATED AND AGREED, by, between, and among Rosalie Vaccarino and David Lee Tegen, individually and on behalf of the Class defined in this agreement (collectively, "Plaintiffs"), and Midland National Life Insurance Company (with its parents, subsidiary, affiliate, predecessor and successor entities, collectively, "Midland" or "Defendant"), through their respective counsel, that the proceedings in the United States District Court for the Central District of California, Western Division, captioned, *Vaccarino v. Midland National Life Ins. Co.*, 11-CV-05858 CAS (MANx) (the "Action"), and matters raised by and related to the Action, are settled fully and finally, compromised, and dismissed on the merits, and with prejudice, on the terms and conditions set forth in this Agreement and the attached exhibits, subject to the occurrences set forth that permit Plaintiffs or Midland to terminate this Settlement, as well as the approval of the Court and entry of judgment.

I. INTRODUCTION

A. The Action and Underlying Allegations

On June 17, 2011, Plaintiff Rosalie Vaccarino filed a class action lawsuit in the Superior Court of the State of California, County of Los Angeles, entitled, *Vaccarino v. Midland National Life Ins. Co.*, Case No. BC463793. On July 15, 2011, Midland removed the case to the United States District Court for the Central District of California, Western Division and moved to dismiss the complaint, and the motion was granted. Plaintiff Vaccarino filed a first amended complaint on December 14, 2011, to which Midland, again, moved to dismiss.

On January 13, 2012, Plaintiff Vaccarino filed a second amended complaint adding David Lee Tegen as a co-plaintiff. After Midland's second motion to dismiss was granted in part, Plaintiffs Vaccarino and Tegen filed the operative third amended complaint on May 3, 2012.

Plaintiffs' third amended complaint makes allegations regarding various Midland fixed deferred annuity products sold in California and seeks certification of a class of California residents age 64 and under at the time of purchase and a subclass of purchasers age 60 to 64 at the time of purchase. Plaintiffs alleged, *inter alia*, that Midland made misrepresentations of "bonuses" and "growth" with respect to its products but failed to disclose that Midland shifted the cost of the bonuses and high sales commissions back to purchasers through lower interest and index credits over time. Plaintiffs further alleged that Midland failed to comply with surrender charge disclosure requirements under California law, Insurance Code section 10127.13, for a subclass of purchasers ages 60-64, and that the policies' Interest Adjustment feature was "indecipherable" and amounted to an unenforceable surrender charge. Plaintiffs asserted causes of action for violation of the Unfair Competition Law (California Business &

Professions Code section 17200 et seq., hereinafter, “UCL”), fraud, breach of contract, breach of the implied covenant of good faith and fair dealing, and declaratory relief.

Plaintiffs sought damages and restitution in connection with the bonus and sales commissions, surrender charges, and Interest Adjustments, plus legal interest, punitive damages, and legal fees and costs. The lawsuit also sought injunctive relief limiting or precluding Midland from continuing to engage in the alleged practices.

Midland denies all of the allegations and any liability to Plaintiffs. Midland has asserted numerous legal and factual defenses to the Action. Midland contends, among other things, that its annuity products are lawful and beneficial and provided the promised benefits to Plaintiffs. Midland contends that Plaintiffs received adequate notice of any applicable surrender charges and Interest Adjustments. Midland also contends that its written disclosures and, in most instances, oral disclosures by independent agents, further informed Plaintiffs of any applicable surrender charges and the manner in which any Interest Adjustment would affect a surrender or partial withdrawal. Midland further contends that Plaintiffs Vaccarino and Tegen’s claims are barred by the statute of limitations. Midland denies that it improperly lowers interest credits and that it failed to comply with the applicable law regarding interest crediting, premium bonuses, or agent compensation and related disclosures. Midland also denies that any claims asserted in this case may properly be adjudicated and tried on a classwide basis pursuant to Rule 23 of the Federal Rules of Civil Procedure.

On September 24, 2012, Plaintiffs Vaccarino and Tegen filed a motion for class certification with respect to seven Midland products, to which Midland filed its opposition on December 5, 2012. As a result of numerous discovery disputes, the briefing schedule on the certification motion was extended. Midland was also granted leave to file a supplemental

opposition, which it filed on April 29, 2013. Plaintiffs Vaccarino and Tegen filed a reply brief on May 24, 2013. The Court heard the certification motion on June 17, 2013. While the Court stated that Rule 23 requirements as to liability had been met based on the record at that time, it denied Plaintiffs' motion without prejudice on the ground that Plaintiffs had not presented a damages model tethered to their theory of liability.

On July 24, 2013, Plaintiffs Vaccarino and Tegen filed a renewed certification motion. On September 5, 2013, Midland filed its opposition to the renewed motion, introducing evidence of a survey conducted by Kent Van Liere, along with a motion to exclude the declaration of Plaintiffs' damages expert, Jeffrey Dellinger. Plaintiffs Vaccarino and Tegen filed a reply brief on November 4, 2013, which included an expert declaration (from Stanley Presser) to respond to Mr. Van Liere's survey, and, on November 8, filed an opposition to the motion to exclude the Dellinger declaration. On December 16, 2013, Midland filed a reply to the motion to exclude the Dellinger declaration. Plaintiffs Vaccarino and Tegen filed a motion to strike arguments and evidence in Midland's reply to the motion to exclude the Dellinger declaration as an improper sur-reply to the renewed certification motion. Midland filed a motion to exclude the Presser declaration. The parties filed their oppositions to these motions, after which the Court ordered the cessation of further briefing on any of the motions.

On February 3, 2014, the Court held a hearing on the renewed certification and related motions. The Court took the matter under submission and, on February 12, 2014, issued an order, which was amended on February 20, 2014. Regarding the 64 and under class, the Court certified claims that Midland had breached the contracts by recouping bonuses and agent commissions, but declined to certify Plaintiffs' fraud and UCL "fraud prong" claims as to the recoupment theory. The Court also certified Plaintiffs' claims that Midland breached the

contracts and violated the UCL's "unfair" prong in connection with the Interest Adjustment provision. As to the 60 to 64 subclass, the Court certified Plaintiffs' claims that Midland breached the contracts and violated the UCL's "unlawful" prong by failing to comply with Insurance Code Section 10127.13. The Court denied the parties' other motions.

On February 26, Midland filed, pursuant to FRCP 23(f), a petition seeking review of the Court's class certification order. Plaintiffs filed their answer to the petition on March 11, 2014. Midland then filed a motion seeking leave to file a reply in support of its petition, and Plaintiffs filed an opposition to that motion. The petition was denied on April 10, 2014.

To accomplish the Settlement, the parties engaged in a mediation session on March 13, 2014 before the Honorable Ronald Sabraw (Ret.).

B. The Background of the Settlement

1. Plaintiffs' Position

During the course of this Action, Class Counsel claim to have reviewed more than 52,000 pages of documents and to have analyzed extensive data, and have taken the depositions of numerous Midland officers and employees and other third parties. Plaintiffs have also taken the depositions of Midland's expert witnesses and have retained and consulted with various experts concerning the merits of Plaintiffs' claims and Midland's defenses.

Based upon the discovery, investigation, and evaluation of the facts and the law, Plaintiffs and Class Counsel have agreed to settle the Action after considering such factors as (1) the benefits to the Class provided by this Settlement Agreement; (2) the risks and uncertainty of litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation; and (3) the desirability of consummating this Settlement Agreement in order to provide relief to the Class.

2. Midland's Position

Midland expressly denies any and all wrongdoing alleged in the pleadings and Plaintiffs' other filings, and does 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 it in the Action. Midland contends that Plaintiffs' allegations do not state a cause of action and are not sustainable as a matter of law. In addition, Midland contends that Plaintiffs would be unable to prove the elements of the causes of action at trial, and that this would be fatal to both individual and class claims. In this regard, Midland contends that it would be inappropriate to certify a litigation class in this Action, in part due to the manageability and superiority problems inherent in presenting the case in a trial involving thousands of individualized sales.

Nonetheless, Midland considers it desirable for this Action to be settled and dismissed because this Settlement will finally put Plaintiffs' claims and the underlying matters to rest. Midland is also entering into this Settlement Agreement to avoid the expense, burden, inconvenience, and inherent risk of litigation and the concomitant disruption of its business operations

II. DEFINITIONS

A. As used in this Agreement and the attached exhibits (which are incorporated by reference), the following terms have the following meanings, unless this Agreement specifically provides otherwise:

1. **"Accumulation Value"** means the accumulation value as defined in the Annuities owned by Class Members, which is the sum of the Fixed Account Value and the Index Account Value(s) as defined in the Annuities, as reflected in the business records of Midland as of the date such value is to be calculated.

2. **“Action”** means the above-captioned action, specifically, Rosalie Vaccarino and David Lee Tegen, on behalf of themselves and all others similarly situated, versus Midland National Life Insurance Company, United States District Court for the Central District of California, Case No. 11-CV-5858-CAS (MANx).

3. **“Active Deferred Annuity”** means any Annuity, as defined herein, that has not been surrendered in full or Annuitized.

4. **“Administrator”** means the Court-appointed, third-party agent or administrator to be retained jointly by the Parties to provide notice to the Class Members, administer the Claim Review Process, or otherwise assist in implementing the terms of this Agreement.

5. **“Agreement”** or **“this Agreement”** or **“Settlement Agreement”** means this Settlement Agreement and the exhibits attached hereto or incorporated herein, including any subsequent amendments and any exhibits to such amendments.

6. **“Annuity”** means a Midland fixed deferred annuity with the marketing name Bonus 5, Bonus 10, Bonus 11, Legacy Bonus 5, Legacy Select, Legacy Bonus 11, or Veridian Plus that was issued in California on a California policy form to at least one Owner who was under the age of 65 at the time of issue. For annuities purchased by non-natural persons or the trustee(s) for a trust, the age of the Annuitant (or younger Annuitant if there are joint Annuitants) at the time of issue will be used (instead of the owner’s age) to determine whether the product qualifies as an “Annuity.” Excluded from the definition of “Annuity” are policies (i) as to which a death benefit has been provided or is in process on or before the Benefit Determination Date, (ii) that were issued but not accepted or were returned to Midland as part of the exercise of the free-look provision in the annuity or were otherwise rescinded on or before

the Benefit Determination Date, (iii) that were surrendered in full without incurring any Surrender Charge on or before the Benefit Determination Date, (iv) that were Annuitized and the Annuity Payments have ceased on or before the Benefit Determination Date, (v) as to which claims were released pursuant to settlement of prior litigation, including without limitation *Peterman, et al. v. North American Company for Life and Health Insurance, et al.*, Case No. BC357194, Superior Court of the State of California for the County of Los Angeles, or *In re Midland National Life Insurance Company Annuity Sales Practices Litigation*, MDL 07-1825, U.S. District Court for the Central District of California, or otherwise, or (vi) as to which the rights and claims have been finally adjudicated in a court of law.

7. **“Annuity Payment”** means one of the periodic payments to be made by Midland following and in connection with the Annuitization of an Annuity.

8. **“Annuitant”** means a natural person upon whose life the amount and duration of Annuity Payments involving life contingencies depend with respect to an Annuity.

9. **“Annuitize”** means to convert the Accumulation Value or the Surrender Value of an Annuity into the right to receive periodic payments.

10. **“Annuitized”** means to have converted the Accumulation Value or the Surrender Value of an Annuity into the right to receive periodic payments.

11. **“Annuitization”** means the conversion of the Accumulation Value or the Surrender Value of an Annuity into the right to receive periodic payments.

12. **“Annuitization Bonus”** means the amount to be added to the Accumulation Value to determine the Annuity Payment amount in accordance with Section IV.C of this Agreement.

13. **“Benefit Determination Date”** means a date selected by Midland that is not more than thirty days after the Effective Date.

14. **“Class”** or **“Class Member”** or **“Class Members”** means and includes any current or most recent Owner (or joint Owners) of an Annuity, according to Midland’s policy administration system as of the Benefit Determination Date, who has not made a valid request for exclusion from this Settlement. **“Class,”** **“Class Member,”** and **“Class Members”** do not include an Owner of a particular Annuity who (a) is or was a member of the Board of Directors, or an officer, shareholder or employee, of Midland; (b) is an affiliate, legal representative, attorney, successor, or assign of Midland; (c) is a judge, justice, or judicial official presiding over the Action or is with the staff or immediate family of such judge, justice or official; or (d) is a person or entity hired to administer the terms of the Settlement. Any reference to **“Class”** or **“Class Member”** or **“Class Members”** with respect to a date before the Benefit Determination Date shall refer to those persons or trustees who would be Class Members if such date were the Benefit Determination Date.

15. **“Class Counsel”** means the law firms of Gianelli & Morris and the Law Offices of Ronald A. Marron.

16. **“Class Counsel Payment”** means the payment Midland agrees to make to Class Counsel in an amount approved by the Court, which shall not exceed \$5,850,000 for attorneys’ fees and \$622,000 for reimbursement of all reasonable expenses and costs incurred by Class Counsel in connection with the Action.

17. **“Class Notice”** means the notice provided to Class Members pursuant to this Agreement in the form attached hereto as Exhibit A.

18. **“Class Representatives”** mean Rosalie Vaccarino and David Lee Tegen.

19. **“Court”** means the United States District Court, Central District of California.

20. **“Effective Date”** means the date on which the Final Order and Judgment approving this Agreement becomes final for all purposes, including appeal. For purposes of this Agreement: (a) if no appeal is taken from the Final Order and Judgment, “Effective Date” shall be the date on which the time to appeal from the Final Order and Judgment has expired; or (b) if any appeal has been taken from the Final Order and Judgment, “Effective Date” means the date on which all appeals therefrom, including petitions for rehearing or reargument, petitions for rehearing *en banc* and petitions for *certiorari* or any other form of review, have been finally resolved by order, mandate or otherwise, in a manner that affirms the Final Order and Judgment; or (c) if the Parties agree in writing and the Court so orders, “Effective Date” can occur on any other agreed date.

21. **“Fairness Hearing”** means a hearing to be held on a date set by the Court, at which time the Court will make a final decision on whether to approve this Agreement as fair, reasonable, and adequate.

22. **“Final Order and Judgment”** means the Court’s order approving the Settlement and this Agreement that is substantially in the form attached hereto as Exhibit C, as described in Section XI of this Agreement.

23. **“Midland”** means Midland National Life Insurance Company.

24. **“Midland’s Counsel”** means Reed Smith LLP.

25. **“Net Surrender Charges”** means for any Annuity, the sum of the Net Surrender Charges for each partial withdrawal transaction and, if the Annuity has been fully surrendered, the Net Surrender Charges on the full surrender transaction, calculated pursuant to

the terms of the Annuity. The Net Surrender Charges for a partial withdrawal transaction equal the applicable Surrender Charges (expressed as a positive number) minus any positive Interest Adjustment, provided that if the positive interest adjustment is greater than the applicable surrender charges (expressed as a positive number), the Net Surrender Charges are zero. The Net Surrender Charges for a full surrender transaction equal the applicable Surrender Charges (expressed as a positive number) minus both (i) any positive Interest Adjustment and (ii) the amount, if any, by which the Minimum Guaranteed Cash Value exceeded the Surrender Value as computed without consideration of the Minimum Guaranteed Cash Value.

26. **“Owner”** means any person or trustee identified in Midland’s policy administration system as having an ownership interest in an Annuity (and shall include the trustee(s) of any trust in a case where the trust is identified in Midland’s policy administration system as the owner of the Annuity) as of the Benefit Determination Date or the last person or trustee identified as having an ownership interest in an Annuity prior to the Benefit Determination Date.

27. **“Parties”** means Plaintiffs and Midland, collectively.

28. **“Plaintiffs”** means Rosalie Vaccarino and David Lee Tegen.

29. **“Policy Year”** means one (1) plus the number of complete years since the date the Annuity of a Class Member was issued as stated in the Annuity.

30. **“Preliminary Approval Order”** means the order to be entered by the Court in substantially the form attached as Exhibit B preliminarily approving this Agreement, as described in Section XI of this Agreement.

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

32. **“Settlement”** means the transactions, rights, obligations, conditions, Release, and other matters contemplated by, described in, or provided by the Settlement Agreement in the aggregate.

33. **“Surrender Charge”** means the surrender charge applicable under the provisions of the Annuity owned by the Class Member. “Surrender Charge” does not include any interest adjustment or market value adjustment applicable under the provisions of any Annuity.

34. 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.

35. All references herein to sections, paragraphs, and exhibits refer to sections, paragraphs, and exhibits of and to this Agreement, unless otherwise expressly stated in the reference.

III. SETTLEMENT PROCESS

The dates for the events contemplated by this Settlement Agreement are as follows:

Event Date	Event
Within 30 days of delivery of fully executed Settlement Agreement	Filing of Motion for Preliminary Approval with Settlement Agreement as an Exhibit
Within 10 days after filing of the Settlement Agreement with the Motion for Preliminary Approval	Defendant to Mail CAFA notices to the US Attorney General and the insurance regulator for each state in which a Class Member resides
14 days after the filing of the Motion for Preliminary Approval	Hearing on Preliminary Approval

Within 7 days of entry of Preliminary Approval Order	Midland to collect data for list of names and addresses of Class Members
Within 14 days of entry of Preliminary Approval Order	Midland to provide list of names and address of Class Members to the Administrator
Within 21 days after entry of Preliminary Approval Order	Mailing of Class Notice
Within 24 days after the mailing of the Class Notice	Petition for Class Counsel Payment and Plaintiffs' Service Awards to be filed
45 days after mailing of Class Notice	Deadline for postmarking of exclusions, objections, and requests to be heard at the Fairness Hearing
Within 50 days after mailing of Class Notice	Administrator to provide all exclusions, objections, and requests to be heard at the Fairness Hearing to counsel for the Parties and to provide a declaration listing those who have objected or requested exclusion to counsel for the Parties
Within 60 days after mailing of Class Notice	Plaintiff to file notice specifying those who have objected or requested exclusion, together with the declaration of the Administrator
To be set by the Court, but not less than 108 days after entry of the Preliminary Approval Order	Fairness Hearing
Three weeks prior to the Fairness Hearing	Motion for Final Approval to be filed by Plaintiffs
Not more than 30 days after the Effective Date	Benefit Determination Date—Midland will compile data from its policy administration system to be used to determine Class Members and benefits that each Class Member will receive

45 days after the Benefit Determination Date	Last date for Midland to provide funds to Settlement Administrator to cover payment of Enhanced Surrender Payments and Surrender Charge Reduction Benefits, along with list of names, addresses, and amounts for each payee; last date for Midland to have adjusted Annuity Payments made after Benefit Determination Date as needed to reflect the Annuitization Bonus and Enhanced Annuity Payments; all as described below
55 days after the Benefit Determination Date	Administrator to mail Surrender Charge Reduction Benefits and Enhanced Surrender Payments
90 days after Benefit Determination Date	Administrator provides Interim Report to Midland and Class Counsel
180 days after Benefit Determination Date	Administrator provides Final Report to Midland and Class Counsel

IV. SETTLEMENT BENEFITS

A. Overview

The relief to be provided pursuant to this Agreement is specific to each of four categories of Annuities owned by Class Members: (i) Annuities with issue ages from 60 to 64 that have incurred Surrender Charges on or prior to the Benefit Determination Date; (ii) Annuities with issue ages from 0 to 59 that have been fully surrendered on or prior to the Benefit Determination Date; (iii) Annuities that are Active Deferred Annuities following the Benefits Determination Date; (iv) Annuities that have been annuitized on or prior to the Benefits Determination Date. Each Annuity in group (i) owned by a Class Member will receive a Surrender Charge Reduction Payment based on a formula set forth below. Each Annuity in group (ii) owned by a Class Member will receive an Enhanced Surrender Payment based on a formula set forth below. Each

Annuity in group (iii) owned by a Class Member will be eligible for an Annuitization Bonus as described below. Annuity Payments to Class Members owning Annuities in group (iv) will receive Enhanced Annuity Payments as described below.

If a Class Member falls into more than one of the above groups due to ownership of multiple Annuities, settlement benefit determinations will be based on the status and issue age of each separate Annuity. The issue age of an Annuity issued to joint owners will be deemed 60 to 64 if at least one owner was age 60 to 64 on the issue date. For Annuities issued to non-natural persons or trustees, the issue age will be deemed 60 to 64 if at least one Annuitant was age 60 to 64 on the issue date. If the issue age for an Annuity is not 60-64, then for purposes of determining which benefits apply, the issue age shall be 0-59. Annuities with issue ages from 60 to 64 that incurred Surrender Charges on partial surrenders on or prior to the Benefit Determination Date, but that have not been fully surrendered on or prior to that date, are eligible for relief under both category (i) and either category (iii) or (iv), as applicable.

Class Members will not be required to submit claim forms to obtain any relief provided under this Settlement. The settlement benefits described herein, however, will only be available for Class Members and will only apply to policies that are Annuities, as specifically defined in this Agreement.

B. Surrender-Related Payments. Midland will provide \$3.55 million for Surrender Charge Reduction Payments with respect to Annuities with issue ages from 60 to 64 owned by Class Members and will provide \$2.0 million for Enhanced Surrender Payments to Annuities with issue ages from 0 to 59 owned by Class Members, as set forth below. Under no circumstances will Midland's liability for surrender-related payments exceed \$5.55 million.

1. Annuities with issue ages from 60 to 64. Class Members who own Annuities with issue ages from 60 to 64 shall be entitled to a Surrender Charge Reduction Payment for any Surrender Charges incurred on any partial or full surrenders of such Annuities on or before the Benefit Determination Date. The amount of each such Class Member's Surrender Charge Reduction Payment shall be calculated as follows: a) arrive at a Refund Percentage Rate by dividing the amount of \$3.55 million by the amount of the total Net Surrender Charges incurred on or prior to the Benefits Determination Date on all Annuities with issue ages from 60 to 64 owned by Class Members; and b) multiply the Refund Percentage Rate by the Net Surrender Charges of the individual Class Member with respect to each Annuity with an issue age from 60 to 64 owned by that Class Member. In no event will Midland be responsible for more than \$3.55 million for Surrender Charge Reduction Payments in the aggregate.

2. Annuities with issue ages from 0 to 59. Class Members who own or owed Annuities with issue ages from 0 to 59 that were fully surrendered on or prior to the Benefit Determination Date shall be entitled to an Enhanced Surrender Payment as to such Annuities. The amount of each Class Member's Enhanced Surrender Payment will be calculated as follows: a) arrive at an Enhancement Percentage Rate by dividing the amount of \$2.0 million by the difference between the total amount of the Accumulation Values at the time of full surrender and the total amount of the Surrender Charges (as provided by the Annuity without consideration of the minimum guaranteed cash value on a full surrender) applied to the full surrender transaction for all Annuities with issue ages from 0 to 59 owned by Class Members that have been fully surrendered on or prior to the Benefit Determination Date; and b) for each Annuity owned by the

individual Class Member with an issue age from 0 to 59 that was fully surrendered on or before the Benefit Determination Date, multiply

(i) the Enhancement Percentage Rate by

(ii) the Annuity's Accumulation Value as of the date of the full surrender minus the Surrender Charge (as provided by the Annuity without consideration of the minimum cash surrender value on a full surrender) applied to the full surrender transaction.

In no event will Midland be responsible for more than \$2.0 million for payments to Class Members owning Annuities with issue ages from 0 to 59.

3. The Administrator shall mail checks to eligible Class Members for Surrender Charge Reduction Payments and Enhanced Surrender Payments no later than 55 days after the Effective Date. The funds remaining from any checks not cashed within 180 days of the date the checks are issued shall be paid in *cy pres* to an appropriate organization approved by the Court.

C. Annuitization Bonus

If an Annuity owned by a Class Member has not been fully surrendered on or prior to the Benefit Determination Date and the Class Member elects to Annuitize the Class Member's Annuity after the Benefit Determination Date with monthly, quarterly, or annual payments to be made for either a 10-year, 15-year, or 20-year certain period and thereafter for as long as the Annuitant is living (a "Qualifying Period"), an Annuitization Bonus will be provided with respect to that Annuity. The Settlement does not require Class Members to Annuitize their Annuities.

1. The Annuitization Bonus will not apply to any Accumulation Value attributable to premium added to an Annuity after filing of the motion for Preliminary Approval of the Agreement, as described in Section X. The Annuitization Bonus shall have no

effect unless a Class Member Annuitizes an Annuity after the Benefit Determination Date and the period over which payments are to be made is a Qualifying Period.

2. For each Active Deferred Annuity owned by a Class Member that is Annuitized for a Qualifying Period after the Benefit Determination Date, Midland will increase the Accumulation Value of each such Annuity by the amount of the applicable Annuitization Bonus, calculated at the time of Annuitization. Midland will determine the Annuity Payment Amount by using the increased Accumulation Value amount and the rates set forth in the table for the corresponding settlement option in the Annuity, or for factors not shown in the tables, rates determined by calculations consistent with those reflected in those tables. The Annuitization Bonus will be an amount equal to a percentage of the Annuity's Accumulation Value on the date of Annuitization, and the applicable percentage will be determined by the duration of the Annuity in question, as set forth in the following table:

Policy Year	Bonus Percentage
Up to and including the 9 th Year	4.3
10	5.4
11	6.5
12	7.6
13	8.7
14	9.8
15	10.9
16+	12

3. In the event that Midland, at any point in time, elects to provide non-guaranteed periodic payment terms with respect to Non-Class Annuity Products and such non-guaranteed payment terms would result in larger payment amounts than would be provided by the Annuitization Bonus, Midland shall provide such non-guaranteed payment terms with respect to Annuities that are Annuitized on the same dates, *i.e.*, Midland will also apply the more

favorable interest rates, mortality factors, and other terms and conditions to annuitization transactions involving Annuities. Any such non-guaranteed benefits will apply in lieu of, and not in addition to, any Annuitization Bonus that otherwise would apply pursuant to this Settlement. The Annuitization Bonus applies only to benefits computed using the rates contained in the Annuities for the computation of Annuity Payments. Midland may discontinue or change any practice with respect to non-guaranteed benefits at any time, but such discontinuation or change will not affect payments as to Annuities that have already been annuitized. For purposes of this paragraph, "Non-Class Annuity Products" means Bonus 5, Bonus 10, Bonus 11, Legacy Bonus 5, Legacy Select, Legacy Bonus 11, and Veridian Plus policies that are not Annuities as defined herein because they were not issued in California on a California policy form and/or were issued to an owner who was 65 or older at the time of issue.

4. When an Annuity is terminated by death on or after the Benefit Determination Date, the beneficiary or surviving spouse shall be entitled to elect to receive the death benefit as an annuity payable for a Qualifying Period and receive the Annuitization Bonus. Annuities that are continued by the surviving spouse of the Owner of an Annuity after a death benefit becomes payable on or after the Benefit Determination Date are also eligible to Annuitize with payment to be made for a Qualifying Period and to receive an Annuitization Bonus.

D. Enhanced Annuity Payments

If a Class Member Annuitizes or has Annuitized an Annuity on or before the Benefit Determination Date, then each Annuity Payment made after the Benefit Determination Date with respect to that Annuitized Annuity will be increased by 1% relative to the amount scheduled to be paid in the absence of this Settlement.

E. Adjustments in the Event of Implementation Delays

The parties recognize that implementing the Annuity Bonus and the Enhanced Annuity Payments in Midland's administrative systems following the Benefit Determination Date could take time. Accordingly, while certain Class Members will be eligible for the Annuity Bonus and Enhanced Annuity Payments following the Benefit Determination Date, Midland may not begin making Annuity Payments that reflect the Annuity Bonus and the Enhanced Annuity Payments until up to 45 days after the Benefit Determination Date. If the Annuity Bonus or Enhanced Annuity Payment benefit is not applied to any Annuity Payments made after the Benefit Determination Date to which it should have applied pursuant to this Settlement, Midland will, as soon as practicable, make a one-time additional payment to adjust for the difference between what was paid and the amount that should have been paid.

V. NOTICE TO THE CLASS AND COMMUNICATIONS WITH CLASS MEMBERS

A. Timing of Class Notice

No later than 21 days after entry of the Preliminary Approval Order, the Administrator will send a Class Notice to each Owner who would be a Class Member if eligibility for Settlement benefits were determined as of the date of the compilation of records from Midland's policy administration system for purposes of the mailing, rather than as of the Benefit Determination Date. Notice shall be mailed first-class mail, postage prepaid, to the last-known address supplied by Midland based on its records as of a date within 7 days after entry of the Preliminary Approval Order. Midland shall provide the list of potential Class Members to the Administrator within 14 days after entry of the Preliminary Approval Order.

B. Content of Class Notice

The Class Notice will be substantially in the form of Exhibit A attached to this Agreement, and no alteration may be made to the form of notice approved by the Court in the preliminary approval order without the consent of both parties.

C. Administrator

1. The Administrator shall:

- (a) verify the mailing list for the Class Notice prior to the mailing by using the National Change of Address database during the fourteen (14) day period prior to the date of the mailing;
- (b) prepare and mail the Class Notice;
- (c) process any mail returned as undeliverable with forwarding address information by re-mailing the Class Notice to the forwarding address or, if no forwarding address information is available, by conducting an advanced address search utilizing Social Security numbers and re-mailing the Class Notice to any forwarding address obtained.
- (d) receive requests for exclusion and objections, and provide copies of such items to the Parties' counsel;
- (e) receive any written correspondence or communication concerning the Settlement from persons or entities in the Class, provide copies of such correspondence to Parties' counsel, and send responses to such correspondence and communications as directed by the Parties' counsel;
- (f) arrange for, staff, and maintain a toll-free call center to respond to questions from persons or entities in the Class (in accordance with question-and-answer scripts

approved by the Parties' counsel), which shall be reasonably staffed during business hours to receive calls;

(g) make any additional mailings required by this Agreement;

(h) upon receipt of any requests for exclusion, objections to the Settlement, or requests to appear at the Fairness Hearing, immediately forward the request or objection to Class Counsel and Midland's Counsel;

(i) no later than 60 days after the mailing of the Class Notice, provide the Parties with information regarding all Class Members who have notified the Administrator that they plan to object to, or exclude themselves from, the Settlement or appear at the Fairness Hearing; and

(j) within 55 days following the Benefit Determination Date, mail checks for Surrender Charge Reduction Payments and Enhanced Surrender Payments to the eligible Class Members;

(k) contemporaneously with the distribution of the checks for the Surrender Charge Reduction Payments and Enhanced Surrender Payments, provide Midland evidence of such mailing;

(l) within 90 days after the Benefit Determination Date, provide Class Counsel and Midland with an interim report containing all data concerning the Surrender Charge Reduction Payments and Enhanced Surrender Payments provided to Class Members;

(m) within 180 days after the Benefit Determination Date, provide Class Counsel and Midland with a final analysis of the Surrender Charge Reduction Payments and Enhanced Surrender Payments provided to Class members, and identify those checks that have been presented and paid; and

(n) execute other tasks delegated to the Administrator under this Agreement or agreed to by the Parties' counsel.

2. The Parties' counsel and their respective designees shall be entitled to observe and monitor the performance of the Administrator.

3. The contract governing the engagement of the Administrator shall obligate each such Administrator to abide by the following performance standards:

(a) the Administrator shall accurately and neutrally describe, and shall train and instruct its employees and agents to accurately and neutrally describe, the provisions of this Agreement in communications with persons and entities in the Class;

(b) the Administrator, its employees, and agents may not make any statements to a Class Member that might reasonably be viewed as causing or helping to cause a Class Member to surrender his or her Annuity, and shall not advocate any form of benefit contemplated by this Agreement;

(c) the Administrator may not render any investment, insurance, or savings advice whatsoever;

(d) the Administrator shall provide prompt, accurate, and neutral responses to inquiries from the Parties' counsel;

(e) if, in the course of any communication with a person or entity in the Class, the person or entity requests that the Administrator or its agent or employee refer the communication to Class Counsel, or if the Administrator or its agent or employee determines that the Class Member is seeking legal advice, then the Administrator or its agent or employee shall promptly refer the inquiry to Class Counsel; and

(f) if, in the course of any communication with a person or entity in the Class, an agent or employee of the Administrator reasonably concludes that the person or entity is not satisfied with the information or assistance provided, the communication shall promptly be referred to a supervisor.

VI. REQUESTS FOR EXCLUSION

A. Any Class Member who wishes to be excluded from the Class must mail a written request for exclusion to the Administrator at the address provided in the Class Notice, postmarked no later than 45 days after the mailing of the Class Notice, or as the Court otherwise may direct, and specifying the Annuity or Annuities to be excluded.

B. The Administrator will forward copies of any written requests for exclusion to Class Counsel and Midland's Counsel immediately upon receipt, and shall provide Class Counsel and Midland's Counsel with a list of all Class Members who wish to be excluded no later than 60 days after the mailing of the Class Notice, or as the Court otherwise may direct.

C. A list reflecting all requests for exclusion shall be filed with the Court by the Administrator no later than 60 days after the mailing of the Class Notice, or as the Court may otherwise direct. Such list shall be filed under seal, be subject to the Court's Confidentiality Order, and served upon Class Counsel and Midland's Counsel by the Administrator.

D. Any Class Member who does not file a timely written request for exclusion with respect to an Annuity, as provided in this Section, shall be bound with respect to that Annuity by all subsequent proceedings, orders, and judgments in this Action, including, but not limited to, the Release, even if he or she has litigation pending or subsequently initiates litigation against Midland relating to that Annuity with respect to the Released Claims. To the extent practicable, the Administrator will use reasonable efforts to serve the Class Notice on counsel for Class

Members who subsequently initiate litigation, arbitration, or other proceedings against Midland relating to the Released Claims prior to the Effective Date.

E. If any one Owner of an Annuity excludes himself or herself from the Class with respect to that Annuity, pursuant to Section VI.A of this Agreement, all other Owners of that Annuity shall be deemed excluded from the Class with respect to that Annuity, and all rights and obligations with respect to that Annuity shall be unaffected by the Settlement Agreement.

F. A Class Member must either exclude, or not exclude, all Annuities in which the Class Member has an interest as an Owner. A Class Member may not exclude some, but not all, Annuities in which the Class Member has an interest as an Owner. If a Class Member submits a timely and otherwise complete request for exclusion that attempts to exclude some, but not all of the Annuities in which the Class Member has an interest as an Owner, all Annuities in which the Class Member has an interest will be deemed excluded from the Settlement.

VII. OBJECTIONS TO SETTLEMENT

A. Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed Settlement, or to the award of attorneys' fees and expenses may do so by filing a written objection with the Court, and delivering a copy to Class Counsel and Midland's Counsel at the addresses listed in Section XIII.I below. The objection must be filed with the Court and served on Parties' counsel no later than 45 days after the mailing of the Class Notice, or as the Court may otherwise direct. An objection that is not timely and properly made shall be forever barred. A person who excludes himself or herself from the Class is not a Class Member and may not object.

B. All objections must contain the following: (i) the objecting party's name, address, telephone number, social security number, and Annuity number(s); (ii) the factual basis and legal

grounds for the objection; (iii) any evidence or other information the objecting party wishes to offer in support of the objection; and (iv) the signature of the individual who is objecting.

C. Class Members may object to the Settlement either on their own or through an attorney retained at their own expense. Any Class Member who files and serves a notice of objection may appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's expense. However, if the Class Member intends to appear and be heard at the Fairness Hearing, either in person or through counsel, the notice of objection must include: (i) a written notice of the Class Member's or the Class Member's counsel's intent to appear at the Fairness Hearing; (ii) a detailed statement of the Class Member's objections to any matter before the Court; (iii) the grounds or reasons why Class Member wishes to appear and to be heard, either in person or through counsel; (iv) any documents and writings that the Class Member wishes the Court to consider; and (v) a statement of any prior class settlement objections made by such Class Member and any fee arrangements made with an attorney regarding any objections, including the objection to this Settlement.

D. Any Class Member who fails to comply with the provisions of Sections VII.A and VII.B above shall waive and forfeit any and all rights he or she may have to object, and shall be bound by all the terms of this Agreement and by all proceedings, order, and judgments, including, but not limited to, the Release, in this Action. Any Class Member who fails to comply with the provisions of Section VII.C above shall waive and forfeit any and all rights he or she may have to appear and be heard at the Fairness Hearing.

E. Any Class Member who objects to the Settlement shall be entitled to all of the benefits of the Settlement if it is approved, so long as the objecting Class Member meets all of the conditions of this Agreement applicable to Class Members and settlement benefits.

VIII. RELEASE AND WAIVER

A. Release and Waiver – Definitions

For purposes of this release and waiver (the “Release”):

1. “Releasees” means, individually and collectively, Midland, its past, present and future parent companies, subsidiaries, affiliates, predecessors, successors, and assigns, together with all of its and their present, former, and future officers, directors, shareholders, insurers, employees, attorneys, legal representatives, and agents (including, without limitation, those acting on behalf of Midland and within the scope of their agency) and their predecessors, successors and, assigns.

2. “Released Claims” means any and all past, present, or future claims, complaints, causes of action, allegations of liability, damages, restitution, equitable, legal or other interest, or demands or rights, whether known or unknown, that concern, refer or relate to, or arise out of, in whole or in part, any facts, events, or transactions relating to the Annuities that have occurred or were in existence at any time prior to the entry of the Final Order and Judgment, including, without limitation:

- (a) the offering of advice in any manner related to the Annuities;
- (b) the design, marketing, solicitation, sale, appropriateness or administration of the Annuities;
- (c) any disclosures or advertising related to the Annuities, whether written or oral, including any omissions from any disclosures or advertising;
- (d) non-compliance with statutory and regulatory requirements;
- (e) the computation and crediting of interest to policy accounts; or
- (f) the calculation and availability of any accumulation or surrender

values, or annuity payments, or the exercise of any rights under the Annuities. Without limiting the foregoing, “Released Claims” include, but are not limited to, all claims that were asserted in the Action, or that could have been asserted against Midland before any court, arbitration panel, or regulatory or administrative agency based on or related to facts alleged in any of the complaints filed in this Action, whether or not brought directly, indirectly, on a representative basis, or otherwise.

B. Release

Upon the Effective Date, Plaintiffs and every Class Member, for themselves, their attorneys, spouses, beneficiaries, executors, conservators, personal representatives, wards, heirs, predecessors, successors, affiliates, agents, and assigns, in consideration of the benefits set forth in this Agreement, fully and finally release Releasees from all Released Claims.

C. Waiver Under California Civil Code Section 1542

1. The Parties acknowledge that it is possible that unknown losses or claims exist or might exist or that present losses may have been underestimated in amount. Plaintiffs and every member of the Class are deemed to acknowledge and understand that they are familiar with principles of law such as and including Section 1542 of the Civil Code of the State of California, which 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.

2. Plaintiffs and the Class are hereby deemed to agree that Section 1542 and all similar federal or state laws, rules, or legal principles of any other jurisdiction are knowingly and voluntarily waived by Plaintiffs and the Class in connection with the Released

Claims as defined in the foregoing paragraphs of this Release, and Plaintiffs and the Class are deemed to agree that this is an essential term of this Agreement. Plaintiffs and the Class are also deemed to acknowledge and understand that they may later discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now believe to be true with respect to the matters released in this Agreement. Nevertheless, it is the intention of Plaintiffs and the Class to fully, finally, and forever settle and release all matters with Releasees that exist, hereafter may exist, or might have existed regarding the Released Claims, as defined under this Agreement.

3. Plaintiffs acknowledge that Class Counsel have advised them and that they are familiar with the provisions of Section 1542 of the California Civil Code, as well as the provisions of any and all comparable or similar statutes or principles of law of any other state or federal jurisdiction that might otherwise be deemed applicable, and that, being aware of Section 1542 and other similar statutes or principles of law, Plaintiffs expressly waive any and all rights and benefits conferred by Section 1542 or other similar statutes or principles of law on behalf of themselves, and on behalf of the Class. Plaintiffs admit to full knowledge and understanding of the consequences and effect of this waiver.

D. Additional Conditions of Release

1. Nothing in this Release shall preclude any action to enforce the terms of the Agreement, including participation in any of the processes detailed therein.

2. Plaintiffs expressly agree that this Release shall be, and may be raised as, a complete defense to, and will preclude, any action or proceeding encompassed by the release of Releasees herein, and as a bar from indemnity and contribution claims arising out of the Released Claims herein.

3. No Plaintiff or Class Member may participate in any settlement or other relief sought in any action brought on behalf of the Plaintiffs or any Class Members by any state or federal government officials or agencies pertaining to any Released Claims.

4. Each Plaintiff and each Class Member, for himself or herself, his or her attorneys, spouse, beneficiaries, executors, conservators, personal representatives, wards, heirs, predecessors, successors, and assigns agrees not to file an appeal from or otherwise seek review of any order approving this Settlement Agreement.

5. It is the intention of the Plaintiffs, on behalf of themselves and the Class Members, in executing this Release to fully, finally, and forever settle and release all matters and all claims released under this Section.

IX. ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS

A. Service Awards

Subject to Court approval, Midland agrees to pay Plaintiffs Rosalie Vaccarino and David Lee Tegen no more than \$15,000 each as a service award for participation as a Class Representative in the Action. Midland will pay the service awards approved by the Court in addition to any benefits that Plaintiffs are entitled to receive under this Agreement as Class Members. Midland will pay any service awards within 14 days of the Effective Date. Class Counsel agrees not to seek service awards for the Class Representatives that exceed \$30,000 in the aggregate.

B. Petition for Class Counsel Payment

1. Midland agrees to pay Class Counsel no more than an aggregate of \$5,850,000 as attorneys' fees and no more than \$622,000 for reimbursement of their expenses and costs as the Class Counsel Payment, subject to Court approval. Class Counsel agree not to

seek or accept an award of attorneys' fees and costs and expenses in excess of, or in addition to, \$5,850,000 in fees and \$622,00 in expenses. Midland agrees not to oppose Class Counsel's request for the Class Counsel Payment of up to \$5,850,000 in fees and \$622,000 in costs, either in this Action or on appeal; however, Midland shall have no obligation to join in Class Counsel's request or in any related submissions.

2. The Parties may have divergent views concerning the most appropriate approach to a valuation of the benefits to Class Members under this Agreement, the most appropriate method for conducting such a valuation, and the proper standard against which any valuation is to be measured in connection with the process for approval of the Settlement. The Parties agree that any appropriate valuation necessarily involves assessments of uncertain future events and certain elections and actions to be made or taken by the Class Members. Plaintiffs estimate that, based on expert analysis, the reasonable value of the benefits, exclusive of attorneys' fees and costs, is approximately \$31 million. While Midland does not adopt this valuation, Midland does not contest Plaintiffs' estimate for purposes of the preliminary or final approval of the Settlement or any request by Class Counsel for attorneys' fees.

3. Midland further agrees to pay the Administrator's reasonable expenses actually incurred in administering the Settlement in accordance with the terms of this Agreement.

4. Class Counsel will petition for approval of the Class Counsel Payment at least 21 days prior to the date by which objections to the proposed Settlement are due. The amount of the Class Counsel Payment shall be determined at the Fairness Hearing. The Class Counsel Payment will not reduce any other benefit provided to the Class or Plaintiffs.

5. If Midland does not exercise any right it may have to terminate the Agreement pursuant to Section XII, Midland will pay the Class Counsel Payment to Gianelli & Morris by wire transfer or check within 14 days of the Effective Date.

6. Midland will pay the Administrator directly for reasonable Administrator expenses actually incurred by wire transfer or check sent within 60 days of receipt of appropriate invoicing and documentation from the Administrator. If Midland disputes the amount of any invoice, it will give notice of such dispute to the Administrator within 30 days after its receipt of the invoice, and the notice will include a statement of the reason(s) for the disagreement.

7. Midland is not responsible for the fees of those attorneys hired by individual Class Members in connection with the review of or objection to the Settlement Agreement.

8. Midland shall not be liable for, or obliged to pay any fees, expenses, costs, or other disbursements to, or incur any expense on behalf of, any Plaintiff, Class Member, or other person or entity, either directly or indirectly, in connection with the Action, this Agreement, or the proposed Settlement, other than the amounts expressly provided for in this Agreement.

X. PRELIMINARY APPROVAL AND RELATED ORDERS

A. The Parties shall submit this Agreement, including all attached exhibits, to the Court and seek and obtain from the Court a Preliminary Approval Order in substantially the same form as Exhibit B to this Agreement. The Preliminary Approval Order shall, among other things:

1. preliminarily approve the proposed Settlement and find that the proposed Settlement is sufficient to warrant sending notice to the Class;

2. schedule the Fairness Hearing based on the Court's availability, but not less than 108 days after entry of the Preliminary Approval Order, to consider the fairness, reasonableness, and adequacy of the proposed Settlement and whether it should be finally approved by the Court;

3. approve the proposed Class Notice and the plan for giving notice;

4. direct the Administrator to mail the Class Notice to each Class Member by first-class mail, postage prepaid, to his or her last known address no later than 21 days after entry of the Preliminary Approval Order, as described in this Agreement;

5. determine that mailing the Class Notice to the last known addresses of the Class Members: (a) constitutes the best practicable notice under the circumstances; (b) is reasonably calculated to apprise Class Members of the pendency of the Action and of their right to object to or exclude themselves from the proposed Settlement; (c) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and (d) meets all applicable requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution, and its Amendments;

6. require the Administrator to file proof of the mailing of the Class Notices at or before the Fairness Hearing;

7. prohibit Midland from communicating with Class Members about the Action or the Settlement, but not preclude Midland from: (a) speaking to Class Members in the ordinary course of Midland's business, provided that if Class Members contact Midland regarding the Action or the Settlement, Midland shall direct such Class Members to contact the Administrator; or (b) communicating with agents and employees of Midland and from communicating with its auditors, rating agencies, insurance commissioners, regulators, or similar

reporting organizations or governmental entities regarding the impact and/or administration of the Settlement;

8. require each Class Member who wishes to exclude himself or herself from the Class to submit an appropriate, timely written request for exclusion, postmarked no later than 45 days after mailing of the Class Notice to the Administrator, in care of the address provided in the Class Notice;

9. preliminarily bar and enjoin each and every Class Member who has not excluded himself or herself from the Settlement, the Class Member's representatives, and/or all persons in active concert or participation with such Class Members from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting, or continuing, as class members or otherwise, any action, including without limitation a class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction), in any federal court, any state court, or any other tribunal or forum of any kind, and from receiving any benefits from any lawsuit, administrative or regulatory proceeding or order in any jurisdiction, arising out of, based on, or relating to the claims, causes of actions, facts, and/or circumstances alleged in the Action and/or the Released Claims;

10. rule that any Class Member who does not submit a timely, written request for exclusion from the Class shall be bound by all proceedings, orders, and judgments in the Action, even if such Class Member has previously initiated or subsequently initiates individual litigation or other proceedings against Midland relating to Annuities issued during the Class Period;

11. require each Class Member who wishes to object to the fairness, reasonableness, or adequacy of the Agreement or the proposed Settlement, or to the award of attorneys' fees and expenses, to send to the Administrator (who shall immediately forward the objection to Class Counsel and Midland's Counsel), and to file with the Court, no later than 45 days after mailing of the Class Notice, or at such other time as the Court may direct, a notice of objection setting forth the information outlined in Section VII.B, above, or be forever barred from separately objecting;

12. require any Class Member who files and serves a written objection and who intends to make an appearance at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's expense, to send to the Administrator (who shall immediately forward the notice to appear to Class Counsel and Midland's Counsel), and file with the Court no later than 45 days after mailing of the Class Notice, or as the Court otherwise may direct, a notice of intention to appear at the Fairness Hearing;

13. authorize Midland and Class Counsel: (a) to establish the means necessary to administer the proposed Settlement, in accordance with the terms of this Agreement; (b) to retain the Administrator to help administer the proposed Settlement, including the notice provisions;

14. to appoint an Administrator to implement the terms of this Agreement;

15. to direct the Administrator to rent one or more post-office boxes to be used for receiving requests for exclusion from the Class and any other communications, and providing that no one other than the Court or the Clerk of the Court and the Administrator shall have access to these post-office boxes; and

16. to direct Midland's Counsel and Class Counsel promptly to furnish each other with copies of any and all objections or written requests for exclusion that might come into their possession that are not otherwise provided by the Administrator.

XI. FINAL APPROVAL AND FINAL ORDER AND JUDGMENT

A. After the Fairness Hearing, and upon the Court's approval of this Agreement, the Parties shall seek and obtain from the Court a Final Order and Judgment in substantially the same form attached as Exhibit C to this Agreement. The Final Order and Judgment shall, among other things:

1. find that the Court has personal jurisdiction over all Class Members, that the Court has subject matter jurisdiction over the claims asserted in the Action to approve this Agreement and all exhibits hereto, and that venue is proper;

2. finally approve this Agreement and the proposed Settlement as fair, reasonable and adequate, and consistent and in compliance with the applicable provisions of the United States Constitution, its Amendments, and the Federal Rules of Civil Procedure, as to, and in the best interests of, the Class; direct the Parties and their counsel to implement and consummate this Agreement according to its terms and provisions; and declare this Agreement to be binding on, and have *res judicata* and preclusive effect, in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and all other Class Members, as well as their heirs, executors, personal representatives, conservators and administrators, predecessors, successors, and assigns, that allege Released Claims, as defined in this Agreement;

3. find that the Class Notice and all other instruments provided to Class Members pursuant to this Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of

the pendency of the Action, their right to object to or exclude themselves from the proposed Settlement and to appear at the Fairness Hearing; (c) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (d) met all applicable requirements of the Federal Rules of Civil Procedure and the United States Constitution and its Amendments, including the Due Process Clause;

4. find that Class Counsel and the Plaintiffs adequately represented the Class for purposes of entering into and implementing the Settlement;

5. dismiss the Action (including all individual claims and Class claims presented thereby) on the merits and with prejudice, without fees or costs to any party, except as provided in this Agreement;

6. declare that the judgment is binding upon all Class Members and upon Midland and extinguishes all claims of Class Members that (a) were alleged, or that could be alleged, based upon, or arise from, the matters which were alleged in the Action or (b) were released pursuant to this Agreement;

7. incorporate the Release set forth above in Section VIII, make the Release effective as of the date of the Final Order and Judgment, and forever discharge the Releasees from any claims or liabilities arising from or related to the Released Claims;

8. permanently bar and enjoin each and every Class Member who has not been excluded from the Settlement, the Class Member's representatives, and/or all persons in active concert or participation with such Class Members from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting, or continuing, as class members or otherwise, any action, including without limitation a class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending

action in any jurisdiction) in any federal court, any state court, or any other tribunal or forum of any kind, and from receiving any benefits from any lawsuit, administrative or regulatory proceeding, or order in any jurisdiction arising out of, based on, or relating to the claims, causes of actions, facts, and/or circumstances alleged in the Action and/or the Released Claims;

9. authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of this Agreement and all exhibits attached hereto that are consistent with the Final Order and Judgment and do not limit the rights of Class Members under the Agreement;

10. without affecting the finality of the Final Order and Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of this Agreement and the Final Order and Judgment, and for any other necessary purpose; *provided, however*, that nothing in this paragraph shall restrict the ability of the Parties to exercise their rights under Section XI.A.9 above; and

11. order that any work product retained by Plaintiffs or Class Counsel that is based on or incorporates information provided by Midland that has been designated as Confidential pursuant to the terms of the Protective Order entered on September 23, 2011, in this case remain Confidential and restrict the disclosure or use of such materials as set forth in the Protective Order.

XII. MODIFICATION OR TERMINATION OF THIS AGREEMENT

A. This Agreement may be terminated at the discretion of either Midland or Plaintiffs, through Class Counsel, if the Court, or any appellate court, rejects, modifies, or denies approval of any portion of this Agreement or the proposed Settlement that the terminating party reasonably determines is material. The terminating Party must exercise the option to withdraw

from and terminate this Agreement, as provided in this Section, in writing sent by first-class mail to the other Party, no later than 20 days after receiving notice of the event prompting the termination.

B. Plaintiffs cannot terminate this Agreement solely because of the amount of attorneys' fees, costs and/or service awards awarded by the Court or any appellate court(s); however, Plaintiffs and their Counsel reserve all rights on appeal in relation to any award of costs and fees in the event the Court does not award the amount of costs and fees requested by the Plaintiffs, and the award is less than the Class Counsel Payment. Midland, however, may elect to terminate this Agreement if the aggregate amount of attorneys' fees and costs awarded exceeds \$5,850,000 in fees and \$622,000 in costs, or if the aggregate amount of service awards to Class Representatives exceeds \$30,000.

C. Midland may unilaterally terminate this Agreement if any regulator or government entity requires any modification to the Agreement, including, without limitation, a constriction or expansion of the scope of the stated benefits that Midland reasonably deems to be material.

D. Midland may unilaterally terminate this Agreement if the "Opt-Out Percentage" is greater than 2%. The "Opt-Out Percentage" shall be computed based on data as of the last date for filing of a list reflecting all requests for exclusion pursuant to Section VI.C, and shall equal (a) the sum of (i) the Accumulation Value of all Active Deferred Annuities held by Owners who have excluded themselves from the Class, (ii) the Accumulation Value of all Annuities that have been fully surrendered by Owners who have excluded themselves from the Class, which shall be determined using the Accumulation Value of such Annuities as of the date of full surrender for each such Annuity, and (iii) the Accumulation Value of all Annuities that have been Annuitized

by Owners who have excluded themselves from the Class, which shall be determined using the Accumulation Value of such Annuities as of the date of Annuityization for each such Annuity, divided by (b) the aggregate Accumulation Value of all Active Deferred Annuities. All amounts used in the calculation shall be compiled from Midland's business records of transactions entered into its policy administration system, known as PolicyLink, as of the close of business on the last date for filing of a list reflecting all requests for exclusion pursuant to Section VI.C, or the first practicable day thereafter. If Midland elects to exercise this right, it shall do so by giving written notice to Class Counsel before the Fairness Hearing.

E. Midland may effect termination of the Settlement Agreement under Section XII.B., XII.C. or XII.D. by giving written notice to Class Counsel.

F. If this Agreement is terminated, it shall be void, no Party shall be bound by any of its terms (except for the terms of this paragraph and Sections XIII.C, XIII.G, XIII.M, XIII.N, and as applied to these paragraphs, Sections XIII.O and XIII.P of this Agreement), and it shall not be admissible in any further proceedings.

G. If this Agreement is terminated, Midland expressly and affirmatively reserves all defenses, arguments and motions as to all claims that might have been or might later be asserted in this Action, including, without limitation, any applicable Statute of Limitations and the argument that the Action may not be litigated as a class action.

XIII. GENERAL MATTERS AND RESERVATIONS

A. Integration and Drafting

The Parties agree that this Agreement is clear and unambiguous, that it was drafted and negotiated by counsel for the Parties at arm's length, that it sets forth the entire Settlement Agreement among the Parties, that no other agreements not expressed or referred to in this

Agreement exist, and that no parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which the Agreement was made or executed.

B. Amendment, Court Approval, Extensions

This Agreement may not be amended without the written consent of all parties and approval of the Court; provided, however, that after entry of the Final Order and Judgment, the Parties may by agreement modify this Settlement Agreement and its implementing documents (including all exhibits) without notice to or approval by the Court if the changes are consistent in all material respects with the Court's Final Order and Judgment and do not materially abridge the rights of Class Members. The Parties also may agree to reasonable extensions of time that are necessary to carry out any provisions of this Settlement Agreement, provided that any extension of more than 45 days must be approved by the Court.

C. Construction

For the purpose of construing this Agreement, the Parties agree that it shall be deemed to have been drafted equally by all Parties and shall not be construed strictly for or against any of the Parties.

D. Integration of Exhibits

The exhibits hereto are incorporated by reference as if set forth herein verbatim and are an integral part of this Agreement.

E. Waiver

The waiver by any Party of any breach of this Agreement shall not be construed as a waiver of any other breach.

F. Counterparts

This Agreement may be executed in counterparts, each of which when executed and delivered shall be considered an original. Executed signature pages shall be valid and enforceable whether they are originals or copies, and whether they are transmitted by facsimile, e-mail or any other means.

G. No Evidence, No Admission

1. In no event shall this Agreement, any of its provisions, any papers or information of any kind submitted or provided by or on behalf of any party in connection with this Agreement, or any discussions, negotiations, statements, or proceedings relating to this Agreement, be offered as, received as, used as, or deemed to be evidence, or referred to, cited, presented or otherwise used for any purpose in the Action, any other action, or in any other proceeding, except in a proceeding to enforce this Agreement, and the absence of any objection by Midland to the certification of the Class for purposes of the Settlement shall not waive any position or argument that Midland may assert in opposing class certification in the Action or any other action or proceeding.

2. Without limiting the foregoing, neither this Agreement nor any related negotiations, statements, or proceedings shall be offered as, received as, used as, or deemed to be evidence or an admission or concession by any person of any matter, including but not limited to any liability or wrongdoing on the part of Midland or any of the Releasees or as evidence of the appropriateness of certification of any class. Midland expressly denies any and all wrongdoing alleged in the Action, and does 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 it in the Action. Midland's entry into this Agreement is without prejudice in any

way to its positions on any substantive, procedural or other issues in the Action, any other action, or in any other proceeding.

H. Tax Consequences

1. No opinion concerning the tax consequences of the proposed Settlement to Class Members or anyone else is given or will be given by Midland, Midland's Counsel, Plaintiffs, or Class Counsel, nor are any representations in this regard made by virtue of this Agreement.

2. Each Class Member's or other person's tax obligations, if any, and the determination of those obligations, are the sole responsibility of the Class Member or other person. Midland shall act as it determines is required by the Internal Revenue Code and the regulations promulgated thereunder in reporting any Settlement benefit provided pursuant to this Agreement.

3. Neither Midland nor the Administrator shall make any payment hereunder if Midland has determined in good faith that a withholding certificate or other document is required by any law or regulation to be provided by the payee prior to making such payment and the document has not been provided. In the event a withholding certification or other document is required by law or regulation to be provided by the payee, the Administrator or Midland shall notify the payee within 30 days prior to the issuance of any payment to be made under this Agreement of the documents needed and notify the payee that completed copies of these documents must be received by the Administrator or Midland prior to issuance of any payment under this Agreement.

I. Notice

1. Whenever this Agreement requires or contemplates that one party shall or may give notice to the other, notice shall be provided by U.S. mail or overnight delivery service, as follows:

If to Midland, then to:

Robert D. Phillips, Jr.
Reed Smith LLP
355 South Grand Avenue, Suite 2900
Los Angeles, CA 90071

If to Plaintiffs, then to:

Robert S. Gianelli
Gianelli & Morris
550 South Hope St., Suite 1645
Los Angeles, CA 90071

2. Should any of these addresses change, the person changing his or her address shall promptly advise the Court, the Administrator and the other Parties, in writing.

J. No Effect on Contract or Duty

1. Except as expressly provided by this Agreement, neither this Agreement nor any of the benefits to be provided under this Agreement shall be interpreted to alter in any way the terms of any Class Member's Annuity and this Agreement shall not constitute a novation of any Class Member's Annuity.

2. This Agreement does not, and shall not be deemed to, create any fiduciary or similar relationship between Midland and any of its current, past, or prospective policyholders or Annuity owners. This Agreement does not impose, and shall not be deemed to impose, any fiduciary or other similar duty on Midland, and Midland expressly disclaims any fiduciary or other similar duties. The duties and obligations assumed by Midland are limited to

those expressly set forth in this Agreement.

K. Time Computation

1. 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 the Court, the day of the act, event, or default from which the designated period begins to run shall not be included.

2. Each other day of the period to be computed shall be included, including the last day thereof, unless such last day is a Saturday, Sunday, or 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 Court inaccessible, in which event the last day of the period shall be the next day that is not one of the aforementioned days.

3. As used in this Section, “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, or by Local Rules of the Court.

4. The Parties reserve the right to agree between themselves on any reasonable extensions of time that might be necessary to carry out the provisions of this Agreement, subject to Section XIII.B, above.

L. Cooperation in Effecting Settlement

The Parties, their successors and assigns, and their attorneys, undertake to implement the terms of this Agreement in good faith, to use good faith in interpreting this Agreement and resolving any disputes that may arise in the implementation of this Agreement, to cooperate with one another in seeking Court approval of this Agreement, and to use their best efforts to effect

the prompt consummation of this Agreement. However, Midland shall not be required to file any briefs or other documents with the Court in support of the motions for Preliminary Approval, Final Approval, Class Counsel Payment, or Service Awards, nor make any oral or other arguments in support thereof.

M. Confidentiality

1. All information and documentation provided to Class Counsel and the Administrator by Midland or the Class Members in connection with the Settlement is confidential, and cannot be provided to third parties or used for any other purpose than effectuating the terms of this Agreement. All such information and documentation shall be returned to Midland or destroyed within 365 days after the mailing of the first settlement payment.

2. The Parties and their counsel agree to keep the existence and contents of this Agreement confidential until the motion requesting the Court's preliminary approval of this Agreement is filed; provided, however, that this paragraph shall not prevent the disclosure of such information prior to the filing of such motion to (1) regulators, rating agencies, independent accountants, advisors, financial analysts, agents, insurers or reinsurers, Plaintiffs, experts, courts, co-counsel, and/or Administrator(s) as may reasonably be required to effectuate the terms and conditions of this Agreement or as otherwise required to comply with any applicable law or regulation, or (2) any person or entity to whom the Parties agree disclosure must be made to effectuate the terms of this Agreement. If disclosure of the existence and/or contents of this Agreement is made pursuant to the preceding sentence, to the extent the recipient of the disclosure is not already subject to an obligation of confidentiality to the disclosing Party, such Party will make reasonable efforts to secure the recipient's undertaking to maintain the existence

and contents of this Agreement strictly confidential and to use such information only for the purpose for which the disclosure is made. Nothing contained herein shall restrict Midland's ability to disseminate information regarding this Agreement and the Settlement internally as needed to analyze and implement the Settlement.

3. The Parties and their counsel agree that their discussions and the information exchanged in the course of negotiating this Settlement is confidential, and 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 this case), 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.

4. On or before the expiration of four months after the Effective Date Class Counsel shall return all documents or information produced to Plaintiffs or Class Counsel by Midland in connection with any of the litigation identified in Section I. To the extent Plaintiffs or Class Counsel retain any work product that is based on or incorporates information designated as Confidential pursuant to the terms of the Protective Order previously entered in this case and provided by Midland, Plaintiffs and Class Counsel shall maintain such work product as Confidential, and the disclosure or use of such materials shall be subject to the same restrictions set forth in the Protective Order previously entered in this case.

N. Media Communications

The Parties agree to cooperate in good faith to ensure that any comments about or descriptions of the Settlement of the dispute forming the basis of this Agreement in the media or in any other public forum are balanced, fair, and accurate, and the Parties will attempt in good faith to agree on descriptions of the Settlement to be communicated in any statements, whether

joint or unilateral, including without limitation any website or other internet postings. Joint or unilateral press releases referring or otherwise related to the Settlement proposed to be made by any Party shall be provided to counsel for Plaintiffs and Midland's Counsel prior to the dissemination or publication so as to allow for a reasonable period of time for review prior to any dissemination or publication. Any such unilateral statements or press releases proposed by any Party must be reviewed and approved by the other Party before dissemination or publication.

O. Governing Law

This Settlement Agreement shall be governed by, and interpreted according to, the law of the State of California, excluding its conflict of laws provisions.

P. Parties Bound

This Agreement shall be binding upon and inure to the benefit of Plaintiffs, Class Members, Class Counsel, Midland and its affiliates, and the respective heirs, predecessors, successors and assigns of each of the foregoing.

Q. Authority to Execute Agreement

Each Party or person executing this Agreement in a representative capacity on behalf of a corporate entity hereby represents that he or she is duly authorized by such entity to execute this Agreement on its behalf, and to bind it to the terms and conditions hereof.

R. Execution Date

This Agreement shall be deemed executed upon the last date of execution by all the undersigned.

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned as of the day and year set forth:

CLASS REPRESENTATIVES

DATED: 5-13-14, 2014

Rosalie Vaccarino
Rosalie Vaccarino

DATED: _____, 2014

David Lee Tegen

DEFENDANT

Midland National Life Insurance Company

DATED: _____, 2014

By: _____
[name]
[title]

APPROVED AS TO FORM:

REED SMITH, LLP

DATED: _____, 2014

By: _____
Robert D. Phillips
Attorneys for Defendant
Midland National Life Insurance Company

GIANELLI & MORRIS

DATED: _____, 2014

By: _____
Robert S. Gianelli
Attorneys for Class Plaintiffs

LAW OFFICES OF RONALD A. MARRON

DATED: _____, 2014

By: _____
Ronald A. Marron
Attorneys for Class Plaintiffs

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned as of the day and year set forth:

CLASS REPRESENTATIVES

DATED: _____, 2014

Rosalie Vaccarino

David Lee Tegen

David Lee Tegen

DATED: 5/12, 2014

DEFENDANT

Midland National Life Insurance Company

DATED: _____, 2014

By: _____
[name]
[title]

APPROVED AS TO FORM:

REED SMITH, LLP

DATED: _____, 2014

By: _____
Robert D. Phillips
Attorneys for Defendant
Midland National Life Insurance Company

GIANELLI & MORRIS

DATED: _____, 2014

By: _____
Robert S. Gianelli
Attorneys for Class Plaintiffs

LAW OFFICES OF RONALD A. MARRON

DATED: _____, 2014

By: _____
Ronald A. Marron
Attorneys for Class Plaintiffs

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned as of the day and year set forth:

CLASS REPRESENTATIVES

DATED: _____, 2014

Rosalie Vaccarino

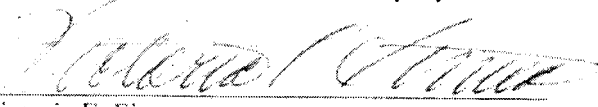
DATED: _____, 2014

David Lee Tegen

DEFENDANT

Midland National Life Insurance Company

DATED: May 14, 2014

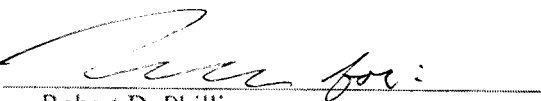
By: 

Victoria E. Fimea
Senior Vice President, General Counsel and Secretary

APPROVED AS TO FORM:

REED SMITH, LLP

DATED: May 15, 2014

By: 

Robert D. Phillips
Attorneys for Defendant
Midland National Life Insurance Company

GIANELLI & MORRIS

DATED: _____, 2014

By: _____
Robert S. Gianelli
Attorneys for Class Plaintiffs

LAW OFFICES OF RONALD A. MARRON

DATED: _____, 2014

By: _____
Ronald A. Marron
Attorneys for Class Plaintiffs

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned as of the day and year set forth:

CLASS REPRESENTATIVES

DATED: _____, 2014 _____
Rosalie Vaccarino

DATED: _____, 2014 _____
David Lee Tegen

DEFENDANT

Midland National Life Insurance Company

DATED: _____, 2014 By: _____
[name]
[title]

APPROVED AS TO FORM:

REED SMITH, LLP

DATED: _____, 2014 By: _____
Robert D. Phillips
Attorneys for Defendant
Midland National Life Insurance Company

GIANELLI & MORRIS

DATED: 5/15, 2014 By: _____
Robert S. Gianelli
Attorneys for Class Plaintiffs

LAW OFFICES OF RONALD A. MARRON

DATED: _____, 2014 By: _____
Ronald A. Marron
Attorneys for Class Plaintiffs

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned as of
the day and year set forth:

CLASS REPRESENTATIVES

DATED: _____, 2014

Rosalie Vaccarino

DATED: _____, 2014

David Lee Tegen

DEFENDANT

Midland National Life Insurance Company

DATED: _____, 2014

By: _____
[name]
[title]

APPROVED AS TO FORM:

REED SMITH, LLP

DATED: _____, 2014

By: _____
Robert D. Phillips
Attorneys for Defendant
Midland National Life Insurance Company

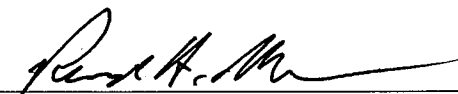
GIANELLI & MORRIS

DATED: _____, 2014

By: _____
Robert S. Gianelli
Attorneys for Class Plaintiffs

LAW OFFICES OF RONALD A. MARRON

DATED: May 15, 2014

By: 

Ronald A. Marron
Attorneys for Class Plaintiffs

EXHIBIT A

United States District Court for the Central District of California

NOTICE OF CLASS ACTION SETTLEMENT

Vaccarino v. Midland National Life Ins. Co., 11-CV-05858 CAS (MANx)

THIS NOTICE IS FOR THE OWNER OR LAST OWNER OF A BONUS 5, BONUS 10, BONUS 11, LEGACY BONUS 5, LEGACY SELECT, LEGACY BONUS 11, OR VERIDIAN PLUS DEFERRED ANNUITY PURCHASED IN CALIFORNIA FROM MIDLAND NATIONAL LIFE INSURANCE COMPANY BY A PERSON AGE 64 OR YOUNGER, OR BY A TRUSTEE, CORPORATION, OR PARTNERSHIP IF AN ANNUITANT UNDER THE POLICY WAS AGE 64 OR YOUNGER. SUCH OWNERS MAY BE ENTITLED TO BENEFITS FROM THIS CLASS ACTION SETTLEMENT.

A federal district court authorized this Notice. This is not junk mail, an advertisement, or a solicitation from a lawyer. The Court has not decided in favor of either side in the litigation. The parties have agreed to a Settlement, and this is Notice to you of the Settlement and how you may be affected.

- Under the Settlement, you may be entitled to receive Settlement benefits in the form of either Surrender-Related Payments, an Annuitization Bonus, or Enhanced Annuity Payments, as described in the response to Question 11 below.
- Your legal rights are affected whether you act, or don't act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	If you do nothing, you will remain a Class Member and will be eligible for one of the three types of benefits available under the Settlement depending on the status of your Annuity.
EXCLUDE YOURSELF	If you choose to exclude yourself, you will not receive the benefits available under the Settlement. You must submit a timely written request to exclude yourself from the Settlement to the Administrator by _____, 2014.
OBJECT	You may write to the Court about why you do not like the Settlement. Written objections must be filed with the Court and served on Class Counsel and Midland's Counsel no later than _____, 2014. Making an objection does not exclude you from the Settlement. If the Settlement is approved, you will be subject to the Settlement and will be bound by the Release, described in response to Question __, which means you will give up any claims you have with respect to your Annuity.

GO TO THE HEARING	If you timely object in writing to the Settlement as described in this Notice and timely send a notice of intent to appear at the Fairness Hearing to the Administrator and file the notice with the Court by _____, 2014, you will be entitled to speak in Court about the fairness of the Settlement during the Fairness Hearing set for _____, 2014.
APPEAR THROUGH AN ATTORNEY	If you desire, you may enter an appearance in this case through an attorney at your own expense, but you will still need to comply with the requirements for objecting to the Settlement and appearing at the Fairness Hearing.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- **This Notice is merely a summary of certain terms and provisions of the proposed Settlement.** For a complete description of the terms and provisions of the proposed Settlement, including certain exceptions, conditions, and limitations that may not be addressed herein, you should read the Settlement Agreement filed with the Court and available at www._____.com or by calling [ADMINISTRATOR NUMBER]. Capitalized terms in this Notice have the meanings assigned in the Settlement Agreement.
- The Court in charge of this case still has to decide whether to approve the Settlement. Please be patient. Updates as to the status of the Settlement will be available from time to time at www._____.com or by calling [ADMINISTRATOR NUMBER].

BASIC INFORMATION

1. Why did I get this notice package?

You are listed in the records of Midland National Life Insurance Company (“Midland”) as being either the current or the last Owner of an Annuity that is included in the Settlement. The Court directed that the parties send you this Notice because you have a right to know about a proposed Settlement of a class action lawsuit and about your options before the Court decides whether to approve the Settlement. If the Court approves it and after objections and appeals are resolved, Midland will provide the benefits as provided in the approved Settlement.

This package explains the litigation, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Central District of California, and the case is known as *Vaccarino v. Midland National Life Ins. Co.*, 11-CV-05858 CAS (MANx). Rosalie Vaccarino and David Lee Tegen, the persons who sued and have been designated to represent all members of the Class in this matter, are called the “Plaintiffs,” and the company they sued, Midland, is the “Defendant.”

2. What is this lawsuit about?

The Plaintiffs brought this lawsuit to assert claims on behalf of themselves and other persons who were age 64 years of age and younger when they purchased certain deferred Annuities issued by Midland. Plaintiffs allege that Midland made misrepresentations regarding the Annuities' "bonus" and "growth" but failed to disclose that it shifted the cost of the bonus and high sales commissions back to purchasers through lower interest or index credits over time. Plaintiffs further alleged that Midland failed to comply with surrender charge disclosures requirements under California law, Insurance Code section 10127.13, for a subclass of purchasers ages 60-64, and that the policies' Interest Adjustment feature was "indecipherable" and amounted to an unenforceable surrender charge. Plaintiffs asserted causes of action for violation of the Unfair Competition Law (California Business & Professions Code section 17200 *et seq.*, hereinafter, "UCL"), fraud, breach of contract, breach of the implied covenant of good faith and fair dealing, and declaratory relief.

Midland denies all of the allegations and any liability to Plaintiffs. Midland has asserted numerous legal and factual defenses to the Action. Midland contends, among other things, that its annuity products are lawful and beneficial and provided the promised benefits to Plaintiffs. Midland contends that Plaintiffs received adequate notice of any applicable surrender charges and Interest Adjustments. Midland also contends that its written disclosures and, in most instances, oral disclosures by independent agents, further informed Plaintiffs of any applicable surrender charges and the manner in which any Interest Adjustment would affect a surrender or partial withdrawal. Midland further contends that Plaintiffs Vaccarino and Tegen's claims are barred by the statute of limitations. Midland denies that it improperly lowers interest credits and that it failed to comply with the applicable law regarding interest crediting, premium bonuses, or agent compensation and related disclosures. Midland also denies that any claims asserted in this case may properly be adjudicated and tried on a classwide basis pursuant to Rule 23 of the Federal Rules of Civil Procedure.

3. Why is this a class action?

In a class action, one or more people, called Class Representatives (in this case Plaintiffs Rosalie Vaccarino and David Lee Tegen), sue on behalf of people who have similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. United States District Court Judge Christina A. Snyder is in charge of this case, and, in the context of the Settlement, she has certified it as a class action.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Midland. Instead, both sides have agreed to settle the Action. The Plaintiffs and their attorneys think the Settlement is in the best interest of the Class.

WHO IS IN THE SETTLEMENT?

To see if you are included in this Settlement, you first have to determine if you are a Class Member.

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

The Settlement applies to the current or most recent Owner (or joint Owners) of an Annuity product identified in response to Question 6 below that was issued in California by Midland to a person who was 64 years old or younger (or if the owner is a trustee or non-natural person, the annuitant was 64 years old or younger), except individuals who are excluded from the Class, as described in the response to Question 7 below, and those who choose to be excluded from the Settlement as described in the response to Question 14. The age of the youngest of joint owners or younger of joint annuitants at issue, as applicable, will be used to determine membership in the Class.

6. Do I own an Annuity included in the Settlement?

The Annuities covered by the Settlement are fixed deferred annuities marketed under the name Bonus 5, Bonus 10, Bonus 11, Legacy Bonus 5, Legacy Select, Legacy Bonus 11, or Veridian Plus that were issued in California to at least one owner who was under age 65 at the time of issue.

For annuities purchased by non-natural persons or a trustee(s) for a trust, the age of the Annuitant (or youngest Annuitant if there are joint Annuitants) at the time of issue will be used (instead of the owner's age) to determine whether the policy qualifies as an "Annuity" for this Settlement. If you are an addressee of this Notice, Midland's records show that you are the current or last Owner of one of these Annuities. If, however, you have a question about the application of this proposed Settlement to a particular Annuity, you may contact the Settlement Administrator. See Question 24.

7. Are there exceptions to being included?

Yes. The following Annuities are not included in the Settlement: (i) those as to which a death benefit has been provided or is in process on or before the Benefit Determination Date, (ii) those that were issued but not accepted or were returned to Midland as part of the exercise of the free-look provision in the annuity or were otherwise rescinded on or before the Benefit Determination Date, (iii) those that were surrendered in full without incurring any Surrender Charge on or before the Benefit Determination Date, (iv) those that were Annuitized and the Annuity Payments have ceased on or before the Benefit Determination Date, (v) those as to which claims were released pursuant to settlement of prior litigation, including without limitation *Peterman, et al. v. North American Company for Life and Health Insurance, et al.*, Case No. BC357194, Superior Court of the State of California for the County of Los Angeles, or *In re Midland National Life Insurance Company Annuity Sales Practices Litigation*, MDL 07-1825, U.S. District Court for the Central District of California, or otherwise, and (vi) those as to which the rights and claims have been finally adjudicated in a court of law. In addition, Owners of

Annuities that are otherwise included may elect to be excluded as described in the response to Question 14.

8. Are beneficiaries of deceased contract owners entitled to relief?

Beneficiaries of contracts terminated by death of an Owner or Annuitant prior to the Benefit Determination Date are not included in the Class and are not entitled to relief. However, spouses of deceased Owners who continued an Annuity are eligible for settlement benefits, unless a death benefit has subsequently been paid or is in process on the Benefit Determination Date. Accordingly, spouses of deceased owners who annuitized the Annuity before the Benefit Determination Date may receive Enhanced Annuity Payments if Annuity Payments are made after the Benefit Determination Date. For Annuities that terminate by death after the Benefit Determination Date, spouses of deceased owners can Annuitize the death benefit amount and elect an Annuitization Bonus. If an Annuity was fully surrendered prior to the Benefit Determination Date, and the owner was a natural person who is deceased, or was the trustee of a trust that has terminated, or was a non-natural person that no longer exists, any benefits provided by the Settlement will be payable to the the heirs or other successors in interest.

9. Does this Settlement cancel my Annuity contract?

No. No matter what you decide to do in response to this Settlement—exclude yourself, object, or do nothing—your Annuity contract will not be terminated by the Settlement and the future rights and benefits provided by your Annuity, if it is still in effect, will continue, although Claims with respect to the Annuities that relate to or arise out of facts, events, or transactions that have occurred or were in existence at any time prior to the entry of the Final Order and Judgment will be released.

10. I'm still not sure if I am included in the Class

If you are not sure whether you are included in the Settlement Class, call [ADMINISTRATOR CONTACT].

THE SETTLEMENT BENEFITS—WHAT YOU GET

11. What benefits does the settlement provide to Class Members?

If the Settlement is approved by the Court and you are a member of the Class and do not exclude yourself from the Settlement, you may receive one of the Settlement benefits Midland will provide, all of which are described further in sections A, B, and C of this answer:

(1) If your Annuity was issued to a purchaser aged 60-64 and there have been Surrender Charges incurred upon a partial or full surrender of your Annuity, or if your Annuity was issued to a purchaser aged 0-59 and the Annuity has been fully surrendered, you will receive a surrender-related payment according to the conditions and formulas set forth below in section A.

(2) If you have an Annuity that is active (not previously Annuitized or surrendered), you may receive the Annuitization Bonus, which provides an increase in Annuity Payments guaranteed by the Annuities, subject to certain conditions explained in Section B, below.

(3) Those Class Members who have already annuitized their Annuity will automatically receive a 1% enhancement to each Annuity Payment made after the Benefit Determination Date, as discussed below in subsection C.

The Settlement does not require you to Annuitize your Annuity.

Please note that the Court has not expressed any opinion regarding the taxability of any benefits received under the terms of the Settlement. Any payments to the Settlement Class may be treated and reported as taxable transactions. You should address any questions regarding taxes to your tax advisor.

A. Surrender-Related Payments

1. Class Members Age 60-64 At Time Of Purchase: Surrender Charge Reduction

Payment: Any Class Member whose Annuity was issued to an owner with an age of 60-64 at the time of issue, and who has incurred a Surrender Charge on partial or full surrender of the Annuity on or before the Benefit Determination Date will receive a Surrender Charge Reduction Payment. Midland will provide a total of \$3,550,000 in Surrender Charge Reduction Payments to the eligible Class Members. No claim form is required. The amount of each such Class Member's Surrender Charge Reduction Payment shall be calculated as follows: a) arrive at a Refund Percentage Rate by dividing the amount of \$3.55 million by the amount of the total Net Surrender Charges incurred on or prior to the Benefits Determination Date on all Annuities with issue ages from 60 to 64 owned by Class Members; and b) multiply the Refund Percentage Rate by the Net Surrender Charges of the individual Class Member with respect to each Annuity with an issue age from 60 to 64 owned by that Class Member.

"Net Surrender Charges" is a term defined in section II.A.25 of the Settlement Agreement and is based on surrender charges as well as adjustments to reflect positive Interest Adjustments and the impact of minimum guaranteed cash values on surrender transactions.

Based on approximate data compiled as of February 28, 2014, it is estimated that Surrender Charge Reduction Payments would have been approximately 78 cents for each dollar of Net Surrender Charges, but the actual amount to be computed as of the Benefit Determination Date may be lower based on various factors, including policyowner behavior between February 2014 and the Benefit Determination Date.

2. Class Members Age 0-59 At Time Of Purchase: Enhanced Surrender Payment: Any Class Member whose Annuity was issued to an owner with an age of 0-59 at the time of issue, and was fully surrendered on or before the Benefit Determination Date will receive an Enhanced Surrender Payment. Midland will provide a total of \$2,000,000 for Enhanced Surrender Payments to the eligible Class Members. The amount of each Class Member's Enhanced Surrender Payment will be calculated as follows: a) arrive at an Enhancement Percentage Rate by dividing the amount of \$2.0 million by the difference between the total amount of the

Accumulation Values at the time of the full surrender and the total amount of the Surrender Charges (as provided by the Annuity without consideration of the minimum guaranteed cash value on a full surrender) applied to the full surrender transaction for all Annuities with issue ages from 0 to 59 owned by Class Members that have been fully surrendered on or prior to the Benefit Determination Date; and b) for each Annuity owned by the individual Class Member with an issue age from 0 to 59 that was fully surrendered on or before the Benefit Determination Date, multiply (i) the Enhancement Percentage Rate by (ii) the Annuity's Accumulation Value as of the date of the full surrender minus the Surrender Charge (as provided by the Annuity without consideration of the minimum cash surrender value on a full surrender) applied to the full surrender transaction.

Based on approximate data compiled as of February 28, 2014, it is estimated that Enhanced Surrender Payments would have been approximately 2.3 cents for each dollar of difference between Accumulation Values and Surrender Charges on which the calculation of Enhanced Surrender Payments are based, but the actual amount to be computed as of the Benefit Determination Date may be lower based on various factors, including policyowner behavior and mortality between February 2014 and the Benefit Determination Date.

The issue age of an Annuity issued to joint owners will be deemed 60 to 64 if at least one owner was age 60 to 64 on the issue date. For Annuities issued to non-natural persons or trustees, the issue age will be deemed 60 to 64 if at least one Annuitant was age 60 to 64 on the issue date. If the issue age for an Annuity is not 60-64, then for purposes of determining which benefits apply, the issue age shall be 0-59.

B. Annuitization Bonus

If your Annuity has not been fully surrendered on or before the Benefit Determination Date, and after the Benefit Determination Date you choose to convert your Annuity to periodic payments (called "Annuitization") for life with either a 10-year, 15-year, or 20-year certain payment period, an Annuitization Bonus will be provided with respect to that Annuity. Upon Annuitization, Midland will increase the Accumulation Value of your Active Deferred Annuity by a percentage based upon the duration of your annuity. That increased Accumulation Value, together with the rates set forth in your Annuity for the corresponding settlement option, will be used to determine the amount of your periodic payments. No claim form is required for this relief. The applicable percentage will be determined by the duration of the Annuity, as set forth in the following table:

<u>Duration of Policy (Years)</u>	<u>Bonus Percentage</u>
Up to and including the 9 th Year	4.3
10	5.4
11	6.5
12	7.6
13	8.7
14	9.8
15	10.9
16+	12.0

C. Enhanced Annuity Payment

If a Class Member has Annuitized the Annuity on or prior to the Benefit Determination Date, then each remaining payment after the Benefit Determination Date will be increased by 1% relative to the amounts to be paid in the absence of the settlement.

12. When will I get my Settlement benefit?

The Court will hold a hearing, called the Fairness Hearing, on _____, 2014, to decide whether to approve the Settlement. If the Court approves the Settlement after that, there may be appeals relating to the Settlement. It is always uncertain how these appeals will be resolved, and resolving them can take time, perhaps more than a year. The Benefit Determination Date will be set within 30 days after the Settlement has been approved by the District Court and any and all appeals have been resolved and the Settlement has become effective. The Annuitization Bonus and Enhanced Annuity Payments will take effect following the Benefit Determination Date and Surrender-Related Payments will be made approximately 55 days after the Benefit Determination Date. Please be patient.

13. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself, you are staying in the Class, and that means: (1) that you can't sue, continue to sue, or be part of any other lawsuit, arbitration or other legal proceeding against Midland relating in any way to the Annuities at issue in this litigation; and (2) that you release all claims for damages or other legal remedies – including any claims presently unknown to you – relating in any way to the Annuities at issue in this litigation, if they concern, relate to, or arise out of facts, events, or transactions that have occurred or are in existence at any time prior to the Final Order and Judgment. If you want to know more about this release of claims, you should review Section VIII. of the Settlement Agreement which can be viewed on the website www._____ or requested from the Administrator as set forth in Question and Answer 24. Also, if you do not exclude yourself from the Settlement, all of the Court's orders will apply to you and legally bind you, even if you had objected to the proposed Settlement.

With respect to all Released Claims, Settlement Class Members agree that they are expressly waiving and relinquishing to the fullest extent permitted by law (i) the provisions, rights, and benefits conferred by 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 or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor.

and (ii) the provisions of any statute or principle of law of any state or federal jurisdiction that might otherwise be applicable, or similar, comparable or equivalent to Section 1542 of the California Civil Code.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to be subject to the Settlement or you want to keep the right to sue or continue to sue Defendant on your own with respect to claims relating in any way to your Annuity, then you must take steps to get out of the Settlement. This is called excluding yourself – or is sometimes referred to as “opting out” of the Settlement Class.

14. How do I get out of the Settlement?

If you do not want to be part of the Settlement Class, you may exclude yourself or “opt out.” If you exclude yourself, you will not be entitled to any Settlement benefits described in this Notice, and you will not be bound by the Release. To exclude yourself from the proposed Settlement, you must submit a written request. This written request must be signed by you and must include: your name, address, social security number, the contract number(s) of the Annuity or Annuities at issue, and a statement that you are requesting exclusion from the Settlement Class in *In Re Vaccarino v. Midland National Life Insurance Company, Case No. 11-CV-05858*. You must **mail** your signed request for exclusion in care of the Settlement Administrator at the following address:

Vaccarino v. Midland National Life Ins. Co. Settlement Administrator
c/o [INSERT ADMINISTRATOR INFORMATION]

THE ENVELOPE CONTAINING YOUR SIGNED REQUEST FOR EXCLUSION MUST BE POSTMARKED BY NO LATER THAN [EXCLUSION DEADLINE]

You cannot exclude yourself on the phone or by e-mail. If your signed request for exclusion is not mailed with a postmark on or before ____, 2014, it will be ineffective and you will be part of the Settlement Class and bound by all orders and judgments entered in connection with the Settlement, including the Release and Waiver. If you are the Owner of more than one Annuity subject to the Settlement and you exclude yourself with respect to any such Annuity, you must exclude yourself with respect to all such Annuities.

15. If I don't exclude myself, can I sue Midland for the same thing later?

No. Unless you exclude yourself, you give up the right to sue Midland for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit about this Notice immediately. You must exclude yourself from this Class to continue your own lawsuit. Remember, the exclusion deadline is ____, 2014.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

Yes. The Court appointed the following law firms to represent the Settlement Class: Gianelli & Morris and the Law Offices of Ronald A. Marron. Together the law firms are called Class Counsel. You will not be charged for the services of 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?

No later than _____, 2014, Class Counsel will file with the Court their petition for approval of an award of attorneys' fees of up to \$5,850,000 and costs of up to \$622,000. The Court may award less than these amounts. Midland will separately pay the attorneys' fees and expenses, up to \$5,850,000 and \$622,000, respectively, that the Court awards. Midland has agreed not to oppose a request for attorneys' fees and expenses up to such amounts. These payments will not affect the benefits available to Settlement Class Members. Class Counsel will file this fee petition three weeks prior to the deadline for filing objections to the Settlement Agreement.

18. What payments will be made to the Class Representatives?

Class Counsel will ask the Court to award the Class Representatives Rosalie Vaccarino and David Lee Tegen a total of no more than \$30,000 (\$15,000 for each Class Representative) as service awards. Midland will separately pay the service awards, up to \$30,000, that the Court awards. Midland has agreed not to oppose a request for service awards up to \$30,000 total. These payments will not affect the benefits available to Settlement Class Members. Class Counsel will file this request three weeks prior to the deadline for objections to the Settlement Agreement.

19. Who will pay the Settlement Administrator?

Midland will pay the costs and fees of the Settlement Administrator, which will not be deducted from the benefits available to Settlement Class Members.

OBJECTING TO THE SETTLEMENT

20. How can I tell the Court I do not like the Settlement?

If you are a Settlement Class Member, you can object to the Settlement if you do not like any part of it. The Court will consider your views in connection with the Fairness Hearing described below. To object, you must file your objection in writing, saying that you object to the proposed Settlement. You may not object if you excluded yourself from the Settlement.

If you wish to object to the proposed Settlement, you must file your written objection with the Court, and mail a copy to Class Counsel and Defendant's Counsel at the addresses listed below. If you are not represented by counsel, the filing may be made in paper form rather than electronically by delivering it to the Clerk of the Court of the Honorable Christina A. Snyder, Courtroom 5 (2nd Floor), 312 N. Spring Street, Los Angeles, California 90012. The objection must be in writing and must be filed with the Court and served on Parties' counsel no later than _____, 2014. An objection that is not timely and properly made shall be forever barred. All objections must contain the following: (i) the objecting party's name, address, telephone number, social security number, and Annuity number(s); (ii) the factual basis and legal grounds for the objection; (iii) any evidence or other information the objecting party wishes to offer in support of the objection; and (iv) the signature of the individual who is objecting.

If the Class Member intends to appear and be heard at the Fairness Hearing, either in person or through counsel, the notice of objection must include: (i) a written notice of the Class Member's or the Class Member's counsel's intent to appear at the Fairness Hearing; (ii) a detailed statement of the Class Member's objections to any matter before the Court; (iii) the grounds or reasons why the Class Member wishes to appear and to be heard, either in person or through counsel; (iv) any documents and writings that the Class Member wishes the Court to consider; and (v) a statement of any prior class settlement objections made by such Class Member and any fee arrangements made with an attorney regarding any objections, including the objection to this Settlement.

Class Counsel

Robert S. Gianelli
Gianelli & Morris
550 South Hope St., Suite 1645
Los Angeles, CA 90071

Midland's Counsel

Robert D. Phillips, Jr.
Reed Smith LLP
355 S. Grand Avenue, Suite 2900
Los Angeles, CA 90071

21. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. If you object, you will remain in the Settlement Class and will be bound by the Settlement, even if the Court disagrees with you and approves the Settlement over your objection. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

22. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at 10:00 a.m. on ____, 2014 (or such continued dates or times as the Court may direct without further notice to the Class) in Courtroom 5, Second Floor, located at 312 North Spring Street, Los Angeles, California 90012. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may listen to people who, prior to the hearing, have asked to speak at the hearing. The Court will also decide how much to pay Class Counsel and whether to approve the service awards to the Class Representatives. After the hearing, the Court will issue its decision on the matters addressed at the Fairness Hearing. We do not know when that decision will be made.

23. Do I have to come to the Fairness Hearing

No. Class Counsel will answer questions that the Court may have. You are welcome to come 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 filed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not required that your or your lawyer attend.

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must do two things: First, you must object to the Settlement in accordance with the procedures described above in the response to Question 20. Second, you must file a Notice of Intention to Appear at the Fairness Hearing with the Court. If you are not represented by counsel, you may file by delivering the Notice to the Clerk of the Court of the Honorable Christina A. Snyder, Courtroom 5 (2nd Floor), 312 N. Spring Street, Los Angeles, California 90012. You must also deliver a copy of the Notice to each of the Parties' counsel at the addresses listed above under Question 20. The Notice of Intention to Appear must be in writing and must contain the information specified in the response to Question 20 and must be filed and served on Parties' counsel no later than [INSERT INFO]. Be sure to include your name, address, telephone number, and your signature on your Notice of Intention to Appear. You cannot speak at the hearing if you do not follow these procedures or if you excluded yourself.

GETTING MORE INFORMATION

24. How do I get more information about the Settlement?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement or Class Counsel's petition for approval of fees and costs, once the petition is filed, by visiting the Settlement website at www._____.com, by writing to the *Vaccarino v. Midland National Life Ins. Co.* Settlement Administrator, [CONTACT INFO], or by calling [CONTACT INFO].

IMPORTANT DATES

19. What are the important dates and deadlines relating to the Settlement?

Deadline	Event
_____, 2014	Class Counsel will file a petition for approval of an award of attorneys' fees and costs and request for service awards for Class Representatives
_____, 2014	Last day to submit a request for exclusion from the proposed Settlement
_____, 2014	Last day to file and serve Class Counsel and Midland's Counsel with objections to the proposed Settlement
_____, 2014	Last day to file Notice of Intent to Appear
_____, 2014	Fairness Hearing

Dated: _____

/s/ Christina A Snyder
Honorable Christina A Snyder

EXHIBIT B

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROSALIE VACCARINO AND
DAVID LEE TEGEN, on behalf of
themselves and all others similarly
situated,

 Plaintiffs,

v.

MIDLAND NATIONAL LIFE
INSURANCE COMPANY; and
DOES 1-100, Inclusive.

 Defendants.

CASE NO.: 11 CV-5858-CAS(MANx)
Assigned to: Hon. Christina A. Snyder

**[PROPOSED] FINDINGS AND
ORDER PRELIMINARILY
APPROVING CLASS
SETTLEMENT, DIRECTING
ISSUANCE OF NOTICE TO THE
CLASS, AND SETTING OF
FAIRNESS HEARING**

The motion of Plaintiffs Rosalie Vaccarino and David Lee Tegen, individually and on behalf of the Class, as defined in the Settlement Agreement (collectively “Plaintiffs”), for preliminary approval of the proposed class action Settlement reached with Defendant Midland Life Insurance Company (“Midland”) came on for hearing before this Court on _____, 2014. Robert D. Phillips and _____ appeared as attorneys for Midland, and Robert S. Gianelli and Ronald A. Marron appeared as attorneys for Plaintiffs. After considering the Settlement Agreement, the moving papers, arguments of counsel, and all other matters presented to the Court, the Court finds that:

1. Plaintiffs filed a Class Action Complaint in this Action on June 17, 2011, alleging violation of the Unfair Competition Law (California Business & Professions Code section 17200 *et seq.*, fraud, breach of contract, breach of the implied covenant of good faith and fair dealing, and declaratory relief.
2. Midland expressly denies any and all wrongdoing alleged in the pleadings and Plaintiffs’ other filings, and does not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could

1 have been alleged against it in the Action. Midland contends that Plaintiffs' allegations
2 do not state a cause of action and are not sustainable as a matter of law. In addition,
3 Midland contends that Plaintiffs would be unable to prove the elements of the causes of
4 action at trial, and that this would be fatal to both individual and class claims. In this
5 regard, Midland contends that it would be inappropriate to certify a litigation class in
6 this matter, in part due to the manageability and superiority problems inherent in
7 presenting the case in a trial involving thousands of individualized sales.

8 3. The proposed Settlement resulted from an arms-length mediation
9 session before the Honorable Ronald M. Sabraw (Ret.) and was concluded only after
10 Plaintiffs and Midland conducted their own investigations and evaluations of the factual
11 and legal issues raised by Plaintiffs' claims and Midland's defenses.

12 4. Plaintiffs and Class Counsel have agreed to settle the Action after
13 considering such factors as (a) the benefits to Plaintiffs and the Class provided by the
14 Settlement Agreement; (b) the risks and uncertainty of litigation, especially in
15 complex actions such as this, as well as the difficulties and delays inherent in such
16 litigation; and (c) the desirability of consummating the Settlement Agreement in order
17 to provide relief to Plaintiffs and the Class. Midland considers it desirable to settle and
18 dismiss this Action because this proposed Settlement will finally put Plaintiffs' claims
19 and the underlying matters to rest. Midland is also entering into this Settlement
20 Agreement to avoid the expense, burden, inconvenience, and inherent risk of litigation
21 and the concomitant disruption of its business operations.

22 5. The Parties have entered into a Settlement Agreement previously filed
23 with this Court.

24 6. The Court has reviewed the Settlement Agreement (and all the attachments
25 thereto) and determined the proposed Settlement to be fair, reasonable, adequate, and
26 within the range of possible approval. The proposed Settlement does not improperly
27 grant preferential treatment to the Plaintiffs or any segment of the Class. The proposed
28 Settlement is sufficient to warrant sending notice to the Class. The procedures for

1 establishing and administering the benefits provided by the proposed Settlement and for
2 notice of the proposed Settlement, exclusion from the proposed Settlement, and
3 objections to the proposed Settlement are fair, reasonable, and in the best interests of
4 the Class.

5 7. Based on Plaintiffs' motion, the Memorandum of Points and Authorities,
6 the Settlement Agreement, and all supporting exhibits and attachments, the Court
7 preliminarily certifies for settlement purposes the Class, as defined in Section II.14 of
8 the Settlement Agreement, pursuant to Rules 23(a) and 23(b)(3). The Court hereby
9 finds for settlement purposes that:

10 (a) the numerosity requirement of Rule 23(a)(1) is satisfied because
11 the proposed settlement Class, comprised of more than _____ Owners of over
12 _____ Annuities, satisfies the requirement that a class be sufficiently
13 numerous such that joinder of all members is impractical;

14 (b) the commonality requirement of Rule 23(a)(2) is satisfied because
15 the Midland products owned by the various Class Members have some similar
16 elements;

17 (c) the typicality requirement of Rule 23(a)(3) is satisfied because the
18 products provided to Plaintiffs were similar to those provided to members of the Class;

19 (d) the adequacy requirement of Rule 23(a)(4) is satisfied because
20 (i) Class Counsel are qualified and competent to prosecute the Action vigorously,
21 (ii) Plaintiffs' interests are not antagonistic to the interests of the Class, and (iii) Class
22 Counsel and Plaintiffs have fairly and adequately protected the interests of the Class;
23 and

24 (e) in the context of settlement, common questions “predominate over
25 any questions affecting only individual members” and “class resolution [is] ‘superior
26 to other available methods for the fair and efficient adjudication of the controversy.’”
27 *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 615 (1997).
28

1 8. The Court has reviewed the notice provisions of Section V of the
2 Settlement Agreement and the form of Class Notice attached to the Settlement
3 Agreement as Exhibit A. The Court has determined that mailing the Class Notice to the
4 last known addresses of the Class Members:

5 (a) constitutes the best practicable notice under the circumstances;

6 (b) is reasonably calculated to apprise Class Members of the pendency
7 of the Action and of their right to object to or exclude themselves from the proposed
8 Settlement;

9 (c) is reasonable and constitutes due, adequate, and sufficient notice to
10 all persons entitled to receive notice; and

11 (d) meets all applicable requirements of Rule 23 of the Federal Rules
12 of Civil Procedure, the United States Constitution, and its Amendments.

13 Accordingly, it is hereby ORDERED AND DECREED AS FOLLOWS:

14 1. The Motion for Preliminary Approval is GRANTED. The Court
15 preliminarily approves the proposed Settlement. All defined terms in the foregoing
16 findings and this Order shall have the same meanings as in the Settlement Agreement.

17 2. The Class, as defined in Section II.14 of the Settlement Agreement, is
18 preliminarily certified for settlement purposes only.

19 3. The Court appoints the law firms of Gianelli & Morris and the Law
20 Offices of Ronald A. Marron as Class Counsel.

21 4. A hearing (the "Fairness Hearing") will be held on _____, {**a**
22 **date that is not less than 108 days after entry of this Order**} at _____ [a.m./p.m.]
23 before the undersigned in the United States District Court for the Central District of
24 California, Western Division, to consider the fairness, reasonableness, and adequacy of
25 the proposed Settlement and whether it should be finally approved by the Court.

26 5. The Court approves the proposed Class Notice and the plan for giving
27 notice.
28

1 6. Midland and Class Counsel are authorized to:

2 (a) establish the means necessary to administer the proposed
3 Settlement, in accordance with the terms of the Settlement Agreement; and

4 (b) retain an Administrator to help administer the proposed Settlement,
5 including the notice provisions.

6 7. The Court appoints _____ as the Administrator to implement
7 the terms of the Settlement Agreement.

8 8. The Administrator shall mail the Class Notice to each Class
9 Member by first-class mail, postage prepaid, to his or her last known address no later
10 than 21 days after entry of this Order, as described in the Settlement Agreement.

11 9. The Administrator shall file proof of the mailing of the Class Notice
12 at or before the Fairness Hearing.

13 10. Class Counsel shall file their petition for approval of Class Counsel's
14 fees, expenses, and class representative service awards no later than 21 days prior to the
15 Fairness Hearing.

16 11. Midland is prohibited from communicating with Class Members about
17 the Action or the Settlement, but Midland is not precluded from:

18 (a) speaking to Class Members in the ordinary course of Midland's
19 business, provided that if Class Members contact Midland regarding the Action or the
20 Settlement, Midland shall direct such Class Members to contact the Administrator; or

21 (b) communicating with agents and employees of Midland or
22 communicating with its auditors, rating agencies, insurance commissioners, regulators,
23 or similar reporting organizations or governmental entities regarding the impact and/or
24 administration of the Settlement.

25 12. Each Class Member who wishes to exclude himself or herself from the
26 Class must submit an appropriate, timely written request for exclusion, postmarked no
27 later than 45 days after mailing of the Class Notice Package to the Administrator at the
28 address provided in the Class Notice.

1 13. Any Class Member who does not submit a timely, written request for
2 exclusion from the Class shall be bound by all proceedings, orders, and judgments in
3 the Action, even if such Class Member has previously initiated or subsequently
4 initiates individual litigation or other proceedings against Midland relating to Annuities
5 issued during the Class Period.

6 14. Each Class Member who wishes to object to the fairness, reasonableness,
7 or adequacy of the Settlement Agreement, the proposed Settlement, or to the award of
8 attorneys' fees and expenses shall send to the Administrator, no later than 45 days after
9 mailing of the Class Notice, a notice of objection setting forth the following
10 information: (i) a notice of the Class Member's or the Class Member's counsel's
11 (retained at the Class Member's own expense) intent to appear at the Fairness Hearing;
12 (ii) a detailed statement of the Class Member's objections to any matter before
13 the Court; (iii) the grounds or reasons why the Class Member wishes to appear and to
14 be heard; (iv) any documents and writings that the Class Member wishes the Court to
15 consider; and (v) a statement of any prior class settlement objections made and any fee
16 arrangements made with an attorney regarding any objections, including the objection
17 to this Settlement. Unless the notice of objection sets forth this information and is
18 timely submitted, the Class Member is forever barred from separately objecting.

19 15. The Administrator shall rent one or more post-office boxes to be used for
20 receiving requests for exclusion and objections from the Class and any other
21 communications, and no one other than the Court or the Clerk of the Court and the
22 Administrator shall have access to these post-office boxes.

23 16. Upon receipt of any request for exclusion or a notice of objection, the
24 Administrator shall immediately forward a copy of the exclusion request or objection to
25 Class Counsel and Midland Counsel.

26 17. Midland Counsel and Class Counsel shall promptly furnish each other
27 with copies of any and all objections or written requests for exclusion that might come
28 into their possession that are not otherwise provided by the Administrator.

1 18. All proceedings in the Action are stayed until further order of the Court,
2 except as may be necessary to implement the proposed Settlement or to comply with
3 the terms of the Settlement Agreement. Further, pending the Court's final
4 determination of whether the proposed Settlement will be approved, each and every
5 Class Member who has not excluded himself or herself from the Settlement, the Class
6 Member's representatives, and/or all persons in active concert or participation with
7 such Class Members are barred and enjoined from filing, commencing, prosecuting,
8 maintaining, intervening in, participating in, conducting, or continuing, as class
9 members or otherwise, any action, including without limitation a class action (including
10 by seeking to amend a pending complaint to include class allegations or by seeking
11 class certification in a pending action in any jurisdiction), in any federal court, any state
12 court, or any other tribunal or forum of any kind, and from receiving any benefits from
13 any lawsuit, administrative or regulatory proceeding or order in any jurisdiction, arising
14 out of, based on, or relating to the claims, causes of actions, facts, and/or circumstances
15 alleged in the Action and/or the Released Claims.

16 19. This Order shall become null and void, and shall be without prejudice to
17 the rights of the Parties, all of whom shall be restored to their respective positions
18 existing immediately before this Court entered this Order, if: (a) the proposed
19 Settlement is not finally approved by the Court, or does not become final, pursuant to
20 the terms of the Settlement Agreement; or (b) the Settlement is terminated in
21 accordance with the terms of the Settlement Agreement or does not become effective
22 as required by the terms of the Settlement Agreement for any other reason. In such
23 event, the Settlement and Settlement Agreement shall become null and void and be of
24 no further force and effect, and neither the Settlement Agreement nor the Court's
25 orders, including this Order, shall be used or referred to for any purpose whatsoever.

26 20. In no event shall the Settlement Agreement, any of its provisions, or any
27 negotiations, statements, or proceedings relating to it be offered as, received as, used
28 as, or deemed to be evidence in the Action, any other action, or in any other

1 proceeding, except in a proceeding to enforce the Settlement Agreement. Without
2 limiting the foregoing, neither the Settlement Agreement nor any related negotiations,
3 statements, or proceedings shall be offered as, used as, or deemed to be evidence or an
4 admission or concession by any person of any matter, including but not limited to any
5 liability or wrongdoing on the part of Midland or as evidence of the appropriateness of
6 certification of any class.

7 21. The Court reserves the right to continue the Fairness Hearing without
8 further written notice to the Class, but will notify counsel for the Parties and any
9 objectors or their counsel who have timely filed a notice of intention to appear in these
10 proceedings. Unless the Court specifically orders otherwise, any such continuance shall
11 not be interpreted to expand or change any deadlines contained in this Order or the
12 Settlement Agreement.

13
14 **IT IS SO ORDERED.**

15 DATED: _____

16 _____
17 Hon. Christina A. Snyder
18 United States District Court Judge
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EXHIBIT C

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3 ROSALIE VACCARINO AND)
4 DAVID LEE TEGEN, on behalf of)
5 themselves and all others similarly)
6 situated,)

6 Plaintiffs,)

7 v.)

8 MIDLAND NATIONAL LIFE)
9 INSURANCE COMPANY; and)
10 DOES 1-100, Inclusive.)

10 Defendants.)

CASE NO.: 11 CV-5858-CAS(MANx)
Assigned to: Hon. Christina A. Snyder

**[PROPOSED] FINAL ORDER
APPROVING CLASS ACTION
SETTLEMENT AND FINAL
JUDGMENT OF DISMISSAL
WITH PREJUDICE**

11
12 The motion of Plaintiffs Rosalie Vaccarino and David Lee Tegen, individually
13 and on behalf of the Class as defined in the Settlement Agreement previously filed in
14 this Action (collectively “Plaintiffs”), for final approval of the class action Settlement
15 reached with Defendant Midland Life Insurance Company (“Midland”) came on for
16 hearing before this Court on _____, 2014 **{insert Fairness Hearing Date}**.
17 Robert D. Phillips and _____ appeared as attorneys for Midland, and Robert
18 S. Gianelli and Ronald A. Marron appeared as attorneys for Plaintiffs. After
19 considering the Settlement Agreement, the moving papers, arguments of counsel and all
20 other matters presented to the Court, it is hereby ORDERED, ADJUDGED, AND
21 DECREED AS FOLLOWS:

22 1. The Motion for Final Approval of Class Action Settlement is hereby
23 GRANTED.

24 2. This Final Order Approving Class Action Settlement and Final Judgment
25 of Dismissal With Prejudice (“Final Order and Judgment”) incorporates and makes part
26 hereof: (a) the Parties’ Settlement Agreement, filed _____, 2014, including
27 Exhibits A through C (collectively the “Settlement Agreement”) and (b) the Court’s
28 findings and conclusions contained in its Findings and Order Preliminarily Approving

1 Class Settlement, Directing Issuance of Notice to the Class, and Setting of Fairness
2 Hearing (“Preliminary Approval Order”). All defined terms in this Final Order and
3 Judgment shall have the same meanings as in the Settlement Agreement.

4 3. All preliminary findings and conclusions in the Court’s Preliminary
5 Approval Order are hereby made final.

6 4. The Court has personal jurisdiction over all Class Members. The Court
7 has subject matter jurisdiction over the claims asserted in this Action to approve the
8 Settlement Agreement and all exhibits attached thereto. Venue is proper. The
9 Settlement Agreement and Settlement are fair, reasonable and adequate, and consistent
10 and in compliance with the applicable provisions of the United States Constitution, its
11 Amendments, and the Federal Rules of Civil Procedure, as to, and in the best interests
12 of, the Class. The Court also finds that the Settlement resulted from and arms-length
13 mediation session and was concluded only after Plaintiffs and Midland conducted their
14 own investigations and evaluations of the factual and legal issues raised by Plaintiffs’
15 claims, as well as Midland’s defenses. [[No objections have been made to the
16 Settlement by any member of the Class.] or [The Court has considered and denied all
17 objections filed in this Action]]. Accordingly, the Settlement Agreement is hereby
18 finally approved.

19 5. The Class, as defined in Section II.14 of the Settlement Agreement, is
20 finally certified for settlement purposes.

21 6. The Court hereby directs the Parties and their counsel to implement and
22 consummate the Settlement Agreement according to its terms and provisions.

23 7. Pursuant to the Court’s Preliminary Approval Order, the notice
24 requirement was satisfied in that the Administrator mailed the Class Notice to
25 each Class Member, no later than 21 days after entry of the Preliminary Approval
26 Order, by first-class mail, postage prepaid, to his or her last known address and further
27 steps were taken in accordance with the Settlement Agreement to obtain updated
28 addresses when mail was returned as undelivered and to re-send the Class Notice.

1 Members of the Class had the opportunity to object to the Settlement or to exclude
2 themselves from the Settlement, and they were informed of the date, time, and location
3 of the Fairness Hearing and had the opportunity to appear at the Fairness Hearing.
4 These procedures afforded protections to Class Members and provide the basis for the
5 Court to make an informed decision on approval of the Settlement based on the
6 responses of Class Members.

7 8. The Class Notice Package and all other instruments provided to Class
8 Members:

- 9 (a) constituted the best practicable notice under the circumstances;
10 (b) constituted notice that was reasonably calculated to apprise Class
11 Members of the pendency of the Action, their right to object to or exclude themselves
12 from the proposed Settlement and to appear at the Fairness Hearing;
13 (c) was reasonable and constituted due, adequate, and sufficient notice
14 to all persons entitled to receive notice; and
15 (d) met all applicable requirements of the Federal Rules of Civil
16 Procedure, the United States Constitution, and its Amendments, including the Due
17 Process Clause.

18 9. Class Counsel and the Plaintiffs adequately represented the Class for
19 purposes of entering into and implementing the Settlement.

20 10. The list of those persons who have requested exclusion from the Class in
21 accordance with the terms of the Settlement Agreement and the Preliminary Approval
22 Order has been filed with the Court, is attached to this Order, and is hereby approved.
23 Those persons are hereby excluded from the Class. The Court finds that it is a
24 complete list of all Class Members who have timely requested exclusion from the
25 Class, and accordingly, such Class Members shall neither share in nor be bound by
26 this Final Order and Judgment or the Settlement Agreement.

27 11. Class Counsel are hereby awarded attorneys' fees in the amount of
28 \$_____ {not to exceed \$5,850,000} and expenses and costs in

1 the amount of \$ _____ {not to exceed \$622,000} (“Class Counsel
2 Payment”). These amounts cover any and all claims for attorneys’ fees, expenses, and
3 costs incurred by any and all Class Counsel in connection with the Settlement of the
4 Action and the administration of such Settlement. Class Counsel Payment shall be
5 provided by Midland to Receiving Class Counsel in accordance with Sections IX.B.5
6 through IX.B.8 of the Settlement Agreement upon satisfaction of the conditions set
7 forth therein.

8 12. As service awards for participation as the Class Representatives in the
9 Action, the Court awards:

10 \$ _____ {not to exceed \$15,000} to Plaintiff Rosalie Vaccarino; and

11 \$ _____ {not to exceed \$15,000} to Plaintiff David Lee Tegen.

12 Midland shall pay the service award in addition to any benefits that Plaintiffs are
13 entitled to receive as Class Members. Midland shall pay the service award within
14 fourteen (14) days of the Effective Date.

15 13. The Release set forth in the Settlement Agreement in Section VIII is
16 incorporated herein and effective as of the date of this Final Order and Judgment, and
17 forever discharges the Releasees from any claims or liabilities arising from or related
18 to the Released Claims.

19 14. Without affecting the finality of this Final Order and Judgment for
20 purposes of appeal, the Court shall retain jurisdiction as to all matters relating to
21 administration, consummation, enforcement, and interpretation of the Settlement
22 Agreement and this Order, and for any other necessary purpose; *provided, however,*
23 that nothing in this paragraph shall restrict the ability of the Parties to exercise their
24 rights under Paragraphs 17, 18, and 20 of this Final Order and Judgment. The Parties
25 submit to the jurisdiction of the Court for purposes of administration, construction,
26 consummation, enforcement, and interpretation of the Settlement Agreement and the
27 Settlement.
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1 15. The Settlement Agreement is binding on, and has *res judicata* and
2 preclusive effect in, all pending and future lawsuits or other proceedings maintained by
3 or on behalf of Plaintiffs and any other Class Members, as well as their heirs,
4 executors, personal representatives, conservators and administrators, predecessors,
5 successors, and assigns that allege Released Claims, as defined in the Settlement
6 Agreement.

7 16. Neither this Final Order and Judgment, nor the Settlement Agreement,
8 nor any other document referred to herein or therein, nor any action taken to carry out
9 this Final Order and Judgment or the Settlement Agreement is, may be construed as,
10 or may be used as an admission or concession by or against Midland of the validity of
11 any claim or any actual or potential fault, wrongdoing or liability whatsoever. Entering
12 into or carrying out the Settlement Agreement, and any negotiations or proceedings
13 relating to it, shall not in any event be construed as, or deemed evidence of, an
14 admission or concession as to Midland's denials or defenses, and shall not be offered or
15 received in evidence in any action or proceeding against any party hereto in any court,
16 administrative agency or other tribunal for any purpose whatsoever, except as evidence
17 of the Settlement or to enforce the provisions of this Final Order and Judgment or the
18 Settlement Agreement; provided, however, that this Final Order and Judgment and the
19 Settlement Agreement may be filed in any action against or by Midland or Releasees to
20 support a defense of *res judicata*, collateral estoppel, release, waiver, good-faith
21 Settlement, judgment bar or reduction, full faith and credit, or any other theory of claim
22 preclusion, issue preclusion or similar defense or counterclaim to the extent allowed by
23 law.

24 17. The Parties are authorized, without further approval from the Court, to
25 agree to and adopt such non-substantive amendments, modifications, or expansions of
26 the Settlement Agreement and all exhibits attached thereto that are consistent with this
27 Final Order and Judgment, and do not limit the rights of Class Members under the
28 Settlement Agreement. Any substantive amendments, modifications, or expansions of

1 the Settlement Agreement and the exhibits attached thereto shall require prior approval
2 by the Court.

3 18. Any work product retained by Plaintiffs or Class Counsel that is based on
4 or incorporates information designated as Confidential pursuant to the terms
5 of the Protective Order previously entered in this case and provided by Midland shall
6 be deemed Confidential Information pursuant to the terms of the Protective Order, and
7 the disclosure or use of such materials shall be subject to the same restrictions as
8 Confidential Information pursuant to the terms of the Protective Order previously
9 entered in this case.

10 19. This Action (and all individual claims and Class claims presented thereby)
11 is dismissed on the merits and with prejudice, without fees or costs to any party except
12 as provided in the Settlement Agreement. The judgment is binding upon all Class
13 Members and upon Midland and extinguishes all claims of Class Members (a) that were
14 alleged, or that could be alleged, based upon, or arise from, the matters that were
15 alleged in the Action or (b) that were released pursuant to the Settlement Agreement.

16 20. Each and every Class Member who has not been excluded from the
17 Settlement, the Class Member's representatives, and/or all persons in active concert or
18 participation with such Class Members are permanently barred and enjoined from
19 filing, commencing, prosecuting, maintaining, intervening in, participating in,
20 conducting, or continuing, as class members or otherwise, any action, including without
21 limitation a class action (including by seeking to amend a pending complaint to include
22 class allegations or by seeking class certification in a pending action in any jurisdiction)
23 in any federal court, any state court, or any other tribunal or forum of any kind, and
24 from receiving any benefits from any lawsuit, administrative or regulatory proceeding
25 or order in any jurisdiction, arising out of, based on, or relating to the claims, causes of
26 actions, facts, and/or circumstances alleged in the Action and/or the Released Claims.

27 21. Section 1715(b) of the Class Action Fairness Act of 2005 requires a
28 settling defendant to "serve upon the appropriate State official of each State in which a

1 class member resides and the appropriate Federal official” a specified group of
2 documents describing the settlement. Pursuant to section 1715(d), final approval cannot
3 be issued earlier than 90 days after notice is given under section 1715(b). Defendant
4 served the necessary documents upon the appropriate officials not later than _____,
5 2014. This order is signed more than 90 days after Defendant served the documents.
6 The Court therefore finds that Defendant is in full compliance with the Class Action
7 Fairness Act, 28 U.S.C. section 1715.

8 22. There being no just reason for delay, the Court, in the interests of justice,
9 expressly directs the Clerk of the Court to enter this Final Order and Judgment, and
10 hereby decrees that, upon entry, it be deemed a final judgment.

11 **IT IS SO ORDERED.**

12 DATED: _____

13 _____
14 Hon. Christina A. Snyder
15 United States District Court Judge
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