

ATTACHMENT 1

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In re NATIONAL WESTERN LIFE
INSURANCE DEFERRED ANNUITIES
LITIGATION

)
) No. 05-CV-1018-GPC(WVG)
)
) CLASS ACTION
)
) **SETTLEMENT AND RELEASE**
) **AGREEMENT**
)
) Judge: Honorable Gonzalo P. Curiel

This Document Relates To:

ALL ACTIONS.

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2 IT IS HEREBY STIPULATED AND AGREED, by, between, and among Anita
3 Williams and Marie Sweeney, individually, and on behalf of the Class defined herein
4 (collectively “Plaintiffs”), and National Western Life Insurance Company (with its subsidiary,
5 affiliate, predecessor and successor entities, collectively “National Western”) (Plaintiffs and
6 National Western to be collectively referred to as the “Parties”), through their respective duly-
7 authorized counsel, that the proceedings in the United States District Court for the Southern
8 District of California, captioned *In Re National Western Life Insurance Co. Deferred Annuities*
9 *Litigation*, 05-CV-1018 GPC(WVG) (the “Action”), and matters raised by and related to the
10 Action or that could have been raised in the Action, are settled fully and finally, compromised,
11 and dismissed on the merits, and with prejudice, on the terms and conditions set forth in this
12 Agreement and the exhibits hereto, subject to the occurrences set forth herein that permit
13 National Western to terminate this Settlement, as well as the approval of the Court and entry of
14 final judgment.
15

16 **I. INTRODUCTION**

17 **A. Factual Background of the Action**

18 On April 7, 2005, Marie Sweeney filed a class action in the Superior Court of the State of
19 California for the County of San Diego against National Western, which was then removed to the
20 United States District Court for the Southern District of California under The Class Action
21 Fairness Act of 2005 on May 11, 2005 and designated Case No 05-CV-1018 JM (LSP) (the
22 “*Sweeney Action*”). At that time, the Complaint alleged solely a California statewide class
23 action. Sweeney then filed a First Amended Complaint on July 8, 2005, asserting a nationwide
24 class action.
25
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27 Prior to the filing of the *Sweeney Action*, the Judicial Panel on Multidistrict Litigation
28

1 (“MDL Panel”) ordered that multiple actions pending against several insurers, including National
2 Western, were to be transferred to Judge Mary McLaughlin in the United States District Court
3 for the Eastern District of Pennsylvania. This MDL proceeding was designated MDL 1712 (the
4 “MDL 1712 proceedings”). National Western filed a Notice of Potential Tag-Along Action in
5 the MDL 1712 proceedings, advising the MDL Panel that the *Sweeney* Action was related to one
6 or more of the pending cases in the MDL 1712 proceedings and should be transferred into those
7 proceedings.
8

9 On January 5, 2006, the MDL Panel issued Conditional Transfer Order No. 2 (“CTO 2”),
10 which Order conditionally transferred the *Sweeney* Action to the MDL 1712 proceedings, then
11 pending in the United States District Court for the Eastern District of Pennsylvania. Counsel for
12 *Sweeney* filed an opposition to CTO 2 and then a motion to vacate CTO 2.

13 Meanwhile, on December 22, 2005, Warren B. Petry and Peter J. and Mary S. Glenane
14 filed a second nationwide class action against National Western in the United States District
15 Court for the Southern District of California, Case No. 05-CV-2336 J (NLS) (“the *Petry*
16 *Action*”), which alleged similar claims to that alleged in the *Sweeney* Action and in the MDL
17 1712 proceedings. National Western then filed a Notice of Potential Tag-Along Action with
18 respect to the *Petry* Action in the MDL 1712 proceedings, requesting that the *Petry* Action be
19 transferred along with the *Sweeney* Action.
20

21 One of the actions that was ordered to be part of the MDL 1712 proceedings was *George*
22 *Miller v. AmerUs Group Co., et al.*, C.A. No. 2:04-03799 (E.D. Pa.) (“the *Miller* Action”),
23 another class action that included claims against National Western. Counsel for the plaintiffs in
24 the *Petry* Action, who were also counsel for the plaintiffs in the *Miller* Action, filed a voluntary
25 dismissal of George Miller’s claims against National Western in the *Miller* Action and then
26 added George Miller, a Pennsylvania resident, as a plaintiff in the *Petry* Action. As a
27
28

1 consequence, the MDL Panel found that the claims against National Western no longer were to
2 be part of the MDL 1712 proceedings and vacated CTO 2 on April 18, 2006.

3 On April 26, 2006, the Court in the *Sweeney* Action and the *Petry* Action issued an Order
4 consolidating both actions and titling the consolidated action as *In Re National Western Life*
5 *Insurance Deferred Annuities Litigation*, Case No. 05-CV-1018 JM (LSP) (defined above as the
6 “Action”). On or about June 12, 2006, the Consolidated and Amended Class Action Complaint
7 was filed in the Action, and, while certain claims for relief originally alleged have been
8 dismissed, the Consolidated and Amended Class Action Complaint remains the operative
9 pleading in the Action. Its present case designation is Case No. 05-CV-1018 GPC (WVG).
10

11 Plaintiffs moved for class certification of the claims in the Action in April 2009, which
12 motion was denied without prejudice on January 11, 2010. In February 2010, Plaintiffs filed an
13 amended motion for class certification and narrowed the proposed class to four National Western
14 annuity products with only Marie Sweeney and George Miller as class representatives. (Mary
15 and Peter Glenane and Warren B. Petry, who did not purchase one of the four annuity forms,
16 retained their individual claims against National Western, but were no longer class
17 representatives.) On July 12, 2010, the Court granted Plaintiffs’ class certification motion.
18

19 George Miller passed away on May 9, 2012, and his daughter, Anita Williams, as the
20 Trustee of the Estate of George J. Miller, substituted in as a plaintiff and class representative in
21 the Action.

22 **B. The Underlying Allegations**

23 **1. Plaintiffs’ Position**

24 (a) The complaints have asserted, among other things, allegations
25 against National Western in this Action that National Western, along with its sales
26 agents and independent marketing organizations, unlawfully, unethically and
27
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1 fraudulently solicited, marketed, sold and issued deferred annuities to senior
2 citizens (persons 65 and older). Plaintiffs' claims have included allegations that,
3 among other things, National Western (1) offered illusory bonuses on its deferred
4 annuities and misrepresented that its deferred annuities have no sales charges; (2)
5 designed and distributed marketing and sales materials that do not disclose the
6 adverse material features and inherent risks of deferred annuities; (3) designed and
7 issued deferred annuity products with extended maturity dates, high surrender
8 charges and other similar provisions to senior citizens; (4) developed and
9 disseminated uniform materials advertising long-term care, asset protection, and
10 living trust financial planning advice; (5) developed uniform sales and marketing
11 materials, standardized annuity contracts, high-pressure sales techniques and
12 scripted sales presentations for use by its sales agents; (6) developed uniform sales
13 techniques to "churn" senior citizens into purchasing deferred annuities baiting
14 them to convert current investments to deferred annuities by extolling the high
15 interest rate without disclosing the associated penalties; (7) instructed and
16 required sales agents to use standardized sales materials, uniform sales techniques
17 and presentations developed and/or authorized by defendants to market and sell
18 unsuitable deferred annuities to senior citizens; (8) rewarded sales agents with
19 perks and high commissions for selling a deferred annuity product to a senior
20 citizen; (9) accepted applications for and issued deferred annuities that mature
21 after the actuarial life expectancy of the annuitant; and (10) imposed and collected
22 charges from the class for withdrawing some or all of the annuity and/or dying
23 prior to the maturity date.
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1 (b) In the course of the Action, Class Counsel (as defined below)
2 have reviewed over 93,000 pages of documents, analyzed extensive data, taken
3 the depositions of numerous National Western officers, employees, independent
4 agents, and other third parties. In addition, Class Counsel have taken the
5 depositions of National Western's expert witnesses, and have retained and
6 consulted with a variety of experts concerning the merits of Plaintiffs' claims
7 and the defenses raised by National Western.
8

9 (c) Based upon the discovery, investigation, and evaluation of the
10 facts and the law, Plaintiffs and Class Counsel have agreed to settle the
11 Action after considering such factors as (1) the benefits to Plaintiffs and the
12 Settlement Class (as defined below) provided by this Agreement; (2) the risks
13 and uncertainty of litigation, especially in complex actions such as this, as well
14 as the difficulties and delays inherent in such litigation; and (3) the desirability
15 of consummating this Settlement Agreement in order to provide relief to
16 Plaintiffs and the Settlement Class.
17

18 **2. National Western's Position**

19 (a) National Western expressly denies any and all wrongdoing
20 alleged in the pleadings and Plaintiffs' other filings, and does not admit or
21 concede any actual or potential fault, wrongdoing, or liability in connection
22 with any facts or claims that have been or could have been alleged against it
23 in the Action. National Western contends that Plaintiffs' allegations do not
24 constitute a claim upon which relief can be granted and are not sustainable as a
25 matter of law. National Western has fully performed all of its obligations under
26 the annuity contracts and has delivered on the promises in the annuity contracts
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1 made to its policyholders. In addition, National Western contends that Plaintiffs
2 would be unable to prove the elements of the causes of action at trial, and
3 that this would be fatal to both individual and class claims. In this regard,
4 National Western contends that it would be inappropriate to certify a litigation
5 class in this matter, in part due to the manageability and superiority problems
6 inherent in presenting the case in a trial involving thousands of individualized
7 sales and National Western has therefore asserted various legal defenses to this
8 lawsuit.
9

10 (b) Nonetheless, National Western considers it desirable for this
11 Action to be settled and dismissed because this Settlement will finally put
12 Plaintiffs' claims and the underlying matters to rest. National Western is also
13 entering into this Settlement Agreement to avoid the expense, burden,
14 inconvenience, and inherent risk of litigation and the concomitant disruption of
15 its business operations.
16

17 **C. Settlement Results from Arms-Length Negotiations.**

18 The Settlement is the product of extensive, good-faith, arms-length, adversarial
19 negotiations among the Parties, including multiple mediations before the Honorable John K.
20 Trotter, retired Justice of the California Court of Appeal. The Settlement is conditioned upon,
21 among other things, approval by the Court as provided for by the Agreement.
22

23 **D. Investigation by Class Counsel.**

24 Class Counsel represent that, prior to Settlement, they have conducted a
25 thorough investigation relating to the Class Representatives' claims, the claims asserted on
26 behalf of the Settlement Class, and the underlying events alleged in the Action, including
27 taking numerous depositions, reviewing extensive documentation produced during the course
28

1 of discovery, reviewing other actions currently pending against National Western, and
2 reviewing and analyzing class and annuity policy data produced in discovery. In addition,
3 Class Counsel have made a thorough study of the legal principles applicable to the Class
4 Representatives' and the Settlement Class' claims and have evaluated the strength of those
5 claims.

6 **E. Fairness of Settlement.**

7 In consideration of (1) the benefits the Class Representatives and the Settlement
8 Class will receive from the Settlement, (2) the risks of continued litigation, (3) the expense and
9 length of time necessary to pursue the litigation through a trial and appeals that may follow,
10 and (4) the investigation described above, Class Counsel have concluded that the terms and
11 conditions of the Settlement are fair, reasonable, adequate, beneficial to, and in the best
12 interests of the Class Representatives and the Settlement Class.
13

14 **F. No Admission of Liability.**

15 While continuing to deny all allegations of wrongdoing and disclaiming any
16 liability whatsoever with respect to any and all claims, National Western considers it desirable
17 to resolve the Action on the terms stated in the Agreement, in order, among other things, to
18 avoid further burden, expense, inconvenience, and interference with ongoing business
19 operations. The Parties agree that in no event shall this Settlement be construed as, or be
20 deemed, an admission or concession by National Western of the truth of any allegation or the
21 validity of any claim asserted in the Action or any other action, or of any fault on the part of
22 National Western or any of the other Released Parties (as defined below) infra, or of any
23 liability or damage to any member of the Settlement Class.
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1 **II. DEFINITIONS**

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

5 1. “Account Value” and “Accumulation Account” mean the same as those
6 terms are used in the Annuities.

7 2. “Action” means *In re National Western Life Insurance Deferred Annuities*
8 *Litigation*, No. 05-CV-1018-GPC (WVG) (S.D. Cal.).

9 3. “Active” means that an Annuity is not terminated and is in active status
10 with no Annuity Settlement Option in force.

11 4. “Administrator” for purposes of this Agreement means, exclusively, Rust
12 Consulting, Inc., 625 Marquette Avenue, Suite 880, Minneapolis, MN 55402, Telephone:
13 (612) 359-2000, Facsimile: (612) 359-2050.

14 5. “Agreement” means this “Settlement and Release Agreement,” including
15 Exhibits A-G hereto.

16 6. “Annuity” or “Annuities” means the following listed annuities purchased
17 by any person when the annuitant was age 65 or older at the time of purchase: National
18 Western’s Confidence Flex 85 (01-1114CA-98), Confidence Flex 45 (01-1114CB-98),
19 Benefit Assurance (01-1138), and Future Assurance (01-1139) and all state iterations of
20 these policies.

21 7. “Annuitant” means the person whose name and age were provided to
22 National Western on the date of the application as further defined in the Annuities.

23 8. “Annuitize” means the selection of an annuity option pursuant to the terms
24 of the Annuities.

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9. “Annuitized Status” means an annuity on which the Settlement Class Member has Annuitized.

10. “Class Counsel” means the law firms of Barrack, Rodos & Bacine and Robbins Geller, Rudman & Dowd LLP.

11. “Class Notice Package” means the Notice attached hereto as Exhibit A as well as the Claim Form attached hereto as Exhibit B.

12. “Class Representatives” means Marie Sweeney and Anita Williams, as Trustee for the Estate of George J. Miller, on behalf of deceased plaintiff George J. Miller, individually and on behalf of the Class, the named plaintiffs in the Action.

13. “Court” means the Honorable Gonzalo P. Curiel, United States District Court Judge, Southern District of California, or any previously or subsequently assigned judge in the Action.

14. “Death Benefit” means the same as that term is used in the Annuities.

15. “Effective Date” has the same meaning as the term “Final Settlement Date.” The Effective Date and the Final Settlement Date shall both mean the date on which the Final Order and the Judgment approving this Agreement become final for all purposes, including appeal. If the Court disapproves the Settlement and that ruling becomes final, or if the Final Approval Order is entered but is reversed on appeal and that reversal becomes final, the Effective Date does not occur, and this Agreement shall terminate and be of no further force or effect without any further action by any Party.

16. “Eligibility Date” means the date of the filing of the Motion for Preliminary Approval.

17. “Final Approval Date” means the date on which the Final Approval Order is entered on the Court’s docket in the Action.

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18. “Final Approval Order” means the order of the Court finally approving this Settlement in all respects, and dismissing the Action with prejudice, as attached as Exhibit E, and in accordance with the terms of this Agreement.

19. “Final Settlement Date” has the same meaning as the term “Effective Date.” The Effective Date and the Final Settlement Date shall both mean the date on which the Final Order and the Judgment approving this Agreement become final for all purposes, including appeal. If the Court disapproves the Settlement and that ruling becomes final, or if the Final Approval Order is entered but is reversed on appeal and that reversal becomes final, the Effective Date does not occur, and this Agreement shall terminate and be of no further force or effect without any further action by any Party.

20. “Lower Tier Benefits” means qualification for a 25% refund of the Surrender Charges incurred on a full surrender of an Annuity subject to the limits contained in Paragraph IV.D.2.

21. “National Western” means National Western Life Insurance Company, defendant in the Action and its present, former, and future parent, sister, subsidiary and affiliated companies, and its past, present, and future officers, directors, employees, servants, attorneys, insurers, reinsurers, legal and beneficial shareholders, partners, privies, representatives, successors, assigns, and agents (including, without limitation, those acting on behalf of National Western and within the scope of their agency), including, without limitation, Independent Marketing Organizations (IMOs), National Marketing Organizations (NMOs), and other marketing organizations involved in any way, directly or indirectly, in the marketing, sale, and servicing of National Western Annuities, and all of such Released Parties’ heirs, administrators, executors, insurers,

1 predecessors, successors and assigns, or any of them, and including any person or entity
2 acting on behalf or at the direction of any of them.

3 22. “National Western’s Counsel” means the law firms of (1) Barger & Wolen
4 LLP, 633 West Fifth Street, 47th Floor, Los Angeles, California 90071, Telephone (213)
5 680-2800, Facsimile (213) 614-7399 and (2) Fulbright and Jaworski LLP, 555 South
6 Flower Street, Forty-First Floor, Los Angeles, CA 90071, Telephone (213) 892-9000,
7 Facsimile (213) 892-9494.

8 23. “Owner” means the person who has ownership rights to the Annuity as
9 further defined in the Annuities.
10

11 24. “Parties” means, collectively, the Class Representatives, the Settlement
12 Class, and National Western.

13 25. “Party” means any Class Representative, any member of the Settlement
14 Class, or National Western.
15

16 26. “Plaintiffs’ Counsel” means the law firms of (1) Barrack, Rodos & Bacine,
17 (2) Robbins Geller, Rudman & Dowd LLP, (3) Finkelstein & Krinsk, Bonnett, Fairbourn,
18 Friedman & Balint, P.C., (4) Shernoff Bidart Echeverria Bentley LLP, (5) James, Hoyer,
19 Newcomer & Smiljanich, P.A., (6) Lightman & Manochi, (7) Jacob A. Goldberg, LLC,
20 (8) Alan F. Markovitz, Attorney at Law, (9) The Evans Law Firm, and (10) Wilentz,
21 Goldman & Spitzer, P.A.
22

23 27. “Policy Year” means a full duration for purposes of the Annuity contracts
24 and is measured by the completion of one year from each policy anniversary.

25 28. “Preliminary Approval Order” means the order preliminarily approving
26 the Settlement and directing that Settlement Notice be mailed to the Settlement Class, as
27 attached as Exhibit D.
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29. “Preliminary Approval Date” means the date on which the Preliminary Approval Order is entered on the Court’s docket in the Action.

30. “Previously Annuitized Policyholder Cap” means the total amount of \$250,000.00

31. “Released Claims” means the claims of the Class Representatives and the Settlement Class, against the Released Parties which are released and finally resolved by the Settlement, as more fully set forth in Article VIII, below.

32. “Released Parties” means National Western and the related persons and entities described in Article VIII, below, against whom the Released Claims are released and finally resolved by the Settlement.

33. “Settlement” means the settlement of the Action, as set forth in the Agreement.

34. “Settlement Benefits” means those benefits specifically described in Article IV, below.

35. “Settlement Class” means the nationwide class and the California classes described below, not including those individuals who have previously, validly excluded themselves therefrom.

Nationwide Class: Any senior citizen (age 65 and older), excluding National Western and its directors, officers, predecessors, successors, affiliates, agents, and employees, as well as the immediate family members of such persons, who purchased one or more of the Annuities, either directly, or through the surrender (in whole or part) of an existing permanent life insurance policy or annuity, or by borrowing against an existing permanent life insurance policy, in which the annuitant was age 65 or older on the date of issue, between December 22, 2001 and the Eligibility Date. “Nationwide

1 Class” does not include: (a) anyone who has made a valid request for exclusion, either in
2 response to the Notice of Pendency of Class Action dated February, 2010 as
3 supplemented by curative notice dated January, 2012, or the Settlement Notice defined
4 herein, (b) anyone who falls into the California Class, (c) any Settlement Class Member
5 who at anytime has signed a document that releases National Western from any further
6 claims concerning an Annuity or whose rights and claims respecting an Annuity have
7 been finally adjudicated in a court of law or (d) anyone who purchased an annuity that
8 falls within the class certified in *Clark v. National Western Life Insurance Company*,
9 Superior Court of the State of California, County of Los Angeles, Case No. BC321681.
10

11 **California Class:** Any senior citizen (age 65 or older), excluding National
12 Western and its directors, officers, predecessors, successors, affiliates, agents, and
13 employees, as well as the immediate family members of such persons, who purchased
14 one or more of the Annuities, either directly, or through the surrender (in whole or part)
15 of an existing permanent life insurance policy or annuity, or by borrowing against an
16 existing permanent life insurance policy, in which the annuitant was age 65 or older on
17 the date of issue, between April 7, 2001 and the Eligibility Date, provided that National
18 Western’s records show that such senior citizen was a California resident on the date of
19 issue. “California Class” does not include: (a) anyone who has made a valid request for
20 exclusion, either in response to the Notice of Pendency of Class Action dated February,
21 2010 as supplemented by curative notice dated January, 2012, or the Settlement Notice
22 defined herein, (b) any Settlement Class Member who at anytime has signed a document
23 that releases National Western from any further claims concerning an Annuity or whose
24 rights and claims respecting an Annuity have been finally adjudicated in a court of law or
25 (c) anyone who purchased an annuity that falls within the class certified in *Clark v.*
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1 *National Western Life Insurance Company*, Superior Court of the State of California,
 2 County of Los Angeles, Case No. BC321681.

3 36. “Settlement Notice” means the notice of the Settlement to be mailed to the
 4 Settlement Class if the Settlement receives preliminary approval by the Court, in the form
 5 of Exhibit A to this Agreement, and in the manner provided in Article V, below.

6 37. “Surrender” means a termination of an Annuity as defined in the
 7 Annuities.

8 38. “Surrender Charge” means any Withdrawal Charge, as defined in the
 9 Annuities, exclusive of taxes or tax withholding, actually deducted upon a withdrawal
 10 from an Annuity, including any such Withdrawal Charges actually deducted on full
 11 surrender, partial withdrawal, or any election to receive a Death Benefit as a single sum.
 12

13 39. “Upper Tier Benefits” means qualification for a 50% refund of the
 14 Surrender Charges incurred on a full surrender of an Annuity subject to the limits
 15 contained in Paragraph IV.D.2.
 16

17 **III. SETTLEMENT PROCESS**

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

| 19 EVENT DATE | EVENT |
|--|--|
| 20 August 30, 2013 | Preliminary Approval Hearing |
| 21 Date of Filing of the Motion for 22 Preliminary Approval (8.16.13) | Eligibility Date |
| 23 21 days after entry of 24 the Preliminary Approval Order | Mailing of the Class Notice Packet and Claim Form |
| 25 24 days after the mailing of 26 the Class Notice Packet | Petition for Class Counsel Payment and Plaintiffs’ Service Awards and Filing of Motion for Final Approval. |
| 27 45 days after the mailing of 28 | Opt Outs, Exclusions and Objections must be |

| | | |
|----|--------------------------------------|--|
| 1 | the Class Notice Packet | postmarked and sent to the Administrator and filed with the Court; requests to appear and be heard at the Fairness Hearing must be served on Class Counsel and National Western’s Counsel and filed with the Court |
| 2 | | |
| 3 | | |
| 4 | 60 days after the mailing of | All Claim Forms must be postmarked and sent |
| 5 | the Class Notice Packet | to the Administrator |
| 6 | 75 days after mailing of | Administrator files with the Court and serves the |
| 7 | Class Notice Packet | Parties’ counsel with notice specifying those |
| 8 | | Claimants who have objected or requested |
| 9 | 24 days after the later of the | Administrator shall provide report regarding |
| 10 | postmark deadline for Claim | claim review |
| 11 | Forms or the postmark deadline | |
| 12 | for responding to the last-mailed | |
| 13 | deficiency notice, if there are any, | |
| 14 | or as soon thereafter as the | |
| 15 | processing of Claims is completed | |
| 16 | To be set by the Court, but not less | Fairness Hearing |
| 17 | than 110 days after entry of the | |
| 18 | Preliminary Approval Order | |
| 19 | The date on which the Final | Final Settlement Date |
| 20 | Order and Judgment approving | |
| 21 | this Agreement becomes final for | |
| 22 | all purposes, including appeal | |
| 23 | Final Settlement Date | Effective Date |
| 24 | | |
| 25 | 7 days after Effective Date | National Western to provide payment of Fee |
| 26 | | Award to Plaintiffs’ Counsel and Service Awards |
| 27 | | to Class Representatives. |
| 28 | 21 days after Effective | National Western to provide data as to amounts |
| | Date | of refunds of Surrender Charge Reduction |
| | | Benefits |
| | | |
| | 45 days after Effective | Administrator to distribute funds for Surrender |
| | Date | Charge Reduction Benefits and Previously |
| | | Annuitized Policyholder Benefits and provide |
| | | proof of payments to National Western and |
| | | Class Counsel |

| | | |
|---|-------------------------------|---|
| 1 | 90 days after Effective Date | Administrator provides interim report to National Western and Class Counsel |
| 2 | | |
| 3 | 180 days after Effective Date | Administrator provides final report to National Western and Class Counsel |
| 4 | | |
| 5 | 195 days after Effective Date | Administrator provides certification as to all payments, returns all materials generated by the Claim Review process to National Western and returns any remaining funds to National Western. |
| 6 | | |
| 7 | | |

8 **IV. SETTLEMENT BENEFITS**

9 **A. Overview.** National Western will provide or make the Settlement Benefits
10 described in this Agreement available to Settlement Class Members as of the Effective Date.
11 Settlement Class Members with an Active Deferred Annuity will receive an Annuitization Bonus
12 if the Annuity is Annuitized after the Final Settlement Date and the Settlement Class Member
13 selects a life annuitization with either a 10-year or a 20-year guarantee period. Settlement Class
14 Members who Annuitized their Annuities on or before the Final Settlement Date will qualify to
15 receive a payment, subject to the Previously Annuitized Policyholder Cap. Settlement Class
16 Members who have surrendered their Annuities prior to the date of the Preliminary Approval
17 Hearing may file Claims that, if approved, will provide partial refunds of past Surrender Charges
18 for their Annuities, or payments of \$100.00, subject to the limits contained in Paragraph IV.D.2.
19 These partial reductions in Surrender Charges, and payments of \$100.00, are referred to in this
20 Agreement as Surrender Charge Reduction Benefits. The partial refunds that are approved after
21 review of the Claim Forms may be at either of two levels, referred to as Upper Tier Benefits and
22 Lower Tier Benefits.
23

24 **B. Annuitization Bonus.** If an Annuity owned by a Settlement Class Member is
25 Annuitized after the Final Settlement Date and the Settlement Class Member selects a life
26
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1 annuitization with either a 10-year or a 20-year certain period, an Annuitization Bonus pursuant
2 to the table provided below will be provided with respect to that Annuity.

3 1. The Annuitization Bonus will not apply to any Accumulation Value
4 attributable to premium added to an Annuity after filing of the motion for
5 Preliminary Approval of the Agreement, as described in Article III. The
6 Annuitization Bonus shall have no effect unless a Settlement Class Member
7 Annuitizes an Annuity after the Final Settlement Date and the Settlement Class
8 Member selects a life annuitization with either a 10-year or a 20-year certain
9 period.
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11 2. Settlement Class Members who have not Annuitized prior to the Effective
12 Date shall be entitled, after the Effective Date and no earlier than the end of the
13 5th Policy Year, to Annuitize the Accumulation Value of their Annuities at the
14 rates set forth in their Annuities for the corresponding settlement option. For each
15 Active Deferred Annuity that is Annuitized and the Settlement Class Member
16 selects a life annuitization with either a 10-year or a 20-year certain period,
17 National Western will increase the Accumulation Value of each Active Deferred
18 Annuity receiving the Annuitization Bonus by the amount of the applicable
19 bonus, calculated at the time of Annuitization. The increased Accumulation
20 Value amount and the rates provided under the corresponding settlement option in
21 the Annuity will be used to determine the annuity payment amount. The
22 Annuitization Bonus will be an amount equal to a percentage of the Annuity's
23 Accumulation Value on the date of Annuitization, and the applicable percentage
24 will be determined by the duration of the Annuity in question, as set forth in the
25 following table:
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| Policy Year | Bonus Percentage |
|-------------|------------------|
| 1-4 | 0% |
| 5-9 | 3% |
| 10 | 4% |
| 11 | 5% |
| 12 | 6% |
| 13 | 7% |
| 14 | 8% |
| 15 | 9% |
| 16+ | 10% |

3. When an Annuity is terminated by death after the Final Settlement Date, and the beneficiary or surviving spouse elects to receive the death benefit in the form of a life annuitization with either a 10-year or a 20-year certain period, National Western will apply the applicable Annuitization Bonus to determine the amount of each periodic payment to the beneficiary or surviving spouse occurring after the Effective Date. Annuities that are continued by the surviving spouse of the Owner of an Annuity are also eligible to receive the applicable Annuitization Bonus if the Annuity is Annuitized with a life annuitization with either a 10-year or a 20-year certain period.

C. Previously Annuitized Policyholder Payments

1. Settlement Class Members whose Annuities are in Annuitized Status as of the Final Settlement Date, as a result of Annuitization either by policyholder election, or upon election by a beneficiary upon death of the owner or annuitant, will receive a payment representing a per capita share of the Previously Annuitized Policyholder Cap amount. The Previously Annuitized Policyholder

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Cap is equal to \$250,000.00. Eligible claimants include Settlement Class Members in Annuitized Status and beneficiaries of Settlement Class Members who Annuitized the death benefit under a Settlement Class Member’s policy prior to the Final Settlement Date. The Previously Annuitized Policyholder Cap amount will be divided by the number of eligible claimants as of the Final Settlement Date to determine the per capita payment.

2. The Administrator will distribute the Previously Annuitized Policyholder payments. The payments will be available for 180 days. The Administrator will reissue these payments if they are not exercised. Any amounts remaining from unexercised distributions one year after the Final Settlement Date will be returned to National Western.

D. Surrender Charge Reduction Benefits

1. **Overview.** Settlement Class Members whose Annuities are in terminated status according to National Western’s computerized records as of the date of filing of the motion for Preliminary Approval, either as a result of a full withdrawal of the Cash Value by the policyholder or as the result of a cash value death claim selection by a policy beneficiary, qualify to make a claim for Surrender Charge Reduction Benefits. Those Settlement Class Members who timely return a claim form (attached hereto as Exhibit B) that meets the Grading Criteria (attached hereto as Exhibit C) will qualify for a refund equal to a percentage of the amount of the withdrawal charge incurred when the policy was terminated, subject to the limitations of Paragraph IV.D.2. This refund, either 50% or 25% of the Surrender Charge incurred, will be paid without interest.

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2. The total amount of Surrender Charge Reduction Benefits to be paid is \$1,000,000.00. Approved claims will be paid in their entirety to the extent that the total amount of approved claims submitted is less than \$1,000,000.00. To the extent that the total amount of approved claims exceeds \$1,000,000.00, the amounts to be distributed shall be distributed pro-rata based on the relative size of the approved claims.

3. Claims shall be reviewed and approved if the Claimant satisfies the conditions for Surrender Charge Reduction Benefits. Claims may be initiated only by timely submission of a properly completed Claim Form, provided, however, that the Administrator may accept and evaluate Claim Forms from Settlement Class Members who failed to timely submit their Claim Forms for good cause shown, provided they are received prior to the entry of the Final Approval Order. If a Settlement Class Member timely submits a Claim Form, or has established good cause for any delinquency and provided the Claim Form is received prior to the entry of the Final Approval Order, that Claim Form will be used to determine qualification for Surrender Charge Reduction Benefits as to the applicable Annuity.

4. Subject to Paragraph IV.D.2 above, if approved under the Claim Review Process, Surrender Charge Reduction Benefits provide a refund of 50% or 25% of Surrender Charges incurred prior to the date the motion for Preliminary Approval of the Settlement is filed with the Court. The applicable percentage, either 50% or 25%, will depend on whether the Claim is approved for Upper Tier Benefits or Lower Tier Benefits. If a Claim qualifies for both Upper Tier Benefits and Lower Tier Benefits, only Upper Tier Benefits will apply. If a timely, properly

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completed Claim does not qualify for either Upper or Lower Tier Benefits, the claimant will receive a check for \$100.00 subject to the limitations in Paragraph IV.D.2.

5. Only Settlement Class Members whose Annuities are terminated as of the date the motion for Preliminary Approval of the Settlement is filed with the Court will have the opportunity to receive a payment returning the applicable percentage of any Surrender Charge previously incurred. Policyholders who terminate between the date the motion for Preliminary Approval of the Settlement is filed with the Court and the Effective Date will receive additional notice to be agreed upon by the Parties regarding their rights should the Settlement be approved. Partial surrenders do not qualify for the Surrender Charge Reduction Benefit. Claims for Surrender Charge Reduction Benefits will be evaluated in accordance with Article IV.F. below.

6. Owners of Annuities as to which a death benefit becomes payable after the date of filing of the motion for Preliminary Approval of the Settlement and before the Effective Date are not eligible for any Surrender Charge Reduction Benefits under this Agreement. Beneficiaries of owners of Annuities as to which a death benefit becomes payable between the date the motion for Preliminary Approval of the Settlement is filed with the Court and the Effective Date will receive additional notice to be agreed upon by the Parties regarding their rights should the Settlement be approved.

E. Claim Submission

1. To submit a Claim, a Settlement Class Member must timely submit to the Administrator a completed Claim Form relating to the Annuity that is the subject

1 of the Claim, provided, however, that the Administrator may accept and evaluate
2 Claim Forms from Settlement Class Members who failed to timely submit their
3 Claim Forms for good cause shown, provided they are received prior to the entry
4 of the Final Approval Order. A separate Claim Form must be submitted for each
5 Annuity for which the Settlement Class Member seeks to make a Claim for
6 Surrender Charge Reduction Benefits. A Claimant may supplement any Claim
7 Form at any time before final determination of the Claim by the Administrator.
8 No later than 21 days after entry of the Preliminary Approval Order, the
9 Administrator shall mail the Class Notice Package to the Settlement Class
10 Members, which, for Settlement Class Members with Annuities in Terminated
11 Status as of the date of filing of the Motion for Preliminary Approval, shall
12 include the Claim Form. If the Settlement Class Member chooses to submit a
13 Claim Form, the Settlement Class Member shall properly complete and sign the
14 Claim Form under penalty of perjury and cause the Claim Form to be postmarked
15 and sent to the Administrator no later than 45 days after mailing of the Class
16 Notice Package.

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19 2. Based on the information contained in or submitted with the Claim Form,
20 the Administrator will determine the Surrender Charge Reduction Benefits, if any,
21 for which each Claimant qualifies pursuant to the Claim Review Process detailed
22 below.

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24 **F. Claim Review Process**

25 1. In order to obtain Surrender Charge Reduction Benefits, a qualifying
26 Settlement Class Member must:

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(a) timely submit a completed Claim Form in accordance with Article IV.E. above, provided, however, that the Administrator may accept and evaluate Claim Forms from Settlement Class Members who failed to timely submit their Claim Forms for good cause shown, provided they are received prior to the entry of the Final Approval Order; and,

(b) satisfy the requirements for Upper Tier Benefits or Lower Tier Benefits, as set forth below.

2. For each Annuity as to which a Claimant obtains Surrender Charge Reduction Benefits, National Western will apply the applicable reduction (either 50% or 25%, subject to Article IV.D.2) to reduce the amount of any Surrender Charge that was applied to a full surrender from the Annuity.

3. Each Claimant must timely submit a Claim Form as to each Annuity as to which Surrender Charge Reduction Benefits are requested and must provide, under penalty of perjury, the information in response to one or more of the following questions:

(a) whether a misrepresentation concerning the applicable Surrender Charges, bonus interest, right to annuitize, commission paid to the agent or other policy terms occurred at the time of the Annuity's sale, and if so, a narrative description of the claimed misrepresentation, in reasonable detail identifying how, when, by whom and the nature of the misrepresentation.

(b) whether full surrender of the Annuity was necessary to pay for:
(i) medical expenses;
(ii) nursing or home care;
(iii) retention of the Claimant's sole residence; or

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(iv) other essential living expenses (such as food, rent, necessary housing repairs and upkeep, utilities, and/or transportation for the Claimant or a member of Claimant's household);

And if so, as to any of items (i)-(iii), a description of the claimed expense, and as to any expenses claimed under (iv) an explanation, in reasonable detail, of the need and the financial circumstances indicating the Claimant could not afford the expenses without incurring a Surrender Charge on the Claimant's Annuity;

(c) whether the Settlement Class Member's annual income is less than or equal to \$35,000.

4. If a Claimant does not have first-hand, personal knowledge of the Annuity sale giving rise to an asserted misrepresentation (because, for example, the Claimant is not the original purchaser of the Annuity), then, if the Claimant intends to assert a misrepresentation, that Claimant must submit a Claim Form executed under penalty of perjury by a person having such first-hand, personal knowledge.

5. If a Claimant is a revocable trust, then the Claim will be assessed based on the settlor's circumstances, including the settlor's medical condition, assets and finances. If the Claimant is an irrevocable trust, the information specified by paragraph 3.(b), and 3.(c) shall not be required to be provided on the Claim Form and the response to each such item shall be deemed to be negative.

6. Qualification for Surrender Charge Reduction Benefits shall be assessed based on the information in the Claim Form as follows:

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(a) If the information set forth in the Claim Form provides a positive answer supported by a narrative response to Question 1, the Claimant shall be entitled to receive Upper Tier Benefits.

(b) If the information set forth in the Claim Form provides a positive answer supported by a narrative response to Question 2, the Claimant shall be entitled to Lower Tier Benefits.

(c) If the information set forth in the Claim Form establishes a yearly income of less than \$35,000 a year, the Claimant shall be entitled to Lower Tier Benefits.

(d) If the information set forth in the Claim Form does not establish that any of the circumstances described above exist, then the Claim shall not be approved and the Claimant shall receive \$100.00 subject to the limitations of Paragraph IV.D.2.

7. No Surrender Charge Reduction Benefits will apply to a full surrender or partial withdrawal taken from an annuity after the filing of the motion for Preliminary Approval of the Agreement.

8. Policies Terminated Due to Death - Policies which are in the Settlement Classes and where the annuitant has died fall into the following categories and will receive the following relief:

a. Lump Sum Distribution of Death Benefit: Provided the beneficiaries have taken the lump sum distribution prior to the date of filing of the motion for preliminary approval, the form of relief available to these Settlement Class Members is the Claim Review Process, described above in Article IV.F.

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b. Annuitized Distribution of Death Benefit: Provided they have Annuitized prior to the Final Settlement Date, the form of relief available to these Settlement Class Members is the same as that provided to previously annuitized policies, described above in Article IV.C.

c. Spousal Continuance: Provided that the Annuity is Active as of the Final Settlement Date, the form of relief available to these Settlement Class Members is the Annuitization Bonus, described above in Article IV.B.

9. Unless requested by the Administrator, Claimants will not be required, but may choose, to submit documents substantiating the information set forth in the Claim Form. In the event a Claim Form does not indicate that the Claimant is asserting that one or more of the conditions under Questions 3.(a) or (b) exists (such as where the pertinent section of the Claim Form is left blank), the Administrator shall deem that the Claimant has responded in the negative as to such conditions, and shall not be required to obtain additional information as to such conditions before making its determination. In the event the section of the Claim Form pertaining to income is incomplete, the Administrator shall deem that the Claimant has responded in the negative as to such conditions, and shall not be required to obtain additional information as to such conditions before making its determination. If a Claim Form indicates that the Claimant is asserting that one or more of the conditions for relief under Questions 3.(a)-(c) exist, but the Administrator determines information provided as to any of the claimed conditions is insufficient to determine those conditions exist, the Administrator

1 shall send, via first class mail, a notice of deficiency to the Claimant identifying
2 the response as to which additional information is needed to complete the
3 Administrator's determination. The Administrator shall also send a notice of
4 deficiency to any Claimant who fails to properly sign or verify the Claim Form, or
5 who fails to respond whether he or she is an original Owner of the Annuity, or if
6 not the original Owner, whether an original Annuitant was age 65 or over. In any
7 case in which a notice of deficiency is sent, the Claimant may supplement his or
8 her Claim Form by responding to the notice of deficiency in writing, under
9 penalty of perjury, by mail, postmarked no later than 21 days from the mailing of
10 the notice of deficiency. The notice of deficiency shall be substantially in the
11 form of Exhibit G attached hereto. The Administrator shall determine which
12 conditions under Questions 3.(a)-(c) have been satisfied by reviewing the
13 information provided by a Claimant in a Claim Form and in a timely and properly
14 signed response to a notice of deficiency.
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17 10. The criteria set forth in this Article are the product of extensive arm's-
18 length settlement negotiations between the Parties. As such, these provisions
19 apply only to the settlement of the claims in this Action and should not be offered
20 as, received as, used as, or deemed to be evidence in any other action or
21 proceeding and do not reflect or require modification of National Western's
22 business practices beyond the terms of this Agreement.
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24 11. Surrender Charge Reduction Benefits will only be paid to the person or
25 entity that is the Owner, or beneficiary, as reflected in National Western's records
26 on the Effective Date.
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1 12. No Obligation to Pay Without an Effective Date. In the event that there is
2 no Effective Date of this Agreement, National Western shall have no obligation
3 whatsoever to pay or credit any amounts to the Class Representatives or the
4 Settlement Class as described in Article IV. In the event there is no Effective
5 Date of this Agreement, National Western's agreement pursuant to Article IV,
6 above, shall not be admissible for any purpose in this or any other action.
7

8 **G. Administrator**

9 1. The Administrator shall:

- 10 (a) verify the mailing list for Class Notice prior to the mailing of the
11 Class Notice;
- 12 (b) prepare and mail the Class Notice;
- 13 (c) process returned mail, investigate the availability of a correct
14 address, and re-mail if an updated address is available;
- 15 (d) receive requests for exclusion and objections, provide copies of
16 such items to the Parties' counsel;
- 17 (e) receive Claim Forms, and send notice requesting any required
18 curative information or clarifications as deemed necessary by the
19 Administrator, or as directed by Class Counsel or National Western's
20 Counsel;
- 21 (f) notify each Claimant whether his or her Claim is approved for
22 Upper Tier Benefits or Lower Tier Benefits and provide copies of such
23 results to Claimants, the Parties' counsel, and National Western's
24 designee;
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(g) arrange for, staff, and maintain a toll-free call center to respond to questions from persons or entities in the Settlement Class (in accordance with question-and-answer scripts approved by Parties' counsel), which shall be reasonably staffed during business hours to receive calls until the initial Claim Review Process is completed;

(h) assist persons and entities in the Settlement Class that contact the Administrator for assistance in completing Claim Forms (in accordance with question-and-answer scripts approved by the Parties' counsel);

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

(j) no later than 75 days after the mailing of the Class Notice Package, provide the Court and the Parties' counsel with information regarding Settlement Class Members who have notified the Administrator that they plan to object to, or exclude themselves from, the Settlement;

(k) no later than 24 days after the later of the postmark deadline for Claims Forms or the postmark deadline for response to the last-mailed deficiency notice, if there are any deficiency notices, or as soon thereafter as the processing of Claims is completed, provide National Western's Counsel and Class Counsel with an Excel spreadsheet listing the following information for each Claim Form that is timely submitted and received:

- (i) the policy or certificate number of the Annuity with respect to which the Claim was submitted;
- (ii) the Claimant's name and state of residence;
- (iii) whether the Claim Form was fully completed;
- (iv) whether the Claim Form was properly signed by the Owner;
- (v) whether the Claim was approved for Upper Tier Benefits;
- (iv) whether the Claim was approved

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for Lower Tier Benefits; (vii) whether the Claim Form established that the circumstances described in each of Questions 3.(a), 3.(b), and/or 3.(c), exist; and (viii) if a Claim was rejected, the basis for such rejection.

(l) within 45 days following the Effective Date, mail checks for Surrender Charge Reduction Benefits to the eligible Claimants, and mail payments for Previously Annuitized Policy Fund Benefits to all eligible Settlement Class Members;

(m) contemporaneously with the distribution of the Surrender Charge Reduction Benefits payments and the Previously Annuitized Policyholder payments to the eligible Claimants, provide Class Counsel and National Western’s Counsel evidence of such mailing;

(n) The Administrator will distribute the Previously Annuitized Policyholder payments. The payments will be valid for 180 days. The Administrator will reissue these payments if they are not exercised within the first 180 days. Any amounts remaining from unexercised distributions one year after the Final Settlement Date will be returned to National Western’s Counsel.

(o) within 90 days after the Effective Date, provide Class Counsel and National Western’s Counsel with an interim report containing all data concerning the payments of Surrender Charge Reduction Benefits and Previously Annuitized Policyholder payments provided to Settlement Class Members;

(p) within 180 days after the Effective Date, provide Class Counsel and National Western with a final analysis of the Surrender Charge

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Reduction Benefits and Previously Annuitized Policyholder payments provided to Settlement Class Members, and identify those payments that have not been presented and paid;

(q) within 195 days after the Effective Date, certify that the terms of this Settlement under its control have been fully implemented, and at the same time send all records received or generated through the Claim Review Process relating to the Plaintiffs and Settlement Class Members to National Western, where they will be maintained;

(r) within 365 days after the Effective Date, return all funds remaining, if any, as a result of uncashed instruments; and

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

2. National Western's Counsel shall assist in, observe and monitor the performance of the Administrator. Initial determinations as to qualification for relief will be made by the Administrator under the direction of National Western's Counsel. Class Counsel shall have the right to review each claim form that is rejected by the Administrator. Counsel for both Parties will meet and confer regarding the disputed claims. The Magistrate for this Action will finally decide any claims that the Parties cannot resolve.

3. The arrangement governing the engagement of the Administrator shall obligate the 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

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persons and entities in the Settlement Class (pursuant to scripted answers approved by counsel for the Parties);

(b) the Administrator, its employees and agents may not make any statements to a Claimant that might reasonably be viewed as causing or helping to cause a Claimant 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 and/or its agent or employee refer the communication to Class Counsel, or if the Administrator and/or its agent or employee determines that the Settlement Class Member is seeking legal advice, then the Administrator and/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 Settlement Class, an agent or employee of the Administrator reasonably concludes that the person or entity is not satisfied with the information and/or assistance provided, the communication shall promptly be referred to a supervisor.

H. Finality of Determinations

All affirmative determinations and awards made by the Administrator under National Western's direction or by the Magistrate, and all negative determinations made by the

1 Administrator under National Western's direction, or after meet and confer with Counsel, or
2 after a ruling by the Magistrate, if necessary, shall be final and binding. The Settlement Class
3 Members, along with their predecessors, successors and assigns, and Plaintiffs' Counsel,
4 National Western and any other party-in-interest may not appeal or seek review or vacatur of or
5 otherwise challenge such determinations or awards in any subsequent court or administrative
6 proceeding, including without limitation any proceeding under any applicable federal or state
7 law, rule, or procedure, unless the Administrator does not make its decisions on Claims in
8 accordance with the requirements of this Agreement or is grossly negligent.
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10 **I. Determination and Distribution of Surrender Charge Reduction Benefits**

11 1. Following the final determination of all Claims submitted to the Claim
12 Review Process but before relief is distributed to Claimants, the Administrator
13 shall prepare a list of: (a) Annuities approved for Upper Tier Benefits; (b)
14 Annuities approved for Lower Tier Benefits; and (c) Annuities who qualify for
15 payments of \$100.00. Thereafter, a determination shall be made as to whether the
16 approved Claims exceed the limits contained in Paragraph IV.D.2, and if so, the
17 adjustments to be made in the Surrender Charge Reduction Benefits pursuant to
18 paragraph 2 below.
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20 2. Limit on Approved Claims. The total amount of Surrender Charge
21 Reduction Benefits is \$1,000,000.00. Approved claims will be paid in their
22 entirety to the extent that the total amount of approved claims submitted is less
23 than \$1,000,000.00. To the extent that the total amount of approved claims
24 exceeds \$1,000,000.00, the amounts to be distributed shall be distributed pro-rata
25 based on the relative size of the approved claims. To the extent Claim Forms are
26 not returned in a timely manner, or are finally rejected according to the process
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1 detailed above, no claim for Surrender Charge Reduction Benefits shall exist,
2 provided, however, that the Administrator may accept and evaluate Claim Forms
3 from Settlement Class Members who failed to timely submit their Claim Forms
4 for good cause shown provided they are received prior to the entry of the Final
5 Approval Order.

6 **J. Limitation of Liability for Administrator Determinations**

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8 Neither National Western, its officers, directors and employees, National Western's
9 Counsel nor Class Counsel shall have any liability for any determinations made by the
10 Administrator pursuant to this Agreement, and the Administrator shall have no liability for
11 determinations made in good faith.

12 **V. NOTICE TO THE SETTLEMENT CLASS AND COMMUNICATIONS**
13 **WITH SETTLEMENT CLASS MEMBERS**

14 **A. Class Notice**

15 1. No later than 21 days after the entry of the Preliminary Approval Order,
16 the Administrator will send a Class Notice Package, substantially in the form of
17 Exhibit A hereto, to each Settlement Class Member by first-class mail, postage
18 prepaid, to the last known address supplied by National Western based on its
19 records as of the Eligibility Date.

20 2. National Western shall review and approve the Class Notice Package and
21 the Claim Form prior to dissemination if it has been altered from the version
22 approved by the Court in the Preliminary Approval Order.

23 **B. Remailing of Notice**

24 The Administrator will re-mail, one time, pursuant to its normal procedures, any Class
25 Notice Package returned by the Postal Service with a forwarding address.
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1 **VI. REQUESTS FOR EXCLUSION**

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

6 **B.** The Administrator will forward copies of any written requests for exclusion to
7 Class Counsel and National Western's Counsel immediately upon receipt, and shall provide
8 Class Counsel and National Western's Counsel with a list of all Settlement Class Members who
9 wish to be excluded no later than 64 days after the mailing of the Class Notice Package, or as the
10 Court otherwise may direct.

11 **C.** A list reflecting all requests for exclusion shall be filed with the Court by the
12 Administrator no later than 75 days after the mailing of the Class Notice Package, or as the Court
13 otherwise may direct. Such list shall be filed under seal, be subject to the Court's Confidentiality
14 Order, and served upon Class Counsel and National Western's Counsel by the Administrator.

15 **D.** Any Settlement Class Member who does not file a timely written request for
16 exclusion with respect to an Annuity as provided in this Article shall be bound with respect to
17 that Annuity by all subsequent proceedings, orders, and judgments in this Action, including, but
18 not limited to, the Release (as set forth in Article VIII below), even if he or she has litigation
19 pending or subsequently initiates litigation against National Western relating to that Annuity
20 with respect to the Released Claims. To the extent practicable, the Administrator will use
21 reasonable efforts to serve the Class Notice Packages on legal counsel for all Settlement Class
22 Members who have pending litigation against National Western. National Western will
23 promptly direct the Administrator to serve the Class Notice Packages on counsel for Settlement
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1 Class Members who subsequently initiate litigation, arbitration, or other proceedings against
2 National Western relating to the Released Claims prior to the Final Settlement Date.

3 E. If any one Owner of an Annuity excludes himself or herself from the Settlement
4 Class with respect to that Annuity pursuant to Article VI of this Agreement, all other Owners of
5 that Annuity shall be deemed excluded from the Settlement Class with respect to that Annuity,
6 and all rights and obligations with respect to that Annuity shall be unaffected by the Settlement
7 Agreement.
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9 F. A Settlement Class Member must either exclude, or not exclude, all Annuities in
10 which the Settlement Class Member has an interest as an Owner. A Settlement Class Member
11 may not exclude some, but not all Annuities in which the Settlement Class Member has an
12 interest as an Owner. If a Settlement Class Member submits a timely and otherwise complete
13 request for exclusion that attempts to exclude some, but not all of the Annuities in which the
14 Settlement Class Member has an interest as an Owner, all Annuities in which the Settlement
15 Class Member has an interest will be deemed excluded from the Settlement.
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17 **VII. OBJECTIONS TO SETTLEMENT**

18 A. Any Settlement Class Member who wishes to object to the fairness,
19 reasonableness, or adequacy of this Agreement or the proposed Settlement, or to the award of
20 attorneys' fees and expenses, must deliver to Class Counsel identified in the Class Notice and to
21 National Western's Counsel, and file with the Court, no later than 45 days after the mailing of
22 the Class Notice Package, or as the Court otherwise may direct, a written statement of the
23 objections, as well as the specific reason(s), if any, for each objection, including any legal
24 support the Settlement Class Member wishes to bring to the Court's attention, any evidence or
25 other information the Settlement Class Member wishes to introduce in support of the objections
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1 and the Settlement Class Member's Annuity number(s). Settlement Class Members may do so
2 either on their own or through an attorney retained at their own expense.

3 **B.** Any Settlement Class Member who files and serves a written objection, as
4 described in the preceding paragraph, may appear at the Fairness Hearing, either in person or
5 through personal counsel hired at the Settlement Class Member's expense, to object to the
6 fairness, reasonableness, or adequacy of this Agreement or the proposed Settlement, or to any
7 award of attorneys' fees and expenses. Settlement Class Members or their attorneys who intend
8 to make an appearance at the Fairness Hearing must deliver a notice of intention to appear to
9 Class Counsel identified in the Class Notice and to National Western's Counsel, and file said
10 notice with the Court, no later than 45 days after the mailing of the Class Notice Package, or as
11 the Court may otherwise direct.

13 **C.** Any Settlement Class Member, who does not exclude himself or herself, and who
14 fails to comply with the provisions of this Article shall waive and forfeit any and all rights he or
15 she may have to appear separately and/or object, and shall be bound by all the terms of this
16 Agreement and by all proceedings, orders and judgments, including, but not limited to, the
17 Release (as defined below), in this Action.

19 **D.** Any Settlement Class Member who objects to the Settlement shall be entitled to
20 all of the benefits of the Settlement if it is approved, so long as the objecting Settlement Class
21 Member complies with all requirements of this Agreement applicable to Settlement Class
22 Members, including, if appropriate, the timely submission of a Claim Form. (A Settlement Class
23 Member may submit a Claim for Surrender Charge Reduction Benefits without waiving his or
24 her objection to the Settlement.)

26 **VIII. RELEASE**

27 **A. General Release by Class Representatives and the Settlement Class.**

1 Subject to the limitations stated below, upon execution of this Agreement by National Western
2 and the Class Representatives, issuance of the Final Approval Order by the Court, and
3 occurrence of the Effective Date, in consideration of the Settlement Benefits set forth above, the
4 Class Representatives and each and every member of the Settlement Class on behalf of
5 themselves, their heirs, assigns, executors, administrators, predecessors, and successors, and any
6 other person or entity purporting to claim on their behalf, shall automatically and without further
7 action or notice be deemed to have irrevocably and unconditionally released, waived, and forever
8 discharged the Released Parties, as defined in Article VIII.D., from the Released Claims, as
9 defined in Article VIII.C.
10

11 **B. Express Agreement.**

12 1. The Class Representatives and the Settlement Class hereby expressly
13 further agree that they shall not now or hereafter institute, maintain, assert, join, or participate in,
14 either directly or indirectly, on their own behalf, on behalf of a class, or on behalf of any other
15 person or entity, any action or proceeding of any kind against the Released Parties, as defined in
16 Article VIII.D, asserting Released Claims, as defined in Article VIII.C, including but not limited
17 to participation in any settlement or other relief sought in any action brought on behalf of the
18 Plaintiffs or any Settlement Class Members by any state or federal government officials or
19 agencies pertaining to any Released Claims.
20

21 2. The Class Representatives and the Settlement Class hereby agree and
22 acknowledge that the provisions of this Release together constitute an essential term of the
23 Agreement. The Class Representatives and the Settlement Class expressly agree that this
24 Release shall be, and may be raised as, a complete defense to, and will preclude, any action or
25 proceeding encompassed by the release of Releasees herein, and as a bar from indemnity and
26 contribution claims arising out of the Released Claims herein.
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1 **C. Released Claims.**

2 Subject only to those limitations specifically stated in this Article, Released Claims is
3 defined as:

4 1. Any and all past, present or future claims, causes of action, suits, petitions,
5 demands in law or equity, or any allegations of liability for damages, debts, restitution,
6 injunctive, equitable, legal or administrative relief, interest, demands or rights, monetary
7 damages, trebling, punitive or exemplary damages, claims for mental anguish, contracts,
8 agreements, obligations, promises, attorneys' fees, costs, interest, or expenses whatsoever,
9 whether known or unknown, that the Settlement Class or the Class Representatives now have,
10 had, or may hereafter claim to have, in law or equity, that arise out of the Action, or that could
11 have been raised in the Action, whether or not brought directly, indirectly, on a representative
12 basis, or otherwise, and regardless of whether those claims are based on federal, state, or local
13 law, statute, ordinance, regulations, contract, common law, or any other source, that concern,
14 refer or relate to, or arise out of, in whole or in part, any facts, events or transactions relating to
15 the Annuities that have occurred or were in existence at any time prior to the entry of the Final
16 Order and Judgment, including without limitation claims for breach of contract, fraud, violation
17 of any state or federal consumer protection law or law regulating insurance, RICO type laws,
18 securities laws and regulations, any claims for consequential damages, emotional distress, pain
19 and suffering, or personal injury, any claims for vicarious liability based on the conduct of the
20 Class Representatives' or the Settlement Class Members' selling agents, brokers, their agencies,
21 and affiliated sales organizations, or any of the other parties or entities referenced in Article
22 VIII.D., below, or any claims relating to the negotiation of this Agreement, although nothing in
23 this Release shall be construed to preclude the proper enforcement of this Agreement.
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1 2. The term “Released Claims” also includes all claims that arise out of the Action,
2 or that could have been raised in the Action, related to (a) the design, development, marketing,
3 offer, solicitation, application, underwriting, acceptance, issuance, sale (including, without
4 limitation, in connection with the issuance of an Annuity as a replacement for a non-National
5 Western annuity or another National Western annuity), presentation, illustration, projection,
6 purchase, operation, performance, interest crediting, charges, administration, servicing, retention,
7 and/or replacement (by means of surrender, partial surrender, loans respecting, withdrawal
8 and/or termination of any annuity) of or in connection with (1) the Annuities or (2) any annuity
9 sold or to be sold or offered in connection with, or relating in any way directly or indirectly to
10 the sale or solicitation of, the Annuities, or external or internal replacements of annuities issued
11 by National Western, (b) the marketing, sale, delivery, and/or performance of any products,
12 plans, or services in connection with, or relating to or allegedly relating to, the marketing,
13 purchase, or sale of an Annuity, and (c) improper disclosure of Surrender Charges or any
14 associated charges, any claims relating in any way to the amount of interest credited to the
15 policies, including claims based on any reduction of credited interest to recoup, in whole or in
16 part, the costs of premium bonuses or sales commissions, or improper disclosure or concealment
17 thereof, and (d) any and all matters concerning or relating to this Settlement.
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20 3. The Class Representatives and the Settlement Class acknowledge that they are
21 aware that they may hereafter discover claims or damage presently unknown or unsuspected, or
22 facts in addition to or different from those which they now know or believe to be true, with
23 respect to the Released Claims. Nevertheless, the Class Representatives and the Settlement Class
24 understand and agree that this release is, and is intended to be, a broad, general release of the
25 Released Parties, and the Class Representatives and the Settlement Class agree that this release
26 fully, finally, and forever shall settle and release all claims and causes of action whatsoever, and
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1 all claims relating thereto, and which now exist, hereafter may exist, or might have existed
2 (whether or not previously or currently asserted in any action or proceeding).

3 4. Accordingly, the Class Representatives and Settlement Class expressly waive and
4 assume the risk of any and all claims—which exist as of this date, but of which the Class
5 Representatives and Settlement Class do not know or suspect to exist, whether through
6 ignorance, oversight, error, negligence or otherwise, and which, if known, would materially
7 affect a Class Representative’s or a Settlement Class Member’s decision to enter into this
8 Agreement. This Agreement includes all Released Claims, of every nature and kind whatsoever,
9 which the Settlement Class and the Class Representatives may have against the Released Parties,
10 known or unknown, suspected or unsuspected, past or present, despite the fact that California
11 *Civil Code* §1542 may provide otherwise. The Class Representatives and the Settlement Class
12 expressly waive any right or benefit available in any capacity under the provisions of §1542,
13 which provides as follows:
14

15 A general release does not extend to the claims which the creditor does not
16 know or suspect to exist in his or her favor at the time of executing the
17 release, which if known by him or her must have materially affected his or
18 her settlement with debtor.
19

20 5. The Class Representatives and the Settlement Class hereby agree that the
21 provisions of Section 1542 and all similar federal or state laws, rights, rules, or legal principles,
22 to the extent they are found to be applicable herein, are hereby knowingly and voluntarily waived
23 and relinquished by the Class Representatives and the Settlement Class, who hereby agree that
24 this is an essential term of the release.
25

26 **D. Released Parties.**
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1 Subject only to those limitations specifically stated in this Article VIII, Released Parties
2 is defined as, individually and collectively: National Western, and its present, former, and future
3 parent, sister, subsidiary and affiliated companies, and its past, present, and future officers,
4 directors, employees, servants, attorneys, insurers, reinsurers, legal and beneficial shareholders,
5 partners, privies, representatives, successors, assigns, and agents (including, without limitation,
6 those acting on behalf of National Western and within the scope of their agency), including,
7 without limitation, Independent Marketing Organizations (IMOs), National Marketing
8 Organizations (NMOs), and other marketing organizations involved in any way, directly or
9 indirectly, in the marketing, sale, and servicing of National Western Annuities, and all of such
10 Released Parties' heirs, administrators, executors, insurers, predecessors, successors and assigns,
11 or any of them, and including any person or entity acting on behalf or at the direction of any of
12 them.
13

14 **E. Limitations on Scope of the Release.**

15 1. Notwithstanding anything in this Article VIII, the Released Claims, as
16 defined herein, are subject to the following limitations:
17

18 (a) Nothing shall preclude any action or proceeding to enforce the
19 terms of this Agreement, including participation in any of the processes detailed
20 herein;

21 (b) No claims of any nature are released with respect to any annuity,
22 insurance policy, or other contract or agreement between any Settlement Class
23 Member and any Released Party, other than the Annuities;

24 (c) National Western, the Class Representatives, and the Settlement
25 Class Members shall continue to have all rights as specified by the express terms
26 of the Annuities, except as expressly modified by the Settlement.
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1 **F. Mutual Release.**

2 Upon the Court’s final approval of the Settlement, each of the Released Parties shall be
3 deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released,
4 relinquished, and discharged each and every one of Plaintiffs’ Counsel in this matter, including
5 Class Counsel, and each and all of the Settlement Class Members, from all claims (including,
6 without limitation, unknown claims) arising out of, relating to, or in connection with, the
7 institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims.
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9 **IX. ATTORNEYS’ FEES AND EXPENSES AND SERVICE AWARDS**

10 **A. Service Awards**

11 Subject to Court approval, National Western agrees to pay Plaintiffs Marie Sweeney and
12 Anita Williams no more than \$10,000 each as a service award for participation as a Class
13 Representative in the Action. National Western will pay the service awards, up to \$10,000,
14 approved by the Court in addition to any benefits that Plaintiffs are entitled to receive as
15 Settlement Class Members. National Western will pay any service awards within 7 days of the
16 Final Settlement Date. Class Counsel agrees not to seek service awards for the Class
17 Representatives that exceed \$20,000 in the aggregate.
18

19 **B. Petition for Class Counsel Payment**

20 1. National Western agrees to pay Class Counsel no more than an aggregate
21 of \$5,430,000 as attorneys’ fees and reimbursement of their expenses and costs as
22 the Class Counsel Payment, subject to Court approval. Class Counsel agree not to
23 seek or accept an award of attorneys’ fees and costs and expenses in excess of, or
24 in addition to, \$5,430,000. Class Counsel agrees to accept the award of attorneys’
25 fees and costs and expenses granted by the Court and agrees that such award,
26 even if less than the amount sought by Class Counsel, does not constitute grounds
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for rejection of this Settlement. National Western agrees not to oppose Class Counsel’s request for the Class Counsel Payment of up to \$5,430,000 for fees and costs either in this Action or on appeal; however, National Western shall have no obligation to join in Class Counsel’s request or in any related submissions.

2. The Parties have divergent views concerning the most appropriate approach to a valuation of the benefits to Settlement 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 Settlement Class Members. For purposes of this Settlement, Plaintiffs agree that they will not assign a numerical value to the Settlement benefits in excess of \$23 million in connection with the proceedings for preliminary or final approval of the Settlement. National Western takes no position on this valuation for purposes of the preliminary or final approval of the Settlement.

3. Waiver of Any Claim for Additional Attorneys’ Fees and Costs. The provisions in this Article IX for the payment of attorneys’ fees and the reimbursement of expenses by National Western, subject to Court approval, will constitute Plaintiffs’ Counsel’s full compensation for time and expenses incurred or which may be incurred in connection with the Action, regardless of the amount of time and expense incurred by Plaintiffs’ Counsel subsequent to the signing of this Agreement. National Western shall have no obligation to pay Plaintiffs’ Counsel, the Settlement Class or the Class Representatives any additional

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amounts for attorneys' fees or litigation expenses incurred or which may be incurred in connection with the Action, regardless of the amount of time and expense incurred by Plaintiffs' Counsel subsequent to the signing of this Agreement. The Settlement Class and the Class Representatives shall have no obligation to pay Plaintiffs' Counsel any amounts for attorneys' fees or litigation expenses incurred or which may be incurred in connection with the Action.

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

5. 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.

6. If National Western does not exercise any right it may have to terminate the Agreement pursuant to Article XII, National Western will pay Class Counsel by wire transfer or check within 7 days after the Final Settlement Date.

7. Class Counsel shall be responsible for distributing the Class Counsel Payment in their discretion. National Western shall have no responsibility or liability in connection with the allocation of the Class Counsel Payment in any respect.

8. National Western will pay the Administrator directly for reasonable Administrator Expenses actually incurred upon receipt of appropriate invoicing and documentation from the Administrator.

1 9. The Parties and their Counsel are not responsible for the fees of those
2 attorneys hired by individual Settlement Class Members in connection with the
3 review or objection to the Settlement Agreement.

4 10. National Western shall not be liable for, or obliged to pay any fees,
5 expenses, costs or other disbursements to, or incur any expense on behalf of, any
6 Plaintiff, Settlement Class Member or other person or entity, either directly or
7 indirectly, in connection with the Action, this Agreement, or the proposed
8 Settlement, other than the amounts expressly provided for in this Agreement.
9

10 **X. PRELIMINARY APPROVAL AND RELATED ORDERS**

11 The Parties shall submit this Agreement, including all attached exhibits, to the Court and
12 seek and obtain from the Court a Preliminary Approval Order in substantially the same form as
13 Exhibit D to this Agreement.

14 **XI. FINAL APPROVAL AND FINAL ORDER AND JUDGMENT**

15 After the Fairness Hearing, and upon the Court’s approval of this Agreement, the Parties
16 shall seek and obtain from the Court: (i) a Final Order in substantially the same form as Exhibit
17 E to this Agreement; and (ii) a Judgment in substantially the same form attached as Exhibit F to
18 this Agreement.
19

20 **XII. MODIFICATION OR TERMINATION OF THIS AGREEMENT**

21 A. This Agreement may be terminated at the discretion of National Western if the
22 Court, or any appellate court, rejects, modifies, or denies approval of any portion of this
23 Agreement or the proposed Settlement that National Western reasonably determines is material.
24 National Western must exercise the option to withdraw from and terminate this Agreement, as
25 provided in this Article, in writing sent by first-class mail to the Class Counsel, no later than 20
26 days after receiving notice of the event prompting the termination.
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1 **B.** Notwithstanding the rights of National Western in the preceding paragraph,
2 Plaintiffs cannot terminate this Agreement because of the amount of attorneys' fees, costs and/or
3 service awards awarded by the Court or any appellate court(s) or for any other non-material
4 reason; however, Plaintiffs and their counsel reserve all rights on appeal in relation to any award
5 of costs and fees in the event the Court does not award the amount of costs and fees requested by
6 the Plaintiffs and the award is less than the Class Counsel Payment. National Western, however,
7 may elect to terminate this Agreement if the aggregate amount of attorneys' fees and costs
8 awarded exceeds \$5,430,000 or if the aggregate amount of service awards to Class
9 Representatives exceeds \$20,000.

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

16 **D.** National Western may unilaterally terminate this Agreement if the "Opt-Out
17 Percentage" is greater than 5%. The "Opt-Out Percentage" shall be computed based on data as
18 of the last date for filing of a list reflecting all requests for exclusion pursuant to Article VI, and
19 shall equal (a) the sum of (i) the Account Value of all Active Deferred Annuities held by Owners
20 who have excluded themselves from the Class, (ii) the Account Value of all Annuities that have
21 been fully surrendered by Owners who have excluded themselves from the Settlement Class,
22 which shall be determined using the Account Value of such Annuities as of the date of full
23 surrender for each such Annuity, and (iii) the Account Value of all Annuities that have been
24 Annuitized by Owners who have excluded themselves from the Settlement Class, which shall be
25 determined using the Account Value of such Annuities as of the date of Annuitization for each
26 such annuity, divided by (b) the sum of (i) the aggregate Account Value of all Active Deferred
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1 Annuities, plus (ii) the Account Value of all Annuities that have been fully surrendered by
2 Owners who have not excluded themselves from the Settlement Class, which shall be determined
3 using the Account Value of such Annuities as of the date of full surrender for each such Annuity,
4 plus (iii) the Account Value of all Annuities that have been Annuitized by Owners who have not
5 excluded themselves from the Settlement Class, which shall be determined using the Account
6 Value of such Annuities as of the date of Annuitization for each such annuity. All amounts used
7 in the calculation shall be compiled from National Western's business records as of the close of
8 business on the last date for filing of a list reflecting all requests for exclusion pursuant to Article
9 VI, or the first practicable day thereafter. If National Western elects to exercise this right, it shall
10 do so by giving written notice to Class Counsel before the Fairness Hearing.
11

12 **E.** National Western may effect termination of the Agreement under Article XII.C.
13 or XII.D. by giving written notice to Class Counsel.
14

15 **F.** If this Agreement is terminated, it shall be null and void, no Party shall be bound
16 by any of its terms (except for the terms of this paragraph and Articles XIII.D., XIII.H, XIII.N,
17 XIII.O and as applied to these paragraphs, Articles XIII.P and XIII.Q. of this Agreement), and it
18 shall not be admissible in any further proceedings.

19 **G.** If this Agreement is terminated, National Western expressly and affirmatively
20 reserves all defenses, arguments and motions as to all claims that were, might have been or might
21 later be asserted in this Action, including, without limitation, any applicable Statute of
22 Limitations and the argument that the Action may not be litigated as a class action.
23

24 **H.** If this Agreement is terminated, the Action may continue, but this Agreement, and
25 all papers or information of any kind submitted or provided by or on behalf of any party in
26 connection with this Agreement, and any discussions related to this Agreement, unless
27 independently obtained through past or future discovery, shall not be offered or submitted in
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1 evidence or used, referred to, cited, presented or otherwise involved for any purpose in any
2 proceeding. The Parties' entry into this Agreement and the provision by the Parties of any
3 documents or information, in whatever form, pursuant to this Agreement or in connection with
4 the settlement process shall not constitute a waiver of work product, settlement, or any other
5 privilege and is without prejudice in any way to that Party's positions on any substantive,
6 procedural or other issues in the Action.

7 **XIII. GENERAL MATTERS AND RESERVATIONS**

8 **A. Integration and Drafting**

9
10 The Parties agree that this Agreement is clear and unambiguous, that it was drafted and
11 negotiated by counsel for the Parties at arm's length, that it sets forth the entire Settlement
12 Agreement among the Parties, that no other agreements not expressed or referred to in this
13 Agreement exist, and that no parol or other evidence may be offered to explain, construe,
14 contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances
15 under which the Agreement was made or executed.

16 **B. Amendment, Court Approval, Extensions**

17
18 This Agreement may not be amended without the written consent of all parties and
19 approval of the Court; provided, however, that after entry of the Final Order and Judgment, the
20 Parties may by agreement modify this Settlement Agreement and its implementing documents
21 (including all exhibits) without notice to or approval by the Court if the changes are consistent in
22 all material respects with the Court's Final Order and Judgment and do not materially abridge the
23 rights of Settlement Class Members. The parties also may agree to reasonable extensions of time
24 that are necessary to carry out any provisions of this Agreement, provided that any extension of
25 more than 30 days must be approved by the Court.

26 **C. Early Implementation**

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1 National Western, in consultation with Class Counsel and without approval of the Court,
2 may implement the terms of the Settlement after entry of the Final Order and Judgment but prior
3 to the Final Settlement Date, in which case all provisions of this Agreement that specify actions
4 to be taken on or after the Final Settlement Date, shall, to the extent necessary, be deemed to
5 provide that those actions shall be taken on or after the date on which National Western elects to
6 implement the Settlement.

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8 **D. Construction**

9 The Parties agree that the terms and conditions of this Agreement are the result of
10 lengthy, intensive arms-length negotiations between the Parties and that this Agreement shall not
11 be construed in favor of or against any Party for any reason, including but not limited to the
12 extent to which any person, Party or attorney participated in drafting this Agreement.

13 **E. Integration of Exhibits**

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

16
17 **F. Waiver**

18 The failure of any Party to enforce at any time any provision of this Agreement shall not
19 be construed to be a waiver of such provision, or any other provision, nor in any way to affect
20 the validity of this Agreement or any part hereof, or the right of any Party thereafter to enforce
21 that provision or each and every other provision. No waiver of any breach of this Agreement
22 shall constitute or be deemed a waiver of any other breach.

23
24 **G. Counterparts**

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

3 **H. No Evidence, No Admission**

4 1. In no event shall this Agreement, any of its provisions, or any
5 negotiations, statements, or proceedings relating to it be offered as, received as,
6 used as, or deemed to be evidence in the Action, any other action, or in any other
7 proceeding, except in a proceeding to enforce this Agreement.

8
9 2. Without limiting the foregoing, neither this Agreement nor any related
10 negotiations, statements, or proceedings shall be offered as, used as, or deemed to
11 be evidence or an admission or concession by any person of any matter, including
12 but not limited to any liability or wrongdoing on the part of National Western or
13 any of the Released Parties or as evidence of the appropriateness of certification
14 of any class.

15
16 **I. Tax Consequences**

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

21 2. Each Settlement Class Member's or other person's tax obligations, if any,
22 and the determination of those obligations, are the sole responsibility of the
23 Settlement Class Member or other person. National Western shall act as it
24 determines is required by the Internal Revenue Code and the regulations
25 promulgated thereunder in reporting any Settlement benefit provided pursuant to
26 this Agreement.
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3. Neither National Western nor the Administrator shall make any payment hereunder if National Western 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 National Western 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 National Western prior to issuance of any payment under this Agreement.

J. 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 National Western, then to:

Robert W. Fischer Jr.
Fulbright and Jaworski
555 South Flower Street, Forty-first floor
Los Angeles, CA 90071

If to Plaintiffs, then to:

Theodore J. Pintar
Robbins Geller Rudman & Dowd LLP

1 655 West Broadway, Suite 1900

2 San Diego, CA 92101

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

6 **K. No Effect on Contract or Duty**

7 1. Neither this Agreement nor any of the benefits to be provided under this
8 Agreement shall be interpreted to alter in any way the terms of any Settlement
9 Class Member's Annuity or to constitute a novation of any Settlement Class
10 Member's Annuity, except as expressly provided by this Agreement or the
11 benefits granted in accordance with the terms of this Agreement.

12 2. This Agreement does not, and shall not be deemed to, create any fiduciary
13 or similar relationship between National Western and any of its current, past, or
14 prospective policyholders or Annuity owners. This Agreement does not impose,
15 and shall not be deemed to impose, any fiduciary or other similar duty on
16 National Western, and National Western expressly disclaims any fiduciary or
17 other similar duties. The duties and obligations assumed by National Western are
18 limited to those expressly set forth in this Agreement.

19 **L. Cooperation in Effecting Settlement**

20 The Parties, their successors and assigns, and their attorneys, undertake to implement the
21 terms of this Agreement in good faith, to use good faith in interpreting this Agreement and
22 resolving any disputes that may arise in the implementation of this Agreement, to cooperate with
23 one another in seeking Court approval of this Agreement, and to use their best efforts to effect
24 the prompt consummation of this Agreement.
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1 **M. Confidentiality**

2 1. All information and documentation exchanged between the Parties or the
3 Administrator are confidential, and cannot be provided to third parties or used for
4 any other purpose than effectuating the terms of this Agreement. All information
5 and documentation shall be returned to National Western or destroyed within 365
6 days after the mailing of the first settlement payment.

7 2. The Parties and their counsel agree to keep the existence and contents of
8 this Agreement confidential until the motion requesting the Court’s preliminary
9 approval of this Agreement is filed; provided, however, that this paragraph shall
10 not prevent the disclosure of such information prior to the filing of such motion to
11 (1) regulators, rating agencies, independent accountants, advisors, financial
12 analysts, agents, insurers or reinsurers, Plaintiffs or Settlement Class Members,
13 experts, courts, co-counsel, and/or Administrator(s) as may reasonably be
14 required to effectuate the terms and conditions of this Agreement or as otherwise
15 required to comply with any applicable law or regulation, or (2) any person or
16 entity to whom the Parties agree disclosure must be made to effectuate the terms
17 of this Agreement. If disclosure and/or contents of this Agreement is made
18 pursuant to the preceding sentence, to the extent the recipient of the disclosure is
19 not already subject to an obligation of confidentiality to the disclosing Party, such
20 Party will make reasonable efforts to secure the recipient’s undertaking to
21 maintain the existence and contents of this Agreement strictly confidential and to
22 use such information only for the purpose for which the disclosure is made.

23 3. The Parties and their counsel agree that their discussions and the
24 information exchanged in the course of negotiating this Settlement are
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1 confidential, and were made available on the condition that neither the Parties nor
2 their counsel may disclose them to third parties (other than experts or consultants
3 retained by the Parties in connection with this case), that they not be the subject of
4 public comment, and that they not be publicly disclosed or used by the Parties or
5 their counsel in any way in the Action should it not settle, or in any other
6 proceeding.

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8 4. On or before the expiration of two months after the date on which the
9 Administrator is to provide the report described in Article III and Article IV.G.,
10 Plaintiffs' Counsel shall return or destroy all documents or information produced
11 to Plaintiffs or Plaintiffs' Counsel by National Western in connection with any of
12 the litigation identified in Article I.A. Plaintiffs' Counsel shall destroy all
13 documents produced by National Western in discovery in this matter, whether in
14 their possession or the possession of a witness, agent, or an expert hired by
15 Plaintiffs. Plaintiffs' Counsel shall provide certification of destruction as per ¶14
16 of the Protective Order in this Action. To the extent Plaintiffs' Counsel retains
17 any work product that is based on or incorporates information designated as
18 Confidential Material pursuant to the terms of the Protective Order previously
19 entered in this Action and provided by National Western, Plaintiffs' Counsel shall
20 maintain such work product as Confidential Material pursuant to the terms of the
21 Protective Order previously entered in this case, and the disclosure or use of such
22 materials shall be pursuant to the terms of the Protective Order previously entered
23 in this Action.
24
25
26
27
28

1 **N. Media Communications**

2 Except for any obligations related to State or Federal laws, and except for
3 communications with regulatory bodies, auditors and rating agencies, and except for posting a
4 copy of the Class Notice Package and Claim Form on Class Counsel’s website, the Parties agree
5 not to issue press releases or comments about or descriptions of the Settlement of the dispute
6 forming the basis of this Agreement in the media or in any other public forum including websites
7 and other internet postings. If a Party disseminates or publishes a unilateral statement or press
8 release, such dissemination or publication shall constitute a breach of this Agreement.
9

10 **O. Governing Law**

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

13 **P. Parties Bound**

14 Each and every term of this Agreement shall (according to its terms) be binding upon,
15 and inure to the benefit of National Western as well as each Party’s successors, successors in
16 interest, heirs, administrators, executors, assigns, personal representatives, those acting on their
17 behalf, and any other persons that are intended beneficiaries of this Agreement.
18

19 **Q. Authority to Execute Agreement**

20 Each Party or person executing this Agreement in a representative capacity on behalf of a
21 corporate entity hereby represents that he or she is duly authorized by such entity to execute this
22 Agreement on its behalf, and to bind it to the terms and conditions hereof.
23

24 **R. Headings**

25 The headings herein are for convenience only and shall not affect the interpretation or
26 construction of this Agreement.

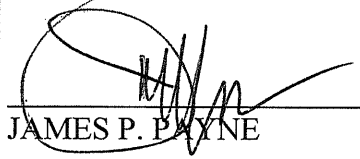
27 **S. Execution Date**

28

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

3
4 IN WITNESS WHEREOF, this Agreement has been executed by the undersigned as of the date
5 and year set forth:

6
7 **NATIONAL WESTERN LIFE INSURANCE COMPANY**

8
9  _____ Date: 8-15-13
10 JAMES P. PAYNE

11 **Named Plaintiffs:**

12
13 _____ Date: _____
14 MARIE SWEENEY

15 _____ Date: _____
16 ANITA WILLIAMS

17
18 **Attorneys of Record, on behalf of Plaintiffs' Counsel:**

19
20 **ROBBINS GELLER RUDMAN & DOWD LLP**
21 _____ Date: _____
22 THEODORE J. PINTAR

23
24 **BARRACK, RODOS & BACINE**
25 _____ Date: _____
26 STEPHEN R. BASSER

27
28

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5 and year set forth:

6
7 **NATIONAL WESTERN LIFE INSURANCE COMPANY**

8
9 _____ Date: _____
10 JAMES P. PAYNE

11 **Named Plaintiffs:**

12
13  _____ Date: Aug 16, 2013
14 MARIE SWEENEY

15 _____ Date: _____
16 ANITA WILLIAMS

17
18 **Attorneys of Record, on behalf of Plaintiffs' Counsel:**

19
20 **ROBBINS GELLER RUDMAN & DOWD LLP**

21 _____ Date: _____
22 THEODORE J. PINTAR

23
24 **BARRACK, RODOS & BACINE**

25 _____ Date: _____
26 STEPHEN R. BASSER

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5 and year set forth:

6
7 **NATIONAL WESTERN LIFE INSURANCE COMPANY**

8
9 _____ Date: _____
10 JAMES P. PAYNE

11 **Named Plaintiffs:**

12
13 _____ Date: _____
14 MARIE SWEENEY

15 *Anita Williams* Date: *Aug. 19, 2013*
16 _____
17 ANITA WILLIAMS

18 **Attorneys of Record, on behalf of Plaintiffs' Counsel:**

19
20 **ROBBINS GELLER RUDMAN & DOWD LLP**

21
22 _____ Date: _____
23 THEODORE J. PINTAR

24 **BARRACK, RODOS & BACINE**

25
26 _____ Date: _____
27 STEPHEN R. BASSER

28

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8
9 _____ Date: _____
10 JAMES P. PAYNE

11 **Named Plaintiffs:**

12
13 _____ Date: _____
14 MARIE SWEENEY

15 _____ Date: _____
16 ANITA WILLIAMS

17
18 **Attorneys of Record, on behalf of Plaintiffs' Counsel:**

19
20 **ROBBINS GELLER RUDMAN & DOWD LLP**

21  Date: 8/15/13
22 _____
23 THEODORE J. PINTAR

24 **BARRACK, RODOS & BACINE**

25 _____ Date: _____
26 STEPHEN R. BASSER

27
28

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3
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5 and year set forth:

6
7 **NATIONAL WESTERN LIFE INSURANCE COMPANY**

8
9 _____ Date: _____
10 JAMES P. PAYNE

11 **Named Plaintiffs:**

12
13 _____ Date: _____
14 MARIE SWEENEY

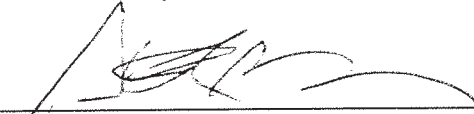
15 _____ Date: _____
16 ANITA WILLIAMS

17
18 **Attorneys of Record, on behalf of Plaintiffs' Counsel:**

19
20 **ROBBINS GELLER RUDMAN & DOWD LLP**

21 _____ Date: _____
22 THEODORE J. PINTAR

23
24 **BARRACK, RODOS & BACINE**

25  Date: August 15, 2012
26 _____
27 STEPHEN R. BASSER

28

EXHIBIT A

United States District Court for the Southern District of California

NOTICE OF CLASS ACTION SETTLEMENT

*In re National Western Life Insurance Deferred Annuities Litigation,
No. 05-CV-1018-GPC (WVG)*

THIS NOTICE IS FOR PERSONS WHO PURCHASED ONE OF THE FOLLOWING DEFERRED ANNUITIES ISSUED BY NATIONAL WESTERN LIFE INSURANCE COMPANY IN WHICH THE ANNUITANT WAS AGE 65 OR OLDER ON THE DATE OF ISSUE: CONFIDENCE FLEX 45, CONFIDENCE FLEX 85, BENEFIT ASSURANCE, AND FUTURE ASSURANCE

*A federal district court authorized this Notice.
This is not junk mail, an advertisement or a solicitation from a lawyer.*

To be a member of the Settlement Class, you must have purchased a National Western Confidence Flex 45, Confidence Flex 85, Benefit Assurance, or Future Assurance deferred annuity in which the annuitant was 65 or older on the date of issuance of the annuity. For California residents, the purchase must have occurred between April 7, 2001 and August 22, 2013; for non-California residents, the purchase must have occurred between December 22, 2001 and August 22, 2013.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

| | |
|-----------------------------------|--|
| DO NOTHING | If you do nothing in response to this Notice, you will be subject to the Settlement. You will be bound by the Release described in response to Question 13, which means you will give up any claims you have with respect to your Annuity(ies). Your ability to obtain Settlement benefits will depend on whether you have an active deferred annuity, an annuity that has been annuitized, or an annuity that has been terminated. Each of the settlement benefits are discussed in detail in response to Question 11 of this Notice. |
| EXCLUDE YOURSELF | You must submit a timely written request to exclude yourself from the Settlement by [_____, 2013]. If you choose to exclude yourself, you will not receive the benefits available under the terms of the Settlement. |
| OBJECT | You may write the Court about why you do not like the Settlement. Written objections to the Settlement must be filed with the Court no later than [_____, 2013]. Lodging 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 13, which means you will give up any claims you have with respect to your Annuity(ies). |
| GO TO THE HEARING | If you timely object in writing to the Settlement as described in the Notice and file a timely Notice of Intention to Appear at the Fairness Hearing, you will be entitled to ask to speak in Court about the fairness of the Settlement during the Fairness Hearing set for [_____, 2014]. |
| APPEAR THROUGH AN ATTORNEY | You may enter an appearance in this case through an attorney if you desire, 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 the 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 and Release Agreement filed with the Court and available at www._____.com or by calling 1-800-____-_____.

QUESTIONS? CALL 1-800-____-____ TOLL-FREE

- The Court in charge of this case still has to decide whether to approve the Settlement. Please be patient.

BASIC INFORMATION

1. Why did I get this Notice Package?

You are listed in National Western's records as being either the current or the last Owner of an Annuity, or the beneficiary of an Owner who has died, that is included in the Settlement.

The Court directed the parties to 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 the proposed Settlement and all objections and appeals are resolved, National Western will provide the benefits provided by 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 Southern District of California, and the case is known as *In re National Western Life Insurance Deferred Annuities Litigation*, No. 05-CV-1018-GPC(WVG). Marie Sweeney and Anita Williams, as Trustee for the Estate of George J. Miller, have been designated to represent all members of the Settlement Class in this matter. They are called the "plaintiffs," and the company they sued, National Western Life Insurance Company, is the "Defendant."

2. What is this litigation about?

Plaintiffs brought this litigation on behalf of themselves and other seniors against National Western with respect to certain deferred annuities issued by National Western. Plaintiffs allege that National Western sold senior consumers deferred annuities with undisclosed sales loads and illusory premium bonuses. Plaintiffs allege that these undisclosed costs adversely impacted the performance of National Western's annuities.

Plaintiffs claim that the conduct described above violates the federal civil RICO statute, 18 U.S.C. §1962, and certain California consumer protection laws, including §§ 17200 and 17500 of the California Business and Profession Code, and California's Financial Elder Abuse Act (Welf. & Inst. Code § 15610.30). Plaintiffs seek monetary relief arising out of defendant's allegedly improper conduct in connection with the marketing and sale of its annuities to senior citizens in the form of restitution, compensatory, punitive and other exemplary damages, as well as interest, legal fees and costs. The litigation also seeks injunctive relief that would require defendant to change certain of its business practices.

National Western denies any and all liability to plaintiffs or the Settlement Class and contends that plaintiffs and the Settlement Class are not entitled to any form of monetary damages, restitution or injunctive relief. National Western contends that plaintiffs' allegations do not state a cause of action and are not sustainable as a matter of law. In addition, National Western contends that it has fully performed all of its obligations under the annuity contracts and has delivered on its promises in the annuity contracts made to its policyholders. In addition, National Western 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.

3. Why is there a class action?

In a class action, one or more people, called Class Representatives, 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 Gonzalo P. Curiel is in charge of this case.

4. Why is there a Settlement?

The Court did not decide in favor of plaintiffs or National Western. Instead, both sides have agreed to a settlement. The Class Representatives and their attorneys think the Settlement is in the best interest of the Settlement Class.

WHO IS IN THE SETTLEMENT

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

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

The Settlement includes the following Class:

California Class:

Any senior citizen (age 65 or older), excluding National Western and its directors, officers, predecessors, successors, affiliates, agents, and employees, as well as the immediate family members of such persons, who purchased one or more of the Annuities, either directly, or through the surrender (in whole or part) of an existing permanent life insurance policy or annuity, or by borrowing against an existing permanent life insurance policy, in which the

QUESTIONS? CALL 1-800-____-____ TOLL FREE

annuitant was age 65 or older on the date of issue, between April 7, 2001 and the Eligibility Date, provided that National Western's records show that such senior citizen was a California resident on the date of issue. "California Class" does not include: (a) anyone who has made a valid request for exclusion, either in response to the Notice of Pendency of Class Action, dated February 2010, as supplemented by the curative notice dated January 2012, or the Settlement Notice, (b) any Settlement Class Member who at any time has signed a document that releases National Western from any further claims concerning the Annuity or whose rights and claims respecting the Annuity have been finally adjudicated in a court of law or (c) anyone who purchased an annuity that falls within the class certified in *Clark v. National Western Life Insurance Company*, Superior Court of the State of California, County of Los Angeles, Case No. BC321681.

Nationwide Class:

Any senior citizen (age 65 and older), excluding National Western and its directors, officers, predecessors, successors, affiliates, agents, and employees, as well as the immediate family members of such persons, who purchased one or more of the Annuities, either directly, or through the surrender (in whole or part) of an existing permanent life insurance policy or annuity, or by borrowing against an existing permanent life insurance policy, in which the annuitant was age 65 or older on the date of issue, between December 22, 2001 and the Eligibility Date. "Nationwide Class" does not include: (a) anyone who has made a valid request for exclusion, either in response to the Notice of Pendency of Class Action, dated February 2010, as supplemented by the curative notice dated January 2012, or the Settlement Notice, (b) anyone who falls into the California Class, (c) any Settlement Class Member who at any time has signed a document that releases National Western from any further claims concerning the Annuity or whose rights and claims respecting the Annuity have been finally adjudicated in a court of law or (d) anyone who purchased an annuity that falls within the class certified in *Clark v. National Western Life Insurance Company*, Superior Court of the State of California, County of Los Angeles, Case No. BC321681.

6. Do I own a Deferred Annuity included in the Settlement?

To take part in the Settlement, you must own or have owned, or be the beneficiary of a deceased owner of, one of the following annuity products issued by National Western during the Class Period: Confidence Flex 45, Confidence Flex 85, Benefit Assurance, and/or Future Assurance. If you are an addressee of this Notice, National Western's records show that you are or were the Owner, or are the beneficiary of a deceased owner, of one of these products. If, however, you have a question about the application of this Settlement to a particular annuity, you may contact the Settlement Administrator. See Question 23.

7. Are there exceptions to being included in the Settlement Class?

Yes. The following persons are not included in the California Class: (a) anyone who has made a valid request for exclusion, either in response to the Notice of Pendency of Class Action, dated February 2010, as supplemented by the curative notice dated January 2012, or the Settlement Notice, (b) any Settlement Class Member who at any time has signed a document that releases National Western from any further claims concerning the Annuity or whose rights and claims respecting the Annuity have been finally adjudicated in a court of law, or (c) anyone who purchased an annuity that falls within the class certified in *Clark v. National Western Life Insurance Company*, Superior Court of the State of California, County of Los Angeles, Case No. BC321681.

The following persons are not included in the Nationwide Class: (a) anyone who has made a valid request for exclusion, either in response to the Notice of Pendency of Class Action, dated February 2010, as supplemented by the curative notice dated January 2012, or the Settlement Notice, (b) anyone who falls into the California Class, (c) any Settlement Class Member who at any time has signed a document that releases National Western from any further claims concerning the Annuity or whose rights and claims respecting the Annuity have been finally adjudicated in a court of law, or (d) anyone who purchased an annuity that falls within the class certified in *Clark v. National Western Life Insurance Company*, Superior Court of the State of California, County of Los Angeles, Case No. BC321681.

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

Yes, but the type of relief depends upon the election made by the Beneficiary when the policyholder died. Beneficiary(ies) who elected to take a lump sum distribution when the policyholder died can participate in the claims review process, described below in Section 11. Beneficiary(ies) who annuitized the annuity when the policyholder died can receive a payment representing a per capita (per person) share of a \$250,000 fund established to make payments to those who have already annuitized their policies. Beneficiary(ies) who elected the spousal continuance option when the policyholder died will be eligible to receive an annuitization bonus based on the selection of certain settlement options.

9. Does this settlement cancel my Annuity contract?

No. Your Annuity will not be cancelled as a result of your participation in the Settlement. However, you will release any claims that you may have against National Western as part of this Settlement.

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

If you are not sure whether you are included in the Settlement Class, call 1-800-____-_____.

QUESTIONS? CALL 1-800-____-_____ TOLL FREE

THE SETTLEMENT BENEFITS – WHAT YOU GET

11. What benefits does the Settlement provide?

If the Settlement is approved by the Court and you are a member of the Settlement Class and do not exclude yourself from the Settlement, you may receive one of the following settlement benefits:

(1) Active Annuity. If you have an active annuity, and you annuitize the annuity after the Settlement is approved for a 10- or 20-year certain period and life, you will receive an annuitization bonus. 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 |
|---------------|------------------|
| 1-4 | 0 |
| 5-9 | 3% |
| 10 | 4% |
| 11 | 5% |
| 12 | 6% |
| 13 | 7% |
| 14 | 8% |
| 15 | 9% |
| 16 or greater | 10% |

(2) Annuitized Policies. If you have already annuitized your annuity, or you annuitize your policy before the Settlement is approved, you will receive a payment representing a per capita share of a \$250,000 fund.

(3) Terminated Annuities. If you have already terminated your annuity, either as a result of a full withdrawal of the cash value by the policyholder or as the result of a cash value death claim selection by a policy beneficiary, you may apply for a surrender charge reduction through the claims review process.

To apply for the surrender charge reduction you must submit a claim form and provide certain information about the purchase of your annuity. The claim form must be post-marked no later than _____ and mailed to: Rust Consulting, Inc., [INSERT ADDRESS/P.O. BOX].

If you qualify for the surrender charge reduction, you will receive a refund of either 50% or 25% of the withdrawal charge incurred when the policy was terminated. If you do not qualify for the surrender charge reduction, you will receive a check for \$100.00. The aggregate relief available to class members with terminated annuities is \$1,000,000.

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

12. When would I get my Settlement Benefit?

The Court will hold a hearing on [_____, 2014,] called the Fairness Hearing, to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Also, National Western will need some time to process the settlement. This will take several months. Please be patient. Benefits will not take effect until approximately one month after the Court's approval of the Settlement (if the Court approves the Settlement) becomes final and non-reviewable.

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

Unless you exclude yourself, you are staying in the Class, and that means: (1) that you cannot sue, continue to sue, or be part of any other lawsuit, arbitration or other legal proceeding against Defendant 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 and Release Agreement, a copy of which is set forth as Appendix A to this Notice. To obtain a complete copy of the Settlement and Release Agreement, you may go to the website at www._____.com or write to or call the Claims Administrator. 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 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:

QUESTIONS? CALL 1-800-____-____ TOLL FREE

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.

14. How do I get out of the Settlement?

If you do not want to be part of the Settlement, 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 National Western Life Insurance Deferred Annuities Litigation*. You must **mail** your signed request for exclusion to National Western at the following address:

In re National Western Life Insurance Deferred Annuities Litigation
c/o Rust Consulting, Inc.
[INSERT ADDRESS/P.O. BOX]

THE ENVELOPE CONTAINING YOUR SIGNED REQUEST FOR EXCLUSION MUST BE POSTMARKED BY NO LATER THAN [_____, 2013].

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 [_____, 2013], it will be ineffective and you will be part of the Settlement Class, and be bound by all orders and judgments entered in connection with the Settlement, including the Release and Waiver.

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

No. Unless you exclude yourself, you give up the right to sue National Western 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 [_____, 2013].

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: Robbins Geller Rudman & Dowd LLP and Barrack, Rodos & Bacine. 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 [_____, 2013], Class Counsel will file with the Court their petition for approval of an award of attorneys' fees and costs of up to \$5,430,000. The Court may award less than this amount. National Western will separately pay the attorneys' fees and expenses. This payment will not affect the benefits available to Settlement Class Members.

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

Class Counsel will ask the Court to award each of the Class Representatives a total of no more than \$10,000 each as a service award. National Western will separately pay the service awards. This payment will not affect the benefits available to Settlement Class Members.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

19. How do I tell the Court that I do not like the Settlement?

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

QUESTIONS? CALL 1-800-____-____ TOLL FREE

If you wish to object to the proposed Settlement, you must file your written objection with the Clerk of the Court of the Honorable Gonzalo P. Curiel, Courtroom 2D, 221 West Broadway, San Diego, CA 92101, and deliver a copy to Class Counsel and National Western's Counsel at the addresses listed below. The objection must be in writing and must be filed and served on the Parties' counsel no later than [_____], 2013. 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, if applicable, Annuity number(s); (ii) the factual basis and legal grounds for the objection; and (iii) the signature of the individual who is objecting.

Class Counsel

Theodore J. Pinter
Robbins Geller Rudman & Dowd LLP
655 West Broadway, Suite 1900
San Diego, CA 92101

Stephen R. Basser
Barrack, Rodos & Bacine
600 West Broadway, Suite 900
San Diego, CA 92101

National Western's Counsel

Robert W. Fischer
Fulbright & Jaworski LLP
555 S. Flower, 41st Floor
Los Angeles, CA 90071

Kent R. Keller
Barger & Wolen LLP
633 West Fifth Street, Suite 4700
Los Angeles, CA 90071

20. 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

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you don't have to.

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

The Court will hold a Fairness Hearing at [_____ a.m./p.m.] on [_____], 2014 (or such continued dates or times as the Court may direct without further notice to the Class) in Courtroom 2D, 221 West Broadway, San Diego, CA 92101. 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 award to the Class Representative. 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.

22. 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 necessary.

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 19. Second, you must file a Notice of Intention to Appear at the Fairness Hearing with the Clerk of the Court of the Honorable Gonzalo P. Curiel, Courtroom 2D, 221 West Broadway, San Diego, CA 92101, and deliver a copy to Parties' counsel at the addresses listed above, under Question 19. The Notice of Intention to Appear must be in writing and must be filed and served on Parties' counsel no later than [_____], 2013. 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

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

This Notice summarizes the proposed Settlement. More details are in the Settlement and Release Agreement. You can get a copy of the Settlement and Release Agreement or Class Counsel's petition for approval of fees and costs, once the petition is filed, by visiting the Settlement website at _____, or by writing to the Claims Administrator. You must **mail** your signed request for information to the Claims Administrator at the following address:

In re National Western Life Insurance Deferred Annuities Litigation
c/o Rust Consulting, Inc.
[XXXXX]

QUESTIONS? CALL 1-800-____-____ TOLL FREE

IMPORTANT DATES

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

| Deadline | Event |
|-------------|---|
| _____, 2013 | Class Counsel will file a petition for approval of an award of attorneys' fees and costs and service awards for the class representatives, as well as a motion for final approval |
| _____, 2013 | Last day to submit a request for exclusion from the proposed Settlement |
| _____, 2013 | Last day to submit objections to the proposed Settlement |
| _____, 2013 | Last day to file Notice of Intent to Appear |
| _____, 2013 | Last day to submit a claim form for the Surrender Charge Reduction Benefit |
| _____, 2014 | Fairness Hearing |

Dated: _____, 2013

/s/ Gonzalo P. Curiel
Honorable Gonzalo P. Curiel

APPENDIX A

**Section VIII of Settlement and Release Agreement
Released Claims**

VIII. RELEASE

A. General Release and Agreement by Class Representatives and the Class

Subject to the limitations stated below, upon execution of this Agreement by National Western and the Class Representatives, issuance of the Final Approval Order by the Court, and occurrence of the Effective Date, in consideration of the Settlement Benefits set forth above, the Class Representatives and each and every member of the Settlement Class on behalf of themselves, their heirs, assigns, executors, administrators, predecessors, and successors, and any other person or entity purporting to claim on their behalf, shall automatically and without further action or notice be deemed to have irrevocably and unconditionally released, waived, and forever discharged the Released Parties, as defined in Article VIII.D, from the Released Claims, as defined in Article VIII.C.

B. Express Agreement

1. The Class Representatives and the Settlement Class hereby expressly further agree that they shall not now or hereafter institute, maintain, assert, join, or participate in, either directly or indirectly, on their own behalf, on behalf of a class, or on behalf of any other person or entity, any action or proceeding of any kind against the Released Parties, as defined in Article VIII.D, asserting Released Claims, as defined in Article VIII.C, including but not limited to participation in any settlement or other relief sought in any action brought on behalf of the Plaintiffs or any Settlement Class Members by any state or federal government officials or agencies pertaining to any Released Claims.

2. The Class Representatives and the Settlement Class hereby agree and acknowledge that the provisions of this Release together constitute an essential term of the Agreement. The Class Representatives and the Settlement Class 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.

C. Released Claims

Subject only to those limitations specifically stated in this Article, Released Claims is defined as:

1. Any and all past, present or future claims, causes of action, suits, petitions, demands in law or equity, or any allegations of liability for damages, debts, restitution, injunctive, equitable, legal or administrative relief, interest, demands or rights, monetary damages, trebling, punitive or exemplary damages, claims for mental anguish, contracts, agreements, obligations, promises, attorneys' fees, costs, interest, or expenses whatsoever, whether known or unknown, that the Settlement Class or the Class Representatives now have, had, or may hereafter claim to have, in law or equity, that arise out of the Action, or that could have been raised in the Action, whether or not brought directly, indirectly, on a representative basis, or otherwise, and regardless of whether those claims are based on federal, state, or local law, statute, ordinance, regulations, contract, common law, or any other source, 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 claims for breach of contract, fraud, violation of any state or federal consumer protection law or law regulating insurance, RICO type laws, securities laws and regulations, any claims for consequential damages, emotional distress, pain and suffering, or personal injury, any claims for vicarious liability based on the conduct of the Class Representatives' or the Settlement Class Members' selling agents, brokers, their agencies, and affiliated sales organizations, or any of the other parties or entities referenced in Article VIII.D, below, or any claims relating to the negotiation of this Agreement, although nothing in this release shall be construed to preclude the proper enforcement of this Agreement.

2. The term "Released Claims" also includes all claims that arise out of the Action, or that could have been raised in the Action, related to (a) the design, development, marketing, offer, solicitation, application, underwriting, acceptance, issuance, sale (including, without limitation, in connection with the issuance of an Annuity as a replacement for a non-National Western annuity or another National Western annuity), presentation, illustration, projection, purchase, operation, performance, interest crediting, charges, administration, servicing, retention, and/or replacement (by means of surrender, partial surrender, loans respecting, withdrawal and/or termination of any annuity) of or in connection with (1) the Annuities or (2) any

QUESTIONS? CALL 1-800-____-____ TOLL FREE

annuity sold or to be sold or offered in connection with, or relating in any way directly or indirectly to the sale or solicitation of, the Annuities, or external or internal replacements of annuities issued by National Western, (b) the marketing, sale, delivery, and/or performance of any products, plans, or services in connection with, or relating to or allegedly relating to, the marketing, purchase, or sale of an Annuity, and (c) improper disclosure of Surrender Charges or any associated charges, any claims relating in any way to the amount of interest credited to the policies, including claims based on any reduction of credited interest to recoup, in whole or in part, the costs of premium bonuses or sales commissions, or improper disclosure or concealment thereof, and (d) any and all matters concerning or relating to this Settlement.

3. The Class Representatives and the Settlement Class acknowledge that they are aware that they may hereafter discover claims or damage presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, with respect to the Released Claims. Nevertheless, the Class Representatives and the Settlement Class understand and agree that this release is, and is intended to be, a broad, general release of the Released Parties, and the Class Representatives and the Settlement Class agree that this release fully, finally, and forever shall settle and release all claims and causes of action whatsoever, and all claims relating thereto, and which now exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding).

4. Accordingly, the Class Representatives and Settlement Class expressly waive and assume the risk of any and all claims—which exist as of this date, but of which the Class Representatives and Settlement Class do not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect a Class Representative’s or a Settlement Class Member’s decision to enter into this Agreement. This Agreement includes all Released Claims, of every nature and kind whatsoever, which the Settlement Class and the Class Representatives may have against the Released Parties, known or unknown, suspected or unsuspected, past or present, despite the fact that California *Civil Code* §1542 may provide otherwise. The Class Representatives and the Settlement Class expressly waive any right or benefit available in any capacity under the provisions of §1542, which provides as follows:

A general release does not extend to the 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 debtor.

5. The Class Representatives and the Settlement Class hereby agree that the provisions of Section 1542 and all similar federal or state laws, rights, rules, or legal principles, to the extent they are found to be applicable herein, are hereby knowingly and voluntarily waived and relinquished by the Class Representatives and the Settlement Class, who hereby agree that this is an essential term of the release.

D. Released Parties

Subject only to those limitations specifically stated in this Article VIII, Released Parties is defined as, individually and collectively: National Western, and its present, former, and future parent, sister, subsidiary and affiliated companies, and its past, present, and future officers, directors, employees, servants, attorneys, insurers, reinsurers, legal and beneficial shareholders, partners, privies, representatives, successors, assigns, and agents (including, without limitation, those acting on behalf of National Western and within the scope of their agency), including, without limitation, Independent Marketing Organizations (IMOs), National Marketing Organizations (NMOs), and other marketing organizations involved in any way, directly or indirectly, in the marketing, sale, and servicing of National Western Annuities, and all of such Released Parties' heirs, administrators, executors, insurers, predecessors, successors and assigns, or any of them, and including any person or entity acting on behalf or at the direction of any of them.

E. Limitations on Scope of the Release

1. Notwithstanding anything in this Article VIII, the Released Claims, as defined herein, are subject to the following limitations:

(a) Nothing shall preclude any action or proceeding to enforce the terms of this Agreement, including participation in any of the processes detailed herein;

(b) No claims of any nature are released with respect to any annuity, insurance policy, or other contract or agreement between any Settlement Class Member and any Released Party, other than the Annuities;

(c) National Western, the Class Representatives and the Settlement Class Members shall continue to have all rights as specified by the express terms of the Annuities, except as expressly modified by the Settlement.

F. Mutual Release

Upon the Court's final approval of the Settlement, each of the Released Parties shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged each and every one of Plaintiffs' Counsel in this matter, including Class Counsel, and each and all of the Settlement Class Members, from all claims (including, without limitation, unknown claims) arising out of, relating to, or in connection with, the institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims.

EXHIBIT B

EXHIBIT B

**In Re National Western Life Insurance Deferred Annuities Litigation
Settlement Administrator**

c/o _____

I. OWNER AND ANNUITY IDENTIFICATION:

Owner Name(s) & Address(es):
Policy No. [to be pre-printed on form]
[to be pre-printed on form] _____

If the address above is incorrect, provide correct address information here:

CLAIM FORM FOR SURRENDER CHARGE REDUCTION BENEFITS

II. INSTRUCTIONS

This Claim Form is for Class Members who want to apply for Surrender Charge Reduction Benefits. You must submit a separate Claim Form for each Annuity for which you are listed as an Owner if you want to apply for Surrender Charge Reduction Benefits. If you do not want Surrender Charge Reduction Benefits, you do not need to submit a Claim Form.

DEADLINE FOR SUBMISSION: To participate in the Claims Review Process, this Claim Form must be properly completed and returned to the following address by U.S. mail bearing a postmark of not later than _____, 2013.

National Western Class Action Information Center
{-----ADDRESS-----}

A self-addressed envelope has been provided for your use in returning this Claim Form. Proper postage must be affixed.

If this Claim Form is not returned or is returned but postmarked after the deadline stated above, you will not be eligible for the Surrender Charge Reduction Benefits.

If you have any questions, please call the National Western Class Action Information Center at 1-8XX-XXX-XXXX. (The hearing impaired should email questions to _____@_____).

III. SURRENDER CHARGE REDUCTION BENEFITS

A. General Instructions

If you want Surrender Charge Reduction Benefits, please answer the following Questions. Your responses will be reviewed by the Settlement Administrator to determine the level of benefits, if any, you may receive under the Claims Review Process. You may attach copies of any documents you deem relevant, but you are NOT required to do so. Any documents you attach will NOT be returned to you, so please make sure you send no original documents. Please provide a complete answer for every question on the Claim Form. If you leave a question blank, the Administrator will assume that your answer to that question is no, or in the negative. Attach additional pages if necessary to complete your answers. The Settlement Administrator will notify you once the Claim processing is completed and the Settlement becomes final, if it is approved by the Court.

If you were not the original purchaser of the Annuity, you may either skip Question 1, in which case the answer will be treated as “no,” or you may obtain a statement from the original purchaser providing the requested information, in which case the statement at the bottom of the form with respect to responses to Question 1 provided by persons who are not the original purchaser must be signed and dated by the original purchaser.

B. Instructions For Annuities Owned by Trusts

If the Annuity is owned by a revocable trust, the answers to all questions should be completed by the settlor for the trust, and “you” refers to the settlor.

If the Annuity is owned by an irrevocable trust, only question 1 needs to be answered, and it must be answered by a person with firsthand knowledge of the purchase of the Annuity, and “you” refers to the person who purchased the Annuity.

C. Questions to be Answered

1. Do you believe that you were misled regarding any of the benefits or costs of the Annuity at the time you purchased it, including the surrender charges, bonus interest, right to annuitize, commissions paid to your agent or other policy benefits when you purchased your annuity? Yes No

If yes, please explain how, when, by whom and the nature of the misrepresentation:

2. Did you incur a Surrender Charge on a withdrawal from the Annuity in the past because you needed the funds at the time of the past surrender to pay for any of the following: (Please check any or all that apply)

- a. Medical expenses;
Please describe the medical expenses:

- b. Nursing or home care;
Please describe the nursing or home care expenses:

- c. Retention of your sole residence;
Please describe the expenses necessary for the retention of your sole residence:

- d. Other expenses necessary for food, rent, necessary housing repairs and upkeep, utilities, and/or transportation for you or a member of your household:

If you are claiming any expenses under "D," explain and describe the nature of those expenses and why you could not afford those expenses under your financial circumstances without surrendering or withdrawing funds from your Annuity beyond the amount you may withdraw without Surrender Charges. Please provide a reasonable level of detail for each type of expense that you identified:

3. What is your current annual income from all sources, including both earned income and income from wages, dividends, interest, capital gains, pension or retirement plan payments, annuities, and social security?

4. Are you an original Owner of the Annuity? Yes No

5. If your answer to Question 4 is no, was one of the original Owners of the Annuity age 65 or over at the time the Annuity was issued? Yes No

REQUIRED SIGNATURES

One or more of the current Owners of the applicable Annuity must sign and date the statement below.

If more than one person or entity has an ownership interest in the Annuity, but only one Owner is executing this Claim Form, by signing the Claim Form, he or she is representing that he or she is authorized to elect the form of relief with respect to the Annuity on behalf of all co-Owners.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signature of Owner
Printed Name of Owner:

Signature of Co-Owner
Printed Name of Co-Owner:

Date: _____

Date: _____

IF THE INFORMATION PROVIDED IN RESPONSE TO QUESTION 1 ABOVE WAS PROVIDED BY A PERSON OTHER THAN THE CURRENT OWNER, THAT PERSON MUST SIGN AND DATE THE FOLLOWING STATEMENT:

I declare under penalty of perjury under the laws of the United States of America that the information provided in response to Question 1 above is true and correct.

Signature of Person Providing Response to Question 1 Above

Printed Name and Address of Person Providing Response to Question 1 Above:

Name

Address

Date: _____

IT IS RECOMMENDED THAT YOU KEEP A COPY OF THE COMPLETED CLAIM FORM FOR YOUR RECORDS.

EXHIBIT C

EXHIBIT C

GRADING CRITERIA

Question 1 – Policyholders who provide a timely, complete, signed claim form with a positive answer to Question 1, and a narrative response explaining how they were misled, will qualify for a 50% reduction in the amount of withdrawal charge previously incurred upon surrender of their policy, subject to the Cap on the Claim Fund. If a policyholder provides a positive answer and the relevant narrative response portion of the claim form is left blank or if the response set forth therein is ambiguous or if the claim form is unsigned, the policyholder will have the opportunity to cure his or her claim form. The insufficient claim form will be remailed and the policyholder must provide an updated claim form within three weeks of the mailing date. Failure to cure the claim form will lead to a rejection of the claim.

Question 2 – Policyholders who provide a timely, complete, signed claim form with a positive answer to Question 2, and a description of the alleged need, will qualify for a 25% reduction in the amount of withdrawal charge previously incurred upon surrender of their policy, subject to the Cap on the Claim Fund. If a policyholder provides a positive answer and the relevant narrative response portion of the claim form is left blank or if the response set forth therein is ambiguous, or if the claim form is unsigned, the policyholder will have the opportunity to cure his or her claim form. The insufficient claim form will be remailed and the policyholder must provide an updated claim form within three weeks of the mailing date. Failure to cure the claim form will lead to a rejection of the claim.

Question 3 – Policyholders who provide a timely, complete, signed claim form with an answer to question three which identifies their qualifying amount of total income as less than \$35,000 a year will qualify for a 25% reduction in the amount of withdrawal charges previously incurred upon surrender of their policy, subject to the Cap on the Claim Fund. Failure to provide an answer to question three does not trigger remailing of the claim form; however, if the claim form is unsigned, the policyholder will have the opportunity to cure his or her claim form.

These relief categories are non-cumulative. Each policyholder can only qualify for one reduction in surrender charges despite the number of correct answers provided. To the extent a policyholder provides positive responses in two categories and qualifies for both the 50% and 25% reduction in surrender charges, they will receive a 50% reduction in surrender charges, subject to the Cap on the Claim Fund.

Initial determinations as to qualification for relief will be made by the Class Administrator under the direction of counsel for National Western. Plaintiffs' counsel shall have the right to review each claim form that is rejected by the Class Administrator. Counsel for both parties will meet and confer regarding disputed claims. The Magistrate will finally decide any claims that the parties cannot resolve.

EXHIBIT D

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re NATIONAL WESTERN LIFE
INSURANCE DEFERRED
ANNUITIES LITIGATION

No. 05-CV-1018-GPC(WVG)

CLASS ACTION

This Document Relates To:

ALL ACTIONS.

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

1 The motion of Plaintiffs Anita Williams, as Trustee for Estate of George J.
2 Miller, and Marie Sweeney, individually, and on behalf of the Settlement Class as
3 defined in the Settlement and Release Agreement (collectively “Plaintiffs”), for
4 preliminary approval of the proposed class action Settlement reached with Defendant
5 National Western Life Insurance Company (“National Western”) came on for hearing
6 before this Court on August 30, 2013. Theodore J. Pintar and Stephen R. Basser
7 appeared as attorneys for plaintiffs, and Robert W. Fischer, Jr. appeared as an attorney
8 for National Western. After considering the Settlement and Release Agreement, the
9 moving papers, arguments of counsel and all other matters presented to the Court, the
10 Court finds that:

11 1. Plaintiffs filed a consolidated and amended complaint in this action on
12 June 12, 2006 on behalf of themselves and a nationwide class of senior citizens who
13 had purchased National Western’s deferred annuities. Plaintiffs allege violations of
14 civil RICO, elder abuse, unlawful, deceptive and unfair business practices, unfair,
15 deceptive and misleading advertising, breach of fiduciary duty, aiding and abetting
16 breach of fiduciary duty, fraudulent concealment, breach of the duty of good faith and
17 fair dealing, and unjust enrichment and imposition of a constructive trust.

18 2. National Western expressly denies any and all wrongdoing alleged in the
19 pleadings and Plaintiffs’ other filings, and does not admit or concede any actual or
20 potential fault, wrongdoing, or liability in connection with any facts or claims that
21 have been or could have been alleged against it in the Action. National Western
22 contends that Plaintiffs’ allegations do not constitute a claim on which relief can be
23 granted and are not sustainable as a matter of law. In addition, National Western
24 contends that it has fully performed all of its obligations under the annuity contracts
25 and has delivered on its promises in the annuity contracts made to its policyholders.
26 In addition, National Western contends that Plaintiffs would be unable to prove the
27 elements of the causes of action at trial, and that this would be fatal to both individual
28 and class claims.

1 3. The proposed Settlement resulted from numerous arm's-length mediation
2 sessions before Justice John K. Trotter and was concluded only after Plaintiffs and
3 National Western conducted their own investigations and evaluations of the factual
4 and legal issues raised by Plaintiffs' claims, as well as National Western's defenses.

5 4. Plaintiffs and Class Counsel have agreed to settle the Action after
6 considering such factors as: (a) the benefits to Plaintiffs and the Settlement Class
7 provided by the Settlement and Release Agreement; (b) the risks and uncertainty of
8 litigation, especially in complex actions such as this, as well as the difficulties and
9 delays inherent in such litigation; and (c) the desirability of consummating the
10 Settlement and Release Agreement in order to provide relief to Plaintiffs and the
11 Settlement Class. National Western considers it desirable for this Action to be settled
12 and dismissed because this proposed Settlement will finally put Plaintiffs' claims and
13 the underlying matters to rest. National Western is also entering into this Settlement
14 and Release Agreement to avoid the expense, burden, inconvenience, and inherent risk
15 of litigation and the concomitant disruption of its business operations.

16 5. The Parties have entered into a Settlement and Release Agreement
17 previously filed with this Court.

18 6. The Court has reviewed the Settlement and Release Agreement (and all
19 the attachments thereto) and determined the proposed Settlement to be fair,
20 reasonable, adequate and within the range of possible approval. The proposed
21 Settlement does not improperly grant preferential treatment to the Class
22 Representatives or any segment of the Settlement Class. The proposed Settlement is
23 sufficient to warrant sending notice to the Settlement Class. The procedures for
24 establishing and administering the benefits provided by the proposed Settlement and
25 for notice of the proposed Settlement, exclusion from the proposed Settlement, and
26 objections to the proposed Settlement are fair, reasonable, and in the best interests of
27 the Settlement Class.

28

1 7. Based on Plaintiffs’ motion, the memorandum of points and authorities,
2 the Settlement and Release Agreement, and all supporting exhibits and attachments,
3 the Court preliminarily certifies the Settlement Class, as defined in Paragraph II.A.35
4 of the Settlement and Release Agreement. The Court hereby finds for settlement
5 purposes that:

6 (a) the numerosity requirement of Rule 23(a)(1) is satisfied because
7 the proposed settlement Class comprised of more than 10,000 owners of over 12,000
8 Annuities satisfies the requirement that a class be sufficiently numerous such that
9 joinder of all members is impractical;

10 (b) the commonality requirement of Rule 23(a)(2) is satisfied because
11 National Western products owned by the various Settlement Class Members have
12 similar elements;

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

16 (d) the adequacy requirement of Rule 23(a)(4) is satisfied because:
17 (i) Class Counsel are qualified and competent to prosecute the Action vigorously;
18 (ii) Plaintiffs’ interests are not antagonistic to the interests of the Settlement Class; and
19 (iii) Class Counsel and Plaintiffs have fairly and adequately protected the interests of
20 the Settlement Class; and

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

25 8. The Court has reviewed the Class Notice Package, including the class
26 notice and the claim form contained therein, attached to the Settlement and Release
27 Agreement as Exhibits A and B. The Court has determined that mailing the Class
28 Notice Package to the last known addresses of the Settlement Class Members:

- 1 (a) constitutes the best practicable notice under the circumstances;
- 2 (b) is reasonably calculated to apprise Settlement Class Members of
- 3 the pendency of the Action and of their right to object to or exclude themselves from
- 4 the proposed Settlement;
- 5 (c) is reasonable and constitutes due, adequate, and sufficient notice to
- 6 all persons entitled to receive notice; and
- 7 (d) meets all applicable requirements of Rule 23 of the Federal Rules
- 8 of Civil Procedure, the United States Constitution, and its Amendments.

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

- 10 1. The Motion for Preliminary Approval is GRANTED. The Court
- 11 preliminarily approves the proposed Settlement. All defined terms in the foregoing
- 12 findings and this Order shall have the same meanings as in the Settlement and Release
- 13 Agreement.
- 14 2. The Settlement Class, as defined in Paragraph II.A.35 of the Settlement
- 15 and Release Agreement, is preliminarily certified for settlement purposes only.
- 16 3. Robbins Geller Rudman & Dowd LLP and Barrack Rodos & Bacine shall
- 17 serve as Class Counsel for the Settlement Class. Anita Williams, as the Trustee for
- 18 the Estate of George J. Miller, and Marie Sweeney shall serve as representatives of the
- 19 Settlement Class.
- 20 4. A hearing (the “Fairness Hearing”) will be held on _____,
- 21 2014 at _____ [a.m./p.m.] before the undersigned in the United States District Court
- 22 for the Southern District of California to consider the fairness, reasonableness, and
- 23 adequacy of the proposed Settlement and whether it should be finally approved by the
- 24 Court.
- 25 5. The Court approves the proposed Class Notice Package and the plan for
- 26 giving notice.
- 27 6. National Western and Class Counsel are authorized to:
- 28

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

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

6 7. The Court appoints Rust Consulting, Inc. as the Administrator to
7 implement the terms of the Settlement and Release Agreement.

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

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

14 10. Class Counsel shall file their petition for approval of Class Counsel's fees
15 and expenses and Motion for Final Approval of the Settlement no later than 24 days
16 after the mailing of the Class Notice Packet.

17 11. National Western is prohibited from communicating with Settlement
18 Class Members about the Action or the Settlement, but National Western is not
19 precluded from:

20 (a) speaking to Settlement Class Members in the ordinary course of
21 National Western's business, provided that if Settlement Class Members contact
22 National Western regarding the Action or the Settlement, National Western shall
23 direct such Settlement Class Members to contact the Claims Administrator or Class
24 Counsel; or

25 (b) communicating with agents and employees of National Western or
26 communicating with its auditors, rating agencies, insurance commissioners, regulators
27 or similar reporting organizations or governmental entities regarding the impact and/or
28 administration of the Settlement.

1 12. Each Settlement Class Member who wishes to exclude himself or herself
2 from the Settlement Class must submit to the Administrator an appropriate, timely
3 written request for exclusion, postmarked no later than 45 days after mailing of the
4 Class Notice Package, in care of the address provided in the class notice.

5 13. Any Settlement Class Member who does not submit a timely, written
6 request for exclusion from the Settlement Class shall be bound by all proceedings,
7 orders, and judgments in the Action, even if such Settlement Class Member has
8 previously initiated or subsequently initiates individual litigation or other proceedings
9 against National Western relating to Annuities issued during the class period.

10 14. Each Settlement Class Member who wishes to object to the fairness,
11 reasonableness, or adequacy of the Settlement and Release Agreement, the proposed
12 Settlement, or to the award of attorney's fees and expenses, shall serve on Class
13 Counsel and National Western's Counsel, and file with the Court, no later than or 45
14 days after mailing of the Class Notice Package, a statement of the objection, as well as
15 the specific reasons, if any, for each objection, including any legal support the
16 Settlement Class Member wishes to bring to the Court's attention and any evidence
17 the Settlement Class Member wishes to introduce in support of his or her objection, or
18 be forever barred from separately objecting.

19 15. Any attorney hired by a Settlement Class Member at the Settlement Class
20 Member's expense for the purpose of objecting to the Settlement and Release
21 Agreement, the proposed Settlement, or the award of attorney's fees and expenses,
22 shall file with the Clerk of the Court and deliver to Class Counsel and National
23 Western's Counsel a notice of appearance no later than 45 days after mailing of the
24 Class Notice Package or as the Court otherwise may direct.

25 16. Any Settlement Class Member who files and serves a written objection
26 and who intends to make an appearance at the Fairness Hearing, either in person or
27 through personal counsel hired at the Settlement Class Member's expense (who has
28 filed a timely notice to appear), shall deliver to Class Counsel and National Western's

1 Counsel, and file with the Court no later than 45 days after mailing of the Class Notice
2 Package a notice of intention to appear at the Fairness Hearing.

3 17. The Administrator shall rent one or more post-office boxes to be used for
4 receiving requests for exclusion from the Settlement Class and any other
5 communications, and provided that no one other than the Court or the Clerk of the
6 Court and the Administrator shall have access to these post-office boxes.

7 18. National Western's Counsel and Class Counsel shall promptly furnish
8 each other with copies of any and all objections or written requests for exclusion that
9 might come into their possession that are not otherwise provided by the Administrator.

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

26 20. This order shall become null and void, and shall be without prejudice to
27 the rights of the Parties, all of whom shall be restored to their respective positions
28 existing immediately before this Court entered this Order, if: (a) the proposed

1 Settlement is not finally approved by the Court, or does not become final, pursuant to
2 the terms of the Settlement and Release Agreement; or (b) the Settlement is
3 terminated in accordance with the terms of the Settlement and Release Agreement or
4 does not become effective as required by the terms of the Settlement and Release
5 Agreement for any other reason. In such event, the Settlement and Release
6 Agreement shall become null and void and be of no further force and effect, and
7 neither the Settlement and Release Agreement nor the Court's orders, including this
8 Order, shall be used or referred to for any purpose whatsoever.

9 21. In no event shall the Settlement and Release Agreement, any of its
10 provisions, or any negotiations, statements, or proceedings relating to it be offered as,
11 received as, used as, or deemed to be evidence in the Action, any other action, or in
12 any other proceeding, except in a proceeding to enforce the Settlement and Release
13 Agreement. Without limiting the foregoing, neither the Settlement and Release
14 Agreement nor any related negotiations, statements, or proceedings shall be offered
15 as, used as, or deemed to be evidence or an admission or concession by any person of,
16 any matter, including but not limited to any liability or wrongdoing on the part of
17 National Western or as evidence of the appropriateness of certification of any class.

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

24 IT IS SO ORDERED.

25 DATED: _____

THE HON. GONZALO P. CURIEL
UNITED STATES DISTRICT JUDGE

EXHIBIT E

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re NATIONAL WESTERN LIFE
INSURANCE DEFERRED
ANNUITIES LITIGATION

No. 05-CV-1018-GPC(WVG)

CLASS ACTION

This Document Relates To:

[PROPOSED] FINAL ORDER

ALL ACTIONS.

1 Following a hearing on August 30, 2013 (“Preliminary Approval Hearing”), this
2 Court entered its Order: (1) preliminarily approving class action settlement,
3 (2) directing distribution of the Class Notice Package, and (3) setting a Fairness
4 Hearing (“Preliminary Approval Order”), preliminarily approving the Settlement
5 entered into by the parties in the above-captioned Action, and scheduling a hearing to
6 determine whether the Settlement is fair, reasonable, adequate, in the best interests of
7 the Class, and free from collusion, whether the Settlement should be finally approved
8 by the Court, and to consider a motion by Class Counsel for an award of attorneys’
9 fees, expenses, and service award for the Class Representatives (“Fairness Hearing”).

10 The Court has considered: (1) the memorandum submitted in support of
11 Plaintiffs’ Motion for Final Approval of Class Action Settlement (“Final Approval
12 Motion”); (2) the declarations and exhibits submitted in support of the Final Approval
13 Motion; (3) the memorandum submitted in support of the Plaintiffs’ Motion for an
14 Award of the Attorneys’ Fees and Expenses and for Service Awards (“Fee Motion”),
15 filed _____; (4) the declarations and exhibits submitted in support of the Fee
16 Motion; (5) the Settlement and Release Agreement, filed _____, including
17 Exhibits A to G (collectively “Settlement and Release Agreement”); (6) the entire
18 record in this proceeding, including but not limited to the memorandum in support of
19 preliminary approval of the Settlement, filed _____; (7) the oral presentations
20 of Class Counsel and National Western’s Counsel at the Preliminary Approval
21 Hearing and Fairness Hearing; (8) the Court’s findings and conclusions contained in
22 its Preliminary Approval Order; (9) this Court’s experiences and observations while
23 presiding over this matter, and the Court’s file herein; and (10) the relevant law.

24 Based upon these considerations, it is hereby ORDERED, ADJUDGED, AND
25 DECREED, as follows:

26 1. The Motion for Final Approval of Class Action Settlement is hereby
27 GRANTED.

28

1 2. **Incorporation of Documents.** This Final Order Approving Class Action
2 Settlement (“Final Approval Order”) incorporates and makes part hereof: (a) the
3 Parties’ Settlement and Release Agreement and all exhibits thereto and (b) the Court’s
4 findings and conclusions contained in its Preliminary Approval Order. All defined
5 terms in this Final Approval Order shall have the same meanings as in the Settlement
6 and Release Agreement.

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

9 4. **Jurisdiction.** The Court has personal jurisdiction over all Settlement
10 Class Members (as defined in Paragraph 5 below) and has subject matter jurisdiction
11 over this action, including, without limitation, jurisdiction over all the claims asserted
12 in the Action, jurisdiction to approve the Settlement and Release Agreement and the
13 exhibits hereto and jurisdiction to dismiss this action on the merits and with prejudice.

14 5. **Definition of Class.** Based on the findings and conclusions in the
15 Preliminary Approval Order, the Class certified under Fed. R. Civ. P. 23(b)(3) as part
16 of this settlement is:

17 (a) “Settlement Class” means the nationwide class and the California
18 classes described below, not including those individuals who have previously, validly
19 excluded themselves therefrom.

20 **Nationwide Class:** Any senior citizen (age 65 and older),
21 excluding National Western and its directors, officers, predecessors,
22 successors, affiliates, agents, and employees, as well as the immediate
23 family members of such persons, who purchased one or more of the
24 Annuities, either directly, or through the surrender (in whole or part) of an
25 existing permanent life insurance policy or annuity, or by borrowing
26 against an existing permanent life insurance policy, in which the annuitant
27 was age 65 or older on the date of issue, between December 22, 2001 and
28 the Eligibility Date. “Nationwide Class” does not include: (a) anyone who

1 has made a valid request for exclusion, either in response to the Notice of
2 Pendency of Class Action, dated February 2010, as supplemented by the
3 curative notice dated January 2012, or the Settlement Notice, (b) anyone
4 who falls into the California Class, (c) any Settlement Class Member who
5 at any time has signed a document that releases National Western from any
6 further claims concerning the Annuity or whose rights and claims
7 respecting the Annuity have been finally adjudicated in a court of law, or
8 (d) anyone who purchased an annuity that falls within the class certified in
9 *Clark v. National Western Life Insurance Company*, Superior Court of the
10 State of California, County of Los Angeles, Case No. BC321681.

11 **California Class:** Any senior citizen (age 65 or older), excluding
12 National Western and its directors, officers, predecessors, successors,
13 affiliates, agents, and employees, as well as the immediate family members
14 of such persons, who purchased one or more of the Annuities, either
15 directly, or through the surrender (in whole or part) of an existing
16 permanent life insurance policy or annuity, or by borrowing against an
17 existing permanent life insurance policy, in which the annuitant was age 65
18 or older on the date of issue, between April 7, 2001 and the Eligibility
19 Date, provided that National Western's records show that such senior
20 citizen was a California resident on the date of issue. "California Class"
21 does not include: (a) anyone who has made a valid request for exclusion,
22 either in response to the Notice of Pendency of Class Action, dated
23 February 2010, as supplemented by the curative notice dated January 2012,
24 or the Settlement Notice, (b) any Settlement Class Member who at any
25 time has signed a document that releases National Western from any
26 further claims concerning the Annuity or whose rights and claims
27 respecting the Annuity have been finally adjudicated in a court of law, or
28 (c) anyone who purchased an annuity that falls within the class certified

1 in *Clark v. National Western Life Insurance Company*, Superior Court of
2 the State of California, County of Los Angeles, Case No. BC321681.

3 6. **Adequate Representation.** The law firms of Robbins Geller Rudman &
4 Dowd LLP and Barrack, Rodos & Bacine LLP (“Class Counsel”) and Plaintiffs Anita
5 Williams, as the Trustee for the Estate of George J. Miller, and Marie Sweeney,
6 (“Class Representatives”) have fully and adequately represented the Class in the
7 Action and for purposes of entering into and implementing the settlement and have
8 satisfied the requirements of Rule 23(a)(4) of the Federal Rules of Civil Procedure.

9 7. **Class Notice Package.** The Court finds that the distribution of the Class
10 Notice Package in accordance with the terms of the Settlement and Release
11 Agreement and the Preliminary Approval Order:

12 (a) constituted the best practicable notice to Settlement Class
13 Members under the circumstances;

14 (b) was reasonably calculated, under the circumstances, to apprise
15 Settlement Class Members of: (i) the terms of the Settlement and Release Agreement;
16 (ii) their right to exclude themselves from the Class, and the procedure for doing so
17 and advised that any members of the Class who did not exclude themselves, would be
18 bound by the Settlement; (iii) their right to object to any aspect of the proposed
19 Settlement (including the fairness, reasonableness or adequacy of the proposed
20 Settlement, the adequacy of representation of the Class by the Class Representatives
21 or Class Counsel, and/or the award of attorneys’ fees and expenses or the service
22 awards to the Class Representatives); and (iv) their right to appear at the Fairness
23 Hearing, either on their own or through counsel hired at their own expense;

24 (c) constituted due, adequate and sufficient notice to all persons
25 entitled to be provided with notice; and

26 (d) fully satisfied the requirements of the Federal Rules of Civil
27 Procedure (including Fed. R. Civ. P. 23(c)(2) and (e)), the United States Constitution
28 (including the Due Process Clause) and the California Constitution, the Local Rules of

1 the United States District Court for the Southern District of California, and any other
2 applicable law.

3 8. **Requests for Exclusion.** After the mailing of the _____ Class Notice
4 Packages, only _____ timely and valid requests for exclusion have been received.
5 No other untimely and/or invalid requests for exclusion were received. A list of those
6 persons and entities who have timely and validly requested exclusion from the
7 Settlement Class, according to the terms of the Class Notice Package and the Court's
8 orders regarding said notices, was filed with the Court in support of final settlement
9 approval as Exhibit A to Declaration of _____, and is incorporated herein and made
10 a part hereof. The persons and Annuities on that list are the timely opt-outs, are
11 excluded from the Class, shall not be bound by the Settlement or Judgment in the
12 Action, and shall not receive any benefit under the Settlement.

13 9. **Settlement Class Member Objections.** As set forth in detail *supra*,
14 full and fair notice of Settlement Class Members' right to object to the proposed
15 Settlement and to appear at the Fairness Hearing in support of such an objection has
16 been provided in the form and manner required by the Settlement and Release
17 Agreement, the Court's Preliminary Approval Order, the requirements of due process,
18 and any other applicable law. The deadline for objection expired on _____.
19 There were _____ objections to the Settlement. No person has requested leave to
20 appear at the Fairness Hearing to object to the Settlement. The Court has considered
21 and overruled all objections filed to the Settlement.

22 10. **Findings and Conclusions.** The Court finds that the Settlement was not
23 the product of collusion or any other indicia of unfairness, is fair, reasonable, and
24 adequate to the Class in light of the complexity, expense, and likely duration of the
25 litigation (including appellate proceedings), and the risks involved in establishing
26 liability, damages, and in maintaining the action as a class action, through trial and
27 appeal. The Court finds that the Settlement represents a fair and complete resolution
28 of all claims asserted in a representative capacity on behalf of the Settlement Class

1 and should fully and finally resolve all such claims. In support of these findings and
2 conclusions, the Court further finds:

3 (a) There is no evidence of collusion. The proposed settlement, as set
4 forth in the Settlement and Release Agreement, resulted from extensive arm's-length
5 negotiation. The Action was extensively and vigorously litigated (as further described
6 below), prior to any settlement. Plaintiffs and National Western engaged in intensive
7 arm's-length negotiations, including meeting on multiple occasions with a mediator,
8 conferring on multiple occasions independently during that period, participating in
9 numerous substantive telephone conferences, and exchanging numerous emails and
10 proposals. Counsel for the parties attended face-to-face meetings, participated in
11 periodic conference calls and collectively worked several hundred hours over several
12 years to reach the terms embodied in the Settlement.

13 (b) The Settlement provides for substantial cash benefits to be paid or
14 credited automatically by National Western to those Settlement Class Members with
15 active deferred annuities who annuitize (or who have already annuitized) their
16 policies, without requiring those Settlement Class Members to affirmatively
17 participate in a claims process. The Settlement also provides for substantial cash
18 benefits to be paid by National Western to Settlement Class Members who have
19 surrendered their policies prior to the date of the filing of the Motion for Preliminary
20 Approval of the Settlement, if those Settlement Class Members meet certain
21 requirements, including the need for necessary living expenses, through a claims
22 process. No portion of the substantial cash benefit will be consumed by attorneys'
23 fees, litigation expenses, notice expenses, settlement administration expenses, or the
24 requested service award for Plaintiffs, since such amounts are all separately provided
25 for. The Court has considered the realistic range of outcomes in this matter, including
26 the amount Settlement Class Members might receive if they prevailed at trial, the
27 strength and weaknesses of the case, the novelty and number of the complex legal
28 issues involved, the risk that Settlement Class Members could receive less than the

1 relief provided for in the Settlement, and the risk that Settlement Class Members could
2 receive nothing if the case were to be concluded by trial. The amount offered by the
3 Settlement is fair, reasonable, and adequate in view of these factors.

4 (c) Before reaching the proposed settlement, Plaintiffs and National
5 Western fully and vigorously litigated their claims and defenses in extensive
6 proceedings before this Court. A detailed procedural history of this action is set forth
7 in the Court's docket, and is described in the Declaration of Theodore J. Pintar in
8 Support of Plaintiffs' Memorandum in Support of Motion for an Award of Attorneys'
9 Fees, Reimbursement of Expenses, and Service Awards, filed _____
10 ("Pintar Declaration"). Over the span of more than eight years, Class Counsel
11 reviewed thousands of documents, attended multiple hearings and conducted
12 numerous depositions of corporate executives and expert witnesses. The Parties
13 briefed class certification and multiple motions for summary judgment. Class Counsel
14 tirelessly litigated this action while attempting, in good faith, to achieve a just, fair and
15 amicable resolution.

16 (d) Based upon the vigorous litigation of relevant legal issues before
17 this Court and extensive investigation of the underlying facts in discovery, Plaintiffs
18 and National Western were fully informed of the legal bases for the claims and
19 defenses herein, and capable of balancing the risks of continued litigation (both before
20 this Court and on appeal) and the benefits of the proposed settlement.

21 (e) The Class is and was at all times adequately represented by
22 Plaintiffs and Class Counsel, including in entering into and implementing the
23 Settlement, and has satisfied the requirements of the Federal Rules of Civil Procedure
24 Rule 23, and applicable law. Class Counsel submit that they have fully and
25 competently prosecuted all causes of action, claims, theories of liability, and remedies
26 reasonably available to the Settlement Class Members. Further, both Class Counsel and
27 National Western's Counsel are highly experienced trial lawyers with specialized
28 knowledge in insurance and annuity litigation, and complex class action litigation

1 generally. Class Counsel and National Western's Counsel are capable of properly
2 assessing the risks, expenses, and duration of continued litigation, including at trial and
3 on appeal. Class Counsel submits that the Settlement is fair, reasonable and adequate
4 for the Settlement Class Members. National Western denies all allegations of
5 wrongdoing and disclaims any liability with respect to any and all claims alleged by
6 Plaintiffs and the Settlement Class, including their claims regarding the propriety of
7 class certification. National Western considers it desirable to resolve the Action to
8 finally put Plaintiffs' and the Settlement Class' claims to rest and avoid, among other
9 things, the risks of continued litigation, the expenditure of time and resources necessary
10 to proceed through trial and any subsequent appeals, and interference with ongoing
11 business operations.

12 (f) As addressed above, through the mailing of the Class Notice
13 Package in the form and manner ordered by the Court, the Settlement Class has
14 received the best practicable notice of the pendency of this action, of the Settlement,
15 the Fairness Hearing, and of Settlement Class Members' rights and options, including
16 their rights to opt out, to object to the settlement, and/or to appear at the Fairness
17 Hearing in support of a properly submitted objection, and of the binding effect of the
18 Orders and Judgment in this Action, whether favorable or unfavorable, on all
19 Settlement Class Members. The Class Notice Package fully satisfied all notice
20 requirements under the law, including the Federal Rules of Civil Procedure and all due
21 process rights under the U.S. Constitution and California Constitution.

22 (g) The response of the Class to this Action, the certification of a class
23 in the Action, and to the Settlement, including Class Counsel's application for an
24 award of attorneys' fees, litigation expenses, and the class representatives' service
25 award, after full, fair, and effective notice thereof, strongly favors final approval of the
26 Settlement. Out of the _____ Class Notice Packages that were mailed to the
27 Settlement Class Members, only _____ valid requests for exclusion were received
28 and ____ objections were received.

1 (h) As set forth in the Settlement, National Western has denied, and
2 continues to deny, any wrongdoing or liability relating to the Action.

3 11. **Implementation of Settlement.** The parties and the Claims
4 Administrator are directed to implement the Settlement and Release Agreement
5 according to its terms and conditions. The Parties are authorized for purposes of
6 implementing the Settlement and Release Agreement, without further approval from
7 the Court, to agree to and to adopt such amendments, modifications and expansions of
8 the Settlement and Release Agreement and the exhibits thereto that are consistent with
9 the Final Order and Judgment and do not limit the rights of the Settlement Class
10 Members under the Settlement and Release Agreement.

11 12. **Attorneys' Fees and Expenses.** Class Counsel are hereby awarded
12 attorneys' fees, expenses, and costs in the amount of \$_____ (not to exceed
13 \$_____) ("Class Counsel Payment"). This amount covers any and all claims for
14 attorneys' fees, expenses, and costs incurred by any and all Class Counsel in
15 connection with the Settlement of the Action and the administration of such
16 Settlement. Class Counsel Payment shall be provided by National Western to Class
17 Counsel in accordance with Section IX of the Settlement and Release Agreement.

18 (a) Uncontroverted evidence was presented, and the Court finds, that
19 the settlement value made available to the class is, at a minimum, \$_____ million.
20 This is an excellent result. To determine the value, a distinguished actuary analyzed
21 the settlement, and the value of its components, based on his extensive experience and
22 sound actuarial principles, using conservative assumptions. Dkt. No. _____. Based
23 on its familiarity with the record, the Court reiterates its prior finding that the
24 settlement is not only fair and adequate, but easily within a range of reasonableness
25 warranting approval.

26 (b) The Court reviewed all declarations and other evidence supporting
27 Class Counsel's request for an attorney fee and expense award. Dkt. Nos. _____.
28 Class Counsel presented uncontroverted evidence demonstrating an aggregate lodestar

1 of \$_____ million, which the Court finds to be reasonable. *See, e.g.*, Dkt. No.
2 _____ (referencing supporting declarations). Class Counsel presented
3 uncontroverted evidence demonstrating aggregate recoverable expenses of \$_____,
4 which the Court finds to be reasonable. *See, e.g.*, Dkt. No. _____ (referencing
5 supporting declarations). Class Counsel, however, requires \$____ million for fees and
6 expenses, or nearly \$_____ voluntarily cut from their reasonable lodestar and
7 expenses. Dkt. No. _____. The award therefore reflects a ___% reduction –
8 effectively a negative multiplier – from the reasonable lodestar and expenses.

9 (c) The Court finds that the attorneys’ fees and expenses awarded are
10 commensurate with Class Counsel’s request negotiated at an arm’s-length mediation
11 before Justice John K. Trotter (ret.). The amount awarded is further justified given
12 that the matter was litigated on a contingency basis for nearly eight years, with no
13 assurance that Class Counsel would be paid for their extensive efforts on behalf of
14 Plaintiffs and the Settlement Class.

15 (d) In determining reasonable compensation to Class Counsel, the
16 Court is mindful that this litigation was especially complex. As the Court observed
17 for several years, the litigation called upon a high level of skill and experience in class
18 actions for Plaintiffs to succeed against defendant National Western, which also had
19 first-rate legal representation. Based on the Court’s review of the record and
20 familiarity with local hourly rates, the Court finds that the hourly rates sought by all
21 attorneys and other professionals who worked on the case for Class Counsel are
22 reasonable for complex, contingent-fee class litigation in San Diego. Over the span of
23 more than eight years, Class Counsel reviewed thousands of documents, attended
24 multiple hearings and conducted numerous depositions of corporate executives and
25 expert witnesses. The Parties briefed class certification, class decertification and
26 multiple motions for summary judgment. Given that the litigation was contentious,
27 lengthy and at times very labor-intensive for Class Counsel, the time expended by all
28 attorneys and other professionals was time reasonably spent.

1 (e) Assuming arguendo that the settlement benefit here and Class
2 Counsel's award may be viewed as a "constructive common fund," the Court has
3 conducted a percentage cross-check to confirm the reasonableness of class counsel's
4 award. The combined minimum value of the settlement (\$_____ million) and the
5 award (\$_____ million) is \$_____ million. The award is _____% of a "constructive
6 common fund" (assuming, again, such a fund here for analytical purposes). This
7 percentage is consistent with the Ninth Circuit's 25% benchmark for reasonableness
8 in common fund situations. A percentage cross-check thus confirms that class
9 counsel's award in this action is reasonable. To simplify the calculation, the service
10 awards to the representative Plaintiffs, Class Notice Package costs and other expenses
11 are excluded, but the Court observes that including these items would only reduce the
12 percentage of Class Counsel's award below what is already a reasonable percentage
13 fee and expense award.

14 (f) Uncontroverted evidence was presented, and the Court finds, that
15 Class Counsel and National Western negotiated and finalized their Settlement and
16 Release Agreement (Dkt. No. ____) before commencing negotiations on attorney fees
17 and expenses. *See, e.g.,* _____. The record reflects that the parties negotiated the
18 substantive terms of the proposed Settlement at arm's-length without any hint of
19 collusion.

20 13. **Service Awards.** As service awards for participation as the Class
21 Representatives in the Action, the Court awards:

22 \$_____ (not to exceed \$10,000) to Plaintiff Anita Williams; and

23 \$_____ (not to exceed \$10,000) to Plaintiff Marie Sweeney.

24 National Western will pay these amounts in addition to any benefits that Plaintiffs are
25 entitled to receive as Settlement Class Members. National Western will pay any service
26 awards within seven days from the date of the entry of the Final Approval Order.

27 14. **Work Product.** Any work product retained by Plaintiffs or Class
28 Counsel that is based on or incorporates information designated as Confidential

1 Material pursuant to the terms of the Protective Order previously entered in this case
2 and provided by National Western shall be deemed Confidential Material pursuant to
3 the terms of the Protective Order, and the disclosure or use of such materials shall be
4 subject to the same restrictions as Confidential Materials pursuant to the terms of the
5 Protective Order previously entered in this case.

6 **15. Permanent Injunction.** This Order is binding on all Settlement Class
7 Members and upon National Western and extinguishes all claims of Settlement Class
8 Members that: (a) were alleged in the Action, could have been alleged in the Action;
9 or (b) were released pursuant to the Settlement and Release Agreement. All class
10 members are hereby permanently barred and enjoined from:

11 (a) filing, commencing, prosecuting, maintaining, intervening in,
12 participating in, conducting, or continuing litigation as Settlement Class Members or
13 otherwise, or from receiving any benefits from any lawsuit, administrative, or
14 regulatory proceeding or order in any jurisdiction, based on, or relating to the claims
15 or causes of action or the facts alleged in the Action or the Released Claims;

16 (b) filing, commencing, or prosecuting a lawsuit as a class action, a
17 separate class, or group for purposes of pursuing a putative class action (including by
18 seeking to amend a pending complaint to include class allegations or by seeking class
19 certification in a pending action in any jurisdiction) on behalf of the Settlement Class,
20 arising out of, based on, or relating to the claims, causes of action, facts and/or
21 circumstances relating thereto, in the Action or the Released Claims; and

22 (c) organizing or soliciting the participation of any Settlement Class
23 Member in a separate class or group for purposes of pursuing a putative class action,
24 or any claim or lawsuit, in any jurisdiction based on, arising out of, or relating to the
25 claims, causes of action and facts alleged in the Action or the Released Claims.

26 **16. Enforcement of Settlement.** Nothing in this Final Order shall preclude
27 any action to enforce the terms of the Settlement and Release Agreement.

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1 **17. Retention of Jurisdiction.** This Court expressly retains exclusive
2 jurisdiction as to all matters relating to the administration, consummation,
3 enforcement and interpretation of the Settlement and Release Agreement and of this
4 Final Order, and for any other necessary purpose, including, without limitation:

5 (a) enforcing the terms and conditions of the Settlement and Release
6 Agreement and resolving any disputes, claims or causes of action that, in whole or in
7 part, are related to or arise out of the Settlement, Final Approval Order, or the Final
8 Judgment;

9 (b) entering such additional orders as may be necessary or appropriate
10 to protect or effectuate the Final Judgment approving the Settlement and Release
11 Agreement, dismissing all claims on the merits and with prejudice, and permanently
12 enjoining Settlement Class Members from initiating or pursuing related proceedings,
13 or to ensure the fair and orderly administration of this settlement; and

14 (c) entering any other necessary or appropriate orders to protect and
15 effectuate this Court’s retention of continuing jurisdiction.

16 **18. Dismissal of Action.** The Action, including the individual claims of
17 Anita Williams, as Trustee for the Estate of George J. Miller, and Marie Sweeney and
18 Class claims resolved in it, is hereby dismissed on the merits and with prejudice.

19 SO ORDERED this __ day of _____, 2014.

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21 DATED: _____

THE HON. GONZALO P. CURIEL
UNITED STATES DISTRICT JUDGE

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EXHIBIT F

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re NATIONAL WESTERN LIFE
INSURANCE DEFERRED
ANNUITIES LITIGATION

No. 05-CV-1018-GPC(WVG)

CLASS ACTION

[PROPOSED] FINAL JUDGMENT

This Document Relates To:

ALL ACTIONS.

1 WHEREAS, Plaintiffs Anita Williams, as Trustee for the Estate of George J.
2 Miller, and Marie Sweeney individually and on behalf of the Settlement Class as
3 defined in the Settlement and Release Agreement (collectively, “Plaintiffs”) and
4 Defendant National Western Life Insurance Company (“National Western”) entered
5 into a Settlement and Release Agreement with exhibits (collectively, the “Settlement
6 and Release Agreement”), dated _____, 2013, to settle this class action (the
7 “Action”) and capitalized terms in this Final Judgment have the same meaning as the
8 same defined terms in the Settlement and Release Agreement;

9 WHEREAS, the Court (Hon. Gonzalo P. Curiel) entered an Order dated,
10 _____, 2013 entitled “Findings and Order Preliminarily Approving Class
11 Settlement, Directing Issuance of Notice to the Class, and Setting of Fairness
12 Hearing” (“Preliminary Approval Order”) ordering individual notice to Settlement
13 Class Members, scheduling a fairness hearing for _____, 2013 (the “Fairness
14 Hearing”), providing Settlement Class Members with an opportunity to object to the
15 proposed settlement and the opportunity to exclude themselves;

16 WHEREAS, on _____, 2013, Plaintiffs filed their Motion for Final Approval
17 of Class Action Settlement and supporting documents (“Final Approval Motion”);

18 WHEREAS, on _____, 2013, Plaintiffs filed their Motion for an Award of
19 Attorneys’ Fees and Expenses and for Service Awards to the Class Representatives
20 and supporting documents (the “Fee and Expense Motion”);

21 WHEREAS, after the parties filed supporting memoranda and other evidence,
22 the Court held the Fairness Hearing on _____, 2014 to determine whether to grant
23 final approval to the proposed settlement;

24 WHEREAS, on _____, 2014, the Court held a hearing on the Fee and
25 Expense Motion; and

26 WHEREAS, on _____, 2014, the Court granted the Final Approval Motion,
27 finding the Settlement and Release Agreement fair, reasonable, and adequate and
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1 granted the Fee and Expense Motion, and on _____, 2014, entered an order
2 confirming such rulings (“Final Approval Order”); now, therefore;

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

4 1. **Incorporation of Other Documents.** This Final Judgment incorporates
5 and makes a part hereof:

6 (a) the Settlement and Release Agreement filed with this Court on
7 _____, 2013 and the exhibits referenced therein;

8 (b) the findings of fact and conclusions of law entered on the record at
9 the Fairness Hearing and the hearing of the Fee and Expense Motion on _____,
10 2014; and

11 (c) the findings of fact and conclusions of law contained in the
12 Preliminary Approval Order and the Final Approval Order.

13 2. **Jurisdiction.** The Court has personal jurisdiction over all Settlement
14 Class Members (as defined in Paragraph 3 below) and has subject matter jurisdiction
15 over this action, including, without limitation, jurisdiction over all the claims asserted
16 in the Action, jurisdiction to approve this Agreement and the exhibits hereto and
17 jurisdiction to dismiss this action on the merits and with prejudice.

18 3. **Settlement Class.** Settlement Class is defined as the nationwide class
19 and the California classes described below, not including those individuals who have
20 previously, validly excluded themselves therefrom.

21 **Nationwide Class:** Any senior citizen (age 65 and older),
22 excluding National Western and its directors, officers, predecessors,
23 successors, affiliates, agents, and employees, as well as the immediate
24 family members of such persons, who purchased one or more of the
25 Annuities, either directly, or through the surrender (in whole or part) of
26 an existing permanent life insurance policy or annuity, or by borrowing
27 against an existing permanent life insurance policy, in which the
28 annuitant was age 65 or older on the date of issue, between

1 December 22, 2001 and the Eligibility date. “Nationwide Class” does
2 not include: (a) anyone who has made a valid request for exclusion,
3 either in response to the Notice of Pendency of Class Action, dated
4 February 2010, as supplemented by the curative notice dated January
5 2012, or the Settlement Notice, (b) anyone who falls into the California
6 Class, (c) any Settlement Class Member who at any time has signed a
7 document that releases National Western from any further claims
8 concerning the Annuity or whose rights and claims respecting the
9 Annuity have been finally adjudicated in a court of law or (d) anyone
10 who purchased an annuity that falls within the class certified in *Clark v.*
11 *National Western Life Insurance Company*, Superior Court of the State
12 of California, County of Los Angeles, Case No. BC321681.

13 **California Class:** Any senior citizen (age 65 or older), excluding
14 National Western and its directors, officers, predecessors, successors,
15 affiliates, agents, and employees, as well as the immediate family
16 members of such persons, who purchased one or more of the Annuities,
17 either directly, or through the surrender (in whole or part) of an existing
18 permanent life insurance policy or annuity, or by borrowing against an
19 existing permanent life insurance policy, in which the annuitant was age
20 65 or older on the date of issue, between April 7, 2001 and the Eligibility
21 date, provided that National Western’s records show that such senior
22 citizen was a California resident on the date of issue. “California Class”
23 does not include: (a) anyone who has made a valid request for exclusion,
24 either in response to the Notice of Pendency of Class Action, dated
25 February 2010, as supplemented by the curative notice dated January
26 2012, or the Settlement Notice, (b) any Settlement Class Member who at
27 any time has signed a document that releases National Western from any
28 further claims concerning the Annuity or whose rights and claims

1 respecting the Annuity have been finally adjudicated in a court of law or
2 (c) anyone who purchased an annuity that falls within the class certified
3 in *Clark v. National Western Life Insurance Company*, Superior Court of
4 the State of California, County of Los Angeles, Case No. BC321681.

5 4. **Adequacy of Representation.** As reflected in the Final Approval Order,
6 the law firms of Robbins Geller Rudman & Dowd LLP and Barrack, Rodos & Bacine
7 (“Class Counsel”) and Plaintiffs Anita Williams, as the Trustee for the Estate of
8 George J. Miller, and Marie Sweeney, (“Class Representatives”) have fully and
9 adequately represented the Settlement Class in the Action and for purposes of entering
10 into and implementing the settlement and have satisfied the requirements of Fed. R.
11 Civ. P. 23.

12 5. **Final Settlement Approval.** As reflected in the Final Approval Order,
13 the Court has found that the distribution of the Class Notice Package (“Class Notice”)
14 constituted the best practicable notice to Settlement Class Members under the
15 circumstances; that Class Notice was reasonably calculated, under the circumstances,
16 to apprise Settlement Class Members of the terms of the Settlement and Release
17 Agreement, of the opportunity for Settlement Class Members to exclude themselves
18 from the Settlement, of the procedure for doing so, of Settlement Class Members’
19 rights to object to any aspect of the proposed Settlement and of their right to appear at
20 the Fairness Hearing; and that the Class Notice was reasonable and constituted due,
21 adequate and sufficient notice to all persons entitled to be provided with notice, and
22 otherwise fully satisfied the requirements of the Federal Rules of Civil Procedure
23 (including Fed. R. Civ. P. 23(c)(2) and (e)), the United States Constitution (including
24 the Due Process Clause) and the California Constitution, the Local Rules of the United
25 States District Court for the Southern District of California, and any other applicable
26 law. The Court also found that the terms and the provisions of the Settlement and
27 Release Agreement, including all exhibits, have been entered into in good faith and
28 fully and finally approved them as fair, reasonable and adequate as to, and in the best

1 interests of each of, the parties to this Action and the Settlement Class Members and
2 in full compliance with all applicable requirements of the Federal Rules of Civil
3 Procedure, the United States Constitution (including the Due Process Clause) and any
4 other applicable law. Additionally, the Court found that the Settlement is not the
5 product of fraud, overreaching or collusion between the parties.

6 6. **Attorneys' Fees and Expenses and Service Awards.** Within seven (7)
7 days of the Final Settlement Date, National Western shall pay \$___ million in
8 attorneys' fees and expenses ("Class Counsel Payment") to Class Counsel.

9 7. Within seven (7) days of the Final Settlement Date, National Western
10 will pay to Plaintiffs Anita Williams and Marie Sweeney a service award in the
11 amount of \$10,000 each.

12 8. **Release.** The Release set forth in Section VIII of the Settlement and
13 Release Agreement is incorporated herein and effective as of the date of this Final
14 Judgment.

15 9. **Permanent Injunction.** Effective as of the Date of the Final Order, this
16 Judgment is binding on all Settlement Class Members and upon National Western and
17 extinguishes all claims of Settlement Class Members (a) that were alleged in the
18 Action, could have been alleged in the Action or (b) that were released pursuant to the
19 Settlement and Release Agreement. All Settlement Class Members are hereby
20 permanently barred and enjoined from:

21 (a) filing, commencing, prosecuting, maintaining, intervening in,
22 participating in, conducting, or continuing litigation as Settlement Class Members or
23 otherwise, or from receiving any benefits from any lawsuit, administrative, or
24 regulatory proceeding or order in any jurisdiction, based on, or relating to the claims
25 or causes of action or the facts alleged in the Action or the Released Claims;

26 (b) filing, commencing, or prosecuting a lawsuit as a class action, a
27 separate class, or group for purposes of pursuing a putative class action (including by
28 seeking to amend a pending complaint to include class allegations or by seeking class

1 certification in a pending action in any jurisdiction) on behalf of the Settlement Class,
2 arising out of, based on, or relating to the claims, causes of action, facts and/or
3 circumstances relating thereto, in the Action or the Released Claims; and

4 (c) organizing or soliciting the participation of any Settlement Class
5 Member in a separate class or group for purposes of pursuing a putative class action,
6 or any claim or lawsuit, in any jurisdiction based on, arising out of, or relating to the
7 claims, causes of action and facts alleged in the Action or the Released Claims.

8 **10. Enforcement of Settlement.** Nothing in this Final Judgment shall
9 preclude any action to enforce the terms of the Settlement and Release Agreement.

10 **11. No Admission of Liability.** Neither this Final Judgment, the Final
11 Approval Order, nor the Settlement and Release Agreement, nor any other document
12 referred to herein or therein, nor any action taken to carry out this Final Judgment, the
13 Final Approval Order or the Settlement and Release Agreement is, may be construed
14 as, or may be used as an admission or concession by or against National Western of
15 the validity of any claim or any actual or potential fault, wrongdoing or liability
16 whatsoever. Entering into or carrying out the Settlement and Release Agreement, and
17 any negotiations or proceedings relating to it, shall not in any event be construed as, or
18 deemed evidence of, an admission or concession as to National Western's denials or
19 defenses, and shall not be offered or received in evidence in any action or proceeding
20 against any party hereto in any court, administrative agency or other tribunal for any
21 purpose whatsoever, except as evidence of the Settlement or to enforce the provisions
22 of this Final Judgment, the Final Approval Order or the Settlement and Release
23 Agreement; provided, however, that this Final Judgment, the Final Approval Order,
24 and the Settlement and Release Agreement may be filed in any action against or by
25 National Western or Releasees to support a defense of res judicata, collateral estoppel,
26 release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit,
27 or any other theory of claim preclusion, issue preclusion or similar defense or
28 counterclaim to the extent allowed by law.

1 12. **Modification.** The Parties are authorized, without further approval from
2 the Court, to agree to and adopt such amendments, modifications, and expansions of
3 the Settlement and Release Agreement and all exhibits attached thereto that are
4 consistent with the Final Judgment, and that do not limit the rights of Settlement Class
5 Members under the Settlement and Release Agreement.

6 13. **Retention of Jurisdiction.** This Court expressly retains exclusive
7 jurisdiction as to all matters relating to the administration, consummation,
8 enforcement and interpretation of the Settlement and Release Agreement and of this
9 Final Judgment, and for any other necessary purpose, including, without limitation:

10 (a) enforcing the terms and conditions of the Settlement and Release
11 Agreement and resolving any disputes, claims or causes of action that, in whole or in
12 part, are related to or arise out of the Settlement, Final Approval Order, or this Final
13 Judgment;

14 (b) entering such additional orders as may be necessary or appropriate
15 to protect or effectuate this Final Judgment approving the Settlement and Release
16 Agreement, dismissing all claims on the merits and with prejudice, and permanently
17 enjoining Settlement Class Members from initiating or pursuing related proceedings,
18 or to ensure the fair and orderly administration of this settlement; and

19 (c) entering any other necessary or appropriate orders to protect and
20 effectuate this Court's retention of continuing jurisdiction.

21 14. **Dismissal of Action.** The Action, including the individual claims of
22 Anita Williams, as Trustee for the Estate of George J. Miller, and Marie Sweeney and
23 Settlement Class claims resolved in it, is hereby dismissed on the merits and with
24 prejudice without fees or costs to any party except as provided in the Settlement and
25 Release Agreement.

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1 15. There being no just reason for delay, the Court, in the interests of justice,
2 expressly directs the Clerk of the Court to enter this Final Judgment, and hereby
3 decrees that, upon entry it be deemed a final judgment.

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DATED: _____

THE HON. GONZALO P. CURIEL
UNITED STATES DISTRICT JUDGE

EXHIBIT G

Exhibit G

In re National Western Life Insurance Deferred Annuities Litigation Settlement Administrator

c/o _____

Address 1

Address 2

City, ST ZIP

Date

Name 1

Address 1

Address 2

City, ST ZIP

Claim ID No.:

Re: In re National Western Life Insurance Deferred Annuities Litigation

RESPONSE DUE DATE: <<21 days after mailing>>

Dear Sir or Madam:

The Settlement Administrator for the class action settlement involving National Western Life Insurance Company has reviewed the Claim Form you submitted. The Settlement Administrator has determined that your Claim Form is deficient for the following reason(s) (each reason is marked with an "X"):

_____ You indicated that you believe that you were misled with respect to Surrender Charges, right to Annuitize, or other policy benefits, but you failed to offer an explanation of how, when, by whom, and the nature of the Misrepresentation.

_____ You indicated that you incurred a Surrender Charge on a withdrawal from an Annuity in the past because you needed funds from the Annuity to pay for medical expenses, nursing or home care, and/or retention of your sole residence, but you failed to provide a description of the claimed expense(s).

_____ You indicated that you incurred a Surrender Charge on a withdrawal from an Annuity in the past because you needed funds from the Annuity to pay for other essential living expenses, but you did not explain the nature of the expense(s) or the circumstances indicating that you could not afford the expenses without withdrawing funds subject to a Surrender Charge from your Annuity.

_____ You did not state your annual income.

_____ You did not state whether you were an original Owner of the Annuity.

_____ You indicated you were not the original Owner of the Annuity but did not state if the original purchaser of the Annuity was over age 65 at the date of issue.

_____ You did not sign the Claim Form.

_____ You did not date the Claim Form.

_____ The person who provided the response to Question 1 did not sign the Claim Form.

_____ The person who provided the response to Question 1 did not date the Claim Form.

A copy of the Claim Form that you submitted is enclosed. To be fully considered for the Surrender Charge Reduction Benefit, you must provide the information requested in your Claim Form and mail it to the Settlement Administrator within 21 days after the date on this Notice of Deficiency by First-Class United States Mail to the following address:

In re National Western Life Insurance Deferred Annuities Litigation Settlement Administrator
[Address]

You must sign and date your Claim Form under penalty of perjury again before you re-submit it. If you re-submit the Claim Form with adequate information, your Claim will be reviewed by the Settlement Administrator based on the additional information you provide. If you do not re-submit the Claim Form postmarked by <<21 days after mailing>>, your Claim will be reviewed based on the information you originally provided and may be denied due to the deficiency(ies) indicated above. If your Claim is approved, you will receive or be notified of your Surrender Charge Reduction Benefit as soon as practicable.

Any material you submit as part of the claims process will be kept confidential and will only be disclosed to the claims administrator, the parties to the lawsuit and their counsel.

Respectfully,

In re National Western Life Insurance Deferred Annuities Litigation Settlement Administrator