

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

FRED HANEY, MARSHA MERRILL,  
SYLVIA RAUSCH, STEPHEN SWENSON,  
and ALAN WOOTEN, individually, and on  
behalf of all others similarly situated,

*Plaintiffs,*

v.

GENWORTH LIFE INSURANCE  
COMPANY and GENWORTH LIFE  
INSURANCE COMPANY OF NEW  
YORK,

*Defendants.*

**Civil Action No.: 3:22-cv-00055-REP**

**ORDER GRANTING PRELIMINARY APPROVAL OF  
SETTLEMENT AND DIRECTING NOTICE TO CLASS**

This matter is before the Court on Plaintiffs' Motion to Direct Notice of Proposed Settlement to the Class ("Motion"). ECF No. 26. Plaintiffs, individually and on behalf of the proposed settlement class ("Class"), and Genworth Life Insurance Company and Genworth Life Insurance Company of New York (collectively, "Genworth") have entered into a Joint Stipulation of Class Action Settlement and Release ("Settlement Agreement") to resolve the above-captioned litigation. Having considered the Motion, the Memorandum of Law in support, and the Settlement Agreement, together with all Declarations, Exhibits, and attachments thereto, the record, and the briefs and oral argument in this matter, IT IS HEREBY ORDERED as follows:

1. Unless otherwise defined herein, all terms that are capitalized herein shall have the same meaning ascribed to those terms in the Settlement Agreement.
2. The Court has jurisdiction over this litigation, Plaintiffs, Genworth, and any party to any agreement that is part of or related to the Settlement Agreement.

#### **PRELIMINARY APPROVAL**

3. On April 1, 2022, Plaintiffs filed their Motion and Memorandum of Law in support after the Parties entered into the Settlement Agreement, submitting to the Court, pursuant to Rule 23(e)(1) of the Federal Rules of Civil Procedure, the Parties' Settlement Agreement and appendices thereto, as well as Declarations of Plaintiffs' counsel, the proposed Settlement Administrator, and the mediator in support of the Motion. ECF Nos. 26 and 27.
4. On May 2, 2022, the Court held the hearing on the Motion. ECF No. 30.
5. The Court has reviewed the terms of the proposed Settlement Agreement, the appendices thereto, Plaintiffs' Motion and Memorandum of Law in support, and the Declarations of Plaintiffs' counsel, the proposed Settlement Administrator, and the mediator.
6. Based on its review of these filings, the Court finds that the Settlement Agreement is the result of considerable, informed, arm's-length negotiations conducted with an experienced

mediator, Rodney A. Max of Upchurch, Watson, White & Max Mediation Group, and further arms-length negotiations between Class Counsel and Genworth's counsel.

7. The terms of the Settlement Agreement do not improperly grant preferential treatment to any individual or segment of the Class, and are fair, reasonable, and adequate, and the Court is likely to grant final approval of the Settlement.

8. The Court therefore GRANTS preliminary approval of the Settlement Agreement and all of the terms and conditions contained therein, and directs that Notice be sent to the Class in the form and manner prescribed in the Settlement Agreement and discussed herein.

### PRELIMINARY CERTIFICATION OF THE CLASS

9. Pursuant to Fed. R. Civ. P. 23, the Court preliminarily certifies, for settlement purposes only, the Class defined as follows:

all Policyholders<sup>1</sup> of GLIC and GLICNY long-term care insurance Choice 2, Choice 2.1, California CADE, California Reprice, and California Unbundled policies and state variations of those Class Policies<sup>2</sup> in force at any time during the Class Period<sup>3</sup> (defined below) and issued in any of the States<sup>4</sup> excluding: (1) those Policyholders whose policies entered Non-Forfeiture Status (defined below) or entered a Fully Paid-Up Status (defined below) prior to January 1, 2014; (2) those Policyholders whose Class Policy is Lapsed (defined below) and is outside any period Genworth allows for the Class Policy to be automatically reinstated with payment of past due premium, or whose Class Policy has otherwise Terminated

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<sup>1</sup> "Policyholder(s)" means the policy owner, except: (1) where a single policy or certificate insures both a policy owner and another insured person, "Policyholder(s)" means both the policy owner and the other insured person jointly; (2) where the Class Policy at issue is certificate 7042CRT, 7044CRT, or any other Class Policy that is a certificate issued under a group long-term care insurance policy, "Policyholder(s)" means the certificate holder.

<sup>2</sup> "Class Policies" means Genworth long-term care insurance policies on the policy forms identified in Appendix A to the Settlement Agreement in force at any time during the Class Period and issued in any of the fifty (50) states of the United States or the District of Columbia.

<sup>3</sup> The "Class Period" means any time on or between January 1, 2013 and the date the Class Notice is mailed.

<sup>4</sup> The complete list of the Class Policy forms that are included within the definition of Class is attached hereto as **Appendix A**.

(defined below), as of the date of the Class Notice; and those Policyholders whose Class Policy is Lapsed and is outside any period Genworth allows for the Class Policy to be automatically reinstated with payment of past due premium or has otherwise Terminated, as of the date the Special Election Letter<sup>5</sup> would otherwise be mailed to the Policyholder; (3) those Policyholders who are deceased at any time before their signed Special Election Option is post-marked for mailing to Genworth, or is faxed or emailed to Genworth; (4) Genworth's current officers, directors, and employees as of the date Class Notice is mailed; and (5) Judge Robert E. Payne and his immediate family and staff.

10. The Court preliminarily finds that the Class satisfies the requirements of Fed. R. Civ. P. 23(a): (1) the Class is presently comprised of approximately 345,000 members in all fifty (50) States and the District of Columbia; (2) there are questions of law or fact common to the Class; (3) the Named Plaintiffs' claims are typical of those of Class Members; and (4) the Named Plaintiffs and their counsel will fairly and adequately protect, and have adequately protected, the interests of the Class.

11. The Court preliminarily finds that the Class satisfies the requirements of Fed. R. Civ. P. 23(b)(3): (a) the questions of law or fact common to the Class predominate over individual questions; and (b) class action litigation is superior to other available methods for the fair and efficient adjudication of this controversy.

12. The Court hereby appoints Named Plaintiffs Fred Haney, Marsha Merrill, Sylvia Rausch, Stephen Swenson and Alan Wooten as Class representatives.

13. The Court hereby appoints Brian D. Penny of Goldman Scarlato & Penny, P.C., Stuart A. Davidson of Robbins Geller Rudman & Dowd LLP, Jonathan M. Petty of Phelan Petty, PLC, and Glen L. Abramson of Berger Montague PC as Class Counsel.

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<sup>5</sup> The "Special Election Letter" means the letter that Genworth will send, as part of consideration to the Class under this Settlement that provides disclosures and settlement options available to the Class Member.

## NOTICE & ADMINISTRATION

14. The Court appoints Epiq Class Action & Claims Solutions, Inc. (“Epiq”) as the Settlement Administrator to fulfill the duties of Settlement administration set forth in the Settlement Agreement.

15. The Court approves the forms of the Class Notice and Publication Notice appended to the Settlement Agreement, and attached hereto as **Exhibits A and B**, respectively, and finds that the Class Notice and Publication Notice satisfy the requirements of due process and Fed. R. Civ. P. 23, and will provide the best notice practicable under the circumstances. The Class Notice and Publication Notice, as well as the plan for dissemination of the same, are reasonably calculated to apprise Class Members of the nature of this litigation, the scope of the Class, the terms of the Settlement Agreement, the right of Class Members to object to the Settlement Agreement or to exclude themselves from the Class and the processes for doing so, and of the Final Approval Hearing.

16. The Court therefore approves the Class Notice and Publication Notice and directs the Parties and the Settlement Administrator to proceed with providing notice to Class Members pursuant to the terms of the Settlement Agreement and this Order.

17. Under the terms of the Settlement Agreement, the Settlement Administrator shall disseminate the Class Notice no more than 60 calendar days after entry of the instant Order (“Notice Date”).

18. Under the terms of the Settlement Agreement, the Settlement Administrator shall also publish the Publication Notice. The Publication Notice shall be an eighth of a page in size, and will be published for one business day in the national edition of *The New York Times*, *The Wall Street Journal*, and *USA Today*, no later than 40 days before the Final Approval Hearing.

19. The Court further approves the form of the Special Elections Letter to be mailed to Class Members, subject to any necessary changes as a result of discussions with or input of state regulators, as well the administration and/or auditing procedures with respect to the same described in the Settlement Agreement.

### **EXCLUSIONS AND OBJECTIONS**

20. Class Members who wish to opt-out and exclude themselves from the Class may do so by notifying the Settlement Administrator in writing, postmarked no later than sixty (60) calendar days after the mailing of Class Notice. Each request for exclusion must include: (1) the Class Member(s)' name(s), (2) the Class Member(s)' address(es), (3) if available, the Class Member(s)' policy number(s), (4) a statement that the Class Member(s) is/are "requesting exclusion" from the Settlement Agreement, (5) the name of the case and case number (*Haney v. Genworth Life Ins. Co.*, Case No. 3:22-cv-00055-REP), and (6) the Class Member(s)' signature(s). All Class Members who do not opt out shall be bound by the terms of the Settlement.

21. Class Members who wish to object to the Settlement Agreement may do so only by submitting a written objection to the Court with a copy to the Settlement Administrator in accordance with the procedures outlined in the Class Notice no later than sixty (60) calendar days after the mailing of Class Notice.

22. Any Class Member who does not timely submit a written objection in accordance with the procedures outlined in the Class Notice shall be deemed to have waived any objection, shall not be permitted to object to the Settlement, and shall be precluded from seeking any review of the Settlement Agreement and/or the Final Order and Judgment by appeal or other means.

### **FINAL APPROVAL HEARING**

23. The Court will hold a Final Approval Hearing on November 17, 2022 at 10:00 a.m. in Courtroom 7400 at the Spottswood W. Robinson III & Robert R. Merhige, Jr., Federal Courthouse of the Eastern District of Virginia, 701 East Broad Street, Richmond, Virginia 23219.

24. At the Final Approval Hearing, the Court will consider whether: (a) the Settlement Agreement is fair, reasonable, and adequate; (b) the Class should be finally certified; (c) a final judgment should be entered; (d) Class Counsel's motion for an award of attorneys' fees and expenses should be granted; and (e) the Service Payments sought for Named Plaintiffs should be awarded.

### **DEADLINES, INJUNCTIONS, AND TERMINATION**

25. All proceedings, deadlines, and discovery in this matter, except those necessary to implement this Order and the Settlement Agreement, are hereby stayed and suspended until further Order of the Court.

26. In the event that the Settlement Agreement is terminated pursuant to the terms of the Settlement Agreement: (a) the Settlement Agreement and this Order shall become void, shall have no further force or effect, and shall not be used in any action or any other proceedings for any purpose other than as may be necessary to enforce the terms of the Settlement Agreement that survive termination; (b) this matter will revert to the status that existed before execution of the Settlement Agreement; and (c) no term or draft of the Settlement Agreement or any part of the Parties' settlement discussions, negotiations, or documentation (including any briefs filed in support of preliminary or final approval of the Settlement Agreement) shall: (i) be admissible into evidence for any purpose in any action or other proceeding other than as may be necessary to enforce the terms of the Settlement Agreement that survive termination; (ii) be deemed an admission or concession by any Party including regarding the validity of any Released Claim or

the propriety of certifying any class against Genworth; or (iii) be deemed an admission or concession by any Party including regarding the truth or falsity of any facts alleged in the Action or the availability or lack of availability of any defense to the Released Claims.

27. The dates of performance contained herein may be extended by Order of the Court, for good cause shown, without further direct notice to the Class.


**SUMMARY OF DEADLINES**

28. The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and this Order include, but are not limited to:

<u>Event</u>	<u>Calculation of Due Date</u>	<u>Proposed Date</u>
Date for commencing the mailing of the Class Notice to the Class	At least 90 calendar days after entry of Notice Order	August 1, 2022
Deadline for filing of papers in support of final approval of Settlement and Plaintiffs' counsel's application for attorneys' fees, expenses, and service awards	At least 60 calendar days prior to Final Approval Hearing	September 16, 2022
Publication of Publication Notice	At least 15 calendar days before the Deadline for requesting exclusion from the Class or filing objections	By September 15, 2022
Deadline for requesting exclusion from the Class or filing objections	60 calendar days after the mailing of Class Notice	September 30, 2022
Deadline for filing reply brief(s) in support of final approval of Settlement and Class Counsel's application for an award of attorneys' fees, expenses, and Named Plaintiffs' service payments, and	14 calendar days prior to Final Approval Hearing	November 3, 2022
Deadline for Genworth to report to the Court concerning any state regulatory input on the Settlement	14 calendar days prior to Final Approval Hearing	November 3, 2022
Final Approval Hearing	At least 120 calendar days after entry of the Notice Order	November 17, 2022

**IT IS SO ORDERED.**

Dated: May 2, 2022

/s/ 

ROBERT E. PAYNE  
UNITED STATES DISTRICT JUDGE



**APPENDIX A****CLASS POLICIES****Choice 2 Class Policies**

<b>State</b>	<b>Policy/Certificate Form</b>
Alabama	7042AL
	7042CRT
	7043AL
	7043CRT
Alaska	7042AK
	7044AK
Arizona	7042AZ
	7044AZ
Arkansas	7042AR
	7044AR
Colorado	7042CO
	7044CO
Connecticut	7042CT
	7044CT
Connecticut Partnership	7043CT
	7045CT
D. C.	7042DC
	7044DC
Delaware	7042DE
	7044DE
Florida	7042FL
	7044FL
Georgia	7042GA
	7044GA
Hawaii	7042HI
	7044HI
Idaho	7042ID
	7044ID
Illinois	7042IL
	7044IL
Indiana	7042IN
	7044IN
Indiana Partnership	7043IN
	7045IN
Iowa	7042IA

	7044IA
Kansas	7042KS
	7044KS
Kentucky	7042KY
	7044KY
Louisiana	7042LA
	7044LA
Maine	7042ME
	7044ME
Maryland	7042MD
	7044MD
Massachusetts	7042MA
	7044MA
Michigan	7042MI
	7044MI
Minnesota	7042MN
	7044MN
Mississippi	7042MS
	7044MS
Missouri	7042MO
	7044MO
Montana	7042MT
	7044MT
Nebraska	7042NE
	7044NE
Nevada	7042NV
	7044NV
New Hampshire	7042NH
	7044NH
New Jersey	7042NJ
	7044NJ
New Mexico	7042NM
	7044NM
New York	51012
	51014
New York Partnership	51015
North Carolina	7042NC
	7044NC
North Dakota	7042ND
	7044ND
Ohio	7042OH

	7044OH
Oklahoma	7042OK
	7044OK
Oregon	7042OR
	7044OR
Pennsylvania	7042PA
	7044PA
Rhode Island	7042RI
	7044RI
South Carolina	7042SC
	7044SC
South Dakota	7042SD
	7044SD
Tennessee	7042TN
	7044TN
Texas	7042TX
	7044TX
Utah	7042UT
	7044UT
Vermont	7042VT
	7044VT
Virginia	7042VA
	7044VA
Washington	7042WA
	7044WA
West Virginia	7042WV
	7044WV
Wisconsin	7042WI
	7044WI
Wyoming	7042WY
	7044WY

**Choice 2.1 Class Policies**

<b>State</b>	<b>Policy/Certificate Form</b>
Alabama	7042AL REV
	7044AL Rev
Alaska	7042AK REV
	7044AK Rev
Arizona	7042AZ REV
	7044AZ Rev
Arkansas	7042AR REV
	7044AR Rev
Colorado	7042CO REV
	7044CO Rev
D.C.	7042DC REV
	7044DC Rev
Delaware	7042DE REV
	7044DE Rev
Florida	7042FL REV
	7044FL Rev
Georgia	7042GA REV
	7044GA Rev
Hawaii	7042HI REV
	7044HI Rev
Idaho	7042ID REV
	7044ID Rev
Illinois	7042IL REV
	7044IL Rev
Indiana	7042IN REV
	7044IN Rev
Indiana Partnership	7043IN REV
	7045IN Rev
Iowa	7042IA
	7044IA Rev
Kansas	7042KS
	7044KS Rev
Kentucky	7042KY REV
	7044KY Rev
Louisiana	7042LA REV
	7044LA Rev
Maine	7042ME REV

	7044ME Rev
Maryland	7042MD REV
	7044MD Rev
Massachusetts	7042MA REV
	7044MA Rev
Michigan	7042MI REV
	7044MI Rev
Minnesota	7042MN REV
	7044MN Rev
Mississippi	7042MS REV
	7044MS Rev
Missouri	7042MO REV
	7044MO Rev
Montana	7042MT REV
	7044MT Rev
Nebraska	7042NE REV
	7044NE Rev
Nevada	7042NV REV
	7044NV Rev
New Hampshire	7042NH REV
	7044NH Rev
New Jersey	7042NJ REV
	7044NJ Rev
New Mexico	7042NM REV
	7044NM Rev
New York	51012 REV
	51014 Rev
New York Partnership	51015 REV
North Carolina	7042NC REV
	7044NC Rev
North Dakota	7042ND REV
	7044ND Rev
Ohio	7042OH REV
	7044OH Rev
Oklahoma	7042OK REV
	7044OK Rev
Oregon	7042OR REV
	7044OR Rev
Pennsylvania	7042PA REV

	7044PA Rev
Rhode Island	7042RI REV
	7044RI Rev
South Carolina	7042SC REV
	7044SC Rev
South Dakota	7042SD REV
	7044SD Rev
Tennessee	7042TN REV
	7044TN Rev
Texas	7042TX REV
	7044 TX Rev
Utah	7042UT REV
	7044UT Rev
Vermont	7042VT REV
	7044VT Rev
Virginia	7042VA REV
	7044VA Rev
Washington	7042WA REV
	7044WA Rev
West Virginia	7042WV REV
	7044WV Rev
Wisconsin	7042WI REV
	7044WI Rev
Wyoming	7042WY REV
	7044WY Rev

### California CADE/Reprice/Unbundled

State	Policy/Certificate Form
California, CA Reprice & CA Unbundled	7035AX REV
California, CA Discount Enhancement (CADE)	7035AX REV 2009
California Partnership	7037C REV
California Partnership, CAP Unbundled	7037C REV 2
California Partnership, CAP CADE	7037C REV 2009

**EXHIBIT A**

**CLASS NOTICE**

**NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT**

***Haney, et al. v. Genworth Life Insurance Company, et al.***

United States District Court for the Eastern District of Virginia (Richmond Division), Case No. 3:22-cv-00055-REP

**TO: POLICYHOLDERS OF GENWORTH LIFE INSURANCE COMPANY (“GLIC”) AND GENWORTH LIFE INSURANCE COMPANY OF NEW YORK (“GLICNY”) (collectively GLIC and GLICNY are referred to as “Genworth”) LONG-TERM CARE INSURANCE POLICIES ON POLICY FORMS OR CERTIFICATES IDENTIFIED IN THE ATTACHED APPENDIX 1 (the “Class Policies”) IN FORCE ON OR AFTER JANUARY 1, 2013, WHOSE POLICIES HAVE NOT LAPSED OR BEEN TERMINATED (AND NOT REINSTATED) ON OR BEFORE JANUARY 1, 2014.**

YOU ARE HEREBY NOTIFIED that a proposed settlement of the above-entitled class action lawsuit pending in the United States District Court for the Eastern District of Virginia (“the Class Action”) has been reached between the parties, and on May 2, 2022, the settlement was granted preliminary approval by the Court supervising the lawsuit.

THE PURPOSE OF THIS NOTICE is to describe the Class Action, to inform you of the proposed settlement terms, and to inform you of your potential rights and options in connection with the settlement. You are encouraged to visit the settlement website at **[www.Choice2LongTermCareInsuranceSettlement.com](http://www.Choice2LongTermCareInsuranceSettlement.com)** for the precise terms and conditions of the settlement, the complete Settlement Agreement, pleadings and documents on file in this case, and other information about this settlement, including important dates, and a full description of the settlement options you may be offered if the Court approves the settlement.

The settlement will resolve all claims in the above-entitled Class Action. A court hearing concerning the fairness of the settlement (the “Final Approval Hearing”) will be held on November 17, 2022 at 10:00 a.m. at the following address: The Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse, 701 East Broad Street, Richmond, VA 23219, Richmond Court Room 7400 to determine whether the settlement should be given final approval by the Court. You are not required to attend the hearing in order to participate in the settlement. **BECAUSE YOUR RIGHTS MAY BE AFFECTED, IT IS EXTREMELY IMPORTANT THAT YOU READ THIS ENTIRE NOTICE CAREFULLY.**

If you have any questions, you may contact Epiq (the “Settlement Administrator”) toll-free at (855) 662-0078 or you may call Class Counsel at (800) 348-6192. You should not contact the Court, Genworth, or Genworth’s counsel with questions about this Notice or the settlement,

although you may contact Genworth, as usual, about your policy, benefits, or any election letter received.

**A. DESCRIPTION OF THE CLASS ACTION**

On January 28, 2022, five individuals with GLIC or GLICNY Choice 2, Choice 2.1, California CADE, California Reprice, and/or California Unbundled long term care insurance policies, Fred Haney, Marsha Merrill, Sylvia Rausch, Stephen Swenson, and Alan Wooten (“Named Plaintiffs”), filed a Class Action Complaint against Genworth in the United States District Court for the Eastern District of Virginia, alleging that Genworth intentionally withheld material information from Policyholders with respect to the full scope and magnitude of Genworth’s rate increase action plans and its reliance on Policyholders paying increased rates to pay future claims (the “Complaint”). The Named Plaintiffs’ Complaint alleged that they did not challenge Genworth’s right to increase premiums under the policies or Genworth’s justification for rate increases. Instead, the Complaint asserted claims for Fraudulent Inducement by Omission and for Declaratory Relief.

Genworth denies any wrongdoing or legal liability for any alleged wrongdoing in connection with any facts or claims that have been or could have been alleged in Named Plaintiffs’ lawsuit, whether on behalf of the Named Plaintiffs or Class Members. Genworth contends that the Named Plaintiffs’ and Class Members’ claims challenged Genworth’s right to increase premiums and thus are barred by the filed-rate doctrine, and that neither Named Plaintiffs nor the putative Class has been injured or is entitled to any relief. The Court has not ruled on the merits of the claims or defenses.

All Parties believe in the merits of their respective claims and defenses. Nevertheless, due to the uncertainties, risks, expenses, and business disruption of continued litigation, the Parties have agreed to settle the lawsuit after voluntary mediation proceedings involving a mediator. The parties have entered into a Joint Stipulation of Class Action Settlement and Release (“Settlement Agreement”), which the Court has preliminarily approved as fair and reasonable. The principal terms of the Settlement Agreement are summarized in this Notice. The full Settlement Agreement is on file with the Court and available at:

**[www.Choice2LongTermCareInsuranceSettlement.com](http://www.Choice2LongTermCareInsuranceSettlement.com)**

The attorneys for Named Plaintiffs Fred Haney, Marsha Merrill, Sylvia Rausch, Stephen Swenson, and Alan Wooten have been designated by the Court as “Class Counsel” to represent all Class Members affected by the Settlement Agreement. Class Counsel believes that the Settlement Agreement summarized by this Notice is fair, reasonable, and adequate and in the best interests of the Class Members.



The following law firms are Class Counsel and represent the Class Members:

<p>GOLDMAN SCARLATO &amp; PENNY, P.C.          Brian D. Penny          161 Washington Street, Suite 1025          Conshohocken, PA 19428</p>	<p>ROBBINS GELLER RUDMAN &amp; DOWD LLP          Stuart A. Davidson          120 East Palmetto Park Road, Suite 500          Boca Raton, FL 33432</p>
<p>PHELAN PETTY, PLC          Jonathan M. Petty          3315 West Broad Street          Richmond, VA 23230</p>	<p>BERGER MONTAGUE PC          Glen L. Abramson          1818 Market Street, Suite 3600          Philadelphia, PA 19103</p>
<p>CLASS COUNSEL'S TOLL-FREE NUMBER: (800) 348-6192 _____</p>	

The Settlement Administrator is Epiq. Epiq's phone number is (855) 662-0078; and its mailing address is: P.O. Box 2860, Portland, OR 97208-2860.

## **B. CLASS MEMBERS**

The "Class Members" for purposes of this settlement are defined as all Policyholders<sup>6</sup> of GLIC and GLICNY long-term care insurance Choice 2, Choice 2.1, California CADE, California Reprice, and California Unbundled policies, and State variations of those policies in force at any time during the Class Period and issued in any of the fifty (50) States of the United States or the District of Columbia (the "States")<sup>7</sup> excluding: (1) those Policyholders whose policies went into Non-Forfeiture Status<sup>8</sup> or a Fully Paid-Up Status<sup>9</sup> prior to January 1, 2014; (2) those

<sup>6</sup> "Policyholder(s)" means the policy owner, except: (a) where a single policy or certificate insures both a policy or certificate owner and another insured person, "Policyholder(s)" means both the policy or certificate owner and the other insured person jointly; (b) where the Class Policy at issue is certificate 7042CRT, 7044CRT, or any other Class Policy that is a certificate issued under a group long-term care insurance policy, "Policyholder(s)" means the certificate holder.

<sup>7</sup> A list of Class Policy forms is attached hereto as **Appendix A**.

<sup>8</sup> "Non-Forfeiture Status" means a policy status where the Policyholder (defined below) has exercised a "Non-Forfeiture Option." "Non-Forfeiture Options" include, but are not limited to, benefits that may have been made available pursuant to: an optional Non-Forfeiture Benefit Rider; the Limited Benefits Upon Lapse Due to a Substantial Premium Increase (also called a Contingent Non-forfeiture Benefit); the Limited Non-Forfeiture Option; the Optional Limited Benefit Endorsement; or the Limited Benefit with Payment for Partial Policy Disposition.

<sup>9</sup> "Fully Paid-Up Status" means a status whereby a Class Policy is continued in full force and effect and no further premiums are owed. A Class Policy in Fully Paid-Up Status does not include a Class Policy that is in a Non-Forfeiture Status.

Policyholders whose Class Policy is Lapsed<sup>10</sup> and is outside any period Genworth allows for the Class Policy to be automatically reinstated with payment of past due premium, or whose Class Policy has otherwise Terminated,<sup>11</sup> as of the date of the Class Notice; and those Policyholders whose Class Policy is Lapsed and is outside any period Genworth allows for the Class Policy to be automatically reinstated with payment of past due premium or has otherwise Terminated, as of the date the Special Election Letter<sup>12</sup> would otherwise be mailed to the Policyholder; (3) those Policyholders who are deceased at any time prior to sending their Special Election Option to Genworth; (4) Genworth's current officers, directors, and employees as of the date Class Notice is mailed; and (5) Judge Robert E. Payne and his immediate family and staff.

Changes to your policy status or coverage (including, for example, whether your policy lapses or is terminated) may also impact whether you are in the proposed settlement class. If your policy lapses after the date of this notice, it must be reinstated within your applicable auto-reinstatement period if you wish to exercise rights and options in the settlement.

### **C. YOUR OPTIONS**

As a Class Member, you have several options and you should read this entire Notice carefully before acting.

**OPTION #1:** If you do not oppose the settlement of the lawsuit, then simply do nothing. You do not need to send any documents to the Settlement Administrator. **IF YOU DO NOTHING, YOU WILL BE BOUND BY THE TERMS OF THE SETTLEMENT, INCLUDING THE RELEASE.** If you do nothing, you will not have the right to pursue your own action for the claims covered by the Class Action Release. If the Settlement Agreement is approved by the Court, you will then be sent another correspondence with options to elect to receive benefits under the Settlement Agreement.

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<sup>10</sup> "Lapse" or "Lapsed" means a status whereby a policy is no longer in force because premium was not paid as required. A Lapsed policy terminates and cannot be reinstated if it is outside any period Genworth allows for the policy to be automatically reinstated with payment of past due premium. For purposes of this Settlement Agreement, a policy in Non-Forfeiture Status is not a Lapsed policy.

<sup>11</sup> "Terminated" means a status whereby a Class Policy is no longer in force and is unable to be automatically reinstated by the Policyholder with payment of past due premium. It includes, for example, a Class Policy that has Lapsed beyond the period permitted for automatic reinstatement, a Class Policy that has been cancelled, or a Class Policy (including a policy in Non-Forfeiture Status) that is no longer in force because all available benefits have been exhausted.

<sup>12</sup> A "Special Election Letter" is an individualized letter to be sent to all Class Members who have not opted-out providing certain disclosures and settlement options available to that Class Member.

**OPTION #2:** If you do NOT want to be bound by the Settlement Agreement and wish to retain the right to proceed against GLIC and/or GLICNY on your own as to the claims that were alleged, or that have a reasonable connection with any matter of fact set forth in the Class Action, subject to any defenses that may be available to GLIC and/or GLICNY to any claims you may have, including, but not limited to, statutes of limitation and statutes of repose, then you must notify the Settlement Administrator that you wish to exclude yourself from the Settlement Agreement and the Class (also known as “opting out”).

To do so, you must send a signed letter to the Settlement Administrator, which includes: (1) your name, (2) your address, (3) if available, your policy number, (4) a statement that you are “requesting exclusion” from the Settlement Agreement, (5) the name of the case and case number (*Haney, et al. v. Genworth Life Insurance Company, et al.*, Case No. 3:22-cv-00055-REP), and (6) your signature.

Opt-out letters can be mailed to the Settlement Administrator at the following mailing address: P.O. Box 2860, Portland, OR 97208-2860.

The letter requesting exclusion must be postmarked no later than September 30, 2022. Any request for exclusion received with a postmark after that date will be invalid.

**IF YOU CHOOSE TO EXCLUDE YOURSELF, YOU WILL NOT RECEIVE THE SETTLEMENT AGREEMENT POLICY ELECTION OPTIONS OR OTHER RELIEF AND THE TERMS OF THE SETTLEMENT WILL NOT APPLY TO YOU.**

**OPTION #3: If you want to remain in the Settlement Agreement and be bound by its terms, but you oppose any aspect of the Settlement Agreement, or Class Counsel’s application for an award of fees and expenses, you may object to the Settlement Agreement.**

In order to object, you must file a written Objection with the Clerk of United States District Court for the Eastern District of Virginia, located at 701 East Broad Street, Richmond, VA 23219, and you must serve a copy of the written Objection on the Settlement Administrator at the following address: P.O. Box 2860, Portland, OR 97208-2860.

A written Objection must include: (1) your full name, (2) your current address, (3) the name of the case and the case number (*Haney et al. v. Genworth Life Insurance Company et al.*, Case No. 3:22-cv-00055-REP), (5) the basis or reason(s) for your objection(s), (6) your signature, and (7) if you (or someone on your behalf such as an attorney) intends to appear at the Final Approval Hearing, a statement stating that you (or someone on your behalf) intend to appear at the Final Approval Hearing.

Any written Objection must be filed with the Court **and** sent to the Settlement Administrator with a postmark no later than September 30, 2022. Any written Objection filed and/or mailed with a post-mark after this deadline will be invalid.

You may be permitted to appear personally (or through an attorney) at the Final Approval Hearing to present your objections directly to the Court **if you first timely file and serve a written Objection and do not submit a request for exclusion**. A written Objection must state whether you (or someone on your behalf, such as an attorney) intends to appear at the Final Approval Hearing. If you wish to have an attorney represent you in connection with any written Objection, including to appear at the Final Approval Hearing, you will be responsible for any fees or expenses of that attorney. If you submit a written Objection, you will remain a Class Member and, if the Court rejects your objection(s), you will still be bound by the terms of the Settlement Agreement, including the Release.

#### **D. SUMMARY OF PROPOSED SETTLEMENT TERMS**

This Settlement Agreement is conditioned upon the Court entering an order granting final approval of the Settlement Agreement as fair, reasonable, and adequate and in the best interests of the Class. Subject to the Settlement Agreement becoming final, the terms of the Settlement Agreement are as follows:

1. **Special Election Disclosures and Options**: In consideration for a Release as described in Paragraph D.2, and as a direct result of the Class Action and the Settlement Agreement, Genworth will send a special election letter (“Special Election Letter”) to all Class Members after the Settlement has been finally approved. The Special Election Letter will contain, subject to approval by the Court and being approved by and/or not objected to by State insurance regulators:
  - (a) Disclosure of certain information about GLIC’s and/or GLICNY’s future rate increase plans and need for future rate increases (the “Disclosures”); and
  - (b) Class Members’ right to make an election of either (1) maintaining current benefits at existing filed rates (subject to the future approved rate increases), or (2) electing from a selection of reduced paid-up benefit options or reduced benefit options (the “Special Election Options”), subject to the availability of those options depending on each Class Member’ current policy terms and benefits and certain State Partnership Plan (“Partnership Plan”) requirements. Special Election Options that may be available could increase the amount of your current non-forfeiture paid-up benefit or entitle you to cash damages pay-outs. The actual Special Election Options available to you will depend upon many factors including, but not limited to, your current policy status and benefits, final court approval, and State regulatory review and comment.

(c) Please visit the settlement website,

[www.Choice2LongTermCareInsuranceSettlement.com](http://www.Choice2LongTermCareInsuranceSettlement.com), for a full description of these options and a sample of the Special Election Letter.

2. **Release:** Each member of the Class who does not timely and validly opt out of the Class, will fully and irrevocably waive and release GLIC and GLICNY (collectively “Genworth”) and each of those entities’ respective affiliates, predecessors, successors, parents, subsidiaries, and, for each of the foregoing, their current, former, and future directors, officers, direct and indirect owners, members, managers, attorneys, representatives, employees, and agents (the “Genworth Released Parties”) of and from any and all known or unknown, contingent or absolute, matured or unmatured, suspected or unsuspected, disclosed or undisclosed, foreseeable or unforeseeable, liquidated or unliquidated, existing or arising in the future, and accrued or unaccrued claims, demands, interest, penalties, fines, and causes of action, that the Named Plaintiffs and Class Members may have from the beginning of time through and including the final settlement date that relate to claims alleged, or that have a reasonable connection with any matter of fact set forth in the Class Action including, but not limited to, any claims relating to rate increases on Class Policies. This release specifically includes any legal or equitable claim arising from or related to any election or policy change made or not made by any Class Members to his or her policy benefits prior to the final settlement date. Named Plaintiffs and Class Members, subject to the exception set forth below, will further release the Genworth Released Parties and Class Counsel from any claims relating to or arising out of the Disclosures the Class Members are provided as part of the Settlement Agreement, including (but not limited to) claims specifically relating to any alleged omissions in the Disclosures or any decision, or non-decision, to maintain, modify, or give up coverage based on the Disclosures or Special Election Options offered. The following claim shall not be released: if within one year of the date a Class Member makes a Special Election or one year of the deadline for the Class Member to make a Special election, whichever is earlier a Class Member who believes he or she was harmed by an express and intentional misrepresentation in the Disclosures or in representations made by the Genworth Released Parties or Class Counsel about the Disclosures can pursue a claim in this Court via verified complaint or verified petition, provided that, before filing any such claim, the Class Member shall first notify the Parties of the basis for the claim and provided them with a reasonable opportunity to investigate and, if appropriate, remedy the alleged harm.

This Release will not prevent a Class Member from making a claim for benefits under his or her long-term care insurance policy consistent with his or her policy coverage, nor shall it include a Class Member’s challenge or appeal of Genworth’s denial of benefits under his or her Class Policy.

This Class Notice only contains a summary of the actual benefits and release language contained in the Stipulation of Settlement, which is on file with the Court and available for your review, including on the settlement website described below. If the Settlement Agreement is not approved by the Court or does not become final for any reason, the Class Action will continue, this Release will not be binding, and the Special Election Options will not be available.

3. **Attorneys' Fees and Litigation Expenses:** As part of the request for Final Approval of the Settlement Agreement, Class Counsel will file a request seeking to be paid a contingent payment of 15% of certain amounts related to Special Election Options selected by the Class, which shall be no greater than \$13,000,000.00. **None** of the attorneys' fees will be deducted from payments made by Genworth to Class Members.

Class Counsel will also file a request for an award of reasonable litigation expenses in this case. These expenses will be no more than \$50,000.

These are the only attorneys' fees and litigation expenses that Class Counsel will be paid as a result of the Settlement. Class members will not be required to separately pay Class Counsel for any other attorneys' fees or expenses. Genworth has agreed to pay all fees and expenses separately. The actual amounts of attorneys' fees and litigation expenses to be paid to Class Counsel will be determined by the Court, and these amounts will be paid by Genworth directly to Class Counsel.

This Class Notice only contains a summary of the actual Attorneys' Fees and Litigation Expenses provisions contained in the Settlement Agreement, which is on file with the Court and available for your review, including on the settlement website described below.

4. **Class Representative Service Payment:** Named Plaintiffs Fred Haney, Marsha Merrill, Sylvia Rausch, Stephen Swenson, and Alan Wooten have been appointed as class representatives by the Court. As part of the request for Final Approval of the Settlement Agreement, Class Counsel will request that service payments be awarded to each class representative in an amount of up to \$15,000 for each of them for the time, work, and risk they undertook in bringing this Class Action and achieving a settlement on behalf of all Class Members. None of the service payments approved by the Court will be deducted from payments made by Genworth to Class Members.

#### **E. FINAL APPROVAL HEARING ON PROPOSED SETTLEMENT**

The Final Approval Hearing on the fairness and adequacy of the Settlement Agreement will be held on November 17, 2022, at 10:00 a.m. in Courtroom 7400 in The Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse, 701 East Broad Street, Richmond, VA

23219. You are not required to attend the Final Approval Hearing in order to participate in the Settlement Agreement, although you are free to do so if you choose. The Court, in its discretion, may continue the Final Approval Hearing to a later date, in which case no additional written notice will be sent to Class Members, so it is incumbent upon you to check the settlement website regarding the Final Approval Hearing date and time if you wish to attend.

**F. ADDITIONAL IMPORTANT INFORMATION**

The Special Election Options described in this notice still require final approval by the Court and are subject to review by State insurance regulators.

You should also consider the following additional information, which may impact the availability of Special Election Options under this settlement:

- 1. If you currently have a long-term care policy with Genworth, you must continue to pay premiums (unless they have been waived) to keep your policy in force so that it is eligible for Special Election Options under this settlement.** Your premiums also remain subject to any rate increases that may be approved or otherwise permitted.
- 2. Changes to your policy status or coverage (including lapse or termination) may impact whether you are in the proposed settlement class and/or whether Special Election Options will be available to you.**
  - If your policy lapses after the date of this notice but is still in the period during which your policy can be automatically reinstated by paying any past-due premium, you will need to reinstate your policy by paying the past-due premium to exercise any rights and options under the settlement.
  - If, before you are sent a Special Election Letter, your policy lapses and is outside any period Genworth allows for the policy to be automatically reinstated with payment of past due premium, or terminates for any other reason, then you will be excluded from the Settlement Class and the Special Election Options will not be available to you.
  - If, after you have been sent a Special Election Letter, your policy lapses and is outside any period Genworth allows for

the policy to be automatically reinstated with payment of past due premium, or terminates for any other reason, then you will remain in the Settlement Class and release your claims, but you will no longer be eligible for the Special Election Options.

- 3. If you reduce your coverage, including in response to a rate increase on your policy, your reduction in coverage may affect the Special Election Options that otherwise may become available to you under this settlement.** As a Policyholder, you have options to reduce your coverage that are separate from the Special Election Options that may become available to you under this settlement. For example, if there is a premium rate increase on your policy, you will have options for reducing your coverage. Those options will be different from any Special Election Options that may become available under this settlement and do not include the possibility of a cash damages payout. If you select an option to reduce your coverage separate from the Special Election Options that may be available under this settlement, you may eliminate or reduce the availability of any future Special Election Options or the value of any corresponding cash damages payments that may be available. Whether one of these options or any Special Election Option will best meet your needs will depend on your specific circumstances.

This Notice is only a summary of the Settlement Agreement. For the precise terms and conditions of the settlement, the complete Settlement Agreement, pleadings and documents on file in this case, and other information about this settlement including important dates, PLEASE VISIT THE SETTLEMENT WEBSITE AT **[www.Choice2LongTermCareInsuranceSettlement.com](http://www.Choice2LongTermCareInsuranceSettlement.com)** OR CALL THE SETTLEMENT ADMINISTRATOR AT (855) 662-0078.



**EXHIBIT B**

**PUBLICATION NOTICE**

**Genworth Long-Term Care Insurance Choice 2, Choice 2.1, California CADE, California Reprice, and California Unbundled Class Action**

Do you own a Choice 2, Choice 2.1, California CADE, California Reprice, or California Unbundled long-term care insurance policy issued by Genworth Life Insurance Company or Genworth Life Insurance Company of New York? If so, you may be part of a class action settlement. Genworth has agreed to settle a proposed class action involving certain Choice 2, Choice 2.1, California CADE, California Reprice, and California Unbundled long-term care policies.

In January 2022, five policyholders brought a lawsuit on behalf of a class alleging that Genworth should have included certain additional information in letters sent to Genworth Choice 2, Choice 2.1, California CADE, California Reprice, and California Unbundled policyholders about premium rate increases. Genworth denies all allegations and maintains that its disclosures to policyholders were reasonable, appropriate and truthful.

Pending final Court approval and subject to certain conditions, impacted policyholders may receive certain disclosures and policy options, including potential payments or credits. If you are a class member, you may be entitled to obtain this relief, and you may have other rights relating to the proposed settlement. To learn more about the settlement (including whether you are a class member and how to be excluded from or object to the settlement), you may visit this website, [www.Choice2LongTermCareInsuranceSettlement.com](http://www.Choice2LongTermCareInsuranceSettlement.com), or call the Settlement Administrator at (855) 662-0078.