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14 *Attorneys for Plaintiff and the Class*

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

19 JOE S. YEARBY, on behalf of himself and all
20 others similarly situated,

21 Plaintiff,

22 v.

23 AMERICAN NATIONAL INSURANCE
COMPANY,

24 Defendant.

Case No. 3:20-cv-09222-EMC

**DECLARATION OF STEVEN G.
SKLAVER IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

1 I, Steven G. Sklaver, hereby declare as follows:

2 1. I submit this declaration in support of Plaintiff’s motion for final approval of the
3 proposed class action settlement between Joe S. Yearby, individually and on behalf of the Class,
4 and Defendant American National Insurance Company (“ANICO”).

5 2. I am a member in good standing of the State Bar of California. I am a partner of the
6 law firm of Susman Godfrey L.L.P., and counsel of record for Plaintiff in the above-captioned
7 action. I have personal knowledge of the facts set forth herein and, if called to testify as a witness,
8 could and would testify competently thereto.

9 3. I was among the principal negotiators of the proposed class action settlement (the
10 “Settlement”). Following extensive negotiations, the parties reached an agreement on November
11 22, 2022, and the parties then negotiated a long-form Settlement Agreement, a true and correct
12 copy of which is filed on the docket in this case at Dkt. 82-2 at 25. A true and correct copy of
13 Plaintiff’s policy is filed on the docket in this case at Dkt. 82-2 at 47. A true and correct copy of
14 the proposed Plan of Allocation is filed on the docket in this case at Dkt. 82-2 at 77. A chart showing
15 a comparison of outcomes for three other COI cases in which Susman Godfrey has been involved
16 for which final approval has been granted, compared to Plaintiff’s proposed settlement with
17 ANICO, is filed on the docket in this case at Dkt. 82-2 at 174. It is the opinion of Class Counsel
18 that the Settlement and Plan of Allocation is fair, adequate, and reasonable.

19 4. I previously submitted a declaration in support of Plaintiff’s Motion for Preliminary
20 Approval. Dkt. 82-2. I also submitted a declaration in support of Class Counsel’s Motion for
21 Attorneys’ Fees, Reimbursement of Litigation Expenses, and Service Award (“Fee Motion”). Dkt.
22 90-1. I submit this additional declaration to provide additional information and to update the Court
23 on developments following the close of the objection and opt-out period on October 10, 2023.

24 **THE LITIGATION**

25 5. In December 2020, Plaintiff filed a class action lawsuit against ANICO. Dkt. 1. The
26 Complaint included one claim for breach of contract, alleging that ANICO breached the Policies
27 by determining and deducting COI charges calculated using COI rates that were not based on
28 ANICO’s revised, improved, annual expectations as to future mortality experience. Dkt. 1 at 14.

1 6. ANICO moved to transfer venue to the Southern District of Texas and to dismiss
2 based on lack of personal jurisdiction, res judicata, and failure to state a claim. Dkt. 25-28.
3 Pursuant to Federal Rule of Civil Procedure 15(a)(1), Plaintiff filed a First Amended Complaint
4 (“FAC”) on April 23, 2021. Dkt 31. ANICO moved to dismiss the FAC on similar grounds as the
5 original complaint, and also filed its renewed motion to transfer the action. Dkts. 43-44. Plaintiff
6 opposed the motions, Dkts. 46-47, after conducting jurisdictional discovery by serving document
7 requests on April 23, 2021. After hearing oral argument, the Court denied the motion to transfer
8 and granted in part and denied in part the motion to dismiss, allowing Plaintiff to amend his tolling
9 allegations. Dkt. 57. Plaintiff did so by filing a Second Amended Complaint (“SAC”). Dkt. 61.
10 ANICO did not move to dismiss the SAC, and instead served its Answer. Dkt. 69.

11 7. After an unsuccessful first mediation on February 16, 2022, which was conducted
12 at the suggestion of the Court, see Dkt. 41 at 2 (setting ADR deadline and limiting discovery until
13 after the completion of ADR), the parties engaged in fact discovery, which included the service of
14 41 Requests for Production of documents, extensive negotiation over the scope of production and
15 ESI protocol, and production and review of over 18,000 pages of documents and data sets, including
16 documents produced pursuant to third-party subpoenas served on ANICO’s independent auditors,
17 Deloitte & Touche LLP and KPMG LLP. Plaintiff also served a Rule 30(b)(6) deposition notice on
18 ANICO and, following ANICO’s objections to the notice, engaged in meet and confer efforts over
19 the scope of the topics shortly before the parties reached an agreement on settlement.

MEDIATION AND SETTLEMENT

21 8. The Settlement is the result of extensive, arms-length negotiations between the
22 parties with the assistance of an experienced mediator, Vaughn R. Walker, a retired United States
23 District Judge.

24 9. Through the life of the case, the parties have exchanged numerous settlement offers
25 and counter-offers and engaged in an unsuccessful mediation on February 16, 2022, in person in
26 San Francisco. Following extensive document and third-party discovery, the parties renewed
27 mediation discussions in September 2022 and on November 22, 2022, the parties attended another
28

1 mediation which resulted in agreement for a final settlement. A long-form settlement agreement
2 was heavily negotiated and agreed to thereafter. Dkt. 82-2 at 25.

3 10. Throughout the process, the Settlement negotiations were conducted by highly
4 qualified and experienced counsel on both sides at arm's length. Class Counsel was well informed
5 of material facts and the negotiations were hard-fought and non-collusive. Class Counsel analyzed
6 all of the contested legal and factual issues to thoroughly evaluate ANICO's contentions, and
7 advocated in the settlement negotiation process for a fair and reasonable settlement that serves the
8 best interests of the Class. Given the complexities and expert witness issues involved in COI cases,
9 they are extraordinarily expensive to try, and there was a serious risk that further litigation expenses
10 would have severely diminished the distributions given that the total alleged historical damages
11 through February 28, 2023 are only \$5,704,128. *See, e.g., Leonard, et. al. v. John Hancock Life*
12 *Ins. Co. of New York*, No. 1:18-cv-04994-AKH, Dkt. 208 at 14 (S.D.N.Y. March 11, 2022)
13 (expenses of \$1,427,596.29); *Helen Hanks v. Voya Retirement Life Ins. & Annuity Co.*, No. 1:16-
14 cv-06399-PKC, Dkt. 293 at 16 (S.D.N.Y. April 4, 2022) (expenses of \$2,183,929.18).

15 11. On June 26, 2023, Plaintiff moved for preliminary approval of the Settlement. Dkt.
16 82. Following the hearing, the Court granted preliminary approval on August 11, 2023, finding that
17 "it likely will be able to approve the proposed Settlement as fair, reasonable, and adequate," that
18 "the Agreement was entered into at arm's length by highly experienced counsel," and that the case
19 "was thoroughly litigated by experienced counsel." Dkt. 89 at 2–3.

20 12. On July 5, 2023, ANICO mailed notices pursuant to the Class Action Fairness Act
21 ("CAFA") to the United States Attorney General and appropriate state officials required by 28
22 U.S.C. § 1715(b). There have been no objections to the Settlement from any recipient.

23 13. Class Counsel moved for attorneys' fees, reimbursement of litigation expenses, and
24 a service award ("Fee Motion") on August 25, 2023. Dkt. 90. Class Counsel sought \$1.25 million
25 in attorneys' fees, equaling 23.3% of the Settlement's total benefits. Class Counsel also sought
26 reimbursement of incurred litigation expenses and a \$25,000 service award for Plaintiff. *Id.* at 13–
27 14. There is no agreement for ANICO not to object to the Fee Motion.

1 year-to-year increases contemplated under Defendant’s current rate schedules in effect on
2 November 23, 2022.” *See* Settlement Agreement § 48. *Second*, “American National agrees to not
3 take any legal action (including asserting as an affirmative defense or counter-claim), or cause to
4 take any legal action, that seeks to void, rescind, cancel, have declared void, or seeks to deny
5 coverage under or deny a death claim for any Class Policy based on: (1) an alleged lack of valid
6 insurable interest under any applicable law or equitable principles; or (2) any misrepresentation
7 allegedly made on the application for, or otherwise made in applying for the policy” *Id.* § 49.

8 18. Once the settlement becomes final, the Settlement Class (referred to as the
9 “Releasing Parties” in the Settlement Agreement) will release ANICO, certain related parties
10 (referred to as the “Released Parties” in the Settlement Agreement) from “all Claims, from
11 whatever jurisdiction, arising out of or related to any Policy, or Policies, that were alleged or could
12 have been alleged in the Action arising out of the same Factual Predicate as that alleged in the
13 Action and/or as clarified herein.” Settlement Agreement §§ 30–32, 66. Expressly excluded from
14 this release are claims arising from (i) future COI rate scale increases (after the 5 year COI rate
15 freeze expires), (ii) other future increases to policy charges or credits that could not have been
16 asserted in this action, or (iii) any failure to pay any death benefits that may be owed. *Id.* §§ 15, 72.

17 19. The Plan of Allocation distributes proceeds directly to Class Members on a *pro rata*
18 basis without the need for a claim form. Dkt. 82-2 at 77. This ensures that proceeds will be
19 distributed equitably and that as many claimants as possible will receive a distribution. Each Class
20 Member’s *pro rata* share shall be that Class Member’s share of the total damages, with each Class
21 Member receiving a minimum distribution of \$100. *See id.* Those damages will be determined in
22 accordance with the methodology set out in the June 22, 2023 Declaration of Robert Mills, dkt. 82-
23 6, which determines the COI Overcharge for a Policy as the difference between the COI charges
24 actually assessed on the Policy from January 1, 2010 to February 28, 2023, and the COI charges
25 that would have been deducted from the policy accounts under Plaintiff’s theory of liability. Dkt.
26 82-2 at 78. All in-force policies will also benefit from the guarantee of policy validity and the five-
27 year COI freeze.

1 20. Class members will not need to fill out claim forms. Money will be sent to them
2 automatically in the mail, using the addresses that ANICO maintains on file. Proceeds will be
3 mailed within 30 days after the Final Settlement Date. Dkt. 82-2 at 77.¹ Within one year plus 30
4 days after the date the Settlement Administrator mails the proceeds, to the extent feasible and
5 practical in light of the costs of administering such subsequent payments, any funds remaining in
6 the Settlement Fund shall be re-distributed on a *pro rata* basis to Class Members who previously
7 cashed their checks. *Id.*

8 21. This method of distribution is designed to ensure that all Settlement Class Members
9 are equitably compensated and is designed to maximize the number of Settlement Class Members
10 who will receive proceeds from the Final Settlement Fund. It is Class Counsel’s opinion that this
11 Plan of Allocation is fair, reasonable, and equitable.

12 22. The Settlement provides for an incentive award of up to \$25,000 for Plaintiff and
13 class representative Joe Yearby for his services on behalf of the Settlement Class. *See* Settlement
14 Agreement §§ 21, 60. The Settlement Agreement also provides for attorneys’ fees in an amount not
15 to exceed 33 1/3% of the gross benefits provided to the Settlement Class and reimbursement for all
16 expenses incurred or to be incurred. *See id.* § 60. The amounts as approved by the Court will be
17 paid out of the Final Settlement Fund. *See id.* §§ 19, 21, 47, 61–62.

18 23. Class Counsel filed its Fee Motion on August 25, 2023, seeking \$1.25 million in
19 attorneys’ fees, which is 23.3% of the Settlement’s overall benefits (and below the Ninth Circuit’s
20 25% benchmark), incurred litigation expenses, and a \$25,000 service award for Mr. Yearby. Dkt.
21 90. The Fee Motion was also immediately posted on the settlement website identified in the Class
22 Notice. Settlement Class Members had the opportunity to object to the Fee Motion, and no
23 objections have been filed.

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25
26 ¹ The Settlement Agreement defines the Final Settlement Date as “the latest of: (i) the date of final
27 affirmance on any appeal of the Order and Judgment; (ii) the date of final dismissal with prejudice
28 of the last pending appeal from the Order and Judgment; or (iii) if no appeal is filed, the expiration
of the time for filing or noticing any form of valid appeal from the Order and Judgment.” *See*
Settlement Agreement § 18.

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

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5 Executed this 13th day of October 2023, in Los Angeles, California.

6
7 /s/ Steven G. Sklaver
8 Steven G. Sklaver
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