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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

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

Plaintiff,

v.

AMERICAN NATIONAL INSURANCE  
COMPANY,

Defendant.

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

**PLAINTIFF'S UNOPPOSED MOTION  
TO DISTRIBUTE REMAINING FUNDS  
IN CY PRES**

Date: August 28, 2025

Time: 1:30 PM

Location: Courtroom 5, 17th Floor

Judge: Honorable Edward M. Chen

**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 28, 2025, at 1:30 PM, in Courtroom 5 of the United States District Court for the Northern District of California, Phillip Burton Federal Building and United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, the Honorable Edward M. Chen presiding, Plaintiff Joe S. Yearby will and hereby does move to distribute any funds that remain in the Net Settlement Fund in *cy pres*. This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the declarations in support of the motion, argument by counsel at the hearing before this Court, any papers filed in reply, such oral and documentary evidence as may be presented at the hearing of this motion, and all papers and records on file in this matter.

**STATEMENT OF ISSUES**

Whether this Court should approve distributing any funds that remain in the Net Settlement Fund in *cy pres* to the Life Insurance Settlement Association.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

After completing two substantial distributions of checks to eligible life insurance policyowners who are members of the Settlement Class from a settlement fund of nearly \$5 million, approximately \$35,734.67 remains available after accounting for various expenses.<sup>1</sup> Class Counsel respectfully moves for an order permitting the final distribution in *cy pres* of the remaining balance to the Life Insurance Settlement Association (“LISA”), a not-for profit organization dedicated to promoting a robust market for life insurance owners to sell or monetize their life insurance policies—an important financial option that benefits all universal life policyowners such as the Settlement Class Members. American National Insurance Company (“ANICO”) is unopposed. If this motion is granted, it will end the distribution process and allow the administration process in this case to be terminated upon final distribution of the settlement fund balance to LISA.

**I. BACKGROUND**

On November 3, 2023, the Court granted final approval to the settlement negotiated in this class action involving the cost of insurance charges imposed on certain policies issued by ANICO. (Dkt. 100). The Court’s final approval order, which approved a settlement providing nearly \$5 million in monetary relief, along with additional noncash benefits, also approved the proposed Plan of Allocation, which provided that each Settlement Class Member would be issued a check equal to his or her *pro rata* share of the Net Settlement Fund. (Dkt. 100 at 2; Dkt. 82-2 at 78).

The Plan of Allocation approved by the Court provided:

Within one year plus 30 days after the date the Settlement Administrator mails the first Settlement Fund Payments, any funds remaining in the Settlement Fund shall be redistributed on a *pro rata* basis to Settlement Class Members who previously cashed the checks they received, to the extent feasible and practical in light of the costs of administering such subsequent payments, unless the amounts involved are too small to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair. All costs associated with the disposition of residual funds—whether through additional distributions to Settlement Class Members and/or through an alternative plan approved by the Court—shall be borne solely by the Settlement Fund.

(Dkt. 82-2 at 78–79).

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<sup>1</sup> All capitalized terms have the same meaning as in the Settlement Agreement, Dkt. 82-2 at 25.

After the Court’s final approval order, the Settlement Administrator (“JND”) administered distribution of a first round of settlement checks in accordance with the Settlement Agreement, and approximately 2,482 Settlement Class Members cashed the first round of settlement distribution checks. Declaration of Gina Intrepido-Bowden (“JND Decl.”) at ¶ 8. Consistent with the approved Plan of Allocation, Plaintiff then moved for an order authorizing a second distribution from the Net Settlement Fund to Settlement Class Members who had both participated in the first distribution and whose *pro rata* share of the remaining Net Settlement Fund was equal to or greater than \$10. Dkt. 107. Pursuant to the Court’s order authorizing the second distribution, Dkt. 109, JND issued checks to 2,102 Settlement Class Members totaling \$459,454.55 and subsequently reissued a total of 52 checks. JND Decl. ¶¶ 11–12. The second distribution is now complete, but not every check was cashed in this round. *Id.* ¶ 13. As of August 5, 2025, \$75,137.72 remains in the settlement fund with an estimated \$35,734.67 available for redistribution after accounting for estimated taxes and administration expenses. *Id.* ¶ 14. JND has confirmed that it is not feasible to issue a third distribution of funds to Settlement Class Members, given the available funds remaining and the costs associated with a third distribution. *Id.* ¶ 15.

Accordingly, Class Counsel now moves for an order authorizing the remaining balance of the Net Settlement Fund to be distributed in *cy pres* to LISA, for the reasons set forth below.

## II. LEGAL STANDARD

The *cy pres* doctrine allows a court to distribute unclaimed or non-distributable portions of a class action settlement fund to indirectly benefit the entire class. *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1305 (9th Cir. 1990). But “before a court invokes its *cy pres* power . . . it must ask three questions: (1) to whom does the residue belong, (2) would it be practicable to distribute the residue to its owners and (3) if not, who is an appropriate alternate recipient?” *In re Wells Fargo Sec. Litig.*, 991 F. Supp. 1193, 1195 (N.D. Cal. 1998) (citing Herbert Newberg and Alba Conte, *Newberg on Class Actions*, §§ 10.15–10.17 (3d ed. 1992)). This reflects “the law’s general preference for *cy pres* awards to be limited to scenarios where it is not feasible to make further distributions to class members.” *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 333 (N.D. Cal. 2018) (citing *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1038 (9th Cir. 2011)); *see*

1 *also* Principles of the Law of Aggregate Litig. § 3.07(c) (Am. Law Inst. 2010) (“If the court finds  
2 that individual distributions are not viable . . . the settlement may utilize a *cy pres* approach.”).

3 If the court determines that the unclaimed settlement funds cannot be practicably distributed  
4 to the class members, the resultant *cy pres* distribution must be “guided by (1) the objectives of the  
5 underlying statute(s); and (2) the interests of the silent class members,” such that there is “a driving  
6 nexus between the plaintiff class and the *cy pres* beneficiaries.” *Nachshin*, 663 F.3d at 1038–39;  
7 *Dennis v. Kellogg Co.*, 697 F.3d 858, 865–866 (9th Cir. 2012). The court should also “account for  
8 the nature of the plaintiffs’ lawsuit.” *Nachshin*, 663 F.3d at 1036.

### 9 **III. ARGUMENT**

#### 10 **A. A *cy pres* award is appropriate because a third distribution to class members 11 is not practicable.**

12 JND has confirmed that a third distribution to class members will not be feasible due to the  
13 estimated administration costs and the small balance of remaining funds. JND Decl. ¶ 15. As of  
14 August 5, 2025, only \$35,734.67 remains in the Net Settlement Fund after accounting for expenses.  
15 *Id.* ¶ 14. During the second distribution to Settlement Class Members, 1,884 out of 2,102 class  
16 members cashed their checks, making a third distribution comparable to the size of the second  
17 distribution. *Id.* ¶ 11, 13. After estimated settlement administration costs associated with a third  
18 distribution, only approximately \$5,734.67 would remain in the Net Settlement Fund for  
19 distribution, meaning the average check amount per Settlement Class Member would be \$3.04. *See*  
20 *id.* ¶ 15.

21 Under these circumstances, a third distribution to class members is not economically  
22 feasible. *See, e.g., Miguel-Sanchez v. Mesa Packing, LLC*, No. 20-CV-00823-VKD, 2022 WL  
23 10757077, at \*1 (N.D. Cal. Oct. 18, 2022) (finding additional distribution to class members not  
24 economically feasible where remaining fund of \$65,994.50 before administration expenses, divided  
25 among 548 class members, would have resulted in average payments that were minimal compared  
26 to initial payments). A *cy pres* award is thus consistent with the law’s “general preference for *cy*  
27 *pres* awards to be limited to scenarios where it is not feasible to make further distributions to class  
28 members.” *In re Anthem*, 327 F.R.D. at 333. Because a third distribution will not be economical,



1 Class Counsel requests that the Court approve distributing the remaining funds to a *cy pres*  
 2 recipient, LISA. JND has confirmed that a *cy pres* distribution is the most economical way of  
 3 distributing any funds that remain. JND Decl. ¶ 15.

4 **B. LISA is a worthy *cy pres* recipient.**

5 Once a court finds that the further additional allocation of funds is no longer reasonable, it  
 6 must determine whether the suggested *cy pres* recipient is a worthy recipient. “The Ninth Circuit  
 7 has instructed that a *cy pres* distribution must be guided by ‘the objectives of the underlying  
 8 statute(s)’, the ‘interests of the silent class members,’ and ‘the nature of the plaintiffs’ lawsuit.’”  
 9 *Camberis v. Ocwen Loan Servicing LLC*, No. 14-CV-02970-EMC, 2018 WL 6068999, at \*5 (N.D.  
 10 Cal. Nov. 20, 2018) (Chen, J.) (quoting *Nachshin*, 663 F.3d at 1036, 1038–39). Courts in this  
 11 District ask whether “there is ‘a driving nexus between the plaintiff class and the *cy pres*  
 12 beneficiaries.’” *Id.* (quoting *Nachshin*, 663 F.3d at 1038–39).

13 LISA is a worthy *cy pres* recipient and qualifies as a non-sectarian, not-for-profit  
 14 organization that serves the interests of the silent class members. LISA aims to promote a robust  
 15 market for life insurance owners to sell their life insurance policies, a valuable option that benefits  
 16 all insurance policy owners. Declaration of Bryan Nicholson (“Nicholson Decl.”) ¶¶ 4, 6. LISA  
 17 educates consumers and advisors about a life settlement as an alternative to lapse or surrender of a  
 18 life insurance policy, which is an important financial option and benefit to class members who  
 19 cannot now or in the future afford to pay the high insurance charges that were at issue in this  
 20 litigation. *Id.* ¶¶ 6–7. Often, the only other option is to lapse or surrender the policy for little or no  
 21 money at all, after having paid premiums for decades. LISA has a national reach and helps to create  
 22 materials that help seniors move through the initial decision-making steps they should consider as  
 23 they evaluate the life settlement option. *Id.* ¶ 5–6. LISA also responds in real time to inquiries from  
 24 seniors to permit them to make decisions on an educated basis. *Id.* LISA provides educational  
 25 material to policyholders interested in availing themselves of life settlement options other than  
 26 surrendering their policies or letting them lapse. *Id.*

27 These resources could “aid class members or similarly situated parties in the future.” *In re*  
 28 *Wells Fargo Sec. Litig.*, 991 F. Supp. 1193, 1198 (N.D. Cal. 1998). Indeed, LISA has previously

1 been approved as a *cy pres* recipient following the completion of distributions to class members in  
 2 other cost of insurance class action settlements. *See, e.g., 37 Besen Parkway, LLC v. John Hancock*  
 3 *Life Ins. Co.*, Case No. 1:15-cv-09924-PGG-HBP, Dkt. 173 ¶ 3 (Apr. 16, 2024) (approving LISA  
 4 as the *cy pres* recipient for any unclaimed settlement funds following a third and final distribution).

5 A *cy pres* distribution to LISA is also consistent with “the nature of the plaintiffs’ lawsuit,”<sup>2</sup>  
 6 such that “there is ‘a driving nexus between the plaintiff class and the *cy pres* beneficiaries.’”  
 7 *Nachshin*, 663 F.3d at 1038–39. This case relates to alleged excessive charges for cost of insurance  
 8 rates of universal life insurance policies. When consumers face excessive cost of insurance charges,  
 9 they can be forced to lapse or surrender their life insurance policies as a result for little or no money  
 10 at all—a disastrous option after paying premiums for decades. The secondary market that LISA  
 11 promotes helps ensure that seniors will have better options to monetize their investments, now and  
 12 in the future, as the need arises. LISA’s activities are also national in scope, aligning with the broad  
 13 geographic distribution of Settlement Class Members across the United States.<sup>3</sup> LISA’s  
 14 membership, consisting of brokers, providers, financing entities, and service providers, does  
 15 business in all 50 states, and have contributed conceptual as well as detailed language to laws  
 16 governing the industry in every regulated state. Nicholson Decl. ¶ 5.

17 LISA’s mission aligns with the interests of the absent class members and relates to the  
 18 nature of Plaintiff’s case. The Court should authorize distributing the remaining Net Settlement  
 19 Funds in *cy pres* to LISA, ending the distribution and administration process in this case.

#### 20 **IV. CONCLUSION**

21 For the foregoing reasons, the Court should enter an order directing distribution of any funds  
 22 that remain in the Net Settlement Fund to *cy pres* recipient LISA.

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23  
 24  
 25  
 26 <sup>2</sup> The Ninth Circuit also instructs that courts should consider whether the *cy pres* distribution is  
 27 consistent with “the objectives of the underlying statute(s).” *Nachshin*, 663 F.3d at 1038–39. Here,  
 28 the single claim alleged in Plaintiff’s complaint is for breach of contract, so there is no underlying  
 statute at issue in the case. *See* Dkt. 61 at 14–15.

<sup>3</sup> Settlement Class Members’ policies were issued as far back as several decades ago. Although  
 they were all issued in California, Settlement Class Members now reside across the United States.

Dated: August 12, 2025

By: /s/ Kevin R. Downs

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*Attorneys for Plaintiff and the Class*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 12, 2025, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system.

/s/ Kevin Downs

Kevin Downs