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

DAVID JOH, *et al.*,

Plaintiffs,

v.

AMERICAN INCOME LIFE INSURANCE
COMPANY, *et al.*,

Defendants.

Case No. 3:18-CV-06364-TSH

~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL

1 Before the Court is an unopposed Motion for Preliminary Approval of Class Action Settlement
2 filed by Plaintiffs David Joh, David Hamilton, and Bridget Smith. The parties have entered into a
3 Stipulation of Settlement, a copy of which was submitted with the Motion. This Settlement is a revised
4 version of a settlement that this Court previously approved on a preliminary basis but declined to
5 approve at the final approval stage due to the method of distribution of the settlement proceeds.

6 The Court, having reviewed and considered the Motion, its accompanying memorandum, the
7 revised Stipulation of Settlement and all exhibits thereto, and declarations in support thereof, finds that
8 the Motion should be, and hereby is, GRANTED in accordance with the terms of this Preliminary
9 Approval Order. On a preliminary basis, the Court concludes that the parties have addressed the
10 distribution issue that the Court raised with regard to the earlier version of the settlement. The Court
11 finds and concludes as follows:

12 1. This Order incorporates the Stipulation of Settlement. Unless otherwise provided herein,
13 all capitalized terms shall have the same meaning as those terms are defined in the Stipulation of
14 Settlement.

15 2. The Court has jurisdiction over the subject matter of this proceeding and over all Parties
16 to this proceeding. In addition, the Court has personal jurisdiction over all parties with respect to the
17 Action and the Settlement.

18 3. The Court hereby finds the Settlement involves the resolution of a bona fide dispute and
19 was entered into by the Parties in good faith.

20 **LIKELY APPROVAL OF THE PROPOSED SETTLEMENT**

21 4. For the reasons stated in greater detail below, the Court finds on a preliminary basis—
22 that is, subject to further consideration after class notice has been sent and final approval papers have
23 been filed—that it will likely be able to approve the proposed Settlement—including the settlement
24 payments and the process by which Settlement Class Members may object to or request exclusion from
25 the settlement— as fair, reasonable, and adequate under Rule 23(e)(2). *See* Fed. R. Civ. P.
26 23(e)(1)(B)(i).

27 5. Based on a review of the papers submitted by Plaintiffs, the Court finds on a preliminary
28 basis that the Settlement: (a) resulted from efforts by Plaintiffs and Class Counsel who adequately

1 represented the Class; (b) was negotiated at arm's length with Defendant with the assistance of
2 experienced class action mediator David Rotman; (c) provides relief for the Class that appears at this
3 stage to be adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the
4 proposed method of distributing relief to the class, including the method of processing payments to
5 Class Members; and (iii) the terms of the proposed award of attorney's fees and costs, including timing
6 of payment; and (d) treats Class Members equitably relative to one another.

7 6. In making this preliminary finding, the Court considered the nature of the claims, the
8 amounts and kinds of benefits paid and received in the Settlement, and the allocation of Settlement
9 payments among the Class Members, and the fact that Defendant does not admit any liability and does
10 not characterize this Settlement as an admission of liability, that the Settlement represents a
11 compromise of the Parties' respective positions rather than the result of a finding of liability at trial.
12 The Court further preliminarily finds that the terms of the Stipulation have no obvious deficiencies and
13 do not improperly grant preferential treatment to any individual Class Member.

14 **LIKELY CERTIFICATION OF CLASS**

15 7. The Court further finds that the Court will likely be able to certify the Class for purposes
16 of the settlement and settlement approval. See Fed. R. Civ. P. 23(e)(1)(B)(ii). The Court preliminarily
17 certifies the following Class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure:

18 All individuals who trained to become and/or worked as sales agents in California
19 for Defendant during the last four years prior to the filing of the original Complaint
20 in *Joh* and whose training and/or work began before August 16, 2019 (the date of
preliminary approval of the earlier version of this Settlement).

21 8. The Court finds that this action is likely to be certified as a class action, for settlement
22 purposes only, pursuant to Fed. R. Civ. P. 23(a) and (b)(3). The Court preliminarily finds for settlement
23 purposes that: (a) the Class certified herein numbers approximately 7,000 people, (b) there are
24 questions of law and fact that are common to the Class, and those questions of law and fact common to
25 the Class predominate over any questions affecting any individual Class Member; (c) the claims of
26 Plaintiffs are typical of the claims of the Class they seek to represent for purposes of settlement; (d) a
27 class action on behalf of the Class is superior to other available means of adjudicating this dispute; and
28 (e) Plaintiffs and Class Counsel are adequate representatives of the Class. Defendant retains all rights

1 to assert that the action may not be certified as a class action, other than for settlement purposes.

2 9. Pursuant to Rule 23(g), the Court appoints Steven M. Tindall of Gibbs Law Group LLP
3 and Michael A. Gould of Gould & Associates to serve as Class Counsel.

4 **NOTICE AND ADMINISTRATION**

5 10. The parties have designated experienced class action administrator KCC, LLC, as the
6 Settlement Administrator. The Settlement Administrator shall perform all the duties of the Settlement
7 Administrator set forth in the Settlement Agreement. Settlement Administrator KCC, LLC will
8 calculate individual settlement awards to Class Members. Defendant will provide KCC, LLC with the
9 information necessary to make these calculations.

10 11. The Court finds that the provisions for Notice to the Class set forth in the Stipulation of
11 Settlement satisfy the requirements of due process and Federal Rule of Civil Procedure 23 and provide
12 the best notice practicable under the circumstances, including individual notice to all members who can
13 be identified through reasonable effort. The Notice is reasonably calculated to apprise Class Members
14 of the nature of this litigation; the scope of the Class, the Class claims, issues, or defenses; the terms of
15 the Settlement Agreement; the right of Class Members to appear, object to the Settlement Agreement,
16 and exclude themselves from the Settlement Class and the process for doing so; of the Final Approval
17 Hearing; and of the binding effect of a class judgment on the Class. The Court therefore approves the
18 proposed methods of providing Notice, and the Claim Form, and directs KCC to proceed with
19 providing Notice to Class Members, at Defendant's sole cost, pursuant to the terms of the Settlement
20 Agreement and this Order.

21 12. No later than 14 days after the entry of this Order, KCC shall substantially complete its
22 notice obligations consistent with the specifications of the Stipulation of Settlement, including by
23 mailing all Class Members a Notice of their calculated number of workweeks, emailing all Class
24 Members for whom it has email addresses, and establishing a dedicated settlement website.

25 13. Class Members shall have 60 days from the mailing date of the Notice to dispute their
26 calculated number of workweeks in accordance with the terms of the Settlement.

27 14. No later than 70 days after the mailing date of the Notice, KCC shall file an affidavit
28 attesting that notice was disseminated as ordered.

OBJECTIONS AND EXCLUSIONS

1
2 15. Class Members who wish to opt out and exclude themselves from the Class may do so
3 by submitting such request in writing to the Settlement Administrator consistent with the specifications
4 listed in Notice no later than 60 days from the mailing date of the Notice.

5 16. All Class members who do not opt out and exclude themselves shall be bound by the
6 terms of the Stipulation of Settlement upon entry of the Final Approval Order and Judgment.

7 17. Class Members who wish to object to the Court’s approval of this Settlement may mail
8 or file with the Court written objections consistent with the specifications listed in the Notice no later
9 than no later than 60 days from the mailing date of the Notice.

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

FINAL APPROVAL HEARING AND SCHEDULE

15
16 19. The Court will hold a hearing on entry of final approval of the settlement, an award of
17 fees and expenses to Class Counsel, and service awards to the Class Representatives on January 7, 2021
18 at 10:00 a.m. at the United States District Court for the Northern District of California, San Francisco
19 Courthouse, 450 Golden Gate Ave., San Francisco, CA 94102.

20 20. At the final approval hearing, the Court will consider: (a) whether the settlement should
21 be approved as fair, reasonable, and adequate for the Class, and judgment entered on the terms stated in
22 the settlement; and (b) whether Plaintiff’s application for an award of attorney fees and expenses to
23 Class Counsel and service awards to Plaintiff should be granted.

24 21. Plaintiffs shall move for final settlement approval and approval of attorney’s fees,
25 litigation expense reimbursements, and class representative service awards no later than 28 days after
26 the entry of this Order. To the extent Plaintiffs file an omnibus motion seeking both final approval and
27 attorney’s fees, they shall have leave to exceed the page limit set by Local Rule, but their motion shall
28 not exceed 35 pages in length.

1 22. The Court reserves the right to adjust the date of the final approval hearing and related
2 deadlines. In that event, the revised hearing date or deadlines shall be posted on the settlement website
3 referred to in the Class notice, and the parties shall not be required to re-send or republish notice to the
4 Class.

5 **IT IS SO ORDERED.**

6 Dated: August 21, 2020


HONORABLE THOMAS S. HIXSON
UNITED STATES MAGISTRATE JUDGE

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