

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

FILED
LOS ANGELES SUPERIOR COURT
JUN 19 2014
SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK
BY Nancy Navarro Deputy
NANCY NAVARRO

EDDIE L. CRESSY

Plaintiff,

v.

FIDELITY & GUARANTY LIFE
INSURANCE COMPANY; PARAMOUNT
FINANCIAL SERVICES, INC.; AND
DOUGLAS ANDREW,

Defendants.

Case No.: BC514340

ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: June 19, 2014
Time: 10:00 a.m.

I. BACKGROUND

This is an insurance class action brought by Plaintiff Eddie L. Cressy on behalf of persons who purchased Indexed Universal Life ("IUL") insurance policies issued by Defendant Fidelity & Guaranty Life Insurance Company f/k/a OM Financial Life Insurance Company ("FG Life"). The complaint alleges, *inter alia*, that Defendants FG Life, Paramount Financial Services, Inc. ("Paramount"), and Douglas Andrew ("Andrew") (collectively, "Defendants") marketed and/or sold the IUL Policies as investment products, failed to disclose the high costs associated with the IUL Policies, and encouraged customers to obtain a mortgage or home equity line of credit and to use the proceeds to purchase IUL Policies (called the "Missed

1 Fortune Strategy”¹). Based on these and other allegations, the complaint asserts causes of action
2 for: (1) unlawful, unfair, and fraudulent business practices (Business & Professions Code
3 §§17200, *et seq.*); (2) unfair, deceptive, and misleading advertising (Business & Professions
4 Code §§17500, *et seq.*); (3) breach of fiduciary duty; and (4) fraud.

5 Following mediation and additional negotiations, the parties entered into a *Settlement*
6 *Agreement* (“settlement agreement”).

7 Plaintiff then filed a motion for preliminary approval of the settlement agreement, which
8 was initially set for hearing on 5/21/14. However, prior to the hearing, the Court requested
9 supplemental briefing and continued the hearing to this date. In response to that request, the
10 parties entered into an *Amended Settlement Agreement* (“amended settlement agreement”).

11 Now before the Court is a motion for preliminary approval of the amended settlement
12 agreement.
13

14 II. DISCUSSION

15 A. SETTLEMENT CLASS DEFINITION

16 The proposed settlement class is defined as: “[A]ny person or entity who owns or
17 owned an IUL Policy issued by FG Life from January 1, 2007 to March 31, 2014, inclusive,”
18 subject to certain enumerated exceptions. See Amended Settlement Agreement, §II.15.

19 B. TERMS OF SETTLEMENT AGREEMENT

20 A signed copy of the amended settlement agreement was filed under separate cover on
21 6/5/14. Its essential terms are as follows:
22

- 23 • The settlement provides two types of benefits:

24
25 ¹ See Amended Settlement Agreement, §II.35.

1 ○ **Interest Enhancement:** A participating class members with an Active IUL
2 Policy will automatically receive an Interest Enhancement (i.e., a one-year 1%
3 increase in the minimum guaranteed interest rate under his/her IUL Policy).
4 §§II.4 (definition of “Active IUL Policy”), IV.A, IV.B.

5 ○ **Inactive Surrender Benefit Relief:** A participating class member with an
6 Inactive IUL Policy and who submits a valid claim form will be eligible to
7 receive a refund of a percentage of surrender charges paid at the time of
8 surrender or lapse of his/her IUL Policy. §§II.31 (definition of “Inactive IUL
9 Policy”), V.A.

10 • The Inactive Surrender Benefit Relief will be paid out of the Claim Fund, which consists
11 of a \$1,250,000 contribution by FG Life and a \$5,000 contribution by Paramount and
12 Andrew. §V.B.1.

13 • The amount of a participating class member’s Inactive Surrender Benefit Relief depends
14 on the category into which he/she is placed by the claims administrator. §§V.F.1, V.F.2.

15 ○ **Category One** (i.e., a claimant whose IUL Policy had lapsed or had been
16 surrendered as of 3/31/14) will receive 10% of surrender charges paid.²
17 §V.F.2.a.

18 ○ **Category Two** (i.e., a claimant whose IUL Policy had lapsed or had been
19 surrendered as of 3/31/14 and who believes the IUL Policy was misrepresented at
20 the time of sale or whose IUL Policy was sold as an investment and/or using
21 his/her home equity and/or the Missed Fortune Strategy to finance the premiums)
22 will receive 30% of surrender charges paid. §V.F.2.b.

23
24
25

² Also included in Category One are class members with Active IUL policies as of 3/31/14 that became Inactive IUL policies on or before 10/15/14. See Amended Settlement Agreement, §V.F.2.a.

1 ○ Category Three (i.e., a claimant whose IUL Policy had lapsed or had been
2 surrendered as of 3/31/14 and who believes the IUL Policy was misrepresented at
3 the time of sale and whose IUL Policy was sold as an investment and/or using
4 his/her home equity and/or the Missed Fortune Strategy to finance the premiums)
5 will receive 60% of surrender charges paid. §V.F.2.c.

- 6 • The Claim Fund will be allocated as follows:
 - 7 ○ \$125,500 (10% of the Claim Fund) to Category One;
 - 8 ○ \$376,500 (30% of the Claim Fund) to Category Two; and
 - 9 ○ \$753,000 (60% of the Claim Fund) to Category Three. §§V.F.2.a to V.F.2.c.
- 10 • Unclaimed amounts will go to a Claim Surplus Fund, which will be used to pay claims
11 above the aggregate amount allocated to any category. §§V.G.1.a to V.G.1.b.
- 12 • If there is no Claim Surplus Fund or if the claims exceed the Claim Fund, the Inactive
13 Surrender Benefit Relief will be reduced pro rata such that the claims equal the Claim
14 Fund. §V.G.1.c.
- 15 • In no instance shall a claimant receive more than 100% of surrender charges paid.
16 §V.G.1.d.
- 17 • FG Life will pay class counsel a total of \$2,000,000, including: (1) attorney fees and
18 costs; (2) a \$30,000 service award to the sole class representative; and (3) claims
19 administration costs.³ §§XI.A, XI.B.1.
- 20 • A claimant will have 120 days from the date of mailing to cash his/her check. §V.G.3.

23
24 ³ In response to the Court's request for supplemental briefing, Plaintiffs estimate attorney fees to be no more
25 than \$1,885,000, attorney costs to be approximately \$75,000 to \$100,000, and claims administration costs to be
approximately \$85,000 to \$100,000. See Yancey Declaration, ¶¶37, 42. The Court notes that some of the figures in
§VIII.F of the Supplemental Briefing are different. There, Plaintiffs estimate attorney fees to be approximately
\$1,810,000 and attorney costs to be approximately \$50,000 to \$75,000.

- 1 • If a claimant does not cash his/her check by the 120-day deadline, the claims
2 administrator will issue a second check, subtracting up to \$50 from the amount for the
3 cost of re-mailing and necessary skip trace or address search. §V.H.3.
 - 4 ○ If funds attributable to uncashed checks are \$10,000 or more, such funds will be
5 treated the same as Claim Surplus Funds. §V.H.5.
 - 6 ○ If funds attributable to uncashed checks are less than \$10,000, such funds “will
7 be paid into Court for disposition by the Court.” §V.H.5.
- 8 • In addition to the monetary relief, Defendants will implement changes to their business
9 practices. Specifically, Defendants will be barred from representing that IUL Policies
10 are investments. §§VI.A, VI.B.
- 11 • Participating class members will release certain claims against Defendants. (See further
12 discussion below)
- 13 • The claims administrator will be Dahl Administration, LLC. §II.5 and Exhibit G.

14
15 **C. SETTLEMENT STANDARDS AND PROCEDURE**

16 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise of an
17 entire class action, or of a cause of action in a class action, or as to a party, requires the approval
18 of the court after hearing.” “Any party to a settlement agreement may serve and file a written
19 notice of motion for preliminary approval of the settlement. The settlement agreement and
20 proposed notice to class members must be filed with the motion, and the proposed order must be
21 lodged with the motion.” See CRC rule 3.769(c).

22
23 “In a class action lawsuit, the court undertakes the responsibility to assess fairness in
24 order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
25 action. The purpose of the requirement [of court review] is the protection of those class

1 members, including the named plaintiffs, whose rights may not have been given due regard by
2 the negotiating parties.” See Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of
3 America (2006) 141 Cal. App.4th 46, 60 (internal quotation marks omitted); see also Wershba
4 v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 245 (Court needs to “scrutinize the
5 proposed settlement agreement to the extent necessary to reach a reasoned judgment that the
6 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
7 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
8 concerned”) (internal quotation marks omitted).

9
10 “The burden is on the proponent of the settlement to show that it is fair and reasonable.
11 However ‘a presumption of fairness exists where: (1) the settlement is reached through arm’s-
12 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court
13 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
14 objectors is small.” See Wershba at 245 (citing Dunk v. Ford Motor Co. (1996) 48
15 Cal.App.4th 1794, 1802. Notwithstanding an initial presumption of fairness, “the court should
16 not give rubber-stamp approval.” See Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th
17 116, 130. “Rather, to protect the interests of absent class members, the court must
18 independently and objectively analyze the evidence and circumstances before it in order to
19 determine whether the settlement is in the best interests of those whose claims will be
20 extinguished.” *Id.* In that determination, the court should consider factors such as “the strength
21 of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk
22 of maintaining class action status through trial, the amount offered in settlement, the extent of
23 discovery completed and stage of the proceedings, the experience and views of counsel, the
24 presence of a governmental participant, and the reaction of the class members to the proposed
25

1 settlement.” Id. at 128. “Th[is] list of factors is not exclusive and the court is free to engage in
2 a balancing and weighing of factors depending on the circumstances of each case.” Wershba at
3 245.

4 “A settlement need not obtain 100 percent of the damages sought in order to be fair and
5 reasonable. Compromise is inherent and necessary in the settlement process. Thus, even if ‘the
6 relief afforded by the proposed settlement is substantially narrower than it would be if the suits
7 were to be successfully litigated,’ this is no bar to a class settlement because ‘the public interest
8 may indeed be served by a voluntary settlement in which each side gives ground in the interest
9 of avoiding litigation.’” Id. at 250.

10
11 **D. ANALYSIS OF SETTLEMENT AGREEMENT**

12 **1. Does a presumption of fairness exist?**

13 a. Was the settlement reached through arm’s-length bargaining? Yes. The
14 settlement is the product of mediation sessions with the Hon. Dickran M.
15 Tevrizian (Ret.) on 2/11/14 and 2/12/14 and additional negotiations. See
16 Amended Settlement Agreement, §I.A.29; Yancey Declaration, ¶¶14-16.

17 b. Were investigation and discovery sufficient to allow counsel and the court to act
18 intelligently? Yes. Class counsel: conducted both formal and informal
19 discovery; interviewed witnesses; reviewed 15,000+ pages of documents
20 produced by FG Life and a non-party; analyzed data, and retained expert
21 witnesses. See Amended Settlement Agreement, §I.B.1.d.; Yancey Declaration,
22 ¶¶8-13.

23
24 c. Is counsel experienced in similar litigation? Yes. Class counsel is experienced in
25 similar class action litigation. See Yancey Declaration, ¶¶2-3 and Exhibits A-C.

1 d. What percentage of the class has objected? This cannot be determined until the
2 fairness hearing. See Weil & Brown, Cal. Practice Guide: Civil Procedure
3 Before Trial (The Rutter Group 2013) ¶ 14:139.18, (“Should the court receive
4 objections to the proposed settlement, it will consider and either sustain or
5 overrule them at the fairness hearing.”).

6 CONCLUSION: The settlement is entitled to a presumption of fairness.

7 **2. Is the settlement fair, adequate, and reasonable?**

8 a. Strength of Plaintiffs’ case. “The most important factor is the strength of the
9 case for plaintiffs on the merits, balanced against the amount offered in
10 settlement.” See Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116,
11 130. Here, class counsel estimates Plaintiffs’ average potential recovery at trial
12 to be \$278⁴ per class member. See Supplemental Briefing, §II.A.
13 Notwithstanding such estimate, the settlement (consisting of an interest
14 enhancement and/or partial refund of surrender charges paid and changes to
15 Defendants’ business practices) appears to be a fair, adequate, and reasonable
16 compromise of Plaintiffs’ claims for the following reasons: First, Plaintiffs
17 expect Defendants to challenge class certification. It is Defendants’ position that
18 the circumstances surrounding each sale of an IUL Policy differs from person to
19 person. See Amended Settlement Agreement, §I.B.2.b. Second, Defendants
20 have defenses that, if believed by the trier of fact, could limit or even bar
21 Plaintiffs’ recovery. For example, it is FG Life’s position that it disclosed all the
22
23
24

25 ⁴ Multiplying this amount by the number of Active IUL policyholders (46,115) and Inactive IUL
policyholders (20,803) yields an aggregate recovery of approximately \$18,603,204. See Yancey Declaration, ¶7;
Supplemental Briefing, §II.A.

1 costs associated with the IUL Policies. *Id.*, §I.B.2.c. As another example, FG
2 Life contends that the IUL Policies provide benefits to policy owners, primarily
3 through the IUL Policies' guarantee features (e.g., guaranteed minimum interest
4 rates). *Id.*, §I.B.2.e.

- 5 b. Risk, expense, complexity and likely duration of further litigation. Given the
6 nature of the class claims, the case is likely to be expensive and lengthy to try.
7 Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong
8 the litigation as well as any recovery by the class members.
- 9 c. Risk of maintaining class action status through trial. There is always a risk of
10 decertification. See Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th
11 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain
12 some flexibility in conducting class actions, which means, under suitable
13 circumstances, entertaining successive motions on certification if the court
14 subsequently discovers that the propriety of a class action is not appropriate.").
- 15 d. Amount offered in settlement. As indicated above, the settlement provides class
16 benefits in the form of: (1) a one-year 1% increase in the minimum guaranteed
17 interest rate for those with Active IUL Policies (totaling approximately
18 \$5,000,000);⁵ (2) a 10%, 30%, or 60% refund of surrender charges paid by those
19 with Inactive IUL Policies (totaling approximately \$1,255,000); and (3) changes
20 to Defendants' business practices. In addition, FG Life will pay a total of
21 \$2,000,000 for attorney fees and costs, the service award to the sole class
22 representative, and claims administration costs.
23
24
25

⁵ See Yancey Declaration, ¶26.

- 1 e. Extent of discovery completed and stage of the proceedings. As discussed above,
2 at the time of the settlement, Plaintiffs had conducted extensive discovery.
- 3 f. Experience and views of counsel. The settlement was negotiated and endorsed
4 by class counsel who, as indicated above, is experienced in class action litigation.
- 5 g. Presence of a governmental participant. This factor is not applicable here.
- 6 h. Reaction of the class members to the proposed settlement. The class members'
7 reactions will not be known until they receive notice and are afforded an
8 opportunity to object, opt-out and/or submit claim forms. This factor becomes
9 relevant during the fairness hearing.
- 10

11 CONCLUSION: The settlement can be preliminarily deemed “fair, adequate, and
12 reasonable.”

13 **3. Scope of release**

14 The named Plaintiff and participating class members will release “all Released Claims.”
15 See Amended Settlement Agreement, §X.B. “Released Claims” means all claims: (1) “whether
16 known or unknown, whether suspected or unsuspected, whether at law or in equity, whether
17 direct or indirect that concern, refer or relate to, arise out of, or are connected with, directly or
18 indirectly, in whole or in part, the offering of advice in any manner related to the IUL Policies,
19 or the design, marketing, solicitation or sale of the IUL Policies, as well as the crediting of
20 interest to policy accounts of the IUL Policies;” (2) “that were asserted in this Action, or that
21 could have been asserted against any of the Defendants . . . arising out of or relating to this
22 Action . . .;” and (3) “arising out of or relating to the Action, up until the date of this Settlement
23
24
25

1 Agreement, regardless of whether Plaintiff asserted such claims in the Federal Complaint,⁶ First
2 Amended Complaint, Second Amended Complaint or the State Court Complaint.” Id., §X.A.2.

3 In addition, the named Plaintiff and participating class members will waive the
4 protections of Civil Code §1542 “in connection with the Released Claims” Id., §X.C.2.

5 The class release appears to be proper because it is narrowly written to encompass
6 claims arising out of Plaintiffs’ allegations. The Civil Code §1542 waiver, in turn, is tethered to
7 the “Released Claims.”

8 The named Plaintiff’s Civil Code §1542 waiver is appropriate because “[he]
9 acknowledges that Class Counsel have advised him” of its provisions and “[he] admits to full
10 knowledge and understanding of the consequences and effect of this waiver.” Id., §X.C.3.

11
12 **4. May conditional class certification be granted?**

13 a. Standards

14 A detailed analysis of the elements required for class certification is not required, but it
15 is advisable to review each element when a class is being conditionally certified. Amchem
16 Products, Inc. v. Winsor (1997) 521 U.S. 591, 620, 622-627. The trial court can appropriately
17 utilize a different standard to determine the propriety of a settlement class as opposed to a
18 litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement
19 cases. Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1807, FN 19. Finally, the Court is
20 under no “ironclad requirement” to conduct an evidentiary hearing to consider whether the
21 prerequisites for class certification have been satisfied. Wershba at 240.

22
23
24 ⁶ The named Plaintiff first filed an action in the U.S. District Court on 7/11/11 (entitled *Cressy v. FG Life*
25 *Financial Life Insurance Company, et al.* (Case No. LACV-11-5871-JAK (JCx))). See Amended Settlement
Agreement, §1.A.1. The federal district court ultimately dismissed the federal claims with prejudice and dismissed
the state claims without prejudice. Id., §1.A.24. The named Plaintiff then re-filed this action in state court. Id.,
§1.A.25.

1 b. Analysis

2 i. Numerosity. There are approximately 66,918 class members (46,115
3 Active IUL policyholders + 20,803 Inactive IUL policyholders). See
4 Supplemental Briefing, §I.A. Thus, numerosity has been sufficiently
5 established. See Rose v. City of Hayward (1981) 126 Cal.App.3d 926,
6 934 (stating that “[n]o set number is required as a matter of law for the
7 maintenance of a class action” and citing examples wherein classes of as
8 little as 10 [Bowles v. Superior Court (1955) 44 Cal.2d 574] and 28
9 [Hebbard v. Colgrove (1972) 28 Cal.App.3d 1017] were upheld).

10 ii. Ascertainability. The class is defined above. The class definition is
11 “precise, objective and presently ascertainable.” See Sevidal v. Target
12 Corp. (2010) 189 Cal.App.4th 905, 919. Class members are identifiable
13 from Defendants’ records.

14 iii. Community of interest. “The community of interest requirement involves
15 three factors: ‘(1) predominant common questions of law or fact; (2) class
16 representatives with claims or defenses typical of the class; and (3) class
17 representatives who can adequately represent the class.’” Linder v.
18 Thrifty Oil Co. (2000) 23 Cal.4th 429, 435. First, the class members
19 share common questions of law and fact regarding Defendants’ business
20 practices vis-à-vis the marketing and/or sale of IUL Policies. Second, the
21 named Plaintiff’s claims are typical of the class in that he purchased an
22 IUL Policy based upon the alleged fraudulent misrepresentation that it
23 was a sound investment. Lastly, the named Plaintiff can adequately
24 25

1 represent the class because his interests in this action appear to be
2 coextensive with the interests of the class.

3 iv. Adequacy of class counsel. As indicated above, class counsel has shown
4 experience in class action litigation.

5 v. Superiority. Given the relatively small size of the individual claims, a
6 class action appears to be superior to separate actions by the class
7 members.

8 CONCLUSION: The class may be conditionally certified since the prerequisites of class
9 certification have been satisfied.

10
11 **5. Is the notice proper?**

12 a. Method of class notice.

13 The claims administrator will send summary notices via first-class mail to all class
14 members. See Amended Settlement Agreement, §VII.A.1 and Exhibit A. The claims
15 administrator will also create a settlement website to which it will post copies of the long-form
16 notice, amended settlement agreement, claim form, and opt-out form. Id., §VII.A.2 and Exhibit
17 B.

18 The claims administrator will re-mail returned notices to the forwarding addresses or to
19 updated addresses located via skip trace or address search. Id., §VII.D.

20 The proposed methods of class notice appear to provide the best possible means for
21 giving actual notice to the putative class members.

22 b. Content of class notice.

23 The proposed summary and long-form notices are attached to the amended settlement
24 agreement as Exhibits A and B, respectively. Such notices appear to be acceptable. The
25

1 summary notice provides an overview of the settlement and directs class members to the
2 settlement website and/or the toll-free telephone number to obtain more information regarding
3 the case and the settlement. The long-form notice includes information such as: a summary of
4 the litigation; the nature of the settlement; the terms of the amended settlement agreement
5 (including the class benefits and the \$2 million maximum payment for attorney fees and costs,
6 the service award, and the claims administration costs); the procedures and deadlines for
7 participating in, opting out of, or objecting to, the settlement; the consequences of participating
8 in, opting out of, or objecting to, the settlement; and the date, time, and place of the final
9 approval hearing.

11 c. Cost of class notice.

12 As indicated above, claims administration costs will be paid out of the \$2,000,000
13 described in §XI.A of the amended settlement agreement. Currently, those costs are estimated to
14 be between \$85,000 and \$100,000. See Yancey Declaration, ¶42. Prior to the time of the final
15 fairness hearing, the claims administrator must submit a declaration attesting to the total costs
16 incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

17 **6. Attorney fees and costs**

18 CRC rule 3.769(b) states: "Any agreement, express or implied, that has been entered into
19 with respect to the payment of attorney fees or the submission of an application for the approval
20 of attorney fees must be set forth in full in any application for approval of the dismissal or
21 settlement of an action that has been certified as a class action."

22 Ultimately, the award of attorney fees is made by the court at the fairness hearing, using
23 the lodestar method with a multiplier, if appropriate. PLCM Group, Inc. v. Drexler (2000) 22
24 Cal.4th 1084, 1095-1096; Ramos v. Countrywide Home Loans, Inc. (2000) 82 Cal.App.4th 615,
25 625-626; Ketchum III v. Moses (2000) 24 Cal.4th 1122, 1132-1136. Despite any agreement by

1 the parties to the contrary, "the court ha[s] an independent right and responsibility to review the
2 attorney fee provision of the settlement agreement and award only so much as it determined
3 reasonable." Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th
4 123, 128.

5 The question of class counsel's entitlement to attorney fees (currently estimated to be no
6 more than \$1,885,000⁷) will be addressed at the fairness hearing when class counsel brings a
7 noticed motion for attorney fees. Class counsel must provide the court with billing information
8 so that it can properly apply the lodestar method, and must indicate what multiplier (if
9 applicable) is being sought.

10
11 Class counsel should also be prepared to justify the costs sought by detailing how they
12 were incurred.

13 ~~(Despite the Court's request for supplemental briefing, Plaintiffs fail to address the issues
14 of: (1) a fee-splitting agreement among class counsel; and (2) whether or not such agreement
15 has been disclosed to, and approved by, the named Plaintiff. See Preliminary Approval of Class
16 Action Settlement Checklist, p.3. Plaintiffs must address these issues at the time of final
17 approval.~~

18 **7. Incentive Award to Class Representatives**

19 The sole class representative requests an incentive award of \$30,000. In connection with
20 the final fairness hearing, the named Plaintiff must submit a declaration attesting to why he
21 should be entitled to an enhancement award in the proposed amount. The named Plaintiff must
22 explain why he "should be compensated for the expense or risk he has incurred in conferring a
23 benefit on other members of the class." See Clark v. American Residential Services LLC
24

25
7 See Yancey Declaration, ¶37.

1 (2009) 175 Cal.App.4th 785, 806. Trial courts should not sanction enhancement awards of
2 thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours
3 expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of
4 quantification of time and effort expended on the litigation, and in the form of reasoned
5 explanation of financial or other risks incurred by the named plaintiffs, is required in order for
6 the trial court to conclude that an enhancement was ‘necessary to induce [the named plaintiff] to
7 participate in the suit” Id. at 806-807 (italics and ellipsis in original).

8
9 The Court will decide the issue of the enhancement award at the time of final approval.

10 III. CONCLUSION AND ORDER

11 A. TENTATIVE RULING

- 12 (1) Grant preliminary approval of the settlement as fair, adequate, and reasonable;
- 13 (2) Grant conditional class certification;
- 14 (3) Appoint Eddie L. Cressy as class representative;
- 15 (4) Appoint McCallum, Methvin & Terrell, P.C., Weintraub Tobin, and the Law Office
16 of David I. Lipsky as class counsel;
- 17 (5) Appoint Dahl Administration, LLC as claims administrator;
- 18 (6) Approve the proposed notice plan; and
- 19 (7) Approve the proposed schedule of settlement proceedings.

20 B. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS


- 21 • Preliminary approval hearing: June 19, 2014
- 22 • Deadline for claims administrator to mail summary notices: July 18, 2014⁸

23
24
25

⁸ See Amended Settlement Agreement, §VII.A.1.

- 1 • Deadline for class members with Active IUL Policies to submit paper or online claim
- 2 forms: Not applicable
- 3 • Deadline for class members with Inactive IUL Policies to submit paper or online claim
- 4 forms: ~~September 8, 2014~~⁹ **October 2**
- 5 • Deadline for class members to object or opt out: September 2, 2014¹⁰
- 6 • Deadline for class counsel to file motion for final approval: September 19, 2014
- 7 • Final fairness hearing: October 3, 2014,¹¹ **9:00 a.m.**

9 Dated: **6-19-14**


 AMY D. HOGUE
 Judge of the Superior Court

22 _____

23 ⁹ See Amended Settlement Agreement, §V.C.3. Differently, the parties' proposed schedule at §III.A states that the deadline to submit paper or online claim forms is "October 15, 2014."

24 ¹⁰ See Amended Settlement Agreement, §§VIII.A.2, VIII.B.1, IX.A.1. So as to prevent any confusion, this date should probably be aligned with the claims deadline and thus, be changed to 9/8/14. Section III.B of the amended settlement agreement states that "[t]he schedule set forth in Section III.A. and elsewhere in this Agreement may be modified by the Court . . ."

25 ¹¹ See Amended Settlement Agreement, §III.A.