

1 Steven G. Sklaver (237612)  
ssklaver@susmangodfrey.com  
2 SUSMAN GODFREY L.L.P.  
1900 Avenue of the Stars, 14th Floor  
3 Los Angeles, California 90067  
Telephone: (310) 789-3100  
4 Facsimile: (310) 789-3150

5 Seth Ard (*pro hac vice*)  
sard@susmangodfrey.com  
6 Ryan Kirkpatrick (243824)  
rkirkpatrick@susmangodfrey.com  
7 SUSMAN GODFREY L.L.P.  
1301 Avenue of the Americas, 32nd Floor  
8 New York, New York 10019  
Telephone: (212) 336-8330  
9 Facsimile: (212) 336-8340

10 Kevin Downs (331993)  
kdowns@susmangodfrey.com  
11 SUSMAN GODFREY L.L.P.  
1000 Louisiana Street, Suite 5100  
12 Houston, Texas 77002  
Telephone: (713) 651-9366  
13 Facsimile: (713) 654-6666

14 *Attorneys for Plaintiff*

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

**JOINT SUPPLEMENTAL BRIEF IN  
SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT, DKT. 82**

Date: August 10, 2023

Time: 1:30 PM

Location: Courtroom 5, 17th Floor

Judge: Honorable Edward M. Chen

1 Plaintiff Joe S. Yearby and Defendant American National Insurance Company (“ANICO”)
   
2 submit this Joint Supplemental Brief in Support of Plaintiff’s Motion for Preliminary Approval of
   
3 Class Action Settlement, Dkt. 82, addressing the issues raised by the Court in its Order Re
   
4 Supplemental Briefing, Dkt. 83.

5 **A. Litigation Risks**

6 *1. Single-Factor COI Provision*

7 **Do each of the policies at issue contain the same “based on” language?** Yes. Each of
   
8 the Class<sup>1</sup> policies at issue contains the same language providing that monthly COI rates “will be
   
9 determined” by ANICO “from time to time based on” its “expectations as to future mortality
   
10 experience.” The Class policies are standardized form insurance contracts, of which ANICO issued
   
11 15 products in California on these forms.

12 These products are UL 1983, UL I, and Pension UL I (issued on Forms FPL83 and PUL84);
   
13 UL 1986, Anico Employee UL, UL II, Flex Universal Life, Pension UL II, Pension UL III, and UL
   
14 III, (issued on Forms AUL86, FUL86, JUL86, PFUL86, PRUL86, and RUL86); and UL 1992, UL
   
15 100, UL 25 Salary Deduction UL, Universal Asset Life, and UL 50 (issued on Forms CUL93,
   
16 HUL93, SDL93, UAL III, and UAL93).

17 The parties are in agreement that these are the products owned by members of the Class that
   
18 are being resolved by the Settlement, and identification of these specific product names has also
   
19 been added to question 3 (“Who is affected by the lawsuit?”) in the long-form class notice, a redline
   
20 of which appears in Exhibit B.

21 **What should the Court make of the litigation risks given the definition in the**
  
22 **Settlement Agreement?** The parties agree that the definition in the Settlement Agreement refers
   
23 to the fact that the products at issue do not *expressly* list any other factor besides “expectations of
   
24 future mortality experience” in the specific sentence that states that monthly COI rates “will be
   
25 determined by” ANICO from “time to time.” The meaning of this language is in dispute between
   
26 the parties. For example, whether or not consideration of other factors is permissible under the

27 \_\_\_\_\_
   
28 <sup>1</sup> Unless otherwise noted, all Capitalized Terms mean the same as in the Settlement Agreement,
   
Dkt. 82-2 at 26.

1 language at issue in this case is a contested issue with, as ANICO contends, legal support. *See Slam*  
 2 *Dunk I, LLC v. Connecticut Gen. Life Ins. Co.*, 853 F. App'x. 451 (11th Cir. 2021). Additionally,  
 3 there are litigation risks about the meaning of “time to time,” an issue that has not yet been litigated.  
 4 Plaintiff contends that that clause would require ANICO to redetermine COI rates at least annually.  
 5 ANICO disputes that construction, and resolution of that issue in ANICO’s favor would  
 6 substantially lower the damages Plaintiff contends are recoverable.

7                   2.     *Damages Model*

8                   **What is the potential “challenge[] [to] the variables used in Plaintiff’s damages**  
 9 **model”?** (Dkt. 82 at 21). Plaintiff’s damages model is calculated as the difference between what  
 10 ANICO actually charged a policyholder for its COI charge (the “Actual COI Charge”) and what  
 11 ANICO allegedly should have charged the policyholder, had it based its COI rate on its expectations  
 12 as to future mortality (the “But-For COI Charge”). Plaintiff’s experts calculated the Actual COI  
 13 Charge by multiplying ANICO’s COI rate by the “Net Amount at Risk,” which is the death benefit  
 14 that would be paid by an insurer minus the accrued cash value—in other words, the amount of risk  
 15 the insurer is exposed to in the event of death. Plaintiff’s experts then calculated the But-For COI  
 16 Charge by multiplying ANICO’s expected mortality experience by the Net Amount at Risk. The  
 17 expected mortality experience, or “qx,” is the expected probability of death for an insured of a given  
 18 issue age and policy year. Plaintiff contends that ANICO documents its qx values by using an  
 19 industry table and multiplying the values by a scalar, or multiplier, which captures the difference  
 20 between the insurer’s expectations and general industry experience. Plaintiff’s experts extracted  
 21 ANICO’s qx values (or the appropriate scalars used) from the actuarial memoranda that ANICO  
 22 published every year. With these qx values and corresponding But-For Charges, Plaintiff’s experts  
 23 calculated the alleged overcharges for every Class policy by calculating the difference between  
 24 what ANICO did charge and what Plaintiff contends ANICO should have charged.

25                   ANICO raised several challenges to Plaintiff’s proposed “but for” damage model. First,  
 26 ANICO raised the issue that backing COI rates to “mortality experience” is actuarially insupportable  
 27 in that professional actuarial principles and standards require insurers to consider provision for  
 28 operating expenses, reserves, and funds to ensure continued operations, and must test rates to assure

1 sufficiency for longevity. Without those considerations, ANICO maintains, the Policy could never  
2 have been issued from an actuarial or regulatory perspective. ANICO maintained that this argument  
3 could eliminate all damages in the case. Secondly, ANICO raised a statute of limitations issue  
4 peculiar to this case, as it relates to policyholders' knowledge obtained from allegations and notices  
5 from a prior COI class action resolved for the same policyholders in 2006. Specifically, ANICO  
6 maintains that Plaintiff's damage model is not based on any alleged failure to reduce COI rates due  
7 to changes in mortality expectations, but instead, is based on Plaintiff's belief that rates should  
8 never have been greater than mortality experience. Thus, for purposes of limitations, ANICO  
9 maintains that the only issue is when policyholders had notice of the allegation that ANICO COI  
10 rates included non-mortality factors and policyholders were put on notice of that issue in the prior  
11 case. ANICO maintained that application of limitations to claims arising prior to December of  
12 2016 would reduce Plaintiff's damage claims by approximately 60%. Thirdly, ANICO maintains  
13 that "scalers" were indiscriminately applied to "but for" calculations which increased damages by  
14 approximately 36% by reducing the alleged mortality rate by the percentage of the scaler. ANICO  
15 maintains that scalers from actuarial memoranda used in the models were not in every instance used  
16 to determine mortality tables for the policies in question, as the policies in the proposed class are  
17 not isolated into their own study; rather, they are a smaller part of a much larger group of policies  
18 studied together. The scalers do not in every instance accurately reflect the scalers used in studies  
19 conducted by the company and proper application, assuming Plaintiff is correct in all other facets  
20 of the case, would result in a reduction to Plaintiff's damage model calculations. Finally, ANICO  
21 maintains that Plaintiff's damage model does not take into consideration COVID impacts on  
22 mortality expectations.

### 23 **B. Settlement Administration Expenses**

24 **What are the estimated settlement administration expenses?** Due to the number of  
25 policies at issue and the form and manner of notice, settlement administration expenses are  
26 estimated to be approximately \$60,020. Issuing supplemental email notice and accepting opt-out  
27 requests by email would add approximately \$2,500 to the expenses.

1           **How do these expenses compare to other bids received?** JND's estimated settlement  
2 administration expenses are significantly lower than one of the other bids Plaintiff received, which  
3 was \$117,040. JND's bid is higher than another bid received, which was \$43,904, which was not  
4 realistic given prior COI class action experience (*e.g.*, the bid assumed only 50 total hours of project  
5 management to administer the settlement). Because of JND's reasonable estimate and assumptions,  
6 and vast experience specifically in COI class action administration, as provided in detail in Dkt.  
7 82-2 and 82-4, it is the proposed settlement administrator here.

8           **C. Other Settlements Involving COI Charges**

9           **Why did some COI cases involve markedly larger settlement funds/average payouts**  
10 **per policy?** The amount of damages potentially at issue in COI cases can depend on the magnitude  
11 of the COI overcharges, the number of policies at issue, the face value of those policies, and other  
12 factors. The ANICO policies at issue here involved relatively low face value policies and a  
13 relatively small total COI overcharge, compared to other policies at issue in other COI settlements.  
14 The average face amount for the ANICO policies at issue is \$76,000. While the relatively low total  
15 COI overcharge at issue here results in a correspondingly low average payout per policy, the  
16 proposed Settlement would recover a high percentage—88%—of the total overcharges for the  
17 Class.

18           Both *Fleisher v. Phoenix Life Ins. Co.*, 11-cv-8405, (S.D.N.Y.) and *Leonard v. John*  
19 *Hancock Life Ins. Co.*, 18-cv-04994, (S.D.N.Y.) involved high-value policies. In *Fleisher*, the  
20 average policy had a face value of \$5.5 million. Alleged overcharges in *Fleisher* totaled \$50.7  
21 million across the 1,103 policies at issue. In *Leonard*, the policies had an estimated \$2.8 million  
22 average face value, with \$134.9 million in alleged COI overcharges across the 1,184 policies that  
23 had an alleged overcharge. Both cases involved significantly higher average overcharges per policy  
24 than in this case. *Fleisher* and *Leonard* also involved decisions by carriers to impose a new, higher  
25 COI rate scale that replaced a prior COI rate scale, a fact pattern which has a different damages  
26 model than this case, in which no new COI rate scale has been imposed. Compared to the 88%  
27 recovery of total COI overcharges provided by the proposed settlement here, the recovery in  
28

1 *Fleisher* provided 68.5% of the total overcharges, and the recovery in *Leonard* was only marginally  
2 higher than here, at 91.25%.

3         *37 Besen Parkway, LLC v. John Hancock Life Ins. Co.*, 15-cv-9924, (S.D.N.Y.) had a  
4 damages model like this case. While the settlement fund in that case was much larger than here—  
5 \$91.25 million compared to \$5 million—that case involved large policies with an average face  
6 value of approximately \$977,000 compared to the \$76,000 average policy here. The total COI  
7 overcharge at issue for the policies in *Besen* was \$217 million, and the court approved a settlement  
8 covering a nationwide class with 79,033 policies, compared to the proposed California-only Class  
9 here with 3,090 policies at issue here.

10         Of the COI cases listed in Exhibit 7 to the Sklaver Declaration, (Dkt. 82-2 at 175), *Besen*  
11 provides the best comparison to the proposed settlement here. Both are cases tied to similar policy  
12 language and both involve the same COI overcharge model. Comparing the proposed settlement  
13 here to the one approved in *Besen*, here there is a higher average recovery per policy, with more  
14 than double the percentage of the total COI overcharges recovered.

15         **D. Means of Notice**

16         **Would there be a benefit to supplemental email notice, and what would the cost be?**

17 The parties agreed to direct-mail notice because ANICO maintains mailing addresses for the  
18 policyholders at issue. Direct-mail is what ANICO uses to send policyholders standard policy  
19 information, like annual statements and grace notices. Although ANICO does not have email  
20 addresses in its records for all of the policyholders in the proposed Class, ANICO has informed  
21 Plaintiff that ANICO does have email addresses for approximately 470 policyholders—about 15  
22 percent of the proposed Class – though ANICO does not know what percentage of the email  
23 addresses remain valid given that some of the policies have lapsed, been surrendered, or had claims  
24 paid on them. The additional cost of providing email notice would be approximately \$2,500. The  
25 parties do not oppose providing additional email notice to these policyholders for whom ANICO  
26 has email addresses on file.

1           **E.       Requests for Exclusion**

2           **Would there be a benefit to allowing requests for exclusion by email?** Plaintiff's  
3 proposed settlement administrator, JND, can accept requests by email and the impact to the overall  
4 expense is expected to be marginal. The parties do not oppose allowing request for exclusion by  
5 email, and the proposed notices attached to this submission have been amended to account for that  
6 modification.

7           **F.       Attorneys' Fees and Costs**

8           **How many hours of legal work were spent on each major litigation task?** Plaintiff's  
9 lodestar for attorneys' fees as of June 9, 2023, was approximately \$611,000, representing  
10 approximately 800 hours of work at hourly rates ranging from \$400–\$1,300. Of that amount,  
11 approximately 37.4 hours (\$33,530.00) were spent on work related to the complaint and amended  
12 complaints; 196.9 hours (\$131,410.00) were spent on discovery-related work; 236.9 hours  
13 (\$189,752.59) were spent opposing ANICO's motions to dismiss and motion to transfer; 95.3 hours  
14 (\$91,790.00) were spent performing work related to mediations; 98.1 hours (\$82,360.00) were  
15 spent working on the proposed settlement and related motions; 37.5 hours (\$22,850.00) were spent  
16 performing legal research unrelated to the motions to dismiss and transfer; and 90.8 hours  
17 (\$60,160.00) were spent on general case management work.

18           **How were the expert/consultant fees incurred?** Plaintiff claims litigation expenses of  
19 \$167,818.96 as of June 9, 2023, which includes \$146,122.50 of expert and consultant fees. The  
20 vast majority of these fees were incurred as a result of work performed by Robert Mills of  
21 Micronomics, Inc. and by Demeter Capital, a firm with deep COI and life insurance experience.  
22 Both Mr. Mills and Demeter Capital were closely involved in the discovery and mediation process,  
23 to help ensure that ANICO had provided all the information needed to accurately calculate what  
24 Plaintiff contends are the total COI overcharge for the Class.

25           Consultants from Demeter Capital reviewed ANICO's mortality data as well as data related  
26 to COI charges for the Class policies to determine what Plaintiff contends are ANICO's best  
27 estimate of future mortality experience for the Class policies. Demeter Capital also performed a  
28 valuation analysis of the noncash benefits to the Class in the proposed Settlement. (*See Decl. of*

1 Keith McNally, Dkt. 82-3). As of June 9, 2023, invoices from Demeter Capital accounted for  
2 \$73,000 of the total expert fees incurred, for approximately 73 hours of work.

3 Robert Mills, an economist with Micronomics Inc., reviewed and analyzed ANICO's policy  
4 data and COI charge data, as well as the expectations as to future mortality experience calculated  
5 by Demeter Capital, to calculate what Plaintiff contends are the COI charges that ANICO should  
6 have charged if it had based them on its expectations as to future mortality. Mr. Mills then  
7 determined the total COI overcharges at issue for the Class on a policy-by-policy basis. As of June  
8 9, 2023, invoices from Micronomics accounted for \$71,900 of the total expert fees incurred, for  
9 approximately 138.5 hours of work.

### 10 **G. Language of Notices**

11 The Court's requested changes to the short- and long-form notices are reflected in the  
12 attached Exhibit A (Revised Short-Form Notice) and Exhibit B (Revised Long-Form Notice).

13  
14  
15 Dated: July 14, 2023

By: /s/ Steven G. Sklaver  
16 Steven G. Sklaver  
17 SUSMAN GODFREY L.L.P.  
18 1900 Avenue of the Stars, 14th Floor  
19 Los Angeles, California 90067  
20 Telephone: (310) 789-3100  
21 Facsimile: (310) 789-3150  
22 ssklaver@susmangodfrey.com

23 Seth Ard (*pro hac vice*)  
24 Ryan Kirkpatrick  
25 SUSMAN GODFREY L.L.P.  
26 1301 Avenue of the Americas, 32nd Floor  
27 New York, New York 10019  
28 Telephone: (212) 336-8330  
Facsimile: (212) 336-8340  
sard@susmangodfrey.com  
rkirkpatrick@susmangodfrey.com

Kevin Downs  
SUSMAN GODFREY L.L.P.  
1000 Louisiana Street, Suite 5100  
Houston, Texas 77002  
Telephone: (713) 651-9366



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  
26  
27  
28

Facsimile: (713) 654-6666  
kdowns@susmangodfrey.com

*Attorneys for Plaintiff*

By: /s/ Frank Busch  
FRANK BUSCH  
Attorneys for Defendant

James M. Wagstaffe (95535)  
Michael von Loewenfeldt (178665)  
Frank Busch (258288)  
**WAGSTAFFE, VON LOEWENFELDT,  
BUSCH & RADWICK LLP**  
100 Pine Street, Suite 725  
San Francisco, CA 94111  
Telephone: (415) 357-8900  
Fax: (415) 357-8910

Janet Rushing (*pro Hac Vice*)  
Joseph R. Russo, Jr. (*pro Hac Vice*)  
**GREER, HERZ & ADAMS LLP**  
2525 South Shore Blvd., Suite 203  
League City, TX 7757

# **Exhibit A**

COURT AUTHORIZED  
LEGAL NOTICE

**If you own or owned a universal life policy issued in California by ANICO that was subject to monthly COI deductions on or after January 1, 2010, you may be affected by eligible for an average payout of \$973.26 in a class action settlement**

A proposed settlement has been reached in a class action lawsuit called *Yearby v. American National Insurance Company*, Case No. 3:20-cv-09222-EMC (N.D. Ca.) (the "Settlement"). Records indicate you may be affected. This Notice summarizes your rights and options. More details are available at [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com).

**What is this about?** The lawsuit alleges that Defendant American National Insurance Company ("ANICO") violated its contractual commitment to policyholders by refusing to decrease its cost of insurance ("COI") rates despite what is alleged to be improved future mortality expectations. Plaintiff seeks monetary relief for the COI overcharges. ANICO denies Plaintiff's claims and any and all liability or wrongdoing. The Court has not decided who is right or wrong. Instead, both sides have agreed to a Settlement to avoid the risks, costs, and delays of further litigation.

**Who is affected?** The Settlement Class consists of all owners of universal life (including variable universal life) insurance policies issued in California by ANICO, or its predecessors in interest, that provide that COI rates are determined based on expectations as to future mortality experience, and that were subjected to monthly COI deductions on or after January 1, 2010. Excluded from the Settlement Class are Class Counsel and their employees; Defendant ANICO, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing; the Court, the Court's staff, and their immediate families.

**What does the Settlement provide?** A Settlement Fund of \$5 million will be established, but reduced proportionally if any owners submit a timely and valid exclusion request ("Final Settlement Fund"). After payments for settlement administration; (estimated to be \$60,020), attorneys' fees (not to exceed \$1,666,666.67 or 33 1/3% of the gross benefits provided to cash component of the Settlement Class) and litigation expenses, and Plaintiff's Service Award (up to \$25,000); the remaining amount will be distributed to Settlement Class Members in proportion to their share of the overall COI overcharges collected from the Settlement Class through February 28, 2023, with each Settlement Class Member receiving a minimum distribution of \$100. No portion of the Settlement Fund will be returned to ANICO. In addition, ANICO has also agreed to provide non-monetary relief valued at \$362,289, which consists of a promise that for a period of five years after the Court finally approves the Settlement, current COI rate scales for the Class Members' policies will not be increased, and that it will not take any legal action (including asserting as an affirmative defense or counter-claim), or cause to take any legal action, that seeks to void, rescind, cancel, have declared void, or seeks to deny coverage under or deny a death claim for any Class Policy based on: (1) an alleged lack of valid insurable interest under any applicable law or equitable principles; or (2) any misrepresentation allegedly made on the application for, or otherwise made in applying for the policy, as outlined in the Settlement Agreement available at [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com).

**American National Insurance COI Litigation**  
c/o JND Legal Administration  
P.O. Box 91237  
Seattle, WA 98111

«Barcode»

Postal Service: Please do not mark barcode

«Full\_Name»

«CF\_CARE\_OF\_NAME»

«CF\_ADDRESS\_1»

«CF\_ADDRESS\_2»

«CF\_CITY», «CF\_STATE» «CF\_ZIP»

«CF\_COUNTRY»

**Do nothing.** You will remain part of the Settlement Class and receive certain benefits from the Settlement. You will automatically receive a payment in the mail if you are entitled to one. You will be bound by the Settlement, and you will give up your right to sue or continue to sue ANICO for the claims in this case.

**Exclude yourself.** You will remove yourself from the Settlement Class. You will not receive a payment from the Settlement. You will keep your right to sue or continue to sue ANICO at your own expense and with your own attorney for the claims in this case. Your exclusion request must include the case name (*Yearby v. American National Insurance Co.*), a statement saying that you want to be excluded from the Settlement Class, your full name, address, telephone number, email address (if any), the policy number(s) to be excluded, and your signature. If you own multiple policies that are included in the Settlement Class, you may request to exclude some policies from the Settlement Class while participating in the Settlement Class with respect to other policies. Exclusion requests must be **postmarked by Month x, 2023**.

**Object.** If you do not exclude yourself from the Settlement Class, **thereby remaining a Settlement Class Member**, you may object or tell the Court what you do not like about the Settlement. The Court can only approve or deny the Settlement. The Court cannot alter the terms of the Settlement. Objections must be **filed and served by Month x, 2023**.

For more details about your rights and options and how to exclude yourself or object, go to [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com).

**What happens next?** The Court will hold a Fairness Hearing on **Month x, 2023** at **x:xx x.m. PT** at **x**, to consider whether the Settlement is fair, reasonable, and adequate; and how much to pay and reimburse Class Counsel and Plaintiff. The Court has appointed Susman Godfrey L.L.P. as Class Counsel. You or your attorney may ask to speak at the hearing at your own expense, but you do not have to. The date of the Fairness Hearing may change without further notice, so please check [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com) or <https://ecf.cand.uscourts.gov> for updates.

**How can I get more information?** Go to [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com), call toll-free 1-877-381-0370, or write to American National Insurance COI Litigation, c/o JND Legal Administration, P.O. Box 91237, Seattle, WA 98111. Complete copies of the pleadings, orders and other publicly filed documents in the lawsuit may also be accessed for a fee through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>.

*Carefully separate this Address Change Form at the perforation*

Name: \_\_\_\_\_

Current Address: \_\_\_\_\_

\_\_\_\_\_

Unique ID: [JND Unique ID]

**Address Change Form**

To make sure your information remains up-to-date in our records, please confirm your address by filling in the above information and depositing this postcard in the U.S. Mail.



American National Insurance COI Litigation  
c/o JND Legal Administration  
P.O. Box 91237  
Seattle, WA 98111

COURT AUTHORIZED

LEGAL NOTICE

**If you own or owned a universal life policy issued in California by ANICO that was subject to monthly COI deductions on or after January 1, 2010, you may be eligible for an average payout of \$973.26 in a class action settlement**

American National Insurance COI Litigation  
c/o JND Legal Administration  
P.O. Box 91237  
Seattle, WA 98111

«Barcode»

Postal Service: Please do not mark barcode

«Full Name»

«CF\_CARE\_OF\_NAME»

«CF\_ADDRESS\_1»

«CF\_ADDRESS\_2»

«CF\_CITY», «CF\_STATE» «CF\_ZIP»

«CF\_COUNTRY»

A proposed settlement has been reached in a class action lawsuit called *Yearby v. American National Insurance Company*, Case No. 3:20-cv-09222-EMC (N.D. Ca.) (the “Settlement”). Records indicate you may be affected. This Notice summarizes your rights and options. More details are available at [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com).

**What is this about?** The lawsuit alleges that Defendant American National Insurance Company (“ANICO”) violated its contractual commitment to policyholders by refusing to decrease its cost of insurance (“COI”) rates despite what is alleged to be improved future mortality expectations. Plaintiff seeks monetary relief for the COI overcharges. ANICO denies Plaintiff’s claims and any and all liability or wrongdoing. The Court has not decided who is right or wrong. Instead, both sides have agreed to a Settlement to avoid the risks, costs, and delays of further litigation.

**Who is affected?** The Settlement Class consists of all owners of universal life (including variable universal life) insurance policies issued in California by ANICO, or its predecessors in interest, that provide that COI rates are determined based on expectations as to future mortality experience, and that were subjected to monthly COI deductions on or after January 1, 2010. Excluded from the Settlement Class are Class Counsel and their employees; Defendant ANICO, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing; the Court, the Court’s staff, and their immediate families.

**What does the Settlement provide?** A Settlement Fund of \$5 million will be established, but reduced proportionally if any owners submit a timely and valid exclusion request (“Final Settlement Fund”). After payments for settlement administration (estimated to be \$60,020), attorneys’ fees (not to exceed \$1,666,666.67 or 33 1/3% of the cash component of the Settlement) and litigation expenses, and Plaintiff’s Service Award (up to \$25,000); the remaining amount will be distributed to Settlement Class Members in proportion to their share of the overall COI overcharges collected from the Settlement Class through February 28, 2023, with each Settlement Class Member receiving a minimum distribution of \$100. No portion of the Settlement Fund will be returned to ANICO. In addition, ANICO has also agreed to provide non-monetary relief valued at \$362,289, which consists of a promise that for a period of five years after the Court finally approves the Settlement, current COI rate scales for the Class Members’ policies will not be increased, and that it will not take any legal action (including asserting as an affirmative defense or counter-claim), or cause to take any legal action, that seeks to void, rescind, cancel, have declared void, or seeks to deny coverage under or deny a death claim for any Class Policy based on: (1) an alleged lack of valid insurable interest under any applicable law or equitable principles; or (2) any misrepresentation allegedly made on the application for, or otherwise made in applying for the policy, as outlined in the Settlement Agreement available at [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com).

**What are my options?** You can do nothing, exclude yourself, or object to the Settlement.

**Do nothing.** You will remain part of the Settlement Class and receive certain benefits from the Settlement. You will automatically receive a payment in the mail if you are entitled to one. You will be bound by the Settlement, and you will give up your right to sue or continue to sue ANICO for the claims in this case.

**Exclude yourself.** You will remove yourself from the Settlement Class. You will not receive a payment from the Settlement. You will keep your right to sue or continue to sue ANICO at your own expense and with your own attorney for the claims in this case. Your exclusion request must include the case name (*Yearby v. American National Insurance Co.*), a statement saying that you want to be excluded from the Settlement Class, your full name, address, telephone number, email address (if any), the policy number(s) to be excluded, and your signature. If you own multiple policies that are included in the Settlement Class, you may request to exclude some policies from the Settlement Class while participating in the Settlement Class with respect to other policies. Exclusion requests must be **postmarked by Month x, 2023**.

**Object.** If you do not exclude yourself from the Settlement Class, thereby remaining a Settlement Class Member, you may object or tell the Court what you do not like about the Settlement. The Court can only approve or deny the Settlement. The Court cannot alter the terms of the Settlement. Objections must be **filed and served by Month x, 2023**.

For more details about your rights and options and how to exclude yourself or object, go to [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com).

**What happens next?** The Court will hold a Fairness Hearing on **Month x, 2023** at **x:xx x.m. PT** at **x**, to consider whether the Settlement is fair, reasonable, and adequate; and how much to pay and reimburse Class Counsel and Plaintiff. The Court has appointed Susman Godfrey L.L.P. as Class Counsel. You or your attorney may ask to speak at the hearing at your own expense, but you do not have to. The date of the Fairness Hearing may change without further notice, so please check [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com) or <https://ecf.cand.uscourts.gov> for updates.

**How can I get more information?** Go to [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com), call toll-free 1-877-381-0370, or write to American National Insurance COI Litigation, c/o JND Legal Administration, P.O. Box 91237, Seattle, WA 98111. Complete copies of the pleadings, orders and other publicly filed documents in the lawsuit may also be accessed for a fee through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>.

Carefully separate this Address Change Form at the perforation

Name: \_\_\_\_\_

Current Address: \_\_\_\_\_

\_\_\_\_\_

Unique ID: [JND Unique ID]

**Address Change Form**

To make sure your information remains up-to-date in our records, please confirm your address by filling in the above information and depositing this postcard in the U.S. Mail.

PLACE  
STAMP  
HERE

American National Insurance COI Litigation  
c/o JND Legal Administration  
P.O. Box 91237  
Seattle, WA 98111

# **Exhibit B**

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**If you own or owned a universal life policy issued in California by ANICO that was subject to monthly COI deductions on or after January 1, 2010, you may be ~~affected by~~ eligible for an average payout of \$973.26 in a class action settlement**

*A court authorized this notice. This is not a solicitation from a lawyer.*

- A proposed settlement has been reached in a class action lawsuit called *Yearby v. American National Insurance Company*, Case No. 3:20-cv-09222-EMC (N.D. Ca.) (the “Settlement”).
- Plaintiff alleges that Defendant American National Insurance Company (“ANICO”) violated its contractual commitment to policyholders by refusing to decrease its cost of insurance (“COI”) rates despite alleged, improved future mortality expectations. Plaintiff seeks monetary relief for the COI overcharges. ANICO denies Plaintiff’s claims and any and all liability or wrongdoing.
- If the Court approves the Settlement, Settlement Class Members will be eligible to receive payment from a cash Settlement Fund of up to \$5 million, as further detailed in Question 10.
- In addition, ANICO agrees that for a period of five years after the Court finally approves the Settlement, current COI rate scales for the Class Members’ policies will not be increased, and that it will not take any legal action (including asserting as an affirmative defense or counter-claim), or cause to take any legal action, that seeks to void, rescind, cancel, have declared void, or seeks to deny coverage under or deny a death claim for any Class Policy based on: (1) an alleged lack of valid insurable interest under any applicable law or equitable principles; or (2) any misrepresentation allegedly made on the application for, or otherwise made in applying for the policy, as outlined in the Settlement Agreement available at [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com). An insurance expert has quantified that non-monetary relief as having a present value of \$362,289.
- You are a Settlement Class Member if you own or owned a universal life (including variable universal life) insurance policy issued in California by ANICO, or its predecessors in interest, that provide that COI rates are determined based on expectations as to future mortality experience, and that were subjected to monthly COI deductions on or after January 1, 2010. Your legal rights are affected whether or not you act. ***Please read this Notice carefully.***



<b>YOUR LEGAL RIGHTS AND OPTIONS</b>		
<b>Do Nothing</b>	<ul style="list-style-type: none"> <li>• Get certain benefits from the Settlement — Automatically receive a payment in the mail if you are entitled to one</li> <li>• Be bound by the Settlement</li> <li>• Give up your right to sue or continue to sue ANICO for the claims in this case</li> </ul>	
<b>Ask to be Excluded (“Opt Out”)</b>	<ul style="list-style-type: none"> <li>• Remove yourself from the Settlement Class</li> <li>• Get no benefits from the Settlement</li> <li>• Keep your right to sue or continue to sue ANICO, at your own expense, for the claims in this case</li> </ul>	Postmarked by <b>Month x</b> , 2023
<b>Object</b>	<ul style="list-style-type: none"> <li>• <del>Te</del><u>Remain a Settlement Class Member and tell</u> the Court what you do not like about the Settlement</li> </ul> <p>The purpose of an objection to the Settlement is to persuade the Court not to approve the proposed Settlement. A successful objection to the Settlement may mean that the objector and other members of the Class are not bound by the Settlement.</p>	Filed and served by <b>Month x</b> , 2023

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice. The deadlines may be moved, cancelled, or otherwise modified, so please check [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com) regularly for updates and further details.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

**WHAT THIS NOTICE CONTAINS**

**BASIC INFORMATION.....PAGE 4**

- 1. Why was this Notice issued?
- 2. What is this lawsuit about?
- 3. Who is affected by the lawsuit?
- 4. What is a class action and who is involved?
- 5. Why is this lawsuit a class action?
- 6. Why is there a Settlement?

**THE SETTLEMENT CLASS.....PAGE 5**

- 7. Am I part of the Settlement Class?
- 8. Are there exceptions to being included?
- 9. What if I am still not sure if I am included?

**WHAT SETTLEMENT CLASS MEMBERS GET .....PAGE 6**

- 10. What does the Settlement provide?
- 11. What am I giving up by staying in the Settlement?

**HOW TO GET A PAYMENT .....PAGE 7**

- 12. How can I get a payment?
- 13. When will I get my payment?

**EXCLUDING YOURSELF FROM THE SETTLEMENT .....PAGE 7**

- 14. How do I ask to be excluded?
- 15. If I don't exclude myself, can I sue ANICO for the same thing later?
- 16. If I exclude myself, can I still get a Settlement payment?

**THE LAWYERS REPRESENTING YOU .....PAGE 8**

- 17. Do I have a lawyer in this case?
- 18. How will the lawyers be paid?
- 19. Should I get my own lawyer?

**OBJECTING TO THE SETTLEMENT .....PAGE 9**

- 20. How can I tell the Court if I do not like the Settlement?
- 21. What is the difference between objecting and excluding?

**THE COURT'S FAIRNESS HEARING .....PAGE 10**

- 22. When and where will the Court decide whether to approve the Settlement?
- 23. Do I have to come to the hearing?
- 24. May I speak at the hearing?

**IF YOU DO NOTHING .....PAGE 10**

- 25. What happens if I do nothing at all?

**GETTING MORE INFORMATION.....PAGE 11**

- 26. How can I get more information?

## **BASIC INFORMATION**

### **1. Why was this Notice issued?**

You have a right to know about a proposed Settlement and your rights and options before the Court decides whether to approve the Settlement.

Honorable Edward M. Chen of the United States District Court for the Northern District of California (the “Court”) is in charge of this case. The case is called *Yearby v. American National Insurance Company*, Case No. 3:20-cv-09222-EMC (N.D. Ca.). The individual who sued is Plaintiff Joe S. Yearby. The company he sued, ANICO, is called the Defendant.

### **2. What is this lawsuit about?**

The class action lawsuit alleges that that ANICO violated its contractual commitment to policyholders by refusing to decrease its COI rates despite alleged, improved future mortality expectations. Plaintiff asserts that he and members of the Class have been damaged as a result. ANICO denies Plaintiff’s claims; however, both sides have agreed to the Settlement to avoid the risks, costs, and delays of further litigation, including an appeal, so that people affected will get a chance to receive compensation.

### **3. Who is affected by the lawsuit?**

The Settlement affects all owners of universal life (including variable universal life) insurance policies issued in California by ANICO, or its predecessors in interest, that provide that COI rates are determined based on expectations as to future mortality experience, and that were subjected to monthly COI deductions on or after January 1, 2010. Excluded from the Settlement Class are Class Counsel and their employees; Defendant ANICO, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing; the Court, the Court’s staff, and their immediate families.

The ANICO life insurance products issued in California that are covered by this Settlement are UL 1983, UL I, and Pension UL I (issued on Forms FPL83 and PUL84); UL 1986, Anico Employee UL, UL II, Flex Universal Life, Pension UL II, Pension UL III, and UL III, (issued on Forms AUL86, FUL86, JUL86, PFUL86, PRUL86, and RUL86); and UL 1992, UL 100, UL 25 Salary Deduction UL, Universal Asset Life, and UL 50 (issued on Forms CUL93, HUL93, SDL93, UAL III, and UAL93).

### **4. What is a class action and who is involved?**

In a class action, a person(s) or entity(ies) called a “Class Representative(s)” sues on behalf of all individuals who have a similar claim. Here, Plaintiff Joe S. Yearby represents other eligible ANICO policy owners and together they are called the “Class” or “Class Members.” Bringing a case, such as this one, as a class action allows resolution of many similar claims of persons and entities that might be economically too small to bring in individual actions. One court resolves the issues for all class members, except for those who validly exclude themselves from the class.

## **5. Why is this lawsuit a class action?**

In the Court's Order Preliminarily Approving Class Action Settlement, the Court decided that the settlement of the breach of contract claim against ANICO in this lawsuit can proceed as a class action because, at that point of the lawsuit, it met the requirements of Rule 23 of the Federal Rules of Civil Procedure, which governs class actions in federal court. The Court found that:

- There are numerous Class Members whose interests will be affected by this lawsuit;
- There are legal questions and facts that are common to each of them;
- The Class Representative's claims are typical of the claims of the rest of the Class;
- The Class Representative and the lawyers representing the Class will fairly and adequately represent the interests of the Class;
- A class action would be a fair, efficient and superior way to resolve this lawsuit;
- The common legal questions and facts predominate over questions that affect only individual Class Members; and

In certifying the Settlement Class, the Court appointed Susman Godfrey L.L.P. as Class Counsel. For more information, visit the Important Documents page at [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com).

## **6. Why is there a Settlement?**

ANICO denies any and all liability or wrongdoing of any sort with regard to its COI rates. Instead, the parties have agreed to the Settlement. The parties want to avoid the risks, costs, and delays of further litigation. The Court has not decided in favor of the Plaintiff or the Defendant. Plaintiff and Class Counsel think the Settlement is in the best interests of the Settlement Class and is fair, reasonable, and adequate.

## **THE SETTLEMENT CLASS**

### **7. Am I part of the Settlement Class?**

You are a member of the Settlement Class if you own or owned a universal life (including variable universal life) insurance policy issued in California by ANICO, or its predecessors in interest, that provides that COI rates are determined based on expectations as to future mortality experience, and that was subjected to monthly COI deductions on or after January 1, 2010. See Questions **3** and **8** for more information.

### **8. Are there exceptions to being included?**

Yes. Excluded from the Settlement Class are Class Counsel and their employees; Defendant ANICO, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing; the Court, the Court's staff, and their immediate families.

In addition, policy owners have an opportunity to request exclusion from the Settlement, as described below. Policy owners that timely and validly request exclusion will not be part of the Settlement Class and will not be entitled to any of its benefits.

If an owner (such as a securities intermediary or trustee) owns multiple policies on behalf of different principals, that owner may stay in or opt-out of the Settlement Class separately for each policy.

### **9. What if I am still not sure if I am included?**

If you are still not sure whether you are a Settlement Class Member, please visit [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com), call the Settlement Administrator toll-free at 1-877-381-0370, or write to: American National Insurance COI Litigation, c/o JND Legal Administration, P.O. Box 91237, Seattle, WA 98111.

## **WHAT SETTLEMENT CLASS MEMBERS GET**

### **10. What does the Settlement provide?**

A Settlement Fund of \$5 million will be established for Settlement Class Members. The Settlement Fund will be reduced proportionally if there are any opt outs from the Settlement Class. After payment of the cost to administer the Settlement Fund (estimated to be \$60,020) as well as attorneys' fees and expenses (not to exceed \$1,666,666.67 or 33 1/3% of the cash component of the Settlement) and the payment to the Class Representative (up to \$25,000) (see Question 18 below), the Settlement Administrator will distribute the remaining amounts to Settlement Class Members in proportion to their share of the overall COI overcharges collected from the Settlement Class through February 28, 2023, with each Class Member receiving a minimum distribution of \$100. No portion of the Settlement Fund will be returned to ANICO.

ANICO has also agreed to provide the following relief, quantified as having present value of \$362,289, not to:

- Increase current COI rate scales for the Class Members' policies for a period of five years after the Court finally approves the Settlement.
- Take any legal action (including asserting as an affirmative defense or counter-claim), or cause to take any legal action, that seeks to void, rescind, cancel, have declared void, or seeks to deny coverage under or deny a death claim for any Class Policy based on: (1) an alleged lack of valid insurable interest under any applicable law or equitable principles; or (2) any misrepresentation allegedly made on the application for, or otherwise made in applying for the policy.

More details are in a document called the Settlement Agreement, which is available at [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com).

### **11. What am I giving up by staying in the Settlement?**

If you are a Settlement Class Member, unless you exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against ANICO about the facts that arise from the same factual predicate of the claims released in this Settlement. It also means that all the decisions by the Court will bind you. The Released Claims and Released Parties are

Questions? Call 1-877-381-0370 or visit [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com)

defined in the Settlement Agreement. They describe the legal claims that you give up if you stay in the Settlement. The Settlement Agreement is available at [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com).

### **HOW TO GET A PAYMENT**

#### **12. How can I get a payment?**

You will automatically receive a payment in the mail if you are entitled to one. No claims need to be filed.

#### **13. When will I get my payment?**

Payments will be mailed to Settlement Class Members after the Court grants “final approval” of the Settlement and after all appeals are resolved. If the Court approves the Settlement, there may be appeals. It is always uncertain whether these appeals can be resolved and resolving them can take time. Please be patient.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want a payment from the Settlement or you want to keep the right to sue or continue to sue ANICO on your own about the claims released in the Settlement, then you must take steps to get out of the Settlement. This is called excluding yourself—or it is sometimes referred to as “opting out” of the Settlement.

#### **14. How do I ask to be excluded?**

To exclude yourself (or “opt-out”) of the Settlement, you must complete and mail the Settlement Administrator a written request for exclusion. The exclusion request must include the following:

- Your full name, address, telephone number, and email address (if any);
- A statement says that you want to be excluded from the Settlement Class;
- The case name (*Yearby v. American National Insurance Company*)
- The policy number(s) to be excluded; and
- Your signature.

You must mail your exclusion request **postmarked by Month x, 2023** to:

American National Insurance COI Litigation  
c/o JND Legal Administration  
P.O. Box 91237  
Seattle, WA 98111

If you own multiple policies that are included in the Settlement Class, you may request to exclude some policies from the Settlement Class while participating in the Settlement Class with respect to other policies.

**IF YOU DO NOT EXCLUDE YOURSELF BY **MONTH x**, 2023, YOU WILL REMAIN PART OF THE SETTLEMENT CLASS AND BE BOUND BY THE ORDERS OF THE COURT IN THIS LAWSUIT.**

**15. If I don't exclude myself, can I sue ANICO for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue ANICO for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from this Settlement to continue your own lawsuit. If you properly exclude yourself from the Settlement, you will not be bound by any orders or judgments entered in the Action relating to the Settlement.

**16. If I exclude myself, can I still get a Settlement payment?**

No. You will not get any money from the Settlement if you exclude yourself.

**THE LAWYERS REPRESENTING YOU**

**17. Do I have a lawyer in this case?**

Yes. The Court has appointed the following lawyers as "Class Counsel."

**Steven G. Sklaver**  
SUSMAN GODFREY L.L.P.  
1900 Avenue of the Stars, 14<sup>th</sup> Floor  
Los Angeles, CA 90067-6029  
ssklaver@susmangodfrey.com  
Telephone: 310-789-3100

**Seth Ard**  
**Ryan Kirkpatrick**  
SUSMAN GODFREY L.L.P.  
1301 Avenue of the Americas, 32nd Floor  
New York, NY 10019-6023  
sard@susmangodfrey.com  
rkirkpatrick@susmangodfrey.com  
Telephone: 212-336-8330

**Kevin Downs**  
SUSMAN GODFREY L.L.P.  
1000 Louisiana Street, Suite 5100  
Houston, TX 77002  
kdowns@susmangodfrey.com  
Telephone: 713-651-9366

**18. How will the lawyers be paid?**

The Court will determine how much Class Counsel will be paid for fees and expenses. Class Counsel will file a motion seeking an award for attorneys' fees not to exceed 33 1/3% of the ~~gross benefits provided to cash component of the Settlement Class~~ (that is, will not exceed 33 1/3% of \$5,~~362,289,000,000~~, which is \$1,~~787,429,666,666.67~~). In addition to seeking an award for attorneys' fees, Class Counsel will seek reimbursement for expenses incurred or to be

incurred in connection with the Settlement, as well as a Service Award up to \$25,000 for Plaintiff for his service as the representative on behalf of the Settlement Class, to be paid from the Final Settlement Fund. You will not be responsible for direct payment of any of these fees, expenses, or awards.

### **19. Should I get my own lawyer?**

If you stay in the Settlement Class, you do not need to hire your own lawyer to pursue the claims against ANICO because Class Counsel is working on behalf of the Settlement Class. However, if you want to be represented by your own lawyer, you may hire one at your own expense and cost.

## **OBJECTING TO THE SETTLEMENT**

### **20. How can I tell the Court if I do not like the Settlement?**

Any Settlement Class Member who does not timely and properly opt out of the Settlement may object to the fairness, reasonableness, or adequacy of the proposed Settlement. Settlement Class Members who wish to object to any term of the Settlement must do so, in writing, by filing a written objection with the Court. The Court can only approve or deny the Settlement. The Court cannot alter the terms of the Settlement. The written objection must include:

- The case name and number (*Yearby v. American National Insurance Company*, Case No. 3:20-cv-09222-EMC);
- Your full name, address, telephone number, and email address (if any);
- The policy number(s);
- A written statement of all grounds for the objection accompanied by any legal support for the objection (if any);
- Copies of any papers, briefs, or other documents upon which the objection is based;
- A list of all persons who will be called to testify in support of the objection (if any);
- A statement of whether you intend to appear at the Fairness Hearing; and
- Your or your counsel's signature.

If you intend to appear at the Fairness Hearing through counsel, the written objection must also state the identity of all attorneys representing you who will appear at the Fairness Hearing. Your objection, along with any supporting material you wish to submit, must be filed with the Office of the Court at the address below by **Month x, 2023**.

Phillip Burton Federal Building & United States Courthouse  
450 Golden Gate Avenue  
San Francisco, CA 94102



**21. What is the difference between objecting and excluding?**

Objecting is simply telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement-; thereby remaining a Settlement Class Member. The purpose of an objection to the Settlement is to persuade the Court not to approve the proposed Settlement. A successful objection to the Settlement may mean that the objector and other members of the Class are not bound by the Settlement. Excluding yourself from the Settlement is telling the Court that you do not want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you.

**THE COURT’S FAIRNESS HEARING**

**22. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Fairness Hearing on **Month x**, 2023 at **x:xx x.m. PT** at **x**. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider how much to pay and reimburse Class Counsel and any Service Award payment to Plaintiff. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. The date of the Fairness Hearing may change without further notice, so please check [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com) or <https://ecf.cand.uscourts.gov> for updates.

**23. Do I have to come to the hearing?**

No. But you or your own lawyer may attend at your expense. If you submit an objection, you do not have to come to Court to talk about it. As long as you filed and served your written objection on time to the proper addresses, the Court will consider it.

**24. May I speak at the hearing?**

Yes. You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your “Notice of Intent to Appear.” Your request must state your name, address, and telephone number, as well as the name, address, and telephone number of the person that will appear on your behalf. Your request must be filed with the Clerk of the Court and served on Class Counsel and Defendant’s Counsel no later than **Month x**, 2023.

**IF YOU DO NOTHING**

**25. What happens if I do nothing at all?**

Those who are eligible to receive a payment from the Settlement do not need to do anything to receive payment; you will automatically receive a payment from the Settlement. Unless you

exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against ANICO about the legal issues that arise from the same factual predicate of this case, ever again.

### **GETTING MORE INFORMATION**

#### **26. How can I get more information?**

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement, available at [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com). You can also call the Settlement Administrator toll-free at 1-877-381-0370, or write to:

American National Insurance COI Litigation  
c/o JND Legal Administration  
P.O. Box 91237  
Seattle, WA 98111

Complete copies of the pleadings, orders and other publicly filed documents in the lawsuit may also be accessed for a fee through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>.

**PLEASE DO NOT CONTACT THE COURT**

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**If you own or owned a universal life policy issued in California by ANICO that was subject to monthly COI deductions on or after January 1, 2010, you may be eligible for an average payout of \$973.26 in a class action settlement**

*A court authorized this notice. This is not a solicitation from a lawyer.*

- A proposed settlement has been reached in a class action lawsuit called *Yearby v. American National Insurance Company*, Case No. 3:20-cv-09222-EMC (N.D. Ca.) (the “Settlement”).
- Plaintiff alleges that Defendant American National Insurance Company (“ANICO”) violated its contractual commitment to policyholders by refusing to decrease its cost of insurance (“COI”) rates despite alleged, improved future mortality expectations. Plaintiff seeks monetary relief for the COI overcharges. ANICO denies Plaintiff’s claims and any and all liability or wrongdoing.
- If the Court approves the Settlement, Settlement Class Members will be eligible to receive payment from a cash Settlement Fund of up to \$5 million, as further detailed in Question 10.
- In addition, ANICO agrees that for a period of five years after the Court finally approves the Settlement, current COI rate scales for the Class Members’ policies will not be increased, and that it will not take any legal action (including asserting as an affirmative defense or counter-claim), or cause to take any legal action, that seeks to void, rescind, cancel, have declared void, or seeks to deny coverage under or deny a death claim for any Class Policy based on: (1) an alleged lack of valid insurable interest under any applicable law or equitable principles; or (2) any misrepresentation allegedly made on the application for, or otherwise made in applying for the policy, as outlined in the Settlement Agreement available at [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com). An insurance expert has quantified that non-monetary relief as having a present value of \$362,289.
- You are a Settlement Class Member if you own or owned a universal life (including variable universal life) insurance policy issued in California by ANICO, or its predecessors in interest, that provide that COI rates are determined based on expectations as to future mortality experience, and that were subjected to monthly COI deductions on or after January 1, 2010. Your legal rights are affected whether or not you act. ***Please read this Notice carefully.***

<b>YOUR LEGAL RIGHTS AND OPTIONS</b>		
<b>Do Nothing</b>	<ul style="list-style-type: none"> <li>• Get certain benefits from the Settlement — Automatically receive a payment in the mail if you are entitled to one</li> <li>• Be bound by the Settlement</li> <li>• Give up your right to sue or continue to sue ANICO for the claims in this case</li> </ul>	
<b>Ask to be Excluded (“Opt Out”)</b>	<ul style="list-style-type: none"> <li>• Remove yourself from the Settlement Class</li> <li>• Get no benefits from the Settlement</li> <li>• Keep your right to sue or continue to sue ANICO, at your own expense, for the claims in this case</li> </ul>	Postmarked by <b>Month x</b> , 2023
<b>Object</b>	<ul style="list-style-type: none"> <li>• Remain a Settlement Class Member and tell the Court what you do not like about the Settlement</li> </ul> <p>The purpose of an objection to the Settlement is to persuade the Court not to approve the proposed Settlement. A successful objection to the Settlement may mean that the objector and other members of the Class are not bound by the Settlement.</p>	Filed and served by <b>Month x</b> , 2023

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice. The deadlines may be moved, cancelled, or otherwise modified, so please check [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com) regularly for updates and further details.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

**WHAT THIS NOTICE CONTAINS**

**BASIC INFORMATION.....PAGE 4**

- 1. Why was this Notice issued?
- 2. What is this lawsuit about?
- 3. Who is affected by the lawsuit?
- 4. What is a class action and who is involved?
- 5. Why is this lawsuit a class action?
- 6. Why is there a Settlement?

**THE SETTLEMENT CLASS.....PAGE 5**

- 7. Am I part of the Settlement Class?
- 8. Are there exceptions to being included?
- 9. What if I am still not sure if I am included?

**WHAT SETTLEMENT CLASS MEMBERS GET .....PAGE 6**

- 10. What does the Settlement provide?
- 11. What am I giving up by staying in the Settlement?

**HOW TO GET A PAYMENT .....PAGE 7**

- 12. How can I get a payment?
- 13. When will I get my payment?

**EXCLUDING YOURSELF FROM THE SETTLEMENT .....PAGE 7**

- 14. How do I ask to be excluded?
- 15. If I don't exclude myself, can I sue ANICO for the same thing later?
- 16. If I exclude myself, can I still get a Settlement payment?

**THE LAWYERS REPRESENTING YOU .....PAGE 8**

- 17. Do I have a lawyer in this case?
- 18. How will the lawyers be paid?
- 19. Should I get my own lawyer?

**OBJECTING TO THE SETTLEMENT .....PAGE 9**

- 20. How can I tell the Court if I do not like the Settlement?
- 21. What is the difference between objecting and excluding?

**THE COURT'S FAIRNESS HEARING .....PAGE 10**

- 22. When and where will the Court decide whether to approve the Settlement?
- 23. Do I have to come to the hearing?
- 24. May I speak at the hearing?

**IF YOU DO NOTHING .....PAGE 10**

- 25. What happens if I do nothing at all?

**GETTING MORE INFORMATION.....PAGE 11**

- 26. How can I get more information?

## **BASIC INFORMATION**

### **1. Why was this Notice issued?**

You have a right to know about a proposed Settlement and your rights and options before the Court decides whether to approve the Settlement.

Honorable Edward M. Chen of the United States District Court for the Northern District of California (the “Court”) is in charge of this case. The case is called *Yearby v. American National Insurance Company*, Case No. 3:20-cv-09222-EMC (N.D. Ca.). The individual who sued is Plaintiff Joe S. Yearby. The company he sued, ANICO, is called the Defendant.

### **2. What is this lawsuit about?**

The class action lawsuit alleges that that ANICO violated its contractual commitment to policyholders by refusing to decrease its COI rates despite alleged, improved future mortality expectations. Plaintiff asserts that he and members of the Class have been damaged as a result. ANICO denies Plaintiff’s claims; however, both sides have agreed to the Settlement to avoid the risks, costs, and delays of further litigation, including an appeal, so that people affected will get a chance to receive compensation.

### **3. Who is affected by the lawsuit?**

The Settlement affects all owners of universal life (including variable universal life) insurance policies issued in California by ANICO, or its predecessors in interest, that provide that COI rates are determined based on expectations as to future mortality experience, and that were subjected to monthly COI deductions on or after January 1, 2010. Excluded from the Settlement Class are Class Counsel and their employees; Defendant ANICO, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing; the Court, the Court’s staff, and their immediate families.

The ANICO life insurance products issued in California that are covered by this Settlement are UL 1983, UL I, and Pension UL I (issued on Forms FPL83 and PUL84); UL 1986, Anico Employee UL, UL II, Flex Universal Life, Pension UL II, Pension UL III, and UL III, (issued on Forms AUL86, FUL86, JUL86, PFUL86, PRUL86, and RUL86); and UL 1992, UL 100, UL 25 Salary Deduction UL, Universal Asset Life, and UL 50 (issued on Forms CUL93, HUL93, SDL93, UAL III, and UAL93).

### **4. What is a class action and who is involved?**

In a class action, a person(s) or entity(ies) called a “Class Representative(s)” sues on behalf of all individuals who have a similar claim. Here, Plaintiff Joe S. Yearby represents other eligible ANICO policy owners and together they are called the “Class” or “Class Members.” Bringing a case, such as this one, as a class action allows resolution of many similar claims of persons and entities that might be economically too small to bring in individual actions. One court resolves the issues for all class members, except for those who validly exclude themselves from the class.

## **5. Why is this lawsuit a class action?**

In the Court's Order Preliminarily Approving Class Action Settlement, the Court decided that the settlement of the breach of contract claim against ANICO in this lawsuit can proceed as a class action because, at that point of the lawsuit, it met the requirements of Rule 23 of the Federal Rules of Civil Procedure, which governs class actions in federal court. The Court found that:

- There are numerous Class Members whose interests will be affected by this lawsuit;
- There are legal questions and facts that are common to each of them;
- The Class Representative's claims are typical of the claims of the rest of the Class;
- The Class Representative and the lawyers representing the Class will fairly and adequately represent the interests of the Class;
- A class action would be a fair, efficient and superior way to resolve this lawsuit;
- The common legal questions and facts predominate over questions that affect only individual Class Members; and

In certifying the Settlement Class, the Court appointed Susman Godfrey L.L.P. as Class Counsel. For more information, visit the Important Documents page at [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com).

## **6. Why is there a Settlement?**

ANICO denies any and all liability or wrongdoing of any sort with regard to its COI rates. Instead, the parties have agreed to the Settlement. The parties want to avoid the risks, costs, and delays of further litigation. The Court has not decided in favor of the Plaintiff or the Defendant. Plaintiff and Class Counsel think the Settlement is in the best interests of the Settlement Class and is fair, reasonable, and adequate.

### **THE SETTLEMENT CLASS**

## **7. Am I part of the Settlement Class?**

You are a member of the Settlement Class if you own or owned a universal life (including variable universal life) insurance policy issued in California by ANICO, or its predecessors in interest, that provides that COI rates are determined based on expectations as to future mortality experience, and that was subjected to monthly COI deductions on or after January 1, 2010. See Questions **3** and **8** for more information.

## **8. Are there exceptions to being included?**

Yes. Excluded from the Settlement Class are Class Counsel and their employees; Defendant ANICO, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing; the Court, the Court's staff, and their immediate families.

In addition, policy owners have an opportunity to request exclusion from the Settlement, as described below. Policy owners that timely and validly request exclusion will not be part of the Settlement Class and will not be entitled to any of its benefits.

If an owner (such as a securities intermediary or trustee) owns multiple policies on behalf of different principals, that owner may stay in or opt-out of the Settlement Class separately for each policy.

#### **9. What if I am still not sure if I am included?**

If you are still not sure whether you are a Settlement Class Member, please visit [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com), call the Settlement Administrator toll-free at 1-877-381-0370, or write to: American National Insurance COI Litigation, c/o JND Legal Administration, P.O. Box 91237, Seattle, WA 98111.

### **WHAT SETTLEMENT CLASS MEMBERS GET**

#### **10. What does the Settlement provide?**

A Settlement Fund of \$5 million will be established for Settlement Class Members. The Settlement Fund will be reduced proportionally if there are any opt outs from the Settlement Class. After payment of the cost to administer the Settlement Fund (estimated to be \$60,020) as well as attorneys' fees and expenses (not to exceed \$1,666,666.67 or 33 1/3% of the cash component of the Settlement) and the payment to the Class Representative (up to \$25,000) (*see* Question 18 below), the Settlement Administrator will distribute the remaining amounts to Settlement Class Members in proportion to their share of the overall COI overcharges collected from the Settlement Class through February 28, 2023, with each Class Member receiving a minimum distribution of \$100. No portion of the Settlement Fund will be returned to ANICO.

ANICO has also agreed to provide the following relief, quantified as having present value of \$362,289, not to:

- Increase current COI rate scales for the Class Members' policies for a period of five years after the Court finally approves the Settlement.
- Take any legal action (including asserting as an affirmative defense or counter-claim), or cause to take any legal action, that seeks to void, rescind, cancel, have declared void, or seeks to deny coverage under or deny a death claim for any Class Policy based on: (1) an alleged lack of valid insurable interest under any applicable law or equitable principles; or (2) any misrepresentation allegedly made on the application for, or otherwise made in applying for the policy.

More details are in a document called the Settlement Agreement, which is available at [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com).

#### **11. What am I giving up by staying in the Settlement?**

If you are a Settlement Class Member, unless you exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against ANICO about the facts that arise from the same factual predicate of the claims released in this Settlement. It also means that all the decisions by the Court will bind you. The Released Claims and Released Parties are

Questions? Call 1-877-381-0370 or visit [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com)



defined in the Settlement Agreement. They describe the legal claims that you give up if you stay in the Settlement. The Settlement Agreement is available at [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com).

## **HOW TO GET A PAYMENT**

### **12. How can I get a payment?**

You will automatically receive a payment in the mail if you are entitled to one. No claims need to be filed.

### **13. When will I get my payment?**

Payments will be mailed to Settlement Class Members after the Court grants “final approval” of the Settlement and after all appeals are resolved. If the Court approves the Settlement, there may be appeals. It is always uncertain whether these appeals can be resolved and resolving them can take time. Please be patient.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want a payment from the Settlement or you want to keep the right to sue or continue to sue ANICO on your own about the claims released in the Settlement, then you must take steps to get out of the Settlement. This is called excluding yourself—or it is sometimes referred to as “opting out” of the Settlement.

### **14. How do I ask to be excluded?**

To exclude yourself (or “opt-out”) of the Settlement, you must complete and mail the Settlement Administrator a written request for exclusion. The exclusion request must include the following:

- Your full name, address, telephone number, and email address (if any);
- A statement says that you want to be excluded from the Settlement Class;
- The case name (*Yearby v. American National Insurance Company*)
- The policy number(s) to be excluded; and
- Your signature.

You must mail your exclusion request **postmarked by Month x, 2023** to:

American National Insurance COI Litigation  
c/o JND Legal Administration  
P.O. Box 91237  
Seattle, WA 98111

If you own multiple policies that are included in the Settlement Class, you may request to exclude some policies from the Settlement Class while participating in the Settlement Class with respect to other policies.

**IF YOU DO NOT EXCLUDE YOURSELF BY **MONTH x**, 2023, YOU WILL REMAIN PART OF THE SETTLEMENT CLASS AND BE BOUND BY THE ORDERS OF THE COURT IN THIS LAWSUIT.**

**15. If I don't exclude myself, can I sue ANICO for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue ANICO for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from this Settlement to continue your own lawsuit. If you properly exclude yourself from the Settlement, you will not be bound by any orders or judgments entered in the Action relating to the Settlement.

**16. If I exclude myself, can I still get a Settlement payment?**

No. You will not get any money from the Settlement if you exclude yourself.

**THE LAWYERS REPRESENTING YOU**

**17. Do I have a lawyer in this case?**

Yes. The Court has appointed the following lawyers as "Class Counsel."

**Steven G. Sklaver**  
SUSMAN GODFREY L.L.P.  
1900 Avenue of the Stars, 14<sup>th</sup> Floor  
Los Angeles, CA 90067-6029  
ssklaver@susmangodfrey.com  
Telephone: 310-789-3100

**Seth Ard**  
**Ryan Kirkpatrick**  
SUSMAN GODFREY L.L.P.  
1301 Avenue of the Americas, 32<sup>nd</sup> Floor  
New York, NY 10019-6023  
sard@susmangodfrey.com  
rkirkpatrick@susmangodfrey.com  
Telephone: 212-336-8330

**Kevin Downs**  
SUSMAN GODFREY L.L.P.  
1000 Louisiana Street, Suite 5100  
Houston, TX 77002  
kdowns@susmangodfrey.com  
Telephone: 713-651-9366

**18. How will the lawyers be paid?**

The Court will determine how much Class Counsel will be paid for fees and expenses. Class Counsel will file a motion seeking an award for attorneys' fees not to exceed 33 1/3% of the cash component of the Settlement (that is, will not exceed 33 1/3% of \$5,000,000, which is \$1,666,666.67). In addition to seeking an award for attorneys' fees, Class Counsel will seek reimbursement for expenses incurred or to be incurred in connection with the Settlement, as well

as a Service Award up to \$25,000 for Plaintiff for his service as the representative on behalf of the Settlement Class, to be paid from the Final Settlement Fund. You will not be responsible for direct payment of any of these fees, expenses, or awards.

### **19. Should I get my own lawyer?**

If you stay in the Settlement Class, you do not need to hire your own lawyer to pursue the claims against ANICO because Class Counsel is working on behalf of the Settlement Class. However, if you want to be represented by your own lawyer, you may hire one at your own expense and cost.

## **OBJECTING TO THE SETTLEMENT**

### **20. How can I tell the Court if I do not like the Settlement?**

Any Settlement Class Member who does not timely and properly opt out of the Settlement may object to the fairness, reasonableness, or adequacy of the proposed Settlement. Settlement Class Members who wish to object to any term of the Settlement must do so, in writing, by filing a written objection with the Court. The Court can only approve or deny the Settlement. The Court cannot alter the terms of the Settlement. The written objection must include:

- The case name and number (*Yearby v. American National Insurance Company*, Case No. 3:20-cv-09222-EMC);
- Your full name, address, telephone number, and email address (if any);
- The policy number(s);
- A written statement of all grounds for the objection accompanied by any legal support for the objection (if any);
- Copies of any papers, briefs, or other documents upon which the objection is based;
- A list of all persons who will be called to testify in support of the objection (if any);
- A statement of whether you intend to appear at the Fairness Hearing; and
- Your or your counsel's signature.

If you intend to appear at the Fairness Hearing through counsel, the written objection must also state the identity of all attorneys representing you who will appear at the Fairness Hearing. Your objection, along with any supporting material you wish to submit, must be filed with the Office of the Court at the address below by **Month x, 2023**.

Phillip Burton Federal Building & United States Courthouse  
450 Golden Gate Avenue  
San Francisco, CA 94102

**21. What is the difference between objecting and excluding?**

Objecting is simply telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement; thereby remaining a Settlement Class Member. The purpose of an objection to the Settlement is to persuade the Court not to approve the proposed Settlement. A successful objection to the Settlement may mean that the objector and other members of the Class are not bound by the Settlement. Excluding yourself from the Settlement is telling the Court that you do not want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you.

**THE COURT’S FAIRNESS HEARING**

**22. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Fairness Hearing on **Month x**, 2023 at **x:xx x**.m. PT at **x**. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider how much to pay and reimburse Class Counsel and any Service Award payment to Plaintiff. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. The date of the Fairness Hearing may change without further notice, so please check [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com) or <https://ecf.cand.uscourts.gov> for updates.

**23. Do I have to come to the hearing?**

No. But you or your own lawyer may attend at your expense. If you submit an objection, you do not have to come to Court to talk about it. As long as you filed and served your written objection on time to the proper addresses, the Court will consider it.

**24. May I speak at the hearing?**

Yes. You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your “Notice of Intent to Appear.” Your request must state your name, address, and telephone number, as well as the name, address, and telephone number of the person that will appear on your behalf. Your request must be filed with the Clerk of the Court and served on Class Counsel and Defendant’s Counsel no later than **Month x**, 2023.

**IF YOU DO NOTHING**

**25. What happens if I do nothing at all?**

Those who are eligible to receive a payment from the Settlement do not need to do anything to receive payment; you will automatically receive a payment from the Settlement. Unless you exclude yourself, you won’t be able to start a lawsuit, continue with a lawsuit, or be part of any

other lawsuit against ANICO about the legal issues that arise from the same factual predicate of this case, ever again.

### **GETTING MORE INFORMATION**

#### **26. How can I get more information?**

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement, available at [www.AnicoCOISettlement.com](http://www.AnicoCOISettlement.com). You can also call the Settlement Administrator toll-free at 1-877-381-0370, or write to:

American National Insurance COI Litigation  
c/o JND Legal Administration  
P.O. Box 91237  
Seattle, WA 98111

Complete copies of the pleadings, orders and other publicly filed documents in the lawsuit may also be accessed for a fee through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>.

**PLEASE DO NOT CONTACT THE COURT**