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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION
18

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 STIPULATION AND
SETTLEMENT AGREEMENT**

1 5. “Class” means “[a]ll owners of universal life (including variable universal life)
2 insurance Policies issued in California by American National Insurance Company, or its
3 predecessors in interest, that provide that cost of insurance rates are determined based on
4 expectations as to future mortality experience, and that were subjected to monthly cost of insurance
5 deductions on or after January 1, 2010.” Specifically excluded from the Class are Class Counsel
6 and their employees; American National; officers and directors of American National, and
7 members of their immediate families; the heirs, successors or assigns of any of the foregoing; the
8 Court, the Court’s staff, and their immediate families.

9 6. “Class Counsel” means Susman Godfrey L.L.P.

10 7. “Class Counsel’s Fees and Expenses” means the amount of the award approved by
11 the Court to be paid to Class Counsel from the Final Settlement Fund for attorneys’ fees and
12 reimbursement of Class Counsel’s costs and expenses.

13 8. “Class Notice” means the notice of the Settlement approved by the Court to be sent
14 by the Settlement Administrator to the Class.

15 9. “COI” means cost of insurance.

16 10. “COI Rate” means the rate used to calculate COI charges for the Policies.

17 11. “COI Rate Scale” or “COI Rate Scales” refers to the table(s) of COI rates for the
18 Policies.

19 12. “Confidential Information” means material designated as “Confidential” in
20 accordance with the terms of the Stipulated Protective Order entered in the Action on July 14, 2021
21 (Dkt. 52).

22 13. “Court” means The United States District Court for the Northern District of
23 California, Hon. Edward M. Chen.

24 14. “Current COI Rate Scales” refers to the tables of COI rates for the Policies that were
25 in effect as of November 22, 2022, and which have been produced in this Action. ANICO represents
26 and warrants that the Current COI Rate Scales have not been changed as of the date of this
27 Agreement.

28

1 15. “Excluded Claims” refers to all claims arising from a future increase to Defendant’s
2 Current COI Rate Scales, or increases to any other policy charges and credits, following the date
3 of this Agreement and which could not have been asserted in the Action based on the Factual
4 Predicate. For the avoidance of doubt, Excluded Claims do not include (a) Claims arising from
5 year-to-year increases in COI Rates under Defendant’s Current COI Rate Scales, whether occurring
6 in the past or the future, due to an insured’s sex, attained age or rating classification, so long as
7 there has been no change in Defendant’s Current COI Rate Scales, or (b) any other Claims
8 challenging Defendant’s Current COI Rate Scales. The right to pursue Excluded Claims is
9 expressly reserved by the Settlement Class Members.

10 16. “Factual Predicate” means the facts, allegations, claims or assertions made by
11 Plaintiff in the Action on his own behalf or on behalf of the Class and, for the avoidance of doubt
12 and without limitation, specifically includes allegations related to American National’s failure to
13 decrease COI Rates; its methods, interpretations, processes or procedures in developing the Current
14 COI Rate Scales; and/or its or methods, interpretations, processes or procedures for calculating and
15 assessing COI in the past, present, or future using the Current COI Rate Scales, including whether
16 or not such Current COI Rate Scales included or includes in the future: (a) consideration of factors
17 in addition to sex, attained age, or rating class of the insured; and/or (b) any alleged expense in
18 excess of alleged monthly percentages of premium dollar expense limits expressed through policy
19 data pages.

20 17. “Final Approval Date” means the date on which the Court enters its Order and
21 Judgment approving the Settlement.

22 18. “Final Settlement Date” means the date on which the Order and Judgment becomes
23 final, which shall be the latest of: (i) the date of final affirmance on any appeal of the Order and
24 Judgment; (ii) the date of final dismissal with prejudice of the last pending appeal from the Order
25 and Judgment; or (iii) if no appeal is filed, the expiration of the time for filing or noticing any form
26 of valid appeal from the Order and Judgment.

27 19. “Final Settlement Fund” means the cash fund after any reductions in the amount of
28 the Settlement Fund pursuant to paragraph 44. The Final Settlement Fund will be a single qualified

1 settlement fund pursuant to 26 U.S.C. § 468B that will be used to pay: (i) Settlement Administration
2 Expenses; (ii) any Incentive Award; (iii) any Class Counsel's Fees and Expenses awarded by the
3 Court; (iv) all payments to the Settlement Class; and (v) any other payments provided for under
4 this Settlement or the Order and Judgment. There will be no reversion of any portion of the Final
5 Settlement Fund to American National. All funds held in the Final Settlement Fund and all earnings
6 thereon, shall be deemed to be *in custodia legis* of the Court and shall remain subject to the
7 jurisdiction of the Court until such time as the funds shall have been disbursed pursuant to the terms
8 of this Agreement or further order of the Court.

9 20. "Funding Date" means ten (10) calendar days after the Court grants preliminary
10 approval of the Settlement.

11 21. "Incentive Award" means the amount of an award approved by the Court to be paid
12 to Plaintiff from the Final Settlement Fund, in addition to any settlement relief he may be eligible
13 to receive, to compensate Plaintiff for efforts undertaken by him on behalf of the Settlement Class.

14 22. "Mediator" means Judge Vaughn Walker (Ret.).

15 23. "Net Settlement Fund" means the Final Settlement Fund less (i) Settlement
16 Administration Expenses; (ii) any Incentive Award; (iii) any Class Counsel's Fees and Expenses
17 awarded by the Court; and (iv) any other payments provided for under this Settlement or the Order
18 and Judgment.

19 24. "Order and Judgment" means the Court's order approving the Settlement and
20 entering final judgment. The judgment will include a provision for the retention of the Court's
21 jurisdiction over the Parties to enforce the terms of the judgment and for a bar order (consistent
22 with the provisions of paragraph 88) prohibiting claims by the Releasing Parties against Released
23 Parties for the Released Claims.

24 25. "Owner" or "Owners" means a Policy's owner, whether person or entity, as recorded
25 on Defendant's books as of January 1, 2023. For Policies that have lapsed, surrendered, matured,
26 or otherwise terminated, Owner means a Policy's owner as recorded on Defendant's books as of
27 the date the Policy lapsed, surrendered, matured, or otherwise terminated, or any updated
28 information Defendant had as of January 1, 2023.

1 26. “Parties” means, collectively, Plaintiff and American National. The singular term
2 “Party” means either of Plaintiff or American National as appropriate.

3 27. “Plaintiff” means Joe S. Yearby, individually and as representative of the Class, and
4 his assigns, successors-in-interest, executors, administrators and/or representatives.

5 28. “Policy” or “Policies” means any universal life (including variable universal life)
6 insurance issued in California by American National Insurance Company that provide that cost of
7 insurance rates are determined based on expectations as to future mortality experience and no other
8 factor, and that were subjected to monthly cost of insurance deductions on or after January 1, 2010.

9 29. “Opt-Outs” means the Owner(s) that timely elect to opt-out of the Settlement during
10 the opt-out period provided in paragraph 52.

11 30. “Released Claims” means all Claims, from whatever jurisdiction, arising out of or
12 related to any Policy, or Policies, that were alleged or could have been alleged in the Action arising
13 out of the same Factual Predicate as that alleged in the Action and/or as clarified herein. For the
14 avoidance of doubt, Released Claims do not include Excluded Claims.

15 31. “Released Parties” means American National and their respective past, present, and
16 future parent companies, direct and indirect subsidiaries, affiliates, predecessors, successors and
17 assigns, together with each of the their respective past, present, and future officers, directors,
18 shareholders, employees, representatives, attorneys, and agents (including but not limited to, those
19 acting on behalf of American National and within the scope of their agency).

20 32. “Releasing Parties” means Plaintiff and each Settlement Class Member, on behalf
21 of themselves and their respective agents, heirs, relatives, representatives, attorneys, successors,
22 trustees, subrogees, executors, assignees, and all other persons or entities acting by, through, under,
23 or in concert with any of them.

24 33. “Settlement” means the settlement set forth in this Agreement.

25 34. “Settlement Administration Expenses” means all Class Notice and administrative
26 fees, costs, or expenses incurred in administering the Settlement, including those fees incurred by
27 the Settlement Administrator. Settlement Administration Expenses shall be paid from the Final
28 Settlement Fund.

1 35. “Settlement Administrator” means the third-party settlement administrator of the
2 Settlement. Plaintiff shall be responsible for selecting the Settlement Administrator. The
3 Settlement Administrator’s fees shall be paid from the Final Settlement Fund.

4 36. “Settlement Class” means the Class without the “Opt-Outs.”

5 37. “Settlement Class Member(s)” means all persons and entities that are included in
6 the Settlement Class.

7 38. “Settlement Fund” means a cash fund consisting of the consideration paid for the
8 benefit of the Settlement Class.

9 39. “Settlement Fund Account” or “Escrow Account” means the separate escrow
10 account designated and controlled by Class Counsel at one or more national banking institutions
11 into which the Final Settlement Fund will be deposited for the benefit of the Class pursuant to this
12 Agreement. As of the entry of Final Judgment or Order, including exhaustion of all appeals (if
13 any) , Defendant shall no longer have any right, title, or interest in the sums held in the Escrow
14 Account, except for any reduction in the amount owed for Opt-Outs. The Parties agree that upon
15 entry of Final Judgment or Order, including exhaustion of all appeals (if any), this is a non-
16 reversionary settlement, and, except as expressed in this Agreement, that there shall be no reversion
17 of the Final Settlement Fund to Defendant unless the Final Order and Judgment is not entered or is
18 overturned on appeal or review, and in no event shall Settlement Administration Expenses already
19 expended at the time revert to Defendant.

20 40. “Unknown Claims” means any claims asserted, that might have been asserted or
21 that hereafter may be asserted arising out of the facts, transactions, events, occurrences, acts,
22 disclosures, statements, omissions, or failures to act that were or could have been alleged in the
23 Action with respect to the Released Claims that the Releasing Parties do not know or suspect to
24 exist in his or her favor at the Final Approval Date, and which if known by him or her might have
25 affected his or her decision to opt-out of or object to the Settlement.

26 41. The terms “he or she” and “his or her” include “it” or “its,” where applicable.
27 Defined terms expressed in the singular also include the plural form of such term, and vice versa,
28 where applicable.

1 42. All references herein to sections and paragraphs refer to sections and paragraphs of
2 this Agreement, unless otherwise expressly stated in the reference.

3 **II. SETTLEMENT RELIEF**

4 **1. Cash Consideration to the Settlement Class**

5 43. American National shall fund the Settlement Fund, in the amount of \$5,000,000 by
6 the Funding Date.

7 44. The Settlement Fund shall be reduced on a pro-rata basis measured by the face
8 amount for each Opt-Out. By way of example, if 1% of the total face amount of the in-scope policies
9 owned by members of the Class is attributable to Opt-Outs, the Settlement Fund will be reduced
10 by 1% (i.e., to \$4,950,000). The reduced portion of the Settlement Fund, if any, shall be repaid to
11 American National within thirty (30) days of entry of Final Judgment or Order, including
12 exhaustion of all appeals (if any).

13 45. Any disputes regarding the reduction of the Settlement Fund shall first be presented
14 to the Mediator for potential resolution, and, absent resolution, to the Court for a determination.
15 The Settlement Fund, after any reduction for Opt-Outs is referred to herein as the Final Settlement
16 Fund, and the Class Policies that do not timely and validly opt-out during the opt-out period
17 constitute the Settlement Class. For the avoidance of doubt, if an Owner (such as a securities
18 intermediary or trustee) owns multiple policies on behalf of different principals, that Owner may
19 stay in the Settlement Class as to some Policies and opt-out of the Settlement Class for other
20 Policies. The Parties agree that the opt-out reduction methodology set forth in paragraph 44 is
21 proposed solely for settlement purposes and may not be used as an admission or evidence of the
22 validity of any damages model regarding any alleged wrongdoing by American National.

23 46. The Net Settlement Fund shall be distributed to the Settlement Class pursuant to a
24 distribution formula or other process to be developed by Class Counsel and approved by the Court.

25 47. American National shall not be required make any payments to the Settlement Class
26 in connection with this Action other than the Final Settlement Fund amount.

27

28

1 **2. Non-Cash Consideration to the Settlement Class**

2 48. For a period of five (5) years following the Final Approval Date, American National
3 agrees that Current COI Rate Scales for the Class Policies will not be increased.

4 49. American National agrees to not take any legal action (including asserting as an
5 affirmative defense or counter-claim), or cause to take any legal action, that seeks to void, rescind,
6 cancel, have declared void, or seeks to deny coverage under or deny a death claim for any Class
7 Policy based on: (1) an alleged lack of valid insurable interest under any applicable law or equitable
8 principles; or (2) any misrepresentation allegedly made on the application for, or otherwise made
9 in applying for the policy. The covenant set forth in this paragraph is solely prospective, and does
10 not apply to any actions taken by American National in the past. With the exception of the
11 foregoing, nothing contained in this Agreement shall otherwise restrict American National from:
12 (i) following its normal procedures and any applicable legal requirements regarding claims
13 processing, including but not limited to confirming the death of the insured; determining the proper
14 beneficiary to whom payment should be made in accordance with applicable laws, the terms of the
15 policy and policy specific documents filed with American National; and investigating and
16 responding to competing claims for death benefits; (ii) enforcing contract terms and applicable laws
17 with respect to misstatements regarding the age or gender of the insured; (iii) complying with any
18 court order, law or regulatory requirements or requests, including but not limited to, compliance
19 with regulations relating to the Office of Foreign Asset Control, Financial Industry Regulatory
20 Authority and Financial Crimes Enforcement Network.

21 **III. PRELIMINARY APPROVAL AND CLASS NOTICE**

22 50. The Parties agree that Plaintiff shall move for an order seeking preliminary approval
23 of the Settlement within 14 days of executing this Agreement, which shall include a request to
24 notify the Class of the settlement and provide a period during which Class members can request
25 exclusion from the settlement. To the extent the Court finds that the Settlement does not meet the
26 standard for preliminary approval, the Parties will negotiate in good faith to modify the Settlement
27 directly or with the assistance of the Mediator and endeavor to resolve the issue(s) to the satisfaction
28 of the Court.

1 51. Plaintiff's form of Class Notice will be direct mailing by the Settlement
2 Administrator to each Owner at address information that is available from American National's
3 files as well as publication notice through a settlement website. Plaintiff understands and agrees
4 that American National will provide its current Owner address information to the Settlement
5 Administrator, but may not have updated, and has no obligation to update, address information
6 related to policies that are no longer in force for any reason, including but not limited to death,
7 lapse, or termination.

8 52. Any Owner that wishes to Opt-Out of the Settlement Class must submit to the
9 Settlement Administrator a written request for exclusion sent by U.S. mail and postmarked no later
10 than 45 calendar days after the date set by the Court or in the Preliminary Approval order for notice
11 to go out to Owners. Unless otherwise directed by the Court, a list reflecting policy numbers of
12 Opt-Outs who validly requested exclusion shall be filed with the Court by the Parties prior to the
13 Fairness Hearing.

14 53. Opt-Outs must submit an opt-out request clearly stating that the Owner desires to be
15 excluded from the Settlement Class, must identify the Polic(y/ies) to be excluded, and must be
16 signed by such person or entity or by a person providing a valid power of attorney to act on behalf
17 of such person or entity.

18 54. The Settlement Administrator shall maintain the post office box to which Opt-Out
19 requests are required to be sent, monitor exclusion requests for accuracy and completeness, request
20 any needed clarifications. Settlement Administrator shall jointly discuss any needs for additional
21 information relating exclusively to the Settlement Agreement with Counsel for Plaintiff and
22 Defendant.

23 55. Settlement Administrator shall refer to Counsel for Defendant any requests from an
24 Owner for any insurance business-related information, including, without limitation, requests for
25 policy status, agent, or premium information. Upon confirming the request is business-related,
26 Counsel for Defendant shall refer the matter to a customer service representative for Defendant
27 who typically deal with such requests. If the request specifically involves questions over the
28 Settlement Agreement requiring Counsel involvement, Defendant's Counsel shall include

1 Plaintiff's Counsel on any communications. The Parties shall use their best efforts to prevent
2 disclosure of identifying information in such communications.

3 56. Settlement Class Members may object to this Settlement by filing a written objection
4 with the Court and serving any such written objection on counsel for the respective Parties (as
5 identified in the Class Notice) no later than 45 calendar days after the Notice Date, or as otherwise
6 determined by the Court. Unless otherwise ordered by the Court, the objection must contain: (1)
7 the full name, address, telephone number, and email address, if any, of the Settlement Class
8 Member; (2) Policy number; (3) a written statement of all grounds for the objection accompanied
9 by any legal support for the objection (if any); (4) copies of any papers, briefs, or other documents
10 upon which the objection is based; (5) a list of all persons who will be called to testify in support
11 of the objection (if any); (6) a statement of whether the Settlement Class Member intends to appear
12 at the Fairness Hearing; and (7) the signature of the Settlement Class Member or his/her counsel.
13 If an objecting Settlement Class Member intends to appear at the Fairness Hearing through counsel,
14 the written objection must also state the identity of all attorneys representing the objecting
15 Settlement Class Member who will appear at the Settlement Hearing. Unless otherwise ordered by
16 the Court, Settlement Class Members who do not timely make their objections as provided in this
17 Paragraph will be deemed to have waived all objections and shall not be heard or have the right to
18 appeal approval of the Settlement. The Class Notice shall advise Settlement Class Members of
19 their right to object and the manner required to do so.

20 57. Within 10 calendar days following the filing of this Agreement with the Court,
21 American National shall serve notices at its own expense of the proposed Settlement upon
22 appropriate officials in compliance with the requirements of the Class Action Fairness Act
23 ("CAFA"), 28 U.S.C. §1715.

24 58. American National shall have the option, but is not obligated to, terminate this
25 Agreement no later than 10 calendar days after expiration of the deadline for submitting Opt-Out
26 requests from the Settlement Class pursuant to paragraph 52 of this Agreement if more than 7% of
27 the Policies, as measured by face amount, timely request to Opt-Out from the Settlement.

28

1 **IV. INCENTIVE AWARD AND FEES AND EXPENSES**

2 59. Plaintiff will move for an Incentive Award from the Final Settlement Fund in an
3 amount up to but not more than \$25,000, subject to Court approval. The purposes of such an award
4 shall be to compensate the Plaintiff Joe S. Yearby for efforts undertaken by him on behalf of the
5 Class. Any Incentive Award approved by the Court shall be made to Plaintiff in addition to, and
6 shall not diminish or prejudice in any way, any settlement relief which he may be eligible to receive.

7 60. Plaintiff will move for attorneys' fees not to exceed 33 1/3% of the gross benefits
8 provided to the Settlement Class, and reimbursement for all expenses incurred or to be incurred,
9 payable only from the Final Settlement Fund. Class Counsel's Fees and Expenses, as awarded by
10 the Court, may be paid from the Final Settlement Fund, at Plaintiff's option, immediately upon
11 entry of an order approving such fees and expenses, or at a later date if required by the Court.

12 61. Neither Plaintiff nor American National shall be liable or obligated to pay any fees,
13 expenses, costs, or disbursements to any person, either directly or indirectly, in connection with the
14 Action, this Agreement, or the Settlement, other than those expressly provided in this Agreement.

15 62. The Parties agree that the Settlement is not conditioned on the Court's approval of
16 the Incentive Award or Class Counsel's Fees and Expenses.

17 **V. TAX REPORTING AND NO PREVAILING PARTY**

18 63. Any person or entity receiving any payment or consideration pursuant to this
19 Agreement shall alone be responsible for the reporting and payment of any federal, state and/or
20 local income or other form of tax on any payment or consideration made pursuant to this
21 Agreement, and American National shall have no obligations to report or pay any federal, state
22 and/or local income or other form of tax on any payment or consideration made pursuant to this
23 Agreement.

24 64. All taxes resulting from the tax liabilities of the Settlement Fund shall be paid solely
25 out of the Final Settlement Fund.

26 65. No Party shall be deemed the prevailing party for any purposes of this Action.
27
28

1 VI. RELEASES AND WAIVERS

2 66. Upon the Final Settlement Date, the Releasing Parties shall be deemed to have, and
3 by operation of the Order and Judgment shall have, fully, finally, and forever released, relinquished
4 and discharged the Released Parties of and from all Released Claims. For the avoidance of doubt,
5 the Released Claims do not include Excluded Claims.

6 67. Any person or entity receiving any payment or consideration pursuant to this
7 Agreement hereby expressly further warrants, represents and agrees that they are the sole Owner
8 of the particular Policy in question, sole owner of Released Claims released herein and fully
9 authorized to release such Released Claims.

10 68. The Releasing Parties hereby expressly further agree that they shall not now or
11 hereafter institute, maintain, assert, join, incite others to or themselves participate in, either directly
12 or indirectly, on their own behalf, on behalf of a class, or on behalf of any other person or entity,
13 any action or proceeding of any kind against the Released Parties asserting Released Claims.
14 Nothing in this provision shall be construed to restrict any attorney's right to practice law, including
15 under Rule 5.6 of the California Rules of Professional Conduct, and for this paragraph only and for
16 that reason, the definition of Releasing Parties excludes counsel.

17 69. With respect to any Released Claims under this Agreement, the Parties stipulate and
18 agree that, upon the Final Settlement Date, the Releasing Parties shall be deemed to have, and by
19 operation of the Order and Judgment shall have expressly waived and relinquished, to the fullest
20 extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil
21 Code, which provides:

22 **A general release does not extend to claims that the creditor or releasing party**
23 **does not know or suspect to exist in his or her favor at the time of executing the**
24 **release and that, if known by him or her, would have materially affected his or**
25 **her settlement with the debtor or released party.**

26 The Releasing Parties shall upon the Final Settlement Date be deemed to have, and by
27 operation of the Order and Judgment shall have, waived any and all provisions, rights, or benefits
28 conferred by any law of any state or territory of the United States, or principle of common law,

1 which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. The
2 Releasing Parties may hereafter discover facts in addition to or different from those that they now
3 know or believe to be true with respect to the subject matter of the Released Claims, but the
4 Releasing Parties upon the Final Settlement Date, shall be deemed to have, and by operation of the
5 Order and Judgment shall have fully, finally, and forever settled and released any and all Released
6 Claims, known or unknown, suspected or unsuspected, contingent or noncontingent, whether or not
7 concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity
8 now existing or coming into existence in the future, including, but not limited to, conduct relating
9 to the Released Claims that is negligent, intentional, with or without malice, or any breach of any
10 duty, law, or rule without regard to subsequent discovery or existence of such different or additional
11 facts.

12 70. Nothing in this Release shall preclude any action to enforce the terms of this
13 Agreement.

14 71. The scope of the Released Claims or Released Parties shall not be impaired in any
15 way by the failure of any Settlement Class Member to actually receive the benefits provided for
16 under this Agreement.

17 72. For purposes of clarification only, this Agreement shall not release American
18 National from paying any death benefits that may be owed, nor create liability for benefits not owed
19 as of the date of this Agreement except as provided herein.

20 **VI. OTHER PROVISIONS**

21 73. The Parties: (i) acknowledge that it is their intent to consummate this Agreement,
22 (ii) agree to cooperate in good faith to the extent reasonably necessary to effect and implement all
23 terms and conditions of the Agreement and to exercise their best efforts to fulfill the foregoing
24 terms and conditions of the Agreement, and (iii) agree to cooperate in good faith to obtain
25 preliminary and final approval of the Settlement and to finalize the Settlement. The Parties agree
26 that the amounts paid in the Settlement and the other terms of the Settlement were negotiated in
27 good faith, and at arm's length by the Parties, with the assistance of the Mediator, following
28 mediation including before the Mediator on February 16, 2022, and additional follow-on

1 communications, and reflect a settlement that was reached voluntarily after consultation with
2 competent legal counsel.

3 74. No person or entity shall have any claim against Class Counsel, the Settlement
4 Administrator, American National's counsel, or any of the Released Parties based on actions taken
5 substantially in accordance with the Agreement and the Settlement contained therein or further
6 orders of the Court.

7 75. American National specifically and generally denies any and all liability or
8 wrongdoing of any sort with regard to any of the Claims in the Action and make no concessions or
9 admissions of liability of any sort. Neither this Agreement, nor the Settlement, nor any drafts or
10 communications related thereto, nor any act performed or document executed pursuant to, or in
11 furtherance of, the Agreement or the Settlement: (i) is or may be deemed to be or may be used as
12 an admission of, or evidence of, the validity of any Claims, or of any wrongdoing or liability of the
13 Released Parties, or any of them; or (ii) is or may be deemed to be or may be used as an admission
14 of, or evidence of, any fault or omission of the Released Parties, or any of them, in any civil,
15 criminal or administrative proceeding in any court, administrative agency, or other tribunal.
16 Nothing in this paragraph shall prevent American National and/or any of the Released Parties from
17 using this Agreement and Settlement or the Order and Judgement in any action that may be brought
18 against them in order to support a defense or counterclaim based on principles of res judicata,
19 collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of
20 claim preclusion or issue preclusion or similar defense or counterclaim.

21 76. American National agrees to provide, or cause to be provided to the Settlement
22 Administrator, all data reasonably necessary to effectuate the distribution of Class Notice,
23 allocation, and payments to the Settlement Class for Owners and/or Policies for which American
24 National possesses such information. The parties agree that the Settlement Administrator shall
25 refrain from disclosing policyholder personal identifying information, such as Owner, Insured or
26 beneficiary names, addresses or social security numbers, to Class Counsel, but may provide any
27 other data to Class Counsel. American National may provide separate data sets to assist Settlement
28 Administrator with this obligation. For the avoidance of doubt, the Settlement Administrator shall

1 not be prohibited from sharing with Class Counsel, consistent with provisions of paragraph 55, any
2 inquiries or requests initiated by any Settlement Class Member (or potential Settlement Class
3 Member), including names and contact information of the person who made the request or inquiry.
4 To the extent Class Counsel receives personal information from the Settlement Administrator,
5 Class Counsel agrees that such information may only be used to aid or assist in responding to the
6 inquiry or request and for no other purpose.

7 77. The Parties agree that if this Agreement or the Settlement fails to be approved, fails
8 to become effective, otherwise fails to be consummated, is declared void, or if there is no Final
9 Settlement Date, then the Parties will be returned to status quo ante, as if this Agreement had never
10 been negotiated or executed, except that all Settlement Administration Expenses shall not be
11 recouped. Each Party will be restored to the place it was in as of the date this Agreement was signed
12 with the right to assert in the Action any argument or defense that was available to it at that time.

13 78. Except as expressly provided herein, nothing in this Agreement shall change the
14 terms of any Policy. Nothing in this Agreement shall preclude any action to enforce the terms of
15 this Agreement.

16 79. The Parties agree, to the extent permitted by law, that all agreements made and
17 orders entered during the course of the Action relating to confidentiality of information shall
18 survive this Agreement. To the extent Class Counsel or the Settlement Administrator requires
19 Confidential Information to effectuate the terms of this Agreement, the terms of the Stipulated
20 Protective Order entered in the Action on July 14, 2021 (Dkt. 52) shall apply to any information
21 necessary to effectuate the terms of this Agreement.

22 80. The Agreement may be amended or modified only by a written instrument signed
23 by or on behalf of all Parties or their respective successors-in-interest. No waiver of any provision
24 of this Agreement or consent to any departure by either Party therefrom shall be effective unless
25 the same shall be in writing, signed by the Parties or their counsel, and then such waiver or consent
26 shall be effective only in the specific instance and for the purpose for which given. No amendment
27 or modification made to this Agreement pursuant to this paragraph shall require any additional
28 notice to the Settlement Class Members, including written or publication notice, unless ordered by

1 the Court. Plaintiff and Class Counsel agree not to seek such additional notice. The Parties may
2 provide updates on any amendments or modifications made to this Agreement on the settlement
3 website.

4 81. Each person executing the Agreement on behalf of any Party hereby warrants that
5 such person has the full authority to do so.

6 82. The Agreement may be executed in one or more counterparts. All executed
7 counterparts and each of them shall be deemed to be one and the same instrument. Furthermore,
8 electronically-signed PDF versions or copies of original signatures may be accepted as actual
9 signatures, and will have the same force and effect as the original. A complete set of executed
10 counterparts shall be filed with the Court.

11 83. The Agreement shall be binding upon, and inure to the benefit of, the successors,
12 heirs, and assigns of the Parties hereto. This Agreement is not designed to and does not create any
13 third-party beneficiaries either express or implied, except as to the Settlement Class Members.

14 84. The language of all parts of this Agreement shall in all cases be construed as a whole,
15 according to its fair meaning, and not strictly for or against any Party. No Party shall be deemed
16 the drafter of this Agreement. The Parties acknowledge that the terms of the Agreement are
17 contractual and are the product of negotiations between the Parties and their counsel. Each Party
18 and its respective counsel cooperated in the drafting and preparation of the Agreement. In any
19 construction to be made of the Agreement, the Agreement shall not be construed against any Party.

20 85. Other than necessary disclosures made to the Court or the Settlement Administrator,
21 this Agreement and all related information and communication shall be held strictly confidential
22 by Plaintiff, Class Counsel and their agents until such time as the Parties file this Agreement with
23 the Court.

24 86. The Parties and their counsel further agree that their discussions and the information
25 exchanged in the course of negotiating this Settlement are confidential under the terms of the
26 mediation agreement signed by the Parties in connection with the mediation session with the
27 Mediator and any follow-up negotiations between the Parties' counsel. Such exchanged
28 information was made available on the condition that neither the Parties nor their counsel may

1 disclose it to third parties (other than experts or consultants retained by the Parties in connection
2 with the Action and subject to confidentiality restrictions), that it not be the subject of public
3 comment, and that it not be publicly disclosed or used by the Parties or their counsel in any way in
4 the Action should it not settle, or in any other proceeding; provided however, that nothing contained
5 herein shall prohibit the Parties from seeking such information through formal discovery if not
6 previously requested through formal discovery or from referring to the existence of such
7 information in connection with the Settlement of the Action.

8 87. This Agreement shall be governed by and interpreted in accordance with the laws
9 of the State of California, without reference to its choice-of-law or conflict-of-laws rules.

10 88. The Court shall retain jurisdiction with respect to implementation and enforcement
11 of the terms of the Agreement and any discovery sought from or concerning objectors to this
12 Agreement. All Parties hereto submit to the jurisdiction of the Court for purposes of implementing
13 and enforcing the Settlement embodied in the Agreement.

14 89. Whenever this Agreement requires or contemplates that one Party shall or may give
15 notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturday and
16 Sunday) express delivery service as follows:

17 (a) If to American National, then to:

18 Frank Busch
19 James M. Wagstaffe
20 Michael von Loewenfeldt
21 **WAGSTAFFE, VON LOEWENFELDT,**
22 **BUSCH & RADWICK LLP**
23 100 Pine Street, Suite 725
24 San Francisco, CA 94111
25 Telephone: (415) 357-8900
26 Fax: (415) 357-8910

24 Joseph R. Russo, Jr.
25 Janet Rushing
26 **GREER, HERZ & ADAMS LLP**
27 One Moody Plaza, 18th Floor
28 Galveston, TX 77550

(b) If to Plaintiff or the Class, then to:

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

Seth Ard
Ryan Kirkpatrick
SUSMAN GODFREY L.L.P.
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New York, New York 10019
Telephone: (212) 336-8330
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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
Facsimile: (713) 654-6666
kdowns@susmangodfrey.com

90. The Parties reserve the right to agree between themselves on any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

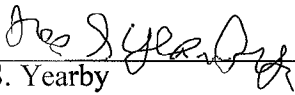
91. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Agreement or by order of any court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Each other day of the period to be computed shall be included, including the last day thereof, unless such last day is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court on a day in which the court is closed during regular business hours. In any event, the period runs until the end of the next day that is not a Saturday, a Sunday, a legal holiday, or a day on which the court is closed. When a time period is less than seven business days, intermediate Saturdays, Sundays, legal holidays, and days on which the court is closed shall be excluded from the computation. As used in this Paragraph, legal holidays include New Year’s Day, Dr. Martin Luther King Jr. Day, Lincoln’s Birthday,

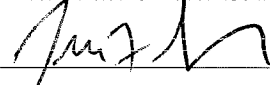
1 Washington's Birthday, Presidents' Day, Memorial Day, Juneteenth, Independence Day, Labor
2 Day, Columbus Day, Election Day, Veterans Day, Thanksgiving Day, Christmas Day and any other
3 day appointed as a holiday by Federal law or New York Law.

4
5 **AGREED TO BY:**

6 **Joe S. Yearby**

American National Insurance Company

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8 
Joe S. Yearby

By: 
Title: EVP & Chief Admin Officer

9 Date: June 5, 2023

Date: 6/7/23

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1 APPROVED ONLY AS TO FORM:

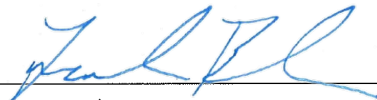
2 Date: 05/15/2023

By: 

3 Steven G. Sklaver
4 SUSMAN GODFREY L.L.P.
5 1900 Avenue of the Stars, 14th Floor
6 Los Angeles, California 90067
7 Telephone: (310) 789-3100
8 Facsimile: (310) 789-3150
9 ssklaver@susmangodfrey.com


10 *Class Counsel and Attorneys for Plaintiff Joe*
11 *S. Yearby*

12 Date: 6/9/2023

13 By: /s/ 

14 Frank Busch
15 WAGSTAFFE, VON LOEWENFELDT,
16 BUSCH & RADWICK LLP
17 100 Pine Street, Suite 725
18 San Francisco, CA 94111
19 Telephone: (415) 357-8900
20 Fax: (415) 357-8910

21 *Counsel for Defendant American National*
22 *Insurance Company*

23 
24 *Joseph Russo, Jr.*
25 *Greer, Herz & Adams LLP*

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