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*Ralph F. Hints*

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 RALPH F. HINTS,	)	Case Number: 4:19-cv-03764-YGR
	)	ORDER GRANTING
11 Plaintiff,	)	STUPILATED REQUEST FOR ENTRY OF
	)	JUDGMENT [Fed.R.Civ.P. 41(a)(2)]; <del>PROPOSED</del>
12	)	JUDGMENT
13 vs.	)	
	)	
14 AMERICAN FAMILY LIFE ASSURANCE	)	
COMPANY OF COLUMBUS,	)	
15 Defendant.	)	
	)	
16	)	
17	)	
18	)	

19 Plaintiff Ralph F. Hints states the following:

20 1. Hints’ complaint (June 27, 2019) (ECF no. 1) includes two claims for relief. The first claim  
21 seeks a judicial declaration of rights to future benefits under a disability insurance policy issued by  
22 defendant American Family Life Assurance Company of Columbus (AFLAC), invoking 29 USC  
23 § 1132(a)(1)(B). The second claim seeks equitable relief against AFLAC under a theory of estoppel,  
24 based on representations by AFLAC personnel, invoking 29 USC § 1132(a)(3).

25 2. On May 15, 2020, the Court granted judgment on the pleadings in AFLAC’s favor as to the  
26 first claim for relief. Order Denying Plaintiff’s Motion for Judgment on The Pleadings and Granting  
27 Defendant’s Motion for Judgment on the Pleadings (May 15 Order) (May 15, 2020) (ECF no. 26). In so  
28

1 doing, the Court determined that “the policy—with respect to Hints’ situation—is unambiguous, and  
2 thus, concludes that AFLAC’s motion is well-taken.” *Id.* at 7:4–5.

3 3. Under current Ninth Circuit law, an estoppel claim under § 1132(a)(3) requires as an  
4 essential element that “the provisions of the plan at issue were ambiguous such that reasonable  
5 persons could disagree as to their meaning or effect.” *Gabriel v. Alaska Elec. Pension Fund*, 773 F.3d  
6 945, 957 (9th Cir. 2014).

7 4. Based on the Court’s finding of non-ambiguity in connection with the May 15 Order, Hints  
8 therefore concedes that the second claim for relief for estoppel under § 1132(a)(3) cannot succeed  
9 and is without merit under Ninth Circuit law. Hints therefore specifically stipulates that the second  
10 claim for relief may be further asserted following an eventual Ninth Circuit mandate if and only if,  
11 in addition to all other applicable substantive and procedural prerequisites, this Court’s ruling that  
12 the insurance policy in question is unambiguous is reversed or otherwise vacated by the Ninth  
13 Circuit.

14 5. Hints wishes to seek appellate review of the Court’s ruling that the insurance policy in  
15 question is unambiguous, and, in order to promote efficiency and facilitate appellate review, wishes  
16 to promptly secure a final and appealable order disposing of the action as a whole. Appellate  
17 jurisdiction, however, depends on a showing that the judgment is the product not merely of a  
18 stipulation but of the “approval and meaningful participation of the district court.” *Galaza v. Wolf*,  
19 954 F.3d 1267, 1272 (9th Cir. 2020).

### 20 **Stipulation**

21 6. On July 20, 2020, the Court advised the parties via email from chambers that it is “willing  
22 to enter a stipulated dismissal under Rule 41.” Therefore the parties submit the stipulation below,  
23 respectfully inviting the Court’s critical consideration of the posited basis for entering judgment at  
24 this time and the Court’s meaningful participation in the associated processes.

25 7. In view of the foregoing, the parties therefore jointly request that the Court, after due  
26 deliberation and analysis, enter final judgment under Fed.R.Civ.P. 41(a)(2) in the form proposed  
27 below.

1 Respectfully submitted on behalf of the parties by the undersigned counsel.

2 DATED: July 23, 2020

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

3 By: /s/ Sean P. Nalty

4 SEAN P. NALTY

*Attorneys for Defendant*

5 *American Family Life Assurance Company of*  
6 *Columbus*

7  
8  
9 DATED: July 23, 2020

Johnston Law Office

10 By: /s/ Richard Johnston

11 Richard Johnston

*Attorney for Plaintiff*

12 *Ralph F. Hints*

13  
14 **[PROPOSED] FINAL JUDGMENT**

15 The Court, having considered the parties' request for entry of judgment under Fed.R.Civ.P.  
16 41(a)(2), and having conducted due deliberation and analysis, certifies that it has meaningfully  
17 participated in the process of securing entry of a final and appealable judgment, and approves the  
18 parties' request.

19 Now, therefore, the Court orders that plaintiff Ralph F. Hints recover nothing as against  
20 defendant American Family Life Assurance Company of Columbus, that the entire action be  
21 dismissed on the merits, and that final judgment to that effect be, and is hereby, entered.

22 **IT IS SO ORDERED.**

23 Dated: \_\_\_\_\_ July 27 \_\_\_\_\_, 2020

24  
25  
26 

YVONNE GONZALEZ ROGERS

27 UNITED STATES DISTRICT JUDGE