

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

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ROBERT FRANCIS,

Plaintiff,

vs.

ANACOMP, INC. ACCIDENTAL DEATH
AND DISMEMBERMENT PLAN and LIFE
INSURANCE COMPANY OF NORTH
AMERICA,

Defendants.

CASE NO.10cv467 BEN (BGS)

ORDER:

**CERTIFYING SUMMARY
JUDGMENT ORDER FOR
INTERLOCUTORY APPEAL
UNDER 28 U.S.C. § 1292(b)**

Plaintiff Robert Francis moves for certification for interlocutory appeal this Court’s Summary Judgment Order. In the Order, the Court found that California state law regarding the interpretation of accidental death provisions in the insurance policy is not saved from ERISA preemption. That decision is based on the holding of *McClure v. Life Ins. Co. of North America*, 84 F.3d 1129 (9th Cir. 1996).¹ The more recent case of *Kentucky Ass’n of Health Plans, Inc. v. Miller*, 538 U.S. 329 (2003), could change the law to be applied if the court of appeals re-visits the

¹The Defendant appears to be the same entity in both cases.

1 issue.

2 Pursuant to 28 U.S.C. § 1292(b), three factors control whether an interlocutory order ought
3 to be certified for immediate appeal:

- 4 1. Where the issue involves a controlling issue of law;
- 5 2. Where there are substantial grounds for differences of opinion regarding the controlling
6 issue of law; and
- 7 3. Where an immediate appeal may materially advance the ultimate termination of
8 litigation.

9 In this case, each of the factors are present. Therefore, the motion is granted.

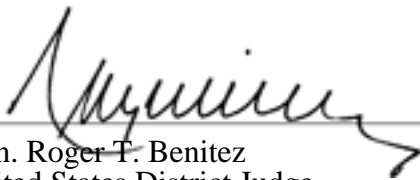
10 This Court's summary judgment order is, hereby, certified for immediate appeal under 28
11 U.S.C. § 1292(b).

12

13 DATED: December 14, 2011

14

15



Hon. Roger T. Benitez
United States District Judge

16

17

18

19

20

21

22

23

24

25

26

27

28