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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ERNEST O. ABBIT, on behalf of himself
and on behalf of all persons similarly
situated,

Plaintiff,

v.

ING USA ANNUITY AND LIFE
INSURANCE COMPANY, ING U.S.,
INC.,

Defendant.

Case No.: 13-cv-2310-GPC-WVG

**ORDER APPROVING PROPOSED
CLASS NOTICE AND GRANTING
MOTION FOR SCHEDULING
ORDER TO SUBMIT NOTICE
PLAN(S)**

[ECF No. 62]

On December 14, 2015, Plaintiff Ernest O. Abbit and Defendants ING USA Annuity and Life Insurance Company and ING U.S., Inc. (“Defendants” or “ING”) filed a joint stipulation and motion for entry of scheduling order to approve plan to disseminate notice of class action. (Mot. Class Notice, ECF No. 62.) For the reasons set forth below, the Court **GRANTS** the parties’ joint motion.

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1 **LEGAL STANDARD**

2 For classes certified under Rule 23(b)(3) of the Federal Rules of Civil Procedure, the
3 court “must direct to class members the best notice that is practicable under the
4 circumstances, including individual notice to all members who can be identified through
5 reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). The Federal Rules further provide that:
6 The notice must clearly and concisely state in plain, easily understood language:

- 7 i. the nature of the action;
- 8 ii. the definition of the class certified;
- 9 iii. the class claims, issues, or defenses;
- 10 iv. that a class member may enter an appearance through an attorney if the member
11 so desires;
- 12 v. that the court will exclude from the class any member who requests exclusion;
- 13 vi. the time and manner for requesting exclusion; and
- 14 vii. the binding effect of a class judgment on members under Rule 23(c)(3).

15 Fed. R. Civ. P. 23(c)(i - vii).

16 Notice provides an opportunity for class members to participate in the litigation, to
17 opt-out of the litigation, to monitor the performance of class representatives and class
18 counsel, and to ensure that predictions of adequate representation are fulfilled. Manual For
19 Complex Litigation (Fourth) § 21.13 (2004). In the Rule 23(b)(3) context, due process is
20 satisfied “where a fully descriptive notice is sent first-class mail to each class member, with
21 an explanation of the right to ‘opt out,’” within a reasonable time. *Phillips Petroleum Co.*
22 *v. Shutts*, 472 U.S. 797, 812 (1985).

23 **DISCUSSION**

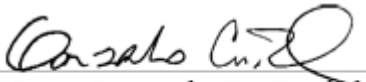
24 Having reviewed the proposed Class Notice (ECF No. 62-1) and finding that the
25 notice complies with the Court’s Class Cert. Order (ECF No. 59) and Rule 23(b)(3), the
26 Court hereby **APPROVES** the proposed Class Notice. The parties are authorized to make
27 non-substantive changes to the notice, as long as they are acceptable to both parties, to
28 reflect deadlines, mailing addresses, and similar information or to format the notice for

1 printing.

2 The parties shall submit to the Court on or by **January 5, 2016** either a joint
3 proposed Notice Plan or separate proposed Notice Plans for the Court's approval and
4 directive to issue notice to the Classes.

5 **IT IS SO ORDERED.**

6 Dated: January 4, 2016

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8 Hon. Gonzalo P. Curiel
9 United States District Judge
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