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**IN THE 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, and ING U.S., Inc.
Defendants.

Case No. 13-CV-2310-GPC(WVG)

CLASS ACTION

**ORDER DIRECTING
DISSEMINATION OF CLASS
NOTICE**

[ECF No. 75]

1 On February 19, 2016, parties filed a Joint Proposed Class Notice
2 Dissemination Plan (“Joint Plan”). ECF No. 75. Following careful consideration of
3 the parties’ briefing and applicable law, the Court hereby **DIRECTS** the following
4 class notice procedures:

5 **IT IS HEREBY ORDERED:**

6 1. **TIMETABLE FOR NOTICE PLAN:** The timetable for the Notice
7 Plan, including opt-outs, shall be incorporated into the Class Notice and shall be
8 triggered by the date of the issuance of this Order, as follows:

Event	Days from Trigger Date
Defendants provide the Notice Administrator and Class counsel all Class data for purposes of Notice, including full names, issue age, social security numbers, contract numbers and mailing addresses.	Within 14 days.
Notice Administrator verifies data before mailing. Class Counsel instructs Notice Administrator to mail Notice to Class members with valid addresses; posts website containing Notice and information about litigation; establishes toll-free phone information.	Within 30 days.
Notice Administrator to re-send Notice to Class members with undeliverable mailing addresses.	Within 60 days.
Deadline for Class members to opt-out with valid written exclusion request.	Within 75 days.
Deadline for filing with the Court the final list of opt-outs.	Within 90 days.

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23 2. **NOTICE PLAN VIA FIRST CLASS MAIL:** The Court finds that the
24 form and manner of individual Notice by direct first-class mail satisfies the
25 requirements of Federal Rule of Civil Procedure 23(c)(2)(B), due process, and
26 constitutes the best practicable procedure under the circumstances. The Notice
27 Administrator shall mail the Notice via first-class mail to each known Class
28

1 Member at the address provided by Defendants, based on the information contained
2 in Defendants' databases, and update those addresses for which mail is returned
3 with a forwarding address.

4 3. APPOINTMENT OF NOTICE ADMINISTRATOR: KCC/Gilardi
5 shall be appointed Notice Administrator and shall work at the direction of Class
6 Counsel to timely execute the Notice Plan.

7 4. AMENDMENT OF THE CLASS DEFINITIONS:¹ The definitions
8 of the certified Classes by Order dated November 16, 2015 (ECF No. 59) shall be
9 amended to exclude the word “co-conspirator” as follows:

10 **The Multi-State Class**

11 All persons or entities, excluding defendants and their directors,
12 officers, predecessors, successors, affiliates, agents, and employees, as
13 well as the immediate family members of such persons, that, when a
14 resident of either the state of California, Florida, Illinois, Pennsylvania
15 or Texas, purchased a Secure Index fixed index annuity contract from
16 ING USA Annuity and Life Insurance Company within the applicable
17 statute of limitations.

18 **The California Class**

19 All persons or entities, excluding defendants and their directors,
20 officers, predecessors, successors, affiliates, agents, and employees, as
21 well as the immediate family members of such persons, that, when a
22

23 ¹ Parties also urge the Court to amend the class definitions to include limitations on the applicable
24 statute of limitations and the class period. Joint Plan 5. However, the Court finds that it would be
25 inappropriate to decide the applicable statute of limitations and the class period based on the
26 limited briefing proffered in the Joint Plan and given the posture of the case. *Cf. Connecticut Ret.*
27 *Plans & Trust Funds v. Amgen, Inc.*, No. CV07-2536PSG, 2009 WL 2633743, at *14 (C.D. Cal.
28 Aug. 12, 2009), *aff'd*, 660 F.3d 1170 (9th Cir. 2011), *aff'd*, 133 S. Ct. 1184 (2013) (citations
omitted) (noting that “many other district courts have held [that] evidentiary disputes concerning
the commencement and termination dates of a proposed class period raise questions of fact going
to the merits of the case, and are therefore not a proper subject for inquiry at the certification
stage”); *Weinberger v. Thornton*, 114 F.R.D. 599, 606 (S.D. Cal. 1986) (accepting plaintiffs’
proposed time limits of the class period for the purposes of a motion for class certification).

1 resident of California, purchased a Secure Index fixed index annuity
2 contract from ING USA Annuity and Life Insurance Company within
3 the applicable statute of limitations.

4 **The California Seniors Subclass**

5 All members of the California Class that were age 65 or older on the
6 date of purchase, excluding defendants and their directors, officers,
7 predecessors, successors, affiliates, agents, and employees, as well as
8 the immediate family members of such persons.

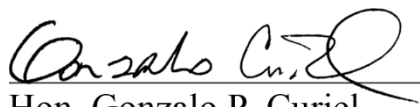
9 5. **EXCLUSIONS:** Any Class member who desires to opt-out of the
10 Class must send a written request for exclusion to the Notice Administrator,
11 postmarked no later than seventy-five (75) days of this Order. The Notice
12 Administrator's address shall be provided in the Notice to the Class members and
13 shall be posted on the website. The Notice Administrator shall provide a list of
14 those persons requesting exclusion to Class Counsel and Defendants' counsel after
15 the deadline for exclusions passes.

16 6. To be effective, a written request for exclusion must contain the name
17 of this lawsuit, the Class member's full name, current address and phone number,
18 annuity contract number, and be signed by the Class member. The request must
19 also state clearly that the person wishes to be excluded from the Class.

20 7. Any Class member who submits a valid and timely request for
21 exclusion shall not be a Class member and shall not be bound by the orders and
22 judgments of this Court.

23 **IT IS SO ORDERED.**

24 Dated: April 26, 2016

25 
26 Hon. Gonzalo P. Curiel
27 United States District Judge
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