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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

JOYCE GOERTZEN, an individual, individually  
and on behalf of herself all similarly-situated  
persons, by and through her power of attorney  
BEVERLY KRAUS,

Plaintiff,

v.

GREAT AMERICAN LIFE INSURANCE  
COMPANY, and DOES 1-50

Defendants.

Case No.: 4:16-cv-00240-YGR

**ORDER PRELIMINARILY APPROVING  
CLASS SETTLEMENT, DIRECTING  
ISSUANCE OF NOTICE TO THE CLASS,  
AND SETTING OF FAIRNESS HEARING**

Hon. Yvonne Gonzalez Rogers

1 The motion of Plaintiff Joyce Goertzen, individually and on behalf of the class, as defined in  
2 the Settlement Agreement, attached hereto as Exhibit A, for preliminary approval of the proposed  
3 class action Settlement reached with Defendant Great American Life Insurance Company (“Great  
4 American”) came on for hearing before this Court on October 31, 2017. Robert D. Phillips, Jr.,  
5 appeared as attorney for Great American, and Ingrid M. Evans appeared as attorney for Plaintiff.  
6 After considering the Settlement Agreement, the moving papers, arguments of counsel, and all other  
7 matters presented to the Court, the Court finds that:

8 1. Plaintiff filed a Class Action Complaint in this Action on December 1, 2015, alleging  
9 violations of California’s Business and Professions Code §17200 and California’s Elder Abuse  
10 statute – Cal. Welfare & Institutions Code § 15600, *et seq.* The Complaint alleges that Great  
11 American did not properly disclose the surrender charges on the face page of certain contracts issued  
12 in California to persons aged 60 or older.

13 2. Great American denies any and all wrongdoing alleged in the pleadings and  
14 Plaintiff’s other filings, and does not admit or concede any actual or potential fault, wrongdoing, or  
15 liability in connection with any facts or claims that have been or could have been alleged against it in  
16 the Action. Great American has asserted numerous legal and factual defenses to the Action. It  
17 contends its annuity products are lawful and beneficial and that Plaintiff received adequate notice of  
18 any applicable surrender charges. Great American contends that Plaintiff’s allegations do not state a  
19 cause of action and are not sustainable as a matter of law. In addition, Great American contends that  
20 Plaintiff would be unable to prove the elements of the causes of action at trial, and that this would be  
21 fatal to both her individual and class claims.

22 3. The proposed Settlement resulted from an arm’s-length mediation session before the  
23 Honorable Ronald M. Sabraw (Ret.) and was concluded only after Plaintiff and Great American  
24 conducted their own investigations and evaluation of the factual and legal issues raised by Plaintiff’s  
25 claims and Great American’s defenses.

26 4. Plaintiff and Class Counsel have agreed to settle the Action after considering such  
27 factors as (a) the benefits to Plaintiff and the Class provided by the Settlement Agreement; (b) the  
28 risks and uncertainty of litigation, and the difficulties and delays inherent in such litigation; and (c)

1 the desirability of consummating the Settlement Agreement in order to provide relief to Plaintiff and  
2 the Class. Great American considers it desirable to settle and dismiss this Action because this  
3 proposed Settlement will finally put Plaintiff's claims and the underlying matters to rest. Great  
4 American is also entering into this Settlement Agreement to avoid the expense, burden,  
5 inconvenience, and inherent risk of litigation and the concomitant disruption of its business  
6 operations.

7 5. The Parties have entered into the Settlement Agreement attached hereto as **Exhibit A**,  
8 which was previously filed with this Court and attached as Exhibit 1 to the declaration of Ingrid M.  
9 Evans.

10 6. The Court has reviewed the Settlement Agreement and all the attachments thereto and  
11 determined the proposed Settlement to be fair, reasonable, adequate, and within the range of possible  
12 approval. The proposed Settlement does not improperly grant preferential treatment to the Plaintiff  
13 or any segment of the Class. The proposed Settlement is sufficient to warrant sending notice to the  
14 Class. The procedures for establishing and administering the benefits provided by the proposed  
15 Settlement and for notice of the proposed Settlement, exclusion from the proposed Settlement, and  
16 objections to the proposed Settlement are fair, reasonable, and in the best interests of the Class.

17 7. Based on Plaintiff's motion, the Memorandum of Points and Authorities, the  
18 Settlement Agreement, and all supporting exhibits and attachments, the Court preliminarily certifies  
19 for settlement purposes the Class, as defined in Section II.13 of the Settlement Agreement, pursuant  
20 to Rules 23(a) and 23(b)(3). The Court hereby finds for settlement purposes that:

21 (a) the numerosity requirement of Rule 23(a)(1) is satisfied because the proposed  
22 settlement Class, comprised of more than 4,000 class members, satisfies the requirement that a class  
23 be sufficiently numerous such that joinder of all members is impracticable;

24 (b) the commonality requirement of rule 23(a)(2) is satisfied because the Great  
25 American products owned by the various Class Members all have the same language on their cover  
26 pages;

27 (c) the typicality requirement of Rule 23(a)(3) is satisfied because the Great  
28 American product issued to Plaintiff was similar to those issued to the other members of the Class;

1 (d) the adequacy requirement of rule 23(a)(4) is satisfied because (i) Class  
2 Counsel is qualified and competent to prosecute the Action vigorously, (ii) Plaintiff's interests are  
3 not antagonistic to the interests of the Class, and (iii) Class Counsel and Plaintiff have fairly and  
4 adequately protected the interests of the Class; and

5 (e) in the context of settlement, common questions “predominate over any  
6 questions affecting only individual members” and “class resolution [is] ‘superior to other available  
7 methods for the fair and efficient adjudication of the controversy.’” *Amchem Products, Inc. v.*  
8 *Windsor*, 521 U.S. 591, 615 (1997).

9 8. The Court has reviewed the notice provisions of Section V of the Settlement  
10 Agreement and the form of Class Notice attached to the Settlement Agreement as **Exhibit A**  
11 hereto. The Court has determined that mailing the Class Notice to the last known addresses of the  
12 Class Members:

- 13 (a) constitutes the best practicable notice under the circumstances;  
14 (b) is reasonably calculated to apprise Class Members of the pendency of the  
15 Action and of their right to object to or exclude themselves from the proposed Settlement;  
16 (c) is reasonable and constitutes due, adequate, and sufficient notice to all  
17 persons entitled to receive notice; and  
18 (d) meets all applicable requirements of Rule 23 of the Federal Rules of  
19 Civil Procedure, the United States Constitution, and its Amendments.

20 Accordingly, the Court **ORDERS** as follows;

21 1. The Motion for Preliminary Approval is **GRANTED**. The Court preliminarily  
22 approves the proposed Settlement. All defined terms in the foregoing findings and this Order shall  
23 have the same meanings as in the Settlement Agreement.

24 2. The Class, as defined in Section II.13 of the Settlement Agreement, is  
25 preliminarily certified for settlement purposes only.

26 3. The Court appoints Evans Law Firm, Inc. as Class Counsel.

27 4. A hearing (the “Fairness Hearing”) will be held on **March 27, 2018, at**  
28 **2:00PM** before the undersigned in the United States District Court for the Northern District of

1 California, Oakland Division, to consider the fairness, reasonableness, and adequacy of the  
2 proposed Settlement and whether it should be finally approved by the Court. The parties are  
3 to submit a motion for Final Approval no later than **January 5, 2018**.

4 5. The Court approves the proposed Class Notice attached to Settlement  
5 Agreement as **Exhibit A** hereto and the plan for giving notice.

6 6. Great American and Class Counsel are authorized to:

7 (a) establish the means necessary to administer the proposed Settlement, in  
8 accordance with the terms of the Settlement Agreement; and

9 (b) retain an Administrator to help administer the proposed Settlement,  
10 including the notice provisions.

11 7. The Court appoints KCC as the Administrator to implement the terms of the  
12 Settlement Agreement.

13 8. The Administrator shall mail the Class Notice to each Class Member by first-class  
14 mail, postage prepaid, to his or her last known address no later than **14 days after entry of this**  
15 **Order**, as described in the Settlement Agreement.

16 9. The Administrator shall file proof of the mailing of the Class Notice as part of the  
17 Motion for Final Approval.

18 10. Class Counsel shall file its motion for approval of Class Counsel's fees, expenses,  
19 and class representative service awards no later than **January 5, 2018**.

20 11. The Court approves the Claim Form attached to the Settlement Agreement as **Exhibit**  
21 **B** hereto. To be valid, any Claim Form must be submitted to the Settlement Administrator in the  
22 manner provided in the Claim Form no later than **February 28, 2018**.

23 12. Great American is prohibited from communicating with Class Members about  
24 the Action or the Settlement, but Great American is not precluded from:

25 (a) speaking to Class Members in the ordinary course of Great American's  
26 business, provided that if Class Members contact Great American regarding the Action or the  
27 Settlement, Great American shall direct such Class Members to contact the Administrator or Class  
28 Counsel; or

1 (b) communicating with agents and employees of Great American or  
2 communicating with its auditors, rating agencies, insurance commissioners, regulators, or similar  
3 reporting organizations or governmental entities regarding the impact and/or administration of the  
4 Settlement.

5 13. Each Class Member who wishes to exclude himself or herself from the Class must  
6 submit an appropriate, timely written request for exclusion, postmarked no later than **January 4,**  
7 **2018.**

8 14. Any Class Member who does not submit a timely, written request for exclusion from  
9 the Class shall be bound by all proceedings, orders, and judgments in the Action, even if such Class  
10 Member has previously initiated or subsequently initiates individual litigation or other proceedings  
11 against Great American relating to Annuities issued during the Class Period.

12 15. Each Class Member who wishes to object to the fairness, reasonableness, or adequacy  
13 of the Settlement Agreement, the proposed Settlement, or to the award of attorneys' fees and  
14 expenses shall file with the Court, no later than **January 4, 2018,** a notice of objection setting forth  
15 the following information: (i) a notice of the Class Member's or the Class Member's counsel's  
16 (retained at the Class Member's own expense) intent to appear at the Fairness Hearing; (ii) a detailed  
17 statement of the Class Member's objections to any matter before the Court; (iii) the grounds or  
18 reasons why the Class Member wishes to appear and to be heard; (iv) any documents and writings  
19 that the Class Member wishes the Court to consider; and (v) a statement of any prior class settlement  
20 objections made and any fee arrangements made with an attorney regarding any objections,  
21 including the objection to this Settlement. Unless the notice of objection sets forth this information  
22 and is timely submitted, the Class Member is forever barred from separately objecting.

23 16. The Administrator shall rent one or more post-office boxes to be used for receiving  
24 requests for exclusion from the Class and any other communications, and no one other than the  
25 Court or the Clerk of the Court and the Administrator shall have access to these post-office boxes.

26 17. Upon receipt of any request for exclusion, the Administrator shall immediately  
27 forward a copy of the exclusion request to Class Counsel and Great American's Counsel.  
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1           18.     Great American’s Counsel and Class Counsel shall promptly furnish each other with  
2 copies of any and all written requests for exclusion that might come into their possession that are not  
3 otherwise provided by the Administrator.

4           19.     All proceedings in the Action are stayed until further order of the Court, except as  
5 may be necessary to implement the proposed Settlement or to comply with the terms of the  
6 Settlement Agreement. Further, pending the Court’s final determination of whether the proposed  
7 Settlement will be approved, each and every Class Member who has not excluded himself or herself  
8 from the Settlement, the Class Member’s representatives, and/or all persons in active concert or  
9 participation with such Class Members are barred and enjoined from filing, commencing,  
10 prosecuting, maintaining, intervening in, participating in, conducting, or continuing, as class  
11 members or otherwise, any action, including without limitation a class action (including by seeking  
12 to amend a pending complaint to include class allegations or by seeking class certification in a  
13 pending action in any jurisdiction), in any federal court, any state court, or any other tribunal or  
14 forum of any kind, and from receiving any benefits from any lawsuit, administrative or regulatory  
15 proceeding or order in any jurisdiction, arising out of, based on, or relating to the claims, causes of  
16 actions, facts, and/or circumstances alleged in the Action and/or the Released Claims.

17           20.     This Order shall become null and void, and shall be without prejudice to the rights of  
18 the Parties, all of whom shall be restored to their respective positions existing immediately before  
19 this Court entered this Order, if: (a) the proposed Settlement is not finally approved by the Court, or  
20 does not become final, pursuant to the terms of the Settlement Agreement; or (b) the Settlement is  
21 terminated in accordance with the terms of the Settlement Agreement or does not become effective  
22 as required by the terms of the Settlement Agreement for any other reason. In such event, the  
23 Settlement and Settlement Agreement shall become null and void and be of no further force and  
24 effect, and neither the Settlement Agreement nor the Court’s orders, including this Order, shall be  
25 used or referred to for any purpose whatsoever.

26           21.     In no event shall the Settlement Agreement, any of its provisions, or any negotiations,  
27 statements, or proceedings relating to it be offered as, received as, used as, or deemed to be evidence  
28 in the Action, any other action, or in any other proceeding, except in a proceeding to enforce the

1 Settlement Agreement. Without limiting the foregoing, neither the Settlement Agreement nor any  
2 related negotiations, statements, or proceedings shall be offered as, used as, or deemed to be  
3 evidence or an admission or concession by any person of any matter, including but not limited to any  
4 liability or wrongdoing on the part of Great American or as evidence of the appropriateness of  
5 certification of any class.

6 22. The Court reserves the right to continue the Fairness Hearing without further written  
7 notice to the Class, but will notify counsel for the Parties and any objectors or their counsel who  
8 have timely filed a notice of intention to appear in these proceedings. Unless the Court specifically  
9 orders otherwise, any such continuance shall not be interpreted to expand or change any deadlines  
10 contained in this Order or the Settlement Agreement.

11 **IT IS SO ORDERED.**

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13 DATED: \_\_\_\_\_

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15 Hon. Yvonne Gonzalez Rogers  
16 United States District Judge  
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