

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES—  
GENERAL

Case No. 2:22-cv-02071-SSS-PDx

Date January 25, 2024

Title *Robert R. Fine v. Kansas City Life Ins. Co.*

Present: The Honorable SUNSHINE S. SYKES, UNITED STATES DISTRICT JUDGE

Irene Vazquez

Not Reported

Deputy Clerk

Court Reporter

Attorney(s) Present for Plaintiff(s):

Attorney(s) Present for Defendant(s):

None Present

None Present

**Proceedings: (IN CHAMBERS) ORDER DENYING DEFENDANT’S  
MOTION FOR RECONSIDERATION, [DKT. 171], AND  
GRANTING PLAINTIFF’S MOTION TO APPROVE AND  
DISSEMINATE CLASS NOTICE, [DKT. 175]**

**I. INTRODUCTION**

Before the Court are two motions. The first is a Motion for Reconsideration of the Order Granting Motion for Class Certification filed by Defendant Kansas City Life Insurance Company (“KCL”). [Dkt. 171]. Plaintiff Robert R. Fine opposes. [Dkt. 185]. The second is a Motion to Approve and Disseminate Class Notice filed by Fine. [Dkt. 175]. KCL opposes. [Dkt. 187]. Having reviewed the parties’ arguments, relevant legal authority, and record in this case, the Motion for Reconsideration is **DENIED** and the Motion to Approve and Disseminate Class Notice is **GRANTED**.

**II. DEFENDANT’S MOTION FOR RECONSIDERATION**

KCL moves the Court to reconsider its order granting class certification. Before turning to the merits of the motion, the Court will first resolve the parties’ dispute about whether KCL complied with the meet-and-confer requirements under Local Rule 7-3.

On November 17, 2023, KCL’s counsel, Hannah Makinde, had emailed Fine’s counsel, Joseph M. Feierabend, to notify him that KCL intended to move the Court to reconsider its class certification order, explaining “that the order fail[ed] to consider the material differences between the various class policies.” [Dkt. 185-1, Decl. of Joseph M. Feierabend (“Feierabend Decl.”) ¶ 3; Dkt. 195, Decl. of Hannah Makinde (“Makinde Decl.”) ¶ 2]. During a telephone conversation later that day, Makinde informed Feierabend that “the Court failed to consider and address material differences between the universal life (UL) and variable universal life (VUL) insurance products.” [Makinde Decl. ¶ 3]. She further informed him that the motion would also raise the issue of differing contract language among the insurance policies. [*Id.*]. On November 20, 2023, at Feierabend’s request, the parties had a second telephone conference. [Feierabend Decl. ¶ 5; Makinde Decl. ¶ 4]. During this call, Makinde revealed, for the first time, the specific reasons that formed the basis of KCL’s motion. [Feierabend Decl. ¶ 5; *see* Makinde Decl. ¶¶ 5-9]. Makinde asked Feierabend if he had any questions or comments, to which he replied that he did not without first regrouping with his team. [Makinde Decl. ¶ 9]. KCL filed this motion later that day.

Local Rule 7-3 demands that “counsel contemplating the filing of any motion must first contact opposing counsel *to discuss thoroughly*, preferably in person, *the substance of the contemplated motion and any potential resolution.*” C.D. Cal. R. 7-3 (emphasis added). This conference must occur at least seven days before the motion is filed. *Id.* The Court may decline to consider a motion for failure to comply with Local Rule 7-3. C.D. Cal. R. 7-4.

The Court declines to consider KCL’s motion for reconsideration because of its failure to comply with Local Rule 7-3. To begin, the parties’ declarations reveal that KCL did not make a good-faith effort to discuss thoroughly the substance of this motion during the November 17 telephone conference. Indeed, during that conversation, KCL’s counsel vaguely described the issues as “material differences” between the two types of life insurance policies and a failure to consider differing contract language. [Makinde Decl. ¶ 3]. It was not until Fine’s counsel asked for a subsequent conference that KCL’s counsel finally provided him with the specific reasons that now serve as the foundation for the arguments raised in this motion—a conference that occurred on the same day this motion was filed.

This leads the Court to its second point: KCL also failed to comply with Local Rule 7-3 when it failed to conduct this meet and confer at least seven days before filing this motion. The seven-day requirement serves the important purpose of providing the parties ample time and opportunity to contemplate their respective

legal arguments and to discuss the motion's merits. *See Aviles v. Quik Pick Express, LLC*, No. CV-15-5214-MWF (AGR), 2015 WL 5601824, at \*2 (C.D. Cal. Sept. 23, 2015) (noting that Local Rule 7-3, in part, "serves the important purpose of providing the opposing party sufficient notice as to the contents of a proposed motion and an opportunity to discuss the merits of the motion, or, at a minimum, negotiate a hearing date"). KCL's counsel here, however, did not meet and confer with Fine's counsel until November 17, 2023—three days before it filed this motion. That the parties subsequently met and conferred on November 20 does not excuse KCL's noncompliance. KCL's decision to inform Fine of its specific arguments at the eleventh hour deprived Fine of the time and opportunity to contemplate those issues and, more importantly, deprived the parties of a meaningful opportunity to thoroughly discuss this motion's merits.

Accordingly, because KCL failed to comply with Local Rule 7-3's requirements, the Motion for Reconsideration is **DENIED**.

### **III. PLAINTIFF'S MOTION TO APPROVE AND DISSEMINATE CLASS NOTICE**

The Court now turns to Fine's Motion to Approve and Disseminate Class Notice. Fine moves (1) for approval of the class notice and notice plan, (2) to appoint Analytics as notice administrator, and (3) to order KCL to provide him with a list of names and addresses of the class members from KCL's current records within seven days of this order. KCL does not oppose the appointment of Analytics as the notice administrator or the production of the class members' information. Rather, the parties' disagreements center around two questions. First, should the notice incorporate the language "active on or after January 1, 2002" each time the class is described? Second, should the notice include language informing class members about the option to challenge the potential distribution of a class award and to object to a potential motion for attorneys' fees?

In cases where the class has been certified under Federal Rule of Civil Procedure 23(b)(3), as is true here, a court "must direct to class members the best notice that is practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B). The notice's language must state clearly, concisely, and in plain language

- (i) the nature of the action;
- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

*Id.*

First, the Court disagrees with KCL that the notice must include the language “active on or after January 1, 2002” each time the class is described. Section 9, titled “Am I part of this Class,” clearly, concisely, and in plain language states the definition of the certified class:

All persons who own or owned a Better Life Plan, Better Life Plan Qualified, LifeTrack, AGP, MGP, PGP, Chapter One, Classic, Rightrack (89), Performer (88), Performer (91), Prime Performer, Competitor (88), Competitor (91), Executive (88), Executive (91), Protector 50, LowerMax, Ultra 20 (93), Competitor II, Executive II, Performer II, Ultra 20 (96), or Century II VUL life insurance policy issued in California, that was issued or administered by KC Life, or its predecessors in interest, and that was active on or after January 1, 2002.

[Dkt. 175-2, Decl. of Richard W. Simmons on Notice Plan, Ex. A (“Notice”) at 6].<sup>1</sup> This description is consistent with the class definition this Court previously approved of in the class certification order. [Dkt. 168 at 18]. While each section separately may not utter this language, a thorough reading of the entire notice makes clear to the potential class members that the class is defined as those persons who own or have owned the pertinent life insurance policies and that were “active on or after January 1, 2002.” But, even if a person is still unsure about their status as a class member, section 10 of the notice informs that person they can receive free information about this issue through a designated website. [Notice at 6]. The Court thus finds the proposed notice clearly, concisely, and in plain language states the definition of the certified class in Section 9 and that adding the

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<sup>1</sup> Page citations throughout this order refer to CM/ECF pagination.

language “active on or after January 1, 2002” each time the class is described is unnecessary.

Second, the Court disagrees with KCL’s contention that that the notice must inform the class members of their right to object to, or otherwise challenge, a distribution of attorneys’ fees and benefits in the event damages are awarded. At this juncture, the class members have no right to object to a potential motion for attorneys’ fees or challenge the distribution of benefits that have not yet been awarded. If either occurs, the Court may issue subsequent notices to the class members to inform them of their rights to do so. *See also* Fed. R. Civ. P. 23(d)(1)(B) (conferring district courts with the discretion to give appropriate notice to class members of “any step in the action” or “the proposed extent of the judgment”). Adding this language at this early stage of the litigation serves no purpose and may confuse the class members.

Accordingly, the Motion to Approve and Disseminate Class Notice is **GRANTED**.

- The class notice and notice plan are **APPROVED**, and Analytics Consulting, LLC (“Analytics”) is **APPOINTED** as notice administrator. Fine, through Analytics, is **DIRECTED** to issue the notice in a form that resembles Exhibit A to this motion. The notices must be issued within 30 days from the date of this order. Fine and the notice administrator must take any measures they deem necessary and appropriate to ensure that the substance of the notice is communicated to class members, including the use of dedicated telephone lines, websites, and other methods of communication that accomplish the timely and efficient dissemination of the notice to class members;
- Class members will have 60 days from the date of the mailing of the notice to exercise their ability to opt out of the class; and
- KCL is **ORDERED** to provide the last known names and addresses of all class members within 7 days of this order.

**IT IS SO ORDERED.**