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

IN RE MANUFACTURERS LIFE
INSURANCE COMPANY PREMIUM
LITIGATION

CASE NO. 96CV230 BTM (AJB)

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
ENFORCE INJUNCTION**

Defendant John Hancock Life Insurance Company, successor to The Manufacturer's Life Insurance Company ("Insurance Company"), filed a motion to enforce the terms of a Manufacturer's Life class action settlement that was previously approved by this Court. Specifically, Defendant seeks to enjoin certain class members from bringing claims against the Insurance Company that were allegedly released as a part of the class settlement. For the reasons set forth below, the Court GRANTS IN PART AND DENIES IN PART the Insurance Company's motion.

BACKGROUND

On December 21, 1998, this Court awarded final judgment in the Manufacturer's Life class action lawsuit. The plaintiffs in this lawsuit alleged that Manufacturer's Life misrepresented financial information relating to its policies to induce buyers to purchase policies. Specifically, plaintiffs complained of misrepresentations and omissions of information made in the course of selling insurance policies which included a "vanish" point i.e. "the time at which future dividends on a policy, paid-up cash values, or other policy

1 assets would collectively suffice to pay future premiums as they came due.” (Docket No. 95
2 Memo Approving Settlement, at 2) Plaintiffs also alleged that Manufacturer’s Life trained its
3 agents to provide these misrepresentations and to use common marketing materials and
4 illustrations including misleading information regarding these vanishing premium policies.

5 The parties reached a settlement which the Court concluded was fair, adequate and
6 reasonable. In the final judgment approving the class settlement, the Court retained
7 jurisdiction as to all matters relating to the enforcement and interpretation of the settlement
8 agreement.

9 The final judgment defined the class members as “all persons . . . who have or had
10 on or before June 19, 1998, an ownership interest in one or more individual [relevant] policies
11 . . . issued by the Manufacturer’s Life Insurance Company through its United States individual
12 insurance operations from January 1, 1982 through December 31, 1993.” Unless these class
13 members opted out, they would be bound by the terms of the settlement agreement.

14 As part of this settlement agreement, the class members released:

15 any and all past or presently existing Claims, including known, unknown, suspected
16 or unsuspected, that are based upon, related to, or directly connected with, in whole
17 or in part, the allegations and subject matters referred to in the Complaint or the
Released Transactions . . .

18 The term “Released Transactions” was defined as:

19 any and all acts, communications, omissions, or nondisclosures relating to or
20 connected with the marketing, solicitation, application, sale, purchase, operation or
retention of the Policies, based upon the following:

- 21 (1) Policy illustrations, marketing materials or sales presentations setting forth a
22 single, fixed limited number of out-of-pocket premium payments based on
23 then-current, non-guaranteed assumptions about dividend scales, interest
24 crediting rates, policy credits, administration charges, contract charges and/or
25 cost of insurance to purchase, maintain and keep the Policy in force throughout
the insured’s life, or for a specified period of time beyond the number of
premium payments illustrated, promised or represented, without a reduction
in the Policy’s death benefits;
- 26 (2) a concept under which a Policy’s required premiums or charges may be paid
27 out of its current and/or accumulated values, as those premiums or
administration charges, contract charges or costs of insurance became due;
- 28 (3) the ability of Plaintiffs and the Class Members to keep the Policies in force
based on a fixed number and/or amount out-of-pocket premium payments;

- 1 (4) the dollar or monetary amount that would be accumulated or paid under a
2 Policy based on a fixed number and/or amount of out-of-pocket premium
payments;
 - 3 (5) Defendants' policies and practices with respect to dividends, account values,
4 policy loans, credited interest rates, cost of insurance, administrative charges,
5 contract charges and/or other Policy or premium charges, account value
6 calculations, lapse supported pricing or death benefit;
 - 7 (6) the cost of term-rider coverage on the Policy relative to Policy coverage, the
8 affect of term rider coverage on the cost of the Policy and the ability of Policies
9 with term rider premiums to offset or vanish in future years;
 - 10 (7) the Deferred Acquisition Cost statutory accounting charge;
 - 11 (8) the use of direct recognition of Policy loans in the calculation of Policy benefits,
12 dividends, interest crediting rates and/or costs;
 - 13 (9) the manner in which Defendants trained and supervised any of the Releasees,
14 including, but not limited to, Defendants' general agents, agents, branch
managers, Producers, brokers, or any of them, relating to the allegations set
15 forth in the Complaint, or the Released Transactions set forth in items (1)
16 through (8) above.
- 17 d. Released Transactions does not include claims for replacement, sale of life
18 insurance as retirement, savings, pension or other investment plans, servicing,
19 administration, forgery or theft.

20 On March 13, 2008, John and Harriet Maloof (the "Maloofs") sued Defendant John
21 Hancock and Parker Glasgow, an insurance sales agent, in Alabama state court. The
22 Maloofs allege that Glasgow wrongfully induced them to buy two insurance policies in 1989
23 and another policy with a term rider in 1992. Specifically, the Maloofs allege that Glasgow
24 made the following misrepresentations: (1) that surrendering five existing policies to fund the
25 purchase to two new policies was in their best financial interest; and (2) the benefits from
26 these new policies would pay estate taxes upon Mr. Maloof's death. The Maloofs also allege
27 that Glasgow failed to mention the following pertinent information: (1) the 1989 policy was
28 projected to lapse at age 78 or 79; (2) the policy would be unaffordable in later years; (3) the
contract charges were significant; (4) the purchase of these new policies were not in the
financial best interests of the Maloofs; and (5) the benefits of these policies would not be able
to pay estate taxes if Mr. Maloof lived beyond age 78. The Maloofs also generally allege that
Defendant John Hancock is liable for the "negligent, fraudulent and other wrongful acts" of
Glasgow.

1 **DISCUSSION**

2 The Insurance Company seeks an order from this Court enjoining the action brought
3 against it by the Maloofs in Alabama state court on the ground that this action is barred by
4 the Manufacturer's Life settlement agreement. The All-Writs Act, 28 U.S.C. § 1651,
5 empowers federal courts to "issue all writs necessary or appropriate in aid of their respective
6 jurisdictions." The Anti-Injunction Act, 28 U.S.C. § 2283 clarifies that:

7 A Court of the United States may not grant an injunction to stay proceedings in a
8 State court except as expressly authorized by Act of Congress, or where necessary
in aid of its jurisdiction, or to protect or effectuate its judgments.

9 Pursuant to these acts, federal courts may enjoin state court proceedings to protect the *res*
10 *judicata* effect of their judgments. Charlton v. Estate of Charlton, 841 F.2d 988, 989 (9th Cir.
11 1988).

12 Accordingly, this Court is empowered to enjoin the Maloofs' state court action to the
13 extent that this action involves claims released as part of the Manufacturer's Life Settlement.
14 The Maloofs do not dispute that they were members of the Settlement Class. According to
15 the terms of the Manufacturer's Life Settlement Agreement, the class members released only
16 claims related to the allegations in the Complaint or those related to "Released
17 Transactions." The allegations of the class action complaint are based on
18 misrepresentations in connection with the vanish point scheme as described above and do
19 not appear to encompass general misrepresentations regarding financial advisability and
20 affordability, lapse dates, or policy benefits. Furthermore, the allegations in the class action
21 complaint are not broad enough to include the claims made in the Maloofs' complaint.

22 Instead, Defendants argue that the Released Transactions should be construed
23 broadly to encompass all communications regarding the marketing, sale, and purchase of
24 Insurance Company's policies. Contrary to Defendants' contentions, the Released
25 Transactions are more limited in scope and are defined as "communications, omissions,
26 non-disclosures" based on specifically enumerated practices and policies such as the
27 "vanish" point scheme (items 1-4 in the definition of Released Transactions); costs of term
28 rider coverage (item 6); the Deferred Acquisition Cost statutory accounting charge (item 7);

1 the use of direct recognition of Policy loans in the calculation of Policy benefits (item 8); and
2 the training related to these policies and practices (item 9). The only released transaction
3 that is broadly phrased is item number 5 which includes:

4 Defendants' policies and practices with respect to dividends, account values, policy
5 loans, credited interest rates, cost of insurance, administrative charges, contract
6 charges and/or other Policy or premium charges, account value calculations, lapse
7 supported pricing or death benefit.

8 The Maloofs, on the other hand, do not allege claims based on the vanish point
9 scheme. In their complaint, the Maloofs allege general misrepresentations about the
10 desirability and the terms and conditions of the policies that they purchased including (1) the
11 advisability of replacing existing policies to fund new policies; (2) the projected benefits; (3)
12 the projected lapse dates; (4) affordability; and (5) the significant contract charges associated
13 with these new policies.

14 Upon comparing the Maloofs' claims to the definition of the Released Transactions
15 in the settlement agreement, the Court concludes that the only overlap occurs with the
16 Maloofs' claims of misrepresentation regarding significant contract charges. Because item
17 5 of the definition of "Released Transactions" specifically includes contract charges, the
18 Maloofs are precluded from alleging this released claim.

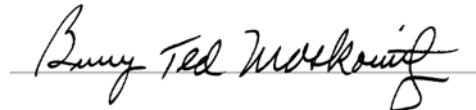
19 The Maloofs are therefore enjoined from proceeding against the Insurance Company
20 on a claim that the contract charges were misrepresented to them. The remainder of the
21 Maloofs' claims, however, centering around the wrongful replacement of existing policies with
22 new policies and the misrepresentations regarding their affordability, benefits and terms and
23 conditions were not released in the Manufacturer's Life Class Settlement. The Maloofs may
24 therefore proceed with these claims in Alabama State Court.

25 For the reasons set forth above, the Court GRANTS IN PART and DENIES IN PART
26 Defendant John Hancock Life Insurance Company's motion to enforce permanent injunction
27 and class action settlement [Doc 163]. The Maloofs are enjoined from proceeding against
28 the Insurance Company in Alabama state court on the claim that the contract charges were
29 misrepresented to them. The Maloofs may proceed with the remainder of their claims that
30 were not released as part of the Manufacturer's Life Class Settlement.

1 The Court also grants the parties motion to substitute counsel [Doc. 164].

2 **IT IS SO ORDERED.**

3 DATED: November 18, 2008

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5 Honorable Barry Ted Moskowitz
6 United States District Judge
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