Note Changes Made by Court

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

JASON T. KOO,

Plaintiff,

v.

UNUM GROUP; PROVIDENT LIFE AND ACCIDENT INSURANCE COMPANY; and DOES 1-10, inclusive,

Defendants.

Case No.: 2:25-cv-05797-JFW-BFMx

STATEMENT OF DECISION

I. INTRODUCTION

This matter came before the Court on Plaintiff Jason T. Koo's ("Plaintiff") Motion for Determination Regarding ERISA Preemption and Defendants Unum Group ("Unum") and Provident Life and Accident Insurance Company's ("Provident") (collectively, "Defendants") Motion Re: Applicability of ERISA. The Court has reviewed the parties' Motions, the accompanying declarations and exhibits, the parties' Oppositions, the documents submitted in support of their Oppositions, and the parties' arguments. Pursuant to the Court's July 28, 2025 Order Approving the Parties' Proposed Briefing Schedule Re: ERISA Issues, the Court issues this Statement of Decision.

For the reasons set forth below, the Court finds that Plaintiff's disability insurance coverage was not established or maintained as part of any ERISA-governed

employee welfare benefit plan, that it falls within the Department of Labor's safe harbor regulation, and that it is an individually owned and regulated disability insurance policy governed by California law. Accordingly, ERISA does not apply.

II. FACTUAL BACKGROUND

Plaintiff was employed as an Executive Partner in the Financial and Insurance Services Division of New York Life Insurance Company ("New York Life"). (Koo Decl., ¶ 2.) While in that position, he was offered the opportunity to purchase an individual disability insurance policy issued by Provident, through licensed insurance broker Lloyd Pomerantz ("Pomerantz") of Miller-Pomerantz Insurance & Financial Services. (Koo Decl., ¶ 2; Pomerantz Decl., ¶¶ 1, 3.)

Included in the Unum Enrollment Kit that Plaintiff received as part of the solicitation was a June 30, 2016 New York Life memorandum titled "Unum Elective Supplemental Disability Program," which expressly stated:

> The purchase of any Unum policy is completely voluntary. New York Life does not sponsor, contribute to or endorse this program and it is not a plan subject to the Employee Retirement Income Security Act of 1974, as amended (ERISA).

(Coleman Decl., Exh. G, ENROLLMENT KIT_2; Koo Decl., ¶ 4, Exh. A; Pomerantz Decl. ¶ 5, Exh. B.)

This language appeared in all copies of the memorandum that were provided to Plaintiff and Pomerantz. (*Id.*) In prior emails with Defendants, New York Life had also previously advised that it explicitly intended not to endorse any such insurance program that Defendants offered. (Coleman Decl., Exh. K, RISK FILE 146601 – 1374; Exh. I, RISK FILE 146601 – 1365-1366.)

Plaintiff applied for and obtained Individual Disability Income Policy No. 06-650-5216760 (the "Policy") in 2016. (Koo Decl., ¶ 2.) The Policy was individually underwritten, requiring Plaintiff to provide personal financial and medical information directly to Defendants. (Koo Decl., ¶ 7.) The Policy was marketed, sold, and maintained

as a personal, state-regulated contract. (Koo Decl., ¶¶ 3, 13; Pomerantz Decl. ¶¶ 4, 6; Coleman Decl., Exh. G, ENROLLMENT KIT_2–3.) The Enrollment Kit likewise described the product as "Supplemental Individual Disability Insurance (IDI)" and emphasized that it was "Individually owned," "Non-cancellable," "pa[id] with post-tax dollars," and "a fully portable benefit" that "belongs to you, even if you change employers." (Coleman Decl., Exh. G, ENROLLMENT KIT_3–8.)

No evidence produced by Defendants indicates any employer contribution. Plaintiff personally paid all premiums for the Policy, and New York Life did not subsidize, reimburse, or pay any portion of the premium. (Koo Decl., ¶ 5.) The Enrollment Kit similarly explained that premiums were paid solely by the employee and that premium amounts would be determined by Unum, with employees instructed to contact Unum directly if they chose to opt out of future increases. (Coleman Decl., Exh. G, ENROLLMENT KIT_7, 18.)

Initially, premiums were processed via a "Premium Payment Authorization," which allowed New York Life to collect Plaintiff's premiums through payroll deductions for the purpose of remittance to Defendants. (Coleman Decl., Exh. D.) The form itself identified the product as "Supplemental Individual Disability Insurance" and listed New York Life only as a premium remitter. (*Id.*) After Plaintiff left New York Life, the premiums were billed directly to him, and he paid for them directly from his own personal funds. (Koo Decl., ¶ 11; Coleman Decl., Exh. C.)

The record demonstrates that New York Life explicitly stated in its June 30, 2016 memorandum that the program was not sponsored, contributed to, or endorsed by New York Life and was not subject to ERISA. (Koo Decl., ¶¶ 3–4, Exh. A; Pomerantz Decl., ¶ 5, Exh. B; Coleman Decl., Exh. G, ENROLLMENT KIT_2.) And internal correspondence produced from Defendants' "risk file" further confirms that New York Life instructed Unum that it did not intend to create any program subject to ERISA:

- New York Life revised Defendants' draft renewal letter to "confirm that this program is not an employee benefit plan offered by New York Life, and it is not

subject to ERISA." (Coleman Decl., Exh. K, RISK FILE 146601 – 1374.)

- New York Life insisted on including language that the purchase of any policy was "completely voluntary" and that the program was "not a benefit plan or arrangement sponsored or endorsed by New York Life." (Coleman Decl., Exh. J, RISK FILE 146601 – 1371; Exh. K, RISK FILE 146601 – 1373.)
- New York Life explicitly stated: "We want to make it clear that we are not creating a plan subject to ERISA." (Coleman Decl., Exh. I, RISK FILE 146601 – 1365–1366.)
- Defendants acknowledged internally that whether the program fell under ERISA "is not our decision but New York Life's decision." (Coleman Decl., Exh. J, RISK FILE 146601 – 1372.)

New York Life's only documented involvement otherwise consisted of:

1. Allowing Defendants to provide marketing materials (Enrollment Kit: Coleman Decl., Exh. G);
2. Notifying eligible employees of the availability of voluntary coverage (June 30, 2016 New York Life memorandum: Koo Decl., Exh. A; Pomerantz Decl., Exh. B; Coleman Decl., Exh. G, ENROLLMENT KIT_2); and
3. Processing voluntary payroll deductions (Premium Payment Authorization: Coleman Decl., Exh. D; Exh. G at ENROLLMENT KIT_18).

These ministerial actions fall within the safe harbor activities contemplated by 29 C.F.R. § 2510.3-1(j)(3).

In response to Plaintiff's discovery requests, Defendants did not produce or identify any Form 5500s, a plan instrument, a trust agreement, a summary plan description, any employer plan documents, or any communications showing New York Life's sponsorship or administrative control. Instead, Defendants identified only four categories of documents:

1. Plaintiff's individual policy (IDI-POL-000001–000043);

2. Plaintiff's application file (PLA-APP-IDI-000001–000082);

3. Defendants' print screens (PLA-BM-IDI-000001–000020 and PLA-BPS-IDI-000001–000027); and

4. Unum's internal Risk File 146601 (RISK FILE 146601 0001–2189).

(Coleman Decl., Exh. B, Resp. to Rog. No. 1 at 2:8–13.)

None of these materials constitutes or references any New York Life plan, program, or ongoing administrative scheme. Further, the only communications with New York Life in the "risk file" are those in which New York Life repeatedly insisted that *it did not endorse or sponsor the program*. (Coleman Decl., Exh. I, RISK FILE 146601 – 1365–1366; Exh. K, RISK FILE 146601 – 1374.)

Plaintiff submitted a disability claim directly to Defendants in 2017. (Koo Decl., ¶ 9.) For approximately six years, Defendants accepted and paid residual disability benefits. (Dkt. No. 1, Exh. A, Complaint ¶ 23; Dkt. No. 14 at 1:16–2:4.) On May 24, 2024, Unum terminated benefits, and on December 30, 2024, Unum upheld its termination on appeal. (Dkt. No. 14 at 1:16–2:4.)

Consistent with Plaintiff's and Pomerantz's understanding (Koo Decl., ¶¶ 3, 13; Pomerantz Decl., ¶¶ 4, 6), Unum's Enrollment Kit and Policy instructed Plaintiff regarding California-specific rights and remedies:

- The first page of the Policy directed him to contact the California Department of Insurance for assistance in resolving problems with Defendants. (Coleman Decl., Exh. E, PLA-APP-IDI-44.)
- Defendants sent multiple letters advising him of a California law protecting policyholders against unintentional lapses or cancellations of their policies. (Coleman Decl., Exh. F.)
- The Enrollment Kit included California-specific "Exclusions and Limitations." (Coleman Decl., Exh. G, ENROLLMENT KIT_11.)

These references reflect Defendants' own repeated characterization of the Policy as a California-regulated, individual contract.

III. ANALYSIS

A. Defendants Bear the Burden of Establishing ERISA Applicability

Defendants assert ERISA preemption as a basis for federal-question jurisdiction and as their Ninth Affirmative Defense.[1] As the party invoking ERISA, Defendants bear the burden of proving that the coverage at issue constitutes an "employee welfare benefit plan" within the meaning of 29 U.S.C. § 1002(1). *Kanne v. Connecticut General Life Ins. Co.*, 867 F.2d 489, 492 & n.4 (9th Cir. 1988). An ERISA-governed "employee welfare benefit plan" is any 1) plan, fund, or program 2) established or maintained 3) by an employer 4) for the purpose of providing disability benefits 5) to the participants or their beneficiaries. *Id.* Whether an ERISA plan exists is a factual determination made "in light of all the surrounding facts and circumstances." *Id.* at 492. For the reasons discussed below, the Court concludes that Defendants have not met their burden.

B. No ERISA "Plan, Fund, or Program" Was "Established or Maintained"

The Court concludes that the Policy is not an ERISA-governed plan because it does not meet the statutory requirements necessary to establish it as an "employee benefit plan." Every employee benefit plan must be established pursuant to a written instrument that "shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan." 29 U.S.C. § 1102(a)(1). ERISA also mandates certain requisite features of an employee benefit plan, such as a procedure for amending the plan and for identifying the persons who have authority to amend the plan. 29 U.S.C. § 1102(b). In this case, the Policy does not identify a named fiduciary, does not provide a procedure for amending the plan, and does not identify any person who has authority to amend the plan. "The Ninth Circuit strictly construes ERISA's statutory requirements regarding plan documents, and where the statutory requirements are lacking, there is no ERISA plan. *Cinelli* [*v. Security Pacific Corp.*, 61 F.3d 1437, 1441 (9th Cir. 1995)] (citing *Watkins v. Westinghouse Hanford Co.*, 12 F.3d 1517 (9th Cir. 1993))." *Westover v. Provident Life*

[1] Plaintiff does not contest diversity jurisdiction or venue.

& Accident Ins. Co., 580 F. Supp. 3d 959, 967 (W.D. Wash. 2022). In *Westover*, the court examined a Provident individual disability policy which also lacked a plan fiduciary, a procedure to amend the plan, and individuals with authority to amend the plan. *Id*. The court held that the "reality of the IDI policy itself is that it lacks specific statutory elements of an ERISA plan as a matter of law. Provident has not established the first element of its ERISA defense, *i.e.*, the existence of a 'plan, fund, or program.' *See Kanne*, 867 F.2d at 492." *Id*. The same is true here.

In addition, the Court concludes that the Policy lacks an employer administrative scheme or program that would be subject to ERISA. *Fort Halifax Packing Co., Inc.*, 482 U.S. at 12; *Golden Gate Rest. Ass'n*, 546 F.3d at 651; *Rizzi v. Blue Cross of Southern California*, 206 Cal. App. 3d 380, 388-390 (1988); *Bogue v. Ampex Corp.*, 976 F.2d 1319, 1322–23 (9th Cir. 1992) (an ERISA plan exists only when benefit administration requires "ongoing, particularized, administrative, discretionary analysis"); *Velarde v. PACE Membership Warehouse, Inc.*, 105 F.3d 1313, 1317 (9th Cir. 1997) (ERISA applies only where an employer must maintain an "ongoing administrative scheme"); *Steigleman v. Symetra Life Ins. Co.*, No. 23-4082, 2025 WL 602175, at *2 (9th Cir. Feb. 25, 2025) ("Our test for determining whether benefits are provided pursuant to an 'employee welfare benefit plan' asks whether the benefit package implicates 'an ongoing administrative scheme.' *Delaye v. Agripac, Inc.*, 39 F.3d 235, 237 (9th Cir. 1994)."). In *Pegram v. Herdrich*, 530 U.S. 211, 222–223 (2000), the Supreme Court recognized the "circular" nature of ERISA's definition of an employee welfare benefit plan as "any plan, fund, or program . . . to the extent that such plan, fund, or program was established . . . for the purpose of providing . . . through the purchase of insurance or otherwise . . . benefits." 29 U.S.C. § 1002(1). The Supreme Court determined that, definitionally, a "plan" is a *scheme* decided upon in advance, and that with an ERISA plan, "the scheme comprises a set of rules that define the rights of a beneficiary and provide for their enforcement. Rules governing collection of premiums, definition of benefits, submission of claims, and resolution of disagreements over

entitlement to services are the sorts of provisions that constitute a plan." *Pegram*, 530 U.S. at 223. Because New York Life has no such scheme governing the administration of the Policy, no plan exists. There is no evidence that New York Life did anything more than relay limited information about the insurance program to eligible employees and deduct premiums from the employees' paychecks. "To do little more than write a check hardly constitutes the operation of a benefit plan." *Fort Halifax Packing Co., Inc.*, 482 U.S. at 12. Without evidence of any ongoing administrative activity by New York Life, there is simply no basis for regulation under ERISA.

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C. The Department of Labor's Safe Harbor Regulation Applies

The Department of Labor has issued a regulation, often referred to as the "safe harbor" regulation, for certain group or group-type insurance programs that are excluded from ERISA preemption. 29 C.F.R. § 2510.3-1(j). In assessing whether an employer has "established or maintained" an insurance plan, a court should consider 29 C.F.R. § 2510.3–1(j). *Silvera v. Mutual Life Ins. Co. of New York,* 884 F.2d 423, 426 (9th Cir. 1989). "While an employer's failure to adhere to the safe harbor provision does not necessitate a finding that it 'established or maintained' an ERISA plan, its adherence to the provision does preclude such a finding." *Anderson v. UnumProvident Corp.*, 322 F. Supp. 2d 1272, 1275-1276 (M.D. Ala. 2002), *aff'd sub nom. Anderson v. UNUM Provident Corp.*, 369 F.3d 1257 (11th Cir. 2004). *See also Zavora v. Paul Revere Life Ins. Co.,* 145 F.3d 1118, 1121 (9th Cir. 1998) (finding that an employer's failure to meet one subsection of the safe harbor regulation is not conclusive, but it is evidence that "must be considered along with 'all the surrounding circumstances' to determine whether an ERISA plan exists."). To the extent that New York Life's involvement in the issuance and maintenance of Plaintiff's Policy is considered, the Court concludes that such involvement does not equate to having "established or maintained" the coverage because its actions fall squarely within the safe harbor regulation.

The safe harbor regulation provides that a group insurance program offered to employees is not an "employee welfare benefit plan" if the following four criteria are met:

1) No contributions are made by an employer or employee organization;

2) Participation in the program is completely voluntary for employees or members;

3) The sole functions of the employer or employee organization with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees or members, to collect premiums through payroll deductions or dues checkoffs and to remit them to the insurer; and

4) The employer or employee organization receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deductions or dues checkoffs.

29 C.F.R. § 2510.3-1(j). This regulation allows an employer to "assist its work force by arranging for the provision of desirable coverage at attractive rates" without "the trouble and expense that meeting ERISA's requirements entails." *Johnson v. Watts Regulator Co*., 63 F.3d 1129, 1133 (1st Cir. 1995). The group insurance program through which the Policy was issued meets the safe harbor criteria, precluding ERISA preemption.

1. No Employer Contributions

Plaintiff paid all premiums personally. (Koo Decl. ¶ 5.) Although Unum's Enrollment Kit states that Plaintiff's premiums were discounted, there is no evidence that this discount was a result of any action by New York Life. (Coleman Decl., Exh. G, ENROLLMENT KIT_3.) An insurer's unilateral volume discount, *particularly in the absence of any evidence that the employer negotiated that discount*, "is not a 'contribution' as that term is used in the safe-harbor provision of ERISA." *Pope v.*

Washington Nat'l Ins. Co., 2005 WL 8158051, at *6 (N.D. Ala. Dec. 15, 2005).

As "noted in *Schwartz v. Provident Life and Accident Insurance Co.*, 280 F. Supp. 2d 937, 941 (D. Ariz. 2003), the dispositive question is whether [the employer] actually absorbed any portion of the cost of those premiums, which by itself would be sufficient to bring the insurance policy outside of the safe harbor. Where an employer acts as a mere conduit for payment of premiums, the employer does not make contributions for purposes of the first safe harbor provision. *Id.* at 942 (*citing Levin v. UNUM Life Ins. Co. of America*, 33 F. Supp. 2d 1179, 1183 (N.D. Cal. 1998))." *Ames v. Jefferson Pilot Fin. Co.*, 515 F. Supp. 2d 1050, 1055 (D. Ariz. 2007). In this case, Plaintiff paid for the premiums with his own money, and New York Life merely acted as a conduit. (Koo Decl., ¶ 5.) *See also Sandborg v. Royal Ins. Holdings plc*, No. C 97-3540 SI, 1998 WL 61218, at **1, 3 (N.D. Cal. Feb. 4, 1998) (concluding that a "list billing" process whereby the insured received a fifteen percent discount did not remove the insured's policy from the safe harbor regulation); *Rubin v. Guardian Life Ins. Co. of Am.*, 174 F. Supp. 2d 1111, 1118-1119 (D. Or. 2001) (finding that an insurer's offering of discounted premiums is "insufficient, in and of itself, to establish that [the employer] went beyond employer neutrality in its involvement with the disability insurance offer."); *Rosen v. Provident Life and Acc. Ins. Co.,* 2015 WL 260839, at **8-12 (N.D. Ala. Jan. 21, 2015) (rejecting Provident's ERISA preemption defense and noting that a premium discount based on a salary allotment agreement did not constitute an employer contribution or endorsement); *Gooden v. Unum Life Ins. Co. of Am.*, 181 F. Supp. 3d 465, 475 (E.D. Tenn. 2016) ("It is illogical to stretch th[e] 'clear meaning' [of the first safe harbor criterion] to encompass a group discount that results solely from using payroll deductions to pay insurance premiums."); *Johnson*, 63 F.3d at 1133 (holding that "an employer can assist its work force by arranging for the provision of desirable coverage at attractive rates" and still meet the safe harbor requirements); *Letner v. Unum Life Ins. Co. of Am.*, 203 F. Supp. 2d 1291, 1300-1301 (N.D. Fla. 2001) (finding that a fifteen percent discount obtained by paying premiums via payroll deductions

through employer held to be "*de minimus* and indirect contributions" which were "highly improbable" to impact ERISA jurisdiction); *Levin v. UNUM Life Ins. Co. of Am.*, 33 F. Supp. 2d 1179, 1183 (N.D. Cal. 1998) (concluding that an individual disability insurance policy was not an ERISA plan in part because "[a]lthough the [employer] paid for the premiums on plaintiff's insurance policy, it did so as plaintiff's agent, . . . with the plaintiff himself remaining personally liable for the premiums."); *Schneider v. Provident Life and Acc. Ins. Co.,* No. C 97–4646 SC, 1999 WL 281206, at *4 (N.D. Cal. 1999) ("[The employer's] issuance of premium checks to Provident, with the cost charged to Plaintiff as taxable income, falls squarely within the 'safe harbor' provision of 29 C.F.R. § 2510.3–1(j).").

In *Gooden*, 181 F. Supp. 3d at 475, the court examined the interplay between the first safe harbor criterion (no employer contributions) and the third criterion, which "specifically permits an employer 'to collect premiums through payroll deductions . . . and remit them to the insurer.' 29 C.F.R. § 2510.3–1(j)(3)." Noting that it is common for insurers to offer group discounts, regardless of whether the group's insurance is governed by ERISA, the court found that there "is no reason why the combination of two permissible actions -- payroll deduction by the employer and a group discount from the insurer -- would remove an insurance policy from the safe harbor. . . . To hold otherwise would be to present an employer who did not wish to be drawn into ERISA with a nonsensical choice: either refuse to allow its employees to use payroll deductions for insurance premiums (which is specifically allowed under the safe harbor), or refuse to allow the insurer to offer its employees a premium discount (which would risk involving the employer in negotiating the terms of the policy, thereby potentially endorsing the plan under the third criterion of the safe harbor)." *Id*. Like the discount that Unum offered in *Gooden*, Defendants' discount here "was not negotiated by or particularized for [New York Life]. It was a program Unum . . . offered to any set of insureds who could persuade their employer to use payroll deduction for their premium payments, as permitted by the third criterion of the safe harbor." *Id*.

2. Voluntary Participation

New York Life and Unum expressly informed Plaintiff that purchase of the Policy was "completely voluntary." (Koo Decl. ¶¶ 3–4; Coleman Decl., Exh. G, ENROLLMENT KIT_2.) In a June 30, 2016 Memorandum, New York Life's Maria J. Mauceri notified certain employees, including Plaintiff, that they were eligible to participate in an "Elective" disability program and that the "purchase of any Unum policy is completely voluntary." (Koo Decl., Exh. A.) Unum also included New York Life's memorandum in the personalized Enrollment Kit that it provided to Plaintiff. (Coleman Decl., Exh. G, ENROLLMENT KIT_2.)

3. New York Life Did Not Endorse the Program

"[A]n employer will be said to have endorsed a program within the purview of the Secretary's safe harbor regulation if, in light of all the surrounding facts and circumstances, an objectively reasonable employee would conclude on the basis of the employer's actions that the employer had not merely facilitated the program's availability but had exercised control over it or made it appear to be part and parcel of the company's own benefit package." *Tomes v. Pro. Ins. Co.,* 2014 WL 2690938, at **4-5 (C.D. Cal. June 11, 2014) (quoting *Johnson*, 63 F.3d at 1135). *See also Thompson v. Am. Home Assurance Co.,* 95 F.3d 429, 436–437 (6th Cir. 1996) ("[T]he relevant framework for determining if endorsement exists is to examine the employer's involvement in the creation or administration of the policy from the employees' point of view. . . . [E]mphasis should be placed on those circumstances which would allow an employee to reasonably conclude that the employer had compromised its neutrality in offering the plan."). "[J]udging endorsement from the viewpoint of an objectively reasonable employee most efficaciously serves ERISA's fundamental objective: the protection of employee benefit plan participants and their beneficiaries." *Johnson*, 63 F.3d at 1135. "The policy behind this prong of the safe harbor requirement is to prevent situations where the employer is taking positions on behalf of, or in coordination with, the insurer or administrator." *Ames v. Jefferson Pilot Fin. Co.*, 515

F. Supp. 2d 1050, 1056-1057 (D. Ariz. 2007).

From the perspective of an objectively reasonable employee, the Court concludes that it is clear that New York Life did not endorse the Policy to its employees. Just a few weeks before he purchased the Policy, Plaintiff received a memorandum from New York Life specifically advising that New York Life did not endorse the program. (Koo Decl., Exh. A.) In addition, via its personalized Enrollment Kit, Unum also specifically advised Plaintiff that New York Life did not endorse the program. (Coleman Decl., Exh. G, ENROLLMENT KIT_2.) On the first page of its Enrollment Kit, Unum informed Plaintiff that this "coverage is made available by Unum and serviced by Miller-Pomerantz Insurance & Financial Services." (*Id*. at 1.) Moreover, Pomerantz has attested that his agency received a copy of New York Life's memorandum providing that the program is not an ERISA plan and that New York Life does not sponsor, contribute to, or endorse the program. (Pomerantz Decl., ¶5.)

New York Life conveyed its lack of endorsement, not only to its employees, but also to Unum. In a December 20, 2007 email from New York Life to Pomerantz, New York Life revised the draft Executive Disability Program renewal letter shared between New York Life and Unum "to confirm that this program is not an employee benefit plan offered by New York Life, and it is not subject to ERISA." (Coleman Decl., Exh. K, RISK FILE 146601 – 1374.) In a subsequent email, New York Life again notified Pomerantz that "[w]e want to make it clear that we are not creating a plan subject to ERISA." (Coleman Decl., Exh. I, RISK FILE 146601 – 1365-1366.) Unum responded that "this is not our decision (nor do we determine) if a plan falls under ERISA. It is up to an employer and their legal department to determine whether or not the plan would be considered ERISA." (*Id*. at 1364.) After further discussions, Unum and New York Life agreed to include the following sentence in the parties' renewal letter: "New York Life intends that the purchase of any Unum policy by an employee of New York Life under this program is completely voluntary, and is not a benefit plan or arrangement sponsored or endorsed by New York Life." (Coleman Decl., Exh. H, RISK FILE

146601 – 1352.) Unum was permitted to continue soliciting business from New York Life's employees on the condition that the New York Life employees were notified that New York Life did not endorse the policies and that the policies were not subject to ERISA.

In addition, New York Life's involvement in the insurance program is limited to functions that are explicitly contemplated under the third section of the safe harbor regulation ("to permit the insurer to publicize the program to employees or members, [and] to collect premiums through payroll deductions or dues checkoffs and to remit them to the insurer."). 29 C.F.R. § 2510.3-1(j)(3). New York Life merely informed employees that they were "eligible to participate in a supplemental disability program from Miller-Pomerantz and Unum" and provided them with a few basic elements of the program -- most notably, the fact that it *was not subject to ERISA*. (Koo Decl., Exh. A.) Initially, New York Life collected Plaintiff's premiums through payroll deductions and remitted them to Provident. (Coleman Decl., Exh. D.) The premium amount was determined by Defendants, and Plaintiff was instructed to contact Unum if he wanted to opt out of any future premium increases. (*Id*.; Coleman Decl., Exh. G, ENROLLMENT KIT_7.) After leaving New York Life, Plaintiff's premiums were deducted directly from his bank account. (Koo Decl., ¶ 11.) New York Life's minimal engagement with the insurance program falls squarely within the conduct permitted under the safe harbor regulation. Moreover, an employer's ministerial acts do not amount to endorsement. *Johnson*, 63 F.3d at 1134. "When an employer performs such activities as maintaining a list of eligible employees, selecting the specific benefit to be made available to its employees, selecting the specific elimination period to be made available to its employees, it is not deemed as endorsing the Plan. *Zavora,* 145 F.3d at 1121. Instead, it is performing the type of ministerial administrative duties that courts have held not to satisfy endorsement. *See, e.g., Schwartz [*v. Provident Life & Acc. Ins. Co.*, 280 F. Supp. 2d 937, 943-944 (D. Ariz. 2003)*]." *Ames*, 515 F. Supp. 2d at 1057.

Throughout the solicitation and the administration of Plaintiff's coverage, Unum

repeatedly informed Plaintiff that his coverage was subject to California state law, including in the Enrollment Kit; in the Policy; and in letters dated February 20, 2018, July 28, 2020, and May 14, 2024, (Coleman Decl., Exh. G, ENROLLMENT KIT_11; Exh. E, PLA-APP-IDI-44; Exh. F.) Unum's repeated references to California law are additional "surrounding circumstances" that negate the existence of an ERISA plan. *Zavora,* 145 F.3d at 1121.

4. No Employer Consideration

Plaintiff attests that New York Life received no consideration. (Koo Decl. ¶ 12.) Defendants identify no contrary evidence. Without evidence to the contrary, this provision has been met. As a result, the Court concludes that the safe harbor applies in full.

D. The Totality of the Circumstances Confirms That ERISA Does Not Apply

Courts evaluate ERISA's applicability by considering "all the surrounding circumstances." *Kanne*, 867 F.2d at 492. The relevant circumstances here include:

- express employer disclaimers of sponsorship and endorsement;
- voluntary participation;
- 100% employee-paid premiums;
- individual underwriting;
- failure to meet the statutory requirements of an "employee benefit plan";
- absence of any ongoing employer administrative scheme;
- repeated references to California insurance law; and
- insurer-driven ERISA characterization unsupported by the record.

Under the controlling legal standards, and based solely on the record before the Court, the Court concludes that the Policy is not governed by ERISA.

IV. CONCLUSION

For the foregoing reasons, the Court finds that:

1. Plaintiff's Individual Disability Income Policy No. 06-650-5216760 is not governed by ERISA.

2. Plaintiff's state-law claims are not preempted by ERISA.

3. This action shall proceed under California common and statutory law.

4. Defendants' Ninth Affirmative Defense (ERISA Preemption) and Tenth Affirmative Defense (Limitations of Remedies) are **STRICKEN**.

Dated: December 16, 2025

JOHN F. WALTER
UNITED STATES DISTRICT JUDGE