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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **OAKLAND DIVISION**

17 **IN RE PFA INSURANCE MARKETING**
18 **LITIGATION**

19 Case No. 4:18-CV-03771-YGR

20 **PLAINTIFFS' NOTICE OF MOTION AND**
21 **MOTION FOR PRELIMINARY APPROVAL**
22 **OF CLASS ACTION SETTLEMENT, AND**
23 **MEMORANDUM OF LAW IN SUPPORT**
24 **THEREOF**

25 Judge: Hon. Yvonne Gonzalez Rogers
26 Date: May 2, 2023
27 Time: 2:00 p.m.
28 Courtroom: 1 – 4th Floor

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on May 2, 2023, at 2:00 p.m., before the Honorable Yvonne Gonzalez Rogers of the United States District Court for the Northern District of California, Plaintiffs Dalton Chen and Youxiang Eileen Wang will and do hereby move the Court, pursuant to Rules 23(a), (b)(3), and (e) of the Federal Rules of Civil Procedure, for entry of the proposed Preliminary Approval Order, and request that the Court set the following schedule:

Event	[Proposed] Deadline
Class Action Fairness Act notice to state and federal officials, under 28 U.S.C. § 1715	Within 10 days after filing of this motion
Notice to be mailed to Class Members and posted on Settlement Website	Within 28 days after Preliminary Approval
Plaintiffs to move for final approval of the settlement	60 days after Preliminary Approval
Plaintiffs to move for attorneys' fees, expenses, and service awards	60 days after Preliminary Approval
Deadline for the submission of objections and requests for exclusion, and any opposition or objections to Plaintiffs' motion for attorneys' fees, expenses, and service awards	90 days after Preliminary Approval
Deadline to file a claim	90 days after Preliminary Approval
Filing of declaration confirming execution of Notice program	At least 35 days before Settlement Hearing
Filing of reply briefs in support of final approval and motion for attorneys' fees, expenses, and service awards, and responses to any timely objections	At least 7 days before Settlement Hearing
Settlement Hearing	At least 100 days after Preliminary Approval

The Motion is based on this Notice of Motion, the incorporated memorandum of points and authorities, the Declaration of Daniel C. Girard ("Girard Decl.") and the Declaration of Cameron R. Azari ("Azari Decl.") and their attachments, filed herewith, the record in this action, the argument of counsel, and any other matters the Court may consider.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Dalton Chen and Eileen Wang seek preliminary approval of their class settlement
4 with Defendants Life Insurance Company of the Southwest (“LICS”) and Premier Financial Alliance,
5 Inc. (“PFA”). Plaintiffs sued LICS and PFA for violating state deceptive trade practice laws in
6 connection with PFA’s multilevel life-insurance sales plan. The case was sharply contested, with class
7 certification and summary judgment decided, and trial approaching, before the parties reached
8 agreement on settlement terms. The parties mediated in August 2022, under the supervision of Hon.
9 Diane Welsh (Ret.), a former Magistrate Judge in the Eastern District of Pennsylvania. Negotiations
10 continued for the next several months. The settlement offers class members the opportunity by filing a
11 simple claim form online to recover a substantial portion of the insurance premiums they paid, while
12 avoiding the delay and significant uncertainties associated with a trial and appeals.

13 The class of insureds eligible to recover under the settlement is the same California class that
14 the Court certified for trial. The claim and payment process is a simplified version of the claim
15 procedure that would have followed any verdict for the class. Under the settlement, Defendants agree
16 to pay class members who submit a valid claim their actual premiums paid, minus deductions for
17 LICS’s charges for maintaining the policy while it was in force, with a one-third discount. There is no
18 cap on the total payments and PFA also agrees to implement a series of forward-looking measures to
19 address Plaintiffs’ allegations of deceptive practices.

20 The class members fall into two broad categories: those whose policies already lapsed or were
21 surrendered, and those whose policies remain in force. By making a claim, the latter group of active
22 policy owner class members will terminate their policies, consistent with Civil Code section 1689.2,
23 which Plaintiffs would rely on to support their claims for rescission at a trial. Given the composition
24 of the class, the notice will be translated into several languages, and it has been carefully prepared for
25 ease of comprehension. To the same end, active policyholders and inactive policyholders, who are
26 necessarily situated differently with respect to their options under this settlement, will receive different
27 versions of the notice and claim form. The claim form requires a simple attestation of class
28 membership, similar to the Court’s description. *See* Dkt. No. 239 at 37:23-26. Although decisions

1 about life insurance are personal and unique, any class member can consult Class Counsel about their
2 options and can also obtain a dollar estimate of their expected payment.

3 Under the settlement, Defendants will pay an agreed sum for notice and administration costs
4 separate from the payment of class member claims. Defendants also will pay Class Counsel's
5 attorneys' fees and costs separate from the relief available to class members, subject to Court approval.
6 The negotiated fee and cost payment, up to \$6,371,000, is less than Class Counsel's lodestar
7 accumulated over four years of prosecuting the action and negotiating the settlement.

8 This settlement conforms to this District's Procedural Guidance for Class Action Settlements
9 and is fair, reasonable, and adequate. Therefore, the Court should grant preliminary approval and
10 direct that the class members be notified of the settlement and their ability to make a claim for a cash
11 payment.

12 **II. STATEMENT OF ISSUES TO BE DECIDED**

13 Should the Court, pursuant to Fed. R. Civ. P. 23(e)(1)(B), preliminarily approve the settlement,
14 authorize notice to the Class and schedule further settlement proceedings?

15 **III. FACTUAL AND PROCEDURAL BACKGROUND**

16 The parties litigated this case since 2018 before agreeing to a settlement in principle. Given
17 the volume of case activities and filings as reflected on the docket, and the Court's familiarity with the
18 course of the litigation, Plaintiffs provide only a high-level overview of the procedural history.

19 **A. Plaintiffs' Allegations**

20 In their operative complaint, Plaintiffs asserted claims for (1) violations of the Endless Chain
21 Scheme, Cal. Penal Code § 327 and Cal. Civ. Code § 1689, as a predicate for their claim under the
22 unlawful prong of the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.*; (2)
23 violations of the UCL under the unlawful and unfair prongs as to both Defendants, and under the
24 fraudulent prong as to PFA only; (3) violations of the New Jersey Consumer Fraud Act, N.J. Stat. §
25 56:8-1, *et seq.*; (4) fraud by omission as to PFA only; and (5) civil conspiracy. Dkt. No. 131.

26 In support of these claims, Plaintiffs alleged that LICS markets complex indexed universal life
27 insurance through PFA, a multi-level sales organization. PFA generates sales for LICS by recruiting
28 widely, often attracting individuals with no previous insurance or sales experience. Plaintiffs alleged

1 that recruits are invited to attend “Financial Opportunity Seminars” and small group meetings where
2 PFA sales operatives display images of wealth and tell recruits that they can build their own insurance
3 business and earn passive income by recruiting more people to PFA. Under PFA’s step-by-step
4 program, Plaintiffs alleged, recruits pay \$125 to join, and are encouraged to “become a client” by
5 purchasing LICCS’s “Living Life” insurance policy, and then give up their “warm contacts” to their
6 “upline,” and then “replicate” the same steps by recruiting new participants who will in turn be pitched
7 to buy the policy, turn over their personal contacts, and recruit others, in an endless cycle. Plaintiffs
8 further alleged that the ostensible goal of joining PFA is to become licensed to sell insurance and profit
9 from sales commissions generated by new recruits, but that few ever become licensed, and of those
10 who do, even fewer succeed in rising in the PFA hierarchy. Before accepting this sales pitch, Plaintiffs
11 alleged, the recruits are never told that only few have achieved the promised financial and professional
12 success. Most end up with a costly insurance policy they otherwise would not have purchased,
13 Plaintiffs contended. *See* Dkt. No. 131 (Complaint). Defendants, for their part, deny liability and have
14 vigorously contested Plaintiffs’ allegations. *See* Dkt. No. 136 (PFA Answer); Dkt. No. 137 (LICCS
15 Answer). The settlement contains no admission or acknowledgment of wrongdoing or liability.

16 **B. Early Case Activities**

17 The initial complaint in the litigation was filed on June 25, 2018. Dkt. No. 1. On January 22,
18 2019, the Court denied PFA’s motion to compel arbitration for failure to demonstrate the existence of
19 an agreement. Dkt. No. 56. On March 26, 2019, the Court held the two actions—*Chen v. PFA*, No.
20 4:18-cv-03771-YGR, and *Wang v. LICCS*, No. 4:19-cv-01150-YGR (N.D. Cal. filed Feb. 28, 2019)—
21 related under the Local Rules. Dkt. No. 81. After holding case management conferences on May 16
22 (Dkt. No. 93) and August 20 (Dkt. No. 109), the Court on December 19 declined to reconsider its
23 arbitration ruling and denied PFA’s motion to transfer the case to the Northern District of Georgia
24 (Dkt. No. 110). The Court held another case management conference on March 6, 2020 (Dkt. No.
25 107), and on April 16 appointed Girard Sharp LLP as interim class counsel and directed the filing of a
26 consolidated complaint (Dkt. No. 134).

27 Plaintiffs filed the consolidated complaint on April 30, 2020. Dkt. No. 131. PFA answered on
28 May 19 (Dkt. No. 136) and LICCS answered on May 21 (Dkt. No. 137).

1 **C. Discovery Proceedings**

2 The parties began discovery in mid-2020. Girard Decl., ¶ 7. The parties negotiated, and the
3 Court approved, case management orders regarding confidentiality (Dkt. No. 144), electronically
4 stored information (Dkt. No. 153), privilege issues (Dkt. No. 151), and expert witnesses (Dkt. No.
5 152). Girard Decl., ¶ 7. Defendants produced over 85,000 documents in discovery, which Plaintiffs
6 reviewed and analyzed. *Id.* Plaintiffs also gathered and produced voluminous documents in response
7 to defense requests. *Id.* The parties took 21 depositions of fact witnesses, and six expert depositions.
8 *Id.*, ¶¶ 9-11.

9 Among other discovery proceedings, the parties litigated disputes concerning: PFA’s
10 production of documents responsive to Plaintiffs’ first set of requests and PFA’s compliance with the
11 ESI guidelines (Dkt. No. 159); PFA’s production of its executive chairman Jack Wu for deposition
12 (Dkt. Nos. 167, 217); LICS’s production of class member identification data (Dkt. No. 173); LICS’s
13 production of its CEO for deposition (Dkt. No. 190); and extending the fact discovery cutoff so
14 Plaintiffs could pursue the deposition of Jack Wu and their subpoena enforcement action involving
15 Steven Early¹ (Dkt. No. 211). Girard Decl., ¶¶ 12(a)-(e).

16 **D. Class Certification Proceedings**

17 Plaintiffs moved for class certification on May 14, 2021. Dkt. Nos. 181-82. PFA and LICS
18 filed oppositions on June 29 (Dkt. Nos. 194-97), and Plaintiffs replied on July 23 (Dkt. Nos. 207-08).

19 On October 13, 2021, the Court held a video hearing on class certification. Dkt. No. 251. On
20

21 ¹ In 2020, Plaintiffs subpoenaed non-party Early, a Georgia lawyer and a former outside counsel to and
22 executive at PFA. Although Early agreed to appear for a deposition, he refused to comply with
23 Plaintiffs’ document subpoena, asserting that all of his responsive documents are privileged. Girard
24 Decl., ¶ 13. Plaintiffs filed an action to enforce the subpoena in the Northern District of Georgia, and
25 on April 20, 2021, the Georgia court granted Plaintiffs’ motion to transfer the enforcement action to
26 this Court. *Id.*; see Case No. 4:21-mc-80087-YGR-SK. Judge Kim and this Court issued a series of
27 rulings, and the Ninth Circuit granted Plaintiffs’ motions to dismiss Early’s two interlocutory appeals.
28 Girard Decl., ¶ 14. Early finally provided a privilege log for communications he is withholding on
November 17, 2022. Case No. 4:21-mc-80087-YGR-SK, Dkt. No. 81. The parties and Mr. Early
agreed to table the dispute as settlement negotiations had reached an advanced stage, and on February
28, 2023, Judge Kim ruled that Plaintiffs may seek to reopen their enforcement action if the Settlement
of this class action is not approved. *Id.*, Dkt. No. 85.

1 November 3, the Court issued an order granting in part and denying in part the motion for class
2 certification. Dkt. No. 239. Specifically, the Court granted certification under Rule 23(b)(3) of a
3 California Class as to Plaintiffs' claims under the unlawful and unfair prongs of the UCL. *Id.* at 38.
4 Subject to various exclusions, the certified Class consists of all persons who enrolled as PFA
5 associates and purchased one or more Living Life or Living Life by Design policies within California
6 between January 1, 2014 and the present. *Id.* The Court otherwise denied Plaintiffs' motion without
7 prejudice. *Id.*

8 On November 17, 2021, Defendants separately petitioned the Ninth Circuit for review of the
9 class certification under Rule 23(f). Girard Decl., ¶ 18; Ninth Circuit Appeal Nos. 21-80115, 21-
10 80116. Plaintiffs filed a consolidated answer to the petitions on November 29. Girard Decl., ¶ 18. On
11 January 20, 2022, the Ninth Circuit denied review. *Id.*

12 Motions and stipulations regarding dissemination of class notice followed in 2022. Dkt. Nos.
13 312, 320, 321, 322, 323, 324, 328, 330, 334. On December 21, 2022, the Court granted the parties'
14 stipulation adjourning the dissemination of class notice in light of the parties' agreement in principle to
15 settle the action. Dkt. No. 352.

16 **E. Dispositive Motion Practice**

17 On November 19, 2021, the Court conducted a pre-motion conference regarding dispositive
18 motions. Dkt. No. 250. On December 6, PFA and LICS separately moved for summary judgment.
19 Dkt. Nos. 252, 262-63. LICS also moved to exclude the expert opinions of Plaintiffs' testifying
20 experts Dr. William Keep, Christopher Snyder, and Larry Stern (Dkt. Nos. 253-56, 258, 260), and
21 PFA joined those motions (Dkt. Nos. 257, 259, 261). Plaintiffs moved to exclude the expert opinions
22 of LICS's expert Bill Post. Dkt. Nos. 264-66. Plaintiffs and LICS opposed the respective dispositive
23 motions on January 6, 2022 (Dkt. Nos. 269-81), and the parties filed replies in support of their
24 respective dispositive motions on January 18 (Dkt. Nos. 286-95).

25 On May 31, 2022, the Court held an in-person hearing on the parties' dispositive motions.
26 Dkt. No. 317. On June 15, the Court issued an order granting summary judgment with respect to
27 Plaintiffs' request for prospective injunctive relief; their theory of liability against LICS based on the
28 existence of an LICS-PFA partnership; and Plaintiff Wang's fraud claim against PFA. Dkt. No. 306 at

1 49. The Court otherwise denied the motions for summary judgment. *Id.* Also on June 15, the Court
2 issued a companion order largely denying the parties' *Daubert* motions regarding the admissibility of
3 expert evidence. Dkt. No. 307.

4 **F. The Settlement Negotiations**

5 On August 11, 2022, the parties participated in an in-person mediation in Philadelphia with
6 Judge Welsh. Girard Decl., ¶ 22. Although the parties did not reach a settlement, they continued
7 negotiating after the mediation. *Id.*, ¶¶ 22-23. The case proceeded on two tracks, with the parties'
8 counsel preparing for trial and concurrently negotiating toward a settlement over the subsequent
9 months. *Id.*, ¶ 23. After PFA's counsel was diagnosed with a terminal illness in September 2022, the
10 parties approached the Court to request an adjustment in the schedule while PFA sought new counsel.
11 On October 11, the Court suspended all pretrial deadlines, except for the pretrial conference set for
12 January 6, 2023 and the trial date set for February 6, 2023. Dkt. No. 337. A week later PFA gave
13 notice that it had engaged new litigation counsel at Coblenz Patch Duffy & Bass LLP ("CPDB").
14 Dkt. Nos. 340-43.

15 Thereafter the parties consented to postpone the trial date and pretrial schedule to allow CPDB
16 time to come up to speed, an adjustment the Court approved on November 14, 2022, setting the
17 pretrial conference for June 2, 2023. Dkt. No. 348. The parties signed a detailed term sheet on
18 December 16, 2022, and on December 22, the Court granted the parties' stipulation to adjourn Class
19 Counsel's obligation to comply with the order to mail notice. Dkt. No. 352. On February 10, 2023,
20 upon receipt of the parties' report confirming their progress in documenting the settlement, the Court
21 vacated the trial date. Dkt. No. 355.

22 Class Counsel's objective in negotiating the settlement was to reproduce to the extent
23 practicable the rescissory relief that Class Counsel would pursue if the class prevailed at trial. Girard
24 Decl., ¶ 25. To mitigate LICS's informational and experiential advantages, Class Counsel retained
25 Philip J. Bieluch, an actuarial consultant specializing in life insurance product development and
26 reinsurance, with previous class action consulting experience, for advice throughout the negotiations.
27 *Id.* The protracted nature of the negotiations is attributable to several factors, including hard
28 bargaining between the parties, the developed record in the case, the lack of ready models for

1 resolution of alleged “endless chain” claims arising in the insurance sales context, and the reality
2 that not all class members will wish to terminate their policies. Girard Decl., ¶ 26.

3 **IV. SUMMARY OF SETTLEMENT TERMS**

4 The parties’ Stipulation of Settlement (“Settlement” or “SA”), appended here with the Girard
5 Declaration, has four exhibits: Exhibit A is the proposed Notice;² Exhibit B is the proposed
6 preliminary approval order; Exhibit C is the proposed final order and judgment; and Exhibit D is the
7 proposed Claim Form.³

8 **A. The Settlement Class**

9 The Class of LICS policyholders eligible for relief under the Settlement is substantially
10 identical to the Class certified for trial, consisting of:

11 All Persons who: (i) enrolled as PFA associates between January 1, 2014
12 and the Stipulation Date and (ii) purchased one or more Living Life Policies
13 within California between January 1, 2014 and the Stipulation Date (March
14 17, 2023).

15 The following Persons are excluded from the Class: (a) all individuals who
16 reached the level of Provisional Field Director, Qualified Field Director,
17 Senior Field Director, Regional Field Director, Area Field Director,
18 National Field Director, Executive Field Director, or Senior Executive Field
19 Director at PFA; (b) the judicial officers to whom this matter is assigned
20 and their immediate family members and staff; (c) Defendants, their
21 parents, affiliates, subsidiaries, legal representatives, predecessors,
22 successors, assigns, employees, and any entity in which one of these
23 Defendants has a controlling interest or which has a controlling interest in
24 one of these Defendants; (d) Jack Wu, Aggie Wu, Rex Wu, Hermie Bacus,
25 Bill Hong, Lan Zhang, and their legal representatives, successors, assigns,
26 and immediate family members; (e) any Person who previously released
27 any Defendant pertaining to any Released Claim; and (f) any Person who
28 submits a valid request to be excluded from the Class in accordance with
this Stipulation.

SA § 2.4; *compare* Dkt. No. 239 at 38 & n.9.

² Capitalized terms not otherwise defined have the meaning ascribed to them in the Settlement.

³ The Notice and Claim Form are divided into two sets: Exhibits A1 and D1 will be sent to former Class Policy owners, and Exhibits A2 and D2 will be sent to current Class Policy owners. Girard Decl., ¶ 49. In each instance, the two documents will be included in the same envelope. *Id.*

1 LICS has identified approximately 22,000 Living Life and Living by Design policies purchased
 2 in California between January 2014 and March 2023 by owners whose name matches a name on the
 3 list of PFA associates.⁴ Girard Decl., ¶ 29. In connection with these policies, LICS’s records show a
 4 total of 13,105 unique addresses, to which the Notice will be sent. Girard Decl., ¶ 30. PFA has no
 5 record of which individuals reached the upper levels of PFA’s marketing hierarchy and are therefore
 6 excluded from the class. *See* Dkt. No. 239 at 37 (the Court noting that “neither defendant has records
 7 showing whether a PFA member ever reached one of the positions within PFA that would result in
 8 their exclusion”). PFA’s list also may contain duplicate entries, as many similar or identical first and
 9 last names appear on PFA’s member list—which contains, for example, 918 people with the surname
 10 “Nguyen” and 249 with the surname “Wang.” Girard Decl., ¶ 31. Thus, although an exact count is
 11 unavailable, it appears there are fewer than 13,000 Class Members. *Id.*, ¶ 32.

12 **B. Settlement Consideration**

13 The Settlement provides cash payments that resemble the rescissory relief that Plaintiffs would
 14 seek were the Class to obtain judgment. Girard Decl., ¶ 33.

15 Both Class Members whose Class Policy has lapsed or been surrendered, and Class Members
 16 who elect to terminate their in-force Class Policy, can make a claim for a cash payment. The
 17 Settlement obligates the Defendants to return a portion of the premiums paid by Class Member
 18 claimants, according to a formula that subtracts cost of insurance and other policy charges from the
 19 total premiums paid, and then applies a one-third discount. The Inactive Policy Relief—for claiming
 20 Class Members who owned policies that lapsed or were surrendered—will be calculated as:

21 67 percent of the following formula: (a) the premiums paid on the Class Policy;
 22 *minus*; (b) an expense factor of 25 percent of the total premiums paid on the
 23 Class Policy; *minus* (c) the total amount of cost of insurance charges and
 24 accumulated value charges deducted from the Class Policy; *minus* (d) the total
 25 amount of withdrawal, partial surrender, and/or total surrender amounts
 26 already paid on the Class Policy.

27 SA § 3.6. The Active Policy Relief—for claiming Class Members who are current policy
 28 owners and elect termination—will similarly be calculated as:

⁴ Of these Class Policies, 78% are active and 22% are inactive. Girard Decl., ¶ 29.

1 67 percent of the following formula: (a) the premiums paid on the Class Policy;
2 *minus* (b) an expense factor of 10 percent of the total premiums paid on the
3 Class Policy; *minus* (c) the total amount of cost of insurance charges and
4 accumulated value charges deducted from the Class Policy; *minus* (d) the total
5 amount of outstanding policy loans and interest owed to LICS on the Class
6 Policy; *minus* (e) the total amount of withdrawals from or partial surrenders of
7 the Class Policy; *minus* (f) the cash surrender value of the Class Policy.

8 SA § 3.3.

9 The deduction for cost of insurance accounts for the cost required to maintain the death benefit
10 protection for the policyholder while the insurance is in place, an offset Plaintiffs conceded would
11 apply if they prevailed at trial. Dkt. No. 260-2 (Stern Rpt. at 11); Dkt. No. 281-3 (Stern Dep. at 51-
12 52); *see also* Dkt. No. 281-2 (Toole Dep. at 76). The expense factor deduction accounts for the
13 overhead costs borne by LICS in originating the policy sale, administering the policy, and processing
14 payments and other policy-related transactions. Girard Decl., ¶ 38. The expense factor applied to the
15 total premium differs between the inactive and active policyholder groups because the cost to the
16 insurer of rescinding a policy in the first few years is exponentially greater—the insurer recovers the
17 substantial commission due to the selling agent over a period of several years. *Id.* Hence, because the
18 inactive policies generally were in force for less time, Plaintiffs conceded a greater deduction from the
19 total payment to inactive policyholder claimants. *Id.*

20 The Settlement also obligates PFA to implement and maintain certain forward-looking measures
21 related to the sales practices at issue in the case. SA, Appx. A. These include requirements that PFA
22 retain copies of certain approved marketing materials (SA, Appx. A, ¶ 1) and that it make available to
23 enrollees a compensation summary that shows the percentage of “Associates” at each PFA
24 commission level and the average yearly gross earnings at each such level (SA, Appx. A, ¶ 2). PFA
25 also agrees not to use certain imagery in its promotional and training materials—including images of
26 vacation destinations (other than conference and convention venues), private planes, high-end luxury
27 cars or homes, facsimile or actual checks, or other similar imagery to make or imply claims regarding
28 compensation—and not to use terms like “passive income,” “unlimited income potential,” “get rich,”
or “get wealthy.” SA, Appx. A, ¶ 3.

1 **C. The Claims Administrator**

2 The parties agreed that Epiq Class Action & Claims Solutions, Inc. will serve as Claims
3 Administrator. SA § 2.3. Epiq is among the most experienced class action settlement administrators
4 and maintains adequate procedures for handling confidential data. Azari Decl., ¶¶ 3-17. Epiq has
5 served as the notice and claims administrator in many significant litigations, including this Court’s
6 antitrust MDL, *In re Lithium Ion Batteries Antitrust Litig.*, No. 4:13-md-02420-YGR (N.D. Cal.).

7 The maximum budget for Epiq’s services in this case is \$200,000, which Defendants will
8 separately pay. SA § 6.1. The Court previously approved the parties’ selection of Epiq to distribute
9 class notice. Dkt. No. 334.

10 Pursuant to Paragraph 2 of the Procedural Guidance for Preliminary Approval,⁵ Epiq was
11 retained at the request of the Department of Justice to administer the class action settlement in *In re*
12 *U.S. Office of Personnel Management Data Security Breach Litigation*, No. 15-1394 (ABJ) (D.D.C.),
13 in which Girard Sharp serves as lead class counsel. During the past two years, the firm also has
14 worked with Epiq in *In re Pacific Fertility Center Litigation*, No. 3:18-cv-01586-JSC (N.D. Cal.), and
15 in *In re Juul Labs, Inc., Marketing, Sales Practices, and Products Liability Litigation*, No. 3:19-md-
16 02913-WHO (N.D. Cal.).

17 **D. The Notice and Claim Form**

18 Using the same method previously approved by the Court (Dkt. No. 334),⁶ within 28 days after
19 Preliminary Approval, Epiq will send the Notice by first-class mail to the last-known address of
20 Living Life policyholders who purchased their policy in California in the relevant time period and
21 whose name matches a name from the list of PFA associates. SA §§ 5.3, 6.5 & Ex. B at ¶ 7(b). Class
22 Counsel will file a declaration confirming these mailings have been completed. SA, Ex. B at ¶ 8.
23 Epiq also will perform standard skip-traces and remailings for returned mail. Azari Decl., ¶ 23; Girard
24 Decl., ¶ 47. Defendants will send the notice required by the Class Action Fairness Act (SA § 5.2) and
25 file an affidavit confirming that process has been completed (SA, Ex. B at ¶ 9). Epiq will also post the
26

27 ⁵ <https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/>.

28 ⁶ The Court previously found that this method for distributing class notice “is the best method practicable and satisfies the requirements of Rule 23(c)(2)(B).” Dkt. No. 328 at 1; *see* Dkt. No. 334.

1 Notice on the Settlement Website.⁷ SA, Ex. B at ¶ 7(a).

2 The Notice complies with all Northern District guidelines. *See generally* SA, Exs. A1 & A2.
3 Using plain language, the Notice advises Class Members of the pendency and nature of the case, basic
4 settlement terms, and their right to make a claim, to opt out of the Class, to object to the Settlement,
5 and to appear before this Court at the Settlement Hearing. The Notice also includes Class Counsel’s
6 contact information, the address of the Settlement Website, and instructions for how to access the case
7 docket. The Notice has a placeholder for the date, time, and place of the Settlement Hearing and alerts
8 Class Members that the hearing date may change without further notice but that they should monitor
9 the Settlement Website for updates. The Notice also describes the process to follow for Class
10 Members who wish to object or opt out. Finally, the Notice provides details regarding the payment
11 formula and Class Counsel’s anticipated motion for attorneys’ fees and reimbursement of litigation
12 expenses and for a service award to Plaintiff Chen, to be paid separately by Defendants.

13 Because many Class Members are not native English speakers, the Notice will be translated
14 into several languages—Chinese, Tagalog, Spanish, Vietnamese, and Nepali—and those translated
15 versions will be posted on the Settlement Website. Girard Decl., ¶¶ 50, 58. To further assure clear
16 and intelligible communication with this Class, a different notice will be sent to each of the two
17 subgroups of Class Members (former policyholders and active policyholders). *Id.*, ¶ 51.

18 The notice for the “actives” discloses that making a claim will cause their policy to terminate.
19 *See* SA, Ex. A2. It also advises that, in deciding whether to make a claim, they should compare an
20 estimate of their potential cash payment under the Settlement with the cash surrender value of the
21 policy, as in some cases the Settlement payment may be less than the cash surrender value. SA, Ex.
22 A2 at p. 1 & Question 10. The notice to the actives directs them to the Settlement Website where they
23 can input their unique claim identifier (shown on the enclosed Claim Form) to see this information—
24 i.e., both their estimated Settlement payment and their policy’s cash surrender value (with a specified
25 “as of” date)—with the caveat that these values may change before the payment is calculated. *Id.*;
26 Girard Decl., ¶¶ 59-60.

27 _____
28 ⁷ www.pfasettlement.com has been reserved.

1 A short Claim Form will be enclosed with the Notice packet. Girard Decl., ¶¶ 58-61. Like the
2 Notice, the Claim Form has two variants, one for active policyholders and one for inactive
3 policyholders. See SA, Ex. D1 & D2. The Claim Form requires a claiming Class Member to fill in
4 their contact details, list their policy number, and attest they are a Class Member who is not excluded.
5 SA, Exs. D1 & D2 at §§ III & IV. To further promote comprehension and accessibility of use, the
6 Claim Form includes a preliminary instruction sheet and a reminder checklist at the end. SA, Exs. D1
7 & D2. The two claim forms also will be posted online and can be submitted either online or by U.S.
8 mail. Girard Decl., ¶ 52.

9 **E. The Claim Procedure**

10 Class Members will have 90 days from Preliminary Approval to make a claim. SA § 6.6. As
11 discussed in the Notice (SA, Ex. A1 & A2 at Questions 8 & 28), Epiq will establish a toll-free
12 telephone number and an email address that Class Members can use to request assistance in filing a
13 claim, and they can also contact Class Counsel for free help. Girard Decl., ¶ 54. In addition, Epiq will
14 provide claimants with a reasonable cure opportunity. SA § 6.7.

15 Starting 90 days after the Effective Date, LICS will initiate procedures to terminate the policies
16 of active policyholder Class Members who elect to terminate, and will calculate the payments to that
17 group and to the group of former policyholder Class Members. SA § 6.9. LICS will transfer the total
18 amount to a fund and provide Epiq the payment information so it can remit the payments to Class
19 Members who filed a valid claim. SA § 9.1.

20 Claimants can elect between electronic payment or paper check. SA, Ex. D1 & D2 at 2 (Claim
21 Form). Any unclaimed funds will be distributed *cy pres* according to Court order. SA § 9.1.

22 **F. Release of Claims**

23 The Release applies to claims arising from the facts underlying the claims and allegations in
24 this action. SA §§ 2.24-27, §§ 4.1-4.4. Consistent with the Procedural Guidance, the Release tracks
25 the claims in the Consolidated Complaint. See, e.g., *K.H. v. Secretary of Dep't of Homeland Sec.*,
26 2018 WL 6606248, at *4 (N.D. Cal. Dec. 17, 2018) (“Because the release is appropriately limited to
27 claims related to those litigated in this lawsuit, the Court finds it is sufficiently narrow to support
28 approval.”). The Release accordingly extends to claims that relate “to: (i) whether PFA or LICS

1 operates as an endless chain, pyramid scheme, or similar legally prohibited structure; (ii) the business
 2 or business model of PFA or LICS, (iii) any disclosures or omissions relating to PFA or LICS, and/or
 3 (iv) marketing or sale of any Living Life Policies.” SA § 2.26.

4 **G. Objection and Opt-Out Opportunity**

5 The Settlement allows any Class Member to object to the Settlement or to opt out of the Class.
 6 SA §§ 5.4-5.5 & Ex. B at ¶¶ 12-15. These provisions follow the mandates of Rule 23 and
 7 recommendations of the Procedural Guidance. Objections and opt-outs will be due 90 days after the
 8 Preliminary Approval, the same date as the deadline for making claims. SA, Ex. B at ¶¶ 12, 14.

9 **H. Attorneys’ Fees and Expenses, and Service Award**

10 Under the Settlement, Defendants agree not to oppose an application by Class Counsel for
 11 attorneys’ fees not to exceed \$6,000,000 and reimbursement of litigation expenses not to exceed
 12 \$371,000. SA § 7.1. The agreed fee was negotiated by the parties after they agreed on all other
 13 material terms of settlement, and is lower than Class Counsel’s lodestar. Girard Decl., ¶ 63.

14 Defendants also agree not to oppose Class Counsel’s application for a service award of
 15 \$10,000 for the Class Representative, Dalton Chen. SA § 8.1. Plaintiff Eileen Wang and the other
 16 Living Life policyholders who came forward with evidence of their experiences are eligible for the
 17 same relief as the Class, in exchange for their individual releases of liability. SA §§ 2.8, 8.7. In
 18 addition, Defendants will pay Ms. Wang an amount equal to any service award that the Court approves
 19 for Mr. Chen. SA § 8.7.

20 **V. ARGUMENT**

21 **A. The Settlement Is Fair, Reasonable, and Adequate.**

22 The requirements for preliminary approval are all met in this case. “[T]here is a strong
 23 judicial policy that favors settlements, particularly where complex class action litigation is
 24 concerned.” *In re Chrysler-Dodge-Jeep EcoDiesel Mktg., Sales Practices, & Prods. Liab. Litig.*,
 25 2019 WL 536661, at *5 (N.D. Cal. Feb. 11, 2019) (quoting *Allen v. Bedolla*, 787 F.3d 1218, 1223
 26 (9th Cir. 2015)). Further, the heightened scrutiny that applies to settlements entered into prior to
 27 formal class certification “does not apply to this case because the Court previously certified a class.”
 28 *Theodore Broomfield v. Craft Brew All., Inc.*, 2020 WL 1972505, at *6 (N.D. Cal. Feb. 5, 2020). At

1 the preliminary approval stage, the settling parties must furnish the Court “information sufficient to
2 enable it to determine whether to give notice” of the proposed settlement to the class. Fed. R. Civ. P.
3 23(e)(1). The Court will direct notice to all class members who would be bound if doing so “is
4 justified by the parties’ showing that the court will likely be able to (i) approve the proposal under
5 Rule 23(e)(2) and (ii) certify the class for purposes of judgment on the proposal.” *Id.*

6 **1. The Settlement Is the Product of Arm’s Length Negotiations Among**
7 **Experienced Counsel.**

8 Under Rule 23(e)(2), the Court considers whether the class representative and class counsel
9 adequately represented the Class and whether the settlement proposal was negotiated at arm’s length.
10 Both factors are satisfied here. First, the Court already determined that Plaintiff Chen and Class
11 Counsel are adequate representatives (Dkt. No. 239 at 16), and the Settlement is the product of their
12 concerted efforts over a period of years to deliver relief to the Class.

13 Second, the parties’ adversarial negotiations proceeded with “sufficient information to make
14 an informed decision about settlement.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th
15 Cir. 1998). This Settlement followed many months of hard bargaining, supervised in part by a retired
16 federal judge. *See* Fed. R. Civ. P. 23(e)(2) advisory committee’s note to 2018 amendment (advising
17 that “involvement of a neutral” in negotiations “may bear on whether they were conducted in a
18 manner that would protect and further the class interests.”); *Federal Ins. Co. v. Caldera Med., Inc.*,
19 2016 WL 5921245, at *5 (C.D. Cal. Jan. 25, 2016). Moreover, the parties reached their agreement
20 after voluminous document, deposition and expert discovery that addressed the key factual questions
21 in this case. *See* Dkt. No. 339 at 3 (noting “huge amounts of paper” submitted); *see, e.g., LaGarde v.*
22 *Support.com, Inc.*, 2012 WL 13034899, at *7 (N.D. Cal. Nov. 2, 2012) (existence of robust discovery
23 indicates plaintiffs were sufficiently informed). Class Counsel’s discovery and expert work, further
24 informed by this Court’s opinions on a series of motions, enabled counsel to “enter[] the settlement
25 discussions with a substantial understanding of the factual and legal issues from which they could
26 advocate for their respective positions and which are necessary for a robust negotiation.” *Kulesa v.*
27 *PC Cleaner, Inc.*, 2014 WL 12581769, at *10 (C.D. Cal. Feb. 10, 2014); *see Van Lith v. iHeartMedia*
28 *+ Entm’t, Inc.*, 2017 WL 1064662, at *16 (E.D. Cal. Mar. 20, 2017) (“The adversarial nature of these

1 negotiations and the discovery performed by the parties indicate that the settlement process is
2 procedurally adequate.”).

3 **2. The Settlement Treats All Class Members Equitably.**

4 “Approval of a plan of allocation of settlement proceeds in a class action . . . is governed by
5 the same standards of review applicable to approval of the settlement as a whole: the plan must be
6 fair, reasonable and adequate.” *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 6778406, at
7 *3 (N.D. Cal. Nov. 16, 2016) (quoting *In re Oracle Sec. Litig.*, 1994 WL 502054, at *1-2 (N.D. Cal.
8 June 18, 1994)). The Settlement’s plan of allocation meets this standard because it conforms to
9 Plaintiffs’ claims in litigation and treats all Class Members fairly and equitably.

10 The Settlement gives each Class Member the option of terminating their current policy to
11 receive cash or of recovering premiums paid on their former policy. The Settlement thereby
12 approximates the optional rescission process that Plaintiffs would have proposed after a verdict for
13 the Class—but with simplified proof requirements and swifter relief. Girard Decl., ¶¶ 25, 55; Dkt.
14 No. 239 at 11 (discussing proposal for “any proposed class members who wish to receive this
15 optional rescission”);⁸ *see also Kamakahi v. Am. Soc’y for Reprod. Med.*, 305 F.R.D. 164, 176 (N.D.
16 Cal. 2015) (court may “leav[e] the potentially difficult issue of individualized damage assessments
17 for a later day.”) (citing *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1167 (9th Cir. 2014)).

18 All Class Members are eligible to make a claim, regardless of whether they are former or
19 current policyholders. Girard Decl., ¶ 39. Other than the subtractions discussed at page 9 above, the
20 same formula applies to each of these two broad groups of Class Members. *Id.*, ¶ 38. Because the
21 Settlement applies this objective formula to Class Members’ individual policy records without
22 capping the total payment on valid claims, the Settlement will compensate each claimant
23 commensurate with the actual loss they experienced. *See Khoja v. Orexigen Therapeutics, Inc.*, 2021
24 WL 5632673, at *7 (S.D. Cal. Nov. 30, 2021) (“A plan of allocation that reimburses class members
25 based on the extent of their injuries is generally reasonable.”); *In re Merrill Lynch & Co., Inc.*

26 _____
27 ⁸ *See* Cal. Civ. Code § 1689.2 (permitting a participant in an endless chain scheme to “rescind the
28 contract upon which the scheme is based” and “recover all consideration paid pursuant to the scheme,
less any amounts paid or consideration provided to the participant pursuant to the scheme.”).

1 *Research Reports Sec. Litig.*, 2007 WL 313474, at *5 (S.D.N.Y. Feb. 1, 2007) (approving use of loss
2 formula); *Howard v. Liquidity Servs. Inc.*, 2018 WL 4853898, at *2 (D.D.C. Oct. 5, 2018) (similar).

3 Some Class Members with active policies have built up sufficient cash value so that it does
4 not make financial sense for them to terminate their policy. In part for this reason, not all Class
5 Members with an active policy will elect to terminate. The Settlement fully preserves their right to
6 keep their policy in force. *See* Girard Decl., ¶ 41.

7 For those who choose to make a claim, the deductions under the Settlement’s payment
8 formula conform to the mandate to deduct “any amounts paid or consideration provided to the
9 participant.” Cal. Civ. Code § 1689.2. Plaintiffs previously recognized that, considering the value
10 they received from the Living Life policy while it was in force, the policy charges assessed by LICS
11 would be deducted from individual recoveries. *E.g.*, Dkt. 260-2 at 11 (among other deductions,
12 Plaintiffs’ expert actuary opined that rescinding Class Members should “be entitled to recover all
13 premiums paid . . . minus the total COI deductions, which will be offset as a reasonable proxy for the
14 value the Class Member received for potential death benefits under the Policy during the period it was
15 in force”). The Settlement thus adheres to the actuarial realities of this insurance litigation.

16 Pursuant to Paragraph 1(f) of the Procedural Guidance for Preliminary Approval, although it
17 difficult to predict how Class Members will respond to this Settlement, Class Counsel tentatively
18 anticipate a claim rate of approximately 15% for inactive policyholder Class Members and a claim rate
19 of approximately 10% for active policyholder Class Members. Girard Decl., ¶ 55. These estimates
20 are based on Class Counsel’s experience in similar consumer cases and consultation with the Claims
21 Administrator. *Id.*; *see, e.g., Carlotti v. ASUS Computer Int’l*, 2020 WL 3414653, at *4 (N.D. Cal.
22 June 22, 2020) (finding that in several consumer cases the claim rate was between 4.7 to 10.9% and
23 approving settlement with 4% claims rate); *Norcia v. Samsung Telecommc’ns Am., LLC*, 2021 WL
24 3053018, at *3 (N.D. Cal. July 20, 2021) (approving consumer settlement with 2% claim rate).

25 The parties discussed but ultimately rejected the possibility of making automatic payments to
26 inactive policyholders. Girard Decl., ¶ 53. Only Class Members are entitled to recover and, given
27 available information, only through an attestation of Class Membership can a claimant’s eligibility for
28 payment be verified. *Id.* Therefore, as the Court contemplated in its class certification decision, such

1 an attestation is necessary to pay Class Member claims. *See* Dkt. No. 239 at 37:23-26 (noting that
2 Class Members “who wished to rescind their policies could be required to submit an affidavit
3 attesting that they do not hold any of the positions at PFA that are excluded from the proposed
4 subclass and that they otherwise satisfy the requirements for inclusion”).

5 As noted above, not all Class Members will elect a Settlement payment. Girard Decl., ¶ 41.
6 Some, for instance, have accumulated sufficient cash surrender value that it may not make financial
7 sense to terminate. *Id.* But this reality is not a flaw in the Settlement; rather, the shifting policy cash
8 values are inherent to the insurance product at issue. *Cf. Mandalevy v. BofI Holding, Inc.*, 2022 WL
9 4474263, at *10 (S.D. Cal. Sept. 26, 2022) (approving settlement of securities class action where
10 class members who profited from their purchased shares received “Recognized Claim” values of
11 zero); *Schueneman v. Arena Pharms., Inc.*, 2020 WL 3129566, at *7 (S.D. Cal. June 12, 2020)
12 (same). And, because the Settlement focuses relief on those Class Members who discontinued their
13 policies or made minimum payments to keep their policies in effect, the Settlement maximizes
14 recoveries to the Class Members that Class Counsel contend were most harmed by Defendants’
15 alleged scheme: those who found the policy too expensive to maintain. Girard Decl., ¶ 42. The
16 cohesion of the Class is not affected given that each Class Member was exposed to the alleged
17 unlawful practices and purchased the promoted product. *See, e.g., Ruiz Torres v. Mercer Canyons*
18 *Inc.*, 835 F.3d 1125, 1136-37 (9th Cir. 2016) (affirming certification where all class members were
19 exposed to the same challenged practice); *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods*
20 *LLC*, 31 F.4th 651, 669 (9th Cir.) (a certified class may “potentially include[] more than a *de minimis*
21 number of uninjured class members.”), *cert. denied*, 143 S. Ct. 424 (2022); *In re Mego Fin. Corp.*
22 *Sec. Litig.*, 213 F.3d 454, 462-63 (9th Cir. 2000); *Rodman v. Safeway, Inc.*, 2014 WL 988992, at *16
23 (N.D. Cal. Mar. 10, 2014) (a class “will often include persons who have not been injured by the
24 defendant’s conduct”) (citation omitted), *aff’d*, 694 F. App’x 612 (9th Cir. 2017).

25 The Settlement’s provisions have been diligently crafted to treat all Class Members equitably
26 relative to each other.

1 **3. The Relief Under the Settlement Is Adequate.**

2 In determining whether the relief for Class Members is adequate under Rule 23(e)(2), the
 3 Court considers “the costs, risks, and delay of trial and appeal”; “the effectiveness of any proposed
 4 method of distributing relief to the class, including the method of processing class-member claims”;
 5 “the terms of any proposed award of attorney’s fees, including timing of payment”; and “any
 6 agreement required to be identified under Rule 23(e)(3).”⁹ Generally, “[a]pproval of a class
 7 settlement is appropriate when ‘there are significant barriers plaintiffs must overcome in making their
 8 case.’” *Mendoza v. Hyundai Motor Co., Ltd.*, 2017 WL 342059, at *6 (N.D. Cal. Jan. 23, 2017)
 9 (citation omitted). Additionally, “a proposed settlement may be acceptable even though it amounts to
 10 only a fraction of the potential recovery that might be available to the class members at trial.” *In re*
 11 *Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 3648478, at *6 (N.D. Cal. July 7, 2016) (citations
 12 omitted).

13 The Settlement ensures that every Class Member whose policy lapsed or was surrendered can
 14 make a claim for a significant portion of the premiums they paid and that every Class Member with
 15 an in-force policy (on which a death benefit claim has not been made) can terminate it and make a
 16 similar claim for settlement relief. The negotiated formula reduces these awards by a factor of only
 17 one-third. *See, e.g., Linney*, 151 F.3d at 1242 (a class settlement amounting to a fraction of the
 18 potential total recovery was reasonable given risks of going to trial); *Hendricks v. StarKist Co.*, 2015
 19 WL 4498083, at *7 (N.D. Cal. July 23, 2015) (settlement representing “only a single-digit percentage
 20 of the maximum potential exposure” was reasonable). If all Class Members made a claim, the
 21 Settlement would pay out almost \$50 million in excess of cash surrender values. Girard Decl., ¶ 33.
 22 While the payments will vary, of necessity, based on the amount of premiums paid and other actuarial
 23 factors, most Class Members eligible for payment stand to recover thousands of dollars. *Id.* ¶ 43.
 24 Plaintiff Chen, for instance, who is an inactive policyholder, can receive \$2,370, which equals 42% of
 25 his total premiums paid after subtraction of the policy charges. *Id.* Beyond these substantial
 26 recoveries, as well, the Settlement imposes a series of forward-looking measures on PFA to address
 27

28 ⁹ There are no side agreements to disclose under Rule 23(e)(3).

1 Plaintiffs' deceptive practice claims. SA, Appx. A.

2 In comparison, continuing to pursue these novel pyramid-scheme claims would have been
3 risky for the Class. Defendants are well defended by experienced counsel and have consistently
4 denied liability. *See Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 326 (C.D. Cal. 2016) ("The
5 settlement the parties have reached is even more compelling given the substantial litigation risks in
6 this case."). LICS argued it could not have participated in a pyramid scheme because inventory
7 loading with an insurance policy is impossible and people neither had to buy a policy to join PFA nor
8 paid for the right to sell a product or to receive rewards unrelated to policy sales to ultimate users.
9 Dkt. No. 263 at 14-16. LICS also argued that Plaintiffs could not maintain a class action because
10 individuals joined PFA and bought Living Life policies for a host of different reasons. Dkt. No. 197
11 at 17-18. PFA argued that paying the \$125 enrollment fee did not actually entitle anyone to sell a
12 policy and that no PFA member made money from recruiting unless they sold a policy. Dkt. No. 252
13 at 16-17.

14 To prevail in the litigation, Plaintiffs would have needed to defeat a likely decertification
15 motion prepared by new counsel and then prevail on complex issues at trial and in a subsequent
16 appeal. *Mazzei v. Money Store*, 829 F.3d 260, 265-67 (2d Cir. 2016) (court can decertify class even
17 after a jury verdict in favor of a certified class at trial); *see In re Lenovo Adware Litig.*, 2018 WL
18 6099948, at *8 (N.D. Cal. Nov. 21, 2018) (risk of decertification favored preliminary approval). The
19 time and expenses attributable to trying the case and handling a post-trial appeal are substantial, and
20 there are inherent risks and uncertain outcomes accompanying these events. *See, e.g., Walker v. Life*
21 *Ins. Co. of the Sw.*, 2021 WL 1220692, at *8 (C.D. Cal. Feb. 22, 2021) (finding that the parties'
22 demonstrated willingness to appeal weighed in favor of settlement approval, "because in its absence
23 there will be inevitable costs, high risks and delay."); *Kacsuta v. Lenovo (U.S.) Inc.*, 2014 WL
24 12585783, at *4 (C.D. Cal. Sept. 15, 2014) (risks arising from liability defenses favored settlement
25 approval). In contrast to the risk, uncertainty, expense, and delay that continued litigation would
26 bring, the Settlement affords the Class guaranteed relief.

27 Further, under Rule 23(e)(2)(C)(ii), the Settlement provides for a method of distributing
28 payments that is straightforward and not unduly demanding, yet also sufficient to deter unjustified

1 claims. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii) advisory committee’s note to 2018 amendment. Each
 2 Class Member will be sent a Notice and Claim Form clearly setting forth their options, and they can
 3 submit their claim online or by traditional mail to Epiq for determination of eligibility based upon
 4 objective considerations. *See* SA, Exs. A1, A2, D1, D2. Promptly after the claim period has ended,
 5 Defendants will remit payment to Epiq, which in turn will distribute Settlement payments to the
 6 eligible Claimants. SA §§ 6.6, 6.9, 9.1. Those whose claims are found ineligible will have a
 7 reasonable opportunity to cure the deficiency. SA § 6.7. This claim process is straightforward, easy
 8 to understand, and offers a simplified version of the relief Plaintiffs intended to seek at trial.

9 Finally, the Settlement provides for a fair and reasonable process and timetable for
 10 determining an award of attorney’s fees and litigation expenses. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii).
 11 Within 60 days after Preliminary Approval—30 days before the deadline for objections (SA, Ex. B at
 12 ¶ 14), consistent with Ninth Circuit precedent, *see In re Mercury Interactive Corp. Sec. Litig.*, 618
 13 F.3d 988, 995 (9th Cir. 2010)—Class Counsel will apply for their fees, reimbursement of litigation
 14 expenses, and a service award for Plaintiff Chen (SA § 7.1 & Ex. B at ¶ 10). The agreed-upon fee
 15 was negotiated by the parties after they agreed on all other material terms of settlement, and is less
 16 than Class Counsel’s lodestar. Girard Decl., ¶ 63.¹⁰

17 For all of these reasons, Rule 23(e)(2) is satisfied.

18 **B. The Court Will Be Able to Affirm Its Certification of the Class for Settlement**
 19 **Purposes.**

20 The Court certified the Class and likely will be able to affirm its certification at final approval.
 21 *See* Fed. R. Civ. P. 23(e)(1)(B). When the Court has already granted certification, “the only
 22 information ordinarily necessary is whether the proposed settlement calls for any change in the class
 23 certified, or of the claims, defenses, or issues regarding which certification was granted.” *Foster v.*
 24 *Adams & Assocs., Inc.*, 2021 WL 4924849, at *3 (N.D. Cal. Oct. 21, 2021) (citing Fed. R. Civ. P. 23
 25 advisory committee’s note to 2018 amendment); *Youth Just. Coalitions v. City of Los Angeles*, 2020
 26 WL 9312377, at *2 (C.D. Cal. Nov. 17, 2020) (same). As the Settlement effects no change in the

27 _____
 28 ¹⁰ Pursuant to Paragraph 6 of the Procedural Guidance for Preliminary Approval, as of March 15,
 2023, Class Counsel had devoted 9,704 hours of professional time to this matter since February 2019,
 for a total lodestar of \$6,924,495. Girard Decl., ¶ 64.

1 Class that the Court certified, it can affirm the certification based on the findings already reached.
2 *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

3 **C. The Notice and Claim Form Are Reasonable, Comprehensible, and Well-Tailored**
4 **to the Settlement Relief.**

5 Rule 23(e)(1)(B) requires the Court to “direct notice in a reasonable manner to all class
6 members who would be bound by the proposal.” Under Rule 23(b)(3), the Court must “direct to class
7 members the best notice that is practicable under the circumstances, including individual notice to all
8 members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). The proposed
9 Notice and Notice Plan meet these standards. *See generally* Azari Decl.

10 Although direct notice is not required, *see Briseno v. ConAgra Foods, Inc*, 844 F.3d 1121,
11 1129 (9th Cir. 2017), here it is the best notice practicable because LICS’s policy records contain
12 contact information of persons who purchased a Living Life policy in California. Girard Decl., ¶ 56;
13 Dkt. No. 324 at 1. The Court approved use of direct U.S. mail for notifying the Class Members of this
14 action. Dkt. Nos. 328, 334; *Boyd v. May Trucking Co.*, 2019 WL 12763009, at *11 (C.D. Cal. July 1,
15 2019) (finding “direct mail notice is satisfactory.”).

16 The Notice is based on the Federal Judicial Center models and uses plain language to explain
17 complex insurance issues in simple, understandable terms. Girard Decl., ¶ 57. As set forth at page 11
18 above, the Notice addresses all the matters referenced in Rule 23(c)(2)(B). Translating it into several
19 foreign languages will remove a potential barrier to certain Class Members understanding the
20 Settlement and their options. Girard Decl., ¶ 58. The use of separate notices for inactive and active
21 policy owner Class Members will further clarify their choices while avoiding unnecessary confusion.
22 *Id.*; *see* SA, Exs. A1 & A2.

23 Both the Notice and the Claim Form for active policyholders prominently disclose that the
24 consequence of making a claim is that their policy will terminate, foreclosing any other policy-related
25 benefit. These documents also prominently advise the recipient to compare their estimated Settlement
26 payment with their cash surrender value, noting that they can see estimates of these dollar amounts at
27 the Settlement Website by typing in the unique identifier that appears on their Claim Form. Girard
28

1 Decl., ¶ 59. Consequently, active policyholder Class Members will be dissuaded from terminating
2 their policy when doing so is financially unadvisable. *Id.*, ¶ 60.

3 Like the Notice, the short Claim Form has been designed for ease of use and to facilitate
4 informed decision making. Girard Decl., ¶ 61. Both the Notice and Claim Form—for both active and
5 inactive policyholders—make clear to the recipient that they can obtain free assistance in deciding
6 whether to make a claim, and how to do so, from Class Counsel, as well as from the Claims
7 Administrator, by phone, email, or U.S. mail. *Id.*; see SA, Exs. A1, A2, D1, D2. The Notice and
8 Claim Form are fair, reasonable and adequate in all respects.

9 **VI. CONCLUSION**

10 For the foregoing reasons, Plaintiffs respectfully request that the Court (1) grant preliminary
11 approval of the parties' settlement, (2) direct notice to the Class, and (3) establish a schedule for
12 settlement proceedings.

13
14 Dated: March 17, 2023

Respectfully submitted,

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