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4 **IN THE UNITED STATES DISTRICT COURT**  
5 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

6 **IN RE PFA INSURANCE MARKETING**  
7 **LITIGATION**

CASE No. 4:18-cv-03771 YGR

**ORDER GRANTING MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Re: Dkt. No. 356

United States District Court  
Northern District of California

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12 Plaintiffs Dalton Chen and Youxiang Eileen Wang bring this class action against  
13 defendants Life Insurance Company of the Southwest (“LSW” or “LICS”) and Premier Financial  
14 Alliance (“PFA”) for state-law claims arising out of defendants’ alleged endless chain scheme.  
15 Now pending is plaintiffs’ motion for preliminary approval of a settlement agreement. Docket  
16 No. 356. The motion is opposed by Wenjian Gonzales and Rui Chen, who were named plaintiffs  
17 in the original iteration of the complaint filed on June 25, 2018. Docket No. 358. Gonzales and  
18 Chen are not named plaintiffs in the operative consolidated complaint. *See* Docket No. 131. On  
19 May 1, 2023, the Court directed plaintiffs to file a supplemental statement providing additional  
20 information regarding the settlement agreement. Docket No. 361. On June 1, 2023, plaintiffs  
21 filed a supplemental statement, as well as revised versions of the settlement agreement, proposed  
22 notices, and proposed claims forms, in response to the Court’s order of May 1, 2023. *See* Docket  
23 No. 364.

24 Having carefully considered the pleadings, the record, and the parties’ briefs, the Court  
25 **GRANTS** plaintiffs’ motion for preliminary approval.<sup>1</sup>

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28 <sup>1</sup> Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds that the motion is appropriate for decision without oral argument. Therefore, the hearing noticed for July 25, 2023, is VACATED.

1 **I. BACKGROUND**

2 **A. Procedural History**

3 The factual and procedural background of this class action was set forth in detail in the  
4 Court's order granting in part and denying in part defendants' motions for summary judgment,  
5 Docket No. 306.

6 In short, LSW sells life insurance products through an alleged multilevel marketing  
7 scheme that is jointly operated by LSW and PFA. The alleged scheme targets immigrants and  
8 their families with promises of financial success derived from recruiting people to join PFA and  
9 selling the "Living Life policy" issued by LSW under the trade name National Life Group  
10 ("NLG"). Docket No. 131 ¶ 1. Plaintiffs allege that, pursuant to the alleged scheme, people  
11 wishing to participate in the alleged scheme pay a \$125 fee to become a PFA associate with the  
12 goal of ultimately becoming licensed to sell the Living Life policy and profit financially from  
13 commissions from those sales. *Id.* ¶¶ 27, 32, 55, 58. After paying an initial membership fee of  
14 \$125, PFA associates are advised that they cannot progress in PFA without buying the Living Life  
15 policy. *Id.* ¶ 56. PFA associates are also exposed to representations indicating that purchasing a  
16 Living Life policy will assist them in selling policies to others and in achieving success and  
17 personal wealth. *See, e.g., id.* ¶¶ 28-29, 33-34. PFA associates are exposed to representations  
18 indicating that the rewards that a PFA associate can reap from the alleged scheme increase as the  
19 PFA associate recruits more people to join PFA. *Id.* ¶¶ 61, 71-73. PFA associates are not told,  
20 however, that only those at the top of the PFA hierarchy will ever realize the level of financial  
21 success that is represented to PFA associates. *Id.* ¶¶ 75-76.

22 In the operative complaint, plaintiffs assert claims for violations of (1) the Endless Chain  
23 Scheme law, Cal. Penal Code § 327, as a predicate for their claim under the unlawful prong of the  
24 Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.*; (2) the UCL under the  
25 unlawful and unfair prongs as to both defendants, and under the fraudulent prong as to PFA only;  
26 (3) the New Jersey Consumer Fraud Act ("NJCFA"), N.J. Stat. § 56:8-1, *et seq.*; in addition to (4)  
27 fraud as to PFA only; and (5) civil conspiracy.

1 On May 14, 2021, plaintiffs moved for certification of proposed classes under Rules  
2 23(b)(2) and 23(b)(3) based on their claims under each of the three prongs of the UCL and the  
3 New Jersey Consumer Fraud Act. On November 3, 2021, the Court granted the motion for  
4 certification under Rule 23(b)(3) as to a California subclass with respect to plaintiffs' claims under  
5 the unlawful and unfair prongs of the UCL. *See* Docket No. 239. The Court otherwise denied the  
6 motion without prejudice. *See id.*

7 The California subclass that the Court certified under Rule 23(b)(3) is comprised of:

8 All persons who enrolled as Premier<sup>2</sup> associates and purchased one  
9 or more Living Life<sup>3</sup> policies within California between January 1,  
2014 and the present.<sup>4</sup>

10 *See* Order at 38, Docket No. 239.

11 On June 15, 2022, the Court granted in part and denied in part defendants' motions for  
12 summary judgment. Docket No. 306. With respect to the named plaintiffs' individual requests for  
13 prospective injunctive relief; plaintiffs' theory of liability against LSW predicated on the existence  
14 of a partnership between LSW and PFA; and named plaintiff Wang's individual claim for fraud  
15 against PFA, the Court granted the motions. *Id.* The balance of the motions was denied. *Id.*

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18 <sup>2</sup> "Premier" refers to PFA.

19 <sup>3</sup> Pursuant to the Court's order certifying the California subclass, the policies that  
20 determine membership in the California subclass are the Living Life policy and its successor  
policy, namely the Living Life by Design policy. *See* Order at 10, Docket No. 239.

21 <sup>4</sup> Excluded from the subclass are defendants defined as LSW and PFA, "their parents,  
22 affiliates, subsidiaries, legal representatives, predecessors, successors, assigns, employees, any  
23 entity in which one of these Defendants has a controlling interest or which has a controlling  
24 interest in one of these Defendants, and relevant nonparties National Life Insurance Company,  
25 NLV Financial Corporation, Mehran Assadi, David Carroll, Jack Wu, Aggie Wu, Rex Wu,  
26 Hermie Bacus, Bill Hong, and Lan Zhang." Order at 38 n.9, Docket No. 239. "Also excluded  
27 from the class are the legal representatives, successors, assigns, and immediate family members of  
28 Defendants and these relevant nonparties; all individuals who reached the level of Provisional  
Field Director, Qualified Field Director, Senior Field Director, Regional Field Director, Area Field  
Director, National Field Director, Executive Field Director or Senior Executive Field Director at  
PFA; and the judicial officers to whom this matter is assigned and their immediate family  
members and staff." *Id.*

1 On August 16, 2022, the Court granted plaintiffs' motion to appoint Epiq Class Action &  
2 Claims Solutions, Inc. as administrator of the proposed plan for providing notice to the certified  
3 class but it deferred its approval of the proposed notice plan pending a further submission by the  
4 parties. Docket No. 323.

5 On September 8, 2022, after plaintiffs submitted additional information in support of their  
6 proposed notice plan, the Court granted plaintiffs' motion for approval of their proposed notice  
7 plan for disseminating the class notice. Docket No. 328. The Court found that plaintiffs'  
8 proposed notice plan, which would involve disseminating the class notice via U.S. mail with skip  
9 trace, is the best method practicable and satisfies the requirements of Rule 23(c)(2)(B). *Id.* at 1-2.  
10 The Court found that, in light of the quality and quantity of other available contact information for  
11 LSW policyholders, employing a second method for disseminating the class notice would not  
12 reasonably increase the rate at which members of the California subclass would receive it. *Id.*  
13 The Court also found that the parties' proposed "cross-reference list," *see* Docket No. 323 at 10-  
14 11, which compares LSW records of policyholders' purchase of relevant policies in California  
15 with PFA records of PFA associates, was reasonably likely to enable the identification of members  
16 of the California subclass for the purpose of disseminating the class notice. *Id.* at 2. The Court  
17 required plaintiffs to file a revised proposed notice that did not contain the deficiencies it  
18 identified in its order of August 16, 2022. *Id.*

19 On September 13, 2022, the Court approved plaintiffs' revised proposed notice and  
20 authorized the administrator to proceed with disseminating the approved notice according to the  
21 approved notice plan. Docket No. 334.

22 On December 21, 2022, the Court granted a stipulation adjourning the obligation to mail  
23 the class notice pursuant to the Court's order of September 13, 2022, on the ground that the parties  
24 had entered into an agreement in principle to settle the action. Docket No. 352.

25 On March 17, 2023, plaintiffs filed a motion for preliminary approval of a settlement  
26 agreement the parties executed on the same date, March 17, 2023. Docket No. 56. On March 31,  
27 2023, Rui Chen and Wenjian Gonzales filed objections to the settlement agreement. Docket No.  
28 358.

1 On May 1, 2023, the Court issued an order directing plaintiffs to file additional  
2 information pertaining to the settlement agreement. Docket No. 361.

3 On June 1, 2023, plaintiffs filed a supplemental statement and a revised version of the  
4 settlement agreement (which was executed on May 31, 2023), revised proposed notices, and  
5 revised proposed claim forms. Docket No. 364.

6 **B. Settlement Agreement**

7 The parties mediated in August 2022 under the supervision of Diane Welsh, a former  
8 magistrate judge in the Eastern District of Pennsylvania. Docket No. 356 at 1. Settlement  
9 negotiations continued for several months thereafter. *Id.* As noted, on March 17, 2023, the parties  
10 executed a stipulation and agreement of settlement. Docket No. 356-2. The parties modified the  
11 settlement agreement to address some of the questions and comments in the Court’s order of May  
12 1, 2023 (hereinafter, “SA”). *See* Docket No. 364-2. The following is a brief summary of the SA’s  
13 key terms.

14 **Settlement Class.** The settlement class under the SA largely tracks the class definition of  
15 the California subclass that the Court certified under Rule 23(b)(3), with some exceptions that do  
16 not impact the Court’s prior class certification analysis, as discussed in more detail below. Class  
17 Counsel represent that there are approximately 22,000 Living Life and Living by Design policies  
18 purchased in California between January 2014 and March 2023 whose owner matches a name on  
19 the list of PFA associates, and that there are at most 13,000 people who fall within the definition  
20 of the settlement class (hereinafter, “class members”). *See* Girard Decl. ¶¶ 29, 32, Docket No.  
21 356-1.

22 **Recovery under the SA.** The SA gives eligible class members the option to receive cash  
23 payments pursuant to formulas that approximate the relief that plaintiffs could obtain if they  
24 prevailed at trial. *See* Girard Decl. ¶ 33, Docket No. 356-1. According to the SA, members of the  
25 settlement class who have a “Class Policy”<sup>5</sup> will be eligible to choose one of the two forms of

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27 <sup>5</sup> “Class Policy” is defined under the SA as including the Living Life policies that  
28 determine class membership (i.e., Living Life policies that were purchased in California during the  
relevant time period), but that definition has exclusions that have the effect of narrowing the set of  
class members who would otherwise be eligible for relief under the SA; those exclusions are set

1 relief: Active Policy Relief or Inactive Policy Relief. *See* SA § 2.7.

2 Active Policy Relief is for eligible class members whose Class Policy is active in LSW's  
3 administration system as of the Relief Calculation Date, who submit a valid claim form, and who  
4 meet other criteria relating to whether certain types of benefits were paid under the policy. *See* SA  
5 § 3.2. Eligible class members who choose this type of relief will terminate their policy in  
6 exchange for a cash payment that will be calculated based on a formula that (1) takes the  
7 premiums paid by the class member on the policy, and (2) subtracts all of the following: an  
8 "expense factor" of 10% of the total premiums paid (with the "expense factor" being or reflecting  
9 LSW's expenses in connection with the policy); the cost of insurance charges; outstanding policy  
10 loans and interest that class members owe to LSW; amounts withdrawn by class members; and the  
11 "cash surrender value" of the policy. SA § 3.3. After subtracting all of those amounts from the  
12 premiums paid, class members will receive 67% of the remainder. *Id.*

13 Inactive Policy Relief is for eligible class members whose Class Policy is lapsed or  
14 surrendered in LSW's administration system as of the Relief Calculation Date, who submit a valid  
15 claim form, and who meet other criteria relating to whether certain types of benefits were paid  
16 under the policy. *See* SA § 3.5. Eligible class members who select this type of relief will receive  
17 a cash payment that will be calculated based on a formula that (1) takes the premiums the class  
18 member paid on the policy, and (2) subtracts all of the following: an "expense factor" of 25% of  
19 the total premiums paid on the policy; the cost of insurance charges; and the total amount of  
20 withdrawal, partial surrender, or total surrender amounts already paid on the policy. After  
21 subtracting all of those amounts, the class member will receive 67% of the remainder. *See* SA  
22 § 3.6.

23 Class members whose policy does not satisfy the definition of Class Policy under the SA  
24 will not be eligible for either Active Policy Relief or Inactive Policy Relief even though, based on  
25 the terms of the SA, they will be included in the settlement class and will release claims under the  
26 SA if they do not exclude themselves. The definition of "Class Policy" excludes (a) Living Life

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28 forth in detail below. *See* SA § 2.7.

1 Policies for which the insured is deceased; (b) Living Life Policies on which a claim for a death  
2 benefit was made or paid prior to the Stipulation Date; (c) Living Life Policies that were rescinded  
3 or not taken prior to the Stipulation Date; (d) Living Life Policies on which a full-election or  
4 partial election of any benefit under an Accelerated Benefits Rider (“ABR”) was made or paid  
5 prior to the Stipulation Date; and (e) Living Life Policies that were sold or assigned to a non-Class  
6 Member prior to the Stipulation Date. *See* SA § 2.7.

7 In its order of May 1, 2023, the Court ordered Class Counsel to provide additional  
8 information regarding the Class Policy limitation and on whether the Court can grant preliminary  
9 approval of the SA notwithstanding that limitation. In their supplemental statement, plaintiffs  
10 explain that the purpose of the Class Policy limitation is to exclude class members who “have no  
11 colorable claim to damages[.]” Docket No. 364 at 21. Class Counsel have not provided an  
12 estimate of how many class members have a policy that does not fall within the definition of Class  
13 Policy.

14 The SA does not call for the creation of a settlement fund in the first instance. Instead, the  
15 money that LSW will provide to the Claims Administrator for distribution to class members who  
16 submitted valid claims and are eligible for either type of relief under the SA will be based on the  
17 amounts that individual class members are owed according to LSW’s calculations, as described in  
18 more detail below.

19 **How to Recovery under the SA Compares to Full Recovery.** In its order of May 1,  
20 2023, the Court required plaintiffs to provide more information in a supplemental statement that  
21 would enable a comparison between what class members are likely to receive under the SA and  
22 what they would have received had plaintiffs prevailed at trial, or if not possible, the analysis upon  
23 which they make this assessment.

24 In their supplemental statement, Class Counsel provide some additional information that  
25 they prepared with the assistance of their actuarial consultant, Philip J. Bieluch, using December  
26 2022 data in LSW’s records. *See* Girard Decl. ¶¶ 5-6, 17, Docket No. 364-1. The following chart  
27 shows the average recovery for the different types of eligible class members when compared to the  
28 average premium paid.

	<b>Average premium paid</b>	<b>Average settlement payment</b>	<b>Median settlement payment</b>
<b>Active policyholders</b>	\$14,590	\$4,566	\$3,175
<b>Inactive policyholders</b>	\$4,355	\$1,310	\$672
<b>Both active and inactive policyholders</b>	\$12,371	\$3,860	\$2,500

Class Counsel also provide in their supplemental statement some case studies that compare the recoveries under the settlement for three representative active policyholders and three representative inactive policy holders relative to their potential recovery if they prevailed at trial. The case studies show that the recovery under the settlement for the representative class members ranges from 29% to 95% of their potential total recovery. *See* Girard Decl. ¶¶ 5-6, Docket No. 364-1.

Class Counsel represent that, for about 16% of the approximately 22,000 policies at issue, the policies are unlikely to be rescinded by the class members who own them because the cash surrender values of the policies increased during the policy period to the point that the cash surrender value as of December 2022 would exceed the class member's projected recovery under the SA. *See* Girard Decl. ¶ 12, Docket No. 364-1. The increase in cash surrender value generally occurs because the insured paid premiums in excess of the amount needed to maintain the policy and experienced favorable returns under the index feature. *Id.* Class Counsel represent that the individuals who were most impacted by PFA's promotional practices do not have these policies. *Id.* If those policies are excluded from the analysis, the remaining policies would result in a recovery for the class members who own them of up to \$66 million under the SA, assuming 100% participation in the SA. *Id.* The amount recoverable by these same class members at trial would be \$130 million. *Id.* Accordingly, for these class members, the recovery under the SA in relation to potential recovery at trial is 50.7%. *Id.* Class Counsel represent that the individuals who were most impacted by PFA's promotional practices fall within this group that does not include the policies whose cash surrender values increased during the policy period. *Id.*

Class Counsel tentatively anticipate a claim rate of approximately 15% for inactive policyholder class members and a claim rate of approximately 10% for active policyholder class



1 members. *See* Girard Decl. ¶ 55, Docket No. 356-1. Class Counsel represent that claims rates in  
2 class actions typically fall within a range of 5% to 10% but there are several factors in this case  
3 that could result in a higher rate than that, namely the fact that the SA offers substantial recoveries,  
4 that the claim forms are simple and do not require supporting documentation, that the notice will  
5 be mailed via first class mail, and the fact that the events at issue in the action are relatively recent.  
6 *See* Girard Decl. ¶ 15, Docket No. 364-1.

7 **Procedure for Payments to Class Members.** To receive relief under the SA, eligible  
8 class members must submit a completed claim form to the Claims Administrator within 90 days of  
9 the date on which the Court grants preliminary approval of the settlement. SA § 6.6. Claim forms  
10 may be submitted online or can be mailed, in which case the date of the postmark shall determine  
11 timeliness. *See id.* The Claims Administrator will provide an opportunity to class members who  
12 filed claims to cure any errors or deficiencies in their claim forms during the period beginning  
13 from the Effective Date and ending 60 days after the Effective Date. SA § 6.7. Effective Date is  
14 the date on which the SA and final judgment become final (after any appeals are resolved) and the  
15 action has been dismissed with prejudice. SA § 9.8. By the 90th day after the Effective Date, the  
16 Claims Administrator must provide the parties a set of all valid claim forms. SA § 6.8.

17 In its order of May 1, 2023, the Court noted that the SA was silent as to when the amounts  
18 owed to class members would be calculated by LSW, the date on which such amounts would be  
19 paid to class members, and the date on which policies of class members selecting Active Policy  
20 Relief would be terminated. The parties amended the SA to provide that, no later than 21 days  
21 after the Claims Administrator provides LSW with the list of valid claim forms, LSW shall,  
22 “pursuant to reasonable commercial efforts, terminate the Active Class Policies that have elected  
23 Policy Relief and calculate the amount of Policy Relief due to each eligible Class Member based  
24 on Valid Claim Forms.” SA § 6.9. LSW shall thereafter disburse the total amount of policy relief  
25 to the Claims Administrator with a breakdown of the amount due to each eligible class member,  
26 and concurrently provide the Claims Administrator and Class Counsel with a spreadsheet in Excel  
27 form reflecting LSW’s calculation of Policy Relief to each eligible Class Member. SA § 6.9.  
28 Class Counsel declare that, pursuant to these revised provisions, LSW must disburse the total

1 amount owed to class members within 21 days of receiving the Claims Administrator’s  
2 determinations. Girard Decl. ¶ 20, Docket No. 364-1. Not later than 21 days from receipt of the  
3 LSW payment for the total Policy Relief, the Claims Administrator will issue the Policy Relief to  
4 eligible class members by mailing checks and processing electronic payments. SA § 6.9; Girard  
5 Decl. ¶ 20, Docket No. 364-1.

6 **Non-Monetary Relief.** Under the SA, PFA will be required to implement certain  
7 modifications to its sales practices, such as abstaining from using certain language or certain  
8 images that imply that joining PFA would result in financial success or wealth. *See* Appendix A,  
9 Docket No. 356-3. In their supplemental statement, plaintiffs represent that, although these  
10 modifications are prospective, class members could nevertheless benefit from them because, for  
11 example, the modifications may help class members assess similar sales plans and marketing  
12 pitches in the future. *See* Docket No. 364 at 12.

13 **Release.** In exchange for the benefits described above, class members who do not opt out  
14 of the SA will release claims that they asserted or could have asserted in this action.<sup>6</sup> *See* SA §  
15 2.26.

16 **Incentive Awards.** Class Counsel represent that class representative Dalton Chen devoted  
17 considerable time to this matter since 2019 on tasks that included appearing for depositions,  
18 reviewing case materials, and searching for and producing documents for discovery purposes.  
19 Girard Decl. ¶¶ 28-29, Docket No. 364-1. Accordingly, the SA permits him to petition for an  
20 incentive award of \$10,000. SA ¶ 8.1.

21 **Class Witnesses.** “Class Witnesses” Youxiang Eileen Wang, Donna Daniele, Shannon  
22 Xiao, and Yunhai Li, who are not class members because they did not purchase a policy in  
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24 <sup>6</sup> “Released Plaintiffs’ Claims” means and includes any and all Claims that were or could  
25 have been included in the Action, including without limitation Claims relating in any way, directly  
26 or indirectly, to: (i) whether PFA or LICS operates as an endless chain, pyramid scheme, or  
27 similar legally prohibited structure; (ii) the business or business model of PFA or LICS, (iii) any  
28 disclosures or omissions relating to PFA or LICS, and/or (iv) marketing or sale of any Living Life  
Policies. Notwithstanding the foregoing, “Released Plaintiffs’ Claims” does not include: (i)  
Claims to enforce contractual rights to benefits that do not arise out of a Plaintiff Release Party’s  
Claim; and (ii) Claims to enforce the terms of this Stipulation or orders or judgments issued by the  
Court in connection with this Settlement. SA § 2.26.

1 California, also contributed valuable evidence in support of the prosecution and resolution of the  
2 action according to Class Counsel. Girard Decl. ¶¶ 30-34, Docket No. 364-1. The Class  
3 Witnesses will be permitted to participate in the settlement on the same terms as class members to  
4 resolve their individual claims. *See* SA § 8.7. Class Counsel represent that the payments to the  
5 Class Witnesses will have no impact on class member recoveries. Girard Decl. ¶¶ 30-34, Docket  
6 No. 364-1.

7 **Cy Pres.** Class Counsel represent that amounts remaining because of class members’  
8 failure to cash checks will be negligible and that a subsequent distribution to class members of  
9 those amounts would be “uneconomic.” *See* Girard Decl. ¶ 21, Docket No. 364. Accordingly, the  
10 parties recommend that any residual funds that the Claims Administrator is unable to distribute  
11 following reasonable efforts be distributed to Bay Area Legal Aid, which has no association to  
12 Class Counsel, or another 501(c)(3) charitable non-profit organization having no affiliation with  
13 Class Counsel that the Court selects. SA § 6.9; Girard Decl. ¶ 22, Docket No. 364.

14 **Method of Notice.** The parties will disseminate notice to class members within 28 days of  
15 the date the Court grants preliminary approval. The method that plaintiffs propose to use to  
16 provide notice to the settlement class is “the method previously approved by the Court.” Girard  
17 Decl. ¶ 44. It involves sending notice by first-class mail to the last-known address of Living Life  
18 policyholders who purchased their policy in California during the relevant time period and whose  
19 name matches a name from the list of PFA associates. SA §§ 5.3, 6.5. The Claims Administrator  
20 will perform skip-traces and remailings for returned mail. Plaintiffs represent that there are 13,105  
21 unique addresses to which notices will be mailed. However, because of possible duplicate entries  
22 and the exclusions to the definition of the settlement class (such as the exclusion of PFA members  
23 who reached high-level positions within PFA), plaintiffs estimate, as noted above, that there are at  
24 most 13,000 people who fall within the definition of the settlement class. Girard Decl. ¶ 32,  
25 Docket No. 356-1.

26 The proposed notices, which the parties revised based on the Court’s comments in its order  
27 of May 1, 2023, vary depending on whether class members have active policies versus inactive  
28 policies. *See* Docket No. 364-3 (notice for inactive policyholders); Docket No. 364-4 (notice for

1 active policyholders). Because many class members are not native English speakers, the revised  
2 proposed notices will be translated into several languages and the translated versions will be  
3 posted on the settlement website. Girard Decl. ¶¶ 50, 58, Docket No. 356-1. The revised  
4 proposed notices inform class members of the key terms of the SA, including the fact that those  
5 who do not own a Class Policy are ineligible to make a claim and will be bound by the release,  
6 and describe the characteristics of policies that do not qualify as Class Policies. The revised  
7 proposed notices also state that, on the settlement website, class members can see an estimate of  
8 their settlement payment and that active policyholders, in addition to the estimate of their  
9 settlement payment, can also see the estimated cash surrender value of their policy. The revised  
10 proposed notices contain instructions as to how to access these estimates. The revised proposed  
11 notices inform class members as to how they can object to the SA and opt out. The notices also  
12 instruct class members as to how to access additional materials relevant to the settlement on the  
13 settlement website and on the docket via PACER.

14 **Claim Forms.** The proposed claim forms, which the parties revised based on the Court's  
15 comments in its order of May 1, 2023, vary depending on whether class members have active  
16 policies versus inactive policies. *See* Docket No. 364-7 (claim form for inactive policy holders);  
17 Docket No. 364-8 (claim form for active policy holders). The claims forms will be prepopulated  
18 with the policy numbers of all policies associated with the individual to whom the notices and  
19 claim forms are sent, so that a claimant can check a box next to the policy or policies for which he  
20 or she wishes to submit a claim under the SA. The claim forms do not require any unnecessary  
21 information or information that would be burdensome to obtain. Class members must submit  
22 claim forms no later than 90 days after the Court grants preliminary approval of the SA. SA § 6.6.  
23 Class members may submit their claim forms by mail, in which case the postmark will serve as the  
24 date of submission. SA § 6.6. For those who wish to submit their claims online, class members  
25 can use the Unique ID number and PIN printed on their claim forms. The claim forms will  
26 include a field for entering the class member's email address. The Claims Administrator will send  
27 an email to those who submitted valid claims and provided email addresses on their claim form  
28 one week before distributions under the SA begin to ask whether the class members prefer to

1 receive their payment via direct deposit (ACH) or via paper check. The default method for  
2 disseminating payments under the SA will be a mailed paper check.

3 **Opt Outs.** Class members wishing to opt out of the SA must submit a request within 90  
4 days of the date the Court grants preliminary approval of the SA. In response to the Court's Order  
5 of May 1, 2023, the parties amended the opt-out procedure so that a Class member who wishes to  
6 opt out need only provide their policy number (which will be printed on the claim forms, as noted  
7 above) or the last four digits of his or her social security number, in addition to name, address,  
8 signature, and statement of intent to opt out. Class Counsel represent that policy or social security  
9 number information is needed for class members to affirmatively opt out because a non-trivial  
10 number of class members have the same or similar names. *See* Girard Decl. ¶ 41, Docket No.  
11 364-1. Class members who wish to opt out will be able to transpose their policy number from the  
12 claim form to their opt-out communication. *See* Girard Decl. ¶ 37, Docket No. 364-1.

13 The SA contains an opt-out threshold that permits LSW to terminate the SA if the total  
14 premiums paid by class members who exclude themselves total at least \$13,000,000. SA § 9.2.

15 **Attorneys' Fees and Costs.** The SA provides that Class Counsel may petition for  
16 attorneys' fees of up to \$6,000,000, and costs of up to \$371,000. SA § 7.1. These amounts are to  
17 be paid by defendants within fifteen days of the date the Court approves them. SA § 7.3. Class  
18 Counsel declare that their lodestar to date is \$7,133,014. Girard Decl. ¶ 47, Docket No. 364-1.  
19 The SA contains a clear-sailing provision, meaning that defendants agreed not to oppose Class  
20 Counsel's motion for fees. SA §§ 7.1, 7.2. The SA also provides that, if the Court awards  
21 attorneys' fees in an amount that is less than \$6,000,000, then the difference will revert to  
22 defendants (i.e., the SA contains a so-called "kicker" clause). SA § 7.4.

23 **Claims Administrator.** The parties selected Epiq Class Action & Claims Solutions, Inc.  
24 to administer the SA. SA § 2.3. Defendants will pay up to \$200,000 in administrative expenses.  
25 SA § 6.1. Class Counsel selected Epic in light of its experience administering claims in other  
26 complex cases and given that its bid was substantially similar to the bids it received from other  
27 potential claims administrators. Girard Decl. ¶¶ 43-44, Docket No. 364-1. The Court previously  
28 approved the parties' selection of Epiq to distribute class notice. *See* Docket No. 334.

1           **Class Action Fairness Act.** Each defendant filed a declaration providing that it mailed  
 2 notice of the proposed settlement agreement to the appropriate federal and state officials on March  
 3 21, 2023, *see* Docket No. 362, and March 24, 2023, *see* Docket No. 363, respectively.

4           **Other Cases Affected by the SA.** Plaintiffs represent that the parties not aware of other  
 5 cases will be affected by the SA. *See* Docket No. 364 at 20.

## 6       **II.     LEGAL STANDARD**

7           “The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed,  
 8 or compromised only with the court’s approval.” Fed. R. Civ. P. 23(e). “[S]trong judicial policy .  
 9 . . . favors settlements, particularly where complex class action litigation is concerned.” *Class*  
 10 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). “The purpose of Rule 23(e) is to  
 11 protect the unnamed members of the class from unjust or unfair settlements affecting their rights.”  
 12 *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008).

13           The approval of a settlement involves a preliminary approval stage, after which the court  
 14 directs notice to class members and then holds a fairness hearing to determine whether final  
 15 approval of the settlement agreement is warranted. At the preliminary approval stage, a court  
 16 may order the dissemination of notice to the class only if the court finds that it will likely be able  
 17 to (1) “certify the class for purposes of judgment on the proposal” and (2) “approve the proposal  
 18 under Rule 23(e)(2).” *See* Fed. R. Civ. P. 23(e)(1)(B).

## 19       **III.    DISCUSSION**

### 20           **A.     Class Certification**

21           A court may certify a settlement class if all of the prerequisites of Federal Rule of Civil  
 22 Procedure 23(a) have been met, and at least one of the requirements for Rule 23(b) has also been  
 23 met. *See* Fed. R. Civ. P. 23(a) & (b). As noted above, the Court previously certified the  
 24 California subclass under Rule 23(b)(3). Where, as here, the Court is evaluating a settlement  
 25 under Rule 23 and it previously certified a class under Rule 23(b)(3), the Court must consider  
 26 only “whether the proposed settlement calls for any change in the class certified, or of the claims,  
 27 defenses, or issues regarding which certification was granted.” Fed. R. Civ. P. 23 Advisory  
 28 Committee’s Note to 2018 Amendment.

United States District Court  
Northern District of California

1 Here, the settlement class differs from the class that was certified in a few respects. The  
2 Court certified under Rule 23(b)(3) the following California subclass with respect to plaintiffs’  
3 claims under the unlawful and unfair prongs of the UCL:

4 “All persons who enrolled as Premier associates and purchased one  
5 or more Living Life or Living Life by Design policies within  
6 California between January 1, 2014 **and the present.**”

7 *See Order at 38, Docket No. 239 (emphasis added).* Excluded from the class were:

8 Defendants Life Insurance Company of the Southwest (“LSW”) and Premier Financial Alliance (“PFA”), heir parents, affiliates,  
9 subsidiaries, legal representatives, predecessors, successors, assigns, employees, any entity in which one of these Defendants  
10 has a controlling interest or which has a controlling interest in one of these Defendants, and **relevant nonparties National Life  
11 Insurance Company, NLV Financial Corporation, Mehran Assadi, David Carroll**, Jack Wu, Aggie Wu, Rex Wu, Hermie  
12 Bacus, Bill Hong, and Lan Zhang. Also excluded from the class are the legal representatives, successors, assigns, and immediate  
13 family members of Defendants and these relevant nonparties; all individuals who reached the level of Provisional Field Director,  
14 Qualified Field Director, Senior Field Director, Regional Field Director, Area Field Director, National Field Director, Executive  
15 Field Director or Senior Executive Field Director at PFA; and the judicial officers to whom this matter is assigned and their  
16 immediate family members and staff.”

17 *See Order at 38 n.9, Docket No. 239 (emphasis added).*

18 The settlement class is the following:

19 “All Persons who: (i) enrolled as PFA associates **between  
20 January 1, 2014 and the Stipulation Date** and (ii) purchased one  
21 or more Living Life Policies within California between January 1,  
22 2014 **and the Stipulation Date of March 17, 2023.**”

23 Excluded from the settlement class are:

24 (a) all individuals who reached the level of Provisional Field  
25 Director, Qualified Field Director, Senior Field Director, Regional  
26 Field Director, Area Field Director, National Field Director,  
27 Executive Field Director, or Senior Executive Field Director at  
28 PFA; (b) the judicial officers to whom this matter is assigned and  
their immediate family members and staff; (c) Defendants, their  
parents, affiliates, subsidiaries, legal representatives, predecessors,  
successors, assigns, employees, and any entity in which one of  
these Defendants has a controlling interest or which has a  
controlling interest in one of these Defendants; (d) Jack Wu, Aggie  
Wu, Rex Wu, Hermie Bacus, Bill Hong, Lan Zhang, **and their  
legal representatives, successors, assigns, and immediate family  
members; (e) any Person who previously released any**

1                   **Defendant pertaining to any Released Claim;** and (f) any Person  
2                   who submits a valid request to be excluded from the Class in  
3                   accordance with this Stipulation.

4                   *See* Docket No. 356 at 7 (emphasis added).

5                   As shown in bold above, the differences between the class that was certified and the  
6                   settlement class are that the settlement class (1) includes a date range for when persons enrolled as  
7                   PFA associates, whereas the certified class did not; (2) sets the Stipulation Date of March 17,  
8                   2023, as the end of the time period for the class definition, whereas the certified class does not; (3)  
9                   does not exclude nonparties National Life Insurance Company, NLV Financial Corporation,  
10                  Mehran Assadi, and David Carroll, as the certified class did; (4) excludes the legal representatives,  
11                  successors, assigns, and immediate family members of Jack Wu, Aggie Wu, Rex Wu, Hermie  
12                  Bacus, Bill Hong, and Lan Zhang, whereas the certified class did not; and (5) excludes any person  
13                  who previously released any Defendant pertaining to any Released Claim.

14                  In their supplemental statement, plaintiffs have adequately explained why the differences  
15                  between the certified class and the settlement class do not warrant undertaking a new class  
16                  certification inquiry for the purpose of approving the SA. Docket No. 364 at 15. As to the first  
17                  difference noted above, plaintiffs explain that specifying a date range for when persons enrolled as  
18                  PFA associates is consistent with the definition of the class that was certified (that definition  
19                  requires that persons have enrolled as PFA associates and purchased a policy within California  
20                  “between January 1, 2014 and the present”) and is for the purpose of making it easier for class  
21                  members to understand the class membership requirement and whether they qualify.

22                  As to the second difference, plaintiffs explain that an end date is necessary to ascertain the  
23                  scope of the class for the purpose of entering a final judgment. *See id.*

24                  As to the third difference, plaintiffs explain that the settlement class need not exclude  
25                  nonparties National Insurance Company, NLV Financial Corporation, and their principal  
26                  executives because they are already excluded under other exclusionary clauses of the settlement  
27                  class definition. *See id.*

28                  As to the fourth difference, plaintiffs explain that the settlement class excludes Jack Wu,  
                    Aggie Wu, Rex Wu, Hermie Bacus, Bill Hong, and Lan Zhang because those individuals were in



1 the uppermost rungs of the PFA hierarchy and the parties agreed that they should not be part of the  
2 class for the same reasons that high-level PFA associates are excluded. Additionally, the parties  
3 also agreed that family members, legal representatives, successors, and assigns of these  
4 individuals have sufficiently similar interests to warrant their exclusion, as well. *See id.* at 16.

5 As to the fifth difference, plaintiffs explain that it is appropriate to exclude from the  
6 settlement class persons who previously released a defendant as to any Released Claim because  
7 such persons are routinely excluded from class definitions to promote finality and avoid  
8 duplicative recoveries. *See id.*

9 The Court is persuaded by plaintiffs' explanations and finds that the differences between  
10 the certified class and the settlement class do not alter the reasoning underlying the Court's grant  
11 of certification to the California subclass under Rule 23(b)(3). Accordingly, the Court need not  
12 conduct a new class certification analysis with respect to the settlement class the purpose of  
13 approving the settlement agreement. *See, e.g., Youth Just. Coalitions v. City of Los Angeles*, No.  
14 16-07932, 2020 WL 9312377, at \*2 (N.D. Cal. Nov. 17, 2020) (approving settlement class  
15 definition that expanded and clarified who was in the class because the "change does not alter the  
16 reasoning underlying its earlier decision to grant class certification"); *Foster v. Adams & Assocs.,*  
17 *Inc.*, No. 18-CV-02723-JSC, 2021 WL 4924849, at \*3 (N.D. Cal. Oct. 21, 2021) (same with  
18 respect to change to certified class that set an end date for the class definition).

19 Accordingly, the Court finds that it will likely be able to "certify the class for purposes of  
20 judgment on the [settlement] proposal." *See* Fed. R. Civ P. 23(e)(1)(B).

### 21 **B. Likelihood of Approval**

22 In determining whether the Court will likely be able to approve the SA under Rule  
23 23(e)(2), the Court must consider the factors set forth in that rule to determine whether the  
24 settlement is fair, reasonable, and adequate, namely whether "(A) the class representatives and  
25 class counsel have adequately represented the class; (B) the proposal was negotiated at arm's  
26  
27  
28

1 length; (C) the relief provided for the class is adequate; and (D) the proposal treats class members  
2 equitably relative to each other.” Fed. R. Civ. P. 23(e)(2).<sup>7</sup>

3 For the reasons set forth below, the Court finds that it is likely to approve the SA under  
4 Rule 23(e)(2).

### 5 1. Adequate Representation

6 The Court finds that Class Counsel have adequately represented class members throughout  
7 this litigation, and that this factor weighs in favor of granting preliminary approval.

8 After conducting substantial discovery and bringing several successful discovery motions<sup>8</sup>,  
9 Class Counsel successfully obtained certification of the California subclass and largely defeated  
10 defendants’ motions for summary judgment. Prior to the settlement, the parties were scheduled to  
11 go to trial. In light of the success that Class Counsel have achieved to date on behalf of the class,  
12 their substantial experience in prosecuting other complex class actions, and the substantial  
13 discovery that Class Counsel have conducted to date, the Court finds that Class Counsel were well  
14 informed about the strengths and weaknesses of class members’ claims before and during their  
15 settlement negotiations and are well-positioned to negotiate a fair settlement on behalf of the  
16 settlement class. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 967 (9th Cir. 2009) (“[W]e

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17  
18 <sup>7</sup> Courts in this district often rely on judicially-created factors for examining the  
19 reasonableness and adequacy of a settlement agreement, even after Rule 23 was amended in  
20 December 2018 “to set forth specific factors to consider in determining whether a settlement is  
21 ‘fair, reasonable, and adequate.’” *See Briseno v. Henderson*, 998 F.3d 1014, 1025-26 (9th Cir.  
22 2021). However, in *Briseno*, the Ninth Circuit encouraged district courts to “follow the law that  
23 Congress created” when evaluating a settlement agreement under Rule 23 rather than relying on  
24 “judicially manufactured factors.” *See id.* (noting that “Congress provided district courts with new  
25 instructions” in the revised Rule 23(e) “that require them to go beyond our precedent” and that  
26 “we must follow the law that Congress enacted”). Accordingly, the Court guides its analysis here  
27 based on the factors set forth in Rule 23(e).

28 <sup>8</sup> According to Class Counsel, the parties began discovery in mid-2020 and defendants  
produced over 85,000 documents in discovery, which plaintiffs reviewed and analyzed. Girard  
Decl. ¶¶ 7-16, Docket No. 356-1. Plaintiffs also gathered and produced voluminous documents in  
response to defense requests. The parties took twenty-one depositions of fact witnesses, and six  
expert depositions. Among other discovery proceedings, the parties litigated disputes concerning:  
PFA’s production of documents responsive to plaintiffs’ first set of requests and PFA’s  
compliance with the ESI guidelines; PFA’s production of its executive chairman Jack Wu for  
deposition; LSW’s production of class member identification data; LSW’s production of its CEO  
for deposition; and extending the fact discovery cutoff so plaintiffs could pursue the deposition of  
Jack Wu and their subpoena enforcement action involving Steven Early. *See id.*

1 have held that [p]arties represented by competent counsel are better positioned than courts to  
2 produce a settlement that fairly reflects each party’s expected outcome in litigation” and that this  
3 weighs “in favor of approval”) (citation and internal quotation marks omitted).

4 **2. Whether the SA Was Negotiated at Arm’s Length**

5 The parties conducted a mediation overseen by a retired judge in August 2022. Girard  
6 Decl. ¶ 22, Docket No. 356-1. Following the mediation, the case proceeded on two tracks, with  
7 the parties’ counsel preparing for trial and concurrently negotiating toward a settlement. *Id.* ¶ 23.  
8 To mitigate LSW’s informational and experiential advantages, and for assistance on the actuarial  
9 aspects of the negotiations, Class Counsel consulted Philip J. Bieluch, an actuarial consultant  
10 specializing in life insurance product development and reinsurance. *Id.* ¶ 25. On December 16,  
11 2022, the parties signed a detailed term sheet, *id.* ¶ 24, and they entered into the settlement  
12 agreement on March 17, 2023, *id.* ¶ 27. The parties subsequently revised some aspects of the  
13 settlement agreement in response to the Court’s comments in its order of May 1, 2023. Class  
14 Counsel declare that the protracted nature of the settlement negotiations is attributable to several  
15 factors, which include the hard bargaining between the parties, the developed evidentiary record,  
16 the lack of ready models for resolution of “endless chain” claims in the insurance sales context,  
17 and the need to accommodate the preferences of all class members, including those who prefer to  
18 retain their policies. *Id.* ¶ 26.

19 Additionally, Class Counsel declare that they negotiated their fees and costs only after the  
20 parties had agreed on all other material terms. Girard Decl. ¶ 46, ECF No. 364-1. Class Counsel  
21 agreed to waive any enhancement to their lodestar and, in exchange for the waiver of any  
22 enhancement, LSW agreed not to oppose Class Counsel’s agreed fee. *Id.* Class Counsel further  
23 declare that the agreement as to fees is the product of the parties’ “hard bargaining and best efforts  
24 to arrive at an arm’s length settlement as to attorney’s fees.” *Id.* ¶ 45.

25 The Court finds that the participation of a neutral mediator and of an actuarial consultant in  
26 the settlement discussions, the back-and-forth between the parties as to the terms of the settlement,  
27 and the parties’ decision to negotiate attorneys’ fees and costs until after they had agreed on all  
28 other material terms of the SA indicate that the SA is the product of arms’ length negotiations.

1 *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (holding that  
 2 participation of a mediator is not dispositive but is “a factor in favor of a finding of non-  
 3 collusiveness”); *see also Youth Just. Coalitions v. City of Los Angeles*, No.  
 4 216CV07932VAPRAOX, 2020 WL 9312377, at \*3 (C.D. Cal. Nov. 17, 2020) (“The sustained  
 5 back and forth negotiations between the parties indicate that the Settlement Agreement was the  
 6 result of a process that was fair and full of adversarial vigor.”) (citation and internal quotation  
 7 marks omitted). The Court has carefully reviewed the record, including the supplemental  
 8 submissions that plaintiffs filed after the Court asked for additional information in its order of May  
 9 1, 2023, and it sees no indication of fraud, overreaching, or collusion. Accordingly, the Court  
 10 finds that this factor weighs in favor of granting preliminary approval. The SA’s provisions  
 11 relating to Class Counsel’s attorneys’ fees and costs (e.g., the clear-sailing provision and the  
 12 kicker provision) do not alter this finding, for the reasons discussed in more detail below.

### 13 **3. Whether the SA Treats Class Members Equitably Relative to Each** 14 **Other**

15 “Approval of a plan of allocation of settlement proceeds in a class action . . . is governed  
 16 by the same standards of review applicable to approval of the settlement as a whole: the plan must  
 17 be fair, reasonable and adequate.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1045  
 18 (N.D. Cal. 2008) (citation and internal quotation marks omitted). “It is reasonable to allocate the  
 19 settlement funds to class members based on the extent of their injuries or the strength of their  
 20 claims on the merits.” *Id.*

21 Plaintiffs argue that the SA treats class members equitably based on the extent of their  
 22 injuries or the strength of their claims on the merits and that it is, therefore, fair, reasonable, and  
 23 adequate. The Court agrees.

24 Class members who have a Class Policy will have the option to receive a payment under  
 25 the SA under the Active Policy Relief or Inactive Policy Relief provisions, depending on whether  
 26 they have an active policy or inactive policy. Class members with an active Class Policy who opt  
 27 to receive a payment under the SA will terminate their policy. Class members with an active  
 28 Class Policy who wish to retain it for any reason, including because the cash surrender value of

1 their policy is greater than their expected payment under the SA, will be able to retain it by not  
2 submitting a claim form.

3           Payments for eligible class members who opt to receive a payment under the SA will be  
4 calculated based on formulas for active and inactive policies that are set forth in the SA and are  
5 described in detail in the background section of this order. According to Class Counsel, the  
6 formulas approximate the remedy that class members with active and inactive Class Policies,  
7 respectively, would have received under the statute that permits a participant to an endless chain  
8 scheme to rescind the contract upon which the scheme is based, Cal. Civ. Code § 1689.2.  
9 Pursuant to that statute, class members would be able to “recover all consideration paid pursuant  
10 to the scheme, less any amounts paid or consideration provided to the participant pursuant to the  
11 scheme” if they prevailed at trial. Docket No. 356 at 15. Plaintiffs argue that the SA  
12 approximates the optional rescission process under § 1689.2 because it “obligates the Defendants  
13 to return a portion of the premiums paid by Class Member claimants, according to a formula that  
14 subtracts cost of insurance and other policy charges from the total premiums paid, and then applies  
15 a one-third discount.” *Id.* at 8. The SA’s formulas differ most saliently between inactive and  
16 active policies in that the “expense factor” to be subtracted from a claimant’s recovery will be  
17 25% of the total premiums paid on an inactive Class Policy, whereas it will be only 10% for an  
18 active Class Policy. Class Counsel represent that the expense factor difference between the  
19 inactive and active policies is equitable because “the cost to the insurer of rescinding a policy in  
20 the first few years . . . is exponentially greater than later, given that it typically requires a  
21 period of several years for the insurer to recover the substantial commission due to the selling  
22 agent. Thus, Plaintiffs conceded a greater deduction from the total payment to inactive  
23 policyholder claimants, as the inactive policies generally were in force for less time.” Girard Decl.  
24 ¶ 38, Docket No. 356-1.

25           The Court finds that the SA treats class members with inactive Class Policies equitably  
26 relative to those with active Class Policies. The formulas based on which payments will be  
27 calculated will compensate each claimant commensurate with the actual loss they experienced in a  
28 manner that approximates the relief they could have obtained under § 1689.2 had they prevailed at

1 trial. The Court is persuaded that the difference in the formulas' expense factor for active policies  
2 versus inactive policies is justified by the fact that inactive policies resulted in greater costs for the  
3 insurer relative to active policies.

4 As noted above, class members who do not have a Class Policy as defined in the SA will  
5 not be eligible for any relief under the SA even though they will release their claims if they do not  
6 opt out. As noted, the definition of "Class Policy" excludes (a) Living Life Policies for which the  
7 insured is deceased; (b) Living Life Policies on which a claim for a death benefit was made or paid  
8 prior to the Stipulation Date; (c) Living Life Policies that were rescinded or not taken prior to the  
9 Stipulation Date; (d) Living Life Policies on which a full-election or partial election of any benefit  
10 under an Accelerated Benefits Rider ("ABR") was made or paid prior to the Stipulation Date; and  
11 (e) Living Life Policies that were sold or assigned to a non-Class Member prior to the Stipulation  
12 Date. *See* SA § 2.7.

13 In its order of May 1, 2023, the Court ordered plaintiffs to explain the purpose of limiting  
14 the relief offered by the SA to settlement class members who have a Class Policy and to  
15 demonstrate that this limitation would not result in preferential treatment to some class members  
16 at the expense of others. In their supplemental statement, plaintiffs argue that their proposed  
17 allocation plan is reasonable and does not preclude granting approval of the SA because class  
18 members who do not have a Class Policy "have no colorable claim to damages[.]" *See* Docket  
19 No. 364 at 21. Plaintiffs explain that the purpose of the Class Policy limitation is to "exclude[]"  
20 scenarios where the policyholder has received or is in the process of receiving benefits under the  
21 policy, never purchased the policy in the first place, or disposed of the policy. In the case of  
22 individuals who have received or are in the process of receiving benefits, they are better served  
23 keeping the policy and receiving the death benefit. The individuals who paid no money for a  
24 policy or had their policy rescinded have nothing to rescind. Similarly, those who disposed of  
25 their policy by sale or assignment cannot rescind a policy they no longer own." *See id.*

26 The Court finds plaintiffs' representations as to the relative value of the claims of class  
27 members who do not have a Class Policy to be persuasive, particularly given that Class Counsel  
28 retained an actuarial consultant to assist them with the actuarial aspects of the settlement

1 negotiations. Girard Decl. ¶ 25, Docket No. 356-1. Based on those representations, the Court  
 2 finds that plaintiffs’ proposal to limit relief under the SA to class members who had a Class Policy  
 3 is reasonable and equitable because it is based on the relative value of class members’ claims. *See*  
 4 *In re: Cathode Ray Tube (Crt) Antitrust Litig.*, No. C-07-5944 JST, 2016 WL 3648478, at \*14  
 5 (N.D. Cal. July 7, 2016) (“Class counsel here were within their rights to allocate the settlement  
 6 proceeds according to the degree of injury suffered by the class” because “no Ninth Circuit case  
 7 holds that the release of a class action claim must be compensated in all instances”) (citations  
 8 omitted); *see also Vinh Nguyen v. Radiant Pharms. Corp.*, No. SACV 11-00406 DOC, 2014 WL  
 9 1802293, at \*5 (C.D. Cal. May 6, 2014) (“[A]n allocation formula need only have a reasonable,  
 10 rational basis, particularly if recommended by experienced and competent counsel.”) (citation and  
 11 internal quotation marks omitted). Further, if class members who do not have a Class Policy  
 12 believe that their claims “actually have value, [they] can demonstrate that fact during the objection  
 13 process (or timely opt out).” *In re Cathode Ray Tube*, 2016 WL 3648478, at \*14.

14 The Court finds that the SA’s provisions that allow the class representative to apply for an  
 15 incentive award of \$10,000, and that allow the Class Witnesses (who, as noted, are not class  
 16 members) to participate in the settlement on the same terms as class members, do not preclude the  
 17 Court from granting preliminary approval of the SA. The recovery of the class representative and  
 18 the Class Witnesses will not impact the recovery of class members, and plaintiffs have shown that  
 19 the benefits that the class representative and Class Witnesses can obtain under the SA are  
 20 warranted in light of their contributions to the prosecution of this action. The proposed notices  
 21 inform class members of these terms of the SA. Class members may file objections or opt out if  
 22 they believe that the treatment of the class representative and Class Witnesses under the SA is  
 23 unreasonable.

24 In light of the foregoing, the Court finds that this factor weighs in favor of granting  
 25 preliminary approval.

#### 26 4. Whether the Relief Provided to the Class is Adequate

27 In considering whether the relief provided to the class pursuant to the settlement agreement  
 28 is adequate, the Court must take into account: (i) the costs, risks, and delay of trial and appeal; (ii)

1 the effectiveness of any proposed method of distributing relief to the class, including the method  
2 of processing class-member claims; (iii) the terms of any proposed award of attorneys' fees,  
3 including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).  
4 *See* Fed. R. Civ. P. 23(e)(2)(C).

5 Here, as discussed above, in exchange for releasing claims that were or could have been  
6 asserted in the action, class members with a Class Policy will receive the option of selecting  
7 Active Relief or Inactive Relief. Those who select it will receive a payment under the settlement  
8 based on formulas that are uniformly applied based on whether a class member has an active  
9 policy or an inactive policy, and which take into account class members' individual circumstances  
10 and the relative strength of their claims for relief (e.g., the premiums they have paid on their  
11 policies, the benefits they have received to date). Class Members who do not have a Class Policy  
12 will not be eligible for relief under the SA because, according to Class Counsel's representations,  
13 those class members do not have colorable claims for relief, as discussed above.

14 Because the SA is a claims-made settlement, the parties will not know definitively the  
15 number of claims filed under the settlement, or the value of the relief to be accorded to those class  
16 members who opted to file claims, until the deadline for filing claims has expired (the deadline for  
17 filing claims is 90 days after the Court grants preliminary approval). Accordingly, Class Counsel  
18 provided estimates of the potential recovery under the SA. Class Counsel believe that  
19 approximately 16% of the approximately 22,000 policies at issue are unlikely to be rescinded by  
20 the class members who own them because the policy cash surrender values increased during the  
21 policy period to the point that the cash surrender value as of December 2022 would exceed the  
22 policyholders' projected recovery under the SA. *See* Girard Decl., ¶ 12, Docket No. 364-1. Class  
23 Counsel estimate that, after excluding those policies, the aggregate recovery for settlement class  
24 members would be up to \$66 million, assuming 100% participation in the SA. Girard Decl. ¶ 12,  
25 Docket No. 364-1. The amount recoverable for those same policies at trial would have been \$130  
26 million. *See id.* Accordingly, for those policies, the settlement recovery in relation to the  
27 potential total recovery at trial is 50.7%. *See id.* Class Counsel also provided some detailed case  
28 studies in their supplemental statement, which compare the settlement recoveries of a few



1 representative class members relative to their potential recoveries if plaintiffs were to prevail at  
2 trial; these case studies indicate that the SA will permit those class members to recover from 29%  
3 to 95% of their potential total recovery. *See* Girard Decl. ¶¶ 5-6, Docket No. 364-1.

4 The Court finds, based on these estimates, that the relief provided to class members under  
5 the SA is adequate when considering the Rule 23(e)(2)(C) factors, which the Court discusses in  
6 turn below.

7 **a. Costs, risks, and delay of trial and appeal**

8 As noted above, the parties settled this action several weeks before their jury trial was set  
9 to begin. Class Counsel represent that, in light of the significant risks involved with proceeding to  
10 trial and a possible appeal, the settlement of the plaintiffs' claims under the terms now before the  
11 Court would be in the best interest of the class members. Class Counsel explain that some of the  
12 risks the class members would face at trial include the risk that a jury or the Court would: attribute  
13 the class representative's lack of success with PFA to inadequate efforts or sales skill; find that  
14 PFA adequately disclosed the risks of failure and the importance of individual effort; find that  
15 PFA did not operate as an Endless Chain Scheme; conclude LWS is not liable for the conduct of  
16 PFA or its associates; find that any improprieties by PFA associates were independent actions, not  
17 undertaken in accordance with PFA or LSW guidelines provided to the associates; exclude or  
18 disregard evidence favorable to plaintiffs on the basis that sales materials, including audio and  
19 video recordings, were never approved by PFA or LSW; or agree with LSW that California's 10-  
20 30 day "free-look" period gave buyers adequate time to rethink their purchase of a policy,  
21 assuming it was motivated by a desire to advance in the PFA hierarchy. Girard Decl. ¶ 7, Docket  
22 No. 364-1.

23 Some of the risks that plaintiffs would face on appeal include the potential for a Ninth  
24 Circuit panel to accept PFA's legal contention that plaintiffs lack standing because they did not  
25 seek any redress against PFA, or LSW's class certification arguments: (a) that individual issues  
26 connected to particular policy purchases, such as different face values and premium payments,  
27 underlie each separate claim, (b) that different PFA members bought a policy for many different  
28 reasons, or (c) that the putative class sweeps in those who suffered no injury. Girard Decl. ¶ 8,

1 Docket No. 364-1. Accordingly, for the purpose of negotiating the SA, Class Counsel assumed an  
2 even probability of prevailing at trial and a slightly better than even chance of prevailing on  
3 appeal, equating to an approximately one-third chance of securing a favorable final judgment.  
4 Girard Decl. ¶ 6, Docket No. 364-1.

5 Class Counsel believe that settling the class members' claims pursuant to the SA is  
6 superior to proceeding to trial for the additional reason that proceeding to trial could delay class  
7 members' payments for at least two to three years when compared to receiving payments under  
8 the settlement on a relatively fixed timeline. Girard Decl. ¶ 11, Docket No. 364-1.

9 The Court is persuaded by Class Counsel's evaluation of the risks of proceeding to trial  
10 relative to the benefits of resolving plaintiffs' claims pursuant to the SA and finds that, in light of  
11 those significant risks, the recovery obtained under the SA is reasonable and adequate. This  
12 weighs in favor of granting preliminary approval of the SA.

13 **b. The proposed method of distributing relief to the class**

14 Class Members who have a Class Policy will have 90 days from the date on which  
15 preliminary approval is granted to submit a claim. SA § 6.6. Claim forms may be submitted  
16 online or they can be mailed, in which case the date of the postmark shall determine timeliness.  
17 *See id.* As noted above, the parties revised the proposed claim forms in response to the Court's  
18 comments in its order of May 1, 2023. The revised claim forms are easy to understand and fill  
19 out, and do not require class members to provide unnecessary information or information that  
20 could be burdensome to collect. *See* Docket Nos. 364-7 & 364-8. Class Members who submitted  
21 claims will be provided with a sixty-day period during which they can cure any deficiencies in  
22 their claim forms, which will begin on the Effective Date and end 60 days after the Effective  
23 Date. SA § 6.7. By the 90th day after the Effective Date, the Claims Administrator must provide  
24 the parties a set of all valid claim forms. SA § 6.8.

25 As noted above, in response to the Court's order of May 1, 2023, the parties amended the  
26 SA to provide definite dates for when payments to class members must be calculated by LSW  
27 and for when payments to class members must be distributed. Specifically, no later than 21 days  
28 after the Claims Administrator provides LSW with the list of valid claim forms, LSW must

1 terminate the Active Class Policies and calculate the amounts due to each class member who  
 2 submitted a valid claim form and then must disburse the total amount of policy relief to the  
 3 Claims Administrator with a breakdown of the amount due to each eligible class member. SA §  
 4 6.9. LSW must concurrently provide the Claims Administrator and Class Counsel with a  
 5 spreadsheet in Excel form reflecting its calculations. *Id.* Not later than 21 days from receipt of  
 6 the LSW payment for the total policy relief, the Claims Administrator will issue the Policy Relief  
 7 to eligible class members via the default method of mailing checks, or by direct deposit for those  
 8 class members who provided an email address in their claim form and opted to receive their  
 9 payment by direct deposit (ACH). SA § 6.9; Girard Decl. ¶ 20, Docket No. 364-1.

10 Amounts remaining because checks were not cashed will be distributed to Bay Area Legal  
 11 Aid (BALA), which is not affiliated with Class Counsel, or another 501(c)(3) charitable non-  
 12 profit organization having no affiliation with Lead Counsel or Plaintiffs as the Court may  
 13 approve. SA § 6.9; Girard Decl. ¶ 22, Docket No. 364. Given the broad nature of the legal relief  
 14 BALA provides to the community, the Court finds a sufficient connection with the underlying  
 15 matter to warrant the distribution.

16 The Court finds that the proposed method of distributing relief to the settlement class is  
 17 reasonable and weighs in favor of granting preliminary approval of the SA.

18 **c. The terms of any proposed award of attorneys' fees**

19 Rule 23(e) requires courts to “balance the ‘proposed award of attorney’s fees’ vis-à-vis the  
 20 ‘relief provided for the class’ in determining whether the settlement is ‘adequate’ for class  
 21 members.” *Briseno*, 998 F.3d at 1024. This requires scrutinizing the settlement agreement for  
 22 “subtle signs that class counsel have allowed pursuit of their own self-interests and that of certain  
 23 class members to infect the negotiations.” *Id.* at 1023. Such subtle signs exist: (1) when counsel  
 24 receive a disproportionate distribution of the settlement; (2) when the parties negotiate a “clear  
 25 sailing” arrangement providing that defendants will not oppose class counsel’s request for fees;  
 26 and (3) when the parties arrange for fees not awarded to class counsel to revert to defendants  
 27 rather than to the class members (i.e., when the settlement contains a so-called “kicker” clause).  
 28 *Id.* Where any of these signs are present, the district court must “examine the negotiation process

1 with even greater scrutiny than is ordinarily demanded” and the “approval of the settlement [must]  
2 be supported by a clear explanation” of why the negotiated attorneys’ fee is justified and “does not  
3 betray the class’s interests.” *In re Bluetooth*, 654 F.3d at 949.

4 Here, as noted above, the SA provides that Class Counsel may request an award of up to  
5 \$6,000,000 in fees and costs of up to \$371,000. The SA contains a “quick pay” provision, because  
6 the SA requires defendants to pay fees and costs to Class Counsel within 15 days of the date the  
7 Court approves them. The SA contains both a clear-sailing provision and a “kicker” provision.

8 The “quick pay” provision of the SA does not weigh against granting preliminary  
9 approval. *See In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. MDL 3:07-MD-1827 SI, 2011 WL  
10 7575004, at \*1 (N.D. Cal. Dec. 27, 2011) (“With respect [to] the ‘quick pay’ provisions, Federal  
11 courts, including this Court and others in this District, routinely approve settlements that provide  
12 for payment of attorneys’ fees prior to final disposition in complex class actions.”).

13 The presence of the clear-sailing and kicker provisions require the Court to examine the  
14 SA and the negotiations leading to it closely for signs that the parties colluded at the class  
15 members’ expense. Here, as discussed in more detail above, the Court has found no indication of  
16 collusion or that the settlement negotiations were not conducted at arm’s length. The Court also  
17 finds no evidence that the SA’s clear-sailing and kicker provisions indicate that Class Counsel  
18 negotiated an unreasonably high award of fees and costs for themselves at the expense of the class  
19 members. This is because the maximum amount in fees and costs that Class Counsel may apply  
20 for under the terms of the SA does not appear to be disproportionate to the benefits that class  
21 members can obtain under the SA. As discussed above, the estimates that Class Counsel have  
22 provided suggest that, after excluding policies that are unlikely to be rescinded, eligible class  
23 members who own the remaining Class Policies could recover up to \$66 million in the aggregate,  
24 assuming 100% participation. Girard Decl., ¶ 12, Docket No. 364-1. That amount represents  
25 50.7% of the amount that class members could have recovered if they prevailed at trial. *See id.*  
26 An award in fees and costs of \$6,371,000 would not be disproportionate or unreasonably high  
27 relative to an aggregate class recovery that is estimated to be in the vicinity of \$66 million,  
28 particularly where, as here, Class Counsel’s lodestar to date, \$7,133,014, is comparable to their

1 maximum possible award under the SA. *See* Girard Decl. ¶ 47, Docket No. 364-1. Where, as  
2 here, there is no evidence of collusion and the attorneys' fees and costs at issue are not  
3 disproportionate to the class members' recovery under the settlement, the presence of a clear-  
4 sailing provision or kicker clause does not preclude granting approval of a settlement. *See In re*  
5 *Bluetooth*, 654 F.3d at 949; *Briseño*, 998 F.3d at 1026-28.

6 That being said, the question of whether the Court can grant *final* approval of the SA,  
7 which is a claims-made settlement, will depend on the class members' *actual* recovery, which can  
8 be determined only after the class members file claims. *See Briseño*, 998 F.3d at 1020, 1026-28  
9 (reversing final approval of a claims-made settlement that provided for an award of attorneys' fees  
10 and costs of approximately \$6 million in relevant part because, prior to final approval, the parties  
11 represented that the class members could receive \$67.5 million in the aggregate if every class  
12 member filed a claim, but based on the claims that were actually filed, class members received  
13 only about \$1 million in the aggregate, which the Ninth Circuit found to be disproportionate  
14 relative to the award of fees and costs). Here, the parties will not know definitively the number of  
15 claims submitted, or the value of the relief to be accorded to those class members who opted to  
16 submit claims, until the deadline for filing claims has passed. The class members' actual recovery  
17 in the aggregate could turn out to be much less than the estimated aggregate recovery of \$66  
18 million, which assumes a 100% participation rate. If that is the case, then Class Counsel will have  
19 to make a showing in their motion for final approval of the SA that their requested fees and costs,  
20 which will not be opposed by defendants, are not unreasonably high relative to the benefits  
21 conferred to the class and do not preclude the Court from granting final approval of the SA. *See*  
22 *Briseño*, 998 F.3d at 1020, 1026-28; *In re Bluetooth*, 654 F.3d at 950.

23 Counsel is on notice that the Court will not approve fees without having a thorough  
24 understanding of the actual recovery to the class members. It may, in fact, be necessary to  
25 approve fees in stages if the Court does not possess sufficient information.<sup>9</sup>

26 \_\_\_\_\_  
27 <sup>9</sup> For instance, the SA provides that the Claims Administrator will not begin to evaluate  
28 and process claims until the SA's Effective Date, which is the date on which the SA becomes final  
after appeals are exhausted. The SA'S Effective Date will therefore take place *after* the Final  
Fairness Hearing. This timing may affect the Court's ability to have sufficient information to

1 Thus, to facilitate that determination at the final approval stage, plaintiffs shall, in their  
2 motion for final approval of the SA, provide relevant information and data, including the number  
3 and estimated value of the claims timely filed by the claims-filing deadline; the estimated  
4 aggregate recovery for the settlement class in light of those claims; the estimated average recovery  
5 for class members who filed timely claims; how the estimated aggregate and average recoveries  
6 for class members who filed timely claims compare to their potential recovery had they prevailed  
7 at trial; the number of class members who received notice but will not be eligible for recovery  
8 because they do not have a Class Policy; the number of class members who were eligible for  
9 recovery but did not file claims; and the number of opt outs. The Court is mindful that the SA  
10 provides that the Claims Administrator will not begin to evaluate and process claims until the  
11 SA's Effective Date (i.e., until the judgment becomes final after any appeals have been  
12 adjudicated). *See* SA § 6.7. Nevertheless, to evaluate whether final approval of the SA can be  
13 granted, the parties must file the information just described prior to the final fairness hearing.

14 **d. Any agreement required to be identified under Rule 23(e)(3)**

15 Plaintiffs represent that there are no agreements under Rule 23(e)(3) to disclose. Docket  
16 No. 356 at 18 n.9. Accordingly, this factor does not impact the Court's finding that the class  
17 members' relief under the settlement is adequate and reasonable.

18 **C. Proposed Notice Plan**

19 Given that the Court has found that the settlement class can be certified for the purpose of  
20 judgment on the SA and that the Court is likely to approve the settlement under Rule 23(e)(2), the  
21 Court must "direct notice in a reasonable manner to all class members who would be bound by  
22 the proposal[.]" Fed. R. Civ. P. 23(e)(1).

23 The method of notice proposed for the purposes of the SA, which is notice via first class  
24 mail with skip trace, is the same that the Court previously approved after granting certification to  
25 the Rule 23(b)(3) California subclass. The Court found that that method is the best practicable  
26

27  
28 \_\_\_\_\_  
make a final determination on attorneys' fees.

1 under the circumstances under Fed. R. Civ. P. 23(c)(2)(B). *See* Docket Nos. 328, 334. The Court  
2 incorporates those findings here by reference.

3 As to the contents of the notice, the notice is satisfactory if it “generally describes the  
4 terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate  
5 and to come forward and be heard.” *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 962 (9th  
6 Cir. 2009) (citation omitted). The Court previously identified some deficiencies in the proposed  
7 notices in its order of May 1, 2023, but the parties have corrected all of them. The Court is  
8 satisfied that the revised proposed notices communicate the material terms of the SA in a neutral,  
9 accurate, and easy-to-understand manner. The proposed notices will be translated into multiple  
10 languages, and those notices will be posted on the settlement website. The notices advise class  
11 members of the manner in which they can obtain an estimate of their expected settlement  
12 payment so that they can make an informed decision about whether to submit a claim form, as  
13 well as the manner in which they can object to the SA or opt out. For active policyholders, the  
14 notice informs them of the manner in which they can obtain an estimate of their policy’s cash  
15 value so that they can compare that value to their expected payment under the SA before deciding  
16 whether to terminate their policies and obtain a payment under the SA. The revised notices also  
17 indicate that class members can obtain additional information about the settlement at the website  
18 for the settlement and on the docket via PACER.

19 Accordingly, the Court approves the revised proposed notices as well as the proposed  
20 notice plan.

21 **D. Opposition to Motion for Preliminary Approval**

22 Wenjian Gonzales and Rui Chen, who were named plaintiffs in the original iteration of the  
23 complaint filed on June 25, 2018, but are not named plaintiffs in the operative complaint, oppose  
24 plaintiffs’ motion for preliminary approval of the settlement. Docket No. 358. Plaintiffs filed a  
25 response to Gonzales’ and Ren’s opposition. *See* Docket No. 360. For the reasons discussed  
26 below, the Court is not persuaded by Gonzales’ and Ren’s arguments and overrules their  
27 objections.  
28

1 First, Gonzales and Chen argue that the Court should not grant preliminary approval of the  
2 SA because the SA seeks certification of a nationwide class. Gonzales and Chen are incorrect. As  
3 discussed above, the settlement class is materially identical to the *California* subclass that the  
4 Court previously certified. No nationwide class is at issue here.

5 Second, Gonzales and Chen contend that the Court should not grant preliminary approval  
6 of the SA because the formulas for calculating payments under the SA are confusing and class  
7 members do not have sufficient information to determine whether they should submit a claim  
8 form, opt out, or object. As discussed above, in response to comments in the Court's order of May  
9 1, 2023, the parties revised the proposed notices, which now instruct class members with active  
10 and inactive policies as to how they can view, for the purpose of determining whether to submit a  
11 claim, an estimate of their settlement payment on the settlement website as well as the cash  
12 surrender value of policies that are active. The revised proposed notices also inform class  
13 members that they can contact Class Counsel if they have questions about the settlement or their  
14 potential recovery under the SA, and that they can view a copy of the SA and other relevant filings  
15 on the docket via PACER or on the settlement website. The Court finds that class members will  
16 have access to sufficient information to make educated decisions about whether to file a claim  
17 form, object, opt out, or investigate further.

18 Third, Gonzales and Chen also argue that it is not clear whether defendants will pay any  
19 amounts to class members because PFA made representations in 2018 or 2019 that it was close to  
20 being insolvent. In its order of May 1, 2023, the Court required plaintiffs to provide additional  
21 information as to this issue. In their supplemental statement, plaintiffs represent that "there is no  
22 basis to posit" that defendants, who are jointly liable for the settlement payments, are "in any  
23 danger of insolvency." *See* Docket No. 364 at 14. Based on plaintiffs' representation, the Court  
24 is persuaded that it is not likely that defendants will fail to pay amounts owed to class members  
25 because of insolvency issues.

26 Fourth, Gonzales and Chen argue that the Court cannot grant preliminary approval of the  
27 SA because the scope of the release is overbroad, as it releases "any possible claims, but must only  
28 include claims tracked from the complaint." Docket No. 358 at 7. The Court disagrees. As noted



1 above, class members who do not exclude themselves will release claims that plaintiffs asserted or  
 2 could have asserted in this action based on the factual predicate underlying the claims in this  
 3 action.<sup>10</sup> See SA § 2.26. The scope of the release is, therefore, permissible. See *Hesse v. Sprint*  
 4 *Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (holding that a settlement “may preclude a party from  
 5 bringing a related claim in the future even though the claim was not presented and might not have  
 6 been presentable in the class action . . . where the released claim is based on the identical factual  
 7 predicate as that underlying the claims in the settled class action”).

8 Fifth, Gonzales and Chen contend that the Court should not grant preliminary approval  
 9 because the proposed notice program is not the “most practicable” as it does not include notice by  
 10 email. Docket No. 358 at 7-8. As discussed above, the proposed notice plan here is the same as  
 11 the one the Court approved in September 2022. See Docket No. 328. The Court found at that  
 12 time that notice via U.S. mail with skip trace was the best method of notice practicable because  
 13 the parties had shown that LSW policyholders’ mailing addresses are kept up to date but other  
 14 contact information is not. See *id.* at 1-2. In the absence of evidence to the contrary, the Court  
 15 reaffirms and incorporates its prior findings herein and the administrator can provide the Court  
 16 with the means by which it attempted to contact all class members.

17 Sixth, Gonzales and Chen contend that the Court should not grant preliminary approval  
 18 of the SA because the opt out procedure is too burdensome. The Court disagrees. As noted  
 19 above, the parties amended the opt-out procedure in response to the Court’s order of May 1, 2023,  
 20 so that a Class member who wishes to opt out need only provide his or her policy number (which  
 21 will be printed on the claim forms, as noted above) or the last four digits of his or her social  
 22

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23  
 24 <sup>10</sup> “Released Plaintiffs’ Claims” means and includes any and all Claims that were or could  
 25 have been included in the Action, including without limitation Claims relating in any way, directly  
 26 or indirectly, to: (i) whether PFA or LICS operates as an endless chain, pyramid scheme, or  
 27 similar legally prohibited structure; (ii) the business or business model of PFA or LICS, (iii) any  
 28 disclosures or omissions relating to PFA or LICS, and/or (iv) marketing or sale of any Living Life  
 Policies. Notwithstanding the foregoing, “Released Plaintiffs’ Claims” does not include: (i)  
 Claims to enforce contractual rights to benefits that do not arise out of a Plaintiff Release Party’s  
 Claim; and (ii) Claims to enforce the terms of this Stipulation or orders or judgments issued by the  
 Court in connection with this Settlement. SA § 2.26.

1 security number, in addition to name, address, signature, and statement of intent to opt out. This  
2 procedure does not impose any undue burdens on class members.

3 Finally, Gonzales and Chen contend they should have the opportunity to petition for fees  
4 despite not having been appointed as class counsel. Plaintiffs respond that “[n]othing prevents  
5 Gonzales Counsel from filing a petition for attorneys’ fees.” *See* Docket No. 360 at 11. The  
6 Court concurs. Accordingly, this issue does not preclude granting preliminary approval to the SA.

### 7 **E. Proposed Schedule**

8 The parties revised their proposed schedule pursuant to the Court’s order of May 1, 2023,  
9 as set forth below. Under the revised proposed schedule, class members would have at least 35  
10 days to opt out or object to the settlement and the motion for attorneys’ fees and costs. The  
11 revised schedule also provides time for the parties to collect information about the number and  
12 type of claims submitted by class members, the expected value of the payments that would be  
13 made to class members who submitted timely claims, the number of opt outs, the number of  
14 objections, and other information that must be included in a motion for final approval of a  
15 settlement under the Procedural Guidance and other relevant authorities. The Court approves the  
16 revised proposed dates.

17 <b>Event</b>	<b>Revised Proposed Date</b>
18 Class Action Fairness Act (“CAFA”) notice to state and federal officials, under 28 U.S.C. § 1715	N/A. Defendants already complied with this requirement.
19 Deadline to file on the docket a declaration attesting compliance with CAFA’s notice requirements under 28 U.S.C. § 1715	N/A. Defendants already complied with this requirement.
20 Notice to be mailed to Class Members and posted on Settlement Website	Within 28 days after Preliminary Approval
21 Plaintiffs to move for final approval of the Settlement	120 days after Preliminary Approval (30 days after the deadline for claims, opt-outs, and objections are due)
22 Plaintiffs to move for attorneys’ fees, expenses, and service awards and post a copy of the motion on the settlement’s website	30 days after Preliminary Approval
23 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
24 Deadline to submit a claim	90 days after Preliminary Approval
25	
26	
27	
28	

Filing of declaration confirming execution of Notice program	Within 60 days after Preliminary Approval
Filing of reply briefs in support of final approval and motion for attorneys’ fees, expenses, and service awards, and responses to any timely objections	If a reply is necessary, at least 14 days before the Settlement Hearing
Settlement Hearing	160 days after Preliminary Approval

**IV. CONCLUSION**

For the reasons set forth above, the Court **GRANTS** plaintiffs’ motion for preliminary approval of the settlement agreement and preliminary certification of the settlement class.

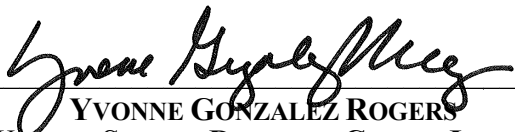
The Court approves the proposed method of notice, the revised proposed notice forms, and the revised proposed claim forms.

The Court appoints Epiq Class Action & Claims Solutions, Inc. as the Claims Administrator.

A Settlement Hearing will be held on January 16, 2024, at 2:00 p.m. The Court approves and adopts the parties’ revised proposed dates, as set forth above.

**IT IS SO ORDERED.**

Dated: July 21, 2023

  
 YVONNE GONZALEZ ROGERS  
 UNITED STATES DISTRICT COURT JUDGE

United States District Court  
Northern District of California

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