

1 Daniel C. Girard (SBN 114826)
2 Jordan Elias (SBN 228731)
3 Adam E. Polk (SBN 273000)
4 Sean Greene (SBN 328718)
5 **GIRARD SHARP LLP**
6 601 California Street, Suite 1400
7 San Francisco, CA 94108
8 Telephone: (415) 981-4800
9 *dgirard@girardsharp.com*
10 *jelias@girardsharp.com*
11 *apolk@girardsharp.com*
12 *sgreene@girardsharp.com*

13 *Class Counsel*

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 **DECLARATION OF DANIEL C.**
21 **GIRARD IN SUPPORT OF**
22 **PLAINTIFFS' MOTION FOR**
23 **PRELIMINARY APPROVAL OF**
24 **CLASS ACTION SETTLEMENT**

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

1 I, Daniel C. Girard, hereby declare as follows:

2 1. I am a member of the California State Bar and admitted to practice in this District. I am
3 managing partner of the law firm Girard Sharp LLP, Class Counsel in this action against Premier
4 Financial Alliance, Inc. (“PFA”) and Life Insurance Company of the Southwest (“LICS”). I submit
5 this declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.
6 The following statements are based on my personal knowledge and, if called upon to do so, I could
7 testify competently thereto.

8 2. Attached hereto as **Exhibit 1** is the executed Stipulation of Settlement (“Settlement
9 Agreement”)¹ in this case, and its exhibits:

10 **Appendix A**: PFA Business Changes

11 **Exhibit A1**: Notice to Inactive Policyholders of Class Action, Proposed
12 Settlement, and Settlement Hearing

13 **Exhibit A2**: Notice to Active Policyholders of Class Action, Proposed
14 Settlement, and Settlement Hearing

15 **Exhibit B**: Proposed Order granting Plaintiffs’ Motion for Preliminary
16 Approval of Class Action Settlement

17 **Exhibit C**: Proposed Final Order and Judgment

18 **Exhibit D1**: Claim Form for Inactive Policy Relief

19 **Exhibit D2**: Claim Form for Active Policy Relief

20 **I. THE LITIGATION**

21 **A. Pleadings and Initial Proceedings**

22 3. Plaintiffs brought this class action against Defendants PFA and LICS, on behalf of
23 individuals who enrolled as PFA associates after January 1, 2014, and who purchased, within
24 California, one or more Living Life or Living Life by Design indexed universal life insurance policies
25 issued by LICS.

26 4. Plaintiffs alleged that Defendants operated an endless chain scheme: PFA recruited
27

28 ¹ Unless otherwise noted, capitalized terms have the same meaning as defined in the Settlement Agreement.

1 individuals to become PFA “associates” and purchase a Living Life Policy, telling people they could
2 become a licensed insurance agent; and that, by purchasing a policy and selling it to their friends and
3 family, they could progress up PFA’s hierarchy, achieve success and get rich.

4 5. On June 25, 2018, the initial complaint in the litigation was filed. Dkt. No. 1. On
5 March 26, 2019, the Court related two actions, *Chen v. PFA*, No. 4:18-cv-03771-YGR, and *Wang v.*
6 *LICS*, No. 4:19-cv-01150-YGR (N.D. Cal. filed Feb. 28, 2019). Dkt. No. 81. Each of these actions
7 similarly alleged that Defendants violated deceptive trade practice laws.

8 6. On April 16, 2020, the Court appointed Girard Sharp LLP as interim class counsel and
9 directed the filing of a consolidated class action complaint. Dkt. No. 134. Plaintiffs filed the
10 consolidated complaint on April 30, 2020. Dkt. No. 131. PFA answered on May 19 (Dkt. No. 136)
11 and LICS answered on May 21 (Dkt. No. 137).

12 **B. Discovery**

13 7. On May 21, 2020, Plaintiffs served their first requests for production of documents on
14 Defendants. In June, the parties negotiated case management orders regarding confidentiality (Dkt.
15 No. 144), electronically stored information (Dkt. No. 153), privilege issues (Dkt. No. 151), and expert
16 witnesses (Dkt. No. 152). Thereafter, Defendants produced over 85,000 documents in discovery that
17 Plaintiffs reviewed and analyzed. Plaintiffs also produced hundreds of documents in response to
18 Defendants’ requests for production.

19 8. The parties collectively took 21 depositions of fact witnesses and 6 expert depositions.

20 9. Plaintiffs deposed 15 of Defendants’ witnesses—including 30(b)(6) witnesses and
21 LICS’s chief executive officer, senior vice president of life and annuity distribution, director of
22 antifraud and special investigations, and vice president of independent distribution.

23 10. Plaintiffs deposed PFA’s chief executive officer David Carroll and PFA’s former
24 executive field director, regional field director and area field director.

25 11. Plaintiffs also deposed Defendants’ experts Patrick Kennedy, Jim Toole and Bill Post.

26 12. Throughout discovery, the parties litigated various disputes, including related to:

- 27 a. PFA’s production of documents responsive to Plaintiffs’ first set of requests and
28 PFA’s compliance with the ESI guidelines (Dkt. No. 159);

- b. Plaintiffs' entitlement to depose PFA's executive chairman Jack Wu (Dkt. Nos. 167, 217);
- c. LICS's production of class member identification data (Dkt. No. 173);
- d. LICS's production of its chief executive officer for deposition (Dkt. No. 190);
- e. extending the fact discovery cutoff so Plaintiffs could pursue the deposition of Jack Wu and their subpoena enforcement action against Steven Early² (Dkt. No. 211).

C. Enforcing the Subpoena of Steven Early

13. In 2020, Plaintiffs subpoenaed non-party Steven G. Early, a Georgia lawyer who was PFA's former outside counsel, Chief Financial Officer, and Chief Operating Officer. Mr. Early agreed to appear for deposition, but refused to comply with Plaintiffs' document subpoena, asserting that his responsive documents are privileged. Plaintiffs filed an action to enforce the subpoena in the Northern District of Georgia, where Mr. Early resides. On April 20, 2021, the Georgia federal court granted Plaintiffs' motion to transfer the enforcement action to the Northern District of California. *See* Case No. 4:21-mc-80087-YGR-SK.

14. U.S. Magistrate Judge Sallie Kim and this Court issued a series of rulings, and the Ninth Circuit granted Plaintiffs' motions to dismiss Early's two interlocutory appeals.

15. On November 17, 2022, Early provided a privilege log for communications he is withholding. *Id.*, Dkt. No. 81.

16. The parties and Mr. Early agreed to table their dispute once settlement negotiations reached an advanced stage in late 2022. 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.

D. Motion Practice

17. On May 14, 2021, Plaintiffs moved for class certification. Dkt. Nos. 181-82. On November 3, 2021, the Court granted in part and denied in part Plaintiffs' motion. Dkt. No. 239.

18. On November 17, 2021, Defendants separately petitioned the Ninth Circuit for review of the class certification under Rule 23(f). On November 29, Plaintiffs filed a consolidated answer to the

² Section C provides a brief overview of the *Early* action, which proceeded on a coordinated docket.

1 petitions, and on January 20, 2022, the Ninth Circuit denied review.

2 19. On December 6, 2021, PFA and LICS separately moved for summary judgment. Dkt.
3 Nos. 252, 262-63. LICS also moved to exclude the expert opinions of Plaintiffs' testifying experts Dr.
4 William Keep, Christopher Snyder and Larry Stern. Dkt. Nos. 253-56, 258, 260. Plaintiffs moved to
5 exclude the expert opinions of LICS's expert Bill Post. Dkt. Nos. 264-66.

6 20. On June 15, 2022, the Court issued an order granting in part and denying in part
7 summary judgment. Dkt. No. 306 at 49. The Court granted summary judgment against Plaintiffs on
8 their request for prospective injunctive relief; their theory of liability against LICS based on the
9 existence of an LICS-PFA partnership; and Plaintiff Wang's fraud claim against PFA. *Id.* The same
10 day, the Court issued an order largely denying the parties' *Daubert* motions regarding the admissibility
11 of expert evidence. Dkt. No. 307.

12 21. Motions and stipulations regarding dissemination of class notice followed. On
13 December 21, 2022, the Court granted the parties' stipulation adjourning the dissemination of class
14 notice considering the parties' agreement in principle to settle the action. Dkt. No. 352.

15 **II. THE SETTLEMENT**

16 **A. The Parties' Negotiations**

17 22. The parties served confidential mediation briefs on August 4, 2022, and mediated in
18 Philadelphia with the Honorable Diane M. Welsh (Ret.) on August 11. After nearly 10 hours of
19 negotiations, the parties agreed to adjourn the mediation. Although the parties did not reach a
20 settlement, they continued negotiations after the mediation.

21 23. Following the mediation, the case proceeded on two tracks, with the parties' counsel
22 preparing for trial and concurrently negotiating toward a settlement.

23 24. On December 16, 2022, the parties signed a detailed term sheet, and on December 22,
24 the Court granted the parties' stipulation to adjourn Class Counsel's obligation to comply with the
25 order to mail class notice. Dkt. No. 352. On February 10, 2023, upon receipt of the parties' report
26 confirming their progress in documenting the settlement, the Court vacated the trial date and
27 corresponding deadlines. Dkt. No. 355.

28 25. Class Counsel's objective in negotiating the settlement was to reproduce, to the extent

1 practicable, the rescissory relief that Class Counsel would pursue if the Class prevailed at trial. To
2 mitigate LICS’s informational and experiential advantages, and for assistance on the actuarial aspects
3 of the negotiations, Class Counsel consulted Philip J. Bieluch, an actuarial consultant specializing in
4 life insurance product development and reinsurance.

5 26. The protracted nature of the negotiations is attributable to several factors, which include
6 the hard bargaining between the parties, the developed evidentiary record, the lack of ready models for
7 resolution of “endless chain” claims in the insurance sales context, and the need to accommodate the
8 preferences of all class members, including those who prefer to retain their policies.

9 **B. The Settlement Class**

10 27. The proposed Settlement is entered on behalf of the following class: All Persons who: (i)
11 enrolled as PFA associates between January 1, 2014 and the Stipulation Date and (ii) purchased one or
12 more Living Life Policies within California between January 1, 2014 and the Stipulation Date of
13 March 17, 2023. SA § 2.4.

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

25 29. LICS has identified approximately 22,000 Living Life and Living by Design policies
26 purchased in California between January 2014 and March 2023 by owners whose name matches a
27 name on the list of PFA associates. Of these Class Policies, 78% are active and 22% are inactive.

28 30. LICS’s records show a total of 13,105 unique addresses in connection with these

1 policies. The Claims Administrator will send the Notice to all these addresses. Some recipients may
2 be excluded as they reached the upper levels of PFA’s marketing hierarchy and are therefore excluded
3 from the class. *See* Dkt. No. 239 at 37.

4 31. PFA’s list also may contain duplicate entries, as many similar or identical first and last
5 names appear on PFA’s member list. That list contains, for example, 249 people with the surname
6 “Wang” and 918 people with the surname “Nguyen.”

7 32. Thus, while an exact count is unavailable, the class appears to contain fewer than 13,000
8 members.

9 **C. Settlement Benefits for the Class**

10 33. The Settlement provides cash payments that Class Counsel believe equate to the
11 rescissory relief they would seek at trial. Both Class Members who are former insureds, and Class
12 Members who elect to terminate their in-force Class Policy, are eligible to make a claim. If all Class
13 Members made a claim, the Settlement would pay out almost \$50 million over and above cash
14 surrender values.

15 34. In addition to the monetary relief offered, the Settlement requires PFA to implement
16 various business changes to its marketing plan. SA, Appx. A.

17 35. The Settlement obligates the Defendants to return a portion of the premiums paid by
18 Class Member claimants, according to a formula that subtracts cost of insurance and similar policy
19 charges from the total premiums paid, and then applies a one-third discount.

20 36. The Inactive Policy Relief—for Class Members who owned policies that lapsed or
21 surrendered—will be calculated as: 67 percent of the following formula: (a) the premiums paid on the
22 Class Policy; *minus*; (b) an expense factor of 25 percent of the total premiums paid on the Class
23 Policy; *minus* (c) the total amount of cost of insurance charges and accumulated value charges
24 deducted from the Class Policy; *minus* (d) the total amount of withdrawal, partial surrender, and/or
25 total surrender amounts already paid on the Class Policy. SA § 3.6.

26 37. The Active Policy Relief—for Class Members who are current policy owners and elect
27 termination—will similarly be calculated as: 67 percent of the following formula: (a) the premiums
28 paid on the Class Policy; *minus* (b) an expense factor of 10 percent of the total premiums paid on the

1 Class Policy; *minus* (c) the total amount of cost of insurance charges and accumulated value charges
2 deducted from the Class Policy; *minus* (d) the total amount of outstanding policy loans and interest
3 owed to LICS on the Class Policy; *minus* (e) the total amount of withdrawals from or partial
4 surrenders of the Class Policy; *minus* (f) the cash surrender value of the Class Policy. SA § 3.3.

5 38. The expense factor deduction (subpart “b” above) accounts for the overhead costs borne
6 by LICS in originating the policy sale, administering the policy, and processing payments and other
7 policy-related transactions. The expense factor applied to the total premium differs between the
8 inactive and active policyholder groups. This difference accounts for the cost to the insurer of
9 rescinding a policy in the first few years, which is exponentially greater than later, given that it
10 typically requires a period of several years for the insurer to recover the substantial commission due to
11 the selling agent. Thus, Plaintiffs conceded a greater deduction from the total payment to inactive
12 policyholder claimants, as the inactive policies generally were in force for less time. Other than these
13 subtractions, the same formula applies to both Active and Inactive Class Members.

14 39. All Class Members are eligible to make a claim, regardless of whether they are former
15 or active policyholders.

16 40. Policy owners who do not make a claim will maintain their policy.

17 41. Some Class Members with active policies have built up sufficient cash value so that it
18 does not make financial sense for them to terminate their policy. Partly for this reason, not all Class
19 Members with an active policy will elect to terminate. Class Counsel took care to ensure that the
20 Settlement preserves their right to keep their policy in force. The Notice also spells out how Class
21 Members can compare their estimated recovery under the Settlement to their cash surrender value.

22 42. The Settlement focuses relief on those Class Members who discontinued their policies or
23 made minimum payments to keep their policies in effect—thereby maximizing recoveries to the Class
24 Members that Class Counsel contend were most harmed by Defendants’ alleged scheme, *i.e.*, those
25 who found the policy too expensive to carry over time.

26 43. The payments to Class Members will vary, based upon the amount of premiums paid
27 and other actuarial factors. Individual Class Members stand to recover thousands of dollars. Plaintiff
28 Dalton Chen’s recovery is representative. As inactive policyholder, he will receive \$2,370, equating

1 to 67% of his total premiums paid after subtraction of policy charges and overhead, and 42% of his
2 recovery under the damages model proposed by Plaintiffs' expert witness Larry Stern.

3 **D. Notice and Claim Procedures**

4 44. Within 28 days after Preliminary Approval, Epiq will send the Notice by first-class mail
5 to the last-known address of Living Life policyholders who purchased their policy in California in the
6 relevant time period and whose name matches a name from the list of PFA associates (SA §§ 5.3, 6.5
7 & Ex. B at ¶ 7(b)), using the method previously approved by the Court (Dkt. No. 334).

8 45. The Declaration of Cam Azari, a notice expert at Epiq, is being filed concurrently and
9 discusses this direct notice plan in relation to the applicable standards for providing notice to the class
10 in this case.

11 46. Epiq will file a declaration confirming these mailings have been completed. SA, Ex. B
12 at ¶ 8.

13 47. With respect to returned mail, Epiq will perform standard skip-traces and re-mailings.

14 48. Defendants will send the notice required by the Class Action Fairness Act (SA § 5.2)
15 and file a declaration confirming that process has been completed (SA, Ex. B at ¶ 9).

16 49. In addition, Epiq will post the Notice on the Settlement Website. SA, Ex. B at ¶ 7(a).

17 50. Many Class Members are not native English speakers. The Notice will be translated
18 into several languages—Chinese, Tagalog, Spanish, Vietnamese, and Nepali—and will be posted on
19 the Settlement Website.

20 51. To further promote comprehension, the Notice and Claim Form are divided into two
21 sets: Exhibits A1 and D1 will be sent to former Class Policy owners; Exhibits A2 and D2 will be sent
22 to current Class Policy owners. In every instance the two documents will be included within the same
23 envelope.

24 52. The two claim forms will also be posted on the Settlement Website, and can be
25 submitted either online or by U.S. mail.

26 53. The parties discussed, but rejected, the possibility of making automatic payments to
27 inactive policyholders. Because only Class Members are entitled to recover under the Settlement,
28 given the limits on information available to ascertain the Class, Defendants insisted on an attestation

1 of Class Membership that a claimant's eligibility for payment be verified.

2 54. Class Members will have 90 days from Preliminary Approval to make a claim. SA
3 § 6.6. Epiq will establish a toll-free telephone number and an email address that Class Members can
4 use to request assistance in filing a claim, and they can also contact Class Counsel for free help. Epiq
5 will also provide claimants with a reasonable cure opportunity. SA § 6.7.

6 55. Class Counsel generally expect a claim rate of about 15% for inactive policyholder
7 Class Members and a claim rate of about 10% for active policyholder Class Members. These
8 estimates are based on Class Counsel's experience and consultation with Epiq, but the unique aspects
9 of this case make it more difficult than usual to predict participation rates. Class Counsel believe,
10 however, that participation in the Settlement will be higher than for a comparable offer of rescission
11 following a victory at trial. The time required to adjudicate an appeal would make it harder to locate
12 former policyholders, and Defendants could be expected to argue for detailed attestations of class
13 membership and other formalities that the Settlement avoids.

14 **E. The Notice and Claim Form**

15 56. LICS's policy records contain contact information of people who purchased a Living
16 Life policy in California. Dkt. No. 324 at 1. The Court previously approved use of direct U.S. mail
17 for notifying the Class Members of the action. Dkt. No. 334.

18 57. The proposed Notice of the Settlement is based on the Federal Judicial Center models.
19 The Notice addresses all the matters referenced in Rule 23(c)(2)(B).

20 58. Translating the Notice into several foreign languages is intended to remove a potential
21 barrier to certain Class Members understanding the Settlement and their options. The use of separate
22 notices for inactive and active policy owner Class Members is intended to further facilitate Class
23 Members' comprehension of the Notice and to avoid needless confusion. The parties also expended
24 considerable effort, in consultation with Epiq, on simplifying the Notice and Claim Form and
25 eliminating unnecessary formality and reducing the potential for confusion.

26 59. The Notice and Claim Form for active policyholders advise the recipient to compare
27 their estimated Settlement payment with their cash surrender value. Both documents direct the insured
28 to the Settlement Website, where they can input their unique claim identifier (shown on the enclosed

1 Claim Form) and compare their estimated Settlement payment with their policy’s cash surrender
2 value—“as of” a certain date—with the caveat that these values may change before the payment is
3 calculated. SA, Ex. A2 at p. 1 & Question 10. Hence, the dollar comparison that the notice advises
4 the active policyholders to undertake, in deciding whether to claim, will be readily available to them
5 online.

6 60. As a result of this process, active policyholder Class Members will be dissuaded from
7 terminating their policy when doing so is not in their interest.

8 61. Like the Notice, the Claim Form has been designed for ease of use and to facilitate
9 informed decisions by Class Members. Both the Notice and Claim Form—for both active and inactive
10 policyholders—tell Class Members that they can obtain free assistance in deciding whether to make a
11 claim, and how to do so, from Class Counsel, as well as from the Claims Administrator, by phone,
12 email, or U.S. mail.

13 **F. Attorneys’ Fees, Expense Reimbursement, and Service Awards**

14 62. Under the Settlement, the Defendants agree not to oppose an application by Class
15 Counsel for attorneys’ fees not to exceed \$6,000,000 and reimbursement of litigation expenses not to
16 exceed \$371,000. SA § 7.1.

17 63. The agreed fee was negotiated by the parties after they agreed on all other material terms
18 of settlement, and is lower than Class Counsel’s lodestar.

19 64. As of March 15, 2023, Class Counsel and their professional staff had devoted 9,704
20 hours of time to this matter since February 2019, for a total lodestar of \$6,924,495.

21 65. Defendants agree not to oppose the application for a \$10,000 service award for each
22 Plaintiff.

23 66. Plaintiff Eileen Wang and the other Living Life policyholders who came forward with
24 evidence of their experiences are eligible for the same relief as the Class, in consideration for their
25 individual releases of liability. SA §§ 2.8, 8.7.

26 **III. RECOMMENDATION OF COUNSEL**

27 67. In negotiating this Settlement, experienced Class Counsel considered the relative risks
28 and benefits of the Settlement in relation to the risks of litigation, and sought to ensure that the

1 Settlement Agreement complies in all respects with the relevant case law.

2 68. Class Counsel believe that, in view of the risks, uncertainties, expense and delay that
3 would come with continued litigation, the proposed Settlement is fair, adequate, and reasonable.

4 69. Class Counsel therefore respectfully request that the Court grant preliminary approval
5 and approve the notice plan, permitting Class Members to exercise their rights under Rule 23 and the
6 terms of the Settlement, and set a schedule for further proceedings, including a Settlement Hearing at
7 which the Court can consider whether to grant final approval.

8 * * *

9 I declare under penalty of perjury under the laws of the United States that the foregoing is true
10 and correct. Executed March 17, 2023.

11 By: /s/ Daniel C. Girard
12 Daniel C. Girard