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

19 IN RE PFA INSURANCE MARKETING
20 LITIGATION

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

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

26 Judge: Hon. Yvonne Gonzalez Rogers
27 Date: January 16, 2024
28 Time: 2:00 p.m.
Courtroom: 1 – 4th Floor

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1 **NOTICE OF MOTION AND MOTION**

2 **PLEASE TAKE NOTICE** that on January 16, 2024, at 2:00 p.m., before the Honorable
3 Yvonne Gonzalez Rogers of the United States District Court for the Northern District of California,
4 Plaintiffs Dalton Chen and Youxiang Eileen Wang will and do hereby move the Court, pursuant to
5 Rules 23(a), (b)(3), and (e) of the Federal Rules of Civil Procedure, for an order granting final
6 approval of the proposed settlement of this action. The Motion is based on this Notice of Motion, the
7 incorporated memorandum of points and authorities, the Declaration of Sean Greene (“Greene Decl.”)
8 and the Declaration of Eamon Mason (“Mason Decl.”) filed herewith, the record in this action, the
9 argument of counsel, and any other matters the Court may consider.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 The Court thoroughly reviewed the Settlement before granting preliminary approval, requiring
13 detailed answers to questions about the settlement terms, comparative recoveries, and the anticipated
14 response of Class members. Notice having been given in accordance with the Court’s Preliminary
15 Approval Order, Plaintiffs now report on the response of Class members and the claims received. The
16 response of the Class weighs in favor of final approval. There are 998 claimants; using Class
17 Counsel’s estimate of 13,000 Class members, the Class as a whole claimed at a rate of about 8 percent.
18 The claimants will recover almost \$4.2 million, for an average recovery of \$4,207. There is no
19 meaningful opposition to the Settlement. Two objections were made; these are addressed below.
20 Neither raises cogent objections to the Settlement. Considering the response of Class members, and
21 the extensive record before the Court, the Settlement should be approved so the claims can be paid.

22 The Settlement gave all Class members the option of making a claim for a substantial payment
23 in a simplified version of the procedure that would have followed a favorable verdict. Through this
24 benefit, the Settlement achieved Plaintiffs’ goal: to give Californians who enrolled with Defendant
25 Premier Financial Alliance, Inc. (“PFA”), and who purchased a Living Life or Living Life by Design
26 policy issued by Defendant Life Insurance Company of the Southwest (“LICS”), the option of
27 rescinding their policy purchase and recovering a substantial portion of their premiums. Eligible
28 claimants will receive their premiums paid, minus deductions for maintaining the policy, less a one-

1 third discount for risk and delay. PFA has also agreed to business changes that will bring its sales
2 practices in line with those of several mainstream multi-level marketing businesses.

3 None of the objectors has established their standing to object—none submitted evidence that
4 they were a PFA associate who purchased a Class Policy in California. Moreover, the Gonzales
5 Plaintiffs merely repeat their flawed arguments in opposition to preliminary approval, which this Court
6 already rejected, including their misplaced assertions of an overbroad release and a nationwide class.
7 Despite their unsupported complaints, the Gonzales Plaintiffs had the same ability as all other
8 individuals to visit the Settlement Website to see an estimate of what amount (if any) they could
9 receive by making a claim, and a comparison of that amount to the cash surrender value (if any)
10 associated with their policy. Additionally, the negotiated fee of \$6 million does *not* “greatly exceed”
11 the total class recovery (Dkt. No. 372 at 3) but accords with California law and is consistent with
12 attorney fee awards approved by courts in analogous cases. The other objector, Yunhai Li, is an
13 Illinois resident who served as a Class Witness. Yunhai has made a claim in accordance with the
14 rights negotiated for him in the Settlement Agreement¹ and he will receive a substantial payment, but
15 he believes he should also recover spousal support benefits that he lost following a divorce. As a non-
16 Class member who did not purchase in California,² however, he lacks standing to object, and his
17 objection³ in any event gives no reason to doubt the fairness of the settlement.

18 The Court should grant the motion for final approval.

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

20 Should the Court grant final approval of the parties’ settlement under Fed. R. Civ. P. 23(e)?

21 **III. UPDATE ON SETTLEMENT PARTICIPATION**

22 Plaintiffs incorporate their previous descriptions of the history of this litigation and the
23 settlement reached by the parties. *See* Dkt. Nos. 356, 367-1. After the Court granted preliminary
24 approval on July 21, 2023 (Dkt. No. 366), the Claims Administrator carried out the Notice program
25

26
27 ¹ Dkt. No. 364-2, § 8.7.

28 ² Dkt. No. 366 at 10-11.

³ Dkt. No. 375.

1 and began receiving and processing claims.⁴ Since preliminary approval, the Settlement Website⁵ has
 2 posted the Notice, including versions translated into Chinese, Nepali, Spanish, Tagalog, and
 3 Vietnamese. Mason Decl., ¶ 7. Any potential Class member could input their unique ID and PIN
 4 (shown in the Notice packet) on the website to see their estimated Settlement payment and their
 5 policy's cash surrender value. Mason Decl., ¶ 8.

6 **A. Summary of Class Member Claims**

7 Out of an estimated 13,000 Class members (Dkt. No. 356, ¶ 32), 998 made a valid claim, for an
 8 overall claim rate of 7.7%. Greene Decl., ¶ 5; Mason Decl., ¶ 15. That rate will increase after the
 9 Claims Administrator affords a cure opportunity to 31 Class members who can recover but whose claim
 10 form was incomplete. Greene Decl., ¶ 6. The approximate claim rate for those with inactive policies is
 11 17.4% of potential Class members, while the group with active policies (many of whom prefer to keep
 12 their life insurance) claimed at a rate of 4.8% of potential Class members. Greene Decl., ¶ 5.

13 As required by this Court's Preliminary Approval Order (Dkt. No. 366 at 30), the following
 14 table shows the numerical claim breakdown, total estimated value of claims, and average payments to
 15 Class members, segregated according to the active and inactive policyholder groups, and also showing
 16 estimated post-trial figures (applying Plaintiffs' proposed damages formula, which Defendants would
 17 have contested). The bolded figures show that the Class will receive about \$4.2 million, for an
 18 average payment of \$4,207.

	Active Policyholder	Inactive Policyholder	Active and Inactive
Number of Claims	478	520	998
Total Estimated Value (Settlement)	\$2,988,507.82	\$1,210,138.25	\$4,198,646.07
Total Estimated Value (Post-Trial)	\$6,893,163.55	\$2,454,886.83	\$9,348,050.38
Average Payment (Settlement)	\$6,252.11	\$2,327.19	\$4,207.06
Average Payment (Post-Trial)	\$14,420.84	\$4,720.94	\$9,366.78

27 ⁴ Dkt. No. 369. Pursuant to this District's Procedural Guidance for Class Action Settlements, there
 28 were 484 undeliverable class notices and claim packets. Mason Decl., ¶ 6.

⁵ <https://www.pfasettlement.com/Home/Documents>.

Greene Decl., ¶ 2; Mason Decl., ¶ 16.

Information pertaining to a representative sample of individual claims approved under the Settlement also appears below.

<u>ACTIVE</u>	Total premium paid	Loan or withdrawal	Settlement payment	Estimated post-verdict payment	% Recovery
Claimant 1	\$18,001.05	N/A	\$8,499.76	\$14,486.31	59%
Claimant 2	\$14,277.36	N/A	\$7,156.96	\$12,594.85	57%
Claimant 3	\$12,132.00	N/A	\$3,592.23	\$10,693.16	34%
Claimant 4	\$10,915.84	N/A	\$3,115.81	\$9,224.02	34%
Claimant 5	\$7,232.80	N/A	\$3,441.77	\$6,880.68	50%
Claimant 6	\$5,325.00	N/A	\$2,684.20	\$4,538.77	59%

<u>INACTIVE</u>	Total premium paid	Loan or withdrawal	Settlement payment	Estimated post-verdict payment	% Recovery
Claimant 1	\$12,966.00	N/A	\$5,141.73	\$10,915.72	47%
Claimant 2	\$10,356.72	N/A	\$2,310.37	\$6,037.49	38%
Claimant 3	\$4,593.56	N/A	\$2,350.75	\$3,967.94	59%
Claimant 4	\$2,580.00	N/A	\$954.81	\$2,070.09	46%
Claimant 5	\$1,400.00	N/A	\$426.29	\$986.25	43%
Claimant 6	\$12,966.00	N/A	\$5,141.73	\$10,915.72	47%

Greene Decl., ¶ 7. These dollar amounts are typical of the payments to the group of claimants. *Id.*

Pursuant to the Preliminary Approval Order, the estimated number of Class members who, though eligible for recovery, did not file an approved claim is approximately 12,002. Mason Decl., ¶ 17. Additionally, the parties are unaware of any Class members who received the notice but were ineligible because they did not own a Class Policy. Mason Decl., ¶ 5.

A total of 129 Class members timely opted out. Mason Decl., ¶ 13. More than 90% of the opt-out notices came from active policyholders. Greene Decl., ¶ 18. Active policyholders appear to have opted out as a precautionary measure: many wrote that they were opting out because they want to keep their policy, the same outcome that would have resulted from simply not making a claim. *Id.* There is

1 no indication the opt-outs are attributable to dissatisfaction with the settlement terms. There were two
 2 objections, one from the Gonzales Plaintiffs⁶ (Dkt. No. 372) and the other from Yunhai Li (Dkt. No.
 3 375). Yunhai is an Illinois resident and a Class Witness under the settlement who previously
 4 submitted a declaration in support of class certification (Dkt. No. 181-4).

5 **B. Summary of Class Counsel’s Communications with Class Members**

6 The Notice invites Class members to contact Class Counsel with any questions. Dkt. Nos. 364-
 7 3 & 364-4 at pp. 10, 17, 26, 33 of 33. Class Counsel received inquiries about the Settlement and their
 8 rights and options from approximately 152 Class members. Greene Decl., ¶ 10.

9 Girard Sharp attorney Sean Greene promptly responded to all these individuals. Greene Decl.,
 10 ¶ 10. The individuals who contacted the firm generally inquired about their eligibility to participate in
 11 the Settlement, assistance in looking up their estimated Policy Relief payment and cash surrender
 12 value on the Settlement Website, the nature and effect of Policy Relief, potential termination of their
 13 policy, claim information, timing of payment, and other information regarding their rights under the
 14 Settlement. Greene Decl., ¶ 14.

15 In assisting Class members, Mr. Greene was guided by the Settlement Agreement and by this
 16 Court’s Preliminary Approval Order. Greene Decl., ¶ 15. Other than conveying the Class member’s
 17 financial information, much of his advice repeated or clarified information provided in the Notice.
 18 Greene Decl., ¶ 17. To our knowledge, Mr. Greene answered all questions to the satisfaction of the
 19 callers. Greene Decl., ¶ 13.

20 **IV. ARGUMENT**

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

22 A “strong judicial policy . . . favors settlements, particularly where complex class action
 23 litigation is concerned.” *In re Chrysler-Dodge-Jeep EcoDiesel Mktg., Sales Practices, & Prods.*
 24 *Liab. Litig.*, 2019 WL 536661, at *5 (N.D. Cal. Feb. 11, 2019) (quoting *Allen v. Bedolla*, 787 F.3d
 25 1218, 1223 (9th Cir. 2015)). The Court considers whether “the class representatives and class
 26 counsel have adequately represented the class”; “the proposal was negotiated at arm’s length”; “the
 27

28 ⁶ The Court denied the Gonzales Plaintiffs’ administrative motion to extend their deadline to opt out.
 Dkt. Nos. 373, 376.

1 relief provided for the class is adequate”; and “the proposal treats class members equitably relative to
2 each other.” Fed. R. Civ. P. 23(e)(2). When applied to this Settlement, these factors are all satisfied.

3 **1. The Settlement Resulted From Arm’s Length Negotiations Among**
4 **Experienced Counsel.**

5 Under Rule 23(e)(2), the Court first determines whether the class was adequately represented
6 and whether the settlement proposal was negotiated at arm’s length. To negotiate a fair and
7 reasonable settlement, “the parties [must] have sufficient information to make an informed decision
8 about settlement.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998).

9 The parties here reached their settlement after extensive document, deposition and expert
10 discovery and after motion practice on class certification and summary judgment that addressed key
11 factual questions. Dkt. No. 356-1, ¶¶ 7-21; Dkt. No. 367-1, ¶¶ 28-81. *See, e.g., LaGarde v.*
12 *Support.com, Inc.*, 2012 WL 13034899, at *7 (N.D. Cal. Nov. 2, 2012) (existence of robust discovery
13 indicates plaintiffs were sufficiently informed). Class Counsel’s discovery and expert work, along
14 with the Court’s opinions, enabled counsel to “enter[] the settlement discussions with a substantial
15 understanding of the factual and legal issues from which they could advocate for their respective
16 positions and which are necessary for a robust negotiation.” *Kulesa v. PC Cleaner, Inc.*, 2014 WL
17 12581769, at *10 (C.D. Cal. 2014). The parties’ settlement resulted from many months of difficult
18 negotiations initiated through a retired judge and informed by Plaintiffs’ actuarial consultant. Dkt.
19 No. 356-1, ¶¶ 22-26; Dkt. No. 367-1, ¶¶ 87-94. The first two Rule 23(e)(2) factors are met: In
20 granting preliminary approval, this Court concluded the class had been adequately represented, saw
21 “no indication of . . . collusion” and found that, “[i]n light of the success that Class Counsel have
22 achieved to date on behalf of the class, their substantial experience in prosecuting other complex class
23 actions, and the substantial discovery . . . [they] were well informed about the strengths and
24 weaknesses of class members’ claims before and during their settlement negotiations and are well-
25 positioned to negotiate a fair settlement” Dkt. No. 366 at 18, 20. The reaction of Class members
26 gives no indication any of these findings should be reconsidered.

27 **2. The Settlement Treats Settlement Class Members Equitably.**

28 The Court further found that the Settlement’s method for determining awards treats Class

1 members equitably relative to each other, explaining in part that the objective formulas “compensate
 2 each claimant commensurate with the actual loss they experienced in a manner that approximates the
 3 relief they could have obtained under § 1689.2 had they prevailed at trial. The Court is persuaded that
 4 the difference in the formulas’ expense factor for active policies versus inactive policies”—i.e.,
 5 deducting a 15% higher expense factor from premiums paid by inactive policyholders—“is justified by
 6 the fact that inactive policies resulted in greater costs for the insurer relative to active policies.” Dkt.
 7 No. 366 at 21-22. The Settlement also appropriately limits recoveries to PFA associates who
 8 purchased a Class Policy and who did not already rescind or assign it (because there is nothing left to
 9 rescind), or already receive a death benefit (because they are better off keeping that policy benefit). *Id.*
 10 at 22-23. Thus, the plan of allocation treats all Class members fairly in relation to the strength of their
 11 claims. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1045 (N.D. Cal. 2008); *Khoja v.*
 12 *Orexigen Therapeutics, Inc.*, 2021 WL 5632673, at *7 (S.D. Cal. 2021) (“A plan of allocation that
 13 reimburses class members based on the extent of their injuries is generally reasonable.”).

14 Accordingly, Rule 23(e)(2)(D) is satisfied.

15 3. The Relief Afforded by the Settlement Is Adequate.

16 The outcome of the claims process demonstrates that the relief for Class members is adequate
 17 under Rule 23(e)(2), which looks at “the costs, risks, and delay of trial and appeal”; “the effectiveness
 18 of any proposed method of distributing relief to the class, including the method of processing class-
 19 member claims”; “the terms of any proposed award of attorney’s fees, including timing of payment”;
 20 and “any agreement required to be identified under Rule 23(e)(3).”⁷

21 By allowing any Class member to recover a substantial portion of amounts paid in connection
 22 with the alleged scheme, the Settlement secures the benefit contemplated by the Endless Chain Law.⁸
 23 Based on all approved claims, the total recovery for Class members will be approximately
 24 \$4,198,646—a large amount. Mason Decl., ¶ 16. This is approximately 6% of what could have been
 25 recovered had a claim been made by everyone who could have gained more under the Settlement than

26 _____
 27 ⁷ There is no side agreement to disclose under Rule 23(e)(3).

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

1 by surrendering their policy, and 3% of the latter group’s potential recovery at trial. Greene Decl., ¶
2 4. The amount that went unclaimed comes as no surprise; Class Counsel projected claim rates in this
3 range. Dkt. No. 364-1, ¶ 15 (noting that “claim rates in class actions have typically fallen within a
4 range of 5-10%”); Dkt. No. 356-1 (correctly anticipating claim rate of “about 15% for inactive
5 policyholder Class Members”); Greene Decl., ¶ 5 (stating final claim rates of 7.7% for the Class with
6 inactives claiming at 17.4%).

7 The \$4.2 million is of value to claiming Class members regardless of whether other people for
8 whatever reason did not claim. And notably, unlike in most consumer class action settlements, active
9 policyholders who did not claim retain a valuable benefit—their life insurance policy, which includes
10 both a death benefit and a cash value component. It is therefore unsurprising that the claim rate for
11 inactive policyholders exceeds the claim rate for active policyholders. *See* Greene Decl., ¶ 5. Even
12 without taking this unique aspect of the case into account, the percentage of potential damages
13 recovered under this Settlement is consistent with other approved settlements. *See, e.g., In re Lithium*
14 *Ion Batteries Antitrust Litig.*, 2017 WL 1086331, at *4 (N.D. Cal. 2017) (between 2.2% and 11.2% of
15 total possible damages); *Greko v. Diesel U.S.A., Inc.*, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26,
16 2013); *Hillman v. Lexicon Consulting, Inc.*, 2017 WL 10433869, at *9 (C.D. Cal. Apr. 27, 2017)
17 (“3.8% of the estimated damages”); *see also Linney*, 151 F.3d at 1242 (settlement amounting to a
18 fraction of the potential total recovery was reasonable given the significant risks of going to trial);
19 *Hendricks v. StarKist Co.*, 2015 WL 4498083, at *7 (N.D. Cal. 2015) (settlement representing “only a
20 single-digit percentage of the maximum potential exposure” was reasonable given the risks).

21 Further supporting approval of the Settlement, the total claim rate of 7.7% falls at the high end
22 of the typical range. *See, e.g., Chess v. Volkswagen Grp. of Am., Inc.*, 2022 WL 4133300, at *6 (N.D.
23 Cal. Sept. 12, 2022) (approving claims-made settlement with 2% response rate); *Tait v. BSH Home*
24 *Appliances Corp.*, 2015 WL 4537463, at *8 (C.D. Cal. July 27, 2015) (approving claims-made
25 settlement with claims rate of 3%); *Shames v. Hertz Corp.*, 2012 WL 5392159, at *14 (S.D. Cal. Nov.
26 5, 2012) (4.9% claims rate was reasonable); *see also In re Comcast Corp. Set-Top Cable TV Box*
27 *Antitrust Litig.*, 333 F.R.D. 364, 386 (E.D. Pa. 2019) (less than 1% claims rate; settlement payout of
28 \$211,000, out of a potential \$15 million-plus value, did “not reflect a failure of Class Counsel”);

1 *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 696 (S.D. Fla. 2014) (noting courts have
2 approved “claims-made settlements where the participation rate was very low”) (citing *Perez v.*
3 *Asurion Corp.*, 501 F. Supp. 2d 1360, 1377 (S.D. Fla. 2007) (1.1%)).

4 Individual recoveries for Class members are significant. Of the 998 eligible claimants, 36 will
5 recover **\$15,000 or more**; 230 will recover between **\$14,999 and \$5,000**; 490 will recover between
6 **\$4,999 and \$1,000**; and 242 will recover **up to \$999**. Greene Decl., ¶ 8. In addition to the \$4,207
7 average payment, the median payment for all valid claims is \$2,328. Greene Decl., ¶ 3. Paired with
8 this substantial monetary relief, the Settlement also includes PFA’s agreement to change its sales
9 practices in several important ways. Dkt. No. 356-3. PFA will begin disclosing associate earnings
10 and the fact that buying a policy is not a prerequisite to joining PFA, and it will stop displaying
11 certain images and statements suggesting that recruits can get rich by joining PFA. The payments for
12 Class members and the PFA business changes are more than adequate when considered in light of the
13 delays, risks, and uncertainties that continued litigation would have brought. *See, e.g., Spann v. J.C.*
14 *Penney Corp.*, 314 F.R.D. 312, 326 (C.D. Cal. 2016) (“The settlement the parties have reached is
15 even more compelling given the substantial litigation risks in this case.”).

16 As the Court observed (Dkt. No. 366 at 25), Plaintiffs would have faced significant litigation
17 risks had the case not settled. LICS argued, for example, that insurance cannot be “inventory loaded”
18 and that PFA associates did not receive any rewards that were unrelated to policy sales. Dkt. No. 263
19 at 14-16. PFA likewise argued that it could not be a pyramid scheme, as no one at PFA earned
20 money from recruiting unless they actually sold a policy. Dkt. No. 252 at 16-17. Defendants’
21 arguments posed not only a substantial trial risk but also a post-trial risk of decertification. Dkt. No.
22 366 at 25. *See Mazzei v. Money Store*, 829 F.3d 260, 265-67 (2d Cir. 2016) (class decertified after
23 trial); *Walker v. Life Ins. Co. of the Sw.*, 2021 WL 1220692, at *8 (C.D. Cal. 2021) (parties’
24 demonstrated willingness to appeal supported approval of the settlement, “because in its absence
25 there will be inevitable costs, high risks and delay.”). Plaintiffs’ nationally recognized pyramid
26 scheme expert William W. Keep, Ph.D. noted that Class members “can get paid many months sooner
27 than in the most optimistic litigation scenario” and that he was “not aware of any pyramid scheme
28 case where the defendant firm did not appeal an unfavorable trial court decision.” Dkt. No. 367-2,

¶ 5. Contrasting with the risks and additional delays after four years of litigation, the settlement will deliver certain recoveries to Class members, providing “a significant, easy-to-obtain benefit,” *In re Haier Freezer Consumer Litig.*, 2013 WL 2237890, at *4 (N.D. Cal. 2013), with relief “directly targeted to the harm suffered by the class [that] adequately redresses their injuries.” *Shin v. Plantronics, Inc.*, 2020 WL 1934893, at *3 (N.D. Cal. Jan. 31, 2020).

The method of distributing awards is straightforward (Dkt. No. 366 at 26-27) and the terms of the proposed fee award are reasonable based on the parties’ agreement and for the reasons discussed in Class Counsel’s motion for attorneys’ fees. Dkt. No. 367. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii). Many courts applying California law⁹ have approved fee-to-class recovery ratios well in excess of the 1.4 ratio here. *See, e.g., In re Tea Station Inv., Inc.*, 2022 WL 13907834, at *9 (B.A.P. 9th Cir. Oct. 18, 2022) (noting that “California law generally rejects a strictly proportional approach in awarding fees based on prevailing party fee shifting statutes” and rejecting challenge to \$168,766.25 fee award where the plaintiff recovered \$4,674.08 and nothing for the class); *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1167 (C.D. Cal. 2010) (awarding \$3.7 million in fees when there was “a total current class recovery of only \$1.2 million”); *Jefferson v. Chase Home Fin.*, 2009 WL 2051424, at *3 (N.D. Cal. July 10, 2009) (disagreeing that “the fee award of \$600,000 should be reduced because of its disproportionality to the \$68,000 recovery of Plaintiff class”).

Thus, the Rule 23(e)(2)(C) factors are satisfied.

B. Certification of the Settlement Class Is Appropriate.

The Court certified this California Class for trial (Dkt. No. 239), and there have been no

⁹ California law on attorneys’ fees applies to the resolution of these California claims for the California Class. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Indep. Living Ctr. of S. Cal., Inc. v. Kent*, 909 F.3d 272, 282 (9th Cir. 2018) (“[F]ederal common law does not govern the award of fees” when there are “no independent federal claims”). Class Counsel, as attorneys for a prevailing party, are presumptively entitled to recover their lodestar. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1133-34 (2001). California law does not treat the ratio of counsel’s lodestar to recovery for a class as a decisive factor; rather, “it is inappropriate . . . to tie an attorney fee award to the amount of the prevailing buyer/plaintiff’s damages or recovery” under a fee-shifting statute like the Endless Chain Law. *Warren v. Kia Motors Am., Inc.*, 30 Cal. App. 5th 24, 37 (2018); *see also Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th 140, 163 (2006) (rejecting proportionality requirement in fee-shifting context); *Bernardi v. Cnty. of Monterey*, 167 Cal. App. 4th 1379, 1398 (2008) (same); *Reck v. FCA US LLC*, 64 Cal. App. 5th 682, 697 (2021) (same).

1 intervening events that would warrant reconsidering the Court’s Rule 23 findings. Therefore, in
 2 granting final approval, the Court should affirm its class certification. *See Dickey v. Advanced Micro*
 3 *Devices, Inc.*, 2019 WL 4918366, at *3 (N.D. Cal. 2019) (incorporating “prior analysis . . . in the order
 4 certifying the class”).

5 **C. The Class Notice Satisfied Due Process and Rule 23.**

6 “A binding settlement must provide notice to the class in a ‘reasonable manner’” under Rule
 7 23(c)(2)(B) and 23(e)(1)(B). *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 567 (9th Cir.
 8 2019) (en banc). Due process requires “notice reasonably calculated, under all the circumstances, to
 9 apprise interested parties of the pendency of the action and afford them an opportunity to present their
 10 objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

11 Applying these standards, the Court approved the Notice program, which used plain language
 12 in a traditional “flat mailer” as well as creation of an interactive settlement website for the Class. Dkt.
 13 No. 366 at 31-32 (finding that the method of notice is the same as previously approved and that the
 14 notices “communicate the material terms of the SA in a neutral, accurate, and easy-to-understand
 15 manner.”). The Claims Administrator followed the approved notice procedures to reach a large
 16 majority of the Class. Dkt. No. 369, ¶¶ 8, 29 (attesting that at least 90% of Class members were
 17 notified of the Settlement). As such, the Court should affirm its finding that this Notice Program
 18 meets all applicable standards and requirements.

19 **D. The Objections to Final Approval Should Be Overruled.**

20 Class Counsel respond here to Gonzales¹⁰ Plaintiffs’ settlement objections (Dkt. No. 372 at 5-
 21 10)¹¹ and will respond in our reply brief to Gonzales Plaintiffs’ opposition to Class Counsel’s fee
 22 application.

23 As an initial matter, none of the Gonzales Plaintiffs has established that they are a member of
 24

25 ¹⁰ Gonzales Counsel continues to spell the last name of his client inconsistently. *Compare* Admin.
 26 Mot., Dkt. No. 373 (“Gonzales”), *with* Mot. for Attorneys’ Fees, and Service Awards, Dkt. No. 368
 27 (“Gonzalez”). We use the latest spelling here, “Gonzales,” while noting that the Court identified the
 same inconsistency in early 2019 and used “Gonzalez.” Dkt. No. 56 at 1 n.1.

28 ¹¹ *See* Northern District of California, Procedural Guidance for Class Action Settlements, Final
 Approval, No. 1 (final approval motion should respond to settlement objections).

1 the Class. All claimants under the Settlement had to attest that they enrolled with PFA and purchased
 2 a Class Policy in California during the Class Period and did not rise to one of the excluded positions in
 3 PFA’s hierarchy. Dkt. No. 364-7 at pp. 13-14 of 14; Dkt. No. 364-8 at pp. 11-12 of 12. In contrast,
 4 Gonzales Plaintiffs submitted no such evidence. As a result, their objections fail for lack of standing.
 5 *See* Fed. R. Civ. P. 23(e)(5)(A) (providing that “[a]ny *class member*” may object to a proposed class
 6 settlement) (emphasis added); *Glasser v. Volkswagen of Am., Inc.*, 645 F.3d 1084, 1088 (9th Cir.
 7 2011) (objector must be an aggrieved class member to have standing to object); *Miller v. Ghirardelli*
 8 *Chocolate Co.*, 2015 WL 758094, at *10 (N.D. Cal. Feb. 20, 2015); *In re TracFone Unlimited Serv.*
 9 *Plan Litig.*, 112 F. Supp. 3d 993, 1008 (N.D. Cal. 2015) (objector had “no legal standing to object to
 10 the settlement because he has not demonstrated that he is an aggrieved class member.”).¹² Not only
 11 have they failed to make any showing of class membership, but Gonzales Plaintiffs’ request for “the
 12 option of opting out pursuant to a notice plan” (Dkt. No. 372 at 9) suggests they *lack* standing given
 13 that most Class members received the Notice (Dkt. No. 369), which describes the ability of Class
 14 members to opt out (Dkt. No. 364-3 & Dkt. No. 364-4 at pp. 4, 12-13, 20, 28-29 of 33).

15 Gonzales Plaintiffs’ settlement objections also fail on the merits. First, even after the Court
 16 pointed out the argument is wrong (Dkt. No. 366 at 32), Gonzales Plaintiffs persist in arguing that the
 17 settlement is on behalf of a nationwide class (Dkt. No. 372 at 5-6). The fact remains “[n]o nationwide
 18 class is at issue” and the California Class is the same one the Court certified for trial. Dkt. No. 366 at
 19 32. Second, Gonzales Plaintiffs again assert that the release provision is overbroad. Dkt. No. 372 at
 20 8-10. The Court rejected this objection as well. Dkt. No. 366 at 32-33. Contrary to Gonzales
 21 Plaintiffs’ argument that the Settlement could not release all claims related to the underlying facts—
 22 including potential federal claims against PFA and LICS—a class judgment “may release claims that
 23 were or *could have been* pled in exchange for settlement relief.” *Wal-Mart Stores, Inc. v. Visa U.S.A.,*
 24 *Inc.*, 396 F.3d 96, 106-07 (2d Cir. 2005) (emphasis added). Thus, the Court held that “class members
 25 who do not exclude themselves will release claims that plaintiffs asserted or could have asserted in this
 26

27
 28 ¹² *See also In re Zoom Video Commc’ns, Inc. Priv. Litig.*, 2022 WL 1593389, at *7 (N.D. Cal. Apr. 21, 2022); *Custom LED, LLC v. eBay, Inc.*, 2014 WL 2916871, at *6 (N.D. Cal. June 24, 2014) (citing, *inter alia*, *In re First Capital Holdings Corp. Fin. Prods. Sec. Litig.*, 33 F.3d 29, 30 (9th Cir. 1994)).

1 action based on the factual predicate underlying the claims in this action. *See* SA § 2.26. The scope of
2 the release is, therefore, permissible.” Dkt. No. 366 at 32-33 (footnote omitted).

3 Gonzales Plaintiffs’ remaining objection also is recycled. They assert it was not clear to Class
4 members what they stood to gain by making a claim. Dkt. No. 372 at 5-6. But as the Court found
5 (Dkt. No. 366 at 32), the Notice and the Settlement Website gave Class members all the information
6 they needed to decide whether to claim, including an estimate of what their settlement payment would
7 be, how their cash surrender value compared, and how to get further assistance. Thus, in rejecting this
8 argument, this Court “[f]ound] that class members will have access to sufficient information to make
9 educated decisions about whether to file a claim form, object, opt out, or investigate further.”
10 Throughout the 60-day claim period, Class Counsel guided dozens of Class members through their
11 decision and the claim process. *See* Greene Decl., ¶¶ 10-17.

12 Class Witness Yunhai Li lacks standing to object because he is not a Class member, having
13 purchased his Living Life Policy in Illinois (Dkt. No. 181-4, ¶¶ 2, 5-7), and his objection says nothing
14 about the settlement but instead relates his difficult personal circumstances (Dkt. No. 375). The
15 objection should therefore be overruled.

16 **V. CONCLUSION**

17 For all these reasons, the Court should grant final approval and enter judgment.

18
19 Dated: November 20, 2023

Respectfully submitted,

20 **GIRARD SHARP LLP**

21 */s/ Daniel C. Girard* _____

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23 Jordan Elias (SBN 228731)

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9 *Class Counsel*

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 12
 13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**
 15 **OAKLAND DIVISION**

16 IN RE PFA INSURANCE MARKETING
17 LITIGATION

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

18 **DECLARATION OF SEAN GREENE IN**
 19 **SUPPORT OF PLAINTIFFS' MOTION**
 20 **FOR FINAL APPROVAL OF**
 21 **CLASS ACTION SETTLEMENT**

22 Judge: Hon. Yvonne Gonzalez Rogers
 23 Date: January 16, 2024
 24 Time: 2:00 p.m.
 25 Courtroom: 1 – 4th Floor

1 I, Sean Greene, 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 an attorney at the law firm Girard Sharp LLP, Class Counsel in this action against Premier Financial
 4 Alliance, Inc. (“PFA”) and Life Insurance Company of the Southwest (“LICS”). I submit this
 5 declaration in support of Plaintiffs’ Motion for Final Approval of Class Action Settlement. The
 6 following statements are based on my personal knowledge and, if called upon to do so, I could testify
 7 competently thereto.

8 2. The Claims Administrator¹ has completed the process of evaluating and approving
 9 claims under the Settlement and has provided counsel with a spreadsheet showing all approved claims
 10 (the “Claims Spreadsheet”). The information in that spreadsheet provides the factual basis for the
 11 table below. The table shows the numerical claim breakdown, total estimated value of claims, and
 12 average payments to Class Members, separated according to the active and inactive policyholder
 13 groups and also showing estimated post-trial figures (applying Plaintiffs’ proposed damages formula).

	Active Policyholder Valid Claimants	Inactive Policyholders Valid Claimants	Total
Number of Claims	478	520	998
Total Estimated Value (Settlement)	\$2,988,507.82	\$1,210,138.25	\$4,198,646.07
Total Estimated Value (Post-Trial)	\$6,893,163.55	\$2,454,886.83	\$9,348,050.38
Average Payment (Settlement)	\$6,252.11	\$2,327.19	\$4,207.06
Average Payment (Post-Trial)	\$14,420.84	\$4,720.94	\$9,366.78

22 3. The median recovery for all valid claims is \$2,328.88.

23 4. The total recovery for Class Members will be approximately \$4,198,646.07. This is
 24 approximately 6% of what could have been recovered had a claim been made by all who could have
 25 received more under the Settlement than by surrendering their policy, and 3% of the latter group’s
 26 potential recovery at trial.

27
 28 ¹ Capitalized terms in this Declaration have the same meaning ascribed to them in the parties’
 Stipulation and Agreement of Settlement. Dkt. No. 364-2 at pp. 39-72.

5. The approximate claim rate of valid claims for all estimated Class Members was 7.7%. The approximate claim rate for inactive policyholder Class Members was 17.4%. The approximate claim rate for active policyholder Class Members was 4.8%.

6. Separately, 31 Class Members made a claim that the Claims Administrator denied due to deficiencies on their Claim Form. The Claims Administrator will contact these Class Members as specified in the Settlement Agreement to provide them an opportunity to cure the deficiencies. The claim rate will increase to the extent this group perfects their claim.

7. Based on the Claims Spreadsheet, the tables below show information pertaining to a representative sample of individual claims approved under the Settlement.

<u>ACTIVE</u>	Total premium paid	Loan or withdrawal	Settlement payment	Estimated post-verdict payment	% Recovery
Claimant 1	\$18,001.05	N/A	\$8,499.76	\$14,486.31	59%
Claimant 2	\$14,277.36	N/A	\$7,156.96	\$12,594.85	57%
Claimant 3	\$12,132.00	N/A	\$3,592.23	\$10,693.16	34%
Claimant 4	\$10,915.84	N/A	\$3,115.81	\$9,224.02	34%
Claimant 5	\$7,232.80	N/A	\$3,441.77	\$6,880.68	50%
Claimant 6	\$5,325.00	N/A	\$2,684.20	\$4,538.77	59%

<u>INACTIVE</u>	Total premium paid	Loan or withdrawal	Settlement payment	Estimated post-verdict payment	% Recovery
Claimant 1	\$12,966.00	N/A	\$5,141.73	\$10,915.72	47%
Claimant 2	\$10,356.72	N/A	\$2,310.37	\$6,037.49	38%
Claimant 3	\$4,593.56	N/A	\$2,350.75	\$3,967.94	59%
Claimant 4	\$2,580.00	N/A	\$954.81	\$2,070.09	46%
Claimant 5	\$1,400.00	N/A	\$426.29	\$986.25	43%
Claimant 6	\$12,966.00	N/A	\$5,141.73	\$10,915.72	47%

The dollar amounts and percentage recoveries of these claimants are typical of the approved claims and generally consistent with the \$4,200 average and \$2,300 median payments.

8. Of the 998 valid claims, 36 will recover \$15,000 or more; 230 will recover between \$14,999 and \$5,000; 490 will recover between \$4,999 and \$1,000; and 242 will recover up to \$999.

1 9. As of November 17, 2023, Class Counsel and their professional staff had devoted
2 10,398.60 hours of time to this matter since February 2019, for a total lodestar of \$7,601,400.50.

3 10. From August 24 to November 15, 2023, approximately 152 Class Members contacted
4 Girard Sharp with inquiries concerning the Settlement. I was primarily responsible for responding to
5 these people. On the same or the next business day as the intake, I responded by telephone, email, or
6 text message to each person who contacted the firm regarding the Settlement. I consulted my records
7 of these communications in preparing the Declaration.

8 11. Of the 152 individuals with whom I had an initial communication regarding the
9 Settlement, I engaged in follow-up communications with approximately 85 of those individuals, often
10 providing requested financial information.

11 12. I also responded to questions pertaining to 16 non-Class Members, mostly family
12 members of the inquiring Class Member in whose name a Class Policy was purchased.

13 13. I believe that my communications with these individuals were timely, helpful, and
14 responsive. I am unaware of any individual's outreach to Girard Sharp regarding the Settlement going
15 unaddressed. To my knowledge, I answered all questions to the satisfaction of the callers.

16 14. Without waiver of applicable privilege, and viewing these communications collectively,
17 general topics of these inquiries included:

- 18 • Their eligibility to participate in the Settlement;
- 19 • Help with locating their estimated Policy Relief payment and cash surrender value
20 on the Settlement Website;
- 21 • The nature and consequences of Policy Relief;
- 22 • Potential termination of their insurance policy and the effect of making a claim on an
23 existing policy;
- 24 • Miscellaneous requests regarding claim submission and timing of payment; and
- 25 • Other information regarding their rights under the Settlement.

26 15. My responses to and assistance of Class Members were guided by the parties'
27 Stipulation and Agreement of Settlement (Dkt. No. 364-2 at pp. 39-72) and the Court's Order Granting
28 Motion for Preliminary Approval of Class Action Settlement (Dkt. No. 366).

United States District Court
Northern District of California

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**IN RE PFA INSURANCE MARKETING
LITIGATION**

CASE NO. 4:18-cv-03771-YGR

**DECLARATION OF EAMON MASON IN
SUPPORT OF FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

I, Eamon Mason, hereby declare and state as follows:

1. I am a Project Manager for Epiq Class Action & Claims Solutions, Inc. (“Epiq”). I am over 21 years of age and am not a party to this action. I have more than 18 years of experience working in the legal field and over six years of experience handling all aspects of class action settlement and claims administration. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently thereto.

2. I previously submitted a declaration in support of preliminary approval of the Settlement (Dkt. No. 364-10), and my colleague Cameron Azari submitted a declaration regarding Epiq’s implementation of the Notice plan (Dkt. No. 369).

NOTICE PLAN

Individual Notice – Updates

3. Epiq received data for 16,829 unique, identified potential Class Member records (of these records, 93 records had no physical address that was mailable), to which Epiq subsequently sent notice.

4. The total number of Class Policies associated with these potential Class Members is 23,417.

5. Epiq is unaware of any Class Members who received notice but were ineligible for recovery because they did not own a Class Policy.

**DECLARATION OF EAMON MASON IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

CASE NO. 4:18-cv-03771-YGR

United States District Court
Northern District of California

1 one late request for exclusion. Pursuant to the Preliminary Approval Order, the Request for Exclusion
2 Report is included as **Exhibit 1**.

3 14. As of November 14, 2023, Epiq had received a total of one objection to the Settlement, from
4 Yunhai Li.

5 *Claim Submissions and Distribution Options*

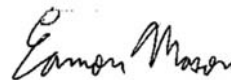
6 15. The deadline for Class Members to file a Claim Form was October 19, 2023. As of
7 November 14, 2023, Epiq had received 1,076 Claim Forms (317 online and 759 paper). We evaluated
8 these Claims and determined that 998 meet the criteria for approval under the Settlement.

9 16. The total estimated value of all 998 approved Claims, for both the Inactive Policy Relief and
10 Active Policy Relief policyholder groups, is \$4,198,646.07, with an average value of \$4,207.06:

- 11 • 520 approved Claims for \$1,210,138.25 for Inactive Policy Relief, with an average value
- 12 of \$2,327.19; and
- 13 • 478 approved Claims for \$2,988,507.82 for Active Policy Relief, with an average value
- 14 of \$6,252.11.

15 17. The number of Class Members who were eligible for recovery but did not file an approved
16 claim is approximately 12,002.

17 I declare under penalty of perjury under the laws of the State of California that the foregoing is
18 true and correct. Executed November 20, 2023.

19 

20 Eamon Mason

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EXHIBIT 1

In re PFA Insurance Marketing Litigation, Case No. 4:18-cv-03771 (N.D. Cal.)**Timely Requests for Exclusion**

Opt Out No.	Name
1	MUOI NGUYEN
2	MARIA DEGUZMAN
3	GRACE LOUIE
4	JAIME LEW
5	JIM LEW
6	GAIL A. PICOU
7	WILFREDA HILDEBRAND
8	MICHELLE DAVID
9	KIMCHI NGUYEN CHOW
10	LING CHEN
11	PHUC K. PHAN
12	PATRICIA GARCIA
13	JEFFREY GARCIA
14	ALBERTO UMALI
15	PATRICIA ALMIRA BULAWAN
16	SANTIAGO GAYLORD FERRER IV
17	KIM NGUYEN
18	HANHONG SHEN
19	YUEWU LIU
20	ASHREEN NAICKER
21	THUY NGUYEN
22	YANHONG GUO
23	HAIMANOT GIRMA
24	CAROL RIVERA
25	ANESHA PARSONS
26	HONEYLET BAUTISTA
27	IMELDA C. VELA
28	DEVIN TENOYO
29	LUKAS WILLIAM WIJAYA
30	JINGYUAN YANG
31	BRENDALYN MALIMBAN
32	SHIELA C. DANGCA
33	BENJAMIN CHANG
34	MARK ANTONY ABAD ABUTIN
35	BERTHA LARA
36	EMILY YU
37	JEANNIE ABRIANIE KORTOLO

38	JESSICA YOUNG
39	ADELINA VELASCO DIMAANO
40	ADOR GOMEZ DIMAANO
41	DHON SULIT
42	OSCAR JOVANNY PEREZ
43	WILLIAM YOUNG
44	NADIA ELENA HUEZO
45	PEDRO PERALES
46	CECILIA NGUYEN VU
47	LYDIA SUMARLI
48	BORI PHEAN
49	SANDRA SU
50	DAVID ALLEN HOWE
51	DONNAMARIE VENTURA HOWE
52	JENNIFER WEBER
53	JEL VISE ONG
54	YOLANDA CIRILO
55	LEAN FRANCES P. CORPUZ
56	MARINA TARROSA JESENA
57	ANCHETA R. DELAOSSA
58	YUVIANITA CEELY
59	EDNA V. ABBRENCILLO
60	MICHAEL JAMES K. ONG
61	IRENE LIU
62	JENIFFER SANTOS LABOG
63	JI LAN ZHANG
64	JOVANI RAYA
65	ANNIE NGUYEN
66	SYLVIA SOLIVEN
67	MEDIATRIX O. GARCIA
68	HUILAN ZHOU
69	KATY NILSEN
70	RICARDO BARLAAN
71	QUINNIE WONG
72	SHARAN NGUYEN
73	CHARITO M. MORELOS
74	DOLORES MASGA
75	HONGMIN LU
76	ANALISA V. SERRANO
77	CHELO R. ALEGADO
78	SHANA FOURNETTE
79	JESSIRE PEREZ
80	ANGELA RAMOS
81	PHI PHI DINH
82	ELVERA CHANDRA

83	SHIRLEE VICTORIO
84	KIMBERLY GAGNI
85	ANDREA WAKILINA
86	VERA T. QUIWA
87	CHRYS AZRIEL T. QUIWA
88	MEI YANG
89	ARMENIA TING
90	RODOLFO GARCIA
91	ANITA LOUREN
92	RONALD HORI
93	EMILY MILANO
94	ERIDEN REQUIERON BERRY
95	ERILYN R. BERRY
96	LYNLEY R. BERRY
97	ROBERT DOMINGCIL
98	LEONARDO TORIO
99	KATHY NGUYEN MAGAWAY
100	TUAN A. TRAN
101	DESHAUN DABON
102	JOY MARCIAL
103	RONEL CUARESMA
104	AIMEE MIANA TEH
105	WAI PONG WANG
106	WANTING ZHANG
107	JUDITH TERREL
108	HUY NGUYEN
109	TINA CHEN
110	MAI TU
111	LORENA REVILLA
112	JOSE LUIS MADRIGAL
113	SARAH SENDLE
114	ALYSSA A. TAN
115	TING H. WANG
116	REUBELYN LONTOK
117	KALYNN MENG
118	EVALYN S. TRAN
119	DANNY Y. TAGUAS
120	WENJIAN GONZALEZ
121	CATHERINE CLARK
122	CHRISTIAN ANGELO T. QUIWA
123	ROMEO B. QUIWA, JR.
124	CHRYS AZRIEL T. QUIWA
125	ERILYN R. BERRY
126	FILOMENA C. REQUIERON
127	RUE CHEN

128	JI YANG
129	JUDITH TERREL

Late Request for Exclusion

Opt Out No.	Name
130	YING XIN HUANG

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

IN RE PFA INSURANCE MARKETING
LITIGATION

Case No. 4:18-cv-03771-YGR

**[PROPOSED] FINAL JUDGMENT
AND ORDER OF DISMISSAL WITH
PREJUDICE**

1 This matter came before the Court for a hearing pursuant to the Order Granting
2 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement of this Court
3 dated July 21, 2023 ("Preliminary Approval Order"), on the motion of Plaintiffs for final
4 approval of the Settlement of this Action as set forth in the Stipulation and Agreement
5 of Settlement dated March 17, 2023, including all exhibits thereto (the "Stipulation").
6 Due and adequate notice having been given to Class Members as required in the Court's
7 Preliminary Approval Order, and the Court having considered all papers filed and
8 proceedings held herein and otherwise being fully informed, and good cause appearing
9 therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

10 1. This Final Judgment and Order of Dismissal with Prejudice ("Judgment")
11 incorporates herein the Stipulation, including the exhibits thereto. Unless otherwise
12 defined herein, all capitalized terms used herein shall have the same meanings as set
13 forth in the Stipulation.

14 2. This Court has jurisdiction over the subject matter of the Action, and the
15 Settling Parties to the Stipulation have consented to the jurisdiction of the Court for
16 purposes of implementing and enforcing the Settlement embodied in the Stipulation.

17 3. The record shows that notice of the Settlement has been given to all Class
18 Members in the manner approved by the Court in the Preliminary Approval Order. The
19 Court finds that such notice: (a) is reasonable and constitutes the best notice practicable
20 under the circumstances; (b) constitutes notice that was reasonably calculated, under the
21 circumstances, to apprise all Class Members who could reasonably be identified of (i)
22 the pendency of the Action, (ii) the terms of the Settlement, (iii) Class Members' right to
23 be excluded from the Class; (iv) Class Members' right to object to and to appear at the
24 Settlement Hearing; and (v) the binding effect of the proceedings, rulings, orders, and
25 judgments in this Action, whether favorable or unfavorable, on all Persons who are
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1 not excluded from the Class; and (c) constitutes due, adequate, and sufficient notice to
2 all Persons or entities entitled to receive notice in accordance with Federal Rule of Civil
3 Procedure 23, Due Process, and any other applicable law.

4 4. Pursuant to Federal Rule of Civil Procedure 23, the Court finds that the
5 terms and provisions of the Settlement set forth in the Stipulation are, in all respects,
6 fair, reasonable, and adequate, and in the best interests of the Class. The Court further
7 finds that the Settlement set forth in the Stipulation is the result of arm's-length
8 negotiations between experienced counsel representing the interests of Plaintiffs, Class
9 Members, PFA, and LICS. Accordingly, the Court hereby fully and finally approves
10 the Settlement set forth in the Stipulation, and the Settling Parties are hereby directed to
11 implement and consummate the Settlement according to the terms and provisions of the
12 Stipulation.

13 5. Except as to any individual claim of those Persons identified in Exhibit 1
14 attached hereto, if any, who have validly and timely requested exclusion from the Class,
15 the Action, and all claims contained therein, as well as all of the Released Claims
16 (including Unknown Claims), are dismissed on the merits and with prejudice. It is
17 hereby determined that all Class Members who did not timely and properly elect to
18 exclude themselves from the Class by a written Request for Exclusion delivered on or
19 before the date set forth in the Preliminary Approval Order and the Notice are bound by
20 this Judgment.

21 6. All Persons whose names appear on Exhibit 1 hereto are hereby excluded
22 from the Class, are not bound by this Judgment, and may not make any claim with
23 respect to or receive any benefit from the Settlement. Such excluded Persons may not
24 pursue any Released Claims on behalf of those Persons who are bound by this
25 Judgment.

1 7. Upon the Effective Date, the Release Parties, on behalf of themselves, their
2 successors and assigns, and any other Person claiming (now or in the future) through or
3 on behalf of them (regardless of whether any such Release Party ever seeks or obtains
4 by any means, including without limitation by submitting a Claim Form, any Policy
5 Relief), shall be deemed to have, and by operation of the Judgment shall have, fully,
6 finally, and forever released, relinquished, and discharged all Released Claims
7 (including Unknown Claims) against the Release Parties and shall have covenanted not
8 to sue the Release Parties with respect to all such Released Claims (including Unknown
9 Claims), and shall be permanently barred and enjoined from asserting, commencing,
10 prosecuting, instituting, assisting, instigating, or in any way participating in the
11 commencement or prosecution of any action or other proceeding, in any forum,
12 asserting any Released Claim, in any capacity, against any of the Release Parties.
13 Nothing contained herein shall, however, release or bar the Release Parties from
14 bringing any action or claim to enforce the terms of this Stipulation or the Judgment.
15 The Settling Parties acknowledge, and the Class Members shall be deemed by operation
16 of this Judgment to acknowledge, that the waiver of Unknown Claims, and of the
17 provisions, rights, and benefits of any law of any state or territory of the United States
18 or any other jurisdiction, or principle of common law that is, or is similar, comparable,
19 or equivalent to California Civil Code Section 1542 was bargained for and is a material
20 element of the Settlement of which the release in this paragraph is a part.

21 8. The Stipulation (including any exhibits attached thereto), the fact and
22 terms of the Settlement, and any communications relating thereto, shall not be deemed a
23 presumption, inference, concession, or admission by any Settling Party or their counsel,
24 any Class Member, or any of the Release Parties of any fault, liability, injury or
25 damages, or wrongdoing whatsoever, as to any facts or claims alleged or that have been
26 or could have been asserted in the Action, or in any other actions or proceedings, or as
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1 to the validity or merit of any of the claims or defenses alleged or that have been or
2 could have been asserted in any such action or proceeding, and shall not be interpreted,
3 construed, deemed, invoked, offered, or received into evidence or otherwise used in any
4 action or proceeding of any nature, whether civil, criminal, or administrative, for any
5 purpose whatsoever, provided, however, that the Stipulation and/or the Judgment may
6 be introduced in any proceeding to enforce the terms of the Settlement or Judgment, or
7 as otherwise required by law.

8 9. The Release Parties may file the Stipulation and/or the Judgment in any
9 action that may be brought against them in order to support a defense or counterclaim
10 based on principles of *res judicata*, collateral estoppel, full faith and credit, release,
11 good faith settlement, judgment bar, or reduction or any other theory of claim
12 preclusion or issue preclusion or similar defense or counterclaim. The Settling Parties
13 may file the Stipulation and/or this Judgment in any proceeding that may be necessary
14 to consummate or enforce the Stipulation, the Settlement, or this Judgment.

15 10. The Settling Parties are to bear their own costs, except as otherwise
16 provided in the Stipulation and in this Judgment. The Court hereby approves the Fee
17 and Cost Reimbursement to Lead Counsel provided in the Stipulation. If the Fee and
18 Cost Reimbursement award is reduced or reversed following payment by Defendants,
19 Lead Counsel shall refund the amount reduced or reversed to Defendants within fifteen
20 (15) calendar days following a Court order providing for such reduction or reversal.

21 11. The Court hereby approves an Incentive Award to Class Representative in
22 the amount of \$10,000. If the Incentive Award is reduced or reversed following
23 payment by Defendants, Class Representative shall refund the amount reduced or
24 reversed to Defendants within fifteen (15) calendar days following a Court order
25 providing for such reduction or reversal.

1 12. Neither the portion of this Judgment regarding the Fee and Cost
2 Reimbursement, including any modification or change in the award of attorneys' fees
3 and expenses that may hereafter be approved, nor Incentive Award shall in any way
4 disturb, affect, or delay the entry of this Judgment or the releases provided hereunder
5 and shall be considered separate from this Judgment.

6 13. Without affecting the finality of this Judgment, the Court retains
7 continuing and exclusive jurisdiction over all matters relating to administration,
8 consummation, enforcement, and interpretation of the Stipulation, the Settlement, and
9 of this Judgment, to protect and effectuate this Judgment, including any proceedings to
10 enjoin the Release Parties from instituting, commencing, or prosecuting the Released
11 Claims against the Release Parties, and for any other necessary purpose. Plaintiffs,
12 PFA, LICS, and each Class Member are hereby deemed to have irrevocably submitted
13 to the exclusive jurisdiction of this Court, for the purpose of any suit, action,
14 proceeding, or dispute arising out of or relating to the Settlement or the Stipulation,
15 including the exhibits thereto, and only for such purposes. Without limiting the
16 generality of the foregoing, and without affecting the finality of this Judgment, the
17 Court retains exclusive jurisdiction over any such suit, action, or proceeding.

18 14. No Person shall have any claims against the Claims Administrator, the
19 Parties, Lead Counsel, or Defense Counsel arising from or relating to the Settlement,
20 the Action, or the determinations or distributions made substantially in accordance with
21 the Settlement or Orders of the Court, including this Final Judgment and Order of
22 Dismissal. No Class Member shall have any claim against PFA, LICS, Defense
23 Counsel, or any of the Defendant Release Parties with respect to: (a) any act, omission
24 or determination of Lead Counsel, the Claims Administrator, or any of their respective
25 designees or agents, in connection with the administration of the Settlement or
26 otherwise; (b) the determination, administration, calculation or payment of claims; (c)
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1 any application for, or award of, Fee and Cost Reimbursement to Lead Counsel; or (d)
2 any application for, or award of, an Incentive Award to Class Representative.

3 15. The Court finds that during the course of the Action, the Settling Parties
4 and their respective counsel at all times complied with the requirements of Rule 11 of
5 the Federal Rules of Civil Procedure, and particularly with Rule 11(b) of the Federal
6 Rules of Civil Procedure.

7 16. Nothing in this Judgment constitutes or reflects a waiver, release or
8 discharge of any rights or claims of PFA or LICS against their insurers, or their
9 insurers' subsidiaries, predecessors, successors, assigns, affiliates, or representatives.

10 17. In the event that the Settlement is not consummated or fails to become
11 Final in accordance with the terms of the Stipulation, this Judgment shall be vacated,
12 and all orders entered and releases delivered in connection with the Stipulation and this
13 Judgment shall be null and void, except as otherwise provided for in the Stipulation,
14 and the Settling Parties shall be returned to their respective positions immediately prior
15 to the execution of the Stipulation.

16 18. Without further order of the Court, the Settling Parties may unanimously
17 agree to reasonable extensions of time or other reasonable amendments, modifications,
18 and expansions of the Stipulation necessary to carry out any of the provisions of the
19 Stipulation, provided that such amendments, modifications, and expansions of the
20 Stipulation are not materially inconsistent with this Judgment and do not materially
21 limit the rights of Class Members or the Release Parties under the Stipulation.

22 19. Judgment shall be, and hereby is, entered dismissing the Action with
23 prejudice and on the merits. There is no just reason for delay in the entry of Judgment
24 and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule
25 54(b) of the Federal Rules of Civil Procedure.

1 IT IS SO ORDERED.

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3 Dated: _____

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5 HON. YVONNE GONZALEZ ROGERS
6 United States District Judge
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