IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE PFA INSURANCE MARKETING LITIGATION

CASE NO. 4:18-cv-03771 YGR

ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; GRANTING PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND A SERVICE AWARD; AND DENYING WENJIAN GONZALEZ AND RUI CHEN'S MOTION FOR FEES AND SERVICE AWARDS

Re: Dkt. Nos. 367, 368, 377

Plaintiffs Dalton Chen and Youxiang Eileen Wang bring this class action against defendants Life Insurance Company of the Southwest ("LSW" or "LICS") and Premier Financial Alliance ("PFA") for state-law claims arising out of defendants' alleged endless chain scheme. Now pending is plaintiffs' motion for final approval of the settlement agreement, Docket No. 377, and plaintiffs' motion for fees, costs, and a service award for class representative Dalton Chen, Docket No. 367. The motions are opposed by objectors Wenjian Gonzalez[1] and Rui Chen, who are not named plaintiffs in the operative consolidated complaint but were named plaintiffs in an earlier version of the complaint prior to consolidation, and two other objectors. Docket No. 372.

[1] Wenjian Gonzalez' last name is spelled as both "Gonzales" and "Gonzalez" in Gonzalez and Chen's filings. *Compare* Docket No. 373 ("Gonzales"), *with* Docket No. 368 ("Gonzalez"). At the final fairness hearing, counsel for Gonzalez confirmed that the correct spelling is "Gonzalez."

Also pending is Gonzalez and Chen's motion for fees and service awards. Docket No. 368. Named plaintiffs oppose that motion. Docket No. 371.

Having carefully considered the pleadings, the record, the parties' briefs, and argument presented at the final fairness hearing held on January 23, 2024, the Court **GRANTS** plaintiffs' motion for final approval of the settlement agreement; **GRANTS** plaintiffs' motion for fees, costs, and a service award; and **DENIES** the motion for fees and service awards filed by Gonzalez and Chen.

I. BACKGROUND

A. Procedural History

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

In the operative consolidated complaint, plaintiffs assert claims against LSW and PFA for violations of (1) the Endless Chain Scheme Law, Cal. Penal Code § 327, as a predicate for their claim under the unlawful prong of the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code

§ 17200, *et seq.*; (2) the UCL under the unlawful and unfair prongs as to both defendants, and under the fraudulent prong as to PFA only; (3) the New Jersey Consumer Fraud Act ("NJCFA"), N.J. Stat. § 56:8-1, *et seq.*; in addition to (4) fraud as to PFA only; and (5) civil conspiracy. *See generally* Docket No. 131.

This action began as two separate actions that were later consolidated. The procedural history of the two actions prior to consolidation is relevant to the resolution of Gonzalez and Chen's motion for fees and service awards.

The first of the two actions was *Chen v. Premier Financial Alliance, et al.*, Case No. 4:18-cv-03771-YGR ("the *Chen* action"), which was filed by Gonzalez and Chen on June 25, 2018, against PFA, LSW's corporate parent National Life Group Insurance Co. ("NLG"), and other defendants for claims arising out of the PFA's alleged multi-level marketing scheme involving the sale of insurance policies. Docket No. 1. The claims asserted were for violations of the Endless Chain Scheme Law, Cal. Penal Code § 327, the UCL, California's False Advertising Law, and California's "Seller Assisted Marketing Plan," as well as for fraudulent concealment, "federal securities fraud," and unjust enrichment. *See id.* Gonzalez and Chen later filed an amended complaint to assert additional claims for violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"). *See* Docket No. 28.

The defendants in the *Chen* action filed several motions to compel arbitration. Docket Nos. 39, 46. On December 17, 2018, Gonzalez and Chen opposed those motions and supported their opposition with their own declarations. Docket Nos. 49-51. On January 22, 2019, the Court denied the motions, finding that defendants had failed to meet their burden to establish the existence of a valid agreement to arbitrate the claims asserted in the *Chen* action. Docket No. 56. Defendants then moved to dismiss the operative complaint. Docket No. 70. On May 8, 2019, the Court granted the motions to dismiss, with leave to amend, and it stayed the *Chen* action pending the resolution of the motions to compel and to transfer that had recently been filed in the second of the two actions that were consolidated, namely *Wang v. Life Insurance Company of the Southwest, et al.* ("the *Wang* action"), Case No. 4:19-cv-01150. Docket No. 92.

The *Wang* action was filed by Class Counsel, Girard Sharp LLP, on February 28, 2019, on behalf of named plaintiffs Youxiang Eileen Wang and Biyun Zong against LSW's parent company (NLG), PFA, and other defendants for claims arising out of PFA's multi-level marketing scheme involving the sale of insurance policies. *See Wang* action, Docket No. 1. The *Wang* plaintiffs asserted claims for fraud, civil conspiracy, violations of the Endless Chain Scheme Law, the UCL, and the New Jersey Consumer Fraud Act. *See id.* They filed an amended complaint on April 30, 2019, which (i) added Dalton Chen as a named plaintiff, (ii) removed Biyun Zong as a named plaintiff, and (iii) asserted the same claims as in the original complaint but against LSW and PFA only. *Wang* action, Docket No. 43.

On May 28, 2019, defendants in the *Chen* action moved for leave to seek reconsideration of the Court's order denying their motions to compel arbitration and, in the alternative, to transfer the action to the Northern District of Georgia. Docket No. 95. On the same date, defendants in the *Wang* action moved to compel that action to arbitration or, alternatively, to transfer it to the Northern District of Georgia. *See Wang* action, Docket No. 55. On June 18, 2019, Gonzalez and Chen opposed the motions in the *Chen* action and supported their opposition with declarations by Gonzalez and his counsel. *See* Docket No. 101. The *Wang* plaintiffs also opposed the motions in the *Wang* action, which they supported with, among other things, PFA's discovery responses and transcripts of depositions that Girard Sharp LLP conducted. *See Wang* action, Docket Nos. 63, 64. On December 19, 2019, the Court denied the motions in both the *Chen* and *Wang* actions on the ground that defendants had not shown that a valid agreement existed that contained an enforceable arbitration provision and an enforceable forum selection clause. Docket No. 110; *see also Wang* action, Docket No. 86.

On January 10, 2020, Gonzalez and Chen filed a second amended complaint in the *Chen* action in which, among other changes, they no longer asserted claims for violations of California's "Seller Assisted Marketing Plan" and "federal securities fraud." *See* Docket No. 113.

On March 6, 2020, after a hearing on case management for both the *Wang* and *Chen* actions, counsel for the *Wang* plaintiffs, Girard Sharp LLP, and counsel for Gonzalez and Chen, Blake J. Lindemann of Lindemann Law Firm, APC, each filed motions regarding the potential

consolidation of the *Wang* and *Chen* actions and appointment of interim class counsel in any consolidated action. *See* Docket No. 124; *Wang* action, Docket No. 108.

On April 16, 2020, the Court granted the *Wang* plaintiffs' motion for consolidation and for appointment of Girard Sharp LLP as interim class counsel in the consolidated action. Docket No. 134. The Court directed the filing within fourteen days of a consolidated class action complaint under the caption *In re PFA Insurance Marketing Litigation* and case number 4:18-cv-03771. *Id.* The Court vested Girard Sharp LLP with "sole authority over all matters concerning the prosecution of this action on behalf of [p]laintiffs and the proposed class," including, among other tasks: (1) "directing, coordinating, and supervising the prosecution of plaintiffs' claims"; (2) "assigning work to any additional plaintiffs' counsel, as necessary and appropriate"; (3) "collecting and reviewing time and expense records from all plaintiffs' counsel on a monthly basis, or as provided for under any Court-approved protocol"; and (4) "coordinating activities to avoid duplication and inefficiency . . . in the litigation." *See id.* ¶ 7. The Court approved a time and expense protocol that Girard Sharp LLP had proposed, which requires quarterly submissions of *in camera* reports showing hours billed and expenses incurred in this matter. Docket Nos. 129, 134-1.

On April 30, 2020, Girard Sharp LLP filed the operative consolidated complaint on behalf of named plaintiffs Dalton Chen and Youxiang Eileen Wang. *See* Docket No. 131. Notably, Gonzalez and Chen declined Girard Sharp LLP's invitation to be named plaintiffs in the consolidated complaint. *See* Girard Decl. ¶ 28, Docket No. 371-1. The claims asserted in this operative pleading are described in detail above. LSW and PFA each filed an answer on May 19 and May 21, 2020, respectively. *See* Docket Nos. 136, 137.

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

The Court certified a California subclass under Rule 23(b)(3) comprised of:

> All persons who enrolled as Premier[2] associates and purchased one or more Living Life[3] policies within California between January 1, 2014 and the present.

See Order at 38, Docket No. 239. The subclass had some exclusions, including individuals who reached certain positions within PFA.[4]

In granting certification of this California subclass, the Court rejected defendants' argument that certifying the subclass would result in class members being forced to rescind their policies regardless of whether they wanted to keep the policies and regardless of whether they had purchased the policies for reasons that had nothing to do with the alleged marketing scheme at issue in this case. *See id.* at 33-35. The Court reasoned that class members would not be forced to rescind their policies if it certified the subclass because the remedy that plaintiffs sought in this litigation was that "proposed class members be given *the option to rescind* their Living Life policies, and that any proposed class member who chooses to rescind his or her policy receive a refund of premium payments paid, minus any offsets for benefits or commissions received." Order at 33, Docket No. 239 (emphasis supplied). The Court also rejected defendants' argument that the subclass could not be certified on the basis that identifying the members of the subclass would be difficult, if not impossible, given that defendants claimed that they did not maintain

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[2] "Premier" refers to PFA.

[3] Pursuant to the Court's order certifying the California subclass, the policies that 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.

[4] Excluded from the subclass are defendants defined as LSW and PFA, "their parents, affiliates, subsidiaries, legal representatives, predecessors, successors, assigns, employees, any entity in which one of these Defendants has a controlling interest or which has a controlling interest in one of these Defendants, and relevant nonparties National Life Insurance Company, NLV Financial Corporation, Mehran Assadi, David Carroll, Jack Wu, Aggie Wu, Rex Wu, Hermie Bacus, Bill Hong, and Lan Zhang." Order at 38 n.9, Docket No. 239. "Also excluded from the class are the legal representatives, successors, assigns, and immediate family members of 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.*

records showing whether a PFA member ever reached one of the positions within PFA that would result in their exclusion from the subclass. *See id.* at 37. The Court reasoned that, because any difficulties in identifying class members were largely the result of defendants' failure to maintain adequate records, any such difficulties should not impede certification, particularly given that class membership could be determined via self-identification through affidavits. *See id.* (reasoning that "members of the proposed California subclass who wished to rescind their policies could be required to submit an affidavit attesting that they do not hold any of the positions at PFA that are excluded from the proposed subclass and that they otherwise satisfy the requirements for inclusion in the subclass").

On June 15, 2022, the Court granted in part and denied in part defendants' motions for summary judgment. Docket No. 306. With respect to the named plaintiffs' individual requests for prospective injunctive relief; plaintiffs' theory of liability against LSW predicated on the existence of a partnership between LSW and PFA; and named plaintiff Wang's individual claim for fraud against PFA, the Court granted the motions. *Id.* The balance of the motions was denied. *Id.* In denying defendants' motions for summary judgment with respect to plaintiffs' UCL claim, the Court again recognized that the remedy that plaintiffs sought for the certified California subclass in connection with that claim was "optional recission of the Living Life policies and, for those class members who do so opt, or whose policies were surrendered or lapsed, plaintiffs also seek to recover 'the net money they lost pursuant to Defendants' scheme[.]'" *Id.* at 9.

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

On September 8, 2022, after plaintiffs submitted additional information in support of their proposed notice plan, the Court granted plaintiffs' motion for approval of their proposed notice plan for disseminating the class notice. Docket No. 328. The Court found that plaintiffs' proposed notice plan, which would involve disseminating the class notice via U.S. mail with skip trace, was the best method practicable and satisfied the requirements of Rule 23(c)(2)(B) and due

process. *Id.* at 1-2. The Court found that, in light of the quality and quantity of other available contact information for LSW policyholders, employing a second method for disseminating the class notice would not reasonably increase the rate at which members of the California subclass would receive it. *Id.* The Court also found that the parties' proposed "cross-reference list," *see* Docket No. 323 at 10-11, which compares LSW records of policyholders' purchase of relevant policies in California with PFA records of PFA associates, was reasonably likely to enable the identification of members of the California subclass for the purpose of disseminating the class notice. *Id.* at 2. The Court required plaintiffs to file a revised proposed notice that did not contain the deficiencies it identified in its order of August 16, 2022. *Id.*

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

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

On March 17, 2023, plaintiffs filed a motion for preliminary approval of a settlement agreement that the parties executed on the same date, March 17, 2023. Docket No. 56. On March 31, 2023, Gonzalez and Chen filed objections to the settlement agreement. Docket No. 358.

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

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

On July 21, 2023, the Court granted plaintiffs' motion for preliminary approval of the settlement agreement; approved the proposed method of notice, revised proposed notices and claim forms; appointed Dalton Chen as class representative, Girard Sharp LLP as Class Counsel, and Epiq Class Action & Claims Solutions, Inc. as the Claims Administrator; and set a final fairness hearing for January 16, 2024. Docket No. 366.

On December 13, 2023, the Court continued the final fairness hearing to January 23, 2024, at 3:00 p.m. because of its trial schedule. Docket No. 378.

On January 23, 2024, the Court held a final fairness hearing, during which it requested that plaintiffs file additional information in support of their motion for final approval of the SA.

On January 29, 2024, plaintiffs filed a supplemental declaration in support of their motion for final approval of the SA. Docket No. 385.

B. Settlement Agreement

The parties mediated in August 2022 under the supervision of Diane Welsh, a former magistrate judge in the Eastern District of Pennsylvania. Docket No. 356 at 1. Settlement negotiations continued for several months thereafter. *Id.* As noted, on March 17, 2023, the parties executed a stipulation and agreement of settlement. Docket No. 356-2. The parties modified the settlement agreement to address some of the questions and comments in the Court's order of May 1, 2023 (hereinafter, "SA"). *See* Docket No. 364-2. Gonzalez and Chen's counsel, Mr. Lindemann, did not participate in negotiating or documenting the settlement agreement. Girard Decl. ¶ 29, Docket No. 371-1. The following is a summary of the SA's key terms.

Settlement Class. The settlement class under the SA (hereinafter, "the settlement class") largely tracks the class definition of the California subclass that the Court certified under Rule 23(b)(3), with some minor exceptions that do not impact the Court's prior class certification analysis, as discussed in more detail in the Court's order granting preliminary approval of the SA. *See* Order at 15-17, Docket No. 366. The settlement class is comprised of:

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

Excluded from the settlement class are:

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

See Docket No. 356 at 7; SA § 2.4.

Class Counsel represent that there were 16,829 people who appeared on the cross-reference list used to identify potential class members (that list is described in more detail above). Girard Decl. ¶¶ 3-11, Docket No. 385. Class Counsel represent that a reasonable estimate of the number of class members is 13,000 people, because the cross-reference list contains duplicates and names of people who fall within the exclusions to the settlement class (for example, some of the people on the list became PFA associates outside of the relevant time period or reached certain positions within PFA and, therefore, fall within the exclusions to the settlement class). *See id.*

Recovery under the SA. The SA gives class members the option to receive cash payments pursuant to formulas that approximate the relief that plaintiffs could obtain if they prevailed at trial. *See* Girard Decl. ¶ 33, Docket No. 356-1. According to the SA, members of the settlement class who have a Class Policy could choose one of the two forms of relief: Active Policy Relief or Inactive Policy Relief. *See* SA § 2.7.

Active Policy Relief is for class members whose Class Policy is active in LSW's administration system as of the Relief Calculation Date, who submit a valid claim form, and who meet other criteria relating to whether certain types of benefits were paid under the policy. *See* SA § 3.2. Class members who selected this type of relief will rescind (or terminate) their policy in exchange for a cash payment that will be calculated based on a formula that (1) takes the premiums paid by the class member on the policy, and (2) subtracts all of the following: an "expense factor" of 10% of the total premiums paid (with the "expense factor" being or reflecting LSW's expenses in connection with the policy); the cost of insurance charges; outstanding policy loans and interest that class members owe to LSW; amounts withdrawn by class members; and the

"cash surrender value" of the policy. SA § 3.3. After subtracting all of those amounts from the premiums paid, class members will receive 67% of the remainder. *Id.*

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

To the extent that class members have a policy that does not fall within the definition of Class Policy under the SA, they will not be eligible for either Active Policy Relief or Inactive Policy Relief even though, based on the terms of the SA, they will be included in the settlement class and will release claims under the SA if they did not exclude themselves. The definition of "Class Policy" excludes (a) Living Life Policies for which the insured is deceased; (b) Living Life Policies on which a claim for a death benefit was made or paid prior to the Stipulation Date; (c) Living Life Policies that were rescinded or not taken prior to the Stipulation Date; (d) Living Life Policies on which a full-election or partial election of any benefit under an Accelerated Benefits Rider ("ABR") was made or paid prior to the Stipulation Date; and (e) Living Life Policies that were sold or assigned to a non-Class Member prior to the Stipulation Date. *See* SA § 2.7. In its order of May 1, 2023, the Court ordered plaintiffs to provide additional information regarding the Class Policy limitation. In response, plaintiffs explained that the purpose of the Class Policy limitation is to exclude class members who "have no colorable claim to damages[.]" Docket No. 364 at 21. In its order granting preliminary approval of the SA, the Court credited plaintiffs' representations as to the relative value of the claims of class members who do not have a Class Policy and found that their proposal to limit relief under the SA to class members who had a Class Policy was reasonable and equitable because the limitation is based on the relative value of class

members' claims and because class members could object or opt out of the settlement if they did not agree with the Class Policy terms of the SA. *See* Order at 23, Docket No. 366. The Class Policy limitation and its impact on class members' ability to recover under the SA was included in the class notices that the Court approved. In support of their motion for final approval, plaintiffs represent that no class members were precluded from recovering under the SA pursuant to, or because of, the Class Policy limitation. *See* Docket No. 377 at 4. As discussed below, no objections were filed with respect to the Class Policy limitation.

The SA does not call for the creation of a settlement fund in the first instance. Instead, the money that LSW will provide to the Claims Administrator for distribution to class members who submitted valid claims and are eligible for either type of relief under the SA will be based on the amounts that individual class members are owed based on the formulas discussed above.

Procedure for Payments to Class Members. To receive relief under the SA, eligible class members were required to submit a completed claim form to the Claims Administrator within 90 days of the date on which the Court granted preliminary approval of the SA, which was October 19, 2023. SA § 6.6. Claim forms were to be submitted online or mailed, in which case the date of the postmark shall determine timeliness. *See id.* The Claims Administrator will provide an opportunity to class members who filed claims to cure any errors or deficiencies in their claim forms during the period beginning from the Effective Date and ending 60 days after the Effective Date. SA § 6.7. Effective Date is the date on which the SA and final judgment become final (after any appeals are resolved) and the action has been dismissed with prejudice. SA § 9.8. By the 90th day after the Effective Date, the Claims Administrator must provide the parties a set of all valid claim forms. SA § 6.8.

No later than 21 days after the Claims Administrator provides LSW with the list of valid claim forms, LSW shall, "pursuant to reasonable commercial efforts, terminate the Active Class Policies that have elected Policy Relief and calculate the amount of Policy Relief due to each eligible Class Member based on Valid Claim Forms." SA § 6.9. LSW shall thereafter disburse the total amount of policy relief to the Claims Administrator with a breakdown of the amount due to each class member, and concurrently provide the Claims Administrator and Class Counsel with

a spreadsheet in Excel form reflecting LSW's calculation of Policy Relief to each class member. SA § 6.9. Class Counsel declared that, pursuant to these provisions, LSW must disburse the total amount owed to class members within 21 days of receiving the Claims Administrator's determinations. Girard Decl. ¶ 20, Docket No. 364-1. Not later than 21 days from receipt of the LSW payment for the total Policy Relief, the Claims Administrator will issue the Policy Relief to class members by mailing checks and processing electronic payments. SA § 6.9; Girard Decl. ¶ 20, Docket No. 364-1.

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

Release. In exchange for the benefits described above, class members who did not opt out of the SA will release claims that they asserted or could have asserted in this action.[5] *See* SA § 2.26.

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

Class Witnesses. "Class Witnesses" Youxiang Eileen Wang, Donna Daniele, Shannon

[5] "Released Plaintiffs' Claims" means and includes "any and all Claims that were or could have been included in the Action, including without limitation Claims relating in any way, directly or indirectly, to: (i) whether PFA or LICS operates as an endless chain, pyramid scheme, or similar legally prohibited structure; (ii) the business or business model of PFA or LICS, (iii) any disclosures or omissions relating to PFA or LICS, and/or (iv) marketing or sale of any Living Life Policies." SA § 2.26.

Xiao, and Yunhai Li, who are not class members because they did not purchase a policy in California, also contributed valuable evidence in support of the prosecution and resolution of the action according to Class Counsel. Girard Decl. ¶¶ 30-34, Docket No. 364-1. The Class Witnesses will be permitted to participate in the settlement on the same terms as class members to resolve their individual claims. *See* SA § 8.7. The payments to the Class Witnesses will have no impact on class member recoveries. Girard Decl. ¶¶ 30-34, Docket No. 364-1.

Cy Pres. Amounts remaining because of class members' failure to cash checks will be negligible and a subsequent distribution to class members of those amounts would be "uneconomic." *See* Girard Decl. ¶ 21, Docket No. 364. Accordingly, the SA and the Court's order granting preliminary approval of the SA provide that any residual funds that the Claims Administrator is unable to distribute following reasonable efforts shall be distributed to Bay Area Legal Aid. SA § 6.9; Girard Decl. ¶ 22, Docket No. 364; Order at 27, Docket No. 366. The Court confirms here its approval of Bay Area Legal Aid as the *cy pres* recipient.

Method of Notice. The Court approved the parties' proposed notice plan in its order granting preliminary approval of the SA. *See* Order at 30-31, Docket No. 366. That method involved disseminating notice within 28 days of the date the Court granted preliminary approval of the SA by first-class mail with skip trace to the people whose names appeared on the "cross-reference" list described above. SA §§ 5.3, 6.5. There were 16,829 people to whom the Class Administrator mailed the notice. Girard Decl. ¶¶ 3-11, Docket No. 385.

The notices, which the parties revised based on the Court's comments in its order of May 1, 2023, and which the Court approved in its order of July 21, 2023, varied depending on whether class members have active policies versus inactive policies. *See* Docket No. 364-3 (notice for inactive policyholders); Docket No. 364-4 (notice for active policyholders). Because many class members are not native English speakers, the notices were translated into several languages and the translated versions were posted on the settlement website. Girard Decl. ¶¶ 50, 58, Docket No. 356-1; Anzari Decl. ¶ 19, Docket No. 369. The notices informed class members of the key terms of the SA. The notices also stated that, on the settlement website, class members could see an estimate of their settlement payment prior to filing a claim or opting out and that active

policyholders, in addition to the estimate of their settlement payment, could also see the estimated cash surrender value of their policy prior to filing a claim or opting out. The notices contained instructions as to how to access these estimates on the settlement website or by contacting the Claims Administrator via a toll-free number, an email address, or by mail. The notices also stated that class members could obtain a copy of the SA on the settlement website or by contacting the Claims Administrator via a toll-free number or by mail. The notices informed class members as to how they could object to the SA and opt out. The notices also instructed class members as to how to access additional materials relevant to the settlement on the settlement website and on the docket via PACER.

As of November 14, 2023, the Claims Administrator had received 484 undeliverable Notice Packages, 265 of which were re-mailed. Mason Decl. ¶ 6, Docket No. 377-2. Accordingly, the notice reached "a least 90%" of the estimated 13,000 class members. *See* Azari Decl. ¶¶ 8, 29, Docket No. 369.

Claim Forms. The claim forms, which the parties revised based on the Court's comments in its order of May 1, 2023, and which the Court approved in its order of July 21, 2023, granting preliminary approval of the SA, varied depending on whether class members had active policies versus inactive policies. *See* Docket No. 364-7 (claim form for inactive policy holders); Docket No. 364-8 (claim form for active policy holders). The claims forms were prepopulated with the policy numbers of all policies associated with the individual to whom the notices and claim forms were sent, so that a claimant could check a box next to the policy or policies for which he or she wished to submit a claim under the SA. The claim forms required class members to certify, by adding their signature to the form, that they met the criteria for membership in the settlement class, including the requirement that the class member did not reach certain positions within PFA (people who reached certain positions within PFA are excluded from the settlement class, as noted above). The claim forms did not require any unnecessary information or information that would be burdensome to obtain. Class members were required to submit claim forms no later than 90 days after the Court granted preliminary approval of the SA, by October 19, 2023. SA § 6.6. Claim forms could be submitted by mail, in which case the postmark shall serve as the date of

submission. SA § 6.6. For those who wished to submit their claims online, class members could use the Unique ID number and PIN printed on their claim forms to do so. The claim forms included a field for entering the class member's email address. The Claims Administrator will send an email to those who submitted valid claims and provided email addresses on their claim form one week before distributions under the SA begin to ask whether the class members prefer to receive their payment via direct deposit (ACH) or via paper check. The default method for disseminating payments under the SA will be a mailed paper check.

Opt Outs. Class members wishing to opt out of the SA were required to submit a request within 90 days of the date the Court granted preliminary approval of the SA, i.e., by October 19, 2023. A class member wishing to opt out was required to provide his or her policy number (which was printed on the claim forms, as noted above) or the last four digits of his or her social security number, in addition to name, address, signature, and statement of intent to opt out. Policy or social security number information was necessary for class members to affirmatively opt out because a non-trivial number of class members have the same or similar names. *See* Girard Decl. ¶ 41, Docket No. 364-1.

Plaintiffs represent in their submissions in support of final approval that a total of 129 class members timely opted out. Mason Decl. ¶ 13, Docket No. 377-2. At the final fairness hearing, Class Counsel represented that defendants had agreed to accept some untimely requests to opt out, and that the total number of opt outs is, therefore, 142. In light of the parties' agreement to accept the untimely opt-out requests, the Court will assume for the purpose of evaluating the present motion for final approval that there are 142 opt outs. Plaintiffs shall file a list of the 142 opt outs on the docket within seven days of the date this order is filed.

Attorneys' Fees and Costs. The SA provides that Class Counsel may petition for attorneys' fees of up to $6,000,000, and costs of up to $371,000. SA § 7.1. These amounts are to be paid by defendants within fifteen days of the date the Court approves them. SA § 7.3. The SA contains a clear-sailing provision, meaning that defendants agreed not to oppose Class Counsel's motion for fees. SA §§ 7.1, 7.2. The SA also provides that, if the Court awards attorneys' fees in

an amount that is less than $6,000,000, then the difference will revert to defendants (i.e., the SA contains a so-called "kicker" clause). SA § 7.4.

Claims Administrator. The parties selected, and the Court appointed, Epiq Class Action & Claims Solutions, Inc. to administer the SA. Defendants will pay up to $200,000 in administrative expenses. SA § 6.1.

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

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

II. LEGAL STANDARD

"The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed. R. Civ. P. 23(e). The approval of a settlement involves a preliminary approval stage, after which the court directs notice to class members and then holds a fairness hearing to determine whether final approval of the settlement agreement is warranted under Rule 23(e).

"[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned." *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). "The purpose of Rule 23(e) is to protect the unnamed members of the class from unjust or unfair settlements affecting their rights." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008).

III. DISCUSSION

A. Class Certification

A court may certify a class for the purpose of entering judgment on a proposed settlement agreement under Rule 23(e) if the requirements of Rule 23(a) have been met, and at least one of the requirements of Rule 23(b) has also been met. *See* Fed. R. Civ. P. 23(e)(1)(B)(ii); Fed. R. Civ. P. 23(a) & (b). Where, as here, the Court is evaluating a settlement under Rule 23 and it previously certified a class, the Court must consider only "whether the proposed settlement calls

for any change in the class certified, or of the claims, defenses, or issues regarding which certification was granted." Fed. R. Civ. P. 23 Advisory Committee's Note to 2018 Amendment.

As noted above, the Court previously certified the California subclass under Rule 23(b)(3). As discussed in the Court's order granting preliminary approval of the SA, the Court found that the settlement class differs in a few minor respects from the California subclass that the Court certified under Rule 23(b)(3) with respect to plaintiffs' claims under the unlawful and unfair prongs of the UCL. *See* Order at 16-17, Docket No. 366. Specifically, the settlement class: includes a date range for when persons enrolled as PFA associates, whereas the certified class does not; sets the Stipulation Date of March 17, 2023, as the end of the time period for the class definition, whereas the certified class does not; does not specifically exclude nonparties National Life Insurance Company, NLV Financial Corporation, Mehran Assadi, and David Carroll, as the certified class does; and excludes any person who previously released any Defendant pertaining to any Released Claim. *See id*.

The Court found at the preliminary approval stage that plaintiffs had adequately explained why the differences between the certified California subclass and the settlement class did not alter the reasoning underlying the Court's grant of certification as to the California subclass under Rule 23(b)(3) and it concluded that, for that reason, it did not need to conduct a new class certification analysis with respect to the settlement class the purpose of approving the SA. *See id*. at 17. The Court incorporates by reference its findings and reasoning with respect to that issue here and concludes that it need not conduct a new class certification analysis for the purpose of granting final approval of the SA. The settlement class satisfies the requirements for certification under Rules 23(a) and 23(b)(3) for the same reasons that the certified California subclass did. Accordingly, the Court certifies the settlement class for the purpose of entering judgment on the SA as required by Rule 23(e). *See Youth Just. Coalitions v. City of Los Angeles*, No. 16-07932, 2020 WL 9312377, at *2 (N.D. Cal. Nov. 17, 2020) (approving settlement class definition that differed from the definition of the class previously certified without conducting a new class certification analysis because the "change does not alter the reasoning underlying its

earlier decision to grant class certification"); *Foster v. Adams & Assocs., Inc.*, No. 18-CV-02723-JSC, 2021 WL 4924849, at *3 (N.D. Cal. Oct. 21, 2021) (same).

B. Fairness of the Settlement Agreement

In determining whether the SA can be approved under Rule 23(e)(2), the Court must consider the factors set forth in that rule to determine whether the settlement is fair, reasonable, and adequate, namely whether "(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate; and (D) the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2).[6] For the reasons set forth below, the Court finds that the SA satisfies the requirements for approval under Rule 23(e)(2).

1. Adequate Representation

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

After Class Counsel filed the operative consolidated complaint, they conducted substantial discovery and brought several successful discovery motions.[7] Thereafter, Class Counsel successfully obtained certification of the California subclass and largely defeated defendants'

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

[7] According to Class Counsel, the parties began discovery in mid-2020 and defendants produced over 85,000 documents in discovery, which Class Counsel 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.*

motions for summary judgment. Those are remarkable results given the relative novelty of their theory of liability, which is premised on the application of the Endless Chain Scheme Law to a joint marketing scheme involving insurance products. Prior to the settlement, the parties were scheduled to go to trial. In light of the exceptional success that Class Counsel have achieved to date on behalf of the class, their substantial experience in prosecuting complex class actions, and the substantial discovery that Class Counsel have conducted to date, the Court finds that Class Counsel were well informed about the strengths and weaknesses of class members' claims before and during their settlement negotiations and were well-positioned to negotiate a fair settlement on behalf of the settlement class. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 967 (9th Cir. 2009) ("[W]e have held that [p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation" and that this weighs "in favor of approval") (citation and internal quotation marks omitted).

2. Whether the SA Was Negotiated at Arm's Length

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

Class Counsel declared that they negotiated their fees and costs only after the parties had

agreed on all other material terms. Girard Decl. ¶ 46, ECF No. 364-1. Class Counsel agreed to waive any enhancement to their lodestar and, in exchange for the waiver of any enhancement, LSW agreed not to oppose Class Counsel's agreed fee. *Id.* Class Counsel further declared that the agreement as to fees is the product of the parties' "hard bargaining and best efforts to arrive at an arm's length settlement as to attorney's fees." *Id.* ¶ 45.

The Court finds that the participation of a neutral mediator and of an actuarial consultant in the settlement discussions, the back-and-forth between the parties as to the terms of the settlement, and the parties' decision to negotiate attorneys' fees and costs until after they had agreed on all other material terms of the SA indicate that the SA is the product of arms' length negotiations. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (holding that participation of a mediator is not dispositive but is "a factor in favor of a finding of non-collusiveness"); *see also Youth Just. Coalitions v. City of Los Angeles*, No. 2-16-CV-07932-VAPRAOX, 2020 WL 9312377, at *3 (C.D. Cal. Nov. 17, 2020) ("The sustained back and forth negotiations between the parties indicate that the Settlement Agreement was the result of a process that was fair and full of adversarial vigor.") (citation and internal quotation marks omitted). The Court has carefully reviewed the record and it finds no indication of fraud, overreaching, or collusion. Accordingly, the Court finds that this factor weighs in favor of granting final approval. The SA's provisions relating to Class Counsel's attorneys' fees and costs (e.g., the clear-sailing provision and the kicker provision) do not alter this finding, for the reasons discussed in more detail below.

3. Whether the SA Treats Class Members Equitably Relative to Each Other

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

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

The Court finds that the SA treats class members equitably relative to each other because the formulas for calculating payments for class members who filed claims are designed to approximate the remedy that plaintiffs would have sought had they prevailed at trial and take into account the individual circumstances of each class member (e.g., the premiums that each class member paid, etc.). The formulas for calculating payments under the SA for active and inactive policies are described in detail in the background section of this order. According to Class Counsel, the formulas approximate the remedy that class members with active and inactive policies would have sought had they prevailed at trial, which was the option to rescind active policies and recover the consideration paid to defendants pursuant to the alleged marketing scheme, less any applicable offsets, such as amounts that the class members received pursuant to the scheme. Docket No. 356 at 15. The SA approximates that remedy because it "obligates the Defendants to return a portion of the premiums paid by Class Member claimants, according to a formula that subtracts cost of insurance and other policy charges from the total premiums paid, and then applies a one-third discount." *Id.* at 8. The SA's formulas differ most saliently between inactive and active policies in that the "expense factor" to be subtracted from a claimant's recovery will be 25% of the total premiums paid on an inactive Class Policy, whereas it will be only 10% for an active Class Policy. The Court credits Class Counsel's representation that the expense factor difference between the inactive and active policies is equitable because "the cost to the insurer of rescinding a policy in the first few years . . . is exponentially greater then than later, given that it typically requires a period of several years for the insurer to recover the substantial commission due to the selling agent. Thus, plaintiffs conceded a greater deduction from the total payment to inactive policyholder claimants, as the inactive policies generally were in force for less time." Girard Decl. ¶ 38, Docket No. 356-1.

The Court further finds that the SA's provisions that gave class members with active policies *the option* to rescind their policies and to receive a payment under the SA are fair and

reasonable. In recognition of the fact that some class members may have purchased policies because they did, in fact, want them (as opposed to having purchased the policies because, as a result of the alleged marketing scheme at issue in this case, class members believed that purchasing them would help them succeed as PFA agents), the form of relief that plaintiffs have sought throughout this litigation for class members with active policies is *the option* to rescind. *See* Order at 33-35, Docket No. 239. That option was intended to enable class members to rescind active policies that they had never wanted or needed but purchased because they were victimized by the alleged marketing scheme. At the same time, that option also was intended to enable class members to keep policies they had purchased because they actually wanted them for reasons unrelated to the alleged marketing scheme. Pursuant to the terms of the SA, class members with active policies received the optional rescission relief that plaintiffs have sought throughout this litigation. Those class members had the opportunity to exercise that option by filing a claim; if they filed a claim, their policy will be terminated and they will receive a payment under the SA. If they did not file a claim, their policy will not be terminated and they will not receive a payment under the SA (because they will be keeping their policy and there is nothing to rescind). The Court finds that those terms are fair and reasonable because they empowered class members to decide for themselves, based on their own individual circumstances, whether to rescind their policies. As noted, class members received access to information that enabled them to make an educated decision about whether to exercise their option to rescind, including information about how the cash surrender value of their policy compared with the estimated payment they would receive under the SA if they submitted a claim.

Class Counsel represented at the preliminary approval stage that around 16% of the active policies held by class members were unlikely to be rescinded, whether in connection with the SA or in the event that plaintiffs prevailed at trial, because the class members holding those policies had invested in the policies by paying in excess of the premiums required to maintain the policies and had experienced favorable returns under the index feature of the policies. *See* Girard Decl. ¶ 12, Docket No. 364-1. According to Class Counsel, given those class members' decision to invest in the policies, the policies' cash surrender value would exceed the payment that those class

members could expect to receive under the SA. *See id.* To the extent that class members with those policies declined to exercise their option to rescind them by submitting claim under the SA, they will not receive a payment under the SA and will release claims pursuant to the SA if they did not opt out. That does not render the SA unfair or unreasonable. The Court credits Class Counsel's representation during the final fairness hearing that class members who chose to invest in their policies purchased such policies because they wanted and believed in them and were not victimized by the alleged marketing scheme.[8] Further, those class members had the opportunity to opt out of the SA or to object to the extent that they were dissatisfied with the terms of the SA, including with how their payments under the SA compared with the cash surrender value of their policies. No objections were filed by any class member who complained that the cash surrender value of his policy was greater than his estimated payment under the SA. The absence of objections on this issue further supports the Court's finding that the SA treats class members equitably.

As noted above, the SA limited relief to class members who have a Class Policy as defined in the SA. *See* SA § 2.7. The Court found at the preliminary approval stage that the Class Policy limitation was equitable because, per Class Counsel's representations, it was intended to exclude scenarios where the policyholders had no colorable claim for damages. *See* Order at 22-23, Docket No. 366. The Court reaffirms that finding here, particularly given that plaintiffs represent that the Class Policy limitation had no impact on class members' ability to obtain relief under the SA. *See* Docket No. 377 at 4.

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[8] Given Class Counsel's representation that class members who invested in their policies were not victimized by the alleged marketing scheme, the fact that they will not receive a payment under the SA if they did not exercise their option to rescind their policies is fair and reasonable. The lack of payment under the SA reflects that they were not injured by the alleged scheme as compared with other class members, and that they will be retaining their policies and the fruits of their investments in those policies. *See In re: Cathode Ray Tube (Crt) Antitrust Litig.*, No. C-07-5944 JST, 2016 WL 3648478, at *14 (N.D. Cal. July 7, 2016) ("Class counsel here were within their rights to allocate the settlement proceeds according to the degree of injury suffered by the class" because "no Ninth Circuit case holds that the release of a class action claim must be compensated in all instances") (citations omitted); *see also Vinh Nguyen v. Radient Pharms. Corp.*, No. SACV 11-00406 DOC, 2014 WL 1802293, at *5 (C.D. Cal. May 6, 2014) ("[A]n allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent counsel.") (citation and internal quotation marks omitted).

Finally, the SA's provisions that allow the class representative to apply for an incentive award of $10,000, and that allow the Class Witnesses (who, as noted, are not class members) to participate in the settlement on the same terms as class members, also are fair and reasonable. The recovery of the class representative and the Class Witnesses will not impact the recovery of class members, and plaintiffs have shown that the benefits that the class representative and Class Witnesses can obtain under the SA are warranted given their contributions to the prosecution of the operative consolidated complaint on behalf of the class.

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

4. Whether the Relief Provided to the Class is Adequate

In considering whether the relief provided to the class pursuant to the SA is adequate, the Court accounts for: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3). *See* Fed. R. Civ. P. 23(e)(2)(C).

Plaintiffs represent that, out of the estimated 13,000 class members, 998 class members filed timely claims, which means that the overall claim rate was 7.7%.[9] ECF No. 377 at 3. That claim rate is within the range of approval. *See In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 568 (9th Cir. 2019) ("We have approved class action settlements 'where less than five percent of class members file claims.'") (citations omitted). Plaintiffs further represent that the

[9] In their supplemental declaration, Class Counsel represent that the number of valid claims submitted as of the date of the declaration (January 29, 2024) is 1,015. Girard Decl. ¶ 12, Docket No. 385. The class recovery statistics that plaintiffs included in their briefs in support of final approval of the SA are premised on there being 998 claims, not 1,015. Because plaintiffs did not provide any updated class recovery statistics based on the 1,015 claims other than the representation at the final fairness hearing that the class recovery based on the 1,015 claims will be $4,241,000, the Court will rely on the class recovery statistics that plaintiffs provided in their final approval briefs for the purpose of evaluating the Rule 23(e) factors; those statistics assume that only 998 valid claims were submitted. However, the Court expects that 1,015 claims will be compensated pursuant to the terms of the SA.

claim rate for class members with inactive policies was 17.4% and that it was 4.8% for class members with active policies. ECF No. 377 at 3. As noted, a total of 142 class members opted out.

The value of the 998 claims is $4,198,646.07, with the average recovery per claimant being $4,207.06 and the median recovery being $2,328.88. Mason Decl. ¶¶ 15-16; Greene Decl. ¶ 3. Of the 998 claimants, 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. Greene Decl. ¶ 8. Plaintiffs represent that the total estimated recovery for the 998 claimants if plaintiffs had prevailed at trial would have been $9,348,050.38. *See* Docket No. 377 at 3. Accordingly, the recovery rate of the 998 claimants under the SA, when compared with their total estimated recovery had they prevailed at trial, is approximately 44%.

The following chart compares the recovery under the SA of class members who filed timely claims with their potential recovery at trial.

	Active Policyholder	**Inactive Policyholder**	**Active and Inactive**
Number of claims	478	520	998
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

At the preliminary approval stage, plaintiffs represented that the potential recovery at trial for the estimated 13,000 class members was $130 million. *See* Girard Decl. ¶ 12, Docket No. 364-1. Accordingly, the $4,198,646.07 that the 998 claimants will recover collectively represents approximately 3% of the total recovery that the estimated 13,000 class members would have recovered collectively had they prevailed at trial. *See* Greene Decl. ¶ 4.

The Court is satisfied that the $4,198,646.07 that the 998 class members who filed claims will receive collectively is a fair and reasonable class recovery given that the primary relief that plaintiffs sought to obtain in this action was *the option* to rescind active policies and to receive a

refund of premiums paid, minus applicable offsets. While the $4,198,646.07 that the class will receive based on the 998 claims that were submitted is a fraction of what the class could have recovered if plaintiffs had prevailed a trial (approximately 3%), that fraction reflects the fact that class members' decision to exercise their option to rescind active policies and submit a claim for payment under the SA turned on circumstances that are unique to each class member and that are not within Class Counsel's control, as well as the risks of continued litigation. *See* Girard Decl. ¶¶ 104-05, Docket No. 367-1; *see also Hendricks v. StarKist Co*, No. 13-CV-00729-HSG, 2015 WL 4498083, at *7 (N.D. Cal. July 23, 2015) (finding that settlement recovery of "only a single-digit percentage of the maximum potential exposure . . . is reasonable given the stage of the proceedings and the defenses asserted in this action"); *Officers for Just. v. Civ. Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982) ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair."). The Court also considers the fact that, for those class members who exercised their option to submit claims, their payments under the SA will be significant, with the average recovery per claimant being $4,207.06 and the median recovery being $2,328.88.

The Court finds that the relief provided to class members under the SA is fair and reasonable when considering the Rule 23(e)(2)(C) factors, which the Court discusses in turn below.

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

As noted above, the parties settled this action several weeks before their jury trial was set to begin. Class Counsel represent that, in light of the significant risks involved with proceeding to trial and a possible appeal, the settlement of plaintiffs' claims under the terms now before the Court would be in the best interest of the settlement class. Class Counsel explain that some of the risks the class members would face at trial include the risk that a jury or the Court would: attribute the class representative's lack of success with PFA to inadequate efforts or sales skill; find that PFA adequately disclosed the risks of failure and the importance of individual effort; find that PFA did not operate as an endless chain scheme; conclude LWS is not liable for the conduct of PFA or its associates; find that any improprieties by PFA associates were independent actions, not

undertaken in accordance with PFA or LSW guidelines provided to the associates; exclude or disregard evidence favorable to plaintiffs on the basis that sales materials, including audio and video recordings, were never approved by PFA or LSW; or agree with LSW that California's 10-30 day "free-look" period gave buyers adequate time to rethink their purchase of a policy, assuming it was motivated by a desire to advance in the PFA hierarchy. Girard Decl. ¶ 7, Docket No. 364-1.

Some of the risks that plaintiffs would face on appeal include the potential for a Ninth Circuit panel to accept PFA's legal contention that plaintiffs lack standing because they did not seek any redress against PFA, or LSW's class certification arguments: (a) that individual issues connected to particular policy purchases, such as different face values and premium payments, underlie each separate claim, (b) that different PFA members bought a policy for many different reasons, or (c) that the putative class sweeps in those who suffered no injury. Girard Decl. ¶ 8, Docket No. 364-1. Accordingly, for the purpose of negotiating the SA, Class Counsel assumed an even probability of prevailing at trial and a slightly better than even chance of prevailing on appeal, equating to an approximately one-third chance of securing a favorable final judgment. Girard Decl. ¶ 6, Docket No. 364-1.

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

The Court is persuaded by Class Counsel's evaluation of the risks of proceeding to trial relative to the benefits of resolving plaintiffs' claims pursuant to the SA. That plaintiffs largely prevailed in defeating defendants' motions for summary judgment does not mean that they would have prevailed at trial. *See Rodriguez*, 563 F.3d at 964 ("[S]uccessfully opposing [a] motion for summary judgment did not mean that the class had established liability or would obtain a favorable, unanimous jury verdict"). Given that defendants vigorously opposed every motion that plaintiffs filed in this action until the eve of trial, it is likely that defendants would have continued to do the same through trial and on appeal. In light of the significant risks that Class Counsel identified, and

the fact that continued litigation would have prolonged the litigation and delayed class members' recovery, the recovery obtained under the SA is reasonable and fair. This weighs in favor of granting final approval of the SA.

b. The proposed method of distributing relief to the class

Class Members had 90 days from the date on which preliminary approval was granted to submit a claim, i.e., by October 19, 2023. SA § 6.6. As noted above, the parties revised the claim forms in response to the Court's comments in its order of May 1, 2023, and the Court approved the revisions in its order granting preliminary approval of the SA. The approved claim forms were easy to understand and fill out, and did not require class members to provide unnecessary information or information that could be burdensome to collect. *See* Docket Nos. 364-7 & 364-8. Class members who submitted timely claims will be provided with a sixty-day period during which they can cure any deficiencies in their claim forms, which will begin on the Effective Date and end 60 days after the Effective Date. SA § 6.7. By the 90th day after the Effective Date, the Claims Administrator will provide the parties a set of all valid claim forms. SA § 6.8. No later than 21 days after the Claims Administrator provides LSW with the list of valid claim forms, LSW must terminate the Active Class Policies and calculate the amounts due to each class member who submitted a valid claim form and then must disburse the total amount of policy relief to the Claims Administrator with a breakdown of the amount due to each eligible class member. SA § 6.9. LSW must concurrently provide the Claims Administrator and Class Counsel with a spreadsheet in Excel form reflecting its calculations. *Id.* Not later than 21 days from receipt of the LSW payment for the total policy relief, the Claims Administrator will issue the Policy Relief to eligible class members via the default method of mailing checks, or by direct deposit for those class members who provided an email address in their claim form and opted to receive their payment by direct deposit (ACH). SA § 6.9; Girard Decl. ¶ 20, Docket No. 364-1.

Amounts remaining because checks were not cashed will be distributed to Bay Area Legal Aid (BALA), which is not affiliated with Class Counsel. SA § 6.9; Girard Decl. ¶ 22, Docket No. 364.

The Court finds that the proposed method of distributing relief to the class is reasonable

and fair and weighs in favor of granting final approval of the SA.

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

Rule 23(e) requires courts to "balance the 'proposed award of attorney's fees' vis-à-vis the 'relief provided for the class' in determining whether the settlement is 'adequate' for class members." *Briseno*, 998 F.3d at 1024. This requires scrutinizing the settlement agreement for "subtle signs that class counsel have allowed pursuit of their own self-interests and that of certain class members to infect the negotiations." *Id.* at 1023. Such subtle signs exist: (1) when counsel receive a disproportionate distribution of the settlement; (2) when the parties negotiate a "clear sailing" arrangement providing that defendants will not oppose class counsel's request for fees; and (3) when the parties arrange for fees not awarded to class counsel to revert to defendants rather than to the class members (i.e., when the settlement contains a so-called "kicker" clause). *Id.* Where any of these signs are present, the district court must "examine the negotiation process with even greater scrutiny than is ordinarily demanded" and the "approval of the settlement [must] be supported by a clear explanation" of why the negotiated attorneys' fee is justified and "does not betray the class's interests." *In re Bluetooth*, 654 F.3d at 949.

Here, as noted above, the SA provides that Class Counsel may request an award of up to $6,000,000 in fees and costs of up to $371,000, and Class Counsel now request those amounts in their present motion for fees and costs. *See* Docket No. 367. The SA contains a "quick pay" provision, because the SA requires defendants to pay fees and costs to Class Counsel within 15 days of the date the Court approves them. The SA also contains both a clear-sailing provision and a "kicker" provision.

The "quick pay" provision of the SA does not weigh against granting final approval. *See In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. MDL 3:07-MD-1827 SI, 2011 WL 7575004, at *1 (N.D. Cal. Dec. 27, 2011) ("With respect [to] the 'quick pay' provisions, Federal courts, including this Court and others in this District, routinely approve settlements that provide for payment of attorneys' fees prior to final disposition in complex class actions."). The presence of the clear-sailing and kicker provisions require the Court to examine the SA and the negotiations leading to it closely for signs that the parties colluded at the class members' expense. *See In re*

Bluetooth, 654 F.3d at 949; *Briseño*, 998 F.3d at 1026-28.

Here, as discussed in more detail above, the Court has carefully reviewed the record and has found no indication of collusion or that the settlement negotiations were not conducted at arm's length. The amount in fees that Class Counsel now seek under the terms of the SA is fair and reasonable when compared with the monetary relief that Class Counsel achieved for the class of $4,198,646.07, particularly when taking into account the risks of continued litigation discussed above, that class members will receive their recovery faster than if the litigation continued, that the monetary relief achieved for the class reflects class members' individual choices as to whether to exercise their option to rescind active policies and submit claims for payments under the SA, and that Class Counsel committed substantial resources on a contingency basis for the benefit of the class and achieved excellent results on behalf of the class throughout this highly contested litigation. Further supporting that finding is that the requested fees of $6,000,000 are less than Class Counsel's lodestar, which is $7,338,869.00. Girard Decl. ¶ 121 & Ex. B.

The fees that Class Counsel request here are distinguishable from those that courts in other cases have found to be disproportionate to the benefits provided to the class. *See, e.g.*, *Lowery v. Rhapsody Int'l, Inc.*, 75 F.4th 985, 991 (9th Cir. 2023) ("The district court's fee award is not reasonable under Rule 23, given that the $1.7 million fee award is more than *thirty times larger* than the amount paid to class members") (emphasis supplied); *In re Bluetooth*, 654 F.3d at 938 (vacating attorneys' fee award of $800,000 where class members received "zero dollars for economic injury" and $100,000 in *cy pres* awards); *Briseno*, 998 F.3d at 1026 (finding that attorneys' fees of almost $7 million were disproportionate to the benefits conferred on the class, which would total less than $1 million); *Dekker v. Vivint Solar, Inc.*, No. C 19-07918 WHA, 2023 WL 5498063, at *1 (N.D. Cal. Aug. 23, 2023) (reducing requested fees of almost $2 million to $100,000 because the only benefit to the class was an agreement that "formalized a practice both sides recognize defendants had already implemented" and the class members received no monetary compensation at all). Where, as here, there is no evidence of collusion and the attorneys' fees at issue are reasonable when compared to the class members' recovery under the settlement and the other factors discussed above, the presence of a clear-sailing provision or kicker

clause does not preclude granting approval of a settlement. *See In re Bluetooth*, 654 F.3d at 949; *Briseño*, 998 F.3d at 1026-28.

Accordingly, the Court finds that this factor weighs in favor of granting final approval of the SA.

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

Plaintiffs represent that there are no agreements under Rule 23(e)(3) to disclose. Docket No. 356 at 18 n.9. Accordingly, this factor does not impact the Court's findings as to the fairness of the SA.

C. Notice Plan

A court must "direct notice [of a proposed class settlement] in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). Due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

In its order granting preliminary approval of the SA, the Court found that the parties' proposed notice plan, involving notice by first-class mail with skip trace, was the best practicable under the circumstances and met the requirements of Rules 23(e)(1) and 23(c)(2)(B) and due process. Order at 30-31, Docket No. 366. The Claims Administrator mailed the Court-approved notice to 16,829 people who appeared on the cross-reference list used to identify potential class members, consistent with the notice plan the Court approved. *See* Girard Decl. ¶¶ 3-11, Docket No. 385. As of November 14, 2023, the Claims Administrator had received 484 undeliverable Notice Packages, 265 of which were re-mailed. Mason Decl. ¶ 6, Docket No. 377-2. The notice, therefore, reached at least 90% of class members. *See* Azari Decl. ¶¶ 8, 29, Docket No. 369.

The Court finds that the notice provided to class members complied with the requirements of Rules 23(e)(1) and 23(c)(2)(B) and due process. *See In re Hyundai*, 926 F.3d at 567 ("To satisfy Rule 23(e)(1), settlement notices must present information about a proposed settlement neutrally, simply, and understandably. Notice is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come

forward and be heard.") (internal citations and quotation marks omitted). As discussed in more detail above, the notices and claim forms that the Court approved were easy to understand and described the settlement terms with more than sufficient detail to enable class members to make educated decisions as to whether to file a claim, opt out, or investigate further prior to the deadlines for filing claims or objections, or opting out. The notices also instructed class members as to how they could access an estimate of their recovery under the SA, as well as the cash surrender value of active policies, on the settlement website or by contacting the Claims Administrator.

The adequacy of the notice, as well as the absence of any meaningful opposition to the SA after notice was distributed, weigh in favor of granting final approval of the SA.

D. Objections to the Settlement Agreement

Under Rule 23(e)(5), any class member may object to the settlement agreement if it requires court approval under Rule 23(e). "The objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection." Fed. R. Civ. P. 23(e)(5)(A). "An objector to a proposed settlement agreement bears the burden of proving any assertions they raise challenging the reasonableness of a class action settlement." *Noll v. eBay, Inc.*, 309 F.R.D. 593, 602 (N.D. Cal. 2015) (citation omitted).

Objections to the SA were filed by (1) Yuanhai Li, *see* ECF No. 375; (2) Gonzalez and Chen, who were named plaintiffs in the *Chen* action but are not named plaintiffs in the operative consolidated complaint, and Evan Chan, *see* Docket No. 372.

1. Yuanhai Li

Yuanhai Li, who provided a mailing address located in Illinois, objects to the SA on the ground that a "DuPage county court judge (IL)" denied spousal support in 2018 to an unidentified person because Li "became a PFA insurance agent & paid $125 and because the judge thought and believed PFA is a pyramid scam." *See* Docket No. 375 at 1.

Plaintiffs argue that Yunhai Li is an Illinois resident who served as a Class Witness and will receive a payment under the SA as such. Docket No. 377 at 2, 13. Plaintiffs represent that Li

did not purchase a Living Life Policy in California and is, therefore, not a class member and lacks standing to object. Plaintiffs also contend that Li's objection should be overruled because the notices instructed class members to include a statement in their objections that established their class membership, but Li failed to do so. *See, e.g.*, Docket No. 364-3 at 12-13 (notice stating that objections must include a statement that the class member "enrolled as a PFA associate, paid a $125 fee associated with the enrollment, purchased a Living Life or Living Life by Design indexed universal life insurance policy in California between January 1, 2014, and March 17, 2023, and did not reach 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").

The Court agrees with plaintiffs that Li did not include the requisite statements in his objection indicating that he is a class member. Because Li failed to establish that he is a class member, he lacks standing to object to the SA. *See In re TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 1008 (N.D. Cal. 2015) (holding that objector had "no legal standing to object to the settlement because he has not demonstrated that he is an aggrieved class member") (collecting cases); *Moore v. Verizon Commc'ns Inc.*, No. C 09-1823 SBA, 2013 WL 4610764, at *9 (N.D. Cal. Aug. 28, 2013) ("[A] court need not consider the objections of non-class members because they lack standing."). The Court overrules Li's objection on that basis. Even if Li had standing to object, the Court would overrule his objection because it does not go to the fairness or reasonableness of the SA. Li's objection appears to be about an Illinois judge's determination regarding spousal support, a matter that is unrelated to the issues in this litigation.

2. Wenjian Gonzalez, Rui Chen, and Evan Chan

Wenjian Gonzalez, Rui Chen, and Evan Chan, who are represented by Mr. Lindemann, filed objections to the SA in a single filing.[10] *See* Docket No. 372. Their objections largely repeat

[10] During the final fairness hearing held on January 23, 2024, Mr. Lindemann raised new objections on behalf of objector Evan Chan that were not raised in his written objections of October 19, 2023, Docket No. 372. Because the deadline for submitting objections was October 19, 2023, the Court overrules the new objections that Mr. Lindemann raised at the hearing as untimely. The Court will not consider any objections that were not asserted in Evan Chan's written objections of October 19, 2023, which are set forth in Docket No. 372. *See In re TFT-*

the objections that Gonzalez and Chen advanced in opposition to plaintiffs' motion for preliminary approval of the SA, which the Court considered and rejected in its order granting preliminary approval of the SA.

In their reply in support of their motion for final approval of the SA, plaintiffs argue that Gonzalez and Chen do not have standing to object to the SA because they submitted opt-out requests and they appear on the Claims Administrator's list of opt-outs. *See* Docket No. 382 at 1. Plaintiffs further contend that Gonzalez, Chen, and Chan lack standing to object because their objections did not contain the requisite statements described in the notice that are intended to establish that objectors are members of the settlement class. Plaintiffs also argue that, even if Gonzalez, Chen, and Chan had standing, their objections lack merit.

The Court agrees with plaintiffs that the record indicates that Gonzalez and Chen excluded themselves from the SA. Their names appear on the opt-out list filed by the Claims Administrator. *See* Mason Decl., Ex. 1 at 7, Docket No. 377-2. Gonzalez and Chen also admit in their written objections that they excluded themselves from the SA.[11] *See* Docket No. 372 at 3. Because Gonzalez and Chen opted out, they do not have standing to object to the SA and the Court overrules their objections on that basis.[12] *See Senne v. Kansas City Royals Baseball Corp.*, *LCD (Flat Panel) Antitrust Litig.*, No. MDL 3:07-MD-1827 SI, 2011 WL 7575004, at *3 (N.D. Cal. Dec. 27, 2011) ("His objection herein is untimely, having been mailed on November 28, 2011, rather than filed with the Court on that date. On that basis alone, the Court refuses to consider the objection."); *Moore*, 2013 WL 4610764, at *9 (overruling objections because objectors "failed to comply with the proper procedures to object to the Settlement"). While well intentioned, Mr. Lindemann's untimely efforts to raise new issues at the hearing do not inspire confidence and do not indicate thoroughness on his part.

[11] Gonzalez and Chen state in their objections that they filed an "administrative motion to extend their deadline to file a claim or withdraw their opt-out by 45 days." Docket No. 372 at 3. The Court denied that administrative motion on October 26, 2023. *See* Docket No. 376.

[12] At the hearing, counsel for Gonzalez and Chen, Mr. Lindemann, argued that Gonzalez and Chen's objections to plaintiffs' motion for preliminary approval of the SA (1) "carry forward" to the final approval stage because Gonzalez and Chen had not opted out when they filed those objections at the preliminary approval stage; and (2) "carry over" to the objections of Evan Chan. Mr. Lindemann cited no authority for either of those propositions. Gonzalez and Chen lost standing to object when they opted out of the class, as they are no longer class members. Any objections they filed before they opted out were previously overruled and do not "carry forward" or "carry over" to the final approval stage or to objector Evan Chan. Objector Evan Chan did not file any objections at the preliminary approval stage.

No. 14-CV-00608 JCS, 2023 WL 2699972, at *10 (N.D. Cal. Mar. 29, 2023), *aff'd sub nom. Senne v. Concepcion*, No. 23-15632, 2023 WL 4824938 (9th Cir. June 28, 2023) (declining to consider objection on the basis that the objector opted out and thus lacked "standing to object") (citation omitted).

That leaves Evan Chan's objections. Evan Chan failed to comply with the procedural requirements for objecting to the SA. The notice required class members to include in their objections a statement indicating that they met the criteria for membership in the settlement class, namely, that they "enrolled as a PFA associate, paid a $125 fee associated with that enrollment, purchased a Living Life or Living Life by Design indexed universal life insurance policy in California between January 1, 2014 and March 17, 2023, and did not reach 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[.]" *See* Docket No. 364-3 at 30. Evan Chan failed to do so.[13] *See generally* Docket No. 372. Because Evan Chan did not follow the procedures in the notice for establishing his class membership for the purpose of objecting to the SA, and because he otherwise has not established that he is a member of the settlement class[14], the Court overrules his objections on those grounds. *See Moore*, 2013 WL 4610764, at *9 (overruling objections on the ground that objectors "failed to comply with the proper procedures to object to the Settlement").

[13] Gonzalez and Chen also failed to comply with the procedural requirements in the notice for objecting to the SA, as they did not include a statement in their written objections attesting that they satisfy the criteria for membership in the settlement class. The Court would overrule their objections on that basis if they had standing to object.

[14] At the final fairness hearing, the Court asked Evan Chan's counsel, Mr. Lindemann, to establish that Evan Chan is a member of the settlement class and has standing to object. Mr. Lindemann's stated that he "believe[d]" that Evan Chan satisfies all criteria for membership in the settlement class but admitted that there is nothing in the record that supports that and he further admitted that he did not know if Evan Chan received the class notice. Mr. Lindemann's unsupported and inconclusive statements are insufficient to satisfy Evan Chan's burden to establish that he has standing to object. *See In re TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 1008 (N.D. Cal. 2015) (holding that the "burden is on [the objector] to prove that he has standing to object") (collecting cases).

Even if the Court had not overruled Evan Chan's objections for the reasons set forth above, the Court would overrule them in any event because they are meritless.[15]

First, Evan Chan argues that "The Settlement Should Not Be Approved Because the Parties Request Approval of a Nationwide Class, even though Only California and New Jersey Classes Were Certified." *See* Docket No. 372 at 5. Gonzalez and Chen advanced the same objection at the preliminary approval stage, and the Court rejected it at that time because the settlement class, like the Rule 23(b)(3) California subclass that the Court certified, is limited to people who purchased relevant policies in California during the relevant time period. *See* Order at 15-16, 32, Docket No. 366. Nevertheless, Evan Chan contends that "there is not an adequate disclosure as to whether a nationwide class is proposed, and that fact should be clarified." Docket No. 372 at 6. The Court disagrees. The definition of the settlement class is clear in the SA, *see* SA § 2.4; in plaintiffs' motion for preliminary approval of the SA, *see* Docket No. 356 at 7, and in the Court's order granting preliminary approval of the SA, *see* Order at 15-16, Docket No. 366. Evan Chan's arguments that the SA involves a nationwide class and that the Court certified a New Jersey class are plainly incorrect and reflect a profound lack of familiarity by their counsel, Mr. Lindemann, with the Court's prior orders, the terms of the SA, and this litigation in general. This objection is overruled.

Second, Evan Chan argues that class members lacked sufficient information about what they were "scheduled to receive" as part of the SA because the formulas for calculating class members' recovery "are confusing and do not inform a class member as to what her net payout will be if she submits a claim." Docket No. 372 at 6-7. Chan contends that, for that reason, class members were not provided with sufficient information to enable them to make informed decisions about whether to file a claim, object, or opt out of the SA. *See id.* Gonzalez and Chen advanced this objection at the preliminary approval stage and the Court rejected it then. *See* Order at 32, Docket No. 366. As discussed at length above, class members were informed via the notice

[15] Gonzalez and Chen advance the same objections as Evan Chan. *See* Docket No. 372. Accordingly, their objections are meritless for the same reasons that Evan Chan's are.

that they could see estimates of their recovery under the SA, as well as the cash surrender value of active policies, on the settlement website or by contacting the Claims Administrator by toll-free number, email, or by mail. The notices also informed class members that they could contact Class Counsel if they had questions about the settlement or their potential recovery under the SA, and that they could view a copy of the SA and other relevant filings on the docket via PACER or on the settlement website. That was more than sufficient to enable class members to make informed decisions as to whether to file a claim, object, or exclude themselves from the SA. *See In re Hyundai*, 926 F.3d at 567-68 (holding that a class notice need not "explain in a step-by-step formula how each class member's benefit is calculated" and that a "settlement notice need not provide an exact forecast of the award each class member would receive, let alone a detailed mathematical breakdown; it merely must give class members enough information so that those with adverse viewpoints could investigate and come forward and be heard") (citation and internal quotation marks omitted). This objection is overruled.

Third, Evan Chan argues that the scope of the release is overbroad because it includes "any possible claims, but must only include those tracked from the complaint." *See* Docket No. 372 at 9. That is incorrect. Class members who did not opt out of the SA will release only claims that they asserted or could have asserted in this action.[16] *See* SA § 2.26. The scope of the release is permissible. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 748 (9th Cir. 2006) ("The weight of authority holds that a federal court may release not only those claims alleged in the complaint, but also a claim based on the identical factual predicate as that underlying the claims in the settled class action . . . . A class settlement may also release factually related claims against parties not named as defendants[.]") (citations and internal quotation marks omitted); *see also Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) ("[W]e have held that federal district

[16] "Released Plaintiffs' Claims" means and includes *any and all Claims that were or could have been included in the Action*, including without limitation Claims relating in any way, directly or indirectly, to: (i) whether PFA or LICS operates as an endless chain, pyramid scheme, or similar legally prohibited structure; (ii) the business or business model of PFA or LICS, (iii) any disclosures or omissions relating to PFA or LICS, and/or (iv) marketing or sale of any Living Life Policies. SA § 2.26 (emphasis supplied).

courts properly released claims not alleged in the underlying complaint where those claims depended on the same set of facts as the claims that gave rise to the settlement."). This objection is overruled.

Fourth, Evan Chan argues that "the proposed settlement is unworkable because the Gonzales Plaintiffs and other class members must be given the option of opting out pursuant to a notice plan, their claims cannot be released, and they will proceed in this Court." Docket No. 372 at 9. It is not clear what this objection is intended to challenge. To the extent that Chan implies that class members were not given "the option of opting out pursuant to a notice plan," the Court overrules the objection because class members did receive the opportunity to opt out; they were given 90 days from the date the Court granted preliminary approval of the SA to do so, and this was clearly stated in the notice that was mailed to class members pursuant to the notice plan that the Court approved. *See* Docket Nos. 364-3, 364-4. This objection is overruled.

Fifth, Evan Chan argues conclusorily and without citing any support that he has "concerns about Mr. Girard's conflicts" and that "Mr. Girard was retained under suspicious circumstances at the behest of undisclosed third parties long after a class action was under way." Docket No. 372 at 10. Mr. Lindemann did not address or expound upon this objection during the final fairness hearing. Because Evan Chan has not substantiated his allegations with respect to Mr. Girard, and because, as discussed above, the Court has found no indication in the record that the SA is the product of collusion or self-dealing by Class Counsel, the Court overrules this objection as unfounded. *See Noll*, 309 F.R.D. at 602 ("An objector to a proposed settlement agreement bears the burden of proving any assertions they raise challenging the reasonableness of a class action settlement.") (citation omitted).

Sixth, Evan Chan contends that "there appears to be an allocation conflict in that some unknown class members have a 'cash value.'" Docket No. 372 at 7. To the extent that Chan contends that the SA treats some class members unfairly because some class members with active policies may have opted not to rescind their policy pursuant to the SA because the cash surrender value of their policy was significant or otherwise exceeded the amount they would recover under the SA, the Court is not persuaded. For the reasons discussed above, the Court finds that the SA

treated those class members fairly by giving them the option to retain policies that they had invested in or otherwise wanted to keep, rather than forcing them to rescind the policies and obtain a payment under the SA. To the extent that any of those class members were dissatisfied with the terms of the SA, they had the opportunity to opt out or object. The fact that no objections were filed by any class member who claimed to have an active policy whose cash surrender value exceeded the class member's estimated payment under the SA supports the Court's finding that the SA is fair and reasonable to all class members.[17]

Seventh, Evan Chan argues in his written objections, in a single sentence and without citing any support, that people "colluding with principals of the defendants" may "submit large claim forms to which they are not entitled." *See* Docket No. 37 at 3. At the final fairness hearing, Mr. Lindemann argued that he had learned that some unidentified people who allegedly should have been excluded from the settlement class may receive a payment under the SA because they submitted claims in which they falsely attested that they satisfy the criteria for class membership.[18] The Court asked Mr. Lindemann for supporting evidence or at least a factual basis for how he knew that this had occurred, such as the names of people who may have filed the improper claims he described. He declined to provide any specifics to the Court. In light of Mr. Lindemann's refusal to substantiate his allegations, the Court overrules this objection as unfounded. As noted, "[a]n objector to a proposed settlement agreement bears the burden of

[17] Evan Chan does not claim to have had an active policy whose cash surrender value exceeded his expected payment under the SA.

[18] As discussed above, defendants argued at the class certification stage that they did not keep records showing which PFA members reached certain positions within PFA and that, for that reason, the California subclass should not be certified because it would not be possible to determine which PFA members should be excluded from the class on the basis that they reached certain positions within PFA. The Court rejected the argument, reasoning that defendants' failure to maintain those records should not impede class certification because class members could certify that they did not reach certain positions within PFA. *See* Order at 37, Docket No. 239. In light of that ruling, the forms for submitting claims under the SA, which the Court approved, required class members to certify that they met the criteria for membership in the settlement class, namely, that they enrolled as a PFA associate between January 1, 2014 and March 17, 2023, paid a $125 fee associated with that enrollment, purchased a relevant policy in California between January 1, 2014 and March 17, 2023, and did not reach certain positions within PFA. *See* Docket Nos. 364-7, 364-8.

proving any assertions they raise challenging the reasonableness of a class action settlement." *Noll*, 309 F.R.D. at 602 (citation omitted). Mr. Lindemann failed to satisfy that burden.[19]

Finally, Evan Chan contends that the SA's "non-monetary agreements . . . that protect class members" have not been described with sufficient specificity as required under Federal Rule of Civil Procedure 65(d) and that it "has not been demonstrated that the injunctive relief or changed practices benefit anybody[.]" *See* Docket No. 372 at 3, 10. To the extent that Chan intends to suggest that the business changes that PFA agreed to implement as part of the SA have not been sufficiently explained, the Court is not persuaded. The business changes that PFA agreed to implement are set forth in Appendix A to the SA, and the notices that the Court approved informed class members that PFA will implement certain business changes as described in the SA and that they could access the SA on the settlement website or by contacting the Claims Administrator at the address or toll-free number provided in the notice. *See* Docket Nos. 364-3, 364-4. In any case, for the purpose of evaluating the fairness and reasonableness of the SA, the Court has not relied on the business changes that PFA will implement as part of the SA or the benefits that such changes may confer on class members. For the reasons set forth above, the Court finds that the SA is fair and reasonable even without taking those business changes into account.

In sum, the objections that were filed are overruled; they do not impact the Court's finding that the SA is fair and reasonable.

3. Letters filed in support of the SA

The Court received three letters in support of granting final approval of the SA, which were written by Mercedes Albana, Alexander P. Albana, and Richard Albana, who appear to be

[19] The Court would overrule this objection for the additional reason that neither Evan Chan nor his counsel, Mr. Lindemann, has shown that the submission of claims by people who should have been excluded from the class would preclude the Court from finding that the SA is fair and reasonable. The SA did not create a settlement fund; as discussed at length above, each class member's recovery under the SA is based on formulas that take into account each class member's individual circumstances. Thus, even if it were the case that some people who are not class members submitted claims, that would not reduce or otherwise impact the recovery of actual class members who submitted valid claims.

members of the same family. *See* Docket Nos. 379, 380, 381. None of the letters contains a statement establishing that the authors are members of the class. Each of the authors requests that the Court approve the SA so that he or she can "recover some of [his or her] losses," which suggests that the authors could be members of the class and filed claims. *See id.* Although it is not clear that the letters were written by class members, the Court finds that the letters further support granting final approval of the SA.

E. Class Counsel's Motion for Attorneys' Fees, Costs, and a Service Award

Plaintiffs move for an award of attorneys' fees and costs for Class Counsel, and for a service award of $10,000 for class representative Dalton Chen. Docket No. 367. Gonzalez, Chen, and Chan oppose the motion for fees and costs. Docket No. 372.

1. Fees

In a certified class action, a court "may award reasonable attorney' fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). "[C]ourts have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." *In re Bluetooth*, 654 F.3d at 941.

Plaintiffs request a fee award not to exceed $6,000,000 pursuant to the terms of the SA. Plaintiffs argue that the lodestar method is the appropriate method for determining whether the agreed-upon $6,000,000 in fees is reasonable.

Because the claims in this litigation arise under California law and the Court is exercising diversity jurisdiction over those claims, California law governs fee requests in this litigation. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). The Court, therefore, looks to California law to evaluate the reasonableness of Class Counsel's fee request. Under California law, "the determination of what constitutes a 'reasonable fee' begins with the lodestar-the number of hours reasonably expended multiplied by a reasonable hourly rate." *Mannick v. Kaiser Found. Health Plan, Inc.*, No. C 03-5905 PJH, 2007 WL 2892647, at *6 (N.D. Cal. Sept. 28, 2007) (quoting *PLCM Group, Inc. v. Drexler*, 22 Cal.4th 1084, 1095 (2000)). "The lodestar is considered the basic fee for comparable services in the legal community, and it may be adjusted by the court based on several factors including the novelty and difficulty of the questions

involved, the skill displayed in presenting them, the extent to which the nature of the litigation prevented other employment by the attorneys, and the contingent nature of the fee award." *Id.* (citing *Ketchum v. Moses*, 24 Cal .4th 1122, 1132 (2001)).

Here, the requested $6,000,000 is the maximum that plaintiffs can seek under the SA. The requested fees correspond to a multiplier of 0.82 given that Class Counsel's lodestar is $7,338,869.00. *See* Girard Decl. ¶ 121 & Ex. B. The lodestar is the product of 10,069.30 hours at rates that range from $225 to $300 per hour for litigation assistants; $400 to $850 per hour for associates; and $975 to $1,195 per hour for partners. *See* Girard Decl. ¶ 121 & Ex. B.

The Court has reviewed Class Counsel's submissions and finds that the fees requested were reasonably incurred on tasks that advanced the prosecution of this action, including depositions, document review, other discovery, class certification briefing and argument, appellate work in connection with the Court's certification order, expert work, and dispositive motions. *See* Girard Decl. ¶¶ 3-128, Docket No. 367-1. The Court further finds that the billing rates used by Class Counsel to calculate their lodestar are commensurate with their experience and in line with prevailing rates in this district for personnel of comparable experience, skill, and reputation. *See Fleming v. Impax Lab'ys Inc.*, No. 16-CV-06557-HSG, 2022 WL 2789496, at *9 (N.D. Cal. July 15, 2022) (finding rates ranging from $760 to $1,325 for partners, $895 to $1,150 for counsel, and $175 to $520 for associates to be reasonable); *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL 1047834, at *5 (N.D. Cal. March 17, 2017) (finding rates ranging from $275 to $1,600 for partners, $150 to $790 for associates, and $80 to $490 for paralegals to be reasonable). The Court further finds that the requested fees are appropriate given that Class Counsel represented the class with skill and diligence over the course of several years and achieved remarkable success on behalf of the class, as is evidenced by the fact that plaintiffs achieved certification of the California subclass and largely defeated defendants' motions for summary judgment despite the relative novelty of their theory of liability, which applies the Endless Chain Scheme Law in the context of insurance products. *See In re Hyundai*, 926 F.3d at 571 (holding that the "district court, which had ably managed this complex litigation for several years and observed various counsel's performance during numerous hearings and

through extensive briefing, was in the best position to evaluate each firm's contributions" in the context of determining the appropriate amount of fees to award in connection with a class action settlement). Because of the foregoing, as well as the fact that Class Counsel request only 82% of the fees they reasonably incurred, the Court finds that the fee request of $6,000,000 is fair and reasonable.

Gonzalez, Chen, and Chan object to plaintiffs' motion for fees. Docket No. 372. As discussed above, however, Gonzalez and Chen excluded themselves from the SA, and Evan Chan has not established that he is a member of the settlement class. Because Gonzalez, Chen, and Chan have not shown that they will be impacted by any fee award that the Court awards to Class Counsel, they do not have standing to object to the fee request at issue. *See Glasser v. Volkswagen of Am., Inc.*, 645 F.3d 1084, 1088 (9th Cir. 2011) (holding that only class members who are "aggrieved" by a fee award have standing to object to it) (citation and internal quotation marks omitted). The Court overrules their objections on that basis.

The Court would overrule their objections in any case because they are not well-taken. First, Gonzalez, Chen, and Chan argue that "the percentage-of-recovery must be based on the net fund" and that the Court should, therefore, deduct Class Counsel's requested costs from the fund for the class before determining whether Class Counsel's requested fees amount to a reasonable percentage of the fund for the class. *See* Docket No. 372 at 3-4. This argument is misplaced because class members' recovery under the SA is not based on any fund and the percentage-of-the-fund method for calculating reasonable fees is inapplicable.

Second, they argue that the Court should not award the requested fees because Class Counsel have not clarified how the SA benefits the class and class members, therefore, lacked enough information to make informed decisions about whether to file a claim, object, or opt out. *See* Docket No. 372 at 4. This argument fails for the reasons discussed above. The notices, claim forms, and settlement website that the Court approved contained sufficient information to enable class members to make informed decisions about whether to file a claim, opt out, object, or investigate further before the deadline for submitting claims or requests for exclusion.

In light of the foregoing, the Court grants plaintiffs' request for $6,000,000 in fees.

2. Costs

Class Counsel may seek reimbursement of reasonable out-of-pocket expenses. Fed. R. Civ. P. 23(h); *see Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (holding that attorneys may recover reasonable expenses that would typically be billed to paying clients in non-contingency matters). Costs compensable under Rule 23(h) include "nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h).

Here, plaintiffs seek reimbursement for Class Counsel's expenses in the amount of $371,000, which is the maximum allowed under the SA. Class Counsel declared that their expenses to date total $432,931.70 and therefore exceed the amount requested. Girard Decl. ¶¶ 129-30, Docket No. 367-1.

The Court has reviewed Class Counsel's submissions and finds that the costs they incurred are of the type that attorneys working on a non-contingency basis bill to paying clients. Those costs were incurred on travel expenses, research, court filing fees, transcripts and court reporters, mediation expenses, experts, and document review expenses. *See id.* & Ex. C, Docket No. 367-4. Accordingly, the Court finds that an award of $371,000 in costs is reasonable and fair.

Gonzalez, Chen, and Chan object to the motion for costs for the same reasons that they object to plaintiffs' motion for fees. Docket No. 372. The Court overrules those objections for the same reasons that it overruled Gonzalez, Chen, and Chan's objections to plaintiffs' fee request.

The Court grants plaintiffs' motion for $371,000 in costs.

3. Service award

Service awards "are discretionary . . . and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-959 (9th Cir. 2009). The Ninth Circuit has emphasized that district courts must "scrutiniz[e] all incentive awards to determine whether they destroy the adequacy of the class representatives." *Radcliffe v. Experian Info. Solutions*, 715 F.3d 1157, 1163 (9th Cir. 2013).

Plaintiffs move for a $10,000 service award for named plaintiff and class representative Dalton Chen, which is the maximum permitted under the SA. The record shows that Dalton Chen contributed significantly to the prosecution of this action; he assisted with the drafting of the operative consolidated complaint, gathered documents, assisted with discovery, prepared for and testified at two depositions, and prepared to testify at trial. *See* Chen Decl. ¶¶ 3-7, Docket No. 367-6. Accordingly, the Court finds that a service award to Dalton Chen of $10,000 is fair and reasonable.

The Court grants plaintiffs' motion for a $10,000 service award for Dalton Chen.

F. Gonzalez and Chen's Motion for Fees and Service Awards

Gonzalez and Chen move for (1) an award of fees of $1,422,207.50; (2) a "multiplier/enhancement of 1.5 totaling $711,103.75" under California Code of Civil Procedure 1021.5, to be awarded in addition to the $1,422,207.50 they seek in fees; and (3) a service award for each Gonzalez and Chen of $10,000. Docket No. 368. They contend that they and their counsel, Mr. Lindemann, are entitled to "compensation for their years of hard, effective work investigating and advancing these important claims past a motion to compel arbitration and motion to transfer creating that drove this settlement [sic]." *Id.* at 3. Gonzalez and Chen contend that their requested fees are warranted under (1) the federal "common fund doctrine" and the equitable principles upon which it is based; (2) under California fee-shifting statutes; and (3) based on an "agreement" to divide fees that Gonzalez and Chen allege existed between their counsel, Mr. Lindemann, and Class Counsel. Gonzalez and Chen contend that they "are not seeking compensation in excess of what class counsel seeks as fees and costs, but rather are simply seeking their fair share of the attorneys' fees and costs approved by the Court." Docket No. 368 at 9. In other words, Gonzalez and Chen appear to contend that the fees and service awards they request should be paid out of any fees that the Court awards to Class Counsel pursuant to the SA.

Plaintiffs oppose the motion, arguing that Gonzalez, Chen, and Mr. Lindemann provided no significant benefit to the class and are, therefore, not entitled to fees or service awards. Docket No. 371. Plaintiffs contend that the catalyst for the SA and the class's recovery in connection thereto was the product of the work of Class Counsel alone, which included preparing and filing

the operative consolidated complaint, obtaining discovery, obtaining class certification, overcoming summary judgment, preparing the case for trial, and negotiating the SA. *See id.* at 7. Class Counsel declared that (1) Girard Sharp LLP never reached any agreement, explicit or implicit, with Mr. Lindemann to share legal work or fees in this case, Girard Decl. ¶ 23, Docket No. 371-1; (2) after the Court appointed Girard Sharp LLP as interim class counsel, Class Counsel invited Mr. Lindemann to include Gonzalez and Chen in the operative consolidated complaint, and he declined to do so, *id.* ¶ 28; (3) in preparing the operative consolidated complaint, Class Counsel did not rely on any investigative work or other work product of Mr. Lindemann; (4) after their appointment as interim lead counsel, Class Counsel did not assign any work to Mr. Lindemann or authorize any expenditure of time by him in connection with this litigation, *id.* ¶ 29; (5) Class Counsel are not aware of any legal services that Mr. Lindemann provided for plaintiffs after consolidation, *id.* ¶ 31; and (6) Mr. Lindemann did not participate in negotiating or documenting the SA, *see id.* ¶ 29.

Defendants oppose the motion only to the extent that Gonzalez and Chen's request for fees and service awards would require them to pay an amount in excess of the $6,371,000 limit for attorneys' fees and costs set forth in the SA. Docket No. 370.

1. Fees

The Court first turns to the question of whether Gonzalez and Chen have shown that they can recover the fees they request under any of the theories they advance.

As a threshold matter, the Court must determine whether any of the fees sought by Gonzalez and Chen were incurred by Mr. Lindemann after the Court appointed Girard Sharp LLP as interim class counsel; if they were so incurred, then Mr. Lindemann was required by the Court's order of April 16, 2020, to obtain authorization from Girard Sharp LLP before performing any such work. *See* Docket No. 134. That order provides that Girard Sharp LLP has sole authority to prosecute the action and to assign work to any additional plaintiffs' counsel. *See id.* Class Counsel declared, and Mr. Lindemann does not dispute, that Mr. Lindemann did not obtain authorization from Class Counsel to perform any work on behalf of plaintiffs in this litigation after the Court's appointment of Girard Sharp LLP as interim class counsel. Girard Decl. ¶¶ 29-31,

Docket No. 371-1. Accordingly, to the extent that Gonzalez and Chen seek fees for work performed after the Court's appointment of Girard Sharp LLP as interim class counsel on April 16, 2020, the Court denies the request for failure to comply with the Court's order appointing interim class counsel. *See Ferrick v. Spotify USA Inc.*, No. 16-CV-8412 (AJN), 2018 WL 2324076, at *11 (S.D.N.Y. May 22, 2018) ("Fees incurred by non-lead counsel after the appointment of lead counsel are not compensable."). Additionally, for the purpose of determining whether Mr. Lindemann's litigation activities benefitted the class, the Court will not consider any unsanctioned work that Mr. Lindemann or his firm may have performed after April 16, 2020, in violation of the Court's April 16, 2020, order.

Below, the Court examines whether Gonzalez and Chen have shown that they can recover fees for work performed before April 16, 2020.

First, Gonzalez and Chen argue that they can recover such fees under the "common fund doctrine" as described in *Rodriguez v. Disner*, 688 F.3d 645, 653 (9th Cir. 2012) ("*Rodriguez*") (citation omitted). That doctrine, which is a "traditional equitable doctrine rooted in concepts of quasi-contract and restitution," permits a court to award fees where "there is no contractual or statutory basis to award attorneys' fees in a class action case[.]" *See id.* (citation and internal quotation marks omitted). "Under the common fund doctrine, a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Id.* (citation and internal quotation marks omitted).

The common fund doctrine has no application here. As noted above, fee requests in this action are governed by California law, not federal law. The common fund doctrine described in *Rodriguez* applies where the fee request is governed by federal law. *See id.* at 653 & n.6 (holding that "[f]ederal courts award attorneys' fees under the common fund doctrine as a matter of federal common law, based on the historic equity jurisdiction of the federal courts" and noting that, "[b]ecause the litigation in this case alleged violation of federal antitrust law, the award of attorneys' fees is governed by federal equitable doctrines") (citations and internal quotation marks omitted). Additionally, the common fund doctrine can be used to award fees only where a common fund was created. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051-52 (9th Cir.

2002) ("The equitable common fund/common benefit doctrine authorizes attorney fees only when the litigants preserve or create a common fund for the benefit of others as well as themselves.") (citation and internal quotation marks omitted). Here, no common fund was created by the SA, and no common fund was created as a result of the *Chen* action or Mr. Lindemann's litigation activities. Accordingly, Gonzalez and Chen's request for fees pursuant to the common fund doctrine fails.

Even if that doctrine applied here, the Court would nevertheless deny Gonzalez and Chen's request for fees because they have not shown that the litigation activities of their counsel prior to consolidation in April 2020 meaningfully benefited the class, which is the underlying equitable rationale and essential requirement for recovering fees under the common fund doctrine. *See Rodriguez*, 688 F.3d at 653-54. Gonzalez and Chen argue that their counsel's filing of the complaint in the *Chen* action and their opposition of defendants' motions to compel arbitration and to transfer venue in the *Chen* action conferred a substantial benefit to the class and "drove" the SA because there "were no rulings of substance after the Order denying the motion to compel arbitration."[20] *See* Docket No. 383 at 3-5.

The Court disagrees. When counsel for Gonzalez and Chen performed the pre-consolidation activities to which they point, the operative consolidated complaint had not yet been filed and no class had been certified. Thus, those pre-consolidation activities benefitted the individual claims of Gonzalez and Chen, not the California subclass that the Court certified more than a year later based on the work of Class Counsel. The Court credits Class Counsel's

[20] Gonzalez and Chen also argue, in passing, that the filing of the *Chen* action benefited the class because it preserved the statute of limitations given that the *Chen* action was filed a year before the *Wang* action. *See* Docket No. 368 at 5; Docket No. 383 at 5. However, as plaintiffs correctly argue in their opposition to Gonzalez and Chen's motion, at least one court in this circuit has held that preserving the statute of limitations is "not sufficient to merit compensation" under the common fund doctrine. *See In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *25 (C.D. Cal. June 10, 2005) ("Although MMK's filing of the complaint in the State Court Action effectively preserved the statute of limitations . . . such an act by MMK is not viewed as sufficient to merit compensation."). Gonzalez and Chen have not distinguished *In re Heritage*. In light of *In re Heritage*, which is persuasive authority, the Court finds that the filing of the *Chen* action and the impact that that had on the statute of limitations in the consolidated litigation is not sufficient, without more, to warrant awarding Gonzalez and Chen any of the fees they seek.

declaration that neither the complaint they filed in the *Wang* action nor the operative consolidated complaint they filed in this litigation after consolidation relied on work performed by Mr. Lindemann. *See* Girard Decl. ¶¶ 7, 9, 29, Docket No. 371-1. The SA confers significant benefits to the class, as discussed at length above, but counsel for Gonzalez and Chen did not participate in the settlement negotiations or in crafting the terms of the SA. *See* Girard Decl. ¶ 29, Docket No. 371-1. Further, contrary to Gonzalez and Chen's contention, the Court issued *multiple* substantive rulings in the consolidated action after denying the arbitration motions in the *Chen* action, including its order granting in part plaintiffs' motion for class certification and order largely denying defendants' motions for summary judgment. The Court's summary judgment ruling, which was issued about two years after Class Counsel was charged with the exclusive authority to prosecute this action, immediately preceded the August 2022 mediation and subsequent settlement discussions that culminated in the SA. Thus, if any motion practice was the catalyst or driver for the SA, it appears that it was the summary judgment motion work of Class Counsel, not the motion practice of Mr. Lindemann more than two years earlier in connection with the *Chen* action. The Court, therefore, finds that Gonzalez and Chen have not shown that the litigation activities that Mr. Lindemann performed in connection with the *Chen* action prior to consolidation conferred a meaningful benefit to the class. Accordingly, Gonzalez and Chen's request for fees under the common fund doctrine and the equitable principles that underlie it is not well-taken. *See Class Plaintiffs v. Jaffe & Schlesinge*r, P.A., 19 F.3d 1306, 1309 (9th Cir. 1994) (affirming district court's denial of fees request by counsel who did not represent the class, reasoning that "[w]e know of no authority which mandates an award of fees to attorneys not formally representing the class, whose activities in representing others incidentally benefit the class").

Second, relying on *Rodriguez*, 688 F.3d at 658, Gonzalez and Chen argue that they are entitled to the fees they seek because they conferred a substantial benefit on class members by filing objections to plaintiffs' motion for preliminary approval of the SA. In *Rodriguez*, the Ninth Circuit held that, "[u]nder certain circumstances, attorneys for objectors may be entitled to attorneys' fees *from the fund created by class action litigation*," such as where the objections

"increase the fund or otherwise substantially benefit the class members[.]" *Id.* at 658-59 (citations and internal quotation marks omitted, emphasis supplied). That doctrine has no application here because, as discussed above, no fund was created by the SA.[21]

Even if that doctrine applied here despite the absence of a fund, the Court would nevertheless deny the fee request at issue because the objections that Gonzalez and Chen filed conferred no substantial benefit to the class. The Court rejected Gonzalez and Chen's objections at the preliminary approval stage because they were premised on an erroneous understanding of the scope of the litigation, the terms of the SA, and other matters; for example, Gonzalez and Chen incorrectly argued that the SA impacts a nationwide class. *See* Order at 31-34, Docket No. 366. While the Court ordered plaintiffs on May 1, 2023, to clarify certain terms of the SA and to make certain changes to the claim forms and notices prior to granting preliminary approval of the SA, *see* Docket No. 361, that order was based on the Court's own independent review and analysis of the SA, notices, claim forms, and relevant case law, not on Gonzalez and Chen's objections.[22] Further, as noted above, Gonzalez and Chen opted out of the settlement and their objections to the present motion for final approval have been overruled for lack of standing. Because Gonzalez and Chen's objections have not substantially benefitted the class, the Court declines to award Gonzalez and Chen fees in connection with those objections. *See Rodriguez*, 688 F.3d at 658-59; *see also Vizcaino*, 290 F.3d at 1051 (affirming denial of fees to objectors on the ground that they "did not

[21] Aside from *Rodriguez*, the other cases that Gonzalez and Chen rely upon to argue that they can recover fees because their objections benefitted the class also involved settlements that created a fund. *See, e.g.*, *In re Optical Disk Drive Prod. Antitrust Litig.*, No. 10-MD-02143-RS, 2021 WL 4124159, at *1 (N.D. Cal. Sept. 9, 2021) (evaluating objector's fee request in the context of settlement that created a fund out of which class members would receive payments); *In re Easysaver Rewards Litig.*, No. 09-CV-02094-BAS-WVG, 2021 WL 230013, at *1 (S.D. Cal. Jan. 22, 2021) (same). Those authorities, like *Rodriguez*, are inapposite because no fund was created here.

[22] The Court's order of May 1, 2023, also ordered plaintiffs to respond to Gonzalez and Chen's allegations that, in 2018 or 2019, PFA had reported being close to insolvency. *See* Order at 11, Docket No. 361. Plaintiffs responded that they knew of no basis to posit that PFA and LSW, which are jointly liable for the settlement payments, are in any danger of insolvency. *See* Docket No. 364 at 24. Accordingly, the Court overruled Gonzalez and Chen's objections to the extent that they were premised on defendants' alleged insolvency. Because Gonzalez and Chen's allegations of defendants' purported insolvency were not confirmed as true, they do not merit an award of fees.

increase the fund or otherwise substantially benefit the class members" and reasoning that, "[i]n the absence of a showing that objectors substantially enhanced the benefits to the class under the settlement, as a matter of law they were not entitled to fees, and the district court did not abuse its discretion").

Third, Gonzalez and Chen contend that they can recover the fees and the 1.5 multiplier they request under California Civil Procedure Code section 1021.5. That statute provides:

> Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.

Cal. Code Civ. P. § 1021.5. Gonzalez and Chen argue that they satisfy the requirements for recovering fees under section 1021.5 because (1) their litigation activities in the *Chen* action prior to consolidation, discussed above, "helped secure relief" for the class, Docket No. 368 at 8; (2) private enforcement was necessary because no government entity pursued the claims in the *Chen* action; and (3) they worked on a contingency basis "over many years." Docket No. 368 at 9.[23]

Gonzalez and Chen's request does not satisfy at least one of the requirements for recovering fees under section 1021.5, namely the requirement that the actions of the "successful party" have conferred "a significant benefit, whether pecuniary or nonpecuniary," on "the general

[23] In their reply only, Gonzalez and Chen argue that their pre-consolidation litigation activities in the *Chen* action entitle them to fees under section 1021.5 because they served as a "catalyst" for defendants' "changed behavior." Docket No. 383 at 7. However, "[i]n order to be eligible for attorney fees under section 1021.5 [under the catalyst theory], a plaintiff must not only be a catalyst to defendant's changed behavior, but the lawsuit must have some merit . . . and the plaintiff must have engaged in a reasonable attempt to settle its dispute with the defendant prior to litigation." *See Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 560-61 (2004), *as modified* (Jan. 12, 2005). Here, Gonzalez and Chen have not shown that their counsel's pre-consolidation activities led to any changed behavior by defendants that was sought in the *Chen* action or in this consolidated action, nor have they shown that their counsel ever engaged in settlement negotiations with defendants. Thus, Gonzalez and Chen's attempt to invoke the "catalyst theory" to recover fees under section 1021.5 fails.

public or a large class of persons." *See* Cal. Code Civ. P. § 1021.5(a). As discussed above, Gonzalez and Chen have not shown that the litigation activities that their counsel conducted prior to consolidation conferred a significant benefit on the class. The Court's orders denying the motions to compel arbitration and to transfer venue in the *Chen* action benefitted Gonzalez and Chen individually as named plaintiffs in the *Chen* action but they did not confer a "significant benefit" on "the general public or a large class of persons," as section 1021.5 requires. That is because those rulings did not result in any actual relief from defendants, such as changes in the marketing scheme at issue in this litigation or other conduct that impacted class members. *See Graham*, 34 Cal. 4th at 571 (holding that a "successful party" under section 1021.5 is a party that "achieve[s] actual relief from an opponent"); *In re Taco Bell Wage & Hour Actions*, 222 F. Supp. 3d 813, 825 (E.D. Cal. 2016) (finding that the filing of a lawsuit "conferred a significant benefit on a large class of persons" in part because "within several months of th[e] lawsuit being filed Taco Bell changed its autopay policy . . . to comply with California law"). The SA achieved significant benefits for the class but, as discussed above, but Gonzalez and Chen's counsel played no role in the negotiations and execution of that agreement. S*ee* Girard Decl. ¶ 22, Docket No. 356-1. Gonzalez and Chen have cited no authority showing that any court has awarded section 1021.5 fees under circumstances similar to those here; the authorities they cite are distinguishable.[24] Accordingly, the Court denies Gonzalez and Chen's motion for fees and a multiplier under section 1021.5.

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[24] In *Gong-Chun v. Aetna Inc.*, No. 1:09-CV-01995-SKO, 2012 WL 2872788, at *19 (E.D. Cal. July 12, 2012), the court awarded fees under section 1021.5 to class counsel because they negotiated and executed a settlement agreement pursuant to which members of the class received compensation. Here, Mr. Lindemann is not class counsel and he did not participate in the negotiations or execution of the SA.

In *Kumar v. Salov N. Am. Corp*., No. 14-CV-2411-YGR, 2017 WL 2902898, at *5 (N.D. Cal. July 7, 2017), *aff'd*, 737 F. App'x 341 (9th Cir. 2018), the Court awarded section 1021.5 fees to class counsel because they negotiated a settlement that required the defendant to keep product label changes that it had made after the action was filed but prior to the settlement. Here, Mr. Lindemann does not represent the class and his pre-consolidation activities in the *Chen* action did not result in any changes to defendants' conduct or in the terms of the SA.

In *People v. Investco Mgmt. & Dev. LLC*, 22 Cal. App. 5th 443, 454-55 (2018), the California Court of Appeal affirmed an award of fees under section 1021.5 to intervenors who successfully moved to challenge potential modifications to a stipulated interlocutory judgment on the ground that the intervenors' successful motion directly benefitted hundreds of investors and

Fourth, Gonzalez and Chen contend that they can recover the fees they seek because they were the "prevailing party" under the Endless Chain Scheme Law's fee-shifting statute, namely California Civil Code section 1689.2. That statute permits a court to award reasonable attorneys' fees to the prevailing plaintiff. *See* Cal. Civ. Code § 1689.2. The Endless Chain Scheme Law served as the predicate for the UCL claim that the Court certified in this action. However, Gonzalez and Chen have not cited any authority showing that the Court may award fees pursuant to a statute that served as the predicate for a UCL claim. The UCL does not authorize an award of fees, even if another statute that serves as its predicate contains a fee-shifting provision. *See People ex rel. City of Santa Monica v. Gabriel*, 186 Cal. App. 4th 882, 891 (2010) ("Here, plaintiff sued only under the UCL. The UCL does not authorize an award of attorney fees. No exception exists for UCL actions predicated on a statute that authorizes such an award."). Moreover, Gonzalez and Chen have not shown that they were the "prevailing party" under section 1689.2 in any case. Accordingly, the Court declines to award them fees under section 1689.2.

Finally, Gonzalez and Chen contend that they can recover the fees they seek because their counsel, Mr. Lindemann, allegedly entered into an agreement with Class Counsel "for a division of fees." Docket No 368 at 10. As evidence of that purported agreement, Mr. Lindemann filed an email sent by Class Counsel Adam Polk to Mr. Lindemann on February 17, 2020, which attached a "redline" of a "JPA under consideration" and states, while referring to the attached JPA, that "[t]his also memorializes that the firms' approximate lodestars are at present $725,000 for LLF

"the public generally." *See id.* Here, Gonzalez and Chen's pre-consolidation activities in the *Chen* action did not confer a meaningful benefit on class members or the public generally.

In *Conservatorship of Whitley*, 50 Cal. 4th 1206, 1226, 241 P.3d 840, 854 (2010), the California Court of Appeal addressed the question of what a plaintiff must show to establish the "necessity and financial burden requirement" of section 1021.5. Here, the Court has found that Gonzalez and Chen's motion for fees fails because they have not shown that they meet the "substantial benefit on the general public or a large class of persons" requirement of section 1021.5. *Whitley* is, therefore, inapposite.

In *Gibson v. Chrysler Corp.*, 261 F.3d 927, 943 (9th Cir. 2001), the Ninth Circuit held that, for the purpose of determining whether the amount-in-controversy requirement for removal of a class action to federal court on diversity grounds is satisfied, a potential award of attorneys' fees under section 1021.5 cannot be allocated solely to the named plaintiffs (to the exclusion of unnamed class members). Here, the Court's exercise of diversity jurisdiction is not disputed. *Gibson* is inapposite.

and $820,000 for GS." *See* Docket No. 383-1. Adam Polk's email further states, "Assuming the attached is acceptable for you, please accept the changes, sign, and return to me. Dan or I will then finalize and return a fully executed version." *See id.* There is no evidence in the record that Mr. Lindemann ever responded to Mr. Polk's email. Gonzalez and Chen nevertheless contend that this email gives Mr. Lindemann "a right in quantum meruit and contractual basis for a division of fees." Docket No 368 at 10.

Plaintiffs argue that no agreement between Class Counsel and Mr. Lindemann was ever made with respect to the allocation of attorneys' fees or any other aspect of this litigation. Class Counsel declared that (1) they sent Mr. Lindemann a draft joint prosecution agreement ("JPA") on March 12, 2019, soon after Class Counsel filed the initial complaint in the *Wang* action, and Mr. Lindemann rejected the proposal the next day, Girard Decl. ¶¶ 10-11, Docket No. 371-1; (2) Mr. Lindemann returned an edited version of the draft JPA to Class Counsel months later, on January 7, 2020, and Class Counsel sent him a counterproposal two days thereafter, on January 9, 2020, and Mr. Lindemann rejected it the same day, *id*. ¶ 20; (3) thereafter, Class Counsel attempted to agree on terms for a JPA with Mr. Lindemann and, in the course of those discussions, Mr. Lindemann and Class Counsel exchanged lodestars in February 2020 but that exchange neither reflects, nor resulted in, any agreement between Class Counsel and Mr. Lindemann, *id.* ¶¶ 22-23.

The Court finds that Gonzalez and Chen have not shown that they can recover fees based on the February 17, 2020, email or any purported agreement between Mr. Lindemann and Class Counsel. The email does not reflect that any agreement between Class Counsel and Mr. Lindeman was ever formed, with respect to the division of fees or otherwise. The email does not indicate that Mr. Lindeman ever responded to the email and accepted the draft JPA that was attached to it. Mr. Polk's statement in the email that the attached JPA "memorializes" each law firm's lodestar through the date of the email does not indicate that he and Mr. Lindemann agreed as to a "division of fees." Notably, Gonzalez and Chen have not described what the terms of the purported agreement for the division of fees were, such as which fees would be divided, how they would be divided, and when.

The only case that Gonzalez and Chen cite for the proposition that the Court may infer the existence of an agreement "for a division of fees" based on the "memorialization" of the lodestars described above is *Tiffany Builders, LLC v. Delrahim*, 97 Cal. App. 5th 536 (2023). That case is distinguishable. There, the California Court of Appeal held that a "two-page hand-written document" that set forth the basic terms of an agreement and contained the signatures of each of the parties to the agreement was sufficiently definite to be enforceable, because the terms of the agreement that were left unspecified in the written and signed document could be supplemented with extrinsic evidence. *See id.* at 587. The Court of Appeal reasoned: "When people pen their names to a document they have drafted together, the law accords their act a potent meaning. Delrahim and Rostamian signed their joint creation, thereby enacting a ritual signifying commitment: an exchange of promises." *See id.* at 588. Here, Gonzalez and Chen have pointed to no signed document that reflects an exchange of promises between Class Counsel and Mr. Lindemann.

Gonzalez and Chen also cite California Rule of Professional Conduct 1.5.1(b) for the proposition that "no formal signed document was required to effectuate" the purported agreement between Mr. Lindemann and Class Counsel "for a division of fees." *See* Docket No. 368 at 10. That argument is unavailing. Rule 1.5.1(a) provides, in relevant part, that lawyers "who are not in the same law firm shall not divide a fee for legal services unless" three conditions are met: (1) the lawyers enter into a written agreement to divide the fee; (2) the client has consented in writing; and (3) the total fee charged by all lawyers is not increased solely by reason of dividing the fees. *See* Cal. R. Prof. Conduct 1.5.1(a). Rule 1.5.1(b), which is the subsection that Gonzalez and Chen cite, provides that Rule 1.5.1 does not apply to "a division of fees pursuant to court order." *See* Cal. R. Prof. Conduct 1.5.1(b). Here, Gonzalez and Chen have not pointed to any court order regarding the division of fees. Accordingly, the requirements of Rule 1.5.1(a) would apply to any agreement between Mr. Lindemann and Class Counsel to divide fees. Gonzalez and Chen have not pointed to any written agreement that satisfies the requirements of Rule 1.5.1(a).

For the foregoing reasons, the Court denies Gonzalez and Chen's request for fees.

2. Service awards

Gonzalez and Chen argue that they are entitled to service awards of $10,000 each because they have spent "many hours and years of their lives" on tasks related to this litigation. Docket No. 368 at 10.

Plaintiffs oppose the request, arguing that Gonzalez and Chen are not entitled to service awards because they are not class representatives, have never been deposed, and never participated in or contributed to the consolidated litigation as named plaintiffs or class members. *See* Docket No. 371 at 11-12. In their reply, Gonzalez and Chen do not respond to plaintiffs' arguments. *See generally* Docket No. 383.

As discussed above, service awards "are discretionary . . . and are intended to compensate *class representatives* for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez*, 563 F.3d at 958-959 (emphasis supplied). Gonzalez and Chen are not class representatives and did not do work "on behalf of the class," given that their involvement in this litigation was limited to the prosecution of their own individual claims in the *Chen* action and that they did not assist in the prosecution of the consolidated complaint. Accordingly, Gonzalez and Chen's request for service awards is not well-taken.

Gonzalez and Chen have not cited any authority that compels a different conclusion. The authorities that Gonzalez and Chen cite to support their request for service awards are distinguishable. There, service awards were granted to people who were not class representatives because the settlement agreement that the court approved specifically provided for those awards, or because the recipients engaged in activities on behalf or for the benefit of the class. *See Coates v. Farmers Grp., Inc.*, No. 15-CV-01913-LHK, 2016 WL 5791413, at *2 (N.D. Cal. Sept. 30, 2016) (approving awards to opt-in plaintiffs and ordering that awards be paid "as provided in the Settlement Agreement"); *Wellens v. Sankyo*, No. C 13-00581 WHO (DMR), 2016 WL 8115715, at *4 (N.D. Cal. Feb. 11, 2016) (approving awards to opt-in class members because their efforts resulted in a "substantial benefit" to the class); *Vedachalam v. Tata Consultancy Servs.*, Ltd, No. C 06-0963 CW, 2013 WL 3929129, at *2 (N.D. Cal. July 18, 2013) (approving awards to

"testifying declarants" given "their efforts on behalf of the class"). Here, the SA does not provide for service awards for Gonzalez or Chen and, as noted, their litigation-related work was for their own individual claims in the *Chen* action, not for the class.

Accordingly, the Court denies Gonzalez and Chen's request for service awards.

IV. CONCLUSION

For the reasons set forth above, the Court **GRANTS** plaintiffs' motion for final approval of the settlement agreement and certification of the settlement class. The Court finds that the settlement agreement is fair, adequate, and reasonable. The appointments of class representative Dalton Chen, Class Counsel Girard Sharp LLP, and Epiq Class Action & Claims Solutions, Inc. as the Claims Administrator, are confirmed. Plaintiffs' motion for attorneys' fees, costs, and a service award for Dalton Chen is also **GRANTED**. Gonzalez and Chen's motion for fees and service awards is **DENIED**.

It is hereby ordered that final judgment is **GRANTED** in accordance with the terms of the SA, the order granting preliminary approval of the SA issued on July 21, 2023, and this order. This document will constitute a final judgment (and a separate document constituting the judgment) for purposes of Rule 58, Federal Rules of Civil Procedure.

The parties shall file a post-distribution accounting in accordance with this District's Procedural Guidance for Class Action Settlements by July 26, 2024. The Court **SETS** a compliance deadline on August 2, 2024, on the Court's 9:01 a.m. calendar to verify timely filing of the post-distribution accounting.

Plaintiffs shall file a list of the 142 opt outs on the docket within seven days of the date this order is filed.

IT IS SO ORDERED.

Dated: February 5, 2024

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE