

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-9198 JVS (JDEx) Date February 22, 2021

Title Joyce Walker et al. v. Life Insurance Company of the Southwest

Present: The Honorable **James V. Selna, U.S. District Court Judge**

Lisa Bredahl

Not Present

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: [IN CHAMBERS] Order Regarding Motion for Preliminary Approval of Class Settlement

Before the Court is Plaintiffs Joyce Walker, Kim Bruce Howlett, Muriel Spooner, Taline Bedelian, and Oscar Guevara’s (collectively - “Plaintiffs”) motion for preliminary approval of the class settlement they have reached with Defendant Life Insurance Company of the Southwest (“LICS”). Mot., ECF No. 1094, LICS does not oppose.

For the following reasons, the Court **GRANTS** preliminary approval of the proposed settlement, directs dissemination of notice to the Class pursuant to the proposed notice plan, and appoints Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator for the dissemination of notice.

I. BACKGROUND

A. Allegations and Procedural History

The general background of this dispute is well-known to the parties and to the Court. Plaintiffs represent a class of purchasers of indexed universal life insurance policies issued by LICS. Fourth Amended Complaint (“FAC”), ECF No. 947, ¶ 1. Generally, Plaintiffs allege claims under California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, that LICS’s pre-application illustrations, which are documents that depict policy performance under a variety of “what-if” scenarios, violated provisions of California’s Illustration Statute, Cal. Ins. Code §§ 10509.950, *et seq.* *Id.* ¶¶ 17-38. In their surviving claims, Plaintiffs allege that LICS’s illustrations improperly projected policy values in two ways: (1) by failing to define that “guaranteed values” at particular interest rates for the policies reflect yearly minimum interest rates

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-9198 JVS (JDEx) Date February 22, 2021
Title Joyce Walker et al. v. Life Insurance Company of the Southwest

instead of a minimum average interest rate over multiple years, and (2) by assuming, but not expressly describing, the elimination of the Monthly Percent of Accumulated Value Charge (“MPAVC”) after Paragon policies have been in force for ten years. *Id.* ¶¶ 25-27, 31-35.

In 2011, the Court ruled that Plaintiffs could not predicate UCL claims on California’s Illustration Statute because the Statute lacks a private right of action. 2011 MTD Order, ECF No. 59; 2011 MJP Order, ECF No. 112. On November 9, 2012, the Court then certified two classes, each asserting claims for common-law fraud and violations of the UCL based on different factual allegations. *See* 2012 Certification Order, ECF No. 353. On May 29, 2013, the Court decertified one of those classes. 2013 Decertification Order, ECF No. 447.

At trial, a jury heard Plaintiffs’ common-law fraud claims, and the Court heard Plaintiffs’ UCL claims. Post-Trial UCL Proceedings Order, ECF No. 791, at 3. The jury found LICS not liable on all of Plaintiffs’ common-law fraud claims. *Id.* The Court found in favor of LICS on all remaining claims. *Id.* at 75. On appeal, the Ninth Circuit reversed the Court’s dismissal of Plaintiffs’ UCL claims predicated on violations of the Illustration Statute and clarified that Plaintiffs could sue to enforce the Illustration Statute through UCL claims. *Walker v. Life Insurance Company of the Southwest*, 681 Fed. Appx. 599, 602, *as amended on denial of reh’g* (9th Cir. May 5, 2017). The Ninth Circuit otherwise affirmed this Court’s judgment. *Id.*

On remand, Plaintiffs filed a Third Amended Complaint (“TAC”) alleging that LICS’s practices in connection with the marketing and sale of two of its life insurance policies, SecurePlus Provider (“Provider”) and SecurePlus Paragon (“Paragon”), constitute unlawful and unfair business practices under the UCL based on various violations of the Illustration Statute. TAC, ECF No. 839, ¶¶ 83–99. The parties filed crossmotions for summary judgment, which the Court granted in part and denied in part on December 22, 2017. *2017 MSJ Order*, Docket No. 874. Subsequently, the Court granted Plaintiffs’ motion for leave to file a Fourth Amended Complaint (“FAC”) to add Plaintiffs Taline Bedelian and Oscar Guevara. 2018 *Nunc Pro Tunc* Order, ECF No. 939, at 13. On July 31, 2018, the Court certified a new class. 2018 Certification Order, ECF No. 961. The certification order was subsequently affirmed on appeal. *Walker v. Life Insurance Company of the Southwest*, 953 F.3d 624 (9th Cir. 2020).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-9198 JVS (JDEx) Date February 22, 2021
Title Joyce Walker et al. v. Life Insurance Company of the Southwest

B. Summary of the Settlement

1. The Settlement Class

The Settlement Class is defined as:

All persons who purchased a Provider Policy or Paragon Policy from Life Insurance Company of the Southwest that was issued between September 24, 2006 and April 27, 2014, and who resided in California at the time the Policy was issued, and who received an illustration on or before the date of policy application.

Settlement Agreement, ECF No. 1095-1, ¶ 2.5. The Court has previously certified this class. 2018 Certification Order at 7, 20.

2. Settlement Amount and Injunctive Relief

Under the terms of the Settlement, LICS will be “required to continue to eliminate the Monthly Percent of Accumulated Value Charge (‘MPAVC’) on each Underlying Life Insurance Policy that is a Paragon Policy once such Underlying Life Insurance Policy has been in force for ten policy years.” Settlement Agreement ¶ 4.17. Class Members will also be entitled to receive at least one of three different types of relief: (1) Term Insurance Relief, (2) a Surrender Charge Credit, or (3) Cash Relief. *Id.* at ¶ 4. Specifically, Class Members can elect to receive any combination of options except they cannot select both the Term Insurance Relief and Cash Relief options. *See id.* ¶ 4.13.

a. Term Insurance Relief

The Term Insurance Relief option gives eligible Class Members the option to receive from LICS at no cost a three-year term life insurance policy. *Id.* ¶ 4.3. Class Members will be eligible to receive this benefit if they submit a Proof of Claim electing Term Insurance Relief and submit a Term Insurance Application. *Id.* ¶ 4.5. The Class Member cannot elect to receive Cash Relief or have an insured that dies prior to the issuance of the Term Life Insurance Relief. *Id.* ¶ 4.3.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-9198 JVS (JDEx) Date February 22, 2021
Title Joyce Walker et al. v. Life Insurance Company of the Southwest

LICS will make available term insurance relief of up to \$35,000,000 in aggregate face value. Id. ¶ 4.2. “The face value of each Term Policy shall be a percentage of the face value of the Underlying Life Insurance Policy owned by the Class Member receiving the Term Policy. The percentage, which shall be the same for all Term Policies, is equal to \$35,000,000 divided by the product of: (i) the aggregate face value of all SecurePlus Paragon and SecurePlus Provider Policies issued to individuals in California during the Class Period (other than Policies that have paid a death claim prior to the date on which the Stipulation of Settlement was executed), multiplied by (ii) 0.75. The percentage is currently estimated to be 0.51%, and will be finalized as part of the settlement administration process.” Id. ¶ 4.4. “In the event that the total aggregate face value of the Term Policies to be issued calculated using the formula outlined above exceeds \$35,000,000, then the face value of each Term Policy shall instead be based on a pro rata share (by face value of each Underlying Life Insurance Policy electing to receive the Term Insurance Relief Option) of the \$35,000,000.” Id.

b. Surrender Charge Credit

The Surrender Charge Credit option gives eligible Class Members the option to surrender their underlying life insurance policy and obtain a refund of “some or all of the surrender charge incurred on the full surrender.” Id. ¶ 4.7. “To be eligible, a Class Member must maintain his or her Underlying Life Insurance Policy in force through the Proof of Claim Cure Period and until the surrender has been processed in accordance with this Settlement.” Id. ¶ 4.8. The “Proof of Claim Cure Period” is a 60-day period beginning on the day after the period when Class Members can submit Proofs of Claim during which Claims Administrator can contact Class Members who submitted a Proof of Claim to cure any defects. Id. ¶¶ 2.19, 4.10.

LICS will make available surrender charge credit of up to \$1,000,000 in aggregate value. Id. ¶ 4.7. “The amount of Surrender Charge Credit available to each eligible Class Member shall be the lesser of: (i) the amount of surrender charge actually incurred on full surrender of the Class Member’s Underlying Life Insurance Policy in accordance with this Stipulation; or (ii) an amount determined by the following formula: (a) first, calculate a percentage (which shall be the same for all eligible Class Members) equal to one million dollars (\$1,000,000) divided by the aggregate premium paid on all SecurePlus Paragon and SecurePlus Provider Policies issued to individuals in California during the Class Period; and then (b) multiply that percentage times the total premiums paid on the

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-9198 JVS (JDEx) Date February 22, 2021
Title Joyce Walker et al. v. Life Insurance Company of the Southwest

eligible Class Member's Underlying Life Insurance Policy that is being surrendered. The percentage is currently estimated to be 0.256%, and will be finalized as part of the settlement administration process." *Id.* ¶ 4.9.

c. Cash Relief Option

Finally, the Cash Relief allows eligible Class Members to receive a direct payment. Class Members will be eligible to receive this benefit if they submit a Proof of Claim electing the Cash Relief option. *Id.* ¶ 4.13. The Class Member also cannot elect to receive Cash Relief. *Id.* If a Class Member elects to receive Term Insurance Relief and the insured on the underlying life insurance policy dies prior to issuance of the Term Life Insurance Relief, that Class Member will also be eligible for the Cash Relief option. *Id.*

The total amount available to the Class under the Cash Relief option will be equal to the sum of: (1) \$500,000 minus any amount up to \$150,000 paid to cover the Settlement's administrative costs and taxes and (2) any remainder from the \$1,000,000 allocated to cover the surrender charge credit following distribution of the surrender charge credit (collectively referred to as the "Residual"). *Id.* ¶¶ 3.1, 3.2, and 4.12. The payment made to any individual Class Member who elects the Cash Relief option will be equal to "the lesser of: (a) the total premiums paid on the Underlying Life Insurance Policy owned by the electing Class Member; or (b) a pro rata share (by total premium paid on each Underlying Life Insurance Policy electing to receive the Cash Relief Option) of the Residual." *Id.* ¶ 4.14. If "the Residual becomes sufficiently small that, in the reasonable judgment of Lead Counsel, it is not economically reasonable to distribute further proceeds, any remaining Residual shall be donated to a charity selected by Lead Counsel and unaffiliated with any Party or their counsel." *Id.* ¶ 4.16.

3. Attorneys' Fees and Costs

Plaintiffs have agreed to make an application for reimbursement of costs and fees not to exceed \$2,500,000, which LICS will not oppose. *Id.* ¶ 8.1. The amount given in attorney's fees will not reduce the amount of money made available to Class Members.

4. Administrative Expenses and Service Awards

As noted previously, *supra* Section I.B.2, the Parties have agreed that a maximum

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-9198 JVS (JDEx) Date February 22, 2021
Title Joyce Walker et al. v. Life Insurance Company of the Southwest

of \$150,000 that is allocated for payment of the Cash Relief option will be available to pay for administrative expenses and taxes. Plaintiffs have agreed to make a request for service awards not to exceed an aggregate sum of \$100,000 for the Named Plaintiffs, which LICS will not oppose. *Id.* ¶ 9.1. Any amount allocated for service awards will not reduce the amount of money allocated for the Class.

5. *Release*

On final approval of the Settlement Agreement, “the Releasing Parties, on behalf of themselves, their successors and assigns, and any other Person claiming (now or in the future) through or on behalf of them (regardless of whether any such Releasing Party ever seeks or obtains by any means, including without limitation by submitting a Proof of Claim, any Term Insurance Relief or any disbursement from the Settlement Fund), shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties and shall have covenanted not to sue the Released Parties with respect to all such Released Claims, and shall be permanently barred and enjoined from asserting, commencing, prosecuting, instituting, assisting, instigating, or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any Released Claim, in any capacity, against any of the Released Parties.” *Id.* ¶ 5.1.

The “Releasing Parties” includes LICS, the Named Class Members, all other Class Members, and “with respect to each Released Party, the immediate family members, heirs, executors, trustees, administrators, successors, assigns, and present and former employees, officers, directors, attorneys, legal representatives, accountants, insurers, reinsurers, managers, and agents of each of them, and any person or entity which is or was related to or affiliated with any Released Party or in which any Released Party has a controlling interest, and the present, former, and future direct and indirect parents, subsidiaries, divisions, affiliates, predecessors, successors, and the employees, officers, directors, attorneys, assigns, legal representatives, insurers, reinsurers, managers, and agents of each of them.” *Id.* ¶ 2.23.

The “Released Claims” for Class Members and their related parties “includes, unless prohibited by law, any and all Claims and Unknown Claims (as defined herein) relating in any way, directly or indirectly, to any Paragon or Provider life insurance

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-9198 JVS (JDEx) Date February 22, 2021
Title Joyce Walker et al. v. Life Insurance Company of the Southwest

Policies issued in California between September 24, 2006 and April 27, 2014, that have been or could have been asserted by or on behalf of any of the Releasing Plaintiff Parties, in any capacity, which concern, arise out of, are based upon, or refer or relate in any way to the same events, transactions, circumstances, or factual predicate as the claims asserted in the Action, including without limitation any communications, disclosures, omissions, or nondisclosures related to the Policies, whether written or oral, including any Policy illustrations; the offering of advice in any manner related to the Policies; the design, marketing, solicitation, application, sale, appropriateness, or administration of the Policies; or the crediting of interest to Policy accounts. Notwithstanding the foregoing, “Released Plaintiffs’ Claims” does not include: (i) Claims to enforce a Class Member’s contractual rights to make a claim for benefits that will become payable in the future pursuant to the express terms of the policy form issued by LICS; or (ii) Claims to enforce the terms of this Stipulation or orders or judgments issued by the Court in connection with this Settlement.” Id. ¶ 2.26.

The “Released Claims” for LICS and its related parties include, “unless prohibited by law, any and all Claims and Unknown Claims (as defined herein) that could have been asserted against any of the Released Plaintiff Parties arising out of, based upon, or relating in any way to the institution, prosecution, or settlement of the Action. Notwithstanding the foregoing, “Released Defendant’s Claims” does not include claims to enforce the terms of this Stipulation or orders or judgments issued by the Court in connection with this Settlement.” Id. ¶ 2.25.

6. *Notice*

The Parties propose providing notice to class members by mail and e-mail, though the Parties do not indicate whether one form of notice will take priority over the other. The information they provide the Court is as follows. LICS will provide the Claim Administrator with “a list of last known e-mail addresses and mailing addresses for Class Members based on information contained in LICS’s records that is readily accessible and customarily used to facilitate communications with policyholders.” Id. ¶ 6.2. The Claim Administrator will then send the Postcard Notice, ECF No. 1095-3, to each Class Member at either their last known e-mail address or their last known mailing address. Id. ¶ 6.3, Mot. at 21. The Postcard Notice includes the following information: “(i) the existence of and [Class Members’] rights with respect to the Action and Settlement, including information on excluding themselves from the Class; (ii) the various benefits

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-9198 JVS (JDEx) Date February 22, 2021
Title Joyce Walker et al. v. Life Insurance Company of the Southwest

provided to Class Members in exchange for the dismissal and release of claims against LICS (including that Class Members who stay in the Settlement will be mailed a Proof of Claim Form); (iii) the date, time and place of the Settlement Hearing and Class Members' right to appear at the Settlement Hearing; (iv) the maximum Fee and Cost Reimbursement and Incentive Award that may be sought; and (v) the website for Class Members to access and the address, phone number, and email address for Class Members to contact in order to view the Stipulation and obtain copies of the long form Notice." Mot. at 21.

A Settlement Website for the Class Settlement will also be established.¹ The Postcard Notice will refer all Class Members to the Settlement Website, at which Class Members can access a longer Notice of Pendency and Proposed Settlement of Class Action (the "Notice of Pendency"), ECF No. 1095-2. Postcard Notice. This longer Notice includes the following information: "(i) the Class definition and terms of the Settlement; (ii) the eligibility criteria for each of the various Settlement benefits; (iii) the process Class Members must follow to receive the Settlement benefits; (iv) procedures for objecting to or seeking exclusion from the Settlement; and (v) the binding effect of the proceedings, rulings, orders, and judgments in this Action." Mot. at 21-22.

7. *Opt-Out and Objection Process*

The Settlement Agreement and motion do not address how Class Members can opt out of or object to the Settlement. But according to the Notice of Pendency, a Class Member can opt out of the Settlement by sending a notification in writing to Walker v. LICS Exclusions, c/o Epiq Class Action & Claims Solutions, Inc., P.O. Box 5053, Portland, OR 97208-5053. Notice of Pendency at 14. Such written notice must include the Class Member's name, address, telephone number, policy number(s), signature, and a statement that he or she wishes to be excluded from the Class. *Id.* Such a written notice must be postmarked by the date sixty days following the date of the Notice of Pendency. *Id.*

Similarly, the Notice of Pendency states that a Class Member can object to the Settlement by submitting a written notice of objection including the objector's name, address, telephone number, policy number(s), signature, reasons for objection, and any

¹ That Settlement Website will be available at www.lswclassaction.com. Postcard Notice.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-9198 JVS (JDEx) Date February 22, 2021
Title Joyce Walker et al. v. Life Insurance Company of the Southwest

relevant supporting documents. *Id.* at 16. The written objection must be sent by first class mail to the Claims Administrator, Plaintiffs’ counsel and LICS’s counsel. *Id.* The written objection must also be filed with the Clerk of the United States District Court for the Central District of California, though the Notice of Pendency does not any information on the means by which a Class Member could do that. *Id.* The written objection must similarly be postmarked by the date sixty days following the date of the Notice of Pendency. *Id.*

8. *Revocation of Agreement*

Either Party may terminate the Settlement within seven business days of any of the following events occurring: “(i) entry of a Court order declining to enter the Preliminary Approval Order; (ii) entry of a Court order refusing to approve this Stipulation; (iii) entry of a Court order declining to enter the Final Judgment; (iv) entry of a Court order refusing to dismiss the Action with prejudice; (v) entry of an order by which the Final Judgment is modified or reversed by any appeal or review; or (vi) failure on the part of any Settling Party to abide, in material respect, with the terms of this Stipulation.” Settlement Agreement ¶ 10.1. Lead Plaintiffs also have the right to terminate the Settlement Agreement if the Settlement Fund amount is not paid into the Escrow Account as provided in ¶ 3.1 of the Settlement. *Id.* ¶ 10.2. Finally, LICS has the option to terminate the Settlement if the Class Members who request exclusion from the Settlement have paid total premiums on the underlying life insurance policies greater than \$19,400,000. *Id.* ¶ 10.3; Confidential Agreement, ECF No. 1098-1.

II. LEGAL STANDARD

Federal Rule of Civil Procedure Rule 23(e) states that “[t]he claims ... of a certified class—or a class proposed to be certified for purposes of settlement—may be settled . . . or compromised only with the court’s approval.” “The parties must provide the court with information sufficient to enable it to determine whether to give notice of the propos[ed] [settlement] to the class.” Fed. R. Civ. P. 23(e)(1)(A). “The court must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties’ showing that the court will likely be able to: (i) approve the propos[ed] [settlement] under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” *Id.* 23(e)(1)(B)(i)(ii).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-9198 JVS (JDEx) Date February 22, 2021

Title Joyce Walker et al. v. Life Insurance Company of the Southwest

III. DISCUSSION

This Court has already certified the class incorporated in the Settlement Agreement. 2018 Certification Order. The Court therefore turns to preliminary approval of the Settlement Agreement.

A. *Preliminary Approval of the Proposed Class Settlement*

1. *The Fairness Factors Support Settlement Approval*

Under Rule 23(e)(2) if the proposed settlement would bind class members, the Court may approve it only after a hearing and only on finding that it is fair, reasonable and adequate. To make this determination, the Court must consider the following factors:

- (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, taking into account:
 - (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); and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

Before the revisions to the Federal Rule of Civil Procedure 23(e), the Ninth Circuit had developed its own list of factors to be considered. *See, e.g., In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 964 (9th Cir. 2011) (citing *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)). The revised Rule 23 "directs the parties to present [their] settlement to the court in terms of [this new] shorter list of core concerns[.]" Fed. R. Civ. P. 23(e)(2), 2018 Advisory Committee Notes. "The goal of [amended Rule 23(e)] is . . . to focus the [district] court and the lawyers on the core

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-9198 JVS (JDEx) Date February 22, 2021
Title Joyce Walker et al. v. Life Insurance Company of the Southwest

concerns of procedure and substance that should guide the decision whether to approve the proposal.” Id.

a. Adequacy of Representation by Class Representatives and Class Counsel

Under Rule 23(e)(2)(A), the first factor to be considered is whether the class representatives and class counsel have adequately represented the class. This analysis includes “the nature and amount of discovery” undertaken in the litigation. Fed. R. Civ. P. 23(e)(2)(A), 2018 Advisory Committee Notes.

There certainly has been adequate representation by the class representatives and class counsel. This case has been extensively litigated, with the complaint having been filed over a decade ago. See supra Section I.A. Class Counsel, Kasowitz Benson Torres LLP, is a respected litigation firm that has been involved in the case since its early stages. There has also been extensive discovery conducted during this litigation, sufficient for the case to have even gone to trial several years ago. This factor therefore weighs in favor of approval.

b. Negotiated at Arm’s Length

The second Rule 23(e)(2) factor asks the Court to confirm that the proposed settlement was negotiated at arm’s length. Fed. R. Civ. P. 23(e)(2)(B). As with the preceding factor, this can be “described as [a] ‘procedural’ concern[], looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement.” Fed. R. Civ. P. 23(e)(2), 2018 Advisory Committee Notes. “[T]he involvement of a neutral or court-affiliated mediator or facilitator in [settlement] negotiations may bear on whether th[ose] [negotiations] were conducted in a manner that would protect and further the class interests.” Fed. R. Civ. P. 23(e), 2018 Advisory Committee Notes; accord Pederson v. Airport Terminal Servs., 2018 WL 2138457, at *7 (C.D. Cal. April 5, 2018) (the oversight “of an experienced mediator” reflected noncollusive negotiations).

The Court does not have detailed information of the negotiations that took place in the lead up to this Settlement. The Parties have made previous attempts to settle this case, however, that included mediation before a private neutral and before Magistrate Judge Early. Mot. at 7. This previous involvement of a neutral and a court-affiliated mediator,

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-9198 JVS (JDEx) Date February 22, 2021
Title Joyce Walker et al. v. Life Insurance Company of the Southwest

together with the Parties' extensive adversarial proceedings through the various motions and appeals, suggest that this Settlement was negotiated at arm's length. While the Court would appreciate further information about the negotiations that gave rise to this Settlement during the motion for final approval of this Settlement, the Court believes that the above information is sufficient to determine that this factor weighs in favor of preliminary approval.

c. Adequacy of Relief Provided for the Class

The third factor the Court considers is whether "the relief provided for the class is adequate, taking in to account: (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)." Fed. R. Civ. P. 23(e)(2)(C). Under this factor, the relief "to class members is a central concern." Fed. R. Civ. P. 23(e)(2)(C), Advisory Committee Notes.

Plaintiffs allege that LICS's illustrations improperly projected policy values in two ways: (1) by failing to define that illustrations of "guaranteed values" at particular interest rates reflect providing that particular minimum interest rate on average over a multiple year period instead of yearly, and (2) by assuming, but not expressly describing, the elimination of the Monthly Percent of Accumulated Value Charge ("MPAVC") after Paragon policies have been in force for ten years. FAC ¶¶ 25-27, 31-35.

LICS's agreement to continue to eliminate the MPAVC on each underlying Paragon policy after it has been in force for ten policy years would adequately remedy any damage caused by the second allegedly misleading projection. By contrast, it is difficult for the Court to compare the value of the rest of the Settlement Agreement to any alleged damage to the Class from the first allegedly misleading projection. The Parties have not submitted with this motion any estimate for the Class's damages should Plaintiffs' theory of the case prevail.² Nor would be the Court be able to roughly calculate

² Previously, Plaintiffs submitted expert declarations to the Court that approximated the difference in value of the policies at the end of the insured individuals' lives, assuming they lived to the ninetieth percentile of the mortality distribution, if the policies had accumulated interest based on a "true

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-9198 JVS (JDEx) Date February 22, 2021
Title Joyce Walker et al. v. Life Insurance Company of the Southwest

such an amount in damages without further information about the Class Members' policies.

The Court notes that the face value of the Settlement Agreement, excluding the elimination of the MPAVC, is altogether approximately \$36,350,000. Of course, not all of this value will necessarily be realized by the Class. Should enough Class Members elect the Cash Relief option, a portion of the relief made available by LICS will be revert to a cy pres award. The \$35,000,000 of term life insurance is also a fraction of the approximately \$9.15 billion in Class Members' underlying life insurance policies.³ But, as noted in the discussion in the following subsection, the costs, risks, and delay of trial and appeal weigh in favor of a Settlement Agreement even if it may not be the most substantial recovery for the Parties. Further evidence of the value of the Settlement as compared to the Class's possible recovery will have to be submitted during the motion for final approval to allow the Court to conduct a more detailed analysis. Nevertheless, given these facts, the Court concludes that the Settlement Agreement at least within the "range of possible approval." See Williams v. Costco Wholesale Corp., 2010 WL 761122, at *5 (S.D. Cal. Mar. 4, 2010).

guaranteed minimum annual interest rate" each year as opposed to a minimum average annual interest rate across several years. Abrevaya Certification Decl., ECF No. 908, at ¶¶ 20, 24 (citing Brockett 2013 Report, ECF No. 863, at ¶¶ 65-76). The experts concluded that the Provider policies would be worth 43.7% more while the Paragon policies would be worth 49.7% more. Id. ¶ 24. But, the Court cannot rely on this information to determine how much the Class's overall damages would be under Plaintiffs' theory of the case. As noted infra at note 3, the Court can derive an estimate of the overall value of the Class Members' policies at this moment given information provided in the Settlement Agreement. But without an estimate of the final overall value of the policies at the end of the lives of the insured individuals, a percentile loss in value by the end of the insured individuals' lives, as provided by the experts, cannot be used to calculate an estimate of the prospective overall lost value for Class Members. The parties have not provided a means of calculating the value that the Class Members would have accrued in the coming years if the policies performed as the Plaintiffs allege the illustrations imply.

³ The Court derives this number from the Parties' estimation of the multiplier that will be used to calculate the value of the term life insurance policy made available to a given Class Member. See Settlement Agreement ¶ 4.4. A 0.51% is calculated by dividing \$35,000,000 by the product of 0.75 and "the aggregate face value of all SecurePlus Paragon and SecurePlus Provider Policies issued to individuals in California during the Class Period (other than Policies that have paid a death claim prior to the date on which the Stipulation of Settlement was executed)." Id. ($\$35,000,000 \div 0.0051 \div 0.75 = \$9,150,326,797.39$).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-9198 JVS (JDEx) Date February 22, 2021
Title Joyce Walker et al. v. Life Insurance Company of the Southwest

The Court now turns to considering the factors listed in Rule 23(e)(2)(C).

i. Costs, Risks, and Delay of Trial and Appeal

“A[] central concern [when evaluating a proposed class action settlement] . . . relate[s] to the cost and risk involved in pursuing a litigated outcome.” Fed. R. Civ. P. 23(e), 2018 Advisory Committee Notes. Here, the costs, risks, and delay of trial and appeal favor preliminary approval. “Proceeding in this litigation in the absence of settlement poses various risks such as . . . having summary judgment granted against Plaintiffs[] or losing at trial. Such considerations have been found to weigh heavily in favor of settlement.” Graves v. United Industries Corporation, 2020 WL 953210, at *7 (C.D. Cal. Feb. 24, 2020) (citing See Rodriguez v. West Publishing Corp., 563 F.3d 948, 966 (9th Cir. 2009); Curtis-Bauer v. Morgan Stanley & Co., Inc., 2008 WL 4667090, at *4 (N.D. Cal. Oct. 22, 2008)). Moreover, as Class Counsel note in their motion, the Parties in this case have shown themselves to be capable advocates readily willing to appeal. Mot. at 17. Therefore, although this case is currently set for trial during this year, final resolution of this case in the absence of this Settlement Agreement will likely be far removed. This subfactor favors preliminary approval of the Class Settlement because in its absence there will be inevitable costs, high risks and delay.

ii. Effectiveness of Proposed Method of Relief Distribution

Next, the Court must consider “the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims.” Fed. R. Civ. P. 23(e)(2)(C). “Often it will be important for the court to scrutinize the method of claims processing to ensure that it facilitates filing legitimate claims.” Fed. R. Civ. P. 23(e), 2018 Advisory Committee Notes. “A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding.” Id.

The claims process is straightforward. Class Members can make a claim by submitting a valid and timely Claim Form, which is available for download from the Settlement Website to the Settlement Administrator without complication. This is a reasonable means of claims administration. See In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, & Products Liability Litigation, 2013 WL 3224585, at *18 (C.D. Cal. June 17, 2013) (“The requirement that class members

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-9198 JVS (JDEx) Date February 22, 2021

Title Joyce Walker et al. v. Life Insurance Company of the Southwest

download a claim form or request in writing a claim form, complete the form, and mail it back to the settlement administrator is not onerous.”).

The claim administration process is also designed to facilitate the filing of legitimate claims. As noted, supra Section I.B.2.b, after Class Members have the opportunity to submit claim forms there will be a Cure Period during which the Claims Administrator will contact those who have submitted Claim Forms to cure any defects or problems identified. The proposed Claims Administrator, Epiq Class Action and Claims Solutions, Inc. is also experienced in handling claims administration. As the method for processing Class Member claims is neither onerous nor likely to result in false claims, this factor weighs in favor of preliminary approval.

iii. Terms of Proposed Award of Attorneys’ Fees

Third, the Court must consider “the terms of any proposed award of attorneys’ fees, including timing of payment.” Fed. R. Civ. P. 23(e)(2)(c). The Court identifies no concern with the proposed motion for attorneys’ fees. Class Counsel will have to submit a formal motion for attorneys’ fees along with evidence of time spent on the case before the Court can approve a specific amount in attorneys’ fees. But the Settlement Agreement’s provision for up to \$2,500,000 in fees and costs does not strike the Court as undermining the adequacy of relief to the Class. See Settlement Agreement ¶ 8.1. The amount awarded in attorneys’ fees and costs will not impact the relief awarded to the Class. The provisions in the Settlement Agreement regarding attorneys’ fees and costs were also negotiated following negotiation of relief to the Class. Mot. at 8. This subfactor therefore weighs in favor of preliminary approval. With the final motion for approval of attorney’s fees, the Court will expect a lodestar calculation.

iv. Agreement Identification Requirement

The Court must also evaluate any agreement made in connection with the proposed Settlement. See Fed. R. Civ. P. 23(e)(2)(C)(iv), (e)(3). Here, the Parties states that in addition to the Settlement Agreement, they also reached a Confidential Supplemental Agreement. Rule 23(e)(3) Statement, ECF No. 1098. As the Court has noted previously, the Confidential Supplemental Agreement allows LICS to withdraw from the Settlement if Class Members who have paid more than \$19,400,000 in premiums request exclusion from the Settlement. Confidential Agreement at ¶ 2. The Court does not find this to be an

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-9198 JVS (JDEx) Date February 22, 2021
Title Joyce Walker et al. v. Life Insurance Company of the Southwest

improper or unusual basis for terminating the Settlement Agreement. See, e.g., In re Lithium Ion Batteries Antitrust Litigation, 2019 WL 3856413, at *21 (N.D. Cal. Aug. 16, 2019) (granting final approval to a class settlement that allowed the defendant to withdraw from the settlement agreement if class members who collectively purchased 5% or more of the products at issue requested exclusion). This subfactor therefore weighs in favor of preliminary approval.

Based on the foregoing analysis, it is clear that the adequacy of relief for the Class weighs in favor of preliminary approval of the Settlement Agreement.

d. Equitable Treatment of Class Members

The final Rule 23(e)(2) factor turns on whether the proposed settlement “treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). “Matters of concern could include whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief.” Fed. R. Civ. P. 23(e)(2)(D), 2018 Advisory Committee Notes.

There are two relevant distinctions among the Class Members that the Court must account for. The first distinction is one made by the Settlement Agreement between Class Members whose policies insured individuals who die prior to possible issuance of term life insurance relief and Class Members whose policies insure individuals who are at that point still living. Class Members whose policies’ insured die prior to issuance of term life insurance relief will only be eligible for the cash relief option. See supra Section I.B.2. These Class Members will not benefit from any future elimination of the MPAVC after a policy has been in force for ten years. Nor will they have the option of surrendering their policies and obtaining a surrender charge credit for the insured has already died. Of course, it is impossible to know at this time how much relief the cash relief option will provide each Class Member who elects that option because the amount distributed to a given Class Member depends on the number of Class Members who seek that type of relief. But the terms of the Settlement Agreement make it clear that these individuals might obtain no relief at all because the Remainder allocated for the Cash Relief Option might revert to a cy pres award. See supra Section I.B.2.c. The Court does not believe this to be equitable treatment. Class Members who purchased a policy and whose insured die prior to final distribution of the term life insurance relief are likely to receive far less in

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-9198 JVS (JDEx) Date February 22, 2021

Title Joyce Walker et al. v. Life Insurance Company of the Southwest

benefits from the Settlement Agreement than Class Members who have insured individuals still living.

Second, Class Counsel will request service awards for the Named Plaintiffs. Class Counsel will request \$100,000 overall in service awards for the five Named Plaintiffs. Class Counsel therefore intend to request on average \$20,000 for each of the Named Plaintiffs. As noted above, the exact amount of recovery for each Class Member who is not a Named Plaintiff is uncertain. The total value that LICS will make available to the Class Members totals \$36,350,000. The Court previously noted in its Second Class Certification Order that there are estimated to be about 50,000 Class Members. Second Certification Order at 9. If the Court were to assume that the Settlement Agreement results in approximately equal relief for each of the Class Members, LICS would be making available approximately \$725 in value for each eligible Class Member.

The Court is unable to determine at this time whether it is appropriate to grant service awards that are more than 25 times the size of the value of the Settlement received by the average Class Member. The Court acknowledges that the Named Plaintiffs have devoted extensive time to this case over the years. See Mot. at 19 (noting that Named Plaintiffs have performed many actions including “sitting for depositions, attending a lengthy trial, and consulting on many occasions with counsel”). But the Court cannot conclude without more detailed evidence of Named Plaintiffs’ participation whether the service awards would amount to equitable treatment of the Class Members.

Given the analysis above, the Court concludes that this factor weighs against preliminary approval, but this can potentially be cured in Plaintiffs’ submission for final approval. As such, the factors overall weigh in favor of preliminary approval.

C. The Proposed Settlement Class Meets the Notice Requirements Under Fed. R. Civ. Pro. 23(c)(2)(B).

Under Rule 23(c)(2)(B), “for any class certified under Rule 23(b)(3)—or upon ordering notice under Rule 23(e)(1) to a class proposed to be certified for purposes of settlement under Rule 23(b)(3)—the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). Rule 23(c)(2)(B) further states that the notice may be made by one of the following: United

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-9198 JVS (JDEx) Date February 22, 2021
Title Joyce Walker et al. v. Life Insurance Company of the Southwest

States mail, electronic means, or another type of appropriate means. Id. “The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).” Id.

The proposed judgment meets this notice requirements. Following a review of the submitted Notice of Pendency and the Postcard Notice, the Court concludes that Notice to the Class Members will include the substantive information that Rule 23(c)(3) requires. See supra Section I.B.6. The Court finds, however, that it is appropriate to include in the Notice of Pendency instructions on how to file an objection with the Court. The Notice of Pendency currently does not explain how to file an objection with the Court even though it is necessary to validly object. See supra Section I.B.7. The Court therefore **orders** the Parties to include such instructions in the Notice of Pendency before disseminating notice to the Class.

The Parties plan to e-mail or mail the Postcard Notice to the Class. Id. The Court notes, however, that the Parties do not specify how they will notify individuals for whom LICS has both an e-mail address and physical mailing address. See, e.g., Mot. at 21 (“The Parties negotiated the proposed Postcard Notice (Exhibit A-2 to the Stipulation) to be disseminated to all Class Members at the e-mail address or mailing address of each such Class Member as set forth in LICS’s records.”). The Court therefore **orders** the Parties to distribute the Postcard Notice by both e-mail and United States mail where both means of contacting the Class Member are available. Doing so will best notice that is practicable under the circumstances. Cf. Fed. R. Civ. P. 23(c)(2)(B).

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** preliminary approval of the proposed settlement, directs dissemination of notice to the Class pursuant to the proposed notice plan, subject to the changes mentioned above, and appoints Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator for the dissemination of notice. The Court finds that oral argument would not be helpful in this matter. Fed. R. Civ. P. 78; L.R. 7-15. Hearing set for March 8, 2021, is ordered **VACATED**.

