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19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

21 KONSTANTIN SHECHTER, et al,
22
23 Plaintiffs,

24 v.

25 PACIFIC WEST CAPITAL GROUP,
26 INC., et al,
27 Defendants.

28 ARNOLD N. APPLEBAUM, et al.
Plaintiff,

v.

PACIFIC WEST CAPITAL GROUP,
INC., et al,
Defendants.

FILED
Superior Court of California
County of Los Angeles
03/29/2023

David W. Slayton, Executive Officer / Clerk of Court

By: A. Morales Deputy

Lead Case No. BC621512
Related Case: BC652409
Judge: Lawrence P. Riff
Dept. 7

CLASS ACTION

**~~PROPOSED~~ [UPDATED] ORDER
GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

**NOTICE OF ORDER TO SHOW CAUSE
RE DISMISSAL OF RELATED CASE**

Date: August 30, 2023
Time: 10:00 a.m.
Dept.: 7

Complaint filed: May 23, 2016
Trial date: None

1 Plaintiffs have filed a Motion for Preliminary Approval of the Class Action Settlement
2 (“Settlement” or “Class Settlement”) reached with the Receiver for PWCG Trust and Defendant
3 Mills Potoczak & Company. (MPC)

4 On March 28, 2023, the Court held a hearing on the Motion. Appearances were as set forth
5 in the record. The Court has carefully considered the Second Amended Joint Stipulation &
6 Settlement Agreement (“SASA” or “Settlement Agreement”) together with all exhibits thereto, all
7 the filings related to the Settlement, the arguments of counsel, and the record in this case. The
8 Court hereby gives its preliminary approval of the Class Settlement; finds that the Settlement and
9 Settlement Agreement are sufficiently fair, reasonable and adequate to allow dissemination of
10 notice of the Settlement to the Class Members and to hold a final approval hearing on the Class
11 Settlement; orders the Class Notice be sent to the Class Members in accordance with the Settlement
12 Agreement and this Order; and schedules a final approval hearing to determine whether the
13 proposed Class Settlement is fair, adequate and reasonable.

14 IT IS HEREBY ORDERED:

15 The Court finds that the terms of the Class Settlement preliminarily appear to be fair,
16 reasonable, and adequate, and within the range of possible approval and sufficient to warrant
17 providing notice to the Class, when balanced against the probable outcome of further litigation,
18 given the risks relating to liability and damages. It further appears that investigation and research
19 has been conducted such that counsel for the Parties are reasonably able to evaluate their respective
20 positions. It further appears to the Court that the Settlement will avoid substantial additional costs
21 by all parties, as well as the delay and risks that would be presented by the further prosecution of
22 the Action, and that it will provide substantial benefits to the Class going forward. It further appears
23 that the Settlement reasonably considers the strength of claims and risk of litigation and treats the
24 Class Members equitably relative to each other. It appears that the Settlement has been reached
25 as a result of intensive, arm’s-length negotiations utilizing an experienced third-party neutral
26 mediator. The Court further takes into account the effectiveness of any proposed method of
27 distributing relief to the Class as well as the terms of any proposed award of attorney’s fees,
28 including timing of payment.

1 Defendant Mills Potoczak & Company, through its insurers, will pay the Gross Settlement
2 Amount of Nine Million Seven Hundred Fifty Thousand (\$9,750,000.00) on a non-reversionary
3 basis. Class Members are not required to submit claims to receive settlement benefits.

4 The Court now certifies for settlement purposes, the following Class: “all individuals that
5 (a) invested in Life Settlements sold by PWCG during the Class Period or (b) were or are a
6 Claimant as that term is defined in the Distribution Plan of Receiver Thomas Hebrank approved
7 by the District Court in the SEC Action, Dkt. 375-2, 393.”

8 The Court appoints for purposes of the Settlement, Plaintiffs Konstantin Shechter, Svetlana
9 Averbukh and Arnold Applebaum as representatives of the Class.

10 The Court designates for purposes of the Settlement, as Class Counsel Thomas G. Foley
11 of Foley Bezek Behle & Curtis, LLP and Richard E. Donahoo of Donahoo & Associates, PC. The
12 Court preliminarily finds that, based on the work Class Counsel has done identifying,
13 investigating, and prosecuting the claims in this action; Class Counsel’s experience in handling
14 class actions and claims; Class Counsel’s knowledge of the applicable law; and the resources Class
15 Counsel has and will commit to representing the class, that Class Counsel has represented and will
16 represent the interests of the Class fairly and adequately.

17 Thomas Hebrank, Receiver for PWCG Trust, is appointed as the Settlement Administrator
18 and shall administer the Settlement in accordance with the terms and conditions of this Order and
19 the Settlement Agreement.

20 The Settlement Administrator shall distribute the Class Notice according to the notice plan
21 described in the Settlement Agreement.

22 A declaration from the Settlement Administrator demonstrating distribution of the Class
23 Notice shall be filed by the parties in conjunction with the motion for final approval.

24 The Court hereby conditionally certifies the proposed Class and conditionally finds that,
25 solely for the purposes of approving this Class Settlement and for no other purpose and with no
26 other effect on this litigation, the proposed Class meets the requirement for certification under
27 Code Civil Procedure §382 and Cal. Rule of Court 3.764 on the grounds that membership in the
28 Class and each Subclass is ascertainable; that a well-defined community of interest exists within

1 the Class and Subclass; that a common nucleus of facts and common questions of law in the Class
2 and each Subclass predominate over individual questions; that substantial benefits result from class
3 certification; and that Plaintiffs and their counsel will adequately and fairly protect the interests of
4 the Class.

5 The Court hereby approves, as to form and content, the Class Notice in substantially the
6 form attached as Exhibit A to the Settlement Agreement. The Class Notice is sufficient to inform
7 Class Members of the terms of the Settlement Agreement, their rights under the Settlement
8 Agreement, their rights to object to or comment on the Settlement Agreement, their right to receive
9 a payment or opt out of the Settlement Agreement, the process for doing so, and the date and
10 location of the Fairness and Final Approval hearing. The Court finds that the distribution of the
11 Class Notice in accordance with the Settlement Agreement meets the requirements of due process;
12 is the best notice practicable under the circumstances; is reasonable and constitutes due, adequate,
13 and sufficient notice to all persons entitled thereto; and is reasonably calculated, under the
14 circumstances, to apprise the Class Members of the proposed settlement and of their right to object
15 or to exclude themselves as provided in the Settlement Agreement. The Parties have agreed to send
16 the Class Notice to Class Members by regular United States Mail. The notice plan is therefore
17 APPROVED.

18 The Court approves the procedures set forth in the Settlement Agreement and the Class
19 Notice for exclusions from and objections to the Class Settlement. Any Class Members shall have
20 the right to be excluded from the Class by mailing a request for exclusion to the Settlement
21 Administrator. Any Class Member who does not request exclusion from the settlement class as
22 provided in the Settlement Agreement shall be bound by the terms and provisions of the Settlement
23 Agreement upon its final approval, including but not limited to the releases, waivers, and covenants
24 described in the Settlement Agreement, whether or not such person objected to the Settlement
25 Agreement and whether or not such person makes a claim upon the settlement funds.

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1 Any Class Member who has not submitted a timely request for exclusion from the
2 Settlement Agreement shall have the right to object to Settlement Agreement as set forth in the
3 Agreement.

4 A Class Member may seek to challenge his or her estimated individual settlement payment
5 amount set forth in his or her Class Notice and must make such challenge must do so in accordance
6 with the terms of the Agreement.

7 The Court directs that a final approval hearing be scheduled (the “Fairness Hearing” or
8 “Final Approval Hearing”) to assist the Court in determining whether the Class Settlement is fair,
9 reasonable and adequate; whether Judgment should be entered in this Action; whether Class
10 Counsel’s application for fees and expenses should be approved; and whether Class Counsel’s
11 request for a Class Representative Payment should be approved. Plaintiffs shall file a Motion for
12 Final Approval and Attorney’s Fees, Costs, and Class Representative Service Awards on the date
13 set by the court. Class Members may appear, by counsel or on their own behalf, to be heard in
14 support of or opposition to the Settlement Agreement and Class Counsel’s Motion for Attorney’s
15 Fees, Costs, and Class Representative Service Award.

16 The Court hereby preliminarily approves the Class Settlement, including the plan of
17 allocation of the Gross Settlement Amount as described in the Settlement. Specifically, after all
18 required deductions are made from the Gross Settlement Amount, the Net Settlement Fund will be
19 distributed to Class Members. Each Class Member who does not opt-out of the Settlement will
20 receive his/her pro rata share of the Net Settlement Fund.

21 If the Class Settlement is not finally approved, or the Effective Date does not occur, or the
22 Settlement is terminated under its terms, then: (a) the Settlement shall be without force and effect
23 upon the rights of the Parties hereto, and none of its terms shall be effective or enforceable; (b) the
24 Parties shall be deemed to have reverted nunc pro tunc to their respective status as of the day
25 immediately before the Parties entered into the Settlement Agreement, with the Parties to meet and
26 confer regarding any discovery or case management deadlines that were pending at the time the
27 Parties stayed litigation; (c) Defendant and/or Released Parties shall not be obligated to pay any
28 amount of the Gross Settlement Amount and shall be refunded any amounts paid pursuant to the

1 Agreement but not yet spent or disbursed; (d) all Orders entered in connection with the Settlement,
 2 including the certification of the Class, shall be vacated without prejudice to any Party's position
 3 on the issue of class certification, or any other issue, in this Action or any other action, and the
 4 Parties shall be restored to their litigation positions existing on the date of execution of Settlement
 5 Agreement; and (e) the Parties shall proceed in all respects as if the Settlement Agreement and
 6 related documentation and orders had not been executed, and without prejudice in any way from
 7 the negotiation or fact of the Settlement or the terms of the Settlement Agreement. In such an
 8 event, this Court's orders regarding the Settlement, including this Preliminary Approval Order,
 9 shall not be used or referred to in litigation, or any arbitration or other civil or administrative
 10 proceeding, for any purpose. Nothing in the foregoing paragraph is intended to alter the terms of
 11 the Settlement Agreement with respect to the effect of the Settlement Agreement if it is not
 12 approved.

13 The Court directs that the following deadlines are established by this Preliminary Approval
 14 Order:

Deadline	Activity
Within twenty (20) calendar days after entry of this Order	Settlement Administrator shall mail, by U.S. First Class, to Class Members the Class Notice.
Forty-five (45) days from mailing date.	All Class Members' requests for exclusion, and objections, challenges to individual amounts must be postmarked by this date.
Sixteen (16) court days prior to August 30, 2023 which is August 8, 2023	Plaintiffs shall submit his Motion for Final Approval of Class Action Settlement and Plaintiffs Motion for Attorney's Fees and Costs.
August 30, 2023 at 10:00 am in Dept. 7 of Los Angeles Superior Court, Spring Street Courthouse.	The Court will hear Plaintiffs Motion for Final Approval of Class Action Settlement and Plaintiffs Motion for Attorney's Fees and Costs.

1 Class Members are enjoined from initiating or prosecuting any proceeding on any claim to
2 be released pursuant to the Settlement Agreement unless and until the Class Member opts out of
3 the Class.

4 Pending further order of this Court, all proceedings in this matter, other than contemplated
5 herein and in the Settlement Agreement, are stayed.

6 This Court reserves the right to adjourn or continue the Fairness Hearing from time to time
7 without further notice to Class Members.

8 The Court retains jurisdiction to consider all further applications arising out of or in
9 connection with the Settlement.

10 **ORDER TO SHOW CAUSE WHY RELATED CASE SHOULD NOT BE DISMISSED**

11 With respect to the related case of Arnold K. Applebaum, et al. v. Pacific West Capital
12 Group, et al. LASC Case: No. BC652409, the Court sets an Order to Show Cause Why The Case
13 Should Not Be Dismissed to be heard **August 30, 2023 at 10:00 am** in Department 7 in
14 conjunction with the scheduled fairness hearing and Motion for Final Approval. Anyone that
15 would like to be heard on the order to show cause shall file a response nine (9) court days prior to
16 the hearing.

17 IT IS SO ORDERED.

19 03/29/2023



A handwritten signature in black ink, appearing to read "Lawrence P. Riff".

Lawrence P. Riff / Judge

JUDGE OF THE SUPERIOR COURT

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PROOF OF SERVICE
Code Civ. Proc. § 1013a(3)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 440 West First Street, Suite 101, Tustin, California 92780.

On **March 28, 2023**, I served the foregoing document(s) described as:

[PROPOSED] [UPDATED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

NOTICE OF ORDER TO SHOW CAUSE RE DISMISSAL OF RELATED CASE

on the interested parties in this action by:

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- Transmitting the foregoing document(s), via facsimile to the fax number(s) set forth below on this date.
 - Depositing the foregoing document(s) in the United States mail at Tustin, California, in a sealed envelope with postage thereon fully prepaid, addressed as set forth below.
 - By electronic transmission via FTP – by transmitting electronically a true and correct copy of the above-listed document(s) on counsel of record on this date to www.CaseAnywhere.com by file transfer protocol (FTP) upload pursuant to the Order Authorizing Electronic Service.
 - Causing overnight delivery of the document(s) listed herein via **ONTRAC OVERNIGHT**, to the address(es) set forth below.

SEE ONLINE SERVICE LIST ON CASEANYWHERE

I am “readily familiar” with the firm’s practice of collection and processing mail. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Tustin, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and executed on **March 28, 2023**, at Tustin, California.

/s/ Sarah L. Kokonas
Sarah L. Kokonas