

MATTHEW J. ADLER (SBN 273147)
 Matthew.Adler@dbr.com
 DRINKER BIDDLE & REATH LLP
 Four Embarcadero Center, 27th Floor
 San Francisco, California 94111-4180
 Telephone: 415-591-7500
 Facsimile: 415-591-7510

JEFFREY S. JACOBSON (*pro hac vice*)
 Jeffrey.Jacobson@dbr.com
 DRINKER BIDDLE & REATH LLP
 1177 Avenue of the Americas, 41st Floor
 New York, New York 10036-2714
 Telephone: 212-248-3140
 Facsimile: 212-248-3141

JACLYN M. METZINGER (*pro hac vice*)
 jmetzinger@kelleydrye.com
 KELLEY DRYE & WARREN LLP
 101 Park Avenue
 New York, New York 10178
 Telephone: 212-808-7800
 Facsimile: 212-808-7897

*Attorneys for Defendants Premier Financial Alliance,
 Inc., David Carroll, Jack Wu, Lan Zhang, Bill Hong,
 Rex Wu, AJWProduction, LLC and The Consortium
 Group, LLC*

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

RUI CHEN, an individual, WENJIAN
 GONZALES, an individual; and all those
 similarly situated,

Plaintiffs,

v.

PREMIER FINANCIAL ALLIANCE, INC., a
 suspended California Corporation, or as may
 be organized under Georgia Law; DAVID
 CARROLL, an individual; JACK WU, an
 individual; LAN ZHANG, an individual; BILL
 HONG, an individual, REX WU, an
 individual; LIFE INSURANCE COMPANY
 OF THE SOUTHWEST, a Texas Corporation;
 NATIONAL LIFE INSURANCE COMPANY,
 a Texas Corporation; NLV FINANCIAL
 CORPORATION, a Texas Corporation;
 NATIONAL LIFE HOLDING COMPANY, a

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

**DEFENDANTS PREMIER FINANCIAL
 ALLIANCE, INC., DAVID CARROLL,
 JACK WU, LAN ZHANG, BILL HONG,
 REX WU, AJWPRODUCTION, LLC, AND
 THE CONSORTIUM GROUP, LLC'S
 NOTICE OF MOTION AND MOTION
 FOR LEAVE TO SEEK
 RECONSIDERATION OF THE COURT'S
 DECISION ON THEIR PRIOR MOTION
 TO COMPEL ARBITRATION OR, IN THE
 ALTERNATIVE, TO TRANSFER TO THE
 NORTHERN DISTRICT OF GEORGIA
 PURSUANT TO 27 U.S.C. § 1404(A):
 MEMORANDUM OF POINTS AND
 AUTHORITIES**

MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
 SEEK RECONS. OF PRIOR ORDER DENYING MOT.
 TO COMPEL ARBITRATION, AND TO TRANSFER
 PURSUANT TO 28 U.S.C. § 1404(A)

CASE No. 4:18-cv-03771-YGR
 CASE No. 4:19-cv-01150-YGR

Texas Corporation; AJWPRODUCTION, LLC, a California Limited Liability Company, THE CONSORTIUM GROUP, LLC, a Nevada Limited Liability Company, trustee of NEW WORLD TRUST, a trust operating under unknown laws, trustee of EARLY BIRD TRUST, a trust operating under unknown laws, DOES 7- 10,

Defendants.

YOUXIANG EILEEN WANG and DALTON CHEN, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

LIFE INSURANCE COMPANY OF THE SOUTHWEST and PREMIER FINANCIAL ALLIANCE, INC.,

Defendants.

Case No. 4:19-cv-01150-YGR

DEFENDANT PREMIER FINANCIAL ALLIANCE, INC.'S NOTICE OF MOTION AND MOTION TO COMPEL ARBITRATION OR, IN THE ALTERNATIVE, TO TRANSFER TO THE NORTHERN DISTRICT OF GEORGIA PURSUANT TO 27 U.S.C. § 1404(A): MEMORANDUM OF POINTS AND AUTHORITIES

Chen Action Filed: June 25, 2018

Chen FAC Filed: October 15, 2018

Wang Action Filed: February 28, 2019

Wang FAC Filed: April 30, 2019

Hearing Date: July 19, 2019

Time: 2:00 p.m.

Courtroom: 1, 4th Floor

[[Proposed] Order and Declaration of Kelly Martin filed concurrently herewith]

Trial Date: None Set

MOT. TO COMPEL ARBITRATION, FOR LEAVE TO SEEK RECONS. OF PRIOR ORDER DENYING MOT. TO COMPEL ARBITRATION, AND TO TRANSFER PURSUANT TO 28 U.S.C. § 1404(A)

NOTICE OF MOTIONS AND MOTIONS

TO THE COURT, PLAINTIFFS AND THEIR COUNSEL:

PLEASE TAKE NOTICE that on July 19, 2019, at 2:00 p.m., or as soon thereafter as the parties may be heard, before the Honorable Yvonne Gonzalez Rogers, United States District Court Judge, in Courtroom 1, 4th Floor, located at 1301 Clay Street, Oakland, CA 94612, Defendant Premier Financial Alliance, Inc. (“PFA”) and, where appropriate, David Carroll, Jack Wu, Lan Zhang, Bill Hong, Rex Wu, AJW Production, LLC and The Consortium Group, LLC (collectively, with PFA, the “PFA Defendants”), will and hereby do move (1) to compel arbitration of all claims against PFA in the action styled *Wang v. Life Insurance Company of the Southwest et al*, 4:19-cv-01150-YGR (the “Wang Action”); (2) for leave to file a motion for reconsideration of the Court’s previous denial of PFA’s motion to compel arbitration in the action styled *Chen v. Premier Financial Alliance, Inc. et al.*, Case No. 4:18-cv-03771-YGR (the “Chen Action”), if the Court compels arbitration in the Wang Action; and (3) in the event the Court does not compel arbitration in the Wang Action and/or the Chen Action, to transfer these cases to the Northern District of Georgia, Atlanta Division, pursuant to 28 U.S.C. § 1404(a).

Good cause exists to grant these motions because *all* persons who agree to become PFA Associates, including the Plaintiffs in the Chen Action and the Wang Action, must affirmatively agree to PFA’s Associate Marketing Agreement (“AMA”). The AMA contains terms and conditions governing the relationship between PFA and its Associates, including a condition that any disputes between the Associate and PFA must be arbitrated on an individual basis and not litigated in court. Under the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1 et seq., and controlling precedent, this Court’s role is to move the parties out of this court and into arbitration as quickly as possible.

In the Chen Action, the Court previously denied a motion to compel arbitration solely because the Court believed that PFA’s prior counsel did not submit sufficient evidence that PFA Associates must, and the Chen Plaintiffs did, affirmatively check a box agreeing to PFA’s terms and conditions, including the arbitration requirement. The instant motion to compel arbitration of

MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
SEEK RECONS. OF PRIOR ORDER DENYING MOT.
TO COMPEL ARBITRATION, AND TO TRANSFER
PURSUANT TO 28 U.S.C. § 1404(A)

1 the *Wang* Action bolsters that showing.

2 If the Court compels arbitration of all claims against PFA in the *Wang* Action, the PFA
 3 Defendants respectfully request that the Court permit them to move for reconsideration of the
 4 Court's prior ruling with respect to the *Chen* Action. The proof of affirmative consent that PFA
 5 submits with the instant motion applies equally to all PFA Associates, including not only the *Chen*
 6 Plaintiffs but all putative members of the classes pleaded in both cases. It would not be judicially
 7 efficient for the Court to compel arbitration of the *Wang* Action claims—necessarily finding that
 8 all members of the putative class must also arbitrate any claims they have against PFA—but then
 9 to allow the *Chen* Plaintiffs to proceed in court on their individual claims only.

10 Finally, in the event the Court declines to compel arbitration in either or both cases, it should
 11 transfer any surviving claims to be litigated in the United States District Court for the Northern
 12 District of Georgia. Two other provisions of the AMA to which all PFA Associates have agreed
 13 are a Georgia choice of law clause and a consent to venue and jurisdiction in Georgia. PFA is
 14 incorporated in Georgia and headquartered there. All employees of PFA who could be potential
 15 witnesses in this case reside and/or or work in Georgia, and PFA's documents relevant to the case
 16 are stored there. PFA neither owns nor rents any property in California and has no employees in
 17 the State. The *Chen* Action names an officer who resides in Florida and certain PFA Associates
 18 who live in California as additional defendants, but those defendants all consent to this transfer
 19 motion and also agreed, like all other PFA Associates, to Georgia jurisdiction. The cases' only
 20 other connection to California is that the plaintiffs chose to sue here, but the law is clear that in
 21 class actions, and particularly where plaintiffs seek *nationwide* class certification, as the *Chen* and
 22 *Wang* Plaintiffs do, their choice of forum is entitled to little or no weight.

23 These motions are based upon this Notice of Motion and Motion; the accompanying
 24 Declaration of Kelly Martin ("Martin Decl."); the pleadings in this action and documents attached
 25 thereto and referenced therein; and on such other briefs, oral argument and documentary matters as
 26 may be presented to this Court at or before the hearing on these motions.

27 These motions are made following multiple discussions among counsel, which took place

28 MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
 SEEK RECONS. OF PRIOR ORDER DENYING MOT.
 TO COMPEL ARBITRATION, AND TO TRANSFER
 PURSUANT TO 28 U.S.C. § 1404(A)

1 between April 16-30, 2019.

2 DATED: May 28, 2019

3 **DRINKER BIDDLE & REATH LLP**

4 By: /s/ Matthew J. Adler
5 Matthew J. Adler
6 matthew.adler@dbr.com
7 Four Embarcadero Center, 27th Floor
8 San Francisco, CA 94111
9 Telephone: (415) 591-7671
10 Facsimile: (415) 591-7510

DRINKER BIDDLE & REATH LLP

By: /s/ Jeffrey S. Jacobson
Jeffrey S. Jacobson (*pro hac vice*)
jeffrey.jacobson@dbr.com
1177 Avenue of the Americas
New York, NY 10036
Telephone: (212) 248-3140
Facsimile: (212) 248-3141

8 **KELLEY DRYE & WARREN LLP**

9 By: /s/ Jaclyn M. Metzinger
10 Jaclyn M. Metzinger (*pro hac vice*)
11 jmetzinger@kelleydrye.com
12 101 Park Avenue
13 New York, NY 10178
14 Telephone: (212) 808-7800
15 Facsimile: (212) 808-7897

16 *Attorneys for Defendants*
17 *Premier Financial Alliance, Inc., David*
18 *Carroll, Jack Wu, Lan Zhang, Bill Hong, Rex*
19 *Wu, AJWProduction, LLC and The*
20 *Consortium Group, LLC*

21
22
23
24
25
26
27
28 MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
SEEK RECONS. OF PRIOR ORDER DENYING MOT.
TO COMPEL ARBITRATION, AND TO TRANSFER
PURSUANT TO 28 U.S.C. § 1404(A)

TABLE OF CONTENTS

		Page
1		
2		
3	INTRODUCTION	1
4	FACTUAL BACKGROUND	2
5	ARGUMENT	6
6	I. THIS COURT SHOULD COMPEL ARBITRATION OF THE WANG ACTION	6
7	A. The Wang Plaintiffs Knowingly and Willingly Entered Into an Agreement to Arbitrate their Claims with PFA	7
8	B. This Dispute Falls Squarely Within the Scope of the AMA	11
9	II. THIS COURT SHOULD GRANT THE PFA DEFENDANTS LEAVE TO SEEK RECONSIDERATION OF THE COURT’S PRIOR ORDER DECLINING TO COMPEL ARBITRATION IN THE CHEN ACTION	12
10	III. BOTH THE CHEN AND WANG ACTIONS SHOULD BE TRANSFERRED TO THE NORTHERN DISTRICT OF GEORGIA.....	14
11	1. Convenience of the Parties and Witnesses Tips Decisively in Favor of Transfer to the Northern District of Georgia	16
12	2. Plaintiffs’ Choice of Forum Is Not Entitled To Deference In a Putative National Class Action and, In Any Event, Is Greatly Outweighed By Inconvenience To the Defendants	17
13	3. The AMA Was Drafted In Georgia, Is Governed By Georgia Law, and Contains a Georgia Forum Selection Clause.	18
14	4. The Operative Facts Occurred in Georgia, Not California	19
15		
16		
17	CONCLUSION	20
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES**Page(s)****CASES**

<i>Aboltin v. Jeunesse, LLC</i> , No. CV-16-02574-PHX-SPL, 2017 WL 5957646 (D. Ariz. Sept. 12, 2017)	14, 15
<i>Ambriz v. Coca Cola Co.</i> , No. 13-cv-03539-JST, 2014 WL 296159 (N.D. Cal. Jan. 27, 2014)	16
<i>AT&T Mobility LLC v. Concepcion</i> , 563 U.S. 333 (2010)	5
<i>AT&T Techs., Inc. v. Commc'ns Workers of Am.</i> , 475 U.S. 643 (1986)	7, 11
<i>Britton v. Co-op Banking Grp.</i> , 4 F.3d 742 (9th Cir. 1993)	11
<i>Broad. Data Retrieval Corp. v. Sirius Satellite Radio, Inc.</i> , No. 06-cv-1190-JFW-SSX, 2006 WL 1582091 (C.D. Cal. June 6, 2006)	18
<i>Caley v. Gulfstream Aero Corp.</i> , 428 F.3d 1359 (11th Cir. 2005)	7
<i>Chiron Corp. v. Ortho Diagnostic Sys., Inc.</i> , 207 F.3d 1126 (9th Cir. 2000)	6, 11
<i>Cohn v. Oppenheimerfunds, Inc.</i> , No. 09-cv-1656-WQH-BLM, 2009 WL 3818365 (S.D. Cal. Nov. 12, 2009)	18
<i>Crawford v. Beachbody, LLC</i> , No. 14CV1583-GPC KSC, 2014 WL 6606563 (S.D. Cal. Nov. 5, 2014)	8
<i>Dahdoul Textiles, Inc. v. Zinatex Imports, Inc.</i> , No. 2:15-cv-4011-ODWASX, 2015 WL 5050514 (C.D. Cal. Aug. 25, 2015)	16, 17
<i>Daugherty v. Experian Info. Sols., Inc.</i> , 847 F. Supp. 2d 1189 (N.D. Cal. 2012)	6
<i>Dean Witter Reynolds, Inc. v. Byrd</i> , 470 U.S. 213 (1985)	6
<i>DeVries v. Experian Info. Sols., Inc.</i> , No. 16-CV-02953-WHO, 2017 WL 733096 (N.D. Cal. Feb. 24, 2017)	8
<i>F.T.C. v. Wright</i> , 2:13-CV-2215-HRH, 2014 WL 1385111 (D. Ariz. Apr. 9, 2014)	16
<i>Ferguson v. Corinthian Colleges, Inc.</i> , 733 F.3d 928 (9th Cir. 2013)	6

MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
SEEK RECONS. OF PRIOR ORDER DENYING MOT.
TO COMPEL ARBITRATION, AND TO TRANSFER
PURSUANT TO 28 U.S.C. § 1404(A)

1	<i>Gallivan v. Educ. Mgmt. Corp.</i> ,	
2	No. 1:16-CV-3178-WSD, 2017 WL 7663068 (N.D. Ga. Aug. 16, 2017).....	7
3	<i>Gemini Capital Group, Inc. v. Yap Fishing Corp.</i> ,	
4	150 F.3d 1088 (9th Cir. 1998).....	17
5	<i>Hendricks v. StarKist Co.</i> ,	
6	No. 12-cv-729 YGR, 2014 WL 1245880 (N.D. Cal. Mar. 25, 2014).....	16
7	<i>Horanzy v. Vemma Nutrition Co.</i> ,	
8	87 F. Supp. 3d 341 (N.D.N.Y. 2015).....	14, 15, 16, 17
9	<i>Jang v. Bos. Sci. Scimed, Inc.</i> ,	
10	No. CV 10-3911 ODW VBKX, 2010 WL 11463889 (C.D. Cal. Aug. 9, 2010).....	15
11	<i>Jones v. GNC Franchising, Inc.</i> ,	
12	211 F.3d 495 (9th Cir. 2000).....	14
13	<i>L.A. Printex Indus., Inc. v. Le Chateau, Inc.</i> ,	
14	No. CV 10-4264 ODW FMOX, 2011 WL 2462025 (C.D. Cal. June 20, 2011).....	15
15	<i>Lou v. Belzberg</i> ,	
16	834 F.2d 730 (9th Cir. 1987).....	16
17	<i>Macias v. Excel Bldg. Servs., LLC</i> ,	
18	767 F. Supp. 2d 1002 (N.D. Cal. 2011)	6
19	<i>Marley v. Macy's S.</i> ,	
20	No. CV 405-227, 2007 WL 1745619 (S.D. Ga. June 18, 2007)	7
21	<i>Martin v. Biaggini</i> ,	
22	Case No. 12-cv-06287-JD, 2014 WL 1867068 (N.D. Cal. May 7, 2014)	11, 12
23	<i>Mason v. Midland Funding LLC</i> ,	
24	No. 1:16-cv-02867-LMM-RGV, 2018 WL 3702462 (N.D. Ga. May 25, 2018)	8
25	<i>McKee v. Audible, Inc.</i> ,	
26	No. CV 17-1941-GW(EX), 2017 WL 4685039 (C.D. Cal. July 17, 2017)	8
27	<i>Meyer v. Uber Techs., Inc.</i> ,	
28	868 F.3d 66 (2d Cir. 2017).....	7, 8
	<i>Moses H. Cone Me'l. Hosp. v. Mercury Constr. Corp.</i> ,	
	460 U.S. 1 (1983).....	6
	<i>Newthink LLC v. Lenovo (U.S.) Inc.</i> ,	
	No. 2:12-cv-5443-ODW JCX, 2012 WL 6062084 (C.D. Cal. Dec. 4, 2012)	14, 15, 16
	<i>Nyuyen v. Barnes & Noble Inc.</i> ,	
	763 F.3d 1171 (9th Cir. 2014).....	8, 9
	<i>Ostroff v. Alterra Healthcare Corp.</i> ,	
	433 F. Supp. 2d 538 (E.D. Pa. 2006)	6

MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
 SEEK RECONS. OF PRIOR ORDER DENYING MOT.
 TO COMPEL ARBITRATION, AND TO TRANSFER
 PURSUANT TO 28 U.S.C. § 1404(A)

1	<i>Palomino v. Facebook, Inc.</i> ,	
2	No. 16-cv-4230-HSG, 2017 WL 76901 (N.D. Cal. Jan. 9, 2017)	18
3	<i>Peatrotsky v. Persolve, LLC</i> ,	
4	No. CV 12-0203 JCG, 2012 WL 13012679 (C.D. Cal. May 22, 2012)	17
5	<i>School Dist. No. 1J v. ACandS, Inc.</i> ,	
6	5 F.3d 1255 (9th Cir. 1993).....	11
7	<i>Shearson/Am. Express, Inc. v. McMahon</i> ,	
8	482 U.S. 220 (1987).....	6
9	<i>Siddiqi v. Gerber Prods. Co.</i> ,	
10	No. CV 12-1188 PA RZX, 2012 WL 11922412 (C.D. Cal. Mar. 26, 2012)	16, 17
11	<i>Simula, Inc. v. Autoliv, Inc.</i> ,	
12	175 F.3d 716 (9th Cir. 1999).....	11
13	<i>Swift v. Zynga Game Network, Inc.</i> ,	
14	805 F. Supp. 2d 904 (N.D. Cal. 2011)	8
15	<i>Timothy Dupler v. Orbitz, LLC</i> ,	
16	No. CV182303RGKGSJX, 2018 WL 6038309 (C.D. Cal. July 5, 2018).....	7, 11
17	<i>Tompkins v. 23andMe, Inc.</i> ,	
18	No. 5:13-CV-05682-LHK, 2014 WL 2903752 (N.D. Cal. June 25, 2014), <i>aff'd</i> ,	
19	840 F.3d 1016 (9th Cir. 2016).....	8, 11
20	<i>U.S. Bank, N.A. v. PHL Variable Ins. Co.</i> ,	
21	No. 2:11-cv-9517-ODW, 2012 WL 3848630 (C.D. Cal. Sept. 4, 2012)	14
22	<i>United States ex rel. Tutanés-Luster v. Broker Sols., Inc.</i> , No. 17-CV-04384-JST,	
23	2019 WL 1024962 (N.D. Cal. Mar. 4, 2019)	17
24	<i>Van Dusen v. Barrack</i> ,	
25	376 U.S. 612 (1964).....	13
26	<i>Wasson v. LogMeIn, Inc.</i> ,	
27	No. CV 18-7285 PA GJSX, 2018 WL 6016283 (C.D. Cal. Nov. 2, 2018)	17
28	STATUTES, RULES & REGULATIONS	
	9 U.S.C. § 1 et seq.	1
	9 U.S.C. § 2	3, 7
	9 U.S.C. § 4	6
	28 U.S.C. § 1404(a)	<i>passim</i>
	Fed. R. Civ. P. 12(b)(6).....	1
	Fed. R. Civ. P. 12(c)	1
	MOT. TO COMPEL ARBITRATION, FOR LEAVE TO SEEK RECONS. OF PRIOR ORDER DENYING MOT. TO COMPEL ARBITRATION, AND TO TRANSFER PURSUANT TO 28 U.S.C. § 1404(A)	

1	Fed. R. Civ. P. 54(b)	11
2	Fed. R. Evid. 902	10
3	Ga. Code Ann. § 13-3-1	7
4	Local Rule 7-9	11, 12

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
SEEK RECONS. OF PRIOR ORDER DENYING MOT.
TO COMPEL ARBITRATION, AND TO TRANSFER
PURSUANT TO 28 U.S.C. § 1404(A)

- v -

CASE No. 4:18-cv-03771-YGR
CASE No. 4:19-cv-01150-YGR

Defendant Premier Financial Alliance, Inc. (“PFA”) and, as appropriate, Defendants David Carroll, Jack Wu, Lan Zhang, Bill Hong, Rex Wu, AJW Production, LLC and The Consortium Group, LLC (collectively, with PFA, the “PFA Defendants”) hereby move for an order (1) to compel arbitration of all claims against PFA in the action styled *Wang v. Life Insurance Company of the Southwest et al.*, 4:19-cv-01150-YGR (the “Wang Action”); (2) for leave to seek reconsideration of the Court’s previous denial of the PFA Defendants’ motion to compel arbitration in the action styled *Chen v. Premier Financial Alliance, Inc. et al.*, Case No. 4:18-cv-03771-YGR (the “Chen Action”), if the Court compels arbitration in the Wang Action; and (3) in the event the Court does not compel arbitration in the Wang Action and/or the Chen Action, to transfer these cases to the Northern District of Georgia, Atlanta Division, pursuant to 28 U.S.C. § 1404(a).

INTRODUCTION

The claims pleaded in the Chen Action and the Wang Action are fundamentally misguided and, should it prove necessary to do so, PFA will file a Rule 12(c) motion for judgment on the pleadings in the Chen Action and a Rule 12(b)(6) motion to dismiss for failure to state a claim in the Wang Action. Neither case should require that motion practice, however, because the plaintiffs in both matters, like all PFA Associates, affirmatively agreed to PFA’s Associate Marketing Agreement (“AMA”), which includes a condition that any disputes between the Associate and PFA (as well as disputes between and among PFA Associates) must be arbitrated on an individual basis and not litigated in court. The AMA is a standard “clickwrap” agreement, requiring Associates to check an online box signifying their assent to the AMA’s terms and conditions. It is black-letter law, in the Ninth Circuit as elsewhere, that clickwrap agreements like the AMA can and must be enforced pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1 et seq.

The attached Declaration of Kelly Martin (“Martin Decl.”) puts the AMA before the Court, demonstrates that all PFA Associates must affirmatively check a box accepting the AMA’s terms, and provides the dates on which all the plaintiffs in the Chen Action and the Wang Action accepted the AMA. Nothing more is required. Although the Court previously denied PFA’s motion to compel arbitration in the Chen Action, it did so only because it believed PFA’s prior counsel had

MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
SEEK RECONS. OF PRIOR ORDER DENYING MOT.
TO COMPEL ARBITRATION, AND TO TRANSFER
PURSUANT TO 28 U.S.C. § 1404(A)

CASE NO. 4:18-CV-03771-YGR
CASE NO. 4:19-CV-01150-YGR

1 not provided sufficient proof of the AMA's clickwrap nature. With that evidence now before the
 2 Court, the PFA Defendants respectfully request that the Court, if it compels arbitration in the *Wang*
 3 Action, permit them to seek reconsideration of the Court's previous decision in the *Chen* Action
 4 and compel arbitration of the *Chen* Plaintiffs' claims, too.

5 In the alternative, the PFA Defendants request that the Court transfer any non-arbitrable
 6 claims against them to the United States District Court for the Northern District of Georgia, Atlanta
 7 Division, pursuant to 28 U.S.C. § 1404(a). The factors courts must consider in transfer motions tip
 8 decisively in favor of Georgia as the appropriate venue for these claims. Two other provisions of
 9 the AMA to which Plaintiffs and all putative class members agreed are a Georgia choice of law
 10 clause and a consent to jurisdiction in Georgia. PFA is incorporated in Georgia and headquartered
 11 there. All employees of PFA who could be potential witnesses in this case reside in Georgia, and
 12 PFA's documents relevant to the case are stored there. PFA neither owns nor rents any property in
 13 California and has no employees in the state. The *Chen* Action names an officer who resides in
 14 Florida and certain PFA Associates who live in California as additional defendants, but those
 15 defendants all consent to this transfer motion and also agreed, like all other PFA Associates, to
 16 Georgia venue and jurisdiction. The *Chen* and *Wang* Plaintiffs' decision to sue here is the cases'
 17 only other connection to this State, but the law is clear, in California as elsewhere, that in class
 18 actions, a plaintiff's choice of forum is entitled to little or no weight. That is especially true where,
 19 as here, the plaintiff seeks a *nationwide* class.

20 **FACTUAL BACKGROUND**

21 For over three decades, PFA has provided thousands of people the opportunity to start their
 22 own businesses. PFA is a marketing firm that provides its Associates with the knowledge and
 23 means to sell life insurance and annuity products issued by affiliated life insurance companies. (*See*
 24 *Martin Decl.* ¶ 4.) PFA's independent "Associates" pay \$125 to join PFA and, in return, gain access
 25 to PFA's proprietary marketing database and systems, including an exclusive PFA team e-mail
 26 system and business monitoring system, as well as training and mentorship opportunities. (*Id.* ¶ 6.)

27 PFA Associates cannot sell insurance unless and until they become licensed to do so by at least
 28 MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
 SEEK RECONS. OF PRIOR ORDER DENYING MOT.
 TO COMPEL ARBITRATION, AND TO TRANSFER
 PURSUANT TO 28 U.S.C. § 1404(A)

one State authority and then subsequently receive an appointment to sell insurance by at least one insurance company. (*See* Martin Decl. ¶¶ 11-14 and Ex. A, p. 2; p. 4 § 2.) Some people who join PFA as Associates already hold the necessary license(s) and/or appointment(s). (*See id.* ¶ 12.) Anyone who joins without already holding a license or appointment, however, agrees as part of the AMA to obtain their licenses and become appointed by PFA’s affiliated insurance companies shortly after joining. (*See id.* and Ex. A, p. 4 § 2.) Once PFA Associates become licensed and appointed to sell insurance, they can earn commissions on their own sales of insurance and annuity products. (*See id.* ¶ 14.) Further, to the extent that PFA Associates choose to build teams of salespeople, they also can earn commissions based on sales made by the “downline” Associates they sponsor to join PFA. (*See id.* and Ex. A, p. 4 § 2.)

PFA Associates are independent contractors, not employees of PFA, and the AMA governs the relationship between PFA and its Associates. (*See* Martin Decl. ¶¶ 7, 10 and Ex. A, p. 4 § 1.) PFA’s online application contains the full text of the AMA. (*See id.* ¶ 7 and Ex. A, pp. 3-8.) Anyone wishing to become an Associate must affirmatively consent to its terms. (*See id.* ¶¶ 7, 15-17 and Ex. A.) Specifically, PFA applicants must scroll through the entire AMA, click a checkbox consenting to the terms and conditions of the AMA, and electronically sign their name at the end of the AMA. (*See id.* ¶ 15 and Ex. A, p. 8.) By clicking this check box and electronically signing their names, applicants affirmatively consent to the terms and conditions set forth in the AMA. (*Id.*)

Below is a screen shot of what all PFA applicants saw, and assented to, when joining PFA. (Note that this is just the bottom of the AMA. It is what PFA applicants see after scrolling through the text of the AMA, the full text of which is attached as Exhibit A to the Martin Declaration.):

///

///

///

///

///

MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
SEEK RECONS. OF PRIOR ORDER DENYING MOT.
TO COMPEL ARBITRATION, AND TO TRANSFER
PURSUANT TO 28 U.S.C. § 1404(A)

14. Miscellaneous

The following miscellaneous provisions shall apply:

- ▶ Modifications. PFA shall not be bound by any promise, agreement or understanding heretofore or hereafter made, unless made in writing and signed by the President of PFA expressing by its terms and intention to modify this agreement.
- ▶ Indebtedness. Any indebtedness of Associate to PFA shall be considered a loan payable upon demand. As security for any such indebtedness, PFA shall have a first lien upon any compensation payable to the Associate under this agreement and PFA may deduct same from any such compensation due the Associate.
- ▶ No Waiver. The failure of PFA to enforce any provision of the agreement or any policy, procedure, rule or regulation that it may promulgate, shall not constitute a waiver thereof.
- ▶ Entire Agreement. This Agreement and any exhibits as may have been referenced herein, together with the policies, procedures and rules of PFA, if any, as may be promulgated from time to time on PFA's PTRAC website or via group email blast, supersedes all prior agreements between PFA and the Associate and supersedes all negotiations and communications prior to the signing and acceptance hereof.
- ▶ Construction. Should any part of this agreement be deemed, held or ruled to be invalid, illegal or otherwise unenforceable, the remainder of this agreement shall remain in force and be enforceable by its terms.
- ▶ Choice of Law/Forum. Should there be any conflict as to the interpretation, breach or other default events under this agreement, the parties agree that the choice of the law shall be the State of Georgia. All parties consent to jurisdiction and venue in Gwinnett County, Georgia for any disputes that may arise hereunder.
- ▶ Offer and Acceptance. This Agreement shall be executed electronically by Associate via PFA's PTRAC online web site. When executed and electronically submitted by Associate to PFA, this Agreement will constitute an offer by Associate to become licensed with PFA as per the terms and conditions herein above stated. Said offer shall be deemed accepted by PFA unless: (1) Associate withdraws his offer in writing and deliver said withdrawal prior to receiving his password from PFA and signing on to PTRAC; or, (2) Associate cancels his electronic membership payment authorization to PFA for good cause; or, (3) PFA notifies Associate of its rejection of his offer to join PFA within 30 days of Associate's acceptance date.

☐ I accept the terms and conditions

Enter Name

Continue

If an applicant fails to click the "I accept the terms and conditions" check box, or does not electronically sign his/her name at the end of the AMA, the application will not be submitted to or processed by PFA. (*See* Martin Decl. ¶ 16.)

The AMA contains a binding arbitration clause requiring associates to arbitrate any disputes with PFA or other PFA Associates in Gwinnett County, Georgia:

The associate agrees not to institute any legal proceedings against PFA; but, instead, shall submit any and all disputes with PFA, its officers, directors, employees, members and associates to binding arbitration pursuant to the rules of the American Arbitration Association.

(Martin Decl. ¶ 18 and Ex. A, p. 4 § 2.) If a dispute is not arbitrable under this provision, the AMA provides that "[a]ll parties consent to jurisdiction and venue in Gwinnet County, Georgia." (*Id.* ¶ 20 and Ex. A, p. 8 § 14.) Finally, regardless of whether a dispute proceeds in arbitration or litigation, the AMA provides that Georgia law will govern. (*See id.* ¶ 19 and Ex. A, p. 8 § 14.)

These terms govern the relationship between PFA and each of the named plaintiffs in both the *Chen* and *Wang* Actions. The *Chen* Plaintiffs, Rui Chen and Wenjian Gonzalez, claim to have joined PFA in 2017 and 2017/2018, respectively. (*Chen* FAC ¶¶ 74, 76.) Like *all other* PFA Associates, they had to agree affirmatively to the AMA in their application. (*See* Martin Decl.

MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
SEEK RECONS. OF PRIOR ORDER DENYING MOT.
TO COMPEL ARBITRATION, AND TO TRANSFER
PURSUANT TO 28 U.S.C. § 1404(A)

¶¶ 15-16.) Although counsel for the *Chen* Plaintiffs have not yet provided PFA with the full legal names and addresses of the *Chen* Plaintiffs, PFA has records pertaining to people with similar names. Assuming these are indeed the *Chen* Plaintiffs, Ms. Chen joined PFA and accepted the terms of the AMA on January 2, 2019, and Ms. Gonzalez did the same January 19, 2018. (*See* Martin Decl. ¶¶ 22-23.) The *Wang* Plaintiffs similarly allege, and PFA's database of Associates confirms, that that they both became PFA associates in 2017. (*Wang* FAC ¶¶ 10, 14; *see* Martin Decl. ¶¶ 25-26.) PFA's records reflect that Ms. Wang joined PFA and accepted the terms of the AMA on November 8, 2017 and Mr. Chen did so on May 2, 2017. (*See* Martin Decl. ¶¶ 25-26.)

PFA is a Georgia corporation with its headquarters located in Suwanee, Georgia. (*See* Martin Decl. ¶¶ 27-28.) PFA has approximately 13 employees. (*See id.* ¶ 29.) All of PFA's employees, including its corporate officers and many of the witnesses in this case who have knowledge of the pricing and distribution model challenged in both the *Chen* and *Wang* Actions, work at PFA's Georgia headquarters. (*See id.*) PFA's electronic records, and substantially all of PFA's records that are potentially relevant to any of Plaintiffs' claims, are stored at PFA's Georgia headquarters. (*See id.* ¶ 30.) PFA has no property in California, no employees based in California, and is not licensed to do business there. (*See id.* ¶¶ 32-34.) PFA's parent company and co-defendant in the *Chen* Action, The Consortium Group, LLC, is a Georgia corporation and is headquartered there. (*See id.* ¶ 35.) As is true with PFA, The Consortium Group has no employees in California, no property in California, and is not licensed to do business there. (*See id.* ¶¶ 36-38.)

Of the five individuals named as defendants in the *Chen* Action, David Carroll is the only officer of PFA. (*See* Martin Decl. ¶¶ 40-41.) Carroll is the founder and CEO of PFA, and he works out of PFA's Suwanee, Georgia headquarters. (*Chen* FAC ¶ 9; *see* Martin Decl. ¶ 40.) The other four individual PFA Defendants (Jack Wu, Bill Hong, Lan Zhang and Rex Wu) are independent contractor Associates of PFA, not employees. (*See* Martin Decl. ¶ 41.) These four defendants reside in California, but they join this motion and, separately, like all other Associates, they each consented to arbitration of all disputes with PFA, and also to venue and jurisdiction in Gwinnett County, Georgia, for any non-arbitrable disputes, when they executed the AMA. (*See id.*)

MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
SEEK RECONS. OF PRIOR ORDER DENYING MOT.
TO COMPEL ARBITRATION, AND TO TRANSFER
PURSUANT TO 28 U.S.C. § 1404(A)

PFA was previously named as a defendant in an unrelated action filed in the Superior Court of the State of California for the County of Los Angeles styled *Esther Liu v. Premier Financial Alliance, Inc., Steven Early, Lan Zhang, Qinghu Huang*, Case No. BC639922. There, the Superior Court granted PFA's motion to compel arbitration based on evidence concerning the same arbitration in the AMA that is at issue in these cases. (*See* Martin Decl. ¶ 42 and Ex. B.) The California Court of Appeals affirmed that decision. (*See id.* ¶ 42 and Ex. C.) The PFA Defendants submitted this same evidence in support of their motion to compel arbitration in the *Chen* Action, but this Court found it insufficient. (*Chen* Dkt. No. 56.) The additional evidence discussed above is being submitted in connection with PFA's motion to compel arbitration in the *Wang* Action.

ARGUMENT

I. THIS COURT SHOULD COMPEL ARBITRATION OF THE WANG ACTION

The Federal Arbitration Act ("FAA") reflects a "liberal federal policy favoring arbitration." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2010) (citation omitted). The FAA also requires courts to "rigorously enforce agreements to arbitrate." *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987). The Supreme Court has instructed that "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract itself or an allegation of waiver, delay, or a like defense to arbitrability." *Moses H. Cone Me'l. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983). A party aggrieved by the refusal of another party to arbitrate under a written agreement may petition the Court for an order compelling arbitration as provided for in the parties' agreement. *See* 9 U.S.C. § 4.

"By its terms, the [FAA] leaves no room for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 213 (1985) (emphasis in original); *see also* 9 U.S.C. § 4. Once a court determines that a transaction affects interstate commerce—and that conclusion is inescapable here—a court's role when presented with a motion to compel arbitration is limited to determining: "(1) whether a valid

MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
SEEK RECONS. OF PRIOR ORDER DENYING MOT.
TO COMPEL ARBITRATION, AND TO TRANSFER
PURSUANT TO 28 U.S.C. § 1404(A)

1 agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at
 2 issue. If the response is affirmative on both counts, then the [FAA] requires the court to enforce
 3 the arbitration agreement in accordance with its terms.” *Daugherty v. Experian Info. Sols., Inc.*,
 4 847 F. Supp. 2d 1189, 1193 (N.D. Cal. 2012), *quoting Chiron Corp. v. Ortho Diagnostic Sys., Inc.*,
 5 207 F.3d 1126, 1130 (9th Cir. 2000).

6 “While the Court may not review the merits... [i]n deciding a motion to compel arbitration,
 7 [it] may consider the pleadings, documents of uncontested validity, and affidavits submitted by
 8 either party.” *Macias v. Excel Bldg. Servs., LLC*, 767 F. Supp. 2d 1002, 1007 (N.D. Cal. 2011),
 9 *quoting Ostroff v. Alterra Healthcare Corp.*, 433 F. Supp. 2d 538, 540 (E.D. Pa. 2006). Moreover,
 10 in conducting these inquiries, as a matter of federal law, “any doubts concerning the scope of
 11 arbitrable issues should be resolved in favor of arbitration.” *Ferguson v. Corinthian Colleges, Inc.*,
 12 733 F.3d 928, 937-38 (9th Cir. 2013), *quoting Moses H. Cone*, 460 U.S. at 24-25.

13 Here, both of these inquiries must be answered in the affirmative and PFA’s motion to
 14 compel arbitration should be granted. Indeed, at least two California courts have already compelled
 15 a plaintiff into arbitration with PFA based on the same arbitration clause in the AMA. (*See* Martin
 16 Decl. ¶ 42 and Exs. B, C.)

17 **A. The Wang Plaintiffs Knowingly and Willingly Entered Into an Agreement to**
 18 **Arbitrate their Claims with PFA**

19 Under the FAA, arbitration agreements are enforceable “save upon such grounds as exist at
 20 law or in equity for the revocation of any contract.” 9 U.S.C. § 2. Accordingly, courts look to state
 21 law to determine whether an agreement to arbitrate exists. *See Marley v. Macy’s S.*, No. CV 405-
 22 227, 2007 WL 1745619, at *2 (S.D. Ga. June 18, 2007) (citing to *Caley v. Gulfstream Aero Corp.*,
 23 428 F.3d 1359, 1369 (11th Cir. 2005), providing that if a binding agreement arose between the
 24 parties, courts apply the contract law of the state that governs the formation of the contract).
 25 Georgia law, which the AMA specifies will govern any dispute between PFA and Associates,
 26 requires mutual assent in order to form a contract. *See Gallivan v. Educ. Mgmt. Corp.*, No. 1:16-
 27 CV-3178-WSD, 2017 WL 7663068, at *6 (N.D. Ga. Aug. 16, 2017) (citing Ga. Code Ann. § 13-3-

28 MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
 SEEK RECONS. OF PRIOR ORDER DENYING MOT.
 TO COMPEL ARBITRATION, AND TO TRANSFER
 PURSUANT TO 28 U.S.C. § 1404(A)

1: “to constitute a valid contract, there must be parties able to contract, a consideration moving to the contract, the assent of the parties to the terms of the contract, and a subject matter upon which the contract can operate.”). Similarly under California law, “[t]o form a contract, there must be “[m]utual manifestation of assent, whether by written or spoken word or by conduct.” *Meyer v. Uber Techs., Inc.*, 868 F.3d 66, 74 (2d Cir. 2017) (citations omitted).

A party opposing arbitration after having consented to arbitrate faces a steep hurdle: “where the contract contains an arbitration clause, there is a presumption of arbitrability in the sense that ‘[an] order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.’” *AT&T Techs., Inc. v. Commc’ns Workers of Am.*, 475 U.S. 643, 650 (1986) (internal citation omitted). The arbitration clause in the AMA therefore creates a presumption of arbitrability that the Wang Plaintiffs will not be able to overcome.

The AMA is a standard “clickwrap” agreement that requires applicants to “click a button explicitly agreeing to the terms of the contract.” *See, e.g., Timothy Dupler v. Orbitz, LLC*, No. CV182303RGKGSJX, 2018 WL 6038309, at *2 (C.D. Cal. July 5, 2018) (“Clickwrap agreements require website users to “click on an ‘I agree’ box after being presented with a list of terms”), quoting *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1175-76 (9th Cir. 2014). *See also McKee v. Audible, Inc.*, No. CV 17-1941-GW(EX), 2017 WL 4685039, at *6 (C.D. Cal. July 17, 2017) (collecting cases holding that such agreements are binding “even if the user does not actually read the terms of services”). Indeed, courts around the country, including in California and Georgia, “have recognized that [an] electronic ‘click’ can suffice to signify the acceptance of a contract,” and that “[t]here is nothing automatically offensive about such agreements, as long as the layout and language of the site give the user reasonable notice that a click will manifest assent to an agreement.” *Meyer v. Uber Techs., Inc.*, 868 F.3d 66, 75 (2d Cir. 2017). *See also Tompkins v. 23andMe, Inc.*, No. 5:13-CV-05682-LHK, 2014 WL 2903752, at *8 (N.D. Cal. June 25, 2014), *aff’d*, 840 F.3d 1016 (9th Cir. 2016) (plaintiffs received adequate notice where, during the account creation and registration processes, each named plaintiff clicked a box or button that appeared near

MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
SEEK RECONS. OF PRIOR ORDER DENYING MOT.
TO COMPEL ARBITRATION, AND TO TRANSFER
PURSUANT TO 28 U.S.C. § 1404(A)

a hyperlink to the terms of service to indicate acceptance.) *Swift v. Zynga Game Network, Inc.*, 805 F. Supp. 2d 904, 908 (N.D. Cal. 2011) (user bound by arbitration provision because he was told that, “By using YoVille, you also agree to the YoVille [blue hyperlink] Terms of Service” and the user proceeded); *Crawford v. Beachbody, LLC*, No. 14CV1583-GPC KSC, 2014 WL 6606563, at *3 (S.D. Cal. Nov. 5, 2014) (online customer who placed order was bound by contract terms when website stated that “By clicking Place Order below, you are agreeing that you have read and understand the Beachbody Purchase Terms and Conditions”); *DeVries v. Experian Info. Sols., Inc.*, No. 16-CV-02953-WHO, 2017 WL 733096, at *6 (N.D. Cal. Feb. 24, 2017) (plaintiff had notice where “text containing the Terms and Conditions hyperlink was located directly above that button and indicated that clicking “Submit Secure Purchase” constituted acceptance of those terms”.); *Mason v. Midland Funding LLC*, No. 1:16-cv-02867-LMM-RGV, 2018 WL 3702462, at *11-13 (N.D. Ga. May 25, 2018) (finding, under Georgia and Utah law, that clickwrap agreements, including those containing an arbitration clause, are “routinely ... upheld”).

This Court has already recognized the validity of clickwrap agreements in connection with the PFA Defendants’ motion to compel arbitration in the *Chen* Action:

Courts will enforce clickwrap-type agreements where the user indicates actual notice of the terms of the agreement or was required to acknowledge the terms of the agreement before proceeding with further use of the site. [*Nyuyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1175-76 (9th Cir. 2014).] Enforcement of a browsewrap-type agreement, which lacks such an acknowledgment, will depend upon whether the website’s design and content would put “a reasonably prudent user on inquiry notice of the terms of the contract.” *Id.* at 1777. The conspicuousness of the terms and notices, as well as the overall design of the webpage, will contribute to the determination that a user was on inquiry notice. *Id.* (citing cases).

(*Chen* Dkt. No. 56 at 4.)

This Court denied the PFA Defendants’ motion to compel in *Chen*, however, because it believed that “Defendants [did] not offer, through the Early declaration or otherwise, evidence of how the AMA or the Associate registration form appears on the PFA website.” (*Chen* Dkt. No. 56 at 2-3.) The Court was particularly concerned that the submitted evidence (1) did not “explain[] the design and content of the webpage or how the AMA appeared on the PFA website;” (2) did not demonstrate “whether the terms of the AMA appeared on the registration page itself, or if a user

MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
SEEK RECONS. OF PRIOR ORDER DENYING MOT.
TO COMPEL ARBITRATION, AND TO TRANSFER
PURSUANT TO 28 U.S.C. § 1404(A)

1 would have had to click a link to see the full terms;” and (3) did not demonstrate “other factors that
 2 might contribute to determining plaintiffs’ notice of the terms, such as the size of the font or other
 3 aspects of the appearance and presentation of the terms online.” (*Chen* Dkt. No. 56 at 5.) Therefore,
 4 the Court concluded that the PFA Defendants had failed to prove that “(1) either of [the *Chen*
 5 Plaintiffs] had actual knowledge of the arbitration agreement; or (2) whether the AMA was a
 6 clickwrap or browsewrap agreement, how the website was designed and where these terms appeared,
 7 and whether associates assented by clicking and “I agree” box, or were deemed to agree by
 8 continuing in the registration process.” (*Id.*)

9 All of the evidence that the Court found to be missing from the *Chen* motion is submitted
 10 here. As explained more fully above and in the accompanying declaration of Kelly Martin, all PFA
 11 Associates, including the *Wang* Plaintiffs, were presented with the full text of the AMA, including
 12 the arbitration clause, when joining PFA. (*See* Martin Decl. ¶ 7 and Ex. A.) Screenshots of the
 13 AMA as seen by the *Wang* Plaintiffs when joining PFA demonstrate that the arbitration clause was
 14 disclosed in plain sight and in the same size font as the other terms of the AMA. (*See id.* ¶¶ 5-7
 15 and Ex. A.)¹ There was no hyperlink required to view the arbitration clause, nor was it disclosed
 16 in fine print at the end of the agreement or at the bottom of the webpage. (*See id.* ¶ 7 and Ex. A.)
 17 In fact, the arbitration clause is contained in the second paragraph of the AMA titled “Covenants
 18 of the Associate.” (*Id.* ¶ 18 and Ex. A.)

19 As reflected in these screenshots, PFA applicants, including the *Wang* Plaintiffs, had to
 20 scroll through the entire AMA until they reached a check box at the end of the AMA. (*See* Martin
 21 Decl. ¶ 15 and Ex. A.) By clicking this check box, PFA applicants represented to PFA that they
 22 “accept the terms and conditions” of the AMA, including the arbitration provision. (*See id.* and
 23 Ex. A, p. 8.) Applicants must also electronically sign their names to the online application, further
 24 demonstrating their consent to the AMA and the arbitration clause. (*See id.*) If an applicant fails
 25

26 ¹ To address the Court’s concerns over the authenticity of PFA’s website (Dkt. No. 56 at 3 n.
 27 4), Ms. Martin explains in her declaration that the attached screenshots were taken from the current
 28 PFA website. She also affirms that the same setup was in effect in 2017 and 2018 when Plaintiffs
 joined PFA. (*See* Fed. R. Evid. 902, Advisory Committee Notes to 2017 Amendments at ¶ 5.)

1 to click the check box or to electronically sign his/her name at the end of the AMA, the application
2 will not be submitted to or processed by PFA. (*See id.* ¶ 16.)

3 This evidence specifically addresses each of the Court’s concerns on the PFA Defendants’
4 motion to compel in *Chen*, both in terms of the prominence of the terms and conditions of the AMA
5 as well as the mechanism by which an applicant consented to those terms, and demonstrates that
6 the *Wang* Plaintiffs “indicate[d] actual notice of the terms of the [AMA]” and were
7 “acknowledge[d] the terms of the agreement before proceeding with further use of the site.” (*See*
8 *Chen* Dkt. No. 56 at 4-5.) The *Wang* Plaintiffs should be bound by that agreement to arbitrate.

9 **B. This Dispute Falls Squarely Within the Scope of the AMA**

10 The broad arbitration clause in the AMA indisputably covers the claims at issue here. All
11 PFA Associates, including the *Wang* Plaintiffs and any putative class member, agreed “not to
12 institute *any* legal proceedings against PFA” and instead agreed to “submit *any and all disputes*
13 *with PFA* . . . to binding arbitration pursuant to the rules of the American Arbitration Association.”
14 (Martin Decl. ¶ 18 and Ex. A, p. 8 § 14 (emphasis added).) The Ninth Circuit has recognized that
15 “all disputes” clauses like the one in the AMA are “broad and far reaching” in scope, *Chiron Corp.*
16 *v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1131 (9th Cir. 2000), and are “routinely used...to
17 secure the broadest possible arbitration coverage.” *Britton v. Co-op Banking Grp.*, 4 F.3d 742, 745
18 (9th Cir. 1993). Such clauses require arbitration of all disputes that “touch matters” covered by the
19 contract defining the parties’ relationship. *See Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 721 (9th
20 Cir. 1999). And again, “[a]ny doubts about the scope of arbitrable issues, including applicable
21 contract defenses, are to be resolved in favor of arbitration.” *Tompkins v. 23andMe, Inc.*, 840 F.3d
22 1016, 1022 (9th Cir. 2016); *see also Timothy Dupler*, 2018 WL 6038309, at *3, *citing AT&T Tech.,*
23 *Inc. v. Comm. Workers of America*, 475 U.S. 643, 650 (1986).

24 The *Wang* Plaintiffs’ claims against PFA undoubtedly “touch”— and indeed are entirely
25 predicated upon—matters covered by the AMA. Indeed, PFA Associates’ entire relationship with
26 PFA is governed by the AMA, including representations made in the AMA itself and by other PFA
27 Associates about the quality of the life insurance products being sold (which Plaintiffs allege are

28 MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
SEEK RECONS. OF PRIOR ORDER DENYING MOT.
TO COMPEL ARBITRATION, AND TO TRANSFER
PURSUANT TO 28 U.S.C. § 1404(A)

overpriced), the training provided to PFA Associates (which is referenced in the AMA and which Plaintiffs allege was deceptive), and the requirement that PFA associates must pay \$125 to join PFA. (*Wang* FAC ¶¶ 1, 2, 10-12, 14-16, 35-39, 43-52, 108, 122, 142; Martin Decl. ¶ 13 and Ex. A at 2.)

II. THIS COURT SHOULD GRANT THE PFA DEFENDANTS LEAVE TO SEEK RECONSIDERATION OF THE COURT’S PRIOR ORDER DECLINING TO COMPEL ARBITRATION IN THE *CHEN* ACTION

If the Court grants PFA’s motion to compel arbitration of the *Wang* Action based on the evidence submitted herewith, the PFA Defendants hereby request leave to seek reconsideration of the Court’s January 2019 Order denying their motion to compel arbitration in the *Chen* Action.

Where, as here, “the court’s ruling has not resulted in a final judgment or order, reconsideration of the ruling may be sought under Rule 54(b) of the Federal Rules of Civil Procedure.” *Martin v. Biaggini*, Case No. 12-cv-06287-JD, 2014 WL 1867068, at *1 (N.D. Cal. May 7, 2014). “Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” *Id.*, quoting *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Further, under Civil Local Rule 7-9, when the motion for leave to seek reconsideration is based upon the presentation of new evidence, the moving party must specifically show “that at the time of the motion for leave, a material difference in fact or law exists from that which was presented to the court before entry of the interlocutory order for which the reconsideration is sought, and that in the exercise of reasonable diligence the party applying for reconsideration did not know such fact or law at the time of the interlocutory order.” *Martin*, 2014 WL 1867068, at *1, citing Civil LR 7-9(b).

The PFA Defendants acknowledge that the facts set forth in the Martin Declaration were within their possession at the time of their prior motion to compel arbitration. However, PFA’s prior counsel did not submit this evidence in support of the prior motion. PFA’s prior counsel relied upon a decision of the Los Angeles Superior Court that compelled arbitration pursuant to PFA’s AMA and submitted a declaration containing the same facts that the Los Angeles Superior Court (and the California Court of Appeal) found sufficient to demonstrate the AMA’s

MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
SEEK RECONS. OF PRIOR ORDER DENYING MOT.
TO COMPEL ARBITRATION, AND TO TRANSFER
PURSUANT TO 28 U.S.C. § 1404(A)

1 enforceability. (See Martin Decl. ¶ 42 and Exs. B, C.) This Court required more.

2 Compelling arbitration in the *Wang* Action and declining to reconsider the Court's prior
 3 ruling in the *Chen* Action would result in judicial inefficiency and a procedural anomaly given the
 4 overlap between the putative classes. The *Wang* FAC seeks a class of "all persons in the United
 5 States who purchased a Living Life policy between January 1, 2014 and the present." (*Wang* FAC
 6 ¶ 93.) Given the *Wang* Plaintiffs' allegation that PFA Associates are required to purchase a life
 7 insurance policy prior to advancing in PFA (*Wang* FAC ¶ 47), this proposed class, by definition,
 8 includes all PFA Associates during the relevant time period. This class is entirely duplicative of
 9 the class sought in the *Chen* Action, which includes "all persons who enrolled in PFA from June
 10 25, 2014 to the present date." (*Chen* ¶ 84.) Thus, if the Court grants PFA's motion to compel
 11 arbitration in *Wang*, the decision would necessarily apply to all putative class members in both the
 12 *Wang* and the *Chen* Actions. If the Court then declines to reconsider its prior decision in *Chen*, the
 13 two named *Chen* Plaintiffs would be the only two PFA Associates permitted to litigate their claims
 14 in Court, and even that litigation would be limited to the *Chen* Plaintiffs' *individual* claims, as
 15 opposed to their current putative class claims. This result simply does not make sense given that
 16 all PFA Associates, including the *Wang* and *Chen* Plaintiffs, all consented to the AMA and its
 17 arbitration clause in the exact same manner.

18 Compelling arbitration in *Wang* but not *Chen* would also result in parallel proceedings with
 19 duplicative discovery and hearings taking place both here in the Northern District of California and
 20 in an AAA arbitration in Georgia. Putting aside the increased burden and cost this would place on
 21 the PFA Defendants and other PFA witnesses, it also would be extremely inefficient as this Court
 22 would be hearing and deciding the same exact issues as the arbitrator sitting in Georgia. Parallel
 23 proceedings also presents the risk of PFA being held to inconsistent standards in different
 24 jurisdictions.

25 For all of these reasons, and in light of the evidence submitted in connection with PFA's
 26 motion to compel arbitration in the *Wang* Action, the PFA Defendants respectfully request that the
 27 Court permit them to seek reconsideration of the Court's decision on their prior motion to compel

28 MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
 SEEK RECONS. OF PRIOR ORDER DENYING MOT.
 TO COMPEL ARBITRATION, AND TO TRANSFER
 PURSUANT TO 28 U.S.C. § 1404(A)

1 arbitration in the *Chen* Action.

2 **III. BOTH THE *CHEN* AND *WANG* ACTIONS SHOULD BE TRANSFERRED TO**
 3 **THE NORTHERN DISTRICT OF GEORGIA**

4 This Court should compel arbitration of Plaintiffs' claims in both the *Chen* and the *Wang*
 5 Actions. To the extent the Court either declines to compel arbitration or believes a court in the
 6 parties' agreed venue should make that decision, however, the Court should transfer all claims
 7 against the PFA Defendants in both matters to the United States District Court for the Northern
 8 District of Georgia, Atlanta Division. "For the convenience of parties and witnesses, [and] in the
 9 interest of justice," 28 U.S.C. § 1404(a) allows a district court to transfer any civil action to a
 10 different federal district court to which the parties "have consented," or to one where the action
 11 "might have been brought." Here, both actions certainly "might have been brought" in the Northern
 12 District of Georgia, where PFA is incorporated and headquartered, and Plaintiffs all, by their
 13 acceptance of the AMA, "have consented" to venue and jurisdiction in Georgia. (Martin Decl. ¶
 14 20 and Ex. A, p. 8 § 14.) The other factors relevant to the Section 1404(a) analysis also favor
 15 Georgia as the appropriate venue.

16 The purpose of § 1404(a) is "to prevent the waste of time, energy, and money, and to protect
 17 litigants, witnesses and the public against unnecessary inconvenience and expense." *Van Dusen v.*
 18 *Barrack*, 376 U.S. 612, 616 (1964) (citation omitted). "[C]ourts have broad discretion to adjudicate
 19 [§ 1404(a) motions to transfer] "according to an individualized, case-by-case consideration of
 20 convenience and fairness."" *U.S. Bank, N.A. v. PHL Variable Ins. Co.*, No. 2:11-cv-9517-ODW,
 21 2012 WL 3848630, at *1 (C.D. Cal. Sept. 4, 2012), *quoting Jones v. GNC Franchising, Inc.*, 211
 22 F.3d 495, 498 (9th Cir. 2000). Factors that the Court may consider include:

23 (1) the location where the relevant agreements were negotiated and executed, (2) the
 24 state that is most familiar with the governing law, (3) the plaintiff's choice of forum,
 25 (4) the respective parties' contacts with the forum, (5) the contacts relating to the
 26 plaintiff's cause of action in the chosen forum, (6) the differences in the costs of
 27 litigation in the two forums, (7) the availability of compulsory process to compel
 attendance of unwilling non-party witnesses, ... (8) the ease of access to sources of
 proof, ... [(9)] the presence of a forum selection clause[,] ... [and (10)] the relevant
 public policy of the forum state.

28 MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
 SEEK RECONS. OF PRIOR ORDER DENYING MOT.
 TO COMPEL ARBITRATION, AND TO TRANSFER
 PURSUANT TO 28 U.S.C. § 1404(A)

1 *Newthink LLC v. Lenovo (U.S.) Inc.*, No. 2:12-cv-5443-ODW JCX, 2012 WL 6062084, at *1 (C.D.
2 Cal. Dec. 4, 2012), *quoting Jones*, 211 F.3d at 498.

3 Courts routinely find that these factors warrant transfer in putative class actions against
4 marketing firms like PFA. For example, in *Aboltin v. Jeunesse, LLC*, No. CV-16-02574-PHX-SPL,
5 2017 WL 5957646, at *4 (D. Ariz. Sept. 12, 2017), the defendant firm, as well as various named
6 defendants, were all residents of Florida, the firm was headquartered there, and it had no physical
7 presence or employees in Arizona. The court held that the action therefore “could have been
8 instituted” in Florida. *Id.* The court further found that Florida had a “significant connection to the
9 facts alleged in the Complaint,” that “the individuals likely to have knowledge of PFA’s marketing
10 and compensation structure” were located in Florida, and that “the corporate documents and other
11 written records in dispute are located...in Florida,” making it “less expensive to litigate th[e]
12 action” there.” *Id.* at *4-5. By contrast, there were “no allegations that Jeunesse agents personally
13 negotiated the agreement with Plaintiff[s] or other class members, which [agreements were]
14 accessed and executed over the internet.” *Id.* at *4. And the plaintiffs’ forum choice “is given less
15 deference where it is a class action that implicates many different class members of different states.”
16 *Id.* Based on the totality of these factors, the court transferred the case to Florida.

17 Similarly, in *Horanzy v. Vemma Nutrition Co.*, 87 F. Supp. 3d 341 (N.D.N.Y. 2015), a New
18 York federal court transferred a putative class action against a multi-level marketing firm to the
19 District of Arizona pursuant to § 1404(a). As is true with Plaintiffs here, the *Horanzy* plaintiff
20 sought to represent a nationwide class, and sued in his home state of New York even though most
21 members of the putative class lived elsewhere. The moving defendants in *Horanzy* all were
22 domiciled in Arizona, the company’s home state. After balancing the § 1404 factors, the New York
23 court found that only one factor, the plaintiff’s choice of forum, favored New York, but noted that
24 plaintiff’s choice should be accorded “only minimal weight” in the context of a putative class
25 action. 87 F. Supp. 3d at 350. The court found that all of the other factors favored transfer to
26 Arizona or were neutral, and therefore granted the defendants’ transfer motion. *Id.*

27 The facts of this case are nearly indistinguishable from *Aboltin* and *Horanzy*. This Court

28 MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
SEEK RECONS. OF PRIOR ORDER DENYING MOT.
TO COMPEL ARBITRATION, AND TO TRANSFER
PURSUANT TO 28 U.S.C. § 1404(A)

1 should therefore transfer both the *Chen* and *Wang* Actions to the Northern District of Georgia.

2 **1. Convenience of the Parties and Witnesses Tips Decisively in Favor of**
 3 **Transfer to the Northern District of Georgia**

4 “[T]he convenience and cost of attendance of witnesses” is the most important factor in the
 5 § 1404(a) transfer analysis. *Newthink LLC*, 2012 WL 6062084, at *1; *see also L.A. Printex Indus.,*
 6 *Inc. v. Le Chateau, Inc.*, No. CV 10-4264 ODW FMOX, 2011 WL 2462025, at *3 (C.D. Cal. June
 7 20, 2011); *Jang v. Bos. Sci. Scimed, Inc.*, No. CV 10-3911 ODW VBKX, 2010 WL 11463889, at
 8 *3 (C.D. Cal. Aug. 9, 2010). Here, that factor tips only in one direction: Georgia.

9 PFA is incorporated and headquartered in Georgia. (*See* Martin Decl. ¶¶ 27-28.) PFA’s
 10 parent company and co-defendant in the *Chen* matter, The Consortium Group, is headquartered in
 11 Georgia. (*See id.* ¶ 35.) Substantially all of PFA’s records that are potentially relevant to any of
 12 Plaintiffs’ claims, including those relating to PFA’s policies and procedures, are stored at PFA’s
 13 Georgia headquarters. (*See id.* ¶ 30.) PFA’s information technology systems are based in Georgia.
 14 (*See id.* ¶ 31.) “[E]ven if these documents could be produced electronically, the cost of litigation
 15 will still likely be less if the case was venued in the forum where these documents are located.”
 16 *Newthink LLC*, 2012 WL 6062084, at *2. All of PFA’s employees with knowledge of PFA’s
 17 finances, policies, and procedures, including founder and CEO David Carroll who is a named
 18 defendant in the *Chen* Action, work out of PFA’s Georgia headquarters. (*See id.* ¶¶ 29, 40.) PFA,
 19 moreover, has no employees or physical presence in California, and is not licensed to do business
 20 there. (*See id.* ¶¶ 32-34.) Finally, although the individual PFA Associate Defendants in *Chen* (Jack
 21 Wu, Bill Hong, Lan Zhang and Rex Wu) live in California, they (like all other PFA Associates)
 22 have consented to venue and jurisdiction in Georgia for disputes against PFA or other PFA
 23 members. (*See id.* ¶ 41.) They also consent to this motion.

24 Thus, for the PFA Defendants and anticipated PFA witnesses, “the most convenient forum
 25 is obvious.” *Newthink LLC*, 2012 WL 6062084, at *1. “It will be less costly to litigate this case in
 26 [Georgia], primarily because most of the defendants and relief defendants are domiciled or reside
 27 in [Georgia] and because most of the witnesses are located in [Georgia].” *F.T.C. v. Wright*, 2:13-

28 MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
 SEEK RECONS. OF PRIOR ORDER DENYING MOT.
 TO COMPEL ARBITRATION, AND TO TRANSFER
 PURSUANT TO 28 U.S.C. § 1404(A)

CV-2215-HRH, 2014 WL 1385111, at *4 (D. Ariz. Apr. 9, 2014). If the case is not transferred, these witnesses will be required to travel 2,500 miles from Suwanee, Georgia to Oakland, California. Further, to the extent that any relevant witness is a former employee or otherwise disinclined to testify, a Georgia court will be much better positioned to issue compulsory process.

Plaintiffs, by contrast, cannot “point to any relevant evidence or witness that may be in California,” other than themselves. *See Dahdoul Textiles, Inc. v. Zinatex Imports, Inc.*, No. 2:15-cv-4011-ODWASX, 2015 WL 5050514, at *4 (C.D. Cal. Aug. 25, 2015). And even this is only true for three of the four named Plaintiffs (Rui Chen, Wenjian Gonzalez, and Dalton Chen). (*Chen* FAC ¶¶ 5-6; *Wang* FAC ¶ 13.) The fourth plaintiff, Ms. Wang, resides in New Jersey. (*Wang* FAC ¶ 9.)

2. Plaintiffs’ Choice of Forum Is Not Entitled To Deference In a Putative National Class Action and, In Any Event, Is Greatly Outweighed By Inconvenience To the Defendants

A plaintiff’s residency and venue choice can be relevant to the § 1404(a) analysis, but these factors are “given less weight” where the plaintiff attempts to represent a nationwide class. *See Siddiqi v. Gerber Prods. Co.*, No. CV 12-1188 PA RZX, 2012 WL 11922412, at *4 (C.D. Cal. Mar. 26, 2012). *See also, e.g., Hendricks v. StarKist Co.*, No. 12-cv-729 YGR, 2014 WL 1245880, at *2 (N.D. Cal. Mar. 25, 2014) (according little weight to forum choice in a putative nationwide class action), citing *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987); *Horanzy*, 87 F. Supp. 3d at 346 (“district courts may give little weight to [the plaintiff’s choice of forum] in national class actions”); *Ambriiz v. Coca Cola Co.*, No. 13-cv-03539-JST, 2014 WL 296159, at *6 (N.D. Cal. Jan. 27, 2014) (“the plaintiff’s choice of forum is entitled to less weight” where he “has brought an action on behalf of a class”). In the context of a putative *nationwide* class, as sought in both *Chen* and *Wang*, every venue is inconvenient for most class members, but transfer to PFA’s Georgia home district, the Northern District of Georgia, would eliminate all inconvenience for PFA, the other PFA Defendants, and any PFA-affiliated witnesses. Under such circumstances, Plaintiffs’ choice of a California forum should be given less weight in determining whether to transfer this case to the Northern District of

MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
SEEK RECONS. OF PRIOR ORDER DENYING MOT.
TO COMPEL ARBITRATION, AND TO TRANSFER
PURSUANT TO 28 U.S.C. § 1404(A)

Georgia. *See Horanzy*, 87 F. Supp. 3d, at 349; *Siddiqi*, 2012 WL 11922412, at *4.²

The three Plaintiffs who live in California “obviously prefer to litigate the case in their [home] district[.]” *Dahdoul Textiles*, 2015 WL 5050514, at *4. However, even in non-class situations where a plaintiff’s venue choice is given its normal weight, this Court has been “inclined to give more weight to Defendants’ convenience given that they are the ones being haled into court with little connection to” a state that is not “the[ir] primary residence.” *Id.* Here, given the *reduced* weight afforded to Plaintiffs’ choice of forum, and the extreme inconvenience to the PFA Defendants that would result from these cases proceeding in California, this Court should transfer venue of both matters to the Northern District of Georgia.

3. The AMA Was Drafted In Georgia, Is Governed By Georgia Law, and Contains a Georgia Forum Selection Clause.

The terms and conditions to which all PFA associates agreed when they signed up were drafted and approved at PFA’s Georgia headquarters. (*See* Martin Decl. ¶ 8.) PFA itself indicated its own assent to be bound by those terms and conditions in Georgia. (*See id.* ¶ 9.) Although PFA does not know where any particular Associate is located when he or she agrees to become an Associate, these Associates know that they are contracting with a Georgia corporation because this fact is stated at the very top of the AMA and prominently disclosed in PFA’s online application process. (*See id.* ¶ 28 and Ex. A, p. 3.)

Furthermore, when joining PFA, all Associates agree that any disputes with PFA shall be governed by Georgia law without regard to its conflicts of law principles. (*See* Martin Decl. ¶ 19 and Ex. A, p. 8 § 14.) California and Georgia courts both are equally capable of applying federal law, but Georgia courts are undoubtedly more familiar with and experienced in applying Georgia

² “[E]ven less deference is given to a plaintiff’s choice of forum where plaintiff’s choice is not located in her home state.” *Peatrofsky v. Persolve, LLC*, No. CV 12-0203 JCG, 2012 WL 13012679, at *4 (C.D. Cal. May 22, 2012), citing *Gemini Capital Group, Inc. v. Yap Fishing Corp.*, 150 F.3d 1088, 1091 (9th Cir. 1998); *see also United States ex rel. Tutaness-Luster v. Broker Sols., Inc.*, No. 17-CV-04384-JST, 2019 WL 1024962, at *3 (N.D. Cal. Mar. 4, 2019); *Wasson v. LogMeIn, Inc.*, No. CV 18-7285 PA GJSX, 2018 WL 6016283, at *2 (C.D. Cal. Nov. 2, 2018). Ms. Wang resides in New Jersey (*Wang* FAC ¶ 9), but nevertheless seeks to pursue her claims in California.

1 common law. This factor also supports transfer of both cases to the Northern District of Georgia.

2 In opposing transfer, Plaintiffs presumably will highlight that their Complaints purport to
 3 assert claims arising under California law. However, under the Georgia choice of law clause in the
 4 AMA, those claims fail as a matter of law and therefore are not a basis to keep this action in this
 5 Court. *See, e.g., Palomino v. Facebook, Inc.*, No. 16-cv-4230-HSG, 2017 WL 76901, at *3-5 (N.D.
 6 Cal. Jan. 9, 2017) (California choice of law clause in Facebook’s terms and conditions precluded a
 7 New Jersey resident plaintiff from pursuing claims under a New Jersey consumer statute).³

8 **4. The Operative Facts Occurred in Georgia, Not California**

9 “[M]isrepresentations and omissions . . . are deemed to occur in the district where they are
 10 transmitted or withheld, not where they are received.” *Cohn v. Oppenheimerfunds, Inc.*, No. 09-
 11 cv-1656-WQH-BLM, 2009 WL 3818365, at *5 (S.D. Cal. Nov. 12, 2009) (citation omitted). Here,
 12 the *Wang* Plaintiffs allege that they were misled by various representations and advertising, and
 13 that PFA should be liable for those representations because it “dictates the terms of all outward-
 14 facing content,” including advertising. (*Wang* FAC ¶ 9.) Taking Plaintiffs’ allegations at face
 15 value, and assuming for the purpose of this motion that PFA *did* dictate or approve the challenged
 16 representations, those representations “occurred” in Georgia, where PFA is headquartered, and not
 17 in California or New Jersey where Plaintiffs’ reside. Thus, transfer is further warranted because
 18 Plaintiffs have failed to allege that “the operative facts which form the basis for the allegations”
 19 occurred in California. *Broad. Data Retrieval Corp. v. Sirius Satellite Radio, Inc.*, No. 06-cv-1190-
 20 JFW-SSX, 2006 WL 1582091, at *3 (C.D. Cal. June 6, 2006).

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ³ The New Jersey Consumer Fraud Act claim asserted in the *Wang* FAC also fails as a
 28 matter of law given the Georgia choice of law clause in the AMA.

CONCLUSION

For all these reasons, Defendants respectfully request an order (1) compelling individual arbitration of the claims asserted by the *Wang* Plaintiffs; (2) granting the PFA Defendants leave to seek reconsideration of the Court's prior order denying their motion to compel arbitration in the *Chen* Action and, upon reconsideration, compelling arbitration of the claims asserted by the *Chen* plaintiffs; or, in the alternative (3) transferring both the *Wang* and *Chen* Actions to the Northern District of Georgia, Atlanta Division pursuant to 28 U.S.C. § 1404(a) where Plaintiffs' agreement to arbitrate and/or failure to state a claim can be decided.

DATED: May 28, 2019

DRINKER BIDDLE & REATH LLP

By: /s/ Matthew J. Adler
 Matthew J. Adler
matthew.adler@dbr.com
 Four Embarcadero Center, 27th Floor
 San Francisco, CA 94111
 Telephone: (415) 591-7671
 Facsimile: (415) 591-7510

DRINKER BIDDLE & REATH LLP

By: /s/ Jeffrey S. Jacobson
 Jeffrey S. Jacobson (*pro hac vice*)
jeffrey.jacobson@dbr.com
 1177 Avenue of the Americas
 New York, NY 10036
 Telephone: (212) 248-3140
 Facsimile: (212) 248-3141

KELLEY DRYE & WARREN LLP

By: /s/ Jaclyn M. Metzinger
 Jaclyn M. Metzinger (*pro hac vice*)
jmetzinger@kelleydrye.com
 101 Park Avenue
 New York, NY 10178
 Telephone: (212) 808-7800
 Facsimile: (212) 808-7897

*Attorneys for Defendants
 Premier Financial Alliance, Inc., David
 Carroll, Jack Wu, Lan Zhang, Bill Hong, Rex
 Wu, AJWProduction, LLC and The
 Consortium Group, LLC*

MOT. TO COMPEL ARBITRATION, FOR LEAVE TO
 SEEK RECONS. OF PRIOR ORDER DENYING MOT.
 TO COMPEL ARBITRATION, AND TO TRANSFER
 PURSUANT TO 28 U.S.C. § 1404(A)

DRINKER BIDDLE & REATH LLP
Matthew J. Adler (SBN 273147)
Matthew.Adler@dbr.com
Four Embarcadero Center, 27th Floor
San Francisco, CA 94111
Telephone: (415) 591-7671
Facsimile: (415) 591-7510

DRINKER BIDDLE & REATH LLP
Jeffrey S. Jacobson (*pro hac vice*)
Jeffrey.Jacobson@dbr.com
1177 Avenue of the Americas
New York, NY 10036
Telephone: (212) 248-3140
Facsimile: (212) 248-3141

KELLEY DRYE & WARREN LLP
Jaclyn M. Metzinger (*pro hac vice*)
jmetzinger@kelleydrye.com
101 Park Avenue
New York, NY 10178
Telephone: (212) 808-7800
Facsimile: (212) 808-7897

*Attorneys for Defendants Premier Financial Alliance,
Inc., David Carroll, Jack Wu, Lan Zhang, Bill Hong,
Rex Wu, AJWProduction, LLC and The Consortium
Group, LLC*

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

RUI CHEN, an individual, WENJIAN
GONZALES, an individual; and all those
similarly situated,

Plaintiffs,

v.

PREMIER FINANCIAL ALLIANCE, INC., a
suspended California Corporation, or as may
be organized under Georgia Law; DAVID
CARROLL, an individual; JACK WU, an
individual; LAN ZHANG, an individual; BILL
HONG, an individual, REX WU, an
individual; LIFE INSURANCE COMPANY
OF THE SOUTHWEST, a Texas Corporation;
NATIONAL LIFE INSURANCE COMPANY,

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

DECLARATION OF KELLY MARTIN

a Texas Corporation; NLV FINANCIAL CORPORATION, a Texas Corporation; NATIONAL LIFE HOLDING COMPANY, a Texas Corporation; AJWPRODUCTION, LLC, a California Limited Liability Company, THE CONSORTIUM GROUP, LLC, a Nevada Limited Liability Company, trustee of NEW WORLD TRUST, a trust operating under unknown laws, trustee of EARLY BIRD TRUST, a trust operating under unknown laws, DOES 7- 10,

Defendants.

YOUXIANG EILEEN WANG and DALTON CHEN, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

LIFE INSURANCE COMPANY OF THE SOUTHWEST and PREMIER FINANCIAL ALLIANCE, INC.,

Defendants.

Case No. 4:19-cv-01150-YGR

Kelly Martin, declares, pursuant to 28 U.S.C. § 1746, that:

1. I am the Office Manager of Premier Financial Alliance, Inc. (“PFA”). I have been employed by PFA continuously since 2006. PFA is a Georgia corporation, headquartered at 1300 Peachtree Industrial Boulevard, Suite 4210, Suwanee, Georgia. I am a Georgia resident and my office is located at the Suwanee headquarters.

2. I make this declaration in support of (1) PFA’s Motion to Compel Arbitration in the action styled *Youxiang Eileen Wang and Dalton Chen v. Life Insurance Company of the Southwest et al.*, Case No. 4:19-cv-01150-YGR (the “Wang Action”); (2) if the Court compels arbitration in the Wang Action, PFA and defendants David Carroll (“Carroll”), Jack Wu (“J. Wu”), Lan Zhang (“Zhang”), Bill Hong (“Hong”), Rex Wu (“R. Wu”), AJWProduction, LLC (“AJW”) and The

1 Consortium Group, LLC's (collectively, with PFA, the "PFA Defendants") Motion for Leave to
 2 Seek Reconsideration of the Court's January 2019 Order Denying Their Motion to Compel
 3 Arbitration; and (3) PFA and the PFA Defendants' respective Motions to Transfer Venue in both
 4 the *Chen* and *Wang* Actions to the Northern District of Georgia, Atlanta Division.

5 3. Except as otherwise indicated, I make this declaration on the basis of my personal
 6 knowledge of the facts and events described below, which knowledge I gained during my work for
 7 PFA, as well as records maintained by PFA in the regular course of PFA's business. The records
 8 on which I relied are described in this declaration.

9 4. PFA is a marketing firm that provides its Associates with the knowledge and means
 10 to sell life insurance and annuity products issued by affiliated life insurance companies.

11 **PFA's Clickwrap Associate Marketing Agreement**

12 5. PFA utilizes an online application process for its Associates. True and correct screen
 13 shots from PFA's online application process are attached hereto as Exhibit A. These screen shots
 14 were taken from the version of PFA's website that was in use continuously between 2017 and 2019
 15 when Plaintiffs allegedly joined PFA.

16 6. Applicants are required to pay a \$125 fee to join PFA. In return, they gain access to
 17 PFA's proprietary marketing database and systems, including an exclusive PFA team e-mail system
 18 and business monitoring system, as well as training and mentorship opportunities. (Ex. A, p. 2.)

19 7. As a condition of joining PFA, all applicants are required to consent to and sign an
 20 Associate Marketing Agreement ("AMA"). PFA's relationship with its Associates is governed by
 21 that AMA. The full text of the AMA is shown to applicants during PFA's online application process
 22 and reflected in the screen shots attached hereto as Exhibit A. Applicants must scroll through the
 23 entire AMA in order to reach the end screen where applicants can actually submit their application.
 24 (Ex. A, pp. 3-8.)

25 8. The AMA was drafted and approved at PFA's Georgia headquarters.

26 9. PFA has indicated its own consent to the bound by the AMA in Georgia.

27 10. The AMA states that PFA Associates are independent contractors, not employees, of
 28 PFA. (Ex. A, p. 3 § 1.)

1 11. As part of PFA's online application process, applicants must provide PFA with their
2 names, addresses, phone numbers, and email addresses. Applicants must also state whether they
3 are currently licensed to sell life insurance and, if so, the States in which they are licensed. (Ex. A,
4 pp. 1-2.)

5 12. Some applicants already hold the necessary license(s) and/or appointment(s) at the
6 time of their application. Anyone who joins PFA without already holding a license or appointment
7 agrees as part of the AMA to obtain their licenses and become appointed by PFA's affiliated
8 insurance companies shortly after joining. (Ex. A, p. 4 §§ 2-3.)

9 13. PFA's online application process tells applicants that payment of the \$125 fee "does
10 not allow [applicants] to market any of the products or to receive any compensation from PFA's
11 affiliated Life Insurance companies and/or any other company PFA is contracted with. All
12 appropriate state licensing and company appointment processes must be completed before engaging
13 in the sale of life insurance and/or the receipt of commissions and overrides." (Ex. A, p. 2.)

14 14. Once PFA Associates are licensed to sell insurance and appointed by PFA's affiliated
15 insurance companies, they can earn commissions on their own sales of life insurance and annuity
16 products. Further, to the extent that PFA Associates choose to build teams of sales people, they can
17 also earn commissions based on sales made by the "downline" Associates they sponsor to join PFA.

18 15. In order to join PFA, applicants must scroll through the AMA, click a check box
19 consenting to the terms and conditions of the AMA, and electronically sign their name at the end of
20 the AMA. (Ex. A, pp. 3-8.) By clicking this check box and electronically signing their names,
21 applicants affirmatively consent to the terms and conditions set forth in the AMA. (Ex. A, p.8.)

22 16. If an applicant fails to click the "I accept the terms and conditions" check box or does
23 not electronically sign his/her name at the end of the AMA, the application will not be submitted to
24 or processed by PFA and the applicant will not become a PFA associate.

25 17. PFA's software will not allow an applicant to begin the process of becoming
26 appointed with its affiliated insurance companies unless the applicant has first electronically signed
27 the AMA.

18. Section 2 of the AMA contains the following arbitration clause:

The Associate agrees not to institute any legal proceedings against PFA; but, instead, shall submit any and all disputes with PFA, its officers, directors, employees, and associates to binding arbitration pursuant to the rules of the American Arbitration Association.

(Ex. A, p. 4 § 2.)

19. Section 14 of the AMA states that, “[s]hould there be any conflict as to the interpretation, breach or other default events under this agreement, the parties agree that the choice of the law shall be the State of Georgia.” (Ex. A, p. 8 § 14.)

20. Section 14 of the AMA also states that PFA and PFA associates “consent to jurisdiction and venue in Gwinnett County, Georgia for any disputes that may arise” under the AMA. (Ex. A, p. 8 § 14.)

The Chen Plaintiffs

21. I understand that the named Plaintiffs in the *Chen* Action, Rui Chen and Wenjian Gonzales (the “*Chen* Plaintiffs”), allege that they signed up to be Associates with PFA. (*Chen* First Amended Complaint (“*Chen* FAC”) ¶¶ 74, 76.) I have not been provided with the full legal names and addresses of the *Chen* Plaintiffs and therefore have not been able to confirm these allegations in PFA’s associate database. However, PFA does have records pertaining to Associates with similar names.

22. Plaintiff Rui Chen alleges that she “(upon information and belief) became an associate in the scheme, upon information and belief, on or about 2017.” (*Chen* FAC ¶ 74.) PFA has located four different associates in its records with some variation on this name (Rui Chen, Ruiya Chen, Ruilian Chen, and RuiDong Chen). Assuming that Rui Chen is the same individual who has filed the *Chen* Action, she joined PFA and consented to the AMA on January 2, 2019. Moreover, at the time that Rui Chen joined PFA, she did not hold a license to sell insurance in any State and PFA has no record that she subsequently obtained a license to sell insurance or became appointed with one of PFA’s affiliated insurance companies. The other three PFA Associates with names similar to Rui Chen all joined PFA and consented to the AMA in 2016.

23. Plaintiff Wenjian Gonzales^u alleges that she “became an associate on or about late 2017/2018.” (*Chen* FAC ¶ 76.) PFA does not have any records on someone with this name, but does have records pertaining to a Wenjian Gonzalez^z, who signed up with PFA and consented to the AMA on January 19, 2018. At the time that she signed up, Wenjian Gonzalez was not licensed to sell insurance in any State and PFA has no record that Ms. Gonzalez subsequently obtained a license to sell insurance or became appointed with one of PFA’s affiliated insurance companies.

The Wang Plaintiffs

24. PFA has been able to locate in its database the two named plaintiffs in the *Wang* Action.

25. Plaintiff Wang alleges, and PFA’s database confirms, that she is a New Jersey resident. Plaintiff Wang joined PFA and consented to the AMA on November 8, 2017. (*Wang* First Amended Complaint (“*Wang* FAC”) ¶¶ 9-10.)

26. Plaintiff Dalton Chen alleges, and PFA’s database confirms, that he is a California resident. Plaintiff Chen joined PFA and consented to the AMA on May 2, 2017. (*Wang* FAC ¶¶ 13-14.)

The PFA Defendants’ Connections to Georgia And Lack of Connections to California

27. PFA’s headquarters is in Suwanee, Georgia.

28. PFA applicants know that they are contracting with a Georgia corporation when they sign up with PFA. The opening paragraph of the AMA states that PFA is a Georgia corporation. (Ex. A, p. 3.)

29. PFA currently has approximately thirteen employees. All of PFA’s employees, including its corporate officers and many of the likely witnesses in this case with knowledge of PFA’s pricing and distribution model, work in Georgia.

30. PFA’s electronic records, and substantially all of its records that are potentially relevant to any of Plaintiffs’ claims, including those relating to PFA’s policies and procedures, are stored at PFA’s Suwanee, Georgia headquarters.

31. PFA’s information technology systems are also based at its Suwanee, Georgia headquarters.

32. PFA has no employees in California.

33. PFA does not own or rent any property in California.

34. PFA is not licensed to do business in California.

35. PFA's parent company, The Consortium Group, which is also a named defendant in the *Chen* Action, is a Georgia corporation headquartered in Georgia.

36. The Consortium Group has no employees in California.

37. The Consortium Group does not own or rent any property in California.

38. The Consortium Group is not licensed to do business in California.

39. The *Chen* Action names five individuals as defendants: David Carroll, Jack Wu, Bill Hong, Lan Zhang and Rex Wu.

40. David Carroll is founder and CEO of PFA. He resides in Florida and works in Georgia.

41. Jack Wu, Bill Hong, Lan Zhang, and Rex Wu are not officers, directors or employees of PFA, but rather are PFA Associates (and, therefore, independent contractors according to the AMA). All four reside in California. Because they all executed the AMA, they all have consented to arbitration of all disputes with PFA and other PFA associates, and also to venue and jurisdiction in Gwinnett County, Georgia to the extent a dispute is not covered by the arbitration clause in the AMA. (Ex. A, p. 4 § 2; p. 8 § 14.)

42. PFA was previously sued in an action filed in the Superior Court of the State of California for the County of Los Angeles styled *Esther Liu v. Premier Financial Alliance, Inc., Steven Early, Lan Zhang, Qinghu Huang*, Case No. BC639922. The defendants in that action moved to compel arbitration based on the same arbitration provision in the AMA that is being submitted in these actions. The Superior Court granted the defendants' motion to compel. A true and correct copy of the Superior Court's Notice of Orders Regarding Defendants' Motion to Compel Arbitration and Motion to Stay Judicial Proceedings Pending Arbitration is attached hereto as Exhibit B. The Superior Court's decision was subsequently affirmed on appeal to the Court of Appeal of the State of California, Second Appellate District, Division Eight. A true and correct copy of the Court of Appeal's decision is attached hereto as Exhibit C.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct.

3 Executed on May 28, 2019

4
5 
6 Kelly Martin

EXHIBIT A

JOIN PFA

All fields must be filled and cannot be left empty.

To complete the join process you must have your upline referring associate's PFA ID.

Upline Referring Associate PFA ID*:

New Associate Information

First Name*:

Middle Name:

Last Name*:

Company:

Create your personalized PFA email address*:

@pfaonline.com

Password*:

Retype Password*:

Address*:

Address2:

Address2:

City*:

State*:

State

Zip Code*:

Currently Life Licensed:

☐ YES ☐ NO

License Resident State:

License Resident State:

Non-Resident License State:

Alabama
Alaska
Arizona
Arkansas
California

Business Phone*:

Mobile Phone*:

Home Phone:

Fax:

Current Email Address*:

Upload Photo:

Choose File

Continue

The non-refundable \$125.00 association fee will provide you with the use of all of PFA's marketing systems, the exclusive PFA team e-mail system and the invaluable P-Trac business monitoring system. These important tools are vital in helping you build your own successful team with PFA and we look forward to helping you begin your new business venture.

Payment of the PFA Association Fee does not allow you to market any of the products or to receive any compensation from PFA's affiliated Life Insurance companies and/or any other company PFA is contracted with. All appropriate state licensing and company appointment processes must be completed before engaging in the sale of life insurance and/or the receipt of commissions and overrides.

Premier Financial Alliance, Inc. Associate Marketing Agreement

THIS AGREEMENT is entered into by and between, PREMIER FINANCIAL ALLIANCE, INC., a Georgia corporation, whose principal place of business is 1300 Peachtree Industrial Blvd Suite 4210, Suwanee, Georgia 30024. (hereinafter referred to as "PFA"), and the undersigned party, (hereinafter referred to as the "Associate").

RECITALS:

Whereas PFA has developed various programs of financial needs analysis and marketing techniques that are proprietary to PFA; and,

Whereas PFA is continuously developing, modifying and pursuing new methods to do financial needs analysis and marketing techniques for the benefit its Associate; and,

Whereas PFA is continuously seeking out the best product providers in the financial services industry for its Associates; and,

Whereas Associate desires to become a member of PFA and to avail himself to the programs and expertise of PFA.

Now Therefore, in consideration of the mutual promises, covenants and the aforementioned Recitals, PFA and Associate do hereby mutually bargain and agree as follows:

1. Relationship of the Parties

The Associate shall be a member of PFA with all of the rights and privileges he is entitled to hereunder. The Associate shall be a self employed independent contractor and PFA shall not control the Associate's work hours, number of hours worked or place of work. At no time shall anything in this agreement be construed to create an employee-employer relationship between PFA and the Associate. The Associate does not hold a franchise or distributorship with PFA; nor is the Associate an agent, partner or joint venturer with PFA.

2. Covenants of the Associate

The Associate agrees not to represent himself as an employee, owner, partner or agent of PFA. The Associate agrees not to present himself to third

2. Covenants of the Associate

The Associate agrees not to represent himself as an employee, owner, partner or agent of PFA. The Associate agrees not to present himself to third parties as one who has the authority to make or execute contracts, agreements, covenants or obligations on behalf of PFA. The Associate agrees to be appointed and coded under PFA's contracts with its affiliated insurance companies. The Associate agrees to comply with all local, state, federal and international statutes, laws, ordinances and regulations in conducting his business under this Agreement. The Associate agrees that he will not represent PFA membership as a business opportunity nor will he represent that PFA members will be compensated based on the number of persons they recruit to join PFA. The Associate agrees to be solely responsible for payment of all federal, state and local taxes based on business, sales or income obtained under this agreement. (This includes, but is not limited to, income taxes, payroll taxes, self-employment taxes, unemployment taxes, sales taxes, franchise taxes, intangible taxes and personal property taxes.) The Associate agrees not to institute any legal proceedings against PFA; but, instead, shall submit any and all disputes with PFA, its officers, directors, employees and associates to binding arbitration pursuant to the rules of the American Arbitration Association. The Associate agrees to comply with all policies, procedures, rules, regulations and guidelines of PFA and of all of its affiliated insurance companies with whom the Associate may be appointed under PFA. The Associate agrees not to use any advertising or promotional material other than those provided or approved by PFA or its affiliated insurance companies. The Associate agrees not to share or pay any insurance commissions to PFA recruits before they are licensed.

3. Duties of the Associate

The Associate shall not place his financial interest ahead of his client's interests at any time and shall strive to keep his client's interests paramount at all times. The Associate shall not misrepresent any product or service offered by PFA and its affiliated insurance companies. The Associate shall conduct his business in a legal, ethical, honest and fair manner and in the best interest of his clients and PFA. The Associate shall at all times remain current on his continuing education requirements so as to remain knowledgeable in representing PFA and its affiliated insurance companies. The Associate shall not solicit nor accept any funds from his client that are not made payable directly to a PFA affiliated insurance company. The Associate shall submit within 24 hours of completion by the client all applications for insurance policies solicited hereunder to PFA for suitability and compliance review prior to submittal to PFA's affiliated insurance companies. The Associate shall promptly obtain cooperation from clients for all underwriting requirements necessary for underwriting approval. Associate shall, within 24 hours of policy receipt, deliver and obtain delivery receipts for all issued policies. The Associate shall be responsible for the training and supervision of his downline recruits. Should PFA change its association with any insurance company, the Associate shall transfer his appointments and coding to PFA's new affiliated insurance company. The Associate shall be responsible for obtaining and maintaining all licenses and permits required by the appropriate governing authorities in doing business under this Agreement. The Associate shall be responsible for obtaining Errors and Omissions insurance coverage for his insurance activities that covers PFA, its officers, directors, employees, agents and affiliated insurance companies from liability from the Associate's errors and omissions. The Associate shall protect and preserve the reputation, integrity and dignity of PFA and its affiliated insurance companies at all times and shall immediately report to PFA any improper behavior, violations, citations, warnings, for which Associate has knowledge.

4. Authority of the Associate

The Associate is authorized by PFA to solicit applications for life insurance, annuities, accident and health insurance and any other financial products that may be provided by PFA and its affiliated insurance companies for which the Associate is properly licensed and appointed. The Associate has no authority to, and cannot, bind PFA or its affiliated insurance companies to any insurance policy or other financial instrument without their written consent. The Associate is authorized to solicit recruits on behalf of PFA and to recommend any such recruits for licensing and/or appointment with PFA or affiliated insurance companies. The Associate has no authority to make any representations on behalf of PFA concerning reimbursement of

PFA or affiliated insurance companies. The Associate has no authority to make any representations on behalf of PFA concerning reimbursement of insurance licensing expenses to recruits. All such Associate recruits must certify that they currently meet, or shall meet within 90 days of joining PFA, the requirements and qualifications necessary to become an associate under this agreement. All recruits must execute an Associate's Marketing Agreement; which shall, until accepted by PFA, be an offer by PFA to become an Associate. Once accepted by PFA, the recruit shall become an associate in the downline of the associate who recruited him. The Associate's authority under this agreement shall extend no further than is stated in this paragraph.

5. Compensation of Associate

The Associate's compensation shall be determined by his contract level authorization submitted to PFA by the Associate's upline recruiting associate. The Associate's compensation shall be computed in accord with PFA's current Associate Promotion Guidelines which is published on PFA's website www.PFAonline.com. In the event commissions are not paid directly to Associate by PFA's affiliated insurance companies, PFA will pay commissions to the Associate semimonthly computed on the Associate's contract level percentage times the net paid target or PFA equivalent street level commissions received by PFA during the previous semimonthly pay period. The Associate will become entitled to override commissions for any associates that he recruits, trains and supervises on an ongoing basis. Any such override commissions shall be computed and paid pursuant to the Associate's contract level. The Associate hereby agrees that any debit for chargeback from the insurance company for business upon which the Associate has been paid, or for which an Associate's downline associate has been paid, or any other obligation due from the Associate to PFA, may be offset against compensation due to the Associate from PFA. PFA, at its sole discretion, reserves the right to change the company compensation plan without prior notice to or consent from its associates. Should the Associate fail to transfer his license and appointments when notified that PFA has changed its insurance company association, the Associate will lose all rights to compensation due hereunder. Should the Associate's insurance license or appointment be terminated or suspended, PFA shall not pay any compensation to the Associate until said Associate is re-licensed, reappointed or taken off suspension by the appropriate licensing authority, insurance company or PFA.

6. Advances to Associate

To the extent that PFA has contracts with its affiliated insurance companies that advance commissions for new policies prior to when said commissions would normally be earned, PFA agrees to pay any such advances to the Associate in an amount and manner as it shall determine appropriate based on the Associate's financial situation, volume of business submitted and persistence of business. PFA will pay any such approved advances pursuant to the Associates contract level as set forth under Paragraph IV above. Any advances paid to Associate by PFA become debts owed to PFA by the Associate which debts Associate agrees to repay should the policies cancel or lapse to the extent that PFA is charged back any commissions from the insurance companies. To the extent that Associate's downline associates shall have debit charge backs for commissions advances paid to Associate's downline associates that are not promptly paid by said downline associates on demand, such downline associates debits for advanced commissions shall be rolled up to the Associate, who shall be responsible for repayment. The Associate acknowledges that PFA has a lien on its earned commissions for new business and may apply said earned commissions to repay any advances made to Associates; and that, the Associate is personally responsible for repayment of any advances. PFA, at its sole discretion, reserves the right to change the company advance payment policy without prior notice to or consent from its associates.

7. Associate's Vesting Rights

All renewal commissions as may be earned on qualifying life insurance business sold by the Associate hereunder together with renewals commissions earned on all qualifying life insurance business sold by any recruits that the Associate is entitled to override hereunder, shall vest when the Associate

attains the Qualified Field Director (QFD) contract level as stated in the Associate Promotion Guidelines. The vesting percent shall be as set forth in the Associate Promotional Guidelines. The net qualifying renewals earned hereunder shall be paid when received by PFA at the pay rate set forth in the Associate Promotion Guidelines. Should any Associate die, his vested interest in all qualifying renewal commissions shall, if permitted by the appropriate regulatory authorities, pass to his estate and/or heirs at law. Any vested rights on qualifying life insurance business sold by the Associate shall not be subject to reversion unless the Associate or his heirs are not licensed and legally able to receive same. Notwithstanding the above, PFA may offset any obligations or debts owed by Associate to PFA against payment of any vested rights in said renewal commissions as may be owed to Associate.

8. Associate's Bill of Rights

The Associate may not be terminated by PFA except For Cause as defined hereunder. PFA may not demote the Associate to a lower pay level in the Associate Promotion Guidelines except upon For Cause. PFA must promote the Associate whenever he meets all the qualifications for promotion in the Associates Promotion Guidelines. PFA, cannot without the consent of the Associate, promote or re-assign an associate from the Associate's downline except upon For-Cause Grounds for sanctions. PFA has no exclusive territories. The Associate may do business in any state or country in which the Associate is licensed, appointed and coded under PFA with its affiliated insurance companies. The Associate shall have vested rights to renewal commissions upon Associate's promotion to QFD.

9. Duties of PFA

PFA shall offer, on a regular basis, training and assistance to the Associate in marketing the financial products of its affiliated insurance companies to Associate's clients and recruits. PFA shall utilize its resources and talents to constantly upgrade and improve its financial programs and the financial products available to the Associate. PFA shall maintain a website, email and the PTRAC online business monitoring system to facilitate Associates business communications with PFA.

10. Associate For-Cause Grounds for Sanctions

PFA may sanction the Associate, in its sole discretion, immediately or anytime thereafter, upon any one or more of the following acts or occurrences by the Associate:

- ▶ Failure to conform to market conduct and/or compliance standards of appropriate governmental regulatory and/or licensing authorities.
- ▶ Abandonment or blatant disregard of a client's interests.
- ▶ Replacement of business written with PFA's affiliated insurance companies.
- ▶ Recruiting agents currently licensed by PFA's affiliated insurance companies or under another PFA Associate.
- ▶ Utilizing non-approved advertising or promotional materials.
- ▶ Failure to obtain and maintain all required licenses and permits.
- ▶ Failure to obtain and maintain approved errors and omission insurance.
- ▶ Misrepresentation, fraud, unethical or illegal business practices.
- ▶ Failure to comply with the policies, rules, regulations, and guidelines of PFA or its affiliated insurance companies.
- ▶ Commission of a felony or acts of moral turpitude and/or substance abuse.

- ▶ Commission of a felony or acts of moral turpitude and/or substance abuse.
- ▶ Sanctioning by any governmental licensing authority.
- ▶ Failure to properly train, supervise and assist recruited associates.
- ▶ Intentional breach of Associate's Covenants hereunder.
- ▶ Intentional breach of Associate's Duties hereunder.
- ▶ Knowingly exceeding Associate's Authority hereunder.
- ▶ Poor insurance business persistency below 80% over any 24 month period.
- ▶ Failure to follow approved PFA recruiting guidelines and policies.

Without limiting its authority to terminate the Associate for cause on the above grounds, PFA reserves the right to issue warnings, impose fines, order suspensions, deny PTRAC access, suspend compensation, reassign associates and impose other disciplinary sanctions as PFA may from time to time, in its sole discretion, determine appropriate.

11. Termination of Agreement

This agreement shall terminate upon any of the following events: (1) The death of the Associate (except for his heir's vested rights, if any, hereunder); (2) If the Associate becomes permanently disabled or incapacitated so that he cannot perform his duties hereunder; (3) Should PFA cease doing business with its affiliated insurance companies and fail to become affiliated with another insurance company within a reasonable period; (4) Upon the written resignation of Associate; or, (5) Upon the For-Cause Termination of the Associate by PFA.

12. Covenants of Associate Upon Termination

Associate covenants and agrees that, should this Agreement terminate pursuant to Paragraph 11 above, or otherwise by action of law, Associate shall:

- ▶ Return all marketing materials, recruiting materials, training materials, sales manuals and forms, website access passwords, and any other materials or documents generated by PFA for the benefit and use of Associate, within 24 hours of termination.
- ▶ Immediately resign from all appointments with PFA affiliated insurance companies and cease and refrain from all sales activities with PFA's insurance affiliates for a period of 6 months.
- ▶ Turn over all active client files, leads and applications in underwriting to a PFA for reassignment to another associate.
- ▶ Not disclose any confidential or proprietary information by, from or about PFA or its business operations that was obtained by the Associate while a member of PFA (unless said information is generally known or has been disclosed to the public).
- ▶ Not replace or exchange any insurance business generated by the Associate or his downline recruits for a period of twenty four months (24) after termination.
- ▶ Not seek re-appointment with any PFA affiliated insurance company for a period of twelve months after a For-Cause Termination or for a period of 6 months after a voluntary resignation from PFA.
- ▶ Not recruit PFA associates to leave PFA to become appointed, coded or licensed under Associate with any other insurance company or agency within twenty four months (24) after Termination (except for former associates that Associate's recruited prior to joining PFA).

13. Breach of Agreement

13. Breach of Agreement

Should Associate breach any covenants, duties or other terms and provisions of this Agreement, PFA, in its sole discretion, may elect to file civil litigation in Gwinnett County, Georgia, (or, at PFA's sole option, in Associate's state of domicile), seeking monetary damages and/or injunctive relief. Since damages for violation of this Agreement may be difficult to ascertain, Associate agrees to pay liquidated damages in the amount of \$100,000 for a breach hereof or in the amount of the actual damages as may be awarded to PFA, whichever is greater. Associate consents to PFA's choice of law, venue and liquidated damages provisions herein in lieu of binding arbitration.

14. Miscellaneous

The following miscellaneous provisions shall apply:

- ▶ Modifications. PFA shall not be bound by any promise, agreement or understanding heretofore or hereafter made, unless made in writing and signed by the President of PFA expressing by its terms and intention to modify this agreement.
- ▶ Indebtedness. Any indebtedness of Associate to PFA shall be considered a loan payable upon demand. As security for any such indebtedness, PFA shall have a first lien upon any compensation payable to the Associate under this agreement and PFA may deduct same from any such compensation due the Associate.
- ▶ No Waiver. The failure of PFA to enforce any provision of the agreement or any policy, procedure, rule or regulation that it may promulgate, shall not constitute a waiver thereof.
- ▶ Entire Agreement. This Agreement and any exhibits as may have been referenced herein, together with the policies, procedures and rules of PFA, if any, as may be promulgated from time to time on PFA's PTRAC website or via group email blast, supersedes all prior agreements between PFA and the Associate and supersedes all negotiations and communications prior to the signing and acceptance hereof.
- ▶ Construction. Should any part of this agreement be deemed, held or ruled to be invalid, illegal or otherwise unenforceable, the remainder of this agreement shall remain in force and be enforceable by its terms.
- ▶ Choice of Law/Forum. Should there be any conflict as to the interpretation, breach or other default events under this agreement, the parties agree that the choice of the law shall be the State of Georgia. All parties consent to jurisdiction and venue in Gwinnett County, Georgia for any disputes that may arise hereunder.
- ▶ Offer and Acceptance. This Agreement shall be executed electronically by Associate via PFA's PTRAC online web site. When executed and electronically submitted by Associate to PFA, this Agreement will constitute an offer by Associate to become licensed with PFA as per the terms and conditions herein above stated. Said offer shall be deemed accepted by PFA unless: (1) Associate withdraws his offer in writing and deliver said withdrawal prior to receiving his password from PFA and signing on to PTRAC; or, (2) Associate cancels his electronic membership payment authorization to PFA for good cause; or, (3) PFA notifies Associate of its rejection of his offer to join PFA within 30 days of Associate's acceptance date.

☐ I accept the terms and conditions

Enter Name

Continue

JOIN PFA

Name On Card	<input type="text" value="John Doe"/>		
Address	<input type="text" value="123 John Doe St"/>		
City	<input type="text" value="Suwanee"/>		
State	<input type="text" value="Georgia"/>		
ZIP	<input type="text" value="30024"/>		
Card #	<input type="text"/>		
CVC Code	<input type="text"/>		
Expiration Date	<input type="text" value="Month"/>	<input type="text" value="Year"/>	(MM/YYYY)

Please enter the above information exactly as it appears on your credit card statement. The address must match the card to process correctly.



[Pay Now \(\\$125\)](#)

EXHIBIT B

LIEBER & GALPERIN, LLP
 STANLEY P. LIEBER, CSB # 57628
 JASON A. LIEBER, CSB # 233537
 633 W 5th Street, Suite 2600
 Los Angeles, CA 90071
 Telephone: (213) 973-0051
 Facsimile: (213) 947-1696

Attorneys for Defendants,
 Premier Financial Alliance, Inc. and Steven Early

FILED
 Superior Court of California
 County of Los Angeles

FEB 27 2017

Sherri B. Carter, Executive Officer/Clerk
 By Raul Sanchez Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**

ESTHER LIU, an individual,) Case No.: BC639922
)
Plaintiff,) NOTICE OF COURT'S ORDERS
) REGARDING DEFENDANTS' MOTION
vs.) TO COMPEL ARBITRATION &
) MOTION TO STAY JUDICIAL
PREMIER FINANCIAL ALLIANCE, INC., a) PROCEEDINGS PENDING
Georgia corporation; STEVEN EARLY, an) ARBITRATION
individual; LAN ZHANG, an individual;)
QINGHU HUANG, a.k.a. GRACE HUANG,) Assigned to the Honorable William Fahey
an individual, and Does 1 through 100,)
inclusive,) Department: 69
)
Defendants.)

TO THIS COURT AND ALL PARTIES INTERESTED: On February 23, 2017, the Court held a hearing on Defendants' Motion to Compel Arbitration Pursuant to California Code of Civil Procedure, §1281.2 & Motion to Stay Judicial Proceedings Pending Arbitration Pursuant to California Code of Civil Procedure § 1281.4. Collin L. Grant appeared for Defendants, Premier Financial Alliance, Inc. and Steven Early. Roland Ho appeared for Plaintiff, Esther Liu.

///

///

ORIGINAL

1 At the hearing, the Court made the following orders:

- 2 1. Granted the Defendants' Motion to Compel Arbitration Pursuant to California Code
3 of Civil Procedure, §1281.2 & Motion to Stay Judicial Proceedings Pending
4 Arbitration Pursuant to California Code of Civil Procedure §1281.4
5 2. OSC re: Commencement of Arbitration is set for April 25, 2017 at 8:30 am.

6
7
8 DATE: February 27, 2017

LIEBER & GALPERIN, LLP

9
10 By: 

11 STANLEY P. LIEBER,
12 Attorneys for Defendants, Premier
13 Financial Alliance, Inc. and Steven Early.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

(1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I am employed in Los Angeles County, I am over the age of Eighteen years and not a party to the within action; my business address is 633 W. 5th Street, Suite 2600, Los Angeles, CA 90071.

On **February 27, 2017**, I served the foregoing document (s) described as:

**NOTICE OF COURT'S ORDERS REGARDING DEFENDANTS' MOTION TO
COMPEL ARBITRATION & MOTION TO STAY JUDICIAL PROCEEDINGS
PENDING ARBITRATION**

On interested parties in this action as follows:

Roland Y. Ho, Esq.
The Law Office of Roland Ho
16700 Valley View Avenue, Suite 271
La Mirada, CA 90638

BY E-SERVICE

VIA PERSONAL DELIVERY

XXX BY MAIL. I enclosed the documents in a sealed envelope or package to the persons at the address described above, and place the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope or package with fully paid postage.

BY OVERNIGHT DELIVERY. I enclosed the above document in an envelope or package provided by an overnight delivery carrier and addressed to the persons described above. I placed the envelope or package for collection and overnight delivery at an office or regularly utilized drop box of the overnight delivery carrier.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **February 27, 2017** at Los Angeles, California

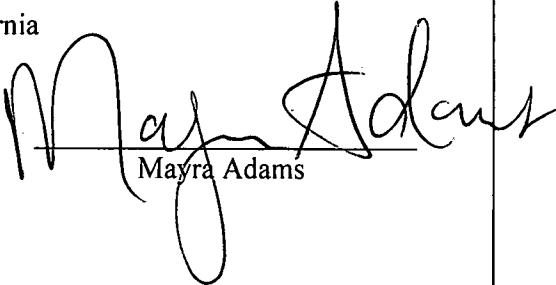

Mayra Adams

EXHIBIT C

Filed 11/8/18

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

COURT OF APPEAL – SECOND DIST.

FILED

Nov 08, 2018

DANIEL P. POTTER, Clerk

S. Lui

Deputy Clerk

ESTHER LIU,

Plaintiff and Appellant,

v.

PREMIER FINANCIAL
ALLIANCE, INC.,

Defendant and Respondent.

B284545

(Los Angeles County
Super. Ct. No. BC639922)

APPEAL from orders of the Superior Court of Los Angeles
County, William F. Fahey, Judge. Affirmed.

Law Office of Roland Ho and Roland Ho for Plaintiff and
Appellant.

Lieber & Galperin, Stanley P. Lieber and Jason Lieber for
Defendant and Respondent.

Plaintiff Esther Liu appeals from the trial court's orders compelling arbitration of her dispute with Premier Financial Alliance, Inc. (PFA), and denying her motion for an order requiring PFA to pay the arbitration costs. She argues that the arbitration clause in the parties' contract did not apply to her complaint because PFA had already terminated the agreement. She also contends the trial court considered the wrong factors in denying her motion for arbitration costs. We find no error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 2011, Liu, an insurance agent, signed an Associates Marketing Agreement with PFA, an insurance brokerage. The agreement gave Liu a license to sell PFA's insurance products. She signed the agreement again in 2012.

In September 2016, PFA terminated the agreement with Liu after concluding that she had committed misconduct relating to other agents. Two months later, she filed the present action against PFA for intentional and negligent interference with prospective economic advantage, defamation and negligence.¹

PFA moved to compel arbitration. It cited the parties' agreement which provided that Liu "agrees not to institute any legal proceedings against PFA; but, instead, shall submit any and all disputes with PFA, its officers, directors, employees and associates to binding arbitration pursuant to the rules of the American Arbitration Association."

In opposition, Liu argued solely that (1) the arbitration provision did not apply because PFA had terminated the agreement, and (2) the arbitration clause did not clearly and unambiguously provide that all disputes between the parties

¹ She also sued several of PFA's agents. Those individuals are not parties to this appeal.

would be submitted to binding arbitration. The court granted the motion.

Liu then filed a motion to compel PFA to advance the costs of arbitration. She argued that if she were required to pay a pro rata share of the arbitration expenses, she would effectively be deprived of a forum for her dispute. In support of her motion, she filed a declaration stating that her expenses over the preceding four months were greater than her income. The court denied the motion, and dismissed the case without prejudice. Liu timely appealed.

DISCUSSION

1. *Liu's Agreement to Arbitrate Survived Termination of the Contract*

Liu argues that her contractual obligation to arbitrate disputes with PFA expired with the termination of the Associates Marketing Agreement. We disagree. We review the interpretation of the parties' arbitration agreement de novo. (*Coast Plaza Doctors Hosp. v. Blue Cross of Cal.* (2000) 83 Cal.App.4th 677, 684 (*Coast Plaza*).)

“The scope of arbitration is a matter of agreement between the parties.’ [Citation.] ‘A party can be compelled to arbitrate only those issues it has agreed to arbitrate.’ [Citation.] Thus, ‘the terms of the specific arbitration clause under consideration must reasonably cover the dispute as to which arbitration is requested.’ [Citation.] For that reason, ‘the contractual terms themselves must be carefully examined before the parties to the contract can be ordered to arbitration’ by the court. [Citation.]” (*Molecular Analytical Systems v. Ciphergen Biosystems, Inc.* (2010) 186 Cal.App.4th 696, 705 (*Molecular*).)

“In determining the scope of an arbitration clause, ‘[t]he court should attempt to give effect to the parties’ intentions, in light of the usual and ordinary meaning of the contractual

language and the circumstances under which the agreement was made [citation].’ [Citation.]” (*Victoria v. Superior Court* (1975) 40 Cal.3d 734, 744.) Any “‘doubts as to the scope of an agreement to arbitrate are to be resolved in favor of arbitration.’ [Citations.]” (*Molecular, supra*, 186 Cal.App.4th at p. 705.) “The party opposing arbitration has the burden of showing that the agreement, as properly interpreted, does not apply to the dispute. [Citations.]” (*Ibid.*)

Here, Liu agreed “to submit any and all disputes with PFA” to arbitration. This was a broadly worded agreement that clearly showed an intention to arbitrate “any” dispute between the parties. “In interpreting an unambiguous contractual provision we are bound to give effect to the plain and ordinary meaning of the language used by the parties. [Citations.]” (*Coast Plaza, supra*, 83 Cal.App.4th at p. 684.) We interpret this language to mean that it applies to Liu’s claim that PFA improperly terminated the Associates Marketing Agreement.

Nothing in arbitration clause excludes claims asserted after the contract ends. Rather, the provision states that Liu must submit “any and all” disputes between the parties to arbitration—regardless of when the claim arose. That the contract contains no temporal limitations is not surprising given that a large percentage of employer-employee disputes involve wrongful termination which, by definition, occurs after the agreement has been terminated. The contract could have been drafted to limit the arbitration clause to the time period when the contractual relationship was still ongoing. But there is no such language, and a court may not read terms into an agreement that are not there. (See Code Civ. Proc., § 1858 [“In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has

been inserted”]; *Rebolledo v. Tilly’s, Inc.* (2014) 228 Cal.App.4th 900, 918.)

2. *The Trial Court Did Not Err in Denying Costs*

Liu also contests the denial of her motion seeking an order compelling PFA to advance the costs of arbitration. She argues the trial court did not properly assess her ability to pay arbitration costs. We conclude the court did not err in denying the motion.

When an arbitration agreement requires the parties to share the costs of arbitration, and a party moves to compel the other side to advance arbitration costs, the trial court must determine the costs of arbitration and the moving party’s ability to pay. (*Roldan v. Callahan Blaine* (2013) 219 Cal.App.4th 87, 94–96 (*Roldan*)). If the court finds the moving party “lack[s] the means to share the cost of the arbitration” such that to require them to share the arbitration costs “might effectively deprive them of access to any forum for resolution of their claims,” the court must order the financially solvent party to either pay the moving party’s share of the arbitration costs or waive its right to arbitrate that party’s claim. (*Id.* at p. 96.)

We are not aware of any authority discussing the standard of review applicable to a trial court’s decision whether to grant a motion to advance the costs of arbitration. We believe the court’s decision was in its discretion, and therefore, apply the abuse of discretion standard.

Here, the parties’ arbitration provision was silent as to allocation of arbitration expenses. Therefore, under Code of Civil Procedure section 1284.2, each party was required to “pay his pro rata share of the expenses and fees of the neutral arbitrator together with other expenses incurred or approved by the neutral arbitrator” Liu argued that the arbitration costs would be \$12,000, and cited to a page of the American Arbitration

Association's "fee schedule" for arbitration which does not, in fact, state that costs would be \$12,000. She also submitted a declaration stating that her expenses exceeded her income over the preceding four months: for example, that she earned \$27,250 in rental property income and paid car loans of \$5,700. Based on this evidence, she argued that she was "unable to pay" for a pro rata share of the costs of arbitration.

Liu failed to meet her burden as the moving party of showing that she was unable to pay her share of the arbitration costs. First, her claim that arbitration costs would be \$12,000 was not supported by the evidence she cited. Second, the limited snapshot of her income and expense (which did not include evidence of her assets, such as her real estate holdings) did not demonstrate that she was unable to pay any arbitration costs. By contrast, in *Roldan*, where the court found a "very real possibility these plaintiffs might be deprived of a forum if they are accorded no relief from these costs," there was evidence the moving parties "relied on section 8 housing subsidies to pay for their apartments." (*Roldan, supra*, 219 Cal.App.4th at pp. 90, 96.)

3. *The Trial Court Did Not Rule on the Appropriate Location for the Arbitration*

Sprinkled throughout the parties' briefs and the trial court's oral comments at the hearing where the case was dismissed, were comments about the State of Georgia being the proper place for the arbitration. Liu argues the trial court "misinterpreted the choice of law/venue provision . . . to mandate that the arbitration was to take place in Georgia." She contends that it would be unconscionable to require her to arbitrate in Georgia.

By way of brief background the arbitration provision (§ 2) says nothing about the location of arbitration. On its face, the arbitration provision, which is part of the “Covenants of the Associate [Employee],” deals only with employee claims. It says nothing about disputes initiated by PFA. That subject is covered in paragraph 13, “Breach of the Agreement” which states if Liu were to breach the agreement, PFA “in its sole discretion, may elect to file civil litigation in Gwinnett County, Georgia” or in Liu’s home state. Paragraph 14 provides that Georgia law shall apply and that the parties consent to jurisdiction and venue in Georgia. Contractual interpretation aside, more relevant to Liu’s argument, though, is that the trial court did not order that the arbitration should or should not take place in Georgia, so there is no error that Liu may assert on appeal. The court’s rulings were limited to granting the motion to compel arbitration and denying Liu’s request for cost allocation. Accordingly, we do not reach Liu’s arguments on the place for the arbitration.²

DISPOSITION

The orders granting PFA’s motion to compel arbitration and denying Liu’s motion for arbitration costs are affirmed. PFA is awarded its costs on appeal.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

STRATTON, J.

² Each party’s motion for sanctions is denied. Liu’s request for judicial notice of the trial court’s October 6, 2017 minute order is granted.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

RUI CHEN, an individual, WENJIAN GONZALES, an individual; and all those similarly situated,

Plaintiffs,

v.

PREMIER FINANCIAL ALLIANCE, INC., a suspended California Corporation, or as may be organized under Georgia Law; DAVID CARROLL, an individual; JACK WU, an individual; LAN ZHANG, an individual; BILL HONG, an individual; REX WU, an individual; LIFE INSURANCE COMPANY OF THE SOUTHWEST, a Texas Corporation; NATIONAL LIFE INSURANCE COMPANY, a Texas Corporation; NLV FINANCIAL CORPORATION, a Texas Corporation; NATIONAL LIFE HOLDING COMPANY, a Texas Corporation; AJWPRODUCTION, LLC, a California Limited Liability Company, THE CONSORTIUM GROUP, LLC, a Nevada Limited Liability Company, trustee of NEW WORLD TRUST, a trust operating under unknown laws, trustee of EARLY BIRD TRUST, a trust operating under unknown laws, DOES 7- 10,

Defendants.

YOUXIANG EILEEN WANG and DALTON CHEN, on behalf of themselves and all others similarly situated,

Plaintiffs,

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

[PROPOSED] ORDER GRANTING DEFENDANTS PREMIER FINANCIAL ALLIANCE, INC., DAVID CARROLL, JACK WU, LAN ZHANG, BILL HONG, REX WU, AJWPRODUCTION, LLC, AND THE CONSORTIUM GROUP, LLC'S MOTION FOR LEAVE TO SEEK RECONSIDERATION OF THE COURT'S DECISION ON THEIR PRIOR MOTION TO COMPEL ARBITRATION OR, IN THE ALTERNATIVE, TO TRANSFER TO THE NORTHERN DISTRICT OF GEORGIA PURSUANT TO 27 U.S.C. § 1404(A)

Hearing Date: July 19, 2019

Time: 2:00 p.m.

Courtroom: 1

Case No. 4:19-cv-01150-YGR

[PROPOSED] ORDER GRANTING DEFENDANT PREMIER FINANCIAL ALLIANCE, INC.'S MOTION TO COMPEL ARBITRATION OR, IN THE

v.

LIFE INSURANCE COMPANY OF THE
SOUTHWEST and PREMIER FINANCIAL
ALLIANCE, INC.,

Defendants.

**ALTERNATIVE, TO TRANSFER TO
THE NORTHERN DISTRICT OF
GEORGIA PURSUANT TO 27 U.S.C. §
1404(A)**

Hearing Date: July 19, 2019

Time: 2:00 p.m.

Courtroom: 1

On July 19, 2019, at 2:00 p.m., Defendant Premier Financial Alliance, Inc. (“PFA”) brought on for hearing a motion (1) to compel arbitration of all claims against PFA in the action styled *Wang v. Life Insurance Company of the Southwest et al.*, 4:19-cv-01150-YGR (the “*Wang* Action”); or, in the alternative, (2) to transfer the *Wang* Action to the Northern District of Georgia, Atlanta Division, pursuant to 28 U.S.C. § 1404(a); and further

On July 19, 2019, at 2:00 p.m., Defendants PFA, Defendants David Carroll, Jack Wu, Lan Zhang, Bill Hong, Rex Wu, AJW Production, LLC and The Consortium Group, LLC (collectively, the “PFA Defendants”) brought on for hearing a motion (1) for leave to seek reconsideration of the Court’s previous denial of the PFA Defendants’ motion to compel arbitration in the action styled *Chen v. Premier Financial Alliance, Inc. et al.*, Case No. 4:18-cv-03771-YGR (the “*Chen* Action”); or, in the alternative, (2) to transfer the *Chen* Action to the Northern District of Georgia, Atlanta Division, pursuant to 28 U.S.C. § 1404(a).

Appearances were made as is reflected on the record. The Court has considered the argument presented by all parties at the hearing, and all papers submitted of and in opposition to the motion.

The Court hereby GRANTS PFA’s motion to compel arbitration of the *Wang* Action.

Good cause exists to grant this motion because all persons who agree to become PFA Associates, including the Plaintiffs in the *Wang* Action, affirmatively agreed to PFA’s Associate Marketing Agreement (“AMA”). The AMA includes a broad arbitration clause requiring any disputes between PFA Associate and PFA (as well as disputes between and among PFA Associates) must be arbitrated on an individual basis and not litigated in court. The AMA is a

standard “clickwrap” agreement, requiring Associates to check an online box signifying their assent to the AMA’s terms and conditions. It is black-letter law, in the Ninth Circuit as elsewhere, that clickwrap agreements like the AMA can and must be enforced pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1 et seq. *See, e.g., Timothy Dupler v. Orbitz, LLC*, No. CV182303RGKGSJX, 2018 WL 6038309, at *2 (C.D. Cal. July 5, 2018) (“Clickwrap agreements require website users to “click on an ‘I agree’ box after being presented with a list of terms”), *quoting Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1175-76 (9th Cir. 2014). *See also McKee v. Audible, Inc.*, No. CV 17-1941-GW(EX), 2017 WL 4685039, at *6 (C.D. Cal. July 17, 2017) (collecting cases holding that such agreements are binding “even if the user does not actually read the terms of services”). Indeed, courts around the country, including in California and Georgia, “have recognized that [an] electronic ‘click’ can suffice to signify the acceptance of a contract,” and that “[t]here is nothing automatically offensive about such agreements, as long as the layout and language of the site give the user reasonable notice that a click will manifest assent to an agreement.” *Meyer v. Uber Techs., Inc.*, 868 F.3d 66, 75 (2d Cir. 2017). *See also Tompkins v. 23andMe, Inc.*, No. 5:13-CV-05682-LHK, 2014 WL 2903752, at *8 (N.D. Cal. June 25, 2014), *aff’d*, 840 F.3d 1016 (9th Cir. 2016) (plaintiffs received adequate notice where, during the account creation and registration processes, each named plaintiff clicked a box or button that appeared near a hyperlink to the terms of service to indicate acceptance); *Swift v. Zynga Game Network, Inc.*, 805 F. Supp. 2d 904, 908 (N.D. Cal. 2011) (user bound by arbitration provision because he was told that, “By using YoVille, you also agree to the YoVille [blue hyperlink] Terms of Service” and the user proceeded); *Crawford v. Beachbody, LLC*, No. 14CV1583-GPC KSC, 2014 WL 6606563, at *3 (S.D. Cal. Nov. 5, 2014) (online customer who placed order was bound by contract terms when website stated that “By clicking Place Order below, you are agreeing that you have read and understand the Beachbody Purchase Terms and Conditions”); *DeVries v. Experian Info. Sols., Inc.*, No. 16-CV-02953-WHO, 2017 WL 733096, at *6 (N.D. Cal. Feb. 24, 2017) (plaintiff had notice where “text containing the Terms and Conditions hyperlink was located directly above that button and indicated that clicking “Submit Secure Purchase” constituted acceptance of those terms”); *Mason Midland Funding LLC*, No. 1:16-cv-02867-LMM-RGV, 2018 WL 3702462, at *11-13

1 (N.D. Ga. May 25, 2018) (finding, under Georgia and Utah law, that clickwrap agreements,
2 including those containing an arbitration clause, are “routinely ... upheld”).

3 The Declaration of Kelly Martin (“Martin Decl.”) put the AMA before the Court, and
4 demonstrates that all PFA Associates must affirmatively check a box accepting the AMA’s terms,
5 and provides the dates on which all the *Wang* Plaintiffs accepted the AMA. With that evidence,
6 the Court compels arbitration in the *Wang* action.

7 [Alternatively] The Court hereby GRANTS PFA’s motion to transfer the *Wang* Action to
8 the Northern District of Georgia, Atlanta Division, pursuant to 28 U.S.C. § 1404(a). Good cause
9 exists to grant this motion because a Georgia venue would be more convenient to the parties and
10 witnesses, and therefore would be in the interests of justice. Indeed, all factors relevant to the
11 Section 1404(a) analysis weigh in favor of a Georgia venue. *See Van Dusen v. Barrack*, 376 U.S.
12 612, 616 (1964); *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000); *Newthink*
13 *LLC v. Lenovo (U.S.) Inc.*, No. 2:12-cv-5443-ODW JCX, 2012 WL 6062084, at *1 (C.D. Cal. Dec.
14 4, 2012). Specifically, all PFA Associates, including the *Wang* Plaintiffs, agreed to a Georgia
15 choice of law clause and consented to venue and jurisdiction in Georgia when they joined PFA
16 and consented to the terms of the AMA. The AMA was drafted and approved in Georgia, and
17 PFA indicated its consent to the AMA in Georgia.

18 Moreover, the convenience of the parties and witnesses, which is the most important factor
19 in the analysis, also favors transfer to Georgia. *See Newthink LLC*, 2012 WL 6062084, at *1; *L.A.*
20 *Printex Indus., Inc. v. Le Chateau, Inc.*, No. CV 10-4264 ODW FMOX, 2011 WL 2462025, at *3
21 (C.D. Cal. June 20, 2011); *Jang v. Bos. Sci. Scimed, Inc.*, No. CV 10-3911 ODW VBKX, 2010
22 WL 11463889, at *3 (C.D. Cal. Aug. 9, 2010). PFA is incorporated and headquartered in Georgia,
23 and all of its employees who could be potential witnesses in this case reside and/or or work in
24 Georgia. PFA’s information technology systems and documents relevant to this case are stored
25 there. Thus, it will be less costly to litigate this case in Georgia. *See Newthink LLC*, 2012 WL
26 6062084, at *1; *F.T.C. v. Wright*, 2:13-CV-2215-HRH, 2014 WL 1385111, at *4 (D. Ariz. Apr. 9,
27 2014).

28 Conversely, PFA neither owns nor rents any property in California, has no employees in

the State, and is not licensed to do business there. The only connection the *Wang* Action has to California is that the plaintiffs chose to sue here, but the law is clear that a plaintiff's choice of forum is entitled to little or no weight in class actions, and particularly putative nationwide actions. *See Siddiqi v. Gerber Prods. Co.*, No. CV 12-1188 PA RZX, 2012 WL 11922412, at *4 (C.D. Cal. Mar. 26, 2012); *Hendricks v. StarKist Co.*, No. 12-cv-729 YGR, 2014 WL 1245880, at *2 (N.D. Cal. Mar. 25, 2014) (according little weight to forum choice in a putative nationwide class action) (citing *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987)); *Horanzy*, 87 F. Supp. 3d at 346 ("district courts may give little weight to [the plaintiff's choice of forum] in national class actions"); *Ambriz v. Coca Cola Co.*, No. 13-cv-03539-JST, 2014 WL 296159, at *6 (N.D. Cal. Jan. 27, 2014) ("the plaintiff's choice of forum is entitled to less weight" where he "has brought an action on behalf of a class"). A plaintiff's choice of forum is also entitled to less weight when he or she sues outside of his or her own state of residence. *See Peatroqsky v. Persolve, LLC*, No. CV 12-0203 JCG, 2012 WL 13012679, at *4 (C.D. Cal. May 22, 2012), citing *Germini Capital Group, Inc. v. Yap Fishing Corp.*, 150 F.3d 1088, 1091 (9th Cir. 1998); *United States ex rel. Tutan-Luster v. Broker Sols., Inc.*, No. 17-CV-04384-JST, 2019 WL 1024962, at *3 (N.D. Cal. Mar. 4, 2019); *Wasson v. LogMeIn, Inc.*, No. CV 18-7285 PA GJSX, 2018 WL 6016283, at *2 (C.D. Cal. Nov. 2, 2018). Because Plaintiff Wang resides in New Jersey, her choice of a California forum is entitled to less weight. Thus, all factors relevant to the Section 1404(a) analysis weigh in favor of a Georgia venue, and the Court hereby transfers the *Wang* Action to the Northern District of Georgia, Atlanta Division.

The Court hereby GRANTS the PFA Defendants' motion for leave to seek reconsideration of the Court's denial of the PFA Defendants' prior motion to compel arbitration in the *Chen* Action.

Good cause exists to grant this motion. Where "the court's ruling has not resulted in a final judgment or order, reconsideration of the ruling may be sought under Rule 54(b) of the Federal Rules of Civil Procedure." *Martin v. Biaggini*, Case No. 12-cv-06287-JD, 2014 WL 1867068, at *1 (N.D. Cal. May 7, 2014). "Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly

1 unjust, or (3) if there is an intervening change in controlling law.” *Id.* (quoting *School Dist. No. 1J*
 2 *v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

3 Here, the Court’s decision on the PFA Defendants’ prior motion to compel arbitration has
 4 not resulted in a final judgment or order. Moreover, the PFA Defendants have presented new
 5 evidence that was not considered on the prior motion. Specifically, the Court previously denied
 6 the PFA Defendants’ motion because it believed that that the PFA Defendants had not provided
 7 sufficient evidence of the agreement to arbitrate. The evidence submitted in support of PFA’s
 8 motion to compel arbitration in the *Wang* Action applies with equal force to the *Chen* Plaintiffs.
 9 With that evidence, the Court hereby grants leave to the PFA Defendants to seek reconsideration
 10 of the Court’s denial of the PFA Defendants’ prior motion to compel arbitration in the *Chen*
 11 Action.

12 [Alternatively] The Court hereby GRANTS the PFA Defendants’ motion to transfer the
 13 *Chen* Action to the Northern District of Georgia, Atlanta Division, pursuant to 28 U.S.C. § 1404(a).

14 Good cause exists to grant this motion for the same reasons set forth above with respect to
 15 PFA’s motion to transfer the *Wang* Action. All factors relevant to a Section 1404(a) analysis
 16 weigh in favor of the *Chen* Action proceeding in Georgia. The only difference is that the *Chen*
 17 Action names additional defendants whose connection to California must also be considered.

18 Defendant David Carrol is the founder and CEO of PFA. He works out of PFA’s Georgia
 19 headquarters. Individual Defendants Jack Wu, Bill Hong, Lan Zhang, and Rex Wu all live in
 20 California, but they, like all other PFA Associates, have consented to venue and jurisdiction in
 21 Georgia for disputes against PFA or other PFA Associates. All five individual defendants also
 22 consent to this motion. Thus, given the reduced weight afforded to the *Chen* Plaintiffs’ choice of
 23 forum, and the extreme inconvenience to the PFA Defendants and witnesses that would result from
 24 this case proceeding in California, the Court hereby transfers the *Chen* Action to the Northern
 25 District of Georgia.

26 IT IS SO ORDERED

27 Date:_____

 Hon. Yvonne Gonzalez Rogers
 United States District Court