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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

IRENE PARRY, individually and on behalf of
all others similarly situated; JEANETTE
O’SULLIVAN, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

FARMERS INSURANCE EXCHANGE;
TRUCK INSURANCE EXCHANGE; FIRE
INSURANCE EXCHANGE.; FARMERS
GROUP, INC.; and DOES 1-100,

Defendants.

Case No.: BC683856

Hon. Amy Hogue, SS Dept. 007

**PLAINTIFFS’ AMENDED
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

[Declaration of Charles Crueger filed
concurrently]

DATE: March 8, 2022

TIME: 2:00 p.m.

DEPT: SS 007

COMPLAINT FILED: November 16, 2017

Trial Date: Not Set

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1 **I. Introduction**

2 Plaintiffs and Defendants (“Farmers”) have reached a settlement that resolves all claims
3 on behalf of the previously certified class, provides substantial monetary benefits to the class, and
4 protects the agents’ independent contractor status going forward. The parties’ revised Settlement
5 Agreement (hereafter, the Settlement or “SA”) is attached as Exhibit A to the concurrently filed
6 Declaration of Charles J. Crueger (“Crueger Decl.”). By this Motion, Plaintiffs seek an Order: (i)
7 Granting Preliminary Approval to the Proposed Class Action Settlement; (ii) Certifying the
8 Settlement Class for settlement purposes only; (iii) Approving the Form and Manner of Notice;
9 (iv) Appointing a Settlement Administrator; (v) Establishing a schedule for the provision of
10 Notice to the Class and the opportunity to opt out or object to the Settlement; and (vi) Setting the
11 Final Approval Hearing.¹

12 The Settlement provides over \$90 million in benefits: \$40 million in Direct Payments
13 allocated to all participating Class Members without the need to make a claim; \$35 million in
14 Claims Payments of up to \$10,000 to each Class Member who submits a claim for certain
15 unreimbursed expenses related to Farmers Smart Office program; and specific business model
16 and contract changes to preserve and protect the agents’ independent contractor status valued at
17 \$15.5 million. Importantly, the agents had been unsuccessful in previous litigation to force
18 Farmers to make these contract changes, and these changes constitute relief that Plaintiffs could
19 not have obtained even if successful at trial. In short, the settlement is fair and reasonable and
20 provides valuable relief that Class Members might not have obtained even if they prevailed at trial.
21 Indeed, the Settlement has been well received by potential Settlement Class Members. The
22 United Farmers Agents’ Association (UFAA) also supports the Settlement. (Crueger Decl., ¶ 65
23 and Ex. AA [declaration of UFAA Vice President].)

24
25 _____
26 ¹ A redline showing changes between the current Settlement and the version submitted on December
27 23, 2021, is attached as Exhibit Z to the Crueger Declaration, and the changes between the current
28 Settlement and the version submitted on October 6, 2021, is attached as Exhibit Z.1. A redline showing
changes between the current proposed notice, attached as Ex. A to the Settlement Agreement, and the
version the parties submitted on October 6, 2021, is attached as Exhibit Z.2.

1 In addition, the Settlement now contemplates that the Settlement Administrator will have
2 made its initial determinations on all claims, and a final determination on all or substantially all
3 claims, by the final approval hearing. Indeed, the claims form review process will progress
4 concurrently with the claims process as the Settlement Administrator makes its initial
5 determinations. (SA § 10.1.) This will avoid the need for separate direct and claims payment
6 checks, and all or nearly all Class Members who submit valid claims can receive their direct and
7 claims payment in a single check after the Effective Date. (SA § 17.1.)² To illustrate this point,
8 Appendix A lays out an example of a potential schedule to final approval. The Settlement also
9 proposes an attorneys' fee allocation formula between the direct and claims payments; states that
10 the Settlement Administrator can use email addresses to provide notice that potential Class
11 Members have submitted to Class Counsel or UFAA; and provides that designated Farmers
12 personnel who will assist with the claims form review process will sign a written confidentiality
13 agreement that need not be disclosed to the Court or Class Counsel, but that the Court may, at its
14 discretion, order that it be disclosed. (SA §§ 6.2, 9.1, and 9.4.3.) Further, Defendants' response to
15 questions the Court addressed them in the January 19, 2022 Tentative Ruling on the Motion for
16 Preliminary Approval is attached as Appendix B.

17 As part of preliminary approval, Plaintiffs seek certification of a Settlement Class (the
18 Class) defined in section IV, *infra*. The definition of the Settlement Class varies only slightly from
19 the definition of the class that was certified and neither expands nor restricts the previous
20 definition of who is a class member, as we explain in section IV.A, *infra*.

21 The Settlement is entitled to a presumption of fairness because: (i) it is the product of
22 arm's length bargaining between the Parties' counsel after nearly four years of litigation, three
23 different mediation sessions before three different and experienced mediators, and months of
24 contentious negotiations even after a framework for settlement was reached, which also required
25 the mediator's assistance; (ii) the parties have conducted extensive discovery and investigation

26 ² If for some reason there are Class Members whose Claim has yet to complete the review process by
27 the Effective Date, they shall receive one check for their Direct Payment after the Effective Date and a
28 second check for any Claim Payment after that review is complete. (SA § 17.1.)

1 into the claims, defenses, and potential damages in this case, including Plaintiffs obtaining the
2 Court order granting certification; (iii) Class Counsel is experienced in complex and class action
3 litigation, including insurance agent misclassification class actions; and (iv) the Settlement has
4 already received enthusiastic support from potential Settlement Class Members. The Court
5 should therefore grant preliminary approval, certify the proposed Settlement Class, allow Class
6 Members to receive notice, and schedule a hearing for final approval.

7 **II. Factual and Procedural History of the Litigation**

8 **A. The Complaint and the Underlying Facts**

9 Plaintiffs were exclusive Farmers insurance agents when they filed this class action over
10 four years ago in November 2017. They alleged that the Exchange Defendants violated California
11 Labor Code section 2802, which requires employers to reimburse their employees for any
12 expenses they incur to do their job, and the Unfair Competition Law (UCL) (Bus. & Prof. Code,
13 section 17200, *et seq.*). (Nov. 16, 2017, Compl., at ¶¶ 87-106.) Specifically, Plaintiffs alleged that
14 the Exchange Defendants owed them expense reimbursement because they treated Plaintiffs and
15 the class as employees under California law, not independent contractors. (*Ibid.*) After taking
16 discovery, Plaintiffs amended their complaint to add FGI as a defendant. Plaintiffs alleged that
17 FGI also violated Labor Code section 2802 and the UCL, and that it further violated Labor Code
18 section 2753 by advising the Exchange Defendants to treat the Class as independent contractors to
19 avoid employee status. (Oct. 29, 2019, Amend. Compl., at ¶¶ 97-115.) Plaintiffs sought, among
20 other things, recovery of unreimbursed expenses, a declaratory judgment that Defendants'
21 violated section 2802 and FGI violated section 2753. (*Id.* at p. 21 [Prayer for Relief].)

22 **B. The Parties Take Extensive Discovery**

23 The parties took years of extensive discovery to prepare for class certification and explore
24 the merits of the claims and defenses.³ Plaintiffs served 119 interrogatories, 29 requests for
25 admission, and 128 requests to produce documents on Defendants and engaged in years of

26
27 ³ The Court limited discovery to class certification issues with merits discovery to proceed after
28 certification. (See October 25, 2018 Minute Order.)

1 litigation to obtain the production of confidential company documents and corporate responses to
2 discovery. (Crueger Decl. ¶ 5.) Defendants served 237 interrogatories and 121 requests to produce
3 documents on Plaintiffs, and Plaintiffs were required to produce all the documents in their
4 possession related to their work as a Farmers agent and their claims in the litigation. (*Id.*, ¶ 6.)
5 Plaintiffs also served 7 third-party subpoenas. (*Id.*, ¶ 7.) As a result of Plaintiffs' discovery,
6 Defendants produced over 268,557 pages of documents, including confidential business
7 documents, company policies, company performance metrics and 49,358 internal emails from
8 Farmers' distribution management and other employees. (*Id.*, ¶ 8.) Many of these documents
9 were obtained only after months of negotiation over their production, and often Court
10 intervention, including numerous Court conferences and briefing setting forth the Parties' relative
11 positions. The named Plaintiffs alone produced 143,809 pages of documents from their files, and
12 17,661 pages of documents they received from third-party subpoenas. (*Id.*, ¶ 9.) Plaintiffs' counsel
13 took 18 days of deposition testimony of Farmers' witnesses, including current and former
14 distribution management employees, nearly all of which required travel to and from California and
15 days, if not weeks, of preparation. (*Id.*, ¶ 10.) Defendants deposed each Plaintiff twice. (*Id.*) Each
16 time, Plaintiffs' counsel prepared for and represented the named Plaintiffs at those depositions.
17 This hard-fought discovery period began in 2018 and was still ongoing in 2021 at the time of the
18 proposed settlement.

19 **C. The Court Certifies the Class.**

20 The parties used the extensive discovery record to either support or oppose class
21 certification and build their case for trial. To support class certification, Plaintiffs submitted over
22 155 exhibits, as well as testimony by 20 witnesses and declarations by both Plaintiffs, a current
23 agent, and a former district manager. (Crueger Decl. ¶ 11.) Farmers opposed certification by
24 submitting numerous documents and deposition testimony excerpts, as well as 65 declarations by
25 Farmers' agents and managers. (*Id.*, ¶ 12.) Both sides also presented fully developed expert
26 opinions. Plaintiffs served the report of their expert with their certification motion. (*Id.*, ¶ 13.)
27
28

1 Farmers served two expert reports with their opposition papers. (*Id.*, ¶ 14.) Plaintiffs served a
2 rebuttal expert report. (*Id.*, ¶ 15.)

3 The Court granted in part, and denied in part, Plaintiffs’ class certification motion on
4 February 26, 2021, and then amended its certification order on March 4, 2021. The Court denied
5 the motion as to certifying a class seeking injunctive relief. (Amended Order, at p. 22 [attached as
6 Ex. D to the Crueger Decl.].) The Court granted the motion as to all other claims for relief and
7 certified the following class:

8 All individuals who signed a Farmers Agent Appointment Agreement and worked
9 as a Farmers agent in the State of California.

10 (*Id.* at p. 1.) The class period for claims against the Exchange defendants was from November 16,
11 2013, until notice is mailed to the class, while the class period for claims against FGI was October
12 29, 2015, until notice is mailed to the class. (*Id.* at p. 2.) The Court also appointed Plaintiffs as
13 class representatives and Plaintiffs’ counsel as class counsel. (*Id.* at p. 22.) The class the Court
14 certified includes approximately 6,369 agents. (Crueger Decl. ¶ 16.) The Court also stated that it
15 would “revisit” certification and “entertain a motion to decertify if it appears the case is
16 unmanageable.” (Amended Order, at p. 12-13.)

17 Farmers filed a petition on May 3, 2021, asking the Court of Appeal to review the
18 certification order. The California Chamber of Commerce and three other entities—the Personal
19 Insurance Federation of California, National Association of Mutual Insurance Companies, and the
20 California Business Roundtable—filed an amicus supporting Farmers’ petition. Plaintiffs filed
21 preliminary responses to Farmers’ petition and supporting amicus, and Farmers filed a
22 preliminary reply. The Court of Appeal denied the petition on May 28, 2021. (Crueger Decl. ¶ 17;
23 see also Court of Appeal (Second District) Case No. B312051.)

24 **D. The Parties Prepare Additional Discovery and Motion Practice.**

25 After the Court granted certification, the parties began to address the merits and prepare
26 the case for class trial. Plaintiffs believed merits discovery would take over a year. This would
27 include discovery on the underlying issue of whether the agents were “employees” for purposes
28

1 of section 2802. (Crueger Decl. ¶ 18.) Plaintiffs were also preparing to take discovery on FGI's
2 liability as a joint employer or under an alter ego theory, FGI's liability under section 2753 for
3 willful misclassification, categories of unreimbursed agent expenses recoverable under section
4 2802, and other issues related to manageability that Farmers raised during certification. (*Id.*) This
5 discovery would have required additional substantial productions of documents and emails,
6 subpoenas to third parties, and numerous depositions of both Farmers' and third-party witnesses.
7 (*Id.*, ¶ 19.) Preparing for trial would have also required both parties to prepare and disclose more
8 fulsome expert testimony on liability issues as well as expert depositions. (*Id.*)

9 Finally, on May 25, 2021, Plaintiffs filed a motion for summary adjudication of Farmers'
10 twelfth affirmative defense that Defendants paid enhanced commissions that already reimbursed
11 all or part of the agents' expenses. The motion was scheduled for hearing on October 6, 2021, but
12 the Court took it off the schedule in light of the parties' settlement. (Crueger Decl. ¶ 20.)
13 Plaintiffs anticipate that both parties would have filed additional dispositive motions and motions
14 in limine prior to trial, and that Farmers would have moved to decertify the class. (*Id.*, ¶ 21.)

15 **III. *Dunk/Kullar* Analysis**

16 **A. The Settlement was Achieved after Extensive Investigation and Discovery.**

17 The parties engaged in a years-long and hard-fought discovery process prior to settlement,
18 *see supra*, section II.B & D. In addition, Plaintiffs spent thousands of hours developing facts and
19 investigating the claims to prepare for class certification and, eventually, for trial. (Crueger Decl.
20 ¶ 23.) Over the years, Plaintiffs interviewed numerous witnesses, including fact witnesses, agents
21 whose declarations Farmers submitted in support of its opposition to class certification, former
22 Farmers' management, potential experts, and Class Members. Plaintiffs also obtained
23 declarations from certain witnesses to support certification and would have presented testimony
24 from additional witnesses at a trial of this matter. (*Id.*, ¶ 24.)

25 Plaintiffs also researched and analyzed the applicable law as to their claims, including
26 extensively researching—and then briefing for certification—issues related to misclassification
27 under California law, joint employer status, and expense reimbursement under Labor Code

1 section 2802. (Crueger Decl. ¶ 25.) Plaintiffs also researched various issues related to Farmers’
2 affirmative defenses, including filing a motion for summary adjudication on Farmers’ affirmative
3 defense that it paid enhanced commissions to reimburse expenses. (*Id.*, ¶ 26.) Plaintiffs also
4 identified and retained experts to assist with their preparation of the case. This included retaining
5 experts to support class certification. (*Id.*, ¶ 27.)

6 **B. Settlement Negotiations were Conducted Before Experienced Mediators.**

7 The parties have explored avenues to settle this case since its inception. Counsel for
8 Plaintiffs and the Exchange Defendants initially met for a full-day mediation before the Hon.
9 Judge Meisinger on August 13, 2018, in Los Angeles. (Crueger Decl. ¶ 28.) They were unable to
10 agree on a resolution and mediation concluded without a settlement. (*Id.*) Instead, the parties
11 engaged in several years of litigation focused on certification and preparing for trial.

12 After the Court granted certification, the parties again agreed to mediate before Barbara
13 Reeves of JAMS. These efforts included counsel for the parties meeting independently with Ms.
14 Reeves prior to the mediation, submitting extensive materials and then a full day of mediation on
15 April 7, 2021, conducted remotely over Zoom. With the mediator’s assistance, the parties
16 exchanged competing settlement terms and discussed their respective assessment of the merits.
17 They disagreed, however, over the path to resolution. (Crueger Decl. ¶ 29.)

18 Believing that the negotiations may benefit from an in-person mediation, the parties
19 agreed to a third in-person mediation with Randy Wulff in Northern California, on June 1, 2021.
20 (Crueger Decl. ¶ 30.) The parties exchanged confidential mediation statements prior to the
21 mediation. At the conclusion of a full day of intense negotiations, the mediator proposed a
22 settlement structure that he believed could bridge the significant gaps between the parties. The
23 parties accepted that proposal and reached a tentative agreement on the terms of a settlement.
24 Even then, it took nearly four months of often contentious negotiations, and Mr. Wulff’s
25 additional assistance, for the parties to finally agree on the terms of the settlement that they then
26 executed on September 30, 2021. (*Id.*, ¶ 30.) To say that this Settlement resulted from extensive
27 investigation and advocacy is an understatement. Both sides, experienced in cases like this one,
28

1 ultimately agreed to a fair compromise that fully and finally resolves this litigation. A court
2 “undoubtedly should give considerable weight to the competency and integrity of counsel and the
3 involvement of a neutral mediator in assuring itself that a settlement agreement represents an
4 arm’s-length transaction entered without self-dealing or other potential misconduct,” and “an
5 agreement reached under these circumstances presumably will be fair to all concerned....”
6 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129.)

7 **C. Class Counsel have Extensive Class Action Experience.**

8 Class Counsel have extensive experience with class actions, including taking to trial and
9 through numerous appeals an analogous action with a certified class of exclusive insurance agents
10 claiming that they were employees under the Employee Retirement Income Security Act of 1974
11 (ERISA).⁴ Class Counsel has set forth a more detailed description of their experience in the
12 Crueger Declaration, Exhibit B.

13 Based on their own independent investigation and evaluation, Class Counsel believes that
14 the Settlement with Farmers is fair, reasonable and adequate, and in the best interest of the Class
15 Members in light of the facts and circumstances, including: the risk of significant delay and
16 uncertainty associated with the litigation; the settlement’s inclusion of significant benefits that
17 could not be achieved through litigation; direct payments to all Class Members without a claims
18 process; and a settlement claims process that provides confidentiality to class members rather
19 than a contested damages trials against Farmers. Notably, class counsel obtained a successful trial
20 verdict that a similar certified class of insurance agents were independent contractors only to have
21 it reversed on appeal, resulting in zero recovery to the class. (*Jammal v. Am. Family Ins. Co.* (6th
22 Cir. 2019) 914 F.3d 449.) Class counsel takes seriously their obligations as fiduciaries to this class
23 and strongly believes that this real and serious risk of litigation compelled accepting a settlement
24 that provides substantial relief to this class short of trial and appeal, including the systemic and
25 contract changes that could never be obtained through a trial of this case.

26
27 _____
28 ⁴ (See *Jammal v. Am. Family Ins. Grp.* (N.D. Ohio July 31, 2017) 2017 U.S. Dist. LEXIS 120684.)

1 Class Member. The expenses agents incur vary by agent, and only the agents maintain records of
2 all the expenses they incur; Farmers does not track the expenses Class Members incur. (See e.g.,
3 Crueger Decl., Ex. L, Mertens Decl. ¶ 22 [“I decide what expenses to incur,” not Farmers]; Ex.
4 T at p. 32:24-33:12 [PMQ testimony that Farmers does not “track or monitor” agent expenses or
5 how they decide to spend money].) Farmers does allow agents to pay certain expenses to third
6 parties—including, as relevant here, certain Smart Office-related expenses such as signs for the
7 Farmers agency—by deducting those expenses from the commissions Farmers owes them (called
8 folio). (Crueger Decl., Ex. S at p. 3 [Smart Office document showing which sign vendors eligible
9 for payment via folio deduction].) Farmers does not require agents to use this system to pay
10 expenses, including for Smart Office. (See, *id.*; see also Ex. U at p. 156:5-17 [Farmers cannot track
11 expenses through folio].) Accordingly, determining the amount of expense reimbursement
12 Farmers owed each Class Member would have required each Class Member to submit evidence
13 supporting their claims for unreimbursed expenses at a trial or before a special master.

14 That said, the starting point for this analysis is an estimate of Farmers’ exposure if the
15 Plaintiffs prevailed on the misclassification issue and agents turned out in large numbers to engage
16 in the contested claims process following a trial of the misclassification issue. One reasonable
17 damage estimate based on Class Member data that Farmers produced exceeds \$1 billion. Plaintiffs
18 derived that valuation by applying an estimate of the average expense per agent per month to data
19 Farmers provided about each Class Member’s months of service during the class period.
20 Specifically, following certification, Farmers produced information showing both the number of
21 agents in the class and each agent’s start date and end date during the class period. Thus, for
22 example, if an agent started prior to the class period—November 13, 2013—then the start date
23 would be November 13, 2013, and the end date would be the date the agent terminated, if any.
24 Using this information, Plaintiffs constructed a formula that calculated each agent’s service
25 during the class period, summarized as follows:
26
27
28

Active Agents by years service	Number
≥7 years	1,875
<7 years ≥ 6 years	14
<6 years ≥ 5 years	222
<5years ≥ 4 years	147
<4 years ≥ 3 years	174
<3 years ≥ 2 years	240
<2 years ≥ 1 years	239
<1 year	237
Totals	3,148

Former Agents by years service	Number
≥7 years	31
<7 years ≥ 6 years	332
<6 years ≥ 5 years	326
<5years ≥ 4 years	469
<4 years ≥ 3 years	380
<3 years ≥ 2 years	427
<2 years ≥ 1 years	695
<1 year	561
Totals	3,221

All Agents (Active and Former)	Number
≥7 years	1,906
<7 years ≥ 6 years	346
<6 years ≥ 5 years	548
<5years ≥ 4 years	616
<4 years ≥ 3 years	554
<3 years ≥ 2 years	667
<2 years ≥ 1 years	934
<1 year	798
Totals	6,369

(Crueger Decl., ¶ 36.)⁵

Plaintiffs then made a estimate of what an average expense per month per agent they could expect to recover as “necessary expenditures” incurred “in direct consequence of the discharge of [the agents’] duties.” (Lab. Code section 2802, subd. (a).) As mentioned above, and as Defendants stated in interrogatory responses, the expenses incurred “will vary as to each agent, and depends on the manner in which the agent operates their insurance agency business....”

(Crueger Decl., Ex. I, Farmers Defendants Response to Special Interrogatory No. 31, at p 5:18-

⁵ “Active Agents” describes Class Members who were appointed either before or during the class period but have not terminated; “Former Agents” describes agents who were appointed either before or during the class period and terminated during the class period. Both the named Plaintiffs fall into the “Former Agents” category because they were appointed before the class period but terminated during the class period. (Crueger Decl., Ex. F, ¶ 2 [Parry Decl.], Ex. G, ¶ 2 [O’Sullivan Decl.].)

1 22.) Plaintiffs do have their own information, however, and this shows that Plaintiff Parry
2 averaged approximately \$4,900 per month in total expenses, and Plaintiff O’Sullivan averaged
3 approximately \$6,300 per month in total expenses. (*Id.*, ¶ 37.) Using those numbers as an average
4 expense per Class Member per month generates total estimated classwide expenses of \$1.65
5 billion using Plaintiff Parry’s average expense number and \$2.11 billion using Plaintiff
6 O’Sullivan’s average expense number. (*Id.*, ¶¶ 38-39.)

7 These are gross numbers, however, that do not necessarily represent what agents could
8 recover as necessary expenses incurred in direct consequence of their duties to sell Farmers’
9 insurance and service Farmers’ customers. Accordingly, any damage and risk estimate must
10 account for various discounts, the major ones listed below.

- 11 2. The risk of loss on whether the agents are employees, along with the expense,
12 complexity, and duration of further litigation, favor approval.

13 Farmers has vigorously argued that it properly classified all Class Members as
14 independent contractors and submitted declarations by Class Members to oppose certification.
15 Overcoming Farmers’ arguments and defenses on the misclassification issue alone presents
16 complex factual issues that would require the time, expense, and uncertainty of a trial to resolve.
17 (*S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 349 [issue of
18 employee status “is one of fact” for the tier of fact].)

19 The caselaw, moreover, provides cause for any reasonable plaintiff to temper expectations
20 on whether they will prevail at trial and then on appeal. As the Ninth Circuit has observed, “[w]e,
21 along with virtually every other Circuit . . . have held that insurance agents are independent
22 contractors.” (*Murray v. Principal Fin. Grp., Inc.* (9th Cir. 2010) 613 F.3d 943, 944-45; *see also*
23 *Weary v. Cochran* (6th Cir. 2004) 377 F.3d 522, 524 [“this Court has repeatedly held that
24 insurance agents are independent contractors, rather than employees”]; *Arnold v. Mutual of*
25 *Omaha Ins. Co.* (2011) 202 Cal.App.4th 580, 581 [affirming summary judgment that an insurance
26 agent was an independent contractor, not an employee, under Labor Code § 2802 and *Borello*].) In
27 fact, after A.B. 5 clarified that *Borello*’s test determined the employee status of insurance agents, a
28

1 plaintiff dropped as “no longer viable” his wage and hour claims against Farmers alleging that
2 Farmers misclassified its agents as independent contractors.⁶ (See also *Jammal, supra*, 914 F.3d at
3 460 [“This court has time and again declared insurance agents to have independent contractor
4 status — and appellees have presented no case in which we have not done so”]; *Plazzo v.*
5 *Nationwide Mut. Ins. Co.* (6th Cir. 1989) 892 F.2d 79 [reversing judgment that insurance agent was
6 an employee].)

7 Plaintiffs believe that these cases are distinguishable, and they have a meritorious case,
8 particularly since whether Farmers treated its exclusive agency force, the Class Members, as
9 employees presents case-specific issues of fact. Yet a trial on the misclassification issues presents
10 complex, inherently risky issues, and any trial would be expensive and years in the future.
11 Moreover, a fact finder deciding against Plaintiffs on the independent contractor issue would
12 result in zero recovery for Class Members since Labor Code section 2802’s requirements apply
13 only to employees, not independent contractors. In sum, the benefits Class Members may obtain
14 through litigation are uncertain and years away, while the benefits of the Settlement are certain
15 and only months away.

16 3. The risk of maintaining class action status.

17 Farmers repeatedly challenged class certification and argued that it was unwarranted.
18 Over opposition, the Court granted class certification. Farmers sought review of the Court’s
19 order, which the Court of Appeal denied, but Farmers retained the right to challenge certification
20 through a renewed motion to decertify or on appeal. The Court also stated that it would “revisit”
21 certification “if it appears the case is unmanageable.” (Amended Order, at p. 12-13.) Although
22 Plaintiffs believe that the Court’s certification order rests on a legally and factually sound
23 foundation, a risk remains that future proceedings, including appellate review, could jeopardize
24 the Court’s class certification decision

25
26 _____
27 ⁶ See Nov. 21, 2019, Notice of Unopposed Motion and Memorandum in Support of Motion for
28 Preliminary Approval of Class Action Settlement, at p. 4, filed in *Ashe v. Farmers Ins. Group* (Super. Ct.
Los Angeles County, Case No. 18STCV00453).

1 4. Farmers’ argument that expenses must be discounted to account for work
2 unrelated to Defendants’ business.

3 Farmers argued that Class Members could not recover for expenses related to work they
4 did outside of selling insurance for Defendants. As Farmers pointed out during certification, most
5 Class Members (including the named Plaintiffs) maintained appointments with other insurance
6 companies, and some agents have other business ventures.⁷ To that end, Farmers put in evidence
7 of how Farmers’ agents sell insurance for other companies unrelated to Farmers, and how some
8 agents can allegedly make more from their non-Farmers insurance business than their Farmers’
9 business.⁸ Farmers also put in evidence and examples of how agents can purchase their own office
10 buildings or run other businesses out of their agency having nothing to do with selling insurance,
11 including running an accounting business, a mortgage brokerage, selling securities products, or
12 being a landlord and renting office space in their building.⁹ It also put in evidence of agents
13 incurring expenses that may or may not be reasonably necessary to perform their duties, such
14 purchasing a trailer that played Farmers’ jingles.¹⁰ Farmers also argued that expenses agents
15 incurred to sell insurance for Mid-Century and Farmers New World Life—subsidiaries of the
16 Exchange Defendants and FGI, respectively—had to be excluded since neither was a defendant.

17 While Plaintiffs disagree with the merits of these arguments, a finding that expenses
18 should be reduced for any of these reasons would substantially reduce Defendants’ total exposure.
19 Accordingly, Plaintiffs assumed an average recovery per Class Member of half the named
20 Plaintiffs’ average monthly expense numbers, or approximately \$2,500. Plugging that number into
21 the data Farmers provided generates the following conservative damage estimates during the class
22

23 ⁷ See Farmers Defendants’ Opposition to Plaintiffs’ Motion for Class Certification, at p. 17 (dated Jan.
24 7, 2021).

25 ⁸ Crueger Decl., Ex. J (Herzog Decl., ¶ 10), Ex. K (Martindale Decl., ¶ 25), Ex. L (Mertens Decl., ¶¶
26 8, 9), and Ex. O (Senigaglia Decl., ¶¶ 6, 7).

27 ⁹ Crueger Decl., Ex. J (Herzog Decl., ¶ 10), Ex. K (Martindale Decl., ¶¶ 14, 24), Ex. L (Mertens Decl.,
28 ¶¶ 8, 9), and Ex. N (Pritulla Decl., ¶¶ 21-23).

¹⁰ Crueger Decl., Ex. L (Mertens Decl., ¶ 16).

1 period: \$542,690,902 for active agents and \$297,210,984 for former agents, for a total of
2 \$839,901,885. (Crueger Decl., ¶ 40.)

3 Farmers also argues that the process of sorting out what expenses were incurred in
4 consequence of discharging their duties for Farmers' rendered the class unmanageable. (See
5 Farmers Defendants' Opposition to Plaintiffs' Motion for Class Certification, at pp. 22-23 [dated
6 Jan. 7, 2021].) While this Court disagreed, it also stated that it would revisit the issue as necessary
7 on a motion for decertification. (Amended Order, at p. 12-13.) Decertification would result in zero
8 recovery for the Settlement Class.

9 5. Risk of low participation in a contested damages process after trial of the
10 independent contractor issue.

11 It is unrealistic to assume that every Class Member would devote the substantial time and
12 effort necessary to submit testimony and evidence and otherwise participate in contested
13 individualized hearings on damages if Plaintiffs prevailed at trial on the misclassification issue.
14 Further, Farmers has stated that it would vigorously contest all claimed expenses and "test [each
15 Class Members'] credibility under cross examination," with disputes resolved either through
16 individual court trials or by a special master.¹¹ Thus, a real risk exists that some Class Members,
17 particularly those who still sell insurance for Farmers, would be unwilling to risk a vigorously
18 contested process to prove up their claim for fear that doing so would hurt their long-term career
19 as a Farmers agent. Assuming even 70% of Class Members decide to engage in this contested
20 process and submit evidence, the total expense number falls to \$580 million. And if only 40% of
21 Class Members decide to engage in a contested process to prove their individual damages claim,
22 the settlement numbers would fall to \$336 million.

23 By contrast, the Settlement Agreement allows Class Members to submit claims without
24 cross examination knowing that even the fact of their participation is confidential. (SA 9.4.)

25
26
27 ¹¹ See Farmers Defendants' Opposition to Plaintiffs' Motion for Class Certification, at pp. 8-9 (dated
28 Jan. 7, 2021).

1 7. The settlement delivers benefits not attainable by a judgment on the merits.

2 One tension in this case was Class Members’ desire to remain independent contractors
3 and Farmers’ position that a win for Plaintiffs would force Farmers to reclassify agents as
4 employees and “significantly impact Farmers’ business,” and could result in reduced
5 commissions, the termination of agents, and reduced resources offered to agents. (Exchange
6 Defendants’ Opposition to Class Certification, at pp. 24-25 [January 7, 2021].) While Plaintiff
7 disagreed, the Court did deny certification of any claim for injunctive relief. (Amended Order, at
8 p. 22.) Thus, Plaintiffs could not by this lawsuit obtain injunctive relief to protect the Class
9 Members’ independent contractor status going forward. Yet the Settlement Agreement does just
10 that by implementing valuable systemic and contract changes intended to protect the Class
11 Members status as independent contractors and will not result in the forced reclassification that
12 Farmers threatened if the lawsuit was successful.

13 8. The settlement is reasonable given the benefits and risks.

14 The benefits this Settlement achieves both monetarily and in the form of systemic
15 business practice changes, when weighed against the risks and uncertainties, tip the scales
16 decisively towards preliminary approval of the settlement. A settlement that delivers over \$90
17 million in benefits to Class Members, while maintaining the agents’ independent contractor
18 status, represents a reasonable compromise of Plaintiffs’ claims. The monetary relief alone
19 represents by one measure between 4%-15% of the maximum recovery after trial and contested
20 individualized damage process.¹³ This is a reasonable compromise considering the real risks that
21 that current agents would be reluctant to participate in a contested damages process against
22 Farmers or that Class Members would recover nothing—even if they prevailed on the underlying
23 independent contractor/employee issue—and the potential for a years-long damages process and
24 then an appellate process, including the potential for review by the California Supreme Court, and
25 risk posed should a retrial be ordered.

26 ¹³ \$90 million ÷ \$2.11 billion = 4.25%; \$90 million ÷ \$1.64 billion = 5.5%; \$90 million ÷ \$839.9 million =
27 10.72%; \$90 million ÷ \$580 million = 15.5%. The percentage ranges between 4% and 13% even if compared
28 to only the \$75 million direct and claims-made payments.

1 **IV. Certification of the Settlement Class.**

2 **A. The Settlement Class Definition.**

3 The Settlement requires that the Court certify the following Class for settlement purposes
4 that differs slightly from the class that the Court earlier certified (with additions underlined):

5 All individuals who (i) signed a Farmers Agent Appointment Agreement or a
6 Farmers Corporate Agent Appointment Agreement and (ii) worked as a Farmers
7 agent or Supervising Agent for an incorporated Farmers agency in the State of
8 California at any time between November 16, 2013 to the date that the Court
9 grants preliminary approval of the Settlement.

10 (Cite § 5.1.) The revised class definition does not change who is or is not a Class Member. For
11 example, Plaintiff Jeanette O’Sullivan signed a corporate agent appointment agreement. (Crueger
12 Decl., Ex. G, ¶ 2 [O’Sullivan Decl.].) And there is no dispute that she is a member of the class the
13 Court certified since the Court appointed her as a named class representative. So, all agents who
14 signed a corporate agent appointment agreement were explicitly included in the class. With the
15 Settlement Agreement, and to ensure no confusion existed with the notice, the parties agreed to
16 amend the class definition in the Settlement Agreement to make sure that Class Members who
17 signed a corporate agent appointment agreement understood that they are included in the class.
18 Otherwise, the Class definition neither expands nor restricts the ranks of Class Members eligible
19 to participate in the Settlement. As with the previously certified class, the Class encompasses
20 approximately 6,369 current and former agents. (Crueger Decl., ¶ 16.) The Class period also
21 matches the longest class period of the class the Court previously certified. (See Amended Order,
22 at p. 2.)

22 **B. The Class Satisfies Numerosity.**

23 A class of approximately 6,369 former and current agents satisfies numerosity. (See
24 Amended Order, at p. 3 [finding class is numerous].)

25 **C. The Class is Ascertainable.**

26 The Settlement defines Class Members by who signed an agreement with Farmers, an
27 “objective characteristic[] and common transactional fact[]” that makes “the ultimate

1 identification of class members possible when that identification becomes necessary.” (*Noel v.*
2 *Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980; see also Amended Order, at p. 3 [finding class is
3 ascertainable].)

4 **D. Common Questions of Fact and Law Predominate.**

5 With respect to commonality and predominance, the class certification inquiry focuses
6 “on what type of questions—common or individual—are likely to arise in the action” (*Sav-*
7 *On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327.) To assess predominance, a
8 court “must examine the issues framed by the pleadings and the law applicable to the causes of
9 action alleged.” (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916.) The
10 pertinent question is whether the common issues are so numerous or substantial, when compared
11 to the individual issues, that trying them in one proceeding would be advantageous to the judicial
12 process and the litigants. (*Sav-On*, 34 Cal. 4th at 326.)

13 Plaintiffs’ claims raise at least four common questions: (1) Are the agents “employees”
14 under Lab. Code section 2802? (2) Does Farmers reimburse agents for all expenses they
15 necessarily incur? (3) Is FGI is an “employer,” or the alter ego of the employer, under section
16 2802? and (4) Did FGI knowingly advise the Exchanges to classify the agents as independent
17 contractors to avoid employee status? Answering these questions also answers whether any
18 Defendant violated the UCL. These common issues predominate because they all are
19 “susceptible of proof on a classwide basis” using evidence common to all class members of
20 Farmers’ company-wide policies. (*Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522,
21 531.) Indeed, the Court previously concluded that common issues of fact and law predominate for
22 all these issues to grant class certification, and nothing has changed since then to alter that
23 analysis. (Amended Order, at pp. 4-16.)

24 **E. Plaintiffs’ Claims are Typical.**

25 Typicality refers to the nature of the claim or defense of the class representatives. ““The
26 test of typicality ‘is whether other members have the same or similar injury, whether the action is
27 based on conduct which is not unique to the named plaintiffs, and whether other class members
28

1 have been injured by the same course of conduct.’ [Citation.]” (*Seastrom v. Neways, Inc.* (2007)
2 149 Cal.App.4th 1496, 1502.) Typicality does not require that class representatives suffered all the
3 damages of class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 238.)

4 Plaintiffs’ claims are typical as both Plaintiffs’ claims arise from the same factual and legal
5 questions as Class Members, and both “Plaintiffs’ claims for monetary and other non-equitable
6 relief are common to the class.” (Amended Order, at p. 17, 19.)

7 **F. Class Counsel and the Class Representatives are Adequate.**

8 Plaintiffs are adequate Class Representatives because their claims are not antagonistic to
9 the claims of the Settlement Class. (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.)
10 Plaintiffs contacted and selected Class Counsel, volunteered to be class representatives,
11 prosecuted this case faithfully for many years, responded to extensive discovery, including
12 numerous depositions, and assisted Class Counsel on many issues relating to the claims as well as
13 the Settlement. (See Declaration of Irene Parry, ¶¶ 1-5 [attached as Exhibit F to the Crueger Decl.
14 and hereafter referred to as the “Parry Decl.”]; Declaration of Jeanette O’Sullivan, ¶¶ 1-5
15 [attached as Exhibit G to the Crueger Decl. and hereafter referred to as the “O’Sullivan Decl.”].)

16 Class Counsel are adequate because they have extensive experience in class action
17 litigation, including insurance agent misclassification disputes. (See Amended Order, at pp. 19-20
18 [finding Plaintiffs and Plaintiffs’ counsel are adequate].) Neither Class Counsel nor the Class
19 Representatives have any conflicts with the Settlement Class. (Crueger Decl., ¶ 42; Ex. G, ¶ 5
20 [O’Sullivan Decl.], Ex. F, ¶ 5 [Parry Decl.] and Exs. V to Y [declarations of counsel].)

21 **G. Class Treatment is Superior.**

22 Certification for settlement purposes presents a superior means for resolution. One
23 settlement resolving the claims and issues of approximately 6,349 individuals confers “substantial
24 benefits” that “render proceeding as a class superior to the alternatives,” including numerous
25 and potentially conflicting individual lawsuits that would waste economic and judicial resources.
26 (*Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1089; see also Amended Order, at pp. 20-
27 21 [finding class action treatment superior].)

1 Farmers’ Smart Office standards. (See Plaintiffs’ Oct. 16, 2020, Memorandum of Points and
2 Authorities in Support of Class Certification, at pp. 13, 14 and exhibits cited therein.) A Class
3 Member does not have to have been certified as Smart Office compliant by Farmers or otherwise
4 have met those standards, however, to submit a claim. (SA, Exs. B & C [claim forms].) Smart
5 Office-related expenses, including office signage, staff, and website appearance, were all expenses
6 that Farmers expected Class Members to bear as “reasonable expenses” in running a Farmers’
7 agency. In other words, these were the expenses that Plaintiffs believe would be recoverable
8 under Labor Code section 2802 in a post-trial claims process.

9 Participating Class Members wishing to submit a claim will use one of the two proposed
10 Claim Forms. (SA, § 6.1.2; § 10; SA Exs. B & C [claim forms].) The process has been designed to
11 be easy and not so burdensome that Class Members will not be able to obtain the benefits of the
12 Settlement. Class Members will support a claim either by submitting documentation showing that
13 they paid the expense or—for all expenses except Licensed & Appointed Staff—attest that they
14 paid the expenses by a deduction from their Farmers’ folio.¹⁵ Nearly all Class Members will use
15 the proposed Claim Form attached as Exhibit B to the Settlement to submit a claim for any
16 eligible expense paid between November 16, 2013, and December 31, 2020. The small number of
17 Class Members who were appointed in December 2020 and paid expenses to meet Farmers’
18 Smart Office standard will use the proposed Claim Form attached as Exhibit C to the Settlement,
19 as they are allowed to claim expenses paid after December 2020. This latter category has
20 approximately 67 Class Members. (Declaration of Zoltan Nagy, ¶ 7 [attached as Exhibit E to the
21 Crueger Declaration and hereafter referred to as the “Nagy Decl.”].)

22 A small number of Class Members that Farmers appointed through Farmers’ External
23 Acquisition (after 1/1/2019), SEED, or Retail programs prior to January 1, 2021, however, are
24

25 ¹⁵ See Settlement Exhibit B & C, Claim Forms. Class Members could not use folio to pay for Licensed
26 & Appointed Staff. Class Members will have a wide variety of options to document expenses that they
27 claim reimbursement for, including profit and loss statements or other accounting records maintained in
28 the ordinary course of business (e.g., Quickbooks); payroll records; receipts; or itemized expenses from tax
returns. (*Ibid.*)

1 ineligible to claim expenses paid for Licensed and Appointed staff because those three programs
2 required a Licensed and Appointed staff to be engaged as a condition of the agent's appointment
3 with Farmers. Only about 1,088 Class Members, however, fall into this category, and the vast
4 majority of them received start-up or signing bonuses of up to \$10,000. (SA, § 10.3(4)(ii); Nagy
5 Decl., ¶¶ 8-11.) These Class Members may still receive a Claims Payment of up to \$10,000,
6 however, by claiming reimbursement for any other categories of eligible expenses. (SA, § 6.1.2;
7 SA Exs. B & C [claim forms].) Class Members appointed in January of 2021 and after were not
8 subject to Farmers' Smart Office policy and, therefore, incurred no eligible expenses for which
9 they may receive a Claims Payment. Only 205 Class Members fall into this category and those
10 agents will receive the other benefits of the Settlement. (Nagy Decl., ¶ 6.)

11 Class Members can submit claims for any dollar amount, including amounts exceeding
12 \$10,000, although the maximum amount any one Settlement Class member can receive is
13 \$10,000. (SA, § 6.1.2; § 10; SA Exs. B & C [claim forms].) If value of all claims to be paid to the
14 Settlement Class members who submitted valid claims exceeds \$35 million, then claims will be
15 paid based on an allocation formula.¹⁶ (SA, § 6.1.2.) The \$10,000 cap as well as the allocation
16 formula is designed to ensure that all Class Members, whether they ran a large or a small agency,
17 are treated alike in the Settlement.

18 If a Class Member's Claim Form omits necessary information or is otherwise defective,
19 Class Members are provided an opportunity to correct those errors. In fact, the Settlement
20 provides a process by which the Settlement Administrator will provide a deficiency notice via mail
21 or email to the Class Member explaining the deficiency so it can be corrected. (SA, § 9.7.) The
22 Settlement Class member will have the longer of 30 days or the claims deadline to submit by mail
23 or electronically (via email or through the settlement website) information to correct or complete
24 the Claims Form. (*Ibid.*) Class Counsel will also be notified of defective claims forms (*ibid.*), and
25

26
27 ¹⁶ For example, just over half of Class Members submitting a valid claim for \$10,000 each will exhaust
28 the \$35 million fund.

1 they intend to take steps to encourage and assist Class Members to submit claims and correct any
2 deficiencies.

3 Settlement Class members will be able to submit a Claim Form in one of three ways: by
4 mail, by email, or by completing an online Claim form and uploading any supporting
5 documentation, as necessary, using secure website maintained by the Settlement Administrator.
6 (SA, § 9.4.5; SA Exs. B & C [claim forms].) The Settlement Administrator will also maintain a
7 website and a toll-free telephone support system, with live in-person support during business
8 hours, to provide information and aid Class Members with the claims process. (SA, §§ 9.2 & 9.3.)
9 In addition, Class Counsel will be available to answer any Class Members' questions and will have
10 staff designated to assist in claims submission.

11 **VI. Miscellaneous**

12 **A. There are No Terms Outside the Scope of the Complaint.**

13 The settlement includes no terms that are outside the scope of the operative First
14 Amended Complaint.

15 **B. Class Notice Will Only be in English.**

16 The Class is comprised of current and former Farmers exclusive insurance agents. The
17 Class members' agent agreements with Farmers were in English and they interacted with Farmers
18 in English. There is no evidence that notice should be given in anything other than English.

19 **C. Affirmative Obligations of Settlement Class Members**

20 The affirmative obligations of Class members involve (a) those who wish (but are not
21 required) to make a claim to fill out and submit a Claim Form, and (b) to agree by virtue of their
22 participation in the Settlement to the contractual changes set forth in the Settlement Agreement,
23 including the mutual arbitration clause with a jury and class action waiver for certain claims as
24 part of the monetary relief and systemic and contract changes.

1 the California Labor Code.” (SA, § 18.2.) Claims unrelated to the facts and/or claims set forth in
2 the First Amended Complaint are not being released.

3 2. Civil Code Section 1542 Waiver Applies to Plaintiffs only.

4 The Civil Code Section 1542 Waiver Applies to only to the named Plaintiffs and not all
5 Class Members. (SA, ¶ 18.4)

6 3. Release Effective Date.

7 The Release will become effective upon final approval. The Court granting final approval
8 will automatically vest the right of all participating Class Members to receive a Direct Payment
9 and immediately result in the systemic and contract changes regardless of whether they also
10 decide to make a claim. (SA, § 6.1.1; § 7 and § 7.1.)

11 4. No Confidentiality Provisions Exist.

12 The Settlement contains no confidentiality provisions, and thus no provisions that bar or
13 could otherwise impede Class Counsel from discharging their fiduciary duties to the Class.

14 **C. The Monetary Terms of the Settlement.**

15 1. The Settlement Amount.

16 As discussed above, the Settlement Amount is valued at over \$90 million that will be
17 allocated as follows: \$40 million in up-front direct payments distributed directly to all Settlement
18 Class members who do not timely opt out, net of fees, awards, and expenses; and \$15.5 million of
19 monetary relief generated by contract changes; and \$35 million distributed to Settlement Class
20 members on a claims-made basis, with claims payments of up to \$10,000 to each Class member
21 who claims unreimbursed expenses related to Farmers’ Smart Office program—the basic
22 categories being one Licensed & Appointed Staff, Exterior Signage, Interior Signage and
23 Branding, Digital (e.g., website), and Office Appearance. (SA, § 6.1.1, 6.1.2.)

24 Participating Class Members who do not submit a Claim Form will be issued a check for
25 their Direct Payment within 10 calendar days of the Effective Date. (SA § 17.1.) Participating
26 Class Members who timely submit a Claim Form that has completed the Claim Form Review
27 Process as of the Effective Date will be issued a single check for their Direct Payment and Claim

1 Payment within 10 calendar days after the Effective Date. (*Ibid.*) Plaintiff anticipates that all Class
2 Members who submitted a timely Claim will fall into this category since the Effective Date means
3 the date after which all appeal rights from the Court’s judgment have passed or been exhausted.
4 (SA § 1.10.) If there are participating Class Members who timely submitted a Claim Form that has
5 not completed the Claim Form Review Process as of the Effective Date, then they will be issued a
6 check for their Direct Payment within 10 calendar days of the Effective Date and a check for the
7 Claims Payment within 10 calendar days after the completion of the Claim Form Review Process.
8 (*Ibid.*) Contract changes will go into effect and provide immediate benefits to class members.

9 The contract changes in the Settlement have been valued at \$15,547,489. (SA, § 7;
10 Crueger Decl., Ex. M [Wazzan Decl.].) As Farmers often reminded the Court, all Class Members
11 agreed to independent contractor status; indeed, there has never been any dispute that Class
12 Members want Farmers to treat them as independent contractors. The systemic and contract
13 changes Farmers agreed to as part of the Settlement are aimed at protecting and preserving the
14 Class Members’ independent contractor status under California law and will provide significant
15 benefits to current agents. In fact, the United Farmers Agents Association (UFAA) previously
16 brought suit to challenge many of these systemic practices. (See Court’s Statement of Decision in
17 *United Farmers Agents Assoc., Inc. v. Farmers Group, Inc. et. al.* (L.A. Sup. Ct., Jan 13, 2017) Case
18 No. BC 497447, attached as Ex. C to the Crueger Declaration [hereafter “Statement of
19 Decision”].) Farmers successfully defended its practices after four years of litigation, a full-blown
20 trial, and then an appeal.¹⁷ Yet Farmers agreed to change these and other practices to resolve this
21 case. Specifically:

22 • Farmers will eliminate the no-cause termination provision on three months’ notice
23 in the Agent Agreement for the Settlement Class. This is a significant, material change, since “the
24 strongest evidence of the right to control is whether the hirer can discharge the worker without
25 cause, because ‘[t]he power of the principal to terminate the services of the agent gives him the

26 _____
27 ¹⁷ (See *United Farmers Agents Assn., Inc. v. Farmers Group, Inc.* (2019) 32 Cal.App.5th 478 [affirming
28 judgment for defendants].)

1 means of controlling the agent's activities.’’ (Ayala, supra, 59 Cal.4th at 531.) Going forward,
2 Farmers can terminate the Agreement if (a) the agent fails to operate the agency consistent with
3 industry or professional standards, or (b) based on the Companies’ changed business
4 circumstances or market conditions, and (c) only after providing the agent with six months
5 written notice.¹⁸ (SA, §§ 7.1.1-7.1.3.) Class Members who are current agents, by contrast, retain
6 the right to resign their appointment under the Agreement at any time without cause, and now
7 only have to give 60-days’ notice. (SA, § 7.1.2.)

8 Notably, the UFAA had challenged, and lost, its argument to eliminate the no-cause
9 termination provision as unconscionable under California law. (Statement of Decision, at p. 6.)

10 • Farmers will eliminate the non-solicitation provision contained in the agent
11 contract. (SA, § 7.1.4.) Under existing agreements, Class Members who terminated and elected to
12 receive the contract payments Farmers owed them had to refrain from soliciting customers of
13 their former Farmers’ agency for one year. This provision has now been eliminated.

14 • Farmers will eliminate any policy that utilizes the Agency Growth Model for
15 determining eligibility for bonuses or achievement clubs. (SA, § 7.3.) Plaintiffs contended that this
16 use of Agency Growth Model mirrored the performance management systems that employers use
17 to control their employees and undermined the agents’ independent contractor classification.
18 (See Amended Order, at p. 7 [quoting Ex. Y, the declaration of Plaintiffs’ expert].) Notably,
19 UFAA had challenged, and lost, its argument challenging Farmers’ right to use Agency Growth
20 Model. (Statement of Decision, at p. 12.)

21 • Farmers will establish a written Complaint Procedure for agents to raise concerns
22 and complaints related to their independent contractor status and allow the agent to remain
23 anonymous to her/his District Manager and/or Farmers’ territory leadership. (SA, ¶ 7.4.)
24 Farmers must also identify an individual to serve as a single point of contact within the Complaint
25 Procedure. Plaintiffs assert that Farmers previously maintained no meaningful, formal system for

26
27 ¹⁸ Farmers retains the right to terminate the agent agreement for other reasons already enumerated in
28 the agent agreements, such as for embezzlement, abandoning the agency, or conviction of a felony.

1 agents to raise concerns or complaints related to their independent contractor status. The new
2 Complaint Procedure aims to allow agents to raise issues that managers are acting inconsistent
3 with the agents’ independent contractor classification without fear of retaliation, as well as a
4 formal process to document their complaints and have them addressed by someone outside of
5 Farmers’ territory leadership.

6 Farmers must also notify its personnel and district managers that they are to treat agents
7 consistent with their independent contractor status under California law. (SA, ¶ 7.4.)

8 • Farmers will eliminate the Customer Service Standards section from the Agency
9 Operations Manual, including the standard that agents have their Farmers’ agency open 45 hours a
10 week. (SA, § 7.2.) Plaintiffs contended that these standards represented a way for Farmers to
11 control how agents sold insurance and serviced customers that undermined the agents’
12 independent contractor classification.

13 Notably, UFAA had previously challenged, and lost, its argument challenging Farmers’
14 right to impose office hours standards. (Statement of Decision, at p. 15.)

15 • Finally, Farmers and participating Class Members agree to a mutual arbitration
16 clause with a jury and class action waiver for certain claims. During this case, Farmers signaled to
17 Plaintiffs that it intended to cut off further cases such as this one by amending all existing agent
18 agreements to include a mutual arbitration clause with a jury and class action waiver and including
19 this clause in all future agent agreements—the latter of which would also limit the class size in this
20 case. There is no question that Farmers has the right to do this under California and federal law.
21 (*Kindred Nursing Centers Ltd. P’ship v. Clark* (2017), 137 S. Ct. 1421, 1425 [federal law preempts
22 any state law that “singles out” or otherwise prohibits arbitration].) Indeed, other insurance
23 companies operating in California have required their independent contractor exclusive agents to
24 agree to mutual mandatory arbitration of all claims with clauses that also include unfavorable
25 “loser pays” provisions. (See *Goff v. Nationwide Mut. Ins.* (6th Cir. 2020) 825 F.App’x 298
26 [rejecting challenge to mandatory arbitration clause in agent agreement that required agent to pay
27 Nationwide’s attorney fees if Nationwide prevailed].)

1 not to exceed \$600,000; and (4) service awards to the Plaintiffs, which shall not exceed \$40,000
2 each.¹⁹ (SA, §§ 6.2 & 6.3.) Plaintiffs make this proposal so that all Class Members bear in the
3 costs and fees associated with the case and to maximize participation in the Claims Fund. If the
4 Court adopts this or any other structure for payment of fees and costs, the total attorney fees will
5 not exceed 33% of the \$75 million Settlement Amount. The Settlement Agreement proposes that
6 the Court deduct the award of costs, service awards, and 65% of the award of attorneys' fees from
7 the Direct Payments and 35% of the award of attorneys' fees from the Claim Payments. (SA § 6.2;
8 see also Dec. 3, 2021 Order at p. 5, ¶ 14 [proposing allocation of 65% from Direct Payments and
9 35% from Claim Payments].)

10 4. No Subclasses exist.

11 There are no subclasses.

12 5. Plaintiffs Rendered Extraordinary Service.

13 Plaintiffs seek approval of a service award of \$40,000 each to be paid from the Settlement
14 Amount. Both Plaintiffs played key roles in bringing about this Settlement and their service to the
15 Class has been nothing short of extraordinary. This case originated because of Plaintiffs. Plaintiffs
16 identified the misclassification issue, believed that Farmers was not treating them and their fellow
17 agents consistent with their independent contractor classification, researched what could be done,
18 and contacted Class Counsel. Plaintiffs then volunteered to spend their own time to gather
19 essential information for Class Counsel to assist them in researching the merits of the claims as
20 well as reviewing drafts of the pleadings prior to filing. Once the case was filed, both Plaintiffs
21 spent time gathering tens of thousands of pages of their own documents to produce in discovery
22 and responded to written discovery. Both Plaintiffs also devoted substantial personal time to
23 assisting Class Counsel with case preparation and depositions, including traveling to Chicago to
24 meet with Class Counsel, and both Plaintiffs sat for two depositions each. They have been
25 involved in every aspect of this case, helped Class Counsel analyze various issues, and stayed

26 _____
27 ¹⁹ Unclaimed portions of the Settlement Amount cannot be reallocated or paid to the Settlement Class
28 or to Settlement Class Counsel. (SA § 6.2.)

1 involved in settlement negotiations, including reviewing the Settlement and exhibits prior to
2 signing. (See generally, Crueger Decl., ¶ 35; Parry Decl., ¶¶ 1-5; O’Sullivan Decl., ¶¶ 1-5.)
3 Plaintiffs will submit declarations providing further detail to support their petition for a service
4 award.

5 6. Attorney Fees will be Calculated as a Percentage of the Settlement Amount.

6 Class Counsel will request, and Farmers will not oppose, an award of attorneys’ fees in an
7 amount not to exceed 33% of the \$75 million Settlement Amount and reimbursement of costs and
8 expenses of an amount not to exceed \$600,000. (SA, § 6.2.) Class Counsels’ expenses to date are
9 approximately \$492,874. (Crueger Decl., ¶ 33.) Class Counsel expects to incur additional
10 expenses to assist Class Members with the claims process, and they will file an accounting of
11 expenses incurred with their motion for attorneys’ fees and costs prior to final approval.

12 7. Payment Formula.

13 Direct Payments, net of fees, expenses, and awards, shall be distributed pro rata based on
14 the Class Members’ respective lengths of time as a California Farmers® agent/Supervising Agent
15 during the Settlement Class Period. (SA, § 6.1.1.) Claim payments of up to \$10,000 per Class
16 Member will be paid to all Class Members who submit a timely and valid Claim Form. (SA, §
17 6.1.2.) The Settlement Administrator alone shall determine the timeliness and completeness of
18 Claim Forms submissions and resolve any disputes regarding the computation of Direct Payments
19 or Claims Payments. The Settlement Administrator’s decision on any such issue or dispute shall
20 be final, binding, and non-appealable. (SA, § 3.2.)

21 8. Tax Allocation of Settlement Payments.

22 All Direct Payments and Claims Payments will be reported to the IRS on Form 1099s—a
23 form used to report monies paid to independent contractors—and Class Members shall be
24 responsible for remitting to State and/or Federal taxing authorities any applicable other taxes due.
25 (SA, § 10.4).

1 U.S. Mail, to their last known addresses, and by email to those Settlement Class Members for
2 whom the Settlement Administrator has email addresses. (SA, § 9.1)

3 The Settlement Administrator will send by mail and email (if available) a first reminder to
4 all Settlement Class Members who have not submitted a Claim Form within thirty (30) calendar
5 days after the Notice was sent, and a second reminder within sixty-five (65) calendar days after
6 the Notice was sent. (SA § 9.1.3.)

7 **Telephone Assistance:** The Settlement Administrator shall maintain a dedicated toll-free
8 telephone number with an automated interactive voice response system from the Notice Date
9 until sixty (60) days after the final disbursement of settlement payments to claimants. (SA, § 9.3.)
10 The voice response system will present callers with a series of choices to hear pre-recorded
11 information concerning the settlement. If callers require further assistance, the Settlement
12 Administrator shall provide live telephone support during business hours. (*Id.*)

13 4. The Class Notice Complies with CRC Rule 3.766(d).

14 The Notice attached as Exhibit A complies with Rule 3.766(d) in that it informs the
15 Settlement Class in clear terms of the following:

- 16 (1) A brief explanation of the case, including the basic contentions or denials of the
17 parties;
- 18 (2) A statement that the Court will exclude the member from the Class if the member
19 so requests by a specified date;
- 20 (3) A procedure for the member to follow in requesting exclusion from the class;
- 21 (4) A statement that the judgment, whether favorable or not, will bind all members
22 who do not request exclusion; and
- 23 (5) A statement that any member who does not request exclusion may, if the member so
24 desires, enter an appearance through counsel.

25 (Cal. Rules of Court, Rule 3.766(d).)

26 The Notice includes an individual Claim Form, and also identifies the link to the
27 Settlement Website which contains access to the Claim Form.

1 5. The Settlement Class will be Informed of Social Distancing Procedures.

2 The Notice refers Class Members to the Los Angeles County Superior Court’s website to
3 locate current social distancing or Covid-19 related protocols.

4 6. The Manner in which Payment will be Processed.

5 **Direct Payments:** The Notice informs Class Members who do not timely request
6 exclusion that they will receive a pro rata share of \$40 million, based on the Class Members’
7 respective lengths of time as a California Farmers® agent/Supervising Agent during the Class
8 Period. Class Members do not need to make a claim to receive a Direct Payment.

9 **Claims Payments:** The Notice informs Class Members who do not timely request
10 exclusion that they can also submit a claim for reimbursement of eligible expenses that are set
11 forth in the Claim Form. Class Members are further informed that, for a valid claim, they must
12 declare and, where applicable, provide documentary proof, that they paid business expenses
13 necessary to meet one or more of the Smart Office Standards during the Settlement Class
14 Period. The Notice further informs Class Members that the maximum Claims Payment,
15 regardless of the amount claimed, cannot exceed \$10,000 and that the sum total of the Claims
16 Payments cannot exceed \$35 million. The Notice alerts Settlement Class Members that the
17 Claim Form is included with the Notice and can also be found at www.____.com.

18 For those Class Members who choose to submit a claim for a Claims Payment, the
19 Notice informs them of the Claims Deadline of no later than one hundred (100) days after the
20 date the Settlement Administrator provides notice.

21 With respect to timing of payments, the Notice informs Class Members that payments
22 will be made after the Effective Date, defined as after Court grants final approval to the
23 Settlement and after any appeals are resolved.

24 7. Notices Returned as Undeliverable.

25 For Notices returned as undeliverable by the United States Postal Service without any
26 forwarding addresses, the Settlement administrator will attempt to obtain updated addresses
27 using skip tracing and proprietary database resources to which it subscribes within five (5)
28

1 calendar days of its receipt of the returned Notice. In instances where updated addresses are
2 found, Notice will be re-mailed. (SA, § 9.5).

3 8. The Manner in Which Rемаiled Notices will be Handled.

4 Those potential Class Members who receive Notice pursuant to the skip trace or
5 proprietary database resources shall be informed (via an insert in the Notice) that his or her time
6 to submit a Claim Form or Request for Exclusion to the Settlement Administrator shall be the
7 longer of: (1) thirty (30) calendar days from the date Notice is mailed to the updated address, (2)
8 the Claims Deadline, for submission of a Claim Form; or (3) the Exclusion Deadline, for
9 submission of a Request for Exclusion. (SA, § 9.5.)

10 9. Notice of a Change in the Hearing Date or Location.

11 The Notice advises Class Members that the date or time for hearing on final approval of
12 the Settlement may be changed without further notice, and that any such change will be posted on
13 the Settlement Website.

14 10. The Settlement Website.

15 A website at www.[____].com will be established by the Settlement Administrator where
16 the Settlement Agreement, the Notice, the Preliminary Approval Order, and other such
17 documents regarding the Settlement as the parties agree are necessary shall be posted. The
18 Website shall be maintained throughout the Settlement process and after the Final Judgment is
19 issued. Class Members will also be provided with an individual claim number to enter into an
20 electronic portal maintained by the Settlement Administrator for information individual to the
21 Settlement Class Member.

22 11. Publication Notice.

23 There will be no published notice of this Settlement.

24 12. Notice of Final Judgment.

25 Upon the granting of final approval of the Settlement, notice of entry of the Order and Final
26 Judgment will be posted on the Settlement Website described above.

1 **E. Responses to Notice.**

2 1. Procedures for Submitting Written Objections, Requests for Exclusion, Claim
3 Forms and Disputes to Direct Payments or Claims Payments.

4 The Parties are proposing a schedule for dissemination of Class Notice, that includes
5 deadlines for objecting to the Settlement, opting out of the Settlement, and submission of the Claim
6 Forms along with a hearing on Final Approval and other relevant dates. A summary of the proposed
7 Schedule is set forth in Appendix A.

8 2. Manner of and Deadline for Objections and Requests for Exclusion

9 The Notice advises Class Members who wish to object to any aspect of the Settlement,
10 including attorneys' fees, that they must file with the Court or the Settlement Administrator a
11 written statement objecting to the Settlement. The Notice states that the written statement
12 should be filed no later than thirty (30) calendar days prior to the Final Approval Hearing, and
13 that Class Members may appear at the Final Approval hearing, without prior notice, to lodge
14 objections even if they did not file any written objections. The Notice further advises Class
15 Members that they remain eligible to receive monetary compensation from the Settlement if they
16 file an objection, unless the Class Member submits a timely and valid Request for Exclusion.

17 The Notice advises that Class Members who do not wish to participate in the Settlement
18 may request exclusion from the Settlement by emailing or sending a letter to the Settlement
19 Administrator, and that the written request must be sent, or postmarked if sent by U.S. mail, no
20 later than 60 days from Notice. (SA § 1.12; SA Ex. A [Proposed Notice] pp. 5-6.)

21 3. Class Members May Attend the Final Approval Hearing and be Heard.

22 The Notice advises Class Members of their option to attend the Final Approval Hearing,
23 along with the date, time, and location of the hearing. Class Members are further advised of their
24 ability to ask to the Court to speak regarding the Settlement. There is no requirement that the
25 Class Member first file a notice of intent to appear. (SA Ex. A [Proposed Notice] p. 7.)
26
27
28

1 presence of a governmental participant, and the reaction of the class members to the proposed
2 settlement. [Citation] The list of factors is not exhaustive and should be tailored to each case. Due
3 regard should be given to what is otherwise a private consensual agreement between the parties.”
4 (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) Further, a “‘presumption of fairness
5 exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and
6 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is
7 experienced in similar litigation; and (4) the percentage of objectors is small.’ [Citation]”
8 (*Wershba, supra*, 91 Cal.App.4th at 245 [quoting *Dunk*, at p. 1802].)

9 The presumption of fairness applies here. The first three elements are satisfied and the
10 fourth cannot be evaluated until final approval after Class Members receive notice. As set out
11 above, the Settlement resulted from informed, non-collusive negotiations by experienced Class
12 Counsel, and assisted by mediators experienced in resolving complex class action litigation, and
13 only after nearly four years of discovery, investigation, and motion practice. (See *supra*, section
14 II.B & III.A-C.) The Settlement achieves results unobtainable through litigation.

15 **B. The Proposed Settlement Falls Within the Range of Possible Final Approval**
16 **and is Fair, Reasonable, and Adequate under the Circumstances.**

17 In evaluating the fairness, adequacy, and reasonableness of a proposed class settlement,
18 the Court considers the strength of plaintiffs’ case, the risk, expense and likely duration of further
19 litigation, the settlement amount, the stage of the proceedings, the views of class counsel and the
20 reaction of the class members. (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723; *Dunk*,
21 *supra*, 48 Cal.App.4th at 1801.)

22 The proposed Settlement meets the criteria for preliminary approval because it represents
23 the product of reasoned judgment and extensive negotiation assisted by the best efforts of three
24 separate experienced mediators. It merits submission to Class Members and then a hearing on
25 final approval. (*Levi Strauss & Co., supra*, 41 Cal.3d at 485.) Plaintiffs firmly believe in the merits
26 of the case. But as they described in the *Dunk/Kullar* Analysis section (*supra*, § III.E-F), Plaintiffs
27 faced real risks of an adverse outcome absent approval of the Settlement, including the risk that

1 the Class Members receive nothing. Moreover, any favorable merits-based resolution will take
2 years of complex and expensive litigation to achieve. The benefits Plaintiffs have obtained through
3 the proposed Settlement, moreover, extend beyond what Plaintiffs could have obtained even if
4 they prevailed in full on their claims. For Plaintiffs obtained not only substantial monetary relief—
5 a Settlement Amount of \$75 million—but they secured material changes in the agent agreements
6 and other systemic changes valued at over \$15.5 million that they could not have achieved through
7 litigation of the expense reimbursement claims. Notably, UFAA tried through separate litigation
8 to obtain some of the contract changes Farmers agreed to in this Settlement, but the California
9 courts rebuffed their legal arguments. Now, however, Farmers will give up some of the rights it
10 fought hard and long to retain to resolve this case. And just as important, if not more so, these
11 changes all aim to bolster and protect the agents’ independent contractor classification. (See
12 *supra*, *Dunk/Kullar* Analysis section III,G [describing contract changes]; SA, § 7 [Systemic and
13 Contract Changes]; Crueger Decl., Ex. M [Wazzan Decl. valuing contract changes at
14 \$15,547,489].) Farmers promised to treat Class Members as independent contractors. The value
15 in helping them hold Farmers to the promise to treat them as such cannot be overstated.

16 In sum, the Settlement has no deficiencies that would require the Court to reject it,
17 particularly at the preliminary approval stage. The benefits obtained under the Settlement are
18 substantial, especially when weighed against the risks that Farmers would prevail at trial or on
19 appeal and the considerable expense and delay of continued litigation. The proposed Settlement,
20 moreover, is presumptively fair and does not disclose grounds to doubt its fairness or other
21 obvious deficiencies, such as unduly preferential treatment of the class representatives or of
22 segments of the class, or excessive compensation for attorneys, and it falls within the range of
23 possible approval. Once notice is disseminated, Class Members can review the Settlement and
24 react, including by opting out, and the Court will be able to evaluate their reaction.

25 **C. None of the two objectors’ arguments warrant denying preliminary approval.**

26 Two potential Settlement Class Members, Maureen Martinez and Lynn Klecka, filed a
27 motion opposing preliminary approval on December 3, 2021, through their counsel, Attorney

1 Nancy Anfanger. Attorney Anfanger frequently litigates against the Defendants, including
2 representing former district managers challenging the independent contractor designation.
3 Sometimes Attorney Anfanger’s client prevails, at least in part. (See *Davis v. Farmers Ins.*
4 *Exchange* (2016) 245 Cal.App.4th 1302 [jury found plaintiff district manager was an employee
5 under California law, but court of appeal affirmed judgment against plaintiff on wrongful
6 termination claim and reversed judgment against plaintiff on wage and UCL claim and remanded
7 for further proceedings].) Other times they lose. (See e.g., *Glenn Smith v. Farmers Group Inc., et.*
8 *al.*, (Super. Ct. L.A. County, No. BC512079) [finding former Farmers’ district manager was an
9 independent contractor, not an employee].) Class Counsel has previously discussed this case with
10 Attorney Anfanger, who expressed no disagreement with this case prior to settlement. Once the
11 settlement became public, however, she contacted Plaintiffs’ counsel to express disagreement, her
12 intent to oppose, and then filed this objection on behalf of Martinez and Klecka.

13 As Plaintiffs explained in their January 4, 2022 response, the objection essentially raises
14 three complaints. First, the objectors complain about the fact of a settlement generally, calling it
15 “unlawful” and an “usurp[ation]” of this Court’s and the legislature’s authority “to determine
16 the true nature” of Class Members’ employment status. (Objection at p. 2.) They argue that
17 Plaintiffs must first try the independent contractor/employee issue and then, only *after* Plaintiffs
18 prevail at trial, can a settlement “lawfully” occur as it purportedly would prevent Defendants
19 from paying “for employment status classification as this proposed settlement permits.” (*Ibid.*)
20 But no statute or judicial policy supports the objectors’ unfounded position that a certified class
21 must risk a trial on the merits before the Court may approve a settlement. To the contrary, “‘the
22 law favors settlements.’ [Citation.]” (*Village Northridge Homeowners Assn. v. State Farm Fire &*
23 *Casualty Co.* (2010) 50 Cal.4th 913, 930.) Indeed, if Plaintiffs lose the independent contractor
24 issue at trial, then both the objectors and the certified class receive nothing—a wholly adverse
25 outcome that already occurred in cases prosecuted by the objector’s counsel against the
26 Defendants about the employee status of a district manager. (See *Smith* case, cited *supra* on p. 1.)
27 Yet, the objectors ignore the risks of continued litigation on the merits, even though it represents
28

1 the “most important factor” for evaluating the reasonableness of a proposed settlement. (*Kullar,*
2 *supra*, 168 Cal.App.4th at p. 130 [citation omitted].) To the extent the objectors claim that the
3 settlement is premature, moreover, they ignore how the parties took extensive discovery that
4 allowed each side to understand the others’ strategies, positions, and proof—facts that favor
5 finding a presumption of fairness exists. (*Dunk, supra*, 48 Cal.App.4th at p. 1802 [a settlement is
6 presumed fair when the “investigation and discovery are sufficient to allow counsel and the court
7 to act intelligently”].)

8 Next, the objectors make various unfounded statements that essentially question the
9 settlement’s fairness. They repeatedly state that the settlement resulted from collusion, claiming
10 that Defendants “paid off” Plaintiffs’ counsel, and that Plaintiffs sold “employment classification
11 to the highest bidder.” (Objection at p. 2, 3, 4, and 6.) Of course, the objectors cite no evidence
12 for these inflammatory claims. They ignore how the settlement resulted from informed, non-
13 collusive negotiations assisted by mediators experienced in resolving complex class action
14 litigation, and only *after* nearly four years of discovery, investigation, and motion practice. The
15 objectors lack any good faith basis to claim that collusion exists here.

16 Moreover, the objectors’ position contrasts sharply with those of the rest of the class that
17 Class Counsel have talked with, which has been overwhelmingly positive. (Crueger Decl., ¶ 65.)
18 Potential Settlement Class Members know that some of the relief was lost in prior litigation, and
19 those agents that Class Counsel have talked to are supportive and understand the long road that
20 has led to this settlement. (*Ibid.*) As part of the continued outreach by Class Counsel, there are
21 both webinars and in person meetings before and after preliminary approval so that this very
22 interested class gets the information it deserves.²⁰ Indeed, the proposed notice will list upcoming
23 webinars. (SA, Ex. A [Notice].)

24 The objectors also call the settlement “profoundly unjust,” claiming there were
25 “hundreds of thousands of dollars” in expenses at issue for things like rent and E&O insurance,
26 and that “Plaintiffs’ counsel’s job was not that hard under the circumstances.” (Objection at p.

27 ²⁰ Notably, these discussions have always been tempered with communications to agents that this
28 Court decides whether the settlement is fair and reasonable and on what terms.

1 5.) At the same time, however, the objectors characterize the former district manager’s individual
2 case in *Davis* challenging Farmers’ independent contractor classification and attempting to
3 recover expenses as “quite complicated.” (Objection at p. 5 n. 2.) No doubt it was, and it settled
4 after eight long years of litigation.²¹ The Court can only assume that the complications that arose
5 in proving expenses in an individual case would remain when proving the damages owed each
6 class member in this case. The objectors disregard these complicated issues, and the years of
7 litigation needed to resolve them, when they complain about the settlement amount and label
8 Plaintiffs’ path to total victory as “not that hard.” Indeed, under the *Dunk/Kullar* analysis, the
9 Court measures the reasonableness of settlement against the risk Plaintiffs faced of not prevailing
10 at all, not the recovery Plaintiffs might in theory have obtained had they prevailed in full. “The
11 proposed settlement cannot be judged without reference to the strength of plaintiffs’ claims. ‘The
12 most important factor is the strength of the case for plaintiffs on the merits, balanced against the
13 amount offered in settlement.’ [Citations]” (*Kullar, supra*, 168 Cal.App.4th at p. 130.) But on this
14 issue the objectors offer no analysis at all.

15 The objectors also claim that the limited arbitration clause in the proposed contract
16 amendment represents “an end run” of California Labor Code section 432.6. (Objection at p. 4.)
17 Section 432.6 represents California’s choice “to assure that entry into an arbitration agreement by
18 an employer and employee is mutually consensual and to declare that compelling an unwilling
19 party to arbitrate is an unfair labor practice.” (*Chamber of Commerce of the United States v. Bonta*
20 (9th Cir. 2021) 13 F.4th 766, ___ [2021 U.S. App. LEXIS 27659, at *7].) But section 432.6 applies
21 only to “employees,” not independent contractors like the class members here. (Labor Code §
22 432.6, subd. (a) [statute applies to “any applicant for employment or any employee”].) The
23 statute also “does not apply to postdispute settlement agreements,” which this Settlement clearly
24 is. (*Id.*, subd. (g)). Moreover, the objectors err by characterizing the statute as “ban” on

25 ²¹ See *William A Davis v. Farmers Insurance Group Inc. et al*, (Super. Ct. L.A. County, No.
26 BC398948). The complaint was filed on September 29, 2008, a notice of settlement was filed on
27 December 27, 2016, and a “Notice of Settlement of Entire Case” and a “Amended Notice of
28 Settlement of Entire Case” were filed on December 27 and December 28, respectively. Shortly
thereafter, a notice and release and waiver of all liens “related to this case above \$29,750.00” was
filed on January 12, 2017.

1 arbitration, as made clear both by the quote from *Bonta* above and the text of the statute. (*Id.* at
2 subd. (f) [“Nothing in this section is intended to invalidate a written arbitration agreement that is
3 otherwise enforceable under the Federal Arbitration Act”].) In short, California law undermines
4 the objectors’ argument about Plaintiffs attempting to “end run” California law.

5 Finally, the objectors complain about potential attorneys’ fees and costs, stating that the
6 “proposed payment” is “unconscionable.” (Objection at p. 4.) The argument is both
7 undeveloped and premature, however, since Plaintiffs’ counsel have yet to file a motion for
8 attorneys’ fees and costs. Nor do the objectors explain why their concerns about a “proposed
9 payment” of attorneys’ fees and costs provide a valid reason to deny *preliminary* approval, which
10 is “nothing more than [a determination] that ‘there is, in effect, ‘probable cause’ to submit the
11 proposal to members of the class and to hold a full-scale hearing on its fairness.’” (*Levi Strauss &*
12 *Co., supra*, 41 Cal.3d at 485 [quoting *Manual for Complex Litigation (Second)*, § 1.46].)

13 **D. The Notice Meets Applicable Legal Standards and Due Process.**

14 The method and content of notice should fairly apprise the Class of the terms of a
15 settlement and the options available to each member and it should be designed to reach a
16 substantial percentage of the class. (*Phil. Housing Auth. v. Am. Radiators & Std. Sanitary Corp.* 17
17 (E.D. Pa. 1970) 323 F.Supp. 364, 378; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.)

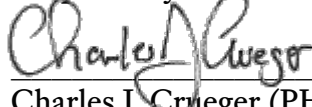
18 As described above, the proposed Class Notice describes the terms of the Settlement and
19 the proposed plan with respect to the distribution of the settlement funds to the Participating
20 Settlement Class Members. The Class Notice informs Class Members of how they may opt-out of
21 or object to the Settlement and the schedule for final approval. The Class Notice also informs
22 Class Members of the scope of the release. In short, the proposed Notice describes the Settlement
23 with enough specificity to allow Class Members to decide whether they should accept the benefits
24 offered or opt-out or object to the Settlement.

25 **IX. Conclusion.**

26 For these reasons, Plaintiff Parry and Plaintiff O’Sullivan respectfully request that the
27 Court grant the motion for preliminary approval.

1
2 February 10, 2022

Respectfully submitted,



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APPENDIX A
Example of Potential Schedule with March 8, 2022 Preliminary Approval Date

Event	Deadline	Potential Date
Preliminary Approval		3/8/22
Settlement website	Within 5 calendar days of entry of preliminary approval order.	3/13/22
Defendant to submit Class List to Settlement Administrator	Within 7 calendar days after of entry of preliminary approval order.	3/15/22
Emailing and mailing of Class Notice and Claim Form	Within 21 calendar days of entry of preliminary approval order.	3/29/22
Opt Out Deadline	60 calendar days after the Notice is first mailed to potential Class Members, subject to 30 day extension for Class Members who are re-mailed a Class Notice	5/30/22 (30 days is May 28, a Saturday)
Deadline for claim form	100 days from the date Class Notice is mailed to potential Class Members, subject to any extension for re-mailed notices.	7/7/22
Last Date for Additional Submissions Deadline	Due 30 days after Settlement Administrator provides initial determination of claims. This is a rolling process that will run concurrent with Settlement Class Members submitting claims, with the Settlement Administrator providing initial determinations every two weeks.	8/22/22 (44 days is August 20, a Saturday)
Responses to Additional Submissions	Due 30 days after additional submissions.	9/21/22
All Claims Substantially Done	Assumes Settlement Administrator completes final decisions 15 days after the claims form review process.	10/6/22
Motions for Final Approval and for Award of Attorney Fees, Expense Reimbursement, and Service Awards.	60 calendar days prior to the Final Approval Hearing	8/12/22 (60 days is August 14, a Saturday)
Objection to Settlement or any request for Award of Attorney Fees, Expense Reimbursement, and Service Awards	30 calendar days prior to the Final Approval Hearing.	9/12/22
Final Approval Hearing		10/12/22

1 questions addressed to Defendants in the Court’s January 19, 2022 Tentative Ruling on the Motion
2 for Preliminary Approval.

3 1. *Are Defendants in agreement that the Settlement Administrator can use email*
4 *addresses obtained from the UFAA and those also collected by Plaintiffs? How would this work?*
5 *To the extent that class notice is to be sent by email, would class notice be sent to all three emails*
6 *for a particular class member: (1) the email address provided by Defendants as part of the class*
7 *data; (2) the email address obtained from the UFAA; and (3) the email address obtained by*
8 *Plaintiff? Please work through these issues and jointly propose specific changes to the Settlement*
9 *Agreement (i.e., the Court does not the parties to merely set forth their positions).*

10 As set forth in the revised Settlement Agreement at Section 9.1, the Parties have agreed
11 that the Settlement Administrator may email Notice to Settlement Class Members utilizing email
12 addresses obtained by Plaintiffs or UFAA in addition to those email addresses being provided by
13 Defendants. The Parties have further agreed that those emails should be validated by the
14 Settlement Administrator because Defendants have no knowledge of the accuracy of the emails
15 addresses collected by Plaintiffs or UFAA. Additionally, the Parties have agreed in Section 9.1
16 that if Notice is successfully delivered to at least one email address, Notice by email is deemed
17 complete without need for skip tracing or additional efforts to re-email Notice.

18 2. *What is Defendants' position on Plaintiffs' Responses (¶7) re confidentiality?*
19 *Plaintiffs appear to want written confidentiality agreements and want the agreement to advise the*
20 *signatory that their identity may be disclosed under certain circumstances. Please also work*
21 *through these issues and jointly propose specific changes to the Settlement Agreement.*

22 As an initial matter, Defendants are fully confident that any employees who are involved in
23 the claims process will conduct themselves appropriately. However, as set forth in Section 9.4.3
24 of the revised Settlement Agreement, the Parties have agreed that employees who are granted
25 access, in the course of the claims process, to identifying information of a Settlement Class
26 Member on a submitted Claim Form will be required to execute a written confidentiality
27 agreement. Defendants’ counsel will maintain copies of those written confidentiality agreements.
28

Locke Lord LLP
300 S. Grand Avenue, Suite 2600
Los Angeles, CA 90071

1 The Parties agree that the identities of these employees need not be disclosed to the Court or
2 Settlement Class Counsel unless the Court orders otherwise.

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Dated: February 10, 2022

Respectfully submitted,

LOCKE LORD LLP


By:  _____

Nina Huerta
Jonevin K. Sabado
Jordon R. Ferguson

Attorneys for Defendants
FARMERS INSURANCE EXCHANGE;
TRUCK INSURANCE EXCHANGE; and
FIRE INSURANCE EXCHANGE

Dated: February 10, 2022

THARPE & HOWELL LLP

By:  _____

Christopher S. Maile
Attorneys for Defendant
FARMERS GROUP, INC.

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PROOF OF SERVICE

I, the undersigned, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 601 S. Figueroa St., Suite 2050, Los Angeles, California 90017.

On February 10, 2022 I served the foregoing documents described as follows:

PLAINTIFFS' AMENDED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached service list, and in the manner stated below:

 BY MAIL:

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

 BY PERSONAL SERVICE: I caused to be delivered such envelope by hand to the offices of:

 X BY EMAIL: **NANCY B. ANFANGER**

 X BY ELECTRONIC SERVICE

served by e-mail through Case Anywhere: I attached a true and correct copy of the above-entitled document(s) to Case Anywhere by electronic transfer for service on all counsel of record by electronic service pursuant to the Order Authorizing Electronic Service. This service complies with C.C.P. §1010.6.

 X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

 (Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed February 10, 2022 at Los Angeles, California.

 Karina Torres
(Type of Print Name)

 Karina Torres
(Signature)

SERVICE LIST
PARRY v FARMERS INSURANCE EXCHANGE
Case No. BC 683856

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