SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

IRENE PARRY, individually and on behalf of all on behalf of all others similarly situated, JEANNETTE O'SULLIVAN, individually and on behalf of all on behalf of all others similarly situated,

Plaintiffs,

v.

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

Defendants.

Case No.: BC683856

ORDER
OVERRULING OBJECTIONS

Hearing Date: March 8, 2022
Time: 2:00 p.m.
Dept.: 7

Maureen Martinez and Lynn Klecka, in a filing dated December 3, 2021, object to the granting of preliminary approval of the instant Settlement.[1] Before addressing these objections, the Court notes that it is very familiar with the case, having, among other things, ruled on (and granted) Plaintiffs' motion for certification. Objectors ignore or misconstrue the realities of the case. In order to ultimately prevail, the class, through the Plaintiffs, would need to establish Defendants' liability on the merits, .e.g., that Farmers agents were employees of the Exchange Defendants[2], a complex undertaking not without serious pitfalls. A victory on the merits by Defendants would leave Plaintiffs and class members with no recovery at all. A determination against Defendants on the merits would no doubt be appealed[3] and could be overturned by the Court of Appeal leaving class members with no recovery. (*See, e.g.*, Jamaal *v. Am. Family Ins. Co.* (6th Cir. 2019) 914 F.3d 449 [determination that insurance agents were employees reversed on appeal.) An appeal would, at a minimum, considerably delay class members' recovery.

Even if Plaintiffs win on the merits, all class members seeking recovery would have to come forward with evidence of their damages, triggering hundreds or even thousands of mini trials taking place over a lengthy period of time. Complicated issues exist about class members' entitlement to damages. The Court believes that the Settlement, at least on a preliminary basis, is fair, reasonable and in the best interests of the class. With that said, the Court addresses Objectors' objections.

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[1] Objectors did not endeavor to establish that they are class members. But the parties appear acknowledge that both Objectors are former Farmers' agents (and the Court therefore assumes that they are class members). (Plaintiffs' Response to Objections, filed January 4, 2022, at 1:4-5.)

[2] Plaintiffs would also need to establish the liability of Farmers Group, Inc.; something totally ignored by Objectors.

[3] The records of this case reveal that Defendants have vigorously defended this case over its nearly four years. Contrary to Objectors' claims, there was nothing easy about this case, including that Plaintiffs were required litigate class certification. (See Objection at p. 5 that "Plaintiffs' counsel's job was not that hard under the circumstances.") In one or more filings, Plaintiffs' counsel mentioned that they have devoted thousands of hours to the case.

Objectors insist that Plaintiffs must first try the independent contractor/employee issue and only after Plaintiffs prevail on the merits can a settlement occur. In essence, Objectors argue any settlement here without a determination against Defendants on classification would be automatically deficient. (Objections at p. 2.) There is no statute or judicial policy (and none is cited) requiring that a certified class must risk a trial on the merits before settling.[4] Rather the issue here is whether the Settlement is fair and reasonable given the risks of continued litigation and the amount offered in settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) The Court preliminarily finds that the Settlement qualifies.[5]

Objectors also assert that Defendants essentially "paid off" Plaintiffs' counsel to "drop the case" and that Plaintiffs' counsel sold "employment classification to the highest bidder." (Objections at pp. 2-4 and 6.) These accusations are just another way (albeit stated in unnecessarily prerogative language) Objectors claim that the Settlement is deficient, a proposition which the Court rejects for preliminary approval purposes. Moreover, Objectors offer no evidence whatsoever to support these serious accusations.[6] Indeed, all evidence known to the Court is to the contrary.

Objectors then argue that the arbitration clause in the proposed contract amendment represents "an end run" of California Labor Code section 432.6. (Objections at p. 4.). Section 432.6 was enacted "to assure that entry into an arbitration agreement by an employer and employee is mutually consensual and to declare that compelling an unwilling party to arbitrate is an unfair labor practice." (*Chamber of Commerce of the United States v. Bonta* (9th Cir. 2021) 13 F.4th 766,

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[4] When claiming that the Settlement is deficient, Objectors myopically only on the claims payments (from a $35 million fund). They completely ignore Defendants' $40 million payment that will be automatically distributed pro rata to class members (based on tenure as Farmers agents) and the value of contractual amendments that the Settlement would bring to class members. Defendants' expert believes that the amendments are worth over $15 million to class members. This alone dooms Objectors' argument.

[5] This also dispatches Objectors' claims that the Settlement is "profoundly unjust" and similar statements made in the Objections. (Objections at p. 5.)

[6] Indeed, Objectors offered no evidence whatsoever to support their Objections, e.g., no declarations, etc.

771.) The Court rejects this assertion. First, Objectors do not directly contend that the Settlement would violates section 432.6; they only contend that that it's an "end run" of the statute. Moreover, they don't even explain that assertion. Further, section 432.6 applies only to "employees," not independent contractors; here, under the Settlement, class members remain, as before, independent contractors. Furthermore, section 432.6 also "does not apply to post dispute settlement agreements." (*Id.*, subd. (g).)[7]

Lastly, Objectors complain about potential attorneys' fees and costs, stating that the "proposed payment" is "unconscionable." (Objections at p. 4.) The Court first notes that the Settlement provides that Plaintiffs' counsel can apply for a fee award of 33% of the monetary value of the Settlement which could be as much as $75 million (and not just $35 million). (Settlement Agreement 6.2.) A request for a one third contingency payment of a settlement fund is far from unusual in this Court. Further, Plaintiffs' counsel do not request a percentage of the value of the contract amendments.[8] The Court will, as a fiduciary for the class, carefully assess Plaintiffs' Counsel's request for fees and costs in conjunction with the Final Approval Hearing. Objectors' complain is premature and could not provide a basis for denying preliminary approval; indeed, the Settlement provides that the difference, if any, between what the Court orders in fees and costs and what Plaintiffs' Counsel request pours over to class members. (Settlement Agreement 6.2.)[9]

Objectors submitted a "second" objection dated February 23, 2022.[10] This filing largely repeats the same contention made in Objectors' first objections. To the extent that this filing raises

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[7] Objectors do not dispute Plaintiffs' counsel's opinion that the Amended Agreement's arbitration provision is an improvement over agents' existing arbitration provisions.

[8] The Court, however, will take the contract amendments into account when the Court fixes the amount of the fee award.

[9] The Court also notes that Objectors don't even suggest what amount of fees and costs would be "fair".

[10] Except for one or two instances, the second objection ignores the arguments made by Plaintiffs in opposition the first objections (filed January 4, 2020) or in the amended motion for preliminary injunction (filed on December 29, 2021).

new arguments, they are either of no moment to the Court's consideration of the motion for preliminary approval[11] or have been answered by the above.[12]

None of Objectors' objections are well-founded and the Court therefore overrules them.

Dated: MAR 0 8 2022

AMY D. HOGUE
JUDGE OF THE SUPERIOR COURT

[11] These arguments include whether class members want to be treated as independent contractors or employees. (2nd Objections at p. 3.) This particular argument puts the horse before the cart. Class members' response to the Settlement will be weighed at final approval.

[12] This includes that: (1) Objectors continue to ignore the full potential benefits available to class members under the Settlement, e.g., ignoring the direct payments. (See, n. 3, *supra*.) (2) Objectors misunderstand the terms of the Settlement by contending that class members had to comply with the "Smart Office" program in order to make a claim against the $35 million fund. (2nd Objections at pp. 6-7.) Under the Settlement it is sufficient that class members claim expenses within the one of the enumerated categories identified as "necessary to meet one or more Farmers' Smart Office Standards"; they did not have to have been in or complied with the Smart Office Program. (See Claim Form attached to Class Notice.) (3) Objectors also assert that the contract amendments under the Settlement "only benefit" Defendants. (2nd Objections at p. 8.) This is based on an incomplete analysis of the contract amendments and well as a misunderstanding of them. (4) Objectors misconstrue the scope of the releases to be given by class members. (2nd Objections p. 9 [claiming that class members will "lose all of their claims," including for age, race, and gender discrimination].). These claims are not released in the Settlement. (5) Objectors repeat their contention under Labor Code section 432.6, without developing any cogent argument. They also assert, without support, that the Settlement violates PAGA and FEHA. (2nd Objections pp. 5, 8.)