

FILED
Superior Court of California
County of Los Angeles

MAR 08 2022

Herri R. Catty, Clerk
Alfredo Morales deputy
ALFREDO MORALES

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

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

DATE: March 8, 2022
TIME: 2:00 p.m.
DEPT: SS 007

Plaintiffs claim that Defendants should have reimbursed the expenses incurred by Plaintiffs and a certified class of insurance agents in California who are or were appointed by the three Exchange Defendants (Farmers Insurance Exchange, Truck Insurance Exchange, and Fire Exchange) to sell Farmers® insurance and service Farmers® customers because they were treated as employees under California law and not independent contractors. Plaintiffs now seek preliminary approval of a class action settlement with Defendants. The Court held a hearing on March 8, 2022, and, for the following reasons, grants preliminary approval.

1 **I. Background**

2 **A. Procedural history leading up to the Settlement.**

3 Plaintiffs are former Farmers[®] insurance agents. They filed this class action in November
4 2017, alleging that because the three Exchange Defendants misclassified them and a putative
5 class of Farmers[®] agents as independent contractors, they violated Labor Code section 2802 by
6 failing to reimburse the agents' business expenses, and violated the Unfair Competition Law
7 (UCL), Bus. & Prof. Code, section 17200, *et seq.* as well. (Nov. 16, 2017, Compl., at ¶¶ 87-106.)
8 Plaintiffs later amended their complaint to add Farmers Group, Inc. (FGI) as a defendant and
9 allege that FGI also violated Labor Code section 2802 and the UCL, and that it further violated
10 Labor Code section 2753 by advising the Exchange Defendants to treat the Class as independent
11 contractors to avoid employee status. (Amend. Compl., at ¶¶ 97-115.) Plaintiffs sought, among
12 other things, recovery of Class members' unreimbursed expenses, a declaratory judgment that
13 Exchange Defendants and FGI violated section 2802, and a declaratory judgment that FGI
14 violated section 2753. (*Id.* at p. 21 [Prayer for Relief].)

15 After the Court entered a case management schedule, the parties took considerable
16 discovery, and Plaintiffs filed a motion for class certification on October 16, 2020. Defendants
17 opposed certification, and both sides supported their positions with declarations and expert
18 opinions.

19 The Court issued a ruling on class certification on February 26, 2021, which it amended
20 on March 4, 2021. In its order, the Court denied Plaintiffs' request to certify a class seeking
21 injunctive relief but granted the motion as to all other claims for relief (Amended Order, at p. 22),
22 certifying the following class:

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

25 (*Id.* at p. 1.) The class period as to the Exchange Defendants was from November 16, 2013, until
26 notice is mailed to the class, while the class period for claims against FGI was October 29, 2015,
27 until notice is mailed to the class. (*Id.* at p. 2.) The Court also appointed Plaintiffs as class
28 representatives and Plaintiffs' counsel as class counsel. (*Id.* at p. 22.)

1 Defendants filed a petition asking the Court of Appeal to review the Court's certification
2 order. The Court of Appeal denied the petition on May 28, 2021. (*Farmers Group, Inc. v.*
3 *Superior Court* (May 28, 2021, Case No. B312051) Cal.App 2 Dist.) Plaintiffs also filed a motion
4 for summary adjudication of Defendants' twelfth affirmative defense. That motion was scheduled
5 for hearing on October 6, 2021, but the Court took that motion off the schedule in light of the
6 parties' settlement (discussed below).

7 **B. The Settlement**

8 **1. The proposed Settlement Class.**

9 The Settlement proposes that the Court certify the following class for settlement
10 purposes:

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

15 (Settlement Agreement ("SA") § 5.1.)¹ The definition of "individuals" excludes entities as well as
16 persons who settled, released, or already pursued the claims asserted in this action and either
17 prevailed or received an adverse judgement or order. (SA § 5.2.)

18 The parties note that while the Settlement Class definition differs somewhat from the
19 definition the Court certified, they made the changes only to avoid any confusion on whether the
20 class included agents who signed a corporate Agent Appointment Agreement. The parties
21 represent that the Settlement class definition neither expands nor restricts the ranks of Class
22 Members eligible to participate in the Settlement from the definition the Court previously
23 certified. The parties agree that, as with the previously certified class, the Class encompasses
24 approximately 6,369 current and former agents, and the class period matches the longest class
25 period of the class the Court previously certified. (See Amended Order, at p. 2.)

26
27
28 ¹ The terms of the Settlement Agreement control in the event of any conflict between descriptions/explanations
of the Settlement Agreement contained herein and the terms of the Settlement Agreement

1 **2. The proposed settlement terms.**

2 The Settlement Amount is a maximum of \$75 million in cash to Class Members. Forty
3 million dollars, less any amounts that may be awarded by the Court for attorneys' fees, costs, or
4 service awards, will be distributed directly to each Class Member who does not timely opt out, on
5 a pro rata basis, with each Class Member's share determined by his or her length of time as a
6 California Farmers agent during the class period. Class Members need not make a claim to receive
7 a direct payment. (SA § 6.1.1.)

8 Up to thirty-five million dollars will be distributed to Settlement Class Members on a
9 claims-made basis, with claims payments of up to a maximum of \$10,000, to each Class Member
10 who claims unreimbursed expenses related to Farmers' Smart Office program—the basic
11 categories being one Licensed & Appointed Staff, Exterior Signage, Interior Signage and
12 Branding, Digital (e.g., website), and Office Appearance. (SA § 6.1.2.) If the total value of the
13 valid claims exceeds \$35 million, each Class Member's claim payment will be adjusted by the
14 percentage that all claims exceeded \$35 million to ensure that all Class Members who submit
15 valid claims receive an equal proportional share of their claimed amount. For example, if total
16 valid claims equal \$40 million, then each person's Claim Payment would be adjusted so that they
17 receive 87.5% of their valid claim. (*Id.*) Any unclaimed portion of the \$35 million will revert to
18 Defendants, while any uncashed direct payment and/or claims payment checks will escheat to the
19 State of California as unclaimed property by being sent to the Unclaimed Property Division for
20 class members to possibly claim. (SA § 17.2.) The Court may also order that attorneys' fees and
21 costs of Plaintiffs' counsel be deducted from the amounts claimed by Class Members from the
22 \$35 million fund.

23 The Settlement also commits Defendants to make changes to the Class Members' Agent
24 Appointment Agreements, and other systemic changes, that the parties believe will protect and
25 preserve the Class Members' independent contractor status under California law. More
26 specifically, as to the Class Members who do not opt out of the Settlement, the following changes
27 will be made:
28

- 1 • Elimination of the no-cause termination provision on three months' notice in the
2 Agent Appointment Agreement for the Settlement Class. The Exchange
3 Defendants retain the right to terminate the Agreement if (a) the agent fails to
4 operate the agency consistent with industry or professional standards, or (b) based
5 on the Companies' changed business circumstances or market conditions, and (c)
6 only after providing the agent with six months written notice.² (SA §§ 7.1.1-7.1.3.)
7 Class Members who are current agents, by contrast, retain the right to resign their
8 appointment under the Agreement at any time without cause, and now only have to
9 give 60-days' notice, or at an earlier date by mutual agreement of the agent and the
10 Companies. (SA § 7.1.2.)
- 11 • Elimination of the non-solicitation provision contained in the Agent Appointment
12 Agreement, which prohibited solicitation of customers of their former Farmers'
13 agency for one year.
- 14 • Elimination of any policy that utilizes the Agency Growth Model for determining
15 eligibility for bonuses or achievement clubs. (SA § 7.3.)
- 16 • Establishment of a written Complaint Procedure for agents to raise concerns and
17 complaints related to their independent contractor status and allow the agent to
18 remain anonymous to her/his District Manager and/or Defendants' territory
19 leadership. (SA ¶ 7.4.) Defendants must also notify its personnel and district
20 managers that they are to treat agents consistent with their independent contractor
21 status under California law. (SA ¶ 7.4.)
- 22 • Elimination of the Customer Service Standards section from the Agency
23 Operations Manual, including the standard that agents have their Farmers' agency
24 open 45 hours a week. (SA § 7.2.).
- 25 • Defendants and Class Members agree to a mutual arbitration clause that includes a
26 jury and class action waiver for certain claims. (SA § 7.1.5.)

27 ² The Exchange Defendants also retain the right to terminate the agent agreement for other reasons already
28 enumerated in the agent agreements.

1 The parties have submitted a declaration by an expert, C. Paul Wazzan, a Senior Managing
2 Director of FTI Consulting, Inc., that values the total gains to Class Members from the contract
3 changes at \$15,547,489.

4 **3. Notice and Administration costs.**

5 The cost of notice and settlement administration, up to a maximum of \$150,000, will be
6 paid from the \$40 million direct payment funds, except that all administrative costs related to
7 Defendants' review of claims submissions will be borne entirely by Defendants. (SA § 1.14.) The
8 parties agree to use A.B. Data, Ltd. (A.B. Data) as the Settlement Administrator. (SA § 1.20.)

9 The parties will provide Notice of the Settlement to Class Members in accordance with the
10 proposed notice program administered by A.B. Data. That proposed notice program is as follows.
11 The Exchange Defendants will provide A.B. Data the potential Class Members' contact
12 information (mailing address, social security number, California insurance license number (if
13 available) and current email address and telephone number, if available in Defendants' records).
14 (SA § 9.1.) The Exchange Defendants represent that they have current email and mailing
15 addresses for all 3,140 current agents (about half the class) and mailing and potentially email
16 addresses for the other half (about 3,229 former agents), although the Exchange Defendants do
17 not know whether all that contact information is correct. Additionally, Plaintiffs state that they
18 have been working with the United Farmers Agents Association (UFAA), which has contact
19 information for thousands of current and former potential Class Members in California and has
20 been working to assist Plaintiffs' counsel in educating Class Members about the Settlement and
21 the importance of receiving accurate and current contact information. UFAA has provided its
22 contact list to Plaintiffs' counsel, who state they are working to verify the accuracy of that contact
23 information and provide that contact information to the Settlement Administrator so that it may
24 be utilized in the notice process. Finally, Plaintiffs' counsel state that they have been
25 communicating, and will continue to communicate, with potential Class Members through a
26 series of webinars and in-person meetings, all of which have encouraged the attendees to provide
27 their current contact information to counsel, who have maintained a website and dedicated email
28 address through which class members can submit their current contact information. All these

1 efforts are designed so that the Notice Package reaches as many Class Members as feasible at
2 inception.

3 Upon Preliminary Approval, A.B. Data will mail a Notice Package to all potential
4 Settlement Class Members by United States Postal Service (“USPS”) First-Class Mail using Class
5 Members’ contact information supplied by Defendants. (SA § 9.1.) The Notice Package will consist
6 of the Court-approved notice of the terms and conditions of this Settlement and the Court-approved
7 Claim Form. (SA § 9.1.) Before mailing the Notice Package, A.B. Data will run the addresses of
8 all known intended recipients through the USPS National Change of Address (“NCOA”) database.
9 (Declaration of Justin Parks (“Parks Decl.”) ¶ 6.) In addition to the mailed notice, A.B. Data will
10 send the full content of the Notice Package in the form of an email to all potential Class Members
11 for whom the Exchange Defendants have provided email addresses, the thousands of email
12 addresses provided by the UFAA, and all email addresses Plaintiffs’ counsel has collected while
13 educating potential Class Members about the Settlement. (SA § 9.1.)

14 For mailed Notice Packages returned as undeliverable without any forwarding addresses,
15 A.B. Data will attempt to obtain updated addresses using skip tracing and proprietary database
16 resources and, in instances where updated addresses are found, re-mail the Notice Packages. (SA,
17 § 9.5.) A.B. Data will also try to contact each Class Member whose Notice Package is returned as
18 undeliverable by telephone to obtain updated mail and email addresses. (*Id.*)

19 In addition, A.B. Data will maintain a settlement administration website that provides all
20 pertinent dates, including the deadline to submit claims and the date and time for the final
21 approval hearing. The settlement website will also have hyperlinks to the page where Class
22 Members can submit a claim, as well as hyperlinks to copies of the Settlement Agreement and all
23 related court filings and court orders. A.B. Data will also maintain a dedicated toll-free telephone
24 number that will present callers with a series of choices to hear pre-recorded information
25 concerning the Settlement and live telephone support during business hours if Class Members
26 need further assistance. (SA § 9.3.)

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4. Claim Forms.

Class Members do not have to submit a claim to receive their pro rata share of the \$40 million direct payment. If the Class Member does not opt out, A.B. Data will mail them a check for their pro rata share. (SA § 6.1.1.) The Notice contained in the Notice Package sent to Class Members will also provide an estimate of that Class Member's share of the direct payment prior to any reductions to pay notice and settlement costs, attorneys' fees and costs, and service awards.

To receive benefits in the second part of the Settlement, a fund of \$35 million, Class Members must submit claims through a confidential and streamlined process, consisting of a form, and supporting documentation of expenses. In this portion of the Settlement, Class Members will have the opportunity to receive up to a maximum of \$10,000 each for reimbursement of their unreimbursed Smart Office-related expenses. (See generally SA § 9.4 and Claim Forms appended as exhibits to the Settlement Agreement.) Smart Office was a program applicable to Class Members to standardize the appearance, hours of operation, staffing, and websites of Farmers[®] agencies that, according to Plaintiffs, ran afoul of the independent contractor classification. This was a highly contested issue that is directly tied to the merits of the litigation. Defendants state Smart Office was terminated in December 2020, prior to the resolution of this matter. Class Members did not need to comply with the Smart Office program in order to receive reimbursement of Smart Office-related expenses through the Settlement.

The claims process appears to be straightforward. Class Members may submit their Claim Form, and any supporting documentation, online at the settlement website, by emailing it to A.B. Data, or by U.S. mail. The claim form contains a list of categories of Smart Office-related expenses that may be claimed, including the expense of one Licensed & Appointed Staff, Exterior Signage, Interior Signage and Branding, Digital (e.g., website), and Office Appearance. Claims for expenses can be submitted for any of the agent's expenses incurred between the start of the Class Period, November 16, 2013, and December 31, 2020, when the Exchange Defendants ended the Smart Office program. The claim form requires that Class Members attest that they paid the Smart Office type expenses as follows:

1 I swear under penalty of perjury recognized by the laws of the State of California
2 that: (a) between November 16, 2013 and December 31, 2020, I paid the
3 expense(s) in the amount(s) and categories I have filled in below while appointed
4 as a Farmers agent; and (b) those expenses were necessary to meet one or more
5 Farmers' Smart Office Standards.

6 Class Members can support a claim either by submitting documentation showing that they paid
7 the expense or—for all expenses except Licensed & Appointed Staff—attest that they paid the
8 expenses by a deduction from their Farmers' folio.³ Class Members are to fill out the Claim
9 Form, sign the attestation and upload their documentation to make a claim.

10 Class Members appointed through Farmers' External Acquisition (after 1/1/2019), SEED,
11 or Retail programs prior to January 1, 2021, however, are ineligible to claim expenses paid for
12 Licensed and Appointed staff because those three programs required a Licensed and Appointed
13 staff to be engaged as a condition of the agent's appointment with the Exchange Defendants. (SA
14 § 10.3(4)(ii).) These Class Members may still receive a Claims Payment of up to \$10,000,
15 however, by claiming reimbursement for any other categories of eligible expenses. (SA, § 6.1.2.)
16 As of September 30, 2021, Defendants stated that 1,088 Class Members fell into this category and
17 the vast majority of them received start-up or signing bonuses of up to \$10,000. (SA, §
18 10.3(4)(ii); Declaration of Zoltan Nagy, ¶¶ 8-11.) Class Members appointed in January of 2021
19 and after were not subject to Farmers' Smart Office policy and, therefore, incurred no eligible
20 expenses for which they may receive a Claims Payment. Approximately 205 Class Members fall
21 into this category and those agents will receive the other benefits of the Settlement. (Declaration
22 of Zoltan Nagy, ¶ 6.)

23 Class Members will have 100 calendar days after A.B. Data sends out notice to file a
24 claim and to submit supporting documentation (if any) online at the settlement website, by email,
25 or by mailing it to A.B. Data. (SA §§ 1.3; 9.4.) The Claim Form mailed to Class Members will be
26 prepopulated with the Class Member's contact information available to A.B. Data. A.B. Data will
27 assign each Class Member a unique identifier that they can use to access an online claim form
28 that will also be prepopulated with the Class Member's contact information on file. (SA § 9.4.)

³ Class Members apparently could not use folio to pay for Licensed & Appointed Staff.

1 A.B. Data will send by mail and email (if available) a first reminder to all Settlement Class
2 Members who have not submitted a Claim Form within thirty (30) calendar days after the Notice
3 was sent, and a second reminder to all Settlement Class Members who have not submitted a
4 Claim Form within sixty-five (65) calendar days after the Notice was sent. (SA § 9.1.3.)
5 Plaintiffs' counsel will also be given notice of any deficiencies and has committed to working
6 with Class Members to correct them and submit valid claims.

7 A.B. Data will review all claims and make initial determinations on whether to approve
8 the claim or deny the claim as deficient because the Class Member did not sign the form or the
9 required certification, did not substantiate a claim, or did not provide accurate identifying
10 information upon request. (SA § 9.7, § 10.3.) A.B. Data will notify a Class Member if it denied
11 the claim as deficient who will then have the opportunity to correct any deficiencies within 30
12 calendar days. (*Id.*) At the same time it provides the Class Member notice of a deficient claim,
13 A.B. Data will also notify Plaintiffs' and Defendants' counsel, and Plaintiffs' counsel will assist
14 Class Members with correcting any deficiency. In addition, A.B. Data will notify Plaintiffs' and
15 Defendants' counsel of its initial determinations (both approvals and denials) who then have 30
16 calendar days to review the initial determinations and decide whether to submit additional
17 information to A.B. Data for it to consider. (SA § 10.3.) If a party decides to submit additional
18 information, it will provide that information to both A.B. Data and the non-submitting party, who
19 then has 30 calendar days to respond. (*Id.*) If the submitting parties are Defendants, then
20 Plaintiffs' counsel will work with Class Members to prepare and submit any response. (*Id.*) A.B.
21 Data has full authority, however, to determine whether to finally allow or deny a claim, and its
22 decision is not subject to review or appeal. (*Id.*)

23 5. The release.

24 The Settlement Agreement contains a release. In that Release, Plaintiffs and the Class
25 Members agree to release all "Released Claims" against the "Released Parties" as of the Effective
26 Date. (SA § 18.3.) The Settlement Agreement defines "Released Claims" as follows:

27 any and all claims, demands, debts, liabilities, actions, obligations, damages, losses,
28 costs, and causes of action of every kind and nature, whether at common law,

1 pursuant to statute, ordinance, or regulation, in equity or otherwise, whether arising
2 under federal, state, or other applicable law, whether known or unknown, actual or
3 potential, suspected or unsuspected, direct or indirect, or contingent or fixed that
4 have been alleged, could have been alleged, or in the future might be alleged, that
5 reasonably arise out of or reasonably relate to the facts and/or claims set forth in the
6 First Amended Complaint during the Class Period, including Plaintiffs' claims that
7 they were misclassified as independent contractors rather than employees, both on
8 behalf of the Settlement Class Representatives and on behalf of the Settlement Class
9 Members (individually and on behalf of any corporation for which they are/were
10 the Supervising Agent, if applicable), including without limitation claims and
11 theories based on the California Labor Code.

12 (SA § 18.2.) The "Released Parties" means Defendants, each of their subsidiaries or affiliates,
13 including Mid-Century Insurance Company and Farmers New World Life Insurance Company,
14 and each of their present and former predecessors, successors, assigns, parent companies,
15 divisions, members, owners, executives, officers, directors, governors, shareholders,
16 policyholders, representatives, employees, agents, attorneys, attorneys-in-fact, consultants,
17 contractors, servants, vendors, managers, and their trustees, administrators, fiduciaries, co-
18 defendants, administrators, related individuals and/or entities, insurers, and/or any and all
19 individuals and/or entities acting by, through, under, or in concert with any of them or otherwise
20 affiliated with them. (SA § 18.1.) The California Civil Code section 1542 waiver applies only to
21 the named Plaintiffs, however, and no other Class Members. (SA § 18.4.)

22 **6. Attorneys' fees, costs, service awards, and objections.**

23 The Settlement contemplates Plaintiffs' counsel filing an application for an award of
24 attorneys' fees in an amount not to exceed 33% of the \$75 million Settlement Amount, and for
25 reimbursement of costs and expenses of an amount not to exceed six hundred thousand dollars.
26 (SA § 6.2.) Plaintiffs' counsel will also seek a service award for each named Plaintiff not to
27 exceed forty thousand dollars. (SA § 6.3.) Plaintiffs must file the motion for attorneys' fees, costs,
28 and service awards no later than sixty days before the final approval hearing. (SA § 6.2.)
Defendants agree that they will not oppose the motion up to the amounts provided for in Sections
6.2 and 6.3 of the Settlement Agreement. (*Id.*) The Court will approve any award of fees, costs,
and service awards, however, and it will decide these issues, including how to split the attorneys'

1 fees and costs between the direct payment and claims-made portions of the Settlement, at final
2 approval. (*Id.*)

3 Class Members may object to any aspect of the Settlement, including the request for
4 attorneys' fees, costs, and service awards, and written objections are due thirty days before the
5 final approval hearing, although the Court retains discretion to hear untimely written objections.
6 The Court will hear any Class Members who wish to verbally object by appearing (or having his
7 or her attorney appear) at the final approval hearing, either in person or remotely. No notice of
8 appearance is required. (SA § 14.)

9 **II. Discussion**

10 “[T]he law favors settlements.’ [Citation.]” (*Village Northridge Homeowners Assn. v.*
11 *State Farm Fire & Casualty Co.* (2010) 50 Cal.4th 913, 930.) This is particularly true when a
12 settlement achieves significant results that cannot be achieved by litigation. The Settlement here
13 achieves significant business changes that could not have been awarded by a jury or the Court in
14 this matter. Notably, part of the relief that Defendants have agreed to here was relief previously
15 sought against them in a legal action in which they prevailed. Finally, the Settlement leaves
16 agents as the independent contractors. The claims raised by Plaintiffs created the potential of
17 reclassification of agents as employees if the agents prevailed in this litigation. By agreeing to
18 this Settlement, both direct payments and monetary claims can be made, and protections are put
19 into place regarding the independent contractor classification.

20 California Rules of Court, rule 3.769 requires Court approval of class action settlements
21 and establishes a three-step process for obtaining court approval. “[T]he court preliminarily
22 approves the settlement and the class members are notified as directed by the court,” and then
23 “the court conducts a final approval hearing to inquire into the fairness of the proposed
24 settlement.” (*Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.) But first the
25 Court must address whether to certify “a provisional settlement class.” (Cal. Rules of Court, rule
26 3.769(d).)

1 **A. Certification of Settlement Class.**

2 “[I]t is well established that trial courts should use different standards to determine the
3 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser
4 standard of scrutiny is used for settlement cases. [Citation.] The reason for this is that no trial is
5 anticipated in a settlement class case, so the case management issues inherent in the ascertainable
6 class determination need not be confronted. [Citation.]” (*Global Minerals & Metals Corp. v.*
7 *Superior Court* (2003) 113 Cal.App.4th 836, 859.) As the Court already granted Plaintiffs’ earlier
8 certification motion, this standard is easily met. Accordingly, the Court grants certification to the
9 following class for purposes of settlement pursuant to Code of Civil Procedure section 382 and
10 California Rules of Court, rule 3.7689:

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

15 (SA § 5.1.) As discussed above, there appears to be no material difference exists between this
16 definition and the definition that the Court earlier certified in its March 4, 2021, Amended Order.
17 Moreover, as explained below, the Settlement Class continues to meet the requirements for
18 certification under Code of Civil Procedure section 382, as it is (1) a “sufficiently numerous,
19 ascertainable class,” with (2) “a well-defined community of interest” having all three sub-
20 factors—namely, “predominant common questions of law or fact,” and “class representatives
21 with claims or defenses typical of the class,” who “can adequately represent the class,” and (3)
22 “certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a
23 class is superior to other methods.” (*Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069,
24 1089.)

25 **1. The Class Satisfies Numerosity.**

26 A class of approximately 6,369 former and current agents satisfies numerosity. (See
27 Amended Order, at p. 3 [finding class is numerous].)
28

1 **2. The Class is Ascertainable.**

2 The Settlement defines Class Members by who signed an agreement with the Exchange
3 Defendants, an “objective characteristic[] and common transactional fact[]” that makes “the
4 ultimate identification of class members possible when that identification becomes necessary.”
5 (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980; see also Amended Order, at p. 3 [finding
6 class is ascertainable].)

7 **3. Common Questions of Fact and Law Predominate.**

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

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

1 **4. Plaintiffs' Claims are Typical.**

2 Typicality refers to the nature of the claim or defense of the class representatives. ““The
3 test of typicality ‘is whether other members have the same or similar injury, whether the action is
4 based on conduct which is not unique to the named plaintiffs, and whether other class members
5 have been injured by the same course of conduct.’ [Citation.]” (*Seastrom v. Neways, Inc.* (2007)
6 149 Cal.App.4th 1496, 1502.) Typicality does not require that class representatives suffered all
7 the damages of class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
8 238.)

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

12 **5. Class Counsel and the Class Representatives are Adequate.**

13 Plaintiffs are adequate Class Representatives because their claims are not antagonistic to
14 the claims of the Settlement Class. (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.)
15 Further, the declarations Plaintiffs submitted in connection this motion indicate that Plaintiffs
16 contacted and selected Class Counsel, volunteered to be class representatives, prosecuted this
17 case faithfully for many years, responded to extensive discovery, including numerous depositions,
18 and assisted Class Counsel on many issues relating to the claims as well as the Settlement.

19 Class Counsel are adequate because they have extensive experience in class action
20 litigation, including insurance agent misclassification disputes. (See Amended Order, at pp. 19-20
21 [finding Plaintiffs and Plaintiffs' counsel are adequate].) Neither Class Counsel nor the Class
22 Representatives appear to have any conflicts with the Settlement Class.

23 **6. Class Treatment is Superior.**

24 Certification for settlement purposes presents a superior means for resolution. One
25 settlement resolving the claims and issues of approximately 6,349 individuals confers “substantial
26 benefits” that “render proceeding as a class superior to the alternatives,” including numerous and
27 potentially conflicting individual lawsuits that would waste economic and judicial resources.
28

1 (*Fireside Bank, supra*, 40 Cal.4th at 1089; see also Amended Order, at pp. 20-21 [finding class
2 action treatment superior].)

3 **B. The settlement is presumptively fair and warrants preliminary approval.**

4 A trial court’s preliminary approval of a class action settlement requires “nothing more
5 than [a determination] that ‘there is, in effect, ‘probable cause’ to submit the proposal to members
6 of the class and to hold a full-scale hearing on its fairness.’” (*State of California v. Levi Strauss &
7 Co.* (1986) 41 Cal.3d 460, 485 [quoting *Manual for Complex Litigation (Second)*, § 1.46].) The
8 Court need only “scrutinize the proposed settlement agreement to the extent necessary to reach a
9 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
10 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and
11 adequate to all concerned.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245
12 [internal quotation marks omitted].)

13 Here, there is no evidence of fraud overreaching or collusion between the negotiating
14 parties. The record shows that this case was hotly contested from the very beginning and the
15 parties’ attempts to resolve the case spanned years and required the services of several well-
16 known and respected mediators. Additionally, the Court finds that the proposed Settlement taken
17 as a whole is fair and reasonable. To determine fairness, the Court “should consider relevant
18 factors, such as the strength of plaintiffs’ case, the risk, expense, complexity and likely duration
19 of further litigation, the risk of maintaining class action status through trial, the benefits offered in
20 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
21 views of counsel, the presence of a governmental participant, and the reaction of the class
22 members to the proposed settlement. [Citation] The list of factors is not exhaustive and should be
23 tailored to each case. Due regard should be given to what is otherwise a private consensual
24 agreement between the parties.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)
25 Further, a “‘presumption of fairness exists where: (1) the settlement is reached through arm’s-
26 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
27 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
28

1 objectors is small.’ [Citation]” (*Wershba, supra*, 91 Cal.App.4th at 245 [quoting *Dunk*, at p.
2 1802].)

3 The presumption of fairness applies here. The first three elements are satisfied. The parties
4 reached the Settlement through the assistance of three different highly experienced mediators
5 skilled in resolving complex class action litigation and only after four years of discovery,
6 investigation, and motion practice. There is no evidence of collusion. Moreover, counsel for both
7 Plaintiffs and Defendants are experienced in class action litigation and claims involving the
8 complex questions about the proper classification of insurance agents at issue here. The fact that
9 the case settled at such an advanced stage of the litigation, when the parties had a clear view of
10 the merits and potential risks, further weighs in favor of preliminary approval. (*Chun-Hoon v.*
11 *McKee Foods Corp.* (N.D. Cal. 2010) 716 F. Supp. 2d 848, 851–852 [“The parties have engaged
12 in several years of litigation, including depositions, substantial research, an interlocutory appeal
13 and several motions. By the time the settlement was reached, therefore, the litigation had
14 proceeded to a point at which both plaintiffs and defendants ha[d] a clear view of the strengths
15 and weaknesses of their cases.”] [citations omitted].) The fourth element—the percentage of
16 objections—cannot be evaluated until final approval after Class Members receive Notice of the
17 Settlement.

18 The Court has received two objections filed by an attorney representing two objectors. For
19 the reasons contained in the Court’s Order on the objections, the Court overrules the objections in
20 their entirety.

21 Among other things, the objectors failed to raise legitimate concerns about the
22 Settlement’s fairness. To evaluate the fairness, adequacy, and reasonableness of a proposed class
23 settlement, a court considers the strength of plaintiffs’ case, the risk, expense and likely duration
24 of further litigation, the settlement amount, the stage of the proceedings, the views of class
25 counsel and the reaction of the class members. (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th
26 706, 723; *Dunk, supra*, 48 Cal.App.4th at 1801.) The two objectors do not address those issues.
27 Instead, they chiefly argue that Plaintiffs should have taken the independent contractor issue to
28 trial and only then, if they prevailed, entered into settlement talks. The Court does not agree that

1 Plaintiffs had to risk losing a trial on whether Defendants properly classified Plaintiffs and class
2 members as independent contractor issue before they could settle the case. (*Low v. Trump Univ.,*
3 LLC (S.D.Cal. 2017) 246 F. Supp. 3d 1295, 1302 [courts favor settlement before trial where
4 parties have engaged in extensive discovery].)

5 Moreover, the Plaintiffs' *Dunk/Kullar* analysis makes plain Plaintiffs faced considerable
6 risk of an adverse result either at trial or on appeal that would result in zero recovery for the
7 Plaintiffs and the class. In fact, as Plaintiffs point out, the case law should cause any reasonable
8 plaintiff to temper expectations on whether they will prevail through an appeal of the independent
9 contractor issue. (See *Murray v. Principal Fin. Grp., Inc.* (9th Cir. 2010) 613 F.3d 943, 944-45
10 ["[w]e, along with virtually every other Circuit . . . have held that insurance agents are
11 independent contractors"]; *Arnold v. Mutual of Omaha Ins. Co.* (2011) 202 Cal.App.4th 580, 581
12 [affirming summary judgment that an insurance agent was an independent contractor, not an
13 employee, under Labor Code § 2802 and *Borello*].) In fact, counsel for Plaintiffs recently
14 prevailed on the issue of whether a certified class of insurance agents were employees under the
15 common-law test, only to have a divided court of appeals reverse. (*Jammal v. Am. Family Ins.*
16 *Co.* (6th Cir. 2019) 914 F.3d 449; see also *Plazzo v. Nationwide Mut. Ins. Co.* (6th Cir. 1989) 892
17 F.2d 79 [reversing judgment that insurance agent was an employee].) Moreover, after A.B. 5
18 clarified that *Borello's* test determined the employee status of insurance agents, a plaintiff
19 dropped as "no longer viable" his wage and hour claims against Farmers alleging that Farmers
20 misclassified its agents as independent contractors.⁴ The fact that Plaintiffs reached a settlement
21 before a trial of the underlying independent contractor issue in no way undermines the
22 presumption of fairness.

23 Further, the *Dunk/Kullar* analysis requires the Court to measure the reasonableness of
24 settlement against the risk Plaintiffs faced of not prevailing at all, not the recovery Plaintiffs
25 might in theory have obtained had they prevailed in full. "The proposed settlement cannot be
26 judged without reference to the strength of plaintiffs' claims. "The most important factor is the

27
28 ⁴ See Nov. 21, 2019, Notice of Unopposed Motion and Memorandum in Support of Motion for 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 strength of the case for plaintiffs on the merits, balanced against the amount offered in
2 settlement.’ [Citations]” (*Kullar, supra*, 168 Cal.App.4th at p. 130.) Approval only “requires a
3 record which allows ‘an understanding of the amount that is in controversy and the realistic range
4 of outcomes of the litigation,’” not “explicit statement[s]” of “the maximum amount” of value
5 plaintiffs could have recovered had they prevailed on all claims at trial. (*Munoz v. BCI Coca-Cola*
6 *Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409 [quoting *Kullar, supra*, 168
7 Cal.App.4th at p. 130].)

8 The Court finds that the benefits of the Settlement when measured against the risks of
9 continuing to litigate the merits of the independent contractor issue through trial, followed by
10 individual damages trials, and then an inevitable appeal, clearly weigh in favor finding that the
11 settlement benefits are reasonable to grant preliminary approval and provide Notice to Settlement
12 Class Members. The settlement delivers up to \$75 million in monetary benefits—\$40 million in
13 direct payments without any claim requirement and \$35 million expense reimbursement pursuant
14 to a claims-made process—plus contract and other changes designed to protect current class
15 members’ independent contractor status with a claimed value of over \$15.5 million. While
16 Plaintiffs estimate that the total recovery to the class could have potentially exceeded \$1 billion if
17 all class members engaged in a post-trial contested damages process against Defendants, they also
18 correctly point out a trial on the independent contractor issue would not have fixed Defendants’
19 liability to each Settlement Class Member. The parties agree that the expenses each Settlement
20 Class Member incurred differ by Class Member, and thus fixing the extent of Defendants’
21 liability to each Class Member would have required Class Members to participate in individual
22 evidentiary proceedings. It is unclear how many Class Members, particularly current agents,
23 would be willing to participate in individualized hearings on damages, subject themselves to cross
24 examination and, in the case of the over 3000 current agents, enter into an adversarial process
25 with the companies they continue to work with. The Settlement avoids this process and other
26 hurdles and promises to deliver (as calculated by Plaintiffs’ counsel) between 4%-15% of the
27 maximum recovery when, on the other hand, there was the risk of a zero recovery to the class.
28

1 The Court finds on a preliminary basis, therefore, that the Settlement Agreement, which is
2 hereby incorporated in full by reference as part of this Order, is within the range of
3 reasonableness of a settlement that could ultimately be given final approval.

4 **ACCORDINGLY,**

5 1. The Court grants preliminary approval of the Settlement based upon the terms set
6 forth in the Settlement Agreement (in the form attached as Exhibit A to the Declaration of
7 Charles J. Crueger, filed on February 10, 2022).

8 2. The Court grants provisional certification of the Settlement Class pursuant to Code
9 of Civil Procedure § 382 and California Rules of Court, Rule 3.7689 to the following Settlement
10 Class:

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

16 3. The Court appoints Plaintiffs Irene Parry and Jeanette O'Sullivan as Class
17 Representatives and Charles Crueger and Erin Dickinson of Crueger Dickinson LLC and Edward
18 A. Wallace of Wallace Legal Group LLC as Lead Class Counsel and, Milberg Coleman Bryson
19 Phillips Grossman, PLLC, Nelson & Fraenkel LLP, and Wexler Boley & Elgersma LLP as
20 additional Settlement Class Counsel (all referred to herein as Settlement Class Counsel).

21 4. The Court finds that the form and content of the proposed Class Notice and Claim
22 Form (in the forms attached as Exhibits A, B and C to the Settlement Agreement) as well as the
23 distribution method provided for in the Settlement Agreement, are reasonable and designed to
24 fully satisfy due process and the requirements of the California Rules of Court. The Court is
25 satisfied that the plan of delivery under the Settlement Agreement is designed to reach as many
26 Settlement Class Members as reasonably feasible and includes measures to obtain updated
27 contact information for any Settlement Class Member whose notice is returned as undeliverable,
28 including skip-tracing. The Court accordingly authorizes and approves the proposed form,

1 method, and timing of giving Notice to the Settlement Class of this action and the proposed
2 settlement as set forth in the Settlement Agreement.

3 5. The Court finds that the proposed deadlines are also reasonable. Class members
4 will have 60 days from the mailing of Class Notice to opt-out of, or submit a written objection to,
5 the Settlement and will have 100 days from the date Class Notice is mailed to potential Class
6 Members, subject to any extension for re-mailed notices to submit his or her Claim Form to the
7 Settlement Administrator.

8 6. The Court preliminarily appoints A.B. Data Ltd. as the Settlement Administrator.

9 7. The Court sets the Final Approval Hearing for November 10, 2022, 11:00 a.m. in
10 Department SS 007 of this Court and orders the implementation of the following schedule for
11 further proceedings:

Event	Deadline
Settlement website	Within 5 calendar days of entry of preliminary approval order.
Defendant to submit Class List to third party Settlement Administrator	Within 7 calendar days after of entry of preliminary approval order.
Emailing and mailing of Class Notice and Claim Form	Within 21 calendar days of entry of preliminary approval order.
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
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.
Motions for Final Approval and for Award of Attorney Fees, Expense Reimbursement, and Service Awards.	60 calendar days prior to the Final Approval Hearing
Written 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.

1 The Final Approval Hearing and related prior deadlines set forth above may, from time to
2 time, and without further notice to the Settlement Class (except those who have filed timely and
3 valid objections) be continued or adjourned by order of the Court.

4
5 **IT IS SO ORDERED.**

6 Dated: MARCH 8, 2022



AMY D. HOGUE
Honorable Amy D. Hogue
Judge of the Superior Court