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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

LYNNE COATES, SERENA NEVES, KEEVER RHODES MUIR, CELESTE STOKES, and KAREN WASSON on behalf of themselves and all others similarly situated and aggrieved,

Plaintiffs,

vs.

FARMERS GROUP, INC., FARMERS INSURANCE EXCHANGE, and FARMERS INSURANCE COMPANY, INC.,

Defendants.

Case No: 5:15-CV-01913-LHK

CLASS ACTION

NOTICE OF MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS/COLLECTIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

Judge: Hon. Lucy H. Koh
Date: June 23, 2016
Time: 1:30 p.m.
Crtrm. 8 – 4th Floor

E-FILED

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NOTICE AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 19, 2016 at 1:30 p.m., or as soon thereafter as the matter may be heard, in Courtroom 8 of the United States District Court for the Northern District of California, located on the 4th floor of the United States Courthouse at 280 South 1st Street, San Jose, California, Plaintiffs Lynne Coates, Serena Neves, Keever Rhodes Muir, Celeste Stokes and Karen Wasson ("Plaintiffs") will move, and hereby do move, the Court for an order that:

1) certifies the proposed Rule 23 settlement class, appointing the Plaintiffs as class representatives and Plaintiffs' counsel as class counsel; 2) preliminarily approves the proposed class/collective action settlement with Defendant Farmers Insurance Exchange;[1] 2) appoints Rust Consulting as the class administrator; 3) approves the notice of the settlement and the procedures for providing such notice; 4) sets a briefing schedule for Plaintiffs' motion for attorneys' fees and costs and motion for final approval; and 5) schedules a final fairness hearing.

Such an order is appropriate because the proposed settlement meets the legal standard for preliminary approval and is in the best interests of the class. The proposed notice explains the settlement terms in straightforward language; the proposed notice procedures provide the best practicable notice to the class; and class members will have an opportunity to object to the settlement or opt out of the action.

This motion is based on this notice of motion, the following points and authorities, the declaration of Lori E. Andrus and the exhibits thereto, including the settlement agreement and proposed class notice, all pleadings and papers filed in this case, and on such other further written and oral argument and authorities as may be presented at or before the hearing on this matter.

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[1] As part of the settlement agreement, Plaintiffs agree to dismiss the claims against Farmers Group, Inc. and Farmers Insurance Co., Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs hereby seek preliminary approval for a class/collective action settlement to resolve claims on behalf of nearly 300 female attorneys who worked for Farmers in its Claims Litigation organization. The proposed settlement ("Settlement Agreement" or "Settlement") is attached as Exhibit B to the Declaration of Lori E. Andrus in Support of Preliminary Approval of Class Settlement ("Andrus Declaration" or "Andrus Decl."), submitted herewith.

The proposed Settlement provides that Farmers will pay $4,105,000, consisting of (a) individual cash payments to class members, (b) service awards, and (c) a payment to California's Labor and Workforce Development Agency ("LWDA") as civil penalties. Over and above this amount, Farmers will pay the employers' share of payroll taxes, notice and settlement administration costs, and attorneys' fees and costs. The proposed Settlement also provides meaningful injunctive relief, including a full review of Farmers' compensation-related policies and practices by an independent Human Resources Consultant (the cost of which Farmers will bear), an agreement to certain hiring and promotion benchmarks designed to increase the representation of women at all levels in Claims Litigation, and other significant business changes.

The Settlement was signed by Farmers and Plaintiffs on April 13, 2016 after extensive arm's-length negotiations conducted by mediator Barry Goldstein, Esq. Andrus Decl. ¶¶ 24-25.

As demonstrated below, the proposed Settlement is well within the "range of reasonableness" for preliminary approval. Class Counsel believe that the Settlement is the best that could be achieved given the substantial risks inherent in this litigation, including the risk that the trier of fact would find Farmers to not be liable on any of the claims. Andrus Decl. ¶¶ 31-33. Accordingly, Plaintiffs request that the Court preliminarily approve the proposed Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs Lynne Coates, Serena Neves, Keever Rhodes Muir, Celeste Stokes and Karen Wasson (collectively "Plaintiffs" or "Class Representatives") bring this class action against Farmers Group, Inc., Farmers Insurance Exchange, and Farmers Insurance Co., Inc. (collectively "Farmers") alleging violations of Title VII of the Civil Rights Act ("Title VII"), 42 U.S.C. §§

2000e, *et seq.*; the Equal Pay Act ("EPA"), 29 U.S.C. §§ 206, *et seq.*; the California Fair Employment and Housing Act ("FEHA"), Cal. Gov. Code § 12940, *et seq.*; the California Equal Pay Act ("Cal. EPA"), Cal. Lab. Code § 1197.5 *et seq.*; the California Private Attorney General Act ("PAGA"), Cal. Lab. Code § 2698, *et seq.*; and the California Unfair Business Practices Act, Cal. Bus. and Prof. Code §§ 17000-17208. First Amended Complaint ("FAC"), ¶¶ 147-204, 219-223. Essentially, Plaintiffs allege that Farmers systematically discriminated against female attorney employees and that Farmers' common compensation and promotion policies and practices resulted in lower pay and unequal promotions for female attorneys. *See* FAC, generally.

The parties have engaged in extensive discovery efforts. Andrus Decl., ¶¶ 14-15. Farmers has produced hundreds of thousands of pages of documents, including personnel data, compensation data, and other policy documents. *Id*. Plaintiffs responded to requests for production of documents directed to twelve opt-in Plaintiffs. *Id*. Farmers responded to thirteen requests for production of documents and three sets of special interrogatories. *Id*. The parties met and conferred extensively on multiple discovery matters including the scope and format of e-discovery, the sufficiency of Farmers' privilege and redaction logs, and preservation issues. *Id*. Plaintiffs' Counsel spent many hours on the phone and in individual meetings with Plaintiffs and absent class members, learning about their experiences at Farmers. *Id*. Plaintiffs' Counsel also spent a good deal of time researching various legal issues underpinning Plaintiffs' legal claims, not the least important of those being how the new California Fair Pay Act impacted the lawsuit. *Id*. Plaintiffs took the depositions of six corporate deponents and had scheduled nearly a dozen more depositions to take place in April and May, should mediation fail. *Id*. Farmers took depositions of named Plaintiffs Lynne Coates and Keever Rhodes Muir, as well as opt-in Plaintiffs Sandra Carter and Angela Storey. *Id*. In advance of mediation, both parties worked extensively with their experts to develop competing statistical analyses of the payroll data. *Id*.

On December 9, 2015, the Court conditionally certified the EPA claims as a collective action.[2] Fifty-four women opted in.[3]

[2] The Court conditionally certified an EPA Class defined as: "Women employed by Farmers Group, Inc., Farmers Insurance Exchange, or Farmers Insurance Company, Inc. ("Farmers") in

Plaintiffs now seek certification of a "Settlement Class,"[4] defined as:

(1) The "Nationwide Title VII Class," consisting of:
women employed by Farmers Group, Inc., Farmers Insurance Exchange, or Farmers Insurance Company, Inc. in Claims Litigation at any time from September 10, 2012 to the date of the Order Granting Preliminary Approval in one or more of the following positions: attorney, workers compensation attorney, associate trial attorney, associate workers compensation trial attorney, trial attorney, workers compensation trial attorney, senior trial attorney, senior workers compensation trial attorney, specialty trial attorney, specialty workers compensation trial attorney, supervising attorney, supervising workers compensation attorney, HEAT attorney, or managing attorney. The Nationwide Title VII Class excludes individuals working in Farmers Legal Business Administration (formerly known as "Claims Legal Services Management").

(2) The "California Class," consisting of:
women employed by Farmers Group, Inc., Farmers Insurance Exchange, or Farmers Insurance Company, Inc. in Claims Litigation in California at any time from April 29, 2011 to the date of the Order Granting Preliminary Approval in one or more of the following positions: attorney, workers compensation attorney, associate trial attorney, associate workers compensation trial attorney, trial attorney, workers compensation trial attorney, senior trial attorney, senior workers compensation trial attorney, specialty trial attorney, specialty workers compensation trial attorney, supervising attorney, supervising workers compensation attorney, HEAT attorney, or managing attorney. The California Class excludes individuals working in Farmers Legal Business Administration (formerly known as "Claims Legal Services Management").

Settlement, ¶¶ 1.24.1-1.24.2.

III. TERMS OF THE PROPOSED SETTLEMENT

The pertinent terms of the proposed Settlement, including the significant injunctive relief, are summarized below.

Claims Litigation at any time since June 8, 2012 in one or more of the following positions: attorney, workers compensation attorney, associate trial attorney, trial attorney, senior trial attorney, senior workers compensation attorney, specialty trial attorney, supervising attorney, supervising workers compensation attorney, HEAT attorney, or managing attorney (the "Class" or "Class Members"). *See* Order Granting Plaintiff's Motion for Conditional Certification and Authorizing Notice (Dkt. No. 78). The Class excludes individuals working in Farmers Legal Business Administration (formerly known as "Claims Legal Services Management")." *Id.*

[3] A list of the individuals who opted-in to the lawsuit to prosecute their EPA claims (the "Collective Action Plaintiffs") is attached as Exhibit B to the Settlement Agreement. The parties have jointly moved for the Court to reject the Notice of Consent to Join previously filed by Leslie "Les" Sachanowicz.

[4] The Nationwide Title VII Class and the California Class contain certain job titles that were absent from the definitions included in the First Amended Complaint and that were not included in the EPA conditional class definition: associate workers compensation trial attorney, workers compensation trial attorney, senior workers compensation trial attorney, and specialty workers compensation trial attorney. The parties have included these job titles in the Settlement Class definition to ensure the benefits of the Settlement inure to all female attorneys working in Farmers' Branch Legal Offices ("BLOs") during the applicable statute of limitations periods.

A. THE MONETARY BENEFIT TO THE CLASS

Pursuant to the parties' agreement, Farmers will create a settlement fund of $4,105,000 ("Settlement Fund") to pay (a) $4,000,000 to Class Members (a proposed distribution formula is described below), (b) $15,000 to the LWDA as civil penalties, and (c) service awards in the following amounts: $25,000 each to Lynne Coates and Keever Rhodes Muir; $10,000 each to Serena Neves, Celeste Stokes, and Karen Wasson; and $5,000 each to Sandra Carter and Angela Storey. Settlement, ¶¶ 5.1-5.2; 7.2-7.3.

Separate and apart from the Settlement Fund, Farmers will pay the employers' share of payroll taxes, and notice and settlement administration costs. Settlement, ¶¶ 5.3.3; 10.1. Farmers has also agreed to separately pay the fees and costs associated with hiring an independent Human Resources Consultant, and a Compliance Special Master. *Id.*, ¶¶ 3.4.4; 3.9.

This is a cash settlement does not require class members to submit claim forms. Class Members who do not opt out of the action and are successfully located will receive their settlement share automatically. Settlement, ¶ 8.1. Funds from uncashed checks will escheat to the state.[5] *Id.*, ¶ 8.4. None of the $4,105,000 that Farmers has committed to pay Class Members will revert to Defendant.

The parties have agreed to a distribution matrix that apportions the $4,000,000 among Class Members based on (a) whether they opted-in pursuant to the EPA (which provides for double damages and a three year statutory period reaching back to June 8, 2012 pursuant to the parties' Tolling Agreement [Dkt. No. 29]), (b) whether they are/were employed by Farmers in California (since the statutory period for the California Class' claims under California Business & Professions Code § 17200 reaches back to April 29, 2011, four years before the filing of the lawsuit), (c) the number of workweeks worked during the relevant statutory period(s), (d) the Salary Grade(s) they were in during the relevant statutory period(s), (e) the geographic area(s)

[5] The Settlement authorizes the administrator to contact those Class Members who do not cash their checks by telephone and also to employ a private investigator to locate any class member who has not cashed their check and whose award is greater than $200, with the cost of the private investigator deducted from the individual's award. Settlement, ¶ 8.3.

they were in during the relevant statutory period(s), and (f) whether they worked part-time (in which case their shares will be pro-rated).[6] Andrus Decl., ¶ 27; *see also* Settlement, ¶ 5.3.

Such a distribution provides a fair and reasonable way to compensate Class Members. The average individual settlement award will be $13,559. Andrus Decl., ¶ 28. However, there will be significant variation among class members, with many (136) receiving more than $15,000 and a few (26) receiving more than $25,000. *Id.* In Plaintiffs' Counsel's judgment, the monetary value of the Settlement to the Class is substantial and well within the range of reasonableness. *Id*, ¶ 32.; *see also* Declaration of Lori J. Costanzo ("Costanzo Decl."), ¶ 8, submitted herewith.

B. INJUNCTIVE RELIEF

Farmers has agreed to meaningful injunctive relief for a period of three years. The business practices changes are designed to increase the representation of women in all levels of Claims Litigation and to ensure more equitable treatment of the female attorneys in Farmers' ranks. Specifically, Farmers will:

- retain an independent Human Resources Consultant[7] to review its employment policies and procedures with respect to BLO attorney compensation, salary grade placement, performance ratings, and promotions, and to modify those policies, if appropriate. Settlement, ¶ 3.4.
- appoint an internal Compliance Official[8] to monitor compliance with the Settlement, and to provide annual diversity training to Farmers' Managing Attorneys and Division Attorneys, and report to Class Counsel on an annual basis. *Id.*, ¶ 3.5.
- refrain from prohibiting discussion about pay amongst attorney employees. *Id.*, ¶ 3.17.
- make available information on salary grade ranges to attorney employees. *Id.*, ¶ 3.12.
- state in job postings that "Farmers is an equal opportunity employer, committed to the strength of a diverse workforce." *Id.*, ¶ 3.13.
- internally publicize its anti-discrimination policy(ies) annually. *Id.*, ¶ 3.15.
- conduct annual statistical analyses to confirm that its compensation policies and procedures are not having a negative impact on female attorney employees, and to correct any adverse impact identified. *Id.*, ¶ 3.11.

[6] Fifty percent of the amount paid to each Class Member will be treated as wages subject to withholding and reported on Form W-2. Settlement, ¶ 8.6.1. The remaining 50% will be treated as interest and penalties not subject to withholding and reported on Form 1099. *Id.*
[7] The fees and costs of the independent Human Resources Consultant will be borne by Farmers.
[8] The fees and costs of the internal Compliance Official will be borne by Farmers.

- use its best efforts to increase the representation of women in Salary Grades 36-40 over the next three (3) years to certain agreed-upon benchmarks. *Id.*, ¶ 3.10; Settlement, Exh. C.[9]

- add the following to the "Essential Job Functions" section of the Job Profile for Managing Attorneys: "Actively supports diversity in the workforce." *Id.*, ¶ 3.14.

- maintain internal complaint policies at least as robust as those presently in place, including the ability to anonymously report violations. *Id.*, ¶ 3.16.

- jointly with Class Counsel seek judicial appointment of a Compliance Special Master[10] to provide oversight over the Settlement. *Id.*, ¶ 4.1.

Farmers' willingness to agree to these robust business practices reflects a real commitment to change. Though Farmers maintains it has not violated the law—and its defenses present Plaintiffs with formidable obstacles to recovery through trial of this matter—Farmers is to be commended for its willingness to "walk the talk" on gender equality.

C. SETTLEMENT ADMINISTRATION

The parties propose that, subject to the Court's approval, Rust Consulting (the "Class Administrator") administer the Settlement. Andrus Decl., ¶ 35 The costs of administering the Notice and the Settlement will be borne entirely by Farmers, separate and apart from the

[9]

Salary Grade	Year of the Agreement	Percentage of Women Among Those Hired and Promoted into the Salary Grade
SG 36	1	45%
	2	48%
	3	50%
SG 37	1	40%
	2	45%
	3	47%
SG 38	1	27%
	2	30%
	3	32%
SG 39	1	27%
	2	30%
	3	32%
SG 40	1	16%
	2	19%
	3	21%

[10] The parties jointly recommend Barry Goldstein be appointed Compliance Special Master. Andrus Decl., ¶ 36. The fees and costs of the Compliance Special Master will be borne by Farmers.

monetary relief to the Class. Settlement, ¶ 10.1. The Class Administrator will provide individualized Notice by first class mail to the last known home address for each Class Member identified in the Farmers' employment records. *Id.*, ¶¶ 9.1; 10.3.1-1.3.6. The Class Administrator will take all reasonable steps to locate each Class Member, including running the addresses through the National Change of Address database, as well as skip-tracing Notices returned as undeliverable and re-mailing the Notices to any updated address found. *Id.*, ¶¶ 10.3.3; 10.3.5. The Class Administrator will maintain a toll-free number for communication with Class Members. *Id.*, ¶ 10.2.1. During the Notice period, the Class Administrator will provide weekly updates regarding the numbers of opt outs and/or objections, and will provide final reports to Class Counsel and the Court at the conclusion of the Settlement administration. *Id.*, ¶¶ 10.3.7; 10.3.9. Upon final approval, the Class Administrator will be responsible for sending out checks to Class Members and for sending reminder postcards to Class Members who have not cashed their checks 30 days prior to the end of the 180-day check expiration period. *Id.*, ¶¶ 8.1; 8.2.

D. CLASS NOTICE; RIGHT TO OBJECT OR OPT-OUT

The proposed Notice sets out information about the case and explains the Settlement in plain terms. Settlement, Exhs. A; D. The Notice also provides the Class Member's individual estimated Settlement share, as well as the procedures that must be followed to object to the Settlement, or to opt out of the Rule 23(b)(3) portion of the Settlement. Settlement, Exh. A. Class members will be given 45 days to object or opt out. Settlement, ¶¶ 10.4.1; 10.5.1. Overall, the Notice gives Class Members a fair opportunity to participate in, object, or, where permissible, opt out of the Settlement such that it constitutes the best practicable notice to the class.

E. RELEASE OF CLAIMS

The release of claims closely hews to the facts and legal claims included in the First Amended Complaint. Specifically, the proposed Settlement provides that members of the Nationwide Title VII Class and the California Class who do not opt out of the action will release Farmers and other Released Parties defined in the Settlement from:

> all claims asserted in the First Amended Complaint under applicable state, local and federal law that were brought in the Litigation or that are based on the same facts and circumstances as the claims brought in the Litigation. The rights and

> claims released include: (i) claims for unequal pay, ***and*** (ii) claims for disparate treatment based on gender with respect to compensation, raises, job assignments, demotions, denial of promotion, performance ratings and termination, ***and*** (iii) claims for disparate impact discrimination based on gender with respect to compensation, raises, job assignments, demotions, denial of promotion, performance ratings and termination. The claims released arise under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e, *et seq.*, ***and*** for those who work or worked in California: the California Fair Employment and Housing Act, Cal. Gov't Code §12940, *et seq.*, the California Equal Pay Act, Cal. Lab. Code §1197.5, the California Fair Pay Act, Cal. Lab. Code §1197.5 (as of 2016), California's Business & Professions Code §17200 *et seq.* and the Private Attorneys General Act (PAGA), Cal. Lab. Code §§2698-2699, *et seq.* Only as to the claims released herein, each member of the Rule 23 Class waives all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, and does so understanding the significance of that waiver. Section 1542 provides:
>
> > A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.
>
> Those Rule 23 Class members who did not opt into the EPA collective action do not release their potential federal EPA claims, 29 U.S.C. §206(d), but 75% of the amount paid to the Rule 23 Class member who did not opt in shall be deemed an offset to any recovery under any EPA claim.

Settlement, ¶ 12.1.

The Collective Action EPA Plaintiffs will release Farmers and other Released Parties defined in the Settlement from:

> all gender-based discrimination claims involving alleged unequal, disparate or unfair compensation under state and federal law, including but not limited to the Equal Pay Act, 29 U.S.C. §206(d), that were brought in the Litigation or that are based on the same facts and circumstances as the claims brought in the Litigation. Collective Action Plaintiffs who cash their settlement checks shall be deemed to have accepted this Release. Only as to the claims released herein, each Collective Action Plaintiff waives all rights and benefits afforded by Section 1542 of the Civil Code of the State of California (quoted in Section 12.1), and does so understanding the significance of that waiver.

Settlement, ¶ 12.2.

F. SERVICE AWARDS

The proposed Settlement permits Plaintiffs to request approval from the Court for Class Representative Service Awards of $25,000 to Lynne Coates, $25,000 to Keever Rhodes Muir, and $10,000 each to Serena Neves, Celeste Stokes, and Karen Wasson. These payments are in addition to the other relief provided to Plaintiffs, and are meant to compensate their efforts and to acknowledge the substantial risk and potential harm to reputation that their bringing suit presents.

The difference in the amount of the awards relates to the fact that, of the named Plaintiffs, only Lynne Coates and Keever Rhodes Muir were deposed in this case. Andrus Decl., ¶ 37. Ms. Coates and Ms. Rhodes Muir also attended the mediation session on April 4, 2016. *Id.*

The proposed Settlement also provides for payments of $5,000 each to EPA opt in plaintiffs Sandra Carter and Angela Storey, subject to Court approval. Settlement, ¶ 7.3. Ms. Carter and Ms. Storey were both deposed in this case and provided early assistance to Counsel in developing the facts of the case. Andrus Decl., ¶ 38.

G. ATTORNEYS' FEES AND COSTS

Farmers agrees that Plaintiffs are entitled to reasonable attorneys' fees in the amount of $1,830,000, and costs up to $185,000, subject to the Court's approval. Settlement, ¶ 6.1. Attorneys' fees and costs will be paid separate and apart from any Class relief paid. *Id.* Thirty days prior to the deadline for Class Members to opt out or object to the Settlement, Plaintiffs will file a motion seeking approval of the requested attorneys' fees and costs, *id.*, and will make a full and appropriate showing in support of the motion. The motion will be noticed so that it will be heard concurrently with Plaintiffs' motion for final approval. Although the efforts undertaken by Class Counsel will be fully explored in their motion for attorneys' fees and costs, for the time being it suffices to say that Class Counsel's efforts have been significant. Andrus Decl., ¶¶ 13-18.

IV. ARGUMENT

A. STANDARD FOR REVIEW OF A CLASS ACTION SETTLEMENT

The law favors settlement, particularly in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See* H. Newberg & A. Conte, 4 *Newberg on Class Actions* (4th ed. 2002), § 11.41 (hereafter "Newberg"); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *see also Officers for Justice v. Civil Service Comm. of San Francisco*, 688 F.2d 615, 635 (9th Cir. 1982). As the Ninth Circuit noted in *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943 (9th Cir. 1976), "there is an overriding public interest in settling and quieting litigation." *Van Bronkhorst*, at 950. "This is particularly true in class action suits." *Id.*

Nevertheless, to make certain that the rights of absent parties are not unjustly compromised, the settlement of a class action requires court approval. Fed. R. Civ. P. 23(e). This process safeguards the procedural due process rights of class members and enables the Court to fulfill its role as the guardian of the class' interests. *See Newberg*, § 11:41 (and cases cited therein); Federal Judicial Center, *Manual for Complex Litigation* (4th ed. 2004) § 21.63. Approving a proposed class action settlement "involves a two-step process in which the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004).

At the preliminary approval stage, the court need only "'determine whether the proposed settlement is within the range of possible approval.'" *Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 479 (E.D. Cal. 2010) (quoting *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982)); *see Newberg*, § 11.41. In this context, "[t]here is an initial presumption of fairness when a proposed class settlement was negotiated at arm's length by counsel for the class." *Murillo v. Texas A&M Univ. Sys.*, 921 F. Supp. 443, 445 (S.D. Tex. 1996); *see also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (courts must give "proper deference to the private consensual decision of the parties").

Because settlement is the preferred means of resolving class actions, the court's review of a negotiated settlement must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon*, 150 F.3d at 1027. Accordingly, "[i]n reviewing [a] proposed settlement, the Court need not address whether the settlement is ideal or the best outcome, but only whether the settlement is fair, adequate, free from collusion and consistent with Plaintiffs' fiduciary obligations to the class." *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2008 WL 3385452, at *2 (N.D. Cal. Aug. 8, 2008). "[I]f the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the

range of possible approval, then the court should direct that the notice be given to the class members of a formal fairness hearing." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).

Where a Rule 23 class has not yet been certified, the court first "make[s] a preliminary determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b)." *In re Wireless Facilities*, 253 F.R.D. 630, 634 (S.D. Cal. 2008); *accord In re VeriFone Holdings, Inc. Sec. Litig.*, No. C-07-6140 EMC, 2013 U.S. Dist. LEXIS 126988, *5 (N.D. Cal. Sept. 5, 2013) ("When a settlement is reached prior to class certification, courts peruse the proposed compromise to ratify both the propriety of the certification and the fairness of the settlement.") (internal quotation omitted). The Court then determines whether the class settlement should be preliminarily approved.

"To determine whether preliminary approval is appropriate, the settlement need only be potentially fair, as the Court will make a final determination of its adequacy at the hearing on final approval, after such time as any party has had a chance to object and/or opt out." *La Parne v. Monex Deposit Co.*, No. SACV 08-0302 DOC, 2010 WL 4916606, at *2 (C.D. Cal. Nov. 29, 2010). "The court then approves the form and manner of notice and sets a final fairness hearing, where it will make a final determination on the fairness of the class settlement." *In re Wireless Facilities*, 253 F.R.D. at 634.

B. THE COURT SHOULD PRELIMINARILY CERTIFY THE SETTLEMENT CLASS FOR SETTLEMENT PURPOSES.

Plaintiffs propose two categories in the Settlement Class: a "Nationwide Title VII Class" composed of female attorneys who work or have worked in Claims Litigation for Farmers nationwide during the class period (and who assert Title VII claims), and a "California Class" composed of female attorneys who work or have worked in Claims Litigation for Farmers at California BLOs during the class period (and who assert various California claims in addition to Title VII claims).

1. The Requirements of Rule 23(a) are Satisfied.

a) The Class is Sufficiently Numerous.

To satisfy Rule 23(a)(1)'s numerosity requirement, Plaintiffs must show that "the class is so numerous that joinder of all members is impracticable." Here, Plaintiffs seek to represent nearly 300 women nationwide who worked in Claims Litigation since September 20, 2012. Plaintiffs also seek to represent approximately 118 women in California who worked in Claims Litigation since April 29, 2011. These Settlement Class is sufficiently numerous to satisfy Rule 23(a)(1). *See Hernandez v. Cty. Of Monterey*, 305 F.R.D. 132, 153 (N.D. Cal. 2015) ("A class or subclass with more than 40 members raises a presumption of impracticability based on numbers alone.").

b) Questions of Law or Fact are Common to the Class.

Commonality is construed permissively, and just one common question will satisfy Rule 23(a)(2). *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014). "All questions of fact and law need not be common to satisfy the rule. The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." *Hanlon*, 150 F.3d at 1019 (9th Cir. 1998).

Plaintiffs allege that Farmers discriminated against a class of female attorney employees with respect to pay and promotions. Plaintiffs maintain that numerous common questions of law arise under these claims including, *inter alia*: (1) whether Defendant has engaged in unlawful disparate impact gender discrimination; (2) whether the failure to institute adequate standards, quality controls, implementation metrics, or oversight in assignment, compensation, evaluation, development, promotion and termination systems is illegal; (3) whether the lack of transparency and of opportunities for redress in those systems violates the law; and (4) whether senior management and HR's failure to prevent, investigate, or properly respond to evidence and complaints of discrimination in the workplace is impermissible.

Plaintiffs also maintain that numerous common questions of fact arise under these claims including, *inter alia*, whether Farmers has: (1) systematically, intentionally or knowingly placed female attorney employees in job titles or classifications lower than similarly-situated male

attorney employees; (2) systematically, intentionally, or knowingly compensated female attorney employees less than similarly-situated male attorney employees; (3) systematically, intentionally or knowingly precluded or delayed the promotion of female attorney employees into higher levels positions traditionally held by male attorney employees; (4) systematically, intentionally or knowingly subjected female attorney employees to inaccurate, inequitable or discriminatorily lowered performance evaluations; (5) systematically, intentionally, knowingly, or deliberately showed an indifference to evidence of discrimination in the workplace or otherwise minimized, ignored, mishandled, or covered up evidence of or complaints about gender discrimination and harassment in the workplace; (6) failed to adequately or meaningfully train, coach or discipline senior management on equal employment opportunity principles and compliance; and/or (7) carried out demotions and/or job reassignments in a discriminatory manner based on gender.

These common legal and factual issues satisfy Rule 23(a)(2). *See McReynolds v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 672 F.3d 482, 488 (7th Cir. 2012) (reversing denial of Title VII class certification where the plaintiffs pointed to two company-wide policies to establish commonality); *Ellis v. Costco Wholesale Corp.*, 285 F.R.D. 492, 506-533 (N.D. Cal. 2012) (finding commonality and certifying Rule 23 class where plaintiffs alleged their employer engaged in a pattern or practice of gender discrimination in the promotion of female employees to management positions); *Velez v. Novartis Pharm. Corp*., No. 04 CIV 09194 CM, 2010 WL 4877852, at *9 (S.D.N.Y. Nov. 30, 2010) (commonality established where "[a]ll Class Members bring the common claim that Novartis discriminated against female sales employees with respect to wages, promotion and pregnancy"); *Bellifemine v. Sanofi-Aventis U.S. LLC*, No. 07 CIV. 2207 JGK, 2010 WL 3119374, at *1 (S.D.N.Y. Aug. 6, 2010) ("The commonality requirement is met because the Named Plaintiffs' claims involve allegations of common pay and promotion claims arising from the same alleged policies and practices of the company.").

c) The Class Representatives' Claims are Typical of the Class.

In assessing typicality under Rule 23(a)(3), courts consider "'whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of

conduct.'" *Villalpando v. Exel Direct Inc.*, 303 F.R.D. 588, 606 (N.D. Cal. 2014) (quoting *Hanlon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)). Typicality is generally satisfied if the named plaintiff is a part of the class, and has suffered the same injury as other class members. *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 156 (1982). Here, the claims of the Class and the Class Representatives all arise from the same alleged course of conduct: Farmers' alleged systemic discriminatory policies and systems resulting in female attorney employees being denied equal pay and promotions to similar male attorney employees. Further, there are no defenses to these pay and promotion claims that are unique to the Class Representatives. Accordingly, Plaintiffs maintain that the Class Representatives' claims are typical of the class. *See Ellis*, 285 F.R.D. at 533-535; *Velez*, 2010 WL 4877852, at *9 (plaintiffs found to be typical where they alleged that they and all class members were discriminated against on the basis of their gender); *Hnot v. Willis Group Holdings Ltd.*, 228 F.R.D. 476 (S.D.N.Y. 2005) (typicality satisfied where plaintiffs "allege suffering from similar discriminatory practices as the other class members, at the hands of the same group of individuals, and in the same manner, by being paid less than similarly situated men, and by being denied or not being considered for promotions").

d) The Class Representatives and Their Counsel Will Fairly and Adequately Protect the Class' Interests.

Rule 23(a)(4) requires that the Class Representatives "fairly and adequately protect the interests of the class." Rule 23(g) requires the Court to consider Class Counsel's prior experience, knowledge and ability to properly represent the Class. Throughout the litigation, the Class Representatives—who hail from five different BLOs in three states—vigorously represented their fellow female employees. Andrus Decl., ¶ 37. They have each spent time assisting Plaintiffs' Counsel and responding to written discovery. *Id.* Additionally, Plaintiffs Coates and Rhodes Muir spent considerable time preparing for their depositions and being deposed, and also assisted with preparation for mediation and attended the mediation session. *Id.*, ¶ 38. Only after all material terms of class relief were negotiated, Plaintiff Coates also resolved her individual claims against Defendant. *Id.*, ¶ 29 and Exh. C.

Plaintiffs' Counsel, and particularly the partners at Andrus Anderson LLP, are highly experienced and well-versed in class action litigation and gender discrimination litigation. Andrus Decl., ¶¶ 4-12; Costanzo Decl., ¶¶ 2-3; *see also Bolton v. U.S. Nursing Corp.*, No. C 12-04466 LB, 2013 WL 2456564, at *4 (N.D. Cal. Jun. 6, 2013) (provisionally finding that Lori E. Andrus has "sufficient experience and expertise in prosecuting class action cases" to be appointed class counsel for settlement purposes). Accordingly, Rules 23(a)(4) and 23(g) are satisfied.

2. The Requirements of Rule 23(b) are Satisfied.

a) Farmers Acted On Grounds That Apply Generally to the Class.

Rule 23(b)(2) allows class treatment when "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." In this case, Plaintiffs maintain that Farmers uses uniform evaluation, pay and promotions policies and practices for all of those in the Class. Because this is the case, the injunctive relief negotiated by the parties to address those policies and practices will "provide relief to each member of the class." *Parsons v. Ryan*, 754 F.3d 657, 688 (9th Cir. 2014). Thus, the injunctive relief portion of the Settlement qualifies for certification under Rule 23(b)(2). This aspect of the Class is mandatory; Class Members cannot opt out, although they can object to its terms. *Wal-Mart v. Dukes*, 131 S.Ct. 2541, 2558 (2011) ("Rule [23] provides no opportunity for (b)(1) or (b)(2) class members to opt out").

b) Common Issues Predominate.

"In evaluating whether common issues predominate [for purposes of a damages class under Rule 23(b)(3)], the operative question is whether a putative class is 'sufficiently cohesive' to merit representative adjudication." *Ellis*, 285 F.R.D. at 537 (N.D. Cal. 2012) (quoting *Amchem Prods. v. Windsor*, 521 U.S. 591, 623 (1997)). "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." *Hanlon*, 150 F.3d at 1022 (quotation omitted).

Here, "[r]esolution of Plaintiffs' challenge to [alleged discriminatory employment] practices will resolve significant issues with respect to the class as a whole, and this dwarfs individualized issues as to particular employment decisions." *Ellis*, 285 F.R.D. at 538; *see also, e.g. In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 571 F.3d 953, 958 (9th Cir. 2009) ("[U]niform corporate policies will often bear heavily on questions of predominance and superiority"); *Sullivan v. Kelly Servs., Inc.*, 268 F.R.D. 356, 364 (N.D. Cal. 2010) ("[U]niform corporate practices and policies that cumulatively impact the class in a particular manner can satisfy the predominance requirement."); *Bellifemine*, 2010 WL 3119374, at *2 (holding "the Named Plaintiffs' claims meet [Rule 23(b)(3)] because they are unified by common factual allegations that Sanofi-Aventis allegedly disfavored female sales force employees compared to males in terms of compensation and promotion").

The only potential individual issues concern Class Member damages, which do not undermine or defeat predominance. *See Jimenez v. Allstate Ins. Co.*, 765 F.3d at 1168; *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 513 (9th Cir. 2013) (holding it was an abuse of discretion to deny certification because the damage inquiry would be highly individualized).

c) A Class Action is Superior to Alternative Methods of Adjudicating the Claims.

In considering whether a class action is the superior approach for resolving this controversy:

> [C]ourts will [first] look at whether or not the class members have interests in individually controlling the prosecution or defense of separate actions; second, the courts consider the extent and nature of any litigation concerning the controversy already begun by or against class members; third, the courts assess the desirability or undesirability of concentrating the litigation of the claims in the particular forum; finally, the courts consider the likely difficulties in managing a class action.

Ching v. Siemens Indus., Inc., No. C 11-4838 MEJ, 2013 WL 6200190, at *5 (N.D. Cal. Nov. 27, 2013).

Here, class treatment is superior to other methods of adjudication. Plaintiffs have already engaged in extensive discovery to support the Class' claims. Requiring each individual Class Member to conduct cumulative discovery and separately litigate her own action would be highly

inefficient and wasteful of party and judicial resources. There is no reason for this litigation to not be concentrated in this jurisdiction, nor is there any reason to believe that Class Members have significant interest in controlling the prosecution of their claims. Further, "[g]iven the class's common questions affecting the class as a whole at the liability stages of this matter, and given class members' ability to opt out of the monetary relief class or to pursue their claims for relief in [this action], class members have a diminished interest in individually controlling the common portions of this action." *Ellis*, 285 F.R.D. at 539–540.[11]

C. THE COURT SHOULD PRELIMINARILY APPROVE THE PROPOSED CLASS SETTLEMENT.

The proposed Settlement warrants preliminary approval under the liberal standards summarized above. The Settlement is not only a fair, reasonable and adequate resolution of the claims asserted, it is a favorable result for Class Members.

1. The Settlement Is the Product of Arm's-Length, Informed Negotiations.

The proposed Settlement was reached following lengthy negotiations presided over by Barry Goldstein, an experienced mediator who is skilled in the prosecution of, and resolution of complex gender discrimination class actions. Andrus Decl., ¶ 24. The Settlement, therefore, is the product of arm's-length negotiations. *Carter v. Anderson Merchandisers, LP*, 2010 WL 1946784, at *7 (C.D. Cal. May 11, 2010) ("The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive."). Even prior to the mediation session, the parties engaged in extensive negotiations regarding the injunctive relief that would be necessary to settle the case. Andrus Decl., ¶ 24.

The negotiations were also well informed. Both parties were represented by experienced counsel. Plaintiffs' Counsel collectively have many years of experience and are experts in gender

[11] The Court need not reach the issue of whether the case, if tried, would present manageability issues. *See, e.g. Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 610 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, see Fed. R. Civ. P. 23(b)(3)(D), for the proposal is that there be no trial.").

discrimination and class action litigation. Andrus Decl., ¶¶ 4-18; Costanzo Decl., ¶¶ 2-3. The same is true of defense counsel. Prior to the mediation, Plaintiffs obtained and analyzed hundreds of thousands of pages of documents produced by Defendant, including personnel data, compensation data, and other policy documents, and Farmers provided Plaintiffs with a comprehensive set of studies showing the statistical evidence on which it would rely to defeat class certification and, if the case were certified, to present at trial in an effort to show that no pattern of discrimination in pay or promotions exists. Andrus Decl., ¶ 14. Plaintiffs' Counsel vigorously investigated the claims asserted against Farmers by first collecting information about its practices from the Plaintiffs and numerous Opt-in Plaintiffs and Class Members. *Id.*, ¶¶ 14, 36. Through discovery, Plaintiffs' Counsel received extensive information from Defendant concerning the compensation paid to Class Members as well as male employees. *Id.*, ¶ 14. Plaintiffs' Counsel and their expert analyzed this data to assess the claims and calculate damages. *Id.*, ¶ 19. Plaintiffs took the deposition of six corporate deponents. *Id.*, ¶ 15. Moreover, Plaintiffs Coates and Rhodes Muir, as well as opt-in Plaintiffs Carter and Storey, were all deposed. *Id.*, ¶¶ 37-38. As a result of months of these intense litigation activities, Plaintiffs had a solid background to assess the strengths and weaknesses of the claims and the benefits of the proposed Settlement under the circumstances of this case. *Id.*, ¶ 30.

In sum, all counsel were sufficiently informed to evaluate the costs and benefits of proceeding with, as opposed to settling, this case. The decision to settle the case, and the judgment that the proposed Settlement is in the best interests of the Class, therefore, are important factors for the Court to consider. *Williams v. Vukovich*, 720 F.2d 909, 922-23 (6th Cir. 1983) ("The court should defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs."); *accord In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (holding "[t]he recommendations of plaintiffs' counsel should be given a presumption of reasonableness."); *Hightower v. JPMorgan Chase Bank, N.A.*, No. CV111802PSGPLAX, 2015 WL 9664959, at *8 (C.D. Cal. Aug. 4, 2015) (holding "[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation.").

2. There Are No Indicia of Fraud or Collusion.

Though the proposed Settlement provides that Farmers agrees that Plaintiffs are entitled to an award of reasonable attorneys' fees, and that any such award would be no greater than $1,830,000 (plus $185,000 for costs), the amount was negotiated separately, only ***after*** the class monetary and injunctive relief was well defined. Andrus Decl., ¶ 26. As such, there was no conflict of interest between Class Counsel and Class Members. *Roberts v. Electrolux Home Products, Inc.*, 2014 WL 4568632, at *16 (C.D. Cal., Sept. 11, 2014) (finding "no collusion in negotiating the attorneys' fees in this matter and those fees were negotiated *separate and apart* from the Class Settlement") (emphasis in original).

3. The Proposed Notice and Notice Plan Are Sufficient.

Pursuant to Rule 23(e), the Court must "direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). The notice provided members of a class certified under Rule 23(b)(3) must be "the best notice practicable under the circumstances" and must "clearly and concisely state in plain, easily understood language" the nature of the action, the class definition, a general statement of the class claims and issues, that a class member may enter an appearance through counsel if desired, the right and manner of exclusion or objection, and the binding effect of class judgment. Fed. R. Civ. P. 23(c)(2)(B).[12] A notice "is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 962 (9th Cir. 2009) (quoting *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)); *Ontiveros v. Zamora*, 303 F.R.D. 356, 367 (E.D. Cal. 2014) (notice sufficient where it identified "the options available to putative class members—do nothing, object, or opt out—and comprehensively explained the nature and mechanics of the settlement in a separate document").

[12] Notice is not required at all under Rule 23(b)(2). *Dukes*, 131 S.Ct. 2541 at 2558. However, in this instance, members of the Class will receive Notice and be permitted to register any objection they might have to the injunctive relief portion of the Settlement.

In this case, the Notice agreed to as part of the proposed Settlement satisfies this standard. Settlement, Exhs. A; D. The Notice is written in simple, direct, and comprehensive terms, and provides: (1) a description of the claims in the case; (2) a detailed description of the terms of the proposed Settlement; (3) disclosure of the amounts that will be requested for Service Awards and for attorneys' fees and costs; (4) a detailed description of how individual Settlement shares will be calculated; (5) instructions on how to object to or opt out of the Settlement; (6) a summary of the release provisions in the Settlement, including a direct quote from the Settlement regarding the "Released Claims"; and (7) instructions as to how to obtain additional information regarding the Settlement. This is more than adequate, particularly given that the Settlement requires that the Notice be sent to class members via first class mail. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974) (notice mailed to each member of a settlement class "who can be identified through reasonable effort" constitutes reasonable notice).

The forty-five days that Class Members have to object or opt out is also more than adequate. *In re Nat'l Football League Players' Concussion Injury Litig.*, 301 F.R.D. 191, 203 (E.D. Pa. 2014) *petition dismissed sub nom. In re Nat. Football League Players Concussion Injury Litig.*, 775 F.3d 570 (3d Cir. 2014) ("It is well-settled that between 30 and 60 days is sufficient to allow class members to make their decisions to accept the settlement, object, or exclude themselves."); *accord Charron v. Pinnacle Grp. N.Y. LLC*, 874 F. Supp. 2d 179, 193 (S.D.N.Y. 2012), *aff'd sub nom. Charron v. Wiener*, 731 F.3d 241 (2d Cir. 2013) ("Courts have held that opt out periods of less than 45 days satisfy due process, even where unsophisticated class members must make decisions regarding complex issues of law or fact.").

In sum, the Notice and Notice plan provides the best notice practicable under the circumstances and will give Class Members a full and fair opportunity to consider the Settlement and to make an informed decision on whether to participate, to object, or to opt out.

4. <u>The Settlement Is Fair and Reasonable Considering the Benefits Conferred, the Value of the Case, and Significant Litigation Risks.</u>

The proposed Settlement involves a substantial sum of money, that, when distributed, will confer meaningful monetary benefits on Class Members.

One measure of the reasonableness of the Settlement Fund is a comparison with the total estimated value of the case. In preparing for mediation, Plaintiffs estimated Farmers' class-wide exposure to be: $8,177,365 for Title VII damages; $3,098,489 for the EPA damages;[13] and $1,450,000 for civil penalties pursuant to the California Private Attorney General Act of 2004, California Labor Code § 2698 *et seq*. Andrus Decl., ¶ 19. These estimates were based on a statistical analysis of the payroll records that omitted Salary Grade as a control.[14] *Id*. When Salary Grades are added to the regression analysis, Plaintiffs estimated Farmers exposure to be $3,675,125 for Title VII damages and $1,234,116 for the EPA damages. *Id*. By contrast, Farmers' expert contended that there was ***no*** statistically significant disparity in pay in any salary grade, a dispute of fact that creates the risk of a finding adverse to Plaintiffs' claims. *Id.*, ¶ 20. Whichever range of total exposure one uses, Plaintiffs' Counsel also had to discount the value of the claims given the risks inherent in proceeding with litigation. For instance, Farmers contended that the Lilly Ledbetter amendments to Title VII do not provide for a two-year back pay period for discrete acts of discrimination—a defense victory on this issue would also have significantly shortened the available recovery period. *Id.*, ¶ 21.

The proposed Settlement, with a cash outlay of $4,105,000 (in addition to other costly provisions), is within judgment value, had Plaintiffs litigated the claims through trial and prevailed on their claims. Andrus Decl., ¶ 23. This is a fine result, and better than many a settlement that has satisfied courts in this district and circuit. *See, e.g.*, *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved."); *White v. Experian Info. Solutions, Inc.*, 803 F. Supp. 2d 1086, 1098 (C.D. Cal. 2011) (rejecting contention that settlement is not fair

[13] The Equal Pay Act damages overlap with the California Fair Pay Act, and double recovery is not permitted. Cal. Lab. Code § 1197.5(i).

[14] Plaintiffs maintain that female attorneys at Farmers are unfairly placed in lower salary grades, and that they are not promoted as quickly as the male attorneys. Andrus Decl., ¶ 19. As such, controlling for Salary Grades masks the bias present in Salary Grade placement. *Id*. Unsurprisingly, Farmers disagrees with Plaintiffs' approach. *Id.*, ¶ 20. The outcome of this dispute would have a significant impact on the potential overall recovery available to Plaintiffs at trial.

and reasonable even though it was asserted that settlement amounted to a 99% discount over full value of claims); *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988), *aff'd sub nom. Behrens v. Wometco Enters.*, 899 F.2d 21 (11th Cir. 1990) ("A settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery.").

It is significant that the Settlement Fund does not revert to Farmers, and that it provides substantial and immediate benefits to Class Members without a claims process. *See White*, *supra*, at 1098; *see also Kakani v. Oracle Corp.*, No. C 06-06493 WHA, 2007 WL 1793774, at *5-6 (N.D. Cal. Jun. 19, 2007); Barbara J. Rothstein & Thomas R. Willging, *Managing Class Action Litigation: A Pocket Guide for Judges*, FEDERAL JUDICIAL CENTER, 13 (2005), http://www.fjc.gov/public/pdf.nsf/lookup/classgde.pdf/$file/classgde.pdf (non-reversionary provision is an indicator that agreement has been honestly and fairly negotiated).

Importantly, the proposed Settlement also includes significant changes in Farmers' business practices that will benefit its female attorney employees. *See* Section III.B, *infra*. These commitments create real and lasting change in Farmers' Claims Litigation organization, materially benefitting current and future female attorney employees, and directly addressing the gravamen of Plaintiffs' complaint—unequal pay.

In sum, Plaintiffs and their Counsel concluded that the proposed Settlement, which assures Class Members immediate compensation and long-term improvements in their workplace, is in the Class' best interest. Andrus Decl., ¶¶ 31-33; Costanzo Decl., ¶ 6.

5. The Proposed Service Awards Are Reasonable.

Courts award class representative service awards to advance public policy by encouraging individuals to come forward and perform their civic duty in protecting the rights of the class and also to compensate class representatives for their time, effort, and inconvenience. *See, e.g.*, *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). It has long been established that courts have discretion to approve such service or "incentive" awards to representative plaintiffs in class actions as compensation for their having

expended time and effort for the benefit of others and for having undertaken the risks inherent in serving as a named plaintiff. In evaluating the reasonableness of a requested award, the Court should consider factors such as "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefited from those actions, … [and] the amount of time and effort the plaintiff expended in pursuing the litigation." *Staton*, 327 F.3d at 977. The Court should also consider whether the requested award will result in disproportionate benefits to the plaintiff vis-à-vis the other class members. *Id*.

In the present case, the Class Representatives contributed substantially to the prosecution of this case. Andrus Decl., ¶¶ 36-38. They consulted with Counsel on countless occasions and Plaintiffs Coates and Rhodes Muir each submitted to a deposition. *Id*. Plaintiffs also made the decision to act as advocates on behalf of hundreds of other attorneys, and spearheaded a settlement worth well over the $4,000,000 going directly to Class Members, all the while taking the risk of the litigation solely on themselves. *Id*.

Under these circumstances, an award of $25,000 for each of Plaintiffs Coates and Rhodes Muir, and $10,000 for each of Plaintiffs Neves, Stokes, and Wasson is well within the range of reasonableness, particularly given the average benefit conferred on each Class Member. Awards of $5,000 for each of EPA opt-in plaintiffs Sandra Carter and Angela Storey, both of who submitted to deposition and assisted Class Counsel, are also appropriate. *See Taylor v. Fedex Freight, Inc.*, No. 5:10-cv-02118 LHK, slip op. at 5 (N.D. Cal. Jan. 27, 2012) (order of dismissal with prejudice and final judgment) (approving incentive awards ranging from $10,000 to $25,000); *see also Fulford v. Logitech, Inc.*, No. 08-cv-02041 MMC, 2010 WL 807448, at *3 n.1 (N.D. Cal. March 5, 2010) (collecting cases approving awards ranging from $5,000 to $40,000).

D. THE COURT SHOULD ALSO PRELIMINARILY APPROVE THE SETTLEMENT UNDER THE FEDERAL EQUAL PAY ACT.

An opt-in settlement under the EPA does not involve the rights of absent class members and is not subject to Rule 23(e). Nonetheless, courts review the settlement to ensure that it is fair and reasonable. *See, e.g.*, 29 U.S.C. §§ 216(b), 256; *Lee v. The Timberland Co.*, No. C 07-2367 JF, 2008 WL 2492295 (N.D. Cal. Jun. 19, 2008); *Willix v. Healthfirst, Inc.*, No. 07 CIV. 1143

ENV RER, 2011 WL 754862, at *2 (E.D.N.Y. Feb. 18, 2011); *Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 471 (E.D. Cal. 2010) ("Even when the parties settle, the court must make some final certification finding before approving a collective action settlement."); *Gamble v. Boyd Gaming Corp.*, No. 2:13-CV-01009-JCM, 2015 WL 4874276, at *4 (D. Nev. Aug. 13, 2015).

"The standard for approval of an FLSA settlement is lower than for a Rule 23 settlement because an FLSA settlement does not implicate the same due process concerns as does a Rule 23 settlement."[15] *Willix*, 2011 WL 754862, at *5. "Typically, courts regard the adversarial nature of a litigated FLSA case to be an adequate indicator of the fairness of the settlement." *Id. See also Gamble*, 2015 WL 4874276, at *4 n.2 ("District courts are not constrained by the mandates for proposed settlement of Rule 23 class actions"). As set forth in cases such as these, an EPA settlement need only reflect a reasonable compromise of contested litigation involving a bona fide dispute between the parties.

Here, as the proposed Settlement meets the stricter Rule 23(e) standard, it also easily passes muster under the FLSA, as incorporated by the EPA. First, the parties plainly have bona fide disputes over Plaintiffs' EPA claims covering both liability and, absent settlement, whether final certification of a collective action class under the stage-two decertification standard is appropriate. *See, e.g. Altier v. Worley Catastrophe Response, LLC*, No. CIV.A. 11-241, 2012 WL 161824, at *14 (E.D. La. Jan. 18, 2012); *Lee v. The Timberland Co.*, No. C 07-2367 JF, 2008 WL 2492295, at *2 (N.D. Cal. Jun. 19, 2008). Second, under the circumstances, Plaintiffs maintain that there is little question that the Settlement represents a fair and reasonable compromise of contested claims. *See, e.g., Campanelli v. Hershey Co.*, No. C 08-1862 BZ, 2011 WL 3583597, at *1 (N.D. Cal. May 4, 2011) ("substantial" payments achieved through arm's length negotiations); *Reyes v. Buddha-Bar NYC*, No. 08 CIV. 02494(DF), 2009 WL 5841177, at *3 (S.D.N.Y. May 28, 2009); *Willix*, 2011 WL 754862, at *5. Moreover, unlike many cases, since each EPA Collective Action Plaintiff is also a Rule 23 Class Member, each employee will receive (i) a notice which

[15] The EPA incorporates section 216(b) of the Federal Fair Labor Standards Act ("FLSA"), which provides that "similarly situated" employees may join the collective action. Because of this incorporation, precedent under the FLSA is relevant to settlement of an EPA collective class suit like the one involved here.

meets the more stringent requirements of Rule 23 and due process and (ii) an opportunity to weigh in on the Settlement by appearing at the final fairness hearing.

V. PROPOSED SCHEDULE FOR REMAINING PROCEDURES

Plaintiffs propose the following schedule for final approval:

Preliminary Approval	June 23, 2016 at 1:30 p.m.
Last day for Defendant to provide contact information to Class Administrator	5 business days after Preliminary Approval
Last day to mail notice	10 days after Farmers provides Class list
Last day for Plaintiff to file motion for attorneys' fees and costs	30 days prior to objection/opt-out deadline
Last day for Class members to submit objections or opt-out requests	45 days after mailing of Notice
Class Counsel files any objections with the Court	3 days after end of opt out period
Last day for final report from Settlement Administrator re: notice	10 days of last day to object/opt out
Class Counsel files motion for final approval	14 days prior to Final Approval Hearing
Written responses to objections to be filed with the Court	7 days prior to Final Approval Hearing
Class Administrator provides statement re: costs of administration and declaration of due diligence; Class Counsel files with the Court	5 days prior to Final Approval Hearing
Final Approval Hearing	September 29, 2016 at 1:30 p.m., or as soon thereafter as is convenient for the Court

VI. CONCLUSION

For the foregoing reasons, the Court should grant preliminary approval of the proposed Settlement, conditionally certify the proposed Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure, appoint the proposed Class Administrator, Class Representatives, and Class Counsel, approve and order distribution of the proposed Class Notice, and schedule a Final Approval Hearing.

Dated: 4/13/16

Respectfully submitted,

ANDRUS ANDERSON LLP

By: _____
Lori E. Andrus

Attorneys for Plaintiffs, the Classes, and the Aggrieved Employees