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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

11 LAUREN CAMPBELL, Individually, and on  
12 Behalf of Other Members of the Public  
13 Similarly Situated,

Plaintiff,

14 vs.

15 FIRST INVESTORS CORPORATION,  
16 FIRST INVESTORS LIFE INSURANCE  
17 COMPANY, and DOES 1-10, INCLUSIVE,

Defendants.

CASE NO. 11-CV-0548 BEN (WMe)

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

[Docket No. 38]

18  
19 Plaintiff Lauren Campbell was a licensed registered representative and licensed insurance agent  
20 affiliated with the San Diego office of Defendants First Investors Corporation and First Investors Life  
21 Insurance Company (collectively, "First Investors"). In addition to San Diego, First Investors operates  
22 offices in Pasadena, Walnut Creek, and San Jose, California. Plaintiff alleges that First Investors  
23 misclassified its California registered representatives as independent contractors, and therefore failed  
24 to comply with the California Labor Code.

25 On February 18, 2011, Plaintiff initiated this putative class action in San Diego County  
26 Superior Court. The Complaint asserts nine causes of action: (1) failure to pay overtime wages; (2)  
27 failure to pay minimum wages; (3) failure to pay wages due; (4) failure to provide itemized wage  
28 statements; (5) failure to provide meal periods; (6) failure to provide rest periods; (7) failure to

1 reimburse employee expenses; (8) unlawful deductions from wages; and (9) unfair competition. On  
2 March 18, 2011, Defendants removed the action to this Court.

3 Presently before the Court is Plaintiff's Unopposed Motion for Preliminary Approval of Class  
4 Action Settlement.

## 5 DISCUSSION

6 Once parties reach a settlement agreement prior to class certification, the court must "peruse  
7 the proposed compromise to ratify both the propriety of the certification and the fairness of the  
8 settlement." *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). The court must (1) assess  
9 whether a class exists, and (2) determine whether the proposed settlement is "fundamentally fair,  
10 adequate, and reasonable." *Id.* (internal quotation marks omitted). Here, the Court will first examine  
11 the propriety of class certification, then the fairness of the settlement agreement, followed by the  
12 questions of class counsel and class notice.

### 13 I. CLASS CERTIFICATION

14 A plaintiff seeking a Rule 23(b)(3) class certification must: (1) satisfy the prerequisites of Rule  
15 23(a); and (2) satisfy the requirements of Rule 23(b)(3). Here, the parties seek provisional certification  
16 for settlement purposes only of the following class: individuals who were affiliated with Defendants  
17 (or any one Defendant) as a licensed registered representative or licensed insurance agent at any of  
18 Defendants' four California offices during the "Covered Period" (from February 18, 2007, through the  
19 date of this Order preliminary approving the settlement). (Dente Decl., Exh. A [Settl.] ¶ 5.)

#### 20 A. Rule 23(a) Requirements

21 Rule 23(a) establishes four prerequisites for class action litigation: (1) numerosity; (2)  
22 commonality; (3) typicality; and (4) adequacy of representation. FED. R. CIV. P. 23(a); *see also Staton*,  
23 327 F.3d at 953. The Court will examine each prerequisite in turn.

##### 24 1. Numerosity

25 The numerosity prerequisite is met if "the class is so numerous that joinder of all members is  
26 impracticable." FED. R. CIV. P. 23(a)(1). In the present case, there are approximately 300 class  
27 members covered by the Settlement. (Dente Decl., Exh. A [Settl.] ¶ 5.) They are too numerous to be  
28

1 joined as plaintiffs in this action. Accordingly, the numerosity requirement is met.

2 **2. Commonality**

3 The commonality requirement is met if “there are questions of law or fact common to the  
4 class.” FED. R. CIV. P. 23(a)(2). The commonality requirement is construed “permissively.” *Hanlon*  
5 *v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). Not all questions of law and fact need to be  
6 common, but rather “[t]he existence of shared legal issues with divergent factual predicates is  
7 sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class.”  
8 *Id.* In addition, commonality requires that class members “have suffered the same injury.” *Wal-Mart*  
9 *Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011).

10 Here, the class members’ claims all share the same issue: whether they were inappropriately  
11 classified as independent contractors and, as a result, not paid in accordance with the California Labor  
12 Code. Accordingly, the commonality requirement is met.

13 **3. Typicality**

14 Typicality requires that “the claims or defenses of the representative parties [be] typical of the  
15 claims or defenses of the class.” FED. R. CIV. P. 23(a)(3). The Ninth Circuit interprets typicality  
16 permissively. *Hanlon*, 150 F.3d at 1020. The representative claims are “typical” if they are  
17 “reasonably co-extensive with those of absent class members,” though they “need not be substantially  
18 identical.” *Id.*; *see also Cal. Rural Legal Assistance, Inc. v. Legal Servs. Corp.*, 917 F.2d 1171, 1175  
19 (9th Cir. 1990). The named plaintiffs must be members of the class they seek to represent and they  
20 must “possess the same interest and suffer the same injury” as putative class members. *Gen. Tel. Co.*  
21 *of Sw. v. Falcon*, 457 U.S. 147, 156 (1982) (internal quotation marks omitted). It is sufficient for the  
22 plaintiff’s claims to “arise from the same remedial and legal theories” as the class claims. *Arnold v.*  
23 *United Artists Theatre Cir., Inc.*, 158 F.R.D. 439, 449 (N.D. Cal. 1994).

24 Here, Plaintiff’s claims arise from the same factual and legal circumstances as those pertaining  
25 to the claims of the class members. Specifically, Plaintiff alleges that she and the class members were  
26 improperly classified as independent contractors, giving rise to multiple failures on First Investors’ part  
27 to pay and reimburse class members in accordance with the California Labor Code. Accordingly, the  
28 typicality requirement is met.

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**4. Adequacy of Representation**

Representative parties must be able to “fairly and adequately protect the interests of the class.” FED. R. CIV. P. 23(a)(4). Representation is adequate if the plaintiffs: (1) “do not have conflicts of interest with the proposed class” and (2) are “represented by qualified and competent counsel.” *Dukes v. Wal-Mart, Inc.*, 509 F.3d 1168, 1185 (9th Cir. 2007). At the heart of this requirement is the “concern over settlement allocation decisions.” *Hanlon*, 150 F.3d at 1020.

Here, Plaintiff has an interest in proving liability against First Investors, and Plaintiff’s interest is the same as that of the absent class members. Plaintiff does not have any apparent conflicts of interest with the class.

In addition, class counsel is adequate, as they have significant experience representing classes of employees in wage and hour litigation. Matthew Dente, from the Dente Law Firm, has ten years of experience practicing employment law and serving as counsel in wage and hour class actions. (Dente Decl. ¶¶ 3-5.) Dente has served as counsel in dozens of wage and hour class actions before state and federal courts. (*Id.*) London Meservy, Meservy Law, P.C., has eleven years of experience litigating complex multi-plaintiff cases and class actions both as outside defense counsel, plaintiff’s counsel, and in-house corporate counsel. (Meservy Decl. ¶¶ 3-5.) Meservy’s current practice focuses almost exclusively on complex class actions on behalf of employees and consumers, and Meservy currently serves as counsel in multiple cases. (*Id.* ¶ 4.) Brian Robbins, from Robbins Umeda LLP, has over ten years of experience in complex civil litigation, including class actions. (Robbins Decl. ¶ 3.) In addition, Robbins serves as counsel in multiple putative wage and hour class actions. (*Id.*) Plaintiff and the proposed class counsel have indicated that they are willing to pursue this action vigorously on behalf of the class, have thoroughly investigated the class claims, and have served and responded to discovery. (Dente Decl. ¶¶ 8, 15-22.) Accordingly, the adequacy requirement has been met.

For the reasons stated above, Plaintiff has satisfied the prerequisites of Rule 23(a).

**B. Rule 23(b)(3) Requirements**

Rule 23(b)(3) requires the court to find that: (1) “the questions of law or fact common to class members predominate over any questions affecting only individual members” (“predominance”); and

1 (2) “a class action is superior to other available methods for fairly and efficiently adjudicating the  
2 controversy” (“superiority”).

3 **1. Predominance**

4 The predominance inquiry tests “whether proposed classes are sufficiently cohesive to warrant  
5 adjudication by representation.” *Hanlon*, 150 F.3d at 1022 (internal quotation marks omitted). This  
6 analysis requires that common questions of law and fact “present a significant aspect of the case and  
7 [that] they can be resolved for all members of the class in a single adjudication.” *Id.* (internal  
8 quotation marks omitted). The relevant inquiry is whether issues “subject to generalized proof  
9 predominate over those issues that are subject only to individualized proof.” *Dilts v. Penske Logistics,*  
10 *LLC*, 267 F.R.D. 625, 634 (S.D. Cal. 2010) (internal quotation marks and alteration omitted).

11 Here, the central issue in this action is whether Defendants violated certain provisions of the  
12 California Labor Code by misclassifying its registered representatives as independent contractors.  
13 Judicial economy favors resolving this predominant issue once, in a class action settlement, rather than  
14 litigating it multiple times in individual lawsuits. Accordingly, the predominance requirement is met.

15 **2. Superiority**

16 The superiority requirement focuses on the determination of “whether the objectives of the  
17 particular class action procedure will be achieved in the particular case.” *Hanlon*, 150 F.3d at 1023.  
18 The class-action method is considered to be superior if “classwide litigation of common issues will  
19 reduce litigation costs and promote greater efficiency.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d  
20 1227, 1234 (9th Cir. 1996).

21 Concentration of class members’ claims for settlement purposes is desirable in order to avoid  
22 the possibility of duplicative individual matters and inconsistent judicial determinations. Class  
23 treatment of the class members’ claims would be more manageable than many individual lawsuits  
24 brought by current or former registered representatives. In addition, because of the relatively small  
25 individual claims of class members, it is unlikely that individual actions to recover these unpaid wages  
26 will be filed. The average estimated individual settlement award is \$4,082.73, and class members  
27 employed throughout the entire time period will recover approximately \$19,744.35. (Aguilar Decl.  
28 ¶ 9.) Accordingly, the superiority requirement is met.

1 For the foregoing reasons, Plaintiff has satisfied the requirements of Rule 23(b)(3). The Court  
2 **GRANTS** preliminary certification for the purposes of the proposed settlement. The Court, however,  
3 may review this finding at the Final Approval Hearing.

## 4 **II. THE SETTLEMENT**

5 Rule 23(e) requires the Court to determine whether a proposed settlement is “fundamentally  
6 fair, adequate, and reasonable.” *Staton*, 327 F.3d at 959 (internal quotation marks omitted). In making  
7 this determination, a court may consider: (1) the strength of the plaintiff’s case; (2) “the risk, expense,  
8 complexity, and likely duration of further litigation;” (3) “the risk of maintaining class action status  
9 throughout the trial;” (4) “the amount offered in settlement;” (5) “the extent of discovery completed,  
10 and the stage of the proceedings;” (6) “the experience and views of counsel;” (7) “the presence of a  
11 governmental participant;” and (8) “the reaction of the class members to the proposed settlement.”  
12 *See id.* (internal quotation marks omitted). Moreover, the settlement may not be the product of  
13 collusion among the negotiating parties. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir.  
14 2000).

15 Because some of these factors cannot be fully assessed until the Court conducts the Final  
16 Approval Hearing, “a full fairness analysis is unnecessary at this stage.” *See Alberto v. GMRI, Inc.*,  
17 252 F.R.D. 652, 665 (E.D. Cal. 2008) (internal quotation marks omitted). At the preliminary approval  
18 stage, the Court need only review the parties’ proposed settlement to determine whether it is within  
19 the permissible “range of possible approval” and thus, whether the notice to the class and the  
20 scheduling of the formal fairness hearing is appropriate. *Id.* at 666.

### 21 **A. The Strength of Plaintiff’s Case and the Risk, Expense, Complexity and** 22 **Likely Duration of Further Litigation, and the Risk of Maintaining Class** 23 **Action Status Throughout the Trial**

24 Plaintiff’s counsel believes that the proposed settlement is fair, reasonable, and adequate, and  
25 is in the best interest of the parties in light of all known facts and circumstances, including the risk of  
26 delay, the uncertainty of recovery, and the defenses asserted by Defendants. (Dente Decl. ¶ 24.)  
27 Specifically, Plaintiff recognizes that there is a possibility that the Class may not obtain certification  
28 or, even with certification, will not be able to recover damages, considering Defendants’ defenses, as

1 well as the uncertainty in the law regarding Plaintiff's and the putative class's employment status, the  
2 previously unsettled law regarding meal and rest periods, the requisite showing on an injury to recover  
3 damages under California Labor Code § 226, and the willfulness requirement under California Labor  
4 Code § 203. (*Id.* ¶ 17.) In addition, class counsel recognizes the possibility of an adverse ruling on  
5 Defendants' motion to compel arbitration, summary judgment and/or class certification, the difficulties  
6 of complex litigation, the process of establishing entitlement to the damages at issue, and various  
7 possible delays and appeals. (*Id.* ¶ 26.) Taken together, these considerations weigh in favor of  
8 preliminary approval of the proposed settlement.

9 **B. The Extent of Discovery and the Stage of the Proceedings**

10 In regards to class action settlements, "formal discovery is not a necessary ticket to the  
11 bargaining table where the parties have sufficient information to make an informed decision about  
12 settlement." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239 (9th Cir. 1998) (internal quotation  
13 marks omitted).

14 Here, the parties appear to have engaged in substantial discovery. Defendants have produced  
15 Plaintiff's personnel file, payroll documents, and arbitration agreements. (Dente Decl. ¶ 8.) In  
16 addition, class counsel requested, and Defendants produced a class list with start and end dates, work  
17 locations, and total workweeks for every putative class member; copies of all applicable policies; data  
18 showing the class members' earnings (including commissions, bonuses, deductions, reimbursements,  
19 etc.); a sampling of payroll records, commission/bonus statements, pay stubs, Form 1099's, and CAP  
20 statements for approximately 20% of the putative class; all First Investors presentations shown to  
21 putative class members and prospective registered representatives; training documents; compensation  
22 plans; commissions and bonus plans; a representative sampling of weekly schedules; documents  
23 related to First Investors' mentoring program; and documents regarding support service fees and other  
24 expenses incurred by putative class members. (*Id.*) The parties appear to have thoroughly investigated  
25 and evaluated the factual strengths and weaknesses of this case and engaged in sufficient investigation  
26 and discovery to support the settlement. Accordingly, the extent of discovery and stage of the  
27 proceedings weigh in favor of preliminary approval.

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1                                   **C.     Experience of Class Counsel**

2           Class counsel has experience in complex civil litigation. (See Dente Decl. ¶¶ 3-5; Meservy  
3 Decl. ¶¶ 3-5; Robbins Decl. ¶ 3.) Dente and Meservy have extensive experience representing both  
4 defendants and plaintiffs in wage and hour class action cases. (See Dente Decl. ¶¶ 3-5; Meservy Decl.  
5 ¶¶ 3-5.) Both Dente and Meservy have been appointed as class counsel in numerous wage and hour  
6 class actions in both state and federal court. (See Dente Decl. ¶¶ 3-5; Meservy Decl. ¶¶ 3-5.) In  
7 addition, Robbins Umeda LLP has handled complex class and derivative actions, including wage and  
8 hour class actions. (See Robbins Decl. ¶ 3.)

9           Moreover, Defendants’ counsel, Paul Hastings LLP, has a worldwide employment litigation  
10 practice, and has handled over 200 class actions within the last two years. (Mot. at 9.) Nancy Abell  
11 has over 30 years of experience, and is the Global Chair of Paul Hastings’ Employment Law  
12 Department. (*Id.*) Abell has litigated numerous wage and hour class actions. (*Id.*) Raymond Bertrand  
13 has approximately 17 years of experience, and has litigated many statewide and nationwide class  
14 actions, including wage and hour matters. (*Id.*) In addition, Bertrand is the Co-Editor-in-Chief of  
15 Matthew Bender’s *California Employers’ Guide to Employee Handbooks and Personnel Policy*  
16 *Manuals* and authors the wage-and-hour section of Matthew Bender’s *California Labor &*  
17 *Employment Bulletin*.

18           Counsel on both sides believe that this is a fair and reasonable settlement. Accordingly, this  
19 factor weighs in favor of preliminary approval. See *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15,  
20 18 (N.D. Cal. 1980); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008)  
21 (“The recommendations of plaintiffs’ counsel should be given a presumption of reasonableness.”  
22 (internal quotation marks omitted)).

23                                   **D.     The Amount Offered in Settlement**

24           A settlement is not judged against only the amount that might have been recovered had the  
25 plaintiff prevailed at trial, nor must the settlement provide 100% of the damages sought to be fair and  
26 reasonable. *Linney*, 151 F.3d at 1242. There is a “range of reasonableness” in determining whether  
27 to approve settlement “which recognizes the uncertainties of law and fact in any particular case and  
28 the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *Frank v.*



1 *Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) (quoting *Newman v. Stein*, 464 F.2d 689,  
2 693 (2d Cir. 1972)). The adequacy of the amount recovered must be judged as “a yielding of absolutes  
3 . . . Naturally, the agreement reached normally embodies a compromise; in exchange for the saving  
4 of cost and elimination of risk, the parties each give up something they might have won had they  
5 proceeded with litigation.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 624 (9th Cir.  
6 1982) (internal quotation marks omitted). “It is well-settled law that a cash settlement amounting to  
7 only a fraction of the potential recovery will not per se render the settlement inadequate or unfair.”  
8 *Id.* at 628.

9 Here, Plaintiff brings claims for damages and statutory penalties against First Investors on  
10 behalf of herself and other California registered representatives for: (1) failure to pay overtime wages;  
11 (2) failure to pay minimum wages due; (3) failure to timely pay wages due; (4) failure to provide  
12 itemized wage statements; (5) failure to provide meal periods; (6) failure to provide rest periods; (7)  
13 failure to reimburse employee expenses; (8) unlawful deductions; and (9) unfair competition. The  
14 approximate and reasonable value of Plaintiff’s claims are: (1) \$3,500,000 for the minimum wage and  
15 overtime claims; (2) \$1,037,120 for the meal and rest period claims; and (3) \$2,300,000 for the  
16 reimbursement of business expense claims. (Aguilar Decl. ¶¶ 5-7.) Thus, an approximate and  
17 reasonable value of the total claims in this action is \$6,837,120. (*See id.* ¶ 8.) In addition, Plaintiff’s  
18 claims carry the potential for related statutory penalties for inaccurate wage statements and waiting  
19 time penalties, as well as related civil penalties potentially recoverable under the California Private  
20 Attorneys General Act of 2004, Labor Code § 2698 *et seq.* Many of these penalties, however, arguably  
21 require heightened proof, such as proof of intent and/or willfulness. Moreover, many of these  
22 penalties, if recovered, would not be awarded to class members.

23 The parties have agreed to a Gross Settlement Amount of \$1,750,000, which includes, subject  
24 to the Court’s approval: (1) payment to the California Labor Workforce Development Agency for its  
25 share of the settlement of claims for civil penalties pursuant to the Private Attorneys’ General Act in  
26 the amount of \$17,500; (2) all employer taxes applicable to the settlement payments, including the  
27 Federal Unemployment Tax Act and the Federal Insurance Contributions Act; (3) Plaintiff’s Class  
28 Representative Payment in the amount of \$25,000; (4) Class Counsel’s attorney’s fees in the amount

1 of \$437,500 and expenses not to exceed \$20,000; and (5) the Settlement Administrator's fees and  
2 expenses. (Dente Decl. ¶ 13.) All settlement payments to the eligible class members will be made  
3 from the amount remaining in the settlement fund after all other applicable deductions ("Settlement  
4 Proceeds"). (*Id.*) The average estimated individual settlement award is \$4,082.73, and class members  
5 employed throughout the entire time period will recover approximately \$19,744.35. (Aguilar Decl.  
6 ¶ 9.)

7 In addition, if fewer than all participating class members timely and properly submit claims,  
8 any unclaimed sum will be distributed by the Settlement Administrator to the Children's Miracle  
9 Network. (Dente Decl., Exh. A [Settl.] ¶ 39.) In *Dennis v. Kellogg Co.*, \_\_ F.3d \_\_, 2012 WL  
10 3800230, at \*5 (9th Cir. 2012), the Ninth Circuit held that "[t]o avoid the many nascent dangers to the  
11 fairness of the distribution process, we require that there be a driving nexus between the plaintiff class  
12 and the *cy pres* beneficiaries." *Id.* at \*5 (internal quotation marks omitted). This "'driving nexus'  
13 between the class and the *cy pres* beneficiaries . . . is more than a simple alignment of interest.  
14 'Nexus' implies that there be an actual connection, not just between the class and the *cy pres*  
15 beneficiary, but between the *claims alleged in the case* and the *cy pres* beneficiary." *In re Groupon,*  
16 *Inc. Mktg. & Sales Practices Litig.*, Case No. 11-MD-2238 DMS (RBB), Docket No. 97, at 15 (S.D.  
17 Cal. Sept. 28, 2012); *see also Nachshin v. AOL, LLC*, 663 F.3d 1034, 1036 (9th Cir. 2011). Here, the  
18 parties do not assert that there is a driving nexus between the class and the *cy pres* beneficiary, nor is  
19 a driving nexus apparent to the Court. Accordingly, preliminary approval of the settlement is  
20 **DENIED** to the extent that the parties intend to distribute any unclaimed sum of the settlement to the  
21 Children's Miracle Network. The parties may address this issue at the Final Approval Hearing.

22 The value of the settlement takes into account the risks related to certification, liability, and  
23 damages, including the possibility that the Class would have not been able to make the necessary  
24 showings to obtain recovery. (Dente Decl. ¶ 25.) In light of the uncertainties involved with respect  
25 to litigating this action, the Court finds the amounts offered in settlement to be adequate, at least at this  
26 stage of the proceedings. *See, e.g., Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068 MMC, 2007 WL  
27 221862, at \*4 (N.D. Cal. Jan. 26, 2007) (finding settlement of a wage and hour class action for 25 to  
28 35% of the claimed damages to be reasonable in light of the uncertainties involved in the litigation).

1                   **E. Collusion Between the Parties**

2           The collusion inquiry regards the possibility that the agreement is the result of either the  
3 negotiators' overt misconduct or improper incentives for certain class members at the expense of other  
4 members of the class. *Staton*, 327 F.3d at 960. Here, there is no evidence of overt misconduct. The  
5 Court will focus only on the aspects of the settlement that lend themselves to self-interested action.

6           First, the Individual Settlement Payments will be distributed to the class members  
7 proportionately, based on their tenure. (*See Dente Decl.*, Exh. A [Settl.] ¶ 43.) Each class member  
8 who timely submits a Claim Form will receive a share of the Settlement Proceeds, calculated as  
9 follows: (1) the Settlement Proceeds will be divided by the total number of Compensable Work Weeks  
10 of all class members, and (2) that number (the "Work Week Value") will be multiplied by the number  
11 of Compensable Work Weeks during which the individual class member was affiliated with First  
12 Investors, to determine the Individual Settlement Payment. (*Id.* ¶ 43.)

13           Second, the proposed class representative enhancement of \$25,000 likewise does not appear  
14 to be the result of collusion. The Court evaluates incentive awards using "relevant factors including  
15 the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has  
16 benefitted from those actions, the amount of time and effort the plaintiff expended in pursuing the  
17 litigation and reasonable fears of workplace retaliation." *Staton*, 327 F.3d at 977 (internal quotation  
18 marks and alterations omitted). Here, Plaintiff requests \$25,000 for Campbell, for her time, effort,  
19 risks undertaken for the payment of costs in the event this action had been unsuccessful, and stigma  
20 upon future employment opportunities for having initiated an action against a former employer. (*See*  
21 *Dente Decl.*, Exh. A [Settl.] ¶ 41.)

22           Third, the attorneys' fees do not appear to be the result of collusion. It is permissible for  
23 plaintiffs to simultaneously negotiate the merits of the action and attorneys' fees. *Staton*, 327 F.3d at  
24 971. Twenty-five percent is the "benchmark" of recovery. *Powers v. Eichen*, 229 F.3d 1249, 1256-57  
25 (9th Cir. 2000). In addition, "the choice of whether to base an attorneys' fee award on either net or  
26 gross recovery should not make a difference so long as the end result is reasonable." *Id.* at 1258.  
27 Here, the Settlement Agreement provides that Plaintiff's counsel will recover an award of attorneys'  
28 fees up to 25% of the Gross Settlement Amount, or \$437,500. (*Dente Decl.*, Exh. A [Settl.] ¶ 40.) In

1 addition, Plaintiff's counsel will request reimbursement of their expenses not to exceed \$20,000, to  
2 be paid out of the Gross Settlement Amount. (*Id.*) Accordingly, the attorneys' fees do not appear to  
3 be the result of collusion.

4 For the above reasons, the Court **GRANTS IN PART** preliminary approval of the proposed  
5 settlement. Preliminary approval of the settlement is **DENIED** to the extent that the parties intend to  
6 distribute any unclaimed sum of the settlement to the Children's Miracle Network.

### 7 **III. APPOINTING CLASS COUNSEL**

8 The choice of counsel has traditionally been left to the parties, "whether they sue in their  
9 individual capacities or as class representatives." *In re Cavanaugh*, 306 F.3d 726, 734 (9th Cir. 2002)  
10 (internal quotation marks omitted). Here, Plaintiff's counsel has extensive experience in employment  
11 class actions, as discussed above. Accordingly, because Plaintiff's counsel appears to be competent  
12 to represent the class, the Court **GRANTS** Plaintiff's motion to appoint Matthew S. Dente from the  
13 Dente Law Firm; London D. Meservy from Meservy Law, PC.; and Brian J. Robbins and Conrad B.  
14 Stephens from Robbins Umeda LLP.

### 15 **IV. APPROVING CLASS NOTICE**

16 Class notice must be "reasonably calculated, under all the circumstances, to apprise interested  
17 parties of the pendency of the action and afford them an opportunity to present their objections." *See*  
18 *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Moreover, the class notice  
19 must satisfy the content requirements of Rule 23(c)(2)(B), which provides that the notice must clearly  
20 and concisely state in plain, easily understood language:

21 (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims,  
22 issues, or defenses; (iv) that a class member may enter an appearance through an  
23 attorney if the member so desires; (v) that the court will exclude from the class any  
24 member who requests exclusion; (vi) the time and manner for requesting exclusion;  
and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

25 Here, the content of the proposed notice is adequate. The proposed notice provides: (1)  
26 information on the meaning and nature of the class; (2) the terms and provisions of the proposed  
27 settlement; (3) the relief that settlement group members will be entitled to, including a specific  
28 estimate of the amount to be paid to each eligible member; (4) the costs and fees to be paid out of the

1 Gross Settlement Amount; (5) the procedures and deadlines for submitting claim forms, objections,  
2 and/or requests for exclusion; and (6) the date, time, and place of the Final Approval Hearing. (*See*  
3 Dente Decl., Exh. A [Settl., Exh. A [Proposed Class Notice]].) In addition, the method of notice, more  
4 fully set forth below, is reasonable.

### 5 CONCLUSION

6 For the reasons stated above, **IT IS HEREBY ORDERED:**

7 1. Based upon the Court's review of the Settlement, the supporting briefs and declarations,  
8 and the entire record, the Plaintiff's Unopposed Motion for Preliminary Approval of Settlement is  
9 **GRANTED IN PART AND DENIED IN PART**, as specified herein.

10 2. This Order incorporates by reference the definitions in the Settlement, and all terms  
11 defined therein shall have the same meaning in this Order as set forth in the Settlement.

12 3. The Court hereby conditionally certifies the following Class for settlement purposes  
13 only:

14 All individuals affiliated with Defendants (or any one Defendant) as a licensed  
15 registered representative or licensed insurance agent at any of Defendants' four  
16 California offices during the Covered Period.

17 The Covered Period means the period from February 18, 2007 through the date of this Order.

18 4. Based upon the Court's review of the Settlement, the supporting briefs and declarations,  
19 and the entire record, this action presents common issues of law and fact, Plaintiff Lauren Campbell  
20 is found to be an adequate representative of the Class, and her claims are found to be typical of the  
21 other Class Members. The following attorneys are hereby appointed and designated as counsel for the  
22 Plaintiff and the Class ("Class Counsel"):

23 THE DENTE LAW FIRM  
24 MATTHEW S. DENTE (SB# 241547)  
25 600 B Street, Suite 1900  
26 San Diego, CA 92101  
27 Telephone: 619-550-3475  
28 Facsimile: 619-342-9668

LONDON D. MESERVY (SB# 216654)  
MESERVY LAW, PC.  
120 C Ave., Suite 120  
Coronado, CA 92118

1 Telephone: (858) 779-1276  
2 Facsimile: (866) 231-8132

3 ROBBINS UMEDA LLP  
4 BRIAN J. ROBBINS, (SB# 190264)  
5 CONRAD B. STEPHENS, (SB# 266790)  
6 600 B Street, Suite 1900  
7 San Diego, CA 92101  
8 Telephone: (619) 525-3900  
9 Facsimile: (619) 525-3991

10 5. Class Counsel is authorized to act on behalf of Class Members with respect to all acts  
11 or consents required by, or which may be given under the Settlement, and such other acts reasonably  
12 necessary to consummate the Settlement. Any Class Member may enter an appearance through  
13 counsel of such Class Member's own choosing and at such Class Member's own expense. Any Class  
14 Member who does not enter an appearance or appear on his or her own will be represented by Class  
15 Counsel.

16 6. Preliminarily, the Court approves in part the Settlement. The Court approves the  
17 definition and disposition of the Gross Settlement Amount, with the exception of the provision  
18 providing distribution of any unclaimed sum of the Settlement to the Children's Miracle Network. In  
19 addition, the Court approves the proposed payments to Class Members, Class Counsel Attorneys' Fees  
20 and Costs Payment, and the Class Representative Payment. The Court finds that, on a preliminary  
21 basis, the Gross Settlement Amount, as defined in the Settlement, appears to be within the range of  
22 reasonableness of a settlement that could ultimately be given final approval by this Court, with the  
23 exception of the proposed distribution of any unclaimed sum of the Settlement to the Children's  
24 Miracle Network.

25 7. The Final Approval Hearing shall be held before this Court on **May 2, 2013, at 9:30**  
26 **a.m.** at the United States District Court for the Southern District of California, 940 Front Street, San  
27 Diego, CA 92101, in Courtroom 3, to determine all necessary matters concerning the Settlement,  
28 including: whether the proposed Settlement of the Action on the terms and conditions provided for in  
the Settlement is fair, adequate, and reasonable and should be finally approved by the Court; whether  
a Judgment should be entered herein; whether the proposed allocation and distribution of the Gross  
Settlement Amount contained in the Settlement should be approved as fair, adequate, and reasonable

1 to the Class Members; and to finally approve the Class Counsel Fees and Cost Payment and the Class  
2 Representative Payment.

3 8. The Court approves, as to form and content, the Notice and Claim Form attached as  
4 Exhibits A and B to the Settlement. The Court finds that the distribution of the Notice and Claim  
5 Form substantially in the manner and form set forth in the Settlement and this Order satisfies due  
6 process requirements, is the best notice practicable under the circumstances, and shall constitute due  
7 and sufficient notice to all Class Members.

8 9. The Court appoints CPT Group as Settlement Administrator and directs the Settlement  
9 Administrator to mail to Class Members the Notice and Claim Form by first class mail by **December**  
10 **21, 2012**, under the procedures set forth in the Settlement. If no response is received, another Notice  
11 and Claim Form will be sent by **February 21, 2013** by certified mail to those class members who have  
12 not yet responded. Class Members who wish to participate in the settlement provided for by the  
13 Settlement (“Participating Class Members”) must complete and return the Claim Form under the  
14 Settlement’s instructions by first class mail or equivalent, postage paid, by **March 11, 2013**.

15 10. Any Class Member may choose to opt out of and be excluded from the Settlement as  
16 provided in the Notice by following the instructions for requesting exclusion from the Settlement that  
17 are set forth in the Notice and Settlement. All written requests for exclusion must be submitted as  
18 provided in the Notice and Settlement. Any such person who chooses to opt-out of and be excluded  
19 from the Settlement will not be entitled to any recovery under the Settlement and will not be bound  
20 by the Settlement or have any right to object, appeal, or comment thereon. Any written request to be  
21 excluded from the Settlement must be express and signed by each such person. Individuals in the  
22 Class who have not requested exclusion shall be bound by all determinations of the Court, the  
23 Settlement, and any Judgment that may be entered thereon.

24 11. Any Participating Class Member may appear at the Final Approval Hearing and object  
25 to the Settlement (“Objectors”). Objectors may present evidence and file briefs or other papers that  
26 may be proper and relevant to the issues to be heard and determined by the Court as provided in the  
27 Notice. On or before **March 11, 2013**, Objectors shall serve by hand or by first class mail written  
28 objections and copies of any papers and briefs in support of their position and verification of their

1 membership in the Class upon Class Counsel and Counsel for Defendants, and file the objections,  
2 papers, and briefs with the Clerk of this Court.

3 12. All papers in support of the Settlement shall be filed with the Court and served on the  
4 parties' counsel no later than **April 1, 2013**.

5 13. To the extent permitted by law, pending final determination as to whether the  
6 Settlement should be approved, any individuals within the Class, whether directly, representatively,  
7 or in any other capacity, whether or not such persons have appeared in the Action, shall not institute  
8 or prosecute against Defendants any claims to be resolved through this Settlement. The Court  
9 incorporates by reference and preliminarily approves the release of claims set forth in Paragraph 61  
10 of the Settlement.

11 14. As of the date this Order is signed, all dates and deadlines associated with the Action  
12 shall be stayed, other than those related to the administration of the Settlement of the Action.

13 15. If the Settlement does not become effective in accordance with the terms of and as  
14 defined in the Settlement, or if the Settlement is not finally approved by the Court, or is terminated,  
15 canceled or fails to become effective for any reason, this Order shall be rendered null and void and  
16 shall be vacated, and the parties shall revert to their respective positions as of before entering into the  
17 Settlement.

18 16. The Court reserves the right to adjourn or continue the date of the Final Approval  
19 Hearing and all dates provided for in the Settlement without further notice to Class Members, and  
20 retains jurisdiction to consider all further applications arising out of or connected with the proposed  
21 Settlement.

22 17. The Court retains exclusive jurisdiction over the Action to consider all further matters  
23 arising out of or connected with the Settlement until Judgment has been entered.

24 18. In accordance with the terms of the Settlement, the Court hereby adopts the  
25 following dates for performance of the specified activities:

26  
27 **December 7, 2012**

28 Deadline for Defendants to provide  
Settlement Administrator with class data;



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**December 21, 2012**

Deadline for Settlement Administrator to mail the Class Notice and Claim Forms to all Class Members;

**February 21, 2013**

Deadline for Settlement Administrator to mail a second Class Notice and Claim Form by certified mail to all Class Members who have not responded;

**March 11, 2013**

Last day for Class Members to submit claims;

**March 11, 2013**

Last day for Class Members to submit written objections to the Settlement and any notices of intent to appear at the final approval hearing;

**March 11, 2013**

Last day for eligible Class Members to submit requests to be excluded from the Settlement;

**March 20, 2013**

Last day for Settlement Administrator to provide declaration of compliance with its obligations under the Settlement;

**March 25, 2013**

Last day for Plaintiff to file and serve a motion for final approval of Settlement, and for Plaintiff to file request for attorneys' fees, costs, and Class Representative payment;

**April 1, 2013**

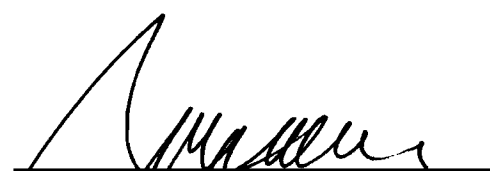
Last day for filing of any written opposition to motion for final approval of Settlement and/or Plaintiff's request for attorneys' fees, costs, and Class Representative Payment; and

**May 2, 2013, at 9:30 a.m.**

Final approval hearing.

**IT IS SO ORDERED.**

DATED: 1/2/12, 2012

  
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HON. ROGER T. BENITEZ  
United States District Judge