UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DEL OBISPO YOUTH BASEBALL, INC. d/b/a DANA POINT YOUTH BASEBALL, individually and on behalf of all other similarly situated individuals and entities,

Plaintiff,

v.

THE AMBASSADOR GROUP LLC d/b/a AMBASSADOR CAPTIVE SOLUTIONS; et al.,

Defendants.

Case No. 8:21-cv-00199-SPG-DFM

ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT [ECF NO. 138]

Before the Court is Plaintiff Del Obispo Youth Baseball, Inc.'s (d/b/a Dana Point Youth Baseball ("DPYB")) second unopposed motion for preliminary approval of a class action settlement ("Motion") and seeking certification of a class. (ECF No. 120 ("Mot.")). Having considered the parties' submissions, the relevant law, and the record in this case, the Court finds this matter suitable for resolution without a hearing pursuant to Fed. R. Civ. P. 78(b) and C.D. Cal. L.R. 7-15 and **GRANTS** Plaintiff's Motion.

I. BACKGROUND

The Court previously granted in part, and denied, in part, Plaintiff's first motion for preliminary approval for class action settlement. *See* (ECF No. 124 ("Order")). The parties have amended the Settlement Agreement and filed amended pleadings, specifically the Third Amended Complaint (ECF No. 132 ("TAC")), to clarify the definition of the class. Accordingly, the Court sets forth allegations relevant to this Motion below and otherwise incorporates the factual background set forth in the previous Order. *See* (Order at 2–4).

A. Plaintiff's Allegations

This is a nationwide class action lawsuit brought by Plaintiff DPYB. Plaintiff is a nonprofit organization that provides "the means for community youth in South Orange County to develop qualities and attributes through baseball." (TAC ¶ 14). Plaintiff is a member of "Protect Our Nation's Youth Baseball, Inc." ("PONY National"), a larger nonprofit organization that is comprised of over 500,000 players in 4,000 leagues located throughout the United States and in more than 40 countries. (*Id.* ¶¶ 15–16).

The TAC alleges Defendants Ambassador Group LLC, doing business as, Ambassador Captive Solutions ("Ambassador"), and Brandon White ("White"), are part of a nation-wide association-in-fact enterprise with Performance Insurance Company SPC ("Performance"), Goldenstar Specialty Insurance, LLC ("Goldstar"), Dominic Cyril Gagliardi ("D. Gagliardi"), and Marco Solomon Gagliardi ("M. Gagliardi"). (*Id.* ¶ 18). This enterprise is alleged to have misappropriated premiums paid by Plaintiff DPYB and other youth sports teams, leagues, and athletes throughout the United States by selling them counterfeited and nonexistent accident and health insurance policies (the "Counterfeited Policies") that purported to provide accident, health, and other insurance coverage to the youth sports teams, leagues, and athletes. (*Id.*).

The TAC alleges the Counterfeited Policies were sold through a captive reinsurance arrangement, which allows a broker—a party that is not licensed to issue insurance policies—to use intermediaries to form an indirect relationship with an insurance company ("Issuing Carrier"). (*Id.* ¶ 31). The TAC alleges that Defendants formed such a captive

reinsurance enterprise (the "Captive Program"). In the Captive Program, Gagliardi Insurance Services, Inc. ("Gagliardi Insurance")[1] served as the broker,[2] Goldenstar and Performance served as the Captive, Defendant White controlled Performance, and Defendant Ambassador was the "captive consultant." (TAC ¶¶ 39–46).[3]

Under this supposed Captive Program, the Defendants and Gagliardi Insurance sold Counterfeited Policies to Plaintiff and the class members. (*Id.* ¶ 46). Instead of engaging an Issuing Carrier, the TAC alleges that Defendants forged documents that misled Plaintiff and the class members into believing that an Issuing Carrier had issued actual policies. *See* (*id.* ¶¶ 46–47). Plaintiff and the class members paid substantial premiums to Defendants on Counterfeited Policies in reliance on the belief that the payments were being remitted to the supposed Issuing Carrier—however, Defendants never did so and instead stole all such premium payments. *See, e.g.*, (*id.* ¶¶ 26–29, 54).

On or about October 27, 2020, Gagliardi Insurance informed Plaintiff that the Counterfeited Insurance policies it had provided to Plaintiff were the subject of a federal lawsuit brought by several issuing carriers, who were challenging Defendants' unauthorized use of the issuing carriers' marks. (*Id.* ¶ 70).

B. Procedural History

On January 28, 2021, Plaintiff filed its Class Action Complaint against Defendants Ambassador, White, Performance, and Goldenstar alleging five causes of action: (1) Racketeer Influenced and Corrupt Organizations Act ("RICO"); (2) conversion; (3) unjust enrichment; (4) unfair competition; and (5) negligence. (ECF No. 1). Defendants

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[1] Gagliardi Insurance is not named as a defendant in the case.

[2] The TAC alleges M. and D. Gagliardi served as the Chief Executive Officer and President of Gagliardi Insurance, respectively, during the relevant time period. (TAC ¶¶ 22–24).

[3] The TAC alleges captive reinsurance transactions are often facilitated by a captive intermediary or consultant that assists the broker in developing a business plan, forming the Captive, and identifying an Issuing Carrier to issue the policies that will be sold by the broker and be the subject of the reinsurance agreement. (*Id.* ¶ 38). Defendant Ambassador is such a captive intermediary. (*Id.*).

Ambassador and White moved to dismiss Plaintiff's Class Action Complaint or, in the alternative, to transfer the action to the Western District of Kentucky. (ECF No. 24).

Plaintiff then filed the First Amended Complaint, which asserted the same five causes of action but added Defendant D. Gagliardi. (ECF No. 34). In response, Defendants Ambassador and White filed a motion to dismiss the First Amended Complaint or, in the alternative, to transfer the action to the Western District of Kentucky. (ECF No. 44). Judge Selna, the district judge previously presiding over this case, denied Defendant's motion in its entirety. (ECF No. 51). Thereafter, Plaintiff filed its Second Amended Complaint, asserting the same five causes of action but adding Defendant M. Gagliardi. (ECF No. 62). The Clerk of Court subsequently entered default pursuant to Rule 55(a) of the Federal Rules of Civil Procedure against Defendant M. Gagliardi. (ECF No. 80).

On September 8, 2022, Plaintiff filed a motion to certify the class. (ECF Nos. 97, 98). Thereafter, the parties requested, and the Court granted, continuances of the hearing on class certification because the parties had been engaging in mediation and expected to reach a settlement, (ECF Nos. 103, 107, 112, 113).

On March 23, 2023, Plaintiff and Defendants Ambassador and White (the "Settling Defendants") filed a stipulation notifying the Court that they had reached a settlement. (ECF No. 116). Thereafter, per the parties' request, the Court stayed all non-settlement related proceedings while the parties finalized the class action settlement. (ECF No. 117). On November 28, 2023, Plaintiff filed its unopposed motion seeking preliminary approval of the class action settlement. (ECF No. 120). After the Court heard oral argument on the motion, on February 16, 2024, the Court granted, in part, and denied, in part Plaintiff's motion. *See* (Order).

Specifically, the Court certified the proposed class for purposes of settlement, appointed class counsel and Plaintiff as the representative plaintiff, and found that the original settlement agreement did not appear to have any markers of collusion and thus appeared to result from arms-length negotiations. The Court, however, found several deficiencies with the original settlement agreement, including the original settlement

agreement: (1) was unclear regarding the status of the non-settling Defendants— namely, Performance, Goldenstar, D. Gagliardi, and M. Gagliardi—and the impact of the original settlement agreement on the litigation against them; (2) contained a release of claims that was too broad; (3) was insufficient in explaining how the addresses of class members would be ascertained for the purposes of notice; and (4) appeared to provide for a settlement amount that was a mere fraction of the possible recovery, given the broad scope of the class.

In response, on April 2, 2024, Plaintiff filed its TAC, the operative complaint, clarifying the scope of the class but otherwise asserting the same causes of action as the SAC. (TAC). On April 22, 2024, Plaintiff filed the instant motion again seeking preliminary approval of an amended settlement agreement ("Amended Settlement Agreement") that has been revised to address the deficiencies in the original settlement agreement. (ECF No. 138). Plaintiff has also dismissed Defendants Performance, Goldenstar, and D. Gagliardi. (ECF Nos. 141–43). To date, no opposition to the Motion has been filed.

C. The Amended Settlement Agreement

Plaintiff and Settling Defendants have negotiated the Amended Settlement Agreement. (ECF No. 138-2 ("Ram Decl.") ¶ 13, ECF No. 138-3 ("Am. Settlement")). The Amended Settlement Agreement provides the following key provisions.

1. Class Definition

The Amended Settlement Agreement seeks to certify a nationwide settlement class ("Settlement Class") defined as: "[A]ll members of PONY National that purchased a general commercial, accident, directors and officers, auto and/or other type of policy bounded by Gagliardi Insurance Services, Inc. and that made such purchase in the United States on or after January 1, 2018 through January 28, 2021 (the 'Class Period')." (Am. Settlement § 2.19). Excluded from the Settlement Class are "(i) Ambassador and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; and (iii) the Judge or Magistrate Judge to whom the

action is assigned and, any member of those Judges' staffs or immediate family members." (*Id.*). Plaintiff estimates that the size of the Settlement Class is approximately 614 members. *See* (Ram Decl. ¶ 17).

2. Settlement Amount

Pursuant to the Amended Settlement Agreement, Settling Defendants will create a common fund ("Settlement Fund") consisting of $195,000 in cash that Settling Defendants have agreed to pay to fully resolve the claims of the proposed Settlement Class. (Am. Settlement § 2.21). All members of the Settlement Class ("Settlement Class Members") will receive a pro rata share of the Settlement Fund, "less the Costs of Settlement Administration and Proposed Class Counsel's Attorneys' Fees, Costs, and Expenses; and Service Award to Representative Plaintiff." (*Id.* § 2.17). The pro rata share will be determined based upon the costs incurred by each Settlement Class Member in purchasing its Counterfeited Policy during the Class Period (the "Benefit Amount"). (*Id.* §§ 2.04, 3.02). To that end, the Claims Administrator will calculate the total amount paid for each Counterfeited Policy by each Settlement Class Member during the Class Period (the "Direct Damages"). (*Id.* § 3.02). If the Settlement Benefit Fund has more than (or not enough) money to pay these amounts, there will be a pro rata increase (or decrease) to each Benefit Amount. (*Id.*). Within 90 days of the Effective Date,[4] the Settlement Administrator shall mail the Settlement Class Member's Benefit Amounts, which will be issued by check.[5] (*Id.* § 10.02).

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[4] The Amended Settlement Agreement established the Effective Date as essentially the date that the Amended Settlement Agreement, as set forth here, has been finally adjudged. Specifically, Effective Date is defined as the first date by which all the following events have occurred and been met: the Court has entered the Order of Preliminary Approval with notice of a final approval hearing, the Court has entered the Judgment granting final approval to the Amended Settlement Agreement, and the Judgment is affirmed either by a failure to appeal within 30 days or, if appealed, the Judgment is upheld. (*Id.* §§ 2.09, 11.01).

[5] The Amended Settlement Agreement provides that Settling Defendants shall cause funds sufficient for the Claims Administrator to pay the Benefit Amounts at some time after the

3. Attorneys' Fees and Costs

The Amended Settlement Agreement, similar to the original settlement agreement, provides that the putative class will be represented by Michael F. Ram and Marie N. Appel of Morgan & Morgan and Gretchen M. Nelson and Gabriel S. Barenfeld of Nelson & Fraenkel LLP ("Class Counsel"). (Am. Settlement § 2.05). The Court appointed these attorneys as Class Counsel in its previous order. *See* (Order at 16).

Further, Settling Defendants will not oppose Class Counsel's request for up to $65,000 from the Court for their attorneys' fees, costs, and expenses to be paid from the Settlement Fund. (*Id.* § 9.02). Plaintiff represents that the attorneys have actually incurred lodestar fees of $611,842, and $14,365 in expenses and thus the $65,000 requested is only a small fraction of fees and expenses actually incurred. (Ram Decl. ¶ 21).

4. Released Persons

The Amended Settlement Agreement proposes to release claims against "Released Persons," defined in the Amended Settlement Agreement to mean:

> Ambassador, Brandon White, and their current and former parents, subsidiaries, affiliated companies, and divisions, whether indirect or direct, as well as these entities' respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers. Released persons does not include Dominic Cyril Gagliardi, Gagliardi Insurance, Performance Insurance Company or Goldenstar Specialty Insurance LLC or any of their predecessors, successors, directors, heirs, officers, employees, principals, agents, attorneys, insurers or reinsurers, except that Released Persons expressly includes Brandon White.

(Am. Settlement § 2.13).[6] The Amended Settlement Agreement also provides that "it is the intent of the parties that the "Release shall not be considered, interpreted, or construed

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Effective Date but with enough time for the Benefit Amounts to be paid to the Settlement Class to be disbursed to an account as directed by the Administrator. (*Id.* § 10.02).

[6] The original settlement agreement did not release any Defendant except Ambassador.

to prevent Settlement Class Members from pursuing claims related to the Scheme against any person who is not a Released Person." (Am. Settlement § 8.01).

5. Released Claims

The Settlement Agreement requires Settlement Class Members to release:

> any and all claims, rights, rights of set-off and recoupment, demands, actions, obligations, and causes of action of any and every kind, nature, and character, known and unknown, including without limitation, negligence, negligence per se, breach of contract, breach of implied contract, breach of fiduciary duty, breach of confidence, invasion of privacy, misrepresentation (whether fraudulent, negligent, or innocent), unjust enrichment, bailment, wantonness, any federal, state, or local statutory or regulatory claims, including, but not limited to, pursuant to consumer protection laws, unfair and deceptive trade practice laws, and further including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees, costs, and expenses, pre-judgment interest, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, the appointment of a receiver, and any other form of relief that any Settlement Class Member has, has asserted, could have asserted, or could assert against any of the Released Persons based on, relating to, concerning, or arising out of the Scheme and the allegations, facts, or circumstances described in the Complaint.

(*Id.* § 2.12).[7]

The Amended Settlement Agreement provides that Representative Plaintiff releases Unknown Claims, which is defined as "any of the Released Claims that Representative Plaintiff does not know or suspect to exist in his/her favor at the time of the release . . . that, if known by it, might have affected its settlement with, and release of, the Released Persons, or might have affected its decision not to object to and/or to participate in this Settlement

[7] The original settlement agreement included a broader release, releasing all claims that related to concerned, or arose out of the "Scheme and the allegations, facts, or circumstances described in the Litigation and/or Complaint." *See* (Order at 8–9, 21–22).

Agreement." (*Id.* § 2.22).[8] Plaintiff's release of the Unknown Claims also includes an express waiver of rights under California Civil Code § 1542.[9]

6. Settlement Administrator

The Amended Settlement Agreement provides for the administrator to be CPT Group, Inc. (Am. Settlement § 2.16). Class Counsel represents that CPT Group, Inc. is "experienced in formulating and effectuating notice programs and administering class action claims." (*Id.*; Ram Decl. ¶ 19). According to Class Counsel's review of CPT Group, Inc.'s proposal, their experience and pricing is most suited for the "unique financial circumstances of this Action." (*Id.*). The anticipated cost of notice and administration is estimated at approximately $20,000, which will be paid from the Settlement Fund. (*Id.;* Am. Settlement § 2.17).[10]

II. LEGAL STANDARD

Parties seeking class certification for settlement purposes must satisfy the requirements of Federal Rule of Civil Procedure 23. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620–21 (1997). In considering such a request, a court must give the Rule 23 certification factors "undiluted, even heightened, attention in the settlement context." *Id.* Once a class is certified, Rule 23(e) provides that "[t]he claims, issues, or defenses of a certified class may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). "The purpose of Rule 23(e) is to protect the unnamed members of the class from unjust or unfair settlements affecting their rights." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008). Thus, before approving a class action settlement under Rule 23, a district

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[8] The original settlement agreement provided that all members of the settlement class released unknown claims, instead of just the Representative Plaintiff. *See* (Order at 8–9).

[9] California Civil Code section 1542 provides: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party." *See also* (Am. Settlement § 2.22).

[10] The former proposal before the Court estimated that the cost of administration would be $10,000. *See* (Order at 10).

court must conclude that the settlement is "fundamentally fair, adequate, and reasonable." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). In the Ninth Circuit, there is a "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015) (citing *In re Syncor*, 516 F.3d at 1101).

Court approval of a class action settlement requires a two-step process—a preliminary approval followed by a later final approval. *See Tijero v. Aaron Bros., Inc.*, No. C 10–01089 SBA, 2013 WL 60464, *6 (N.D. Cal. Jan. 2, 2013) ("The decision of whether to approve a proposed class action settlement entails a two-step process." (citing Manual for Complex Litig. (Fourth) § 21.632 (2004)); *West v. Circle K Stores, Inc.*, No. CIV. S-04-0438 WBS GGH, 2006 WL 1652598, *2 (E.D. Cal. June 13, 2006) ("[A]pproval of a class action settlement takes place in two stages."). At the preliminary approval stage, the court "must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms." *See* Manual for Complex Litig. (Fourth) § 21.632 (2004); *see also Becker v. LISI, LLC*, No. 21-CV-03295-JST, 2022 WL 19975411, at *2 (N.D. Cal. Sept. 1, 2022). However, the "settlement need only be *potentially* fair, as the Court will make a final determination of its adequacy at the hearing on Final Approval." *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) (emphasis in original).

III. CONDITIONAL CLASS CERTIFICATION

The Court previously certified Plaintiff's proposed settlement class, which was broader than the Settlement Class defined in the TAC and Amended Settlement Agreement. Specifically, the Amended Settlement Agreement and TAC define the Settlement Class as limited to PONY members, while the previous definition was not so limited. Furthermore, the Class Period is limited to 2018 through 2021, while the former definition did not provide an end date. Therefore, the Court considers whether the Settlement Class should be certified.

For the reasons stated below, the Court again finds that all of Rule 23's factors have been satisfied and conditionally certifies Plaintiff's Settlement Class for purposes of settlement.

A. Numerosity

A class satisfies the prerequisite of numerosity if it is so large that joinder of all class members is impracticable. *Hanlon*, 150 F.3d at 1019. To be impracticable, joinder must be difficult or inconvenient, but need not be impossible. *Keegan v. Am. Honda Motor Co*., 284 F.R.D. 504, 522 (C.D. Cal. 2012) (citing Fed. R. Civ. P. 23(a)(1), *Harris v. Palm Springs Alpine Estates, Inc.,* 329 F.2d 909, 913–14 (9th Cir.1964)). "The numerosity requirement is not tied to any fixed numerical threshold," but "[i]n general, courts find the numerosity requirement satisfied when a class includes at least 40." *Rannis v. Recchia*, 380 F. App'x 646, 651 (9th Cir. 2010) (citing cases); *Woodard v. Labrada*, No. EDCV 16-00189 JGB (SPx), 2019 WL 4509301, at *4 (C.D. Cal. Apr. 23, 2019). Here, Plaintiff estimates that there are 614 members in the Class. *See* (Ram Decl. ¶ 17). Thus, numerosity is satisfied. *See Rannis,* 380 F. App'x at 651.

B. Commonality

A plaintiff's claims meet the commonality requirement when they "depend upon a common contention . . . capable of classwide resolution—which means that a determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). "So long as there is even a single common question, a would-be class can satisfy the commonality requirement of Rule 23(a)(2)." *Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir. 2014) (internal quotation marks and citations omitted). Thus, where the circumstances of class members "vary but retain a common core of factual or legal issues with the rest of the class, commonality exists." *Id.* (internal quotation marks and citations omitted).

Plaintiff asserts, and Settling Defendants do not dispute, that the common factual and legal issues in this action include, but are not limited to: "(1) whether Defendants made misrepresentations with regards to the Counterfeited Policies; (2) whether those

misrepresentations were material; (3) whether those misrepresentations were made willfully, recklessly, or negligently; and (4) whether Plaintiff and members of the Settlement Class have sustained damages by reason of Defendants' misrepresentations and omissions." (Mot. at 23 (citing ECF No. 62 ¶ 87(a)–(g))); *see also* (TAC ¶ 87(a)–(g)).

In its previous Order, the Court found that there were common legal and factual questions, "[a]lthough the common factual and legal issues would be a bit more clear if the definition of the class in the SAC and [original settlement agreement] were confined to PONY members or a particular type of insurance." (Order at 13). Plaintiff has since made these adjustments to the Settlement Class definition. As before, there are common factual and legal issues because the alleged scheme in the TAC depended on the particular captive reinsurance program and insurance policies issued by a particular supposed broker, Gagliardi. *See Sihler v. Fulfillment Lab, Inc*., No. 20CV1528-LL-DDL, 2023 WL 4335735, at *6 (S.D. Cal. June 23, 2023) ("[C]ommonality has been met as to the RICO claims because whether there are RICO violations raises common questions that are capable of classwide resolution." (citing *In re United Energy Corp. Solar Power Modules Tax Shelter Invs. Sec. Litig*., 122 F.R.D. 251, 255 (C.D. Cal. 1988) ("The issues of law and fact in making out a RICO violation will generally be common to all Plaintiffs' claims, because Plaintiffs are asserting a single fraudulent scheme by the defendants which injured each plaintiff."))); *cf. Stitt v. Citibank*, No. 12-CV-03892- YGR, 2015 WL 9177662, at *4–5 (N.D. Cal. Dec. 17, 2015) (finding no commonality in a RICO action regarding fraudulent property inspection charges when, "a finding that [the defendant's] methodology is 'actionable'" would not "generate a common answer that [the defendant] made a misrepresentation when it implicitly stated that inspection charges were valid" because the plaintiffs would have to show that each of their "*circumstances in fact did not warrant* a property inspection or charge" (emphasis in original)). Accordingly, the Court again finds that commonality is satisfied here.

C. Typicality

Rule 23(a)(3) requires that the claims or defenses of the class representatives be typical of the claims or defenses of the class they seek to represent. Fed. R. Civ. P. 23(a)(3). The purpose of the typicality requirement is to "ensure[] that the interest of the class representative 'aligns with the interests of the class.'" *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1116 (9th Cir. 2017) (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)). "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff, and whether other class members have been injured by the same course of conduct." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (quoting *Hanon*, 976 F.2d at 508). Representative claims are "typical" if they are "reasonably co-extensive with those of the absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020.

The Court finds that Plaintiffs' claims are typical of the Settlement Class because they are based on Plaintiff paying premiums for Counterfeited Policies issued by Gagliardi during the Class Period and the Settlement Class Member definition is tied to such policies.[11] In particular, the TAC alleges that Plaintiff received numerous "Certificates of Liability Insurance" for policies that were never actually issued by the carriers that Gagliardi Insurance represented issued the policies. *E.g.*, (TAC ¶ 62). The omissions and misrepresentations to Plaintiff are similar to the rest of the Settlement Class. (*Id.* ¶ 64). Though the actual monetary loss Plaintiff may have incurred would be specific to the number of polices the Plaintiff took out, the damages are still typical of the class because it seeks to recompense the premiums paid for Counterfeited Policies. (*Id.* ¶ 88). Thus, Plaintiff again satisfies the typicality requirement.

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[11] Similar to its commonality analysis, the Court had previously noted that narrowing the definition of Settlement Class in the SAC and the original settlement agreement to PONY members or a particular type of policy would demonstrate more clearly that the typicality requirement has been met. (Order at 14). Plaintiff has since made this adjustment in the Amended Settlement Agreement and TAC.

D. Adequacy of Representation

Finally, Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "To satisfy constitutional due process concerns, absent class members must be afforded adequate representation before entry of a judgment which binds them." *Hanlon*, 150 F.3d at 1020. To determine whether the adequacy prong is satisfied, courts consider the following two questions: "(1) [d]o the representative plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003); *see also Fendler v. Westgate-California Corp.*, 527 F.2d 1168, 1170 (9th Cir. 1975) (noting that representative plaintiffs and counsel also must have sufficient "zeal and competence" to protect class interests).

The Court sees no reason to depart from its previous finding that Plaintiff and Class Counsel adequately represent the Settlement Class. *See* (Order at 14–15). For example, it is still true that Plaintiff and Class Counsel have expended considerable time, expense, and resources to pursue these claims on behalf of the Settlement Class, including by engaging in several years of discovery to ensure adequate recovery for the Settlement Class. (Mot. at 23–24; Ram Decl. ¶ 20). Furthermore, Class Counsel and Plaintiff successfully negotiated the Amended Settlement Agreement, which addresses each of the Court's specific concerns. *See* (Ram Decl. ¶¶ 13–18). Plaintiff has therefore satisfied the adequacy of representation requirement.

With all four requirements satisfied, the Court finds at this time that the Settlement Class satisfies Rule 23(a) for the purposes of preliminary approval of the class action settlement.

E. Rule 23(b)(1)

Plaintiff seeks to certify the Settlement Class under Rule 23(b)(3). (Mot. at 24). "In addition to satisfying Rule 23(a)'s prerequisites, parties seeking class certification must show that the action is maintainable under Rule 23(b)(1), (2), or (3)." *Amchem*, 521 U.S.

at 614. Rule 23(b)(3) provides for certification of a class where: "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). The rule also provides that certain factors are relevant in making this determination: "(A) the class members' interests in individually controlling the prosecution of defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3)(A)–(D).

While Plaintiff has redefined the Settlement Class and the Class Period, the changes have made Plaintiff's arguments for certification stronger, as discussed herein, while the factual predicate has remained the same. Similarly, the Court is aware of no change that would materially impact its previous holding that Plaintiff demonstrated common questions predominate and prosecuting the conduct as a class action is superior to other litigation methods. Accordingly, the Court again finds that this "action is maintainable" under Rule 23(b). *See Amchem*, 521 U.S. at 614. As before, Plaintiff's basic common question—whether there was an actual Issuing Carrier for insurance policies sold as part of the Captive Programs—likely predominates. The questions at the center of this lawsuit still focus on Defendants' conduct, instead of the Plaintiff's and Settlement Class Members' conduct, which supports a finding of predominance. *Just Film*, 847 F.3d at 1122 ("These issues are appropriate for classwide litigation because they focus on [the defendants'] conduct."); *Sihler*, 2023 WL 4335735, at *11 (finding predominance met when the RICO claims "turn[ed] on common proof . . . [such as] whether Defendants participated in the conduct at issue; whether Defendants' participation in the conduct was part of an enterprise and was performed through a pattern of racketeering activity; whether it caused injury to Plaintiffs; or whether Defendants knew about and agreed to facilitate the scheme." (citing *Just Film*, 847 F.3d at 1123)). The individual questions that are likely to

arise between each Settlement Class Member will center on the price of their premiums under the Counterfeited Policy, whereas the common questions regarding whether the overarching alleged practice was unlawful, are likely shared between all Settlement Class Members. *In re United Energy Corp.*, 122 F.R.D. at 255 ("The issues of law and fact in making out a RICO violation will generally be common to all Plaintiffs' claims, because Plaintiffs are asserting a single fraudulent scheme by the defendants which injured each plaintiff.").

As the Court has previously found, this case involves a need for collective recovery based on the singular nature of the scheme and current financial situation of the Settling Defendants, which supports the superiority of a class action over individual litigation. Adjudicating each dispute individually would not promote judicial efficiency and could result in "varying adjudications of liability." *In re United Energy Corp.*, 122 F.R.D. at 258; *see also Just Film*, 847 F.3d at 1123–24 (affirming district court's finding of superiority and noting that "litigation on a classwide basis would promote greater efficiency in resolving the classes' claims").

Thus, based on the foregoing, the Court again conditionally certifies the Settlement Class for purposes of settlement under Rule 23(b)(3). As before, the Court also appoints Plaintiff's counsel as Class Counsel because they have demonstrated their ability to handle this matter competently and appoints Plaintiff as class representative because Plaintiff is adequately representative of the class.

IV. THE AMENDED SETTLEMENT AGREEMENT

Approval of class action settlements is governed by Federal Rule of Civil Procedure 23(e). A district court may approve a class action settlement only when it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).[12] At the preliminary approval phase,

[12] Though Rule 23 was amended in 2018, the Ninth Circuit has not directly address how, or whether, the Rule 23(e) analysis may have changed with these amendments. *See Saucillo v. Peck*, 25 F.4th 1118, 1124 n.3 (9th Cir. 2022) ("Because we vacate the district court's approval of the settlement agreement in this case for reasons unrelated to the *Hanlon* or Rule 23(e)(2) factors, we need not reach the question as to how district courts

the Court need only decide whether the settlement is potentially fair. *See Acosta*, 243 F.R.D. at 386; *Hollis v. Union Pac. R.R. Co*., No. EDCV 17-2449 JGB (SHKx), 2018 WL 6273014, at *5 (C.D. Cal. Mar. 6, 2018) (citing *Campbell v. First Investors Corp*., No. 11-CV-0548 BEN WMC, 2012 WL 5373423, at *4 (S.D. Cal. Oct. 29, 2012)) ("A full fairness analysis is unnecessary until the Court conducts the final fairness hearing."). Once the Court approves the settlement and the class members have been notified and provided an opportunity to object, the Court will hold a formal fairness hearing to determine whether the Settlement is fair, reasonable, and adequate. *See* Manual for Complex Litigation (Fourth) §§ 21.632-34 (2012). At the preliminary approval stage, the inquiry is whether the 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." *In re Tableware Antitrust Litig*., 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (citation omitted).

A. Whether the Amended Settlement Agreement Cures the Previous Obvious Deficiencies

The Court previously denied Plaintiff's motion for preliminary approval of the original settlement agreement based on four "obvious deficiencies," including the original settlement agreement: (1) was unclear regarding the status of the non-settling Defendants and the impact of the original settlement agreement on the litigation against them; (2) contained a release of claims that was too broad; (3) was insufficient in explaining how the addresses of class members would be ascertained for purposes of notice; and (4) appeared to provide for a settlement amount that was a mere fraction of the possible recovery, given

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should incorporate the [2018 amended] Rule 23(e)(2) factors into their analyses."). However, the prior Ninth Circuit factors "correlate with the new language of the rule." *Gagnier v. Siteone Landscape Supply LLC*, Case No.: SACV 21-01834-CJC (DFMx), 2023 WL 8116831, at *6 (C.D. Cal. June 6, 2023) ("[T]he Ninth Circuit in recent cases has analyzed class settlements while invoking the pre-2018 factors." (citing *Campbell v. Facebook, Inc*., 951 F.3d 1106, 1121 n.10 (9th Cir. 2020))).

the broad scope of the class. The Court primarily focuses on these elements in determining whether to preliminarily approve the Amended Settlement Agreement.

1. Non-Settling Defendants

The Court's previous Order directed Plaintiff to clarify for the Court how it would resolve litigation as to the non-settling Defendants Performance, Goldenstar, D. Gagliardi and M. Gagliardi. (Order at 20). Plaintiff has since dismissed these Defendants without prejudice. (ECF Nos. 141–43).[13] Therefore, this no longer weighs against preliminary approval.

2. Release of Claims

The Court previously found that the release in the original settlement agreement was overly broad and weighed heavily against preliminary approval because the original motion for preliminary approval referred to facts found outside of the operative pleading and because the release could be read to go beyond the scope of the factual predicate of the SAC because the original settlement agreement released claims arising out of the "Litigation *and/or* Complaint." (Order at 21 (emphasis added)). The original settlement agreement also waived California Civil Code section 1542 for all class members, which considering the already-broad release, weighed against preliminary approval. (*Id.*).

"A settlement agreement may preclude a party from bringing a related claim in the future 'even though the claim was not presented and might not have been presentable in the class action,' *but only* where the released claim is 'based on the identical factual predicate as that underlying the claims in the settled class action.'" *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (quoting *Williams v. Boeing Co.*, 517 F.3d 1120, 1133 (9th Cir. 2008) (emphasis added)). "Put another way, a release of claims that 'go[es] beyond the scope of the allegations of the operative complaint' is impermissible." *Lovig v. Sears, Roebuck & Co.*, No. EDCV 11-00756-CJC, 2014 WL 8252583, at *2 (C.D. Cal. Dec. 9, 2014) (quoting *Willner v. Manpower Inc.*, No. 11–CV–02846–JST, 2014 WL

[13] One non-settling Defendant, Defendant M. Gagliardi, was not dismissed. Default was entered against M. Gagliardi on April 6, 2022. *See* (ECF No. 80).

4370694, at *7 (N.D. Cal. Sept. 3, 2014)). Therefore, "[d]istrict courts in this Circuit have declined to approve settlement agreements where such agreements would release claims based on different facts than those alleged in the litigation at issue." *Chavez v. PVH Corp*., No. 13–CV–01797–LHK, 2015 WL 581382, at *5 (N.D. Cal. Feb. 11, 2015).

Here, the Court finds that the modified release in the Amended Settlement Agreement cures the previous deficiency and therefore no longer weighs against preliminary approval. In the Amended Settlement Agreement, the parties clarify that the release applies to only claims arising out of the facts describing in the TAC. *See* (Am. Settlement § 2.12). Further, the Amended Settlement Agreement substantially narrows the release by only applying the express waiver of rights under section 1542 to Plaintiff. (*Id.*). The release of claims appears to be fair because the release is now expressly limited to claims that could have been asserted in this action. *See* (Am. Settlement § 2.12); *see also Bendon v. DTG Operations, Inc*., Case No. ED CV 16-0861 FMO (AGRx), 2018 WL 6265059, at *10 (C.D. Cal. Feb. 27, 2018). Further, the release of claims expressly excepts claims that could be brought against entities and persons not named as released persons, such as Defendants M. Gagliardi, D. Gagliardi, Performance, and Goldenstar. *See* (Am. Settlement §§ 2.12–2.13). The limitation of section 1542 waiver, which extends Plaintiff's release to all unknown claims, also further narrows the release and weighs in favor of preliminary approval. Thus, the Court finds that this release "adequately balances fairness to absent class members and recovery for plaintiffs with defendant's business interest in ending this litigation." *Bendon,* 2018 WL 6265059, at *10 (citing *Fraser v. Asus Computer Int'l*, 2012 WL 6680142, *4 (N.D. Cal. 2012)).

3. Sufficiency of Notice

The Court previously found the proposed notice insufficient because Plaintiff failed to explain whether or how potential Settlement Class Members' mailing addresses would be obtained to enable the Court to assess whether sufficient notice could be provided to Settlement Class Members and whether the notice plan comported with Due Process. Class Counsel had also asked for an opportunity to correct other deficiencies. In connection with

the instant Motion, Plaintiff represents that it has a "current list of all PONY league members including addresses and has requested from the national headquarters for PONY a list of league members during the Class Period." (Mot. at 27). Plaintiff also states that a "toll-free help line" will be made available to address any inquiries. Additionally, Plaintiff attaches the short- and long-form notices that will be mailed to Class Members and posted on the settlement website. *See* (ECF Nos. 138-4, 138-5).

Rule 23(c)(2)(B) requires that the Court "direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Rule 23(e)(1) likewise requires that a proposed settlement may only be approved after notice is directed in a reasonable manner to all class members who would be bound by the agreement. Fed. R. Civ. P. 23(e)(1). 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." *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (internal quotations and citation omitted).

Plaintiff has cured the deficiencies previously identified by the Court, and the Court similarly finds the notice program described to be sufficient. First, Plaintiff has now demonstrated that the proposed mail program is practicable because Plaintiff and Class Counsel are locating the addresses for each Settlement Class Member and have made significant strides in obtaining a complete list. *See* (Ram Decl. ¶¶ 14–15). Second, the content of both notices includes the definition of the Settlement Class; the main terms of the Amended Settlement Agreement; the Settlement Class Members' rights and options under the Amended Settlement Agreement, including how to be excluded from or object to the Amended Settlement Agreement; a description of the release; and it provides the toll-free number and a website to aid any Settlement Class Members. *See* (ECF No. 138-4 at 2–5; ECF No. 138-5 at 2–5). The Court finds that this notice is satisfactory because it appropriately identifies the Settlement Class Members and the notices provide enough

information for those with "adverse viewpoints" to inquire and "to come forward and be heard." *Churchill Vill.*, 361 F.3d at 575.

a) Settlement Amount

The Court's previous order found that Plaintiff had not demonstrated the $195,000 to be paid by the Settling Defendants was sufficient, given how broadly the previous class was defined. *See* (Order at 23–24). The Amended Settlement Agreement has a more narrowly-defined Settlement Class, and Plaintiff has now ascertained an approximate size of the Settlement Class (approximately 614 Class Members). *See* (Ram Decl. ¶¶ 14, 17). The Amended Settlement Agreement also increases administration costs from $10,000 to $20,000. *See* (Ram Decl. ¶ 19).

"[A] cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." *Officers for Justice*, 688 F.2d at 628. In assessing the consideration class members receive out of a class action settlement, "[i]t is the complete package taken as a whole, rather than the individual component parts, that must be examined for overall fairness." *Id.* "In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *Reed v. Bridge Diagnostics, LLC*, Case No. 8:21:cv-01409-CJC-KES, 2023 WL 4833461, at *6 (C.D. Cal. July 27, 2023). Therefore, a proposed settlement may be acceptable, even if it amounts to a fraction of the potential recovery that might be available to class members at trial, because of the value in eliminating uncertainty of recovery. *See Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998) (citation omitted).

The Court finds that though the $195,000 is not a particularly large recovery amount for the conduct alleged in the TAC, Plaintiff has adequately cured the deficiencies within its control, namely by narrowing the Settlement Class definition and ascertaining the size of the Settlement Class, which provides the Court with an understanding of the actual recovery the approximately 614 Settlement Class Members may expect (proportionate to the premiums they paid). Plaintiff, therefore, has demonstrated that the amount of the

Settlement is fair in light of the unique circumstances posed by Settling Defendants' limited financial resources. In particular, Plaintiff has established that there is no possibility for a larger Settlement Fund, nor would further litigation improve the position of Plaintiff or the Settlement Class Members because Settling Defendant's insurance policy could run out. Therefore, this too weighs in favor of preliminary approval.

B. The Settlement Agreement Negotiations

The Court previously found that settlement negotiations were the result of arms-length negotiations, which weighed in favor of granting preliminary approval. This finding was based on: (1) Class Counsel's representation that the parties did not negotiate attorneys' fees until after the substantive terms of the settlement were agreed upon, which reduced any concern arising from the original settlement agreement's "clear sailing" arrangement;[14] (2) the lack of a reverter clause and original settlement agreement's provision that, "[i]f there is more money than necessary in the Settlement Benefit Fund to pay the Direct Damages for each Class Member, there will be a pro rata increase to each Benefit Amount," (ECF No. 120-2 § 3.01); (3) that Class Counsel would not receive an unfairly disproportionate amount of the settlement because, while 33% of a common fund as payment to class counsel is a substantial payment, it is within the range of approval and is not evidence of collusion;[15] and (4) the original settlement agreement was reached after

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[14] A settlement agreement contains a "clear-sailing arrangement" when "the defendant agrees not to challenge a request for an agreed-upon attorney's fee," but the "mere presence of such an agreement is not 'an independent basis for withholding settlement approval.'" *Martinez v. Helzberg's Diamond Shops*, Case No. ED CV 20-1085 PSG (SHKx), 2021 WL 9181893, at *7 (C.D. Cal. Sept. 24, 2021) (quoting *Briseno v. Henderson*, 998 F.3d 1014, 1027 (9th Cir. 2021)). The original settlement agreement provided that the Settling Defendants would not oppose Class Counsel's request for attorneys' fees, (ECF No. 120-2 § 9.02)

[15] *See Razo v. AT&T Mobility Servs., LLC*, No. 1:20-CV-0172 JLT HBK, 2022 WL 4586229, at *10 (E.D. Cal. Sept. 29, 2022) ("The typical range of acceptable attorneys' fees in the Ninth Circuit is 20% to 33 1/3% of the total settlement value, with 25% considered the benchmark." (citing *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000)); *Lim*, 2022 WL 17253907, at *12 ("The amount of attorney's fees and costs

significant time and effort was spent obtaining and reviewing documents in discovery, engaging in mediation, and negotiating the settlement terms at arms-length. The Court also noted that the requested $65,000 for both attorneys' fees and expenses was substantially lower than what Class Counsel represented was actually incurred ($611,842 in lodestar and $14,365 in litigation costs and expenses).

"This circuit has long deferred to the private consensual decision of the parties." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). The Ninth Circuit has "emphasized" that "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit 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." *Id*. (internal quotation marks and citation omitted). Three factors may raise concerns of collusion: (1) "when counsel receive[s] a disproportionate distribution of the settlement, or when the class receives no monetary distribution but class counsel are amply rewarded"; (2) "when the parties negotiate a 'clear sailing' arrangement providing for the payment of attorneys' fees separate and apart from class funds"; and (3) "when the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund." *In re Bluetooth Headset Prods. Liab. Litig*., 654 F.3d at 947 (internal quotation marks and citations omitted).

Based on the Court's review of the Amended Settlement Agreement, there have been no facts that materially change this analysis. The Court thus incorporates its previous analysis by reference. *See* (Order at 18–20). Also, based on the Court's review of the underlying record, the Court again concludes that the parties have a sound basis for measuring the terms of the Amended Settlement Agreement against the risks of continued litigation, and there is no evidence that the Amended Settlement Agreement was "the

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permitted in the Settlement Agreement – 33.33% of the Gross Settlement Amount – is substantial but not so disproportionate as to suggest collusion.").

product of fraud or overreaching by, or collusion between, the negotiating parties . . . ." *Rodriguez*, 563 F.3d at 965 (quoting *Officers for Justice v. Civil Serv. Comm'n of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982)). The Court therefore finds the Amended Settlement Agreement has resulted from sufficiently serious, informed, non-collusive negotiations. Preliminary approval of the Amended Settlement Agreement is thus warranted.

V. CONCLUSION

For the foregoing reasons, the Court ORDERS the following:

1. The Unopposed Amended Motion for Preliminary Approval of Class Settlement is GRANTED;
2. The Court preliminarily certifies the class, as defined in the Amended Settlement Agreement, (Am. Settlement § 2.19; TAC ¶ 82), for purposes of settlement;
3. For settlement purposes only, the Court hereby appoints:
   a. Plaintiff Del Obispo Youth Baseball, Inc.'s (d/b/a Dana Point Youth Baseball as the Class Representative;
   b. Michael F. Ram and Marie N. Appel of Morgan & Morgan and Gretchen M. Nelson and Gabriel S. Barenfeld of Nelson & Fraenkel LLP as Class Counsel; and
   c. CPT Group, Inc. as the Settlement Administrator; and

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4. The Motion for Final Approval of the Settlement and any motion for attorneys' fees shall be filed no later than September 9, 2024, and a Final Approval Hearing shall be held on December 18, 2024, at 1:30 p.m. in the United States District Court, Central District of California, Courtroom 5C, located at 350 W. 1st Street, Los Angeles, California, 90012.

IT IS SO ORDERED.

DATED: June 11, 2024

HON. SHERILYN PEACE GARNETT
UNITED STATES DISTRICT JUDGE