

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

KRISTINA RAINES and DARRICK
FIGG, individually and on behalf of others
similarly situated,

Plaintiffs,

v.

U.S. HEALTHWORKS MEDICAL
GROUP, a corporation, et al.,

Defendants.

Case No.: 19-cv-1539-DMS-DEB

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF
CLASS SETTLEMENT**

Plaintiffs move for preliminary approval of their class action settlement. ECF No. 206. For the reasons below, the Court grants the motion.¹

I. BACKGROUND

A. Factual and Procedural Background

This is a class action against U.S. Healthworks and its related and successor companies. *See* Third Amended Complaint (“TAC”), ECF No. 106. Plaintiffs allege that Defendants conducted post-offer, pre-placement medical examinations requiring that job

¹ The Court hereby vacates the motion hearing set for July 17, 2025 at 2:00 PM. Pursuant to Civil Local Rule 7.1(d)(1).

1 applicants fill out a health history questionnaire which asked health questions that were
2 neither job-related nor consistent with business necessity in violation of the California Fair
3 Employment and Housing Act – “FEHA” (Cal. Govt. Code § 12940 et. seq.). ECF. No.
4 106 ¶¶ 36-37, 43, 79.

5 Discovery has been extensive since this case began in October 2018. Plaintiffs’
6 counsel has engaged in substantial written discovery and Defendants have produced more
7 than 38,000 pages of documents. Plaintiffs have deposed several of Defendants’
8 employees and PMKs. Both Plaintiffs have been deposed. ECF No. 206-1 ¶ 15. Discovery
9 disputes have generated numerous discovery conferences with the Court. *Id.* ¶ 16. The
10 parties have each designated experts, some of whom have been deposed. *Id.* ¶ 17; ECF
11 Nos. 131-3; 142-8; 142-12.

12 Plaintiffs were successful in appealing dismissal of their FEHA claim by obtaining
13 a favorable opinion from the California Supreme Court in *Raines v. U.S. Healthworks*, 15
14 Cal.5th 268, 273 (2023); ECF Nos. 127-128.

15 Following remand, in August 2024, the Court certified nominal and punitive damage
16 claims against Defendants for a class of 245,000 job applicants who had been presented
17 with the HHQ during their post-offer, pre-employment medical examinations from October
18 23, 2017 through December 31, 2018 (“the Class Period”) in violation of FEHA. *See* ECF
19 No. 162. Defendants sought permission to appeal the class certification order under Rule
20 29(f) to the Ninth Circuit, which denied permission to appeal.

21 Formal settlement negotiations began in October 2024 and involved a full-day
22 mediation session with Kevin Barnes, Esq. In April 2025, Magistrate Judge Daniel E.
23 Butcher conducted mandatory settlement conference(s) over two days, and the parties
24 subsequently accepted his mediator’s settlement proposal. ECF No. 206-1 ¶¶ 19-21. The
25 Settlement Agreement is found at ECF No. 206-1 ¶ 22, Ex. 1.

26 The Plaintiffs have now moved for preliminary approval of their class action
27 settlement. ECF No. 206.
28

1 **B. Terms of the Agreement**

2 Plaintiffs seek provisional certification of a settlement class comprising all job
3 applicants (172,070 in number) who underwent a “basic” post-offer, pre-placement
4 medical examination at a U.S. Healthworks-branded facility in California between October
5 23, 2017 and December 31, 2018 (“Class Period”). *See* ECF No. 206-1, Ex. 1 § B, 4.

6 Pursuant to the settlement agreement, Defendants will pay nominal damages in the
7 amount of \$1 for each of the Settlement Class Members as a *cy pres* award payable to a
8 recognized charitable organization(s) selected by Plaintiffs’ counsel, which is Legal Aid at
9 Work. (*Id.*, §§ A, 1a; D, 8a.). Defendants also represent and warrant they no longer use
10 the Health History Questionnaire form (HHQ) at issue and agree to not use that form in the
11 future. (*Id.*, § D, 4.).

12 In exchange, class members will release Defendants from all claims that were or
13 could have been asserted in relation to the alleged improper use of the HHQ during the
14 post-offer, pre-placement medical examinations. *Id.*, § D, 16a. In addition, the Plaintiffs
15 will give general releases and Civil Code § 1542 waivers. *Id.*, § D, 16b.

16 The settlement administrator will provide notice to class members via a settlement
17 website, a toll-free number, and text (SMS) messages, or if unavailable, via email, or if
18 unavailable, via mail. *Id.* § D, 10b-d. Individuals may opt out of the class by sending a
19 written request to the settlement administrator within thirty days after the notice date. *Id.* §
20 D, 11.

21 Plaintiffs are deemed the prevailing party on their FEHA claim for purposes of
22 Plaintiffs’ motion for attorneys’ fees and costs only, and Plaintiffs’ counsel is entitled to
23 recover reasonable attorneys’ fees and costs under FEHA in an amount to be determined
24 by a motion to the Court. (*Id.*, § D, 8c.) Plaintiffs are also requesting Incentive and Service
25 Awards in the amount of \$7,500 each, subject to court approval. (Settlement Agreement,
26 §§ D, 5a, 8b.).

27 Class members may object to the settlement, class counsel’s fee application, and/or
28 the amount requested for incentive awards for the representative Plaintiffs by filing an

1 objection with the Court within 60 days after the entry of the preliminary approval order.
2 *Id.* § D, 12.

3 II. PROVISIONAL CERTIFICATION

4 The Rule 23 requirements are satisfied. The Court has previously certified a class,
5 finding that the commonality, typicality, predominance, and superiority requirements were
6 all satisfied. The settlement class is sufficiently numerous because it contains an estimated
7 172,070 class members. ECF No. 206-1 ¶¶ 24–25. For the same reasons, the Court finds
8 that those requirements are met here. The Court accordingly grants provisional certification
9 of the settlement class.

10 III. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

11 A. Legal Standard

12 The Ninth Circuit maintains a “strong judicial policy” that favors the settlement of
13 class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). Courts
14 generally employ a two-step process in evaluating a class action settlement. First, courts
15 make a “preliminary determination” concerning the merits of the settlement and, if the class
16 action has settled prior to class certification, the propriety of certifying the class. *See*
17 *Manual for Complex Litigation, Fourth* (“MCL, 4th”) § 21.632 (FJC 2004). “The initial
18 decision to approve or reject a settlement proposal is committed to the sound discretion of
19 the trial judge.” *City of Seattle*, 955 F.2d at 1276. The Court’s task at the preliminary
20 approval stage is to determine whether the settlement falls “within the range of possible
21 approval.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007)
22 (quotation omitted); *see also* MCL, 4th § 21.632 (explaining that courts “must make a
23 preliminary determination on the fairness, reasonableness, and adequacy of the settlement
24 terms and must direct the preparation of notice of the certification, proposed settlement,
25 and date of the final fairness hearing.”). Second, courts must hold a hearing pursuant to
26 Rule 23(e)(2) to make a final determination of whether the settlement is “fair, reasonable,
27 and adequate.”
28

1 Preliminary approval of a settlement is appropriate if “the proposed settlement
2 appears to be the product of serious, informed, non-collusive negotiations, has no obvious
3 deficiencies, does not improperly grant preferential treatment to class representatives or
4 segments of the class, and falls within the range of possible approval.” *In re Tableware*,
5 484 F. Supp. 2d at 1079 (quotation omitted). The proposed settlement need not be ideal,
6 but it must be fair and free of collusion, consistent with counsel’s fiduciary obligations to
7 the class. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (“Settlement is
8 the offspring of compromise; the question we address is not whether the final product could
9 be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion.”).
10 To assess a settlement proposal, courts must balance a number of factors:

11 the strength of the plaintiffs’ case; the risk, expense, complexity, and likely
12 duration of further litigation; the risk of maintaining class action status
13 throughout the trial; the amount offered in settlement; the extent of discovery
14 completed and the stage of the proceedings; the experience and views of
15 counsel; the presence of a governmental participant; and the reaction of the
16 class members to the proposed settlement.

17 *Id.* at 1026 (citations omitted). The proposed settlement must be “taken as a whole, rather
18 than the individual component parts” in the examination for overall fairness. *Id.* Courts do
19 not have the ability to “delete, modify or substitute certain provisions”; the settlement
20 “must stand or fall in its entirety.” *Id.*

21 **B. Analysis**

22 1. Non-Collusive Negotiations

23 In examining the means by which the parties arrived at the settlement agreement, the
24 Court concludes that the negotiations and agreement were non-collusive. The settlement
25 was reached after the parties engaged in six years of litigation, extensive discovery, appeal
26 to the Ninth Circuit with certification to the California Supreme Court, class certification
27 with appeal to the Ninth Circuit, and negotiations that were overseen by a neutral third-
28 party mediator and by a Magistrate Judge of this Court. These facts support the conclusion
that the settlement agreement is non-collusive and likely to benefit the class members. *See*,

1 *e.g., Harris v. Vector Marketing Corp.*, No. C-08-5198 EMC, 2011 WL 1627973, at *8
2 (N.D. Cal. Apr. 29, 2011).

3 2. Risk, Expense, Complexity, and Likely Duration of Further Litigation

4 Liability remains disputed and uncertain in this case as evidenced by the expert
5 declarations submitted in support of and in opposition to the motion for class certification
6 and the Rule 23(f) appeal. ECF No. 206-1 ¶¶ 33-34. Even if liability can be established,
7 the amount of nominal damages and whether punitive damages may be imposed, especially
8 given the latter's heightened burden of proof, are highly contested. *Id.* ¶ 32, 35-36. The
9 viability of the class also would be challenged by Defendants, which could potentially
10 result in de-certification. *Id.* ¶ 31. Therefore, this factor weighs strongly in favor of
11 settlement.

12 3. The Amount Offered in Settlement

13 To evaluate adequacy, courts primarily consider plaintiffs' expected recovery
14 balanced against the value of the settlement offer. *In re Tableware Antitrust Litig.*, 484 F.
15 Supp. 2d 1078, 1080 (N.D. Cal. 2007). The \$1 nominal damages award per class member,
16 payable as a *cy pres* award to Legal Aid at Work, which prosecutes impact class action
17 employment litigation on behalf of California workers, is consistent with the Court's prior
18 ruling certifying the class for nominal damages. ECF No. 162.

19 4. The Extent of Discovery Completed and the State of the Proceedings

20 Plaintiffs contend that the information revealed in discovery as well as their experts'
21 review and analysis of same, together with the Court's rulings, provided Plaintiffs and their
22 counsel with a sufficient baseline to evaluate the strengths and weaknesses of Plaintiffs'
23 claims and the benefits of the proposed Settlement Agreement. ECF No. 206-1 ¶¶ 23-27.
24 Given the extensive discovery and advanced stage of these proceedings, which have been
25 ongoing for more than six years, the Court agrees that the parties have gathered "sufficient
26 information to make an informed decision about the settlement." *In re Mego Fin. Corp.*
27 *Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000).
28

1 5. The Experience and Views of Counsel

2 Based on their litigation of this case and experience, Plaintiffs' counsel believes that
3 the Settlement Agreement is within the range of reasonableness given that it provides for
4 nominal damages (the only damages available) and avoids the risks of unfavorable rulings
5 or verdicts and de-certification. ECF No. 206-1 ¶¶ 23-27. This weighs in favor of
6 approving the settlement agreement.

7 6. The Reaction of Class Members to the Proposed Settlement

8 The Court will wait until the final approval hearing to determine the reaction of the
9 class members to the settlement.

10 7. Payment to a *Cy Pres*

11 The payment of the nominal damages to a *cy pres* is reasonable, given that
12 distribution of \$1 to each class member would be cost prohibitive and payment of lump
13 sum nominal damages would be consistent with the public policy promoted by this case.
14 ECF No. 206-1 ¶ 26.

15 8. The Presence of Obvious Deficiencies

16 The Court has reviewed the settlement agreement and did not find any obvious
17 deficiencies. To the extent any objector calls attention to any such deficiency, the Court
18 will consider it at the final approval hearing.

19 **IV. NOTICE**

20 The Court must separately evaluate the proposed notice procedure. Under Federal
21 Rule of Civil Procedure 23(c)(2)(B), "the court must direct to class members the best notice
22 that is practicable under the circumstances, including individual notice to all members who
23 can be identified through reasonable effort." The notice must state:

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

1 Fed. R. Civ. P. 23(c)(2)(B).

2 Plaintiffs propose sending summary notice directly to class members via text (SMS),
3 email and/or mail. ECF No. 206-1, Ex. 1 §§ D, 10c. The notice will be posted on the
4 settlement website. *Id.*, §§ D, 10d. The notice contains each of the required elements listed
5 above and clearly and concisely states in plain, easily understood language the key
6 elements of the Settlement and the class members' rights under it. *Id.* Class members are
7 also informed about how to opt out of the class, how to object to the settlement, attorneys'
8 fees application and request for incentive and service awards and how to attend the final
9 approval hearing. *See id.* In addition, the settlement administrator will set up a toll-free
10 number to call for more information about the settlement. ECF No. 206-1 § D, 10d.

11 The Court approves this notice procedure.

12 V. CONCLUSION

13 The Court grants the motion for preliminary approval and further orders as follows:

- 14 1. The Court provisionally certifies a settlement class consisting of all job
15 applicants (172,070 in number) who underwent a "basic" post-offer, pre-
16 placement medical examination at a U.S. Healthworks-branded facility in
17 California between October 23, 2017 and December 31, 2018.
- 18 2. The Settlement Agreement is within the range of reasonableness and meets
19 the requirements for preliminary approval.
- 20 3. Plaintiffs Kristina Raines and Darrick Figg are conditionally certified as the
21 Class Representatives, and the following law firms are conditionally
22 appointed as class counsel: Phillips, Erlewine, Given & Carlin LLP and Light
23 & Miller LLP.
- 24 4. The Court approves the notice (attached as Exhibit 1 to the Settlement
25 Agreement) and the Notice Plan. The Notice shall be distributed in the
26 manner specified in the Settlement Agreement.
- 27 5. Class Counsel or the settlement administrator shall create a website for this
28 settlement in which the Notice and other documents filed with the Court (as

specified in the Settlement Agreement) will be accessible by the class members at the listed and stated website address.

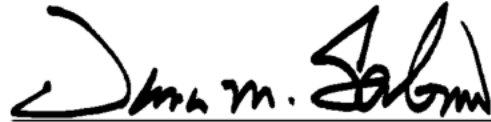
6. To comply with the Class Action Fairness Act, Defendants shall provide notice to the proper entities within 10 days. *See* 28 U.S.C. § 1715.
7. Verita Global is hereby approved as the Settlement Administrator, pursuant to the terms set forth in the Settlement Agreement, and is authorized to administer the settlement claims process within the budget submitted. ECF No. 206-1, Ex. 2.
8. A hearing shall be held before this Court on November 21, 2025 at 1:30 p.m. in Courtroom 13A to consider whether the Settlement should be given final approval by the Court, whether the Court should grant Plaintiffs' request for Incentive and Service Awards, and what amounts should be awarded to Plaintiffs' counsel for attorneys' fees and costs.
9. At the final approval hearing, Class Members' objections to the Settlement Agreement, if any, may be heard, provided they submitted timely written objections as set forth in the Settlement Agreement.
10. In the event the Settlement receives final approval, all Settlement Class Members will be deemed to have forever released and discharged the Class Released Claims as set forth in the Settlement Agreement.
11. The Court hereby adopts the following schedule:

<u>Event</u>	<u>Date</u>
Last day for the Administrator to send Notice	August 18, 2025
Last day for Plaintiffs to file their motion for attorneys' fees, costs, and incentive awards to be heard at the Fairness Hearing	September 19, 2025

Last day for Class Members to file a claim, request exclusion, or object to the Settlement	October 22, 2025
Last day for parties to file motion for final approval and supporting briefs	October 24, 2025
Final Approval and Fairness Hearing	November 21, 2025 at 1:30 p.m in Courtroom 13A

IT IS SO ORDERED.

Dated: July 14, 2025



Hon. Dana M. Sabraw
United States District Judge