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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JASIBEL CANCHOLA *et al.*,
Plaintiffs,

v.

ALLSTATE INSURANCE COMPANY,
Defendant.

Case No. 8:23-cv-00734-FWS-ADS

ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION [95] AND MOTION TO EXCLUDE EXPERT REPORT [73]

Before the court are Plaintiff Jasibel Canchola, Plaintiff Carlos Ochoa, Plaintiff Richard Curtis, and Plaintiff Robert Souza's (collectively, "Plaintiffs") Motion for Class Certification, (Dkt. 95), and Motion to Exclude Expert Report and Testimony of Paul Oyer, (Dkt. 73 ("*Daubert* Motion")). Defendant Allstate Insurance Company ("Defendant") opposes both motions, and the matters are fully briefed. (Dkts. 67, 83, 96.) The court held a hearing on this matter on November 7, 2024. (Dkt. 102.) Based on the state of the record, as applied to the applicable law, Plaintiffs' Motion for Class Certification and *Daubert* Motion are **GRANTED**.

I. BACKGROUND

Defendant sells property, casualty, and life insurance in California through independent and exclusive agents. (Dkt. 41 ("FAC") ¶¶ 2-3, 36-37, 40-47.)[1] Exclusive agents sell insurance for Defendant or other approved carriers in Allstate-branded agencies. (*Id.* ¶¶ 23-26; Dkt. 54-31 ("Telgenhoff Depo.") at 97:2-23.) The terms of the relationship between Defendant and its exclusive agents are set forth in the Exclusive Agency Agreement. (*See, e.g.*, Dkt. 55 ("Crueger Decl."), Exhs. 1-8.) The version of the Exclusive Agency Agreement employed varies depending on the business structure the executive agent elects: (1) R3001 for individual agents; (2) R3001S for sole proprietorships; and (3) R3001A or R3001C for corporations or LLCs.[2] (*See, e.g.*, Telgenhoff Depo. at 64:9-66:1; Dkt. 54-3 at 6.)

The Exclusive Agency Agreement classifies the relationship between Defendant and the exclusive agents as that of "an independent contractor for all purposes." (*See, e.g.*, Exh. 55-6 ("R3001C Agreement") § I(D).)[3] The Exclusive

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[1] All citations refer to the CM/ECF pagination, other than the cites to deposition testimony, which retain the original pagination.

[2] Defendant no longer utilizes the R3001 and R3001A Agreements. (Dkt. 54-3 at 6.)

[3] The parties agree that the material terms of the Exclusive Agency Agreement do not vary between the four iterations discussed above. (Dkt. 95 at 12 n.2; Dkt. 67 at 13

Agency Agreement also imposes certain "duties and conditions" on exclusive agents, such as requirements that exclusive agents "provide customer service, including the collection of payments, for any and all Company policyholders," "meet certain business objectives established by the Company in the areas of profitability, growth, retention, customer satisfaction and customer service," "meet with Company representatives at mutually convenient times to discuss various business topics" upon request, and permit "Company representatives" to access their sales location "to review compliance with this Agreement during the business hours of the sales location." (*See, e.g.*, *id.* §§ II(A)-(J).)

The Exclusive Agency Agreement incorporates by reference the Exclusive Agency Independent Contractor Manual, the Allstate Agency Standards, and the Supplement for the R3001 Agreement (together, "Allstate Agreements"). (*See, e.g.*, *id.* § 1(C); FAC ¶ 48.) The Allstate Agreements require exclusive agents to incur various expenses necessary to operate their Allstate agencies without reimbursement, including, but not limited to, costs attributable to leasing office space, branding the interior and exterior of the agency, staffing the agency, obtaining phones, a centralized telephone system, internet access, and Allstate-approved computers with Allstate software, advertising, and certain expenses assessed based on agents' errors and omissions. (*See, e.g.*, R3001C Agreement §§ VIII, XI; FAC ¶¶ 54, 94(a)-(h); Dkt. 45 ("Answer") ¶ 94; Telgenhoff Depo. at 222:24-226:4.)

Plaintiffs previously worked as exclusive agents for Defendant between 1990 and 2023, and each signed an Exclusive Agency Agreement. (FAC ¶¶ 23-26; Dkt. 57 ("Canchola Decl.") ¶¶ 3, 5-9; Dkt. 58 ("Ochoa Decl.") ¶¶ 3, 5-10; Dkt. 59 ("Curtis Decl.") ¶¶ 3, 4-8; Dkt. 61 ("Souza Decl.") ¶¶ 3, 5-8.) In their roles as exclusive agents, Plaintiffs incurred certain expenses from rent, internet, licensed staff wages,

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n.4.) As in the parties' briefing, the court references the R3001C Agreement as representative of all versions of the Exclusive Agency Agreement at issue.

payroll taxes and fees, mandatory insurance coverage, marketing, licensing, Allstate Agency Voice (a cloud-based telephone system), and computer-related costs, but were not reimbursed for those expenses. (Canchola Decl. ¶¶ 18-19; Ochoa Decl. ¶¶ 19-21; Curtis Decl. ¶¶ 12-13; Souza Decl. ¶¶ 12-13.) Plaintiffs assert a single claim, individually and on behalf of others similarly situated, for unreimbursed business expenses under California Labor Code § 2802 and seek to certify a class of "[a]ll individuals who signed an Allstate R3001, R3001A, R3001S, or R3001C Exclusive Agency Agreement and who worked as an Allstate exclusive agent in the State of California during the class period." (Dkt. 95 at 2; FAC ¶¶ 95-96, 104-07.)

II. LEGAL STANDARD

Federal Rule of Civil Procedure 23 "enables a federal court to adjudicate claims of multiple parties at once, instead of in separate suits." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 408 (2010). The party seeking class certification "bear[s] the burden of demonstrating that they have met each of the four requirements of [Rule] 23(a) and at least one of the requirements of Rule 23(b)." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 979-80 (9th Cir. 2011). The party "must prove the facts necessary to carry the burden of establishing that the prerequisites of Rule 23 are satisfied by a preponderance of the evidence." *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Food, LLC*, 31 F. 4th 651, 665 (9th Cir. 2022).

Rule 23(a) requires a party seeking class certification to demonstrate that: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). These requirements are respectively referred to as numerosity, commonality, typicality, and adequacy. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997). In addition, as applicable here, Rule 23(b)(3) requires that "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).

"Rule 23 does not set forth a mere pleading standard," *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011), and a class action may only be certified if the court is "satisfied, after a rigorous analysis, that the prerequisites of both Rule 23(a) and Rule 23(b)(3) have been satisfied," *Olean*, 31 F. 4th at 664 (quoting *Gen. Tel. Co. of Sw. v. Falcon,* 457 U.S. 147, 161 (1982)). The court's "rigorous analysis" will frequently "entail some overlap with the merits of the plaintiff's underlying claim." *Dukes*, 564 U.S. at 351. However, "Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage" and "[m]erits questions may be considered . . . only to the extent [] that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 465-66 (2013).

III. DISCUSSION

As discussed above, Plaintiffs seek to certify a class under Rule 23(a) and (b)(3) defined as: "All individuals who signed an Allstate R3001, R3001A, R3001S, or R3001C Exclusive Agency Agreement and who worked as an Allstate exclusive agent in the State of California during the class period," or from March 28, 2023, to the present. (*See* Dkt. 95 at 2; FAC ¶¶ 95-96; Dkt. 1-2.) Plaintiffs also move for a court order appointing Plaintiffs as class representatives and their attorneys of record at Crueger Dickison LLC, Wallace Miller, and Nelson & Fraenkel LLP as class counsel. (Dkt. 95 at 31-33; *see also* Dkt. 61-1.) The court first addresses Plaintiffs' *Daubert* Motion, and then considers whether Plaintiffs have met the requirements for class certification.

A. *Daubert* Motion

Plaintiffs move to exclude the expert report of Defendant's expert witness, Professor Paul Oyer, pursuant to Federal Rule of Evidence 702. (Dkt. 73 at 2.)

Federal Rule of Evidence 702 authorizes "a witness who is qualified as an expert by knowledge, skill, experience, training, or education" to "testify in the form of an opinion or otherwise" if: (1) "the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue"; (2) "the testimony is based on sufficient facts or data"; (3) "the testimony is the product of reliable principles and methods"; and (4) "the expert has reliably applied the principles and methods to the facts of the case." Fed. R. Evid. 702. The proponent of the expert bears the burden of proving admissibility. *Lust By & Through Lust v. Merrell Dow Pharms.*, Inc., 89 F.3d 594, 598 (9th Cir. 1996).

At the class certification stage, "the relevant inquiry is a tailored *Daubert* analysis which scrutinizes the reliability of the expert testimony in light of the criteria for class certification and the current state of the evidence." *Rai v. Santa Clara Valley Transp. Auth.*, 308 F.R.D. 245, 264 (N.D. Cal. 2015); *see also Grodzitsky v. Am. Honda Motor Co.*, 957 F.3d 979, 984-85 (9th Cir. 2020). "Expert opinion testimony is relevant if the knowledge underlying it has a valid connection to the pertinent inquiry," and "it is reliable if the knowledge underlying it has a reliable basis in the knowledge and experience of the relevant discipline." *United States v. Sandoval-Mendoza*, 472 F.3d 645, 654-55 (9th Cir. 2006) (cleaned up). "Ultimately, the test under *Daubert* is not the correctness of the expert's conclusions but the soundness of [their] methodology." *Elosu v. Middlefork Ranch Inc.*, 26 F.4th 1017, 1024 (9th Cir. 2022) (internal quotation marks and citation omitted).

Plaintiffs challenge only the relevance of Professor Oyer's opinions to the class certification analysis, not his qualifications or methodology. (*See* Dkt. 73 at 7-14; Dkt. 83 at 5, 9-10.) Plaintiffs specifically contest Professor Oyer's opinions that: (1) Defendant reimbursed exclusive agents' business expenses "indirectly" by providing outcome-based compensation; and (2) that "Plaintiffs' approach for damages based on expenses alone is conceptually flawed" because "[e]valuating the harm to members of the proposed class must be analyzed in the context of the total

compensation to the [e]xclusive [a]gency, specifically the compensation used to cover the [e]xclusive [a]gency's expenses that Plaintiffs seek as damages," and "individualized inquiry is necessary to estimate the harm" to the agencies, if any.[4] (*Id.* at 5-6; *see also* Dkt. 66-14 ("Oyer Report") ¶¶ 16, 62.)

Plaintiffs argue both opinions are irrelevant to the court's analysis at class certification because the opinions constitute legal conclusions and contradict California law related to reimbursing business expenses under California Labor Code § 2802. (Dkt. 73 at 9-14.) Defendant argues these opinions are relevant and admissible because Professor Oyer's opinions "concerning the wide variations in the types and amounts of Plaintiffs' expenses show that a determination of reasonable and necessary business expenses will change depending on the specific facts and circumstances of a particular [e]xclusive [a]gency's business" and thus that individualized issues predominate. (Dkt. 83 at 6-7, 11-14.)

The court agrees with Plaintiffs that the challenged opinions are impermissible legal conclusions. Generally, experts may not opine on "matters of law for the court." *Berman v. Freedom Fin. Network, LLC*, 400 F. Supp. 3d 964, 971 (N.D. Cal. 2019) (internal citations omitted). Here, Professor Oyer repeatedly opines that individualized inquiry is necessary to assess the proposed class's damages stemming from unreimbursed business expenses. (*See, e.g.*, Oyer Report at 25-33.) Professor Oyer also opines that Defendant's "outcome-based compensation . . . is an efficient compensation method that indirectly compensates the [e]xclusive [a]gency for its efforts (including expenses)" and "any member of the proposed class who received compensation to cover the [e]xclusive [a]gency's allegedly reimbursable expenses is not harmed." (*Id.* at 25.) The court finds these opinions address "central legal

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[4] Although Plaintiffs indicated at oral argument that they seek to exclude Professor Oyer's expert report in its entirety, Plaintiffs' *Daubert* Motion challenges only these two opinions. (*See generally* Dkt. 73; Dkt. 83 at 7-11.) Thus, the court does not address Professor Oyer's remaining opinions.

questions" raised by Plaintiffs' Motion for Class Certification, namely commonality and predominance. *See, e.g.*, *In re Google RTB Consumer Privacy Litig.*, 2024 WL 2242690, at *3 (N.D. Cal. Apr. 4, 2024) (granting motion to exclude expert's conclusions regarding whether certain data or disclosures constitutes "common evidence" and whether the defendant "violate[d] the privacy rights of its account holders by failing to inform them of the at-issue data collection" because both opinions were legal questions for the court to determine at class certification); *RJ v. Cigna Health & Life Ins. Co.*, 2024 WL 1107826, at *5 (N.D. Cal. Feb. 12, 2024) (stating "[t]o the extent that [the expert] is offering her opinion on whether class certification is appropriate in this case or the permissible inferences the [c]ourt may draw, such opinions do not assist the [c]ourt in understanding the evidence or determining a fact in issue"). In other words, Dr. Oyer's report is merely a "thinly disguised attempt to submit what is essentially an amicus brief as an expert report." *LD v. United Behavioral Health*, 2023 WL 2806323 at *3 (N.D. Cal. Mar. 31, 2023). Because Dr. Oyer's opinions regarding commonality and predominance improperly invade the province of the court, the court **GRANTS** Plaintiffs' *Daubert* Motion as to these opinions.

B. Motion for Class Certification

1. Numerosity

Under Rule 23(a)(1), "[o]ne or more members of a class may sue or be sued as representative parties on behalf of all members only if . . . the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "The numerosity requirement is not tied to any fixed numerical threshold—it 'requires examination of the specific facts of each case and imposes no absolute limitations.'" *Rannis v. Recchia*, 380 F. App'x 646, 651 (9th Cir. 2010) (quoting *Gen. Tel. Co. of the Nw., Inc. v. Equal Emp. Opportunity Comm'n,* 446 U.S. 318, 330 (1980)). "In general, courts find the numerosity requirement satisfied when a class includes at least 40 members," but "a class of 15 'would be too small to meet the numerosity

requirement.'" *Id*. (quoting *Gen. Tel. Co*., 446 U.S. at 330). "The central question is whether [p]laintiffs have sufficiently identified and demonstrated the existence of the numbers of persons for whom they speak." *Schwartz v. Upper Deck Co*., 183 F.R.D. 672, 680-81 (S.D. Cal. 1999).

Plaintiffs assert that the proposed class includes 973 members who worked as exclusive agents during the class period and that Defendant has admitted it can identify these members by referencing its records. (Dkt. 95 at 24; *see also* Crueger Decl., Exh. 47 at 781, 783; FAC ¶¶ 95-97.) Defendant does not contest Plaintiffs' estimated class size, (*see generally* Dkt. 67), and the court finds Plaintiffs' estimate sufficient to demonstrate numerosity. *See Celano v. Marriott Int'l, Inc.*, 242 F.R.D. 544, 549 (N.D. Cal. 2007) (noting "courts generally find that the numerosity factor is satisfied if the class comprises 40 or more members and will find that it has not been satisfied when the class comprises 21 or fewer."); *In re Badger*, 143 F.R.D. at 696 (stating a reasonable estimate as to numerosity is sufficient).

2. Commonality and Predominance

Consistent with the parties briefing, the court analyzes the commonality and predominance requirements under Rule 23(a)(2) and (b)(3) together. (*See* Dkt. 95 at 24-30; Dkt. 67 at 15-31); *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1121-22 (9th Cir. 2017) (jointly analyzing commonality and predominance).

Rule 23(a)(2) requires "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). A common question "is capable of classwide resolution—which means that 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." *Dukes*, 564 U.S. at 350. "By contrast, an individual question is one where members of a proposed class will need to present evidence that varies from member to member." *Olean*, 31 F. 4th at 663 (citing *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016)). "[T]he key inquiry is not whether the plaintiffs have raised common questions, 'even in droves,' but rather, whether class treatment will 'generate common *answers* apt to drive the resolution of

the litigation.'" *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 958 (9th Cir. 2013) (quoting *Dukes*, 564 U.S. at 350). The analysis "does not turn on the number of common questions, but on their relevance to the factual and legal issues at the core of the purported class claims." *Jimenez v. Allstate Inc. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014). Even a "single *significant* question of law or fact" is sufficient. *Abdullah*, 731 F.3d at 958 (citing *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir. 2012)).

Rule 23(b)(3) requires that "the questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). "Rule 23(b)'s predominance inquiry 'is far more demanding' than Rule 23(a)'s commonality requirement." *Sali v. Corona Reg'l Med. Ctr.*, 909 F.3d 996, 1008 (9th Cir. 2018) (quoting *Amchem Prods.*, 521 U.S. at 623-24). "The predominance inquiry asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Tyson Foods*, 577 U.S. at 453 (cleaned up). "The main concern . . . is the balance between individual and common issues." *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 545-46 (9th Cir. 2013) (internal quotation marks and citation omitted). Each element of a claim need not be susceptible to class-wide proof, *Amgen*, 568 U.S. at 468-69, and the "important questions apt to drive the resolution of the litigation are given more weight in the predominance analysis over individualized questions which are of considerably less significance to the claims of the class," *Ruiz Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016).

"In order for the plaintiff[] to carry their burden of proving that a common question predominates, they must show that the common question relates to a central issue in the plaintiff['s] claim." *Olean*, 31 F. 4th at 663 (citing *Dukes*, 564 U.S. at 349-50). "Considering whether 'questions of law or fact common to class members predominate' begins . . . with the elements of the underlying cause of action." *Erica*

P. John Fund, Inc. v. Halliburton Co., 563 U.S. 804, 809 (2011) (quoting Fed. R. Civ. P. 23(b)(3)).

Plaintiffs assert a single claim for unreimbursed business expenses under California Labor Code § 2802. Section 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties . . . ." Cal. Lab. Code § 2802(a). The critical question raised by Plaintiffs' unreimbursed business expenses claim is whether Plaintiffs were misclassified as independent contractors, rather than employees. *See id.* Plaintiffs argue this misclassification question predominates over individualized issues. (Dkt. 95 at 24-28.)

California courts distinguish between employees and independent contractors by applying the common law test articulated in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal. 3d 341 (1989). Under *Borello*, "the principal test of an employment relationship is whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired." 48 Cal. 3d at 350-51 (alteration adopted); *see also Ayala v. Antelope Valley Newspapers, Inc.*, 59 Cal. 4th 522, 532 (2014) ("[T]he hirer's right to control the work is the foremost consideration in assessing whether a common law employer-employee relationship exists"). A party's right to control depends upon whether the party "retains all necessary control over its operations," and the "strongest evidence" of the right to control is "whether the hirer can discharge the worker without cause." *Ayala*, 59 Cal. 4th at 531 (cleaned up).

Although the employer's "right to control" is the "most important" consideration, courts also must consider several "secondary indicia of the nature of a service relationship," including:

> (a) whether the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular

> occupation; (d) whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether or not the work is a part of the regular business of the principal; and (h) whether or not the parties believe they are creating the relationship of employer-employee.

Borello, 48 Cal. 3d at 350-51 (internal quotation marks omitted). Because these secondary factors are "intertwined," the weight accorded any one factor depends upon the "particular circumstances" at play, and the factors "cannot be applied mechanically as separate tests." *Id.* at 351.

Defendant argues that Plaintiffs cannot establish either commonality or predominance because the misclassification question raises numerous individualized issues regarding proposed class members' prudential standing, exclusive agents' varied business structures, and business expenses under California Labor Code § 2802. (*See* Dkt. 67 at 15-31.) The court addresses these arguments in turn.

i. *Prudential Standing*

Defendant first argues that individualized questions predominate regarding the proposed class's prudential standing to assert claims under California Labor Code § 2802. (Dkt. 67 at 16-18.) Under the prudential standing rule, a plaintiff must "assert [their] own legal rights and interests" and "cannot rest [their] claim to relief on the legal rights or interests of third parties." *Meland v. Weber*, 2 F.4th 838, 848 (9th Cir. 2021) (quoting *Franchise Tax Bd. of Cal. v. Alcan Aluminum Ltd.*, 493 U.S. 331, 336 (1990)). In the corporate context, whether a shareholder has prudential standing depends on whether the shareholder asserts a derivative claim based on "an injury to the corporation" or a direct claim based on an independent injury. *Id.* "The same conduct may result in injury to both the corporation and the individual shareholders." *RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1057 (9th Cir. 2002).

Defendant reasons that Plaintiffs, as well as other putative class members, lack prudential standing to sue for unreimbursed expenses under the "shareholder

standing" rule because Plaintiffs seek to recover business expenses incurred by the corporations for which they served as owners or principal officers. (Dkt. 67 at 16.) Defendant further argues that determining whether class members suffered direct injuries or whether any exception to the rule, like the alter ego doctrine, applies, would require fact-intensive and individualized assessment. (*Id.* at 17-18.)

Defendant's challenge to Plaintiffs' prudential standing misconstrues the commonality and predominance inquiries. Because prudential standing is a non-jurisdictional issue, *see Tenet v. Doe*, 544 U.S. 1, 6 n.4 (2005); *Pershing Park Villas Homeowners Ass'n v. United Pac. Ins. Co.*, 219 F.3d 895, 899 (9th Cir. 2000), the court does not analyze Plaintiffs' prudential standing but rather considers only whether the prudential standing inquiry presents common questions, *cf. Alcantar v. Hobart Serv.*, 800 F.3d 1047, 1053 (9th Cir. 2015) (stating at the class certification stage "whether class members could actually prevail on the merits of their claims is not a proper inquiry in determining the preliminary question [of] whether common questions exist") (internal quotation marks and citation omitted); *Dawson v. Great Lakes Educ. Loan Servs., Inc.*, 327 F.R.D. 637, 646 (W.D. Wis. 2018) (stating the question of "prudential standing" should be resolved at summary judgment rather than class certification).

Plaintiffs have presented evidence showing that the Allstate Agreements: (1) require exclusive agents to incur certain business expenses; and (2) dictate that Defendant's "primary relationship" is with the exclusive agent, rather than a corporate entity. (*See, e.g.*, R3001C Agreement §§ III, VIII, XI; Dkt. 54-3 at 11.) Given that the terms of the relationship between Defendant and the exclusive agents are standardized, the court concludes that whether Plaintiffs and other class members suffered a direct injury, and thus can recover unreimbursed business expenses incurred by their affiliate corporations, is a common question capable of resolution on a classwide basis. *See, e.g.*, *Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1145 (2014) (stating that recovering unreimbursed business expenses under

section 2802 requires only that "an employee . . . was required to [incur a business expense], and he or she was not reimbursed."); *Bowerman v. Field Asset Servs., Inc.*, 60 F.4th 459, 468 nn. 4 & 6 (9th Cir. 2023) (stating employees "can still incur expenses for purposes of section 2802 even if their businesses ultimately pay the bill").

ii. *Right to Control*

The court next assesses whether determining "the scope of the right of control . . . is susceptible to classwide proof." *Ayala*, 59 Cal. 4th at 537. Plaintiffs argue that the scope of Defendant's right to control can be determined by analyzing the provisions of the Allstate Agreements, which apply uniformly to all exclusive agents. (Dkt. 95 at 24-28.) Plaintiffs specifically point to the provisions of the Allstate Agreements enabling Defendant to terminate agents at-will, control the location and size of Allstate agencies, retain ownership of Allstate agencies while requiring exclusive agents to pay business expenses, mandate that exclusive agents sell only for Defendant, unilaterally set and alter exclusive agents' compensation, mandate certain office hours and the use of a mandatory phone system, and manage agents as part of an "integrated salesforce." (*Id.* at 12-20.)

"[C]ourts have long found that comprehensive uniform policies detailing the job duties and responsibilities of employees carry great weight for certification purposes" because "[s]uch centralized rules, to the extent they reflect the realities of the workplace, suggest a uniformity among employees that is susceptible to common proof." *In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 571 F.3d 953, 958-59 (9th Cir. 2009) (citation omitted). "At the certification stage, the importance of a form

contract is not in what it says, but that the degree of control it spells out is uniform across the class."[5] *Ayala*, 59 Cal. 4th at 534.

The parties agree that the Exclusive Agency Agreement, as well as the Exclusive Agency Independent Contractor Manual, the Allstate Agency Standards, and the Supplement for the R3001 Agreement, govern the exclusive agents' rights and obligations and that the material terms of these agreements and policies do not vary amongst members of the proposed class. (Dkt. 95 at 12-18 & n.2; Dkt. 67 at 13-14 & n.4.) These agreements and policies provide substantial detail regarding Defendant's right to control exclusive agents' work. For example, the Allstate Agreements dictate that Defendant must approve the location of an exclusive agent's agency, the agency's advertising materials, and any sale, assignment or transfer of exclusive agents' economic interest in the agency. (*See, e.g.*, R3001C Agreement §§ V, VI, XVI.) The Allstate Agreements allow Defendant to retain control over the products exclusive agents may sell, the terms and prices of those product sales, and the exclusive agents' compensation. (*See, e.g.*, R3001C Agreement §§ I(A)-(F), XV; Answer ¶¶ 9-10; Telgenhoff Depo. at 98:22-99:17; 99:23-100:6; 101:8-11.) The Allstate Agreements also require exclusive agents to maintain certain business hours, adhere to agency and customer service standards, and bear the expenses of running the agency. (*See, e.g.*, R3001C Agreement §§ VIII, XI; Dkt. 54-3 at 13-14.) Most critically, the Exclusive Agency Agreement authorizes Defendant to terminate exclusive agents with or without cause, stating the agreement may be terminated "[b]y either party, with or without cause, upon providing ninety (90) days prior written notice to the other" or

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[5] Although Federal Rule of Civil Procedure 23, not California's certification standard, governs the court's analysis at class certification, the court considers the California Supreme Court's decision in *Ayala* as persuasive authority demonstrating that the question of misclassification may present common questions that predominate where a company's right to control is uniform, even if the exercise of that right is varied. *See Nash v. Horizon Freight Sys., Inc.*, 2020 WL 7640878, at *2 n.2 (N.D. Cal. Dec. 23, 2020).

"by the Company, with cause, immediately upon providing written notice to you." (*See, e.g.*, R3001C Agreement § XVII(B).)

Although Defendant concedes the agreements and policies applicable to exclusive agents are standardized, Defendant maintains the Allstate Agreements are insufficient to demonstrate predominance for two reasons. First, Defendant argues that analyzing the nature of the work each class member performs will necessarily entail individualized inquiry because the Allstate Agreements provide exclusive agents with significant latitude in structuring their agencies and defining their relative roles within that structure. (Dkt. 67 at 18-23.) Defendant cites discrepancies in the work performed by exclusive agents who worked in a managerial capacity versus those who engaged directly in sales work, including among the named plaintiffs, as exemplifying the "qualitative" differences in the nature of class members' work. (*See, e.g.*, *id.* at 19-20; *see also* Dkt. 67-3 ("Thomas-Wayne Decl.") ¶ 9; Dkt. 66, Exh. A ("Souza Depo.") at 63:23-64:9.)

Second, Defendant argues that because the Allstate Agreements are "broad and vague," as opposed to "authoritative," and allow for "significant differences in their practical application," the court must look beyond the agreements and policies to the actual nature of Defendant's relationship with exclusive agents. (Dkt. 67 at 20-23.) Defendant argues that individualized questions predominate regarding the practical application of Defendant's right to control because the evidence, namely the testimony of two named plaintiffs and two other exclusive agents, suggests Defendant did not seek to enforce "any meaningful authority." (*Id.* at 23; *see also* Dkt. 66, Exh. I ("Curtis Depo.") at 16:19-17:16, 172:18-173:10; Souza Depo. at 48:19-49:17; Thomas-Wayne Decl. ¶¶ 5-6; Dkt. 67-1 ("Bealer Decl.") ¶ 8.) In other words, Defendant asserts the exercise of its rights belies the right to control set out in the Allstate Agreements.

The court finds neither argument is persuasive on the issue of predominance. In effect, both arguments address the merits of the misclassification question, i.e., the

actual degree of control Defendant exercises over exclusive agents. But "the existence of variations in the extent to which a hirer exercises control does not necessarily show variation in the extent to which the hirer possesses a right of control." *Ayala*, 59 Cal. 4th at 535. Instead, "the key question is whether there is evidence a hirer possessed different rights to control with regard to its various hirees." *Id.* at 536.

It is true that some courts have considered "evidence of the parties' course of conduct" in assessing whether the right to control presents common questions that predominate where "other evidence demonstrate[d] a practical allocation of rights at odds with the written terms" of the parties' agreement. *Id.* at 536; *see, e.g.*, *Rowe v. Ulta Salon, Cosmetics & Fragrance, Inc.*, 2019 WL 6998780, at *6 (C.D. Cal. Aug. 30, 2019) (considering testimony that the hirer's policies were "not strictly or uniformly enforced" and concluding that variations in the hirer's exercise of control defeated any finding of predominance); *Martinez v. Flower Foods, Inc.*, 2016 WL 10746664, at *11-12 (C.D. Cal. Feb. 1, 2016) (finding that the parties' agreement did not confer a uniform right of control, considering the parties' course of conduct, and concluding the plaintiffs failed to produce evidence showing that the question of control was amenable to class-wide proof).

However, the court finds those cases distinguishable. *See Soares v. Flower Foods, Inc.*, 320 F.R.D. 464, 482 (N.D. Cal. 2017) (distinguishing *Martinez* on the issue of predominance because examining evidence of the defendants' "actual exercise of control," as opposed to whether "the right to control is subject to common proof," was contrary to California law"). Unlike *Martinez*, the Allstate Agreements' standards are not so "broad and vague" to preclude the court from determining whether the scope of Defendant's right to control is uniform. *Cf. Martinez*, 2016 WL 10746664, at *11 (determining standard requiring drivers to comply with "good industry practice" too "broad and vague" to demonstrate uniform scope of the hirer's right to control). Further, the discrepancies highlighted by Defendant fail to

demonstrate "fundamental" variations between the scope of Defendant's right to control as articulated in the Allstate Agreements and as applied in practice.

To the contrary, the court finds the scope of Defendant's right to control the manner and means exclusive agents' work is susceptible to classwide proof by analyzing the uniform rights and obligations set out in the Allstate Agreements. *See, e.g.*, *Salinas v. Cornwell Quality Tools Co.*, 635 F. Supp. 3d 954, 969 (C.D. Cal. 2022) (concluding the commonality and predominance requirement were met even though "questions concerning [the hirer's] application of its policies may require individualized inquiries for each [d]ealer" because "the amount of control [the hirer] retained the right to exercise is subject to common proof"); *Alfred v. Peppridge Farm, Inc.*, 322 F.R.D. 519, 546 (C.D. Cal. 2017) (concluding the right to control factor weighed in favor of finding predominance because "the scope of the right to control is governed by the [a]greements, which are common, and evidence of actual operational control or independence can be presented at trial"). The court thus concludes the "centralized rules" articulated in the Allstate Agreements present common questions regarding the scope of Defendant's right to control and weigh in favor of finding predominance.

iii. *Secondary Indicia*

The court next considers whether *Borello*'s secondary factors "will require individual inquiries or can be assessed on a classwide basis." *Ayala*, 59 Cal. 4th at 538. In assessing these factors, the court weighs "the impact of individual variations" based on "the significance of the factor they affect." *Id.* at 539.

Plaintiffs argue that common questions predominate as to numerous secondary factors, including whether exclusive agents' work is a part of the regular business of the principal, the skill required to be an exclusive agent, the instrumentalities, tools, and place of work, the length of time of the relationship, the method of payment, whether exclusive agents' work is done "under the direction of the principal or . . . without supervision," and the parties' belief about the type of relationship formed.

(Dkt. 95 at 25-28; Dkt. 96 at 3-7.) Defendant argues individualized inquires predominate as to three secondary factors: (1) whether the exclusive agents performing services were engaged in a distinct occupation or business; (2) the exclusive agents' degree of investment in their businesses; and (3) the exclusive agents' opportunities for profits and losses.[6] (Dkt. 67 at 24-26.)

As a preliminary matter, the court notes that Defendant does not dispute that six of the secondary factors—the skill required to be an exclusive agent, the instrumentalities, tools, and place of work, the length of time of the relationship, the method of payment, whether exclusive agents' work is done under the direction of the principal or without supervision, and the parties' belief about the type of relationship formed—present common questions. (*See generally id.*) The court concludes each of these factors can be resolved through common proof by referencing the Allstate Agreements and the uniform structure of the relationship between Defendant and the exclusive agents. (*See, e.g.*, Dkt. 55-99 ¶¶ 46-94); *see also* section III.B.2, *supra*.

With respect to the contested factors, the court again finds that Defendant's arguments and evidence go to the merits of the misclassification inquiry. For example, as to the distinct occupation or business factor, Defendant emphasizes that exclusive agents may hire third parties and elect to work solely in managerial roles and that these managerial roles "depart[] from [Defendant's] business of selling

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[6] One of these factors—distinct occupations or businesses—come from the "secondary indicia" discussed above; the remaining two factors—the degree of investment and opportunities for profits and losses—come from the six-factor test utilized in other jurisdictions. All three factors are relevant to the misclassification analysis. *See, e.g.*, *Borello*, 48 Cal. 3d at 354-55 (discussing six-factor test and noting both the secondary indicia and the six factors are "logically pertinent" to the question of whether a service provider is an employee or independent contractor"); *Dynamex Operations W. v. Superior Ct.*, 4 Cal. 5th 903, 932 (2018) (affirming that courts may consider "the various factors set forth in prior California cases, in Labor Code section 2750.5, and in the out-of-state cases adopting the six-factor test" in assessing whether a worker is an employee or independent contractor).

insurance." (Dkt. 67 at 24-25). However, at class certification, the court does not conclusively decide whether some exclusive agents worked in a distinct occupation, but instead determines whether Defendant supplied a common policy dictating the types of occupations and businesses in which exclusive agents could engage. *See, e.g.*, *Karl v. Zimmer Biomet Holdings, Inc.*, 2020 WL 4340172, at *7 (N.D. Cal. July 28, 2020) (stating, in considering the distinct occupation or business factor, "[t]he relevant point here remains that [the hirer's] sales associate agreements spoke to, and provided some common policy regarding, sales associates' power to hire workers"). As with the right to control, the court concludes whether exclusive agents engaged in distinct businesses and occupations can be determined by referencing the Allstate Agreements, including the provisions addressing whether exclusive agents can hire third parties, the role of those third parties within Defendant's business, which party owns the customers and books of business, as well as the "global structure" of the parties' relationship.[7] *Cf. Alexander v. FedEx Grd. Package Sys., Inc.*, 765 F.3d 981, 995 (9th Cir. 2014) (weighing the distinct occupation or business factor based on whether the work performed the drivers was "wholly integrated" into the hirer's operations, whether the drivers acted like the hirer's employees, and whether drivers had the opportunity to expand their businesses).

Even if the evidence ultimately suggests some exclusive agents do operate distinct businesses, the court notes this would not necessarily defeat predominance given the numerous other common questions presented by the misclassification and unreimbursed business expenses inquiries. *See, e.g.*, *Nash v. Horizon Freight Sys., Inc.*, 2020 WL 7640878, at *2-3 (N.D. Cal. Dec. 23, 2020) (concluding the "distinct occupation or business" factor did not defeat predominance, even though some drivers

[7] Defendant's arguments as to the degree of investment and opportunities for profit and loss fail for the same reason. (*See, e.g.*, Dkt. 67 at 25-26; Bealer Decl. ¶¶ 4-5; Thomas-Wayne Decl. ¶¶ 12, 15; Curtis Depo. 52:21-52:2, 101:22-102:17, 164:9-165:16.)

hired third parties and were able to drive for other companies, because "plaintiffs need only show that common questions 'predominate' over individual questions, not that common questions exist to the complete exclusion of individual questions"); *cf. Ruiz Torres*, 835 F. 3d at 1136 ("[A] well-defined class may inevitably contain some individuals who have suffered no harm as a result of a defendant's unlawful conduct.") (citations omitted). This is particularly true given the importance of the other factors presenting common questions, including the scope of the right to control, the right to terminate without cause, and the secondary indicia discussed above. *See Ayala*, 59 Cal. 4th at 539-40 (citing "control, the skill involved, and the right to terminate at will" as "key factors" that are often of "inordinate importance"). Therefore, the court concludes that common questions also predominate as to the secondary factors.

iv. *Failure to Indemnify for Necessary Expenditures*

Finally, the court considers whether common questions predominate as to Plaintiffs' claim for unreimbursed business expenses under California Labor Code § 2802. Plaintiffs argue that the predominance requirement is met because Defendant maintain a common policy requiring exclusive agents to incur certain costs. (Dkt. 95 at 28-30.) Defendant contends this claim presents multiple individualized inquires, such as "whether the expense was a direct consequence of the discharge of an employee's duties," "whether the employee already owned the purchases that he or she is seeking reimbursement for," "whether the employee ever attempted to seek reimbursement of the claimed expenses," and "whether the employee had already been effectively reimbursed through other means." (Dkt. 67 at 27-31.)

As discussed above, section 2802 requires employers to "indemnify [their] employee[s] for all necessary expenditures or losses incurred by the employee[s] in direct consequence of the discharge of [their] duties." Cal. Lab. Code § 2802(a). Determining "whether an expense is necessary depends on the reasonableness of the employee's choices." *Herrera v. Zumiez, Inc.*, 953 F.3d 1063, 1077 (9th Cir. 2020)

(internal quotation marks omitted) (quoting *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 568 (2007)).

The parties do not dispute that the Allstate Agreements require all exclusive agents to bear the costs of running their agencies, including, but not limited to, expenses for office space, licensed staff, marketing, a unique telephone system, errors and omissions, and insurance coverage. (*See, e.g.*, R3001 Agreement §§ III, VIII, XI; Dkt. 55-99 ¶¶ 54, 94.) The court concludes the legality of this policy, as well as the misclassification inquiry discussed above, present common questions as to Plaintiffs' business expenses claim. *See, e.g.*, *Salinas*, 635 F. Supp. 3d at 972 (concluding common questions predominated as to section 2802 claim because the parties' agreements "set forth uniform practices regarding the expenses [d]ealers are required to pay" and which expenses are reimbursed); *Ludlow v. Flowers Foods, Inc.*, 2022 WL 2441295, at *7 (S.D. Cal. July 5, 2022) (finding common questions predominated as to the plaintiffs' section 2802 claim where the employer had "a general policy that requires distributors to obtain their own vehicle and insurance" because "the legality of this common practice can be determined on a class-wide basis with common proof").

Defendant's remaining individualized questions pertain to the issue of damages.[8] However, "Rule 23 specifically contemplates the need for such

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[8] The court also finds the Ninth Circuit's decision in *Bowerman* is distinguishable. There, the Ninth Circuit determined that the district court erred in certifying a class premised on claims for failure to pay overtime compensation and unreimbursed business expenses due to "the complexity of the individualized questions and the absence of any representative evidence." 60 F.4th at 471. The Ninth Circuit noted the plaintiffs withdrew their expert testimony after the district court certified the class, necessitating "individual testimony" as to "the work history and credibility of each individual class member" in order "to establish the existence of an injury and the amount of damages." *Id.* at 470. The plaintiffs also failed to present any evidence demonstrating that the hirer "had a uniform policy that required the class to . . . incur

individualized claim determinations after a finding of liability," *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1131 (9th Cir. 2017), and thus "the presence of individualized damages cannot, by itself, defeat class certification, *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 514 (9th Cir. 2013); *see also Tyson Foods*, 577 U.S. at 453 ("When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.") (internal quotation marks omitted). Thus, the court concludes that common questions predominate with respect to Plaintiffs' claim for unreimbursed business expenses under California Labor Code § 2802. *See, e.g.*, *Villalpando v. Exel Direct Inc.*, 303 F.R.D. 588, 609-10 (N.D. Cal. 2014) (certifying class of drivers who provided delivery services based on a uniform policy regarding reimbursement despite individualized issues regarding damages).

In sum, Plaintiffs have sufficiently demonstrated that common questions of law and fact predominate as to the right to control, *Borello*'s secondary factors, and their claim for unreimbursed business expenses. Accordingly, the court concludes Rule 23(b)(3)'s predominance requirement is met.

3. Typicality and Adequacy

Rule 23(a)(3) requires that the claims of the representative plaintiff be typical of the claims of the class. Fed. R. Civ. P. 23(a)(3). To be considered "typical," the plaintiff's claims must be "reasonably co-extensive with those of absent class members" but "need not be substantially identical." *Castillo v. Bank of Am., NA*, 980

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reimbursable expenses." *Id.* at 469 n.7. Unlike the plaintiffs in *Bowerman*, Plaintiffs have presented evidence demonstrating that Defendant employed a uniform policy requiring exclusive agents to incur certain expenses and that some of the unreimbursed business expenses are subject to common proof through Defendant's records.

F.3d 723, 730 (9th Cir. 2020). The test for typicality is (1) "whether other members have the same or similar injury," (2) "whether the action is based on conduct which is not unique to the named plaintiffs," and (3) "whether other class members have been injured by the same conduct." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (citations omitted).

Rule 23(a)(4) requires that the court ensure "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). In analyzing adequacy, the court must resolve two questions: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Ellis*, 657 F.3d at 985 (citation omitted). "Adequate representation depends on, among other factors, an absence of antagonism between representatives and absentees, and a sharing of interest between representatives and absentees." *Id.* (citing *Molski v. Gleich*, 318 F.3d 937, 955 (9th Cir. 2003)). Class representatives "must be part of the class and possess the same interest and suffer the same injury as the class members." *Amchem Prod.*, 521 U.S. at 626 (internal quotations and citations omitted).

Plaintiffs argue the typicality and adequacy requirements are met because their claims arise from Defendant's policy of failing to reimburse business expenses, they have diligently prosecuted this action to date, and they have no conflicts of interest with the proposed class members. (Dkt. 95 at 30-31; Dkt. 96 at 9-10.) Plaintiffs further argue their counsel, Charles J. Crueger, Erin K. Dickinson, Benjamin Kaplan, and James Tilton of Crueger Dickison LLC, Edward A. Wallace, Mark R. Miller, and Matthew J. Goldstein of Wallace Miller, and Gretchen M. Nelson and Gabriel S. Barenfeld of Nelson & Fraenkel LLP, are well qualified to represent the class. (Dkt. 95 at 31.) Defendant contends that Plaintiffs are not typical or adequate class representative because Plaintiffs do not currently work as exclusive agents, lack an "ongoing interest" in the categorization of class members, and chose to limit their

recovery to certain business expenses to "advance their own interests." (Dkt. 67 at 31.)

The court finds Plaintiffs have sufficiently demonstrated typicality and adequacy. As to typicality, Plaintiffs and the proposed class members were subject to the same policy requiring exclusive agents to incur certain categories of expenses and, as a result, allegedly suffered the same injury in the form of unreimbursed business expenses. *See* section III.B.2, *supra*. Because both Plaintiffs and the proposed class would be entitled to recover their business expenses if they prevail on the misclassification question, the court concludes that Plaintiffs' claims are "reasonably co-extensive" with the proposed class. *See Salinas*, 635 F. Supp. 3d at 976. For the same reasons, the court finds insufficient evidence of any conflict of interest due to Plaintiffs' status as former exclusive agents. *See, e.g.*, *id.* at 975-76 (rejecting the defendant's argument that a former franchisee could not adequately represent current franchisees due to purported differences in their economic interests because the former franchisee's claims were "reasonably co-extensive" with other class members); *Sarviss v. Gen. Dynamic Info. Tech., Inc.*, 663 F. Supp. 2d 883, 911 (C.D. Cal. 2009) (finding no conflict of interest where a former employee sought to represent a proposed class of both past and present employees because "the allegation is that each type of payroll system violated California law, and the relief Plaintiff seeks for such claims—damages—will be common to all such individuals").

As to adequacy, Plaintiffs submitted declarations stating that they are "not aware of any conflicts with any members of the proposed class," are "familiar with what [their] responsibilities would be as a class representative," and "willingly undertake [their] duty to act in the best interest of other members of the proposed class." (*See, e.g.*, Canchola Decl. ¶¶ 30-32; Ochoa Decl. ¶¶ 31-33; Curtis Decl. ¶¶ 19-21; Souza Decl. ¶¶ 20-22.) Plaintiffs also state they have diligently prosecuted this action to date by reviewing and responding to written discovery, sitting for depositions, maintaining regular contact with their attorneys, and preparing to take

this case to trial. (*See, e.g.*, Canchola Decl. ¶¶ 36-37; Ochoa Decl. ¶¶ 37-38; Curtis Decl. ¶¶ 26-27; Souza Decl. ¶¶ 25-26.) The court finds these declarations sufficient to show that Plaintiffs would be adequate class representatives.

The court further finds that Plaintiffs' counsel would serve as adequate class counsel. The record before the court demonstrates that Plaintiffs' counsel have significant experience litigating complex civil matters and class actions, including comparable suits involving misclassification of insurance agents in California state and federal courts. (*See, e.g.*, Dkt. 95 at 31; Dkt. 56 ("Dickinson Decl.") ¶¶ 2-6, Exhs. A-C.) Those courts have similarly found Plaintiffs' counsel to be adequate class representatives. *See, e.g.*, *Jammal v. Am. Fam. Ins. Grp.*, 2016 WL 815576, at *7 (N.D. Ohio Mar. 2, 2016) (granting motion to certify class of allegedly misclassified independent contractors and appointing Charles Crueger and Erin Dickinson of Crueger Dickinson, among others, as class counsel); *Parry v. Farmers Ins. Exch.*, No. BC683856 (Cal. Super. Ct. Mar. 4, 2021) (granting motion to certify class based on misclassification theory and appointing attorneys from Wallace Miller and Nelson & Fraenkel LLP as class counsel). Accordingly, the court concludes Plaintiffs' claims are typical of the proposed class and Plaintiffs and their counsel are adequate class representatives.

4. Superiority

Rule 23(b)(3) also requires a finding that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). "A class action is the superior method for managing litigation if no realistic alternative exists." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). By contrast, "[i]f each class member has to litigate numerous and substantial separate issues to establish [their] right to recover individually a class action is not superior." *Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1192 (9th Cir. 2001). To evaluate superiority, the court considers: (1) "the class members' interests in individually controlling the prosecution or defense of separate actions;"

(2) "the extent and nature of any litigation concerning the controversy already begun by or against class members;" (3) "the desirability or undesirability of concentrating the litigation of the claims in the particular forum;" and (4) "the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3)(A)-(D). In analyzing these factors, the court must "focus on the efficiency and economy elements of the class action" to ensure "that cases allowed under subdivision (b)(3) are those that can be adjudicated most profitably on a representative basis." *Zinser*, 253 F.3d at 1190.

The court finds that the superiority factors weigh in favor of certification. As to the first two factors, the court finds insufficient evidence suggesting either that putative class members want to assert unreimbursed business expenses claims in individual actions or that other pending actions have raised the same claims against Defendant. As to the third factor, the court finds this forum is desirable for the litigation because the class members worked in California and California law governs. As to the fourth factor, the court finds the proposed class is manageable because the misclassification and business expense liability issues are susceptible to common proof, *see* section III.B.2, *supra*, and adjudicating these issues jointly for the 973 members of the class would be substantially more efficient and cost-effective. Although the question of damages presents some individualized issues, the court notes these issues can be addressed in a separate damages phase. *See Hilario v. Allstate Ins. Co.*, 2024 WL 615567, at *2 (9th Cir. Feb. 14, 2024) ("[T]he denial of class certification is improper on superiority grounds where that denial is 'based on manageability concerns on the need to individually calculate damages.'") (quoting *Levya*, 716 F.3d at 515). Therefore, the court concludes a class action is a superior method of resolving the controversy.

5. Summary

Plaintiffs have demonstrated that the proposed class meet the requirements of Rule 23(a) and (b)(3). Accordingly, the court **GRANTS** the Motion for Class Certification.

IV. DISPOSITION

For the reasons stated above, the court **GRANTS** Plaintiffs' Motion for Class Certification, (Dkt. 95), and *Daubert* Motion, (Dkt. 73). The court certifies the following class:

> All individuals who signed an Allstate R3001, R3001A, R3001S, or R3001C Exclusive Agency Agreement and who worked as an Allstate exclusive agent in the State of California during the class period.

The court appoints Plaintiffs Jasibel Canchola, Carlos Ochoa, Richard Curtis, and Robert Souza as the class representatives and Charles J. Crueger, Erin K. Dickinson, Benjamin Kaplan, and James Tilton of Crueger Dickison LLC, Edward A. Wallace, Mark R. Miller, and Matthew J. Goldstein of Wallace Miller, and Gretchen M. Nelson and Gabriel S. Barenfeld of Nelson & Fraenkel LLP as class counsel.

The court also **ORDERS** the parties to promptly meet and confer regarding the submission of a joint stipulated class notice and distribution plan and file either a stipulated class notice and distribution plan or a notice that no stipulation can be agreed to within **twenty-one (21) days** of the date of this Order. If the parties cannot agree to a class notice or distribution plan, the court further **ORDERS** that Plaintiffs shall file a proposed class notice and distribution plan **within twenty-eight (28) days** of this Order, Defendant shall file any objections within **fourteen (14) days** of Plaintiffs' filing, and Plaintiffs shall file any reply within **seven (7) days** of Defendant's filing.

IT IS SO ORDERED.

Dated: March 28, 2025

Hon. Fred W. Slaughter
UNITED STATES DISTRICT JUDGE