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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES – CENTRAL**

13 ROGER HARRIS, DUANE BROWN, AND
14 BRIAN LINDSEY,

15 Plaintiffs,

16 vs.

17 FARMERS INSURANCE EXCHANGE
18 AND MID CENTURY INSURANCE
19 COMPANY,

20 Defendants.

Case No. BC579498

*[Assigned to the Hon. Maren Nelson in Dept.
17 of Spring Street Courthouse]*

**PLAINTIFFS’ MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
ATTORNEYS’ FEES, COSTS, SERVICE
AWARDS, AND NOTICE AND
ADMINISTRATION EXPENSES**

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1 **I. INTRODUCTION**

2 Plaintiffs and Class Counsel¹ successfully litigated this class action, resulting in a settlement
3 that establishes a \$15,000,000 non-reversionary fund for the benefit of the Settlement Class
4 (“Class”) along with non-monetary relief.² The Settlement was achieved despite significant hurdles
5 to recovery and with no guarantees of success. These benefits to the Class could not have been
6 achieved absent Class Counsel’s time, effort, and skill, as well as Plaintiffs’ participation in the case.
7 The requested \$4,950,000 in attorneys’ fees (thirty-three percent of the Settlement Fund) is
8 consistent with attorneys’ fee awards in California courts for settlements of this caliber and
9 represents a less than 1.2 multiplier on Class Counsel’s lodestar. Further, the \$233,877.81 in out-
10 of-pocket expenses, and \$573,000.00 in third-party notice and settlement administration expenses
11 are reasonable and should be awarded. The requested Service Awards for the Class Representatives
12 are also appropriate considering their investment of time and energy in this litigation. The amounts
13 sought through this motion are equal or less than the amounts disclosed to the Class in the Notice.

14 **II. BACKGROUND**

15 The litigation history, settlement negotiations, and terms of the Settlement are set out in
16 Plaintiffs’ Memorandum of Points and Authorities in Support of Motion for Final Approval, and are
17 incorporated here. This memorandum will focus on the efforts of Class Counsel and the Class
18 Representatives to achieve the significant result in this case.

19 **A. CLASS COUNSEL’S EFFORTS TO SECURE BENEFITS FOR THE CLASS.**

20 Class Counsel are experienced in complex class action litigation and consumer litigation in
21 general. In addition, Jay Angoff of Mehri & Skalet has substantial expertise in insurance matters,
22 having served previously as Missouri’s Insurance Commissioner and New Jersey’s Deputy
23 Commissioner, as well as the first Director of the unit implementing the Affordable Care Act at the

24
25 ¹ On January 7, 2020, the Court appointed Mehri & Skalet PLLC, Tycko & Zavareei LLP, and
26 Berger Montague PC, as Class Counsel. As used herein, Class Counsel also includes local counsel
Schonbrun, Seplow, Harris & Hoffman, LLP.

27 ² Unless otherwise explicitly defined herein, all capitalized terms have the same meanings as those
28 set forth in the Parties’ Second Amended Settlement Agreement (“Settlement Agreement”), attached
to the Declaration of Cyrus Mehri in Support of Plaintiffs’ Motion for Preliminary Approval of
Class Action Settlement and Plaintiffs’ Motion for Attorneys’ Fees, Costs, Service Awards, and
Notice and Administration Expenses (“*Mehri Decl.*”), as Ex. 1.

1 U.S. Department of Health and Human Services. Class Counsel’s qualifications are set forth in the
2 accompanying Declarations of Cyrus Mehri, Andrea Gold, Jeffrey Osterwise and Wilmer Harris.
3 As a result of their experience, Class Counsel were able to efficiently and effectively litigate this
4 action and had the credibility necessary to negotiate an excellent settlement on behalf of the Class.
5 Class Counsel litigated this case on a contingency basis and have thus far received no compensation
6 for their time or out-of-pocket costs. *Mehri Decl.* ¶ 86. If Class Counsel did not successfully
7 resolve this matter, Class Counsel would have been paid nothing and would have been out
8 \$233,877.81 in out-of-pocket expenses. *See Mehri Decl.*, ¶ 92.

9 Class Counsel have invested a substantial amount of time and resources investigating and
10 litigating this action, which was thoroughly litigated with substantial discovery and briefing of legal
11 issues. Many of the tasks performed by Class Counsel are not evident based solely upon a review
12 of the docket in this matter, as much of the litigation of this action took place in proceedings before
13 the California Department of Insurance (the “Department”) after the Court granted Farmers’ motion
14 to stay this case under the primary jurisdiction doctrine.

15 Tasks performed by Class Counsel thus far include: (1) investigating the claims, including
16 reviewing Farmers’ class plan filings and rate filings beginning with their 2002 California
17 Department of Insurance filings; (2) communicating with Plaintiffs; (3) researching and drafting
18 the Complaint, the First Amended Complaint, and the Second Amended Complaint; (4) researching
19 and successfully responding to Farmers’ demurrer; (5) participating in numerous conferences with
20 Chief Administrative Law Judge Rosi, to whom the Department Proceeding was assigned; (6)
21 researching and successfully responding to Farmers’ first motion for a preliminary injunction and
22 petition for writ of administrative mandamus to stop the Department Proceeding; (7) drafting and
23 responding to written discovery requests; (8) engaging in numerous meet and confers regarding
24 discovery issues; (9) drafting a successful motion to compel discovery; (10) reviewing over 70,000
25 pages of documents produced by Defendants; (11) participating in a day-long meeting with
26 Plaintiffs’ expert, Farmers’ counsel, several of Farmers’ witnesses, representatives from the
27 Department, and representatives of Consumer Watchdog, (12) deposing seven Farmers employees;
28 (13) engaging an eminently qualified expert to opine on Farmers’ liability, and guiding the

1 preparation of the expert’s pre-filed direct testimony and supplemental pre-filed direct testimony in
2 the Department Proceeding; (14) successfully defending Plaintiffs’ expert’s opinions from Farmers’
3 motion to strike; (15) successfully moving to strike certain of Farmers’ witnesses’ pre-filed direct
4 testimony; (16) preparing for the evidentiary hearing in the Department Proceeding; (17) responding
5 to Farmers’ motion to lift the stay in this case; (18) responding to Farmers’ second motion for a
6 preliminary injunction to stop the Department Proceeding; (19) preparing for and attending an in-
7 person mediation session; (20) engaging in extended settlement negotiations; (21) drafting the
8 Settlement Agreement; (22) researching and drafting the preliminary approval motion and all
9 supporting papers; (23) overseeing administration of the Settlement, including responding to
10 inquiries from Class Members with questions about the Settlement; and (24) researching and
11 drafting the final approval brief and all supporting papers. *Mehri Decl.* ¶¶ 65-85.

12 Class Counsel’s declarations demonstrate the amount of time each professional spent
13 working on behalf of the Class and how Class Counsel’s lodestar was calculated.³ To date, Class
14 Counsel have devoted over 6,000 hours to this matter. *Mehri Decl.*, ¶ 87. Class Counsel also
15 anticipates contributing additional time and effort to this case if the Settlement is finally approved.
16 Additional tasks Class Counsel expects to perform include continuing to oversee the administration
17 of the Settlement, preparing for and attending the final fairness hearing, and continuing to respond
18 to Class Member questions. *Id.* ¶ 85.

19 To date, Class Counsel has also collectively incurred \$233,877.81 in out-of-pocket litigation
20 costs. *Id.* ¶ 92. These costs were necessarily incurred and are of the type typically reimbursed by
21 paying clients. The estimated costs of settlement administration in this matter (which are not
22 included in the litigation cost totals) are anticipated not to exceed \$573,246 and are reasonably
23 incurred.⁴

24 **B. CLASS REPRESENTATIVES’ PARTICIPATION IN THE CASE.**

25 The Class Representatives have played a valuable role in bringing this litigation to a
26

27 ³ See *Mehri Decl.*, ¶ 96; *Gold Decl.*, ¶ 30; *Osterwise Decl.*, ¶ 20; *W. Harris Decl.*, ¶ 23.

28 ⁴ See Declaration of Cameron R. Azari, Esq. on Implementation and Adequacy of Settlement
Notice Plan (“*Azari Decl.*”), ¶ 31, filed concurrently herewith.

1 successful conclusion. All three Plaintiffs have played an important role in the case. As explained
2 in their declarations,⁵ and as discussed in more detail below, the Plaintiffs contributed to obtaining
3 significant relief for the Class. The Settlement’s allowance for Service Awards of up to \$5,000.00
4 for each Plaintiff, reflects their initiative in pursuing this Action and the time they have invested.
5 *Mehri Decl.*, ¶ 114.

6 **III. ARGUMENT**

7 **A. THE COURT SHOULD APPROVE THE REQUESTED ATTORNEYS’ FEES.**

8 The requested award of thirty-three percent (33%) of the Settlement Fund fairly and
9 reasonably compensates Class Counsel. It is also consistent with fees awarded by California courts
10 in common fund class actions. Class Counsel invested significant resources in this case with the
11 possibility of no recovery whatsoever. Due in no small part to their skill, experience, and
12 perseverance, Class Counsel were able to achieve a Settlement that provides significant relief to
13 Class Members, after extensive arm’s length negotiations. A lodestar cross-check confirms the
14 appropriateness of awarding thirty-three percent of the Settlement Fund as the award results in a
15 less than 1.2 lodestar multiplier, which is well within the range generally approved in California.

16 **1. The Court Should Use The Percentage-of-the-Fund Method To Determine** 17 **Attorneys’ Fees.**

18 “California has long recognized, as an exception to the general American rule that parties
19 bear the costs of their own attorneys, the propriety of awarding an attorney fee to a party who has
20 recovered or preserved a monetary fund for the benefit of himself or herself and others.” *Laffitte v.*
21 *Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 488; *see also Boeing Co. v. Van Gemert* (1980) 444
22 U.S. 472, 478 (“[A] litigant or lawyer who recovers a common fund for the benefit of persons other
23 than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”). In
24 awarding fees in a class action, courts generally use either the percentage of the recovery or the
25 lodestar multiplier approach. *See generally Laffitte, supra*, 1 Cal.5th at p. 489-97. “The choice of
26 a fee calculation method is generally one within the discretion of the trial court, the goal under either

27
28 ⁵ *See* Declarations of Roger Harris (“*R. Harris Decl.*”), Duane Brown (“*Brown Decl.*”) and Brian Lindsey (“*Lindsey Decl.*”), filed concurrently herewith.

1 the percentage or lodestar approach being the award a reasonable fee to compensate counsel for
2 their efforts.” *Id.* at p. 504.

3 “[W]hen class action litigation establishes a monetary fund for the benefit of the class
4 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
5 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
6 fund created.” *Id.* at p. 503. There are numerous “recognized advantages of the percentage
7 method—including relative ease of calculation, alignment of incentives between counsel and the
8 class, a better approximation of market conditions in a contingency case, and the encouragement it
9 provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation.” *Id.*

10 California courts have not established a “benchmark” percentage of the fund but have noted
11 that “[e]mpirical studies show that, regardless whether the percentage method or the lodestar method
12 is used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix,*
13 *Inc.* (2008) 162 Cal.App.4th 43, 66, n. 11 (internal quotation omitted); *see also Halcomb v. Autism*
14 *Response Team Inc.*, 2018 WL 4278937, at *6 (Cal.Super.) (“1/3 of...gross settlement amount...is
15 average”) (Nelson, J.); *Beaver v. Tarsadia Hotels* (S.D. Cal., Sept. 28, 2017, No. 11-CV-01842-
16 GPC-KSC) 2017 WL 4310707, at *9 (“California courts routinely award attorneys’ fees of one-
17 third of the common fund.”). Here, the requested thirty-three percent of the Settlement Fund is an
18 appropriate award of attorneys’ fees and is in line with other awards in California courts.⁶

19 The propriety of the requested fee can also be gleaned by considering several factors
20 considered under California law, including the risks and potential value of the litigation, the

22 ⁶ *See, e.g., Ayala v. Cherry Creek Mortg. Co., Inc.*, 2019 WL 8269063, at *3 (Cal.Super.) (approving
23 1/3 of the common fund as attorneys’ fees); *Cubillas v. Dav-El Los Angeles*, 2018 WL 3760657, at
24 *3-4 (Cal.Super.) (awarding \$1.12 million as attorneys’ fees, of 40% of the common fund); *Larson*
25 *v. John Hancock Life Ins. Co. (U.S.A.)*, 2018 WL 8016973, at *6 (Cal.Super. May 08, 2018);
26 (awarding \$17.925 million as attorneys’ fees; 30% of the common fund and a 2.3 lodestar
27 multiplier); *Ha v. Google Inc.*, 2018 WL 1052448, at *2 (Cal.Super. Feb. 07, 2018) (awarding
28 attorneys fees equaling 1/3 of the common fund); *Hernandez v. Gold Point Transp, Inc.*, 2017 WL
9751227, at *3-5 (Cal.Super. Sep. 08, 2017) (where settlement recovered “3.8 to 4.6% of the total
estimated damages,” awarding 1/3 of the common fund as attorneys’ fees); *In re FireEye, Inc.*
Securities Litigation, 2017 WL 3536993, at *5 (Cal.Super. Aug. 07, 2017) (awarding \$3,416,667,
1/3 of the common fund, as attorneys’ fees); *Murphy v. CVS Caremark Corp.*, 2017 WL 4176566,
at *3, *5 (Cal.Super. Feb. 28, 2017) (approving attorneys’ fees equaling 30% of the common fund
where the total settlement was \$12.75 million and the “[p]laintiffs could [have] theoretically
recover[ed] hundreds of millions of dollars”).

1 contingent nature of the representation, the novelty and difficulty of the issues presented, the skill
2 shown by counsel, and the hours worked and asserted hourly rates. *See Laffitte, supra*, 1 Cal.5th at
3 p. 504.

4 **2. The Settlement Provides A Substantial Benefit To The Class.**

5 Class Counsel’s efforts in this matter resulted in a non-reversionary settlement fund of
6 \$15,000,000 for the benefit of the Class. *Mehri Decl.*, ¶ 26. As detailed in Plaintiffs’ supplemental
7 preliminary approval memorandum, Class Counsel estimates that the Settlement Class could have
8 recovered approximately \$42 million had Plaintiffs prevailed on their strongest theory of liability—
9 that Farmers was liable for engaging in price optimization without the Department’s approval
10 between August 18, 2015 and March 31, 2017. *Mehri Decl.*, ¶ 33. Thus, the Settlement returns to
11 the Class nearly 36% of the damages they reasonably could have expected to recover if Plaintiffs
12 were to prevail after trial and inevitable appeals, which would likely take years to complete. *See*
13 *Mehri Decl.*, ¶ 34; *see also Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 227–228
14 (“A settlement need not obtain 100 percent of the damages sought in order to be fair and
15 reasonable.”); *see also In re Mego Financial Corp. Securities Litigation* (9th Cir. 2000) 213 F.3d
16 454, 459, as amended (June 19, 2000) (“It is well-settled law that a cash settlement amounting to
17 only a fraction of the potential recovery does not per se render the settlement inadequate or unfair;”
18 approving settlement which represented “roughly one-sixth of the potential recovery”); *Halcomb,*
19 *supra*, 2018 WL 4278937, at *5 (approving settlement recovering 21.08% of potential damages).

20 In addition to monetary benefits, the Settlement also provides meaningful injunctive relief
21 in the form of commitments by Farmers not to use any form of price optimization in connection
22 with California private passenger auto rates or class plans, nor to initiate a challenge to the
23 Commissioner’s legal authority to regulate the use of price optimization. *Mehri Decl.*, ¶ 27.

24 In light of the risks discussed further below that would have faced the Class had litigation
25 continued, this is an excellent recovery which supports Class Counsel’s requested fees.

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28 ///

1 **3. Class Counsel Undertook Considerable Risk In Litigating This Novel And**
2 **Difficult Case On A Contingent Basis As Recovery Was Far From**
3 **Guaranteed.**

4 Class Counsel took this case on a contingency fee basis, and they have invested time and
5 resources in this matter without any compensation to date. *Mehri Decl.*, ¶ 86. At all times, this case
6 carried a very real possibility of an unsuccessful outcome and Class Counsel receiving no fees of
7 any kind. At the time the Complaint was filed, there were no obvious indications that a settlement
8 would be reached or that the litigation would be successful. Further, continued litigation of this
9 matter carried a number of very specific risks that could have resulted in no recovery for the Class
10 and no compensation for Class Counsel. There were several novel and uncertain litigation issues in
11 this case.

12 First, to prevail, Plaintiffs had to prove that Farmers was using price optimization (a.k.a., a
13 method of taking into account an individual's or class's willingness to pay a higher premium relative
14 to other individuals or classes) when pricing automobile insurance in California. *Mehri Decl.*, ¶¶
15 35-36. To the extent Farmers was using price optimization in California, it had not publicly
16 disclosed the practice. Nor, to Class Counsel's knowledge, had anyone else alleged that Farmers'
17 was using (or had used) price optimization in California. *Mehri Decl.*, ¶ 68. Plaintiffs' allegations
18 against Farmers were entirely the product of Class Counsel's investigation.

19 In fact, when Plaintiffs filed their Complaint against Farmers in April 2015, the California
20 Department of Insurance had only three months prior issued its Notice stating that any use of price
21 optimization was in violation of California law. *Mehri Decl.*, ¶ 69. Additionally, the only other
22 insurance price optimization cases that had been filed anywhere in the country were two cases filed
23 against Allstate by clients of Class Counsel. *Id.* Neither of those cases had advanced beyond the
24 initial pleading when Plaintiffs filed their Complaint. *Id.* Simply put, Class Counsel had no roadmap
25 to follow for proving Plaintiffs' claims, factually or legally.

26 Further, it was evident from the outset that, to prove their allegations true, Plaintiffs would
27 be almost entirely dependent on information exclusively in Farmers' possession. This presented a
28 substantial risk to Class Counsel because Farmers inevitably would, and did, resist producing

1 relevant information. For example, during the course of this litigation Farmers filed a petition for
2 writ of mandamus and a motion for a preliminary injunction with the goal, among others, to prevent
3 Plaintiffs from obtaining discovery. *Mehri Decl.*, ¶¶ 73-75.

4 Plaintiffs also faced substantial legal obstacles to proving liability. Primary among these
5 obstacles was the holding in *MacKay v. Superior Court* (2010) 188 Cal.App.4th 1427, that Ins.
6 Code, § 1860.1 “protects from prosecution under laws outside the Insurance Code only ‘act[s] done,
7 action[s] taken [and] agreement[s] made pursuant to the authority conferred by’ the ratemaking
8 chapter.” 188 Cal.App.4th at p. 1449. While Class Counsel believed Plaintiffs had winning
9 arguments that the holding in *MacKay* did not bar their claims, this Court’s interpretation of *MacKay*
10 added to the risk that Plaintiffs would not prevail. *Mehri Decl.*, ¶¶ 38-40.

11 The risks to recovery also increased when this Court stayed this case pending proceedings
12 before the Department. As a result, Plaintiffs were required to prove not only to this Court, but also
13 to the Department, that Farmers engaged in price optimization. *Mehri Decl.*, ¶ 37. Also, the
14 requirement that Plaintiffs first prove their allegations to Commissioner substantially delayed
15 Plaintiffs’ recovery. For example, prior to the Parties requesting postponement of the evidentiary
16 hearing, that hearing was scheduled to begin in January 2019 - three years after the Court ruled on
17 Farmer’s demurrer to Plaintiffs’ complaint. *Mehri Decl.*, ¶¶ 9, 13.

18 Beyond these risks that are not common of most class action litigation, Plaintiffs and Class
19 Counsel still would have faced the obstacles to proving damages and obtaining class certification
20 that are typical in any class action. *Mehri Decl.*, ¶ 41.

21 All of these legal hurdles presented significant barriers to recovery, and all were or would
22 have been well-litigated by Farmers. Farmers is represented by skilled counsel from Hinshaw &
23 Culbertson LLP, who have extensive experience litigating claims related to California’s regulations
24 for automobile insurance. See hinshawlaw.com/services-Insurance-Regulatory-Law.html (last
25 visited May 19, 2020). Farmers would have mounted a vigorous defense throughout continued
26 litigation.

27 That Class Counsel was nevertheless able to secure a \$15 million recovery for the benefit of
28 the Class is indicative of Class Counsel’s skill, experience, and expertise. Notable examples of

1 Class Counsel’s exemplary work include successfully persuading the Court to largely overrule
2 Farmers’ Demurrer. *Mehri Decl.*, ¶ 71. That decision was the result of the comprehensive factual
3 investigation and legal analysis that Class Counsel put into preparing a strong class action complaint
4 and of Class Counsel’s legal skills in framing the argument and opposing the Demurrer. *Mehri Decl.*,
5 ¶¶ 67-71. Class Counsel also ably shepherded extensive discovery in the Department Proceeding,
6 often at Farmers’ resistance; ultimately obtaining evidence leading to the Department’s Senior
7 Casualty Actuary Edward D. Cimini, Jr. testifying in a sworn statement that “Farmers engaged in
8 price optimization in the construction of its Private Passenger Auto Class Plan with regard to the
9 selection of rate relativities for the optional rating factor of Persistency.” *Mehri Decl.*, ¶¶ 72-76.
10 Class Counsel also defeated Farmers’ effort to exclude Plaintiffs’ expert from offering his opinions
11 at the evidentiary hearing. *Mehri Decl.*, ¶¶ 77-78. After these, and other successes, Class Counsel
12 skillfully negotiated the Settlement, which, among other things, provides automatic cash payments
13 to every Class Member without a claims process. *Mehri Decl.*, ¶¶ 81-83. Class Counsel’s work, in
14 the face of substantial risk of non-recovery, warrants awarding 33% of the Settlement Fund as
15 attorneys’ fees.

16 **4. The Lodestar Crosscheck Supports The Requested Award.**

17 “[T]rial courts have discretion to conduct a lodestar cross-check on a percentage fee.”
18 *Laffitte, supra*, 1 Cal.5th at p. 506. Only when the lodestar multiplier is “far outside the normal
19 range” would the trial court “have reason to reexamine its choice of a percentage.” *Id.* at p. 504.
20 “[T]rial courts conducting lodestar cross-checks have generally not been required to closely
21 scrutinize each claimed attorney-hour, but have instead used information on attorney time spent to
22 focus on the general question of whether the fee award appropriately reflects the degree of time and
23 effort expended by the attorneys.” *Id.* at p. 505 (noting that the trial court had “exercised its
24 discretion” by “performing the cross-check using counsel declarations summarizing overall time
25 spent”) (internal quotations omitted).

26 A lodestar crosscheck here confirms that the requested award is reasonable. Class Counsel
27 have already logged a combined total of 6,029.8 hours in billable time, resulting in a lodestar of
28 \$4,137,835.20. *Mehri Decl.*, ¶ 87. This results in a lodestar multiplier of less than 1.2. *Mehri Decl.*

1 ¶ 88. The hours billed represent time spent on tasks that were essential to litigation and settlement.
2 *Mehri Decl.* ¶ 89. Class Counsel carefully coordinated their work throughout this litigation to avoid
3 duplication of effort. *Id.* The hourly rates for Class Counsel – ranging from \$370.00 to \$940.00 for
4 attorneys, and \$200.00 to \$212.00 for paralegals and staff – are also reasonable. Notably, Class
5 Counsel have based all of their rates off of the Adjusted Laffey Matrix. *See*
6 <http://www.laffeymatrix.com/see.html> (last visited May 19, 2020); *Mehri Decl.* ¶ 109; *Gold Decl.*,
7 ¶ 34; *Osterwise Decl.*, ¶ 22; *W. Harris Decl.*, ¶ 27. Numerous courts have accepted attorneys’ fees
8 consistent with the Adjusted Laffey Matrix. *See Gold Decl.*, ¶ 34 (citing cases); *W. Harris Decl.*, ¶
9 27 (citing cases).

10 The lodestar multiplier here –1.196– is within a reasonable range. California courts
11 generally approve multipliers between 2 and 4. *See, e.g., Wershba, supra*, 91 Cal.App.4th at p. 229
12 (“Multipliers can range from 2 to 4 or even higher”); *Laffitte, supra*, 1 Cal.5th at p. 487 (approving
13 fees where multiplier was “2.03 to 2.13”); *see also City of Oakland v. Oakland Raiders* (1988) 203
14 Cal.App.3d 78, 82-83 (2.34 multiplier); *Sutter Health Uninsured Pricing Cases* (2009) 171
15 Cal.App.4th 495, 512 (affirming that multiplier of 2.52 was “fair and reasonable”); *Vizcaino v.*
16 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (upholding multiplier of 3.65). Here the
17 lodestar cross-check supports Class Counsel’s requested fee.

18 **5. The Few Objections To Class Counsel’s Requested Attorneys’ Fees Are**
19 **Meritless.**

20 Only four Class Members, out of over 600,000, object to Class Counsel’s requested
21 attorneys’ fees.⁷ However, none of the objectors give a specific reason why Class Counsel efforts
22 in this matter do not merit an attorney fee award of 33% of the Settlement Fund, nor do they consider
23 that Class Counsel has yet to be compensated for their work zealously litigating this complex case
24 for over 5 years. Instead, the objectors merely assert that the requested attorneys’ fees are too high.
25 Court’s routinely overrule such generic objections, especially where, as here, the requested
26 attorneys’ fees are reasonable. *See, e.g., Sosa v. Dreyer’s Grand Ice Cream, Inc.*, 2011 WL 7972073

27
28 ⁷ These objectors are Gregory Roche, Keith Elton ODeil, Richard Markuson, and Michael England (collectively, the “objectors”). *See Mehri Decl.*, ¶ 55, Ex. 3.

1 (Cal.Super.) (overruling objection that did not “provide a factual or legal basis to award less in
2 attorneys’ fees than what [was] being requested”); *In re Wells Fargo & Company Shareholder*
3 *Derivative Litigation* (N.D. Cal., Apr. 7, 2020, No. 16-CV-05541-JST) 2020 WL 1786159, at *17
4 (overruling objection to fee request that “ma[de] no specific complaint about it,” other than that the
5 request was “bloated”); *Hefler v. Wells Fargo & Company* (N.D. Cal., Dec. 18, 2018) 2018 WL
6 6619983, at *13, *aff’d sub nom. Hefler v. Pekoc* (9th Cir. 2020) 802 Fed.Appx. 285 (“generalized
7 objections do not provide a basis to contravene the Court’s benchmark analysis and lodestar cross-
8 check”) (citing cases). Likewise, the Court should overrule the objections here to Class Counsel’s
9 fee request.

10 **6. Plaintiffs Have Given Their Written Approval Of Class Counsel’s Fee**
11 **Allocation Agreement.**

12 If the Court approves the requested attorneys’ fees, those fees will be split among the four
13 firms constituting Class Counsel in the manner agreed in Class Counsel’s co-counsel agreement,
14 which the Court described in its Preliminary Approval Order. Plaintiffs have given written approval
15 to the fee splitting arrangement. *Mehri Decl.* ¶ 64.

16 **B. THE COURT SHOULD APPROVE THE REQUESTED EXPENSES.**

17 Class Counsel also seek reimbursement of documented, out-of-pocket expenses incurred in
18 litigating and settling this matter. *See Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 (counsel
19 should recover “those out-of-pocket expenses that would normally be charged to a fee paying
20 client”) (internal citations omitted); *Ashker v. Sayre* (N.D. Cal., Mar. 7, 2011) 2011 WL 825713, at
21 *3 (finding “costs of reproducing pleadings, motions and exhibits are typically billed by attorneys
22 to their fee-paying clients” and are thus reimbursable); *Trustees of Const. Industry and Laborers*
23 *Health and Welfare Trust v. Redland Ins. Co.* (9th Cir. 2006) 460 F.3d 1253, 1258-59 (legal research
24 costs reimbursable); *In re Immune Response Securities Litigation* (S.D. Cal. 2007) 497 F.Supp.2d
25 1166, 1177-78 (expert fees, legal research, copies, postage, filing fees, messenger, and federal
26 express costs reimbursable).

27 Class Counsel have expended \$233,877.81 in reasonable and necessary expenses in this
28 matter. *Mehri Decl.*, ¶ 93. These costs include, among other things, Plaintiffs’ expert witness,

1 travel, hosting and processing electronically stored information, transcripts, printing/scanning,
2 electronic research, filing and other court fees, delivery charges, and telephone charges. *Id.*, ¶ 95.
3 These costs are reasonable and should be reimbursed. *Id.*

4 In addition, the Settlement Administrator has incurred, and will continue to incur, expenses
5 that are requested to be reimbursed from the common fund. The Administrator’s costs are not
6 expected to exceed \$573,246.00. *See Newberg on Class Actions* § 12:20 (5th ed.) (“The[] costs of
7 paying the claims administrator, processing the claims, providing notice to the class, and generally
8 administering the settlement is typically deducted from the settlement fund.”). The Settlement
9 Administrator requests a final amount of \$573,000.00 for administration costs. The requested
10 settlement administration costs cover, among other things, preparing and sending notices, the cost
11 of a media campaign, toll-free telephone IVR and website implementation, and processing and
12 mailing settlement distributions to Class Members. *Azari Decl.*, ¶¶ 30-31. The requested
13 administration costs are fair and reasonable, and should be reimbursed from the Settlement Fund.

14 **C. THE CLASS REPRESENTATIVE SERVICE AWARDS ARE REASONABLE.**

15 Service awards for class representatives “are fairly typical in class action cases.” *Rodriguez*
16 *v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958; *see also Bell v. Farmers Ins. Exchange*
17 (2004) 115 Cal.App.4th 715, 726, *as modified on denial of reh’g* (Mar. 9, 2004) (affirming an order
18 for “service payments to the five named plaintiffs compensating them for their efforts in bringing
19 suit”). Such awards are intended to compensate class representatives for work done on behalf of
20 the class, to make up for financial or reputational risk undertaken in bringing the action, and to
21 recognize their willingness to act as private attorneys general. *Rodriguez, supra*, 563 F.3d at pp.
22 958-59.

23 In deciding whether to approve an incentive award, a court should consider: “1) the risk to
24 the class representative in commencing suit, both financial and otherwise; 2) the notoriety and
25 personal difficulties encountered by the class representative; 3) the amount of time and effort spent
26 by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack
27 thereof) enjoyed by the class representative as a result of the litigation.” *Cellphone Termination Fee*
28 *Cases* (2010) 186 Cal.App.4th 1380, 1394-95 (internal citations and quotation marks omitted).

1 As set forth in their declarations, all three Class Representatives devoted significant time and
2 effort to successfully prosecuting the case that has been pending for over five years, including
3 providing information necessary for the complaints and reading and reviewing those complaints,
4 discussing their duties with Class Counsel, conferring with Class Counsel to stay informed on the
5 litigation progress, reviewing several drafts of the Settlement Agreement and discussing the same
6 with Class Counsel, and assisting with the preparation of declarations in support of the Settlement.
7 *See R. Harris Decl.*, ¶¶ 4, 7-9; *Brown Decl.*, ¶¶ 4, 7-9; *Lindsey Decl.*, ¶¶ 4, 7-9.

8 In addition, the Class Representatives brought this case for the benefit of the Class, despite
9 their concern that doing so could negatively affect the service they received as Farmers customers,
10 and despite the possibility that being a Class Representative could bring them unwanted, negative
11 attention. *See R. Harris Decl.*, ¶¶ 5-6; *Brown Decl.*, ¶¶ 5-6; *Lindsey Decl.*, ¶¶ 5-6.

12 The modest Service Awards of \$5,000.00 for each Class Representative (\$15,000.00 total,
13 0.1% of the Settlement Fund) are in line with those regularly approved in class action settlements
14 and are appropriate given the Class Representatives' important role. Courts routinely grant service
15 awards in similar amounts or higher. *See, e.g., Cellphone Termination Fee Cases, supra*, 186
16 Cal.App.4th at p. 1395 (finding no abuse of discretion in a \$10,000 award); *Munoz v. BCI Coca-*
17 *Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 (finding a \$5,000 award
18 reasonable); *Garner v. State Farm Mut. Auto. Ins. Co.* (N.D. Cal., Apr. 22, 2010) 2010 WL 1687832,
19 at *17, n. 8 (“Numerous Courts in the Ninth Circuit and elsewhere have approved Enhancement
20 Awards of \$20,000 or more where, as here, the class representative has demonstrated a strong
21 commitment to the class”).⁸

22 **IV. CONCLUSION**

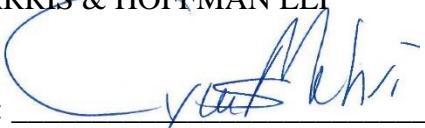
23 Based on the foregoing, the Court should approve the requested payments to be deducted
24 from the common fund: (1) attorneys' fees to Class Counsel in the amount of \$4,950,000 (33% of
25 the common fund), (2) reimbursement of Class Counsel's out-of-pocket costs in the amount of
26 _____

27 ⁸ Two objectors, Mr. Markuson and Mr. ODell, object to the Service Awards (although Mr. ODell
28 appears to incorrectly believe that the Service Awards will be paid to Class Counsel, not Plaintiffs).
Like the objections to Class Counsel's request for attorneys' fees, these objections lack any specific
reason to deny the requested Service Awards. The Court should overrule these objections.

1 \$233,877.81, (3) Class Representative Service Awards of \$5,000.00 (\$15,000.00 total) to each
2 Plaintiff, and (4) \$573,000.00 in settlement administration expenses.

3
4 DATED: May 21, 2020

MEHRI & SKALET PLLC
TYCKO & ZAVAREEI LLP
BERGER MONTAGUE PC
SCHONBRUN SEPLOW
HARRIS & HOFFMAN LLP

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10 By: 
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12 Cyrus Mehri
13 *Attorneys for Plaintiffs*

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1 **PROOF OF SERVICE**
2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am a resident of the aforesaid county, State of California; I am over the age of 18 years
4 and not a party to the within action; my business address is 715 Fremont Avenue, Suite A,
5 South Pasadena, CA 91030.

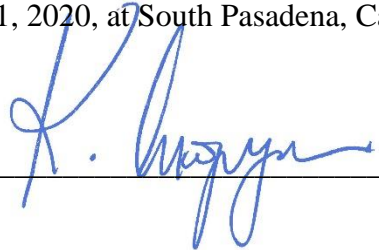
6 On May 21, 2020, I caused the service of the following document(s) described as:

7 **PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
8 **MOTION FOR ATTORNEYS' FEES, COSTS, SERVICE AWARDS, AND NOTICE**
9 **AND ADMINISTRATION EXPENSES**

10 to the person(s) listed on the Service List.

11 x **[By E-MAIL or ELECTRONIC TRANSMISSION VIA CASE ANYWHERE]**
12 Pursuant to a court order, I electronically transmitted the document(s) listed above via
13 Case Anywhere to the individual(s) listed on the Service List. The Case Anywhere
14 system sends an e-mail notification of the electronic transmission to the parties and
15 counsel of record who are registered with the Case Anywhere system.

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct. Executed on May 21, 2020, at South Pasadena, California.

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19 Kristina Akopyan
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SERVICE LIST

<p>Peter Kahana, Esq. pkahana@bm.net Jeff Osterwise, Esq. josterwise@bm.net BERGER & MONTAGUE, P.C. 1818 Market Street, Suite 3600 Philadelphia, PA 19103 Tel.: (215) 875-3000 Fax: (215) 875-4613</p> <p><i>Class Counsel</i></p>	<p>James C. Castle, Esq. jcastle@mail.hinshawlaw.com HINSHAW & CULBERTSON, LLP 633 West Fifth Street, 47th Floor Los Angeles, CA 90071 Tel.: (213) 614-7343 Fax: (213) 614-7399</p> <p><i>Attorneys for Defendants</i> Farmers Insurance Exchange and Mid Century Insurance Co.</p>
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