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

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

15 Plaintiffs,

16 v.

17 FARMERS INSURANCE EXCHANGE AND
18 MID CENTURY INSURANCE COMPANY,

19 Defendants.

Case No. BC579498

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

**[PROPOSED] ORDER GRANTING
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: June 17, 2020

Time: 9:00 a.m.

Department: 17

Complaint filed: April 22, 2015

Trial date: None set

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1 **I. BACKGROUND**

2 On April 22, 2015, Plaintiffs filed their class action complaint alleging five causes of action
3 pertaining to the alleged use of price optimization/elasticity of demand (a.k.a., a method of taking
4 into account an individual’s or class’s willingness to pay a higher premium relative to other
5 individuals or classes) by Defendants Farmers Insurance Exchange and Mid Century Insurance
6 Company (“Farmers”) when pricing their automobile insurance, in violation of California’s Unfair
7 Competition Law, Bus. & Prof. Code, § 17200 et seq. (“UCL”) and the California Insurance Code,
8 and as unjust enrichment. Plaintiffs filed a First Amended Complaint on October 29, 2015 and a
9 Second Amended Complaint on March 5, 2020.

10 On November 30, 2015, Farmers filed a Demurrer to the First Amended Complaint
11 (“Demurrer”). On December 30, 2015, Plaintiffs filed their Response in Opposition to Farmers’
12 Demurrer, and on January 8, 2016, Farmers filed its Reply in support of its Demurrer.

13 After hearing argument by the parties, on January 25, 2016, the Court sustained in part and
14 denied in part Farmers’ Demurrer. The Court overruled Farmers’ Demurrer to Plaintiffs’ causes of
15 action under the UCL and for unjust enrichment. The Court sustained without leave to amend
16 Farmers’ Demurrer as to Plaintiffs’ cause of action for violation of Ins. Code, § 1861.10. The Court
17 granted Farmers’ request for a stay of the case pending proceedings before the California
18 Department of Insurance (the “Department”) pursuant to the primary jurisdiction doctrine.

19 For several months, the Department sought to determine whether Farmers was using price
20 optimization or elasticity of demand when pricing its automobile insurance, but was unable to
21 resolve the issue. Thus, on April 14, 2017, the California Insurance Commissioner announced that
22 he would hold a hearing on “whether Farmers has violated California insurance law by using
23 illegal price optimization” titled *In the Matter of the Rating Practices of Farmers Insurance*
24 *Exchange and Mid-Century Insurance Company* (CDI File No. NC-2017-00003). The matter was
25 assigned to Chief Administrative Law Judge Rosi. Plaintiffs and Consumer Watchdog (“CWD”)
26 subsequently intervened in the Department Proceeding.

27 The Department Proceeding continued for over two years and included significant motion
28

1 practice and discovery. Plaintiffs' Counsel state they reviewed over 70,000 pages of documents
2 produced by Farmers and deposed seven Farmers employees with knowledge of Farmers'
3 development of automobile insurance premiums in California. In addition to this formal discovery,
4 in June 2018, Plaintiffs' counsel and Plaintiffs' expert witness J. Robert Hunter, a former Texas
5 insurance commissioner, also participated in a day-long meeting with Farmers' counsel, several of
6 Farmers' witnesses, representatives from the Department, and representatives of CWD. During this
7 meeting, Plaintiffs' counsel represent they and Mr. Hunter questioned Farmers' witnesses
8 concerning relevant issues.

9 Following depositions and document discovery, the parties exchanged proposed pre-filed
10 direct testimony they intended to enter into evidence during the evidentiary hearing phase of the
11 Department Proceeding. This pre-filed direct testimony included a report from Plaintiffs' expert
12 Mr. Hunter, as well as reports from experts for Farmers, the Department of Insurance, and CWD.
13 Such expert reports and analyses included calculations of the potential damages at issue. Farmers
14 also proposed pre-filed direct testimony from several of its fact witnesses who had been deposed in
15 the matter. The proposed pre-filed direct testimony, taken together, comprehensively presented the
16 parties' positions on most of the key issues in this case and their evidence in support of those
17 positions.

18 Following exchange of the proposed direct testimony, the parties made motions to strike
19 various parts of each other's testimony. After Judge Rosi ruled on those motions, the Department
20 Proceeding was ripe for the evidentiary hearing, which had been set for January 7, 2019.¹
21 However, in December 2018, the parties agreed to a mediation before the Hon. Harry W. Low
22 (Ret.) and requested that the evidentiary hearing in the Department Proceeding be continued. On
23 February 19, 2019, the parties participated in a full day mediation with Justice Low.² The
24 mediation did not result in a settlement on that date. For the next several months, the parties

25 ¹ In November 2018, Farmers filed a Petition for Writ of Administrative Mandamus related to the
26 conduct and scope of the Department Proceeding. Farmers had also filed a similar petition in
27 August of 2017, which the Court had denied.

28 ² Justice Low also attended the June 2018 meeting, during which Plaintiffs' Counsel presented a
framework for settlement to Farmers' counsel.

1 continued their negotiations both in writing and over the telephone, with the participation of Judge
2 Low.

3 On June 5, 2019, the parties executed a Memorandum of Understanding wherein the parties
4 agreed to the material terms of the settlement. On June 6, 2019, Plaintiffs and Farmers filed a
5 Stipulated Request for a Stay of the Department Proceeding pending the Settlement of the Action.
6 And, on June 7, 2019, the parties filed a Notice of Settlement with the Court advising the Court of
7 the Memorandum of Understanding and requesting a stay of all proceedings until the filing of the
8 Settlement Agreement and a Motion for Preliminary Approval. The parties executed the Settlement
9 Agreement on August 29, 2019.

10 On August 30, 2019, Plaintiffs filed a motion seeking preliminary approval. On October 8,
11 2019, the Court issued a checklist of items for the parties to address and continued preliminary
12 approval. In response, on November 20, 2019, Plaintiffs' counsel filed Supplemental Briefing, the
13 Supplemental Declaration of Cameron R. Azari on Settlement Notice Plan, and a fully executed
14 Amended Settlement Agreement attached as Exhibit 1 to the Supplemental Declaration of Jay
15 Angoff.

16 On December 12, 2019, the Court continued preliminary approval and requested further
17 briefing. In response, on December 20, 2019, counsel filed the Second Supplemental Declaration
18 of Cameron R. Azari On Settlement Notice Plan. On December 23, 2019, counsel filed a fully
19 executed Second Amended Settlement Agreement. The Court preliminary approved this class
20 Settlement on January 7, 2020. Now before the Court is Plaintiffs' Motion for Final Approval and
21 Plaintiffs' Motion for Attorneys' Fees, Costs, Service Awards, and Notice and Administration
22 Expenses ("Fee Motion").

23 **II. DISCUSSION**

24 **A. SETTLEMENT CLASS DEFINITION**

25 As proposed and preliminarily approved, the "Settlement Class" means all Policy Holders
26 of Defendants Farmers Insurance Exchange ("FIE") and Mid Century Insurance Company
27 ("MCA") who: (1) had 9 or more years of tenure/persistency as a FIE and/or MCA policyholder as
28

1 of August 18, 2015 or who reached 9 or more years of tenure/persistency as a FIE and/or MCA
2 policyholder on or before March 31, 2017, and (2) were FIE and/or MCA policyholders of
3 Defendants at any time during the period extending from August 18, 2015 through March 31, 2017.
4 Excluded from the Settlement Class are (a) officers, directors, and employees of any member of the
5 Farmers Insurance Group of Companies; (b) the judge overseeing the proposed settlement and the
6 judge's immediate family and (c) all Policy Holders who make a timely election to be excluded.
7 (Second Amended Settlement Agreement, ¶ 54) (herein, "Settlement Agreement").

- 8 • "Policy Holder" means each person who has an ownership interest in a Policy or Policies
9 during the Class Period. (¶ 42).
- 10 • "Renewing Current Policy Holder" means a Settlement Class Member who continues to
11 have his or her Policy as of the Effective Date and who renews his or her Policy within six
12 months after the Payment Date. (¶ 49).
- 13 • "Non-Renewing Current Policy Holder" means a Settlement Class Member who continues
14 to have his or her Policy as of the Effective Date and who declines to renew his or her
15 Policy within six months after the Payment Date. (¶ 33).
- 16 • "Class Period" means the period from August 18, 2015, through March 31, 2017. (¶ 23).
- 17 • "Past Policy Holder" means a Settlement Class Member who no longer holds his or her
18 Policy as of the Effective Date. (¶ 38).
- 19 • There are approximately 608,843 class members, a number confirmed by the Settlement
20 Administrator.

21 **B. TERMS OF SETTLEMENT AGREEMENT**

22 The essential terms are as follows:

- 23 • The Settlement Amount ("SA") is **\$15,000,000, non-reversionary.** (¶ 57).
- 24 • The Net Settlement Amount is **\$9,228,122.19**, being the SA Less:
 - 25 ○ **\$4,950,000** (33%) for attorneys fees (Mehri Decl. in Support of Final Approval ¶ 88
26 (herein, "Mehri Decl.");
 - 27 ○ **\$233,877.81** for attorney costs (*Id.* ¶ 92);

- 1 ○ **\$15,000** for Service Awards to the class representatives (\$5,000 x 3) (*Id.* ¶ 115); and
- 2 ○ **\$573,000** for notice administration costs (*Id.* ¶ 52).
- 3 • Funding of the Settlement Amount:
 - 4 ○ On January 21, 2020, Farmers delivered to the Settlement Administrator \$500,000
 - 5 from the Settlement Amount, which was deposited in a Qualified Settlement Fund
 - 6 account for this matter at the Depository Bank. This amount was necessary to pay
 - 7 for the Notice Program and administration of the Settlement by the Settlement
 - 8 Administrator. (Settlement Agreement ¶ 61).
 - 9 ○ Within 10 days of the Effective Date Farmers shall deliver to the Settlement
 - 10 Administrator that portion of the Settlement Amount necessary to pay the
 - 11 Settlement Class Member Payments due to the Past Policy Holders and the
 - 12 attorneys' fees and costs payable to Class Counsel, which amount shall be deposited
 - 13 in the Qualified Settlement Fund account for this matter at the Depository Bank
 - 14 maintained by the Settlement Administrator. The Settlement Administrator shall
 - 15 deliver such Settlement Class Member Payments to the Past Policy Holders in
 - 16 accordance with this Final Approval Order. (¶ 62).
 - 17 ▪ "Effective Date" means the day following: (A) the entry by the Court of the
 - 18 Final Order and Judgment: (i) affirming certification of the Settlement Class;
 - 19 (ii) finding the Settlement Agreement to be fair, adequate and reasonable;
 - 20 (iii) finding that the Notice to the Class of the Settlement Agreement was
 - 21 fair, adequate and reasonable; (iv) resolving any and all objections to the
 - 22 fairness and reasonableness of the Settlement Agreement, if any; and (B) the
 - 23 expiration of the deadline of the deadline for seeking appellate review of the
 - 24 Final Order and Judgment if no appeal is sought; or the day following the
 - 25 date all appellate courts with jurisdiction affirm the Final Judgment and
 - 26 Order with no possibility of further appellate review existing; and (C) the
 - 27 Commissioner's dismissal of the Department Proceeding (without prejudice
 - 28 to reinstatement in the event the Settlement does not receive Final Approval

1 and/or the Effective Date does not occur). (¶ 28).

2 ○ In order to reduce the costs of administration of the Settlement, Farmers shall retain
3 that portion of the Settlement Amount that is allocated to Settlement Class Members
4 who are Renewing Current Policy Holders, who will, beginning on the Payment
5 Date, at its own cost and expense, directly credit the Policies of those Renewing
6 Current Policy Holder Settlement Class Members at the time of renewal of their
7 Policies. At the conclusion of the renewal cycle, Farmers shall deliver to the
8 Settlement Administrator that portion of the Settlement Amount necessary to satisfy
9 the Settlement Class Member Payments due to the Non-Renewing Current
10 Policyholders, whose payments will then be delivered by the Settlement
11 Administrator by paper check. Farmers shall report to the Court as to the status of
12 all Settlement Class Member Payments made to Renewing Current Policy Holders
13 on a semi-annual basis following the Payment Date. (¶ 63).

14 ● The parties also agreed to affirmative contractual relief. The terms are subject to specific
15 definition but are generally as follows:

- 16 ○ Farmers will not use any form of price optimization software or program, nor in any
17 way consider price optimization/elasticity of demand in connection with, or in the
18 development of, California private passenger auto rates or class plans, unless and
19 until such time as such practices are explicitly authorized under California law or by
20 the California Department of Insurance. (Exhibit 5 to Settlement Agreement, ¶1).
- 21 ○ Farmers will not initiate a challenge, in any way, to the Commissioner’s 2/18/15
22 Notice re price optimization (“the Notice”) or the Commissioner’s legal authority to
23 regulate the use of price optimization software or the consideration of price
24 optimization/elasticity of demand or price sensitivity in connection with, or in the
25 development of, rates and class plans for California private passenger auto.
- 26 ○ However, if accused of price optimization or the allegedly improper consideration
27 of price optimization/elasticity of demand, Farmers reserves the right to defend
28 itself against any such accusation and does not waive any argument it may make in

1 defense of such a claim, including that the Notice was unlawful, or the
2 Commissioner lacked the legal authority to regulate the use of price optimization
3 software or the consideration of price optimization/elasticity of demand. (Exhibit 5
4 to Settlement Agreement, ¶ 2).

- 5 • There is no claims requirement. Settlement Class Members will receive a Settlement
6 Payment unless they have opted out. (¶¶ 55, 63).
- 7 • Distributions from the Settlement Amount:
 - 8 ○ Unless a Renewing Current Policy Holder has contacted the Settlement
9 Administrator to request a paper check instead of a Policy credit, Farmers shall
10 credit the Policies of all Renewing Current Policy Holders their Settlement Class
11 Member Payments at the time of their next Policy renewal. (¶ 80).
 - 12 ○ Settlement Class Member Payments to Renewing Current Policy Holders shall be
13 made first by crediting a Policy for those Policy Holders at the time of their next
14 Policy renewal, or by mailing a standard size check if it is not feasible or reasonable
15 to make the payment by a credit. Farmers shall notify Renewing Current Policy
16 Holders of any such credit on the Policy statement on which the credit is reflected
17 and provide a brief explanation that the credit has been made as a payment in
18 connection with the Settlement. The form and substance of this notification shall be
19 mutually agreed upon by the Parties and is attached to the Settlement as Exhibit 6.
20 Farmers will bear all costs and expenses associated with implementing the Policy
21 credits and notification discussed in this paragraph. (¶ 81).
 - 22 ○ If the next Policy renewal date for a Policy Holder does not occur within 6 months
23 of the Payment Date, the Policy Holder shall receive his or her Settlement Class
24 Member Payment via check from the Settlement Administrator. Within 10 days
25 after the Payment Date, Farmers shall provide the Settlement Administrator with a
26 list of the Settlement Class Members who do not have a Policy renewal date within
27 6 months of the Effective Date. (¶ 82).
 - 28 ○ After Farmers has processed all Settlement Class Member Payments to Renewing

1 Current Policy Holders with a Policy renewal date occurring within 6 months of the
2 Payment Date, Farmers shall notify the Settlement Administrator of that portion of
3 the Settlement Amount necessary to fund the Settlement Class Member Payments to
4 Non-Renewing Current Policy Holders by check. (§ 83).

5 ○ Within 10 days after Effective Date, Farmers shall provide the Settlement
6 Administrator with a list of Past Policy Holder Settlement Class Members in order
7 to send checks to Past Policy Holders for their Settlement Class Member Payments.
8 (§ 85).

- 9 ● **Uncashed/ Returned Checks:** The amount of the Net Settlement attributable to uncashed or
10 returned checks sent by the Settlement Administrator shall be held by the Settlement
11 Administrator one year from the date that the first distribution check is mailed by the
12 Settlement Administrator. During this time the Settlement Administrator shall make a
13 reasonable effort to locate intended recipients of settlement funds whose checks were
14 returned to effectuate delivery of such checks. The Settlement Administrator shall make
15 only one such additional attempt to identify updated addresses and re-mail or re-issue a
16 distribution check to those for whom and updated address was obtained. (§ 87).
- 17 ● **Disposition of Residual Funds:** Within 2 years after the date the Settlement Administrator
18 mails the first Settlement Class Member Payment, any remaining amounts such as resulting
19 from uncashed checks (“Residual Funds”) in the Qualified Settlement Fund shall be
20 distributed pursuant to California Code of Civil Procedure 384(b). Specifically, the parties
21 agree that, consistent with the requirements of Section 384, the Court may open any
22 judgment to direct payment of any amounts remaining in the Qualified Settlement Fund,
23 plus interest, to the Center for Auto Safety, www.autosafety.org, or other court approved cy
24 pres recipient. It is represented that the Center for Auto Safety, among other things,
25 provides tools to educate consumers in California on different types of auto insurance
26 coverage and discount strategies to save consumers on costs of insurance premiums. It is
27 further represented that neither the Parties nor counsel for the Parties have any interest or
28 involvement in the governance or the work of Center for Auto Safety. The Court approves

1 the Center for Auto Safety as the cy pres recipient if there are Residual Funds. (¶ 88).

- 2 • Termination of the Settlement: The Settlement Agreement provided that the Settlement may
3 be terminated by either Class Counsel or Farmers by serving on counsel for the opposing
4 party and filing with the Court a written notice of termination within 15 days (or such
5 longer time as may be agreed in writing between Class Counsel and Farmers) if the
6 Department Proceeding is not dismissed by the Insurance Commissioner of the California
7 Department of Insurance following the Court’s issuance of the Preliminary Approval Order
8 and prior to the Court’s issuance of this Final Approval Order; provided, however, that such
9 dismissal is without prejudice to reinstatement if the Settlement does not otherwise become
10 effective. (¶ 94.e). The parties have represented to the Court that a motion to dismiss the
11 Department Proceeding is pending before Judge Rosi.

- 12 • Epiq Systems, Inc. is the Settlement Administrator. (¶ 53).

- 13 • All class members who do not opt out will release certain claims against Farmers.

14 Specifically, as of the Effective Date, Plaintiffs and each Settlement Class Member, each on
15 behalf of itself and on behalf of its respective heirs, assigns, beneficiaries, and successors
16 (“Releasing Parties”), shall automatically be deemed to have fully and irrevocably released
17 and forever discharged Farmers and each of its present and former parents, subsidiaries,
18 divisions, affiliates, predecessors, and assigns, and the present and former directors,
19 officers, employees, agents, insurers, members, attorneys, advisors, consultants,
20 representatives, partners, joint venturers, independent contractors, wholesalers, resellers,
21 distributors, retailers, predecessors, successors and assigns of each of them (“Released
22 Parties”), of and from any claims that were or could have been alleged based on the facts
23 pleaded in the First Amended Complaint dated October 29, 2015 and/or any subsequent
24 amended complaint filed in conjunction with the Court’s approval of the Settlement
25 (“Released Claims”). (¶ 89).

26 **C. ANALYSIS OF SETTLEMENT AGREEMENT**

27 **1. Standards for Final Fairness Determination**

28 “Before final approval, the court must conduct an inquiry into the fairness of the proposed

1 settlement.” (Cal. Rules of Court, rule 3.769(g).) “If the court approves the settlement agreement
2 after the final approval hearing, the court must make and enter judgment. The judgment must
3 include a provision for the retention of the court’s jurisdiction over the parties to enforce the terms
4 of the judgment. The court may not enter an order dismissing the action at the same time as, or
5 after, entry of judgment.” (Cal. Rules of Court, rule 3.769(h).)

6 “In a class action lawsuit, the court undertakes the responsibility to assess fairness in order
7 to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action.
8 The purpose of the requirement [of court review] is the protection of those class members,
9 including the named plaintiffs, whose rights may not have been given due regard by the negotiating
10 parties.” *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.
11 4th 46, 60 (internal quotation marks omitted); *see also Wershba v. Apple Computer, Inc.* (2001) 91
12 Cal. App. 4th 224, 245 (Court needs to “scrutinize the proposed settlement agreement to the extent
13 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
14 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
15 whole, is fair, reasonable and adequate to all concerned”) (internal quotation marks omitted).

16 “The burden is on the proponent of the settlement to show that it is fair and reasonable.
17 However ‘a presumption of fairness exists where: (1) the settlement is reached through arm's length
18 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
19 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
20 small.” *See Wershba* at 245 (citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.

21 Notwithstanding an initial presumption of fairness, “the court should not give rubber-stamp
22 approval.” *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. “Rather, to
23 protect the interests of absent class members, the court must independently and objectively analyze
24 the evidence and circumstances before it in order to determine whether the settlement is in the best
25 interests of those whose claims will be extinguished.” *Id.* In that determination, the court should
26 consider factors such as “the strength of plaintiffs’ case, the risk, expense, complexity and likely
27 duration of further litigation, the risk of maintaining class action status through trial, the amount
28 offered in settlement, the extent of discovery completed and stage of the proceedings, the

1 experience and views of counsel, the presence of a governmental participant, and the reaction of
2 the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of factors is not exclusive
3 and the court is free to engage in a balancing and weighing of factors depending on the
4 circumstances of each case.” *Wershba* at 245.

5 Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order to
6 be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, even
7 if ‘the relief afforded by the proposed settlement is substantially narrower than it would be if the
8 suits were to be successfully litigated,’ this is no bar to a class settlement because ‘the public
9 interest may indeed be served by a voluntary settlement in which each side gives ground in the
10 interest of avoiding litigation.” *Id.* at 250.

11 **2. Does a presumption of fairness exist?**

12 a) Was the settlement reached through arm’s-length bargaining? Yes. On February 19,
13 2019, the parties participated in a full day mediation with Justice Low. The mediation
14 did not result in a settlement on that date. For the next several months, the parties
15 continued their negotiations both in writing and over the telephone, with the
16 participation of Justice Low. On June 5, 2019, the parties executed a Memorandum of
17 Understanding wherein the Parties agreed to the material terms of the settlement. The
18 Parties executed the original Settlement Agreement on August 29, 2019, filed a fully
19 executed Amended Settlement Agreement with the Court on November 20, 2019, and
20 filed a fully executed Second Amended Settlement Agreement with the Court on
21 December 23, 2019 (Mehri Decl. ¶¶ 14-16).

22 b) Were investigation and discovery sufficient to allow counsel and the court to act
23 intelligently? Yes. It is represented that Plaintiffs’ Counsel reviewed over 70,000 pages
24 of documents produced by Farmers and deposed seven Farmers employees with
25 knowledge of Farmers’ development of automobile insurance premiums in California.
26 The Parties also exchanged proposed pre-filed direct testimony they intended to enter
27 into evidence during the evidentiary hearing phase of the Department Proceeding. (*Id.*
28 ¶¶ 11-12). In addition to this formal discovery, in June 2018, Plaintiffs’ counsel and

1 Plaintiffs' expert witness J. Robert Hunter, a former Texas insurance commissioner,
2 also participated in a day-long meeting with Farmers' counsel, several of Farmers'
3 witnesses, representatives from the Department, and representatives of CWD. During
4 this meeting, Plaintiffs' counsel and Mr. Hunter questioned Farmers' witnesses
5 concerning relevant issues. (*Id.* ¶ 11).

6 c) Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in
7 class action litigation, including insurance actions. (*Id.* ¶ 32).

8 d) What percentage of the class has objected? As of June 17, 2020, the Settlement
9 Administrator has received only six objections. The handful of objections do not defeat
10 the strong presumption that the Settlement is favorable and should be approved. "The
11 settlement of a class action requires court approval to prevent fraud, collusion, or
12 unfairness to the class." *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th
13 1110, 1117. Objectors may participate to assist in determining if there is any indication
14 of collusion and in determining the reasonableness of the overall fee award, but,
15 "[u]ltimately, the key consideration for the trial court is the substantive fairness of the
16 settlement terms, as well as the reasonableness of the fee award and any evidence of
17 collusion." *Id.* None of the Objectors show that the Settlement is unfair as their
18 objections are generic and fail to raise any substantive concerns with the terms of the
19 Settlement. *See Noll v. eBay, Inc.*, (N.D. Cal. 2015) 309 F.R.D. 593, 611 ("The
20 objectors have not satisfied this burden . . . none raises any substantive concerns about
21 the fairness, reasonableness, or adequacy of the settlement.").³ Importantly, no Objector
22 presents any evidence of collusion. To the contrary, the Settlement followed extensive
23 investigation, discovery, litigation, and arm's-length negotiations. While the Objectors
24 raise concerns that the Settlement Amount and estimated payments to Settlement Class
25 Members are too low, they do not take into account the significant injunctive relief

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³ To the extent that they are not inconsistent with California jurisprudence, California courts are advised to look for guidance to Rule 23 of the Federal Rules of Civil Procedure and federal cases applying Rule 23. *See Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *see also Green v. Obledo* (1980) 29 Cal. 3d 126, 145-46; *Dunk*, 48 Cal. App. 4th at 1801 fn. 7.

1 provided by the Settlement Agreement or the risks inherent in further litigating this
2 Action. As discussed below, these risks are real and support the Settlement negotiated
3 by Class Counsel.

4 Moreover, as to the four Objectors who raise concerns regarding the amount of the
5 attorneys' fees request, they do not give a specific reason why Class Counsel's efforts
6 in this matter do not merit an attorney fee award of 33% of the Settlement Fund.

7 Instead, the objectors assert only that the requested attorneys' fees are too high. Courts
8 routinely overrule such generic objections, especially where, as here, the requested
9 attorneys' fees are reasonable. *See, e.g., Sosa v Dreyer's Grand Ice Cream, Inc.*, No.
10 RG08424366, 2011 WL 7972073 (Cal. Super. July 06, 2011) (overruling objection that
11 did not "provide a factual or legal basis to award less in attorneys' fees than what [was]
12 being requested"); *Roos v. Honeywell Internat., Inc.* (2015), 241 Cal. App. 4th 1472,
13 1494–95 (holding that objectors "did not sustain their burden by simply complaining
14 that the amount requested was excessive"), *disapproved on other grounds by Hernandez*
15 *v. Restoration Hardware, Inc.* (2018), 4 Cal. 5th 260. Likewise, any objections to the
16 Service Awards to the Class Representatives fail as they do not raise specific concerns
17 or explain why Service Awards totaling 0.1% of the Settlement Amount, which is in
18 line with other awards by this Court, are improper.

19 Further, objections as to the lack of admission of liability on behalf of Farmers ignore
20 that this is an essential element of most settlement agreements. Finally, none of the
21 Objectors assert that Class Counsel's investigation and discovery were insufficient for
22 them to act intelligently, or that Class Counsel is inexperienced. The Court has therefore
23 considered these objections and finds them to be without merit.

24 **CONCLUSION:** The Settlement is entitled to a presumption of fairness.

25 **3. Is the settlement fair, adequate, and reasonable?**

26 a) **Strength of Plaintiffs' case.** "The most important factor is the strength of the case
27 for plaintiffs on the merits, balanced against the amount offered in settlement." (*Kullar,*
28 *supra* at 130.).

1 Counsel contends that in terms of monetary relief, Plaintiffs could have recovered
2 approximately \$42 million based on Plaintiffs' allegation that Farmers engaged in price
3 optimization without the Department's approval between August 18, 2015 and March
4 31, 2017, calculated as follows: Annual Injury of \$26,000,00 x 1.625 years (period
5 which injury occurred)= \$42,250,000 total injury. (Preliminary Approval Order at 15-
6 16).

7 However, absent settlement, proceedings would need to continue before the
8 Department, which would include additional briefing, an evidentiary hearing, a decision
9 by Chief Administrative Law Judge Rosi, a decision by the Commissioner, and
10 potential appeals from any decision by the Commissioner; only then could Plaintiffs
11 have returned to this Court, where they would face risk of losing on any one of their
12 claims and, even if successful, could be further subjected to a lengthy appeals process.
13 The risk of losing at any one of these stages is very real. Notwithstanding Plaintiffs'
14 arguments that Farmers violated the Insurance Code, *MacKay v. Superior Court* (2010)
15 188 Cal.App.4th 1427, and this Court's interpretation of *MacKay*, have created a
16 substantial risk that a finding that Farmers engaged in price optimization by the
17 Department would not translate into any monetary recovery for Plaintiffs; moreover,
18 Plaintiffs would have also had to overcome Farmers' other defense that the rates set
19 forth in the Class Plans were approved by the Department and that Farmers simply
20 charged those approved rates to its policyholders (including Plaintiffs and the members
21 of the Settlement Class).

22 b) Risk, expense, complexity and likely duration of further litigation. Given the nature
23 of the class claims, the case is likely to be expensive and lengthy to try. Procedural
24 hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as
25 well as any recovery by class members.

26 c) Risk of maintaining class action status through trial. Even if a class is certified, there
27 is always a risk of decertification. (*Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.
28 App. 4th 1213, 1226 ["Our Supreme Court has recognized that trial courts should retain

1 some flexibility in conducting class actions, which means, under suitable circumstances,
2 entertaining successive motions on certification if the court subsequently discovers that
3 the propriety of a class action is not appropriate.”].)

4 d) Amount offered in settlement. Defendant has agreed to settle for the non-
5 reversionary sum of \$15,000,000. The \$15,000,00 settlement constitutes approximately
6 36% of the \$42,250,000 maximum value of the claims, which is within the “ballpark”
7 of reasonableness. As the Court has approved the requested deductions, \$9,228,122.19
8 will be available for automatic distribution to participating class members. The
9 settlement share for each class member will be **\$15.15**. [$\$9,228,122.19 \text{ net} / 608,843$
10 class members = \$15.15].

11 e) Extent of discovery completed and stage of the proceedings. As discussed above, at
12 the time of the settlement, Class Counsel had conducted discovery sufficient to value
13 the case for settlement purposes.

14 f) Experience and views of counsel. The settlement was negotiated and endorsed by
15 Class Counsel who, as indicated above, are experienced in class action litigation,
16 including insurance actions. Based upon their investigation and analysis, the attorneys
17 representing Plaintiffs and the Settlement Class are of the opinion that this settlement is
18 fair, reasonable, and adequate.

19 g) Presence of a governmental participant. This factor is not directly applicable here,
20 but the Department of Insurance moving to dismiss its action following preliminary
21 approval of this settlement supports approval of the Settlement.

22 h) Notice to and reaction of the class members to the proposed settlement.

23 Number of Settlement Class members: 608,843 (original list of 608,917 – 74 opt outs)
24 (Declaration of Cameron R. Azari ¶¶ 7, 27)

25 Number of notices mailed or emailed: 608,912 (*Id.* ¶ 15)

26 Number of undeliverable notices: 606 (99.9% of all notices were delivered) (*Id.*)
27
28

1 Number of opt-outs: 74⁴ (*Id.* ¶ 27)

2 Number of objections: 6 (*Id.* ¶ 28)

3 The Notice Program was completed in accordance with the Court’s instructions in the
4 Preliminary Approval Order. Notice was provided to the Settlement Class members in
5 three different ways:

- 6 • *Email Notice*, including a “click through” to the Settlement website, was sent to
7 Settlement Class members for whom Farmers had email addresses and who had
8 agreed to accept their Policy statements and/or information from Farmers by
9 email;
- 10 • *Long-Form Notice* with details regarding the Settlement was sent to those
11 Settlement Class members who had not agreed to accept their Policy statements
12 and/or information from Farmers by email or for whom Farmers did not have
13 email addresses and was also posted on the Settlement Website
14 (www.FarmersPriceOptimizationSettlement.com);
- 15 • *Publication Notice* was published in the following publications to apprise
16 Settlement Class members of the Settlement: the Los Angeles Times, East Bay
17 Times/Mercury News, Sacramento Bee, San Diego Union-Tribune, San
18 Francisco Chronicle, Redding Record Searchlight, Las Vegas Review Journal,
19 Facebook (California IP addresses only) and Google Display Network
20 (California IP addresses only).

21 Each facet of the Notice Program was timely and properly accomplished. To effectuate
22 Notice, Farmers, at its own expense and with the assistance of the Settlement
23 Administrator, created a list of Settlement Class members and their electronic mail
24 and/or postal address based on information already within its possession. The
25 Settlement Administrator sent out Email Notice and the Long Form Notice to

26
27 ⁴ Epiq received 82 “requests for exclusion” however, eight of these requests were submitted by
28 individuals not included in the original Settlement Class Member data provided to Epiq by
Farmers.

1 Settlement Class members, as applicable. 30,939 of the Email Notices were returned as
2 undeliverable. The Settlement Administrator therefore mailed Long-Form Notice to
3 these Settlement Class members. (*Id.* ¶¶ 10-11).

4 The Settlement Administrator used the National Change of Address Database prior to
5 sending the Long-Form Notice to the Settlement Class Members who did not receive
6 Email Notice (or whose Email Notice was returned as undeliverable). 1,403 of Long-
7 Form Notices were returned as undeliverable. The Settlement Administrator performed
8 reasonable address traces for the Long-Form Notices that were returned as
9 undeliverable and resent Long-Form Notices to 787 of those Settlement Class Members.
10 (*Id.* ¶ 14). Only 606 Settlement Class Members did not receive mailed notice as a result
11 of the above processes. (*Id.* ¶ 15). The Settlement Administrator completed all mailing
12 and initial re-mailing of the Email Notice and Long Form Notice by February 28, 2020.
13 (*Id.* ¶ 35).

14 In addition, the Settlement Website, with a Long Form Notice and other important
15 filings relating to the Settlement, was established on February 14, 2020. The website
16 allowed Settlement Class members to obtain detailed information about the Action and
17 the Settlement. As of May 19, 2020, the Settlement Website had 15,965 visitor sessions
18 with 24,941 page views. (*Id.* ¶¶ 23-24).

19 On February 14, 2020, the Settlement Administrator also established and maintained an
20 automated toll-free telephone line, available 24 hours a day, seven days a week, for
21 Settlement Class members to call to listen to answers to frequently asked questions and
22 to request Long Form Notices be sent via mail. As of May 19, 2020, the toll-free
23 number has handled 3,808 calls representing 11,131 minutes of use. (*Id.* ¶ 25).

24 The Notice Program was effective as approximately 99.9% of Settlement Class
25 members received individual notice. (*Id.* ¶ 15).

26 Settlement Class Members do not have to submit claims or take any other affirmative
27 step to receive relief under the Settlement or to receive a payment. Rather, they will
28 automatically receive payment of their benefit (Mehri Decl. ¶ 49). For Settlement Class

1 Members who are to receive a paper check, the Settlement Administrator will mail the
2 check to the same address at which the Settlement Class Member received notice. (*Id.*)
3 Settlement Class Members were required to exclude themselves by May 6, 2020. 74
4 persons did so. (Azari Decl. ¶ 27). Additionally, six (6) Settlement Class Members filed
5 objections to the Settlement; however, for the reasons stated above, the Court finds
6 those objections to be without merit.

7 CONCLUSION: The Court finds that the notice was adequate and conforms to due process
8 requirements, and further finds that the settlement is “fair, adequate, and reasonable.”

9 **D. ATTORNEY FEES AND COSTS**

10 Class Counsel request \$4,950,000.00 for attorney fees and \$233,877.81 for costs. (Mehri
11 Decl. ¶¶ 92-95.)

12 In determining the appropriate amount of a fee award, courts may use the lodestar method,
13 applying a multiplier where appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,
14 1095-96.) A percentage calculation is permitted in common fund cases. (*Laffitie v. Robert Half*
15 *Int'l, Inc.* (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the contrary, courts
16 have an independent responsibility to review an attorney fee provision and award only what it
17 determines is reasonable. (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118
18 Cal.App.4th 123, 128.)

19 In the instant case, fees are sought pursuant to the percentage method. (Mehri Decl. ¶ 88.)
20 The \$4,950,000.00 fee request is 33% of the \$15,000,000.00 gross settlement amount, which is
21 average. (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13 [“Empirical
22 studies show that, regardless whether the percentage method or the lodestar method is used, fee
23 awards in class actions average around one-third of the recovery.”].)

24 Here, the \$4,950,000.00 fee request represents a reasonable percentage of the total funds
25 paid by Defendants. Further, the notice expressly advised Settlement Class Members of the fee
26 request. Four (4) putative Settlement Class Members filed objections to the fee request; however,
27 for the reasons stated above, the Court finds those objections to be without merit. Accordingly, the
28 Court awards attorneys’ fees in the amount of \$4,950,000.00.

1 Class Counsel has agreed to share awarded fees on the following basis: First, all co-counsel
2 shall be reimbursed for their expenses including expenses for the Litigation Fund used to fund
3 prosecution of the case. (Mehri Decl. ¶ 64 n.6) Second, 30% of fees recovered shall be divided
4 equally among the three Co Lead Counsel, Mehri & Skalet (“M&S”), Tycko & Zavareei and
5 Berger Montague for funding major costs in the Litigation Fund. (*Id.*) Third, 5% of fees shall go to
6 M&S for the unique expertise and experience of partner Jay Angoff, a former state insurance
7 commissioner and former federal insurance regulator. (*Id.*) Finally, the remaining 65% to all Co-
8 Counsel including Schonbrun, Seplow, Harris, Hoffman & Zeldes, LLP in the proportion that each
9 firm’s reasonable lodestar (i.e., reasonable hours times reasonable then current rates based on the
10 Adjusted Laffey Matrix used in courts in the District of Columbia, and for Schonbrun, Seplow,
11 Harris, Hoffman & Zeldes, LLP, the Adjusted Laffey Rate as adjusted for the Los Angeles market)
12 bears to the combined lodestar of all Co-Counsel. (*Id.*) The fee sharing arrangement was disclosed
13 to all Named Plaintiffs in writing, and Named Plaintiffs provided their written approval thereof.
14 (Mehri Decl. ¶ 62.)

15 As for costs, Class Counsel requests \$233,877.91. (*Id.* ¶¶ 92-95.) The Settlement
16 Agreement provided that Class Counsel could seek reimbursement of costs up to \$275,000.00.
17 (Settlement Agreement, ¶91.) Further, the notice expressly advised Settlement Class members of
18 Class Counsel’s request for reimbursement of costs. The costs to date include expert costs
19 (\$115,469.42), travel costs (\$46,906.84), electronic research costs (\$5,857.93), printing costs
20 (\$20,787.05), electronically stored information costs (\$9,532.93), court reporting fees
21 (\$14,699.38), court costs and filing fees (\$14,031.10), service/courier/postage fees (\$5,885.42), and
22 “other” fees (\$707.74). (Mehri Decl. ¶ 95) The costs appear to be reasonably necessary to the
23 litigation, reasonable in amount, and were not objected to by the Settlement Class and are
24 approved.

25 **E. SERVICE AWARDS TO CLASS REPRESENTATIVES**

26 A Service Award to a named class representative must be supported by evidence that
27 quantifies time and effort expended by the individual and a reasoned explanation of financial or
28 other risks undertaken by the class representative. *See Clark v. American Residential Services LLC*

1 (2009) 175 Cal.App.4th 785, 806-807; *see also Cellphone Termination Cases* (2010) 186
2 Cal.App.4th 1380, 1394-1395 (“[C]riteria courts may consider in determining whether to make an
3 incentive award include: 1) the risk to the class representative in commencing suit, both financial
4 and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3)
5 the amount of time and effort spent by the class representative; 4) the duration of the litigation and;
6 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the
7 litigation. [Citations.]”).

8 Here, Plaintiffs Roger Harris, Duane Brown, and Brian Lindsey each request a \$5,000.00
9 Service Award [\$15,000.00 total]. (Mehri Decl. ¶ 115)

10 Each of the Plaintiffs submitted similar declarations describing their efforts acting as a class
11 representative in this matter. Each of them described providing assistance to their counsel in the
12 form providing information necessary for the complaints and reading and reviewing those
13 complaints, discussing their duties with Class Counsel, conferring with Class Counsel throughout
14 the course of the litigation to stay informed on its progress, reviewing several drafts of the
15 settlement agreement and discussing the same with Class Counsel, and assisting with the
16 preparation of declarations in support of the Settlement. (Declaration of Roger Harris, ¶¶ 7-9;
17 Declaration of Duane Brown, ¶¶ 7-9, Declaration of Brian Lindsey, ¶¶ 7-9). The Plaintiffs also
18 explained that they pursued claims for the benefit of the Settlement Class, despite their concern that
19 doing so could negatively affect the service they received as Farmers customers, and despite the
20 possibility that being Class Representatives could bring them unwanted, negative attention.
21 (Declaration of Roger Harris, ¶¶ 4-6; Declaration of Duane Brown, ¶¶ 4-6, Declaration of Brian
22 Lindsey, ¶¶ 4-6).

23 In light of the above, as well as the benefits obtained on behalf of the Settlement Class,
24 \$5,000.00 to each Plaintiff is a reasonable award for Plaintiffs’ participation in this case. The
25 requested Service Awards are approved.

26 **F. NOTICE AND SETTLEMENT ADMINISTRATION COSTS**

27 Plaintiffs seek payment from the Settlement Fund to the Settlement Administrator in the
28 amount of \$573,000. The Settlement Administrator agreed to cap the Settlement Administration

1 Costs at \$661,000.00. (Preliminary Approval Order at 22.) The Notice informed Class members
2 that up to \$573,000 (the “maximum estimated amount[]” of “notice and administration expenses”)
3 would be deducted from the Settlement Fund for notice and administration expenses. (Mehri Decl.
4 ¶¶ 51-52.) The Settlement Administrator has submitted a detailed declaration describing its work
5 and the costs incurred. (Azari Decl. ¶ 30-31.) The notice and administration costs appear to be
6 reasonably necessary, reasonable in amount, and were not objected to by the Settlement Class and
7 are approved.

8 **III. CONCLUSION AND ORDER**

9 The Court hereby:

- 10 (1) Grants class certification for purposes of settlement for the reasons stated in the
11 Court’s Preliminary Approval Order of January 7, 2020;
- 12 (2) Overrules all objections to the Settlement;
- 13 (3) Grants final approval of the Settlement as fair, adequate, and reasonable;
- 14 (4) Approves the Center for Auto Safety as the cy pres recipient that will receive any
15 Residual Funds;
- 16 (5) Awards \$4,950,000.00 in attorney fees to Class Counsel;
- 17 (6) Awards \$233,877.81 in litigation costs to Class Counsel;
- 18 (7) Awards \$15,000.00 as Class Representative Service Awards to Roger Harris
19 (\$5,000.00), Duane Brown (\$5,000.00), and Brian Lindsey (\$5,000.00);
- 20 (8) Awards \$573,000.00 in notice and settlement administration costs to Epiq Systems,
21 Inc.;
- 22 (9) Enters the Judgment filed herewith; and
- 23 (10) A Non-Appearance Case Review re: Final Report re: Distribution of Settlement
24 Funds is set for _____, at _____. Final Report is
25 to be filed by June 17, 2022.

26 Date:

27 _____
28 HON. MAREN E. NELSON
Judge of the Superior Court

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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

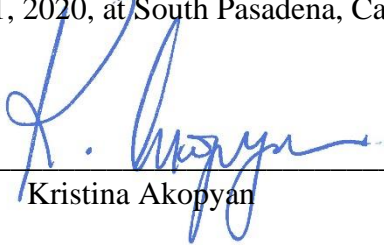
On May 21, 2020, I caused the service of the following document(s) described as:

[PROPOSED] ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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

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

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



Kristina Akopyan

SERVICE LIST

<p>1 2 3 Peter Kahana, Esq. pkahana@bm.net 4 Jeff Osterwise, Esq. josterwise@bm.net 5 BERGER & MONTAGUE, P.C. 1818 Market Street, Suite 3600 6 Philadelphia, PA 19103 7 Tel.: (215) 875-3000 8 Fax: (215) 875-4613 9 <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 <i>Attorneys for Defendants</i> Farmers Insurance Exchange and Mid Century Insurance Co.</p>
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