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Superior Court of California
County of Los Angeles

JAN 07 2020

Sherri R. Carter, Executive Officer/Clerk
By: Nancy Navarro, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

ROGER HARRIS, DUANE BROWN, and
BRIAN LINDSEY,

Plaintiffs,

vs.

FARMERS INSURANCE EXCHANGE and
MID CENTURY INSURANCE COMPANY,

Defendants.

Case No.: BC579498

ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: January 7, 2020

Time: 9:00 a.m.

Dept.: SSC-17

I. BACKGROUND

On April 22, 2015, Plaintiffs filed a class action complaint alleging five causes of action pertaining to Defendants' (collectively in this Order referred to as Farmers) alleged use of price optimization/elasticity of demand when pricing their automobile insurance. They allege claims under California's Unfair Competition Law, Bus. & Prof. Code, § 17200 et seq. ("UCL") and the California Insurance Code, and for unjust enrichment. Plaintiffs filed a First Amended Complaint on October 29, 2015.

1 On November 30, 2015, Farmers filed a Demurrer to the First Amended Complaint. After
2 hearing argument by the parties, on January 25, 2016, the Court sustained in part and denied in
3 part Farmers' Demurrer. The Court overruled Farmers' Demurrer to Plaintiffs' causes of action
4 under the UCL and for unjust enrichment. The Court sustained without leave to amend Farmers'
5 Demurrer as to Plaintiffs' cause of action for violation of Ins. Code, § 1861.10. The Court
6 granted Farmers' request for a stay of the case pending proceedings before the California
7 Department of Insurance (the "Department") pursuant to the primary jurisdiction doctrine.

8 For several months, the Department sought to determine whether Farmers was using
9 price optimization or elasticity of demand when pricing its automobile insurance but was unable
10 to resolve the issue. Thus, on April 14, 2017, the California Insurance Commissioner announced
11 that he would hold a hearing on "whether Farmers has violated California insurance law by using
12 illegal price optimization" titled *In the Matter of the Rating Practices of Farmers Insurance*
13 *Exchange and Mid-Century Insurance Company* (CDI File No. NC-2017-00003). The matter
14 was assigned to Chief Administrative Law Judge Kristin Rosi. The Commissioner invited
15 Plaintiffs to participate in the Department Proceeding and stated that he would convey his
16 findings to this Court. Plaintiffs and Consumer Watchdog ("CWD") subsequently intervened in
17 the Department Proceeding.

18 The Department Proceeding continued for over two years and included motion practice
19 and discovery. It is represented that Plaintiffs' Counsel reviewed over 70,000 pages of
20 documents produced by Farmers and deposed seven Farmers employees with knowledge of
21 Farmers' development of automobile insurance premiums in California. In addition to this
22 formal discovery, in June 2018, Plaintiffs' counsel and Plaintiffs' expert witness J. Robert
23 Hunter, a former Texas insurance commissioner, also participated in a day-long meeting with
24 Farmers' counsel, several of Farmers' witnesses, representatives from the Department, and
25

1 representatives of CWD. During this meeting, Plaintiffs' counsel and Mr. Hunter questioned
2 Farmers' witnesses concerning relevant issues.

3 Following depositions and document discovery, the Parties exchanged proposed pre-filed
4 direct testimony they intended to enter into evidence during the evidentiary hearing phase of the
5 Department Proceeding. This pre-filed direct testimony included a report from Plaintiffs' expert
6 Mr. Hunter, as well as reports from experts for Farmers, the Department of Insurance, and CWD.
7 Farmers also proposed direct testimony from several of its fact witnesses who had been deposed
8 in the matter.

9 In December 2018, prior to the evidentiary hearing set for January 7, 2019, the Parties
10 agreed to a mediation before the Hon. Harry W. Low (Ret.) and requested that the evidentiary
11 hearing in the Department Proceeding be continued.

12 On February 19, 2019, the Parties participated in a full day mediation with Justice Low.
13 The mediation did not result in a settlement on that date. For the next several months, the Parties
14 continued their negotiations both in writing and over the telephone, with the participation of
15 Justice Low. On June 5, 2019, the Parties executed a Memorandum of Understanding wherein
16 the Parties agreed to the material terms of the settlement. The Parties executed the Settlement
17 Agreement on August 29, 2019.

18 On October 8, 2019, the Court issued a checklist of items for the parties to address and
19 continued preliminary approval. In response, on November 20, 2019, counsel filed Supplemental
20 Briefing ("Supp. Brief"), the Supplemental Declaration of Cameron R. Azari On Settlement
21 Notice Plan ("Azari Supp. Decl.") and a fully executed Amended Settlement Agreement attached
22 as Exhibit 1 to the Supplemental Declaration of Jay Angoff ("Angoff Supp. Decl.").

23 On December 12, 2019, the Court continued preliminary approval and requested further
24 briefing. In response, on December 20, 2019, counsel filed the Second Supplemental Declaration
25 of Cameron R. Azari On Settlement Notice Plan ("Azari 2nd Supp. Decl.") and a partially

1 executed Second Amended Settlement Agreement attached as Exhibit 1 to the Declaration of
2 Cyrus Mehri (“Mehri Decl.”). On December 23, 2019 counsel filed a fully executed Second
3 Amended Settlement Agreement attached as Exhibit 1 to the Supplemental Declaration of Cyrus
4 Mehri (“Mehri Supp. Decl.”).

5 Now before the Court is the motion for preliminary approval of the Settlement
6 Agreement. As set forth below, the Court preliminarily approves the settlement and the notice
7 plan.

8 9 **II. DISCUSSION**

10 **A. SETTLEMENT CLASS DEFINITION**

11 As proposed, the “Settlement Class” means all Policy Holders of Defendants Farmers
12 Insurance Exchange (“FIE”) and Mid Century Insurance Company (“MCA”) who: (1) had 9 or
13 more years of tenure/persistency as a FIE and/or MCA policyholder as of August 18, 2015 or
14 who reached 9 or more years of tenure/persistency as a FIE and/or MCA policyholder on or
15 before March 31, 2017, and (2) were FIE and/or MCA policyholders of Defendants at any time
16 during the period extending from August 18, 2015 through March 31, 2017. Excluded from the
17 Settlement Class are (a) officers, directors, and employees of any member of the Farmers
18 Insurance Group of Companies ; (b) the judge overseeing the proposed settlement and the
19 judge’s immediate family and (c) all Policy Holders who make a timely election to be excluded.
20 (Settlement Agreement, ¶54.)

- 21 • “Policy Holder” means each person who has an ownership interest in a Policy or
22 Policies during the Class Period. (¶42)
- 23 • “Renewing Current Policy Holder” means a Settlement Class Member who
24 continues to have his or her Policy as of the Effective Date and who renews his or
25 her Policy within six months after the Payment Date. (¶49)

- 1 • “Non-Renewing Current Policy Holder” means a Settlement Class Member who
2 continues to have his or her Policy as of the Effective Date and who declines to
3 renew his or her Policy within six months after the Payment Date. (¶33)
- 4 • “Class Period” means the period from August 18, 2015, through March 31, 2017.
5 (¶23)
- 6 • “Past Policy Holder” means a Settlement Class Member who no longer holds his
7 or her Policy as of the Effective Date. (¶38)
- 8 • The Parties stipulate to the certification of the Settlement Class for purposes of
9 the Settlement Agreement only. (¶59)
- 10 • There are approximately 609,000 class members, a number confirmed by the
11 Settlement Administrator.

12 **B. TERMS OF SETTLEMENT AGREEMENT**

13 The essential terms are as follows:

- 14 • The Settlement Amount (“SA”) is **\$15,000,000, non-reversionary.** (¶58)
- 15 • The Net Settlement Amount is estimated at **\$9,187,000**, being the SA less:
 - 16 ○ Up to **\$4,950,000 (33%)** for attorney fees (¶91);
 - 17 ○ Up to **\$275,000** for attorney costs (¶91);
 - 18 ○ Up to **\$15,000** for service awards to the class representatives (\$5,000 x 3) (¶90);
 - 19 and
 - 20 ○ Estimated **\$573,000** for notice administration costs.
- 21 • Funding of the Settlement Amount:
 - 22 ○ Within 10 days of Preliminary Approval of the Settlement, Farmers shall deliver
 - 23 to the Settlement Administrator \$500,000 from the Settlement Amount to be
 - 24 deposited in a Qualified Settlement Fund account for this matter at the Depository
 - 25 Bank. This amount is necessary to pay for the Notice Program and administration

1 of the Settlement by the Settlement Administrator. (¶61). Counsel for Farmers
2 represented at hearing that the balance shall be advanced as necessary from the
3 Settlement Amount to ensure timely notice.

- 4 ○ Within 10 days of the Effective Date Farmers shall deliver to the Settlement
5 Administrator that portion of the Settlement Amount necessary to pay the
6 Settlement Class Member Payments due to the Past Policy Holders and the
7 attorneys' fees and costs payable to Class Counsel, which amount shall be
8 deposited in the Qualified Settlement Fund account for this matter at the
9 Depository Bank maintained by the Settlement Administrator. The Settlement
10 Administrator shall deliver such Settlement Class Member Payments to the Past
11 Policy Holders in accordance with the Court's Final Approval Order. (¶62)

- 12 ■ "Effective Date" means the day following: (A) the entry by the Court of
13 the Final Order and Judgment: (i) affirming certification of the Settlement
14 Class; (ii) finding the Settlement Agreement to be fair, adequate and
15 reasonable; (iii) finding that the Notice to the Class of the Settlement
16 Agreement was fair, adequate and reasonable; (iv) resolving any and all
17 objections to the fairness and reasonableness of the Settlement Agreement,
18 if any; and (B) the expiration of the deadline for seeking appellate review
19 of the Final Order and Judgment if no appeal is sought; or the day
20 following the date all appellate courts with jurisdiction affirm the Final
21 Judgment and Order with no possibility of further appellate review
22 existing; and (C) the Commissioner's dismissal of the Department
23 Proceeding (without prejudice to reinstatement in the event the Settlement
24 does not receive Final Approval and/or the Effective Date does not occur).

25 (¶28)

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

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

- 15 ○ Farmers will not use any form of price optimization software or program, nor in
16 any way consider price optimization/elasticity of demand in connection with, or in
17 the development of, California private passenger auto rates or class plans, unless
18 and until such time as such practices are explicitly authorized under California
19 law or by the California Department of Insurance. (Exhibit 5 to Settlement
20 Agreement, ¶1 (Exhibit 1 to Merhi Decl.))
- 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
23 to 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.

1 However, if accused of price optimization or the allegedly improper consideration
2 of price optimization/elasticity of demand, Farmers reserves the right to defend
3 itself against any such accusation and does not waive any argument it may make
4 in defense of such a claim, including that the Notice was unlawful, or the
5 Commissioner lacked the legal authority to regulate the use of price optimization
6 software or the consideration of price optimization/elasticity of demand. (Exhibit
7 5 to Settlement Agreement, ¶2 (Exhibit 1 to Merhi Decl.))

- 8 • Class Members will receive a Settlement Payment unless they opt out. (¶55)
- 9 • The “Opt-Out Period” means the period that begins the day after the earliest date on
10 which the Notice is first mailed, and that ends 120 days after Preliminary Approval. (¶36)

11 A Settlement Class member may opt-out of the Settlement Class at any time during the
12 Opt-Out Period, provided the opt-out notice is postmarked no later than the last day of the
13 Opt-Out Period. (¶69) A Settlement Class Member may submit an objection, via mail, to
14 the Settlement Administrator at any time during the Opt-Out Period, provided the
15 objection is postmarked no later than the last day of the Opt-Out Period. (¶70)

- 16 ○ Farmers also shall have the right to terminate the Settlement by serving on Class
17 Counsel and filing with the Court a notice of termination within 14 days after its
18 receipt from the Settlement Administrator of any report indicating that the number
19 of Settlement Class members who timely request exclusion from the Settlement
20 Class equals or exceeds 5%. (¶95)

- 21 • “Settlement Class Member Payment” means the equal distribution that will be made from
22 the Net Settlement Amount to each Settlement Class Member (or jointly to Settlement
23 Class Members who jointly hold an ownership interest in a Policy or Policies). (¶56)

- 24 ○ The Net Settlement Amount will be allocated to Settlement Class Members such
25 that each Settlement Class Member will receive an equal Settlement Class

1 Member Payment from the Net Settlement Amount, except that Settlement Class
2 Members that jointly hold an ownership interest in any Policy or Policies shall
3 receive a joint Settlement Class Member Payment. (§32)

- 4 ■ Counsel represent that they considered alternatives for how to allocate the
5 Net Settlement Amount to Settlement Class Members. After receiving
6 input from Justice Low during the negotiation process, the Parties agreed
7 to allocate the Net Settlement Amount in equal payments to each person
8 who has or had an ownership interest in any Farmers policy or policies,
9 except that persons who jointly have or had an ownership interest in any
10 Farmers policy or policies would not receive separate payments from the
11 Net Settlement Amount. Class Counsel determined that this plan of
12 allocation appropriately allocates the Net Settlement Amount to
13 Settlement Class members in a manner that is not overly costly to
14 administer and is consistent with Plaintiffs' theory (i.e. that Defendant
15 engaged in price optimization without the Department's approval between
16 August 18, 2015 and March 31, 2017 (or 1.625 years) as opposed to a
17 multitude of years for which a formula based on the years of membership
18 during the prolonged period of price optimization would be proper).
19 (Angoff Supp. Decl., ¶7; see also Supp. Brief, pgs. 9-11.)

- 20 ● Distributions from the Settlement Amount:

- 21 ○ Unless a Renewing Current Policy Holder has contacted the Settlement
22 Administrator to request a paper check instead of a Policy credit, Farmers shall
23 credit the Policies of all Renewing Current Policy Holders their Settlement Class
24 Member Payments at the time of their next Policy renewal. (§80)

- 1 ○ Settlement Class Member Payments to Renewing Current Policy Holders shall be
2 made first by crediting a Policy for those Policy Holders at the time of their next
3 Policy renewal, or by mailing a standard size check if it is not feasible or
4 reasonable to make the payment by a credit. Farmers shall notify Renewing
5 Current Policy Holders of any such credit on the Policy statement on which the
6 credit is reflected and provide a brief explanation that the credit has been made as
7 a payment in connection with the Settlement. The form and substance of this
8 notification shall be mutually agreed upon by the Parties and is attached to the
9 Settlement as Exhibit 9. Farmers will bear all costs and expenses associated with
10 implementing the Policy credits and notification discussed in this paragraph. (§81)
- 11 ○ If the next Policy renewal date for a Policy Holder does not occur within 6
12 months of the Payment Date, the Policy Holder shall receive his or her Settlement
13 Class Member Payment via check from the Settlement Administrator. Within 10
14 days after the Payment Date, Farmers shall provide the Settlement Administrator
15 with a list of the Settlement Class members who do not have a Policy renewal
16 date within 6 months of the Effective Date. (§82)
- 17 ○ After Farmers has processed all Settlement Class Member Payments to Renewing
18 Current Policy Holders with a Policy renewal date occurring within 6 months of
19 the Payment Date, Farmers shall notify the Settlement Administrator of that
20 portion of the Settlement Amount necessary to fund the Settlement Class Member
21 Payments to Non-Renewing Current Policy Holders by check. (§83)
- 22 ○ Within 10 days after Effective Date, Farmers shall provide the Settlement
23 Administrator with a list of Past Policy Holder Settlement Class Members in order
24 to send checks to Past Policy Holders for their Settlement Class Member
25 Payments. (§85)

- 1 • **Uncashed/ Returned Checks:** The amount of the Net Settlement Amount attributable to
2 uncashed or returned checks sent by the Settlement Administrator shall be held by the
3 Settlement Administrator one year from the date that the first distribution check is mailed
4 by the Settlement Administrator. During this time the Settlement Administrator shall
5 make a reasonable effort to locate intended recipients of settlement funds whose checks
6 were returned to effectuate delivery of such checks. The Settlement Administrator shall
7 make only one such additional attempt to identify updated addresses and re-mail or re-
8 issue a distribution check to those for whom an updated address was obtained. (¶87)
- 9 • **Disposition of Residual Funds:** Within 2 years after the date the Settlement Administrator
10 mails the first Settlement Class Member Payment, any remaining amounts such as
11 resulting from uncashed checks (“Residual Funds”) in the Qualified Settlement Fund
12 shall be distributed pursuant to California Code of Civil Procedure 384(b). Specifically,
13 the parties agree that, consistent with the requirements of Section 384, the Court may
14 open any judgment to direct payment of any amounts remaining in the Qualified
15 Settlement Fund, plus interest, to the Center for Auto Safety, www.autosafety.org, or
16 other court approved cy pres recipient. It is represented that the Center for Auto Safety,
17 among other things, provides tools to educate consumers in California on different types
18 of auto insurance coverage and discount strategies to save consumers on costs of
19 insurance premiums. It is further represented that neither the Parties nor counsel for the
20 Parties have any interest or involvement in the governance or the work of Center for Auto
21 Safety. Class Counsel shall seek the Court’s approval of distribution to the cy pres
22 recipient. If the Court does not approve the cy pres recipient, Class Counsel, with input
23 from Farmers, will propose another cy pres recipient for the Court’s approval. (¶88)
- 24 • **Termination of the Settlement:** This Settlement may be terminated by either Class
25 Counsel or Farmers by serving on counsel for the opposing Party and filing with the

1 Court a written notice of termination within 15 days (or such longer time as may be
2 agreed in writing between Class Counsel and Farmers) if the Department Proceeding is
3 not dismissed by the Insurance Commissioner of the California Department of Insurance
4 following the Court's issuance of the Preliminary Approval Order and prior to the
5 Court's issuance of the Final Approval Order (in which case notice of termination may be
6 served and filed at any time prior to issuance of the Final Approval Order); provided
7 however, that such dismissal is without prejudice to reinstatement if the Settlement does
8 not otherwise become effective. (§94.e)

- 9 ○ Counsel represents that the California Insurance Commissioner is not a party to
10 the Amended Settlement Agreement. (Supp. Brief, 5:19-20.) Based on
11 representations made by representatives of the California Department of
12 Insurance to the Parties and to Chief Administrative Law Judge Rosi, Plaintiffs
13 understand that the Commissioner intends to seek dismissal of the Department
14 Proceeding if and after the Court grants preliminary approval of the Settlement.
15 (Angoff Supp. Decl., ¶6.) In the event the Department Proceeding is not
16 dismissed prior to Final Approval of the Settlement, provision 93.e, above,
17 provides for termination of the settlement on those grounds. (Supp. Brief, 5:23-
18 6:3.)

- 19 • Epiq Systems, Inc. will perform settlement administration. (§53)
- 20 • All class members who do not opt out will release certain claims against Defendant. (See
21 further discussion below)

22 C. SETTLEMENT STANDARDS AND PROCEDURE

23 California Rules of Court, rule 3.769(a) provides: "A settlement or compromise of an
24 entire class action, or of a cause of action in a class action, or as to a party, requires the approval
25 of the court after hearing." "Any party to a settlement agreement may serve and file a written

1 notice of motion for preliminary approval of the settlement. The settlement agreement and
2 proposed notice to class members must be filed with the motion, and the proposed order must be
3 lodged with the motion.” (See Cal. Rules of Court, rule 3.769(c).)

4 “In a class action lawsuit, the court undertakes the responsibility to assess fairness in
5 order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
6 action. The purpose of the requirement [of court review] is the protection of those class
7 members, including the named plaintiffs, whose rights may not have been given due regard by
8 the negotiating parties.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America*
9 (2006) 141 Cal. App.4th 46, 60 [internal quotation marks omitted]; *Wershba v. Apple Computer,*
10 *Inc.* (2001) 91 Cal.App.4th 224, 245 (“*Wershba*”): Court needs to “scrutinize the proposed
11 settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is
12 not the product of fraud or overreaching by, or collusion between, the negotiating parties, and
13 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned,” internal
14 quotation marks omitted, disapproved on other grounds in *Hernandez v. Restoration Hardware,*
15 *Inc.* (2018) 4 Cal.5th 260.)

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-
18 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court
19 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
20 objectors is small.” (*Wershba* at 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
21 1794, 1802 (“*Dunk*”)].) Notwithstanding an initial presumption of fairness, “the court should
22 not give rubber-stamp approval.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
23 116, 130 (“*Kullar*”).) “Rather, to protect the interests of absent class members, the court must
24 independently and objectively analyze the evidence and circumstances before it in order to
25 determine whether the settlement is in the best interests of those whose claims will be

1 extinguished.” (*Ibid.*) In that determination, the court should consider factors such as “the
2 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation,
3 the risk of maintaining class action status through trial, the amount offered in settlement, the
4 extent of discovery completed and stage of the proceedings, the experience and views of
5 counsel, the presence of a governmental participant, and the reaction of the class members to the
6 proposed settlement.” (*Id.* at 128.) “Th[is] list of factors is not exclusive, and the court is free
7 to engage in a balancing and weighing of factors depending on the circumstances of each case.”
8 (*Wershba, supra* at 245.)

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

15 **D. ANALYSIS OF SETTLEMENT AGREEMENT**

16 **1. Does a presumption of fairness exist?**

17 a. Was the settlement reached through arm’s-length bargaining? Yes. On February 19,
18 2019, the Parties participated in a full day mediation with Justice Low. The mediation
19 did not result in a settlement on that date. For the next several months, the Parties
20 continued their negotiations both in writing and over the telephone, with the
21 participation of Judge Low. On June 5, 2019, the Parties executed a Memorandum of
22 Understanding wherein the Parties agreed to the material terms of the settlement. The
23 Parties executed the Settlement Agreement on August 29, 2019. (Motion, 8:7-17.)

24 b. Were investigation and discovery sufficient to allow counsel and the court to act
25 intelligently? Yes. It is represented that Plaintiffs’ Counsel reviewed over 70,000 pages

1 of documents produced by Farmers and deposed seven Farmers employees with
2 knowledge of Farmers' development of automobile insurance premiums in California.
3 (Motion, 7: 16-19.) In addition to this formal discovery, in June 2018, Plaintiffs' counsel
4 and Plaintiffs' expert witness J. Robert Hunter, a former Texas insurance commissioner,
5 also participated in a day-long meeting with Farmers' counsel, several of Farmers'
6 witnesses, representatives from the Department, and representatives of CWD. During
7 this meeting, Plaintiffs' counsel and Mr. Hunter questioned Farmers' witnesses
8 concerning relevant issues. (Motion, 7: 19-24.)

9 c. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class
10 action litigation, including insurance actions. (Exhibits 2-4 to the Angoff Decl.)

11 d. What percentage of the class has objected? This cannot be determined until the fairness
12 hearing. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter
13 Group 2014) ¶ 14:139.18: "Should the court receive objections to the proposed
14 settlement, it will consider and either sustain or overrule them at the fairness hearing.")

15 CONCLUSION: The settlement is entitled to a presumption of fairness.

16 **2. Is the settlement fair, adequate, and reasonable?**

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

20 Counsel contends that in terms of monetary relief, Plaintiffs could have recovered
21 approximately \$42 million based on Plaintiff's allegation that Defendant engaged in
22 price optimization without the Department's approval between August 18, 2015 and
23 March 31, 2017, calculated as follows: Annual Injury of \$26,000,000 x 1.625 years
24 (period during which injury occurred)= \$42,250,000 total injury. (Motion, 15:10; Supp.
25 Brief, 8:8-23; see also Exhibit 3 to Angoff Supp. Decl. (Pre-filed Direct Testimony of

1 Allan I. Schwartz, actuarial expert for intervenor Consumer Watchdog, Oct. 4, 2018, at
2 22.)).

- 3 b. Risk, expense, complexity and likely duration of further litigation. Given the nature of
4 the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles
5 (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any
6 recovery by the class members.
- 7 c. Risk of maintaining class action status through trial. Even if a class is certified, there is
8 always a risk of decertification. (*Weinstat v. Dentsply Intern., Inc.* (2010) 180
9 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that trial courts should
10 retain some flexibility in conducting class actions, which means, under suitable
11 circumstances, entertaining successive motions on certification if the court subsequently
12 discovers that the propriety of a class action is not appropriate.”].)
- 13 d. Amount offered in settlement. Defendant has agreed to settle for the non-reversionary
14 sum of \$15,000,000. The \$15,000,000 settlement constitutes approximately 36% of the
15 \$42,000,000 maximum value of the claims, which is within the “ballpark” of
16 reasonableness. Assuming the Court approves all of the maximum requested deductions,
17 approximately \$9,187,000 will be available for automatic distribution to participating
18 class members. Assuming full participation, the average settlement share will be
19 approximately **\$15.09**. [$\$9,187,000 \text{ net} \div 609,000 \text{ class members} = \15.09].
- 20 e. Extent of discovery completed and stage of the proceedings. As discussed above, at the
21 time of the settlement, Class Counsel had conducted discovery sufficient to value the
22 case for settlement purposes.
- 23 f. Experience and views of counsel. The settlement was negotiated and endorsed by Class
24 Counsel who, as indicated above, are experienced in class action litigation, including
25 insurance actions. Based upon their investigation and analysis, the attorneys

1 representing Plaintiffs and the class are of the opinion that this settlement is fair,
2 reasonable, and adequate.

3 g. Presence of a governmental participant. This factor is not directly applicable here but
4 the understanding that the Department of Insurance will dismiss its action upon
5 preliminary approval of the settlement is a factor for the Court's consideration.

6 h. Reaction of the class members to the proposed settlement. The class members' reactions
7 will not be known until they receive notice and are afforded an opportunity to opt out or
8 object. This factor becomes relevant during the fairness hearing.

9 CONCLUSION: The settlement can be preliminarily deemed "fair, adequate, and
10 reasonable."

11 **3. Scope of release**

12 As of the Effective Date, Plaintiffs and each Settlement Class Member, each on behalf of
13 itself and on behalf of its respective heirs, assigns, beneficiaries and successors ("Releasing
14 Parties"), shall automatically be deemed to have fully and irrevocably released and forever
15 discharged Farmers and each of its present and former parents, subsidiaries, divisions, affiliates,
16 predecessors, successors and assigns, and the present and former directors, officers, employees,
17 agents, insurers, members, attorneys, advisors, consultants, representatives, partners, joint
18 venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors,
19 successors and assigns of each of them ("Released Parties"), of and from any claims that were
20 or could have been alleged based on the facts pleaded in the First Amended Complaint dated
21 October 29, 2015 and/or any subsequent amended complaint filed in conjunction with the
22 Court's approval of the Settlement ("Released Claims"). (¶88)

23 //

24 //

25 //

1 4. May conditional class certification be granted?

2 a. Standards

3 A detailed analysis of the elements required for class certification is not required, but it
4 is advisable to review each element when a class is being conditionally certified. (*Amchem*
5 *Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627.) The trial court can appropriately
6 utilize a different standard to determine the propriety of a settlement class as opposed to a
7 litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement
8 cases. (*Dunk, supra* at 1807, fn. 19.) Finally, the Court is under no “ironclad requirement” to
9 conduct an evidentiary hearing to consider whether the prerequisites for class certification have
10 been satisfied. (*Wershba, supra* at 240.)

11 b. Analysis

- 12 i. Numerosity. There are approximately 609,000 class members. Thus,
13 numerosity has been established. (*Rose v. City of Hayward* (1981) 126
14 Cal.App.3d 926, 934 [stating that “[n]o set number is required as a
15 matter of law for the maintenance of a class action” and citing examples
16 wherein classes of as little as 10 [*Bowles v. Superior Court* (1955) 44
17 Cal.2d 574] and 28 [*Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017]
18 were upheld].)
- 19 ii. Ascertainability. The class is defined above. The class is defined “in
20 terms of objective characteristics and common transactional facts” that
21 make “the ultimate identification of class members possible when that
22 identification becomes necessary.” *Noel v. Thrifty Payless, Inc.* (2019)
23 7 Cal.5th 955, 980. Class members are identifiable from Defendant’s
24 records. (Motion, 18:14-15.)
- 25

1 iii. Community of interest. “The community of interest requirement
2 involves three factors: ‘(1) predominant common questions of law or
3 fact; (2) class representatives with claims or defenses typical of the
4 class; and (3) class representatives who can adequately represent the
5 class.’” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

6 Counsel contends that the following common issues predominate
7 over any individual concerns: 1) whether Farmers considered policy
8 holder’s elasticity of demand when setting automobile insurance
9 premiums in California; 2) whether such consideration violated California
10 law; 3) whether Farmers disclosed its use of elasticity of demand to
11 Settlement Class members or the Department of Insurance.; 4) if and how
12 Settlement Class members were damaged by Farmers’ consideration of
13 elasticity of demand. (Motion, 18:22 -9:1.)

14 Counsel further contends that Plaintiffs are typical of the class
15 because they have the same claims as the members of the Settlement
16 Class and were subject to the same allegedly unlawful practices. (Motion,
17 19:14-14.)

18 Finally, counsel contends that Plaintiffs have no interests
19 antagonistic to the class and are represented by adequate counsel.
20 (Motion, 19:18-27.)

21 iv. Adequacy of class counsel. As indicated above, Class Counsel have
22 experience in insurance litigation.

23 v. Superiority. Given the relatively small size of the individual claims, a
24 class action appears to be superior to separate actions by the class
25 members.

1 CONCLUSION: The class may be conditionally certified since the prerequisites of class
2 certification have been satisfied.

3
4 **5. Is the notice proper?**

5 a. Method of class notice.

6 Notice may be provided to Settlement Class members in three different ways: Email
7 notice to Settlement Class members for whom Farmers has email addresses (“Email Notice”)
8 and who have not indicated that they do not wish to receive e-mail from Farmers, which email
9 will include a “click through” to the Long Form Notice and Settlement website; Long Form
10 Notice with details regarding the Settlement (“Long Form Notice”) via regular mail and/or on
11 the Settlement Website; and a mutually agreed Publication Notice published in California in the
12 following publications to apprise Settlement Class members of the Settlement: the Los Angeles
13 Times, East Bay Times/Mercury News, Sacramento Bee, San Diego Union-Tribune, San
14 Francisco Chronicle, Redding Record Searchlight, Las Vegas Review-Journal, Facebook
15 (California IP addresses only) and Google Display Network (California IP addresses only).
16 Email Notice and Long Form Notice shall collectively be referred to as “Mailed Notice.” Not all
17 Settlement Class members will receive all forms of Notice. (¶72)

18 Farmers has provided the list of Settlement Class members and their electronic mail
19 and/or postal addresses to the Settlement Administrator. (¶73) Counsel has orally represented
20 that the class members for whom Farmers has provided email addresses does not include those
21 who have indicated they do not wish to receive e-mail.

22 The Settlement Administrator may run the physical addresses of all Settlement Class
23 members receiving Mailed Notice through the National Change of Address Database and shall
24 mail to all such Settlement Class members the Long Form Notice, as ordered by the Court. The
25 Settlement Administrator shall also send out Long Form Email Notice to all Settlement Class

1 members receiving Notice by that method. The initial mailed Long Form Notice and Email
2 Notice shall be referred to as “Initial Mailed Notice.” (§74)

3 The Settlement Administrator shall perform reasonable address traces for all Initial
4 Mailed Notices that are returned as undeliverable. No later than 60 days after preliminary
5 approval, the Settlement Administrator shall complete the re-mailing of Long-Form Notices to
6 those Settlement Class members whose new addresses were identified as of that time through
7 address traces (“Notice Re-mailing Process”). The Settlement Administrator shall send Long
8 Form Notices to all Settlement Class members’ whose emails were returned as undeliverable
9 and complete such Notice pursuant to the deadlines described herein as they relate to the Notice
10 Re-mailing Process. (§75)

11 The Notice Program (which is composed of both the Initial Mailed Notice and the Notice
12 Re-mailing Process) shall be completed no later than 60 after entry of a Preliminary Approval
13 Order. (§76)

14 A Spanish version of the Long Form Notice shall be provided to Settlement Class
15 Members who request it. The Email Notice, Long Form Notice, and Publication Notice shall
16 inform Settlement Class members, in Spanish, of the availability of the Spanish version of the
17 Long Form Notice. (§72)

18 The Final Judgment will be available on the Administrator’s website. (§58)

19 b. Content of class notice.

20 Copies of the proposed class notices are attached to the Settlement Agreement as
21 Exhibits 2-4. The notices appear to be acceptable. The mailed long form notice includes
22 information such as: a summary of the litigation; the nature of the settlement; the terms of the
23 settlement agreement; the maximum deductions to be made from the gross settlement amount
24 (i.e., attorney fees and costs, the enhancement award, and claims administration costs); the
25 procedures and deadlines for participating in (do nothing), opting out of, or objecting to, the

1 settlement; the consequences of participating in, opting out of, or objecting to, the settlement;
2 and the date, time, and place of the final approval hearing. The e-mailed notice makes this same
3 information available via a “click through.”

4 c. Cost of class notice

5 As indicated above, settlement administration costs are estimated at **\$573,000** and
6 **capped at \$661,000**, as represented on the record. Prior to the time of the final fairness hearing,
7 the settlement administrator must submit a declaration attesting to the total costs incurred and
8 anticipated to be incurred to finalize the settlement for approval by the Court.

9 Accordingly, and based on the above, the Court preliminarily finds the Notice Plan the
10 best notice practicable under the circumstances and compliant with the requirements of due
11 process.

12 **6. Attorney fees and costs**

13 California Rule of Court, rule 3.769(b) states: “Any agreement, express or implied, that
14 has been entered into with respect to the payment of attorney fees or the submission of an
15 application for the approval of attorney fees must be set forth in full in any application for
16 approval of the dismissal or settlement of an action that has been certified as a class action.”

17 Counsel for the Plaintiffs represent that at the outset of the case in May of 2015, they
18 entered into a co-counsel agreement. (Mehri Decl., ¶11.) The Co-counsel Agreement describes
19 the fee split as follows: First, all co-counsel shall be reimbursed for their expenses including
20 expenses for the Litigation Fund used to fund prosecution of the case. (*Id.* at ¶11.a) Second,
21 30% of fees recovered shall be divided equally among the three Co Lead Counsel, Mehri &
22 Skalet (“M&S”), Tycko & Zavareei and Berger & Montague for funding major costs in the
23 Litigation Fund. (*Id.* at ¶11.b) Third, 5% of fees shall go to M&S for the unique expertise and
24 experience of partner Jay Angoff, a former state insurance commissioner and former federal
25 insurance regulator. (*Id.* at ¶11.c) Finally, the remaining 65% to all Co-Counsel including

1 Schonbrun, DeSimone, Seplow, Harris and Hoffman in the proportion that each firm's
2 reasonable lodestar (i.e., reasonable hours times reasonable then current rates based on the
3 Adjusted Laffey Matrix used in courts in the District of Columbia) bears to the combined
4 lodestar of all Co-Counsel. (*Id.* at ¶11.d) Counsel represent that Plaintiffs have given their
5 written approval of Co-counsel's fee splitting agreement, as that agreement is an exhibit to
6 Plaintiffs' retainer agreements. (*Id.* at ¶12.)

7 Ultimately, the award of attorney fees is made by the court at the fairness hearing, using
8 the lodestar method with a multiplier, if appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22
9 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615,
10 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122, 1132-1136.) In common fund cases,
11 the court may use the percentage method, as cross-checked against the lodestar. (*Laffitte v.*
12 *Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties
13 to the contrary, "the court ha[s] an independent right and responsibility to review the attorney
14 fee provision of the settlement agreement and award only so much as it determined reasonable."
15 (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

16 The question of class counsel's entitlement to **\$4,950,000** in attorney fees will be
17 addressed at the fairness hearing when class counsel brings a noticed motion for attorney fees.
18 Class counsel must provide the court with billing information so that it can properly apply the
19 lodestar method and must indicate what multiplier (if applicable) is being sought.

20 Class counsel should also be prepared to justify the costs sought (capped at **\$275,000**) by
21 detailing how they were incurred.

22 **7. Enhancement Award to Class Representatives**

23 The Settlement Agreement provides for enhancement awards of **\$5,000** to each of the named
24 Plaintiffs for a total of **\$15,000**. Plaintiffs may submit evidence in support of an enhancement
25

1 award at the time of final approval if she/he so chooses to. Trial courts should not sanction
2 enhancement awards of thousands of dollars with “nothing more than *pro forma* claims as to
3 ‘countless’ hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly more
4 specificity, in the form of quantification of time and effort expended on the litigation, and in the
5 form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is
6 required in order for the trial court to conclude that an enhancement was ‘necessary to induce
7 [the named plaintiff] to participate in the suit’” (*Clark v. American Residential Services*
8 *LLC* (2009) 175 Cal.App.4th 785, 806 [italics and ellipsis in original].)

9 The Court will decide the issue of the enhancement award at the time of final approval.

10 **III. CONCLUSION AND ORDER**

11 **A. RULING**

12 The Court hereby:

- 13 (1) Grants preliminary approval of the settlement as fair, adequate, and reasonable;
- 14 (2) Grants conditional class certification;
- 15 (3) Appoints Roger Harris, Duane Brown, and Brian Lindsey as Class Representatives;
- 16 (4) Appoints Mehri & Skalet PLLC; Tyco & Zavareei, LLP, and Berger Montague, PC
17 as Class Counsel;
- 18 (5) Appoints Epiq Systems, Inc. as Settlement Administrator;
- 19 (6) Approves the proposed notice plan based on Counsel’s oral representations that the
20 class members for whom Farmers has email addresses, those email addresses are the
21 regular and/or preferred method of communication for those class members; and
22 (7) Approves the proposed schedule of settlement proceedings.

23 **B. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS**

- 24 • Preliminary approval hearing: January 7, 2020

- 1 • Deadline for Defendant to provide class list to settlement administrator: November 30,
- 2 2019.
- 3 • Deadline for settlement administrator to mail notices: March 9, 2020 (within 60 calendar
- 4 days after preliminary approval)
- 5 • Deadline for class members to opt out: May 6, 2020 (within 120 calendar days after
- 6 preliminary approval)
- 7 • Deadline for class members to object: May 6, 2020 (within 120 calendar days after
- 8 preliminary approval)
- 9 • Deadline for class counsel to file motion for final approval: May 26, 2020 (16 court
- 10 days prior to final fairness hearing)
- 11 • Final fairness hearing: June 17, 2020, at 9:00 a.m.

12
13
14 Dated: 1/7/2020



15 MAREN E. NELSON
16 Judge of the Superior Court
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