

## **AMENDED SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is made and entered into this 18<sup>th</sup> day of November 2019, by and among (1) Plaintiffs, Roger Harris, Duane Brown, Brian Lindsey (“Plaintiffs”), individually, and on behalf of the Settlement Class, and (2) Farmers Insurance Exchange and Mid Century Insurance Company (collectively “Farmers” or “Defendants”), subject to preliminary and final approval as required by the California Rules of Court. As provided herein, Plaintiffs, Class Counsel and Farmers hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a Final Order and Judgment and achievement of the Effective Date all claims of the Settlement Class against Farmers in the action titled *Harris, et al. v. Farmers Insurance Exchange, et al.*, Superior Court of California, County of Los Angeles, Case No. BC 57948 (“Action”), shall be settled and compromised upon the terms and conditions contained herein.

### **I. Recitals**

1. On April 22, 2015, Plaintiffs filed a class action complaint in the Superior Court of California alleging five causes of action pertaining to Farmers’ alleged use of price optimization/elasticity of demand (a.k.a., a method of taking into account an individual’s or class’s willingness to pay a higher premium relative to other individuals or classes) as a rating factor in violation of California’s Unfair

Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. (“UCL”), the California Insurance Code, and as unjust enrichment.

2. Plaintiffs filed a First Amended Complaint on October 29, 2015.

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

4. On January 25, 2016, the Court sustained in part and denied in part Farmers’ Demurrer. The Court overruled Farmers’ Demurrer to Plaintiffs’ causes of action under the UCL and for unjust enrichment. The Court sustained without leave to amend Farmers’ Demurrer as to Plaintiffs’ cause of action for violation of California Insurance Code Section 1861.10. The Court granted Farmers’ request for a stay of the case pending proceedings before the California Department of Insurance (the “Department”) pursuant to the primary jurisdiction doctrine.

5. For the next several months, the Department informally investigated whether Farmers was using price optimization or elasticity of demand as a rating factor. Then, both in response to the Superior Court’s order and also on his own motion, on April 14, 2017 the Commissioner announced that he would hold a hearing on “whether Farmers has violated California insurance law by using illegal price optimization” titled *In the Matter of the Rating Practices of Farmers Insurance*

*Exchange and Mid-Century Insurance Company* (CDI File No. NC-2017-00003).

6. The Commissioner invited Plaintiffs to participate in the Department Proceeding and stated that he would convey his findings to the Superior Court.

7. Both Plaintiffs and Consumer Watchdog (“CWD”) subsequently intervened in the Department Proceeding.

8. The Department Proceeding continued for over two years and included significant motion practice and discovery. The Parties also entered into a Joint Statement of Issues in which the Parties stipulated to the following facts:

- a. The Commissioner approved Farmers’ 2008 Class Plans and associated rate filings;
- b. Farmers did not directly use price optimization software in the development of the 2008 Class Plans or any rate filings based on those Class Plans;
- c. Farmers calculated rates and premiums in a manner consistent with the 2008 Class Plans as filed with the Commissioner;

9. During that time, Farmers also filed two separate Petitions for Writ of Administrative Mandamus – one in August of 2017 and another in November of 2018 – related to the conduct and scope of the Department Proceeding.

10. After several continuances as the Parties engaged in discovery and other disputes, the Department Proceeding was set for final evidentiary hearing on January 7, 2019.

11. In December of 2018, the Parties agreed to a mediation before the Hon.

Harry W. Low (Ret.) and requested that the evidentiary hearing in the Department Proceeding be continued. The Chief Administrative Law Judge presiding over the Department Proceeding, Judge Rosi, granted that request.

12. On February 19, 2019, the Parties participated in a full day mediation with Judge Low. The mediation did not result in a settlement on that date.

13. For the next several months, the Parties continued their discussions and negotiations both in writing and over the telephone, with the participation of Judge Low. Chief Administrative Law Judge Rosi continued the evidentiary hearing in the Department Proceeding pending such settlement talks.

14. On June 5, 2019, the Parties executed a Memorandum of Understanding wherein the Parties agreed to the material terms of the settlement, the finalization of which is contingent on (1) the execution of a full and binding Settlement Agreement; (2) the Commissioner of Insurance's dismissal of the Department Proceeding (CDI File No. NC -2017-00003) (without prejudice to reinstatement in the event the Settlement does not receive Final Approval and/or the Effective Date does not occur); (3) the entry by the Court of a Final Order and Judgment (i) affirming certification of the Settlement Class, (ii) finding the Settlement Agreement to be fair, adequate and reasonable, (iii) finding that the Notice to the Class of the Settlement Agreement is fair, adequate and reasonable, (iv) resolving any and all objections to the Settlement Agreement, (v) dismissing with prejudice the Settlement Class

Members' claims against the Released Persons with each party to bear its own costs;

(4) the expiration of the deadline for seeking appellate review of the Final Order and Judgment if no appeal is sought, or the day following the date all appellate courts with jurisdiction to review the Final Judgment and Order with no possibility of further appellate review.

15. On June 6, 2019, Plaintiffs and Farmers filed a Stipulated Request for a Stay of the Department Proceeding pending the Settlement of the Action.

16. On June 7, 2019, the Parties filed a Notice of Settlement with the Court advising the Court of the Memorandum of Understanding and requesting a stay of all proceedings until the filing of this Settlement Agreement and a Motion for Preliminary Approval.

17. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims of the Releasing Parties (definitions below). The Parties intend this Agreement to bind Plaintiffs, Farmers, and all Settlement Class Members.

18. Plaintiffs' proposed Second Amended Complaint is attached hereto as Exhibit 1. Plaintiffs will file this proposed Second Amended Complaint with the Court as the operative complaint in the Action at the time that Plaintiffs file their Motion for Preliminary Approval.

19. On November 18, 2019, the Parties entered into an Amended Settlement Agreement.

**NOW, THEREFORE**, in light of the foregoing, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

## **II. Definitions**

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement:

20. “Action” means *Harris, et al. v. Farmers Insurance Exchange, et al.*, Superior Court of California, Case No. BC 57948.

21. “Class Counsel” means:

MEHRI & SKALET PLLC  
Cyrus Mehri, Esq.  
Jay Angoff, Esq.  
1250 Connecticut Ave. NW  
Suite 300  
Washington, DC 20036

TYCKO & ZAVAREEI LLP  
Hassan A. Zavareei, Esq.  
Andrea Gold, Esq.  
1828 L Street Northwest  
Suite 1000  
Washington, DC 20036

BERGER MONTAGUE, P.C.  
Peter Kahana, Esq.  
Jeff Osterwise, Esq.  
1818 Market Street, Suite 3600  
Philadelphia, PA 19103

22. “Class Period” means the period from August 18, 2015, through March 31, 2017.

23. “Class Representatives” mean Roger Harris, Duane Brown, and Brian Lindsey.

24. “Court” means the Superior Court of California, County of Los Angeles.

25. “Depository Bank” shall mean BB&T or its successor or another bank acceptable to the parties with the capacity to hold a qualified settlement fund.

26. “Department Proceeding” means the California Department of Insurance administrative investigatory non-compliance hearing, California Department of Insurance File No. NC-2017-00003.

27. “Effective Date” means the day following: (A) the entry by the Court of the Final Order and Judgment: (i) affirming certification of the Settlement Class; (ii) finding the Settlement Agreement to be fair, adequate and reasonable; (iii) finding that the Notice to the Class of the Settlement Agreement was fair, adequate and reasonable; (iv) resolving any and all objections to the fairness and reasonableness of the Settlement Agreement, if any; and (B) the expiration of the deadline for seeking appellate review of the Final Order and Judgment if no appeal is sought; or the day following the date all appellate courts with jurisdiction affirm the Final Judgment and Order with no possibility of further appellate review existing; and (C) the Commissioner’s dismissal of the Department Proceeding

(without prejudice to reinstatement in the event the Settlement does not receive Final Approval and/or the Effective Date does not occur).

28. “Final Approval” means the date that the Court enters an order granting final approval to the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of any Service Awards to the Class Representatives.

29. “Final Approval Order” means the final order that the Court enters upon Final Approval that does not affect the financial terms or Releases provided for herein. All Parties will in good faith support and pursue preliminary and final class-wide approval of the material terms of this Agreement. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then the Final Approval Order includes all such orders.

30. “Farmers” means Farmers Insurance Exchange and its affiliate, Mid Century Insurance Company.

31. “Net Settlement Amount” means the Settlement Amount, minus Court approved attorneys’ fees, costs and expenses, any notice and administration expenses, and Court-approved Service Awards to Plaintiffs. The Net Settlement Amount will be allocated (to Settlement Class Members such that each Settlement Class Member will receive an equal Settlement Class Member Payment from the



Net Settlement Amount, except that Settlement Class Members that jointly hold an ownership interest in any Policy or Policies shall receive a joint Settlement Class Member Payment.

32. “Non-Renewing Current Policy Holder” means a Settlement Class Member who continues to have his or her Policy as of the Effective Date and who declines to renew his or her Policy within six months after the Payment Date.

33. “Notice” means the notices that the Parties will ask the Court to approve in connection with the Motion for Preliminary Approval of the Settlement.

34. “Notice Program” means the methods provided for in this Agreement for giving the Notice and consists of Postcard Notice, Email Notice, Long Form Notice, and Publication Notice (all defined herein below), which shall be substantially in the forms as the Exhibits attached hereto as Exhibits 3-6.

35. “Opt-Out Period” means the period that begins the day after the earliest date on which the Notice is first mailed, and that ends 120days after Preliminary Approval. The deadline for the Opt-Out Period will be specified in the Notice.

36. “Parties” means Plaintiffs and Farmers.

37. “Past Policy Holder” means a Settlement Class Member who no longer holds his or her Policy as of the Effective Date.

38. “Payment Date” means that date occurring after the Effective Date on which the Court orders the payment of the Settlement Class Member Payments to begin.

39. “Plaintiffs” means Roger Harris, Duane Brown, and Brian Lindsey.

40. “Policy” means any private passenger auto insurance policy maintained by Farmers in the state of California.

41. “Policy Holder” means each person who has an ownership interest in a Policy or Policies during the Class Period.

42. “Preliminary Approval” means the date that the Court enters, without material change, an order preliminarily approving the Settlement.

43. “Publication Notice” means a mutually agreed notice of the Settlement published in California in the following publications in the publications identified in paragraph 71 to apprise Settlement Class Members of the Settlement.

44. The “Releases” means all of the releases contained in Paragraph 88 hereof.

45. “Released Claims” means all claims to be released as specified in Paragraph 88 hereof.

46. “Released Parties” means those persons released as specified in Paragraph 88 hereof.

47. “Releasing Parties” means Plaintiffs and all Settlement Class Members, and each of their respective heirs, assigns, beneficiaries and successors.

48. “Renewing Current Policy Holder” means a Settlement Class Member who continues to have his or her Policy as of the Effective Date and who renews his or her Policy within six months after the Payment Date.

49. “Service Award” means any Court-ordered payment to Plaintiffs for serving as Class Representatives that is in addition to any payment otherwise due Plaintiffs as Settlement Class Members.

50. “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement.

51. “Settlement Administration Costs” means all costs of the Settlement Administrator regarding notice and settlement administration.

52. “Settlement Administrator” means Epiq Systems, Inc.

53. “Settlement Class” means all Policy Holders of Defendants Farmers Insurance Exchange (“FIE”) and Mid Century Insurance Company (“MCA”) who: (1) had 9 or more years of tenure/persistency as a FIE and/or MCA policyholder as of August 18, 2015 or who reached 9 or more years of tenure/persistency as a FIE and/or MCA policyholder on or before March 31, 2017, and (2) were FIE and/or MCA policyholders of Defendants at any time during the period extending from August 18, 2015 through March 31, 2017. Excluded from the Settlement Class are

(a) officers, directors, and employees of any member of the Farmers Insurance Group of Companies; (b) the judge overseeing the proposed settlement and the judge's immediate family and (c) all Policy Holders who make a timely election to be excluded.

54. "Settlement Class Member" means each Policy Holder included in the Settlement Class who does not timely opt-out of the Settlement.

55. "Settlement Class Member Payment" means the equal distribution that will be made from the Net Settlement Amount to each Settlement Class Member (or jointly to Settlement Class Members who jointly hold an ownership interest in a Policy or Policies), as described in Paragraph 31.

56. "Settlement Amount" means the \$15,000,000 that Farmers is obligated to pay under the Settlement. The Settlement Amount is all inclusive and will be used to pay the Settlement Class Member Payments, any attorneys' fees, costs and Service Awards ordered by the Court, any Settlement Administration Costs including the costs of Settlement Administrator and the costs of all forms of Notice and the Notice Program, and any *cy pres* payment required under this Agreement. Any and all costs incurred by Farmers in the process of making Policy credits to Renewing Current Policy Holders shall be borne by Farmers separately and not out of the Settlement Amount.

57. “Settlement Website” means the website that the Settlement Administrator will use as a means for Settlement Class members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long Form Notice, the order preliminarily approving this Settlement, the Final Judgment, and such other documents as Class Counsel agree to post or that the Court orders posted on the website. The URL of the Settlement Website shall be [www.FarmersPriceOptimizationSettlement.com](http://www.FarmersPriceOptimizationSettlement.com), or such other URL as Class Counsel and Farmers agree upon in writing.

### **III. Certification of the Settlement Class**

58. For Settlement purposes only, Plaintiffs and Farmers agree to ask the Court to certify the Settlement Class under California Code of Civil Procedure Section 382.

### **IV. Monetary Settlement**

59. Subject to approval by the Court, the total monetary consideration to be provided by Farmers pursuant to the Settlement shall be \$15,000,000, inclusive of the amount paid to Settlement Class Members, any and all attorneys’ fees, costs and expenses awarded to Class Counsel, any Service Awards to the Class Representatives, all costs and expenses incurred by the Settlement Administrator and any *cy pres* payment.

60. Within 10 days of Preliminary Approval of the Settlement, Farmers shall deliver to the Settlement Administrator \$500,000 from the Settlement Amount to be deposited in a Qualified Settlement Fund account for this matter at the Depository Bank. This amount is estimated to be necessary to pay for the Notice Program and administration of the Settlement by the Settlement Administrator.

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

62. In order to reduce the costs of administration of the Settlement, Farmers shall retain that portion of the Settlement Amount that is allocated to Settlement Class Members who are Renewing Current Policy Holders, who will beginning on the Payment Date, at its own cost and expense, directly credit the Policies of those Renewing Current Policy Holder Settlement Class Members at the time of renewal of their Policies. At the conclusion of the renewal cycle, Farmers shall deliver to the Settlement Administrator that portion of the Settlement Amount

necessary to satisfy the Settlement Class Member Payments due to the Non-Renewing Current Policyholders, whose payments will be then be delivered by the Settlement Administrator by paper check. Farmers shall report to the Court as to the status of all Settlement Class Member Payments made to Renewing Current Policy Holders on a semi-annual basis following the Payment Date.

**V. Prospective Injunctive Relief**

63. Without admitting any liability or that it is required by law to do so, Farmers agrees to the practices outlined in the attached Exhibit 7.

**VI. Settlement Approval**

64. Upon execution of this Agreement by all Parties, Class Counsel shall promptly move the Court for an Order granting Preliminary Approval of this Settlement (“Preliminary Approval Order”). The motion for Preliminary Approval shall request that the Court: (1) approve the terms of the Settlement as within the range of fair, adequate and reasonable; (2) provisionally certify the Settlement Class pursuant to California Code of Civil Procedure Section 382 for settlement purposes only; (3) appoint Class Counsel as counsel for the Settlement Class; (4) appoint Plaintiffs as Class Representatives of the Settlement Class (5) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (6) approve the procedures set forth herein below for Settlement Class members to exclude themselves from the Settlement Class or to object to the

Settlement; (7) stay the Action pending Final Approval of the Settlement; and (8) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel and counsel for Farmers, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith, and determine whether to approve the Settlement and Class Counsel's application for attorneys' fees, costs and expenses and for Service Awards to the Class Representatives ("Final Approval Hearing").

## **VII. Settlement Administrator**

65. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph hereafter and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, providing Mailed and Email Notice to Settlement Class members and distributing the Settlement Amount as provided herein.

66. The duties of the Settlement Administrator, in addition to other responsibilities that are described in the preceding paragraph and elsewhere in this Agreement, are as follows:

a. Use the name and address information for Settlement Class members provided by Farmers in connection with the Notice process approved by the Court, for the purpose of mailing the Mailed Notice and sending the Email Notice, and later



mailing distribution checks to Past Policy Holder Settlement Class Members and Non-Renewing Current Policy Holder Settlement Class Members, and to Renewing Current Policy Holder Settlement Class Members where it is not feasible or reasonable for Farmers to make the payment by a credit to the their Policies;

- b. Arrange for the Publication Notice;
- c. Establish and maintain a Post Office box for requests for exclusion from the Settlement Class;
- d. Establish and maintain the Settlement Website;
- e. Establish and maintain an automated toll-free telephone line for Settlement Class members to call with Settlement-related inquiries, and answer the questions of Settlement Class members who call with or otherwise communicate such inquiries;
- f. Respond to any mailed Settlement Class member inquiries;
- g. Process all requests for exclusion from the Settlement Class;
- h. Provide weekly reports to Class Counsel and Farmers that summarizes the number of requests for exclusion received that week, the total number of exclusion requests received to date, and other pertinent information;
- i. In advance of the Final Approval Hearing, prepare an affidavit to submit to the Court confirming that the Notice Program was completed, describing how the Notice Program was completed, providing the names of each Settlement

Class member who timely and properly requested exclusion from the Settlement Class, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;

j. Pay invoices, expenses and costs upon approval by Class Counsel and Farmers, as provided in this Agreement; and

k. Any other Settlement-administration-related function at the instruction of Class Counsel and Farmers, including, but not limited to, verifying that settlement funds have been distributed.

#### **VIII. Notice to Settlement Class members**

67. As soon as practicable after Preliminary Approval of the Settlement, the Settlement Administrator shall implement the Notice Program provided herein, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice shall include, among other information: a description of the material terms of the Settlement including the injunctive relief; a date by which Settlement Class members may exclude themselves from or “opt-out” of the Settlement Class; a date by which Settlement Class members may object to the Settlement; the date upon which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which Settlement Class members may access this Agreement and other related documents and information. Class Counsel and Farmers shall

insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices and publications provided under or as part of the Notice Program shall not bear or include the Farmers logo or trademarks or the return address of Farmers, or otherwise be styled to appear to originate from Farmers.

68. The Notice also shall include a procedure for Settlement Class members to opt-out of the Settlement Class. A Settlement Class member may opt-out of the Settlement Class at any time during the Opt-Out Period, provided the opt-out notice is postmarked no later than the last day of the Opt-Out Period. Any Settlement Class member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement. Requests for exclusion from the Settlement must be delivered to the Settlement Administrator via mail.

69. The Notice also shall include a procedure for Settlement Class members to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs and expenses and/or Service Awards to the Class Representatives. A Settlement Class member may submit an objection, via mail, to the Settlement Administrator at any time during the Opt-Out Period, provided the objection is postmarked no later than the last day of the Opt-Out Period.

70. A written objection must also set forth:

a. the name of the Action;

- b. the objector's full name, address and telephone number;
- c. an explanation of the basis upon which the objector claims to be a Settlement Class member;
- d. all grounds for the objection;
- e. the identity of all counsel who represent the objector;
- f. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- g. the objector's signature.

Class Counsel and/or Farmers may conduct limited discovery on any objector consistent with the California Code of Civil Procedure.

71. Notice shall be provided to Settlement Class members in four different ways: Email notice to Settlement Class members for whom Farmers has email addresses ("Email Notice") and who have agreed to accept their Policy statements and/or information by email; postcard Notice ("Postcard Notice") to those Settlement Class members who have not agreed to accept their Policy statements and/or information by email or for whom Farmers does not have current email addresses; Long-Form Notice with details regarding the Settlement ("Long Form Notice") on the Settlement Website; and a mutually agreed Publication Notice published in California in the following publications to apprise Settlement Class members of the Settlement: the Los Angeles Times, East Bay Times/Mercury News,

Sacramento Bee, San Diego Union-Tribune, San Francisco Chronicle, Facebook (California IP addresses only) and Google Display Network (California IP addresses only). Email Notice and Postcard Notice shall collectively be referred to as “Mailed Notice.” Not all Settlement Class members will receive all forms of Notice, as detailed herein. The cost of all forms of Notice and the Notice Program shall be paid out of the Settlement Amount. A Spanish version of the Long Form Notice shall be provided to Settlement Class Members who request it. The Postcard Notice, Email Notice, and Publication Notice shall inform Settlement Class members, in Spanish, of the availability of the Spanish version of the Long Form Notice.

72. Farmers, with the assistance of the Settlement Administrator as appropriate, shall create a list of Settlement Class members and their electronic mail and/or postal addresses based on readily available information already within its possession. Farmers will bear the expense of extracting the necessary data to make this list of Settlement Class members. Farmers will provide the list of Settlement Class members and their electronic mail and/or postal addresses to the Settlement Administrator to provide Notice by November 30, 2019.

73. The Settlement Administrator shall run the physical addresses through the National Change of Address Database and shall mail to all such Settlement Class members Postcard Notice. The Settlement Administrator shall also send out Email

Notice to all Settlement Class members receiving Notice by that method. The initial Mailed Postcard and Email Notice shall be referred to as “Initial Mailed Notice.”

74. The Settlement Administrator shall perform reasonable address traces for all Initial Mailed Notice postcards that are returned as undeliverable. By way of example, a “reasonable” tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose. No later than 60 days after preliminary approval, the Settlement Administrator shall complete the re-mailing of Postcard Notice to those Settlement Class members whose new addresses were identified as of that time through address traces (“Notice Re-mailing Process”). The Settlement Administrator shall send Postcard Notice to all Settlement Class members’ whose emails were returned as undeliverable and complete such Notice pursuant to the deadlines described herein as they relate to the Notice Re-mailing Process.

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

76. Within the provisions set forth in this Section VIII, further specific details of the Notice Program shall be subject to the agreement of Class Counsel and Farmers.

## **IX. Final Approval Order and Judgment**

77. Plaintiffs' Motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiffs shall file their Motion for Final Approval of the Settlement, and application for attorneys' fees, costs and expenses and for Service Awards for the Class Representatives no later than 105 days after preliminary approval. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' Motion for Final Approval of the Settlement, and on Class Counsel's application for attorneys' fees, costs, and expenses and for the Service Awards for the Class Representatives. One week prior to the Final Approval Hearing, Plaintiffs may file supplemental briefing in support of final approval of the Settlement. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class members (or their counsel) who object to the Settlement or to Class Counsel's application for attorneys' fees, costs, expenses or the Service Awards application, provided the objectors submitted timely objections that meet all of the requirements listed in the Agreement.

At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and entering final judgment thereon and whether to approve Class Counsel's request for attorneys' fees, costs, expenses and Service Awards.

Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice provided satisfies Due Process requirements;
- d. Provide for the future entry of judgment dismissing the Action with prejudice;
- e. Release Farmers and the Released Parties from the Released Claims;  
and
- f. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Farmers, all Settlement Class Members, and all objectors, to administer, supervise, construe and enforce this Agreement in accordance with its terms.

**X. Distributions From The Settlement Amount**

78. In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases and occurrence of the Effective Date, Farmers shall be responsible for paying the Settlement Amount, from which Settlement Class Member Payments shall be paid to the Settlement Class Members.

79. Unless a Renewing Current Policy Holder has contacted the Settlement Administrator to request a paper check instead of a Policy credit, Farmers shall credit



the Policies of all Renewing Current Policy Holders their Settlement Class Member Payments at the time of their next Policy renewal.

80. Settlement Class Member Payments to Renewing Current Policy Holders shall be made first by crediting a Policy for those Policy Holders at the time of their next Policy renewal, or by mailing a standard size check if it is not feasible or reasonable to make the payment by a credit. Farmers shall notify Renewing Current Policy Holders of any such credit on the Policy statement on which the credit is reflected and provide a brief explanation that the credit has been made as a payment in connection with the Settlement. The form and substance of this notification shall be mutually agreed upon by the Parties and shall be substantially similar to the language of Exhibit 9. Farmers will bear all costs and expenses associated with implementing the Policy credits and notification discussed in this paragraph.

81. If the next Policy renewal date for a Policy Holder does not occur within six (6) months of the Payment Date, the Policy Holder shall receive his or her Settlement Class Member Payment via check from the Settlement Administrator. Within 10 days after the Payment Date, Farmers shall provide the Settlement Administrator with a list of the Settlement Class members who do not have a Policy renewal date within six (6) months of the Effective Date. Settlement Class Member Payments to such Settlement Class Members shall be made by mailing a standard

size check. The Settlement Administrator shall be responsible for mailing such checks.

82. After Farmers has processed all Settlement Class Member Payments to Renewing Current Policy Holders with a Policy renewal date occurring within six (6) months of the Payment Date, Farmers shall notify the Settlement Administrator of that portion of the Settlement Amount necessary to fund the Settlement Class Member Payments to Non-Renewing Current Policy Holders by check.

83. Settlement Class Member Payments to Non-Renewing Current Policy Holders shall be made by mailing a standard size check. The Settlement Administrator shall be responsible for mailing such checks.

84. Within 10 days after Effective Date, Farmers shall provide the Settlement Administrator with a list of Past Policy Holder Settlement Class Members in order to send checks to Past Policy Holders for their Settlement Class Member Payments.

85. Settlement Class Member Payments to Past Policy Holders shall be made by mailing a standard size check. The Settlement Administrator shall be responsible for mailing such checks.

86. The amount of the Net Settlement Amount attributable to uncashed or returned checks sent by the Settlement Administrator shall be held by the Settlement Administrator one year from the date that the first distribution check is mailed by

the Settlement Administrator. During this time the Settlement Administrator shall make a reasonable effort to locate intended recipients of settlement funds whose checks were returned (such as by running addresses of returned checks through the Lexis/Nexis database that can be utilized for such purpose) to effectuate delivery of such checks. The Settlement Administrator shall make only one such additional attempt to identify updated addresses and re-mail or re-issue a distribution check to those for whom an updated address was obtained.

**a. Disposition of Residual Funds**

87. Within 2 years after the date the Settlement Administrator mails the first Settlement Class Member Payment, any remaining amounts such as resulting from uncashed checks (“Residual Funds”) in the Qualified Settlement Fund shall be distributed pursuant to California Code of Civil Procedure 384(b). Specifically, the parties agree that, consistent with the requirements of Section 384, the Court may open any judgment to direct payment of any amounts remaining in the Qualified Settlement Fund, plus interest, to the Center for Auto Safety, [www.autosafety.org](http://www.autosafety.org), or other court approved cy pres recipient. While most known for strengthening highway safety standards to save lives, for decades the Center for Auto Safety has provided tools to educate consumers in California and across the country on different types of auto insurance coverage and discount strategies to save consumers on costs of insurance premiums. Neither the Parties or counsel for the Parties have any

interest or involvement in the governance or the work of Center for Auto Safety. Class Counsel shall seek the Court's approval of distribution to the *cy pres* recipient. If the Court does not approve the *cy pres* recipient, Class Counsel with input from Farmers will propose another *cy pres* recipient for the Court's approval.

**b. Release**

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

**c. Payment of Attorneys' Fees, Costs, and Service Awards**

89. Class Counsel will ask the Court to approve Service Awards to the Plaintiffs in the amount of \$5,000 each to be paid out of the Settlement Amount.

The Service Awards will be capped at \$5,000 per Class Representative. The Service Awards are to be paid by the Settlement Administrator directly to the Class Representatives within 10 days of the Effective Date. The Service Awards shall be paid to the Class Representatives in addition to the Class Representatives' Settlement Class Member Payments. Farmers agrees not to oppose Class Counsel's request for the Service Awards. The Parties agree that the Court's failure to approve the Service Awards, in whole or in part, shall not prevent the Settlement Agreement from becoming Effective, nor shall it be grounds for termination.

90. Class Counsel agree to cap their request for attorneys' fees at 33% of the gross Settlement Amount. Farmers agrees not to oppose Class Counsel's request for attorneys' fees of up to 33% of the Settlement Amount, and not to oppose Class Counsel's request for reimbursement of reasonable costs and expenses. Any award of attorneys' fees, costs, and expenses to Class Counsel shall be payable solely out of the Settlement Amount. The Parties agree that the Court's failure to approve, in whole or in part, any award for attorneys' fees shall not prevent the Settlement Agreement from becoming Effective, nor shall it be grounds for termination.

91. Within 14 days of the Effective Date, the Settlement Administrator shall pay Class Counsel all Court-approved attorneys' fees, costs, and expenses.

92. The Parties negotiated and reached agreement regarding attorneys' fees and costs, and the Service Awards, only after reaching agreement on all other material terms of this Settlement.

**d. Termination of Settlement**

93. This Settlement may be terminated by either Class Counsel or Farmers by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 15 days (or such longer time as may be agreed in writing between Class Counsel and Farmers) after any of the following occurrences:

- a. Class Counsel and Farmers agree to termination;
- b. the Court rejects, materially modifies, materially amends or changes, or declines to finally approve the Settlement;
- c. an appellate court vacates or reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand within 360 days after such reversal;
- d. the Effective Date does not occur;
- e. the Department Proceeding is not dismissed by the Insurance Commissioner of the California Department of Insurance following the Court's issuance of the Preliminary Approval Order and prior to the Court's issuance of the Final Approval Order (in which case notice of termination may be served and filed at any time prior to issuance of the Final Approval Order); provided however, that

such dismissal is without prejudice to reinstatement if the Settlement does not otherwise become effective; or

f. any other ground for termination provided for elsewhere in this Agreement.

94. Farmers also shall have the right to terminate the Settlement by serving on Class Counsel and filing with the Court a notice of termination within 14 days after its receipt from the Settlement Administrator of any report indicating that the number of Settlement Class members who timely request exclusion from the Settlement Class equals or exceeds 5%.

e. **Effect of a Termination**

95. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiffs', Class Counsel's, and Farmers' obligations under the Settlement shall cease to be of any force and effect; and the Parties shall return to the status *quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims and defenses will be retained and preserved. Any Party may move to reinstate the Department Proceeding. Any and all costs and/or expenses associated with the Notice and administration of the Settlement prior to its termination shall be borne by Farmers.

96. The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions hereof.

97. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made or filed with the Court.

98. In the event the Settlement is terminated in accordance with the provisions of this Agreement, or if the Settlement does not receive Final Approval, or if the Effective Date does not occur, Plaintiffs may seek to re-institute the Department Proceeding.

99. In the event the Settlement does not receive Final Approval, or a Final Approval Order is reversed on appeal, or the Effective Date is not otherwise achieved then this Settlement Agreement shall be of no force or effect, the Parties shall be returned to their status in the litigation as if the Settlement was never executed, and, in such event, the Parties agree that this Settlement Agreement, and any and all negotiations, documents and discussions associated with it, shall be without prejudice to the rights of any party, and shall not be deemed or construed to be an admission or evidence of any violation of any statute, law or regulation or of



any liability or wrongdoing by Defendants or of the truth of any of the claims or allegations made by Plaintiffs in the Action.

100. All Parties expressly reserve all of their rights if the Settlement does not become final, including but not limited to Farmers' right to oppose class certification and Plaintiffs' right to seek re-institution of the Department Proceeding.

101. If the Settlement does not receive final and non-appealable Court approval, Farmers shall not be obligated to make any payments or provide any other monetary or non-monetary relief to Plaintiffs or the Settlement Class Members, any attorneys' fees, costs, or expenses to Class Counsel, and/or any Service Awards to Plaintiffs.

**f. No Admission of Liability**

102. Farmers continues to dispute its liability for the claims alleged in the Action, and maintains that its private passenger auto insurance policy pricing practices and representations concerning those practices complied, at all times, with applicable laws and regulations. Farmers does not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. Farmers has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action.

103. Class Counsel believe that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted significant formal discovery including extensive written discovery and depositions over a period of approximately 2 years, and conducted independent investigation of the challenged practices. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class members.

104. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability or wrongdoing of any kind whatsoever.

105. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or

may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiffs or Settlement Class members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency or other tribunal.

106. In addition to any other defenses Farmers may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Agreement or the Releases contained herein.

#### **XIX. Miscellaneous Provisions**

107. With the exception of the claims brought on behalf of the Settlement Class and resolved pursuant to the terms of the Settlement, Class Counsel have no intention to represent any person or entity covered as a Settlement Class member in any complaint filed in this Action to re-litigate the claims covered by any of the complaints in this Action.

108. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

109. Binding Effect. This Agreement shall be binding upon, and inure to the

benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

110. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

111. Obligation To Meet And Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.

112. Integration. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

113. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

114. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the State of California, without regard to the principles thereof regarding choice of law.

115. Counterparts. This Agreement may be executed in any number of

counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

116. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice program and the Settlement Administrator. As part of their agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

117. Notices. All notices to Class Counsel provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

MEHRI & SKALET PLLC  
Jay Angoff, Esq.  
1250 Connecticut Avenue NW  
Suite 300  
Washington, DC 20036

*Class Counsel*

TYCKO & ZAVAREEI, LLP  
Andrea Gold, Esq.  
1828 L Street NW  
Suite 1000  
Washington, DC 20036  
*Class Counsel*

BERGER MONTAGUE, P.C.  
Jeff Osterwise, Esq.  
1818 Market Street  
Suite 3600  
Philadelphia, PA 19103  
*Class Counsel*

HINSHAW & CULBERTSON LLP  
James C. Castle  
633 West 5th Street  
47th Floor  
Los Angeles, CA 90071-2043  
*Counsel for Farmers*

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice program.

118. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and counsel for Farmers and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

119. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

120. Authority. Class Counsel (for the Plaintiffs and the Settlement Class Members), and counsel for Farmers (for Farmers), represent and warrant that the persons signing this Agreement have full power and authority to bind the person, partnership, corporation or entity included within the definitions of Plaintiffs and Farmers, for whom they are signing, to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

121. Agreement Mutually Prepared. Neither Farmers nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

122. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action (including but not limited to approximately 2 years of contested discovery in the

Department Proceeding); and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

123. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she or it has fully read this Agreement and the Release contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Release and the legal effects of this Agreement and the Release, and fully understands the effect of this Agreement and the Release.

*Counsel for Plaintiffs on Behalf Named Plaintiffs*

Dated: November 18, MEHRI & SKALET, PLLC  
2019 Cyrus Mehri, Esq.



Jay Angoff, Esq.

By: Mehri  
Counsel for Plaintiff

Dated: 11/18/2019

TYCKO  
TYCKO & ZAVAREEI LLP  
Hassan A. Zavareei, Esq.  
Andrea Gold, Esq.

By: Hassan Zavareei

Dated: \_\_\_\_\_

BERGER MONTAGUE, P.C.  
Peter Kahana, Esq.  
Jeff Osterwise, Esq.

By: \_\_\_\_\_

Dated: \_\_\_\_\_

ROGER HARRIS

\_\_\_\_\_

Dated: \_\_\_\_\_

DUANE BROWN

\_\_\_\_\_

Dated: \_\_\_\_\_

BRIAN LINDSEY

\_\_\_\_\_

Jay Angoff, Esq.

By: *[Signature]*  
Counsel for Plaintiff

Dated: \_\_\_\_\_

TYKO & ZAVAREEI LLP  
Hassan A. Zavareei, Esq.  
Andrea Gold, Esq.

By: \_\_\_\_\_

Dated: November 18, 2019

BERGER MONTAGUE, P.C.  
Peter Kahana, Esq.  
Jeff Osterwise, Esq.

By: *[Signature]*  
Jeff Osterwise

Dated: \_\_\_\_\_

ROGER HARRIS

\_\_\_\_\_

Dated: \_\_\_\_\_

DUANE BROWN

\_\_\_\_\_

Dated: \_\_\_\_\_

BRIAN LINDSEY

\_\_\_\_\_

Jay Angoff, Esq.

*[Handwritten signature]*  
By: Counsel for Plaintiff

Dated: \_\_\_\_\_

TYKO & ZAVAREEI LLP  
Hassan A. Zavareei, Esq.  
Andrea Gold, Esq.

By: \_\_\_\_\_

Dated: \_\_\_\_\_

BERGER MONTAGUE, P.C.  
Peter Kahana, Esq.  
Jeff Osterwise, Esq.

By: \_\_\_\_\_

Dated: Nov 18 2019

ROGER HARRIS

*[Handwritten signature]*

Dated: \_\_\_\_\_

DUANE BROWN

\_\_\_\_\_

Dated: \_\_\_\_\_

BRIAN LINDSEY

\_\_\_\_\_

Jay Angoff, Esq.

By: *Yusef Mehri*  
*Counsel to Plaintiff*

Dated: \_\_\_\_\_

TYKO & ZAVAREEI LLP  
Hassan A. Zavareei, Esq.  
Andrea Gold, Esq.

By: \_\_\_\_\_

Dated: \_\_\_\_\_

BERGER MONTAGUE, P.C.  
Peter Kahana, Esq.  
Jeff Osterwise, Esq.

By: \_\_\_\_\_

Dated: \_\_\_\_\_

ROGER HARRIS

\_\_\_\_\_

Dated: *11-15-2019*

DUANE BROWN

*Duane A. Brown*

Dated: \_\_\_\_\_

BRIAN LINDSEY

\_\_\_\_\_

Jay Angoff, Esq.

By: *Yusef M. Khattar*  
*Counsel for Plaintiff*

Dated: \_\_\_\_\_

TYKO & ZAVAREEI LLP  
Hassan A. Zavareei, Esq.  
Andrea Gold, Esq.

By: \_\_\_\_\_

Dated: \_\_\_\_\_

BERGER MONTAGUE, P.C.  
Peter Kahana, Esq.  
Jeff Osterwise, Esq.

By: \_\_\_\_\_

Dated: \_\_\_\_\_

ROGER HARRIS

\_\_\_\_\_

Dated: \_\_\_\_\_

DUANE BROWN

\_\_\_\_\_

Dated: 11/13/2019

BRIAN LINDSEY

*Brian Lindsey*

Dated: 11/18/19

FARMERS INSURANCE EXCHANGE

Thomas S. Noh

MID CENTURY INSURANCE  
COMPANY

Dated: 11/18/19

Thomas S. Noh

*Counsel for Defendants*

Dated: 11/18/19

HINSHAW & CULBERTSON LLP  
James C. Castle, Esq.

James C. Castle

# EXHIBIT 1

1 Wilmer J. Harris, SBN 150407  
2 wharris@sshhlaw.com  
3 SCHONBRUN SEPLOW  
4 HARRIS & HOFFMAN LLP  
5 715 Fremont Ave., Suite A  
6 South Pasadena, CA 91030  
7 Telephone: (626) 441-4129  
8 Facsimile: (626) 283-5770

9 Jay Angoff [D.C. Bar #248641]  
10 jay.angoff@findjustice.com  
11 Cyrus Mehri [D.C. Bar #420970]  
12 cyrus@findjustice.com  
13 Christine H. Monahan, Esq. [D.C. Bar #1035590]  
14 cmonahan@findjustice.com  
15 MEHRI & SKALET PLLC  
16 1250 Connecticut Ave. NW, Suite 300  
17 Washington, DC 20036  
18 Telephone: (202) 822-5100  
19 Facsimile: (202) 822-4997

20 Attorneys for Plaintiffs  
21 [Additional Counsel listed on following page]

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
23 **FOR THE COUNTY OF LOS ANGELES**

24 ROGER HARRIS, DUANE BROWN, AND  
25 BRIAN LINDSEY,

26 Plaintiffs,

27 vs.

28 FARMERS INSURANCE EXCHANGE  
AND MID CENTURY INSURANCE  
COMPANY,

Defendants.

Case No: BC 579498

**SECOND AMENDED CLASS ACTION**  
**COMPLAINT FOR DAMAGES**

1. **Violation of the Unfair Competition Law – Commission of Unlawful Business Act or Practice Cal. Bus. & Prof. Code § 17200 et seq.**
2. **Violation of the Unfair Competition Law – Commission of Unfair Business Act or Practice Cal. Bus. & Prof. Code § 17200 et seq.**
3. **Violation of the Unfair Competition Law – Commission of Fraudulent Business Act or Practice Cal. Bus. & Prof. Code § 17200 et seq.**
4. **Unjust Enrichment**

**JURY TRIAL DEMANDED**



1 Peter Kahana, Esq. [PA Bar #33587]  
2 Jeff Osterwise, Esq. [PA Bar #201859]  
3 **BERGER MONTAGUE, P.C.**  
4 1818 Market Street, Suite 3600  
5 Philadelphia, PA 19103  
6 Tel: (215) 875-3000  
7 Fax: (215) 875-4613  
8 pkahana@bm.net  
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10 Jonathan K. Tycko, Esq. [D.C. Bar #445851]  
11 Andrea Gold, Esq. [D.C. Bar #420970]  
12 **TYCKO & ZAVAREEI LLP**  
13 1828 L Street NW, Suite 1000  
14 Washington, DC 20036  
15 Tel: (202) 973-0900  
16 Fax: (202) 973-0950  
17 jtycko@tzlegal.com  
18 agold@tzlegal.com

19 *Attorneys for Plaintiffs*

20  
21  
22  
23  
24  
25  
26  
27  
28



1 they present. That data indicates, among other things, that their most loyal customers are price  
2 inelastic and are willing to renew their policies and pay more than the risk they present justifies.

3 7. After reviewing internal documents and testimony by Defendants' employees  
4 responsible for developing Defendants' California auto insurance class plans, California  
5 Department of Insurance Senior Casualty Actuary Edward D. Cimini, Jr. has concluded that  
6 "Farmers engaged in price optimization in the construction of its Private Passenger Auto Class  
7 Plan with regard to the selection of rate relativities for the optional rating factor of Persistency."

8 8. The use of elasticity of demand as a rating factor results in the Defendants' most  
9 loyal customers paying more than they would pay based on the risk they present. As the  
10 Department's Senior Casualty Actuary Cimini observed, "Farmers' existing persistency  
11 discounts for tenured policyholders were considerably smaller than the actuarially indicated  
12 discounts. Lower discounts for these policyholders resulted in higher premium for these  
13 policyholders."

14 9. Defendants did not disclose their use of elasticity of demand as a rating factor to  
15 the California Department of Insurance when seeking approval of their Private Passenger Auto  
16 Class Plan ("class plans" or "2008 class plans"), and the Department did not approve its use.

17 10. In their marketing materials, Defendants intentionally omit and fail to disclose  
18 their use of elasticity of demand as a rating factor in determining auto insurance premiums.

19 11. Plaintiffs and members of the Class have paid higher prices for their insurance  
20 coverage than the risk they present would justify.

21 12. Plaintiffs bring this action on behalf of themselves and other similarly situated  
22 insureds for violation of California's Unfair Competition law, and for unjust enrichment.

### 23 **JURISDICTION AND VENUE**

24 13. This action is properly brought in the Superior Court of the State of California.  
25 Each cause of action enumerated below arises from California state law and the events giving  
26 rise to this lawsuit took place in California, including the County of Los Angeles.

### 27 **PARTIES**

28 14. Plaintiff Roger Harris is a citizen of the State of California and was a customer

1 of Defendants until 2018. Mr. Harris resides in Lompoc, California in the County of Santa  
2 Barbara.

3 15. Plaintiff Harris has been a loyal customer of Defendants for more than 15 years.

4 16. Plaintiff Harris has purchased auto insurance from Defendants for multiple  
5 vehicles. Most recently, Plaintiff purchased auto insurance for one vehicle from Defendants.

6 17. Plaintiff Duane Brown is a citizen of the State of California and is a customer of  
7 Defendants. Mr. Brown resides in Lompoc, California in the County of Santa Barbara.

8 18. Plaintiff Brown became a customer of Defendants in 1997 and has been a loyal  
9 customer of Defendants since that time.

10 19. Plaintiff Brown has purchased auto insurance from Defendants. Currently,  
11 Plaintiff purchases auto insurance for six automobiles from Defendants.

12 20. Plaintiff Brian Lindsey is a citizen of the State of California and was a customer  
13 of Defendants until 2018. Mr. Lindsey resides in the County of Santa Barbara.

14 21. Plaintiff Lindsey was a loyal customer of Defendants for almost ten years.

15 22. Plaintiff Lindsey purchased auto insurance from Defendants. Plaintiff purchased  
16 auto insurance for at least one automobile from Defendants.

17 23. Defendants have never notified Plaintiffs that they are charging them more than  
18 other policyholders presenting the same risk because of their willingness to tolerate a price  
19 increase.

20 24. As explained in more detail below, Plaintiffs have been injured in fact and  
21 directly harmed as a result of Defendants' failure to disclose their use of elasticity of demand as  
22 a rating factor, in that Plaintiffs have been fraudulently, deceptively and unfairly misled into  
23 paying a premium that is higher than it would have been had Defendants calculated Plaintiffs'  
24 premiums based on the risk they present.

25 25. A direct causal relationship exists between Defendants' unlawful conduct and  
26 the ascertainable losses suffered by Plaintiffs and the Class. Had Defendants' use of elasticity  
27 of demand as a rating factor been disclosed, Plaintiffs (and other Class members) would have  
28 paid less for auto insurance.





1           39.     Conversely, an individual whose demand is inelastic is relatively insensitive to  
2 price changes – he or she is relatively unlikely to seek insurance elsewhere in response to a  
3 price increase. The more the insurer can raise its prices to such an individual without causing  
4 him or her to switch carriers, the more inelastic that individual’s demand is.

5           40.     By using elasticity of demand as a rating factor, Defendants charge customers  
6 whose demand is inelastic—who are unlikely to seek insurance elsewhere in response to a price  
7 increase—more than customers who are likely to shop around in response to a price increase, all  
8 other things being equal. Defendants’ customers whose demand is inelastic thus pay prices that  
9 are higher than the risk they present would justify.

10          41.     Defendants did not disclose in their class plan the use of elasticity of demand as  
11 a rating factor to the Department, and the Department did not approve Defendants' use of  
12 elasticity of demand as a rating factor.

13     **California Has Specifically Prohibited the Use of Elasticity of Demand as a Rating Factor,**

14                             **As Have Other States**

15          42.     The term commonly used by insurance companies and insurance regulators for  
16 the use of elasticity of demand as a rating factor is “price optimization.” On February 18, 2015,  
17 the California Department of Insurance issued a Notice (the “Notice”) announcing that “any use  
18 of Price Optimization in the ratemaking/pricing process or in a rating plan is unfairly  
19 discriminatory in violation of California law,” and ordering any insurer using price optimization  
20 to discontinue doing so. The Notice defines “price optimization” as “any method of taking into  
21 account an individual’s or class’s willingness to pay a higher premium relative to other  
22 individuals or classes.” It also notes that “price optimization does not seek to arrive at an  
23 actuarially sound estimate of the risk of loss and other future costs of a risk transfer.”

24          43.     The Notice further ordered that “Any insurer currently using Price Optimization  
25 to adjust its rates in California shall cease this practice.” More specifically, the Notice ordered  
26 “any insurer that has a factor or factors based on Price Optimization in its rating plan” to  
27 “remove the factor or factors in its next filing” to be made “no later than six months from the  
28 date of this Notice.”





1 “adding a driver,” “moving to a new residence,” and “if you’ve recently switched vehicles” can  
2 cause your premium to increase. Nowhere on Farmers’ website does Farmers disclose that an  
3 insured’s elasticity of demand can affect an individual’s premium, even though that is the case.

4 52. Consultants have boasted about the fact that the use of elasticity of demand as a  
5 rating factor is hidden from regulators and therefore that regulators cannot tell whether an  
6 insurer is using an individual’s willingness to pay a higher premium than the risk-based  
7 premium in its computations.

8 **Farmers’ Use of Elasticity of Demand as a Rating Factor**

9 53. Farmers’ employees have acknowledged Farmers’ use of elasticity of demand in  
10 calculating premiums. A Senior Analyst who worked at Farmers between August 2008 and  
11 June 2012, for example, has said that his projects included “price elasticity modeling of  
12 differing consumer segments.”

13 54. An Actuarial Analyst at the Farmers Personal Lines Pricing Group, who has been  
14 in that position since February 2012, says that he is “managing team on the design,  
15 implementation, and delivery of an auto insurance price optimization tool,” and that he has  
16 “pitched potential price optimization schemes that incorporate retention, conversion, and  
17 elasticity modeling.”

18 55. A Product Manager working at Farmers between 2003 and 2008 says that he  
19 “built and used GLM’s for retention price elasticity.”

20 56. Further, a Senior Product Manager who was working at Farmers in 2007-2008  
21 says he “designed pricing strategy” through “proper segmentation” and “demand estimation.”

22 57. Defendants specifically have engaged in price optimization in California for  
23 more than a decade by charging their most loyal policyholders—those insured by the company  
24 for nine or more years—more than the risk they present justifies because they are willing to pay  
25 more than that risk-based rate.

26 58. Defendants have known for years that their longer-tenured customers are price  
27 inelastic. This knowledge was captured and shared in internal PowerPoint presentations and  
28 memorandums circulated as early as at least 2006 and 2007. These materials further

1 emphasized that it was in Defendants’ business interest to capitalize on this knowledge in  
2 ratemaking. It thus was standard practice for Defendants to charge price-inelastic, tenured  
3 policyholders higher-than-indicated rates. For example:

- 4 a. A May 2007 PowerPoint presentation from Defendants’ Insight &  
5 Innovation (“I&I”) group entitled “Retention-Elasticity Modeling,” states  
6 that “[r]enewal elasticity [is] extraordinarily low,” among Defendants’  
7 policyholders and that the number one variable associated with higher  
8 retention was “[p]olicy [t]enure” — specifically, “[o]lder policies.”
- 9 b. A memorandum describing Defendants’ pricing strategy in 2006 or 2007  
10 notes that “the retention model tells us that tenured business tends to have  
11 [sic] higher retention levels. Lowering the price point for those that are  
12 likely to renew anyway does not gain a premium advantage.”
- 13 c. A presentation at the company in approximately 2006 emphasized that  
14 Defendants’ auto product managers should be thinking about “how you  
15 optimize rate — how you maximize margins with every customer who  
16 allows you to.”

17 59. Similarly, in emails, then-Vice President Bill Martin endorsed the use of price  
18 optimization practices that “surgically allow for subsidies within our portfolio, as a means to  
19 superior growth without compromising on targeted profitability.” He instructed his  
20 subordinates, including Regional Vice President for California Auto Russina Sgoureva and  
21 Chief Auto Actuary Morgan Bugbee, that:

22 We need our PM’s [(product managers)] to be creative with what they have —  
23 *encouraging subsidy where it generates overall profitable growth*, eliminating  
24 mix shifts toward unsubsidized unprofitable segments. *That means we need to*  
25 *make intensive use of even the most preliminary revenue-forecasting tools (rate*  
*optimization or elasticity) as part of the process* and track whether the outcome  
is the same as predicted so as to refine the forecast model.

26 60. This practice of charging price-inelastic, tenured policyholders higher-than-  
27 indicated rates did not require sophisticated algorithms and computer software to be effective.  
28 Indeed, as Mr. Martin acknowledged in 2007, it was the “massive amounts of premium gained

1 and saved” from considering policyholders’ elasticity of demand that led Defendants to see the  
2 value in investing in price optimization software that could mechanize its consideration of  
3 elasticity of demand.<sup>1</sup>

4 61. Defendants’ knowledge of the price inelasticity of its long-tenured customers  
5 carried over and was incorporated into the development of Defendants’ California auto  
6 insurance class plans. Specifically, the undisclosed elasticity rating factor was employed to  
7 deprive Defendants’ long-term customers of the persistency discounts the risk they presented  
8 warranted.

9 62. In preparing their 2008 Class Plans, Defendants knew that the loss ratios for their  
10 longer-tenured policyholders were far lower (nearly 20 percentage points) than the loss ratios  
11 for their less-tenured policyholders. In other words, Defendants were making a significantly  
12 greater profit off their longer-tenured policyholders than their less-tenured policyholders,  
13 because the losses relative to premiums were lower for longer-tenured policyholders compared  
14 to less-tenured policyholders.<sup>2</sup>

15 63. This profit occurred because Defendants had been charging rates far higher than  
16 their loss-models indicated for the longer-tenured customers. Specifically, Defendants used  
17 relativities for “Persistency” — a rating factor based on the length of time a policyholder had  
18 been consistently insured by the company — that were significantly higher for policyholders  
19 with nine or more years tenure than its own data showed was justified.

20 64. In October 2007, Defendants identified giving larger discounts to their long-term  
21 policyholders as a “future product change.” Implementing such discounts would have brought  
22 the rates paid by Defendants’ long-term policyholders closer to the rates the risk they presented  
23

---

24 <sup>1</sup>Farmers employees have also recognized that price optimization does not need to rely on  
25 sophisticated software to be unlawful. As Defendants’ Chief Auto Actuary Morgan Bugbee  
26 noted, “[w]hether or not these tools are being used is irrelevant. What’s relevant is whether or  
27 not regulators are comfortable with companies deviating from the point estimates of cost from  
their models, the reasons why the company has deviated, and the extent to which those  
deviations occur (not excessive or inadequate...)”

28 <sup>2</sup> Notably, because renewal business is less expensive to administer than new business,  
Defendants were likely already earning greater profits on its longer-tenured policyholders  
without even comparing loss ratios.

1 justified. But despite knowing that they were overcharging their longest-tenured policyholders,  
2 Defendants affirmatively chose not to reduce the rates for these policyholders in their 2008  
3 class plans.

4 65. Internal documents show that this decision was made in June 2008 — relatively  
5 early in Defendants’ planning process — after a meeting with a set of officials responsible for  
6 overseeing Defendants’ agency workforce in California. The decision was then immediately  
7 presented to and approved by the executives overseeing work in California, including Mr.  
8 Martin and then-President of Personal Lines, Jeff Dailey.

9 66. Internal documents further make clear that Defendants chose not to follow its  
10 indications for the persistency rating factor because doing so would have meant lowering rates  
11 for their customers who would renew anyway at a higher, actuarially unjustifiable rate.

12 67. While actuarially improper, this decision made business sense for Defendants.  
13 In fact, back in January 2007, Defendants’ Senior Customer Advocacy Manager Chris Maydak  
14 had specifically advised Mr. Bugbee that he should not “react” to his loss indications showing  
15 that longer-tenured policyholders in California should receive 30-35% discounts. Mr. Maydak  
16 explained, “If you react to the loss indications, you end up lowering rate for those who tend to  
17 renew anyway.”

18 68. After reviewing internal documents and testimony by Defendants’ employees  
19 responsible for developing Defendants’ California auto insurance filings, California Department  
20 of Insurance Senior Casualty Actuary Edward D. Cimini, Jr. testified in a sworn statement that  
21 “Farmers engaged in price optimization in the construction of its Private Passenger Auto Class  
22 Plan with regard to the selection of rate relativities for the optional rating factor of Persistency.”

23 69. Mr. Cimini based his conclusion that Defendants engaged in price optimization,  
24 despite not having employed a sophisticated software program or algorithm, on evidence that  
25 “Farmers had extensively studied how sensitive their existing policyholders were to varying  
26 levels of premium increases at renewal,” knew its “most tenured business ... would likely renew  
27 their policies at premium levels which were higher than premium levels supported by the  
28 underlying data,” and “decided to retain its existing persistency discounts because [it] believed

1 the renewal customers would be willing to pay the higher rates.”

2 **Defendants Were Aware That the 2015 Notice on Price Optimization Reached Their**  
3 **Conduct, But Failed to File a New Class Plan Removing the Factor Based on Price**  
4 **Optimization Until August 2018**

5 70. Defendants paid close attention to state actions regulating price optimization and  
6 tried to influence regulators not to prohibit the practice.

7 71. Defendants’ employees immediately recognized that the 2015 Notice prohibited  
8 a broad range of conduct, including non-mechanized forms of price optimization. Defendants  
9 had implemented such price optimization in its 2008 Class Plans, which were then still in effect.

10 72. Nonetheless, Defendants did not file a new class plan removing the factor based  
11 on price optimization within the time period set by the Notice. Instead, Defendants did not file  
12 an amended class plan removing the price optimized persistency rating factor until August 2018  
13 — three years past the deadline.

14 **Defendants’ Use of Elasticity of Demand as a Rating Factor in California Has Injured**  
15 **Defendants’ Long-Tenured Policyholders**

16 73. Had Defendants chosen to use the indicated relativities — those based on the risk  
17 presented by the policyholder as set forth in Exhibit 4 of its 2008 class plans — the rates paid  
18 by policyholders who had been with the company for nine or more years would have been  
19 between 4.1% and 11.2% less, depending on the type of coverage a policyholder had.

20 74. During the class period, Defendants overcharged its policyholders that had been  
21 with the company for nine or more years by more than \$200 million.

22 **CLASS ALLEGATIONS**

23 75. Plaintiffs, on behalf of themselves and all others similarly situated, bring this  
24 action pursuant to California Code of Civil Procedure Section 382. This action satisfies the  
25 numerosity, commonality, typicality, adequacy, predominance and superiority requirements.

26 76. The proposed Class is defined as:

27 All persons who (1) had 9 or more years of tenure/persistency as a  
28 Farmers Insurance Exchange (“FIE” and/or Mid Century Auto

1 (“MCA”) policyholder as of August 18, 2015 or who reached 9 or  
2 more years of tenure/persistence as a FIE and/or MCA policyholder on  
3 or before March 31, 2017, and (2) were FIE and/or MCA policyholders  
4 of Defendants at any time during the period extending from August 18,  
5 2015 through March 31.

6 77. Excluded from the Class are (a) officers, directors, and employees of any  
7 member of the Farmers Insurance Group of Companies; (b) the judge overseeing the proposed  
8 settlement and the judge’s immediate family; and (c) all Policy Holders who make a timely  
9 election to be excluded.

10 78. Membership in the class is ascertainable based on computerized records  
11 maintained by Defendants. Plaintiffs reserve the right to modify or amend the definition of the  
12 proposed Class before the Court determines whether certification is appropriate.

13 79. The Class is numerous such that joinder of all Class members is impracticable.  
14 The proposed Class contains many thousands of members.

15 80. Common questions of law and fact exist as to all members of the Class and  
16 predominate over questions affecting only individual Class members. The common legal and  
17 factual questions include, but are not limited to, the following:

- 18 a. Whether Defendants consider Class members’ elasticity of demand as a  
19 rating factor in establishing the premium charged to Class members;
- 20 b. Whether Defendants’ use of elasticity of demand as a rating factor  
21 produces premiums that exceed the risk-based premium;
- 22 c. Whether Defendants’ use of elasticity of demand as a rating factor  
23 produces premiums that are higher than the expected value of future costs  
24 for those policyholders who have inelastic demand;
- 25 d. Whether Defendants’ use of elasticity of demand as a rating factor results  
26 in customers presenting the same risk being charged different premiums  
27 based on their elasticity of demand;
- 28 e. Whether Defendants use elasticity of demand as a rating factor to charge

- 1 inflated premiums that are not strictly related to individual risk transfer;
- 2 f. Whether Defendants are unjustly enriched through their use of elasticity
- 3 of demand as a rating factor;
- 4 g. Whether Defendants violate California's Unfair Competition Law
- 5 through their use of elasticity of demand as a rating factor.

- 6 81. Other questions of law and fact common to the Class include:
- 7 a. The proper method or methods by which to measure damages, and
- 8 b. The declaratory relief to which the Class is entitled.

9 82. Plaintiffs' claims are typical of the claims of other members of the Class and

10 there is no defense available to Defendants that is unique to Plaintiffs.

11 83. The claims of the representative Plaintiffs are typical of the claims of the Class

12 in that the representative Plaintiffs, like all Class members, paid more than the risk-based

13 premium due to Defendants' use of elasticity of demand as a rating factor. Furthermore, the

14 factual basis of Farmers' misconduct is common to all Class members, and represents a

15 common thread of deceptive, unfair, and unlawful conduct resulting in injury to all members of

16 the Class.

17 84. Plaintiffs will fairly and adequately represent the interests of the Class. Plaintiffs

18 have no interests that are antagonistic to those of the Class. Plaintiffs have the ability to assist

19 and adequately protect the rights and interests of the Class during litigation. Further, Plaintiffs

20 are represented by counsel who are competent and experienced in this type of class action

21 litigation.

22 85. This class action is not only the appropriate method for the fair and efficient

23 adjudication of the controversy, it is the superior method because:

- 24 a. Joinder of thousands of individual Class members is impracticable,
- 25 cumbersome, unduly burdensome, and a waste of judicial and litigation
- 26 resources;
- 27 b. There is no special interest by the Class members in individually
- 28 controlling separate causes of action;

- 1 c. The Class members' individual claims are small compared with the  
2 expense of litigating the claim thereby making it impracticable, unduly  
3 burdensome, and expensive, if not totally impossible, to justify individual  
4 Class members addressing their losses in litigation;
- 5 d. When liability is determined, the claims of all Class members can be  
6 determined through routine mathematical calculations and thus can be  
7 determined by the Court and administered efficiently in a manner that is  
8 far less onerous, burdensome, and expensive than if it were attempted  
9 through filing, discovery, and trial of many individual cases;
- 10 e. This class action will promote the orderly, efficient, expeditious, and  
11 appropriate adjudication and administration of class claims to promote  
12 economies of time and resources;
- 13 f. This class action will assure uniformity of decisions among Class  
14 members;
- 15 g. The resolution of this controversy through this class action presents fewer  
16 management difficulties than individual claims filed in which the parties  
17 may be subject to varying adjudication of their rights.

18 86. Furthermore, class treatment is appropriate because Defendants have acted on  
19 grounds generally applicable to the Class, making class-wide equitable, injunctive, declaratory  
20 and monetary relief appropriate. In addition, the prosecution of separate actions by or against  
21 individual members of the Class would create a risk of incompatible standards of conduct for  
22 Defendants and inconsistent or varying adjudications for all parties.

23 **CAUSES OF ACTION<sup>3</sup>**

24 **FIRST CAUSE OF ACTION**

25 **Violation of the Unfair Competition Law – Commission of Unlawful Business Act or**  
26 **Practice**

27 \_\_\_\_\_  
28 <sup>3</sup> Plaintiffs have removed their Fifth Cause of Action for Violation of California Insurance Code  
§ 1861.10 consistent with the Court's Order on January 25, 2016. However, Plaintiffs are not  
waiving any of their rights vis-à-vis this cause of action, including their right to appeal.



1 **Cal. Bus. & Prof. Code § 17200 et seq.,**

2 87. Plaintiffs repeat, reassert, and incorporate the allegations contained in  
3 paragraphs 1-86 above as if set forth herein.

4 88. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or fraudulent  
5 business act or practice.”

6 89. Defendants’ conduct is “unlawful” because it violates the California Insurance  
7 Code and its implementing regulations in the following ways:

- 8 a. Defendants’ use of elasticity of demand as a rating factor violates Cal.  
9 Ins. Code § 1861.02 because it is not one of the three mandatory rating  
10 factors that are authorized by § 1861.02(a) and it has not been adopted by  
11 the Commissioner as a permissible rating factor pursuant to §  
12 1861.02(a)(4).
- 13 b. Defendants’ use of elasticity of demand as a rating factor violates Cal.  
14 Code Regs. Tit. 10, § 2632.4(a) because elasticity of demand constitutes  
15 a rating factor that is not set forth in or authorized by California  
16 regulations.
- 17 c. Defendants’ use of elasticity of demand as a rating factor violates Cal.  
18 Ins. Code § 1861.02(a)(4) and Cal. Code Regs. Tit. 10, § 2632.4(b)  
19 because elasticity of demand does not bear a substantial relationship to  
20 loss.
- 21 d. Defendants’ use of elasticity of demand as a rating factor violates Cal.  
22 Code Regs. Tit. 10, § 2632.10(a) in that it causes Farmers to collect a  
23 premium which is not calculated in accordance with a class plan that  
24 complies with California regulation.
- 25 e. Defendants’ use of elasticity of demand as a rating factor violates Cal.  
26 Ins. Code § 1859 in that Farmers willfully withheld information from, or  
27 knowingly gave false or misleading information to, the California  
28 Insurance Commissioner concerning its use of elasticity of demand as a

1 rating factor to unlawfully increase Plaintiffs’ and the Class’ insurance  
2 premiums.

3 90. Plaintiffs and the Class members have suffered injury in fact and have lost  
4 money as a result of Defendants’ unlawful business acts or practices.

5 91. Pursuant to Business and Professions Code §§ 17200 and 17203, Plaintiffs seek  
6 an order providing restitution and disgorgement of all profits relating to the above-described  
7 unfair business acts or practices, and injunctive and declaratory relief as may be appropriate.

8 **SECOND CAUSE OF ACTION**

9 **Violation of the Unfair Competition Law – Commission of Unfair Business Act or Practice**

10 **Cal. Bus. & Prof. Code § 17200 *et seq.*,**

11 92. Plaintiffs repeat, reassert, and incorporate the allegations contained in  
12 paragraphs 1-91 above as if set forth herein.

13 93. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or fraudulent  
14 business act or practice.”

15 94. The acts and practices of Defendants as alleged herein also constitute “unfair”  
16 business acts and practices under the UCL in that Defendants’ conduct is unconscionable,  
17 immoral, deceptive, unfair, illegal, unethical, oppressive, and/or unscrupulous. Further, the  
18 gravity of Defendants’ conduct outweighs any conceivable benefit of such conduct.

19 95. Defendants have, in the course of their business and in the course of trade or  
20 commerce, undertaken and engaged in unfair business acts and practices under the UCL by  
21 using elasticity of demand as a rating factor.

22 96. Defendants have also, in the course of their business and in the course of trade or  
23 commerce, undertaken and engaged in unfair business acts and practices by:

- 24 a. Engaging in bad faith in using elasticity of demand as a rating factor;
- 25 b. Not calculating auto insurance premiums based on risk or loss costs but,  
26 instead, using elasticity of demand as a rating factor to inflate premiums;
- 27 c. Making material and misleading omissions about the manner in which  
28 they determine a customer’s auto insurance premium;



1 auto insurance premiums for its price inelastic customers was likely to deceive, and did in fact  
2 deceive, Plaintiffs and the Class.

3 103. Defendants' conduct in failing to disclose to Plaintiffs and members of the Class  
4 their use of elasticity of demand as a rating factor to inflate auto insurance premiums for price  
5 inelastic policyholders was likely to deceive, and did in fact deceive, Plaintiffs and the Class.

6 104. Plaintiffs and the Class members have suffered injury in fact and have lost  
7 money as a result of Defendants' fraudulent business acts or practices.

8 105. The above-described fraudulent business acts or practices present a threat and  
9 likelihood of harm and deception to members of the Class in that Defendants have  
10 systematically perpetrated the fraudulent conduct upon members of the public by engaging in  
11 the conduct described herein.

12 106. Pursuant to Business and Professions Code §§ 17200 and 17203 Plaintiffs seek  
13 an order providing restitution and disgorgement of all profits relating to the above-described  
14 fraudulent business acts or practices, and injunctive and declaratory relief as may be  
15 appropriate.

16 **FOURTH CAUSE OF ACTION**

17 **Unjust Enrichment**

18 107. Plaintiffs repeat, reassert, and incorporate the allegations contained in  
19 paragraphs 1-106 above as if set forth herein.

20 108. Defendants have been unjustly enriched at the expense of Plaintiffs and Class  
21 members as a result of their conduct as alleged above.

22 109. Defendants have wrongfully and unjustly collected higher auto insurance  
23 payments from thousands of insureds than they were entitled to by using elasticity of demand as  
24 a rating factor.

25 110. It would be inequitable to allow Defendants to retain these ill-gotten gains, and  
26 the Plaintiffs and Class members are entitled to restitution and/or disgorgement of all revenues  
27 obtained by Defendants as a result of their unlawful conduct.

28

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiffs, individually and on behalf of the Class, pray for judgment in favor  
3 of Plaintiffs and the Class and against Defendants as follows:

- 4 A. Finding that this action satisfies the prerequisites for maintenance as a class  
5 action under California Code of Civil Procedure Section 382 and certifying the  
6 Class defined herein;
- 7 B. Designating Plaintiffs as representatives of the Class and their counsel as class  
8 counsel;
- 9 C. Declaring Defendants’ use of elasticity of demand as a rating factor to be  
10 unlawful and granting equitable and/or injunctive relief;
- 11 D. Awarding Plaintiffs and members of the Class their compensatory damages in  
12 an amount to be determined at trial;
- 13 E. Disgorgement of, restitution of, and/or imposing a constructive trust upon, the  
14 ill-gotten gains derived by Defendants from their unjust enrichment;
- 15 F. Plaintiffs’ reasonable attorneys’ fees and non-taxable expenses;
- 16 G. Plaintiffs’ taxable costs;
- 17 H. Pre- and post-judgment interest at the maximum rate permitted by applicable  
18 law; and
- 19 I. Granting such further relief as the Court deems just.

20 **JURY DEMAND**

21 Plaintiffs demand a trial by jury on all issues so triable.

22  
23 Dated: August \_\_, 2019

SCHONBRUN SEFLOW  
HARRIS & HOFFMAN LLP

MEHRI & SKALET PLLC

26 BERGER MONTAGUE, P.C.

27 TYCKO & ZAVAREEI LLP  
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By: \_\_\_\_\_  
Jay Angoff

*Attorneys for Plaintiffs*

# EXHIBIT 2

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# EXHIBIT 3

A \$15,000,000 settlement has been reached in a class action lawsuit alleging that Farmers Insurance Exchange and Mid-Century Insurance Company (collectively “Farmers”) violated California law by using price optimization (a method of setting prices that takes into account an individual’s or class of consumers’ willingness to pay a higher price for a product relative to other individuals or classes) when pricing its automobile insurance in California. Farmers denies the allegations in the lawsuit and denies that it did anything wrong. The Court has not decided who is right. Those included in the Settlement Class have legal rights and options, such as receiving settlement benefits or excluding themselves from or objecting to the settlement.

**WHO IS INCLUDED? Farmers’ records indicate that you are a Settlement Class Member.** The Settlement Class includes all California Policy Holders of Defendants Farmers Insurance Exchange (“FIE”) and Mid-Century Insurance Company (“Mid-Century”) who: (1) had 9 or more years of tenure/persistence as a FIE and/or Mid-Century policyholder as of August 18, 2015 or who reached 9 or more years of tenure/persistence as a FIE and/or Mid-Century policyholder on or before March 31, 2017, and (2) were FIE and/or Mid-Century policyholders at any time during the period extending from August 18, 2015 through March 31, 2017.

If you believe that you are in the Settlement Class, but have not received notice of the Settlement, you may call the toll free number, 1-855-964-0518, write the Settlement Administrator at Farmers PO Settlement, P.O. Box 5053, Portland, OR 97208-5053, or send an e-mail to [info@FarmersPOSettlement.com](mailto:info@FarmersPOSettlement.com).

**SETTLEMENT BENEFITS.** Farmers will pay \$15 million to make payments (via check or policy credit) to eligible Settlement Class Members as well as to pay Class Counsel’s attorneys’ fees, costs, expenses, costs of Settlement Administration, and Service Awards. After these fees and costs are deducted from the Settlement Fund, the remaining funds (approximately \$9,237,613) will be paid to Settlement Class Members with an equal payment amount of approximately \$15.02. If the Settlement is approved, payments will *automatically* be made to Settlement Class Members identified in Farmers’ records. You do not need to do anything to receive a payment.

**OTHER OPTIONS.** If you do not want to be legally bound by the Settlement, you must exclude yourself by **Month Day, 2020**, and the Court will exclude you from the Settlement. If you do not timely exclude yourself, you will release any claims you have and will not be able to sue Farmers for any claim relating to the lawsuit. Settlement Class Members who do not exclude themselves will be bound by any judgement. If you stay in the Settlement, you may object to it by **Month Day, 2020**. The Detailed Notice available at the website or by calling the toll-free number below includes information on how to exclude yourself or object. The Court will hold a hearing on **Month Day, 2020** to consider whether to approve the Settlement and a request by Class Counsel for attorneys’ fees of up to 33% of the Settlement Amount plus Class Counsel’s costs and expenses and Service Awards to the Class Representatives in the amount of \$5,000 each. You may appear at the hearing, but you are not required to attend. You may also hire your own attorney, at your own expense, to appear or speak for you at the hearing.

For more information regarding the Settlement, call the toll free number or visit the settlement website.

**[www.FarmersPriceOptimizationSettlement.com](http://www.FarmersPriceOptimizationSettlement.com) • 1-855-964-0518**

Farmers PO Settlement Administrator  
P.O. Box 5053  
Portland, OR 97208-5053

**If You Had a Farmers Insurance  
Exchange or Mid-Century Insurance  
Company Auto Policy in California  
between August 18, 2015 and  
March 31, 2017 and had been insured  
by those companies for 9 or more years,  
You May Be Eligible for a Payment  
from a Class Action Settlement.**

*Para una notificacion en Espanol, visitar  
[www.FarmersPriceOptimizationSettlement.com](http://www.FarmersPriceOptimizationSettlement.com).*

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# EXHIBIT 4

Email Notice

**If You Purchased Automotive Vehicle Insurance from Farmers from August 18, 2015 to March 31, 2017, You May Be Eligible for a Payment from a Class Action Settlement.**

*Para una notificación en Español, visitar [www.FarmersPriceOptimizationSettlement.com](http://www.FarmersPriceOptimizationSettlement.com).*

A \$15,000,000 settlement has been reached in a class action lawsuit alleging that Farmers Insurance Exchange and Mid Century Insurance Company (“Farmers”) used optimization/elasticity of demand (a method of taking into account an individual’s or class’s willingness to pay a higher premium relative to other individuals or classes) as a rating factor when setting insurance rates, and that this method violated California law. Farmers denies the allegations in the lawsuit and denies that it did anything wrong. The Court has not decided who is right. Those included in the Settlement Class have legal rights and options, such as receiving settlement benefits or excluding themselves from or objecting to the settlement.

**WHO IS INCLUDED?** Farmers’ records indicate that you are a Settlement Class Member. The Settlement Class includes all California Policy Holders of Defendants Farmers Insurance Exchange (“FIE”) and Mid-Century Insurance Company (“Mid-Century”) who: (1) had 9 or more years of tenure/persistency as a FIE and/or Mid-Century policyholder as of August 18, 2015 or who reached 9 or more years of tenure/persistency as a FIE and/or Mid-Century policyholder on or before March 31, 2017, and (2) were FIE and/or Mid-Century policyholders at any time during the period extending from August 18, 2015 through March 31, 2017.

**SETTLEMENT BENEFITS.** Farmers will pay \$15 million to a Settlement Fund to make payments or give policy credits to eligible Settlement Class Members as well as to pay Class Counsel’s attorneys’ fees, costs, notice and administration expenses, and Service Awards. The maximum estimated amounts for the deductions from the \$15 million Settlement Fund are as follows: Class Counsel’s attorneys’ fees (\$4,950,000), costs (\$275,000), notice and administration expenses (\$522,387) and Service Awards (\$15,000). After these fees and costs are deducted from the Settlement Fund, the remaining funds (approximately \$9,237,613) will be divided by the total number of Settlement Class Members (approximately 615,000) to calculate the payment amount for each Settlement Class Member. All Settlement Class Members will receive an equal payment amount (estimated at \$15.02). If the Settlement is approved, payments or policy credits will *automatically* be made to Settlement Class Members identified in Farmers’ records. If you received this notice by email or mail, you do not need to do anything to receive a payment or policy credit.

**OTHER OPTIONS.** If you do not want to be legally bound by the Settlement, you must exclude yourself by **Month Day, 2020**. If you do not timely exclude yourself, you will release any claims you have and will not be able to sue Farmers for any claim relating to the lawsuit per the Amended Settlement Agreement and Release as follows:

“As of the Effective Date, Plaintiffs and each Settlement Class Member, each on behalf of itself and on behalf of its respective heirs, assigns, beneficiaries and successors (“Releasing Parties”), shall automatically be deemed to have fully and irrevocably released and forever discharged Farmers and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, agents, insurers, members, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors and assigns of each of them (“Released Parties”), of and from any claims that were or could have been alleged based on the facts pleaded in the First Amended Complaint dated October 29,

2015 and/or any subsequent amended complaint filed in conjunction with the Court's approval of the Settlement ("Released Claims")."

If you stay in the Settlement, you may object to it by **Month Day, 2020**.

If you wish to exclude yourself from the Settlement Class, you must send a letter to the Settlement Administrator identifying:

- (1) the name and case number of this lawsuit (*Harris, et al. v. Farmers Insurance Exchange, et al. Superior Court of California, County of Los Angeles, Case No. BC 57948*);
- (2) your full name, current address, and telephone number;
- (3) a statement that you wish to exclude yourself from the Settlement Class; and
- (4) your signature.

To be effective you must submit the above information to the following address **postmarked no later than Month Day, 2020**:

Farmers PO Settlement Administrator  
P.O. Box 5053  
Portland, OR 97208-5053

This is a firm deadline for requesting exclusion from the proposed settlement. You cannot ask to be excluded on the phone, by email, or at the website.

The Court will hold a hearing on **Month Day, 2020** to consider whether to approve the Settlement and a request by Class Counsel for attorneys' fees of up to 33% of the Settlement Fund plus Class Counsel's costs and expenses, and Service Awards to the Class Representatives in the amount of \$5,000 each. You may appear at the hearing, but you are not required to attend. You may also hire your own attorney, at your own expense, to appear or speak for you at the hearing.

For more information regarding the Settlement and a copy of the Judgement (once it is available), visit the [Settlement Website](#).

# EXHIBIT 5

**If You Had a Farmers Insurance Exchange or Mid-Century Insurance Company Auto Policy in California at any time between August 18, 2015 and March 31, 2017 and had been insured by those companies for 9 or more years, You May Be Eligible for a Payment from a Class Action Settlement.**

*The Superior Court for the State of California, County of Los Angeles (“the Court”) authorized this Notice. This is not a solicitation from a lawyer. This is not a legal action against you and you are not required to take any action to receive benefits that may be approved.*

*Para una notificación en Español, visitar [www.FarmersPriceOptimizationSettlement.com](http://www.FarmersPriceOptimizationSettlement.com).*

- A \$15,000,000 settlement has been reached in a class action case known as *Harris, et al. v. Farmers Insurance Exchange, et al.*, Superior Court of California, County of Los Angeles, Case No. BC 57948 (“Action”). The Plaintiffs filed a class action complaint alleging five causes of action pertaining to the alleged use by Farmers Insurance Exchange and Mid-Century Insurance Company of price optimization/elasticity of demand (a method of taking into account an individual’s or class’s willingness to pay a higher premium relative to other individuals or classes) as a rating factor in California in violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. (“UCL”) and the California Insurance Code, and as unjust enrichment. Farmers denies Plaintiffs’ allegations and denies that it did anything wrong. The Court has not decided who is right.
- A settlement of this lawsuit (“Settlement”) has been negotiated which, if approved by the Court, may entitle you to an automatic payment. By entering into the Settlement, Farmers has not admitted the truth or validity of any of the claims against it. Your rights and options under the Settlement—and the deadlines to exercise them—are explained below.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
<b>EXCLUDE YOURSELF</b>	Get no benefits from the Settlement. This is the only option that allows you to start or remain part of any other lawsuit against Farmers about the legal claims in this case.
<b>OBJECT</b>	Write to the Court about why you do not like the Settlement.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the Settlement.
<b>DO NOTHING</b>	If you received a notice by email or in the mail about this Settlement, a policy credit or check payment will automatically be issued to you for the amount you are eligible to receive. You will give up your rights to sue Farmers about the legal claims in this case.

- These rights and options—and the deadlines to exercise them—are explained in this notice.
- The Court presiding over this case still has to decide whether to approve the Settlement. If it does, and after any appeals are resolved, benefits will be distributed to those who qualify. Please be patient as this process sometimes takes a long time.

**QUESTIONS? CALL 1-855-964-0518 OR VISIT [www.FarmersPriceOptimizationSettlement.com](http://www.FarmersPriceOptimizationSettlement.com)**



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## BASIC INFORMATION

### 1. Why is this Notice being provided?

A Court authorized this notice because you have a right to know about a proposed Settlement of this class action lawsuit and about all of your options before the Court decides whether to give “final approval” to the Settlement. This notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who may be eligible for those benefits, and how to get them.

Judge Maren Nelson of the Superior Court of California, County of Los Angeles is overseeing this class action. The Settlement resolves the case known as *Harris, et al. v. Farmers Insurance Exchange, et al.*, Case No. BC 57948.

The persons who sued are called “Plaintiffs,” and the companies sued, Farmers Insurance Exchange and Mid-Century Insurance Company, are called collectively “Farmers” or “Defendants.”

### 2. What is this lawsuit about?

In California, as in other states, drivers are required to maintain auto insurance. Auto insurance companies are not permitted to determine auto insurance premiums based on what the market will bear, but instead must determine premiums based on those rating factors that the Insurance Commissioner has approved as having a substantial relationship to the risk of loss. This case was brought as a class action complaint alleging that Farmers engaged in violations of the Unfair Competition Law – Commission of Unfair Business Act or Practice Cal. Bus. & Prof. Code § 17200 et seq., Unjust Enrichment and Violation of Cal. Ins. Code § 1861.10, and claims that Defendants improperly used price optimization/elasticity of demand (a policyholders’ or class of policyholders’ willingness to tolerate a price increase as a compared to other policyholders or other classes of policyholders) as a factor in calculating premiums in California. This notice is just a summary of the allegations. The complaint in the lawsuit is posted at [www.FarmersPriceOptimizationSettlement.com](http://www.FarmersPriceOptimizationSettlement.com) and contains all of the allegations. Farmers denies these allegations; however, in order to avoid the expense, inconvenience, and distraction of continued litigation, they have agreed to the Settlement described herein.

### 3. Why is this a class action?

In a class action, one or more people called Settlement Class Representatives (in this case Roger Harris, Duane Brown, and Brian Lindsey) sue on behalf of people who have similar claims. All of these people are a “Settlement Class” or “Settlement Class Members.” One court resolves the issues for all Settlement Class Members, except for those who timely exclude themselves from the Settlement Class.

### 4. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to settle this case to avoid the cost and risk of a trial. The proposed Settlement does not mean that any law was broken or that the Defendants did anything wrong. Defendants deny all legal claims in this case. Plaintiffs and their lawyers think that in light of litigation uncertainties and the lengthy delay that would result from a trial and possible appeal, the proposed Settlement is in the best interest of the Settlement Class Members.

## WHO IS IN THE SETTLEMENT

To see if you will be affected by the Settlement or if you can get a payment from it, you first have to determine if you are a Settlement Class Member.

### 5. How do I know if I am part of the Settlement?

If you received notice of the Settlement by email or by mail then Farmers' records show you may be a member of the Settlement Class. But even if you did not receive a notice, you may still be a member of the Settlement Class.

The Proposed "Settlement Class" is composed of:

All California Policy Holders of Defendants Farmers Insurance Exchange ("FIE") and Mid-Century Insurance Company ("Mid-Century") who: (1) had 9 or more years of tenure/persistence as a FIE and/or Mid-Century policyholder as of August 18, 2015 or who reached 9 or more years of tenure/persistence as a FIE and/or Mid-Century policyholder on or before March 31, 2017, and (2) were FIE and/or Mid-Century policyholders at any time during the period extending from August 18, 2015 through March 31, 2017.

Excluded from the Settlement Class are (a) officers, directors, and employees of any member of the Farmers Insurance Group of Companies ; (b) the judge overseeing the proposed Settlement and the judge's immediate family and (c) all Policy Holders who make a timely election to be excluded.

### 6. What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are in the Settlement Class, or have any other questions about the Settlement, visit the Settlement Website at [www.FarmersPriceOptimizationSettlement.com](http://www.FarmersPriceOptimizationSettlement.com) or call the toll free number, 1-855-964-0518. You may also write with questions to Farmers PO Settlement, P.O. Box 5053, Portland, OR 97208-5053, or send an e-mail to [info@FarmersPriceOptimizationSettlement.com](mailto:info@FarmersPriceOptimizationSettlement.com).

## THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

If the Settlement is approved and becomes final, it will provide benefits to Settlement Class Members.

### 7. What does the Settlement provide?

Farmers will pay \$15 million to a Settlement Fund to make payments or give policy credits to eligible Settlement Class Members as well as to pay Class Counsel's attorneys' fees, costs, notice and administration expenses, and Service Awards. The maximum estimated amounts for the deductions from the \$15 million Settlement Fund are as follows: Class Counsel's attorneys' fees (\$4,950,000), costs (\$275,000), notice and administration expenses (\$522,387) and Service Awards (\$15,000). After these fees and costs are deducted from the Settlement Fund, the remaining funds (approximately \$9,237,613) will be divided by the total number of Settlement Class Members (approximately 615,000) to calculate the payment amount for each Settlement Class Member. All Settlement Class Members will receive an equal payment amount (estimated at \$15.02).

Settlement Class Members who are "Renewing Current Policy Holders" will receive a credit at the time of renewal of their Policies. "Non-Renewing Current Policy Holders" and those Settlement Class Members who are no longer Policyholders will receive their Settlement Class Member Payment by paper check.

**QUESTIONS? CALL 1-855-964-0518 OR VISIT [www.FarmersPriceOptimizationSettlement.com](http://www.FarmersPriceOptimizationSettlement.com)**

“Renewing Current Policy Holder” means a Settlement Class Member who continues to have his or her Policy as of the Effective Date and who renews his or her Policy within six months after the Payment Date.

“Non-Renewing Current Policyholder” means a Settlement Class Member who continues to have his or her Policy as of the Effective Date and who declines to renew his or her Policy within six months after the Payment Date.

“Policy” means any private passenger auto insurance policy maintained by Farmers in the state of California.

“Effective Date” means the day following: (A) the entry by the Court of the Final Order and Judgment: (i) affirming certification of the Settlement Class; (ii) finding the Settlement Agreement to be fair, adequate and reasonable; (iii) finding that the Notice to the Class of the Settlement Agreement was fair, adequate and reasonable; (iv) resolving any and all objections to the fairness and reasonableness of the Settlement Agreement, if any; and (B) the expiration of the deadline for seeking appellate review of the Final Order and Judgment if no appeal is sought; or the day following the date all appellate courts with jurisdiction affirm the Final Judgment and Order with no possibility of further appellate review existing; and (C) the Insurance Commissioner’s dismissal of the Department Proceeding (without prejudice to reinstatement in the event the Settlement does not receive Final Approval and/or the Effective Date does not occur).

“Payment Date” means the date occurring after the Effective Date on which the Court orders the payment of the Settlement Class Member Payments to begin.

Details on all of the settlement benefits are in the Settlement Agreement, which is available at [www.FarmersPriceOptimizationSettlement.com](http://www.FarmersPriceOptimizationSettlement.com).

## HOW TO GET A PAYMENT

### 8. How can I get a payment?

If you received a notice by email or in the mail telling you that you are Settlement Class Member, you will receive an automatic payment or policy credit once the Settlement is approved by the Court and the Effective Date passes, provided you are eligible for a payment and you have not requested exclusion from the Settlement (*see* —“Excluding Yourself From The Settlement” below).

If you did not receive a notice by email or in the mail and believe you are a Settlement Class Member, please contact the Settlement Administrator at [www.FarmersPriceOptimizationSettlement.com](http://www.FarmersPriceOptimizationSettlement.com) or by calling 1-855-964-0518.

### 9. When will I get my payment?

Payments and policy credits will be made after the Effective Date, which comes after Court grants “final approval” to the Settlement and after any appeals are resolved (*see* “The Court’s Final Approval Hearing” below). It is uncertain when the Court will decide to approve or disapprove the proposed Settlement and whether any appeals will be filed. Please be patient.

### 10. What am I giving up to get a payment?

If the Settlement becomes final, Settlement Class Members who do not timely request exclusion from the Settlement will be releasing Farmers per the Amended Settlement Agreement and Release as follows:

**QUESTIONS? CALL 1-855-964-0518 OR VISIT [www.FarmersPriceOptimizationSettlement.com](http://www.FarmersPriceOptimizationSettlement.com)**

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

This means you will no longer be able to sue Farmers regarding any of the claims described in the Settlement Agreement.

The Settlement Agreement is available at [www.FarmersPriceOptimizationSettlement.com](http://www.FarmersPriceOptimizationSettlement.com). The Settlement Agreement provides more detail regarding the release and describes the released claims with specific descriptions in necessary, accurate legal terminology, so read it carefully. You can talk to the law firms representing the Settlement Class listed in the section “The Lawyers Representing You” for free or you can, at your own expense, talk to your own lawyer if you have any questions about the released claims or what they mean.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want to participate in this proposed Settlement and you want to keep the right to sue Farmers about the legal issues in this case, then you must take steps to opt out of the Settlement. This is called asking to be excluded from, or sometimes called “opting out” of, the Settlement Class.

### **11. If I exclude myself, can I get anything from this Settlement?**

No. If you exclude yourself, you may not apply for any benefits under the Settlement and you cannot object to the proposed Settlement. If you ask to be excluded, however, you will retain any right you have to sue or be part of a different lawsuit against the Defendants in the future. You will not be bound by anything that happens in this lawsuit.

### **12. If I do not exclude myself, can I sue later?**

No, not over the issues raised in this case.

### **13. How do I get out of the Settlement?**

If you wish to exclude yourself from the Settlement Class, you must send a letter to the Settlement Administrator identifying:

- (1) the name and case number of this lawsuit (*Harris, et al. v. Farmers Insurance Exchange, et al. Superior Court of California, County of Los Angeles, Case No. BC 57948*);
- (2) your full name, current address, and telephone number;
- (3) a statement that you wish to exclude yourself from the Settlement Class; and
- (4) your signature.

**QUESTIONS? CALL 1-855-964-0518 OR VISIT [www.FarmersPriceOptimizationSettlement.com](http://www.FarmersPriceOptimizationSettlement.com)**

To be effective you must submit the above information to the following address **postmarked no later than Month Day, 2020**:

Farmers PO Settlement Administrator  
P.O. Box 5053  
Portland, OR 97208-5053

This is a firm deadline for requesting exclusion from the proposed Settlement. You cannot ask to be excluded on the phone, by email, or at the website.

## THE LAWYERS REPRESENTING YOU

### 14. Do I have a lawyer in the case?

The Court approved the law firms of Mehri & Skalet PLLC, Tycko & Zavareei LLP and Berger Montague, P.C., as Class Counsel to represent the Settlement Class. You will not be charged separately for these lawyers. If you wish to be represented by your own lawyer in this case, you may hire one at your own expense.

### 15. How will the lawyers be paid?

Class Counsel will apply to the Court for an award of attorneys' fees of up to \$4,950,000 plus costs and expenses for investigating the facts, litigating the cases, and negotiating the Settlement. To date, Class Counsel have not received any payment for their services in conducting this Litigation on behalf of the Settlement Class Representatives and the Settlement Class, nor have Class Counsel been reimbursed for their costs and expenses to date in this case. Class Counsel will also request the Court to award a service award of \$5,000 to each of the three Settlement Class Representatives in recognition of their service to the Settlement Class. The amount of the fees, expenses and service award will be determined by the Court. Class Counsel's contact information is as follows:

CLASS COUNSEL		
MEHRI & SKALET PLLC Cyrus Mehri, Esq. Jay Angoff, Esq. 1250 Connecticut Ave. NW, Suite 300 Washington, DC 20036	TYCKO & ZAVAREEI LLP Hassan Zavareei, Esq. Andrea Gold, Esq. 1828 L Street, N.W., Suite 1000 Washington, DC 20036	BERGER MONTAGUE, P.C. Peter Kahana, Esq. Jeff Osterwise, Esq. 1818 Market Street, Suite 3600 Philadelphia, PA 19103

## OBJECTING TO THE SETTLEMENT

### 16. How do I tell the Court if I do not like the Settlement?

You can object to the Settlement if you do not like some part of it. You must state the reasons you think the Court should not approve the Settlement. To object, send a letter (as instructed below) saying that you object to the proposed Settlement. You must include:

- a. the case name and case number of this Litigation (*Harris, et al. v. Farmers Insurance Exchange, et al. Superior Court of California, County of Los Angeles, Case No. BC 57948*);

**QUESTIONS? CALL 1-855-964-0518 OR VISIT [www.FarmersPriceOptimizationSettlement.com](http://www.FarmersPriceOptimizationSettlement.com)**

- b. your full name, current address, and phone number;
- c. an explanation of the basis upon which you claim to be a Settlement Class member;
- d. all grounds for the objection;
- e. the identity of all counsel who represent you;
- f. a statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing;
- g. your signature.

Mail the objection to each of the following address so that it is postmarked no later than **Month Day, 2020**. This is a firm deadline. Objections postmarked after this date will not be recognized.

Farmers PO Settlement Administrator  
P.O. Box 5053  
Portland, OR 97208-5053

### 17. What is the difference between objecting and asking to be excluded?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you cannot object to the Settlement and you will not be eligible to apply for any benefits under the Settlement because the case no longer affects you.

## THE COURT'S FINAL APPROVAL HEARING

### 18. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at x:xx x.m. on **Month Day, 2020**, at the Superior Court of California, County of Los Angeles, \_\_\_\_\_ . At the Final Approval Hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate. The Court may also consider Class Counsel's request for attorneys' fees, costs and expenses, and Service Awards. If there are objections received by the deadline, the Court may consider them. After the Final Approval Hearing, the Court will decide whether to approve the Settlement and how much to award in attorneys' fees, costs and expenses, as well as Service Awards.

The Final Approval Hearing may be moved to a different date or time without additional notice, so it is recommended that you periodically check [www.FarmersPriceOptimizationSettlement.com](http://www.FarmersPriceOptimizationSettlement.com) or call the toll-free number for updated information.

### 19. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend the hearing at your own expense. If you send in a written objection, you do not have to come to the Final Approval Hearing to talk about it. As long as you mailed your written objection on time, the Court may consider it. You may also pay your own lawyer to attend the Final Approval Hearing, but their attendance is not necessary.

## IF YOU DO NOTHING

### 20. What happens if I do nothing?

If you are a Settlement Class Member and received a notice by email or in the mail telling you that you will receive an automatic payment or policy credit, you do not need to do anything in order to receive your payment or policy credit (provided the Court approves the Settlement). If you *did not* receive a notice by email or in the mail telling you that you will receive an automatic payment or policy credit and do nothing, you *will not* get a payment or policy credit from this Settlement. In addition, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendant about the claims in this case, ever again.

## GETTING MORE INFORMATION

### 21. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. The Settlement Agreement and a copy of the Judgement (once it is available) will be at [www.FarmersPriceOptimizationSettlement.com](http://www.FarmersPriceOptimizationSettlement.com). You also may write with questions to Farmers PO Settlement, P.O. Box 5053, Portland, OR 97208-5053, or send an e-mail to [info@FarmersPriceOptimizationSettlement.com](mailto:info@FarmersPriceOptimizationSettlement.com).



# EXHIBIT 6

## **If You Purchased Automotive Vehicle Insurance from Farmers from August 18, 2015 to March 31, 2017, You May Be Eligible for a Payment from a Class Action Settlement.**

*Para una notificación en Español, visitar [www.FarmersPriceOptimizationSettlement.com](http://www.FarmersPriceOptimizationSettlement.com).*

A \$15,000,000 settlement has been reached in a class action lawsuit alleging that Farmers Insurance Exchange and Mid-Century Insurance Company (“Farmers”) used optimization/elasticity of demand (a method of taking into account an individual’s or class’s willingness to pay a higher premium relative to other individuals or classes) as a rating factor when setting insurance rates, and that this method violated California law. Farmers denies the allegations in the lawsuit and denies that it did anything wrong. The Court has not decided who is right. Those included in the Settlement Class have legal rights and options, such as receiving settlement benefits or excluding themselves from or objecting to the settlement.

**WHO IS INCLUDED?** The Settlement Class includes all California Policy Holders of Defendants Farmers Insurance Exchange (“FIE”) and Mid-Century Insurance Company (“Mid-Century”) who: (1) had 9 or more years of tenure/persistency as a FIE and/or Mid-Century policyholder as of August 18, 2015 or who reached 9 or more years of tenure/persistency as a FIE and/or Mid-Century policyholder on or before March 31, 2017, and (2) were FIE and/or Mid-Century policyholders at any time during the period extending from August 18, 2015 through March 31, 2017.

**SETTLEMENT BENEFITS.** Farmers will pay \$15 million to a Settlement Fund to make payments or give policy credits to eligible Settlement Class Members as well as to pay Class Counsel’s attorneys’ fees, costs, notice and administration expenses, and Service Awards. The maximum estimated amounts for the deductions from the \$15 million Settlement Fund are as follows: Class Counsel’s attorneys’ fees (\$4,950,000), costs (\$275,000), notice and administration expenses (\$522,387) and Service Awards (\$15,000). After these fees and costs are deducted from the Settlement Fund, the remaining funds (approximately \$9,237,613) will be divided by the total number of Settlement Class Members (approximately 615,000) to calculate the payment amount for each Settlement Class Member. All Settlement Class Members will receive an equal payment amount (estimated at \$15.02). If the Settlement is approved, payments or policy credits will *automatically* be made to Settlement Class Members identified in Farmers’ records. If you did not receive a notice by mail or in your email and believe you should be included, visit the website or call the toll-free number below.

**OTHER OPTIONS.** If you do not want to be legally bound by the Settlement, you must exclude yourself by **Month Day, 2020**. If you do not timely exclude yourself, you will release any claims you have and will not be able to sue Farmers for any claim relating to the lawsuit. If you stay in the Settlement, you may object to it by **Month Day, 2020**. The Detailed Notice available at the website or by calling the toll-free number below includes information on how to exclude yourself or object. The Court will hold a hearing on **Month Day, 2020** to consider whether to approve the Settlement and a request by Class Counsel for attorneys’ fees of up to 33% of the Settlement Fund plus Class Counsel’s costs and expenses, and Service Awards to the Class Representatives in the amount of \$5,000 each. You may appear at the hearing, but you are not required to attend. You may also hire your own attorney, at your own expense, to appear or speak for you at the hearing.

For more information regarding the Settlement, call the toll free number or visit the Settlement Website. To obtain a copy of the Judgement (once it is available), visit the Settlement Website.

# EXHIBIT 7

## **Introduction**

The rates Farmers Insurance Exchange and Mid-Century Insurance Company (collectively “Farmers”) charge for auto insurance have always been subject to approval by the California Department of Insurance (the “CDI” or “Department”). In the last few years—long after the CDI had approved Farmers’ system of calculating rates—the Department began studying computer programs used by some insurers that enabled them to quote or charge policy holders rates that, in part, were influenced by elasticity of demand or their willingness to pay a higher price. Farmers states, and the Department has verified, that Farmers has never used a specific computer program for this purpose.

However, in determining California auto insurance premiums, Farmers has traditionally considered various characteristics of the individual driver, including the length of time the driver has been insured with Farmers. The Plaintiffs in this case have argued that in considering an insured’s tenure with Farmers in connection with rate setting, Farmers has also considered price optimization/elasticity of demand (a.k.a., any method of taking into account an individual’s or class’s willingness to pay a higher premium relative to other individuals or classes) as a rating factor in violation of California law. Farmers disagrees with Plaintiffs’ argument, denies that it engaged in price optimization or any wrongful conduct, and has only charged premiums reviewed by the CDI and approved by the Commissioner of Insurance. Nevertheless, in the interests of resolving this dispute Farmers has now filed and the California Department of Insurance has approved a new rating system that does not consider an insured’s tenure with Farmers in determining his or her premium. In addition, Farmers hereby agrees to the following:

## **Injunctive Relief**

1. Farmers will not use any form of price optimization software or program, nor in any way consider price optimization/elasticity of demand in connection with, or in the development of, California private passenger auto rates or class plans, unless and until such time as such practices are explicitly authorized under California law or by the California Department of Insurance.
2. Farmers will not initiate a challenge, in any way, to the Commissioner's 2/18/15 Notice re price optimization (“the Notice”) or the Commissioner's legal authority to regulate the use of price optimization software or the consideration of price optimization/elasticity of demand or price sensitivity in connection with, or in the development of, rates and class plans for California private passenger auto. However, if accused of price optimization or the allegedly improper consideration of price optimization/elasticity of demand, Farmers reserves the right to defend itself against any such accusation and does not waive any argument it may make in defense of such a claim, including that the Notice was unlawful or the Commissioner lacked the legal authority to regulate the use of price optimization software or the consideration of price optimization/elasticity of demand.

# EXHIBIT 8

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# EXHIBIT 9

## **Renewal Insert-Farmers Insurance Exchange**

In determining California auto insurance premiums, Farmers Insurance Exchange (“Farmers”) has traditionally considered the risk characteristics of individual drivers. In 2015, three Farmers policyholders filed a class action complaint alleging that Farmers also improperly considered a non-risk-based characteristic - the willingness of the individual policyholder to pay a higher price - in calculating premiums. Farmers disagrees with that allegation and denies that it engaged in any wrongful conduct. Nevertheless, in the interests of resolving this dispute, Farmers agreed to a settlement in the amount of \$15,000,000, including all attorneys’ fees, costs of administration, and service fees. That settlement has been approved by the Superior Court of the State of California. To reduce the costs of administering that settlement, Farmers will apply premium credits to current Farmers policyholders. Specifically, current Farmers policyholders who (1) had 9 or more years of tenure with Farmers as of August 18, 2015 or who reached 9 or more years of tenure with Farmers on or before March 31, 2017, and (2) were Farmers policyholders at any time during the period from August 18, 2015 through March 31, 2017, will each be credited \$\_\_\_\_. You are one of those policyholders. If you choose to renew your Farmers policy, Farmers will credit this amount to your renewal premium, i.e., Farmers will reduce your renewal premium by this amount. However, you need not renew your Farmers policy in order to receive the benefits of the settlement. If you choose not to renew your policy with Farmers, you will receive a paper check for the same amount ( \$ \_\_ ) from the Settlement Administrator.



## **Renewal Insert-Mid Century Insurance Company**

In determining California auto insurance premiums, Mid Century Insurance Company (“Mid Century”) has traditionally considered the risk characteristics of individual drivers. In 2015, three Mid Century policyholders filed a class action complaint alleging that Mid Century also improperly considered a non-risk-based characteristic - the willingness of the individual policyholder to pay a higher price - in calculating premiums. Mid Century disagrees with that allegation and denies that it engaged in any wrongful conduct. Nevertheless, in the interests of resolving this dispute, Mid Century agreed to a settlement in the amount of \$15,000,000, including all attorneys’ fees, costs of administration, and service fees. That settlement has been approved by the Superior Court of the State of California. To reduce the costs of administering that settlement, Mid Century will apply premium credits to current Mid Century policyholders. Specifically, current Mid Century policyholders who (1) had 9 or more years of tenure with Mid Century as of August 18, 2015 or who reached 9 or more years of tenure with Mid Century on or before March 31, 2017, and (2) were Mid Century policyholders at any time during the period from August 18, 2015 through March 31, 2017, will each be credited \$ \_\_\_. You are one of those policyholders. If you choose to renew your Mid Century policy, Mid Century will credit this amount to your renewal premium, i.e., Mid Century will reduce your renewal premium by this amount. However, you need not renew your Mid Century policy in order to receive the benefits of the settlement. If you choose not to renew your policy with Mid Century, you will receive a paper check for the same amount ( \$ \_\_\_ ) from the Settlement Administrator.