

FILED
LOS ANGELES SUPERIOR COURT

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

ROGER HARRIS, DUANE BROWN, and
BRIAN LINDSEY,

Plaintiffs,

vs.

FARMERS INSURANCE EXCHANGE and
MID CENTURY INSURANCE COMPANY,

Defendants.

Case No.: BC579498

ORDER OVERRULING OBJECTIONS,
GRANTING MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT ON CONDITION,
APPROVING ATTORNEYS' FEES , COSTS,
AND SERVICE AWARDS

Date: August 31, 2020

Time: 9:00 a.m.

Dept.: SSC-17

1 **I. BACKGROUND**

2 The background regarding this case is set out in detail in the Court’s order of
3 January 7, 2020, granting preliminary approval of a proposed settlement. Notice was
4 given to the Class Members as ordered. (See Declaration of Cameron R. Azari, filed May
5 21, 2020 (“Azari Final Decl.”)). Now before the Court is Plaintiffs’ motion for final
6 approval of the Settlement Agreement, including for payment of fees, costs, and service
7 awards to the named plaintiffs.

8 The Court has considered the moving papers and the objections to the settlement
9 by putative Class Members. For the reasons set forth below the Court overrules the
10 objections, grants final approval of the settlement on condition that the releases do not
11 take place until the settlement is fully funded, and grants the request for fees, costs, and
12 service awards.

13 **II. THE TERMS OF THE SETTLEMENT**

14 The terms of the settlement are set forth in the Preliminary Approval Order and
15 reiterated here:

16 **A. SETTLEMENT CLASS DEFINITION**

17 As proposed, “Settlement Class” means all Policy Holders of Defendants Farmers
18 Insurance Exchange (“FIE”) and Mid Century Insurance Company (“MCA”) who: (1)
19 had 9 or more years of tenure/persistency as a FIE and/or MCA policyholder as of
20 August 18, 2015 or who reached 9 or more years of tenure/persistency as a FIE and/or
21 MCA policyholder on or before March 31, 2017, and (2) were FIE and/or MCA
22 policyholders of Defendants at any time during the period extending from August 18,
23 2015 through March 31, 2017. Excluded from the Settlement Class are (a) officers,
24 directors, and employees of any member of the Farmers Insurance Group of Companies;
25 (b) the judge overseeing the proposed settlement and the judge’s immediate family and

1 (c) all Policy Holders who make a timely election to be excluded. (Settlement
2 Agreement, ¶54.)

- 3 • “Policy Holder” means each person who has an ownership interest in a
4 Policy or Policies during the Class Period. (¶42)
- 5 • “Renewing Current Policy Holder” means a Settlement Class Member who
6 continues to have his or her Policy as of the Effective Date and who renews
7 his or her Policy within six months after the Payment Date. (¶49)
- 8 • “Non-Renewing Current Policy Holder” means a Settlement Class Member
9 who continues to have his or her Policy as of the Effective Date and who
10 declines to renew his or her Policy within six months after the Payment
11 Date. (¶33)
- 12 • “Class Period” means the period from August 18, 2015, through March 31,
13 2017. (¶23)
- 14 • “Past Policy Holder” means a Settlement Class Member who no longer
15 holds his or her Policy as of the Effective Date. (¶38)
- 16 • The Parties stipulate to the certification of the Settlement Class for
17 purposes of the Settlement Agreement only. (¶59)
- 18 • There are approximately 608,917 class members. (Azari Final Decl., ¶7.)

19 **B. THE MONETARY TERMS OF SETTLEMENT**

20 The essential monetary terms are as follows:

- 21 • The Settlement Amount (“SA”) is **\$15,000,000, non-reversionary.** (¶58)
 - 22 • The Net Settlement Amount (**\$8,917,119**) is the SA less:
 - 23 ○ Up to **\$4,950,000** (33%) for attorney fees (¶91);
 - 24 ○ Up to **\$275,000** for attorney costs (¶91);
- 25

- Up to **\$15,000** for service awards to the class representatives (\$5,000 x 3) (¶90); and
- Estimated **\$842,881** for claims administration costs. (¶76)

- **Funding of the Settlement Amount:**

- Within 10 days of Preliminary Approval of the Settlement, Farmers was required to 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 was estimated to be necessary to pay for the Notice Program and administration of the Settlement by the Settlement Administrator. (¶61) Counsel for Farmers represented at the preliminary approval hearing that the balance would be advanced as necessary from the Settlement Amount to ensure timely notice.
- 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)
 - "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

1 Class of the Settlement Agreement was fair, adequate and
2 reasonable; (iv) resolving any and all objections to the fairness and
3 reasonableness of the Settlement Agreement, if any; and (B) the
4 expiration of the deadline for seeking appellate review of the Final
5 Order and Judgment if no appeal is sought; or the day following the
6 date all appellate courts with jurisdiction affirm the Final Judgment
7 and Order with no possibility of further appellate review existing;
8 and (C) the Commissioner's dismissal of the Department Proceeding
9 (without prejudice to reinstatement in the event the Settlement does
10 not receive Final Approval and/or the Effective Date does not
11 occur). (§28)

- 12 ○ In order to reduce the costs of administration of the Settlement, Farmers
13 shall retain that portion of the Settlement Amount that is allocated to
14 Settlement Class Members who are Renewing Current Policy Holders, who
15 will, beginning on the Payment Date, at its own cost and expense, directly
16 credit the Policies of those Renewing Current Policy Holder Settlement
17 Class Members at the time of renewal of their Policies. At the conclusion of
18 the renewal cycle, Farmers shall deliver to the Settlement Administrator
19 that portion of the Settlement Amount necessary to satisfy the Settlement
20 Class Member Payments due to the Non- Renewing Current Policyholders,
21 whose payments will then be delivered by the Settlement Administrator by
22 paper check. Farmers shall report to the Court as to the status of all
23 Settlement Class Member Payments made to Renewing Current Policy
24 Holders on a semi-annual basis following the Payment Date. (§63)

- 1 • The parties also agreed to affirmative contractual relief. The terms are subject to
2 specific definition but are generally as follows:
- 3 ○ Farmers will not use any form of price optimization software or program,
4 nor in any way consider price optimization/elasticity of demand in
5 connection with, or in the development of, California private passenger
6 auto rates or class plans, unless and until such time as such practices are
7 explicitly authorized under California law or by the California Department
8 of Insurance. (Exhibit 5 to Settlement Agreement, ¶1 (Exhibit 1 to Merhi
9 Decl.))
- 10 ○ Farmers will not initiate a challenge, in any way, to the Commissioner's
11 2/18/15 Notice re price optimization (“the Notice”) or the Commissioner's
12 legal authority to regulate the use of price optimization software or the
13 consideration of price optimization/elasticity of demand or price sensitivity
14 in connection with, or in the development of, rates and class plans for
15 California private passenger auto. However, if accused of price
16 optimization or the allegedly improper consideration of price
17 optimization/elasticity of demand, Farmers reserves the right to defend
18 itself against any such accusation and does not waive any argument it may
19 make in defense of such a claim, including that the Notice was unlawful, or
20 the Commissioner lacked the legal authority to regulate the use of price
21 optimization software or the consideration of price optimization/elasticity
22 of demand. (Exhibit 5 to Settlement Agreement, ¶2 (Exhibit 1 to Merhi
23 Decl. ISO Preliminary Approval.))
- 24 • “Settlement Class Member Payment” means the equal distribution that will be made
25 from the Net Settlement Amount to each Settlement Class Member (or jointly to

1 Settlement Class Members who jointly hold an ownership interest in a Policy or
2 Policies). (¶56)

- 3 ○ The Net Settlement Amount will be allocated to Settlement Class Members
4 such that each Settlement Class Member will receive an equal Settlement
5 Class Member Payment from the Net Settlement Amount, except that
6 Settlement Class Members that jointly hold an ownership interest in any
7 Policy or Policies shall receive a joint Settlement Class Member Payment.
8 (¶32)

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

1 Approval, ¶7; see also Supp. Brief ISO Preliminary Approval, pgs.
2 9-11.) .

3 • Distributions from the Settlement Amount:

- 4 ○ Unless a Renewing Current Policy Holder has contacted the Settlement
5 Administrator to request a paper check instead of a Policy credit, Farmers
6 shall credit the Policies of all Renewing Current Policy Holders their
7 Settlement Class Member Payments at the time of their next Policy
8 renewal. (¶80)
- 9 ○ Settlement Class Member Payments to Renewing Current Policy Holders
10 shall be made first by crediting a Policy for those Policy Holders at the time
11 of their next Policy renewal, or by mailing a standard size check if it is not
12 feasible or reasonable to make the payment by a credit. Farmers shall notify
13 Renewing Current Policy Holders of any such credit on the Policy
14 statement on which the credit is reflected and provide a brief explanation
15 that the credit has been made as a payment in connection with the
16 Settlement. The form and substance of this notification shall be mutually
17 agreed upon by the Parties and is attached to the Settlement as Exhibit 9.
18 Farmers will bear all costs and expenses associated with implementing the
19 Policy credits and notification discussed in this paragraph. (¶81)
- 20 ○ If the next Policy renewal date for a Policy Holder does not occur within 6
21 months of the Payment Date, the Policy Holder shall receive his or her
22 Settlement Class Member Payment via check from the Settlement
23 Administrator. Within 10 days after the Payment Date, Farmers shall
24 provide the Settlement Administrator with a list of the Settlement Class
25

1 members who do not have a Policy renewal date within 6 months of the
2 Effective Date. (§82)

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

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

13 ● **Uncashed/ Returned Checks:** The amount of the Net Settlement Amount
14 attributable to uncashed or returned checks sent by the Settlement Administrator
15 shall be held by the Settlement Administrator one year from the date that the first
16 distribution check is mailed by the Settlement Administrator. During this time the
17 Settlement Administrator shall make a reasonable effort to locate intended
18 recipients of settlement funds whose checks were returned (such as by running
19 addresses of returned checks through the Lexis/Nexis database that can be utilized
20 for such purpose) to effectuate delivery of such checks. The Settlement
21 Administrator shall make one such additional attempt to identify updated
22 addresses and re-mail or re-issue a distribution check to those for whom an
23 updated address was obtained. (§87)

24 ● **Disposition of Residual Funds:** Within 2 years after the date the Settlement
25 Administrator mails the first Settlement Class Member Payment, any remaining

1 amounts such as resulting from uncashed checks (“Residual Funds”) in the
2 Qualified Settlement Fund shall be distributed pursuant to California Code of Civil
3 Procedure 384(b). Specifically, the parties agree that, consistent with the
4 requirements of Section 384, the Court may open any judgment to direct payment
5 of any amounts remaining in the Qualified Settlement Fund, plus interest, to the
6 Center for Auto Safety, www.autosafety.org, or other court approved cy pres
7 recipient. The parties represent that neither the Parties or counsel for the Parties
8 have any interest or involvement in the governance or the work of Center for Auto
9 Safety. Class Counsel shall seek the Court’s approval of distribution to the cy pres
10 recipient. If the Court does not approve the cy pres recipient, Class Counsel with
11 input from Farmers will propose another cy pres recipient for the Court’s
12 approval. (¶88)

- 13 • **Termination of the Settlement:** This Settlement may be terminated by either Class
14 Counsel or Farmers by serving on counsel for the opposing Party and filing with
15 the Court a written notice of termination within 15 days (or such longer time as
16 may be agreed in writing between Class Counsel and Farmers) after any of the
17 following occurrences: the Department Proceeding is not dismissed by the
18 Insurance Commissioner of the California Department of Insurance following the
19 Court’s issuance of the Preliminary Approval Order and prior to the Court’s
20 issuance of the Final Approval Order (in which case notice of termination may be
21 served and filed at any time prior to issuance of the Final Approval Order);
22 provided however, that such dismissal is without prejudice to reinstatement if the
23 Settlement does not otherwise become effective. (¶94.e)
 - 24 ○ The Department Proceeding CDI-NC-2017-00003 was dismissed on July
25 30, 2020. (See Supp. Brief ISO Final Approval and Exhibit A thereto.)

1 **C. TERMS OF RELEASES**

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

14 The releases are effective upon the Effective Date (¶88); however, the settlement
15 will not begin to receive funding until 10 days after the Effective Date. (¶62). As to
16 policyholders receiving a credit, funding will be with the renewal. (¶¶ 82-85). For this
17 reason, the Court finally approves the settlement conditioned upon payment and/or the
18 credit being made in full and on time. Absent same the releases will not be effective.

19 **III. ANALYSIS OF SETTLEMENT AGREEMENT**

20 “Before final approval, the court must conduct an inquiry into the fairness of the
21 proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the
22 settlement agreement after the final approval hearing, the court must make and enter
23 judgment. The judgment must include a provision for the retention of the court's
24 jurisdiction over the parties to enforce the terms of the judgment. The court may not
25

1 enter an order dismissing the action at the same time as, or after, entry of judgment.”
2 Cal. Rules of Court, rule 3.769(h).

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

17 “The burden is on the proponent of the settlement to show that it is fair and
18 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is
19 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to
20 allow counsel and the court to act intelligently; (3) counsel is experienced in similar
21 litigation; and (4) the percentage of objectors is small.’” See *Wershba, supra*, 91
22 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
23 1802. Notwithstanding an initial presumption of fairness, “the court should not give
24 rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
25 116, 130. “Rather, to protect the interests of absent class members, the court must

1 independently and objectively analyze the evidence and circumstances before it in order
2 to determine whether the settlement is in the best interests of those whose claims will be
3 extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In
4 that determination, the court should consider factors such as “the strength of plaintiffs’
5 case, the risk, expense, complexity and likely duration of further litigation, the risk of
6 maintaining class action status through trial, the amount offered in settlement, the extent
7 of discovery completed and stage of the proceedings, the experience and views of
8 counsel, the presence of a governmental participant, and the reaction of the class
9 members to the proposed settlement.” *Id.* at 128. This “list of factors is not exclusive and
10 the court is free to engage in a balancing and weighing of factors depending on the
11 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.)

12 **A. A Presumption of Fairness Exists**

13 The Court preliminarily found in its Order of January 7, 2020, that the
14 presumption of fairness should be applied. No facts have come to the Court’s attention
15 that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a
16 presumption of fairness as set forth in the preliminary approval order.

17 **B. The Settlement Is Fair, Adequate, and Reasonable**

18 The settlement was preliminarily found to be fair, adequate and reasonable.

19 The notice process resulted in the following:

20 Number of class members: 608,917

- 21 • 248,379 records with email addresses
- 22 • 360,533 records with physical mailing addresses and no email
- 23 addresses; and
- 24 • 5 records with no email or mailing addresses

25 Number of notices sent: 608,912

1 Number of undeliverable notices: 606

2 Number of opt-outs: 83

3 Number of objections: 6

4 Number of participating class members: 608,842

5 (Azari Final Decl. ¶¶ 7-28; Supp. Brief, 1:8-11.)

6 **Objections**

7 Six objections to the Settlement were received and are attached to the Declaration
8 of Cyrus Mehri ISO Final Approval (“Mehri Decl. ISO Final”) as Exhibit 3. The Court
9 has reviewed and considered each objection, summarized as follow:

- 10 1. Kevin Brady objects on the basis that this matter was not taken to trial. Mr. Brady
11 states that the settlement “ is not based on anything legally tangible,” that
12 Defendants are not taking responsibility or admitting to liability, and should pay
13 much more than the settlement amount.
 - 14 2. Jenny Clark objects on the basis that her own rates increased significantly in
15 2015-2017 and that the settlement per class member is not enough to hold
16 Defendant accountable and should be greater.
 - 17 3. Richard Markuson objects because he does not like the outcome of the settlement;
18 believes class members are not getting enough relief; does not think counsel is
19 acting in his best interest; believes counsel is receiving too great an award; and
20 believes the class representatives are being paid too much.
 - 21 4. Gregory Roche objects stating this lawsuit will raise Farmer’s cost of doing
22 business which will be passed on to policyholders, and counsel is receiving more
23 money than each class member.
- 24
25

1 5. Keith Odell objects stating counsel is receiving too much money. Mr. Odell
2 believes that the incentive award is also for class counsel, and finds both amounts
3 in excess and unfair.

4 6. Michael England objects because he does not believe the settlement provides a
5 great enough benefit to the class, and provides for too much in attorney's fees.

6 (Exhibit 3 to Mehri Decl. ISO Final)

7 The objections may be summarized as raising three points: (1) the Settlement
8 does not confer a great enough benefit to the class; (2) the requested attorneys' fees are
9 too high; (3) the incentive awards are too high. After consideration, the Court overrules
10 the objections.

11 To the extent the objections are based on a belief that the class should recover
12 some higher amount, it should be noted that settlements "need not obtain 100 percent of
13 the damages sought in order to be fair and reasonable," and that even if the relief is
14 substantially less than what would be available after a successful outcome, "this is no bar
15 to a class settlement because 'the public interest may indeed be served by a voluntary
16 settlement in which each side gives ground in the interest of avoiding litigation.'"

17 (*Wershba, supra*, 91 Cal.App.4th at 250, *citing Air Line Stewards, etc., Loc. 550 v.*
18 *American Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109.)

19 To the extent the objections are based on a belief that the fees sought are
20 unreasonably high, it should be noted that the fees are aggregate fees paid by the class as
21 a whole. Thus, while the amount may seem high in comparison to an individual award,
22 per class member it is a modest amount (approximately \$8.20) for over five years of
23 litigation. Moreover, given the percentage sought and the length of time this matter has
24 been pending, as well as the work done, the fees are fair (*see infra*).
25

1 As to the incentive awards, at least one objector may misunderstand that they are
2 being paid to counsel rather than the named Plaintiffs.

3 The objectors had the opportunity to opt-out and seek individual redress if they
4 did not find the amounts conferred or requested fees to be fair. They did not.

5 Finally, the Court notes that out of a large class, the number of objections is
6 minimal, reflecting the class' overwhelmingly positive response.

7 The Court finds that the notice was given as directed and conforms to due process
8 requirements. Given the reactions of the Class Members to the proposed settlement and
9 for the reasons set for in the Preliminary Approval order, the settlement is found to be
10 fair, adequate, and reasonable.

11
12 **C. CLASS CERTIFICATION IS PROPER**

13 For the reasons set forth in the preliminary approval order certification of the
14 Class for purposes of settlement is appropriate.

15
16 **D. ATTORNEY FEES AND COSTS**

17 Class Counsel requests **\$4,950,000** (33 1/3%) for attorney fees and **\$233,877.81**
18 for costs. (Motion ISO Fees, 9:8-9; 16:27-28.)

19 Counsel for the Plaintiffs represent that at the outset of the case in May of 2015,
20 they entered into a co-counsel agreement. (Mehri Decl. ISO Preliminary Approval, ¶11.)
21 The Co-counsel Agreement describes the fee split as follows: First, all co-counsel shall
22 be reimbursed for their expenses including expenses for the Litigation Fund used to fund
23 prosecution of the case. (*Id.* at ¶11.a) Second, 30% of fees recovered shall be divided
24 equally among the three Co Lead Counsel, Mehri & Skalet ("M&S"), Tycko & Zavareei
25 and Berger & Montague for funding major costs in the Litigation Fund. (*Id.* at ¶11.b)

1 Third, 5% of fees shall go to M&S for the unique expertise and experience of partner Jay
2 Angoff, a former state insurance commissioner and former federal insurance regulator.
3 (*Id.* at ¶11.c) Finally, the remaining 65% are to be awarded to all Co-Counsel including
4 Schonbrun, DeSimone, Seplow, Harris and Hoffman in the proportion to each firm's
5 reasonable lodestar (i.e., reasonable hours times reasonable then current rates based on
6 the Adjusted Laffey Matrix used in courts in the District of Columbia) bears to the
7 combined lodestar of all Co-Counsel. (*Id.* at ¶11.d) Counsel represent that Plaintiffs have
8 given their written approval of Co-counsel's fee splitting agreement, as that agreement is
9 an exhibit to Plaintiffs' retainer agreements. (*Id.* at ¶12.)

10 Courts have an independent responsibility to review an attorney fee provision and
11 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*
12 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is
13 permitted in common fund cases. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,
14 503 (*Laffitte*).

15 Fees are sought pursuant to the percentage method. (Motion ISO Fees, pgs. 9-13.)
16 The \$4,950,000 fee request is 33 1/3% of the Gross Settlement Amount.

17 The \$4,950,000 fee request represents a reasonable percentage of the total funds
18 paid by Defendant. Further, the notice expressly advised class members of the fee
19 request, and only four out of over 600,000 objected. (Azari Final Decl. ¶28 and Exhibits
20 1-5 thereto.)

21 The Court declines, however, to engage in the "lodestar cross check" analysis
22 suggested by counsel. Counsel represent they have a combined total of 6,029.8 hours of
23 billable time over the course of approximately 5 years of litigation (through May 15,
24 2020), including motion practice, discovery, preparing for a contested hearing before
25 Administrative Law Judge Kristin Rosi, and lengthy settlement negotiations. Berger

1 Montague PC calculated their lodestar based on 2020 rates as set forth in the adjusted
2 “Laffey Matrix” for firms working in the Washington D.C. area. (See Osterwise Dec.
3 ¶22). The rates of Tycko & Zavareei are likewise 2020 rates based on the “Laffey
4 Matrix” for lawyers working in the Washington D.C. area. (Gold Dec. ¶34). The rates
5 for Schonbrun, Seplow Harris & Hoffman LLP are based on the 2020 adjusted Laffey
6 Matrix for Washington D.C. with an adjustment upward of 4.6%. (Harris Dec. ¶27). The
7 basis of Mehri & Skalet LLC’s claimed rates is unclear. (See Mehri Dec. ¶ 109).

8 Under California state law, the “lodestar” is calculated by multiplying the number
9 of hours reasonably expended by the reasonable hourly rate. *PLCM Group, Inc. v.*
10 *Drexler* (2000) 22 Cal.4th 1084, 1095-96 (*PLCM*). “Generally, ‘[t]he lodestar is
11 calculated using the reasonable rate for comparable legal services in *the local community*
12 for noncontingent litigation of the same type, multiplied by the reasonable number of
13 hours spent on the case.’” *Environmental Protection Information Center v. Department*
14 *of Forestry & Fire Protection* (2010) 190 Cal.App.4th 217, 248, citing *Nichols v. City of*
15 *Taft* (2007) 155 Cal.App.4th 1233, 1242-1243.

16 No counsel provide rates for Los Angeles counsel for 2015-2019, when the bulk
17 of the work in this matter was done. It appears, for example, that Mr. Harris’ rate in
18 2016 was \$760. In this matter he suggests a rate of \$940. (Harris Dec. ¶¶22-23). He
19 bases this in part on an upward adjustment based on 2007 data of federal locality pay
20 differentials based on federally compiled cost of living data. *In re Chiron Securities*
21 *Litigation* (N.D. Cal. 2007) 2007 WL 4249902, but provides no actual local rates.

22 In short, there is no reliable data from which to make a proper lodestar
23 crosscheck.
24
25

1 Nonetheless, fees in the amount of **\$4,950,000** are reasonable and appropriate
2 pursuant to *Laffitte*, particularly given the contingent nature of the work, the time this
3 matter has been pending, the experience of counsel, and the results achieved.

4 Class Counsel requests **\$233,877.81** in costs. This is less than the \$275,000 cap
5 provided in the settlement agreement (¶91). The amount was disclosed to Class
6 Members in the Notice, and no objections to costs were received. (Azari Final Decl. ¶28
7 and Exhibits 1-5 thereto.) The costs include, but are not limited to experts (\$115,469.42);
8 court costs (\$14,031.10); court reporting fees (\$14,699.38); service/postage costs
9 (\$5,885.42); printing costs (\$20,787.05), and travel expenses (\$46,906.84). (Mehri Decl.
10 ISO Final, ¶95.)

11 The costs appear to be reasonable and necessary to the litigation, are reasonable
12 in amount, and were not objected to by the class. Costs of **\$233,877.81** are approved.

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

15 A service (or incentive) fee award to a named class representative must be
16 supported by specific evidence that quantifies the time and effort expended by the
17 individual and a reasoned explanation of financial or other risks undertaken by the class
18 representative. See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th
19 785, 806-807; see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380,
20 1394-1395 [“Criteria courts may consider in determining whether to make an incentive
21 award include: (1) the risk to the class representative in commencing suit, both financial
22 and otherwise; (2) the notoriety and personal difficulties encountered by the class
23 representative; (3) the amount of time and effort spent by the class representative; (4) the
24 duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the
25 class representative as a result of the litigation. (Citations.)”]. Specific evidence is

1 needed. *Clark*, 175 Cal App. 4th at 806-807. (Award of incentives improper where there
2 was “nothing more than pro forma claims as to ‘countless’ hours expended, ‘potential
3 stigma’ and ‘potential risk.’ Significantly more specificity, in the form of quantification
4 of time and effort expended on the litigation, and in the form of reasoned explanation of
5 financial or other risks incurred by the named plaintiffs, is required in order for the trial
6 court to conclude that an enhancement was “necessary to induce [the named plaintiff] to
7 participate in the suit”)

8 The Class Representatives (Roger Harris, Duane Brown and Brian Lindsay) each
9 request an enhancement or incentive award in the amount of **\$5,000** for a total of
10 \$15,000. (Mehri Decl., ¶¶114-115.) Counsel urges that: all three Class Representatives
11 devoted significant time and effort to successfully prosecuting the case that has been
12 pending for over five years, including providing information necessary for the
13 complaints and reading and reviewing those complaints, discussing their duties with
14 Class Counsel, conferring with Class Counsel to stay informed on the litigation progress,
15 reviewing several drafts of the Settlement Agreement and discussing the same with
16 Class Counsel. (Motion ISO Fees, 18:1-11.)

17 No declarations by the Class Representatives were filed prior to hearing on this
18 matter. At hearing counsel explained this was due to clerical error. The declarations
19 were filed August 31, 2020.

20 Each named plaintiff explains that he took a risk in this matter of unwanted
21 negative attention from making public allegations against Farmers. Each remained a
22 Farmers insured for several years after initiation of the lawsuit, even though it was
23 possible that he could get a lower rate by shopping around, and even though he was
24 concerned that his participation in this case could affect the service he received from
25 Farmers. Each reports discussing the case by telephone and email with Class Counsel to

1 remain informed, including reviewing several drafts of the Settlement Agreement. Each
2 entered into the same release as Class Members. (Harris, Brown, Lindsey Dec. filed
3 August 31, 2020, ¶¶ 5-9) Class Counsel represented at hearing that although the named
4 representatives did not maintain time records each of the named plaintiffs spent
5 approximately 20 hours on this matter.

6 While the risks described by plaintiffs did not come to pass and the time
7 represented to have been spent was modest, each plaintiff volunteered to act as a class
8 representative and actively participated in this matter over a lengthy period of time.
9 Given these facts and the benefits secured for the class, service awards of \$5,000 each
10 are approved.

11 **F. SETTLEMENT ADMINISTRATION COSTS**

12 The Settlement Administrator, Epiq, requests **\$573,246** in compensation for its
13 work in administrating this case. At the time of preliminary approval, costs of
14 settlement administration were estimated at \$842,881. (¶76) Class Members were
15 provided with notice of this amount and did not object. (Azari Final Decl. ¶28 and
16 Exhibits 1-5 thereto.)

17 Accordingly, claims administration costs are approved in the amount of
18 **\$573,246.**

19 **IV. ORDER**

20 The Court hereby:

- 21 (1) Grants class certification for purposes of settlement;
- 22 (2) Grants final approval of the settlement as fair, adequate, and reasonable
23 contingent upon Defendant timely paying all settlement amounts in full.
24 Specifically, without such payment, the releases herein are null and void;
- 25 (3) Awards **\$4,950,000** in attorney fees to Class Counsel ;

- 1 (4) Awards **\$233,877.81** in litigation costs to Class Counsel;
- 2 (5) Awards **\$573,246** in claims administration costs to Epiq.;
- 3 (6) Awards **\$5,000** each to the named plaintiffs as service awards (\$15,000 total);
- 4 (7) Orders class counsel to lodge a proposed Judgment, consistent with this ruling
- 5 and containing the class definition, full release language, and a list of all persons
- 6 opting out by September **9**, 2020;
- 7 (8) Orders class counsel to provide notice to the class members pursuant to
- 8 California Rules of Court, rule 3.771(b); and
- 9 (9) Sets a Non-Appearance Case Review re: Final Report re: Distribution of
- 10 Settlement Funds for May 7, 2021 at 8:30 a.m. A Final Report is to be filed by
- 11 April 23, 2021.

12

13 Dated: 09/04/2020



14 MAREN E. NELSON

15 Judge of the Superior Court

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