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

[Additional counsel on following page]

Attorneys for Plaintiffs

THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ROGER HARRIS, DUANE BROWN, AND BRIAN LINDSEY,

Plaintiffs,

v.

FARMERS INSURANCE EXCHANGE AND MID CENTURY INSURANCE COMPANY,

Defendants.

Case No. BC579498

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

CLASS ACTION

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Date: June 17, 2020
Time: 9:00 a.m.
Department: 17

Complaint filed: April 22, 2015
Trial date: None set

Jay Angoff, Esq.
Cyrus Mehri, Esq.
MEHRI & SKALET PLLC
1250 Connecticut Ave. NW, Suite 300
Washington, DC 20036
Telephone: (202) 822-5100
Facsimile: (202) 822-4997
jay.angoff@findjustice.com
cmehri@findjustice.com

Peter Kahana, Esq.
Jeff Osterwise, Esq.
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: (215) 875-3000
Fax: (215) 875-4613
pkahana@bm.net
josterwise@bm.net

Hassan A. Zavareei, Esq. (CA Bar. No. 181547)
Andrea Gold, Esq.
TYCKO & ZAVAREEI LLP
1828 L Street NW, Suite 1000
Washington, DC 20036
Tel: (202) 973-0900
Fax: (202) 973-0950
hzavareei@tzlegal.com
agold@tzlegal.com

Class Counsel

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I. INTRODUCTION

After five years of vigorous litigation both in this Court and the California Department of Insurance ("Department"), and after months of contentious negotiations, including before a highly experienced mediator, former California Insurance Commissioner and former presiding Justice of the California Court of Appeal, Hon. Harry W. Low (Ret.), Plaintiffs Roger Harris, Duane Brown, and Brian Lindsey ("Plaintiffs" or "Class Representatives") respectfully seek final approval of the Settlement Agreement and Release ("Settlement" or "Settlement Agreement").[1] If approved, the Settlement will resolve all claims against Defendants Farmers Insurance Exchange and Mid Century Insurance Company ("Farmers") and provide substantial relief to hundreds of thousands of Californians. The terms of the Settlement—including a $15 million common fund to be distributed to the Settlement Class after payment of fees, costs, and expenses—is well within the range of reasonableness and consistent with applicable caselaw. Indeed, given the significant risks that Plaintiffs faced (both in the Department Proceeding and in this Court), the Settlement is an excellent result for the Settlement Class as it provides for: (1) $15 million in monetary relief; (2) significant injunctive relief, as Farmers has stopped using the challenged rating factor and has agreed to other prospective practice steps; (3) automatic distributions with no requirement for claim submissions; and (4) no reversion to Farmers for any funds that may remain post-distribution. Thus, Plaintiffs respectfully request that the Court (1) grant Final Approval; (2) make final the certification of the Settlement Class; (3) appoint Plaintiffs as Class Representatives who were previously appointed in the Preliminary Approval Order ("PA Order"); (4) appoint as Class Counsel Plaintiffs' counsel who were previously appointed in the PA Order; (5) deny all timely objections; and (6) enter Judgment.

II. BACKGROUND

A. Litigation and Settlement History

On April 22, 2015, Plaintiffs filed their class action complaint alleging five causes of action pertaining to Farmers' alleged use of price optimization/elasticity of demand as a rating factor, and its failure to disclose such use to Plaintiffs, California consumers, and the Department. Plaintiffs allege that

[1] Unless otherwise explicitly defined herein, all capitalized terms have the same meanings as those set forth in the Settlement Agreement. *See* Mehri Decl., Ex. 1.

such consideration of elasticity of demand violated California law and caused policyholders to pay higher prices for their automobile insurance coverage than the risk they present would justify. Plaintiffs filed a First Amended Complaint on October 29, 2015.[2] The Parties then briefed Farmer's Demurrer to the First Amended Complaint ("Demurrer"). After hearing argument by the Parties, on January 25, 2016, the Court sustained in part and denied in part Farmers' Demurrer, and stayed the case pending proceedings before the Department., which was assigned to Chief Administrative Law Judge Rosi. Plaintiffs and Consumer Watchdog ("CWD") subsequently intervened in the Department Proceeding. *See* Declaration of Cyrus Mehri in Support of Final Approval (herein, "Mehri Decl."), ¶¶ 7-10.

The Department Proceeding continued for over two years and included significant motion practice, discovery, and the exchange of proposed pre-filed direct fact and expert testimony, which comprehensively presented the Parties' positions on most of the key issues and supporting evidence. The Department Proceeding was ripe for the evidentiary hearing, set for January 7, 2019,[3] but which was stayed pending a February 19, 2019 full day mediation with Justice Low.[4] The mediation did not result in a settlement. For the next several months, the Parties continued negotiations, with the participation of Justice Low, and the evidentiary hearing was postponed—first until March 4, then until April 2, and then again until June 10. *Id.* ¶¶ 11-15.

In June 2019, the Parties agreed to the material terms of the settlement, stayed the Department Proceeding, and filed a Notice of Settlement. The Parties executed the Settlement Agreement on August 29, 2019. On August 30, 2019, Plaintiffs filed a motion seeking preliminary approval. In response to the Court's October 8, 2019 checklist, on November 20, 2019, Plaintiffs' counsel filed Supplemental Briefing. On December 12, 2019, the Court continued preliminary approval and requested further briefing. On December 20, 2019, counsel filed the Second Supplemental Declaration of Cameron R.

[2] Plaintiffs filed a Second Amended Complaint on March 5, 2020.

[3] In November 2018, Farmers filed a Petition for Writ of Administrative Mandamus related to the conduct and scope of the Department Proceeding. Farmers filed a similar petition in August of 2017, as well as a related motion for a preliminary injunction. Plaintiffs opposed, and the Court denied, Farmers' motion for a preliminary injunction. Subsequently, Farmers voluntarily dismissed its writ petition.

[4] Justice Low also attended the June 2018 meeting, noted below, during which Plaintiffs' Counsel presented a framework for settlement to Farmers' counsel.

Azari. On December 23, 2019, counsel filed a fully executed Second Amended Settlement Agreement. The Court preliminarily approved the Settlement on January 7, 2020. *Id.* ¶¶ 15-16.

The proposed Settlement was reached after substantial discovery and arm's-length negotiations between experienced counsel. Farmers produced more than 70,000 pages of documents, and Class Counsel deposed seven Farmers employees. In addition, in June 2018, Class Counsel and Plaintiffs' expert witness J. Robert Hunter, a former Texas insurance commissioner, participated in a day-long meeting with Farmers' counsel, several of Farmers' witnesses, representatives from the Department, and representatives of CWD. Through discovery and briefing of various motions, nearly every aspect of this litigation was explored including Farmers' defenses to liability and damages. *Id.* ¶¶ 11-12, 17.

Additionally, attorneys' fees and Service Awards were not discussed or negotiated until all other material settlement terms had been agreed upon, eliminating the possibility of a trade-off between compensation for the Settlement Class and compensation for Class Counsel or the Plaintiffs. *Id.* ¶ 64.

Plaintiffs were informed about the material terms of the Settlement before a memorandum of understanding was entered into and all three support it as favorable to the Settlement Class. *Id.* ¶ 15; *see also Id.* Ex. 3, Declaration of Roger Harris ¶ 9; Declaration of Duane Brown ¶ 9, Declaration of Brian Lindsey ¶ 9. The Department also participated in the mediation and subsequent negotiations. The Department carefully reviewed the Settlement Agreement and has informed Judge Rosi that it is supportive of the terms. Further, on April 14, 2020, based on and in accordance with a stipulation between the Department, Farmers, Plaintiffs and CWD, the Department moved to dismiss the Department Proceeding. The motion is currently pending before Judge Rosi. Mehri Decl. ¶ 15.

B. Summary of Settlement's Benefit to the Settlement Class

The Settlement Agreement will create a $15,000,000.00 non-reversionary common fund paid by Farmers, inclusive of the amount paid to Settlement Class Members, any and all attorneys' fees, costs and expenses awarded to Class Counsel, any Service Awards, all costs and expenses incurred by the Settlement Administrator and any *cy pres* payment, as monetary consideration for the release of Plaintiffs' and the Settlement Class' claims. Settlement Class Members do not have to file a claim in order to receive payment under the Settlement. *Id.* ¶¶ 26, 49. Farmers initially determined that the number of Settlement

Class Members was 608,917. The actual number of Settlement Class Members is 608,843 (608,917 minus 74 opt-outs).[5] *See* Declaration of Cameron Azari ("Azari Decl.") ¶¶ 7, 27. The Net Settlement Amount will provide approximately $15.15 per Settlement Class Member. The Settlement Class Member Payments will be distributed as set forth in the Court's PA Order. *See* PA Order at 5-7.

Finally, Plaintiffs achieved significant injunctive relief. Farmers will not use any form of price optimization software or program, nor in any way consider 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 Department. Farmers has also agreed that it will not initiate a challenge, in any way, to the Commissioner's legal authority to regulate the use of price optimization software or the consideration of elasticity of demand or price sensitivity in connection with, or in the development of, rates and class plans for California private passenger auto. In addition, Farmers has already removed the challenged persistency rating factor from its most recently filed class plan. Both the 608,843 Settlement Class Members as well as other California Farmers policyholders—now and in the future—can thus be assured that their willingness to pay a higher price will not affect the rate they will pay to Farmers. That is a major benefit to Settlement Class members and will remain a benefit to future Farmers policyholders. Mehri Decl. ¶¶ 19-20.

In exchange for the benefits conferred by the Settlement, all Settlement Class Members will be deemed to have released the Released Parties from claims relating to the subject matter of the Action. *See* Settlement Agreement ¶ 89.

C. Class Notice Was Provided in the Manner Directed by the Court

The Notice Program, which reached **99.9%** of Settlement Class members, was completed in accordance with the PA Order. *See* PA Order, at 20-21. Notice was provided to the Settlement Class in three different ways:

1. Email Notice, including a "click through" to the Settlement website, was sent to Settlement Class members for whom Farmers had email addresses and who had agreed to accept their Policy statements and/or information from Farmers by email (Azari Decl. ¶¶ 9-10);

[5] The Settlement Administrator, Epiq, received 82 "requests for exclusion" however, eight of these requests were submitted by individuals not included in the original Settlement Class Member data provided to Epiq by Farmers.

2. Long-Form Notice was sent to those Settlement Class members who had not agreed to accept their Policy statements and/or information from Farmers by email or for whom Farmers did not have email addresses, and was also posted on the Settlement Website (www.FarmersPriceOptimizationSettlement.com) (*Id.* ¶¶ 11-16, 23);

3. Publication Notice was published 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, Redding Record Searchlight, Las Vegas Review Journal, Facebook (California IP addresses only) and Google Display Network (California IP addresses only) (*Id.* ¶¶ 17-21).

Each facet of the Notice Program was timely and properly accomplished. The Settlement Administrator sent out Email Notice and the Long Form Notice to Settlement Class members, as applicable. 30,929 of the Email Notices were returned as undeliverable. The Settlement Administrator therefore mailed Long-Form Notice to these Settlement Class members. *Id.* ¶ 10.

The Settlement Administrator used the National Change of Address Database prior to sending the Long-Form Notice to the Settlement Class Members who did not receive Email Notice (or whose Email Notice was returned as undeliverable). 1,403 Long-Form Notices were returned as undeliverable. The Settlement Administrator performed reasonable address traces and resent Long-Form Notices to 787 of those Settlement Class Members. Only 606 Settlement Class Members (1/10 of 1% of the total Settlement Class) did not receive emailed or mailed notice as a result of the above processes. *Id.* ¶¶ 11-16. The Settlement Administrator completed all mailing and initial re-mailing of the Email Notice and Long Form Notice by February 28, 2020. *Id.* ¶ 35. Notice of final judgment will be available on the Settlement Website. *Id.* ¶ 23.

In addition, the Settlement Website, with a Long Form Notice and other important filings relating to the Settlement, was established on February 14, 2020. The website allowed Settlement Class members to obtain detailed information about the Action and the Settlement. As of May 19, 2020, the Settlement Website had 15,965 visitor sessions with 24,941 page views. *Id.* ¶¶ 23-24. The Notice Program was effective as approximately 99.9% of Settlement Class members received individual notice. *Id.* ¶ 15.

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

Settlement Class Members do not have to submit claims or take any affirmative step to receive relief under the Settlement. Rather, they will automatically receive payment of their benefit. Mehri Decl. ¶ 49. For those receiving a paper check, the Settlement Administrator will mail it to the address at which the Settlement Class Member received notice. *Id.*

III. ARGUMENT

A. Standard for Final Approval

"Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." Cal. Rules of Court, Rule 3.769(g). "[T]he court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 60 (internal quotation marks and citation omitted); *see also Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (holding that Court should "scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned") (internal quotation marks omitted).

"The burden is on the proponent of the settlement to show that it is fair and reasonable. However 'a presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.'" *Wershba*, 91 Cal.App.4th at 245 (citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794).

B. All of the Relevant Factors Favor Final Approval

1. A Presumption of Fairness is Applicable to this Settlement

As set forth in the PA Order, the Settlement is presumptively fair as it is the result of arm's-length negotiations, there has been investigation and discovery that are sufficient to permit counsel and the Court to act intelligently, and counsel are experienced in similar litigation.

a. Settlement Was Reached Through Arm's-Length Negotiation

Nothing should disturb the Court's preliminary determination that the proposed Settlement is the product of hard-fought settlement discussions and negotiations between counsel for Plaintiffs and counsel for Farmers. *See* PA Order at 14.

b. The Settlement Is the Result of Extensive Investigation

The Court correctly found that the Settlement arose out of sufficient investigation, demonstrating that it was "within the ballpark" of fair, adequate, and reasonable. *Id.* at 14-16. The Parties aggressively litigated for almost five years, and Class Counsel undertook extensive formal discovery by reviewing tens of thousands of documents produced by Farmers, deposing seven Farmers employees, and conducting informal discovery through a day-long meeting with Farmers. Through this discovery, and the extensive briefing of various motions, every aspect of this litigation was explored, including Farmers' defenses to liability and damages. Indeed, the Parties agreed to mediate just before the final evidentiary hearing in the Department Proceeding. Mehri Decl. ¶¶ 7-16.

Plaintiffs realistically could have recovered up to approximately $42 million for the Settlement Class had they prevailed at each remaining stage of this litigation. *Id.* ¶ 33; *see also* PA Order at 15-16. The Settlement thus achieves almost 36% of those damages, in addition to meaningful injunctive relief, which is an excellent result, and sufficient information for the court to determine the Settlement is fair, adequate, and reasonable. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (citing *Dunk* for the proposition that the court's ability to evaluate adequacy of the settlement was met where court was made aware of litigation risks, maximum value of claims, and actual value of settlement received by each class member).

c. Counsel for the Parties are Experienced Class Action Attorneys

All parties are represented by counsel with significant experience in class action litigation, including consumer class actions and insurance matters. Class Counsel spent many hours investigating the claims of the Plaintiffs against Farmers. Class Counsel conducted extensive research to gather information about Farmers' conduct and its impact on policyholders. Class Counsel also expended significant resources researching and developing the legal claims. In addition, Jay Angoff of Mehri & Skalet has substantial expertise in insurance matters, having served previously as Missouri's Insurance

Commissioner and New Jersey's Deputy Commissioner, as well as the first Director of the unit implementing the Affordable Care Act at the U.S. Department of Health and Human Services. Mehri Decl. ¶ 90. Such experience underscores the presumption of fairness. *See Wershba*, 91 Cal.App.4th at 245.

C. Additional Relevant Criteria Confirm that the Settlement is Fair, Adequate and Reasonable

Although there is an initial presumption of fairness, "the court should not give rubber-stamp approval." *Kullar*, 168 Cal.App.4th at 130. "Rather, to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished." *Id.* Factors relevant to that determination include "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Id.* at 128 (citing *Dunk*, 48 Cal.App.4th at 1801). "Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *Wershba*, 91 Cal.App.4th at 245.

Nevertheless, "[a] settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, even if 'the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,' this is no bar to a class settlement because 'the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.'" *Id.* at 250 (internal citations omitted). Here, because the Settlement provides immediate and substantial relief, without the risks of future litigation, it warrants final approval.

1. The Settlement Consideration is Significant, Immediately Available to the Settlement Class, and Extinguishes Substantial Litigation Risks

Settlement of Plaintiffs' and the Settlement Class' claims now assures they will receive an immediate cash benefit. The Settlement Class size is 608,843. Accordingly, the Settlement provides approximately $24.63 per Settlement Class Member, prior to deduction of any fees, costs, expenses, and

Service Awards. Assuming the Court awards the maximum for each, the Net Settlement Amount will provide approximately $15.15 per Settlement Class Member.

Conversely, if Plaintiffs continued to litigate, they likely would not see any recovery for several years and would face the significant risks of ongoing litigation. Before returning to this Court to prove their claims, Plaintiffs would have had to convince the Commissioner, through CALJ Rosi, that Farmers illegally considered policyholders' elasticity of demand when developing its insurance premiums. Plaintiffs further would have had to convince the Commissioner that Farmers was considering elasticity of demand without disclosing it to the Department. Plaintiffs would have participated in the evidentiary hearing before CALJ Rosi, likely to be conducted in at least two phases with briefing after each phase. Plaintiffs then would have to wait for a decision from CALJ Rosi, and then a decision from the Commissioner accepting or rejecting CALJ Rosi's findings. If the Commissioner found in Plaintiffs' favor, Farmers could have sought to appeal that decision. Only after the conclusion of litigation in connection with that application would Plaintiffs have returned to this Court, where this action would resume with its usual delays and risks of appeal. The Settlement avoids this substantial delay.

Moreover, notwithstanding Plaintiffs' arguments that Farmers violated the Insurance Code, *MacKay v. Superior Court* (2010) 188 Cal.App.4th 1427, and this Court's interpretation of *MacKay*, have created a substantial risk that a finding by CALJ Rosi that Farmers engaged in price optimization would not translate into any monetary recovery for Plaintiffs. Farmers has maintained throughout this litigation that *MacKay* shields it from any liability for alleged price optimization because the rates set forth in the Class Plans were approved by the Department and Farmers simply charged those approved rates to its policyholders (including Plaintiffs and the members of the Settlement Class).

MacKay held that Ins. Code, § 1860.1 "protects from prosecution under laws outside the Insurance Code only 'act[s] done, action[s] taken [and] agreement[s] made pursuant to the authority conferred by' the ratemaking chapter." *MacKay*, 188 Cal.App.4th at 1449. As the court recognized in *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 979–81, 990, because 1860.1 was enacted to immunize insurers from antitrust laws so they can act in concert to set rates, the language "pursuant to the authority conferred by this chapter" in Section 1860.1 can only refer to insurer actions taken pursuant

to the authority Section 1860.1 conferred on insurers to set rates collectively; it does not and could not refer to insurer actions taken pursuant to the authority conferred on the Commissioner to regulate rates, because the Commissioner had no such authority when Section 1860.1 was enacted.

Despite that legislative history, *MacKay* held that 1860.1 does immunize unilateral conduct from private challenge, and this Court, in *First American Title Co. Cases*, No. JCCP 4751, at 19-20 (L.A. Super. Ct. July 23, 2018), agreed with *MacKay*. Plaintiffs therefore had to weigh the strength of their case on the merits, and the likelihood of success before Judge Rosi, against the possibility of no recovery in this case while Plaintiffs spend years seeking to eliminate *MacKay* as a barrier to recovery. Finally, if Plaintiffs were able to overcome Farmers' defenses, they still would have faced obstacles to proving damages and obtaining class certification that are typical in any class action. The $15 million settlement is the product of those competing considerations, a months-long mediation process before Justice Low, and intensive and intense negotiations between the Parties.

As explained in Plaintiffs' preliminary approval briefing, Plaintiffs' realistic possibility of recovery was a maximum of $42 million. And such recovery could only be had after years of further risky litigation. The $15 million Settlement Amount is approximately 36% of the maximum possible recovery, without the risks inherent to this litigation, which is an excellent result. *See Wershba*, 91 Cal.App.4th at 250; *see also* Final Approval Order, *Djoric v. Justin Brands, Inc.*, No. BC57492 (L.A. Sup. Ct. July 31, 2018) (approving settlement where "the high range of recoverable damages [was] $125 per purchase" and monetary relief in settlement was "either $25 in cash or $50 in promotional codes"). Additionally, Plaintiffs obtained significant injunctive relief as described above in Section II.B.

Finally, the inclusion of a *cy pres* component in the Settlement is justified here. Consistent with Code Civ. Proc., § 384, the Settlement Agreement permits the Court to re-open any judgment to order a *cy pres* payment of any residual funds and interest thereon. In addition, the Parties have selected a *cy pres* recipient that meets the requirements of Section 384. Specifically, the Parties have chosen the Center for Auto Safety, an independent "non-profit consumer advocacy organization dedicated to improving vehicle safety, quality, and fuel economy." *About the Center*, The Center for Auto Safety, https://www.autosafety.org/about-cas/ (last visited May 11, 2020). No party or counsel has an interest

in or involvement with the Center for Auto Safety. *See* Mehri Decl. ¶ 30.

2. The Complexity, Expense, and Likely Duration of Continued Litigation Against Farmers Favors Final Approval

The only certain outcome of additional litigation would be the additional expenditure of time and money by the parties and the Court. Even if some Settlement Class Members might recover damages beyond those available under the Settlement, the time and expense required could be substantial. Indeed, Class Counsel already spent thousands of hours litigating this case over the past five years, incurred hundreds of thousands of dollars in costs, and, absent the Settlement, the class would face the prospect of several more years of litigation before they could receive relief, if awarded at all. *Id.* ¶¶ 18, 21-25.

3. The Experience and Views of Counsel Favor Final Approval

Plaintiffs' Counsel support the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class as a whole. The opinion of experienced counsel supporting the Settlement is entitled to considerable weight and supports final approval. *See Dunk*, 48 Cal.App.4th at 1802.

4. The Settlement Enjoys Overwhelming Class Support

As of the opt-out and objection deadline on May 6, 2020, 74 members of the Settlement Class have opted-out (0.01%) and 6 members (0.0009%) have objected (the "Objectors"). These extremely low percentages "'raise[] a strong presumption that the terms of a proposed class action settlement are favorable to the class members.'" *Martinez v. Autozone, Inc.* (Cal. App. May 14, 2007) 2007 WL 1395477 at *9 (unpublished) (quoting *Nat'l Rural Telecomm. Coop. v. DIRECTTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 529); 7-*Eleven Owners for Fair Franchising v. Southland Corp.* (2000) ("*7-Eleven*"), 85 Cal.App.4th 1135, 1152–1153 (response of absent class members was "overwhelmingly positive" where only 1.5 percent elected to opt out); *Churchill Vill., L.L.C. v. Gen. Elec.*, (9th Cir. 2004) 361 F.3d 566, 577 (affirming final approval where approximately 0.61% of class members either opted out or objected). Such a low rate is particularly striking considering that **99.9%** of the Settlement Class received direct notice.[6] The reaction of the Settlement Class strongly supports a finding that the Settlement is fair, adequate, and reasonable.

a. None of the Objections Weigh Against Final Approval

[6] Moreover, this rate establishes that the notice process was more than adequate. *See Wershba*, 91 Cal.App.4th at 251 ("The standard is whether the notice has 'a reasonable chance of reaching a substantial percentage of the class members.") (citation omitted).

The handful of *pro se* objections do not defeat the strong presumption that the Settlement is favorable and should be approved. "The settlement of a class action requires court approval to prevent fraud, collusion, or unfairness to the class." *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1117. Objectors may participate to assist in determining if there is any indication of collusion and in determining the reasonableness of the overall fee award, but, "[u]ltimately, the key consideration for the trial court is the substantive fairness of the settlement terms, as well as the reasonableness of the fee award and any evidence of collusion." *Id.* at 1123. None of the Objectors show that the Settlement is unfair as their objections are generic and fail to raise any substantive concerns with the terms of the Settlement. *See Noll v. eBay, Inc.*, (N.D. Cal. 2015) 309 F.R.D. 593, 611 ("The objectors have not satisfied this burden . . . none raises any substantive concerns about the fairness, reasonableness, or adequacy of the Settlement.").[7] Importantly, no Objector presents any evidence of collusion. Nor could they. The Settlement followed extensive investigation, discovery, litigation, and arm's-length negotiations. Further, none of the Objectors assert that Class Counsel's investigation and discovery were insufficient for them to act intelligently, or that Class Counsel is inexperienced.

Instead, the six *pro se* Objectors raise largely the same issue—that the estimated $15.09 payment is too low to compensate for the injury inflicted by Farmers and/or is too low when compared to the amount sought in attorneys' fees. *See Kevin Brady Objection* (stating that settlement should have been $1B to incentivize Farmers not to break the law); *Jenny Clark Objection* (stating that $15.09 is too low because Farmers' actions were "out and out wrong and dishonest" and because she generally believes her premium was too high for multiple years); *Richard Markuson Objection* (stating that Settlement Class members will not receive "enough relief for the injury they have suffered" and "Plaintiffs' attorneys are being paid too much"); *Gregory Roche Objection* (stating that estimated $15.09 payment is insufficient and that maximum possible attorneys' fee award is a "ridiculous amount"); *Keith ODell Objection* (stating that Class Counsel should receive less in attorneys' fees); *Michael England Objection* (objecting because "class council [sic] receive payment more than 1/3 of a million times larger than the $15 received by members

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

of the class," which Mr. England calls a "trivial payment"). *See* Mehri Decl., Ex. 3.

Indeed, the Objectors fail to meet their burden of showing that the Settlement is unreasonable because none of the Objectors even mentions the risks of the case. On the other hand, after extensive discovery, experienced Class Counsel did consider the risk and expense in having to first prove to Judge Rosi and the Commissioner that Farmers was illegally considering policyholders' elasticity of demand—before Plaintiffs could even return to this Court. Nor did the Objectors consider the real risk of a zero recovery. Despite those risks, the Settlement represents approximately 36% of the maximum value of Plaintiffs' claims. *See* PA Order at 16. Courts routinely find far smaller recoveries to be reasonable. *See, e.g.*, Final Approval Order, *Loera v. Collection Technology, Inc.*, No. BC647015 at 12 (L.A. Sup. Ct. Jan. 3. 2019) ("Class Counsel obtained a gross settlement valued at $1,350,000. This is 12% of Defendant's maximum potential exposure, which, given the uncertain outcomes, is within the 'ballpark of reasonableness'."); Final Approval Order, *Price v. Uber Technologies, Inc.*, No. BC554512 at 8 (L.A. Sup. Ct. Jan. 18, 2018) (granting final approval where "[t]he proposed $7,750,000 settlement represents approximately 15% of the low value estimate ($52 million) and .77% of the highest value ($1 billion)"); Final Approval Order, *Djoric v. Justin Brands, Inc.*, No. BC57492 at 12 (L.A. Sup. Ct. July 31, 2018) (granting final approval where each class member could receive either 20% (if cash) or 40% (if promotional code) of estimated high end of recoverable damages).

Because the Objectors fail to evaluate risk and expense, they fail to recognize that "the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation." *Kullar*, 168 Cal.App.4th at 129; *7-Eleven*, 85 Cal. App. 4th at 1153 (rejecting challenges to the amount in settlement where only 9 of 5,454 class members objected, finding the "objectors ha[d] failed to overcome" presumption that settlement was fair based on the four *Dunk* factors). As a result, none of the objections are persuasive. Objections directed at the amount of the Settlement minimize the reality that, because of the very nature of settlement as a compromise (as opposed to an award at trial), all class members will necessarily not be provided full compensation for all of their potential damages.

Similarly, the four Objectors who complain about the amount of the attorneys' fee request provide no meaningful assistance to the Court in evaluating the reasonableness of Class Counsel's fee. Those objections, which present no challenge beyond complaining about the amount requested, are addressed in Plaintiffs' concurrently filed fee petition. The other stray comments by the Objectors also do nothing to refute a finding that the Settlement is reasonable. Mr. Brady's objection to the lack of an admission of liability by Farmers is meritless. The absence of an admission of liability does not make a settlement unfair or unreasonable. Indeed, one of the key reasons that parties decide to settle is to avoid adjudication of the lawfulness of the challenged conduct. *See Rosenburg v. Int'l Bus. Machines Corp.* (N.D. Cal. Jul. 12, 2007) 2007 WL 2043855 at *3 (finding that "the absence of an admission of liability does not require disapproval of the settlement"); *All. To End Repression v. City of Chicago*, (N.D. Ill. 1982) 561 F. Supp. 537, 554 ("It would defeat an important purpose of [a class action] settlement, and therefore render settlements less attractive to the parties, if the settlement agreement were required to include admissions of wrongdoing by defendants, or if the Court itself made such findings in connection with a proposed [class action] settlement."). And Mr. England's objection appears mainly grounded in his mistaken belief that the Settlement "does little, if anything, to ensure a change in behavior by Farmers." He provides no basis for this belief and ignores that the Settlement includes significant injunctive relief that will "ensure a change in behavior by Farmers."

Next, Mr. Markuson and Mr. ODell object to the Service Awards (although Mr. ODell appears to incorrectly believe that the Service Awards will be paid to Class Counsel, not Plaintiffs). These Objectors' claim that the Class Representatives will be paid too much ignores that the Class Representatives dedicated their time and efforts to this litigation on behalf of the Settlement Class for 5 years. Although the requested Service Awards will provide meaningful and deserved relief to Plaintiffs, they only amount to 0.1% of the Settlement Amount and they are in line with other awards by this Court in similar cases. *See, e.g.*, Final Approval Order, *Branch v. PM Realty Group, LP*, No. BC575759 at 15 (L.A. Sup. Ct. Nov. 21, 2017) (awarding $10,000 and $5,000 service awards, comprising 1.5% of $1,000,000 monetary settlement); Final Approval Order, *Munyan v. Nationwide Medical, Inc.*, No. BC579015 at 18 (L.A. Sup. Ct. Oct. 12, 2017) (awarding three (3) $5,000 service awards, comprising 3.75% of $400,000

monetary settlement). Thus, the Court should conclude that the Settlement is fair, adequate and reasonable under California law and overrule the objections.

D. The Court Should Certify the Settlement Class

The Parties agreed to certification of the Settlement Class (Settlement Agreement ¶ 54), the Court conditionally certified it, and the Court should now certify it at final approval. The Settlement Class is numerous—it is ascertainable from Farmers' records and includes 608,843 Settlement Class Members. Additionally, the Community of Interest requirements are met. Class-wide issues predominate over any individual concerns, including: whether Farmers considered policyholder's elasticity of demand when setting automobile insurance premiums; whether such consideration violated California law; whether Farmers disclosed its use of elasticity of demand to Settlement Class members or the Department; and if and how Settlement Class members were damaged. The Class Representatives were subject to the same allegedly unlawful practices and they have no conflicts of interest with the Settlement Class. As discussed above, Class Counsel have significant experience in class action and insurance matters. Finally, class treatment is superior because the claims of all Settlement Class members are identical and are based on the same common core of facts, but involve a modest amount of damages; adjudicating this matter as a class action will achieve economies of time, effort, and expense, and promote uniformity of results.

IV. CONCLUSION

For the foregoing reasons, and the reasons provided in the pending application for approval of attorneys' fees, costs and Service Awards, Plaintiffs request that the Court (1) grant Final Approval of the Settlement; (2) make final the certification of the Settlement Class; (3) appoint Plaintiffs as Class Representatives who were previously appointed in the Court's PA Order; (4) appoint as Class Counsel Plaintiffs' counsel who were previously appointed in the Court's PA Order; (5) deny all timely objections; and (6) enter Judgment consistent with the terms of the Settlement Agreement.

DATED: May 21, 2020

MEHRI & SKALET PLLC

By: _____
Cyrus Mehri
Attorneys for Plaintiffs

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

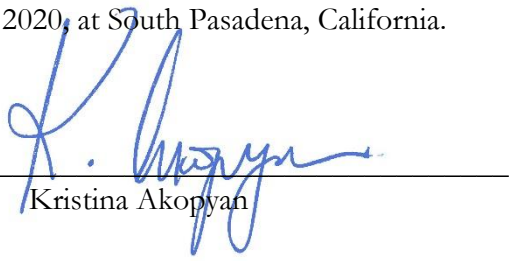
On May 21, 2020, I caused the service of the following document(s) described as:

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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

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

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



Kristina Akopyan

SERVICE LIST

Peter Kahana, Esq. pkahana@bm.net Jeff Osterwise, Esq. josterwise@bm.net **BERGER & MONTAGUE, P.C.** 1818 Market Street, Suite 3600 Philadelphia, PA 19103 Tel.: (215) 875-3000 Fax: (215) 875-4613 *Class Counsel*	James C. Castle, Esq. jcastle@mail.hinshawlaw.com **HINSHAW & CULBERTSON, LLP** 633 West Fifth Street, 47th Floor Los Angeles, CA 90071 Tel.: (213) 614-7343 Fax: (213) 614-7399 *Attorneys for Defendants* Farmers Insurance Exchange and Mid Century Insurance Co.
Hassan A. Zavareei, Esq. hzavareei@tzlegal.com Andrea Gold, Esq. agold@tzlegal.com **TYCKO & ZAVAREEI LLP** 1828 L Street, NW Washington, DC 20036 Tel.: (202) 973-0900 Fax: (202) 973-0950 *Class Counsel*	Harvey Rosenfield, Esq. harvey@consumerwatchdog.org Pamela Pressley, Esq. pam@consumerwatchdog.org **CONSUMER WATCHDOG** 6330 San Vicente Blvd, Suite 250 Los Angeles, CA 90048 Tel.: (213) 897-2000 Fax: (213) 897-5775 *Attorneys for* Consumer Watchdog
Jay Angoff, Esq. jay.angoff@findjustice.com Cyrus Mehri, Esq. Cyrus@findjustice.com **MEHRI & SKALET PLLC** 1250 Conneticut Ave. NW, Suite 300 Washington, DC 2003 Tel.: (202) 822-5100 Fax: (202) 822-4997 *Class Counsel*	Laura Robbins,Esq. laura.robbins@doj.ca.gov Andrea Schoor, Esq. andrea.schoor@doj.ca.gov **CALIFORNIA DEPARTMENT OF JUSTICE** 300 South Spring Street, Suite 1702 Los Angeles, CA 90013 Tel.: (213) 897-2000 Fax: (213) 897-5775 *Attorneys for* California Department of Insurance, Dave Jones, in his capacity as Insurance Commissioner of the State of California