

1 David Borgen (SBN 99354)
dborgen@gbdhlegal.com
2 James Kan (SBN 240749)
jkan@gbdhlegal.com
3 GOLDSTEIN, BORGEN, DARDARIAN & HO
155 Grand Avenue, Suite 900
4 Oakland, CA 94612
Tel: (510) 763-9800
5 Fax: (510) 835-1417

6 Jay Angoff (D.C. Bar 248641)
Cyrus Mehri (D.C. Bar 420970)
7 MEHRI & SKALET PLLC
2000 K Street, NW, Suite 325
8 Washington, DC 20006
Tel: (202) 822-5100

9 Attorneys for Plaintiff
10 *(Additional Counsel listed on Signature Page)*

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 ANDREA STEVENSON, individually and on
14 behalf of all others similarly situated,

15 Plaintiffs,

16 v.

17 ALLSTATE INSURANCE CO., and ALLSTATE
18 INDEMNITY CO,

19 Defendants.
20
21
22

Case No.: 4:15-cv-04788-YGR

**NOTICE OF MOTION AND
MEMORANDUM IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Judge: Hon. Yvonne Gonzalez Rogers

Date: November 14, 2023

Time: 2:00 p.m.

Place: Courtroom 1, 4th Floor,
1301 Clay
Street, Oakland, CA 94612

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Page
NOTICE OF MOTION AND MOTION	1
I. INTRODUCTION AND SUMMARY OF ARGUMENT	1
II. FACTUAL AND LEGAL BACKGROUND.....	3
III. SUMMARY OF MATERIAL SETTLEMENT TERMS.....	6
A. The Proposed Settlement Class	6
B. Benefits to the Settlement Class	7
C. Settlement Administrator and Administration Costs.....	10
D. Class Member Release	11
E. Proposed Plan of Notice	11
F. Opt-Outs and Objections	12
G. Attorneys’ Fees, Costs, and Service Awards.....	13
H. Class Action Fairness Act	13
I. Results in Comparable Cases	13
IV. LEGAL STANDARD	15
V. ARGUMENT	16
A. The Settlement Agreement warrants preliminary approval.....	16
i. Rule 23(e)(2)(B): The Settlement is the product of good-faith, informed, arms’ length negotiations.	18
ii. Rule 23(e)(2)(C): The Settlement is fair, adequate, and reasonable.	19
1. The Strengths and Risks of Plaintiff’s Case and the Complexity and Likely Duration of Further Litigation.....	19
2. The Risk of Maintaining Class Action Status	20
3. The Amount Offered in Settlement	20
iii. Rule 23(e)(2)(D): The Allocation of the Settlement	23
1. The Extent of Discovery Completed and Stage of Proceedings....	25
2. The Views of Class Counsel.....	25
3. Government Participant, Class Member Reaction, Other Cases Affected	25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

iv. Rule 23(e)(2)(A): The Class Representative and Class Counsel have adequately represented the proposed class26

v. The proposed Fee and Expense Award is fair and reasonable27

B. Certification of the Settlement Class is appropriate27

C. The Court should approve the proposed Notice Plan29

VI. CONCLUSION30

TABLE OF AUTHORITIES

Page(s)

Cases

1

2

3

4 *Adams v. Inter-Con Sec. Sys. Inc.*,
2007 WL 3225466 (N.D. Cal. Oct. 30, 2007) 18

5

6 *Avina v. Marriott Vacations Worldwide Corp.*,
2019 WL 8163642 (C.D. Cal. Oct. 25, 2019) 26

7 *Banks v. Nissan N. Am., Inc.*,
2015 WL 7710297 (N.D. Cal. Nov. 30, 2015) 17

8

9 *Bravo v. Gale Triangle, Inc.*,
2017 WL 708766 (C.D. Cal. Feb. 16, 2017) 27

10

11 *Briseño v. Henderson*,
998 F.3d 1014 (9th Cir. 2021) 19

12 *Celano v. Marriott Int’l Inc.*,
242 F.R.D. 544 (N.D. Cal. 2007) 28

13

14 *Churchill Village, L.L.C. v. General Electric*,
361 F.3d 566, 575 (9th Cir. 2004). 16

15

16 *Class Plaintiffs v. City of Seattle*,
955 F.2d 1268 (9th Cir. 1992) 15

17 *Dennis v. Kellogg Co.*,
2013 WL 6055326 (S.D. Cal. Nov. 14, 2013) 19

18

19 *Edwards v. First American Corporation*,
No. CV-07-03796 SJO, 2016 WL 9176564 (C.D. Cal., Oct. 14, 2016) 24

20

21 *Edwards v. First American Corporation*,
No. CV07-03796-SJO, 2016 WL 8943464 (C.D. Cal., June 20, 2016) 7, 24

22 *Eisen v. Carlisle and Jacquelin*,
417 U.S. 156 (1974) 29

23

24 *Ellis v. Costco Wholesale Corp.*,
657 F.3d 970 (9th Cir. 2011) 29

25

26 *Grimm v. Am. Eagle Airlines, Inc.*,
2014 WL 12746376 (C.D. Cal. Sept. 24, 2014) 20

27 *Hanlon v. Chrysler Corp.*,
150 F.3d 1011 (9th Cir. 1998) 16

28

1 *Hanon v. Dataproducts Corp.*,
 2 976 F.2d 497 (9th Cir. 1992).....28

3 *Harris, et al. v. Farmers Insurance Exchange, et al.*,
 4 Superior Court of California, Case No. BC57948..... 13, 14, 15

5 *Hendricks v. StarKist Co.*
 6 No. 13-CV-00729-HSG, 2015 WL 4498083 (N.D. Cal., July 23, 2015).....24

7 *Hillman v. Lexicon Consulting, Inc.*,
 8 2017 WL 10433869 (C.D. Cal. April 27, 2019).....26

9 *In re Apple Inc. Device Performance Litig.*,
 10 50 F.4th 769 (9th Cir. 2022).....27

11 *In re Beef Indus. Antitrust Litig.*,
 12 607 F.2d 167 (5th Cir. 1979)..... 17

13 *In re Bluetooth Headset Prod. Liab. Litig.*,
 14 654 F.3d 935 (9th Cir. 2011)..... 17, 19

15 *In re Hyundai & Kia Fuel Econ. Litig.*,
 16 926 F.3d 539 (9th Cir. 2019)..... 18

17 *In re Facebook Biometric Info. Privacy Litig.*,
 18 522 F.Supp.3d 617 (N.D. Cal. 2021).....24

19 *In re Lithium Ion Batteries Antitrust Litig.*,
 20 No. 13-MD-02420 YGR (DMR), 2020 WL 7264559 (N.D. Cal. Dec. 10, 2020),
 21 *aff'd*, No. 21-15120, 2022 WL 16959377 (9th Cir. Nov. 16, 2022)..... 19

22 *In the Matter of the Rating Practices of Allstate Insurance Company and Allstate*
 23 *Indemnity Company*
 24 (CDI File No. NC-2018-00001)2

25 *In re Pac. Enters. Sec. Litig.*,
 26 47 F.3d 373 (9th Cir. 1995)..... 16

27 *Kimber Baldwin Designs, LLC v. Silv Communications, Inc.*,
 28 No. 1:16-CV-448, 2017 WL 5247538 (S.D. Ohio, Nov. 13, 2017).....24

Lane v. Facebook, Inc.,
 696 F.3d 811 (9th Cir. 2012).....30

MacKay v. Superior Court,
 188 Cal. App. 4th 1427 (2010).....9, 22

McCabe v. Six Continents Hotels, Inc.,
 No. 12-CV-04818 NC, 2016 WL 491332 (N.D. Cal. Feb. 8, 2016)24

1 *McCabe v. Six Continents Hotels, Inc.*
 No. 12-CV04818 NC, 2015 WL 3990915 (N.D. Cal., June 30, 2015) 24

2

3 *Moreno v. Cap. Bldg. Maint. & Cleaning Servs., Inc.*,
 2021 WL 1788447 (N.D. Cal. May 5, 2021)..... 26

4

5 *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.*,
 221 F.R.D. 523 (C.D. Cal. 2004)..... 25

6 *Norton v. LVNV Funding, LLC*,
 2021 WL 3129568 (N.D. Cal. July 23, 2021) 26

7

8 *O’Connor v. Uber Techs., Inc.*,
 No. 13-CV-03826-EMC, 2019 WL 1437101 (N.D. Cal. Mar. 29, 2019) 16

9

10 *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*,
 688 F.2d 615 (9th Cir. 1982) 16

11 *Phillips Petroleum Co. v. Shutts*,
 472 U.S. 797 (1985) 29

12

13 *Sarabri v. Weltman, Weinberg & Reis Co., L.P.A.*,
 2012 WL 3809123 (S.D. Cal. Sept. 4, 2012) 30

14 *Tryfonas, et. al v. The Allstate Corp., et al.*,
 Cir. Ct. Madison County, Illinois, No. 2016-L-000880 15

15

16 *Trzeciak v. Allstate Prop. & Cas. Ins. Co.*,
 569 F. Supp. 3d 640 (E.D. Mich. 2021) 15

17

18 *Trzeciak v. Allstate Prop. & Cas. Ins. Co.*,
 No. 21-10737 (E.D. Mich. 2021) 15

19 *Tyson Foods, Inc. v. Bouaphakeo*,
 136 S. Ct. 1036 (2016) 29

20

21 *Van Bronkhorst v. Safeco Corp.*,
 529 F.2d 943 (9th Cir. 1976) 16

22

23 *Vizcaino v. Microsoft Corp.*,
 290 F.3d 1043 (9th Cir. 2002) 27

24 *Wal-Mart Stores, Inc. v. Dukes*,
 564 U.S. 338 (2011) 28

25

26 *Wolin v. Jaguar Land Rover N. Am.*,
 LLC, 617 F.3d 1168 (9th Cir. 2010) 29

27

28

1 **Federal Statutes**

2 28 U.S.C.

3 § 1711 13

4 § 1712 13

5 § 1714 13

6 § 1715 13

7 Class Action Fairness Act 2, 11, 13

8 **State Statutes**

9 Cal. Code Civ. Proc. § 1094.5 9

10 Cal. Code Regs. Title 10, § 2632.11 3

11 California Insurance Code

12 § 1860.1 17, 22

13 § 1861.10(a) 2

14 **Rules**

15 Fed. R. Civ. P.

16 23 1, 16, 29

17 23(a) 28

18 23(a)(3) 28

19 23(a)(4) 28

20 23 (b)(3) 28

21 23(b)(3) 29

22 23(b)(3) 29

23 23(c)(2)(B) 29

24 23(e) 16, 30

25 23(e)(1)(B)(ii) 27

26 23(e)(2)(C)(ii) 23

27 23(e)(2)(c)(iii) 27

28 Rule

29 23(a) 28

30 23(b)(3) 29

31 23(e)(2) 16

32 23(e)(2)(A) 26

33 23(e)(2)(B) 18

34 23(e)(2)(C) 19

35 23(e)(2)(D) 23, 24

36 **Other Authorities**

37 Center for Auto Safety, <https://www.autosafety.org/> 9

38

1 **NOTICE OF MOTION AND MOTION**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: PLEASE TAKE**

3 **NOTICE THAT** on November 14, 2023 at 2:00 p.m., or as soon thereafter that the matter may be
 4 heard, in the Courtroom of the Honorable Yvonne Gonzalez Rogers, of the United States District Court
 5 for the Northern District of California, located in Courtroom 1 on the 4th Floor, 1301 Clay Street,
 6 Oakland, CA 94612, Oakland Courthouse, Plaintiff Andrea Stevenson (“Plaintiff”) will and hereby
 7 does move, pursuant to Federal Rule of Civil Procedure 23, this Court for an Order (1) preliminarily
 8 approving the Proposed Settlement settling her claims, both on behalf of herself and on behalf of a
 9 Settlement Class of similarly situated individuals; (2) certifying the Settlement Class for settlement
 10 purposes only; (3) directing notice to the Settlement Class; (4) appointing Plaintiff’s counsel as Class
 11 Counsel and Plaintiff as Class Representative; and (5) scheduling a final approval hearing. As
 12 discussed more fully in the attached Memorandum of Points and Authorities, the Parties have
 13 negotiated a Settlement that provides substantial compensation to consumers who allegedly overpaid
 14 for auto insurance due to Defendants’ alleged use of price optimization/elasticity of demand as a rating
 15 factor when determining auto insurance premiums for certain policyholders in California. The
 16 proposed notice program, which was negotiated and agreed to by the Parties, includes both email
 17 notice, postcard, and long-form notice, and thereby provides the best notice practicable under the
 18 circumstances, as required by Federal Rule of Civil Procedure 23. Thus, in this Motion, which is
 19 unopposed by Defendants Allstate Insurance Co. and Allstate Indemnity Co., Plaintiff respectfully
 20 requests that the Court grant preliminary approval of the Proposed Settlement, direct notice to the
 21 proposed Settlement Class, and schedule a final approval hearing.

22 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

23 On February 18, 2015, the California Department of Insurance (“CDI” or the “Department”)
 24 issued a notice forbidding insurance companies from using price optimization in their rating plans for
 25 private passenger auto insurance (the “Notice”). The Notice defines price optimization as “any method
 26 of taking into account an individual’s or class’s willingness to pay a higher premium relative to other
 27 individuals or classes.”

1 Plaintiff Andrea Stevenson originally filed this proposed class action on August 21, 2015, in the Superior
2 Court of the State of California, against Allstate Insurance Co. and Allstate Indemnity Co. (together
3 “Allstate” or “Defendants”), asserting six causes of action based on Allstate’s alleged use of price
4 optimization in determining auto insurance premiums for customers in California.

5 After Allstate removed the case to the U.S. District Court for the Northern District of California
6 pursuant to the Class Action Fairness Act, this Court, on March 17, 2016, dismissed Plaintiff’s claim
7 under Section 1861.10(a) of the California Insurance Code and stayed the five remaining claims
8 pursuant to the primary jurisdiction doctrine, pending action by the Insurance Commissioner of the
9 State of California (the “Commissioner”), concerning “whether Plaintiff in fact challenges approved
10 rates within the CDI’s exclusive jurisdiction.” Dkt No. 43 at 12.

11 Following an initial inquiry by the Department, on April 27, 2018 the Commissioner issued a
12 Notice of Hearing for the purpose of determining “(1) whether Allstate has violated California
13 insurance law by using illegal price optimization; (2) how Allstate implemented any such illegal price
14 optimization in its rate and/or class plan; and (3) how any such illegal price optimization impacted
15 Allstate’s policyholders.” *In the Matter of the Rating Practices of Allstate Insurance Company and*
16 *Allstate Indemnity Company* (CDI File No. NC-2018-00001) (hereinafter referred to as the
17 “Department Proceeding”). Plaintiff successfully moved to participate in the Department Proceeding
18 as an intervenor.

19 Vigorous litigation and discovery ensued in the Department Proceeding and spanned several
20 years. In late November 2022, just days before the evidentiary hearing in the Department Proceeding
21 was set to commence, Plaintiff and Allstate reached an agreement in principle to resolve the claims
22 raised in this Action. That agreement, and the resulting Settlement¹ which is attached as Exhibit 1 to
23 the Joint Declaration of Proposed Class Counsel (“Counsel Decl.”), was reached only after extensive
24 litigation and arm’s-length negotiations before Sanford Kingsley, an experienced mediator and former
25 California insurance litigator.²

26 _____
27 ¹ Unless otherwise specifically defined herein, all capitalized terms have the same meanings as those
28 set forth in the Parties’ Settlement Agreement, attached as Exhibit 1.

² A detailed discussion of the procedural history of this litigation is set forth in paragraphs 3 – 20 of

1 The Settlement provides for a total fund of \$25,000,000 and additional non-monetary relief.
 2 The Settlement is fair, reasonable, and adequate, and provides meaningful relief to the proposed
 3 Settlement Class, while balancing the risks and delays of continued, protracted litigation in the
 4 Department Proceeding and this action, including an evidentiary hearing before the California
 5 Insurance Commissioner, potential appeal of the finding in the evidentiary hearing before the
 6 California Insurance Commissioner, potential writ of mandamus litigation regarding the powers of the
 7 California Insurance Commissioner, additional briefing in this Court regarding the impact of the
 8 Commissioner’s decision on Plaintiff’s claims in this Court, class certification briefing, expert reports
 9 and discovery, dispositive motion briefing, trial, and the potential for no recovery to Plaintiff at all.
 10 Based on an informed evaluation of the facts and governing legal principles, Plaintiff respectfully
 11 requests that the Court preliminarily approve the Settlement.

12 II. FACTUAL AND LEGAL BACKGROUND

13 California auto insurers are required to calculate their rates in accordance with a class plan filed
 14 with and approved by the Department. Cal. Code Regs. tit. 10, § 2632.11. Section 2632.3(a) defines a
 15 class plan as “the schedule of rating factors and discounts, and their order and manner of analysis as
 16 required by Section 2632.7, in the development of rates and premiums charged for a policy of
 17 automobile insurance.”

18 Rating factors are the rating characteristics that an insurer uses—such as driving record,
 19 mileage driven, and years licensed—to determine premiums. *Id.* at § 2632.5. California law identifies
 20 three mandatory rating factors that an insurer must use and fifteen optional rating factors that an
 21 insurer may use in a rating plan. Based on the insurer’s loss data, the insurer calculates a number,
 22 called a relativity, for each gradation or category of each rating factor that reflects the risk presented by
 23 that gradation or category. The process for calculating a relativity includes producing an “indicated
 24 relativity” which is a rating relativity based on an estimate of loss costs and expenses that an insured
 25 may experience based on the insurance policies written. The relativity for a category exceeds 1.00 if
 26 the risk presented by policyholders in that category is greater than average; the relativity is lower than
 27 _____

28 the Joint Declaration of Plaintiff’s Counsel.

1 1.00 if the risk presented by such policyholders is less than average. Individual premiums are
 2 determined by multiplying the base rate, which is the same for all policyholders, by the relativity for
 3 the category the insured fits into of each rating factor.

4 Private passenger auto insurance ratemaking is highly regulated in California. California
 5 ratemaking law is unique in that it requires an insurer to perform a mandatory analysis for each rating
 6 factor in a particular order, called a sequential analysis, to determine the relativity for each gradation or
 7 category of each rating factor. *Id.* at § 2632.7. This process begins with calculating indicated
 8 relativities for an individual rating factor. The insurer then selects relativities for all categories within
 9 that rating factor using its actuarial judgment. California ratemaking law requires that selected
 10 relativities for a rating factor must be balanced to a weighted average of 1.0 for multiplicative factors.³

11 California ratemaking law also mandates that the rating factors have certain weights, meaning
 12 that the rating factors must have certain levels of importance in calculating a policyholder's overall
 13 rate. *Id.* at § 2632.8. Under the California ratemaking law, the weights of the factors must align in
 14 decreasing order of importance as follows: driving safety record must have the most weight followed
 15 by annual miles driven followed by years of driving experience followed by the weight for the optional
 16 rating factors. To achieve compliance with the weighting requirements of the California ratemaking
 17 law, an insurer may use a process referred to as “pumping and tempering” the rating factor relativities
 18 using formulas provided by the Department. This process provides a proscribed formula to adjust
 19 rating factor relativities for compliance with the weighting requirements.⁴

20 Under section 2632.7(a), the relativities derived from the sequential analysis process are used
 21 to calculate individual premiums. An insurer must file a class plan with the Department for review.
 22 An insurer may only calculate premiums in accordance with a class plan that is filed with and
 23

24 _____
 25 ³ As a result of the balancing requirements, alterations in the relativities results in no change to the
 26 overall rate level. In other words, a class plan filing is rate neutral. Accordingly, if certain rating
 factors relativity selections result in higher rates for some classes of insureds, other classes of insureds
 necessarily receive lower rates.

27 ⁴ As a result of the weighting requirements, insurers may need to use pumping and tempering for
 28 certain rating factors and/or classifications within a rating factor in order to comply with the California
 ratemaking law. This necessarily results in adjustments to other rating factors given the sequential
 structure of the proscribed analysis.

1 approved by the Department and may not calculate premiums in any other manner unless and until and
2 new class plan is filed with and approved by the Department.

3 In the class plan Allstate filed in 2011, however, which became effective July 13, 2012
4 following approval by the Department, and which except for the elimination of gender as a rating
5 factor is still in effect today, Plaintiff alleges that Allstate did not use relativities derived from its
6 sequential analysis to determine premiums for policyholders with certain characteristics. Rather,
7 according to Plaintiff's claim, Allstate used relativities that exceeded both the relativity based on the
8 loss data in the sequential analysis—i.e., the indicated relativity—and also exceeded the relativity
9 Allstate used in its prior class plan, which Allstate refers to in its 2011 class plan as the current
10 relativity. Plaintiff's theory of liability is that such relativity selections were improper and based, at
11 least in part, on consideration of elasticity of demand. Allstate disputes Plaintiff's theory and the
12 allegation that it did not use the rating factor relativities derived from its sequential analysis. Allstate
13 maintains that it selected rating factor relativities consistent with its sequential analysis including the
14 mandated pumping and tempering procedure, and did not in any way consider elasticity of demand.

15 The policyholders for whom Plaintiff alleges Allstate used relativities that exceed indicated and
16 current relativities are drivers who have certain types of policies in addition to an auto policy, and
17 those licensed for 29 or more years who have comprehensive coverage, and/or have been licensed for
18 34 or more years and have collision coverage. As a result of Allstate's use of relativities that exceeded
19 both indicated and current in calculating premiums for those policyholders, Plaintiff alleges that
20 Allstate charged those policyholders more than it would have charged them based on the risk they
21 presented. Those policyholders are the members of the Settlement Class.

22 Allstate denies Plaintiff's allegations. Allstate, relying on its underlying workpapers, contends
23 that the selection of relativities complied with California law and resulted from the application of the
24 proscribed sequential analysis, including the required pumping and tempering, carried out for each
25 rating factor. Allstate asserts that it never used a retention model or any information regarding
26 elasticity of demand in any way in selecting rating factor relativities in its class plan. In addition,
27 Allstate asserts that it did not have information regarding and did not take into account the willingness
28 of any California policyholder or class of policyholders to pay a higher premium in its selection of

1 rating factor relativities. Allstate did not use the alleged “Earnix” method of setting prices, or any
 2 other mechanized pricing methodology including the Broaden the Target program, Complementary
 3 Group Rating program, or Table Assignment Number rating program. Allstate maintains that its rating
 4 factor relativity selections were a product of legitimate actuarial considerations that strictly complied
 5 with the proscribed sequential analysis process and considered the balancing and weighting
 6 requirements as required by California law. Allstate maintains that it charged all policyholders its filed
 7 and approved rates.

8 **III. SUMMARY OF MATERIAL SETTLEMENT TERMS**

9 **A. The Proposed Settlement Class**

10 The Settlement Agreement (“SA”) seeks certification of the following Settlement Class:

11 [A]ll current and former Allstate California auto insurance Primary Policy Holders whose
 12 total premiums were calculated, at any time on or after July 1, 2016, based on Allstate’s
 13 selection of a rating factor relativity exceeding both the Current and Indicated rating
 14 factor relativities for certain coverages in connection with the Years Licensed and/or
 15 Multipolicy rating factors. Specifically, those Primary Policy Holders include (a) any
 16 Primary Policy Holder whose premiums were determined based on licensure for 29 or
 17 more years and had Comprehensive coverage, (b) any Primary Policy Holder whose
 18 premiums were determined based on licensure of 34 or more years and had Collision
 19 coverage, and (c) any Primary Policy Holder who in addition to their auto policy had a
 20 condo, life, and/or mobile home policy and did not have a renters policy.

21 SA ¶ 58. Primary Policy Holder is defined in the Settlement Agreement to include the first
 22 named insured on any private passenger auto insurance policy issued by Allstate in the state of
 23 California during the period July 1, 2016, through September 30, 2022. SA ¶¶ 29, 47. The parties
 24 estimate that the Settlement Class consists of approximately 1,293,698 Primary Policy Holders.
 25 Counsel Decl. 49.

26 The definition of the class in the operative complaint is “[a]ll Allstate customers in the state of
 27 California who, within the applicable statute of limitations preceding the filing of this action to the date
 28 of class certification, purchased automotive vehicle insurance, were subject to Allstate’s practice of
 using elasticity of demand as a rating factor, and were charged or paid a higher premium than the risk-
 based premium.” The Settlement Class differs from the class set out in the operative complaint in two
 ways. Guideline 1(a).

1 *First*, the Settlement Class definition is based on factual developments during many months of
2 fact and expert discovery taken in connection with the proceedings before the Department of
3 Insurance, wherein Plaintiff identified the specific categories of policyholders who were allegedly
4 harmed by Allstate’s price optimization strategies. Counsel Decl. ¶¶ 34-35. In particular, Class
5 Counsel learned through extensive discovery that, based on Plaintiff’s theory of liability, Allstate’s
6 alleged price optimization strategies allegedly impacted rates for the policyholders in categories (a)-(c)
7 of the above Settlement Class definition.

8 *Second*, the Settlement Class is limited *to* qualifying policyholders whose premiums were
9 calculated on or after July 1, 2016. Notably, the Department published a notice on February 18, 2015,
10 prohibiting the use of price optimization and requiring insurers using price optimization to file new
11 class plans eliminating factors based on price optimization within six months, i.e., by August 18, 2015.
12 Dkt. No. 29. By not filing and obtaining the Department’s approval of such a new class plan, Plaintiff
13 contends that Allstate was charging unapproved rates beginning approximately 16 months after the
14 date of the Bulletin. That 16 months is the total of the six months the Department gave insurers to file
15 new class plan, plus 10 months, which is the time it took for the Department to approve Allstate’s 2011
16 class plan. The start date of July 1, 2016 in the Settlement Class definition approximates the earliest
17 date on which Plaintiff alleges Allstate could have implemented a class plan which did not include
18 price optimization. *Id.* ¶ 38.

19 **B. Benefits to the Settlement Class**

20 The Settlement Agreement obliges Allstate to pay a Settlement Amount of \$25,000,000,
21 inclusive of all payments to be made to the Settlement Class, any attorneys’ fees, costs and Service
22 Award ordered by the Court, any costs to be paid to the Settlement Administrator, the costs of
23 providing notice to the Settlement Class, and any *cy pres* payment required to be made under the
24 Settlement Agreement. SA ¶ 61; Guideline 1(c).

25 After payment of costs of administration and notice and any fees, expenses, and Service Award
26 authorized by the Court, the Net Settlement Amount will be equally distributed among all Settlement
27 Class Members. SA ¶ 36; Guideline 1(e).

1 Further, the Settlement Agreement provides meaningful additional non-monetary relief on
2 behalf of the Settlement Class:

- 3 • It requires Allstate to file a new class plan that does not consider an individual's or class's
4 willingness to pay a higher premium. On February 2, 2023, Allstate filed such a class plan with
5 the Department. With non-material exceptions, it does not use rating factor relativities for
6 either the multipolicy rating factor or the years-licensed rating factor that exceed both indicated
7 and current. Plaintiff asserts that Allstate's selection of rating factor relativities that do not
8 exceed current and indicated for the years licensed and multipolicy rating factors, all else equal,
9 will result in premiums for those rating factor relativities that Plaintiff estimates are, on an
10 annual basis in total, millions of dollars less with respect to those rating factor relativities.
11 Counsel Decl. ¶ 40. Allstate disagrees with this assertion and that its prior rating plan
12 considered an individual's or class's willingness to pay a higher premium.
- 13 • Allstate has also agreed to explain in writing the basis of any relativity selections it makes that
14 exceed the indicated relativity by more than 5% in any class plan it files over the next ten years.
15 The Department thereby will have the opportunity to make its own decision as to the validity of
16 Allstate's explanation, and the public will be able to see Allstate's justification for its
17 selections. Allstate has provided such an explanation with the filing memorandum
18 accompanying the class plan filed on February 3, 2023, which is presently pending review and
19 approval by the Department.
- 20 • The Settlement Agreement also prohibits Allstate from in any way considering an individual's
21 or class's willingness to pay a higher premium in setting its rates.

22 SA ¶¶ 72-73. The non-monetary relief contemplated under the Settlement Agreement has
23 substantial value, providing security to Settlement Class Members and California private passenger
24 auto policyholders generally going forward, and substantially constraining Allstate's ability to
25 implement any price optimization measures in the future. Guideline 1(c).

26 If any amount remains from the Net Settlement Amount after the Settlement Administrator has
27 made a reasonable effort to locate intended recipients of settlement funds whose checks were returned,
28 this amount will be distributed to the Center for Auto Safety, the *cy pres* recipient selected by the

1 Parties. SA ¶ 100. As will be detailed in a declaration Class Counsel will submit prior to the final
2 approval hearing, the Center for Auto Safety⁵ is a known advocate for auto insurance consumers, and
3 its interests are aligned with those of the Settlement Class Members. The Center for Auto Safety is
4 independent from the Parties, their Counsel, and the Court. Guideline 8.

5 The \$25,000,000 Settlement Amount combined with meaningful non-monetary relief is a fair
6 and reasonable relief for the Settlement Class in light of Allstate's numerous defenses and the
7 challenging and unpredictable path of litigation Plaintiff would have faced absent a settlement. In
8 particular, if Plaintiff continued to litigate, she likely would not see any recovery for several years and
9 would face the following risks:

10 1. After an evidentiary hearing, the CALJ could find that Allstate has not engaged in price
11 optimization or that any such alleged price optimization did not impact policyholders.

12 2. Even if the CALJ found that Allstate engaged in price optimization that impacted
13 policyholders, the Commissioner could nevertheless reject that finding.

14 3. While Plaintiff believes the Commissioner's findings pursuant to the Court's primary
15 jurisdiction referral are not appealable—since an appeal of that finding would defeat the purpose of a
16 primary jurisdiction referral—Allstate disputes Plaintiff's position and believes that it has a right to
17 judicial review pursuant to Cal. Code Civ. Proc. § 1094.5. Allstate also asserts that it has the right to
18 challenge the hearing procedures via an action for a writ for administrative mandamus. Allstate
19 believes that a stay of this action would be required pending any appeal.

20 4. Were the Commissioner to find that Allstate has price optimized, and were this Court to
21 adopt that finding, Allstate could still seek to have the remaining claims in this case dismissed based
22 on *MacKay v. Superior Court*, 188 Cal. App. 4th 1427 (2010).

23 5. Plaintiff could also have faced obstacles to proving damages and obtaining class
24 certification that are typical in any class action.

25 6. Plaintiff further would have to survive summary judgment.
26
27

28 ⁵ Center for Auto Safety, <https://www.autosafety.org/> (last visited Sep. 15, 2023).

1 7. Allstate could appeal an adverse result in this Court to the Ninth Circuit Court of
2 Appeals.

3 The Settlement Agreement avoids all of these risks.

4 **C. Settlement Administrator and Administration Costs**

5 The proposed Administrator is Kroll Settlement Administration LLC (“Kroll”), a highly
6 regarded class action administration firm. Decl. of Scott M. Fenwick of Kroll Settlement
7 Administration (“Admin Decl.”) ¶ 2. To select an Administrator, Class Counsel reviewed bids from
8 three prominent settlement administrators. Each of these administrators submitted proposals
9 containing similar methods of notice and proposed payments to the class at similar costs. Ultimately,
10 Kroll’s proposal was the most cost effective in light of the Administrator’s comprehensive proposed
11 notice program and administration plan. Counsel Decl. ¶¶ 52-54; Admin Decl. ¶ 3. The proposals are
12 described in further detail in the Administrator’s Declaration. Admin Decl. ¶¶ 5-21. Tycko &
13 Zavareei has worked with Kroll four times in the past two years; Berger Montague has worked with
14 Kroll four times in the past two years; and Mehri & Skalet has not worked with Kroll in the past two
15 years. *Id.* ¶ 55; Guideline 2(a).

16 The Settlement Agreement provides that, within 14 days of Preliminary Approval of the
17 Settlement, Allstate will deliver to the Settlement Administrator \$1,100,000 from the Settlement
18 Amount, which is an estimate of the amount needed to pay for the Notice Program and administration
19 of the Settlement Administrator. SA ¶ 69. While the Settlement Administrator may ultimately require
20 more than this \$1,100,000 estimate, the Settlement Administrator has agreed to cap Settlement
21 Administration Costs at \$1,057,030. SA ¶ 87; Admin Decl. ¶ 24; Guideline 2(a).

22 Assuming 1,293,698 Settlement Class members, which is the estimated size of the Settlement
23 Class based on Allstate’s review of its records, the Administrator estimates that the costs of notice and
24 administration will be approximately \$1,050,000 which is consistent with the costs estimated by the
25 other settlement administration proposals that Class Counsel reviewed, and consistent with amounts
26 charged by other settlement administrators for similar notice and payment methods. Counsel Decl. ¶
27 52; Admin Decl. ¶ 24. These costs are reasonable in light of the size of the Settlement.

28

1 The Administrator will administer payment of the Settlement Amount to Settlement Class
 2 Members who are Past Primary Policy Holders or Non-Remaining Current Primary Policy Holders in
 3 accordance with the Court’s Final Approval Order and will oversee the issuance of payments of the
 4 Settlement Amount to Settlement Class Members who are Remaining Current Primary Policy
 5 Holders⁶; oversee the provision of Notice to Settlement Class Members; provide CAFA notice;
 6 respond to inquiries made by Settlement Class Members via mail or telephone; process any requests
 7 for exclusion from the Settlement Class; provide Class Counsel and Allstate regular updates regarding
 8 the number of exclusion requests that it received; and perform a number of other Settlement
 9 Administration-related functions. SA ¶¶ 78, 97-98. The Administrator also explains in its declaration
 10 its comprehensive procedures for ensuring the security of Settlement Class Member data, its
 11 acceptance of responsibility and maintenance of insurance in case of errors. Admin Decl. ¶¶ 25-28;
 12 Guideline 2(b).

13 **D. Class Member Release**

14 As consideration for the benefits conferred through the Settlement, the Settlement Agreement
 15 releases Plaintiff’s and each Settlement Class Member’s claims against Allstate from any claims that
 16 were or could have been alleged based on the facts pleaded in the Complaint or FAC in this action. SA
 17 ¶ 101. The release is appropriately tailored, as it is limited to claims arising from Allstate’s alleged use
 18 of price optimization in California. SA ¶ 50; Guideline 1(b).

19 **E. Proposed Plan of Notice**

20 Under the proposed Notice Plan, the Notice will include, among other things: (1) deadlines for
 21 Settlement Class Members to “opt out” of the Settlement Class or object to the Settlement; (2) the date
 22 of the Final Approval Hearing, and a statement encouraging class members to review the docket or the
 23 Settlement Website to confirm whether the date has changed; (3) the web address of the Settlement
 24 Website; (4) contact information for class counsel; and (5) information to help Settlement Class
 25
 26

27 ⁶ Per the Settlement Agreement, Allstate will, at its own cost, under the direction of the Settlement
 28 Administrator, issue payment of the Settlement Amount to Settlement Class Members who are
 Renewing Current Primary Policy Holders in the form of a premium credit. SA ¶ 77.

1 Members access this action's docket on PACER and in person. SA ¶¶ 80-89; Admin Decl. ¶¶ 18-19;
2 Guideline 3(a)-(e).

3 The Notice Plan outlines the three ways in which Notice will be provided: (1) Email notice to
4 Settlement Class Members for those individuals for whom Allstate has email addresses and who have
5 agreed to accept policy information from Allstate via email; (2) Postcard notice for Settlement Class
6 Members who have not provided Allstate their email address; and (3) a Long Form Notice with details
7 regarding the Settlement, available on the Settlement Website or, by request, via regular mail. SA ¶
8 83. The Notice Program described in this paragraph will be completed no later than 90 days after entry
9 of a Preliminary Approval Order. SA ¶ 87. The Notice Program is designed to reach 91% of the likely
10 Settlement Class Members. Admin Decl. ¶ 17.

11 The Settlement Website, which will be created and operated by the Settlement Administrator,
12 shall contain: (1) the Long Form Notice described above in English and Spanish; (2) other relevant
13 documents available for download, including important case documents such as the Settlement
14 Agreement, this Motion for Preliminary Approval, the Motion for Final Approval, and any motions for
15 attorneys' fees and/or service award. Admin Decl. ¶ 18-20.

16 **F. Opt-Outs and Objections**

17 The Notice will inform Settlement Class Members of the procedure to opt out of the Settlement
18 Class. The Settlement Agreement provides that Settlement Class Members may opt out of the
19 Settlement Class at any point during the "Opt-Out Period," which ends 120 days after Preliminary
20 Approval. SA ¶¶ 40, 80-81; Guideline 9. The Notice will specify the opt out deadline and will inform
21 Settlement Class Members of the procedure to opt out of the notice. SA ¶¶ 80-81. Among other
22 things, the Notice will inform Settlement Class Members that they may opt-out by sending an opt-out
23 request to the Settlement Administrator. SA ¶ 81; Guideline 4.

24 The Notice will also inform Settlement Class Members of the procedure by which they may
25 object to the Settlement Agreement, and to Class Counsel's motions for attorneys' fees and/or a service
26 award. Settlement Class Members' objections must: (1) be in writing; (2) clearly identify the case
27 name and number; (3) state whether it applies only to the Settlement Class Member, or to a larger
28 portion of the Settlement Class; (4) specifically identify the basis for the objection; (5) be submitted to

1 the Court; and (6) be filed or postmarked on or before the end of the Opt-Out Period, which date shall
 2 be specified in the Notice. SA ¶ 81. The Notice will explain that the Court is limited to approving or
 3 denying the proposed Settlement, and that it cannot change the terms of the Settlement Agreement.
 4 Guideline 5.

5 **G. Attorneys' Fees, Costs, and Service Awards**

6 Class Counsel will move the Court for an award of attorneys' fees, which will be capped at
 7 thirty percent (30%) of the Settlement Amount, or \$7,500,000. SA ¶ 104. Class Counsel will also
 8 move the Court for an award of reasonable costs and expenses. Any award of attorneys' fees and/or
 9 costs will be paid out of the Settlement Amount. Allstate has agreed not to challenge Class Counsel's
 10 request for an award of attorneys' fees up to one third of the Settlement Amount. Class Counsel will
 11 also move for approval of a Service Award to the Class Representative of \$5,000, which will be paid
 12 out of the Settlement Amount. SA ¶ 103. Allstate agrees not to challenge this request. Guidelines 6-
 13 7.

14 **H. Class Action Fairness Act**

15 The proposed Settlement fully complies with the Class Action Fairness Act ("CAFA"). 28
 16 U.S.C. § 1711 *et seq.*; Guideline 10. The proposed Settlement does not provide for a recovery of
 17 coupons, does not result in a new loss to any Class Member, and does not treat Class Members
 18 inequitably based upon geographic location or any other factor. *See* 28 U.S.C. §§ 1712-14. Moreover,
 19 "[u]pon the filing of the motion requesting issuance of the Preliminary Approval Order, Allstate will
 20 provide timely notice of such motion as required by 28 U.S.C. § 1715." SA § 75; Guideline 10.

21 **I. Results in Comparable Cases**

22 Plaintiff has identified three comparable cases which involve similar allegations concerning
 23 price optimization of automobile insurance. Guideline 11. These comparable cases, which are
 24 discussed here, are also summarized in a chart included as Appendix A to this Motion.

25 *Harris, et al. v. Farmers Insurance Exchange, et al.*, Superior Court of California, Case No.
 26 BC57948: The proposed settlement with Allstate is similar in structure to the settlement Plaintiff's
 27 counsel reached with Farmers in *Harris*. In both cases, the settlement classes include insureds that the
 28 respective plaintiffs alleged paid more for their insurance because the defendant insurer improperly and

1 unlawfully considered their elasticity of demand in setting their rates. Specifically, in *Harris*, the
2 settlement class included policyholders with inelastic demand who paid more than the risk they
3 presented justified because they had been with Farmers for nine or more years. Here, the Settlement
4 Class includes two types of policyholders that Plaintiff alleged have inelastic demand and who Plaintiff
5 asserts paid more than the risk they presented justified: drivers with both an Allstate auto policy and
6 certain other types of Allstate policies, and experienced drivers with comprehensive coverage or
7 collision coverage. The *Harris* settlement received final approval on September 4, 2020. Here is how
8 the *Harris* settlement and the proposed Settlement in this case compare:

9 1. Amount of the settlement. The settlement amount in *Harris* was \$15 million. The
10 Settlement Amount here is \$25 million.

11 2. Additional non-monetary relief. The additional relief provisions in the *Harris*
12 agreement prohibited Farmers from considering price optimization in setting auto insurance rates, and
13 also prohibited Farmers from challenging the Commissioner's legal authority to regulate the use of
14 price optimization. The proposed Settlement with Allstate prohibits Allstate from using price
15 optimization when developing auto insurance rates and class plans in California, and also requires
16 Allstate to file a new class plan which does not consider elasticity of demand. On February 3, 2023,
17 Allstate did file such a new class plan with the Department. As discussed in section B above, and as
18 more fully set forth in the Joint Declaration of proposed Class Counsel, with non-material exceptions
19 that class plan does not use relativities for the multipolicy or years licensed rating factors that exceed
20 both indicated and current, and in many cases uses relativities that are lower than both indicated and
21 current. Counsel Decl. ¶¶ 39-44. Plaintiff's counsel estimate that Settlement Class members will pay
22 millions of dollars less per year in total for the rating factor relativities that are part of the Settlement,
23 all else equal, due to Allstate's using the relativities in its new class plan rather than those it used in its
24 2011 class plan. *Id.* ¶ 40. As stated above, Allstate disputes this assertion.

25 The additional non-monetary relief also requires Allstate, in its new Class Plan and any
26 subsequent California private passenger Class Plans filed in California for a period of 10 years, to
27 explain in writing the basis for any relativity selections it makes that are 5% more than the calculated
28 indicated relativity.

1 3. Number of class members and compensation to each class member. In *Harris*, the class
2 consisted of approximately 750,000 policyholders. The compensation to each class member before
3 deduction of any court-approved attorneys' fees, expenses, settlement administration costs, and service
4 awards to class representatives was about \$20.00. After such deductions, the net compensation to each
5 class member was \$15.15.

6 In this case, the Class consists of approximately 1,293,698 policyholders, and the compensation
7 to each class member before deduction of any Court-approved attorneys' fees, expenses, settlement
8 administration costs, and service awards to class representative is \$19.32. Counsel Decl. ¶ 49. After
9 deductions of maximum amounts allowable under the Settlement Agreement for fees, expenses,
10 settlement administration costs and service award, Plaintiff's counsel estimates that the net
11 compensation to each class member will be \$12.40.

12 *Tryfonas, et. al v. The Allstate Corp., et al.*, Cir. Ct. Madison County, Illinois, No. 2016-L-
13 000880 – Plaintiff's counsel represent the plaintiffs in *Tryfonas*. There, the plaintiffs allege that
14 Allstate uses price optimization when setting insurance rates for customers in Illinois. The plaintiffs
15 filed a motion for class certification on June 24, 2022, which the court denied in November 2022. The
16 plaintiffs filed petition for leave to appeal the court's denial of class certification, which the Illinois
17 Appellate Court denied in March 2023. Plaintiffs' petition for leave to appeal the Illinois Appellate
18 Court's decision was denied by the Supreme Court of Illinois on September 27, 2023.

19 *Trzeciak v. Allstate Prop. & Cas. Ins. Co.*, No. 21-10737 (E.D. Mich. 2021): Plaintiffs alleged
20 that "Allstate breached their insurance contract and committed silent fraud by overcharging premiums
21 based on non-risk factors that actually disadvantage long-term policy holders." *Trzeciak v. Allstate*
22 *Prop. & Cas. Ins. Co.*, 569 F. Supp. 3d 640, 643 (E.D. Mich. 2021). The court found that the plaintiffs
23 failed to state a claim and granted Allstate's motion to dismiss the plaintiffs' amended complaint, with
24 prejudice. *Id.* at 650.

25 IV. LEGAL STANDARD

26 In the Ninth Circuit, there is a "strong judicial policy that favors settlements" of class actions.
27 *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). "[T]here is an overriding
28 public interest in settling and quieting litigation," and this is "particularly true in class action suits."

1 *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976). Recognizing that “[p]arties
 2 represented by competent counsel” are “positioned . . . to produce a settlement that fairly reflects each
 3 party’s expected outcome in [the] litigation,” courts favor approval of settlements. *In re Pac. Enters.*
 4 *Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). At the preliminary approval stage, courts generally
 5 “require a determination of whether the proposed settlement ‘falls within the range of possible
 6 approval’ and ‘has no obvious deficiencies.’” *O’Connor v. Uber Techs., Inc.*, No. 13-CV-03826-
 7 EMC, 2019 WL 1437101, at *4 (N.D. Cal. Mar. 29, 2019). Moreover, preliminary approval should be
 8 granted where the parties have ‘show[n] that the court will likely be able to . . . approve the proposal
 9 under [the final approval factors in] Rule 23(e)(2)’” and ‘certify the class for purposes of judgment on
 10 the proposal.’” *Id.* (citing Fed. R. Civ. P. 23(e)(1)(B)). The relative degree of importance to be
 11 attached to any particular factor will depend upon . . . the unique facts and circumstances presented by
 12 each individual case.” *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688
 13 F.2d 615, 625 (9th Cir. 1982). In particular, determining whether a proposed settlement is fair,
 14 adequate and reasonable depends upon:

15 (1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity, and
 16 likely duration of further litigation; (3) the risk of maintaining class action status
 17 throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery
 18 completed and the stage of the proceedings; (6) the experience and views of counsel; (7)
 the presence of a governmental participant; and (8) the reaction of the class members to
 the proposed settlement.

19 *Churchill Village, L.L.C. v. General Electric*, 361 F.3d 566, 575 (9th Cir. 2004).

20 V. ARGUMENT

21 A. The Settlement Agreement warrants preliminary approval.

22 The Settlement satisfies each factor for preliminary approval in the Ninth Circuit and under
 23 Rule 23. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); Fed. R. Civ. P. 23(e).
 24 The Settlement provides meaningful relief directly to the Class Members while avoiding the
 25 considerable risks of continuing with the litigation. Without admitting that any class in this action or
 26 any similar action could be certified, Allstate supports certification of a class in this action as set forth
 27 in the Settlement Agreement for settlement purposes only.

1 Generally, heightened scrutiny applies if settlement is achieved prior to certification of a
2 litigated class. *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011). But
3 courts have noted that certain factors obviate the concerns that lead to imposition of a higher standard,
4 such as where the settlement is achieved prior to certification but after extensive discovery. *See Banks*
5 *v. Nissan N. Am., Inc.*, 2015 WL 7710297, at *8 (N.D. Cal. Nov. 30, 2015) (“[U]nlike most pre-
6 certification cases, extensive discovery has been conducted in this case, lessening the concern over
7 informational deficiencies between the parties.”); *In re Beef Indus. Antitrust Litig.*, 607 F.2d 167, 180
8 (5th Cir. 1979) (settlement discussions began after six months of discovery; action pending for three
9 years, court fully briefed). Here, the Settlement was reached after the Parties completed all fact and
10 expert discovery in the Department Proceeding, including reviewing over 400,000 pages of documents
11 produced by Allstate, deposing eight current and former Allstate employees, and exchanging reports
12 by experts opining on actuarial issues and damages. Counsel Decl. ¶¶ 9-16.

13 Any settlement requires the Parties to balance the merits of the claims and defenses asserted
14 against the attendant risks of continued litigation and delay. Plaintiff believes her claims and the
15 claims of the proposed Settlement Class are meritorious and that she would prevail if this case
16 proceeded to trial. *Id.* ¶¶ 34-38. Allstate denies liability and has indicated a willingness to continue to
17 litigate vigorously. *Id.* Allstate argues that the selection of relativities for the rating factors in its 2011
18 class plan complied with California law, including the sequential analysis and factor weighting
19 requirements under the California Insurance Code and regulations. Allstate also notes that it is
20 undisputed that it did not use Earnix as alleged in the Complaint, or any other price optimization
21 software or any mechanized form of price optimization, in preparing the 2011 class plan. Allstate
22 contends that it has never used any price optimization methodology whatsoever in California. Allstate
23 further notes that this Court has found that Section 1860.1 of the California “is a so-called immunity
24 statute that prohibits private causes of action against an insurer challenging their auto insurance rates
25 approved by the Commissioner.” Dkt. No. 43.

26 Thus, Plaintiff anticipates that Allstate would vigorously defend its position during an
27 evidentiary hearing in the Department Proceeding, would seek an administrative appeal of any ruling
28 against Allstate by the Commissioner, would seek to dismiss Plaintiff’s claims in this Court on a

1 motion for summary judgment, would oppose a motion for class certification, and would file *Daubert*
 2 challenges to any experts upon which Plaintiff relies. Counsel Decl. ¶¶ 27-28. Plaintiff also faces a
 3 risk of a loss at trial. In short, it is clear that if this case continues in litigation, the Class Members will
 4 have to wait much longer before receiving any recovery—if they recover at all. In Class Counsel’s
 5 experience and informed judgment, the benefits of settling outweigh the risks and uncertainties of
 6 continued litigation, as well as the attendant time and expenses associated with litigation, discovery,
 7 and possible appellate review. *Id.* ¶¶ 28, 45-48.

8 **i. Rule 23(e)(2)(B): The Settlement is the product of good-faith, informed, arms’ length**
 9 **negotiations.**

10 The Ninth Circuit “put[s] a good deal of stock in the product of an arms-length, non-collusive,
 11 negotiated resolution” in analyzing whether to approve a class action settlement. *In re Hyundai & Kia*
 12 *Fuel Econ. Litig.*, 926 F.3d 539, 570 (9th Cir. 2019); *see* Fed. R. Civ. P. 23(e)(2)(B). Moreover, “[t]he
 13 assistance of an experienced mediator in the settlement process confirms that the settlement is non-
 14 collusive.” *Adams v. Inter-Con Sec. Sys. Inc.*, 2007 WL 3225466, at *3 (N.D. Cal. Oct. 30, 2007).

15 Here, the Settlement is the result of intensive, arms’ length negotiation between experienced
 16 attorneys who are familiar with the legal and factual issues in this Action, as well as class action
 17 litigation generally. Before agreeing upon the terms of the Settlement, the Parties participated in
 18 numerous mediation sessions before mediator Sanford Kingsley, who is an experienced former
 19 California insurance litigator. Counsel Decl. ¶ 17. Plaintiff’s counsel also had frequent discussions
 20 with Mr. Kingsley and with counsel for Allstate, both separately and together, including particularly
 21 intense and intensive discussions during the Thanksgiving holiday in 2022. Plaintiff’s counsel also
 22 participated in settlement discussions with all parties to the Department proceeding. *Id.* ¶ 18.

23 In advance of the parties’ first mediation session, which was on January 26, 2022, the Parties
 24 completed fact discovery and expert discovery in the Department proceeding. Counsel Decl. ¶¶ 74-76.
 25 Moreover, as part of the mediation proceeding, Plaintiff requested, and Allstate produced, internal data
 26 that the parties used to make a reasonable estimate of the number of Class Members. *Id.* ¶ 49. Class
 27 Counsel has litigated other cases involving similar factual and legal issues and understands what
 28 information is critical to determine membership in the Settlement Class and how to calculate damages.

1 See Section I above. The Parties' vigorous negotiation of the claims in this action evidence an absence
2 of collusion and the presence of fairness and good faith.

3 In addition, the Settlement does not include any of the indicia of collusion identified by the
4 Ninth Circuit, including whether (i) plaintiff's counsel receive a disproportionate distribution of the
5 settlement, (ii) the settlement agreement includes a "clear sailing" provision, or (iii) the agreement
6 contains a reverter clause. *Briseño v. Henderson*, 998 F.3d 1014, 1026-27 (9th Cir. 2021); *In re*
7 *Bluetooth*, 654 F.3d at 946-47. There is no clear sailing agreement because any fees awarded will be
8 paid from the common fund, not separately from Allstate. See *In re Lithium Ion Batteries Antitrust*
9 *Litig.*, No. 13-MD-02420 YGR (DMR), 2020 WL 7264559, at *15 (N.D. Cal. Dec. 10, 2020), *aff'd*,
10 No. 21-15120, 2022 WL 16959377 (9th Cir. Nov. 16, 2022) (finding that a clear sailing agreement
11 "provides for the payment of attorneys' fees separate and apart from class funds."). And there is no
12 reversionary component: all funds will be distributed pro rata to Class Members. Counsel Decl. ¶ 49.
13 To the extent any Class Members do not cash their settlement distribution check, any amounts
14 remaining in the Settlement Fund will be paid to a *cy pres* recipient, subject to the Court's approval.
15 *Id.* Under no circumstances will any funds be returned to Allstate.

16 **ii. Rule 23(e)(2)(C): The Settlement is fair, adequate, and reasonable.**

17 A review of the relevant factors supports the conclusion that the Settlement falls within the
18 "range of reason" such that the Court should preliminarily approve the Settlement, order that notice be
19 sent to the Settlement Class, and schedule a Final Approval Hearing.

20 **1. The Strengths and Risks of Plaintiff's Case and the Complexity and Likely**
21 **Duration of Further Litigation**

22 First, as discussed in Section B above, the Settlement is fair, adequate, and reasonable given the
23 strengths and risks of Plaintiff's case. While continued litigation presents serious risks, the Settlement
24 provides immediate and substantial benefits to Class Members. It is "plainly reasonable for the parties
25 at this stage to agree that the actual recovery realized, and risks avoided here outweigh the opportunity
26 to pursue potentially more favorable results through full adjudication." *Dennis v. Kellogg Co.*, 2013
27 WL 6055326, at *3 (S.D. Cal. Nov. 14, 2013).
28

1 **2. The Risk of Maintaining Class Action Status**

2 Second, the risk of maintaining class action status through trial supports preliminary approval
3 of the Settlement. Counsel Decl. ¶ 28. The class has not yet been certified, and Allstate will oppose
4 certification if the case proceeds. Plaintiff “necessarily risk[s] losing class action status.” *Grimm v.*
5 *Am. Eagle Airlines, Inc.*, 2014 WL 12746376, at *10 (C.D. Cal. Sept. 24, 2014).

6 **3. The Amount Offered in Settlement**

7 Third, the Common Fund of \$25,000,000 is a good recovery for the Class. Plaintiff and
8 Allstate dispute the estimated reasonable recovery of the Settlement Class. Using estimates of
9 Plaintiff’s counsel (which Allstate vigorously disputes), the \$25,000,000 represents approximately
10 18.2% of the \$137.5 million which Plaintiff’s counsel estimate the Settlement Class could have
11 reasonably recovered if it had prevailed before the Commissioner, before this Court, and on appeal.
12 Counsel Decl. ¶ 38; Guideline 1(c). Allstate disagrees with Plaintiff’s methodology. It maintains that
13 Plaintiff’s methodology does not consider the fact that an alteration in rating factor relativities for one
14 coverage requires an equally upward alteration in rating factor relativities for other coverages to
15 comply with the balancing requirements in the California rating law. Allstate also maintains that
16 Plaintiff’s methodology does not consider how changes to the rating factor relativities necessarily
17 require changes to other rating factor relativities for other rating factors as a result of the weighting
18 requirements in the California rating law. Allstate asserts that these changes would produce
19 significant, if not complete, offsets to any alleged damages.

20 Plaintiff believes the Settlement is similar to or better than the outcomes in other lawsuits
21 involving auto insurance price optimization. *See* Section I above; Guideline 11.
22 Plaintiff’s expert opined that Allstate had engaged in price optimization in four different ways: (1) by
23 failing to use loyalty—tenure with Allstate—as a rating factor; (2) by using relativities that exceeded
24 indicated for drivers qualifying for Allstate’s Level 3 Distinguished Driver Discount; (3) by using such
25 relativities for multi-policy policyholders; and (4) by using such relativities for drivers licensed for 39
26 or more years who had comprehensive or collision coverage.

27 Allstate challenged the opinions and methodology of Plaintiff’s expert. Allstate’s expert
28 opined that Allstate’s 2011 class plan was not the product of price optimization or consideration of

1 elasticity of demand, and that Allstate’s rating factor relativities did not constitute price optimization.
2 Allstate’s expert further opined that Allstate’s rating factor relativity selections were actuarially sound
3 and produced risk-based rates.

4 In preparing for trial and further evaluating the evidence, Plaintiff concluded that her strongest
5 theory was that Allstate engaged in price optimization in the selection of rating factor relativities that
6 exceeded both current and indicated. Applying this theory of liability, Plaintiff became convinced that
7 her first theory—price optimization through the non-use of a loyalty discount—had essentially no
8 chance of succeeding. That is because loyalty is not a mandatory rating factor but rather only an
9 optional rating factor. Thus, no law requires Allstate to use a loyalty discount. And Allstate’s
10 effective rating factor relativity selection of 1.0 (no discount) did not exceed both current and
11 indicated. Further, neither the Department’s actuary nor Consumer Watchdog’s actuary found that
12 Allstate’s non-use of loyalty constituted price optimization. The claim that Allstate’s failure to use
13 such a discount constitutes illegal price optimization thus would have been very difficult to prove and
14 essentially non-viable.

15 Plaintiff similarly concluded that the theory of price optimization alleged as to the relativities
16 used for the Level 3 Distinguished Driver Discount was also very unlikely to succeed. That is because
17 the relativities Allstate used for its Level 3 Distinguished Driver Discount Allstate were simply carried
18 over from its 2008 class plan to its 2011 class plan. Allstate also carried over to its 2011 class plan the
19 relativities it used in its 2008 class plan for several other rating factors, including Model Year, Usage,
20 Experience Group, Economy Car, and the Good Student Discount, and did not increase any of those
21 relativities above the level they were at in its 2008 class plan. The argument that Allstate used price
22 optimization in these instances of carrying over relativities from its 2008 class plan constitutes illegal
23 price optimization thus would have been very difficult to prove and essentially non-viable.

24 In contrast, for certain categories of multi-policy policyholders and for drivers licensed for 29
25 or more years with comprehensive coverage or for 34 or more years with collision coverage, Allstate
26 did not merely carry over the relativities from its 2008 class plan, but increased those relativities so
27 that they exceeded both the relativities Allstate used in its 2008 class plan and those its most recent
28 data indicated it should use. Allstate argues that the relativity selections were the result of applying the

1 sequential analysis and weighting requirements under California law. Plaintiff maintained that Allstate
2 selected relativities for the Years Licensed rating factor in violation of Sections 2632.7 and 2632.8, and
3 that it had no actuarial justification for selecting relativities exceeding both indicated and current for
4 the multipolicy rating factor. Plaintiff's expert opined both that Allstate's justifications for the
5 relativities for these factors were not actuarially sound, and that Allstate knew that more experienced
6 drivers and drivers with other policies were more likely to retain coverage with Allstate. Plaintiff
7 therefore concluded that her strongest case for Allstate's price optimization was with respect to
8 experienced drivers and multipolicy policyholders. Thus, the Settlement Class is limited to those
9 policyholders.

10 However, even with respect to experienced drivers and multipolicy policyholders, Plaintiff's
11 argument that the reason Allstate used relativities exceeding both current and indicated was the relative
12 lack of price insensitivity of the policyholders for whom it used those relativities was based on
13 circumstantial rather than direct evidence.

14 In addition, as the Court noted in its March 17, 2016 Order, *MacKay v. Superior Court*, 188
15 Cal. App. 4th 1427 (2010) interprets Insurance Code section 1860.1 as immunizing private challenges
16 to approved rates and rating factors. Dkt. No. 43 at 12. Allstate disclosed to the Department the
17 relativities it was using in its class plan, and the Department approved that plan. If the Court were to
18 continue to follow *MacKay* (over Plaintiff's objection), any recovery by class members before the date
19 the Department promulgated its price optimization notice would be barred.

20 Allstate takes the position that none of Plaintiff's claims can survive as a matter of law based
21 on *McKay* because each of Plaintiff's claims implicates Allstate's ratemaking. At the motion to
22 dismiss stage, this Court stated that Section 1860.1 "is a so-called immunity statute that prohibits
23 private causes of action against an insurer challenging their auto insurance rates approved by the
24 Commissioner." This Court also stated that "challenges to the ratemaking process itself still remain
25 within the exclusive jurisdiction of the Commissioner pursuant to Section 1860.1, and that "[t]he
26 gravamen of Plaintiff's allegations is a challenge to the approved rates and not the application thereof."
27 On the other hand, Plaintiff contends that by not filing and obtaining the Department's approval of a
28 class plan eliminating the effects of price optimization after the Department issued its February 18,

1 2015 Notice, Allstate was arguably charging unapproved rates beginning at least approximately 16
 2 months after the date of the bulletin. That 16 months is the total of the six months the Department
 3 gave insurers to file new class plans, plus 10 months, which is the time it took for the Department to
 4 approve Allstate's 2011 class plan.⁷ Plaintiff therefore calculated the potential injury to the Settlement
 5 Class related to her viable theories of price optimization beginning on July 1, 2016. According to
 6 Plaintiff, that amount, before any set off for the amount by which Settlement Class members benefitted
 7 due to Allstate's use of relativities that were less than both indicated and current, was \$137.5 million.⁸
 8 The \$25 million settlement is 18.2% of that \$137.5 million.⁹ Allstate, on the other hand, believes that
 9 Plaintiff's calculation of \$137.5 million is overstated and the calculation fails to account for how
 10 changing the relativities for certain coverages would require Allstate to make changes to other
 11 relativities and/or other rating factors. Allstate asserts that Plaintiff's damages calculation is not the
 12 product of a sequential analysis, including the balancing and weighting requirements, as required by
 13 the California rating law and does not reflect a final rate that would be approved by the CDI. Allstate
 14 contends that making those required changes would significantly reduce, if not eliminate, any alleged
 15 overcharge to the Settlement Class.

16 **iii. Rule 23(e)(2)(D): The Allocation of the Settlement**

17 Fourth, the proposed method of distributing relief will be effective. *See* Fed. R. Civ. P.
 18 23(e)(2)(C)(ii). The Parties have agreed to allocate the Net Settlement Amount in equal payments to
 19 each Settlement Class Member, without need for any Settlement Class Member to submit a claim
 20 form. Counsel Decl. ¶ 49.

21
 22
 23 ⁷ Allstate takes the position that it had no duty to file a new class plan eliminating the effects of price
 24 optimization after the Department issued its bulletin, since it never engaged in price optimization to
 begin with.

25 ⁸ Plaintiff's counsel believe the MacKay analysis of 1860.1 is indefensible and that MacKay should be
 26 overruled. But it has not been. The possibility of Plaintiff recovering for price optimization pre-
 27 dating the Bulletin, therefore, was remote. As a result, Plaintiff did not calculate the amount that the
 Settlement Class could, theoretically, have recovered for that time period. However, Plaintiff expects
 that the potential pre-Bulletin recovery would be less than the post-Bulletin recovery.

28 ⁹ The potential class recovery for each of Plaintiff's remaining causes of action overlaps, because each
 cause of action would entitle the class to equitable relief, including restitution.

1 The settlement “treats class members equitably relative to each other.” Fed. R. Civ. P.
2 23(e)(2)(D). The pro rata allocation of the Settlement is fair and reasonable because it provides equal
3 relief to all Class Members who make a claim and is consistent with the distribution of funds in the
4 other settlement of an insurance price optimization case. *See* Section I above; *see also In re Facebook*
5 *Biometric Info. Privacy Litig.*, 522 F.Supp.3d 617, 629 (N.D. Cal. 2021) (distribution that would
6 provide “pro rata” share of common fund treated class members equitably to one another and
7 “weigh[ed] in favor of final approval”); *Hendricks v. StarKist Co.* No. 13-CV-00729-HSG, 2015 WL
8 4498083, at *7–8 (N.D. Cal., July 23, 2015) (approving a flat payment per class member given the
9 “modest payment amounts at issue,” and noting that “some courts recognize that an allocation formula
10 need only have a reasonable, rational basis, particularly if recommended by experienced and competent
11 counsel.” (internal quotation marks omitted)); *Edwards v. First American Corporation*, No. CV07-
12 03796-SJO (FFMX), 2016 WL 8943464, at *8 (C.D. Cal., June 20, 2016) (granting preliminary
13 approval of an allocation plan providing an equal payment to each claimant); *Edwards v. First*
14 *American Corporation*, No. CV-07-03796 SJO (FFMX), 2016 WL 9176564, (C.D. Cal., Oct. 14,
15 2016) (granting final approval for same); *McCabe v. Six Continents Hotels, Inc.* No. 12-CV04818 NC,
16 2015 WL 3990915, at *3, 8–10 (N.D. Cal., June 30, 2015) (preliminarily approving a settlement
17 providing equal payments to each claimant); *McCabe v. Six Continents Hotels, Inc.*, No. 12-CV-04818
18 NC, 2016 WL 491332 (N.D. Cal. Feb. 8, 2016) (granting final approval for same); *Kimber Baldwin*
19 *Designs, LLC v. Silv Communications, Inc.*, No. 1:16-CV-448, 2017 WL 5247538, at *1 (S.D. Ohio,
20 Nov. 13, 2017) (granting final approval where “[e]ach Class Member submitting a valid claim [would]
21 receive an equal settlement payment”).

22 Plaintiff carefully considered other allocation alternatives and concluded that other approaches
23 were impractical. For example, allocating the Net Settlement Fund based on length of time a
24 Settlement Class Member was insured by Allstate or with consideration of which allegedly price
25 optimized rating factors impacted the Settlement Class Member’s premium would require the
26 Settlement Administrator to analyze voluminous data and would be prohibitively costly to administer.
27 Counsel Decl. ¶ 49 n.5. Allstate believes that allocating the Net Settlement Fund based on another
28 metric would exponentially increase the cost and burden of settlement administration.

1 **1. The Extent of Discovery Completed and Stage of Proceedings**

2 Fifth, the extent of discovery completed and the stage of proceedings favor preliminary
3 approval. Counsel Decl. ¶¶ 17-20. The Parties engaged in several years of discovery in the
4 Department Proceeding, completing fact discovery and expert disclosures in that Proceeding. The
5 parties also exchanged pre-filed direct testimony in the Department Proceeding and received rulings on
6 their motions to exclude evidence from the evidentiary hearing in the Department proceeding. At the
7 time the Parties reached an agreement in principle to settle this lawsuit on a class-wide basis, Plaintiff
8 had made significant preparations for the evidentiary hearing, which was set to commence within 10
9 days. Accordingly, Plaintiff had conducted sufficient discovery and pre-trial preparations to permit
10 Class Counsel and the Court to intelligently and fairly evaluate the fairness and adequacy of the
11 Settlement.

12 **2. The Views of Class Counsel**

13 Sixth, Class Counsel's view is that this Settlement is a good recovery for the Settlement Class
14 given the risks of continuing the litigation. Counsel Decl. ¶¶ 45-48. Both Class Counsel and Allstate's
15 counsel are experienced in class action litigation, including cases concerning auto insurance price
16 optimization. *Id.* ¶¶ 83-86; Section I above. "Great weight is accorded to the recommendation of
17 counsel, who are most closely acquainted with the facts of the underlying litigation." *See, e.g., Nat'l*
18 *Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

19 **3. Government Participant, Class Member Reaction, Other Cases Affected**

20 The favorable reaction to the Settlement by a government participant, the California
21 Department of Insurance, weighs in favor of preliminary approval of the Settlement. As described
22 herein, the Department participated in fact and expert discovery in the Department Proceeding and the
23 mediation and settlement negotiations that led to the Settlement. Counsel Decl. ¶¶ 9, 12, 14, 18-20.
24 As a result of the Settlement, the Department and Allstate entered into a separate agreement to dismiss
25 the Department Proceeding, pending approval of CALJ Rosi and, subsequently, the Commissioner.
26 SA ¶ 16; Counsel Decl. ¶ 20. Dismissal of the Department Proceeding is contingent on this Court
27 granting final approval of the Settlement and the Settlement reaching its effective date. SA ¶ 16;
28 Counsel Decl. ¶ 16.

1 Because the Court has not yet approved the Class Notice, the Settlement Class has not had an
2 opportunity to react, so this factor is neutral. *See Hillman v. Lexicon Consulting, Inc.*, 2017 WL
3 10433869, at *8 (C.D. Cal. April 27, 2019). Moreover, Class Counsel is aware of no other cases that
4 will be affected by the Settlement. Counsel Decl. ¶ 58; Guideline 1(d).

5 **iv. Rule 23(e)(2)(A): The Class Representative and Class Counsel have adequately**
6 **represented the proposed class**

7 Under Rule 23(e)(2)(A), the Court should also consider whether the Settlement Class
8 Representative and Class Counsel have adequately represented the class, including the nature and
9 amount of discovery undertaken in the litigation. *See Avina v. Marriott Vacations Worldwide Corp.*,
10 2019 WL 8163642, at *6 (C.D. Cal. Oct. 25, 2019). Here, Plaintiff Stevenson has adequately
11 represented the class by “actively participat[ing] in the prosecution of this case,” *Norton v. LVNV*
12 *Funding, LLC*, 2021 WL 3129568, at *8 (N.D. Cal. July 23, 2021), and “[t]here are no indications that
13 [Plaintiff has] failed to adequately represent the interests of the class.” *Moreno v. Cap. Bldg. Maint. &*
14 *Cleaning Servs., Inc.*, 2021 WL 1788447, at *10 (N.D. Cal. May 5, 2021).

15 Class Counsel have also adequately represented the class. Class Counsel are particularly
16 experienced in the litigation, certification, trial, and settlement of nationwide class action cases, and in
17 litigating cases concerning insurance price optimization. Counsel Decl. ¶¶ 82-86. Jay Angoff, as a
18 former state insurance commissioner, brought specialized knowledge to the case. Counsel Decl. ¶ 46.
19 Notably, Class Counsel vigorously sought, fought for, and successfully obtained the key document
20 discovery, and deposed current and former Allstate employees responsible for developing Allstate’s
21 class plans in California and who possess with other relevant information. Counsel Decl. ¶¶ 9, 70.
22 Class counsel also retained a qualified expert witness to opine on Allstate’s price optimization and its
23 impact on Allstate’s customers, and successfully defended the expert’s opinions from Allstate’s motion
24 to strike the opinions. At the same time, Plaintiff’s counsel successfully moved to strike certain parts
25 of the pre-filed direct testimony submitted by Allstate’s expert witness. *Id.* ¶¶ 10, 13. Allstate believes
26 that the rulings were in error and disagrees that Plaintiff’s expert is qualified to offer admissible
27 testimony and similarly moved to strike. Finally, Class Counsel prepared for and participated in
28

1 several mediation sessions and dozens of settlement negotiations, forcefully advocating for the
2 Settlement Class. *Id.* ¶¶ 17-20, 76.

3 **v. The proposed Fee and Expense Award is fair and reasonable**

4 Class Counsel intends to seek attorneys' fees in an amount not to exceed 30% of the
5 \$25,000,000 Common Fund (*i.e.*, \$7,500,000), as well as reasonable expenses incurred in the
6 litigation. Subject to the Court's consideration of a detailed fee application, the proposed award of
7 attorneys' fees is fair. *See* Fed. R. Civ. P. 23(e)(2)(c)(iii); *see, e.g., In re Apple Inc. Device*
8 *Performance Litig.*, 50 F.4th 769, 784 (9th Cir. 2022) (25% of the common fund is benchmark for
9 Ninth Circuit).

10 In addition, Class Counsel have diligently tracked time throughout the case, and as of August
11 31, 2023, had spent 6,757 hours litigating the case totaling \$5,897,270 in lodestar with \$347,404 in
12 expenses, including \$224,677 in expert fees. Counsel Decl. ¶ 78; Guideline 6. Counsel expects to
13 spend significant additional time throughout the approval process, notice, and claims administration.
14 *Id.* ¶ 80. A conservative estimate of the multiplier sought is 1.27, which is well within the range
15 commonly awarded in the Ninth Circuit. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6
16 (9th Cir. 2002) (surveying cases and finding 83% of multipliers between 1.0 and 4.0, and 54% between
17 1.5 and 3.0). Any multiplier will diminish over time given the substantial work needed to administer
18 the Settlement.

19 Class Counsel will also seek a reasonable and fair Service Award for Plaintiff Stevenson.
20 Guideline 7. The Settlement Agreement authorizes the Class Representative to seek a service award of
21 up to \$5,000, which is well within the range of approval for class action settlements that provide
22 significant benefits to the class. *See Bravo v. Gale Triangle, Inc.*, 2017 WL 708766, at *19 (C.D. Cal.
23 Feb. 16, 2017) ("Generally, in the Ninth Circuit, a \$5,000 incentive award is presumed reasonable.").

24 **B. Certification of the Settlement Class is appropriate**

25 On a motion for preliminary approval, the Parties must also show that the Court "will likely be
26 able to ... certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B)(ii).

1 The Settlement Class meets the requirements of Fed. R. Civ. P. 23(a) and (b)(3).¹⁰

2 The Settlement Class as defined meets Rule 23(a)'s numerosity requirement. The class
 3 definition encompasses 1,293,698 Class Members. Counsel Decl. ¶ 49. This number of Class
 4 Members demonstrates that joinder is a logistical impossibility. *See, e.g., Celano v. Marriott Int'l Inc.*,
 5 242 F.R.D. 544, 549 (N.D. Cal. 2007) (numerosity is generally satisfied when a class has at least 40
 6 members)). The Settlement Class also satisfies the commonality requirement, which requires that class
 7 members' claims "depend upon a common contention" of such a nature that "determination of its truth
 8 or falsity will resolve an issue that is central to the validity of each [claim] in one stroke." *Wal-Mart*
 9 *Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The Settlement Class's claims here depend on the
 10 common contention that Allstate, in violation of California law, used price optimization to charge the
 11 Settlement Class Members' auto insurance premiums calculated from relativities that exceeded the
 12 indicated relativities. There are at least two common questions in this case: (1) whether Allstate used
 13 price optimization in its 2011 class plan; and, if so, (2) whether customers who paid more for their auto
 14 insurance due to such price optimization are entitled to restitution.

15 Typicality is satisfied if "the claims or defenses of the representative parties are typical of the
 16 claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "The test of typicality is whether other
 17 members have the same or similar injury, whether the action is based on conduct which is not unique
 18 to the named plaintiffs, and whether other class members have been injured by the same course of
 19 conduct." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (internal quotation marks
 20 and citation omitted). Here, the Settlement Class Representative's claims are typical of the claims of
 21 Class Members because all claims rise from Allstate's price optimization in its 2011 class plan.

22 Finally, the adequacy requirement is satisfied where the class representative will "fairly and
 23 adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To make this determination,
 24

25
 26 ¹⁰ Neither this motion nor the "Settlement Agreement shall be construed as an admission by Allstate
 27 that this Action or any similar case is amenable to class certification," nor shall this motion or the
 28 Settlement Agreement "prevent Allstate from opposing class certification or seeking decertification of
 the Settlement Class if final approval of [the] Settlement Agreement is not obtained, or not upheld on
 appeal, including review by the United States Supreme Court, for any reason." Allstate supports
 certification of the class for settlement purposes only. SA ¶ 64.

1 “courts must resolve two questions: ‘(1) do the named plaintiffs and their counsel have any conflicts of
2 interest with other class members and (2) will the named plaintiffs and their counsel prosecute the
3 action vigorously on behalf of the class?’” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th
4 Cir. 2011) (quoting *Hanlon*, 150 F.3d at 1020). Here, the Settlement Class Representative has no
5 conflicts of interest with the Class, and she and Class Counsel have vigorously prosecuted this case on
6 behalf of the class. *See* Counsel Decl. ¶¶ 59-63, 69-76.

7 Class certification is appropriate under Rule 23(b)(3) when “questions of law or fact common
8 to class members predominate over any questions affecting only individual members, and ... a class
9 action is superior to other available methods for fairly and efficiently adjudicating the controversy.”
10 Fed. R. Civ. P. 23(b)(3). Common questions predominate over any questions affecting only individual
11 members here. These questions can be resolved using the same evidence for all class members and are
12 exactly the kind of predominant common issues that make class certification appropriate. *See Tyson*
13 *Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (“When one or more of the central issues in
14 the action are common to the class and can be said to predominate, the action may be considered
15 proper under Rule 23(b)(3).”) (cleaned up). Class certification here is also “superior to other available
16 methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Class-wide
17 resolution is the only practical method of addressing the alleged violations at issue in this case. There
18 are millions of class members with modest individual claims, most of whom likely lack the resources
19 necessary to seek individual legal redress. *See Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d
20 1168, 1175 (9th Cir. 2010) (“Where recovery on an individual basis would be dwarfed by the cost of
21 litigating on an individual basis, this factor weighs in favor of class certification.”) (citations omitted).

22 **C. The Court should approve the proposed Notice Plan**

23 The Parties’ proposed Notice Plan meets the procedural and substantive requirements of Rule
24 23. Due process under Rule 23 requires that class members receive notice of the settlement and an
25 opportunity to be heard and participate in the litigation. *See* Fed. R. Civ. P. 23(c)(2)(B); *Phillips*
26 *Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985); *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 175
27 (1974) (“[I]ndividual notice must be provided to those class members who are identifiable through
28 reasonable effort.”).

1 Here, direct notice will be made via email and U.S. Mail, using addresses in Allstate’s records.
2 The proposed Notice Plan is the best notice practicable and is reasonably designed to reach the Class
3 Members. Admin. Decl. ¶ 17. Courts have approved similar notice plans.

4 Moreover, the substance of long-form Class Notice and Summary Notice will fully apprise
5 class members of their rights. SA at Exs. C-D. Under Rule 23(e), notice to class members “must
6 ‘generally describe[] the terms of the settlement in sufficient detail to alert those with adverse
7 viewpoints to investigate and to come forward and be heard.’” *Lane v. Facebook, Inc.*, 696 F.3d 811,
8 826 (9th Cir. 2012) (alteration in original) (quoting *Rodriguez v. W. Publ’g Corp.*, 563 F. 3d 948, 962
9 (9th Cir. 2009)). The Class Notice contains all the critical information required to apprise Class
10 Members of their rights under the settlement, directs them to the Settlement Website, where they can
11 obtain more detailed information, explains how to view case filings on PACER or at the Court, and
12 provides a toll-free number for Class Members to call with questions. SA at Ex. D; Guideline 3. This
13 approach to notice is adequate and will fully apprise Class Members of their rights under Rule 23(e).
14 *See, e.g., Sarabri v. Weltman, Weinberg & Reis Co., L.P.A.*, 2012 WL 3809123, at *2 (S.D. Cal. Sept.
15 4, 2012) (approving mailed notice where notice would include the settlement website with full details
16 and the claim administrator’s toll-free number).

17 VI. CONCLUSION

18 For the reasons stated above, Plaintiff respectfully requests that the Court (1) preliminarily
19 approve the proposed Settlement; (2) certify the Settlement Class; (3) direct notice to the Settlement
20 Class through the proposed notice program; (4) appoint Plaintiff’s counsel as Class Counsel and
21 Plaintiff as Class Representative; and (5) schedule the final approval hearing.

22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted this 2nd day of October, 2023.

GOLDSTEIN, BORGEN, DARDARIAN & HO

/s/ David Borgen

David Borgen (SBN 99354)

dborgen@gbdhlegal.com

James Kan (SBN 240749)

jkan@gbdhlegal.com

GOLDSTEIN, BORGEN, DARDARIAN & HO

155 Grand Avenue, Suite 900

Oakland, CA 94612

Tel: (510) 763-9800

Fax: (510) 835-1417

Cyrus Mehri

cmehri@findjustice.com

Jay Angoff

jay.angoff@findjustice.com

MEHRI & SKALET PLLC

2000 K Street, NW, Suite 325

Washington, DC 20006

Tel: (202) 822-5100

Andrea Gold

agold@tzlegal.com

TYCKO & ZAVAREEI LLP

2000 Pennsylvania Avenue, NW, Suite 1010

Washington, DC 20006

Jeffrey Osterwise

josterwise@bm.net

BERGER MONTAGUE PC

1818 Market Street. Suite 3600

Philadelphia, PA 19103

Appendix A

STEVENSON V. ALLSTATE INS. CO, ET AL.

APPENDIX A – INFORMATION CONCERNING COMPARABLE OUTCOMES

Case	<i>Harris et al. v. Farmers Insurance Exchange, et al., Los Angeles Super. Ct. Case No. BC57948</i>	<i>Tryfonas, et al. v. The Allstate Corp., et al., Cir. Ct. Madison County, Illinois, No. 2016-L-000880</i>	<i>Trzeciak v. Allstate Prop. & Cas. Ins. Co., No. 21-10737 (E.D. Mich. 2021)</i>
Claims Released	All claims that were raised or could be raised in the operative complaint— <i>i.e.</i> , all claims relating to overpayment for Farmers’ auto insurance caused by Farmers’ unlawful consideration of demand elasticity in setting its rates.	N/A	N/A
Total Settlement Fund	\$15 million	N/A	N/A
Number of Class Members	Approximately 609,000 members	N/A	N/A
Number of Class Members to Whom Notice Was Sent	608,912	N/A	N/A
Methods of Notice	Email notice, long-form notice, and publication notice via several prominent local newspapers, Facebook, and Google Display Network	N/A	N/A
Number and Percentage of Claims Submitted	N/A – direct payment, no claims process	N/A	N/A

STEVENSON V. ALLSTATE INS. CO, ET AL.

Average Recovery Per Class Member	Approximately \$24.60 before deduction of any Court-approved attorneys' fees, expenses, settlement administration costs, and service awards to class representatives.	N/A	N/A
Amounts distributed to Cy Pres Recipients	\$1,069,485.77 to the Center for Auto Safety	N/A	N/A
Administrative Costs	\$573,000 to Settlement Administrator	N/A	N/A
Attorneys' Fees and Costs	\$4,950,000.00 in attorneys' fees; \$233,877.81 in costs.	N/A	N/A
Total Exposure if Plaintiffs Prevailed on Every Claim	\$42,000,000	N/A	N/A
Value of Injunctive Relief	Farmers was prohibited from considering price optimization in setting auto insurance rates, and was prohibited from challenging the Commissioner's legal authority to regulate the use of price optimization.	N/A	N/A
Other		In <i>Tryfonas</i> , the plaintiffs allege that Allstate uses price optimization when setting insurance rates for customers in Illinois. The plaintiffs filed a motion for class certification, which the court denied in November 2022. The plaintiffs' petition for leave to appeal that decision was denied by the	In <i>Trzeciak</i> , the plaintiffs alleged that "Allstate breached their insurance contract and committed silent fraud by overcharging premiums based on non-risk factors that actually disadvantage long-term policy holders." <i>Trzeciak v. Allstate Prop. & Cas. Ins. Co.</i> , 569 F. Supp. 3d 640, 643 (E.D. Mich. 2021).

STEVENSON V. ALLSTATE INS. CO, ET AL.

		Supreme Court of Illinois on September 27, 2023.	The court found that the plaintiffs failed to state a claim and granted Allstate's motion to dismiss the plaintiffs' amended complaint with prejudice. <i>Id.</i> at 650.
--	--	--	---