

April 24 2024 3:04 PM

The Honorable BRYAN CHUSHCOFF
CONSTANCE R. WHITE
COUNTY CLERK
NO: 18-2-06616-1

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

ANOUSACK SANITH, Individually, and as
the Representative of All Persons Similarly
Situated,

Plaintiff,

vs.

STATE FARM FIRE AND CASUALTY
COMPANY,

Defendant.

NO. 18-2-06616-1

**MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date: May 10, 2024

I. MOTION/RELIEF REQUESTED

COMES NOW the Plaintiff ANOUSACK SANITH, through his attorneys, and files this
unopposed motion which provides for the following relief:

- 1) Grants preliminary approval of the Stipulation of Settlement and Settlement Agreement (“Settlement”);
- 2) Approves and directs implementation of the proposed notice plan; and
- 3) Schedules a final fairness hearing.

The Class at issue is that earlier certified by this Court:

All State Farm Fire & Casualty insureds with Washington policies issued in Washington State, where the insureds’ vehicle damages were covered under Underinsured Motorist Property Damage coverage, and

1. the repair estimates on the vehicle (including any

1 supplements) totaled at least \$1,000; and

2
3 2. the vehicle was no more than six years old (model year
4 plus five years) and had less than 90,000 miles on it at the time of
5 the accident; and

6 3. the vehicle suffered structural (frame) damage and/or
7 deformed sheet metal and/or required body or paint work.

8 Excluded from the Class are (a) claims involving leased vehicles or total losses,
9 (b) the assigned judge, the judge's staff and family, and (c) accidents with a date
10 of loss before March 23, 2012 and after February 13, 2024.

11 The Settlement Class period shall run through (*i.e.*, is capped at) February 13, 2024, which is
12 the cutoff date for the Class List.¹

13 THIS REQUEST is respectfully submitted pursuant to the Superior Court Civil Rule CR
14 23(e), and to the procedure and criteria for preliminary approval as stated in the *Manual for*
15 *Complex Litigation*, Fourth (Federal Judicial Center 2004) (hereinafter the "*Manual*") §§21.62 &
16 21.63, and *Pickett v. Holland America Line-Westours*, 145 Wn.2d 178, 35 P.3d 351 (2001).

17 While not admitting fault, and expressly reserving all defenses, which it has asserted and
18 believes would prevail on the merits, STATE FARM FIRE AND CASUALTY (hereinafter
19 "SFF&CC") does not oppose the relief requested in this motion, for purposes of settlement only.

20 **A. PROPOSED SETTLEMENT PROCESS**

21 The proposed settlement will involve the claims of approximately two thousand six
22 hundred (2,600) insureds of SFF&CC on a claims-made basis and will result in a settlement fund
23 of roughly \$2,080,000 (a figure to be based upon the final class list to be provided if preliminary
24 approval is granted) which, less attorney's fees and costs approved by the Court and any service
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28 ¹ The Class list will therefore include those claims identified as likely falling within the proposed class (being a loss covered by UMPD, with repair estimates of \$1,000 or more, and being less than 6 years and 90,000 miles) with a date of loss on or before February 13, 2024.

1 award approved by the Court, will be available for disbursement to eligible Class Members who
2 present a timely and valid claim.
3

4 As set forth in the accompanying proposed Order, the parties have agreed, and propose
5 for purposes of settlement only, the following deadlines (with dates assuming preliminary
6 approval on May 10, 2024):

- 7 • a deadline of thirty (30) days from the date of preliminary approval for Defendant
8 to furnish the class list to Class Counsel and the Claims Administrator (**by June**
9 **10, 2024**);
- 10 • a deadline of sixty (60) days from the date of preliminary approval for the
11 mailing of notice to be completed (**by July 9, 2024**);
- 12 • within 30 days after mailing of notice, Class Counsel will submit their motion for
13 fees, costs, and an incentive bonus for the Class Representative (**by August 8,**
14 **2024**);
- 15 • A deadline of 30 days prior to the Final Approval Hearing date will be set by the
16 Court for the submission of any objections and for opt-outs to be submitted
17 (**August 21, 2024**);
- 18 • This provides a period of around forty-three (43) days from the mailing of notice
19 for the submission of objections, comments, and for any individuals to exclude
20 themselves from the Class and Settlement;
- 21 • A final approval hearing then being set on or around **September 20, 2024**; and
- 22 • The deadline for submission of claims – either electronically or postmarked –
23 will be forty-five (45) days *after* the final fairness hearing.

24 After the objection/comment/exclusion deadline date (i.e., a week or two before the
25 hearing) Plaintiff will file a final brief updating the Court on the dissemination of notice
26 (showing the effectiveness of notice and listing any opt-outs), addressing objections, if any, to
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1 the Settlement or requests for fees/costs/class rep bonus.² At that time the Parties will submit an
2 agreed proposed final approval order which has been updated to reflect the response to the notice
3 program, as well information on any opt-outs.
4

5 The Settlement Agreement, the proposed form of Notice, and the proposed Claim Form
6 are attached as Exhibits to the proposed Preliminary Approval Order which accompanies this
7 Motion.
8

9 B. EVIDENCE RELIED UPON

10 1. Declaration of STEPHEN M. HANSEN

11 II. OVERVIEW OF SETTLEMENT APPROVAL PROCESS

12 This motion requests conditional certification of a settlement class and preliminary
13 approval of the Settlement. Washington courts strongly favor and encourage settlements. *The*
14 *City of Seattle v. Blume*, 134 Wn. 2d 243, 258, 947 P.2d 223 (1997). This is particularly true in
15 the class action setting, where costs, delays, risks and uncertainties might otherwise overwhelm
16 any benefit to the class, and where settlements preserve judicial resources. *See In re Fire Storm*
17 *1991*, 106 Wn. App. 217, 222, 22 P.3d 849 (2001); *Class Plaintiffs v. City of Seattle*, 955 F.2d
18 1268, 1276 (9th Cir. 1992)³ (“strong judicial policy . . . favors settlements, particularly where
19 complex class action litigation is concerned”), *cert. denied sub nom. Hoffer v. City of Seattle*,
20 506 U.S. 953 (1992); *see also* Herbert B. Newberg & Alba Conte, *Newberg on Class Actions*
21 (5th ed. 2014) (“*Newberg*”) § 13:44 (citing cases). Indeed, settlements contribute greatly to the
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26 ² The undersigned counsel do not anticipate any objections, having not received them in multiple prior materially
27 identical settlements in this Court and the Western District of Washington. Prior experience is that it is typical to
28 receive several opt-outs in diminished value settlements.

³ Since CR 23 is identical to its federal counterpart, Fed. Civ. P. 23, Washington courts consider federal cases
interpreting the analogous federal provision as highly persuasive. *Brown v. Brown*, 6 Wn. App. 249, 252 492 P.2d
581 (1971).

1 efficient utilization of judicial resources and the speedy resolution of justice, for “[a] just result is
2 often no more than an arbitrary point between competing notions of reasonableness.” *In re*
3 *Corrugated Container Antitrust Litig. II*, 659 F.2d 1322, 1325 (5th Cir. 1981).

4 Pursuant to CR 23(e), “[a] class action shall not be dismissed or compromised without
5 the approval of the court.” Thus, the authority to approve this Settlement is committed to the
6 sound discretion of the trial court. As the Washington Supreme Court remarked in *Pickett v.*
7 *Holland Am. Line-Westours, Inc.*:

8 Great weight is accorded his [the trial judge’s] views because he is exposed to the
9 litigants, and their strategies, positions and proofs. He is aware of the expense
10 and possible legal bars to success. Simply stated, he is on the firing line and can
11 evaluate the action accordingly.

12 *Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn. 2d 178, 189, 35 P.3d 351 (2001) (*quoting*
13 *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 454–55 (2d Cir. 1974), *abrogated on other*
14 *grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000)).

15 The settlement approval process has two steps. First, the Court addresses preliminary
16 approval. In addressing preliminary approval, the Court determines if the Settlement is within
17 the “range of reasonableness.” *Newberg* § 13:15. If the preliminary evaluation of the proposed
18 settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, the Court
19 directs that notice be given to the class members of a formal fairness hearing, and the terms of
20 the settlement, and their rights to file a claim, opt-out of the class, or object to the Settlement.
21 Subsequently, the parties implement the Notice Program, employing the best practical means to
22 inform the Class Members of the terms of the Settlement, the date and time of the Final
23 Settlement Hearing, and their option to object or opt-out.

24 Then, at the later second step, “final approval”, arguments and evidence may be
25 presented in support of or in opposition to the settlement, and the Court will have a full record to
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1 rule on the settlement. *Manual* §§ 21.632 & 21.633. The role of the Court at the Final
2 Settlement Hearing is limited to determining whether the terms of the proposed Settlement are
3 “fair, adequate and reasonable.” *Pickett*, 145 Wn.2d at 189. The Court may not try disputed
4 issues in the case, nor may the Court substitute its judgment of what is fair for decisions reached
5 by the parties in arm’s-length negotiations. *See* 21 Charles Alan Wright et. al., *Federal Practice*
6 & *Procedure* § 1797.5 (3d ed. 1998); *see also Manual for Complex Litigation* § 21.61 at 309 (4th
7 ed.) (“*Manual*”) (“The judicial role in reviewing a proposed settlement is critical, but limited to
8 approving the proposed settlement, disapproving it, or imposing conditions on it. The judge
9 cannot rewrite the agreement.”). Further, while proponents of a settlement bear the burden of
10 proving that the settlement should be approved, they should not be required to stage a mini trial
11 on the merits, as this is the event which the settlement aims to avoid. *See In re Armored Car*
12 *Anti-Trust Litig.*, 472 F. Supp. 1357, 1367 (N.D. Ga. 1979), *affirmed in part, reversed in part on*
13 *other grounds*, 645 F.2d 488 (5th Cir. 1981).

17 **III. PROCEDURAL HISTORY**

18 On March 23, 2018 Plaintiff ANOUSACK SANITH filed a Class Action Complaint in
19 the above-entitled matter against SFF&CC alleging causes of action for breach of contract based
20 upon SFF&CC’s alleged failure to properly and fairly assess claims for DV and to pay him and
21 Class Members (as hereinafter defined) under the statutorily mandated wording of the
22 Underinsured Motorist Property Damage (UMPD) coverage for the amount that their vehicles’
23 decreased in value as a result of property damage to their vehicles.
24

25 Mr. Sanith is a first-party insured who purchased UMPD coverage with SFF&CC. Mr.
26 Sanith’s Complaint alleges that his insuring agreement, and the insuring agreement for the
27 putative Class Members, is the statutorily mandated UMPD language, and that this language has
28

1 been held to cover the loss of market value of his vehicles after repair consistent with WPI 30.12,
2 and that as such he, and members of the proposed Class, are entitled to recover any loss in value
3 of their vehicles as of the time of their accidents. SFF&CC denies liability and maintains that it
4 paid the full and appropriate amounts owed, as part of its regular claim-handling process.
5

6 SFF&CC appeared through counsel and each side served discovery requests upon the
7 other in the form of Interrogatories/Requests for Production of Documents, and depositions.
8 Each side provided answers to these discovery requests and provided witnesses. Following entry
9 of an agreed case scheduling order to accommodate briefing for purposes of class certification,
10 the parties in turn submitted their briefs on Class Certification and deposed experts. On July 8,
11 2022, the parties presented oral argument to the Court. The Court granted Plaintiff's motion, and
12 on October 21, 2022 entered its order certifying the class proposed by Mr. Sanith.
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15 On November 21, 2022, SFF&CC sought discretionary review of the class certification
16 order. Following briefing and oral argument, review was denied on March 21, 2023 (Case No.
17 58078-1-II). The appellate court issued its Certificate of Finality on April 21, 2023. On May
18 10, 2023, Mr. Sanith then filed his motion for approval of a notice plan and approval of a
19 proposed notice form to the class members. The Court granted the motion on June 9, 2023.
20

21 Following denial of review and while the request for approval of the proposed Class
22 Notice was pending, the parties re-engaged in discussions regarding a possible settlement, and a
23 proposed Settlement Class. SFF&CC assembled its data in response to Plaintiff's request for a
24 Class List and has determined that the proposed Settlement Class will contain approximately
25 2,600 claims.
26

27 The parties have agreed to a resolution at the same per claim figure (\$800 per claims) and
28 applicable terms as in prior similar settlements approved against insurers in Washington. This

1 results in a settlement fund of roughly \$2,080,000.00, less attorney’s fees and costs approved by
2 the Court, and less any service award approved by the Court, for disbursement to eligible Class
3 Members who present a timely and valid claim. The amount of this settlement fund was based
4 on settlement amounts and methodology used in or arising out of mediated class action
5 settlements in prior diminished value cases in a similar procedural posture. In each instance
6 those settlements were approved by the Court.
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9 Only after these figures, other key terms, and the settlement structure were finalized, did
10 the parties discuss fees (agreeing that as with similar cases proceeding through Class Certification
11 and review, 30% of the fund could be requested) costs, and any Class representative bonus (up to
12 \$10,000 for Mr. Sanith, in line with prior cases). These discussions culminated with the
13 settlement presented here for preliminary approval.
14

15 **IV. THE PROPOSED SETTLEMENT**

16 Under the terms of the proposed settlement, if it is approved, SFF&CC agrees to pay up
17 to the amount of the \$2,080,000 “Settlement Fund,” less attorney’s fees and costs approved by
18 the Court and any service award approved by the Court, for claims that are valid under the
19 Settlement. In addition to those payments from the Settlement Fund, Defendant, through a
20 Claims Administrator approved by the Court, will provide notice to claimants and pay for Claims
21 Administrator’s fees and expenses, including notice costs.
22

23 The Members of the Settlement Class will be those listed on the final claims notice list
24 furnished to Class Counsel by the Defendant once preliminary approval is granted, which will
25 include all claims accruing through February 13, 2024. As such, the settlement fund will be
26 approximately \$2,080,000.
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1 As with prior DV settlements,⁴ those who submit timely valid claims forms will then be
2 paid a pro-rata share of the settlement fund in relation to their vehicle's cost of repair. The
3 settlement formula provides that those with higher repair costs (a proxy for extensiveness of
4 damages which impacts the amount of diminished value) will receive higher compensation for
5 their diminished value loss. The details of the settlement payments, and formula under which
6 they will be made are contained in the Settlement Agreement. This formula and claims process
7 follows that used in *Moeller v. Farmers*, and subsequent cases, with the exception that the claim
8 form has been streamlined and now asks only four questions.⁵

9 Some additional key terms of the proposed settlement are as follows:

10 1. **Notice.** Notice to Class Members shall be made as follows:

11 a) First class mailed notice sent to the updated last known address of persons
12 identified on the Class List. In generating the class list, SFF&CC used the most current
13 Class List Addresses in its. The Claims Administrator will update the addresses of
14 Settlement Class Administrators from the National Change of Address Database and
15 "True Trace." The first class mailed notice will include the Claim Form(s) which will be
16 personalized, printed on contrasting colored paper, and partially filled out for each
17 individual Class member⁶; and

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23 ⁴ Those include recently *Moeller v. Farmers*, *Merrill v. PEMCO*, *Meyer v. AmFam*, *Johnston v. USAA*, *Atkins v.*
24 *National General*, *Snyder v. Farmers*, *Lewis v. Hartford*, *Dawsey v. Travelers*, *Vigna v. Allstate*, *Ball v. Mapfree*,
25 *Achziger v. IDS*, *Miller v. Mutual of Enumclaw*, *Kogan v. Allstate Ins. Co.*, *McGraw v. GEICO*, *James v.*
Nationwide ; *Brunswick v. Amica* ; *Zielinski v. First National & Safeco*; *McCracken v. Unigard.*; *Dashiell v. USAA*;
and Rogers v. PEMCO.

26 ⁵ *Moeller* asked additional questions regarding the type of damage to the vehicle in the qualifying accident, and a
27 question regarding the vehicle's mileage at the time of the accident. These have been removed from this settlement
28 where the claims form only asks about the insured's knowledge (if any) regarding prior accidents and if the vehicle
was leased.

⁶ Class Members with more than one qualifying accident will receive a claim form for each accident. The form will
list information on the vehicle involve and the date of loss.

1 b) The Settlement Agreement provides for the establishment of a Settlement website
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3 at which further information may be obtained, and claims submitted on-line. As with
4
5 other recent settlements, Class Counsel provide their contact information and phone
6 number in the notice and will be available *personally* to address questions of Class
7 Members.

8 2. *Incentive Payments & Attorneys' Fees.* The proposed settlement includes
9 payment made by the Defendant of the sum of \$10,000.00 to Mr. Sanith for his service as Class
10 Representative. Class Counsel will present their request for attorney's fees to the Court within
11 30 days of notice being mailed, prior to the deadline for objections. Under the settlement, the
12 Defendant has agreed that it will pay any attorney's fee request of up to 30% percent of the
13 amount of the Settlement Fund, and a request for actual costs incurred not to exceed \$13,000.00,
14 awarded by this Court. *Settlement* at ¶64. The issue of fees, costs, and payments to the Class
15 Representative for her service is not determined at this time. Both will be disclosed in the notice,
16 which will allow Class Members to, should they wish, to comment on either.⁷

17
18 **V. THE CRITERIA FOR SETTLEMENT CLASS CERTIFICATION AND**
19 **PRELIMINARY SETTLEMENT APPROVAL ARE SATISFIED IN THIS CASE**

20 The proposed settlement provides an excellent resolution to this litigation, warranting
21 preliminary approval and submission to the Class for its consideration. The settlement follows a
22 structure that has been used in prior diminished value settlements in this Court (e.g., *Moeller v.*
23 *Farmers; Merrill v. PEMCO*⁸; *Johnson v. USAA*⁹; *Atkins v. National General*¹⁰; *Snyder v.*

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27 ⁷ This Court's resolution of any fee request in a Class Action includes considering the response of the Class
28 Members to that request, and as such the fee request is resolved at Final Approval, not now.

⁸ Pierce County Superior Court Cause No. 13-2-13764-5

⁹ Pierce County Superior Court Cause No. 14-2-10507-5

¹⁰ Pierce County Superior Court Cause No. 16-2-04728-4

1 *Farmers*¹¹; *Vigna v. Allstate*¹²; *Ball v. Commence West*¹³; *Miller v. Mutual of Enumclaw*¹⁴; *Mc*
2 *Graw v. GEICO*¹⁵; *James v. Nationwide*¹⁶; *Brunswick v. Amica*¹⁷; *Zielinski v. First National*¹⁸;
3 *Dashiell v. USAA*¹⁹; and *Rogers v. PEMCO*²⁰); each was preliminarily and finally approved by
4 Judges of this Court.

5
6 Where a preliminary evaluation of the proposed settlement does not disclose grounds to
7 doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class
8 representatives or segments of the class, or excessive compensation for attorneys and appears to
9 fall within the range of possible approval, *Manual* § 21.632, this request for preliminary approval
10 should be granted.

11
12 The Court should direct that notice be given to the class members of a formal fairness
13 hearing, and the terms of the settlement, and their rights to file a claim, opt-out, or object. At
14 that time, arguments and evidence may be presented in support of or in opposition to the
15 settlement, and the Court will have a full record to rule on the settlement. *Manual* §§ 21.632 &
16 21.633.

17
18 **A. *The Settlement is the Product of Arm's-Length Negotiations***

19 The proposed settlement is the result of arm's-length negotiation between experienced
20 attorneys familiar with the legal and factual issues of the case. Fees, and any bonus for the Class
21 Representative, were not discussed until all other materials terms were agreed upon.
22

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24 _____
25 ¹¹ Pierce County Superior Court Cause No. 13-2-15638-1

26 ¹² Pierce County Superior Court Cause No. 16-2-07871-6

27 ¹³ Pierce County Superior Court Cause No. 19-2-08244-1

28 ¹⁴ Pierce County Superior Court Cause No. 19-2-12357-1

¹⁵ Pierce County Superior Court Cause No. 15-2-07829-7

¹⁶ Pierce County Superior Court Cause No. 20-2-05920-5

¹⁷ Pierce County Superior Court Cause No. 20-2-05690-7

¹⁸ Pierce County Superior Court Cause No. 19-2-12285-0

¹⁹ Pierce County Superior Court Cause No. 20-2-05684-2

²⁰ Pierce County Superior Court Cause No. 22-2-07702-1

1 Class Counsel have decades of combined experience in the litigation and settlement of
2 class actions, with legal and factual similarities to this case. Based upon their extensive work up
3 of similar cases, involving diminished value, Class Counsel support the Settlement as fair and
4 reasonable and as providing prompt possible monetary relief to the members of the Class.
5

6 ***B. The Settlement Provides Reasonable Relief to Class Members***

7 As with other recent DV settlements negotiated by Class Counsel, this is not a “one size
8 fits all” settlement: the proposed settlement provides for actual cash compensation to all eligible
9 Class Members who submit a valid claim form on a *proportional* basis, based upon each
10 individual insured's repair cost (an indication of the severity of the vehicle’s damage, which is -
11 as Class Counsel would contend - related to the amount of the vehicle’s DV) to distribute
12 settlement payments.
13

14 ***C. The Settlement Treats All Class Members Consistently and Fairly***

15 As indicated above, eligible Class Members benefit under the proposed settlement in
16 proportion to the severity of damage to their vehicles. All eligible Class Members who submit a
17 valid claim form will be compensated based on this methodology, which is designed to
18 approximate the severity of the damage sustained by each Class Member’s vehicle, while
19 addressing the issue of previous accidents (if any) by a payment of half of the normal payment
20 to those class members having a prior accident with respect to the same vehicle. Because
21 settlement benefits will be calculated based on a standardized methodology, all Class Members
22 will receive the same value for the same magnitude of claim.
23
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25 The \$10,000.00 award proposed for Mr. Sanith is at the modest end of the spectrum.
26 See, e.g., *Williams Corp. v. Kaiser Sand & Gravel Co.*, No. C91 -4028 MHP, 1995 WL
27 1781676 (N.D. Cal. Sept. 19, 1995) (“finally, the court authorizes an additional payment of
28

1 \$10,000.00 to . . . the Class Representative as compensation for its time and effort expended in
2 the case.”); *Carroll v. Blue Cross & Blue Shield*, 157 F.R.D. 142, 143 (D. Mass. 1994) (“the
3 class representatives shall receive payments of \$7,500.00 each as compensation for services
4 rendered to the class in initiating then prosecuting this action”; *In re Dun & Bradstreet Credit*
5 *Servs. Customer Litig.*, 130 F.R.D. 366, 376 (S.D. Ohio 1990) (incentive awards to compensate
6 the class representatives for “time, risk and expenses” granted in amounts ranging from
7 \$35,000.00 to \$55,000.00); *Bogosian v. Gulf Oil Corp.*, 621 F. Supp. 27, 32 (E.D. Pa. 1985)
8 (stating “the propriety of allowing the modest compensation to class representatives seems
9 obvious,” and awarding \$20,000.00 to two named class representatives) and is identical to that
10 requested in similar DV cases where, as with Mr. Sanith, the Plaintiff has been actively
11 involved in the litigation and been deposed.
12
13

14
15 ***D. There Has Been No Collusion***

16 The settlement negotiations were conducted at arm’s-length over several months’ time.
17 As noted earlier, fees were not discussed until the other settlement terms had been resolved. The
18 parties have agreed that a maximum of 30%, (slightly above the 25% benchmark fee under
19 *Bowles v. Dep’t. of Retirement Sys.*, 121 Wn.2d 52, 847 P.2d 440 (1993)) of the Settlement Fund
20 will be requested with STATE FARM agreeing to pay an award up to 30% from the Settlement
21 Fund.
22

23 **VI. THE PROPOSED NOTICE PLAN SATISFIES DUE PROCESS**

24 Pursuant to CR 23(c)(2):

25 In any class action maintained under subdivision (b)(3), the court
26 shall direct to the members of the class the best notice practicable
27 under the circumstances, including individual notice of all
28 members who can be identified through reasonable effort.

It is well settled that to protect the rights of absent class members, the Court must provide the

1 “best notice practicable” to class members of a potential class action settlement. See *Phillips*
2 *Petroleum Co. v. Shutts*, 472 U.S. 797, 811–12 (1985); *Eisen v. Carlisle & Jacquelin*, 417 U.S.
3 156, 174–75 (1974); *Mullane v. Cent. Hanover Bank & Trust Co.*, U.S. 306, 314 (1950). "Rule
4 23 . . . requires that individual notice in [opt out] actions be given to all class members ‘who can
5 be identified through reasonable efforts’ with others given the ‘best notice practicable under the
6 circumstances; . . . Due process does not require actual notice to parties who cannot reasonably
7 be identified." *Eisen*, 411 U.S. at 175–76.

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9
10 The *Manual* at § 21.312 prescribes the features that a settlement notice should contain.

11 To that end, the notice should:

- 12 • describe the essential terms of the proposed settlement;
- 13 • disclose any special benefits provided to the class representatives;
- 14 • provide information regarding attorneys’ fees
- 15 • indicate the time and place of the hearing to consider approval of the settlement,
16 and the method of objecting to or opting out of the settlement;
- 17 • explain the procedure for allocating and distributing settlement funds, and, if the
18 settlement provides different kinds of relief for different categories of class
19 members, clearly spell out those variations; and
- 20 • prominently display the address and phone number of class counsel and the
21 procedure for making inquiries.

22 Here, the notice attached to the Proposed Order satisfies these criteria and follows and is based
23 upon the template created by the Federal Judicial Center for use in Class Action Cases. The
24 proposed Claim Form is designed to be easily understood and completed by Class Members who
25 are asked to answer four standardized questions. Those who do not wish to participate in the
26 settlement receive instructions as to how they can exclude themselves (“opt out”) from the class.
27
28 Copies of the Stipulation of Settlement, which is lengthy and cannot practicably be incorporated

1 into the notice without causing confusion, will be available on the website established for this
2 matter as the *Manual* at § 21.312 recommends.

3
4 The notice also includes comprehensive information on the claims and options available
5 to the class members. As the *Manual* concludes; "[t]he notice should describe clearly the options
6 open to the class members and the deadline for taking action." *Id.* The proposed form of notice
7 satisfies these standards and should be approved.

8
9 The proposed opt-out period of roughly 45 days is commonplace in class actions and is
10 longer than the more typical 30-day periods often found and should be approved by the Court.

11 The last step in the settlement approval process is a final fairness hearing at which the
12 Court may hear all evidence and argument necessary to make its settlement evaluation.
13 Proponents of the settlement may explain and describe the terms and conditions of the settlement
14 and offer argument in support of final approval; in addition, any member of the Settlement Class,
15 or their counsel, may be heard in support of or in opposition to the proposed settlement. The
16 Court will determine after the hearing whether the settlement is entitled to final approval, and a
17 final order and judgment under CR 23(e) may thereupon be entered.

18
19 The hearing date suggested by the parties (allowing *at least* a week past the
20 objection/opt-out deadline) will allow sufficient time for comments or objections (if any) to be
21 considered and final approval papers responding to those comments and/or objections to be
22 prepared and filed, yet allows the settlement (if approved) to be finalized as soon as possible so
23 that members of the Class can be compensated.
24

25 **VIII. CONCLUSION**

26
27 Mr. Sanith and Class Counsel respectfully request that the Court GRANT preliminary
28 approval of the proposed Settlement, ORDER that notice be provided to Settlement Class

