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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

19 THE DOAN, PAUL ENDRES, and JANE
20 MARIANI, individuals on behalf of themselves
21 and a class of similarly situated persons,

22 Plaintiffs,

23 v.

24 STATE FARM GENERAL INSURANCE
25 COMPANY, an Illinois Corporation,

26 Defendant.

CLASS ACTION

Case No. 108CV129264

SETTLEMENT AGREEMENT

1 This Settlement Agreement, dated as of March 29, 2018, and all exhibits thereto (the
2 "Settlement Agreement"), is made and entered into by and among the following Parties (as
3 defined below): (i) PAUL ENDRES and JANE MARIANI ("Representative Plaintiffs"), by and
4 through Cutter Law P.C. and Dreyer Babich Buccola Wood Campora, LLP ("Policyholders'
5 Counsel"); and (ii) STATE FARM GENERAL INSURANCE COMPANY ("State Farm"). The
6 Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge,
7 and settle *Doan et. al. v. State Farm General Insurance Company*, Case No. 108CV129264,
8 pending in the Superior Court of the State of California for the County of Santa Clara, upon and
9 subject to the terms and conditions hereof.

10 WHEREAS,

- 11 1. In this matter, the trial on the Fourth Amended Complaint's cause of action for declaratory
12 relief commenced on November 9, 2015 (Trial Phase I).
- 13 2. Specifically at issue at Trial Phase I was whether or not State Farm's adjustment methods
14 when calculating depreciation complied with the mandates of Insurance Code section
15 2051 and the Code of California Regulations 2695.9(f).
- 16 3. All evidence and arguments were ultimately submitted by the parties to the Court on
17 December 11, 2015.
- 18 4. On April 20, 2016, the Honorable Peter H. Kirwan issued the Court's Statement of
19 Decision as to the Fourth Amended Complaint's claim for declaratory relief, as attached
20 hereto as Exhibit A.
- 21 5. Policyholders' Counsel and State Farm began engaging in arm's length negotiations
22 concerning a possible settlement of the matter and thereafter agreed to participate in
23 mediation before Hon. William Cahill (Ret.) on April 6, 2017. Some agreements were
24 reached at that mediation and then the Court held two Settlement Conferences. As a
25 result of these mediated discussions, the Representative Plaintiffs and State Farm have
26 agreed to resolve the remaining claim in this case, brought under California Business and
27 Profession Code Section 17200, before proceeding to Trial Phase II, and to fully resolve
28 this matter in its entirety. The principle terms of the settlement were put on the record in
open court on September 29, 2017 by authorized representatives of the Parties. There was
a further mediation supervised by the Honorable Justice Richard Aldrich (Ret.) on January

1 25, 2018. At this mediation the parties reached an agreement by which Policyholders'
2 Counsel's claim for fees and costs would be resolved.

3 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the
4 Representative Plaintiffs by and through Policyholders' Counsel and State Farm, as follows:

5
6 **1. Definitions**

7 As used in the Settlement Agreement and the exhibits hereto, in addition to any definitions
8 set forth elsewhere in this Settlement Agreement, the following terms have the meanings
9 specified below:

10 1.1. "Costs of Notice and Administration" means, except as otherwise provided herein,
11 all costs and expenses reasonably and actually incurred in connection with the required activities
12 of State Farm except the cost of publication notice. Plaintiffs' Counsel will advance the cost of
13 publication subject to a claim for reimbursement to be submitted to the Court but limited as the
14 parties have agreed.

15 1.2. "Court" means the Santa Clara County Superior Court.

16 1.3. "Defendant's Counsel" means Michael O'Neill, SHAVER, KORFF &
17 CASTRONOVO, LLP at 16255 Ventura Boulevard, Suite 850, Encino, CA 94136.

18 1.4. "Request for Reconsideration" means the form to be submitted to request a
19 reconsideration of a Reconsideration Claimant's personal property claim .

20 1.5. "Final Approval Hearing" means the hearing to be conducted by the Court to
21 finally determine the fairness, adequacy and reasonableness of this Settlement Agreement in
22 accordance with applicable jurisprudence.

23 1.6. "Final Order and Judgment" refers to the order to be entered by the Court
24 following the Final Approval Hearing, approving this Settlement Agreement without material
25 alterations, as fair, adequate and reasonable in accordance with applicable jurisprudence, and
26 issuing such other findings and determinations as the Court or the Parties deem necessary and
27 appropriate to effectuate the terms of this Settlement Agreement.

28 1.7. "Judgment" means the entry of judgment dismissing this Litigation, pursuant to
the terms of the Final Order and Judgment.

1 1.8. "Notice" refers to the "Offer of Reconsideration" which will be sent to
2 Reconsideration Claimants at their last known mailing address.

3 1.9. "Notice Date" means 60 days after entry of the order granting Preliminary
4 Approval of the Settlement, by which time State Farm both shall have completed the mailing of
5 Notice and Policyholders' Counsel shall have posted the settlement website on the Internet.

6 1.10. "Person" means an individual, corporation, partnership, limited partnership,
7 limited liability company or partnership, association, joint stock company, estate, legal
8 representative, trust, unincorporated association, government entity or any political subdivision or
9 agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors,
10 successors, representatives, and/or assignees.

11 1.11. "Plaintiffs" mean Paul Endres, Jane Mariani and The Doan who was a plaintiff for
12 a limited period of time.

13 1.12. "Policyholders' Counsel" means Cutter Law P.C. at 401 Watt Avenue, Sacramento
14 CA 95864 and Dreyer Babich Buccola Wood Campora, LLP at 20 Bicentennial Circle,
15 Sacramento CA 95864.

16 1.13. "Preliminary Approval Order" refers to the order to be entered by the Court
17 preliminarily approving the proposed Settlement Agreement and Notice Plan, substantially in the
18 form of Exhibit B, attached hereto.

19 1.14. "Related Entities" means any past or present director, officer, employee, agent,
20 attorney, predecessor, successor, parent, subsidiary, division and any affiliated entity of State
21 Farm.

22 1.15. "Reconsideration Claimants" consist of:

23 All former or current State Farm policyholders in California who made a claim to State
24 Farm for actual cash value in a personal property claim during the time period of December 31,
25 2004 to May 19, 2014 and did not exhaust their respective policy limit for personal property and
26 whose personal property claim was not originally denied.

27 Excluded from the Reconsideration Claimants are any natural persons who are directors
28 and officers of State Farm, and any of their legal representatives, heirs, successors or assigns, and
any judicial officer to whom this matter is assigned. State Farm estimates that the approximate
number of Reconsideration Claimants is 89,769.

1 1.16. "Reconsideration Claimant" means any Person who meets the definition set forth
2 in 1.15 above.

3 1.17. "Website Notice" means the detailed notice regarding the Settlement which will
4 be posted on the settlement website and available to Reconsideration Claimants upon request.

5 1.18. "Publication Notice" means the document that is attached as Exhibit C.

6 1.19. "Effective date" means the date that the Court's Final Approval Order and entry
7 of Judgment dismissing the action becomes final.

8 **2. State Farm's Settlement Position**

9 2.1 State Farm denies each and every claim and contention alleged against it in the
10 Litigation and all charges of wrongdoing or liability alleged against it. Nonetheless, State Farm
11 and its counsel have concluded that it is desirable that this matter be fully and finally settled in the
12 manner and upon the terms and conditions set forth in this Settlement Agreement. State Farm has
13 also taken into account the uncertainty and risks inherent in litigation. State Farm has therefore
14 determined that it is desirable that the case be settled in the manner and upon the terms and
15 conditions set forth in this Settlement Agreement.

16 **3. Claims of the Representative Plaintiffs and Benefits of the Settlement**

17 3.1 The Representative Plaintiffs and Policyholders' Counsel believe the claims
18 asserted in this matter have merit. However, Representative Plaintiffs and Policyholders'
19 Counsel recognize and acknowledge that the expense and length of continued proceedings
20 necessary to prosecute the case against State Farm through further trial and potential appeals is
21 considerable and that resolution is an appropriate and reasonable means of ensuring that the
22 Reconsideration Claimants are afforded important benefits and protections as expeditiously as
23 possible. Policyholders' Counsel have taken into account the uncertain outcome and the risk of
24 further litigation, as well as the difficulties and delays inherent in such litigation.

25 3.2 Policyholders' Counsel believes that the settlement set forth in this Settlement
26 Agreement confers substantial benefits upon the Reconsideration Claimants and current State
27 Farm policyholders and has determined, following years of litigation, discovery, and trial of part
28 of this action, that the settlement set forth in this Settlement Agreement is fair, reasonable, and
adequate, and in the best interests of the Representative Plaintiffs and the Reconsideration
Claimants.

1 **4. For Settlement Purposes Only**

2 4.1 This Settlement Agreement, whether or not consummated, and any proceedings
3 taken pursuant to this Settlement Agreement are for settlement purposes only, and neither the fact
4 of, nor any provision contained in this Settlement Agreement or its exhibits, nor any action taken
5 hereunder shall constitute, be construed as, or be admissible in evidence as any admission of the
6 validity of any claim or any fact alleged by the Representative Plaintiffs in this Litigation or in
7 any other pending action or of any wrongdoing, fault, violation of law, or liability of any kind on
8 the part of State Farm or any of the Released Parties or admission by State Farm or any of the
9 Related Entities of any claim or allegation made in this matter or in any other action, nor as an
10 admission by the Representative Plaintiffs, Reconsideration Claimants or Policyholders' Counsel
11 of the validity of any fact or defense asserted against them in this matter or in any other action.

12 4.2 This Settlement Agreement and any and all related communications shall not be
13 used for any purpose other than as needed in support of the Plaintiffs' Counsel's request for
14 approval of this Settlement Agreement or for the enforcement of its terms.

15 **5. Settlement Benefits**

16 Each Reconsideration Claimant shall be offered the right to seek reconsideration of
17 his or her personal property damage claim as set forth in Section 5.1.

18 **5.1 Insurance Claim Reconsideration**

19 (a) Within sixty (60) days after the Court enters an order granting Preliminary
20 Approval of this settlement, State Farm will send an Offer of
21 Reconsideration as specified in the transcript of the hearing dated
22 September 9, 2017 to the last known mailing address of each
23 Reconsideration Claimant. Included with the Offer of Reconsideration will
24 be a Request for Reconsideration. Each Reconsideration Claimant who
25 returns the Request for Reconsideration who made a claim against State
26 Farm for Actual Cash Value (ACV) of lost or damaged personal property,
27 whose policy limits were not paid, and whose claim was not originally
28 denied by State Farm, is entitled to request reconsideration of his or her
claim, specifically, the depreciation applicable to individual lost or
damaged items of personal property. Prior to mailing, State Farm will

1 compare the mailing addresses for the approximately 89,769 former or
2 current policyholders referred to above with the United States Postal
3 Service to get the most current address. If the Notice is returned to State
4 Farm by the United States Postal Service as undeliverable, then State Farm
5 will inform Policyholders' Counsel of the name of each policyholder who
6 did not receive the notice.

7 (b) State Farm will provide the mailing list of the Reconsideration Claimants
8 to both the Policyholders' Counsel and to a third party administrator and
9 the third party administrator will audit the mailing process and provide the
10 result of the audit process to the Policyholders' Counsel and State Farm. If
11 State Farm elects to retain a third party administrator to mail the Offer of
12 Reconsideration, State Farm agrees that this retained third party
13 administrator will be independent, reputable and experienced. Any third
14 party administrator retained by either State Farm or Policyholder's Counsel
15 needs to be independent and approved by the Court prior to any work being
16 performed. If State Farm retains an independent, reputable and experienced
17 third party administrator that is approved by the Court to mail the Offer of
18 Reconsideration, then Policyholders' Counsel will not conduct an audit. If
19 State Farm elects to mail the Offer of Reconsideration, Policyholders'
20 Counsel can retain a third party administrator to conduct an independent
21 audit of the mailing. Policyholders' Counsel will pay for the cost of the
22 audit and will not claim that cost as a recoverable cost from State Farm.

23 (c) State Farm will reconsider the Actual Cash Value (ACV) for the personal
24 property claims of each of the Reconsideration Claimants whose original
25 claims were not denied entirely and who elect to have their claims
26 reconsidered. Policyholders who elect to ask for reconsideration will
27 receive from State Farm, if available, a copy of their original Contents
28 Inventory Summary for their claim. The policyholder will be asked to
identify the item or items that he or she thinks State Farm took excessive
depreciation and will provide further information to State Farm on the

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condition of each item or items. State Farm will consider this information about condition. If appropriate, State Farm will re-calculate depreciation and may issue a further payment as appropriate to policyholders, including simple interest at 5% calculated from January 1 of the year after the last payment on the policyholder's personal property claim was made through the last day of the month before State Farm makes a further payment.

- (d) If a policyholder continues to dispute the depreciation assessed then the policyholder can contact State Farm and seek to negotiate an agreement. If a policyholder cannot reach an agreement with State Farm, then the policyholder can proceed with an arbitration process.
- (e) State Farm will consider the insured's assertion of the condition of the item or items for which reconsideration is sought. State Farm will evaluate the insured's position in light of all the information that State Farm has and will decide if reconsideration of the depreciation for an item or items is supported.
- (f) State Farm may not reduce the recovery of any policyholder who elects to have his or her items reconsidered by State Farm based upon a contention that State Farm previously overpaid on any item when the claim was originally adjusted.
- (g) The parties will agree upon and designate several neutral arbitrators who will be prepared to hear any disputes about differences in depreciation. The arbitration will proceed with each side (the disputing policyholder and State Farm) assigning a specific amount of depreciation for each item. The arbitrator will then choose either the policyholder's or State Farm's proffered depreciation for each item. The arbitrator will issue an award reflecting his or her evaluation of each item for which depreciation was disputed. State Farm will pay for all costs of arbitration.

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6. Publication Notice

6.1 Publication Notice will be made of the Court's Phase 1 ruling in the form attached hereto as Exhibit C.

7. Changes in State Farm's Practices

7.1 The Parties agree, as a material term of this Settlement Agreement, that the factual findings and legal analysis applicable to State Farm's claim adjustment practices and the rights of the parties as declared by this Court in Exhibit A, are deemed and agreed to inure to the benefit of all current and former State Farm policyholders in California who elect to have the depreciation that had been applied to their claims reconsidered by State Farm.

7.2 After this action was filed, starting on May 19, 2014, State Farm began the use of XactContents for claims made in California that involved the claimed loss of or damage to personal property for claims that were submitted on and after that date. The XactContents tool considers the condition of each item of claimed lost or damaged personal property. When State Farm uses XactContents to calculate depreciation for lost or damaged personal property, State Farm communicates to the involved policyholder the basis for the calculation of depreciation for each item and will provide upon request the depreciation schedule depreciation used to adjust the subject personal property claim. State Farm agrees that the depreciation guide used by XactContents or whatever means State Farm is using to calculate depreciation or work life expectancy will be available to current policyholders and Reconsideration Claimants for public review. State Farm agrees, as a material term of this Settlement Agreement, that it will continue to use tools or processes that consider the condition of each item of claimed lost or damaged personal property and will communicate to the involved policyholder the basis for the determination of depreciation for each item that is claimed.

8. Preliminary and Final Approval

8.1 As soon as practicable after the execution of the Settlement Agreement, Policyholders' Counsel shall submit this Settlement Agreement to the Court and apply for entry of the Preliminary Approval Order, substantially in the form attached as "Exhibit B" hereto, which order by its terms shall:

- (a) Approve this Settlement Agreement for purposes of issuing the Offer of Reconsideration to the Reconsideration Claimants;

- 1 (b) Approve the form and content of the Offer of Reconsideration and method
2 of its dissemination to Reconsideration Claimants; and
3 (c) Schedule the Final Approval Hearing to review comments and/or
4 objections regarding this Settlement Agreement, to consider its fairness,
5 reasonableness and adequacy, and the application for an award of
6 attorneys' fees and reimbursement of expenses, and to consider whether the
7 Court shall issue a Final Order and finally approving the Settlement, ruling
8 on Policyholders' Counsel's application for fees and expenses, and
9 dismissing this matter with prejudice.

10 **9. Exclusive Remedy**

11 9.1 The Parties agree that the Court shall retain exclusive and continuing jurisdiction
12 of this matter, in order to interpret and enforce the terms, conditions, and obligations under this
13 Settlement Agreement.

14 9.2 Nothing in this Settlement Agreement, or in the anticipated Final Order and
15 Judgment, shall grant jurisdictional authority to any Court over the subject matter alleged in these
16 actions, other than as specifically stipulated to herein.

17 **10. Settlement Approval Order**

18 10.1 This Settlement Agreement is subject to and conditioned upon the issuance by the
19 Court of the Final Order and Judgment which grants final approval of this Settlement Agreement
20 in accordance with applicable jurisprudence, and provides the relief specified below, which relief
21 shall be subject to the terms and conditions of this Settlement Agreement and the Parties'
22 performance of their continuing rights and obligations hereunder. Such Final Order and
23 Judgment shall:

24 10.2 Direct Plaintiffs' Counsel to dismiss the Operative Complaint with prejudice and
25 without costs;

26 10.3 Determine that this Settlement Agreement is entered into in good faith, is
27 reasonable, fair and adequate, and in the best interest of the Plaintiffs and Reconsideration
28 Claimants; and

10.4 Preserve the Court's continuing and exclusive jurisdiction over State Farm and all
Plaintiffs and Reconsideration Claimants, to administer, supervise, construe and enforce this

1 Settlement Agreement in accordance with its terms for the mutual benefit of the Parties, but
2 without affecting the finality of the Judgment.

3 10.5 In the event that the Court or any appellate court enters an order altering this
4 Settlement Agreement in a way that materially and adversely affects any of the Parties, within
5 fifteen (15) calendar days from the date the Court or appellate court enters such an order, the
6 affected party may terminate this Settlement Agreement by giving written notice of its intent to
7 do so to the opposing party's counsel.

8 10.6 In the event that this Settlement Agreement is not approved by the Court or is
9 otherwise canceled in accordance with its terms, or the settlement set forth in this Settlement
10 Agreement is otherwise canceled or terminated or fails to become effective in accordance with its
11 terms, it shall become null and void and shall have no further force and effect, and neither this
12 Settlement Agreement (including any and all of its provisions and the exhibits hereto), nor any
13 drafts hereof, nor any of the negotiations and proceedings relating hereto: (i) shall be offered,
14 received in evidence or otherwise used in this Action or in any other action or proceedings for any
15 purpose, or (ii) shall prejudice the rights of any of the Parties hereto, who shall be restored to their
16 respective positions immediately prior to the execution of this Agreement.

17 10.7 In the event that the Settlement Agreement is not approved by the Court or the
18 settlement set forth in the Settlement Agreement is terminated in accordance with its terms, (i) the
19 Parties shall be restored to their respective positions in the action, and shall jointly request that all
20 scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any
21 Party or litigant, which extension shall be subject to the decision of the Court, (ii) the terms and
22 provisions of the Settlement Agreement shall have no further force or effect with respect to the
23 Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and (iii)
24 any judgment or order entered by the Court in accordance with the terms of the Settlement
25 Agreement shall be treated as vacated, *nunc pro tunc*.

26 **11. Attorneys' Fees and Expenses and Compensation for Representative**
27 **Plaintiffs**

28 11.1 Except as provided herein, none of the Parties shall bear any expenses, costs,
damages, or fees alleged or incurred by Representative Plaintiffs or by any of their attorneys,
experts, advisors, agents or representatives.

1 11.2 Policyholders' Counsel will request \$14,000,000 in fees and costs. State Farm
2 agrees that Policyholders' Counsel are entitled to an award of attorney fees and costs but State
3 Farm will contest the amount of fees and costs requested by Policyholders' Counsel. The Parties
4 agree that in no event will Policyholder's Counsel be entitled to collect more than the
5 \$14,000,000 they request. The Parties agree that the Court's decision on fees and costs and the
6 scope of the Publication Notice and the form the Publication Notice will take will be final and not
7 subject to appeal by either party.

8 11.3 Policyholders' Counsel will also request for The Doan, Paul Endres, and Jane
9 Mariani individual incentive awards of up to the sum of \$15,000 each for prosecuting this lawsuit,
10 including appearing for deposition, cooperating with counsel, responding to discovery, and
11 testifying in the trial of this matter. State Farm retains the right to oppose the request for the
12 payment of any incentive award.

13 11.4 State Farm agrees to pay the award of Attorneys' Fees and Costs into a Qualified
14 Settlement Fund ("QSF") within 15 days of the Court executing the Final Approval Order that
15 includes an award of Attorneys' Fees and Costs. Policyholders' Counsel agree that the funds in
16 the QSF shall not be withdrawn until the Effective Date is reached. Any interest earned in the
17 QSF during the pendency of any appeal by an intervener shall go to Policyholders' Counsel if the
18 Court's award is upheld on appeal. If there is an appellate modification of the Court's fee and
19 costs award as a result of an intervener's appeal, the parties will allocate any interest earned pro
20 rata based upon the modification of the award. If this Settlement Agreement is not approved by
21 the Court, or is canceled in accordance with its terms or is otherwise canceled or terminated or
22 fails to become effective and becomes null and void as set out in paragraph 10.6 of this
23 Settlement Agreement all principal and interest held in the QSF will be returned to State Farm
24 within 10 days of this Settlement Agreement becoming null and void.

25 **12. Termination of Settlement Agreement**

26 12.1 This Settlement Agreement shall, without notice, be automatically terminated if
27 the Judgment is not entered, or in the event of any party's withdrawal pursuant to Section 10.5 of
28 this Settlement Agreement. Upon termination, all Parties shall be restored to their respective
positions as immediately prior to the date of execution of this Settlement Agreement except as
otherwise provided.

1 **13. Notice to Parties**

2 13.1 All notices to the Parties or their counsel required by this Settlement Agreement,
3 except objections, shall be made in writing and communicated by facsimile and regular mail to
4 the following addresses and facsimile numbers:

5 If to Plaintiffs Paul Enders or Jane Mariani or Policyholders' Counsel:

6 C. Brooks Cutter
7 John Parker Jr
8 CUTTER LAW P.C.
9 401 Watt Avenue
 Sacramento, CA 95864
 Facsimile: (916) 669-4499

10 Robert A. Buccola
11 Steven M. Campo
12 DREYER BABICH BUCCOLA WOOD CAMPORA, LLP
13 20 Bicentennial Circle
 Sacramento, CA 95826
 Telephone: (916) 379-3500
 Facsimile: (916) 379-3599

14 If to State Farm or Defendant's Counsel:

15 Michael O'Neill
16 SHAVER, KORFF & CASTRONOVO, LLP
17 16255 Ventura Boulevard, Suite 850
18 Encino, CA 94136
19 Telephone: (818) 905-6001
 Facsimile: (818) 905-6004

20 **14. Miscellaneous Provisions**

21 14.1 This Settlement Agreement, including all exhibits hereto, shall constitute the entire
22 agreement among the Parties with regard to the subject of this Settlement Agreement and shall
23 supersede any previous agreements, representations, communications and understandings among
24 the Parties with respect to the subject matter of this Settlement Agreement. No representations,
25 warranties or inducements have been made to any Party concerning this Settlement Agreement or
26 its exhibits other than the representations, warranties and covenants contained and memorialized
27 in such documents, except as expressly herein provided. This Settlement Agreement is a fully
28 integrated agreement and may not be changed, modified, or amended except in writing signed by
all Parties, subject to Court approval. The Parties contemplate that, subject to Court approval, the

1 exhibits to this Settlement Agreement may be modified by subsequent agreement of State Farm
2 and Plaintiffs' Counsel prior to dissemination to the Reconsideration Claimants.

3 14.2 The Parties intend this settlement to be a final and complete resolution of all
4 disputes, claims, and causes of action by and between them with respect to the Litigation in any
5 way whatsoever. The settlement compromises claims that are contested and shall not be deemed
6 an admission by any of the Parties as to the merits of any claim or defense. The Parties each
7 agree that the settlement was negotiated in good faith by the Parties, and reflects a settlement that
8 was reached voluntarily after consultation with competent legal counsel.

9 14.3 The Settlement Agreement may be amended or modified only by a written
10 instrument signed by or on behalf of all the Parties or their respective successors-in-interest.

11 14.4 Subject to Court approval, the Parties may agree to reasonable extensions of time
12 to carry out any of the provisions of this Settlement Agreement.

13 14.5 This Settlement Agreement shall be binding upon and inure to the benefit of the
14 Parties and their respective agents, executors, heirs, successors and assigns.

15 14.6 The determination of the terms of, and the drafting of, this Settlement Agreement
16 has been by mutual agreement after negotiation, with consideration by and participation of the
17 Parties hereto and their counsel.

18 14.7 The Settlement Agreement may be executed in one or more counterparts, each of
19 which shall be deemed an original but all of which together shall constitute one and the same
20 instrument. A complete set of original executed counterparts shall be filed with the Court.

21 14.8 If for any reason any portion of this Settlement Agreement shall be interpreted or
22 determined to be illegal, invalid, void, or unenforceable, the remaining provisions shall remain in
23 full force and effect, unless this severability provision would deny one or more Parties of the
24 material benefits of this Settlement Agreement, in which case the entire Settlement Agreement
25 shall have no force and effect.

26 14.9 The waiver by a party of any provision or breach of this Settlement Agreement
27 shall not be deemed a waiver of any other provision or breach of this Settlement Agreement.

28 14.10 This Settlement Agreement shall be considered to have been negotiated, executed
and delivered, and to be wholly performed, in the State of California, and the rights and
obligations of the Parties to the Settlement Agreement shall be construed and enforced in

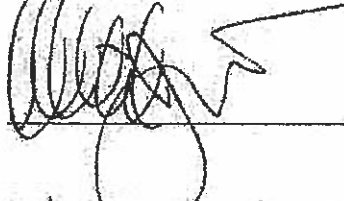
1 accordance with, and governed by, the internal, substantive laws of the State of California without
2 giving effect to that State's choice of law principles.

3 14.11 Agreements made and orders entered during the course of the Litigation relating to
4 the confidentiality of information shall survive this Settlement Agreement.

5 14.12 Each counsel or other Person executing the Settlement Agreement on behalf of any
6 party hereto hereby warrants that such counsel or other Person has the full authority to do so.

7 IN WITNESS WHEREOF, the Parties hereto have caused the Settlement Agreement to be
8 executed by their duly authorized agents.

9 STATE FARM GENERAL
10 INSURANCE COMPANY

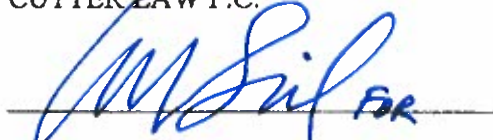
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12
13 MICHAEL S. O'NEIL, Esq. 106607
14 By:

15 Title: COUNSEL FOR STATE
16 FARM ~~INSURANCE~~ COMPANY
17 INS CO

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19 C. Brooks Cutter (SBN 121407)
20 CUTTER LAW P.C.

21 

22 Robert A. Buccola (SBN 112880)
23 DREYER BABICH BUCCOLA WOOD
24 CAMPORA, LLP

E-FILED

Apr 20, 2016 1:44 PM

David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
Case #1-08-CV-129264 Filing #G-82963
By R. Walker, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

THE DOAN, an individual on behalf of himself
and a class of similarly situated persons,

Plaintiffs,

vs.

STATE FARM GENERAL INSURANCE
COMPANY, an Illinois corporation,

Defendants.

Case No.: 1-08-CV-129264

FINAL STATEMENT OF DECISION

Trial Date: November 9, 2015
Time: 9:00 am
Dept.: 1 (Complex Civil Lit)

Complaint Filed: 12/4/08
1st Amended Complaint Filed: 1/28/09
2nd Amended Complaint Filed: 5/8/09
3rd Amended Complaint Filed: 7/20/12
4th Amended Complaint Filed: 3/9/15

Judge: Hon. Peter H. Kirwan
Dept: 1 (Complex Civil Litigation)

The above-entitled matter was tried before the Honorable Peter H. Kirwan, sitting without a jury, commencing on November 9, 2015. The court trial proceeded over the course of eight court days between November 9, 2015 and December 3, 2015. Attorney's Robert Buccola, Steven Campora, Brooks Cutter and John R. Parker, Jr. represented Plaintiffs. Attorneys Raoul Kennedy, James Schaefer, and Michael O'Neill represented Defendant State Farm General Insurance Company.

Following the submission of evidence, the Court afforded the parties an opportunity to submit their respective Proposed Statements of Decision. Both parties presented closing

1 arguments on December 3, 2015, and the matter was then taken under submission by the Court.
2 Having considered all of the evidence, the credibility of the witnesses, and pre- and post-trial
3 briefs, the Court issued its Proposed Statement of Decision on March 2, 2016 in accordance
4 with and pursuant to Code of Civil Procedure section 632 and California Rules of Court, Rule
5 3.1590. Thereafter, Defendant State Farm General Insurance Company filed its Objections to
6 Proposed Statement of Decision on March 17, 2016 pursuant to California Rules of Court,
7 Rule 3.1590(g). In addition, Plaintiffs filed a Response to the Proposed Statement of Decision
8 on March 17, 2016 and Defendants immediately filed their Objection to Plaintiffs' Response.
9 To the extent that this Statement of Decision has not elaborated upon certain arguments and/or
10 objections raised by Defendant, they have been reviewed and considered prior to the issuance
11 of this Decision.

12 I. PROCEDURAL BACKGROUND

13 This litigation was originally filed on December 4, 2008. This Court sustained
14 Defendant State Farm's Demurrer to Plaintiff's Second Amended Complaint in June, 2009.
15 Plaintiffs then filed an appeal and on May 14, 2011, the Court of Appeal (6th District) reversed
16 this Court's Order sustaining the demurrer and dismissing Plaintiff's Complaint (See *Doan v.*
17 *State Farm General Insurance Co. (2011) 195 Cal.App.4th 1082*). The matter was then
18 remanded back to this Court and on March 18, 2013, this Court entered an Order certifying
19 Plaintiff's two proposed classes: (1) all California residents insured under a State Farm
20 homeowners or commercial insurance policy; and (2) all California residents insured under a
21 State Farm homeowners or commercial insurance policy who made a claim for actual cash
22 value in a person property claim and who accepted a first party settlement for less than the
23 applicable policy limits, or whose claims are still pending and who have not been offered the
24 policy limits, between December 31, 2004 and the time of this trial.

25 In reversing and remanding, the Court of Appeal found that the Plaintiff could seek
26 declaratory relief where a statutory construction question lies at the heart of the parties'
27 dispute. The Court of Appeal found that the Plaintiff could seek pre-appraisal declaratory
28 relief and that the trial court had discretion to stay the appraisal proceeding pending resolution

1 of the legal questions. Following remand, this Court issued an Order dated February 25, 2014
2 which outlined the issues to be tried in the declaratory relief portion of the case which was set
3 for trial on June 9, 2014. The Order reads, in pertinent part:

4
5 “Thus, the following factual and legal questions are to be adjudicated at the March 3 trial
6 for declaratory relief:

- 7
- 8 ▪ Is Defendant’s mere use of the Depreciation Guide a violation of Insurance Code
9 section 2051? If not, is Defendant’s exclusive use of the Depreciation Guide a
10 violation of Insurance Code section 2051?
 - 11 ▪ Is Defendant’s use of the Depreciation Guide kept “secret” or “concealed” from
12 claimants? If not, does Defendant “fully explain[] to the claimant in writing” the
13 basis for a depreciation adjustment as required by California Code of Regulations,
14 Title 10, Chapter 5, Section 2695.9 subdivision (f)?

15 The trial will necessarily involve interpreting the meaning of statutory phrases such as “a
16 fair and reasonable deduction for physical depreciation based upon its condition at the time of
17 the injury” as used in Cal. Ins. Code, § 2051, subd. (b)(2), and the “fully explained” requirement
18 of section 2695.9 subdivision (f). The trial will also involve making factual findings on whether
19 Defendant’s claim adjustment conduct violates the relevant statutes and regulations as set forth
20 in paragraph 69 of the TAC. However, the trial will not resolve Plaintiffs’ other causes of action
21 for violation of the Unfair Competition Law (Bus. & Prof. Code, § 17200), breach of contract,
22 and breach of the implied covenant of good faith and fair dealing, or Plaintiffs’ request for
23 injunctive relief. The resolution of Plaintiffs’ declaratory relief cause of action will be limited to
24 a declaratory judgment on the actual controversy as set forth in the TAC.”

25 Prior to the scheduled trial date of June 9, 2014, State Farm moved to stay the case until
26 completion of the Department of Insurance’s Market Conduct Examination of State Farm’s
27 depreciation practices. Ultimately, the case was stayed and the results of the Department of
28 Insurance’s Market Conduct Examination were received by this Court on February 18, 2015.
The stay was then lifted and the declaratory relief cause of action was tried before this Court
between November 9, 2015 and December 3, 2015.¹

¹ During the Phase 1 trial, there was some evidence presented that in May of 2014, State Farm began using a new program for personal property losses (XactContents) in place of its internally created PPIF. This Statement of Decision only addresses State Farm’s practices before it changed to XactContents.

1 **II. FINDINGS OF FACT**

2 Following the submission of evidence and argument by counsel, the Court makes the
3 following findings.

4 Both Plaintiffs Paul Endres and Jane Mariani were insured with State Farm at the time
5 they suffered fire losses at their residences. Mr. Endres suffered a fire loss at his home in
6 Berkeley on April 7, 2011. Ms. Mariani suffered a fire loss at her townhouse in Sacramento on
7 February 28, 2011. Both Plaintiffs submitted claims for damaged personal property resulting
8 from the respective fires. For personal property losses, Plaintiffs' policies provided that State
9 Farm would pay the cost to repair or replace less depreciation. (Trial Exhibit 42).
10

11 While adjusting a claim for personal property loss following a fire, State Farm would
12 require its insured to complete a Personal Property Inventory Form ("PPIF") itemizing the items
13 claimed as damaged or lost. The PPIF Form had separate columns for the insured to list the
14 quantity of the item, a description of the item, the brand name, the purchase source, the age, and
15 the replacement cost. This form did not contain a separate column for the description of an
16 item's condition at the time of loss. The PPIF is sent or given to the insured who then
17 completes it and returns it to the claims adjuster. During this claims process, State Farm
18 adjusters will often meet with the insured at the property or communicate by telephone or
19 correspondence to assist in the claims process. Once an insured submits the PPIF to State Farm,
20 the items are programmed onto a computer spreadsheet by the claims adjuster using the
21 information obtained by the insured on the PPIF. In addition, State Farm uses a Depreciation
22 Guide (the "Guide") during its claims adjustment process. The Guide is a set of guidelines that
23 provides assistance in the claims adjustment process as it provides useful work life estimates for
24 household items commonly owned by insureds. The Guide had been used by State Farm for
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1 many years and is an age-based useful life expectancy schedule that assumes average quality and
2 average use. Upon receipt of the PPIF from the insured, State Farm then generates a Content
3 Inventory Summary ("CIS") which includes the items on the PPIF and also states the amount of
4 depreciation for each item. For items that are specifically listed in the Guide, State Farm
5 adjusters are trained to start with the Guide's schedule for determining the amount of the
6 depreciation allocated to a particular item on the CIS Form. The preamble to the Guide reads as
7 follows:
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9 The most important factor in determining depreciation is good judgment. Depreciation
10 will vary with usage which, in turn, varies with each family. Determination of the value of an
11 article which is lost, damaged or destroyed requires consideration and reporting of all pertinent
12 factors, including the quality of the articles, model, brand, extent of wear and tear, and the
13 extent to which the article had been used prior to the incident which generated the claim. A
14 depreciation guide or schedule is to be used in conjunction with other indications of value
15 including visual inspection, whenever possible.

16 Once the CIS is generated by the claims adjuster, it is sent to the insured for review. If
17 the insured is satisfied with the depreciation deduction and has no questions or concerns, State
18 Farm will tender a check to the insured for the Actual Cash Value ("ACV") of the claimed
19 property. If the insured has questions or concerns about the amount of depreciation or how the
20 claim was processed, the adjuster will normally obtain additional information from the insured
21 regarding the disputed item and, if appropriate, make adjustments to the ACV of a particular
22 item. The adjusters were permitted to deviate from the Guide but were instructed to document
23 any change or deviation from the Guide in the claims file. While State Farm does not provide a
24 copy of its Guide to its insureds, the adjusters are permitted to advise the insureds that the Guide
25 will be used in adjusting the claim if asked. While State Farm did not have a policy of hiding or
26 concealing the Guide, there was no evidence presented during the trial that State Farm ever
27 provided its insured with a copy of the Guide while adjusting a claim. According to one State
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1 Farm employee (Stephanie Cheezum), some percentage of insureds between 30% and 60%
2 request their ACV check after receiving the CIS Form from State Farm without further
3 discussion about their claim.

4
5 State Farm's employees testified that ACV is the cost to replace an item less
6 depreciation. In adjusting a claim for personal property, State Farm would typically calculate
7 the ACV by determining the cost of replacing an item new less the depreciation. For items that
8 could not be easily replaced as new such as antiques, collectibles, art, etc., State Farm would
9 typically determine the Fair Market Value in determining its value. With respect to the Mariani
10 and Endres claims, there was evidence at trial that certain items of personal property were
11 depreciated significantly (50%-80%) without full consideration of their condition at the time of
12 loss. In calculating the ACV for many of these items, State Farm appeared to base their
13 depreciation solely on the age of the item, rather than the condition. This was also true with the
14 claim presented by former class representative, The Doan. Although State Farm relies on its
15 CIS Form to show the amount of depreciation taken for an item, there is no requirement that
16 adjusters provide the insureds with any further written explanation of the basis for the
17 depreciation taken.
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20 A Market Study Conduct Examination was performed by the Department of Insurance in
21 2014 regarding State Farm's practices. The Department's Market Study Examination found that
22 State Farm did not consider the actual condition of each item of property before depreciating it.
23 The Department examiners randomly selected 70 Homeowner Claims Files and 70 Commercial
24 Property claims files for examination and ultimately found 78 violations of the California
25 Insurance Code and Code of Regulations. In its report, the Department noted that State Farm's
26 claim files did not include evidence that condition was considered and used in the calculation of
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1 depreciation deducted from the identified claim files except in certain limited cases. In addition,
2 the report found that State Farm failed to fully explain the basis for adjustments for depreciation
3 to claimants in writing, which must reflect a measurable difference in market value attributable
4 to the condition and age of the property.
5

6 There was also evidence at trial regarding the review of claims files of 340 class
7 members once their consent was obtained to review their files. Of the 340 files reviewed, there
8 were 158 complete claims files. Several word searches were performed and the word
9 "condition" in the context of a pre-loss condition appeared in only 30 of the 340 claims files,
10 representing 8.8% of all files.
11

12 III. LEGAL ANALYSIS AND FINDINGS

13 A. Declaratory Relief

14 Preliminarily, this Court finds that Declaratory Relief is an appropriate remedy
15 to attain judicial clarification of the parties' rights and obligations under the applicable
16 law. (See *Kirkwood v. California State Automobile Assn.* (2011) 193 Cal.App.4th 49).
17 Plaintiffs' Fourth Amended Complaint (FAC) includes a cause of action for
18 Declaratory Relief which alleges that a dispute has arisen between Plaintiffs and
19 Defendants regarding whether Defendant's use of the Depreciation Guide violates
20 California Insurance Code Section 2051 and whether Defendant's practices are in
21 violation of Title 10, Chapter 5, Section 2695.9(f) of the California Code of
22 Regulations. In fact, the California Court of Appeal (6th District) in this very case held
23 that this Court had discretion to stay appraisal pending adjudication of the cause of
24 action for Declaratory Relief in order to resolve matters not encompassed within the
25 scope of appraisal. (See *Doan v. State Farm General Insurance Company* (2011) 195
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1 *Cal.App.4th 1082*). “The trial court’s discretion to consider declaratory relief extends to
2 cases like this, where a statutory construction question lies at the heart of the parties’
3 dispute. [Citations.] And “judicial economy favors resort to declaratory relief in this
4 instance by heading off duplicative future actions challenging [the insurer’s] statutory
5 interpretation as reflected in its adjustment policy. “ (*Doan*, supra, 195 Cal. App.4th at
6 p. 1098).
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8 **B. California Insurance Code Section 2071**

9 California Insurance Code Section 2071 sets forth the language and
10 requirements for the standard form of fire insurance policy for this state. The language
11 in Section 2071 states that the insured will receive the “actual cash value of the
12 property at the time of loss, but not exceeding the amount which it would cost to repair
13 or replace the property with material of like kind and quality within a reasonable time
14 after the loss...” (Emphasis added).
15

16 **C. California Insurance Code Section 2051**

17 California Insurance Code Section 2051 sets forth the measure of indemnity
18 under an open policy of fire insurance. Section 2051(b) reads, in pertinent part:
19

20 (b) Under an open policy that requires payment of actual cash value, the
21 measure of the actual cash value recovery, in whole or partial settlement
22 of the claim, shall be determined as follows:

- 23 (1) In case of total loss to structure, the policy limit or the fair market
24 value of the structure, whichever is less.
- 25 (2) In case of a partial loss to the structure, or loss to its **contents**, the
26 amount it would **cost the insured to repair, rebuild, or replace** the
27 thing lost or injured less a fair and reasonable deduction for physical
28 **depreciation based upon its condition at the time of the injury** or
the policy limit, whichever is less. In case of a partial loss to the
structure, a deduction for physical depreciation shall apply only to

1 components of a structure that are normally subject to repair and
2 replacement during the useful life of that structure. (Emphasis added).

3 As set forth above, the standard form fire policy which is set forth in Insurance
4 Code Section 2071 requires an insurer to pay “the actual cash value of the property at
5 the time of loss.” During the Phase 1 trial, the parties argued for different
6 interpretations of what “actual cash value” meant in the context of a claim for damage
7 or loss to personal property. Plaintiffs argued that Section 2015(b)(2) sets forth the
8 formula for determining actual cash value. Plaintiffs argued that since Section 2051
9 was amended in 2004, the term “actual cash value” is no longer synonymous with “fair
10 market value” when adjusting a loss of personal property. According to Plaintiffs,
11 actual cash value is the cost to replace an item with a new item of like kind and quality,
12 less reasonable depreciation based on the physical condition of the item at the time of
13 the injury. In contrast, Defendants argued that the intent of Section 2051 was to
14 compensate the insured for the fair market value of their lost property at the time of the
15 loss and therefore, actual cash value is synonymous with fair market value when
16 adjusting a loss of personal property.
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20 After a full and thorough consideration of the evidence and arguments presented
21 by the parties, the Court finds Plaintiffs’ interpretation of the meaning of actual cash
22 value to be more persuasive. California Insurance Code Section 2051, as amended in
23 2004, sets forth the precise formula to determine actual cash value. (See *Alexander v.*
24 *Farmers Ins. Co. (2013) 219 Cal.App.4th 1183*). Section 2051(b) only refers to “fair
25 market value” in subsection (1) with regard to a total loss to the structure. Subsection
26 (2) which relates to partial loss to a structure or loss to its contents, specifies a different
27 method for recovery for actual cash value and does not include the term “fair market
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value.” Had the legislature intended the measure of recovery for subsection (2) to reflect fair market value, it would have included that term as it did in subsection (1). To the contrary, the measure of recovery for actual cash value, per the express language of subsection (2), is the amount it would cost the insured to repair, rebuild, or replace the thing lost or injured less fair and reasonable deduction for physical depreciation based on its condition at the time of the injury.

State Farm’s policy language and claims handling practices provide further support that actual cash value means the cost to repair or replace less depreciation. The Section of State Farm’s policy entitled “**COVERAGE B-PERSONAL PROPERTY**” reads as follows:

1. B1—Limited Replacement Cost Less Settlement.

a. We will pay the cost to repair or replace property covered under Section 1-COVERAGES, **COVERAGE B-PERSONAL PROPERTY**, except for property listed in item b. below, subject to the following:

(1) until repair or replacement is completed, we will pay only the cost to repair or replace less depreciation.

.....

b. We will pay market value at the time of loss for:

(1) antiques, fine arts, paintings, statuary and similar articles which by their inherent nature cannot be replaced with new articles;

(2) articles whose age or history contribute substantially to their value including, but not limited to, memorabilia, souvenirs, and collector’s items; and

(3) property not useful for its intended purpose.

2. B2—Depreciated Loss Settlement.

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a. We will pay the cost to repair or replace less depreciation at the time of loss for property covered under Section 1-COVERGES, COVERAGE B—PERSONAL PROPERTY, except for property listed in item b. below.

State Farm employees who testified at trial confirmed that when completing the CIS Form, the cost of replacement for most household items would typically be the cost to replace that item with a new item of like kind and quality. For items that were not easily replaceable with new items (antiques, paintings, collector's items, etc.), State Farm would pay the fair market value at the time of loss. This is also consistent with the policy language referenced above.

One of the critical issues before this Court concerns whether State Farm was in compliance with Section 2051 in determining the actual cash value when adjusting personal property loss claims. More specifically, was State Farm's use of only the Guide in determining actual cash value a violation of Section 2051? Although the preamble to the Guide sets forth a variety of factors to be considered for depreciation purposes, it is clear from the content of the Guide itself that depreciation is based upon average useful years of a particular item and that depreciation is based upon the age and useful life of the average item, not the actual condition of the item at the time of loss. This is not consistent with the language of Section 2051 which clearly contemplates that physical condition will be based upon the condition of the item at the time of loss. Accordingly, the Court finds that State Farm's use of its Depreciation Guide, based on age and average quality goods, to populate its CIS Form does not comply with Section 2051(b), because the Guide fails to consider the condition of the insured's personal property at the time of the injury.

1 At trial, there was evidence that the Department of Insurance came to a similar
2 conclusion following their Market Conduct examination of State Farm's practices.
3 Specifically, the DOI found that "State Farm did not consider the actual condition of
4 each item of property before depreciating it. Failure to consider and document condition
5 of property in depreciating it violates California Insurance Code sections
6 2051(b)(2)(requiring depreciation to be based on "condition")..." (See correspondence
7 from DOI General Counsel Adam Cole dated Feb. 10, 2015 with attached Public Report
8 of the Targeted Market Conduct Examination of State Farm General Insurance
9 Company). While the Court's findings are consistent with those in the DOI Report, the
10 findings in this Statement of Decision are based exclusively on the evidence presented at
11 trial and independent of the findings of the DOI.
12
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14 **D. Section 2695.9(f) of the California Code of Regulations**

15 Another critical issue that was litigated during Phase 1 concerned whether State
16 Farm's practices met the requirements of Section 2695.9(f) of the California Code of
17 Regulations, Title 10. Section 2695.9(f) states, in pertinent part:
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19 (f) When the amount claimed is adjusted because of betterment,
20 depreciation, or salvage, all justification for the adjustment shall be contained in
21 the claim file. Any adjustments shall be discernable, measurable, itemized and
22 specified as to dollar amount, and shall accurately reflect the value of the
23 betterment, depreciation or salvage. Any adjustments for betterment or
24 depreciation shall reflect a measurable difference in market value attributable to
25 the condition and age of the property and apply only to property normally subject
26 to repair and replacement during the useful life of the property. The basis for any
27 adjustment shall be fully explained to the claimant in writing.
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As discussed in *Kirkwood v. California State Automobile Assn. Inter-Ins. Bureau*
(193 Cal.App.4th 49, 54 (2011)), the legislature adopted specific regulations following the
amendment to Section 2051 in 2004 that mandated that the insurer itemize, justify and

1 fully explain all adjustments to the amount claimed, including for depreciation. Simply
2 put, Section 2695.9(f) requires that insurers not only document the basis/justification for
3 claims adjustments due to betterment, depreciation or salvage in the claim file, but it also
4 requires the insurer to fully explain to their insured the reason or reasons why they did so.
5 Applying this to the instant case, Section 2695.9(f) imposed, among other things, a duty
6 upon State Farm to advise their insureds in writing as to how the claimed property was
7 depreciated.
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10 There is no limiting language that excludes the applicability of Section 2695.9(f)
11 from claims for damaged personal property/contents. Nor has State Farm cited to any
12 legal authority which supports this position. Accordingly, the Court finds that it does
13 apply to the facts and conduct at issue in the instant case. The real question, therefore, is
14 whether State Farm met the requirements of Section 2695.9(f) in advising their insureds
15 in writing as to how the claimed property was depreciated. At trial, State Farm argued
16 that the CIS Form provided the insured with a written explanation of the depreciation as
17 it contained information about the replacement cost, depreciation percentage,
18 depreciation amount applied, and actual cash value of each item. In addition, State Farm
19 produced evidence of a form letter sent to the claimant advising them that the loss had
20 been adjusted to actual cash value (replacement cost less depreciation) in accordance with
21 the terms of their policy. Notably, the letter also provided a definition of the term
22 Depreciation², however neither the letter nor the CIS Form describes, in writing, the basis
23 of the depreciation taken or whether the physical condition of the items was ever
24 considered during the adjustment of the claim. As noted above, the actual basis for
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² The letter includes the following definition of Depreciation. "Depreciation is a deduction from the replacement cost based on age, condition, quality, and use of the property at the time of the loss."

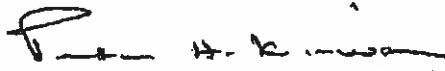
1 depreciation in a large percentage of cases was premised entirely upon the age and useful
2 life of the item as set forth in the Guide. State Farm's own witnesses testified that any
3 deviations from the Guide were to be documented in the claim file and the evidence
4 presented at trial was that the majority of claims followed the formula from the Guide
5 (age and useful life) without any explanation to the claimant about the use of the Guide,
6 its formula for depreciation, or that the actual physical condition was even considered.
7 While there was no evidence of any active scheme by State Farm to conceal its use of the
8 Guide, it is equally true that State Farm did not provide its insureds with a copy of the
9 Guide nor did they advise the insureds in writing that age and useful life of the property
10 was the basis for depreciation in the cases where the Guide was used exclusively.
11

12
13 While the Court acknowledges the evidence submitted by State Farm relating to
14 the training of its adjusters to have conversations with insureds about the condition of
15 their property at the time of loss, those conversations alone simply do not meet the
16 written requirements of 2695.9(f). Accordingly, the Court finds that State Farm's
17 submission of the CIS Form to the insured without any further written explanation as to
18 the actual basis for the adjustment fails to meet the requirements of Section 2695.9(f).
19 In so ruling, the Court recognizes the impracticality and burden of providing a full
20 written explanation for each and every item that is depreciated in a large fire loss case
21 where often there are hundreds (and possibly thousands) of items claimed. State Farm
22 is required, however, to provide some written explanation for the amounts deducted and
23 the reasons for doing so which takes into consideration the age and condition of the
24 item. Pursuant to Section 2695.9(f), State Farm is required to maintain all justifications
25 for these adjustments in the insured's claims file.
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1 **IV. CONCLUSION**

2 For the reasons set forth above, the Court finds that Plaintiffs are entitled to a
3 declaration that State Farm was in violation of Insurance Code Section 2051 in those
4 cases where the Guide was used exclusively to deduct depreciation. Absent some
5 indication in the claims file that physical condition of the property at the time of loss
6 was considered in applying depreciation, the use and exclusive reliance of the Guide to
7 deduct depreciation and determine actual cash value violates Section 2051. In addition,
8 Plaintiffs are entitled to a declaration that State Farm was in violation of Section
9 2695.9(f) for not fully explaining in writing the basis for depreciation as the CIS Form
10 does not explain the reasons for the depreciation nor does it contemplate the condition
11 of the property at the time of loss.
12
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15 Dated: 4/20/16


Honorable Peter H. Kirwan
Judge of the Superior Court

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

THE DOAN, PAUL ENDRES, and JANE
MARIANI, individuals on behalf of themselves
and a class of similarly situated persons,

Plaintiffs,

v.

STATE FARM GENERAL INSURANCE
COMPANY, an Illinois Corporation,

Defendant.

CLASS ACTION

Case No. 108CV129264

[PROPOSED] ORDER

Complaint Filed: December 4, 2008
Trial Date: November 13, 2017 (Phase II)

[PROPOSED] ORDER

The Court has reviewed this Motion for Preliminary Approval and the settlement submitted by the parties, and hereby makes a preliminary finding that the settlement, which follows years of contested litigation and a declaratory relief trial, is within the range of fairness such that it is appropriate to set this matter for a hearing for final approval. The Court further

1 finds that the extensive California-wide publication notice plan developed by Class Counsel is the
2 best notice practicable under the circumstances, where no State Farm policyholders' rights will be
3 released by the settlement, and direct mail notice to each State Farm policyholder who made a
4 claim during the class period and will have an opportunity for reconsideration is also the best
5 notice practicable under the circumstances.

6 A hearing for final approval will be set for _____ and
7 plaintiffs' counsels' motion for fees and costs will be heard at the hearing on the motion for final
8 approval of the settlement.

9 The Court orders that the published notice and mailed notice agreed to by the parties be
10 made as soon as is reasonably practical and completed 60 days in advance of the final approval
11 hearing.

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13 **IT IS SO ORDERED.**

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15 Date: _____

16 Hon. Peter H. Kirwan
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**Notice regarding State Farm
California Personal Property
Depreciation Decision**

The case regarding State Farm's method of depreciating personal property in California was tried in Santa Clara County Superior Court in November and December of 2015. After hearing the evidence and arguments presented by both sides, the Court issued its decision on April 20, 2016. The Court held that for certain claims State Farm did not calculate depreciation according to the requirements of California law and also failed to adequately notify its policyholders, in writing, of the basis or reasoning for its calculation of depreciation.

Since this lawsuit was filed, State Farm has changed its claim adjustment practices. State Farm now asks policyholders who make a personal property claim to rate the condition of each item of lost or damaged personal property they claim. State Farm then factors condition into its calculation of depreciation. The full text of the Court's Decision is available at www._____.

www._____

MECHANICAL SPECIFICATIONS	
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Publication:	Total Word Count: 155
Ad Unit: 3.2" x 7"	Create Date/Time: 10/31/17 at 3:44 pm
Headline Font: Calibri	Operator: BS
Headline Font Size/Leading: 16/19	Last Edit Time:
Body Copy: Times LT	Operator: