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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 JOEL STEDMAN and KAREN JOYCE,  
9 Plaintiffs,

10 v.

11 PROGRESSIVE DIRECT INSURANCE  
COMPANY,  
12 Defendant.

CASE NO. 2:18-cv-1254

ORDER GRANTING PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT

13  
14 Plaintiffs and Class Representatives, Joel Stedman and Karen Joyce, on behalf of  
15 themselves and the Certified Class they represent, as well as Progressive Direct Insurance  
16 Company (“Progressive”), have submitted a Stipulated Motion for Preliminary Approval of  
17 Class Action Settlement. Dkt. No. 120. This class action was brought by Stedman and Joyce to  
18 challenge Defendant’s alleged practice of limiting Personal-Injury-Protection (“PIP”) insurance  
19 benefits based on a finding that the insured had reached or would soon reach “Maximum  
20 Medical Improvement” (“MMI”) in violation of Washington Administrative Code (WAC) § 284-  
21 30-395. WAC 284-30-395(1) dictates that insurers can only deny, limit, or terminate benefits if  
22 the insurer determines claimed medical expenses are not reasonable, not necessary, not related to  
23 the subject accident, or not incurred within three years of the date of the loss.

24 The Court GRANTS the motion for preliminary approval of the class action settlement.

## BACKGROUND

### I. Overview of the case.

Progressive is an automobile insurance carrier who does business in King County, Washington. Dkt. No. 11 at 2. Stedman is a third-party beneficiary under a contract between Progressive and Maria Eggers. *Id.* Stedman was injured in an automobile accident in March 2016. *Id.* Joyce is insured under a contract with Progressive. *Id.* at 3. Joyce was injured in an automobile accident in August 2014. *Id.*

Both Stedman and Joyce received PIP benefits following their respective car accidents. *Id.* at 6, 8–9. While they were receiving their benefits, Progressive requested that they “undergo a medical examination for determining, among other things, whether [they] had reached, in the eyes of [their] insurer, ‘maximum medical improvement] or MMI.’” *Id.* at 8–9. Progressive then terminated their respective PIP benefits contending that they had reached MMI and no “further treatment would be deemed reasonable or necessary or otherwise recoverable from Progressive’s PIP coverage.” *Id.* at 9.

Stedman and Joyce brought this lawsuit on behalf of all first-party insureds and third-party beneficiaries who made a claim for PIP benefits and who had their benefits subsequently terminated, limited, or denied based on Progressive’s claim that the insured had reached MMI. *Id.* at 3. Plaintiffs allege that Progressive violated WAC 284-30-395 by limiting PIP benefits based on the finding that the insured had reached or would soon reach MMI.

### II. Procedural posture.

Plaintiffs filed this action in the Superior Court of the State of Washington on July 25, 2018. Dkt. No. 1-3 at 5. On August 24, 2018, Defendant removed this case to the United States District Court for the Western District of Washington. Dkt. No. 1 at 1. On October 29, 2018, Progressive filed a motion for judgment on the pleadings. Dkt. No. 19. On March 4, 2019, the

1 Court granted this motion in part, dismissing Joyce’s claims that were controlled by a three-year  
2 statute of limitations. Dkt. No. 27. The Court also consolidated this case with *Peoples v. United*  
3 *Servs. Auto. Ass’n*, which was another case alleging bad faith in relation to PIP claims. Dkt. No.  
4 28. The Court certified two questions to the Washington State Supreme Court pursuant to  
5 RCW § 2.60.020. *Id.* On November 27, 2019, the Washington Supreme Court issued its opinion  
6 in *Peoples v. United Servs. Auto. Ass’n*, which answered both questions in Plaintiffs’ favor. Dkt.  
7 No. 33; *Peoples v. United Servs. Auto. Ass’n*, 452 P.3d 1218 (Wash. 2019). The case was  
8 remanded to this Court on January 7, 2020. Dkt. No. 33.

9 Plaintiffs moved for class certification on October 27, 2020. Dkt. No. 42. On July 19,  
10 2021, the Court certified the class of “[a]ll insureds, as defined within Progressive’s Automobile  
11 Policy, and all third-party beneficiaries of such coverage, under any Progressive insurance policy  
12 effective in the state of Washington between July 24, 2012 and the present, for whom  
13 Progressive limited benefits, terminated benefits, or denied coverage based, even in part, upon its  
14 determination that its insured or beneficiary had reached ‘maximum medical improvement’ or a  
15 ‘fixed and stable’ condition” (“Class”). Dkt. No. 74 at 11–12. In October 2021, the Court ruled  
16 that “where the insurer had incorporated [the terms MMI or “fixed and stable”] into its coverage  
17 determination as justification, in whole or in part, for the termination of benefits, a reasonable  
18 fact finder could conclude that the insurer violated WAC 284-30-395.” Dkt. No. 79 at 6. The  
19 Court also denied the motion for summary judgment filed by Progressive. *Id.*

20 Class Counsel prepared a comprehensive class list of all individuals with claims facially  
21 satisfying the certified class definition. Dkt. No. 121 at 1–2. The class list contained 442  
22 individuals. *Id.* at 2. After receiving Court approval, certification notice was distributed to all of  
23 the class members. Dkt. Nos. 102, 121 at 3. One class member elected to opt-out. Dkt. No. 121 at  
24 3.

1 On May 11, 2023, the Class moved for partial summary judgment. Dkt. No. 105. On June  
2 15, 2023, the Parties notified the Court that they had reached a settlement in principle. Dkt. No.  
3 118.

4 **III. Settlement posture.**

5 Class counsel made a settlement demand to Progressive in August 2022. Dkt. No. 121.  
6 Then the Parties agreed to participate in mediation. *Id.*; Dkt. No. 100. On January 10, 2023, the  
7 Parties mediated the case, but they did not reach an agreement resolving the case. *Id.* In March  
8 2023, the Parties exchanged offers again but were again unable to reach an agreement. *Id.* After  
9 the Class moved for partial summary judgment, the Parties reengaged in settlement negotiations.  
10 *Id.* On June 8, 2023, the Parties reached an agreement in principle. *Id.* On August 3, 2023, the  
11 Parties finalized execution of a comprehensive settlement agreement (“Settlement”). *Id.*

12 The Settlement class is identical to the Class that the Court certified. Dkt. Nos. 74, 97.  
13 The Settlement class is currently comprised of 441 individual claimants.

14 Pursuant to the terms of the Settlement, Progressive will pay \$2,150,000 to create a  
15 common fund. Class members will release Progressive, its employees, and affiliated entities  
16 from:

17 any and all claims that relate to Progressive’s adjustment of their PIP claim,  
18 including but not limited to claims for declaratory relief, breach of contract,  
19 common law bad faith or violation of the implied duty of good faith and fair dealing,  
20 and violations of the Washington State Consumer Protection Act (RCW 19.86) or  
Insurance Fair Conduct Act (RCW 48.30 and WAC §284-30), and any claim to  
attorneys’ fees and costs arising from these claims, which were affirmatively  
asserted or could have been asserted in the Lawsuit (“Released Claims”).

21 Dkt. No. 121-1 at 4.

22 The median net allocation is \$1,600. Dkt. No. 120 at 7. Class representatives have asked  
23 for a service award of \$5,000 each to be paid out of the common fund. Dkt. No. 121-1 at 3. Class  
24 counsel has represented that they will ask for no more than 33.33% of the gross settlement fund

1 and for reimbursement of out-of-pocket litigation costs under \$15,000. *Id.*; Dkt. No. 120 at 8.

2 Additionally, administration costs are expected to be under \$10,000 and are to be paid out of the  
3 fund. Dkt. No. 120 at 8.

## 4 DISCUSSION

### 5 I. Legal standard.

6 “Strong judicial policy. . . favors settlements, particularly where complex class action  
7 litigation is concerned.” *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).  
8 Fed. R. Civ. P. 23 requires court approval to settle a class action. Fed. R. Civ. P. 23(e).

9 First, the Court must make a preliminary determination of the merits of the settlement.  
10 *See* Manual for Complex Litigation (Fourth) § 21.632 (2004). “The court’s focus at the  
11 preliminary approval stage is on whether the proposed settlement appears to be the product of  
12 serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly  
13 grant preferential treatment to class representatives or segments of the class, and falls within the  
14 range of possible approval.” *Tuttle v. Audiophile Music Direct Inc.*, No. C22-1081JLR, 2023 WL  
15 3318699, at \*3 (W.D. Wash. May 9, 2023) (internal citation omitted). Preliminary approval is  
16 appropriate when “the court will likely be able to” give final approval. Fed. R. Civ. P.  
17 23(e)(1)(B).

18 After the Court makes an initial determination that the settlement is fair, reasonable, and  
19 adequate, the parties must give the members of the class notice of a formal Rule 23(e) fairness  
20 hearing. *Id.* Then, the Court must hold a fairness hearing and make a final determination of  
21 whether the settlement is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). The Court  
22 must evaluate the settlement as a “whole, rather than the individual component parts” for  
23 “overall fairness.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

### 24 II. 23(e)(2) factors.

1           **A. Adequacy of representation.**

2           Rule 23(e)(2)(A) requires courts to determine whether “the class representatives and class  
3 counsel have adequately represented the class.” Fed. R. Civ. P. 23(e)(2)(A). When the Court  
4 granted class certification, it determined that Stedman, Joyce, and class counsel could adequately  
5 represent the class. Dkt. No. 74 at 7. The Court is unaware of any conflicts between the named  
6 plaintiffs, class counsel, and the other members of the class. The Court preliminarily finds that  
7 the class representatives and class counsel adequately represented the class for purposes of Rule  
8 23(e)(2)(A).

9           **B. Arm’s length negotiations.**

10          Fed. R. Civ. P. 23(e)(2)(B) requires the Court to evaluate whether “the proposal was  
11 negotiated at arm’s length.” The Court must examine the Settlement for “explicit collusion” and  
12 also for “subtle signs that class counsel have allowed pursuit of their own self-interests and that  
13 of certain class members to infect the negotiations.” *Jones v. GN Netcom, Inc. (In re Bluetooth*  
14 *Headset Prods. Liab. Litig.)*, 654 F.3d 935, 947 (9th Cir. 2011). Some signs of this are: 1) if a  
15 disproportionate distribution of the settlement is to class counsel, 2) if the parties negotiate a  
16 clear sailing arrangement providing for the payment of attorneys’ fees separate and apart from  
17 class funds, and 3) when the parties arrange for fees not awarded to revert to defendants rather  
18 than be added to the class fund. *See id.*

19          The Ninth Circuit has set a “benchmark” fee award at 25% of the recovery obtained for  
20 common fund settlements such as this one. *Hanlon*, 150 F.3d at 1029. Class counsel represents  
21 that they will ask for an award of attorney’s fees amounting to no more than 33.33% of the gross  
22 settlement fund. Dkt. No. 120 at 15. The Court cannot make a determination at this time as to  
23 whether this is a disproportionate distribution as class counsel has not yet provided facts  
24 supporting their fee request. Because the Parties have not made the settlement contingent on

1 class counsel recovering the full fee, the Court will allow the settlement approval process to  
2 proceed. Also, the Settlement does not contain a “clear sailing provision.” Additionally, no  
3 amount of the Settlement fund will revert to Defendant. Dkt. No. 121-1 at 6.

4 The Court preliminarily finds that this factor is satisfied.

5 **C. Adequacy of class relief.**

6 Rule 23(e)(2)(C) requires the Court to evaluate “whether the relief provided for the class  
7 is adequate, taking into accounts: (i) the costs, risks, and delay of trial and appeal; (ii) the  
8 effectiveness of any proposed method of distributing relief to the class, including the method of  
9 processing class-member claims; [and] (iii) the terms of any proposed award of attorney’s fees  
10 including timing of payment.” Fed. R. Civ. P. 23(e)(2)(c). “To evaluate adequacy, courts  
11 primarily consider plaintiffs’ expected recovery balanced against the value of the settlement  
12 offer.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007). “It is well-  
13 settled law that a cash settlement amounting to only a fraction of the potential recovery will  
14 not *per se* render the settlement inadequate or unfair.” *Officers for Just. v. Civil Serv. Com.*, 688  
15 F.2d 615, 628 (9th Cir. 1982).

16 *1. Costs, risks, and delays versus settlement amount and scope of released claims and*  
17 *attorney’s fees.*

18 This case was settled before briefing was completed for Plaintiffs’ motion for partial  
19 summary judgment. Dkt. Nos. 105, 118. Although the Court has not yet made a determination on  
20 liability, the Parties were apprised of each other’s positions. The Parties recognized that  
21 continued litigation presents significant risks as to Plaintiff’s ability to prove liability and  
22 damages. The common fund amount “considers multiple contingencies and risks: (1) the  
23 possibility that Class Members would not be awarded treble damages under the CPA; (2) the  
24 possibly that Class Members would only be awarded medical expenses up to their respective

1 policy limits at trial, and (3) the possibility that the Court would conclude that Class Members’  
2 injuries were uncommon or unmanageable, resulting in potential decertification.” Dkt. No. 120 at  
3 8–9.

4 The Settlement provides for a common fund in the amount of \$2,150,000. Dkt. No. 121-2  
5 at 2. Class members are expected to receive net allocations equal to 99.29% of their denied  
6 medical expense damages and prejudgment interest accrued up to May 2023. Dkt. No. 120 at 7.  
7 Class members will receive an estimated gross median allocation of \$2,349. Dkt. No. 121 at 4.  
8 The gross allocation is approximately 268.1% of the medical expense damages of all 441 class  
9 members or 150% of the medical expense damages and prejudgment interest. *Id.* The estimated  
10 minimum net distribution is \$1,592.10. *Id.* at 4. Class counsel also considered the outcome of  
11 similar litigation, including *Durant v. State Farm*, whose gross settlement provided “100% of  
12 actual denied claims suffered by the Settlement class members, also includes some interest.” *See*  
13 *Durant v. State Farm Mut. Auto. Ins. Co.*, Case No. 2:15-cv-01710-RAJ, Dkt. No. 105, pg. 21  
14 (Oct. 11, 2018).

15 All attorneys’ fees and costs, administration costs, and incentive awards will also be  
16 drawn from the settlement fund. *Id.* Although Plaintiffs may have received more money if they  
17 proceeded to trial, “inherent in compromise is a yielding of absolutes and an abandoning of  
18 highest hopes.” *Milstein v. Werner*, 57 F.R.D. 515, 524-25 (S.D.N.Y. 1972).

19 The Settlement asks for attorneys’ fees of no more than 33.33%. *Id.* at 3. The Settlement  
20 also requests incentive payments to the two class representatives of \$5,000. *Id.* at 3. As discussed  
21 above, the Court cannot make a determination as to whether these amounts are reasonable based  
22 on the current record. Plaintiffs should include information in their final approval papers through  
23 which the Court can perform a lodestar cross-check on the fees counsel seeks under the  
24 percentage-of-recovery method of awarding attorneys’ fees.



1 The Court does not have any concerns regarding the scope of the released claims.

2 *2. Effectiveness of the proposed method of distributing relief.*

3 Notice of the Settlement will be distributed by mail and e-mail. Under the Settlement,  
4 class members will not have to submit claims to receive payment. A third-party administrator  
5 will send the checks directly to class members unless they opt-out. The shares will be calculated  
6 pro rata based on the medical expenses submitted and denied in Progressive’s claims data using  
7 specific reason codes up to the maximum remaining policy benefits available. Dkt. No. 121-1 at  
8 4. This method of distributing relief is “simple and effective.” *Loreto v. Gen. Dynamics Info.*  
9 *Tech., Inc.*, No. 319CV01366GPCMSB, 2021 WL 1839989, at \*10 (S.D. Cal. May 7, 2021).

10 **D. Whether the settlement treats class members equally.**

11 Rule 23(e)(2)(D) requires the Court to evaluate whether the settlement proposal “treats  
12 class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D).

13 The only potential preferential treatment in the Settlement is the incentive awards to the  
14 two named class representatives. “[R]easonable incentive awards to class representatives are  
15 permitted.” *Named Plaintiffs & Settlement Class Members v. Feldman (In re Apple Inc. Device*  
16 *Performance Litig.)*, 50 F.4th 769, 785 (9th Cir. 2022) (internal citation omitted). The Court  
17 must “evaluate the propriety of requested incentive payments by considering, among other  
18 factors, the actions the plaintiff has taken to protect the interests of the class, the degree to which  
19 the class has benefitted from those actions, the amount of time and effort the plaintiff expended  
20 in pursuing the litigation, and any financial or reputational risks the plaintiff faced.” *Id.* at 786  
21 (internal citation omitted). The Parties represent that the class representatives have made  
22 “material contributions to this litigation, including participating in discovery, assisting in  
23 counsel’s investigation, and testifying before the Court via declaration.” Dkt. No. 121 at 4. Five  
24 thousand dollars is also generally regarded as a reasonable amount of money for an incentive

1 award. *See, e.g., In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 947-48 (9th Cir.  
2 2015) (district court did not abuse discretion in approving \$5,000 incentive awards for each of  
3 the nine class representatives where the individual recovery was only \$12 per class member);  
4 *Gabriel v. Nationwide Life Ins. Co.*, No. C09-0508-JCC, 2010 WL 11684280, at \*6 (W.D. Wash.  
5 Aug. 9, 2010) (granting \$15,000 incentive award per plaintiff based upon representations of  
6 counsel and circumstances of the case). Additionally, the \$10,000 total for incentive payments  
7 make up less than 0.5% of the common fund. *See In re Online DVD-Rental Antitrust Litig.*, 779  
8 F.3d at 948 (comparing incentive awards to total recovery).

9 Without more information as to the extent of participation of the class representatives in  
10 this litigation, the Court is unable to determine at this time whether the requested payment is  
11 reasonable.

12 Besides the incentive award, Stedman and Joyce will receive the same relief as all other  
13 class members. There is also no evidence or suggestion that any other class member will receive  
14 preferential treatment under the Settlement. This factor weighs in favor of approval.

#### 15 **E. Notice.**

16 “Adequate notice is critical to court approval of a class settlement under Fed. R. Civ. P.  
17 23(e).” *Hanlon*, 150 F.3d at 1026. The Court must also separately evaluate the proposed notice  
18 procedure. Fed. R. Civ. P. 23(c)(2)(B) requires that the court “direct to class members the best  
19 notice that is practicable under the circumstances, including individual notice to all members  
20 who can be identified through reasonable effort.” The notice must state:

21 (i) the nature of the action; (ii) the definition of the class certified; (iii) the class  
22 claims, issues, or defenses; (iv) that a class member may enter an appearance  
23 through an attorney if the member so desires; (v) that the court will exclude from  
24 the class any member who requests exclusion; (vi) the time and manner for  
requesting exclusion; and (vii) the binding effect of a class judgment on members  
under Rule 23(c)(3).

1 Fed. R. Civ. P. 23(c)(2)(B).

2 The Parties have jointly proposed a class notice. Dkt. No. 121-2. The “Notice of Class  
3 Action Settlement” (“Notice”) adequately informs class members of the nature of the litigation,  
4 the essential terms of the settlement agreement, that class members do not have to file a claim for  
5 recovery, and information on how to opt-out or object to the settlement. The Notice also  
6 identifies class counsel, specifies the amount of the class representatives’ incentive payments,  
7 and class counsel attorneys’ fees payment.

8 The Parties propose sending the Notice by U.S. Mail and by e-mail to all class members  
9 through a third-party administrator. “This notice provides information to Class Members about  
10 relevant deadlines and prospective allocations, as well as instructions for attending the final  
11 approval hearing, objecting, or opting out.” Dkt. No. 120 at 17. The Court approves the notice  
12 procedure in the Settlement and directs the Parties to begin the notice process.

13 **ORDER**

14 For the reasons set for the above, the Court ORDERS as follows:

15 **A. Preliminary Approval of Proposed Settlement.** The Parties’ Conditional  
16 Settlement Agreement (“Agreement”) is preliminarily approved as fair, reasonable, and adequate  
17 and within the range of reasonableness for preliminary settlement approval. The Court finds that:  
18 (a) the Agreement resulted from extensive arm’s length negotiations; and (b) the Agreement is  
19 sufficient to warrant notice of the Settlement to persons in the Class and a full hearing on the  
20 approval of the Settlement.

21 **B. Fairness Hearing.** A final approval hearing (the “Fairness Hearing”) will be held  
22 before the Court on January 17, 2024, as set forth in the Notice to the Class, to determine  
23 whether the Agreement is fair, reasonable, and adequate and should be approved. Papers in  
24 support of final approval of the Agreement, the incentive award to Plaintiff, and Class Counsel’s

1 application for an award of attorneys' fees, costs, and expenses (the "Fee Application") must be  
2 filed with the Court according to the schedule set forth in Paragraph K below. The Final  
3 Settlement Approval Hearing, and all dates provided for herein, may, without further notice to  
4 the Class, be continued or adjourned by order of this Court. After the Fairness Hearing, the  
5 Court may enter a settlement order and final judgment in accordance with the Agreement that  
6 will adjudicate the rights of the Class Members with respect to the Released Claims being  
7 settled. The scope of the Released Claims will be that set forth in ¶3.4 of the Settlement  
8 Agreement.

9 **C. Class Notice.** Class Notice must be sent within sixty (60) days following entry of  
10 this Order. Simpluris may serve as Administrator. The Administrator will provide mail notice to  
11 persons in the Class by mail, and when available, by e-mail as well, according to the program  
12 described in the Settlement Agreement. Skip tracing must be performed by the Administrator  
13 for all returned mail.

14 **D. Findings Concerning Class Notice.** The Court finds that the foregoing program of  
15 Class Notice and the manner of its dissemination is the best practicable notice under the  
16 circumstances and is reasonably calculated to apprise the Class of the pendency of this action  
17 and their right to object to or exclude themselves from the Class. The Court further finds that the  
18 Class Notice program is reasonable, that it constitutes due, adequate, and sufficient notice to all  
19 persons entitled to receive notice and that it meets the requirements of due process and Civil  
20 Rule 23. The Court hereby approves the Notice in substantially the same form as that attached  
21 as Exhibit Two to the Declaration of Mark A. Trivett filed in support of the Preliminary  
22 Approval Motion.

1           **E. Administration.** The Court confirms that it is appropriate for the Defendant to  
2 provide the information necessary to provide the notice contemplated herein and to administer  
3 the settlement, including names, addresses, and personal identifying information.

4           **F. Exclusion from the Class.** Persons in the Class will possess the right to opt out by  
5 sending a written request to a designated address within thirty-five (35) days after the Notice  
6 Mailing Date. All Class Members who do not opt out in accordance with the terms set forth  
7 herein will be bound by all determinations and judgments in this action. Exclusion requests must  
8 contain the person’s name, address, telephone number, and signature, and must include the  
9 following statement: “I request to be excluded from the class settlement in *Stedman v.*  
10 *Progressive*, Case No. #2:18-CV-1254 JNW.” The Administrator will retain a copy of all  
11 requests for exclusion. Not later than 15 days from the exclusion deadline, the Administrator  
12 must file with the Court a declaration that provides copies of all exclusion requests received.

13           **G. Objections and Appearances.** Any person in the Class who has not timely  
14 submitted a valid request for exclusion from the Class, and thus is a Class Member, may object  
15 to the proposed Settlement and appear at the Final Approval Hearing to argue that the proposed  
16 Settlement should not be approved and/or to oppose the application of Class Counsel for an  
17 award of attorneys’ fees and the incentive awards to the Class Representatives.

- 18           1. In order to object to the Settlement, a Class member must make any objection  
19           in writing and file it with the Court and serve on all Parties not later than thirty  
20           (30) days after the Notice Mailing Date. The objection must include the  
21           person’s name, address, telephone number, and signature, and must set forth,  
22           in clear and concise terms, the legal and factual arguments supporting the  
23           objection. Any objections that are not timely filed and mailed will be forever  
24           barred.

- 1           2. In order to speak at the hearing, a Class member also must file with the Court  
2           and serve on all Parties a Notice of Intention to Appear at the Fairness Hearing  
3           with the Court no later than thirty (30) days before the Fairness Hearing. The  
4           Notice must include the person's name, address, telephone number, and  
5           signature.

6           **H. Further Papers In Support Of Settlement And Fee Application.** Class  
7           Counsel's Motion for Attorneys' Fees and the Motion for Final Approval must be filed within  
8           thirty (30) days of the Exclusion/Objection Deadline as provided in Paragraph K. Class Counsel  
9           should include information in their final approval papers through which the Court can perform a  
10          lodestar cross-check on the fee award counsel seeks under the percentage-of-recovery method of  
11          awarding attorneys' fees.

12          **I. Effect of Failure to Approve the Agreement.** In the event the Agreement is not  
13          approved by the Court, or for any reason the Parties fail to obtain a Final Judgment as  
14          contemplated in the Agreement, or the Agreement is terminated pursuant to its terms for any  
15          reason, then the following will apply:

- 16               1. All orders and findings entered in connection with the Agreement will become  
17               null and void and have no further force and effect, may not be used or referred  
18               to for any purposes whatsoever, and will not be admissible or discoverable in  
19               any other proceeding;
- 20               2. The Agreement and its existence will be inadmissible to establish any fact or  
21               any alleged liability of the Defendant for the matters alleged in this action or  
22               for any other purpose; and

1           3. Nothing contained in this Order is, or may be construed as, any admission or  
2           concession by or against the Defendant or Plaintiffs on any point of fact or  
3           law.

4           **J. Stay/Bar Of Other Proceedings.** All proceedings in this action are stayed until  
5 further order of the Court, except as may be necessary to implement the terms of the Settlement.  
6 Pending final determination of whether the Settlement should be approved, Plaintiffs, all persons  
7 in the Class and persons purporting to act on their behalf are enjoined from commencing or  
8 prosecuting (either directly, representatively, or in any other capacity) against any of the  
9 Released Parties any action, arbitration, or proceeding in any court, arbitration forum, or tribunal  
10 asserting any of the Released Claims as defined in the Agreement.

**K. Timeline.**

ACTION	DATE
Preliminary Approval Order Entered	At the Court's Discretion
Notice Mailing Date	Within 60 days following entry of the Preliminary Approval Order
Exclusion/Objection Deadline	30 days after Notice Mailing Date
Claims Administrator's Filing of Exclusion Requests	15 days after Exclusion/Objection Deadline
Plaintiff's Counsel's Fee Motion Submitted	30 days after Exclusion/Objection Deadline
Final Approval Brief and Response to Objections	30 days after Exclusion/Objection Deadline
Final Approval Hearing / Noting Date	Between 120-150 days of entry of the Preliminary Approval Order
Final Approval Order Entered	At the Court's Discretion

The Fairness Hearing is scheduled on January 17, 2024, at 9:00 AM in Courtroom 16106 at the Seattle Courthouse.

**IT IS SO ORDERED**

Dated this 14th day of September, 2023.



\_\_\_\_\_  
Jamal N. Whitehead  
United States District Judge