

1 HONORABLE RICHARD A. JONES  
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8 IN THE UNITED STATES DISTRICT COURT  
9 IN AND FOR THE WESTERN DISTRICT OF WASHINGTON

10 BRETT DURANT, On Behalf of  
11 Himself and all other similarly situated,

12 Plaintiffs,

13 CASE NO. 2-15-CV-01710-RAJ

14 vs.  
15 STATE FARM MUTUAL AUTOMOBILE  
16 INSURANCE COMPANY, a foreign  
17 automobile insurance company,

18 Defendant.

19 ORDER

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21 This matter comes before the Court on Plaintiff Brett Durant's motion to certify  
22 class and appoint class counsel. Dkt. # 27.<sup>1</sup> Defendant State Farm Mutual Automobile  
23 Insurance Company ("State Farm") opposes the motion. Dkt. # 34.<sup>2</sup> For the reasons that  
24 follow, the Court **GRANTS** Plaintiff's motion.

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26 <sup>1</sup> The Court notes that Plaintiff largely cites to authority that is outside the Ninth Circuit. *See, e.g.*,  
27 Dkt. # 27 at pp. 4-5 (twenty of Plaintiff's thirty-five cases cited in his motion are outside the Ninth  
28 Circuit). This authority is not binding on the Court. Importantly, the Court finds that Plaintiff cited  
non-binding authority when valid Ninth Circuit authority on the issue exists and is accessible. The  
Court advises Plaintiff and his counsel to be mindful of this issue for future filings.

29 <sup>2</sup> The Court strongly disfavors footnoted legal citations. Footnoted citations serve as an end-run  
30 around page limits and formatting requirements dictated by the Local Rules. *See* Local Rules W.D.  
Wash. LCR 7(e). Moreover, several courts have observed that "citations are highly relevant in a  
legal brief" and including them in footnotes "makes brief-reading difficult." *Wichansky v. Zowine*,

ORDER-1

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## I. BACKGROUND

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3 On July 21, 2012, Plaintiff was injured in a motor vehicle accident. Dkt. # 27 at  
4 p. 10. To aid in his recovery, Plaintiff sought treatment with a chiropractor and  
5 masseuse. *Id.* at pp. 10-11. Plaintiff opened a Personal Injury Protection Coverage (PIP)  
6 claim with State Farm to cover these medical expenses. *Id.* at p. 10. According to the  
7 PIP provision in Plaintiff's policy, State Farm agreed to cover "reasonable medical  
8 expenses incurred within three years of the date of the accident." Dkt. # 39-1 at p. 23.  
9 "Reasonable medical expenses" include, among other things, "necessary" expenses that  
10 are "essential in achieving maximum medical improvement for the bodily injury  
11 sustained in the accident." *Id.* at p. 24.

12

13 Upon opening the PIP claim, Plaintiff received a letter from State Farm  
14 summarizing his benefits. Specifically, the letter stated that:

15 The policy provides coverage for reasonable and necessary  
16 medical expenses that are incurred within three (3) years  
17 of the accident. Medical services must also be essential in  
18 achieving maximum medical improvement for the injury  
19 you sustained in the accident. . . .

20

21 Occasionally there are situations where treatment may not  
22 be considered reasonable, necessary, or related to the  
23 accident. Similarly, there may be cases where the services  
24 are not essential in achieving maximum medical  
25 improvement for the injury sustained in the accident. In  
26 such cases, YOUR PIP COVERAGE MAY NOT PAY  
27 FOR ALL OF YOUR EXPENSES directly.

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29 No. CV-13-01208-PHX-DGC, 2014 WL 289924, at \*1 (D. Ariz. Jan. 24, 2014). The Court strongly  
30 discourages the Parties from footnoting their legal citations in any future submissions. *See Kano v.*  
*Nat'l Consumer Co-op Bank*, 22 F.3d 899-900 (9th Cir. 1994).

1 Dkt. # 30, Ex. C at pp. 24-25.  
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3 To determine whether insureds have achieved maximum medical improvement  
4 (“MMI”), State Farm sends form letters to treating providers. Dkt. # 39-1 at p. 2. The  
5 letters ask, among other things, whether the patient has reached MMI and, if not, when  
6 the provider thinks that the patient will reach MMI. *Id.* State Farm denies coverage for  
7 treatment once a provider discloses that a patient has reached MMI. Dkt. # 30, Ex. F at  
8 pp. 32-35. A simple denial of coverage based on this MMI standard, codified under  
9 State Farm’s Reason Code 546, specifically explains that “[s]ervices are not covered, as  
10 your provider advised us you previously reached maximum medical improvement. . . .”

11 *Id.*

12 In lieu of communicating directly with treating providers, State Farm claims  
13 specialists may contract with physicians to conduct Utilization Reviews (“UR”) or  
14 Independent Medical Examinations (“IME”) of insureds’ claims. Dkt. # 34 at p. 9. In  
15 such cases, the claims specialists send the physicians form letters that may include  
16 questions regarding a patient’s MMI status. *See, e.g.*, Dkt. # 39-4 at p. 18 (Question 11  
17 asks whether “the patient reached maximum medical improvement relative to the  
18 injury(ies) or condition(s) sustained” in the accident.). A denial of coverage based on the  
19 outcome of a UR or an IME is codified under Reason Codes 536 and 537, respectively.  
20 *See, e.g.*, Dkt. # 39-5 at p. 32; *see also* Dkt. # 27 at p. 15. However, Reason Codes 536  
21 and 537 do not expressly state that the denial is based on the patient reaching MMI; one  
22 would need to review the individual claim file to ascertain whether the physician found  
23 that the patient achieved MMI.

24 On April 3, 2013, Plaintiff’s chiropractor certified that Plaintiff had reached MMI  
25 on March 27, 2013. Dkt. # 30, Ex. E at p. 29. Soon thereafter, State Farm denied  
26 coverage for Plaintiff’s claims based on Reason Code 546. Dkt. # 30, Ex. F at pp. 32-35.  
27 Though Plaintiff concedes that his injuries “may have been stable as of the end of March,  
28 his injuries had not resolved.” Dkt. # 27 at p. 11. Plaintiff claims that he could not

1 maintain stability without ongoing treatment; otherwise, Plaintiff risked exacerbating his  
2 injuries upon returning to his usual activities. *Id.*

3 Plaintiff retained an attorney for the purpose of pursing his denied PIP benefits.  
4 Plaintiff argued that State Farm was in violation of Washington Administrative Code  
5 (WAC) 284-30-395 when it denied claims based on the MMI standard. Dkt. # 30, Ex. G  
6 at p. 37. This provision of the WAC provides, in part:

7 Within a reasonable time after receipt of actual notice of  
8 an insured's intent to file a personal injury protection  
9 medical and hospital benefits claim, and in every case  
10 prior to denying, limiting, or terminating an insured's  
11 medical and hospital benefits, an insurer shall provide an  
12 insured with a written explanation of the coverage  
13 provided by the policy, including a notice that the insurer  
14 may deny, limit, or terminate benefits if the insurer  
15 determines that the medical and hospital services:  
16

17 (a) Are not reasonable;  
18 (b) Are not necessary;  
19 (c) Are not related to the accident; or  
20 (d) Are not incurred within three years of the automobile  
21 accident.

22 These are the only grounds for denial, limitation, or  
23 termination of medical and hospital services permitted  
24 pursuant to RCW 48.22.005(7), 48.22.095, or 48.22.100.

25 WAC 284-30-395(1)(a)-(d). State Farm conceded that the MMI standard is not codified  
26 in the WAC, but explained that "the insurance commissioner's office thoroughly reviews  
27 and approves policy language proposed by insurance companies." Dkt. # 30, Ex. H at p.  
28

29 39. State Farm nonetheless reiterated that it denied Plaintiff's claims because he reached

1                   MMI. *Id.* State Farm did not deny Plaintiff's claims because they were unreasonable,  
2 unnecessary, or unrelated to the accident.  
3

4                   On April 9, 2014, Plaintiff filed a class action against State Farm in Superior  
5 Court based on the use of the MMI standard to deny coverage for personal injury claims.  
6 Dkt. # 5-1 (Complaint). State Farm removed the action to this Court, and now Plaintiff  
7 seeks to certify the class and appoint class counsel. Dkt. ## 1, 27.

8                   **II. LEGAL STANDARD**

9                   The Court's decision to certify a class is discretionary. *Vinole v. Countrywide*  
10 *Home Loans, Inc.*, 571 F.3d 935, 944 (9th Cir. 2009). Federal Rule of Civil Procedure  
11 23 ("Rule 23") guides the Court's exercise of discretion. A plaintiff "bears the burden  
12 of demonstrating that he has met each of the four requirements of Rule 23(a) and at  
13 least one of the [three alternative] requirements of Rule 23(b)." *Lozano v. AT&T*  
14 *Wireless Servs., Inc.*, 504 F.3d 718, 724 (9th Cir. 2007). Rule 23(a) requires a  
15 plaintiff to demonstrate that the proposed class is sufficiently numerous, that it  
16 presents common issues of fact or law, that it will be led by one or more class  
17 representatives with claims typical of the class, and that the class representative will  
18 adequately represent the class. *Gen. Tel. Co. of the S.W. v. Falcon*, 457 U.S. 147, 161  
19 (1982); Fed. R. Civ. P. 23(a). If a plaintiff satisfies the Rule 23(a) requirements, he  
20 must also show that the proposed class action meets one of the three requirements of  
21 Rule 23(b). *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir.  
22  
23 2001).

24                   Plaintiff seeks certification under Rule 23(b)(3). A class may be certified  
25 under this subdivision if: (1) common questions of law and fact predominate over  
26 questions affecting individual members, and (2) if a class action is superior to other  
27 means to adjudicate the controversy. Fed. R. Civ. P. 23(b)(3).

28                   The "predominance" and "superiority" prongs of Rule 23 work together to  
29 ensure that certifying a class "would achieve economies of time, effort, and expense,  
30

1 and promote . . . uniformity of decision as to persons similarly situated, without  
2 sacrificing procedural fairness or bringing about other undesirable results.” *Amchem*  
3 *Prods., Inc. v. Windsor*, 521 U.S. 591, 615 (1997) (internal citation and quotation  
4 omitted). A “central concern of the Rule 23(b)(3) predominance test is whether  
5 ‘adjudication of common issues will help achieve judicial economy.’” *Vinole*, at 944  
6 (quoting *Zinser*, 253 F.3d at 1189). Thus, the Court must determine whether  
7 resolution of common questions would resolve a “significant aspect” of the class  
8 members’ claims such that there is “clear justification” for class treatment. *Hanlon v.*  
9 *Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998) (citations omitted).

10  
11 In considering Rule 23’s requirements, the Court must engage in a “rigorous  
12 analysis,” but a “rigorous analysis does not always result in a lengthy explanation or in  
13 depth review of the record.” *Chamberlan v. Ford Motor Co.*, 402 F.3d 952, 961 (9th  
14 Cir. 2005) (citing *Falcon*, 457 U.S. at 161). The Court is neither permitted nor  
15 required to conduct a “preliminary inquiry into the merits” of the plaintiff’s claims.  
16 *Blackie v. Barrack*, 524 F.2d 891, 901 (9th Cir. 1975) (citing *Eisen v. Carlisle &*  
17 *Jacquelin*, 417 U.S. 156, 177 (1974)); *see also* Fed. R. Civ. P. 23 advisory  
18 committee’s note (2003) (“[A]n evaluation of the probable outcome on the merits is  
19 not properly part of the certification decision”); *but see Wal-Mart Stores, Inc. v.*  
20 *Dukes*, 564 U.S. 338, 351 (2011) (suggesting that Rule 23 analysis may be inextricable  
21 from some judgments on the merits in a particular case). The Court may assume the  
22 truth of a plaintiff’s substantive allegations, but may require more than bare  
23 allegations to determine whether a plaintiff has satisfied the requirements of Rule 23.  
24 *See, e.g., Blackie*, 524 F.2d at 901, n.17; *Clark v. Watchie*, 513 F.2d 994, 1000 (9th  
25 Cir. 1975) (“If the trial judge has made findings as to the provisions of the Rule and  
26 their application to the case, his determination of class status should be considered  
27 within his discretion.”).

1

### 2     III. DISCUSSION

3

4     Plaintiff proposes that the Court certify the following class:

5

6           All insured, as defined in the medical payments coverage  
7           portions of State Farm's policies, and all third-party  
8           beneficiaries of such coverage, under any State Farm  
9           insurance policy issued in the state of Washington with  
10           respect to whom State Farm terminated, or limited  
11           benefits, based upon its determination that its insured had  
12           reached "maximum medical improvement" or that such  
13           benefits were not "essential in achieving maximum  
14           medical improvement for the bodily injury."

15     Dkt. 5-1 (Complaint) at ¶ 4.2.<sup>3</sup>

16     **A. Rule 23(a)**

17        **1. Numerosity**

18        Plaintiff's proposed class satisfies the numerosity requirement of Rule 23(a).  
19        There are six Reasons Codes that could have been used by claims specialists to deny  
20        claims based on MMI. Dkt. # 34 at p. 10. State Farm estimated that 3,285 of its  
21        75,000 PIP claims involved at least one of these six Reason Codes. *Id.* In an early  
22        discovery exchange, State Farm produced a sampling of the 3,285 claims: fifty-eight  
23        claims were denied based on Reason Codes 536, 537, or 546 and two claims were  
24        denied based on Reason Codes 251, 358, or 431. Dkt. ## 28 at ¶ 2, 34 at pp. 10-11.

25        Plaintiff's claims handling expert, Stephen Strzelec, analyzed these sixty claim  
26        files to discern which claims were actually denied based on the MMI standard. *See*  
27        Dkt. # 28. Of the six Reason Codes, Mr. Strzelec found that Reason Codes 536, 537,

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29       <sup>3</sup> In this Order, the Court certifies the class as described in the Complaint. However, the  
30       Court notes that Plaintiff did not define the time period of the class. This does not prevent  
the Court from granting certification at this time, but the Court urges the parties to address  
this issue as the case moves forward.

1 and 546 were most relevant; of this subset, Mr. Strzelec discovered that fifty-two  
2 claims were denied based on the MMI standard. Dkt. # 28 at ¶¶ 11-12. Plaintiff's  
3 statistics expert extrapolated Mr. Strezelec's findings to the entire group of 3,285  
4 claims involving the six Reason Codes. Dkt. # 31. Based on these calculations, the  
5 expert estimated that 2,276 to 3,146 claims were denied based on the MMI standard.<sup>4</sup>  
6 *Id.* at ¶¶ 3-4. The Court acknowledges that this is currently an estimated class size and  
7 not an exact accounting, but the Court also finds that the class size will be large  
8 enough to meet the numerosity requirement under Rule 23. As such, Plaintiff met his  
9 burden to show that joinder will be impracticable without merely speculating as to the  
10 potential class size. *See Mortimore v. F.D.I.C.*, 197 F.R.D. 432, 435 (W.D. Wash.  
11 2000) (finding that the plaintiff "need not show the exact number of potential  
12 members in order to satisfy this prerequisite" as long as he can show impracticability  
13 in joinder without merely speculating "as to the number of parties involved . . .").  
14

## 16       2. Commonality

17 Plaintiff satisfies the commonality requirement of Rule 23(a) because he  
18 alleges that State Farm engaged in the same conduct for each class member by  
19 denying claims based on the MMI standard. Specifically, the Court finds that there is  
20 a common question for all class members: is a denial based, even in part, on MMI a  
21 violation of WAC 284-30-395 such that State Farm has been engaging in unfair or  
22 illegal practices? *Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir. 2014) ("Plaintiffs need  
23 not show, however, that 'every question in the case, or even a preponderance of  
24 questions, is capable of class wide resolution. So long as there is 'even a single  
25 common question,' a would-be class can satisfy the commonality requirement of Rule  
26 23(a)(2).'" (internal quotations omitted)). An answer to this common question will  
27 "drive the resolution of the litigation," and therefore Plaintiff meets his burden under  
28

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29  
30       <sup>4</sup> There was an insufficient amount of claims analyzed based on Reason Code 536 and therefore the  
Court will not include those claims in this Order for class certification. Dkt. # 31 at ¶ 5.

1 Rule 23(a)(2). *See id.* at 675 (“What matters to class certification . . . is not the raising  
2 of common ‘questions’—even in droves—but, rather the capacity of a classwide  
3 proceeding to generate common answers apt to drive the resolution of the litigation.”)  
4 (internal quotations omitted).  
5

6 **3. Typicality**

7 “The test of typicality is whether other members have the same or similar  
8 injury, whether the action is based on conduct which is not unique to the named  
9 plaintiffs, and whether other class members have been injured by the same course of  
10 conduct.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011)  
11 (internal quotations omitted). Plaintiff satisfies the typicality requirement because the  
12 course of conduct leading to his alleged injury—that State Farm denied coverage  
13 based on the MMI standard—is the same for all potential class members. That each  
14 claim will necessarily include a unique set of facts based upon individual bodily  
15 injuries does not negate the common nature of those claims. *Parsons*, 754 F.3d at 685  
16 (“Thus, ‘[t]ypicality refers to the nature of the claim or defense of the class  
17 representative, and not to the specific facts from which it arose or the relief sought.’”).  
18

19 State Farm argues that Plaintiff lacks standing and therefore his claims are not  
20 typical of the class. Dkt. # 34 at pp. 26-27. For support, State Farm alleges that  
21 Plaintiff settled his underinsured motorist (UIM) claims. Dkt. # 34 at p. 26. However,  
22 State Farm does not explain how a potential settlement of Plaintiff’s UIM claims  
23 affects his PIP claims. Moreover, Plaintiff’s lawsuit arises from denials of coverage  
24 based on the MMI standard; Plaintiff does not appear to be arguing for PIP benefits  
25 above his policy limits, but rather for benefits within his limits that he believes were  
26 wrongfully denied. Dkt. # 30, Ex. F at pp. 32-35.  
27

28 Similarly, State Farm’s argument that Plaintiff lacks a cognizable injury fails.  
29 Dkt. # 34 at p. 27. State Farm claims that Plaintiff received more massages than  
30 necessary for his “back sprain condition,” and that his masseuse overcharged for her

1 services. *Id.* According to State Farm, it overpaid Plaintiff's claims to a point that  
2 eclipses the current disputed amount. *Id.* State Farm misses the mark. It denied  
3 coverage for Plaintiff's massages because he had "reached maximum medical  
4 improvement." Dkt. # 30, Ex. F at pp. 32-35. State Farm did not deny these claims  
5 based on reasonableness, necessity, or relatedness per the WAC, but instead it used a  
6 standard that Plaintiff argues is outside the scope of the law. This conduct is typical  
7 of the claims asserted by the class.

8

9 **4. Adequate Representation**

10 Questions of a class representative's adequacy dovetail with questions of his  
11 counsel's adequacy. Fed. R. Civ. P. 23(g)(4) ("Class counsel must fairly and  
12 adequately represent the interests of the class."). To determine whether the adequacy  
13 requirement is met, courts may be guided by two questions: "(1) do the named  
14 plaintiffs and their counsel have any conflicts of interest with other class members and  
15 (2) will the named plaintiffs and their counsel prosecute the action vigorously on  
16 behalf of the class?" *Ellis*, 657 F.3d at 985. The Court finds no evidence of conflicts  
17 between Plaintiff or his counsel and the other potential members of the class. The  
18 Court further finds that Plaintiff has and will continue to vigorously prosecute this  
19 matter on behalf of the class. Moreover, based on the record, the Court has no  
20 difficulty concluding that counsel has provided and will likely continue to provide  
21 adequate representation for the proposed class.

22

23 **B. Rule 23(b)(3)**

24

25 **1. Predominance**

26 To meet the predominance requirement, common questions of law and fact  
27 must be "a significant aspect of the case . . . [that] can be resolved for all members of  
28 the class in a single adjudication." *Mazza v. Am. Honda Motor Co., Inc.*, 666 F.3d  
29 581, 589 (9th Cir. 2012) (quoting *Hanlon*, 150 F.3d at 1022). To make this  
30 determination, the Court must analyze each of Plaintiff's claims separately. *Erica P.*

*John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809 (2011) (“Considering whether questions of law or fact common to the class members predominate begins, of course, with the elements of the underlying cause of action.”).

Here, Plaintiff is pursuing four causes of action: (1) violation of the Washington Consumer Protection Act (CPA), (2) breach of contract, (3) tortious bad faith handling of insurance claims, and (4) violation of the Insurance Fair Conduct Act. Dkt. # 5-1 (Complaint) at ¶¶ 8.1-8.13. Central to each cause of action is whether State Farm’s use of the MMI standard to deny claims is unreasonable or an “unfair or deceptive act or practice.” *See Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 719 P.2d 531, 533 (Wash. 1986) (describing the elements of a CPA claim); *Fid. & Deposit Co. of Maryland v. Dally*, 201 P.3d 1040, 1044 (Wash. Ct. App. 2009) (describing elements of a claim for breach of contract); *Smith v. Safeco Ins. Co.*, 78 P.3d 1274, 1276 (Wash. 2003) (describing elements of a tort action for bad faith); RCW 48.30.015 (giving an insured a private right of action for “unreasonably denied” claims for coverage or payments of benefits). Therefore, the Court finds that the common issue described above will resolve most of the elements of the causes of action.

To calculate damages, however, it might be necessary to conduct an individualized review of each claim. Though this may be labor intensive, the parties will be able to calculate the damages based on the submitted records. Despite the possible individualized nature of damages calculations in this matter, the Court nevertheless finds that “[c]lasswide resolution of the common issues is superior to the filing of multiple and duplicative lawsuits and will result in the efficient and consistent resolution of overarching questions.”<sup>5</sup> *Helde v. Knight Transp., Inc.*, No.

<sup>5</sup> The Court does not find that the individualized nature of damages hinders its ability to certify the class at this stage. However, the Court has grave concerns about managing the damages in this case moving forward as those damages are predicated on individual claims and the specific reasons for denial. The Court urges Plaintiff to address this manageability

1 C12-0904RSL, 2013 WL 5588311, at \*5 (W.D. Wash. Oct. 9, 2013); *see also Blackie*  
2 *v. Barrack*, 524 F.2d 891, 905 (9th Cir. 1975) (“The amount of damages is invariably

3 an individual question and does not defeat class action treatment.”).

4

## 5 **2. Superiority**

6 Finally, the Court considers whether the class is superior to individual suits.  
7 *Amchem*, 521 U.S. at 615. “A class action is the superior method for managing  
8 litigation if no realistic alternative exists.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d  
9 1227, 1234-35 (9th Cir. 1996). This superiority inquiry requires a comparative  
10 evaluation of alternative mechanisms of dispute resolution. *Hanlon*, 150 F.3d at 1023.  
11 Rule 23(b)(3) provides a non-exhaustive list of factors relevant to the superiority  
12 analysis. Fed. R. Civ. P. 23(b)(3).

13 State Farm takes issue with the manageability of the class action and the forum.  
14 Dkt. # 34 at pp. 28-29, *see also* Fed. R. Civ. P. 23(b)(3)(C), (D). State Farm claims  
15 that there is “no manageable way to even *identify* putative class members.” Dkt. # 34  
16 at p. 29 (emphasis in original). However, State Farm has detailed records of each  
17 claim, the basis for denial, and to whom the claim belongs. Identification does not  
18 appear to be an issue for this class.

19 State Farm further argues that Plaintiff should have brought this action in  
20 arbitration or before the Washington Insurance Commissioner. Dkt. # 34 at p. 29.  
21 State Farm cites to RCW 7.06, *et seq.*, for its argument that actions seeking less than  
22 \$50,000 must be arbitrated. *Id.* But this class action is seeking nearly \$8 million.  
23 Dkt. # 22 at p. 5. “Moreover, ‘a comparative examination of alternatives underscores  
24 the wisdom of a class action in this instance.’” *Wiener v. Dannon Co.*, 255 F.R.D.  
25 658, 672 (C.D. Cal. 2009) (quoting *Hanlon*, 150 F.3d at 1023). If the class members  
26 were forced to bring individual claims for relatively small amounts of damages, then

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30 issue in future filings. Plaintiff may wish to consider whether sub-classes on the basis of  
relief would aid in potential manageability issues.

1 many members would most likely refrain after realizing “the disparity between their  
2 litigation costs and what they hope to recover.” *Id.* (quoting *Local Joint Exec. Bd. of*  
3 *Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th  
4 Cir. 2001)). Accordingly, the superiority requirement of Rule 23(b)(3) is satisfied.  
5

6 **IV. CERTIFICATION TO STATE SUPREME COURT**

7 The common question in this case may require the Court to define the terms  
8 “reasonable” or “necessary” as they appear in WAC 284-30-395. Additionally, the  
9 Court may be required to determine whether “maximum medical improvement” falls  
10 within the bounds of WAC 284-30-395. The Court requests briefing from the parties  
11 with regard to whether such questions should be certified to the Washington Supreme  
12 Court. RCW 2.60.030. **If the parties agree on a course of action, they may file a**  
13 **joint brief within ten (10) days from the date of this Order. If the parties do not**  
14 **agree, each party may file an opening brief within ten (10) days of the date of this**  
15 **Order; responsive briefs will be due five (5) days later. No replies will be**  
16 **considered. The briefs shall not exceed ten (10) pages.**

17 **V. CONCLUSION**

18 For all the foregoing reasons, the Court **GRANTS** Plaintiff’s motion to certify the  
19 class and appoint class counsel. Dkt. # 27. The Court **DENIES** State Farm’s motion to  
20 strike. Dkt. # 34. The Court requests briefing from the parties **within ten (10) days**  
21 **from the date of this Order** regarding whether certain questions should be certified to  
22 the Washington Supreme Court.

23 Dated this 9th day of March, 2017.

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The Honorable Richard A. Jones  
United States District Judge