

The Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, a foreign
automobile insurance company,

Defendant.

No.: 2-15-CV-01710-RAJ

CLASS ACTION

**~~PROPOSED~~ ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, AMENDING
THE CLASS DEFINITION FOR
SETTLEMENT PURPOSES,
APPROVING AMENDED NOTICE TO
CLASS, ORDERING A STAY, AND
SETTING CRITICAL DATES,
INCLUDING FINAL APPROVAL
HEARING DATE**

THIS MATTER having come before the Court on the unopposed motion of the Plaintiff for preliminary approval of Class Action Settlement, approving the form of the amended Notice, modifying the class definition for settlement purposes only, and establishing a schedule for exclusions, objections, motions and final hearing date; the Court having reviewed the Plaintiff's motion including exhibits, and any and all pleadings related thereto,

NOW, THEREFORE, IT IS HEREBY ORDERED

Plaintiff's Motion is **GRANTED**

ACCORDINGLY, IT IS FURTHER ORDERED

Preliminary Approval of the Settlement

1 1. Subject to further consideration at the Final Approval Hearing as described below,
2 the Court Preliminarily finds the settlement set forth in the parties' Settlement Agreement and
3 Release and attached Exhibits (the "Settlement") to be fair, just, reasonable and adequate to the
4 Settlement Class described below.

5 **Amended Class Certification**

6 2. The Court has previously certified a class and approved the parties' stipulated class
7 definition and proposed notice. (Dkt 50). Solely for the purposes of the proposed Settlement, the
8 Court finds and concludes that the prerequisites for class action certification under Rule 23(b)(3)
9 have been satisfied for the purpose of amending the class definition. Therefore, for purposes of
10 effectuating this Settlement only, the Court shall amend the class definition and approve certification
11 of a Settlement Class defined as follows:
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13 State Farm insureds in the state of Washington who, from April 9, 2008 to June 15, 2018,
14 had a Personal Injury Protection (PIP) claim for medical or hospital benefits denied,
15 terminated or limited by State Farm Mutual Automobile Insurance Company (State Farm)
16 on the grounds that they had reached Maximum Medical Improvement, using an Explanation
of Review form referencing Reason Codes SF546, SF536 or SF537.

17 **Schedule of Important Dates:**

18 3. The Court hereby sets the following dispositive dates in this matter:

19 a. Date by which the Notice is mailed to Settlement Class Members:

20 **Thirty (30) days from the date of this Order**

21 b. Date by which to file Motion for Attorneys' Fees, Costs and Expenses

22 **Sixty (60) days from the date of this Order**

23 c. Last day to request exclusion from the Settlement Class

24 **Ninety (90) days from the date of this Order**

25 d. Last day for Settlement Class Members to file objections to the settlement or
26 attorney fees, costs and expenses application

27 **Ninety (90) days from the date of this Order**

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2 e. Date by which Settlement Class Counsel will Provide Defense Counsel with
Opt-Out List

3 **One hundred (100) days from the date of this Order**

4 f. Last Day for Settlement Class Counsel to File Motion for Final Approval of
Class Action Settlement

5 **One hundred ten (110) days from the date of this Order**

6 g. Last day to file any reply to objections

7 **One hundred ten (110) days from the date of this Order**

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9 The Court will hold a hearing regarding final approval of the Class Action Settlement (the
10 Final Approval Hearing) on June 10, 2019 at 1:30 pm in the courtroom of the Honorable Richard
11 Jones for the following purposes: (1) to determine whether the terms and conditions provided for in
12 the proposed Settlement are fair, reasonable, adequate, and in the best interests of the Settlement
13 Class and whether the Settlement should be finally approved by the Court; (2) to rule upon, and
14 approve if appropriate, Settlement Class Counsel's fee, costs and expenses application, (3) to
15 approve the Settlement Class Representative's request for an incentive award, (4) to approve the
16 final proposed Plan of Allocation as set forth in the parties' Settlement Agreement, (5) to consider
17 and rule upon any objections or other matters brought before the Court, and (6) to approve the Final
18 Judgment in this matter.
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20 **Manner of Notice**

21 4. The Court approves the form and content of the Notice of Class Action and Class
22 Action Settlement, and the creation of the Settlement Website, as described in the Settlement
23 Agreement. The Court finds that providing notice of the Settlement and Final Approval Hearing,
24 together with Notice of Class Action as set forth herein: (i) constitutes the best notice practicable
25 under the facts and circumstances of this action; (ii) is reasonably calculated, under the
26 circumstances, to apprise Class members of the class action and the proposed settlement, including
27 the scope of the releases related to the settlement; (iii) shall constitute due and sufficient notice of
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1 the proposed Settlement to the Class; and (iv) satisfies the requirements of Rule 23 and the United
2 States Constitution. The Notice must be mailed within thirty (30) days of the entry of this Order.

3 **Appointment of Settlement Administrator**

4 5. Rust Consulting, Inc. is appointed as the Settlement Administrator and shall perform
5 all of the duties of the Settlement Administrator described in the Settlement Agreement and this
6 Order.
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8 **Exclusions from the Settlement Class and Objections**

9 6. Any class member who wishes to be excluded from the Settlement Class must send
10 a written request for exclusion to the Settlement Administrator, by first-class mail, postage prepaid,
11 to the address provided in the direct notice and Settlement Website (“Request for Exclusion). To
12 be valid, any request for exclusion must (i) be in writing; (ii) identify the case name: *Durant v. State*
13 *Farm*, Case No. 2:15-cv-01710-RAJ, (iii) state the name, address and telephone number of the
14 Person in the Settlement Class seeking exclusion; (iv) be physically signed by the individual(s)
15 seeking exclusion; and (v) be postmarked on or before the Objection/Exclusion Deadline. Each
16 request for exclusion must also contain a statement to the effect that “I/We hereby request to be
17 excluded from the proposed Settlement Class.” Mass or class opt outs shall not be allowed. If the
18 proposed settlement is approved, any Settlement Class member who has not submitted a timely and
19 proper written Request for Exclusion from the Settlement Class shall be bound by all subsequent
20 proceedings, orders, and judgments in this Litigation, even if he or she has pending, or subsequently
21 initiates, litigation against Defendant relating to any of the Released Claims in the Settlement
22 Agreement.
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25 7. Any Settlement Class Member who has not filed a timely and proper written request
26 for exclusion, and who complies with the requirement of this Paragraph, may comment in support
27 of, or in opposition to, any aspect of the proposed Settlement either on his or her own or through an
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1 attorney hired at his or her expense. Any papers submitted in support of said objection shall be
2 received by the Court at the Final Approval Hearing, only if the Person making an objection files,
3 on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice,
4 notice of his or her intention to do so and at the same time: (a) files copies of such papers he or she
5 proposed to submit at the Final Approval Hearing with the Clerk of the Court; (b) files copies of
6 such papers through the Court's CM/ECF system if the objection is from a Settlement Class member
7 represented by counsel, who must also file an appearance; and (c) sends copies of such papers via
8 mail, hand, or overnight delivery to both Settlement Class Counsel and Defense Counsel at the
9 following locations:
10

11 Plaintiff's Counsel:

12 Tyler Firkins
13 Vans Siclen, Stocks & Firkins
14 721 45th Street N.E.
15 Auburn, WA 98002
16 Telephone: 253.859.8899

17 Defendant's Counsel:

18 Frank Falzetta
19 Sheppard Mullin Richter & Hampton
20 333 S. Hope St., 43rd Floor
21 Los Angeles, CA 90071-1422
22 Telephone: 213-620-1780

23 8. Any class member who intends to intervene and object to this Settlement must
24 present the objection in writing, which must be personally signed by the objector and must include:
25 (i) the Settlement Class Member's full name and current address, (ii) the specific grounds for the
26 objection, (iii) all documents or writings that the Settlement Class Member desires the Court to
27 consider, (iv) the name and contact information of any and all attorneys representing, advising, or
28 in any way assisting the objector in connection with the preparation or submission of the objection
or who may profit from the pursuit of the objection; and (v) a statement indicating whether the

1 objector intends to appear at the Final Approval Hearing (either personally or through counsel, who
2 must file an appearance). All written objections must be filed and postmarked, emailed, or
3 submitted to the Settlement Website no later than the Objection/Exclusion Deadline.

4 9. Any Settlement Class Member who fails to timely file a written objection with the
5 Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the
6 terms of this Order and as detailed in the Notice, and at the same time provide copies to designated
7 counsel for the Parties, shall not be permitted to object to the Settlement Agreement at the Final
8 Approval Hearing, and shall be foreclosed from seeking any review of the Settlement Agreement
9 by appeal or other means and shall be deemed to have waived his or her objections and be forever
10 barred from making any such objections in this Litigation or any other action or proceeding.

11 10. If the Settlement is finally approved, all Settlement Class Members who have not
12 filed a timely and proper request for exclusion shall release the Released Parties from all Released
13 Claims, as described in the Settlement Agreement.

14 11. This Order shall become null and void, and shall be without prejudice to the rights
15 of the Parties, all of whom shall be restored to their respective positions in the Action as of the date
16 of the signing of the Settlement Agreement, if (i) the proposed Settlement is not finally approved by
17 the Court, or does not become effective in accordance with the Settlement Agreement's Effective
18 Date (as defined in the Settlement Agreement), pursuant to the terms of the Settlement Agreement;
19 or (ii) the Settlement Agreement is terminated pursuant to the terms of the Settlement Agreement
20 for any reason. In such event, the certification of the Settlement Class and any Final Judgment or
21 other order entered by the Court in the Litigation in accordance with the terms of the Settlement
22 Agreement shall be deemed vacated *nunc pro tunc*, and the Parties shall be returned to the *status*
23 *quo ante* with respect to the Action as if the Settlement Agreement had never been entered into.
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1 12. This Order shall be of no force and effect if the Settlement does not become final and
2 shall not be construed or used as an admission, concession, or declaration by or against Defendant
3 of any fault, wrongdoing, breach, or liability, or by or against Plaintiff of the Settlement Class
4 Members that their claims lack merit or that the relief requested in the class complaint in this
5 Litigation is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses
6 they may have.
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8 **Stay Order**

9 13. Pending the Final Approval Hearing, all deadlines, dates and proceedings in this
10 matter unrelated to the Class Action Settlement are hereby stayed.

11 IT IS SO ORDERED.

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14 Dated this the 5th day of February, 2019.

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17 The Honorable Richard A. Jones
18 United States District Judge
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