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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FAYSAL A JAMA,

Plaintiff,

v.

STATE FARM FIRE AND  
CASUALTY COMPANY,

Defendant.

CASE NO. C20-652 MJP

ORDER ON PLAINTIFF'S  
MOTION FOR CLASS  
CERTIFICATION

This matter comes before the Court on Plaintiff's Motion for Class Certification. (Dkt. No. 44.) Having reviewed the Motion, the Opposition (Dkt. No. 53), the Reply (Dkt. No. 58), the Surreply (Dkt. No. 71), Plaintiff's additional briefing on Rule 23(g) (Dkt. No. 102), Defendant's Notices of Supplemental Authority (Dkt. Nos. 57, 108), and all supporting materials, and having held oral argument on the Motion on June 22, 2021, the Court GRANTS in part the Motion.

**BACKGROUND**

This case involves Defendant State Farm Fire and Casualty Company's claims settlement process used to determine the actual cash value (ACV) of an insured's total loss vehicle. Plaintiff

1 Faysal Jama attacks State Farm’s practice of applying a “typical negotiation discount” and  
2 condition deductions to the comparable cars used to determine the ACV of an insured’s total loss  
3 vehicle. These discounts appear in reports prepared by a third-party Audatex, which are referred  
4 to as “Autosource Reports.” Plaintiff alleges that valuations based on Autosource Reports with  
5 the typical negotiation discount and condition deductions violate Washington’s insurance  
6 regulations. Plaintiff pursues claims for: (1) breach of contract, (2) insurer bad faith, (3) breach  
7 of the duty of good faith and fair dealing, (4) violation of the Washington Consumer Protection  
8 Act, and (5) declaratory judgment. (Complaint ¶¶ 6.1-6.29 (Dkt. No. 1-3).)

9 **A. Regulatory Framework**

10 The parties agree that a “necessary predicate” to Plaintiff’s claims is State Farm’s alleged  
11 violation of WAC 284-30-391 (“Section 391”). (Def. Opp. at 8 (Dkt. No. 53 at 14).) The Court  
12 has already analyzed the regulatory framework of Section 391 in ruling on State Farm’s Motion  
13 to Dismiss. (Order on Motion to Dismiss (Dkt. No. 29).) The Court reviews several pertinent  
14 aspects of that analysis to help frame the legal issues presented in the Motion.

15 Section 391 establishes the methods by which an insurer “must adjust and settle vehicle  
16 total losses” and the standards of practice for the settlement of total loss vehicle claims. WAC  
17 284-30-391. The settlement methodology and standards of practice work in tandem and impose  
18 intertwined, but independent requirements on the insurer. Section 391 states that “[u]nless an  
19 agreed value is reached, the insurer must adjust and settle vehicle total losses using the methods  
20 set forth in subsections (1) through (3) of this section.” WAC 284-30-391 (emphasis added). But  
21 the insurer need follow just one of these three methods. At issue in this case is Section 391’s  
22 “cash settlement” methodology. This provision permits the insurer to “settle a total loss claim by  
23 offering a cash settlement based on the actual cash value of a comparable motor vehicle, less any  
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1 applicable deductible provided for in the policy.” WAC 284-30-391(2). Section 391(2) includes  
2 two key provisions to determine actual cash value of a comparable motor vehicle. First, to  
3 determine the actual cash value, “only a vehicle identified as a comparable motor vehicle may be  
4 used.” WAC 284-30-391(2)(a). Second, the insurer must “determine the actual cash value of the  
5 loss vehicle by using any one or more of the following methods”: (1) comparable motor vehicle;  
6 (2) licensed dealer quotes; (3) advertised data comparison; or (4) computerized sources. WAC  
7 284-30-391(2)(b)(i)-(iv).

8 Section 391 also “establish[es] standards of practice for the settlement of total loss  
9 vehicle claims” which the “insurer must” follow. WAC 284-30-391(4). Relevant here is Section  
10 391(4)(b), which says that the insurer must “[b]ase all offers on itemized and verifiable dollar  
11 amounts for vehicles that are currently available, or were available within ninety days of the date  
12 of loss, using appropriate deductions or additions for options, mileage or condition when  
13 determining comparability.”

14 In ruling on the Motion to Dismiss, the Court concluded that “[t]o give full effect to the  
15 language of Section 391(2), the Court finds that the ‘actual cash value’ determination must  
16 comply with the methodologies set forth in Section 391(2).” (MTD Order at 10.) “This  
17 determines the ‘fair market value’ of a comparable vehicle, which is consistent with the general  
18 definition of ‘actual cash value’ in Section 320.” (Id.) The Court also held that Section 391(4)  
19 provides the exclusive list of deductions that can be taken from the actual cash value  
20 determination. (Id. at 12-13.) To comply with Section 391(4), any deduction must also be  
21 itemized and verifiable. (Id. at 13-14.) In so holding, the Court defined the terms “itemized” and  
22 “verifiable” as follows: “Merriman Webster defines the term ‘itemized’ as ‘to set down in detail  
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1 or by particulars; list’ and defines ‘verifiable’ as to be able to ‘establish the truth, accuracy or  
2 reality of.’” (Id. at 13 (citation and quotation omitted).)

3 **B. Facts Relevant to the Named Plaintiff**

4 The Court reviews the facts related to the settlement of Plaintiff’s total loss claim to  
5 understand whether he may represent a class of similarly situated individuals.

6 Plaintiff was an insured of State Farm when State Farm deemed his 2009 Honda Civic  
7 Hybrid sedan a total loss in May 2019. (See Declaration of Faysal Jama, ¶ 2 and Ex. A.) To  
8 evaluate the amount of the total loss, State Farm obtained an Autosource Report to value  
9 Plaintiff’s loss vehicle. (Id. Ex. B.) The Autosource Report used four different comparable  
10 vehicles, making adjustments to account for differences with the Plaintiff’s vehicle, including  
11 mileage and options. (Id.) The value of these comparable vehicles was then used to establish the  
12 “actual cash value” of Plaintiff’s vehicle. (Id.) The value of each comparable vehicle was then  
13 reduced another further 9% as a “typical negotiation discount,” a deduction buried in the fine  
14 print. (Id.) The Autosource Report then took an addition \$155 deduction for the apparent atypical  
15 condition of Plaintiff’s car, though neither Audatex nor State Farm inspected the condition of the  
16 comparable vehicles. (Id.; Deposition of Neal Lowell at 148:22-150:6 (Dkt. No. 45).) Through a  
17 representative of Plaintiff’s counsel’s firm, Plaintiff requested to “settle out the claim.” (Graff  
18 Decl. ¶ 23 & Ex. B (Dkt. No. 54 and 54-2 at 4).) State Farm paid the amount set out in the  
19 Autosource Report, but Plaintiff maintains that he continued to dispute the valuation. (See Resp.  
20 to RFA Nos. 2-3, 5, 7 (Dkt. No. 55-19).)

21 **C. Facts Relevant to Class Certification**

22 Plaintiff asserts that State Farm follows a uniform claims settlement practice through  
23 which it underpays its insureds’ total loss claims by using an ACV determined in Autosource  
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1 Reports that includes a typical negotiation discount and a condition deduction applied to the  
2 comparable vehicles. The evidence bears this out. The typical claims handling process starts with  
3 a car inspection performed by a State Farm “estimator” or repair facility representative which  
4 leads to the creation of a Vehicle Inspection Report. (Declaration of Douglas Graff ¶¶ 11-12  
5 (Dkt. No. 54).) This “triggers the valuation process” which includes obtaining an “Autosource  
6 Report” created by a third-party vendor called Audatex/Solara. (Id. ¶¶ 11-13.) From March 25,  
7 2014 to the present, State Farm has used Autosource Reports to provide computerized ACVs on  
8 total loss claims. (Deposition of Douglas Graff at 29:7-20 (Dkt. No. 45).) Autosource Reports are  
9 used “99-plus percent of the time” when there is a total loss claim in Washington. (Id. at 32:16-  
10 21.) And absent rare circumstances (when no comparable vehicles are found or when the  
11 comparable vehicle either has a “sold” price or sold by a “no-haggle” dealer), the Autosource  
12 Report will apply a typical negotiation discount to the advertised price of the comparable  
13 vehicles. (Id. at 45:8-46:3; Declaration of Neal Lowell ¶ 15 (Dkt. No. 56).)

14         Once the claims handler has reviewed and “verified” the Autosource Report as to the  
15 condition, equipment, mileage, and options, they will reach out to the customer to discuss the  
16 valuation. (Graff Decl. ¶ 17.) Claims handlers do not provide insureds the Autosource Report as  
17 a matter of course—only if requested. (Id. ¶ 20.) If the insured contests the valuation, then the  
18 claims adjuster may change the valuation based on objective information from the insured and  
19 they can request an updated Autosource Report reflecting that new data. (Graff Decl. ¶¶ 20-22.)  
20 The claims file should note whether the claims adjuster specifically discussed the negotiation  
21 discount and/or if the insured was sent the Autosource Report. (Graff Dep. 163:24-164:8;  
22 Deposition of Ellie Gray at 45:15-46:24, 47:14-50:2, 54:22-55:22 (Dkt. No. 75-14).) If the  
23 insured objects to the negotiation discount, State Farm will not “back out” the discount but will  
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1 | instead consider a two-dealer quote report. (Graff Dep. at 168:1-169:20.) Using anything other  
2 | than the Autosource Report for the valuation requires management approval and documentation  
3 | in both the claims file and State Farm’s computer-searchable database. (Graff Dep. at 171:3-  
4 | 172:20, 202:1-13, 235:7-235:14, 245:3-247:4.) If the insured and State Farm cannot agree, then  
5 | the next step is appraisal. (Graff Dep. at 172:21-175:6; 236:13-237:8.)

6 |         Plaintiff points to evidence that the process for applying a condition deduction also  
7 | follows a common pattern. Plaintiff notes that Audatex’s system always assumes that the  
8 | comparable cars are of “typical” condition without any inspection of those vehicles. (See Lowell  
9 | Dep. at 151:12-152:2.) Audatex’s assumed “typical” condition is based on historical inspections  
10 | performed by insurance adjusters and appraisers. (Id. at 155:25-156:19, 170:15-24.) Audatex  
11 | does not require these “inspectors” be licensed or certified. (Id.) According to Audatex, its  
12 | historical data is not limited to the condition of comparable vehicles sold within ninety (90) days,  
13 | as required by Section 391. (Id. at 160:4-18.) Audatex then breaks the various conditions into 12  
14 | categories and assigns a percentage of the vehicle’s value to each category. (Id. at 162:16-  
15 | 164:11.) The percentages have not been changed in the last 10 years and the 30(b)(6) witness for  
16 | Audatex did not know how they were calculated. (Id.)

17 |         State Farm focuses much of its briefing on its contention that insureds often reach  
18 | agreement on the value of the total loss claim, which is relevant to State Farm’s theory of  
19 | compliance with Section 391. According to State Farm, when an insured agrees to the value  
20 | State Farm proposes, “the agreement is documented in the claim file.” (Graff Decl. ¶ 23.) State  
21 | Farm also sends a letter to the insured explaining the valuation and the total-loss settlement  
22 | process, and it includes a release of interest/power of attorney. (Id. ¶ 24.) The sole example State  
23 | Farm points to are call notes in Plaintiff’s claim file, which state:

1 “RCF [Received Call From] Anna from the Law offices of Daniel Whitmore the NI’s  
2 [Named Insured’s] attorney’s office stating the NI [Named Insured] wants to settle out  
the claim ... Value Accepted (Y/N): Y.”

3 (Graff Decl. ¶ 23.) The parties dispute whether this shows Plaintiff agreed to the negotiation  
4 discount, and Plaintiff argues that he merely sought payment without waiving his objection to the  
5 negotiation discount. State Farm has not provided evidence from the claim files of any insureds  
6 in the proposed class that the insured specifically and expressly agreed to the use of the typical  
7 negotiation discount or the condition deduction being applied to reach the ACV.

8 Instead, State Farm relies heavily on a survey that its expert, John Lynch, Jr., conducted  
9 of a small sample of insureds and argues that class members frequently agree to the ACVs  
10 presented by State Farm. Lynch designed a survey of putative class members based on Plaintiff’s  
11 original proposed class definition and the proposed class definition in the related matter of  
12 Ngethpharat v. State Farm, C20-454 MJP. Of the list of 60,689 claims he found only 50,970 of  
13 the insureds had email addresses. (Expert Report of John Lynch, Jr. ¶ 14 (Dkt. No. 55-2).) After  
14 some testing, he ultimately sent a survey to 4,000 randomly-sampled individuals and only 10.7%  
15 completed (427) the survey. (Id. ¶ 22 and Ex. 5 to Lynch Report.) Through what looked like a  
16 communication directly from State Farm, Lynch’s survey asked the following questions:

- 17 1. Did you call your State Farm insurance agent after your total loss accident?
- 18 2. Did you speak with a State Farm claim specialist after your total loss accident?
- 19 3. Were you satisfied or dissatisfied with the speed of the final settlement you received from  
20 State Farm?
- 21 4. Were you satisfied or dissatisfied with the amount of the final settlement you received  
22 from State Farm?
- 23 5. Did you tell State Farm that you disagreed with the dollar value of the settlement for your  
24 totaled vehicle?
6. When you made your total loss claim, did you do your own research to figure out the fair  
market value of your vehicle?

1 7. What sources did you consult to figure out the fair market value of your vehicle just prior  
2 to your accident? Select all that apply

3 8. When you replaced your totaled vehicle, did you negotiate the price of the replacement  
4 vehicle you purchased or leased?

5 (Dkt. No. 85-2 at 9-10.) The results showed that 81.7% of the people polled stated they were  
6 satisfied with the amount of the final settlement, but 20.6% stated they disagreed with the dollar  
7 value of the settlement. (Lynch Report ¶ 24.) Absent from the survey are any questions about  
8 whether the recipient agreed with the value State Farm came up with for the loss vehicle,  
9 whether the person knew about the typical negotiation discount, whether the insured agreed with  
10 the typical negotiation discount, or whether the typical negotiation discount was applied to the  
11 insured's claim. Lynch initially did not determine what portion of the respondents are current or  
12 former insureds. His supplemental declaration states that the reporting rate was slightly higher  
13 for current insureds, but that the no differences in "satisfaction or in any other survey measure"  
14 as between the two population. (Declaration of John Lynch in Opposition to Plaintiffs' Motion to  
Exclude ¶ 4 (Dkt. No. 86-4).)

15 **D. Proposed Class Definitions**

16 In the initial Motion, Plaintiff sought to certify the following class:

17 All persons and entities within the State of Washington that have made first-party  
18 property damage claims under contracts of automobile insurance with State Farm that  
19 provided for payment of the actual cash value of the policyholder's vehicle (less any  
20 applicable deductible) in the event of total loss, and (1) where policyholders experienced  
21 a total loss of their insured vehicle covered under such policy, (2) where such claims for  
total loss were evaluated by State Farm using the Autosource valuation system, and (3)  
where such claims were paid by State Farm to the policyholder or a lienholder without  
the parties agreeing to use, and using, an alternative appraisal process described in the  
policyholder's policy.

22 (Mot. at 2 (Dkt. No. 44).) In response to criticism from State Farm, Plaintiff's Reply proposes  
23 two classes as follows:  
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1        **Typical Negotiation Deduction Class:**

2        All persons and entities within the State of Washington that have made first-party  
3        property damage claims under contracts of automobile insurance with State Farm that  
4        provided for payment of the actual cash value of the policyholder’s vehicle (less any  
5        applicable deductible) in the event of total loss, and (1) where policyholders experienced  
6        a total loss of their insured vehicle covered under such policy, (2) where such claims for  
7        total loss were evaluated by State Farm using the Autosource valuation system which  
8        took a deduction/adjustment for “typical negotiation,” and (3) where such claims were  
9        paid by State Farm to the policyholder or a lienholder without the parties agreeing to use,  
10       and using, an alternative appraisal process described in the policyholder’s policy.

7        **Condition Deduction Class:**

8        All persons and entities within the State of Washington that have made first-party  
9        property damage claims under contracts of automobile insurance with State Farm that  
10       provided for payment of the actual cash value of the policyholder’s vehicle (less any  
11       applicable deductible) in the event of total loss, and (1) where policyholders experienced  
12       a total loss of their insured vehicle covered under such policy, (2) where such claims for  
13       total loss were evaluated by State Farm using the Autosource valuation system which  
14       took deductions for the condition of the loss vehicle, and (3) where such claims were paid  
15       by State Farm to the policyholder or a lienholder without the parties agreeing to use, and  
16       using, an alternative appraisal process described in the policyholder’s policy.

13       (Reply at App’x 1 (Dkt. No. 58-1 at 2).) As clarified during oral argument, the two classes  
14       largely overlap. (See Presentation from Oral Argument at 16 (Dkt. No. 106).) Nearly all of the  
15       insureds in the class who had a condition deduction taken, also had the typical negotiation  
16       discount applied, too. Roughly 8% likely had only the condition deduction applied.

17       **ANALYSIS**

18       **A.     Class Certification Standard**

19       Courts must undertake a “rigorous analysis” of all the Rule 23 factors to determine  
20       whether to certify a class. Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 351 (2011). The  
21       plaintiff must first meet all four requirements in Rule 23(a): numerosity, commonality, typicality,  
22       and adequacy of representation. See Leyva v. Medline Indus., 716 F.3d 510, 512 (9th Cir. 2013);  
23       Fed. R. Civ. P. 23(a). The plaintiff must also satisfy one of the Rule 23(b) factors. Here Plaintiff  
24       seeks certification under the “predominance” standard of Rule 23(b)(3). “To obtain certification

1 of a class action for money damages under Rule 23(b)(3),” a putative class must also establish  
2 that “the questions of law or fact common to class members predominate over any questions  
3 affecting only individual members.” Amgen Inc. v. Conn. Ret. Plans & Tr. Funds, 568 U.S. 455,  
4 460.

5 Plaintiff must demonstrate predominance and superiority under Rule 23(b)(3) by a  
6 preponderance of the evidence fits Rule 23(b)(3). See Olean Wholesale Grocery Coop., Inc. v.  
7 Bumble Bee Foods LLC, 993 F.3d 774, 784 (9th Cir. 2021). “Establishing predominance,  
8 therefore, goes beyond determining whether the evidence would be admissible in an individual  
9 action” and “[i]nstead, a ‘rigorous analysis’ of predominance requires ‘judging the  
10 persuasiveness of the evidence presented’ for and against certification.” Id. at 785-86 (quoting  
11 Ellis v. Costco Wholesale Corp., 657 F.3d 970, 982 (9th Cir. 2011)). And in ruling on a motion  
12 for class certification “[c]ourts must resolve all factual and legal disputes relevant to class  
13 certification, even if doing so overlaps with the merits.” Id. at 784 (citing Wal-Mart, 564 U.S. at  
14 351).

15 **B. Rule 23(a)(1): Numerosity**

16 Numerosity exists when “the class is so numerous that joinder of all members is  
17 impractical.” Fed. R. Civ. P. 23(a)(1). “The numerosity requirement requires examination of the  
18 specific facts of each case and imposes no absolute limitations.” Gen. Tel. Co. of the Nw. v.  
19 Equal Emp. Opportunity Comm’n, 446 U.S. 318, 330 (1980). Here, State Farm admitted in its  
20 notice of removal that there are “8,004 total-loss claims and insureds that fall within Plaintiff’s  
21 class definition.” (Dkt. No. 1-4, ¶ 9.) This is sufficient to demonstrate numerosity and State Farm  
22 makes no challenge in opposition.  
23  
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1 **C. Rule 23(a)(2): Commonality**

2 Rule 23(a)(2) requires that there be “questions of law or fact common to the class.”  
3 “Commonality requires the plaintiff to demonstrate that the class members have suffered the  
4 same injury.” Wal-Mart, 564 U.S. at 349–50 (citation and quotation omitted). To satisfy  
5 commonality, the claims must depend on a common contention “that is capable of classwide  
6 resolution.” Id. at 350. “What matters to class certification . . . is not the raising of common  
7 ‘questions’—even in droves—but rather, the capacity of a class-wide proceeding to generate  
8 common answers apt to drive the resolution of the litigation.” Id. (quotation and citation  
9 omitted). “Dissimilarities within the proposed class are what have the potential to impede the  
10 generation of common answers.” Id. (quotation and citation omitted).

11 **1. Plaintiff’s proof of commonality**

12 Typical Negotiation Discount

13 The primary common contention that can be resolved on a classwide basis is whether  
14 State Farm is permitted to settle total loss claims with a typical negotiation discount. Resolution  
15 of this question will be common to the class of persons paid a value determined in an Autosource  
16 Report with the negotiation discount applied. If the Court finds the negotiation discount either  
17 permissible or not, then all of the class members’ claims will be resolved on a classwide basis.  
18 This is also true of Plaintiff’s claims premised on the theory that the negotiation discount is not  
19 “verifiable” as required by Section 391(4)(b). Based on the Court’s review of the Autosource  
20 Report examples filed to date, it appears that the disclosures and descriptions of the typical  
21 negotiation is uniform, and its verifiability (or lack thereof) can be resolved on a classwide basis.

22 The only problem with regard to the above-identified commonality is the proposed class  
23 definition, which includes insureds who were not necessarily paid the amount determined in an  
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1 Autosource Report with the typical negotiation discount applied. Such insureds would not have  
2 injuries directly traceable to the negotiation discount and resolution of the legality of the  
3 deduction would not necessarily resolve their claims. But this is not fatal to Plaintiff's request for  
4 class certification. "[W]hen a class definition is not acceptable, judicial discretion can be utilized  
5 to save the lawsuit from dismissal." 3 Newberg on Class Actions § 7:27 (5th ed.); see Campbell  
6 v. PricewaterhouseCoopers, LLP, 253 F.R.D. 586, 594 (E.D. Cal. 2008), adhered to, 287 F.R.D.  
7 615 (E.D. Cal. 2012) ("[C]ourts retain the discretion to alter an inadequate class definition.").  
8 Rather than deny class certification, the Court finds it appropriate to revise the class definition to  
9 include only those paid the value determined in an Autosource Report with the negotiation  
10 discount applied. By so narrowing the class, the Court ensures that the legality of the negotiation  
11 discount can be resolved on a classwide basis. The Court therefore revises the class definition as  
12 follows:

### 13 **Typical Negotiation Class**

14 All persons and entities within the State of Washington that have made first-party  
15 property damage claims under contracts of automobile insurance with State Farm that  
16 provided for payment of the actual cash value of the policyholder's vehicle (less any  
17 applicable deductible) in the event of total loss, and (1) where policyholders experienced  
18 a total loss of their insured vehicle covered under such policy, (2) where such claims for  
19 total loss were evaluated by State Farm using the Autosource valuation system which  
20 took a deduction/adjustment for "typical negotiation," (3) where such claims were settled  
21 and paid using the amount determined in the Autosource valuation which took a  
22 deduction/adjustment for "typical negotiation"; and (4) where such claims were paid by  
23 State Farm to the policyholder or a lienholder without the parties agreeing to use, and  
24 using, an alternative appraisal process described in the policyholder's policy.

### 20 **Condition Deduction**

21 Plaintiff also identifies common contentions capable of classwide resolution as to his  
22 claim that the condition deduction violates Section 391. Plaintiff points to testimony from  
23 Audatex's 30(b)(6) witness that condition deductions are unverifiable and rely on data that is  
24 temporally and geographically noncompliant with Section 391. The witness confirmed that

1 Audatex does not inspect the condition of comparable cars used on the Autosource Report.  
2 (Lowell Dep. at 148:22-152:18.) Instead, Audatex assumes the comparable vehicles are in  
3 typical condition. (Id.) Audatex then calculates the condition deduction on historical data (not the  
4 specifically-identified comparable cars) that is updated “typically quarterly” and gathered within  
5 the state which is not necessarily current or from within 150 miles of the loss vehicle. (Id. at  
6 153:11-154:13, 160:4-18.) Plaintiff argues that this deduction methodology applies to every  
7 condition deduction and violates Section 391 by using unverifiable data that is not within 90  
8 days and 150 miles of the loss vehicle.

9         The Court agrees with Plaintiff that the permissibility of these condition deductions can  
10 be resolved on a classwide basis using common evidence. It appears that Plaintiff can establish  
11 that the condition deduction methodology violates Section 391 using evidence common to the  
12 class and that resolution of the claim will apply classwide. State Farm argues that the condition  
13 deduction is not capable of classwide proof, relying on the decision in Lundquist v. First Nat’l  
14 Ins. Co. of Am., No. C18-5301RJB, 2020 WL 6158984, at \*2 (W.D. Wash. Oct. 21, 2020). In  
15 Lundquist, the plaintiffs set out “to prove that the WACs were violated by using comparable  
16 vehicles in the adjustment of a claim that was reduced by a condition adjustment.” 2020 WL  
17 6158984, at \*1. To do so, the plaintiffs had to “show that the comparable vehicles used were not  
18 comparable vehicles at all because any condition adjustment was (1) not itemized and (2)  
19 inappropriate in dollar amount.” Id. While the Court found the failure to itemize was capable of  
20 classwide proof, it found a lack of commonality because “Plaintiffs would have to prove that  
21 each class member’s condition adjustment was for an inappropriate dollar amount, and  
22 Defendants, in their responsive case, would have the right to present evidence that each  
23 individual class member received an appropriate determination of actual cash value.” Id. at \*2.

1 But in this case, there is no need to make any individual determination of the appropriateness the  
2 dollar amount of each condition deduction. Instead, Plaintiff claims that the common  
3 methodology used to determine any condition deduction violates Section 391 and the legality of  
4 any condition deduction can be resolved uniformly as to the whole class. This does not require  
5 an individual valuation determination.

6 But as with Plaintiff's proposed definition of the typical negotiation deduction class, the  
7 proposed definition is overbroad and does not limit itself to those whose claims were settled and  
8 paid using a valuation that included a condition deduction. Rather than deny the motion, the  
9 Court revises the definition to preserve what appears an otherwise appropriate class definition.

10 See Campbell, 253 F.R.D. at 594. The Court thus revises the class definition as follows:

11 **Condition Deduction Class:**

12 All persons and entities within the State of Washington that have made first-party  
13 property damage claims under contracts of automobile insurance with State Farm that  
14 provided for payment of the actual cash value of the policyholder's vehicle (less any  
15 applicable deductible) in the event of total loss, and (1) where policyholders experienced  
16 a total loss of their insured vehicle covered under such policy, (2) where such claims for  
17 total loss were evaluated by State Farm using the Autosource valuation system which  
18 took deductions for the condition of the loss vehicle, (3) where such claims were settled  
19 and paid using the amount determined in the Autosource valuation which took  
20 deductions for the condition of the loss vehicle; and (4) where such claims were paid by  
21 State Farm to the policyholder or a lienholder without the parties agreeing to use, and  
22 using, an alternative appraisal process described in the policyholder's policy.

23 **2. State Farm's arguments against commonality**

24 State Farm claims that there are three flaws as to commonality, which the Court  
addresses below. State Farm also attacks the issue of damages in the context of commonality and  
predominance under Rule 23(b)(3). The Court separately addresses those concerns in the context  
of its predominance analysis in Section F(2).

1                   **a.       Agreed Value**

2                   State Farm argues that Plaintiff cannot prove liability with common evidence because  
3 each claim will need to be examined to determine whether the insured “agreed” to the value.  
4 (Def. Opp. at 8-10 (Dkt. No. 53).) State Farm argues Section 391 “expressly allows an insurer  
5 and insured to reach an ‘agreed value’ based on any methodology” and that this necessitates  
6 mini-trials on whether each insured’s reached an agreement as to value. (Id. at 8-10.)

7                   To understand this argument, the Court reviews the relevant portion of Section 391,  
8 which states:

9                   Unless an agreed value is reached, the insurer must adjust and settle vehicle total losses  
10 using the methods set forth in subsections (1) through (3) of this section. Subsections (4)  
11 through (6) of this section establish standards of practice for the settlement of total loss  
12 vehicle claims. If an agreed value or methodology is reached between the claimant and  
13 the insurer using an evaluation that varies from the methods described in subsections (1)  
14 through (3) of this section, the agreement must be documented in the claim file. The  
15 insurer must take reasonable steps to ensure that the agreed value is accurate and  
16 representative of the actual cash value of a comparable motor vehicle in the principally  
17 garaged area.

18 WAC 284-30-391. The key question is what the nature of the agreement as to the “value or  
19 methodology” must be to satisfy this exception to following the settlement methodologies listed  
20 in Section 391(1)-(3). The third sentence explains that the “agreed value or methodology” must  
21 be “reached between the claimant and the insurer using an evaluation that varies from the  
22 methods described in subsections (1) through (3).” Reading this in the context of the regulations  
23 and for plain meaning, the Court construes this to require that the agreement expressly  
24 acknowledge that the value arrived at or methodology used otherwise does not comply with the  
settlement methodologies of Section 391(1)-(3). In the context of this case, the relevant question  
is whether the insured expressly agreed to the typical negotiation discount and/or condition  
deduction applied to the comparable cars used to determine the ACV in the Autosource Report.  
This agreement must also be documented in the claim file. WAC 284-30-391. To satisfy this safe

1 harbor, State Farm bears the burden of showing that the claim file contains an express agreement  
2 by the insured to the Autosource Report’s use of a typical negotiation discount and/or condition  
3 deduction. And because this safe harbor acts as an affirmative defense, State Farm bears the  
4 burden of showing that there is evidence of consent in the class and that this issue could impact  
5 commonality. See True Health Chiropractic, Inc. v. McKesson Corp., 896 F.3d 923, 932 (9th  
6 Cir. 2018) (noting that the defendant bears the burden of providing evidence of predominance-  
7 defeating consent to a TCPA claim).

8 State Farm has failed to convince the Court that the “agreed value” safe harbor threatens  
9 commonality. State Farm’s primary witness states in his declaration that any agreed value must  
10 be documented in the claim file (Graff Decl. ¶¶ 23-24), but he testified that the claim file would  
11 only document an agreement to accept payment, not an agreement to use a non-compliant  
12 valuation methodology (Graff Dep. 81, 84-85). This cuts against State Farm’s ability to satisfy  
13 the safe harbor, which requires the claim file to show an express agreement as to the use the  
14 typical negotiation discount and/or condition deduction. State Farm also fails to provide any  
15 evidence of any class member who has agreed to either deduction. This is fatal to State Farm’s  
16 argument, which requires some evidence of consent to defeat class certification. See True Health,  
17 896 F.3d at 932. The only evidence State Farm points to are the “File History Notes” in  
18 Plaintiff’s claim file, which say:

19 “RCF [Received Call From] Anna from the Law offices of Daniel Whitmore the NI’s  
20 [Named Insured’s] attorney’s office stating the NI [Named Insured] wants to settle out  
the claim ... Value Accepted (Y/N):Y.”

21 (Graff Decl. ¶ 23.) But these call notes just show that Plaintiff wanted to be paid on the claim,  
22 not that he agreed to the use of the typical negotiation or condition deduction. And even if State  
23 Farm had produced some evidence sufficient to satisfy the safe harbor, it would not appear to  
24



1 require an in-depth analysis because State Farm is required to document the express agreement in  
2 each claim file. There would be no need for an extensive inquiry as to each claim.

3 State Farm also relies on Lynch’s survey to argue that there is proof that State Farm  
4 reached an agreed value with most members of the proposed class. This argument is flawed  
5 because the survey did not ask whether the insured: (a) had a typical negotiation discount or  
6 condition deduction applied to the valuation, (b) knew that a typical negotiation discount or  
7 condition deduction had been applied, or (c) agreed to the use of the typical negotiation discount  
8 or condition deduction to reach the ACV of their total loss car. Instead, the survey just asked  
9 whether the insured was satisfied with the final settlement or whether the insured “disagreed”  
10 with the “dollar value” of the settlement. (Dkt. No. 55-2 at 9-10.) The survey does not  
11 demonstrate proof of consent that might threaten commonality. See True Health, 896 F.3d at  
12 932.

13 **b. ACV Determination**

14 State Farm also argues that commonality cannot be shown because the ACV for each  
15 class member’s vehicle will need to be individually determined. The Court is unconvinced.

16 First, State Farm ignores the fact that Plaintiff does not quibble with the ACV  
17 determination in the Autosource Reports except as to the amount deducted for the negotiation  
18 discount and/or condition deduction and the related sales tax. In other words, the Autosource-  
19 determined ACV is not at issue except for the amount of the typical negotiation discount and/or  
20 condition deductions. To combat this shortcoming, State Farm again relies on Lundquist. But  
21 Lundquist remains factually distinguishable. The claims there required a determination of  
22 whether the correct comparable vehicles and condition deductions were used, which required  
23 plaintiffs to “prove that the dollar amount of a ‘comparable vehicle’ was inappropriate.” 2020  
24

1 WL 6158984, at \*2. Here, Plaintiff challenges only the legality of the deduction of the typical  
2 negotiation discount and/or condition deductions, not the appropriateness of the dollar amount of  
3 the comparable vehicles. The Court agrees with Plaintiff that the analysis of the legality of these  
4 deductions does not require a claim-by-claim review. The Court rejects State Farm’s argument,  
5 which assumes too much from what Plaintiff has set out to prove.

6 **c. Weighting**

7 State Farm argues that even if Section 391 does not allow the negotiation deduction,  
8 Section 392 does because it allows insurers to use weighting to adjust value of comparable  
9 vehicles including for negotiation discounts. This argument lacks merit. The first problem is that  
10 State Farm asks the Court to label the negotiation discount a form of “weighting” despite the fact  
11 that it is used as a deduction to the ACV of comparable cars. As State Farm’s own expert,  
12 Laurentius Marais, opines, “the ‘adjustments’ referred to in WAC Sec. 284-30-391 intrinsically  
13 involve addition and subtraction . . . , while the “weighting” referred to in WAC Sec. 284-30-392  
14 intrinsically involves multiplication.” (Expert Report of M. Laurentius Marais ¶ 13 (Dkt. No. 55-  
15 1).) Here, the typical negotiation discount is simply a deduction applied to the advertised price of  
16 each comparable car and does not involve weighting of the comparable cars. While the precise  
17 amount of the negotiation discount deducted from each comparable car may be reached through  
18 multiplication, the discount itself functions purely as a deduction or subtraction just as the other  
19 adjustments do in Section 391. The Court is not convinced that the typical negotiation discount is  
20 a form of weighting of the “identified vehicles to arrive at an average” value of the comparable  
21 vehicles. The second problem is that State Farm essentially asks the Court to read Section 392’s  
22 mention of “weighting” as a means by which to expand the limited settlement methodologies for  
23 additions and deductions listed in Section 391(1)-(3). But by its own title, Section 392 is limited  
24

1 to “Information that must be included in the insurer’s total loss vehicle valuation report.” Section  
2 392 does not expand the kinds of deductions and additions that can be taken under Section  
3 391(1)-(3). The Court rejects this argument in full.

4 **D. Rule 23(a)(3): Typicality**

5 To demonstrate typicality, Plaintiff must show that the named parties’ claims are typical  
6 of the class. Fed. R. Civ. P. 23(a)(3). “The test of typicality ‘is whether other members have the  
7 same or similar injury, whether the action is based on conduct which is not unique to the named  
8 plaintiffs, and whether other class members have been injured by the same course of conduct.’”  
9 Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992) (citation omitted). “Typicality  
10 refers to the nature of the claim or defense of the class representative, and not to the specific  
11 facts from which it arose or the relief sought.” Id. (internal citation and quotation marks omitted).  
12 “The requirement is permissive, such that “representative claims are ‘typical’ if they are  
13 reasonably coextensive with those of absent class members; they need not be substantially  
14 identical.” Just Film, Inc. v. Buono, 847 F.3d 1108, 1116 (9th Cir. 2017) (quoting Parsons v.  
15 Ryan, 754 F.3d 657, 685 (9th Cir. 2014)). “The purpose of the typicality requirement is to assure  
16 that the interest of the named representative aligns with the interests of the class.” Hanon, 976  
17 F.2d at 508.

18 In light of the Court’s revised class definition, the Court finds that Plaintiff’s claimed  
19 injuries are typical of both classes, as he was paid a value based on an Autosource Report that  
20 applied the negotiation discount and a condition deduction. The Court is satisfied with Plaintiff’s  
21 typicality as to both classes.  
22  
23  
24

1 **E. Rule 23(a)(4): Adequacy of Representation**

2 “The final hurdle interposed by Rule 23(a) is that ‘the representative parties will fairly  
3 and adequately protect the interests of the class.’” Hanlon v. Chrysler Corp., 150 F.3d 1011,  
4 1020 (9th Cir. 1998) (quoting Fed. R. Civ. P. 23(a)(4)), overruled on other grounds by Wal-Mart,  
5 564 U.S. 338. Adequacy of representation requires that “[f]irst, the named representatives must  
6 appear able to prosecute the action vigorously through qualified counsel, and second, the  
7 representatives must not have antagonistic or conflicting interests with the unnamed members of  
8 the class.” Lerwill v. Inflight Motion Pictures, Inc., 582 F.2d 507, 512 (9th Cir. 1978). And the  
9 Court must also assess the following requirements of Rule 23(g) to determine the adequacy of  
10 class counsel:

- 11 (i) the work counsel has done in identifying or investigating potential claims in the  
12 action;
- 13 (ii) counsel’s experience in handling class actions, other complex litigation, and the types  
14 of claims asserted in the action;
- 15 (iii) counsel’s knowledge of the applicable law; and
- 16 (iv) the resources that counsel will commit to representing the class.

17 Fed. R. Civ. P. 23(g)(1)(A). The Court may also consider “any other matter pertinent to  
18 counsel’s ability to fairly and adequately represent the interests of the class.” Fed. R. Civ. P.  
19 23(g)(1)(B). And class counsel must “fairly and adequately represent the interests of the class.”  
20 Fed. R. Civ. P. 23(g)(4).

21 The Court finds that Plaintiff is an adequate class representative committed to  
22 representing the classes’s interests and able to prosecute the action through counsel. The Court is  
23 also satisfied that Mark Trivett of Badgley Mullins Turner, PLLC and Daniel Whitmore of the  
24 Law Office of Daniel R. Whitmore, PS are adequate class counsel who will fairly and adequately  
represent the interest of the class. Both Trivett and Whitmore explain the work they have done to

1 identify or investigate potential claims on Plaintiff’s behalf and their experience in handling class  
2 actions and other complex cases involving similar kinds of claims. (Declaration of Mark Trivett  
3 (Dkt. No. 38); Brief re: Rule 23(g) and supporting Declarations of Trivett and Daniel Whitmore  
4 (Dkt. Nos. 102-104)); Fed. R. Civ. P. 23(g)(1)(A)(i) and (ii). Trivett and Whitmore have  
5 demonstrated throughout the course of this case their knowledge of the applicable law and the  
6 subject matter of this case. See Fed. R. Civ. P. 23(g)(1)(A)(iii). And they both aver that their two  
7 firms have the resources available to commit to representing the class, and have already made  
8 expenditures in this regard. See Fed. R. Civ. P. 23(g)(1)(A)(iv); (Dkt. Nos. 102-104). The Court  
9 therefore finds both Trivett and Whitmore and their respective law firms to be adequate class  
10 counsel.

11 **F. Rule 23(b)(3): Predominance**

12 Plaintiff asks the Court to certify the class under the predominance and superiority  
13 requirements of Rule 23(b)(3). The Court assesses both issues, along with the question of  
14 damages.

15 **1. Common questions of law and fact**

16 The “predominance inquiry tests whether proposed classes are sufficiently cohesive to  
17 warrant adjudication by representation.” Amchem Products, Inc. v. Windsor, 521 U.S. 591, 623  
18 (1997). “This calls upon courts to give careful scrutiny to the relation between common and  
19 individual questions in a case.” Tyson Foods, Inc. v. Bouaphakeo, 577 U.S. 442, 453 (2016).  
20 “An individual question is one where members of a proposed class will need to present evidence  
21 that varies from member to member, while a common question is one where the same evidence  
22 will suffice for each member to make a prima facie showing [or] the issue is susceptible to  
23 generalized, class-wide proof.” Id. (citation and quotation omitted). “The Rule 23(b)(3)  
24

1 predominance inquiry asks the court to make a global determination of whether common  
2 questions prevail over individualized ones.” Torres v. Mercer Canyons Inc., 835 F.3d 1125, 1134  
3 (9th Cir. 2016).

4 Plaintiff has demonstrated the predominance of classwide issues over individual ones.  
5 The primary common questions are whether the typical negotiation deduction and/or condition  
6 deduction included in the Autosource Report are legally permissible. As the Court has already  
7 explained in its discussion of commonality, resolution of these questions can be made on a  
8 classwide basis using common evidence because they involve legal determinations whose impact  
9 will be felt equally by members of the classes, all of whom received total loss valuations that  
10 included a negotiation deduction and/or condition deduction. Plaintiff has demonstrated that each  
11 class member’s claim can be resolved using classwide proof, which suffices to show  
12 predominance.

13 State Farm makes five arguments against predominance, none of which has merit. The  
14 Court has already considered the first three arguments—whether individual issues persist  
15 because of the “agreed value” safe harbor, whether the Court must determine the ACV of class  
16 member’s vehicle, and the permissibility of the negotiation discount as a form of weighting.  
17 These same arguments fail in the context of predominance, as none of them requires individual  
18 determinations to predominate over those common to the class. The Court also rejects State  
19 Farm’s argument that the question of whether individual class members suffered an injury will  
20 predominate. (Opp. at 16-17.) As refined by Plaintiff and the Court, the class definitions include  
21 only those who received payment based on an Autosource Report with the negotiation discount  
22 and/or condition deduction. If Plaintiff succeeds in proving liability, then each class member will  
23 have suffered the same injury compensable by refunding the improperly-applied negotiation  
24

1 discount and/or condition deduction. And the condition deduction class excludes those who  
2 received only an upward condition adjustment who would not otherwise have an injury. The  
3 Court finds no concerns as to the class members' individual injury and standing. See  
4 TransUnion LLC v. Ramirez, \_\_\_ U.S. \_\_\_, No. 20-297, 2021 WL 2599472, at \* 10 (U.S. June  
5 25, 2021) (noting that “[e]very class member must have Article III standing in order to recover  
6 individual damages”). Nor has State Farm identified any evidence, let alone the claimed  
7 “significant evidence,” that the class “includes a large percentage of uninjured class members  
8 who . . . reached an ‘agreed value.’” (Opp. at 17 (Dkt. No. 53).) This theoretical argument does  
9 not defeat predominance.

10 Lastly, the Court rejects State Farm’s argument that the issue of causation under the CPA  
11 is an individual issue that will predominate, making class certification improper. State Farm  
12 argues “the only way to determine proximate causation is through an assessment of each class  
13 member’s claim that State Farm’s purported failure to explain the typical negotiation adjustment  
14 caused his or her damages.” (Opp. at 18 (Dkt. No. 53).) State Farm is correct that causation is an  
15 element of Plaintiff’s CPA claim. See Hangman Ridge Training Stables, Inc. v. Safeco Title Ins.  
16 Co., 105 Wn.2d 778, 793 (1986) (“A causal link is required between the unfair or deceptive acts  
17 and the injury suffered by plaintiff.”) But here, Plaintiff challenges the application of the typical  
18 negotiation discount and/or condition deduction as per se CPA violations. This stands in contrast  
19 to Kelley v. Microsoft Corp., 2011 WL 13353905 (W.D. Wash. May 24, 2011), on which State  
20 Farm relies, where the question of causation depended on the “motivation of each consumer.” Id.  
21 at \*3. Here, the insured’s motivation is irrelevant given the per se nature of the claimed violation.  
22 What matters is whether the negotiation discount and/or condition deduction are permitted.  
23  
24

## 2. Damages and the Damages Model

State Farm argues that Plaintiff has not shown that there is common proof of damages or a viable damages model consistent with his theory of liability. The Court disagrees.

Under Rule 23(b), plaintiff must show that “damages are capable of measurement on a classwide basis” and that the proposed damages model is consistent with the theory of liability. See Comcast Corp. v. Behrend, 569 U.S. 27, 34 (2013). Plaintiff pursues breach of contract, CPA, and breach of the duty of good faith claims. The Court reviews the recoverable damages under each claim.

As to their breach of contract claim, Plaintiff is entitled to the benefit of the bargain: “Contract damages are ordinarily based on the injured party’s expectation interest and are intended to give that party the benefit of the bargain by awarding him or her a sum of money that will, to the extent possible, put the injured party in as good a position as that party would have been in had the contract been performed.” Ford v. Trendwest Resorts, Inc., 146 Wn.2d 146, 155 (2002) (citation and quotation omitted). This includes the benefit of having the insurer comply with insurance regulations, because when applicable regulations provide a specific procedure for settling claims they become “a part of and should be read into the insurance policy.” See Touchette v. NW Mut. Ins. Co., 80 Wn.2d 327, 332 (1972).

As to the CPA, a plaintiff may bring a private CPA action against their insurers for breach of the duty of good faith or for violations of Washington insurance regulations. Peoples v. United Servs. Auto. Ass’n, 194 Wn.2d 771, 778 (2019). The failure by an insurer to follow WAC requirements in settling an insurance claim is a per se CPA violation—meaning that the practice is unfair and deceptive and occurs in the conduct of trade or commerce. Van Noy v. State Farm Mut. Auto. Ins. Co., 98 Wn. App. 487, 495-96 (1999) aff’d, 142 Wn.2d 784 (2001). And “the



1 deprivation of contracted-for insurance benefits is an injury to ‘business or property’ regardless  
2 of the type of benefits secured by the policy.” Peoples, 194 Wn.2d at 779 (finding that wrongful  
3 denial of PIP benefits are compensable under the CPA). Under the CPA, damages are properly  
4 calculated by determining the amount of the wrongly withheld contracted-for insurance benefits.  
5 See id.

6 And as to the bad faith claim, the plaintiff “must prove actual harm, and its damages are  
7 limited to the amounts it has incurred as a result of the bad faith . . . as well as general tort  
8 damages.” Fire & Marine Ins. Co. v. Onvia, Inc., 165 Wn.2d 122, 133 (2008); see Coventry  
9 Assocs. v. Am. States Ins. Co., 136 Wn.2d 269, 285 (1998).

10 Plaintiff proposes a manageable and reasonable damages model that matches his theory  
11 of liability as to the refined classes of individuals who were paid an amount based on a  
12 negotiation discount and/or a condition deduction. If Plaintiff is correct that these deductions are  
13 impermissible, then the proper measure of damages is the refund of the negotiation discount  
14 and/or condition deduction and related sales tax. This is the benefit of the bargain to which the  
15 insureds were entitled given the method by which State Farm chose to settle the claims and its  
16 duty of good faith. Plaintiff has identified common evidence in State Farm’s and Audatex’s  
17 possession that can be used to determine the negotiation discount and/or condition deduction for  
18 each class member. (See Torelli Report ¶¶ 4, 15-23, 27-32 (Dkt. No. 41).) The process of  
19 performing these calculations appears one capable of common treatment and resolution using a  
20 common methodology.

21 State Farm makes several unsuccessful arguments as to why damages do not meet the  
22 commonality and predominance requirements. First, State Farm argues that an “in-depth  
23 analysis” of exactly what each class member was “actually underpaid” is required. (Dkt. No. 53  
24

1 at 19.) This, State Farm argues, would require an analysis of each class member’s vehicle to  
2 determine what the difference between the ACV and what State Farm paid. This argument fails  
3 to grapple with the reality that Plaintiff does not quibble over the ACV as determined by the  
4 Autosource Report—just the negotiation discount and/or condition deduction and the related  
5 sales tax.

6 Second, State Farm argues that representative evidence cannot be used to determine  
7 classwide damages. (Opp. at 21-23.) The Court need not reach this issue because Plaintiff has  
8 shown how damages can be properly calculated on an individual claim basis rather than on an  
9 aggregate basis. (See Torelli Report at ¶¶ 4, 15-23, 27-32.) But given the Parties’ discussion of  
10 this potential methodology, the Court briefly reviews this issue. As Torelli opines, a sample of  
11 claims can be used to determine classwide damages. (See *id.* ¶ 24.) He adds further detail to this  
12 proposed methodology with the Reply brief, explaining how he can “generate a relatively  
13 accurate individual damages figure for each class member to be used in a distribution phase”  
14 using Audatex’s price bands and data from State Farm. (Torelli Supplemental Report ¶ 21 (Dkt.  
15 No. 60).) State Farm levies two unsuccessful attacks to this approach. First, State Farm argues  
16 that aggregate damages would be inappropriate if the methodology allows class members who  
17 did not actually receive a negotiation discount to recover. But by limiting the class to those who  
18 received a settlement with the negotiation discount applied, the Court finds no potential problem  
19 of providing recovery to those who suffer no damages. Second, State Farm invokes the recent  
20 Olean decision to argue that use of statistical sampling and aggregate damages will violate the  
21 Rules Enabling Act by expanding its liability to individuals who have not been harmed. But  
22 Olean was concerned with the use of representative sampling to prove liability, not damages. The  
23 Court made that distinction quite clear:

1 Moreover, even if class members suffered individualized damages that diverged from the  
 2 average overcharge calculated by Plaintiffs' expert, "the presence of individualized  
 3 damages cannot, by itself, defeat class certification under Rule 23(b)(3)." Leyva, 716  
 4 F.3d at 514. Indeed, we have consistently distinguished the existence of injury from the  
 5 calculation of damages. See Vaquero, 824 F.3d at 1155; Senne, 934 F.3d at 943.  
 6 Consequently, individualized damages calculations do not, alone, defeat predominance—  
 7 although, as we discuss below, the presence of class members who suffered no injury at  
 8 all may defeat predominance.

9 Olean, 993 F.3d at 790. Here, sampling is proposed only to calculate damages, not to prove  
 10 liability. And State Farm will still be permitted to challenge individual claims with any available  
 11 affirmative defense, such as the "agreed value" safe harbor State Farm has identified. The Court  
 12 does not find any issue with the potential use of sampling in this case.

### 13 **3. Class Treatment is Superior and Manageable**

14 "In determining superiority, courts must consider the four factors of Rule 23(b)(3)."

15 Zinser v. Accufix Rsch. Inst., Inc., 253 F.3d 1180, 1190 (9th Cir.), as amended on denial of  
 16 reh'g, 273 F.3d 1266 (9th Cir. 2001). The four factors are:

- 17 (A) the class members' interests in individually controlling the prosecution or defense of  
 18 separate actions;
- 19 (B) the extent and nature of any litigation concerning the controversy already begun by or  
 20 against class members;
- 21 (C) the desirability or undesirability of concentrating the litigation of the claims in the  
 22 particular forum; and
- 23 (D) the likely difficulties in managing a class action.

24 Fed. R. Civ. P. 23(b)(3)(A)-(D).

Plaintiff has shown sufficient superiority here. First, this case involves relatively small  
 deductions to total loss settlements on damaged cars where the likelihood of recovery is likely  
 outweighed by the costs of individual litigation. As the Ninth Circuit has explained, "[w]here  
 damages suffered by each putative class member are not large, this factor weighs in favor of  
 certifying a class action." Zinser, 253 F.3d at 1190; see Fed. R. Civ. P. 23(b)(3)(A). Second,

1 neither party has identified any other cases (other than Ngethpharat) involving these kinds of  
2 claims against State Farm. See Fed. R. Civ. P. 23(b)(3)(B). Third, there is good reason to focus  
3 the claims in this forum because it applies Washington law to Washington residents who have  
4 the same policies from State Farm and who encountered this same common practice of applying  
5 the negotiation discount. See Fed. R. Civ. P. 23(b)(3)(C). Fourth, notwithstanding State Farm’s  
6 arguments discussed below, there are no obvious difficulties in managing this on a class basis.  
7 See Fed. R. Civ. P. 23(b)(3)(D).

8 State Farm argues that this case is not manageable because it will require determining  
9 whether anyone in the class submitted evidence supporting a different valuation and was paid on  
10 that amount. State Farm argues this will require great labor to determine who is in the class and  
11 is not “administratively feasible.” (Dkt. No. 53 at 29.) But Plaintiff has provided sufficient  
12 evidence that this determination is relatively straightforward and is administratively manageable  
13 based on the claim files and data available for review. State Farm also argues that appraisal is a  
14 far superior process to determining ACV. But this is a red herring. Plaintiff does not dispute the  
15 ACV determined by State Farm other than as to the negotiation discount. Thus, the appraisal  
16 process would not necessarily resolve the dispute. And State Farm has not shown that the use of  
17 an appraisal for each class member would be superior, particularly where the costs would likely  
18 eclipse the modest amount at issue for each insured’s claim.

#### 19 **G. Surreply**

20 State Farm asks the Court to strike: (1) portions of Plaintiff’s Reply (Dkt. No. 58), (2)  
21 Torelli’s Supplemental Expert Report and Declaration filed with the Reply, including  
22 attachments 1 through 4 (Dkt. Nos. 59, 60); (3) the Supplemental Declaration of Darrell M.  
23 Harber, including attachments A through E (Dkt. No. 61); and (4) the Reply brief’s inclusion of  
24

1 two revised proposed class definitions. The Court GRANTS in part and DENIES in part the  
2 request.

3 First, State Farm asks the Court to strike the portions of Plaintiff's Reply and Torelli's  
4 supplemental report that contain new arguments and evidence about a 150-claim file sample that  
5 were raised for the first time in reply. The Court agrees that these arguments and evidence were  
6 improperly raised for the first time in reply. See Docusign, Inc. v. Sertifi, Inc., 468 F. Supp. 2d  
7 1305, 1307 (W.D. Wash. 2006). It is true the Court ordered the production of the 150-claim file  
8 sample after Plaintiff moved for class certification. (Order on Motion to Compel (Dkt. No. 76).)  
9 But Plaintiff did not ask for an extension of the class certification deadline or for leave to amend  
10 their Motion once they received the Order or the sample. The Court thus STRIKES the argument  
11 based on the sample, and Torelli's materials submitted with the reply. (Dkt. No. 58, 59, 60.) The  
12 Court does not, however, find it proper to strike Torelli's further statements about calculating  
13 classwide damages using a potential, future sample of class claims. These statements merely  
14 expand on his initial report to respond to State Farm's opposition briefing and is not improper.

15 Second, State Farm asks the Court to strike Darrell Harber's supplemental declaration  
16 and exhibits and Plaintiffs' reliance on it in the Reply. The Court has not considered these  
17 arguments and evidence and DENIES the request as MOOT.

18 Third, State Farm also asks the Court to strike Harber's and Torelli's declarations/reports  
19 as improper supplemental reports filed after the expert deadline. Given the Court's ruling above,  
20 the Court DENIES this request as MOOT. And the Court DENIES as MOOT the request to  
21 strike Harber's declaration and Torelli's supplemental reports as to the 150-claim sample, and  
22 DENIES the request to Strike Torelli's supplemental report as to classwide damages based on a  
23 sampling methodology.

1 Lastly, State Farm asks the Court to strike the new class definitions submitted with the  
2 Reply. The Court disagrees. Plaintiff made these proposed revisions to respond to various  
3 critiques in State Farm’s opposition. Given that the Court enjoys wide discretion in defining the  
4 class, the Court found these proposals to be permissible and helpful. State Farm was also given  
5 an opportunity to consider the Court’s proposed class definitions and present its views during  
6 oral argument. The Court DENIES the request to strike the class definitions.

### 7 CONCLUSION

8 Plaintiff has provided sufficient evidence to establish by a preponderance that class  
9 certification is appropriate and proper under Rule 23(a) and Rule 23(b)(3). The Court certifies  
10 the following classes:

#### 11 **Typical Negotiation Class**

12 All persons and entities within the State of Washington that have made first-party  
13 property damage claims under contracts of automobile insurance with State Farm that  
14 provided for payment of the actual cash value of the policyholder’s vehicle (less any  
15 applicable deductible) in the event of total loss, and (1) where policyholders experienced  
16 a total loss of their insured vehicle covered under such policy, (2) where such claims for  
17 total loss were evaluated by State Farm using the Autosource valuation system which  
18 took a deduction/adjustment for “typical negotiation,” (3) where such claims were settled  
19 and paid using the amount determined in the Autosource valuation which took a  
20 deduction/adjustment for “typical negotiation”; and (4) where such claims were paid by  
21 State Farm to the policyholder or a lienholder without the parties agreeing to use, and  
22 using, an alternative appraisal process described in the policyholder’s policy.

#### 18 **Condition Deduction Class:**

19 All persons and entities within the State of Washington that have made first-party  
20 property damage claims under contracts of automobile insurance with State Farm that  
21 provided for payment of the actual cash value of the policyholder’s vehicle (less any  
22 applicable deductible) in the event of total loss, and (1) where policyholders experienced  
23 a total loss of their insured vehicle covered under such policy, (2) where such claims for  
24 total loss were evaluated by State Farm using the Autosource valuation system which  
25 took deductions for the condition of the loss vehicle, (3) where such claims were settled  
26 and paid using the amount determined in the Autosource valuation which took  
27 deductions for the condition of the loss vehicle; and (4) where such claims were paid by  
28 State Farm to the policyholder or a lienholder without the parties agreeing to use, and  
29 using, an alternative appraisal process described in the policyholder’s policy.

1 The Court also appoints Faysal Jama as class representative and Mark Trivett of Badgley Mullins  
2 Turner, PLLC and Daniel Whitmore of the Law Office of Daniel R. Whitmore, PS as class  
3 counsel.

4 The Court also GRANTS in part and DENIES in part State Farm's surreply/motion to  
5 strike. The Court STRIKES in part the supplemental report of Torelli and the Reply's citation to  
6 it concerning the 150-claim sample. The Court does not strike the additional information Torelli  
7 provides about calculating classwide damages using a future sample. The Court DENIES as  
8 MOOT State Farm's request to strike the supplemental Harber declaration and the Reply's  
9 citation to it. The Court DENIES as MOOT the request to strike Harber's declaration and  
10 Torelli's supplemental reports as to the 150-claim sample, and DENIES the request to strike  
11 Torelli's supplemental report as to classwide damages based on a sampling methodology. And  
12 the Court DENIES State Farm's request to strike the class definitions proposed in the Reply.

13 The clerk is ordered to provide copies of this order to all counsel.

14 Dated July 1, 2021.

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16 Marsha J. Pechman  
17 United States Senior District Judge  
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