

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Pitkin v. State Farm Fire and Casualty Company

Pitkin · No. 23-cv-00924-WHO · Decided July 15, 2025

SUMMARY

The United States District Court for the Northern District of California grants plaintiffs’ motion to certify a class challenging State Farm’s practice of depreciating sales tax when calculating actual cash value benefits for covered property losses under California Insurance Code section 2051(b). The court concludes that the Rule 23 requirements are satisfied, denies State Farm’s motion to exclude the plaintiffs’ experts as moot, and grants related motions to seal.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	William H. Orrick
JURISDICTION	United States District Court for the Northern District of California
DECIDED	July 15, 2025
DOCKET	23-cv-00924-WHO
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs moved for class certification under Federal Rule of Civil Procedure 23(a) and 23(b)(3), and defendant opposed certification and moved to exclude or strike plaintiffs' expert opinions and reports.
STANDARD OF REVIEW	Class certification requires a rigorous analysis of the Rule 23 prerequisites, with plaintiffs bearing the burden of proving those prerequisites by a preponderance of the evidence. The court may consider the merits to the extent necessary to determine whether Rule 23 requirements are satisfied, but may not conduct free-ranging merits inquiries. Expert evidence at the certification stage must satisfy the applicable reliability requirements, although the manner and degree of proof may differ from that required at trial.
PRECEDENTIAL VALUE	district court order; precedential status not stated
PARTIES	Melissa Pitkin, Dan Grout v. State Farm Fire and Casualty Company

TOPICS

class actions

insurance coverage

declaratory relief insurance

statutory interpretation

civil procedure

PRACTICE AREAS

insurance coverage

class actions

civil procedure

contracts

consumer protection

QUESTIONS PRESENTED

1. Whether plaintiffs' expert opinions and proposed methodologies were sufficiently reliable for consideration at the class-certification stage under Federal Rule of Evidence 702.
2. Whether the proposed class was ascertainable and satisfied the numerosity, commonality, typicality, and adequacy requirements of Federal Rule of Civil Procedure 23(a).
3. Whether common questions predominated over individualized questions under Rule 23(b)(3), particularly whether California Insurance Code section 2051(b) prohibits depreciating sales tax in calculating actual cash value.
4. Whether a class action was superior to other available methods of adjudication under Rule 23(b)(3).
5. What class period was consistent with the applicable statutes of limitations.

HOLDINGS

1. Plaintiffs' experts offered sufficiently reliable methodologies and factual bases for the court to consider their opinions at the class-certification stage. State Farm's motion to exclude or strike the opinions and rebuttal reports was denied as moot.
2. The proposed class satisfied numerosity, ascertainability, commonality, typicality, and adequacy.
3. Common questions predominate because the proposed class challenges State Farm's uniform practice of depreciating sales tax in ACV calculations, and the legality of that practice under California Insurance Code section 2051(b), together with the resulting damages methodology, can be resolved on a classwide basis.
4. A class action was superior to other available methods for adjudicating the claims.
5. The class period was limited to claims arising on or after March 1, 2019.

KEY QUOTATIONS

"For the foregoing reasons, Pitkin's motion for class certification is GRANTED." (Conclusion)

"The existence of damage is not at issue, just the amount." (Discussion § III.A.2)

"Putative class members in this case can measure their injuries on a classwide basis by adding back to the ACV of their personal property as calculated by State Farm the amount of the putatively unlawful depreciated sales tax." (Discussion § III.A.2)

FACTUAL BACKGROUND

Plaintiffs owned a California home insured under a State Farm homeowners policy. After the Walbridge Fire destroyed their home and personal possessions, State Farm paid actual cash value benefits for personal-property losses and used a methodology that included sales tax in replacement cost before depreciating the entire amount. Plaintiffs alleged that State Farm used this practice uniformly for California personal-property claims and thereby reduced ACV payments by depreciating sales tax.

PROCEDURAL HISTORY

Plaintiffs brought a putative class action alleging that State Farm uniformly depreciated sales tax when calculating actual cash value benefits for California personal-property insurance claims. The court denied State Farm's motion to exclude or strike the expert materials as moot and granted plaintiffs' motion for class certification, modifying the class period to begin March 1, 2019.

DISPOSITION

other

CASES CITED

- Johnson v. Hartford Casualty Insurance Co., No. 15-CV04138-WHO, 2017 WL 2224828, at *8 (N.D. Cal. May 22, 2017)
- Maison D'Artiste v. American International Group, Inc., 2020 WL 4037219, at *3 (C.D. Cal. Jan. 23, 2020)
- Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC, 31 F.4th 651, 663-65 (9th Cir. 2022) (en banc)
- Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 349-51, 359 (2011)
- General Telephone Co. of the Southwest v. Falcon, 457 U.S. 147, 157, 161 (1982)
- Amgen Inc. v. Connecticut Retirement Plans & Trust Funds, 568 U.S. 455, 459, 465-66 (2013)
- Hanni v. American Airlines, No. C-08-00732-CW, 2010 WL 289297, at *8 (N.D. Cal. Jan. 15, 2010)
- Sali v. Corona Regional Medical Center, 909 F.3d 996, 1006 (9th Cir. 2018)
- Lytle v. Nutramax Laboratories, Inc., 114 F.4th 1011, 1030-31 (9th Cir. 2024)
- General Electric Co. v. Joiner, 522 U.S. 136, 141, 144, 146 (1997)
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 593, 596 (1993)
- E. Texas Motor Freight System, Inc. v. Rodriguez, 431 U.S. 395, 403 (1977)
- Hanlon v. Chrysler Corp., 150 F.3d 1011, 1020 (9th Cir. 1998)
- Drimmer v. WD-40 Co., 343 F. App'x 219, 221 (9th Cir. 2009)
- Doninger v. Pacific Northwest Bell, Inc., 564 F.2d 1304, 1309 (9th Cir. 1977)
- Tyson Foods, Inc. v. Bouaphakeo, 577 U.S. 442, 454 (2016)
- Small v. Allianz Life Insurance Co., 122 F.4th 1182, 1187-88, 1197-98 (9th Cir. 2024)
- Lara v. First National Insurance Co., 25 F.4th 1134, 1137-39 (9th Cir. 2022)
- Jama v. State Farm Mutual Automobile Insurance Co., 113 F.4th 924, 927, 934 (9th Cir. 2024)
- Zinser v. Accufix Research Institute, Inc., 253 F.3d 1180, 1190-91 (9th Cir. 2001)

- Love v. Fire Insurance Exchange, 221 Cal. App. 3d 1136, 1144 n.4 (Ct. App. 1990)
- North Star Reinsurance Corp. v. Superior Court, 10 Cal. App. 4th 1815, 1822 (1992)
- Ramyeard v. State Farm General Insurance Co., B329614, Los Angeles County Super. Ct. No. 20STCV06274 (filed Apr. 29, 2025)

OPINION

Pitkin v. State Farm General Insurance Company

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 MELISSA PITKIN, et al., Case No. 23-cv-00924-WHO 8 Plaintiffs,

ORDER CERTIFYING CLASS

v. 9 Re: Dkt. Nos. 61, 75, 87, 89

10 STATE FARM FIRE AND CASUALTY

COMPANY,

11 Defendant. 12

13 Plaintiffs Melissa Pitkin and Dan Grout (a married couple, together, “plaintiffs”) bring this 14 class action complaint against defendant State Farm General Insurance Company (“State Farm”), 15 alleging that State Farm has a common practice of depreciating sales tax when calculating actual 16 cash value (“ACV”) benefits payments to policyholders, which plaintiffs claim violates California 17 Insurance Code section 2051(b). As a result of this uniform practice in California, plaintiffs say 18 that they and the proposed Class (which they estimate to number in the tens of thousands) share a 19 common problem and common claims. They seek class certification under Federal Rules of Civil

20 Procedure 23(a) and 23(b) for all four of their causes of action: declaratory relief, breach of 21 contract, breach of the implied covenant of good faith and fair dealing, and violation of 22 California’s Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, et seq). 23 State Farm concedes that its practice is to depreciate sales tax when calculating ACV but 24 insists that the practice is lawful. It opposes class certification, arguing that the plaintiffs’ experts’ 25 opinions should be disregarded as unreliable and that individual issues predominate over common 26 ones both as to class ascertainability and damages calculations. But the plaintiffs have offered a 27 feasible methodology for calculating damages classwide, have demonstrated that the class is 1 ACV for personal property insurance policies like those held by the putative Class Members 2 predominates over whatever individualized issues may arise. In short, the plaintiffs have satisfied 3 the Rule 23 requirements for class certification.¹ The motion to certify the class is GRANTED.²

4 BACKGROUND

5 A. The Plaintiffs 6 Pitkin and Grout own a home together in Healdsburg, California. They hold a

7 homeowner's insurance policy from State Farm, policy number 57-C4-6752-1 (the "Policy"), 8 which covered certain losses to their home and all of its contents.³ The Policy included the "main 9 policy form" (FP-7955, CA) as well as a "homeowners endorsement form" (FE-3422). Subject to 10 the Policy's terms, conditions, and exclusions, the Policy included "Coverage B – Personal 11 Property" limits of \$506,574, and other various special limits.⁴ Regarding settlement of Coverage 12 B claims, the Policy provides for settlement of damaged personal property in several ways, 13 including actual cash value ("ACV"), market value, and replacement cost ("RC"). Declaration of 14 1 The class period will be modified to be consistent with the relevant statutes of limitations 15 associated with the plaintiffs' claims. 16 2 State Farm has filed an Administrative Motion to File Under Seal. Dkt. No. 75. It seeks to seal exhibits it previously designated as "confidential," which it has filed provisionally under seal 17 alongside its response to the plaintiffs' Motion. Those documents that State Farm seeks to seal concern nonpublic claim-specific policyholder information. Good cause shown, the motion to seal 18 is GRANTED. 19 Plaintiffs' Administrative Motion to Consider Whether Another Party's Material Should be Sealed (Dkt. No. 87), to which State Farm properly responded (Dkt. No. 88), is also GRANTED. 20 Accordingly, the portions of the Declaration of Tyson C. Redenbarger and the Declaration of Nabilah Hossain filed in support of the plaintiffs' Reply (Dkt. No. 86), and exhibits attached 21 thereto, shall be sealed in the manner laid out by State Farm in its responsive statement at Dkt. No. 88. Public, redacted versions of these sealed documents already exist on the docket.

22 3 State Farm points out that the Policy was issued initially to Mildred Cussins and Bonnie Pitkin, 23 who are Melissa Pitkin's grandmother and mother, respectively. Following receipt of the at-issue Claim, State Farm retroactively added Melissa Pitkin and Dan Grout as named insureds. Oppo. 3, 24 n.2. 25 4 State Farm provides that the special limits or sublimits applicable to Coverage B under the Policy include: Jewelry and Furs (\$1,500/\$2,500); Cash (\$200); Business Property (\$1,500/\$750); 26 Securities and Other Papers (\$1,000); Watercraft (\$1,500); Trailers (\$1,500); Stamps (\$2,500); Firearm Theft (\$2,500); Silverware and Goldware Theft (\$2,500); Electronic Data Processing 27 Equipment (\$5,000). See State Farm Opposition to Class Certification ("Oppo.") [Dkt. No. 76] 3, 1 Donna Blazewich ("Blazewich Decl.") [Dkt. No. 76-5] ¶ 7. 2 On August 20, 2020, the Walbridge Fire burned down the plaintiffs' home. See 3 Declaration of Melissa Pitkin ("Pitkin Decl.") ¶¶ 7-9; Declaration of Dan Grout ("Grout Decl.") ¶¶ 4 7-9. After losing their home and personal possessions, the plaintiffs tendered a claim to State 5 Farm for their losses under the Policy. State Farm accepted the claim and adjusted their losses 6 pursuant to the Policy's terms, which stated that the plaintiffs are entitled to recover ACV for their 7 personal property losses. On December 16, 2022, and January 24, 2023, the plaintiffs received 8 partial payments from State Farm for their personal property contents losses. State Farm also sent 9 the plaintiffs "loss payment worksheets" that showed their ACV benefits for their personal 10 property. Pitkin Decl. ¶¶ 7-8; Grout Decl. ¶¶ 7-8. 11 For all items of property where sales tax was applicable, State Farm depreciated sales tax 12 in calculating ACV. Pitkin Decl. ¶ 9; Grout Decl. ¶

9. That practice is what the plaintiffs 13 challenge in this action. 14 B. State Farm’s policies and procedures regarding settlement of personal property claims 15 State Farm describes its process of handling personal property claims like the plaintiffs’ as 16 follows. When a claim is reported to State Farm, its claims personnel open a new claim in State 17 Farm’s “Enterprise Claims System” (“ECS”) and a unique claim number is assigned to the claim. 18 Blazewich Decl. ¶ 3. ECS is a “proprietary relational database” that State Farm uses to store its 19 data in various forms. Declaration of Jay Thorpe (“Thorpe Decl.”) ¶¶ 4, 6, 20. After a claim is 20 opened in ECS, State Farm claims personnel “generally” contact the insured or claimant to discuss 21 the claim. Blazewich Decl. ¶ 3. State Farm may settle a covered personal property or contents 22 loss claim during that first contact, or it may not, depending on the circumstances of a particular 23 claim. Id. ¶ 14. 24 According to State Farm, if a claim “involves more than a few items or is not settled 25 during a first contact,” at that point the claims personnel may “utilize the XactContents® tool to 26 assist in valuing lost property for claim settlement purposes.” Id. Third party entity Verisk owns 27 the XactContents® tool. See Declaration of Jennifer Hoffman (“Hoffman Decl.”) [Dkt. No. 76-1] 1 ¶¶ 4-5; id., Ex. 2 (Peterson Depo.) at pp. 57-58; id. Ex. 3 (Melzer Depo.) at p. 95. The 2 XactContents® tool is capable calculating RC and ACV and then generating reports containing 3 RC and ACV calculations for contents “consistent with State Farm’s ACV methodology in 4 California”; State Farm concedes that methodology includes depreciating sales tax in the 5 calculation of ACV. See Blazewich Decl. ¶ 15 (explaining that State Farm calculates ACV in 6 California by calculating the RC of an item, including sales tax where applicable, and then 7 subtracting depreciation from the RC); see also Class Cert. Mot. Ex. 4 (“Operation Guideline 75- 8 50 Betterment, Depreciation, and Actual Cash Value”); id., Ex. 5 (Defendant State Farm’s 9 Response to Plaintiff’s Irrog. No. 3). According to State Farm, while the XactContents® tool can 10 “assist” claims personnel as they make decisions on a claim, ECS records what actually happens 11 on a claim. Blazewich Decl. ¶¶ 2-3, 17. 12 Information on ECS is electronically stored. Thorpe Decl. ¶ 4. ECS includes fields that 13 record the date and amount of Coverage B payments (like those available under the plaintiffs’ 14 Policy). State Farm notes that ECS does not store information regarding the “nature or basis” of 15 Coverage B payments in a form that can be searched across claims. Oppo. 4; Thorpe Decl. ¶ 6. 16 XactContents® Payment Tracker Worksheets or reports may contain ACV and RC calculations 17 for particular items; State Farm points out that such information “reflects a calculation, not a claim 18 payment.” Thorpe Decl. ¶¶ 9, 15. According to State Farm, its ECS database is separate and apart 19 from any database maintained by Verisk, the third party that owns XactContents®, meaning that a 20 query of ECS does not yield data contained in Verisk’s XactContents® system. State Farm 21 distinguishes ECS and XactContents® like this: XactContents® is a tool, and ECS is the claim 22 record. Oppo. 5; Thorpe Decl. ¶¶ 7-8; Blazewich Decl. ¶¶ 2-3, 14-15. 23 C. Section 2051(b) 24 Section 2051(b) was added to the California Insurance Code in 2004 as part of the 25 Homeowners Bill of Rights (“HBOR”) to standardize the calculation of actual cash recovery

under 26 an open policy⁵ by insurers in determining ACV under insurance policies. Section 2051(b) reads: 27 Under an open policy that requires payment of actual cash value, the measure of the actual 1 cash value recovery, in whole or partial settlement of the claim, for either a total or partial 2 loss to the structure or its contents, shall be the amount it would cost the insured to repair, rebuild, or replace the thing lost or injured less a fair and reasonable deduction for 3 physical depreciation based upon its condition at the time of the injury or the policy limit, whichever is less. A deduction for physical depreciation shall apply only to components of 4 a structure that are normally subject to repair and replacement during the useful life of that structure. (emphasis added). 5 Cal. Ins. Code § 2051(b) (emphasis added). 6 I have already considered this law and its impact. In 2017, in *Johnson v. Hartford Cas. 7 Ins. Co.*, I held that sales tax was distinct from physical items and not subject to “depreciation” 8 under section 2051(b). No. 15-CV04138-WHO, 2017 WL 2224828, at *8 (N.D. Cal. May 22, 9 2017). I found that physical depreciation refers to wear and tear only, and since sales tax is not 10 subject to wear and tear, the depreciation of sales tax when calculating ACV is not permitted 11 under California law. *Id.* Three years later, a federal district court in the Central District of 12 California agreed that “[a] plain reading of [§ 2051(b)] and [corresponding] regulation appears to 13 indicate that any actual cash value payment made under a property insurance policy should not 14 depreciate ... expenses that are ‘not a component of physical depreciation’—as sales tax ... 15 appear[s] to be.” *Maison D’Artiste v. Am. Int’l Grp., Inc.*, 2020 WL 4037219, at *3 (C.D. Cal. Jan. 16 23, 2020). Citing *Johnson* and noting that there is very little other authority on the issue, the court 17 concluded, “at [that] early stage,” the plaintiff’s factual allegations (that depreciation of payments 18 for sales tax is improper under section 2051) plausibly asserted a UCL violation. *Id.* 19 A California state trial court ruled differently. In 2023, the defendants asked that I stay 20 this litigation pending resolution of an appeal of a California state court decision, *Ramyeard v. State 21 Farm General Insurance Co.*, No. 20STCV06274, (Cal. Super. Ct. filed Feb. 19, 2020). The 22 plaintiffs in *Ramyeard* also challenged State Farm’s practice of depreciating sales tax when 23 calculating ACV. That court granted summary judgment in State Farm’s favor, finding that: (1) 24 depreciating sales tax in this manner “is legally proper,” and (2) the plaintiffs’ claims were 25 untimely.⁶ I declined to stay this case, noting that the *Ramayed* appeal was in its “early stages” in 26 27 6 The state court order was three pages long and appears to have adopted the proposed order

1 July 2023, and that the court might not even reach the section 2051(b) question.

2 And that is what happened. The *Ramyeard* appeal has since resolved; the state appellate 3 court, in an unpublished decision, affirmed the lower court’s decision on the untimeliness issue 4 alone and did not reach the section 2051(b) issue. See Statement of Recent Decision, filed by 5 State Farm (Dkt. No. 85) (*Ramyeard v. State Farm*, B329614, Los Angeles County Super. Ct. No. 6 20STCV06274 (filed Apr. 29, 2025)). 7 D. Plaintiffs challenge State Farm’s ACV calculation practices 8 The plaintiffs filed this class action on March 1, 2023, alleging that State Farm violates 9 California law by depreciating sales tax as a component of RC when calculating ACV; they say

10 that State Farm did this when calculating the replacement cost of the plaintiffs' personal property 11 in the context of their Coverage B claim following the fire that destroyed their property, and that it 12 does this "systematically" across the state, "consistently underpaying property insurance claims by 13 depreciating sales tax[.]" Complaint [Dkt. No. 1]. State Farm does not deny that this is its 14 practice—under State Farm's uniform policies, it first calculates the RC of an item, including sales 15 tax where applicable, and then calculates ACV by subtracting depreciation from the RC ($ACV = 16 RC - depreciation$)—it denies that the practice is unlawful. See Declaration of Nabilah Hossain 17 ("Hossain Decl.") [Dkt. No. 62-4] Ex. 4 ("Operation Guideline 75-50 Betterment, Depreciation, 18 and Actual Cash Value"); id., Ex. 5 (Def. State Farm Resp. to Pl's Irrog. No. 3); id., Ex. 7 (Donna 19 Blazewich, Person Most Knowledgeable "PMK", for State Farm General Insurance, Deposition, 20 or "PMK Depo.") at 32:12-23). 21 The parties agree that State Farm's practice involves a two-step process. First, State 22 Farm's uniform policy is to include sales tax as a component of RC. See Hossain Decl. Ex. 8. 23 price of the sofa and ottoman, and not the applicable sales tax." Further, it held that "[t]he 24 legislative history for Section 2051 and the rulemaking file for the 2006 amendments to Title 10 of the California Code of Regulations Section 2695.9 show that the phrase 'physical depreciation' in 25 Section 2051 was intended to communicate that depreciation of labor is not a component of physical depreciation," and "reflect an understanding and intent that depreciation would apply to 26 items of physical property, not the cost components of a physical property item." *Ramyeard v. State Farm General Insurance Co.*, No. 20STCV06274 at 3-4. The state court also observed that "[t]he 27 unpublished federal district court cases cited by Plaintiffs on this issue are not persuasive or 1 Then State Farm depreciates the entire amount of RC; it does not limit depreciation to the 2 property's wear and tear or components subject to physical depreciation. The plaintiffs contend 3 that while State Farm's internal "definition" of depreciation aligns with section 2051(b) (insofar as 4 it describes depreciation as a "decrease in the value of the property over a period of time due to 5 wear, tear, and obsolescence," see id. Ex. 4 (Operation 75-50 Guide) at 2), in practice, it 6 disregards these standards and violates section 2051(b) by depreciating sales tax as part of its 7 ACV calculation. State Farm's witnesses have admitted to this practice, and plaintiffs say the 8 practice is further evidenced by the written estimate provided to them. See Pitkin Decl. ¶¶ 7-9; 9 Grout Decl. ¶¶ 7-9. 10 E. The proposed class 11 State Farm included sales tax in the Replacement Cost Value (RCV) of Pitkin and Grout's 12 personal property in California, then depreciated that amount to arrive at the Actual Cash Value 13 (ACV) of that property. The plaintiffs say that State Farm has done the same to the members of 14 the proposed class. As such, the plaintiffs seek to certify injunctive and declaratory relief under

15 Rule 23(b)(2), or alternatively, damages claims under Rule 23(b)(3) on behalf of a class defined 16 as: All persons who, between January 1, 2015⁷ and the present, were or are a named insured 17 under a property insurance policy issued in California by Defendant, who suffered a 18 covered loss to real or personal property for which they received payment of actual cash value (ACV)

benefits that were reduced due to depreciation of sales tax, and who were 19 paid or are reasonably certain to be paid benefits in an amount that is less than the applicable policy limits. 20 The plaintiffs seek class certification on each of their four claims set forth in the Second Amended 21 Complaint (“SAC”): declaratory relief, breach of contract, breach of the implied covenant of good 22 faith and fair dealing, and a claim for violations of California’s Unfair Competition Law (“UCL”). 23 See Second Amended Complaint (“SAC”) [Dkt. No. 41]. 24

LEGAL STANDARD

25 Federal Rule of Civil Procedure 23 governs class actions. See *Olean Wholesale Grocery* 26 27 7 *State Farm* contests the time period covered by the class definition. At oral argument, the parties 1 *Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 663–64 (9th Cir. 2022) (en banc). 2 “[C]ertification is proper only if ‘the trial court is satisfied, after a rigorous analysis,’ ” that the 3 requirements of Rule 23 are met. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350–51 (2011) 4 (quoting *Gen. Tel. Co. of SW v. Falcon*, 457 U.S. 147, 161 (1982)). “[P]laintiffs must prove the 5 facts necessary to carry the burden of establishing that the prerequisites of Rule 23 are satisfied by 6 a preponderance of the evidence.” *Olean*, 31 F.4th at 665. 7 A “plaintiff[] must make two showings” to certify its purported class. *Olean*, 31 F.4th at 8 663. “First, the plaintiffs must establish ‘there are questions of law or fact in common to the class,’ 9 as well as demonstrate numerosity, typicality, and adequacy of representation.” *Id.* (quoting Fed. 10 R. Civ. Proc. 23(a)). “Commonality requires the plaintiff to demonstrate that the class members 11 ‘have suffered the same injury,’ ” and the “claims must depend upon a common contention.” *Wal-* 12 *Mart*, 564 U.S. at 349–50 (quoting *Falcon*, 457 U.S. at 157). 13 “Second, the plaintiffs must show that the class fits into one of three categories” as 14 provided in Rule 23(b). *Olean*, 31 F.4th at 663. Here, plaintiffs seek certification under Rule 15 23(b)(3). Under Rule 23(b)(3), a class may be certified if “questions of law or fact common to 16 class members predominate over the questions affecting only individual members, and a class 17 action is superior to other available methods for fairly and efficiently adjudicating the 18 controversy.” Fed. R. Civ. Proc. 23(b)(3). In deciding this, courts consider: (A) the class members’ interests in individually controlling the prosecution or defense of 19 separate actions; 20 (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; 21 (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and 22 (D) the likely difficulties in managing a class action. 23 *Id.* 24 “[P]laintiffs must prove the facts necessary to carry the burden of establishing that the 25 prerequisites of Rule 23 are satisfied by a preponderance of the evidence. In carrying the burden of 26 proving facts necessary for certifying a class under Rule 23(b)(3), plaintiffs may use any 27 admissible evidence.” *Olean*, 31 F.4th at 665 (citing *Tyson Foods v. Bouaphakeo*, 577 U.S. 442, 1 the plaintiff’s underlying claim, Rule 23 grants courts no license to engage in free-ranging merits 2 inquiries at the certification stage.” *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 3 465–66 (2013) (internal citations and quotation marks omitted). “Merits questions may be 4 considered to the extent—but only to the extent—that they

are relevant to determining whether the

5 Rule 23 prerequisites for class certification are satisfied.” Id. (citation omitted).

6 In considering a motion for class certification, the substantive allegations of the complaint 7 are accepted as true, but “the court need not accept conclusory or generic allegations regarding the 8 suitability of the litigation for resolution through class action.” *Hanni v. Am. Airlines*, No. C-08- 9 00732-CW, 2010 WL 289297, at *8 (N.D. Cal. Jan. 15, 2010). The court may also “consider 10 supplemental evidentiary submissions of the parties.” Id. “[T]he ‘manner and degree of evidence 11 required’ at the preliminary class certification stage is not the same as ‘at the successive stages of 12 the litigation’—i.e., at trial.” *Sali v. Corona Reg’l Med. Ctr.*, 909 F.3d 996, 1006 (9th Cir. 2018) 13 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)).

14 DISCUSSION

15 I will first address State Farm’s challenge to the reliability of the plaintiffs’ experts. Then I 16 turn to the plaintiffs’ ability to satisfy the Rule 23(a) and (b) requirements.

17 I. PLAINTIFFS’ EXPERTS

18 State Farm attacks the plaintiffs’ experts’ opinions on several grounds, arguing that I 19 should disregard all three experts’ opinions as speculative and unhelpful. 20 A. Rule 702 21 Federal Rule of Evidence 702 allows a witness qualified by knowledge, skill, experience, 22 training or education to testify in the form of an opinion if the court finds that it is more likely than 23 not that the expert’s specialized knowledge will help the trier of fact understand the evidence or 24 determine a fact, if it is based on sufficient facts or data and is the product of reliable principles 25 and methods, and reflects a reliable application of the principles and methods to the facts of the 26 case. Fed. R. Evid. 702. State Farm argues that the plaintiffs’ experts’ opinions are “speculative 27 and inadmissible” and should be excluded pursuant to Rule 702. Opposition to Class Certification 1 issue again at the conclusion of merits discovery. See *Lytle v. Nutramax Labs., Inc.*, 114 F.4th 2 1011, 1030 (9th Cir. 2024) (discussing the divergence in caselaw regarding how defendants may 3 challenge the reliability of an expert’s evidence under *Daubert*).8 4 For three experts that the plaintiffs have offered, State Farm argues that their reports 5 contain an “analytical gap” between the data and the expert’s opinion. It contends that because the 6 plaintiffs did not show the “Combined Ramyead dataset” (a copy of the data set that State Farm 7 had collected from Verisk and its ECS system in the Ramyead Action) to their experts, the experts 8 did not consider critical data in reaching their conclusions, and their opinions are thus unreliable 9 and inadmissible. This argument is unpersuasive and unsupported by State Farm’s proffered 10 authority. 11 State Farm cites *General Elec. Co. v. Joiner* for the rule that “nothing in either *Daubert* or 12 the Federal Rules of Evidence requires a court to admit opinion evidence that is connected to 13 existing data only by the ipse dixit of the expert.” 522 U.S. 136, 146 (1997). In that case, Robert 14 Joiner alleged that he contracted cancer as a result of contact he had with hazardous materials 15 manufactured by petitioner General Electric Company (“GE”) while he was working for GE. The 16 district court excluded Joiner’s experts’ testimony in part because the experts, considering the 17 same

data, drew “different conclusions” from one another. Joiner, 522 U.S. at 141 (discussing 18 district court decision). The Eleventh Circuit reversed, and GE appealed. The United States 19 Supreme Court agreed with GE that Joiner’s experts’ statements regarding causation of his cancer 20 8 The court in Lytle explained that “whether a ‘full’ or ‘limited’ Daubert analysis should be 21 applied may depend on the timing of the class certification decision.” Lytle, 114 F.3d at 1031. For instance, “[i]f discovery has closed and an expert’s analysis is complete and her tests fully 22 executed, there may be no reason for a district court to delay its assessment of ultimate admissibility at trial.” Id. But, “[b]y contrast, where an expert’s model has yet to be fully 23 developed, a district court is limited at class certification to making a predictive judgment about how likely it is that the expert’s analysis will eventually bear fruit,” which, the court observed, 24 “still requires determining whether the expert’s methodology is reliable,” but makes a “full-blown Daubert assessment of the results of the application of the model,” “premature.” Id. Here, the 25 situation is a hybrid; I have granted an extension of fact discovery and the parties’ experts may opine on the Ramyeard dataset, see Dkt. No. 101 (Order Granting Stipulation to Extend Fact 26 Discovery). At this stage, it is more likely than not that plaintiffs’ experts’ opinions are based on sufficient data, are the product of reliable principles and methods, and reflect a reliable application 27 of them to this case. 1 were “nothing more than speculation” because the studies that the experts relied on had no 2 apparent connection to Joiner’s situation.⁹ Joiner never replied to that criticism; instead, he 3 focused on whether animal studies of the type upon which his experts relied can ever be a proper 4 foundation for an expert’s opinion, which was not the issue. 5 Here, the plaintiffs’ experts did not reach their conclusions based solely on their own 6 authority. Each of the plaintiffs’ experts—Greg Regan, David Melzer, and Eugene Peterson— 7 applied a set methodology and presented reliable bases for their conclusions. Regan has explained 8 his methodology and why he believes it is capable of calculating damages on a classwide basis. 9 See Expert Class Certification Report of Greg Regan, CPA/CFF, CFE (“Regan Report”) [Dkt. No. 10 62-1]. Meltzer and Peterson demonstrate an understanding of the relevant analytical tools about 11 which they opine, tools that they say may be used to identify the class and calculate damages. 12 These experts’ opinions are connected to existing data by more than their own assertions. 13 State Farm’s argument to the contrary focuses on the completeness of the experts’ analysis; 14 it takes umbrage that the plaintiffs’ experts did not consider the Ramyeard dataset in arriving at 15 their initial conclusions. Neither Rule 702 nor Joiner requires that they do; the issue is whether 16 they have relied on sufficient facts to reach reliable opinions. I find that they have. 17 With respect to the experts’ rebuttal reports, which State Farm seeks to exclude, they all 18 appear to address the same issues as their authors’ opening reports and respond to State Farm’s 19 allegations that their methodologies are flawed. They also discuss the dataset that State Farm says 20 created an “analytical gap” in their reasoning, the “Combined Ramyeard Dataset.”¹⁰ State Farm 21 asks that I strike these rebuttal reports. I will not strike them, but to the extent they discuss the 22 Ramyeard dataset I do not rely on them. State Farm’s motion to exclude (Dkt. No. 89) is DENIED 23 9 See

Joiner, at 144 (explaining that Joiner’s experts had relied on studies involving infant mice 24 that had developed cancer after being exposed to the hazardous chemicals via direct injection into their stomachs, whereas Joiner was an “adult human being whose alleged exposure to [the 25 hazardous chemicals] was far less than the exposure in the animal studies.”). 26 10 On May 1, 2025, I approved the Parties’ Stipulated and [Proposed] Order for Limited Extension of Fact Discovery, Dkt. No. 84, wherein the parties agreed that additional time was needed for the 27 depositions of Donna Blazewich and Jay Thorpe to be taken, and for an “updated version of the 1 as moot. State Farm will have the opportunity to challenge the experts’ testimony and rebuttal 2 opinions during expert discovery, which, pursuant to the parties’ stipulation, will not close until 65 3 days after the updated Ramyeard dataset has been provided.11 See Dkt. No. 101. If State Farm 4 requires additional time to depose the experts so that it may develop arguments pertaining to their 5 analysis of the Ramyeard dataset, it is entitled to do so then. 6 B. Greg Regan – Damages Expert 7 Greg Regan is a partner in the Forensic Consulting Services Group of Hemming Morse, 8 LLC. He has provided trial and/or deposition testimony in at least nine cases in federal and state 9 court. Regan Report App’x A at p. 3; Regan Report ¶ 9 (stating that Regan has been retained “to 10 perform these types of damages analyses in matters involving large companies such as Amazon, 11 Avaya, ASML, Beyond Meat, Cisco, Fitbit, Google, Intuit, and PNC Bank,” and “as an expert by 12 numerous governmental entities such as the Securities and Exchange Commission, the Consumer 13 Financial Protection Bureau, and Attorneys General for numerous states[.]”). He is the plaintiffs’ 14 damages expert. 15 Regan’s report provided a methodology to measure the impact on potential Class Members 16 of State Farm’s policies and practices of including sales tax in its depreciation calculations to 17 determine ACV. His proposed methodology employs the sales tax amounts that are identifiable 18 from State Farm’s XactContents® tool for items included in the policyholder claim and the 19 amount of sales tax depreciation State Farm withheld from payments made out to the insured, 20 which he says are identifiable in XactContents® and in ECS. He explains that XactContents® 21 contains a reporting tool called the Payment Tracker Worksheet Report, which he believes will 22 “facilitate access” to the data needed to calculate damages on a classwide basis. Regan Report ¶ 23 15. He further explains that policyholders making a personal property loss claim submit a detailed 24 inventory of items to State Farm, which uses XactContents® to manage inventories of personal 25 property damage claims. Id. XactContents®, Regan states, can be used to calculate the benefit 26 11 The parties have stipulated that the updated Ramyeard spreadsheet, which is the same as the 27 Combined Ramyeard Dataset except it is limited to the time frame encompassed by the Plaintiffs’ 1 payable to the policyholder, including consideration of depreciation. The tool allows State Farm 2 to calculate ACV by subtracting depreciation from RC. Id. ¶ 17. 3 Regan opines that classwide damages can be calculated based on information presently 4 available with the following formula: 5 Sales Tax * (Item’s Depreciation Age ÷ Item’s Depreciable Life) = Item-Specific Damage 6 State Farm argues that this opinion is unreliable for two reasons. First, he did not initially 7 consider the Ramyeard

dataset in forming it.¹² Oppo. 12-13. But as discussed above, he was not ⁸ required to. Rule 702 requires that expert testimony be based on sufficient evidence and use ⁹ reliable principles and methodologies, not that the expert consider all possible relevant data. The ¹⁰ As the Court wrote in Daubert, “[v]igorous, cross-examination, presentation of contrary evidence, ¹¹ and careful instruction on the burden of proof” are sufficient to expose flaws in otherwise proper ¹² expert opinion. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 596 (1993). As I have ¹³ described, Regan relied on evidence available in State Farm’s XactContents® tool and in its ECS ¹⁴ database. State Farm is welcome to question him further about how the Ramyead dataset squares ¹⁵ with his conclusions, (and, as I noted, see *supra*, n. 12, Regan has already opined on that matter, ¹⁶ though I do not consider his rebuttal report today), but his failure to consider that dataset in his ¹⁷ original analysis does not render his opinions unreliable. ¹⁸ State Farm also argues that Regan’s damages methodology is a “simple formula” that ¹⁹ “rests on several flawed assumptions,” including that “every putative class member . . . received ²⁰ payment equal to the sum of the ACV column in their XactContents® report.” Oppo. ¹⁴ (citing ²¹ Regan Dep. pp. 84-87; 118). It claims that this assumption is false “even for the Pitkins, who ²² were paid less than the ACV column total due to an applied sublimit.” *Id.* (citing Blazewich Decl. ²³ ¶¶ 21, 24). It protests that since the ACV column in the XactContents® report does not apply ²⁴ sublimits, or account for advance payments or deductibles, Regan’s damages formula is flawed. ²⁵ But Regan described his methodology in detail, and it does not require considering the application ²⁶ ²⁷ ¹² Regan submitted a rebuttal report addressing State Farm’s arguments about the Ramyead dataset ¹ of sublimits to calculate damages. See Regan Report 4-7. At oral argument, counsel for plaintiffs ² explained that information pertaining to applicable sublimits and special limits is available in State ³ Farm’s databases, but that aside, whether sublimits or special limits applied to a claim informs ⁴ whether they are identifiable as a class member, not how their damages are calculated. ⁵ To that point, with respect to the ascertainability of the class, Regan explains that Class ⁶ Members are State Farm policyholders in California that only received ACV and did not take the ⁷ additional step of submitting a receipt to establish proof of replacement. *Id.* at ⁴ ¶ 14. He states ⁸ that the information he has reviewed “indicates that members of the Class are ascertainable from ⁹ State Farm’s records,” explaining that “XactContents® contains reporting tools including, for ¹⁰ example, the Payment Tracker Worksheet Report, which should facilitate access to this data and ¹¹ the ability to analyze that data.” *Id.* at ⁵ ¶ 15. This is backed up by David Melzer’s expert report ¹² on class identification. ¹³ C. David Melzer – Class Identification Expert ¹⁴ Plaintiffs present David Melzer’s expert report to support their contention that the ¹⁵ members of the class are readily identifiable. Melzer has worked in the insurance industry since ¹⁶ 2011 in various specialist capacities. Melzer Report ¶¶ 10-17. He worked for Travelers Insurance ¹⁷ from 2013 to 2020, where he held positions including adjuster, technical specialist, and claims ¹⁸ manager. *Id.* ¶ 4. After working for Travelers, he started his own public adjusting firm, called ¹⁹ Property Claims Consultant, Inc., where he handles first and third-party property claims, including ²⁰ personal

property claims. Id. ¶ 5. He has held the position of President of Property Claims 21 Consultant, Inc. since he started the firm in November 2020. Id. He has “significant experience 22 processing and analyzing personal property insurance claims,” and “experience working with 23 industry-standard software used to process and track personal property claims, including 24 Xactimate or XactContents.” Id. ¶ 6. 25 State Farm argues that Mezler’s report is not helpful because he does not rely on any 26 specialized knowledge. Oppo. 16. It thinks little of his ten years working in the claims 27 departments for various insurance companies, or his last five years of experience as President of 1 and no understanding of the principles of data analysis.” Id. Plaintiffs counter that Melzer has 2 “extensive experience in processing and analyzing personal property insurance claims and 3 working with industry-standard software such as XactContents.” Reply 19; see Melzer Report ¶¶ 4 4-7. 5 Melzer’s proposed methodology to estimate the total number of potential class members is 6 as follows. To estimate the total volume of personal property replacement claims for State Farm 7 in California from 2015 to the present, he analyzed the number of claims in a submarket: San 8 Diego. He chose San Diego as a representative example, because claims throughout California 9 would “typically be consistent with personal property claims made in San Diego.” Melzer Report 10 ¶ 10, n.2. Melzer sets forth that during his time at Travelers in 2018, in the San Diego territory, a 11 team of eight adjusters would typically handle 20-30 claims per month, amounting to between 12 1,920 and 2,800 (average of 2,400 a year) claims annually for a population of approximately 3.29 13 million people. Id. ¶ 10. Of those claims, 20% were commercial claims, meaning that on average, 14 a team of eight adjusters working in that submarket processes 1,920 personal property replacement 15 claims per year. Id. 16 Using that data, Melzer estimated the total number of insurance claims in San Diego across 17 all insurers by dividing the number of Travelers’ claims by its 3.68% market share (a percentage 18 market share that is available on the California Property and Casualty Market Share Report 19 published by the California Department of Insurance). Id. ¶ 11. From that number, he divided the 20 number of claims in San Diego by its population, to calculate the number of claims per person in 21 that region. Id. ¶ 12 (calculating number of claims per capita in the San Diego submarket in 22 2018). He then calculated the total number of claims in California as a state by multiplying the 23 state’s population to the per capita calculation, and determined that 625,370 claims are submitted 24 in the state annually. Id. ¶ 13. This represented an estimate of the total number of residential 25 insurance claims in California each year, “assuming consistency in population, market share, and 26 claim frequency.” Id. ¶ 14. 27 He then consulted the California Property and Casualty Market Share Report (the “Market 1 State Farm consistently has “over 8.5% of the Property and Casualty Insurance Market in 2 California.” Id. ¶¶ 11-15. Based on that information, given that State Farm “historically holds 3 roughly 8.5% of the California insurance market,” Melzer calculated that State Farm’s annual 4 claim volume would be 53,156 claims. Of those claims, Melzer explains, it is estimated by the 5 Market Report that approximately 40% involve personal property replacement, yielding 21,262 6 personal property claims for State Farm

annually. Id. ¶ 16. From that annual estimate, Melzer 7 determined that from 2015 to 2023, there were at least 191,362 State Farm claims involving 8 personal property in California. Id. ¶¶ 16-17.13 9 Melzer goes on to explain that based on his familiarity with Xactimate and XactContents®, 10 he believes that “given the detail data that insurance companies maintain and given the flexibility 11 and the power of Xactimate/XactContents, it is [his] opinion that State Farm can create a report, or 12 export the necessary data, that will allow for the identification of all personal property insurance 13 claims where State Farm depreciated the taxes. From that report, Plaintiffs will be able to identify 14 the members of the Class.” Id. ¶ 24. He explains that this process will be as straightforward as 15 selecting a checkbox: “[i]n fact, Xactimate/XactContents has a feature where a tax on a personal 16 property claim can be depreciated simply by clicking one box.” Id. ¶ 21. 17 State Farm argues that the plaintiffs cannot rely on Melzer’s opinions to show that class 18 members are readily ascertainable. It insists that ECS, not XactContents®, is the “claim record,” 19 which means that Melzer cannot rely upon XactContents® data to identify class members; it 20 points out that Melzer admitted at a deposition that the XactContents® “Payment Tracker” report 21 is changed on a weekly basis, see Hoffman Decl. ¶ 5, Ex. 3 (Melzer Dep. pp. 49-50), which State 22 Farm contends “suggests a lack of reliability for purposes of forming assumptions across a class 23 based on XactContents® data alone.” Oppo. 17. 24 State Farm overstates how much data is necessary to identify class members. All that is 25 needed, it would seem, to identify class members, is to identify those insureds for whom State 26 Farm calculated ACV for a Category B personal property claim. Melzer says he can do that 27 1 through data in XactContents® and State Farm’s other records; it is as simple as checking a box 2 and generating a report. Melzer Report ¶¶ 21, 24. 3 D. Eugene Peterson – XactContents® Expert 4 Plaintiffs offer Eugene Peterson as an expert on State Farm’s XactContents® tool.14 5 Peterson states in his report that “[u]sing XactContents® and the State Farm database, it is feasible 6 to efficiently determine where depreciation was taken and calculate and prove what damages, if 7 any, specific insureds or groups of insureds are entitled to.” Peterson Report [Dkt. No. 62-2] p. 5. 8 State Farm objects to Peterson’s expert opinions on three main grounds: first, he is not 9 actually an expert in XactContents® because he mistakenly referred to it as “Xactimate” (an 10 Xactware tool that can estimate building property, rather than personal property) during a 11 deposition; second, he has “no knowledge of State Farm’s ECS, the information it stores, or its 12 functionality”; and third, he did not review the Ramyeard data before opining. Oppo. 18. 13 An expert is considered reliable where he has “a reliable basis in the knowledge and 14 experience of the relevant discipline.” Daubert, 509 U.S. at 593. Peterson’s testimony is aimed at 15 explaining the function of XactContents®. He is well positioned to do so. In his opening report, 16 Peterson explains that he was retained to “[o]pine regarding the ability to utilize XactContents® 17 records to calculate on a class-wide basis the amount of depreciation taken from sales tax from 18 [ACV] loss settlements that were calculated for State Farm in XactContents®.” Peterson Report at 19 p. 1. 20 The Xactimate® estimating software is the

principal software that 22 of the 25 major 21 insurance companies in the United States use to resolve and settle real property insurance claims, 22 including State Farm, and XactContents® is a software tool integrated with Xactimate® for 23 estimating and managing personal property claims. Id. It focuses on valuation of personal items 24 and allows for depreciation calculations. Id. Peterson explains that in XactContents®, 25 depreciation can be applied to any line item, including sales tax. Id. at p. 2. He notes that he was a 26 27 14 Peterson was the plaintiffs' Xactimate expert in Johnson, where he opined on the "function of 1 "consultant to the owner and founder of Xactware/Xactimate® until his death[,] and was 2 authorized by the company to teach its software to contractors and adjusters. Id. 3 Considering Peterson's extensive experience with Xactware and its offerings, State Farm's 4 attempt to discredit him as an XactContents® expert because he at one point mistakenly referred 5 to the name of the software with which it is integrated is borderline disingenuous. As for State 6 Farm's argument about Peterson's failure to consider the Ramyeard dataset, it fares no better in the 7 context of his report than it did for Regan. 8 Peterson concludes that "XactContents® software contains global and line-item settings 9 that allow an insurance company to apply depreciation based on one of three methods: 1) 10 percentage, 2) by a fixed dollar amount, and 3) by age with an adjusted condition." Id. at p. 3. He 11 opines, "The software allows complete control over how depreciation is calculated, so each 12 insurance company can set its policies for depreciation without needing to customize the software. 13 From the software's perspective, a user can determine what line items are to be depreciated and 14 what is to be depreciated in each line item, e.g., sales tax." Id. at p. 4. In reviewing State Farm's 15 estimates, he noted that sales tax depreciation was taken on all line items that were depreciated, 16 and "[u]sing XactContents® and the State Farm database, it is feasible to efficiently determine 17 where depreciation was taken and calculate and prove what damages, if any, specific insureds or 18 groups of insureds are entitled to." Id. at p. 4. This is particularly true because the XactContents® 19 uses a flexible database management system that allows "key searches, comparisons, filters, etc. to 20 extract the sought after data." Id. at p. 3. 21 Peterson did not need to consult the Ramyeard dataset to arrive at this conclusion, and he 22 did not need a deep knowledge of State Farm's ECS to arrive at it, either. He reached his 23 conclusions through his understanding of the XactContents® tool and through analysis of State 24 Farm's estimates that were provided to him.

25 II. RULE 23(A) REQUIREMENTS

26 Rule 23(a) of the Federal Rules of Civil Procedure requires all putative classes to satisfy 27 four requirements: (1) The class must be so numerous that joinder of all members would be 1 ("commonality"); (3) the claims of the named party must be typical of those of the class 2 ("typicality"); and (4) the representatives of the class must be able to fairly and adequately 3 represent the interests of the class ("adequacy"). Fed. R. Civ. P. 23(a). Plaintiffs meet these 4 requirements. 5 A. Numerosity 6 Federal Rule of Civil Procedure 23(a)(1) requires that the proposed class be "so numerous 7 that joinder of all members is impracticable." State Farm does

not challenge plaintiffs' putative class on this basis. Plaintiffs estimate a class size of 191,362, see Melzer Report ¶¶ 9-17, which clearly satisfies numerosity. I also find that this class is ascertainable because the plaintiffs have set forth clear and objective criteria by which they can identify class members. State Farm contends that the plaintiffs offer "no facts—only speculation—supporting that their proposed Rule 23(b)(3) class can be readily identified through objective criteria." *Oppo*. It contends that the plaintiffs' class identification expert, Melzer, does not specify how members of the class may be identified, he only concludes that they can be. It argues that determining whether insureds had a "covered loss," received an ACV payment based on RC less depreciation, and are "reasonably certain" to be paid less than "applicable policy limits" would require individual determinations. *Id.* But, as plaintiffs assert in reply, and as is indicated by Melzer's report, they have shown that: (1) all policyholders can be identified on XactContents®, (2) XactContents® has a depreciation function, and (3) ACV and Remaining RC Benefit are functions of XactContents®.

Plaintiffs' experts have all recognized and endorsed that the individuals comprising the

putative class are identifiable and ascertainable via reviews of XactContents® data and State Farm's ECS data. Supported by the sufficient reliability of their reports, this satisfies the plaintiffs' burden. See discussion *supra* Section I. B. Commonality In order to meet the requirement of commonality, plaintiffs must demonstrate that there are questions of law and fact common to the class. Fed. R. Civ. P. 23(a)(2). A question is common to 1 of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 2 (2011). The question need not be answered on the merits in the class's favor, but "must be of such nature that it is capable of class-wide resolution." *Alcantar v. Hobart Servs.*, 800 F.3d 1047, 1053 4 (9th Cir. 2015) (quoting *Amgen, Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 459 and *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-350 (2011)). Here, as in *Johnson*, the putative class is framed around the common answer of "the plaintiffs were disadvantaged by State Farm's policies of depreciation of sales tax," to the question "how were the plaintiffs disadvantaged by State Farm?" The causes of action all turn on whether California Insurance Code section 2051(b) prohibits State Farm from depreciating the sales tax in calculating ACV for benefits payments. If that question is answered in the affirmative, questions going to relief will also be common to the class. C. Typicality To show typicality, a plaintiff must demonstrate that the "named parties' claims are typical of the class." Fed. R. Civ. P. 23(a)(3). This means that the class representative "possess[es] the same interest and suffer[s] the same injury" as the other class members. *E. Tex. Motor Freight Sys. v. Rodriguez*, 431 U.S. 395, 403 (1977). Plaintiffs Pitkin and Grout have suffered the same harm that they allege the putative class has suffered: reduction in ACV payments by unlawful depreciation of sales tax value. See Pitkin Decl. ¶¶ 7-9; Grout Decl. ¶¶ 7-9; see also Peterson Report, Melzer Report (describing class). They possess the same interest as the other putative class members: they seek recovery of the difference

between the payment from State Farm and the ACV without sales tax depreciation. See 22 Pitkin Decl. ¶¶ 7-12; Grout Decl. ¶¶ 7-12; Peterson Report; Melzer Report. 23 D. Adequacy

24 Rule 23(a)(4) requires that the named parties be able to “fairly and adequately protect the
25 interests of the class.” Fed. R. Civ. P. 23(a)(4). To meet this requirement, the plaintiff must
show 26 that (1) the named plaintiffs and their counsel do not have conflicts of interests with other
class 27 1 members, and (2) the named plaintiffs and their counsel will prosecute the action
vigorously on 2 behalf of the class, which includes a showing that class counsel is competent and
qualified. 3 *Hanlon v. Chrysler Corp.*, 150 F. 3d 1011, 1020 (9th Cir. 1998), overruled on other
grounds by 4 *Wal-Mart*, 564 U.S. at 338, 131 S.Ct. 2541. 5 State Farm argues that the plaintiffs are
not adequate class representatives because of their 6 “inexplicable waiver of their own claim for
RC benefits, which far outweighs any damages they 7 could recover under the theory alleged in
this action.” *Oppo.* 3, 34. State Farm cites no authority 8 why this would make them inadequate
class representatives. 9 Its argument that the waiver “suggests a conflict with the class” also comes
up short. State 10 Farm contends that I should find Pitkin and Grout inadequate because they are
choosing to 11 abandon significant damages in an attempt to achieve class certification, which the
Ninth Circuit 12 looked poorly on in *Drimmer v. WD-40 Co.*, 343 F. App’x 219, 221 (9th Cir.
2009) (affirming 13 district court’s inadequacy finding based on, among other things, the named
plaintiff’s 14 “inexplicable disinterest in pursuing all remedies available to him”). But here, as
plaintiffs point 15 out, under their insurance policies they were entitled to accept ACV payments
(as they did) rather 16 than replacement costs. Their choice to do so does not render them
inadequate or in conflict with 17 other potential class members.

18 III. RULE 23(B) REQUIREMENTS

19 A plaintiff seeking certification of a class must also meet the requirements of Rule 23(b). 20
Under Rule 23(b)(3), a class action may move forward if (1) “questions of law and fact” that are
21 common to the class predominate over those affecting only individual class members 22
 (“predominance”), and (2) a class action is “superior” to other available methods (“superiority”).
23 The plaintiff seeking to certify the putative class bears the burden of demonstrating that the 24
proposed class meets these requirements. See *Doninger v. Pac. Nw. Bell*, 564 F.2d 1304, 1309 25
(9th Cir. 1977). Again, plaintiffs meet these requirements. 26 A. Predominance 27 Under Rule
23(b)(3), the plaintiff must show that “questions of law or fact common to 1 P. 23(b)(3). An
“individual question is one where members of a proposed class will need to 2 present evidence
that varies from member to member, while a common question is one where the 3 same evidence
will suffice for each member to make a prima facie showing or the issue is 4 susceptible to
generalized, class-wide proof.” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 5 454, 136 S.Ct.
1036, 1045 (2016) (internal quotation marks omitted). State Farm argues that 6 individual issues
necessary to resolving each proposed class member’s claims will predominate 7 over individual
ones. I disagree. 8 The plaintiffs’ claims revolve around what they allege is State Farm’s failure to
pay the 9 amount it owes under its contracts to the insured because of its unlawful practice of

depreciating 10 the value of the sales tax in calculating ACV. These questions pertain to every class member and 11 can be resolved through the interpretation of one statute, Cal. Ins. Code § 2051. This was true in 12 Johnson and it is true here. 13 State Farm insists that the plaintiffs wrongly “focus on a single issue” in their Motion, 14 whether State Farm’s ACV methodology comports with section 2051, while “ignor[ing] that 15 resolution of that issue does not determine liability on any claim, because there is no private right 16 of action for violation of Section 2051.” Oppo. 20-21. It contends that since there is no private 17 action for violation of section 2051, the plaintiffs must still establish that the elements of breach of 18 contract are resolvable on a classwide basis, something it insists is impossible. See Oppo. 20 19 (discussing Ninth Circuit caselaw that provides there is no private right of action for violation of 20 section 2051(b)). State Farm relies on the Ninth Circuit’s decisions in *Small v. Allianz Life Ins. 21 Co.*, 122 F.4th 1182 (2024) and *Lara v. First Nat’l Ins. Co.*, 25 F.4th 1134 (9th Cir. 2022) for this 22 conclusion; it says those cases foreclose my conclusion in Johnson that a class much like the one 23 the plaintiffs propose today could proceed. Again, I disagree. 24 1. The nature of the plaintiffs’ claims 25 As a preliminary matter, the plaintiffs are not seeking to certify a class under a private right 26 of action arising out of section 2051—they are seeking to certify a class that asserts claims for 27 breach of contract, breach of the implied covenant of good faith and fair dealing, a UCL violation, 1 those four claims can be resolved commonly to the class, or whether individual questions on the 2 merits of each of those four claims will predominate. 3 Putting aside for now that I disagree with State Farm’s conclusion that individual questions 4 as to the putative class members’ breach of contract claims will predominate over common ones, 5 State Farm entirely ignores the plaintiffs’ other three claims. Even if causation issues did make it 6 such that each class member’s breach of contract claim had to be assessed on a claim-by-claim 7 basis to ascertain whether State Farm’s challenged ACV calculation practice caused their 8 damages, the same would not necessarily be true for the plaintiffs’ UCL claim, breach of implied 9 covenant claim, or plea for declaratory relief. As the plaintiffs point out in Reply, the common 10 question of whether section 2051 prohibits the depreciation of sales tax “flows through and is at 11 the heart of each of the four causes of action asserted,” and “applies to both the Plaintiffs and the 12 proposed Class Members identically.” Reply 3-4. At the hearing, State Farm claimed that it 13 focused exclusively on the plaintiffs’ breach of contract claim because it is the only claim for 14 which the plaintiffs seek class certification. But as is evident from the Motion, that is not true. 15 See Class Cert. Mot. 8 (stating that “Plaintiffs seek class certification on each claim set forth in the 16 [SAC]”). 17 2. Common issues predominate 18 The Ninth Circuit’s recent decisions in *Lara* and *Small* do not contradict my analysis in 19 Johnson, where I explained that even for plaintiffs whose property was repaired, damages 20 attributable to the unlawful depreciation of sales tax were still calculable on a classwide basis. 21 Plaintiff Johnson, who also lost his insured property in a fire, alleged, as plaintiffs do here, that the 22 defendant insurance company, Hartford, was underpaying him and the class by depreciating the 23 value of the sales tax when calculating ACV; in its policy payouts

to class members following 24 claims, Hartford was reimbursing the amount of sales tax as applied to the estimated cost of lost, 25 depreciated items rather than the amount of sales tax as applied to the estimated cost of 26 replacement with new items. Johnson, 2017 WL 2224828, at *2-3. Johnson alleged, as plaintiffs 27 do here today, that this violated section 2051(b). Hartford argued that “because proving breach of 1 argument, concluding that since “[t]he measure of damages is not the difference between the 2 amount of money spent on repairs and what was paid out, but rather the difference between what 3 Hartford paid out and what it should have paid out if not for its purportedly unlawful practice of 4 depreciation[,]” different payouts to different class members did not defeat predominance. The 5 same is true here. 6 State Farm says Small and Lara require a different result than in Johnson. Small was a 7 different case, and Lara’s holding is not inconsistent with Johnson, as explained in *Jama v. State 8 Farm Mut. Auto. Ins. Co.*, 113 F.4th 924 (9th Cir. 2024), and does not disfavor certification here. 9 In *Small v. Allianz Life Ins. Co.*, a purported beneficiary and insured of Allianz brought a 10 putative class action against the life insurance company, claiming breach of contract and violations 11 of California’s Unfair Competition Law on allegations that the company had failed to comply with 12 statutory notice requirements under California Insurance Code before terminating the plaintiff and 13 other class members’ life insurance policies for nonpayment of premiums. 122 F.4th 1182 (9th 14 Cir. 2024). At class certification, plaintiffs had contended that they only needed to show that 15 Allianz violated the statutory notice provisions identified in the complaint, not that those 16 violations were the cause of the plaintiffs’ injuries. Allianz disagreed, pointing out that it was not 17 unusual for insured parties to voluntarily terminate life insurance policies by ceasing to pay their 18 premiums. In some cases, then, policies lapsed, but the lapses were not caused by a lack of notice, 19 (which was the target of the plaintiffs’ claims), but rather by the intent of the insured party not to 20 pay the premium. The district court certified two subclasses, and Allianz took interlocutory 21 appeal. The Ninth Circuit reversed in part, vacated in part, and remanded. 22 The Ninth Circuit considered whether a plaintiff alleging a violation of Cal. Ins. Code 23 sections 10113.71 and 10113.72 “need only show the insurance company violated the notice 24 requirement(s), or, whether the plaintiff must also show that the violation caused them harm.” 25 Small, at 1187-1188. The court found the latter to be correct. It determined that the plaintiffs had 26 to show causation for the class given that the California Insurance Code lacked a private cause of 27 action, and “nothing in California law convinces us that a breach of contract claim in this context 1 caused the plaintiff’s injury.” It held that “because Plaintiffs must not only establish a violation 2 but that the violation caused them harm, common questions do not predominate because causation 3 cannot be determined on a class-wide basis.” Small, at 1197-1198. 4 This case is different. State Farm concedes that it calculates ACV in the manner that the 5 plaintiffs allege is unlawful for each personal property policy at issue in the proposed class. In 6 other words, it concedes that as a matter of practice in California, it engages in the conduct that 7 plaintiffs identify as a breach of their insurance contracts. Unlike in Small, there is no regular or 8 even

sporadic decision by insureds to voluntarily terminate their coverage by not paying a 9 premium, such that the defendant's conduct—lawful or otherwise—becomes disconnected from 10 the putative class members' injuries. 11 State Farm tries to compare itself to Allianz, arguing that it "could have adjusted the report 12 value, or settled the claim for more than the report, or the claimant could make a[] [Replacement 13 Cost] claim." Oppo. 21. Alternatively, it argues, it "may have requested an XactContents[] report, 14 but already paid an insured more than the ACV calculation in that report," meaning that even if 15 members of the class were subject to State Farm's challenged ACV calculation methodology, 16 some members were not injured by its employment. *Id.* In so arguing, State Farm is ignoring the 17 crux of the plaintiffs' claims. The plaintiffs are challenging an ACV calculation policy used to 18 calculate the putative class members' benefits that State Farm admits it employs uniformly. If, as 19 the plaintiffs contend, the depreciation of sales tax is prohibited by section 2051, then the plaintiffs 20 and the putative Class Members are entitled to relief under all four pending causes of action 21 awarding damages for the improper reduction of ACV benefits, and to declaratory relief enjoining 22 State Farm from continuing to calculate ACV in a manner that violates section 2051 going 23 forward. Unlike in *Small*, where the insurer's challenged practice was not uniform to the class 24 because some putative class members voluntarily terminated their coverage by ceasing to pay their 25 premiums, creating causation problem, here, State Farm admits that its challenged practice is 26 uniform to the class; it always reduces their ACV benefits from what they might otherwise be, 27 regardless of whether those ACV benefits are later, varyingly increased or decreased by other 1 In its discussion of *Small*, State Farm flags potential problems that will arise as it tries to 2 prove its affirmative defenses (i.e. that policy sublimits and special limits sometimes apply and 3 change an insured's ACV calculation). Those are not the plaintiffs' concern at class certification. 4 To certify a class based on plaintiffs' breach of contract claim (upon which the parties focus),¹⁶ the 5 plaintiffs must meet their burden of showing potential breach of contract and damages arising out 6 of that breach. They have done so. They are not required to address affirmative defenses now. 7 *Lara v. First Nat'l Ins. Co.*, 25 F.4th 1134 (9th Cir. 2022), is more applicable to this case 8 than *Small*, but it does not disfavor certification of the proposed class as State Farm argues it does. 9 In *Lara*, the district court declined to certify a proposed damages class in an auto insurance suit 10 because (1) individual questions predominated over common ones and (2) individualized trials 11 were superior to a class action. See *Lara*, 25 F.4th 1134. The Ninth Circuit affirmed both 12 holdings. 13 The case concerned how auto insurance companies valued totaled vehicles. When a car is 14 declared "totaled," insurance companies endeavor to value the car as it was before the accident. 15 The defendant in *Lara*, Liberty, used a vendor that provided a listing of comparable vehicles from 16 used car dealerships, and then raised or lowered the value based on the condition of the subject 17 car. Because the average used car at a dealership is generally in better condition than the average 18 car on the street, Liberty's vendor adjusted the value downward before sending its reports to 19 Liberty. Upon receiving the reports, Liberty would make corresponding

adjustments to the 20 vehicles' values during negotiations with the insured. Plaintiff insureds filed a putative class 21 action, claiming that Liberty violated a Washington state statute that required the insurer to 22 itemize deductions or additions made to the vehicle's value and ensure that the adjustments were 23 appropriate. *Lara*, at 1137. 24 Because the state statute at issue in *Lara* did not create a private right of action (as is also 25 true for section 2051(b)), the plaintiffs could not sue for its breach directly, so they sued for breach 26 of contract and unfair trade practices. *Id.* The district court found that while the named plaintiffs 27 1 were typical, individualized issues predominated and class treatment was not superior. *Id.* This is 2 because each vehicle valuation was usually, but not always, based on the vendor's report. The 3 insurer could make other adjustments independent from the vendor's report, including making a 4 higher offer based on "goodwill," or choose to disregard it entirely. *Id.* at 1138. The district court 5 explained that this variation across the class in what might have led to the change in value during 6 negotiations defeated predominance and would necessitate dozens of mini trials. In affirming, the 7 Ninth Circuit explained: "[In *Lara*] figuring out whether each individual putative class member 8 was harmed would involve an inquiry specific to that person. More particularly, it would involve 9 looking into the actual pre-accident value of the car and then comparing that with what each 10 person was offered, to see if the offer was less than the actual value. Because this would be an 11 involved inquiry for each person, common questions do not predominate." *Lara*, 25 F.4th at 1139. 12 Here, unlike *Lara*, State Farm's admitted practice is to calculate ACV by reducing sales 13 tax through depreciation; the plaintiffs argue that this practice is prohibited by section 2051(b), 14 and results in every class member having the ACV of their personal property improperly reduced 15 in calculating their benefits. As the plaintiffs put it in their Reply, unlike in *Lara*, here "[t]he 16 existence of damage is not at issue, just the amount." Reply 15. And the amount, as discussed, can 17 feasibly be calculated classwide. See discussion *supra* Section I. 18 The Ninth Circuit in *Jama* clarified how *Lara* should be applied. In *Jama*, plaintiffs— 19 insured parties who lived in Washington state—sought certification of two subclasses of insureds 20 who had "totaled" their vehicles. Under the State of Washington's insurance regulations, an 21 insurer owed an insured the "actual cash value" of a totaled car. *Jama*, 113 F.4th at 927 (citing 22 Wash. Admin. Code § 284-30-391). The district court initially certified both subclasses, the 23 "condition" class and the "negotiation" class. The "negotiation subclass" alleged that State Farm 24 improperly compensated them following the crashes that totaled their vehicles by applying a 25 "negotiation discount" when calculating their vehicles' ACV. The plaintiffs alleged that this 26 practice was not permitted under Washington law. After the district court certified the subclasses, 27 the Ninth Circuit decided *Lara*, and the district court, at State Farm's request, decertified both 1 On appeal, the Ninth Circuit reversed decertification of the *Jama* "negotiation" subclass, 2 and upheld decertification of the "condition" subclass. The court explained the distinctions 3 between the putative *Jama* negotiation subclass (which was certifiable), the *Lara* subclass (which 4 was not), and the putative *Jama* "condition" subclass (which was also not) as follows: As to [the negotiation]

class, [the plaintiffs'] theory is not that State Farm failed to follow the correct procedure for making permissible adjustments [as the plaintiffs in *Lara* alleged defendant Liberty did], but rather that Washington law does not permit State Farm to apply a discount for typical negotiation at all. . . . Accordingly, Plaintiffs' challenge to the negotiation class here is materially distinguishable from the challenge in *Lara*: A class member in *Lara* might have been subject to the challenged condition deduction but been uninjured by it because a greater or equal condition addition could also have been lawfully applied. This would lead a class member to receive the actual cash value of their vehicle or more. All members of the negotiation class in this case, however, received less than they were owed in the exact amount of the impermissible negotiation deduction. As to the proposed negotiation class in this case, we therefore conclude that class members could measure their injuries on a class-wide basis by adding back to the value of their vehicles as calculated in the Autosource reports the amount of the unlawful negotiation discount. *Jama*, 113 F.4th at 934 (emphasis added). Plaintiffs' theory of liability here is more akin to that of the *Jama* negotiation subclass than that of the rejected *Lara* class, or the decertified *Jama* condition subclass. The plaintiffs' theory is not that State Farm failed to follow the correct procedure when fulfilling their claims, but rather that California law does not permit State Farm to depreciate sales tax when calculating ACV, meaning that every time State Farm depreciated sales tax in calculating ACV—which happened to every putative class member—the calculation yielded a too-low ACV, which was used to fulfill their claim. So even if some of the Class Members ultimately are shown to have received a payout that is more than the calculated ACV of their personal property because of the application of a policy sublimit or special limit (something State Farm asserts as an affirmative defense, and is welcome to develop), they still all received less than they otherwise would have had State Farm not depreciated sales tax in the calculation and, through that depreciation, lowered ACV. Putative class members in this case can measure their injuries on a classwide basis by adding back to the ACV of their personal property as calculated by State Farm the amount of the putatively unlawful depreciated sales tax. Regardless of whether State Farm applies sublimits or special limits or other modifications to putative class members' claims, there is no modification that could accurately price the ACV of their property if plaintiffs are correct that including depreciated sales tax in the calculation of ACV is always unlawful. See *Jama*, at 934 (distinguishing the negotiation subclass from the rejected condition class in *Lara*, observing that in *Lara*, "an un-itemized condition adjustment could nevertheless have accurately reflected the condition of the car for some class members," but in the case of the *Jama* negotiation subclass, "there is no negotiation adjustment that could accurately price the negotiation discount . . . if Plaintiffs are correct that the adjustment is always unlawful, regardless of the amount."). The measure of damages, as the plaintiffs' experts explain, is the deduction to the value of their personal property arising from that depreciation of sales tax. This is measurable on a classwide basis, as I discussed above. See discussion *supra*, Section I. B. Superiority To proceed with a class

action under Rule 23(b)(3), a plaintiff must also show that a class action is a “superior” means of adjudicating the claims. Fed. R. Civ. P. 23(b)(3). In making this determination, a court may take into consideration: (1) “class members’ interests in individually controlling the prosecution or defense of separate actions,” (2) “the extent and nature of any litigation” regarding the “same controversy”; (3) the “desirability or undesirability” of litigating all claims in the same forum; and (4) the “likely difficulties in managing a class action.” Fed. R. Civ. P. 23(b)(3)(A)-(D). I find that these factors favor certification. The first factor, which considers the class members’ interest in pursuing individual actions, weighs in favor of certification. “Where damages suffered by each putative class member are not large, this factor weighs in favor of certifying a class action.” *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1190 (9th Cir. 2001). In *Zinser*, plaintiffs sought to certify a class alleging minimum damages of \$50,000 per class member. The court denied certification because, while “a party with a claim of \$50,000 might have a difficult time alone pursuing a complex products liability case,” the fact that \$50,000 was the minimum amount alleged did not support certification.

Id. at 1191. Here, as the plaintiffs point out, the damages at issue here are relatively small per class member. The other factors also support the superiority of a class action in this case. While a similar class was certified and a similar issue was litigated in this court in 2017, I know of no other similar action now proceeding in the Northern District or in the Ninth Circuit. There is a significant benefit to litigating all claims pertaining to the legality of State Farm’s California-wide practice of depreciating sales tax when calculating ACV in one forum. If the putative class members were to pursue their claims in different courts around the state, or around the Ninth Circuit, courts could reach piecemeal and inconsistent rulings on what is otherwise a straightforward legal question. And this case presents no known difficulties in managing it as a class action; the records pertaining to class membership, breach, and damages are available in State Farm’s records, see discussion *supra*, Section I, and the questions of whether State Farm is liable for UCL violations, or the class is entitled to declaratory relief are well-suited to class treatment.

IV. CLASS PERIOD

State Farm mentions in its opposition that the class definition is impermissibly broad in time. *Oppo*. The plaintiffs filed this lawsuit in 2023; they allege causes of action that have, at most, a four-year statute of limitations. *Id.* (citing Cal. Code Civ. Proc. § 337(a) (breach of contract); *Love v. Fire Ins. Exch.*, 221 Cal. App. 3d 1136, 1144 n.4 (Ct. App. 1990) (bad faith); Cal. Bus. & Prof. Code § 17208 (UCL); *North Star Reins. Corp. v. Sup. Ct.*, 10 Cal. App. 4th 1915, 1822 (1992) (declaratory relief). At oral argument, the plaintiffs agreed that the class definition should be modified such that the starting date is March 1, 2019, through the present.

CONCLUSION

For the foregoing reasons, Pitkin’s motion for class certification is GRANTED. The following class is certified: All persons who, between March 1, 2019, and the present, were or are

a named insured 24 under a property insurance policy issued in California by Defendant, who suffered a 25 covered loss to real or personal property for which they received payment of actual cash 26 17 The resolution of the Ramyeard appeal in State Farm's favor does not weigh against class 27 certification because the state appellate court, in upholding summary judgment in State Farm's 1 value (ACV) benefits that were reduced due to depreciation of sales tax, and who were paid or are reasonably certain to be paid benefits in an amount that is less than the 2 applicable policy limits. 3 The motion to strike portions of plaintiff's reply and new expert reports is denied as moot. 4 IT IS SO ORDERED. 5 Dated: July 15, 2025 6 ® 4 William H. Orrick 8 United States District Judge 9 10 11 12 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28