

The Honorable BENJAMIN H. SETTLE

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DANIEL KOGAN and CHRISTOPHER
HEWITT, individually and as the
representative of all persons similarly situated,

Plaintiffs,

vs.

ALLSTATE FIRE AND CASUALTY
INSURANCE CO,

Defendant.

NO. 3:15-cv-05559-BHS

ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT & DIRECTING ISSUANCE
OF NOTICE

Plaintiffs, DANIEL KOGAN and CHRISTOPHER HEWITT, on behalf of themselves
and the proposed Settlement Class, and Defendants and Settling Parties, ALLSTATE FIRE &
CASUALTY INSURANCE COMPANY, ALLSTATE INSURANCE COMPANY, ALLSTATE
INDEMNITY COMPANY, ALLSTATE PROPERTY AND CASUALTY INSURANCE
COMPANY, ENCOMPASS INSURANCE COMPANY OF AMERICA, ENCOMPASS
INDEMNITY COMPANY, ESURANCE INSURANCE COMPANY and ESURANCE
PROPERTY & CASUALTY INSURANCE COMPANY (“Defendants”), all acting by and
through their respective counsel, have agreed, subject to Court approval following sending of the

1 Class Notice to the Settlement Class and a hearing, to settle this Action upon the terms and
2 conditions in the Stipulation of Settlement, (also sometimes referred to as the “Agreement”),
3 filed with the Court on November 30th, 2020; and
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5 The Parties have made an application pursuant to Fed. R. Civ. P. 23 for preliminary
6 approval of the Settlement of this Action, as set forth in the Agreement; and

7 The Court has read and considered the Agreement and the exhibits thereto and has read
8 and considered all other papers filed and proceedings had herein, and is otherwise fully
9 informed, and with good cause appearing,
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11 **IT IS HEREBY ORDERED:**

12 1. This Preliminary Approval Order incorporates by reference the definitions in the
13 Agreement.

14 2. The Court has jurisdiction over the subject matter of this Action and over all
15 Parties to this Action, including the Named Plaintiffs, all Settlement Class Members and
16 Defendants.
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18 3. The Court finds that, for settlement purposes only, the requirements for Rule 23
19 Conditional Settlement Certification have been met, and certifies the following Settlement Class,
20 for settlement purposes only, defined as follows:

21 All insureds of Defendants with Washington policies issued in Washington State
22 between July 6, 2009 and the date of preliminary approval of this Settlement for
23 insureds of ALLSTATE FIRE & CASUALTY INSURANCE COMPANY,
24 between January 11, 2019 and the date of preliminary approval of this Settlement
25 for insureds of ALLSTATE INSURANCE COMPANY, between March 10, 2017
26 and the date of preliminary approval of this Settlement for insureds of
27 ENCOMPASS INSURANCE COMPANY OF AMERICA and ENCOMPASS
28 INDEMNITY COMPANY, and between November 25, 2014 and the date of
preliminary approval of this Settlement for insureds of ALLSTATE
INDEMNITY COMPANY, ALLSTATE PROPERTY AND CASUALTY
INSURANCE COMPANY, ESURANCE INSURANCE COMPANY and
ESURANCE PROPERTY & CASUALTY INSURANCE COMPANY, where the

insured's vehicle damages were covered under the policy's underinsured/uninsured motorist ("UMPD ") coverage and,

- 1. The repair estimates on the vehicle (including any supplements) totaled at least \$1,000; and
- 2. The vehicle was no more than six years old (model year plus five years) and had less than 90,000 miles on it at the time of the accident; and
- 3. The vehicle suffered structural (frame) damage and/or deformed sheet metal and/or required body or paint work.

Excluded from the Class are (a) claims involving leased vehicles or total losses, (b) the assigned judge, the judge's staff and family.

4. For purposes of determining whether the terms of the Proposed Settlement should be finally approved as fair, reasonable and adequate, and contingent upon the Settlement being finally approved, Named Plaintiffs Daniel Kogan and Christopher Hewitt are appointed as Class Representatives, and the following counsel are designated as counsel for the Class ("Class Counsel"):

Scott P. Nealey
Law Office of Scott P. Nealey
71 Stevenson Street, Suite 400
San Francisco, California 94105

Stephen M. Hansen
Law Offices of Stephen M. Hansen, P.S.
1821 Dock Street, Suite 103
Tacoma, WA 98402

5. If final approval of the Proposed Settlement is not obtained, or if Final Judgment as contemplated herein is not granted, this Order shall be vacated *ab initio* and the Parties shall be restored without prejudice to their respective litigation positions prior to the date of this Order of Preliminary Approval.

1 6. Pending final determination of whether the Proposed Settlement should be
2 approved, all proceedings in the Action shall be stayed until further order of the Court, except
3 such proceedings as may be necessary either to implement the Proposed Settlement or to comply
4 with or effectuate the terms of the Stipulation of Settlement.
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6 7. Within one hundred fifty (150) days after the entry of this Order, the Claims
7 Administrator shall send a copy of the Individual Notice and a Claim Form (or Claim Forms if a
8 Class Member has multiple claims), pre-printed with the Class Member's name and most recent
9 address, the date of the loss, and the vehicle make, model, and year, by first-class mail, to each
10 Person on the Settlement Class List. Prior to any mailing the Claims Administrator shall update
11 all addresses on the Settlement Class List by running the addresses thereon through the National
12 Change of Address Data Base and True Trace. In furtherance of this Paragraph, the Court
13 appoints Epiq Systems, Inc., as the Claims Administrator for this matter.
14

15 8. The Court preliminarily finds that the dissemination of the Individual Notice and
16 Claim Form under the terms and in the format provided for in this Order and the Stipulation of
17 Settlement constitutes the best notice practicable under the circumstances, and is due and
18 sufficient notice for all purposes to all persons entitled to such notice, and fully satisfies the
19 requirements of due process, the Federal Rules of Civil Procedure and all other applicable laws.
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21 9. A hearing (the "Final Settlement Hearing") shall be held on June 28, 2021 at
22 11:00 o'clock a.m., Courtroom E, as set forth in the Individual Notice, to determine whether the
23 Proposed Settlement of this Action (including the payment of attorneys' fees and costs to Class
24 Counsel) should be approved as fair, reasonable, and adequate, and to determine whether final
25 judgment approving the Proposed Settlement and dismissing all claims asserted in this Action on
26 the merits, with prejudice and without leave to amend, should be entered. The Settlement
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Hearing may be postponed, adjourned or rescheduled by order of the Court without further notice to the Class Members.

10. Objections to the Settlement shall be heard, and any papers or briefs submitted in support of said objections shall be considered, by the Court (unless the Court in its discretion shall otherwise direct) only if they comply with the objection procedures set forth in the Stipulation of Settlement and Notice. Specifically, members of the Class who have not previously opted out of the Class must file a notice of intent to object to the Settlement. To be effective, a notice of intent to object to the Settlement must: (1) contain a heading that includes the name of the case and case number; (2) provide the name, address, telephone number and signature of the Class Member filing the objection; (3) be filed with the Clerk of the Court not later than thirty (30) days before the Final Settlement Hearing; (4) be served on Class Counsel and counsel for the Defendants at the addresses below by first-class mail, postmarked no later than thirty (30) days before the Final Settlement Hearing; (5) contain the name, address, bar number and telephone number of the objecting Class Member's counsel, if represented by an attorney. Class Members represented by an attorney must comply with all applicable laws and rules for filing pleadings and documents in the Court; and state whether they intend to appear at the Final Settlement Hearing, either in person or through counsel, and serve the foregoing on the following counsel.

<p>Class Counsel:</p> <p>Mr. Stephen M. Hansen 1821 Dock Street #103 Tacoma, WA 98402</p>	<p>Counsel for Defendants:</p> <p>Mr. Steven M. Levy Dentons US LLP 233 South Wacker Drive Suite 5900 Chicago, IL 60606-6361</p>
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1 11. In addition to the foregoing, a notice of intent to object must contain the following
2 information, if the Class Member or his/her attorney requests permission to speak at the Final
3 Settlement Hearing: (1) a detailed statement of the specific legal and factual basis for each and
4 every objection; and (2) a detailed description of any and all evidence the Objector may offer at
5 the Final Settlement Hearing, including photocopies of any and all exhibits which may be
6 introduced at the Final Settlement Hearing. Any individual or entity who objects must submit
7 themselves or itself to discovery pursuant to the Stipulation of Settlement, under the timelines
8 specified therein.
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10 12. Settlement Class Members who wish to exclude themselves from the Settlement
11 Class must prepare a written request for exclusion, postmarked no later than thirty (30) days
12 before the Final Settlement Hearing, which shall be sent to the Claims Administrator. Written
13 requests for exclusion must be signed and include the individual's name, address, and telephone
14 number, and expressly state the desire to be excluded from the Settlement Class. Requests for
15 exclusion must be exercised individually by the Class Member, not as or on behalf of a group,
16 class, or subclass, except that such exclusion requests may be submitted by a Class Member's
17 Legally Authorized Representative.
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19 13. All Class Members who do not opt out of the Class shall be bound by any
20 Approval Order and Final Judgment entered pursuant to the Stipulation of Settlement, and shall
21 be barred and enjoined, now and in the future, from asserting any and all of the Released Claims,
22 as defined in the Stipulation of Settlement, against the Released Persons, as defined in the
23 Stipulation of Settlement, and any such Class Member shall be conclusively deemed to have
24 released any and all such Released Claims.
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1 14. Class Counsel agree that any representation, encouragement, solicitation or other
2 assistance, including but not limited to referral to other counsel, of or to any Opt Outs or any
3 other person seeking to litigate with Defendants over any of the claims covered under the
4 Release in this matter could place Class Counsel in an untenable conflict of interest with the
5 Class. Accordingly, Class Counsel and their respective firms agree (only to the extent that it is
6 otherwise not violative of any applicable rules governing the practice of law) not to represent,
7 encourage, solicit or otherwise assist, in any way whatsoever (including, but not limited to
8 referrals to other counsel) any Opt Out except that referring such person to the Notice or
9 suggesting to any such person the option of obtaining separate counsel, without specifically
10 identifying options for such counsel, shall be permitted under the terms of this provision.
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12 Additionally, Class Counsel and their respective firms agree (only to the extent that it is
13 otherwise not violative of any applicable professional rules) not to represent, encourage, solicit
14 or otherwise assist, in any way whatsoever, any Opt Out or any other person who seeks to
15 represent any form of opt-out class, or any other person, in any subsequent litigation that person
16 may enter into with any of the Released Persons regarding the Released Claims or any related
17 claims, except that suggesting to any such person the option of obtaining separate counsel,
18 without specifically identifying options for such counsel, shall be permitted.
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21 15. The Settlement fits within the parameters necessary for potential final approval,
22 and is therefore hereby preliminarily approved, but is not to be deemed an admission of liability
23 or fault by Defendants or by any other person, or a finding of the validity of any claims asserted
24 in the Action or of any wrongdoing or of any violation of law by Defendants. The Settlement is
25 not a concession and shall not be used as an admission of any fault or omission by Defendants or
26 any other person or entity. Neither the terms or provisions of the Stipulation of Settlement, nor
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1 any related document, nor any of the negotiations or proceedings connected with it, shall be
2 offered as evidence or received in evidence in any pending or future civil, criminal, or
3 administrative action nor proceeding, to establish any liability or admission by Defendants
4 except in any proceedings brought to enforce the Stipulation of Settlement, except that the
5 Released Persons may file this Order in any action that may be brought against any of them in
6 order to support a defense or counterclaim based on principles of res judicata, collateral estoppel,
7 release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion
8 or issue preclusion, or similar defense or counterclaim.
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11 16. Upon motion of any party, the Court may, for good cause, extend any of the
12 deadlines set forth in this Order without further notice to the Class.

13 17. Pending final determination as to whether the Proposed Settlement should be
14 finally approved, no Class Member shall commence, prosecute, pursue, or litigate any Released
15 Claims against any Released Person, whether directly, representatively, or in any capacity, and
16 regardless of whether any such Class Member has appeared in the Action.
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18 Based upon the above, IT IS SO ORDERED.

19 DONE IN OPEN COURT this 4th day of December, 2020.
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23 _____
24 BENJAMIN H. SETTLE

25 United States District Judge
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