

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN GABRIEL, RUTH BJORKLUND, and
LAUREN GUSTAFSON-OMER each on his
and her own behalf and on behalf of similarly
situated persons,

Plaintiffs,

v.

NATIONWIDE LIFE INSURANCE
COMPANY, an Ohio corporation,

Defendant.

Case No. C09-0508-JCC

ORDER

This matter comes before the Court on Plaintiff's Motion for Settlement Class Certification (Dkt. No.23), and the Parties' Joint Motion to Preliminarily Approve Settlement Agreement, Approve Settlement Class, Authorize Notice of Settlement to Class Members and Establish a Final Settlement Approval Hearing and Process (Dkt. No. 25) (hereinafter "Joint Motion). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS both motion for the reasons explained herein.

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1 **I. BACKGROUND**

2 This putative class action concerns Nationwide Life Insurance Company
3 (“Nationwide”)’s uncontested failure to follow Washington insurance law when it unwittingly
4 sold a medical insurance plan to approximately 1,037 residents of this state. The facts are not
5 materially in dispute. Nationwide offered a fixed-indemnity insurance plan to employers in
6 various states, including twenty-two employers outside the state of Washington that, unknown
7 to Nationwide, employed Washington residents. Nationwide failed to file the medical plan with
8 the Office of the Insurance Commissioner (“OIC”), violating WASH. REV. CODE 48.18.100.
9 Additionally, until July 22, 2007, fixed-indemnity policies were illegal when sold as stand-
10 alone policies in this state, and are still subject to strict regulation by the OIC. *See former*
11 *WASH. REV. CODE 48.43.005(19)(i) (2006); WASH. REV. CODE 48.43.005(19)(d), (i);*
12 *48.21.370; WASH. ADMIN. CODE 284-50-440, 284-96-550.* Finally, the medical plan that
13 Nationwide sold conflicted with Washington law: among other violations, it did not provide
14 certain benefits mandated for such plans in this state, expressed limitations that are not lawful
15 here, and failed to include appropriate disclaimers. (*See* OIC Order (Dkt. No. 27-2 at 4–6
16 (listing these and other substantive violations of Washington law).) Nationwide acknowledges
17 its “technical” statutory violations, but has contested damages, and denied that any Washington
18 resident was harmed. (Joint Motion 6 (Dkt. No. 25) *see also* OIC Order (Dkt. No. 27-2 at 4)
19 (finding that no claims submitted by a covered employee were improperly denied).)

20 The parties have engaged in extensive discovery and advocacy, including bringing
21 this matter to the Office of the Insurance Commissioner. (Joint Motion 13–14 (Dkt. No. 25).)
22 The parties participated in mediation on November 23, 2009. (*Id.* at 14.) Both parties now wish
23 to settle this matter pursuant to Federal Rule of Civil Procedure 23(e). The Court has not yet
24 issued an order certifying the class; Nationwide agreed, as part of the Settlement Agreement,
25 not to oppose certification of a settlement class. *See* FED. R. CIV. P. 23(c)(1); (*see also*
26 Settlement Agreement ¶ 3(b) (Dkt. No. 25-2 at 6).)

1 **II. DISCUSSION**

2 When the parties to a putative class action reach a settlement agreement prior to class
3 certification, courts engage in a two-step process. First, the Court must assess whether a class
4 exists. “Such attention is of vital importance, for a court asked to certify a settlement class will
5 lack the opportunity, present when a case is litigated, to adjust the class, informed by the
6 proceedings as they unfold.” *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). When,
7 as here, the parties have entered into a settlement agreement before the district court certifies
8 the class, reviewing courts “must pay ‘undiluted, even heightened, attention’ to class
9 certification requirements . . .” *Id.* at 1019 (quoting *Amchem*, 521 U.S. at 620); *see also Staton*
10 *v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003).

11 Second, the district court must consider whether the proposed settlement is within the
12 acceptable bounds of being “fundamentally fair, adequate, and reasonable,” such that notice to
13 the class and the final scheduling of the formal fairness hearing is appropriate. *See Hanlon v.*
14 *Chrysler Corp.* 150 F.3d 1011, 1026 (9th Cir.1998) (citations omitted). Rule 23(e)(2) requires
15 a hearing on the fairness, reasonableness, and adequacy of the settlement, at which objectors
16 may be heard.

17 **A. Class Certification**

18 The parties have agreed to the certification of a class defined as:

19
20 All individuals who were covered by Nationwide Life Insurance Company
21 under a fixed-indemnity policy between April 16, 2003 and November 23,
22 2009, and who were Washington residents at the time in which they enrolled or
23 re-enrolled in the Nationwide policy.

24 The parties estimate that this class will contain around 1,037 Washington residents,
25 based on a spreadsheet that Nationwide produced. The spreadsheet contains the addresses of
26 the proposed settlement class; the members are dispersed across the state. (Hamburger Decl. ¶¶
4 (Dkt. No. 24 at 2).) Nationwide also produced all of the written claims submitted to

1 Nationwide by, or on behalf of, class members during the class period; the claims indicate that
2 most of the class members have relatively small claims for damages, usually amounting to a
3 return on their premiums or minimal medical expenses. (*Id.* ¶ 5, 6.)

4 The named plaintiffs, John Gabriel, Ruth Bjorklund, and Lauren Gustafson-Omer, were
5 covered under the Nationwide fixed-indemnity medical plan. In the Complaint, the parties
6 allege that Gabriel and Gustafson-Omer purchased the Nationwide policy at issue for
7 themselves, and Bjorklund purchased it for herself and her family.¹ (Compl. ¶ 1–3 (Dkt. No. 1
8 at 1–2).) Bjorklund and Gustafson-Omer incurred medical charges that they allege would have
9 been covered if they had had a medical plan that complied with Washington law, as opposed to
10 the fixed-indemnity plan that only paid a small flat sum toward their expenses. (*Id.* ¶ 29–38
11 (Dkt. No. 1 at 6–7).)

12 In the settlement agreement papers, Plaintiffs seek only equitable remedies. They
13 propose a class settlement that would allow the members to choose either rescission or
14 reformation. If the class member elects rescission, she would be refunded for the premiums
15 paid. If she chooses reformation, she must make a claim for medical expenses; Nationwide will
16 then pay the difference between what they paid and what would have been covered by a lawful
17 Basic Health Plan, less a \$1,500 deductible. (Settlement Agreement ¶ 12(d), (e) (Dkt. No. 25-2
18 at 14) (describing the Rescission and Reformation remedies).)

19 Under Rule 23 of the Federal Rules of Civil Procedure, a court may certify a settlement
20 class so long as all of the requirements for class certification under Rule 23(a) and at least one
21 of the requirements of Rule 23(b) are satisfied. See *Amchem*, 521 U.S. at 622; see also *Hanlon*,
22 150 F.3d at 1019. Class actions are maintainable only if the four prerequisites of numerosity,
23 commonality, typicality, and adequacy in Rule 23(a) are met. If so, in a Rule 23(b)(3) action
24

25
26 ¹ The Court understands that “purchased” in this context, based on the facts of this case,
means that Nationwide sold the Plan to the plaintiffs’ employers.

1 such as this one, the court must then consider the questions of law or fact common to class
2 members predominate over any questions affecting only individual members, and that a class
3 action is superior to other available methods for fairly and efficiently adjudicating the
4 controversy. FED. R. CIV. P. 23(b)(3). Settlement is relevant to the determination of class
5 certification. *Amchem*, 521 U.S. at 620.

6 **1. Numerosity**

7 The first requirement for maintaining a class action under Rule 23(a) is that the class is
8 so numerous that joinder of all members would be “impracticable.” Fed. R. Civ. P. 23(a)(1). In
9 addition, “factors such as geographical diversity of class members [and] the ability of
10 individual claimants to institute separate suits . . . should be considered in determining”
11 whether joinder is practicable. *Jordan v. County of Los Angeles*, 669 F.2d 1311, 1319 (9th Cir.
12 1982), *vacated on other grounds*, 459 U.S. 810 (1982). Courts have regularly certified classes
13 with less than one hundred members. *See Jordan*, 669 F.2d at 1319 & n. 10; *see also*
14 *Consolidated Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 482 (2d Cir. 1995) (numerosity is
15 “presumed at a level of 40 members”); *Ikonen v. Hartz Mountain Corp.*, 122 F.R.D. 258, 262
16 (S.D.Cal. 1988) (“classes of 40 or more are numerous enough.”)

17 This putative class contains approximately 1,037 members, who are geographically
18 distributed all over the state of Washington. The putative class members have small claims that
19 they would not be likely to pursue on their own. *Jordan*, 669 F.2d at 1319. The numerosity
20 requirement is easily met here.

21 **2. Commonality**

22 To fulfill the commonality prerequisite of Rule 23(a)(2), Plaintiffs must establish that
23 there are questions of law or fact common to the class as a whole. *See* FED. R. CIV. P. 23(a)(2).
24 The Ninth Circuit has construed Rule 23(a)(2) permissively, and has even described the
25 requirement as “minimal.” *See Hanlon*, 150 F.3d at 1019. The commonality requirement may
26 be satisfied by either (1) the existence of a shared legal issue with divergent facts or (2) a

1 common core of salient facts with disparate legal remedies. *See id.* One shared legal issue is
2 usually enough. *See, e.g., Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001) (commonality
3 is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the
4 putative class members). Commonality “is not defeated by slight differences in class members’
5 positions.” *Blackie v. Barrack*, 524 F.2d 891, 902 (9th Cir. 1975).

6 Here, all of the proposed class members were enrolled in the same Nationwide fixed-
7 indemnity policy, and all of the proposed class members are Washington residents protected by
8 Washington law. None of the legal issues concerning liability differs from member to member.
9 The communality requirement is met.

10 3. Typicality

11 Third, the claims or defenses of the representative parties must be typical of the claims
12 or defenses of the class. FED. R. CIV. P. 23(a)(3). The typicality and commonality requirements
13 are very similar, although they are stated differently. *Armstrong*, 275 F.3d at 868 (citing
14 *General Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 157 n. 13 (1982)). Typicality requires
15 that the claims of the class representatives be typical of those of the class, and is satisfied when
16 each class member’s claim arises from the same course of events, and each class member
17 makes similar legal arguments to prove the defendant’s liability. *Id.* The crux of this
18 requirement, like the typicality requirement, is that “maintenance of a class action is
19 economical and that the named plaintiff’s claim and the class claims are so interrelated that the
20 interests of the class members will be fairly and adequately protected in their absence.” *Id.*
21 (citing cases; internal punctuation marks omitted).

22 Again, Plaintiffs are seeking damages to remedy the fact that Nationwide’s policy was
23 unauthorized when sold and conflicted with Washington law. The legal issues asserted by the
24 class members to prove liability will all be identical. The named plaintiffs all had the same
25 Nationwide policy as the members of the putative class. Two out of the three named plaintiffs
26 made medical claims that were denied; one seeks only rescission of the contract. One of the

1 named plaintiffs purchased the Nationwide plan for themselves and their family; two
2 purchased it only for him or herself. These named plaintiffs represent a cross-section of the
3 class members, and their claims are thus typical of the class. The typicality requirement
4 presents no bar to maintenance of this class action.

5 **4. Adequacy**

6 The final prerequisite to maintaining a class action is adequacy of representation: the
7 representative parties must fairly and adequately protect the interests of the class. FED. R. CIV.
8 P. 23(a)(4). Resolution of two questions determines legal adequacy: (1) do the named plaintiffs
9 and their counsel have any conflicts of interest with other class members and (2) will the
10 named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?
11 *Hanlon*, 150 F.3d at 1020 (citations omitted). This element serves to uncover conflicts of
12 interest between named parties and the class they seek to represent. *Amchem*, 521 U.S. at 625.

13 There is no indication that the interests of the named plaintiffs, or the law firm of
14 Sirianni Youtz Meier & Spoonemore, conflict with those of the class members. There are no
15 subclasses or groups of plaintiffs with which the interests of the named plaintiffs or their
16 counsel might conflict, for example. *See Amchem*, 521 U.S. at 626 (no adequacy of
17 representation in asbestos case where the goals of currently injured plaintiffs conflicted with
18 those of exposure-only plaintiffs). The entire class is alleging a common injury from
19 Nationwide's failure to comply with Washington law. The law firm has extensive experience
20 litigating class actions, and the named plaintiffs have demonstrated enthusiastic involvement in
21 the case. (*See* Hamburger Decl. (Dkt. No. 24).) Class representation is adequate.

22 **5. Certification under Rule 23(b)(3): Predominance and Superiority**

23 Plaintiffs have moved for class certification under Rule 23(b)(3), the "adventuresome"
24 innovation in the 1966 class-action amendments that allowed for damages class actions in
25 situations where class action is not as clearly called for. *Amchem*, 521 U.S. at 614–15. To
26 qualify for certification under Rule 23(b)(3), common questions must predominate over any

1 questions affecting only individual members, and class resolution must be superior to other
2 available methods for fair and efficient adjudication of the controversy. FED. R. CIV. P.
3 23(b)(3). The rule contains a non-exhaustive list of factors pertinent to the court’s close look at
4 the predominance and superiority criteria: (A) the class members’ interests in individually
5 controlling the prosecution or defense of separate actions; (B) the extent and nature of any
6 litigation concerning the controversy already begun by or against class members; (C) the
7 desirability or undesirability of concentrating the litigation of the claims in the particular
8 forum; and (D) the likely difficulties in managing a class action. *Id.*; *see also Amchem*, 521
9 U.S. at 615–16.

10 The damages class is particularly useful in cases that may vindicate the rights of groups
11 of people who individually would be without effective strength to bring their opponents into
12 court at all. *Amchem*, 521 U.S. at 617. Classes are thus routinely certified when each individual
13 class member’s damages are too small to incentivize him or her to bring a solo action to
14 prosecute his or her rights. *See id.* (citing *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th
15 Cir. 1997)). The inquiry also “trains on the legal or factual questions that qualify each class
16 member’s case as a genuine controversy . . .” *Amchem*, 521 U.S. at 623. Although it is similar
17 to the commonality and typicality requirements in Rule 23(a), the predominance requirement is
18 “more demanding” *Id.* at 625.

19 A very recent case out of the Ninth Circuit, *Yokoyama v. Midland Nat’l Life Ins. Co.*, to
20 is directly on point. 594 F.3d 1087 (9th Cir. 2010). There, senior citizens in Hawai’i brought an
21 action as a class against a life insurance company, alleging that the policies were deceptive and
22 misleading in violation under Hawai’i law. *Id.* at 1088. The district court denied class
23 certification, holding that each plaintiff would have to show individualized reliance in order to
24 prove a violation of the Hawai’i Deceptive Practices Act, and therefore common issues did not
25 satisfy Rule 23(b)(3)’s predominance and superiority requirements. *Id.*

26 //

1 The Ninth Circuit reversed. First, the appellate court observed that the Hawai'i
2 Supreme Court had interpreted the statute at issue *not* to require actual reliance—the test for a
3 violation was instead an objective one, investigating whether the practice was likely to mislead
4 a reasonable consumer. *Id.* at 1092–93. The plaintiffs had based their lawsuit *only* on what the
5 insurance company had disclosed or failed to disclose on the insurance forms themselves. *Id.* at
6 1093. This did not involve an individualized inquiry. Second, the Ninth Circuit observed that,
7 although the various plaintiffs' damage claims would be different, “damage calculations alone
8 cannot defeat certification. We have said that the amount of damages is invariably an
9 individual question and does not defeat class action treatment.” *Id.* at 1094 (quoting *Blackie*,
10 524 F.2d at 905 (internal quotation marks omitted). Thus, the Ninth Circuit found that the
11 district court had erred as a matter of law in refusing to certify the class, and remanded for
12 further proceedings. *Id.*

13 In this case, Plaintiffs allege violations of Washington law that arise from the content
14 of, and procedure used to implement, a single Nationwide policy. There is no alleged
15 individualized inquiry that would require an investigation into reliance, for example. Plaintiffs
16 make claims for equitable contract remedies based on illegality, and allege that the illegality
17 constitutes a *per se* violation of the Washington Consumer Protection Act. (Dkt. No. 25 at 4.)
18 Neither of these claims requires a subjective determination of liability based on individualized
19 conduct; rather, both are based on the objective contents of the Nationwide medical plan itself.
20 *See, e.g., Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 719 P.2d 531 (Wash.
21 1986) (listing CPA elements); 25 WASH. PRAC., CONTRACT LAW & PRACTICE § 18-310.01
22 (describing CPA jury instructions and *per se* violations); *Tanner Elec. Co-op. v. Puget Sound*
23 *Power & Light Co.*, 911 P.2d 1301, 1309 (1996) (the doctrine of illegality holds that a
24 “contract that is contrary to the terms and policy of an express legislative enactment is illegal
25 and unenforceable”).

26 //

1 It is undoubtedly true that the resolution of this matter would call for an individualized
2 assessment of damages. In the proposed settlement, class members would be able to elect
3 whether they wished to rescind the contract and get their premiums back, or reform the
4 contract and be reimbursed for medical expenses actually incurred, less a deductible.
5 (Settlement Agreement Item 12 (Dkt. No. 25-2 at 13–16).) But, of course, the rule in this
6 circuit is that individualized damages will not alone defeat certification under Rule 23(b)(3).
7 *Yokoyama*, 594 F.3d at 1094 (citing cases). Moreover, this damages election is easy to
8 administrate, and common to the class.

9 Finally, the 23(b)(3) factors weigh in favor of finding predominance and superiority
10 here. There are no known cases already begun by class members, to the best of the parties’
11 knowledge. (Hamburger Decl. ¶8 (Dkt. No. 24 at 3).) There are likely no difficulties in
12 maintaining this action, both because of the relatively small class that is located entirely within
13 the boundaries of this state, and because this is a settlement class; indeed, the district court
14 “need not inquire whether the case, if tried, would present intractable management problems . .
15 . for the proposal is that there be no trial.” *Amchem*, 521 U.S. at 620. And the small size of
16 each individual member’s damages means that aggregation of those claims in a class action is a
17 superior form of adjudicating this matter. *Id.* at 617.

18 The Court thus GRANTS Plaintiff’s Motion for Class Certification.

19 **A. The Joint Motion**

20 The parties’ Joint Motion combines a number of preliminary motions and requests an
21 order that will (a) preliminarily approve the settlement agreement, (b) approve and direct
22 notice to settlement class members, and (c) schedule a final fairness hearing.

23 Generally, Rule 23(e) provides for searching judicial inquiry into the fairness of a class
24 settlement. It requires the court to determine whether a proposed settlement is “‘fundamentally
25 fair, adequate, and reasonable.’” *Staton*, 327 F.3d at 959 (quoting *Hanlon*, 150 F.3d at 1026).
26 To make this determination, the court must consider a number of factors. *In re Mego Fin.*

1 *Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000) (citing *Class Plaintiffs v. City of Seattle*,
2 955 F.2d 1268, 1290 (9th Cir. 1992) (listing factors). An order preliminarily approving a
3 settlement does not finally ratify it, however. Because many of these factors cannot be assessed
4 until after notice, “a full fairness analysis is unnecessary at this stage.” *See Alberto v. GMRI*,
5 *Inc.*, 252 F.R.D. 652, 665 (E.D.Cal. 2008) (citation and quotation marks omitted). Rather, the
6 Court need only review the parties’ proposed settlement to determine whether it is within the
7 permissible “range of possible judicial approval” and thus, whether the notice to the class and
8 the scheduling of the formal fairness hearing is appropriate.

9 Preliminary approval of a settlement and notice to the class is appropriate “[i]f (1) the
10 proposed settlement appears to be the product of serious, informed, noncollusive negotiations,
11 (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class
12 representatives or segments of the class, and (4) falls with the range of possible approval.”
13 *Vasquez v. Coast Valley Roofing, Inc.*, 2009 WL 3857428, at *7 (E.D.Cal. Nov.17, 2009)
14 (citing *In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1079 (N.D.Cal. 2007).)

15 The Court has reviewed the Joint Motion, the Settlement Agreement, the Notice to the
16 Settlement Class, and all supporting and additional documentation. Based on the record before
17 it, the Court tentatively finds, pursuant to Federal Rule of Civil Procedure 23(e), that the
18 proposed settlement appears fair, reasonable, and adequate. There is no evidence of fraud,
19 collusion or overreaching by the parties, and it does not appear from the face of the agreement
20 that the rights of absent class members were disregarded; there is no preferential treatment in
21 the Agreement. The parties plainly arrived at the Settlement Agreement after serious,
22 informed, adversarial proceedings, including mediation. The settlement agreement has no
23 obvious deficiencies and falls within the range of possible approval.

24 This is a preliminary finding. Class members may object to the Settlement Agreement
25 according to the procedures below, and the Court will only finally approve the settlement
26 agreement after the required fairness hearing.

1 **III. CONCLUSION**

2 For the foregoing reasons, Plaintiff's Motion for Class Certification is GRANTED. The
3 Court CERTIFIES the following class under FED. R. CIV. P. 23(b)(3):

4 All individuals who were covered by Nationwide Life Insurance Company
5 under a fixed-indemnity policy between April 16, 2003 and November 23,
6 2009, and who were Washington residents at the time in which they enrolled or
re-enrolled in the Nationwide policy.

7 Plaintiffs John Gabriel, Ruth Bjorklund, and Luran Gustafson-Omer are named as class
8 representatives, and the law firm of Sirianni Youtz Meier & Spoonemore is named as class
9 counsel. This order granting class certification may be altered or amended before final
10 judgment, according to Federal Rule of Civil Procedure 23(c)(1)(C).

11 The Parties' Joint Motion is also GRANTED. It is accordingly ORDERED that:

12 1. The Court preliminarily approves the proposed Settlement Agreement attached
13 as *Appendix 1* to the Joint Motion, as fair, reasonable and adequate, pursuant to FRCP 23(e).
14 The Court's preliminary approval is subject to change pending the outcome of the final
15 approval hearing established herein.

16 2. The Court directs Class Counsel to mail, by United States first-class mail, notice
17 of settlement to all the Settlement Class Members (as defined in *Appendix 1*, ¶3(b), p. 5) as
18 identified by Nationwide from its records. The form of notice attached as *Appendix 2* to the
19 Joint Motion is approved for such notice. Class Counsel shall follow the requirements
20 contained in the proposed Settlement Agreement in mailing these notices.

21 3. The mailing containing the notice to Class Members shall also include a claim
22 form and the worksheet to aid Class Members in filling out the claim form. The claim form,
23 worksheet and claim chart also attached as *Appendix 2* to the Joint Motion is approved for this
24 purpose. No claims shall be paid, however, until after final approval of the proposed
25 Settlement Agreement is granted by this Court.

1 4. Class Counsel shall immediately commence its mailing of notices to Class
2 Members as required in the proposed Settlement Agreement. Notice must be mailed by no later
3 than **June 4, 2010**.

4 5. The Court concludes that direct mail notice to identifiable Class Members is the
5 best notice practicable under the circumstances. The Notice will state that claims submitted by
6 Class Members must be received by Class Counsel postmarked by no later than **July 30, 2010**.
7 Class Counsel will not be required to report to the Court the exact amount of claims received
8 by the July 30, 2010 hearing, but shall be prepared to provide a rough estimate and a projected
9 date by which the Class counsel will seek final distribution of the Settlement Funds.

10 8. A final settlement hearing to consider whether the proposed Settlement
11 Agreement is fair, reasonable and adequate is scheduled for **August 5, 2010, at 9:00 a.m.**
12 before Judge Coughenour.

13 9. Class Members who wish to opt out of the class must opt out in writing to
14 Plaintiffs' Counsel postmarked by **July 2, 2010**.

15 10. Class Counsel will provide Nationwide with an "Opt-out" Report by **July 9,**
16 **2010**.

17 11. Class Counsel will file a separate motion for attorneys' fees and incentive
18 awards by no later than **July 9, 2010**. Class counsel shall post the motion on its website. Class
19 counsel shall not be required to give additional notice under FED. R. CIV. P. 23 (h)(2) to class
20 members of any motion for attorneys' fees. The notice being sent to class members adequately
21 advises them of the attorneys' fees provision in the proposed Settlement Agreement and their
22 opportunity to object to the provision of attorneys fees.

23 12. Class Members who want to comment on the proposed Settlement Agreement,
24 or object to any portion of the proposed Settlement Agreement (including, but not limited to,
25 the remedies available to Class Members, the sufficiency of the settlement amount, the
26 disbursement of excess funds, the amount of incentive payments requested, or the amount of

1 attorneys' fees requested) must submit written comments and/or objections to the Court by
2 **July 23, 2010.**

3 12. Class Members who wish to appear at the final settlement hearing may do so if
4 they submit written notice to the Court that they intend to appear in person or through counsel.
5 If a class member wishes to appear in person or through counsel at the hearing, they must also
6 describe the nature of their comment or objection in their written notice of intent to appear.
7 Written notice of intent to appear must be filed with the Court by **July 23, 2010.**

8 14. The parties shall file with the Court a Joint Motion for Final Approval of the
9 Settlement Agreement together with any supporting declaration or other documentation by no
10 later than **July 30, 2010.** The parties shall also mail the Joint Motion to all Class Members who
11 file written notice with the Court that they intend to appear at the final settlement hearing.

12 15. If the Settlement Agreement is finally approved, Class Counsel will seek the
13 Court's authorization before disbursing the Settlement Funds to Class Members. However, no
14 additional notice to Class members will be required at that time.

15 16. Except as set forth in this Order, all deadlines established in the Court's
16 scheduling Orders, including the trial date, are hereby stricken.

17 IT IS SO ORDERED.

18 DATED this 17th day of May, 2010.

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21 

22 John C. Coughenour
23 UNITED STATES DISTRICT JUDGE
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