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18 **UNITED STATES DISTRICT COURT**
 19 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

20 MELISSA PITKIN and DAN GROUT, on
 21 behalf of themselves and all others similarly
 situated,

22 Plaintiffs,

23 v.

24 STATE FARM GENERAL INSURANCE
 25 COMPANY, an Illinois Corporation,

26 Defendant.

Case No. 3:23-cv-00924-WHO

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
 MOTION TO CERTIFY CLASS, APPOINT
 CLASS REPRESENTATIVES, AND
 APPOINT CLASS COUNSEL;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT THEREOF**

Judge: Hon. William H. Orrick

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1 **NOTICE OF MOTION AND MOTION TO CERTIFY CLASS, APPOINT CLASS**
2 **REPRESENTATIVES, AND APPOINT CLASS COUNSEL**

3 **TO: ALL PARTIES AND THEIR COUNSEL OF RECORD**

4 PLEASE TAKE NOTICE that on March 12, 2025. At 2:00 p.m., before the Honorable
5 William H. Orrick, United States District Judge, at the United States District Court, Northern
6 District of California, Courtroom 2 – 17th Floor, 450 Golden Gate Avenue, San Francisco,
7 California, 94102, Plaintiffs Melissa Pitkin and Dan Grout (“Plaintiffs”) will bring this Motion
8 pursuant to Federal Rule of Civil Procedure 23 for class certification, appointment of class
9 representatives and appointment of class counsel.

10 This Motion is based on this Notice of Motion and Motion, the Memorandum of Points
11 and Authorities in Support Thereof, the Declaration of Nabilah Hossain in Support of Plaintiff’s
12 Motion to Certify Class and Appoint Class Representatives (“Hossain Decl.”), the Joint
13 Declaration of Nabilah Hossain, Jack Weaver, and William Hedden in Support of Plaintiff’s
14 Motion for Appointment of Class Counsel (“Joint Decl.”), the Declarations of Plaintiffs Melissa
15 Pitkin and Dan Grout, Expert Class Certification Report of Greg J. Regan, CPA/CFF, CFE
16 (“Regan Report”) attached as Exhibit 1 to the Hossain Decl., Expert Report of Eugene Peterson
17 (“Peterson Report”), attached as Exhibit 2 to the Hossain Decl., Expert Report of David Melzer:
18 (“Melzer Report”), attached as Exhibit 3 to the Hossain Decl., the [Proposed] Order filed herewith,
19 and any additional materials and arguments that may be submitted by Plaintiffs in further support
20 of this Motion, the pleadings and filings herein and such other evidence, written or oral, as may be
21 presented.

22 **STATEMENT OF ISSUES TO BE DECIDED**

23 **The issues to be decided on this Motion are:**

24 1. Whether to certify the Classes proposed by Plaintiffs, which satisfy the
25 requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(2) and/or (b)(3);
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

In 2017, this court unequivocally decided that sales tax is distinct from the physical items and not subject to depreciation or deduction in calculating Actual Cash Value (“ACV”) of an item under California Insurance Code § 2051. *Johnson v. Hartford Cas. Ins. Co.*, No. 15-CV-04138-WHO, 2017 WL 2224828, at *8 (N.D. Cal. May 22, 2017). State Farm General Insurance (“State Farm”) has continuously and flagrantly disregarded California law, which for nearly two decades has explicitly prohibited the depreciation of sales tax in calculating the Actual Cash Value (“ACV”) of personal property. Despite this clear statutory mandate, State Farm has systematically and unlawfully engaged in this practice across the state, consistently underpaying property insurance claims by depreciating sales tax in violation of California law. As a result, Plaintiffs – and the proposed Class—share a common problem and common claims that focus on State Farms practices and policies, making class certification appropriate.

In particular, the class is more than sufficiently numerous as it is estimated that there are tens of thousands of class members, the claims involve a single common question of statutory interpretation which can be decided on common evidence, the Plaintiffs have identical claims to the putative class members and the Plaintiff and class counsel will fairly and adequately represent the interests of the class.

Plaintiffs bring this case against State Farm Insurance to cure an unlawful practice that affects thousands of policy holders in California in the exact same way and seek an order certifying the class action under Rules 23(a) and 23(b). Plaintiffs also seek injunctive and declaratory relief to reduce the risk of future harm to themselves and the Class.

1 **II. FACTUAL BACKGROUND**

2 **A. Insurance Code § 2051 and California Law Prohibits the Depreciation of**
 3 **Sales Tax in Calculating ACV Benefits Under Policies**

4 All insurance contracts issued in the State of California are governed by the California
 5 Insurance Code (the “Insurance Code”), which prescribes minimum standards for insurance
 6 issued in this state for the protection of policyholders. Cal. Ins. Code. § 2051.¹ In 2004,
 7 § 2051(b) was added to the Insurance Code as part of the Homeowners Bill of Rights, to
 8 standardize the calculation of actual cash recovery under an open policy by insurers in
 9 determining ACV under insurance policies. *California Fair Plan Assn. v. Garnes*, 11 Cal. App.
 10 5th 1276, 1295 (2017), *as modified on denial of reh'g* (June 14, 2017) (*Garnes*).

11 Section 2051, establishes the only permissible method in determining ACV in California.
 12 *Kirkwood v. State Automobile*, 193 Cal. App. 4th 49, 54 (2011). Section 2051, subsection (b),
 13 reads:

14 Under an open policy that requires payment of actual cash value, the measure of
 15 the actual cash value recovery, in whole or partial settlement of the claim, for
 16 either a total or partial loss to the structure or its contents, shall be the amount it
 17 would cost the insured to repair, rebuild, or replace the thing lost or injured less a
 18 fair and reasonable deduction for physical depreciation based upon its condition
 19 at the time of the injury or the policy limit, whichever is less. ***A deduction for
 physical depreciation shall apply only to components of a structure that are
 normally subject to repair and replacement during the useful life of that
 structure.*** (emphasis added).

20 As prescribed in the statute, ACV is the amount it would cost the insured to repair, rebuild,
 21 or replace the item lost or injured, also known as Replacement Cost Value “RCV,” minus a fair
 22 and reasonable deduction for “*physical depreciation*” based on the item’s condition at the time of
 23 the injury or policy limit. As plainly written in the statute, the only lawful deduction allowed from
 24 RCV is for “physical depreciation.” Sales tax is distinct from physical items and not subject to
 25 “depreciation” or deduction. *Johnson* 2017 WL 2224828 at *8. Physical depreciation refers to

26 _____
 27 ¹ All subsequent undesignated statutory references are to the California Insurance Code.

1 wear and tear only, and since sales tax is not subject to wear and tear, the depreciation of sales tax
 2 is not permitted. The cost imposed by the sales tax is discrete from the value of the item being
 3 purchased; it is “separately stated *and collected*” from the consumer, by the seller, and rendered to
 4 the government. *Johnson* 2017 WL 2224828 at *8.

5 Case law confirms the plain meaning of the text of § 2051(b). In 2017, the California Court
 6 of Appeal unequivocally held, in a published decision, that 2051(b) provided “mandatory
 7 minimum coverage” that insurers could not contract around. *Garnes*, 11 Cal. App. 5th at 1308–09.
 8 In the same month that *Garnes* was decided, this Court held that the plain meaning of § 2051(b)
 9 prohibited the depreciation of sales tax and denied a motion for summary judgment on that issue
 10 in *See Johnson*, 2017 WL 2224828 at *7-8,*17. Two and a half years later, in 2020, the United
 11 States District Court for the Central District of California, determined that: “[a] plain reading of [§
 12 2051(b)] and [corresponding] regulation appears to indicate that any actual cash value payment
 13 made under a property insurance policy should not depreciate ... expenses that are ‘not a
 14 component of physical depreciation’—as sales tax ... appear[s] to be.” *Maison D’Artiste v. Am.*
 15 *Int’l Grp., Inc.*, 2020 WL 4037219, at *3 (C.D. Cal. Jan. 23, 2020).

16 **B. State Farm’s Uniform Policy is to Depreciate Sale Tax in Calculating ACV**

17 Section 2051(b) has been law since 2005, and courts have consistently affirmed that it is
 18 unlawful for insurance companies to depreciate sales tax when calculating Actual Cash Value
 19 (ACV). Despite this clear legal precedent, State Farm's policies and practices continue to disregard
 20 the law, openly flouting its requirements.

21 State Farm violates the law by depreciating sales tax as a component of Replacement Cost
 22 (“RC”). Under their uniform policies, including in the state of California, State Farm first
 23 calculates the RC of an item, including sales tax where applicable, and then calculates ACV by
 24 subtracting depreciation from the RC. (ACV = RC – depreciation). *See* Ex. 4² “Operation
 25

26 _____
 27 ² All references to Exhibits are to the Hossain Declaration unless otherwise indicated.
 28

1 Guideline 75-50 Betterment, Depreciation, and Actual Cash Value (“Operation Guideline 75-
 2 50”)” at 2; Ex. 5 “Defendant State Farm’s Response to Plaintiff’s Interrogatory No. 3, dated
 3 March 11, 2024,”; Ex. 6 “Robert Garza Deposition” at 48: 5-10; 68: 8-11; Ex. 7 “Donna
 4 Blazewich, Person Most Knowledgeable “PMK”, for State Farm General Insurance, Deposition”
 5 at 32:12-23. 5. This is a two-step process.

6 Under the first step, it is State Farm’s uniform policy to include sale tax as a component of
 7 RC. Ex. 8 “Operation Guide for Personal Property Claim Handling [“Operation Guide 75-05”].³
 8 According to Operation Guide 75-05, which applies to first party personal property claims: “Sales
 9 tax, were applicable, *should be included* as part of the replacement cost calculation. The claim
 10 handler/associate should verify with the insured if sales tax was already included I their claim for
 11 replacement costs. If not, *it should be added.*” See Ex. 8 Operation Guide 75-05 at 5 (emphasis
 12 added). State Farm’s Person Most Knowledgeable, Donna Blazewich, confirmed that in execution,
 13 adjusters include sales tax as a part of replacement cost. Ex. 7 “PMK Dep.” at 35:22-36:7.

14 In the second step, State Farm improperly depreciates the entire amount of RC, rather than
 15 limiting depreciation to the property’s wear and tear or components subject to physical
 16 depreciation, as explicitly required by § 2051. State Farm’s own internal definition of depreciation
 17 aligns with § 2051(b), describing depreciation as “a decrease in the value of the property over a
 18 period of time due to wear, tear, and obsolescence.” Ex. 4 Operation Guideline 75-50 at 2.
 19 However, in practice, State Farm blatantly disregards these standards by depreciating sales tax as
 20 part of its ACV calculation, a clear disregard of the law. Ex. 7 PMK Dep. at 35:22-36:7; Ex. 6
 21 Garza Dep. at 70:22-73:10. See also Ex. 5 Def. Resp. to Interrog. No. 3 at 11-12. This is also
 22 apparent from the written estimate it provided Plaintiffs. See Pitkin Decl. ¶¶ 7-9; Grout Decl. ¶¶ 7-
 23 9.⁴

24
 25 ³ Operation Guide 75-05 has been in effect since February 19, 2016. See Def. Resp. to Interrog.
 26 No. 3, dated March 11, 2024, at 11-12.

27 ⁴ All references to paragraphs in Plaintiffs’ declarations are to both declarations unless otherwise
 28 indicated.

1 State Farm’s practice of depreciating sales tax in calculating ACV benefits is part of a
2 common and systematic policy and practice by State Farm to deprive their property insurance
3 policyholders, of contractual benefits to which they are entitled as matter of California law.

4 **C. State Farm’s Depreciated Sales Tax in Calculating ACV for Plaintiff’s**
5 **Personal Property**

6 State Farm included sales tax in the Replacement Cost Value (RCV) of Plaintiffs' personal
7 property in California, then depreciated that amount to determine the Actual Cash Value (ACV).
8 *Id.* ¶¶ 7-9. In other words, State Farm unlawfully depreciated sales tax when calculating ACV in
9 connection with Plaintiffs' personal property claims.

10 **III. THE PROPOSED CLASS REPRESENTATIVES**

11 Plaintiffs Melissa Pitkin and Dan Grout (“Plaintiffs”) are a married couple who own a
12 home together in Healdsburg, California. *Id.* ¶ 2. Plaintiffs purchased a homeowner’s insurance
13 policy from State Farm—policy number 57-C4-6752-1—which covered certain losses to their
14 home and all its contents (the “Policy”). *Id.* ¶ 3. On August 20, 2020, Plaintiffs lost their home and
15 all of its contents in the Wallbridge Fire. *Id.* ¶ 4. Shortly thereafter, they tendered a claim to State
16 Farm for their losses under the Policy. State Farm accepted the claim and adjusted their losses
17 according to the Policy. The Policy states that Plaintiffs are entitled to recover ACV for their
18 personal property losses. Based on the policy language, this means that State Farm owed them the
19 amount it would cost to repair, rebuild, or replace their damaged property minus a fair and
20 reasonable deduction for physical depreciation. *Id.* ¶ 6. The language of the Policy is consistent
21 with how ACV should be measured under § 2051(b) as well as State Farm’s Claim Practice on
22 Betterment, Depreciation, and Actual Cash Value that defines ACV as the “value of the damages
23 part of the property at the time of the loss, calculated as the estimated cost to repair to replace such
24 property, less a deduction to account for the pre-loss depreciation.” Ex. 4 Operation Guideline 75-
25 50 at 2.

1 On December 16, 2022 and January 24, 2023, respectively, Plaintiffs received partial
2 payments from State Farm for our personal property contents losses. *Id.* ¶¶ 7-8. At the same time,
3 State Farm sent Plaintiffs loss payment worksheets showing their ACV benefits for their personal
4 property. *Id.* For all items of property where sales tax was applicable, State Farm depreciated sales
5 tax in calculating ACV *Id.* ¶ 9. *See also* Ex. 1, Regan Report; Ex. 2, Peterson Report; Ex. 3,
6 Meltzer Report ¶ 25. This is a violation of the § 2051(b) and in contravention of State Farm’s own
7 policy language.

8 Plaintiffs have and will continue to pursue the claims in this litigation on behalf of
9 themselves and the putative class.

10 **IV. ARGUMENT**

11 **A. Legal Standard and Proposed Class Definition**

12 Plaintiffs seeking class certification must provide facts sufficient to satisfy the requirements
13 of Rule 23(a) and at least one prong of Rule 23(b). *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d
14 1180, 1186 (9th Cir. 2001). Rule 23(a) requires Plaintiffs to demonstrate: (1) numerosity; (2)
15 commonality of the factual and legal issues; (3) typicality of Plaintiffs’ claims and defenses to those
16 of the class; and (4) adequacy of Plaintiffs and their counsel. *See Mazza v. Am. Honda Motor Co.*,
17 666 F.3d 581, 588 (9th Cir. 2012).

18 Here, Plaintiffs seek to certify injunctive and declaratory relief claims under Rule 23(b)(2),
19 or alternatively, damages claims under Rule 23(b)(3) on behalf of a class defined as:

20 All persons who, between January 1, 2015 and the present, were or are a named insured
21 under a property insurance policy issued in California by Defendant, who suffered a covered
22 loss to real or personal property for which they received payment of actual cash value (ACV)
23 benefits that were reduced due to depreciation of sales tax, and who were paid or are
24 reasonably certain to be paid benefits in an amount that is less than the applicable policy
25 limits.

26 Plaintiffs seek class certification on each claim set forth in the Second Amended
27 Consolidated Complaint (“SAC”) filed August 4, 2023. ECF No. 41. The claims include: Count I
28 Declaratory Relief; Count II Breach of Contract; Count III – Breach of the Implied Covenant of

1 Good Faith and Fair Dealing; and Count IV – Violation of California’s Unfair Competition Law
 2 (Cal. Bus. & Prof. Code §§ 17200, *et seq.*). Compl. at ¶¶ 55-81.⁵

3 **B. This Case Meets the Requirements of Rule 23(a)**

4 **1. The Proposed Class is Sufficiently Numerous**

5 In the Ninth Circuit, courts routinely hold that numerosity is satisfied when the class contains
 6 40 members. *See Hatamian v. Advanced Micro Devices, Inc.*, No. 14-CV-00226 YGR, 2016 WL
 7 1042502, at *4 (N.D. Cal. Mar. 16, 2016); *In re Cooper Cos. Sec. Litig.*, 254 F.R.D. 628, 634 (C.D.
 8 Cal. 2009). Plaintiffs do not need precise Class figures to satisfy numerosity. *In re Cooper Cos. Inc.*
 9 *Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009). “Where the exact size of the proposed class is
 10 unknown, but general knowledge and common sense indicate it is large, the numerosity requirement
 11 is satisfied.” *In re HiEnergy Techs., Inc. Sec. Litig.*, 2006 WL 2780058, at *3 (C.D. Cal. Sept. 26,
 12 2006).

13 Here, there are an estimated 191,362 potential class members in this case. *See* Ex. 3 Melzer
 14 Report ¶¶ 9-17. This number easily satisfies numerosity. *See Johnson v. Hartford Cas. Ins. Co.*, No.
 15 15-CV-04138-WHO, 2017 WL 2224828, at *12 (N.D. Cal. May 22, 2017) (estimated 19,500 class
 16 members meets the numerosity requirement). Thus, Plaintiffs satisfy Rule 23(a)(1).

17 **2. Plaintiffs’ Have Claims Typical of the Proposed Class**

18 To show typicality, a plaintiff must demonstrate that the “named parties’ claims are typical
 19 of the class.” Fed. R. Civ. P. 23(a)(3). This means that the class representative “possess[es] the
 20 same interest and suffer[s] the same injury” as the other class members. *E. Tex. Motor Freight Sys.*
 21 *v. Rodriguez*, 431 U.S. 395, 403 (1977). The typicality requirement is “permissive” and requires
 22 only that the representative’s claims “are reasonably coextensive with those of the absent class
 23 members; they need not be substantially identical.” *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir.
 24 2014) (internal quotation omitted).

25 Plaintiffs’ claims are typical. Plaintiffs Pitkin and Grout have suffered the same harm that
 26

27 ⁵ All references to “Compl.” are to Plaintiffs’ Amended Class Action Complaint. ECF No. 41.
 28

1 the putative class has suffered—the reduction in ACV payment via unlawful depreciation. *See*
2 Pitkin Decl. ¶¶ 7-9; Grout Decl. ¶¶ 7-9. *See also* Ex. 2, Peterson Report; Ex. 3, Meltzer Report.
3 Likewise, Pitkin and Grout possess the same interest as the other putative class members—
4 recovery of the difference between the payment from State Farm and the undepreciated ACV. *See*
5 Pitkin Decl. ¶¶ 7-12; Grout Decl. ¶¶ 7-12; Ex. 2, Peterson Report; Ex. 3 Meltzer Report; *see also*
6 *Johnson v. Hartford Cas. Ins. Co.*, No. 15-CV-04138-WHO, 2017 WL 2224828, at *13 (N.D. Cal.
7 May 22, 2017). Thus, Plaintiffs satisfy Rule 23(a)(3).

8 3. Common Issues of Law and Fact Predominate Plaintiffs’ Claims

9 Rule 23(a)(2) requires that “there are questions of law or fact common to the class.” Fed.
10 R. Civ. P. 23(a)(2). “A common contention need not be one that ‘will be answered, on the merits,
11 in favor of the class.’ It only ‘must be of such nature that it is capable of class-wide resolution.’ ”
12 *Alcantar v. Hobart Servs.*, 800 F.3d 1047, 1053 (9th Cir. 2015) (quoting *Amgen, Inc. v. Conn. Ret.*
13 *Plans & Tr. Funds*, 568 U.S. 455, 459 and *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-350
14 (2011)). A “single common question” is enough to satisfy the commonality requirement of Rule
15 23(a)(2). *Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir. 2014) (internal quotation marks omitted).

16 Here, Plaintiffs’ causes of action each rely on common questions of law or fact.

17 First, virtually all of the questions of law or fact at issue are common between Plaintiffs and all
18 others in the proposed Class. For example: (1) whether § 2051 of the California Insurance Code
19 prohibits Defendants from deducting depreciation from sales tax in calculating and paying ACV
20 benefits under property insurance policies issued in California; (2) whether Defendant had or has a
21 common policy or practice of deducting depreciation for sales tax in calculating and paying ACV
22 benefits under property insurance policies issued in California; (3) whether Plaintiffs and Class
23 Members are entitled to declaratory and/or injunctive relief; and (4) whether Defendant breached
24 its contractual obligations to Plaintiffs and Class Members by deducting depreciation from sales
25 tax in calculating and paying ACV benefits under property insurance policies issued in California.
26 Each of these issues may be resolved uniformly and simultaneously for all class members. *See*

27
28

1 Compl. at ¶¶ 55-81. Indeed, absent class members would need to prove essentially identical legal
2 theories and factual issues if they chose to pursue their claims individually. Thus, Plaintiffs satisfy
3 Rule 23(a)(2).

4 **4. Plaintiffs and their Counsel Are Adequate**

5 Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the
6 interests of the class.” Fed. R. Civ. P. 23(a)(4). In determining whether plaintiffs and their counsel
7 are adequate representatives of the class, this Court must consider two factors. First, whether the
8 lead plaintiffs and their counsel have “any conflicts of interest with other class members. Second,
9 whether the lead plaintiffs and their counsel can “vigorously prosecute the action of behalf of the
10 class.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 n. 9 (9th Cir. 2011). Plaintiffs and
11 proposed class counsel satisfy both factors.

12 **a. Plaintiffs Are Adequate Representatives**

13 Plaintiffs are adequate representatives of the class. Under Rule 23(a)(4), the “adequacy”
14 requirement examines whether “the named plaintiff’s claim and class claims are so interrelated
15 that the interests of the Class Members will be fairly and adequately protected in their absence.
16 *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 & n.13 (1982) Plaintiffs’ declarations show they
17 are: (1) generally informed about the general nature of their claims and this litigation; (2) familiar
18 with their roles and duties as class representatives; and (3) they are not aware of any conflicts with
19 any absent class member or any party to this litigation. *See* Pitkin Decl. ¶¶ 14-20; Grout Decl. ¶¶
20 14-20. As detailed above, Plaintiffs’ claims are typical. Plaintiffs allege they were harmed by the
21 same conduct and in the same manner as the rest of the class, both of which stem from
22 Defendant’s common policy and practice of adjusting claims in violation of California law. *See*
23 *generally* ECF 41. Since Plaintiffs’ claims and those of the class are identical and Plaintiffs’
24 claims will succeed or fail along with those of the class, their interests are aligned. Thus, Plaintiffs
25 are adequate representatives of the class.

1 **1. Common Questions of Law and Fact Predominate**

2 Here, and as detailed above, Plaintiffs’ claims assert that State Farm illegally depreciates
3 sales tax when calculating ACV. This question, which pertains to every class member, can be
4 resolved through the interpretation of one statute and the same factual determinations. *See Johnson*
5 2017 WL 2224828, at *15 (rejecting six arguments against Rule 23(b)(3) factors in substantially
6 similar case). This condition is easily met in this case.

7 **2. A Class Action Is Superior to Other Available Methods for the Efficient**
8 **Adjudication of This Case**

9 Finally, Rule 23(b)(3) requires that the class action vehicle be superior to any other method
10 of adjudication. Fed. R. Civ. P. 23(b)(3). To determine whether a class action is superior, the
11 courts consider four factors: 1) class members’ individual interests in controlling the prosecution
12 of separate actions; 2) whether other litigation has already commenced; 3) the desirability of
13 concentrating claims in one forum; and 4) the difficulties likely to be encourages in managing a
14 class action. *Id.*

15 Each of the factors enumerated in Rule 23(b)(3) weighs in favor of class action treatment.
16 First, individual class members have no significant interest in controlling the prosecution of
17 separate actions given the prohibitive costs of bringing an individual action compared to the
18 relatively small amount of potential recovery, very few Class member could prosecute these
19 claims on an individual basis, nor would it be financially prudent for them to do so. *Zinser*, 253
20 F.3d at 1190. In any event, any individual who may desire will have the opportunity to opt out of
21 the Class. Second, counsel are unaware of any other litigation against Defendant asserting these
22 claims in this Court or the Ninth Circuit.⁶ Third, there is a substantial advantage in concentrating
23 this litigation in one forum. This case turns on an interpretation of § 2051 and whether or not sales
24 tax is depreciable. A situation in which numerous lawsuits surrounding the same question, in

25 _____
26 ⁶ Counsel acknowledge, however, that a separate action against State Farm in California State
27 Court has been appealed from a grant of summary judgment in State Farm’s favor.
28

1 which each court must decide, would produce “confusion, uneven, and inequitable results”
2 applying different rulings under the same statute to different policyholders. *See Johnson*, 2017 WL
3 2224828 at * 17. Fourth, this case presents no unusual difficulties in the management or
4 notification of Class Members. The records pertaining to class membership, breach, and damages
5 are all available in State Farm’s records. *See Ex. 1, Regan Report; Ex. 2, Peterson Report; Ex. 3,*
6 *Meltzer Report ¶¶18-24.*

7 For these reasons, this case easily satisfies the superiority requirement of Rule 23.

8 **V. CONCLUSION**

9 This case is well-suited for class action treatment, as the central issue is whether sales tax
10 is subject to depreciation under California law. State Farm has already acknowledged its practice
11 of depreciating sales tax, and the remedy can be readily determined from its records. For these
12 reasons, Plaintiffs respectfully request that the Court: (1) certify this action as a Class action; and
13 (2) appoint Plaintiffs as Class Representatives; and (3) appoint Cotchett, Pitre, & McCarthy, LLP,
14 Welty, Weaver, & Currie, APC, the Murry Law Firm, and William H. Hedden as Class Counsel.

15
16 Dated: October 17, 2024

COTCHETT, PITRE & McCARTHY, LLP

17
18 By: /s/ Nabilah A. Hossain
FRANK M. PITRE
19 THOMAS E. LOESER
NABILAH A. HOSSAIN
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21 *Attorneys for Plaintiffs Melissa Pitkin and Dan Grout*
22 *and the Proposed Class*
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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, Nabilah A. Hossain, attest that concurrence in the filing of this document has been obtained from the other signatory. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 17th day of October, 2024, at Burlingame, California.

/s/ Nabilah A. Hossain
Nabilah A. Hossain