

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

JENIFER K. DEMARRE & RYAN A. DEMARRE,

Plaintiffs,

vs.

MUTUAL OF ENUMCLAW INSURANCE
COMPANY,

Defendant.

NO. 21-2-10304-5 SEA

**ORDER VACATING PRIOR ORDER AND
GRANTING PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Clerk's Action Required

Plaintiffs Jenifer and Ryan DeMarre moved for preliminary approval of a class action settlement with Mutual of Enumclaw Insurance Company and Enumclaw Property and Casualty Insurance Company. The terms of the settlement are set forth in the Settlement Agreement and Release attached as Exhibit 1 to the Declaration of Blythe H. Chandler in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. The Court has read and considered the Settlement Agreement, and the briefing submitted in support of preliminary approval of the settlement, conducted a hearing on the record today, and is fully advised.

The Court previously entered an order certifying a class comprised of the same people who make up the proposed settlement class (Sub. No. 55).

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court vacates the class certification order entered on November 16, 2022 (Sub. No. 55).

1 2. The Court preliminarily approves the Settlement Agreement and Release.¹

2 3. The Settlement appears to be the product of serious, informed, non-collusive
3 negotiations. The settlement has no obvious deficiencies, does not improperly grant prefer-
4 ential treatment to any class members, and falls within the range of possible judicial approval.
5 See William B. Rubenstein, *Newberg on Class Actions* § 13:10 (5th ed. Dec. 2021 update).

6 4. For purposes of settlement only, the Court finds that the Class satisfies the re-
7 quirements of CR 23(a) and (b)(3) and grants conditional and preliminary certification of the
8 following Class:

9 All MOE insureds with Washington policies issued in Washington
10 State, who received compensation for the total loss of their own
11 vehicles under their first party coverages (Coverages Part C and D)
12 and who received a settlement offer from MOE based on a total
13 loss valuation that used a deduction for typical negotiation.
14 Excluded from this proposed class are the assigned judge, the
15 judge's staff and family, MOE employees, and insureds with claims
16 for accidents with dates of loss occurring prior to March 6, 2019, or
17 after March 31, 2020.

15 5. The numerosity requirement is satisfied because there are hundreds of Class
16 Members. See CR 23(a)(1); *Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 821, 64 P.3d 49 (2003).

17 6. The commonality requirement is satisfied because there are overarching
18 questions of law and fact common to the Class, including whether MOE's use of a typical
19 negotiation deduction in total loss claims was unfair or deceptive under the CPA or breached
20 MOE's contracts with insureds. See *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 320, 54 P.3d
21 665 (2002).

22 7. The typicality requirement is satisfied because Plaintiffs' claims arise from the
23 same course of conduct that gives rise to the claims of other Class Members and are based on
24 the same legal theories. See CR 23(a)(3); *Pellino v. Brink's Inc.*, 164 Wn. App. 668, 267 P.3d 383,
25 392 (2011).

26
27 ¹ Unless otherwise noted, capitalized terms are defined by the Settlement Agreement.

1 8. The adequacy requirement is satisfied because Plaintiffs have no interests
2 antagonistic to the other Class Members and are represented by qualified counsel. *See Hansen*
3 *v. Ticket Track, Inc.*, 213 F.R.D. 412, 415 (W.D. Wash. 2003).

4 9. The predominance requirement is satisfied because there is a “common nucleus
5 of operative facts” to each Class Member’s claim, and all Class Members were subject to the
6 same conduct by MOE. *See CR 23(b)(3); Chavez v. Our Lady of Lourdes Hosp. at Pasco*, 190
7 Wn.2d 507, 516, 415 P.3d 224 (2018).

8 10. The superiority requirement is satisfied because the resolution of numerous
9 claims in one action is far superior to individual lawsuits and promotes consistency and
10 efficiency of adjudication, particularly in a case like this one with modest damages. *See CR*
11 *23(b)(3); Chavez*, 190 Wn.2d at 518-23.

12 11. For purposes of settlement, the Court appoints Jenifer and Ryan DeMarre as
13 class representatives.

14 12. The Court appoints the Terrell Marshall Law Group PLLC, and Leonard Law, PLLC,
15 as Class Counsel.

16 13. As provided for in the Settlement Agreement, MOE shall disseminate notice to
17 Class Members by mail, perform at least one skip trace for mail returned undeliverable, and
18 mail Settlement Award checks to Settlement Class Members, and perform any additional duties
19 that are called for by the Settlement Agreement or ordered by the Court.

20 14. The Court approves the notice program outlined in the Settlement Agreement,
21 including the postcard Notice and Settlement Website attached as exhibits A and B to the
22 Settlement Agreement. The Notice and Settlement Website provide all of the information Class
23 Members need to evaluate and respond to the settlement, including the nature of the
24 litigation, the general terms of the proposed settlement, their rights under the settlement, an
25 explanation of how they can object to or exclude themselves from the settlement, the identity
26 of Class Counsel and that Class Counsel will request attorneys’ fees from the Settlement Fund,
27 and the date and time of the Final Approval Hearing.

1 15. The Court also approves the parties' plan for disseminating notice, which will
2 ensure that Class Members receive "the best notice practicable under the circumstances." CR
3 23(c)(2). Issuance of notice substantially in the manner set forth in the Settlement Agreement
4 satisfies the requirements of due process and applicable state and federal law and constitutes
5 due and sufficient notice to all members of the Class.

6 16. Within 14 days of entry of this Order, Class Counsel shall establish the Settle-
7 ment Website. Within 30 days of entry of this Order, MOE shall send notice to all Settlement
8 Class Members in accordance with the notice plan described in Section VII.3 of the Settlement
9 Agreement. The date the Settlement Administrator distributes notice is the "Notice Date."

10 17. Any Class Member may exclude himself or herself from the settlement by
11 sending a written request to Class Counsel by mail postmarked no later than 60 days from the
12 Notice Date. The exclusion request must be in writing and include the name and address of the
13 individual requesting exclusion. Following final approval of the settlement and the occurrence
14 of the Effective Date, each Settlement Class Member who does not submit a timely, valid
15 request for exclusion shall be bound by all terms of the Settlement Agreement, including the
16 release, and any final judgment entered by the Court in this case.

17 18. Any Settlement Class Member may object to the settlement by filing with the
18 Court a written statement objecting to the settlement, along with any supporting document-
19 ation the Settlement Class Member wishes the Court to consider, no later than 60 days from
20 the Notice Date. For his or her objection to be considered by the Court, the Settlement Class
21 Member must not have excluded himself or herself from the settlement.

22 19. Class Counsel shall file their motion for an award of attorneys' fees, costs, and
23 service award no later than 30 days from the date of this Order.

24 20. MOE shall provide a declaration of due diligence and proof of mailing, including
25 information as to any inability to deliver notice because of invalid addresses, and report on
26 completion of the notice plan no later than 12 judicial days before the Final Approval Hearing.
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1 21. Plaintiffs shall file a motion for final approval of the settlement and response to
2 any objections no later than 9 judicial days before the Final Approval Hearing.

3 22. A Final Approval Hearing shall be held before this Court on **May 5, 2023, at 9:00**
4 **a.m.** in the courtroom of the Honorable Andrea Darvas (Department 23), King County Superior
5 Court, 516 3rd Avenue, Seattle, Washington, 98104, and/or via Zoom. At the hearing, the Court
6 will consider whether the settlement is fair, reasonable, and adequate, and should be approved
7 by the Court. The Court will also consider Class Counsel’s motion for attorneys’ fees and costs
8 and for a service award to the class representative, and rule on any other matters that the
9 Court deems appropriate.

10 23. Any interested person who has not excluded themselves from the Settlement
11 Class may appear at the final approval hearing to address whether the proposed settlement
12 should or should not be approved as fair, reasonable, and adequate. The Court will consider all
13 properly submitted objections. Any Settlement Class Member who does not appear individually
14 or through counsel and who does not challenge or comment upon the fairness and adequacy of
15 the Settlement Agreement or Class Counsel’s request for fees shall waive and forfeit any and all
16 rights to appear separately or object.

17 24. The Court retains jurisdiction over the Action and all matters arising out of or
18 connected with the proposed settlement. The Court reserves the right to adjourn or continue
19 the date of the Final Approval Hearing without further notice to Class Members and retains
20 jurisdiction to consider all further applications arising out of or connected with the settlement.
21 After the Final Approval Hearing, the Court may approve the settlement without further notice
22 to Settlement Class Members.

23 25. If the Court does not enter the Final Approval Order, or if the Effective Date does
24 not occur for any reason, then the Action shall proceed as if the Settlement Agreement had not
25 been executed. In that event, the Parties shall meet and confer and present the Court with a
26 proposed revised case scheduling order.

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IT IS SO ORDERED.

DATED this 21st day of December, 2022.

electronic signature attached

/s/ _____
THE HONORABLE ANDREA DARVAS

Presented by:

TERRELL MARSHALL LAW GROUP PLLC

By: /s/ Blythe H. Chandler, WSBA #43387

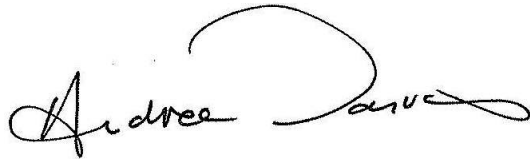
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King County Superior Court
Judicial Electronic Signature Page

Case Number: 21-2-10304-5
Case Title: DEMARRE ET ANO vs MUTUAL OF ENUMCLAW INSURANCE
CO
Document Title: ORDER RE PRELIM SETTMT APPROVAL
Signed By: Andrea Darvas
Date: December 21, 2022



Judge: Andrea Darvas

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: A0508A9EC49C5AD88584C7F2E36F1D39ADCAE781
Certificate effective date: 7/16/2018 2:36:32 PM
Certificate expiry date: 7/16/2023 2:36:32 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Andrea Darvas:
XHze8QrS5hGvaMX2AFk6yQ=="