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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MIKESHIA MORRISON, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

ESURANCE INSURANCE CO., a foreign
automobile insurance company,

Defendant.

Case No.

NOTICE OF REMOVAL

Defendant Esurance Insurance Company (“Esurance”) hereby removes the state court action described below to this United States District Court for the Western District of Washington. Removal is proper under the Class Action Fairness Act (“CAFA”), 28 U.S.C. §§ 1332(d), 1441 (a) and (b), and 1453 because this is a class action with 100 or more putative class members, an amount in controversy in excess of \$5 million, and minimal diversity.

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1 **I. NATURE OF THE CASE**

2 1. On August 6, 2018, Plaintiff filed this lawsuit in King County Superior Court
3 under the caption *Mikeshia Morrison, On Behalf of Herself and all others similarly situated v.*
4 *Esurance Insurance Co., a foreign automobile insurance company*, King County Case No. 18-2-
5 19723-6.

6 2. The Complaint asserts six causes of action against Esurance for: (1) declaratory
7 relief; (2) breach of contract; (3) violation of the Washington Insurance Fair Conduct Act,
8 RCW 48.30.015; (4) violation of the Washington Consumer Protection Act, RCW 19.86, *et seq.*;
9 (5) common law bad faith; and (6) breach of the implied covenant of good faith and fair dealing.

10 3. The Complaint alleges that Esurance is an automobile insurance carrier
11 headquartered in San Francisco, California that is licensed to provide insurance to Washington
12 residents and that Esurance unlawfully denied, limited, and/or terminated Plaintiff's and the
13 putative class members' benefits under Personal Injury Protection coverage ("PIP") after
14 concluding that Plaintiff and the putative class members had achieved maximum medical
15 improvement ("MMI"). (Compl. ¶¶ 1.1, 1.2, 2.2, 5.1, 5.4, 5.12, 5.13.)

16 4. Plaintiff purports to bring this suit as a class action on behalf of a putative class
17 defined as:

18 [A]ll first party insureds and all third-party beneficiaries of any automobile
19 insurance policies issued by Esurance in the State of Washington, who made a
20 claim for PIP benefits, and Esurance terminated their PIP benefits, limited their
21 benefits, or denied coverage for future treatment of injuries based on Esurance's
22 contention that the insured/beneficiary had reached MMI, or that such treatment
23 or benefits were not essential in achieving MMI for the injuries arising out of the
24 automobile accident.

25 (Compl. ¶ 3.2.)

26 5. Plaintiff seeks damages incurred by Plaintiff and the putative class members
following Esurance's denial of PIP benefits using MMI, in name or substance, as a criterion for
the termination, limitation, or denial of future benefits, together with any and all exemplary
damages and enhancements provided by statutes (including treble damages under the

1 Washington Insurance Fair Conduct Act and the Washington Consumer Protection Act), along
2 with prejudgment interest, and attorney fees awarded by statute and under *Olympic Steamship*.
3 (Compl. ¶¶ 7.3, 8.5, 9.6, 10.6, 11.4; Compl. at Prayer for Relief ¶¶ 10–13.)

4 6. Plaintiff also asks the Court to direct Esurance to return to the class all
5 subrogation payments received by Esurance on behalf of its insureds for PIP benefits paid and to
6 declare that Esurance has extinguished and otherwise waived its right to claim
7 subrogation/reimbursement on payments made on the insured’s PIP claims (Compl. at Prayer for
8 Relief ¶¶ 8, 14.)

9 7. Finally, Plaintiff asks the Court to enjoin Esurance “from utilizing MMI, in name
10 or in substance, as a basis for terminating, limiting, or denying PIP claims.” (Compl. at Prayer
11 for Relief ¶ 9.)

12 **II. THE REQUIREMENTS FOR REMOVAL UNDER CAFA ARE SATISFIED**

13 8. This Court has original jurisdiction over this matter pursuant to CAFA, 28 U.S.C.
14 § 1332(d), because each requirement for the exercise of jurisdiction has been met. This lawsuit
15 is a “class action” within the definition of CAFA; there is minimal diversity of citizenship; the
16 putative class exceeds 100 members; and the amount in controversy exceeds \$5 million. This
17 action is removable pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446, and 1453.

18 **A. This Case Is a “Class Action.”**

19 9. CAFA defines a “class action” as “any civil action filed under rule 23 of the
20 Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing
21 an action to be brought by 1 or more representative persons as a class action.” 28 U.S.C.
22 § 1332(d)(1)(B).

23 10. This matter is a “class action” under CAFA because Plaintiff specifically pleads
24 that she brings her claims as “class claims pursuant to [Washington] Civil Rule 23 and Local
25 Rule 23,” Washington’s equivalent of Rule 23 of the Federal Rules of Civil Procedure. (Compl.
26 ¶ 3.1.)

1 **B. This Case Satisfies CAFA’s Minimal-Diversity Requirement.**

2 11. Minimal diversity exists between the putative class and Esurance as required by
3 28 U.S.C. § 1332(d)(2). CAFA requires only that *one* member of the class is a citizen of a state
4 different from the defendant. 28 U.S.C. § 1332(d)(2)(A).

5 12. In this case, minimal diversity exists because Plaintiff is a citizen of the State of
6 Washington, and Esurance is not. (Compl. ¶¶ 2.1, 2.2.) Esurance is a Wisconsin corporation
7 with its corporate headquarters in San Francisco, California. (*See* Compl. ¶ 2.2.) Indeed,
8 Plaintiff specifically alleges that Esurance “is a foreign insurer” (Compl. ¶ 5.1), which is
9 “headquartered in San Francisco, California” (Compl. ¶ 2.2).

10 **C. The Putative Class Exceeds 100 Members.**

11 13. CAFA further requires that the proposed class include at least 100 members. 28
12 U.S.C. § 1332(d)(5).

13 14. Plaintiff’s claim that “the class consists of several hundred, if not thousands, of
14 persons located in Washington who have been impacted by” Esurance’s alleged conduct satisfies
15 CAFA’s numerosity requirement. (Compl. ¶¶ 3.3; *see also* Compl. ¶ 1.2 (“This action concerns
16 the thousands of consumers who have had their benefits terminated by Esurance under
17 Esurance’s use of MMI”).) *See Kuxhausen v. BMW Fin. Servs. NA LLC*, 707 F.3d 1136, 1140
18 (9th Cir. 2013) (plaintiff’s allegation that it sought to provide relief to “hundreds of affected
19 consumers” satisfied the numerosity requirement). As discussed below, Esurance’s records also
20 support Plaintiff’s admission regarding the size of the putative class alleged by Plaintiff.

21 **D. The Amount in Controversy Exceeds \$5 Million.**

22 15. CAFA requires that the amount in controversy exceed \$5 million exclusive of
23 interest and costs. 28 U.S.C. § 1332(d)(2). The claims of the individual class members are
24 aggregated to determine whether that threshold is met. 28 U.S.C. § 1332(d)(6). Though
25 Esurance disputes liability and damages, the amount put in controversy by the claims of Plaintiff
26 and the putative class readily exceeds CAFA’s \$5 million amount in controversy threshold.

1 16. The relevant question for removal purposes is what amount is put in controversy
2 by the complaint, and not what a defendant will actually owe. *See, e.g., Sanchez v. Monumental*
3 *Life Ins. Co.*, 102 F.3d 398, 405 (9th Cir. 1996) (defendant’s removal is proper where evidence
4 allows the court “to determine the extent of the loss which it *might incur*” if plaintiff is
5 successful) (emphasis added); *Fong v. Regis Corp.*, No. C 13-04497 RS, 2014 WL 26996, at *2
6 (N.D. Cal. Jan. 2, 2014) (“When measuring the amount in controversy, a court must assume that
7 the allegations of the complaint are true and that a jury will return a verdict for the plaintiff on all
8 claims made in the complaint.”).

9 17. Analysis of the amount in controversy starts with the allegations in the complaint.
10 *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015). Where the complaint
11 does not plead a specific amount in controversy, a defendant is entitled to rely on a chain of
12 reasoning, including assumptions and logical extrapolations of the amounts at issue in a case, to
13 satisfy its burden of proving that the amount in controversy more likely than not exceeds the
14 jurisdictional threshold. *LaCross v. Knight Transp., Inc.*, 775 F.3d 1200, 1201, 1203 (9th Cir.
15 2015) (“[W]e conclude that [defendant] has produced sufficient evidence to establish by a
16 preponderance of the evidence that the amount in controversy exceeds \$5 million. We also
17 conclude that the chain of reasoning and its underlying assumption to extrapolate fuel costs for
18 the entire class period using the actual invoiced fuel costs of one quarter are reasonable[.]”).

19 18. A notice of removal need only include a plausible allegation that the amount in
20 controversy exceeds CAFA’s \$5 million amount in controversy threshold and need not include
21 actual evidence establishing that amount. *Dart Cherokee Basin Operating Co. v. Owens*, 135 S.
22 Ct. 547, 554 (2014). “[T]he Supreme Court has said that a defendant can establish the amount in
23 controversy by an unchallenged, plausible assertion of the amount in controversy in its notice of
24 removal.” *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1197–98 (9th Cir. 2015) (citing
25 *Dart*, 135 S. Ct. at 554–55). The notice of removal itself may, but need not, include all the
26 specific facts and calculations on which the removing party relies. *Dart*, 135 S. Ct. at 551.

1 19. If the basis for jurisdiction is challenged, the removing defendant need only show
2 by a preponderance of the evidence that the amount in controversy exceeds \$5 million. *Ibarra*,
3 775 F.3d at 1197 (quoting *Dart*, 135 S. Ct. at 554). “The preponderance of the evidence standard
4 is not daunting, and only requires that the defendant provide evidence establishing that it is more
5 likely than not that the amount in controversy exceeds \$5,000,000.” *Kogan v. Allstate Fire &*
6 *Cas. Ins. Co.*, No. C15-5559 BHS, 2015 WL 6870760, at *2 (W.D. Wash. Nov. 9, 2015)
7 (internal editing and quotation marks omitted). Moreover, a plaintiff’s quibbles as to specifics of
8 a defendant’s removal calculation will not prevent removal so long as the defendant has adduced
9 a plausible removal calculation. *Id.* at *3.

10 20. In this case, the elements of the calculation for the amount in controversy include:
11 (1) compensatory damages; (2) treble damages as alleged by Plaintiff; (3) the cost of the future-
12 relief component of any judgment for Plaintiff; and (4) attorneys’ fees as alleged by Plaintiff.

13 **Compensatory Damages**

14 21. According to the Complaint, Plaintiff seeks compensatory damages including but
15 not limited to (1) actual and consequential damages; (2) the amount of all medical expenses
16 incurred by Plaintiff and the putative class following Esurance’s denial, limitation, or termination
17 of PIP benefits; and (3) repayment of the subrogation payments received by Esurance on behalf
18 of its insureds for PIP benefits paid. (Compl. ¶¶ 7.3, 8.5, 9.6, 10.6, 11.4; Compl. at Prayer for
19 Relief ¶¶ 10, 11.)

20 22. The Complaint does not plead the total compensatory damages sought by the
21 putative class, nor does it plead the actual and consequential damages alleged; the medical
22 expenses incurred by the putative class following a wrongful denial, limitation, or termination of
23 PIP benefits based on MMI considerations; or the total subrogation payments received by
24 Esurance that the putative class seeks to recover.

25 23. Plaintiff’s allegations place in controversy damages arising in all claims in which
26 putative class members submitted one or more medical bills to Esurance for payment under PIP

1 coverage, where Esurance may have limited, denied, or terminated payment of PIP benefits or
2 denied coverage for future treatment of injuries based on a contention that the putative class
3 members had reached MMI or that such treatment or benefits were not essential in achieving
4 MMI for the injuries arising out of the automobile accident.

5 24. Although Plaintiff's Complaint does not allege a class period, the longest statute
6 of limitations on the claims asserted is six years for the breach-of-contract claim.
7 RCW 4.16.040. Thus, the class alleged by Plaintiff covers the period from August 6, 2012
8 through the date this lawsuit was filed, August 6, 2018 (the "Class Period").

9 25. During the Class Period, a total of 3,819 unique claimants submitted PIP claims
10 for medical benefits to Esurance in Washington State (the "Potential Class Members"). With
11 respect to the PIP claims of the Potential Class Members, the remaining available PIP benefits
12 under the applicable policies (*i.e.*, the difference between the benefits previously paid by
13 Esurance and the PIP coverage limits) are approximately \$36,717,770.29.

14 26. Esurance's standard automobile insurance policies in effect during the Class
15 Period give Esurance the right to conduct an Independent Medical Examination ("IME") of any
16 PIP claimants, including all of the Potential Class Members. Because determinations regarding
17 "maximum medical improvement" would typically arise in the context of an IME conducted
18 pursuant to an Esurance PIP policy, for purposes of removal Esurance focuses this petition on
19 PIP claims where an IME was ordered or conducted. Because it is possible that a determination
20 of MMI could be reached without an IME (*e.g.*, based on a review of medical records submitted
21 by the claimant), this number is under-inclusive in determining the number of Potential Class
22 Members who were potentially subject to a determination they had reached MMI or that the
23 treatment or benefits at issue were not essential in achieving MMI for the injuries arising out of
24 the automobile accident.

25 27. Esurance did not maintain data during the Class Period that could be readily
26 queried and aggregated to show whether an IME was actually performed in all PIP claims.

1 During the Class Period, Esurance claims adjusters were not required to enter data in Esurance's
2 electronic claims system in a form that could be queried and aggregated to show whether an IME
3 was conducted in a PIP claim, although adjusters could and sometimes did voluntarily enter
4 information indicating an IME referral. Accordingly, the only way to definitively determine for
5 the entire Class Period the exact number of IMEs conducted on Potential Class Members—and
6 what amounts were paid, denied, or limited based on that IME and on what grounds—is to
7 review each of these individuals' claims files. Such a file-by-file review would be very
8 burdensome and not feasible at this time.

9 28. The limited IME-indicator data that appears in Esurance's available electronic
10 claims records indicates that at least 422 Potential Class Members were referred to an IME by
11 Esurance during the Class Period. Esurance's available electronic claims records indicate that
12 Esurance paid less than the full PIP limits available toward the claims of 369 of these Potential
13 Class Members. Because this data is limited,¹ in all likelihood it understates the actual number
14 of IMEs conducted on Potential Class Members for the reasons stated above.

15 29. For the 369 Potential Class Members describe in the foregoing paragraph, the
16 remaining available PIP benefits (*i.e.*, the difference between the benefits previously paid by
17 Esurance and the PIP coverage limits, which is potentially still available to pay medical expenses
18 and other PIP benefits) are approximately \$3,592,795.87. The amount of subrogation,
19 reimbursement, and contribution payments received by Esurance for PIP benefits that Esurance
20 paid to these Potential Class Members during the Class Period is approximately \$559,488.34.

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24 ¹ This includes data: (1) that claims adjusters have voluntarily entered into Esurance's electronic
25 system during the Class Period; (2) that appears in the electronic records that Esurance
26 received in the regular course of business from three of its IME vendors used in the State of
Washington for the period from 2016 to present; and (3) from Esurance's medical bill review
software.

1 30. Accordingly, the principal amount of compensatory damages (not trebled) put at
2 issue for the Class Period is at least \$4,125,284.21. These figures break down by time period as
3 follows.

4 a. 2012–2014: For the two-year period from August 6, 2012 to August 5,
5 2014, during which breach-of-contract (but not treble) damages are available to the Potential
6 Class Members, available PIP benefits are approximately \$782,838.66. For the same period, the
7 amount of subrogation, reimbursement, and contribution payments received by Esurance for PIP
8 benefits it paid to these Potential Class Members is approximately \$211,059.81. Accordingly,
9 the compensatory damages put at issue for August 6, 2012 to August 5, 2014 amount to at least
10 \$993,898.47.

11 b. 2014–present: For the four-year period from August 6, 2014 to August 6,
12 2018, during which treble damages are available under Plaintiff’s Consumer Protection Act
13 claim, available PIP benefits are approximately \$2,809,957.21. For the same period, the amount
14 of subrogation, reimbursement, and contribution payments received by Esurance for PIP benefits
15 it paid to these Potential Class Members is approximately \$348,428.53. Accordingly, the
16 principal amount of compensatory damages (not trebled) put at issue for August 6, 2014 to the
17 present is at least \$3,158,385.74.²

18 31. These figures are conservative, *inter alia*, because they do not include
19 unreimbursed medical expenses of any of the approximately 3,000 other Potential Class
20 Members who submitted medical bills under PIP coverage associated with automobile policies
21 issued by Esurance in the State of Washington during the Class Period, each of whom may also
22 have been referred for an IME before their PIP benefits were denied, limited, or terminated by
23 Esurance or denied based on reaching MMI without an IME being conducted.

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26 ² Amounts described in Paragraph 30(b) relate to the claims of 274 Potential Class Members.

1 32. Likewise, these figures do not account for any in-process or future subrogation
2 recoveries by Esurance that may need to be paid to the Potential Class Members.

3 **Treble Damages**

4 33. Exemplary or punitive damages are included in determining the amount in
5 controversy. *See Lewis v. Hartford Cas. Ins. Co.*, No. 3:15-CV-05275-RBL, 2015 WL 4430971,
6 at *2–3 (W.D. Wash. July 20, 2015) (lead plaintiff could not disclaim right to treble damages for
7 absent class members; trebling compensatory damages put amount in controversy well above
8 CAFA’s \$5 million minimum); *Dawsey v. Travelers Indem. Co.*, No. 3:15-cv-05188-RBL, 2015
9 WL 4394545, at *2–3 (W.D. Wash. July 16, 2015) (trebling compensatory damages to find
10 amount in controversy exceeded jurisdictional threshold); *Burke Family Living Trust v. Metro.*
11 *Life Ins. Co.*, No. C09-5388 FDB, 2009 WL 2947196, at *3 (W.D. Wash. Sept. 11, 2009)
12 (denying motion to remand where, among other things, plaintiff’s claim for treble damages
13 increased the amount in controversy above the jurisdictional threshold); *see also Chabner v.*
14 *United of Omaha Life Ins. Co.*, 225 F.3d 1042, 1046 n.3 (9th Cir. 2000) (noting district court
15 may take treble damages, attorneys’ fees, and punitive damages into account when determining
16 whether jurisdictional threshold had been met).

17 34. Here, Plaintiff brings claims under the CPA, which authorizes the court to
18 increase any damages award up to three times the actual damages sustained, to a maximum of
19 \$25,000. RCW 19.86.090. Courts can award CPA treble damages to each putative class
20 member, not just the class representative. *See, e.g., Smith v. Behr*, 113 Wash. App. 306, 345–46,
21 54 P.3d 665 (2002) (trial court has discretion to “determine whether to award treble damages to
22 the represented class members” as well as the named plaintiff); *Peck v. Cingular Wireless, LLC*,
23 No. 09-0106, 2009 WL 775385, at *2 (W.D. Wash. Mar. 20, 2009) (“Plaintiffs seek \$2.3 million
24 in actual damages, split among roughly 100,000 class members, or about \$23 per person. When
25 such actual damages are trebled, the resulting amount of \$69 does not exceed the cap on
26 exemplary damages per class member and the aggregate of \$6.9 million constitutes defendants’

1 potential exposure, not including costs and attorney’s fees, which is well over the \$5 million
2 threshold for jurisdiction under CAFA. Therefore, plaintiffs’ motion for remand is DENIED.”).³

3 35. The longest statute of limitations on the claims for which treble damages are
4 available is four years for the Consumer Protection Act claim. RCW 19.86.120.

5 36. As set forth above, before trebling, the compensatory damages at issue for the
6 CPA claim (*i.e.*, those relating to the period from August 6, 2014 to the present) are at least
7 \$3,158,385.74. Therefore, a reasonable estimate of the portion of Plaintiff’s requested damages
8 relating to her CPA claim, before applying the statutory cap, is approximately \$9,475,157.22
9 (*i.e.*, treble the principal damages amount of \$3,158,385.74).

10 37. Indeed, the amount in controversy threshold is readily met even if each of the 274
11 Potential Class Members whose claims arose during the four-year period of August 6, 2014 to
12 the present had their damages capped at the statutory maximum of \$25,000 (*i.e.*, \$25,000 * 274
13 Potential Class Members in August 6, 2014 to present = \$6,850,000). *See Peck*, 2009 WL
14 775385, at *2.

15 **Cost of Future Injunctive Relief**

16 38. As set forth above, the amount in controversy far exceeds the \$5 million CAFA
17 threshold based on only compensatory and treble damages. However, the cost of injunctive and
18 declaratory relief in this case to Esurance also must be included in the amount in controversy.
19 Ninth Circuit law is clear that the cost of this type of relief to a defendant must be included in the
20 amount in controversy. *See, e.g., Tuong Hoang v. Supervalu Inc.*, 541 F. App’x 747, 748 (9th
21 Cir. 2013) (the “value of the requested injunction against Defendants would not be ‘recovered’
22 by Plaintiffs yet the value of such an injunction is part of the amount that has been put in
23 controversy by Plaintiffs’ complaint We reverse and remand for the district court to
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25 ³ Plaintiff and Potential Class Members also seek treble damages on their IFCA claim pursuant
26 to RCW 48.30.015.

1 determine whether Defendants have met the preponderance of the evidence standard for
2 removal.”).

3 39. In *Keeling v. Esurance Ins. Co.*, 660 F.3d 273 (7th Cir. 2011), the plaintiff alleged
4 that Esurance improperly charged premiums for coverage that was worthless. Esurance removed
5 the case to federal court under CAFA. The district court remanded, and Esurance appealed.
6 Esurance had issued more than 50,000 insurance policies containing the contested clause.
7 During the applicable limitations period, Esurance collected a net premium of \$613,894 on the
8 relevant coverages. The district court treated this amount as “the principal amount in
9 controversy (the class wants the money repaid),” and found the “prospective relief would be
10 costless to Esurance, because that relief would require changing only a few words on a printed
11 form.” *Id.* at 274. The Seventh Circuit reversed and determined the amount-in-controversy
12 requirement had been met. *Id.* The Seventh Circuit explained that the value of the injunctive
13 relief was based not on the cost of a forms change, but on the loss of premiums or increase in
14 claims payments Esurance could incur if the plaintiff prevailed:

15 If the class is right and Esurance must either stop charging a premium
16 or change the terms so that policyholders receive indemnity more
17 frequently, it will suffer a financial loss. Suppose it were to comply
18 with an injunction by eliminating this coverage and its premium. Its
19 current profit on this coverage in Illinois is about \$125,000 a year.
20 The present value of foregoing this stream of profits is about \$1.5
21 million. (That is the present value of \$125,000 a year for 20 years,
22 discounted at 5% per year.)

23 *Id.* Accordingly, even though the compensatory damages amounted to only approximately
24 \$600,000, the cost of the injunctive relief—projected 20 years into the future—plus the potential
25 for punitive damages, brought the amount-in-controversy above CAFA’s \$5 million requirement.

26 40. Here, Plaintiff seeks a judgment declaring that Esurance “has violated and
continues to violate Washington Law . . . by inserting MMI as a criterion for terminating,
limiting, or denying PIP claims.” (Compl. at Prayer for Relief ¶ 2.) Plaintiff also seeks an
injunction “requiring Defendant to immediately cease and desist from utilizing MMI, in name or

1 in substance, as a basis for terminating, limiting, or denying PIP claims.” (Compl. at Prayer for
2 Relief ¶ 9.) As noted, compliance with such a judgment will not only require Esurance to
3 reimburse the amounts for past denials, limitations, and terminations, it will also require
4 Esurance to cease making such denials, limitations, and terminations in the future. It is
5 reasonable to assume that the value of the relevant denials, limitations, and terminations for the
6 future will approximate those for the past.

7 41. The approximately \$3,592,795.87 in potential bill reductions and denials during
8 the Class Period spanned 6 years, so the average value of these denials and reductions to
9 Esurance during the Class Period was approximately \$598,799.31 annually.

10 42. If Esurance was required to cease the alleged practice about which Plaintiff
11 complains for just a 10-year period (10 years less than the period used in *Keeling*), the cost to
12 Esurance of not taking those reductions would be approximately \$5,987,993.1 (10 *
13 \$598,799.31), with a corresponding net-present value of approximately \$4,623,769.55 using the
14 5% discount factor used in *Keeling*. For a 20-year period like that used in *Keeling*, the amount
15 swells to approximately \$11,975,986.20, with a corresponding net present value of
16 approximately \$7,462,362.95 using the same discount factor. Both figures are well in excess of
17 the \$5 million amount-in-controversy threshold under CAFA.

18 43. Together with the Potential Class Members’ potential breach-of-contract damages
19 between 2012 and 2014 (\$993,898.47) plus actual and trebled damages for the period from 2014
20 to present (\$6,850,000), the shorter 10-year injunctive-relief value brings the total amount in
21 controversy to more than \$12 million, and the 20-year injunctive relief figure supported by
22 *Keeling* brings the total to more than \$15 million.

23 **Attorneys’ Fees**

24 44. When attorneys’ fees are added to the amount in controversy, the amount in
25 controversy is further increased over \$5 million.

1 45. “[W]here an underlying statute authorizes an award of attorneys’ fees, either with
2 mandatory or discretionary language, such fees may be included in the amount in controversy.”
3 *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998); *see also Lowdermilk v. U.S.*
4 *Bank Nat’l Ass’n*, 479 F.3d 994, 995 (9th Cir. 2007) (holding that where the “statutes provide for
5 the payment of attorneys’ fees, we include the fees in the amount in controversy”).

6 46. Here, under the above law, Plaintiff’s request for attorneys’ fees can and should
7 be included in determining whether the CAFA jurisdictional amount requirement is satisfied.
8 Plaintiff’s potential recovery of statutory attorneys’ fees pushes the amount in controversy
9 further over the jurisdictional threshold.

10 47. Plaintiff seeks attorneys’ fees in connection with her claims for violations of the
11 Consumer Protection Act and Insurance Fair Conduct Act (as well as her claims for common law
12 bad faith and breach of the implied covenant of good faith and fair dealing). (Compl. ¶¶ 8.2, 8.5,
13 9.6, 10.6, 11.4.) Attorneys’ fees are recoverable under both statutes. RCW 19.86.090 (CPA);
14 RCW 48.30.015 (IFCA). Using 1/4 of the damages estimate above for just the treble damages
15 available under the CPA claim (\$6,850,000) as a reasonable estimate of attorneys’ fees, the
16 estimated amount of attorneys’ fees in controversy equals approximately \$1,712,500.
17 Accounting for this element of relief sought by Plaintiff brings the amount in controversy to
18 more than \$14 million, using the 10-year net-present-value figure for the value of the injunctive
19 relief Plaintiff seeks, and more than \$17 million using the 20-year net-present-value figure for
20 the value of prospective injunctive relief.

21 48. For all the foregoing reasons, Esurance has demonstrated by a preponderance of
22 the evidence that the amount the putative class could potentially recover here exceeds \$5 million,
23 which is all that is required by clear Ninth Circuit law for removal to be appropriate.

24 **III. CAFA EXCEPTIONS DO NOT APPLY**

25 49. Plaintiff bears the burden of establishing that an exception to CAFA jurisdiction
26 applies. *Mondragon v. Capital One Auto Fin.*, 736 F.3d 880, 883 (9th Cir. 2013) (“[T]he burden

1 of proof for establishing the applicability of an exception to CAFA jurisdiction rests on the party
2 seeking remand, which in this case, as in most cases, is the plaintiff.”). The mandatory and
3 discretionary exceptions to removal under 28 U.S.C. § 1332(d) do not apply because they all
4 require a defendant to be a citizen of the forum state. 28 U.S.C. §§ 1332(d)(4)(A)(II),
5 1332(d)(4)(B), 1332(d)(3). Esurance is not, nor is it alleged to be, a citizen of Washington.
6 (Compl. ¶¶ 2.2, 5.1.)

7 **IV. PROCEDURAL REQUIREMENTS FOR REMOVAL ARE MET**

8 50. Removal is timely under 28 U.S.C. §§ 1446(b) and 1453 because the Complaint is
9 the first pleading, motion, order, or other paper from which it could be ascertained that this
10 action is removable.

11 51. Plaintiff filed the Complaint on August 6, 2018. On August 7, 2018, Plaintiff
12 served Esurance with a copy of the Complaint through the Insurance Commissioner of the State
13 of Washington. On August 13, 2018, Esurance received a copy of the Complaint from the
14 Insurance Commissioner. This Notice of Removal is timely filed within 30 days of service.

15 52. In addition, venue is appropriate here because the alleged acts and omissions
16 giving rise to this action occurred in this Judicial District. 28 U.S.C. § 1391(b)(2).

17 53. Pursuant to 28 U.S.C. § 1446(a) and LCR 101(b) and 101(c), Esurance attaches
18 the following documents to this Notice of Removal: (1) Civil Case Cover Sheet (Exhibit 1); (2) a
19 copy of the operative complaint, filed as a separate “attachment” in the electronic filing system
20 and labeled as the “complaint” (Exhibit 2); (3) the most current state court docket and all
21 pleadings on file (Exhibit 3); (4) the Insurance Commissioner’s Certificate of Service (Exhibit
22 4); and (5) Esurance’s Notice of Filing of Notice of Removal filed in state court (omitting
23 exhibits) (Exhibit 5). Counsel for Esurance hereby verifies that these Exhibits are true and
24 complete copies of all the records and proceedings in the state court proceeding.
25
26

1 54. Pursuant to LCR 101(b)(3), Esurance states that no party has filed a separate jury
2 demand in the state court proceeding, but Plaintiff included a jury demand in her Complaint.
3 (Compl. ¶ 12.1.)

4 55. A copy of this Notice of Removal is being filed with the Clerk of the King County
5 Superior Court and is being served under 28 U.S.C. § 1446(d).

6 56. Esurance, by this notice, intends no admission of liability, no admission as to the
7 viability of any of Plaintiff's theories, and no admission as to liability for any of the damage
8 amounts in controversy. Instead, for purposes of removal, Esurance merely refers to and relies
9 upon the potential damages as alleged by Plaintiff in accordance with settled removal law.
10 Esurance reserves, and does not waive, any objections that it may have to service, jurisdiction, or
11 venue, and any and all other defenses, motions, and objections relating to this action, including
12 without limitation objections to the sufficiency of Plaintiff's pleadings and to the propriety of
13 class certification.

14 For the foregoing reasons, Esurance hereby removes this action from the Superior Court
15 of the State of Washington, King County, to this Court.

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1 DATED this 6th day of September, 2018.

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FOX ROTHSCHILD LLP

By /s/ Gavin W. Skok
Gavin W. Skok, WSBA #29766
1001 Fourth Avenue, Suite 4500
Seattle, WA 98154
Telephone: (206) 624-3600
Fax (206) 389-1708
Email: gskok@foxrothschild.com

Patrick M. Fenlon, *pro hac vice* to be filed
Campbell Mithun Tower – Suite 2000
222 South Ninth Street
Minneapolis, MN 55402
Telephone: 612-607-7000
Facsimile: 612-607-7100
Email: pfenlon@foxrothschild.com

Attorneys for Defendant
Esurance Insurance Co.

CERTIFICATE OF SERVICE

I certify that I am a legal administrative assistant at the law firm of Fox Rothschild LLP in Seattle, Washington. I am a U.S. citizen over the age of eighteen years and not a party to the within cause. On the date shown below, I caused to be served a true and correct copy of the foregoing on counsel of record for all other parties to this action as indicated below:

<u>Service List</u>	
Duncan C. Turner, WSBA #20597 BADGLEY MULLINS TURNER PLLC 19929 Ballinger Way NE, Suite 200 Seattle, WA 98155 Telephone: (206) 621-6566 Facsimile: (206) 621-9686 dturner@badgleynullins.com <i>Attorneys for Plaintiff</i>	<input checked="" type="checkbox"/> Via US Mail <input type="checkbox"/> Via Messenger <input checked="" type="checkbox"/> Via CM/ECF / Email <input type="checkbox"/> Via over-night delivery
Randall C. Johnson, Jr., WSBA #24556 LAW OFFICE OF RANDALL C. JOHNSON, PLLC P.O. Box 15881 Seattle, WA 98115 Telephone: (206) 890-0616 rcjj.law@gmail.com <i>Attorneys for Plaintiff</i>	<input checked="" type="checkbox"/> Via US Mail <input type="checkbox"/> Via Messenger <input checked="" type="checkbox"/> Via CM/ECF / Email <input type="checkbox"/> Via over-night delivery
Ryan C. Nute, WSBA #32530 LAW OFFICE OF RYAN C. NUTE, PLLC 19929 Ballinger Way NE, Suite 200 Seattle, WA 98155 Telephone: (206) 330-0482 ryan@rcnutelaw.com <i>Attorneys for Plaintiff</i>	<input checked="" type="checkbox"/> Via US Mail <input type="checkbox"/> Via Messenger <input checked="" type="checkbox"/> Via CM/ECF / Email <input type="checkbox"/> Via over-night delivery

1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true and correct.

3 EXECUTED this 6th day of September, 2018, in Seattle, Washington.


4
5 
6 Courtney R. Tracy

EXHIBIT 1

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Mikeshia Morrison

(b) County of Residence of First Listed Plaintiff King County, Washington (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

(see attachment)

DEFENDANTS

Esurance Insurance Co.

County of Residence of First Listed Defendant San Francisco County, CA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Gavin W. Skok, Fox Rothschild LLP, 1001 Fourth Avenue, Suite 4500, Seattle, WA 98154; 206-624-3600

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes categories like Insurance, Personal Injury, Real Property, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332(d), 1441(a)-(b), 1453

Brief description of cause: Putative class action alleging wrongful denial of personal injury protection medical benefits under insurance policies

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,001.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 09/06/2018 SIGNATURE OF ATTORNEY OF RECORD s/ Gavin Skok

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

**ATTACHMENT TO
CIVIL COVER SHEET**

Attorneys for Plaintiff:

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Badgley Mullins Turner PLLC
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Ryan C. Nute
Law Office of Ryan C. Nute, PLLC
19929 Ballinger Way NE, Suite 200
Seattle, WA 98155
Telephone: (206) 330-0482

EXHIBIT 2

Insurance Commissioner
ACCEPTED SOP
AUG 07 2018
TIME: 2 pm

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

MIKESHIA MORRISON, On Behalf of Herself)
and all others similarly situated,)

Plaintiff,)

v.)

ESURANCE INSURANCE CO., a foreign)
automobile insurance company,)

Defendant.)

CLASS ACTION
No.
COMPLAINT FOR DECLARATORY
JUDGMENT, INJUNCTIVE RELIEF,
AND FOR DAMAGES

The Plaintiff, by and through her attorneys of record, Badgley Mullins Turner PLLC,
Law Office of Ryan C. Nute, PLLC, and Law Office of Randall Johnson, PLLC, allege as
follows:

I. NATURE OF THIS ACTION

1.1 Defendant Esurance Insurance Co. (“Esurance”) has engaged in a systematic
practice of prematurely and unlawfully depriving its injured claimants of medical benefits
under Personal Injury Protection (PIP) coverage. PIP coverage typically promises that the
insurer will pay a first-party insured or a third-party beneficiary “reasonable and necessary”

1 medical expenses incurred from bodily injuries sustained in an automobile accident.

2 1.2 PIP benefits may be terminated by an insurance carrier for only one of four
3 reasons: if treatment is not (1) reasonable, (2) necessary, (3) related to the accident, or (4)
4 incurred within three years of the accident. WAC 284-30-395(1). No other reasons for
5 terminating benefit payments are permitted. Despite this, Esurance has terminated benefit
6 payments to first-party insureds and third-party beneficiaries when it contends that an insured
7 has achieved “maximum medical improvement” (“MMI”) for the bodily injury claim. This
8 action concerns the thousands of consumers who have had their benefits terminated by
9 Esurance under Esurance’s use of MMI in terminating their PIP benefits and denying
10 coverage for treatment received by the insured following Esurance’s determination that an
11 insured has reached MMI.
12

13 II. THE PARTIES

14 2.1 Plaintiff Morrison is, and at all times material hereto is, a resident of King
15 County, Washington.
16

17 2.2 Defendant Esurance was, and at all times material hereto is, an automobile
18 insurance carrier licensed to provide insurance under the laws of the State of Washington to
19 Washington residents. Esurance is headquartered in San Francisco, California. Esurance does
20 business in King County, Washington.

21 2.3 At all times material to this Complaint, Plaintiff was insured under a contract
22 of insurance with Defendant and dutifully paid all premiums. Plaintiff’s coverage was in
23 force on March 6, 2018. On March 6, 2018, Plaintiff was injured in an automobile accident
24 and in order to obtain treatment for her injuries, opened a PIP claim with Defendant.
25
26

III. CLASS ALLEGATIONS

1
2 3.1 Plaintiff brings all claims herein as class claims pursuant to Civil Rule 23 and
3 Local Rule 23. The requirements of these rules are met with respect to the class defined
4 below.

5 3.2 The class consists of all first party insureds and all third-party beneficiaries of
6 any automobile insurance policies issued by Esurance in the State of Washington, who made
7 a claim for PIP benefits, and Esurance terminated their PIP benefits, limited their benefits, or
8 denied coverage for future treatment of injuries based on Esurance’s contention that the
9 insured/beneficiary had reached MMI, or that such treatment or benefits were not essential in
10 achieving MMI for the injuries arising out of the automobile accident.

11 3.3 Joinder of all members of the class is impractical, as the class consists of
12 several hundred, if not thousands, of persons located in Washington who have been impacted
13 by the Defendant’s conduct identified herein. The exact number of class members can be
14 determined by appropriate discovery.
15

16 3.4 There are questions of law and fact that are common to the class, including,
17 but not limited to, the following:
18

19 A. Whether it is lawful for Esurance to terminate or limit benefits based upon a
20 claimant reaching, according to Esurance, “maximum medical improvement.”

21 B. Whether a Declaratory Judgment should be entered declaring Esurance’s
22 pattern or practice of denying coverage on the basis of MMI is unlawful.

23 C. Whether Esurance should be enjoined from such further unlawful conduct.

24 D. Whether Esurance’s conduct damaged class members.

25 E. The nature and extent of damages that insureds have suffered as a result of
26

1 Esurance's pattern or practice of denying claims based on MMI.

2 F. Whether Esurance's unlawful conduct as alleged in this Complaint
3 extinguishes any contractual or equitable subrogation interest Defendant may have in its
4 insureds' recoveries.

5 3.5 The interest of Plaintiff in this matter is the same as the interests of the other
6 members of the class. Her claim arises from the same practice and course of conduct that
7 gives rise to the claims of other potential class members.

8 3.6 Plaintiff is committed to vigorously pursuing this action on behalf of the class
9 and has retained counsel competent to handle class actions of this sort. Plaintiff will fairly
10 and adequately represent the interests of the class members and has no interests that conflict
11 with those of the rest of the class.

12 3.7 The prosecution of separate actions by members of the class would create a
13 risk of establishing incompatible standards of conduct for Defendant. For example, one court
14 may determine that challenged actions violate Washington law and enjoin them, while
15 another may decide that those same actions are somehow permissible. Similarly, individual
16 actions may be dispositive to the interests of the class.

17 3.8 Defendant has acted in a consistent manner towards all class members such
18 that a pattern of activity is apparent. That is, Defendant has arbitrarily inserted a fifth
19 element to WAC 284-30-395(1), and denied claims on this basis, which constitutes an unfair
20 practice that affects all class members. Defendant's actions apply to the class as a whole and
21 Plaintiff seeks equitable remedies with respect to the entire class.

22 3.9 The common questions of law and fact identified above predominate over
23 those questions that affect only individual class members. Moreover, a class action is the
24
25
26

1 superior method for a fair and efficient adjudication of this controversy because Defendant's
2 practice of denying coverage of claims based on MMI is pervasive across many automobile
3 insurance policies which provide for PIP protection. The likelihood that individual members
4 of the class will prosecute separate actions is remote due to the time and expense necessary to
5 conduct this litigation, and the likelihood that the insured submitted the treatment Defendant
6 denied to their health insurer for payment. To Plaintiff's knowledge, no similar cases are
7 currently pending against this Defendant by other members of the class. Plaintiff's counsel,
8 experienced in class actions, foresees little difficulty managing this case as a class action.
9

10 3.10 The prerequisites for maintaining a class action for injunctive relief exist in
11 this case. If injunctive relief is not granted, great harm and irreparable injury to Plaintiff and
12 other members of the class will continue, and Defendant will continue denying coverage and
13 treatment on the basis of MMI. The proposed class has no adequate remedy at law for the
14 injuries which will recur, given that Defendant will continue to mislead its first-party
15 insureds and cause them economic and non-economic injuries unless prevented by this Court.
16 An order, finding money damages alone, would be meaningless to those who will be injured
17 by Defendant's conduct in the future if the challenged conduct is allowed to continue, and for
18 those who rely on Defendant in selecting an insurance provider and seeking care for their
19 injuries arising out of an automobile accident.
20

21 IV. VENUE AND JURISDICTION

22 4.1 This Court has jurisdiction over Plaintiff's claims pursuant to RCW 2.08.010,
23 which grants the Superior Court with jurisdiction to hear disputes of this type.
24

25 4.2 This Court has jurisdiction over Defendant because Defendant is authorized to
26 conduct business in the State of Washington and does transact business in Washington

1 through the sale of insurance policies.

2 4.3 Venue is proper in King County under RCW 4.12.025 since Defendant
3 transacts business in King County, the insured resides in King County, and many of the
4 alleged violations of law occurred in King County.

5 **V. STATEMENT OF FACTS AS TO PLAINTIFFS.**

6 5.1 Defendant is a foreign insurer who is licensed to provide automobile liability
7 insurance in the State of Washington and does provide automobile liability insurance in the
8 State of Washington. Defendant's automobile policies include optional coverage for
9 Personal Injury Protection ("PIP"). Defendant's promise of PIP coverage states in pertinent
10 part, "In return for **'your'** premium payment for Personal Injury Protection, and subject to
11 the Limits of Liability, if **'you'** pay the premium for Personal Injury Protection, **'we'** will pay
12 the benefits an **'insured'** is entitled to pursuant to Washington Personal Injury Protection law
13 because of **'bodily injury.'**" (emphasis in original) These payments are available for up to
14 three years for bodily injury sustained in an automobile accident. The PIP payments include
15 "[m]edical and hospital benefits" which the policy defines as, "payments for all reasonable
16 and necessary expenses incurred by or on behalf of the **'insured'** within 3 years from the
17 date of the 'accident' for necessary health care services related to the 'accident' and provided
18 by persons licensed to render such services[.]" (emphasis in original).

19 5.2 Insurance regulations in Washington limit the reasons for which an insurer
20 can terminate, limit, or deny PIP benefits. These regulations authorize an insurer to
21 terminate, limit, or deny PIP benefits:

22 (1) if the treatment is not reasonable;

23 (2) if the treatment is not necessary;

1 (3) if the treatment is not related to the motor vehicle accident; or

2 (4) if the treatment was not incurred within three years of the date of the motor vehicle
3 accident.

4 5.3 No other grounds for terminating, limiting, or denying PIP benefits may be
5 used.

6 5.4 Despite the clear regulations, Defendant has terminated, limited, or denied its
7 first-party insureds and third-party beneficiaries PIP benefits while they were still receiving
8 treatment for injuries by arguing that the treatment, and any future treatment, was
9 unnecessary since the claimant had reached maximum medical improvement. Defendant
10 argues that once maximum medical improvement has been reached, further medical
11 treatment would be unreasonable, unnecessary, or unrelated to the accident.

12 5.5 By inserting MMI as a basis for terminating, limiting, or denying PIP benefits,
13 Defendant is engaging in a scheme to manufacture a defense to first-party and third-party
14 beneficiary claims.
15

16 5.6 Defendant has a duty to act in good faith.

17 5.7 Plaintiff purchased an automobile policy from Defendant and paid all sums
18 due and owing to maintain coverage. Plaintiff purchased PIP coverage offered by Defendant.
19 Her policy, and PIP coverage, was in effect on March 6, 2018, the date in which she was
20 involved in an accident with the Plaintiff.
21

22 5.8 On March 6, 2018, Plaintiff was involved in an automobile accident and was
23 injured. She opened a PIP claim with Defendant and sought treatment for her injuries.
24

25 5.9 Plaintiff was treated for her injuries beginning in March of 2018.
26

1 5.10 Plaintiff engaged in chiropractic and massage therapy from March 2018 to
2 June of 2018.

3 5.11 Plaintiff was treated at Kirkland Chiropractic and Massage during the period
4 of March 2018 to June 2018.

5 5.12 While Plaintiff was receiving PIP benefits, Esurance requested that Plaintiff
6 undergo a medical examination for determining, among other things, whether she had
7 reached, in the eyes of her insurer, “maximum medical improvement” or MMI.

8 5.13 Esurance then terminated Plaintiff’s PIP benefits, contending that she had
9 reached MMI as of June 6, 2018 and therefore, no further treatment would be deemed
10 reasonable or necessary or otherwise recoverable from Esurance’s PIP coverage.
11

12 5.14 Esurance’s PIP benefits were then terminated by Esurance despite the fact
13 Plaintiff needs ongoing and continuing medical treatment.

14 **FIRST CAUSE OF ACTION- DECLARATORY RELIEF**

15 6.1 Plaintiff incorporates all preceding paragraphs.

16 6.2 Plaintiff and the Class are entitled to PIP benefits under automobile policies
17 with PIP benefits.
18

19 6.3 Defendant terminated, limited, or denied PIP coverage under an automobile
20 policy with PIP coverage benefits utilizing maximum medical improvement as a reason for
21 the denial.

22 6.4 An actual and justiciable controversy has arisen and now exists between the
23 Class and Defendant concerning Defendant’s use of MMI as a basis for terminating, limiting,
24 or denying PIP benefits. The Class is entitled to a judicial declaration from this Court of the
25 rights of the Class and obligations of Defendant under the policy. The Class is entitled to a
26

1 judicial declaration that Defendant has acted in bad faith by misrepresenting policy
2 provisions, failing to disclose all pertinent benefits, and compelling policy holders to initiate
3 or submit to litigation to recover amounts due under the policy. This action is timely and
4 appropriate under applicable law.

5 **SECOND CAUSE OF ACTION- BREACH OF CONTRACT**

6 7.1 Plaintiff incorporates all preceding paragraphs.

7 7.2 The automobile policy held by Plaintiff and the Class entitled them to receive
8 certain benefits, including coverage for medical expenses that were reasonable, necessary,
9 related to the accident, and incurred within three years of the date of the accident.
10

11 7.3 Defendant has breached its contract with Plaintiff and the Class by refusing to
12 pay PIP benefits that were reasonable, necessary, related to the accident, and incurred within
13 three years of the date of the accident, by alleging that Plaintiff and the Class had reached
14 maximum medical improvement. Plaintiff and the Class are entitled to recover damages
15 proximately caused by the breach, plus pre-judgment interest.
16

17 **THIRD CAUSE OF ACTION- INSURANCE FAIR CONDUCT ACT
18 VIOLATIONS/BAD FAITH**

18 8.1 Plaintiff incorporates all preceding paragraphs.

19 8.2 RCW 48.30.015 provides that any first party claimant to a policy of insurance
20 who is unreasonably denied a claim for coverage or payment of benefits by an insurer may
21 bring an action in the superior court of this state to recover the actual damages sustained,
22 together with the costs of the action, including reasonable attorneys' fees and litigation costs
23 for violations of specified insurance statutes and regulations.
24

25 8.3 Defendant has breached applicable regulations, including but not limited to:
26

- 1 • Terminating, limiting, or denying PIP coverage in violation of WAC 284-30-
2 355(1) by using MMI as a criterion for terminating PIP benefits.
- 3 • Misrepresenting pertinent facts or insurance policy provisions in violation of
4 WAC 284-30-330 (1) by misrepresenting pertinent facts or insurance policy
5 provisions relating to PIP coverage.
- 6 • Refusing to pay PIP benefits without conducting a reasonable investigation in
7 violation of WAC 284-30-330(4), including, but not limited to, investigating
8 whether Defendant was entitled to terminate, limit or deny PIP benefits on the
9 basis of MMI, using MMI as a pre-textual basis for terminating benefits, and
10 not examining whether Plaintiff's claims for PIP benefits were valid under the
11 four criteria authorized for terminating benefits under Washington law
- 12 • Forcing Plaintiff and its insureds to initiate litigation in order to obtain policy
13 benefits in violation of WAC 284-30-330(7).
- 14 • Breaching statutory and common law duties to act in good faith by denying
15 valid claims on a basis that any reasonable investigation would have proven to
16 be an insufficient reason for denying coverage.

17
18
19 8.4 Defendant's denial of Plaintiff's future treatment misrepresents pertinent facts
20 or insurance policy provisions;

21 8.5 Plaintiff and the Class are entitled to recover damages, including attorney
22 fees, prejudgment interest, and exemplary damages as a result of Defendant's violations.

23
24 **FOURTH CAUSE OF ACTION- CONSUMER PROTECTION ACT VIOLATIONS**

25 9.1 Plaintiff incorporates all preceding paragraphs.

1 9.2 The business of insurance affects the public interest.

2 9.3 This policy was intended to provide coverage for personal injury protection.
3 Defendant is charged with paying PIP claims that are reasonable, necessary, related to the
4 accident, and incurred within three years of the date of the accident.

5 9.4 Defendant has engaged in unfair, misleading, and deceptive acts by inserting
6 maximum medical improvement as an additional reason for terminating PIP benefits, and in
7 using MMI as a basis for arguing that care or treatment is not reasonable, is not necessary, or
8 is not related to the accident.

9
10 9.5 Defendant's conduct violates the Consumer Protection Act, RCW 19.86 *et*
11 *seq.*

12 9.6 Plaintiff and the Class have been damaged as a result of these violations, and
13 Plaintiff and the Class are entitled to recover their damages, including attorney fees,
14 prejudgment interest, and exemplary damages.

15 **FIFTH CAUSE OF ACTION- COMMON LAW BAD FAITH**

16 10.1 Plaintiff incorporates all preceding paragraphs.

17
18 10.2 RCW 48.01.030 requires each insurer to act in good faith toward its insured.
19 Defendant misrepresented policy and statutory provisions and, among other things, structured
20 its investigation of Plaintiff's PIP claim to manufacture a basis for denying coverage.

21 10.3 Specifically, by inserting MMI into the evaluation of Plaintiff's claims for PIP
22 benefits, Defendant is elevating its own financial interests--avoiding the financial obligation
23 of paying a claim—over that of its first-party insured or third-party beneficiaries, the PIP
24 benefit.
25
26

1 10.4. Defendant's conduct is egregious and pervasive, and without regard to the
2 medical needs of its first-party insureds or third-party beneficiaries.

3 10.5 Defendant's conduct violates the common law duty of an insurer acting in
4 good faith.

5 10.6 As a result, Plaintiff and the Class are entitled to recover damages, including
6 attorney fees, prejudgment interest, and exemplary damages.

7 **SIXTH CAUSE OF ACTION – BREACH OF THE IMPLIED COVENANT OF GOOD**
8 **FAITH AND FAIR DEALING**

9 11.1 Plaintiff incorporates all preceding paragraphs.

10 11.2 Defendant has breached the implied covenant of good faith and fair dealing
11 owed to Plaintiff and the Class.

12 11.3 Plaintiff and the Class have been damaged as a result of Defendant's use of
13 MMI as a criterion in terminating, limiting, or denying PIP benefits.

14 11.4 Plaintiff and the Class are entitled to recover their actual and consequential
15 damages including their attorney fees and pre-judgment interest.

16 **VI. DEMAND FOR JURY**

17 12.1 Plaintiff hereby demands a trial by jury on all issues so triable as a matter of
18 right. In the event this matter is removed, then this prayer for a jury trial should be construed
19 as a demand for jury under Rule 81.
20

21 **VII. PRAYER FOR RELIEF**

22 WHEREFOR, the Plaintiff prays for the following relief:

- 23 1. For an order certifying the class and permitting the case to be prosecuted as a
24 class action.
25

- 1 2. A declaration that Esurance has violated and continues to violate Washington
2 Law, including, but not limited to the Consumer Protection Act, the Insurance
3 Fair Conduct Act, and Washington Insurance Regulations by inserting MMI as a
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- 5 3. A declaration that Esurance, by committing the acts alleged in this Complaint, has
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- 8 4. A declaration that, by committing the acts alleged in this Complaint, Defendant
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18 has extinguished its right to claim subrogation/reimbursement on payments made
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- 20 9. An injunction, requiring Defendant to immediately cease and desist from utilizing
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22 claims.
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10. An award to Plaintiff and the Class for all damages, namely the amount of any and all medical expenses incurred by claimants following Defendant's denial of PIP benefits using MMI as a criterion for the termination, limitation, or denial of future benefits, together with any and all enhancements provided by statutes, pre-judgment interest, and attorney fees awarded by statutes and under *Olympic Steamship*.
 11. Repayment to its insureds of the subrogation payments received by Defendant on behalf of its insureds for PIP benefits paid.
 12. An award to Plaintiff and the class for all damages incurred and proven at trial.
 13. An award of treble damages under the Insurance Fair Conduct Act and all allowable enhanced damages under the Consumer Protection Act.
 14. A waiver of Defendant's subrogation interest in repayment of PIP claims in which treatment was unlawfully denied, limited, or terminated.
 15. Any and all further relief as the Court may deem just and equitable.

18 DATED this 6th day of August, 2018.

19
20 BADGLEY MULLINS TURNER PLLC

21 /s/Duncan C. Turner

22 Duncan C. Turner, WSBA No. 20597

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Superior Court Case Summary

About Dockets

Court: King Co Superior Ct

Case Number: 18-2-19723-6

Sub	Docket Date	Docket Code	Docket Description	Misc Info
1	08-06-2018	COMPLAINT	Complaint	
2	08-06-2018	SET CASE SCHEDULE JDG0021	Set Case Schedule Judge Veronica A. Galvan	08-05- 2019ST
3	08-06-2018	CASE INFORMATION COVER SHEET LOCS	Case Information Cover Sheet Original Location - Seattle	
4	08-06-2018	SUMMONS	Summons	
5	08-10-2018	CONFIRMATION OF SERVICE	Confirmation Of Service	

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You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

Directions

King Co Superior Ct
516 3rd Ave, Rm C-203
Seattle, WA 98104-2361

[Map & Directions](#)

206-477-1400[Phone]

206-296-0986[Fax]

[Office Email]

[Visit Website](#)

Disclaimer

What is this website? It is a search engine of cases filed in the municipal, district, superior, and appellate courts of the state of Washington. The search results can point you to the official or complete court record.

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You can contact the court in which the case was filed to view the court record or to order copies of court records.

How can I contact the court?

Click [here](#) for a court directory with information on how to contact every court in the state.

Can I find the outcome of a case on this website?

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Clerks at the municipal, district, superior, and appellate courts across the state enter information on the cases filed in their courts. The search engine will update approximately twenty-four hours from the time the clerks enter the information. This website is maintained by the Administrative Office of the Court for the State of Washington.

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Insurance Commissioner
ACCEPTED SOP
AUG 07 2018
TIME: 2 pm

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

MIKESHIA MORRISON, On Behalf of Herself)
and all others similarly situated,)

Plaintiff,)

v.)

ESURANCE INSURANCE CO., a foreign)
automobile insurance company,)

Defendant.)

CLASS ACTION
No.
COMPLAINT FOR DECLARATORY
JUDGMENT, INJUNCTIVE RELIEF,
AND FOR DAMAGES

The Plaintiff, by and through her attorneys of record, Badgley Mullins Turner PLLC,
Law Office of Ryan C. Nute, PLLC, and Law Office of Randall Johnson, PLLC, allege as
follows:

I. NATURE OF THIS ACTION

1.1 Defendant Esurance Insurance Co. (“Esurance”) has engaged in a systematic
practice of prematurely and unlawfully depriving its injured claimants of medical benefits
under Personal Injury Protection (PIP) coverage. PIP coverage typically promises that the
insurer will pay a first-party insured or a third-party beneficiary “reasonable and necessary”

1 medical expenses incurred from bodily injuries sustained in an automobile accident.

2 1.2 PIP benefits may be terminated by an insurance carrier for only one of four
3 reasons: if treatment is not (1) reasonable, (2) necessary, (3) related to the accident, or (4)
4 incurred within three years of the accident. WAC 284-30-395(1). No other reasons for
5 terminating benefit payments are permitted. Despite this, Esurance has terminated benefit
6 payments to first-party insureds and third-party beneficiaries when it contends that an insured
7 has achieved “maximum medical improvement” (“MMI”) for the bodily injury claim. This
8 action concerns the thousands of consumers who have had their benefits terminated by
9 Esurance under Esurance’s use of MMI in terminating their PIP benefits and denying
10 coverage for treatment received by the insured following Esurance’s determination that an
11 insured has reached MMI.
12

13 II. THE PARTIES

14 2.1 Plaintiff Morrison is, and at all times material hereto is, a resident of King
15 County, Washington.
16

17 2.2 Defendant Esurance was, and at all times material hereto is, an automobile
18 insurance carrier licensed to provide insurance under the laws of the State of Washington to
19 Washington residents. Esurance is headquartered in San Francisco, California. Esurance does
20 business in King County, Washington.

21 2.3 At all times material to this Complaint, Plaintiff was insured under a contract
22 of insurance with Defendant and dutifully paid all premiums. Plaintiff’s coverage was in
23 force on March 6, 2018. On March 6, 2018, Plaintiff was injured in an automobile accident
24 and in order to obtain treatment for her injuries, opened a PIP claim with Defendant.
25
26

III. CLASS ALLEGATIONS

1
2 3.1 Plaintiff brings all claims herein as class claims pursuant to Civil Rule 23 and
3 Local Rule 23. The requirements of these rules are met with respect to the class defined
4 below.

5 3.2 The class consists of all first party insureds and all third-party beneficiaries of
6 any automobile insurance policies issued by Esurance in the State of Washington, who made
7 a claim for PIP benefits, and Esurance terminated their PIP benefits, limited their benefits, or
8 denied coverage for future treatment of injuries based on Esurance's contention that the
9 insured/beneficiary had reached MMI, or that such treatment or benefits were not essential in
10 achieving MMI for the injuries arising out of the automobile accident.

11 3.3 Joinder of all members of the class is impractical, as the class consists of
12 several hundred, if not thousands, of persons located in Washington who have been impacted
13 by the Defendant's conduct identified herein. The exact number of class members can be
14 determined by appropriate discovery.
15

16 3.4 There are questions of law and fact that are common to the class, including,
17 but not limited to, the following:
18

19 A. Whether it is lawful for Esurance to terminate or limit benefits based upon a
20 claimant reaching, according to Esurance, "maximum medical improvement."

21 B. Whether a Declaratory Judgment should be entered declaring Esurance's
22 pattern or practice of denying coverage on the basis of MMI is unlawful.

23 C. Whether Esurance should be enjoined from such further unlawful conduct.

24 D. Whether Esurance's conduct damaged class members.

25 E. The nature and extent of damages that insureds have suffered as a result of
26

1 Esurance's pattern or practice of denying claims based on MMI.

2 F. Whether Esurance's unlawful conduct as alleged in this Complaint
3 extinguishes any contractual or equitable subrogation interest Defendant may have in its
4 insureds' recoveries.

5 3.5 The interest of Plaintiff in this matter is the same as the interests of the other
6 members of the class. Her claim arises from the same practice and course of conduct that
7 gives rise to the claims of other potential class members.

8 3.6 Plaintiff is committed to vigorously pursuing this action on behalf of the class
9 and has retained counsel competent to handle class actions of this sort. Plaintiff will fairly
10 and adequately represent the interests of the class members and has no interests that conflict
11 with those of the rest of the class.

12 3.7 The prosecution of separate actions by members of the class would create a
13 risk of establishing incompatible standards of conduct for Defendant. For example, one court
14 may determine that challenged actions violate Washington law and enjoin them, while
15 another may decide that those same actions are somehow permissible. Similarly, individual
16 actions may be dispositive to the interests of the class.

17 3.8 Defendant has acted in a consistent manner towards all class members such
18 that a pattern of activity is apparent. That is, Defendant has arbitrarily inserted a fifth
19 element to WAC 284-30-395(1), and denied claims on this basis, which constitutes an unfair
20 practice that affects all class members. Defendant's actions apply to the class as a whole and
21 Plaintiff seeks equitable remedies with respect to the entire class.

22 3.9 The common questions of law and fact identified above predominate over
23 those questions that affect only individual class members. Moreover, a class action is the
24
25
26

1 superior method for a fair and efficient adjudication of this controversy because Defendant's
2 practice of denying coverage of claims based on MMI is pervasive across many automobile
3 insurance policies which provide for PIP protection. The likelihood that individual members
4 of the class will prosecute separate actions is remote due to the time and expense necessary to
5 conduct this litigation, and the likelihood that the insured submitted the treatment Defendant
6 denied to their health insurer for payment. To Plaintiff's knowledge, no similar cases are
7 currently pending against this Defendant by other members of the class. Plaintiff's counsel,
8 experienced in class actions, foresees little difficulty managing this case as a class action.
9

10 3.10 The prerequisites for maintaining a class action for injunctive relief exist in
11 this case. If injunctive relief is not granted, great harm and irreparable injury to Plaintiff and
12 other members of the class will continue, and Defendant will continue denying coverage and
13 treatment on the basis of MMI. The proposed class has no adequate remedy at law for the
14 injuries which will recur, given that Defendant will continue to mislead its first-party
15 insureds and cause them economic and non-economic injuries unless prevented by this Court.
16 An order, finding money damages alone, would be meaningless to those who will be injured
17 by Defendant's conduct in the future if the challenged conduct is allowed to continue, and for
18 those who rely on Defendant in selecting an insurance provider and seeking care for their
19 injuries arising out of an automobile accident.
20

21 **IV. VENUE AND JURISDICTION**

22 4.1 This Court has jurisdiction over Plaintiff's claims pursuant to RCW 2.08.010,
23 which grants the Superior Court with jurisdiction to hear disputes of this type.
24

25 4.2 This Court has jurisdiction over Defendant because Defendant is authorized to
26 conduct business in the State of Washington and does transact business in Washington

1 through the sale of insurance policies.

2 4.3 Venue is proper in King County under RCW 4.12.025 since Defendant
3 transacts business in King County, the insured resides in King County, and many of the
4 alleged violations of law occurred in King County.

5 **V. STATEMENT OF FACTS AS TO PLAINTIFFS.**

6 5.1 Defendant is a foreign insurer who is licensed to provide automobile liability
7 insurance in the State of Washington and does provide automobile liability insurance in the
8 State of Washington. Defendant's automobile policies include optional coverage for
9 Personal Injury Protection ("PIP"). Defendant's promise of PIP coverage states in pertinent
10 part, "In return for 'your' premium payment for Personal Injury Protection, and subject to
11 the Limits of Liability, if 'you' pay the premium for Personal Injury Protection, 'we' will pay
12 the benefits an 'insured' is entitled to pursuant to Washington Personal Injury Protection law
13 because of 'bodily injury.'" (emphasis in original) These payments are available for up to
14 three years for bodily injury sustained in an automobile accident. The PIP payments include
15 "[m]edical and hospital benefits" which the policy defines as, "payments for all reasonable
16 and necessary expenses incurred by or on behalf of the 'insured' within 3 years from the
17 date of the 'accident' for necessary health care services related to the 'accident' and provided
18 by persons licensed to render such services[.]" (emphasis in original).

19 5.2 Insurance regulations in Washington limit the reasons for which an insurer
20 can terminate, limit, or deny PIP benefits. These regulations authorize an insurer to
21 terminate, limit, or deny PIP benefits:

22 (1) if the treatment is not reasonable;

23 (2) if the treatment is not necessary;

1 (3) if the treatment is not related to the motor vehicle accident; or

2 (4) if the treatment was not incurred within three years of the date of the motor vehicle
3 accident.

4 5.3 No other grounds for terminating, limiting, or denying PIP benefits may be
5 used.

6 5.4 Despite the clear regulations, Defendant has terminated, limited, or denied its
7 first-party insureds and third-party beneficiaries PIP benefits while they were still receiving
8 treatment for injuries by arguing that the treatment, and any future treatment, was
9 unnecessary since the claimant had reached maximum medical improvement. Defendant
10 argues that once maximum medical improvement has been reached, further medical
11 treatment would be unreasonable, unnecessary, or unrelated to the accident.

12 5.5 By inserting MMI as a basis for terminating, limiting, or denying PIP benefits,
13 Defendant is engaging in a scheme to manufacture a defense to first-party and third-party
14 beneficiary claims.
15

16 5.6 Defendant has a duty to act in good faith.

17 5.7 Plaintiff purchased an automobile policy from Defendant and paid all sums
18 due and owing to maintain coverage. Plaintiff purchased PIP coverage offered by Defendant.
19 Her policy, and PIP coverage, was in effect on March 6, 2018, the date in which she was
20 involved in an accident with the Plaintiff.
21

22 5.8 On March 6, 2018, Plaintiff was involved in an automobile accident and was
23 injured. She opened a PIP claim with Defendant and sought treatment for her injuries.
24

25 5.9 Plaintiff was treated for her injuries beginning in March of 2018.
26

1 5.10 Plaintiff engaged in chiropractic and massage therapy from March 2018 to
2 June of 2018.

3 5.11 Plaintiff was treated at Kirkland Chiropractic and Massage during the period
4 of March 2018 to June 2018.

5 5.12 While Plaintiff was receiving PIP benefits, Esurance requested that Plaintiff
6 undergo a medical examination for determining, among other things, whether she had
7 reached, in the eyes of her insurer, “maximum medical improvement” or MMI.

8 5.13 Esurance then terminated Plaintiff’s PIP benefits, contending that she had
9 reached MMI as of June 6, 2018 and therefore, no further treatment would be deemed
10 reasonable or necessary or otherwise recoverable from Esurance’s PIP coverage.
11

12 5.14 Esurance’s PIP benefits were then terminated by Esurance despite the fact
13 Plaintiff needs ongoing and continuing medical treatment.

14 **FIRST CAUSE OF ACTION- DECLARATORY RELIEF**

15 6.1 Plaintiff incorporates all preceding paragraphs.

16 6.2 Plaintiff and the Class are entitled to PIP benefits under automobile policies
17 with PIP benefits.
18

19 6.3 Defendant terminated, limited, or denied PIP coverage under an automobile
20 policy with PIP coverage benefits utilizing maximum medical improvement as a reason for
21 the denial.

22 6.4 An actual and justiciable controversy has arisen and now exists between the
23 Class and Defendant concerning Defendant’s use of MMI as a basis for terminating, limiting,
24 or denying PIP benefits. The Class is entitled to a judicial declaration from this Court of the
25 rights of the Class and obligations of Defendant under the policy. The Class is entitled to a
26

1 judicial declaration that Defendant has acted in bad faith by misrepresenting policy
2 provisions, failing to disclose all pertinent benefits, and compelling policy holders to initiate
3 or submit to litigation to recover amounts due under the policy. This action is timely and
4 appropriate under applicable law.

5 **SECOND CAUSE OF ACTION- BREACH OF CONTRACT**

6 7.1 Plaintiff incorporates all preceding paragraphs.

7 7.2 The automobile policy held by Plaintiff and the Class entitled them to receive
8 certain benefits, including coverage for medical expenses that were reasonable, necessary,
9 related to the accident, and incurred within three years of the date of the accident.
10

11 7.3 Defendant has breached its contract with Plaintiff and the Class by refusing to
12 pay PIP benefits that were reasonable, necessary, related to the accident, and incurred within
13 three years of the date of the accident, by alleging that Plaintiff and the Class had reached
14 maximum medical improvement. Plaintiff and the Class are entitled to recover damages
15 proximately caused by the breach, plus pre-judgment interest.
16

17 **THIRD CAUSE OF ACTION- INSURANCE FAIR CONDUCT ACT
18 VIOLATIONS/BAD FAITH**

18 8.1 Plaintiff incorporates all preceding paragraphs.

19 8.2 RCW 48.30.015 provides that any first party claimant to a policy of insurance
20 who is unreasonably denied a claim for coverage or payment of benefits by an insurer may
21 bring an action in the superior court of this state to recover the actual damages sustained,
22 together with the costs of the action, including reasonable attorneys' fees and litigation costs
23 for violations of specified insurance statutes and regulations.
24

25 8.3 Defendant has breached applicable regulations, including but not limited to:
26

- 1 • Terminating, limiting, or denying PIP coverage in violation of WAC 284-30-
- 2 355(1) by using MMI as a criterion for terminating PIP benefits.
- 3 • Misrepresenting pertinent facts or insurance policy provisions in violation of
- 4 WAC 284-30-330 (1) by misrepresenting pertinent facts or insurance policy
- 5 provisions relating to PIP coverage.
- 6 • Refusing to pay PIP benefits without conducting a reasonable investigation in
- 7 violation of WAC 284-30-330(4), including, but not limited to, investigating
- 8 whether Defendant was entitled to terminate, limit or deny PIP benefits on the
- 9 basis of MMI, using MMI as a pre-textual basis for terminating benefits, and
- 10 not examining whether Plaintiff's claims for PIP benefits were valid under the
- 11 four criteria authorized for terminating benefits under Washington law
- 12
- 13 • Forcing Plaintiff and its insureds to initiate litigation in order to obtain policy
- 14 benefits in violation of WAC 284-30-330(7).
- 15
- 16 • Breaching statutory and common law duties to act in good faith by denying
- 17 valid claims on a basis that any reasonable investigation would have proven to
- 18 be an insufficient reason for denying coverage.

19 8.4 Defendant's denial of Plaintiff's future treatment misrepresents pertinent facts
 20 or insurance policy provisions;

21 8.5 Plaintiff and the Class are entitled to recover damages, including attorney
 22 fees, prejudgment interest, and exemplary damages as a result of Defendant's violations.

23 **FOURTH CAUSE OF ACTION- CONSUMER PROTECTION ACT VIOLATIONS**

24 9.1 Plaintiff incorporates all preceding paragraphs.

1 9.2 The business of insurance affects the public interest.

2 9.3 This policy was intended to provide coverage for personal injury protection.
3 Defendant is charged with paying PIP claims that are reasonable, necessary, related to the
4 accident, and incurred within three years of the date of the accident.

5 9.4 Defendant has engaged in unfair, misleading, and deceptive acts by inserting
6 maximum medical improvement as an additional reason for terminating PIP benefits, and in
7 using MMI as a basis for arguing that care or treatment is not reasonable, is not necessary, or
8 is not related to the accident.

9 9.5 Defendant's conduct violates the Consumer Protection Act, RCW 19.86 *et*
10 *seq.*

11 9.6 Plaintiff and the Class have been damaged as a result of these violations, and
12 Plaintiff and the Class are entitled to recover their damages, including attorney fees,
13 prejudgment interest, and exemplary damages.
14

15 **FIFTH CAUSE OF ACTION- COMMON LAW BAD FAITH**

16 10.1 Plaintiff incorporates all preceding paragraphs.

17 10.2 RCW 48.01.030 requires each insurer to act in good faith toward its insured.
18 Defendant misrepresented policy and statutory provisions and, among other things, structured
19 its investigation of Plaintiff's PIP claim to manufacture a basis for denying coverage.
20

21 10.3 Specifically, by inserting MMI into the evaluation of Plaintiff's claims for PIP
22 benefits, Defendant is elevating its own financial interests--avoiding the financial obligation
23 of paying a claim—over that of its first-party insured or third-party beneficiaries, the PIP
24 benefit.
25
26

1 10.4. Defendant's conduct is egregious and pervasive, and without regard to the
2 medical needs of its first-party insureds or third-party beneficiaries.

3 10.5 Defendant's conduct violates the common law duty of an insurer acting in
4 good faith.

5 10.6 As a result, Plaintiff and the Class are entitled to recover damages, including
6 attorney fees, prejudgment interest, and exemplary damages.

7 **SIXTH CAUSE OF ACTION – BREACH OF THE IMPLIED COVENANT OF GOOD**
8 **FAITH AND FAIR DEALING**

9 11.1 Plaintiff incorporates all preceding paragraphs.

10 11.2 Defendant has breached the implied covenant of good faith and fair dealing
11 owed to Plaintiff and the Class.

12 11.3 Plaintiff and the Class have been damaged as a result of Defendant's use of
13 MMI as a criterion in terminating, limiting, or denying PIP benefits.

14 11.4 Plaintiff and the Class are entitled to recover their actual and consequential
15 damages including their attorney fees and pre-judgment interest.

16 **VI. DEMAND FOR JURY**

17 12.1 Plaintiff hereby demands a trial by jury on all issues so triable as a matter of
18 right. In the event this matter is removed, then this prayer for a jury trial should be construed
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21 **VII. PRAYER FOR RELIEF**

22 WHEREFOR, the Plaintiff prays for the following relief:

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 11. Repayment to its insureds of the subrogation payments received by Defendant on behalf of its insureds for PIP benefits paid.
 12. An award to Plaintiff and the class for all damages incurred and proven at trial.
 13. An award of treble damages under the Insurance Fair Conduct Act and all allowable enhanced damages under the Consumer Protection Act.
 14. A waiver of Defendant's subrogation interest in repayment of PIP claims in which treatment was unlawfully denied, limited, or terminated.
 15. Any and all further relief as the Court may deem just and equitable.

DATED this 6th day of August, 2018.

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/s/Duncan C. Turner

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Attorneys for Plaintiffs and Class

Insurance Commissioner
ACCEPTED SOP
AUG 07 2018
TIME: 2 PM

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

MIKESHIA MORRISON, On Behalf of Herself)
and all others similarly situated,)
Plaintiff,)
v.)
ESURANCE INSURANCE CO., a foreign)
automobile insurance company,)
Defendant.)

CLASS ACTION
Case No.

SUMMONS

TO: ESURANCE INSURANCE CO.

A lawsuit has been started against you in the above-entitled court by plaintiff. Plaintiff's claims are stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the undersigned attorney within twenty (20) days after service of this summons, excluding the day of service, if served within the State of Washington, or within sixty (60) days after service of this summons, excluding the day of service, if served out of the State of Washington, or a default judgment may be entered against you without notice.

1 A default judgment is one where plaintiff is entitled to what he asks for because you have not
2 responded. If you serve a notice of appearance on the undersigned attorney, you are entitled to
3 notice before a default judgment may be entered.

4 You may demand that the plaintiff file this lawsuit with the court. If you do so, the
5 demand must be in writing and must be served upon the plaintiff. Within fourteen (14) days
6 after you serve the demand, the plaintiff must file this lawsuit with the court, or service on you
7 of this summons and complaint will be void.

8 If you wish to seek the advice of an attorney in this matter, you should do so promptly so
9 that your written answer, if any, may be served on time.

10 This summons is issued pursuant to RCW 4.28.185 and Rule 4 of the Superior Court Civil
11 Rules for the State of Washington.

12 DATED this 6th day of August, 2018.

13
14
15 **BADGLEY MULLINS TURNER PLLC**

16 /s/ Duncan C. Turner

17 Duncan C. Turner, WSBA No. 20597
18 19929 Ballinger Way NE, Suite 200
Seattle, WA 98155

19 Telephone: (206) 621-6566

20 Facsimile: (206) 621-9686

Email: dturner@badgleymullins.com

Attorneys for Plaintiffs and Class

21
22 **LAW OFFICE OF RANDALL C. JOHNSON,
PLLC**

23 /s/Randall C. Johnson, Jr.

24 Randall C. Johnson, Jr., WSBA No. 24556
P.O. Box 15881

25 Seattle, WA 98115

26 Telephone: (206) 890-0616

Email: rcjj.law@gmail.com
Attorneys for Plaintiffs and Class

LAW OFFICE OF RYAN C. NUTE, PLLC

/s/Ryan C. Nute
Ryan C. Nute., WSBA No. 32530
19929 Ballinger Way NE, Suite 200
Telephone: (206) 330-0482
Email: ryan@rcnutelaw.com
Attorneys for Plaintiffs and Class

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FILED

18 AUG 06 PM 4:21

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 18-2-19723-6 SEA

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

Mikeshia Morrison, on behalf of herself & NO. 18-2-19723-6 SEA

VS

Esurance Insurance Co.

CASE INFORMATION COVER SHEET
AND AREA DESIGNATION

CAUSE OF ACTION

(MSC) - OTHER COMPLAINT/PETITION (MSC 2)

AREA DESIGNATION

SEATTLE - Defined as all King County north of Interstate 90 and including all of Interstate 90 right of way, all of the cities of Seattle, Mercer Island, Issaquah, and North Bend, and all of Vashon and Maury Islands.

FILED

18 AUG 06 PM 4:21

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 18-2-19723-6 SEA

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

Mikeshia Morrison, on behalf of
herself and all others similarly
situated

Plaintiff(s),

vs.

Esurance Insurance Co.

Respondent(s)

NO. 18-2-19723-6 SEA
ORDER SETTING CIVIL CASE SCHEDULE

ASSIGNED JUDGE: Galvan, Veronica Alicea, Dept. 21

FILED DATE: 8/6/2018
TRIAL DATE: 8/5/2019
SCOMIS CODE: *ORSCS

A civil case has been filed in the King County Superior Court and will be managed by the Case Schedule on Page 3 as ordered by the King County Superior Court Presiding Judge.

I. NOTICES

NOTICE TO PLAINTIFF: The Plaintiff may serve a copy of this **Order Setting Case Schedule (Schedule)** on the Defendant(s) along with the **Summons and Complaint/Petition**. Otherwise, the Plaintiff shall serve the **Schedule** on the Defendant(s) within 10 days after the later of: (1) the filing of the **Summons and Complaint/Petition** or (2) service of the Defendant's first response to the **Complaint/Petition**, whether that response is a **Notice of Appearance**, a response, or a Civil Rule 12 (CR 12) motion. The **Schedule** may be served by regular mail, with proof of mailing to be filed promptly in the form required by Civil Rule 5 (CR 5).

"I understand that I am required to give a copy of these documents to all parties in this case."

PRINT NAME

SIGN NAME

I. NOTICES (continued)

NOTICE TO ALL PARTIES:

All attorneys and parties should make themselves familiar with the King County Local Rules [KCLCR] -- especially those referred to in this *Schedule*. In order to comply with the *Schedule*, it will be necessary for attorneys and parties to pursue their cases vigorously from the day the case is filed. For example, discovery must be undertaken promptly in order to comply with the deadlines for joining additional parties, claims, and defenses, for disclosing possible witnesses [See KCLCR 26], and for meeting the discovery cutoff date [See KCLCR 37(g)].

CROSSCLAIMS, COUNTERCLAIMS AND THIRD PARTY COMPLAINTS:

A filing fee of \$240 must be paid when any answer that includes additional claims is filed in an existing case.

KCLCR 4.2(a)(2)

A Confirmation of Joinder, Claims and Defenses or a Statement of Arbitrability must be filed by the deadline in the schedule. The court will review the confirmation of joinder document to determine if a hearing is required. If a Show Cause order is issued, all parties cited in the order must appear before their Chief Civil Judge.

PENDING DUE DATES CANCELED BY FILING PAPERS THAT RESOLVE THE CASE:

When a final decree, judgment, or order of dismissal of all parties and claims is filed with the Superior Court Clerk's Office, and a courtesy copy delivered to the assigned judge, all pending due dates in this *Schedule* are automatically canceled, including the scheduled Trial Date. It is the responsibility of the parties to 1) file such dispositive documents within 45 days of the resolution of the case, and 2) strike any pending motions by notifying the bailiff to the assigned judge.

Parties may also authorize the Superior Court to strike all pending due dates and the Trial Date by filing a *Notice of Settlement* pursuant to KCLCR 41, and forwarding a courtesy copy to the assigned judge. If a final decree, judgment or order of dismissal of all parties and claims is not filed by 45 days after a *Notice of Settlement*, the case may be dismissed with notice.

If you miss your scheduled Trial Date, the Superior Court Clerk is authorized by KCLCR 41(b)(2)(A) to present an *Order of Dismissal*, without notice, for failure to appear at the scheduled Trial Date.

NOTICES OF APPEARANCE OR WITHDRAWAL AND ADDRESS CHANGES:

All parties to this action must keep the court informed of their addresses. When a Notice of Appearance/Withdrawal or Notice of Change of Address is filed with the Superior Court Clerk's Office, parties must provide the assigned judge with a courtesy copy.

ARBITRATION FILING AND TRIAL DE NOVO POST ARBITRATION FEE:

A Statement of Arbitrability must be filed by the deadline on the schedule **if the case is subject to mandatory arbitration** and service of the original complaint and all answers to claims, counterclaims and cross-claims have been filed. If mandatory arbitration is required after the deadline, parties must obtain an order from the assigned judge transferring the case to arbitration. **Any party filing a Statement must pay a \$220 arbitration fee.** If a party seeks a trial de novo when an arbitration award is appealed, a fee of \$250 and the request for trial de novo must be filed with the Clerk's Office Cashiers.

NOTICE OF NON-COMPLIANCE FEES:

All parties will be assessed a fee authorized by King County Code 4A.630.020 whenever the Superior Court Clerk must send notice of non-compliance of schedule requirements and/or Local Civil Rule 41.

King County Local Rules are available for viewing at www.kingcounty.gov/courts/clerk.

II. CASE SCHEDULE

√	CASE EVENTS	DATE
	Case Filed and Schedule Issued.	8/6/2018
√	Last Day for Filing Statement of Arbitrability without a Showing of Good Cause for Late Filing [See KCLMAR2.1(a) and Notices on page 2]. \$220 Arbitration fee must be paid	1/14/2019
√	DEADLINE to file Confirmation of Joinder if not subject to Arbitration [See KCLCR 4.2(a) and Notices on page 2]	1/14/2019
	DEADLINE for Hearing Motions to Change Case Assignment Area [KCLCR 82(e)]	1/28/2019
	DEADLINE for Disclosure of Possible Primary Witnesses [See KCLCR 26(k)]	3/4/2019
	DEADLINE for Disclosure of Possible Additional Witnesses [KCLCR 26(k)]	4/15/2019
	DEADLINE for Jury Demand [See KCLCR 38(b)(2)]	4/29/2019
	DEADLINE for Change in Trial Date [See KCLCR 40(e)(2)]	4/29/2019
	DEADLINE for Discovery Cutoff [See KCLCR 37(g)]	6/17/2019
	DEADLINE for Engaging in Alternative Dispute Resolution [See KCLCR16(b)]	7/8/2019
	DEADLINE for Exchange Witness & Exhibit Lists & Documentary Exhibits [See KCLCR 4(j)]	7/15/2019
√	DEADLINE to file Joint Confirmation of Trial Readiness [See KCLCR 16(a)(1)]	7/15/2019
	DEADLINE for Hearing Dispositive Pretrial Motions [See KCLCR 56;CR56]	7/22/2019
√	Joint Statement of Evidence [See KCLCR 4(k)]	7/29/2019
	DEADLINE for filing Trial Briefs, Proposed Findings of Fact and Conclusions of Law and Jury Instructions (Do not file proposed Findings of Fact and Conclusion of Law with the Clerk)	7/29/2019
	Trial Date [See KCLCR 40]	8/5/2019

The √ indicates a document that must be filed with the Superior Court Clerk's Office by the date shown.

III. ORDER

Pursuant to King County Local Rule 4 [KCLCR 4], IT IS ORDERED that the parties shall comply with the schedule listed above. Penalties, including but not limited to sanctions set forth in Local Rule 4(g) and Rule 37 of the Superior Court Civil Rules, may be imposed for non-compliance. It is FURTHER ORDERED that the party filing this action **must** serve this *Order Setting Civil Case Schedule* and attachment on all other parties.



DATED: 8/6/2018

PRESIDING JUDGE

IV. ORDER ON CIVIL PROCEEDINGS FOR ASSIGNMENT TO JUDGE

READ THIS ORDER BEFORE CONTACTING YOUR ASSIGNED JUDGE.

This case is assigned to the Superior Court Judge whose name appears in the caption of this case schedule. The assigned Superior Court Judge will preside over and manage this case for all pretrial matters.

COMPLEX LITIGATION: If you anticipate an unusually complex or lengthy trial, please notify the assigned court as soon as possible.

APPLICABLE RULES: Except as specifically modified below, all the provisions of King County Local Civil Rules 4 through 26 shall apply to the processing of civil cases before Superior Court Judges. The local civil rules can be found at www.kingcounty.gov/courts/clerk/rules/Civil.

CASE SCHEDULE AND REQUIREMENTS: Deadlines are set by the case schedule, issued pursuant to Local Civil Rule 4.

THE PARTIES ARE RESPONSIBLE FOR KNOWING AND COMPLYING WITH ALL DEADLINES IMPOSED BY THE COURT'S LOCAL CIVIL RULES.

A. Joint Confirmation regarding Trial Readiness Report

No later than twenty one (21) days before the trial date, parties shall complete and file (with a copy to the assigned judge) a joint confirmation report setting forth whether a jury demand has been filed, the expected duration of the trial, whether a settlement conference has been held, and special problems and needs (e.g., interpreters, equipment).

The Joint Confirmation Regarding Trial Readiness form is available at www.kingcounty.gov/courts/scforms. If parties wish to request a CR 16 conference, they must contact the assigned court. Plaintiff's/petitioner's counsel is responsible for contacting the other parties regarding the report.

B. Settlement/Mediation/ADR

a. Forty five (45) days before the trial date, counsel for plaintiff/petitioner shall submit a written settlement demand. Ten (10) days after receiving plaintiff's/petitioner's written demand, counsel for defendant/respondent shall respond (with a counter offer, if appropriate).

b. Twenty eight (28) days before the trial date, a Settlement/Mediation/ADR conference shall have been held. FAILURE TO COMPLY WITH THIS SETTLEMENT CONFERENCE REQUIREMENT MAY RESULT IN SANCTIONS.

C. Trial

Trial is scheduled for 9:00 a.m. on the date on the case schedule or as soon thereafter as convened by the court. The Friday before trial, the parties should access the court's civil standby calendar on the King County Superior Court website www.kingcounty.gov/courts/superiorcourt to confirm the trial judge assignment.

MOTIONS PROCEDURES

A. Noting of Motions

Dispositive Motions: All summary judgment or other dispositive motions will be heard with oral argument before the assigned judge. The moving party must arrange with the hearing judge a date and time for the hearing, consistent with the court rules. Local Civil Rule 7 and Local Civil Rule 56 govern procedures for summary judgment or other motions that dispose of the case in whole or in part. The local civil rules can be found at www.kingcounty.gov/courts/clerk/rules/Civil.

Non-dispositive Motions: These motions, which include discovery motions, will be ruled on by the assigned judge without oral argument, unless otherwise ordered. All such motions must be noted for a date by which the ruling is requested; this date must likewise conform to the applicable notice requirements. Rather than noting a time of day, the

Note for Motion should state “Without Oral Argument.” Local Civil Rule 7 governs these motions, which include discovery motions. The local civil rules can be found at www.kingcounty.gov/courts/clerk/rules/Civil.

Motions in Family Law Cases not involving children: Discovery motions to compel, motions in limine, motions relating to trial dates and motions to vacate judgments/dismissals shall be brought before the assigned judge. All other motions should be noted and heard on the Family Law Motions calendar. Local Civil Rule 7 and King County Family Law Local Rules govern these procedures. The local rules can be found at www.kingcounty.gov/courts/clerk/rules.

Emergency Motions: Under the court’s local civil rules, emergency motions will usually be allowed only upon entry of an Order Shortening Time. However, some emergency motions may be brought in the Ex Parte and Probate Department as expressly authorized by local rule. In addition, discovery disputes may be addressed by telephone call and without written motion, if the judge approves in advance.

B. Original Documents/Working Copies/ Filing of Documents: All original documents must be filed with the Clerk’s Office. Please see information on the Clerk’s Office website at www.kingcounty.gov/courts/clerk regarding the requirement outlined in LGR 30 that attorneys must e-file documents in King County Superior Court. The exceptions to the e-filing requirement are also available on the Clerk’s Office website. The local rules can be found at www.kingcounty.gov/courts/clerk/rules.

The working copies of all documents in support or opposition must be marked on the upper right corner of the first page with the date of consideration or hearing and the name of the assigned judge. The assigned judge’s working copies must be delivered to his/her courtroom or the Judges’ mailroom. Working copies of motions to be heard on the Family Law Motions Calendar should be filed with the Family Law Motions Coordinator. Working copies can be submitted through the Clerk’s office E-Filing application at www.kingcounty.gov/courts/clerk/documents/eWC.

Service of documents: Pursuant to Local General Rule 30(b)(4)(B), e-filed documents shall be electronically served through the e-Service feature within the Clerk’s eFiling application. Pre-registration to accept e-service is required. E-Service generates a record of service document that can be e-filed. Please see the Clerk’s office website at www.kingcounty.gov/courts/clerk/documents/efiling regarding E-Service.

Original Proposed Order: Each of the parties must include an original proposed order granting requested relief with the working copy materials submitted on any motion. **Do not file the original of the proposed order with the Clerk of the Court.** Should any party desire a copy of the order as signed and filed by the judge, a pre-addressed, stamped envelope shall accompany the proposed order. The court may distribute orders electronically. Review the judge’s website for information: www.kingcounty.gov/courts/SuperiorCourt/judges.

Presentation of Orders for Signature: All orders must be presented to the assigned judge or to the Ex Parte and Probate Department, in accordance with Local Civil Rules 40 and 40.1. Such orders, if presented to the Ex Parte and Probate Department, shall be submitted through the E-Filing/Ex Parte via the Clerk application by the attorney(s) of record. E-filing is not required for self-represented parties (non-attorneys). If the assigned judge is absent, contact the assigned court for further instructions. If another judge enters an order on the case, counsel is responsible for providing the assigned judge with a copy.

Proposed orders finalizing settlement and/or dismissal by agreement of all parties shall be presented to the Ex Parte and Probate Department. Such orders shall be submitted through the E-Filing/Ex Parte via the Clerk application by the attorney(s) of record. E-filing is not required for self-represented parties (non-attorneys). Formal proof in Family Law cases must be scheduled before the assigned judge by contacting the bailiff, or formal proof may be entered in the Ex Parte Department. **If final order and/or formal proof are entered in the Ex Parte and Probate Department, counsel is responsible for providing the assigned judge with a copy.**

C. Form

Pursuant to Local Civil Rule 7(b)(5)(B), the initial motion and opposing memorandum shall not exceed 4,200 words and reply memoranda shall not exceed 1,750 words without authorization of the court. The word count includes all portions of the document, including headings and footnotes, except 1) the caption; 2) table of contents and/or authorities, if any; and 3) the signature block. Over-length memoranda/briefs and motions supported by such memoranda/briefs may be stricken.

IT IS SO ORDERED. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY RESULT IN DISMISSAL OR OTHER SANCTIONS. PLAINTIFF/PETITIONER SHALL FORWARD A COPY OF THIS ORDER AS SOON AS PRACTICABLE TO ANY PARTY WHO HAS NOT RECEIVED THIS ORDER.



PRESIDING JUDGE

FILED

18 AUG 10 PM 3:38

The Honorable Veronica Alice Galvan
KING COUNTY
SUPERIOR COURT CLERK

E-FILED

CASE NUMBER: 18-2-19723-6 SEA

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

MIKESHIA MORRISON, On Behalf of Herself
and all others similarly situated,

No. 18-2-19723-6

Plaintiff,

CONFIRMATION OF SERVICE

v.

ESURANCE INSURANCE CO., a foreign
automobile insurance company,

Defendant.

All the named defendant(s) have been served or have waived service. (Check if appropriate; otherwise, check the box below).

One or more named defendants have not yet been served. (If this box is checked, the following information must also be provided.)

The following defendants have been served or have waived service: _____

The following defendants have not yet been served: _____

Reasons why service has not been obtained: _____

How service will be obtained: _____

Date by which service is expected to be obtained: _____

No other named defendants remain to be served.

DATED this 10th day of August, 2018.

BADGLEY MULLINS TURNER PLLC

/s/Duncan C. Turner

Duncan C. Turner, WSBA No. 20597

1 19929 Ballinger Way NE, Suite 200
2 Seattle, WA 98155
3 Telephone: (206) 621-6566
4 Facsimile: (206) 621-9686
5 Email: dturner@badgleyturner.com
6 **Attorneys for Plaintiffs and Class**

7 LAW OFFICE OF RANDALL C. JOHNSON, PLLC
8 /s/Randall C. Johnson, Jr.
9 Randall C. Johnson, Jr., WSBA No. 24556
10 P.O. Box 15881
11 Seattle, WA 98115
12 Telephone: (206) 890-0616
13 Email: rcjj.law@gmail.com
14 **Attorneys for Plaintiffs and Class**

15 LAW OFFICE OF RYAN C. NUTE, PLLC
16 /s/Ryan C. Nute
17 Ryan C. Nute., WSBA No. 32530
18 19929 Ballinger Way NE, Suite 200
19 Telephone: (206) 330-0482
20 Email: ryan@rcnutelaw.com
21 **Attorneys for Plaintiffs and Class**

EXHIBIT 4



**Service of Process
Transmittal**

08/13/2018

CT Log Number 533868534

TO: Service ofProcess
Esurance Insurance Services, Inc.
650 Davis St Fl 4
San Francisco, CA 94111-1904

RE: Process Served in Washington

FOR: Esurance Insurance Company (Domestic State: WI)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: MIKESHIA MORRISON, On Behalf of Herself and all others similarly situated,
Pltf. vs. ESURANCE INSURANCE CO., etc., Dft.
Name discrepancy noted.

DOCUMENT(S) SERVED: Letter, Summons, Complaint

COURT/AGENCY: King County Superior Court, WA
Case # None Specified

NATURE OF ACTION: Insurance Litigation - Breach of Duty of Good Faith and Fair Dealing - Seeking
Declaratory Relief

ON WHOM PROCESS WAS SERVED: CT Corporation System, Olympia, WA

DATE AND HOUR OF SERVICE: By Certified Mail on 08/13/2018 postmarked on 08/08/2018

JURISDICTION SERVED : Washington

APPEARANCE OR ANSWER DUE: Within 20 days after service, exclusive of the day of service

ATTORNEY(S) / SENDER(S): Duncan C. Turner
Badgley Mullins Turner PLLC
19929 Ballinger Way NE, Suite 200
Seattle, WA 98155
(206) 621-6566

REMARKS: Documents were served upon the Washington State Insurance Commissioner on
8/7/2018 and forwarded to CT Corporation.

ACTION ITEMS: CT has retained the current log, Retain Date: 08/14/2018, Expected Purge Date:
08/19/2018

Image SOP

Email Notification, Service ofProcess serviceofprocess@esurance.com

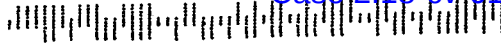
SIGNED: CT Corporation System
ADDRESS: 711 Capitol Way S.
Suite 204
Olympia, WA 98501
TELEPHONE: 602-277-4792

CERTIFIED MAIL®



OFFICE
COMM

P.O. BOX 40258
OLYMPIA, WA 98504-0258



7017 2400 0000 6048 8113

FIRST CLASS



U.S. POSTAGE >>> PITNEY BOWES



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02 4W
0000354556 AUG 08 2018

ESURANCE INSURANCE COMPANY
CT CORPORATION SYSTEM
711 CAPITOL WAY S STE 204
OLYMPIA WA 98501

STATE OF WASHINGTON

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

www.insurance.wa.gov



OFFICE OF
INSURANCE COMMISSIONER

Certificate number **17870** is being issued to certify that the Insurance Commissioner of the State of Washington (OIC) has **ACCEPTED** service of process in the matter below.

Date Service of Process Accepted: 08/07/2018
Certificate Issued: 08/07/2018
Issued By: Ricardo Sanchez *RS*
Certificate Type: First Attempt
Certified Mailing Number: 7017240000060488113
Service Requested Upon: ESURANCE INSURANCE COMPANY
CT CORPORATION SYSTEM
711 CAPITOL WAY S STE 204
OLYMPIA, WA 98501 US
Authorized in Washington: Yes
Attorney Details: DUNCAN C TURNER
BADGLEY MULLINS TURNER PLLC
19929 BALLINGER WAY NE
SUITE 200
SEATTLE, WA 98155 US
(206) 621-6566
dturner@badgleynullins.com
Case Number:
Plaintiff: MIKESHIA MORRISON, On Behalf of Herself and all others similarly situated
Defendant: ESURANCE INSURANCE CO., a foreign automobile insurance company
Documents: SUMMONS
COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF, AND FOR DAMAGES
Copies Sent To: DUNCAN C TURNER
ESURANCE INSURANCE COMPANY

EXHIBIT 5

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HONORABLE VERONICA A. GALVAN

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

MIKESHIA MORRISON, On Behalf of Herself
and all others similarly situated,

Plaintiff,

v.

ESURANCE INSURANCE CO., a foreign
automobile insurance company,

Defendant.

NO. 18-2-19723-6

**NOTICE OF FILING OF
NOTICE OF REMOVAL**

TO: The Clerk of Court

AND TO: Plaintiff and her Counsel, Duncan C. Turner, BADGLEY MULLINS
TURNER PLLC; Randall C. Johnson, Jr., LAW OFFICE OF RANDALL
C. JOHNSON, PLLC; and Ryan C. Nute, LAW OFFICE OF RYAN C.
NUTE, PLLC:

PLEASE TAKE NOTICE that on September 6, 2018, Defendant Esurance Insurance Co.
filed a Notice of Removal in the United States District Court for the Western District of
Washington, removing the above-entitled action to the United States District Court. A true and
correct copy of the Notice of Removal (without exhibits) is attached hereto.

This Notice having been filed, the Superior Court for the State of Washington in and for
the County of King is without jurisdiction to proceed further unless and until the action is
subsequently remanded by the United States District Court. *See* 28 U.S.C. § 1446(d).

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DATED this 6th day of September, 2018.

FOX ROTHSCHILD LLP

By /s/ Gavin W. Skok
Gavin W. Skok, WSBA #29766

Attorneys for Defendant Esurance Insurance Co.


CERTIFICATE OF SERVICE

I certify that I am a legal administrative assistant at the law firm of Fox Rothschild LLP in Seattle, Washington. I am a U.S. citizen over the age of eighteen years and not a party to the within cause. On the date shown below, I caused to be served a true and correct copy of the foregoing on counsel of record for all other parties to this action as indicated below:

<u>Service List</u>	
Duncan C. Turner, WSBA #20597 BADGLEY MULLINS TURNER PLLC 19929 Ballinger Way NE, Suite 200 Seattle, WA 98155 Telephone: (206) 621-6566 Facsimile: (206) 621-9686 dturner@badgleymullins.com <i>Attorneys for Plaintiff</i>	<input type="checkbox"/> Via US Mail <input type="checkbox"/> Via Messenger <input checked="" type="checkbox"/> Via E-filing system / Email <input type="checkbox"/> Via over-night delivery
Randall C. Johnson, Jr., WSBA #24556 LAW OFFICE OF RANDALL C. JOHNSON, PLLC P.O. Box 15881 Seattle, WA 98115 Telephone: (206) 890-0616 rcjj.law@gmail.com <i>Attorneys for Plaintiff</i>	<input type="checkbox"/> Via US Mail <input type="checkbox"/> Via Messenger <input checked="" type="checkbox"/> Via E-filing system / Email <input type="checkbox"/> Via over-night delivery
Ryan C. Nute, WSBA #32530 LAW OFFICE OF RYAN C. NUTE, PLLC 19929 Ballinger Way NE, Suite 200 Seattle, WA 98155 Telephone: (206) 330-0482 ryan@rcnutelaw.com <i>Attorneys for Plaintiff</i>	<input type="checkbox"/> Via US Mail <input type="checkbox"/> Via Messenger <input checked="" type="checkbox"/> Via E-filing system / Email <input type="checkbox"/> Via over-night delivery

1 I declare under penalty of perjury under the laws of the State of Washington that the
2 foregoing is true and correct.

3 EXECUTED this 6th day of September, 2018, in Seattle, Washington.
4

5 
6 _____
7 Courtney R. Tracy
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: Esurance Improperly Cuts Off PIP Benefits During Medical Treatment](#)
