

1 My methodology keeps all other past policy activity unchanged, and I recalculate Account
 2 Values and COI charges using COI rates where non-mortality loads in excess of pricing
 3 and repricing mortality have been removed There is nothing speculative about [my]
 4 proposed methodology for calculating lost Account Values attributable to the non-
 5 mortality loads because it addresses only past losses in Account Value resulting from State
 Farm's alleged wrongful conduct. My methodology relies on past policy experience
 calculated retrospectively from a fixed point in time -- the present date for current in-force
 policies, and the date of termination for previously terminated policies.

6 Dkt. 205-2 at ¶¶ 50, 58. Keeping all other past policy activity and transactions as they actually occurred
 7 and removing the non-mortality loads is the most reasonable way of isolating lost Account Values
 8 resulting from State Farm's addition of non-mortality loads and "provide[s] *the most reasonable basis*
 9 for measuring harm" in a case of this nature. *Vogt*, 963 F.3d at 770 (emphasis added).

10 The lost-profit scenarios State Farm points to are a far cry from the present case. In a breach of
 11 contract case alleging past overcharges through automatic deductions, there is no need to look beyond
 12 what was charged and what should have been charged. The charges were actually levied against class
 13 members. And the appropriate charges are readily calculable. It is thus appropriate to compare the
 14 Account Value using State Farm's loaded COI rates to what the Account Value would have been absent
 15 the overcharges—*i.e.*, what Mr. Witt did.

16 It is State Farm's proffered "but-for" considerations that err by deviating from a world "in which
 17 other things remained the same" but for the breach, and requiring speculation as to how State Farm would
 18 or could have changed its behavior if required to comply with the terms of the Policy. In essence, State
 19 Farm nonsensically critiques Mr. Witt's opinions as speculative for failing to speculate. State Farm's
 20 expert Dr. Stiroh even says Mr. Witt should have considered a "but-for" world where Form 94030 did
 21 not exist. Dkt. 197-3 (Stiroh Report) at ¶¶ 17, 22 [REDACTED]

22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED].

25 Regarding State Farm's further contention that Mr. Witt's opinions are speculative because they
 26 fail to consider whether the unloaded COI rates would satisfy applicable regulatory or actuarial standards,
 27 including illustration testing (Dkt. 208 at 31), Mr. Witt previously testified his methodology is "not a
 28 pricing exercise." Witt Tr. at 27:1-11. He has not proposed any kind of prospective COI rate change. He