

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES  
DEPARTMENT 311  
*Wilson v. Farmers Insurance*  
BC371597  
Motion for Class Certification  
Motion to strike Krosnick declaration  
Motion to compel**

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I

The class certification motion is granted.

The issue is whether insurance adjusters are exempt. *Harris v. Superior Court* (2012) 207 Cal.App.4th 1225, 1231, 1233-1248 said no: not exempt. The wage and hour laws apply to them: meal breaks, rest breaks, and all the rest. Farmers dismisses this "erroneous analysis" (Opposition 22:11-12), but this appellate law compels certification.

*Harris* held that the alleged heterogeneity of the class was no reason to deny class certification. (*Harris v. Superior Court* (2012) 207 Cal.App.4th 1225, 1247-1248.) Farmers offers no evidentiary citations to distinguish that holding, which governs.

II

The motion to strike Dr. Krosnick's declaration is denied.

Krosnick addresses the sampling issue: can a court use a survey to establish damages in a class action, or must California courts eschew statistical techniques and try every member's damage claim individually? This issue is a live one, despite depublication of *Duran v. United States Bank National Assn.* (2012) 203 Cal.App.4th 212. (See, e.g., *Wal-Mart Stores, Inc. v. Dukes* (2011) 131 S.Ct. 2541, 2561 ("We disapprove that novel [Trial by Formula] project.")) There is no settled law or standard procedure in this area.

Krosnick's declaration is an opening volley in the debate about how a trial court is to manage this sizable class after certification. Krosnick swears (1) statistical reasoning can be acceptably reliable, (2) statistical reasoning can be more economical than alternatives, (3) a valid survey is possible under these circumstances, and (4) valid survey design would require careful planning and many important decisions. When deciding that class adjudication is a proper process for this case, these points are relevant.

Farmers offers a competing declaration from an economist. The economist criticizes Krosnick, in part for minimizing the problem that faulty memory poses for surveys and indeed for Krosnick himself. (See Slottje declaration paragraphs 25 and 27.) This give-and-take is lively but not a fundamental objection to surveys. Every human, every witness confronts this frailty. "Remembrance of things past is not necessarily the remembrance of things as they were."

Krosnick has not produced a survey, but his lecture on the utility of statistics is pertinent, mathematically conventional, and unobjectionable.

### III

The motion to compel is granted. *Harris v. Superior Court* (2012) 207 Cal.App.4th 1225, 1231, 1248 held adjusters are not exempt. This discovery is now proper. Sanctions are not appropriate, as *Harris* is new law.