

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI**

MICHAEL PREGON, individually, and on behalf  
of all others similarly situated,

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY  
COMPANY,

Defendant.

Case No. 24SL-CC03130

**STATE FARM'S SEPARATE SUBMISSION IN SUPPORT OF  
FINAL APPROVAL OF PROPOSED CLASS SETTLEMENT**

James F. Bennett #46826  
Robert F. Epperson, Jr. #46430  
Michael J. Kuhn #58936  
DOWD BENNETT LLP  
7733 Forsyth Blvd., Suite 1900  
St. Louis, MO 63105  
Telephone: (314) 889-7300  
[jbennett@dowdbennett.com](mailto:jbennett@dowdbennett.com)  
[repperson@dowdbennett.com](mailto:repperson@dowdbennett.com)  
[mkuhn@dowdbennett.com](mailto:mkuhn@dowdbennett.com)

Joseph A. Cancila, Jr. (pro hac vice)  
Jacob L. Kahn (pro hac vice)  
RILEY SAFER HOLMES & CANCILA LLP  
1 South Dearborn St., Suite 2200  
Chicago, IL 60603  
Telephone: (312) 471-8700  
[jcancila@rshc-law.com](mailto:jcancila@rshc-law.com)  
[jkahn@rshc-law.com](mailto:jkahn@rshc-law.com)

*Attorneys for Defendant State Farm Fire and  
Casualty Company*

Defendant State Farm Fire and Casualty Company (“State Farm”), by and through its undersigned counsel, respectfully provides this separate submission in support of final approval of the proposed class settlement of this case, as described in the Stipulation and Settlement Agreement entered into by State Farm and Plaintiff Michael Pregon (“Plaintiff” or the “Class Representative”), as representative of the asserted class (hereinafter, the “Settlement Agreement”).<sup>1</sup>

### **INTRODUCTION**

This case is one of many class actions filed against insurers in Missouri and across the country challenging the common practice of calculating “actual cash value” (“ACV”) claim payments for structural damage claims by estimating the cost to repair or replace the damaged property, then applying depreciation to that full estimated replacement cost—including both material costs and any labor or other non-material costs (hereinafter “labor depreciation”). The Amended Class Action Petition (the “Petition”) asserts a claim for breach of contract and declaratory judgment on behalf of policyholders who made structural damage claims for properties located in Missouri under policies written by State Farm. The asserted class period is somewhat dated, running from June 5, 2012, to approximately October 2017, a time period during which State Farm had different policy language in effect concerning the operative dispute in this litigation.

State Farm has answered the Petition and, absent the proposed settlement, would vigorously defend this litigation through summary judgment motion practice, class certification proceedings, and trial. Among other things, State Farm would argue at summary judgment that the Petition effectively asks this Court to overrule the unanimous decision issued by a three-judge

---

<sup>1</sup> Capitalized terms used herein shall have the meaning given to them in the Settlement Agreement.

panel of the U.S. Court of Appeals for the Eighth Circuit in 2017, which analyzed an identical State Farm insurance policy and an identical “labor depreciation” liability theory under Missouri law and held unequivocally: “State Farm’s method of determining estimated ‘actual cash value’ *does not breach* its replacement cost contract.” *In re State Farm Fire and Cas. Co.*, 872 F.3d 567, 573 (8th Cir. 2017) (“*LaBrier*”) (emphasis added), *reh’g denied* (Oct. 31, 2017). State Farm understands that Plaintiff contends this case is instead governed by the Missouri Court of Appeals’ more recent labor depreciation decision in *Franklin v. Lexington Ins. Co.*, 652 S.W.3d 286 (Mo. Ct. App. 2022). But State Farm would show that *Franklin* is not controlling here because it turned on materially different language appearing in another insurer’s policy.

Moreover, State Farm would raise a number of defenses both as to the merits of Plaintiff’s individual claim and as to the broader issue of class certification. For example, State Farm would challenge class certification by demonstrating that individualized inquiries would be required to determine whether the depreciation of labor costs as to any particular class member, such as the individual Plaintiff himself, resulted in a breach of the insurance policy. Many claims would also require an individualized assessment of whether the claim was time-barred as a result of the fully enforceable limitations period in State Farm’s Missouri policies. Even if certification were granted, State Farm would be entitled to raise these defenses and others in defense of the merits of each putative class member’s claim. There would be no way to efficiently and effectively manage the litigation.

Despite State Farm’s confidence that it would have prevailed in defeating any future motion to certify a litigation class—as well as on summary judgment as to the Plaintiff’s individual claim, at trial, and in any subsequent appeal—it believes that a settlement as described in the Stipulation and Settlement Agreement (the “Proposed Settlement”) is in the best interests of its

policyholders. First, this matter would likely span several years inclusive of motion practice, discovery, trial, and appeals. Second, a trial of this matter on a class-wide basis would be unmanageable, and even reaching such a trial would likely present significant costs and risks for each side. State Farm seeks to resolve this case to avoid further litigation expenses and uncertainty and continue providing excellent service to its policyholders.

As set forth below, State Farm believes that the Proposed Settlement is fair, reasonable, and adequate, especially in view of the strength of State Farm's defenses to the asserted claims and the difficulties Plaintiffs would face in certifying a litigation class, establishing liability, and proving injury. Accordingly, State Farm supports the Proposed Settlement and requests that it be finally approved.

## **BACKGROUND**

### **I. LaBrier**

In 2015, in a case titled *LaBrier v. State Farm Fire and Casualty Co.*, a State Farm policyholder sued State Farm for an alleged breach of her Missouri homeowners insurance policy. Asserting claims individually and on behalf of a purported class of State Farm policyholders, the plaintiff in *LaBrier* alleged that "State Farm breached its obligations under the policy by improperly depreciating the cost of labor" when it calculated her ACV claim payment. First Am. Pet., *LaBrier*, No. 2:15-cv-0493-NKL (W.D. Mo. May 6, 2015), ¶¶ 14, 18; *see also id.* ¶¶ 35–37 (similar).

The *LaBrier* plaintiff's policy, designated as policy form "FP-7955," offered replacement cost coverage and provided that State Farm would pay up to the "cost to repair or replace" damaged property in two stages, starting with an ACV payment. *LaBrier v. State Farm Fire and Cas. Co.*, 147 F. Supp. 3d 839, 842–43 (W.D. Mo. 2015), *rev'd*, *In re State Farm Fire and Cas. Co.*, 872 F.3d 567, 576 (8th Cir. 2017) (hereinafter, "*LaBrier*"). Notably, the policy "contain[ed] no

explanation of how State Farm calculates ACV, nor any definitions of ACV or depreciation.” *LaBrier v. State Farm Fire and Cas. Co.*, 315 F.R.D. 503, 509 (W.D. Mo. 2016), *rev’d*, 872 F.3d at 577. The loss settlement provision did not even contain the word “depreciation.” *See id.* at 508–09.

After the district court in *LaBrier* denied State Farm’s motion to dismiss, the parties engaged in extensive and contentious discovery. *See* 872 F.3d at 571. A special master eventually ordered State Farm to answer interrogatories for “all 144,900 putative class members,” including by identifying (among other things) the amount of labor depreciated for each putative class claim and “any facts that support State Farm’s affirmative defenses” to each such claim. *Id.* The district court overruled State Farm’s objections to the discovery orders and granted the plaintiff’s motion for class certification. *Id.* State Farm filed a petition for a writ of mandamus challenging the discovery orders and sought permission to appeal the class certification ruling. *Id.* at 571–72.

The United States Court of Appeals for the Eighth Circuit accepted State Farm’s class certification appeal, consolidated it with State Farm’s mandamus petition, and, after full briefing and oral argument: (i) reversed the district court’s order denying State Farm’s motion to dismiss; (ii) reversed the district court’s class certification decision; and (iii) vacated the special master’s “burdensome classwide discovery orders.” *See id.* at 572–73, 576–77. As to State Farm’s challenged depreciation practice, the Eighth Circuit found it to be “a reasonable method of estimating” ACV. *Id.* at 576. And because State Farm’s policy did not define ACV or require the use of an agreed methodology when estimating it, the Eighth Circuit held that State Farm’s methodology “does not breach” its policy. *Id.* at 573–74. The Eighth Circuit therefore remanded the *LaBrier* case “with directions to dismiss LaBrier’s complaint,” *id.* at 577, and denied rehearing, *see Order, In re: State Farm Fire and Cas. Co.*, Nos. 16-3185 & 16-3562 (8th Cir. Oct. 31, 2017).

## **II. Procedural History of This Suit**

Plaintiff Michael Pregon filed this action in July 2024, raising, like the plaintiff in *LaBrier*, a breach of contract claim on behalf of himself and an asserted class of State Farm policyholders in Missouri who received ACV payments from State Farm for structural damage where the estimated cost of labor was depreciated. Specifically, like the plaintiff in *LaBrier*, Plaintiff Pregon alleged that State Farm had improperly depreciated the estimated cost of labor necessary to complete repairs to insured property when calculating and issuing ACV claim payments for structural damage losses under its older, since-discontinued policy language.

The parties agreed to mediate their class action dispute in 2024. The parties initially engaged in settlement discussions through former U.S. Magistrate Judge Stephen C. Williams (Ret.), and in November 2024, the parties agreed to engage Michael N. Ungar of Ulmer & Berne as a private mediator to facilitate further settlement discussions. During a full-day mediation session with Mr. Ungar on November 5, 2024, the parties reached an agreement in principle to settle this action on a class-wide basis, with Plaintiff Pregon as the Representative Plaintiff. The parties subsequently executed a term sheet evidencing their agreement in principle and began the process of negotiating a more comprehensive Proposed Settlement.

The parties presented the Proposed Settlement to this Court in October 2025, and on October 10, 2025, the Court preliminarily approved the Settlement.

## **III. Summary of Proposed Class and Settlement**

While the terms of the Proposed Settlement are set forth more fully in the Settlement Agreement, the following summary of its key features demonstrates that it provides real and substantial benefits to the Settlement Class, while also (in State Farm's view) giving credence to the defenses State Farm has asserted—and would continue to assert if the litigation were to continue.

The Settlement Class as defined in the Settlement Agreement includes:

[a]ll Persons insured under a State Farm structural damage policy who: (1) made a structural damage claim for property located in Missouri with a date of loss on or after June 5, 2012; and (2) received an ACV Payment on that claim where either estimated Non-Material Depreciation or estimated General Contractor Overhead and Profit Depreciation was deducted, or who would have received an ACV Payment but for the deduction of estimated Non-Material Depreciation and/or estimated General Contractor Overhead and Profit Depreciation causing the calculated ACV figure to drop below the applicable deductible.

Settlement Agreement ¶ 3(a). Subject to State Farm's right to challenge or reduce Claim Settlement Payments as outlined in the Settlement Agreement, potential Settlement Class Members who submit a timely, accurate, and complete Claim Form, and who are otherwise deemed eligible, will receive a Claim Settlement Payment in accordance with the following provisions:

**Group A: Settlement Class Members Who Previously Received ACV Payments and Did Not Receive Full RCBs.** The Claim Settlement Payments to Settlement Class Members who received an ACV payment from which either estimated Non-Material Depreciation and/or estimated GCOP Depreciation was initially deducted and did not subsequently recover all available Depreciation through payments of RCBs, will be equal to 90% of the estimated Non-Material Depreciation that was initially deducted from the ACV payment and was not yet recovered through payments of RCBs, plus 50% of the estimated GCOP Depreciation (if any) that was initially deducted from the ACV Payment and was not yet recovered through payments of RCBs, plus simple interest at 8.9% per annum on those additional amounts to be paid from August 6, 2021, through the date the Settlement Agreement is fully executed.

**Group B: Settlement Class Members Who Previously Received Full RCBs After Initially Receiving an ACV Payment.** The Claim Settlement Payments to Settlement Class Members who received an ACV payment from which either estimated Non-Material Depreciation and/or estimated GCOP Depreciation was initially deducted and subsequently recovered all available Depreciation through payments of RCBs will be equal to simple interest at 8.9% per annum on 90% of the amount of estimated Non-Material Depreciation initially applied but subsequently recovered, plus simple interest at 8.9% per annum on 50% of the estimated GCOP Depreciation (if any) that was initially applied but subsequently recovered, calculated from the date of the initial ACV Payment through the final RCB payment.

**Group C: Settlement Class Members Who Would Have Received an ACV Payment But For Application of Non-Material Depreciation and/or GCOP Depreciation.** The Claim Settlement Payments to Settlement Class Members who

did not receive an ACV payment due to the application of estimated Non-Material Depreciation and/or GCOP Depreciation causing the calculated ACV figure to drop below the applicable deductible shall be equal to 90% of the portion of the estimated Non-Material Depreciation and 50% of the portion of the estimated GCOP Depreciation (if any) that the policyholder did not receive in excess of the applicable deductible, plus simple interest at 8.9% per annum on those amounts to be paid from August 6, 2021, through the date the Settlement Agreement is fully executed.

Settlement Agreement ¶ 6.4.<sup>2</sup>

State Farm’s right under the Settlement Agreement to challenge or reduce the settlement payments otherwise provided for in these groupings is consistent with State Farm’s position that many policyholders were fully compensated for their losses notwithstanding State Farm’s alleged labor depreciation practices. The Settlement Agreement provides State Farm the right to review its own claim file materials for each Claim and to reduce the amount to be paid to any Claimant on the basis that (i) the Claimant is not a Settlement Class Member, (ii) payment of the non-interest portion of the Claim Settlement Payment amount would cause the total payments on the claim to exceed the applicable limit of liability under the Settlement Class Member’s policy, or (iii) the Non-Material Depreciation and GCOP Depreciation amounts were already recovered through replacement cost benefits (“RCB”) payments. More specifically:

- (a) If Defendant determines through its review of claim file materials that neither Non-Material Depreciation nor GCOP Depreciation was actually applied to any payment made in connection with the Covered Loss, then the Claimant is not a Settlement Class Member and is not entitled to claim the benefits afforded by this Agreement.
- (b) If Defendant determines through its review of claim file materials that the Claimant is not a Settlement Class Member because the Claimant already received ACV payments from Defendant for the covered Loss in the full

---

<sup>2</sup> Under the claims-made settlement structure, these Claim Settlement Payments will not be reduced by any attorneys’ fees that the Court directs State Farm to pay separately to Class Counsel as part of the final approval order.

amount of any applicable limits under the Claimant's Policy, then the Claimant is not entitled to claim the benefits afforded by this Agreement.

- (c) If Defendant determines through its review of claim file materials that payment of the non-interest portion of the Claim Settlement Payment amount as calculated above (i.e., either the amount of Non-Material Depreciation, the amount of GCOP Depreciation, or the combined sum of those two amounts) would cause the total payments on the claim to exceed the applicable limits of liability under the Settlement Class Member's Policy, then Defendant may reduce the non-interest portion of the Claim Settlement Payment accordingly and update the interest calculation to correspond to the reduced figure.
- (d) If Defendant determines through its review of claim file materials that the Non-Material Depreciation and GCOP Depreciation amounts as determined above (in Section 7.1) were already recovered in full through RCB payments, then Defendant may calculate the Claim Settlement Payment as under Group B from Section 6.4 above.

Settlement Agreement ¶ 7.2.

State Farm submits that the foregoing manageable processes and procedures could not have occurred had this suit proceeded to trial as a class action, for it does not believe that there is class-wide evidence to adjudicate these liability, injury, and class membership issues for all members of the Class, as required for a litigation class under Missouri Supreme Court Rule 52.08.

#### **IV. The Court's Preliminary Approval of the Settlement**

On October 1, 2025, Plaintiff filed an unopposed motion for preliminary approval of the Proposed Settlement. On October 10, 2025, the Court granted the motion and issued a Preliminary Approval Order in which it preliminarily approved the Settlement as "fair, reasonable, adequate, and in the best interests of proposed Settlement Class Members." Order ¶ 2. The Court also found that the plan for Class Notice specified in the Agreement "is reasonably calculated, under all the circumstances," to apprise potential Settlement Class Members of their rights with respect to the Proposed Settlement and constitutes "due, adequate, and sufficient notice to all persons entitled to receive notice, and meet all legal requirements, including the requirements of Missouri Supreme Court Rule 52.08 and Due Process." *Id.* ¶ 8.1. The Court appointed JND Legal Administration

(“JND”) to act as third-party administrator for the Proposed Settlement and directed JND to implement the Class Notice pursuant to that plan. *Id.* ¶ 9. Finally, the Court conditionally certified the proposed class for settlement purposes and scheduled a Final Approval Hearing for March 3, 2026. *Id.* ¶¶ 4, 7.

### DISCUSSION

Missouri Supreme Court Rule 52.08 states that “a class action shall not be dismissed or compromised except with the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.” Mo. Sup. Ct. R. 52.08(e). In concluding that such a compromise or settlement should be approved, the court “is not making a determination as to whether the case could be maintained as a class action if the settlement fell through and litigation were required.” *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 384 (Mo. App. Ct. 1997) (explaining that “cases which could not pass the requirements of Rule 23(a) or (b)(3) if considered without regard to settlement may be able to meet th[ose] requirements” in a settlement context). To approve a class-action settlement, the court need only determine that “the settlement is fair, reasonable, and adequate.” *Id.* at 378 n.6; *see also Ring v. Metropolitan St. Louis Sewer Dist.*, 41 S.W.3d 487, 492 (Mo. App. Ct. 2000) (same). The factors relevant to that determination include:

- (1) the existence of fraud or collusion behind the settlement;
- (2) the complexity, expense, and likely duration of the litigation;
- (3) the stage of the proceedings and the amount of discovery completed;
- (4) the probability of the plaintiff’s success on the merits;
- (5) the range of possible recovery; and
- (6) the opinions of class counsel, class representatives and absent class members.

*Ring*, 41 S.W.3d at 492. As discussed below, these factors support a finding that the Proposed Settlement is fair, reasonable, and adequate, and thus support the Court’s approval of the Settlement Agreement.

**I. The Probability of Plaintiff’s Success Balanced Against the Strength of State Farm’s Defenses**

The “most important consideration” in assessing a proposed class settlement “is the strength of the plaintiff’s case on the merits balanced against the offered settlement.” *Ring*, 41 S.W.3d at 492. The strength of the plaintiff’s case on the merits in turn depends on the strength of any defenses. Here, State Farm’s defenses are particularly strong. Specifically, in the absence of a settlement of this matter, State Farm would have demonstrated through continued litigation that: (1) Plaintiff’s action is ill-suited to certification of a liability class for litigation purposes; and (2) claims where estimated labor costs were depreciated in calculating an ACV claim payment (like Plaintiff’s claim) may be subject to a number of liability-defeating defenses. These considerations support the conclusion that the Proposed Settlement is fair, reasonable and adequate.

**A. The Strength of State Farm’s Defenses Related to Certification of Any Litigation Class**

Had this case proceeded, State Farm would have opposed Plaintiffs’ eventual motion for certification of a litigation class and would have demonstrated that certification of a litigation class is not warranted, as “questions of law or fact common to the members of the class” would *not* “predominate over any questions affecting only individual members.” Mo. Sup. Ct. R. 52.08(b)(3). “What matters to class certification . . . is not the raising of common ‘questions’—even in droves—but, rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation.” *LaBrier*, 782 F.3d at 572 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350) (alteration in original); *see also, e.g., Ring*, 41 S.W.3d at 490 (explaining that, because “Missouri Rule 52.08 is identical to Rule 23 of the Federal Rules of Civil Procedure,” Missouri courts “look to federal precedent for guidance” in addressing class-certification issues). Thus, “[i]f, to make a prima facie showing on a given question, the members of a proposed class will need to present evidence that varies from member to member, then it is an individual question”

that cannot be answered as to all proposed members of the class. *Dale v. DaimlerChrysler Corp.*, 204 S.W.3d 151, 176 (Mo. App. Ct. 2006) (citation and emphasis omitted).

Applying Missouri law, the Eighth Circuit panel in *LaBrier* previously found that the precise breach-of-contract question at issue here is an individual question that cannot be answered on a class-wide basis but instead would need to be determined at a separate trial for each individual class member. On appeal from a decision granting class certification, the *LaBrier* court held not only that State Farm’s alleged practice of depreciating the estimated cost of labor necessary to complete repairs when calculating ACV claim payments “does not breach” its Missouri homeowners insurance policy, but that, because the reasonableness of any individual estimate of ACV can “only be determined based on all the facts surrounding a particular insured’s partial loss, ... there are *no* predominant common facts at issue, and the decision certifying a class ... must be reversed.” *Id.* at 572–73, 577. The Eighth Circuit thus reversed the district court’s denial of State Farm’s motion to dismiss and directed that the case be “remanded with directions to dismiss LaBrier’s complaint.” *Id.* at 577.

Citing these and other authorities, State Farm would have shown in its suggestions opposing certification of a litigation class that, among other things, there is a predominance of individualized issues in this case concerning whether the depreciation of estimated labor costs resulted in an ACV underpayment to each putative class member (of which there may be tens of thousands). To establish State Farm’s liability for breach of contract under Missouri law, Plaintiffs would need to show—for each putative class member—that the dollar amount State Farm paid for ACV was too low, *i.e.*, that State Farm’s application of labor depreciation in each putative class member’s ACV calculation resulted in underpayment. State Farm’s older policy language at issue in this case—the contract that allegedly was breached—does not provide that State Farm will pay

whatever amount appears at the bottom of State Farm’s initial estimate, but rather that State Farm will pay “ACV.” This means there is no breach if State Farm’s estimated ACV payment, however calculated, provided the insured with funds equal to or greater than the true ACV of the damaged property—that is, if the payment provided the insured with “the difference in value of the property immediately before and immediately after the loss.” *LaBrier*, 875 F.3d at 576 (quoting *Wells v. Mo. Prop. Ins. Placement Facility*, 653 S.W.2d 207, 214 (Mo. 1983)); *see also, e.g., Kartman v. State Farm Mut. Auto. Ins. Co.*, 634 F.3d 883, 890 (7th Cir. 2011) (“If a given policyholder was fully compensated for the damage attributable to the hailstorm, then State Farm will have satisfied its contractual obligation regardless of” how it determined the payment amount); *Nguyen v. St. Paul Travelers Ins. Co.* No. CIV.A.06-4130, 2008 WL 4691685, at \*5 (E.D. La. Oct. 22, 2008) (“[T]he issue is whether the total amount paid, not just a discrete, uniformly applicable component of that payment, was sufficient to satisfy State Farm’s contractual obligation”). Moreover, only by examining the *actual* costs to repair the damaged property could State Farm’s *actual* payment obligation under the policy be determined as to a given claim.<sup>3</sup> State Farm would have a strong argument that the need for these types of individualized inquiries defeats certification of a litigation class here, just as in *LaBrier*.

State Farm would further argue that, for many claims, a potential litigation class raises an additional individualized issue: whether the claim is time-barred. The subject insurance policies

---

<sup>3</sup> Because State Farm’s policies expressly cap the amount owed for ACV at the policyholders’ cost to complete repairs, *see* State Farm’s Answer at Additional Defenses, ¶ 4 (“until actual repair or replacement is completed, we will pay only the actual cash value at the time of the loss . . . , not to exceed the cost to repair or replace the damaged part of the property”), putative members of the class who received initial claim payments that exceeded their actual cost of repairs would be unable to establish breach of contract as a matter of law. Simply put, those individuals could not have been and were not underpaid for ACV and, thus, the policy could not have been and was not breached as to them.

provide that any action brought against State Farm must be brought within ten years of the date of loss or damage. *See* State Farm’s Answer at Additional Defenses, ¶ 6. This action was filed on July 3, 2024; thus, only those claims for which the date of loss or damage was on or after July 3, 2014, would be timely. Plaintiff’s Petition, however, defines the class period as beginning on June 5, 2012. Accordingly, for any claims for which the date of loss or damage occurred between June 5, 2012, and July 3, 2014, an individualized inquiry—and potentially, a trial—would be required to determine whether the claim is timely notwithstanding the date of loss or damage. This inquiry would include, for instance, an assessment of any assertion that State Farm waived the limitations period, or that the limitations period was purportedly tolled due to alleged fraudulent concealment. Such claim-by-claim issues would further undercut any request by Plaintiff to certify a litigation class. *See Ring*, 41 S.W.3d at 492–94 (trial court appropriately considered “violation of the statute of limitations” in approving the proposed class settlement).

In opposing certification of a litigation class, State Farm would also assert that the proposed class claims raise additional individualized issues, including whether policy limits were paid, whether State Farm’s payment was based on a particular estimate of ACV, whether the application of depreciation to estimated labor costs resulted in injury, whether insureds (like Plaintiff) who were paid full RCBs (including any initially applied depreciation) can establish an entitlement to interest, and whether other contract-based defenses (*e.g.*, accord and satisfaction, setoff and recoupment) defeat a particular insured’s claim.

State Farm has succeeded in opposing certification of litigation classes in other labor depreciation cases, including but not limited to in *LaBrier*, based upon these same types of individualized issues. For example, in *Cranfield v. State Farm Fire and Casualty Co.*, a federal district court in Ohio denied the plaintiffs’ motion for class certification based in part on the

individualized inquiry necessary to resolve these and other defenses. *See* No. 1:16-CV-1273, 2021 WL 3376283, at \*6 (N.D. Ohio Aug. 2, 2021). As the *Cranfield* court observed:

[I]t will be necessary to review and analyze the facts of each putative class claim to determine “withheld” non-material depreciation; to determine whether any policyholder was “underpaid,” as Plaintiffs contend, due to labor depreciation; whether some policyholders were paid full replacement costs up-front, without depreciation; and whether others may have been paid their policy limits.

*Id.* at \*5; *see also id.* at \*6 (finding that individual issues predominated over common issues, thereby precluding certification under Rule 23(b)(3), based on, among other things, the “variety of property loss policies,” the “different contractual limitations defenses,” and the “[d]istinctions . . . between putative class members who accepted ACV and those who pursued repair and replacement costs”); *Wilcox v. State Farm Fire and Cas. Co.*, No. 14-2798 (RHK/FLN), 2016 WL 6908111, at \*5 (D. Minn. Sept. 7, 2016) (granting State Farm’s motion to strike class allegations in labor depreciation lawsuit because the “adjudication of underpayment in one case would not be dispositive of the interests of another member’s claim”), *report and recommendation adopted*, 2016 WL 7200303 (D. Minn. Nov. 1, 2016).<sup>4</sup>

Thus, an assessment of the fairness of the Proposed Settlement should account for the strong possibility that, absent settlement, Plaintiff likely would be unable to obtain class certification and, thus, none of the putative class members would obtain any recovery whatsoever.

---

<sup>4</sup> State Farm is not the only insurer who has prevailed at the class certification stage in litigated labor depreciation cases. *See Brasher v. Allstate Indem. Co.*, No. 4:18-CV-00576-ACA, 2020 WL 4673259, at \*12–14 (N.D. Ala. Aug. 12, 2020) (denying class certification in labor depreciation action based on insurer’s asserted (and potential) defenses for accord and satisfaction, setoff and recoupment, and based on fact that whether or not each putative class member’s repair costs were less than the amount they already received for ACV—thereby precluding any claim for breach—could not be decided absent individualized evidence for each class member), *reconsideration denied*, 2020 WL 6899158 (N.D. Ala. Nov. 24, 2020).

## B. The Strength of State Farm's Merits Defenses

The Proposed Settlement also should be assessed in light of the strength of the merits of State Farm's defenses to the claims of Plaintiff and the putative class members. The same substantive issues present here were present in *LaBrier* (*see supra* at 4, 11), and if this litigation had proceeded, State Farm would have strong arguments that summary judgment should be granted to State Farm for the same reasons as the Eighth Circuit ordered the dismissal of the plaintiff's suit in *LaBrier*.

Similarly, State Farm would have strong arguments that summary judgment should be granted to State Farm because Plaintiff already received full compensation under his policy by receiving payment for all available RCBs for the loss at issue. *See* State Farm's Answer at Additional Defenses, ¶¶ 12–14. Because Plaintiff's policy expressly provides that State Farm's ACV payment is “not to exceed the cost to repair or replace the damaged part of the property” (*id.* ¶ 4), State Farm would argue that Plaintiff has no right to any additional ACV payment. As multiple courts have recognized, where the policy caps the insurer's payment obligation for ACV in this manner, the policyholder's actual repair costs serve as “an upper limit on . . . the insurer's liability” for ACV. *Elberon Bathing Co. v. Ambassador Ins. Co.*, 389 A.2d 439, 441–42 (N.J. 1978); *see also, e.g., Weidman v. Erie Ins. Grp.*, 745 N.E.2d 292, 295, 297–98 (Ind. Ct. App. 2001) (holding that if an insured has completed repairs, then under similar policy language, he may not recover more for ACV than his actual repair costs).

If State Farm were successful in challenging the named Plaintiff's legal claims, there would be no claim of injury on which to base a request for class certification. *See State ex rel. General Credit Acceptancy Co., LLC v. Vincent*, 570 S.W.3d 42, 50–51 (Mo. 2019) (en banc) (explaining that, for a class to be certified, the “class representative's claims must be typical of the claims of the class,” meaning that the representative “must be a part of the class and possess the same interest

and suffer the same injury as the class members”). For that reason, as well, the Proposed Settlement should be accepted as fair, adequate and reasonable, for absent settlement, the Court might eventually determine through further litigation that *no* claims (individual or class) could proceed against State Farm in this case.

## **II. The Range of Plaintiff’s Possible Recovery**

For the reasons just discussed, “the bottom range of [Plaintiff’s] possible recovery” were this litigation to proceed is “no recovery” at all. *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 266 (Mo. Ct. App. 2011). Accordingly, this factor also weighs in favor of approving the Proposed Settlement. *See id.* at 266, 268 (affirming the trial court’s approval of a settlement in part for this reason).

## **III. The Stage of the Proceedings, and the Complexity, Expense, and Likely Duration of the Litigation**

The Proposed Settlement is also fair, reasonable, and adequate because it avoids the impediment Plaintiff would otherwise face to establishing individualized proofs of injury at trial. As discussed above, determining whether or not any class member received less than the contracted-for ACV amount would require an individualized analysis of each claim, which would create significant litigation-manageability issues. Indeed, there may be any number of policyholders for whom an individualized review would show there was no injury, including (for example) because the policyholder: (i) did not in fact receive an ACV payment with labor depreciation applied; (ii) already received full payment of the applicable limits under their policy; (iii) was able to complete repairs in full for the amount of their ACV payment; or (iv) received an ACV payment that was overstated by more than the amount of any labor depreciation applied in calculating the payment.

The Proposed Settlement eliminates the litigation-manageability challenges that would otherwise be present in a class-wide trial requiring such individualized proofs, and avoids the substantial expense of litigating the case even to the class-certification or summary-judgment stage. As discussed above, this case is similar to other labor-depreciation cases filed in Missouri and elsewhere. Those other cases amply demonstrate the complexity and corresponding burden of litigating suits such as this one. *See supra* at 1, 10–14. Indeed, in *LaBrier*—a case practically identical to the present case—the Eighth Circuit ordered the dismissal of the plaintiff’s complaint only after the district court had (erroneously) certified the class and after both the court and the parties had expended considerable resources on extensive discovery and briefing. *See supra* at 4.

The Proposed Settlement here will avoid any such expenditures and will provide agreed-upon relief to those class members who even arguably experienced an economic impact as a result of an ACV payment that included labor depreciation and who submit a claim. While State Farm will have the right to challenge claim settlement payments based upon certain grounds specified in the Proposed Settlement (such as on grounds that the claimant already received ACV payments in the full amount of any applicable policy limits), the Proposed Settlement will avoid known complexities and associated costs, and will eliminate the widespread individualized disputes as to injury that would ultimately prevent this case from being tried on a class-wide basis. *See Doyle v. Fluor Corp.*, 400 S.W.3d 316, 322 (Mo. Ct. App. 2013) (affirming approval of settlement where “[f]urther litigation would consume ... more time and resources, cause the Class additional hardship, uncertainty and delay in compensation, and possibly jeopardize the settlement altogether”; and further observing that the trial court’s approval of the parties’ settlement was appropriate in that case because, as here, “if the case were to proceed to trial, there was no guaranty that the Plaintiffs would succeed or recover as much as the settlement offered them”).

#### **IV. The Opinions of Class Counsel, Class Representatives, and Absent Class Members**

As outlined in the Settlement Agreement and in Class Counsel’s memoranda in support of preliminary and final approval, counsel for Plaintiff and State Farm have significant experience in complex class action litigation and have negotiated numerous other class action settlements, including settlements of other class actions challenging the depreciation of labor in the calculation of ACV claim payments. All parties, including Plaintiff, agree that the settlement as reflected in the Agreement is fair, adequate, and reasonable.

The complete lack of opposition to the Agreement also supports the approval of the Proposed Settlement. As reflected in the Settlement Agreement, the parties agreed to a form and manner of mailing notice to potential class members, all of which was approved by the Court in its Preliminary Approval Order. In accordance with the Preliminary Approval Order, notice has been disseminated to potential class members. Importantly, the deadline for objections has passed, and no objection has been lodged. Thus, this factor also supports the Court’s final approval of the Proposed Settlement. *See Ring*, 41 S.W.3d at 493–94 (affirming approval of settlement where eleven objections to the settlement agreement had been lodged).

#### **V. The Absence of Fraud or Collusion in Reaching the Settlement**

In negotiating the Proposed Settlement, both Plaintiff and State Farm were represented by experienced counsel who vigorously defended their respective clients’ interests. Prior to entering into the Settlement Agreement and agreeing to the Settlement, the parties litigated other, similar cases in various courts, as noted above, and the Agreement here was reached only through multiple arm’s length settlement negotiations overseen by the Hon. Magistrate Judge Stephen C. Williams (Ret.) and other professional mediators. Accordingly, “[t]he settlement was a product of an arm’s-length negotiation, free of fraud or collusion,” which weighs in favor of approval. *Doyle*, 400 S.W.3d at 322.

**CONCLUSION**

For all of the foregoing reasons, State Farm respectfully requests that the Court find that the Proposed Settlement is fair, reasonable, and adequate, and finally approve the Proposed Settlement in the form agreed to by the Parties, as attached to Plaintiff's motion for final approval.

Dated: February 24, 2026

Respectfully submitted,

By: /s/ Michael J. Kuhn  
James F. Bennett #46826  
Robert F. Epperson, Jr. #46430  
Michael J. Kuhn #58936  
DOWD BENNETT LLP  
7676 Forsyth Blvd., Suite 1900  
St. Louis, MO 63105  
Telephone: (314) 889-7300  
[jbennett@dowdbennett.com](mailto:jbennett@dowdbennett.com)  
[repperson@dowdbennett.com](mailto:repperson@dowdbennett.com)  
[mkuhn@dowdbennett.com](mailto:mkuhn@dowdbennett.com)

Joseph A. Cancila, Jr. (pro hac vice)  
Jacob L. Kahn (pro hac vice)  
RILEY SAFER HOLMES & CANCILA LLP  
1 South Dearborn Street, Suite 2200  
Chicago, IL 60603  
Telephone: (312) 471-8700  
[jcancila@rshc-law.com](mailto:jcancila@rshc-law.com)  
[jkahn@rshc-law.com](mailto:jkahn@rshc-law.com)

*Counsel for Defendant State Farm Fire and  
Casualty Company*

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that the foregoing document was filed using the Court's electronic filing system, which will provide service to all counsel of record.

/s/Michael J. Kuhn