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

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS, AND EXPENSES TO CLASS COUNSEL AND SERVICE AWARD TO CLASS REPRESENTATIVE

INTRODUCTION

Plaintiff Michael Pregon ("Plaintiff") alleges that Defendant State Farm Fire and Casualty Company ("Defendant") improperly applied Non-Material Depreciation and GCOP Depreciation when calculating actual cash value ("ACV") payments for structural loss insurance claims for its policyholders in Missouri.[1] As a result of such alleged application of Non-Material Depreciation and GCOP Depreciation, Plaintiff and other Class Members were deprived of the full amount owed on their Structural Loss claims, thereby breaching the insurance policies. On October 10, 2025, this Court preliminarily approved the proposed Settlement between Plaintiff and Defendant, and appointed Plaintiff as Class Representative and the undersigned as Class Counsel. Concurrent with this Motion, Plaintiff has filed an unopposed motion for final approval of the Settlement. Plaintiff

[1] All capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Settlement.

now moves for an award of attorneys' fees, costs, and litigation expenses to Class Counsel and service award to Plaintiff as Class Representative.[2]

Class Counsel undertook significant litigation efforts and expense to prosecute this case against Defendant. The Settlement provides outstanding results for Class Members, which was achieved due to the skill, determination, and effective advocacy of Class Counsel. Accordingly, Plaintiff respectfully requests an award of attorneys' fees, costs, and litigation expenses in the amount of $5,125,000, which represents 23.8% of the estimated total benefit made available to the Class. Importantly, Defendant's payments to Class Members will *not* be reduced by the amount paid for attorneys' fees and litigation costs. The requested award is fair, reasonable, commensurate with the results obtained by Class Counsel, and consistent with Missouri precedent. Defendant has agreed not to oppose or otherwise object to this application for fees and expenses because the amount sought does not exceed the total amount outlined in the Settlement.

Finally, Defendant has also agreed to pay a service award in the amount of $7,500 to Plaintiff Michael Pregon, subject to this Court's approval. The service award is appropriate given the efforts made by Plaintiff to protect the interests of the Settlement Class, the time and effort he expended pursuing this matter, and the substantial benefit he bestowed on the Settlement Class. Therefore, Plaintiff respectfully requests that the Court approve the service award, which if approved, will *not* reduce the Class Members' recoveries.

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[2] However, State Farm does not join in, approve of, or admit Plaintiff's allegations or averments of fact or law related to this memorandum or any related submissions. As Paragraphs 1.6 and 1.7 of the Settlement make clear, State Farm denies every allegation of liability, wrongdoing, and damages; is not objecting to settling the case to achieve final resolution of the issues on fair and just compromise terms; and believes it has substantial factual and legal defenses to all claims and class allegations asserted in this case that it will continue to pursue in the event the settlement is not approved.

BACKGROUND AND PROCEDURAL HISTORY

Plaintiff refers to his Memorandum of Law in Support of Unopposed Motion for Final Approval of Class Settlement, filed concurrently with this submission, and incorporates by reference the background and procedural history leading up to the parties' settlement negotiations described therein.

After the proposed settlement terms for the putative class were agreed, the parties then negotiated proposed attorneys' fees, litigation costs, and service award. Declaration of Erik D. Peterson ("Peterson Decl.") at ¶¶ 26-28, 34.[3] Consistent with the highest ethical standards, the parties negotiated potential attorneys' fees, costs, and service award only *after* relief to the Class was agreed upon. *Id*.

After extensive direct negotiations between the parties, and after obtaining claim data reports and making damages modeling of the aggregate values to be made available to the putative class, as well as considering likely common fund percentages, the parties reached preliminary terms regarding the remaining issues of attorneys' fees, costs, and service award, and began drafting the settlement agreement. *See id.* at ¶¶ 23-29. The proposed amounts of attorneys' fees, costs, and service award were negotiated as "over and above" payments beyond the proposed relief to the class—*i.e*., the payments of attorneys' fees, costs, and service award will *not* reduce the proposed amounts to be awarded to the Class. *See id*. at ¶ 26. Because the service award, fees, and expenses will be *paid separately* by Defendant and will *not* reduce the recovery to the Class or be

[3] The Peterson Declaration, filed concurrently with this Memorandum, details the history of settlement negotiations for this lawsuit, the timing and structure of the settlement negotiations, and the considerations that led to the negotiated compromise in exchange for the proposed release. *Id*. at ¶¶ 23-43; *see also* the Declaration of Christopher E. Roberts, filed concurrently herewith in further support of final approval and Plaintiff's motion for service award and attorneys' fees, costs, and litigation expenses.

subsidized by the same, Defendant was incentivized to negotiate and pay for as little fees and litigation expenses as possible. *Id*.

Thereafter, the parties worked to formalize their agreement in writing. The parties executed the Settlement Agreement that was filed with the Court on October 1, 2025. The Court entered an order granting preliminary approval of the Settlement on October 10, 2025. ("PA Order").

The deadline for objecting to or seeking exclusion from the Settlement was January 30, 2026. *See* PA Order at ¶¶ 10-11. Out of 37,672 potential Class Members, *four* claims sought exclusion. *See* Declaration of Jameson Olsen ("Olsen Decl.") at ¶¶ 5, 16, filed concurrently herewith. To date, *no* objection to any aspect of the settlement has been received. *Id*. at ¶ 14.

SUMMARY OF CLASS RELIEF

Class Counsel estimates that the aggregate value of the benefits made available by the Settlement exceeds $16,267,500, exclusive of settlement administration costs, attorneys' fees, litigation expenses, and class representative service award. Peterson Decl., ¶ 32. Those Class Members who submit timely, completed Claim Forms will be eligible for claim payments, and Class Members' recoveries will *not* be reduced by the amounts of attorneys' fees, costs, litigation expenses, and/or service award approved by the Court. *See* Stipulation and Settlement Agreement filed with the Court on October 1, 2025, at ¶¶ 1.3, 13.2, 13.7 ("Settlement" or "SA").

The proposed Settlement provides that Defendant shall pay the following amounts to three categories of Class Members, as summarized below:

> **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.

SA ¶¶ 6.4.1-6.4.3.

In addition to the class relief, Defendant also agreed to separately pay for the Settlement Administrator and the mailing of the Class Notice and Claim Forms (*see id*. at ¶ 4.1.4), as well as the reasonable fees incurred by the Neutral Evaluator, as provided in the Settlement. *Id.* at ¶ 4.1.5.

ATTORNEYS' FEES, COSTS, AND SERVICE AWARD

The parties conducted settlement negotiations and attended multiple mediation sessions before a retired U.S. Magistrate Judge and a nationally recognized mediator, where they made substantial progress toward reaching an agreement on class relief. Peterson Decl., ¶¶ 23, 25. *After* the proposed settlement terms for the putative class were agreed to, the parties began to negotiate

proposed attorneys' fees and costs (subject to Court approval). *Id*. at ¶ 26-28, 34. The negotiation of the service award to Plaintiff also followed an agreement in principle on the settlement terms for the proposed Class that he represents. *Id*. All negotiations were conducted at arm's length and were structured in accordance with the highest ethical standards to avoid conflicts of interest between Class Counsel and the putative class members. *Id*. at ¶ 28.

Class Counsel seek as attorneys' fees, costs, and expenses, and Defendant has agreed to pay subject to Court approval, an amount no greater than $5,125,000. SA ¶¶ 4.1.2, 13.1. Class Members' recoveries will not be reduced by the amount of attorneys' fees, costs, or litigation expenses paid. *See id*. at ¶¶ 1.3, 13.2.

To negotiate fees and costs, the parties attempted to determine the approximate aggregate value of the Settlement. After extensive data analysis, Class Counsel estimates the aggregate value of the relief made available to the class for payment on a claims made basis is at least $21,500,000, inclusive of the costs for settlement administration (estimated to be at least $100,000), plus the proposed service award ($7,500), and attorneys' fees and expenses ($5,125,000). Thus, the attorneys' fees sought are approximately 23.8% of the aggregate value of the proposed settlement amounts made available to the putative class (*i.e.*, $5,125,000 / $21,500,000). Peterson Decl., ¶¶ 35, 45-46.

Plaintiff submits that the requested attorneys' fees, costs, and litigation expenses are fair and reasonable when considered under applicable legal standards and authorities, and they are particularly appropriate here in view of the substantial risks Class Counsel took in commencing and prosecuting this case and the substantial results achieved. *Id*. at ¶¶ 47-54. Additionally, the service award sought by Plaintiff in the amount of $7,500 is fair and reasonable, particularly in

light of Plaintiff's involvement in this litigation. *Id.* at ¶¶ 55-56. If approved, the service award will not reduce the Class Members' recoveries. SA ¶¶ 1.3, 13.7.

ARGUMENT

I. THE REQUESTED ATTORNEYS' FEES AND EXPENSES ARE REASONABLE AND SHOULD BE APPROVED.

A. Standard Of Review.

The court may award attorney fees that are authorized by an agreement to settle a class action. *Berry v. Volkswagen Grp. of Am., Inc.*, 397 S.W.3d 425, 431 (Mo. 2013) ("[A]ttorneys' fees may be awarded when they are provided for in a contract," such as a settlement agreement); *see also Tussey v. ABB, Inc.*, 2019 WL 3859763, at *2 (W.D. Mo. Aug. 16, 2019) ("Under the 'common fund' doctrine, Class Counsel is entitled to an award of reasonable attorneys' fees from the settlement proceeds."). Courts utilize two main approaches to analyzing a request for attorney fees: the "lodestar" method and the "percentage of the benefit" approach. *Keli v. Lopez*, 862 F.3d 685, 701 (8th Cir. 2017). "It is within the discretion of the district court to choose which method to apply, as well as to determine the resulting amount that constitutes a reasonable award of attorney's fees in a given case." *Id.*; *In re Chrysler Motors Corp. Overnight Evaluation Program Litig.*, 736 F. Supp. 1007, 1015 (E.D. Mo. 1990) ("[A] district court is vested with significant discretion where determining a reasonable fee."). That said, the percentage method is favored in cases with a common fund and in cases where the value of the settlement to the class can be readily calculated. *In re Tex. Prison Litig.*, 191 F.R.D. 164, 176-77 (W.D. Mo. 1999) (acknowledging the percentage method is preferable to the lodestar method in common fund cases, and thus, "[b]ecause this is a common fund case, the percentage of benefit method should be applied").

Notwithstanding Defendant's agreement to the negotiated fees and costs, the Court may assess the reasonableness of the requested fees. *Rogowski v. State Farm Life Ins. Co.*, 2023 WL

5125113, at *5 (W.D. Mo. Apr. 18, 2023). Such reasonableness determinations are also trusted to the sound discretion of the court. *See Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 267 (Mo. App. 2011) ("We give great deference to attorney fee awards because, '[t]he trial court is considered an expert at awarding attorney's fees, and may do so at its discretion.'"); *see also Petrovic v. Amoco Oil Co*., 200 F.3d 1140, 1156 (8th Cir. 1999) ("Decisions of the district court regarding attorney fees in a class action settlement will generally be set aside only upon a showing that the action amounted to an abuse of discretion.").[4]

Here, Class Counsels' fee request bears all the hallmarks of fee awards that have been approved by Missouri state and federal courts. First, the parties ultimately reached settlement through a mediation process overseen by and with the assistance of a retired U.S. Magistrate Judge and a nationally recognized mediator. The amount of class relief was first negotiated and principally finalized before negotiations occurred regarding attorneys' fees, litigation costs, and class representative service award. The structure of the parties' settlement explicitly provides that the class relief is not connected to, nor diminished by, the attorneys' fees, costs, and service award approved by the Court. The same relief is available to Class Members regardless of the amounts of attorneys' fees and litigation expenses awarded because Defendant has agreed to pay these amounts directly to Class Counsel and "over and above" the relief to the class.

As discussed more below, these circumstances and established Missouri precedent warrant approval of the agreed-upon award of attorneys' fees and litigation expenses to Class Counsel. Given their considerable efforts and success in achieving this recovery for Class Members, which was undertaken on a contingent basis, there is no reason to doubt the reasonableness of Class Counsel's request for attorneys' fees and expenses in the amount of $5,125,000.

[4] Unless otherwise noted, all emphasis is added, and internal citations and footnotes are omitted.

B. "Over And Above" Attorneys' Fee Agreements, Negotiated *After* Relief To The Class, Are Subject To Deference.

It is well-established that fee agreements between the parties in the settlement of a class action are encouraged where, like here, the parties negotiated attorneys' fees separately from the underlying settlement and only after the terms of the class relief were reached. Indeed, the Supreme Court has addressed the value of negotiating fees, stating that "[a] request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983); *see also* 4 William B. Rubenstein, NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 13:2 (6th ed. Dec. 2025 Update) ("Fees should not be negotiated between class counsel and defendant's counsel until after a settlement of the class's claims has been agreed upon."). Here, the fees were not negotiated until *after* relief to the Class was agreed to by the parties. *See* Peterson Decl., ¶¶ 26-28, 34. Further, the Settlement provides that attorneys' fees shall be directly paid by Defendant and shall *not* reduce any Class Member's recovery. SA ¶¶ 1.3, 4.1.2, 13.2.

"Over and above" attorneys' fee agreements such as this one—negotiated *after* relief to the Class—are subject to deference. When attorneys' fees will not reduce any class member's recovery and are to be paid "*over and above* the settlement costs and benefits with no reduction of class benefits," agreements between the parties as to the amount of fees "are *encouraged*, particularly where the attorneys' fees are negotiated separately and only after all the terms have been agreed to between the parties." *Manners v. Am. Gen. Life Ins. Co.*, 1999 WL 33581944, at *28-30 (M.D. Tenn. Aug. 11, 1999); *see, e.g.,* Mem. Op. & Order at ¶¶ 28-31, *Arnold v. State Farm Fire & Cas. Co.*, No. 17-00148 (S.D. Ala. Oct. 4, 2022) (*Arnold* Dkt. 206) (hereinafter "*Arnold* Final Approval Order") (approving class counsels' fee request in labor depreciation class action where "the attorneys' fees, costs, and expenses will be paid 'over and above' the amounts paid to class

members"); *Carroll v. Macy's, Inc.*, 2020 WL 3037067, at *9 (N.D. Ala. June 5, 2020) (approving "fees paid on top of (that is, above and beyond) the fund set up for the Settlement Class"); *Williams v. New Penn Fin., LLC*, 2019 WL 2526717, at *6-8 (M.D. Fla. May 8, 2019) (approving "attorneys' fees under Settlement [] to be paid separately from the Settlement amount paid to Class Members"); *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 690, 694 (S.D. Fla. 2014) (holding $20 million attorneys' fee award was reasonable in homeowners' nationwide class action against mortgage lender and force-placed hazard insurer, in part, because requested fee would be paid by defendants in addition to $300 million available to class); *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 695 (N.D. Ga. 2001) ("[T]he Court should give substantial weight to a negotiated fee amount, assuming that it represents the parties' 'best efforts to understandingly, sympathetically, and professionally arrive at a settlement as to attorney's fees.'").[5]

Courts have held that such "over and above" fee requests are entitled to a "presumption of reasonableness." *DeHoyos v. Allstate Corp*., 240 F.R.D. 269, 322-23 (W.D. Tex. 2007); *see also Cole v. Collier*, 2018 WL 2766028, at *13 (S.D. Tex. June 8, 2018) ("When the amount of fees agreed upon, is separate and apart from the class settlement, and has been negotiated after the other terms have been agreed, the attorneys' fee is presumed to be reasonable."); *Bailey v. AK Steel Corp.*, 2008 WL 553764, at *1 (S.D. Ohio Feb. 28, 2008) ("[F]ees negotiated and paid separate and apart from the class recovery are entitled to a 'presumption of reasonableness.'"). The reasoning of these courts is twofold. First, any hypothetical judicial reduction of an "over and above" fee request upon final approval would only benefit the insurance companies that breached

[5] Missouri courts may consider federal case law for guidance on class action issues because the Missouri class action statute is patterned on Rule 23 of the Federal Rules of Civil Procedure. *Mitchell v. Residential Funding Corp.*, 334 S.W.3d 477, 491 n.12 (Mo. App. 2010) ("Because Rule 52.08 and Fed. R. Civ. P. 23 are identical, Missouri state courts may consider federal interpretations of Federal Rule 23 in interpreting Rule 52.08.").

their contracts—not any class members. *E.g.*, *DeHoyos*, 240 F.R.D. at 322 ("Were the Court to reduce the award of class counsel's fees, this would not confer a greater benefit upon the class, but rather would only benefit Allstate."); *accord Lane v. Page*, 862 F. Supp. 2d 1182, 1258 (D.N.M. 2012) ("Even if the Court were to reject the attorney's fees arrangement, the funds would not go to the class and would not increase the class fund in any way."). Second, "where the money paid to attorneys is entirely independent of money awarded to the class, the Court's fiduciary role in overseeing the award is greatly reduced, because there is no potential conflict of interest between attorneys and class members." *See Mirakay v. Dakota Growers Pasta Co.*, 2014 WL 5358987, at *11 (D.N.J. Oct. 20, 2014); *Fellows v. Am. Campus Communities Servs., Inc.*, 2018 WL 3056046, at *6 n.3 (E.D. Mo. June 20, 2018) ("Because fees were only discussed after settlement, and because the fees are paid in addition to the Class's recovery, the Court is not concerned that agreed upon fee was the result of collusion between the Parties.").[6]

[6] *Accord Dupler v. Costco Wholesale Corp.*, 705 F. Supp. 2d 231, 245 (E.D.N.Y. 2010) ("As a threshold matter, the Court notes that the requested attorneys' fees in this case will not be drawn from a common fund, but rather will be paid directly by defendant. Whatever attorneys' fees are awarded, therefore, will in no way diminish the benefit to the class under the Settlement, which the Court has already found fair, reasonable, and adequate. Furthermore, the issue of attorneys' fees was not raised during the Settlement negotiations until after the parties had already agreed upon the benefit to the class. Therefore, the Court's fiduciary role in overseeing the award is greatly reduced."); *Bezio v. Gen. Elec. Co.*, 655 F. Supp. 2d 162, 168 (N.D.N.Y. 2009) ("If [ ] money paid to the attorneys is entirely independent of money awarded to the class, the Court's fiduciary role in overseeing the award is greatly reduced, because there is no conflict of interest between attorneys and class members."); *In re Sony SXRD Rear Projection TV Class Action Litig.*, 2008 WL 1956267, at *15 (S.D.N.Y. May 1, 2008) ("[T]he danger of conflicts of interest between attorneys and class members is diminished... the fee was negotiated only *after* agreement had been reached on the substantive terms of the Settlement benefitting the class." (emphasis in original)); *McBean v. City of New York*, 233 F.R.D. 377, 392 (S.D.N.Y. 2006) ("If money paid to the attorneys comes from a common fund, and is therefore money taken from the class, then the Court must carefully review the award to protect the interests of the absent class members. If, however, money paid to the attorneys is entirely independent of money awarded to the class, the Court's fiduciary role in overseeing the award is greatly reduced, because there is no conflict of interest between attorneys and class members.").

C. The Court Should Use The Percentage Of The Fund Approach.

The Supreme Court recognizes that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). When calculating attorneys' fees under the common fund doctrine, "a reasonable fee is based on a percentage of the fund bestowed on the class." *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984).

Courts in Missouri and within the Eighth Circuit prefer this percentage method of awarding attorneys' fees. *Burnett v. Nat'l Ass'n of Realtors*, 2024 WL 2842222, at *14 (W.D. Mo. 2024) (citing cases); *Rogowski*, 2023 WL 5125113, at *4 ("In the Eighth Circuit, use of a percentage method of awarding attorney fees in a common-fund case is not only approved, but also 'well established.'"). "The percentage method aligns the interests of the attorneys and the class members by incentivizing counsel to maximize the class's recovery." *Id*. Additionally, as the Southern District of Ohio recently explained,

> It would be inequitable for a court to reduce a fee award based on a lodestar cross-check without considering a law firm's work [in] other cases raising the same or similar issues. That work may, as it did here, substantially enhance the result Class Counsel is able to achieve. This is true for several reasons, including that (1) successfully litigating a particular issue may improve the settlement prospects of cases raising the same issue, (2) developing expertise in a specific niche improves the firm's ability to effectively litigate within that niche, and (3) the work product from one case can be used in a case raising the same issue, resulting in value that is not adequately reflected in a lodestar calculation. These factors weigh in favor of and confirm the appropriateness of what courts in this district already do: base common fund fee awards … on a percentage-of-the-fund. In most cases, the percentage-of-the-fund approach automatically factors into the award any enhancement to the settlement derived from Class Counsel's work in similar cases.

Arp v. Hohla & Wyss Enter., LLC, 2020 WL 6498956, at *7-8 (S.D. Ohio Nov. 5, 2020).

There can be no doubt that Class Counsel's work on other labor depreciation cases substantially enhanced the result they were able to efficiently achieve here. Under these

circumstances, it is appropriate to use the percentage method to calculate Class Counsel's fees in this case as the Northern District of Ohio recently concluded when awarding fees to Class Counsel here in an Ohio labor depreciation class action:

> The Court first finds that it is appropriate to use the percentage-of-the-fund approach. The Court is persuaded that class counsel's extensive prior work and expertise in labor depreciation cases allowed them to be more efficient in this case and thus, a lodestar approach might not adequately compensate counsel for the result achieved herein.

Final Approval/Fairness Hr'g Tr. at 46:2-47:3, *Stevener v. Erie Ins. Co.*, No. 20-cv-603 (N.D. Ohio filed Sept. 15, 2022) (*Stevener* Dkt. 49).

Moreover, as the Eastern District of Pennsylvania has explained:

> [T]he lodestar approach has come under increasing criticism. Among the problems with the lodestar approach is its tendency to encourage lawyers to run up substantial legal bills in order to maximize their recovery from the common fund, and the massive burden it places on trial courts in sifting through attorney fee petitions to determine which costs are and are not justifiable. … Despite the continuing validity of the lodestar method for statutory fees cases in our circuit, the court of appeals has now made it clear that district courts should apply the [percentage of recovery] method of calculating fees in common fund cases such as this one. The POR method of computing fees is thought to be superior because "it apportions the funds between the class and its counsel in a manner that rewards counsel for success and penalizes it for failure."

Lachance v. Harrington, 965 F. Supp. 630, 647 (E.D. Pa. 1997).[7]

[7] It is not necessary for courts to undertake the time-consuming process associated with "cross-checking" the reasonableness of the fee award determined by the percentage method against the fee award calculated using the lodestar method. *See, e.g., Keil v. Lopez*, 862 F.3d 685, 701 (8th Cir. 2017) (recognizing the court is not required to verify the reasonableness of a fee award by looking to the lodestar method as a cross-check); *Burnett*, 2024 WL 2842222, at *17 (declining to do a lodestar crosscheck, which is not required); *Tussey*, 2019 WL 3859763, at *4 n.4 (refusing to consider the lodestar method as a cross-check "[b]ecause one-third of the common fund created by this litigation is a fair fee and because there is no opposition to that fee"); *see also In re Chrysler Motors*, 736 F. Supp. at 1008-09, 1016 (observing that "criticism of the 'lodestar' and multiplier approach to ascertain fees … has grown rapidly in the recent past," and thus "a number of courts have adopted an outright percentage of the fund analysis when awarding attorneys' fees in common fund cases").

Here, although the requested attorneys' fees are allocated separately from the monetary relief to the Settlement Class, they originate from the same source (Defendant) and are therefore a constructive common fund to which the percentage of the fund method applies. *See Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 245-46 (8th Cir. 1996) (finding that attorney fees deriving from defendant rather than out of the class's recovery come from the same source, and thus, "[e]ven if the fees are paid directly to the attorneys, those fees are still best viewed as an aspect of the class's recovery"); *Fellows*, 2018 WL 3056046, at *6 ("While the attorneys' fees, costs, administration and notice cost, and service award are being paid directly by the Defendant rather than into a common fund out of which these amounts are paid, the Court notes that all amounts paid in connection with the settlement are coming from a common source. Thus, the Court finds that the 'percentage of benefit' approach to be the most appropriate methodology for determining fees in this case."); *see also Dewey v. Volkswagen Aktiengesellschaft*, 558 F. App'x 191, 197 (3d Cir. 2014) ("Granted, this case does not involve a true common fund because Volkswagen is paying the fee out of its own pocket and not through the reimbursement fund. However, where the reality is that the fund and the fee are paid from the same source—in this case, Volkswagen—the arrangement 'is for practical purposes, a constructive common fund,' and courts may still apply the percent-of-fund analysis in calculating attorney's fees.").

Finally, the Supreme Court also recognizes that a class member's "right to share the harvest of the suit upon proof of their identity, *whether or not they exercise it*, is a benefit in the fund created by the efforts of class representatives and their counsel." *Boeing*, 444 U.S. at 478-80 (holding class counsel is entitled to a reasonable fee based on funds potentially available to be claimed by class members, regardless of the amount actually claimed). Accordingly, the proper approach to awarding fees under the percentage of the fund method is to award fees based on a

percentage of the entire common fund obtained by Class Counsel, not the amount that Class Members choose to claim. 2 MCLAUGHLIN ON CLASS ACTIONS § 6:24 (22nd ed. Nov. 2025 Update) ("Most Circuits to address the question hold that in a common fund case … attorneys' fees should be calculated as a percentage of the *total funds made available* through counsel's efforts, *whether claimed or not*.") (citing cases). As one district court succinctly explained, "[t]his is so because '[a] settlement's fairness is judged by the *opportunity* created for the class members, *not by how many submit* claims … What matters is the settlement's value to each class member—it is ultimately up to the class members whether to participate or not." *Williams v. Reckitt Benckiser LLC*, 2021 WL 8129371, at *37-38 (S.D. Fla. Dec. 15, 2021).

Decisions in the labor depreciation context are in accord. *See, e.g., Arnold* Final Approval Order at 10 (awarding 22% of gross settlement fund to be made available to labor depreciation class); Final Order & Judgment at ¶¶ 8, 28, 40, *Mitchell v. State Farm Fire & Cas. Co.*, No. 3:17-cv-00170 (N.D. Miss. Feb. 25, 2021) (awarding fees and costs as percentage of total monetary benefit to be made available to labor depreciation class—inclusive of the value of the amount of unrecovered nonmaterial depreciation and interest, attorneys' fees and expenses, service awards, and settlement administration costs) (hereinafter "*Mitchell* Final Approval Order"); Peterson Decl. Ex. A (identifying 41 "claims made" labor depreciation class settlements resulting in final approval between June 1, 2017 through January 7, 2026 in which fees and costs were awarded based on a percentage of the total monetary benefit made available to the class). Accordingly, this Court should not hesitate to apply the percentage method here. *See, e.g., Burnett*, 2024 WL 2842222, at *14 (using percentage approach to award fees in complex class action); *Tussey*, 2019 WL 3859763, at *2-4 (awarding attorneys' fees in class action using percentage approach); *Fellows*, 2018 WL 3056046, at *6 (finding percentage method appropriate in consumer class action).

D. The Fee Percentage Requested By Class Counsel Falls Well Within The Range Of What Missouri Courts Deem Reasonable.

Class Counsel seek as attorneys' fees, costs, and litigation expenses, and Defendant has agreed to pay subject to Court approval, an amount no greater than $5,125,000, or approximately 23.8% of the estimated total benefit to be made available to the Settlement Class. This percentage is calculated by dividing Class Counsel's requested fee by the total benefit to be made available to the Settlement Class, inclusive of the available cash benefits, assuming each Class Member were to make a claim; settlement administration costs; and agreed to attorneys' fees, costs, and expenses. *See, e.g., In re Target Corp. Customer Data Sec. Breach Litig.*, 892 F.3d 968, 976 (8th Cir. 2018) ("[T]he district court acted within its discretion when it included notice and administrative expenses in its calculation of the total benefit to the class."); *Gascho v. Glob. Fitness Holdings, LLC*, 822 F.3d 269, 282-85 (6th Cir. 2016) (holding percentage-of-fund approach properly focuses on the total benefit made available to class; "[w]hen conducting a percentage of the fund analysis, … [a]ttorney's fees are the numerator and the denominator is the dollar amount of the Total Benefit to the class (which includes the 'benefit to class members,' the attorney's fees and may include costs of administration)"); MCLAUGHLIN § 6:24.

Here, the numerator is the amount of requested attorneys' fees and costs ($5,125,000). Peterson Decl., ¶¶ 44-46. The denominator is $21,500,000, which is the sum of the: (i) estimated aggregate value to be made available to the class (approximately $16,267,500); (ii) Settlement Administrator's estimated costs to be paid by Defendant (estimated to be at least $100,000); (iii) proposed service award ($7,500); and (iv) attorneys' fees, costs, and expenses ($5,125,000). *Id.*[8]

[8] Both the U.S. Supreme Court and Missouri state courts hold that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole." *Boeing*, 444 U.S. at 478; *Gerken v. Sherman*, 351 S.W.3d 1, 13 (Mo. App. 2011) (same); *see also* MCLAUGHLIN § 6:24 ("Most Circuits to

This Court has substantial discretion in determining the appropriate fee percentage. However, in Missouri, attorney fees are commonly awarded for one-third of the recovery to the class. *See, e.g., Burnett*, 2024 WL 2842222, at *14 (finding "one-third of the common fund is an appropriate amount for class counsels' fees in complex class actions" and recognizing "Missouri courts 'have frequently awarded attorney fees between twenty-five and thirty-six percent of a common fund in other class actions'"); *Bachman*, 344 S.W.3d at 267 (acknowledging that, "in the class action context, a one-third contingent fee award is not unreasonable," and one study found the "average attorney's fees percentage is 31.71%, and the median is one-third"); *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 388 (Mo. App. 1997) ("A fee of 20-25% … has been approved in many [class actions] as a 'benchmark' for recovery."); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (finding no abuse of discretion in awarding 36% of $3.5 million recovery to class counsel); *see also* NEWBERG § 15:73 ("[R]egardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.").

Here, Class Counsels' request for approximately 23.8% of the common fund created is below the typical range. *See Bachman*, 344 S.W.3d at 267 (leaving undisturbed the trial court's award of $21 million to class counsel for attorneys' fees, representing a fee of one-third of the total

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address the question hold that in a common fund case … attorneys' fees should be calculated as a percentage of the total funds made available through counsel's efforts, whether claimed or not.") (citing cases). Further, precedent supports applying the selected percentage to the total benefit to the class before separately deducting litigation costs and expenses from the fund. *See, e.g., In re Target*, 892 F.3d at 976 ("[T]he district court acted within its discretion when it included notice and administrative expenses in its calculation of the total benefit to the class."); *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 865 (8th Cir. 2017) (finding settlement administration costs were properly included as part of the "benefit" when calculating the percentage-of-the-benefit fee amount and holding district court did not abuse its discretion in awarding attorney fees totaling 1/3 of the gross recovery); *Fellows*, 2018 WL 3056046, at *6 ("[A]ttorneys' fees, costs, the costs of notice of administration and related expenses borne by the Defendants are all properly considered in assessing the value of a settlement.").

settlement); *see also, e.g., Caligiuri v. Symantec Corp.*, 855 F.3d 860, 866 (8th Cir. 2017) (recognizing that "courts have frequently awarded attorney fees between 25 and 36 percent of a common fund in class actions"); *Tussey*, 2019 WL 3859763, at *4 (recognizing that "Courts in this Circuit and this District have frequently awarded attorney fees of $33^{1/3}$%-36% of a common fund") (collecting cases); *Fellows*, 2018 WL 3056046, at *6 (awarding 28.34% of common fund in consumer class action). The 23.8% attorney fee award being sought is imminently modest when compared with other fee awards of this size, and as discussed more thoroughly below, is fair and reasonable considering the risk Class Counsel undertook in pursuing this litigation on a contingency basis, and the excellent relief Class Counsel obtained for the Settlement Class. *Fellows*, 2018 WL 3056046, at *5 (affirming district court's attorney fee award in part because "Class Counsel undertook this litigation on a contingent basis with no guarantee of any fees whatsoever, risking their own money, time and effort, and took time from other endeavors to pursue this action on behalf of the Class").

E. The Settlement Obtained By Class Counsel Achieves An Excellent Result For The Proposed Settlement Class, Particularly Given The Expense, Duration, And Uncertainty Of Continued Litigation.

1. Class Counsel Assumed Considerable Risk To Pursue This Case On A Pure Contingency Basis And Were Precluded From Other Employment As A Result.

When considering the appropriateness of a fee award, it is relevant to consider the probability of success at the outset of the litigation and the risks counsel undertook in pursuing it. *See Burnett*, 2024 WL 2842222, at *16 (recognizing that risk is a major factor in awarding attorney fees and "'[t]he risks plaintiffs' counsel faced must be assessed as they existed in the morning of the action, not in light of the settlement ultimately achieved at the end of the day'"). Here, Class Counsel accepted this litigation on a contingent-fee basis, fronting all the costs and expenses associated with the litigation, foregoing other work, and accepting the risk that should they be

ultimately unsuccessful, they would receive no compensation for their work. Moreover, without the willingness of Class Counsel to assume the risks inherent in this case (or in other cases of similar magnitude and complexity), Class Members would not have recovered anything, let alone the substantial recovery secured here. The public interest is served by awarding compensation in an amount appropriate to encourage skilled attorneys to assume the risks of this type of litigation.

When Class Counsel filed this case and when the settlement was being negotiated, the risk of the Class recovering nothing was substantial. *Hicks v. State Farm Fire & Cas. Co.*, 751 F. App'x 703, 710 (6th Cir. 2018) (observing the "substantial weight of authority" is in favor of insurers in labor depreciation class actions). While labor depreciation litigation classes have been initially certified for contractual claims, no labor depreciation class action has gone to trial or faced the issue of decertification. Thus, certification of a litigation class here was not a guarantee. Even if class certification could have been obtained and sustained over any appeals or decertification motions, Plaintiff would have needed to establish class-wide liability and class-wide damages. Labor depreciation class actions pending throughout the U.S. have led to decidedly mixed results concerning liability, with many class actions resulting in no recovery. *See, e.g., Hicks*, 751 F. App'x at 710. Class Counsel accepted this case and the risks that accompanied it. Given the positive societal benefits to be gained from attorneys' willingness to undertake this kind of difficult and risky, yet important, work, such decisions should be incentivized. *See, e.g., Burnett*, 2024 WL 2842222, at *16 ("'Courts agree that a larger fee is appropriate in contingent matters where payment depends on the attorney's success.'").

2. The Complexity Of The Litigation Supports The Requested Fee.

Class actions have a well-deserved reputation for being inherently complex. This case is no exception. The proposed settlement here was not reached until Class Counsel conducted

extensive pre- and post-suit analysis and investigation, thoroughly researched the law and facts, engaged in discovery and motion practice, performed significant data analysis, and assessed the risks of prevailing at both the trial court and appellate levels. *See* Peterson Decl., ¶¶ 24, 39-42.

Labor depreciation class actions are notoriously complex and slow moving. For example, the labor depreciation lawsuit *Stuart v. State Farm Fire & Cas. Co.* was filed on January 2, 2014 and remained pending in the Western District of Arkansas for over six years (and after an Eighth Circuit decision).[9] *Stuart*, Case No. 4:14-4001 (W.D. Ark.). Similarly, *Hicks v. State Farm Fire & Cas. Co.* was filed on February 28, 2014 and remained pending in the Eastern District of Kentucky until April 28, 2022, when the case settled and judgment was entered just past its eighth anniversary. During the summer of 2020, the Sixth Circuit resolved State Farm's *second* interlocutory appeal in *Hicks*. *See generally Hicks*, 965 F.3d 452 (6th Cir. 2020), *reh'g en banc denied* (6th Cir. Aug. 26, 2020).

As these cases demonstrate, the risk at the time of suit and settlement was and remains substantial. *Hicks*, 751 F. App'x at 710; *see also GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 496 (1st Dist. 1992) ("GMACM's position in this lawsuit is not without authority and, thus, the risk does exist that the class will recover nothing if the case proceeds to trial. Again, the terms of the settlement must be measured within this context."). This lawsuit could have continued for several additional years in trial and appellate courts absent settlement. More importantly, while labor depreciation classes have settled or been dismissed with no recovery, no certified labor depreciation class action has gone to final judgment in favor of the policyholder.

[9] *Stuart v. State Farm Fire & Cas. Co.*, 910 F.3d 371 (8th Cir. 2018), *reh'g and reh'g en banc denied* (8th Cir. Jan. 29, 2019).

Defendant retained experienced litigators at Dowd Bennett LLP and Riley Safer Holmes & Cancila LLP, who have defended labor depreciation class actions and other complex insurance claims in many jurisdictions around the country. Absent settlement, defense counsel would have continued to put forward several grounds for avoiding both liability and class certification. Given the foregoing, the complexity and risks inherent in the litigation support the requested fee.

3. The Amount Involved And Results Obtained Support The Requested Fee.

Class Members' potential recovery of 50-90% of the labor withheld from their ACV payments, plus prejudgment interest on top of this amount, reflects the strong value of these claims.

Additionally, unlike certain other labor depreciation settlements, so-called "interest only" Class Members are also eligible to receive relief under the proposed Settlement.[10] Specifically, Class Members who had Non-Material Depreciation and/or GCOP Depreciation initially withheld from their ACV payments, but who later recovered all outstanding depreciation through the claims process, are eligible to receive a one-time interest payment for the period of withholding. These are very favorable terms, which are coupled with an agreed-to "over and above" fees and costs request, as well as settlement administration costs to be paid separately by Defendant.

4. Awards In Similar Cases Support The Requested Fee.

The "percentage of the fund" fee award sought here by Class Counsel (approximately 23.8%) is supported by Missouri precedent and is well within the typical range of fee awards made by courts in this Circuit. *See, supra,* Arg. § I.D.; *see also, e.g.,* Order and Final Judgment at ¶ 11,

[10] "Interest only" class members are often omitted from labor depreciation settlements because of the negligible value of these claims (*i.e.,* "interest only" class members have been purposely omitted from the settled class and received $0). *See Mitchell* Final Approval Order at ¶ 6 (settlement class defined to only include policyholders "from which Non-Material Depreciation *is still being withheld* from the policyholder (*i.e.*, has not been paid back as replacement cost benefits)"). In contrast, the settlement here at least provides some "time value of money" recovery to these policyholders. *See* Peterson Decl., ¶ 30 & n.1.

McLaughlin v. Fire Ins. Exch., No. 1316-CV11140 (Mo. Cir. Ct., Jackson Cnty. Sept. 19, 2024) (awarding $5,660,825.14 in attorneys' fees and expenses—approximately 47% of total benefits made available to class members—in Missouri labor depreciation class action); Order and Final Judgment at ¶ 29, *Belle Meade Owners Ass'n, Inc. v. Cincinnati Ins. Co.*, No. 22-cv-00123 (E.D. Tenn. May 13, 2024) (hereinafter "*Belle Meade* Final Approval Order") (awarding $1,200,000 in attorneys' fees and expenses—approximately 24.7% of total benefits made available to class members—in Tennessee labor depreciation class action); Order and Final Judgment at ¶ 14, *Staunton Lodge No. 177, A.F. & A.M. v. Pekin Ins. Co.*, No. 2020-L-001297 (Ill. Cir. Ct., Third Judicial Cir., Madison Cnty. Oct. 6, 2022) (hereinafter "*Pekin* Final Approval Order") (awarding $1,500,000 in attorneys' fees and expenses—approximately 21.7% of total benefits made available to class members—in Illinois labor depreciation class action). Additionally, Class Counsels' requested fee is commensurate with the fees awarded in similar labor depreciation class actions in other jurisdictions. *See* Peterson Decl. Ex. A (identifying all "claims made" labor depreciation class settlements resulting in final approval between June 1, 2017 and January 7, 2026 of which Class Counsel are aware with range of percentages for fees and costs awards between 15.5% to 47%). Coupled with the outstanding results in this case, the "over and above" requested fees and costs of $5,125,000 should be deemed fair and reasonable.

5. The Reaction Of The Class Supports The Requested Fee.

As previously discussed, out of 37,672 potential Class Members to have received notice, only *4* claims sought exclusion, and *no* objection has been submitted to any aspect of the settlement. *See* Olsen Decl., ¶¶ 5, 14, 16. This lack of opposition favors a finding that the settlement is fair, reasonable, and adequate, including the requested attorneys' fees. *See, e.g., Garbarino v. Nahon, Saharovich & Trotz, PLC*, 2025 WL 2926188, at *1, 3 (E.D. Mo. Oct. 15, 2025) (finding

settlement to be fair, adequate, and reasonable in part because "no class member objected to the terms of the settlement agreement"); *McClean v. Health Sys., Inc.*, 2015 WL 12426091, at *6 (W.D. Mo. June 1, 2015) (noting "[n]o Class Member filed an objection to this settlement, and only fourteen individuals opted out" and holding "[t]his lack of opposition clearly supports approval").

II. THE REQUESTED SERVICE AWARD SHOULD BE APPROVED FOR THE CLASS REPRESENTATIVE'S EFFORTS IN ASSISTING CLASS COUNSEL IN PROSECUTING THIS ACTION.

The payment of service awards to the representative plaintiffs is typical in class action cases and serves to encourage the filing of class action suits. *Caligiuri*, 855 F.3d at 867 ("Courts often grant service awards to named plaintiffs in class action suits to 'promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits.'"). The service award proposed here in the amount of $7,500 to Plaintiff Michael Pregon is appropriate given the efforts made by the Class Representative to protect the interests of the Settlement Class, the time and effort he expended pursuing this case, as well as the substantial benefit he achieved for the Class. *See Byrd*, 956 S.W.2d at 387 n.10 (observing that class representatives typically receive incentive awards, which can range from $1,000 to $55,000 each); *Tussey*, 2019 WL 3859763, at *6 (approving incentive awards of $25,000 to each of the named plaintiffs, which represented 0.14% of the total settlement fund); *see also Caligiuri*, 855 F.3d at 867 (noting that courts in the Eighth Circuit "regularly grant service awards of $10,000 or greater"). The Class Representative obtained a settlement with an aggregate value estimated to be at least $21,500,000 in total benefits. His willingness to serve as class representative, to stay updated on the case, and to provide necessary information and records, was critical to the litigation. The Class Representative regularly communicated with Class Counsel and generally acted in a fashion that was consistent with a class

representative of the highest ethical standards. *See* Peterson Decl., ¶ 56. Thus, the proposed service award of $7,500 is appropriate.

Significantly, neither Defendant nor any Class Member objected to the requested service award. The service award sought here is consistent with those approved in other labor depreciation class actions. *See, e.g., Belle Meade* Final Approval Order at ¶ 42 (awarding $7,500 to representative in labor depreciation class action); *Pekin* Final Approval Order at ¶ 14 (approving $10,000 service award in labor depreciation class action); *Mitchell* Final Approval Order at ¶ 40 (granting $15,000 service award to representative in labor depreciation class action); Final Order & Judgment at ¶ 22, *Wade v. Foremost Ins. Co.*, No. 18-02120-JPM (W.D. Tenn. July 6, 2020) (*Wade* Dkt. 106) (approving $15,000 service award in labor depreciation class action); Order & Judgment at ¶ 13, *Stuart v. State Farm Fire & Cas. Co.*, No. 4:14-cv-4001 (W.D. Ark. June 2, 2020) (*Stuart* Dkt. 259) (awarding each representative in labor depreciation class action a service award of $9,500). Therefore, Plaintiff respectfully requests that the Court approve a service award in the amount of $7,500, which if approved will not reduce the Class Members' recoveries.

CONCLUSION

Given the foregoing, Plaintiff respectfully requests that the Court award the following:

1. Attorneys' fees, costs, and litigation expenses to Class Counsel in the amount of $5,125,000 (or approximately 23.8% of the estimated total benefit made available to the Settlement Class and without any reduction in the payments to be made to Class Members); and

2. Service award in the amount of $7,500 to Plaintiff Michael Pregon, for his service to the Settlement Class.

February 23, 2026

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed and served via the Court's electronic filing system, which will send electronic notices of same to all counsel of record on this the 23rd day of February, 2026.

/s/Christopher E. Roberts