

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

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

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY  
COMPANY,

Defendant.

Case No. 24SL-CC03130

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**PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF  
CLASS SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASS, AND  
SCHEDULING A FINAL APPROVAL HEARING**

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Pursuant to Missouri Supreme Court Rule 52.08, Plaintiff Michael Pregon (“Plaintiff”), on behalf of himself and the proposed Settlement Class, respectfully moves for an order certifying the proposed class solely for purposes of settlement, and further ordering preliminary approval of the settlement in accordance with the terms and conditions set forth in the proposed preliminary approval order attached as Ex. 1 to the settlement agreement (“Settlement” or “SA”) filed with this Motion.<sup>1</sup>

1. Defendant State Farm Fire and Casualty Company (“Defendant” or “State Farm”) does not oppose this motion for approval of a settlement.<sup>2</sup> The Settlement was reached through

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<sup>1</sup> All capitalized terms used in this Motion that are not otherwise defined have the meanings ascribed to them in the Settlement.

<sup>2</sup> However, State Farm does not join in, approve of, or admit Plaintiff’s allegations or averments of fact or law contained in this motion or in any accompanying memoranda or 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.

extensive arm's-length settlement negotiations. *See* Ex. A, Declaration of Erik D. Peterson; Ex. B, Declaration of Christopher E. Roberts.

2. For purposes of preliminarily approving the Settlement only, Plaintiff seeks certification of the following Settlement Class:

All 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.

SA ¶ 2.33. A copy of the Settlement is attached as Exhibit 1 to the Declaration of Erik D. Peterson.

*See* Ex. A, Peterson Decl., Decl. Ex. 1.

The Settlement Class does not include: (a) claims arising under State Farm policy forms (including endorsement form FE-3650) expressly permitting the "depreciation" of "labor" within the text of the policy form; (b) claims in which State Farm's ACV Payments exhausted the applicable limits of insurance; (c) members of the judiciary and their staff to whom this Action was assigned; (d) State Farm and its affiliates, officers, and directors; and (e) Class Counsel. SA ¶ 2.33.

3. For purposes of preliminarily approving the Settlement, Plaintiff requests that he be appointed class representative and that the undersigned counsel be appointed as class counsel.

4. A proposed settlement class is properly certified when it meets the requirements of Rule 52.08(a) and the requirements of Rule 52.08(b)(1), (2) or (3). Rule 52.08(a) requires that the class be sufficiently numerous (numerosity), that questions of law or fact are common to the class (commonality), that the claims or defenses of the class representative are typical of the claims or defenses of the class (typicality), and the class representative will adequately represent the interests

of the class (adequacy). Mo. S. Ct. R. 52.08(a)(1)-(4). Plaintiff seeks to certify a Rule 52.08(b)(3) class for settlement purposes, which further requires that “questions of law or fact common to the members of the class predominate over any questions affecting only individual members” (predominance) and that a class action be “superior to other available methods for the fair and efficient adjudication of the controversy” (superiority). Mo. S. Ct. R. 52.08(b)(3). Here, all requirements necessary for preliminary approval of a settlement class are satisfied.

5. Numerosity under Rule 52.08(a)(1) is satisfied for the proposed Settlement Class because there are thousands of class members.

6. Commonality under Rule 52.08(a)(2) is satisfied for the proposed Settlement Class because there are questions of law or fact common to all members of the proposed class, including but not limited to the single, predominating question presented: whether Defendant can withhold estimated Non-Material Depreciation and/or estimated GCOP Depreciation under its property insurance policies. In addition to the Non-Material Depreciation and the GCOP Depreciation withholdings themselves, Class Members’ entitlement to prejudgment interest also presents a common question.

7. Typicality under Rule 52.08(a)(3) is satisfied for the proposed Settlement Class because Plaintiff and the putative class members made claims under their standard-form insurance policies, and Defendant withheld estimated Non-Material Depreciation and/or estimated GCOP Depreciation in making ACV Payments to them. Plaintiff’s claims arose from the underpayment of his ACV claim, and his claims are identical in all material respects to the claims of the putative class.

8. Adequacy under Rule 52.08(a)(4) is satisfied for the proposed Settlement Class because: (1) Plaintiff has fairly and adequately represented and protected the interests of the

putative class; (2) Plaintiff is a member of the proposed class; (3) Plaintiff's interests are perfectly aligned with the proposed class, as he seeks to maximize everyone's recovery of compensatory damages and prejudgment interest resulting from Defendant's allegedly improper withholding of Non-Material Depreciation and/or GCOP Depreciation from ACV Payments; and (4) Plaintiff retained counsel competent and experienced in class action and insurance litigation.

9. As required by Rule 52.08(b)(3), questions of law or fact common to members of the proposed Settlement Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Predominance is satisfied because the predominating question in this lawsuit for purposes of settlement class certification remains whether estimated Non-Material Depreciation and/or estimated GCOP Depreciation can be withheld under Defendant's property insurance policies. Superiority is also satisfied because of the thousands of small value claims at issue, and the interests of the parties and judicial economy favor settlement.

10. Pursuant to Rule 52.08(e), “[a] class action shall not be dismissed or compromised without 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.” *Id.* A class action settlement may be approved as fair, reasonable, and adequate based upon the following considerations: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of further 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. *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 266 (Mo. App. 2011). Among these, “[t]he most important consideration in determining if a

settlement is fair, reasonable, and adequate is the strength of the plaintiffs' case on the merits balanced against the offered settlement." *Id.*

11. As more fully set forth in the accompanying Memorandum of Law and supporting Declarations, the Settlement is appropriate for preliminary approval. In summary, the Settlement provides the following categories of relief:

**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.

12. As set forth further in the Settlement, upon the Effective Date, Class Members will release claims limited to the subject matter of this lawsuit and without giving up any claims or arguments unrelated to the subject matter of this lawsuit. All unrelated matters will continue to be adjusted and handled by State Farm in its ordinary course of business.

13. As the requirements of Rule 52.08 are satisfied, the Court should preliminarily approve the Settlement.

WHEREFORE, for these reasons and those set forth in the accompanying Memorandum of Law and Declarations of Plaintiff's counsel, Plaintiff requests that the Court grant Plaintiff's Motion for Preliminary Approval of Class Settlement and certify the class for settlement purposes, direct that class notice be issued, and schedule a hearing date for final approval of the Settlement.

October 3, 2025

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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 3rd day of October, 2025.

/s/Christopher E. Roberts

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

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

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY  
COMPANY,

Defendant.

Case No. 24SL-CC03130

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**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT, CERTIFICATION OF  
SETTLEMENT CLASS, AND SCHEDULING A FINAL APPROVAL HEARING**

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**I. INTRODUCTION**

The settlement agreement reached between Plaintiff Michael Pregon (“Plaintiff”), on behalf of himself and the proposed Settlement Class, and Defendant State Farm Fire and Casualty Company (“Defendant” or “State Farm”), is attached as Exhibit 1 (“Settlement” or “SA”) to the Declaration of Erik D. Peterson (the “Peterson Declaration”), filed with this Memorandum.<sup>1</sup>

Plaintiff submits this unopposed<sup>2</sup> motion seeking the Court’s preliminary approval of this

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<sup>1</sup> All capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Settlement. The Peterson Declaration is attached as Ex. A to the Unopposed Motion for Preliminary Approval of Class Action Settlement. Also attached as Ex. B is the Declaration of Christopher E. Roberts.

<sup>2</sup> 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.

Settlement under Missouri Supreme Court Rule 52.08 so that notice of the Settlement can be disseminated to the Class and the Final Approval Hearing scheduled. At the Final Approval Hearing, the Court will have additional submissions in support of the Settlement before it and any objections that may be filed, and will be asked to determine whether, in accordance with Rule 52.08, the Settlement is “fair, reasonable, and adequate.” *Ring v. Metro. St. Louis Sewer Dist.*, 41 S.W.3d 487, 492 (Mo. App. 2000).<sup>3</sup>

The proposed Settlement is made on behalf of a class of Missouri policyholders of Defendant. For Class Members who timely submit valid Claim Forms, and for whom there remains some estimated Non-Material Depreciation and/or estimated GCOP Depreciation still withheld from an actual cash value (“ACV”) claim payment (or who did not receive an ACV Payment because the withholding of Non-Material Depreciation and/or GCOP Depreciation caused the loss to drop below the applicable deductible), their proposed settlement payment will be equal to 90% of the Non-Material Depreciation that was withheld and not subsequently paid, plus 50% of the GCOP Depreciation that was withheld and not subsequently paid, plus simple interest at 8.9% per annum from August 6, 2021 through the date the Settlement Agreement is fully executed.

Class Members who timely submit valid Claim Forms, and for whom all estimated Non-Material Depreciation and/or estimated GCOP Depreciation that was previously withheld from ACV Payments was subsequently paid in full, will receive simple interest at 8.9% per annum on 90% of the Non-Material Depreciation amount initially withheld but subsequently recovered, plus simple interest at 8.9% per annum on 50% of the GCOP Depreciation amount initially withheld but subsequently recovered, calculated from the date of the initial ACV Payment through the final replacement cost benefit payment.

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<sup>3</sup> Unless otherwise noted, all internal citations and footnotes are omitted, and all emphasis is added.

The proposed Settlement was reached through extensive arm's-length negotiations overseen by former U.S. Magistrate Judge Stephen Williams (Ret.) and nationally recognized mediator Michael Ungar, and will result in a significant recovery for the Settlement Class. The Settlement warrants the Court's preliminary approval, and Plaintiff requests that the Court enter the proposed Preliminary Approval Order attached as Exhibit A to the Settlement.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

### **A. Law Concerning Labor Depreciation**

This action involves allegations that Defendant breached the terms of its standard-form property insurance policies with Plaintiff and other Class Members by wrongfully withholding Non-Material Depreciation and GCOP Depreciation when adjusting property loss claims in violation of the law. *See, e.g., Franklin v. Lexington Ins. Co.*, 652 S.W.3d 286, 303 (Mo. App. 2022) (reasoning that, “[i]n the absence of an express policy provision that allows for it, labor does not fall within that which can be depreciated when an insured is entitled to an ACV payment,” and thus holding that “labor may not be depreciated under an insurance policy that does not define ACV or depreciation to expressly include labor depreciation”). This Settlement resolves these issues for Plaintiff and the Class Members.

### **B. This Settlement**

Subject to Court approval, this Settlement will resolve Class Members' Missouri labor depreciation claims against Defendant. The Parties reached this resolution only after significant litigation in Missouri against State Farm on behalf of policyholders from Missouri.

Relevant here, proposed Class Counsel filed a Petition in the Circuit Court of Cole County, Missouri on April 27, 2022, and a First Amended Petition on June 5, 2022, in the lawsuit captioned *Brown v. State Farm Fire & Casualty Co.* *See Pet. & First Am. Pet.*, Case No. 22AC-AC00423.

The plaintiff in *Brown* alleged that State Farm improperly depreciated the estimated cost of labor necessary to complete repairs to insured property when it calculated and issued ACV Payments to him and other class members for structural damage losses suffered under their property insurance policies. *See generally id.* Brown asserted claims for breach of contract and declaratory relief on behalf of himself and a class of policyholders who received ACV Payments from State Farm for structural damage to property located in Missouri where the estimated cost of labor was depreciated in the calculation of ACV. *See id.* State Farm removed the action to the Western District of Missouri on January 4, 2023. *Brown v. State Farm Fire & Cas. Co.*, No. 2:23-cv-4002 (W.D. Mo.) (*Brown* Dkt. 1).

On January 11, 2023, State Farm filed a motion to dismiss and a motion to strike the class allegations in *Brown* based on the Eighth Circuit's opinion in *LaBrier*, which predicted that insurers may depreciate labor costs under Missouri law. *In re State Farm Fire & Cas. Co.*, 872 F.3d 567, 570 (8th Cir. 2017). *Brown* Dkts. 13, 15. When the Eighth Circuit decided *LaBrier*, there was a lack of Missouri case law specifically on point. In 2022, however, the Missouri Court of Appeals expressly held that an insurer may *not* withhold labor depreciation under a policy that does not specifically allow for labor depreciation. *Franklin v. Lexington Ins. Co.*, 652 S.W.3d 286, 303 (Mo. App. 2022).

The Western District of Missouri issued an Order on August 29, 2023, finding that *Franklin* controls and denying State Farm's motions to dismiss and strike. *Brown* Dkt. 52.

In September 2023, State Farm moved the Western District of Missouri to reconsider its Order and to certify for interlocutory appeal State Farm's proposed question of whether *LaBrier* remains controlling precedent despite the Missouri appellate court's decision in *Franklin*. *Brown* Dkt. 56. The Western District of Missouri declined to modify any finding or conclusion but

allowed State Farm to seek appeal of its Order denying the motions to dismiss and strike. *Brown* Dkt. 65. State Farm sought an appeal; however, on March 13, 2024, the Eighth Circuit denied State Farm's petition for permission to appeal. *Brown* Dkt. 71.

While State Farm's motions to dismiss and strike were pending in *Brown*, proposed Class Counsel filed a parallel labor depreciation class action in the Western District of Missouri on February 23, 2023. *M&M Rental Prop., LLC v. State Farm Fire & Cas. Co.*, Case No. 3:23-cv-05011 (W.D. Mo.). As in *Brown*, State Farm filed a motion to dismiss and a motion to strike the class allegations in *M&M Rental*. *M&M Rental* Dkts. 13, 15. The Western District of Missouri stayed the *M&M Rental* action pending resolution of the motions in *Brown*. *M&M Rental* Dkt. 29. After the Eighth Circuit denied State Farm's petition for permission to appeal in *Brown*, which left the Western District of Missouri's dismissal order intact, the Western District of Missouri also denied State Farm's motions to dismiss and strike in *M&M Rental*. *M&M Rental* Dkt. 59. Proposed Class Counsel filed a third parallel labor depreciation class action in this Court on July 3, 2024. *See Pet., Pregon v. State Farm Fire & Cas. Co.*, Case No. 24SL-CC03130.

Throughout these actions, formal and informal discovery was conducted, including the production of claims data for the putative class to assess the value of the case. Peterson Decl., ¶ 21. Following the exchange of data, a series of informal settlement discussions were conducted, as well as multiple mediation sessions as detailed below. *Id.* The parties in *Brown* and *M&M Rental* reached settlements and dismissed the *Brown* and *M&M Rental* federal actions, while this case remains pending. *See Brown* Dkt. 79-80; *M&M Rental* Dkt. 67-68.

### **C. Settlement Negotiations**

Settlement discussions were conducted through former U.S. Magistrate Judge Stephen Williams (Ret.). Peterson Decl., ¶ 23. The parties participated in two mediation sessions with Judge

Williams on December 18, 2023 and June 4, 2024. *Id.*

In November 2024, the parties agreed to engage Michael Ungar of Ulmer & Berne as a private mediator to facilitate further settlement discussions. *Id.* at 25. During a full-day mediation session with Mr. Ungar on November 5, 2024, the parties reached an agreement in principle to settle the Action on a class-wide basis, with Plaintiff Pregon as the Representative Plaintiff. *Id.* The parties subsequently executed a summary term sheet evidencing their agreement in principle and began the process of negotiating a more comprehensive settlement agreement. *Id.* The settlement in principle did not include any agreements on attorneys' fees, litigation costs, or a service award. *Id.*

Consistent with the ethical standards for class action settlements, only after relief to the proposed class was agreed to, did the parties begin to negotiate the service award, attorneys' fees, and costs. *Id.* at ¶ 26. 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 will not reduce the amounts awarded to the Settlement Class. *See id.* Because the attorneys' fees, costs, and service award will be paid separately by State Farm and will not reduce the recovery to the Settlement Class or be subsidized by the same, State Farm was incentivized to negotiate and pay for as little fees and litigation expenses as possible. *Id.*

The Peterson Declaration, filed concurrently with this Memorandum, confirms the history of settlement negotiations for this lawsuit and the timing and structure of the parties' settlement negotiations. *Id.* at ¶¶ 23-35. The Declaration also addresses the considerations that led to the compromise in exchange for the proposed release. *Id.* at ¶¶ 36-42.<sup>4</sup>

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<sup>4</sup> See also the Declaration of Christopher E. Roberts, filed concurrently herewith in further support of preliminary approval.

### III. SUMMARY OF SETTLEMENT TERMS

#### A. The Class

The “Settlement Class” is defined as:

All 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.

SA ¶ 2.33.

The Settlement Class does not include: (a) claims arising under State Farm policy forms (including endorsement form FE-3650) expressly permitting the “depreciation” of “labor” within the text of the policy form; (b) claims in which State Farm’s ACV Payments exhausted the applicable limits of insurance; (c) members of the judiciary and their staff to whom this Action was assigned; (d) State Farm and its affiliates, officers, and directors; and (e) Class Counsel. *Id.*

#### B. Class Members’ Recovery Under The Settlement

Under the proposed Settlement, State Farm will pay the following amounts to three categories of Class Members:

**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. The attorneys' fees, costs, and service award as may be approved by this Court will not reduce any Class Member's individual payments. *See generally* SA ¶¶ 1.3, 13.2, 13.7.

### **C. Disputes And Neutral Evaluator**

Any Class Member may dispute the amount of their Claim Settlement Payment or denial of their Claim Form by requesting in writing a final and binding resolution by the Neutral Evaluator. SA ¶ 7.11. All disputes received from Class Members will be provided to State Farm's counsel and Plaintiff's counsel, and State Farm and Plaintiff's counsel may evaluate those claims and supply any additional documentation. *Id.* at ¶ 7.12. The Neutral Evaluator will then issue a decision based only on the written submissions, and the decision of the Neutral Evaluator shall be final and binding. *Id.* at ¶ 7.13. State Farm will separately pay for the reasonable fees incurred by the Neutral Evaluator as provided in the Settlement. *See id.* at ¶ 4.1.5. In the forthcoming motion requesting final approval of this Settlement, Plaintiff will seek approval from the Court for Judge

Robert Schieber (Ret.) to serve as Neutral Evaluator.

#### **D. The Release Of Claims**

Plaintiff and Class Members will provide State Farm a release narrowly tailored to the subject matter of this dispute. SA ¶¶ 9.1-9.3. All other unrelated disputes concerning an individual claim will continue to be handled in the ordinary course of State Farm's business. *See id.*

#### **E. Attorneys' Fees, Costs, And Service Award**

Plaintiff's counsel will seek as attorneys' fees, costs, and expenses an amount no greater than \$5,125,000, and Defendant has agreed not to oppose such request. SA ¶ 13.1. Class Members' recoveries will not be reduced or enhanced by the amounts of attorneys' fees or litigation costs and expenses paid. *See id.* at ¶¶ 1.3, 13.2.

Additionally, Plaintiff will seek, and Defendant has agreed not to oppose, a service award in an amount no greater than \$7,500 for Mr. Pregon. SA ¶ 13.6. If approved, the service award will not reduce the Class Members' recoveries. *See id.* at ¶¶ 1.3, 13.7.

#### **F. The Class Notice And Settlement Administration**

Defendant will separately pay for the Class Notices and the services of the Settlement Administrator. *See* SA ¶ 4.1.4. Direct-mailed notice of the terms of the proposed Settlement will be mailed to potential Class Members at least seventy-five days before the Final Approval Hearing. *See id.* at ¶¶ 5.2-5.3.

If the mailing is returned to the Administrator, the Administrator will re-mail the Class Notice to the forwarding address. *Id.* at ¶ 5.4. To the extent no forwarding address is provided, the Administrator will run the Class Member's name and address through a single commercial database (e.g., Accurint) chosen by the Administrator, and should the commercial database show a more current address, the Administrator will re-mail the Class Notice to the more current address.

*Id.* If a more current mailing address cannot be found through the commercial database, the Administrator will send a message to the last known email address contained in Defendant's records (when available) and attempt to contact the Class Member to obtain a current address. *Id.*

Notice will also be published on the internet on the settlement website created by the Administrator. *Id.* at ¶ 5.6. A reminder postcard notice will be issued before the expiration of the deadline to submit Claim Forms. *Id.* at ¶ 5.5. Class Members may submit Claim Forms by mailing the completed form to the Administrator or uploading a copy to the settlement website. *Id.* at ¶ 6.2.

#### **IV. THE SETTLEMENT CLASS IS CERTIFIABLE UNDER RULE 52.08.**

The proposed Settlement comes prior to formal class certification and seeks to certify a class simultaneous with a settlement, commonly referred to as a "settlement class." A class is properly certified when it meets the requirements of Rule 52.08(a) and the requirements of Rule 52.08(b)(1), (2) or (3). *See Mo. S. Ct. R. 52.08.* Rule 52.08(a) requires that the class be sufficiently numerous (numerosity), that questions of law or fact are common to the class (commonality), that the claims or defenses of the class representatives are typical of the claims or defenses of the class (typicality) and the class representatives will adequately represent the interest of the class (adequacy). Mo. S. Ct. R. 52.08(a)(1)-(4). In addition, the class must satisfy one of the requirements of Rule 52.08(b).

Here, Plaintiff seeks to certify a Rule 52.08(b)(3) class for settlement purposes. Rule 52.08(b)(3) requires that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members" (predominance) and that a class action be "superior to other available methods for the fair and efficient adjudication of the controversy" (superiority). Mo. S. Ct. R. 52.08(b)(3). Generally, "a court should err in favor of

certification of a class.” *Smith v. Leif Johnson Ford, Inc.*, 632 S.W.3d 798, 803, 808 (Mo. App. 2021).

The Missouri provisions governing class certification, Rule 52.08, are patterned after Federal Rule of Civil Procedure 23. *See, e.g., 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.” *Id.* (citing *Union Planters Bank, N.A. v. Kendrick*, 142 S.W.3d 729, 735 n.5 (Mo. banc 2004)). When analyzing a proposed settlement class under the federal corollary, the Court must first ensure that the proposed class meets the requirements of Federal Rules 23(a) and 23(b)(3), with the exception that the Court need not consider, in analyzing a proposed settlement class, whether trial would present intractable management problems. *See generally* NEWBERG ON CLASS ACTIONS § 13:12 (5th ed.) (Dec. 2021 Update) (“NEWBERG”); Wright and Miller, 7B FEDERAL PRACTICE AND PROCEDURE § 1797.2 (3d ed.) (Apr. 2020 Update) (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997)).

While the Supreme Court reiterated that a trial court must conduct a “rigorous analysis” to confirm that the requirements of Federal Rule 23 have been met, *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011), the requisite “rigorous analysis” of the record and consideration of the merits must be focused on and limited to the question of whether Rule 23’s requirements have been established and, here, in the context of a proposed settlement class. *Postawko v. Mo. Dep’t of Corr.*, 910 F.3d 1030, 1037 (8th Cir. 2018). Permissible inquiry into the merits of plaintiff’s claims at the class certification stage is limited, and the court’s “primary task is not to determine the final disposition of a plaintiff’s claims, but instead to examine whether those claims are appropriate for class resolution.” *Id.* The court “must determine only” if Rule 23’s requirements

have been met.” *Id.*

Here, as demonstrated below, even under a “rigorous analysis,” Plaintiff has satisfied all the requirements of Rules 52.08(a) and 52.08(b)(3) for the proposed settlement class. This is because courts have certified labor depreciation litigation classes: “Courts in jurisdictions where labor depreciation has been found to be unlawful have *uniformly found that common issues predominate* in cases challenging insurers’ depreciation of labor costs” and have certified *litigation classes*. *Hicks v. State Farm Fire & Cas. Co.*, 2019 WL 846044 (E.D. Ky. Feb. 21, 2019), *aff’d*, 965 F.3d 452 (6th Cir. July 10, 2020), *reh’g en banc denied* (6th Cir. Aug. 26, 2020).<sup>5</sup>

Furthermore, several courts have certified *settlement* classes in the process of granting final approval of labor depreciation class settlements. *See generally* Peterson Decl. Ex. 2 (identifying all labor depreciation class settlements resulting in final certification and approval between June 1, 2017 and August 26, 2025 of which Plaintiff’s counsel are aware).

#### **A. The Settlement Meets The Requirements Of Rule 52.08(a).**

##### *1. Numerosity*

Numerosity is satisfied when “the class is so numerous that joinder of all members is impracticable.” Mo. S. Ct. R. 52.08(a)(1). While there is no specific number of class members that makes a class sufficiently numerous, where there are likely more than 40 class members, numerosity is presumptively satisfied. NEWBERG § 3:12. In Missouri, the numerosity requirement has been satisfied with as few as eighteen class members. *Dale v. DaimlerChrysler Corp.*, 204

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<sup>5</sup> *E.g., Mitchell v. State Farm Fire & Cas. Co.*, 954 F.3d 700 (5th Cir. 2020); *Stuart v. State Farm Fire & Cas. Co.*, 910 F.3d 371 (8th Cir. 2018); *Arnold v. State Farm Fire & Cas. Co.*, 2020 WL 6879271 (S.D. Ala. Nov. 23, 2020); *Green v. Am. Modern Home Ins. Co.*, No. 4:14-04074 (W.D. Ark. Aug. 24, 2016); *McCain v. Baldwin Mut. Ins. Co.*, No. 2010-901266 (Montgomery Cnty., Ala., Oct. 18, 2016), *rev’d due to inadequacy of representative*, 260 So.3d 801 (Ala. 2018); *Farmers Union Mut. Ins. Co. v. Robertson*, 370 S.W.3d 179 (Ark. 2010); *McLaughlin v. Fire Ins. Exch.*, No. 1316-CV11140 (Jackson Cnty., Mo. July 12, 2017).

S.W.3d 151, 168 (Mo. App. 2006) (citing cases).

Here, based upon data review and extrapolation, the attorneys estimate that Class Notice will be issued for thousands of claims at issue, and multiple class members (e.g., spouses) can share a single claim. Numerosity is easily satisfied. *See, e.g., Frank v. Enviro-Tech Servs.*, 577 S.W.3d 163, 167-69 (Mo. App. 2019) (finding numerosity satisfied where there were 82 potential class members); *Dale*, 204 S.W.3d at 166-68 (noting the existence of “hundreds and maybe even thousands” of potential claimants supports a finding of numerosity and recognizing that “[c]lass certifications have been upheld where the class is composed of 100 or even less”).

## 2. *Commonality*

Commonality is satisfied when “there are questions of law or fact common to the class.” Mo. S. Ct. R. 52.08(a)(2). “[T]he commonality requirement is not usually a contentious one ... and is easily met in most cases.” NEWBERG § 13:18. The rule “does not require that all issues in the litigation be common, only that common questions exist.” *Elsea v. U.S. Eng’g Co.*, 463 S.W.3d 409, 419 (Mo. App. 2015). Commonality exists if “a single common issue [overrides] the litigation, despite the fact that the suit also entails numerous remaining individual issues.” *Id.* (quoting *Meyer ex rel. Coplin v. Fluor Corp.*, 220 S.W.3d 712, 716 (Mo. banc 2007)). In other words, what matters most in class certification “is not the raising of common questions, but the ability of a classwide proceeding to generate common answers apt to drive resolution of the litigation.” *Id.*

Here, the common factual issue is that Plaintiff and putative class members received ACV Payments from Defendant following property loss claims from which estimated Non-Material Depreciation and/or estimated GCOP Depreciation were improperly withheld. In addition to the Non-Material Depreciation and the GCOP Depreciation withholdings themselves, whether

Plaintiff and putative class members are entitled to prejudgment interest also presents a common issue. The commonality requirement of Rule 52.08(a)(2) is satisfied.

### 3. *Typicality*

Typicality is satisfied when “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Mo. S. Ct. R. 52.08(a)(3). Like the test for commonality, the test for typicality is not demanding. NEWBERG § 3:29. “The burden of satisfying the typicality prerequisite is fairly easily met so long as other class members have claims similar to the named plaintiff.” *Dale*, 204 S.W.3d at 169. Any “[f]actual variations in the individual claims will not normally preclude class certification if the *claim arises from the same event or course of conduct as the class claims*, and gives rise to the same legal or remedial theory.” *Id.* (emphasis in original).

Here, all claims are premised upon the same legal theories. Plaintiff’s breach of contract and declaratory judgment claims arising from the underpayment of his ACV in violation of Defendant’s standard-form policies is identical to the claims of the putative class. *Hicks*, 2019 WL 846044, at \*4; *Mitchell*, 327 F.R.D. at 561-62. The additional claims for prejudgment interest are likewise identical for both the putative class and Plaintiff. Through these claims, Plaintiff seeks monetary relief for himself and all putative class members. Accordingly, “as goes the claim of the named plaintiff, so go the claims of the class.” *Dale*, 204 S.W.3d at 169.

### 4. *Adequacy*

Adequacy is satisfied when “the representative parties will fairly and adequately protect the interests of the class.” Mo. S. Ct. R. 52.08(a)(4). The adequacy requirement applies to class counsel and the class representative. Adequacy is satisfied where “class counsel is competent and qualified to conduct the litigation” and the proposed class representative has “no interests

antagonistic to the other proposed class members.” *Lucas Subway MidMo, Inc. v. Mandatory Poster Agency, Inc.*, 524 S.W.3d 116, 130 (Mo. App. 2017).

Here, Plaintiff is a member of the proposed class, and Plaintiff’s interests are perfectly aligned with the proposed class, as he seeks to maximize everyone’s recovery of compensatory damages and prejudgment interest resulting from Defendant’s allegedly improper withholding of labor costs as depreciation in the calculation of ACV. *See Dale*, 204 S.W.3d at 172-73; *Craft v. Philip Morris Cos.*, 190 S.W.3d 368, 379 (Mo. App. 2005) (finding proposed class representative adequate where “Plaintiff alleged that she asserted claims that are typical of the claims of the entire class, that she had no interests antagonistic to those of the class, and that she would fairly and adequately represent and protect the class”).

Furthermore, Plaintiff retained experienced counsel. Plaintiff’s attorneys are putative or certified class counsel in most of the labor depreciation class actions pending throughout the United States and have decades of experience in insurance, class action, and complex litigation. *See In re Tetracycline Cases*, 107 F.R.D. 719, 731 (W.D. Mo. 1985) (finding plaintiff’s counsel “capable of vigorously and ably representing the interests of the class” after considering counsel’s “experience, competence, resources and support personnel,” and thus having “little difficulty finding that this aspect of the adequacy requirement … is satisfied”). The adequacy requirement is therefore satisfied.

## **B. The Requirements Of Rule 52.08(b)(3) Are Satisfied.**

### *1. Predominance*

Rule 52.08(b)(3) provides that a class may be certified if “the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members.” Mo. S. Ct. R. 52.08(b)(3). The predominance inquiry simply requires the

court to determine whether the class seeks “to remedy a common legal grievance.” *Karen S. Little, L.L.C. v. Drury Inns, Inc.*, 306 S.W.3d 577, 580 (Mo. App. 2010) (quoting *Dale*, 204 S.W.3d at 175). Predominance does not require that all questions of law or fact be common to the class, but that “common issues substantially predominate over individual ones.” *Id.* at 581. To determine whether a question is common or individual, the court looks at the “nature of the evidence required to show the allegations of the petition.” *Id.* A question is common, and therefore predominates, if the same evidence is necessary to answer the pertinent question of law or fact for each class member. *Id.*

Here, Plaintiff contends that the seminal disputed issue is the same one recently addressed by the Missouri Court of Appeals—*i.e.*, a property insurer may not withhold labor from ACV Payments when calculating ACV pursuant to the replacement cost less depreciation methodology under a policy that does not specifically allow for labor depreciation. *Franklin v. Lexington Ins. Co.*, 652 S.W.3d 286 (Mo. App. 2022). This same issue has repeatedly been identified by federal courts as “a common question well suited to class wide resolution.” *Stuart v. State Farm Fire & Cas. Co.*, 910 F.3d 371, 375 (8th Cir. 2018); *see also Hicks*, 965 F.3d at 459 (“Plaintiffs’ claims share a common legal question central to the validity of each of the putative class member’s claims: whether State Farm breached Plaintiffs’ standard-form contracts by deducting labor depreciation from their ACV payments.”); *Arnold v. State Farm Fire & Cas. Co.*, 2020 WL 6879271, at \*5 (S.D. Ala. Nov. 23, 2020) (“[C]ommonality is easily satisfied” where the “overarching issue … is whether State Farm breached its agreements with policyholders by improperly withholding labor depreciation ….”); *Mitchell v. State Farm Fire & Cas. Co.*, 327 F.R.D. 552, 561 (N.D. Miss. 2018) (“The proposed class members, all of whom purchased insurance coverage from State Farm, each have a claim concerning the issue of whether State Farm breached its policy by depreciating labor

costs in calculating actual cash value payments.... [C]ommonality is met.”), *aff’d*, 954 F.3d 700 (5th Cir. 2020). Indeed, “[t]his common question, posed in the context of [Defendant’s] uniform claim handling practices, ‘will yield a common answer for the entire class that goes to the heart of whether [Defendant] will be found liable under the relevant laws.’” *Hicks*, 2019 WL 846044, at \*4, *aff’d*, 965 F.3d at 458-59.

Further, it is black-letter law that conceded or otherwise resolved legal issues still satisfy the predominance inquiry such that a class action remains an appropriate means of adjudicating the case. *Hicks*, 965 F.3d at 458-59 (rejecting insurer’s argument that commonality cannot be satisfied where the common liability question concerning labor depreciation was already answered in plaintiffs’ favor); *In re Nassau Cnty. Strip Search Cases*, 461 F.3d 219, 228 (2d Cir. 2006) (“Even resolved questions continue to implicate the ‘common nucleus of operative facts and issues’ with which the predominance inquiry is concerned.”); *Waste Mgmt. Holdings, Inc. v. Mowbray*, 208 F.3d 288, 299 (1st Cir. 2000) (“[T]he fact that an issue has been resolved on summary judgment does not remove it from the predominance calculus.”); NEWBERG § 4:51 (“[T]he fact that an issue is conceded or otherwise resolved does not mean that it ceases to be an ‘issue’ for the purposes of predominance analysis.”). “[R]esolved issues bear on the key question that the analysis seeks to answer: whether the class is a legally coherent unit of representation by which absent class members may fairly be bound.” *In re Nassau*, 461 F.3d at 228.

Accordingly, courts repeatedly find that common issues predominate in cases challenging insurers’ withholding of labor costs as depreciation under the terms of standard-form insurance policies. *Mitchell*, 954 F.3d at 711-12 (district court did not abuse its discretion in finding predominance where overarching issue was whether insurer breached its contracts by depreciating labor costs); *Stuart*, 910 F.3d at 375-78 (“It was not an abuse of discretion for the district court to

conclude that plaintiffs' [labor depreciation] claims share a common, predominating question of law" that is "well suited to classwide resolution"); *Hicks*, 2019 WL 846044, at \*5-6 ("Courts in jurisdictions where labor depreciation has been found to be unlawful have uniformly found that common issues predominate in cases challenging insurers' depreciation of labor costs."); *Arnold*, 2020 WL 6879271, at \*8 ("[I]n jurisdictions where labor depreciation is unlawful, as is the case here, courts have uniformly found that common questions predominate in cases challenging insurers' depreciation of labor costs."); *Farmers Union Mut. Ins. Co. v. Robertson*, 370 S.W.3d 179, 187 (Ark. 2010) (finding "[t]he requirement that the common issue[s] predominate is ... satisfied" because "whether Appellant was able to depreciate labor pursuant to the contractual terms of its policies would be the same and require the same proof"). The predominance requirement is satisfied.

## 2. *Superiority*

Rule 52.08(b)(3) provides that a class may be certified if a class action is "superior to other available methods for the fair and efficient adjudication of the controversy." Mo. S. Ct. R. 52.08(b)(3).

The court considers the following factors when analyzing the superiority requirement:

- (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and,
- (D) the difficulties likely to be encountered in the management of a class action.

Mo. S. Ct. R. 52.08(b)(3)(A)-(D); *see generally Karen S. Little, L.L.C.*, 306 S.W.3d at 583. The ultimate question, however, is whether a class action is more efficient than other methods of

adjudication. *Dale*, 204 S.W.3d at 182. Here, each of the Rule 52.08(b)(3) factors establish that a class action is the most efficient mechanism of adjudicating this dispute.

A class action is superior because it is in the interest of the members of the class to adjudicate this case on a class basis rather than by way of hundreds of individual actions. Mo. S. Ct. R. 52.08(b)(3)(A). To this end, the court considers “the inability of the poor or uninformed to enforce their rights, and the improbability that large numbers of class members would possess the initiative to litigate individually.” *Elsea*, 463 S.W.3d at 417 (quoting *Dale*, 204 S.W.3d at 182). The superiority requirement is satisfied as Missouri courts have repeatedly recognized that a class action is a particularly appropriate way of resolving several relatively small claims. *See Hale v. Wal-Mart Stores, Inc.*, 231 S.W.3d 215, 229 (Mo. App. 2007) (“Class actions which aggregate small claims that could not otherwise be brought are exactly the type of claims that satisfy the superiority requirement.”); *Wright v. Country Club of St. Albans*, 269 S.W.3d 461, 467-68 (Mo. App. 2008) (finding “class action would be superior to other methods of adjudication in that, in the absence of class action, the potential expense of the litigation in relation to the relatively small recovery amount for each plaintiff would prevent most, if not all, injured parties from initiating a lawsuit.”).

The instant case presents classic small value claims, and Class Members have no interest in individually litigating this issue. As such, “the negative-value nature of the claims in this case establishes superiority of the class action.” *Mitchell*, 954 F.3d at 712; *see also Arnold*, 2020 WL 6879271, at \*10; *Hicks*, 2019 WL 846044, at \*6 (finding superiority where spreadsheet data of supplemental payments made by State Farm as part of its Kentucky labor depreciation refund program demonstrated majority of policyholders were paid less than \$1,000, with a significant portion paid less than the filing fee for commencing an action in state court); *accord Hale*, 231

S.W.3d at 229 (finding class action superior because the case “involves small claims by tens of thousands of potential class members who individually would not have the means to finance the expenses of the litigation” and the claims “implicate[d] company-wide policies and data manipulation” so that “[w]ithout the aggregate pursuit of these claims, … it would be economically infeasible for individual class members to access or develop this type of evidence”).

Accordingly, all the requirements under Rule 52.08 are satisfied. The next step is for the Court to analyze whether the proposed settlement warrants preliminary approval.

**V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL BECAUSE THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

“A strong public policy favors [settlement] agreements, and courts should approach them with a presumption in their favor.” *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1148 (8th Cir. 1999). The presumption in favor of settlements is particularly strong “in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *Cohn v. Nelson*, 375 F. Supp. 2d 844, 852 (E.D. Mo. 2005). In Missouri, any action brought as a class action may not be settled without approval of the Court and, unless excused for good cause shown, on notice as the Court may direct. MO. S. CT. R. 52.08(e).

Ultimately, the Court’s primary concern in determining whether to approve a settlement is to determine whether the settlement is “fair, reasonable and adequate.” *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 266 (Mo. App. 2011). To make this determination, the Court considers:

(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 potential recovery; and (6) the opinions of class counsel . . .”

*Id.*

As set forth in detail below, consideration of the foregoing factors supports a finding that the settlement is “fair, reasonable and adequate” and warrants preliminary approval.

*1. Lack Of Fraud Or Collusion*

An initial presumption of fairness attaches to a proposed settlement when it is shown to be the result of arm’s length negotiations conducted by experienced plaintiff’s counsel as is the case here. *See, e.g., Ring*, 41 S.W.3d at 493 (finding no suggestion of fraud or collusion because record contained “no evidence to indicate the settlement negotiations were anything other than an arms length negotiation by competent attorneys on both sides”); *Burnett v. Nat’l Ass’n of Realtors*, 2024 WL 2842222, at \*4 (W.D. Mo. 2024) (finding proposed settlements fair when the agreements were “negotiated at arm’s-length by experienced counsel acting in good faith, including mediation with a nationally recognized and highly experienced mediator, and the Settlement Agreements were reached as a result of those negotiations”).

The presumption in favor of settlement is warranted here as there is no indicia of fraud or collusion. Settlement negotiations occurred only after the parties engaged in discovery. The Settlement was the product of extensive arm’s length negotiations, including multiple mediation sessions before a retired U.S. Magistrate Judge and a nationally recognized mediator. Finally, the negotiations were structured to follow the highest ethical standards—*e.g.*, class relief was negotiated and agreed upon before any negotiations concerning the attorneys’ fees, costs, and service award occurred.<sup>6</sup> *See* Peterson Decl., ¶¶ 26-27, 34.

*2. The Complexity, Length, And Expense Of Further Litigation*

This factor requires the Court to compare the immediate benefits and risks of the proposed

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<sup>6</sup> *See* NEWBERG § 13:2 (“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.”).

settlement against the mere possibility of future relief given the uncertainties of protracted and expensive litigation. “In this respect, ‘[i]t has been held proper to take the bird in the hand instead of a prospective flock in the bush.’” *Jenkins v. Trustmark Nat'l Bank*, 300 F.R.D. 291, 303 (S.D. Miss. 2014). Indeed, “[i]f the Court approves the Agreement, the present lawsuit will come to an end and Class Members will realize [] immediate [] benefits as a result. If the Court denies approval, however, protracted litigation would likely ensue.” *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) (granting final approval of class settlement).

Class actions have a well-deserved reputation for being inherently complex. *See Keli v. Lopez*, 862 F.3d 685, 698 (8th Cir. 2017) (recognizing class actions are complex in nature and “[c]lass actions, in general, place an enormous burden of costs and expense upon the parties”). Labor depreciation class actions are particularly complex and slow moving. For example, the labor depreciation lawsuit *Stuart, supra*, Arg. § IV, 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). Similarly, the *Hicks* litigation, *supra*, Arg. § IV, was filed on February 28, 2014, and remained pending in the Eastern District of Kentucky for over eight years.

The instant lawsuit thus could have continued for several additional years in trial and appellate courts absent settlement. Experts in the areas of claims handling and data manipulation would have been retained. Both sides retained experienced class action attorneys. Given the foregoing, and because the Settlement provides significant monetary relief for Class Members now, as opposed to potential relief in the future, the Court should find that this factor supports preliminary approval of the Settlement. *See Bachman*, 344 S.W.3d at 266 (observing the settlement would allow the class to avoid the time, complexity, and expense of continued litigation); *Ring*, 41 S.W.3d at 493 (finding the trial court properly considered “the delays and risks of protracted

litigation and the benefits of certainty of settlement compared to the uncertainty of litigation" in approving proposed class settlement).

### *3. The Stage Of The Proceedings And Amount Of Discovery Completed*

The Court's consideration of the stage of proceedings and the nature and extent of discovery in evaluating the fairness of a settlement is focused on whether the parties have obtained sufficient information to evaluate the merits of competing positions. *See Ring*, 41 S.W.3d at 489-90, 493 (noting the plaintiffs agreed to settle after motion to dismiss was resolved and, although settlement was at an early stage, "class counsel had engaged in a substantial amount of discovery and was familiar with the issues and complexity of this case" after engaging in "previous litigation surrounding [the same] controversy"). While this proposed Settlement comes before formal certification, "[t]hat a case is settled early does not establish that the class was ill-represented or that the settlement was the product of collusion." *Schulte*, 805 F. Supp. 2d at 588. As courts recognize:

Early dispute resolution is salutary, and we should not encourage the unnecessary expense, delay, and uncertainty caused by lengthy litigation when the parties are prepared to compromise. Nor should we hold ... that a prompt settlement necessarily suggests a failure to prosecute or defend the action with due diligence and reasonable prudence. To the contrary, an early resolution may demonstrate that the parties and their counsel are well prepared and well aware of the strength and weaknesses of their positions and of the interests to be served by an amicable end to the case.

*Id.* at 589.

This reasoning applies here. First, the stage of these proceedings should not be considered in a vacuum as Plaintiff's counsel are well prepared and aware of the strengths and weaknesses of the parties' respective positions, having successfully represented policyholders in numerous other labor depreciation putative and certified class actions throughout the United States. *See, e.g., id.* at 588 (granting final approval of class action settlement despite early stage of proceedings where

class counsel conducted a great deal of independent research to evaluate plaintiffs' claims); *Ring*, 41 S.W.3d at 493 (finding settlement fair, reasonable, and adequate despite early stage of proceedings where class counsel engaged in previous litigation surrounding same controversy and had familiarity of the issues and complexity of the case). Second, formal and informal discovery was conducted, including but not limited to State Farm's production of certain claims data and documents, prior to finalizing the proposed Settlement. Peterson Decl., ¶ 21.

In sum, Plaintiff's counsel had all the information necessary to evaluate the merits of the parties' legal positions and the probable course of future litigation such that they could effectively represent the proposed Class. Accordingly, this factor weighs in favor of preliminary approval.

#### *4. The Probability Of Plaintiff's Success On The Merits*

This factor analyzes whether there were risks that the class would not be certified or, if certified, potentially decertified. It also analyzes whether the class, if certified, would be able to establish liability or damages, and whether there were risks. The Court then weighs these risks against the amount and form of relief in the settlement. *See Ring*, 41 S.W.3d at 492-93; *Bachman*, 344 S.W.3d at 266.

Before considering the likelihood of establishing class-wide liability or damages, the first consideration is whether this Court would have granted class certification of a litigation class. While numerous labor depreciation litigation classes have been initially certified for contractual claims (as referenced, *supra*, Arg. § IV), no labor depreciation class action has ever gone to trial or faced the issue of decertification. Peterson Decl., ¶ 36. In addition, there has been a recent decision wherein one federal district court denied a motion for class certification of a litigation class against State Farm in a labor depreciation case despite prior rulings finding labor depreciation prohibited under the applicable policy language. *See, e.g., Cranfield v. State Farm Fire & Cas.*

*Co.*, 2021 WL 3376283, at \*1 (N.D. Ohio Aug. 2, 2021) (denying motion for litigation class certification despite Sixth Circuit decision finding labor depreciation to be impermissible under the applicable policy language). And, before the *Franklin* decision, the Eighth Circuit rejected class certification in a Missouri labor depreciation class action. *See In re State Farm Fire & Cas. Co.*, 872 F.3d 567, 577 (8th Cir. 2017). Thus, certification of a litigation class here was not a guarantee. *See* Peterson Decl., ¶ 36.

Assuming *arguendo* that class certification could have been obtained and sustained over any appeals or decertification motions, the next hurdle would be to establish class-wide liability and class-wide damages. *Id.* at ¶ 37. Labor depreciation class actions pending throughout the United States have led to decidedly mixed results concerning liability, with many class actions resulting in no recovery. *See Hicks v. State Farm Fire & Cas. Co.*, 751 F. App'x 703, 710 (6th Cir. 2018) (noting the “substantial weight of authority” is against successfully establishing liability in labor depreciation class actions); *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.”).

Despite these hurdles, this lawsuit was settled after a Missouri appellate court held that labor costs may not be depreciated in the calculation of ACV pursuant to the replacement cost less depreciation methodology where the policy itself does not define ACV. *Franklin*, 652 S.W.3d at 303. With this decision in mind, Plaintiff’s counsel had a high level of confidence in establishing contractual liability for the claims at issue. Peterson Decl., ¶ 37. Defendant, however, has not conceded liability for any putative class member and has argued extensively that *Franklin* does not apply here. *Id.* The recovery of 90% of the still withheld Non-Material Depreciation, plus 50%

of the still withheld GCOP Depreciation, plus prejudgment interest reflects the strong value of these claims.

#### *5. The Range Of Possible Recovery*

The proposed Settlement is extremely favorable because: (1) Class Members submitting Claim Forms will receive 50-90% of their labor withholdings plus an additional amount to account for interest; (2) 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; and (3) the release is narrowly tailored to the subject matter of the lawsuit. *See Bachman*, 344 S.W.3d at 266 (finding proposed settlement fair when “the bottom range of possible recovery was no recovery”). In addition, State Farm has agreed to pay a service award, attorneys’ fees, case expenses, settlement administration costs, and reasonable costs of a Neutral Evaluator on top of Class Members’ recoveries. These terms are very favorable and support preliminary approval of the Settlement.

#### *6. The Opinions Of Class Counsel*

Counsel agrees that the settlement is fair, adequate, and reasonable. The opinion of competent counsel supports approval of the proposed Settlement. *See Ring*, 41 S.W.3d at 493-94 (finding trial court properly relied on the opinion of competent counsel who had experience in similar litigation and believed certain issues were risky because they were unsettled in the courts); 2 MC LAUGHLIN ON CLASS ACTIONS § 6:16 (18th ed. Oct. 2021 Update) (“MC LAUGHLIN”) (“The recommendation of experienced class counsel that a proposed settlement is in the best interest of the class is entitled to great weight.”).

As one commentator explains:

What counts in favor of the settlement is that experienced counsel—particularly

counsel experienced in class action litigation—have reached it and are proposing it.... [T]hat is, if experienced counsel reached this settlement, the court may trust that the terms are reasonable in ways that it might not had the settlement been reached by lawyers with less experience in class action litigation.

NEWBERG § 13:59. Plaintiff's counsel, who are putative or certified class counsel in a large percentage of the pending labor depreciation class actions throughout the United States and have decades of experience in insurance, class action, and complex litigation, strongly recommend the Settlement. *See* Peterson Decl., ¶¶ 8, 33, 42; Roberts Decl., ¶ 9.

In short, the Settlement is fair, reasonable, and adequate, and should be preliminarily approved by the Court.

**A. Plaintiff's Forthcoming Motion Requesting Attorneys' Fees, Costs, And Service Award Falls Within The Range Of Reasonableness Sufficient To Allow Preliminary Approval And Notice To The Class.**

The Settlement provides that Plaintiff's counsel will seek as attorneys' fees, costs and litigation expenses an amount no greater than \$5,125,000, and Defendant has agreed not to oppose such request. Class Members' recoveries will *not* be reduced by the amounts of attorneys' fees, costs, and litigation expenses paid. Plaintiff will seek a service award in the amount of \$7,500, which if approved, will *not* reduce the Class Members' recoveries.

Under the Settlement Agreement, and pursuant to Rule 52.08(e), Class Members will receive notice that fees, costs, and litigation expenses will be sought, and will be provided information about how they can object, assuming the Court preliminarily approves the Settlement. Plaintiff's counsel will then file a motion for fees and expenses pursuant to both the Settlement and Rule 52.08(e). In turn, this Court will then award the attorneys' fees, costs, and service award, if any, it determines appropriate assuming the Settlement is finally approved.

Although attorneys' fees and costs are analyzed only at the final approval stage, Plaintiff's counsel will properly seek fees based upon a percentage of the amounts made available to the class

on a “claims made” basis. At that time, Plaintiff’s counsel will demonstrate that they are seeking a reasonable percentage of the amounts to be made available to the class. *See, e.g., Landmark & Funk, P.C. v. Skinder-Strauss Assocs.*, 639 F. App’x 880, 884 (3d Cir. 2016) (citing *Boeing v. Van Gemert*, 444 U.S. 472, 480-81 (1980)). The percentage methodology is the preferred methodology in federal and state courts for calculating fees. *See Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 925 (1st Dist. 1995) (“Percentage analysis approach eliminates the need for additional major litigation and further taxing of scarce judicial resources which occurred here as a result of plaintiffs’ request for attorneys’ fees.”).

Assuming preliminary approval of the settlement is granted, Plaintiff’s counsel will show upon final approval that the attorneys’ fees sought here are fully consistent with comparable cases. Specifically, the requested fees are consistent with several final class action approval orders from state and federal courts in similar labor depreciation class action settlements. *See Peterson Decl.* Ex. 2 (identifying all “claims made” labor depreciation class settlements resulting in final approval between June 1, 2017, and August 26, 2025 of which Plaintiff’s counsel are aware with range of percentages for fees and costs awards between 17% to 47%).

Further, Plaintiff’s counsel will also show that the percentage to be sought here is generally below that approved by federal and state courts. 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%, such as is requested here, has been approved in many [class action] cases 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). Plaintiff's counsel will demonstrate when submitting their anticipated motion concerning fees and litigation expenses (assuming preliminary approval) that their request will be closer toward the lower end, rather than the higher end of these benchmarks. *See generally 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 settlement).

Here, pursuant to the parties' agreement, Defendant has agreed not to oppose Plaintiff's request for an amount no greater than \$5,125,000 in attorneys' fees and litigation expenses. Plaintiff's 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 no more than 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).<sup>7</sup> *See* Peterson Decl., ¶ 35. This is within the range of

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<sup>7</sup> 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 Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Gerken v. Sherman*, 351 S.W.3d 1, 13 (Mo. App. 2011) (same); *see also* MC LAUGHLIN § 6:24 ("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)). 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 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

reasonableness for fee awards in Missouri. *Burnett*, 2024 WL 2842222, at \*14; *Bachman*, 344 S.W.3d at 267.

Because the attorneys' fees will not reduce any Class Member's recovery and the attorneys' fees are to be paid "over and above the settlement costs and benefits with no reduction of class benefits," agreements between Plaintiff's and defense counsel 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); *Bailey v. AK Steel Corp.*, 2008 WL 553764, at \*1 (S.D. Ohio Feb. 28, 2008) ("[C]ourts are especially amenable to awarding negotiated attorneys' fees and expenses in a reasonable amount where that amount is *in addition to and separate from* the defendant's settlement with the class."). Indeed, courts have held that these "over and above" fee requests are entitled to a "presumption of reasonableness." *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 322-33 (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 is 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."). In any event, at this stage of the proceedings, there is no basis to preclude preliminary approval because of the fee request to be made in the future, a request that will not impact individual recoveries.

Finally, the payment of a service award to the representative plaintiff is common in class

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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)"); *MC LAUGHLIN* § 6:24.

action cases and serves to encourage the filing of class action suits. *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). The \$7,500 service award sought here for Plaintiff is consistent with the service awards approved in other labor depreciation class actions. *See, e.g., Jondro* Final Approval Order at ¶ 13 (awarding service awards in the amount of \$3,750 or \$7,500 to each representative plaintiff in labor depreciation class action); *Belle Meade* Final Approval Order at ¶ 42 (approving \$7,500 to class representative in labor depreciation class action).

Further, the proposed Class Representative, Michael Pregon, obtained a settlement valued at several million dollars, exclusive of interest payments, attorneys' fees, and costs for the class. 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. Since this Court will fully analyze the appropriateness and amount of the service award at the Final Approval Hearing in the future, the proposed service award in the Settlement does not provide grounds for delaying the grant of preliminary approval.

## **VI. CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests the Court preliminarily approve the Settlement. In order to comply with the notice requirements, as well as to allow sufficient time after notice for class members to decide whether to opt out of the class or object to the settlement, Plaintiff further requests that the Court schedule a Final Approval Hearing no sooner than 120 days from the date of preliminary approval. *See* SA ¶¶ 3.2-3.3.

October 3, 2025

*/s/Christopher E. Roberts*

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*Attorneys for Plaintiff and  
Proposed Class Representative*

**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 3rd day of October, 2025.

*/s/Christopher E. Roberts* \_\_\_\_\_

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

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

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY  
COMPANY,

Defendant.

Case No. 24SL-CC03130

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**DECLARATION OF ERIK D. PETERSON IN SUPPORT OF PLAINTIFF'S  
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT,  
CERTIFICATION OF SETTLEMENT CLASS, AND  
SCHEDULING A FINAL APPROVAL HEARING**

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I, Erik D. Peterson, hereby declare as follows:

1. I am over the age of 18 years, and I am of sound mind and otherwise competent to make this Declaration. I have personal knowledge of the matters asserted herein.

2. I am an attorney duly licensed to practice in the Commonwealth of Kentucky and the State of California, as well as multiple federal circuit courts of appeals and district courts. I have appeared as one of the attorneys for Plaintiff and proposed class representative Michael Pregon ("Plaintiff") in the above-captioned matter.

3. This Declaration is submitted in support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Settlement, Certification of Settlement Class, and Scheduling a Final Approval Hearing.

**Biographical Information**

4. I am the founder and owner of Erik Peterson Law Offices, PSC, located in Lexington, Kentucky. Following my graduation from the University of Kentucky College of Law,

I served as a law clerk to the Hon. Gregory F. Van Tatenhove in the United States District Court for the Eastern District of Kentucky. Since completing my clerkship over fifteen years ago, my practice has focused solely on class action and insurance litigation in trial and appellate courts around the country. Courts have described me as “an experienced class action litigator.” *Hicks v. State Farm Fire & Cas. Co.*, 2021 WL 8269349, at \*4 (E.D. Ky. Nov. 8, 2021). In another class action lawsuit, the court observed that “[t]hroughout th[e] litigation – in both state and federal court – Class Counsel has demonstrated a mastery of the[] issues and prosecuted the case with tenacity.” *Jones v. Auto Club Prop.-Cas. Ins. Co.*, No. 15-CI-00956, slip op. at 6 (Jefferson Cir. Ct. Feb. 12, 2018).

5. As it relates specifically to labor depreciation class actions, I have been lead or co-lead counsel in more than sixty putative and certified class actions, both pending and resolved, in state or federal courts in Alabama, Arizona, Connecticut, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Washington, and Wisconsin. These cases have been against a wide variety of property insurers, from small regional insurers to national insurers. I am counsel of record in all labor depreciation cases currently pending in the Fourth, Fifth, Sixth, and Eleventh Circuits. And, like my co-counsel here, I am counsel of record in the vast majority of labor depreciation class actions that have been filed nationwide. I have also consulted with groups of plaintiffs’ counsel in other labor depreciation class actions in which I do not represent the litigants.

6. I have argued labor depreciation class action appeals before the Nebraska Supreme Court and the United States Court of Appeals for the Sixth Circuit and have served as counsel in numerous cases setting important precedent related to labor depreciation and certification of labor depreciation class actions. *See, e.g., Hicks v. State Farm Fire & Cas. Co.*, 965 F.3d 452 (6th Cir.

July 10, 2020) (affirming class certification); *Hicks v. State Farm Fire & Cas. Co.*, 751 F. App'x 703 (6th Cir. 2018) (holding labor depreciation improper under Kentucky law); *Arnold v. State Farm Fire & Cas. Co.*, No. 2:17-cv-148 (S.D. Ala. Oct. 4, 2022) (*Arnold* Dkt. 206) (granting final approval of Alabama class action settlement); *Arnold v. State Farm Fire & Cas. Co.*, 268 F. Supp. 3d 1297 (S.D. Ala. 2017) (holding labor depreciation improper under Alabama law); *Cedarview Mart, LLC v. State Auto Prop. & Cas. Co.*, 2021 U.S. Dist. LEXIS 60871 (N.D. Miss. Mar. 30, 2021) (holding labor depreciation improper under Mississippi law); *Donofrio v. Auto-Owners (Mut.) Ins.*, 2020 U.S. Dist. LEXIS 53830 (S.D. Ohio Mar. 26, 2020) (holding labor depreciation improper under Ohio law).

7. For these reasons, I consider myself a national subject matter expert for plaintiffs' labor depreciation class actions. Only a handful of law firms pursue these cases on a national scale.

8. This Declaration summarizes the background of this lawsuit, particularly the settlement negotiations that led to the proposed settlement and the basis upon which Plaintiff's counsel recommends that the Court preliminarily approve the settlement. The following recitation is not all-inclusive but rather is intended to illustrate how settlement negotiations were structured, and the analysis that Plaintiff's counsel incorporated in agreeing to a settlement on behalf of the putative class. I believe these facts demonstrate that the settlement is fair, reasonable, and adequate, and should be preliminarily approved by the Court.

### **Brief History of the Litigation**

9. This action and proposed settlement involve allegations that Defendant State Farm Fire and Casualty Company ("Defendant" or "State Farm") breached the terms of its property insurance policies with Plaintiff and other class members by wrongfully depreciating labor costs

when adjusting property loss claims. The settlement will resolve Class Members' Missouri labor depreciation claims against Defendant that were raised in three separate actions.

10. On April 27, 2022, class allegations were asserted against State Farm in the Circuit Court of Cole County, Missouri. *See Pet., Brown v. State Farm Fire & Casualty Co.*, Case No. 22AC-AC00423.

11. The plaintiff in *Brown* alleged that State Farm improperly depreciated the estimated cost of labor and other nonmaterial costs necessary to complete repairs to insured property when it calculated and issued actual cash value ("ACV") payments to Brown and other class members for structural damage losses under its property insurance policies. Brown asserted claims for breach of contract and declaratory relief on behalf of himself and a putative class of State Farm policyholders who received ACV Payments from State Farm for loss or damage to structures located in Missouri.

12. State Farm removed the action to the Western District of Missouri on January 4, 2023.

13. On January 11, 2023, State Farm filed a motion to dismiss and a motion to strike the class allegations in *Brown* based on the Eighth Circuit's opinion in *LaBrier*, which predicted that insurers may depreciate labor costs under Missouri law. *In re State Farm Fire & Cas. Co.*, 872 F.3d 567, 570 (8th Cir. 2017).

14. When the Eighth Circuit decided *LaBrier*, there was a lack of Missouri case law specifically on point. In 2022, however, the Missouri Court of Appeals expressly held that an insurer may *not* withhold labor depreciation under a policy that does not specifically allow for labor depreciation. *Franklin v. Lexington Ins. Co.*, 652 S.W.3d 286, 303 (Mo. App. 2022).

15. On August 29, 2023, the Western District of Missouri issued an Order in *Brown*, finding that *Franklin* controls and denying State Farm's motions to dismiss and strike.

16. In September 2023, State Farm moved the Western District of Missouri to reconsider its Order and to certify for interlocutory appeal State Farm's proposed question of whether *LaBrier* remains controlling precedent despite the Missouri appellate court's decision in *Franklin*.

17. The Western District of Missouri declined to modify any finding or conclusion but allowed State Farm to seek appeal of its Order denying the motions to dismiss and strike. State Farm sought an appeal. However, on March 13, 2024, the Eighth Circuit denied State Farm's petition for permission to appeal.

18. While State Farm's motions to dismiss and strike were pending in *Brown*, proposed Class Counsel filed a parallel labor depreciation class action in the Western District of Missouri on February 23, 2023. *M&M Rental Prop., LLC v. State Farm Fire & Cas. Co.*, Case No. 3:23-cv-05011 (W.D. Mo.).

19. As in *Brown*, State Farm filed a motion to dismiss and a motion to strike the class allegations in *M&M Rental*. The Western District of Missouri stayed the *M&M Rental* action pending resolution of the motions in *Brown*. After the Eighth Circuit denied State Farm's petition for permission to appeal in *Brown*, which left the Western District of Missouri's dismissal order intact, the Western District of Missouri also denied State Farm's motions to dismiss and strike in *M&M Rental*.

20. Proposed Class Counsel filed a third parallel labor depreciation class action in this Court on July 3, 2024. See Pet., *Pregon v. State Farm Fire & Cas. Co.*, Case No. 24SL-CC03130.

21. Throughout these actions, the parties engaged in formal and informal discovery and reviewed claims data for the putative class to assess the value of the case. Following the exchange of data, the parties engaged in a series of informal settlement discussions, as well as multiple mediation sessions.

22. The parties in *Brown* and *M&M Rental* reached individual settlements and dismissed those lawsuits .

### **Settlement Negotiations**

23. Settlement discussions through former U.S. Magistrate Judge Stephen Williams (Ret.) were conducted in two mediation sessions with Judge Williams on December 18, 2023 and June 4, 2024.

24. Prior to participating in the mediations, the discovery done included State Farm's production of internal and third-party claims and estimating data. The detailed analysis of this data allowed for meaningful settlement negotiations.

25. In November 2024, the parties agreed to engage Michael 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 the action on a class-wide basis. The parties subsequently executed a summary term sheet evidencing their agreement in principle and began the process of negotiating a more comprehensive settlement agreement. The settlement in principle did not include any agreements on attorneys' fees, litigation costs, or a service award.

26. Consistent with ethical standards for class action settlements, only after relief to the proposed class was agreed, did Plaintiff's counsel begin to negotiate the service award, attorneys' fees, and costs. State Farm indicated it would not object to the amounts sought by Plaintiff and his

counsel once those amounts were finally negotiated, since the amounts were subject to the Court-approval process. Because the service award, attorneys' fees, and costs will be paid separately by State Farm and will not reduce the recovery to the class or be subsidized by the same, State Farm was incentivized to negotiate and pay as little in fees and litigation expenses as possible.

27. Because of the timing of negotiations for fees and costs in comparison to the class relief, there are no "red flags" concerning the way the class action settlement negotiations were conducted. *See NEWBERG ON CLASS ACTIONS* § 13:54 (5th ed. Dec. 2021 Update) ("The concern is also greater when the value of the settlement fund and the fees were negotiated simultaneously, as that could indicate that some of the class's fund was traded off for greater fees.").

28. Because the Court does not approve any attorneys' fees and costs until the final fairness hearing, the foregoing recitation is not intended to set forth a complete justification for any amounts of attorneys' fees and costs. Rather, the foregoing recitation is set forth only to show that the class action settlement negotiations were conducted at arm's length by experienced counsel and were structured in accordance with the highest ethical standards to avoid conflicts of interest between putative class counsel and the putative class members.

29. Since reaching an agreement on all material terms associated with the Settlement,<sup>1</sup> the parties have worked diligently to formally consummate their agreement through a written Settlement Agreement, which has now been completed and executed, and is attached hereto as

**Exhibit 1.**

**The Settlement Terms**

30. The proposed Settlement provides that State Farm shall pay the following amounts

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<sup>1</sup> All capitalized terms used in this Declaration that are not otherwise defined have the meanings ascribed to them in the Settlement.

to the following categories of claiming Class Members:

**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.<sup>2</sup>

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<sup>2</sup> State Farm's policies are either "actual cash value only" or "replacement cost value" policies. For the latter type of policies, policyholders who suffer a covered loss first receive an ACV Payment (calculated by subtracting depreciation from the RCV of the covered loss) and then can recover the depreciation (known as "depreciation holdback" or "replacement cost benefits") after the repair or replacement is completed. Settlement Class Members who have recovered all such depreciation, referred to as interest-only class members, will also receive compensation as part of

31. In addition to the class relief, State Farm has agreed to pay administration costs, reasonable fees of a Neutral Evaluator, a service award to the named Plaintiff, and reasonable attorneys' fees and expenses. Unlike in many settlements, the payment of fees, expenses, and a service award will not reduce the value of the putative class members' recoveries. Thus, these amounts are an additional benefit to the class.

32. The amounts of payments to be made available to Class Members will vary. Based upon analysis of claims and estimating data for State Farm's Missouri property claims included in the Settlement, Plaintiff's counsel estimates that the aggregate amount to be made available to class members for payment on a claims-made basis is at least \$16,267,500, not including the settlement administration costs, attorneys' fees, litigation expenses, and class representative service award.

33. Based on my extensive experience in handling more than 60 labor depreciation cases, I strongly believe this is an excellent result for the putative class, particularly given the many risk factors discussed below.

#### **Service Award and Class Counsel Fees and Expenses**

34. After the proposed settlement terms for the putative class were agreed, the parties then negotiated proposed attorneys' fees/costs and a class representative service award.

35. Pursuant to the parties' agreement, State Farm has agreed not to oppose Plaintiff's requests for an amount no greater than \$5,125,000 in attorneys' fees and litigation expenses, and an amount no greater than \$7,500 to Plaintiff as a service award. Plaintiff's counsel estimates the value of the relief made available to the class to be at least \$16,267,500, plus the costs of

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the settlement. The payment they receive is intended to compensate them for the lost time value of money.

administration (estimated to be at least \$100,000), attorneys' fees and expenses (\$5,125,000), and service award (\$7,500), for a total aggregate value of at least \$21,500,000. Thus, the attorneys' fees to be sought are about 23.8% of the aggregate value.

### **Factors Supporting Approval of the Settlement**

36. Both at the time suit was filed 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 ever gone to trial or faced the issue of decertification.

37. Assuming *arguendo* that class certification could have been obtained and sustained over any appeals or decertification motions, Plaintiff's next hurdle would be to establish class-wide liability and class-wide damages. After several state appellate courts have found that labor is not depreciable when ACV is calculated and paid, Plaintiff's counsel had a high level of confidence in establishing contractual liability for the claims at issue. *See, e.g., Franklin v. Lexington Ins. Co.*, 652 S.W.3d 286, 303 (Mo. Ct. App. 2022). Defendant, however, has not conceded this point.

38. 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 multiple, discrete grounds for avoiding both liability and class certification.

39. This settlement was not reached until Plaintiff's counsel conducted extensive pre- and post-suit analysis and investigation; conducted discovery; thoroughly researched the law and

facts; assessed the risks of prevailing at both the trial court and appellate levels; and engaged in lengthy negotiation of all the foregoing disputes.

40. There were also several factors in the risk assessment process that had to be considered. These complexities and factors included the following considerations:

- a. Plaintiff's counsels' risk assessment had to consider the possibility of losing at the class certification, liability, or damages stages. For example, the Court may not have certified a class, or not certified as broad of a class, as sought by Plaintiff's counsel. This raises the major risk of class members, or categories of them, receiving no relief.
- b. Plaintiff's counsels' risk assessment also had to account for considerations associated with increasing common fund attorneys' fees and costs. Even if the class prevailed upon certification as well as the liability and damages stages at one or more trials, Plaintiff's counsel would likely have to incur substantial non-recoverable costs for e-discovery, non-testifying expert witnesses, jury consultant fees, etc. These costs would be set off against any recovery.
- c. Experience shows that as time goes by, more putative class members cannot be located to receive their award; die; or are otherwise denied participation in their recovery due to various factors. Further delays increase this unacceptable risk of non-recovery by absent class members.

41. Further, the negotiated recovery for the proposed class was *not* reduced based upon State Farm's "ability to pay" because State Farm is financially secure.

42. Based upon these factors and considerations, Plaintiff's counsel deems the amount of class recovery, and the terms hereof under the Settlement to warrant preliminary approval.

43. Attached hereto as **Exhibit 2** is a table of all labor depreciation class settlements resulting in final certification and approval between June 1, 2017 and August 26, 2025 of which Plaintiff's counsel is aware.

Under penalties as provided by law, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

FURTHER DECLARANT SAYETH NOT.

*s/ Erik D. Peterson*  
ERIK D. PETERSON  
erik@eplo.law

October 1, 2025

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

**STIPULATION AND SETTLEMENT AGREEMENT  
AMONG PLAINTIFF MICHAEL PREGON,  
INDIVIDUALLY AND ON BEHALF OF A SETTLEMENT CLASS, AND  
DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY**

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IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiff Michael Pregon (“Plaintiff”), individually and on behalf of the Settlement Class as defined herein, and Defendant State Farm Fire and Casualty Company (“State Farm” or “Defendant”), that, in consideration of the promises and covenants set forth in this Stipulation and Settlement Agreement (“Agreement”) and, upon entry by the Court of a Final Order and Judgment in the lawsuit captioned *Pregon v. State Farm Fire and Casualty Co.*, Case No. 24SL-CC03130 (“Action”), the matters raised by, or which could have been raised by, Plaintiff in the Action against Defendant are settled, compromised, and fully resolved on the terms and conditions set forth in this Agreement.

## 1. RECITALS

1.1 On July 3, 2024, this Action was initiated in the Circuit Court of St. Louis County, Missouri, by Plaintiff Michael Pregon. Plaintiff alleged that State Farm improperly depreciated the estimated cost of labor necessary to complete repairs to insured property when it calculated and issued actual cash value (“ACV”) claim payments to him and other class members for structural damage losses suffered under their property insurance policies. Plaintiff asserted a claim for breach of contract on behalf of himself and a class of State Farm policyholders who received ACV payments from State Farm for structural damage to property located in Missouri where the estimated cost of labor was depreciated in the calculation of ACV.

1.2 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.). 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 the Action on a class-wide basis, with Plaintiff Pregon as the Representative Plaintiff. The parties

subsequently executed a summary term sheet evidencing their agreement in principle and began the process of negotiating a more comprehensive settlement agreement.

1.3 Consistent with the highest ethical standards, and with the assistance of Mr. Ungar, the parties negotiated attorneys' fees, costs, and a service award only after agreeing upon relief to the Settlement Class. Any award of attorneys' fees, costs, expenses, or a service award will not reduce the proposed amounts to be awarded to the Settlement Class.

1.4 Class Counsel submit that they have significant experience with claims based on the depreciation of estimated non-material repair costs (including labor), having represented insureds in numerous certified, putative, and resolved class actions throughout the United States. Based upon this and other class action and insurance litigation experience, Class Counsel believe that the claims of Plaintiff relating to the depreciation practice at issue in this Action have significant merit. Class Counsel recognize and acknowledge, however, that prosecuting such claims through further fact and expert discovery, class certification and decertification motions, dispositive motions, trial, and appeals will involve considerable uncertainty, time, and expense.

1.5 Class Counsel has concluded that it is in the best interests of the Settlement Class that the claims asserted against Defendant in the Action be resolved on the terms and conditions set forth in this Agreement. After extensive consideration and analysis of the factual and legal issues presented in the Action, and extensive settlement negotiations, Class Counsel has reached the conclusion that the substantial benefits that Settlement Class Members will receive as a result of this Settlement are a very good result in light of the risks and uncertainties of continued litigation, the time and expense that would be necessary to prosecute the Action through trial and any appeals that might be taken, and the likelihood of success at trial.

1.6 Defendant has denied and continues to deny each and every allegation of liability, wrongdoing, and damages, as Defendant believes it has substantial factual and legal defenses to all claims and class allegations asserted in the Action. Defendant has always maintained, and continues to maintain, that it has acted in accordance with all applicable policy forms, agreements and governing law, including a prior decision by the U.S. Court of Appeals for the Eighth Circuit addressing the same policy language at issue here under Missouri law. Nonetheless, Defendant has concluded that because continuing to defend against the claims and allegations in the Action would be protracted and expensive, it is desirable that such claims be fully and finally settled on a class-wide basis (without any admission of fault or liability or admission as to the propriety of certification of a litigation class) in the manner and upon the terms set forth in this Agreement.

1.7 Without admitting any liability or wrongdoing, Defendant agrees to the terms of this Agreement, provided that Final Order and Judgment approving the Settlement is entered and all Released Claims are settled, compromised, and released, in order to resolve all issues relating to depreciation in connection with ACV claim payments that were asserted, or that could have been asserted, in the Action.

1.8 Just prior to the filing of this Agreement, and with leave of Court, Plaintiff filed a First Amended Complaint. State Farm will file its Answer to the First Amended Complaint before this Agreement is presented to the Court for preliminary approval.

## **2. DEFINITIONS**

In addition to terms defined elsewhere in this Agreement, the following terms shall be defined as follows:

2.1 “Action” means the lawsuit captioned *Michael Pregon v. State Farm Fire and Casualty Co.*, filed in the Circuit Court of St. Louis County, Missouri, Case No. 24SL-CC03130.

2.2 “ACV Payment” means an actual cash value payment made on an insurance claim for a Structural Loss, calculated by estimating the replacement cost value of covered damage, and subtracting Depreciation, including Non-Material Depreciation and GCOP Depreciation (if any), and any applicable deductible.

2.3 “Administrator” means, subject to approval by the Court, a third-party settlement administrator retained by Defendant (with the consent of the Class Counsel) to assist in administering and implementing the Settlement.

2.4 “Agreement,” “Proposed Settlement” and “Settlement” means this Stipulation and Settlement Agreement, including all exhibits thereto.

2.5 “Claim Form” means the Court-approved claim form, without material change from Exhibit 3, that a Settlement Class Member must submit to be considered eligible for a Claim Settlement Payment under the Settlement as provided in Sections 6 and 7.

2.6 “Claim Settlement Payment” means the sole payment to which a Settlement Class Member filing a valid and timely Claim Form may be entitled, as described in Sections 6 and 7.

2.7 “Claim Deadline” means the date by which the Claim Forms must be uploaded or postmarked in order to be considered timely, as further provided in Section 6.2.

2.8 “Claimant” means any potential Settlement Class Member who submits a Claim Form.

2.9 “Class Counsel” means individually and collectively, the attorneys and law firms approved and appointed by the Court to represent the Settlement Class, including:

David T. Butsch  
Christopher E. Roberts  
Butsch Roberts & Associates LLC  
7777 Bonhomme Ave., Suite 1300  
Clayton, MO 63105  
Tel: (314) 863-5700

J. Brandon McWherter  
McWherter Scott Bobbitt PLC  
109 Westpark Drive, Suite 260  
Brentwood, TN 37027  
Tel: (615) 354-1144  
[brandon@msb.law](mailto:brandon@msb.law)

[Butsch@ButschRoberts.com](mailto:Butsch@ButschRoberts.com)  
[Roberts@ButschRoberts.com](mailto:Roberts@ButschRoberts.com)

T. Joseph Snodgrass  
Snodgrass Law LLC  
100 S. Fifth St., Suite 800  
Minneapolis, MN 55402  
Tel: (612) 448-2600  
[jsnodgrass@snodgrass-law.com](mailto:jsnodgrass@snodgrass-law.com)

Erik D. Peterson  
Erik Peterson Law Offices PSC  
110 W. Vine Street, Suite 300  
Lexington, KY 40507  
Tel: (800) 614-1957  
[erik@eplo.law](mailto:erik@eplo.law)

Douglas J. Winters  
The Winters Law Group, LLC  
7700 Bonhomme Avenue, Suite 575  
St. Louis, MO 63105  
(314) 499-5200  
[dwinters@winterslg.com](mailto:dwinters@winterslg.com)

2.10 “Class Notice” means the notice mailed to potential Settlement Class Members following preliminary approval of this Agreement, as provided in Sections 5.2 and 5.3, in substantially the same form as Exhibit 2.

2.11 “Class Period” means the period encompassing Settlement Class claims, beginning on June 5, 2012, and ending in approximately October 2017.

2.12 “Court” means the Circuit Court of St. Louis County, Missouri, in which the Action is pending.

2.13 “Covered Loss” means a first party insurance claim for a Structural Loss, as defined below, that occurred during the Class Period and that Defendant or a court of competent jurisdiction determined to be a covered loss.

2.14 “Depreciation” means an estimated amount subtracted from the estimated replacement cost value when calculating the ACV of damaged property, reflecting the age, condition, wear and tear and/or obsolescence of the item(s) of structural damaged property.

2.15 “Defendant’s Counsel” means:

Joseph A. Cancila, Jr.  
Jacob L. Kahn

James F. Bennett  
Robert F. Epperson, Jr.

Lauren Abendshien  
 Lucas T. Rael  
 RILEY SAFER HOLMES & CINCILA LLP  
 1 South Dearborn St., Suite 2200  
 Chicago, IL 60603  
 Tel: (312) 471-8700  
 jcancila@rshc-law.com  
 jkahn@rshc-law.com  
 labendshien@rshc-law.com  
 lrael@rshc-law.com

J. Russell Jackson  
 Michael J. Kuhn  
 DOWD BENNETT LLP  
 7676 Forsyth Blvd., Suite 1900  
 St. Louis, MO 63105  
 Tel: (314) 889-7300  
 jbennett@dowdbennett.com  
 repperson@dowdbennett.com  
 rjackson@dowdbennett.com  
 mkuhn@dowdbennett.com

2.16 “Effective Date” shall be: (1) the day following the expiration of the deadline for appealing the entry by the Court of the Final Order and Judgment, if no such appeal is filed; or (2) if an appeal of the Final Order and Judgment is filed, the date upon which all appellate courts with jurisdiction (including the United States Supreme Court by petition for certiorari) affirm such Final Order and Judgment, or deny any such appeal or petition for certiorari, such that no future appeal is possible.

2.17 “Final Approval Hearing” means a hearing to consider final approval of the Proposed Settlement and entry of Final Order and Judgment, as provided in Sections 3.3 and 12.

2.18 “Final Order and Judgment” means the final order and judgment to be entered by the Court, substantially the same in form and content as Exhibit 5 and without material change thereto (as determined by the Defendant or Class Counsel), adopting this Agreement, approving the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class Members, and fully and finally disposing of all claims asserted in the Action against the Defendant. If the Defendant or Plaintiff reasonably contends that the form or content of the final order and judgment ultimately entered by the Court materially differs from the form or content of Exhibit 5, then such Party may immediately move to set aside the final order and judgment and terminate this Agreement as provided for herein. However, the circuit court’s denial or reduction of

requested attorneys' fees, costs, disbursements, or service award will not be considered a material difference from or change to Exhibit 5.

2.19 "General Contractor Overhead and Profit Depreciation" (or "GCOP Depreciation") means Depreciation applied to estimated costs (if any) that State Farm has projected a general contractor may charge for coordinating repairs, specifically including Depreciation resulting from the use of the Xactimate® setting "Depreciate O&P."

2.20 "Legally Authorized Representative" means an administrator/administratrix, personal representative, or executor/executrix of a deceased Settlement Class Member's estate, a guardian, conservator, attorney-in-fact, or next friend of an incapacitated Settlement Class Member, or any other legally appointed Person or entity responsible for the handling of the business affairs of a Settlement Class Member, in all cases as established by written evidence of a Legally Authorized Representative's authority. However, any Named Insured is a Legally Authorized Representative for claims under that Named Insured's policy without any further written evidence of authority.

2.21 "Neutral Evaluator" means the final and binding arbiter of any dispute concerning a Settlement Class Member's eligibility for or amount of any Claim Settlement Payment, as set forth in Sections 7.11, 7.12, and 7.13, who will be identified and retained by Defendant with Class Counsel's reasonable consent.

2.22 "Non-Material Depreciation" means Depreciation applied to estimated repair line-item cost elements such as labor, equipment, market conditions, and removal costs, including, for example, Depreciation resulting from the use of the Xactimate® settings "Depreciate Non-Material" and/or "Depreciate Removal."

2.23 "Parties" means Plaintiff and Defendant.

2.24 “Person” means any natural person, individual, corporation, limited liability company, association, partnership, trust, or any other type of legal entity.

2.25 “Plaintiff” means Michael Pregon, individually and as representative of the Settlement Class, as the context may indicate.

2.26 “Policy” or “Policies” means a structural damage insurance policy or policies issued to a Settlement Class Member or Settlement Class Members.

2.27 “Preliminary Approval” means the Preliminary Approval Order substantially the same in form and content as Exhibit 1 and without material change thereto (as determined by the Defendant or Class Counsel) to be entered by the Court, as provided in Section 3.2.2. If the Defendant or Plaintiff reasonably contends that the form or content of the Preliminary Approval Order ultimately entered by the Court materially differs from the form or content of Exhibit 1, then such Party may immediately move (prior to the issuance of Class Notice) to set aside the Preliminary Approval Order and terminate this Agreement as provided for herein.

2.28 “Released Claims” means and includes any and all past, present and future claims arising from or in any way related to Depreciation of any kind on insurance claims within the Class Period (including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, and/or withholding of Depreciation), whether known or unknown, and that were asserted or could have been asserted in the Action, to the full extent of res judicata protection. This release is not intended to prevent an individual Settlement Class Member from seeking and potentially recovering any RCBs that may still remain available under the terms of his or her Policy. Additionally, Released Claims do not include any claim for enforcement of this Settlement and/or the Final Order and Judgment.

2.29 “Released Persons” means, individually and collectively, (i) State Farm Fire and Casualty Company, and all of its past and present divisions, parent entities, associated entities, affiliates, partners, and subsidiaries; and (ii) all past and present officers, directors, shareholders, agents, attorneys, employees, stockholders, successors, assigns, independent contractors, and legal representatives of the entities set forth in (i). The Released Claims extend only to claims arising under insurance policies issued by the Defendant.

2.30 “Releasing Persons” means Plaintiff and all Settlement Class Members who do not properly and timely opt out of the Settlement (as provided in Section 10 herein), and their respective spouses, family members, executors, representatives, administrators, guardians, wards, heirs, attorneys-in-fact, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf.

2.31 “RCB” or “RCBs” means replacement cost benefits on Structural Losses that may be (or at one time may have been) available under a Settlement Class Member’s Policy.

2.32 “Settlement Check” or “Settlement Checks” means the check(s) containing the sum that such Settlement Class Member(s) is (are) entitled to receive as payment under this Agreement, in accordance with the procedures set forth in Sections 6 and 7 below, after submitting a timely, accurate, and complete Claim Form.

2.33 “Settlement Class” means all 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. The Settlement Class excludes all claims arising under State Farm policy forms (including endorsement form FE-3650) expressly permitting the “depreciation” of “labor” within the text of the policy form. The Settlement Class also excludes any claims in which State Farm’s ACV Payments exhausted the applicable limits of insurance. Finally, the Settlement Class excludes members of the judiciary and their staff to whom this Action was assigned; State Farm and its affiliates, officers, and directors; and Class Counsel.

2.34 “Settlement Class Member” means any Person who is included within the definition of the Settlement Class.

2.35 “Structural Loss” means physical damage to a dwelling, business, or other structure located in the State of Missouri while covered by a structural damage insurance policy issued by Defendant.

### **3. CONDITIONS**

3.1 The Settlement is expressly contingent upon the satisfaction in full of the material terms and conditions set forth below.

3.2 **Condition No. 1: Approval.** The Settlement must be approved by the Court in accordance with the following steps:

3.2.1 **Motion for Preliminary Approval.** After good faith consultation with Defendant’s Counsel, Class Counsel will file with the Court a motion for preliminary approval within a reasonable time after the execution of this Agreement by all Parties. The motion for preliminary approval shall include a proposed Preliminary Approval Order, a Class Notice, Claim Form, a Postcard Notice, and a proposed Final Order and Judgment, all substantially the same in form and content as Exhibits 1–5, respectively. The Parties shall take reasonable steps to secure expeditious entry by the Court of a Preliminary Approval Order and shall request that the Court schedule a Final Approval Hearing no earlier than one hundred and twenty (120) days

after entry of a Preliminary Approval Order. Defendant may, but is not required to, file a memorandum in support of the motion for preliminary approval.

- 3.2.2 **Entry of Preliminary Approval Order.** The Court will be requested to enter a Preliminary Approval Order adopting the terms and conditions set forth in Exhibit 1, which shall, among other things:
- a. Preliminarily approve the Settlement as fair, reasonable and adequate;
  - b. Preliminarily certify the Settlement Class for settlement purposes, as defined herein, and designate Plaintiff as the representative of the Settlement Class, and designate Class Counsel as counsel for the Settlement Class pursuant to Missouri Supreme Court Rule 52.08 and Missouri common law;
  - c. Vacate any further scheduled dates and stay consideration of all other motions and deadlines pending in the Action;
  - d. Order the issuance of Class Notice to Settlement Class Members pursuant to this Agreement, and determine that such Class Notice complies with all requirements, including, but not limited to, Missouri Supreme Court Rule 52.08(c)(2) and the Due Process Clauses of the Missouri and United States Constitutions;
  - e. Appoint the Administrator;
  - f. Schedule a date and time for a Final Approval Hearing, to be held no sooner than one hundred and twenty (120) days after the entry of the Preliminary Approval Order, to determine whether the Settlement should be finally approved by the Court;
  - g. Require Persons within the Settlement Class who wish to exclude themselves to submit an appropriate and timely written request for exclusion by the opt out deadline in the Preliminary Approval Order, and advise that a failure to do so shall bind those Settlement Class Members to the Settlement;
  - h. Require Settlement Class Members who wish to object to the Settlement to submit a timely written objection by an objection deadline in the Preliminary Approval Order, and advise that a failure to do so shall prevent those Settlement Class Members from objecting to the Settlement;

- i. Require any Settlement Class Member who objects to the Settlement and wishes to appear at the Final Approval Hearing to file a notice of intent to appear;
- j. Provide that the Final Approval Hearing may take place, at the sole discretion of the Court, via telephone or video and provide that any Settlement Class Member who files a notice of intent to appear shall be provided with information required to access the telephone or video hearing;
- k. Order that the Class Notice and Claim Form be sent to Settlement Class Members and set the Claim Deadline;
- l. Preliminarily enjoin all Settlement Class Members, unless and until they have timely and properly excluded themselves from the Settlement, from (i) filing, commencing, prosecuting, maintaining, intervening in, or participating as a plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction, individually or as a class action on behalf of any Settlement Class Members who have not timely excluded themselves, based on or arising from the Released Claims; and (ii) attempting to organize an opt-out class of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on or arising from the Released Claims;
- m. Authorize the Parties to take all necessary and appropriate steps to implement the Settlement as set forth in this Agreement; and
- n. Enforce such additional provisions as provided in Exhibit 1 as necessary to implement this Agreement and the Settlement, and to issue related orders to effectuate the preliminary approval of the Settlement Agreement.

**3.3 Final Approval Hearing.** In connection with the motion for preliminary approval, the Parties shall request that the Court schedule and conduct a Final Approval Hearing not less than one hundred and twenty (120) days after entry of the Preliminary Approval Order, at which time it will consider whether the Settlement is fair, reasonable, and adequate pursuant to Missouri Supreme Court Rule 52.08. Plaintiff, after good faith consultation with counsel for Defendant, shall request that, at or after the Final Approval Hearing, the Court: (i) enter a Final Order and Judgment consistent with this Agreement and Exhibit 5, granting final approval of the Settlement

and dismissing with prejudice the claims of Plaintiff and the Settlement Class in this Action; (ii) determine the attorneys' fees and expenses that should be awarded to Class Counsel as contemplated in the Agreement; and (iii) determine the service award (if any) that should be awarded to Plaintiff.

**3.4 Condition No. 2: Finality of Judgment.** The Court shall enter a Final Order and Judgment consistent with this Agreement and the terms and conditions set forth in Exhibit 5, as described in Section 12, and the Effective Date must occur.

#### **4. SETTLEMENT CONSIDERATION**

**4.1** Subject to the procedures in Sections 6 and 7 below, and in compromise of disputed claims and in consideration of this Agreement, as well as additional consideration described in this Agreement, the Parties have agreed that in exchange for a release by the Releasing Persons of the Released Persons of all Released Claims, and entry of Final Order and Judgment as contemplated herein, Defendant shall make the following payments:

- 4.1.1** Subject to the conditions set forth in this Agreement, the Claim Settlement Payments as provided in Sections 6 and 7, below;
- 4.1.2** Subject to the conditions set forth in this Agreement, attorneys' fees and expenses that are awarded by the Court to Class Counsel, as provided in Section 13 below;
- 4.1.3** Subject to the conditions set forth in this Agreement, a service award (if any) that is awarded by the Court to Plaintiff, as provided in Section 13 below;
- 4.1.4** The costs of Class Notice and settlement administration, as provided in this Agreement; and
- 4.1.5** The reasonable fees incurred by the Neutral Evaluator, as provided in this Agreement.

**4.2** Until such time as the foregoing payments are made, all sums to be paid by Defendant shall remain under the control and ownership of Defendant, the Administrator, or their

independent contractors. Neither Settlement Class Members nor any other Person shall have any right to or ownership or expectation interest in Claim Settlement Payments or any other sums unless and until timely and eligible claims of Settlement Class Members have been submitted and Settlement Checks in payment of same have been issued and timely negotiated by Settlement Class Members, as described in this Agreement.

## 5. NOTICE

5.1 **Class Notice.** Defendant shall conduct a reasonable search of its records and provide the following information to the Administrator for each Person reasonably believed to be a potential Settlement Class Member, to the extent such information is reasonably available: name, last known mailing address, date of the Covered Loss during the Class Period, Policy number, and claim number for the Covered Loss. Defendant shall provide such information to the Administrator as soon as practicable after Preliminary Approval of the Proposed Settlement, but in any event no more than fifteen (15) days after entry of the Preliminary Approval Order.

5.2 The Administrator shall mail a copy of the Class Notice and Claim Form in a form and with content substantially similar to Exhibits 2 and 3, respectively, by first-class U.S. Mail to each potential Settlement Class Member identified by Defendant. Immediately prior to mailing the Class Notice and Claim Form to potential Settlement Class Members, and only for purposes of that mailing, the Administrator shall run the addresses one time through the National Change of Address database in order to obtain any updated addresses for potential Settlement Class Members.

5.3 The Administrator shall complete mailing of the Class Notice and Claim Form to potential Settlement Class Members not less than seventy-five (75) days prior to the Final Approval Hearing. Any material change(s) to the Class Notice or Claim Form agreed to by the

Parties after entry of the Preliminary Approval Order must be approved by the Court prior to mailing.

5.4 If a Class Notice and Claim Form mailed to any potential Settlement Class Member is returned as undeliverable, the Administrator will promptly log such return as undeliverable and provide copies of the log to Defendant's Counsel and Class Counsel as requested. If the mailing is returned to the Administrator with a forwarding address, the Administrator will forward the mailing to that address. For other returned mailings, the Administrator will run the name and address one time through a single commercial database (e.g., Accurint) chosen by the Administrator, and should the commercial database show a more current mailing address, the Administrator shall re-mail the returned Class Notice and Claim Form to the more current mailing address. If a more current mailing address cannot be found by searching the commercial database referenced in the preceding sentence, the Administrator shall send one message to the last known e-mail address as contained in Defendant's records (when available) for such Settlement Class Member and attempt to contact such Settlement Class Member to obtain a current address. If a more current mailing address cannot be found through either of the two methods described above, then no further efforts to locate or to find a more current mailing address for Settlement Class Members is required of Defendant or the Administrator.

5.5 **Postcard Notice.** No later than forty-five (45) days before the Claim Deadline, the Administrator shall mail a reminder in a form and with content substantially similar to Exhibit 4 (the "Postcard Notice") with information regarding the Claim Deadline, the Settlement Website address, and how to request a copy of the Claim Form. The Postcard Notice will be mailed to each potential Settlement Class Member who has not submitted a Claim Form and who has not timely and properly excluded themselves from the Settlement Class.

**5.6 Settlement Website.** No later than the mailing of the Class Notice and Claim Form as provided in Sections 5.2 and 5.3, the Administrator shall establish a website containing copies of the Petition, the Agreement and Exhibits, the Preliminary Approval Order, the Class Notice, Claim Form, Spanish translations of the Class Notice and Claim Form, and such other documents and information about the Settlement as Class Counsel and Defendant's Counsel agree upon (hereinafter, the "Settlement Website"). The Claim Form shall be available to download or print from the Settlement Website.

**5.6.1** The Settlement Website shall use a Uniform Resource Locator that identifies the internet address as [www.Pregon-v-StateFarm.com](http://www.Pregon-v-StateFarm.com), or such other URL as Class Counsel and Defendant's Counsel agree upon. The Settlement Website shall not include any advertising and shall not bear or include any logos or trademarks of the Defendant other than those appearing in the Agreement. The Settlement Website shall cease to operate and the Administrator shall remove all information from the Settlement Website no later than the Final Accounting as described in Section 7.14. Ownership of the Settlement Website URL shall be transferred to Defendant within ten (10) days of when operation of the Settlement Website ends.

**5.7 Toll-free Number.** No later than the mailing of the Class Notice as provided in Sections 5.2 and 5.3, the Administrator shall establish a toll-free interactive voice response phone number, with script recordings of information about the Settlement, including information about the Claim Form, utilizing relevant portions of the Class Notice and Claim Form. The Administrator shall send the Class Notice and Claim Form, or Spanish translations of both, upon request to any potential Settlement Class Members. The phone number shall remain open and accessible through the Claim Deadline and allow for Settlement Class Members to leave recorded messages and, at Defendant's option, may also provide for live operators during select times to answer certain basic questions about the Settlement. The phone number shall be kept open and accessible after the Claim Deadline until all Claim Settlement Payments are issued and all disputes submitted pursuant to Section 7.11 regarding Claim Settlement Payments are resolved. Except for requests for the

Class Notice or Claim Form, the Administrator will promptly advise Class Counsel of recorded messages left by Settlement Class Members concerning the Action and/or the Settlement, or direct any Settlement Class Members with questions that cannot be answered to Class Counsel, so that Class Counsel may timely and accurately respond to such inquiries.

5.8 The Parties agree that the foregoing procedures constitute reasonable and the best practicable notice under the circumstances, and constitute an appropriate and sufficient effort to locate current addresses for potential Settlement Class Members such that no additional efforts to do so shall be required. Upon reasonable request, the Administrator shall advise Class Counsel and Defendant's Counsel of the progress of the notice program so they can monitor compliance with this Agreement.

## **6. SUBMISSION OF CLAIM FORMS**

6.1 Claim Forms mailed to potential Settlement Class Members shall be pre-populated with the potential Settlement Class Member's name, current address, date of the Covered Loss, Policy number, claim number, and mortgagee (if any) on the declarations page of the Policy as of the date of the Covered Loss, to the extent feasible and if such information is reasonably available to Defendant.

6.2 To be considered valid and timely, a Claim Form must be materially complete, signed by or on behalf of the Settlement Class Member, and mailed to the Administrator's address as specified in the Claim Form, postmarked by the Claim Deadline, which shall be thirty (30) days after the Final Approval Hearing. Signed and completed Claim Forms may also be scanned and uploaded via the Settlement Website by the Claim Deadline. Claim Forms may be submitted on behalf of deceased or incapacitated Settlement Class Members by Legally Authorized Representatives, with written proof of authority.

6.3 The Claim Form will reasonably request of Settlement Class Members such information as described on the attached Claim Form (Exhibit 3). To be eligible for a Claim Settlement Payment, Settlement Class Members must, on or with the Claim Form:

- 6.3.1 Affirm that they have not assigned the claim for the Covered Loss upon which the ACV Payment was calculated, other than any interest that may be held by a mortgagee;
- 6.3.2 Confirm that the pre-populated contact, claim, and Policy information contained on the Claim Form is correct, or, if necessary, update, correct, or provide additional information regarding any pre-populated contact, claim, or Policy information contained on the Claim Form;
- 6.3.3 Answer the questions on the face of the Claim Form with respect to the Covered Loss identified thereon; and
- 6.3.4. If the Settlement Class Member under the Covered Loss is deceased or incapacitated, include written confirmation that the Person submitting the Claim Form is a Legally Authorized Representative of the Settlement Class Member.

The Claim Form will not require that a Settlement Class Member sign under penalty of perjury or that any signature be notarized.

6.4 Subject to Defendant's right to challenge or reduce the amount owed to any Claimant, as set forth below in Section 7.2, Claimants who submit a timely and properly completed Claim Form and are deemed eligible for a Claim Settlement Payment shall be paid in accordance with the following provisions:

- 6.4.1 **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.

- 6.4.2 **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.
- 6.4.3 **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.

6.5 The foregoing Claim Settlement Payments are the only payments to which Settlement Class Members will be entitled under the Settlement. Claim Settlement Payments are deemed to be inclusive of claims for any potentially applicable damages, penalties, interest, and fees, subject to the payments of attorneys' fees and expenses and service award (if any) that the Court may require Defendant to pay separately, as provided for herein. All Claim Settlement Payments to Settlement Class Members, exclusive of interest payments, are subject to the terms, limits, conditions, coverage limits, and deductibles of their respective policies. Any rights to Claim Settlement Payments under this Agreement shall inure solely to the benefit of Settlement Class Members and are not transferable or assignable, other than through an interest that may already be held by a mortgagee or a Person who was hired in the ordinary course, before the issuance of Class

Notice, to repair or replace the Structural Loss. A valid assignment does not include an alleged assignment to any third-party entities that purport to take class action assignments in exchange for cash.

6.6 The opportunity to submit Claim Forms for Claim Settlement Payments and other obligations incurred by Defendant pursuant to this Agreement shall be in full and final disposition of the Action, and in full consideration for the release of any and all Released Claims as against any and all Released Persons, regardless of whether or not a Settlement Class Member receives a Class Notice, submits a Claim Form, or receives a Claim Settlement Payment check.

## 7. CLAIMS ADMINISTRATION AND PAYMENTS

7.1 **Claims Determinations.** For purposes of this Settlement only, the Defendant shall calculate the principal amount of the Non-Material Depreciation and GCOP Depreciation (if any) to be used in determining the Settlement Payment amounts for each claim in Groups A, B, and C (from Section 6.4) as follows, using the data supplied by Xactware Solutions, Inc. (“Xactware”), for the last-uploaded estimate for each claim, subject to the provisions set forth in Section 7.2:

7.1.1 If Defendant’s payment records for the claim in question reflect a total Coverage A indemnity payment amount of greater than \$0, then:

7.1.1.1 Where the data supplied by Xactware for the last-uploaded estimate for the claim reflects a figure greater than \$0 in *either* the column designated as “Total Non-Material Depreciation” or the column designated as “Total GCOP Depreciation,” then 90% of the figure in the column designated as “Total Non-Material Depreciation” shall serve as the amount of Non-Material Depreciation to be used in determining the Settlement Payment amount for that claim and 50% of the figure in the column designated as “Total GCOP Depreciation” (if any) shall serve as the amount of GCOP Depreciation to be used in determining the Settlement Payment amount for that claim; and

7.1.1.2 Where the data supplied by Xactware for the last-uploaded estimate for the claim reflects a figure of \$0 in *both* the column designated as “Total Non-Material Depreciation” *and* the column designated as “Total GCOP Depreciation,” but a figure greater

than \$0 in the column designated as “Calculated Labor Depreciation,” then 90% of the sum of the figures shown in the columns designated as “Calculated Labor Depreciation” “Calculated Market Condition Depreciation” and “Calculated Equipment Depreciation” shall serve as the amount of Non-Material Depreciation to be used in determining the Settlement Payment amount for that claim and the amount of GCOP Depreciation (if any) to be used in determining the Settlement Payment amount for that claim shall be 50% multiplied by 1/6th (16.6667%) of the figure shown in the column designated as “Total Depreciation” if costs for general contractor overhead and profit were included on the estimate for the claim.<sup>1</sup>

7.1.2 If Defendant’s payment records for the claim in question reflect a total Coverage A indemnity payment amount of \$0, then<sup>2</sup>:

7.1.2.1 Where the data supplied by Xactware for the last-uploaded estimate for the claim reflects a figure greater than \$0 in *either* the column designated as “Total Non-Material Depreciation” or the column designated as “Total GCOP Depreciation,” then the amount of Non-Material Depreciation and GCOP Depreciation to be used in determining the Settlement Payment amount for that claim shall be calculated as follows:

7.1.2.1.1 If the data supplied by Xactware for the last-uploaded estimate for the claim reflects a figure greater than \$0 in the column designated as “Total GCOP Depreciation,” then:

(a) The amount of Non-Material Depreciation shall be calculated by, first, subtracting the applicable deductible amount for the claim (from Defendant’s claims data) from the sum of (i) the “Actual Cash Value” figure reported by Xactware, (ii) the “Total Non-Material Depreciation” figure reported by Xactware, and (iii) the “Total GCOP Depreciation” figure reported by Xactware; and then, second, multiplying the resulting figure by 90% of the decimal number produced by dividing the “Total Non-Material Depreciation” figure reported by Xactware by the sum of (i) the “Total Non-

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<sup>1</sup> This circumstance is only expected to occur for certain claims with dates of loss in 2013 and earlier.

<sup>2</sup> If the “Actual Cash Value” figure reported by Xactware is greater than the applicable deductible with the total Coverage A indemnity payment amount of \$0 for any of the examples below, then the amount of Non-Material Depreciation and the amount of GCOP Depreciation for the claim shall be \$0. The Claimant is not a Settlement Class Member.

Material Depreciation" figure reported by Xactware and (ii) the "Total GCOP Depreciation" figure reported by Xactware; and

- (b) The amount of GCOP Depreciation shall be calculated by, first, subtracting the applicable deductible amount for the claim (from Defendant's claims data) from the sum of (i) the "Actual Cash Value" figure reported by Xactware, (ii) the "Total Non-Material Depreciation" figure reported by Xactware, and (iii) the "Total GCOP Depreciation" figure reported by Xactware; and then, second, multiplying the resulting figure by 50% of the decimal number produced by dividing the "Total GCOP Depreciation" figure reported by Xactware by the sum of (i) the "Total Non-Material Depreciation" figure reported by Xactware and (ii) the "Total GCOP Depreciation" figure reported by Xactware.<sup>3</sup>

- 7.1.2.1.2 If the data supplied by Xactware for the last-uploaded estimate for the claim reflects a figure of \$0 for "Total GCOP Depreciation," then the amount of GCOP Depreciation to be used in determining the Settlement Payment for that claim shall be \$0 and the amount of Non-Material Depreciation to be used in determining the Settlement Payment amount for that claim shall be calculated by, first, subtracting the applicable deductible amount for the claim (from Defendant's claims data) from the sum of the "Actual Cash Value" figure reported by Xactware and the "Total Non-Material Depreciation" figure reported by Xactware; and then, second, by multiplying the resulting figure by 90%.

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<sup>3</sup> For example, for a claim with "Actual Cash Value" of \$450, "Total Non-Material Depreciation" of \$150, and "Total GCOP Depreciation" of \$100 (per Xactware), and with an applicable deductible of \$500, the amount of Non-Material Depreciation and GCOP Depreciation to be used in determining the Settlement Payment amount would be calculated as follows:

$$\text{Non-Material Depreciation} = ((\$450 + \$150 + \$100) - \$500) * (0.90 * (\$150 / (\$150 + \$100))) = \$108$$

$$\text{GCOP Depreciation} = ((\$450 + \$150 + \$100) - \$500) * (0.50 * (\$100 / (\$150 + \$100))) = \$40$$

In other words, for this hypothetical claim, of the \$150 in "Total Non-Material Depreciation" reflected in the data supplied by Xactware, \$108 would be used in determining the Settlement Payment amount for that claim. And of the \$100 in "Total GCOP Depreciation" reflected in the data supplied by Xactware, \$40 would be used in determining the Settlement Payment amount for that claim.

7.1.2.2 Where the data supplied by Xactware for the last-uploaded estimate for the claim reflects a figure of \$0 in *both* the column designated as “Total Non-Material Depreciation” *and* the column designated as “Total GCOP Depreciation,” but a figure greater than \$0 in the column designated as “Calculated Labor Depreciation,” then the amount of Non-Material Depreciation and GCOP Depreciation to be used in determining the Settlement Payment amount for that claim shall be calculated as follows:

7.1.2.2.1 If the data supplied by Xactware for the last-uploaded estimate for the claim reflects that costs for general contractor overhead and profit were included on the estimate for the claim, then:

- (a) The amount of Non-Material Depreciation to be used in determining the Settlement Payment amount for that claim shall be calculated by, first, subtracting the applicable deductible amount for the claim (from Defendant’s claims data) from the sum of (i) the “Actual Cash Value” figure reported by Xactware, (ii) the figures shown in the three columns designated as “Calculated Labor Depreciation,” “Calculated Market Condition Depreciation,” and “Calculated Equipment Depreciation” (hereinafter, “Calculated Non-Material Depreciation”), and (iii) 1/6th (16.6667%) of the figure shown in the column designated as “Total Depreciation” (hereinafter, “Calculated GCOP Depreciation”); and then, second, multiplying the resulting figure by 90% of the decimal number produced by dividing the Calculated Non-Material Depreciation figure by the sum of (i) the Calculated Non-Material Depreciation figure and (ii) the Calculated GCOP Depreciation figure; and
- (b) The amount of GCOP Depreciation to be used in determining the Settlement Payment amount for that claim shall be calculated by, first, subtracting the applicable deductible amount for the claim (from Defendant’s claims data) from the sum of (i) the “Actual Cash Value” figure reported by Xactware, (ii) the Calculated Non-Material Depreciation figure and (iii) the Calculated GCOP Depreciation figure; and then, second, multiplying the resulting figure by 50% of the decimal number produced by dividing the Calculated GCOP

Depreciation figure by the sum of (i) the Calculated Non-Material Depreciation figure and (ii) the Calculated GCOP Depreciation figure.<sup>4</sup>

- 7.1.2.2.2 If the data supplied by Xactware for the last-uploaded estimate for the claim reflects that costs for general contractor overhead and profit were *not* included on the estimate for the claim, then the amount of GCOP Depreciation to be used in determining the Settlement Payment for that claim shall be \$0 and the amount of Non-Material Depreciation to be used in determining the Settlement Payment amount for that claim shall be calculated by, first, subtracting the applicable deductible amount for the claim (from Defendant's claims data) from the sum of (i) the "Actual Cash Value" figure reported by Xactware and (ii) the Calculated Non-Material Depreciation figure; and then, second, by multiplying the resulting figure by 90%.

For purposes of the interest component of the Settlement Payment for claims in Group B, Defendant shall use the date of the first Coverage A indemnity payment for each claim in Group B as the date of the initial ACV payment and the date of the most recent Coverage A indemnity payment as the date of the final RCB payment.

## 7.2 Defendant's Right to Challenge or Reduce Settlement Payments.

Notwithstanding any other provisions of this Agreement, Defendant shall have the right to

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<sup>4</sup> For example, for a claim with "Actual Cash Value" of \$450, "Calculated Labor Depreciation" of \$100, "Calculated Market Condition Depreciation" of \$25, "Calculated Equipment Depreciation" of \$25, "Total Depreciation" of \$600, an applicable deductible of \$500, and for which the data supplied by Xactware for the last-uploaded estimate for the claim reflects that costs for general contractor overhead and profit were included on the estimate for the claim, the amount of Non-Material Depreciation and GCOP Depreciation to be used in determining the Settlement Payment amount would be calculated as follows:

$$\text{Non-Material Depreciation} = ((\$450 + (\$100 + 25 + 25) + (\$600/6)) - \$500) * (0.90 * (\$150 / (\$150 + \$100))) = \$108$$

$$\text{GCOP Depreciation} = ((\$450 + (\$100 + 25 + 25) + (\$600/6)) - \$500) * (0.50 * (\$100 / (\$150 + \$100))) = \$40$$

In other words, for this hypothetical claim, of the \$150 in "Calculated Labor Depreciation," "Calculated Market Condition Depreciation," and "Calculated Equipment Depreciation," \$108 would be used in determining the Settlement Payment amount for that claim. Similarly, \$40 of the remaining depreciation for the claim would be used as the GCOP Depreciation figure in determining the Settlement Payment amount for that claim.

challenge or reduce the amount of any Claim Settlement Payment owed 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 as calculated above 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 as calculated above were already recovered through RCB payments. If Defendant denies payment or reduces payment for the reasons set forth below, then the specific reason shall be set forth in correspondence from the Administrator to the Settlement Class Member. More specifically, Defendant shall have the right to challenge or reduce Claim Settlement Payments for the following reasons, but only these reasons:

- 7.2.1 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.
- 7.2.2 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 amount of any applicable limits under the Claimant's Policy, then the Claimant is not entitled to claim the benefits afforded by this Agreement.
- 7.2.3 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.
- 7.2.4 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.

7.3 The Administrator shall notify in writing those Claimants who submit an untimely Claim Form that their claim is denied and will not be processed further. The Administrator's determination of whether a Claim Form was timely submitted shall be final, binding, not reviewable by the Neutral Evaluator, not appealable, and not the subject of an objection.

7.4 The Administrator shall notify in writing those Claimants who submit a timely but materially deficient Claim Form that they have thirty (30) days to correct the deficiency. The notice will identify the deficiency and state that any response must be postmarked or submitted electronically within thirty (30) days of the date of the notice of the deficiency.

7.5 Defendant will periodically update Class Counsel and the Administrator on the claims review process and provide Class Counsel and the Administrator, within sixty (60) days of receiving all timely and properly completed Claim Forms from the Administrator, a complete list of: (a) Claimants who submitted Claim Forms; (b) the amount of Claim Settlement Payment, if any, owing to each; and (c) if no Claim Settlement Payment is owing, a brief explanation why. The Parties agree that this period may be extended as reasonably necessary for Defendant to complete the review process.

7.6 **Confirmation of Calculation Methodology.** Within ten (10) days of providing the list referenced in Section 7.5, Defendant will provide a declaration from an employee, who executes the same with full knowledge of Defendant's processes for determining the Claim Settlement Payment amounts on the list, confirming that all persons calculating Claim Settlement Payments were trained and instructed to make the calculations in accordance with the guidelines set forth above.

7.7 **Audit of Calculation Methodology.** Within ten (10) days of receiving the list referenced in Section 7.5, Class Counsel may request from Defendant the claim file materials

associated with no more than 2% of the claim numbers on the list, selected on a random basis. To the extent Class Counsel elects to proceed with such a review, then within sixty (60) days of the date when Class Counsel identifies the claim numbers for that review, Defendant shall produce to Class Counsel, for each such identified claim, an electronically searchable copy (e.g., searchable PDF format) of the claim file materials associated with that claim as those materials are stored within Defendant's records. Class Counsel shall thereafter promptly notify Defendant's Counsel of any disputes with respect to the methodology or general accuracy of the Claim Settlement Payment calculations. To the extent disputes arise that cannot be resolved amicably in a timely manner, the parties will promptly involve the Court or the Parties' mediator (Michael N. Ungar of Ulmer & Berne) to help resolve any disputes.

**7.8     Funding.** Within thirty (30) days of providing its final determinations of Claim Settlement Payments described in Section 7.5 (subject to the final conclusion of the process described in Sections 7.6 and 7.7), Defendant shall send to the Administrator adequate funds for deposit into an account established by the Administrator to pay Claim Settlement Payments. In no event shall Defendant be liable for paying Claim Settlement Payments before that time. Prior to transferring funds to the Administrator, Defendant is not required to maintain any funds or payments made under this Agreement in a segregated account, and any interest or other income earned on funds prior to the distributions provided hereunder remains the property of Defendant.

**7.9     Checks.** Within ten (10) days of receiving the funds referenced in Section 7.8, the Administrator shall mail to each Claimant, as determined above, a Settlement Check for the Claim Settlement Payment to which each Claimant is entitled. The Administrator shall use addresses used to send the Class Notice, subject to any updates received from Claimants on Claim Forms or otherwise.

7.10 Settlement Checks shall be issued in the names of the policyholders as reflected in Defendant's records for the claim in question and any mortgagee of which Defendant is aware and may be obligated to include, and (except as set forth below for replacement or re-issued Settlement Checks) shall state on their face that they expire and are void 135 days from the date of issuance, after which the Administrator may close the account and treat the Settlement Check in accordance with the escheatment procedures discussed below. Prior to the expiration date stated on the face of the original Settlement Check, Claimants may request that a replacement check be issued by the Administrator if they lose or misplace their original check. Prior to the expiration date stated on the face of the original Settlement Check, Claimants may also request that a new Settlement Check be issued with updated payee information, in which case the following procedures shall apply:

- 7.10.1 If a Claimant contacts the Administrator to request the removal or change of a mortgagee or lien holder from a Settlement Check, the Administrator shall instruct the Claimant to contact the mortgagee or lien holder listed on the Settlement Check (or, as applicable, the successor mortgagee or lien holder) and obtain an appropriate endorsement on the Settlement Check. If the Claimant has attempted to contact the mortgagee or lien holder listed on the Settlement Check (or, as applicable, the successor mortgagee or lien holder) but has been unable to obtain an appropriate endorsement on the Settlement Check, the Administrator will promptly notify State Farm, including by providing the State Farm insurance claim number associated with the Settlement Check. After receiving such notification, State Farm will follow its standard business practices to determine whether the mortgagee or lien holder can be removed or changed. State Farm will endeavor to make this determination and advise the Administrator accordingly within sixty (60) days after the Administrator notifies State Farm of the request. If the Claimant's request is not resolved through that process, the Administrator will proceed to Paragraph 7.10.2.
- 7.10.2 To the extent the request for updated payee information is not resolved through the process contained in Paragraph 7.10.1, the Administrator shall send a first letter to the Claimant asking the Claimant to (i) submit documentation necessary to support the proposed update and (ii) return the original Settlement Check, both postmarked within sixty (60) days of the date shown on the first letter. The first letter will provide an Administrator telephone number for the Claimant to call for assistance. If the Claimant complies with subparts (i) and (ii) by submitting sufficient documentation

and returning the original Settlement Check, then the Administrator shall send a replacement Settlement Check to the Claimant with the updated payee information.

- 7.10.3 In the event the Claimant fails to submit sufficient documentation within sixty (60) days following the first letter, the Administrator shall treat the request for a re-issued Settlement Check as initially deficient and shall send a second letter to the Claimant detailing the nature of the deficiency. The second letter will provide an Administrator telephone number for the Claimant to call for assistance. A Claimant that receives a second letter may submit additional documentation to support the proposed update or other response to cure the deficiency, postmarked within sixty (60) days of the date shown on the second letter. If the Claimant does not timely respond to the second letter in a manner that cures the deficiency, the Administrator shall treat the request for a re-issued Settlement Check as deficient and shall not process any further re-issue requests from the Claimant. If such a Claimant has returned the original Settlement Check, the Administrator shall send a replacement Settlement Check to the Claimant with payee information matching the payee information on the original Settlement Check.
- 7.10.4 In the event the Claimant submits sufficient documentation within the requisite time period but fails to return the original Settlement Check within the requisite time period, the Administrator shall send a third letter to the Claimant asking the Claimant again to return the original Settlement Check, postmarked within sixty (60) days of the date shown on the follow-up letter. If the Claimant does not return the original Settlement Check within this final time period, the Administrator shall treat the request for a re-issued Settlement Check as deficient and shall not process any further re-issue requests from the Claimant.

Replacement or re-issued Settlement Checks shall state on their face that they expire and are void 60 days from the date of issuance. In the event any Settlement Check issued pursuant to this Agreement either (i) is returned and the payee cannot be located or (ii) expires or becomes void, then the Administrator or Defendant will follow its standard escheatment procedures for the state of Missouri or other applicable jurisdiction involved, if any.

**7.11 Neutral Evaluator.** The Administrator shall send to Claimants whose Claim Form was denied payment for any reason other than untimeliness a notice explaining why. Those notices, as well as any letters sent to Claimants with a Claim Settlement Payment, shall explain

that Claimants may dispute the amount of the Claim Settlement Payment or denial of their Claim Form by requesting in writing final and binding neutral resolution by the Neutral Evaluator. In order to dispute a Claim Settlement Payment or denial of a Claim Form and invoke the neutral resolution process, a Claimant must return any uncashed Settlement Check to the Administrator and explain in writing the reason for their dispute, as well as provide any supporting documentation, postmarked within thirty (30) days of the date shown on the notice or letter sent by the Administrator. If the Settlement Check is not timely returned, or if the Settlement Check is negotiated prior to final and binding neutral resolution by the Neutral Evaluator, then the dispute resolution process will be automatically terminated and the Claimant will not be entitled to any further Claim Settlement Payment or other payment.

7.12 The Administrator shall promptly provide Defendant's Counsel and Class Counsel with notice of any disputes received from Claimants under Section 7.11 after the deadline for such disputes has passed. Upon receipt of such notice, Defendant may reevaluate the claim and/or supply any additional supporting documentation or information to the Administrator within thirty (30) days. The Administrator shall then promptly provide all materials received from the Claimant, Class Counsel and Defendant to the Neutral Evaluator, unless Defendant has agreed to pay the claim in the manner disputed by the Claimant, in which event the Administrator shall promptly issue a Settlement Check to the Claimant for the agreed Claim Settlement Payment.

7.13 The Neutral Evaluator shall issue a decision based solely on the written submissions without independent research or evidence, and subject to the express terms and conditions of this Agreement, and shall do so, to the extent possible, within thirty (30) days of receiving materials from the Administrator. If applicable, the Administrator shall promptly issue a Settlement Check to the Claimant for a Claim Settlement Payment in accord with the Neutral Evaluator's decision.

The Neutral Evaluator shall have exclusive jurisdiction to resolve any dispute as to final determination of a Claim Settlement Payment, and the decision of the Neutral Evaluator shall be final and binding on the Parties and Claimants and is not subject to appeal or review by the Court. The Neutral Evaluator shall not have authority to award a Claimant any amount not in accordance with the formulas described in Section 7, or authority to award any other damages, costs, attorneys' fees, or other relief. The Neutral Evaluator shall also be bound by the provisions of Section 16 concerning confidential information.

**7.14 Final Accounting.** Within thirty (30) days of completing the escheatment procedures pursuant to Section 7.10 and the resolution of all Claim Forms submitted in accordance with the terms herein, including claims disputed by Claimants, the Administrator shall provide a final accounting to the Parties of all payments under the Settlement and return to Defendant any funds as may remain after escheatment.

**7.15 Information Available to Class Counsel.** Class Counsel shall have the right to interact directly with the Administrator regarding the administration of the Settlement provided that Defendant is notified of all such interactions and copied on all written interactions.

## **8. COVENANTS, REPRESENTATIONS AND WARRANTIES**

**8.1 Covenants Not to Sue.** Plaintiff and Settlement Class Members covenant and agree:

- 8.1.1 not to file, commence, prosecute, maintain, intervene in, or participate in (as parties, class members or otherwise) any action in any jurisdiction based on or relating to any of the Released Claims, or the facts and circumstances relating thereto, against any of the Released Persons;
- 8.1.2 not to organize or solicit the participation of Settlement Class Members in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action in any jurisdiction) based on or relating to any of the Released Claims, or the facts and circumstances relating thereto, against any of the Released Persons; and

8.1.3 that the foregoing covenants and this Agreement shall be a complete defense to any of the Released Claims asserted against any of the Released Persons.

8.2 Plaintiff represents and warrants that he is the sole and exclusive owner of his Released Claims and that he has not assigned or otherwise transferred any interest in any Released Claims against any Released Persons (other than previously disclosed mortgagees or bankruptcy trustees), and further covenants that he will not assign or otherwise transfer any interest in his Released Claims.

8.3 Plaintiff represents and warrants that, after entry of Final Order and Judgment, he will have no surviving claim or cause of action against any of the Released Persons with respect to any of the Released Claims.

8.4 Plaintiff and Class Counsel represent and warrant that there are no outstanding liens or claims against the Action, and acknowledge that Plaintiff and Class Counsel will be solely responsible for satisfying any liens or claims asserted against the Action that Plaintiff and Class Counsel may have allegedly approved or incurred.

8.5 The Parties, and each of them on his or its own behalf only, represent and warrant that they are voluntarily entering into the Agreement as a result of arms-length negotiations among their counsel and through the mediators identified herein; that in executing the Agreement, they are relying solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof; and that, except as provided herein, they have not been influenced to any extent whatsoever in executing the Agreement by representations, statements, or omissions pertaining to any of the foregoing matters by any Party or by any person representing any Party. Each of the Parties assumes the risk of mistake as to facts or law.

## 9. RELEASES

9.1 **Released Claims.** Upon the Effective Date, Releasing Persons, including Plaintiff and each Settlement Class Member, shall, by operation of the Final Order and Judgment, be deemed to have fully, conclusively, irrevocably, forever, and finally released, relinquished, and discharged Defendant and all other Released Persons from all Released Claims and agree not to institute, maintain, or assert any Released Claims against the Released Persons.

9.2 **Unknown Claims.** Plaintiff, for himself and on behalf of Settlement Class Members, explicitly acknowledges that unknown claims within the scope of Released Claims could possibly exist and that any present losses may have been underestimated in amount or severity. Plaintiff or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the Released Claims, or the law applicable to such claims may change. Nonetheless, Plaintiff and each Settlement Class Member expressly agree that he/she/they shall have irrevocably waived and fully, finally and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent, claims with respect to all Released Claims, including unknown claims. Further, Plaintiff and Settlement Class Members agree and acknowledge that they are bound by this Agreement, including by the Releases, and that all of their claims in the Action asserted against Defendant shall be dismissed with prejudice and released, without regard to subsequent discovery of different or additional facts or subsequent changes in the law, and regardless of whether unknown losses or claims exist or whether present losses may have been underestimated in amount or severity, and even if they never received actual notice of the Settlement or received a Claim Settlement Payment. The Parties

acknowledge that the foregoing Releases were bargained for and are a material element of the Agreement.

**9.3 Effective Date.** Released Claims do not include claims arising after the Effective Date.

**9.4 Excluded Claims.** This Agreement and the releases herein do not affect the rights of potential Settlement Class Members who timely and properly submit a request for exclusion from the Settlement in accordance with this Agreement.

**9.5 Continuing Jurisdiction.** The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of the Court. The Court shall retain continuing jurisdiction to protect, enforce, preserve, and implement the Agreement, including, but not limited to, enforcement of the releases contained in the Agreement, and to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Agreement and Final Order and Judgment.

## **10. REQUESTS FOR EXCLUSION**

**10.1** A Person within the Settlement Class who wishes to opt out of the Settlement Class must do so in writing. Any such Person who does not opt out of the Settlement Class in the manner described herein shall be bound by all proceedings, orders, and judgments.

**10.2** To opt out, a Person within the Settlement Class must complete and send to the Administrator, at the address listed in the Class Notice and on the Settlement Website, a request for exclusion postmarked no later than the opt-out deadline of thirty (30) days before the Final Approval Hearing, as identified in the Preliminary Approval Order. The request for exclusion must: (a) identify the case name; (b) identify the name and address of the Settlement Class Member; (c) be personally signed by the Settlement Class Member requesting exclusion; and (d)

state a desire to be excluded from the Settlement Class, such as "I hereby request to be excluded from the proposed Settlement Class in the Pregon Class Action Settlement." Persons must request exclusion individually, and mass or class opt outs are prohibited.

10.3 A Person within the Settlement Class who desires to opt out must take timely affirmative written action pursuant to Section 10.2, even if the Person desiring to opt out (a) files or has filed a separate action against any of the Released Persons, or (b) is or becomes a putative or actual class member in any other class action filed against any of the Released Persons. The Administrator shall provide Class Counsel and Defendant's Counsel a list of all timely requests for exclusion not less than ten (10) days before the Final Approval Hearing.

10.4 Any Person within the Settlement Class who timely and properly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief under or be affected by the Agreement; (c) gain any rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Settlement.

## **11. OBJECTIONS**

11.1 **Overview.** Any Settlement Class Member who does not submit a valid request for exclusion may object to the Settlement by complying with the procedures and deadlines in this Agreement. The Class Notice and Settlement Website will identify the requirements to assert a valid written objection.

11.2 **Filing.** Any Settlement Class Member who wishes to object to the Settlement must do so in a writing, filed with the Clerk of Court, and a copy mailed to the Administrator at the address identified in the Class Notice and on the Settlement Website, by no later than the objection deadline of thirty (30) days before the Final Approval Hearing, as identified in the Preliminary Approval Order. To be valid, a written objection must include: (a) the case name and number;

(b) the name and address of the objecting Settlement Class Member and of counsel, if represented; and (c) the basis for the objection.

**11.3 Waiver.** Any Settlement Class Member who fails to object to the Settlement in the manner described in this Section shall be deemed to have waived any objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

**11.4 Appearance.** Subject to approval of the Court, any Settlement Class Member who files and serves a timely written objection in accordance with this Section may appear, in person or by counsel, at the Final Approval Hearing, whether it is held in the courtroom or via telephone or video conference, to show cause why the Proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Settlement Class Member: (a) files with the Clerk of Court a notice of intention to appear at the Final Approval Hearing by the objection deadline; and (b) mails copies of the notice to Class Counsel and Defendant's Counsel identified in Section 2 of this Agreement, postmarked by the objection deadline. The notice must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not file a notice of intention to appear in accordance with the Agreement shall not be entitled to appear at the Final Approval Hearing.

**11.5 Discovery.** The Parties will have the same right to seek discovery from any objecting Settlement Class Member as they would if the objector were a party in the Action, including the right to take the objector's deposition. Such discovery will be conducted on an expedited basis, and the objecting Settlement Class Member will be required to respond and appear

for deposition within 14 days, if a deposition is noticed. Settlement Class Members who fail to timely file and serve written objections, or fail to respond to written discovery or make themselves available for deposition, shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise).

## **12. FINAL JUDGMENT**

12.1 Not less than ten (10) days before the Final Approval Hearing, the Administrator will provide Class Counsel and Defendant's Counsel with an affidavit or declaration attesting that Class Notice has been disseminated and published in accordance with the Preliminary Approval Order and this Agreement, confirming the timely mailing of notices concerning the Settlement, and identifying Persons who submitted timely and valid requests for exclusion. Class Counsel shall file the affidavit(s) or declaration(s) with the Court before the Final Approval Hearing.

12.2 Prior to the Final Approval Hearing, Class Counsel will file a motion seeking the Court's final approval of the Settlement and entry of Final Order and Judgment, consistent with this Agreement and Exhibit 5, and without material change, which provides for:

- 12.2.1 Approving the Settlement as described in this Agreement and directing the Parties and their counsel to comply with and consummate the terms of this Agreement;
- 12.2.2 Confirming certification of the Settlement Class for settlement purposes only;
- 12.2.3 Finding that Class Counsel and Plaintiff have adequately represented and protected the interests of the Settlement Class;
- 12.2.4 Finding that the terms of this Agreement are fair, reasonable, and adequate and in the best interests of the Settlement Class;
- 12.2.5 Providing that each Settlement Class Member shall be bound by the provisions of this Agreement and the Final Order and Judgment, including the Releases set forth in Section 9;
- 12.2.6 Finding that the Class Notice, the establishment of an automated toll-free interactive voice response phone system, the Settlement Website, and the

Postcard Notice were reasonable, the best notice practicable under the circumstances, and satisfy the requirements of Missouri Supreme Court Rule 52.08, due process under the Missouri and United States Constitutions, and the requirements of any other applicable rules or law;

- 12.2.7 Dismissing all claims in the Action by Plaintiff and Settlement Class Members against Defendant on the merits and with prejudice, and entering Final Order and Judgment thereon;
  - 12.2.8 In order to protect the continuing jurisdiction of the Court and to effectuate this Agreement and the Final Order and Judgment, permanently enjoining Settlement Class Members and anyone acting or purporting to act on their behalf, from filing, commencing, prosecuting, intervening in, maintaining, or participating in (as parties, class members, or otherwise) any new or existing action or proceeding before any court or tribunal regarding any Released Claims against any Released Persons, and from organizing any Settlement Class Members into a separate class for purposes of pursuing as a purported class action any lawsuit regarding any Released Claims against any Released Persons, and providing that any Person in violation of the injunction may be subject to sanctions, including payment of reasonable attorneys' fees incurred in seeking enforcement of the injunction;
  - 12.2.9 Approving payment of attorneys' fees and expenses to Class Counsel in amounts not exceeding the maximum amounts identified in Section 13 of this Agreement;
  - 12.2.10 Approving payment of a service award to Plaintiff in an amount not exceeding the maximum amount identified in Section 13 of this Agreement;
  - 12.2.11 Reserving continuing jurisdiction of the Court over all matters relating to the administration, consummation, enforcement, construction and interpretation of the Settlement, this Agreement, and the Final Order and Judgment;
  - 12.2.12 Holding that there is no just reason for delay and that the Final Order and Judgment shall be final and appealable, irrespective of the Court's continuing jurisdiction over administration of the Settlement; and
  - 12.2.13 Such additional provisions as provided in Exhibit 5, as necessary to implement this Agreement and the Settlement.
- 12.3 **Effect of Final Judgment.** Upon entry of Final Order and Judgment:
- 12.3.1 the Agreement shall be the exclusive remedy for all Settlement Class Members for the Released Claims, except those who have properly

submitted a request for exclusion (opted out) in accordance with Section 10; and

12.3.2 except as set forth in this Agreement, the Released Persons shall not be subject to liability or expense for any of the Released Claims to any Settlement Class Member(s).

12.4 Except for Persons who timely and properly send a request for exclusion in accordance with Section 10, all Settlement Class Members will be deemed, upon entry of the Final Order and Judgment, to have received full and final redress and relief for the Release in Section 9, including but not limited to any refund, reimbursement, restitution, or damages for the conduct covered by the Release, and will be bound by the terms of this Settlement regardless of whether they receive Claim Settlement Payments or any other relief.

12.5 Defendant will not oppose final approval of the Proposed Settlement consistent with the proposed Final Order and Judgment attached as Exhibit 5, and may, in its sole discretion, file a memorandum in support of final approval of the Proposed Settlement.

12.6 If final approval of the Settlement is not granted, or this Agreement is terminated or rendered void, the certification of the Settlement Class shall be automatically vacated and shall not constitute evidence or a binding determination that the requirements for certification of a class for trial purposes in this or any other action can be or have been satisfied. In that event, Defendant reserves and shall have all rights to challenge certification of a class action for trial purposes in the Action or in any other action, on all available grounds as if no Settlement Class had been certified.

12.7 Within ten (10) days of the Effective Date, Plaintiff and members of the Settlement Class shall dismiss with prejudice all Released Claims asserted in any actions or proceedings (other than this Action) that have been brought by or involve any Settlement Class Member in any jurisdiction. This Section in no way limits Settlement Class Members from proceeding with claims that are not Released Claims as defined herein.

### **13. ATTORNEYS' FEES, COSTS, AND EXPENSES, AND SERVICE AWARD**

13.1 The total of all applications for attorneys' fees, costs and expenses by Class Counsel and any other Person on behalf of Settlement Class Members shall not exceed \$5,125,000. Class Counsel agree that the amount of such fees and expenses awarded shall fully compensate them for all work, costs, and expenses in this Action for the claims asserted before and after entry of Final Order and Judgment. Class Counsel agrees that they will not seek an award of attorneys' fees and expenses in this Action in excess of the foregoing total amount, and Defendant agrees not to oppose or otherwise object to an application by Class Counsel for an award of attorneys' fees and expenses in this Action that does not exceed the foregoing total amount.

13.2 The amount of any attorneys' fees, costs and expenses awarded by this Court will not reduce the award to any Settlement Class Member under this Settlement.

13.3 Within fifteen (15) days of the Effective Date, Defendant shall pay to the Administrator funds for the amount of attorneys' fees, costs, and expenses awarded by the Court (not to exceed the amount identified in Section 13.1), and the Administrator shall pay such funds by wire transfer or electronic funds transfer to an account as directed by Class Counsel Erik Peterson, who shall hold and distribute it to all Class Counsel.

13.4 Except as expressly provided in this Agreement, Defendant is not liable or responsible for any other expenses, costs, damages, or fees incurred by any other Person, including, but not limited to, Plaintiff, any Settlement Class Member, any Person who objects to the Settlement or excludes themselves from the Settlement Class, or any of their attorneys, experts, advisors, investigators, agents, or representatives. Any award of attorneys' fees and expenses by the Court, as provided in this Section 13, will be in complete satisfaction of any and all claims for attorneys' fees and expenses that Plaintiff, Settlement Class Members, Class Counsel, or any other

Person or their counsel has or may have against Defendant arising out of or in connection with this Action, the Released Claims, or this Settlement.

13.5 Plaintiff, the Settlement Class, and Class Counsel hereby waive, discharge, and release Defendant from any and all other claims for attorneys' fees, by lien, statute, or otherwise, for legal services in connection with this Action. Defendant shall not be responsible for and shall have no liability whatsoever with respect to the allocation, distribution, or apportionment of any award of attorneys' fees and expenses among Class Counsel or any other Person who may assert a claim thereto. Once payment is made pursuant to Section 13.3 above, Defendant will not be subject to any claims for additional payments to Class Counsel or any attorney who is or was a member of, partner of, or otherwise associated with any of the firms representing Plaintiff, the Settlement Class, or any Settlement Class Member. Class Counsel shall defend, hold harmless, and indemnify Defendant and Defendant's Counsel from and against any claims, damages, liability, causes of action, liens, and expenses, including reasonable attorneys' fees and expenses, resulting from any action or proceeding involving the payment or apportionment of the award of attorneys' fees and expenses in this Action, to or among Plaintiff, Class Counsel, or any attorney or firm that alleges to have provided services to Plaintiff or any Settlement Class Member.

13.6 In addition to the Claim Settlement Payments that may otherwise be due, Defendant agrees to pay Plaintiff Michael Pregon a service award as determined by the Court, not to exceed \$7,500, by a check or electronic funds transfer delivered to Class Counsel within fifteen (15) days of the Effective Date. Plaintiff shall provide Defendant or the Administrator with a completed Form W-9 within five (5) days of the entry of Final Order and Judgment.

13.7 The amount of any service award awarded by this Court will not reduce the award to any Settlement Class Member under this Settlement.

## 14. TERMINATION OF RIGHTS

14.1 If any of the following events occurs, any Party shall have the right, exercisable in their absolute discretion, in good faith, to terminate this Agreement and the Settlement by delivering written notice of such election to Class Counsel/Defendant's Counsel within twenty (20) days of receiving notice that the event has occurred:

- 14.1.1 The Court, or any appellate court, rejects, denies approval, disapproves, or modifies the Agreement in a manner that the terminating party, in its sole judgment and discretion, in good faith, believes to be material;
- 14.1.2 The Court, or any appellate court, does not completely and unconditionally enter or affirm any portion of the Agreement in a manner that the terminating party, in its sole judgment and discretion, in good faith, believes to be material;
- 14.1.3 Any regulatory agency objects to or challenges any of the terms of the Agreement in a way that Defendant, in its sole judgment and discretion, in good faith, believes to be materially adverse to Defendant's interests;
- 14.1.4 The number of Persons who exclude themselves from the Settlement Class exceeds 500;
- 14.1.5 Plaintiff opts out of the Settlement Class or objects to the Settlement or this Agreement;
- 14.1.6 The total of all awards of attorneys' fees, costs and expenses in this Action (inclusive of fees, costs and expenses incurred by Class Counsel and any other Person on behalf of the Settlement Class or any other Person) exceeds the maximum amount set forth in Section 13.1;
- 14.1.7 Any Person is allowed to intervene in this Action to assert claims against Defendant based on Structural Loss claims in states other than Missouri; or
- 14.1.8 A financial obligation is imposed upon Defendant in addition to or greater than those expressly set forth in this Agreement.

14.2 For the avoidance of doubt, Plaintiff may not terminate this Agreement in the event that the Court finally approves the Settlement but denies the request for a service award or reduces the amount of the service award below the amount sought by Plaintiff.

14.3 If an option to terminate this Agreement and the Settlement arises, no Party is required to exercise the option to terminate.

14.4 If the Agreement fails for any reason, or if this Agreement is terminated by a Party pursuant to Section 14.1:

14.4.1 This Agreement and the Proposed Settlement shall have no further force or effect, and all proceedings that have occurred with regard to this Agreement and the Proposed Settlement shall be without prejudice to the rights and contentions of the Parties and any Settlement Class Members;

14.4.2 This Agreement and all negotiations, statements and proceedings relating to them shall be without prejudice to the rights of the Parties, each of whom shall be restored to their respective positions existing immediately before the execution of this Agreement;

14.4.3 This Agreement, and the fact of this Agreement having been made, shall not be admissible or entered into evidence for any purpose whatsoever and shall not be subject to discovery;

14.4.4 Any judgment or order entered in the Action relating to this Agreement or the Settlement, including, without limitation, any order certifying the Settlement Class, shall be automatically vacated *nunc pro tunc*, without the requirement of any motion or further order of the Court, and will be without any force or effect;

14.4.5 The Parties shall not thereafter argue or raise a claim or defense, including, but not limited to, waiver, estoppel, or any other similar or related theories, based on the Agreement (including without limitation the provisions regarding class certification) and related pleadings and orders, or the fact of this Agreement having been made, or that any settlement negotiations preclude Defendant from opposing class certification or the claims in the Action or any other proceeding.

14.5 Section 14.4 shall survive the termination of this Agreement.

## **15. DENIAL OF LIABILITY**

15.1 Defendant enters into this Agreement without admitting, conceding or acknowledging any fault, liability, or wrongdoing of any kind. This Agreement and the negotiations or proceedings connected with it shall not be construed as an admission or concession by Defendant (i) of the truth of any of the allegations in the Action; (ii) of any liability, fault, or

wrongdoing of any kind on the part of Defendant; or (iii) that this Action may be properly maintained as a litigation class action. In the event the Effective Date does not occur, or this Agreement is terminated, or the Proposed Settlement is not finally approved for any reason, or the final approval of the Proposed Settlement is reversed upon appeal, Defendant shall retain the right to object to the maintenance of the Action or any other proceeding as a class action and to contest the Action or any other case on any ground.

15.2 Neither this Agreement, nor the negotiations leading to the Settlement, nor the administration of the Settlement, nor any pleadings, motions, or other document related in any way to the Agreement shall be offered into evidence in the Action or in any other case or proceeding as proof that Defendant has admitted or conceded (i) the truth of any of the allegations in the Action; (ii) any liability, fault, or wrongdoing of any kind on the part of Defendant; or (iii) that this Action may be properly maintained as a litigation class action. Class Counsel and Defendant dispute whether this Agreement may be offered into evidence in a foreign court in support of a potential motion for certification of a different class action in another lawsuit, with State Farm contending that this Agreement cannot and should not be used for such purposes. The Parties and Class Counsel reserve all rights.

## **16. CONFIDENTIALITY AGREEMENT AND MEDIA INQUIRIES**

16.1 The following constitutes highly confidential and proprietary business information of Defendant (the “Confidential Information”): (a) the names, addresses, Policy numbers, and data concerning a Settlement Class Member or potential Settlement Class Member, compiled by Defendant or the Administrator in administering the Proposed Settlement; (b) claim files and documents and electronic data related to claims for each Settlement Class Member, utilized by Defendant or the Administrator in identifying potential Settlement Class Members and

administering the Settlement; and (c) documents and data produced by Defendant in the Action and identified as confidential pursuant to protective order(s) entered in the Action. Confidential Information shall not be publicly disclosed by Class Counsel or other attorneys for Plaintiff in this Action to any Persons other than those identified in protective order(s) entered in the Action or in this Agreement, and shall not be used other than in this Action in connection with the Settlement. It is not a violation of this Agreement for either of the Parties to provide the Court with information concerning Plaintiff's or any objector's individual claims, or to provide the Court with anonymous aggregate claims data values solely for purposes of seeking preliminary or final approval of the Agreement or attorneys' fees or expenses or service award.

16.2 No Persons other than Defendant's Counsel, Class Counsel, the Administrator, the Neutral Evaluator, and their respective employees and contractors shall be allowed access to any Confidential Information. Any Person to whom Confidential Information is disclosed or who has access to Confidential Information shall maintain it as confidential and shall not publicly disclose or release it to any Person not authorized by Defendant, this Agreement, the agreed protective order, or the Court, provided that nothing in this Agreement shall be construed to restrict or limit Defendant's use or disclosure of its own Confidential Information.

16.3 Within thirty (30) days of the Final Accounting described in Section 7.14, Class Counsel shall destroy or return to Defendant's Counsel all Confidential Information in their possession, custody, or control, and shall deliver a letter to counsel for Defendant confirming their undertaking and compliance with this Section. Further, the Parties agree that Confidential Information shall not be used by Class Counsel, or anyone employed with, retained by, or otherwise associated with Class Counsel, in any other litigation, current or future, unless independently obtained through discovery in such other litigation. This Section 16.3 in no way

prevents Class Counsel from retaining their work product created in this Action. Indeed, notwithstanding the above requirement to destroy or return all Confidential Information, those members of Class Counsel admitted to practice in Missouri may retain a complete set of documents necessary to securely store the client's file pursuant to Missouri Rule of Professional Conduct 4-1.22, provided that any such documents containing Confidential Information shall remain subject to any applicable protective orders and shall not be used in any other litigation, current or future, unless independently obtained through discovery in such other litigation.

16.4 The Parties further agree that they shall not affirmatively publish any release or statement to the media (or on the internet) concerning the Settlement of the Action prior to the Effective Date; provided, however, that after the Effective Date, any information published or released must be truthful and adhere strictly to information that appears as part of the public record related to the approval of the Settlement. If any media organization contacts any Party or its counsel seeking information or a statement regarding the Settlement, in the absence of a response agreed upon by all Parties, no information will be provided in response to such inquiries except to the extent such information appears as part of the public record related to the approval of the Settlement. The Parties further agree and intend that any discussions and negotiations related to, and any conduct performed by either Plaintiff or Defendant in furtherance of, this Settlement Agreement shall be expressly prohibited from public disclosure in any other case unless that information appears as part of the public record, and the Parties shall use all reasonable efforts to ensure that such information is not disclosed.

## **17. MISCELLANEOUS**

17.1 The Administrator, Class Counsel and Defendant shall retain copies or images of all returned Class Notices, Claim Forms, and correspondence relating thereto, for a period of one

(1) year after the Final Accounting described in Section 7.14. Thereafter the Administrator, Class Counsel and Defendant may destroy such documents they have in their possession. Nothing in this Agreement shall be construed to require the Administrator, Class Counsel or Defendant to retain records beyond their respective, discretionary, record retention policies.

17.2 The Parties and their counsel agree to undertake their best efforts and to cooperate with each other to effectuate this Agreement and the terms of the Proposed Settlement, including taking all steps and efforts contemplated by this Agreement, and any other reasonable steps and efforts that may become necessary by order of the Court or otherwise. The Parties further agree to cooperate in respect to reasonable, agreed extensions to the timetable hereunder, subject to such Court approval as may be required.

17.4 All terms of this Agreement are contractual and not mere recitals and shall be construed as if drafted by all Parties hereto. The terms of this Agreement are and shall be binding upon each of the Parties hereto, upon each of their agents, attorneys, employees, successors, and assigns, and upon all other Persons claiming any interest in the subject matter hereof through any of the Parties hereto, including any Settlement Class Member. Provided, however, that except as expressly provided in this Agreement, this Agreement is not intended to and does not confer upon any other Person any rights or remedies.

17.5 This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties, and any amendments or modifications shall be presented to the Court for approval. Amendments and modifications may be made without additional notice to the potential Settlement Class Members unless such notice is required by the Court.

17.6 This Agreement shall be governed by the laws of the State of Missouri. The escheatment procedures governing unclaimed checks or checks not timely negotiated to Settlement

Class Members with Structural Loss claims in Missouri shall also be governed by Missouri law, unless the Administrator or Defendant determines that other state escheatment law applies to the unclaimed checks of Settlement Class Members now residing in other states.

17.7 The exhibits to this Agreement are integral parts of the Settlement and are hereby incorporated into and made a part of this Agreement.

17.8 To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Agreement.

17.9 Nothing contained in this Agreement or in any proceedings concerning the Settlement shall in any way affect Defendant's right to seek contribution, indemnity or any other relief from any Person not a party to the Action. All such rights and remedies of Defendant are specifically retained and preserved.

17.10 Unless otherwise noted, all references to "days" in this Agreement shall be to calendar days. In the event any date or deadline under this Agreement is a weekend or legal holiday, such date or deadline shall be on the first business day thereafter.

17.11 The waiver by any Party of any breach of this Agreement will not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

17.12 As used herein, the plural of any defined term includes the singular thereof, and the singular of any defined term includes the plural thereof, as the context may require.

17.13 This Agreement may be executed in counterparts, each of which shall constitute an original. This Agreement shall be deemed to have been executed upon the last date of execution by all the undersigned Parties or counsel.

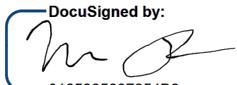
17.14 This Agreement may be executed by electronic or handwritten signatures.

17.15 The undersigned counsel for Defendant represent that they are fully authorized to execute and enter into the terms and conditions of this Agreement on behalf of Defendant.

**PLAINTIFF:**

Dated: 7/28/2025, 2025

By:

DocuSigned by:  
  
0165305837254B6...  
Michael Pregon

**CLASS COUNSEL:**

Dated: 7/31/2025, 2025

By:

Signed by:  
  
D00E1DE0EEBE479...

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Dated: July 31, 2025

By: 

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## EXHIBIT 1

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

**[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT, PRELIMINARILY CERTIFYING SETTLEMENT  
CLASS, DIRECTING CLASS NOTICE, AND SCHEDULING A FINAL APPROVAL  
HEARING**

Upon review and consideration of the Motion for Preliminary Approval of Class Action Settlement of Plaintiff Michael Pregon (the “Representative Plaintiff”), with Defendant State Farm Fire and Casualty Company (“Defendant” or “State Farm”), including the parties’ Stipulation and Settlement Agreement signed by the Representative Plaintiff and the Defendant in \_\_\_\_\_ 2025 (the “Agreement”) and all exhibits thereto, and State Farm’s Separate Submission in Support of Preliminary Approval, and having been fully advised of the particulars, it is HEREBY ORDERED, ADJUDGED and DECREED as follows:

1. **Settlement.** The Representative Plaintiff and the Defendant have negotiated a proposed settlement of the Representative Plaintiff's claims in this action, individually and on behalf of a class of policyholders of the Defendant, described below as the Settlement Class, to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve the Released Claims against the Released Persons as set forth in the Agreement. The Court has carefully reviewed the Agreement, as well as the files, records, and proceedings to date in this matter. The terms and conditions in the Agreement are incorporated here as though fully set forth in this Order.

and, unless otherwise indicated, capitalized terms in this Order shall have the same definitions that are in the Agreement.

2. **Preliminary Approval.** The Agreement entered into, by and among the Representative Plaintiff and the Defendant, was the result of informed, good-faith, arm's length negotiations between the Parties and is approved on a preliminary basis as fair, reasonable, adequate, and in the best interests of proposed Settlement Class Members, subject to further consideration at the Final Approval Hearing.

3. **Settlement Class Relief.** The proposed Claim Settlement Payments to Settlement Class Members and the settlement consideration, as identified in Sections 4, 6, and 7 of the Agreement, are approved on a preliminary basis as fair, reasonable, and adequate.

- a. "Settlement Class" means all 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.

- b. Excluded from the Settlement Class are:

All claims arising under State Farm policy forms (including endorsement form FE-3650) expressly permitting the "depreciation" of "labor" within the text of the policy form;

All claims in which State Farm's ACV Payments exhausted the applicable limits of insurance;

State Farm and its affiliates, officers, and directors;

Members of the judiciary and their staff to whom this Action was assigned; and

Class Counsel.

- c. "Class Period" means the period encompassing Settlement Class claims, beginning on June 5, 2012, and ending in approximately October 2017.

4. **Preliminary Certification of Settlement Class.** For settlement purposes only, the Court makes the following determinations as to certification of the Settlement Class:

- a. The Court preliminarily certifies the Settlement Class for purposes of settlement only, under Missouri Supreme Court Rule 52.08;
- b. The Settlement Class is so numerous that joinder of all members is impracticable;
- c. There are questions of law or fact common to the members of the Settlement Class, and the common questions predominate over any questions affecting only individual members;
- d. The claims of the Representative Plaintiff are typical of the claims or defenses of the members of the Settlement Class;
- e. The Representative Plaintiff is capable of fairly and adequately protecting the interests of the members of the Settlement Class, in connection with the Agreement; and
- f. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. **Designation of Class Representatives.** The Representative Plaintiff is designated as the representative of the Settlement Class for the purpose of seeking final approval of and administering the Settlement Agreement.

6. **Designation of Class Counsel.** David T. Butsch and Christopher E. Roberts of Butsch Roberts & Associates LLC, T. Joseph Snodgrass of Snodgrass Law LLC, Erik D. Peterson of Erik Peterson Law Office PSC, J. Brandon McWherter of McWherter Scott Bobbitt PLC, and Douglas Winters of The Winters Law Group, LLC are designated as Class Counsel for the Settlement Class for the sole purpose of the Settlement.

## 8. Class Notice.

8.1 The Court approves the methods of providing notice to potential Settlement Class Members as described in the Agreement, including the Class Notice, attached as Exhibit 2 to the Agreement. The Court finds that notice as described in the Agreement is reasonably calculated, under all the circumstances, to apprise potential Settlement Class Members of the pendency of this Action, the terms of the Agreement, and their right to object to the Settlement or to exclude themselves from the Settlement Class. The Court further finds that the Class Notice, the Settlement Website, and the other forms of notice described in the Agreement are reasonable, constitute 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.

8.2 The Class Notice, in the form and content of Exhibit 2 to the Settlement Agreement, shall be mailed, by the Settlement Administrator, not less than seventy-five (75) days before the Final Approval Hearing regarding the Settlement, in the manner described in the Agreement.

8.3 No later than the mailing of the Class Notice, the Settlement Administrator shall establish a website containing copies of the Agreement and Exhibits, the Preliminary Approval Order, the Class Notice, Claim Form, Spanish translations of the Class Notice and Claim Form, and such other documents and information about the Settlement as Class Counsel and Defendant's Counsel agree upon. The Claim Form shall be available to download or print from the Settlement Website, and signed, scanned, completed copies of the Class Form may be uploaded to the Settlement Website. The Settlement Website shall have a Uniform Resource Locator which identifies the Settlement Website as [www.Pregon-v-StateFarm.com](http://www.Pregon-v-StateFarm.com), or such other URL as Class Counsel and Defendant's Counsel agree upon. The Settlement Website shall not include any advertising and shall not bear any logos or trademarks of the Defendant other than those appearing in the Agreement. The Settlement Website shall cease to operate, and the Administrator shall remove all information from the Settlement Website, no later than the Final Accounting as set forth in Section 7.14 of the Agreement. Ownership of the Settlement Website URL shall be transferred to the Defendant within ten (10) days of when operation of the Settlement Website ends.

8.4 No later than the mailing of the Class Notice, the Administrator shall establish a toll-free, interactive, voice response phone number, with script recordings of information about this Settlement, including information about the Claim Form, utilizing the relevant portions of the Class Notice and Claim Form. At the Defendant's option, the Administrator may also provide live operators during select times to answer certain basic questions about the Settlement. The Administrator shall send the Class Notice and Claim Form, or Spanish translations of both, upon request, to potential Settlement Class Members. The phone number shall remain open and accessible through the Claim Deadline and allow for Settlement Class Members to leave recorded messages. At Defendant's option, the phone number may be kept open and accessible after the Claim Deadline. Except for requests for the Class Notice or Claim Form, the Administrator will promptly advise Class Counsel of recorded messages left by Settlement Class Members concerning the Action and/or the Settlement, or direct any Settlement Class Members with questions that cannot be answered to Class Counsel, so that Class Counsel may timely and accurately respond to such inquiries.

8.5 Settlement Class Members may submit Claim Forms in the form attached to the Agreement, as Exhibit 3, requesting a Claim Settlement Payment in accordance with the terms of the Agreement. To be considered valid and timely, a Claim Form must be materially complete, signed by or on behalf of the Settlement Class Member, and either: (a) mailed to the Administrator's address, as specified in the Claim Form, and postmarked by \_\_\_\_\_ [30 days after Final Approval Hearing]; or (b) uploaded to the Settlement Website by \_\_\_\_\_ [same date] ("Claim Deadline"). Claim Forms may be submitted on behalf of deceased or incapacitated Settlement Class Members only by Legally Authorized Representatives, with written proof of authority.

8.6 No later than 45 days before the Claim Deadline, the Administrator shall mail a postcard reminder in the form attached to the Agreement as Exhibit 4 (the "Postcard Notice") with information regarding the Claim Deadline, the Settlement Website address,

and how to request a copy of the Claim Form. The Postcard Notice will be mailed to each potential Settlement Class Member who has not submitted a Claim Form and who has not timely and properly excluded themselves from the Settlement Class.

8.7 Class Counsel and Defendant's Counsel, as jointly agreed, along with the Administrator, are authorized, prior to mailing, to complete any omitted information and to make any non-substantive revisions to the Claim Form and Class Notice, as necessary, that do not materially reduce the rights of Settlement Class Members in order to fulfill the purposes of the Settlement. The font size, layout, and other presentation elements of the Claim Form and Class Notice may be adjusted to accommodate printing and mailing considerations.

9. **Settlement Administrator.** The Court approves and authorizes the Defendant to retain [REDACTED] as the Administrator, to implement the terms of the Agreement, and authorizes and directs the Administrator to (a) mail the Class Notice, the Claim Form, and the Postcard Notice; (b) establish the interactive, voice response phone line system; (c) establish the Settlement Website; (d) receive and process Claim Forms; and (e) carry out such other responsibilities as are provided for in the Agreement or as may be agreed to by Class Counsel and the Defendant, all according to and as provided in the Agreement.

10. **Exclusion from the Settlement Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must complete and send to the Administrator, at the address listed in the Class Notice and on the Settlement Website, a request for exclusion postmarked no later than [REDACTED], which is no less than thirty (30) days before the Final Approval Hearing.

10.1 To be valid, the request for exclusion must: (a) identify the case name; (b) identify the name and address of the Settlement Class Member; (c) be personally signed by the Settlement Class Member requesting exclusion; and (d) state a desire to be excluded from the Settlement Class, such as "I hereby request that I be excluded from the proposed Settlement Class in the Pregon Class Action Settlement." Except for deceased or incapacitated Settlement Class Members, for whom Legally Authorized Representatives may act with written evidence of authority, Settlement Class Members must request exclusion individually and not through another acting on their behalf, and mass or class opt outs are prohibited.

10.2 A Settlement Class Member who desires to opt out must take timely affirmative written action, pursuant to this Order and the Agreement, even if the Settlement Class Member desiring to opt out (a) files or has filed a separate action against any of the Released Persons, or (b) is or becomes a putative or actual class member in any other class action filed against any of the Released Persons. The Administrator shall provide Class Counsel and the Defendant's Counsel a list of all timely requests for exclusion not less than ten (10) days before the Final Approval Hearing.

10.3 Any Settlement Class Member who timely and properly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief under or be affected by the Agreement; (c) gain any rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Settlement.

10.4 Except for those who timely submit a valid request for exclusion from the Settlement Class, all Persons within the Settlement Class will upon the Effective Date be bound by the terms of the Agreement, including, but not limited to, the Releases in Section 9 of the Agreement.

10.5 If the proposed Settlement is finally approved, any Settlement Class Member who has not submitted a timely, written request for exclusion from the Settlement Class shall be bound by the Final Order and Judgment and all subsequent proceedings, orders, and judgments in this Action, even if he or she has pending, or subsequently initiates, litigation against the Defendant or any Released Persons relating to any of the Released Claims as defined in the Agreement.

**11. Objections and Appearances.** Any Settlement Class Member who does not submit a valid request for exclusion from the Settlement Class and who complies with the requirements of this Order and the Agreement may object to the proposed Settlement. Any Settlement Class Member who wishes to object to the Settlement must do so in a writing, filed with the Clerk of Court, and mailed to the Administrator at the address in the Class Notice and on the Settlement Website, by no later than \_\_\_\_\_ ("the Objection Deadline"), which is no less than thirty (30) days before the Final Approval Hearing. To be valid, a written objection must comply with the requirements set forth below and in the Agreement.

11.1 A valid written objection must include: (a) the case name and number; (b) the name and address of the objecting Settlement Class Member and of counsel, if represented; and (c) the basis for the objection. These requirements shall also be set forth in the Class Notice and on the Settlement Website.

11.2 Subject to approval of the Court, any Settlement Class Member who files and serves a timely written objection may appear, in person or by counsel, at the Final Approval Hearing to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Settlement Class Member: (a) files with the Clerk of Court, by the Objection Deadline, a notice of intention to appear at the Final Approval Hearing, and (b) mails copies of the notice to Class Counsel and Defendant's Counsel, at the addresses set forth in the Agreement, postmarked by the Objection Deadline. The notice must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not file a notice of intention to appear in accordance with the deadlines and other requirements of this Order and the Agreement shall not be entitled to appear at the Final Approval Hearing.

11.3 Any Settlement Class Member who fails to object to the Settlement in the manner described in this Order shall be deemed to have waived any objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

12. **Releases.** If the Settlement is finally approved, all Releasing Persons, including the Representative Plaintiff and each Settlement Class Member, shall, by operation of the Final Order and Judgment, be deemed to have fully, conclusively, irrevocably, forever, and finally released, relinquished, and discharged the Defendant, and all other Released Persons, from any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent, claims with respect to all Released Claims, including unknown claims as explained in the Settlement Agreement, that the Representative Plaintiff or Settlement Class Members have, or may have had, against any of the Released Persons that relate to, concern, arise from, or pertain in any way to Depreciation of any kind on insurance claims within the Class Period (including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, and/or withholding of Depreciation), whether known or unknown, and that were asserted or could have been asserted in the Action, to the full extent of res judicata protection.

12.1.1 "Released Persons" means, individually and collectively, (i) State Farm Fire and Casualty Company, and all of its past and present divisions, parent entities, associated entities, affiliates, partners, and subsidiaries; and (ii) all past and present officers, directors, shareholders, agents, attorneys, employees, stockholders, successors, assigns, independent contractors, and legal representatives of the entities set forth in (i). The Released Claims extend only to claims arising under insurance policies issued by the Defendant.

12.1.2 The Releases in Section 9 of the Agreement are not intended to prevent an individual Settlement Class Member from seeking and potentially recovering any RCBs that may still remain available under the terms of his or her Policy.

12.1.3 Additionally, Released Claims do not include any claim for enforcement of the Stipulation of Settlement and/or the Final Order and Judgment.

13. **Filings in Advance of Final Approval Hearing.** Not less than seven (7) days prior to the Final Approval Hearing, Class Counsel shall file with the Court a motion seeking the Court's final approval of the Settlement and Stipulation and entry of the Final Order and Judgment in the form and content attached to the Stipulation as Exhibit 5. State Farm, in its sole discretion, may also file a brief in support of final approval of the Stipulation and Settlement. Class Counsel shall file any motion concerning requests for attorneys' fees, costs, expenses and service award at the same time as Class Counsel files, or before Class Counsel files, the motion seeking final approval of the Settlement and Stipulation and entry of the Final Order and Judgment. Finally, at or before the Final Approval Hearing, Class Counsel shall file with the Court proof from the Administrator of the mailing of the Class Notice, the Claim Form, and the Postcard Notice, and identifying the number and names of Settlement Class Members who have timely excluded themselves from the Settlement Class (opted out) or objected to the Settlement.

14. **Preliminary Injunction.** In order to protect the continuing jurisdiction of the Court, and to effectuate this Order, the Agreement, and the Settlement, all Settlement Class Members who do not timely exclude themselves from the Settlement Class, and anyone acting or

purporting to act on their behalf, are preliminarily enjoined from directly or indirectly (a) filing, commencing, prosecuting, maintaining, intervening in, or participating in (as parties, class members or otherwise), any new or existing action or proceeding before any court or tribunal regarding any Released Claims against any of the Released Persons; and (b) organizing any Settlement Class Members into a separate class for purposes of pursuing, as a purported class action, any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a new or pending action) based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the Released Claims.

15. **Service of Papers.** Class Counsel and Defendant's Counsel shall promptly furnish to each other any objections or requests for exclusion that they receive and shall file such objections with the Court on or before the Final Approval Hearing unless such documents already appear on the Court's docket.

16. **Termination of Settlement.** This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (a) the proposed Settlement is not finally approved by the Court, or Final Order and Judgment is not entered or does not become final, or the Effective Date does not occur; or (b) the Settlement Agreement is terminated, pursuant to the terms of the Agreement, for any reason. In such event, and except as provided therein, the proposed Settlement and Agreement shall have no further force or effect, and all proceedings that have occurred, with regard to the Agreement and the Proposed Settlement, shall be without prejudice to the rights and contentions of the Parties and any Settlement Class Members; the preliminary certification of the Settlement Class for settlement purposes shall be automatically

vacated; all communications and documents related to the Settlement will be subject to Missouri Rules of Evidence and all other applicable settlement and negotiation privileges; this Order and other orders, entered by the Court pursuant to the Agreement, will be treated as vacated, *nunc pro tunc*; the Agreement and the Court's orders, including this Order, shall not be used or referred to for any purpose whatsoever; and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses with respect to class certification.

**17. Use of Order Following Termination of Settlement.** This Order shall be of no force and effect if the Settlement does not become final, and shall not be construed or used as an admission, concession, or declaration, by or against the Defendant, of any fault, wrongdoing, breach, or liability, or by or against the Representative Plaintiff or Settlement Class Members that their claims lack merit or that the relief requested in this Action is inappropriate, improper, or unavailable, or as a waiver by any Party of any defenses.

**18. Use of Order and Stipulation Generally.** This Order, the Stipulation, the negotiations of the Stipulation, the Settlement procedures, any act, statement, or document related in any way to the negotiation of the Stipulation or Settlement procedures, and any pleadings, documents, or actions related in any way to the Stipulation shall not be construed as an admission or concession by State Farm (a) of the truth of any of the allegations in this Action; (b) of any liability, fault, or wrongdoing of any kind on the part of State Farm in this Action; or (c) that this Action may be properly maintained as a litigation class action. Likewise, none of the materials referenced in this paragraph shall be offered or received in evidence in any action or proceeding in any court, administrative panel or proceeding, or other tribunal, as proof that State Farm has admitted or conceded points (a), (b), or (c) above. Class Counsel and Defendant dispute whether the Agreement may be offered into evidence in a foreign court in support of a potential motion for

certification of a different class action in another lawsuit, with State Farm contending that the Agreement cannot and should not be used for such purposes.

19. **Stay.** All proceedings in the Action (as defined in the Agreement), as to the claims of the Representative Plaintiff against the Defendant, are stayed, except as necessary to effectuate the terms of the Settlement.

20. **Necessary Steps.** The Court authorizes and directs the Parties to take all other necessary and appropriate steps to implement the Settlement as set forth in the Agreement.

21. **Extensions of Deadlines.** Upon a showing of good cause, the Court may extend any of the deadlines set forth in this Order without **MAILED** further notice to the Settlement Class. Any change to the Final Approval Hearing or the Claim Deadline will be posted on the Settlement Website.

So Ordered: \_\_\_\_\_  
Hon.

Date: \_\_\_\_\_

## EXHIBIT B

**Circuit Court for the Twenty-First Judicial Circuit, St. Louis County, Missouri**  
*Pregon v. State Farm Fire and Casualty Co.*, Case No. 24SL-CC03130

### **NOTICE OF CLASS ACTION SETTLEMENT**

**A court has authorized this notice.**

**This is not an advertisement or solicitation from a lawyer.**

**PLEASE READ THIS NOTICE IN ITS ENTIRETY**

**If your Missouri property was insured by State Farm Fire and Casualty Company (“State Farm”) and you made a claim for structural damage for a loss that occurred between June 5, 2012 and approximately October 2017, this class action settlement may affect your rights.**

- A proposed settlement has been reached in a class action about whether State Farm properly depreciated the estimated costs of the labor and other non-material costs needed to replace damaged structures when making actual cash value (“ACV”) payment(s) to Missouri policyholders under State Farm insurance policies.
- You may be eligible for a payment if you qualify and timely submit a valid claim form.
- Your legal rights are affected whether you act or don’t act. Please read this notice carefully. **There is a deadline to act.**

<b>YOUR LEGAL RIGHTS AND OPTIONS UNDER THIS SETTLEMENT:</b>	
SUBMIT A CLAIM FORM (Deadline: _____, 2025)	The only way to get a payment if you qualify.
ASK TO BE EXCLUDED (Deadline: _____, 2025)	You get no payment. This is the only option that allows you to ever be part of any other lawsuit against State Farm over the claims resolved by this settlement.
OBJECT (Deadline: _____, 2025)	Write to the Court about why you don’t agree with the settlement.
GO TO A HEARING (Deadline: _____, 2025)	Ask to speak in Court about the settlement.
DO NOTHING	You get no payment. You give up rights.

- The Court in charge of this case still has to decide whether to approve the settlement. If it does, and if any appeals are resolved in favor of the settlement, then money will be distributed to those who timely submit claims and qualify for payment. Please be patient.

Questions? Visit [www.Pregon-v-StateFarm.com](http://www.Pregon-v-StateFarm.com) or call toll-free at 1-\_\_\_\_ - \_\_\_\_ - \_\_\_\_  
(Para una notificación en Español, llamar o visitar el website.)

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## EXHIBIT B

### BASIC INFORMATION

#### 1. Why was this notice issued?

State Farm's records reflect that you submitted a claim to State Farm for a covered loss to a dwelling or other structure in Missouri under a State Farm structural damage insurance policy, based on a loss occurring between June 5, 2012 and approximately October 2017, for which you either (i) received an ACV payment on which depreciation may have been applied to estimated labor and other non-material costs, or (ii) did not receive a payment but did receive a State Farm estimate for the costs of the damage repair on which depreciation may have been applied to estimated labor and other non-material costs.

A Court authorized this notice because you have a right to know about a proposed settlement that has been reached in a lawsuit covering these claims. As part of the proposed settlement, the Court has allowed, or "certified," the case to proceed as a class action that may affect your rights. You should know that you have the right to submit a claim for payment as part of the settlement, and about your options regarding this settlement, before the Court decides whether to give "Final Approval" to the settlement. If the Court approves the parties' Class Action Stipulation of Settlement Agreement ("Settlement Agreement"), and if any appeals are resolved in favor of the settlement, then payments will be made to those who qualify and timely submit a valid Claim Form. This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who may be eligible for them, and how to get them. A Claim Form is attached to this notice. You can also print a Claim Form online at the settlement website.

The Circuit Court for the Twenty-First Judicial Circuit of St. Louis County, Missouri, is overseeing this class action. The case is called *Pregon v. State Farm Fire and Casualty Co.*, Case No. 24SL-CC03130. The person who sued is called the "Plaintiff," and the company Plaintiff sued is called the "Defendant."

#### 2. What is this lawsuit about?

The lawsuit claims that State Farm improperly deducted non-material depreciation when adjusting some structural loss insurance claims in Missouri.

State Farm has denied all allegations that it acted wrongfully or unlawfully. State Farm contends that policyholders received everything they were entitled to under their policies, including many through payments for replacement cost benefits.

#### 3. Why is this a class action?

In a class action, one or more persons or organizations called "Class Representatives" (in this case, Michael Pregon) sue on behalf of others who have similar claims. All of those included are a "class" or "class members." One court resolves the issues for all class members, except for those who exclude themselves from the class. Here, the Court has appointed the lawyers for the Class Representative (referred to as "Class Counsel," whose names and contact information are provided in response to Question 15) to represent the Settlement Class and has appointed the Plaintiff who filed the lawsuit to serve as Class Representative.

#### **4. Why is there a settlement?**

Instead of proceeding to a trial, both sides agreed to settle this case. That way, the parties avoid the cost of litigation, a trial, and, potentially, an appeal, and the people and organizations who qualify will get compensation. The Class Representative and his attorneys think the settlement is best for all Settlement Class Members. The settlement does not mean that State Farm did anything wrong. No trial has occurred, and the Court has not finally ruled on Plaintiff's claims or State Farm's defenses. State Farm denies all wrongdoing.

#### **WHO IS IN THE SETTLEMENT?**

To see if you are eligible for benefits from this settlement, you first must determine if you are a Settlement Class Member.

#### **5. How do I know if I am part of the settlement?**

If you received this Notice, then you have been identified as someone who may be a Settlement Class Member.

If you are uncertain about whether you are a Settlement Class Member after reviewing the information below, you may complete a Claim Form and your status as a potential Settlement Class Member will be determined for you.

The Settlement Class includes all policyholders (except for those listed in the Exclusions below) 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 actual cash value ("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.

The capitalized terms have the following meanings:

"Class Period" means the period encompassing Settlement Class claims, beginning on June 5, 2012, and ending in approximately October 2017.

"Structural Loss" means physical damage to a dwelling, business, or other structure located in the State of Missouri while covered by a structural damage insurance policy issued by Defendant.

"Covered Loss" means a first party insurance claim for a Structural Loss, as defined above, that occurred during the Class Period and that Defendant or a court of competent jurisdiction determined to be a covered loss.

"Non-Material Depreciation" means Depreciation applied to estimated repair line-item cost elements such as labor, equipment, market conditions, and removal costs, including, for example, Depreciation resulting from the use of the Xactimate® settings "Depreciate Non-Material" and/or "Depreciate Removal."

“General Contractor Overhead and Profit Depreciation” (or “GCOP Depreciation”) means Depreciation applied to estimated costs (if any) that State Farm has projected a general contractor may charge for coordinating repairs, specifically including Depreciation resulting from the use of the Xactimate® setting “Depreciate O&P.”

“Depreciation” means an estimated amount subtracted from the estimated replacement cost value when calculating the ACV of damaged property, reflecting the age, condition, wear and tear and/or obsolescence of the item(s) of structural damaged property.

#### **6. Are there exceptions to being included in the Settlement Class?**

Excluded from the Settlement Class are: (a) all claims arising under State Farm policy forms (including endorsement form FE-3650) expressly permitting the “depreciation” of “labor” within the text of the policy form; (b) all claims in which State Farm’s ACV Payments exhausted the applicable limits of insurance; (c) State Farm and its affiliates, officers and directors; (d) members of the judiciary and their staff to whom this action is assigned; and (e) Class Counsel (collectively, “Exclusions”).

#### **7. I’m still not sure whether I am a Settlement Class Member.**

If you are not sure whether you are included in the Settlement Class, you may timely submit a claim form to have State Farm determine if you are eligible to receive payment. There is no penalty for submitting a claim form, and submitting a claim form is the only way to have your claim reviewed and, if you are eligible, receive money from this settlement.

If you have further questions, you may call the following toll-free number 1-\*\*\*-\*\*\*-\*\*\* with questions or visit [www.Pregon-v-StateFarm.com](http://www.Pregon-v-StateFarm.com).

Please do not call State Farm or your State Farm agent to discuss this lawsuit. You may, however, continue to call State Farm or your State Farm agent regarding any other insurance matters.

### **THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY**

#### **8. How much will settlement payments be?**

Under the Settlement, State Farm has agreed to pay Settlement Class Members who fully complete a claim form and timely mail it to the proper address or upload it to the proper website, as follows:

- (a) The Claim Settlement Payments to Settlement Class Members who received an ACV Payment from which either estimated Non-Material Depreciation or estimated GCOP Depreciation was initially deducted and did not subsequently recover all available Depreciation through payments of replacement cost benefits (“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.

- (b) The Claim Settlement Payments to Settlement Class Members who received an ACV Payment from which either estimated Non-Material Depreciation 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.
- (c) 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.

The amount of these payments will vary based on the size of the claim and the amount of depreciation initially withheld.

You must submit a Claim Form in order for someone to determine whether you are eligible for settlement payment and, if so, the amount of your settlement payment. If you do not submit a Claim Form, you will not receive a settlement payment. For additional details on the payment terms, please see the Settlement Agreement, which is available at [www.Pregon-v-StateFarm.com](http://www.Pregon-v-StateFarm.com), or call toll free 1-\_\_\_\_\_.

## HOW TO GET A PAYMENT—SUBMITTING A CLAIM FORM

### 9. How can I get a payment?

To ask for a payment, you must complete and return a truthful and accurate Claim Form. **You must mail the completed Claim Form to the following address, postmarked no later than \_\_\_\_\_, \_\_\_\_:**

\_\_\_\_\_  
Settlement  
PO Box \_\_\_\_\_  
\_\_\_\_\_

You can also upload to the settlement website at [www.Pregon-v-StateFarm.com](http://www.Pregon-v-StateFarm.com) a signed, scanned copy of a completed claim form before midnight Central Time on \_\_\_\_\_, \_\_\_\_.

A copy of the Claim Form was mailed with this notice. You may obtain an additional blank Claim Form by downloading one from [www.Pregon-v-StateFarm.com](http://www.Pregon-v-StateFarm.com) or by calling the Administrator at \_\_\_\_\_. If you sign a Claim Form as the representative of a deceased or incapacitated Settlement Class Member, you must also submit written proof that you are the legally authorized representative of that Settlement Class Member.

## 10. When will I get my payment?

If the Court grants Final Approval of the settlement, and if any appeals are resolved in favor of the settlement, then payments will be mailed to eligible Settlement Class Members after the claims administration process is completed. This process can take time, so please be patient.

## 11. What am I giving up to get a payment or stay in the Settlement Class?

Unless you exclude yourself, you are staying in the Settlement Class, and that means you can't sue State Farm and the Released Persons over the claims settled in this case. It also means that all the Court's orders will apply to you and legally bind you.

If you submit a Claim Form, or if you do nothing and do not exclude yourself, you will agree to release all "Released Persons" of all "Released Claims." "Released Persons" and "Released Claims" are defined in the Settlement Agreement, which you can request by calling \_\_\_\_\_ or view at: [www.Pregon-v-StateFarm.com](http://www.Pregon-v-StateFarm.com).

### EXCLUDING YOURSELF FROM THE SETTLEMENT

If you want to keep the right to individually sue State Farm about the issues in this case, then you must take steps to get out of the settlement. This is called excluding yourself from—or "opting out" of—the Class. (If you do exclude yourself from the settlement, you may not submit a claim for potential payment from the settlement.)

## 12. How do I get out of the settlement?

To exclude yourself from the settlement, you must mail a letter saying that you want to be excluded from the *Pregon v. State Farm Fire and Casualty Co.*, Case No. 24SL-CC03130 settlement. Your letter must include your full name and address, and must be signed by you (not your attorney). You must also include a clear statement that you wish to be excluded from the Settlement Class. You must mail your request for exclusion, postmarked by \_\_\_\_\_ to:

\_\_\_\_\_  
Settlement  
PO Box \_\_\_\_\_  
\_\_\_\_\_

More instructions are in the Settlement Agreement, available at: [www.Pregon-v-StateFarm.com](http://www.Pregon-v-StateFarm.com). You cannot exclude yourself by phone, by email, or on the settlement website. The right to exclude yourself from the proposed settlement must be exercised individually, not as a member of a group and, except for a deceased or incapacitated Settlement Class Member, not by another person acting or purporting to act in a representative capacity. If you request exclusion on behalf of a deceased or incapacitated Settlement Class Member, you must also submit written proof that you are the legally authorized representative of that Settlement Class Member. There is a deadline to ask to be excluded. If you do not want to participate in the settlement, then your mailed exclusion request must be postmarked by [insert date], 2025.

### 13. If I don't exclude myself, can I sue State Farm for the same thing later?

No. Unless you exclude yourself, you give up any right to sue State Farm for the claims that this settlement resolves. You must exclude yourself from the Settlement Class to sue State Farm over the claims resolved by this settlement. Remember, the exclusion deadline is \_\_\_\_\_, 2025.

### 14. If I exclude myself, can I get a payment from this settlement?

No. If you exclude yourself, you should not submit a Claim Form to ask for payment as it will be rejected, and you will not receive a payment from this settlement.

## THE LAWYERS REPRESENTING YOU

### 15. Do I have a lawyer in this case?

The Court appointed the following law firms to represent you and other Settlement Class Members as Class Counsel:

David T. Butsch  
 Christopher E. Roberts  
 Butsch Roberts & Associates LLC  
 7777 Bonhomme Ave., Suite 1300  
 Clayton, MO 63105  
 Tel: (314) 863-5700  
[Butsch@ButschRoberts.com](mailto:Butsch@ButschRoberts.com)  
[Roberts@ButschRoberts.com](mailto:Roberts@ButschRoberts.com)

T. Joseph Snodgrass  
 Snodgrass Law LLC  
 100 S. Fifth St., Suite 800  
 Minneapolis, MN 55402  
 Tel: (612) 448-2600  
[jsnodgrass@snodgrass-law.com](mailto:jsnodgrass@snodgrass-law.com)

J. Brandon McWherter  
 McWherter Scott Bobbitt PLC  
 109 Westpark Drive, Suite 260  
 Brentwood, TN 37027  
 Tel: (615) 354-1144  
[brandon@msb.law](mailto:brandon@msb.law)

Erik D. Peterson  
 Erik Peterson Law Offices PSC  
 110 W. Vine Street, Suite 300  
 Lexington, KY 40507  
 Tel: (800) 614-1957  
[erik@eplo.law](mailto:erik@eplo.law)

Douglas J. Winters  
 The Winters Law Group, LLC  
 7700 Bonhomme Avenue, Suite 575  
 St. Louis, MO 63105  
 (314) 499-5200  
[dwinters@winterslg.com](mailto:dwinters@winterslg.com)

The Court determined that these attorneys are qualified to represent the interests of the Settlement Class in this lawsuit. More information about their firms, their practices, and their experience is available on the firm websites.

You do not have to pay Class Counsel. If you want to be represented by your own lawyer, and potentially have that lawyer appear in court for you in this case, you may hire one at your own expense.

## **16. How will the lawyers and Class Representatives be paid?**

If you choose to remain in this lawsuit, you will not be required to pay attorneys' fees or litigation expenses to Class Counsel out of your own pocket. As part of this settlement, Class Counsel will ask the Court for up to \$5,125,000 for attorneys' fees and reasonable litigation expenses, and will ask the Court to award Class Representative Michael Pregon \$7,500 for his efforts in representing the Settlement Class (called a service award). State Farm has agreed not to oppose the request for fees, expenses, and service award up to these amounts. The Court may award less than these amounts. State Farm will separately pay these fees, expenses, and service award that the Court orders.

These payments will not reduce the amount distributed to Settlement Class Members. State Farm will also separately pay the costs to administer the settlement.

## **OBJECTING TO THE SETTLEMENT**

If you do not exclude yourself from the settlement, you can tell the Court if you don't agree with the settlement or some part of it.

## **17. How do I tell the Court if I don't agree with the settlement?**

If you are a Settlement Class Member and don't want the Court to approve the settlement, you must file a written objection with the Court and send a copy to the Administrator by the deadline noted below. You must include: (i) the name of this case and case number (*Pregon v. State Farm Fire and Casualty Co.*, Case No. 24SL-CC03130), (ii) your full name, address, telephone number, signature, and the specific reasons why you object to the settlement, and (iii) whether you intend to appear at the Final Approval Hearing in person or through counsel. If you have a lawyer file an objection for you, he or she must follow all local rules and you must list the attorney's name, address, bar number, and telephone number in the written objection filed with the Court and mailed to the Administrator.

If you intend to appear at the Final Approval Hearing to object to the settlement, you must also: (i) provide the Court with a notice of intention to appear at the Final Approval Hearing by [insert date]; and (ii) mail copies of the notice to Class Counsel and State Farm's Counsel, postmarked by [insert date]. The notice must include a list of any witnesses you may call at the hearing, with each witness's address and a summary of the witness's testimony, and a description of any documents you may present to the Court at the hearing.

You or your lawyer may appear at the Final Approval Hearing if you have filed a written objection as provided above. (See the section on the "Court's Final Approval Hearing" below). The right to object to the proposed settlement must be exercised individually by an individual Settlement Class Member, not as a member of a group and, except in the case of a deceased or incapacitated Settlement Class Member, not by another person acting or purporting to act in a representative capacity. If you file an objection as the representative of a Settlement Class Member, you must also submit written proof that you are the legally authorized representative of that Settlement Class Member.

File the written objection with the Clerk of Court at the address below by [insert date]. Note: You may send it by mail, but it must be received and filed by the Clerk by [insert date].	And mail a copy of the objection to the Settlement Administrator at the following address so that it is postmarked by [insert date]:
<b>Court</b>  Clerk of Court [insert address]	<b>Administrator</b>  Settlement PO Box _____ _____

### **18. What's the difference between objecting and asking to be excluded?**

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class or the settlement. If you exclude yourself, you have no basis to object because the case no longer affects you. If you object, and the Court approves the settlement anyway, you will still be legally bound by the result.

### **THE COURT'S FINAL APPROVAL HEARING**

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

### **19. When and where will the Court decide whether to approve the settlement?**

The Court has scheduled a Final Approval Hearing at [insert time] \_\_.m., on [insert date], in the St. Louis County Circuit Court, Missouri, 105 South Central Avenue, Courtroom \_\_\_\_, Clayton, Missouri. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them at that time. The Court may listen to people who have asked to speak about their objection. The Court may also decide how much to award Class Counsel for fees and expenses for representing the Settlement Class and how much the service award should be for the Class Representative. At or after the Final Approval Hearing, the Court will decide whether to approve the settlement. It is not known how long this decision will take.

Check the settlement website to make sure the Final Approval Hearing hasn't been rescheduled, and to see whether the Court has scheduled the hearing to proceed by video conference or teleconference only, instead of in person.

### **20. Do I have to come to the hearing?**

No. You are not required to attend, and Class Counsel will answer any questions that the Court may have. If you wish to attend the Final Approval Hearing, you may come at your own expense. You may also pay your own lawyer to attend, but it's not necessary, unless you choose to have a lawyer appear on your behalf to object to the settlement.

**21. May I speak at the hearing?**

If you submitted a proper and timely written objection to the settlement, you or a lawyer acting on your behalf may speak at the Final Approval Hearing. You cannot speak at the Final Approval Hearing if you exclude yourself from the settlement.

**IF YOU DO NOTHING****22. What happens if I do nothing at all?**

If you do nothing, you'll get no payment from this settlement. But, unless you exclude yourself from the settlement, you won't be able to individually sue State Farm for the claims resolved in this case.

**GETTING MORE INFORMATION****23. How do I get more information about the settlement?**

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. If you have questions or if you want to request a copy of the Settlement Agreement, which provides more information, call 1-\_\_\_\_\_ or visit [www.Pregon-v-StateFarm.com](http://www.Pregon-v-StateFarm.com).

**PLEASE DO NOT CALL OR WRITE THE COURT, THE JUDGE OR THE JUDGE'S STAFF, OR STATE FARM OR STATE FARM'S COUNSEL FOR INFORMATION OR ADVICE ABOUT THIS SETTLEMENT.**

You may, however, continue to call State Farm or your State Farm agent regarding any other insurance matters.

## EXHIBIT 3

### CLASS ACTION SETTLEMENT CLAIM FORM

*Pregon v. State Farm Fire and Casualty Co.*, Case No. 24SL-CC03130  
Circuit Court for the Twenty-First Judicial Circuit of St. Louis County, Missouri

**THIS FORM MUST BE SIGNED AND RETURNED BY [DATE].  
SEE INSTRUCTIONS BELOW.**

Name: XXXXXXXXXX

Address: XXXXXXXXXX  
XXXXXXX  
XXXXXXX

**IMPORTANT: You are a potential “Settlement Class Member.” Only those persons who fall within the definition of “Settlement Class Member” (as explained in the Class Notice delivered with this Claim Form) are eligible for a settlement payment, and not all who receive the Class Notice are Settlement Class Members.**

**If you are a Settlement Class Member and fail to submit this Claim Form, you will receive nothing as part of this settlement but will still be bound by the settlement. If you are a Settlement Class Member and you submit this Claim Form in a timely and complete manner, then you may receive a check if the settlement is finally approved by the Court. There is no cost to you to submit a Claim Form, and there is no penalty if you submit a Claim Form and are later determined to not be a Settlement Class Member.**

The records of State Farm Fire and Casualty Company (“State Farm”) indicate that you might be a member of the Settlement Class in the case named *Pregon v. State Farm Fire and Casualty Co.*, Case No. 24SL-CC03130, Circuit Court for the Twenty-First Judicial Circuit of St. Louis County, Missouri, with respect to your insurance claim identified on the next page. However, information in State Farm’s records needs to be reviewed to determine whether you are in fact a member of the Settlement Class and, if so, how much money you may be entitled to receive if you submit a timely and complete Claim Form and the settlement is approved by the Court.

Please read the accompanying Class Notice before you complete this Claim Form. To participate in this Settlement, your Claim Form must be: (1) completed to the best of your ability; (2) signed; and (3) either (i) mailed to the Settlement Administrator and postmarked by [DATE], OR (ii) scanned or photographed and uploaded at [www.Pregon-v-StateFarm.com](http://www.Pregon-v-StateFarm.com) by [DATE].

Unique Claim ID:

State Farm Claim #:

**ANSWER THE FOLLOWING QUESTIONS REGARDING YOUR ADDRESS:**

1. Does the address listed above reflect your current mailing address?  
 Yes  
 No
2. If you answered "No" to Question 1, please provide your current mailing address:  

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**PLEASE CAREFULLY REVIEW THE FOLLOWING INFORMATION REGARDING YOUR INSURANCE CLAIM:**

State Farm's records reflect that the following insurance claim may qualify you for membership within the Settlement Class:

Policy Number:	XXXXXXXXXXXX
Claim Number:	XXXXXXXXXXXX
Date of Loss:	X/X/201X
Address of Insured Premises:	XXXXXXXXXXXX

**This Claim Form applies only to the Covered Loss listed above.** If you had more than one Covered Loss during the Class Period (June 5, 2012 through approximately October 2017), then you may receive separate Claim Forms for each Covered Loss. To be eligible for a settlement payment on any other loss, **you must complete and mail (or upload to the settlement website) a Claim Form for EACH Covered Loss by [DATE].**

If you believe you had a Covered Loss during the Class Period for which you did **not** receive a separate Claim Form, you must (1) obtain a blank Claim Form, and (2) complete and mail (or upload to the settlement website) the Claim Form by [DATE]. **Only one Covered Loss may be identified per Claim Form.** You may obtain a blank Claim Form from the settlement website, [www.Pregon-v-StateFarm.com](http://www.Pregon-v-StateFarm.com), or by calling the Settlement Administrator at 1-\_\_\_\_\_ and requesting that one be sent to you by mail.

**Important:** If you are submitting a blank Claim Form, you **must** complete the information above for your Covered Loss. Otherwise, your Claim Form may not be processed further.

Unique Claim ID:

State Farm Claim #:

**PLEASE CAREFULLY REVIEW THE FOLLOWING INSTRUCTIONS REGARDING  
THE MORTGAGE (OR MORTGAGES) ON THE INSURED PREMISES:**

State Farm's records reflect that the Insured Premises identified above was mortgaged to the following entity (or entities):

XXXXXXXXXX  
XXXXXXXXXX

***If you are entitled to a settlement payment, the name of the mortgage company (or companies) listed above may be included as a co-payee on your settlement payment check unless you provide sufficient proof with this Claim Form indicating that the mortgage company no longer has a financial interest in the insured property (e.g., a letter from the mortgage company indicating that it does not need to be included on the check).***

**ANSWER THE FOLLOWING QUESTION ONLY IF IT APPLIES TO YOU:**

3. If ***all of the policyholders*** for the claim identified above are either deceased or incapable of completing this form, and you are submitting this Claim Form as the legally authorized representative, please state how and when you became the legally authorized representative:

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If you are submitting this Claim Form as the legally authorized representative, you must also provide a copy of any documentation you may have to support the fact that you are the legally authorized representative. Any such documentation must be (1) mailed to the Settlement Administrator and postmarked by [DATE], OR (2) scanned or photographed and uploaded to [www.Pregon-v-StateFarm.com](http://www.Pregon-v-StateFarm.com) by [DATE].

***Please do not call State Farm or your insurance agent to discuss this lawsuit or this Claim Form. You may, however, continue to call State Farm or your insurance agent regarding any other insurance matters.***

***If you have any questions, please visit [www.Pregon-v-StateFarm.com](http://www.Pregon-v-StateFarm.com), or call \_\_\_\_\_.***

Unique Claim ID:

State Farm Claim #:

**SIGN AND DATE YOUR CLAIM FORM:**

I wish to make a claim associated with the *Pregon* class action settlement. I have not assigned my rights to payment under this Settlement to anyone other than my mortgage lender (if any). I have read the information and instructions on this Claim Form and affirm that the information provided above is true and correct to the best of my knowledge.

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Signature

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Print Name

---

Date

**MAIL YOUR CLAIM FORM OR SUBMIT YOUR CLAIM FORM ONLINE:**

*Once signed*, this Claim Form must be:

(1) Scanned or photographed, and uploaded on or before [date] to the website: [www.Pregon-v-StateFarm.com](http://www.Pregon-v-StateFarm.com);

OR

(2) Postmarked on or before [date], and mailed to:

*Pregon v. State Farm Fire and Casualty Co.*, Case No. 24SL-CC-03130  
Settlement Notice Administrator  
c/o TBD  
[address]

**CLAIMS ADMINISTRATION:**

Please be patient. If you qualify for payment under the Settlement, a settlement payment check will be mailed to you if the Settlement is approved by the Court. If you do not qualify, a letter will be mailed to you explaining why.

**EXHIBIT 4**

**IMPORTANT NOTICE** – You are receiving this because you may be a member of a class action lawsuit involving State Farm Fire and Casualty Co. and you have not submitted a claim form. If you **FAIL** to submit a claim form and you are a Settlement Class Member, then you will **LOSE** your right to seek payment(s) that may be made available to you under the settlement if the settlement is finally approved by the Court.

You were previously mailed a court-authorized Notice explaining that you may be a Settlement Class Member in a class action settlement regarding depreciation of estimated non-material costs in making actual cash value claim payments under insurance policies. **Our records indicate that you have not submitted a Claim Form.**

This is only a reminder. For more information regarding the proposed Settlement, including who's included in the Settlement Class and important deadlines, please review the Notice or the settlement website at [www.Pregon-v-StateFarm.com](http://www.Pregon-v-StateFarm.com), or call \_\_\_\_\_.

In order to receive any monetary benefits from the settlement, you **MUST** complete a Claim Form and mail it to the following address or scan and upload the form to [www.Pregon-v-StateFarm.com](http://www.Pregon-v-StateFarm.com):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you did not receive or no longer have the Notice or Claim Form, you may request that either or both be mailed to you by calling the phone number below, or you may download them at [www.Pregon-v-StateFarm.com](http://www.Pregon-v-StateFarm.com). You may also call with any questions you have about the proposed Settlement. Please do not call State Farm or your State Farm agent to discuss this lawsuit.

**IN ORDER TO PARTICIPATE IN THIS SETTLEMENT, YOUR CLAIM FORM MUST BE POSTMARKED OR UPLOADED ELECTRONICALLY NO LATER THAN [DEADLINE].**

[www.Pregon-v-StateFarm.com](http://www.Pregon-v-StateFarm.com)

1- \_\_\_\_\_

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

**[PROPOSED] ORDER AND FINAL JUDGMENT GRANTING  
FINAL APPROVAL TO CLASS ACTION SETTLEMENT**

Before the Court is the Unopposed Motion for Final Approval of Class Settlement filed on \_\_\_\_\_, 2025, by Plaintiff Michael Pregon (the “Representative Plaintiff”), accompanied by the brief in support and evidentiary support. Also before the Court is Class Counsel’s Motion for Attorneys’ Fees, Litigation Costs, and Request for Service Awards, filed on \_\_\_\_\_, 2025. Finally, Defendant State Farm Fire and Casualty Company (“Defendant” or “State Farm”) also filed a separate brief in support of final approval on \_\_\_\_\_, 2025.

The claims of the Representative Plaintiff against Defendant have been settled, individually and on behalf of a class of policyholders of the Defendant, pursuant to the Stipulation and Settlement Agreement signed by the Parties in \_\_\_\_\_ 2025 (the “Agreement”). On XXXXXX, 2025, the Court granted preliminary approval of the proposed class action settlement set forth in the Agreement (the “Settlement”) and provisionally certified the Settlement Class for settlement purposes only.

On XXXXXX, 2025, the Court held a duly noticed final approval hearing to consider:  
(1) whether the terms and conditions of the Agreement are fair, reasonable and adequate;

(2) whether judgment should be entered dismissing the Representative Plaintiff's claims on the merits and "with prejudice," including the claims of Settlement Class Members who have not requested exclusion from the Settlement Class; and (3) whether, and in what amount, to award attorneys' fees and expenses to Class Counsel and a service award to the Representative Plaintiff.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

1. The terms and conditions of the Agreement, which were attached to the motion for preliminary approval filed with the Court, are hereby incorporated as though fully set forth in this Judgment, and unless otherwise indicated, capitalized terms in this Judgment shall have the meanings attributed to them in the Agreement.

2. The Court has personal jurisdiction over the Representative Plaintiff, the Defendant, and Settlement Class Members. Venue is proper and the Court has subject matter jurisdiction to approve the Agreement, including all exhibits thereto, and to enter this Judgment. Without in any way affecting the finality of this Judgment, the Court retains jurisdiction as to all matters relating to the administration, consummation, enforcement, construction, and interpretation of the Agreement and of this Judgment. Further, the Court retains jurisdiction to protect, preserve, and implement the Agreement, including without limitation to enforce the releases contained in the Agreement, and to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Agreement.

3. The Settlement was negotiated at arm's length, by experienced counsel who were fully informed of the facts and circumstances of this Action and of the strengths and weaknesses of their respective positions. The Settlement was reached after the Parties had engaged in extensive settlement negotiation sessions through former U.S. Magistrate Judge Stephen C. Williams (Ret.) and Michael N. Ungar of Ulmer & Berne. Counsel for the Parties were, therefore, well positioned

to evaluate the benefits of the Settlement, considering the risks and uncertainties of continued litigation, the time and expense that would be necessary to prosecute the Action through class certification, trial and any appeals that might be taken, and the likelihood of success.

4. The Court finds that the prerequisites for a class action under Missouri Supreme Court Rule 52.08 have been satisfied, for settlement purposes, in that: (a) the number of Settlement Class Members is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement Class, which common questions predominate over any questions affecting only individual members; (c) the claims of the Representative Plaintiff are typical of the claims or defenses of the members of the Settlement Class; (d) the Representative Plaintiff and Class Counsel have fairly and adequately represented, and will continue to fairly and adequately represent, the interests of the Settlement Class for purposes of the Settlement; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Accordingly, and pursuant to Missouri Supreme Court Rule 52.08, this Court hereby finally certifies the Settlement Class.

5. Pursuant to Missouri Supreme Court Rule 52.08, the Court hereby finally certifies the Settlement Class for settlement purposes only, as identified in the Agreement, defined as follows:

a. "Settlement Class" means all 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.

a. Excluded from the Settlement Class are:

All claims arising under State Farm policy forms (including endorsement form FE-3650) expressly permitting the “depreciation” of “labor” within the text of the policy form;

All claims in which State Farm’s ACV Payments exhausted the applicable limits of insurance;

State Farm and its affiliates, officers, and directors;

Members of the judiciary and their staff to whom this Action was assigned; and

Class Counsel.

c. “Class Period” means the period encompassing Settlement Class claims, beginning on June 5, 2012, and ending in approximately October 2017.

6. Pursuant to Missouri Supreme Court Rule 52.08, the Court appoints David T. Butsch and Christopher E. Roberts of Butsch Roberts & Associates LLC, T. Joseph Snodgrass of Snodgrass Law LLC, Erik D. Peterson of Erik Peterson Law Office PSC, J. Brandon McWherter of McWherter Scott Bobbitt PLC, and Douglas Winters of The Winters Law Group, LLC as Class Counsel for the Settlement Class.

7. The Court also designates Representative Plaintiff Michael Pregon as the representative of the Settlement Class.

8. The Court appoints [ ] as the Neutral Evaluator to carry out the duties and responsibilities set forth in the Agreement. The Representative Plaintiff, Class Counsel, State Farm, and State Farm’s Counsel shall not be liable for any act or omission of the Neutral Evaluator.

9. The Court makes the following findings with respect to Class Notice to the Settlement Class:

a. The Court finds that the Class Notice, the establishment of an automated toll-free, interactive, voice response phone system, and the Settlement Website, all as provided for in the Agreement and the Preliminary Approval Order, (i) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class

Members of the Settlement, their right to object or to exclude themselves from the Settlement, and their right to appear at the Final Approval Hearing; (ii) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice; and (iii) complied fully with all applicable legal requirements, including the requirements of Missouri Supreme Court Rule 52.08, the Due Process Clauses of the Missouri and United States Constitutions, the Rules of this Court, and any other applicable law.

b. Class Counsel has filed with the Court a declaration from [REDACTED], the independent third-party Administrator for the Settlement, establishing that the Class Notice and Claim Form were mailed to Class Members on XXXXX, 2025, the Settlement Website was established on XXXXXX, 2025, and the telephone line available for Class Members to call was available beginning XXXXX, 2025. Adequate notice was given to the Settlement Class in compliance with the Agreement and the Preliminary Approval Order.

10. Persons who wished to be excluded from the Settlement Class were provided an opportunity to request exclusion as described in the Class Notice and on the Settlement Website. The Court finds that the individual interests of the persons who timely sought exclusion from the Settlement Class are preserved and that no person was precluded from being excluded from the Settlement Class if desired. Those persons who timely and properly excluded themselves from the Settlement Class are identified in the attached Exhibit 1.

11. Defendant has complied with all notice obligations in connection with the proposed Settlement.

12. XXXXX objections to the Settlement were filed.

13. Settlement Class Members who did not timely file and serve an objection in writing to the Settlement, to the entry of this Judgment, to Class Counsel's application for fees, costs, and expenses, or to the service award to the Representative Plaintiff in accordance with the procedure set forth in the Class Notice and mandated in the Preliminary Approval Order are deemed to have waived any such objection through any appeal, collateral attack, or otherwise.

14. The terms and provisions of the Agreement, including all Exhibits thereto, have been entered into in good faith and, pursuant to Missouri Supreme Court Rule 52.08, are hereby

fully and finally approved as fair, reasonable, adequate as to, and in the best interests of Settlement Class Members. The Court hereby enters judgment approving and adopting the Settlement and the Agreement, fully and finally terminating the Released Claims of the Representative Plaintiff and the Settlement Class in this Action against the Defendant, on the merits.

15. Pursuant to Missouri Supreme Court Rule 52.08, the Court hereby awards Class Counsel attorneys' fees and reasonable litigation expenses in the total amount of \$\_\_\_\_\_, payable by the Defendant pursuant to the terms of the Agreement. The Court also awards a service award in the amount of \$\_\_\_\_\_ to the Representative Plaintiff, Michael Pregon, payable by the Defendant pursuant to the terms of the Agreement. The Defendant shall not be responsible for and shall not be liable with respect to the allocation among Class Counsel, or any other person who may assert a claim thereto, of attorneys' fees and expenses awarded by the Court.

16. The terms of the Agreement, including all Exhibits thereto, and of this Judgment, shall be forever binding on, and shall have *res judicata* and preclusive effect in and on, all Released Claims by the Representative Plaintiff and each Settlement Class Member who did not timely and properly exclude himself or herself from the Settlement Class, as well as each of their respective heirs, beneficiaries, administrators, successors, and assigns, and all other Releasing Persons.

17. The Releases set forth in Section 9 of the Agreement are incorporated herein, in all respects, and are effective as of the entry of this Judgment. The Released Persons are forever released, relinquished, and discharged by the Releasing Persons, including all Settlement Class Members who did not timely exclude themselves from the Settlement Class, from all Released Claims (as that term is defined below and in the Agreement).

a. Although the definitions in the Agreement are incorporated in and are a part of this Judgment, for avoidance of doubt and ease of reference, some of those definitions are repeated as follows:

- i. “ACV Payment” means an actual cash value payment made on an insurance claim for a Structural Loss, calculated by estimating the replacement cost value of covered damage, and subtracting Depreciation, including Non-Material Depreciation (if any), and any applicable deductible.
- ii. “Covered Loss” means a first party insurance claim for a Structural Loss, as defined below, that occurred during the Class Period and that Defendant or a court of competent jurisdiction determined to be a covered loss.
- iii. “Depreciation” means an estimated amount subtracted from the estimated replacement cost value when calculating the ACV of damaged property, reflecting the age, condition, wear and tear and/or obsolescence of the item(s) of structural damaged property.
- iv. “Effective Date” shall be: (1) the day following the expiration of the deadline for appealing the entry by the Court of the Final Order and Judgment, if no such appeal is filed; or (2) if an appeal of the Final Order and Judgment is filed, the date upon which all appellate courts with jurisdiction (including the United States Supreme Court by petition for certiorari) affirm such Final Order and Judgment, or deny any such appeal or petition for certiorari, such that no future appeal is possible.
- v. “Non-Material Depreciation” means Depreciation applied to estimated repair line-item cost elements such as labor, equipment, market conditions, and removal costs, including, for example, Depreciation resulting from the use of the Xactimate® settings “Depreciate Non-Material” and/or “Depreciate Removal.”
- vi. “General Contractor Overhead and Profit Depreciation” (or “GCOP Depreciation”) means Depreciation applied to estimated costs (if any) that State Farm has projected a general contractor may charge for coordinating repairs, specifically including Depreciation resulting from the use of the Xactimate® setting “Depreciate O&P.”
- vii. “Released Claims” means and includes any and all past, present and future claims arising from or in any way related to Depreciation of any kind on insurance claims within the Class Period (including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, and/or withholding of Depreciation), whether known or unknown, and that were asserted or could have been asserted in the Action, to the full extent of res judicata protection. This release is not intended to prevent an individual

Settlement Class Member from seeking and potentially recovering any RCBs that may still remain available under the terms of his or her Policy. Additionally, Released Claims do not include any claim for enforcement of this Settlement and/or the Final Order and Judgment.

- viii. “Released Persons” means, individually and collectively, (i) State Farm Fire and Casualty Company, and all of its past and present divisions, parent entities, associated entities, affiliates, partners, and subsidiaries; and (ii) all past and present officers, directors, shareholders, agents, attorneys, employees, stockholders, successors, assigns, independent contractors, and legal representatives of the entities set forth in (i). The Released Claims extend only to claims arising under insurance policies issued by the Defendant.
- ix. “Releasing Persons” means Plaintiff and all Settlement Class Members who do not properly and timely opt out of the Settlement (as provided in Section 10 of the Agreement), and their respective spouses, family members, executors, representatives, administrators, guardians, wards, heirs, attorneys-in-fact, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf.
- x. “Structural Loss” means physical damage to a dwelling, business, or other structure located in the State of Missouri while covered by a structural damage insurance policy issued by Defendant.

b. The Representative Plaintiff, and each Settlement Class Member, shall, by operation of the Final Order and Judgment, be deemed to have fully, conclusively, irrevocably, forever, and finally released, relinquished, and discharged the Defendant, and all other Released Persons, from any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent, claims with respect to all Released Claims, including unknown claims as explained in the Agreement, that the Representative Plaintiff or Settlement Class Members have, or may have had, against any of the Released Persons that relate to, concern, arise from, or pertain in any way to depreciation of any kind on claims within the class period (including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, and/or withholding of

Depreciation), whether known or unknown, and that were asserted or could have been asserted in the Action, to the full extent of res judicata protection.

c. In agreeing to the foregoing Releases, the Representative Plaintiff, for himself and on behalf of Settlement Class Members, explicitly acknowledges that unknown claims (as explained in the Agreement) within the scope of Released Claims could possibly exist and that any present losses may have been underestimated in amount or severity. The Representative Plaintiff or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the Released Claims, or the law applicable to such claims may change. Nonetheless, the Representative Plaintiff and each Settlement Class Member expressly agree that he/she/they shall have irrevocably waived and fully, finally and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent, claims with respect to all Released Claims, including unknown claims (as explained in the Agreement). Further, the Representative Plaintiff and Settlement Class Members agree and acknowledge that they are bound by the Agreement, including by the Releases, and that all of their claims in the Action asserted against Defendant shall be dismissed with prejudice and released, without regard to subsequent discovery of different or additional facts or subsequent changes in the law, and regardless of whether unknown losses or claims exist or whether present losses may have been underestimated in amount or severity, and even if they never received actual notice of the Settlement or received a Claim Settlement Payment. The Parties acknowledge that the foregoing Releases were bargained for and are a material element of the Agreement.

d. The Representative Plaintiff and Class Counsel have represented and warranted that there are no outstanding liens or claims against the Action and have acknowledged that the Representative Plaintiff and Class Counsel will be solely responsible for satisfying any liens or claims asserted against the Action.

e. The Representative Plaintiff and each Settlement Class Member are deemed to agree and acknowledge that the foregoing Releases were bargained for and are a material element of the Agreement.

f. The Agreement shall be the exclusive remedy for all Settlement Class Members with regard to the Released Claims.

18. The Agreement, the negotiations leading to the Settlement, administration of the Settlement, and any pleadings, motions, or other document related in any way to the Agreement shall not be offered into evidence in the Action or in any other case or proceeding as proof that Defendant has admitted or conceded (i) the truth of any of the allegations in the Action; (ii) any liability, fault, or wrongdoing of any kind on the part of Defendant; or (iii) that this Action may be properly maintained as a litigation class action. Class Counsel and Defendant dispute whether the Agreement may be offered into evidence in a foreign court in support of a potential motion for certification of a different class action in another lawsuit, with State Farm contending that the Agreement cannot and should not be used for such purposes. The Parties and Class Counsel reserve all rights.

19. If the Effective Date does not occur, this Judgment shall automatically be rendered null and void and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void, and Defendant shall retain the right to object to the

maintenance of the Action or any other proceeding as a class action and to contest the Action or any other case on any ground.

20. This Judgment and the Agreement (including the Exhibits thereto) may be filed in any action against, or by, any Released Person in order to support any argument, defense or counterclaim, including without limitation those based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion, issue preclusion, or similar defense or counterclaim.

21. The Representative Plaintiff and all Settlement Class Members, and their respective spouses, family members, executors, representatives, administrators, guardians, wards, heirs, attorneys-in-fact, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, have released the Released Claims as against the Released Persons, and are, from this day forward, hereby permanently barred and enjoined from filing, commencing, prosecuting, intervening in, maintaining, or participating in (as parties, class members or otherwise) any new or existing action or proceeding, before any court or tribunal, regarding any Released Claims against any Released Persons, and from organizing any Settlement Class Members into a separate class for purposes of pursuing, as a purported class action, any lawsuit regarding any Released Claims against any Released Persons, and any person in violation of this injunction may be subject to sanctions, including payment of reasonable attorneys' fees incurred in seeking enforcement of the injunction.

22. Within 10 days of the Effective Date, the Representative Plaintiff and Settlement Class Members shall dismiss, with prejudice, all Released Claims asserted in any actions or proceedings that have been brought by or involve any Settlement Class Member in any jurisdiction.

23. The Released Claims of the Representative Plaintiff, individually, and on behalf of the Settlement Class are hereby settled, compromised, and dismissed on the merits, and with prejudice, against the Defendant without fees (including attorneys' fees) or costs to any party except as otherwise provided in this Judgment.

24. The Parties are hereby directed to implement and consummate the Settlement, according to its terms and provisions, as may be modified by Orders of this Court. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Agreement, as may be modified by the Preliminary Approval Order or this Judgment.

25. The Court hereby enters Final Judgment, as described herein, and expressly determines that there is no just reason for delay.

26. The Action is hereby **DISMISSED WITH PREJUDICE**.

27. Without impacting the finality of this Judgment, the Court shall retain jurisdiction over the construction, interpretation, consummation, implementation, and enforcement of the Agreement and this Judgment, including jurisdiction to enter such further orders as may be necessary or appropriate.

So Ordered: \_\_\_\_\_ Date: \_\_\_\_\_  
Hon. \_\_\_\_\_

**TABLE OF LABOR DEPRECIATION “CLAIMS MADE” CLASS SETTLEMENTS**

Case Name & Case No.	Venue	Estimated Amount of Total Monetary Benefit To Be Made Available To Class <sup>1</sup>	Percentage of Fees & Costs Awarded <sup>2</sup>	Amount of Fees & Costs Awarded	Date of Final Approval Order
<i>Hirsch v. Am. Family Mut. Ins. Co., S.I., No. 25SL-CC03010</i>	Mo. Cir. Ct., St. Louis Cnty.	\$55,549,550.00	17%	\$9,437,500.00	Aug. 26, 2025
<i>Varney v. Am. Family Mut. Ins. Co., No. 25SL-CC03011</i>	Mo. Cir. Ct., St. Louis Cnty.	\$55,534,550.00	17%	\$9,437,500.00	Aug. 26, 2025
<i>Scott v. Safeco Ins. Co. of Am., No. 24SL-CC07051</i>	Mo. Cir. Ct., St. Louis Cnty.	\$14,833,500.00	22.9%	\$3,395,000.00	May 21, 2025
<i>Whiting v. Liberty Ins. Corp., No. 24SL-CC07052</i>	Mo. Cir. Ct., St. Louis Cnty.	\$2,837,500.00	22%	\$625,000.00	May 21, 2025

<sup>1</sup> The “total monetary benefit” is inclusive of the value of the amount of unrecovered nonmaterial depreciation and interest, attorneys’ fees and expenses, service awards, and settlement administrative costs.

<sup>2</sup> The percentage of attorneys’ fees awarded in these cases were based on the “total benefit” made available to the class as discussed, *supra*, n.1.

Case Name & Case No.	Venue	Estimated Amount of Total Monetary Benefit To Be Made Available To Class <sup>1</sup>	Percentage of Fees & Costs Awarded <sup>2</sup>	Amount of Fees & Costs Awarded	Date of Final Approval Order
<i>Litman v. State Auto Prop. &amp; Cas. Co., No. 24SL-CC07058</i>	Mo. Cir. Ct., St. Louis Cnty.	\$5,490,800.00	22.8%	\$1,250,000.00	May 21, 2025
<i>Foringer v. Erie Ins. Co., No. 00746, and Grzymkowski v. Erie Ins. Co., No. 02167</i>	Court of Common Pleas of Philadelphia Cnty.	\$7,142,000.00	24.5%	\$1,750,000.00	Apr. 14, 2025
<i>McLaughlin v. Fire Ins. Exch., No. 1316-CV11140</i>	Mo. Cir. Ct., Jackson Cnty.	\$12,000,000.00	47%	\$5,660,825.14	Sept. 19, 2024
<i>Belle Meade Owners Ass'n, Inc. v. Cincinnati Ins. Co., No. 22-cv-00123</i>	E.D. Tenn.	\$4,857,500.00	24.7%	\$1,200,000.00	May 13, 2024

Case Name & Case No.	Venue	Estimated Amount of Total Monetary Benefit To Be Made Available To Class <sup>1</sup>	Percentage of Fees & Costs Awarded <sup>2</sup>	Amount of Fees & Costs Awarded	Date of Final Approval Order
<i>Walker v. Auto-Owners (Mut.) Ins. Co., No. 2023-LA-0000I43</i>	Ill. Cir. Ct., Tenth Judicial Cir., Peoria Cnty.	\$7,125,000.00	23.1%	\$1,649,000.00	Jan. 10, 2024
<i>Gentes Trust # 1 v. Frontier-Mt. Carroll Mut. Ins., No. 2022-LA-000269</i>	Ill. Cir. Ct., Third Judicial Cir., Madison Cnty.	\$965,000.00	25.9%	\$250,000.00	Oct. 26, 2023
<i>Danshir, LLC v. Greater N.Y. Mut. Ins. Co., No. 21-cv-01158</i>	N.D. Ill.	\$2,060,195.33 (exclusive of settlement administration)	27.1%	\$557,500.00	Oct. 26, 2023
<i>Sproull v. State Farm Fire &amp; Cas. Co., No. 16-L-1341</i>	Ill. Cir. Ct., Third Judicial Cir., Madison Cnty.	\$50,250,000.00	19.7%	\$9,900,000.00	Sept. 28, 2023
<i>Mitchell, et al. v. Allstate Vehicle &amp; Prop. Ins. Co., et al., No. 2:21-cv-347-TFM-B</i>	S.D. Ala.	\$19,195,000.00	20.6%	\$3,950,000.00	Aug. 8, 2023

Case Name & Case No.	Venue	Estimated Amount of Total Monetary Benefit To Be Made Available To Class <sup>1</sup>	Percentage of Fees & Costs Awarded <sup>2</sup>	Amount of Fees & Costs Awarded	Date of Final Approval Order
<i>Condos. At Northpointe Ass'n, et al. v. State Farm Fire &amp; Cas. Co., No. 1:16-cv-01273</i>	N.D. Ohio	\$14,004,000.00	28.6%	\$4,004,000.00	July 25, 2023
<i>Perry v. Allstate Indem. Co., et al., No. 1:16-cv-01522</i>	N.D. Ohio	\$23,200,000.00	22%	\$5,000,000.00	July 25, 2023
<i>Hester, et al. v. Allstate Vehicle &amp; Prop. Ins. Co., et al., No. 20L0462</i>	Ill. Cir. Ct., Twentieth Judicial Cir., St. Clair Cnty.	\$13,290,000.00	22.4%	\$2,990,000.00	June 12, 2023
<i>Fox v. Am. Family Ins. Co., No. 1:20-cv-01991</i>	N.D. Ohio	\$2,621,186.00	25.9%	\$679,567.00	Jan. 12, 2023
<i>Cedarview Mart, LLC v. State Auto Prop. &amp; Cas. Co., No. 3:20-cv-00107</i>	N.D. Miss.	\$5,042,797.00	22%	\$1,129,722.00	Nov. 7, 2022

Case Name & Case No.	Venue	Estimated Amount of Total Monetary Benefit To Be Made Available To Class <sup>1</sup>	Percentage of Fees & Costs Awarded <sup>2</sup>	Amount of Fees & Costs Awarded	Date of Final Approval Order
<i>Staunton Lodge No. 177, A.F. &amp; A.M v. Pekin Ins. Co., No. 2020-L-001297</i>	Ill. Cir. Ct., Third Judicial Cir, Madison Cnty.	\$6,916,100.00	21.7%	\$1,500,000.00	Oct. 6, 2022
<i>Arnold v. State Farm Fire &amp; Cas. Co., No. 2:17-cv-148</i>	S.D. Ala.	\$38,810,000.00	22%	\$8,595,000.00	Oct. 4, 2022
<i>Stevener v. Erie Ins. Co., No. 20-cv-603</i>	N.D. Ohio	\$5,974,285.00	19.3%	\$1,155,000.00	Aug. 19, 2022
<i>Donofrio v. Auto-Owners (Mut.) Ins. Co., No. 19-cv-58</i>	S.D. Ohio	\$8,880,000.00	19.5%	\$1,740,000.00	July 22, 2022
<i>Republic Roofing &amp; Restoration, LLC v. Nat'l Sec. Fire &amp; Cas. Co., No. 19-cv-02518</i>	W.D. Tenn.	\$2,686,954.37	22%	\$602,103.00	May 26, 2022

Case Name & Case No.	Venue	Estimated Amount of Total Monetary Benefit To Be Made Available To Class <sup>1</sup>	Percentage of Fees & Costs Awarded <sup>2</sup>	Amount of Fees & Costs Awarded	Date of Final Approval Order
<i>Huey v. Allstate Vehicle &amp; Prop. Ins. Co., No. 19-cv-00153</i>	N.D. Miss.	\$1,481,208.00	23%	\$336,000.00	May 26, 2022
<i>Shields v. Metropolitan Prop. &amp; Cas. Ins. Co., No. 19-cv-00222</i>	N.D. Miss.	\$8,495,308.00	22%	\$1,895,876.00	May 25, 2022
<i>Helping Hands Home Improvement, LLC v. Selective Ins. Co. of South Carolina, et al., No. 20-cv-00092</i>	M.D. Tenn.	\$4,207,073.00	23.8%	\$999,000.00	May 9, 2022
<i>Hicks v. State Farm Fire &amp; Cas. Co., No. 14-cv-00053</i>	E.D. Ky.	\$7,760,000.00	24.5%	\$1,900,000.00	Apr. 28, 2022
<i>Hawker v. Pekin Ins. Co., No. 21-cv-002169</i>	Ohio Ct. of Common Pleas, Franklin Cty.	\$3,417,000.00	24.1%	\$833,100.00	Feb. 25, 2022

Case Name & Case No.	Venue	Estimated Amount of Total Monetary Benefit To Be Made Available To Class <sup>1</sup>	Percentage of Fees & Costs Awarded <sup>2</sup>	Amount of Fees & Costs Awarded	Date of Final Approval Order
<i>Schulte v. Liberty Ins. Corp., No. 3:19-cv-00026</i>	S.D. Ohio	\$20,078,000.00	17.08%	\$3,431,259.79	May 20, 2021
<i>Arakoni v. Memberselect Ins. Co., No. 1:20-cv-000092</i>	N.D. Ohio	\$230,000.00	23.9%	\$55,000.00	Mar. 3, 2021
<i>Mitchell v. State Farm Fire &amp; Cas. Co., No. 17-00170</i>	N.D. Miss.	\$11,559,000.00	18.9%	\$2,190,000.00	Feb. 25, 2021
<i>Holmes v. LM Ins. Corp., No. 19-00466</i> and <i>Northside Church of Christ v. Ohio Security Ins. Co., No. 20-00184</i>	M.D. Tenn.	\$10,144,000.00	18.3%	\$1,863,665.88	Feb. 5, 2021
<i>Koester v. USAA Gen. Indem. Co., No. 19-02283</i>	W.D. Tenn.	\$4,163,000.00	18.7%	\$780,000.00	Sept. 4, 2020

Case Name & Case No.	Venue	Estimated Amount of Total Monetary Benefit To Be Made Available To Class <sup>1</sup>	Percentage of Fees & Costs Awarded <sup>2</sup>	Amount of Fees & Costs Awarded	Date of Final Approval Order
<i>Stuart v. State Farm Fire &amp; Cas. Co., No. 4:14-cv-4001</i>	W.D. Ark.	\$11,757,954.06	27.7%	\$3,257,954.06	June 2, 2020
<i>Baker v. Farmers Group, Inc., No. CV--17-03901-PHX-JJT</i>	D. Ariz.	\$672,500.00	18.5%	\$120,500.00	Sept. 25, 2019
<i>Braden, et al. v. Foremost Ins. Co. Grand Rapids, No. 4:15-cv-04114-SOH</i>	W.D. Ark.	\$3,827,000.00	22.2%	\$850,000.00	Oct. 9, 2018
<i>Larey v. Allstate Prop. &amp; Cas. Ins. Co., No. 4:14-cv-04008-SOH</i>	W.D. Ark.	\$1,662,500.00	24.8%	\$412,500.00	Feb. 9, 2018
<i>Goodner v. Shelter Mut. Ins. Co., Case No. 4:14-cv-04013-SOH</i>	W.D. Ark.	\$25,529,071.00	23.8%	\$6,086,160.63	June 6, 2017

Case Name & Case No.	Venue	Estimated Amount of Total Monetary Benefit To Be Made Available To Class <sup>1</sup>	Percentage of Fees & Costs Awarded <sup>2</sup>	Amount of Fees & Costs Awarded	Date of Final Approval Order
<i>Green v. American Modern Home Ins. Co., et. al,</i> Case No. 4:14-cv-04074-SOH	W.D. Ark.	\$3,281,795.00  (exclusive of settlement administrative costs to be paid separately by defendant)	24.9%	\$820,448.66	June 1, 2017

**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

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**DECLARATION OF CHRISTOPHER E. ROBERTS IN SUPPORT OF PLAINTIFF'S  
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT,  
CERTIFICATION OF SETTLEMENT CLASS, AND  
SCHEDULING A FINAL APPROVAL HEARING**

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I, Christopher E. Roberts, hereby declare as follows:

1. I am over the age of 18 years, and I am of sound mind and otherwise competent to make this Declaration. I have personal knowledge of the matters asserted herein.
2. I have appeared as counsel for Plaintiff and proposed class representative Michael Pregon ("Plaintiff") in the above-captioned matter. I submit this Declaration in support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Settlement, Certification of Settlement Class, and Scheduling a Final Approval Hearing.
3. I am a partner with the firm of Butsch Roberts & Associates LLC. I am a member in good standing of the Missouri Bar, and I have never been the subject of any disciplinary proceedings. In addition to being admitted to Missouri, I am also licensed to practice in the States of Illinois and Kansas. Furthermore, I am admitted to practice before the United States Courts of Appeals for the Eighth Circuit, Ninth Circuit, and Tenth Circuit, as well as the United States District Courts for the Northern District of Illinois, Southern District of Illinois, Eastern District

of Missouri, Western District of Missouri, District of Kansas, Southern District of Texas, Northern District of Texas, Eastern District of Michigan, and District of Colorado.

4. I am a 2009 graduate of the University of Missouri-Kansas City School of Law, where I received my Juris Doctor degree. I was admitted to the Missouri Bar in 2009, the Illinois Bar in 2010, and the Kansas Bar in 2010.

5. I frequently speak to members of the Missouri Bar on class action practice and consumer law-related issues. I spoke most recently in 2022 at the Solo and Small Firm Conference sponsored by the Missouri Bar about class action practice and procedure.

6. In addition, I am a frequent contributor to the American Bar Association on class action-related issues. I am the author of a chapter in the 2018, 2020, 2021, 2022, and 2023 books published by the American Bar Association about class action law from each United States Circuit Court of Appeals. The chapter I authored in each publication focuses on class action jurisprudence in the Eighth Circuit. I have also written multiple articles on class action-related issues that have been published by the American Bar Association.

7. Butsch Roberts & Associates LLC is an AV rated law firm that began operating under my law partner, David T. Butsch, on November 1, 2008. The firm specializes in complex civil litigation, with an emphasis on consumer class litigation. The two members of the firm, David T. Butsch and me, have combined litigation experience of more than 40 years.

8. I have been appointed to serve as class counsel in numerous cases and have participated in several cases involving the issue of labor depreciation.

9. I have read the Declaration of my co-counsel, Erik D. Peterson, that was filed contemporaneously with this Declaration. I agree with Mr. Peterson's analysis of the proposed settlement, affirm his factual recitations concerning the negotiations of the proposed settlement,

and recommend without hesitation that the Court grant preliminary approval of the settlement. I believe that the law and facts demonstrate that the settlement is fair, reasonable, and adequate and should be granted preliminary approval.

Under penalties as provided by law, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

FURTHER DECLARANT SAYETH NOT.

s/ Christopher E. Roberts  
CHRISTOPHER E. ROBERTS  
CRoberts@butschroberts.com

October 1, 2025