**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,<br><br>Plaintiff,<br><br>v.<br><br>STATE FARM FIRE AND CASUALTY COMPANY,<br><br>Defendant. | Case No. 24SL-CC03130 |

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

Defendant State Farm Fire and Casualty Company ("State Farm"), by and through its undersigned counsel, respectfully provides this separate submission in support of preliminary approval of the Proposed Settlement of this case, as described in the Stipulation and Settlement Agreement entered into by State Farm and Plaintiff Michael Pregon ("Plaintiff" or the "Class Representative"), as representative of the asserted class.

## INTRODUCTION

This case is one of many class actions filed against insurers in Missouri and across the country challenging the common practice of calculating "actual cash value" ("ACV") claim payments for structural damage claims by estimating the cost to repair or replace the damaged property, then applying depreciation to that full estimated replacement cost—including both material costs and any labor or other non-material costs (hereinafter "labor depreciation"). The Amended Class Action Petition (the "Petition") asserts a claim for

breach of contract and declaratory judgment on behalf of policyholders who made structural damage claims for properties located in Missouri under policies written by State Farm. The asserted class period is somewhat dated, running from June 5, 2012, to approximately October 2017, a time period during which State Farm had different policy language in effect concerning the operative dispute in this litigation.

State Farm has answered the Petition and, absent the Proposed Settlement, would vigorously defend this litigation through summary judgment motion practice, class certification proceedings, and trial. Among other things, State Farm would argue at summary judgment that the Petition effectively asks this Court to overrule the unanimous decision issued by a three-judge panel of the U.S. Court of Appeals for the Eighth Circuit in 2017, which analyzed an identical State Farm insurance policy and an identical "labor depreciation" liability theory under Missouri law and held unequivocally: "State Farm's method of determining estimated 'actual cash value' *does not breach* its replacement cost contract." *In re State Farm Fire and Cas. Co.*, 872 F.3d 567, 573 (8th Cir. 2017) ("*LaBrier*") (emphasis added), *reh'g denied* (Oct. 31, 2017). State Farm understands that Plaintiff contends this case is instead governed by the Missouri Court of Appeals' more recent labor depreciation decision in *Franklin v. Lexington Ins. Co.*, 652 S.W.3d 286 (Mo. Ct. App. 2022). But State Farm would show that *Franklin* is not controlling here because it turned on materially different language appearing in another insurer's policy.

Moreover, State Farm would raise a number of defenses both as to the merits of Plaintiff's individual claim and as to the broader issue of class certification. For example, State Farm would challenge class certification by demonstrating that individualized

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

Despite State Farm's confidence that it would have prevailed in defeating any future motion to certify a litigation class—as well as on summary judgment as to the Plaintiff's individual claim, at trial, and in any subsequent appeal—it believes that a settlement as described in the Stipulation and Settlement Agreement (the "Proposed Settlement") is in the best interests of its policyholders. First, this matter would likely span several years inclusive of motion practice, discovery, trial, and appeals. Second, a trial of this matter on a class-wide basis would be unmanageable, and even reaching such a trial would likely present significant costs and risks for each side.

For these reasons, and as explained further below, State Farm has determined that the Proposed Settlement is in the best interests of its current and former Missouri policyholders. State Farm therefore seeks to resolve this case so that it can avoid further litigation expenses and uncertainty and continue providing excellent service to its policyholders. As set forth below, State Farm believes that the Proposed Settlement is fair, reasonable, and adequate, especially in view of the strength of State Farm's defenses to the asserted claims and the difficulties Plaintiff would face in certifying a litigation class,

establishing liability, and proving injury. Accordingly, State Farm supports the Proposed Settlement and requests that it be preliminarily approved.

## DISCUSSION

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

The following discussion briefly summarizes State Farm's defenses to Plaintiff's suit and demonstrates why, especially in light of those defenses, the Proposed Settlement is fair, reasonable, and adequate.

## I. The Proposed Settlement is Fair, Reasonable, and Adequate in View of the Strength of State Farm's Class Certification Arguments and its Liability Defenses to the Breach of Contract Claim.

In the absence of a settlement of this matter, State Farm would have demonstrated through continued litigation that: (1) Plaintiff's action is ill-suited to certification of a liability class for litigation purposes; and (2) claims where estimated labor costs were depreciated in calculating an ACV claim payment (like Plaintiff's claim) may be subject to a number of liability-defeating defenses. These considerations support the conclusion that the Proposed Settlement is fair, reasonable and adequate.

### A. State Farm Has Strong Arguments Opposing Certification of a Litigation Class.

Were this matter to proceed, State Farm would present strong arguments that certification of a litigation class is not warranted.

State Farm's opposition to class certification would include the argument that "questions of law or fact common to the members of the class" would *not* "predominate over any questions affecting only individual members." Mo. Sup. Ct. R. 52.08(b)(3). "What matters to class certification … is not the raising of common 'questions'—even in droves—but, rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation." *LaBrier*, 782 F.3d at 572 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350) (alteration in original); *see also, e.g.*, *Ring*, 41 S.W.3d at 490 (explaining that, because "Missouri Rule 52.08 is identical to Rule 23 of the Federal Rules of Civil Procedure," Missouri courts "look to federal precedent for guidance" in addressing class-certification issues). Thus, "[i]f, to make a prima facie showing on a given question,

the members of a proposed class will need to present evidence that varies from member to member, then it is an individual question" that cannot be answered as to all proposed members of the class. *Dale v. DaimlerChrysler Corp.*, 204 S.W.3d 151, 176 (Mo. App. Ct. 2006) (citation and emphasis omitted).

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

Citing these and other authorities, State Farm would argue, *inter alia*, that here, too, there is a predominance of individualized issues concerning whether the depreciation of estimated labor costs resulted in an ACV underpayment to each putative class member (of which there may be tens of thousands). To establish State Farm's liability for breach of contract under Missouri law, Plaintiffs would need to show—for each putative class

member—that the dollar amount State Farm paid for ACV was too low, *i.e.*, that State Farm's application of labor depreciation in each putative class member's ACV calculation resulted in underpayment. State Farm's policy—the contract that allegedly was breached—does not provide that State Farm will pay whatever amount appears at the bottom of State Farm's initial estimate, but rather that State Farm will pay "ACV." This means there is no breach if State Farm's estimated ACV payment, however calculated, provided the insured with funds equal to or greater than the true ACV of the damaged property—that is, if the payment provided the insured with "the difference in value of the property immediately before and immediately after the loss." *LaBrier*, 875 F.3d at 576 (quoting *Wells v. Mo. Prop. Ins. Placement Facility*, 653 S.W.2d 207, 214 (Mo. 1983)*; see also, e.g., Kartman v. State Farm Mut. Auto. Ins. Co.*, 634 F.3d 883, 890 (7th Cir. 2011) ("If a given policyholder was fully compensated for the damage attributable to the hailstorm, then State Farm will have satisfied its contractual obligation regardless of" how it determined the payment amount) (emphasis in original); *Nguyen v. St. Paul Travelers Ins. Co*. No. CIV.A.06-4130, 2008 WL 4691685, at *5 (E.D. La. Oct. 22, 2008) ("[T]he issue is whether the total amount paid, not just a discrete, uniformly applicable component of that payment, was sufficient to satisfy State Farm's contractual obligation"). Moreover, only by examining the *actual* costs to repair the damaged property could State Farm's *actual* payment obligation under the policy be determined as to a given claim.[1] State Farm would

[1] Because State Farm's policies expressly cap the amount owed for ACV at the policyholders' cost to complete repairs, *see* State Farm's Answer at Additional Defenses, ¶ 4 ("until actual repair or replacement is completed, we will pay only the actual cash value at the time of the loss . . . , not to exceed the cost to repair or replace the damaged part of

have a strong argument that the need for these types of individualized inquiries defeats certification of a litigation class here, just as in *LaBrier*.

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

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the property"), putative members of the class who received initial claim payments that exceeded their actual cost of repairs would be unable to establish breach of contract as a matter of law. Simply put, those individuals could not have been and were not underpaid for ACV and, thus, the policy could not have been and was not breached as to them.

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

State Farm has succeeded in opposing certification of litigation classes in other labor depreciation cases, including but not limited to in *LaBrier*, based upon these same types of individualized issues. For example, in *Cranfield v. State Farm Fire and Casualty Co.*, a federal district court in Ohio denied the plaintiffs' motion for class certification based in part on the individualized inquiry necessary to resolve these and other defenses. *See* No. 1:16-CV-1273, 2021 WL 3376283, at *6 (N.D. Ohio Aug. 2, 2021). As the *Cranfield* court observed:

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

*Id.* at *5; *see also id.* at *6 (finding that individual issues predominated over common issues, thereby precluding certification under Rule 23(b)(3), based on, among other things, the "variety of property loss policies," the "different contractual limitations defenses," and

the "[d]istinctions . . . between putative class members who accepted ACV and those who pursued repair and replacement costs"); *see also Wilcox v. State Farm Fire and Cas. Co.*, No. 14-2798 (RHK/FLN), 2016 WL 6908111, at *5 (D. Minn. Sept. 7, 2016) (granting State Farm's motion to strike class allegations in labor depreciation lawsuit because the "adjudication of underpayment in one case would not be dispositive of the interests of another member's claim"), *report and recommendation adopted*, 2016 WL 7200303 (D. Minn. Nov. 1, 2016).[2]

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

### B. State Farm Also Has Strong Liability Defenses to the Breach of Contract Claim.

The Proposed Settlement also should be assessed in light of the strength of the merits of State Farm's defenses to the claims of Plaintiff and the putative class members. The same substantive issues present here were present in *LaBrier* (*see supra* at pp. 5-6), and if this litigation had proceeded, State Farm would have strong arguments that summary

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

judgment should be granted to State Farm for the same reasons as the Eighth Circuit ordered the dismissal of the plaintiff's suit in *LaBrier*.

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

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

reasonable, for absent settlement, the Court might eventually determine through further litigation that *no* claims (individual or class) could proceed against State Farm in this case.

## II. The Proposed Settlement is Fair, Reasonable, and Adequate in View of the Need for Individualized Proof to Establish Injury.

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

The Proposed Settlement eliminates the litigation-manageability challenges that would otherwise be present in a class-wide trial requiring such individualized proofs. The Proposed Settlement will provide agreed-upon relief to those class members who even arguably experienced an economic impact as a result of an ACV payment that included labor depreciation and who submit a claim. While State Farm will have the right to challenge claim settlement payments based upon certain grounds specified in the Proposed Settlement, such as on grounds that the claimant already received ACV payments in the

full amount of any applicable policy limits, the Proposed Settlement will avoid widespread individualized disputes as to injury that would prevent this case from being tried on a class-wide basis.

## CONCLUSION

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

Dated: October 1, 2025

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on October 1, 2025, the foregoing document was filed using the Court's electronic filing system, which will provide service to all counsel of record.

/s/ M*ichael J. Kuhn*