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 CASULATY COMPANY, Defendant.	Case No. 24SL-CC03130

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT

I. INTRODUCTION

Plaintiff Michael Pregon ("Plaintiff") moves this Court for final approval of the Settlement under Missouri Supreme Court Rule 52.08 and submits this Memorandum in support of the Motion. The parties' settlement agreement was previously filed with the Court on October 1, 2025 ("Settlement" or "SA").[1] On October 10, 2025, this Court preliminarily approved the parties' proposed settlement in this case, and appointed Plaintiff as Class Representative and the undersigned counsel as Class Counsel ("PA Order"). Defendant State Farm Fire and Casualty Company ("Defendant") does not oppose Plaintiff's motion for final approval of the proposed class settlement.[2]

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

[2] However, State Farm does not join in, approve of, or admit Plaintiff's allegations or averments of fact or law related to this memorandum or any related submissions. As Paragraphs 1.6 and 1.7 of the Settlement make clear, State Farm denies every allegation of liability, wrongdoing, and damages; is not objecting to settling the case to achieve final resolution of the issues on fair and

This class action arises out of Defendant's alleged practice of withholding estimated Non-Material Depreciation and estimated GCOP Depreciation when calculating and issuing actual cash value ("ACV") payments for structural loss insurance claims for its policyholders in Missouri. This lawsuit concerns claims for structural damage (buildings) and not contents (furniture, etc.).

Class Counsel estimates that the aggregate value of the benefits made available by the Settlement exceeds $16,267,500, exclusive of settlement administration costs, attorneys' fees, litigation expenses, and class representative service award. Those Class Members who submit timely, completed Claim Forms will be eligible for payment under the Settlement, and Class Members' recoveries will *not* be reduced by the amounts of attorneys' fees, costs, litigation expenses, and/or service award approved by the Court.

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 ACV 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 payments 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 was fully executed (*i.e.*, July 31, 2025).

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

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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.

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.

As discussed below, the proposed Settlement was reached through arm's-length bargaining and will result in a significant recovery for the Settlement Class. Class Counsel, all of whom are experienced in prosecuting labor depreciation class actions, have concluded that the Settlement is a very good result under the circumstances and is clearly in the best interest of the Class. This conclusion is based on all the circumstances presented here: a complete analysis of the available evidence; the substantial risks, expenses, and uncertainties in continuing the litigation; the relative strengths and weaknesses of the claims and defenses asserted; the legal and factual issues presented; and Class Counsels' experience in litigating complex actions like this case.

Members of the Class appear to agree with Class Counsels' conclusion. Notice of the proposed Settlement and Claim Forms were mailed to Class Members and were also published on a settlement website. The Notice apprised Class Members of their right to, and procedures for, opting out of the Settlement, objecting to the Settlement, and/or objecting to Class Counsels' application for attorneys' fees, costs, and litigation expenses. The deadlines to object and to opt-out expired on January 30, 2026. **No** Class Members have objected to any aspect of the Settlement, and written requests for exclusion were submitted by potential Class Members who correspond to **4** unique insurance claims.

For the reasons set forth herein, Plaintiff submits that the Settlement warrants the Court's final approval and respectfully requests that the Court enter the proposed Final Order and Judgment attached to the parties' Settlement as Exhibit 5.

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, 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*, 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. 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 and estimate data for the putative class, which Class Counsel has used 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 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*.

Thereafter, the parties worked to formalize their agreement in writing. The parties subsequently executed a summary term sheet that evidenced their agreement in principle and began the process of negotiating a more comprehensive settlement agreement. *Id*. at ¶ 29. The parties executed the Settlement, which was filed with the Court on October 1, 2025. The Court entered an order granting preliminary approval of the Settlement on October 10, 2025.

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.

PA Order at ¶ 3.a.; 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. PA Order at ¶ 3.b.; SA ¶ 2.33.

B. Class Members' Recovery Under The Settlement

The proposed Settlement provides, in summary, that State Farm shall 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.
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> **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 id.* at ¶¶ 1.3, 13.2, 13.7.

C. Disputes And Neutral Evaluator

The parties have selected Judge Robert Schieber (Ret.) as the Neutral Evaluator, and Judge Schieber has agreed to serve in that role. 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 Class counsel, and State Farm and Class 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.

D. The Release Of Claims

In return for the Claim Settlement Payments, 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

Class Counsel seek as attorneys' fees, costs, and expenses, and Defendant has agreed to pay, if Court approved, an amount no greater than $5,125,000. 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 seeks, and Defendant has agreed to pay, if Court approved, 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 agreed to separately pay for the Class Notices and the work of the Settlement Administrator, JND Legal Administration ("Administrator"). *See* SA ¶ 4.1.4. All Class Members were given direct-mailed notice of the terms of the proposed Settlement more than seventy-five days prior to the Final Approval Hearing. *See id.* at ¶¶ 5.2-5.3. On December 18, 2025, Class Notices were sent via First-Class Mail by the Administrator to 37,672 potential Class Members at the most current addresses in State Farm's records. Olsen Decl., ¶¶ 5-6.

As of February 12, 2026, the Administrator tracked 1,769 Class Notices that were returned as undeliverable without an updated address available. *See id.* at ¶ 7. As of that date, 40,393 Class Notices were not returned as undeliverable, representing a 95.8% deliverable rate.[3] *Id.*

The Administrator established a settlement website, on which .pdf copies of relevant court

[3] Due process does not require that every class member receive notice. *Barfield v. Sho-Me Power Elec. Co-op.*, 2013 WL 3872181, at *13 (W.D. Mo. July 25, 2013) (approving plaintiffs' proposed notice program that included direct mailed notice to a database of individuals, an 800-number for potential members to call for more information, and a website with information on the class action because the court must direct "individual notice to all members who can be identified through reasonable effort" but "[s]omething less than actual notice to all class members is tolerated").

documents and the Settlement could be viewed, and a toll-free telephone number. *Id*. at ¶¶ 9, 11. As of February 12, 2026, there have been 2,990 unique visitors to the settlement website and 706 calls received on the toll-free telephone number. *See id.* at ¶¶ 10, 12.

The deadline for objecting to or seeking exclusion from the Settlement was January 30, 2026. *See* PA Order at ¶¶ 10-11. To date, *no* objections have been submitted to any aspect of the settlement and exclusions were requested were requested from potential Class Members related to *four* unique insurance claims. *See* Olsen Decl., ¶¶ 14, 16.

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." This Court provisionally certified the Settlement Class on October 10, 2025. Plaintiff now seeks final certification of the 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 representative are typical of the claims or defenses of the class (typicality), and the class representative 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). [4]

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* 4 William B. Rubenstein, NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 13:52 (6th ed. June 2025 Update) ("NEWBERG"); Wright and Miller, 7B FEDERAL PRACTICE AND PROCEDURE § 1797.2 (3d ed. Sept. 2025 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

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

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).[5]

Furthermore, several courts have certified *settlement* classes in the process of granting final approval of labor depreciation class settlements. *See generally* Peterson Decl. Ex. A (identifying all labor depreciation class settlements resulting in final certification and approval between June 1, 2017 and January 7, 2026 of which Class Counsel are aware).

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

1. Numerosity is Satisfied.

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,

[5] *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).

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

Here, Class Notice issued to 37,672 potential class members, 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 is Satisfied.

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 other Class Members received ACV Payments from Defendant following property loss claims from which estimated Non-Material

Depreciation and/or estimated GCOP Depreciation was improperly withheld. In addition to the Non-Material Depreciation and GCOP Depreciation withholdings themselves, whether Plaintiff and the 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 is Satisfied.

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 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 class and Plaintiff. Through these claims, Plaintiff seeks monetary relief for himself and all 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. Plaintiff And Class Counsel Meet The Adequacy Requirement.

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 class, and Plaintiff's interests are perfectly aligned with the 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 actions, 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 is Satisfied.

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 been repeatedly 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 [ACV] 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 is Satisfied.

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 Class Members 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, negative value claims that Class Members would have no interest in individually litigating. As such, "the negative value nature of the claims in this case establishes superiority of the class action." *Mitchell*, 327 F.R.D. at 564; *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 of Rule 52.08 are satisfied. The next step is for the Court to analyze whether the proposed settlement warrants final approval.

V. THE SETTLEMENT WARRANTS FINAL APPROVAL.

A. The Court Should Grant Final 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 final 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 v. Metro. St. Louis Sewer Dist.*, 41 S.W.3d 487, 493 (Mo. App. 2000) (finding no suggestion of fraud or collusion because there was "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 they 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 are no indicia of fraud or collusion. Settlement negotiations occurred only after the parties engaged in substantial formal and informal 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.[6] *See* Peterson Decl., ¶¶ 23-28.

[6] *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.").

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

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

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.

Ultimately, Class 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). Additionally, formal and informal discovery was conducted, including but not limited to State Farm's production of certain claims and estimating data and documents, prior to finalizing the proposed Settlement. Peterson Decl., ¶¶ 21, 24, 39.

In sum, Class 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 final 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* G*MAC 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, Class 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 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 final approval of the Settlement.

6. The Opinions Of Class Counsel

Class 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 MCLAUGHLIN ON CLASS ACTIONS § 6:16 (22nd ed. Nov. 2025 Update) ("MCLAUGHLIN") ("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. Class 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., ¶¶ 5-8, 33, 39-40, 43; Roberts Decl., ¶ 9.

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

B. Plaintiff's Concurrent Motion Requesting Attorneys' Fees, Costs, And Service Award Falls Within The Range Of Reasonableness Sufficient To Allow Final Approval.

The Settlement provides that Class Counsel will seek as attorneys' fees, costs, and litigation expenses, and Defendant has agreed to pay if Court approved, an amount no greater than $5,125,000. The attorneys' fees sought are approximately 23.8% of the aggregate value of relief made available to the putative class, which is within the range of reasonableness for fee awards in Missouri. Class Members' recoveries will *not* be reduced by the amount of attorneys' fees, costs, or litigation expenses paid. Plaintiff will also seek a service award in an amount no greater than $7,500, which if approved, will *not* reduce the Class Members' recoveries.

Under the Settlement and the Court's PA Order, and pursuant to Rule 52.08(e), potential Class Members received notice that fees, costs, and litigation expenses will be sought by Class Counsel, and they were provided information about how they could object. *No* Class Member has objected to the amount of either the requested attorneys' fees and litigation costs award or the requested service award. Olsen Decl., ¶ 14. Concurrent with this Motion, Class Counsel has filed a separate motion for fees and expenses pursuant to both the Settlement and Rule 52.08(e).

VI. CONCLUSION

Given the presence of skilled counsel for both parties, the complexity of facts and law at issue, the added expense if this action were to continue, the risks attendant to continued litigation, the present benefit of the Settlement, and the arm's-length negotiations leading to settlement, the Court should find that the Settlement is fair, reasonable, and adequate and enter final approval as requested in the accompanying motion.

February 23, 2026

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CERTIFICATE OF SERVICE

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

/s/Christopher E. Roberts