

At the final approval hearing and thereafter, the Court considered the Sixth Circuit's seven factors for evaluation of a class action settlement and all the Rule 23(e)(2) factors applicable to the potential approval of the Settlement. The Court independently evaluated the Court record, the Settlement, Class Counsel's Motions, and the responses and lack of responses to the class notice by the class members. The Court finds and holds as follows:

I. FINDINGS OF FACT

1. Former plaintiff Charles Cranfield initiated this action on April 22, 2016,¹ asserting a claim for breach of contract on behalf of himself and a putative class of State Farm policyholders. (State Farm timely removed the action to this Court on May 26, 2016.) Plaintiffs claims that State Farm improperly applied depreciation to the estimated cost of labor and other non-material costs necessary to complete repairs to insured property when it calculated and issued actual cash value ("ACV") claim payments to them and other class members for structural damage losses incurred under their property insurance policies. State Farm has denied, and still denies, any liability, wrongdoing, and damages with respect to the matters alleged in the Complaint.

2. After litigation between the Parties and arms-length negotiations between Class Counsel and State Farm's counsel, the Parties reached a settlement that provides substantial benefits to the Settlement Class, in return for a release and dismissal with prejudice of all claims against State Farm. The Settlement was reached after the Parties had engaged in extensive and lengthy negotiations and four mediation sessions before a neutral third-party mediator, Michael N. Ungar of Ulmer & Berne. Class Counsel was therefore well positioned to evaluate the benefits of

¹ Former plaintiff Cranfield's claims were dismissed by stipulation on January 31, 2023. Dkt. 155.

the Settlement, taking into account the expense, risk, and uncertainty of trial and protracted appeal thereafter with respect to numerous difficult questions of law and fact.

3. Plaintiffs and State Farm executed the Stipulation of Settlement and exhibits thereto on January 13, 2023 (collectively, the “Stipulation”).

4. The Stipulation is hereby incorporated by reference in this Final Order and Judgment, and the definitions and terms set forth in the Stipulation are hereby adopted and incorporated into and will have the same meanings in this Final Order and Judgment.

5. On March 2, 2023, the Court entered its Order Granting Preliminary Approval of Class Settlement (“Preliminary Approval Order”), preliminarily approving the Stipulation, preliminarily certifying the settlement Class for settlement purposes, and scheduling a hearing for July 25, 2023, at 2:30 p.m. to consider final approval of the Proposed Settlement and other actions described in the Preliminary Approval Order and the Stipulation (“Final Approval Hearing”).

6. As part of its Preliminary Approval Order, the Court conditionally certified a class of policyholders for settlement purposes (“Settlement Class”), defined as follows:

[A]ll persons and entities insured under a State Farm structural damage policy who: (1) made a structural damage claim for property located in the State of Ohio with a date of loss on or after April 22, 2015; and (2) received an actual cash value (“ACV”) payment on that claim from which estimated Non-Material Depreciation was withheld from the policyholder, or who would have received an ACV payment but for the withholding of estimated Non-Material Depreciation causing the loss to drop below the applicable deductible.

Excluded from the Class are: (1) all claims arising under State Farm policies (including endorsements, e.g., endorsement form FE-3650) expressly permitting the “depreciation” of “labor” within the text of the policy; (2) any claims in which State Farm’s claim payments exhausted the applicable limits of insurance as shown on the declarations page; (3) State Farm and its affiliates, officers, and directors; (4) members of the judiciary and their staff to whom this Action is assigned; and (5) Class Counsel.

7. On July 18, 2023, Plaintiffs moved the Court for Final Approval of the terms of the Proposed Settlement and for the entry of this Final Order and Judgment. In support, Plaintiffs

submitted, inter alia, evidence showing: the dissemination and adequacy of the Class Notice and Claim Form; the dissemination of the reminder Postcard Notice; the establishment of an automated toll-free telephone number and settlement website; the names of potential Class Members who, per the terms of the Stipulation, submitted a timely and proper request for exclusion from the Settlement Class; the arms-length nature of the negotiation of the Stipulation; and the fairness, reasonableness, and adequacy of the Stipulation. In support of the Motion for Final Approval, Plaintiffs submitted a Brief in Support, setting forth extensive argument and authority along with various exhibits attached thereto.

8. In addition, on July 18, 2023, Class Counsel submitted their Motion for Attorneys' Fees and Litigation Costs and Request for Service Awards, which Motion included evidence as the fairness and reasonableness of those requests, as well as extensive argument and authority.

9. On July 18, 2023, State Farm filed its Memorandum of Law in Support of Final Approval of Class Action Settlement. State Farm set forth in its Memorandum extensive argument and authority supporting final approval of the proposed Settlement, including its view that the Settlement is especially fair, reasonable and adequate given State Farm's assessment of the strength of its defenses as to both liability and damages.

10. Plaintiff offered at the Final Approval Hearing the following evidence in support of the Motion for Final Approval and Class Counsel's Motion for Attorneys' Fees and Litigation Costs and Request for Service Awards:

<u>Exhibit No.</u>	<u>Description</u>
1	Declaration of Erik D. Peterson
2	Declaration of Alexander S. Williams, regarding settlement administration

The Court admitted Plaintiff's Exhibit 1 and 2 into evidence for all purposes.

11. The Parties and the Settlement Administrator (**JND Legal Administration**) have satisfactorily demonstrated that the Class Notice and Claim Form was mailed, that the Postcard Notice was mailed, and that an automated toll-free telephone number and settlement website were established in accordance with the Stipulation and Preliminary Approval Order.

12. The Court further finds that all notices concerning the Settlement required by the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §§ 1715 et seq., have been sent and that State Farm has fully complied with the notice requirements under CAFA.

13. The Settlement provides substantial monetary benefits to Class Members who timely submit completed Claim Forms. In addition, State Farm has agreed to fund the costs of notice and settlement administration. The claims procedure established under the Stipulation is fair and provides Class Members with an extended and ample opportunity to submit claims for settlement payments as described in the Stipulation.

14. All potential Class Members were provided an opportunity to request exclusion from the Settlement and Action, as provided in the Stipulation. The Court finds that the individual interests of those Class Members who timely sought exclusion from the Settlement Class are preserved and that no Class Member was precluded from being excluded from the Class if he or she so desired. There are no Class Members who timely and properly excluded themselves from the Class.

15. Class Members who did not timely file and serve an objection in writing to the Stipulation or to the entry of this Final Judgment, in accordance with the procedure set forth in the Stipulation and mandated in the Preliminary Approval Order, are deemed to have waived any such objection through any appeal, collateral attack, or otherwise.

16. At the Final Approval Hearing, the Court considered, among other matters described herein, (a) whether certification of the Settlement Class for settlement purposes was appropriate under Rule 23 of the Federal Rules of Civil Procedure; (b) the fairness, reasonableness, and the adequacy of the Stipulation; and (c) the fairness and reasonableness of Class Counsel's Motion for Attorneys' Fees and Litigation Costs and Request for Service Awards under applicable law. The Court independently evaluated not only the pleadings, evidence, and arguments of Class Counsel and State Farm's counsel, but also rigorously and independently evaluated the Stipulation and Class Counsel's Motion for Attorneys' Fees and Litigation Costs and Request for Service Awards and as such, the Court considered arguments that could reasonably be made against approval of the Stipulation and Class Counsel's Motion for Attorneys' Fees and Litigation Costs and Request for Service Awards, even though such arguments were not actually presented to the Court by objection, pleading or oral argument.

17. On the basis of the matters presented in this Lawsuit and the provisions of the Stipulation, the Court is of the opinion that the Proposed Settlement is a fair, reasonable, and adequate compromise of the claims against State Farm, pursuant to Rule 23 of the Federal Rules of Civil Procedure. In considering a number of factors, the Court finds that:

- a. The liability issues in this Action and the suitability of this Action for certification of a litigation class have been vigorously contested, particularly with respect to litigation manageability requirements;
- b. This Proposed Settlement has the benefit of providing substantial benefits to Class Members now, without further litigation, under circumstances where the liability issues are still vigorously contested among the Parties and the outcome of any class trial or appeal remain uncertain;
- c. The Proposed Settlement is clearly a byproduct of adversary litigation between the Parties and arms-length negotiation, which negotiation was facilitated by neutral mediator Michael N. Ungar of Ulmer & Berne, and was not a result of any collusion on the part of Class Counsel or State Farm; and

- d. Class Counsel's request for an award of reasonable fees and reimbursement of expenses is reasonable, fair, and in all respects consistent with the terms of the Stipulation.

Therefore, on the basis of the foregoing findings of fact and the oral findings of fact articulated at the Final Approval Hearing referenced herein, the Court hereby makes the following:

II. CONCLUSIONS OF LAW

18. The Court has personal jurisdiction over the Plaintiffs, State Farm, and Class Members; venue is proper because the underlying claims arose in this district; and the Court has subject matter jurisdiction, including without limitation, jurisdiction to approve the Stipulation, to grant final certification of the Settlement Class, to settle and release all claims arising out of the Action, and to enter this Final Order and Judgment and dismiss this Action on the merits and with prejudice, pursuant to 28 U.S.C. § 1332(d)(2).

19. The Court concludes that the Settlement Class meets all the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process under the United States Constitution, and all other applicable rules and law, and the Settlement Class this Court previously preliminarily certified in its Preliminary Approval Order is hereby finally certified as a settlement class action. In connection with the settlement class certification ruling, the Court specifically finds that the numerosity, commonality, typicality and adequacy requirements of Rule 23(a)(1), and the requirements of Rule 23(b)(3), are satisfied to the extent necessary to support the certification of a settlement class.

20. The Court further finds that the Plaintiffs and Class Counsel have fairly and adequately represented and protected the interests of the Settlement Class for the purposes of entering into and implementing the Proposed Settlement, as required by Rule 23(a)(4), and Class Counsel meets the standard for appointment set forth in Rule 23(g)(1) and (4).

21. Based on the Court's review of the evidence submitted and arguments of counsel, the Court finds and concludes that the Class Notice and Claim Form was mailed to potential Class Members in accordance with the provisions of the Preliminary Approval Order, and together with the Postcard Notice, the automated toll-free telephone number, and the settlement website: (i) constituted, under the circumstances, the most effective and practicable notice of the pendency of the Action, this Stipulation, and the Final Approval Hearing to all Class Members who could be identified through reasonable effort; and (ii) met all requirements of the Federal Rules of Civil Procedure, the requirements of due process under the United States Constitution, and the requirements of any other applicable rules or law.

22. The Final Approval Hearing and evidence before the Court clearly support a finding that the Stipulation was entered into in good faith, after arms-length negotiations between Plaintiffs and State Farm, and the Court does hereby so find.

23. The Court finds that approval of the Stipulation and the Proposed Settlement embodied therein will result in substantial savings in time and resources to the Court and the litigants and will further the interests of justice. Further, the Court finds that the Stipulation is fair, reasonable, and adequate to, and in the best interests of, members of the Settlement Class, based on discovery, due diligence, and the absence of material objections sufficient to deny approval.

24. A review of the following factors supports a finding that the Settlement is fair, reasonable and adequate:

- a. The risk of fraud or collusion;
- b. The complexity, expense and likely duration of the litigation;
- c. The amount of discovery engaged in by the parties;
- d. The likelihood of success on the merits;

- e. The opinions of class counsel and class representatives; and
- f. The public interest.

Int'l Union, United Auto., Aerospace, & Agr. Implement Workers of America v. General Motors Corp., 497 F.3d 615, 631 (6th Cir. 2007) (“*UAW*”).

25. Although the notice campaign was highly successful and resulted in notice being mailed to approximately 19,397 Class Members, no persons requested exclusion from the Settlement Class, and **no** Class Members filed objections to the Stipulation. The lack of exclusion requests and opposition by a well-noticed Settlement Class strongly supports the fairness, reasonableness, and adequacy of the Settlement.

26. The Court, in evaluating the fairness, reasonableness, and adequacy of the Settlement, considered all objections that could have been raised by any Class Member. After considering all possible objections, the Court finds that the Stipulation and Proposed Settlement are fair, reasonable, and adequate under federal law and the *UAW* factors.

27. The claim process as set forth in the Stipulation is fair, reasonable, and adequate to Class Members. Any Class Member who did not request exclusion from the Class in accordance with the Stipulation is forever barred from asserting a Released Claim against a Released Person in any other action or proceeding.

28. Class Counsel’s requests for no more than \$4,004,000 in attorneys’ fees, expenses, and costs, are fair and reasonable under the circumstances. *Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 279-88 (6th Cir. 2016); *Todd S. Elwert, Inc. v. Alliance Healthcare Servs., Inc.*, 2018 WL 4539287, at *4 (N.D. Ohio Sept. 21, 2018).

29. Finally, Class Counsel’s requests for service awards to Plaintiffs of no more than \$7,500 each, to be paid by State Farm, likewise are fair and reasonable under the circumstances.

Pelzer v. Vassalle, 655 F. App'x 352, 361 (6th Cir. 2016); *In re Polyurethane Foam Antitrust Litig.*, 168 F. Supp. 3d 985, 1000 (N.D. Ohio 2016).

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

30. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, final certification of the Settlement Class is confirmed for the purpose of the Settlement, in accordance with the Stipulation.

31. Timely requests for exclusion were submitted by no potential members of the Settlement Class. All members of the Settlement Class are adjudged to be members of the Settlement Class and are bound by this Final Order and Judgment and by the Stipulation, including the releases provided for in the Stipulation and this Final Order and Judgment.

32. Plaintiff's Motion for Final Approval (Dkt.162) is hereby **GRANTED** and all provisions and terms of the Stipulation are hereby finally approved in all respects. The Parties to the Stipulation are directed to consummate the terms of the Stipulation in accordance with its terms, as may be modified by subsequent orders of this Court.

33. This Final Order and Judgment shall be immediately entered as to all claims in the Action between the Plaintiffs and Class Members and State Farm, and Final Judgment is entered approving and adopting all terms and conditions of the Settlement and the Stipulation, fully and finally terminating all claims of the Plaintiffs and the Settlement Class in this Action against State Farm in accordance with the terms and conditions of the Settlement, on the merits and with prejudice without leave to amend.

34. The Court expressly determines that there is no just reason for delay in entering this Final Order and Judgment.

35. Pursuant to Rule 23(a) and (g) of the Federal Rules of Civil Procedure, Plaintiffs The Condominiums at Northpointe Association and Christina Ermidis are appointed as

representatives of the Settlement Class, and the following counsel are appointed as counsel for the Settlement Class (“Class Counsel”):

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36. Upon the entry of this Final Order and Judgment, the Plaintiffs and all Class Members who did not timely and properly exclude themselves from the Settlement Class, and all of their heirs, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and anyone claiming through them or acting or purporting to act for them or on their behalf, will be bound by this Final Order and Judgment and shall be conclusively deemed to have fully released and discharged, acquitted and forever discharged, to the fullest extent permitted by law, any and all of the Released Persons from all of the Released Claims, all as defined in the Stipulation, and shall be conclusively bound by this Final Order and Judgment under the doctrines of res judicata, collateral estoppel, and claim and issue preclusion, and agree not to sue any Released Person with respect to any Released Claims. The Plaintiffs and all Class Members who did not timely and properly exclude themselves from the Settlement Class shall be deemed to agree and acknowledge that the foregoing releases were bargained for and are a material part of the Stipulation. The Stipulation shall be the exclusive remedy for all Class Members with regards to Released Claims.

37. Although the definitions in the Stipulation are incorporated in and are part of this Final Order and Judgment, the following definitions from the Stipulation are repeated for ease of reference:

- a. “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 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 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 Stipulation of Settlement and/or the Final Order and Judgment.
- b. “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.

38. In order to protect the continuing jurisdiction of the Court and to protect and effectuate this Final Order and Judgment, the Court permanently and forever bars and enjoins the Plaintiffs and all Class Members, and anyone acting or purporting to act on their behalf, from instituting, maintaining, prosecuting, suing, asserting, or cooperating in any action or proceeding, whether new or existing, against any of the Released Persons for any of the Released Claims. Any person in contempt of the injunction under this paragraph may be subject to sanctions, including payment of reasonable attorneys’ fees incurred to seek enforcement of the injunction.

39. This Final Order and Judgment, 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, or other document or action 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 the Lawsuit; (b) of any liability, fault, or wrongdoing of any kind on the part of State Farm; 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) contained within this paragraph.

40. Confidential Information of State Farm shall be protected from disclosure and handled in accordance with the terms of the Stipulation, and Class Counsel and any other attorneys for Plaintiffs in this Lawsuit shall destroy or return to State Farm's Counsel all Confidential Information in their possession, custody, or control as set forth in the Stipulation.

41. Class Counsel's Motion for Attorneys' Fees and Litigation Costs and Request for Service Awards (Doc. No. 163) is hereby **GRANTED**. Pursuant to Rule 23(h), the Court awards Class Counsel \$_____ in attorneys' fees, litigation expenses, and costs. The Court also awards each of the two Class Representatives \$_____ in recognition of their service to the Class in achieving this settlement. The Court hereby finds that these amounts are fair and reasonable and directs that State Farm shall pay such amounts pursuant to the terms of the Stipulation. State Farm 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.

42. Claim Settlement Payments to Class Members who timely file a completed Claim Form shall be made in the amounts, within the time period, subject to the terms, and in the manner described in the Stipulation.

43. The Court appoints Sean Malone of Malone Law, LLC as the Neutral Evaluator to carry out the duties and responsibilities set forth in the Stipulation. The Plaintiffs, Class Counsel, State Farm, and State Farm's Counsel shall not be liable for any act or omission of the Neutral Evaluator.

44. Without further order of the Court, the Parties may agree to reasonably necessary extensions of time to implement any of the provisions of the Stipulation.

45. The Action is dismissed in its entirety on the merits, with prejudice, without fees or costs to any party except as otherwise provided herein.

46. Without in any way affecting the finality of this Final Judgment, this Court shall retain exclusive continuing jurisdiction over this Action for purposes of:

- a. Enforcing the Stipulation and the Settlement; and
- b. Any other matters related or ancillary to any of the foregoing.

IT IS SO ORDERED, this __ day of _____, 2023.

/s/
Hon. Christopher A. Boyko
United States District Judge