UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION AT CLEVELAND

THE CONDOMINIUMS AT NORTHPOINTE ASSOCIATION, and CHRISTINA ERMIDIS, for themselves individually and on behalf of all others similarly situated,

Plaintiffs,

-vs-

STATE FARM FIRE & CASUALTY COMPANY,

Defendant.

CASE NO. 1:16-CV-01273

JUDGE CHRISTOPHER A. BOYKO

PLAINTIFFS' MEMORANDUM IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

I. INTRODUCTION

Plaintiffs The Condominiums at Northpointe Association and Christina Ermidis ("Plaintiffs"), individually and on behalf of a Settlement Class, move the Court for final approval of the Settlement under Federal Rule of Civil Procedure ("Rule") 23(e), and respectfully submit this Memorandum in support of their Motion. The Settlement Agreement reached between the Parties (the "Settlement") was previously filed with the Court on February 17, 2023. Dkt. 157-1. Defendant State Farm Fire and Casualty Company (referred to herein as "State Farm" or "Defendant") will not oppose this motion for final approval of the Settlement.[1]

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[1] As Paragraphs 1.13-1.14 of the Settlement makes clear, however, Defendant denies liability and absent settlement intends to contest each and every claim and cause of action, including whether any aspect of this lawsuit is appropriate for certification as a litigation class.

The proposed Settlement is made on behalf of a class of Defendant's policyholders who suffered structural damage claims during the class period. For Class Members who timely submit claim forms, the Settlement will result in 100% net recovery of withheld Nonmaterial Depreciation and 50% of Overhead and Profit Depreciation for homeowner Class Members who still have outstanding depreciation withheld from their prior actual cash value ("ACV") claim payments, plus simple interest at a rate of 3.5%. For Class Members for whom all Nonmaterial Depreciation that was withheld from ACV Payments was subsequently paid, the Settlement will result in payment of simple interest at a rate of 3.5% for the withholding period. Finally, Class Members who were covered by a structural damage insurance policy other than a homeowners policy will receive 50% of the foregoing amounts. No payments to class members will be reduced by attorneys' fees or costs.

To date, **no** Class Members objected to any aspect of the Settlement, including the class relief, the request for service awards to Plaintiffs in an amount no greater than $7,500 each, or Class Counsel's request for an amount no greater than $4,004,000 for attorneys' fees and litigation costs and expenses. Class Members' recoveries will not be reduced by the amounts of attorneys' fees, costs, litigation expenses or service awards approved by the Court.

Class Counsel, who are experienced in prosecuting labor depreciation class actions, have concluded that the Settlement is an excellent result under the circumstances and is clearly in the best interests of the Class. This conclusion is based on all the circumstances presented here: a complete analysis of all 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 past experience in litigating complex actions similar to this case.

Members of the Class appear to agree with Class Counsel's conclusion. Notice of the proposed Settlement and Claim Forms were mailed to 19,397 unique Class Members and was also published on a settlement website. *See* https://www.northpointe-v-statefarm.com. 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 Counsel's application for attorneys' fees, costs, and expenses. The deadlines to object and to opt-out expired on June 24, 2023. To date, **no** Class Members objected to any aspect of the Settlement, and no Class Members submitted a written request to be excluded from the Settlement.

Accordingly, for the reasons set forth herein, Plaintiffs submit that the Settlement warrants the Court's final approval and respectfully request that the Court enter the proposed Final Approval Order attached to the Parties' Settlement Agreement as Exhibit 4. Dkt. 157-1, PageID.6594-6607.

II. BACKGROUND AND PROCEDURAL HISTORY

A. Ohio Law Concerning Labor Depreciation

This action involves allegations that Defendant breached the terms of its standard-form property insurance policies with Plaintiffs and other class members by wrongfully depreciating labor and other nonmaterial costs when adjusting property loss claims, in violation of Ohio law. *See Perry v. Allstate Indemn. Co.*, 953 F.3d 417 (6th Cir. 2020) ("[b]ecause Perry's interpretation of 'depreciation' is a fair reading of an ambiguous term, her interpretation prevails against the insurer. We accordingly hold as a matter of law that it was improper for Allstate to depreciate labor costs to arrive at its net payment to Perry for the damage to her home.").

B. The Lawsuit

On April 22, 2016, this Action was initiated in the Ohio Court of Common Pleas, Cuyahoga County, by Charles Cranfield ("Cranfield"). State Farm timely removed the Action to this Court

on May 26, 2016. Cranfield alleged that State Farm improperly depreciated the estimated cost of labor necessary to complete repairs to insured property when it calculated and issued ACV claim payments to him and other class members for structural damage losses suffered under their property insurance policies. Cranfield asserted a claim for breach of contract on behalf of himself and a class of State Farm homeowners policyholders who received ACV payments from State Farm for structural damage to an Ohio residence where the estimated cost of labor was depreciated.

On June 27, 2016, State Farm moved to dismiss Cranfield's complaint in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(6). State Farm also moved to certify to the Ohio Supreme Court the question whether Ohio law requires insurers to exclude labor costs from the calculation of depreciation in determining ACV. On December 2, 2016, this Court granted State Farm's motion to certify and issued an order of certification to the Ohio Supreme Court. On February 22, 2017, the Ohio Supreme Court declined to answer the question certified by this Court, and Cranfield move to re-open this case.

On November 26, 2018, this Court granted State Farm's motion to dismiss for failure to state a claim. Cranfield appealed, and on March 23, 2020, the Sixth Circuit reversed, holding that an Ohio insurer may not deduct the cost of labor depreciation pursuant to an actual cash value insurance policy that does not expressly provide for such deductions. Upon remand to this Court, Plaintiffs engaged in extensive factual discovery on both the merits and class certification. Plaintiffs obtained and reviewed thousands of documents and several voluminous state-wide data sets, and then deposed numerous State Farm representatives and expert witnesses.

Cranfield filed an amended complaint on behalf of himself and an asserted class of State Farm insureds without limitation as to the type of policy, and without excluding those who ultimately received payment of replacement cost benefits ("RCBs"). State Farm moved to dismiss

the amended complaint as barred by the contractual limitations period in Cranfield's policy, and also moved to strike the class allegations purporting to include potential members whose claims are similarly barred. While that motion was pending, Cranfield requested leave to further amend his complaint to add The Condominiums at Northpointe Association ("Northpointe") as a plaintiff. The Court subsequently granted Cranfield's motion over State Farm's objection. The Court further denied as moot State Farm's motion to dismiss and motion to strike class allegations.

On March 10, 2021, Cranfield and Northpointe moved for class certification, asking this Court to certify an asserted class of all State Farm policyholders who either (i) received an ACV payment where estimated labor and other non-material costs had been depreciated, or (ii) would have received such a payment but for that depreciation. Plaintiffs also sought to appoint a non-party, Christina Ermidis ("Ermidis"), as an additional class representative.

State Farm opposed the class certification motion and also filed a motion for summary judgment against the individual claims of Cranfield and Northpointe. On August 2, 2021, the Court denied Plaintiffs' motion for class certification without prejudice. *See* Dkt. 135. It held that Northpointe's policy was not part of the asserted class definition in the original complaint and that both Cranfield's and Northpointe's "vulnerability to a limitations defense prevents them from satisfying claim typicality" under Rule 23. *Id.* at 10. The Court also concluded that individual issues predominated over common questions, including due to the variety of policies covered by the asserted class definition, the distinctions between insureds who received only ACV payments compared with those who sought RCBs, and the fact-finding necessary to determine the amount of non-material depreciation applied to any claim and whether any policyholder was underpaid as a result. *See id.* at 10, 12.

Notwithstanding this ruling, the Court granted Plaintiffs leave to file a further amended complaint adding Ermidis as a plaintiff and also stated that it would "entertain a renewed motion for class certification, which would be most appropriate following the ruling on Defendant's pending Motion for Summary Judgment." *Id.* at 14.

After Plaintiffs filed their fourth amended complaint adding Ermidis as a plaintiff and State Farm answered, the parties jointly moved to stay the case to pursue mediation, which motion the Court granted on October 7, 2021. Prior to engaging in settlement negotiations, the parties engaged in extensive discovery, including Defendant's internal and third-party statewide claims and estimating data.

C. Settlement Negotiations

Beginning in the fall of 2021, the parties agreed that they should devote their resources toward attempting to resolve the case on a class-wide basis instead of continuing to engage in time consuming litigation. *See* Peterson Declaration at ¶ 14.

The parties agreed to use Michael N. Ungar of Ulmer & Berne as a private mediator to facilitate settlement discussions. *Id*. at ¶ 14. In order to facilitate the parties' settlement negotiations on several contentious issues, the parties participated in full-day mediation sessions with Mr. Ungar on December 13, 2021, February 11, 2022, March 21, 2022, and April 26, 2022. While the parties made substantial progress towards resolution, unresolved issues remained. Following the conclusion of their mediation session with Mr. Ungar on April 26, the parties continued to negotiate informally and eventually reached an agreement in principle to settle the Action on a class-wide basis, with Northpointe and Ermidis as Representative Plaintiffs. The parties further agreed that State Farm and Cranfield would resolve separately from the class settlement the individual claims asserted by Cranfield. The parties continued direct discussions in an effort to

bridge the gap on remaining class relief issues. Ultimately the parties were able to reach agreement on class relief described above.

Consistent with ethical standards for class action settlements, only after relief to the proposed class was resolved did the Plaintiffs' counsel begin to negotiate the service awards, attorneys' fees, and costs. *See* Peterson Declaration at ¶¶ 16-20. After numerous telephone conversations and emails between counsel, the parties reached a resolution on maximum service awards, attorneys' fees, and litigation expenses to which Defendant would not object. *Id*. at ¶¶ 17-18. Because the service awards, fees, and expenses will be paid separately by Defendant and will not reduce the recovery to the class or be subsidized by the same, Defendant were incentivized to negotiate and pay as little fees and litigation expenses as possible. *Id*. at ¶¶ 16-19.

Class Counsel have significant experience with labor depreciation class actions, having represented insureds in numerous putative and certified class actions pending throughout the United States. *Id*. at ¶¶ 2-4. Based on this and other class action experience, Class Counsel believe the claims and allegations relating to labor depreciation asserted in the Action have significant merit. Class Counsel also recognized and acknowledged, however, that prosecuting such claims through further class certification motions, trial, and appeals would involve considerable uncertainty, time, and expense. *Id*. at ¶¶ 28-33.

Class Counsel have therefore concluded that it is in the best interests of the Settlement Class that the claims asserted against Defendant in the Action be resolved on the terms and conditions set forth in the Settlement Agreement. *Id.* After extensive consideration and analysis of the factual and legal issues presented in the Action, and extensive and multiple settlement negotiation sessions, Class Counsel have reached the conclusion that the substantial benefits that Class Members will receive as a result of this Settlement are an excellent result in light of the risks

and uncertainties of continued litigation, the time and expense that would be necessary to prosecute the Action through class certification, trial and any appeals that might be taken. *Id.* Particularly because homeowner class members who timely file valid claim forms will receive 100% of the withheld non-material depreciation, and a large portion of contractor overhead and profit depreciation, representing most of what they could conceivably recover at trial, without further risk and without reduction for attorneys' fees and costs, the Settlement is fair, reasonable and adequate. Additionally, given the Court's observation in its Order initially denying class certification that policyholders who were covered by a structural damage insurance policy other than a homeowners policy were not included in the original class definition and therefore may be subject to unique time-limitation defenses, the 50% recovery to those Class Members is likewise fair, reasonable, and adequate. The Settlement should be approved.

III. SUMMARY OF SETTLEMENT TERMS

A. The Class

The "Settlement Class" is defined as:

"all 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 any 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.

See Settlement Agreement ¶ 2.8.

"Structural Loss" means physical damage to a dwelling, business, or other structure located in the State of Ohio while covered by a structural damage insurance policy issued by Defendant. Settlement Agreement ¶ 2.35.

"Non-Material Depreciation" means Depreciation applied to estimated repair cost elements such as labor and removal costs, specifically including Depreciation resulting from the use of the Xactimate® settings, "Depreciate Non-Material" and/or "Depreciate Removal.". Settlement Agreement ¶ 2.23.

The "Class Period" means the period encompassing Class claims, beginning on April 22, 2015 (i.e., one year before the filing of this action) and ending in approximately August 2017. Settlement ¶ 2.12.

B. Class Members' Recovery Under The Settlement

The proposed Settlement provides the Defendant must pay the following amounts to the following categories of Class Members who submit complete and timely claim forms, subject to the applicable policy limits and deductibles of the Class Members' policies, and subject to Defendant's right to challenge or reduce these amounts under the Settlement Agreement:

Group A: Settlement Claimants with Homeowners Policies Who Previously Received ACV Payments And Did Not Receive Full RCBs. The Claim Settlement Payments to Claimants who (i) submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), (ii) received an ACV payment from which estimated Non-Material Depreciation was initially deducted, and (iii) did not subsequently recover all available depreciation through payments of replacement cost benefits ("RCBs"), will be equal to 100% 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 General Contractor Overhead and Profit Depreciation (if any) that was initially deducted from the ACV payment and was not yet recovered through payments of RCBs, plus simple interest at 3.5% on those additional amounts to be paid from the date of the initial ACV payment through the date of Final Approval.

Group B: Settlement Claimants with Homeowners Policies Who Previously Received Full RCBs After Initially Receiving an ACV Payment. The Claim Settlement Payments to Claimants who (i) submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), (ii) received an ACV payment from which estimated Non-Material Depreciation was initially deducted, and (iii) subsequently recovered all available depreciation through payments of RCBs will be equal to simple interest at 3.5% on the amount of estimated Non-Material Depreciation initially applied but subsequently recovered, plus simple interest at 3.5% on 50% of the estimated General Contractor Overhead and Profit Depreciation (if any) that was initially applied but subsequently recovered, calculated from the date of the initial ACV payment through the final replacement cost payment.

Group C: Settlement Claimants with Homeowners Policies Who Would Have Received an ACV Payment But For Application of Non-Material Depreciation. The Claim Settlement Payments to Claimants who (i) submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), and (ii) did not receive an ACV payment due to the application of estimated Non-Material Depreciation, shall be equal to 100% of the portion of the estimated Non-Material Depreciation that the Settlement Class Member did not receive as an ACV payment solely because the application of Non-Material Depreciation caused the calculated ACV figure to drop below the applicable deductible, plus simple interest at 3.5% on those amounts to be paid from the date of the initial ACV payment through the date of Final Approval.

Group D: Settlement Claimants with Non-Homeowners Policies. The Claim Settlement Payments to Claimants who fit within the Class Definition but who submitted insurance claims under a State Farm structural damage policy other than a State Farm Homeowners Policy (specifically, policies other than forms FP-7955, FP-7954, FP-7956, or FP-7933), shall be equal to 50% of the amount that would otherwise be calculated above in Groups A, B, and C if the Claimant had submitted a claim under a State Farm Homeowners Policy

Settlement ¶ 6.4. Attorneys' fees, costs and service awards as may be approved by this Court will not reduce Class Members' individual payments. Settlement ¶¶ 13.6.

C. Aggregate Value Of Relief To The Class

Based upon analysis of proprietary depreciation data from Xactanalysis® reports for Defendant's Ohio property claims, Class Counsel estimate that the aggregate amount to be made available to Class Members for payment on a claims made basis is ***at least*** $10,000,000, exclusive of attorney's fees, litigation expenses, administration costs, and the class representative service award. Peterson Declaration ¶ 24.

D. Range Of Individual Claim Values

The payments made available to Class Members will vary. Based on modeling using state-wide claims data spreadsheets produced by Defendant, the average potential claim recovery for claims with "still withheld" amounts of Non-Material Depreciation is believed to be approximately $1,103.24. Peterson Declaration ¶ 24.

E. Exemplars

Plaintiff provides the following examples of potential claim payouts for hypothetical Class Members:

Example 1: A class member (homeowner) had a damage claim and received an ACV payment during the Class Period in the amount of $24,378.00, from which $6,400.08 in Nonmaterial Depreciation was withheld. If this class member submits a claim, she will receive $6,400.08 (plus simple interest at a rate of 3.5%).

Example 2: A class member (homeowner) had a damage claim and received an ACV payment in the amount of $6,000.00, from which $3,000.00 in Nonmaterial Depreciation was withheld. This class member completed all repair work and later received a replacement cost benefit payment through which she recovered all $3,000.00 of the initially withheld Nonmaterial Depreciation. If this class member submits a claim, she will receive simple interest on the initially

withheld Nonmaterial Depreciation at a rate of 3.5%, from the point of initial withholding until the replacement cost benefits were paid.

Example 3: A class member with a commercial (non-homeowner policy) had a damage claim and received an ACV payment during the Class Period in the amount of $24,378.00, from which $6,400.08 in Nonmaterial Depreciation was withheld. If this class member submits a claim, she will receive $3,200.08 (plus simple interest at a rate of 3.5%).

F. Disputes And Neutral Evaluator

Any Class Member may dispute the amount of the Claim Settlement Payment or denial of their claim by requesting in writing a final and binding neutral resolution by a Neutral Evaluator. Settlement ¶ 7.11. All disputes received from Class Members will be provided promptly by the Administrator[2] to Defendant's Counsel and Class Counsel, and Defendant will then have thirty (30) days to reevaluate the claim and/or supply any additional documentation. *Id.* ¶ 7.12. From there, the Neutral Evaluator will issue a decision based only on the written submissions, and the decision of the Neutral Evaluator shall be final, binding and is not subject to appeal or review by the Court. *Id.* ¶ 7.13.

G. The Release Of Claims

In return for these payments, Plaintiffs and the Class will provide Defendant a release narrowly tailored to the subject matter of this dispute. *See* Settlement ¶¶ 9.1-9.2, 2.29-2.31. All other unrelated disputes concerning an individual claim will continue to be handled in the ordinary course. *See id.*

H. Attorneys' Fees, Costs and Service Awards

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[2] The Administrator is JND Legal Administration, a third-party administrator retained by Defendant to assist in administering and implementing the Settlement Agreement. Settlement ¶ 2.2.

Plaintiffs' counsel will seek as attorneys' fees, litigation costs, and expenses, and Defendant has agreed to pay, if court approved, an amount no greater than $4,004,000. *See* Settlement ¶ 13.1. Class Members' recoveries will not be reduced or enhanced by the amounts of attorneys' fees, costs or litigation expenses paid. *Id*. at ¶ 13.6; Peterson Declaration ¶ 16.

Additionally, Plaintiffs will also seek and Defendant has agreed to pay (if approved by the Court) service awards to each class representative in an amount that does not exceed $7,500. Settlement ¶ 13.5. If approved, these service awards will not reduce the Class Members' recoveries. *Id*. at ¶ 13.6.

I. The Class Notice

Defendant agreed to separately pay for the Class Notices and the work of a claims and notice Administrator, and (with the consent of Class Counsel) selected JND Legal Administration to serve as the Administrator to help provide these services. On April 14, 2023, 19,397 Class Notices were sent via First-Class Mail to Settlement Class Members at the most current addresses in the Administrator's updated records. See Para. 7-8 of the Declaration of Alex S. Williams, Vice President of JND, attached as Exhibit ___.

The Administrator tracked 790 Class Notices that were returned as undeliverable, and 143 Class Notices returned with a forwarding address, which were re-mailed. *Id.* at ¶ 9. The Administrator conducted additional research and re-mailed the Class Notice and Claim Form to 314 Settlement Class Members, of which only 58 were returned as undeliverable. *Id.* Thus, only 58 notices could not be delivered to Class Members by mail. Accordingly, 19,339 potential Class Members were mailed a Class Notice which was not returned as undeliverable, representing over

98% of total Class Members.[3] A reminder postcard notice was mailed to all class members who did not request exclusion on July 10, 2023. *Id.* at ¶ 10.

A settlement website was established by the Administrator with a toll-free telephone number and .pdf copies of relevant pleadings and the Settlement. *Id.* at ¶ 11. The Claim Form is easy to complete. The relevant terms and conditions of the Class Notice are set forth in the Settlement.

IV. THE SETTLEMENT CLASS SHOULD BE CERTIFIED UNDER FED.R.CIV.P. 23

As discussed more thoroughly below, the Settlement warrants final approval because it is fair, reasonable, and adequate, and results from extensive, arm's length negotiations by experienced counsel.

Here, as demonstrated below, even under a "rigorous analysis," the requirements of Rule 23 are easily met for the proposed *settlement* class. This is because courts routinely certify labor depreciation *litigation* classes. As a federal district court within the Sixth Circuit previously observed, before the initial class certification ruling in this case, "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 U.S. Dist. LEXIS 27584, at *14 (E.D. Ky. Feb. 21, 2019) (emphasis added), *aff'd* 965 F.3d 452 (6th Cir. July 10, 2020), *reh'g en banc denied* (6th Cir. Aug. 26, 2020); *see also Mitchell v. State Farm Fire & Cas. Co.*, 954 F.3d 700 (5th Cir. 2020),

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[3] "To comport with the requirements of due process, notice must be 'reasonably calculated to reach interested parties.'" *Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008). "Due process does not, however, require actual notice to each party intended to be bound by the adjudication of a representative action." *Id*.

reh'g and reh'g en banc denied (5th Cir. May 13, 2020); *Stuart v. State Farm Fire & Cas. Co.,* 910 F.3d 371 (8th Cir. 2018*), reh'g and reh'g en banc denied* (8th Cir. Jan. 29, 2019).

Furthermore, other district courts within the Sixth Circuit have recently certified several labor depreciation *settlement* classes in the process of granting final approval of labor depreciation class settlements. Most recently, on January 12, 2023 this Court granted class certification and final approval of the settlement reached in *Thomas Fox v. American Family Insurance Co.,* Case No. 20-cv-0199. Similarly, on August 19, 2022, Judge Pamela Barker in this Court granted class certification and final approval in the case captioned *Stevener, et al. v. Erie Insurance Company, et al.*, No. 20-cv-603 (N.D. Ohio August 19, 2022). On July 22, 2022, Judge Walter Rice in the Southern District of Ohio granted class certification and final approval in the case captioned *Donofrio v. Auto-Owners (Mutual) Insurance Company*, No. 3:19-cv-58 (S.D. Ohio July 22, 2022). Similarly, on May 9, 2022, the Middle District of Tennessee granted class certification and final approval in the case captioned *Helping Hands Home Improvement, LLC v. Selective Insurance Company of South Carolina, et al.*, No. 3:20-cv-00092 (M.D. Tenn. May 9, 2022). Likewise, on April 28, 2022, the Eastern District of Kentucky granted class certification and final approval in the case captioned *Hicks v. State Farm Fire & Casualty Company*, No. 0:14-cv-00053 (E.D. Ky. April 28, 2022). Similarly, on May 20, 2021, the Southern District of Ohio granted class certification and final approval in the case captioned *Schulte v. Liberty Ins. Corp, et al.*, No. 3:19-cv-00026-TMR (S.D. Ohio May 20, 2021). Prior to that, on September 21, 2020, the Western District of Tennessee granted class certification of a labor depreciation settlement class and final approval of settlement in the case captioned *Koester, et al. v. USAA General Indemnity Company, et al.*, No. 2:19-cv-02283-SHL (W.D. Tenn. September 21, 2020). Similarly, on August 4, 2020, the Western District of Tennessee granted class certification of a labor depreciation settlement

class and final approval of settlement in the case captioned *Oglesby v. Erie Ins. Co.*, No. 19-02361 (W.D. Tenn. Aug. 4, 2020). Similarly, on July 6, 2020, the Western District of Tennessee granted class certification of labor depreciation settlement classes and final approval of settlement in two separate but related cases captioned *Wade v. Foremost Ins. Co.*, No. 18-02120-JPM (W.D. Tenn. July 6, 2020) (*Wade* Dkt. 106), and *Halford v. Mid-Century Ins. Co.*, No. 19-01077-JPM (W.D. Tenn. July 6, 2020) (*Halford* Dkt. 64).[4]

A. The Settlement Meets The Requirements Of Rule 23(a)

The following factors warrant certification of the proposed Settlement Class.

1. Numerosity

Where there are likely more than 40 class members, numerosity is presumptively satisfied. NEWBERG § 3:12. When analyzing numerosity, a court uses its common sense. *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 541 (6th Cir. 2012). Only a "reasonable estimate" is required to establish numerosity. *Bentley v. Honeywell Intern., Inc.*, 223 F.R.D. 471, 480 (S.D. Ohio 2004). Class notice was issued to thousands of class members. Numerosity is easily satisfied.

2. Commonality

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[4] Several labor depreciation settlement classes have also been approved in other labor depreciation class actions. *Huey v. Allstate Vehicle and Prop. Ins. Co.*, No. 4:19-cv-00153 (N.D. Miss. May 26, 2022); *Shields, et al. v. Metropolitan Prop. And Cas. Ins. Co., et al.*, No. 1:19-cv-00222 (N.D. Miss. May 25, 2022); *Stuart v. State Farm Fire & Cas. Co.*, No. 4:14-cv-4001 (W.D. Ark. June 2, 2020) (granting final approval); *Baker v. Farmers Group, Inc.*, et. al, No. CV--17-03901-PHX-JJT, DE 70 (D. Ariz. Sept. 25, 2019) (same); *Braden, et al. v. Foremost Ins. Co. Grand Rapids*, No. 4:15-cv-04114-SOH, DE 119 (W.D. Ark. Oct. 9, 2018) (same); *Larey v. Allstate Prop. & Cas. Ins. Co*., No. 4:14-cv-04008-SOH, DE 79 (W.D. Ark. Feb. 9, 2018) (same); *Brown v. Homesite Group Inc. d/b/a Homesite Home Ins*., No. 4:14-cv-04026-SOH, DE 58 (W.D. Ark. April 7, 2017) (same); *Goodner v. Shelter Mut. Ins. Co.*, Case No. 4:14-cv-04013-SOH, DE 73 (W.D. Ark. June 6, 2017) (same); *Green v. American Modern Home Ins. Co., et. al*, Case No. 4:14-cv-04074-SOH, DE 94 (W.D. Ark. June 1, 2017) (same); *Adams v. Cameron Mut. Ins. Co*., No. 2:12-cv-02173-PKH, DE 52 (W.D. Ark. Aug. 27, 2015) (same). To Plaintiffs' counsel's knowledge, no labor depreciation *settlement* class has ever failed to be certified.

Commonality only requires that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "[T]he commonality requirement is not usually a contentious one … and is easily met in most cases." NEWBERG §13:18. To demonstrate commonality, plaintiffs' "claims must depend upon a common contention…that is capable of class wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Walmart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). "[E]ven a single common question will do." *Id.* at 359.

The Sixth Circuit previously affirmed a district court's determination that commonality was satisfied in a labor depreciation case arising under Kentucky law. *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."); *see also Mitchell v. State Farm Fire & Cas. Co.*, 327 F.R.D. 552, 561 (N.D. Miss. 2018), *aff'd by* 954 F.3d 700 (5th Cir. 2020) ("The proposed class members, all of whom purchased insurance coverage from State Farm, each have a claim concerning the issue of whether State Farm breached its policy by depreciating labor costs in calculating actual cash value payments…. [C]ommonality is met."). 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 U.S. Dist. LEXIS 27584, at *9, *aff'd by Hicks*, 965 F.3d 452.

In addition to labor withholdings, class members' entitlement to statutory prejudgment interest also presents a common issue. Commonality is easily satisfied.

3. Typicality

"Like the test for commonality, the test for typicality is not demanding." *Kerns v. Caterpillar, Inc.*, 2007 U.S. Dist. LEXIS 50723, at *12 (M.D. Tenn. July 12, 2007); NEWBERG § 3:29. A representative's claim is typical if it arises from the same conduct that gives rise to the claims of other class members and if his or her claims are based on the same legal theory. *Beattie v. Century Tel., Inc*., 511 F.3d 554, 561 (6th Cir. 2007). "[F]or the district court to conclude that the typicality requirement is satisfied, "a representative's claims need not always involve the same facts or law, provided there is a common element of fact or law." *Id*.

Again, the Sixth Circuit has already affirmed the determination that all claims in a labor depreciation case arising under Kentucky law are premised upon the same legal theories. *Hicks*, 2019 U.S. Dist. LEXIS 27584, at *9, *aff'd by Hicks*, 965 F.3d 452; *Mitchell*, 327 F.R.D. at 561-62. The additional claims for prejudgment interest are likewise identical for both the putative class and representatives. Through these claims, Plaintiffs seek monetary relief for themselves and all putative class members. Accordingly, "as goes the claim[s] of the named plaintiff[s], so go the claims of the class." *Sprague v. Gen. Motors Corp.*, 133 F.3d 388, 399 (6th Cir. 1998).

4. Adequacy

Adequacy under Rule 23(a)(4) is satisfied where a proposed class representative: (1) does not have conflicts with other members of the class, and (2) has retained qualified counsel. *Young*, 693 F.3d at 543. Here, Plaintiffs' interests are perfectly aligned with the proposed class, as they seek to maximize everyone's recovery of compensatory damages and prejudgment interest. They retained counsel experienced in class actions and insurance law.

B. The Settlement Meets The Requirements Of Rule 23(b)(3)

To qualify for certification under Rule 23(b)(3), a settlement class must meet two requirements beyond the Rule 23(a) prerequisites: common questions must predominate over any

questions affecting only individual members; and class resolution must be superior to other available methods for the fair and efficient adjudication of the controversy. *Amchem*, 521 U.S. at 615. Again, however, in a settlement class situation, the Court does not inquire whether the "case, if tried, would present intractable management problems, for the proposal is that there be no trial." *Id.* at 620.

1. Predominance

The determinative legal issue, whether nonmaterial costs may be depreciated under Defendant's structural damage policies, remains the predominating issue for purposes of this Court's certification analysis. *Hicks*, 965 F.3d 458-59 (affirming certification of labor depreciation class action after earlier Sixth Circuit panel resolved predominating common liability question in plaintiffs' favor); *Stuart*, 910 F.3d at 375 (certifying labor depreciation litigation class after Arkansas Supreme Court resolved the same legal dispute on question certification).

Like the other Circuit Courts that have affirmed certification of labor depreciation classes, in *Hicks* the Sixth Circuit affirmed the trial court's determination that predominance was satisfied in a case arising under Kentucky law. *Hicks*, 965 F.3d 458-59; *see also Mitchell*, 954 F.3d at 711-12 (finding 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 (finding "[i]t 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 U.S. Dist. LEXIS 27584, at *14 (E.D. Ky. Feb. 21, 2019) ("[c]ourts 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.").

2. Superiority

Rule 23(b)(3) also requires that a class action be superior to other available methods of fairly adjudicating the controversy. The superiority of class certification over other available methods is measured by consideration of certain factors, including: the class members' interests in controlling the prosecution of individual actions; the extent and nature of any litigation concerning the controversy already begun by or against class members; the desirability of concentrating the litigation of various claims in the particular forum; and the likely difficulties in managing a class action. *Hosp. Auth. Of Metro. Gov. of Nashville and Davidson Cty. v. Momenta Pharm., Inc.*, 333 F.R.D. 390, 414 (M.D. Tenn. 2019).

The "'most compelling rationale for finding superiorily in " cla"s action' is the existence of a 'negative value suit.' A negative value suit is one in which the costs of enforcement in an individual action would exceed the expected individual recovery." *Pfaff v. Whole Foods Mkt. Gr. Inc.*, No. 09-02954, 2010 U.S. Dist. LEXIS 104784, at *18 (N.D. Ohio Sep. 29, 2010) (citation omitted); *see Young*, 693 F.3d at 545; *Beattie*, 51 F.3d at 566-67 ("litigation should be brought as a class action if individual suits would yield small recoveries").

In *Hicks*, the Sixth Circuit affirmed the trial court's determination that superiority was satisfied in a labor depreciation case arising under Kentucky law:

> The district court appropriately concluded that superiority is satisfied here because a threshold common issue predominates (i.e. whether State Farm improperly depreciated labor costs from ACV payments) and because Plaintiffs' ability to obtain relief through individual damages suits is likely not economically feasible. As the court correctly observed, the payments State Farm made to Kentucky homeowners for depreciation costs through its 2015 refund program were generally less than $1,000.00 and a "significant portion" of the refunds were for amounts "less than the filing fee for initiating an action in state court."

Hicks, 965 F.3d 464. Given the relatively low per claim value here, the same analysis applies.

Accordingly, all of the requirements of Rule 23 are satisfied. The next step is for the Court to analyze whether the proposed settlement warrants final approval.

V. THE SETTLEMENT MERITS FINAL APPROVAL

The Settlement Agreement is fair, reasonable, and adequate, resulting from extensive, arm's length negotiations by experienced counsel.

A. The Court Should Grant Final Approval Because The Proposed Settlement Satisfies The Requirements Of Rule 23 And Sixth Circuit Precedent

Rule 23(e) was amended to codify the factors that affect whether a court should approve a class action settlement, including for a class that has not yet been certified. As discussed below, courts in the Sixth Circuit have applied similar principles as part of their analysis of final approval motions for many years. All such factors weigh in favor of final approval here.

Under Rule 23(e)(2), a court may only approve a settlement based on a finding that the proposed settlement is "fair, reasonable and adequate" after considering whether:

(A) the class representatives and class counsel have adequately represented the class;
(B) the proposal was negotiated at arm's length;
(C) the relief provided for the class is adequate, taking into account:
 (i) the costs, risks, and delay of trial and appeal;
 (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims;
 (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
 (iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e). These factors overlap with the factors that courts in the Sixth Circuit have considered on final approval, which include:

(1) the likelihood of success on the merits weighed against the amount and form of relief in the settlement;
(2) the complexity, expense and likely duration of the litigation;
(3) the opinions of class counsel and class representatives;

(4) the amount of discovery engaged in by the parties;
(5) the reaction of absent class members;
(6) the risk of fraud or collusion; and
(7) the public interest.

In re Packaged Ice Antitrust Litig., 2011 U.S. Dist. LEXIS 17255, at *46-47 (E.D. Mich. Feb. 22, 2011). "The Court may choose to consider only those factors that are relevant to the settlement at hand and may weigh particular factors according to the demands of the case." *Id.* at 44. Consideration of the Rule 23(e) factors and the Sixth Circuit factors support final approval here.

B. The Settlement Achieves An Excellent Result For The Proposed Settlement Class, Particularly Given The Expense, Duration and Uncertainty Of Continued Litigation

1. Likelihood Of 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 the defendants have vigorously defended the lawsuit and whether there were risks. *Blasi v. United Debt Servs., LLC*, 2019 U.S. Dist. LEXIS 198201, at *18-21 (S.D. Ohio Nov. 15, 2019). The Court then weighs these risks against the amount and form of relief in the settlement. *Packaged Ice*, 2011 U.S. Dist. LEXIS 17255, at *46-47.

Labor depreciation class actions pending throughout the United States have resulted in decidedly mixed results concerning liability, with the majority of class actions resulting in no recovery. *Hicks*, 751 Fed. Appx. at 710 (the "substantial weight of authority" is against successfully establishing liability in labor depreciation class action).

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. The Sixth Circuit has affirmed a grant of class certification in a labor depreciation case arising under Kentucky law. *See generally Hicks*, 965 F.3d 452. Nonetheless, this Court has denied Plaintiffs'

motion for class certification, without prejudice to re-filing after the Court rules on Defendant's pending motion for summary judgment. And while labor depreciation litigation classes have been initially certified for contractual claims, no labor depreciation class action has ever gone to trial or faced the issue of decertification. Peterson Declaration ¶¶ 28-29. The issue of class certification presents a risk to the class justifying the proposed resolution.

Assuming *arguendo* that class certification could have been obtained here and then sustained over any Rule 23(f) motions, the next hurdle would be to establish class-wide liability and class-wide damages. *Id.* at ¶ 28. After the *Perry* decision, Plaintiffs' counsel had a high level of confidence in establishing contractual liability for the claims that were timely under the suit limitations clauses at issue. *Id.* Defendant, however, has not conceded this point. *Id.* The recovery of 100% of the still withheld non-material depreciation by the homeowner class members, plus prejudgment interest reflects the strong value of these claims. Add to that 50% of the disputed GCO&P depreciation and the recovery here reflects a substantial recovery by every class member. In fact, most of the class members (i.e., those without GCO&P depreciation) [5] who timely file valid claim forms will receive through settlement every dime of recovery they could possibly obtain at trial. All they need to do is submit a simple claim form. Additionally, given the Court's observation in its Order initially denying class certification that policyholders who were covered by a structural damage insurance policy other than a homeowners policy were not included in the original class definition and therefore may be subject to unique time-limitation defenses, the 50% recovery to those Class Members is likewise fair, reasonable, and adequate.

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[5] General contractor overhead and profit (GCO&P) is not paid on every claim, but rather as a general matter is paid when the repairs will involve multiple trades such that it is reasonable to assume that a general contractor will be necessary to oversee the project. Claims that involve GCO&P are generally larger claims where it is more likely that repairs were made and the withheld depreciation later recovered through replacement cost benefits.

The proposed settlement of the Class is extremely favorable because: (1) homeowner class members filing claim forms will net 100% of their estimated non-material withholdings and 50% of GCO&P depreciation, plus simple interest at 3.5%; non-homeowners class members who submit claim forms will net 50% of these amounts; (2) "interest only" class members who submit claim forms will also receive a payment of interest calculated at the same rate; and (3) the release is narrowly tailored to the subject matter of this lawsuit. In addition, Defendant has agreed to pay (if court approved) service awards, attorneys' fees, case expenses, and settlement administration costs on top of class members' recoveries, so no class member will suffer a reduction in their full recovery. Moreover, because the payment to class members is un-capped, no payment to class members will be reduced by the number and amount of claims submitted.

2. Complexity, Expense And Likely Duration Of The Litigation

"Most class actions are inherently complex." *Moore v. Aeroteck, Inc.*, 2017 U.S. Dist. LEXIS 102621, at *10 (S.D. Ohio June 30, 2017). Labor depreciation class actions, in particular, are notoriously complex and slow moving due to the increased likelihood of interlocutory appeals via state supreme court "question certification" laws, 28 U.S.C. 1292(b) and/or Federal Rule of Civil Procedure 23(f). For example, the labor depreciation lawsuit *Stuart, supra*, Argument Section IV, was filed on January 2, 2014 and remained pending in the Western District of Arkansas over six-years (and after an Eighth Circuit appellate decision). *Stuart*, Case No. 4:14-4001 (W.D. Ark.). Similarly, *Hicks* was filed on February 28, 2014, and remained pending for over eight years until final settlement approval in April 2022.

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 sophisticated counsel with nationwide class action

and insurance practices. Given the foregoing, the complexity, expense and likely duration of the litigation supports final approval of the proposed settlement here.

3. The Opinions Of Class Counsel And Class Representative

Plaintiffs' Counsel, who is putative or certified class counsel in dozens of pending labor depreciation class actions nationwide, including all labor depreciation cases currently pending in Ohio, and has vast experience in insurance, class actions and complex litigation, strongly recommends the settlement. Peterson Declaration at ¶¶ 3-6. Courts give weight to the recommendation of experienced counsel for the parties in evaluating the adequacy of a settlement. *Blasi*, 2019 U.S. Dist. LEXIS 198201, at *20-21; *Does 1-2 v. Déjà Vu Services, Inc.*, 925 F.3d 886, 899 (6th Cir. 2019).

Plaintiffs, knowing that the proposed Settlement will result in recovery of 100% of the still-withheld labor depreciation plus interest for many Class Members, are similarly pleased with the proposed Settlement.

4. The Amount Of Discovery

At the time of settlement, Plaintiffs had obtained extensive and detailed state-wide claims data from Defendant. The parties exchange document requests and interrogatories. Plaintiffs deposed numerous representatives and expert witnesses employed by Defendant. Peterson Declaration at ¶ 15. The parties thus completed discovery and were well informed and prepared prior to engaging in settlement negotiations.

5. The Reaction Of Class Members

No Class Members objected to any aspect of the Settlement, including the class relief, the requested service awards for Plaintiff, or Class Counsel's request for an amount no greater than $4,004,000 for attorneys' fees and costs and litigation expenses. This fact supports final settlement

approval. *In re Southeastern Milk Antitrust Litig.*, 2012 U.S. Dist. LEXIS 83703, at *15 (E.D. Tenn. June 15, 2012) ("The lack of objections by class members in relation to the size of the class also highlights the fairness of the settlements to unnamed class members and supports approval of the settlements."). No recipient of the Class Notice has sought exclusion from the Class.

6. The Risk Of Fraud Or Collusion

"Courts presume the absence of fraud or collusion in class action settlements unless there is evidence to the contrary." *Leonhardt v. ArvinMeritor, Inc.*, 581 F. Supp. 2d 818, 838 (E.D. Mich. 2008); *Garner Props. & Mgmt., LLC v. City of Inkster*, 2020 U.S. Dist. LEXIS 146655, at *24 (E.D. Mich. Aug. 14, 2020). The participation of well-respected mediator Michael Ungar in the settlement process provides further support for the absence of collusion. There is no indicia of fraud or collusion as the class settlement negotiations were structured to follow the highest ethical standards between counsel with extensive class action and insurance experience. *See* Peterson Declaration at ¶¶ 17-19.

7. The Public Interest

"There is a strong public interest in encouraging settlement of complex litigation and class action suits because they are notoriously difficult and unpredictable and settlement conserves judicial resources." *Dick v. Sprint Comm. Co., LLC*, 297 F.R.D. 283, 297 (W.D. Ky. 2014). "In the instant case, the proposed settlement[s] end[s] potentially long and protracted litigation among these parties and frees the Court's valuable judicial resources." *In re Southeastern Milk*, 2012 U.S. Dist. LEXIS 83703, at *19. This weighs in favor of approving the proposed settlement because the public interest is served by resolution of this case. *Id.*

C. Plaintiffs' Forthcoming Motion Requesting Attorneys' Fees, Costs, And Service Award Fall Within The Range Of Reasonableness Sufficient To Allow Final Approval

The Settlement Agreement 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 $4,004,000. As detailed in the Peterson Declaration, Class Counsel estimate that the benefits to be made available to the class and the amount that Plaintiffs will request the Court to direct Defendant to pay separately for attorneys' fees, litigation expenses, and administration costs, together ***at least*** total $14,004,000 in the aggregate. Accordingly, Class Counsel's fee request amounts to approximately 28.6% of the aggregate value of the Settlement. Peterson Declaration at ¶ 26. Given Class Counsel's considerable efforts and success in achieving this recovery for class members, there is no reason to doubt the reasonableness of Class Counsel's request for attorneys' fees and expenses or the fairness of the Settlement.

Class Counsel seek amounts made available on a claims made basis pursuant to the percentage-of-the-fund method described in *Rawlings v. Prudential-Bache Props*., 9 F.3d 513, 516 (6th Cir. 1993). In the Sixth Circuit, using the percentage-of-the-fund methodology is the "trend" for awarding fees in common benefit class actions, *N.Y. Teacher's Retirement Sys. v. Gen. Motors Co.*, 315 F.R.D. 226, 243 (E.D. Mich. 2016), with the percentages awarded typically ranging from 20 to 50 percent of the common fund created." *Moore*, 2017 U.S. Dist. LEXIS 102621, at *19-20. Here, Class Counsels' request of approximately 28.5% of the common fund created is at the low end of the typical range. *Id*.; *Johnson v. Midwest Logistics Sys.*, 2013 U.S. Dist. LEXIS 74201, at *18 (S.D. Ohio May 25, 2013) (one-third fee award is "consistent with the general fee awards in class action cases").

Further, because the attorneys' fees will not reduce any class member's recovery and the attorneys' fees are to be paid "*over and above* the settlement costs and benefits with no reduction of class benefits," agreements between the parties as to the amount to fees "are *encouraged*,

particularly where the attorneys' fees are negotiated separately and only after all the terms have been agreed to between the parties." *Manners v. Am. Gen. Life Ins. Co.*, 1999 U.S. Dist. LEXIS 22880, at *84 (M.D. Tenn. Aug. 10, 1999). Federal courts, including those in the Sixth Circuit, hold that these "over and above" fee requests are entitled to a "presumption of reasonableness." *Bailey v. AK Steel Corp.*, 2008 U.S. Dist. LEXIS 18838, at *3 (S.D. Ohio Feb. 28, 2008).

Finally, in the Sixth Circuit, service awards are typically provided to class representatives for their often-extensive involvement with a lawsuit and are "efficacious ways of encouraging members of a class to become class representatives and rewarding individual efforts taken on behalf of the class." *Hogan v. Cleveland Ave Rest. Inc.*, 2019 U.S. Dist. LEXIS 212214, at *19 (S.D. Ohio Dec. 10, 2019) (approving service awards up to $15,000); *Owner-Operator Indep. Drivers Ass'n v. Arctic Express, Inc.*, 2016 U.S. Dist. LEXIS 128819, at *19 (S.D. Ohio Sep. 21, 2016) (approving service awards up to $25,000).

VI. CONCLUSION

Given the presence of skilled counsel for both parties, the complexity of facts and law at issue, the further substantial 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 judgment accordingly.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed and served via the Court's ECF filing

system which will send electronic notices of same to all counsel of record on this the ____ day of July, 2023.

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s/Patrick J. Perotti

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