IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

ANNIE ARNOLD, individually and on behalf of all others similarly situated,	)	CIVIL ACTION NO. 2:17-CV-00148-TFM-C
Plaintiff,	)	
v.	)	
STATE FARM FIRE AND CASUALTY COMPANY,	)	
Defendant.	)	

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

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INTRODUCTION

Plaintiff and Class Representative Annie Arnold and the Additional Class Representatives Bobby Abney, Tina Daniel, and Kenneth Scruggs (collectively the "Class Representatives"), on behalf of themselves and the proposed Settlement Class, respectfully 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 the Motion. The parties' Class Action Stipulation of Settlement Agreement was previously filed with the Court on February 9, 2022 ("Settlement Agreement" or "SA"). Doc. 196-1, PageID.11591.[1] Defendant State Farm Fire and Casualty Company ("State Farm") will not oppose this motion for approval of a settlement.[2]

This statewide class action arises out of State Farm's practice of withholding certain labor costs in the payment of State Farm's policyholders' actual cash value ("ACV") insurance claims. This lawsuit only concerns claims for structural damage (buildings) and not contents (furniture, clothes, etc.).

Class Counsel estimates that the aggregate value of the benefits made available by the Settlement exceeds $30,000,000.00, exclusive of the attorneys' fees, litigation expenses, administration costs, and class representative service awards that may be awarded by the Court. Those class members who submit timely and complete claim forms will be eligible for settlement claim payments, and Class Members' recoveries will *not* be reduced by the amounts of attorneys' fees, costs, litigation expenses and/or service awards approved by the Court.

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

[2] As Paragraphs 1.14-1.15 of the Settlement make clear, however, State Farm denies each and every allegation of liability, wrongdoing and damages, and believes it has substantial factual and legal defenses to all claims and class allegations. Doc. 196-1, PageID.11597.

As discussed below, the proposed Settlement was reached through arm's-length bargaining and will result in a 100% recovery of the net estimated Non-Material Depreciation that was withheld from ACV payments for Class Members who submit a claim form and still have outstanding Non-material Depreciation withheld from their prior ACV claim payments. In simpler terms, these Class Members will have the right to receive 100% of the Non-Material Depreciation this lawsuit sought to recover. Further, for the first time in any State Farm labor depreciation class action settlement across the country,[3] State Farm will also pay 44% of the withheld General Contractor Overhead and Profit ("GCOP") Depreciation (in addition to 100% of the Non-Material Depreciation) to any class member who was also subjected to GCOP Depreciation.[4] Finally, for each of the foregoing categories, and also for "interest only" Class Members from whom State Farm initially withheld Non-Material Depreciation or GCOP Depreciation and subsequently paid back the same, State Farm will pay an additional 5.55% in prejudgment interest for each year of withholding from March 8, 2017 to the Effective Date. For most class members, and assuming an Effective Date of September 15, 2022, this equates to an additional 28.36% increase for any "still withheld" amounts of Non-Material Depreciation or GCOP Depreciation. Significantly, *none of these payments* are subject to any reduction for attorneys' fees, costs, and expenses or the service awards to the Class Representatives, as may be approved by the Court.

[3] The prior State Farm labor depreciation class action settlements are *Hicks v. State Farm Fire & Cas. Co.*, No. 14-00053 (E.D. Ky. Apr. 28, 2022) (final order and judgment (*Hicks* Doc. 238)); *Mitchell v. State Farm Fire & Cas. Co.*, No. 3:17cv00170-M (N.D. Miss. Feb. 25, 2021) (final order and judgment (*Mitchell* Doc. 249)); *Stuart v. State Farm Fire & Cas. Co.*, No. 4:14-4001 (W.D. Ark. June 2, 2020) (final order and judgment (*Stuart* Doc. 259)).

[4] This Court referenced the ongoing dispute over whether GCOP Depreciation was properly included within the scope of class damages in its November 23, 2020 class certification and summary judgment orders. *See* Doc. 178, at 3, n.1; Doc. 179, at 3, n.1.

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 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 Class Counsel's experience in litigating complex actions like this case.

The overwhelming majority of Class Members appear to agree with Class Counsel's conclusion. Notice of the proposed settlement and claim forms were mailed to potential Class Members and were also published on a settlement website. *See* https://www.arnold-v-statefarm.com/. The Notice apprised potential 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/or opt-out expired on August 24, 2022. To date, **no** Class Member has objected to any aspect of the Settlement. Out of 54,377 potential Class Members receiving notice, only 7 have submitted written requests for exclusion. *See* Declaration of Kimberly K. Ness, ¶¶ 6-9, 16, filed concurrently herewith ("Ness Decl.").

For the reasons set forth herein, the Class Representatives 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' Amended Agreement as Exhibit 4 (Dkt. 196-1, PageID.11679-11694).

BACKGROUND AND PROCEDURAL HISTORY

I. PROCEDURAL HISTORY

On March 8, 2017, Plaintiff commenced this Action in the Circuit Court of Dallas County, Alabama, and State Farm timely removed the Action to this Court on April 7, 2017. Dkt. 1, 1-2. Plaintiff 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 her and other class members for structural damage losses suffered under their property insurance policies. *See generally* Dkt. 1-2. Plaintiff asserted a claim for breach of contract on behalf of herself and a class of other Alabama State Farm policyholders who received ACV payments from State Farm for loss or damage to a structure where the estimated cost of labor was depreciated. *Id.* ¶¶ 27, 48-56.

On April 14, 2017, State Farm moved to dismiss Plaintiff's complaint in its entirety pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Dkt. 10. On May 2, 2017, Plaintiff filed a conditional motion to remand the Action to Alabama state court. Dkt. 19. After full briefing, Judge Steele denied both motions in a published decision issued on August 3, 2017. *Arnold v. State Farm Fire & Cas. Co.*, 268 F. Supp. 3d 1297 (S.D. Ala. 2017).

On August 16, 2017, State Farm filed a motion in which it asked the Court to: (i) make Section 1292(b) findings regarding the Court's denial of State Farm's motion to dismiss; (ii) certify the "labor depreciation" question to the Alabama Supreme Court; and (iii) reconsider in part the Court's denial of State Farm's motion to dismiss. Dkt. 32. On November 14, 2017, Judge Steele denied State Farm's motion. *Arnold v. State Farm Fire & Cas. Co.*, 2017 WL 5451749 (S.D. Ala. Nov. 14, 2017) (Dkt. 31).

In response to the Court's August 3, 2017 Order denying State Farm's motion to dismiss, State Farm changed its claims handling practices and discontinued its practice of withholding labor from any ACV payments in the State of Alabama. In addition, State Farm also issued refund payments for withheld labor to certain putative class members. *See Arnold v. State Farm Fire & Cas. Co.,* 2020 WL 6879271, at *3, 5, 11 (S.D. Ala. Nov. 23, 2020) (Dkt. 178) (recognizing August 3, 2017 as "the date on which State Farm amended its statewide practices and ceased deducting labor depreciation from its payments" and discussing "State Farm's supplemental payment program"); Dkt. 88, at 8-10 (discussing State Farm's cessation of its labor depreciation practice in Alabama and its program refunding depreciated labor costs for ACV calculations made from August 2, 2017 through August 25, 2017).

State Farm sharply disputed the appropriateness of class certification and claimed that, even if it improperly withheld sums as labor depreciation, Plaintiff and certain putative class members had not suffered any damages. The parties engaged in extensive discovery, including but not limited to: (1) State Farm's production of Xactimate® estimating and State Farm claims and payment data for all persons and entities potentially falling within the asserted class within the alleged class period; (2) State Farm's production of documents related to its Alabama labor depreciation refund program; and (3) several depositions of fact and expert witnesses. *See* Dkt. 200-1, PageID.11793-11794, ¶ 12. As the Court is aware, the parties also engaged in extensive dispositive, certification and expert-related motion practice.

More specifically, on April 22, 2019, Plaintiff moved for class certification. Dkt. 87. State Farm filed its opposition thereto on September 19, 2019, (Dkt. 108), and Plaintiff later filed a reply brief in support of her motion. Dkt. 113. On October 16, 2019, State Farm filed a motion asking the Court to hold an evidentiary hearing on class certification-related issues, (Dkt. 114), including

issues raised in State Farm's subsequently filed motion for summary judgment on Plaintiff's individual claim, (Dkt. 119), and State Farm's subsequently filed motion to exclude the opinions of Plaintiff's proffered expert witness, Toby Johnson. Dkt. 122. Plaintiff opposed State Farm's three motions. Dkts. 116, 128, 131.

On February 13, 2020, this Court granted State Farm's motion for an evidentiary hearing. Dkt. 138. The parties then participated in a two-day, live-witness evidentiary hearing before this Court on July 22-23, 2020, concerning Plaintiff's motion for class certification. The Court also heard arguments by the parties' counsel concerning State Farm's motion for summary judgment on Plaintiff's individual claims and State Farm's motion to exclude Plaintiff's expert, Toby Johnson.

On September 30, 2020, this Court denied State Farm's motion to exclude the expert opinions of Toby Johnson. Dkt. 177. Thereafter, on November 23, 2020, the Court denied State Farm's motion for summary judgment, (Dkt. 179), and granted Plaintiff's motion for class certification. *Arnold v. State Farm Fire & Cas. Co.,* 2020 WL 6879271 (S.D. Ala. Nov. 23, 2020) (Dkt. 178). The Court certified a class of State Farm policyholders who made: (1) a structural damage claim for property located in the State of Alabama with a date of loss on or after March 8, 2011, but before August 3, 2017; and (2) which resulted in an actual cash value payment during the class period from which "non-material depreciation" was withheld from the policyholder; or which would have resulted in an actual cash value payment but for the withholding of "non-material depreciation" causing the loss to drop below the applicable deductible. The certified class excluded: (1) all claims arising under policies with State Farm coverage form WH-2101 or endorsement form FE-3650, or any other policy form expressly permitting the "depreciation" of "labor" within the text of the policy form; and (2) any claims in which the actual cash value

payments exhausted the applicable limits of insurance. The Court appointed Arnold, Abney, Daniel, and Scruggs as representatives of the class (collectively "Class Representatives"), and the undersigned attorneys as Class Counsel. *See id.* at *3, 11.

On December 7, 2020, State Farm filed a petition with the U.S. Court of Appeals for the Eleventh Circuit for permission to appeal the Court's class certification order, pursuant to Federal Rule of Civil Procedure 23(f). That petition was denied on January 26, 2021.

On February 22, 2021, the Court granted the parties' joint motion to stay all proceedings in the Action to allow them time to engage in mediation to explore potential settlement of the Action. Dkt. 185. The Court requested that the parties regularly file joint status reports with the Court. *See id.*

II. SETTLEMENT NEGOTIATIONS

The parties agreed to use George M. Van Tassel, Jr., of Upchurch Watson White & Max, as a private mediator to facilitate settlement discussions. Doc. 200-1, PageID.11796, ¶18.[5] The parties participated in three full-day mediation sessions with Mr. Van Tassel on April 28, May 27, and June 21, 2021. At the conclusion of the third day of mediation on June 21, 2021, the parties reached an agreement in principle to settle the Action on a class-wide basis. *Id.* With Mr. Van Tassel's further assistance, the parties subsequently executed a summary term sheet evidencing that agreement on August 13, 2021, and began the process of negotiating a more comprehensive settlement agreement. *Id.* The parties participated in one further, five-hour mediation session with

[5] The Peterson Declaration, filed on August 10, 2022, addresses the history of settlement negotiations for this lawsuit and the timing and structure of the settlement negotiations. Doc. 200-1, PageID.11796-11797, ¶¶18-21. The Declaration also addresses the considerations that led to the compromise in exchange for the proposed release. *Id.*, PageID.11797-11802, ¶¶ 22-30, 34-40; *see also generally* Doc. 200-2, PageID.11814-11818 (McWherter Decl.); Doc. 200-3, PageID.11820-11822 (Snodgrass Decl.); Doc. 200-4, PageID.11824-11825 (Martin Decl.).

Mr. Van Tassel on November 18, 2021, to resolve the remaining issues that had arisen during negotiations of the more comprehensive settlement agreement. *Id.*

Consistent with the highest ethical standards, and through mediator Van Tassel, the parties negotiated potential attorneys' fees, costs and service awards only after relief to the Settlement Class was agreed to. Any award of attorneys' fees, costs, expenses, or service awards will not reduce the proposed amounts to be awarded to the Settlement Class. *Id.*, PageID.11796, 11798, ¶19, 26. The parties fully executed the Settlement Agreement on January 20, 2022, (Doc. 196-1), and the Court entered a Preliminary Approval Order on April 25, 2022. Doc. 199.

Class Counsel have significant experience with labor depreciation class actions against insurance companies, having represented insureds in dozens of putative and certified class actions pending throughout the United States. Based on this and other class action experience, Class Counsel believe the Class Representatives' 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 fact and expert discovery, dispositive motions, class decertification motions, trial, and appeals would involve considerable uncertainty, time, and expense. Dkt. 200-1, PageID.11801-11802, ¶¶ 34-39.

Class Counsel have therefore concluded that it is in the best interests of the Settlement Class that the claims asserted by the Class Representatives against State Farm in the Action be resolved on the terms and conditions set forth in the Settlement Agreement. *Id.*, PageID.11802, ¶ 40. 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, and the likelihood of success at trial. *Id.*

SUMMARY OF SETTLEMENT TERMS

I. THE CLASS

The "Settlement Class" means all Class Members who do not opt out of the "Class" defined as follows:

> All persons and entities (except for those explicitly excluded below) insured under a State Farm structural damage policy who made: (1) a structural damage claim for property located in the State of Alabama with a date of loss on or after March 8, 2011, but before August 3, 2017; and (2) which resulted in an actual cash value payment during the class period from which "non-material depreciation" was withheld from the policyholder; or which would have resulted in an actual cash value payment but for the withholding of "non-material depreciation" causing the loss to drop below the applicable deductible.
>
> Excluded from the Class are: (1) all claims arising under policies with State Farm coverage form WH-2101 or endorsement form FE-3650, or any other policy form expressly permitting the "depreciation" of "labor" within the text of the policy form or endorsement; (2) all persons and entities that received actual cash value payments from State Farm that 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.

SA ¶¶ 2.9, 2.11, 2.35.

II. CLASS MEMBERS' RECOVERY UNDER THE SETTLEMENT

The proposed Settlement provides that State Farm shall pay the following amounts to four distinct categories of Class Members, subject to applicable policy limits and deductibles of the Class Members' policies:

1. **Group A**: **Settlement Claimants Who Previously Received Only An ACV Payment.** The Claim Settlement Payments to Claimants from whom estimated Non-Material Depreciation was initially deducted and who did not receive any subsequent RCB payments will be equal to 100% of the estimated Non-Material Depreciation that was initially deducted from the ACV payment, plus 44% of the estimated General Contractor Overhead and Profit Depreciation (if any) that was initially deducted from

the ACV payment, plus simple interest at 5.55% on those additional amounts to be paid from March 8, 2017, to the Effective Date. SA ¶ 6.4.1.

2. **Group B**: **Settlement Claimants Who Previously Received Partial RCBs.** The Claim Settlement Payments to Claimants from whom estimated Non-Material Depreciation was initially deducted and who partially recovered the initially deducted Non-Material Depreciation through payment of RCBs will be equal to 100% of the estimated Non-Material Depreciation that was not fully recovered, plus 44% of the estimated General Contractor Overhead and Profit Depreciation (if any) that was initially deducted from the ACV payment and that was not fully recovered through payment of RCBs, plus simple interest at 5.55% on those additional amounts to be paid from March 8, 2017, to the Effective Date. SA ¶ 6.4.2.

3. **Group C**: **Settlement Claimants Who Previously Received Full RCBs.** The Claim Settlement Payments to Claimants from whom Non-Material Depreciation was initially deducted and who subsequently recovered all depreciation will be equal to simple interest at 5.55% on the amount of estimated Non-Material Depreciation initially applied but subsequently recovered, plus simple interest at 5.55% on 44% 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 date of the final replacement cost payment. SA ¶ 6.4.3.

4. **Group D**: **Settlement Claimants Who Would Have Received an ACV Payment But For Application of Non-Material Depreciation.** The Claim Settlement Payments to these Claimants 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 application of Non-Material Depreciation caused the calculated ACV figure to drop below the applicable deductible, plus simple interest at 5.55% on those amounts from March 8, 2017, to the Effective Date. SA ¶ 6.4.4.

Significantly, the amount of any attorneys' fees, costs, and expenses or the service awards to the Class Representatives awarded by this Court will *not* reduce the award to any Class Member under this Settlement. Dkt. 200-1, PageID.11796, 11798, ¶19, 26; SA ¶¶ 4.1.3, 13.2.

III. AGGREGATE VALUE OF MONETARY RELIEF TO THE CLASS AND AVERAGE POTENTIAL CLAIM RECOVERY

Based upon analysis of proprietary depreciation data from Xactanalysis® reports for State Farm property claims in Alabama, Class Counsel estimate that the aggregate amount to be made available to class members for payment on a claims made basis is at least $30MM, exclusive of attorneys' fees, litigation expenses, administration costs, and any class representative service

awards. Doc. 200-1, PageID.11799, ¶27. This amount is also exclusive of the amounts already paid by State Farm to its Alabama policyholders after this lawsuit resulted in a "change in practices" on a prospective basis.[6]

The amounts of payments to be made available to Class Members will vary. Based on modelling using state-wide claim data spreadsheets produced by State Farm, the average potential claim recovery for claims with "still withheld" amounts of Non-Material Depreciation or GCOP Depreciation is $1,021.76. This average amount is the principal, and this average amount would still be subject to 5.55% simple interest for each year of withholding. *Id.*, PageID.11799, ¶28.

IV. EXEMPLARS

To help illustrate how the settlement payments will be issued, the Class Representatives provide the following examples of potential claim payouts for hypothetical Class Members:

- **Example 1**: A class member (homeowner) had water damage to her home and received an ACV payment during Class Period in the amount of $6,500.00, from which $905.33 in Nonmaterial Depreciation was withheld. The class member made repairs herself and never sought any replacement cost benefits payments from State Farm on her claim. If this class member submits a claim, she will receive $905.33 plus pre-judgment interest.

- **Example 2**: A class member (homeowner) had a fire loss on January 1, 2016 and received an ACV payment in the amount of $100,000.00, from which $21,000.00 in Nonmaterial Depreciation was withheld. This class member completed all repair work and received a replacement cost benefit payment on January 1, 2017, through which she recovered all $21,000.00 of the initially withheld Nonmaterial Depreciation (after submitting a claim for replacement cost benefits). If this class member submits a claim form, she will receive $1,165.50 (5.55% pre-judgment interest for 365 days on $21,000.00).

[6] After the Court's August 3, 2017 Order denying State Farm's motion to dismiss, State Farm discontinued its practice of withholding labor from ACV payments in the State of Alabama and issued supplemental payments for withheld labor to certain putative class members. *See Arnold,* 2020 WL 6879271, at *3, 5, 11 (Doc. 178); Doc. 88, at 8-10.

V. DISPUTES AND NEUTRAL EVALUATOR

Any Class Member may dispute the amount of the Claim Settlement Payment or denial of their claim by requesting a final and binding neutral resolution by the Neutral Evaluator within thirty (30) days of the date shown on the notice sent to that Claimant. SA ¶¶ 7.11, 7.12, and 7.13. The parties have agreed that George M. Van Tassel, Jr. will serve as the Neutral Evaluator. *Id.* ¶ 2.23. All disputes received from Class Members will be provided to State Farm's Counsel and Class Counsel, and State Farm will then have thirty (30) days to evaluate the claim or supply any additional documentation to the Administrator. *Id.* ¶ 7.12. From there, the Neutral Evaluator shall issue a decision subject to the express terms and conditions of the Agreement, and the decision of the Neutral Evaluator shall be final and binding. *Id.* ¶ 7.13. State Farm will separately pay the reasonable fees incurred by the Neutral Evaluator as provided in the Agreement. *Id.* at ¶ 4.1.5.

VI. THE RELEASE OF CLAIMS

In return for the payment of Settlement Checks, the Class Representatives and Class Members will provide State Farm a release narrowly tailored to the subject matter of this dispute—*i.e.,* claims related to depreciation of any kind on insurance claims within the class period. *See* SA ¶¶ 2.30, 9.1-9.5. The release is expressly not intended to prevent an individual Class Member from recovering any RCBs that may still remain available under the terms of his or her Policy. *See id.* ¶ 2.30.

VII. ATTORNEYS' FEES, COSTS, AND EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARDS

After the proposed settlement terms for the putative class were agreed to, the parties began to negotiate proposed attorneys' fees and costs (subject to Court approval) through mediator Van Tassel. The negotiation of the service awards to the Class Representatives also followed an agreement in principle on the settlement terms for the proposed Class that they represent. Doc.

200-1, PageID.11796, 11800, ¶¶19-20, 31. All negotiations were conducted at arms' length under the supervision of mediator Van Tassel and structured in accordance with the highest ethical standards to avoid conflicts of interest between Class Counsel and the putative class members. *Id.*

On August 10, 2022, the Class Representatives filed an unopposed motion for an award of attorneys' fees, costs, and expenses and for service awards to the Class Representatives. *See* Dkt. 201. Class Counsel seek as attorneys' fees, costs and litigation expenses, and State Farm has agreed to pay if Court approved, an amount no greater than $8,595,000. Class Members' recoveries will *not* be reduced or enhanced by the amounts of attorneys' fees, costs or litigation expenses paid. SA ¶¶ 13.2.

At the time of the parties' execution of the Settlement Agreement, the permissibility of service awards within the Eleventh Circuit was somewhat unsettled, as described in the decision *Phillips v. Hobby Lobby Stores, Inc*., 2021 WL 3710134 at *5-6 (N.D. Ala. August 20, 2021), and the cases cited therein.[7] SA ¶ 13.5. If this remained the case at the time of the Final Approval Hearing, the parties agreed that the Court should proceed to enter Final Judgment pursuant to Rule 54(b), award Class Counsel their requested attorneys' fees and costs, and defer service awards to the Class Representatives while retaining jurisdiction to allow the Class Representatives to renew their request for service awards after the final outcome of *Johnson v. NPAS Sols., LLC*, 975 F.3d 1244 (11th Cir. 2020) (defined to mean the date upon which all appellate courts with jurisdiction (including the U.S. Supreme Court by petition for certiorari) have ruled upon such appeal, or denied any such appeal or petition for certiorari, such that no future appeal is possible). SA ¶ 13.6. If the Court enters such a Rule 54(b) judgment, Class Counsel and the Class Representatives all expressly agreed to waive any right to appeal the deferred decision by the Court as to the request

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

for service awards after the final outcome of *Johnson*. SA ¶ 13.6. While the Eleventh Circuit recently denied the petition for *en banc* review in *Johnson*, the deadline for any petition for certiorari to the U.S. Supreme Court in *Johnson* has not yet expired.

In the event the Court determines (either at the time Final Judgment is entered as to the overall Settlement or at some later date) that it may award service awards to the Class Representatives, State Farm agrees, but only subject to approval of and determination of amount by the Court, to pay to Plaintiff Annie Arnold a service award in an amount not to exceed $20,000, and to pay to each of the Additional Class Representatives Bobby Abney, Tina Daniel and Kenneth Scruggs a service award in an amount not to exceed $15,000 each. *Id.* ¶ 13.7. If approved, these service awards will *not* reduce the Class Members' recoveries. *Id.* ¶ 4.1.3.

VIII. THE CLASS NOTICE

State Farm agreed to pay for the mailing of the Class Notice, Claim Forms, Postcard Notice and the Administrator. SA ¶ 4.1.4. Per the Settlement and the Court's preliminary approval order, potential Class Members were given direct-mailed notice of the terms of the proposed Settlement at least seventy-five days prior to the Final Approval Hearing. *Id.* ¶¶ 5.3-5.4; Dkt. 199, PageID.11778-11780, ¶¶ 10-16. On June 9, 2022, Class Notices were sent via First-Class Mail by the Administrator to 54,377 potential Settlement Class Members at the most current addresses in State Farm's records. Ness Decl. ¶ 9. The claim form is easy to complete. The relevant terms and conditions of the Class Notice are set forth in the Settlement Agreement.

As of September 8, 2022, the Administrator tracked 2,459 Class Notices that were returned as undeliverable. *Id.* ¶ 9. Of these undeliverable Class Notices, the Administrator re-mailed 1,416 Class Notices to forwarding addresses provided by the USPS or obtained through a third-party lookup, and 182 Notices were returned to the Administrator as undeliverable. *See id.* Thus, as of

September 8, 2022, 54,195 potential Class Members were mailed a Class Notice that was not returned as undeliverable, representing over 99% of total potential Class Members.[8]

A settlement website was established by the Administrator with a toll-free telephone number and .pdf copies of relevant pleadings and the Settlement. As of September 8, 2022, there have been 4,556 unique visitors the settlement website and 2,046 calls received on the toll-free telephone number. *See id.* ¶¶ 11-14. On September 9, 2022, the Administrator sent Reminder Postcards to all potential Class Members who have not yet submitted a Claim Form. *Id.* ¶ 10.

The deadline for objecting to or seeking exclusion from the Settlement was August 24, 2022. Dkt. 199, ¶¶ 21, 23. To date, ***no*** Class Members have objected to any aspect of the settlement. Out of 54,377 potential Class Members, only 7 have submitted written requests for exclusion. *See* Ness Decl. ¶¶ 16, 18. "Because the parties complied with the notice provisions preliminarily approved by the Court, and given that there are no developments or changes in the facts to alter the Court's previous conclusion, the Court [should] conclude[] that the notice provided in this case satisfied the requirements of Rule 23(c)(2)(B)." *McWhorter v. Ocwen Loan Serv., LLC*, 2019 WL 9171207, at *8 (N.D. Ala. Aug. 1, 2019).

ARGUMENT

I. THE SETTLEMENT MERITS FINAL APPROVAL.

This Court has already certified this case as a Rule 23(b)(3) class action after contentious litigation through the adversary process, including a two-day live-witness evidentiary hearing. The

[8] "Courts have consistently recognized that due process does not require that every class member receive actual notice so long as the court reasonably selected a means likely to apprize interested parties." *In re Silicone Gel Breast Implant Prods. Liab. Litig.*, 2010 WL 11506713, at *48 (N.D. Ala. May 19, 2010) (collecting authorities).

Eleventh Circuit declined State Farm's interlocutory petition to review this Court's certification decision under Rule 23(f).

Due to the earlier certification, this Court does not need to revisit Rule 23's class certification elements. *See, e.g.,* 4 William B. Rubenstein, NEWBERG ON CLASS ACTIONS § 13:16 (5th ed. Dec. 2021 update) ("If the court has certified a class prior to settlement, it does not need to re-certify it for settlement purposes.") (hereinafter "NEWBERG"). Instead, the Court need only consider the fairness, reasonableness, and adequacy of the Settlement with respect to Class Representatives and the absent class members. David F. Herr, ANN. MANUAL FOR COMPLEX LIT. § 21.612 (4th ed. May 2021 update) ("Courts have held that approval of settlement class actions under Rule 23(e) requires closer judicial scrutiny than approval of settlements reached only after class certification has been litigated through the adversary process."). As discussed more thoroughly below, the Settlement warrants final approval because it is fair, reasonable, and adequate, and results from extensive, multi-day, and arm's-length negotiations by qualified counsel overseen by an experienced mediator, George M. Van Tassel, Jr.

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

Rule 23(e) was recently amended to codify the factors that affect whether a court should approve a class action settlement. In the context of preliminary approval, the amendments direct putative class counsel to provide the Court with information sufficient to enable the court to determine that the settlement is fair, reasonable and adequate, and that notice is justified because the Court will likely grant final approval to the settlement. These amendments largely mirror current practice under applicable law. As discussed below, courts in the Eleventh Circuit have applied similar principles as part of the analysis of preliminary approval motions for many years. All such factors weigh in favor of preliminary approval here.

According to the amendments to Rule 23, before notice can issue, the putative class representative must demonstrate "that the Court will likely be able to" approve the settlement under Rule 23(e)(2); and (ii) "certify the class for purposes of judgment" arising from the settlement. Fed. R. Civ. P. 23(e)(1)(B). 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 Eleventh Circuit have traditionally considered on final approval, which include:

> (1) the likelihood of success at trial;
> (2) the range of possible recovery;
> (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable;
> (4) the complexity, expense and likely duration of the litigation;
> (5) the substance and amount of opposition to the settlement; and
> (6) the stage of the proceedings and the amount of discovery completed.

In re Equifax Inc. Customer Data Sec. Breach Litig., 999 F.3d 1247, 1273 (11th Cir. 2021); *Swaney v. Regions Bank*, 2020 WL 3064945, at *3 (N.D. Ala. June 9, 2020); *Family Med. Pharm., LLC v. Trxade Gr., Inc.*, 2017 WL 1042079, at *5 (S.D. Ala. Mar. 17, 2017).

When considering these factors, the Court should keep in mind the strong presumption in favor of finding a class action settlement fair. *In re Equifax*, 999 F.3d at 1273 ("[T]here is a 'strong

judicial policy favoring settlement."). "The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding lengthy trials and appeals. Settlement is generally favored because it represents a compromise reached between the parties to the suit and relieves them, as well as the judicial system, of the costs and burdens of further litigation." NEWBERG § 13:44.

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

1. The Adequacy Of Representation

Class Counsel in this lawsuit are also putative or certified class counsel in a majority of the pending and resolved labor depreciation class actions throughout the United States and have decades of experience in insurance, class actions and complex litigation, including against State Farm, in particular. *See* Dkt. 200-1, PageID.11791, ¶¶ 2-5; Dkt. 200-2, PageID.11814-11818, ¶¶ 2-11; Dkt. 200-3, PageID.11820-11822, ¶¶ 2-9; *In re Blue Cross Blue Shield Antitrust Litig.,* 2020 WL 8256366, at *7 (N.D. Ala. Nov. 30, 2020) (finding class counsel adequate where they "have litigated scores of [similar] cases to resolution and are recognized as top authorities in their field"). Both the Class Representatives and Class Counsel have diligently and zealously represented the certified class. In the face of considerable legal complexities, Class Counsel have coordinated discovery efforts, filed hundreds of pleadings and other documents into the record, and zealously represented the Class Representatives and certified Class before this Court.

Among other things, Class Counsel successfully defeated State Farm's motions: (1) to dismiss Plaintiff's breach of contract claim; (2) for summary judgment on Plaintiff's individual claim; and (3) to exclude the expert opinions of the Class Representatives' expert, Toby Johnson. *See* Dkts. 31, 177 and 179. Class Counsel also secured Rule 23(b)(3) certification of the litigation class, which ruling State Farm unsuccessfully sought to challenge under Rule 23(f). *See* Dkts. 178

and 181. Class Counsel additionally succeeded in securing a Settlement with this formidable opponent. Further, this Court has previously held that the Class Representatives are clearly capable of fairly and adequately protecting the interests of the Class since they have been actively involved in this litigation and raise claims that are typical of those of other class members. *Arnold*, 2020 WL 6879271, at *7. "Under these circumstances, … Class Counsel and Plaintiffs adequately represented the Settlement Class. This factor favors the settlement's final approval." *McWhorter*, 2019 WL 9171207, at *9.

2. The Lack Of Fraud Or Collusion

Courts respect the integrity of counsel and presume the absence of fraud or collusion in class action settlements unless there is evidence to the contrary. *Camp v. City of Pelham*, 2014 WL 1764919, at *4 (N.D. Ala. May 1, 2014) ("There is a presumption of good faith in the negotiation process."). Here, there is no such evidence. Indeed, "[t]he Court has already found that the settlement 'is the result of non-collusive, arm's length negotiations among experienced counsel informed of and familiar with the legal and factual issues of the action[,]" which favors the settlement's final approval. *McWhorter*, 2019 WL 9171207, at *9; *see* Dkt. 199, PageID.11775.

Settlement negotiations only occurred after years of contentious litigation and significant discovery, and settlement was only achieved *after* the parties engaged in extended and difficult arm's-length negotiations during four separate mediation sessions overseen by experienced mediator, George M. Van Tassel, Jr. The attorneys' fees, costs and expenses sought here by Class Counsel were only negotiated *after* the substantive terms of the class relief had been agreed upon. Doc. 200-1, PageID.11796, 11800, ¶¶19, 31; *see McWhorter*, 2019 WL 9171207, at *9 (holding parties' protracted settlement negotiations, which "were overseen by Marty Van Tassel, an

experienced mediator who is a member of this Court's Panel of Neutrals," demonstrated settlement was the product of arms'-length bargaining and supported final approval).

3. The Complexity, Expense And Likely Duration Of The Litigation

"A settlement that 'will alleviate the need for judicial exploration of ... complex subjects, reduce litigation costs, and eliminate the significant risk that individual claimants might recover nothing' merits approval." *Swaney*, 2020 WL 3064945, at *4. The Court should compare the immediate benefits and risks of the proposed settlement against the mere possibility of future relief given the uncertainties of protracted 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.'" *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1323 (S.D. Fla. 2005).

"It is common knowledge that class action suits have a well deserved reputation as being most complex." *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977). As this Court's sister district has noted, a class action "to be successful, involves extensive discovery and expert involvement; contentious argument and voluminous briefing over certification, summary judgment and *Daubert* challenges; a lengthy trial; and appeals." *Swaney*, 2020 WL 3064945, at *4. Labor depreciation class actions such as this case are no exception.

Labor depreciation class actions 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)—this is particularly true in class actions involving State Farm's labor withholdings. For example, the labor depreciation class action, *Mitchell v. State Farm Fire & Cas. Co.*, was filed on June 27, 2017, and remained pending for nearly three-and-a-half years (and after a Fifth Circuit appellate decision). *Mitchell*, No. 17-00170 (N.D. Miss.); *Mitchell v. State Farm Fire & Cas. Co.*, 954 F.3d 700 (5th Cir. 2020), *reh'g*

and reh'g en banc denied (5th Cir. May 13, 2020), *aff'g Mitchell v. State Farm Fire & Cas. Co.*, 327 F.R.D. 552 (N.D. Miss. 2018), and *aff'g in part and rev'g in part and remanding Mitchell v. State farm Fire and Cas. Co*., 335 F. Supp. 3d 847 (N.D. Miss. 2018). In fact, from start to finish, the appellate process associated with State Farm's appeal of the district court's adverse rulings on State Farm's motion to dismiss and Mitchell's Rule 23 certification motion took over 18 months.

As another example, the labor depreciation lawsuit, *Stuart v. State Farm Fire & Cas. Co.*, 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.); *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). Similarly, *Hicks v. State Farm Fire & Cas. Co.*, was filed on February 28, 2014, and remained pending in the Eastern District of Kentucky until April 28, 2022, when the case settled and judgment was entered just past its eighth-year anniversary. During the summer of 2020, the Sixth Circuit resolved State Farm's *second* interlocutory appeal in *Hicks*. *See generally Hicks,* 965 F.3d 452 (6th Cir. 2020), *reh'g en banc denied* (6th Cir. Aug. 26, 2020).

This case has been actively litigated for nearly five years. The most substantial discovery related to managing complex e-discovery on a class-wide basis, including voluminous data production, data manipulation, and retrieval issues associated with data from Xactware Solutions, Inc. (owner of Xactimate® and Xactanalysis®) and State Farm. Several fact depositions were undertaken, and multiple third-party subpoenas were issued. Class Counsel prepared and disclosed an expert witness on claims handling, and Xactimate® and Xactanalysis® issues. State Farm likewise disclosed three of its own experts. Expert depositions were conducted. *See* Dkt. 200-1, PageID.11793-11794, ¶12. Counsel for both parties included "national class action practice" attorneys. This lawsuit, inclusive of additional appeals, could have continued for several additional

years. "As a result, continued litigation would have risked delaying the class's potential recovery for years, further reducing the value of any such recovery." *Swaney*, 2020 WL 3064945, at *4.

Indeed, "[c]omplex litigation … 'can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive.'" *Woodward v. NOR-AM Chem. Co.*, 1996 WL 1063670, at *21 (S.D. Ala. May 23, 1999). "Settlement will alleviate the need for judicial exploration of these complex subjects, reduce litigation cost, and eliminate the significant risk that individual claimants might recover nothing. This consideration strongly militates in favor of approving the Settlement." *Id.*; *Family Med.*, 2017 WL 1042079, at *7.

4. The Stage Of The Proceedings At Which Settlement Was Achieved

"Courts look at this [] factor 'to ensure that [p]laintiffs had access to sufficient information to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation." *Swaney*, 2020 WL 3064945, at *5; *Family Med.*, 2017 WL 1042079, at *7. After this Court made rulings concerning standing, contract interpretation, and prejudgment interest issues as part of the dismissal briefing process, the parties conducted significant discovery and extensively briefed further dispositive and certification issues both before this Court and the Eleventh Circuit on State Farm's Rule 23(f) Petition. Additionally, the parties engaged in a two-day, live-witness evidentiary hearing on certification issues. *See generally, supra*, Background § I and Arg. § I.B.3; Dkt. 200-1, PageID.11792-11796, ¶¶ 7-17.

This discovery and motion and appellate practice, as well as the live-testimony evidentiary hearing, resulted in further court rulings on both certification and the merits of this case. These litigation processes amply prepared the parties for mediation, and allowed them to engage in vigorous, arm's-length negotiations under the direction of an experienced and well-respected third-

party mediator who fully explored the issues in the case and helped the parties reach the proposed Settlement. *Family Med.*, 2017 WL 1042079, at *8 ("Thus, the parties exchanged sufficient information to adequately evaluate the merits of their respective positions and weight the benefits of settlement."). Accordingly, "this factor counsels in favor of approving the Settlement because it is not premature." *Swaney*, 2020 WL 3064945, at *5 (approving settlement where parties "have litigated this case for over seven years, through dispositive motions" and "have had the opportunity to investigate the facts and law, review substantive evidence relating to the claims and defenses, and brief the relevant legal issues").

5. The Likelihood Of Success On The Merits And The Range Of Possible Recovery

The "likelihood of success" factor requires the Court to compare the relief offered by the proposed Settlement with the likely recovery if the case were to proceed to trial. *Swaney*, 2020 WL 3064945, at *3. However, "[t]he [c]ourt's role is not to engage in a claim-by-claim, dollar-by-dollar evaluation[ ] but to evaluate the proposed settlement in its totality." *Id.* at *4. Further, when considering the possible range of recovery, given the plaintiffs' success on the merits, the Court must remain aware that "compromise is the essence of settlement" and "a just result is often no more than an arbitrary point between competing notions of reasonableness." *In re Chicken Antitrust Litig.*, 669 F.2d 228, 238 (5th Cir. Unit B 1982). Accordingly, "[t]he relevant inquiry is whether the proposed settlement 'falls within th[e] range of reasonableness, [and] not whether it is the most favorable possible result of litigation." *McWhorter*, 2019 WL 9171207, at *10. "Even a minimal settlement can be approved." *Swaney*, 2020 WL 3064945, at *4.

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 v. State Farm Fire & Cas. Co.*, 751 Fed. App'x 703, 710 (6th Cir. 2018) (the

"substantial weight of authority" is against successfully establishing liability in labor depreciation class action). Further, while labor depreciation litigation classes have been initially certified for contractual claims as in the case here, no labor depreciation class action has ever gone to trial or faced the issue of decertification. *See, e.g., Hicks,* 965 F.3d at 467 (affirming class certification of similar State Farm labor depreciation class action); *Mitchell*, 954 F.3d at 712 (same).

Despite these hurdles, after this Court's denial of State Farm's motions to dismiss and for summary judgment, as well as the Eleventh Circuit's denial of State Farm's Rule 23(f) Petition, Class Counsel had a high level of confidence in establishing contractual liability and damages. State Farm, however, has not conceded this point. Indeed, despite these rulings, State Farm still disputed breach and damages prior to settlement.

Because "the legal and factual issues presented in this case were hotly contested and 'would almost certainly continue to be hotly contested throughout the remaining litigation[,]'" the ultimate outcome on the merits was uncertain for both parties and settlement was appropriate. *Swaney*, 2020 WL 3064945, at *4. The "likelihood of success at trial"-factor therefore weighs in favor of approving the Settlement. *Id.*

Under the Settlement, eligible Class Members who submit timely, complete claim forms stand to receive 100% of their still-withheld labor depreciation. They will also receive 44% of the estimated GCOP Depreciation (if any) that was initially deducted from their ACV payments by State Farm. To date, no State Farm labor depreciation class action has resulted in the payment of GCOP Depreciation. Finally, 5.55% prejudgment interest per year will be provided to Class Members for the periods of withholdings, resulting in 28+% increase in payments for still withheld labor depreciation.

These are extremely favorable terms. *See, e.g., Bennett v. Behring Corp.*, 737 F.2d. 982, 986-87 & n.9 (11th Cir. 1984) (affirming settlement approval in which class fund represented 5.6% of potential recovery); *McWhorter*, 2019 WL 9171207, at *10 (approving settlement that represented approximately 30% of the aggregate amount of fees that defendant had collected and retained from class members). "Since 1995, class action settlements have been approved despite having 'recovered between 5.5% and 6.2%' of the class members' potential recovery." *McWhorter*, 2019 WL 9171207, at *11 (recognizing that courts within and outside the Eleventh Circuit have approved several class action settlements providing recovery rates of 20% or less; collecting cases). Settlements such as this one—in which certain class members are entitled to receive 100% or more of their claimed damages—are, therefore, recognized as both rare and exceptional. *See, e.g., Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1062 (D. Minn. 2010) ("Settlement Class Members who file timely and otherwise valid claims will receive *100%* of their claimed damages—*a percentage almost unheard of in class-action litigation*").

Additionally, so-called "interest only" Class Members are also eligible to receive relief under the Settlement. Class Members who timely submit a claim, and from whom Non-Material Depreciation was initially deducted but who subsequently recovered all previously-withheld depreciation through RCB payments, will receive simple interest at 5.55% on the amount of estimated Non-Material Depreciation initially applied but subsequently recovered, plus simple interest at 5.55% on 44% 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 date of the final RCB payment.

Further, "this Settlement cannot be evaluated in the vacuum of monetary recovery." *In re Blue Cross*, 2020 WL 8256366, at *17 (recognizing business practice changes established by

proposed settlement were "exceptional" and weighed in favor of settlement approval); *McWhorter*, 2019 WL 9171207, at *11 (recognizing non-monetary benefits afforded by settlement weighed supported final approval); *see also Poertner v. Gillette Co.*, 618 Fed. App'x 624, 628 (6th Cir. 2015) (approving inclusion of nonmonetary relief in "settlement pie" when evaluating whether proposed settlement was fair, and rejecting objection that nonmonetary relief was illusory since Gillette was no longer selling or marketing batteries at issue when it agreed to stop putting allegedly misleading statements on batteries' packaging as record showed Gillette's cessation "was motivated by the present litigation"). State Farm's cessation of its labor depreciation practice in the state of Alabama as of August 3, 2017 (*i.e.*, the date of this Court's Order denying State Farm's motion to dismiss), and its corresponding labor withholding refund program,[9] are significant achievements that were the direct results of this litigation. Accordingly, these business practice changes, coupled with the monetary relief provided in the proposed Settlement, warrant a finding that the benefits provided by the Settlement of this litigation are fair, adequate and reasonable when compared to the range of possible recovery. *See Poertner* 618 Fed. App'x at 629 (rejecting objection that nonmonetary relief was illusory since Gillette was no longer selling or marketing batteries at issue when it agreed to stop putting allegedly misleading statements on batteries' packaging as record showed Gillette's cessation "was motivated by the present litigation").

In sum,

> the Settlement offers a Settlement Fund that is well within the range of what courts within this Circuit and others have found to be reasonable. And it does so *now*—thereby avoiding the risks and delay inherent in litigated class certification proceedings and complex pre-trial legal challenges, the costs associated with discovery and pre-trial proceedings, and the prospect of a lengthy trial and possible appeal by [defendant]. The prospect of 'a long, arduous [trial] requiring great expenditures of time and money on behalf of both parties and the [C]ourt,' all in

[9] *See Arnold*, 2020 WL 6879271, at *3, 5, 11.

> the hopes of achieving a result on par with the relief offered by the settlement, is not in the interests of any party or Settlement Class Member.

McWhorter, 2019 WL 9171207, at *11 (emphasis in original).

6. The Opinions Of Class Counsel And The Class Representatives, And The Reaction Of Class Members

"In considering the settlement, the district court may rely upon the judgment of experienced counsel for the parties. Absent fraud, collusion, or the like, the district court 'should be hesitant to substitute its own judgment for that of counsel." *Nelson v. Mead Johnson & Johnson Co.*, 484 Fed. App'x 429, 434 (11th Cir. July 20, 2012); *McWhorter*, 2019 WL 9171207, at *8.

Here, Class Counsel, who are putative or certified class counsel in a majority of the pending and resolved labor depreciation class actions throughout the United States and are experienced insurance class action litigators, strongly recommend the settlement. The Class Representatives, knowing that the proposed Settlement will result in a 100% recovery of still-withheld labor depreciation plus a portion of the GCOP depreciation plus prejudgment interest, are similarly pleased with the proposed Settlement.

As previously discussed, out of 54,377 potential Class Members to have received notice, only 7 have submitted written requests for exclusion and **no** Class Members have objected to any aspect of the settlement, including the class relief, the proposed service awards to the Class Representatives, or to Class Counsel's request for an amount no greater than $8,595,000 for attorneys' fees, costs, and litigation expenses. Ness Decl. ¶¶ 16, 18. "[A] court may properly interpret the absence of any objections from a majority of the plaintiff class as indicating support for the proposed … settlement." *McWhorter*, 2019 WL 9171207, at *12; *Family Med.*, 2017 WL 1042079, at *7 (recognizing "a low percentage of objections points to the reasonableness of a proposed settlement and supports its approval."). "In addition, no federal or state office has

objected to the Settlement. These facts weigh in favor of approving the Settlement." *Swaney*, 2020 WL 3064945, at *5 (approving settlement involving only 4 opt-outs and no objections); *McWhorter*, 2019 WL 9171207, at *12 (holding that "low opt-out and objection rates weigh in favor of granting final approval to the settlement.").[10]

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.

Dated: September 16, 2022

/s/ Erik D. Peterson

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[10] Addressing similar circumstances in the labor depreciation class action, *Mitchell v. State Farm Fire & Cas. Co.*, the Northern District of Mississippi held "[t]he relative lack of exclusion requests and opposition by a well-noticed Settlement Class *strongly supports the fairness, reasonableness, and adequacy of the Settlement*." Final Order and Judgment at 9, ¶ 25, *Mitchell v. State Farm Fire & Cas. Co.*, No. 3:17-cv-00170 (N.D. Miss. February 25, 2021) (*Mitchell* Dkt. 249) (granting final approval of Mississippi labor depreciation class action settlement where notice was mailed to approximately 10,869 class members and only 5 class members sought exclusion from the settlement class).

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of September, 2022, I electronically filed the foregoing Memorandum of Law via CM/ECF system, which will send a notice of electronic filing to the following:

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