

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,)	Case No. 2:17-cv-00148-TFM-C
)	
Plaintiff,)	
)	
v.)	PLAINTIFFS' UNOPPOSED MOTION
)	FOR PRELIMINARY APPROVAL OF
STATE FARM FIRE AND CASUALTY)	CLASS ACTION SETTLEMENT
COMPANY,)	
)	
Defendant.)	

Pursuant to Rule 23(e)(1)-(2) of the Federal Rules of Civil Procedure, Plaintiff and Class Representative Annie Arnold (“Plaintiff”) and Additional Class Representatives Bobby Abney, Tina Daniel, and Kenneth Scruggs (“Additional Class Representatives”), on behalf of themselves and the proposed Settlement Class (collectively “Plaintiffs”), respectfully move for an order preliminarily approving a settlement agreement in accordance with the terms and conditions set forth in the proposed preliminary approval order, attached as Exhibit A to the Settlement Agreement filed concurrently herewith. Defendant State Farm Fire & Casualty Company (“State Farm” or “Defendant”) will not oppose this motion for approval of a settlement.¹

In support of their motion, Plaintiffs state and show as follows:

1. Pursuant to the 2018 amendments to Rule 23(e)(1)(B), a proposed settlement agreement should be preliminarily approved so long as the moving parties demonstrate that the court will “likely be able to” grant final approval to the settlement. These amendments codify existing practice.

¹ 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.

2. Pursuant to Rule 23(e)(3), Plaintiffs state that the only agreement at issue is the Class Action Settlement Agreement (“Settlement” or “SA”) attached hereto as **Exhibit A**.

3. Under Rule 23(e)(2), a proposed settlement can be approved based upon adequacy of representation considerations, the existence of arms-length negotiations and the terms of the settlement in the context of adequacy, the risks of the litigation, fairness to the putative class amongst themselves and in terms of distribution of class member claims and in terms of the attorneys’ fees. These factors largely mirror the factors analyzed by the Fifth Circuit. *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 639 n.11 (5th Cir. 2012); *Reed v. Gen. Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983).

4. As more fully set forth in the accompanying Memorandum and supporting Declarations, the Settlement is appropriate for preliminary approval. The Settlement Class is defined as:

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.

5. In summary, the Settlement provides the following relief:

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.

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.

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.

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.

The amount of any attorneys' fees, costs and expenses awarded by this Court will not reduce the award to any Class Member under this Settlement. SA ¶¶ 13.2.

6. The proposed settlement class does not include any policyholder that is not eligible for a payment under this Settlement Agreement. In exchange for payment, Plaintiffs will provide State Farm a release narrowly tailored to the subject matter of this dispute—*i.e.*, the specific depreciation option settings in Xactimate® software. 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.

7. The proposed settlement was reached through arms-length settlement negotiations, as attested to by Class Counsel in the accompanying Declarations, attached hereto as follows:

Exhibit B – February 9, 2022 Declaration of Erik D. Peterson

Exhibit C – February 9, 2022 Declaration of J. Brandon McWherter

Exhibit D – February 9, 2022 Declaration of T. Joseph Snodgrass

Exhibit E – February 9, 2022 Declaration of David Martin

WHEREFORE, for these reasons and those set forth in the accompanying Memorandum of Law and accompany Declarations of Class Counsel, Plaintiffs respectfully move for an order consistent with the proposed preliminary approval order attached as Exhibit A to the Class Action Stipulation of Settlement Agreement, filed concurrently herewith.

Dated: February 9, 2022

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Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2022, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to counsel of record.

/s/Erik D. Peterson

**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, *

Plaintiff, *

vs. * Case No.: 2:17-CV-148-TFM-C

STATE FARM FIRE AND CASUALTY *
COMPANY, *

Defendant.

**STIPULATION AND SETTLEMENT AGREEMENT
AMONG PLAINTIFF AND CLASS REPRESENTATIVE ANNIE ARNOLD
AND ADDITIONAL CLASS REPRESENTATIVES
BOBBY ABNEY, TINA DANIEL AND KENNETH SCRUGGS,
INDIVIDUALLY AND ON BEHALF OF A SETTLEMENT CLASS, AND
DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY**

Dated: January 13, 2022

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IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiff Annie Arnold (“Plaintiff”), additional class representatives Bobby Abney, Tina Daniel, and Kenneth Scruggs (“Additional Class Representatives”), individually and on behalf of themselves and the Class as defined herein, and Defendant State Farm Fire and Casualty Company (“State Farm” or “Defendant”), that, in consideration of the promises and covenants set forth in this Stipulation and Settlement Agreement (“Agreement”) and, upon entry by the Court of an order of Final Judgment in the lawsuit captioned *Arnold v. State Farm Fire and Casualty Co.*, Case No. 2:17-CV-148-TFM-C (“Action”), the matters raised by, or which could have been raised by, Plaintiff and/or Additional Class Representatives in the Action against Defendant are settled, compromised, and dismissed on the merits and with prejudice on the terms and conditions set forth in this Agreement.

1. RECITALS

1.1 On March 8, 2017, this Action was initiated in the Circuit Court of Dallas County, Alabama by plaintiff Annie Arnold. State Farm timely removed the Action to this Court on April 7, 2017. Plaintiff Arnold alleged that State Farm improperly depreciated the estimated cost of labor necessary to complete repairs to insured property when it calculated and issued actual cash value (“ACV”) claim payments to her and other class members for structural damage losses suffered under their property insurance policies. Plaintiff Arnold asserted a claim for breach of contract on behalf of herself and a class of State Farm policyholders who received ACV payments from State Farm for loss or damage to a dwelling, business, or other structures located in Alabama, based on events that occurred on or after March 1, 2007, where the estimated cost of labor was depreciated.

1.2 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). On May 2, 2017, Plaintiff

filed a conditional motion to remand the Action to Alabama state court. On August 3, 2017, Judge Steele denied both motions.

1.3 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. On November 14, 2017, Judge Steele denied State Farm's motion.

1.4 On April 22, 2019, Plaintiff moved for class certification. State Farm filed its opposition thereto on September 19, 2019, and Plaintiff later filed a reply brief in support of her motion.

1.5 On October 16, 2019, State Farm filed a motion asking the Court to hold an evidentiary hearing on class certification related issues, including issues raised in State Farm's subsequently filed motion for summary judgment directed to Plaintiff's individual claim and State Farm's subsequently filed motion to exclude the opinions of Plaintiff's proffered expert witness, Toby Johnson. Plaintiff opposed State Farm's three motions.

1.6 On February 13, 2020, Judge Moorer granted State Farm's motion for an evidentiary hearing. In-person evidentiary hearings were eventually held in the U.S. District Court for the Southern District of Alabama, Northern Division, on July 22-23, 2020.

1.7 On September 30, 2020, Judge Moorer denied State Farm's motion to exclude the expert opinions of Toby Johnson. Thereafter, on November 23, 2020, Judge Moorer denied State Farm's motion for summary judgment, and granted Plaintiff's motion for class certification, certifying 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.

1.8 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.

1.9 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. The Court requested that the parties regularly file joint status reports with the Court.

1.10 The parties agreed to use George M. Van Tassel, Jr., of Upchurch Watson White & Max, as a private mediator to facilitate settlement discussions. 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. 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. The parties participated in one further, five-hour mediation session with Mr. Van Tassel on November

18, 2021, to resolve the remaining issues that had arisen during negotiations of the more comprehensive settlement agreement.

1.11 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 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 Class.

1.12 Class Counsel submit that they have significant experience with non-material depreciation claims, having represented insureds in numerous certified, putative and resolved class actions throughout the United States. Based upon this and other class action and insurance litigation experience, Class Counsel believe that the claims of Plaintiff and the Additional Class Representatives relating to the depreciation practice at issue in this Action have significant merit. Class Counsel recognize and acknowledge, however, that prosecuting such claims through further fact and expert discovery, dispositive motions, trial, and appeals will involve considerable uncertainty, time, and expense.

1.13 Class Counsel has concluded that it is in the best interests of the Class that the claims asserted against Defendant in the Action be resolved on the terms and conditions set forth in this Agreement. After extensive consideration and analysis of the factual and legal issues presented in the Action, and extensive and multiple settlement negotiation sessions, Class Counsel has reached the conclusion that the substantial benefits that Class Members will receive as a result of this Settlement are a very good result in light of the risks and uncertainties of continued litigation, the time and expense that would be necessary to prosecute the Action through trial and any appeals that might be taken, and the likelihood of success at trial.

1.14 Defendant has denied and continues to deny each and every allegation of liability, wrongdoing, and damages, as Defendant believes it has substantial factual and legal defenses to all claims and class allegations asserted in the Action. Defendant has always maintained, and continues to maintain, that it has acted in accordance with all applicable agreements and governing law. Nonetheless, Defendant has concluded that because continuing to defend against the claims and allegations in the Action would be protracted and expensive, it is desirable that such claims be fully and finally settled on a class-wide basis (without any admission of fault or liability or admission as to the propriety of certification of a litigation class) in the manner and upon the terms set forth in this Agreement.

1.15 Without admitting any liability or wrongdoing, Defendant agrees to the terms of this Agreement, provided that Final Judgment approving the Settlement is entered and all Released Claims are settled, compromised, and released, in order to resolve all issues relating to depreciation in connection with ACV claim payments that were asserted, or that could have been asserted, in the Action.

2. DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following terms shall be defined as follows:

2.1 “Action” means the lawsuit captioned *Arnold v. State Farm Fire and Casualty Co.*, Case No. 2:17-CV-148-TFM-C, pending in the United States District Court for the Southern District of Alabama, Northern Division.

2.2 “Additional Class Representatives” means Bobby Abney, Tina Daniel, and Kenneth Scruggs, individually and as representatives of the Settlement Class, as the context may indicate.

2.3 “Administrator” means, subject to approval by the Court, JND Legal Administration, a third-party settlement administrator retained by Defendant (with the consent of the Class Counsel) to assist in administering and implementing the Settlement.

2.4 “Agreement,” “Proposed Settlement” and “Settlement” means this Stipulation and Settlement Agreement, including all exhibits thereto.

2.5 “Claim Form” means the Court-approved claim form, without material change from Exhibit 3, that a Class Member must submit to be considered eligible for a Claim Settlement Payment under the Settlement as provided in Sections 6 and 7.

2.6 “Claim Settlement Payment” means the sole payment to which a Claimant may be entitled, as described in Sections 6 and 7.

2.7 “Claim Deadline” means the date by which the Claim Forms must be uploaded or postmarked in order to be considered timely, as further provided in Section 6.2.

2.8 “Claimant” means any potential Settlement Class Member who submits a Claim Form.

2.9 “Class” shall mean all persons and entities 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.

2.10 “Class Counsel” means individually and collectively, the attorneys approved and appointed by the Court to represent the Class:

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2.11 “Class Member” means any Person who (a) is included within the definition of the Class and (b) does not timely and properly request exclusion from the Class as provided in Section 10.

2.12 “Class Notice” means the notice mailed to potential Class Members of the Settlement Class following preliminary approval of this Agreement, as provided in Section 5.3, in substantially the same form as Exhibit 2.

2.13 “Class Period” means March 8, 2011 through August 3, 2017.

2.14 “Court” means the United States District Court for the Southern District of Alabama, Northern Division, in which the Action is pending.

2.15 “Covered Loss” means a first party insurance claim for a Structural Loss, as defined below, that occurred during the Class Period and that Defendant or a court of competent jurisdiction determined to be a covered loss.

2.16 “Depreciation” means an estimated amount subtracted from the estimated replacement cost value when calculating the ACV of damaged property, reflecting the age, condition, wear and tear and/or obsolescence of the item(s) of structural damaged property.

2.17 “Defendant’s Counsel” means:

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2.18 “Effective Date” shall be determined as follows. If the Court, pursuant to Federal Rule of Civil Procedure 54(b), grants the Final Judgment as to all claims other than the request for service awards submitted by Plaintiff and the Additional Class Representatives (retaining jurisdiction to allow the Plaintiff and Additional Class Representatives to renew their request for service awards, as provided in Section 13), then the Effective Date of the settlement shall be: (1) the day following the expiration of the deadline for appealing the entry by the Court of the Final Judgment, if no such appeal is filed; or (2) if an appeal of the Final Judgment is filed, the date upon which all appellate courts with jurisdiction (including the United States Supreme Court by petition for certiorari) affirm such Final Judgment, or deny any such appeal or petition for certiorari, such that no future appeal is possible. If, alternatively, the Court grants the Final Judgment as to all

claims without exception, then the Effective Date of the settlement shall be as set forth above in this Section 2.18 with one further modification: if the only appeal filed is one filed by Plaintiff and/or the Additional Class Representatives and if the sole issue(s) in such an appeal filed from the Final Judgment concern the permissibility or amount of the service awards sought by Plaintiff and/or the Additional Class Representatives, then the Effective Date shall be twenty (20) days after the filing of the opening appellate brief in such appeal.

2.19 “Final Approval Hearing” means a hearing to consider final approval of the Agreement and entry of Final Judgment, as provided in Sections 3.3 and 12.

2.20 “Final Judgment” means the order and judgment to be entered by the Court, and adopting the terms set forth in this Agreement and in Exhibit 5, approving the Settlement as fair, reasonable, adequate, and in the best interests of the Class Members, and fully and finally disposing of all claims asserted in the Action against Defendant. Final Judgment could also mean, if applicable, and subject to the Court’s express determination that there is no just reason for delay, pursuant to Federal Rule of Civil Procedure 54(b), the entry of such an order fully and finally disposing of all claims asserted in the Action against Defendant other than the request for service awards submitted by Plaintiff and the Additional Class Representatives, with a ruling on that request deferred for later resolution. If a Party contends there is a material change between the actual Final Judgment issued by the Court and the terms of this Agreement, then such Party may immediately seek to set aside the Final Judgment and terminate this Agreement. However, the district court’s denial or reduction of requested attorneys’ fees, costs, disbursements or service awards will not be considered a material change.

2.21 “General Contractor Overhead and Profit Depreciation” means Depreciation applied to the estimated costs (if any) that State Farm has projected a general contractor may charge

for coordinating repairs, specifically including the Depreciation resulting from the use of the Xactimate® setting, “Depreciate O&P.”

2.22 “Legally Authorized Representative” means an administrator/administratrix, personal representative, or executor/executrix of a deceased Class Member’s estate, a guardian, conservator, attorney-in-fact, or next friend of an incapacitated Class Member, or any other legally appointed Person or entity responsible for the handling of the business affairs of a Class Member, in all cases as established by written evidence of a Legally Authorized Representative’s authority. However, any Named Insured is a Legally Authorized Representative for claims under that Named Insured’s policy without any further written evidence of authority.

2.23 “Neutral Evaluator” means the final and binding arbiter of any dispute concerning a Class Member’s eligibility for or amount of any Claim Settlement Payment, as set forth in Sections 7.11, 7.12, and 7.13. Subject to Court approval, the Parties have agreed that Defendant will retain George M. Van Tassel, Jr., to serve as the Neutral Evaluator.

2.24 “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.”

2.25 “Parties” means Plaintiff, the Additional Class Representatives, and Defendant.

2.26 “Person” means any natural person, individual, corporation, limited liability company, association, partnership, trust, or any other type of legal entity.

2.27 “Plaintiff” means Annie Arnold, individually and as representative of the Settlement Class, as the context may indicate.

2.28 “Policy” or “Policies” means a structural damage insurance policy or policies issued to a Class Member.

2.29 “Preliminary Approval” means the Preliminary Approval Order substantially adopting the terms set forth in Exhibit 1 to be entered by the Court, as provided in Section 3.2.2. If any Party reasonably contends there is a material change between the Preliminary Approval Order entered by the Court and the terms set forth in Exhibit 1, then such Party may immediately move to set aside the Preliminary Approval Order and terminate this Agreement as provided for herein prior to the issuance of Class Notice.

2.30 “Released Claims” means and includes any and all past, present and future claims arising from or in any way related to depreciation of any kind on claims within the class period (including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, and/or withholding of depreciation), whether known or unknown, and that were asserted or could have been asserted in the Action to the full extent of res judicata protection. This release is not intended to prevent an individual Class Member from seeking and potentially recovering any RCBs that may still remain available under the terms of his or her Policy. Additionally, Released Claims do not include any claim for enforcement of this Stipulation of Settlement and/or the Final Judgment.

2.31 “Released Persons” means, individually and collectively, (i) State Farm Fire and Casualty Company, and all of its past and present divisions, parent entities, associated entities, affiliates, partners, and subsidiaries; and (ii) all past and present officers, directors, shareholders, agents, attorneys, employees, stockholders, successors, assigns, independent contractors, and legal representatives of the entities set forth in (i). The Released Claims extend only to claims arising under insurance policies issued by the Defendant.

2.32 “Releasing Persons” means Plaintiff, the Additional Class Representatives, and all Class Members who do not properly and timely opt out of the Settlement, and their respective

spouses, family members, executors, representatives, administrators, guardians, wards, heirs, attorneys-in-fact, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf.

2.33 “RCB” or “RCBs” means replacement cost benefits on Structural Losses that may be (or at one time may have been) available under a Class Member’s Policy.

2.34 “Settlement Check” or “Settlement Checks” means the check(s) containing the sum that such Settlement Class Member(s) is (are) entitled to receive as payment under this Agreement, in accordance with the procedures set forth in Sections 6 and 7 below, after submitting a timely, accurate, and complete Claim Form.

2.35 “Settlement Class” means all Class Members who do not opt out.

2.36 “Structural Loss” means physical damage to a dwelling, business, or other structure located in the State of Alabama while covered by a structural damage insurance policy issued by Defendant.

2.37 “Unknown Claim” is defined in Section 9.2.

3. CONDITIONS

3.1 The Settlement is expressly contingent upon the satisfaction in full of the material terms and conditions set forth below.

3.2 **Condition No. 1: Approval.** The Settlement must be approved by the Court in accordance with the following steps:

3.2.1 **Motion for Preliminary Approval.** After good faith consultation with Defendant’s Counsel, Class Counsel will file with the Court a motion for preliminary approval within a reasonable time after the execution of this Agreement by all Parties. The motion for preliminary approval shall include a proposed Preliminary Approval Order, a Class Notice, Claim Form, a Postcard Notice, and a proposed Final Judgment, all substantially in form and content as Exhibits 1-5. The Parties shall take reasonable steps

to secure expeditious entry by the Court of a Preliminary Approval Order and shall request that the Court schedule a Final Approval Hearing no earlier than one-hundred and twenty (120) days after entry of a Preliminary Approval Order. Defendant may, but is not required to, file a memorandum in support of the motion for preliminary approval.

3.2.2 **Entry of Preliminary Approval Order.** The Court will be requested to enter a Preliminary Approval Order adopting the terms and conditions set forth in Exhibit 1, which shall, among other things:

- a. Preliminarily approve the Settlement as fair, reasonable and adequate and approve selection of the Administrator;
- b. Preliminarily certify the litigation Class previously certified herein for settlement purposes, as defined herein, and designate the Plaintiff and the Additional Class Representatives as the representatives of the Settlement Class, and designate the Class Counsel as counsel for the Settlement Class;
- c. Vacate any further scheduled dates and stay consideration of all other motions and deadlines pending in the Action;
- d. Order the issuance of Class Notice to Class Members pursuant to this Agreement, and determine that such Class Notice complies with all requirements, including, but not limited to, Fed. R. Civ. P. 23 and the Due Process Clause of the United States Constitution;
- e. Appoint JND Legal Administration as the Administrator;
- f. Find that all notices concerning the Settlement required by the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1715, *et seq.*, have been sent and that Defendant will fully comply or has fully complied with the notice requirements under that Act;
- g. Schedule a date and time for a Final Approval Hearing to be held no sooner than one hundred and twenty (120) days after the entry of the Preliminary Approval Order to determine whether the Settlement should be finally approved by the Court;
- h. Require persons within the Class who wish to exclude themselves to submit an appropriate and timely written request for exclusion by the opt out deadline in the Preliminary Approval Order, and advise that a failure to do so shall bind those Class Members who remain in the Settlement Class;
- i. Require Class Members who wish to object to the Settlement to submit a timely written objection by an objection deadline in the

Preliminary Approval Order, and advise that a failure to do so shall prevent those Class Members from objecting to the Settlement;

- j. Require any Class Member who objects to the Settlement and wishes to appear at the Final Approval Hearing to file a notice of intent to appear;
- k. Provide that the Final Approval Hearing may take place, at the sole discretion of the Court, via telephone or video so as to allow the Final Approval Hearing to proceed despite any limitations on in-court hearings related to the COVID-19 pandemic and provide that any Class Member who files a notice of intent to appear shall be provided with information required to access the telephone or video hearing;
- l. Order that the Class Notice and Claim Form be sent to Class Members and set the Claim Deadline;
- m. Preliminarily enjoin all Class Members, unless and until they have timely and properly excluded themselves from the Settlement, from (i) filing, commencing, prosecuting, maintaining, intervening in, or participating as a plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction, individually or as a class action on behalf of any Class Members who have not timely excluded themselves, based on or arising from the Released Claims; and (ii) attempting to organize an opt-out class of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on or arising from the Released Claims;
- n. Authorize the Parties to take all necessary and appropriate steps to implement the Settlement as set forth in this Agreement; and
- o. Enforce such additional provisions as provided in Exhibit 1 as necessary to implement this Agreement and the Settlement, and to issue related orders to effectuate the preliminary approval of the Settlement Agreement.

3.3 Final Approval Hearing. In connection with the motion for preliminary approval, the Parties shall request that the Court schedule and conduct a Final Approval Hearing not less than one-hundred and twenty (120) days after entry of the Preliminary Approval Order, at which time it will consider whether the Settlement is fair, reasonable, and adequate pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiff and the Additional Class Representatives, after

good faith consultation with counsel for Defendant, shall request that, at or after the Final Approval Hearing, the Court: (i) enter a Final Judgment consistent with this Agreement and Exhibit 5, granting final approval of the Settlement and dismissing with prejudice the claims of the Plaintiff, the Additional Class Representatives, and the Settlement Class in this Action; (ii) determine the attorneys' fees and expenses that should be awarded to Class Counsel as contemplated in the Agreement; and (iii) determine the service awards (if any) that should be awarded to Plaintiff and the Additional Class Representatives or, if applicable, defer a decision on the services awards pursuant to Federal Rule of Civil Procedure Rule 54(b), as contemplated by the Agreement and as set forth in Sections 13.5 through 13.7.

3.4 **Condition No. 2: Finality of Judgment.** The Court shall enter a Final Judgment consistent with this Agreement and the terms and conditions set forth in Exhibit 5, as described in Section 12, and the Effective Date must occur.

4. SETTLEMENT CONSIDERATION

4.1 Subject to the procedures in Sections 6 and 7 below, and in compromise of disputed claims and in consideration of this Agreement, as well as additional consideration described in this Agreement, the Parties have agreed that in exchange for a release by the Releasing Persons of the Released Persons of all Released Claims, entry of Final Judgment as contemplated herein, and dismissal with prejudice of the Action, Defendant shall make the following payments:

- 4.1.1 Subject to the conditions set forth in this Agreement, the Claim Settlement Payments as provided in Sections 6 and 7, below;
- 4.1.2 Subject to the conditions set forth in this Agreement, attorneys' fees and expenses that are awarded by the Court to Class Counsel, as provided in Section 13 below;
- 4.1.3 Subject to the conditions set forth in this Agreement, service awards (if any) that are awarded by the Court to the Plaintiff and the Additional Class Representatives, as provided in Section 13 below;

4.1.4 The costs of Class Notice and settlement administration, as provided in this Agreement; and

4.1.5 The reasonable fees incurred by the Neutral Evaluator, as provided in this Agreement.

4.2 Until such time as the foregoing payments are made, all sums to be paid by Defendant shall remain under the control and ownership of Defendant, the Administrator, or their independent contractors. Neither Class Members nor any other Person shall have any right to or ownership or expectation interest in Claim Settlement Payments or any other sums unless and until timely and eligible claims of Class Members have been submitted and Settlement Checks in payment of same have been issued and timely negotiated by Class Members, as described in this Agreement.

5. NOTICE

5.1 **CAFA.** Pursuant to the Class Action Fairness Act of 2005 (the “Act” or “CAFA”), 28 U.S.C. §§ 1715, *et seq.*, within ten (10) days after filing of the motion of Plaintiff and the Additional Class Representatives for preliminary approval, the Administrator shall send written notice of the Settlement to the Attorney General of the United States and appropriate state departments of insurance and state attorneys general. The Parties agree that the foregoing notices will satisfy the obligations of such Act.

5.2 **Class Notice.** Defendant shall conduct a reasonable search of its records and provide the following information to the Administrator for each Person reasonably believed to be a potential Class Member, to the extent such information is reasonably available: name, last known mailing address, date of Covered Loss during the Class Period, Policy number, and claim number for the Covered Loss. Defendant shall provide such information to the Administrator as soon as practicable after Preliminary Approval of the Proposed Settlement, but in any event no more than fifteen (15) days after entry of the Preliminary Approval Order.

5.3 The Administrator shall mail a copy of the Class Notice and Claim Form in a form and with content substantially similar to Exhibits 2 and 3 by first-class U.S. Mail to each potential Class Member identified by Defendant. Immediately prior to mailing of the Class Notice and Claim Form to potential Class Members, and only for purposes of that mailing, the Administrator shall run the addresses one time through the National Change of Address database in order to obtain any updated address for potential Class Members.

5.4 The Administrator shall complete mailing of the Class Notice and Claim Form to potential Class Members not less than seventy-five (75) days prior to the Final Approval Hearing. Any material change(s) to the Class Notice or Claim Form agreed to by the Parties after entry of the Preliminary Approval Order must be approved by the Court prior to mailing.

5.5 If a Class Notice and Claim Form mailed to any potential Class Member is returned as undeliverable, the Administrator will promptly log such return as undeliverable and provide copies of the log to Defendant and Class Counsel as requested. If the mailing is returned to the Administrator with a forwarding address, the Administrator will forward the mailing to that address. For other returned mailings, the Administrator will run the name and address one time through a single commercial database (*e.g.*, Accurint) chosen by the Administrator, and should the commercial database show a more current mailing address, the Administrator shall re-mail the returned Class Notice and Claim Form to the more current mailing address. If a more current mailing address cannot be found by searching the commercial database referenced in the preceding sentence, the Administrator shall send one message to the last known e-mail address as contained in Defendant's records (when available) for such Class Member and attempt to contact such Class Member to obtain a current address. If a more current address cannot be found through either of

the two methods described above, then no further efforts to locate or to find a more current address for Class Members is required of Defendant or the Administrator.

5.6 **Postcard Notice.** No later than forty-five (45) days before the Claim Deadline, the Administrator shall mail a reminder in the form attached as Exhibit 5 (the “Postcard Notice”) with information regarding the Claim Deadline, the Settlement website address, and how to request a copy of the Claim Form. The Postcard Notice will be mailed to each potential Class Member who has not submitted a Claim Form and who has not timely and properly excluded themselves from the Settlement Class.

5.7 **Settlement Website.** No later than the mailing of the Class Notice as provided in Sections 5.3 and 5.4, the Settlement Administrator shall establish a website containing copies of the Agreement and Exhibits, the Preliminary Approval Order, the Class Notice, Claim Form, Spanish translations of the Class Notice and Claim Form, and such other documents and information about the Settlement as Class Counsel and Defendant’s Counsel agree upon (hereinafter, the “Settlement Website”). The Claim Form shall be available to download or print from the Settlement Website.

5.7.1 The Settlement Website shall use a Uniform Resource Locator that identifies the internet address as www.Arnold-v-StateFarm.com, or such other URL as Class Counsel and Defendant’s Counsel agree upon. The Settlement Website shall not include any advertising and shall not bear or include any logos or trademarks of the Defendant other than those appearing in the Agreement. The Settlement Website shall cease to operate and the Administrator shall remove all information from the Settlement Website no later than the Final Accounting as described in Section 7.14. Ownership of the Settlement Website URL shall be transferred to Defendant within ten (10) days after operation of the Settlement Website ends.

5.8 **Toll-free Number.** No later than the mailing of the Class Notice as provided in Sections 5.3 and 5.4, the Administrator shall establish a toll-free interactive voice response phone number, with script recordings of information about the Settlement, including information about

the Claim Form, utilizing relevant portions of the Class Notice and Claim Form. The Administrator shall send the Class Notice and Claim Form, or Spanish translations of both, upon request of any potential Class Members. The phone number shall remain open and accessible through the Claim Deadline and allow for Class Members to leave recorded messages and, at Defendant's option, may also provide for live operators during select times to answer certain basic questions about the Settlement. Except for requests for the Class Notice or Claim Form, the Administrator will promptly advise Class Counsel of recorded messages left by Class Members concerning the Action and/or the Settlement, or direct any Class Members with questions that cannot be answered to Class Counsel, so that Class Counsel may timely and accurately respond to such inquiries.

5.9 The Parties agree that the foregoing procedures constitute reasonable and the best practicable notice under the circumstances, and constitute an appropriate and sufficient effort to locate current addresses for potential Class Members such that no additional efforts to do so shall be required. Upon reasonable request, the Administrator shall advise Class Counsel and Defendant's Counsel of the progress of the notice program to monitor compliance with this Agreement.

6. SUBMISSION OF CLAIM FORMS

6.1 Claim Forms mailed to potential Settlement Class Members shall be pre-populated with the Settlement Class Member's name, current address, date of Covered Loss, Policy number, and claim number, to the extent feasible and if such information is reasonably available.

6.2 To be considered valid and timely, a Claim Form must be materially complete, signed by or on behalf of the Settlement Class Member, and mailed to the Administrator's address as specified in the Claim Form, postmarked by the Claim Deadline, which shall be thirty (30) days after the scheduled date of the Final Approval Hearing. Signed and completed Claims Forms may also be scanned and uploaded on the Settlement Website by the Claim Deadline. Claim Forms

may be submitted on behalf of deceased or incapacitated Settlement Class Members by Legally Authorized Representatives, with written proof of authority.

6.3 The Claim Form will reasonably request of Settlement Class Members such information as described on the attached Claim Form (Exhibit 3). To be eligible for a Claim Settlement Payment, Settlement Class Members must, on or with the Claim Form:

- 6.3.1 Affirm that they have not assigned the claim for the Covered Loss upon which the ACV Payment was calculated, other than an interest that may be held by a mortgagee;
- 6.3.2 Confirm that the pre-populated contact and claim information contained on the Claim Form is correct, or, if necessary, update, correct, or provide additional information to any pre-populated contact or claim information contained on the Claim Form; and
- 6.3.3 If the Settlement Class Member under the Covered Loss is deceased or incapacitated, include written confirmation that the Person submitting the Claim Form is the Legally Authorized Representative of the Settlement Class Member.

The Claim Form will not require that a Settlement Class Member sign under penalty of perjury or that any signature be notarized.

6.4 Subject to Defendant's right to challenge or reduce the amount owed to any Claimant, as set forth below in Section 7.2, Claimants who submit a timely and properly completed Claim Form and are deemed eligible for a Claim Settlement Payment shall be paid in accordance with the following provisions:

- 6.4.1 **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.

- 6.4.2 **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.
- 6.4.3 **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.
- 6.4.4 **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.

6.5 The foregoing Claim Settlement Payments are the only payments to which Settlement Class Members will be entitled under the Settlement. Claim Settlement Payments are deemed to be inclusive of claims for any potentially applicable damages, penalties, interest, and fees, subject to the payments of attorneys' fees and expenses and service awards (if any) that the Court may require Defendant to pay separately, as provided for herein. All Claim Settlement Payments to Settlement Class Members, exclusive of interest payments, are subject to the terms, limits, conditions, coverage limits, and deductibles of their respective policies. Any rights to Claim Settlement Payments under this Agreement shall inure solely to the benefit of Settlement Class

Members and are not transferable or assignable, other than an interest that may already be held by a mortgagee or a person or entity who was hired before the issuance of Class Notice and in the ordinary course to repair or replace the Structural Loss. A valid assignment does not include third-party entities that purport to take class action assignments in exchange for cash.

6.6 The opportunity to submit Claim Forms for Claim Settlement Payments and other obligations incurred by Defendant pursuant to this Agreement shall be in full and final disposition of the Action, and in full consideration for the release of any and all Released Claims as against any and all Released Persons, regardless of whether or not a Settlement Class Member receives a Class Notice, submits a Claim Form, or receives a Claim Settlement Payment check.

7. CLAIMS ADMINISTRATION AND PAYMENTS

7.1 **Claims Determinations.** For purposes of this Settlement only, the Defendant shall calculate the amount of the Non-Material Depreciation and General Contractor Overhead and Profit Depreciation (if any) to be used in determining the Settlement Payment amounts for each claim in Groups A, B, C, and D (from Section 6.4) as follows, subject to the provisions set forth in Section 7.2:

7.1.1 If Defendant's payment records for the claim in question reflect a total Coverage A indemnity payment amount of greater than \$0, then:

7.1.1.1 Where the data supplied by Xactware Solutions, Inc. ("Xactware"), for the last-uploaded estimate for the claim reflects a figure greater than \$0 in the column designated as "Non-Material Depreciation," that figure shall serve as the amount of Non-Material Depreciation to be used in determining the Settlement Payment amount for that claim and 44% of the figure in the column designated as "O and P Depreciation" (if any) shall serve as the amount of General Contractor Overhead and Profit Depreciation to be used in determining the Settlement Payment amount for that claim; and

7.1.1.2 Where the data supplied by Xactware for the last-uploaded estimate for the claim reflects a figure of \$0 for "Non-Material Depreciation" but a figure greater than \$0 in the column

designated as “Calculated Labor Depreciation,” then the sum of the figures shown in the columns designated as “Calculated Labor Depreciation” “Calculated Market Condition Depreciation” and “Calculated Equipment Depreciation” shall serve as the amount of Non-Material Depreciation to be used in determining the Settlement Payment amount for that claim and the amount of General Contractor Overhead and Profit Depreciation (if any) to be used in determining the Settlement Payment amount for that claim shall be 44% multiplied by 1/6th (16.6667%) of the figure shown in the column designated as “Total Depreciation” if costs for general contractor overhead and profit were included on the estimate for the claim.

7.1.2 If Defendant’s payment records for the claim in question reflect a total Coverage A indemnity payment amount of \$0, then:

7.1.2.1 Where the data supplied by Xactware for the last-uploaded estimate for the claim reflects a figure greater than \$0 in the column designated as “Non-Material Depreciation,” then the amount of Non-Material Depreciation to be used in determining the Settlement Payment amount for that claim shall be calculated by subtracting the applicable deductible amount for the claim (from Defendant’s claims data) from the sum of the “Actual Cash Value” figure reported by Xactware and the “Non-Material Depreciation” figure reported by Xactware; and

7.1.2.2 Where the data supplied by Xactware Solutions, Inc., for the last-uploaded estimate for the claim reflects a figure of \$0 for “Non-Material Depreciation” but a figure greater than \$0 in the column designated as “Calculated Labor Depreciation,” then the amount of Non-Material Depreciation to be used in determining the Settlement Payment amount for that claim shall be calculated by subtracting the applicable deductible amount for the claim (from Defendant’s claims data) from the sum of (i) the “Actual Cash Value” figure reported by Xactware, (ii) the “Calculated Labor Depreciation” figure reported by Xactware, (iii) the “Calculated Market Condition Depreciation” figure reported by Xactware, and (iv) the “Calculated Equipment Depreciation” figure reported by Xactware.

For purposes of the interest component of the Settlement Payment for claims in Group C, Defendant shall use the date of the first Coverage A indemnity payment for each claim in Group C as the date of the initial ACV payment and the date of the most recent Coverage A indemnity payment as the date of the final RCB payment.

7.2 Defendant's Right to Challenge or Reduce Settlement Payments.

Notwithstanding any other provisions of this Agreement, Defendant shall have the right to challenge or reduce the amount of any Claim Settlement Payment owed to any Claimant on the basis that (i) the Claimant is not a Settlement Class Member, (ii) the Non-Material Depreciation portion of the Claim Settlement Payment amount as calculated above would exceed the applicable limit of liability under the Class Member's Policy; or (iii) the Non-Material Depreciation portion of the Claim Settlement Payment amount as calculated above was already recovered through RCB payments. More specifically, Defendant shall have the right to challenge or reduce Claim Settlement Payments for the following reasons, but only these reasons:

- 7.2.1 If Defendant determines through its review of claim file materials that Non-Material Depreciation was not actually applied to any payment made in connection with the Covered Loss, then the Claimant is not a Settlement Class Member and is not entitled to claim the benefits afforded by this Agreement.
- 7.2.2 If Defendant determines through its review of claim file materials that the Claimant is not a Settlement Class Member because the Claimant already received ACV payments from Defendant for the Covered Loss in the full amount of any applicable limits under the Claimant's Policy, then the Claimant is not entitled to claim the benefits afforded by this Agreement.
- 7.2.3 If Defendant determines through its review of claim file materials that the Non-Material Depreciation portion of the Claim Settlement Payment amount as calculated above would exceed any applicable limits of liability under the Class Member's Policy, then Defendant may reduce the Non-Material Depreciation portion of the Claim Settlement Payment accordingly and update the interest calculation to correspond to the reduced figure.
- 7.2.4 If Defendant determines through its review of claim file materials that the Non-Material Depreciation amount as determined above (in Section 7.1) was already recovered in full through RCB payments, then Defendant may calculate the Claim Settlement Payment as under Group C from Section 6.4 above.

7.3 The Administrator shall notify in writing those Settlement Class Members who submit an untimely Claim Form that their claim is denied and will not be processed further. The Administrator's determination of whether a Claim Form was timely submitted shall be final, binding, not reviewable by the Neutral Evaluator, not appealable, and not the subject of an objection.

7.4 The Administrator shall notify in writing those Settlement Class Members who submit a timely but materially deficient Claim Form that they have thirty (30) days to correct the deficiency. The notice will identify the deficiency and state that any response must be postmarked within thirty (30) days of the date of the notice of the deficiency.

7.5 Defendant will periodically update Class Counsel and the Administrator on the claims review process and provide Class Counsel and the Administrator, within sixty (60) days after receipt of all timely and properly completed Claim Forms from the Administrator, a complete list of: (a) Settlement Class Members who submitted Claim Forms; (b) the amount of Claim Settlement Payment, if any, owing to each; and (c) if no Claim Settlement Payment is owing, a brief explanation why. The Parties agree that this period may be extended as reasonably necessary for Defendant to complete the review process.

7.6 **Confirmation of Calculation Methodology.** Within ten (10) days after receipt of the list provided by Defendant as referenced in Section 7.5, Defendant will provide a declaration from an employee, who executes the same with full knowledge of Defendant's processes for determining the Claim Settlement Payment amounts on the list, and which confirms that all persons calculating Claim Settlement Payments were trained and instructed to make the calculations in accordance with the guidelines set forth above.

7.7 **Audit of Calculation Methodology.** Within ten (10) days after receipt of the list referenced in Section 7.5, Class Counsel may request from Defendant the claim notes associated with no more than 2% of the claim numbers on the list, selected on a random basis. To the extent Class Counsel elects to proceed with such a review, Defendant shall then produce to Class Counsel, for each identified claim, an electronically searchable copy (e.g., searchable PDF format) of the claim notes associated with that claim as stored within Defendant's records within sixty (60) days of the date Class Counsel identifies the claim numbers. Class Counsel shall thereafter promptly notify Defendant's Counsel of any disputes with respect to the methodology or general accuracy of the Claim Settlement Payments calculations. To the extent disputes arise that cannot be resolved amicably in a timely manner, the parties will promptly involve the Court or the mediator (George M. Van Tassel, Jr.) to help resolve any disputes.

7.8 **Funding.** Within thirty (30) days after the final determinations of Claim Settlement Payments described in Section 7.5 (subject to the final conclusion of the process described in Sections 7.6 and 7.7), Defendant shall send to the Administrator adequate funds for deposit into an account established by the Administrator to pay Claim Settlement Payments. In no event shall Defendant be liable for paying Claim Settlement Payments before that time. Prior to transferring funds to the Administrator, Defendant is not required to maintain any funds or payments made under this Agreement in a segregated account and any interest or other income earned on funds prior to the distributions provided hereunder remains the property of Defendant.

7.9 **Checks.** Within ten (10) days of receipt of funds, the Administrator shall mail to each Claimant, as determined above, a Settlement Check for the Claim Settlement Payment to which each Claimant is entitled. The Administrator shall use addresses used to send the Class Notice, subject to any updates received from Claimants on Claim Forms or otherwise.

7.10 Settlement Checks shall be issued in the names of Claimants as reflected on Defendant's records and any mortgagee of which Defendant is aware and may be obligated to include, and shall state on their face that they expire and are void 180 days from the date of issuance, after which the Administrator may close the account. Prior to the expiration of Settlement Checks, Claimants may request that a replacement check be issued by the Administrator if they lose or misplace their original check. In the event any Settlement Check issued pursuant to this Agreement either (i) is returned and the payee cannot be located or (ii) expires or becomes void, then the Administrator or Defendant will follow its standard escheatment procedures for the state of Alabama or other applicable jurisdiction involved, if any.

7.11 **Neutral Evaluator.** The Administrator shall send to Claimants whose Claim Form was denied payment for any reason other than untimeliness a notice explaining why. Those notices, as well as any letters sent to Claimants with a Claim Settlement Payment, shall explain that Claimants may dispute the amount of the Claim Settlement Payment or denial of their claim by requesting in writing final and binding neutral resolution by the Neutral Evaluator. In order to dispute a Claim Settlement Payment or denial of a claim and invoke the neutral resolution process, a Claimant must return any uncashed Settlement Check to the Administrator and explain in writing the reason for their dispute, as well as provide any supporting documentation, postmarked within thirty (30) days of the date shown on the notice or letter sent to that Claimant. If the Settlement Check is not timely returned, or if the Settlement Check is negotiated prior to final and binding neutral resolution by the Neutral Evaluator, then the dispute resolution process will be automatically terminated and the Claimant is not entitled to any further Claim Settlement Payment or other payment.

7.12 The Administrator shall promptly provide Defendant's Counsel and Class Counsel with notice of any disputes received from Claimants under Section 7.11. Upon receipt, Defendant may reevaluate the claim and/or supply any additional supporting documentation or information to the Administrator within thirty (30) days. The Administrator shall then promptly provide all materials received from the Claimant, Class Counsel and Defendant to the Neutral Evaluator, unless Defendant has agreed to pay the claim in the manner disputed by the Claimant, in which event the Administrator shall promptly issue a Settlement Check to the Claimant for the agreed Claim Settlement Payment.

7.13 The Neutral Evaluator shall issue a decision based solely on the written submissions without independent research or evidence, and subject to the express terms and conditions of this Agreement, and shall do so, to the extent possible, within thirty (30) days after receipt of materials from the Administrator. If applicable, the Administrator shall promptly issue a Settlement Check to the Claimant for a Claim Settlement Payment in accord with the Neutral Evaluator's decision. The Neutral Evaluator shall have exclusive jurisdiction to resolve any dispute as to final determination of a Claim Settlement Payment, and the decision of the Neutral Evaluator shall be final and binding on the Parties and Claimants and is not subject to appeal or review by the Court. The Neutral Evaluator shall not have authority to award a Claimant any amount in excess of the Claim Settlement Payment, determined as described in Section 7, or authority to award any other damages, costs, attorneys' fees, or other relief. The Neutral Evaluator shall also be bound by the provisions of Section 16 concerning confidential information.

7.14 **Final Accounting.** Within thirty (30) days after completion of the escheatment procedures pursuant to Section 7.10 and the resolution of all Settlement Claims Forms submitted in accordance with the terms herein, including claims disputed by Claimants, the Administrator

shall provide a final accounting to the Parties of all payments under the Settlement and return to Defendant any funds as may remain after escheatment.

7.15 **Information Available to Class Counsel.** Class Counsel shall have the right to interact directly with the Administrator regarding the administration of the Settlement provided that Defendant is notified of all such interactions and copied on all written interactions.

8. COVENANTS, REPRESENTATIONS AND WARRANTIES

8.1 **Covenants Not to Sue.** Plaintiff and the Additional Class Representatives and Class Members covenant and agree:

- 8.1.1 not to file, commence, prosecute, maintain, intervene in, or participate in (as parties, class members or otherwise) any action in any jurisdiction based on or relating to any of the Released Claims, or the facts and circumstances relating thereto, against any of the Released Persons;
- 8.1.2 not to organize or solicit the participation of Class Members in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action in any jurisdiction) based on or relating to any of the Released Claims or the facts and circumstances relating thereto; and
- 8.1.3 that the foregoing covenants and this Agreement shall be a complete defense to any of the Released Claims asserted against any of the Released Persons.

8.2 Plaintiff and the Additional Class Representatives represent and warrant that they are the sole and exclusive owners of their Released Claims and that they have not assigned or otherwise transferred any interest in any Released Claims against any Released Persons (other than previously disclosed mortgagees or bankruptcy trustees), and further covenant that they will not assign or otherwise transfer any interest in their Released Claims.

8.3 Plaintiff and the Additional Class Representatives represent and warrant that, after entry of Final Judgment, they have no surviving claim or cause of action against any of the Released Persons with respect to any of the Released Claims.

8.4 Plaintiff, the Additional Class Representatives, and Class Counsel represent and warrant that there are no outstanding liens or claims against the Action, and acknowledge that Plaintiff, the Additional Class Representatives, and Class Counsel will be solely responsible for satisfying any liens or claims asserted against the Action.

8.5 The Parties, and each of them on his, her, or its own behalf only, represent and warrant that they are voluntarily entering into the Agreement as a result of arms-length negotiations among their counsel and through the mediator (George M. Van Tassel, Jr.); that in executing the Agreement, they are relying solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof; and that, except as provided herein, they have not been influenced to any extent whatsoever in executing the Agreement by representations, statements, or omissions pertaining to any of the foregoing matters by any Party or by any person representing any Party. Each of the Parties assumes the risk of mistake as to facts or law.

9. RELEASES

9.1 **Released Claims.** Upon the Effective Date, Releasing Persons, including Plaintiff, the Additional Class Representatives, and each Class Member, shall, by operation of the Final Judgment, be deemed to have fully, conclusively, irrevocably, forever, and finally released, relinquished, and discharged Defendant and all other Released Persons from all Released Claims and agree not to institute, maintain, or assert any Released Claims Against the Released Persons.

9.2 **Unknown Claims.**

9.2.1 Plaintiff and the Additional Class Representatives, for themselves and on behalf of Class Members, explicitly acknowledge that Unknown Claims within the scope of Released Claims could possibly exist and that any present losses may have been underestimated in amount or severity. Plaintiff and the Additional Class Representatives or any Class Member

may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the Released Claims or the law applicable to such claims may change. Nonetheless, Plaintiff, the Additional Class Representatives, and each Class Member expressly agree that he/she/they shall have irrevocably waived and fully, finally and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent, claims with respect to all Released Claims, including Unknown Claims. Further, Plaintiff, the Additional Class Representatives, and Class Members agree and acknowledge that they are bound by this Agreement, including by the Releases, and that all of their claims in the Action asserted against Defendant shall be dismissed with prejudice and released, without regard to subsequent discovery of different or additional facts or subsequent changes in the law, and regardless of whether unknown losses or claims exist or whether present losses may have been underestimated in amount or severity, and even if they never received actual notice of the Settlement or received a Claim Settlement Payment. The Parties acknowledge that the foregoing Releases were bargained for and are a material element of the Agreement.

9.3 **Effective Date.** Released Claims do not include claims arising after the Effective Date.

9.4 **Excluded Claims.** This Agreement and the releases herein do not affect the rights of potential Class Members who timely and properly submit a request for exclusion from the Settlement in accordance with this Agreement.

9.5 **Continuing Jurisdiction.** The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Agreement, including, but not limited to, enforcement of the releases contained in the Agreement, and to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Agreement and Final Judgment.

10. REQUESTS FOR EXCLUSION

10.1 A person within the Class who wishes to opt out of the Class must do so in writing. Any Class Member who does not opt out of the Class in the manner described herein shall be deemed to be a Class Member and shall be bound by all proceedings, orders, and judgments.

10.2 To opt out, a person within the Class must complete and send to the Administrator, at the address listed in the Class Notice and on the Settlement Website, a request for exclusion postmarked no later than the opt out deadline of thirty (30) days before the Final Approval Hearing, as identified in the Preliminary Approval Order. The request for exclusion must: (a) identify the case name; (b) identify the name and address of the Class Member; (c) be personally signed by the Class Member requesting exclusion; and (d) state a desire to be excluded from the Class, such as “I hereby request to be excluded from the proposed Class in the Arnold Class Action.” Persons must request exclusion individually, and mass or class opt outs are prohibited.

10.3 A Class Member who desires to opt out must take timely affirmative written action pursuant to Section 10.2, even if the Class Member desiring to opt out (a) files or has filed a separate action against any of the Released Persons, or (b) is or becomes a putative or actual class member in any other class action filed against any of the Released Persons. The Administrator shall provide Class Counsel and Defendant’s Counsel a list of all timely requests for exclusion not less than ten (10) days before the Final Approval Hearing.

10.4 Any Settlement Class Member who timely and properly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief under or be affected by the Agreement; (c) gain any rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Settlement.

11. OBJECTIONS

11.1 **Overview.** Any Class Member who does not submit a valid request for exclusion may object to the Settlement by complying with the procedures and deadlines in this Agreement. The Class Notice and Settlement Website will identify the requirements to assert a valid written objection.

11.2 **Filing.** Any Class Member who wishes to object to the Settlement must do so in writing filed with the Clerk of Court, and a copy mailed to the Administrator at the address identified in the Mail Notice and on the Settlement Website, postmarked no later than the objection deadline of thirty (30) days before the Final Approval Hearing, as identified in the Preliminary Approval Order. To be valid, a written objection must include: (a) the case name and number; (b) the name and address of the objecting Class Member and of counsel, if represented; and (c) the basis for the objection.

11.3 Any Class Member who fails to object to the Settlement in the manner described in this Section shall be deemed to have waived any objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

11.4 **Appearance.** Subject to approval of the Court, any Class Member who files and serves a timely written objection in accordance with this Section may appear, in person or by counsel, at the Final Approval Hearing, whether it is held in the courtroom or via telephone or video conference, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Class Member: (a) files with the Clerk of the Court a notice of intention to appear at the Final Approval Hearing by the objection deadline; and (b) mails copies of the notice to Class Counsel and Defendant's Counsel identified in Section 2 of this Agreement, postmarked by the objection deadline. The notice must include copies of any

papers, exhibits, or other evidence that the objecting Class Member will present to the Court in connection with the Final Approval Hearing. Any Class Member who does not file a notice of intention to appear in accordance with the Agreement shall not be entitled to appear at the Final Approval Hearing.

12. FINAL JUDGMENT

12.1 Not less than ten (10) days before the Final Approval Hearing, the Administrator will provide Class Counsel and Defendant's counsel with an affidavit or declaration attesting that Class Notice has been disseminated and published in accordance with the Preliminary Approval Order and this Agreement, confirming the timely mailing of notices concerning the Settlement required by the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1715, *et seq.*, and identifying Persons who submitted timely and valid Requests for Exclusion. Class Counsel shall file the affidavit(s) or declaration(s) with the Court before the Final Approval Hearing.

12.2 Prior to the Final Approval Hearing, Class Counsel will file a motion seeking the Court's final approval of the Settlement and entry of Final Judgment, consistent with this Agreement and Exhibit 5, and without material change, which provides for:

- 12.2.1 Approving the Settlement as described in this Agreement and directing the Parties and their counsel to comply with and consummate the terms of this Agreement;
- 12.2.2 Confirming certification of the Class for settlement purposes only;
- 12.2.3 Finding that Class Counsel, the Plaintiff, and the Additional Class Representatives have adequately represented and protected the interests of the Class;
- 12.2.4 Finding that the terms of this Agreement are fair, reasonable, and adequate and in the best interests of the Class;
- 12.2.5 Providing that each Class Member shall be bound by the provisions of this Agreement and the Final Judgment, including the Releases set forth in Section 9;

- 12.2.6 Finding that the Class Notice, the establishment of an automated toll-free interactive voice response phone system, the Settlement Website, and the Postcard Notice were reasonable, the best notice practicable under the circumstances, and satisfy the requirements of the Federal Rules of Civil Procedure, due process under the United States Constitution, and the requirements of any other applicable rules or law;
- 12.2.7 Finding that all notices concerning the Settlement required by the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1715, *et seq.*, have been sent and that Defendant has fully complied with the notice requirements under that Act;
- 12.2.8 Dismissing all claims in the Action by the Plaintiff, the Additional Class Representatives, and Class Members against Defendant on the merits and with prejudice, and entering Final Judgment thereon;
- 12.2.9 In order to protect the continuing jurisdiction of the Court and to effectuate this Agreement and the Final Judgment, permanently enjoining Class Members who have not opted out, and anyone acting or purporting to act on their behalf, from filing, commencing, prosecuting, intervening in, maintaining, or participating in (as parties, class members, or otherwise) any new or existing action or proceeding before any court or tribunal regarding any Released Claims against any Released Persons, and from organizing any Class Members into a separate class for purposes of pursuing as a purported class action any lawsuit regarding any Released Claims against any Released Persons, and providing that any person in violation of the injunction may be subject to sanctions, including payment of reasonable attorneys' fees incurred in seeking enforcement of the injunction;
- 12.2.10 Approving payment of attorneys' fees and expenses to Class Counsel in amounts not exceeding the maximum amounts identified in Section 13 of this Agreement;
- 12.2.11 Ruling upon Plaintiff's and the Additional Class Representatives' request for service awards (not exceeding the maximum amounts identified in Section 13 of this Agreement);
- 12.2.12 Reserving continuing jurisdiction of the Court over all matters relating to the administration, consummation, enforcement, construction and interpretation of the Settlement, this Agreement, and the Final Judgment;
- 12.2.13 If applicable, as set forth in Section 13, deferring ruling upon Plaintiff's and the Additional Class Representatives' request for service awards, as suggested by *Phillips v. Hobby Lobby Stores, Inc.*, 2021 WL 3710134 at *5-6 (N.D. Ala. August 20, 2021), and the cases cited therein;

12.2.14 Pursuant to Fed. R. Civ. P. 54(b), holding that there is no just reason for delay and that the Final Judgment shall be final and appealable, irrespective of the Court's continuing jurisdiction over administration of the Settlement and, if applicable, its deferred ruling upon Plaintiff's and the Additional Class Representatives' request for service awards; and

12.2.15 Such additional provisions as provided in Exhibit 5 as necessary to implement this Agreement and the Settlement.

12.3 **Effect of Final Judgment.** Upon entry of Final Judgment:

12.3.1 the Agreement shall be the exclusive remedy for all Class Members for the Released Claims, except those who have properly submitted a request for exclusion (opted out) in accordance with the terms and provisions hereof; and

12.3.2 except as set forth in this Agreement, the Released Persons shall not be subject to liability or expense for any of the Released Claims to any Class Member(s).

12.4 Except for persons who timely and properly send a request for exclusion in accordance with Section 10, all Settlement Class Members will be deemed to be members of the Settlement Class and, upon entry of the Final Judgment, will have received full and final redress and relief for the Release in Section 9, including but not limited to any refund, reimbursement, restitution, or damages for the conduct covered by the Release, and will be bound by the terms of this Settlement regardless of whether they receive Claim Settlement Payments or any other relief.

12.5 Defendant will not oppose final approval of the proposed Settlement consistent with the proposed Final Judgment attached as Exhibit 4, and may, in its sole discretion, file a memorandum in support of final approval of the Proposed Settlement.

12.6 If final approval of the Settlement is not granted, or this Agreement is terminated or rendered void, the certification of the Settlement Class for purposes of this Settlement shall be automatically vacated and shall not constitute evidence or a binding determination that the requirements for certification of a class for trial purposes in this or any other action can be or have been satisfied. In that event, Defendant reserves and shall have all rights to challenge certification

of a class action for trial purposes in the Action or in any other action, on all available grounds as if no Settlement Class had been certified. For the avoidance of doubt, Class Counsel's motion seeking the Court's final approval of the Settlement shall expressly state that final approval of the Settlement may be granted even if the Court denies a request for service awards or reduces the amount of service awards below the amounts sought by Plaintiff and the Additional Class Representatives, because such service awards are fully severable from this Agreement.

12.7 Within ten (10) days after the Effective Date, the Plaintiff, the Additional Class Representatives, and members of the Settlement Class shall dismiss with prejudice all Released Claims asserted in any actions or proceedings (other than this Action) that have been brought by or involve any Settlement Class member in any jurisdiction. This Section in no way limits Settlement Class members from proceeding with claims that are not Released Claims as defined herein.

13. ATTORNEYS' FEES, COSTS, AND EXPENSES, AND SERVICE AWARDS

13.1 The total of all applications for attorneys' fees, costs and expenses by Class Counsel and any other person on behalf of Settlement Class Members shall not exceed \$8,595,000. Class Counsel agree that the amount of such fees and expenses awarded shall fully compensate them for all work, costs and expenses in this Action for the claims asserted before and after entry of Final Judgment. Class Counsel agrees that they will not seek an award of attorneys' fees and expenses in this Action in excess of the foregoing total amount, and Defendant agrees not to oppose or otherwise object to an application by Class Counsel for an award of attorneys' fees and expenses in this Action that does not exceed the foregoing total amount.

13.2 The amount of any attorneys' fees, costs and expenses awarded by this Court will not reduce the award to any Class Member under this Settlement. The timing for State Farm's

payment of any such attorneys' fees, costs and expenses is set forth below in Sections 13.3 and 13.4 only.

13.3 Within fifteen (15) days after the Effective Date, and provided that neither Plaintiff nor any of the Additional Class Representatives (individually and/or collectively) has filed an appeal solely concerning the permissibility or amount of the service awards sought by Plaintiff and the Additional Class Representatives (a circumstance addressed in Section 13.4), Defendant shall pay the amount of attorneys' fees, costs and expenses awarded by the Court (not to exceed the amount identified in Section 13.1) by wire transfer to an account of Class Counsel Erik Peterson, who shall hold and distribute it to all Class Counsel.

13.4 In the event that Plaintiff or any of the Additional Class Representatives (individually or collectively) files an appeal concerning the permissibility or amount of the service awards sought by Plaintiff and the Additional Class Representatives, Defendant's payment obligations under Section 13.3 (i.e. attorneys' fees, costs and expenses, as may be awarded by the Court) shall be tolled until fifteen (15) days after the date upon which all appellate courts with jurisdiction (including the United States 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; provided further, however, that if the Court's final approval of this Settlement is reversed in such an appeal, Defendant shall have no obligation to make the payments referenced in Section 13.3.

13.5 At the time of the execution of this Settlement, 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.

13.6 If the permissibility of service awards remains in the same *status quo* described in Section 13.5 at the time of the Final Approval Hearing, the Parties agree that this Court should proceed to enter Final Judgment pursuant to Rule 54(b), deferring service awards to Plaintiff and Additional Class Representatives, but retaining jurisdiction to allow the Plaintiff and Additional 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). If the Court enters such a Rule 54(b) judgment, Class Counsel, Plaintiff, and the Additional Class Representatives all expressly agree to waive any right to appeal the deferred decision by the Court as to the request for service awards after the final outcome of *Johnson*. For clarity, the final outcome of *Johnson* refers to the date upon which all appellate courts with jurisdiction (including the United States 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.

13.7 The timing for State Farm's payment of any service awards authorized by the Court is set forth in this Section 13.7. 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 Plaintiff and Additional Class Representatives, Plaintiff and the Additional Class Representatives shall provide Defendant with completed W-9 forms within five (5) days of that decision, and Defendant 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, by check delivered or wire transfer to Erik Peterson, pursuant to the following schedule. If the request for service awards by Plaintiff and Additional Class Representatives is approved at the same time Final Judgment is

entered as to the overall Settlement, Defendant shall pay the awarded amounts within fifteen (15) days after the Effective Date; provided, however, that (i) in the event that Plaintiff or any of the Additional Class Representatives (individually or collectively) files any appeal, including one concerning the permissibility or amount of the service awards sought by Plaintiff and the Additional Class Representatives, Defendant's payment obligations under this Section 13.7 (i.e. service awards) shall be tolled until the date upon which all appellate courts with jurisdiction (including the United States 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, and (ii) if the Court's final approval of this Settlement is reversed in such an appeal, Defendant shall have no obligation to make the payments referenced in this Section 13.7. If, alternatively, the request for service awards is approved upon renewed motion as described in Section 13.6, Defendant shall pay the awarded amounts within fifteen (15) days after an Order allowing service awards. This Section 13.7, and Defendant's agreement to pay the service awards (if any) as provided herein, shall be fully severable from the Settlement Agreement such that the remainder of the Agreement shall survive even if (i) the request for service awards is denied or (ii) the amounts of the approved service awards are below the amounts sought by Plaintiff and the Additional Class Representatives.

13.8 Except as expressly provided in this Agreement, Defendant is not liable or responsible for any other expenses, costs, damages, or fees incurred by any other person, including but not limited to Plaintiff, the Additional Class Representatives, any Class Member, any person who objects to the Settlement or excludes themselves from the Settlement Class, or any of their attorneys, experts, advisors, investigators, agents, or representatives. Any award of attorneys' fees and expenses by the Court as provided in this Section 13 will be in complete satisfaction of any

and all claims for attorneys' fees and expenses that Plaintiff, the Additional Class Representatives, Settlement Class Members, Class Counsel, or any other person or their counsel has or may have against Defendant arising out of or in connection with this Action, the Released Claims, or this Settlement.

13.9 Plaintiff, the Additional Class Representatives, the Settlement Class, and Class Counsel hereby waive, discharge and release Defendant from any and all other claims for attorneys' fees, by lien, statute, or otherwise for legal services in connection with this Action. Defendant shall not be responsible for and shall have no liability whatsoever with respect to the allocation, distribution, or apportionment of any award of attorneys' fees and expenses among Class Counsel or any other person who may assert a claim thereto. Once payment is made pursuant to this Section 13, Defendant will not be subject to any claims for additional payments to Class Counsel or any attorney who is or was a member of, partner of, or otherwise associated with any firm representing the Plaintiff, the Additional Class Representatives, the Settlement Class, or any Class Member. Class Counsel shall defend, hold harmless, and indemnify Defendant and Defendant's Counsel from and against any claims, damages, liability, causes of action, liens, and expenses, including reasonable attorneys' fees and expenses, resulting from any action or proceeding involving the payment or apportionment of the award of attorneys' fees and expenses in this Action by, to, or among Plaintiff, the Additional Class Representatives, Class Counsel, or any attorney or firm that alleges to have provided services to Plaintiff, the Additional Class Representatives or any Class Member.

14. TERMINATION RIGHTS

14.1 Within twenty (20) days after notice of the occurrence of any of the following events, any Party shall have the right, exercisable in their absolute discretion, in good faith, to

terminate this Agreement and the Settlement by delivering written notice of such election to Class Counsel/Defendant's Counsel, if:

- 14.1.1 The Court, or any appellate court(s), rejects, denies approval, disapproves, or modifies the Agreement in a manner that Defendant, in its sole judgment and discretion, in good faith, believes to be material;
- 14.1.2 The Court, or any appellate court(s), does not completely and unconditionally enter or affirm any portion of the Agreement in a manner that Defendant, in its sole judgment and discretion, in good faith, believes to be material;
- 14.1.3 Any regulatory agency objects to or challenges any of the terms of the Agreement in a way that Defendant, in its sole judgment and discretion, in good faith, believes to be materially adverse to Defendant's interests;
- 14.1.4 The number of Persons who exclude themselves from the Settlement Class exceeds 5% of the total number of potential Class Members;
- 14.1.5 Plaintiff or any of the Additional Class Representatives opts out of the Settlement Class or objects to the Settlement or this Agreement;
- 14.1.6 The total of all awards of attorneys' fees, costs and expenses in this Action (inclusive of fees, costs and expenses incurred by Class Counsel and any other person on behalf of the Settlement Class or any other person) exceeds the maximum amount set forth in Section 13.1;
- 14.1.7 Any Person is allowed to intervene in this Action to assert claims against Defendant based on Structural Loss claims in states other than Alabama; or
- 14.1.8 A financial obligation is imposed upon Defendant in addition to or greater than those expressly set forth in this Agreement.

14.2 For the avoidance of doubt, neither Plaintiff nor any of the Additional Class Representatives may terminate this Agreement in the event that the Court finally approves the settlement but denies the request for service awards or reduces the amount of the service awards below the amounts sought by Plaintiff and the Additional Class Representatives (regardless of the result of any appeal from such decision).

14.3 If an option to terminate this Agreement and the Settlement arises, no Party is required to exercise the option to terminate.

14.4 If the Agreement fails for any reason, or if this Agreement is terminated by a Party pursuant to Section 14.1:

- 14.4.1 This Agreement and the Proposed Settlement shall have no further force or effect, and all proceedings that have occurred with regard to this Agreement and the Proposed Settlement shall be without prejudice to the rights and contentions of the Parties and any Class Members;
- 14.4.2 This Agreement and all negotiations, statements and proceedings relating to them shall be without prejudice to the rights of the Parties, each of whom shall be restored to their respective positions existing immediately before the execution of this Agreement;
- 14.4.3 This Agreement, and the fact of this Agreement having been made, shall not be admissible or entered into evidence for any purpose whatsoever and shall not be subject to discovery;
- 14.4.4 Any judgment or order entered in the Action relating to this Agreement or the Settlement, including, without limitation, any order certifying the Settlement Class, shall be automatically vacated *nunc pro tunc*, without the requirement of any motion or further order of the Court, and will be without any force or effect;
- 14.4.5 The Parties shall not thereafter argue or raise a claim or defense, including, but not limited to, waiver, estoppel, or any other similar or related theories, based on the Agreement (including without limitation the provisions regarding class certification) and related pleadings and orders, the fact of this Agreement having been made, or that any settlement negotiations preclude Defendant from opposing class certification or the claims in the Action or any other proceeding.

14.5 Section 14.4 shall survive the termination of this Agreement.

15. DENIAL OF LIABILITY

15.1 Defendant enters into this Agreement without admitting, conceding or acknowledging any fault, liability, or wrongdoing of any kind. This Agreement and the negotiations or proceedings connected with it shall not be construed as an admission or concession by Defendant (i) of the truth of any of the allegations in the Action; (ii) of any liability, fault, or wrongdoing of any kind on the part of Defendant; or (iii) that this Action may be properly maintained as a litigation class action. In the event the Effective Date does not occur, or this

Agreement is terminated, or the Proposed Settlement is not finally approved for any reason, or the final approval of the Proposed Settlement is reversed upon appeal, Defendant shall retain the right to object to the maintenance of the Action or any other proceeding as a class action and to contest the Action or any other case on any ground.

15.2 This Agreement, the negotiations leading to the Settlement, administration of the Settlement, and any pleadings, motions, or other document related in any way to the Agreement shall not be offered into evidence in the Action or in any other case or proceeding as proof that Defendant has admitted or conceded (i) the truth of any of the allegations in the Action; (ii) any liability, fault, or wrongdoing of any kind on the part of Defendant; or (iii) that this Action may be properly maintained as a litigation class action. Class Counsel and Defendant dispute whether this Agreement may be offered into evidence in a foreign court in support of a potential motion for certification of a different class action in another lawsuit, with State Farm contending that this Agreement cannot and should not be used for such purposes. The Parties and Class Counsel reserve all rights.

16. CONFIDENTIALITY AGREEMENT AND MEDIA INQUIRIES

16.1 The following constitutes highly confidential and proprietary business information of Defendant (the “Confidential Information”): (a) the names, addresses, Policy numbers, and data concerning a Class Member or potential member of the Settlement Class compiled by Defendant or the Administrator in administering the Proposed Settlement; (b) claim files and documents and electronic data related to claims for each Class Member, utilized by Defendant or the Administrator in identifying potential Class Members and administering the Settlement; and (c) documents and data produced by Defendant in the Action identified as confidential pursuant to protective order(s) entered in the Action. Confidential Information shall not be publicly disclosed by Class Counsel or other attorneys for Plaintiff and/or the Additional Class Representatives in this Action to any

persons other than those identified in protective order(s) entered in the Action or in this Agreement, and shall not be used other than in this Action in connection with the Settlement. It is not a violation of this Agreement for either of the parties to provide the Court with information concerning the Plaintiff and the Additional Class Representatives or any objector's individual claims, or to provide the Court with anonymous aggregate claims data values solely for purposes of seeking preliminary or final approval of the Agreement or attorneys' fees or expenses or service awards.

16.2 No Persons other than Defendant's counsel, Class Counsel, the Administrator, Neutral Evaluator, and their respective employees and contractors shall be allowed access to any Confidential Information. Any person to whom Confidential Information is disclosed or who has access to Confidential Information shall maintain it as confidential and shall not publicly disclose or release it to any person not authorized by Defendant, this Agreement, the agreed protective order, or the Court. Provided, that nothing in this Agreement shall be construed to restrict or limit Defendant's use or disclosure of its own Confidential Information.

16.3 Within thirty (30) days after the Final Accounting described in Section 7.14, Class Counsel shall destroy or return to Defendant's Counsel all Confidential Information in their possession, custody, or control, and shall deliver a letter to counsel for Defendant confirming their undertaking and compliance with this Section. Further, the Parties agree that Confidential Information shall not be used by Class Counsel or anyone employed with, retained by, or otherwise associated with Class Counsel in any other litigation, current or future, unless independently obtained through discovery in such other litigation. This Section 16.3 in no way prevents Class Counsel from retaining their work product created in this Action.

16.4 The Parties further agree that they shall not affirmatively publish any release or statement to the media (or on the internet) concerning the Settlement of the Action prior to the

Effective Date; provided, however, that after the Effective Date, any information published or released must be truthful and adhere strictly to information that appears as part of the public record related to the approval of the Settlement. If any media organization contacts any Party or its counsel seeking information or a statement regarding the Settlement, in the absence of a response agreed upon by all Parties, no information will be provided in response to such inquiries except to the extent such information appears as part of the public record related to the approval of the Settlement. The Parties further agree and intend that any discussions and negotiations related to, and any conduct performed by either Plaintiff and the Additional Class Representatives or Defendant in furtherance of, this Settlement Agreement shall be expressly prohibited from public disclosure in any other case unless that information appears as part of the public record, and the Parties shall use all reasonable efforts to ensure that such information is not disclosed.

17. MISCELLANEOUS

17.1 The Administrator, Class Counsel and Defendant shall retain copies or images of all returned Class Notices, Claim Forms, and correspondence relating thereto, for a period of one (1) year after the Final Accounting. Thereafter the Administrator, Class Counsel and Defendant may destroy such documents they have in their possession. Nothing in this Agreement shall be construed to require the Administrator, Class Counsel or Defendant to retain records beyond their respective, discretionary, record retention policies.

17.2 The Parties and their counsel agree to undertake their best efforts and to cooperate with each other to effectuate this Agreement and the terms of the proposed Settlement, including taking all steps and efforts contemplated by this Agreement, and any other reasonable steps and efforts that may become necessary by order of the Court or otherwise. The Parties further agree to cooperate in respect to reasonable, agreed extensions to the timetable hereunder, subject to such Court approval as may be required.

17.3 The terms and conditions set forth in this Agreement, including documents referenced herein and all attached exhibits, reflect the entire and exclusive agreement of the Parties hereto and supersede any prior agreements, negotiations, representations, or understandings between them, and may not be contradicted or supplemented by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement and all attached exhibits constitute the complete and exclusive statement of the terms of the Settlement Agreement as between the Parties and that no extrinsic evidence may be introduced in any proceeding concerning the terms of the proposed Settlement. Prior or contemporaneous representations not contained in this Agreement shall be of no force or effect.

17.4 All terms of this Agreement are contractual and not mere recitals and shall be construed as if drafted by all Parties hereto. The terms of this Agreement are and shall be binding upon each of the Parties hereto, upon each of their agents, attorneys, employees, successors and assigns, and upon all other Persons claiming any interest in the subject matter hereof through any of the Parties hereto, including any Class Member. Provided, however, that except as expressly provided in this Agreement, this Agreement is not intended to and does not confer upon any other person or entity any rights or remedies.

17.5 This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties, and any amendments or modifications shall be presented to the Court for approval. Amendments and modifications may be made without additional notice to the potential Class Members unless such notice is required by the Court.

17.6 This Agreement shall be governed by the laws of the State of Alabama. The escheatment procedures governing unclaimed checks or checks not timely negotiated to Class Members with Structural Loss claims in Alabama, shall also be governed by Alabama law, unless

the Administrator or Defendant determines that other state escheatment law applies to the unclaimed checks of class members now residing in other states.

17.7 The exhibits to this Agreement are integral parts of the Settlement and are hereby incorporated into and made a part of this Agreement.

17.8 To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Agreement.

17.9 Nothing contained in this Agreement or in any proceedings concerning the Settlement shall in any way affect Defendant's right to seek contribution, indemnity or any other relief from any person or entity not a party to the Action. All such rights and remedies of Defendant are specifically retained and preserved.

17.10 Unless otherwise noted, all references to "days" in this Agreement shall be to calendar days. In the event any date or deadline under this Agreement is a weekend or legal holiday, such date or deadline shall be on the first business day thereafter.

17.11 The waiver by any party of any breach of this Agreement will not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

17.12 As used herein, the plural of any defined term includes the singular thereof, and the singular of any defined term includes the plural thereof, as the context may require.

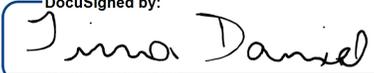
17.13 This Agreement may be executed in counterparts, each of which shall constitute an original. This Agreement shall be deemed to have been executed upon the last date of execution by all the undersigned Parties or counsel.

17.14 The undersigned counsel for Defendant represent that they are fully authorized to execute and enter into the terms and conditions of this Agreement on behalf of Defendant.

PLAINTIFF AND ADDITIONAL CLASS REPRESENTATIVES:

Dated: January __, 2022 By: _____
Annie Arnold

Dated: January __, 2022 By: _____
Bobby Abney

1/13/2022 | 6:23 PM PST
Dated: January __, 2022 By: _____
DocuSigned by:

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Tina Daniel

1/13/2022 | 6:37 PM PST
Dated: January __, 2022 By: _____
DocuSigned by:

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Kenneth Scruggs

CLASS COUNSEL:

1/13/2022 | 6:02 PM PST
Dated: January __, 2022

By: _____
DocuSigned by:
Erik Peterson
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Erik D. Peterson*
MEHR, FAIRBANKS & PETERSON
TRIAL LAWYERS, PLLC
201 West Short Street, Suite 800
Lexington, KY 40507
Tel: 859-225-3731
Email: edp@austinmehr.com

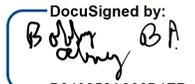
J. Brandon McWherter*
MCWHERTER SCOTT & BOBBITT PLC
341 Cool Springs Blvd., Suite 230
Franklin, TN 37067
Tel: (615) 354-1144
brandon@msb.law

T. Joseph Snodgrass*
LARSON KING, LLP
30 E. Seventh St., Suite 2800

17.14 The undersigned counsel for Defendant represent that they are fully authorized to execute and enter into the terms and conditions of this Agreement on behalf of Defendant.

PLAINTIFF AND ADDITIONAL CLASS REPRESENTATIVES:

Dated: January __, 2022 By: _____
Annie Arnold

1/13/2022 | 6:32 PM PST
Dated: January __, 2022 By: _____

Bobby Abney

Dated: January __, 2022 By: _____
Tina Daniel

Dated: January __, 2022 By: _____
Kenneth Scruggs

CLASS COUNSEL:

1/13/2022 | 6:02 PM PST
Dated: January __, 2022

By: _____

Erik Peterson

Erik D. Peterson*
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Tel: (615) 354-1144
brandon@msb.law

T. Joseph Snodgrass*
LARSON KING, LLP
30 E. Seventh St., Suite 2800

17.14 The undersigned counsel for Defendant represent that they are fully authorized to execute and enter into the terms and conditions of this Agreement on behalf of Defendant.

PLAINTIFF AND ADDITIONAL CLASS REPRESENTATIVES:

Dated: January 20, 2022 By: Annie Arnold
Annie Arnold

Dated: January __, 2022 By: _____
Bobby Abney

Dated: January __, 2022 By: _____
Tina Daniel

Dated: January __, 2022 By: _____
Kenneth Scruggs

CLASS COUNSEL:

Dated: January __, 2022 By: _____

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Dated: January 13, 2022

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EXHIBIT 1

**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, *

Plaintiff, *

vs. * Case No.: 2:17-CV-148-TFM-C

STATE FARM FIRE AND CASUALTY *
COMPANY, *

Defendant.

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS SETTLEMENT,
DIRECTING NOTICE TO THE CLASS, SCHEDULING A FINAL APPROVAL
HEARING, AND PRELIMINARILY CERTIFYING SETTLEMENT CLASS**

Plaintiff Annie Arnold (“Plaintiff”), additional class representatives Bobby Abney, Tina Daniel, and Kenneth Scruggs (“Additional Class Representatives”), individually and on behalf of themselves and the Class as defined herein, and Defendant State Farm Fire and Casualty Company (“State Farm” or “Defendant”), have agreed to settle this litigation pursuant to the terms and conditions stated in the Stipulation of Settlement (the “Stipulation” or the “Settlement”) filed with the Court on _____, 2022 (ECF No. ___), subject to this Court’s approval. Plaintiff, Additional Class Representatives and Class Counsel have filed an Unopposed Motion for Preliminary Approval of Class Settlement, Certification of the Settlement Class, and Scheduling a Final Approval Hearing (the “Motion”). This matter is now ripe for disposition.

I. BACKGROUND

Plaintiff initiated this action on March 8, 2017, asserting a single claim for breach of contract on behalf of herself and a class of State Farm policyholders who made structural damage insurance claims for damage to Alabama properties. Plaintiff claims that State Farm improperly

depreciated the estimated cost of labor and other non-material costs necessary to complete repairs to insured property when it calculated and issued actual cash value (“ACV”) claim payments to her and other class members for structural damage losses suffered under their policies with State Farm.

II. MOTION FOR PRELIMINARY CERTIFICATION OF THE SETTLEMENT CLASS.

A. Legal Standard.

When the plaintiff requests class certification for purposes of a settlement-only class, the district court “need not inquire whether the case, if tried, would present intractable management problems, ... for the proposal is that there be no trial.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). But the other requirements for class certification under Rule 23 of the Federal Rules of Civil Procedure still apply and the Court must find that all of them have been satisfied with respect to the proposed settlement class. *See id.* On November 23, 2020, after a two-day hearing, this Court granted class certification under Fed. R. Civ. P. 23(b)(3) of a disputed *litigation* class of policyholders the same as the proposed Settlement Class here. ECF 178. That prior determination carries weight in the present analysis. *See generally* MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.612 (2004) (recognizing that “approval of settlement class actions under Rule 23(e) requires closer judicial scrutiny than approval of settlements reached after class certification has been litigated through the adversary process.”).

In addition, “[f]or a class action to be certified, the named plaintiff must have standing, and the putative class must satisfy both the requirements of Federal Rule of Civil Procedure 23(a), and the requirements found in one of the subsections of Rule 23(b).” *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1267 (11th Cir. 2019) (citing *City of Hialeah v. Rojas*, 311 F.3d 1096, 1101 (11th Cir. 2002)). The Rule 23(a) requirements for certification of any class action are: “(1) numerosity

(‘a class [so large] that joinder of all members is impracticable’); (2) commonality (‘questions of law or fact common to the class’); (3) typicality (named parties’ claims or defenses “are typical ... of the class”); and (4) adequacy of representation (representatives ‘will fairly and adequately protect the interests of the class’).” *Amchem*, 521 U.S. at 613; *Valley Drug Co. v. Geneva Pharms., Inc.*, 350 F.3d 1181, 1187-88 (11th Cir. 2003) (same). The Federal Rules provide that a “class action may be maintained if Rule 23(a) is satisfied and if” the provisions of Rule 23(b)(1), Rule 23(b)(2), or Rule 23(b)(3) are satisfied. Fed. R. Civ. P. 23(b) (“Types of class actions”). Thus, “[i]n addition to establishing the requirements of Rule 23(a), a plaintiff seeking class certification must also establish that the proposed class satisfies at least one of the three requirements listed in Rule 23(b).” *Little v. T-Mobile USA, Inc.*, 691 F.3d 1302, 1304 (11th Cir. 2012); *see also Diamond v. Hastie*, 2019 WL 1994467, *4 (S.D. Ala. 2019).

Overall, the “party seeking class certification has the burden of proof.” *Brown v. Electrolux Home Products, Inc.*, 817 F.3d 1225, 1233 (11th Cir. 2016) (citing *Valley Drug Co.*, 350 F.3d at 1187 (italics in original)).

B. Standing.

As the Eleventh Circuit has made clear, “analysis of class certification must begin with the issue of standing.” *Griffin v. Dugger*, 823 F.2d 1476, 1482 (11th Cir.1987). The Court previously found that Plaintiff has standing to bring her claims. *See* ECF No. 31, PageID 782-788. Plaintiff and the Additional Class Representatives are State Farm policyholders who made structural damage claims for property located in the State of Alabama and who received actual cash value payments to which “non-material depreciation” was applied, or would have received actual cash value payments but for State Farm’s application of “non-material depreciation” causing the loss to drop below the applicable deductible.

C. Proposed Class.

In the unopposed motion, Plaintiff and the Additional Class Representatives seek certification of a settlement class pursuant to Rules 23(a) and 23(b)(3). The Stipulation provides that the Settlement Class is the same as the litigation class previously certified by the Court—that is, the same Class as the one that the Court previously concluded met all of the class certification requirements under Rule 23(a) and 23(b)(3). The Settlement Class is defined as follows in the Stipulation:

[A]ll persons and entities 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; (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.

(Stipulation, §§ 2.9., 2.35.)

III. MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT.

In determining whether to approve a proposed settlement, the District Court must find that the settlement is fair, adequate and reasonable. *Faught v. American Home Shield Corp.*, 668 F.3d 1233, 1240 (11th Cir. 2011). A district court looks to six factors in determining whether a class action settlement is fair, reasonable, and adequate: “(1) the likelihood of success at trial; (2) the range of possible recovery; (3) the range of possible recovery at which a settlement is fair,

adequate, and reasonable; (4) the anticipated complexity, expense, and duration of litigation; (5) the opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.” *Id.*; see also *Comeens v. HM Operating, Inc.*, 2016 WL 4398412, at *3 (N.D. Ala. Aug. 18, 2016). Furthermore, a court must consider the factors in Rule 23(e) which provides, among other things, that the crux of a court’s preliminary approval evaluation is whether “giving notice [to the class] is justified by the parties’ showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal,” Fed. R. Civ. P. 23(e)(1)(B), and “focus[es]” a court’s inquiry on “the primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the proposal,” Fed. R. Civ. P. 23(e)(2) advisory committee’s note to 2018 amendment—that is, 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 attorneys’ 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.

Upon considering the Motion and exhibits thereto, the Settlement, the record in these proceedings, the representations and recommendations of Class Counsel, and the requirements of law, the Court finds that: (1) this Court has jurisdiction over the subject matter and parties to these proceedings; (2) the proposed Settlement Class (which is identical to the certified litigation class) meets the requirements of Federal Rule of Civil Procedure 23 and should be certified for settlement purposes only; (3) the persons identified below should be appointed Class Representatives and Class Counsel; (4) the proposed Settlement is the result of informed, good-faith, arm’s-length

negotiations between the parties and their capable and experienced counsel and is not the result of collusion; (5) the proposed Settlement is within the range of reasonableness and should be preliminarily approved; (6) the proposed Notice Program and proposed forms of Notice satisfy Federal Rule of Civil Procedure 23 and constitutional due process requirements, and are reasonably calculated under the circumstances to apprise the proposed Settlement Class of the pendency of the Action, class certification, the terms of the proposed Settlement, Class Counsel's future motion for an award of attorneys' fees and expenses and request for Service Awards for Plaintiff and Additional Class Representatives, and their rights to opt-out of the Settlement Class and object to the Settlement; (7) good cause exists to schedule and conduct a Final Approval Hearing, pursuant to Federal Rule of Civil Procedure 23(e), to assist the Court in determining whether to grant final approval of the Settlement and enter Final Judgment, and whether to grant Class Counsel's requested fees, litigation expenses and request for Service Awards for Plaintiff and Additional Class Representatives; and (8) the other related matters pertinent to the preliminary approval of the Settlement should also be approved.

Based on the foregoing, **IT IS HEREBY ORDERED AND ADJUDGED** as follows:

1. This Order (the "Preliminary Approval Order") hereby incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation.
2. The Court has jurisdiction over the subject matter and parties to this proceeding pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446 and 1453.
3. Venue is proper in this District.
4. The Stipulation and Settlement are preliminarily approved as fair, adequate, and reasonable, and the motion of Plaintiff and Additional Class Representatives for preliminary

approval of the Settlement is hereby **GRANTED** in all material respects, subject to further consideration at the Final Approval Hearing.

5. The Court finds, for settlement purposes, that the Federal Rule of Civil Procedure 23(e) factors are present, and that certification of the proposed Settlement Class is appropriate under Rule 23. The following Settlement Class is certified for purposes of the Settlement:

[A]ll persons and entities 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; (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.

6. Plaintiff Annie Arnold and Additional Class Representatives Bobby Abney, Tina Danial, and Kenneth Scruggs are preliminarily appointed as representatives of the Settlement Class and the Court preliminarily finds that the following attorneys for Plaintiff and Additional Class Representatives satisfy the adequacy requirement of Federal Rule of Civil Procedure 23, and appoints such as Class Counsel:

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7. If final approval of the Settlement and entry of Final Judgment is not granted, this Order, including the preliminary certification of the Settlement Class, and other actions of this Court incident to the Settlement, shall be automatically vacated.

8. Pending a final determination by the Court of whether the Settlement should be approved as fair, reasonable, and adequate, neither Plaintiff, Additional Class Representatives nor any potential Class Member who has not opted out, whether directly, indirectly, representatively or in any other capacity, shall start, join, continue, litigate or participate in, support, or accept any benefit or relief from any other lawsuit, arbitration, or administrative or regulatory proceeding against State Farm that is based on, relates to, or involves any of the claims, facts, circumstances, or subject matters of this Action or the Stipulation. Accordingly, the Court hereby preliminarily enjoins the Plaintiff, Additional Class Representatives and any Class Member who has not opted out from the Settlement Class from instituting, maintaining, prosecuting, suing, asserting or cooperating in any action or proceeding, whether new or existing, against any of the Released Persons for any of the Released Claims.

9. JND Legal Administration (the “Administrator”) is appointed to serve as third-party administrator for the Settlement and to perform such duties as may be ordered by this Court pursuant to the terms of the Stipulation.

10. The Parties have prepared the Class Notice, Claim Form, and Postcard Notice, which have been submitted to the Court as Exhibits 2-3 and 5, respectively, to the Stipulation. As set forth herein, the Court has reviewed and approves these forms. Counsel for the Parties, along with the Administrator, are authorized to complete any missing information and to make any non-substantive revisions to these documents, as necessary to fulfill the purposes of the Settlement.

11. Within forty-five (45) days after the entry of this Order, the Administrator shall send a copy of the Class Notice and a Claim Form by first-class U.S. mail to each potential Class Member identified by State Farm. Immediately prior to mailing of the Class Notice and Claim Form to potential Class Members, and only for purposes of that mailing, the Administrator shall run the addresses one time through the National Change of Address database in order to obtain any updated address for potential Class Members. The Administrator shall complete mailing of the Class Notice and Claim Form to potential Settlement Class members not less than seventy-five (75) days prior to the Final Approval Hearing.

12. If a Class Notice and Claim Form sent to any potential Class Member is returned as undeliverable, the Administrator will promptly log such return as undeliverable and provide copies of the log to Defendant and Class Counsel as requested. If the mailing is returned to the Administrator with a forwarding address, the Administrator will forward the mailing to that address. For other returned mailings, the Administrator will run the name and address one time through a single commercial database chosen by the Administrator, and should the commercial database show a more current address, the Administrator shall re-mail the returned Class Notice and Claim Form to the more current address. If a more current mailing address cannot be found by searching the commercial database referenced in the preceding sentence, the Administrator shall send one message to the last known e-mail address as contained in Defendant's records (when

available) for such potential Class Member and attempt to contact such potential Class Member to obtain a current address. If a more current address cannot be found through either of the two methods described above, then no further efforts to locate or to find a more current address for such potential Class Member are required.

13. No later than forty-five (45) days before the Claim Deadline, the Administrator shall mail a reminder in the form attached as Exhibit 5 (the “Postcard Notice”) with information regarding the Claim Form Submission Deadline, the Settlement Website address, and how to request a copy of the Claim Form. The Postcard Notice will be mailed to each Class Member who has not submitted a Claim Form and who has not timely and properly excluded themselves from the Settlement Class.

14. In addition to the Class Notice and Claim Form mailed in accordance with the preceding paragraphs, the Administrator shall establish an automated toll-free telephone number and a Settlement Website that will contain information on the Stipulation, including copies of the Stipulation and Exhibits, the Preliminary Approval Order, the Class Notice, a downloadable copy of the Claim Form, and Spanish translations of the Class Notice and Claim Form. A signed, completed, and scanned Claim Form may also be uploaded and submitted on the Settlement Website.

15. The Court finds that the procedures set forth in the preceding paragraphs are reasonable and constitute the best notice practicable under the circumstances and an appropriate and sufficient effort to locate current addresses of potential Class Members such that no additional efforts shall be required. Upon reasonable request, the Administrator shall advise Class Counsel and Defendant’s Counsel of the progress of the Class Notice program to monitor compliance with this Order.

16. The Court preliminarily finds that the dissemination of the Class Notice, Claim Form, and Postcard Notice under the terms and in the format provided for in this Order, together with the establishment of an automated toll-free telephone number and Settlement Website, as set forth above, (a) constitutes the best practicable notice under the circumstances; (b) is reasonably calculated to apprise all potential Class Members who can be identified through reasonable effort of: the pendency of the Action, the Stipulation and Settlement, and their rights in connection therewith, and the Final Approval Hearing; and (c) meets the requirements of the Federal Rules of Civil Procedure, the requirements of due process under the United States Constitution, and the requirements of any other applicable rules or law.

17. The Court finds that all notices concerning the Settlement required by the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1715, *et seq.*, have been [or will be sent] and that Defendant has fully complied [or will fully comply] with the notice requirements under that Act.

18. The costs of providing notice and effectuating all other settlement administration shall be borne by State Farm, as provided in the Stipulation.

19. The Court will hold a Final Approval Hearing to consider the fairness, reasonableness, and adequacy of the Settlement at _____ [a.m./p.m.], on _____, 2022, at the United States Courthouse, Mobile, Alabama. However, at the sole discretion of the Court, the Final Approval Hearing may occur via telephone or video in order to allow the Final Approval Hearing to proceed despite any limitations on in-court hearings related to the COVID-19 pandemic. In such event, any Class Member who files a notice of intent to appear shall be provided with information required to access the telephone or video hearing. The date of the Final Approval Hearing shall be set forth in the Class Notice. Upon a showing of good cause, the Final Approval Hearing may be postponed, adjourned, or rescheduled by the Court without further notice to the

members of the Class. Any rescheduled date for the Final Approval Hearing will be posted on the Settlement Website.

20. During the Final Approval Hearing, the Court will consider and determine, inter alia:

- a. Whether the Stipulation for Settlement of this Action should be approved as fair, reasonable, and adequate;
- b. Whether this Action should be certified as a class action for settlement purposes only and whether the requirements for certification of a settlement class have been met;
- c. Whether this Action should be dismissed with prejudice pursuant to the terms of the Stipulation;
- d. Whether members of the Settlement Class should be bound by the Release set forth in the Stipulation;
- e. Whether members of the Settlement Class, whether acting individually or together, should be permanently enjoined from instituting, maintaining, prosecuting, suing, asserting or cooperating in any action or proceeding, whether new or existing, against any of the Released Persons for any of the Released Claims;
- f. Whether and in what amount Class Counsel's application for an award of attorneys' fees and expenses should be approved;
- g. Whether and in what amount the request of Plaintiff and Additional Class Representatives for service awards should be approved or, if applicable, whether the ruling upon such request should be deferred; and
- h. Objections, if any, made to the Settlement or any of its terms.

21. Class Members who wish to exclude themselves from the Settlement Class must mail a written opt-out request, pursuant to the instructions posed on the Settlement Website and in the Class Notice, to the Administrator postmarked no later than thirty (30) days prior to the Final Approval Hearing.

22. All Class Members who do not request exclusion in the manner set forth in the Stipulation shall be members of the Settlement Class and bound by all proceedings, orders, and

judgments in the Action, which will have preclusive effect in all pending or future lawsuits or other proceedings.

23. Class Members who do not request exclusion from the Settlement Class may object to the Settlement by filing with the Court, and mailing to the Administrator, a written notice of intent to object as provided in the Stipulation no later than thirty (30) days before the Final Approval Hearing. The right to object to the Settlement must be exercised individually by a Class Member, not as a member or representative of a group or subclass, except in the case of a legally authorized representative on behalf of a deceased, minor, or incapacitated Class Member. To be considered, the written notice of intent to object to the Settlement should contain:

- a. A heading which includes the name of the case and case number;
- b. The name, address, telephone number, and signature of the Class Member (the “Objector”) filing the objection;
- c. The specific reasons why the Class Member objects to the Settlement;
- d. The name, address, bar number, and telephone number of the objecting Class Member’s counsel, if represented by an attorney; and
- e. Indication of whether the objecting Class Member intends to appear at the Final Approval Hearing, either in person or through counsel.

24. In addition, a notice of intent to object should contain the following additional information if the Objector or his/her attorney requests permission to speak at the Final Approval Hearing:

- a. A detailed statement of the specific legal and factual basis for each and every objection;
- b. A list of any and all witnesses whom the Objector may call at the Final Approval Hearing, with the address of each witness and a summary of his or her proposed testimony;
- c. A detailed description of any and all evidence the Objector may offer at the Final Approval Hearing, including photocopies of any and all exhibits which the Objector may introduce at the Final Approval Hearing; and

d. Documentary proof of membership in the Class.

25. An Objector who does not include the above information in his/her notice of intent to object will likely be limited in speaking and presenting evidence or testimony at the Final Approval Hearing and may be prevented from doing so entirely.

26. Any Class Member who does not file and mail a timely and complete written notice of intent to object in accordance with the Stipulation, waives the right to object and to be heard at the Final Approval Hearing and is barred from objecting to the Settlement. However, the Court retains discretion to hear objections absent full, technical compliance with this Order upon a showing of good cause for failure to comply.

27. The Administrator shall provide State Farm's Counsel and Class Counsel with copies of any and all objections and opt-out requests received by the Administrator.

28. At or before the Final Approval Hearing, Class Counsel shall file with the Court proof from the Administrator of the mailing of the Class Notice, the Claim Form, and the Postcard Notice, confirming the timely mailing of notices concerning the Settlement required by the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1715, *et seq.*, and identifying the number and names of Class Members who have timely excluded themselves from the Class (opted out) or objected to the Settlement.

29. Class Members will be provided an opportunity to submit Claim Forms in the form attached to the Stipulation as Exhibit 3, requesting Claim Settlement Payments in accordance with the terms of the Stipulation.

30. Any Class Member who has not submitted a timely, complete opt-out request and who has returned a timely, complete Claim Form may be eligible to receive a Settlement Check according to the terms of the Stipulation, if the Effective Date occurs.

31. Not less than seven (7) days prior to the Final Approval Hearing, Class Counsel shall file with the Court a motion seeking the Court's final approval of the Settlement and Stipulation and entry of Final Judgment in the form and content attached to the Stipulation as Exhibit 4. State Farm, in its sole discretion, may also file a brief in support of final approval of the Stipulation and Settlement. Class Counsel shall file any motion concerning requests for attorneys' fees, costs, expenses and service awards at or before the motion seeking final approval of the Settlement and Stipulation and entry of Final Judgment.

32. This Order, the Stipulation, the negotiations of the Stipulation, the Settlement procedures, any act, statement, or document related in any way to the negotiation of the Stipulation or Settlement procedures, and any pleadings, documents, or actions related in any way to the Stipulation shall not be construed as an admission or concession by State Farm (a) of the truth of any of the allegations in the Lawsuit; (b) of any liability, fault, or wrongdoing of any kind on the part of State Farm in this Action; or (c) that this Action may be properly maintained as a litigation class action. Likewise, none of the materials referenced in this paragraph shall be offered or received in evidence in any action or proceeding in any court, administrative panel or proceeding, or other tribunal, as proof that State Farm has admitted or conceded points (a), (b), or (c) above. Class Counsel and Defendant dispute whether this Agreement may be offered into evidence in a foreign court in support of a potential motion for certification of a different class action in another lawsuit, with State Farm contending that this Agreement cannot and should not be used for such purposes.

33. The Settlement is preliminarily approved as fair, reasonable, adequate, and in the best interest of the Class Members. The Parties and the Administrator are directed to implement the terms of the Settlement in accordance with the Stipulation.

34. Upon a showing of good cause, the Court may extend any of the deadlines set forth in this Order without further notice to the Class.

35. Except for proceedings in furtherance of the administration and finalization of the Settlement, this Action is stayed pending further order from the Court.

IT IS SO ORDERED, this ___ day of _____, 2022.

Terry F. Moorer
United States District Judge

EXHIBIT 2

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF ALABAMA

Arnold v. State Farm Fire and Casualty Company

NOTICE OF CLASS ACTION SETTLEMENT

A federal court authorized this notice.

This is not an advertisement or a solicitation from a lawyer.

PLEASE READ THIS NOTICE IN ITS ENTIRETY

If you made a claim to State Farm for structural damage to a dwelling or other structure located in Alabama based on a loss between that occurred between March 8, 2011 and August 3, 2017, and you received a payment or an estimate for damage repair from State Farm, this class action settlement may affect your rights.

- A policyholder sued State Farm Fire and Casualty Company (“State Farm”) for depreciating the estimated costs of the labor and other non-material costs needed to repair or replace damaged structures when making actual cash value (“ACV”) payment(s) to Alabama policyholders under State Farm insurance policies. The Court allowed the lawsuit to proceed as a “class action” on behalf of a “Class” of persons and entities who made a structural damage claim under a State Farm policy for damage to a dwelling or other structure located in Alabama based on a loss that occurred between March 8, 2011 and August 3, 2017, which resulted in an ACV payment on which depreciation was applied to estimated labor and other non-material costs, or which would have resulted in such a payment but for the application of such depreciation.
- The parties have now reached a proposed settlement of the lawsuit, which is subject to the Court’s final approval.
- Your legal rights are affected whether you act or don’t act. Your options are explained in this notice.
- You may be eligible for a payment if you qualify and timely submit a valid claim form. **There is a deadline to act.** No payments will be made until the Court approves the settlement and all appeals are resolved.
- Please read this notice carefully.
- **Have a question? Read on and then visit [WEBSITE](#) or call 1-800-XXX-XXXX.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	The only way to get a payment if you qualify.
ASK TO BE EXCLUDED (deadline ____, 2022)	You will receive no payment. This is the only option that allows you to ever be part of any other lawsuit against State Farm over the legal claims in this case.
OBJECT (deadline ____, 2022)	Write to the Court about why you don’t agree with the settlement.
GO TO A HEARING (scheduled for ____, 2022)	Ask to speak in Court about the settlement.
DO NOTHING	You will get no payment. You give up rights.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION.....

- 1. Why was this notice issued?
- 2. What is this lawsuit about?
- 3. What is a class action and who is involved?.....
- 4. Why is there a settlement?

WHO IS IN THE SETTLEMENT.....

- 5. Who is in the Settlement Class?.....
- 6. Are there exceptions to being included?.....
- 7. Understanding Class Membership.
- 8. I’m still not sure whether I’m included.....

YOUR LEGAL RIGHTS AND OPTIONS

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

- 9. What am I entitled to receive if I submit a claim form?

HOW TO GET A PAYMENT—SUBMITTING A CLAIM FORM.....

- 10. How can I get a payment?.....
- 11. When will I get my payment?.....
- 12. What am I giving up to receive a payment or stay in the Class?

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BASIC INFORMATION

1. Why was this notice issued?

State Farm's records reflect that you submitted a claim to State Farm for a covered loss to a dwelling or other structure in Alabama under a State Farm structural damage insurance policy, based on a loss occurring between March 8, 2011 and August 3, 2017, for which you either (i) received an ACV payment on which depreciation may have been applied to estimated labor and other non-material costs, or (ii) did not receive a payment but did receive a State Farm estimate for the costs of the damage repair on which depreciation may have been applied to estimated labor and other non-material costs. The Court allowed, or "certified," a class action lawsuit that may affect your rights. The parties have now reached a proposed settlement of that lawsuit.

The Court authorized this notice because you have a right to know of a proposed settlement of this class action, including the right to submit a claim for payment as part of the settlement, and about all your options regarding this settlement before the Court decides whether to give "Final Approval" to the settlement. If the Court approves the parties' Stipulation of Settlement ("Settlement Agreement"), and if any appeals are resolved in favor of the settlement, then payments will be made to those who qualify and timely submit a valid claim. This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who may be eligible for benefits, and how to get them.

The Honorable Judge Terry F. Moorer of the U.S. District Court for the Southern District of Alabama is overseeing this class action. The lawsuit is known as *Arnold v. State Farm Fire and Cas. Co.*, Case No. 17-CV-148-TFM-C.

2. What is this lawsuit about?

This lawsuit is about whether State Farm breached its Alabama insurance policies by applying depreciation to the estimated costs of labor and other non-material costs in calculating ACV payments. Plaintiff contends that such depreciation resulted in Plaintiff and the Class being underpaid and was a breach of the insurance contracts.

State Farm denies that its conduct breached the insurance contracts. State Farm contends that many policyholders received everything they were entitled to under their policy, including through payments for replacement cost benefits.

3. What is a class action and who is involved?

In a class action, one or more people called "Class Representatives" sue on behalf of other people who have similar claims. The people together are a "Class" or "Class Members." The Plaintiff who sued originally, along with three additional class representatives who were appointed by the Court in this case, are the Class Representatives. The person or entity they sue (in this case, State Farm) is called the Defendant. One court resolves the issues for all Class Members. The Court has appointed the lawyers for the Class Representatives (referred to as "Class Counsel," whose names and contact information are provided in response to Question 18) to represent the Class and has appointed the Plaintiff and the three additional class representatives to serve as Class Representatives.

4. Why is there a settlement?

The Court has not decided the merits of this case in favor of either the Plaintiff or State Farm, and has not found that State Farm did anything wrong. Instead, both sides agreed to settle. That way, the parties avoid the cost of a trial and potentially an appeal, and the people who qualify will get compensation. The Class Representatives and their attorneys think the settlement is best for all Class members. The settlement does not mean that State Farm did anything wrong. No trial has occurred, and the Court has not yet ruled on Plaintiff's claims or State Farm's defenses.

WHO IS IN THE SETTLEMENT?

To see if you are bound by and/or potentially eligible for benefits from this Settlement, you first have to determine if you are a Class member.

5. Who is in the Settlement Class?

This settlement covers a Class of State Farm insureds who, according to Plaintiff’s allegations, were underpaid because State Farm calculated ACV payments by applying depreciation to estimated labor and other non-material costs.

You are receiving this notice because you are a potential member of the settlement “Class,” consisting of:

All persons and entities 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.

If you are a member of the Class, you will automatically be included unless you take affirmative steps to exclude yourself. Both current and former State Farm insureds can be part of this lawsuit.

6. Are there exceptions to being included?

The following people are excluded from the Class: (1) all persons and entities with 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; (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.

7. Understanding Class Membership

This Notice has been mailed to all people who are potentially eligible to receive money under the settlement, but it may also reach some people who are not in the Class. This series of questions may help you determine if you are a Class Member. Please consider all of the questions in order:

Question	Yes <u>or</u> Don’t Know	No
Do you or did you have an Alabama structural insurance policy issued by State Farm Fire and Casualty Company?	Continue	You are not a Class Member.
Did you suffer a loss or damage to a dwelling or other structure located in the State of Alabama between March 8, 2011 and August 3, 2017, and make a claim with State Farm?	Continue	You are not a Class Member.

Did you receive an “actual cash value” payment that included a deduction for estimated depreciation of labor or other non-material costs or would you have received such a payment had you not had labor and other non-material depreciation deducted by State Farm in calculating “actual cash value”?	You may be a Class Member, subject to certain exclusions.	You are not a Class Member.
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8. I’m still not sure if I am included.

There is no document in your possession that will easily disclose whether you are a class member. However, if you are unsure whether you are potentially eligible to receive monies from the settlement, you may timely submit a claim form to have State Farm determine if you are eligible to receive payment. There is no penalty to submitting a claim form, and submitting a claim form is the only way to have your claim reviewed, and if eligible, receive money from this settlement.

If you have further questions, you may call the following toll-free number 1-***-***-**** with questions or visit www.Arnold-v-StateFarm.com.

Please do not call State Farm or your State Farm agent to discuss this lawsuit. You may, however, continue to call State Farm or your State Farm agent regarding any other insurance matters.

YOUR LEGAL RIGHTS AND OPTIONS

You have to decide whether to stay in the Class, whether to make a claim, whether to object, or whether to be excluded, and you have to decide this by the deadlines stated in this Notice.

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

9. What am I entitled to receive if I timely submit a claim form?

Class Members who fully complete a claim form (“Claimants”) and timely mail it to the proper address or upload it to the proper website may be eligible for payment. (A copy of the claim form is attached to the back of this Notice.) State Farm has agreed to pay Claimants the following:

- 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 from their ACV payments and who did not receive any subsequent replacement cost benefit 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.
- Group B: Settlement Claimants Who Previously Received Partial RCBs.** The Claim Settlement Payments to Claimants from whom estimated Non-Material Depreciation was initially deducted from their ACV payments and who partially recovered the initially deducted Non-Material Depreciation through payment of replacement cost benefits 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 replacement cost benefits, plus simple interest at 5.55% on those additional amounts to be paid from March 8, 2017, to the Effective Date.

- (3) **Group C: Settlement Claimants Who Previously Received Full RCBs.** The Claim Settlement Payments to Claimants from whom Non-Material Depreciation was initially deducted from their ACV payments 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 final replacement cost payment.
- (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.

Each category of payment set forth in 1, 2, 3 and 4 above is subject to State Farm’s right to challenge or reduce the amount owed on the basis that (i) the Claimant is not a Class Member; (ii) the Non-Material Depreciation portion of the payment would exceed the applicable limit of liability under the Class Member’s Policy; or (iii) the Non-Material Depreciation portion of the payment was already recovered through replacement cost benefits payments, as explained in the Settlement Agreement.

If you have more than one loss during the Class Period of March 8, 2011 through August 3, 2017, you will need to submit a separate claim form for each loss. State Farm’s rights, and additional terms and explanation regarding how the payments are to be calculated, are set forth in the Settlement Agreement, which can be viewed at, or downloaded from www.Arnold-v-StateFarm.com.

The amount of money Class members will receive if they submit a claim form and are found eligible for payment is dependent upon the facts and circumstances of their individual claims. These amounts will be calculated for you if you timely submit a claim form, and if Settlement is approved by the Court.

HOW TO GET A PAYMENT—SUBMITTING A CLAIM FORM

10. How can I get a payment?

To ask for a payment, you must complete a claim form truthfully, accurately, and completely, to the best of your ability. The claim form must be signed. **You must then complete Step A or Step B:**

Step A: Mail the completed claim form to the following address, postmarked no later than _____, 2022:

[insert address]

OR

Step B: Upload the completed claim form at www.Arnold-v-StateFarm.com before midnight, Central Time, no later than _____, 2022.

A blank copy of the claim form should have accompanied this Notice. You may obtain an additional blank claim form by downloading one from www.Arnold-v-StateFarm.com or by calling the Settlement Administrator at 1-***-***-***.

11. When will I get my payment?

If the Court grants “Final Approval” of the settlement, and if any appeals are resolved in favor of the settlement, then payment will be mailed to eligible Class Members after the claims administration process is completed. If you submit a claim form but do not qualify for a payment, you will be notified of that determination. This process can take time, so please be patient.

12. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself, you are staying in the Class, and that means that you can’t sue or be part of any other lawsuit against State Farm over the legal claims in this case. It also means that all of the Court’s orders will apply to you and legally bind you.

If you submit a Claim Form, or simply stay in the Class and do not exclude yourself (*see* Sections 13-15 regarding “Excluding Yourself from the Class”), you will agree to “release and discharge” all “Released Persons” of all “Released Claims.” You may view a full copy of the Settlement Agreement at www.Arnold-v-StateFarm.com, which provides more information.

Here is the definition of “Released Claims” and “Released Persons” in the Settlement:

“Released Claims” means and includes any and all past, present and future claims arising from or in any way related to depreciation of any kind on claims within the class period (including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, and/or withholding of depreciation), whether known or unknown, and that were asserted or could have been asserted herein to the full extent of res judicata protection. This release is not intended to prevent an individual Class Member from seeking and potentially recovering any RCBs that may still remain available under the terms of his or her Policy. Additionally, Released Claims do not include any claim for enforcement of this Stipulation of Settlement and/or the Final Judgment.

“Released Persons” means, individually and collectively, (i) State Farm Fire and Casualty Company, and all of the past and present divisions, parent entities, associated entities, affiliates, partners, and subsidiaries; and (ii) all past and present officers, directors, shareholders, agents, attorneys, employees, stockholders, successors, assigns, independent contractors, and legal representatives of the entities set forth in (i). The Released Claims extend only to claims arising under insurance policies issued by the Defendant.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don’t want to participate in this settlement or case for any reason, but you want to keep the right to individually sue State Farm about the issues in this case, then you must take steps to get out of the settlement. This is called excluding yourself from—or is sometimes referred to as “opting out” of—the Class.

13. How do I get out of the Settlement?

To ask to be excluded, you must send an “Exclusion Request” in the form of a letter sent by regular mail. The letter must include: (i) the name of the case (*Arnold v. State Farm Fire and Cas. Co.*, Case No. 17-CV-148, S.D. Ala.); (ii) a sentence expressly stating that you want to be excluded from the Class in this case, (iii) your name, address, telephone number, and (iv) your personal signature (not the signature of your attorney). **You must mail this letter postmarked by [REDACTED], 2022** to the Notice Administrator at the following address:

Arnold v. State Farm
c/o Notice Administrator
PO Box [REDACTED]



You cannot exclude yourself by phone or at the website.

There is a deadline to ask to be excluded. If you do not want to participate in the Class, then you must postmark the Exclusion Request letter by [redacted], 2022.

14. If I don't exclude myself, can I sue State Farm for the same thing later?

No. Unless you exclude yourself, you give up any right to sue State Farm for the claims that this settlement resolves. You must exclude yourself from this Class to sue State Farm over the claims resolved by this settlement. Remember, the exclusion deadline is [redacted], 2022.

15. If I exclude myself, can I get a payment from the Settlement?

No. If you exclude yourself, you should not submit a Claim Form to ask for a payment as it will be rejected.

OBJECTING TO THE SETTLEMENT

If you do not exclude yourself from the Settlement, you can tell the Court if you don't agree with the settlement or some part of it.

16. How do I tell the Court if I don't agree with all or part of the Settlement?

If you are a Class Member, you can object to the Settlement if you don't like any part of it. If you want to object, you must do so by the postmark deadline of [redacted], 2022, and submit a written objection in that case to the Court, and send a copy to the Settlement Administrator as noted below. You must include the name of the case (*Arnold v. State Farm Fire and Cas. Co.*, Case No. 17-CV-148, S.D. Ala.), your full name, address, telephone number, your signature, the specific reasons why you object to the settlement, and a statement as to whether you intend to appear at the Final Approval Hearing in person or through counsel. If you do intend to appear at the Final Approval Hearing to object to the settlement, you must also provide with your written objection a detailed statement of the specific legal and factual basis for each objection, a list of any witnesses you will call at the hearing with each witness' address and summary of the witness' testimony, a detailed description of all evidence you will offer at the hearing with copies of the exhibits attached, and documentary proof of your membership in the Class. You or your lawyer may appear at the Final Approval Hearing if you have filed a written objection as provided above. (See the section on the "Court's Final Approval Hearing" below). If you have a lawyer file an objection for you, he or she must follow all Court's rules and you must list the attorney's name, address, bar number and telephone number in the written objection filed with the Court.

<p>File the objection with the Clerk of the Court by no later than _____, 2022, or mail the objection to the Clerk of the Court at the address below so that it is postmarked no later than [redacted], 2022.</p>	<p>Mail a copy of the objection to the Administrator at the following address so that it is postmarked no later than [redacted], 2022:</p>
<p>Court</p>	<p>Administrator</p>
<p>U.S. District Court for the Southern District of Alabama 155 St. Joseph Street Mobile, AL 36602</p>	<p>Arnold v. State Farm c/o Notice Administrator PO Box [redacted] [redacted]</p>

17. What’s the difference between objecting and asking to be excluded?

Objecting is simply telling the Court that you don’t like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don’t want to be part of the Class or the settlement. If you exclude yourself, you have no basis to object because the case no longer affects you. If you object, and the Court approves the settlement anyway, you will still be legally bound by the result.

THE LAWYERS REPRESENTING THE CLASS

18. Do I have a lawyer in this case?

The Court appointed the lawyers for Plaintiff and the additional class representatives in this case to represent the Class (“Class Counsel”). Those lawyers are Erik D. Peterson of MEHR, FAIRBANKS & PETERSON TRIAL LAWYERS, PLLC, J. Brandon McWherter of MCWHERTER SCOTT BOBBITT, T. Joseph Snodgrass of LARSON • KING, LLP, and David Martin of THE MARTIN LAW GROUP, LLC:

Erik D. Peterson
Mehr, Fairbanks & Peterson
Trial Lawyers, PLLC
201 West Short Street, Suite 800
Lexington, KY 40507
Tel: 859-225-3731
Email: edp@austinmehr.com

T. Joseph Snodgrass
LARSON KING, LLP
30 E. Seventh St., Suite 2800
St. Paul, MN 55101
Tel: 651-312-6500
Email: jsnodgrass@larsonking.com

J. Brandon McWherter
MCWHERTER SCOTT & BOBBITT PLC
341 Cool Springs Blvd., Suite 230
Franklin, TN 37067
Tel: (615) 354-1144
Email: brandon@msb.law

David Martin, Esq.
The Martin Law Group, LLC
2117 Jack Warner Parkway, Suite 1
Tuscaloosa, AL 35401
Tel: 205-343-1771
Email: david@erisacase.com

The Court determined that these attorneys are qualified to represent the interests of the Class in this lawsuit. More information about their firm, their practices, and their lawyers’ experience is available on the firm websites.

19. Should I get my own lawyer?

You may if you want, but you do not need to hire your own lawyer because Class Counsel represent the Class of which you may be a member. For example, you can hire a lawyer to appear in Court for you if you want someone other than Class Counsel to speak for you. If you hire your own lawyer, you will be responsible for the charges that lawyer requires you to pay for representing you.

20. How will Class Counsel get paid?

If you choose to remain in this lawsuit, you will not be required to pay attorneys’ fees or expenses to Class Counsel out of your own pocket. As part of the Settlement, Class Counsel will ask the Court for their attorneys’ fees and expenses to be paid in addition to the monetary benefits obtained for the Class. Class Counsel will ask the Court for up to \$8,595,000 for attorneys’ fees, costs, and expenses, and will ask the Court to award the Plaintiff \$20,000 and the three additional class representatives \$15,000 each for their efforts in prosecuting this litigation (“Service Awards”). State Farm has agreed not to oppose Class Counsel’s request for their fees, costs

and expenses, and the Service Awards to the Class Representatives up to these amounts. The Court may award Class Counsel and the Class Representatives less than the amounts they request. State Farm will separately pay Class Counsel's fees, costs and expenses, and Class Representatives' Service Awards that the Court orders. These payments will not reduce the amount distributed to Class Members. State Farm will also separately pay the costs to send notice and to administer the Settlement.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

21. When and where will the Court decide whether to approve the Settlement?

The Court has scheduled a Final Approval Hearing at [insert time] a.m., on [insert date], at the United States Courthouse in Mobile, Alabama. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them at that time. The Court may listen to people who have asked to speak about their objection. The Court may also decide how much to award Class Counsel for fees and expenses for representing the Class and how much (if anything) to award the Class Representatives as Service Awards. At or after the hearing, the Court will decide whether to approve the settlement. It is not known how long this decision will take.

22. Do I have to come to the hearing?

No. Class Counsel will answer any questions that the Court may have. If you wish to attend the hearing, or wish to present your objections to the Settlement, you may come at your own expense. You may also pay your own lawyer to attend, but it's not necessary, unless you choose to have a lawyer appear on your behalf to object to the settlement.

23. May I speak at the hearing?

If you submitted a proper written objection to the settlement, you or your lawyer acting on your behalf may speak at the Final Approval Hearing. You cannot speak at the Hearing if you exclude yourself from the settlement.

IF YOU DO NOTHING

24. What happens if I do nothing at all?

If you do not submit a settlement claim, you'll get no payment from this settlement even if you qualify for one. But, unless you exclude yourself from the settlement, you won't be able to individually sue State Farm for the claims in this case.

GETTING MORE INFORMATION

25. How can I get additional information?

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can visit the website www.Arnold-v-StateFarm.com where you will find the Court's Preliminary Approval Order, a copy of the Settlement Agreement, a copy of this Notice, the Claim Form, the Plaintiff's Complaint, and State Farm's Answer to the Complaint. You may also contact the Notice Administrator at [1-XXX-XXX-XXXX](tel:1-XXX-XXX-XXXX).

Please do not call State Farm or your State Farm agent to discuss this lawsuit. You may, however, continue to call State Farm or your State Farm agent regarding any other insurance matters.

**PLEASE DO NOT CALL OR WRITE THE JUDGE OR
CLERK OF THE COURT WITH QUESTIONS**

**PLEASE DO NOT CALL OR WRITE YOUR
STATE FARM AGENT WITH QUESTIONS**

**DIRECT ALL INQUIRIES TO CLASS COUNSEL
OR AN ATTORNEY OF YOUR OWN CHOOSING**

By Order of the United States District Court for the Southern District of Alabama

EXHIBIT 3

THIS FORM MUST BE SIGNED AND RETURNED BY [DATE]. SEE INSTRUCTIONS BELOW.

CLASS ACTION SETTLEMENT CLAIM FORM

Name: Jane Doe
Address: 1234 Main Street, _____, AL

If you are a class member and timely complete and return this Claim Form by [DATE], you may receive a check. If you do not complete the Claim Form, you will not receive any payment.

You are receiving this Claim Form as part of a class action settlement in the case of *Arnold, et al. v. State Farm Fire and Cas. Co.*, Case No. 17-CV-148-TFM-C (S.D. Ala.). The records of State Farm Fire and Casualty Company (“State Farm”) indicate that you may be eligible to receive money from the settlement because you made an insurance claim with State Farm for property damage benefits for the claim identified below. If you timely submit a completed and signed claim form, further information in State Farm’s records will be reviewed to determine whether you are a member of the Class, and if so, the amount of any settlement payment to which you may be entitled if the settlement is approved by the Court.

State Farm records reflect the following claim may be at issue in the class action settlement:

Policy Number: XXXXXXXXXXXX
Claim Number: XXXXXXXXXXXX
Date of Loss: X/X/201X
Address of Insured Premises: 1234 Main Street, _____, AL

This Claim Form applies only to the Covered Loss¹ listed above. If you had more than one Covered Loss during the Class Period (March 8, 2011 through August 3, 2017) then you may submit separate Claim Form(s) for those losses, but you must separately complete, sign and timely submit a separate Claim Form to be eligible for payment on each of those other losses in the event that the settlement is approved by the Court.

Please do not call State Farm or your State Farm agent to discuss this lawsuit or this Claim Form. You may, however, continue to call State Farm or your State Farm agent regarding any other insurance matters.

If you have any questions, please visit www.Arnold-v-StateFarm.com or call 1-xxx-xxx-xxxx.

FOLLOW THE DIRECTIONS ON THE NEXT PAGE TO MAKE A CLAIM.

¹ “Covered Loss” means a first party insurance claim for a Structural Loss (*i.e.*, physical damage to a home or other structure in the State of Alabama while covered by a structural damage insurance policy issued by State Farm) that occurred on or after March 8, 2011, but before August 3, 2017, which State Farm or a court of competent jurisdiction determined to be a covered loss.

EXHIBIT 4

**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,

*

*

Plaintiff,

*

vs.

*

Case No.: 2:17-CV-148-TFM-C

STATE FARM FIRE AND CASUALTY
COMPANY,

*

*

Defendant.

FINAL ORDER AND JUDGMENT

Before the Court is Plaintiff’s Motion for Final Approval of Class Settlement. Also before the Court is Class Counsel’s Motion for Attorneys’ Fees and Litigation Costs and Request for Service Awards pursuant to Federal Rule of Civil Procedure 23(e)(2). Plaintiff Annie Arnold (“Plaintiff”), additional class representatives Bobby Abney, Tina Daniel, and Kenneth Scruggs (“Additional Class Representatives”), individually and on behalf of themselves and the Class as defined herein, and Defendant State Farm Fire and Casualty Company (“State Farm” or “Defendant”), have agreed, subject to Court approval, to settle this litigation pursuant to the terms and conditions stated in the Stipulation of Settlement (the “Stipulation” or the “Settlement”) filed with the Court on _____, 2022.

On [DATE], 2022, the Court granted preliminary approval of the Agreement pursuant to Rule 23(e)(1)(B). Class Notice was issued in accordance with the preliminary approval order, and on _____, 2022, the Court held a final approval hearing on the motions.

At the final approval hearing and thereafter, the Court considered the Eleventh Circuit’s seven factors for evaluation of a class action settlement and all the Rule 23(e)(2) factors applicable to the potential approval of the Settlement. The Court independently evaluated the Court record,

the Settlement, Class Counsel's Motions, and the responses and lack of responses to the class notice by the class members. The Court finds and holds as follows:

I. FINDINGS OF FACT

1. Plaintiff initiated this action on March 8, 2017, asserting a single claim for breach of contract on behalf of herself and a putative class of State Farm policyholders who made structural damage insurance claims for damage to Alabama properties. (State Farm timely removed the action to this Court on April 7, 2017.) Plaintiff claims that State Farm improperly applied depreciation to the estimated cost of labor and other non-material costs necessary to complete repairs to insured property when it calculated and issued actual cash value ("ACV") claim payments to her and other class members for structural damage losses incurred under their property insurance policies. State Farm has denied, and still denies, any liability, wrongdoing, and damages with respect to the matters alleged in Plaintiff's Complaint.

2. After litigation between the Parties and arms-length negotiations between Class Counsel and State Farm's counsel, the Parties reached a settlement that provides substantial benefits to the Settlement Class, in return for a release and dismissal with prejudice of all claims against State Farm. The Settlement was reached after the Parties had engaged in extensive and lengthy negotiations and four mediation sessions before a neutral third-party mediator, George M. Van Tassel, Jr., of Upchurch Watson White & Max. During the negotiations, and in accordance with the highest ethical standards for class action settlement negotiations, settlement relief to the class members was agreed to prior to negotiations concerning any potential award of attorneys' fees, litigation expenses or service awards. At the time of settlement negotiations, and after years of litigation, Class Counsel was therefore well positioned to evaluate the benefits of the Settlement, taking into account the expense, risk, and uncertainty of trial and protracted appeal thereafter with respect to numerous difficult questions of law and fact.

3. Plaintiff, the Additional Class Representatives and State Farm executed the Stipulation of Settlement and exhibits thereto on January __, 2022 (collectively, the “Stipulation”).

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

5. On [DATE], 202_, the Court entered its Order Preliminary Approving Class Settlement (“Preliminary Approval Order”), preliminarily approving the Stipulation, preliminarily certifying the settlement Class for settlement purposes, and scheduling a hearing for _____, 2022, at ___ a.m. to consider final approval of the Proposed Settlement and other actions described in the Preliminary Approval Order and the Stipulation (“Final Approval Hearing”).

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

[A]ll persons and entities 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; (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.

7. On _____, 2022, Plaintiff and Additional Class Representatives moved the Court for Final Approval of the terms of the Proposed Settlement and for the entry of this Final Order

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

8. In addition, on _____, 2022, Class Counsel submitted their Motion for Attorneys' Fees and Litigation Costs and Request for Service Awards, which Motion included evidence as the fairness and reasonableness of those requests, as well as extensive argument and authority.

9. On _____, 2022, State Farm filed its Memorandum of Law in Support of Final Approval of Class Action Settlement. State Farm set forth in its Memorandum extensive argument and authority supporting final approval of the proposed Settlement, including its view that the Settlement is especially fair, reasonable and adequate given State Farm's assessment of the strength of State Farm's defenses as to both liability and damages.

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

<u>Exhibit No.</u>	<u>Description</u>
1	Declaration of _____

2	Declaration of _____
3	Declaration of _____

The Court admitted Plaintiff's Exhibits X-X into evidence for all purposes.

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

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

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

14. All potential Class Members were provided an opportunity to request exclusion from the Settlement and Action, as provided in the Stipulation. The Court finds that the individual interests of those Class Members who timely sought exclusion from the Settlement Class are preserved and that no Class Member was precluded from being excluded from the Class if he or she so desired. Those Class Members who timely and properly excluded themselves from the Class are identified in the attached Exhibit 1.

15. Class Members who did not timely file and serve an objection in writing to the Stipulation, to the entry of this Final Judgment, or to Class Counsel's Motion for Attorneys' Fees

and Litigation Costs and Request for Service Awards, in accordance with the procedure set forth in the Stipulation and mandated in the Preliminary Approval Order, are deemed to have waived any such objection through any appeal, collateral attack, or otherwise.

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

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

- a. The liability issues in this Action and the suitability of this Action for continued certification of a litigation class have been vigorously contested, particularly with respect to litigation manageability requirements;
- b. This Proposed Settlement has the benefit of providing substantial benefits to Class Members now, without further litigation, under circumstances where the liability issues are still vigorously contested among the Parties and the outcome of any class trial or appeal remain uncertain;

- c. The Proposed Settlement is clearly a byproduct of adversary litigation between the Parties and arms-length negotiation, which negotiation was facilitated by neutral mediator George M. Van Tassel, Jr., of Upchurch Watson White & Max, and was not a result of any collusion on the part of Class Counsel or State Farm; and
- d. Class Counsel's request for an award of reasonable fees and reimbursement of expenses is reasonable, fair, and in all respects consistent with the terms of the Stipulation.

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

II. CONCLUSIONS OF LAW

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

19. The Court concludes that the Settlement Class meets all the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process under the United States Constitution, and all other applicable rules and law, and the Settlement Class this Court previously preliminarily certified in its Preliminary Approval Order is hereby finally certified as a settlement class action. This Court previously found that all of the requirements of Rule 23(a) (including numerosity, typicality, commonality and adequacy) and Rule 23(b)(3) (including predominance and superiority) were satisfied for a litigation class with the same class definition as the Settlement Class. ECF 178. This Court now specifically finds that the Settlement Class also satisfies the foregoing requirements.

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

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

22. The Final Approval Hearing and evidence before the Court clearly support a finding that the Stipulation was entered into in good faith, after arms-length negotiations between Plaintiff, Additional Class Representatives and Class Counsel, on the one hand, and State Farm, on the other hand, and the Court does hereby so find.

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

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

- a. The likelihood of success at trial;
- b. The range of possible recovery;
- c. The range of possible recovery at which a settlement is fair, adequate, and reasonable;
- d. The anticipated complexity, expense, and duration of litigation;
- e. The opposition to the settlement; and
- f. The stage of the proceedings at which the settlement was achieved.

Faught v. American Home Shield Corp., 668 F.3d 1233, 1240 (11th Cir. 2011).

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

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

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

28. Class Counsel's requests for no more than \$ _____ in attorneys' fees, expenses, and costs, are fair and reasonable under the circumstances. *Faught*, 668 F.3d at 1242-43; *Drazen v. GoDaddy.com, LLC*, 2020 WL 4606979, at *2-5 (S.D. Ala. Aug. 11, 2020).

29. **[Finally, Class Counsel's requests for service awards to Plaintiff of no more than \$ _____, and to the Additional Class Representatives of no more than \$ _____, to be paid by State Farm, likewise are fair and reasonable under the circumstances. *Faught*, 668 F.3d at 1242-43; *Drazen*, 2020 WL 4606979, at *2-5.]**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

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

31. Timely requests for exclusion were submitted by ___ potential members of the Settlement Class and those potential Class Members (identified in Exhibit ___ hereto) are excluded from the Settlement Class. All other potential members of the Settlement Class are adjudged to be members of the Settlement Class and are bound by this Final Order and Judgment and by the Stipulation, including the releases provided for in the Stipulation and this Final Order and Judgment.

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

33. **[Except as set forth expressly in the following paragraph,]** This Final Order and Judgment shall be immediately entered as to all claims in the Action between the Plaintiff, Additional Class Representatives and Class Members and State Farm, and Final Judgment is

entered approving and adopting all terms and conditions of the Settlement and the Stipulation, fully and finally terminating all claims of the Plaintiff, Additional Class Representatives and the Settlement Class in this Action against State Farm in accordance with the terms and conditions of the Settlement, on the merits and with prejudice without leave to amend.

34. **[Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, this Court hereby defers any ruling on Class Counsel’s request for service awards for Plaintiff and Additional Class Representatives. Class Counsel may renew the request for service awards after the final outcome of *Johnson v. NPAS Sols., LLC*, 975 F.3d 1244 (11th Cir. 2020). (The “final outcome” as used in the preceding sentence means the date upon which all appellate courts with jurisdiction (including the United States 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.) The Court will retain jurisdiction to address any such renewed request.]**

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

36. Pursuant to Rule 23(a) and (g) of the Federal Rules of Civil Procedure, Plaintiff Annie Arnold is appointed as the Representative Plaintiff for this Settlement Class, and Additional Class Representatives Bobby Abney, Tina Danial, and Kenneth Scruggs are appointed as Additional Class Representatives, and the following counsel are appointed as counsel for the settlement Class (“Class Counsel”):

Erik D. Peterson
MEHR, FAIRBANKS & PETERSON
TRIAL LAWYERS, PLLC
201 West Short Street, Suite 800
Lexington, KY 40507
Telephone: 859-225-3731

T. Joseph Snodgrass
LARSON • KING, LLP
30 East Seventh St., Suite 2800
St. Paul, MN 55101
Tel: (651) 312-6500
Fax: (651) 312-6618

Facsimile: 859-225-3830
edp@austinmehr.com

J. Brandon McWherter
MCWHERTER SCOTT BOBBITT
341 Cool Springs Blvd, Suite 230
Franklin, TN 37067
Tel: (615) 354-1144
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David Martin, Esq.
THE MARTIN LAW GROUP,
LLC
2117 Jack Warner Parkway, Suite 1
Tuscaloosa, AL 35401
Telephone: (205) 343-1771
Facsimile: (205) 343-1781
david@erisacase.com

37. **[Except as set forth in Paragraph 34, *supra*,]** Upon the entry of this Final Order and Judgment, the Plaintiff, Additional Class Representatives, all Class Members who did not timely and properly exclude themselves from the Settlement Class, and all of their heirs, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and anyone claiming through them or acting or purporting to act for them or on their behalf, will be bound by this Final Order and Judgment and shall be conclusively deemed to have fully released and discharged, acquitted and forever discharged, to the fullest extent permitted by law, any and all of the Released Persons from all of the Released Claims, all as defined in the Stipulation, and shall be conclusively bound by this Final Order and Judgment under the doctrines of res judicata, collateral estoppel, and claim and issue preclusion, and agree not to sue any Released Person with respect to any Released Claims. The Plaintiff, Additional Class Representatives and all Class Members who did not timely and properly exclude themselves from the Settlement Class shall be deemed to agree and acknowledge that the foregoing releases were bargained for and are a material part of the Stipulation. The Stipulation shall be the exclusive remedy for all Class Members with regards to Released Claims.

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

- a. “Released Claims” means and includes any and all past, present and future claims arising from or in any way related to depreciation of any kind on claims within the class period (including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, and/or withholding of depreciation), whether known or unknown, and that were asserted or could have been asserted herein to the full extent of res judicata protection. This release is not intended to prevent an individual Class Member from seeking and potentially recovering any RCBs that may still remain available under the terms of his or her Policy. Additionally, Released Claims do not include any claim for enforcement of this Stipulation of Settlement and/or the Final Judgment.
- b. “Released Persons” means, individually and collectively, (i) State Farm Fire and Casualty Company, and all of the past and present divisions, parent entities, associated entities, affiliates, partners, and subsidiaries; and (ii) all past and present officers, directors, shareholders, agents, attorneys, employees, stockholders, successors, assigns, independent contractors, and legal representatives of the entities set forth in (i). The Released Claims extend only to claims arising under insurance policies issued by the Defendant.

39. [Except as set forth in Paragraph 34, *supra*,] In order to protect the continuing jurisdiction of the Court and to protect and effectuate this Final Order and Judgment, the Court permanently and forever bars and enjoins the Plaintiff, Additional Class Representatives and all Class Members, and anyone acting or purporting to act on their behalf, from instituting, maintaining, prosecuting, suing, asserting, or cooperating in any action or proceeding, whether new or existing, against any of the Released Persons for any of the Released Claims. Any person in knowing contempt of the injunction under this paragraph may be subject to sanctions, including payment of reasonable attorneys’ fees incurred to seek enforcement of the injunction, subject to this Court’s discretion.

40. This Final Order and Judgment, the Stipulation, the negotiations of the Stipulation, the Settlement procedures, any act, statement, or document related in any way to the negotiation of the Stipulation or Settlement procedures, and any pleadings, or other document or action related in any way to the Stipulation shall not be construed as an admission or concession by State Farm (a) of the truth of any of the allegations in the Lawsuit; (b) of any liability, fault, or wrongdoing of

any kind on the part of State Farm; or (c) that this Action may be properly maintained as a litigation class action. Likewise, none of the materials referenced in this paragraph shall be offered or received in evidence in any action or proceeding in any court, administrative panel or proceeding, or other tribunal, as proof that State Farm has admitted or conceded points (a), (b), or (c) contained within this paragraph. Class Counsel and Defendant dispute whether this Agreement may be offered into evidence in a foreign court in support of a potential motion for certification of a different class action in another lawsuit, with State Farm contending that this Agreement cannot and should not be used for such purposes.

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

42. Class Counsel's Motion for Attorneys' Fees and Litigation Costs and Request for Service Awards (Doc. No. __) is hereby GRANTED[, **with the exception of the Request for Service Awards, as to which the Court has deferred any ruling, as described herein**]. Pursuant to Rule 23(h), the Court awards Class Counsel \$_____ in attorneys' fees, litigation expenses, and costs. [**In addition, the Court awards Plaintiff a service award of \$_____ and each Additional Class Representative a service award of \$_____.**] The Court hereby finds that these amounts are fair and reasonable and directs that State Farm shall pay such amounts pursuant to the terms of the Stipulation. State Farm shall not be responsible for and shall not be liable with respect to the allocation among Class Counsel or any other person who may assert a claim thereto, of attorneys' fees and expenses awarded by the Court.

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

44. The Court appoints [**George M. Van Tassel, Jr., of Upchurch Watson White & Max**] as the Neutral Evaluator to carry out the duties and responsibilities set forth in the Stipulation. The Plaintiff, Additional Class Representatives, Class Counsel, State Farm, and State Farm's Counsel shall not be liable for any act or omission of the Neutral Evaluator.

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

46. [**With the exception of Class Counsel's request for service awards for Plaintiff and Additional Class Representatives, as to which this Court has deferred any ruling and has permitted Class Counsel to renew the request as set forth herein,**] The Action is dismissed in its entirety on the merits, with prejudice, without fees or costs to any party except as otherwise provided herein.

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

- a. Enforcing the Stipulation and the Settlement;
- b. [**Ruling upon Class Counsel's renewed request for service awards for Plaintiff and Additional Class Representatives, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure;**] and
- c. Any other matters related or ancillary to any of the foregoing.

IT IS SO ORDERED, this __ day of _____, 2022.

/s/

Hon. Terry F. Moorner

United States District Judge

EXHIBIT 5

REMINDER NOTICE

If you made a claim to State Farm for structural damage to a dwelling or other structure located in Alabama based on a loss that occurred between March 8, 2011 and August 3, 2017, and you received an actual cash value payment or would have received one but for the application of “non-material depreciation,” this class action settlement may affect your rights.

*A court authorized this Notice.
It is not a solicitation from a lawyer.*

www.Arnold-v-StateFarm.com

11696 State Farm Settlement

c/o **TBD**

TBD

TBD



[BARCODE]

List ID: [List_ID]



Postal Service: Please do not mark barcode

[NameLine1]

[NameLine2]

[AddressLine1]

[AddressLine2]

You were previously mailed a court-authorized Notice explaining that you may be a class member in a class action settlement regarding State Farm Fire and Casualty Company's application of depreciation to estimated labor and non-material costs in making actual cash value ("ACV") claim payments under State Farm policies. **Our records indicate that you have not submitted a Claim Form or request for exclusion.**

Who's included in the Class? The Court approved the following Class definition:

All persons and entities 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.

In order to receive any monetary benefits from the *Arnold v. State Farm* Settlement, you must complete a Claim Form and either mail it to the address below or upload the completed form at www.Arnold-v-StateFarm.com.

Arnold v. State Farm Settlement
TBD

For details regarding the proposed Settlement, including information about important deadlines, please review the Notice previously sent to you. The Notice, along with other important documents, is also available on the settlement website at www.Arnold-v-StateFarm.com.

If you did not receive or no longer have the Notice or Claim Form, you may request that one be mailed to you by contacting the Settlement Administrator at the phone number listed below. You may also contact the Settlement Administrator with any questions you have about the proposed Settlement. Please do not call State Farm or your State Farm agent to discuss this lawsuit.

IN ORDER TO PARTICIPATE IN THIS SETTLEMENT, YOUR CLAIM FORM MUST BE POSTMARKED OR UPLOADED NO LATER THAN [DEADLINE].

Additional orders of the Court and relevant deadlines will be posted on the website. This is only a reminder. For more information, call the number or visit the website below.

**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.)	

**DECLARATION OF ERIK D. PETERSON IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

Pursuant to 28 U.S.C. § 1746, I, Erik D. Peterson, state that I am an attorney duly licensed to practice in the Commonwealth of Kentucky and the State of California, as well as multiple federal circuit courts of appeals and district courts. I have appeared as counsel for the Plaintiff and Class Representative Annie Arnold and Additional Class Representatives Bobby Abney, Tina Daniel, and Kenneth Scruggs (collectively “Plaintiffs”) in the above-captioned matter. I further declare as follows:

1. This Declaration is submitted in support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Settlement.

Biographical Information

2. I am of-counsel to Mehr, Fairbanks & Peterson Trial Lawyers, PLLC, located in Lexington, Kentucky. Following my graduation from the University of Kentucky College of Law, I served as a law clerk to Hon. Gregory F. Van Tatenhove in the United States District Court for

the Eastern District of Kentucky. Since completing my clerkship over thirteen years ago, my practice has focused solely on class action and insurance litigation in trial and appellate courts around the country.

3. As it relates specifically to labor depreciation class actions, I have been lead or co-lead counsel in more than thirty putative and certified class actions, both pending and resolved, in state or federal courts in Alabama, Nebraska, Kentucky, Illinois, Ohio, Massachusetts, Michigan, Mississippi, Missouri, North Carolina, South Carolina and Tennessee. These cases have been against a wide variety of property insurers, from small regional insurers to national insurers. I have also consulted with groups of plaintiffs' counsel in other labor depreciation class actions in which I do not represent the litigants.

4. I have argued labor depreciation class action appeals before the Nebraska Supreme Court and the Sixth Circuit Court of Appeals and have served as counsel in numerous cases setting important precedent related to labor depreciation and class certification of labor depreciation actions. *See, e.g., Hicks v. State Farm Fire and Cas. Co.*, 965 F.3d 452 (6th Cir. July 10, 2020) (affirming class certification); *Hicks v. State Farm Fire & Cas. Co.*, 751 Fed. Appx. 703 (6th Cir. 2018) (holding labor depreciation improper under Kentucky law); *Arnold v. State Farm Fire & Cas. Co.*, 268 F. Supp. 3d 1297 (S.D. Ala. 2017) (holding labor depreciation improper under Alabama law); *Donofrio v. Auto-Owners (Mut.) Ins.*, No. 3:19-cv-58, 2020 U.S. Dist. LEXIS 53830 (S.D. Ohio Mar. 26, 2020) (holding labor depreciation improper under Ohio law). Like my co-counsel here, am counsel of record in the vast majority of labor depreciation cases that have been filed nationwide.

5. This Declaration sets forth a brief summary of the background of this lawsuit, particularly the settlement negotiations that ultimately led to the proposed settlement and the basis

upon which Class Counsel recommend that the Court preliminarily approve the settlement. The following recitation is not all-inclusive but rather is intended to illustrate how settlement negotiations were structured, and the analysis that Plaintiffs' counsel incorporated in agreeing to a settlement on behalf of the putative classes. I believe that these facts demonstrate that the settlement is fair, reasonable and adequate, and should be preliminarily approved by the Court.

Brief History of the Litigation

6. This action and proposed settlement involve allegations that State Farm breached the terms of its standard-form property insurance policies with Plaintiffs and other class members by wrongfully depreciating labor costs when adjusting property loss claims in violation of applicable law.

7. On March 8, 2017, Plaintiff Annie Arnold ("Plaintiff") commenced this Action in the Circuit Court of Dallas County, Alabama. Dkt. 1-2. State Farm timely removed the Action to this Court on April 7, 2017. Dkt. 1. 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 State Farm policyholders who received ACV payments from State Farm for loss or damage to a dwelling, business, or other structures located in Alabama, based on events that occurred on or after March 1, 2007, where the estimated cost of labor was depreciated. *Id.* ¶¶ 27, 48-56.

8. State Farm fought every aspect of this lawsuit. First, 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) (Dkt. 31).

9. Second, 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. 55).

10. 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 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); Dkt. 88, at 8-10.

11. State Farm sharply disputed the appropriateness of class certification in this case, and also claimed that, even if it improperly withheld sums as labor depreciation, Plaintiffs 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. As the 195 entries on the Court's docket reflect, the parties also engaged in extensive dispositive, certification and expert-related motion practice.

12. 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.

13. 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 hearing before this Court on July 22-23, 2020, concerning Plaintiff's motion for class certification, and which included live witnesses. 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.

14. 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. In addition to Plaintiff, the Court also appointed Abney, Daniel, and Scruggs as additional representatives of the class (“Additional Class Representatives”), and myself, J. Brandon McWherter, T. Joseph Snodgrass, and David Martin, as Class Counsel. *See id.* at *3, 11.

15. 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.

16. 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.*

The Settlement Process

17. The parties agreed to use George M. Van Tassel, Jr., of Upchurch Watson White & Max, as a private mediator to facilitate settlement discussions. 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. 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. The

parties participated in one further, five-hour mediation session with Mr. Van Tassel on November 18, 2021, to resolve the remaining issues that had arisen during negotiations of the more comprehensive settlement agreement.

18. 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. Significantly, none of these payments will reduce the value of the class members' recoveries.

19. Because the attorney's fees and service award will be paid separately by Defendants and will not reduce the recovery to the class or be subsidized by same, Defendants were incentivized to negotiate and pay as little as possible. There was no collusion and all negotiations were performed via arms-length bargaining. Because of the timing of negotiations for fees and costs in comparison to the class relief, there are no "red flags" concerning the manner in which the class action settlement negotiations were conducted. *See* 4 William B. Rubenstein, *NEWBERG ON CLASS ACTIONS* § 13:54 (5th ed. Dec. 2021 Update) ("The concern is also greater when the value of the settlement fund and the fees were negotiated simultaneously, as that could indicate that some of the class's fund was traded off for greater fees.") (hereinafter "NEWBERG").

20. Because the Court does not approve any attorneys' fees and costs until the final fairness hearing, the foregoing recitation is not intended to set forth a complete justification of any amounts of attorneys' fees and costs. Rather, the foregoing recitation is set forth only to show that the class action settlement negotiations were conducted at arms' length and structured in accordance with the highest ethical standards so as to avoid conflicts of interest between putative class counsel and the putative class members.

The Settlement Terms

21. The proposed settlement here provides that Settlement Class Members will have the right to receive 100% of the labor depreciation this lawsuit sought to recover, plus 44% of the estimated General Contractor Overhead and Profit (“GCOP”) Depreciation (if any) that was initially deducted from their ACV payments by State Farm, plus prejudgment interest.

22. More specifically, for Settlement Claimants who previously received only an ACV payment or who previously received partial Replacement Cost Benefits (“RCBs”), the Settlement will result in a 100% recovery of the estimated Non-Material Depreciation that was initially deducted and/or not fully recovered through payment of RCBs, plus 44% of the estimated GCOP 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. For most class members, and assuming an Effective Date of September 15, 2022, this interest equates to an additional 28.36% increase for any “still withheld” amounts of Non-Material Depreciation or GCOP Depreciation.

23. Settlement Claimants from whom all Non-Material Depreciation was initially deducted and who subsequently recovered all depreciation through the normal insurance claim process (*i.e.*, “interest only” Class Members), will receive payment 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 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 replacement cost payment.

24. Settlement Claimants who would have received an ACV payment but for application of Non-Material Depreciation, the Settlement will result in 100% of the portion of the estimated Non-Material Depreciation that the Settlement Class Member did not receive as an ACV

payment, plus simple interest at 5.55% on those amounts from March 8, 2017 to the Effective Date.

25. In addition to the class relief, State Farm has agreed to pay administration costs, a service award to Plaintiff and each of the Additional Class Representatives,¹ and attorney's fees and expenses. Unlike in many settlements, the payment of fees, expenses, and any service awards will *not* reduce the value of the putative class members' recoveries. Thus, these amounts are an additional benefit to the Settlement Class.

26. 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 approximately \$30M available to Class Members, exclusive of attorney's fees, litigation expenses, administration costs, and any class representative service awards.

27. The amount 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

¹ The permissibility of service awards within the Eleventh Circuit was somewhat unsettled at the time of the execution of this settlement. *See generally Phillips v. Hobby Lobby Stores, Inc.*, 2021 WL 3710134 at *5-6 (N.D. Ala. August 20, 2021) (discussing state of the law within Eleventh Circuit subsequent to *Johnson v. NPAS Sols., LLC*, 975 F.3d 1244 (11th Cir. 2020), which prohibited incentive or service awards that compensate class representatives for their time in bringing a class action lawsuit). Accordingly, the parties have agreed that the Court should preliminarily approve the settlement while carving out and reserving the issue of the propriety of service awards in this case until such time that the final disposition of *NPAS Sols.* is known. This approach is considered "the current best practice" within the Circuit. *Macrum v. Hobby Lobby Stores, Inc.*, 2021 WL 3710133, at *5 (N.D. Ala. Aug. 20, 2021); *see also Phillips*, 2021 WL 3710134 at *6 (approving settlement except for incentive award but retaining jurisdiction to allow plaintiff to renew request if *NPAS Sols.* is reversed); *Pinon v. Daimler AG*, 2021 WL 6285941, at *20 (N.D. Ga. Nov. 30, 2021) (same); *Cotter v. Checkers Drive-In Rest., Inc.*, 2021 WL 3773414, at *13 (M.D. Fla. Aug. 25, 2021) (same).

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.

28. Finally, the proposed settlement “cannot be evaluated in the vacuum of monetary recovery.” *In re Blue Cross Blue Shield Antitrust Litig.*, 2020 WL 8256366, at *17 (N.D. Ala. Nov. 30, 2020) (recognizing business practice changes established by proposed settlement were “exceptional” and weighed in favor of settlement approval). State Farm’s cessation of its labor depreciation practice in the state of Alabama as of August 3, 2017 (*i.e.*, the date of the Court’s Order denying State Farm’s motion to dismiss), and its corresponding labor withholding refund program, are significant achievements that were the direct results of this litigation. *See Arnold*, 2020 WL 6879271, at *3, 5, 11 (discussing State Farm’s cessation of labor depreciation practice and labor withholding refund program).

29. These business practice changes, coupled with the monetary relief provided in the proposed Settlement, support Class Counsel’s conclusion that the proposed settlement is an excellent result for the Class, particularly given the many risk factors discussed below. *See, e.g., 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).

Class Counsel Fees and Expenses and Class Representative Service Awards

30. After the proposed settlement terms for the Class were agreed upon, the parties then negotiated proposed attorney’s fees/costs and class representative service awards.

31. Pursuant to the parties’ agreement, State Farm has agreed to pay, subject to Court approval, an amount no greater than \$8,595,000 in attorney’s fees and litigation expenses, and amounts no greater than \$20,000 to Plaintiff and Class Representative Annie Arnold and \$15,000 each to the Additional Class Representatives Bobby Abney, Tina Daniel and Kenneth Scruggs.

32. Class Counsel estimate the aggregate value of the relief made available to the Class at \$30MM, costs of administration (estimated to be approximately \$215,000) and attorneys' fees and expenses (\$8,595,000). Thus, the attorney's fees to be sought are approximately 22% of the aggregate value of the proposed Settlement. *See, e.g., In re Home Depot Inc.*, 931 F.3d 1065, 1092 (11th Cir. 2019) (recognizing that in constructive common-fund cases in which the parties designate attorneys' fees to be paid separately from class relief, and agree on the amount of attorney's fees or set a cap, courts include the expected attorneys' fees to value the aggregate "class benefit" afforded by proposed settlement); *Phillips v. Hobby Lobby Stores, Inc.*, 2021 WL 3710134 at *7 (N.D. Ala. August 20, 2021) ("[T]he calculation of the value of the common fund should include all cash used to pay attorneys' fees and the expenses of claims administration."); *Carnegie v. Mut. Sav. Life Ins. Co.*, 2004 WL 3715446, at *37 (N.D. Ala. Nov. 23, 2004) (awarding fees pursuant to percentage-of-the-fund method based on "aggregate Settlement benefits," including settlement benefits to class, class counsel's out-of-pocket expenses, and class counsel's requested fees).

Factors Supporting Approval of the Settlement

33. The risk at the time of suit and settlement was and remains substantial. *Hicks v. State Farm Fire & Cas. Co.*, 751 Fed. Appx. 703, 710 (6th Cir. 2018) (the "substantial weight of authority" is in favor of insurers in labor depreciation class actions). 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. *See, e.g., Hicks v. State Farm Fire & Cas. Co.*, 965 F.3d 452, 467 (6th Cir. July 2020) (affirming class certification of similar State Farm labor depreciation class action); *Mitchell v. State Farm Fire & Cas. Co.*, 954 F.3d 700, 712 (5th Cir. 2020) (same).

34. State Farm retained sophisticated class action defense attorneys with a national class action defense practice. Absent settlement, defense counsel would have continued to put forward several grounds for avoiding both liability and class certification.

35. Class Counsel's risk assessment had to consider the risk of losing a future, but inevitable, class decertification motion. Assuming Plaintiffs successfully opposed decertification, and absent settlement, Plaintiffs' next hurdle would be to establish class-wide liability and class-wide damages. 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 these points. Indeed, despite these rulings, State Farm still disputed breach and damages prior to settlement.

36. Class Counsel's risk assessment also had to take into account considerations associated with increasing common fund attorneys' fees and costs. Even if the Class prevailed upon certification and the liability and damages stages, Class Counsel would likely have to incur substantial non-recoverable costs for, *e.g.*, e-discovery, non-testifying expert witnesses, jury consultant fees, claim file auditing, etc. These costs would be set off against any recovery.

37. Additionally, Class Counsel's risk assessment had to take into account the time value of money, as well as the continued likelihood that as time goes by, more Class Members will be difficult to locate in the claims administration process or pass away.

38. This settlement was not reached until Class Counsel had conducted extensive pre- and post-suit analyses and investigation, consulted with experts about the novel and difficult issues raised, thoroughly researched the law and facts, and assessed the risks of prevailing at both the trial court and appellate levels.

39. Based upon these and other factors and considerations, Class Counsel deem the amount of class recovery under the Settlement to warrant preliminary approval.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

/s/ Erik D. Peterson
Erik D. Peterson
edp@austinmehr.com

February 9, 2022

Arkansas; (5) the Southern District of Ohio; (6) the Western District of Wisconsin; and (7) the Central, Northern and Southern Districts of Illinois. I've also been admitted *pro hac vice* in numerous other courts around the country.

3. I am a member of the law firm of McWherter Scott & Bobbitt, PLC, with its primary offices in Jackson, TN and Franklin, TN. The firm currently has seven attorneys, and primarily handles first party insurance claims. The firm has served as lead and co-lead counsel in numerous class actions around the country. Over the years, our practice area has expanded across several states.

4. For more than a decade, my practice has been focused almost exclusively on the prosecution of first party property insurance claims for policyholders. My interest in this area of the law first started in around 2003 when a tornado struck Jackson, Tennessee, where I lived and worked at the time. Since then, I've represented thousands of policyholders whose claims have been underpaid or denied. I advise and advocate for owners of commercial properties, industrial facilities, municipalities, school districts, residential properties, churches, business owners, condominiums, apartment complexes, and other insurance policyholders. To my knowledge, I (together with the other lawyers in my firm who work with me) am the only lawyer in the State of Tennessee whose practice is limited to the representation of policyholders in coverage and bad faith disputes. Our unique niche in the law has led clients to involve our firm in claims outside Tennessee as well.

5. Since I started counting in 2013, I've assisted the firm's clients in obtaining well over One Hundred Fifty Million Dollars (\$150,000,000) in settlements, awards, and jury verdicts against insurance companies.

6. Over the years, I have been a member of numerous bar associations and other legal associations. In 2018, I was initiated as a fellow in the American College of Coverage Counsel, which is an invitation only organization designed to facilitate and encourage the association of lawyers who are distinguished for their skill, experience, and high standards of professional and ethical conduct in the practice or teaching of insurance coverage and extra-contractual law and who are dedicated to excellence in this area of practice. I've been included in U.S. News and World Reports' "Best Lawyers in America" in Insurance Law since 2013. I've also been featured as a "Super Lawyer" or "Rising Star" by SuperLawyers since 2010 and enjoy an AV Preeminent rating by Martindale Hubbell. Since 2009, I've co-authored a blog, "The Tennessee Insurance Litigation Blog," which focuses on issues of law relevant to insurance litigation in the State of Tennessee. See www.tninsurancelitigation.com. The blog was recognized in 2009 and 2011 as one of the Top 50 insurance related blogs by the LexisNexis Insurance Law Community. To my knowledge, those are the only years the rankings were published.

7. As relevant to this case, I am familiar with Xactimate® and similar estimating programs and the current trend of depreciation of labor by property insurance companies. I've trudged through fire scenes and crawled roofs, quizzed consulting construction experts and estimators for hours on end, and deposed and cross-examined hundreds of adjusters, experts, consultants, and other professionals within the insurance industry. I read insurance policies nearly every day, and try my best to keep abreast of the latest trends in the property insurance industry. Through that experience, I have been fortunate to gain a decent working knowledge of the customs and practices of insurance companies in the investigation, estimating, and payment of claims.

8. Through the years, I've served as lead counsel in numerous cases that ended with seven and eight figure results for my clients. The firm has handled insurance claims ranging from

a few hundred dollars to the eight figures. Several of my cases have developed the law governing insurance disputes in the State of Tennessee through the appellate system. As it relates to the particular issues at hand regarding labor depreciation, I have been counsel in several cases holding that labor may not be depreciated when calculating an insurer's actual cash value payment obligations. *See Lammert v. Auto-Owners Ins. Co.*, 572 S.W. 3d 170 (Tenn. 2019); *Mitchell v. State Farm Fire & Cas. Co.*, 954 F.3d 700, 2020 WL 1503107 (5th Cir. Mar. 30, 2020); *Titan Exteriors, Inc. v. Certain Underwriters at Lloyd's London*, 297 F. Supp. 3d 628 (N.D. Miss. Feb. 26, 2018). I am also lead or co-lead counsel in numerous certified or putative class action cases involving labor depreciation in Tennessee, Mississippi, Alabama, Illinois, Kentucky, Ohio, Wisconsin, Arizona, Washington, and other states.

9. My days are spent counseling clients as to how best present their claim, assisting them in compiling the necessary proof to validate the amounts they are owed, and then enforcing their rights, if necessary, via the judicial system and other alternative dispute resolution options available to policyholders via the provisions of their insurance policies. My entire practice is dedicated to representing insurance policyholders.

10. Although prior to the recent labor depreciation class cases my practice for more than a decade has been limited to individual insurance claims, I do have considerable experience in litigating class actions under Rule 23, and have served as class counsel in several class actions, including more than 30 labor depreciation class actions.

11. I have read the Declaration of my co-counsel, Erik D. Peterson, that was filed contemporaneously with this Declaration. I agree with Mr. Peterson's analysis of the proposed settlement, affirm his factual recitations concerning the negotiations of the proposed settlement, and recommend without hesitation that the Court grant preliminary approval of the settlement. I

believe that the law and facts demonstrate that the settlement is fair, reasonable and adequate, and should be granted preliminary approval.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

/s/ J. Brandon McWherter
J. Brandon McWherter
brandon@msb.law

February 9, 2022

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

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

**DECLARATION OF T. JOSEPH SNODGRASS IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

I, T. Joseph Snodgrass, state that I am an attorney duly licensed to practice in the State of Minnesota, before the United States Supreme Court and several federal circuit courts of appeals and district courts. I have appeared as counsel for the Plaintiff and Class Representative Annie Arnold and Additional Class Representatives Bobby Abney, Tina Daniel, and Kenneth Scruggs (collectively “Plaintiffs”) in the above-captioned matter. I further declare as follows:

1. This Declaration is submitted in support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Settlement.

2. In addition to the State of Minnesota, I am admitted to practice law before the United States District Courts for the Districts of Minnesota, Colorado, North Dakota, the Eastern and Western Districts of Arkansas, the Eastern and Western Districts of Wisconsin, the Southern District of Indiana, the Central and Southern Districts of Illinois, the Eastern District of Michigan,

the Fifth, Seventh, Eighth and Tenth Federal Circuit Courts of Appeal, and the United States Supreme Court.

3. In 1999, I founded the law firm of Larson • King, LLP, a civil litigation law firm. Larson • King is now one of the largest law firms in St. Paul, Minnesota, with 34 attorneys and 20 employees. Larson • King, LLP is a national, complex litigation law firm representing both plaintiffs and over 30 Fortune 500 companies.

4. For approximately the past twenty years, my practice has focused on a plaintiffs' contingency practice, including class actions and multi-district litigation. Prior to that time, the primary focus of my practice consisted of representing individual companies in complex first and third-party insurance coverage and bad faith disputes.

5. While a majority of my firm's practice focuses on complex litigation on behalf of corporations, my individual practice at Larson • King has focused exclusively upon representing plaintiffs in multi-district litigation, class and collective actions. During my 29 years of practice, I have served as the lead attorney in many complex class actions.

6. As it relates specifically to labor depreciation class actions, I have been lead or co-lead counsel approximately forty putative and certified class actions, both pending and resolved, in state or federal courts in Alabama, Illinois, Massachusetts, Minnesota, Mississippi, Missouri, North Carolina, Ohio, South Carolina, Tennessee and Wisconsin. These class action lawsuits have been against a wide variety of property insurers, from small regional insurers to national insurers. These class actions have included single state claims and multi-state claims. I also regularly consult with groups of plaintiffs' counsel in other labor depreciation class actions in which I do not represent the litigants.

7. I have argued labor depreciation class action appeals before the Minnesota Supreme Court (State Farm), the Tennessee Supreme Court (Auto-Owners), the South Carolina Supreme Court (Travelers), both the Illinois Court of Appeals (State Farm) and Illinois Supreme Court (State Farm), and the Fifth Circuit Federal Court of Appeals (State Farm). On April 12, 2022, I am scheduled to argue before the Arizona Supreme Court (Auto-Owners).

8. I have read the Declaration of my co-counsel, Erik D. Peterson, that was filed contemporaneously with this Declaration. I agree with Mr. Peterson's analysis of the proposed settlement, affirm his factual recitations concerning the negotiations of the proposed settlement, and recommend without hesitation that the Court grant preliminary approval of the settlement. I believe that the law and facts demonstrate that the settlement is fair, reasonable and adequate, and should be granted preliminary approval.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

/s/ T. Joseph Snodgrass
T. Joseph Snodgrass
jsnodgrass@larsonking.com

February 9, 2022

**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.)	

**DECLARATION OF DAVID P. MARTIN IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

I, David P. Martin, state that I am an attorney duly licensed to practice in the State of Alabama and admitted in several federal circuit courts of appeals and district courts. I have appeared as counsel for the Plaintiff and Class Representative Annie Arnold and Additional Class Representatives Bobby Abney, Tina Daniel, and Kenneth Scruggs (collectively “Plaintiffs”) in the above-captioned matter. I further declare as follows:

1. This Declaration is submitted in support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Settlement.

2. In addition to the State of Alabama, I am admitted to practice law before the United States District Courts for the Southern, Middle and Northern Districts of Alabama, and the Second, Fifth, and Eleventh Federal Circuit Courts of Appeal.

3. I have practiced in Tuscaloosa for over 25 years. In 2007, I started The Martin Law Group, LLC.

4. I have read the Declaration of my co-counsel, Erik D. Peterson, that was filed contemporaneously with this Declaration. I agree with Mr. Peterson's analysis of the proposed settlement, affirm his factual recitations concerning the negotiations of the proposed settlement, and recommend without hesitation that the Court grant preliminary approval of the settlement. I believe that the law and facts demonstrate that the settlement is fair, reasonable and adequate, and should be granted preliminary approval.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

/s/ David P. Martin
David P. Martin
david@erisacase.com

February 9, 2022

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,)

Plaintiff,)

v.)

STATE FARM FIRE AND CASUALTY)
COMPANY,)

Defendant.)

Case No. 2:17-CV-00148-TFM-C

**PLAINTIFFS' MEMORANDUM OF
LAW IN SUPPORT OF UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

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INTRODUCTION

Plaintiff and Class Representative Annie Arnold (“Plaintiff”) and Additional Class Representatives Bobby Abney, Tina Daniel, and Kenneth Scruggs (“Additional Class Representatives”), respectfully submit this Memorandum in support of their Unopposed¹ Motion for Preliminary Approval of Class Action Settlement (“Motion”). The Stipulation and Settlement Agreement reached between Plaintiff, the Additional Class Representatives and Defendant State Farm Fire & Casualty Company (“State Farm”) (the “Settlement” or “SA”) is attached as Exhibit A to the Motion.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.).

Plaintiff and the Additional Class Representatives now seek the Court’s preliminary approval of this Settlement under Federal Rule of Civil Procedure (“Rule”) 23(e)(1) so that notice of the Settlement can be disseminated to the Class and the Final Approval hearing scheduled. At the Final Approval Hearing, the Court will have before it additional submissions in support of the Settlement, as well as any objections that may be filed, and will be asked to determine whether, in accordance with Rule 23(e)(2), the Settlement is fair, reasonable, and adequate.

As discussed below, the proposed Settlement was reached through arm’s-length bargaining with the involvement of private mediator George M. Van Tassel, Jr., of Upchurch Watson White

¹ 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.

² All capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Settlement Agreement, attached as Exhibit A to the Motion.

& Max. Due to the complexity of issues and substantial amounts at issue, several mediation sessions were required before the lawsuit was resolved.

Class Counsel estimates that, upon approval, the Settlement will make approximately \$30MM available to Class Members. Those class members who submit timely and complete claim forms will be eligible for settlement class payments. This amount is exclusive of the amounts already paid by State Farm to its Alabama policyholders after this lawsuit resulted in the “change in practices” described below.

The Settlement provides the following categories of damages to Class Members who submit settlement claims. First, the settlement provides 100% of the still withheld Non-Material Depreciation. Second, 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 withheld Non-Material Depreciation or GCOP Depreciation and subsequently paid back the same, State Farm will pay an additional 5.55% 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.

³ The prior State Farm labor depreciation class action settlements are *Mitchell v. State Farm Fire & Cas. Co.*, No. 3:17cv00170-M (N.D. Miss. Feb. 25, 2021) (final order and judgment (*Mitchell* Dkt. 249)); *Stuart v. State Farm Fire & Cas. Co.*, No. 4:14-4001 (W.D. Ark. June 2, 2020) (final order and judgment (*Stuart* Dkt. 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* Dkt. 178, at 3,n.1; Dkt. 179, at 3, n.1.

Accordingly, and for the reasons set forth herein, Plaintiff and the Additional Class Representatives submit that the Settlement warrants the Court's preliminary approval and respectfully requests that the Court enter the proposed Preliminary Approval Order attached as Exhibit 1 to the Settlement.

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 and oral argument, 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 also 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* Declaration of Erik Peterson, filed concurrently herewith as Exhibit B ("Peterson Decl."). 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. Peterson Decl. ¶ 17.⁵ 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

⁵ The Peterson Declaration, filed concurrently with this Memorandum and attached as Exhibit 2 to the Motion, addresses the history of settlement negotiations for this lawsuit and the timing and structure of the settlement negotiations. Peterson Decl. ¶¶ 17-20. The Declaration also addresses the considerations that led to the compromise in exchange for the proposed release. *Id.* at ¶¶ 21-29, 33-39; *see also generally* McWherter Decl., Snodgrass Decl. and Martin Decl. (attached as Exhibits C, D and E to the Motion).

an agreement in principle to settle the Action on a class-wide basis. *Id.* ¶ 17. 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 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.* ¶ 18.

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. *Id.* at ¶¶ 33-39.

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.* at ¶ 39. 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.

The amount of any attorneys' fees, costs and expenses awarded by this Court will not reduce the award to any Class Member under this Settlement. SA ¶¶ 13.2.

III. AGGREGATE VALUE OF RELIEF TO THE CLASS

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 approximately \$30MM,

exclusive of attorneys' fees, litigation expenses, administration costs, and any class representative service awards. Peterson Decl. at ¶ 32.

IV. AVERAGE POTENTIAL CLAIM RECOVERY

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. Peterson Decl. ¶ 27.

V. EXEMPLARS

To help illustrate how the settlement payments will be issued, Plaintiffs 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 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% for 365 days of \$21,000.00).

VI. 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.

VII. 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.*, the specific depreciation option settings in Xactimate® software. *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.

VIII. ATTORNEYS’ FEES, COSTS AND SERVICE AWARDS

Class Counsel will 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 ¶¶ 13.1-13.4.

At the time of the execution of this Settlement, 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. SA ¶ 13.5. If this remains the case at the time of the Final Approval Hearing, the Parties agree that the Court should proceed to enter Final Judgment pursuant to Rule 54(b), deferring service awards to Plaintiff and Additional Class Representatives, but retaining jurisdiction to allow Plaintiff and

Additional 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).⁶ SA ¶ 13.6. If the Court enters such a Rule 54(b) judgment, Class Counsel, Plaintiff, and the Additional Class Representatives all expressly agree to waive any right to appeal the deferred decision by the Court as to the request for service awards after the final outcome of *Johnson*. SA ¶ 13.6.

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 Plaintiff and Additional 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.

IX. THE CLASS NOTICE

State Farm will separately pay for the Class Notice and notice Administrator. SA ¶ 4.1.4. Potential Class Members will be given direct-mailed notice of the terms of the proposed Settlement at least seventy-five (75) days prior to the Final Approval Hearing. *Id.* ¶¶ 5.3-5.4. Prior to mailing of the Class Notice by the Administrator through the United States Postal Service, the Administrator will run all Class Members' names and addresses through the "National Change of Address" ("NCOALink") database. *Id.* ¶ 5.3. Additionally, returned class notices will be further researched, and an e-mail will be sent to such persons soliciting an updated mailing address. *Id.* ¶

⁶ As of the date of this filing, the Eleventh Circuit has not yet issued a decision on Plaintiff-Appellee Charles T. Johnson's Petition for Rehearing *En Banc*, which was filed on October 22, 2020.

5.5. Notice will also be published on the internet. *Id.* ¶ 5.7. A reminder postcard notice will also be issued prior to the expiration of the claims deadline. *Id.* ¶ 5.6.

ARGUMENT

I. THE SETTLEMENT MERITS PRELIMINARY 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 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 preliminary 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 Preliminary 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); *In re Blue Cross Blue Shield Antitrust Litig.*, 2020 WL 8256366, at *7 (N.D. Ala. Nov. 30, 2020). These factors overlap with the factors that courts in the Eleventh Circuit have traditionally considered on preliminary and final approval, which include:

- (1) the existence of fraud or collusion;
- (2) the complexity, expense and likely duration of the litigation;

- (3) the stage of the proceedings and the amount of discovery completed;
- (4) plaintiffs' probability of success;
- (5) the range of possible recovery; and
- (6) the opinions of class counsel, class representatives, and absent class members.

Dillard v. City of Foley, 926 F. Supp. 1053, 1063 (M.D. Ala. 1995);⁷ *see, e.g., In re Blue Cross*, 2020 WL 8256366, at *26 (granting preliminary approval of class action settlement); *Dalton v. Carworks Serv., LLC*, 2010 WL 5341939, at *6-7 (S.D. Ala. Nov. 19, 2010) (same).

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 Inc. Customer Data Security Breach Litig.*, 999 F.3d 1247, 1273 (11th Cir. 2021) (“[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.

At the preliminary approval stage, the Court is not required to determine whether it will ultimately approve the settlement, but only whether “the proposed settlement will likely earn final approval.” Fed. R. Civ. P. 23(e) Adv. Comm. Note at 27; *In re Blue Cross*, 2020 WL 8256366, at *14 (“Although a court need not make a final determination of the fairness, reasonableness, and adequacy of the proposed settlement at this stage of the proceedings, it must make a preliminary finding that the proposed settlement is sufficiently fair, reasonable, and adequate on its face to warrant presentation to the class members.”). As this Court’s sister district has observed:

Where [] the proposed settlement is the result of serious, arms-length negotiations between the parties, has no obvious deficiencies, falls within the range of possible

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

approval, achieves favorable outcomes for plaintiffs and the class, and does not grant preferential treatment to plaintiffs or other segments of the class, courts generally grant approval.

In re Blue Cross, 2020 WL 8256366, at *14. As set forth in detail below, consideration of the Rule 23(e) and Eleventh Circuit factors supports preliminary approval here. *See id.* at *15 (recognizing that because Rule 23(e) and Eleventh Circuit “factors overlap, it is appropriate to address them together, in combination”).

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* Peterson Decl. ¶¶ 2-4; *In re Blue Cross*, 2020 WL 8256366, at *15 (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. The “adequacy of representation” factor is thus satisfied.

2. *The Lack Of Fraud Or Collusion*

“A ‘presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery.’” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005); *In re United States Sugar Corp. Litig.*, 2011 WL 13173854, at *2 (S.D. Fla. Jan. 24, 2011) (“Given federal courts’ time-worn policy favoring the voluntary resolution of complex class action cases, a strong initial presumption of fairness attaches to any class action settlement reached by experienced counsel following arms-length negotiations.” (citations omitted)). Likewise, courts 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.”).

The presumption in favor of settlement is warranted here as there is no indicia of fraud or collusion. Settlement negotiations only occurred after years of contentious litigation and significant discovery. The negotiations themselves were conducted at arm’s-length, properly phased to follow the highest ethical standards, and were overseen by an experienced mediator, George M. Van Tassel, Jr. See *Family Med. Pharm., LLC v. Impax Labs., Inc.*, 2017 WL 4366740, at *5 (S.D. Ala. Sept. 29, 2017) (granting preliminary approval of class settlement where “parties (represented by experienced counsel) negotiated this settlement at arm’s length over a period of

months, with the assistance of a qualified mediator and with the benefit of both formal and informal discovery”); *Camp*, 2014 WL 1764919, at *4 (finding there is no evidence of collusion where parties participated in multiple mediations and the settlement was the result of arm’s-length negotiations); *accord George v. Academy Mortgage Corp. (UT)*, 369 F. Supp. 3d 1356, 1369-70 (N.D. Ga. 2019) (“The parties engaged in prolonged adversarial litigation and negotiations, demonstrating the absence of fraud or collusion behind the Settlement. The parties settled this Action by mediation with an experienced mediator, ... which further confirms that the process was procedurally sound and not collusive.”); *Morgan v. Public Storage*, 301 F. Supp. 3d 1237, 1247 (S.D. Fla. 2016) (“Where the parties have negotiated at arms’ length, the Court should find that the settlement is not the product of collusion.’ Moreover, ‘[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.”).

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 v. Regions Bank*, 2020 WL 3064945, at *4 (N.D. Ala. June 9, 2020). 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, the labor depreciation lawsuit, *Hicks v. State Farm Fire & Cas. Co.*, was filed on February 28, 2014, and remains pending in the Eastern District of Kentucky, just shy of its eighth-year anniversary. *Hicks*, No. 14-00053 (E.D. Ky.). On July 10, 2020, the Sixth Circuit resolved State Farm’s *second* interlocutory appeal in *Hicks* and, a month later, denied rehearing *en banc*. See generally *Hicks v. State Farm Fire & Cas. Co.*, 965 F.3d 452 (6th Cir. July

2020), *reh'g and reh'g en banc denied* (6th Cir. Aug. 26, 2020); *Hicks v. State Farm Fire & Cas. Co.*, 751 Fed. App'x 703 (6th Cir. 2018).

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. Peterson Decl. ¶ 11. 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 4366740, at *5 (“it also bears consideration that the proposed settlement brings an end to the litigation now, without a delay of years (and the accompanying expense of litigation) to obtain a judgment”).

4. *The Stage Of The Proceedings*

The Court's consideration of the stage of proceedings and the nature and extent of discovery in evaluating the fairness of a settlement is focused on whether the parties have obtained sufficient information to evaluate the merits of competing positions. *In re Blue Cross*, 2020 WL 8256366, at *16. That said, "[t]he law is clear that early settlements are to be encouraged, and accordingly, only some reasonable amount of discovery should be required to make these determinations." *Id.* (citation omitted). As discussed, *supra*, Arg. § I.B.3., 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.

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.

Accordingly, "Plaintiffs have had ample opportunity to investigate the facts and law and to obtain substantive rulings from the court. Thus, it is clear that the factual record in this matter was sufficiently developed to allow Class Counsel to make a reasoned judgment as to merits of the settlement." *In re Blue Cross*, 2020 WL 8256366, at *16; *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 (internal quotation marks and citation omitted). 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). “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*, 751 Fed. Appx. at 710 (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 very 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); *In re Blue Cross*, 2020 WL 8256366, at *18 (preliminarily approving settlement fund representing between 7.3% and 14.3% of the relevant expert analyses of potential class recovery); *Morgan*, 301 F. Supp. 3d at 1250-51 (approving settlement that obtained 20% the amount sought at trial and “guarantees that each Class member who files a claim will receive a recovery of up to 50% of his or her individual damages”); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1350 (S.D. Fla. 2011) (approving \$410 million class settlement that provided recovery of 9% to 45% of potential recovery that could have been obtained through trial,

noting that “a 9 percent settlement (the absolute lowest percentage anyone has attempted to ascribe to this Settlement) is still within the range of reasonableness” given the risks associated with remaining defenses and appeals).

Additionally, so-called “interest only” Class Members are also eligible to receive relief. 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); *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,⁸ are significant achievements that were the direct results of this litigation. Accordingly, these business practice changes, coupled with the

⁸ *See Arnold*, 2020 WL 6879271, at *3, 5, 11.

monetary relief provided in the proposed Settlement, warrant a preliminary 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").

6. *The Opinions Of Class Counsel And The Class Representatives, And The Reaction Of Class Members*⁹

"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); *see, e.g., Shuford v. Ala. State Bd. Of Educ.*, 897 F. Supp. 1535, 1549 (M.D. Ala. 1995) (holding court would respect views of class counsel, including number of prominent and respected civil rights attorneys, that proposed partial consent decree in employment discrimination class action was fair, adequate, and reasonable, for purposes of assessing propriety of consent decree).

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. "Class Counsel were well-positioned to evaluate the strengths and weaknesses of the claims in this case as well as the appropriate basis upon which to settlement them." *In re Blue Cross*, 2020 WL 8256366, at *17 The Class Representatives, knowing that the proposed Settlement will result in a 100% recovery

⁹ The reaction of absent class members cannot be determined prior to the dissemination of notice.

of still-withheld labor depreciation plus a portion of the GCOP depreciation plus prejudgment interest, are similarly pleased with the proposed Settlement.

C. Plaintiffs' Forthcoming Motion Requesting Attorneys' Fees, Costs And Service Awards Falls Within The Range Of Reasonableness Sufficient To Allow Preliminary Approval And Notice To The Class.

Class Counsel will 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. Class Counsel will also seek (with the caveat as to timing outlined above, *supra* at Summary of Settlement Terms § VIII) approval of the Parties' agreement that State Farm shall pay Plaintiff a service award in an amount not to exceed \$20,000, and service awards in amounts not to exceed \$15,000 to each of the Additional Class Representatives, which if approved, will not reduce Class Members' recoveries.

Under the Settlement Agreement, and pursuant to Rule 23(e) and (h), Class Members will receive notice that fees, costs, and litigation expenses will be sought, and will be provided information about how they can object, assuming the Court preliminarily approves the Settlement. Class Counsel will then file a motion for fees and expenses pursuant to both the Settlement and Rules 23(h)(1) and 54(d)(2). In turn, this Court will then award the attorneys' fees, costs, and expenses that it determines appropriate assuming the Settlement is finally approved.

Given Class Counsel's considerable efforts and success in achieving this recovery for Class Members, there is no reason to doubt the reasonableness of an anticipated request for attorneys' fees and expenses, or the fairness of the Settlement. *See In re Blue Cross*, 2020 WL 8256366, at *23 (granting preliminary approval of settlement where anticipated fee and expense request was in line with Eleventh Circuit benchmarks and settlement class members would receive notice of

request and have an opportunity to object prior to prior to final approval). Although fees are analyzed at the final approval stage, Class Counsel seek amounts made available on a “claims made available” basis pursuant to the percentage-of-the-fund method.

“[I]n this Circuit, common-fund fee awards are properly calculated as a percentage of benefits made available to the class, regardless of whether each class member redeems the benefits made available to class members, or even whether unclaimed benefits revert to the defendant.” *Swaney*, 2020 WL 3064945, at *6; *see, e.g., Waters v. Int’l Precious Metals Corp.*, 190 F.3d 1291, 1294-95 (11th Cir. 1999) (upholding attorney fee award based on entire settlement fund even though portion reverted to the defendant); *Family Med.*, 2017 WL 4366740, at *5 (preliminarily approving claims-made class settlement in which plaintiffs’ counsel sought up to one-third of gross settlement fund less administration costs).

This Court has substantial discretion in determining the appropriate fee percentage. However, awards in this Circuit commonly fall between 20-30% and an upper end of 50%. *Comeens v. HM Operating Inc.*, 2016 WL 4398412, at *4 (N.D. Ala. Aug. 18, 2016 (“[T]he Eleventh Circuit noted courts have generally approved counsel fees of 20% to 30% but that higher than 50% was known to occur.”); *see also In re Equifax Inc. Customer Data Security Breach Litig.*, 999 F.3d 1247, 1273 (11th Cir. 2021) (“average percentage award in Eleventh Circuit is roughly one-third”); *In re Home Depot Inc.*, 931 F.3d 1065, 1076 (11th Cir. 2019) (“In this Circuit, courts typically award between 20-30%, known as the benchmark range.”); *Wilson v. EverBank*, 2016 WL 457011, at *18 (S.D. Fla. Feb. 3, 2016) (“[F]ederal district courts across the country, *routinely* award class counsel fees in excess of the 25 percent ‘benchmark[.]’”).¹⁰ Counsel will demonstrate

¹⁰ Under the percentage-of-the-fund method, “the calculation of the value of the common fund should include all cash used to pay attorneys’ fees and the expenses of claims administration.” *Phillips*, 2021 WL 3710134, at *7; *see also In re Home Depot Inc.*, 931 F.3d 1065, 1092 (11th Cir.

when submitting their anticipated motion concerning fees and litigation expenses (assuming district court preliminary approval) that the request will fall within these benchmarks.¹¹ See Peterson Decl. ¶ 32.

Further, because the attorneys' fees will not reduce any Settlement 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 plaintiffs' and defense counsel 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 WL 33581944, *28-30 (M.D. Tenn. Aug. 11, 1999) (emphasis added); see, e.g., *Williams v. New Penn Fin., LLC*, 2019 WL 2526717, at *6-8 (M.D. Fla. May 8, 2019) (approving "attorneys' fees under Settlement [] to be paid separately from the Settlement amount paid to Class Members"); *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 690, 694 (S.D. Fla. 2014) (holding \$20 million attorneys' fee award was reasonable in homeowners' nationwide class action

2019) (recognizing that in constructive common-fund cases in which the parties designate attorneys' fees to be paid separately from class relief, and agree on the amount of attorney's fees or set a cap, courts include the expected attorneys' fees in the "class benefit"); *Carnegie v. Mut. Sav. Life Ins. Co.*, 2004 WL 3715446, at *37 (N.D. Ala. Nov. 23, 2004) (awarding fees pursuant to percentage-of-the-fund method based on "aggregate Settlement benefits," including settlement benefits to class, class counsel's out-of-pocket expenses, and class counsel's requested fees). Additionally, in analyzing the anticipated fee request, the Court may consider State Farm's cessation of its labor depreciation practice in Alabama, and its corresponding labor withholding refund program, which were significant achievements that resulted directly from this litigation. See *In re Home Depot*, 931 F.3d at 1093-94 (holding class counsel deserved credit for premiums paid by defendant to banks for releases prior to class settlement since banks were putative class members at the time, and payment of premium was direct result of filing of class action).

¹¹ See, e.g., *McWhorter v. Ocwen Loan Serv., LLC*, 2019 WL 9171207, at *14 (N.D. Ala. Aug. 1, 2019) (awarding class counsel \$3.23 million in attorneys' fees, which represented one-third of the common fund, plus litigation expenses); *Comeens*, 2016 WL 4398412, at *4 (approving class counsel's fee request of 33 $\frac{1}{3}$ percent of the common fund, plus costs); see also *In re Checking Account Overdraft Litig.*, 2020 WL 4586398, at *1, 21-22 (S.D. Fla. Aug. 10, 2020) (awarding class counsel \$2,625,000 in attorneys' fees, equal to 35% of settlement fund, plus \$92,899.19 in reimbursement of expenses).

against mortgage lender and force-placed hazard insurer, in part, because requested fee would be paid by defendants in addition to \$300 million available to class); *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 695 (N.D. Ga. 2001) (“the Court should give substantial weight to a negotiated fee amount, assuming that it represents the parties’ ‘best efforts to understandingly, sympathetically, and professionally arrive at a settlement as to attorney’s fees’” (internal citations omitted)); *accord Bailey v. AK Steel Corp.*, 2008 WL 553764, at *1 (S.D. Ohio Feb. 28, 2008) (“courts are especially amenable to awarding negotiated attorneys’ fees and expenses in a reasonable amount where that amount is in *addition to and separate from* the defendant’s settlement with the class” (emphasis added)).

Finally, as previously discussed, the permissibility of service awards within the Eleventh Circuit was somewhat unsettled at the time the parties executed this Settlement. *See Phillips*, 2021 WL 3710134 at *5-6. While a divided panel of the Eleventh Circuit has held “incentive” or “service” awards that compensate a class representative solely for her time and efforts in commencing and prosecuting a class action lawsuit are not permitted, district courts within the Circuit have continued to provide class representatives additional compensation above that provided to the class. *Compare NPAS Sols.*, 975 F.3d at 1260 (holding incentive award “that compensates a class representative for his time and rewards him for bringing a lawsuit” while commonplace is unlawful), *with, e.g., Broughton v. Payroll Made Easy, Inc.*, 2021 WL 3169135, at *4, n.5 (M.D. Fla. July 27, 2021) (finding settlement provision requiring defendant to pay class representative \$5,000 “as consideration for his agreement to execute a general release that was beyond the scope of the class release “fair, adequate, and reasonable[,]” and distinguishing *NPAS Sols.* prohibition on service awards). Yet, other courts within the Circuit, including this Court’s sister district, have carved out and reserved the issue of service awards until such time that the

final disposition of *NPAS Sols.* is known. *Phillips*, 2021 WL 3710134, at *5 (collecting cases); *Macrum v. Hobby Lobby Stores, Inc.*, 2021 WL 3710133, at *5 (N.D. Ala. Aug. 20, 2021) (noting this approach to be “the current best practice”).¹²

Accordingly, if the permissibility of service awards remains in the same *status quo* described above at the time of the Final Approval Hearing, the Parties agree that this Court should proceed to enter Final Judgment pursuant to Rule 54(b), deferring a determination of service awards to Plaintiff and Additional Class Representatives, but retaining jurisdiction to allow Plaintiff and the Additional Class Representatives to renew their request for service awards after the final outcome of *NPAS Sols.*, *supra*. See SA ¶¶ 13.5-13.7; *Phillips*, 2021 WL 3710134 at *6 (retaining jurisdiction over matter until ultimate disposition of *NPAS Sols.* is known and holding “[i]f *NPAS Sols.* is reversed after that final decision, Plaintiff may refile a motion renewing her request for approval of class representative awards”). Because this Court will fully analyze the appropriateness of the service award-provisions of the proposed Settlement at the Final Approval Hearing, these provisions do not provide grounds for delaying the grant of preliminary approval and notice to the Class.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court preliminary approve the Settlement. If the Court is so inclined, Plaintiffs further request the Court schedule a final approval hearing approximately 120 days from the date of preliminary approval.

¹² See also *Pinon v. Daimler AG*, 2021 WL 6285941, at *20 (N.D. Ga. Nov. 30, 2021) (approving settlement except for incentive award but retaining jurisdiction to allow plaintiff to renew request if *NPAS, Sols.* is reversed); *Cotter v. Checkers Drive-In Rest., Inc.*, 2021 WL 3773414, at *13 (M.D. Fla. Aug. 25, 2021) (same).

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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2022, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to counsel of record.

/s/Erik D. Peterson