

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

ERIK KNIGHT and JUNG KIM,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

PROGRESSIVE NORTHWESTERN
INSURANCE COMPANY, PROGRESSIVE
DIRECT INSURANCE COMPANY,
PROGRESSIVE CASUALTY INSURANCE
COMPANY, PROGRESSIVE SPECIALTY
INSURANCE, and PROGRESSIVE
CLASSIC INSURANCE COMPANY, Ohio
corporations,

Defendants.

Case No.: 3:22-cv-00203-JM

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, LITIGATION EXPENSES, AND SERVICE AWARDS**

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I. INTRODUCTION

Plaintiffs Erik Knight and Jung Kim (“Plaintiffs” or “Settlement Class Representatives”) have reached a Settlement with Progressive Northwestern Insurance Company, Progressive Direct Insurance Company, Progressive Casualty Insurance Company, Progressive Specialty Insurance Company, and Progressive Classic Insurance Company (collectively, “Progressive” or “Defendants”) that provides significant benefits to Settlement Class Members.

Every Settlement Class Member who submits a simple claim form will receive 100% of his or her individual PSA Impact Amount, calculated from Defendants’ own data. Not only is the claim process simple and frictionless, but the Notice Plan also includes three rounds of email notice plus three rounds of postcard notice (a total of six notices) and an extended claims period until October 26, 2025, providing the Settlement Class Members ample opportunity to file their claims.

Based on the Parties’ analyses of Progressive’s claims databases, the Settlement makes available an estimated \$13,211,773 in cash benefits, with an average payment of approximately \$506 per claim. Rather than deducting from those cash payments, all court-approved attorneys’ fees, litigation expenses, service awards, and notice and administration costs will be paid separately, on top, by Defendants. Adding these additional monetary benefits brings the cash value of the Settlement to \$17,404,049.¹

As compensation for their efforts in successfully litigating this Action and consistent with the Settlement Agreement, Class Counsel respectfully request attorneys’ fees of \$3,963,531, which

¹ This sum was calculated as follows: \$13,211,773 (available cash benefits to Settlement Class Members who file claims) + \$3,963,531 (requested attorneys’ fees, to be paid by Defendants in addition to the cash benefits) + \$112,000 (requested litigation expenses, to be paid by Defendants in addition to the cash benefits) + \$101,745 (estimated notice and administration costs, to be paid by Defendants in addition to the cash benefits) + \$15,000 (requested service awards, to be paid by Defendants separately).

represents 30% of the available cash benefits of \$13,211,773 or roughly 23% of the total Settlement value of \$17,404,049. Class Counsel also request reimbursement of their out-of-pocket litigation expenses of \$112,000,² again to be paid separately by Defendants. As detailed more fully herein, the requested attorneys' fees and out-of-pocket litigation expenses are fair and reasonable based on the factors typically considered by courts in the Eighth Circuit: the time and labor required to perform the legal service properly; the amount involved in the case and the results obtained; the customary and contingent nature of the fee; the experience and ability of counsel; the novelty and difficulty of the issues involved; the time limitations imposed by the circumstances; the reaction of the Settlement Class Members; and fee awards in similar class action litigation.

Plaintiffs and Class Counsel also seek a service award for each Plaintiff in the amount of \$10,000 for Plaintiff Knight and \$5,000 for Plaintiff Kim in recognition of their role as the Settlement Class Representatives in prosecuting the litigation on behalf of the Settlement Classes. This request is reasonable, consistent with service awards approved in similar class action settlements, and fully justified by the law and Plaintiffs' involvement in this case.

Thus, for the reasons stated herein as well as the accompanying declarations, Class Counsel and Plaintiffs respectfully request that the Court approve the requested attorneys' fees, litigation expenses, and service awards.

II. SUMMARY OF THE PROCEEDINGS

A. OVERVIEW OF THE SETTLEMENT

The factual and procedural background of these consolidated actions and the contours of the Settlement terms are set forth in the Motion for Preliminary Approval, the concurrently-filed

² When fully tallied, Class Counsel's out-of-pocket litigation expenses total \$118,420.68. However, under the Settlement Agreement, Plaintiffs agreed to cap their reimbursement request at \$112,000. As such, Class Counsel is seeking the lower amount of \$112,000.

Motion for Final Approval of Class Action Settlement, and the Declaration of Hank Bates in Support of Plaintiffs’ Motions for (i) Final Approval of Class Action Settlement, and (ii) Attorneys’ Fees, Litigation Expenses, and Service Awards (“Supp. Bates Decl.”). This petition incorporates by reference those documents. In short, under the Settlement, every Settlement Class Member who submits a simple claim form will receive 100% of their PSA Impact Amount. Attorney’s fees, out-of-pocket litigation expenses, and costs of notice and administration are paid separately by Defendants so there is zero reduction in any Settlement Class Member’s individual payment. More specifically, the Settlement makes available approximately \$13.2 million, which was calculated as follows: (1) for the Progressive Northwestern Class, the average PSA Impact Amount is 4.02% of the ACV of each Settlement Class Members total loss vehicle, for a total of approximately \$8,534,836; and (2) for the Progressive Direct and Other Underwriter Class, the average PSA Impact Amount is 3.17% of the ACV of each Settlement Class Members total loss vehicle, for a total of approximately \$4,676,937. *See* ECF No. 179 at ¶¶ 20-21. Distributions will occur between 45 days to 60 days after the Effective Date. ECF No. 179-1 (Settlement Agreement) at ¶ 10(d). In addition to these cash benefits, under the Settlement, Defendants are to separately pay (1) attorneys’ fees up to \$3,963,531, (2) Class Counsel’s out-of-pocket litigation expenses up to \$112,000, (3) costs of notice and administration up to \$101,745; and (4) service awards up to \$15,000. *See* ECF No. 179 at ¶¶ 39, 50-51 and ECF No. 179-6.

III. THE REQUESTED AWARD OF ATTORNEYS’ FEES IS REASONABLE AND APPROPRIATE.

A. THE LEGAL STANDARD FOR AWARDING ATTORNEYS’ FEES.

“Courts utilize two main approaches to analyzing a request for attorney fees,” the percentage of the recovery method and the lodestar method. *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 865 (8th Cir. 2017) (citing *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 244 (8th Cir.

1996)). “It is within the discretion of the district court to choose which method to apply, as well as to determine the resulting amount that constitutes a reasonable award of attorney’s fees in a given case.” *Id.*

The percentage of the recovery approach aids litigants and the courts because it “directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d. Cir. 2005); *see also Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (percentage of the benefit is “a method of more closely aligning the lawyer’s interests with those of his client by giving him a stake in a successful outcome”). “[U]nder the percentage approach, the class members and the class counsel have the same interest—maximizing the recovery of the class.” *See Silber and Goodrich, Common Funds and Common Problems: Fee Objections and Class Counsel’s Response*, 17 Rev. Litig. 525, 534 (Summer 1998).

In applying the percentage method of compensation, it is appropriate for a court to look at the total benefits available to the class, including additional benefits such as the separate payment of attorneys’ fees, litigation expenses, service awards, and costs of notice and administration. *See Barfield v. Sho-Me Power Elec. Co-op.*, No. 2:11-CV-4321NKL, 2015 WL 3460346, at *4 (W.D. Mo. June 1, 2015) (“it is appropriate to base the percentage on the gross cash benefits available for class members to claim, plus the additional benefits conferred on the class by the KAMO Defendants’ separate payment of attorneys’ fees and expenses, and the expenses of administration.”) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 479, 100 S. Ct. 745, 62 L. Ed. 2d 676 (1980)); *see also Jones v. Monsanto Company*, 38 F.4th 693, 700 (8th Cir. 2022) (finding that “the district court did not abuse its discretion in including the amount allocated *cy pres* in calculating the attorney’s fee” because “the funds that are ultimately allocated *cy pres* were

available for class members to claim” and “[i]f the court affirms the adequacy of the notice to the class, then the court cannot fault plaintiffs’ counsel for the fact that class members, for myriad possible reasons, did not submit enough claims to exhaust the Common Fund”); *Tussey v. ABB, Inc.*, No. 06-CV-04305-NKL, 2019 WL 3859763, at *2 (W.D. Mo. Aug. 16, 2019) (providing courts should consider value of “both the monetary and non-monetary value of the settlement” under the percentage of the fund method); *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 437 (2d Cir. 2007) (“The entire Fund, and not some portion thereof, is created through the efforts of counsel at the instigation of the entire class. An allocation of fees by percentage should therefore be awarded on the basis of the total funds made available, whether claimed or not.”).

A reasonable percentage of the total Settlement value is an appropriate basis on which to award Class Counsel a fee in this case. *See Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) (noting that courts within the Eighth Circuit frequently award attorneys’ fees on a percentage basis, typically between 25% and 36% of the settlement); *Caligiuri*, 855 F.3d 860 (affirming fee award of one-third of the gross settlement fund); *Koenig v. U.S. Bank N.A. (In re U.S. Bancorp Litig.)*, 291 F.3d 1035, 1038 (8th Cir. 2002) (affirming fee award to class counsel of 36 percent of settlement fund); *Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019) (affirming fee award of 28% of the Settlement, or \$6,020,000); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999) (stating fee awards based on the percentage of the recovery method are “well established”); *Nelson v. Wal-Mart Stores, Inc.*, No. 2:05CV000134WRW, 2009 WL 2486888, at *1 (E.D. Ark. Aug. 12, 2009) (awarding attorneys’ fees in the amount of one third of the total settlement fund); *Plymouth Cnty. Ret. Sys. v. Patterson Cos., Inc.*, 2022 WL 2093054, at *1 (D. Minn. June 10, 2022) (approving 33-1/3% fee on \$63 million settlement); *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1061 (D. Minn. 2010) (approving 33 1/3% fee”).

Class Counsel assumed significant risk in prosecuting this litigation entirely on a contingency fee basis. Bearing this risk and facing formidable obstacles and uncertainties involved in this complex litigation, Class Counsel's efforts resulted in securing \$13,211,773 in available cash benefits, plus the ancillary benefits of separately paid (1) attorneys' fees up to \$3,963,531, (2) Class Counsel's out-of-pocket litigation expenses up to \$112,000, (3) costs of notice and administration up to \$101,745; and (4) service awards up to \$15,000. A fee award based on a percentage of these benefits is reasonable compensation for their efforts. *See Barfield*, 2015 WL 3460346, at *4.

B. THE RELEVANT FACTORS SUPPORT CLASS COUNSEL'S REQUESTED FEE AWARD.

In determining fee awards, courts in the Eighth Circuit typically consider some or all of the relevant factors listed in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974). *See In re Target Corp. Customer Data Security Breach Litig.*, 892 F.3d 968, 977 (8th Cir. 2018); *In re Xcel Energy Inc. Securities Derivative and "ERISA" Litig.*, 364 F. Supp. 2d 980, 993 (D. Minn. April 8, 2005). The *Johnson* factors are:

(1) The time and labor required; (2) The novelty and difficulty of the questions; (3) The skill requisite to perform the legal service properly; (4) The preclusion of other employment by the attorney due to acceptance of the case; (5) The customary fee for similar work in the community; (6) Whether the fee is fixed or contingent; (7) Time limitations imposed by the client or the circumstances; (8) The amount involved and the results obtained; (9) The experience, reputation, and ability of the attorneys; (10) The undesirability of the case; (11) The nature and length of the professional relationship with the client; and (12) Awards in similar cases.

In re Xcel Energy, 364 F. Supp. 2d at 993. Because not all factors apply to every case, a court should use its discretion to tailor the considerations to the individual facts of the case before it. *See Huyer*, 849 F.3d at 398–400 (affirming trial court's award of one-third of the common fund after review of *Johnson* factors 1- 5 only); *Swinton v. SquareTrade, Inc.*, 454 F. Supp. 3d 848, 886 (S.D. Iowa 2020) ("Many of the *Johnson* factors are related to one another and lend themselves to being

analyzed in tandem.”); *Khoday v. Symantec Corp.*, No. 11-CV-180 (JRT/TNL), 2016 WL 1637039, at *9 (D. Minn. Apr. 5, 2016), *report and recommendation adopted*, No. 11-CV-0180 (JRT/TNL), 2016 WL 1626836 (D. Minn. Apr. 22, 2016) (“Many of the factors overlap, and not all of the individual factors will apply in every case, affording the Court wide discretion in the weight to assign each factor.”)

As demonstrated below, consideration of all the applicable factors strongly supports the requested fee award.

1. Time and Labor Required.

Consideration of the efforts and time expended by Class Counsel establishes that the requested fee is reasonable. Class Counsel have exerted substantial efforts since this Action started and brought the case to the eve of trial. As discussed herein and in the accompanying declarations, the litigation has been hard-fought, entailing substantial and time-consuming investigation, research, motions practice, document review, and settlement negotiations. Specifically, Class Counsel researched and analyzed all factors involved in Plaintiffs’ claims as well as possible defenses available to Defendants; drafted the complaints advancing Plaintiffs’ claims; successfully sought class certification; engaged in substantial motions practice, including summary judgment, *Daubert* briefing, and interlocutory appeals; participated in a full-day mediation; negotiated a very favorable Settlement on behalf of the Settlement Classes; drafted the Settlement Agreement and all related exhibits; presented the proposed Settlement to the Court and obtained an order directing notice to the Settlement Classes; and have worked with the Settlement Administrator to implement the Court-approved Notice Plan and to address any other issues that may arise. *See* Supp. Bates Decl. at ¶¶ 3-23, 25, and 47. Clearly, Class Counsel have been fully committed to the prosecution of this Action and have devoted substantial time and resources to this Action. All work performed by Class Counsel was necessary, performed without duplication, and successfully advanced this

litigation toward Settlement. *See id.* at ¶¶ 26, and 54-55. As such, the effort and time expended by Class Counsel in navigating the complex legal and factual issues presented in this litigation supports the requested fee. *Yarrington*, 697 F. Supp. 2d at 1063 (finding the efforts and time of counsel, among other factors, justified an award of attorneys' fee of 33 1/3% of the settlement fund).

2. The Result Achieved.

Many courts consider the result achieved to be the most important factor in determining whether the fee requested is reasonable. *See In re Flight Transp. Corp. Sec. Litigation*, 685 F. Supp. 1092, 1095 (D. Minn. 1987) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). There is no question that in this case, Class Counsel have achieved a very favorable result.

First, the Settlement Classes will benefit greatly from the Settlement. Under the Settlement, every Settlement Class Member is entitled to receive 100% of their PSA Impact Amount, with attorney's fees, litigation expenses, service awards, and costs of notice and administration paid separately so there is zero reduction in any Settlement Class Member's individual payment. As such, the Settlement makes available an estimated \$13,211,773 for the benefit of the Settlement Classes, with an average payment of approximately \$506 per claim. In addition, the Settlement provides that Defendant will separately pay (1) attorneys' fees up to \$3,963,531, (2) Class Counsel's out-of-pocket litigation expenses up to \$112,000, (3) costs of notice and administration up to \$101,745, and (4) service awards up to \$15,000.

Second, Class Counsel recognize that in contrast to the tangible, immediate benefits of the Settlement, the outcome of continued litigation and a trial against Defendants is uncertain. At the time of settlement, there was a pending motion for summary judgment. Plaintiffs would likely be faced with a motion to decertify the Classes as well. Plaintiffs then would need to prevail at trial and secure an affirmance on a likely appeal before recovering damages.

The risks of maintaining a class-wide judgment through appeal is not hypothetical. Thus far, three appellate courts have reviewed orders certifying classes that challenged Progressive’s application of Projected Sold Adjustments. One court affirmed the order. *Davenport v. Progressive Direct Ins.*, 2025-Ohio-2449, 2025 WL 1902437 (OH Ct. App., 8th Dist.). The two others reversed. *Schroeder v. Progressive Paloverde Ins. Co.*, No. 24-1559, 2025 WL 2083855, at *1 (7th Cir. July 24, 2025); *Drummond v. Progressive Spec. Ins. Co.*, 142 F.4th 149 (3d Cir. 2025). While Plaintiffs are confident this Court’s certification order would be affirmed, experience shows there are no guarantees in litigation. And if the certification order was reversed following a trial win, all Settlement Class Members would be left to fend for themselves in individual actions.

The Settlement removes these risks and uncertainties and assures that Settlement Class Members will receive compensation for their claims now, without further litigation and expense. *See Stuart v. State Farm Fire & Cas. Co.*, No. 4:14-CV-4001, 2020 WL 2892819, at *3 (W.D. Ark. June 2, 2020) (finding 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,” and finally approving the settlement).

Third, there is a substantial likelihood that, even if Defendants’ liability could be established, the Classes would not recover a significantly greater amount than the amount presently provided for in the proposed Settlement. *See Burnett v. Nat’l Ass’n of Realtors*, No. 4:19-CV-00332-SRB, 2024 WL 2842222, at *4 (W.D. Mo. May 9, 2024) (“[E]xperience proves that, no matter how confident trial counsel may be, they cannot predict with 100% accuracy a jury’s favorable verdict.”).

In short, the benefits secured through Settlement were achieved through the work and skill

of Class Counsel and will benefit all Settlement Class Members, while avoiding the risk and uncertainty of further litigation and a possible trial. Accordingly, consideration of this factor weighs in favor of Class Counsel's fee request.

3. The Novelty and Difficulty of the Legal and Factual Issues, the Significant Skill of Experienced Counsel, and Awards in Similar Actions.

"Most class actions are inherently complex and settlement avoids the costs, delays and multitudes of other problems associated with them." *In re Telectronics Pacing Sys. Accufix Atrial "J" Leads Prods. Liab. Litig.*, 137 F. Supp. 2d 985, 1013 (S.D. Ohio 2001) (citation omitted); *Marshall v. Green Giant Co.*, 942 F.2d 539, 549 (8th 1991) ("It goes without saying that class actions are very complex and represent a significant drain on the court in terms of time and management.").

The complexity of this case is considerable and arises from both its substantive allegations and the damages analyses that must be undertaken if Plaintiffs are to prevail at trial. The complexity of this litigation translates into considerable and material risk that Plaintiffs would not secure a recovery that would be greater than the amount of money recovered through the Settlement. In fact, there is a significant risk here that Class Counsel could prosecute this case for several more years (through trial and the inevitable appeals that would follow) and, in the end, recover nothing for the Classes. *See In re Ikon Office Solutions Sec. Litig.*, 194 F.R.D. 166, 179 (E.D. Pa. 2000) (noting where large sums of money are at issue, litigation is guaranteed to be long, drawn-out, and any plaintiff's verdict would be appealed by defendants, further extending litigation); *accord In re Aetna Inc. Sec. Litig.*, No 1219, 2001 WL 20928, at *6 (E.D. Pa. Jan. 4, 2001) ("The risk of delay could have deleterious effects on any future recovery").

Notwithstanding the complexity and difficulty of the issues involved in this case, Class Counsel were able to negotiate an excellent recovery for the Settlement Classes. Class Counsel

respectfully submit that the work they performed in this litigation reflect their skill and experience in complex class litigation. *See* Supp. Bates Decl. at ¶¶ 27, and 46. Additionally, the firm resumes of Class Counsel attest to the national reputation and extensive experience they have in the area of complex class litigation. *See* ECF 41-12 (Decl. of Hank Bates in Support of Plaintiffs’ Motion for Class Certification) at Exs. 1-4. Accordingly, the quality and skill involved in the services performed by Class Counsel support the requested fee.

Moreover, the requested fee is directly in line with fees awarded in similar, complex class litigation in the Eighth Circuit and Arkansas. *See Rodriguez v. GC Pizza LLC*, No. 4:20CV3106, 2025 WL 1555128, at *5 (D. Neb. June 2, 2025) (finding one-third of the settlement fund was “well in line with other attorney’s fee awards in this Circuit”); *Bingollu v. One Source Tech., LLC*, No. 22-CV-77 (DTS), 2024 WL 4249549, at *4 (D. Minn. Sept. 20, 2024) (finding request for one-third of the settlement fund “reasonable”); *Niewinski v. State Farm Life Ins. Co.*, No. 23-04159-CV-C-BP, 2024 WL 4902375, at *5 (W.D. Mo. Apr. 1, 2024) (granting attorneys’ fees of one-third of \$65,000,000 settlement); *Phillips v. Caliber Home Loans, Inc.*, No. 19-CV-2711 (WMW/LIB), 2022 WL 832085, at *7 (D. Minn. Mar. 21, 2022) (awarding Class Counsel (which included Carney Bates & Pulliam, PLLC) attorneys’ fees of one third of the Settlement Fund); *Williams v. State Farm Mutual Automobile Ins. Co.*, Case No. 4:11-cv-00749-KGB (E.D. Ark. June 1, 2018), slip opinion at p. 12 (awarding Class Counsel (which included Carney Bates & Pulliam, PLLC) fees of \$6.57 million, or 30% of the settlement amount of \$21.9 million); *Nelson*, 2009 WL 2486888, at *1 (awarding attorneys’ fees in the amount of one third of the total settlement fund); *see also Huyer*, 849 F.3d at 399 (noting that courts within the Eighth Circuit frequently award attorneys’ fees between 25% and 36% of a common fund); *Caligiuri*, 855 F.3d 860 (affirming fee award of one-third of the gross settlement fund).

Thus, the requested fee in this litigation reasonably reflects the work accomplished by Class Counsel.

4. **The Customary and Contingent Nature of the Fee, Time Limitations Imposed by Client or Circumstances, the Undesirability of the Case, and the Preclusion of Other Employment.**

The customary fee in a class action lawsuit is contingent. This is so because virtually no individual possesses a sufficiently large stake in such litigation to justify paying attorneys on an hourly basis. In this regard, it has been a long-recognized rule that an attorney is entitled to a larger fee when the compensation is contingent rather than being fixed on a time or contractual basis. *See Jones v. Diamond*, 636 F.2d 1364, 1382 (5th Cir. 1981) (“Lawyers who are to be compensated only in the event of victory expect and are entitled to be paid more when successful than those who are assured compensation regardless of result”); *Allshouse v. Joshua Agency, LLC*, No. 1:21-CV-1032, 2023 WL 6166474, at *4 (W.D. Ark. Sept. 21, 2023) (finding that contingency nature of the representation, “with no guarantee of success and significant risk of no recovery,” along with other factors supported fee request of 40% of the settlement fund).

In this case, Class Counsel undertook the litigation and advanced the costs on a contingent basis, bearing the full risk of no recovery at all. They undertook this litigation knowing that they could easily litigate this case for years, expend thousands of attorney hours, and tens of thousands of dollars in expenses, and then lose at summary judgment or at trial. *See Brissette v. Heckler*, 784 F.2d 864, 865-66 (8th Cir. 1986) (reversing and remanding based on district court’s failure to take “into account any contingency factor” in awarding attorneys’ fees where plaintiff prevailed in “a case with a high risk of loss, which would, if lost, produce no fee”).

Additionally, class actions are notoriously lengthy and hard to predict, and had Class Counsel not taken a role in this litigation, they would have been free to allocate their time and resources elsewhere.

Thus, consideration of the customary and contingent nature of the fee, the undesirability of the case and the fact that Class Counsel risked their time and effort with the possibility of no recovery at all, supports Class Counsel's fee request. *See Lake View Sch. Dist.*, 351 Ark. at 93 (noting that contingent fees range from 33 1/3% to 40%).

5. The Absence of Objections by Members of the Settlement Classes to Class Counsel's Fee Request.

As set forth herein and in the concurrently filed Motion for Final Approval, notice has been issued and to date, Class Counsel have received no objection to their fee request. *See* Declaration of Cameron R. Azari, Esq. on Implemental and Adequacy of Settlement Notice Plan ("Supp. Azari Decl.") at ¶ 22. The objection period remains open, and Class Counsel will address any objections that may come prior to the Final Fairness Hearing. Consequently, at this juncture, the lack of objections by Settlement Class Members is further support of the reasonableness of the requested fee. *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995) ("The fact that only a handful of class members objected to the settlement similarly weighs in [class counsel's] favor."); *In re Xcel Energy*, 364 F. Supp. 2d at 1002 ("[S]ilence can be read as an endorsement of the results received and the services rendered by plaintiff's counsel."); *see also In re Crazy Eddie Sec. Litig.*, 824 F. Supp. 320, 327 (E.D.N.Y. 1993) (holding that the lack of objections to the requested fee supported its reasonableness).

6. The Requested Fee Is Reasonable Under a Lodestar Crosscheck.

Although a lodestar crosscheck is "not required" in the Eighth Circuit, performing such a crosscheck here confirms that the requested fee is reasonable and should be approved. *See Keil v. Lopez*, 862 F.3d 685, 701 (8th Cir. 2017); *PHT Holdings II, LLC v. N. Am. Co. Life & Health Ins.*, 2023 WL 8522980, at *7 (S.D. Iowa Nov. 30, 2023).

Under the lodestar method, courts consider “(1) the number of hours spent in various legal activities by the individual attorneys, (2) the reasonable hourly rate for the individual attorneys, (3) the contingent nature of success, and (4) the quality of the attorneys’ work.” *Rodriguez*, 2025 WL 1555128, at *5. The starting point is calculating the lodestar amount by “multiplying the number of hours reasonably expended by reasonable hourly rates.” *Feldman v. Star Trib. Media Co. LLC*, No. 22-CV-1731 (ECT/TNL), 2024 WL 3026556, at *7 (D. Minn. June 17, 2024) (quoting *Bryant v. Jeffrey Sand Co.*, 919 F.3d 520, 529 (8th Cir. 2019)). After this calculation, “other, less objective, factors come into the equation.” *Rodriguez*, 2025 WL 1555128, at *5 (citing *Grunin v. Int’l House of Pancakes*, 513 F.2d 114, 127 (8th Cir. 1975)).

Here, a cross-check of the lodestar incurred by Class Counsel indicates that the fee requested constitutes fair and reasonable compensation for the risks assumed, the work done, and the benefits achieved for the Settlement Class Members. The lodestar currently totals \$1,703,724.64 when using Class Counsel’s customary rates for complex class action litigation. *See* Supp. Bates Decl. at ¶¶ 54-55. Class Counsel was able to litigate this complex, data-intensive and expert-intensive class action to the eve of trial with great efficiency as it is one of multiple similar cases Class Counsel has been litigating contemporaneously against Progressive entities. This lodestar only reflects the time expended specific to this Action and does not include extensive time expended in related cases that significantly benefited the prosecution of this Action. *See id.* at ¶ 55.

The cross-check multiplier is 2.3, which is consistent with multiplier amounts approved in this district and the Eighth Circuit. *See id.* at ¶ 56; *see also Rawa*, 934 F.3d at 870 (observing a lodestar multiplier of 5.3 is within the bounds of reasonableness); *Huyer*, 849 F.3d at 399–400 (observing lodestar multipliers of up to 5.6 times class counsel’s lodestar to be in the reasonable

range for a lodestar crosscheck); *In re T-Mobile Customer Data Security Breach Litigation*, No. 23-2744, 2024 WL 3561874, at *6 (8th Cir. July 29, 2024) (observing that in a case that settled early in the litigation, a multiplier of 5.3 is on the “high” side of reasonableness); *Feldman*, 2024 WL 3026556, at *7 (D. Minn. June 17, 2024) (finding the lodestar amount to yield a multiplier of 2.97, which “is within a reasonable range for a class settlement in this Circuit”); *Niewinski*, 2024 WL 4902375, at *5 (approving lodestar multiplier of 2.64); *Nelson*, 2009 WL 2486888, at *2 (approving lodestar multiplier of 2.5); *In re Charter Commc’ns, Inc., Sec. Litig.*, No. 4:02-cv-1186-CAS, 2005 WL 4045741, at *18 (E.D. Mo. Jun. 30, 2005) (finding 5.61 lodestar multiplier reasonable).

IV. CLASS COUNSEL ARE ENTITLED TO BE REIMBURSED FOR THEIR REASONABLE LITIGATION EXPENSES.

It is commonly recognized that class counsel should have their reasonable out-of-pocket expenses that were incurred in the prosecution and settlement of the class action reimbursed. *See Jorstad v. IDS Realty Trust*, 643 F.2d 1305, 1315 (8th Cir. 1981); *Phillips*, 2022 WL 832085, at *7 (awarding reimbursement of litigation costs that included “filing fees, travel costs, mediation, photocopying, mail and telephone costs, and other incidental expenses related to the litigation.”). In general, courts approve requested expense reimbursements because class counsel brings the case on a contingent basis, “so they had a strong incentive to keep costs to a reasonable level” because they may never recover them at all. *Tussey*, 2019 WL 3859763, at *5. Here, Class Counsel are seeking reimbursement of costs and expenses in an aggregate amount of \$112,000 for prosecuting this action on behalf of the Classes. As set forth in the Supplemental Bates Declaration, these expenses were incurred on an ongoing basis for such items as filing, pro hac vice, and court fees; mediation; forensic investigation and expert witnesses; online research; Federal Express;

travel to hearings and mediation; transcription services; and notice and postage, which represent expenses directly related to the prosecution of this Action. *See id.* at ¶¶ 57-58.³

Accordingly, Class Counsel respectfully request reimbursement for these reasonable expenses as part of the requested fee award.

V. CLASS REPRESENTATIVES ARE ENTITLED TO A SERVICE AWARD.

“Service award payments are regularly made to compensate class representatives for their help to a class.” *In re Zurn Pex Plumbing Prods. Liab. Litig.*, No. 08-MDL-1958 ADM/AJB, 2013 WL 716460, at *2 (D. Minn. Feb. 27, 2013) (approving service awards of \$7,500 and \$5,000); *Niewinski*, 2024 WL 4902375, at *5 (approving service awards of \$25,000); *Stuart*, 2020 WL 2892819, at *3 (approving service awards of \$9,500 each); *Braden v. Foremost Ins. Co. Grand Rapids, Michigan*, No. 4:15-CV-4114, 2018 WL 4903268, at *5 (W.D. Ark. Oct. 9, 2018) (approving service awards of \$10,000 each); *Caligiuri*, 855 F.3d at 867 (affirming service awards of \$10,000 each and noting “courts in this circuit regularly grant service awards of \$10,000 or greater”). Here, Plaintiffs devoted time in the oversight of, and participation in, the litigation on behalf of the Settlement Classes. Specifically, both Plaintiff Knight and Plaintiff Kim assisted with the initial factual investigation, including collecting documents; reviewed the complaints and other case filings; worked with Class Counsel concerning case developments and responding to discovery; participated in the mediation process; and reviewed and discussed the terms of the Settlement reached in this case. *See Supp. Bates Decl.* at ¶ 62. In addition, Plaintiff Knight also provided extensive deposition testimony and was in the process of preparing for a week-long trial

³ As noted above, when fully tallied, Class Counsel’s out-of-pocket litigation expenses total \$118,420.68. However, under the Settlement Agreement, Plaintiffs agreed to cap their reimbursement request at \$112,000. As such, Class Counsel is seeking the lower amount of \$112,000. *See Supp. Bates Decl.* at ¶¶ 57-59.

when this case settled. *See id.* Consequently, the requested service awards of \$10,000 for Plaintiff Knight and \$5,000 for Plaintiff Kim are appropriate, consistent with Plaintiffs' involvement in this case, as well as service awards in similar cases, and should be approved. *See id.*

VI. CONCLUSION.

For all the foregoing reasons, Plaintiffs respectfully request that the Court award Class Counsel attorneys' fees of 30% of the available cash benefits of \$13,211,773 or roughly 23% of the total Settlement value of \$17,404,049 (*i.e.* \$3,963,531); award Class Counsel reimbursement of litigation expenses in the amount of \$112,000; and award service awards of \$15,000 for the two Settlement Class Representatives (\$10,000 for Plaintiff Knight and \$5,000 for Plaintiff Kim).

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Respectfully submitted,

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