

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

THOMAS BAKER, <i>et al.</i> ,	)	
Individually and on behalf of all others	)	
similarly situated,	)	
	)	
Plaintiffs,	)	
	)	Case No. 4:16-cv-1693-RHH
v.	)	
	)	
THE CITY OF FLORISSANT,	)	
	)	
Defendant.	)	

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’ MOTION FOR  
AWARD OF ATTORNEYS’ FEES, COSTS, AND SERVICE AWARDS**

Plaintiffs Thomas Baker, Sean Bailey, Nicole Bolden, Allison Nelson, and Umi Okoli (f.k.a. Meredith Walker) (“Plaintiffs”) submit this memorandum in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees, Costs, and Service Awards. The Settlement reached with the City of Florissant, Missouri (“Florissant” or “Defendant”) in this case is the result of extensive investigation, work, and negotiation. It achieves both monetary and nonmonetary relief for Settlement Class members and should be approved. Pursuant to the Court’s Preliminary Approval Order (ECF No. 289), Plaintiffs request an award of attorneys’ fees in the amount of \$963,333.33, reimbursement of costs in the amount of \$187,196.46, and Service Awards of \$7,500 for each of the five Class Representatives. The requested attorneys’ fees represent one-third of the gross \$2,890,000.00 non-reversionary cash Settlement Fund. In light of the work performed by Class Counsel and the substantial time, effort, and personal sacrifice of the Class Representatives, the attorneys’ fees, costs, and Service Awards sought in this Motion are reasonable. For all of the reasons set forth herein, Plaintiffs request that the Court grant these awards.

## I. BACKGROUND

Class Counsel have devoted substantial time and resources to investigating, litigating, and resolving this case. *See* Declaration of Nathaniel R. Carroll (“Carroll Decl.”), attached hereto as Exhibit 1, ¶¶ 11-21. On October 31, 2016, the named Plaintiffs Thomas Baker, Sean Bailey, Nicole Bolden, Allison Nelson, and Umi Okoli (f.k.a. Meredith Walker) filed their Complaint, asserting claims under 42 U.S.C. § 1983 and alleging Florissant violated their rights under the United States Constitution. ECF Nos. 1, 16, 204. In drafting both the Complaint and its amendments, Class Counsel engaged in extensive review of the laws asserted and evaluated potential class representatives. Carroll Decl. ¶¶ 4-5. Florissant filed a Motion to Dismiss on January 13, 2017 (ECF No. 22) which was denied on December 11, 2017 (ECF No. 54). Florissant then filed its Answer on January 12, 2018. ECF No. 58. Discovery commenced, only for Plaintiffs to be met by Florissant’s Motion for Judgment on the Pleadings for failure to join an indispensable party under Fed. R. Civ. P. 19, filed on March 16, 2019. ECF No. 100. This motion was similarly denied by the Court on August 12, 2019. ECF No. 130.

In connection with ongoing discovery, Class Counsel prepared and served initial disclosures, lengthy interrogatories, and multiple comprehensive sets of document requests; responded to discovery requests, including interrogatories to each named Plaintiff; reviewed over 500,000 pages of documents; subpoenaed records and class membership data from third party entities; met and conferred with defense counsel to resolve various discovery disputes; engaged in successful motion practice to compel third party REJIS’ production of certain documents; noticed, prepared for, and conducted numerous depositions; and prepared Plaintiffs for depositions. Carroll Decl. ¶ 6. Additionally, Class Counsel consulted with expert witnesses; retained an economics expert; retained a data analysis expert; and deposed non-party witnesses. *Id.* Discovery was

managed to maximize efficiency and ensure that there was no duplication of efforts. *Id.* ¶ 7. The discovery process, which accounts for a significant portion of the attorney time expended in this case, was essential to its successful litigation and settlement. *Id.* Among other things, information obtained during the document review process was utilized in depositions and informed the preparation and success of the Plaintiffs' Motion for Class Certification, which was hotly contested and ultimately granted in large part on February 1, 2023. *Id.*

On May 23, 2023, the Parties engaged in a day-long mediation before Mr. Bradley A. Winters, Esq., of JAMS. Carroll Decl. ¶ 8. Class Counsel entered the mediation fully informed of the merits of Class Members' claims and were prepared to continue to litigate and try the case rather than accept a settlement that was not in the Plaintiffs' and the Classes' best interests. *Id.* Mr. Winters actively supervised and participated in the settlement discussions to help the Parties reach an acceptable compromise. *Id.* After a full day of hard-fought negotiations, the Parties reached an agreement on all material terms, including the amount of the Settlement Fund and additional relief for the Classes. *Id.* At no point prior to reaching agreement on the substantive terms of settlement did the Parties discuss payments of Class Counsel's attorneys' fees or the service awards for the Class Representatives. *Id.*

Among other factors leading to settlement were the extensive work performed by Class Counsel, and the credible threat of success at the upcoming May 13, 2024 trial based on Counsel's collective trial experience. *Id.* ¶¶ 12, 15-16. Moreover, the Parties spent significant time and effort on the production and analysis of financial documents, records, and audits of Florissant as well as relevant caselaw on municipal collectability for purposes of settlement or judgment. *Id.* ¶ 15. Class Counsel prepared the first draft of the Settlement Agreement, and the Parties then negotiated the precise terms and language of the Agreement. *Id.* ¶ 9. Following negotiation of the precise terms

and language of the Agreement, Class Counsel ultimately was able to reach a Settlement Agreement that provides both monetary compensation and meaningful non-monetary relief, while avoiding the risks and delay of further litigation. The Parties selected Atticus Administration LLC (“Atticus”) as a third-party administrator, and counsel has been actively involved in supervising and managing all aspects of Atticus’s administration of the notice program. *Id.* ¶ 10.

## II. ARGUMENT

### A. Legal Standard

The Federal Rules of Civil Procedure provide that in a certified class action, the Court may award reasonable attorneys’ fees “that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). In this Circuit, there are two methods commonly used for calculating an attorneys’ fee award in a class action settlement: the lodestar method and the “percentage of the recovery” method. *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 244-45 (8th Cir. 1996). “It is well established in this circuit that a district court may use the ‘percentage of the fund’ methodology to evaluate attorney fees in a common-fund settlement.” *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999). Indeed, “where attorney fees and class members’ benefits are distributed from one fund, a percentage-of-the-benefit method may be preferable to the lodestar method for determining reasonable fees.” *West v. PSS World Med., Inc.*, No. 4:13 CV 574 CDP, 2014 WL 1648741, at \*1 (E.D. Mo. Apr. 24, 2014)<sup>1</sup>; *see also Johnston*, 83 F.3d at 245 (“[T]he [Third Circuit] Task Force recommended that the percentage of the benefit method be employed in common fund situations.” (citing Court Awarded Attorney Fees, Report of the Third Circuit Task Force (Arthur

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<sup>1</sup> None of the funds available to Settlement Class members will revert to Florissant under the Settlement and hence “avoids the claims-rate problem that has troubled some courts and caused them to abandon the percentage-of-the-fund method for calculating fees.” *Barfield v. Sho-Me Power Elec. Co-op.*, No. 2:11-CV-4321NKL, 2015 WL 3460346, at \*4 n.1 (W.D. Mo. June 1, 2015).

R. Miller, Reporter), 108 F.R.D. 237 (1985)); *In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 991 (D. Minn. 2005) (“In the Eighth Circuit, use of a percentage method of awarding attorney fees in a common-fund case is not only approved, but also ‘well established.’” (quoting *Petrovic*, 200 F.3d at 1157)); *In re Chrysler Motors Corp. Overnight Evaluation Program Litig.*, 736 F. Supp. 1007, 1008-09 (E.D. Mo. 1990) (percentage of fund “is a more appropriate and efficient means of calculating an attorneys’ fee award” than lodestar method); *Barfield*, 2015 WL 3460346, at \*3 (same); *Wiles v. Southwestern Bell Tel. Co.*, No. 09-4236-CV-C-NKL, 2011 WL 2416291, at \*4 (W.D. Mo. June 9, 2011) (same). Courts may, but are not required to, use the lodestar method to cross-check the fairness of a percentage award. *See Petrovic*, 200 F.3d at 1157.

**B. The Fee Requested is a Reasonable Percentage of the Fund.**

Under the percentage-of-the-fund method, fees are based on a percentage of the gross value of the common fund. *West*, 2014 WL 1648741, at \*1 (“It is appropriate to apply a reasonable percentage to the gross settlement fund.”). Plaintiffs seek a fee award of \$963,333.33, which is equal to one-third of “the full value of the benefit to each absentee member” obtained through the “entire judgment fund.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 479 (1980).

The request of one-third of the gross settlement amount here is reasonable and well within the range typically approved by courts in this Circuit. “[C]ourts in this circuit . . . have frequently awarded attorney fees between twenty-five and thirty-six percent of a common fund.” *In re Iowa Ready-Mix Concrete Antitrust Litig.*, 2011 WL 5547159, at \*1 (N.D. Iowa Nov. 9, 2011) (awarding 36.04% of \$18.5 million common fund, plus over \$900,000 in expenses). Indeed, awards of one-third of the fund are common. *See, e.g., Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) (“[C]ourts have frequently awarded attorneys’ fees ranging up to 36% in class actions.”); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (affirming award of 36% of \$3.5 million

fund, plus \$40,000 for expenses); *In re Charter Commc'ns, Inc., Sec. Litig.*, 2005 WL 4045741, at \*21 (E.D. Mo. June 30, 2005) (“33% remains the fee most frequently requested”); *West*, 2014 WL 1648741, at \*1 (fee award of 33% of fund reasonable); *Wiles*, 2011 WL 2416291, at \*4-5 (same); *Barfield*, 2015 WL 3460346, at \*4 (same).<sup>2</sup> See also Carroll Decl. ¶¶ 11-21.

Indeed, in a class action case involving similar questions of constitutional law and interpretation as well as issues of sovereign immunity and municipal liability, on a contingency basis, a court has awarded Plaintiffs’ counsel approximately one-third of the fund. See *Webb, et al. v. the City of Maplewood, Missouri*, No. 4:16-CV-1703-CDP, 2023 WL 2784788, at \*4 (E.D. Mo. Apr. 5, 2023) (approving attorneys’ fees in the amount of one-third of the Settlement Fund).

**C. The *Johnson* Factors Support the Reasonableness of the Fee Request.**

The reasonableness of the fee award requested here is supported by the “*Johnson*” factors, which are approved in the Eighth Circuit. See *Barfield*, 2015 WL 3460346, at \*5 (The Eighth Circuit “has approved consideration of the twelve factors set forth in *Johnson v. Georgia Highway Express*, 488 F.2d 714, 719-20 (5th Cir. 1974)”). The *Johnson* factors include:

- (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 attorney’s preclusion of other employment due to acceptance of the case;
- (5) the customary fee;
- (6) whether the fee is fixed or contingent;
- (7) the 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

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<sup>2</sup> See also, e.g., *Cromeans v. Morgan, Keegan & Co., Inc.*, No. 2:12-CV-04269-NKL, 2015 WL 5785576, at \*3 (W.D. Mo. Sept. 16, 2015), *report and recommendation adopted*, 2015 WL 5785508 (W.D. Mo. Oct. 2, 2015) (awarding 33% of gross settlement fund in attorneys’ fees); *Sanderson v. Unilever Supply Chain, Inc.*, No. 10-CV-00775-FJG, 2011 WL 6369395, at \*2-3 (W.D. Mo. Dec. 19, 2011) (awarding 33.78% of settlement fund); *Ray v. Lundstrom*, No. 8:10CV199, 2012 WL 5458425 (D. Neb. Nov. 8, 2012) (awarding one-third of \$3.1 million fund, plus \$77,900 in expenses); *Brehm v. Engle*, No. 8:07CV254, 2011 U.S. Dist. LEXIS 35127, at \*6 (D. Neb. Mar. 30, 2011) (awarding one-third of \$340,000 settlement fund in fees, plus \$45,000 in expenses); *Kelly v. Phiten USA, Inc.*, 277 F.R.D. 564, 571 (S.D. Iowa 2011) (awarding 33% of settlement).

professional relationship with the client; and (12) awards in similar cases.

*Id.* at \*5 (quoting *Allen v. Tobacco Superstore, Inc.*, 475 F.3d 931, 944 n.3 (8th Cir. 2007)). Not every factor applies, and the Court has discretion regarding which factors it considers and the relative weight given to each. *See In re Xcel*, 364 F. Supp. 2d at 993 (citing *Useton v. Commercial Lovelace Motor Freight, Inc.*, 9 F.3d 849, 854 (10th Cir. 1993) (noting that “rarely are all of the *Johnson* factors applicable; this is particularly so in a common fund situation”)); *see also Yarrington v. Solvay Pharmaceuticals, Inc.*, 697 F. Supp. 2d 1057, 1062 (D. Minn. 2010) (“[N]ot all of the individual factors will apply in every case, affording the Court wide discretion in the weight to assign each factor.”). Here, the most salient factors support the requested fee award.

***a. Class Counsel Achieved an Excellent Recovery for the Classes.***

The Settlement is excellent for the Classes, particularly in light of the significant risks of litigation. The Settlement allocates the \$2,890,000 non-reversionary settlement fund as follows: \$2,023,000.00 for the Jailed Classes, \$433,500.00 for the Narrowed Paid Fines Class, and \$433,500.00 for the Remaining Paid Fines Class. Settlement Agreement, ECF No. 287-1, ¶ 47.

The majority of the Settlement is allocated to the Jailed Classes, with the \$2,023,000 for the Jailed Classes to be distributed among Jailed Class members in proportion to the number of hours each Jailed Class member spent detained by Florissant. *See id.* ¶ 79(d)(i). As the 21,510 Jailed Class members were jailed for a total of 641,131.22 hours, the Settlement provides for a recovery of approximately \$3.16 per hour. Plaintiffs’ expert economist Dr. William Rogers opined that each hour of incarceration should be valued between \$20.07 and \$22.62, depending on the year in which the person was incarcerated and the exact method of valuing damages. Accordingly, the Settlement represents slightly under 15% of the highest potential recovery for the Jailed Class.

With respect to the Narrowed Paid Fines Class, the \$433,500.00 of the Settlement Fund

allocated to the Narrowed Paid Fines Class will be distributed among Narrowed Paid Fines Class members in proportion to the amount of qualifying payments they made to Florissant. *See* Settlement Agreement ¶ 79(d)(ii). As the 6,139 members of the Narrowed Paid Fines Class made a total of \$2,868,764.55 in qualifying payments to Florissant, the Settlement represents just under 15% of the highest potential recovery for the Narrowed Paid Fines Class.

With respect to the Remaining Paid Fines Class, the \$433,500.00 of the Settlement Fund allocated to the Remaining Paid Fines Class will be distributed among Remaining Paid Fines Class members in proportion to the amount of fines, costs, or fees they paid to Florissant that are not qualifying payments for the Narrowed Paid Fines Class. *See* Settlement Agreement ¶ 79(d)(iii). As the 63,555 members of that class paid a total of \$13,813,338.80 in fines, costs, and/or fees to Florissant, the Settlement represents approximately 3% of the highest potential recovery for the Remaining Paid Fines Class.<sup>3</sup>

In addition to this monetary relief, the Settlement provides valuable additional consideration that will benefit many of the Settlement Class members: The Settlement provides that the City of Florissant will acknowledge and confirm no “bond schedules” are utilized by the Florissant Police Department and jail to set the conditions of release for arrested individuals, that Florissant will forgive all unpaid Minor Traffic Violation amounts assessed between October 31, 2011 and December 31, 2019 and still due, that Florissant shall implement a policy to provide all

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<sup>3</sup> Although the percentage recovery for this class is lower than the other two Rule 23(b)(3) Classes, a lower recovery is reasonable because—unlike the Jailed Class and the Narrowed Paid Fines Class—this class was not certified by this Court in its Class Certification Order. In addition, because the Remaining Paid Fines Class is composed of those whose payments were made absent any arrest or jailing on Florissant municipal warrants for failure to pay or for failure to appear, the claims that these payments were the result of coercion are arguably weaker than the claims of the Narrowed Paid Fines Class. The lower recovery rate for the Remaining Paid Fines Class accounts for these differences. *See* Fed. R. Civ. P. 23(e)(2), advisory committee’s note to 2018 amendment (noting that courts should consider the “differences among [class members’] claims” in determining whether the apportionment of relief among class members is appropriate).

arrested persons with unconditional access to indigency forms and, unless released, a timely indigency hearing to occur no later than 24 hours after the arrested person is booked in the Florissant jail, and finally that Florissant shall also provide counsel for individuals held and brought before the municipal judge when (a) the individual has been declared indigent, and (b) the judge has determined that the (i) City is requesting jail time or (ii) the arrested individual is required to post a bond and (c) the individual is unrepresented. *Id.* ¶¶ 54-56.

Class Counsel achieved a highly favorable result for the Classes, particularly when taking into account the complex questions of constitutional law involved, the uncertainty of trial, and the hurdles and complexity associated with municipal recovery and collectability, which would have likely delayed recovery even if Plaintiffs had prevailed in full at trial. The Settlement amount is substantial in the aggregate and will provide significant cash benefits to Settlement Class members.

***b. The Contingent Nature of the Case Supports the Fee Request.***

In evaluating the *Johnson* factors, courts must take into consideration the contingent nature of any attorneys' fee award, because "[a]ccess to the courts would be difficult to achieve without compensating attorneys for that risk" of uncertainty. *In re Abrams & Abrams, P.A.*, 605 F.3d 238, 246 (4th Cir. 2010). "Courts have recognized that the risk of receiving little or no recovery is a major factor in awarding attorney fees." *Yarrington*, 697 F. Supp. 2d at 1062 (quoting *In re Xcel*, 364 F. Supp. 2d at 994). "The risk of non-payment must be judged as of the inception of the action and not through the rosy lens of hindsight." *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liab. Litig.*, 553 F. Supp. 2d 442, 478 (E.D. Pa. 2008). "A determination of a fair fee for Class Counsel must include consideration of the contingent nature of the fee, the wholly contingent outlay of out-of-pocket sums by Class Counsel, and the fact that the risks of failure and nonpayment in a class action are extremely high." *Pinto v. Princess Cruise*

*Lines, Ltd.*, 513 F. Supp. 2d 1334, 1339 (S.D. Fla. 2007). The risk of no recovery factors into undesirability, and is considered in light of, among other things, the risk of obtaining class certification and establishing liability at trial. *Bredbenner v. Liberty Travel, Inc.*, No. CIV.A. 09-1248 MF, 2011 WL 1344745, at \*20 (D.N.J. Apr. 8, 2011).<sup>4</sup> Here, Class Counsel faced numerous issues and defenses making liability (and consequent payment) uncertain. The case was prosecuted entirely on a contingent basis, entailing substantial risk that the litigation would yield little or no recovery or compensation. *See* Carroll Decl. ¶ 11 (“The case has been prosecuted entirely on a contingent basis, entailing substantial risk that the litigation would yield little or no recovery or compensation. The only certainty in this matter from the outset was that there would be no fee without a successful result, and that such result would be realized only after a lengthy and difficult effort.”).

***c. The Factual and Legal Issues in this Action are Complex.***

Plaintiffs allege class claims for violation of the Fourth and Fourteenth Amendments to the United States Constitution, stemming from Florissant’s arrest and detention policies and procedures. *See* ECF Nos. 1, 16, and 204. Florissant denied all liability and asserted fifty-two (52) affirmative defenses. *See* ECF No. 58. Moreover, Florissant filed not one but two dispositive motions, which were both defeated and ultimately affirmed Plaintiffs’ action. ECF Nos. 22, 100. The claims are complex in terms of subject matter and legal issues resulting from, among other

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<sup>4</sup> There are ample examples of situations in which attorneys in complex litigation “have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy.” *In re Xcel*, 364 F. Supp. 2d at 994 (citing *Glover v. Standard Fed. Bank*, 283 F.3d 953 (8th Cir. 2002) (reversing class certification)). *See e.g., In re Milk Prods. Antitrust Litig.*, 195 F.3d 430, 437-38 (8th Cir. 1999) (affirming dismissal without leave to replead); *see also Vaszlavik v. Storage Tech Corp.*, 2000 U.S. Dist. LEXIS 21140, at \*11 (D. Colo. Mar. 9, 2000) (case undesirable “given the risk of no recovery and the uncertainty of the governing law”). Even in this case, Plaintiffs faced risks that summary judgment could be granted against them on all or some of their claims, that they would not prevail at trial, or that Florissant would appeal a trial judgment.

things, uncertainty and a lack of precedent as to similar class-wide claims.

In addition to the above, Florissant vigorously contested whether the action satisfied the elements of Rule 23 and could be tried on a class-wide basis, necessitating voluminous discovery, expert work, and lengthy class certification briefing and oral argument. The time and effort required to prosecute the claims and bring this litigation to settlement on a class-wide basis has been considerable, involving 4,342 collective hours of legal service by Class Counsel—as of February 14, 2024—all before the motion practice, preparation, and execution of a lengthy jury trial. Carroll Decl. ¶ 18.

***d. Counsel for All Parties are Skilled Practitioners in Complex Litigation***

The quality and skill of Class Counsel’s work prosecuting this challenging litigation also warrants approval of the requested fee. Complex litigation and class actions require skill sets and experience needed to perform the legal service properly. As set out in the Motion for Class Certification, Plaintiffs’ counsel are highly experienced litigators in complex, class-action litigation and are recognized for their high-quality work and skill. *See* ECF Nos. 167-2, 167-3 167-4, 167-32. Counsel each brought their exceptional abilities to bear on behalf of the Settlement Class, both in developing the factual record in the case, as well as in the quality of their legal research, writing, and argumentation in, among other things, successfully opposing Florissant’s motion to dismiss, successfully opposing Florissant’s motion for judgment on the pleadings, successfully opposing Florissant’s motion to exclude Plaintiffs’ economics expert, and achieving class certification of three Fed. R. Civ. P. 23(b)(3) and Fed. R. Civ. P. 23(b)(2) classes. Moreover, Class Counsel each brought their tenacity and skill to bear at the negotiating table, ultimately resulting in an exceptional settlement for the Classes. *See* Carroll Decl. ¶¶ 8, 15.

In addition, Plaintiffs faced well-qualified opposing counsel from a reputable municipal

defense law firm who pressed defenses on their client's behalf. *See, e.g., Bredbenner*, 2011 WL 13447, at \*20 (performance and quality of opposing counsel considered in measuring the skill and efficiency of class counsel). "Class counsel's success in bringing this litigation to a conclusion prior to trial is another indication of the skill and efficiency of the attorneys involved." *Id.* Accordingly, this factor also supports approval of the requested fee award.

***e. The Requested Award is Consistent with Awards in Similar Cases and is Below Class Counsel's Lodestar.***

As discussed above, the requested award is reasonable and consistent with the range of awards approved by other courts in similar litigation. In addition, the requested award is in line with Class Counsel's lodestar. *See Petrovic*, 200 F.3d at 1157 (explaining that courts may, but are not required to, use the lodestar method to cross-check the fairness of a percentage award). Even applying a lower-than-average hourly rate of \$300, the 4,342 hours of attorney time expended in this case on behalf of Plaintiffs and the Classes amounts to a lodestar of \$1,302,600. Carroll Decl. ¶¶ 18-19.<sup>5</sup> The resulting multiplier is 0.74, which represents a *negative* multiplier. *Id.* Courts within the Eighth Circuit have approved lodestar multipliers well over one. *See, e.g., Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019) (approving award representing a lodestar multiplier of 5.3); *Keil v. Lopez*, 862 F.3d 685, 701 (8th Cir. 2017) (approving award representing a lodestar multiplier of 2.7); *Huyer*, 849 F.3d at 399 (approving award representing a lodestar multiplier of 1.82); *Del Toro v. Centene Management Company, LLC*, No. 4:19-CV-02635-JAR, 2021 WL 1784368, at \*3 (E.D. Mo. May 5, 2021) (approving award representing a lodestar multiplier of 2.73). The fees requested here are well below the range typically awarded and are fair and

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<sup>5</sup> "[A] court performing a lodestar cross check need not scrutinize each time entry; reliance on representation by class counsel as to total hours may be sufficient." *In re NuvaRing Products Liab. Litig.*, 4:08 MDL 1964 RWS, 2014 WL 7271959, at \*4 (E.D. Mo. Dec. 18, 2014). Should the Court wish to undertake a full lodestar cross-check, Class Counsel will provide more detail upon request.

reasonable. Consistent with paragraph 79(a) of the Settlement Agreement, Class Counsel agree and affirm that the attorneys' fee percentage division (40% to ArchCity Defenders, 40% to Tycko & Zavareei, and 20% to Keane Law) shall not be subject to any adjustments or disputes. *See* ECF No. 287-1, ¶ 79(a).

***f. The Reaction of Class Members Demonstrates that Class Counsel Achieved a Favorable Outcome***

Notice of the proposed Settlement Agreement and the rights of Settlement Class members to opt-out of or object to the Settlement Agreement and to the requested attorneys' fees and costs was sent to 79,451 Settlement Class Members on or around January 26, 2024. In addition, notice was provided through publication notice in the *St. Louis American* on February 1, 2024 and through social media advertisements on Facebook. As of February 16, 2024, the date of Atticus's most recent Project Status Report, zero Settlement Class members had objected to the settlement, and 18 had opted out of it. The complete lack of objections and minimal number of opt-outs at this stage demonstrate Class Counsel achieved a favorable outcome. Settlement Class members have until March 4, 2024 to exclude themselves from the Settlement or to object to it. ECF No. 289, p. 6. Class Counsel will update these numbers at final approval.

**D. Class Counsel Should Be Awarded Costs.**

Reasonable and necessary expenses also have been advanced to prosecute this litigation in the amount of \$187,196.46. Carroll Decl. ¶ 20. "Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit by the settlement." *Yarrington*, 697 F. Supp. 2d at 1067 (quotations omitted). The requested costs must be relevant to the litigation and reasonable in amount. *Id.* The appropriate analysis to apply in deciding which expenses are compensable in a common fund case of this type is whether the particular costs are the type typically billed by attorneys to paying clients in the

marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (allowing recovery of “out-of-pocket expenses that ‘would normally be charged to a fee paying client’”).

Here, Class Counsel seeks reimbursement of costs and expenses totaling \$187,196.46. While the great majority of these costs are discovery and expert witness related, expenses also include legal research, court reporters, and some travel and meals. Carroll Decl. ¶¶ 20. These are the type of expenses routinely charged to hourly clients and, therefore, the full requested amount should be reimbursed. *See Yarrington*, 697 F. Supp. 2d at 1067 (approving request where “the costs incurred included filing fees; expenses associated with the research, preparation, filing, and responding to the pleadings in this matter; costs associated with copying, uploading, and analyzing documents; fees and expenses for experts; and mediation fees. . . . All of these costs and expenses were advanced by Settlement Class Counsel with no guarantee they would ultimately be recovered, and most were ‘hard’ costs paid out of pocket to third-party vendors, court reporters, and experts.”); *West*, 2014 WL 1649741, at \*1 (finding costs including mediation expenditures, travel, expert fees, and depositions were reasonable and granting requested award).

**E. The Class Representatives’ Service Awards Should be Approved.**

Plaintiffs seek service awards in the amount of \$7,500 to each of Plaintiffs Thomas Baker, Sean Bailey, Nicole Bolden, Allison Nelson, and Umi Okoli (f.k.a. Meredith Walker) for their service in representing and zealously advocating on behalf of Class Members. As an initial matter, public policy favors the service awards requested here. Service awards “‘promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits.’” *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 867 (8th Cir. 2017) (quoting *Yarrington*, 697 F. Supp. 2d at 1068); *see also Custom Hair Designs by Sandy, LLC v. Cent. Payment Co., LLC*, No. 8:17CV310, 2022 WL 3445763, at \*1 (D. Neb. Aug. 17, 2022) (“Service awards to representative plaintiffs

encourage members of a class to become class representatives and reward individual efforts taken on behalf of a class.”).

In determining an appropriate service award, this Court should consider: “(1) actions the plaintiffs took to protect the class’s interests, (2) the degree to which the class has benefitted from those actions, and (3) the amount of time and effort the plaintiffs expended in pursuing litigation.” *Caligiuri*, 855 F.3d at 867 (citing *In re U.S. Bancorp Litig.*, 291 F.3d at 1038). Class Representatives here worked with counsel to provide information regarding their experiences and claims, including conducting searches of personal records. Carroll Decl. ¶ 22. They also expended significant time responding to Florissant’s interrogatory requests, preparing for deposition, sitting for deposition, and by doing so ultimately preparing for trial. *Id.* These efforts were essential to obtaining class certification and provided substantial benefit to the Classes. Moreover, in challenging a municipality’s arrest and detention procedures, Class Representatives incurred personal risk, including reputational risk, in publicly lending their names to this lawsuit, opening themselves up to scrutiny and attention from both the public and the media. *Id.*

The personal risks and sacrifices undertaken by Plaintiffs in bringing their case, the substantial time they invested in the case, and their critical contributions to the outstanding results for the Classes, all support approval of the requested Service Awards. The requested service awards are a tiny fraction of the amount obtained for the Classes, and are well within the range found reasonable by courts in this Circuit. *See, e.g., Caligiuri*, 855 F.3d at 867 (“[C]ourts in this circuit regularly grant service awards of \$10,000 or greater.”); *Custom Hair Designs by Sandy, LLC*, 2022 WL 3445763, at \*6 (awarding \$15,000 service awards to each of the Class Representatives in light of the “substantial work on behalf of the Class and the risks they took in bringing suit”); *see, e.g., Webb*, No. 4:16-CV-1703-CDP (E.D. Mo.), Dkt. 273 at 11 (awarding

each Class Representative a \$7,500 service award); *Davis et al. v. City of Normandy, Missouri*, No. 4:18-CV-1514-RLW (E.D. Mo.), Dkt. 118 at 3 (awarding \$7,500 service awards to each of four Class Representatives); *Thomas et al. v. City of Edmundson, Missouri*, No. 4:18-CV-2071-RLW (E.D. Mo.), Dkt. 95 at 3 (awarding \$7,500 service awards to both Class Representatives).

### III. CONCLUSION

For the reasons discussed above, the Court should approve Plaintiffs' request for \$963,333.33 in attorneys' fees, \$187,196.46 in reasonable costs, and service awards of \$7,500 for each of Class Representatives Thomas Baker, Sean Bailey, Nicole Bolden, Allison Nelson, and Umi Okoli (f.k.a. Meredith Walker).

Dated: February 16, 2024

Respectfully submitted,

**ArchCity Defenders, Inc.**

By: /s/ Nathaniel R. Carroll

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*Counsel for Plaintiffs and the Classes*

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

THOMAS BAKER, <i>et al.</i> ,	)	
Individually and on behalf of all others	)	
similarly situated,	)	
	)	
Plaintiffs,	)	
	)	Case No. 4:16-cv-1693-RHH
v.	)	
	)	
THE CITY OF FLORISSANT,	)	
	)	
Defendant.	)	

**DECLARATION OF NATHANIEL R. CARROLL**

I, Nathaniel R. Carroll, declare as follows:

1. I am an attorney licensed to practice before all courts of the State of Missouri, have been admitted to practice before this Court, and am a Senior Staff Attorney of the law firm ArchCity Defenders, Inc. I serve as Class Counsel in the above-captioned litigation, and make this declaration in support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Service Awards.

2. As Class Counsel, I am one of the attorneys primarily responsible for representing Plaintiffs in this action. However, in addition to the support of highly experienced counsel at ArchCity Defenders, this matter was also ably prosecuted by a team of highly esteemed class action attorneys, which included Andrea Gold of Tycko Zavareei LLP, and Ryan Keane of Keane Law LLC (collectively, “Class Counsel”). The qualifications of each of these firms and individuals were presented to the Court on May 21, 2020 as part of the Motion for Class Certification (ECF Nos. 166) and again on September 22, 2023 as part of the Motion for Preliminary Approval (ECF Nos. 287-88).

3. I have actively participated in all aspects of this litigation, including the negotiation

of the settlement, and am fully familiar with the proceedings in the matter in which the parties seek resolution. If called upon, I am competent to testify that the following facts are true and correct based upon my personal knowledge.

THE SUBSTANTIVE WORK REQUIRED  
TO SUCCESSFULLY LITIGATE THIS MATTER

4. From the inception of this litigation, Plaintiffs' counsel has aggressively prosecuted this case and vigorously represented the best interests of Plaintiffs and Class Members.

5. The origins of the case date to Spring of 2016, when attorneys at ArchCity Defenders, including myself, learned that individuals were being jailed by Florissant for missing payments and court dates, and being held in jail for days on bonds without receiving due process. Attorneys at ArchCity Defenders, including myself, also represented named Plaintiffs in the Florissant Municipal Court to provide pro bono defense of their underlying municipal charges. ArchCity Defenders, Tycko & Zavareei, and Keane Law, LLC then led the prosecution of the litigation, including investigating the facts, extensive reviewing of the laws asserted, and evaluating and vetting potential class representatives prior to filing suit. Once litigation commenced, Plaintiffs' counsel briefed and defeated Florissant's motions to dismiss and for judgment on the pleadings. ECF Nos. 22 and 100.

6. During discovery, Plaintiffs' counsel prepared and served initial disclosures, lengthy interrogatories, and multiple comprehensive sets of document requests; responded to discovery requests, including interrogatories to each named Plaintiff; reviewed over 500,000 pages of documents; subpoenaed records and class membership data from third party entities; met and conferred with defense counsel to resolve various discovery disputes; engaged in successful motion practice to compel third party REJIS' production of certain documents; noticed, prepared for, and conducted numerous depositions; and prepared Plaintiffs for depositions. Class Counsel

consulted with expert witnesses; retained an economics expert; retained a data analysis expert; and deposed non-party witnesses.

7. Discovery was managed to maximize efficiency and ensure there was no duplication of efforts. The discovery process, which accounts for a significant portion of the attorney time expended in this case, was essential to its successful litigation and settlement. Among other things, information obtained during the document review process was utilized in depositions and informed the preparation and success of the Plaintiffs' Motion for Class Certification, which was granted in large part on February 1, 2023 after briefing and oral argument before the Eastern District of Missouri court.

8. The Parties engaged in a day-long mediation before Mr. Bradley A. Winters, Esq., of JAMS, on May 23, 2023. Class Counsel entered the mediation fully informed of the merits of Class Members' claims and were prepared to continue to litigate and try the case rather than accept a settlement that was not in the Plaintiffs' and the Classes' best interests. Mr. Winters actively supervised and participated in the settlement discussions to help the Parties reach an acceptable compromise. After a full day of hard-fought negotiations, the Parties reached an agreement on all material terms, including the amount of the Settlement Fund and additional relief for the Classes. At no point prior to reaching agreement on the substantive terms of settlement did the Parties discuss payments of Class Counsel's attorneys' fees or the service awards for the Class Representatives.

9. Class Counsel prepared the first draft of the Settlement Agreement, and the Parties then negotiated the precise terms and language of the Agreement. Following negotiation of the precise terms and language of the Agreement, Class Counsel ultimately was able to reach a Settlement Agreement that provides both monetary compensation and meaningful non-monetary

relief, while avoiding the risks and delay of further litigation.

10. Class Counsel has engaged Atticus Administration LLC to administer the Class Settlement Notice process, which remains ongoing and will continue to proceed following submission of Plaintiffs' Motion for Attorneys' Fees and Expenses. This work has included and continues to include: reviewing notice reports on a weekly basis, communicating with Class Members, analyzing reports on impressions and other metrics regarding the success of notice; and discussions regarding any improvements that could be made to the notice and administration. If final approval is granted, Class Counsel will continue these duties, as well as the additional work of reviewing administration reports, locating and contacting class members whose notices were returned undeliverable as addressed, and spreading awareness of the settlement via Class Counsel's social media accounts.

THE TIME AND EXPENSE  
EXPENDED BY PLAINTIFFS' COUNSEL

11. Numerous issues and defenses made liability (and consequent payment) in this matter uncertain. The case has been prosecuted entirely on a contingent basis, entailing substantial risk that the litigation would yield little or no recovery or compensation. The only certainty in this matter from the outset was that there would be no fee without a successful result, and that such result would be realized only after a lengthy and difficult effort.

12. During the past seven-plus years, Plaintiffs' Counsel have advanced significant time and expense on behalf of the Plaintiffs and the Classes. In doing so, Plaintiffs' Counsel have long borne the risk of an unfavorable result. Plaintiffs' Counsel have not been paid for their extensive efforts, nor have they been reimbursed for costs incurred. The efforts required in this matter also necessitated that my firm, and upon information and belief, each of the other firms comprising Plaintiffs' Counsel, forego other opportunities in order to fulfill their responsibilities

in this matter. Plaintiffs' Counsel now seeks an award of attorneys' fees.

13. Plaintiffs' Counsel seek a fee award of \$963,333.33. This amount represents one-third of the total \$2,890,000.00 value of the Settlement Fund, and was the amount set forth in the Notice.

14. I believe that this fee is reasonable in relation to the substantial results achieved for the Settlement Class Members and the efforts of counsel. Further, such an award is supported by the benchmarks for fee awards, costs and expenses in this District and the Eighth Circuit.

15. Throughout the mediation and negotiation efforts, and in advising our clients of the proposed settlement, my firm and I have at all times considered the fairness, reasonableness and adequacy of the settlement for the Class, taking into account: the strength of Plaintiffs' case; the risk, expense, complexity, and likely duration of proceeding to trial; the amount offered in settlement; the production and analysis of financial documents, records, and audits of Florissant as well as relevant caselaw on municipal collectability for purposes of settlement or judgment; and the experience and views of Plaintiffs' Counsel. Against the backdrop of counsel's collective experience in prosecuting complex class actions, we have considered the claims set forth in the Complaint and our continued confidence in the merit of those claims, the scope of relief offered in the settlement compared to the potential relief at the conclusion of litigation, and the risks and costs of continued litigation. Taking these factors into account, it is my opinion that the proposed settlement is fair, reasonable and adequate, well within the range of possible approval, and therefore deserving of the Court's Final Approval.

16. ArchCity Defenders and the other firms comprising Plaintiffs' Counsel have each diligently investigated and prosecuted this matter, dedicating substantial time, effort, resources, and expertise to the investigation of the claims at issue in the action, and have successfully

negotiated the settlement of this matter to the benefit of the Classes. The qualifications of Plaintiffs' Counsel and their extensive experience in prosecuting complex class actions and other complex and civil rights litigation were submitted to the Court prior to its appointment of Class Counsel, and are incorporated herein by reference. *See* ECF Nos. 167-2, 167-3 167-4, 167-32.

17. Throughout the litigation I have had regular communications with the members of Plaintiffs' Counsel regarding their expenditure of time and expense, by monitoring and collaborating to ensure consistent quality, that each firm was able to contribute constructively, and that there was no unnecessary duplication of efforts.

18. In preparing the fee application and this declaration, I asked each member of the Plaintiffs' Counsel to provide me with a reporting of the total hours and expenses expended by their respective firms. I have been informed by each member of the Plaintiffs' Counsel that, if asked, they would provide a declaration or confirm under oath that the time and expenses summarized below accurately reflects the contemporaneous time and expense records of their respective firms. As of February 14, 2024, the total hours of attorney time expended by Plaintiffs' Counsel is 4,342 hours, as reflected below:

ArchCity Defenders:	1,032.4 hours
Tycko & Zavareei:	2,607.2 hours
Keane Law:	702.4 hours

19. As detailed in the accompanying Memorandum in Support of Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards, fee awards of up to 33% are regularly approved in the Eighth Circuit, and when a lodestar cross check is evaluated, even at a lower-than-average rate of \$300 per hour, a negative multiplier of 0.74 is more than reasonable.

20. The total of expenses incurred, for which reimbursement is sought, is \$187,196.46. These expenses were incurred and advanced by Class Counsel as follows:

Tycko Zavareei:	\$156,972.86
ArchCity Defenders:	\$ 18,887.88
Keane Law:	\$ 11,335.72

While the great majority of these costs are discovery and expert witness related, expenses also include legal research, court reporters, and some travel and meals. Plaintiffs' Counsel has maintained detailed records of these expenses which were necessary to advancement of the case and can make them available to the Court for *in camera* review if requested.

21. Plaintiffs' success in this action was by no means assured. Defendant was represented by able counsel, who raised over fifty (50) affirmative defenses. Were this settlement not achieved, and even if Plaintiffs prevailed at trial, Plaintiffs faced potentially years of costly and risky appellate litigation against Defendant, the ultimate success of which is far from certain. These risks support the concept of percentage recoveries.

#### CLASS REPRESENTATIVES' PARTICIPATION

22. Class Representatives here worked with counsel to provide information regarding their experiences and claims, including conducting searches of personal records. They also expended significant time responding to Florissant's interrogatory requests, preparing for deposition, and sitting for deposition. These efforts were essential to obtaining class certification and provided substantial benefit to the Classes. Moreover, in challenging a municipality's arrest and detention procedures, Class Representatives incurred personal risk, including reputational risk, in publicly lending their names to this lawsuit, opening themselves up to scrutiny and attention from both the public and the media.

23. For all of the foregoing reasons, Plaintiffs' Counsel respectfully requests that this Court approve the Settlement, approve the Fee Application, and award class counsel \$963,333.33 in fees, \$187,196.46 in reasonable costs, and Service Awards of \$7,500 for each of the five Class

Representatives, for a total award of \$1,188,029.79.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Nathaniel R. Carroll