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

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| THOMAS BAKER, *et al.*, individually and on behalf of all others similarly situated, | ) | |
| Plaintiffs, | ) | |
| v. | ) | Case No. 4:16-cv-1693-RHH |
| THE CITY OF FLORISSANT, | ) | |
| Defendant. | ) | |

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

Plaintiffs, by and through Class Counsel, respectfully submit this Memorandum of Law in Support of their Motion for Final Approval of Class Action Settlement.

## I. BACKGROUND OF LITIGATION AND SETTLEMENT NEGOTIATIONS

On October 31, 2016, Plaintiffs filed their Class Action Complaint ("Complaint") asserting claims against the City of Florissant (hereinafter, "Defendant," the "City," or "Florissant") under 42 U.S.C. § 1983 and Missouri law. *See* Dkt. No. 204 (Second Amended Class Action Complaint). Plaintiffs alleged that Florissant implemented a systematic, unconstitutional "pay-to-play" arrest and detention scheme that preyed on some of the most vulnerable populations in the area, by arresting already impoverished individuals solely for failing to pay minor municipal fines or failing to appear in its municipal court, and then giving the individuals a choice of either (a) sitting in jail without process for multiple days, or (b) paying an insurmountable amount of money for their release, all without at any point considering the individual's ability to pay. Plaintiffs also alleged that Florissant arrested thousands of Settlement Class members each year on warrants and subsequently failed to bring the arrestees before a judge. In addition, Plaintiffs alleged that

Florissant coerced certain Class members to pay fines, costs, and/or fees to Florissant under threat of incarceration and re-incarceration, again without regard for their ability to pay. Plaintiffs alleged Florissant raised millions of dollars in revenue as a result of this unconstitutional scheme and that Florissant's policies and procedures caused the Plaintiffs and others harm. *See* Complaint, Dkt. No. 204. Defendant, the City of Florissant, has denied and continues to deny the foregoing allegations and all liability.

Florissant moved to dismiss pursuant to Federal Rule of Civil Procedure 8(a), 10(b), 12(f), and 12(b)(1), (6) and alternatively for a more definite statement pursuant to Rule 12(e), which the Court denied. Dkt. Nos. 22, 54. While Florissant's motion to dismiss was pending, this Court permitted discovery to commence. In March of 2019, Florissant then moved for judgment on the pleadings, this time alleging Plaintiffs' failure to join the municipal division of the Circuit Court of St. Louis County as an indispensable party under Fed. R. Civ. P. 19. *See* Dkt. No. 100. The Court denied this motion as well. Dkt. No. 130. The Parties continued litigation and extensive discovery, which included conducting twenty-three depositions, issuing and answering multiple Requests for Production and six Sets of Interrogatories, and reviewing over 500,000 pages of documents. *See* Dkt. No. 288-1, Joint Decl. of Class Counsel, ¶¶ 4-5.

On May 21, 2020, Plaintiffs moved for class certification. Dkt. No. 166. On February 1, 2023, after full briefing and a hearing on the matter (held on August 13, 2021), the Court certified three Rule 23(b)(3) damages classes and Rule 23(b)(2) classes:

> **Modified Class 1 (Jailed Class):** All persons held in the City of Florissant jail on behalf of the City of Florissant for failure to satisfy a bond, fine, fee, (excluding "warrant recall fees", "letter fees", and/or "failure to appear fees", as defined in *Watkins v. City of Florissant*, No. 16SL-CC00165 (St. Louis Co. Cir. Ct. filed Jan. 2016)), surcharge, and/or costs without (1) an indigency hearing, (2) a finding that they were a flight risk, or (3) a finding that they were a danger to the community from October 31, 2011 to present (excluding individuals jailed pursuant to a domestic violence hold).

> **<u>Modified Class 3 (Jailed Class)</u>:** All persons held in the City of Florissant jail, between October 31, 2011 to present, on a Failure to Appear warrant for the City of Florissant who were not brought before a judge for a first appearance or arraignment (excluding individuals jailed pursuant to a domestic violence hold).
>
> **<u>Narrowed Modified Class 4 (Narrowed Paid Fines Class)</u>:** All persons who paid fines and/or fees to the City of Florissant (excluding "warrant recall fees", "letter fees", and/or "failure to appear fees", as defined in *Watkins v. City of Florissant*, No. 16SL-CC00165 (St. Louis Co. Cir. Ct. filed Jan. 2016)) after being jailed on a warrant issued by Florissant and without an indigency hearing from October 31, 2011 to present.

*See* Dkt. No. 253 at 38-39. The Classes contended Florissant's policy of detaining individuals pursuant to the payment of a sum of money without inquiry into their ability to pay violated their constitutional rights under the Equal Protection and Due Process Clauses of the Fourth and Fourteenth Amendments. Each of the three Classes also include injunctive relief allegations, in that Plaintiffs sought declaratory and injunctive relief permanently enjoining Florissant from enforcing the alleged unconstitutional policies and practices, including jailing putative class members without a meaningful inquiry into their ability to pay and an evaluation of alternatives to incarceration before they are jailed for non-payment (Modified Class 1), jailing them without a first appearance or arraignment before a neutral (Modified Class 3), and imposing fines or fees without an inquiry to determine indigency (Narrowed Modified Class 4). The Court granted Rule 23(b)(2) certification of the Classes. *See* ECF No. 253 at 38.

Following certification of the Classes, the Parties engaged in arm's length settlement negotiations via email and telephone. Then, on May 23, 2023, the Parties engaged in a day-long mediation before Mr. Bradley A. Winters, Esq., of JAMS. *See* Dkt. No. 287-1, Settlement Agreement, Recitals ¶ 3; *see also* Dkt. No. 288-1, Joint Decl. of Class Counsel, ¶ 7. 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. Dkt. No. 288-1 ¶ 8. Mr. Winters actively supervised and participated in the settlement discussions to help the Parties reach an acceptable compromise. *Id.* ¶ 11. After lengthy and 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.* ¶ 12. Class Counsel prepared the first draft of the Settlement Agreement, and the Parties then negotiated the precise terms and language of the final Settlement Agreement which was fully executed on September 20, 2023. *Id.* ¶ 13. Class Counsel believes that this Settlement Agreement offers significant benefits to all Class Members and is fair, reasonable, adequate and in the best interest of the Classes.

On September 22, 2023, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement (Dkt. No. 287) and a supporting Memorandum (Dkt. No. 288). The Motion proposed an additional class for settlement purposes (taken together, the "Settlement Classes"):

> **Remaining Paid Fines Class:** All persons who made a payment of fines, costs, and/or fees to the City of Florissant that were assessed without an inquiry into their ability to pay, and who paid such fines, costs, and/or fees, and such payment was not a qualifying payment for the Narrowed Paid Fines Class.

Dkt. No. 287, pp. 4-5; Dkt. No. 287-1, Settlement Agreement ¶¶ 17, 18, 22, 39. Along with the Memorandum, Plaintiffs submitted proposed Class Notice documents (Dkt. Nos. 287-2, 287-3, and 287-4).

On January 2, 2024, after considering the Memorandum, the Settlement Agreement, and the Class Notice documents, the Court found that the proposed additional Settlement Class (the "Remaining Paid Fines Class") likely meets the requirements for certification under Rule 23 of the Federal Rules of Civil Procedure, and certified it for settlement purposes only. Dkt. No. 289.

The Court preliminarily approved the Settlement as fair, reasonable, and adequate, approved the Notice Program, and scheduled a final approval hearing for May 13, 2024. *Id*. The

Court preliminarily appointed Plaintiff Nicole Bolden as Class Representative for the Remaining Paid Fines Class. *Id.* Pursuant to the Court's Order, Notice was provided as directed in the Preliminary Approval Order. Specifically, the initial mailed Postcard Notice was mailed to Settlement Class members on January 26, 2024. *See* Aff. of Bryn Bridley on Dissemination of the Class Notice and Administration of the Settlement ("Administrator Aff."), attached hereto as **Exhibit 1**, ¶ 8. Postcard Notices that were returned to Atticus as undeliverable were promptly remailed to Settlement Class members whose forwarding addresses were obtained from USPS or whose updated addresses could be obtained via skip tracing. *Id.* ¶ 9. The Publication Notice was effectuated with the weekly Missouri newspaper, *The St. Louis American*, in the February 1, 2024 edition. *Id.* ¶ 11. Additionally, targeted social media ads were disseminated on the social networking site, Facebook, beginning on February 1, 2024, directed to Facebook users in St. Louis County and St. Louis City, Missouri. *Id.* ¶ 12. The ad reached 41,779 accounts, with 1,986 link clicks and 2,347 post engagements. *Id.* Next, the Long Form Notice was posted on the Settlement Website www.FlorissantClassAction.com by January 12, 2024, and was also available upon request by Settlement Class members. *Id.* ¶ 13. The website has received approximately 7,980 visits and 3,322 online Payment Information Form submissions. *Id.* ¶ 14. Finally, on January 26, 2024, a toll-free telephone line was activated to receive calls and messages from Class members, which has totaled 476 calls as of April 8, 2024. *Id.* ¶ 15.

On February 16, 2024, Plaintiffs filed a Motion for Award of Attorneys' Fees, Costs, and Service Awards, seeking an Order awarding attorneys' fees in the amount of $963,333.33 and reimbursement of costs in the amount of $187,196.46. *See* Dkt. No. 290. In addition, Plaintiffs sought Service Awards of $7,500 for each of the Class Representatives. *Id.* As of the deadline to

object or opt out of the Settlement, there were no objections and 20 valid exclusion requests. Administrator Aff., ¶¶ 19-20. This speaks volumes to the strength of the Settlement.

## II. SUMMARY OF THE PROPOSED SETTLEMENT

### A. The Classes

The Settlement resolves the claims of the three certified Classes—the two Jailed Classes and the Narrowed Paid Fines Class. Dkt. No. 287-1 ¶¶ 17, 18, 22, 37; Dkt. No. 288, pp. 5-6. In addition, the Settlement Agreement contemplates certification of an additional Settlement Class under Federal Rule of Civil Procedure 23(b)(3), for settlement purposes only:

> **Remaining Paid Fines Class:** All persons who made a payment of fines, costs, and/or fees to the City of Florissant that were assessed without an inquiry into their ability to pay, and who paid such fines, costs, and/or fees, and such payment was not a qualifying payment for the Narrowed Paid Fines Class.

Dkt. No. 287-1 ¶ 39. This Court provisionally certified the Remaining Paid Fines Class for settlement purposes in its Order granting preliminary approval. Dkt. No. 289.

### B. Benefits to the Classes

#### i. Monetary Benefits

The Settlement Agreement provides monetary benefits in the form of a common cash Settlement Fund of $2,890,000.00, of which $2,023,000.00 is allocated to the Jailed Classes, $433,500.00 is allocated to the Narrowed Paid Fines Class, and $433,500.00 is allocated to the Remaining Paid Fines Class. Dkt. No. 287-1 ¶ 47. All payments to Settlement Class Members, Settlement Administration Costs, as well as any Service Awards awarded to Class Representatives and attorneys' fees and costs awarded to Class Counsel shall be paid from the Settlement Fund. *Id.* ¶¶ 19, 23, 40.

Each member of the Jailed Classes and/or Narrowed Paid Fines Class who has not opted out of the Settlement, will receive a cash payment. Each member of the Remaining Paid Fines

Class who timely submits a Payment Information Form and who has not opted out of the Settlement will receive a cash payment. Subject to potential adjustments described in the Settlement, the payments to Settlement Class Members will be made as follows:

1) The Jailed Class Net Settlement Fund—that is, the $2,023,000.00 allocated to the Jailed Classes minus proportional deductions for (a) the Court-approved attorneys' fees and costs awarded to Class Counsel, (b) any Settlement Administration Costs, and (c) any Court-approved Service Awards to the Class Representatives (Dkt. No. 287-1 ¶ 19) shall be distributed *pro rata* to the members of the Jailed Classes using the following calculation: (a) the dollar amount of the Jailed Class Net Settlement Fund divided by the total number of hours spent in jail by all members of the Jailed Classes, which yields a per-jailed-hour amount; (b) multiply the per-jailed-hour amount by the total number of hours jailed for each member of the Jailed Classes. Dkt. No. 287-1 ¶ 79(d)(i). This results in a Jailed Class Member Payment. *Id.*

2) The Narrowed Paid Fines Net Settlement Fund—that is, the $433,500.00 allocated to the Narrowed Paid Fines Class minus proportional deductions for (a) the Court-approved attorneys' fees and costs awarded to Class Counsel, (b) any Settlement Administration Costs, and (c) any Court-approved Service Awards to the Class Representatives (Dkt. No. 287-1 ¶ 23) shall be distributed *pro rata* to the members of the Narrowed Paid Fines Class using the following calculation: (a) the dollar amount of the Narrowed Paid Fines Class Settlement Fund divided by the total dollar amount of qualifying fines, costs, and/or fees paid by all members of the Narrowed Paid Fines Class, which yields a per-dollar-fined rate; (b) multiply the per-dollar-fined rate by the total amount of fines, costs, and/or fees assessed against

and paid by each member of the Narrowed Paid Fines Class. Dkt. No. 287-1 ¶ 79(d)(ii). This results in a Narrowed Paid Fines Settlement Class Member Payment. *Id*.

3) The Remaining Paid Fines Net Settlement Fund—that is, the $433,500.00 allocated to the Remaining Paid Fines Class minus proportional deductions for (a) the Court-approved attorneys' fees and costs awarded to Class Counsel, (b) any Settlement Administration Costs, and (c) any Court-approved Service Awards to the Class Representatives (Dkt. 287-1 ¶ 40) shall be distributed *pro rata* to the members of the Remaining Paid Fines Class who timely submitted a Payment Information Form using the following calculation: (a) the dollar amount of the Remaining Paid Fines Class Settlement Fund divided by the total dollar amount of fines, costs, and/or fees paid by all members of the Remaining Paid Fines Class, which yields a per-dollar-fined rate; (b) multiply the per-dollar-fined rate by the total amount of fines, costs, and/or fees charged to and paid by each member of the Remaining Paid Fines Class. Dkt. No. 287-1 ¶ 79(d)(iii). This results in a Remaining Paid Fines Settlement Class Member Payment for each member of the Remaining Paid Fines Class who timely submitted a valid Payment Information Form. *Id.*

A Settlement Class Member may qualify for a Jailed Class Member Payment, a Narrowed Paid Fines Class Member Payment, a Remaining Paid Fines Class Payment, or some combination of the three payments. Dkt. No. 287-1 ¶ 51. The total of the Jailed Class Member Payment, Narrowed Paid Fines Class Member Payment, and/or Remaining Paid Fines Class Member Payment due to each Settlement Class Member is the total Settlement Class Member Payment. *Id.* ¶¶ 46, 79(d)(iv). Upon final approval, the Settlement Administrator will mail payments

automatically to Settlement Class Members. *Id.* ¶ 79(d)(vi). The Settlement Agreement also sets out a specific procedure for disposition of any residual funds, including a procedure for a secondary distribution and a proposed *cy pres* recipient, Marygrove, a nonprofit organization or foundation which provides residential and non-residential mental health support to children in the St. Louis region who have suffered abuse. *Id.* ¶ 82. In no event shall any portion of the Settlement Fund revert to Florissant. *Id.* ¶ 79(e).

**ii. Additional Consideration and Relief**

In addition to the monetary relief, the Settlement Agreement provides that the City of Florissant will provide acknowledgement and confirmation that no "bond schedules" are utilized by the Florissant Police Department and jail to set conditions of release for arrested individuals. Dkt. No. 287-1 ¶ 54 (within 30 days after the Effective Date). The Settlement Agreement also provides that the City of Florissant will forgive all unpaid Minor Traffic Violation amounts assessed between October 31, 2011 and December 31, 2019 and still due, and provide written confirmation of such debt forgiveness to Class Counsel with the total number of individuals whose debts were forgiven and the total dollar amount of debt forgiven. *Id.* ¶ 55 (written confirmation due within 45 days after the Effective Date). Florissant will also implement a policy to provide all 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. *Id.* ¶ 56. Finally, Florissant will provide counsel for such 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*. Defendant will provide written confirmation of such policy, including a copy of the policy itself, to Class Counsel. *Id*. In light of

this additional consideration and relief, the Parties agree that by virtue of the Settlement, the claims asserted by, and relief requested by, the Injunctive Class are resolved. *Id.* ¶ 57 (within 45 days after the Effective Date).

**C. Class Member Releases**

In exchange for the benefits conferred by the Settlement, all Class Members will be deemed to have released the Released Parties from "any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters during the Class Period that were or could have been alleged in the Action, including but not limited to 'sham warrant' claims and claims for injunctive relief.'" Dkt. No. 287-1 ¶ 85. The release is appropriately tailored, in that it covers claims arising from the identical factual predicate to the claims asserted in the operative Complaint.

**D. Other Agreements from Defendant**

In addition to the above terms for compensation of Settlement Class members, Defendant Florissant has agreed for the following payments to be issued from the Settlement Fund if the settlement receives final approval:

**i. Costs of Settlement Administration**

The agreed cost of settlement administration is $244,637.00. Ex.1, Administrator Aff., ¶ 21. Within such total settlement administration costs, the cost of notice mailing totaled $81,918, the cost of project management and technical set-up totaled $11,875, the cost of CAFA notice totaled $1,850, and the cost of communications with Class Members totaled $13,768. *Id.* This

Notice Program amount shall be paid by Defendant and/or its insurer, and then deducted from the total Settlement Fund, thereby reducing the amount to be paid into the Escrow Account by Defendant by the same amount. *See* Dkt. 287-1, ¶¶ 50 and 79(c).

**ii. Attorneys' Fees and Costs**

Upon approval of the Court, Defendant has agreed not to oppose Class Counsel's Motion for an Award of Attorneys' Fees and Costs of up to one-third to be paid from the Settlement Fund. Class Counsel filed their Motion for Attorneys' Fees, Costs, and Service Awards on February 16, 2024 (Dkt. Nos. 290-91) seeking an award for attorneys' fees in the amount of $963,333.33 (one-third of the Settlement Fund) and reimbursement of costs in the amount of $187,196.46.

**iii. Service Awards for Class Representatives**

Upon approval of the Court, Defendant has agreed that Service Awards of $7,500 each to Class Representatives Thomas Baker, Sean Bailey, Nicole Bolden, Allison Nelson, and Umi Okoli (f.k.a. Meredith Walker) will be paid from the Settlement Fund. Each of the Class Representatives have expended years of effort remaining notified and involved in the actions of the case, producing documents and responding to interrogatories, giving deposition testimony, and participating in settlement discussions on behalf of the entire class.

## III. NOTICE

A class action settlement like the one proposed here must be approved by the Court to be effective. *See* Fed. R. Civ. P. 23(e). The court approval process has three principal steps:

1. A preliminary approval hearing, at which the Court considers whether the proposed settlement is within the range of reasonableness and possibly meriting final approval;

2. A notice period, during which time Class Members are notified of the proposed settlement and given an opportunity to express any objections; and

3. A "formal fairness hearing," or final approval hearing, at which the Court decides whether the proposed settlement should be approved as fair,

adequate, and reasonable to the Class.

*See Manual for Complex Litig. (Fourth)* §§ 21.632-34 (2004).

Here, the first two steps have been completed. The Court granted the motion for preliminary approval of the proposed settlement on January 2, 2024 (Dkt. No. 289), and notice was disseminated to members of all Settlement Classes.

**A. Notice Provided to the Settlement Classes**

In preliminarily approving the Settlement, the Court also approved the plan to provide notice to Class Members as described in the Settlement Agreement. Dkt. No. 289. The Notice program in this Settlement was designed to be the best notice practicable and was tailored to utilize all information about the Class Members known to the Parties. *Id*.

As provided by the Settlement Agreement, the Notice program was executed by Atticus Administration, who mailed each Class Member a Postcard Notice, with information regarding the case, how to opt out, object, or remain in the Classes, how to update class member addresses, how to select payment method using the Payment Information Form, and the date and time of the Final Approval Hearing. Records related to the Settlement Classes were ascertained based on data provided by Defendant to acquire the name and address of each Class Member. When Postcard Notices were returned undeliverable, Atticus promptly remailed the undeliverable Notices that included forwarding information to the forwarding addresses received from the USPS, and sent the remaining undeliverable records to a professional service for address tracing—Notices were promptly remailed to addresses received from trace. *See* Ex. 1, Administrator Aff. ¶ 9. The more detailed Long Form Notice and important case documents such as the Settlement Agreement were also posted on the internet at www.FlorissantClassAction.com. The Long Form Notice was downloaded 45 times from the Settlement Website as of April 8, 2024. *Id.* ¶ 14. Notice was also made available through publications in the weekly Missouri newspaper, *The St. Louis American*,

in the February 1, 2024 edition. *Id.* ¶ 11. Additionally, the Settlement Administrator ran advertisements on the social media platform Facebook beginning on February 1, 2024, targeted to Facebook users in St. Louis County and St. Louis City, Missouri and including clickable links to the Settlement Website URL above. *Id.* ¶ 12.

Finally, Defendant has ensured certain notice of the class action settlement pursuant to the Class Action Fairness Act, 28 U.S.C. §§ 1332(d), 1453, and 1711-1715 was delivered to the Attorney General of the United States and to the appropriate state official in fifty (50) states, the District of Columbia, and Puerto Rico ("CAFA Notice Packets"). *Id.* ¶ 4. The Settlement Administrator confirms that all CAFA Notice Packets were sent via U.S. Priority Mail on September 28, 2024, within ten (10) days from the date the Motion for Preliminary Approval Settlement was filed with the Court. *Id.*

### B. Twenty Opt-Outs and *Zero* Objections to the Class Settlement

The Settlement Administrator received twenty (20) valid requests to opt out of the Settlement Classes, and no objections to the Settlement Agreement. Ex. 1, ¶¶ 19-20.

## IV. <u>ARGUMENT</u>

### A. The Court Should Grant Final Approval of the Proposed Class Settlement

Under Federal Rule of Civil Procedure 23(e), which was amended in 2018 to delineate the relevant factors, in deciding whether to approve a class action settlement, the Court should consider whether:

> (A) the class representative 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)(2).

Other factors courts consider are "defendant's financial condition," *Risch v. Natoli Eng'g Co., LLC*, 2012 WL 3242099, at *2 (E.D. Mo. Aug. 7, 2012) (quoting *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 932-33 (8th Cir. 2005)), "the existence of fraud or collusion behind the settlement," "the stage of the proceedings and the amount of discovery completed," and "the opinions of the class counsel, class representatives, and absent class members," *Albright v. Bi-State Dev. Agency of Missouri-Illinois Metro. Dist.*, No. 4:11CV01691 AGF, 2013 WL 4855308, at *3 (E.D. Mo. Sept. 11, 2013) "The single most important factor in determining whether a settlement is fair, reasonable, and adequate is a balancing of the strength of the plaintiff's case against the terms of the settlement." *Marshall v. Nat'l Football League*, 787 F.3d 502, 508 (8th Cir. 2015) (quoting *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988)).

The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost and rigor of prolonged litigation. *See Little Rock School Dist. v. Pulaski Cnty. Special School Dist. No. 1*, 921 F.2d 1371, 1383 (8th Cir. 1990) ("The law strongly favors settlements. Courts should hospitably receive them . . . As a practical matter, a remedy that everyone agrees to is a lot more likely to succeed than one to which the defendants must be dragged kicking and screaming."). Settlement agreements conserve judicial time and limit expensive litigation. *See* 4 Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 11:41, at 87 (4th Ed. 2002) (hereafter "*Newberg on Class Actions*") ("The compromise

of complex litigation is encouraged by the courts and favored by public policy.”).

Consistent with these factors, on April 5, 2023, this Court granted final approval of the Class Action Settlement in an analogous case: *Webb, et al. v. City of Maplewood, Missouri*, Case No. 4:16 CV 1703 CDP (E.D. Mo. Apr. 5, 2023), Dkt. 273 (“*Webb*”). *Webb* also involved allegations that a municipality implemented an unconstitutional “pay-to-play” arrest and detention scheme, and coerced class members to pay fines, costs, and/or fees to the defendant under threat of incarceration, without regard to ability to pay. The Settlement Agreement also similarly provided a $3,250,000.00 cash Settlement Fund and equitable relief. *Webb*, Dkt. 260-1. *See also Thomas et al. v. City of St. Ann.*, Case No. 4:16-CV-1302-SEP and *Meredith Walker, et al. v. City of St.* Ann, 4:18-cv-1699-SEP, *consol*., 2024 WL 982292 (E.D. Mo. Mar. 7, 2024) (granting final approval of $3,125,000.00 cash Settlement Fund and equitable relief in similar alleged debtor’s prison and jail conditions class action).

**i. The Settlement is Fair and Without Objection**

Like *Webb*, the Settlement in this action is also eminently fair. First, the Settlement Agreement is the product of arms’ length negotiations between the Parties spanning several weeks, culminating in the successful mediation on May 23, 2023, with the active participation of a neutral mediator, Mr. Bradley Winters. During the mediation, Mr. Winters actively supervised and participated in the settlement discussions to help the Parties reach an acceptable compromise.

The Settlement has none of the “hallmarks” sometimes seen as matters of concern, such as reversion of funds to the defendant. Moreover, the active assistance of a neutral mediator is a strong indicator of a lack of collusion. *See DeBoer v. Mellon Mortg. Co*., 64 F.3d 1171, 1178 (8th Cir. 1995) (“It also warrants mention that a Magistrate Judge presided over the settlement negotiations and that the district court had prior experience with this type of litigation. Such multiple layers of scrutiny further militate in favor of the settlement and against [objectors’] claims of collusion.”);

*Claxton v. Kum & Go, L.C.*, 2015 WL 3648776, at *6 (W.D. Mo. June 11, 2015) (approving settlement as "a product of extensive negotiation conducted over a period of several months and requiring the services of a mediator").

Second, the Classes were adequately represented by Class Representatives and experienced Class Counsel, who are well-informed about the merits and risks of the case and who litigated zealously on behalf of the Classes. *See* Fed. R. Civ. P. 23(e)(2)(A). As the Court determined in its Preliminary Approval Order, this settlement is "in all respects fundamentally fair, reasonable, adequate, and in the best interest of the Class Members." Dkt. No. 289, pp. 2-3. Between the time of the Court's Order and present, there have been no changes or objections by the Parties or Class Members.

There is no question that discovery in this case is "to a point at which an informed assessment of its merits and the probable future course of the litigation can be made." *E.E.O.C. v. McDonnell Douglas Corp*., 894 F. Supp. 1329, 1334 (E.D. Mo. 1995). The Parties completed discovery, including the depositions of twenty-three witnesses, the review and analysis of over 500,000 pages of documents, and the production of expert reports with respect to damages. Dkt. No. 288-1, ¶ 5.

The terms of the proposed award of attorneys' fees and costs and Service Awards are also fair and demonstrate that the Settlement is the product of arms' length negotiation. These terms were negotiated only after the Parties reached agreement on all other material terms of the Settlement. *Id*. ¶ 15. Class Counsel filed a separate motion seeking approval of an award of attorneys' fees not to exceed one-third of the Settlement Fund and reasonable litigation costs, as well as a Service Award of up to $7,500 for each Class Representative. Settlement Class Members had an opportunity to review these requests and no Settlement Class Member has objected to them.

Importantly, the Court's failure to approve, in whole or in part, any award of attorneys' fees or the requested Service Awards "shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination." Dkt. No. 287-1, ¶¶ 87, 90.

**ii. The Strength of Plaintiffs' Case and Relief Afforded Favor Settlement**

As the Eighth Circuit has explained, "[t]he single most important factor in determining whether a settlement is fair, reasonable, and adequate is a balancing of the strength of the plaintiff's case against the terms of the settlement." *Marshall*, 787 F.3d at 508 (quoting *Van Horn*, 840 F.2d at 607); *see also* Fed. R. Civ. P. 23(e)(2)(C). The Settlement here provides for substantial monetary relief of $2,890,000 to the Rule 23(b)(3) classes (the Jailed Classes, the Narrowed Paid Fines Class, and the putative Remaining Paid Fines Class), as well as additional valuable relief and consideration. This amounts to a sizeable recovery in a constitutional class action.

Plaintiffs here had a strong factual basis for their claims that the City of Florissant's conduct in arresting and detaining individuals, issuing warrants, and assessing fines, violated the Plaintiffs' and Class members' constitutional rights. However meritorious, though, these claims would require significant time and resources to be expended by both Parties at summary judgment and possibly trial to argue the case before a jury. Moreover, Plaintiffs faced risks that summary judgment could be granted against them. Further, questions of Florissant's culpability for this conduct would likely be resolved by a jury as an issue of fact, which would carry a significant degree of uncertainty. *See Kelly v. Phiten USA, Inc.*, 277 F.R.D. 564, 570 (S.D. Iowa 2011) ("The possibility of a large monetary recovery through future litigation is highly speculative, and any such recovery would occur only after considerable additional delay."). Moreover, significant legal issues exist about whether the City of Florissant would be liable for Plaintiffs' constitutional claims which would involve determinations by this Court and potentially appeals of those determinations

to the United States Court of Appeals for the Eighth Circuit. *See, e.g.*, *Keilee Fant, et al v. City of Ferguson*, 913 F.3d 757, 758 (8th Cir. 2019). Here, the Settlement "brings real and immediate benefits to the settlement class while they may well not get anything if the case were to go forward or, if they did receive some benefits, may well not receive anything until years into the future after millions of dollars have been spent." *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 2004 WL 3671053, at *10-11 (W.D. Mo. Apr. 20, 2004). *See also In re BankAmerica Corp. Sec. Litig.*, 210 F.R.D. 694, 701 (E.D. Mo. 2002) ("it has been held proper to take the bird in the hand instead of a prospective flock in the bush" (internal citation omitted)); *Albright*, 2013 WL 4855308, at *3 ("If the case were to proceed, the resulting motion practice, trial and appeals, could have been lengthy, involved, and expensive, presenting a substantial risk that Plaintiffs and the Settlement Classes would not ultimately prevail on their claim . . . . [T]he Settlement Agreement eliminates a substantial risk that the Class Members would walk away 'empty-handed.'").

In addition, even if Plaintiffs were to succeed with respect to every claim for each of the certified Classes, for the entire time period at issue, and for the maximum possible compensatory damages, collecting on that judgment is far from certain. Florissant has represented that it is unable to pay a multimillion-dollar judgment above the coverage limit of its liability insurer, the Missouri Public Entity Risk Management Fund ("MOPERM"), and even if it was, that collection of the judgment would be difficult. Dkt. No. 288-1, ¶ 26. After conducting a diligent investigation, Class Counsel believe Florissant's representations regarding its financial position and the difficulty of recovery to be sufficiently accurate. *Id.* This Settlement Agreement militates that risk. MOPERM has agreed to cover $2,000,000.00 of this Settlement, which represents the full amount of coverage available (*i.e.*, the policy limit), and Florissant agreed to cover the remainder of the Settlement fund. *Id.* ¶ 9.

Courts in this district have recognized that a "defendant's financial condition" should be taken into account when determining the adequacy of a settlement. *See Risch*, 2012 WL 3242099, at *2. Here, Florissant's financial condition weighs in favor of finding the Settlement adequate.

This settlement provides fair and substantial relief to class members in light of the significant factual issues that would have to be decided by a jury, legal issues to be decided by this Court, and potential appeals to the Eighth Circuit.

**iii. The Allocation of the Settlement is Fair and Reasonable**

The allocation of the Settlement—both among the Classes, and between Settlement Class Members—is fair and reasonable, and treats "class members equitably relative to each other." *See* Fed. R. Civ. P. 23(e)(2)(D). The Settlement Agreement allocates the $2,890,000 common cash Settlement Fund as follows: $2,023,000.00 to the Jailed Classes, $433,500.00 to the Narrowed Paid Fines Class, and $433,500.00 to the Remaining Paid Fines Class. Dkt. No. 287-1, ¶ 47.

The majority of the Settlement is allocated to the Jailed Classes, with the $2,023,000.00 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. Accordingly, the Settlement represents slightly under 15% of the highest potential recovery for the Jailed Classes. Under the terms of the Settlement Agreement, members of the Jailed Classes will be compensated on a *pro rata* basis for the length of time they spent incarcerated by Florissant.

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* Dkt. No. 287-1, ¶ 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* Dkt. No. 287-1, ¶ 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 3% of the highest potential recovery for the Remaining Paid Fines Class. 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 Classes 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).

Further, the proposed method of distributing relief to the Settlement Class Members is also effective. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii). The Parties agreed upon an experienced Settlement Administrator. *See* Dkt. No. 287-1, ¶¶ 60-61. Members of the three certified classes—the Jailed

Classes and the Narrowed Paid Fines Class—will automatically be mailed checks by the Settlement Administrator, as Florissant maintained contact information for a majority of these class members. Members of the additional settlement class—the Remaining Paid Fines Class—were required to submit a simple Payment Information Form to provide their contact information and select their preferred form of payment (electronic or physical check), which was possible either by mailing the detachable form included on the Remaining Paid Fines Class postcard notice back to the administrator, or filling out a simple form online. *Id.* ¶ 79(d)(vi). This was, in significant part, because Florissant did not possess mailing addresses or other contact information for one third of these Remaining Paid Fines Class members. If after 120 days following the first payments mailed by the Settlement Administrator there are sufficient funds for a secondary distribution, and if administration of a secondary distribution is feasible in light of the funds available, the Settlement Administrator will automatically distribute those funds on a *pro rata* basis to participating members of the Jailed Classes, Narrowed Paid Fines Class, and Remaining Paid Fines Class who received and cashed (in check form or as electronic payment) Settlement Class Member Payments. *Id.* ¶¶ 80-84.

The settlement amount was reached by negotiation of the Parties in consideration of settlements reached and judgments awarded in analogous cases, the costs and risks attendant to continued litigation, and the available funds and insurance coverage of the Defendant. These figures fall well within the range of settlement and judgment amounts in analogous cases. *See, e.g.*, *Webb, et al. v. City of Maplewood, Missouri*, Case No. 4:16 CV 1703 CDP (E.D. Mo. Apr. 5, 2023), Dkt. 273 (granting final approval of settlement agreement, which provided for common fund of $3,250,000 for class members in action also alleging a "pay-to-play" arrest and detention scheme). Moreover, it is fair and substantial relief given the significant challenges and risks associated with

pursuing such claims individually.

**iv. Equitable Relief Obtained by the Settlement is Fair and Reasonable**

Additionally, the Settlement is also equitable with respect to the Injunctive Classes, which sought only prospective relief with respect to their constitutional claims. The Settlement provides that the City of Florissant will provide acknowledgement and confirmation within thirty (30) days of the Effective Date that no "bond schedules" are utilized by the Florissant Police Department and jail to set conditions of release for arrested individuals, Florissant will forgive all unpaid Minor Traffic Violation amounts assessed between October 31, 2011 and December 31, 2019 and still due,[1] Florissant shall implement a policy to provide all 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. Dkt. No. 287-1, ¶¶ 54-56. The Settlement further provides that Florissant shall 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.* ¶ 56. This additional consideration resolves the claims of the Injunctive Classes. *Id.* ¶ 57.

**v. Lack of *Any* Objections to the Settlement is Further Evidence that the Settlement is Fair and Reasonable**

Finally, the fact that no Class Member has lodged an objection to the settlement is strong evidence that the settlement is fair, reasonable, and adequate. *See, e.g.*, *Jones v. Casey's General*

[1] The City of Florissant is coordinating with the Florissant Municipal Court Clerk and the Missouri Office of State Court Administrator ("OSCA") to complete the debt forgiveness process within 30 days of the Effective Date. Individuals can search, view, and track municipal case information accessible online via OSCA's "Case.net" website: https://www.courts.mo.gov/cnet/ or by visiting the Florissant Municipal Court.

*Stores, Inc.*, 266 F.R.D. 222, 230 (S.D. Iowa 2009) (noting in class of 7,917 putative members, only eight potential class members opted out and no objections lodged constituted "strong circumstantial evidence supporting the fairness of the Settlement").

Ultimately, it is possible that Class Members could recover a higher amount if they continued litigating the matter; however, weighing the risk of no recovery at all if this action were to be litigated for several more years against the substantial and immediate recoveries that the class stands to obtain, there is no question that the settlement is more than fair in relation to the strength of Plaintiffs' case. "The essence of settlement is compromise." *EEOC v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir. 1985). *See Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 125 (8th Cir. 1975) ("Given the additional fact that any compromise involves some give and take by both sides, we feel that the district court's approval of this settlement was justified."). Because settlement requires compromise, "the parties to a settlement will not be heard to complain that the relief afforded is substantially less than what they would have received from a successful resolution *after* trial." *Id.*

**vi. The Defendant's Financial Condition Favors Settlement**

The City of Florissant makes no claim that its financial condition prohibits the amount of settlement agreed upon here, which should weigh in favor of approval. *See In re Wireless Tel.*, 396 F.3d at 933 (approving settlement partially because "there is no indication that Nextel's financial condition would prevent it from raising the settlement amount"). As discussed in more detail above (Section IV.A.ii), both MOPERM and Florissant have agreed to cover the $2,890,000.00 amount of this Settlement. Thus, Florissant's financial condition weighs in favor of finding the Settlement adequate and for approval.

**vii. The Complexity and Expense of Further Litigation Favors Settlement**

The Parties agreed to settle this matter after conclusion of discovery and after class certification, which left the Parties facing lengthy summary judgment briefing and the possibility of an eventual trial. Even though the Parties conducted significant document discovery, depositions, expert witness discovery, and class certification briefing, this case, filed in 2016, could likely remain pending for a significantly longer period of time even after trial. Given the extensive summary judgment briefing, possible appeals following summary judgment ruling, and pretrial briefing, litigating this case fully would require several additional years, and highly resource-consumptive commitments by the Plaintiffs.

Furthermore, even if the proceeding were to result, eventually, in some recovery for the Class Members, that recovery would have to be substantially discounted for the expenses entailed in obtaining it at trial. *See, e.g.*, *Goldsmith v. Tech. Solutions Co.*, No. 92 C 4374, 1995 U.S. Dist. LEXIS 15093, *14-15 (N.D. Ill. Oct. 10, 1995) ("As courts recognize, a dollar obtained in settlement today is worth more than a dollar obtained after a trial and appeals years later."). In addition, the financial circumstances of many Class Members remain dire, and this Settlement provides much-needed financial compensation.

By contrast, the settlement here provides immediate, substantial benefits to the Class Members and avoids the delays, expenses, and risks associated with further litigation. Accordingly, the complexity, length, and expense of continued litigation weigh heavily in favor of approving the Settlement.

**viii. The Lack of Opposition to the Settlement Favors Settlement**

Of the 78,754 Class Members of the four Settlement Classes, no Class Member has filed an objection. None. Further, the Settlement Administrator received only twenty (20) valid and

timely opt-outs, a rate of 0.03%. In total, these numbers represent a strong, positive acceptance among the affected parties of this Settlement. The affected parties have also had ample opportunity to respond since the beginning of the Notice Period; 75,196 Class Members with addresses on record, or 94.64% of the Settlement Class notices mailed, were successfully sent the Postcard Notice by mail. Ex. 1, Administrator Aff., ¶ 10. Indeed, Class members were aware of and participated in the Settlement—the Settlement Website has received 7,890 visits, 476 calls have been received through the Toll-Free telephone line, and 3,322 online Payment Information Forms have been submitted. *Id.* ¶¶ 14-15. Although "a district court should be hesitant to infer that the class supports a settlement merely because its members are silent, where this silence is coupled with other indicia of fairness, it provides further support for approval." *Armstrong v. Bd. Of Sch. Directors of City of Milwaukee*, 616 F.2d 305, 326 (7th Cir. 1980) (citing *In re General Motors Corp. Engine Interchange Litigation*, 594 F.2d 1106, 1137 (7th Cir. 1979), cert. denied, 100 S. Ct. 146, 62 L.Ed.2d 95 (1979)).

Here, the lack of objections and the low number of opt-outs "is strong circumstantial evidence in favor of the settlement[]." *In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d 1002, 1021 (N.D. Ill. 2000), *aff'd*, 267 F.3d 743 (7th Cir. 2001). "When objection to a settlement is 'miniscule,' the Eighth Circuit has interpreted that response as evidence that the settlement warrants final approval." *Yarrington v. Solvay Pharm., Inc.*, 2010 WL 11453553, at *10 (D. Minn. Mar. 16, 2010) (citing *In re Wireless Tel.*, 396 F.3d at 922; *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1152 (8th Cir. 1999) (approving settlement where fewer than 4% of the class objected)). Accordingly, the lack of opposition to the Settlement among Class Members weighs in favor of approving the Settlement.

### B. The Remaining Paid Fines Class Is Provisionally Certified for Settlement Purposes

Before approving a class action settlement, a court must determine whether the class proposed for settlement is appropriate under Rule 23. *See Amchem Prods. V. Windsor*, 521 U.S. 591, 620 (1997); *Manual for Complex Litig.* § 21.632. "To proceed as a class action, the litigation must satisfy the four prerequisites of Rule 23(a) as well as at least one of the three requirements of Rule 23(b). . . . These prerequisites are otherwise known as (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation." *In re Aquila ERISA Litig.*, 237 F.R.D. 202, 207 (W.D. Mo. 2006). The litigation must also satisfy the Rule 23(b)(3) predominance rule if relevant. *Id*. at 211-12. In certifying a settlement class, however, the court is not required to determine whether the action, if tried, would present intractable management problems, "for the proposal is that there be no trial." *Amchem*, 521 U.S. at 620; *see also* Fed. R. Civ. P. 23(b)(3)(D).

The Court had already determined the Jailed Classes and the Narrowed Paid Fines Class met their respective requirements under Rule 23(b). Dkt. No. 253. Further, in its Order Granting Preliminary Approval, this Court concluded that:

> . . . for the purpose of approving this Settlement Agreement only and for no other purpose and with no other effect on the litigation should the proposed Settlement Agreement not ultimately be approved or should the Effective Date not occur, the proposed additional Settlement Class (the Remaining Paid Fines Class) likely meets the requirements for certification under Rule 23 of the Federal Rules of Civil Procedure: (a) the proposed Remaining Fines Class is ascertainable and so numerous that joinder of all members of the class is impracticable; (b) there are questions of law or fact common to the proposed Remaining Paid Fines Class, and there is a well-defined community of interest among members of the proposed Remaining Paid Fines Class with respect to the subject matter of the litigation; (c) the claims of the proposed Remaining Paid Fines Class with respect to this Class—Nicole Bolden—are typical of the claims of the members of the proposed Remaining Paid Fines Class; (d) the Class Representative will fairy and adequately protect the interests of the Members of the Remaining Paid Fines Class; (e) the counsel of record for the Class Representative are qualified to serve as counsel for the Class Representative in her own capacity as well as her representative capacity

> and for the Remaining Paid Fines Class; (f) common issues will likely predominate over individual issues; and (g) a class action is superior to other available methods for an efficient adjudication of this controversy.

Dkt. No. 289 ¶ 3.

Nothing has changed since the Court made the aforementioned findings at the preliminary approval stage. Here, the Remaining Paid Fines Class meets all of the requirements of Rule 23(a) and satisfies the requirements of Rule 23(b)(2) and (3). Consistent with this Court's prior Order, and for the reasons set forth in the Parties' Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement, the Parties now request that this Court proceed with final approval of this Settlement for the provisionally certified Remaining Paid Fines Class.

**C. The Notice to Putative Class Members was Appropriate**

Under Rule 23(e), the Court must direct notice in a reasonable manner to class members who would be bound by the proposed class settlement. "Notice of a settlement proposal need only be as directed by the district court . . . and reasonable enough to satisfy due process." *DeBoer*, 64 F.3d at 1176. The notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, No. MDL 1559 4:03-MD-015, 2004 WL 3671053, at *8 (W.D. Mo. Apr. 20, 2004) (quoting *Petrovic*, 200 F.3d at 1153). "There is no one 'right way' to provide notice as contemplated under Rule 23(e)." *Id*. In this case, after careful discussion and consideration, the Parties agreed on the content and methods of notice, submitted said content and methods to this Court, and the Court approved the type of notice in its Order. Dkt. No. 289.

**i. The Parties Complied with the Court's Order for Proper Notice**

The parties hired Atticus Administration, LLC to administer the Notice pursuant to the Court's Order. Dkt. No. 289. Atticus mailed each Settlement Class Member a Postcard Notice.

These Postcard Notices were mailed using the last known addresses of the putative Class Members. A copy of the Affidavit of Atticus Administration, LLC confirming the details of the Notice provided to potential Settlement Class Members is filed herewith as Exhibit 1.[2] The Long Form Notice was also posted on the internet at www.FlorissantClassAction.com, which has been fully operational since January 22, 2024, and remains accessible at this time. Paper copies of the Long Form Notice were also available to be mailed to each Class Member upon request. A total of 45 copies of the Long Form Notice have been downloaded by Settlement Class members. Ex. 1 ¶ 14. Parties also arranged for Notice to be made available through publications in *The St. Louis American*, a weekly Missouri newspaper, in the February 1, 2024 edition. *Id.* ¶ 11. Additionally, the Settlement Administrator purchased social media ads on Facebook, targeted to Facebook users in St. Louis County and St. Louis City, Missouri, which included a clickable link to the above Settlement Website URL. *Id.* ¶ 12. Further, the Settlement Administrator activated a toll-free telephone number answered by live customer service specialists during normal business hours, which has been operational since January 26, 2024 and remains accessible at this time. *Id.* ¶ 15. As of April 8, 2024, this toll-free number has received 476 calls. *Id.* ¶ 15.

In addition, Defendant ensured certain notice of the class action settlement pursuant to the Class Action Fairness Act, 28 U.S.C. §§ 1332(d), 1453, and 1711-1715 was delivered to the Attorneys General of each state and territory and to the United States attorney general ("CAFA Notice Packets"). Ex. 1, ¶ 4. Specifically, on September 28, 2024, the Settlement Administrator mailed a cover letter and CD-ROM containing the required documents and other information (as

[2] In short, overall, 88.34% of the Settlement Class was successfully sent the Postcard Notice by mail. Ex. 1, Administrator Aff., ¶ 10. Only 1,188 undeliverable records were not traced because they were returned at or after the opt-out and objection deadline. *Id. ¶* 9. These 1,188 records, and any others returned to the Settlement Administrator as undeliverable, will be traced prior to the distribution of award payments. *Id.*

set forth in Section 1715(b)(1)-(8)), (the "CAFA Notice Packet") to the Attorneys General of each state and territory and to the United States attorney general, each via U.S. Priority Mail. *Id.*

Class Counsel believe the Notice set forth in the Settlement Agreement, as further ordered by the Court, represented the best practicable notice in the context of the claims in dispute.

As for the content of the Notice, Rule 23(c)(2)(B) provides:

> The notice [to a Rule 23(b)(3) class] must concisely and clearly state in plain, easily understood language: the nature of the action, the definition of the class certified, the class claims, issues or defenses, that a class member may enter an appearance through counsel if the class member so desires, that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded, and the binding effect of a class judgment on class members under Rule 23(c)(3).

The Notice described the nature, history and status of the litigation; set forth the definition of the Classes; stated the class claims and issues; disclosed the right of Class members to seek exclusion from the Settlement or to object to the proposed settlement, as well as the deadlines for doing so, and warned of the binding effect of the settlement approval proceedings on people did not exclude themselves. Dkt. Nos. 287-1, 288. In addition, the Notice described the terms of the proposed settlement and provided contact information for Class Counsel. *Id*. The Notice also disclosed the time and place of the Final Approval Hearing and the procedures for commenting on the settlement and/or appearing at the hearing. *Id*. The contents of the Notice therefore satisfied all applicable requirements, and the Class members were provided with adequate notice of the Settlement and its terms. The opt-out and objection period, pursuant to the Notice mailed to all potential Class Members, ended on March 4, 2024.

### D. The Attorneys' Fees, Costs, and Service Awards Requested Pursuant to the Settlement Agreement are Fair and Reasonable

This Court has the discretion to approve attorneys' fees included in the Settlement Agreement. *See, e.g.*, *Petrovic*, 200 F.3d at 1157; Fed. R. Civ. P. 23(h). Here, Plaintiffs requested

attorneys' fees, which will be paid from the Settlement Fund, are one-third of the total money available to Settlement Class Members. As outlined in detail in Plaintiffs' Motion for Attorneys' Fees, Costs, and Service awards filed on February 16, 2024 (*see* Dkt. No. 291), 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, especially considering that this case was settled just before trial, and a similar award was recently approved by Judge Catherine D. Perry in *Webb*, an analogous case. *See Webb, et al. v. City of Maplewood, Missouri*, Case No. 4:16 CV 1703 CDP (E.D. Mo. Apr. 5, 2023), Dkt. 273 (granting full fee request of one-third of the gross settlement amount, *i.e.*, $1,083,333.33); *see also, e.g.*, *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) ("Indeed, courts have frequently awarded attorneys' fees ranging up to 36% in class actions."); *Cromeans v. Morgan, Keegan & Co., Inc.*, 2:12-CV-04269-NKL, 2015 WL 5785576, at *3 (W.D. Mo. Sept. 16, 2015), *report and recommendation adopted*, 2:12-CV-04269-NKL, 2015 WL 5785508 (W.D. Mo. Oct. 2, 2015) (33.3% of fund reasonable); *West v. PSS World Med., Inc.*, No. 4:13 CV 574 CDP, 2014 WL 1648741, at *1 (E.D. Mo. Apr. 24, 2014) (same); *Barfield v. Sho-Me Power Elec. Co-op.*, 2013 WL 3872181, at *4 (W.D. Mo. July 25, 2013) (same); *Sanderson v. Unilever Supply Chain, Inc.*, 10-CV-00775-FJG, 2011 WL 6369395, at *2-3 (W.D. Mo. Dec. 19, 2011) (approving attorneys' fee award of 33.78% of settlement fund); *Wiles v. Sw. Bill Tel. Co.*, No. 09-4236-CV-C-NKL, 2011 WL 2416291, at *4-5 (W.D. Mo. June 9, 2011) (33% of fund reasonable); *see also In re Employee Ben. Plans Sec. Litig.*, 1993 WL 330595, at *7 (D. Minn. June 2, 1993) (approving an award of 33 1/3 percent of the common fund).

Class Counsel also seek an award of costs to reimburse them for reasonable and necessary expenses advanced to prosecute this litigation in the amount of $187,196.46. "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 v. Solvay Pharms., Inc.,* 697 F. Supp. 2d 1057, 1067 (D. Minn. 2010) (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, the costs and expenses are largely discovery and expert witness related, with some other expenses related to legal research, court reporters, and some travel and meals. Dkt. No. 291 at p. 14; Dkt. No. 291-1, Decl. of Class Counsel, ¶ 20; *see, e.g.*, *Webb, et al. v. City of Maplewood, Missouri*, Case No. 4:16 CV 1703 CDP (E.D. Mo. Apr. 5, 2023), Dkt. 273 (granting full request for reimbursement of costs); *Thomas et al. v. City of St. Ann,* 2024 WL 982292 at *3 (same result).

Further, the requested Service Awards of $7,500 per Class Representative, which are a very small fraction of the amount obtained for the Classes, are fair and reasonable in light of their substantial efforts in representing the Classes. 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 v. Symantec Corp.*, 855 F.3d 860, 867 (8th Cir. 2017) (citing *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002)). The Class Representatives in this case worked with counsel to provide information regarding their experiences and claims, including conducting searches of personal records. Dkt. No. 291-1, ¶ 22. They also expended significant time responding to Florissant's interrogatory requests, preparing for deposition, sitting for their depositions, and participating in the decision to settle the case. *Id.*

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 requested Service Awards are fair and well within the reasonable range awarded in the Eighth 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 v. Cent. Payment Co., LLC*, No. 8:17CV310, 2022 WL 3445763, at *6 (D. Neb. Aug. 17, 2022) (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"); *Webb, et al. v. City of Maplewood, Missouri*, Case No. 4:16 CV 1703 CDP (E.D. Mo. Apr. 5, 2023), Dkt. 273 (authorizing service awards in the amount of $7,500 per class representative).

The Motion for an Award of Attorneys' Fees, Costs, and Service Awards was filed on February 16, 2024. No Settlement Class member has objected to the requested attorneys' fees, costs, or Service Awards. For the reasons set forth more fully in the Motion for an Award of Attorneys' Fees, Costs, and Service Awards, Dkt. Nos. 290-91, incorporated by this reference as if fully set forth herein, the Court should approve the requested amounts.

As confirmed by the facts and law set forth above and herein, the proposed attorneys' fees in the Settlement Agreement are fair. This case is complex and involves questions of constitutional law and interpretation as well as issues of sovereign immunity and municipal liability. Class Counsel worked diligently on the case and moved it towards settlement as quickly as practicable. This was a result of aggressive, persistent litigation. Further, the benefits to the Settlement Classes are significant. As noted above, there have been zero objections by Class Members for the proposed amount of fees and costs Class Counsel seek to recover. For these reasons, the fees and

costs are fair.

## V. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court (1) grant final approval of the proposed class action Settlement; (2) affirm its provisional certification of the Remaining Paid Fines Class for purposes of final approval of the certification of the Remaining Paid Fines Class; (3) affirm its appointment of Class Counsel; (4) affirm its appointment of the Class Representatives, who have adequately represented the Remaining Paid Fines Class (and all Classes); (5) grant Class Counsel's Motion for an award of attorneys' fees, costs, and Service Awards as set forth above and in their related Motion (Dkt. No. 290 *et seq.*); and (6) enter Final Judgment consistent with these findings. Plaintiffs have submitted a proposed Final Approval Order and Judgment consistent with these requests for relief.

Dated: April 8, 2024

Respectfully submitted,

By: /s/ *Nathaniel R. Carroll*

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