IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

JAMES PUDLOWSKI, LOUIS C. CROSS, III, GAIL HENRY, and STEVE HENRY, on Behalf of themselves and all others similarly Situated,	)	Case No. 1622-CC00083
	)	Division: 8
Plaintiffs,	)	
v.	)	
THE ST. LOUIS RAMS, LLC, AND THE ST. LOUIS RAMS PARTNERSHIP,	)	
Defendants.	)	

PLAINTIFFS' APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARDS TO CLASS REPRESENTATIVES

Plaintiffs James Pudlowski, Louis Cross, III, Gail Henry and Steve Henry ("Plaintiffs") and Class Counsel, Steven Stolze, respectfully submit this Application for an Award of Attorneys' Fees and Expenses and Incentive Awards to Class Representatives. In support of this Application, Plaintiffs and Class Counsel state as follows:

Introduction

After vigorous, arms-length negotiations, Plaintiffs and Defendant The St Louis Rams. ("Defendants") reached an agreement to settle this class action lawsuit, set forth in the Settlement Agreement attached to Plaintiffs' Motion for Preliminary Approval of Class Settlement as **Exhibit 1**. The settlement provides a victory for the Class. It provides Class members with the opportunity to receive a 25% refund of money spent on Rams tickets and merchandise even though they received and used the tickets and merchandise at the time. The settlement provides this relief for the Class members despite significant risks the Plaintiffs would have faced at trial. Even better, the Class Members will receive their full awards without deduction for attorneys'

fees, costs and incentive payments. As part of the Settlement, the parties have agreed that Defendants shall pay an award of attorneys' fees and expenses not to exceed $7,000,000.00 to Plaintiffs' Counsel and an incentive award to each named Plaintiff as class representative in an amount not to exceed $5,000 per named plaintiff as awarded by the Court. Any award of attorneys' fees and expenses granted by this Court will be paid by the Rams over and above the amount paid by the Rams to the Class. Thus, any amount awarded to compensate the Class attorneys and Class representatives for representing the Class shall not affect the payments available to the Class. Through the prosecution of this action, Plaintiffs and their counsel have obtained substantial benefits for Settlement Class Members. This successful outcome is the culmination of years of research, investigation, litigation, discovery, settlement negotiations, and documentation and implementation of the Settlement by Plaintiffs' counsel.

The Settlement provides for $25,000,000.00 in benefits to Settlement Class Members. In addition, the Settlement also provides for payment of notice and administration expenses, $7,000,000.00 for attorneys' fees and expenses, and $20,000.00 for incentive awards to the named Plaintiffs. All of these payments will be paid by Defendant and will not reduce the $25,000,000.00 available to Class Members.

Plaintiffs' counsel has prosecuted this action on a contingency basis and, to date, has not received any compensation for the substantial resources – both in time and money – it has dedicated to the prosecution and settlement of this action. Class Counsel has also incurred litigation expenses and costs in prosecuting this action. Accordingly, Plaintiffs' counsel submits this Application seeking a total award of $7,000,000.00 in reasonable attorneys' fees and expenses (attorneys' fees of $6,746,189.30 and reimbursement of the $253,810.75 in litigation expenses and costs incurred during the prosecution of this case).

Background and Factual Summary

A. The Pleadings

1. Plaintiffs' Claims

This action arises out of Plaintiffs' allegation that the Rams made misleading statements and omissions between 2010 and 2016 regarding the team's future location and that Missouri citizens who purchased tickets and merchandise during that time period suffered economic damages in that the products they purchases were worth less than the products they thought they were purchasing had the Ram's representations been true regarding the Rams future location. Plaintiffs allege that certain statements and omissions made by the Defendant in this regard violated the Missouri Merchandising Practices Act, Section 407.010 RSMO, et seq. (MMPA). Plaintiffs seek a partial refund of money paid for Rams' tickets and merchandise during the class period.

Plaintiffs filed this case in this Court on January 13, 2016. They brought claims on behalf of themselves and a putative class of Rams customers. After Plaintiffs filed their Petition, Defendant removed this case to the United States District Court for the Eastern District of Missouri. See *Pudlowski v. St. Louis Rams, LLC*, No. 4:16-cv-00189-RLW.

Plaintiffs filed a Motion to Remand this case to this Court. The motion was extensively briefed by both parties. On May 10, 2016, the District Court granted the motion and remanded this case to this Court. However, Defendant filed a Petition for Leave to Appeal the Remand Order with the United States Appellate Court for the Eighth Circuit. The Eighth Circuit granted the Defendant's Petition and on July 19, 2016 reversed the District Court's Order granting remand and sent this case back to the U.S. District Court for the Eastern District of Missouri for further proceedings.

Plaintiffs filed additional briefing in support of their Motion to Remand this case to this Court. The parties again extensively briefed the issue. On this occasion, the U.S. District Court

denied the motion to remand. Plaintiffs then filed a motion to reconsider the denial of the remand and requested the opportunity to engage in jurisdictional discovery regarding the remand issue. The District Court granted the motion to reconsider. Plaintiffs then engaged in extensive jurisdictional discovery and retained an expert to testify regarding the jurisdictional issue. Subsequently the parties again extensively briefed the remand issue.

On March 21, 2018, the U.S. District Court granted the renewed motion to remand and remanded this case to this Court. Defendant again filed a Petition for Leave to Appeal the remand with the U.S. District Court for the Eighth Circuit. The Eighth Circuit denied the Petition.

B. The Course of This Litigation in This Court

From the beginning, this lawsuit has been hotly contested, marked by frequent motions filed by both sides.

1. Motions to Dismiss

The Rams filed motions to dismiss in both federal court and this court. The motion in federal court was denied as moot when this case was remanded. The motion in this Court was extensively briefed by both parties and was denied.

2. Discovery

The parties exchanged responses to written discovery and produced tens of thousands of pages of documents. The Plaintiffs obtained the Rams available data regarding ticket and merchandise purchasers, including data for those whom purchased from the Rams electronically through the Rams website or through Ticketmaster. The plaintiffs also obtained more that 30,000 documents from the Rams related to their relocation.

3. Expert Witnesses

The Plaintiffs designated Dr. Charles Cowan as an expert witness both as to jurisdiction and class certification. Dr. Cowan is an economist, statistician and survey expert with an extensive

career working for the U.S. government and in private practice. Dr. Cowan conducted surveys to determine the economic effect to the Class of the Rams alleged misrepresentations regarding their relocation out of St. Louis. Dr. Cowan produced multiple reports and was deposed on multiple occasions. Defendants retained multiple experts to contest Dr. Cowan's findings.

4. Motion for Class Certification

In the fall of 2018, Plaintiffs filed a motion for class certification. The motion was extensively briefed by both parties. In all, thousands of pages of exhibits and testimony were presented to this Court in support of and in opposition to the motion for class certification. The Court held a hearing on January 23, 2019 and accepted arguments and evidence from both parties on the motion.

On February 6, 2019, the Court granted the motion and certified the class as follows:

> All Missouri residents who were Missouri citizens and remained Missouri citizens when this action was commenced who purchased Rams' tickets and/or merchandise between April 21, 2010 and January 4, 2016, in the State of Missouri for personal, family or household purposes.
> Excluded from the class are named Plaintiffs' counsel and their agents. Also excluded from the class are Defendants and any entity in which Defendants have a controlling interest, and Defendant's legal representatives, heirs and successors; the judicial officers assigned to this litigation and their staff and immediate families.

This Court appointed the named Plaintiffs as Class Representatives and their attorneys as Class Counsel.

5. Motion for Summary Judgment

In addition to the above, the parties engaged in active and hotly disputed motion practice. (Plaintiffs omit voluminous discovery motions from this discussion.) On March 8, 2019, Defendant filed a Motion for Summary Judgment asking the Court to dismiss the case in its entirety. Plaintiffs filed a motion to extend their time to respond to the summary judgment motion until such

time as the Rams complied in full with all of the Plaintiffs' outstanding discovery requests, including Plaintiffs' pending video deposition of the Rams owner and their chief operating officer. The Court granted Plaintiffs' motion in this regard.

6. The Rams' Petition to Appeal

The Rams sought to overturn the Court's class-certification order in a request for permission to appeal filed in the Missouri Appellate Court for the Eastern District. This motion was extensively briefed by the parties and was denied by the appellate court. Defendant then filed a petition for a writ of prohibition with the Missouri Supreme Court.

7. Mediation

This settlement resulted from a lengthy mediation process, with two all day face to face mediation sessions and multiple telephonic mediation sessions spaced out over approximately 30 days.

On February 27, 2019, the Court referred this case to Alternative Dispute Resolution. The parties selected the Honorable Jay Daugherty, former longtime Missouri Circuit Court Judge and currently highly decorated mediator as the neutral. The parties held a mediation session before Judge Daugherty on April 1, 2019, but broke off discussions when it was clear that the case could not then be settled.

The parties conducted their second mediation session several weeks later. That session was unsuccessful, and the parties agreed to continue settlement discussions with the aid of Judge Daugherty. Specifically, the parties agreed that Judge Daugherty would submit a mediator's settlement proposal to both sides. This proposal would take into account all of the legal and factual issues presented by the case, and Judge Daugherty would present a proposed settlement which he believed was fair and equitable to both the Rams and the Class. Both parties would be free to either accept or reject the mediator's proposal.

Ultimately, the parties reached agreement. They agreed on a claims-made process, with a mandatory verified claim form for any Class Member seeking an award, pursuant to which the Rams agreed to pay up to a cap of $25 million. The parties agreed that notice would be provided via email and postcard to those class members listed in data maintained by the Rams. Notice would also be made by publication in the St. Louis *Post-Dispatch*.

The parties did not discuss or negotiate the payment of attorneys' fees and costs prior to reaching agreement on relief to the Class. The Rams agreed that they would pay a capped amount of attorneys' fees, costs, and incentive awards to the class representatives, as approved by the Court. These amounts would not come out of the $25,000,000.00 cap available to be paid to Class Members and, therefore, would not diminish Class Members' recovery.

C. The Settlement Agreement

Following the mediations, the parties continued to engage in arm's-length negotiations over the terms of a formal Settlement Agreement. Those discussions continued for several months before the parties memorialized their Settlement Agreement, which is attached as Ex. 1 to the motion for preliminary approval. Here is a summary of its most important terms.

1. The Class

The class is precisely what the Court certified:

> All Missouri residents who were Missouri citizens and remained Missouri citizens when this action was commenced who purchased Rams' tickets and/or merchandise between April 21, 2010 and January 4, 2016, in the State of Missouri for personal, family or household purposes.
> Excluded from the class are named Plaintiffs' counsel and their agents. Also excluded from the class are Defendants and any entity in which Defendants have a controlling interest, and Defendant's legal representatives, heirs and successors; the judicial officers assigned to this litigation and their staff and immediate families.

Purchasers may opt out of the Class, in which case they will not be bound by any orders

or judgments in this case, not be entitled to relief, and not be affected under the Settlement Agreement. Those who opt out will also not release any claims by virtue of the Settlement Agreement, or be entitled to object to it.

2. Monetary Relief for the Classes

Subject to a damages cap and on a claims-made basis, the Rams will pay each Class Member a 25% refund for all amounts spent on Rams tickets and merchandise during the class period. If the dollar amount of all approved claims exceeds the cap, then individual payments to Class Members will be reduced pro rata so that the pay-out to the Class will not exceed $25 million. Any pro rata adjustment will be as approved by Judge Daugherty.

Argument and Authorities

I. The Requested Attorneys' Fees are Reasonable and Should Be Approved.

Plaintiffs' counsel has not received to date any compensation or reimbursement for the substantial time and money invested and risk taken in prosecuting this action. Yet because of the efforts, expenditures, and risk taken by counsel in prosecuting this action, the Class will benefit from a valuable Settlement, which counsel has obtained for the Class. In light of the substantial results obtained for the Class, the skill shown and efforts and expenses invested by Plaintiffs' counsel, and the considerable risk incurred by counsel in pursuing this action on behalf of the Class, Plaintiffs' counsel requests an award of reasonable attorneys' fees (including their reasonable expenses) in the total amount of $7,000,000.00.

A. Class Counsel Is Entitled to a Reasonable Fee and Expense Award.

Missouri courts follow the "American Rule," which ordinarily requires litigants to bear their own attorneys' fees and costs in litigation. *Mayor, Councilmen, & Citizens of the City of Liberty v. Beard*, 636 S.W.2d 330, 331 (Mo. banc 1982). However, a recognized exception to the American Rule exists when "equity demands a balance of benefits" pursuant to the common

fund doctrine or the common benefit doctrine. *See Gerken v. Sherman*, 351 S.W.3d 1, 13 (Mo. Ct. App. 2011). The common fund doctrine and the related common benefit doctrine provide that counsel are entitled to recover reasonable attorneys' fees when their efforts have resulted in a common fund or a common benefit for a group of similarly situated individuals. As the Missouri Court of Appeals explained in *Gerken*:

> First, the common fund doctrine permits a trial court to require non-litigants to contribute their proportionate part of the counsel fees when a litigant successfully creates, increases, or preserves a fund in which the non-litigants were entitled to share. Second, the common benefit doctrine permits recovery of attorney's fees when a successful litigant benefits a group of other individuals similarly situated.

Id. (*quoting Lett v. City of St. Louis*, 24 S.W.3d 157, 162 (Mo. Ct. App. 2000) (internal citations omitted)); *see also Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[The United States Supreme Court] has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole.").

In this case, Class Counsel is entitled to an award of reasonable attorneys' fees under the common fund doctrine and the common benefit doctrine. Through its efforts, Class Counsel has achieved an excellent Settlement that provides $25,000,000.00 in benefits to the Class. Accordingly, "equity demands a balance of benefits," and the Court should award Plaintiffs' counsel reasonable attorneys' fees for obtaining these significant benefits.

B. Class Counsel's Fee Request is Reasonable as a Percentage of the Recovery.

As an expert on the subject of attorneys' fees, the trial court has wide discretion in awarding attorneys' fees to class counsel in class actions. *Berry v. Volkswagen Group of Am., Inc.*, 397 S.W.3d 425, 430 (Mo. banc 2013) ("The trial court is deemed an expert at fashioning an award of attorneys' fees and may do so at its discretion."); *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 267 (Mo. Ct. App. 2011) (appellate courts "give great deference to attorney fee

awards because the trial court is considered an expert at awarding attorney's fees, and may do so at its discretion." (internal quotations omitted)). A trial court's award of attorney's fees is reviewed for an abuse of discretion, which requires the complaining party to show that the trial court's decision was against the logic of the circumstances and so arbitrary and unreasonable as to shock one's sense of justice. *Berry*, 397 S.W.3d at 431; *Bachman*, 344 S.W.3d at 267.

In cases involving a common fund, courts frequently apply a "percentage of recovery" or "percentage of the fund" approach in awarding attorneys' fees. *See Bachman*, 344 S.W.3d at 267 (awarding a percentage of the settlement value); *see also Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999) (noting the well-established rule that courts may use the percentage-of-the-benefit method in a common fund settlement case); *Hale v. Wal-Mart Stores, Inc.*, Nos. 01CV218710, 02CV227674, 2009 WL 2206963, ¶ 6 (Mo. Cir. Ct. Jackson Cnty. May 15, 2009) (Midkiff, J.) ("Missouri circuit courts recognize recovery of attorneys' fees as a percentage of the common fund.").[1] In applying the percentage of recovery method, a court must: "(1) value the proposed settlement; and (2) decide what percentage of the proposed settlement should be awarded as attorneys' fees." *Sutter v. Horizon Blue Cross Blue Shield of N.J.*, 966 A.2d 508, 519 (N.J. Ct. App. 2009). In this case, the Settlement provides $25,000,000.00 in benefits to the Class. To compensate Plaintiffs' counsel for the substantial time invested and risk incurred in prosecuting this action and achieving an excellent Settlement for the benefit of the Class, counsel requests an award of $7,000,000.00 in reasonable attorneys' fees and expenses, or approximately 28% of the value of the Settlement.

1. The Settlement Provides $25,000,000 in Benefits to the Class.

[1] The "percentage of the fund" approach is appropriately applied to claims-made settlements as well. *Marty v. Anheuser-Busch Cos.*, No. 13-cv-23656-JJO, 2015 WL 6391185, at *2 (S.D. Fla. Oct. 22, 2015). (affirming fee award of one-third of all funds made available to class members in a claims-made settlement).

The Settlement in this case provides $25,000,000 in benefits to the Class. In valuing a settlement for purposes of determining attorney's fees, "a court may use the scope of a claims-made fund (or its ceiling) as a valuation measure." William B. Rubenstein, NEWBERG ON CLASS ACTIONS § 15:56 (5th ed. Dec. 2016 update); *see Estrada v. iYogi, Inc.*, No. 2:13-01989 WBS CKD, 2016 WL 310279, at *6 (E.D. Cal. Jan. 16, 2016) ("When there is a claims-made settlement, such as here, the percentage of the fund approach in the Ninth Circuit is based on the total money available to class members, not just the money actually claimed."); *College Retirement Equities Fund, Corp. v. Rink*, 2015 WL 226112, at *5 (Ky. Ct. App. Jan. 16, 2015).

In addition, the Settlement Agreement provides that Defendants will pay the notice and claim administration costs, and that Defendant will pay up to $7,000,000.00 in attorney's fees, as well as up to $20,000 in incentive awards to the named Plaintiffs. Courts may include such notice and administration costs and attorney's fees as part of the benefit when calculating a percentage- of-the-benefit fee amount, as it is reasonable to consider such costs as a benefit to the class members. *Huyer v. Buckley*, 849 F.3d 395, 398 (8th Cir. 2017) (administration costs may be included in determining total value of settlement); *Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 282 (6th Cir. 2016) (total benefit to class includes attorney's fees and may include costs of administration); *Amunrud v. Sprint Commc'ns Co.*, No. CV 10-57-BLG-CSO, 2012 WL 443751, at *2 (D. Mont. 2012) ("it is appropriate to base the percentage [of the settlement] on the gross cash benefits available for class members to claim, plus the additional benefits conferred on the class by [the defendant's] separate payment of attorney's fees and expenses, and the expenses of administration").

In determining the value of the Settlement for purposes of awarding attorneys' fees under Missouri law, the Court should consider the value of the entire benefit conferred by the

Settlement, and not merely the number or value of the claims made by the Class Members for monetary relief. *Berry v. Volkswagen Group of Am., Inc.*, 397 S.W.3d 425, 428-29 (Mo. banc 2013) (affirming fee award in class action and rejecting arguments that the fee award should be limited by the total payout on claims made by class members); *Hale*, 2009 WL 2206963, ¶ 7 ("Class Counsel are entitled to a fee award based on the percentage of the entire Fund, regardless of the actual amount of claims made by the respective Class Members."); *see also Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 436 (2d Cir. 2007) ("An allocation of fees by percentage should therefore be awarded on the basis of the total funds made available, whether claimed or not."); *Amason v. Pantry, Inc.*, NO. 7:09-CV-02117-RDP, 2014 WL 12600263, at *2 (N.D. Ala. 2014) ("common-fund fee awards are properly calculated as a percentage of the benefits made available to the class, regardless of whether each class member redeems the benefits made available to class members, or even whether unclaimed benefits revert to the defendant").

2. The Amount of Class Counsel's Fee and Expense Request Falls within the Range Routinely Awarded by Courts in Class Actions.

Plaintiffs' counsels' total fee and expense request in the amount of $7,000,000.00 represents approximately 28% of the total value of the Settlement, which falls well within the range of awards routinely granted by Missouri courts. *See Bachman*, 344 S.W.3d at 267 (holding that a fee award of approximately one-third of the value of a settlement is "not unreasonable" in cases involving complex litigation or in the class action context);[2] *Hale*, 2009 WL 2206963, ¶ 30 ("The 38.3% fee requested in this case is customary and well in line with attorneys' fees awards in similar cases."); *McLean v. First Horizon Home Loan Corp.*, No. CV228590, 2007 WL 5674689, ¶ 11 (Mo. Cir. Ct. Jackson Cnty. June 7, 2007) (Scoville, J.) ("[33.3]% contingency fee

[2] The $21 million attorney fee award in *Bachman* was actually 35% of the $60 million value of the settlement, *see Bachman*, 2010 WL 5648344, ¶ 3 (trial court order), *aff'd*, 344 S.W.3d at 267.

is well within the average recovery from recent class action settlements.").

The fee request also falls within the range awarded in class actions by courts throughout the country, which generally recognize that fee awards as high as 50% of the gross settlement fund are reasonable. *See* NEWBERG ON CLASS ACTIONS, *supra*, § 15:83 (5th ed. December 2016 update) ("Usually, 50 percent of the fund is the upper limit on a reasonable fee award from a common fund, . . . though somewhat larger percentages are not unprecedented."); *Wells v. Allstate Ins. Co.*, 557 F. Supp. 2d 1, 7-8 (D.D.C. 2008) (noting that fee awards in common-fund cases may range up to 45%, and approving fee request of 45% of total gross recovery); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494, 499 (D.D.C. 1981) (awarding 45% of $7.3 million gross settlement fund as reasonable attorneys' fees); *see also Martin v. AmeriPride Servs., Inc.*, No. 08cv440-MMA (JMA), 2011 WL 2313604, at *8 (S.D. Cal. June 9, 2011) ("Other case law surveys suggest that 50% is the upper limit, with 30–50% commonly being awarded in cases in which the common fund is relatively small."). The requested fee of 28% percent of the value of the proposed Settlement is reasonable in light of the substantial monetary relief obtained by Class Counsel here and should be awarded.

3. Performing a Lodestar Cross-Check Further Confirms that Counsels' Fee Request is Reasonable.

In cases where an award of attorneys' fees is determined using the percentage of recovery approach, the lodestar approach is often used as a cross-check to test the reasonableness of the attorneys' fee award. *See, e.g.*, *Bachman*, 344 S.W.3d at 267 (approving trial court's consideration of lodestar cross-check as one of the factors considered by trial court in awarding fees to class counsel); *In re AT&T Corp.*, 455 F.3d 160, 164 (3d Cir. 2006) ("[T]he percentage-of-recovery method is generally favored because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure. But we have recommended

that district courts use the lodestar method to cross-check the reasonableness of a percentage-of-recovery fee award."); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 49-51 (2d Cir. 2000).[3]

The lodestar is calculated by "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Alhalabi v. Mo. Dep't of Natural Res.*, 300 S.W.3d 518, 530 (Mo. Ct. App. 2009). Here, as summarized in the attached table, Plaintiffs' attorneys and support staff have expended approximately 4331 hours of work in connection with this case, resulting in a lodestar attorneys' fees amount of $2,329,837. Plaintiffs' counsels' hourly rates used in calculating the lodestar are reasonable and in line with the hourly rates awarded in similar cases to counsel of similar skill and experience. These rates are consistent with the rates customarily charged by other attorneys in the community for similar work.

In fact, both state and federal courts in Missouri have repeatedly approved rates consistent with or in excess of these rates. In *Berry*, 397 S.W.3d 425, for instance, the Supreme Court of Missouri affirmed the trial court's award of attorneys' fees based on a lodestar calculation with rates of up to $650 per hour. *Id.* at 432 (stating that "Class counsel's . . . rates were reasonable."). Similarly, in *Plubell v. Merck & Co. Inc.*, No. 04CV235817-01 (Mo. Cir. Ct. Jackson Cnty., Mar. 15, 2013) (Roldan, J.), the Court awarded reasonable attorneys' fees to class counsel and found that rates as high as $675 per hour for partner time "are well within the rates normally charged for similar work by similarly qualified counsel in Missouri." *Id.*, Final Judgment and Order of Final Settlement Approval and Dismissal with Prejudice filed March 15, 2013 at 8-9. More recently, in *Pollard v. Remington Arms Co.*, No. 4:13-CV-00086-ODS, 2017 WL 991071 (W.D. Mo. Mar. 14, 2017), the court approved hourly rates for class counsel ranging from $261 through $897 and found that the average hourly fees were "not dissimilar to those

hourly rates charged in the area." *Id.* at *6.

In addition, the rates charged herein are well within hourly rates for this area as documented by the hourly rate surveys conducted annually by the Missouri Lawyers Weekly. Per the rates found reasonable in *Berry*, *Plubell* and *Pollard*, counsels' rates are reasonable for purposes of a lodestar cross-check.

In sum, the trial Court may consider the following factors in determining the reasonable value of the lodestar:

1. **The rates customarily charged by the attorneys in the case and by others in the community for similar services.**

   The rates charged herein by Plaintiffs' counsel and staff are well within the range of rates charged in the community for similar services.

2. **The number of hours reasonably expended on the litigation.**

   The hours expended by Plaintiffs' counsel are necessary and reasonable.

3. **The nature and character of services rendered.**

   Plaintiffs' counsel has litigated this case in four separate courts, including this Court, the Missouri Court of Appeals for the Eastern District, the United States District Court for the Eastern District of Missouri, and the Eighth Circuit Court of Appeals.

4. **The degree of professional ability required.**

   This is a complex case which has required an understanding of the MMPA and class action proceedings, remand practice and procedure both as to traditional diversity jurisdiction and jurisdiction under the Class Action Fairness Act, practice and procedure related to survey evidence and the calculation of damages related thereto, among many other legal issues that have been raised throughout the litigation. The degree of professional ability required to handle this case is very high.

5. **The nature and importance of the subject matter.**

   This case involves a matter of importance to the citizens of Missouri as it involved a local controversy between the Rams, their ownership and Missouri citizens. Plaintiffs alleged that the Rams owner made statements assuring that he would protect the interests of Missourians as it related to the Rams since the owner was a long time Missourian who could be trusted.

6. **The amount involved or the result obtained.**

   As discussed herein, Plaintiffs' counsel obtained a favorable result of $25,000,000 in available refunds for the class. Plaintiffs' counsel obtained this result despite arguments advanced by the Rams and their experts throughout the litigation that the Class members received the tickets and merchandise and used the tickets and merchandise that they paid for and therefore legally are not entitled to any refund on their purchases.

7. **The vigor of the opposition.**

   This case was vigorously defended by defense counsel. The Rams were defended by one of the largest law firms in the world. The lawyers handling this case for the Defendants are veteran attorneys with experience in class action and complex litigation. As noted above, the defendants asserted multiple motions to dismiss, a motion for summary judgment, and multiple petitions to multiple appellate courts and the Missouri Supreme Court.

Clearly the lodestar presented is reasonable.

Once the lodestar is established, the Court may consider applying a reasonable multiplier. In determining whether the fee request by Class Counsel is reasonable under the lodestar cross-check, application of a reasonable multiplier is appropriate. In *Berry*, 397 S.W.3d at 433, the

Supreme Court of Missouri indicated that a multiplier should be applied where it is "necessary to ensure a market fee that compensate[s] class counsel for taking [the] case in lieu of working less risky cases on an hourly basis." In deciding whether a multiplier is appropriate, courts consider factors including (a) the risk class counsel assumed in taking the case on a contingent fee basis, unlike the hourly fees received by Defendant's counsel; (b) whether undertaking the representation precluded class counsel from accepting other employment that would have been less risky; and (c) whether the time demands of the case delayed work on class counsel's other work. *See id.* at 432. Here, Plaintiffs' counsels' unadjusted lodestar is $2,329,837. The $6,746,189.30 fee requested (the $7,000,000 request includes $253,810.75 in reasonable litigation expenses[4]) represents a lodestar multiple of approximately 2.9, which is well within the range of multipliers regularly approved in class actions in Missouri. *See Berry*, 397 S.W.3d at 433 (affirming attorney's fee award based on lodestar multiplier of 2.0); *Hale*, 2009 WL 2206963, at ¶ 15 (a 2.3 multiplier is "well within the range of multipliers found reasonable for cross-check purposes by courts in similar complex class actions[.]"); *Mitchell v. Residential Funding Corp.*, No. 03-CV-220489 (Mo. Cir. Ct. Jackson Cnty. June 24, 2008) (Del Muro, J.) (awarding nearly $37 million in attorney's fees as a percentage of the settlement, representing an approximate 10.9 multiplier of the lodestar); *McLean*, 2007 WL 5674689, at ¶ 11 (approving

[4] To date, Class Counsel has incurred $253,810.75 in litigation costs and expenses, which include filing fees, service of process fees, travel costs, computerized legal research and document retrieval, and postage. Each of these costs and expenses were reasonably incurred and were appropriate and necessary to the effective prosecution of this case. *Id.* Expenses of this type are typically awarded to class counsel. *See* 2 Joseph M. McLaughlin, MCLAUGHLIN ON CLASS ACTIONS § 6:24 (8th ed. 2011) (noting that "class counsel also is entitled to reimbursement from the class recovery (without interest) for the costs and reasonable out-of-pocket expenses incurred in prosecuting the litigation"); *Hale v. Wal-Mart Stores, Inc.*, Nos. 01CV218710, 02CV227674, 2009 WL 2206963, ¶ 30 (Mo. Cir. Ct. Jackson Cnty. May 15, 2009) (Midkiff, J.) ("computer-assisted research, photocopying, telephone, facsimile charges, postal messenger, express mail, deposition fees, transcripts, expert witnesses, travel and meals, and subpoena services are reasonably incurred in connection with the prosecution of a [modern], complex litigation.").

2.75 multiplier to account "for the significant risk of non-recovery" and other considerations); *see also* NEWBERG ON CLASS ACTIONS, *supra*, § 15:86 (5th ed. June 2017 update) ("Positive multipliers from 1-3 are the norm, though higher multipliers are not unheard of and may well be warranted in certain circumstances.").

In this case, the modest lodestar multiplier of 2.9 is well within the range of multipliers approved in comparable class action cases with comparable results. Unlike counsel for Defendant, Class Counsel has not received any compensation or reimbursement for the substantial time and money it has invested in and risk it has incurred prosecuting this Action.

Instead, Class Counsel has prosecuted this action solely on a contingency basis, incurring the substantial risk that it might not receive any compensation at all. Furthermore, application of a multiplier in this case (as well as in similar cases) will help ensure that qualified counsel are willing to incur significant risks of non-payment in future cases and, therefore, will promote the remedial and deterrent purposes of the MMPA. *See Zweig v. Metro St. Louis Sewer Dist.*, 412 S.W.3d 223, 250 (Mo. banc 2013) (finding a multiplier justified in the case to ensure adequate representation for similar claims in the future); *Lealao v. Beneficial California, Inc.*, 82 Cal. Rptr. 4th 19, 53, 97 Cal. Rptr. 797, 823 (Cal. Ct. App. 1st Dist. 2000) (class action "fee awards that are too small can also be problematic, as they chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims").

In sum, this case meets all of the requirements necessary for a lodestar multiplier as follows:

a. Plaintiffs' counsel has handled this case on a purely contingent basis and has received no fee to date. This has been a hotly contested case from the beginning and Plaintiffs' counsel have assumed the risk throughout of

receiving no fee for the thousands of hours of work and time invested. Plaintiffs' counsel have also assumed the risk of expending over $250,000 in litigation expenses on behalf of the Class.

b. Undertaking this representation precluded Class counsel from accepting other less risky cases. By the time of the effective date of this settlement, this case will have been heavily litigated for over four years. Plaintiffs' counsel have already invested over 4,000 hours prosecuting this case and will certainly be required to expend significant additional time and resources through the final settlement date.

c. The extensive time demands of this case have delayed work on Class counsel's other cases.

II. The Requested Incentive Awards are Reasonable and Should Be Approved.

Plaintiffs and Class Counsel also apply for incentive awards to Plaintiffs Pudlowski, Henry, Henry and Cross to recognize their initiative and efforts in bringing and prosecuting this case on behalf of the Class. Plaintiffs and Class Counsel respectfully request that the Court approve a reasonable incentive award of $5,000.00 to each Plaintiff. "The purpose of incentive awards, or supplemental compensation, for class representatives is to encourage people with significant claims to pursue actions on behalf of others similarly situated." *Hale*, 2009 WL 2206963, ¶ 43; *see also* MCLAUGHLIN ON CLASS ACTIONS, *supra*, § 6:28 ("[I]t is fair and reasonable to compensate class representatives, ordinarily within the range of $1,000-$20,000, for the efforts they make in obtaining a recovery on behalf of the class."); *Caligiuri v. Symantec Corp.*, No. 16-2015, 2017 WL 1521523, at *6 (8th Cir. Apr. 28, 2017) ("courts in this circuit regularly grant service awards of $10,000 or greater"); *Bachman*, 2010 WL 5648344, ¶ 4 (awarding $10,000 each to the two representative plaintiffs); *Hale*, 2009 WL 2206963, ¶ 46

(awarding $20,000 to each of the class representatives). In other words, "incentive awards promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits." *Ketty v. Parkinson's Specialty Care, LLC*, No. 14-cv-04849 (MJD/JSM), 2016 WL 3036300, at *2 (D. Minn. May 27, 2016). In determining an incentive award, the Court should consider: "(1) the actions the named class representatives have taken to protect the interests of the class; (2) the degree to which the class has benefited from those actions; and (3) the amount of time and effort the named class representatives expended in pursuing the litigation." *Hale*, 2009 WL 2206963, ¶ 43.

Here, Plaintiffs have been instrumental to the prosecution and successful resolution of this case. Their contributions have been active and meaningful throughout the case, from the pre-suit investigation to the negotiation of the Settlement and resolution of the case. Each of the named Plaintiffs has attended multiple meetings with Plaintiffs' counsel, has answered interrogatories and responded to requests to produce documents, and has given their deposition. As a result of Plaintiffs' dedication to the Class, Class Counsel was able to prosecute this action and achieved an excellent result for the entire Class. Simply put, the substantial results obtained for the Class would not have been possible without the efforts of Plaintiffs. *See In re Aquila ERISA Litig.*, No. 04-00865-CV-DW, 2007 WL 4244994, at *3 (W.D. Mo. Nov. 29, 2007) (awarding incentive awards ranging from $5,000 to $25,000 to the named plaintiffs, reasoning that "[w]ithout the participation of the named plaintiffs, there would have been no case and no settlement"). In light of the substantial benefits provided by the Settlement, which Plaintiffs made possible through their initiative and efforts, Plaintiffs and Class Counsel submit that the requested incentive award of $5,000 per Plaintiff is fair and reasonable. *See Jordan v. Paul Financial, LLC*, No. C 07-04496 SI, 2013 WL 6086037, at *3 (N.D. Cal. Nov. 19, 2013) ("In general, courts have found incentive awards of $5,000 for service to a class to be presumptively

reasonable.").

Conclusion

For the foregoing reasons, Plaintiffs respectfully request that the Court award Plaintiffs' Counsel $6,746,189.30 in reasonable attorney's fees, expenses of $253,810.75 incurred in prosecuting this action, and $5,000 each incentive awards to Plaintiffs Pudlowski, Gail Henry, Steve Henry and Louis Cross to be paid by the Defendant.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certify that on September 18, 2019, the foregoing was electronically filed with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Steven J. Stolze
Attorney for Plaintiffs

EXHIBIT A

Attorney	Hourly Rate	Total Hours	Lodestar
Steven Stolze (lead counsel)	$675	1909.8	$1,289,250
Dan DeFeo (Principal DeFeo Law)	$600	1288	$772,800
Thayer Weaver (Principal Weaver Law)	$425	146.5	$62,071
Dominic DeFeo (associate)	$225	750	$168,750
Erika Dopuch (associate)	$225	13.8	$3,105
Angelia Lett (support staff)	$150	125.75	$18,862
James Kirkpatrick (support staff)	$150	97.3	$14,595
Totals:		**4331**	**$2,329,837**

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

JAMES PUDLOWSKI, LOUIS C. CROSS, III, GAIL HENRY, and STEVE HENRY, on Behalf of themselves and all others similarly Situated,	)	Case No. 1622-CC00083
	)	Division: 8
Plaintiffs,	)	
v.	)	
THE ST. LOUIS RAMS, LLC, THE ST. LOUIS RAMS PARTNERSHIP,	)	
Defendants.	)	

DECLARATION OF STEVEN J. STOLZE

1. I was admitted to practice law in the State of Missouri in 1989, and have been a licensed Missouri attorney in good standing continuously since that time - approximately thirty (30) years. Throughout my career, I have handled and/or have been involved in many complex litigation matters, including class action and mass tort lawsuits.

2. I have been actively involved in the prosecution of the instant class action case on behalf of Plaintiffs ("Plaintiffs") and the Class.

Background and Factual Summary

A. The Pleadings

1. Plaintiffs' Claims

This action arises out of Plaintiffs' allegation that the Rams made misleading statements and omissions between 2010 and 2016 regarding the team's future location and that Missouri citizens who purchased tickets and merchandise during that time period suffered economic

damages in that the products they purchases were worth less than the products they thought they were purchasing had the Ram's representations been true regarding the Rams future location. Plaintiffs allege that certain statements and omissions made by the Defendant in this regard violated the Missouri Merchandising Practices Act, Section 407.010 RSMO, et seq. (MMPA). Plaintiffs seek a partial refund of money paid for Rams' tickets and merchandise during the class period.

Plaintiffs filed this case in this Court on January 13, 2016. They brought claims on behalf of themselves and a putative class of Rams customers. After Plaintiffs filed their Petition, Defendant removed this case to the United States District Court for the Eastern District of Missouri. See *Pudlowski v. St. Louis Rams, LLC,* No. 4:16-cv-00189-RLW.

Plaintiffs filed a Motion to Remand this case to this Court. The motion was extensively briefed by both parties. On May 10, 2016, the District Court granted the motion and remanded this case to this Court. However, Defendant filed a Petition for Leave to Appeal the Remand Order with the United States Appellate Court for the Eighth Circuit. The Eighth Circuit granted the Defendant's Petition and on July 19, 2016 reversed the District Court's Order granting remand and sent this case back to the U.S. District Court for the Eastern District of Missouri for further proceedings.

Plaintiffs filed additional briefing in support of their Motion to Remand this case to this Court. The parties again extensively briefed the issue. On this occasion, the U.S. District Court denied the motion to remand. Subsequently, Plaintiffs filed a motion to reconsider the denial of remand. The motion was granted and the Plaintiffs were granted the right to conduct jurisdictional discovery regarding the remand issue. After extensive discovery and expert testimony on the issue,

Plaintiffs renewed their motion to remand.

On March 21, 2018, the U.S. District Court granted the motion and remanded this case to this Court. Defendant again filed a Petition for Leave to Appeal the remand with the U.S. District Court for the Eighth Circuit. The Eighth Circuit denied the Petition.

B. The Course of This Litigation in This Court

From the beginning, this lawsuit has been hotly contested, marked by frequent motions filed by both sides.

1. Motions to Dismiss

The Rams filed motions to dismiss in both federal court and this court. The motion in federal court was denied as moot when this case was remanded. The motion in this Court was extensively briefed by both parties and was denied.

2. Discovery

The parties exchanged responses to written discovery and produced thousands of pages of documents. The Plaintiffs obtained the Rams available data regarding ticket and merchandise purchasers, including data for those whom purchased from the Rams electronically through the Rams website or through Ticketmaster. The plaintiffs also obtained thousands of documents from the Rams related to their relocation.

3. Expert Witnesses

The Plaintiffs designated Dr. Charles Cowan as an expert witness both as to jurisdiction and class certification. Dr. Cowan is an economist, statistician and survey expert with an extensive career working for the U.S. government and in private practice. Dr. Cowan conducted surveys to determine the economic effect to the Class of the Rams alleged misrepresentations regarding their

relocation out of St. Louis. Dr. Cowan produced multiple reports and was deposed on multiple occasions.

4. Motion for Class Certification

In the fall of 2018, Plaintiffs filed a motion for class certification. The motion was extensively briefed by both parties. In all, over a thousand pages of exhibits and testimony were presented to this Court in support of an in opposition to the motion for class certification. The Court held a hearing on January 23, 2019 and accepted arguments and evidence from both parties on the motion.

On February 6, 2019, the Court granted the motion and certified the class as follows:

> All Missouri residents who were Missouri citizens and remained Missouri citizens when this action was commenced who purchased Rams' tickets and/or merchandise between April 21, 2010 and January 4, 2016, in the State of Missouri for personal, family or household purposes.
> Excluded from the class are named Plaintiffs' counsel and their agents. Also excluded from the class are Defendants and any entity in which Defendants have a controlling interest, and Defendant's legal representatives, heirs and successors; the judicial officers assigned to this litigation and their staff and immediate families.

5. Motion for Summary Judgment

In addition to the above, the parties engaged in active and hotly disputed motion practice. (Plaintiffs omit some discovery motions from this discussion.) On March 8, 2019, Defendant filed a Motion for Summary Judgment asking the Court to dismiss the case in its entirety. Plaintiffs filed a motion to extend their time to respond to the summary judgment motion until such time as the Rams complied in full with all of the Plaintiffs' outstanding discovery requests, including Plaintiffs' pending video deposition of the Rams owner and their chief operating officer. The Court granted Plaintiffs' motion in this regard.

6. The Rams' Petition to Appeal

The Rams sought to overturn the Court's class-certification order in a request for permission to appeal filed in the Missouri Appellate Court for the Eastern District. This motion was extensively briefed by the parties and was denied by the appellate court. Defendant then filed a petition for a writ of prohibition with the Missouri Supreme Court. This writ was pending when the parties reached the settlement agreement.

7. Mediation

This settlement resulted from a lengthy mediation process, with two all day face to face mediation sessions and multiple telephonic mediation sessions spaced out over approximately 30 days. On February 27, 2019, the Court referred this case to Alternative Dispute Resolution. The parties selected the Honorable Jay Daugherty, former longtime Missouri Circuit Court Judge and currently highly decorated mediator as the neutral. The parties held a mediation session before Judge Daugherty on April 1, 2019, but broke off discussions when it was clear that the case could not then be settled.

The parties conducted their second mediation session several weeks later. That session was unsuccessful, and the parties agreed to continue settlement discussions with the aid of Judge Daugherty. Specifically, the parties agreed that Judge Daugherty would submit a mediator's settlement proposal to both sides. This proposal would take into account all of the legal and factual issues presented by the case, and Judge Daugherty would present a proposed settlement which he believed was fair and equitable to both the Rams and the Class. Both parties would be free to either accept or reject the mediator's proposal.

Ultimately, the parties reached agreement. They agreed on a claims-made process, with a

mandatory verified claim form for any Class Member seeking an award, pursuant to which the Rams agreed to pay up to a cap of $25 million. The parties agreed that notice would be provided via email and/or postcard to those class members listed in data maintained by the Rams. Notice would also be made by publication in the St. Louis *Post-Dispatch*. .

B. The Settlement Agreement

Following the mediation, the parties continued to engage in arm's-length negotiations over the terms of a formal Settlement Agreement. Those discussions continued for several months before the parties memorialized their Settlement Agreement, which is attached to the motion for preliminary approval as Ex. 1. Here is a summary of its most important terms.

1. The Class

The class is precisely what the Court certified:

> All Missouri residents who were Missouri citizens and remained Missouri citizens when this action was commenced who purchased Rams' tickets and/or merchandise between April 21, 2010 and January 4, 2016, in the State of Missouri for personal, family or household purposes.
> Excluded from the class are named Plaintiffs' counsel and their agents. Also excluded from the class are Defendants and any entity in which Defendants have a controlling interest, and Defendant's legal representatives, heirs and successors; the judicial officers assigned to this litigation and their staff and immediate families.

Purchasers may opt out of the Class, in which case they will not be bound by any orders or judgments in this case, not be entitled to relief, and not be affected under the Settlement Agreement. Those who opt out will also not release any claims by virtue of the Settlement Agreement, or be entitled to object to it.

2. Monetary Relief for the Classes

Subject to a damages cap and on a claims-made basis, the Rams will pay each Class

Member a 25% refund for all amounts spent on Rams tickets and merchandise during the class period. If the dollar amount of all approved claims exceeds the cap, then individual payments to Class Members will be reduced pro rata so that the pay-out to the Class will not exceed $25 million. Any pro rata adjustment will be as approved by Judge Daugherty.

Attorneys' Fees and Expenses Incurred

3. Class Counsel has prosecuted this class action lawsuit on a contingency fee basis. To date, Class Counsel has not received any compensation or reimbursement for the substantial resources - both in time and money - that it has dedicated, or for the substantial risk that it has incurred, with respect to prosecuting this complex class action lawsuit. Consistent with the contingent-fee model and the percentage-of-the fund approach discussed below, Class Counsel requests a total award of $7,000,000.00 for reasonable attorneys' fees and litigation expenses. As part of the $7,000,000.00, this request seeks reimbursement of $253,810.75 in litigation costs and expenses, which include filing fees, service of process fees, travel costs, expert witness fees, computerized legal research and litigation support fees such as court reporters and deposition fees. Each of these costs and expenses were reported to me by the principals of the firms incurring the expenses as reasonably incurred and appropriate and necessary to the effective prosecution of this case.

4. In my professional judgment, based on nearly thirty (30) years of experience litigating high-stakes, complex cases, including class actions, the fee and expense award requested is reasonable and should be approved.

5. In connection with my practice, I keep myself apprised of national, regional, and local attorney hourly rates and, in doing so, consult published data about such hourly rates. I also

make reasonable efforts to keep myself apprised of relevant Missouri and other case law concerning awards of attorneys' fees in class actions. One such resource I have consulted in this regard is the annual "Billing Rates" issue of *Missouri Lawyers' Weekly*. Based on this data and my own personal experience, I have become knowledgeable about attorneys' fees that have been charged and awarded as well as the attorney hourly rates charged and awarded in similar class action cases.

6. As described above, the Settlement achieved in this case through Class Counsel's efforts provides $25,000,000.00 in benefits to the Class. The attorneys' fee and expense award of $7,000,000.00 requested in the Application represents approximately 28% of the total $25,000,000.00 value of the Settlement.

7. The reasonableness of the instant request is confirmed by a lodestar cross- check. The total number of hours that Class Counsel's attorneys and support staff devoted to this case through September 18, 2019 is reflected in the table attached hereto as Exhibit A. The table is organized by timekeeper and shows the lodestar calculation based on the hours worked and the hourly rate of each respective attorney or staff member. As shown in the table, the base lodestar for the services rendered with respect to the instant lawsuit is $2,329,837. Thus, the total fee request of $6,746,189.30 would reflect a multiplier of approximately 2.9 times this lodestar. Such a modest multiplier is quite reasonable in light of the multipliers approved in the past by Missouri courts in class action lawsuits. *See, e.g., Hale*, 2009 WL 2206963 (finding a 2.3 lodestar multiplier reasonable); *McLean v. First Horizon Home Loan Corp.*, No. CV228590, 2007 WL 5674689 (Mo. Cir. Ct. Jackson Cnty. June 7, 2007) (Scoville, J.) (approving a 2.75 lodestar multiplier to account "for the significant risk of non-recovery" and other considerations). I believe a multiplier would be appropriate in this case because the fee to be received by Class Counsel was always contingent,

unlike the fees of counsel for Defendant, taking this case precluded Class Counsel from accepting other employment that would have been less risky, and Class Counsel's work on this case delayed Class Counsel's ability to perform other work.

8. Based on my knowledge of reported hourly rates typically charged in the area for class actions, the hourly rates charged by Class Counsel for its legal services rendered in this case - lead counsel at $675 per hour, partners at $600 and $425 per hour, associates at $225 per hour and staff members at $150 per hour - are consistent with the rates customarily charged in the region by similarly experienced and skilled attorneys for similar class action representation. In *Berry v. Volkswagen Group of Am., Inc.*, 397 S.W.3d 425 (Mo. bane 2013), for instance, the Supreme Court of Missouri affirmed the trial court's award of attorneys' fees based on a lodestar calculation with rates of up to $650 per hour. *Id.* at 432 (stating that "Class counsel's ... rates were reasonable."). Similarly, in *Plubell v. Merck & Co. Inc.*, No. 04CV235817-01 (Mo. Cir. Ct. Jackson Cnty., Mar. 15, 2013) (Roldan, J.), the court awarded reasonable attorneys' fees to class counsel and found that rates as high as $675 per hour for partner time "are well within the rates normally charged for similar work by similarly qualified counsel in Missouri."

9. As shown in Exhibit A, Class Counsel has invested over 4330 hours in the prosecution of this class action case to its successful conclusion with the Settlement it achieved for the Class. Because Class Counsel represents Plaintiffs and the Class on a contingency fee basis, it has an interest in prosecuting this matter efficiently. All of the time expended and hourly rates reflected in Exhibit A were reported and confirmed by the principals of the respective law firms. Although the firms prosecuting this case typically represent plaintiffs on a contingency basis rather than charging by the hour, the rates noted in Exhibit A are reflective of rates charged by other

attorneys in the community for similar services based upon the reported cases cited.

10. The overall degree of professional ability and skill required to prosecute this case and achieve a successful outcome was high. The attorneys have substantial experience in litigating complex cases.

11. In my opinion, without the experience, professional ability, and determination of the attorneys during the prosecution of this case and negotiation of the Settlement and Settlement Agreement, the Class would not have obtained such a favorable recovery.

The declarant confirms under penalty of perjury the foregoing is true and correct.

/s/Steven Stolze