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

CECELIA ROBERTS WEBB, *et al.*, )
Individually and on behalf of all others )
similarly situated, )
)
Plaintiffs, )
)
v. ) Case No. 4:16-CV-1703-CDP
)
THE CITY OF MAPLEWOOD, )
)
Defendant. )

**MOTION FOR AN AWARD OF ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS**

Plaintiffs Cecelia Roberts Webb, Logan C. Yates, Personal Representative of the Estate of Darron T. Yates, Deceased, Anthony Lemicy, and Frank Williams ("Plaintiffs"), on behalf of themselves and all others similarly situated, move this Court for an Order awarding attorneys' fees in the amount of $1,083,333.33 and reimbursement of costs in the amount of $132,365.76. In addition, Plaintiffs move for Service Awards of $7,500 for each of Class Representatives Cecilia Roberts Webb, Logan C. Yates, Personal Representative of the Estate of Darron T. Yates, Deceased, Anthony Lemicy, and Frank Williams. As set out more fully in the accompanying Memorandum in support of this motion, Plaintiffs state as follows:

1. Plaintiffs allege that Defendant City of Maplewood, Missouri ("Maplewood" or "Defendant") violated the United States Constitution and Missouri law by implementing a systematic "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 detaining them pursuant to the payment of a sum of money, all without any inquiry into their ability to pay. *See* Dkt. No. 1.

The lawsuit sought damages and injunctive relief for each alleged violation, as well as costs and attorneys' fees. *Id.*

2. Maplewood has denied liability and asserted multiple affirmative defenses. *See* Answer to Class Action Complaint. Dkt. No. 37.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, on November 18, 2021, the Court granted Plaintiffs' Motion for Class Certification, certifying two Rule 23(b)(3) damages classes and one Rule 23(b)(2) class seeking only injunctive relief. Dkt. No. 202. The Court also appointed Nathaniel Carroll and Blake Strode of Arch City Defenders, Inc.; Andrea R. Gold of Tyco & Zavareei LLP; and Ryan Keane of Keane Law LLC as Class Counsel for the certified classes, and appointed Cecelia Roberts Webb, Darron T. Yates, Anthony Lemicy, and Frank Williams as Class Representatives. *Id.*

4. On June 21, 2022, after six years of litigation that included an appeal to the U.S. Court of Appeals for the Eighth Circuit on Maplewood's motion to dismiss, nearly a dozen depositions, the production of tens of thousands of pages of documents, the grant of a contested motion for class certification after full briefing and a lengthy oral argument, extensive briefing on Maplewood's motion for summary judgment, substantial preparation by both parties for a two-week jury trial scheduled for August 8, 2022, and much negotiation, the parties arrived at a Settlement that will provide meaningful cash compensation, as well as other relief, to the Classes and avoid the risks and delay of further litigation.

5. On November 1, 2022, this Court preliminarily approved the Settlement, finding it to be fair, reasonable, and adequate, and in the best interest of Class Members. *See* Dkt. No. 261. The Court also preliminarily certified an additional class—the Remaining Paid Fines Class—for settlement purposes only, preliminarily appointed Plaintiffs Frank Williams, Cecelia Roberts

Webb, and Logan C. Yates, Personal Representative of the Estate of Darron T. Yates, Deceased, as Class Representatives for the Remaining Paid Fines Class, preliminarily appointed the undersigned as Class Counsel for the Remaining Paid Fines Class, and directed Notice of the Settlement to be issued to Settlement Class members. *Id.* at 5-8. Plaintiffs will separately file a Motion for final approval of the Settlement and certification of the Remaining Paid Fines Class. *Id.* at 7. The Final Approval Hearing is scheduled to be held on Wednesday, April 5, 2023. *Id.*

6. Pursuant to the Settlement Agreement, Dkt. No. 260-1, Maplewood has agreed to pay $3,250,000.00 into a common fund account for the benefit of all Settlement Class members.

7. Plaintiffs request this Court's approval of $1,083,333.33 in attorneys' fees, representing one-third of the gross settlement amount, as well as reimbursement of costs in the amount of $132,365.76. The award of this percentage is supported by the outstanding results achieved for the Settlement Class members' benefit and the significant risk incurred in taking on a complex class action like this one, which involves questions of constitutional law and interpretation as well as issues of sovereign immunity and municipal liability, on a contingency basis.

8. Use of the percentage method in this Circuit is well established. *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999). Indeed, where fees are distributed from a common fund, it is the preferred method. *See West v. PSS World Med., Inc.*, 2014 WL 1648741, at *1 (E.D. Mo. Apr. 24, 2014) ("[W]here attorney fees and class members' benefits are distributed from one fund, a percentage-of-the-benefit method may be preferable to the lodestar method for determining reasonable fees." (citations omitted)); *accord Barfield v. Sho-Me Power Elec. Co-op.*, 2:11-CV-4321NKL, 2015 WL 3460346, at *3 (W.D. Mo. June 1, 2015); *Wiles v. Southwestern Bell Tel. Co.*, 09-4236-CV-C-NKL, 2011 WL 2416291, at *4 (W.D. Mo. June 9, 2011); *see also In re*

*Chrysler Motors Corp. Overnight Evaluation Program Litig.*, 736 F. Supp. 1007, 1008-09 (E.D. Mo. 1990) (percentage of fund "is a more appropriate and efficient means of calculating an attorneys' fee award" than the lodestar method).

9. 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. *See, 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*, 2014 WL 1648741, at *1 (same); *Barfield*, 2015 WL 3460346, at *4 (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*, 2011 WL 2416291, at *4-5 (33% of fund reasonable).

10. Courts may, but are not required to, use the lodestar method to cross-check the fairness of a percentage award. *See Petrovic*, 200 F.3d at 1157 (the lodestar approach is "sometimes warranted to double-check the result of the 'percentage of the fund method'"). Here, the hours and rates of Class Counsel are summarized and submitted for the Court's examination. "[A] court performing a lodestar cross check need not scrutinize each time entry; reliance on representation by class counsel as to total hours may be sufficient." *In re NuvaRing Prods. Liab. Litig.*, No. 4:08 MDL 1964 RWS, 2014 WL 7271959, at *4 (E.D. Mo. Dec. 18, 2014); *accord In re Genetically Modified Rice Litig.*, No. 4:06 MD 1811 CDP, 2012 WL 6085153, at *10 (E.D. Mo. Nov. 2, 2012), *report and recommendation adopted*, No. 4:06MD1811 CDP, 2012 WL 6085141 (E.D. Mo. Dec. 6, 2012), *aff'd*, 764 F.3d 864 (8th Cir. 2014) ("[T]the court may rely

on summaries of attorneys and need not review actual billing records."). Should the Court wish to undertake a full lodestar cross-check, Class Counsel will provide more detail upon request.

11. Plaintiffs' Counsel (which includes Class Counsel and Appellate Counsel) expended a total of 4,467.6 hours of attorney time as of this date. This total does not include the additional time Class Counsel will spend seeking final approval of the settlement and, if final approval is granted, the time expended thereafter during the notice and claim administration process.

12. Based on the hours expended, and reasonable rates "normally charged in the community where the attorney practices," *In re Genetically Modified Rice Litig.*, 2012 WL 6085153, at *8, and even using a below-market-average rate of $300 per hour, Plaintiffs' Counsel's lodestar is at least $1,340,280. The resulting cross-check multiplier is 0.8—a *negative multiplier*—which is well within the range of those applied in comparable cases. *See Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019) ("And while the 5.3 lodestar multiplier is high, it does not exceed the bounds of reasonableness.").

13. The reasonableness of the requested fee award—under either the percentage method or the lodestar method—is supported by the "*Johnson*" factors approved in the Eighth Circuit. *See Barfield*, 2015 WL 3460346, at *5 ("Although the Eighth Circuit has not formally established fee-evaluation factors, . . . it has approved consideration of the twelve factors set forth in *Johnson v. Georgia Highway Express*, 488 F.2d 714, 719-20 (5th Cir. 1974)."). Particularly in light of the significant risks of litigation in this case, the Settlement is an exceedingly good one for the Classes. It provides for significant monetary relief to Settlement Class members, as well as valuable additional consideration and relief. The case was prosecuted on a contingent basis, entailing substantial risk that the litigation would yield little or no recovery or compensation. The

factual and legal issues are complex, and Class Counsel expanded significant time, effort, and resources vigorously litigating this case through multiple motions to dismiss, an appeal to the Eighth Circuit, voluminous discovery, a contested motion for class certification, summary judgment briefing, and final pre-trial preparation. Finally, Class Counsel are highly experienced litigators in complex class-action and/or multidistrict litigation and have been recognized for high quality work and skill.

14. Finally, Plaintiffs also seek Service Awards in the among of $7,500 for each of Class Representatives Cecilia Roberts Webb, Logan C. Yates, Personal Representative of the Estate of Darron T. Yates, Deceased, Anthony Lemicy, and Frank Williams for their service in representing and zealously advocating on behalf of Class Members. "Courts often grant service awards to named plaintiffs in class action suits to 'promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits.'" *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 867 (8th Cir. 2017). The Service Awards requested here are within the range typically approved by courts in this Circuit. *Id.* ("[C]ourts in this circuit regularly grant service awards of $10,000 or greater."). Such Service Awards are clearly warranted here, where each of the Class Representatives was integral to the investigation and development of the case and complaints, was deposed at length by Maplewood counsel, responded to significant written discovery, and was prepared to testify at trial.

WHEREFORE, for the reasons discussed herein and the accompanying Memorandum in support of this motion, the Court should approve Plaintiffs' request for $1,083,333.33 in attorneys' fees, $132,365.76 in reasonable costs, and service awards of $7,500 for each of the Class Representatives.

Dated: December 14, 2022

Respectfully submitted,

**ArchCity Defenders, Inc.**

By: /s/ *Nathaniel R. Carroll*

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

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|---|---|---|
| CECELIA ROBERTS WEBB, *et al.*, | ) | |
| Individually and on behalf of all others | ) | |
| similarly situated, | ) | |
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| | ) | |
| v. | ) | Case No. 4:16-CV-1703-CDP |
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| THE CITY OF MAPLEWOOD | ) | |
| | ) | |
| Defendant. | ) | |

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

## I. INTRODUCTION

Plaintiffs Cecelia Roberts Webb, Logan C. Yates, Personal Representative of the Estate of Darron T. Yates, Deceased, Anthony Lemicy, and Frank Williams ("Plaintiffs") submit this memorandum in support of Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards. The Settlement reached with the City of Maplewood, Missouri ("Maplewood" or "Defendant") in this case is the result of extensive investigation, work, and negotiation. It achieves both monetary and nonmonetary relief for Settlement Class members and should be approved. Pursuant to the Court's Preliminary Approval Order (Dkt. No. 261), Plaintiffs requests an award of attorneys' fees in the amount of $1,083,333.33, reimbursement of costs in the amount of $132,365.76, and Service Awards of $7,500 for each of the Class Representatives. The requested attorneys' fees represent one-third of the gross $3,250,000.00 non-reversionary cash Settlement Fund. In light of the work performed by Plaintiffs' Counsel and the substantial time, effort, and personal sacrifice of the Class Representatives, the attorneys' fees, costs, and Service Awards sought in this Motion are reasonable. For all of the reasons set forth herein, Plaintiffs request that the Court grant these

awards.

## II. BACKGROUND

Class Counsel have devoted substantial time and resources to investigating, litigating, and resolving this case. *See* Declaration of Nathaniel R. Carroll ("Carroll Decl."), attached hereto as Exhibit 1, at ¶¶ 4-11. Beginning on November 1, 2016, the named Plaintiffs Cecelia Roberts Webb, Darron T. Yates, Frank Williams, Anthony Lemicy, Krystal Banks, and Robert Eutz[1] filed their Complaint, asserting claims under 42 U.S.C. § 1983 that Maplewood violated their constitutional rights, as well as asserting Missouri state law claims. In drafting the Complaint, Class Counsel engaged in extensive review of the laws asserted and evaluated potential class representatives. Carroll Decl. ¶¶ 4-5. Maplewood filed a Motion to Dismiss the Complaint on December 29, 2016, Dkt. No. 14, which was denied on June 5, 2017, Dkt. No. 35. Maplewood then filed its Answer to the initial Complaint on June 16, 2017. Dkt. No. 37. That same day, Maplewood sought interlocutory appeal, Dkt. No. 38, which was accepted by the Eighth Circuit. The Eighth Circuit ultimately affirmed the district court's denial of Maplewood's Motion to Dismiss on May 4, 2018.[2] Dkt. No. 49. The district court case was stayed while Maplewood's appeal was pending. Maplewood unsuccessfully sought a writ from the United States Supreme Court, which was denied on October 29, 2018. *See* Dkt. No. 62.

Discovery commenced thereafter. In connection with discovery, Class Counsel prepared and served initial disclosures, lengthy interrogatories, and two comprehensive sets of document requests; responded to discovery requests, including interrogatories to each named plaintiff;

[1] The claims of additional plaintiffs Robert Eutz and Krystal Banks were dismissed from this action on February 7, 2019.

[2] Because Class Counsel appreciated the importance of the legal questions at stake in the appeal, the services of noted appellate firm, Gupta Wessler PLLC, were retained. Gupta Wessler PLLC was retained only for purposes of the appellate briefing in the Eighth Circuit, and is being compensated for their work under a separate arrangement with Class Counsel, but more information can be supplied upon request

reviewed and coded over 700,000 documents; subpoenaed records and class membership data from third party entities; met and conferred with defense counsel to resolve various discovery disputes; engaged in successful motion practice to compel Defendant's production of certain documents; noticed, prepared for, and conducted numerous depositions; and prepared Plaintiffs for depositions. Carroll Decl. ¶ 6. Additionally, Class Counsel consulted with expert witnesses; retained an economics expert; retained a data analysis expert; and deposed non-party witnesses. *Id*. Discovery was managed to maximize efficiency and ensure that there was no duplication of efforts. *Id.* ¶ 7. The discovery process, which accounts for a significant portion of the attorney time expended in this case, was essential to its successful litigation and settlement. *Id.* Among other things, information obtained during the document review process was utilized in depositions and informed the preparation and success of the Plaintiffs' Motion for Class Certification, which was granted on November 18, 2021. *Id.*

Thereafter, Class Counsel fully briefed and submitted an opposition to Maplewood's subsequent petition for interlocutory appeal under Rule 23(f), which the Eighth Circuit denied on December 30, 2021. Carroll Decl. ¶ 8. Class Counsel also fully briefed and filed Plaintiffs' opposition to Defendant's Motion for Summary Judgment, which remained pending at the time the Parties reached the proposed Settlement. *Id.* ¶ 9.

On June 21, 2022, the Parties engaged in a day-long mediation before Mr. Bradley A. Winters, Esq., of JAMS. Carroll Decl. ¶ 10.[3] Class Counsel entered the mediation fully informed of the merits of Class Members' claims and were prepared to continue to litigate and try the case rather than accept a settlement that was not in the Plaintiffs' and the Classes' best interests. *Id.* Mr. Winters actively supervised and participated in the settlement discussions to help the Parties reach

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[3] This was the Parties' second attempt to achieve mediation; the Parties had held a previous day-long mediation session on February 14, 2019, but the Parties did not resolve the case at that time. Carroll Decl. ¶ 10.

an acceptable compromise. *Id*. After almost twelve hours of hard-fought negotiations, the Parties reached an agreement on all material terms, including the amount of the Settlement Fund and additional relief for the Classes. *Id*. At no point prior to reaching agreement on the substantive terms of settlement did the Parties discuss payments of Class Counsel's attorneys' fees or the service awards for the Class Representatives. *Id.*

Among other factors leading to settlement were the extensive work performed by Class Counsel, and the credible threat of success at the impending August 8, 2022 trial based on Counsel's collective trial experience. *Id.* at ¶ 10. Class Counsel prepared the first draft of the Settlement Agreement, and the Parties then negotiated the precise terms and language of the Agreement. *Id.* ¶ 11. Following further intensive negotiation and the exchange of numerous draft agreements between the Parties, Class Counsel ultimately was able to reach a Settlement Agreement that provides both monetary compensation and meaningful non-monetary relief, while avoiding the risks and delay of further litigation. The Parties selected Atticus Administration ("Atticus") as a third-party administrator, and counsel has been actively involved in supervising and managing all aspects of Atticus's administration of the notice program. *Id.* at ¶ 12.

## III. ARGUMENT

### A. Legal Standard

The Federal Rules of Civil Procedure provide that in a certified class action, the Court may award reasonable attorneys' fees "that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). In this Circuit, there are two methods commonly used for calculating an attorneys' fee award in a class action settlement: the lodestar method and the "percentage of the recovery" method. *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 244-45 (8th Cir. 1996). "It is well established in this circuit that a district court may use the 'percentage of the fund' methodology to evaluate attorney fees in a common-fund settlement." *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140,

1157 (8th Cir. 1999). Indeed, "where attorney fees and class members' benefits are distributed from one fund, a percentage-of-the-benefit method may be preferable to the lodestar method for determining reasonable fees." *West v. PSS World Med., Inc.*, 4:13 CV 574 CDP, 2014 WL 1648741, at *1 (E.D. Mo. Apr. 24, 2014)[4]; *see also Johnston*, 83 F.3d at 245 ("[T]he [Third Circuit] Task Force recommended that the percentage of the benefit method be employed in common fund situations." (citing Court Awarded Attorney Fees, Report of the Third Circuit Task Force (Arthur R. Miller, Reporter), 108 F.D.R. 237 (1985))); *In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 991 (D. Minn. 2005) ("In the Eighth Circuit, use of a percentage method of awarding attorney fees in a common-fund case is not only approved, but also 'well established.'" (quoting *Petrovic*, 200 F.3d at 1157)); *In re Chrysler Motors Corp. Overnight Evaluation Program Litig.*, 736 F. Supp. 1007, 1008-09 (E.D. Mo. 1990) (percentage of fund "is a more appropriate and efficient means of calculating an attorneys' fee award" than lodestar method); *Barfield v. Sho-Me Power Elec. Co-op.*, 2:11-CV-4321NKL, 2015 WL 3460346, at *3 (W.D. Mo. June 1, 2015) (same); *Wiles v. Southwestern Bell Tel. Co.*, 09-4236-CV-C-NKL, 2011 WL 2416291, at *4 (W.D. Mo. June 9, 2011) (same). Courts may, but are not required to, use the lodestar method to cross-check the fairness of a percentage award. *See Petrovic*, 200 F.3d at 1157.

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

Under the percentage-of-the-fund method, fees are based on a percentage of the gross value of the common fund. *West*, 2014 WL 1648741, at *1 ("It is appropriate to apply a reasonable percentage to the gross settlement fund."). Plaintiffs seek a fee award of $1,083,333.33, which is equal to one-third of "the full value of the benefit to each absentee member" obtained through the

[4] None of the funds available to Settlement Class members will revert to Maplewood under the Settlement, "avoid[ing] the claims-rate problem that has troubled some courts and caused them to abandon the percentage-of-the-fund method for calculating fees." *Id.* at *5 n.1.

"entire judgment fund." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 479 (1980).

The request of one-third of the gross settlement amount here is reasonable and well within the range typically approved by courts in this Circuit. "[C]ourts in this circuit . . . have frequently awarded attorney fees between twenty-five and thirty-six percent of a common fund." *In re Iowa Ready-Mix Concrete Antitrust Litig.*, 2011 WL 5547159, at *1 (N.D. Iowa Nov. 9, 2011) (awarding 36.04% of $18.5 million common fund, plus over $900,000 in expenses). Indeed, awards of one-third of the fund are common. *See, e.g.*, *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) ("[C]ourts have frequently awarded attorneys' fees ranging up to 36% in class actions."); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (affirming award of 36% of $3.5 million fund, plus $40,000 for expenses); *In re Charter Commc'ns, Inc., Sec. Litig.*, 2005 WL 4045741, at *21 (E.D. Mo. June 30, 2005) ("33% remains the fee most frequently requested."); *West*, 2014 WL 1648741, at *1 (fee award of 33% of fund reasonable); *Wiles*, 2011 WL 2416291, at *4-5 (same); *Barfield*, 2015 WL 3460346, at *4 (same).[5] *See also* Carroll Decl. ¶¶ 16-21.

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

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

> (1) The time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the attorney's preclusion of other employment due to acceptance of the case; (5) the customary fee; (6)

[5] *See also, e.g.*, *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*, 2015 WL 5785508 (W.D. Mo. Oct. 2, 2015) (awarding 33% of gross settlement fund in attorneys' fees); *Sanderson v. Unilever Supply Chain, Inc.*, 10-CV-00775-FJG, 2011 WL 6369395, at *2-3 (W.D. Mo. Dec. 19, 2011) (awarding 33.78% of settlement fund); *Ray v. Lundstrom*, No. 8:10CV199, 2012 WL 5458425 (D. Neb. Nov. 8, 2012) (awarding one-third of $3.1 million fund, plus $77,900 in expenses); *Brehm v. Engle*, No. 8:07CV254, 2011 U.S. Dist. LEXIS 35127, at *6 (D. Neb. Mar. 30, 2011) (awarding one-third of $340,000 settlement fund in fees, plus $45,000 in expenses); *Kelly v. Phiten USA, Inc.*, 277 F.R.D. 564, 571 (S.D. Iowa 2011) (awarding 33% of settlement).

> whether the fee is fixed or contingent; (7) the time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

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

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

The Settlement is excellent for the Classes, particularly in light of the significant risks of litigation. The Settlement allocates the $3,250,000 non-reversionary settlement fund as follows: $2,518,750 to the Jailed Class, $243,750 to the Narrowed Paid Fines Class, and $487,500 to the Remaining Paid Fines Class. Settlement Agreement, Dkt. No. 260-1, ¶ 45. The majority of the Settlement is allocated to the Jailed Class, with the $2,518,750 for the Jailed Class to be distributed among Jailed Class members in proportion to the number of hours each Jailed Class member spent allegedly unconstitutionally detained by Maplewood. *See id.* ¶ 75(d)(i). As the 7,289 Jailed Class members were jailed for a total of 477,895.87 hours, the Settlement provides for a recovery of $5.27 per hour. Plaintiffs' economics expert William Rogers opined that each hour of incarceration should be valued between $20.57 and $24.06. Accordingly, the Settlement represents slightly

under 22% of the highest potential recovery for the Jailed Class.

With respect to the Narrowed Paid Fines Class, the $243,750 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 Maplewood. *See id.* ¶ 75(d)(ii). As the 1,936 members of the Narrowed Paid Fines Class made a total of $903,547.42 in qualifying payments to Maplewood, the Settlement represents just under 27% of the highest potential recovery for the Narrowed Paid Fines Class.

With respect to the Remaining Paid Fines Class, the $487,500 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 Maplewood that are not qualifying payments for the Narrowed Paid Fines Class. *See id.* ¶ 75(d)(iii). As the 23,458 members of that class paid a total of $4,374,412.49 in fines, costs, and/or fees to Maplewood, the Settlement represents 11.14% of the highest potential recovery for the Remaining Paid Fines Class.

In addition to this monetary relief, the Settlement provides valuable additional consideration that will benefit many of the Settlement Class members: The Settlement provides that the prosecutor for the City of Maplewood shall dismiss all unpled charges for Minor Traffic Violations and will ask the Municipal Judge for the City of Maplewood to withdraw all pending Failure to Appear ("FTA") warrants issued between November 1, 2011 and November 18, 2021. *Id.* ¶¶ 52-53.

Class Counsel achieved a highly favorable result for the Classes, particularly when taking into account the complex questions of constitutional law involved, the uncertainty of trial, and the hurdles caused by the limits of Maplewood's liability insurance coverage (and the risk that the liability insurance coverage would be found not to apply to the claims raised in this litigation at

all), which would have delayed recovery even if Plaintiffs had prevailed in full at trial. The Settlement amount is substantial in the aggregate and will provide significant cash benefits to Settlement Class members.

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

In evaluating the *Johnson* factors, courts must take into consideration the contingent nature of any attorneys' fee award, because "[a]ccess to the courts would be difficult to achieve without compensating attorneys for that risk" of uncertainty. *In re Abrams & Abrams, P.A.*, 605 F.3d 238, 246 (4th Cir. 2010). "Courts have recognized that the risk of receiving little or no recovery is a major factor in awarding attorney fees." *Yarrington*, 697 F. Supp. 2d at 1062 (quoting *In re Xcel*, 364 F. Supp. 2d at 994). "The risk of non-payment must be judged as of the inception of the action and not through the rosy lens of hindsight." *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liab. Litig.*, 553 F. Supp. 2d 442, 478 (E.D. Pa. 2008). "A determination of a fair fee for Class Counsel must include consideration of the contingent nature of the fee, the wholly contingent outlay of out-of-pocket sums by Class Counsel, and the fact that the risks of failure and nonpayment in a class action are extremely high." *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1339 (S.D. Fla. 2007). The risk of no recovery factors into undesirability, and is considered in light of, among other things, the risk of obtaining class certification and establishing liability at trial. *Bredbenner v. Liberty Travel, Inc.*, No. CIV.A. 09-1248 MF, 2011 WL 1344745, at *20 (D.N.J. Apr. 8, 2011).[6] Here, Class Counsel faced numerous

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

issues and defenses making liability (and consequent payment) uncertain. The case was prosecuted entirely on a contingent basis, entailing substantial risk that the litigation would yield little or no recovery or compensation. *See* Carroll Decl. ¶ 13 ("The case has been prosecuted entirely on a contingent basis, entailing substantial risk that the litigation would yield little or no recovery or compensation. The only certainty in this matter from the outset was that there would be no fee without a successful result, and that such result would be realized only after a lengthy and difficult effort.").

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

Plaintiffs allege class claims for violation of the First and Fourteenth Amendments to the United States Constitution, as well as for unjust enrichment stemming from Maplewood's use of its police, jail, and Municipal Court to generate revenue for the City. *See* Dkt. No. 1 (Complaint). Maplewood denied all liability and asserted 21 affirmative defenses. *See* Dkt. No. 37. The claims are complex in terms of subject matter and legal issues resulting from, among other things, uncertainty and a lack of precedent as to similar class-wide claims. Moreover, Maplewood raised issues of sovereign immunity, resulting in an interlocutory appeal to the Eighth Circuit that ultimately affirmed Plaintiffs' position. Because Class Counsel appreciated the importance of the legal questions at stake in the appeal, the services of noted appellate firm, Gupta Wessler PLLC, were retained to aid in the briefing.

Further, Maplewood vigorously contested whether the action satisfied the elements of Rule 23 and could be tried on a class-wide basis, necessitating voluminous discovery, expert work, and lengthy class certification briefing and oral argument. The time and effort required to prosecute the claims and bring this litigation to settlement on a class-wide basis has been considerable, involving 4,467.6 collective hours of legal service by Class Counsel and Appellate Counsel—as

of the date of this filing—all before the motion practice, preparation, and execution of a lengthy jury trial. Carroll Decl. ¶ 20.

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

The quality and skill of Class Counsel's work prosecuting this challenging litigation also warrants approval of the requested fee. Complex litigation and class actions require skill sets and experience needed to perform the legal service properly. As set out in the Motion for Class Certification, Plaintiffs' counsel are highly experienced litigators in complex, class-action litigation and are recognized for their high-quality work and skill. *See* Dkt. Nos. 145-52, 145-53, 145-54, and 145-55 (declarations of Class Counsel and firm resumes); *see also* Carroll Decl. ¶¶ 2, 18; Declaration of Andrea Gold ("Gold Decl.") attached hereto as Exhibit 2, at ¶¶ 4-6. Counsel brought their exceptional abilities to bear on behalf of the Settlement Class, both in developing the factual record in the case, as well as in the quality of their legal research, writing, and argumentation in, among other things, successfully opposing Maplewood's motion to dismiss, successfully opposing Maplewood's motion for judgment on the pleadings, successfully opposing Maplewood's motion to exclude Plaintiffs' expert, achieving class certification of two Fed. R. Civ. P. 23(b)(3) classes and one Fed. R. Civ. P. 23(b)(2) class, responding to Maplewood's Fed. R. Civ. P. 23(f) petition for leave to appeal to the Eighth Circuit, and opposing Maplewood's motion for summary judgment. In addition, with the assistance of Gupta Wessler PLLC, Class Counsel persuasively briefed the issues before the Eighth Circuit during Maplewood's interlocutory appeal of this Court's denial of its motion to dismiss. Moreover, Class Counsel brought their tenacity and skill to bear at the negotiating table, ultimately resulting in an exceptional settlement for the Classes. *See* Carroll Decl. ¶¶ 4-12, 17-18. Plaintiffs faced well-qualified opposing counsel from a reputable municipal defense law firm who pressed defenses on their client's behalf. *See*, *e.g.*,

*Bredbenner*, 2011 WL 13447, at *20 (performance and quality of opposing counsel considered in measuring the skill and efficiency of class counsel). "Class counsel's success in bringing this litigation to a conclusion prior to trial is another indication of the skill and efficiency of the attorneys involved." *Id*. Accordingly, this factor supports approval of the requested fee award.

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

As discussed above, the requested award is reasonable and consistent with the range of awards approved by other courts in similar litigation. In addition, the requested award is lower than Plaintiffs' Counsel's lodestar. *See Petrovic*, 200 F.3d at 1157 (explaining that courts may, but are not required to, use the lodestar method to cross-check the fairness of a percentage award). Even applying a lower-than-average hourly rate of $300, the 4,467.6 hours of attorney time expended in this case on behalf of Plaintiffs and the Classes amounts to a lodestar of $1,340,280. Carroll Decl. ¶¶ 20-21.[7] The resulting multiplier is 0.8, which represents a *negative multiplier*. *Id.* ¶ 21. Courts within the Eighth Circuit have approved lodestar multipliers well over one. *See, e.g.*, *Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019) (approving award representing a lodestar multiplier of 5.3); *Keil v. Lopez*, 862 F.3d 685, 701 (8th Cir. 2017) (approving award representing a lodestar multiplier of 2.7); *Huyer*, 849 F.3d at 399 (approving award representing a lodestar multiplier of 1.82); *Del Toro v. Centene Management Company, LLC*, No. 4:19-CV-02635-JAR, 2021 WL 1784368, at *3 (E.D. Mo. May 5, 2021) (approving award representing a lodestar multiplier of 2.73). The fees requested here are well below the range typically awarded and are fair and reasonable.

#### ***f. The Reaction of Class Members Demonstrates that Class***

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

***Counsel Achieved a Favorable Outcome.***

Notice of the proposed Settlement Agreement and the rights of Settlement Class members to opt-out of or object to the Settlement Agreement and to the requested attorneys' fees and costs was sent to 28,518 Settlement Class Members on November 15, 2022. In addition, notice was provided through publication notice in the *St. Louis American* on November 17, 2022, and through social media advertisements on Facebook. As of the date of this motion, two Settlement Class members have opted out of the settlement, and none have objected to it. These low opt-out and objection rates demonstrate that Class Counsel achieved a favorable outcome. Settlement Class members have until January 13, 2023 to exclude themselves from the Settlement or to object to it. Class Counsel will update these numbers at final approval.

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

Reasonable and necessary expenses also have been advanced to prosecute this litigation in the amount of $132,365.76. Carroll Decl. ¶ 22. "Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit by the settlement." *Yarrington*, 697 F. Supp. 2d at 1067 (quotations omitted). The requested costs must be relevant to the litigation and reasonable in amount. *Id.* The appropriate analysis to apply in deciding which expenses are compensable in a common fund case of this type is whether the particular costs are the type typically billed by attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (allowing recovery of "out-of-pocket expenses that 'would normally be charged to a fee paying client'").

Here, Class Counsel seeks reimbursement of costs and expenses totaling $132,365.76. While the great majority of these costs are discovery and expert witness related, expenses also include legal research, court reporters, and some travel and meals. Carroll Decl. ¶ 22; Gold Decl. ¶ 12. These are the type of expenses routinely charged to hourly clients and, therefore, the full

requested amount should be reimbursed. *See Yarrington*, 697 F. Supp. 2d at 1067 (approving request where "the costs incurred included filing fees; expenses associated with the research, preparation, filing, and responding to the pleadings in this matter; costs associated with copying, uploading, and analyzing documents; fees and expenses for experts; and mediation fees. . . . All of these costs and expenses were advanced by Settlement Class Counsel with no guarantee they would ultimately be recovered, and most were 'hard' costs paid out of pocket to third-party vendors, court reporters, and experts."); *West*, 2014 WL 1649741, at *1 (finding costs including mediation expenditures, travel, expert fees, and depositions were reasonable and granting requested award).

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

Plaintiffs seek service awards in the amount of $7,500 to each of Plaintiffs Cecelia Roberts Webb, Logan C. Yates, Personal Representative of the Estate of Darron T. Yates, Deceased, Anthony Lemicy, and Frank Williams, for their service in representing and zealously advocating on behalf of Class Members. As an initial matter, public policy favors the service awards requested here. Service awards "'promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits.'" *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 867 (8th Cir. 2017) (quoting *Yarrington*, 697 F. Supp. 2d at 1068); *see also Custom Hair Designs by Sandy, LLC v. Cent. Payment Co., LLC*, No. 8:17CV310, 2022 WL 3445763, at *1 (D. Neb. Aug. 17, 2022) ("Service awards to representative plaintiffs encourage members of a class to become class representatives and reward individual efforts taken on behalf of a class.").

In determining an appropriate service award, this Court should consider: "(1) actions the plaintiffs took to protect the class's interests, (2) the degree to which the class has benefitted from those actions, and (3) the amount of time and effort the plaintiffs expended in pursuing litigation."

*Caligiuri*, 855 F.3d at 867 (citing *In re U.S. Bancorp Litig.*, 291 F.3d at 1038). Class Representatives here worked with counsel to provide information regarding their experiences and claims, including conducting searches of personal records. Carroll Decl. ¶ 24. They also expended significant time responding to Maplewood's interrogatory requests, preparing for deposition, sitting for their depositions, and preparing for trial. *Id.* These efforts were essential to obtaining class certification and provided substantial benefit to the Classes. Moreover, in challenging a municipality's arrest and detention procedures, Class Representatives incurred personal risk, including reputational risk, in publicly lending their names to this lawsuit, opening themselves up to scrutiny and attention from both the public and the media. *Id.*

The personal risks and sacrifices undertaken by Plaintiffs in bringing their case, the substantial time they invested in the case, and their critical contributions to the outstanding results for the Classes, all support approval of the requested Service Awards. The requested service awards are a tiny fraction of the amount obtained for the Classes, and are well within the range found reasonable by courts in this Circuit. *See, e.g.*, *Caligiuri*, 855 F.3d at 867 ("[C]ourts in this circuit regularly grant service awards of $10,000 or greater."); *Custom Hair Designs by Sandy, LLC*, 2022 WL 3445763, at *6 (awarding $15,000 service awards to each of the Class Representatives in light of the "substantial work on behalf of the Class and the risks they took in bringing suit").

## IV. CONCLUSION

For the reasons discussed above, the Court should approve Plaintiffs' request for $1,083,333.33 in attorneys' fees, $132,365.76 in reasonable costs, and service awards of $7,500 for each of Class Representatives Cecelia Roberts Webb, Logan C. Yates, Personal Representative of the Estate of Darron T. Yates, Deceased, Anthony Lemicy, and Frank Williams.

Dated: December 14, 2022

Respectfully submitted,

**ArchCity Defenders, Inc.**

By: /s/ *Nathaniel R. Carroll*

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*Class Counsel*

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

| | | |
|---|---|---|
| CECELIA ROBERTS WEBB, *et al.*,<br>Individually and on behalf of all others<br>similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>THE CITY OF MAPLEWOOD<br><br>Defendant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case No. 4:16-CV-1703-CDP |

**DECLARATION OF NATHANIEL R. CARROLL**

I, Nathaniel R. Carroll, declare as follows:

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

2. As Class Counsel, I am one of the attorneys primarily responsible for representing Plaintiffs in this action. However, in addition to the support of highly experienced counsel at ArchCity Defenders, this matter was also ably prosecuted by a team of highly esteemed class action attorneys, which included Andrea Gold of Tycko Zavareei LLP and Ryan Keane of Keane Law LLC (collectively, "Class Counsel"), as well as Jon Taylor of Gupta Wessler ("Appellate Counsel") (collectively, "Plaintiffs' Counsel"). The firm resumes and qualifications of Class Counsel were presented to the Court in connection with Plaintiffs' Motion for Class Certification. *See* Dkt. Nos. 145-52, 145-53, 145-54, and 145-55 (declarations of Class Counsel and firm resumes).

3. I have actively participated in all aspects of this litigation, including the negotiation of the settlement, and am fully familiar with the proceedings in the matter in which the parties seek resolution. If called upon, I am competent to testify that the following facts are true and correct based upon my personal knowledge.

<u>THE SUBSTANTIVE WORK REQUIRED TO SUCCESSFULLY LITIGATE THIS MATTER</u>

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

5. The origins of the case date to spring of 2016, when attorneys at ArchCity Defenders, including myself, learned that individuals were being jailed by Maplewood for missing payments and court dates, and being held in jail for days on bonds without receiving due process. Attorneys at ArchCity Defenders, including myself, also represented named Plaintiffs in the Maplewood Municipal Court to provide pro bono defense of their underlying municipal charges. Plaintiffs' Counsel then led the prosecution of this litigation, including investigating the facts, extensive reviewing of the laws asserted, and evaluating and vetting potential class representatives prior to filing suit. Once litigation commenced, Plaintiffs' Counsel briefed and defeated Maplewood's Motion to Dismiss (Dkt. No. 14) for which Maplewood immediately sought interlocutory appeal. The underlying litigation was stayed during the appeal process. When the appeal was accepted, Gupta Wessler served as appellate counsel and successfully obtained a favorable ruling from the Eighth Circuit in favor of Plaintiffs. Maplewood then unsuccessfully sought a writ from the United States Supreme Court, which was denied in October 2018. Thereafter, the stay was lifted.

6. During discovery, Plaintiffs' Counsel prepared and served initial disclosures, lengthy interrogatories, and two comprehensive sets of document requests; responded to discovery

requests, including interrogatories to each named plaintiff; reviewed and coded over 700,000 documents; subpoenaed records and class membership data from third party entities; met and conferred with defense counsel to resolve various discovery disputes; engaged in successful motion practice to compel Defendant's production of certain documents; noticed, prepared for, and conducted numerous depositions; and prepared Plaintiffs for depositions. Class Counsel consulted with expert witnesses; retained an economics expert; retained a data analysis expert; and deposed non-party witnesses.

7. Discovery was managed to maximize efficiency and ensure there was no duplication of efforts. The discovery process, which accounts for a significant portion of the attorney time expended in this case, was essential to its successful litigation and settlement. Among other things, information obtained during the document review process was utilized in depositions and informed the preparation and success of the Plaintiffs' Motion for Class Certification, which was granted on November 18, 2021 after briefing and oral argument before this Court.

8. Thereafter, Class Counsel fully briefed and submitted an opposition to Maplewood's subsequent petition for interlocutory appeal under Rule 23(f), which the Eighth Circuit denied on December 30, 2021. Once the Eighth Circuit mandate issued, Class Counsel selected Atticus Administration ("Atticus"), a qualified and reputable third-party administrator, to issue Notice to Class Members, receive exclusion requests, respond to inquiries, and conduct other activities relating to class notice. This Court approved the selection of Atticus as Notice Administrator. Class Counsel actively supervised and managed Atticus and its administration of the notice program. This entailed: reviewing notice reports on a weekly basis, analyzing reports on impressions and other metrics regarding the success of notice; and discussions regarding any

improvements that could be made to the notice program. These efforts were made by telephone and by email.

9. Class Counsel also fully briefed and filed Plaintiffs' opposition to Defendant's lengthy Motion for Summary Judgment, which remained pending at the time the Parties reached the proposed Settlement.

10. The Parties engaged in a day-long mediation before Mr. Bradley A. Winters, Esq., of JAMS, on June 21, 2022. This was the Parties' second attempt to achieve mediation; the Parties had held a previous day-long mediation session on February 14, 2019, but the Parties did not resolve the case at that time. Class Counsel entered the mediation fully informed of the merits of Class Members' claims and were prepared to continue to litigate and try the case rather than accept a settlement that was not in the Plaintiffs' and the Classes' best interests. Mr. Winters actively supervised and participated in the settlement discussions to help the Parties reach an acceptable compromise. After almost twelve hours of hard-fought negotiations, the Parties reached an agreement on all material terms, including the amount of the Settlement Fund and additional relief for the Classes. Among other factors leading to settlement were the extensive work performed by Class Counsel, and the credible threat of success at the impending August 8, 2022 trial based on Counsel's collective trial experience. At no point prior to reaching agreement on the substantive terms of settlement did the Parties discuss payments of Class Counsel's attorneys' fees or the service awards for the Class Representatives.

11. Class Counsel prepared the first draft of the Settlement Agreement, and the Parties then negotiated the precise terms and language of the Agreement. Following further intensive negotiation and the exchange of numerous draft agreements between the Parties, Class Counsel

ultimately was able to reach a Settlement Agreement that provides both monetary compensation and meaningful non-monetary relief, while avoiding the risks and delay of further litigation.

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

THE TIME AND EXPENSE EXPENDED BY PLAINTIFFS' COUNSEL

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

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

Plaintiffs' Counsel, to forego other opportunities in order to fulfill their responsibilities in this matter. Plaintiffs' Counsel now seek an award of attorneys' fees.

15. Plaintiffs' Counsel seek a fee award of $1,083,333.33. This amount represents one-third of the total $3,250,000 value of the Settlement Fund, and was the amount set forth in the Notice.

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

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

18. ArchCity Defenders and the other firms comprising Plaintiffs' Counsel have diligently investigated and prosecuted this matter, dedicating substantial time, effort, resources, and expertise to the investigation of the claims at issue in the action, and have successfully negotiated the settlement of this matter to the benefit of the Classes. The qualifications of

Plaintiffs' Counsel and their extensive experience in prosecuting complex class actions and other complex and civil rights litigation, including firm resumes, were submitted to the Court prior to its appointment of Class Counsel, and are incorporated herein by reference. *See* Dkt. Nos. 145-52, 145-53, 145-54, and 145-55.

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

20. In preparing the fee application and this declaration, I asked each member of the Plaintiffs' Counsel to provide me with a reporting of the total hours and expenses expended by their respective firms. I have been informed by each member of the Plaintiffs' Counsel that, if asked, they would provide a declaration or confirm under oath that the time and expenses summarized below accurately reflects the contemporaneous time and expense records of their respective firms. As of the date of this declaration, the total hours of attorney time expended by Plaintiffs' Counsel is 4,467.6 hours, as reflected below:

| | |
|---|---|
| ArchCity Defenders: | 1,251.6 hours |
| Tycko & Zavareei: | 2,529 hours |
| Keane Law: | 512 hours |
| Gupta Wessler: | 175 hours |

21. As detailed in the accompanying Memorandum in Support of Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards, fee awards of up to 33% are regularly approved in the Eighth Circuit. Moreover, when a lodestar cross-check is evaluated, the requested fee award will result in a negative multiplier of 0.8, even if Plaintiffs' Counsel's lodestar is calculated using a lower-than-average rate of $300 per hour. The award requested here is more than reasonable.

22. The total of expenses incurred, for which reimbursement is sought, is $132,365.76. These expenses were incurred and advanced by Class Counsel and Appellate Counsel as follows:

| | |
|---|---|
| Tycko Zavareei: | $ 111,699.09 |
| ArchCity Defenders: | $ 10,840.79 |
| Keane Law: | $ 9,549.95 |
| Gupta Wessler: | $ 275.93 |

While the great majority of these costs are discovery and expert witness related, expenses also include legal research, court reporters, and some travel and meals. Costs advanced by ArchCity Defenders for the benefit of the Classes, by category, were as follows:

| | |
|---|---|
| Class Administrator Fees for First Notice: | $ 1,230.00 |
| Court Reporter and Transcript Fees for Depositions: | $ 8,343.68 |
| Expert Fees: | $ 709.61 |
| Mediation Fees: | $ 415.25 |
| Process Server Fees: | $ 142.25 |
| Total: | $10,840.79 |

Costs advanced by Keane Law LLC for the benefit of the Classes, by category, were as follows:

| | |
|---|---|
| Court fees and costs: | $ 374.65 |
| Postage: | $ 72.59 |
| Class notice: | $ 2,363.04 |
| Experts fees: | $ 1,300.95 |
| Depositions/stenographers: | $ 2,691.03 |
| Mediation: | $ 1,908.99 |
| Westlaw/Pacer: | $ 347.06 |
| Printing/copying: | $ 320.85 |
| Admin/misc: | $ 170.79 |
| Total: | $9,549.95 |

Plaintiffs' Counsel has maintained detailed records of these expenses which were necessary to advancement of the case, and can make them available to the Court for *en camera* review if requested.

23. Plaintiffs' success in this action was by no means assured. Defendant was represented by able counsel, who raised numerous affirmative defenses. Were this settlement not achieved, and even if Plaintiffs prevailed at trial, Plaintiffs faced potentially years of costly and

risky appellate litigation against Defendant, the ultimate success of which is far from certain. These risks support the concept of percentage recoveries.

CLASS REPRESENTATIVES' PARTICIPATION

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

25. For all of the foregoing reasons, the Court should approve Plaintiffs' request for an award of $1,083,333.33 in attorneys' fees, $132,365.76 in reasonable costs, and Service Awards of $7,500 for each of the Class Representatives.

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

Dated: December 14, 2022 /s/ *Nathaniel R. Carroll*

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

| | | |
|---|---|---|
| CECELIA ROBERTS WEBB, *et al.*, Individually and on behalf of all others similarly situated, | ) | |
| Plaintiffs, | ) | |
| v. | ) | Case No. 4:16-CV-1703-CDP |
| THE CITY OF MAPLEWOOD | ) | |
| Defendant. | ) | |

**DECLARATION OF ANDREA R. GOLD IN SUPPORT OF PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS**

I, Andrea R. Gold, declare as follows:

1. I am a partner at the law firm of Tycko & Zavareei LLP and counsel of record for Plaintiffs in the above-captioned case. I submit this declaration in support of Plaintiffs' Motion for an Award of Attorneys' Fees, Costs, and Service Awards.

2. On November 18, 2021, this Court appointed me, along with my co-counsel Nathaniel Carroll and Blake Strode of ArchCity Defenders Inc. and Ryan Keane of Keane Law LLC as Class Counsel for the Injunctive Class, the Jailed Class, and the Narrowed Paid Fines Class. On November 1, 2022, this Court also preliminarily appointed me, along with Nathaniel Carroll, Maureen Hanlon, and Blake Strode of Arch City Defenders, Inc. and Ryan Keane of Keane Law LLC as Class Counsel for the Remaining Paid Fines Class.

3. I make this declaration based on my personal knowledge and the records of my law firm. If called upon to do so under oath, I could and would testify competently to the matters set forth herein.

4. I was first admitted to practice law in 2004 in Illinois. (Bar No. 6282969). I was also admitted in Washington, D.C. in 2007 (Bar No. 502607), and Maryland in 2013 (Registration No. 201306100006). I have been admitted pro hac vice in this matter.

5. I am a graduate of University of Michigan Law School (J.D., 2004) and University of Michigan Business School (B.B.A., 2001).

6. I have been in private practice since 2006, and a large portion of my practice has involved litigation on behalf of consumers, representing individuals and classes injured by predatory banking practices, unlawful insurance practices, violations of the Telephone Consumer Protection Act, and other unfair and deceptive business practices.

7. Over the past sixteen years, I have gained substantial experience handling complex civil litigation and class action litigation. With co-counsel, I have taken two cases to trial, including jury trials that have lasted several months.

8. I have been named Class Counsel or Settlement Class Counsel in class actions including *Jacobs v. FirstMerit Corporation, et. al.*, No. 11 CV000090 (Ct. Common Pleas, Lake County, Ohio); *Maria Vergara v. Uber Technologies, Inc.*, No. 1:15-CV-06942 (N.D. Ill.); *Szafarz v. United Parcel Service, Inc.*, No. SUCV2016-2094-BLS2 (Superior Court, Commonwealth of Massachusetts); *Jenna Lloyd, et al. v. Navy Federal Credit Union*, Case No. 3:17-cv-01280 (S.D. Cal.); *Harris v. Farmers Insurance*, No. BC579498 (Super. Ct. State of CA); *Lambert v. Navy Fed. Credit Union*, No. 19-cv-00103-LO-MSN (E.D. Va.); *Smith v. Fifth Third Bank*, No. 1:18-cv-464-DRC-SKB (S.D. Ohio); *Hamm, et al. v. Sharp Electronics Corp.*, No. 5:19-cv-00488-JSM-PRK (M.D. Fla); *Clark v. Hills Bank & Tr. Co.*, No. LACV080753 (Iowa Dist. for Johnson Cty.); *Roy v. ESL Federal Credit Union*, No. 6:19-cv-06122-FPG-MJP (W.D.N.Y.); *Glass et al.* v. *Delta Community Credit Union*, No. 2019CV317322 (Super. Ct. of Fulton Cty., GA); and *Marino, et al.*

*v. Coach, Inc.* No. 1:16-cv-01122-VEC (S.D.N.Y.). The *Jacobs* litigation resulted in a $15,975,000 settlement that has received final approval. The litigation against Uber Technologies, Inc. resulted in a $20 million settlement that has been finally approved. The litigation against UPS resulted in a $995,000 settlement that has been finally approved. The *Lloyd* litigation resulted in a $24.5 million settlement that has received final approval. The *Harris* litigation resulted in a $15 million settlement that has received final approval. The *Lambert* litigation resulted in a $16 million settlement that has received final approval. The *Hamm* litigation resulted in a class settlement valued at up to $114 million by Plaintiffs' expert. The *Roy* litigation resulted in a $1.7 million class settlement that received final approval. The *Glass* litigation resulted in a class settlement valued at $2,825,502 that has received final approval. The *Marino* litigation resulted in a class settlement including, *inter alia*, over $4.5 million of direct relief that received final approval.

9. Tycko & Zavareei has also been named Class Counsel, Lead Counsel, or Settlement Class Counsel in consumer class actions styled *Shannon Schulte, et al. v. Fifth Third Bank*, No. 1:09-cv-06655 (N.D. Ill.); *Kelly Mathena v. Webster Bank*, No. 3:10-cv-01448 (D. Conn.); *Nick Allen, et al. v. UMB Bank, N.A., et al.*, No. 1016 Civ. 34791 (Cir. Ct. Jackson County, Mo.); *Thomas Casto, et al. v. City National Bank, N.A.,* No. 10 Civ. 01089 (Cir. Ct. Kanawha County, W. Va.); *Eaton v. Bank of Oklahoma, N.A., and BOK Financial Corporation, d/b/a Bank of Oklahoma, N.A*., No. CJ-2010-5209 (Dist. Ct. for Tulsa County, Okla.); *Lodley and Tehani Taulva, et al., v. Bank of Hawaii and Doe Defendants 1-50*, No. 11-1-0337-02 (Cir. Ct. of 1st Cir., Haw.); *Jessica Duval, et al. v. Citizens Financial Group, Inc., et al*, No. 1:10-cv-21080 (S.D. Fla.); *Mascaro, et al. v. TD Bank, Inc*., No. 10-cv-21117 (S.D. Fla.); *Theresa Molina, et al., v. Intrust Bank, N.A*., No. 10-cv-3686 (18th Judicial Dist., Dist. Ct. Sedgwick County, Kan.); *Trombley v. National City Bank*, No. 1:10-cv-00232-JDB (D.D.C.); *Jonathan Jones, et al. v. United Bank and*

*United Bankshares, Inc.*, No. 11-C-50 (Cir. Ct. of Jackson County, W. Va.); *Amber Hawthorne, et al. v. Umpqua Bank*, No. 4:11-cv-06700 (N.D. Cal.); *Sylvia Hawkins, et al. v. First Tennessee Bank, N.A.*, No. CT-004085-11 (Cir. Ct. of Shelby County, Tenn.); *Jane Simpson, et al. v. Citizens Bank, et al.*, No. 2:12-cv-10267 (E.D. Mich.); *Alfonse Forgione, et al. v. Webster Bank, N.A.*, No. UWY-CV12-6015956-S (Super. Ct. Judicial Dist. of Waterbury, Conn.); *Sherry Bodnar v. Bank of America, N.A.*, No. 5:14-cv-03224-EGS (E.D. Pa.); *Wong v. TrueBeginnings LLC d/b/a True.com*, No. 3-07 Civ. 1244-N (N.D. Tex.); *Geis v. Airborne Health, et. al.*, Civil Action No. 2:07 Civ. 4238-KSH-PS (D. N.J.); *Dennings, et al. v. Clearwire Corporation*, No. 2:10-cv-01859 (W.D. Wash.); *In Re: Higher One Oneaccount Marketing And Sales Practices Litigation*, No. 3:12-md-02407 (D. Conn.); *Galdamez v. I.Q. Data International, Inc.*, No. 15-cv-1605 (E.D. Va.); *Brown v. Transurban USA*, No. 15-cv-494 (E.D. Va.); *Gatinella et al. v. Michael Kors (USA)*, No. 14-cv-5731 (S.D.N.Y); *Grayson, et al. v. General Electric Company*, 3:13-cv-1799 (D. Conn.); *Farrell, et al. v. Bank of America, N.A.*, No. 3:16-00492 (S.D. Cal.); *In re: APA Assessment Fee Litigation*, 1:10-cv-01780 (D.D.C.); *Griffith v. ContextMedia Health, LLC d/b/a Outcome Health*, No. 1:16-cv-02900 (N.D. Ill.); *Scott, et al. v. JPMorgan Chase & Co.,* No. 17-cv-249 (D.D.C.); *In re Think Finance, LLC, et al.*, No. 17-bk-33964 (Bankr. N.D. Tex.); *Gibbs v. Plain Green, LLC*, No. 3:17-cv-495 (E.D. Va.); *Meta v. Target Corp., et al.*, No. 14-cv-0832 (N.D. Ohio); *Petit v. Procter & Gamble Co.,* No. 15-cv-02150 (N.D. Cal.); *Kumar v. Safeway, Inc. et al.,* RG14726707 (Super. Ct. of Cal. Cty. Of Alameda); *Kumar v. Salov North America Corp., et al.*, 4:14-cv-02411 (N.D. Cal.); *Koller v. Deoleo USA, Inc.*, Case No. 3:14-CV-02400-RS (N.D. Cal.); *Stathakos et al. v. Columbia Sportswear Co.*, No. 1:16-cv-04543 (N.D. Cal.); *Robinson v. First Hawaiian Bank*, No. 17-1- 0167-01 (Cir. Ct. of 1st Cir., Haw.); *Hughes v Autozone Parts, Inc.*, No. BC63-l-080 (Super. Ct. State of CA); *Harkey v. General Electric Company*, No. 3:13-cv-01799 (D. Conn.);

*Lashambae v. Capital One Bank, N.A*. 1:17-cv-06406-VMS (E.D.N.Y.); *Walters v. Target Corp*. 3:16-cv-01678 (S. D. Cal); *Roberts v. Capitol One Financial Corp*. 1:16-cv-04841 (S.D. NY. ); *Juan Quintanilla Vazquez et al. v. Libre by Nexus, Inc*., No. 17-cv-00755 CW (N.D. Cal.); *In re: American Psychological Association Assessment Fee Litigation*, 1:10-cv-01780 (D.D.C.); *Rosado v. Barry Univ*., No. 20-cv-21813-JEM (S.D. Fla.); *Silveira v. M&T Bank*, No. 2:19-cv-06958-ODW-KS (C.D. Cal.); *Jette v. Bank of America, N.A*., No. 20-cv-6791-LDW (D.N.J.); *Wallace v. Wells Fargo & Company, et al*. (2021) 17CV317775 (Super. Ct. of Cal. Cty. of Santa Clara); and *In re: Deva Concepts Products Liability Litigation*, No. 1:20-cv-01234-GHW (S.D.N.Y.); *Clark v. Hills Bank & Tr. Co.,* No. LACV080753 (Iowa Dist. for Johnson Cty.); *Morris, et al., v. Bank of America, N.A.* No. 3:20-cv-00157-RJC-DSC (Western District of North Carolina); *Fernandez v. Rushmore Loan Management Services*, No. 8:21-cv-621-DOC-(KESx) (C.D. Cal.); *Phillips et al. v. Caliber Home Loans, Inc.*¸No. 0:19-cv-2711-WMW-LIB (D. Minn.); *Culbertson et al. v. Deloitte Consulting LLP*, Case No. 1:20-cv-3962-LJL (SDNY); *Elbert v. RoundPoint Mortgage Servicing Corporation*, No. 3:20-cv-250-MMC (N.D. Cal); *Robinson v. Nationstar Mortgage LLC,* No. 8:14-cv-03667-TJS (D. Md.); *Gibbs et al. v. Stinson et al.*, No. 3:18-cv-00676-MHL (E.D. Va); *Julio Lopez and Michael Oros et al. v. Volusion, LLC,* Case No. 1:20-cv-00761-LY (W.D. Tex.); and *Alexander et al. v. Carrington Mortgage Service, LLC,* No. 1:20-cv-02369-RBD (D. Md.). Each of these actions has resulted in a settlement that has been finally approved.

10. Tycko & Zavareei has maintained contemporaneous time records in this case. Since 2016, partners, of counsel, associates, and fellows at Tycko & Zavareei spent 2,529 hours litigating this case. In addition, paralegals spent 164.3 hours providing necessary case support. In my opinion, the time spent by attorneys and staff of Tycko & Zavareei was reasonable and necessary. Indeed, by prosecuting this case purely on a contingency basis and not being paid by the hour,

Tycko & Zavareei attorneys and staff worked efficiently and avoided unnecessary work. The detailed time and expense entries are available to the Court *en camera* upon request.

11. The total number of hours is based only on the hours reasonably expended to achieve an excellent result for the Classes. Our firm coordinated our efforts in the litigation of this case with our co-counsel to ensure that there was no duplicative or unnecessary work. Because our firm is experienced in litigating actions of this type, we were able to efficiently divide tasks based on expertise.

12. Tycko & Zavareei also carried some of the costs in this litigation—taking on this risk for the putative class members. Below is an itemized list of the unreimbursed expenses that the firm incurred in furtherance of the prosecution of this litigation. These expenses are reflected in the firm's books and records that are regularly maintained in the ordinary course of the firm's business, and are based on the receipts and other records maintained by the firm.

| **Expense Category** | **Amount** |
|---|---|
| Copying / Printing | $606.75 |
| Court Fees (Filing Fees, Pro Hac Vice Applications, etc.) | $1,100.00 |
| Court Reporters / Transcripts | $4,979.05 |
| Computer Research | $8,490.15 |
| PACER Fees | $1,206.20 |
| Telephone / Fax | $418.37 |
| Postage / Express Delivery / Messenger | $169.78 |
| Discovery Database Hosting Fees | $55,880.17 |
| Payment for Class Notice | $4,674.00 |
| Mediator Fees | $5,398.08 |
| Expert Fees | $26,185.58 |
| Air and Ground Transportation | $1,914.38 |
| Meals | $35.10 |
| Lodging | $602.48 |
| Miscellaneous / Other | $39.00 |
| **TOTAL:** | **$111,699.09** |

13. In my opinion, the time expended and expenses incurred in prosecuting this action were reasonable and necessary for the diligent litigation and fair resolution of this matter. Moreover, the hours noted above does not include all of the time to be devoted to preparing for and appearing at the final approval hearing or dealing with post-hearing matters.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed at Kensington, Maryland this 13th day of December 2022.

Andrea R. Gold, Esq.