IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

NORA RUIZ, individually and on behalf of all others similarly situated, **Plaintiff,** **v.** **BASS PRO GROUP LLC, and BPS DIRECT LLC, d/b/a BASS PRO SHOPS,** **Defendants.**	**Case No. 6:24-cv-03122-MDH**

PLAINTIFF'S SUGGESTIONS IN SUPPORT OF UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES, AND A SERVICE AWARD

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CLASS COUNSEL

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INTRODUCTION

Class Counsel delivered a $4,950,000 non-reversionary settlement fund to resolve the novel ERISA claims of around 5,000 Bass Pro workers nationwide. The settlement fund will make significant payments to class members—the average *per capita* settlement check will exceed $580 and the largest settlement check will be nearly $2,500. Further, there is no claims process. Class members who do not opt out (only three have thus far—0.05% of the class[1]) will receive a check in the mail for their *pro rata* share of the fund. In exchange for these meaningful payments, class members will release only those claims that were or could have been asserted based on the facts alleged in the Complaint. Based on these metrics alone, it is an impressive result.

The result is even stronger when considered alongside the uncertainty of continued litigation. The disputed issues included the enforceability of Bass Pro's form arbitration agreements, interpretation of ERISA's non-discrimination provision, and the impact of the Supreme Court's intervening *Loper Bright* decision on the Department of Labor regulation at issue in this case. Class Counsel navigated these risks to deliver a favorable settlement. Results matter, and Class Counsel delivered an excellent result.

For their effort, Class Counsel seek one-third of the settlement fund as attorneys' fees as well as reimbursement of $17,893.68 in advanced expenses from the fund. The requested fee is justified under the *Johnson* factors, particularly considering the result achieved and the skill and expertise necessary to achieve it. In addition, Class Counsel seek a service award of $10,000 for

[1] As of the date of this filing, no class members have objected to the settlement and only three class members have requested exclusion from the settlement. The opt-out and objection period runs through March 31, 2025. Class Counsel will supplement the record as to any objections or further requests for exclusion in connection with the motion for final approval of the settlement.

Plaintiff Ruiz. Absent her courage in pressing these untested claims against her current employer there would be no settlement.

The requested attorneys' fees, expenses, and service award are reasonable and should be approved in connection with final approval of the settlement.[2]

ARGUMENT

I. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE.

Class Counsel are entitled to a reasonable attorney's fee for their work representing class members and achieving this meaningful, non-reversionary settlement. Based on the applicable factors endorsed in the Eighth Circuit, a fee equal to one-third of the fund (or $1,650,000) is appropriate and reasonable and should be approved.

A. CONTINGENT FEES IN CERTIFIED CLASS ACTIONS ARE CUSTOMARILY AWARDED USING THE PERCENTAGE-OF-THE-FUND METHOD.

"In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h) "Under the 'common fund' doctrine" the law authorizes the Court to award "attorneys' fees from the settlement proceeds." *Tussey v. ABB, Inc.*, 2019 WL 3859763, at *2 (W.D. Mo. Aug. 16, 2019) (citing Fed. R. Civ. P. 23(h)); *accord Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

Courts typically use the "percentage-of-the-fund method" to award attorney's fees from a common fund. *See, e.g.*, *Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019). Indeed, "[i]n 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,'" *In re Xcel Energy, Inc., Securities, Derivative*

[2] Plaintiff does not repeat the nature of the ERISA claims, the summary of the settlement terms, or the procedural history of the case, which were extensively addressed in Plaintiff's brief in support of preliminary approval. *See* Doc. 37 at 2-10.

& "ERISA" Litig., 364 F. Supp. 2d 980, 991 (D. Minn. 2005) (quoting *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999)), or even "preferable,'" *Barfield v. Sho-Me Power Elec. Co-op.*, 2015 WL 3460346, at *3 (W.D. Mo. June 1, 2015) (quoting *West v. PSS World Med., Inc.*, 2014 WL 1648741, at *1 (E.D. Mo. Apr. 24, 2014)). The percentage method aligns the interests of the attorneys and the class members by incentivizing counsel to maximize the recovery for class members. *See Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 245 (8th Cir. 1996) ("[T]he Task Force [established by the Third Circuit] recommended that the percentage of the benefit method be employed in common fund situations." (citing *Court Awarded Attorneys Fees, Report of the Third Circuit Task Force*, 108 F.R.D. 237, 255 (3rd Cir. 1985))).[3] The Court should therefore use the percentage approach to award fees in this case.

B. THE RELEVANT FACTORS SUPPORT AWARDING CLASS COUNSEL ONE-THIRD OF THE COMMON FUND AS ATTORNEYS' FEES.

Selecting a reasonable percentage depends on "considering relevant factors from the twelve factors listed in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 719–20 (5th Cir. 1974)." *In re Target Corp. Customer Data Security Breach Litig.*, 892 F.3d 968, 977 (8th Cir. 2018) (cleaned up). The following are the *Johnson* factors:

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

[3] In contrast, undue focus on hours or hourly rates "creates an unanticipated disincentive to early settlements, tempts lawyers to run up their hours, and compels district courts to engage in a gimlet-eyed review of line-item fee audits." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (cleaned up). Although a percentage approach may raise potential concerns when a class settlement involves a reversionary fund or the claims process is unduly complicated, those concerns are absent here because nothing will revert to Bass Pro and there is no claims process.

In re Target, 892 F.3d at 977 n.7. To be sure, "[m]any of the *Johnson* factors are related to one another and lend themselves to being analyzed in tandem." *Swinton v. SquareTrade, Inc.*, 454 F. Supp. 3d 848, 886 (S.D. Iowa 2020). Courts in the Eighth Circuit often focus on the most relevant *Johnson* factors in evaluating fee requests. *See In re Xcel*, 364 F. Supp. 2d at 993; *Tussey*, 2019 WL 3859763, at *2; *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1062 (D. Minn. 2010); *see also Hardman v. Bd. Of Educ. Of Dollarway, Arkansas Sch. Dist.*, 714 F.2d 823, 825 (8th Cir. 1983).

Class Counsel achieved a strong settlement that makes average payments of more than $580 *per capita* (with some approaching $2,500), features direct mailing of checks with no claims process, releases only those claims that were or could have been asserted based on the facts alleged, and does so in the face of legitimate uncertainty as to the ultimate outcome of the litigation. The *Johnson* factors confirm that a fee of one-third of the fund is reasonable.

1. The benefits conferred on class members are significant, particularly given the risks of continued litigation (Factor 8).

Through Class Counsel's efforts, class members are receiving substantial monetary compensation as part of this settlement and, unless they opt out (only three have thus far), they do not have to do anything to receive their settlement allocations. The percentage of actual damages recovered, size of the fund, the size of the average payments to class members, and the ease of receiving payment all support the requested fee.

Based on Class Counsel's damages calculations, the $4,950,000 common fund represents 35% of the tobacco surcharges paid during the six-year period preceding the filing of the

Complaint.[4] Net of all fees and expenses, the average *per capita* settlement check will exceed $580, with some class members (those who would have had the most damage at trial) receiving nearly $2,500. These are meaningful payments and they exceed the average settlement payments in the only other significant class settlement of similar claims.[5] Ricke Decl. at ¶¶ 3-9.

In addition, the settlement fund will be distributed without a requirement to file a claim form. Class members who do not request to be excluded from the settlement will be sent a check in the mail for their share of the settlement. No settlement funds will revert to Bass Pro; any funds remaining from uncashed checks will be distributed to the state unclaimed property funds where class members worked to be held for that class member. Nor will class members be required to provide a general release to participate in the settlement. Instead, class members who do not request to be excluded from the settlement will release Bass Pro from claims that were or could have been asserted based on the facts alleged in the Complaint. *Id*.

The absence of a broad release likewise shows the strength of the recovery for class members. *See Ramah Navajo Chapter v. Babbitt*, 50 F. Supp. 2d 1091, 1103-04 (D.N.M. 1999) (noting the limited, rather than general, release as further evidence of an exceptional result in favor of class members). This is a strong result by any measure and, as explained below, that is particularly true given the novel, untested nature of the claims.

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[4] Class Counsel securing relief for a six-year period benefits the class because the parties disputed the appropriate limitations period. The six-year period applies to the breach of fiduciary duty claim, but a three-year period could also apply to that claim if Bass Pro could establish Plaintiff had actual knowledge of the claimed violation. *See* 29 U.S. Code § 1113(1-2). The parties also disputed what limitations period to apply to the claims for violation of the statute (*id*. at § 1132(a)(3)) and claim for benefits (*id*. at § 1132(a)(1)(B)), which are not supplied by ERISA.

[5] Class Counsel previously resolved the first certified class action concerning unlawful tobacco surcharge programs under ERISA in *Lipari-Williams v. The Missouri Gaming Co*., Case No. 20-cv-06067-SRB (W.D. Mo.). In *Lipari-Williams*, the average *per capita* settlement check for the ERISA claims was $378. *Id*., Doc. 145-1 at 1.

2. The claims were novel and difficult to prosecute (Factor 2).

Nearly every aspect of Plaintiff's ERISA claims challenging Bass Pro's tobacco surcharge wellness plan was in flux as the law on this issue evolved (and continues to evolve) in real time. This case presented both substantive and procedural uncertainty—specifically, the parties disputed arbitrability, the merits of Bass Pro's tobacco surcharge, and the available remedies.

For starters, there was a dispute over the appropriate forum for Plaintiff's claims. In its Amended Answer (Doc. 27), Bass Pro asserted that Plaintiff and other similarly situated workers were bound by the company's form arbitration and class waiver agreements. Doc. 27 at Affirmative Defense ¶¶ 4-7. Plaintiff was prepared to resist any motion to compel arbitration and would argue that Bass Pro had waived the ability to arbitrate by participating in the litigation process, that the arbitration agreement violated the effective vindication doctrine with respect to the representative breach of fiduciary duty claim, and that the arbitration agreement's severability language required the entire case to be heard in Court. Class Counsel successfully navigated this threshold issue that could have precluded a class-wide recovery. Ricke Decl. at ¶¶ 10-11.

Likewise, the parties disputed the merits of whether Bass Pro's tobacco surcharge constituted a lawful outcome-based wellness plan under ERISA. This question turned on related disputes about how to interpret ERISA's non-discrimination provision (29 U.S.C. § 1182(b)) and the impact of the Supreme Court's intervening *Loper Bright* decision on the Department of Labor's operative regulation (29 C.F.R. § 2590.702). There is little substantive authority on this issue beyond Judge Bough's order granting class certification in the *Lipari-Williams* matter. 339 F.R.D. 515, 524 ("The plain language of § 1182(b)(2) allows premium discounts or rebates … However, the tobacco surcharge at issue does not appear to be a discount or a rebate.") (cleaned

up). Class Counsel briefed these issues extensively in connection with mediation and was able to reach a favorable resolution. Ricke Decl. at ¶ 12.

In addition, the parties disputed whether Plaintiff could fashion a remedy under ERISA to return the tobacco surcharge funds to class members. Plaintiff argued that the remedy of surcharge was available as a remedy for the ERISA statutory violation claims (29 U.S.C. 1332(a)(3)) under Eighth Circuit precedent, which Bass Pro vigorously disputed. *See Silva v. Metro. Life Ins. Co*., 762 F.3d 711, 722 (8th Cir. 2014); *Powell v. Minnesota Life Ins. Co*., 60 F.4th 1119, 1123 (8th Cir. 2023) (noting that surcharge is available for § 502(a)(3) claim). This is not a complete list of the parties' legal disputes, but it shows that the claims faced risk at each phase of the litigation. Class Counsel addressed each of these uncertainties to deliver a meaningful result for these workers, which supports a one-third fee. Ricke Decl. at ¶ 13.

3. Class Counsel represented the workers on a contingent basis, despite material risks to recovery, and performed labor precluding other employment, even though the cases were undesirable to other lawyers. (Factors 1, 4, 6-7 and 10).

Class Counsel took this case prosecuting largely untested, risky, and modest-sized claims (when viewed on an individual basis as would be required by Bass Pro's arbitration agreement) on a contingency and faced the real risk of recovering nothing for their time if Plaintiff lost on any one of the issues identified above. In the face of these risks, Class Counsel leveraged their skill, experience, and reputation prosecuting ERISA cases to efficiently deliver a favorable settlement and to avoid the material uncertainties identified above. This merits the requested one-third fee.

"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); *see also* Theodore Eisenberg & Geoffrey Miller, Attorney Fees in Class Action Settlements: An Empirical Study, 1 J. Emp. L. Studies 27, 38 (2004) ("[f]ees are … correlated

with risk: the presence of high risk is associated with a higher fee, while low-risk cases generate lower fees … [This] is widely accepted in the literature.")). "Unless that risk is compensated with a commensurate award, no firm, no matter how large or well-financed, will have the incentive to consider pursuing a case such as this." *Tussey*, 2019 WL 3859763, at *3. "Courts agree that a larger fee is appropriate in contingent matters where payment depends on the attorney's success." *Been*, 2011 WL 4478766, at *9.[6] And critically, "[t]he risks plaintiffs' counsel faced must be assessed as they existed in the morning of the action, not in light of the settlement ultimately achieved at the end of the day." *In re Xcel*, 364 F. Supp. 2d at 994.

Here, Class Counsel's time and labor invested were meaningful in the context of this case and necessarily precluded other work. Class Counsel have expended more than 630 hours through February, which will increase through final approval and administration.[7] Ricke Decl. at ¶ 30.

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[6] *Accord, In re: Checking Account Overdraft Litig*., 2014 WL 11370115, at *17 (risk embodied by "contingency fee arrangement often justifies an increase in the award of attorney's fees.") (quoting *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1335 (S.D. Fla. 2001)); *see also id*. ("Public policy concerns – in particular, ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs holding small individual claims – support the requested fee here."); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Products Liab. Litig*., 2013 WL 12327929, at *32 (C.D. Cal. July 24, 2013) ("It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for contingency cases. This ensures competent representation for plaintiffs who may not otherwise be able to afford it." (cleaned up)); *Barrera v. Nat'l Crane Corp*., 2012 WL 242828, at *4 (W.D. Tex. Jan. 25, 2012) ("The legal profession accepts contingent fees that exceed the market value of the services if rendered on a non-contingent basis as a legitimate way of assuring competent representation for plaintiffs who cannot afford to pay on an hourly basis regardless of whether they win or lose"); *Allapattah Servs., Inc. v. Exxon Corp*, 454 F. Supp. 2d 1185, 1217 (S.D. Fla. 2006) ("Class Counsel has risked millions of dollars in un-reimbursed attorneys' time and additional millions in out-of-pocket costs. Unless that risk is compensated with a commensurate reward, few firms, no matter how large or well financed, will have any incentive to represent the small stake holders in class actions against corporate America, no matter how worthy the cause or wrongful the defendant's conduct.").

[7] As the Eighth Circuit recently confirmed, a lodestar crosscheck is not necessary, particularly in a case like this where there is no mega fund and no risk of a windfall to Class Counsel. *In re T-Mobile Customer Data Sec. Breach Litig.*, 111 F.4th 849, 862 (8th Cir. 2024); *Keil v. Lopez*, 862

The fact investigation and discovery process was meaningful. Class Counsel took the time to learn about Plaintiff Ruiz's employment with Bass Pro, prepared a statutory request for plan materials, reviewed and analyzed Bass Pro's plan materials, drafted the Complaint, prepared written discovery requests, worked with Plaintiff Ruiz to respond to written discovery, and collected and produced Plaintiff's responsive documents. On the merits, Class Counsel spent significant time analyzing Bass Pro's arbitration and class waiver provisions, preparing an amended Complaint, and briefing all of the substantive legal issues described above to both Bass Pro and the mediator. The full-day mediation (and subsequent follow-up) was a cerebral debate of all manner of ERISA-specific issues that took significant time and effort. Ricke Decl. at ¶ 32.

Then, once a settlement was reached, Class Counsel prepared initial drafts of all settlement documents, prepared the preliminary approval briefing, and has overseen the notice process with Analytics Consulting LLC. The notice continues to generate unusually high interest from class members. Class Counsel have responded to dozens of inquiries from class members. The work is also not done. Class Counsel will move for final approval of the settlement, address any concerns the Court may have at the final approval hearing, and oversee the distribution of settlement funds. Although Class Counsel efficiently resolved this case without burdening the Court, it did require meaningful time and resources from Class Counsel. Ricke Decl. at ¶ 33.

Class Counsel incurred the risk associated with this commitment of time and resources without the assistance of a government investigation or widespread, public condemnation of Bass

F.3d 685, 701 (8th Cir. 2017). That said, at Class Counsel's customary rates, the requested fee would currently result in a lodestar multiplier of 2.8, which will decrease meaningfully between now and the conclusion of settlement administration. If the Court requires more information about Class Counsel's lodestar, they will of course provide it. Ricke Decl. at ¶¶ 30-31, 35.

Pro's tobacco surcharge practices. Nor did Class Counsel have favorable appellate precedent to rely upon when they began investigating these claims. Ricke Decl. at ¶¶ 34-35.

For the reasons discussed above, these cases were undesirable because of the high risk of no recovery as well as the risk of an outsized commitment of time for a limited recovery (assuming, for example, that Bass Pro succeeded in enforcing its arbitration agreement). In the face of these risks, Class Counsel efficiently delivered a $4,950,000 common fund that will make meaningful payments exceeding $580 on average per person with no claims process and a limited release. *In re T-Mobile Customer Data Sec. Breach Litig.*, 111 F.4th 849, 859 (8th Cir. 2024) ("it doesn't seem reasonable to penalize attorneys for obtaining a quick success"). The significant risks borne by Class Counsel in prosecuting these claims justify the requested one-third fee.[8]

4. Class Counsel's reputation and skillful resolution of the litigation supports the requested fee award (Factors 3, 9, and 11).

Class Counsel has been on the forefront of unlawful wellness plan litigation under ERISA since the filing of the operative Complaint in the *Lipari-Williams* case in 2020. *Lipari-Williams v. The Missouri Gaming Co*., Case No. 20-cv-06067-SRB, Doc. 39 (W.D. Mo. Oct. 21, 2020). In that case, Class Counsel successfully litigated similar ERISA claims through Phase I discovery culminating in Judge Bough's Order (over significant opposition) granting class certification. *Lipari-Williams v. Missouri Gaming Co., LLC*, 339 F.R.D. 515 (W.D. Mo. 2021). Thereafter, the defendants in that case filed a Rule 23(f) petition to the Eighth Circuit, which was denied. Class Counsel successfully resolved those claims as part of a $5.5 million class settlement. Ricke Decl.

[8] *See e.g., Caligiuri v. Symantec Corp.*, 855 F.3d 860, 866 (8th Cir. 2017) (affirming fee award where lower court reasoned, in part, that "[p]laintiffs' counsel, in taking this case on a contingent fee basis, was exposed to significant risk"); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 2020 WL 256132, at *33 (N.D. Ga. Mar. 17, 2020) (noting in another case prosecuted by Class Counsel that the "action was prosecuted on a contingent basis and thus a larger fee is justified.").

at ¶¶ 18-19. Since then, Class Counsel has continued to press similar claims on behalf of working people in cases around the country, which has been covered extensively by national media.[9] These cases have given Class Counsel unique perspective on many of the issues in play here. In fact, Class Counsel recently argued similar arbitration issues at the Ninth Circuit seeking to preserve a district court order refusing to compel arbitration under similar circumstances.[10]

In addition to their experience in these types of ERISA claims, Class Counsel have significant experience in employment, wage and hour, and class action litigation at large. In fact, they are among the few firms to have secured multiple class action jury verdicts and had them affirmed on appeal. For example, after a jury returned a verdict for a class of meatpackers in a wage and hour case, Judge Marten (Ret.) of the District of Kansas observed of Stueve Siegel Hanson that "it appears that plaintiffs' counsel's experience in wage hour class actions has unmatched depth." *Garcia v. Tyson Foods, Inc*., 2012 WL 5985561, at *4 (D. Kan. Nov. 29, 2012), *aff'd*, 770 F.3d 1300 (10th Cir. 2014); Ricke Decl. at ¶¶ 31-27.[11] This factor supports the requested fee.

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[9] *See, e.g.*, Emily Cousins, *ERISA Class Actions Surge Over Health Plans' Tobacco Surcharges,* ALM Law.com, https://www.law.com/ctlawtribune/2024/10/29/erisa-class-actions-surge-over-health-plans-tobacco-surcharges/

[10] Class Counsel is currently litigating the issue of enforceability of mandatory arbitration provisions containing class action waivers in ERISA benefit plans before the Ninth Circuit. *See Platt v. Sodexo, S.A.,* 2023 WL 4832660 (C.D. Cal. July 25, 2023) (denying motion to compel arbitration in an ERISA tobacco surcharge case); *Platt v. Sodexo*, Case No. 23-55737 (9th Cir.) (Sodexo's appeal of the district court's order denying Sodexo's motion to compel arbitration is fully submitted to the Ninth Circuit).

[11] *See, e.g., Bartakovits v. Wind Creek Bethlehem, LLC,* 2022 WL 702300 (E.D. Pa. Mar. 7, 2022) ("Class Counsel is uniquely skilled and efficient in prosecuting [] wage and hour cases"); *James v. Boyd Gaming Corp*., 2022 WL 4482477, at *15 (D. Kan. Sept. 27, 2022) ("the two law firms representing the collective members have extensive experience in this area of law. This skill and experience most likely contributed to their success in securing conditional certification of the two collectives and resolving the litigation through a settlement that provides significant benefits to collective members.")

5. The reaction of class members supports the fee request.

Analytics sent every class member a detailed, Court-authorized notice at their last known address (after cross-checking them against the National Change of Address database) informing them of their anticipated award as well as the proposed awards of attorneys' fees, expenses, and service awards. As of the date of this filing, there have not been any objections to the settlement and only three requests for exclusion. Ricke Decl. at ¶ 16. This indicates strong support for the result achieved and is further evidence that the requested fee is reasonable. If any objections or requests for exclusion are made in the next few weeks as the notice period concludes (March 31, 2025), Class Counsel will address them in connection with final approval.

6. The comparison between the requested attorney fee percentage and percentiles awarded in similar cases supports Class Counsel's request (Factors 5 and 12).

Eighth Circuit courts often look to similar fee awards in class actions within the Eighth Circuit generally, as well as to fee awards in similar litigation in other circuits. *See In re Xcel*, 364 F. Supp. 2d at 998. In the Eighth Circuit, courts have "frequently awarded attorneys' fees ranging up to 36% in class actions." *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017). Contingency fee arrangements are the "key to the courthouse" for individuals taking on a large corporation. As a result, Courts in this Circuit and this District frequently award attorney fees of 33 1/3%–36% of a common fund.[12] A one-third fee is appropriate here and consistent with awards in other class and collective actions in the Eighth Circuit.

[12] *See, e.g.*, *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (36% fee award reasonable); *Del Toro v. Centene Management Company, LLC*, 2021 WL 1784368, at *2-4 (E.D. Mo. May 5, 2021) (awarding 35% of settlement fund as attorneys' fees in wage and hour collective action); *Carlson v. C.H. Robinson Worldwide, Inc.*, 2006 WL 2671105, at *8 (D. Minn. Sept. 18, 2006) (35.5% fee award reasonable); *In re Iowa Ready–Mix Concrete Antitrust Litig*., 2011 WL 5547159 (N.D. Iowa Nov. 9, 2011) (awarding attorneys 36.04% of $18.5 million common fund in

Class Counsel's request for one-third of the common fund is actually less than the percentage fee awarded in the other tobacco surcharge class action settlement where Judge Bough recently awarded Class Counsel 35% of a $5.5 million common fund as attorneys' fees plus reimbursement of advanced expenses. *Lipari-Williams v. Penn National Gaming, Inc*., Case No. 5:20-cv-06067-SRB, Doc. 149 at ¶ 10 (W.D. Mo. May 25, 2023). In sum, every factor[13] that this Court is required to analyze supports the requested fee, which should be approved.

II. CLASS COUNSEL SHOULD HAVE THEIR REASONABLY INCURRED LITIGATION EXPENSES REIMBURSED.

It is commonly recognized that lawyers for a class should have the expenses they incurred to litigate a case reimbursed from the common fund they created.[14] Under the settlement, Class Counsel could seek up to $35,000 in expense reimbursement. *See* Settlement Agreement, Doc. 37-2 at ¶ III.D. As detailed in the attached declaration, however, Class Counsel seek only $17,893.68 in expenses related to the litigation of this matter, including filing fees, mediation expenses (travel and the mediator's fee), legal research, and other ordinary litigation expenses.

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fees, plus separate reimbursement from settlement fund of over $900,000 in expenses); *In re Control Data Sec. Litig.*, No. 85-1341 (D. Minn. Sept. 23, 1994) (awarding 36.96% of $8 million fund); *Oliver v. Centene Corp*., 2023 WL 3072651, at *1-2 (E.D. Mo. Apr. 25, 2023) (awarding $214,000 as attorneys' fees from $375,000 gross fund (57%) in FLSA collective action settlement).

[13] The nature and length of the professional relationship (Factor 11) is often not considered (or treated as neutral) as part of the *Johnson* factors analysis. *James v. Boyd Gaming Corp.*, 2022 WL 4482477, at *17 (D. Kan. Sept. 27, 2022).

[14] Alba Conte, 1 Attorney Fee Awards § 2:19 (3d ed.); *see also Sprague v. Ticonic*, 307 U.S. 161, 166–67 (1939) (recognizing a federal court's equity power to award costs from a common fund). "Reimbursable expenses include many litigation expenses beyond those narrowly defined 'costs' recoverable from an opposing party under Rule 54(d), including: expert fees; travel; long-distance and conference telephone; postage; delivery services; and computerized legal research." *Tussey,* 2019 WL 3859763, at *5 (citing Alba Conte, 1 Attorney Fee Awards § 2:19 (3d ed.)); *In re BankAmerica Corp. Sec. Litig*., 228 F. Supp. 2d 1061, 1066 (E.D. Mo. 2002) (approving reimbursement to class counsel of: "expert witnesses; computerized research; court reporting services; travel expenses; copy, telephone and facsimile expenses; mediation; and class notification").

Ricke Decl. at ¶¶ 38-41. These expenses are the type of expenses that hourly fee-paying clients routinely pay, and Class Counsel requests that they be reimbursed. *See, e.g.*, *Tussey*, 2019 WL 3859763, at *5.

III. THE COURT SHOULD APPROVE THE REQUESTED SERVICE AWARD.

The factors for deciding whether a service award is warranted and in what amount are: "(1) actions the plaintiff took to protect the class's interests, (2) the degree to which the class has benefited from those actions, and (3) the amount of time and effort the plaintiffs expended in pursuing litigation." *Caligiuri*, 855 F.3d at 867. The settlement provides that Plaintiff Ruiz may apply for a service award of $10,000 to be paid from the common fund, which is what she requests. *See* Settlement Agreement, Doc. 37-2, at ¶ III.C.

Each of the three factors endorsed by the Eighth Circuit should also be considered in light of the risks Plaintiff Ruiz took in pressing these claims. This is not a consumer class action where the parties have little to no relationship. Plaintiff Ruiz has and continues to work for Bass Pro. Her livelihood—her ability to provide for her family—is derived from the wages she earns from Bass Pro. For this reason, Courts have recognized that service awards in the employment context are especially warranted.[15]

[15] *See, e.g., Blofstein v. Michael's Fam. Rest., Inc*., 2019 WL 3288048, at *9 (E.D. Pa. July 19, 2019) ("Named Plaintiffs risked their employment reputation by participating in this class action. Under the circumstances, the requested service award is appropriate."); *Sand v. Greenberg*, 2011 WL 7842602, at *3 (S.D.N.Y. Oct. 6, 2011) ("Plaintiffs took risks by putting their names on this lawsuit. Plaintiffs who sue their current employers risk retaliation, including the possible loss of a job. Plaintiffs who sue former employers risk blacklisting and other more subtle forms of retaliation."); *Alvarez v. BI Inc*., 2020 WL 1694294, at *7 (E.D. Pa. Apr. 6, 2020) (awarding a $15,000 service award in a wage case finding that "the parties acknowledge that Named Plaintiffs took significant risk by coming forward to represent the interests of their fellow employees. Named Plaintiffs risked not only their reputation in the community, but also in their field and with their current employers—especially Named Plaintiff Alvarez, who is still employed by Defendant.").

As to the factors, Plaintiff took the necessary steps to bring about the result that is now before the Court. Plaintiff coordinated with Class Counsel in connection with fact investigation, collected wage and hour documents and other relevant employment materials, reviewed the Complaint, responded to written discovery, produced documents, coordinated with Class Counsel in connection with mediation and settlement, and reviewed and approved the Settlement Agreement on behalf of the class she now represents.

Each of these steps and actions Plaintiff Ruiz took was integral to bringing and resolving this case. The benefit conferred on her colleagues is significant in this context. Plaintiff Ruiz's actions contributed to a $4,950,000 settlement fund making *per capita* settlement payments exceeding $580 on average with no claims process and a limited release. Plaintiff Ruiz was the only class member to step forward and attach her name to this Complaint. Absent her efforts, this settlement would not have occurred.

The requested service award is in line with others awarded in employment class actions in the Western District of Missouri. *See, e.g., Louthain v. The Missouri Gaming Company, LLC*, Case No. 5:24-cv-06060-BP, Doc. 29 at ¶ 8 (W.D. Mo.) (approving a $10,000 service award in a wage and hour class action settlement); *Lipari-Williams v. Penn National Gaming, Inc.,* Case No. 5:20-cv-06067-SRB, Doc. 146-1 at 18-19 (W.D. Mo.) (requesting $10,000 service awards for each of the named plaintiffs in an ERISA tobacco surcharge settlement); *id*., Doc. 149 at ¶ 9 (approving service awards as requested).

CONCLUSION

For the foregoing reasons, Class Counsel respectfully requests that the Court approve the requested attorneys' fees of one-third of the settlement fund, reimbursement of litigation expenses in the amount of $17,893.68, and a service award of $10,000 to Plaintiff Ruiz.

Dated: March 7, 2025

Respectfully submitted,

STUEVE SIEGEL HANSON LLP

/s/ Alexander T. Ricke

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CLASS COUNSEL

CERTIFICATE OF SERVICE

The undersigned certifies that on March 7, 2025, the foregoing document was filed with the Court's CM/ECF system, which served a copy of the foregoing document on all counsel of record.

/s/ *Alexander T. Ricke*

CLASS COUNSEL

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

NORA RUIZ, individually and on behalf of all others similarly situated, **Plaintiff,** **v.** **BASS PRO GROUP LLC, and BPS DIRECT LLC, d/b/a BASS PRO SHOPS,** **Defendants.**	**Case No. 6:24-cv-03122-MDH**

DECLARATION OF ALEXANDER T. RICKE

I, Alexander T. Ricke, declare and state as follows:

1. I am a partner at the Kansas City-based law firm Stueve Siegel Hanson LLP. I am serving as Class Counsel in the above-captioned case. I make this Declaration based on personal knowledge and would competently testify to these facts if called to do so. I submit this Declaration in Support of Plaintiff's Unopposed Motion for an Award of Attorneys' Fees, Expenses, and Service Award.

2. The Stueve Siegel Hanson LLP Firm Resume is attached to this Declaration as **Exhibit 1**.

Class Counsel Achieved a Significant Settlement in the Face of Legitimate Uncertainty

3. The complete Settlement Agreement has previously been filed with the Court. Doc. 37-2. This Declaration summarizes key aspects of the Settlement Agreement and the litigation in connection with demonstrating that Class Counsel and Plaintiff Ruiz secured a meaningful recovery overcoming legitimate uncertainty as to the ultimate outcome.

4. The Settlement Agreement obligates Bass Pro to create a non-reversionary $4,950,000 common fund.

5. Based on the class list provided by Bass Pro, the proposed class covered by the Settlement Agreement contains 5,530 individuals.

6. The settlement fund will be used to pay (1) settlement payments to all class members; (2) a service award of $10,000 to Plaintiff Ruiz; (3) Class Counsel's attorney's fees of up to one-third of the common fund ($1,650,000) plus $17,893.68 in advanced expenses (less than the $35,000 in expenses provided for in the Settlement Agreement); (4) the cost of settlement administration (now confirmed to be $31,990); and (5) a modest $5,000 reserve fund to correct errors and omissions.

7. After accounting for the fees and expenses outlined above, Class Counsel estimate that a net settlement fund of $3,218,000 will make *per capita* settlement payments averaging $581.92 to class members. Some settlement payments will be larger and some smaller given that the settlement payments will be made based on each class member's proportional damages. The largest settlement payment will be nearly $2,500. In fact, more than 350 class members will recover at least $2,000.

8. Class Counsel believe this is a meaningful recovery for these workers. It also represents a meaningful recovery on a percentage basis given the risks the claims faced discussed below. Using Bass Pro's class-wide data, Class Counsel calculated class-wide ERISA damages (value of tobacco surcharges during a six-year window, which, even the relevant period was disputed between the parties) of $14,065,410. The $4,950,000 common fund thus represents approximately 35% of the value of the ERISA claims' actual damages assuming the longest, six-year look bad period.

9. Importantly, class members do not need to do anything to receive their settlement payments. If class members do not opt out of the settlement, they will simply receive a check in the mail for their share of the settlement. In addition, those settlement payments will not revert to Bass Pro. If class members do not negotiate their settlement checks, those payments will be transferred to the state unclaimed property fund where the class member worked to be held for that individual. In exchange for these payments, class members agree to a release tailored to claims that were or could have been asserted based on the facts alleged in the operative Complaint.

10. The value of the recovery is underscored by the uncertainty that the claims faced, which were meaningful because of the novel nature of the claims. Here, there were risks associated with arbitration, the merits of whether Bass Pro's tobacco surcharge complied with ERISA, and even the remedies available to the class members.

11. For starters, there was a dispute over the appropriate forum for Plaintiff's claims. In its Amended Answer (Doc. 27), Bass Pro asserted that Plaintiff and class members were bound by the company's form arbitration and class waiver agreements. Doc. 27 at Affirmative Defense ¶¶ 4-7. Plaintiff was prepared to resist any motion to compel arbitration and would argue that Bass Pro had waived the ability to arbitrate by participating in the litigation process, that the arbitration agreement violated the effective vindication doctrine with respect to the representative breach of fiduciary duty claim, and that the arbitration agreement's severability language required the entire case to be heard in Court. Class Counsel successfully navigated this threshold issue that could have precluded a class-wide recovery.

12. Likewise, the parties disputed the merits of whether Bass Pro's tobacco surcharge constituted a lawful outcome-based wellness plan under ERISA. This question turned on related disputes about how to interpret ERISA's non-discrimination provision (29 U.S.C. § 1182(b)) and

the impact of the Supreme Court's *Loper Bright* decision on the Department of Labor's operative regulation (29 C.F.R. § 2590.702). There is little substantive authority on this issue beyond Judge Bough's order granting class certification in the *Lipari-Williams* matter. 339 F.R.D. 515, 524 ("The plain language of § 1182(b)(2) allows premium discounts or rebates … However, the tobacco surcharge at issue does not appear to be a discount or a rebate.") (cleaned up). Class Counsel briefed these issues extensively in connection with mediation and was able to reach a favorable resolution.

13. In addition, the parties disputed whether Plaintiff could fashion a remedy under ERISA to return the tobacco surcharge funds to class members. Plaintiff argued that the remedy of surcharge was available as a remedy for the ERISA statutory violation claims (29 U.S.C. 1332(a)(3)) under Eighth Circuit precedent, which Bass Pro vigorously disputed. *See Silva v. Metro. Life Ins. Co*., 762 F.3d 711, 722 (8th Cir. 2014); *Powell v. Minnesota Life Ins. Co*., 60 F.4th 1119, 1123 (8th Cir. 2023) (noting that surcharge is available for § 502(a)(3) claim). This is not a complete list of the parties' legal disputes, but it shows that the claims faced potential risk at each phase of the litigation. Class Counsel addressed each of these uncertainties to deliver a meaningful result for these workers, which supports a one-third fee

14. The identified uncertainties are in addition to the normal risks of obtaining class certification, defeating dispositive motions, and prevailing at trial and on appeal.

15. As discussed below, I and my colleagues have considerable experience prosecuting these types of claims, as well as wage and hour cases and class action claims generally. In my opinion, recovering 35% of the tobacco surcharge deductions with estimated settlement payments exceeding $580 is a strong recovery in this case given the uncertainties identified above.

16. I have discussed the status of the notice plan with settlement administrator Analytics Consulting LLC. To date, no class members have objected to the settlement and only three class members have requested exclusion. The notice period runs through March 31, 2025. Class Counsel will supplement the record appropriately at the conclusion of the notice period.

Class Counsel's Skill, Reputation, and Experience Supports the Requested One-Third Fee

17. Stueve Siegel Hanson LLP practices almost exclusively in complex litigation in state and federal courts across the country. The firm has approximately 30 attorneys who work from our Kansas City, Missouri offices. The firm handles large-scale, high-stakes litigation usually on a fully contingent basis.

18. Stueve Siegel Hanson has significant experience litigating and trying wage and hour cases and class actions generally. Relevant here, there are few, if any, counsel who have more experience prosecuting tobacco surcharge claims under ERISA than Class Counsel.

19. As far as Class Counsel are aware, Stueve Siegel Hanson and McClelland Law Firm filed the first private action under ERISA seeking to redress unlawful tobacco surcharges in *Lipari-Williams v. The Missouri Gaming Company, LLC*, No. 5:20-cv-06067 (W.D. Mo.) in 2020. There, Class Counsel ultimately obtained class certification, which the Eighth Circuit declined to take up on a Rule 23(f) petition. *Lipari-Williams v. Missouri Gaming Co., LLC*, 339 F.R.D. 515 (W.D. Mo. 2021). Ultimately, the ERISA claims in *Lipari-Williams* settled as part of a $5.5 million class action settlement in May 2023. *See Lipari-Williams*, Doc. 149 (May 25, 2023).

20. Since then, Class Counsel have filed additional cases under ERISA challenging unlawful tobacco surcharges around the country, which have been covered extensively by national

media.[1] In one such case, Class Counsel have litigated an arbitration provision that is similar to what Bass Pro would have pressed here absent settlement. In that case, *Platt v. Sodexo*, the district court denied a motion to compel arbitration, which the defendant appealed and is now fully submitted to the Ninth Circuit awaiting a decision. 2023 WL 4832660 (C.D. Cal. July 25, 2023) (denying motion to compel arbitration in an ERISA tobacco surcharge case); *Platt v. Sodexo*, Case No. 23-55737 (9th Cir.). This experience gives Class Counsel a unique perspective and additional reference point on how to value the claims in this case.

21. As the lead partner at my firm managing this case, I also provide the Court with my credentials (and those of my firm) to support my opinion that this is a strong settlement and that Class Counsel possess significant skill, reputation, and experience in this area of the law as relevant to awarding attorneys' fees under the *Johnson* factors.

22. I am a 2012 graduate of the University of Missouri School of Law and a 2009 graduate of the University of Missouri School of Journalism. I joined Stueve Siegel Hanson in 2016 as an associate after working for several years as an associate at another Kansas City firm focused on complex litigation. I joined Stueve Siegel Hanson's partnership in January 2023. During my tenure at the firm, I have taken lead roles in some of the firm's most challenging cases. I have been recognized as a Missouri & Kansas SuperLawyers Rising Star every year since 2016 and was recently recognized by Chambers USA Guide 2024 in Band 2: Labor & Employment: Mainly Plaintiffs.

[1] *See, e.g.*, Emily Cousins, *ERISA Class Actions Surge Over Health Plans' Tobacco Surcharges,* ALM Law.com (Oct. 29, 2024), https://www.law.com/ctlawtribune/2024/10/29/erisa-class-actions-surge-over-health-plans-tobacco-surcharges/

23. Named one of Law360's Rising Stars for Employment in 2022 honoring top legal talent under the age of 40, I have served as lead or co-lead counsel in scores of wage and hour class and collective actions recovering more than $100 million for workers in various industries.

24. Since 2016, I have served as lead counsel prosecuting ERISA, minimum wage, tip credit, wage deduction, and overtime claims on behalf of low wage earning casino workers. Recoveries in these cases now exceed $70 million with more matters currently pending. A selection of these results include:

a. *Maldonado v. MGM Resorts International*, No. 1:20-cv-05599 (D.N.J.) (recovering $12.5 million for a class of casino workers asserting tip credit violations);

b. *Stewart v. Rush Street Gaming, LLC*, No. 1:20-cv-02566 (N.D. Ill) (recovering more than $9.8 million for a collective of minimum wage casino workers asserting tip credit and minimum wage violations);

c. *Lockett v. Pinnacle Entertainment, Inc.*, No. 4:19-cv-00358 (W.D. Mo.) ($6.25 million for certified class and collective settlement for tip pooling and wage deduction violations);

d. *Bartakovits v. Wind Creek Bethlehem, LLC*, No. 5:20-cv-01602 (E.D. Pa.) ($6 million class settlement for tip credit and wage deduction violations);

e. *Brown v. Rush Street Gaming, LLC*, No. 1:22-cv-00392 (N.D.N.Y.) ($5.5 million class settlement for tip credit and wage statement claims);

f. *Lipari-Williams v. Missouri Gaming Co.*, No. 5:20-cv-06067 (W.D. Mo.) ($5.5 million for certified class and collective settlement for ERISA, tip pooling, and wage deduction violations);

g. *Day v. PPE Casino Resort Maryland LLC*, No. 1:20-cv-01120 (D. Md.) ($3.05 million class and collective settlement for casino workers asserting tip credit and wage deduction claims);

h. *James v. Boyd Gaming Corp.*, No. 2:19-cv-02260 (D. Kan.) (total settlement value of $2.3 million for certified collectives of casino workers asserting tip credit and tip pooling violations, including separate payment of attorneys' fees);

i. *Prime v. JACK Cleveland Casino, LLC*, No. 1:23-cv-02216 (N.D. Ohio) ($2.2 million settlement for a collective of casino workers asserting tip credit claims);

j. *Adams v. Aztar Indiana Gaming Co.*, No. 3:20-cv-00143 (S.D. Ind.) ($2.1 million settlement for certified class and collective asserting minimum wage violations);

k. *MacMann v. Tropicana St. Louis, LLC*, No. 4:19-cv-00404 (E.D. Mo.) (recovering total settlement value of $1.3 million for certified classes and collectives of casino workers asserting tip credit, overtime, timeclock rounding, and wage deduction claims, including separate payment of attorneys' fees).

l. *Rosa v. Tropicana Atlantic City Corp.*, No. 1:20-cv-06969-CPO (D.N.J.) (recovering total settlement value of $1,097,500 for a certified collective of approximately 200 tipped casino workers, including separate payment of attorneys' fees.)

25. In addition to my wage and hour work, I have litigated complex commercial, product liability, and privacy matters to successful conclusions. For example, in 2022, I (along with my partners) secured a settlement on the eve of trial for a certified class of Missouri governmental entities valued at $56 million that provided for the removal and replacement of what the class alleged were dangerous and defective guardrail end terminals throughout the State of Missouri. This case received significant media attention because it was, to my knowledge, the first successful resolution of non-personal injury claim against Trinity for the cost of removing and replacing these devices.[2] The settlement was recognized as a top three settlement in the State of Missouri in 2022.[3]

26. Further, Stueve Siegel Hanson is one of the few firms to have tried numerous class and collective actions to a jury. In the wage and hour context, Stueve Siegel Hanson lawyers tried

[2] Nate Raymond, *Trinity Industries Reaches Settlement Worth $56 Million in Missouri Guardrail Case*, Reuters (June 1, 2022), https://www.reuters.com/legal/government/trinity-industries-reachessettlement-worth-56-million-missouri-guardrail-case-2022-05-31/.

[3] Staff Report, *Missouri Lawyers Media Top V&S Winners of 2022 Announced* (Jan. 10, 2023), https://molawyersmedia.com/2023/01/10/missouri-lawyers-media-top-vs-winners-of-2022-announced/.

a class and collective action on behalf of meat packers at a Tyson plant for unpaid time spent "donning and doffing" required clothing and equipment. After the jury returned a verdict for the workers, Judge Marten (Ret.) of the District of Kansas observed of the wage and hour lawyers at Stueve Siegel Hanson that "it appears that plaintiffs' counsel's experience in wage hour class actions has unmatched depth." *Garcia v. Tyson Foods, Inc*., 2012 WL 5985561, at *4 (D. Kan. Nov. 29, 2012), *aff'd*, 770 F.3d 1300 (10th Cir. 2014).

27. In recent years, Stueve Siegel Hanson lawyers have tried other class actions resulting in seven, eight, and nine-figure verdicts. In June 2017, Stueve Siegel Hanson, as MDL co-lead counsel, tried a bellwether class action *In re: Syngenta AG MIR162 Corn Litigation*, No. 14-MD-2591-JWL (D. Kan.), and secured a verdict of $217,700,000 on behalf of Kansas corn farmers, which was ultimately resolved as part of a nationwide settlement. In 2018, the firm tried and secured a $34,000,000 class action verdict on behalf of approximately 24,000 State Farm life insurance policy holders in *Vogt v. State Farm Life Insurance Co*., No. 16:4170-CV-C-NKL (W.D. Mo.), which was affirmed on appeal by the Eighth Circuit. *Vogt v. State Farm Life Ins. Co*., 963 F.3d 753 (8th Cir. 2020), *cert. denied*, 141 S. Ct. 2551 (2021). In December 2022, Stueve Siegel Hanson lawyers secured a $28,360,000 verdict on behalf of a Missouri class of Kansas City Life Insurance policy holders in, which was affirmed on appeal. *Karr v. Kansas City Life Ins. Co*., 2024 WL 4280503 (Mo. Ct. App. Sept. 24, 2024), *reh'g and/or transfer denied* (Oct. 29, 2024). In 2023, the firm tried another class action on behalf of Missouri policy holders against Kansas City Life Insurance Company and recovered a verdict over $4,000,000 in *Sheldon v. Kansas City Life Insurance Co*., No. 1916-cv-26689, in the Circuit Court of Jackson County, Missouri).

Class Counsel Invested Meaningful Time and Resources in this Case

28. The regular and customary practice at Stueve Siegel Hanson is for all attorneys and paralegals to maintain contemporaneous time records setting forth the amount of time spent in six-minute increments on each task in each case with detailed time records. The time entries for prosecuting Plaintiff's claims against Bass Pro were recorded in the firm's time management system. Based on my discussions with my co-counsel, McClelland Law Firm follows a similar practice.

29. Class Counsel represented Plaintiff and the class on a contingency basis. Class Counsel faced the risk of recovery nothing for their time if any of the issues described above were decided in favor of Bass Pro. As a result, the time incurred was done at considerable risk.

30. Through February 2025, Class Counsel's attorneys and professional staff have expended more than 630 hours on this litigation yielding a lodestar at current rates of more than $580,000. Measured against the lodestar, the requested fee represents a 2.8 multiplier on Class Counsel's time.

31. Although Class Counsel obtained the settlement efficiently, it was not without significant effort that leveraged Class Counsel's unique skills and experience in this area of the law.

32. The fact investigation and discovery process was meaningful despite the (relatively) early settlement. Class Counsel took the time to learn about Plaintiff Ruiz's employment with Bass Pro and experience with the company's tobacco surcharge, prepared a statutory request for plan materials, reviewed and analyzed Bass Pro's plan materials, drafted the Complaint, prepared written discovery requests, worked with Plaintiff Ruiz to respond to written discovery, and collected and produced Plaintiff's responsive documents. On the merits, Class

Counsel spent significant time analyzing Bass Pro's arbitration and class waiver provisions, preparing an amended Complaint, and briefing all of the substantive legal issues described above to both Bass Pro and the mediator. The full-day mediation (including the lead up and subsequent follow-up) was a cerebral debate of all manner of ERISA-specific issues that took significant time and effort.

33. Then, once a settlement was reached, Class Counsel prepared initial drafts of all settlement documents, prepared the preliminary approval briefing, and has overseen the notice process with Analytics Consulting LLC. The notice continues to generate unusually high interest from class members, which Class Counsel ascribes to the meaningful nature of the payments. Class Counsel have responded to dozens of inquiries from class members. The work is also not done. Class Counsel will move for final approval of the settlement, address any concerns the Court may have at the final approval hearing, and oversee the distribution of settlement funds. Although Class Counsel efficiently resolved this case without burdening the Court, it did require meaningful time and resources from Class Counsel.

34. Class Counsel incurred the risk associated with this commitment of time and resources without the assistance of a government investigation or widespread, public condemnation of Bass Pro's tobacco surcharge practices. Nor did Class Counsel have favorable appellate precedent to rely upon when they began investigating these claims.

35. Further, there is more work yet to perform. Class Counsel must oversee the notice process, brief final approval, address any concerns the Court may have at the final approval hearing, and, if approved, oversee the settlement administration and check distribution process. As a result, the lodestar multiplier discussed above will continue to decrease.

36. Although a lodestar cross-check is not necessary under Eighth Circuit precedent, Class Counsel's hourly rates have routinely been approved as reasonable. The hourly rates used to calculate the lodestar are Stueve Siegel Hanson's standard 2025 rates for both contingent and non-contingent, hourly work. For example, in 2024, Mr. Hanson and I were engaged in an hourly, non-contingent employment matter where the client was billed at $1,325 per hour for Mr. Hanson's time and $925 per hour for Mr. Ricke's time (standard 2024 rates). Likewise, beginning in 2022 and continuing into 2023, Mr. Hanson and Mr. Ricke were engaged in an hourly, non-contingent matter where the clients were billed at Mr. Hanson and Mr. Ricke's 2022 hourly rates of $1,050 and $675 per hour, respectively.

37. In addition, Stueve Siegel Hanson's hourly rates have routinely been approved in connection with contested fee applications, lodestar attorneys' fees applications and lodestar cross-checks for attorneys' fees awarded as a percentage of a fund. *See, e.g.*, *O'Dell v. Aya Healthcare*, -- F.Supp.3d --, 2024 WL 4510583, at * (S.D. Cal. Oct. 15, 2024) (finding on contested fee application that SSH's counsel's and staff's hourly rates, including a 2024 partner rate of $975 and of counsel rate of $775 are "reasonable" in a wage and hour class action) (*see also* S.D. Cal. ECF No. 3:22-cv-01151-CAB-MMP, Doc No. 107-2, at 6); *Kruger v. Lely N. Am., Inc.*, 2023 WL 5665215, at *1 (D. Minn. Sept. 1, 2023) (approving fees as a percentage of the fund with partner hourly rates of up to $1,225); *Torretto v. Donnelley Fin. Sols., Inc*., 2023 WL 123201, at *4 (S.D.N.Y. Jan. 5, 2023) (approving lodestar fee application of Stueve Siegel Hanson, which included a 2022 partner rate of $825); *Maldonado v. MGM Resorts International*, Case No. 1:20-CV-05599, Doc. 64 (D.N.J. July 6, 2022), Transcript of Final Approval Hearing at 15:5-16 (approving blended hourly rate of approximately $725 per hour finding that "the lodestar is $1,164,738 based on 1,600 hours of work by counsel … The reasonable lodestar supports the

approval of the fee as requested."); *Jackson County v. Trinity Industries, Inc.*, Case No. 1516-CV23684, 2022 WL 4235745, at *2 (Mo. Cir. Ct. Aug. 30, 2022) (awarding Stueve Siegel Hanson and co-counsel $11,400,000 in attorneys' fees and costs in lodestar fee application and noting that "Class Counsel's blended rate of $662 per hour is reasonable based on the skill, experience, and reputation of counsel," including Mr. Ricke's standard hourly rate of $675 in 2022); *In re Equifax Inc. Customer Data Sec. Breach Litig*., 2020 WL 256132, at *39 (N.D. Ga. Jan. 13, 2020) (approving partner rates ranging from $750-$1,050 per hour in large-scale data breach class action with Stueve Siegel Hanson serving as Co-Lead Counsel); *Reyes v. Experian Info. Sols., Inc*., 2020 WL 5172713, at *4 (C.D. Cal. July 30, 2020) (approving Stueve Siegel Hanson's "sufficiently document[ed] and justifie[d]" hourly rates for purposes of cross-check).

Class Counsel's Litigation Expenses

38. Collectively, Class Counsel seek reimbursement of $17,893.68 from the settlement fund, which is roughly half of the $35,000 cap provided for in the Settlement Agreement. Each firm's expenses are summarized below.

39. Stueve Siegel Hanson has advanced significant expenses in this case, which, to date, are uncompensated. The firm maintained accurate records of all such expenses, and based on those records, the firm has incurred the following costs and expenses, all of which would normally be billed to hourly, non-contingent, fee-paying clients:

Category	Amount
Meals	$499.43
Court Fees	$405.00
Process Servers	$108.20
Mediation Fees	$3,115.00
Ground Transportation	$595.38
Lodging	$2,019.55
Print and Copy	$180.40
Postage	$8.68
PACER	$21.50
Westlaw	$8,075.06
Hosting/Data Storage	$17.18
Total	$15,045.38

40. In addition, I have spoken to my co-counsel Ryan McClelland of McClelland Law Firm regarding that firm's expenses in this case. McClelland Law Firm has incurred a total of $2,848.30 in expenses, which constitute $2,438.77 for travel costs associated with the mediation, $44.38 in printing and copying, and $365.15 in PACER charges.

41. Each of the charges discussed above were reasonably necessary for the litigation and settlement of this case. Further, each is of the type and character that Class Counsel's firms would typically bill to hourly, fee-paying clients.

Executed March 7, 2025, in Kansas City, Missouri.

/s/Alexander T. Ricke
Alexander T. Ricke

EXHIBIT 1

STUEVE SIEGEL HANSON

WHO WE ARE

Stueve Siegel Hanson was launched in 2001 on a foundational business model where our payment for legal services would depend on the results delivered and the value provided rather than the hours spent on a case. Since then, this business model has been a hallmark of our success, which has included the recovery of billions of dollars in damages and relief for consumers, entrepreneurs, employees, small and large businesses, and a variety of economic underdogs. The cases we handle frequently arise in some of the most complex areas of the law, including antitrust, intellectual property, FLSA collective actions, consumer and securities class actions, data breach, franchise disputes and other complex business litigation.

Our team of lawyers includes some of the best trained and most experienced trial lawyers in the country. Stueve Siegel Hanson's founding partners were partners at some of the country's largest law firms. The firm has also been fortunate in its ability to attract, retain and promote lawyers educated at top law schools and groomed at nationally prominent law firms, many of whom also have had valuable experiences as judicial law clerks at both the trial court and appellate levels.

Stueve Siegel Hanson is a national litigation firm based in Kansas City, Missouri, with offices in the heart of The Country Club Plaza.

OUR MISSION

Stueve Siegel Hanson provides aggressive, cutting-edge representation in litigation. Our law firm serves companies in business disputes as well as individuals harmed by dangerous products, unfair employers or unsavory business practices.

Because we work on a contingency model, our fees are based on the results we achieve. This means our trial lawyers have the same interests you do: Succeed for you and we succeed ourselves, fail you and we fail ourselves.

We believe the pursuit of justice should not be subject to the dysfunction of the billable hour, which rewards attorneys more for time than the results achieved. We take pride in winning efficiently and effectively as our clients' partner in the courtroom.

We invest in our firm, our profession and our community. We recruit the brightest attorneys from the nation's top law firms, and together we maintain a culture of camaraderie and respect. We apply new technology to further our efficiency, communication and creativity. We give our time and talents to pro bono projects, community service and bar organizations. While we take considerable pride in earning awards and recognition, we are most fulfilled by results, referrals and repeat business.

AWARDS AND RECOGNITION

We are proud to have been recognized by local, regional and national publications for our work and results. Among our earned rankings:

Law360

Titan of the Plaintiffs Bar:

- Norman Siegel, 2020

Practice Group of the Year:

- Cybersecurity & Privacy, 2019 and 2023
- Food & Beverage, 2018

MVP of the Year:

- Patrick Stueve, 2018 Food & Beverage
- Norman Siegel, 2019 Cybersecurity & Privacy and 2023 Class Action

Rising Star:

- Alexander Ricke, 2022 Employment
- Lindsay Todd Perkins, 2020 Cybersecurity & Privacy
- Austin Moore, 2019 Cybersecurity & Privacy

Chambers and Partners

USA Guide 2023: Litigation: Mainly Plaintiffs in Missouri

- Firm, Band 1
- Norman Siegel, Band 1
- Patrick Stueve, Band 1

The National Law Journal

Elite Trial Lawyers:

- 2019 Business Torts, Employment Rights, Financial Products, and Privacy/Data Breach Finalists
- Austin Moore, 2023 Rising Star of the Plaintiffs Bar Winner

Top 100 Jury Verdicts of 2017, No. 10 Verdict in the U.S.

Best Lawyers

Lawyers of the Year (Kansas City-Mo):

- Patrick Stueve 2016 and 2024 Antitrust Law; 2022 and 2024 Litigation- Antitrust; and 2017, 2019 and 2021 Bet-the-Company Litigation
- Steve Six, 2022 and 2024 Appellate
- George Hanson, 2022 Employment
- Norman Siegel, 2020 Mass Tort Litigation/Class Actions

Best Law Firms 2024 Edition:

- Recognized nationally for Mass Tort Litigation/Class Actions
- Tier 1 for Antitrust Law, Appellate Law, Appellate Practice, Bet-the-Compay Litigation, Commercial Litigation, and Employment Law in Kansas City, Mo.

CLASS AND COLLECTIVE ACTIONS

Since opening its doors in 2001, Stueve Siegel Hanson has obtained substantial results in a wide range of complex commercial, class, and collective actions while serving as lead or co-lead counsel.

Over the past decade, verdicts and settlements include:

Antitrust

- Obtaining $53 million in settlements between a class of direct purchasers of automotive lighting products and several manufacturers accused of participating in a price fixing scheme.
- Obtaining a $25 million settlement in a nationwide antitrust class action regarding price fixing of aftermarket automotive sheet metal parts.
- Obtaining a $7.25 billion settlement in a massive price-fixing case brought by a class of U.S. merchants against Visa, Mastercard and their member banks.
- Obtaining $33 million in nationwide class action alleging price fixing for certain polyurethanes in Urethanes antitrust case.
- Obtaining a $25 million settlement in a class action lawsuit that alleged Blue Rhino and certain competitors conspired to reduce the amount of propane gas in cylinders sold to customers. The firm obtained a $10 million settlement in a related suit against AmeriGas.

Data Privacy

- Obtaining a $3.25 million settlement in data privacy litigation on behalf of more than 61,000 optometrists whose personal information was compromised by the national optometry board.
- Obtaining a historic $1.5 billion settlement in a nationwide class action stemming from credit reporting firm Equifax's massive 2017 data breach.
- Obtaining $500 million, plus additional benefits, for victims of the 2021 T-Mobile data breach.
- Obtaining a $190 million settlement in a class action following a Capital One data breach that compromised the confidential information of nearly 100 million credit applicants.
- Obtaining a $115 million settlement resulting from a 2015 data breach affecting Anthem, Inc., one of the nation's largest for-profit managed health care companies.
- Obtaining a $10 million settlement in a class action resulting from a data breach at Target Corp.
- Obtaining a $3.25 million settlement in data privacy litigation on behalf of more than 61,000 optometrists whose personal information was compromised by the national optometry board.
- Obtaining a $2.3 million settlement in a class action stemming from a data breach at global technology company Citrix's internal network.

Catastrophic Injury

- Obtaining $39.5 million in settlements from three refiners on behalf of adjacent homeowners living above a large plume of gasoline leaked from the refineries and connecting pipelines.

Commercial Litigation

- Obtaining a $1.51 billion settlement for U.S. corn growers, grain handling facilities and ethanol production plants that purchased corn seeds prematurely sold by Syngenta.
- Obtaining a $218 million jury verdict for a class of Kansas corn producers who purchased corn seeds prematurely sold by Syngenta.
- Obtaining a $56 million settlement on behalf of a class of government entities against Trinity Industries and its manufacturing arm, Trinity Highway Products, to remove and replace the companies' 4-inch ET Plus guardrail end terminals on Missouri roads.
- Obtaining a $55 million settlement for dairy farmers in the United States who purchased the Classic model of the voluntary milking system (VMS) manufactured and sold by DeLaval Inc.
- Obtaining a $49.75 million settlement in the United States with Lely on behalf of dairy farmers who purchased its robotic milking system, the Lely Astronaut A4 ("A4").
- Obtaining more than $44 million in restitution and $7.9 million in cash for dentists against Align Technology, Inc. in a nationwide deceptive trade practices case.

Consumer Class Action

- Obtaining two settlements totaling $29 million to resolve consumer class action claims against Experian arising out of the company's reporting of delinquent loan accounts.
- Obtaining up to $220 million in damages for all Missouri residents who purchased the prescription pain reliever Vioxx before it was removed from the market.
- Obtaining more than $75 million in relief for purchasers of Hyundai vehicles for Hyundai's overstatement of horsepower in vehicles.
- Obtaining $29.5 million in settlements for overdraft fees charged to customers from UMB Bank, Bank of Oklahoma, and Intrust Bank.
- Obtaining $19.4 million for purchasers of H&R Block's Express IRA product related to allegedly false representations made during the sales presentation.

Cost of Insurance

- Obtaining a $2.25 billion settlement in a class action lawsuit against The Lincoln National Life Insurance Company over alleged life insurance policy overcharges.
- Obtaining a $325 million settlement in a nationwide class action against State Farm on behalf of policy owners alleging the insurer improperly included non-mortality factors in calculating the cost of insurance charge under the insurance contract.
- Obtaining a $59.75 million settlement in a nationwide class action lawsuit against John Hancock Life Insurance Company (U.S.A.) over alleged life insurance policy overcharges.
- Obtaining a $34 million jury verdict in a class action trial against State Farm Insurance regarding alleged life insurance policy overcharges.
- Obtaining three jury verdicts totaling nearly $33.5 million against Kansas City Life on behalf of Missouri and Kansas policy owners over alleged universal life insurance policy overcharges.

Wage and Hour

- Obtaining a $73 million settlement on behalf of current and former Bank of America retail banking and call center employees who alleged violations of the Fair Labor Standards Act.
- Obtaining approximately $50 million in settlements on behalf of DirecTV satellite technicians who were denied overtime and minimum wages in a California state court class action, more than 50 federal mass actions, and a collective arbitration.
- Obtaining a $27.5 million settlement for a class of loan originators who were misclassified as exempt and denied overtime.
- Obtaining a $25 million settlement for a class of mortgage consultants for unpaid overtime as lead counsel in multidistrict litigation.
- Obtaining a $24 million settlement to resolve a collective arbitration and more than 50 federal mass actions involving misclassified satellite technicians denied overtime and minimum wages.
- Obtaining a $14.5 million settlement for a class of inventory associates for unpaid overtime.
- Obtaining a $12.5 million settlement for multiple classes and collective of pizza delivery drivers alleging vehicle expenses reduced their wages below the minimum wage.
- Obtaining a $12.5 million settlement for classes of workers at two MGM casinos for tip credit violations.
- Obtaining a $10.5 million settlement for a class of bank employees for misclassification as being exempt from overtime.
- Obtaining a $9.8 million settlement for collectives of workers at three Rush Street Gaming casinos for tip credit and wage deduction violations.
- Obtaining an $8.5 million settlement for a collective of employees in the hospitality industry for unpaid minimum wages.
- Obtaining a $7.7 million settlement for a class of loan account servicers misclassified as exempt and denied overtime.
- Obtaining a $7.5 million settlement for class of loan processors in multidistrict litigation.
- Obtaining $6 million settlement for a class of workers at Wind Creek Casino for tip credit and wage deduction violations.
- Obtaining a $5.5 million settlement for a class of workers at Rivers Casino Schenectady for tip credit and overtime violations.
- Obtaining dozens of settlements between $1 million and $5 million for classes and collectives seeking unpaid overtime and minimum wages.

JUDICIAL PRAISE

"I've always been impressed with the professionalism and the quality of work that has been done in this case by both the plaintiffs and the defendants. On more than one occasion, it has made it difficult for the Court because the work has been so good."

> **Hon. Nanette Laughrey**, U.S. District Court for the Western District of Missouri
> *Nobles, et al., v. State Farm Mutual Automobile Insurance Co.*

"The complex and difficult nature of this litigation, which spanned across multiple jurisdictions and which involved multiple types of plaintiffs and claims, required a great deal of skill from plaintiffs' counsel, including because they were opposed by excellent attorneys retained by Syngenta. That high standard was met in this case, as the Court finds that the most prominent and productive plaintiffs' counsel in this litigation were very experienced had very good reputations, were excellent attorneys, and performed excellent work. In appointing lead counsel, the various courts made sure that plaintiffs would have the very best representation… In this Court's view, the work performed by plaintiffs' counsel was consistently excellent, as evidenced at least in part by plaintiffs' significant victories with respect to dispositive motion practice, class certification, and trial."

> **Hon. John Lungstrum**, U.S. District Court for the District of Kansas
> *In Re: Syngenta AG MIR 162 Corn Litigation*

"The most compelling evidence of the qualifications and dedication of proposed class counsel is their work in this case. Considering how far this action has come despite a grant of summary judgment in Defendant's favor and a reversal on appeal, proposed class counsel have made a strong showing of their commitment to helping the class vigorously prosecute this case."

> **Hon. Andrew J. Guilford**, U.S. District Court for the Central District of California
> *Reyes v. Experian*

"I believe this was an extremely difficult case. I also believe that it was an extremely hard fought case, but I don't mean hard fought in any negative sense. I think that counsel for both sides of the case did an excellent job… I congratulate the plaintiffs and I also congratulate the defense lawyers on the very, very fine job that both sides did in a case that did indeed pose novel and difficult issues."

> **Hon. Audrey G. Fleissig**, U.S. District Court for the Eastern District of Missouri
> *William Perrin, et al., v. Papa John's International, Inc.*

"The experience, reputation and ability of class counsel is outstanding."

> **Hon. Michael Manners**, Circuit Court of Jackson County, Missouri
> *Berry v. Volkswagen Grp. of Am., Inc.*

"It appears that plaintiffs' counsel's experience in wage-hour class actions has unmatched depth."

> **Hon. J. Thomas Marten**, U.S. District Court for the District of Kansas
> *Garcia v. Tyson Foods, Inc.*

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