

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Taqueria El Primo LLC, Victor Manuel Delgado Jimenez, Michelle Chavez Solis, El Chinelo Produce, Inc., Virginia Sanchez-Gomez, and Benjamin Tarnowski, on behalf of themselves and others similarly situated,

Plaintiffs,

v.

Farmers Group, Inc., Truck Insurance Exchange, Farmers Insurance Company, Inc., Farmers Insurance Exchange, Illinois Farmers Insurance Company, and Mid-Century Insurance Company,

Defendants.

Case No. 19-CV-03071 (JRT/ECW)

**DECLARATION OF DAVID W. ASP
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PAYMENT OF
ATTORNEYS' FEES, LITIGATION
EXPENSES, AND SERVICE AWARDS**

I, David W. Asp, declare as follows:

1. I am a partner at the law firm of Lockridge Grindal Nauen PLLP ("LGN"). I submit this Declaration in support of Plaintiffs' Motion for Payment of Attorneys' Fees, Litigation Expenses, and Service Awards filed simultaneously herewith ("Motion"). I have personal knowledge of the matters set forth herein and could competently testify thereto.

2. The Court appointed LGN, Hellmuth & Johnson PLLC, and Sawicki & Phelps, PA as Class Counsel for the certified Damages Class and Injunctive Class in this litigation. (*See* ECF No. 318 at 62.) Before and since that appointment, our firms have committed thousands of hours to developing and vigorously and efficiently prosecuting this class action case.

3. In this Declaration, I address the following items: 1) Class Counsel's efforts prosecuting this litigation, 2) Class Counsel's time and expense reporting, 3) Class Representatives' contribution to the prosecution of this case, and 4) LGN's time and expense reporting.

I. CLASS COUNSEL'S EFFORTS TO IN PROSECUTING THIS LITIGATION

4. Class Counsel filed the first complaint in this case on November 8, 2019, in Minnesota state court, representing Plaintiffs against Farmers Insurance Exchange and Illinois Farmers Insurance Company alleging violations of the Minnesota No-Fault Automobile Insurance Act (Minn. Stat. § 65B.41-.71), the Minnesota Consumer Fraud Act (Minn. Stat. § 325D.68-.70), the Minnesota Deceptive Practices Act (Minn. 25D.43.48), and breach of contract. *See* Compl. (ECF No. 1), *Taqueria El Primo LLC et al. v. Illinois Farmers Insurance Company et al.*, Case No. 26-CV-19-18537 (Minn. 2019). Plaintiffs sought money damages and injunctive relief. (*Id.*) Subsequently, Defendants removed this case to the United States District Court for the District of Minnesota. On June 5, 2020, Class Counsel filed the operative Second Amended Complaint. (ECF No. 65, *filed under seal.*) This complaint was the product of Class Counsel's preparation, independent investigation, and research. It included one issue of first impression under Minnesota law, specifically, the interpretation of Minn. Stat. § 65B.44.

5. Class Counsel have developed numerous case management plans and worked cooperatively with Defendants to implement those plans. Defendants in this case are represented by the sophisticated law firm Stoel Rives LLP.

6. Class Counsel have prepared and filed comprehensive memoranda of law regarding numerous discovery issues; in support of class certification, including expert reports and other exhibits; in support of Plaintiffs' summary judgment motion; in opposition to Defendants' *Daubert* and summary judgment motions; opposing Defendants' Rule 23(f) appeal; opposing Defendants' injunction appeal; and seeking approval of this settlement.

7. Class Counsel conducted extensive fact and expert discovery, including preparing for and conducting over eight depositions of Defendants' fact and corporate witnesses and four depositions of Defendants' expert witnesses, preparing for and defending depositions of class representatives and third-party witnesses, reviewing thousands of documents utilized in support of depositions and pleadings, and fulfilling Plaintiffs' own discovery obligations in response to aggressive discovery by Defendants. Class Counsel also litigated numerous non-dispositive motions.

8. Class Counsel consulted with experts during their investigation and discovery phase of this case, including Michael Rothman, Akshay Rao, and Allan Schwartz who prepared voluminous reports in support of class certification and in relation to the parties' motions for summary judgment.

9. Plaintiffs prevailed on their motion for class certification as to the Injunctive Class's claims and the Damages Class's Minnesota Consumer Fraud Act Claims. *See* ECF Nos. 318, 539. This motion involved work by numerous attorneys and staff in crafting descriptions for the factual and legal bases for certification of the Injunctive and Damages Classes. Once Plaintiffs filed their motion, Defendants vigorously opposed class

certification. Defendants challenged Plaintiffs' case factually, procedurally, and legally. Moreover, Defendants presented their own experts to bolster their arguments and sought to discredit Plaintiffs' experts. Despite Defendants' efforts, the Court certified the Injunctive and Damages Classes and did not exclude Plaintiffs' experts.

10. After class certification, Plaintiffs continued to face significant risks in litigating the case. For example, Defendants appealed this Court's class certification order under Rule 23(f). Plaintiffs provided a fulsome opposition to this appeal, and the Court of Appeals ultimately denied Defendants' petition. *See Taqueria El Primo LLC et al. v. Farmers Group, Inc. et al.*, No. 22-8002, Judgment at 1, (8th Cir. 2022).

11. Another risk faced by Plaintiffs was summary judgment. After voluminous briefing regarding the parties' hotly contested cross-motions for summary judgment and *Daubert* motions and a hearing on those same motions, the Court denied Defendants' summary judgment motion except as to Plaintiffs' breach of contract claim. *See* ECF No. 663. The Court also denied Defendants' *Daubert* challenges. *Id.* The Court granted summary judgment for the Injunctive Class. *Id.*

12. In accordance with the Court's Jury Trial Notice (ECF No. 704), Class Counsel engaged in extensive preparations for trial. This preparation included drafting witness and exhibit lists, drafting objections to Defendants' witness and exhibit lists, and drafting jury instructions, motions *in limine*, and other trial documents.

13. Defendants appealed this Court's summary judgment order enjoining Defendants from enforcing limitations in certain agreements with health care providers in Minnesota. After extensive briefing and oral arguments, and shortly before trial, the Court

of Appeals entered an order vacating the Court's injunction *See Taqueria El Primo LLC et al. v. Illinois Farmers Insurance Company. et al.*, No. 23-3129, Judgment at 2, (8th Cir. 2023).

14. In the face of the risks following the Court of Appeals' order, Class Counsel achieved a significant recovery on behalf of the Damages Class and the Injunctive Class. Class Counsel engaged in extensive, arms-length negotiations and two separate mediation sessions with Defendants and ultimately reached a settlement agreement on March 6, 2025. *See* ECF No. 779-1.

15. In the opinion of Class Counsel, the Settlement with Defendants provides substantial benefits to the Settlement Class and avoids the delay and risk of continuing protracted litigation against Defendants. Class Counsel have prepared and executed the Court-approved Class Notice and Settlement Administration programs, and in the process of administering the Court-approved Claims Process.

16. As part of the settlement, Defendants have agreed to pay \$1,950,000.00 (the "Settlement Amount") to settle the claims of the Damages Class and to make certain disclosures regarding no-bill agreements to the Minnesota Department of Commerce to settle the claims of the Injunctive Class. *Id.* at 9. The required disclosures to the Minnesota Department of Commerce also provide a benefit to all Minnesota consumers.

17. Upon payment of the Settlement Amount by Defendants, the money will be deposited and held in an interest-bearing escrow account. Payment of the Settlement Amount will occur on the Effective Date of the Settlement as defined in the Settlement Agreement. *Id.* at 18.

18. Due to the timing of the Effect Date, Class Counsel anticipate that little, if any, interest will accrue before distribution.

19. Plaintiffs propose the requested attorneys' fees of 33 % be calculated on the Gross Settlement Fund, which is the Settlement Amount (\$1,950,000.00) plus an interest, income, or proceeds earned thereon after payment by Defendants into the Escrow Account. *See* Settlement Agreement ECF No. 779-1 at 8, 17. Plaintiffs' proposal is in accordance with the Court-approved class notice documents. *See* ECF Nos. 783-1, 783-2. Plaintiffs propose the Court award Class Counsel \$643,500.00 in attorneys' fees.

20. Class Counsel have prepared and executed the Court-approved class notice and settlement claims administration programs. The Claims process approved by the Court is underway.

21. The retainer agreements between Class Counsel and the Named Plaintiffs specify that Class Counsel may seek attorneys' fees of 33% of any recovery as awarded by the Court. As the fee request here is consistent with the actual agreement with the Named Plaintiffs, and the Settlement Agreement. To date, Class Counsel have received no objections to the fee request.

22. Class Counsel believed in Plaintiffs' case from the beginning, invested extensive time, effort, and money into it, and prosecuted it vigorously. Class Counsel covered the costs of the litigation, bringing the case to a trial-ready state, and settlement without any guarantee of compensation. Class Counsel did so at the risk of no recovery and turned away other opportunities due to the complexity and high-level of time and expense the case demanded.

II. CLASS COUNSEL'S TIME AND EXPENSE REPORTING

23. Class Counsel maintained and prepared contemporaneous attorney and paralegal time and expense reports. These reports contain a chronological listing of time reported for work performed by attorney and paralegals, the name and title of the person who performed the work, the hourly rate associated with each attorney and paralegal at the time the work was performed (i.e., the professional's "historical" rate), and the firm's resulting lode star for that month. Class Counsel have not submitted time for duplicative work, preparing time and expense reports, routine clerical tasks, or for work related to any client not retained. Moreover, Class Counsel have worked diligently to ensure that through the case, their efforts have been coordinated, detailed, vigorous, and efficient. All work performed by Class Counsel was necessary and successfully advanced this litigation toward trial and settlement.

24. All monthly attorney and paralegal time and expense reports maintained and prepared by Class Counsel are retained and preserved on a computer server and back-up media at the respective Class Counsel firms.

A. Class Counsel's Total Recorded Lodestar

25. In preparing this petition, Class Counsel reviewed their monthly reported hours and expenses and submit declarations attesting to the accuracy of the total time and expenses incurred from inception of the case through June 6, 2025.

26. Attached as **Exhibit 1** to this Declaration is LGN's time and expense report for time and expenses incurred through June 6, 2025.

27. Attached as **Exhibit 2** to this Declaration is the declaration of Hellmuth & Johnson PLLC attesting to the truthfulness and accuracy of its time and expense report. The declarant identifies the attorneys and paralegals from the firm that worked on the case and submitted time in the monthly reports and the historic hourly rates for each professional that submitted time.

28. Attached as **Exhibit 3** to this Declaration is the declaration of Sawicki & Phelps, PA attesting to the truthfulness and accuracy of the time and expense report. The declarant identifies the attorneys and paralegals from the firm that worked on the case and submitted time in the monthly reports and the historic hourly rates for each professional that submitted time.

29. In total, from the inception of the case through June 6, 2025, Class Counsel invested 9,597.0 hours of attorney and paralegal time. Class Counsel's total lodestar from inception of the case through June 6, 2025, using historical rates, is \$7,179,165.75. The average hourly rate by Class Counsel and their associated professional staff is approximately \$748.06 per hour, a comparable rate to those charged by other law firms with similar experience, expertise, and reputation, for similar services in this legal market. All Class Counsel performed this work on an entirely contingent basis.

30. Attached as **Exhibit 4** to this Declaration is a summary chart with lodestar figures for attorney and paralegal time reported by each Class Counsel firm for the efforts on behalf of Plaintiffs from inception of the case through June 6, 2025. The total lodestar for each firm is reflected in the right-hand column of the chart, and at the end of that column

is the combined lodestar of all Class Counsel firms. The underlying data is available for the Court's review *in camera*, if requested.

31. Awarding a 33% fee request on the Gross Settlement Fund would result in a negative multiplier of approximately 11.16 on the lodestar Class Counsel have incurred. Class Counsel will not recover all the fees that they have incurred during the course of this litigation.

B. Expenses Incurred on Behalf of Plaintiffs

32. In notifying Class members of the Settlement, Class Counsel informed Class members that Class Counsel would seek reimbursement of all incurred costs and expenses and payment of costs to administer the Settlement from the Settlement Fund (not to exceed \$670,200.00). *See* ECF No. 783-1 at 6. Class Counsel also informed Class members that administrative costs, including the issuance of notice to the Settlement Class, Settlement Administrator fees, and expenses would be paid out from the Settlement Fund. *Id.* at 2, 4 5.

33. Class Counsel have incurred reasonable and necessary expenses totaling \$670,200.00 to resolve Plaintiffs' claims. This total is based on monthly expense reports maintained by Class Counsel for the period from inception of the case through June 6, 2025. The total expenses described in this Declaration, overall and by category, include expenses incurred separately by all Class Counsel. Due to the risk that they might never be recovered, Class Counsel have endeavored to keep expenses to a minimum.

34. As detailed in **Exhibit 1**, and below is Section IV, LGN has incurred a total of \$570,360.86 in unreimbursed expenses from the inception of this case through June 6, 2025. These expenses were reasonable and necessary to the litigation.

35. Hellmuth & Johnson's detailed expense reporting is attached as Exhibit B to the **Hellmuth** Declaration, which is **Exhibit 2** to this Declaration.

36. Sawicki & Phelps's detailed expense reporting is attached as Exhibit B to the Declaration of Paul Phelps, which is **Exhibit 3** to this Declaration.

37. Attached as **Exhibit 5** to this Declaration is a summary of Class Counsel's expenses incurred from the inception of the litigation through June 6, 2025. These expenses include categories such as experts and consultants, document scanning and copying services, an electronic discovery database vendor, mediators, deposition costs, court fees and service costs, online legal research (*e.g.*, Westlaw), travel, and shipping and mailing. Class Counsel have disclosed and identified their costs separately in the declaration for reimbursement accompanying this motion and thereby attest to the reasonableness and necessity thereof. *See* Exhibits 1-3.

C. Ongoing Expense Fund

38. In addition to the already incurred litigation expenses, Class Counsel have an estimated \$95,000.00 in yet-to-be-incurred class notice and settlement and claims administration costs. Class Counsel request the Court establish a set aside fund from the Settlement Fund of \$100,000.00 for ongoing class notice and settlement and claims administration costs. These funds will only be used for reasonable expenses related to class notice and settlement and claims administration. If funds from this requested set aside are not fully used before distribution to the Net Settlement proceeds to the Class, Class Counsel will so report to the Court and propose a method to return any such remaining funds for the benefit of the Class.

III. CLASS REPRESENTATIVES' CONTRIBUTION TO THE PROSECUTION OF THIS CASE

39. The Class Representatives for the Damages Class are Taqueria El Primo LLC, Mitchelle Chavez Solis, El Chinelo Produce, Inc., El Chinelo Produce, Inc., Virginia Sanchez-Gomez, Benjamin Tarnowski, and El Chinelo Market LLC. The Class Representatives for the Injunctive Class are Virginia Sanchez-Gomez and El Chinelo Market LLC. Their help was instrumental in securing the Settlement Agreement. In Class Counsel's opinion, the Class Representatives merit a service award. The Class Representatives have not received a service award in this litigation.

40. This lawsuit would not have been possible if these individuals and companies did not step forward as plaintiffs and Class Representatives. Throughout this litigation, the Class Representatives advised Class Counsel and approved pleadings; reviewed and responded to written discovery; search for, gathered, preserved, and produced documents; prepared for and sat for depositions; kept up to date on the progress of the case; and performed other similar activities.

41. They were never promised that they would receive any additional compensation for leading the case. Rather, they devoted their time and efforts solely to seeking injunctive and monetary relief for themselves and the other Class members.

42. Attached as **Exhibit 6** to this Declaration is a true and correct copy of the Declaration of Benjamin Tarnowski in Support of Motion for Payment of Attorneys' Fees, Litigation Expenses, and Service Awards.

43. Attached as **Exhibit 7** to this Declaration is a true and correct copy of the Declaration of Michelle Chavez Solis in Support of Motion for Payment of Attorneys' Fees, Litigation Expenses, and Service Awards.

44. Attached as **Exhibit 8** to this Declaration is a true and correct copy of the Declaration of Victor Delgado Jimenez in Support of Motion for Payment of Attorneys' Fees, Litigation Expenses, and Service Awards.

45. Attached as **Exhibit 9** to this Declaration is a true and correct copy of the Declaration of Virginia Sanchez-Gomez in Support of Motion for Payment of Attorneys' Fees, Litigation Expenses, and Service Awards.

IV. LGN'S TIME AND EXPENSES

46. Since the inception of the case, my firm, LGN, has represented the interests of the Class Representatives and Class members. Moreover, since the Court appointed LGN as Class Counsel, we have co-led the prosecution of this matter in all regards, which included all the work described above in Section I of this Declaration.

47. A detailed summary of the time spent by the partners, attorneys, and additional support staff of my firm were involved in this litigation is attached hereto as **Exhibit 1**. The lodestar calculation is based on my firm's historic billing rates from the inception of the case through June 6, 2025. The summary was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm.

48. The hourly rates for the partners, attorneys, and professional support staff in my firm included in **Exhibit 1** are our usual hourly rates customarily charged in litigation of this nature.

49. As detailed in **Exhibit 1**, the total number of hours my firm expended on this litigation from the inception of the case through June 6, 2025, is 7,067.95. The total lodestar for my firm is \$5,564,406.50. My firm's lodestar is based on my firm's historic billing rates.

50. The expenses my firm incurred litigating this action are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, receipts, check records, and other source materials and accurately reflect the expenses incurred. My firm incurred a total of \$570,360.86 in expenses from the inception of the case through June 6, 2025. A detailed summary of those expenses is attached as **Exhibit 1**.

* * *

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

Executed this 6th day of June 2025, at Minneapolis, Minnesota.

By: /s/ David W. Asp
David W. Asp