IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JARED KRUGER, MARK VAN ESSEN, LYNN KIRSCHBAUM, DONNA and ROBERT KOON, and SCHUMACHER DAIRY FARMS OF PLAINVIEW LLC, on behalf of themselves and all others similarly situated, Plaintiffs, v. **LELY NORTH AMERICA, INC.** Defendant.	Case No. 0:20-cv-00629-KMM/DTS

CLASS COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

Class Counsel moves for entry of an order granting their Motion for Award of Attorneys' Fees, Expenses, and Service Awards. In support of their Motion, Class Counsel submits a memorandum of law and the Declaration of Patrick J. Stueve. For the reasons set forth in their memorandum and accompanying papers, Class Counsel respectfully requests that the Court enter the proposed order submitted herewith. The capitalized terms in this Motion and the accompanying memorandum have the meaning set forth in the Settlement Agreement.

Dated: March 14, 2023

Respectfully submitted,

/s/ Patrick J. Stueve

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CLASS COUNSEL'S MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR AWARD OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

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INTRODUCTION

Class Counsel have dedicated substantial time and expense on a purely contingent basis to deliver an extraordinary settlement that offers meaningful benefits to the Class. Class Counsel obtained this exceptional result in the face of numerous risks, including navigating a complex legal and factual landscape as well as Lely North America Inc.'s ("Lely") myriad of defenses.

This class action was originally filed on February 28, 2020, and only settled after successfully defending against Lely's motions to dismiss, extensive document and written discovery, and multiple depositions of key defendant witnesses, as well as the deposition of Class Representative Jared Kruger. The failure to reach settlement at this stage would have meant months of additional deposition discovery, including at least 12 additional depositions (six of which were set to take place in The Netherlands), and extensive expert discovery followed by class certification, dispositive motions, and ultimately trial. At each turn, the threat of non-recovery for some or all of the Class would have been significant. Obtaining this recovery required committed, skilled, and engaged counsel who could both recognize these challenges and communicate the common interest with Lely in overcoming them to successfully resolve the case to the benefit of the Class at this juncture—*after* enough fact discovery had occurred that both parties were apprised of the merits but *before* costly and risky expert discovery, class certification briefing, dispositive motions, and trial.

The Settlement Agreement, preliminarily approved by this Court on January 4, 2023, offers Settlement Class Members the option to choose between two separate benefits: (1) a *pro rata* share of the $49,750,000.00 cash fund established by Lely and participation

in the Extended Warranty Program (or Additional Cash Payment) and the Pinch-Sleeve Additional Payment Benefit ("Option 1"); *or* (2) the option to trade-in their A4 Robot(s) for Lely's new Astronaut 5 robotic milking machine ("A5 Robot") at a significantly reduced cost of $40,000 per A5 Robot, which has a retail value of $150,000.00 ("Option 2").

Having achieved this exceptional result efficiently, and despite vigorous and skillful opposition by defense counsel, Class Counsel now respectfully move the Court, pursuant to Federal Rules of Civil Procedure 23(h) and 54(d)(2), to approve their reasonable request for attorneys' fees of $21,433,333.33. Pursuant to the Settlement Agreement, Class Counsel could seek up to one-third of the full value of the settlement fund (inclusive of the cash fund plus the value of the other benefits); however, Class Counsel agreed in the Notice to the Class and in its Preliminary Approval papers to not seek greater than $21,433,333.33 in attorneys' fees. Under any valuation of the Settlement, that request is a reasonable percentage.

Lely has already deposited $49.75 million into the cash fund. Importantly, that cash fund may increase (or decrease) based on the number of claimants that elect Option 2 (but will never be less than $31 million). It may further increase (but not decrease) based on the number of Option 1 claimants that receive the Pinch-Sleeve Additional Payment Benefit or elect the Additional Cash Payment over the Extended Warranty Program. Thus, the maximum value of the *cash* fund is approximately $76 million, and while Lely's ultimate cash payout may be less than that amount, the total value of the Settlement Fund will necessarily be greater: this is because any reduction in the cash fund based on the number

of Class Members who elect the trade-in (Option 2) will only *increase* the total value of the Settlement as the trade-in is more valuable than any cash reduction to which Lely may be entitled.

Consequently, Class Counsel requests a fee equal to approximately 28% of the maximum cash fund of $76 million, or alternatively 33.3% of the *most conservative* value of the Settlement, which is $64.3 million. There is no scenario where the value of the Settlement is less than $64.3 million. Either percentage is supported by the applicable factors and a lodestar crosscheck should the Court perform one.

The requested fees are reasonable under established Eighth Circuit precedent, and are warranted in light of the favorable recovery obtained for the Class, the extensive efforts of counsel in obtaining this result, and the significant risks in bringing and prosecuting this case. Class Counsel further respectfully request that the Court authorize reimbursement of their litigation expenses out of the Settlement Fund, and award the requested service awards to each Settlement Class Representative for their service on behalf of the Class.

FACTUAL BACKGROUND

Class Counsel have efficiently and strategically litigated this case, always with the goal of obtaining the best resolution possible for the Class. Most of the Class are still using the defective A4 robots with little recourse to switch to a non-defective robot or to more traditional milking systems. Therefore, time was of the essence, but so was conducting sufficient fact and expert discovery to fully appreciate the merits of the case and to apprise the Defendant of the same.

After Class Counsel conducted considerable investigation on behalf of their clients, Plaintiffs Jared Kruger, Lynn Kirschbaum, and Donna and Robert Koon filed their original complaint on February 28, 2020, against Lely North America, Lely Holding, B.V., Lely International N.V., and Lely Industries N.V. Doc. 1 ("Original Complaint"). The Original Complaint consisted of Plaintiffs' detailed allegations spanning over 100-pages, as a result of Counsel's dedicated investigation into the deficiencies raised by Plaintiffs. Declaration of Patrick J. Stueve ¶¶ 5-6 ("Second Stueve Decl."), filed contemporaneously herewith. Plaintiffs, dedicated, hard-working dairy farmers, spent hundreds of thousands of dollars to purchase an automatic milking system known as the A4 Robot in the hopes of securing a sustainable future in dairy farming amidst ever-increasing labor costs. Doc. 1 ¶ 190. The A4 was designed, manufactured, marketed and distributed by the Lely Group, which consists of Lely North America and its international parents and siblings (the "Dutch Entities") (collectively with Lely North America, "Lely" or "Defendants"). *Id.* ¶¶ 37-58.

Plaintiffs alleged that the A4 Robot was defective, and resulted in mounting problems and costs in contradiction to what the Defendants had represented. *Id.* ¶¶ 198-205, 212. On behalf of a putative, nationwide class, they asserted contract, tort and fraud claims, as well as state-law consumer protection claims, against Defendants. *Id.* ¶ 248, Counts 1-12.

Defendants moved to dismiss Plaintiffs' Original Complaint on June 12, 2020, challenging the jurisdiction of the named plaintiffs who did not reside in Minnesota and challenging the Court's jurisdiction over the Dutch Entities. Docs. 28 (the Dutch Entities' Motion to Dismiss for Lack of Jurisdiction), 35 (Lely North America's Motion to Dismiss

for Failure to State a Claim). In lieu of opposing the motions to dismiss, on July 2, 2020, Plaintiff Jared Kruger filed an amended class action complaint, adding the direct parent of Lely North America (Maasland), adding allegations regarding the Dutch Entities' jurisdiction based on Plaintiff's alter ego theory, and dismissing without prejudice Plaintiffs Lynn Kirschbaum and Donna and Robert Koon, whose jurisdiction as named representatives was, at that time, challenged by Lely. Doc. 47 ("Amended Complaint").[1] Defendants again moved to dismiss (Docs. 55, 61), which Plaintiff opposed (Docs. 68, 70). The Court heard oral argument on November 9, 2020 (Doc. 85).

On December 14, 2020, the Court denied the Dutch Entities' motion to dismiss for lack of jurisdiction and permitted jurisdictional discovery. Doc. 95. On February 10, 2021, the Court denied in large part Lely North America's motion to dismiss for failure to state a claim, allowing all of Plaintiff's claims to proceed, other than Plaintiff's two contract claims. Doc. 97.

During the Winter and Spring of 2021, Class Counsel vigorously pursued the permitted jurisdictional discovery because many of the necessary documents and witnesses resided in The Netherlands with the Dutch Entities. Second Stueve Decl. ¶ 9. Class Counsel's pursuit of the jurisdictional discovery ultimately resulted in a favorable

[1] Lely did not oppose the Court's jurisdiction over the claims of Plaintiffs Kirschbaum and Koon in the operative complaint filed in conjunction with the Settlement; nor did it oppose the addition of Schumacher Dairy Farms of Plainview LLC, who along with Plaintiffs Kruger and Van Essen are the proposed "Settlement Class Representatives" (also referred to herein as "Plaintiffs"). *See* Doc. 167-1, Ex. 1 to First Stueve Decl. (filed with Motion for Preliminary Approval), Settlement Agreement ("SA") ¶ 1.44; *see also* Doc. 163, Plaintiffs' Third Amended Complaint.

agreement between the parties that the Dutch Entities would provide merits discovery, including up to six depositions, to Plaintiff, and that Lely North America would stipulate to certain facts for the purposes of the litigation and trial. *Id.* As a result of that agreement, Plaintiff moved to dismiss the Dutch Entities without prejudice, which the Court granted. Docs. 112, 115.

Simultaneous to jurisdictional discovery, both Defendants and Plaintiff Kruger served merits discovery, and document collection and productions began in the Summer of 2021. Second Stueve Decl. ¶ 10. Plaintiff served 69 document requests and 19 interrogatories on Lely North America and the Dutch Entities. *Id.* Class Counsel thereafter worked to negotiate search terms, custodians, and ultimately a technology-assisted review ("TAR") protocol with Lely. *Id.* Although the Parties exchanged deficiency letters and engaged in multiple meet and confers, due to the skillful negotiation of Class Counsel, no motions to compel or teleconferences with Magistrate Judge Schultz were ultimately required – other than requests related to the scheduling order. *Id.* ¶ 11. In the Fall of 2021, Defendants informed Plaintiff that they had run into certain technical issues regarding their document productions, so although the Parties worked to move the case forward as much as they could during the Fall of 2021, Defendants were unable to produce most of the documents in the case until March and April of 2022. *Id.* ¶ 12. Defendants completed substantial production in April 2022, producing over 949,000 documents from the negotiated custodians. *Id.* ¶ 13. Class Counsel then conducted a targeted review based on custodians and importance of issues, reviewing over 102,000 documents by the time of Settlement. *Id.*

Plaintiff Kruger also collected documents—including the collection of multiple email accounts of his and his wife's and the collection of hard copy documents from both his farm and family members. *Id.* ¶ 14. Plaintiff Kruger responded to 59 requests for production of documents and 17 interrogatories. *Id*. At the time of Settlement, Plaintiff Van Essen had collected over 25,745 documents, which Class Counsel had begun to review, and was preparing to respond to Lely's requests for production and interrogatories, and to sit for his deposition. *Id.*

The Parties also engaged in third party discovery. Plaintiff Kruger served document subpoenas on his two dairy creameries, the Minnesota Department of Agriculture, and the Lely Center which had purchased the dealership that had sold him his A4 Robot, in order to obtain documents relevant to his experience with the A4. *Id*. ¶ 15. Plaintiff Kruger also served nine subpoenas on the largest Lely Centers, seeking documents relevant to the litigation, including data on pricing for the robots and cost of ownership. *Id.* Lely North America served third party subpoenas on Plaintiff Kruger's veterinarians and other service providers related to his farm. *Id.*

After document productions were substantially completed, Class Counsel took Lely North America's Rule 30(b)(6) deposition, which consisted of three full days of deposing three different designees on July 8, 13, and 14, one of which was the President of Lely North America, Chad Huyser. *Id*. ¶ 17. Class Counsel also took the fact witness depositions of two key witnesses on August 24 and 25, 2022: the deposition of the Director of Customer Care (Ben Smink) and the key Lely North America employee with knowledge as to regulatory compliance (Brad Cupery). *Id*. Plaintiffs further moved to amend their

complaint to add Plaintiff Mark Van Essen as a class representative, and to include details learned in discovery; ultimately, Lely consented to the amendment and the Court granted Plaintiffs' motion. Docs. 134, 142, 146. On September 6, 2022, Lely North America deposed Plaintiff Jared Kruger. Second Stueve Decl. ¶ 16.

At the time of Settlement, Plaintiff had noticed and the Parties had agreed to dates for the following 12 depositions of Defendants in September, October, and November of 2022: five key fact witness depositions in The Netherlands, including depositions of the Chief Financial Officer and Chief Operating Officer of the Dutch Entities; a Rule 30(b)(6) deposition of the Dutch Entities; and six additional fact witness depositions of Lely North America employees, including the current and former presidents of Lely North America, and employees with knowledge of defects, cost of ownership, marketing, and sales. *Id*. ¶ 18. Lely North America had noticed and was set to depose: Plaintiff Mark Van Essen, Leanne Kruger (Jared's wife), and Paul Kruger (Jared's father). *Id*.

Moreover, during this time, Class Counsel engaged three experts in preparation for class certification and merits expert discovery: a robotics engineering expert, a veterinary causation expert in cow health and milk quality, and a dairy-farming damages expert. *Id*. ¶ 19. Class Counsel traveled with the robotics and causation experts to several of Plaintiffs' farms so that the experts could observe the farms, cows, and A4 Robots in operation. *Id*.

After written discovery had largely completed and in the midst of deposition discovery, on September 6, 2022, the Parties engaged in a full-day, in-person mediation in Minneapolis in front of an experienced, neutral, third-party mediator, David Hashmall. *Id*. ¶ 20. Prior to the mediation, the Parties had exchanged detailed mediation statements as

well as confidential discovery information, which—in addition to the extensive discovery conducted to date—allowed the Parties to assess the risks of the case and meaningfully engage in arm's-length settlement negotiations. *Id.* Based on the progress made at the mediation, the Parties agreed to stay the September depositions so that the Parties could continue settlement discussions that month and meet again for a two-day mediation in late September attended by representatives from the Dutch Entities. *Id.* All depositions set for October and November remained on the calendar, such that if a settlement could not be reached, Plaintiffs' case would not be delayed. *Id*.

On September 22-23, 2022, the Parties again mediated in person in front of Mr. Hashmall. *Id*. ¶ 21. After vigorous and hard-fought negotiations, the Parties reached agreement regarding the basic terms of a settlement around midnight on the first day. *Id*. On the second day, the Parties spent a full day actively negotiating a term sheet, which reflects the essential terms of the Settlement preliminarily-approved by this Court on January 4, 2023. *Id*.; Doc. 171, Order Granting Preliminary Approval. The Parties thereafter spent over one month negotiating the detailed Settlement Agreement ultimately approved by the Court. Second Stueve Decl. ¶ 21.

In the two months since the Court granted preliminary approval of the Settlement and approved notice, Class Counsel have remained hard at work. Class Counsel have spent considerable time overseeing the claims and notice program; answering questions from Settlement Class Members; and working on necessary papers to be filed before the final approval hearing. *Id.* ¶ 31.

Importantly, Class Counsel's work will not end once the Settlement is finally approved or even after any potential appeals are resolved. Class Counsel's oversight obligations and other responsibilities pursuant to the Settlement Agreement will continue until the Settlement is fully implemented, which will not occur until many years in the future. *Id.* ¶ 32. For example, for the New A5 Trade-In Program, Class Members have two years from the Effective Date in which to enter into a purchase agreement for their A5 robot(s), and Lely must ensure that all trade-ins are completed within three (3) years of the Effective Date. Doc. 167-1, SA ¶ 3.3(c)(iii)(3), (vii). This time was needed for Class Members to schedule their purchases and installations on schedules that make sense for their farms, but extends Class Counsel's oversight longer than most settlements. As part of this process, Lely has reporting requirements to Class Counsel for three years after the Effective Date. *Id.* ¶ 5.9. Additionally, the Extended Warranty program lasts for four years after the Effective Date, with Defendants providing annual reminders to Lely Centers of the extended warranty as well as certification of compliance to Class Counsel. *Id.* ¶ 3.3(b)(i), (iv).

Given these requirements and the extended time frame required for oversight, based on Class Counsel's experience with previous settlements, Class Counsel anticipate an ongoing and substantial time commitment to answering questions by Class Members, as well as conducting the necessary oversight, over the next four years. Therefore, putting aside the possibility of any appeal and time associated with such appeal, Class Counsel anticipate incurring several hundred additional hours over the next several years in ongoing time expended to monitor and implement the Settlement. Second Stueve Decl. ¶ 34.

ARGUMENT

I. THE FEES REQUESTED ARE REASONABLE AND SHOULD BE APPROVED BY THIS COURT.

A. The Percentage-of-the-Fund Approach Is Appropriate for Calculating Attorneys' Fees in This Case.

"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). The Supreme Court recognizes that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). When calculating attorneys' fees under the common fund doctrine, "a reasonable fee is based on a percentage of the fund bestowed on the class." *Blum v. Stenson*, 456 U.S. 886, 900 n.16 (1984).

"In the Eighth Circuit, use of a percentage method of awarding attorney fees in a common-fund case is not only approved, but also 'well established.'"[2] *In re Xcel Energy, Inc., Sec., Derivative & "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)); *see also Khoday v. Symantec Corp.*, No. 11-CV-180 (JRT/TNL), 2016 WL 1637039, at *8-9 (D. Minn. 2016),

[2] Some courts in this Circuit have suggested that the percentage-of-the-fund approach is the preferred and/or recommended method for determining reasonable attorney fees. *See Barfield v. Sho-Me Power Elec. Co-op.*, No. 2:11-CV-4321-NKL, 2015 WL 3460346, at *3 (W.D. Mo. June 1, 2015) ("where attorney fees and class members' benefits are distributed from one fund, a percentage-of-the-benefit method may be preferable to the loadstar method for determining reasonable fees.") (quoting *West v. PSS World Med., Inc.*, No. 4:13 CV 574 CDP, 2014 WL 1648741, at *3 (E.D. Mo. Apr. 24, 2014)).

aff'd sub nom. Caligiuri v. Symantec Corp., 855 F.3d 860 (8th Cir. 2017). The percentage method aligns the interests of the attorneys and the class members by incentivizing counsel to maximize the class's recovery. *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 Attorney Fees, Report of the Third Circuit Task Force*, 108 F.R.D. 237, 255 (3rd Cir. 1985))). There is ample precedent in this Circuit to support the use of the percentage approach to award fees in this case.

B. The Percentage of the Class Benefit Requested by Class Counsel.

Pursuant to the Settlement Agreement, Class Counsel could seek up to one-third of the full value of the settlement fund (inclusive of the cash fund plus the value of the other benefits); however, Class Counsel agreed in the Notice to the Class and in its Preliminary Approval papers to not seek greater than $21,433,333.33 in attorneys' fees, which is one-third of the upper-threshold of the Cash Fund under the adjustments in Paragraph 3.3(d)(1). Doc. 167, First Stueve Decl. ¶ 32. Importantly, however, that upper-threshold represents the most *conservative* estimate of the value of the Settlement to Class Members. And the request of $21,433,333.33 therefore constitutes approximately 28% of a reasonably conservative Settlement valuation or no more than 33.3% of the lowest valuation. When the trade-in value is considered, the Settlement is appropriately valued higher, and the percentage of the full value of the Fund even lower. Under any potential metric, the requested fee is reasonable.

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).[3] In a similar litigation against Lely's primary competitor, the Court found that "[a]n award of one-third of the settlement fund is reasonable and characteristic of other awards in class action suits." *Bishop et al. v. Delaval Inc.*, No. 5:19-CV-06129-SRB, 2022 WL 18542465, at *2 (W.D. Mo. June 7, 2022) (collecting cases). And, as explained below, each *Johnson* factor supports the requested award.

C. The Fee Is Reasonable and Supported by the *Johnson* Factors.

Selecting a reasonable percentage depends on "considering relevant factors from the twelve factors listed in *Johnson v. Ga. 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 *Johnson* factors "include: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) requisite skill to perform the legal service properly; (4) preclusion of other employment by the attorney due to case acceptance; (5) customary fee for similar work in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by client or circumstances; (8) amount

[3] *E.g.*, *Caligiuri*, 855 F.3d at 865-66 (33.33% of $60,000,000 common fund); *Custom Hair Designs by Sandy, LLC v. Central Payment Co.*, Case No. 8:17CV310, 2022 WL 3445763, at *5 (D. Neb. Aug. 17, 2022) (33.33% of $84,000,000 common fund); *In re Airline Ticket Commission Antitrust Litig.*, 953 F. Supp. 280, 285–86 (D. Minn. 1997) (awarding 33.3% of $86,892,000 common fund); *In re Monosodium Glutamate Antitrust Litig.*, No. Civ. 00MDL1328PAM, 2003 WL 297276, at *3 (D. Minn. Feb. 6, 2003) (30% of $81,400,000); *In re Xcel*, 364 F. Supp. 2d at 999 (awarding 25% of $80,000,000 common fund and noting "courts in this circuit and this district have frequently awarded attorney fees between twenty-five and thirty-six percent of a common fund in other class actions").

involved and results obtained; (9) the attorneys' reputation, experience, and ability; (10) the case's undesirability; (11) nature and length of the professional relationship with the client; and (12) awards in similar cases." *In re CenturyLink Sales Pracs. & Sec. Litig.*, 2020 WL 7133805, at *11 (D. Minn. Dec. 4, 2020).

"Many of the Johnson factors are related to one another and lend themselves to be analyzed in tandem." *Swinton v. SquareTrade, Inc.*, 454 F. Supp. 3d 848, 886 (S.D. Iowa 2020). However, "[b]ecause 'not all of the individual Johnson factors will apply in every case, [ ] the court has wide discretion as to which factors to apply and the relative weight to assign to each.'" *In re CenturyLink*, 2020 WL 7133805, at *11. As detailed more fully below, an analysis of the *Johnson* factors most relevant in this case confirms the reasonableness of the requested fees in this case.

1. Time and Labor Requirement (Factor 1) and Preclusion of Other Employment (Factor 4).

Class Counsel's substantial efforts in litigating this case led to its successful resolution. These efforts—all of which were made on a fully contingent basis—included considerable investigation and discovery, such as obtaining over 949,000 documents from Lely's relevant custodians, taking five key depositions and scheduling an additional 12 depositions, successfully defending Class Representative Jared Kruger's deposition, subpoenaing numerous third parties with pertinent information for the case, and working with three skilled experts in robotics, causation, and damages. Second Stueve Decl. ¶¶ 5-19, 40. Class Counsel also engaged in motion practice—briefing Lely's motions to dismiss, and Plaintiffs' motions for leave to file a Second Amended Complaint. *Id.* ¶¶ 7, 16, 40.

These actions, as described in more detail in the Background Section as well as the Second Declaration of Patrick J. Stueve, allowed Class Counsel to properly evaluate the case and negotiate a robust settlement, thus providing Settlement Class Members with significant relief.

Class Counsel then devoted substantial time and energy to the settlement process. These efforts included initial settlement discussions with Lely in July and August of 2022; an exchange of detailed mediation statements; an initial full day mediation session and a subsequent two-day mediation session with an experienced, neutral, third-party mediator, David Hashmall, all of which ultimately resulted in the execution of the Settlement Agreement that was given preliminary approval by this Court. *Id.* ¶¶ 20-22. These settlement negotiations were robust, and required substantial ingenuity on the part of all counsel to develop a term sheet that provides maximum benefit to the Class. *Id.*

Investigating, litigating, and then negotiating such an exceptional Settlement required substantial time commitment of multiple attorneys and staff members. As of February 28, 2023, Class Counsel has spent more than 12,839.80 hours in the prosecution of this action, and there is still much more work to be done over the next four years for successful administration of the Settlement. *Id.* ¶ 44. The substantial amount of time expended on this case by Class Counsel represents a major investment of professional time and resources that could otherwise have been devoted to litigating other cases. *See Target*, 892 F.3d at 977 n.7 (considering "the preclusion of employment by the attorney due to acceptance of the case").

2. Novelty and Difficulty of the Case (Factor 2).

This complex product-defect, warranty, and fraud case presented difficult legal and factual questions on multiple fronts – including with respect to certifying a class – and the "difficulty of the issues involved created significant risk for class counsel." *Lunsford v. Woodforest Nat'l Bank*, No. 1:12-CV-103-CAP, 2014 WL 12740375, at *13 (N.D. Ga. May 19, 2014).

First, Class Counsel had to prove that the A4 Robot was defective. Class Counsel expended substantial time and resources gathering and developing evidence, arguments, and expert testimony in effort to counter Lely's denial of the alleged product defect with no guarantee that the Court or a jury would accept their arguments. Class Counsel had to become experts themselves on the requirements for dairy farms and robotic milking equipment.

Second, Class Counsel had to prove not only the defect but also the fraud and violation of the warranty. To do this, Class Counsel had to comb through Lely's substantial document production then elicit favorable testimony from witnesses who would not openly admit either the defect, violation of warranty, or the fraud, instead placing blame for the problems and costs experienced by the farmers on farm mismanagement.

In all this work, the claims presented here were novel. Class Counsel were required to become experts in various subject matters, including the dairy industry, milking technology, and milking robots generally. Automated milking robots remain a niche market in a technologically advanced field, and claims related to their defectiveness are inherently

novel. Class Counsel brought their own experience with them from the *Bishop* litigation, which also benefitted the Settlement Class.

3. Requisite Skill (Factor 3) and Attorneys' Reputation, Experience, and Ability (Factor 9).

Courts often judge class counsel's skill against the "quality and vigor of opposing counsel." *In re Charter Communications, Inc.*, MDL No. 1506 All Cases, No. 4:02-CV-1186 CAS, 2005 WL 4045741, at *29 (E.D. Mo. June 30, 2005) (citing *In re IBP, Inc. Sec. Litig.*, 328 F. Supp. 2d 1056, 1064 (D.S.D. 2004)). Here, Lely, a well-funded adversary, is represented by Foley & Lardner LLP, a well-respected law firm that is experienced in complex products liability cases. In other words, Class Counsel faced "well-funded defendants represented by highly-qualified national attorneys." *Tussey v. ABB, Inc.*, Case No. 06-4305-NKL, 2019 WL 3859763, at *3 (W.D. Mo. Aug. 16, 2019).

The Class is represented by Stueve Siegel Hanson LLP, Cullenberg & Tensen, PLLC, and Perrone Law, PLLC, each consisting of highly respected, nationally recognized attorneys with substantial experience litigating complex commercial cases, including cases involving defective robotic milking machines and other agriculture-related cases and class actions. *See Target*, 892 F.3d at 977 n.7 (considering "the experience, reputation, and ability of the attorneys").[4] Indeed, Class Counsel has been praised by courts on a number

[4] The reputation and experience of Class Counsel was presented to this Court in the Declaration of Patrick J. Stueve in Support of Plaintiffs' Unopposed Motion for Preliminary Approval. *See* Doc. 167 at ¶¶ 2-4.

of occasions.[5] Moreover, Class Counsel was supported by well-respected and skilled local counsel, Bill Sieben, of Schwebel, Goetz & Sieben in Minneapolis.

Class Counsel believe that their abilities were demonstrated throughout the course of these proceedings, including the extensive research that went into their pleadings, their efficient litigation of the case, and their achievement of outstanding relief for the Settlement Class.

4. Customary Fee for Similar Work (Factor 5), and Awards in Similar Cases (Factor 12)

Class Counsel, with the agreement of Class Representatives, request Attorneys' Fees based on a percentage of the value of the total Settlement Fund. The requested fee is only 28% of the most reasonable, conservative value of the Settlement Fund, which is Lely's maximum cash payout of $76.044 million under the Settlement. At most, the

[5] *See, e.g.*, *In Re: Syngenta AG MIR 162 Corn Litigation,* 357 F. Supp. 3d 1094, 1113 (D. Kan. 2018) ("The complex and difficult nature of this litigation 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.") (cleaned up); *In re Capital One Consumer Data Sec. Breach Litig.*, No. 1:19-MD-2915 (AJT/JFA), 2022 WL 17176495, at *2 (E.D. Va. Nov. 17, 2022) (finding the factor "results for the class" weighed "heavily in support of a significant fee award to Class Counsel" given the "'exceptional outcome for all the parties given the difficult legal issues,'" and an "'outstanding result'" attributed "'in no small measure, to counsel, counsel's efforts, and ... the level of competence and professionalism that they've brought to every aspect of this case.'") (quoting the Court's comments in granting Final Approval, Doc. No. 2261 at 30:19-31:3); *William Perrin, et al., v. Papa John's International, Inc.*, Transcript of Hearing at 23-24, 4:09-CV-1335-AGF (E.D. Mo. Jan. 6, 2016), ECF No. 455 ("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 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.").

requested fee is 33.3% of the lower potential valuation. Either percentage is well within the reasonable range of awards made in the Eighth Circuit and this District. *See supra* Section I.B.

"[I]t is well-established that [a] fee award should be based on the total economic benefit bestowed on the class." *Chieftan Royalty Co. v. XTO Energy Inc.*, No. CIV-11-29-KEW, 2018 WL 2296588, at *4 (E.D. Okla. Mar. 27, 2018); *accord In re U.S. Bancorp Litig*., 291 F.3d 1035, 1038 (8th Cir. 2002) (affirming fee award based on total potential cash contribution by defendant even though the full amount was "not paid into the fund"); *Tussey*, 2019 WL 3859763, at *5 ("Under the 'common fund' doctrine … the benefit should be based on both the monetary and the non-monetary value of the settlement.") (cleaned up); Principles of the Law of Aggregate Litigation § 3.13 (2010) ("the percentage being based on both the monetary *and the nonmonetary value* of the judgment or settlement" (emphasis added)).

i. The most reasonable, conservative valuation of the Settlement is Lely's maximum cash obligation of $76.044 million.

Here, the value ultimately paid out of the Settlement Fund will depend upon the number of Class Members that file valid claims and the number that choose Option 2 (the trade-in). Nonetheless, the maximum value of the Settlement is easily determined. It is $184.34 million: the minimum cash payout by Lely of $31 million plus the net value of 1,394 trade-ins, which assumes that some small number of farmers cannot choose the trade-

in because they have sold or otherwise disposed of their A4 robot.[6] This is the maximum *total* value made available by the Settlement to the Class Members. Under this valuation, the requested fee is approximately 11.6% of the maximum value of the Fund, which is plainly reasonable.

However, the requested fee is reasonable even if the Court *ignores* the obvious value of Option 2 (trade-in) to those Class Members who choose the trade-in over cash. Under the Settlement, if all Class Members filed claims and chose Option 1 (cash payout), Lely would be required to pay a maximum *cash* amount of $76.044 million.[7] This scenario is Lely's potential cash obligation under the Settlement if *no* Class Member valued Option 2. It reflects the most reasonable, yet conservative, measure of the value of the relief made available by the Settlement for the purpose of calculating attorney's fees. *See Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, 639 F. App'x 880, 883–84 (3d Cir. 2016) (affirming fee award based on total fund made available to the class, noting that the Supreme Court "confirmed the permissibility of using the entire fund as the appropriate benchmark, at least where each class member needed only to prove his or her membership in the injured class

[6] If every Class Member filed a valid claim *and* 95% chose Option 2 (a small number of farmers cannot elect Option 2 as they have sold or otherwise disposed of their A4 robots), Lely would be required to pay the minimum cash amount of $31 million and replace 1,394 A4 robots with new A5 robots, valued at $110,000 per robot (*i.e.*, $150,000 purchase price minus $40,000 payment by class members) or $153.34 million: the total value is the sum of the $31 million cash payment plus the $153.34 million trade-in value, which is $184.34 million.

[7] *E.g.* if all 400 Class Members filed valid claims for all 1,468 robots, elected cash over the extended warranty ($8,000 per robot), and elected Option 1, Lely would be required to pay $76.044 million.

to receive a distribution."); *McKinnie v. JP Morgan Chase Bank, N.A.*, 678 F. Supp. 2d 806, 812 (E.D. Wis. 2009) ("Parties in a class action settlement may negotiate attorneys' fees based on a percentage of the entire common fund, and are not required to base the fees on class members' claims against the fund."); *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) ("the district court abused its discretion by basing the fee on the class members' claims against the fund rather than on a percentage of the entire fund or on the lodestar"); *Carter v. Forjas Taurus, S.A.*, 701 F. App'x 759, 767 (11th Cir. 2017) ("No case has held that a district court must consider only the actual payout in determining attorneys' fees.") (cleaned up). Under this valuation, the requested fee, represents approximately 28 percent of the potential cash available to Class Members, which is reasonable. *See* Sections I.B and I.C.4.ii.

Furthermore, even if the Court considers the amount of benefits *paid out* under the Settlement, as opposed to the amount made available to Class Members, the requested fee is reasonable. Even if only *one* claimant makes a valid claim, Lely would still be required to pay over $64 million in cash under the Settlement.[8] Thus, the number of claims made against the Settlement Fund only modestly diminishes the *cash payout* of the Settlement.

The potential that the number of Option 2 claims made will reduce the maximum cash payout does not justify a lower valuation. In fact, the trade-in justifies giving the Settlement a greater value. Lely's cash obligation is only reduced if Class Members

[8] If that claimant elected Option 1, Lely would be required to put an additional $14.55 million, for a total of $64.3 million, into the Cash Fund. *See* Doc. 166, at 19 (detailing adjustments to the settlement fund). If it elected Option 2, Lely would have to add $14.52 million to the Cash Fund for a total cash payout of $64.27 million.

representing more than 485 robots *elect* to trade-in their A4 robot for a new A5 robot (Option 2). But under the Settlement, each election under Option 2 only *increases* the total value of the Settlement including non-monetary relief (the value of the new A5 robot). This is because the value of the trade-in to those who choose it is at least $110,000 per robot. In contrast, Lely can only take a $30,000 credit against the Cash Fund for each trade-in above 485 robots. So, every trade-in chosen by a Class Member will only *increase* the total value of the Settlement. Thus, if every Class Member able to choose Option 2 chose Option 2 such that Lely's cash obligated fell to the minimum ($31 million), the total value of the Settlement based on benefits actually claimed would be $184.34 million.[9]

Consequently, the requested fee is less than 28 percent—potentially much less—of the most conservative value of the Settlement. Nonetheless, the requested fee is also a reasonable percentage based on a realistic participation rate. Based on the claims rate in the *Bishop v. DeLaval Inc.* settlement, a similar class action, Class Counsel expect that up to half the Class Members may file claims. *See Bishop et al. v. DeLaval, Inc.*, 5:19-cv-06129-SRB, 2022 WL 18957112, at *1 (W.D. Mo. July 20, 2022) (granting final approval of settlement and noting the "favorable reaction of the class members… in which over 45% of the class submitted claims for relief"); Second Stueve Decl. ¶ 26. Under a 50% claims rate, if all claimants chose Option 1 and took cash instead of the extended warranty, Lely's cash payout would be approximately $70 million. If they all chose Option 2, the cash

[9] Lely's cash obligation would only fall to $31 million if 1,100 Class Members file claims and choose Option 2. Consistent with the calculation above, where 95% of the Class submits claims and choose Option 2, the Settlement would have an actual value of $184.34 million in benefits actually claimed by Class Members.

payout would be $42.28 million and the trade-in value would be $80,740,000 for a total value of $123.02 million. Thus, the requested fee would equal between 17 and 30 percent, which as set forth below is a reasonable percentage.

ii. Any valuation results in a reasonable fee based on Class Counsel's request.

Based on the most reasonable valuation of the Settlement, the requested fee is no more than 28 percent of the value of the Settlement (and likely far less than that). Moreover, at most, the requested fee is 33.3% of the absolute lowest potential value of the Settlement, which is Lely's cash obligation of $64.3 million. Either percentage is reasonable.

"Courts in this Circuit and this District have frequently awarded attorney fees of 33⅓ - 36% of a common fund." *Vogt v. State Farm Life Ins. Co.*, 2021 WL 247958 *2 (W.D. Mo. Jan. 25, 2021) (approving attorneys' fees equal to one-third of the common fund) (cleaned up); *see also In re U.S. Bancorp Litigation*, 291 F.3d at 1038 (affirming fee award of 36% of settlement fund); *Huyer*, 849 F.3d at 399 (affirming fee award of 38% as "on the high end of the typical range."); *Yarrington v. Solvay Pharmaceuticals, Inc.*, 697 F.Supp.2d 1057, 1061-62 (D. Minn. 2010) (awarding fee of one-third of $16.5 million settlement fund); *In re E.W. Blanch Holdings, Inc. Securities Litigation*, No. 01-258 (JNE/JGL), 2003 WL 233335319, at *3 (D. Minn. Jun. 16, 2003) (awarding fee of one-third of $20 million settlement fund); *In re Monosodium Glutamate Antitrust Litigation*, 2003 WL 297276, at *3 (awarding fee of one-third of $81.4 million settlement fund); *Rawa*

v. Monsanto Co., 934 F.3d 862, 870 (8th Cir. 2019) (affirming award of 28 percent of $21.5 million fund).[10]

Furthermore, the requested fee here is consistent or lower than the percentage of the fund awarded to the same class counsel in *Bishop et. al., v. DeLaval., Inc.*, a similar robotic milker case litigated in the Eighth Circuit. *Bishop*, 2022 WL 18542465, at *2 ("[a]n award of one-third of the settlement fund is reasonable and characteristic of other awards in class action suits.").

Consequently, this precedent supports the percentage requested here.

5. Whether The Fee is Fixed or Contingent (Factor 6).

Another important factor courts examine is the risk associated with advancing the litigation. "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 Zilhaver v. UnitedHealth Group, Inc.*, 646 F.Supp.2d 1075, 1083 (D. Minn. 2009) ("This being a contingent fee case, plaintiffs' counsel assumed a financial risk. In the Eighth Circuit, courts must take 'into account any contingency factor'

[10] *Nelson v. Wal-Mart Stores, Inc.*, Nos. 2:04-CV-0000171 WRW, 2:05-CV-000134 WRW, 2009 WL 2486888, at *1 (E.D. Ark. Aug. 12, 2009) (awarding fee of one-third of $17.5 million settlement fund); *In re Engineering Animation Securities Litigation*, 203 F.R.D. 417 (S.D. Iowa 2001) (awarding fee of one-third of $7.5 million); *Johnson v. GMAC Mortg. Group*, No. 6:04-CV-02004-LRR, ECF No. 62, 5 (N.D. Iowa Oct. 13, 2006) (awarding fee of "one-third of the settlement amount"); *Wiles v. Southwestern Bill Tel. Co.*, No. 09-4236-CV-C-NKL, 2011 WL 2416291, at *4 (W.D. Mo. June 9, 2011) (awarding fee of "roughly one-third of the fund, a number consistent with other class action cases."); *Brehm v. Capital Growth Fin., LLC*, No. 8:07-CV-254, 2010 WL 481008, at *3 (D. Neb. Feb. 4, 2010) ("a fee of approximately 33% of the monetary benefits recovered . . . seems reasonable."); *In re Texas Prison Litigation*, 191 F.R.D. 164, 176-78 (W.D. Mo. 2000) (36% fee).

where plaintiffs' counsel assumes a 'high risk of loss.'") (quoting *Brissette v. Heckler*, 784 F.2d 864, 865-66 (8th Cir. 1986)).

Class Counsel, in taking this case on a contingent fee basis, was exposed to significant risk, including investment of their own labor as well as advancing the costs of litigation without any guarantee of being compensated. At each stage of the litigation, Class Counsel faced considerable obstacles to the advancement of this case, including dispositive motions and certification of the class. Although Plaintiffs are confident in the viability of their claims, success is by no means guaranteed, and litigating the case to trial would have required significant additional expenditure of time, money, and resources. While Class Counsel was able to achieve an excellent result for Settlement Class Members through the diligent pursuit of the Class's claims and skillful negotiation, this outcome was far from certain when they agreed to the representation, and therefore, this factor, too, weighs in favor of approval of the requested fee.

6. Amount Involved and Results Obtained (Factor 8).

In considering a fee award, the "most critical factor is the degree of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *In re Xcel Energy*, 364 F. Supp. 2d at 994; *see also* Fed. R. Civ. P. 23(h) 2003 advisory committee note ("For a percentage approach to fee measurement, results achieved is the basic starting point"); MANUAL FOR COMPLEX LITIG. 4th § 14:121 (2004) (the size of the fund itself reflects "the measure of success and represents the benchmark from which a reasonable fee will be awarded.") (cleaned up).

Class Counsel have obtained an excellent result for the Settlement Class. The Class Members are provided the meaningful choice of a *pro rata* distribution of the Cash Fund based on the number of Lely A4 robots they purchased new, or the ability to trade-in their Lely A4 robot(s) for new Lely A5 robot(s). The choice is significant because, as alleged, the A4 robots are defective and cause ongoing harm to the Class Members still using them. Many Class Members retrofitted their barns to work with Lely robots and therefore desire to continue using a robotic milker. The Settlement gives them the opportunity to upgrade to the re-designed A5 at a very significant discount or to take cash *and* an extended warranty to continue using the A4. As noted, Settlement's total value is at least $76 million and up to $184.34 million[11]—providing Settlement Class Members significant relief.

This extraordinary result was obtained in the face of vigorous defense of the case by Lely. It is also notable that Class Counsel achieved this excellent result efficiently, with just slightly over two years of litigation, after facing significant delays due to the pandemic (the case was filed in late February right before the March 2020 shutdowns) and due to a technical issue that delayed the Defendant's document productions by the entirety of the Fall of 2021. To achieve this resolution, Class Counsel front-loaded their efforts and investment by conducting time-consuming fact gathering, document review and production, hosting of merits experts, taking key depositions as soon as the key documents had been reviewed, and participating in three full-day, in-person mediation sessions. The successful mediation was conducted without delay once Plaintiffs achieved a sufficient

[11] *See supra* Section I.C.4.i; Doc. 166, Memo. of Law in Support of Motion for Preliminary Approval at 28-30.

understanding of the factual underpinning of their case to put them in a solid negotiating position and to ensure that settlement would advance the interests of the Class Members.

7. The Settlement Class's Reaction Is Neutral at this Stage.

As of this filing, no Settlement Class Member has objected to the fee request. If any objections are filed, Class Counsel will respond following the objection deadline.

D. The Requested Fee is Reasonable Under a Lodestar Crosscheck.

Courts may compare the percentage-based fee to the lodestar as a "cross-check" on the reasonableness of the fee. But such a cross-check is not required in the Eighth Circuit or this District. *See In re CenturyLink*, 2020 WL 7133805, at *13 ("When the Court uses the percentage-of-the-benefit method, it is not required to cross-check it against the lodestar method."); *In re Pork Antitrust Litig.*, CIVIL 18-1776 (JRT/JFD), 2022 WL 4238416, at *9 (D. Minn. Sep. 14, 2022) (same); *Keil v. Lopez*, 862 F.3d 685, 701 (8th Cir. 2017) (stating crosscheck permissible but not required). If applied, a "cross-check calculation need entail neither mathematical precision nor bean counting." *In re Crocs, Inc. Sec. Litig.*, No. 07-cv-02356-PAB-KLM, 2014 WL 4670886, at *4 & n.4 (D. Colo. Sept. 18, 2014) (cleaned up) (describing role of lodestar cross-check as a means to confirm the reasonableness of a percentage fee award). Rather, it is primarily used "to prevent counsel from receiving a windfall" and "does not supplant the court's detailed inquiry into the attorneys' skill and efficiency in recovering the settlement[.]" *In re Cardinal Health Inc. Sec. Litigations*, 528 F. Supp. 2d 752, 764 (S.D. Ohio 2007).

Here, if the Court elects to perform such a crosscheck, it confirms that the requested fee is not a windfall but is well within the range of reasonable fee awards in this Circuit.

As noted above, Class Counsel in conjunction with local counsel have spent 12,839.80 hours litigating this matter through February 2023. Second Stueve Decl. ¶ 44.[12] These hours result in an overall lodestar of $8,416,445.90 at current rates—a figure that will continue to rise as Class Counsel completes the remaining tasks associated with settlement approval and administration.[13]

With a lodestar of approximately $8.4 million, and not accounting for future work, the resulting multiplier against the requested fee is 2.5. That multiplier is well in line with multipliers approved across the Eighth Circuit. Indeed, it is significantly lower than multipliers deemed reasonable in other cases. *See In re UnitedHealth Group Inc. PSLRA Litig.*, 643 F. Supp. 2d 1094, 1106 (D. Minn. 2009) (using lodestar cross-check and finding appropriate a multiplier of nearly 6.5); *Rawa*, 934 F.3d at 870 (affirming fee resulting in a

[12] Class Counsel conservatively anticipate spending at least several hundred additional hours if the Settlement is approved. *See In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, MDL No. 2672 CRB, 2017 WL 1047834, at *5 (N.D. Cal. Mar 17, 2017) (calculating over 20,000 hours for future reasonably anticipated work in conducting lodestar crosscheck); *Tennille v. Western Union Co.*, No. 09-cv-00938-MSK-KMT, 2013 WL 6920449, at *3 (D. Colo. Dec. 31, 2013) (instructing plaintiffs to include in their lodestar calculation "an estimate of the future hours that will be necessary to carry the case to completion under the Settlement Agreement"); *Reyes v. Bakery & Confectionery Union*, 281 F. Supp. 3d 833, 853, 856–57 (N.D. Cal. 2017) (including estimated hours for "future work" related to, *inter alia*, "managing class members' claims"). Such additional work will necessarily increase the lodestar and reduce the final multiplier.

[13] The lodestar here produces a blended rate of $608.30 per hour. Other courts have found those rates to be reasonable for complex, class action litigation. *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB, 2018 WL 1635648, at *9 (E.D. Pa. Apr. 5, 2018) (approving blended rate in 2018 of $623.05 per hour for all common benefit counsel); *Jackson Cnty. v. Trinity Indus.*, No. 1516-CV23684, at *4 (Cir. Ct. Mo. Aug. 30, 2022) (approving Stueve Siegel Hanson's 2022 rates, including for counsel of record here, and overall blended rate of $662 per hour).

lodestar multiplier of 5.3 over objection); *Xcel Energy*, 364 F. Supp. 2d at 999 (finding lodestar multiplier of 4.7 reasonable); *In re St. Paul Travelers Sec. Litig.*, Civ. No. 04-3801 JRT-FLN, 2006 WL 1116118, at *1 (D. Minn. Apr. 25, 2006) (approving multiplier of 3.9); *Cohn v. Nelson*, 375 F. Supp. 2d 844, 862 (E.D. Mo. 2005) ("In shareholder litigation, courts typically apply a multiplier of 3 to 5 to compensate counsel for the risk of contingent representation."); *Huyer*, 849 F.3d at 400 (affirming fee resulting in multiplier of 1.82 and citing cases within the Eighth Circuit approving multipliers up to 5.6).

II. THE COURT SHOULD APPROVE CLASS COUNSEL'S REQUEST FOR REIMBURSEMENT OF REASONABLY INCURRED EXPENSES.

"Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit by the settlement." *Yarrington*, 697 F.Supp.2d at 1067 (cleaned up); *see also Zilhaver*, 646 F.Supp.2d at 1084 ("The common fund doctrine provides that a private plaintiff, or plaintiff's attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim, is entitled to recover from the fund the cost of his litigation.") (cleaned up).

As the date of the preparation of this motion, Class Counsel have incurred $264,245.39 in unreimbursed litigation-related expenses, including expenses related to expert fees, depositions, document discovery (collection and hosting), legal research, mediation, and travel for investigation, depositions, and mediation.[14] Second Stueve Decl.

[14] Class Counsel reserved the right in the Notice to seek up to $300,000.00 in expenses, and it may be that additional expenses are incurred between now and the briefing on final approval. Second Stueve Decl. ¶ 46.

¶ 46. Reimbursement of such expenses is generally permitted. *See Tussey*, 2019 WL 3859763, at *5 ("Reimbursable expenses include many litigation expenses beyond those narrowly defined 'costs' recoverable from an opposing party under Rule 54(d), and includes: expert fees; travel; long-distance and conference telephone; postage; delivery services; and computerized legal research." (citing Alba Conte, 1 Attorney Fee Awards § 2:19 (3d ed.))). These expenses were reasonably incurred and necessary to successfully position this case for anticipated dispositive motions, class certification, and trial of the Class's claims, and undoubtedly contributed to Lely's willingness to settle Plaintiffs' claims on favorable terms. The Court should thus approve Class Counsel's expense reimbursement request.

III. THE COURT SHOULD APPROVE THE REQUESTED SERVICE AWARDS.

"Courts routinely recognize and approve incentive awards for class representatives and deponents." *Wineland v. Casey's Gen. Stores, Inc.*, 267 F.R.D. 669, 677 (S.D. Iowa 2009). The Eighth Circuit has enumerated a number of "relevant factors in deciding whether incentive award to named plaintiff are warranted." *In re U.S. Bancorp Litig.*, 291 F.3d at 1038 (cleaned up). "Courts should consider actions plaintiff took to protect the class's interests, the degree to which the class has benefitted from those actions, and the amount of time and effort plaintiff expended in pursuing litigation." *Zilhaver*, 646 F. Supp. 2d at 1085 (cleaned up) (awarding $15,000 to named plaintiffs).

District courts in the Eighth Circuit "regularly grant service awards of $10,000 or greater," and a number of decisions support the awarding of $15,000-$50,000 depending

on the circumstances of the case. *Caligiuri*, 855 F.3d at 867 (affirming $10,000 service awards to named plaintiffs and citing *Huyer v. Njema*, 847 F.3d 934, 941 (8th Cir. 2017), a case which also affirmed $10,000 service awards to named plaintiffs); *Zilhaver*, 646 F. Supp. 2d at 1085 (granting named plaintiffs $15,000 each in service awards); *Hashw v. Dep't Stores Nat'l Bank*, 182 F. Supp. 3d 935, 952 (D. Minn. 2016) (finding an incentive award of $15,000 was appropriate); *Thornburg v. Open Dealer Exch., LLC*, No. 17-06056-CV-SJ-ODS, 2019 WL 3291569, at *3 (W.D. Mo. July 22, 2019) (granting named plaintiff $15,000*); Karg v. Transamerica Corp.*, No. 18-CV-134-CJW-KEM, 2021 WL 9440635, at *2 (N.D. Iowa Nov. 22, 2021) (awarding $15,000 to each named plaintiff); *Berger v. Xerox Corp. Ret. Income Guar. Plan*, No. 00-584-DRH, 2004 WL 287902, at * 3 (S.D. Ill. Jan. 22, 2004) (approving $20,000 incentive fees to each named plaintiff); *Prater v. Medicredit, Inc.*, No. 4:14-CV-00159-ERW, 2015 WL 8331602, at *4 (E.D. Mo. Dec. 7, 2015) (awarding a $20,000 service award); *Krueger v. Ameriprise Fin., Inc.*, No. 11-CV-02781, 2015 WL 4246879, at *3 (D. Minn. July 13, 2015) (approving incentive awards of $25,000 for each of the five named plaintiffs); *Tussey v. ABB, Inc.*, 850 F.3d 951, 961-62 (8th Cir. 2017) (approving $25,000 incentive awards); *In re Charter*, 2005 WL 4045741, at *25 (awarding $26,625.00 to lead plaintiff); *Bishop*, 2022 WL 18542465, at *3 (finding service awards of $50,000, $25,000 and $10,000 appropriate).

Here, the Settlement Class Representatives assumed unique reputational risk in the dairy community by coming forward to represent the interests of similarly-situated dairy farmers or farm entities. Second Stueve Decl. ¶¶ 48-49. As potential class members, the Settlement Class Representatives could have simply awaited the outcome of the litigation

and received the same benefits as any other class member. Instead, they worked diligently with Class Counsel throughout the course of litigation and actively participated in what had the potential to be a lengthy and hard-fought lawsuit against Lely. *Id.* ¶ 49.

Class Counsel respectfully request service awards commensurate with each Class Representatives' service to the class. Class Counsel respectfully requests that Settlement Class Representative Jared Kruger—who as the sole Plaintiff for much of the litigation produced documents, responded to numerous interrogatories, and sat for his deposition—be awarded $50,000. *Id.* ¶ 50. Class Counsel requests an award of $25,000 for Settlement Class Representative Mark Van Essen, whose documents were collected, who was preparing to sit for his deposition at the time of settlement, who assisted in preparation of the Second Amended Complaint, and who hosted experts on his farm. *Id.* ¶ 51. Class Counsel request $15,000 each for Settlement Class Representatives Lynn Kirschbaum, and Donna and Robert Koon, who initiated the litigation along with Plaintiff Kruger and assisted with the investigation as well as agreeing to serve as Settlement Class Representatives in the Third Amended Complaint and assisted in approving the Settlement. *Id.* ¶ 52. Class Counsel finally request a $15,000 service award for Schumacher Dairy Farms of Plainview LLC, who assisted in the investigation by hosting experts on his farm to observe his Lely A4s and who assisted with the preparation of the Third Amended Complaint and in approving the Settlement. *Id.* ¶ 53.

These Settlement Class Representatives' time, effort and commitment to this case made this Settlement possible. They provided invaluable assistance and demonstrated ongoing commitment to representing the interests of Class Members. Class Counsel

therefore respectfully requests that the Court award the requested service awards, which are in line with those awarded in *Bishop*, 2022 WL 18542465, at *3 (finding service awards of $50,000, $25,000 and $10,000 appropriate based on level of service to the Class).

CONCLUSION

For the foregoing reasons, Class Counsel respectfully requests that the Court approve an award of the requested attorneys' fees, reimbursement of their reasonable expenses (subject to being updated before the final approval hearing), and the requested service awards for the Class Representatives.

Respectfully submitted this 14th day of March, 2023.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JARED KRUGER, MARK VAN ESSEN, LYNN KIRSCHBAUM, DONNA and ROBERT KOON, and SCHUMACHER DAIRY FARMS OF PLAINVIEW LLC, on behalf of themselves and all others similarly situated, v. **LELY NORTH AMERICA, INC.**	Case No. 0:20-cv-00629-KMM/DTS

LOCAL RULE 7.1(F) CERTIFICATE OF COMPLIANCE REGARDING CLASS COUNSEL'S MEMORANDUM IN SUPPORT OF THEIR MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

The undersigned attorney certifies that Class Counsel's Memorandum of Law in Support of Their Motion for Attorneys' Fees, Expenses, and Service Awards complies with the word count limits in Local Rule 7.1(f) and the type-size requirements of Local Rule 7.1(h). The undersigned attorney also certifies that Microsoft Word 2019 was used in preparing the aforementioned memorandum and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations (but excluding the caption, tables, signature block text, and this certificate of compliance), in the following word count, which reports that the text of the memorandum contains 9,408 words.

Dated: March 14, 2023

Respectfully submitted,

/s/ Patrick J. Stueve

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Counsel for the Proposed Settlement Class

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JARED KRUGER, MARK VAN ESSEN, LYNN KIRSCHBAUM, DONNA and ROBERT KOON, and SCHUMACHER DAIRY FARMS OF PLAINVIEW LLC, on behalf of themselves and all others similarly situated, Plaintiffs, v. **LELY NORTH AMERICA, INC.** Defendant.	Case No. 0:20-cv-00629-KMM/DTS

DECLARATION OF PATRICK J. STUEVE IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

I, Patrick J. Stueve, declare as follows:

1. I respectfully submit this Declaration in Support of Class Counsel's Motion for Award of Attorneys' Fees, Expenses, and Service Awards.[1] Except as otherwise noted, the matters stated herein are based on my personal knowledge or on information obtained from associates and staff under my supervision, and, if called upon, I would competently testify thereto.

2. I am a founding partner at the law firm Stueve Siegel Hanson LLP, and since the inception of this litigation have been the senior partner at Stueve Siegel Hanson

[1] Unless otherwise indicated, capitalized terms shall have the meaning that the Settlement Agreement ascribes to them. *See generally* Doc. 167-1, Settlement Agreement.

responsible for this case. Stueve Siegel Hanson has worked with co-counsel, the attorneys Arend Tensen of Cullenberg & Tensen PLLC and Daniel C. Perrone of Perrone Law PLLC, as counsel for Plaintiffs and the proposed Settlement Class Representatives and Class. We have also worked alongside local counsel Bill Sieben of Schwebel Goetz & Sieben.

3. I founded Stueve Siegel Hanson in 2001. We practice almost exclusively in the area of complex litigation in state and federal courts across the country. The firm has approximately 25 attorneys in one office located in Kansas City, Missouri. Stueve Siegel Hanson handles large-scale and high-stakes litigation, usually on a fully contingent basis.

4. As detailed in my declaration filed in support of Plaintiffs' Motion for Preliminary Approval (Doc. 167), I have extensive experience as a complex commercial litigator and trial attorney, including with other robotic milker cases, one of which was a class action in which we and our co-counsel were appointed as class counsel. I have successfully tried many cases to judges and juries in both state and federal court. I am a Fellow in the American College of Trial Lawyers as well as the International Academy of Trial Lawyers. And I have extensive experience litigating and resolving class actions. In addition to trial work, I have an active appellate practice and have successfully argued numerous cases before federal and state appellate courts across the country, including the Eighth Circuit. My experience, honors, and awards, and those of my colleagues Bradley T. Wilders and Jillian R. Dent, are further detailed on our firm website, www.stuevesiegel.com. In addition, the experience and credentials of co-counsel are also detailed on their websites, www.usfarmlaw.com and www.theperronefirm.com. As

detailed there, co-counsel have substantial experience litigating on behalf of farmers and litigating commercial and products liability cases like this.

LITIGATION HISTORY

5. Stueve Siegel Hanson and co-counsel have prosecuted this case on behalf of the proposed Class Representatives and Class since 2019 when we began investigating the facts and circumstances giving rise to the litigation, which we filed in February 2020. Since that time, we have vigorously represented the interests of the proposed Class throughout the course of the litigation and settlement negotiations.

6. We filed the original complaint on behalf of Plaintiffs Jared Kruger, Lynn Kirschbaum, and Donna and Robert Koon on February 28, 2020, against Lely North America, Lely Holding, B.V., Lely International N.V., and Lely Industries N.V. Doc. 1 ("Original Complaint").

7. Defendants moved to dismiss Plaintiffs' Original Complaint on June 12, 2020. Docs. 28 (the Dutch Entities' Motion to Dismiss for Lack of Jurisdiction), 35 (Lely North America's Motion to Dismiss for Failure to State a Claim). In lieu of opposing the motions to dismiss, on July 2, 2020, we filed an amended class action complaint on behalf of Plaintiff Jared Kruger, adding the direct parent of Lely North America (Maasland), adding allegations regarding the Dutch Entities' jurisdiction based on Plaintiff's alter ego theory, and dismissing without prejudice Plaintiffs Lynn Kirschbaum and Donna and Robert Koon, whose jurisdiction as named representatives was, at that time, challenged by Lely. Doc. 47 ("Amended Complaint"). Defendants again moved to dismiss (Docs. 55, 61),

and we briefed those motions (Docs. 68, 70). We argued the motions on November 9, 2020 before the Court (Doc. 85).

8. On December 14, 2020, the Court denied the Dutch Entities' motion to dismiss for lack of jurisdiction and permitted jurisdictional discovery. Doc. 95. On February 10, 2021, the Court denied in large part Lely North America's motion to dismiss for failure to state a claim, allowing all of Plaintiff's claims to proceed, other than Plaintiff's two contract claims. Doc. 97.

9. During the Winter and Spring of 2021, we vigorously pursued the permitted jurisdictional discovery because many of the necessary documents and witnesses resided in The Netherlands with the Dutch Entities. Our pursuit of the jurisdictional discovery ultimately resulted in a favorable agreement between the parties that the Dutch Entities would provide merits discovery, including up to six depositions, to Plaintiff, and that Lely North America would stipulate to certain facts for the purposes of the litigation and trial. As a result of that agreement, Plaintiff moved to dismiss the Dutch Entities without prejudice, which the Court granted. Docs. 112, 115.

10. Simultaneous to jurisdictional discovery, both Defendants and Plaintiff Kruger served merits discovery, and document collection and productions began in the Summer of 2021. Plaintiff served 69 document requests and 19 interrogatories on Lely and the Dutch Entities. We thereafter worked to negotiate search terms, custodians, and ultimately a technology-assisted review ("TAR") protocol with Lely.

11. Although the Parties exchanged deficiency letters and engaged in multiple meet and confers, due to skillful negotiation, no motions to compel or teleconferences with

Magistrate Judge Schultz were ultimately required – other than requests related to the scheduling order.

12. In the Fall of 2021, Defendants informed Plaintiff that they had run into certain technical issues regarding their document productions, so although the Parties worked to move the case forward as much as they could during the Fall of 2021, Defendants were unable to produce most of the documents in the case until March and April of 2022.

13. Defendants completed substantial production in April 2022, producing over 949,000 documents from the relevant custodians. We then conducted a targeted review based on custodians and importance of issues, reviewing over 102,000 documents by the time of Settlement.

14. We also collected documents on behalf of Plaintiff Kruger – including the collection of multiple email accounts and the collection of hard copy documents from both his farm and family members. Plaintiff Kruger responded to 59 requests for production of documents and 17 interrogatories. At the time of Settlement, Plaintiff Van Essen had collected over 25,745 documents, which we had begun to review, and we were helping prepare Plaintiff Van Essen to respond to Lely's requests for production, interrogatories, and to sit for his deposition.

15. The Parties also engaged in third party discovery. We served document subpoenas on Plaintiff Kruger's two dairy creameries, the Minnesota Department of Agriculture, and the Lely Center which had purchased the dealership that had sold him his A4 Robot, in order to obtain documents relevant to his experience with the A4. We also served nine subpoenas on some of the largest Lely Centers, seeking documents relevant to

the litigation, including data on pricing for the robots and cost of ownership. Lely North America too served third party subpoenas on Plaintiff Kruger's veterinarians and other service providers related to his farm.

16. In August 2022, Plaintiffs sought to amend their complaint by the Scheduling Order deadline to add Plaintiff Mark Van Essen as a class representative and to add factual allegations based on discovery to date. The Court granted our request. Doc. 146. On September 1, 2022, Plaintiffs filed their Second Amended Complaint. Docs. 149, 150.

17. After document productions were substantially completed, we took Lely North America's Rule 30(b)(6) deposition, which consisted of three different designees, on July 8, 13, and 14, one of which was the President of Lely North America, Chad Huyser. Plaintiff also took the fact witness depositions of two key witnesses on August 24 and 25, 2022: the deposition of the Director of Customer Care (Ben Smink) and the key Lely North America employee with knowledge as to regulatory compliance (Brad Cupery). On September 6, 2022, Lely North America deposed Plaintiff Jared Kruger.

18. We had noticed and the Parties had agreed to dates for the following 12 depositions of Defendants in September, October, and November of 2022: five key fact witness depositions in the Netherlands, including depositions of the Chief Financial Officer and Chief Operating Officer of the Dutch Entities; a Rule 30(b)(6) deposition of the Dutch Entities; and six additional fact witness depositions of Lely North America employees, including the current and former presidents of Lely North America, and employees with knowledge of marketing and sales. Lely North America had noticed and was set to depose: Plaintiff Mark Van Essen, Leanne Kruger (Jared's wife), and Paul Kruger (Jared's father).

19. While depositions were underway and before we began discussions of settlement, we engaged three experts in preparation for class certification and merits expert discovery: a robotics engineering expert, a veterinary causation expert in cow health and milk quality, and a dairy-farming damages expert. We traveled with the robotics and causation experts to several of Plaintiffs' farms so that the experts could observe the farms, cows, and A4 Robots in operation.

MEDIATION AND SETTLEMENT

20. On September 6, 2022, the Parties engaged in a full-day, in person mediation in Minneapolis in front of an experienced, neutral, third-party mediator, David Hashmall. Prior to the mediation, the Parties had exchanged detailed mediation statements as well as confidential discovery information, which – in addition to the extensive discovery conducted to date – allowed the Parties to assess the risks of the case and meaningfully engage in arm's-length settlement negotiations. At the mediation, the Parties agreed to stay the depositions on the calendar in September so that the Parties could continue settlement discussions that month and meet again for a two-day mediation in late September attended by representatives from the Dutch Entities. All depositions set for October and November remained on the calendar, such that if a settlement could not be reached, Plaintiffs' case would not be delayed.

21. On September 22-23, 2022, the Parties again mediated in person in front of Mr. Hashmall. After vigorous and hard-fought negotiations, the Parties reached agreement regarding the basic terms of a settlement around midnight on the first day. On the second day, the Parties spent a full day actively negotiating a term sheet, which reflected the

essential terms of the Settlement. The Parties thereafter spent over one month negotiating the detailed Settlement Agreement that was preliminarily approved by the Court on January 4, 2023 (Doc. 171).

22. Both the history of this litigation as well as the negotiation of the settlement indicate that the settlement agreement was negotiated at arm's length and there is no indication of collusive behavior here. We confirm that no agreements exist other than those outlined herein and reflected in Settlement Agreement.

THE SETTLEMENT'S BENEFITS TO THE CLASS

23. The preliminarily-approved settlement represents an exceptional result for the Class. In exchange for the release of Settlement Class Members' claims against Lely, Lely will create a Cash Fund in the amount of $49,750,000.00, subject to certain possible adjustments as described in detail in the Settlement Agreement,[2] and create trade-in, pinch-sleeve payment, and extended warranty programs. Doc. 167-1, Settlement Agreement ("SA"). Settlement Class Members who timely and validly submit a claim ("Claimants") must elect *between* the two benefits options: Option 1 (Cash Payment, Extended Warranty or Additional Cash, and Pinch Sleeve Additional Payment Program) *or* Option 2 (New A5 Trade-In Program). *Id.* ¶ 3.3(a). Option 2, the trade-in program, is only available to those

[2] Pursuant to the terms of the Settlement Agreement, the cash fund will remain the same if exactly 485 A4 Robots participate in Option 2; will be increased to a maximum of $64,300,000 if no claimant chooses Option 2 (an amount which does not include the additional cash Lely is to contribute under the Extended Warranty and Additional Pinch Sleeve Payment Programs); and will be decreased to $31,000,000 if 1,110 A4 Robots participate in Option 2, though that decrease is capped such that even if more than 1,110 A4 Robots participate in Option 2, the cash fund will not decrease below $31,000,000. SA ¶ 3.3(d).

Settlement Class Members who still own or lease their A4 Robot(s). *Id.* ¶ 3.3(c). Together, Options 1 and 2 comprise the Settlement Fund.

24. Settlement Class Members who submit a claim for Option 1 will receive three separate benefits: (1) a *pro rata* distribution from the Cash Fund, after fees, expenses, administrative costs, and adjustments (if any) have been deducted; (2) an additional $1,000 for each A4 Robot owned or leased as part of the Pinch Sleeve Additional Payment Program; and (3) the choice between an Extended Warranty for each A4 Robot they own or lease, or alternatively, an additional cash payment of $7,000 for each A4 Robot owned or leased.

25. In lieu of choosing Option 1, Settlement Class Members can choose Option 2 in order to trade-in their A4 Robot(s) for brand new A5 Robot(s), the successor robotic milker to the A4.[3] Pursuant to the detailed provisions set forth in the Settlement Agreement, Defendants will establish the New A5 Trade-In Program through which an eligible Claimant who chose Option 2 can trade in their A4 Robot(s) for the same number of new standard A5 Robot(s) at a steeply discounted purchase price of $40,000.00 for each A5 Robot. *Id.* ¶ 3.3(c)(i). The trade-in purchase price under this program covers the cost of the standard model A5 Robot. Claimants are responsible for costs related to transportation, installation, or labor, including removal costs of the A4 Robot. *Id.* A5 Robots received by Claimants under this New A5 Trade-In Program will be accompanied by Defendants'

[3] A Settlement Class Member can only make a claim for Option 2 if they still own or lease their A4 Robot(s); however, if they lease their A4 Robot(s), the Settlement Class Member will need to exercise the purchase option in order to take advantage of Option 2, such that they own their A4 Robot. *Id.* ¶ 3.3(c).

current standard warranty for Astronaut milking systems. *Id.* The recommended retail price of the standard A5 Robot in the United States is approximately $150,000.00 as of the date of the Settlement Agreement. *Id.* Thus, the settlement offers a new A5 robot at less than one-third of the price that Settlement Class Member's would otherwise have to pay to upgrade their robot (if they elect Option 2).

26. A 50% participation rate is possible in a case like this one based on the provision of direct notice to the class and our experience in a similar robotic milking case, where the final participation rate was over 45% for a class that was smaller. *See Bishop et al. v. DeLaval, Inc*., 5:19-cv-06129-SRB, 2022 WL 18957112, at *1 (W.D. Mo. July 20, 2022) (granting final approval of settlement and noting the "favorable reaction of the class members… in which over 45% of the class submitted claims for relief"). While the value of the Settlement varies based on the ultimate claims rate and number of robots participating in each of the two options, the Settlement makes available significant value to the Class under any claims scenario.

27. If all Settlement Class Members select Option 1, the Cash Fund will be increased to $64,300,000 of which the net amount will be distributed *pro rata* based on the number of A4 robots owned by the Settlement Class Members. These Settlement Class Members will also receive $1,000 per A4 Robot under the Additional Pinch Sleeve Payment Program, and either an Extended Warranty or $8,000 per A4 Robot under the Extended Warranty Program, bringing the total value of the settlement to $76,044,000.

28. If the vast majority of Settlement Class Members elect Option 2, around 95% or 1,394 A4 Robots,[4] the value of the settlement is even greater. Under that scenario, the Cash Fund would be reduced to $31,000,000 but the value of Option 2 would increase to $153,340,000, for a total value of $184,340,000 to the Class.

29. Importantly, the decision to take Option 1 or Option 2 is left entirely to the Settlement Class Member: thus, any member who does *not* desire to trade-in their A4 for a new Lely A5 robot can take the cash payment, while those who value the trade-in option as being more valuable than the cash payment can trade-in their A4 for a new Lely A5 robot. Thus, the value of the settlement to the Class, depending on the option selected by each Class Member and if all participate, is at least $76 million and up to $184.34 million.

30. Based on my experience and knowledge of the litigation, I strongly believe the Settlement is fair, reasonable, and adequate and represents an exceptional result for the Settlement Class. This settlement avoids the uncertainties of continued and protracted litigation. This judgment is based not only on the calculus of risk in engaging in motion practice, trials, and appeals, but also the sizable recovery the Settlement Agreement delivers now with certainty. The fairness of the Settlement Agreement is additionally confirmed because it was achieved through the involvement of an experienced mediator, who was well versed in the strengths and weaknesses of this litigation.

[4] We assume, based on the data we have and certain of our clients' situations, that a small number of farms could not participate in the trade-in given they have sold or otherwise disposed of their A4 robots, such that they must choose Option 1.

ADMINISTRATION OF THE SETTLEMENT BENEFITS

31. In the two months since the Court granted preliminary approval of the Settlement and approved notice, we have remained hard at work. We have spent considerable time overseeing the claims and notice program; answering questions from Settlement Class Members; and working on necessary papers to be filed before the final approval hearing.

32. Our work will not end once the Settlement is finally approved or even after any potential appeals are resolved. Our oversight obligations and other responsibilities pursuant to the Settlement Agreement will continue until the Settlement is fully implemented, which will not occur until many years in the future.

33. For example, for the New A5 Trade-In Program, Class Members have two years from the Effective Date in which to enter into a purchase agreement for their A5 robot(s), and Lely must ensure that all trade-ins are completed within three (3) years of the Effective Date. SA ¶ 3.3(c)(iii)(3), 3.3(c)(vii). This time was needed for Class Members to schedule their purchases and installations on schedules that make sense for their farms, but extends our oversight longer than most settlements. As part of this process, Lely has reporting requirements to Class Counsel for three years after the Effective Date. *Id.* ¶ 5.9. Additionally, the Extended Warranty program lasts for four years after the Effective Date, with Defendants providing annual reminders to Lely Centers of the extended warranty as well as certification of compliance to Class Counsel. *Id.* ¶ 3.3(b)(i), (iv).

34. Given these requirements and the extended time frame required for oversight, based on our experience with previous settlements, we anticipate an ongoing and

substantial time commitment to answering questions by Class Members, as well as conducting the necessary oversight, over the next four years. Therefore, putting aside the possibility of any appeal and time associated with such appeal, we anticipate incurring several hundred additional hours over the next several years in ongoing time expended to monitor and implement the Settlement.

ATTORNEYS' FEES AND EXPENSES REQUESTED

35. Pursuant to the Settlement Agreement, we could seek up to one-third of the full value of the settlement fund (inclusive of the cash fund plus the value of the other benefits). However, we agreed in the Notice to the Class and in its Preliminary Approval papers to not seek greater than $21,433,333.33 in attorneys' fees – the amount we now request.

36. The requested fee is 28% of the most reasonable, conservative value of the Settlement Fund, which is Lely's maximum cash payout of $76.044 million under the Settlement. At most, the requested fee is 33.3% of the lower potential valuation of $64,300,000. Either percentage is well within the reasonable range of awards made in the Eighth Circuit and this District.

37. Here, the value ultimately paid out of the Settlement Fund will depend upon the number of Class Members that file valid claims and the number that elect Option 2 (the trade-in). Nonetheless, the maximum value of the Settlement is easily determined. It is $184.34 million, which includes the minimum cash payout by Lely of $31 million plus the net value of 1,394 trade-ins (which would reduce Lely's cash payout to the minimum), while assuming that some small number of farmers cannot choose the trade-in because they

have sold or gotten rid of their A4 robot.[5] This is the maximum *total* value made available by the Settlement to the Class Members. Under this valuation, the requested fee is approximately 11.6% of the maximum value of the Fund.

38. However, the requested fee is reasonable even if the Court ignores the obvious value of Option 2 (trade-in) to those Class Members who elect the trade-in over cash. Under the Settlement, if all Class Members filed claims and elected Option 1 (cash payout), Lely would be required to pay a maximum cash amount of $76.044 million.[6] This is Lely's potential cash obligation under the Settlement if *no* Class Member placed value on and thus elected Option 2. It reflects the most reasonable, yet conservative, measure of the value of the relief made available by the Settlement for the purpose of calculating attorney's fees.

39. As explained in our Memorandum of Law, filed contemporaneously herewith, each of the *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 719–20 (5th Cir. 1974) factors supports the requested award. *In re Target Corp. Customer Data Security Breach Litig.*, 892 F.3d 968, 977 (8th Cir. 2018) (applying the *Johnson* factors).

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[5] If every Class Member filed a valid claim *and* 95% elected Option 2 (we must assume a small number of farmers cannot elect Option 2 as they have sold or gotten rid of their A4 robots), Lely would be required to pay the minimum cash amount of $31 million and to replace 1,394 A4 robots with new A5 robots, which is valued at $110,000 per robot (*i.e.*, $150,000 purchase price minus $40,000 payment by class members) or $153.34 million: the total value is the sum of the $31 million cash payment plus the $153.34 million trade-in value, which is $184.34 million.

[6] *E.g.* if all 400 Class Members filed valid claims for all 1,468 robots, elected cash over the extended warranty ($8,000 per robot), and elected Option 1, Lely would be required to pay $76.044 million.

40. Our substantial efforts in litigating this case led to its successful resolution. These efforts—all of which were made on a fully contingent basis—included considerable investigation and discovery, including obtaining over 949,000 documents from Lely's relevant custodians, taking five key depositions and scheduling an additional 12 depositions, successfully defending Class Representative Jared Kruger's deposition, subpoenaing numerous third parties with pertinent information for the case, and working with three skilled experts in robotics, causation, and damages. We also engaged in motion practice—briefing Lely's motions to dismiss, and Plaintiffs' motions for leave to file a Second Amended Complaint. These actions allowed us to properly evaluate the case and negotiate a robust settlement, thus providing Settlement Class Members with significant relief.

41. We then devoted substantial time and energy to the settlement process. These efforts included initial settlement discussions with Lely in July and August of 2022; an exchange of detailed mediation statements; an initial full day mediation session and a subsequent two-day mediation session with an experienced, neutral, third-party mediator, David Hashmall, all of which ultimately resulted in the execution of the Settlement Agreement that was given preliminary approval by this Court. These settlement negotiations were robust, and required substantial ingenuity on the part of all counsel to develop a term sheet that provides maximum benefit to the Class.

42. Investigating, litigating, and then negotiating such an exceptional Settlement required substantial time commitment of multiple attorneys and staff members. As of February 28, 2023, we have spent more than 12,839.80 hours in the prosecution of this

action, and there is still much more work to be done over the next four years for successful administration of the Settlement. The substantial amount of time expended on this case by Class Counsel represents a major investment of professional time and resources that could otherwise have been devoted to litigating other cases.

43. In taking this case on a contingent fee basis, we were exposed to significant risk, including investment of our own labor as well as advancing the costs of litigation without any guarantee of being compensated. At each stage of the litigation, we faced considerable obstacles to the advancement of this case, including dispositive motions and certification of the class. Although we are confident in the viability of Plaintiffs' claims, success is by no means guaranteed, and litigating the case to trial would have required significant additional expenditure of time, money, and resources. While we were able to achieve an excellent result for Settlement Class Members through the diligent pursuit of the Class's claims and skillful negotiation, this outcome was far from certain when we agreed to the representation.

44. As detailed in Appendix A to this Declaration, Class Counsel in conjunction with local counsel have spent 12,839.80 hours litigating this matter through February 2023. These hours result in an overall lodestar of $8,416,445.90 at current rates—a figure that will continue to rise as Class Counsel completes the remaining tasks associated with settlement approval and administration. The lodestar here produces a blended rate of $608.30 per hour.

45. With a lodestar of approximately $8.4 million, and not accounting for future work, the resulting multiplier against the requested fee is 2.5. That multiplier is well in line with multipliers approved across the Eighth Circuit.

46. As the date of the preparation of this motion, and as detailed in Appendix A, Class Counsel have incurred $264,245.39 in unreimbursed litigation-related expenses, including expenses related to expert fees, depositions, document discovery (collection and hosting), legal research, mediation, and travel for investigation, depositions, and mediation. These expenses were reasonably incurred and necessary to successfully position this case for anticipated dispositive motions, class certification, and trial of the Class's claims, and undoubtedly contributed to Lely's willingness to settle Plaintiffs' claims on favorable terms. We reserved the right in the Notice to seek up to $300,000.00 in expenses, and it may be that additional expenses are incurred between now and final approval of the Settlement.

47. As of this filing, no Settlement Class Member has objected to the fee request. If any objections are filed, we will respond following the objection deadline.

THE SETTLEMENT CLASS REPRESENTATIVES' SERVICE TO THE CLASS

48. Plaintiffs, as putative Settlement Class Representatives, have actively participated in the litigation. They initiated the litigation in consultation with counsel; actively participated in the litigation, including, depending on the Representative, providing documents, submitting to deposition, reading and understanding the allegations of the Complaint, hosting experts on their farms, and participating in mediation negotiations and ultimately approving and signing the Settlement Agreement. The

Settlement Class Representatives are pursuing this case on behalf of all Settlement Class Members, and in doing so they are fulfilling their duty to protect the interests of all Settlement Class Members, and do not have any conflicts of interest with any other members of the Settlement Class.

49. The Settlement Class Representatives assumed unique reputational risk in the dairy community by coming forward to represent the interests of similarly-situated dairy farmers or farm entities. As potential class members, the Settlement Class Representatives could have simply awaited the outcome of the litigation and received the same benefits as any other class member. Instead, they worked diligently with Class Counsel throughout the course of litigation and actively participated in what had the potential to be a lengthy and hard-fought lawsuit against Lely.

50. We respectfully request service awards commensurate with each Class Representatives' service to the class. First, we request that Settlement Class Representative Jared Kruger – who was the sole Plaintiff for much of the litigation and who, as described above, produced documents, responded to interrogatories, sat for his deposition, and assisted in approving the Settlement – be awarded $50,000.

51. We request an award of $25,000 for Settlement Class Representative Mark Van Essen, whose documents were extensively collected, who was preparing to sit for his deposition at the time of settlement, who assisted in preparation of the Second Amended Complaint, who hosted experts on his farm, and who assisted in approving the Settlement.

52. We request $15,000 each for Settlement Class Representatives Lynn Kirschbaum, and Donna and Robert Koon (together), who initiated the litigation along with

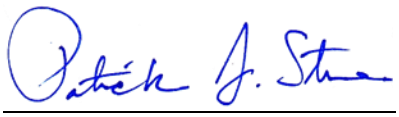
Plaintiff Kruger and assisted with the investigation as well as agreeing to serve as Settlement Class Representatives in the Third Amended Complaint and assisted in approving the Settlement.

53. We finally request a $15,000 service award for Schumacher Dairy Farms of Plainview LLC, who assisted in the investigation by hosting experts on his farm to observe his Lely A4s, assisted with the preparation of the Third Amended Complaint, and assisted in approving the Settlement.

54. These Settlement Class Representatives' time, effort and commitment to this case made this Settlement possible. They provided invaluable assistance and demonstrated ongoing commitment to representing the interests of Class Members.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed March 14, 2023.



Patrick J. Stueve

APPENDIX A

Firm	Timekeeper	Hours	Rate	Lodestar
Stueve Siegel Hanson LLP	Bryant, Joseph	460.90	425.00	$195,882.50
	Campbell, Michelle	224.20	350.00	$78,470.00
	Cervantes, Katrina	6.00	325.00	$1,950.00
	Dent, Jillian	901.00	725.00	$653,225.00
	Edwards, Tanner	868.90	625.00	$543,062.50
	Green, Thaddeus	32.50	395.00	$12,837.50
	Hilton, Todd	48.30	1,050.00	$50,715.00
	Howell, Joshua B	38.40	377.00	$14,476.80
	Kalender, Geoffrey	628.70	395.00	$248,336.50
	Marquart, Mary Rose	4.60	350.00	$1,610.00
	Marshall, Kate	1,259.80	625.00	$787,375.00
	Merrill, Ross	168.30	625.00	$105,187.50
	Naik, Nisha	926.70	425.00	$393,847.50
	Perez, Cheri	37.00	325.00	$12,025.00
	Siegel, Lynnette	80.30	475.00	$38,142.50
	Siegel, Norman	0.50	1,225.00	$612.50
	Six, Stephen	5.30	1,125.00	$5,962.50
	Smith, Charla	26.30	377.00	$9,915.10
	Spates, Brandi	867.50	525.00	$455,437.50
	Stueve, Patrick	481.20	1,225.00	$589,470.00
	Walters, Stephanie	374.50	800.00	$299,600.00
	Weiner, Adrian	2.10	325.00	$682.50
	Wilders, Bradley	124.10	1,050.00	$130,305.00
	Williams, Sheri	7.60	300.00	$2,280.00
		7,574.70		**$4,631,408.40**

Firm	Timekeeper	Hours	Rate	Lodestar
Perrone Law LLC	Daniel C. Perrone	2,014.10	675.00	$1,359,517.50
	Thomas Miller	812.40	775.00	$629,610.00
		2,826.50		**$1,989,127.50**

Firm	Timekeeper	Hours	Rate	Lodestar
Tensen and Cullenburg	Arend Tensen	1,858.00	895.00	$1,662,910.00
	Paralegals (Donna McMann, Shelly Smith)	360.00	225.00	$81,000.00
		2,218.00		**$1,743,910.00**

Firm	Timekeeper	Hours	Rate	Lodestar
Schewbel Goetz & Sieben	William Sieben	23.30	1,200.00	$27,960.00
	Alicia Sieben	19.30	750.00	$14,500.00
	Matthew Barber	6.0	750.00	$4,500.00
	Sharon Helgemoe	12.0	180.00	$2,160.00
	Eileen Sinott	160.0	180.00	$2,880.00
		220.60		**$52,000.00**

Litigation Expenses and Costs

Category	Expenses
Copies/Printing	12,021.10
ESI Processing & Hosting	9,453.29
Experts	66,237.75
Filing Fee	597.37
Hearing Transcript	28,258.87
Mediation	12,385.74
Miscellaneous	4,965.28
Postage	1,469.35
Research (Pacer/Westlaw)	57,374.29
Service/Courier	2,202.50
Telephone	11.73
Travel (Transportation/Meals/Hotel)	69,268.12
TOTAL	**$264,245.39**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JARED KRUGER, MARK VAN ESSEN, LYNN KIRSCHBAUM, DONNA and ROBERT KOON, and SCHUMACHER DAIRY FARMS OF PLAINVIEW LLC, on behalf of themselves and all others similarly situated, Plaintiffs, v. **LELY NORTH AMERICA, INC.** Defendant.	Case No. 0:20-cv-00629-KMM/DTS

[PROPOSED] ORDER

This matter comes before the Court on Class Counsel's Motion for Award of Attorneys' Fees, Expenses, and Service Awards. Based on the argument of counsel and all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Class Counsel's Motion is **GRANTED**.

Dated: _____, 2023

BY THE COURT,

_____
The Honorable Katherine M. Menendez

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JARED KRUGER, MARK VAN ESSEN, LYNN KIRSCHBAUM, DONNA and ROBERT KOON, and SCHUMACHER DAIRY FARMS OF PLAINVIEW LLC, on behalf of themselves and all others similarly situated, Plaintiffs, v. **LELY NORTH AMERICA, INC.** Defendant.	Case No. 0:20-cv-00629-KMM/DTS

MEET AND CONFER STATEMENT REGARDING CLASS COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

Class Counsel hereby certify that they met and conferred with counsel for Defendant Lely North America, Inc. several times throughout October and November of 2022 as they negotiated the final Settlement Agreement, which includes Defendant's agreement to "take no position as to any request to the Court for Attorneys' Fees and Expenses, provided such a request does not seek Attorneys' Fees in excess of one-third of the total value of the Settlement Fund and reimbursement of Expenses that do not exceed $300,000." Doc. 167-1 ¶ 11.2. Defendant also agreed "not to object to any reasonable service award(s) proposed by Class Counsel. *Id.* ¶ 10.1.

Dated: March 14, 2023

Respectfully submitted,

/s/ Patrick J. Stueve

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Counsel for the Proposed Settlement Class

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JARED KRUGER, MARK VAN ESSEN, LYNN KIRSCHBAUM, DONNA and ROBERT KOON, and SCHUMACHER DAIRY FARMS OF PLAINVIEW LLC, on behalf of themselves and all others similarly situated, Plaintiffs, v. **LELY NORTH AMERICA, INC.** Defendant.	Case No. 0:20-cv-00629-KMM/DTS

NOTICE OF HEARING ON CLASS COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

PLEASE TAKE NOTICE that Class Counsel moves the Court for an order granting Class Counsel's Motion for Award of Attorneys' Fees, Expenses, and Service Awards, the Motion of which is to be heard at the Final Approval Hearing in Courtroom 3A before The Honorable Kate M. Menendez, United States District Court for the District of Minnesota, 316 N. Robert Street, St. Paul, Minnesota, 55101, at 10:00 a.m. CT on July 24, 2023.

Dated: March 14, 2023

Respectfully Submitted,

/s/ Patrick J. Stueve

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