

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

MICHAEL VOGT,
on behalf of himself and all others
similarly situated,

Plaintiff,

v.

STATE FARM LIFE
INSURANCE COMPANY,

Defendant.

No. 2:16-cv-04170-NKL

ORDER

On June 6, 2018, a judgment of \$33,333,495.81 was entered in favor of the class on Plaintiffs' claims for breach of contract and conversion. Plaintiffs now seek to alter or amend the judgment to add a class definition, to add prejudgment interest, and to reduce damages to account for class members who have opted out. Plaintiffs' Motion to Amend (Doc. 377) is granted in part and denied in part.

I. ANALYSIS

a. Class Definition

Plaintiffs want the judgment amended to include the following class definition:

All persons who own or owned a universal life insurance policy issued by State Farm on Form 94030 in the State of Missouri. The Class excludes: State Farm; any entity in which State Farm has a controlling interest; any of the officers, directors, or employees of State Farm; the legal representatives, heirs, successors, and assigns of State Farm; anyone employed with Plaintiffs' counsel's firms; and any Judge to whom this case is assigned and his or her immediate family. The Class also excludes the owners of 487 policies that were not subject to overcharges alleged by Plaintiffs (identified in Exhibit A) and the 55 policy owners of 62 policies who timely requested exclusion from the class (identified in Exhibit B).

State Farm has no objection except for the request involving the 487 policyholders who suffered no damages because they never paid an overcharge or their overcharge was immediately refunded. State Farm contends that the presence of these policyholders in the definition of the class requires that the class be decertified because they lack standing. Doc. 353 (State Farm's Suggestions in Support of its Motion to Decertify the Class), pp. 4-5. But any claim by the 487 policyholders was abandoned by the Plaintiffs before trial, and was excluded from the class notice with the agreement of State Farm. Effectively, although not technically changed, the definition of the class was functionally modified prior to the trial. Under these circumstances, it is appropriate to formally amend the class definition to exclude the 487 policyholders pursuant to Federal Rule of Civil Procedure 23(c)(1)(C). This rule permits a court to modify the class definition before the entry of a final judgment, including after a trial on the merits. *Garcia v. Tyson Foods, Inc.*, 890 F. Supp. 2d 1273, 1297 (D. Kan. 2012) *aff'd*, 770 F.3d 1300 (10th Cir. 2014) (collecting authorities); *In re Urethane Antitrust Litigation*, No. 04-1616, 2013 WL 2097346, at *2 (D. Kan. May 15, 2013), *amended*, No. 04-1616, 2013 WL 3879264 (D. Kan. July 26, 2013).

State Farm also asks to amend the definition of the class to exclude State Farm's independent contractor insurance agents who own or owned insurance policies on policy form 94030. Plaintiffs do not object to this amendment and the Court sees no reason to deny State Farm's request. The final judgment therefore is amended to include the following definition of the class:

All persons who own or owned a universal life insurance policy issued by State Farm on Form 94030 in the State of Missouri. The Class excludes: State Farm; any entity in which State Farm has a controlling interest; any of the officers, directors, or employees of State Farm; the legal representatives, heirs, successors, and assigns of State Farm; any State Farm independent contractor insurance agents; anyone employed with Plaintiffs' counsel's firms; and any Judge to whom this case is assigned and his or her immediate family. The Class also excludes the owners of 487 policies that were not subject to overcharges alleged by Plaintiffs (identified in

Exhibit A) and the 55 policy owners of 62 policies who timely requested exclusion from the class (identified in Exhibit B).

b. Reduction of damage award to reflect opt-outs received after deadline

Plaintiffs seek to reduce the damages award to reflect that three class members opted-out after the commencement of the jury trial. State Farm agrees that the damages award should be reduced as requested. Therefore, the jury's award of \$34,333,495.81 is reduced by \$11,080.97, resulting in a total damages award of \$34,322,414.84.

c. Prejudgment Interest

Plaintiffs seek prejudgment interest for their breach of contract claim and their conversion claim. Prejudgment interest is authorized at a rate of nine percent per annum for a breach of contract claim if the amount of damages is liquidated and if no other rate is agreed upon by the parties. *See* Mo. Rev. Stat. § 408.020 (“Creditors shall be allowed to receive interest at the rate of nine percent per annum, when no other rate is agreed upon, for all moneys after they become due and payable, on written contracts . . .”). This statute also applies to Plaintiffs’ conversion claim. *Stromberg v Moore*, 170 SW3d 26, 32 (Mo. App 2005) (“In action for conversion, [t]he rate of allowable interest is that prescribed by Section 408.020”). For the conversion claim, there must also be a demand for payment and “the judgment or order [must exceed] the demand for payment . . .” Mo. Rev. Stat. § 408.040.

“[T]he burden is on the party seeking to avoid application of Section 408.020 to establish that the parties agreed to an alternative arrangement.” *G & G Mechanical Contractors, Inc. v. Jeff City Industry, Inc.*, No. WD80840, 2018 WL 1384503, at *2 n.4 (Mo. App. Mar. 20, 2018).

State Farm opposes the prejudgment interest request for three primary reasons. First, it argues that the amount of damages was not liquidated because the method for calculating damages was disputed by the parties. Second, it contends that prejudgment interest was already included in

the jury's damages award because Plaintiffs' expert's damages model added interest of more than 10 million dollars to the class members' accounts. Third, according to State Farm, the insurance policy in dispute included a rate of interest of four percent and Section 408.020 specifically provides that the nine percent statutory prejudgment interest is only permitted if the parties have not agreed to a different rate of interest.

As to the third argument, Plaintiffs respond that the contract only sets a minimum rate of interest and therefore the parties did not agree to the actual rate of interest to be applied. Further, even if they did agree to a specific rate of interest for purposes of Section 408.020, Plaintiffs claim to be entitled to five percent more in interest to make up the difference between the four percent minimum to which they agreed and the nine percent interest rate authorized by Section 408.020.

The Court rejects Plaintiffs' arguments because the parties agreed to a rate of interest in their contract. The policy provides for a minimum rate of interest. State Farm has discretion, but no obligation, to exceed the minimum interest rate. The rate of interest to be paid thus is controlled by the terms of the contract.

Because the evident purpose of Section 408.020 is to provide for statutory interest only when the parties have failed to set the rate of interest in their contract, the fact that the exact numerical amount of interest is not stated does not mean that the rate was not addressed in the contract. While there is no case on point, *Manfield v. AuditoriumB & Grill Inc.*, 965 S.W.2d 262, 269 (Mo. App. 1998), is instructive. In that case, the Missouri Court of Appeals found that no prejudgment interest was permitted because the contract between the parties provided for zero percent interest. The Missouri Court of Appeals found that this showed that the parties did not intend interest at a different rate.

Here, the parties agreed that the interest would be no less than four percent, necessarily leaving to State Farm the right to set the rate of interest higher. Therefore, the contract addressed whether interest was payable and how that interest rate would be determined. Reading Section 480.020 as meaning that providing for a minimum interest rate does not by contract resolve the interest to be paid is inconsistent with the purpose of the statute.

Because the Court finds that Section 480.020 precludes prejudgment interest in this case, it will not address State Farm's other arguments as to why prejudgment interest should not be awarded.

d. Post-Judgment Interest

Plaintiffs seek post-judgment interest at the rate of 2.23% compounded annually from the date of the entry of judgment, June 6, 2018. State Farm has no objection. Therefore, the judgment is amended to provide post-judgment interest at the rate of 2.23%, compounded annually beginning June 6, 2018 until paid.

e. Plaintiffs' Plan of Allocation.

Plaintiffs ask the Court to approve Plaintiffs' plan for allocating the damages awarded by the jury. They seek to have the damages distributed among the class members in proportion to their losses after deducting attorneys' fees and non-taxable expenses that might be awarded to class counsel, and any service award that might be given to Mr. Vogt. They ask the Court to use Exhibit D to determine the losses sustained by each class member. Exhibit D reflects Dr. Witt's lost Account Value calculation shown in Plaintiffs' Exhibit 242 with a modification to reflect the six excluded policy holders who asked to be excluded after trial commenced. Plaintiffs propose to determine the pro-rata share of each class member by using a fraction where the numerator is each class member's lost account value as stated in Exhibit D plus each class member's share of post –

judgment interest and the denominator is the total damages awarded by the jury plus any post-judgment interest awarded by the Court. The total amount of damages and post judgment interest (after deduction of any attorneys' fees and any non-taxable expenses and any service award to Mr. Vogt that the Court may award) is then multiplied by this fraction to determine the award for each class member. This calculation necessarily assumes that each class member will bear a pro-rata share of fees and expenses, which the Court finds fair and reasonable. It also ensures that no class member receives a share if they did not incur any loss in their account value.

Because State Farm cannot contest the method of allocation (*see Bouaphakeo v Tyson Foods, Inc.*, 593 Fed. Appx. 578, 586 (8th Cir. 2014)), and because the Court finds that the method of allocation is fair and reasonable, the plan of allocation is approved.

Plaintiffs also ask for the appointment of Angeion Group to oversee the distribution of net funds to the class. Given their prior involvement and recent experience communicating with the class, the Court finds that they should be appointed as requested.

Finally, Plaintiffs seek to shift to State Farm the administrative cost of distributing damages to each class member. Plaintiffs' request is denied without prejudice. As State Farm says, if Plaintiffs' request were granted, it would give Plaintiffs' a blank check because the costs of distribution have not even been estimated. Moreover, the request is not even limited to the reasonable costs incurred by the administrator.

II. CONCLUSION

For the foregoing reasons, Plaintiffs' motion to amend the judgment is granted in part and denied in part. The class definition is amended to read as follows:

All persons who own or owned a universal life insurance policy issued by State Farm on Form 94030 in the State of Missouri. The Class excludes: State Farm; any entity in which State Farm has a controlling interest; any of the officers, directors, or employees of State Farm; the legal representatives, heirs, successors, and assigns

of State Farm; any State Farm independent contractor insurance agents; anyone employed with Plaintiffs' counsel's firms; and any Judge to whom this case is assigned and his or her immediate family. The Class also excludes the owners of 487 policies that were not subject to overcharges alleged by Plaintiffs (identified in Exhibit A) and the 55 policy owners of 62 policies who timely requested exclusion from the class (identified in Exhibit B).

The jury's award is reduced to \$34,322,414.84. The judgment is amended to provide post-judgment interest at the rate of 2.23%, compounded annually beginning June 6, 2018 until paid. Plaintiff's proposed method of allocation and the proposal to appoint Angeion Group to oversee the distribution of net funds to the class each are approved. Plaintiffs' request for additional prejudgment interest is denied without prejudice.

/s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: October 11, 2018
Jefferson City, Missouri

EXHIBIT A

POLICIES WITH NO LOST ACCOUNT VALUE

	Policy No.
1	16084594
2	16084609
3	19072178
4	19460191
5	19482525
6	19529335
7	19536992
8	19549079
9	19562130
10	19573865
11	19573889
12	19575885
13	19577561
14	19601153
15	19602537
16	19602582
17	19608102
18	19609390
19	19609410
20	19609431
21	19616532
22	19616633
23	19628206
24	19633893
25	19633903
26	19633904
27	19642465
28	19648153
29	19654839
30	19660132
31	19662078
32	19693749
33	19698155
34	19704536
35	19706213
36	19715162
37	19718690
38	19734142
39	19734144

40	19738189
41	19744714
42	19745002
43	19745048
44	19745164
45	19759938
46	19761939
47	19770247
48	19771518
49	19779053
50	19781496
51	19783923
52	19788859
53	19794361
54	19795675
55	19795709
56	19797695
57	19801633
58	19809738
59	19817596
60	19817611
61	19822111
62	19823847
63	19823877
64	19824855
65	19829855
66	19836013
67	19851107
68	19866810
69	19869856
70	19879593
71	19879920
72	19880852
73	19893488
74	19893753
75	19896785
76	19916285
77	19923348
78	19923643
79	19941405
80	19941407

81	19947955
82	19956259
83	19961390
84	19962464
85	19968519
86	19973049
87	19975592
88	19978087
89	19979090
90	19982528
91	19986450
92	19987654
93	20003020
94	20015893
95	20024964
96	20029036
97	20031163
98	20039009
99	20039272
100	20061904
101	20068664
102	20070538
103	20071998
104	20072170
105	20072213
106	20075055
107	20075057
108	20080719
109	20084025
110	20084028
111	20084081
112	20091213
113	20091443
114	20101643
115	20101859
116	20108372
117	20116954
118	20116958
119	20117601
120	20119706
121	20120129

122	20122904
123	20133697
124	20136157
125	20136782
126	20143889
127	20147172
128	20150938
129	20162956
130	20178154
131	20192344
132	20197641
133	20197777
134	20198504
135	20217192
136	20219251
137	20222214
138	20222446
139	20236398
140	20239216
141	20244840
142	20244898
143	20246330
144	20254100
145	20254555
146	20254929
147	20254963
148	20267678
149	20273098
150	20279232
151	20290415
152	20290417
153	20290418
154	20290421
155	20294993
156	20294995
157	20296863
158	20298748
159	20302362
160	20307395
161	20310885
162	20313207

POLICIES WITH NO LOST ACCOUNT VALUE

163	20318348	204	20526774	245	20666137	286	20847019
164	20330332	205	20526787	246	20670298	287	20852020
165	20336848	206	20526793	247	20679964	288	20858445
166	20337012	207	20532145	248	20686082	289	20858446
167	20342302	208	20540728	249	20686087	290	20861276
168	20369604	209	20550149	250	20694506	291	20862788
169	20379016	210	20552605	251	20696976	292	20870839
170	20379018	211	20555484	252	20697046	293	20874648
171	20383008	212	20559354	253	20700100	294	20876488
172	20386101	213	20567744	254	20711811	295	20879820
173	20386104	214	20573400	255	20717606	296	20882840
174	20386866	215	20574095	256	20721352	297	20883047
175	20398936	216	20575712	257	20723090	298	20884012
176	20399431	217	20582860	258	20723092	299	20884160
177	20403269	218	20585964	259	20732964	300	20884315
178	20408856	219	20588673	260	20740006	301	20886086
179	20417080	220	20591689	261	20740230	302	20893503
180	20422710	221	20591708	262	20741497	303	20898908
181	20437164	222	20595009	263	20741775	304	20900712
182	20439902	223	20599077	264	20744891	305	20900896
183	20441500	224	20599104	265	20747875	306	20903138
184	20446474	225	20599106	266	20750635	307	20905235
185	20453218	226	20599133	267	20755515	308	20923210
186	20456650	227	20603101	268	20770708	309	20932129
187	20458267	228	20607879	269	20771254	310	20935513
188	20459269	229	20611382	270	20777668	311	20943077
189	20472807	230	20623382	271	20779537	312	20943087
190	20479114	231	20623549	272	20782303	313	20946527
191	20479502	232	20629357	273	20792223	314	20946615
192	20482524	233	20635032	274	20792454	315	20954806
193	20484117	234	20635103	275	20802319	316	20958342
194	20484399	235	20641961	276	20807729	317	20958601
195	20489899	236	20642395	277	20809270	318	20961314
196	20498595	237	20649135	278	20822647	319	20970140
197	20498645	238	20649516	279	20824668	320	20970316
198	20498653	239	20649519	280	20835435	321	20970782
199	20503034	240	20649697	281	20838317	322	20974705
200	20510767	241	20651914	282	20838363	323	20978351
201	20524469	242	20656650	283	20839467	324	20991415
202	20524472	243	20662684	284	20839623	325	20992905
203	20524474	244	20664876	285	20842820	326	20996056

POLICIES WITH NO LOST ACCOUNT VALUE

327	20997939
328	20999487
329	21002250
330	21002517
331	21008684
332	21011904
333	21020548
334	21030145
335	21033247
336	21041342
337	21044801
338	21045867
339	21046141
340	21054108
341	21054410
342	21065905
343	21070064
344	21074399
345	21078641
346	21093984
347	21101585
348	21104989
349	21106599
350	21110156
351	21115888
352	21115912
353	21117760
354	21120200
355	21122726
356	21125247
357	21133230
358	21133285
359	21135849
360	21147420
361	21151618
362	21152648
363	21159790
364	21162245
365	21164970
366	21188793
367	21192624

368	21194052
369	21194155
370	21203284
371	21203486
372	21203522
373	21203528
374	21205868
375	21205869
376	21206455
377	21212838
378	21214592
379	21215713
380	21231475
381	21233879
382	21234987
383	21239725
384	21239920
385	21239921
386	21240062
387	21240064
388	21243015
389	21245694
390	21259756
391	21259757
392	21265470
393	21265748
394	21269005
395	21269059
396	21269089
397	21269879
398	21299297
399	21301406
400	21315075
401	21315129
402	21319167
403	21332533
404	21337057
405	21343336
406	21343349
407	21356330
408	21365173

409	21368294
410	21371867
411	21372745
412	21374837
413	21376204
414	21379540
415	21381846
416	21383361
417	21394738
418	21399364
419	21411051
420	21416591
421	21418601
422	21422730
423	21430687
424	21434243
425	21447165
426	21447613
427	21457249
428	21457329
429	21457692
430	21459155
431	21459480
432	21462407
433	21462410
434	21462749
435	21462782
436	21462815
437	21462821
438	21468521
439	21472146
440	21472156
441	21473356
442	21477050
443	21484063
444	21484524
445	21488606
446	21489484
447	21489631
448	21494117
449	21494144

450	21497288
451	21498875
452	21501474
453	21503376
454	21505190
455	21505522
456	21532180
457	21533819
458	21545381
459	21562999
460	21563323
461	21568715
462	21575622
463	21578108
464	21578310
465	21580397
466	21595271
467	21604081
468	21604082
469	21606559
470	21607474
471	21612334
472	21612499
473	21616893
474	21617493
475	21619515
476	21620932
477	21620996
478	21621676
479	21621755
480	21623165
481	21630638
482	21630727
483	21639124
484	21640425
485	21645216
486	21653043
487	23000914

EXHIBIT B

	Policy #	Exclusion Received
1	20997356	5/11/2018
2	16554633	5/15/2018
3	13524074	5/15/2018
4	19961344	5/15/2018
5	16845055	5/15/2018
6	14997852	5/15/2018
7	14839378	5/15/2018
8	20897014	5/15/2018
9	21255782	5/15/2018
10	15125014	5/15/2018
11	19550047	5/15/2018
12	19550046	5/15/2018
13	14087341	5/15/2018
14	13930826	5/15/2018
15	19658785	5/15/2018
16	15546689	5/15/2018
17	15798872	5/15/2018
18	20662872	5/15/2018
19	16678452	5/15/2018
20	20047064	5/15/2018
21	15564195	5/15/2018
22	18522252	5/15/2018
23	20537888	5/15/2018
24	13365557	5/15/2018
25	19579119	5/15/2018
26	15163630	5/15/2018
27	14530021	5/15/2018
28	15423179	5/18/2018
29	21177025	5/18/2018
30	14698716	5/18/2018
31	13592452	5/18/2018
32	20312490	5/18/2018
33	20805068	5/18/2018
34	17781958	5/21/2018
35	16108573	5/21/2018
36	19785057	5/21/2018
37	21239715	5/24/2018
38	21239713	5/24/2018
39	15240596	5/29/2018
40	15523076	5/29/2018
41	14202598	5/30/2018
42	20831858	5/30/2018
43	20534236	5/30/2018
44	21492291	5/30/2018
45	21214609	5/30/2018
46	17562861	5/30/2018

47	21137351	6/1/2018
48	21137350	6/1/2018
49	15077659	6/1/2018
50	16088033	6/1/2018
51	19637919	6/1/2018
52	18540935	6/1/2018
53	18540934	6/1/2018
54	17398315	6/1/2018
55	15974578	6/1/2018
56	21288438	6/1/2018
57	16262899	6/4/2018
58	16246796	6/4/2018
59	16190636	6/4/2018
60	16190635	6/4/2018
61	15383951	6/5/2018
62	13555730	6/5/2018