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Mr. Michael E. Gans
Clerk of Court
Thomas F. Eagleton Courthouse
Room 24.329
111 South 10th Street
St. Louis, MO 63102

Dear Mr. Gans:

Re: Appellees' Response to Rule 28(j) Notice of Supplemental Authority, *Pollard, et al., v. Frost, et al.*, No. 17-1818

This letter serves as a joint response on behalf of Plaintiffs-Appellees and Defendants-Appellees to the Notice of Supplemental Authority filed by Amicus Commonwealth of Massachusetts on January 24, 2018.

As explained in Defendants'-Appellees' brief, Def. Br. at 42-43, the rule in this Circuit is that settlement agreements need not account for differences in state law. *Keil v. Lopez*, 862 F.3d 685, 700 (8th Cir. 2017). Relatedly, a district court is not required to consider evidence regarding the valuation of claims under the laws of different states in order to grant final approval to a settlement. *Id.* Indeed, whether considered part of the predominance analysis under Rule 23(b)(3) or the fairness of the settlement itself, this principle is well established across federal courts. *See, e.g., Sullivan v. DB Investments, Inc.*, 667 F.3d 516, 302-04 (3d Cir. 2011) (a choice-of-law analysis is not required for settlement—as opposed to litigation—classes); *In re Nat'l Collegiate Athletic Ass'n Student-Athlete Concussion Injury Litig.*, 314 F.R.D. 580, 596 n.15 (N.D. Ill. 2016) (same); *In re Pool Prod. Distribution Mkt. Antitrust Litig.*, 310 F.R.D. 300, 312 (E.D. La. 2015) (same); *see also Pollard* Order at 28 (citing *Sullivan*); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022-23 (9th Cir. 1998) (warranty and consumer-protection settlement class met predominance requirement; because personal injury claims were excluded, only "idiosyncratic differences" in state laws were at issue). For this reason, the Ninth Circuit's dissenting opinion rightly criticizes the majority for "put[ting] us at odds with the reasoned decisions of other circuits." *In re Hyundai and Kia Fuel Economy Litigation*, – F.3d. –, 108 WL 505343, at *21 (9th Cir. 2018) (Nguyen, dissenting). At bottom, the district court here correctly adhered to these long-standing principles.

Additionally, this issue is not properly before the Court. Appellants did not raise this issue in their appellate brief, which precludes amici from doing so in their own right. Def. Br. at 41; *United States v. Northeastern Pharm. & Chem. Co.*, 810 F.2d 726, 732 n.3 (8th Circ. 1986). For that additional reason, the Ninth Circuit's decision has no bearing on this appeal.

Respectfully submitted,

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