DOCKET NO. HHD-CV16-6072110-S	:	SUPERIOR COURT
	:	
TAYLOR, ALAN	:	JUDICIAL DISTRICT OF
	:	HARTFORD
v.	:	
	:	AT HARTFORD
HARTFORD CASUALTY INSURANCE	:	
COMPANY; HARTFORD UNDERWRITERS	:	
INSURANCE COMPANY; TRUMBULL	:	
INSURANCE COMPANY; TWIN CITY FIRE	:	
INSURANCE COMPANY; PROPERTY AND	:	
CASUALTY INSURANCE COMPANY OF	:	
HARTFORD; PACIFIC INSURANCE	:	
COMPANY; SENTINEL INSURANCE	:	
COMPANY; AND THE HARTFORD	:	
FINANCIAL SERVICES GROUP, INC.	:	JULY 18, 2019

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR AWARD OF ATTORNEYS' FEES & EXPENSES AND FOR CASE CONTRIBUTION AWARD

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Plaintiff Alan Taylor ("Plaintiff"), individually and on behalf of the proposed Settlement Class (as defined in the Settlement Agreement), respectfully submits this memorandum of law in support of his Motion for Award of Attorneys' Fees & Expenses and Case Contribution Awards in the aggregate amount of $275,000.

I. INTRODUCTION

In his Amended Complaint [Dkt. No. 133.00], Plaintiff Alan Taylor ("Plaintiff") alleges that The Hartford Financial Services Group, Inc. and its various writing companies (collectively, "Defendant" or "Hartford") improperly engaged in a practice in Connecticut and California often called a "roll on," whereby an insurer adds optional coverages to a policy and charges additional premium, often without the prior knowledge or consent of the policyholder. *See generally* Amended Complaint [Dkt. No. 133.00]. After over two-and-a-half years of litigation and lengthy settlement discovery, negotiations and discussions, the Parties agreed to a settlement whereby Class Members were eligible to receive cash awards of between $75 and $225. *See* Memorandum of Law in Support of Plaintiff's Motion for Certification of Settlement Class and Approval of Class Action Settlement ("Pl. Sett. App. Mem.") at 1-3, 14-18. This Court preliminarily approved the Settlement on April 25, 2019, and authorized Plaintiff to give notice to the Settlement Class. *See* [Dkt. No. 136.86.] Plaintiff has now filed a Motion for final approval of the Settlement. Simultaneously therewith, and by this separate motion and memorandum, Plaintiff respectfully asks the Court also to approve an award of attorneys' fees and expenses in the amount of $267,500 and a case contribution award for Lead Plaintiff of $7,500, for a total combined award to Class Counsel and Lead Plaintiff of $275,000.

II. FACTUAL BACKGROUND

Izard, Kindall & Raabe, LLP ("IKR") and Biller, Sachs, Zito & LeMoult ("BSZL") (together, "Settlement Class Counsel"), as well as Plaintiff Taylor personally, have spent significant time, effort, and outlay of funds to investigate and successfully prosecute Taylor's claims against Defendant. This case originated when Taylor contacted the AARP with regard to Defendant's alleged misconduct.[1] Affidavit of Alan Taylor ("Taylor Aff."), attached as Exhibit 2 to the previously-filed Affidavit of Seth R. Klein in Support of Preliminary Approval [Dkt. No. 135.00] ("Klein Prelim. App. Aff."), at ¶ 5. When the AARP was unable to provide a satisfactory response, Taylor contacted the State of Connecticut Insurance Department. Taylor Aff. at ¶ 6. Taylor spent several hours on both oral and written communications with the Department, while also doing his own research. *Id.* at ¶¶ 6-9. Taylor thereafter hired his own counsel, who, along with Taylor, did extensive additional research regarding Hartford's "roll-on" practices. Taylor Aff. at ¶¶ 10-12; Klein Aff. at ¶ 3.

Based upon this review, Plaintiff filed the present action on behalf of himself and all others similarly situated on October 18, 2016. Klein Prelim. App. Aff. at ¶ 4.[2] Defendant moved to dismiss the Complaint on January 19, 2017. *See* [Dkt. No. 104.00]. Following full briefing and oral argument, the Court denied Defendant's motion on September 26, 2016. *See* [Dkt. Nos. 104.10 and 122.00].

Both during and following the pendency of Defendant's motion to dismiss, the parties conferred, briefed, and met with the Court concerning various discovery issues regarding the

[1] The insurance at issue was marketed under an arrangement with the AARP. *See* Amended Complaint at ¶¶ 10-15, 22.

[2] Even after the litigation was filed, Taylor remained closely involved in monitoring and supervising the conduct of the case. Taylor Aff. at ¶¶ 10-12.

overall scope of the case. Klein Prelim. App. Aff. at ¶ 6; *see also* [Dkt. Nos. 110.00 (Motion for Jurisdictional Discovery); 127.00 (Defendant's Proposed Discovery Plan); 127.86 (Discovery Order)]. Based upon these discussions between the parties, Plaintiff agreed to limit his claims to policyholders in Connecticut and California, as the relevant statutes concerning the offering of Supplemental Coverages in other states potentially raised separate individualized questions. *See* Klein Prelim. App. Aff. at ¶ 6. At the Court's direction [*see* Dkt. No. 127.86], the parties engaged in a detailed "sampling" process whereby Plaintiff selected 10% of the relevant Connecticut and California policies to analyze. Klein Prelim. App. Aff. at ¶ 7. Hartford then produced detailed account files for the selected accounts, which counsel for Plaintiff thoroughly reviewed to assess the strengths and weaknesses of the parties' respective claims and defenses. *Id.* Hartford thereafter produced policy-by-policy data to Plaintiff regarding the premiums that ***all*** individual insureds in Connecticut and California paid for Supplemental Coverage, so that the parties could both analyze potential damages in this matter. *Id.*

Following these analyses by both parties, the parties jointly agreed to a full day mediation before Judge Robaina on December 19, 2018. *Id.* at ¶ 8. At the close of mediation and with the assistance of Judge Robaina, the parties reached a settlement in principle and signed a Memorandum of Understanding setting forth the core terms of this Settlement. *Id.* The parties thereafter engaged in detailed discussions to negotiate a formal Settlement Agreement, which was signed on April 5, 2019. *See id.* at ¶ 9; *See generally* Settlement Agreement (Klein Prelim. App. Aff. at Ex. 1). Under the terms of the Settlement, Connecticut consumers who submit valid claim forms receive $200 each, while approved California claimants receive $75. In addition,

policyholders whose coverage was cancelled altogether will receive $225.[3] Even considering only the "regular" $75 and $200 benefits available to Class Members, the total value available to the Class (given the number of Class Members in each state) is at least $1,278,425.[4]

Plaintiff and his counsel also negotiated the amount to be paid by Hartford for fees and an incentive award under the oversight and with the assistance of Judge Robaina. Klein Prelim App. Aff. at ¶ 10. These negotiations occurred only ***after*** the substantive amounts to be paid to Class Members had been finalized. *Id*. With Judge Robaina's participation, Hartford agreed not to oppose a total award of $275,000 encompassing both Class Counsel's fees and expenses and a case contribution award for Lead Plaintiff. Settlement Agreement (Klein Prelim. App. Aff. at Ex. 1) at Article VI.1. The Settlement is ***not*** contingent upon approval of these attorneys' fees or any incentive award. Settlement Agreement at Article VI.2. Rather, the Court's determination of the appropriate amount of fees, costs, and expenses to award to Class Counsel and the appropriate amount of any awards to the Plaintiff and the Class Representatives will have no impact on the finality of the Settlement. Nor are Class Members adversely affected by the fees or Lead Plaintiff award that Class Counsel seek. Pursuant to the Settlement Agreement (at Article III.1.f and Article VI), Hartford has agreed to pay this $275,000 in fees, expenses and

[3] The terms of the Settlement are discussed in further detail in Plaintiff's accompanying Memorandum of Law in Support of Motion for Certification of Settlement Class and Approval of Class Action Settlement.

[4] There are 3,772 Class Members in Connecticut, each of whom is receiving $200, and 6.987 Class Members is California, each of whom is receiving $75, even assuming no Class Member in either state qualifies for the $225 award. *See* Affidavit of Jason Rabe at ¶ 4 (number of Class Members in each state).

Lead Plaintiff award using its own resources, which means that these payments will ***not*** reduce the benefits provided to Class Members.[5]

This Court granted preliminary approval to the Settlement on April 25, 2019 [Dkt. No. 136.86] and, *inter alia*, appointed Rust Consulting, Inc. ("Rust") as Claims Administrator. Pursuant to the preliminary approval Order, Rust sent Notice of the proposed Settlement to all Class Members on June 7, 2019. As of the date of this filing, no Class Members have objected, and only two have opted-out. *See* Court docket (absence of objections); Affidavit of Jason Rabe (a Program Manager at Rust) ("Rabe Aff.") at ¶¶ 16-17. Likewise, although claims also are not due until August 9, Class Members have already filed 1,161 claims (constituting 10.8% of the Class) to date. Rabe Aff. at ¶ 18; Klein Fee & Expense Aff. at ¶ 7.[6]

Over the course of the litigation, from investigation through the filing of Plaintiff's final approval papers, IKR expended 504 hours of time with a lodestar of $363,806.25, and BSZL expended 268.15 hours of time with a lodestar of $108,942.50, for a total of 772.15 hours and $472,748.75 lodestar between both Settlement Class Counsel firms. *See* Affidavit of Seth R. Klein in Support of Motion for Award of Attorneys' Fees and Expenses and Case Contribution Award ("Klein Fee & Expense Aff.") at ¶¶ 9-17; Affidavit of Jon Biller ("Biller Aff.") at ¶¶ 3-9. Accordingly, the $275,000 cap on Hartford's payment for fees and expenses and a Lead Plaintiff

[5] Where, as here, "the parties agree to a fee that is to be paid separately by the Defendant[] rather than one that comes from, and therefore reduces, the Settlement Fund available to the class, the Court's fiduciary role in overseeing the award is greatly reduced because the danger of conflicts of interest between attorneys and class members is diminished." *Kemp-DeLisser v. St. Francis Hospital and Medical Center Fin. Committee*, No. 15-cv-1113 (VAB), 2016 WL 6542707, at *14 (D. Conn. Nov. 3, 2016) (internal quotation marks and citation omitted).

[6] Plaintiff will update the Court by August 23, 2019 (the date set by the Court for Plaintiff to respond to any objections) as to the number of timely claims, objections and opt-outs received by the Claims Administrator and the Court.

award is already $197,848.75 ***below*** the aggregate lodestar of Class Counsel to date ***not even including*** expenses and the lead plaintiff service award, resulting in a negative fee multiplier of 0.58.[7]

III. THE COURT SHOULD APPROVE THE REQUESTED AWARD OF ATTORNEYS' FEES AND EXPENSES TO BE PAID BY DEFENDANTS TO CLASS COUNSEL

Wholly separate from the substantial recovery available to Class Members in direct cash benefits (as detailed in Plaintiff's accompanying motion for approval of the Settlement), Hartford has agreed to pay Class Counsel up to $275,000 in attorneys' fees, costs and other litigation expenses, and a lead plaintiff service award.[8] Plaintiff respectfully requests $267,500 in attorneys' fees and expenses (constituting 20.9% of the direct cash available for the Class, or 17.2% of the $1,553,425 total value obtained for the Class, including requested attorneys' fees and expenses) and $7,500 as a Lead Plaintiff case contribution award. These requests merit approval.

A. The Full Value of the Settlement Fund Available Is Considered in Awarding Attorneys' Fees

In a claims-made settlement, attorneys' fees awarded as a percentage of a fund should take into consideration the entirety of the aggregate value of the settlement fund, not only that portion received directly by the class members. As the Supreme Court has observed, where plaintiffs obtain a claims-made settlement, they "have recovered a determinate fund for the

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[7] Class Counsel's current aggregate expenses are $3,127.87. *See* Klein Fee & Expense Aff. at ¶¶ 14-16; Biller Aff. at ¶¶ 8-9. As with Class Counsel's fees, these expenses will only increase as the Settlement moves through to completion. As discussed herein, Class Counsel are also seeking a $7,500 lead plaintiff service award for Taylor, in light of his extensive efforts in uncovering Hartford's actions and prosecuting this litigation. All of these sums will be drawn from the same capped fund of $275,000.

[8] Fees will be allocated among Class Counsel per agreement of Counsel.

benefit of every member of the class whom they represent." *Boeing*, 444 U.S. at 479. Absent Class Members' "right to share the harvest of the lawsuit upon proof of their identity, ***whether or not they exercise it***, is a benefit in the fund created by the efforts of the class representatives and their counsel." *Id.* at 480 (emphasis added). This is true even where a defendant has the right "to the return of money eventually unclaimed[,] contingent on the failure of absentee class members to exercise their present rights" to the money. *Id.* at 482. Accordingly, the Second Circuit held in *Masters v. Wilhelmina Model Agency, Inc.* 473 F.3d 423, 437 (2d Cir. 2007), that "[t]he entire Fund, and not some portion thereof, is created through the efforts of counsel at the instigation of the entire class. An allocation of fees by percentage should therefore be awarded on the basis of the total funds made available whether claimed or not. We side with the circuits that take this approach." The Court further noted that "[o]ur own cases refer to 'percentage of the fund,' and 'percentage of the recovery.' We take these references to be to the whole of the Fund." *Id.*(emphasis in original, citations omitted).

Federal courts in Connecticut have routinely cited *Boeing* and *Masters* to hold that class counsel are entitled to a percentage of the ***entire*** fund their efforts create, regardless of how much absent class members claim from the fund and whether unclaimed amounts revert to Defendants. *See Kiefer v. Moran Foods, LLC*, No. 12-cv-756, 2014 WL 3882504, at *8 (D. Conn. Aug. 5, 2014) (Young, J.) ("In applying the common fund method, the Supreme Court, the Second Circuit, and other Circuit Courts, have held that it is appropriate to award attorneys' fees as a percentage of the entire maximum gross settlement fund, even where amounts to be paid to settlement class members who do not file claims will revert to the Defendants"); *Bozak v. FedEx Ground Package Sys., Inc.*, No. 11-cv-00738, 2014 WL 3778211, at *6 (D. Conn. July 31, 2014) (same); *Caitflo LLC v. Sprint Communications Co., LP*, No. 11-cv-00497, 2013 WL 3243114, at

*2 (D. Conn. June 26, 2013) (same); *Aros v. United Rentals, Inc.*, No. 10 Civ. 73, 2012 WL 3060470, at *5 (D. Conn. July 26, 2012) (same).[9] Plaintiff respectfully submits that this Court should follow this long-established precedent as well.

Moreover, it is appropriate to include ***both*** the amount made available to the class ***and*** the amount of attorneys' fees and expenses requested to determine the value of the total fund for purposes of determining the percentage of the fund the fee request represents. *See, e.g., Torres*, 519 F. App'x 1,5 (2d Cir. 2013); *Johnston v. Comerica Mortgage Corp.*, 83 F.3d 241, 246 (8th Cir. 1996) ("Even if the fees are paid directly to the attorneys, those fees are still best viewed as an aspect of the class' recovery."); Manual for Complex Litigation, Fourth, § 21.71 p. 525 ("If an agreement is reached on the amount of a settlement fund and a separate amount for attorney fees

[9] Courts elsewhere in this Circuit also routinely follow *Masters* and *Boeing*. *See Hart v. RCI Hospitality Holdings, Inc.*, No. 09 Civ. 3043, 2015 WL 5577713, at *17 (S.D.N.Y. Sept. 22, 2015) ("Circuit precedent supports taking the gross monetary settlement into account when calculating the percentage of the fund … even when unclaimed funds were to revert to the defendants"); *Fleisher v. Phoenix Life Ins. Co.*, No. 11-cv-8405, 2015 WL 10847814, *16 n.10 (S.D.N.Y. Sept. 9, 2015) (citing *Masters*); *In re Nigeria Charter Flights Litig.*, No. 04-cv-304, 2011 WL 7945548, at *5 (E.D.N.Y. Aug. 25, 2011) (citing *Masters* and rejecting argument "that due to the reversionary aspect of the fund, the proper analysis is to compare the fees sought to the actual claims made by the class members"); *Velez v. Novartis Pharm. Corp.*, No. 04 Civ. 09194 (GEL), 2010 WL 4877852, at *21 (S.D.N.Y. Nov. 30, 2010) (quoting *Masters*, 473 F.3d at 437) ("[T]his Circuit has ruled that '[a]n allocation of fees by percentage should therefore be awarded on the basis of total funds made available whether claimed or not.'"); *Dahingo v. Royal Caribbean Cruises, Ltd.*, 312 F. Supp. 2d 440, 443 (S.D.N.Y. 2004) (noting that attorneys' fees equivalent to one-third of common fund of $18.4 million was approved notwithstanding that only $5.6 million of the $18.4 was claimed by class members with the remaining $11.8 million unclaimed and reverting to the defendants); 4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions § 14:6, at 570 (4th ed. 2002) (stating that *Boeing* settled the issue of whether the benchmark common fund amount for fee award purposes is made up of the amount claimed by class members or the amount potentially available to class members by ruling that class counsel are entitled to a reasonable fee based on the funds potentially available to be claimed, regardless of the amount actually claimed).

and expenses . . . the sum of the two amounts ordinarily should be treated as a settlement fund for the benefit of the class ....").[10]

B. Class Counsel Is Entitled to a Reasonable Fee

The Supreme Court has held 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); *see also Central States Southeast & Southwest Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 504 F.3d 229, 249 (2d Cir. 2007). The rationale is to compensate counsel fairly and adequately for their services and to prevent unjust enrichment of persons who benefit from a lawsuit without shouldering its costs. The Connecticut Supreme Court has specifically affirmed this rationale. *Town of New Hartford v. Connecticut Res. Recovery Auth.*, 291 Conn. 511, 517-18, 970 A.2d 583, 588-89 (2009) (citing *Boeing* for the proposition that "persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense."). In addition, courts have recognized that awards of fair attorneys' fees from a common fund should serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and therefore to discourage future misconduct of a similar nature. *See Hicks v. Morgan Stanley & Co.*, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24,

[10] *See also Hubbard v. Donahoe*, No. 03 Civ. 1062 (RJL), 2013 WL 3943495, at *4, 8 (D.D.C. July 31, 2013) (collecting cases); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1072 (S.D. Tex. 2012); *Lopez v. Youngblood*, No. 07 Civ. 0474 (DLB), 2011 WL 10483569, at *12 (E.D. Cal. Sept. 2, 2011) (awarding 28.5% of the recovery where attorneys' fees were paid separate and apart from benefit to the class and citing with approval *Johnston* and *In re Vitamins Antitrust Litig.*, No. 99 Civ. 197 (TFH), 2001 WL 34312839, at *4 (D.D.C. July 16, 2001)); *Cohen v. Chilcott*, 522 F. Supp. 2d 105, 121 (D.D.C. 2007).

2005) ("To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding.") (citation omitted).

C. This Court Should Use the Percentage Method to Evaluate the Reasonableness of Plaintiff's Attorneys' Fees Request

There was little precedent in Connecticut Courts relating to the best means for calculating attorneys' fees in a common fund case prior to a few years ago. Two common methods have been used by courts around the country. The percentage method awards counsel a percentage of the total award received by the class, while the lodestar approach multiplies the number of hours reasonably billed by the reasonable hourly rate (the "lodestar"). *See Savoie v. Merchants Bank,* 166 F.3d 456, 460 (2d Cir. 1999). Under the latter method, a court may adjust the "lodestar," applying a multiplier after considering such factors as the quality of counsel's work, the probability of success of the litigation and the complexity of the issues. *See In re Agent Orange Product Liab. Litig.,* 818 F.2d 226, 232 (2d Cir. 1987). The enhancement of lodestar amounts by a factor of 4-5 is common. *Towns of New Hartford & Barkhamsted v. Connecticut Res. Recovery Auth.,* No. CV040185580S(X02), 2007 WL 4634074, at *6, 10 (Conn. Super. Ct. Dec. 7, 2007).

In the *New Hartford* litigation, then-Judge Eveleigh carefully reviewed recent jurisprudence on the subject, and concluded that the fee award in a common fund case should generally be set as a percentage of the common fund, rather than through the older "lodestar" method. *Id* at *8 (citing federal cases from the Second Circuit and finding that this was also the approach of the First, Third, Sixth, Seventh, Ninth and Tenth Circuits). The court found that the percentage method was simpler and more efficient (avoiding "an otherwise 'gimlet-eyed review' of counsel's detailed lodestar"), allowed for consideration of the same factors used to determine

the appropriate multiplier in a lodestar case, and avoided "'an unanticipated disincentive to early settlements' created by the lodestar method." *Id.* (quoting *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 48-49 (2d Cir. 2000). On appeal, the Connecticut Supreme Court turned back defendant's challenge to the award of fees, while citing with approval the trial court's methodology, finding it to be a "comprehensive analysis:"

> [T]he [trial] court compared the percentage award of attorney's fees in the present case to other recent class actions. It then examined the six factors set forth by the United States Court of *Appeals* for the Second Circuit to determine the reasonableness of the fee in a common fund *class* action: (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the result; and (6) public policy concerns. See *Goldberger v. Integrated Resources, Inc.*, supra, 209 F.3d at 50.

Town of New Hartford v. Connecticut Res. Recovery Auth., 291 Conn. 511, 515 & n.6, 970 A.2d 583, 587 (2009). Plaintiff respectfully submits that this Court should apply the *Goldberger* factors as approved by the Connecticut Supreme Court and award a fee in accordance with the percentage of the common fund method.

D. The Requested Fees Are Reasonable

An analysis of the facts in this case in light of the *Goldberger* factors demonstrates that the requested $267,500 award of attorneys' fees and expenses (or 20.9% of the Settlement cash value and 17.9% of the total Settlement value) is reasonable.

1. Counsel's Time and Labor

There is no question that Settlement Class Counsel expended significant time and effort to bring this litigation to a successful resolution. As detailed above, counsel have devoted substantial time and effort to this case for over two years. Even when courts do not employ the lodestar method to determine fees, they often consider the lodestar calculation in evaluating a

requested percentage fee, although "where used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court." *Goldberger*, at 50. As discussed above, a review of counsel's contemporaneous records indicates that they collectively spent 772.15 hours of attorney time with an aggregate lodestar of $472,748.25. *See* Klein Fee & Expense Aff. at ¶¶ 9-13; Biller Aff. at ¶¶ 3-6.[11] Settlement Class Counsel's fee request, thus, is only about ***58%*** percent of lodestar – a ***negative*** multiplier, and far less than the multipliers of three, four or even five routinely approved in other cases. *See, e.g., Towns of New Hartford*, 2007 WL 4634074, at *10 ("In cases where counsel have undertaken a difficult matter on a contingency basis and have secured a favorable result for the class, the normal multiplier is 4-5 times the lodestar.") (citing *In re EVCI Career Colleges Holding Corp. Sec. Litig.*, No. 05 CIV 10240 CM, 2007 WL 2230177, at *17 (S.D.N.Y. July 27, 2007)); *see also Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 123 (2d Cir. 2005) (finding a multiplier of 3.5 to be reasonable). As in *Town of New Hartford*, there can be no question of counsel obtaining a "windfall." *See* 291 Conn. 511, 515 & n.6 (approving the trial court's lodestar cross-check analysis and finding no windfall where the lodestar multiple was over 2).

2. The Relationship of the Requested Fee to the Settlement

The requested attorneys' fee of 17.9% is well below the standard range in this Court and in the Second Circuit. For example, this Court (Moll, J.) approved a 32% fee award in *Gruber v. Starion Energy Inc.*, No. X03HHDCV176075408S, 2017 WL 6262409, at *1 (Conn. Super. Nov.

[11] The hourly rates for Settlement Class Counsel's attorneys are the same as the regular current rates charged for services in non-contingent matters and/or that have been accepted and approved in class action litigation in other courts throughout the country. Klein Fee & Expense Aff., at ¶ 12; Biller Aff. at ¶ 7.

13, 2017). Indeed, a request of one-third – much higher than is being sought here – is "typical of awards in this Circuit." *Bozak v. FedEx Ground Package Sys., Inc.*, No. 3:11-CV-00738-RNC, 2014 WL 3778211, at * 7 (D. Conn. July 31, 2014); *Capsolas v. Pasta Resources Inc.*, No. 10 Civ. 5595, 2012 WL 4760910, at *8 (S.D.N.Y. Oct. 5, 2012) (fee request of one-third is "consistent with the norms of class litigation in this circuit") (internal quotation marks omitted); *Willix v. Healthfirst Inc.*, No. 07 Civ. 1143, 2011 WL 754862, at *7 (E.D.N.Y. Feb. 18, 2011) (same). Accordingly, the percentage fee in relation to the Settlement is reasonable, especially given the complexity and novelty of the case, the attendant litigation risks, and the effort Settlement Class Counsel expended to reach a Settlement, as discussed below.

3. The Risks of Litigation

The *Goldberger* court identified "the risk of success as 'perhaps the foremost' factor to be considered in determining [a reasonable award of attorneys' fees]." *Goldberger*, 209 F.3d at 54 (citation omitted). Courts have noted that the *Goldberger* risk analysis overlaps with risk analysis performed in evaluating the fairness of a settlement. *See In re Priceline.com*, 2007 WL 2115592, at *3-5 (D. Conn. 2007) (noting that risk analysis concerning attorney fee award is similar to risk analysis with respect to settlement fairness).

Here, although Class Counsel believe that Plaintiff's claims are meritorious, Defendant has raised significant issues concerning Plaintiff's ability to prove legal liability and damages. Accordingly, there is a substantial risk that, absent the Settlement, Plaintiff could not achieve a better result for the Class through continued litigation. For example, Defendant has argued that at least some consumers ***wanted***, and knowingly paid for, the Supplemental Coverage. This is a potentially significant issue that, if credited by the Court, could foreclose damages for at least some Class members. Defendant has likewise argued that each consumer was sold Supplemental

Coverage through individualized marketing channels, including phone conversations that were not conducted pursuant to a standardized, set script. Although Plaintiff believes that he could establish Hartford's misconduct through common proof, Defendant vigorously contests this notion, and Plaintiff faces a substantial risk that the Court could agree with Defendant. Defendant has raised at mediation, and undoubtedly would continue to raise in litigation, several other issues concerning the propriety of classwide relief and damages.[12]

Settlement Class Counsel have received no compensation during the course of this litigation despite having made a significant time commitment and incurred significant expenses to bring this action to a successful conclusion for the benefit of the Class. Any fee award or expense reimbursement to Settlement Class Counsel has always been contingent on the result achieved and on this Court's exercise of its discretion in making any award. "Settlement Class Counsel undertook a substantial risk of absolute non-payment in prosecuting this action, for which they should be adequately compensated." *In re Dun & Bradstreet Credit Serv. Customer Litig.*, 130 F.R.D. 366, 373 (S.D. Ohio 1990). *See also City of Detroit v. Grinnell Corp.*, 356 F. Supp. 1380 (S.D.N.Y. 1972), *aff'd in relevant part*, 495 F.2d 448 (2d Cir. 1974) ("No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success"). Settlement Class Counsel certainly faced – and accepted – substantial risks when they decided to bring this case. Accordingly, this factor argues strongly in favor of Class Plaintiff's requested attorneys' fee award.

[12] The risk is even higher for California consumers, insofar as Plaintiff cannot rely upon Connecticut's Bulletin S-10, discussed in Part IV.B.2 of Plaintiff's accompanying Memorandum of Law in Support of Plaintiff's Motion for Certification of Settlement Class and Approval of Class Action Settlement, to establish Defendant's liability in another state.

4. The Complexities and Magnitude of the Litigation

This case is a class action lawsuit concerning pricing policies that have affected over 10,000 insureds. The complexities involved in this litigation weigh in favor of awarding fees to counsel for a number of reasons, including the uncertainty of the legal claims, the difficulty of establishing damages and liability and the likelihood of long and difficult litigation. For example, in addition to the complexities and difficulties inherent in any class action, this litigation involves many substantial legal issues relating to consumer protection and contract law. The costs and risks associated with litigating this litigation to a verdict, not to mention through the inevitable appeals, would have been high, and the process would require many hours of the Court's time and resources. Further, even in the event that the Class could recover a larger judgment after a trial – which, as discussed above, is far from certain – the additional delay through trial, post-trial motions, and the appellate process could deny the Class any recovery for years, further reducing its value. *Hicks v. Morgan Stanley & Co.*, No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at *6 (S.D.N.Y. Oct. 24, 2005) ("Further litigation would necessarily involve further costs [and] justice may be best served with a fair settlement today as opposed to an uncertain future settlement or trial of the action."); *Strougo v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003) ("even if a shareholder or class member was willing to assume all the risks of pursuing the actions through further litigation…the passage of time would introduce yet more risks…and would, in light of the time value of money, make future recoveries less valuable than this current recovery")

5. Quality of Class Counsel's Representation

To evaluate the "quality of the representation," courts applying the Second Circuit's *Goldberger* factors have "review[ed] the recovery obtained and the backgrounds of the lawyers

involved in the lawsuit." *See In re Merrill Lynch Tyco Research Sec. Litig*., 246 F.R.D. 156, 174 (S.D.N.Y. 2007) (citation omitted). In light of the risks involved in the litigation, a settlement worth almost $1.3 million in cash is a good result. Moreover, Settlement Class Counsel are experienced class action and consumer litigators. *See* Klein Prelim. App. Aff. at Exs. 5 and 6.

The quality of opposing counsel is also important in evaluating the quality of the services rendered by Settlement Class Counsel. *See In re Merrill Lynch Tyco Research Sec. Litig*., 246 F.R.D. at 174. Defendants were ably represented by Wiggin and Dana, an undeniably prominent firm with an excellent litigation reputation. Accordingly, this factor supports Plaintiff's fee request.

6. Considerations of Public Policy

Public policy considerations support the requested fee. Where individual class members suffer real damages, but the amount at issue is too small in comparison to the costs of litigation to justify filing an individual suit, "the class action mechanism and its associate percentage-of-recovery fee award solve the collective action problem" and allow plaintiffs an opportunity to obtain redress. *Hicks*, 2005 WL 2757792, at * 9. As the *Hicks* court further observed, "[t]o make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding." *Id.; see also Bozak v. FedEx Ground Package Sys., Inc.*, No. 3:11-CV-00738-RNC, 2014 WL 3778211, at *6-7 (D. Conn. July 31, 2014) ("Where relatively small claims can only be prosecuted through aggregate litigation, and the law relies on prosecution by 'private attorneys general,' attorneys who fill that role must be adequately compensated for their efforts"); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 374 (S.D.N.Y. 2002) (finding it is "imperative that the filing of such contingent lawsuits not

be chilled by the imposition of fee awards which fail to adequately compensate counsel for the risks of pursuing such litigation and the benefits which would not otherwise have been achieved but for their persistent and diligent efforts.").

7. Reaction of the Class

Although not a formal *Goldberger* factor, the reaction by members of the Class is entitled to great weight by the Court. *See In re Xcel Energy, Inc., Sec., Deriv. & "ERISA" Litig*., 364 F. Supp. 2d 980, 996 (D. Minn. 2005) (stating that number and quality of objections enables court to gauge reaction of class to request for award of attorneys' fees). "[N]umerous courts have [noted] that the lack of objection from members of the class is one of the most important . . ." factors in determining reasonableness of the requested fee. *In re Prudential Sec. Ltd. P'ships Litig.*, 985 F. Supp. 410, 416 (S.D.N.Y. 1997) (internal quotations omitted); *see also Town of New Hartford*, 291 Conn. 511, 515 (noting with approval that the trial court had found there were no objections to the proposed fee award).

Here, 10,759 individual Notices were sent out to Class Members. Rabe Aff. at ¶ 6. The Notices clearly set forth that Settlement Class Counsel would apply for an award of fees and expenses of $275,000 (including a $7,500 Lead Plaintiff case contribution award). *See* Rabe Aff at Ex A (forms of California and Connecticut Notice). Although objections and requests to opt out are not due until August 9, 2019, as of the date of this filing, ***no*** Class Member has filed an objection to the Settlement or to the provisions for an award to the Plaintiff or to counsel for fees and expenses, and only two have requested exclusion from the Settlement. *See* Court docket (lack of objections); Rabe Aff. at ¶ 16-17.

Likewise, although claims also are not due until August 9, Class Members have filed 1,161 claims (constituting 10.8% of the Class) to date. Rabe Aff. at ¶ 18; Klein Prelim. App.

Aff. at ¶ 7. Plaintiff will update the Court by August 23, 2019 (the date set by the Court for Plaintiff to respond to any objections) as to the number of timely claims, objections and opt-outs received by the Claims Administrator or the Court. However, to date, this factor appears to support the application for fees.

E. The Expenses Settlement Class Counsel Incurred Were Reasonable and Necessary to the Effective Prosecution of this Action

"It is well established that counsel who create a common fund are entitled to the reimbursement of expenses that they advance to a class." *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at *10 (S.D.N.Y. Nov. 7, 2007). Settlement Class Counsel requests reimbursement for $3,127.87 in expenses they incurred while prosecuting this action. *See* Klein Fee & Expense Aff. at ¶ 14-16 (IKR expenses), Biller Aff. at ¶¶ 8-9 (BSZL expenses). Settlement Class Counsel have reviewed these expenses carefully and determined that these modest expenses were reasonably incurred and were necessary to the successful prosecution of this action.

* * *

Plaintiff respectfully suggests that the proposed fee and expense award of $267,500 is supported by all of the *Goldberger* factors, and requests that the Court award that amount to Settlement Class Counsel.

F. Lead Plaintiff Alan Taylor Should Receive a Case Contribution Award

Plaintiff and Settlement Class Counsel respectfully submit that Plaintiff Alan Taylor should receive a case contribution award of $7,500 in recognition of the substantial time and effort he contributed to the prosecution of this litigation. Pursuant to the Settlement Agreement, Hartford has agreed to pay these awards using its own resources, which means, as with Class

Counsel's request for attorneys' fees, these payments will not reduce the benefits provided to Class Members. Moreover, as with the fee request, the service award request was subject to arm's length negotiations between parties and was adequately disclosed in advance to the Class. The Notice provides that Plaintiff will seek this amount (*see* Rabe Aff at Ex A (forms of California and Connecticut Notice)), and no objection has been received to date.

Providing named plaintiff contribution awards to consumers who come forward to represent a class is a necessary and important component of any class action settlement. *See Hall v. ProSource Technologies, LLC*, No. 14 Civ. 2502 (SIL), 2016 WL 1555128, at *9 (E.D.N.Y. Apr. 11, 2016) ("Courts regularly grant requests for service awards in class actions to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiffs.") (internal quotations and citations omitted); *Viafara v. MCIZ Corp.*, No. 12 Civ. 7452 (RLE), 2014 WL 1777438, at *16 (S.D.N.Y. May 1, 2014); *Elliot v. Leatherstocking Corp.*, No. 10 Civ. 0934 (MAD) (DEP), 2012 WL 6024572, at *7 (N.D.N.Y. Dec. 4, 2012). Plaintiff voluntarily submitted himself to public scrutiny by bringing a class action claim. Moreover, Plaintiff has been highly motivated and involved throughout this litigation. *See generally* Taylor Aff. (attached as Exhibit 2 to the Klein Prelim. App. Aff.); Biller Aff. at ¶10. As set forth in his affidavit, Plaintiff extensively investigated Defendants' alleged misconduct on his own initiative; instituted complaints with governmental authorities; retained qualified counsel; and actively participated in the management of this case. *Id.* Awards of equal or greater amounts to compensate for their efforts are routinely awarded by courts. *See, e.g., Annelli v. Ford Motor Co.*, No. 044001345S, 2008 WL 2966981, at *4 (Conn. Super. Ct. July 8, 2008) (awarding plaintiff $7,500); *Gray v. Found. Health Sys., Inc.*, No.

X06CV990158549S, 2004 WL 945137, at *4 (Conn. Super. Ct. Apr. 21, 2004) (approving awards of $23,333 for each plaintiff); *Norflet v. John Hancock Life Ins. Co.,* 658 F. Supp. 2d 350, 354 (D. Conn. 2009) (awarding $20,000 to named plaintiff as "reasonable and equitable" for the time she spent "working with Settlement Class Counsel to prosecute and resolve this case").

Without Plaintiff's willingness to serve in this litigation and perform significant work on behalf of the Class, the favorable settlement for the entire class would not have been possible. Indeed, "public policy favors such an award. As already noted, were it not for this class action, many of the plaintiffs' claims likely would not be heard." *Frank v. Eastman Kodak Co.,* 228 F.R.D. 174, 189 (W.D.N.Y. 2005). Plaintiff's participation was substantial and indispensable. Accordingly, Plaintiff and Settlement Class Counsel respectfully request that this Court award Plaintiff a case contribution award of $7,500.

IV. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Court enter an order approving (1) an award of Attorneys' Fees and Expenses in the amount of $267,500, to be paid in accord with the terms of the Settlement Agreement; and (2) an incentive award of $7,500 to Plaintiff Alan Taylor.

Dated: July 18, 2019

THE PLAINTIFF

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CERTIFICATION

I certify that on this 18th day of July, 2019, a copy of the foregoing was sent by email to all counsel of record as follows:

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