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 CERTIFICATION OF SETTLEMENT CLASS AND APPROVAL OF CLASS ACTION SETTLEMENT

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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 Certification of Settlement Class and Approval of Class Action Settlement.[1]

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 premiums, often without the prior knowledge or consent of the policyholder. Specifically, an individual's contract with Hartford provides automobile insurance at a certain level for a certain price. *See* Amended Complaint at ¶ 3. However, Plaintiff alleges that after the initial deal is reached, Hartford adds additional, optional coverages (the "Optional Coverages" or "Supplemental Coverages"), such as "no fault" coverage or coverage for payment of medical bills, even though the policyholder never requested that additional coverage.[2] *Id.* at ¶¶ 3, 16-21, 26. Plaintiff alleges that Hartford then bills an additional amount to the policyholder for the unrequested Supplemental Coverage, and improperly cancels the policyholder's coverage

[1] In conjunction with the present motion for approval of the Settlement and this memorandum of law in support thereof, Plaintiff is also filing a separate Motion for Award of Attorneys' Fees and Expenses and for Case Contribution Award and a separate memorandum of law in support of that motion. A copy of both Motions and Memoranda are being posted to the Settlement website upon filing.

[2] Plaintiff alleges that Hartford "rolls on" Basic Reparations Benefits ("BRB") or MedPay ("MP") coverage in Connecticut, and MP coverage in California. *See* Amended Complaint at ¶ 14.

altogether if the insured does not pay the additional amount or affirmatively opt-out of coverage that the insured never requested. *Id.* at ¶¶ 16-18, 22-26.

Defendant maintains that it did nothing improper. Defendant has also advanced several factual and legal arguments that Hartford maintains defeat all of Plaintiff's claims. *See, e.g.*, [Dkt. No. 128.00] (Defendant's Answer and Special Defenses).

Given the uncertainties of litigation, the parties agreed to a mediation before the Honorable Antonio C. Robaina (Ret.). With Judge Robaina's assistance, the parties agreed to a cash Settlement that provides policyholders who paid a premium for Supplemental Coverage but did not want such coverage with a substantial cash award. Specifically, Connecticut consumers who submit valid claim forms receive $200 each, while approved California claimants receive $75. In each instance, Class Members are receiving more than the average annual premium for Supplemental Coverage paid in each state ($108 and $68 for Connecticut and California, respectively). Indeed, the award to Connecticut consumers is nearly ***double*** the average Connecticut premium, due to the potential availability of punitive damages under CUTPA (which arguably are not available under the relevant California consumer protection law). In addition, policyholders whose coverage was cancelled altogether will receive $225. As discussed in Part IV below, Plaintiff respectfully submits that this is an excellent result, especially considering the legal hurdles faced by Plaintiff to prevailing at (or even reaching) trial.[3] A copy of the full Settlement Agreement is attached as Exhibit 1 to the previously-filed Affidavit of Seth R. Klein in Support of Preliminary Approval [Dkt. No. 135.00] ("Klein Prelim. App. Aff.").

[3] Injunctive relief is unnecessary here as Hartford has ceased "rolling on" additional coverage in Connecticut and California following Taylor's investigation.

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.

Plaintiff now requests that the Court certify the Settlement Class and grant final approval to the proposed settlement. As explained in detail below, the Settlement is fair, reasonable and adequate. It successfully resolves a challenging case and allows thousands of class members to receive a very substantive recovery. Accordingly, Plaintiff moves the Court for entry of an order:

(1) Certifying the Settlement Class;

(2) Appointing Alan Taylor as Lead Plaintiff;

(3) Appointing Seth Klein and Robert Izard of Izard Kindall & Raabe LLP and Jon Biller of Biller, Sachs, Zito & LeMoult as Settlement Class Counsel; and

(4) Approving the Settlement as set forth in the Settlement Agreement.

II. THE PROPOSED CLASS SHOULD BE CERTIFIED

Plaintiff requests that the Court certify the following Class:

> Hartford policyholders in California between October 6, 2012 and the present, and Hartford policyholders in Connecticut between October 6, 2010 and the present, who had Optional Coverages added to their automobile insurance policies because they did not complete or return a Supplemental Application confirming rejection of such coverage and who did not submit a claim for benefits under such coverage.
>
> Excluded from the Class are the following: (1) any trial judge that may preside over this case; (2) Hartford, as well as any parent, subsidiary, affiliate or control person of Hartford, and the officers, directors, agents, servants or employees of Hartford; and (3) the immediate family of any such person(s).

Certification of a class action is governed by Practice Book §§ 9-7 and 9-8. *See* Practice Book § 9-9 (directing the Court to apply factors in preceding sections when certifying and managing a class action). Section 9-7 sets forth four prerequisites to class certification referred to in the short-hand as: (i) numerosity; (ii) commonality; (iii) typicality; and (iv) adequacy of representation. In addition, the class must meet one of the three requirements of § 9-8. Plaintiff here seeks to certify a class under Section 9-8(3), which authorizes class actions where "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and [] a class action is superior to other available methods for fair and efficient adjudication of the controversy."

Connecticut jurisprudence governing class actions "is relatively undeveloped, because most class actions are brought in federal court. Our class action requirements, however, are similar to those applied in the federal courts." *Collins v. Anthem Health Plans, Inc.,* 266 Conn. 12, 32 (2003) (quotation marks omitted). Accordingly, Connecticut courts "look to federal case law for guidance" in construing Connecticut's class action requirements. *Id.* Practice Book § 9-7 is substantively identical to Fed. R. Civ. P. 23(a), and Practice Book § 9-8 is substantively identical to Fed. R. Civ. P. 23(b). *Collins*, 266 Conn. at 32-33.[4]

A. Numerosity, Commonality and Typicality

The Class meets the numerosity, commonality, and typicality standards of § 9-7(1)-(3). First, the number of putative Class Members is such that it is impractical to join all of the Class Members in one lawsuit. *Standard Petroleum v. Faugno Acquisition, LLC*, 330 Conn. 40, 52-54 (2018); *see Cross v. 21st Century Holding Co.*, No. 00 Civ. 4333 (MBM), 2004 WL 307306, at

[4] The December 2018 amendments to Rule 23 discussed Part IV.A below did not change subsections (a) or (b) of the federal rule.

*1 (S.D.N.Y. Feb. 18, 2004) (certifying where the number of persons in the class logically exceeded 100). Here, 10,759 policy holders are in the Class and were sent Notice by Rust.

Second, there are substantial questions of law and fact common to all Class Members. It is a "settled principle that commonality is easily satisfied because there need only be one question common to the class ... the resolution of which will advance the litigation." *Standard Petroleum,* 330 Conn. at 54 (citations omitted). Plaintiff's causes of action all revolve around a core factual allegation: that Hartford improperly "rolled on" and billed for Supplemental Coverage that policyholders did not request. Accordingly, the fundamental question of whether Hartford's practices regarding the addition of Supplemental Coverage was lawful is common to the entire Class. Also common to Plaintiff's claims – and to the Class as a whole – is the question of whether The Hartford's conduct constituted a breach of contract. Likewise, the question of whether Hartford's alleged misconduct harmed the Class is common to all Class Members.

Finally, Plaintiff's claims are "typical" of other Class Members' claims because they were subjected to a uniform set of policies and practices that Hartford allegedly used when "rolling on" Supplemental Coverage (specifically, that Defendant added the additional coverage unless Class Members affirmatively rejected it in writing). Accordingly, Plaintiff's claims arise from the same course of conduct as the other Class Members' claims. Additionally, Plaintiff's and all other Settlement Class Members' claims are premised on the same legal theories.

Accordingly, the typicality requirement is satisfied. *See Standard Petroleum,* 330 Conn. at 54-56 (finding typicality where "common issues occupy essentially the same degree of centrality to each of the claims made"); *In re Host Am. Corp. Sec. Litig.,* Master File No. 05-CV-

1250 (VLB), 2007 WL 3048865 (D. Conn. Oct. 18, 2007) (finding typicality where plaintiffs alleged defendants committed same acts, in same manner against all class members).

B. Adequacy of Representation

The adequacy requirement of § 9-7(4) "is not stringent. It is twofold: counsel must be competent and the plaintiff must not have a conflict of interest with other members of the proposed class, such that representation of both counsel and the representative will be vigorous." *Gold v. Rowland,* No. CV020813759S, 2011 WL 6976499, at *5 (Conn. Super. Dec. 11, 2011) (citations omitted).

Taylor does not have any claims antagonistic to or in conflict with those of the other Class Members, as he is pursuing the same legal theories as the rest of the Settlement Class relating to the same course of Defendant's conduct. "Only conflicts that are fundamental to the suit and that go to the heart of the litigation prevent a plaintiff from meeting the rule's adequacy requirement." *Standard Petroleum,* 330 Conn. at 57-58. Accordingly, Taylor is a suitable Lead Plaintiff.

Additionally, Class Counsel have an extensive background in litigating complex litigation and consumer class actions, have been appointed class counsel in prior cases, and have the resources necessary to prosecute this action to its conclusion. *See* Klein Prelim. App. Aff. at Exs. 4 (Firm Resume of Izard Kindall & Raabe LLP) and 5 (Resume of Jon Biller at Biller Sachs Zito & LeMoult).

C. Predominance of Common Issues and Superiority

Practice Book § 9-8(3) authorizes class actions to proceed where "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and [] a class action is superior to other available methods for fair and efficient

adjudication of the controversy. The matters pertinent to these findings include: (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." *Id.*[5]

> With regard to predominance, the Connecticut Supreme Court recently explained:
>
> > In order to determine whether common questions predominate, a court must examine the causes of action asserted in the complaint on behalf of the putative class. Whether an issue predominates can only be determined after considering what value the resolution of the class-wide issue will have in each class member's underlying cause of action. Common issues of fact and law predominate if they have a direct impact on every class member's effort to establish liability and on every class member's entitlement to relief.

Standard Petroleum, 330 Conn. at 60 (internal citations, modifications and ellipses omitted). Thus, predominance "does ***not*** require a plaintiff seeking class certification to prove that each element of her claims is susceptible to classwide proof," but merely "that common question ***predominate*** over any questions affecting only individual class members." *Amgen, Inc. v. Connecticut Retirement Plans and Trust Funds*, 568 U.S. 455, 469 (2013) (emphasis in original; citations omitted). Here, as discussed above with regard to commonality, there are several issues of law and fact common to all Settlement Class Members. These common issues of law and fact predominate over any potential individual issues which may arise, as they could be resolved

[5] Where, as here, a court is deciding on the certification question in the context of a proposed settlement class, questions regarding the manageability of the case for trial purposes do not have to be considered. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 619 (1997). The remaining elements of the predominance inquiry, however, continue to apply in settlement-only certification situations. *Id.*

through the presentment of proof common to all Class Members. Thus, the predominance requirement of § 9-8(3) is satisfied.

The superiority requirement of § 9-8(3) is also satisfied. Superiority "is intertwined with the predominance requirement." *Standard Petroleum*, 330 Conn. at 74. In order to establish superiority, "maintaining the present action as a class action must be deemed by the court to be superior to other available methods of adjudication. A case will often meet this standard when 'common questions of law or fact permit the court to consolidate otherwise identical actions into a single efficient unit.'" *Bynum v. Dist. Of Columbia*, 217 F.R.D. 43, 49 (D.D.C. 2003) (citations omitted). *See also Wells v. Allstate Ins. Co.*, 210 F.R.D. 1, 12 (D.D.C. 2002) (class actions favored "where common questions of law or fact permit the court to 'consolidate otherwise identical actions into a single efficient unit.'").

A class action is not only the most desirable, efficient, and convenient mechanism to resolve the claims of the Settlement Class, but it is almost certainly the only fair and efficient means available to adjudicate such claims. *See, e.g., Phillips Co. v. Shutts*, 472 U.S. 797, 809 (1985) ("[c]lass actions . . . permit the plaintiffs to pool claims which would be uneconomical to litigate individually . . . [in such a case,] most of the plaintiffs would have no realistic day in court if a class action were not available"). Individual Class Members likely would be unable or unwilling to shoulder the great expense of litigating the claims at issue against The Hartford given the comparatively small size of each individual claim and the substantial legal hurdles. "The realistic alternative to a class action is not 17 million individual suits, but zero individual suits, as only a lunatic or a fanatic" sues over a relatively nominal sum. *In re American Express Merchants' Litig.,* 634 F. 3d 187, 194 (2d Cir. 2011) (citation omitted). Thus, it is desirable to adjudicate this matter as a class action.

In light of the foregoing, all of the requirements of §§ 9-7 and 9-8 are satisfied, and, thus, the Court should certify this Class for settlement purposes in connection with the present Settlement.

III. APPOINTMENT OF CLASS COUNSEL AND LEAD PLAINTIFF

Practice Book Section 9-9(d) provides that "a court that certifies a class must appoint class counsel." Plaintiff respectfully requests that the Court appoint Seth Klein and Robert Izard of Izard Kindall & Raabe LLP ("IKR") and Jon Biller of Biller, Sachs, Zito & LeMoult ("BSZL") as Settlement Class Counsel. IKR and BSZL and the respective attorneys at each firm clearly satisfy all requirements for appointment, as set out in Practice Book Section 9-9(d)(1). IKR and BSZL identified and investigated the legal claims alleged in the Complaint for weeks prior to filing suit and have demonstrated over the course of the past two-and-a-half years of litigation the willingness to commit all resources necessary to the successful prosecution of the case. IKR has a long and successful record of litigating class action cases both in Connecticut and around the country, and Jon Biller of BSZL is likewise an experienced and recognized consumer attorney, as set forth in their respective resumes. *See* Klein Prelim. App. Aff. at Ex. 4 (IKR Firm Resume) and Ex. 5 (Biller Resume).

The Court should also confirm its preliminary appointment of Alan Taylor as Lead Plaintiff. Mr. Taylor has been exceptionally involved since the inception of the litigation. This case originated when Taylor contacted the AARP with regard to Defendant's alleged misconduct.[6] Affidavit of Alan Taylor ("Taylor Aff."), attached as Exhibit 2 to the Klein Prelim. App. Aff., at ¶ 5. When the AARP was unable to provide a satisfactory response, Taylor contacted the State

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

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 Prelim. App. Aff. at ¶ 3. Even after the litigation was filed, Taylor remained closely involved in monitoring and supervising the conduct of the case. Taylor Aff. at ¶¶ 10-12. Accordingly, Taylor has diligently discharged his responsibilities as a Lead Plaintiff.

IV. THE SETTLEMENT SHOULD BE APPROVED

Settlement Class Counsel respectfully submit that the Settlement is fair and reasonable in light of the risks of continued litigation and should be approved by this Court.

A. The Standard for Approval

Public policy strongly favors the pretrial settlement of class action lawsuits. *See Strougo v. Bassini*, 258 F. Supp. 2d 254, 257 (S.D.N.Y. 2003); *see also In re Warner Chilcott Ltd. Sec. Litig.*, No. 06 Civ. 11515 (WHP), 2008 WL 5110904, at *1 (S.D.N.Y. Nov. 20, 2008) ("The settlement of complex class action litigation is favored by the Courts.") (citations omitted). Connecticut Practice Book § 9-9(c) requires judicial approval for any compromise of claims brought on a class basis, and approval of a proposed settlement is a matter within the discretion of the court. *See, e.g., Rabinowitz v. City of Hartford,* No. HHD-CV-075008403S, 2014 WL 3397831 (Conn. Super. Ct. June 3, 2014). As discussed above, because Connecticut jurisprudence governing class actions "is relatively undeveloped" (*Collins,* 266 Conn. at 32), Connecticut courts have historically looked to federal case law for guidance in construing Connecticut's class action requirements. *Id.*

Courts traditionally consider nine factors in deciding whether to grant final approval of a class action settlement:

> (1) the complexity, expense and likely duration of the litigation, (2) the reaction of the class to the settlement, (3) the stage of the proceedings and the amount of discovery completed, (4) the risks of establishing liability, (5) the risks of establishing damages, (6) the risks of maintaining the class action through the trial, (7) the ability of the defendants to withstand a greater judgment, (8) the range of reasonableness of the settlement fund in light of the best possible recovery, [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974) (internal citations omitted).

In addition, on December 1, 2018, amendments to Fed. R. Civ. P. 23 took effect. The new Rule directs courts to consider the following factors in determining whether a proposed settlement is "fair, reasonable and adequate:"

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3); and
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). Although it is not yet clear whether Connecticut courts will use the standards in the amended Rule 23(e), the amendment effectively codifies factors that courts around the country, including Connecticut, were already evaluating. Accordingly, it provides a useful framework for analyzing the fairness of a proposed settlement. A review of all of the above factors supports approval of the Settlement.

B. The Settlement Merits Approval

1. The Proposed Settlement Was the Product of Serious, Informed Non-Collusive Negotiations Including Substantial Discovery

Where a settlement is reached only after extensive arm's-length negotiations by competent counsel who had more than adequate information regarding the circumstances of the action and the strengths and weaknesses of their respective positions, it is entitled to a "strong initial presumption of fairness." *In re PaineWebber Ltd., P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997), *aff'd*, 117 F.3d 721 (2d Cir. 1997). The opinion of experienced counsel supporting the settlement is entitled to considerable weight in a court's evaluation of a proposed settlement. *In re Michael Milken & Assoc. Sec. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993); *see also Reed v. General Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983) ("[T]he value of the assessment of able counsel negotiating at arm's length cannot be gainsaid. Lawyers know their strengths and they know where the bones are buried."). Courts generally presume that settlement negotiations were conducted in good faith and that the resulting agreement was reached without collusion, absent evidence to the contrary. Alba Conte & Herbert Newberg, Newberg on Class Actions § 11.28, at 11-59 (3d ed. 1992) (counsel are "not expected to prove the negative proposition of a noncollusive agreement").

Here, Plaintiff has engaged in extensive arms'-length litigation, discovery and negotiation with Defendant to arrive at the Settlement, and all parties firmly understand the strengths and weaknesses of the claims and defenses at issue. Taylor's pre-filing investigation is detailed in his affidavit (at ¶¶ 5-9), as discussed above. 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. 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 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).

Moreover, Plaintiff and his counsel 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; *see also* Part IV.B.7 below. These negotiations occurred only ***after*** the substantive amounts to be paid to Class Members had been finalized. Klein Prelim. App. Aff. at ¶ 10. Nor is the Settlement contingent upon approval of attorneys' fees or any incentive award. Settlement Agreement (Klein Prelim. App. Aff. at Ex. 1) at Article VI.2. Rather, the Court will separately and independently determine 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.

Given the foregoing litigation and settlement history, Class Counsel believe that the Settlement is in the best interests of the Class. The Settlement constitutes a significant ($75, $200 or $225) monetary recovery for the class, constituting the refund of over a year of improperly-charged premiums to each Class Member. The litigation was hard-fought, with extensive discovery as to the damages caused by the alleged misconduct, and settlement was reached only after arms'-length negotiations with the assistance of a Judge Robaina, who was directly involved in the discussions and oversaw the drafting of the Memorandum of Understanding setting forth the essential terms of the Settlement.

2. The Proposed Settlement Treats All Class Members Equitably Relative to Each Other

Reviewing courts consider whether the terms of a settlement "improperly grant preferential treatment" to "segments of the class." *Kemp-Delisser v. Saint Francis Hosp. and*

Medical Center, No. 15-cv-1113 (VAB), 2016 WL 10033380, at *4 (D. Conn. July 12, 2016). Here, Connecticut Class Members who paid for Supplemental Coverage after being improperly billed are receiving $200, while California Class Members are receiving $75. That difference is warranted because:

- The average Supplemental Coverage annual premium paid by Class Members was significantly higher in Connecticut ($108) than California ($68);
- Connecticut's Department of Insurance had issued an Insurance Bulletin ("Bulletin S-10") in 1983 that, Plaintiff believes, expressly prohibited "roll-on" coverage. *See* Amended Complaint at ¶¶ 20, 31. By contrast, although Plaintiff believes that adding "roll on" coverage is equally violative of California consumer protection law, there is no comparable express prohibition from the California Department of Insurance.
- Connecticut's relevant consumer protection statute (CUTPA), unlike California's (UCL), provides for punitive damage multipliers. *See* Part IV.B.4 below.

Finally, Class Members in either state whose insurance was ***cancelled*** by Defendant for non-payment of Supplemental Coverage premiums are receiving $225. This heightened award is justified by the added stress and inconvenience these Class Members faced by having their automobile insurance wrongly terminated ***altogether***. Thus, the three tiers of Class Member awards are justified by Class Members' different situations. *See Collins v. Olin Corp.*, 248 F.R.D. 95, 105 (D. Conn. 2008) ("It is very common" for class actions "to involve differing damage awards for different class members") (quotation marks and citation omitted).

Accordingly, the Proposed Settlement treats all members of the Settlement Class equally and fairly.

3. Plaintiff Faced Substantial Risks With Regard to Establishing Liability and Damages

In assessing a proposed settlement, the Court should balance the benefits afforded the Class, including the *immediacy* and *certainty* of a recovery, against the continuing risks of litigation. *See Grinnell*, 495 F.2d at 463. 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.[7]

[7] 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 above, to establish Defendant's liability in another state.

4. The Settlement is Reasonable in Light of the Best Possible Recovery and in Light of All the Attendant Risks of Litigation

Determining whether a settlement is reasonable "is not susceptible of a mathematical equation yielding a particularized sum." *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 178 (S.D.N.Y. 2000) *aff'd sub nom. D'Amato v. Deutsche Bank*, 236 F.3d 78 (2d Cir. 2001) (internal citations omitted). The adequacy of the amount offered in settlement must be judged "not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff'd*, 818 F.2d 145 (2d Cir. Apr. 1987). Moreover, the Court need only determine whether the Settlement falls within a "'range of reasonableness.'" *PaineWebber*, 171 F.R.D. at 130 (citation omitted). Indeed, "even a recovery of only a fraction of one percent of the overall damages could be a reasonable and fair settlement." *Fleisher v. Phoenix Life Ins. Co.*, No. 11-cv-8405 (CM) , 2015 WL 10847814, at *11 (S.D.N.Y. Sept. 9, 2015).

Here, the Settlement constitutes an outstanding result, especially given the substantial risk that the Class would get ***no*** recovery if the case proceeded through litigation. Connecticut consumers are eligible to receive an award of $200, almost double the average premium charged in Connecticut for one year of Supplemental Coverage. This constitutes a substantial amount of money that fairly compensates Connecticut Class Members for the harm they suffered, especially in light of the risks of litigation, and takes into account the punitive damages multiplier available under CUTPA. California consumers likewise are eligible to receive reimbursement of $75, which again is more than the average premium charged for one year of Supplemental Coverage, and constitutes fair and reasonable compensation for their injury, particularly given that punitive

damages multipliers are not available in California.[8] Although Plaintiff believes that the Class has arguments to extend liability and damages to additional renewal coverage periods, Defendant has argued that consumers who maintained Supplemental Coverage after the initial policy term received a renewal notice by mail, and so had the opportunity to discontinue Supplemental Coverage at that time if they so desired. Given the significant risk that the Court or ultimate factfinder could agree with Defendant, Plaintiff believes that limiting each Class Member to a single award is reasonable.

Finally, the $225 received by consumers whose insurance was cancelled is also a significant sum that fairly compensates affected Class Members for the inconvenience they suffered for having to secure replacement insurance.[9] Insofar as The Hartford ceased rolling-on coverage in Connecticut and California following Taylor's complaints to the Connecticut Department of Insurance, injunctive relief is unnecessary in this case.

5. The Complexity, Expense and Likely Duration of the Litigation

"The expense and possible duration of the litigation are major factors to be considered in evaluating the reasonableness of [a] settlement." *Milstein v. Huck*, 600 F. Supp. 254, 267 (E.D.N.Y. 1984). 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

[8] Plaintiff initially pled his California claim under California's Consumer Legal Remedies Act. *See* original Complaint at ¶ 69. However, further research has indicated that the CLRA likely does not cover claims of misconduct relating to insurance policies. Accordingly, Plaintiff has repled his California consumer protection claim under California's Unfair Competition Law. However, Defendant has a strong argument that the UCL does not provide for non-restitutionary punitive damages. *See Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1148 (Cal. 2003).

[9] To the extent that any Class Member was more severely harmed by the lack of coverage, such an individualized damages claim is not well-suited for class action treatment. Any such Class Members may opt-out of the Class and pursue individual actions if they so choose.

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*, 258 F. Supp. 2d at 261 ("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").

6. The Reaction of the Settlement Class Supports the Settlement

"It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy." *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002) (citation omitted)). There is a "strong indication of fairness" where the "vast majority of class members neither objected nor opted out." *Silverstein v. AllianceBernstein, L.P.*, No. 09 Civ. 05904 (LGS), 2013 WL 7122612, at *5 (S.D.N.Y. Dec. 20, 2013) (citation omitted).

Pursuant to the Notice Plan approved by the Court, Rust sent direct mail Notice to the 10,759 Class Members after running the addresses provided by Hartford through the U.S. Post Office's national change of address database. Affidavit of Jason Rabe (a Program Manager at Rust) ("Rust Aff.") at ¶ 5. When 1,425 of those mailed Notices were returned to Rust as

undeliverable, Rust traced the relevant individuals through an additional private database search and has completed remailing of 832 Notices to those Class members for whom Rust was able to identify a new address. *Id.* at ¶ 8.

Here, although objections and requests to opt out are not due until August 9, 2019, to date ***no*** Class Members have objected, and only two have opted-out.[10] *See* Court docket (lack of objections); Rabe Aff. at ¶¶ 16-17. This lack of objection strongly supports the Settlement. *See, e.g., D'Amato,* 236 F.3d at 86-87 (holding that the district court properly concluded that 18 objections from a class of 27,883 weighed in favor of settlement).

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. *See* Rabe Aff. at ¶ 7; 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 ¶ 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 filed with the Court.

7. The Negotiated Fees and Incentive Awards are Reasonable

As set forth in greater detail in Plaintiff's accompanying Motion for Award of Attorneys' Fees and Expenses and Case Contribution Award, the negotiated fees an incentive awards are reasonable. Specifically, Hartford has agreed not to oppose any request by Plaintiff for an award of up to $275,000.00 that includes all attorneys' fees and expenses and a Lead Plaintiff service award. *See* Settlement Agreement at Article VI.1. Plaintiff and his counsel negotiated this

[10] Plaintiff and Hartford have agreed that Hartford has the right to unilaterally terminate the Settlement if opt-outs cross a negotiated threshold by the deadline date. Although this agreement has not been filed, it is available to the Court upon request.

amount under the oversight and with the assistance of Judge Robaina, and these negotiations occurred only ***after*** the substantive amounts to be paid to Class Members had been finalized. Klein Prelim. App. Aff. at ¶ 10. The $275,000 cap is already below the $472,748.75 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***. *See* Klein Fee & Expense Aff. at ¶ 13.[11] Moreover, Class Counsel anticipate needing to spend additional time on this litigation responding to Class Member inquiries and "wrapping up" the Settlement, beyond the time already incorporated into the preset lodestar figure. *Id.*

Nor are Class Members adversely affected by the fees that Class Counsel intend to 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 lead plaintiff awards using its own resources, which means that these payments will ***not*** reduce the benefits provided to Class Members. 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).

[11] Class Counsel's current aggregate expenses are $3,127.86. *See* Klein Fee & Expense Aff. at ¶ 16. As with Class Counsel's fees, these expenses will only increase as the Settlement moves through to completion. 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. *See generally* Taylor Aff. (Klein Prelim. App. Aff. at Ex. 2). Both expenses and the lead plaintiff award will be covered by the $275,000 cap and so reduce the amount actually available for Class Counsel fees. Settlement Agreement (Klein Prelim. App. Aff. at Ex. 1) at Article VI.1.

Accordingly, Plaintiff respectfully submits that the $275,000 amount that Hartford has agreed to pay for fees, expenses, and a lead plaintiff service award, is fair and reasonable.

V. CONCLUSION

WHEREFORE, based on foregoing, Plaintiff respectfully requests that the Court enter an Order:

(1) Certifying the Settlement Class;

(2) Appointing Alan Taylor as Lead Plaintiff;

(3) Appointing Seth Klein and Robert Izard of Izard Kindall & Raabe LLP and Jon Biller of Biller, Sachs, Zito & LeMoult as Settlement Class Counsel; and

(4) Approving the Settlement as set forth in the Settlement Agreement.

Dated: July 18, 2019

THE PLAINTIFF

BY /s/ Seth R. Klein

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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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