DOCKET NO.: X07-HHD-CV-18-6090558-S	:	SUPERIOR COURT
	:	
WILLIAM & LAURIE PAETZOLD	:	COMPLEX LITIGATION
	:	
v.	:	JUDICIAL DISTRICT
	:	HARTFORD
METROPOLITAN DISTRICT	:	
COMMISSION	:	AT HARTFORD
	:	
	:	July 29, 2020

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS AND EXPENSES AND FOR SETTLEMENT CLASS REPRESENTATIVE AWARDS

TABLE OF CONTENTS

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 2

III. THE COURT SHOULD APPROVE THE REQUESTED AWARD OF ATTORNEYS' FEES AND EXPENSES 6

- A. Class Counsel Is Entitled to a Reasonable Fee 6
- B. This Court Should Use the Percentage Method to Evaluate the Reasonableness of Plaintiff's Attorneys' Fees Request 7
- C. The Requested Fees Are Fair and Reasonable 9
  - 1. Quality of Class Counsel's Representation and Results Achieved 9
  - 2. The Risks of Litigation 10
  - 3. The Relationship of the Requested Fee to the Settlement 12
  - 4. The Complexities and Magnitude of the Litigation 12
  - 5. Considerations of Public Policy 13
  - 6. Reaction of the Class 14
  - 7. Class Counsel's Time and Lodestar 15
- D. The Expenses Settlement Class Counsel Incurred Were Reasonable and Necessary to the Effective Prosecution of this Action 15

IV. LEAD PLAINTIFFS WILLIAM AND LAURIE PAETZOLD SHOULD RECEIVE SETTLEMENT CLASS REPRESENTATIVE AWARDS 16

V. CONCLUSION 18

TABLE OF AUTHORITIES

Cases

Annelli v. Ford Motor Co.,
No. 044001345S, 2008 WL 2966981 (Conn. Super. Ct. July 8, 2008) 17

Boeing Co. v. Van Gemert,
444 U.S. 472 (1980).. 6, 7

Bozak v. FedEx Ground Package Sys., Inc.,
No. 3:11-CV-00738-RNC, 2014 WL 3778211 (D. Conn. July 31, 2014)........................... 12, 13

Capsolas v. Pasta Resources Inc.,
No. 10 Civ. 5595, 2012 WL 4760910 (S.D.N.Y. Oct. 5, 2012) 12

Central States Southeast & Southwest Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C., 504 F.3d 229 (2d Cir. 2007) 6

City of Detroit v. Grinnell Corp., 356 F.Supp. 1380 (S.D.N.Y.1972),
aff'd in part and rev'd in part on other grounds, 495 F.2d 448 (2d Cir.1974) 11

Elliot v. Leatherstocking Corp.,
No. 10 Civ. 0934 (MAD) (DEP), 2012 WL 6024572 (N.D.N.Y. Dec. 4, 2012)................ 16, 17

Frank v. Eastman Kodak Co.,
228 F.R.D. 174 (W.D.N.Y. 2005)... 17

Goldberger v. Integrated Resources, Inc.,
209 F.3d 43 (2d Cir. 2000).. 8, 9, 14, 16

Gray v. Found. Health Sys., Inc.,
No. X06CV990158549S, 2004 WL 945137 (Conn. Super. Ct. Apr. 21, 2004) 17

Gruber v. Starion Energy Inc.,
No. X03HHDCV176075408S, 2017 WL 6262409 (Conn. Super. Nov. 13, 2017).................. 12

Hall v. ProSource Technologies, LLC,
No. 14 Civ. 2502 (SIL), 2016 WL 1555128 (E.D.N.Y. Apr. 11, 2016) 16

Hicks v. Morgan Stanley & Co.,
No. 01 Civ. 10071 (RJH), 2005 WL 2757792 (S.D.N.Y. Oct. 24, 2005)............................ 7, 13

In re Agent Orange Product Liab. Litig.,
818 F.2d 226 (2d Cir. 1987).. 7

In re Dun & Bradstreet Credit Serv. Customer Litig.,
130 F.R.D. 366 (S.D.Ohio 1990) 11

In re EVCI Career Colleges Holding Corp. Sec. Litig.,
No. 05 CIV 10240 CM, 2007 WL 2230177 (S.D.N.Y. July 27, 2007) 15

In re Merrill Lynch Tyco Research Sec. Litig.,
249 F.R.D. 124 (S.D.N.Y. 2007) 9

In re Prudential Sec. Ltd. P'ships Litig.,
985 F. Supp. 410 (S.D.N.Y. 1997) 14

In re Veeco Instruments Inc. Sec. Litig.,
No. 05-MDL-01695(CM), 2007 WL 4115808 (S.D.N.Y. Nov. 7, 2007)................................ 15

In re Xcel Energy, Inc., Sec., Deriv. & "ERISA" Litig.,
364 F. Supp. 2d 980 (D. Minn. 2005).. 14

Jurich v. Verde Energy USA, Inc.,
No. X07-HHD-CV15-6060160-S (Conn. Super.) 17

Maley v. Del Glob. Techs. Corp.,
186 F. Supp. 2d 358 (S.D.N.Y. 2002).. 13

Norflet v. John Hancock Life Ins. Co.,
658 F.Supp.2d 350 (D. Conn. 2009)... 17

Pineman v. Oechslin,
195 Conn. 405 (1985) 10

Savoie v. Merchants Bank,
166 F.3d 456 (2d Cir. 1999)... 7

Strougo v. Bassini,
258 F. Supp. 2d 254 (S.D.N.Y. 2003).. 13

Taylor v. Hartford Casualty Ins. Co.,
No. HHD-CV16-6072110-S (Conn. Super.)... 17

Town of Glastonbury v. Metropolitan District Commission,
328 Conn. 326 (2018) 10

Town of New Hartford v. Connecticut Res. Recovery Auth.,
291 Conn. 511, 970 A.2d 583 (2009) 7, 8, 14, 15

Towns of New Hartford & Barkhamsted v. Connecticut Res. Recovery Auth.,
No. CV040185580S(X02), 2007 WL 4634074 (Conn. Super. Ct. Dec. 7, 2007) 7, 8, 15

Viafara v. MCIZ Corp.,
No. 12 Civ. 7452 (RLE), 2014 WL 1777438 (S.D.N.Y. May 1, 2014).................................... 16

Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.,
396 F.3d 96 (2d Cir. 2005).. 15

Willix v. Healthfirst Inc.,
No. 07 Civ. 1143, 2011 WL 754862 (E.D.N.Y. Feb. 18, 2011)... 12

Statutes

Conn. Gen. Stat. § 52-192a.. 4

Rules

Connecticut Practice Book § 17-14 4

Plaintiffs William and Laurie Paetzold ("Plaintiffs" or "Settlement Class Representatives"), individually and on behalf of the proposed Settlement Class (as defined in the Settlement Agreement),[1] respectfully submit this memorandum of law in support of their Motion for an award of attorneys' fees, costs and expenses in the amount of $1,920,000 ($1,913,240.77 for fees and $6,759.23 for expenses), constituting 25% of the Settlement value, and for Settlement Class Representative Awards in the amount of $5,000 to each of William and Laurie Paetzold.

I. INTRODUCTION

Plaintiffs' Amended Complaint [Dkt. No. 116.00] brings claims on behalf of the Plaintiffs' themselves and other similarly-situated consumers against the defendant Metropolitan District Commission (the "MDC") alleging that the MDC wrongfully included unlawful Surcharges on bills for properties in East Granby, Farmington, Glastonbury and South Windsor from March 6, 2012 through October 1, 2014. *See* Amended Complaint at ¶¶ 1-15; Order Granting Plaintiffs' Motion for Class Certification ("Class Cert. Order") [Dkt. No. 154.00] at 1-2. After discovery, mediations and motion practice (including motions to strike, for class certification, and to take a public interest appeal), the Parties agreed to a settlement that will provide Class Members with compensation of up to 100% to 103% of their losses (subject to pro rata reduction for attorneys' fees, costs, and named plaintiff awards). Current MDC customers will each receive an automatic credit on their MDC bills reflecting the amount of the overcharges they paid, less their pro rata share of fees, costs and awards, while former MDC customers each

[1] Unless otherwise stated, all capitalized terms used herein are as defined in the Settlement Agreement, signed by all parties as of February 12, 2020 (the "Settlement" or "Settlement Agreement").

will receive a check . These benefits will be provided to all Class Members who do not opt-out, without the need for filing a claim form.[2] *See* Settlement Agreement at ¶¶ 37, 38.[3] The total value of the credit and check awards is $7,680,000. *Id.* at ¶ 39.

This Court preliminarily approved the Settlement on April 21, 2020, and authorized Plaintiffs to give notice to the Settlement Class. *See* [Dkt. No. 177.86.] If the Court grants final approval to the proposed settlement,[4] Plaintiffs respectfully ask the Court also to approve an award of attorneys' fees, costs and expenses in the amount of $1,920,000, or 25% of the value of the Settlement. Plaintiffs respectfully submit that this amount is fair and reasonable given the outstanding result obtained by Class Counsel and the substantial hurdles that Class Counsel overcame from the skilled defense team in reaching that result. Plaintiffs further respectfully requests a $5,000 for each Settlement Class Representative given their significant efforts throughout this litigation, including responding to the MDC's discovery requests, sitting for deposition, and ongoing consultations with Counsel.

II. FACTUAL BACKGROUND

Over the course of this litigation, the parties have engaged in hard-fought adversarial litigation, including both motion practice and discovery, followed by an arms'-length mediation before Judge Antonio C. Robaina (Ret.) before arriving at the Settlement.

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[2] Checks will not be mailed to former MDC customers if the third-party settlement administrator cannot successfully locate them.

[3] A copy of the Settlement Agreement was previously filed as Exhibit 1 to [Dkt. No. 179.00].

[4] Plaintiffs have separately filed a Motion for Final Approval of the Settlement and a Memorandum of Law in support thereof ("Pl. Sett. App. Mem.").

Specifically, Plaintiffs analyzed a substantial volume of documents from the prior litigation between the MDC and the Town of Glastonbury as well as additional records concerning the MDC's Surcharges and associated communications with consumers, the MDC's communications with member and non-member towns about rates and Surcharge issues, and detailed and voluminous financial spreadsheets concerning, *inter alia,* the Surcharges and potential Class Member damages. Affidavit of Seth R. Klein in Support of Motion for Preliminary Approval dated March 26, 2020 [Dkt. No. 179.00] ("Klein Prelim. App. Aff.") at ¶ 3.[5] Likewise, Defendant deposed and obtained interrogatory responses and document discovery from Plaintiffs. *Id.* at ¶ 4.

Moreover, the MDC vigorously defended this case through substantial motion practice, which allowed the parties to fully understand the legal and factual issues at play and to obtain guidance as to the Court's views of the strengths and weaknesses of the claims and defenses. For example, Defendant filed a Motion to Strike [Dkt. No. 109.00], which Plaintiffs opposed [Dkt. No. 111.00]. The Court granted the motion in part and narrowed the claims. [Dkt. No. 115.00], For the claim on which the Court allowed Plaintiffs to proceed, Defendant filed a motion to reargue [Dkt No. 117.00], which the Court denied [Dkt. No. 117.86]. The issues addressed in Defendant's first motion to strike included novel issues that likely would be the subject of an appeal that could be decided in favor of either side if this case were to proceed to final judgment.

After Plaintiffs filed a revised complaint and added a breach of good faith and fair dealing count, the MDC again moved to strike. [Dkt. No. 118.00]. The court granted the

[5] Plaintiffs have also filed a second Affidavit of Seth R. Klein in conjunction with the present motions (the "Klein Aff."), which expressly reaffirms the accuracy of, and adopts the entirety of, Mr. Klein's earlier affidavit. Klein Aff at ¶ 3.

MDC's motion to strike the good faith and fair dealing claim and the case proceeded on a breach of implied contract theory. [Dkt. No. 125.00].

Plaintiffs then moved for class certification [Dkt. No. 127.00]. Defendant opposed Plaintiffs' motion [Dkt. No. 147.00], and Plaintiffs filed a reply in further support of class certification [Dkt. No. 148.00]. This Court thereafter certified the Class sought by Plaintiffs. [Dkt. No. 154.00]. Defendant sought leave from the Chief Justice of the Connecticut Supreme Court to file an immediate "public interest" appeal [Dkt. No. 156.00]. Plaintiffs opposed the petition [Dkt. No. 157.00], and the Chief Justice denied Defendant's request [Dkt. No. 158.00].

During the pendency of the class certification briefing, the parties also filed memoranda of law at the Court's request regarding Defendant's request to depose or solicit affidavits from absent putative Class Members. *See* [Dkt. Nos. 138, 139]. The Court denied Defendant's request to depose absent members of the Class but permitted Defendant to obtain affidavits from willing absent members of the Class. [Dkt. No. 141.00].

On September 5, 2019, Plaintiffs filed an "offer of compromise" pursuant to Conn. Gen. Stat. § 52-192a and Practice Book § 17-14 *et seq.* [Dkt. No. 155.00]. On an issue that appears to one of first impression in Connecticut, Defendant moved to strike the offer of compromise [Dkt. 162.00], Plaintiffs filed a memorandum in opposition [Dkt. No. 164.00], and the Court ultimately denied Defendant's motion [Dkt. No. 168.00].

The foregoing procedural history shows that, up until the time that the Settlement was negotiated and agreed to, the MDC vigorously defended the action at every juncture. The ultimate outcome of various issues at the appellate level, if this case were to proceed further, would be uncertain. The MDC also expressed an intent to argue that the claims of all Class Members were barred by a voluntary payment doctrine that has been adopted in some other

jurisdictions and would largely be an issue of first impression in Connecticut. Although Plaintiffs believe that Defendants would not have prevailed with respect to this defense, either at summary judgment or trial, the novel issue further rendered the ultimate outcome of this litigation uncertain.

The parties participated in a full-day mediation session before Judge Robaina on January 2, 2020. Klein Prelim. App. Aff. at ¶ 5. At the session and with the assistance of Judge Robaina, the parties reached an agreement in principle and prepared a written Memorandum of Understanding, subject to the satisfaction of certain conditions, including approval by the MDC's Board of Commissioners. *Id.* The parties thereafter engaged in detailed negotiations of the Settlement Agreement, which was approved by the MDC Board of Commissioners on February 10, 2020 and signed by the parties on February 12, 2020. *See id.* at ¶ 6; *see generally* Settlement Agreement ([Dkt. No. 179.00] at Ex. 1).

Given the foregoing litigation and settlement history, there is no question that the Settlement is the result of serious, non-collusive negotiations. The litigation was hard-fought, and settlement was reached only after substantial discovery and motion practice that fully developed the legal claims and defenses at issue, and, even then, only after arms'-length negotiations with the assistance of Judge Robaina, who was directly involved in the discussions concerning the essential terms of the Settlement.

This Court granted preliminary approval to the Settlement on April 21, 2020 [Dkt. No. 177.86] and, *inter alia,* appointed JND Legal Administration ("JND") as Claims Administrator. Pursuant to the preliminary approval Order, on June 19, 2020 JND sent notice to each of the 8,884 Class Members, as well as establishing a Settlement Website and a toll-free phone line and email help address. Declaration of Jennifer M. Keough (JND's Chief Executive Officer),

submitted herewith ("Keough Decl."), at ¶¶ 10-15. Although objections and requests to opt out need not be submitted until August 19, 2020, to date ***no*** Class Members have objected, and only three have opted out. *See* Court docket (lack of objections); Keough Decl. at ¶¶ 17-20.[6]

III. THE COURT SHOULD APPROVE THE REQUESTED AWARD OF ATTORNEYS' FEES AND EXPENSES

Plaintiffs respectfully request that this Court award attorneys' fees, costs and expenses in the aggregate amount of $1,920,000 (constituting 25% of the total $7,680,000 value of the Settlement), comprised of $1,913,240.77 in payment of fees and $6,759.23 in reimbursement of out-of-pocket costs and expenses. Plaintiffs respectfully submit the total requested amount is fair and reasonable in light of the outstanding result (100% recovery) that Class Counsel achieved and the substantial risk Class Counsel bore in overcoming vigorous opposition by the MDC and its skilled counsel.

A. 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

[6] Pursuant to this Court's preliminary approval order, Plaintiffs will file a final update by August 27, 2020 (a week prior to the September 3, 2020 final approval hearing) as to the number of timely objections and opt-outs received by the Claims Administrator or filed with the Court, and also will respond to any objections at that time.

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, 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).

B. 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).

Class Counsel understand from prior fee petitions that this Court views the results achieved and the risk borne by counsel to be the principal determinants of a fee award, and that the "the time and labor expended by counsel" (*i.e.,* lodestar) are of substantially less importance.

C. The Requested Fees Are Fair and Reasonable

Class Counsel respectfully submit that the requested fee award of $1,913,240.77 is fair and reasonable and should be approved given the outstanding results achieved by counsel and the substantial risk they bore in prosecuting this matter.

1. Quality of Class Counsel's Representation and Results Achieved

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). Plaintiffs respectfully submit that the results achieved here are outstanding. The value of the Settlement to Class Members who are still customers of the MDC is ***103%*** of the Surcharges they paid, while the value of the Settlement to Class Members who have left the MDC service area is ***100%*** of the Surcharges they paid.[7] Settlement Agreement ([Dkt. No. 179.00] at Ex. 1) at ¶ 38.[8] Even if the Court awards the requested fees and expenses out of that full recovery, a 75% net compensation award to Class members is outstanding. Moreover, Class Members need ***not*** file claims forms to receive these benefits; rather, they will ***automatically*** be provided to any Class Member who does not opt-out (and, with respect to former MDC customers, can be successfully located by the Settlement

[7] Plaintiffs respectfully submit that this *de minimis* difference between current- and former-customer recoveries is warranted to account for the (small) difference in value between a credit that is applied immediately but can be used only over one or more billing cycles (because the amount of the credit is larger than residential customers typically pay for their water in multiple billing cycles), and an immediate payment by check. The 3% difference is approximately equal to one year of interest at current low interest rates.

[8] The credits will be applied dollar for dollar against charges for current customers, thereby directly reducing those customers' bills. Former customers will receive a check for their Surcharges. Settlement Agreement ([Dkt. No. 179.00] at Ex. 1) at ¶ 39.

Administrator using industry-standard methods). *Id.* at ¶ 37(f). Thus, the Settlement provides complete and automatic recovery to Class Members. Indeed, even if Plaintiffs prevailed at trial, the Class would be unlikely to recover more, as attorney's fees and most litigation costs would not be recoverable separately from any judgment for breach of contract. Accordingly, Plaintiffs respectfully submit that they obtained an exceptional result, especially considering the risks and uncertainties of this litigation.

2. The Risks of Litigation

The MDC was represented by aggressive and experienced counsel at Robinson & Cole, and, as discussed in Part II above, this case was very hard-fought. Plaintiffs' counsel believe that they would have prevailed had this case reached trial, but that result is far from guaranteed absent the Settlement, especially given the near-certain appeals. Although the Supreme Court ruled that Surcharges were illegal in *Town of Glastonbury v. Metropolitan District Commission*, 328 Conn. 326 (2018), the MDC vigorously contested Plaintiffs' and the Class' legal basis for recovery from the outset based on defenses unique to this case. In particular, the MDC challenged Plaintiffs' entire legal theory under a claim of municipal immunity and the *Fennell* doctrine, as well as by arguing that there is a presumption in Connecticut law against holding statutory rights (such as those provided in the MDC Charter) to be privately enforceable in contract, under *Pineman v. Oechslin*, 195 Conn. 405, 410-11 (1985). Undoubtedly, the MDC would press these potentially dispositive issues in any appeal, along with the voluntary payment doctrine (likely to be raised on summary judgment) and other defenses.

In addition, the MDC would undoubtedly challenge class certification on appeal. Although Plaintiffs believe there is no basis for overturning this Court's ruling, there is always a risk that an appellate court would agree with at least one of the arguments against certification

raised by the MDC. For example, the MDC has maintained that under Connecticut law, any implied contract between the MDC and its customers would require an individualized "meeting of the minds," thereby giving rise to issues regarding commonality, typicality and the calculation of damages. *See generally* [Dkt. No. 147.00].

Further, as discussed above, Plaintiffs' counsel had to expend significant time and resources litigating Defendants' various motions and defenses in this hotly-contested litigation. Indeed, this Court whittled the litigation down to a ***single*** breach of contract count based on Defendant's motion practice. Even if Plaintiffs won at trial on that single remaining count, they risked reversal on appeal, as Plaintiffs' case hinged entirely on that one remaining claim. If the MDC prevailed on ***any*** of the above appellate points, then Class Counsel, like the Class, would receive nothing.

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 Plaintiff's requested attorneys' fee award.

3. The Relationship of the Requested Fee to the Settlement

The requested attorneys' fee constituting 25% of the Settlement value 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. 13, 2017). Indeed, a request of one-third 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.

4. The Complexities and Magnitude of the Litigation

This case is a class action lawsuit affecting illegal surcharges imposed on nearly 9,000 Class Members. *See* Keough Decl. at ¶ 10. 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, as discussed above. The costs and risks associated with litigating this case 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 somehow recover a larger judgment after a trial – which, as discussed above, is far from certain, both because of the inherent litigation risks ***and*** because the Settlement ***already*** provides

Class Members with essentially complete relief – 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. 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,* 2014 WL 3778211, at *6-7 ("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.”).

6. 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, individual Notices were sent out to 8,884 Class Members. Keough Decl. at ¶ 10. Both the long and short Notices as well as the Settlement Website clearly set forth that Settlement Class Counsel would apply for an award of fees and expenses of “up to $1,920,000 (25% of the total Settlement value) in Attorneys’ Fees and Expenses.” *See id.* at and Exs. A and B. Although objections and requests to opt out are not due until August 19, 2020, 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 Plaintiffs or to counsel for fees and expenses, and only three have opted out. *See* Court docket (lack of objections); Keough Decl. at ¶¶ 17-20.

7. Class Counsel's Time and Lodestar

To the extent the Court deems it relevant, Class Counsel spent 984.25 hours on this litigation with a total lodestar of $643,755.00.[9] Affidavit of Seth R. Klein filed herewith ("Klein Aff.") at ¶ 6. The fee sought constitutes a 2.97 multiple of this lodestar. Such a multiple is within if not below the range of those approved in other cases. *See, e.g., Town 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. The case was hard-fought and counsel devoted almost 1000 hours of time over a two-year period to achieve full recovery for the Class.

D. 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). Class Counsel requests reimbursement for $6,759.23 in expenses they incurred while prosecuting this action. *See* Klein Aff. at ¶ 9. Class Counsel have reviewed these expenses carefully and determined that these

[9] Should the Court wish to review them, Class Counsel's time records and lodestar are available upon request.

expenses were reasonably incurred and were necessary to the successful prosecution of this action.

* * *

Plaintiffs respectfully suggest that the proposed fee and expense award is supported by all of the *Goldberger* factors. Accordingly, Plaintiff respectfully request that the Court award $1,920,000 ($1,913,240.77 for fees and $6,759.23 for expenses) to Settlement Class Counsel.

IV. LEAD PLAINTIFFS WILLIAM AND LAURIE PAETZOLD SHOULD RECEIVE SETTLEMENT CLASS REPRESENTATIVE AWARDS

Plaintiffs and Class Counsel respectfully submit that Plaintiffs William and Laurie Paetzold should each receive a Settlement Class Representative Award of $5,000 in recognition of the substantial time and effort they each contributed to the prosecution of this litigation. As with the fee request, the representative award request was subject to arm's length negotiations between parties and was specifically disclosed to the Class: the long and short Notices and the Settlement website each provide that Plaintiffs will seek up to $5,000 as service awards (*see* Keough Decl. at Exs. A and B), and no objection has been received to date.

Providing Settlement Class Representative 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). Plaintiffs voluntarily submitted themselves to public scrutiny by bringing a class action claim.

Moreover, Plaintiffs have been highly motivated and involved in prosecuting this litigation. *See* Klein Aff. at ¶ 11. Plaintiffs responded to interrogatory and document production requests; sat for deposition against experienced counsel; and consulted regularly with Class Counsel regarding the conduct of this case. *Id.* Awards of equal or greater amounts than $5,000 are routinely awarded by courts to compensate representative class plaintiffs for their efforts. *See, e.g., Jurich v. Verde Energy USA, Inc.,* No. X07-HHD-CV15-6060160-S (Conn. Super.), at [Dkt. No. 274.00] dated February 24, 2020, at ¶ 17 (awarding plaintiff $5,000); *Taylor v. Hartford Casualty Ins. Co.,* No. HHD-CV16-6072110-S (Conn. Super.), at [Dkt. No. 150.00] dated September 12, 2019, at ¶ 4 (awarding plaintiff $7,500); *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 Plaintiffs' 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). Plaintiffs' participation was substantial and indispensable.

Accordingly, Plaintiffs and Class Counsel respectfully request that this Court award to each of William and Laurie Paetzold a Settlement Class Representative Award of $5,000.

V. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court enter an order approving (1) an award of Attorneys' Fees and Expenses in the amount of $1,920,000 ($1,913,240.77 for fees and $6,759.23 for expenses), to be paid in accord with the terms of the Settlement Agreement; and (2) Settlement Class Representative Awards of $5,000 to each of Plaintiffs William and Laurie Paetzold.

Dated: July 29, 2020

PLAINTIFFS

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CERTIFICATION

I certify that on this 29th day of July, 2020, a copy of the foregoing was sent by email to all counsel of record as follows:

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_/s/ Seth R. Klein_______________
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