

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

STATE EMPLOYEES BARGAINING AGENT	:	
COALITION, et al,	:	
	:	
PLAINTIFFS,	:	
	:	
V.	:	NO. 3:03 CV 221 (AVC)
	:	
JOHN G. ROWLAND, et al	:	
	:	
DEFENDANTS.	:	SEPTEMBER 21, 2015

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ORDER  
APPROVING PROVISIONS OF THE PARTIES' SETTLEMENT AGREEMENT  
FOR INCENTIVE PAYMENTS TO NAMED PLAINTIFFS**

As part of the Settlement Agreement in this action, the State of Connecticut has agreed to make incentive payments in the amount of \$10,000 to each of the named plaintiff unions and the individual named plaintiffs who helped produce the Settlement on behalf of the Settlement Class. As with the provision for attorneys' fees and costs provided for in the Settlement Agreement, these proposed incentive payments are in addition to any proceeds payable to each class member individually and will not reduce the proceeds received by the remaining class members in any way.

In conjunction with the application for approval of the Settlement, Class Counsel have moved this Court for entry of an Order approving the proposed incentive payments on behalf of each of the named plaintiff unions and individuals.

**I. Courts Permit Incentive Payments, Which Support Public Policy Considerations.**

"Incentive awards are fairly typical in class action cases." *See Rodriguez v. West Publ 'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (citing 4 William B. Rubenstein et al., *Newberg on Class Actions* § 11:38 (4th ed. 2008)). District courts in the Second Circuit consistently approve

incentive awards. See, e.g., *Spencer v. The Hartford Financial Services Group*, 3:05-cv-1681 (JCH) (Doc. No. 258); *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 131-32 (S.D.N.Y. 2009); *In re WorldCom, Inc. ERISA Litig.*, No. 02 Civ. 4816 (DLC), 2004 WL 2338151 (S.D.N.Y. 2004); *RMED Int'l, Inc. v. Sloan's Supermarkets, Inc.*, No. 94 Civ. 5587 (PKL), 2003 WL 21136726 (S.D.N.Y. 2003); *Dornberger v. Metropol. Life Ins. Co.*, 203 F.R.D. 118, 124 (S.D.N.Y. 2001); *Golden v. Shulman*, No. CV-85-3624, 1988 WL 144718 (E.D.N.Y. 1988).

Courts that have approved incentive awards “have stressed that incentive awards are efficacious ways of encouraging members of a class to become class representatives and rewarding individual efforts taken on behalf of the class.” *Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003). “Such awards ... are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action.” *Rodriguez*, 563 F.3d at 958.

Incentive awards, moreover, serve important public policies. They encourage people to take on the role of class representative in important cases enforcing consumer and other rights – as is the situation here – even though their individual recoveries as class members would be small in relation to the effort required and the risks taken. See, e.g., *In re Worldcom*, 2004 WL 2338151, at \*11 (“The named plaintiffs have performed an important service to the class and the burden of this commitment deserves to be recognized.”); *RMED Int'l*, 2003 WL 21136726, at \*2 (“Incentive awards are given to compensate named plaintiffs for the risk they have incurred by pursuing the class action and the extra effort they have expended.”) (citation omitted); *Golden*, 1988 WL 144718, at \*8 (“In addition to the appointment as representative of the class, Golden ...

has been required to respond personally to the discovery requests of defendants, including document production .... Through his shouldering of these responsibilities, Golden has benefitted all of the members of the class. Courts have recognized that name plaintiffs may be rewarded for taking on extra responsibilities of this sort.” (citations omitted)); *In re Linerboard Antitrust Litig.*, No. MDL 1261, 2004 WL 1221350, at \*18 (E.D. Pa. June 2, 2004) (“Like the attorneys in this case, the class representatives have conferred benefits on all other class members and they deserve to be compensated accordingly.”) (citation omitted); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (“Because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit.”) (citation omitted); *In re Plastic Tableware Antitrust Litig.*, No. 94-CV-3564, 1995 WL 723175, at \*2 (E.D. Pa. Dec. 4, 1995) (“Payments to class representatives may be considered a form of restitutionary relief within the discretion of the trial court. ... They may also be treated as a reward for public service and for the conferring of a benefit on the entire class.”) (citations omitted).

**II. The Requested Incentive Awards Are Appropriate Given the Result in this Case and Are in Line with Awards in Other Cases.**

This Court determined, both in its Order of March 9, 2010, certifying the initial class, and in its Preliminary Approval Order of July 2, 2015, certifying the settlement class, that the named plaintiff unions and the named individual plaintiffs are adequate class representatives and can serve in that capacity in this case.

Each of the named individual plaintiffs has made personal sacrifices that should be compensated. Each accepted the role of class representative, and acted in the best interest of the

class and not in his or her own self-interest. Each of them put in substantial effort that would have been for naught, if the case had not produced a positive result. Each cooperated with counsel, provided documentation of their employment situation and reviewed pleadings in the respective cases in which they were parties. Several responded to production requests and/or appeared at court proceedings. Each of them had the courage to challenge their employer (and the Governor of the State in which they lived). Each has been involved in this (or the companion state court litigation) since the outset in 2003.

The plaintiff unions have also cooperated in the prosecution of this case from the outset, assisting counsel in identifying representative individual plaintiffs, keeping the plaintiff class apprised of the progress of the litigation and – like the individual named plaintiffs – were willing to undertake the litigation and assume the risks (including the risk of retaliation) associated with such litigation. In addition, during and since the negotiation of the Settlement, the plaintiff unions have expended numerous hours and resources to effectuate notice to their respective members and to act as liaison between their members and counsel, including by promulgating appropriate announcements on union bulletin boards and websites.

The requested incentive awards are appropriate by several measures.

*First*, the Named Plaintiffs assisted in and were indispensable towards producing a substantial settlement for the class. This was not an easy case – it was vigorously contested at every stage over a period of twelve years, and there were real risks that the case would not succeed. Especially in light of those facts, the requested incentive awards are appropriate when compared to the results produced.

*Second*, the requested awards of, in the aggregate, \$230,000, are small in relation to the size of the overall Settlement. Against a likely conservative estimate of total value to the class in excess of \$100 million, the requested awards are approximately 0.2% of the fund. That is well within the range of awards approved by courts. *Cf. Roberts v. Texaco, Inc.* 979 F. Supp. 185 (S.D.N.Y. 1997) (incentive awards approved amounting to 0.18% of fund); *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 187 (W.D.N.Y. 2005) (award to sole class representative 8.4% of fund).

*Third*, the requested awards, \$10,000 for each of the 23 named plaintiffs, are in line with awards given in other cases. *Cf. In re Buspirone Antitrust Litig.*, No. MDL 1413, 2003 U.S. Dist. LEXIS 26538, at \*12 (S.D.N.Y. Apr. 17, 2003) (\$25,000 to lead plaintiff); *In re Publication Paper Antitrust Litig.*, Nos. 3:04 MD 1631(SRU), 3:05 CV 1267(SRU), 3:05 CV 1339(SRU), 3:05 CV 1358(SRU), 3:05 CV 1381(SRU), 2009 WL 2351724, at \*1 (D. Conn. July 30, 2009) (approving \$20,000 incentive award); *Roberts*, 979 F. Supp. at 205 (in discrimination case, approving awards to class representatives totaling \$212,500 divided among six representatives: \$85,000 (x1); \$50,000 (x1); \$25,000 (x3); and \$2,500 (x1)); *Yap v. Sumitomo Corp. of Am.*, No. 88 Civ. 700 (LBS), 1991 WL 29112, at \*4 (S.D.N.Y. Feb. 22, 1991) (\$30,000 award); *Meijer, Inc. v. 3M*, Civil Action No. 04-5871, 2006 WL 2382718, at \*25 (E.D. Pa. Aug. 14, 2006) (\$25,000 award); *In re Remeron Direct Purchaser Antitrust Litig.*, No. Civ. 03-0085 FSH, 2005 WL 3008808, at \* 18 (D.N.J. Nov. 9, 2005) (total incentive award of \$60,000 to two named plaintiffs); *In re Remeron End-Payor Antitrust Litig.*, No. Civ. 02-2007 FSH, Civ. 04-5126 FSH, 2005 WL 2230314, at \*33 (D.N.J. Sept. 13, 2005) (\$30,000 award); *In re Terazosin Hydrochloride Antitrust Litig.*, No. 99-MDL-1317, 2005 U.S. Dist. LEXIS 43082, at \*25-26

(S.D. Fla. Apr. 19, 2005) (\$45,000 to one plaintiff; \$30,000 to the other); *Godshall v. Franklin Mint Co.*, No. 01- CV-6539, 2004 WL 2745890, at \*6 (E.D. Pa. Dec. 1, 2004) (\$20,000 to each of the two named plaintiffs from a \$1.125 million settlement fund); *North Shore Hematology-Oncology Associates, P.C. v. Bristol-Myers Squibb Co.*, No. 04-248, slip op. at 5 (D.D.C. Nov. 30, 2004) (\$25,000 award to named plaintiff); *Linerboard*, 2004 WL 1221350, at \*18 (\$25,000 to each of five class representatives); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907 (S.D. Ohio 2001) (\$50,000 bonus to plaintiff who was instrumental in bringing lawsuit); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251 (S.D. Ohio 1991) (awarding \$50,000 each to six class representatives, totaling \$300,000 out of a total settlement valued at approximately \$56 million (of which \$32 million was the cash component of the settlement)); *Van Vranken v. At I. Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995) (\$50,000 award); *In re Revco Sec. Litig.*, Nos. 851 & 89CV593, 1992 WL 118800 (N.D. Ohio May 6, 1992) (award of \$200,000 appropriate); *In re Dun & Bradstreet Credit Serv. Customer Litig.*, 130 F.R.D. 366, 373-74 (S.D. Ohio 1990) (approving awards from \$35,000 to \$55,000); *Spencer v. The Hartford Financial Services Group*, 3:05-cv-1681 (JCH) (Doc. No. 258) (\$10,000 award to each of three class representatives).

### **III. Conclusion**

For the foregoing reasons, Class Counsel respectfully request that, in conjunction with its approval of the Settlement Agreement, the Court enter an Order approving payment of the proposed incentive awards of \$10,000 to each of the named plaintiff unions and individual named plaintiffs.

Dated: September 21, 2015

PLAINTIFFS STATE EMPLOYEES  
BARGAINING AGENT COALITION,  
ET AL,

BY /s/ David S. Golub

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**CERTIFICATION**

I hereby certify that on September 21, 2015, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ David S. Golub

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