

DOCKET NO.: (X10) UWY-CV15-60299656-S	:	COMPLEX LITIGATION DOCKET
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ANTHONY DIAZ, ET AL.	:	J.D. OF WATERBURY
	:	
V.	:	AT WATERBURY
	:	
GRIFFIN HEALTH SERVICES	:	
CORPORATION, ET AL.	:	NOVEMBER 13, 2023

**MEMORANDUM IN SUPPORT OF MOTION FOR ORDER AUTHORIZING  
INCENTIVE AWARD FOR CLASS REPRESENTATIVES**

Pursuant to Connecticut Practice Book § 9-9, named plaintiffs Anthony Diaz, Daisy Gmitter and Bruce Sypniewski (collectively, the “Named Plaintiffs”), each seek an incentive award of \$25,000.00 to be paid from the common fund of One Million Dollars (\$1,000,000.00), that they helped produce for the Settlement Class. By granting Class Certification, this Court determined, by necessary implication, that the Named Plaintiffs are adequate Class Representatives and can serve in that capacity in this case. The undersigned has submitted a Declaration in support of this Application, detailing each Named Plaintiffs’ efforts on behalf of the Class and contributions to the result obtained for the Class. *See* Declaration of Marco A. Allocca, Esq., dated November 13, 2023 (attached as Exhibit A).

To pursue this case in a representative capacity, the Named Plaintiffs placed the interests of the Class ahead of themselves. By proceeding on a Class basis, they delayed and risked any potential individual recovery that they could secure through litigation against these Defendants and cast aside any individual, non-class-wide claims, they may have had against the Defendants. Indeed, this case took years to litigate, with no guarantee of a favorable outcome – or any remuneration to the Named Plaintiffs. Unlike many other class action matters, the Named Plaintiffs had to produce sensitive and confidential information (in the form of their medical records) and subject themselves to questioning regarding those records during deposition.

The \$25,000.00 being sought on behalf of each Named Plaintiff is equitable and in line with the commitment each Named Plaintiff made to representing the Class. The requested incentive payments, therefore, are reasonable and appropriate when compared to the results produced in this action.

**I. COURTS PERMIT INCENTIVE PAYMENTS, WHICH SUPPORT PUBLIC POLICY CONSIDERATIONS**

“Incentive awards are fairly typical in class action cases.” *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); Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006) (finding twenty-eight percent of settled class actions between 1993 and 2002 included incentive awards to class representatives)). “Numerous courts have authorized incentive awards.” *Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003) (citing, among other cases, *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir.), *cert. denied*, 537 U.S. 823, 123 S.Ct. 108, 154 L.Ed.2d 32 (2002); and *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000)). District courts in the Second Circuit consistently approved incentive awards. See, e.g., *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-cv-4816 (DLC), 2004 WL 2338151 (S.D.N.Y. 2004); *RMED Intern, Inc. v. Sloan’s Supermarkets, Inc.*, No. 94-cv-5587 (PKL), 2003 WL 21136726 (S.D.N.Y. 2003); *Dornberger v. Metropolitan Life Ins. Co.*, 203 F.R.D. 118, 124–25 (S.D.N.Y. 2001); *Golden v. Shulman*, No. 85-cv-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*, *supra*, 322 F.3d 897. “Such

awards . . . are intended to compensate class representatives for work done on behalf of the class, [and] to make up for financial or reputational risk undertaken in bringing the action.” (Citation omitted.) *Rodriguez*, 563 F.3d 958. Factors that have been looked on with disfavor, such as an incentive payment agreement indicating that the named plaintiffs expected a bounty, a settlement that accords the named plaintiffs preferential treatment or conflicts between the named plaintiffs and the class, are not present here. *See* *Allocca* Dec. ¶¶ 8–13. As none of the Named Plaintiffs were promised any special benefits for serving as class representatives beyond those provided to all other class members in this case, and they understood that whether they were granted an incentive award from any potential common fund in this action was completely within the discretion of this Court. *Id.*

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*, supra, 2004 WL 2338151, \*11 (“[t]he 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, \*2 (“[i]ncentive 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”); *Golden*, 1988 WL 144718, \*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 benefited all of the members of the class. Courts have recognized that name plaintiffs may be rewarded for taking on extra responsibilities of this sort.”); *In re Linerboard Antitrust Litig.*, No. MDL 1261, 2004 WL

1221350, \*18 (E.D. Pa. June 2, 2004) (“[l]ike the attorneys in this case, the class representatives have conferred benefits on all other class members and they deserve to be compensated accordingly”); *Cook*, supra, 142 F.3d 1016 (“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.”); *In re Plastic Tableware Antitrust Litig.*, No. 94-CV-3565, 1995 WL 723175, \*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.)

Here, the Named Plaintiffs will receive only their pro rata share of the common fund their efforts helped create, unless they receive incentive awards.

## **II. THE NAMED PLAINTIFFS EXPENDED SUBSTANTIAL EFFORTS AND TOOK PERSONAL RISK OVER AN EXTENDED PERIOD OF TIME**

As detailed herein, each of the Named 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 of them had the courage to take on a regional healthcare facility from which they may seek treatment during the pendency of this matter and in the future. Each of them went the extra mile for the Class, did not personally object to producing sensitive and private materials (such as medical records) and all willingly appeared for in-person depositions to answer questions about their personal medical history, all in furtherance of the benefit of the Class. *See* Allocca Dec. ¶¶ 12–14.

**a. Anthony Diaz**

Mr. Diaz has been involved in this lawsuit since the outset in December 2015. He has taken his obligations as Class Representative seriously and has always acted in the interest of the Class. He familiarized himself with the facts and allegations of the case, had regular contact with Class Counsel, he assisted Class Counsel in the factual development of the Case, he reviewed the documents that pertained to his own care and treatment at Griffin Hospital, he answered Interrogatories and Requests for Production—under oath—pertaining to his health, provided medical records and/or HIPAA-compliant authorizations allowing the Defendants to obtain relevant medical records, prepared for his deposition in this case, sat for his deposition in this case during which he was asked questions about his medical history and conditions, and consulted with class counsel regarding settlement, and he was prepared to appear in Court to testify at trial if this matter did not settle. Mr. Diaz’s verified discovery responses were served upon counsel on March 22, 2018, and he sat for his deposition on October 31, 2018. *See* Allocca Dec. ¶¶ 16–21.

**b. Daisy Gmitter**

Mrs. Gmitter has been involved in this matter since October 2016 but was formally added by way of Motion to Cite In Additional Parties on August 2, 2017 (Entry No. 146.00). She has also taken her obligations as Class Representative seriously and has performed the same services to the case and the Class as Mr. Diaz and Mr. Sypniewski. Mrs. Gmitter’s verified discovery responses were served upon counsel on March 22, 2018, and she sat for her deposition on October 8, 2018. *Id.*

**c. Bruce Sypniewski**

Like Mrs. Gmitter, Mr. Sypniewski has been involved in this matter since October 2016, but was formally added by way of Motion to Cite In Additional Parties on August 2, 2017 (Entry No. 1467.00). He too has taken his obligations as Class Representative seriously and has performed the same services to the case and the Class as Mr. Diaz and Mrs. Gmitter. Mr. Sypniewski's verified discovery responses were served upon counsel on March 22, 2018, and he sat for his deposition on January 30, 2019. *Id.*

**III. THE REQUESTED INCENTIVE AWARDS ARE APPROPRIATE GIVEN THE RESULT IN THIS CASE**

The requested incentive awards are appropriate by several measures. First, the Named Plaintiffs assisted in and were indispensable towards producing a substantial common fund for the Class. Without their willingness to serve as Class Representatives in a very difficult case with potentially minimal monetary upside, there could be no Class Settlement for other members of the Class. This was not an easy case – it was vigorously contested at every stage over a period of nearly eight (8) years, and there were real risks that the case would not succeed despite the substantial personal efforts of the Named Plaintiffs. Moreover, the unique nature of this class action – *i.e.*, that it sounds in medical malpractice relating to alleged care and treatment rendered by a healthcare facility – required the Named Plaintiffs to disclose highly sensitive information in the form of their medical records. As noted above, each of the Named Plaintiffs were required to produce medical records and submit to depositions in furtherance of the Class Members' claims. Each of the Named Plaintiffs complied with requirements to disclose such sensitive and confidential information to benefit the Class as a whole. In addition, throughout lengthy settlement negotiations with the Defendants, the Named Plaintiffs stayed apprised of the nature of the settlement negotiations, worked with Class Counsel to determine settlement positions, and

advised Class Counsel, on behalf of the Class Members, as to whether the Settlement was fair and reasonable. Especially in light of those facts, the requested incentive awards are appropriate when compared to the result produced. As a result of their efforts, Class Members can participate in the Settlement without having to similarly disclose their own personal medical information or submit to a deposition.

Second, the requested awards of \$25,000.00 each constitute only 2.5% of the gross Settlement Fund (or 7.5% in the aggregate for all three Named Plaintiffs). An aggregate incentive award of 7.5% is within the percentage range of awards for incentive fees in cases like this, wherein the Named Plaintiffs were active participants in the litigation. See, e.g., *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 187 (W.D.N.Y. 2005) (awarding sole class representative 8.4% award of settlement fund).

Third, the requested awards, \$25,000.00 for each Named Plaintiff, are in line with awards given in other cases. See, e.g., *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” incentive award for her time spent “working with Class Counsel to prosecute and resolve this case”); *Gray v. Found. Health Sys., Inc.*, Docket No. X06-CV-990158549-S, 2004 WL 945137, \*4 (Conn. Super. Ct. Apr. 21, 2004) (Alander, J.) (approving awards of \$23,333 for each named plaintiff); *In re Publication Paper Antitrust Litig.*, No. 3:04-MD-1631 (SRU), 2009 WL 2351724, \*1 (awarding \$20,000.00 incentive fee from \$700,000.00 settlement fund); *Roberts v. Texaco, Inc.*, 979 F.Supp. 185, 205 (S.D.N.Y. Sept. 11, 1997) (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 America*, No. 88-cv-700 (LBS), 1991 WL 29112, \*4 (S.D.N.Y. Feb. 22, 1991) (awarding \$30,000 award to each named plaintiff);

*Fears v. Wilhelmina Model Agency*, No. 02-cv-4911 (HB), 2005 WL 1041134, \*3 (S.D.N.Y. May 5, 2005) (approving awards of \$25,000.00 for plaintiffs who had been deposed, and \$15,000.00 for plaintiffs who testified at trial and other class representatives), vacated in part on other grounds, *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423 (2d Cir. 2007); *Meijer, Inc. v. 3M*, 04-cv-5871, 2006 WL 2382718, \*25 (E.D. Pa. Aug. 14, 2006) (\$25,000 award); *In re Remeron Direct Purchaser Antitrust Litig.*, No. 03-cv-0085 (FHS), 2005 WL 3008808, \*18 (D.N.J. Nov. 9, 2005) (total incentive award of \$60,000 to two named plaintiffs); *Godshall v. Franklin Mint Co.*, No. 01-CV-6539, 2004 WL 2745890, \*6 (E.D. Pa. Dec. 1, 2004) (special award of \$20,000 to each of the two named plaintiffs from a \$1.125 million settlement fund); *Linerboard*, supra, 2004 WL 1221350, \*18 (\$25,000 to each of five class representatives); *Brotherton v. Cleveland*, 141 F.Supp.2d 907, 914 (S.D. Ohio 2001) (\$50,000 incentive award to plaintiff who was “instrumental” in bringing lawsuit); *Enterprise 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); *Van Vranken v. Atl. Richfield Co.*, 901 F.Supp. 294, 300 (N.D. Cal. 1995) (\$50,000 award); *In re Revco Sec. Litig.*, Nos. 851, 89-cv-593, 1992 WL 118800 (N.D. Ohio, May 6, 1992) (award of \$200,000 appropriate for corporate plaintiff); *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).

#### **IV. CONCLUSION**

For the foregoing reasons, the Court should exercise its discretion and award each of the Named Plaintiffs \$25,000.00 for their efforts as Class Representatives to be paid from the common fund created by the Settlement.

By:     /s/433880    

ERNEST F. TEITELL, ESQ.  
MARCO A. ALLOCCA, ESQ.  
SILVER GOLUB & TEITELL LLP  
1 LANDMARK SQ., 15<sup>th</sup> FL.  
STAMFORD, CT 06901  
JURIS NO. 058005

**CERTIFICATION**

This is to certify that on November 13, 2023, a true copy of the foregoing was delivered electronically and/or by regular mail to the following counsel and pro se parties of record and that written consent for electronic delivery was received for all counsel who were electronically served:

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MARCO A. ALLOCCA, ESQ.

# **EXHIBIT A**

DOCKET NO.: (X10) UWY-CV15-60299656-S : COMPLEX LITIGATION DOCKET  
: :  
ANTHONY DIAZ, ET AL. : J.D. OF WATERBURY  
: :  
V. : AT WATERBURY  
: :  
GRIFFIN HEALTH SERVICES :  
CORPORATION, ET AL. : NOVEMBER 13, 2023

**DECLARATION OF MARCO A. ALLOCCA, ESQ. IN SUPPORT OF  
APPLICATION AND MEMORANDUM IN SUPPORT OF  
INCENTIVE AWARD FOR CLASS REPRESENTATIVES**

I, Marco A. Allocca, hereby affirm, as follows:

1. I am a partner in the law firm of Silver Golub & Teitell LLP (“SGT” or the “Firm”). I submit this declaration in support of the Motion for Incentive Award for an award of an incentive fee in the amount of \$25,000.00 for each of the named plaintiffs in the above-captioned action (the “Action”). I have personal knowledge of the facts stated in this Declaration.

2. My Firm was retained by each of the three named plaintiffs, Anthony Diaz, Daisy Gmitter and Bruce Sypniewski. Each of these individuals entered into a 33-1/3% contingency fee agreement with SGT pursuant to General Statutes § 52-251C.

3. At all times mentioned herein, SGT had an attorney-client relationship with each of the three named plaintiffs – Anthony Diaz, Bruce Sypniewski and Daisy Gmitter. None of the representations herein are intended to waive any attorney-client privilege, nor should any representations herein be construed as subject-matter waiver of attorney-client privilege.

4. In or about July 2015, Anthony Diaz engaged the services of SGT to prosecute claims on his behalf, along with the claims of a class of similarly situated individuals who were patients of Griffin Hospital between September 2008 and May 7, 2014, who received insulin

from a multi-dose insulin pen, who were subsequently notified of the potential misuse of multi-dose insulin pens during that time period, and who underwent subsequent blood testing as a result of the potential misuse of multi-dose insulin pens.

5. In or about October 2016, prior to the filing of any motion to certify the class, Bruce Sypniewski sought to engage the services of SGT to prosecute claims on his behalf, along with the claims of a class of similarly situated individuals who were patients of Griffin Hospital, as set forth above in Paragraph 4 of this declaration.

6. In or about October 2016, prior to the filing of any motion to certify the class, Daisy Gmitter sought to engage the services of SGT to prosecute claims on her behalf, along with the claims of a class of similarly situated individuals who were patients of Griffin Hospital, as set forth above in Paragraph 4 of this declaration.

7. Class Counsel agreed to advance all of the costs required to litigate this Action on a contingent basis. None of the three named Plaintiffs were responsible for payment of those costs. Reimbursement of costs, and payment of attorneys' fees, was contingent upon a successful outcome, to be paid pursuant to an order of the Court from the amounts, if any, recovered from the Defendants. If no recovery was achieved for the Class, Class Counsel agreed to absorb all of the costs of litigating this Action, and would receive no attorneys' fees.

8. There was no incentive payment agreement nor any promise of an incentive award made to any of the three named plaintiffs.

9. None of the named plaintiffs were promised any special benefits for serving as Class Representatives beyond those provided to all other class members in this Action.

10. Throughout the pendency of this matter, the three named plaintiffs were advised and understood that whether an incentive award will be authorized by this Court is completely

within the discretion of this Court. Neither Class Counsel nor any party to this Action promised any incentive award to the three named Plaintiffs.

11. The payment of an incentive award was not contemplated or part of any settlement negotiations between Class Counsel, the Class Representatives or the Defendants. Any reference to an incentive award contained in the Settlement Agreement attached as Exhibit A to the Proposed Order regarding Approval of Proposed Settlement Agreement and Notice to Class Members, dated September 18, 2023 (Entry No. 283.00), was added after the parties had reached the proposed total Settlement of \$1,000,000.00, and no promises or representations were made by the Defendants or Class Counsel regarding the approval of a potential incentive award.

12. Each of the three named plaintiffs have made personal sacrifices in furtherance of their representation of the Class and accepted their role as Class Representatives. They did so to benefit the Class claims and not their own self-interests.

13. Each of the three named plaintiffs were told, and understood, that they represented the interest of all Class Members who had been affected by the conduct at issue in this Action. As Class Representatives, they understood that the Court would require them to adequately and fairly represent the Class, and that this action might take several years to litigate, with no guarantee of a favorable outcome for them or any other Class Members.

14. As Class Representatives, each of the three named Plaintiffs committed to becoming familiar with this Action and the claims asserted on behalf of the Class, and the parties who were allegedly responsible for the conduct at issue in this Action. They were kept informed by Class Counsel of all major events during the pendency of this Action so that they could monitor the prosecution of this action and satisfy their duties as Class Representatives.

15. The Settlement was the product of arm's length negotiations among experienced counsel. The Class Representatives and Class Counsel had a thorough understanding of the strengths and weaknesses of the claims asserted in the Action at the time they reached the Settlement.

16. Each of the three named plaintiffs were required to answer written Interrogatories and Requests for Production, produce their personal medical records and/or provide Defendants' counsel HIPAA-compliant authorizations to obtain their medical records, produce any other responsive materials such as journals and/or diaries (if they had any such responsive materials) and sit for a deposition.

17. Anthony Diaz was deposed on October 31, 2018. Prior to his deposition, Mr. Diaz met with Class Counsel for several hours to prepare for his deposition.

18. Bruce Sypniewski was deposed on January 30, 2019. Prior to his deposition, Mr. Sypniewski met with Class Counsel for several hours to prepare for his deposition.

19. Daisy Gmitter was deposed on October 8, 2018. Prior to her deposition, Mrs. Gmitter met with Class Counsel for several hours to prepare for her deposition.

20. In addition to contributing to fact discovery at issue in this case, each of the named plaintiffs have been actively involved in this Action, representing the interests of the Class Members.

21. Each of the three named Plaintiffs spent several hours speaking with Class Counsel about the claims in this matter and were active participants in the mediation process. Although none of the named Plaintiffs appeared in person for the two in-person mediation sessions between Class Counsel and the Defendants, they were consulted with prior to those mediation sessions, available via telephone during those mediation sessions, and remained

engaged during subsequent settlement negotiations occurring after the in-person mediation sessions.

22. The three named Plaintiffs expressed a continued understanding of the importance of their role as Class Representatives throughout this matter.

23. Additionally, had this matter not resulted in a settlement, each of the named plaintiffs was prepared to attend and testify at the trial of this Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on November 13, 2023.

  
\_\_\_\_\_  
MARCO A. ALLOCCA, ESQ.

Before me personally appeared MARCO A. ALLOCCA, ESQ., who swore to the truth and accuracy of the foregoing, this 13<sup>th</sup> day of November, 2023.

  
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Commissioner of the Superior Court