

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

DECLARATION OF DAVID S. GOLUB

David S. Golub does declare, under penalty of perjury, as follows:

1. I am a member of the law firm of Silver Golub & Teitell LLP, Class Counsel in this action. I submit this Declaration in support of the pending (a) Motion for Final Approval of Class Action Settlement, and (b) Motion for Order Approving the Provisions of the Parties' Settlement Agreement for Attorneys' Fees and Costs to assist the Court in evaluating the fairness of the proposed settlement ("Settlement") and the reasonableness of the provisions in the Settlement Agreement for payment by the defendant State of Connecticut of attorneys' fees and costs in this litigation.

Overview of the Settlement

2. The Settlement provides for significant monetary relief for the benefit of the members of the proposed Settlement Class. The Settlement Agreement provides that each class member who sustained economic loss as a result of the layoffs (or layoff orders) at issue in this litigation shall be entitled to receive a substantial percentage of his or her net economic loss, with an interest adjustment for the time value of money, calculated as follows:

Gross economic loss – defined to include all forms of economic loss that are ordinarily recoverable under state and federal law in similar cases

less: mitigation earnings

less: 30% settlement discount

plus: prejudgment interest calculated from date of loss to date of payment at the rate of 5% simple interest per annum.¹

3. For class members who have continuing economic losses – *i.e.*, for those class members who have not been restored to where they would have been on their State employment career trajectory absent the layoffs at issue in this action – the Settlement Agreement further provides up to ten years of front pay and/or the opportunity, at the State’s discretion, for promotion, transfer or future salary increases to address those continuing losses. The Settlement also provides for an award of lost pension benefits or, again at the State’s discretion, an adjustment to future pension service and/or salary credits.

4. All class members who were laid off are also entitled to reimbursement for the cost of COBRA coverage that they were required to incur or, in certain cases, the amount of unreimbursed medical expenses. [Settlement Agreement, ¶ 15.K].

5. In addition, the Settlement Agreement also provides for awards of emotional distress/punitive damages to every member of the class – *i.e.*, every member of the work force of the State of Connecticut who belonged to or was in a position that was destined for a unionized

¹ Pursuant to the Settlement Agreement, economic damage awards for most class members who are still employed by the State of Connecticut will, at the State’s option, be in the form of an award of vacation pay in equal yearly installments over four years, with interest (at the rate of 5% simple interest per annum) running through the dates of each installment payment. There is, however, a hardship provision in the Settlement Agreement which allows class members to apply to the Claims Administrator for expedited payment of the award in lieu of vacation pay. [Settlement Agreement, ¶ 15.L].

bargaining unit as of the date of the layoffs at issue in this action – for the chilling effect of the individual defendants’ conduct on class members’ exercise of their First Amendment rights. These compensatory damages awards to class members range from \$100 or 1.25 personal leave days for those members of the class who did not suffer any economic loss in connection with the announced layoffs but who, plaintiffs allege, were chilled in their exercise of their First Amendment rights as a result of the targeted layoffs; to \$700 or a total of 7 personal and vacation days for class members who suffered economic loss as a result of being bumped or made to change positions as a result of the layoff orders; to \$1,500 or a total of 15 personal and vacation days for class members who suffered a period of layoff as a result of the actions at issue in this litigation. [Settlement Agreement, ¶ 16.A].

6. The Settlement Agreement also provides for a simplified claims administration procedure designed to obtain an expedited determination of class members’ claims. Under the expedited resolution procedure, the State will provide Class Counsel with a proposed calculation of each class member’s damages or lost compensation based on the employment records available to the State. These calculations will include not only the amount of wages lost as a result of the layoff or demotion, but also all additional consequential forms of economic harm, including lost (or reduced) step increases, differential or overtime pay, longevity pay, and any resulting impact to the class member’s pension benefit. [Settlement Agreement, ¶ 17.D]. If the class member believes the calculation is accurate, the class member may settle his or her claim by accepting the proffered calculation. If the class member disputes the State’s offer or calculation, he or she may make a counter-offer to the State. If the parties continue to dispute the calculation after this process, the Settlement Agreement provides for adjudication by a Claims Administrator

under simplified procedures and relaxed evidentiary requirements. [Settlement Agreement, ¶ 17.B].

7. Pursuant to the Settlement Agreement, Class Counsel will represent each class member in connection with the resolution of each class member's claim for economic loss.

8. The Agreement also includes important presumptions which facilitate resolution and, importantly, ease the burdens of proof on the class members. Under the terms of the Agreement, the mitigation deduction for class members whose layoff period was one year or less is limited to actual unemployment compensation that the class member received (or was eligible to receive) during the layoff period (unless the class member actually secured an alternative position paying more than the class member's annual State compensation). [Settlement Agreement, ¶ 15.C]. Significantly, the State is in possession of all records necessary to make the necessary calculation: the class member's pre-layoff earnings, the duration of the class member's layoff, the amount of unemployment compensation received, or that the class member was eligible to receive, during the layoff period, the class member's post-layoff earnings if reinstated to state service, and any pension or other adjustments necessary to make the class member whole post-layoff. For this group of class members, the parties contemplate that only limited additional information from the class member will be necessary to permit an accurate calculation of the class member's actual damages and, thus, most of these cases can be resolved at the stage of the State's initial offer – and without the necessity of the class member's coming forward with any proof of mitigation attempts or mitigation earnings.

9. Finally, the awards to class members will not be reduced in any way for attorneys' fees and costs in connection with prosecution of this (and the state court) action, or the resolution

of the class member's individual claim. Rather, such fees and costs will be paid directly to counsel by the State of Connecticut – which is also paying an additional sum to compensate for the anticipated administrative costs that counsel will incur in order to assist class members, as necessary, in the claims administration process. [Settlement Agreement, ¶ 16.D]. Under the Settlement Agreement, the State of Connecticut has also assumed all of the (considerable) costs of (a) first class mail notice to more than 3,700 class members, (b) email notice to all active State employees, (c) publication notice in eight separate Connecticut newspapers and USA Today on two separate occasions each, (d) obtaining salary, benefit, pension, and unemployment compensation information on each of more than 3,000 class members, (e) undertaking the initial calculation of economic damages for each of those more than 3,000 class members, and (f) mailing checks to all of the class members who are no longer in active State service (likely in excess of 10,000) and who are entitled to receive their awards of damages in installment payments in lieu of vacation and personal time credit. [Settlement Agreement, ¶ 18].

10. The proposed Settlement puts real money in the pockets of the Class Members. As further explained below, given the risk, uncertainty and expense of continued litigation, the proposed Settlement is a fair, reasonable and adequate result and warrants final approval.

History of the Litigation and Efforts of Class Counsel

11. Silver Golub & Teitell LLP was approached in late 2002 by representatives of the State Employees Bargaining Agent Coalition (“SEBAC”) and its constituent unions and was asked to consider prosecuting an action on behalf of the unions and their members challenging then-Governor Rowland's layoffs of State workers intentionally directed solely against members of State employee unions. Silver Golub & Teitell, on behalf of SEBAC, its constituent unions,

and several individual union members affected by the layoff orders, agreed to assume the representation and to bring this action on a contingency fee basis.

12. This was a long and extremely hard-fought litigation in multiple fora. After this action was filed, defendants – then represented by private counsel – immediately moved to dismiss plaintiffs’ original Complaint, and subsequently plaintiffs’ Amended Complaint pursuant to Fed.R.Civ.P. 12(b)(6) on multiple grounds, including lack of standing, political question non-justiciability, legislative immunity and Eleventh Amendment state sovereign immunity. Defendants also successfully sought to stay any discovery in this action pending a Ruling on the Motion to Dismiss. In January 2006, this Court denied the Motion to Dismiss as to plaintiffs’ official capacity claims and granted the Motion as to plaintiffs’ individual capacity claims. (Doc. 93). Defendants took an interlocutory appeal to the Second Circuit on the official capacity claims ruling, requiring extensive briefing of the availability of injunctive relief in the face of claimed defenses of legislative and sovereign immunity, resulting in an opinion of the Second Circuit encompassing over 28 pages of the Federal Reporter. *See State Employees Bargaining Agent Coalition v. Rowland*, 494 F.3d 71 (2007).

13. In December 2005, with discovery in this action effectively stayed pending a Ruling on the outstanding Motion to Dismiss, and with the relevant statute of limitations expiring, Silver Golub & Teitell filed a concurrent class action on behalf of the class of individual union members in Connecticut Superior Court asserting claims on behalf of individual state workers pursuant to the Conn. Gen. Stats. § 31-51q, the state statute protecting employees in Connecticut in the exercise of their First Amendment rights. The defendant State of Connecticut – again represented by private counsel – sought to stay that litigation (and prevent plaintiffs from

obtaining any discovery in that litigation) by filing a Motion to Dismiss plaintiffs' claims, asserting that those claims were barred by the doctrine of sovereign immunity. When defendant's Motion to Dismiss in that case was denied by the trial court, defendants immediately sought an interlocutory appeal in the Connecticut Supreme Court, effectively staying that litigation pending the outcome of that appeal. The State's appeal was denied by the Connecticut Supreme Court in 2009. *Conboy v. State*, 292 Conn. 642 (2009).

14. After this matter was remanded by the Second Circuit in 2007 following the denial of defendants' interlocutory appeal, the parties engaged in substantial document discovery involving the production of nearly 20,000 documents from the defendants in this action. Silver Golub & Teitell also obtained a nearly equal number of documents from nearly every agency of Connecticut state government through requests pursuant to the Connecticut Freedom of Information Act. Thereafter, the parties negotiated an extensive Stipulation of Facts to establish a factual record upon which to seek adjudication – on cross-motions for summary judgment – of their respective positions on whether it is constitutionally permissible, consistent with the First Amendment, for the Executive Branch of the State of Connecticut, in exercising its authority to manage the size of the work force and/or to seek concessions in legislatively-approved collective bargaining agreements, to single out union employees for lay-off and to limit lay-offs to union employees.

15. In conjunction with the parties' cross-motions for summary judgment, plaintiffs moved for class certification on their official capacity claims for injunctive relief. This Court granted the Motion for Class Certification on March 9, 2010 and appointed Silver Golub & Teitell as Class Counsel. (Doc. 224).

16. On July 1, 2011, this Court granted defendants' Cross-Motion for Summary Judgment and denied plaintiffs' Motion. (Doc. 251). Class Counsel appealed to the Second Circuit, resulting in direction of a Judgment in favor of plaintiffs on their First Amendment claims against the defendants in their official capacity and for equitable relief. *State Emp. Bargaining Agent Coalition v. Rowland*, 718 F.3d 126 (2d Cir. 2013). The Second Circuit also reversed this Court's prior dismissal of plaintiffs' individual capacity claims.

17. Subsequent to the Second Circuit's decision, the Office of the Attorney General entered an appearance in this action on behalf of the defendants in their official capacities and filed a petition for *certiorari* to the United States Supreme Court. After discussion with Class Counsel, the Attorney General agreed to withdraw the petition and to enter into settlement discussions with plaintiffs, without prejudice to the subsequent re-filing of the petition if the matter could not be resolved and proceeded to final judgment. The defendants, in their individual capacities, continued to be represented by private counsel and filed a petition for *certiorari* seeking review of the Second Circuit's reinstatement of plaintiff's individual capacity claims against them. Class Counsel submitted a response to the petition, which was denied in January 2014. *See Rowland v. State Employees Bargaining Agent Coalition*, 134 S.Ct. 1002 (2014).

18. In early 2014, counsel for the parties commenced settlement discussions with a view to obtaining a global resolution of this and the concurrent state court litigation. Those settlement discussions were conducted by Attorney Jonathan M. Levine and me from Silver Golub & Teitell along with Attorney Daniel E. Livingston from the firm of Livingston, Adler, Pulda, Meiklejohn, & Kelly, P.C., with senior counsel in the Office of the Attorney General on

behalf of the State of Connecticut. Those discussions took place over the course of 16 months, and involved numerous in-person and telephonic meetings with counsel from the Office of the Attorney General. In connection with those discussions, the parties engaged in extensive exchange of information concerning the employment histories of State employees who had been identified as members of the class. The parties also exchanged extensive information about the elements of compensation and benefits of State employees (and the methodology for calculating such benefits and policies applicable to promotions and salary increases). Both sides also engaged the assistance of economic experts to develop economic models for determining class-wide damages so as to effectuate a settlement.

19. As a result of the extensive back-and-forth during the settlement negotiation process and in the input of their respective economic experts, the parties subsequently determined that, rather than seeking a single settlement to be divided among all class members, a more just and efficient settlement could be achieved by agreeing to (a) a formula to be applied generally for calculating each class member's individual damages and (b) a protocol for determining and/or adjudicating such claims on an individual basis. The parties' discussions culminated in the development of a term sheet which was subsequently transformed into the proposed Settlement Agreement.

20. Both sides zealously pressed their positions throughout the negotiation process, and continued to do so through the process of negotiating the language for a term sheet and subsequently the formal written (24-page) Settlement Agreement presented to the Court.

21. The Settlement Agreement was subsequently presented to the Connecticut General Assembly, as required by Connecticut statute. The Agreement was approved by the

Judiciary Committee of the Connecticut General Assembly and subsequently approved by the full General Assembly by operation of Conn. Gen. Stats. § 3-125a.

22. During the nearly twelve years that the case has been litigated, Class Counsel have developed a comprehensive knowledge of the relevant facts and law by conducting extensive document discovery, and by engaging in substantial motions practice before this Court and the Second Circuit. Prior to agreeing to the Settlement, Class Counsel carefully considered the likelihood of obtaining a better result through continued litigation. Class Counsel have had an opportunity to conduct a full factual investigation in connection with this litigation, including the strengths and weaknesses of plaintiffs' claims and defendants' defenses as well as the litigation risk to the class of not settling. In Class Counsel's considered judgment, the Settlement is fair and appropriate and provides significant monetary relief to class members in a case of complexity and uncertain prospects. Accordingly, Class Counsel formally recommended the Settlement to SEBAC and its constituent unions, which voted to approve the Settlement on behalf of their respective memberships.

23. Class Counsel, Silver Golub & Teitell LLP, has extensive experience in class action litigation and in assessing the reasonableness of class action settlements, having served as lead class counsel in a number of federal and state court class actions, *see Oshonya Spencer, et al. v. Hartford Financial Services Group, Inc.*, 3:05-cv-1681 (JCH) (D. Conn.) (class action against national insurance company and its property and casualty subsidiaries on behalf of almost 22,000 nationwide class members challenging structured settlements entered into by defendant with personal injury claimants resulting in the creation of a \$72.5 million common fund); *Anglim v. Xerox Corporation*, Civ. No. B-83-251 J(EBB) (D. Conn.) (class action resulting in increased

benefits to a class of approximately 40,000 members of Xerox's pension plan); *Christiansen v. Chesebrough Pond's, Inc.*, No. 592 CV 727 (AHN) (D. Conn.) (class action resulting in severance awards to a class of 45 former employees of Chesebrough Pond's); *Town of New Hartford et al. v. Connecticut Resources Recovery Authority*, 291 Conn. 433 (2009) (class action on behalf of 70 Connecticut municipalities resulting in judgment in excess of \$35 million); *Rodriguez v. Progressive Northwestern Insurance Company*, No. UWY CV-00-0160554 S (X06) (Conn. Super. CLD at Waterbury) and *Diglio v. Nationwide Mutual Insurance Company*, No. UWY-CV-00-0161135 (X06) (Conn. Super. CLD at Waterbury) (class actions pursuant to the Connecticut Unfair Trade Practices Act and Unfair Insurance Practices Act on behalf of personal injury claimants whose personal injury claims were improperly settled by the defendant insurance companies in violation of Conn. Gen. Stats. § 52-572a).

24. Class Counsel also has extensive experience in litigating other complex actions. *See, e.g., State of Connecticut v. Philip Morris, Inc., et al.*, CV 96 0072414 S (Conn. Super. CLD at Waterbury); *United States ex rel. Douglas D. Keeth v. United Technologies Corporation*, Civ. No. H-89-323 (AHN)(D. Conn.). In *State of Connecticut v. Philip Morris*, Class Counsel served as private lead counsel for the State of Connecticut in the State's sovereign enforcement action against the tobacco industry, a case involving substantial CUTPA claims for relief. An independent panel of three former attorneys general concluded that the contribution of Connecticut's legal team to the national settlement was among the top five of the 57 states and other entities participating in the nation-wide settlement. This determination resulted in an increase in Connecticut's share of the national settlement by over \$350,000,000. In *United States ex rel. Keeth*, Class Counsel represented the relator in a complex False Claims Action brought

against United, resulting in a settlement of \$150,000,000 on behalf of the United States Government, then the largest such recovery under the False Claims Act; *see also Heidgerd v. Olin Corporation*, Civ. No. N-86-51 (TFGD) (D. Conn.), *aff'd*, 906 F.2d 903 (2d Cir. 1990) (action on behalf of 178 former employees of Olin Corp resulting in a multi-million dollar award of severance benefits to all plaintiffs).²

Fairness of the Settlement

25. On the basis of our considerable experience with complex litigation, Class Counsel determined that the proposed Settlement is fair, and we recommended its approval to the named plaintiffs and to the unions which voted its approval on behalf of their respective members, for the following reasons:

a. The Terms of the Settlement Are Favorable.

26. The Settlement provides for significant monetary relief (in both absolute terms and as a percentage of total actual loss) for the benefit of the members of the proposed Settlement Class. The Settlement Agreement provides that each class member who sustained economic loss as a result of the layoffs (or layoff orders) at issue in this litigation shall be entitled to receive substantial compensation for that economic loss, with a significant interest adjustment for the time value of money. And, for class members who have continuing economic losses – i.e., for

² Jonathan Levine and I have been the principal attorneys at Silver Golub & Teitell responsible for this litigation from the outset. I am a graduate of Yale College (1970) and Yale Law School (1973). I helped found and have been a partner at Silver Golub & Teitell since it was formed. Mr. Levine is a graduate of Harvard College (1986) and Yale Law School (1990). He joined the firm in 1990 upon graduation from law school, and became a partner on January 1, 1999. Both Attorney Levine's and my practices have focused on trial and appellate litigation of complex matters, and he and I have litigated together the substantial majority of the cases referred to in this Declaration.

those class members who have not been restored to where they would have been on their State employment career trajectory absent the layoffs at issue in this action – the Settlement Agreement further provides up to ten years of front pay and/or the opportunity, at the State’s discretion, for promotion, transfer or future salary increases to address those continuing losses. Class members are also entitled to reimbursement for lost pension benefits and the cost of COBRA coverage that they were required to incur or, in certain cases, the amount of unreimbursed medical expenses.

27. In addition, the Settlement Agreement also provides for awards of emotional distress/punitive damages to every member of the class – i.e., every member of the work force of the State of Connecticut who belonged to or was in a position destined for a unionized bargaining unit as of the date of the layoffs at issue in this action – for the chilling effect of the individual defendants’ conduct on class members’ exercise of their First Amendment rights, *whether or not those class members incurred actual economic loss as a result of the layoffs at issue in this litigation.*

28. The Settlement Agreement also provides for a simplified claims administration procedure designed to obtain prompt determination of class members’ claims. Under the expedited resolution procedure, the State will provide Class Counsel with a proposed calculation of each class members’ damages or lost compensation based on the employment records available to the State. These calculations will include not only the amount of wages lost as a result of the layoff or demotion, but also all additional consequential forms of economic harm, including lost (or reduced) step increases, differential or overtime pay, longevity pay, and any resulting impact to the class member’s pension benefit. If the class member believes the

calculation is accurate, the class member may settle his or her claim by accepting the proffered calculation.

29. The Settlement Agreement further assures class members continued legal representation (at no cost) in the determination of their respective damages. Under the Settlement Agreement, Class Counsel will represent class members in connection with the resolution of their individual claims for economic loss. If a class member disputes the State's proffered calculation, Class Counsel will help the class member develop a counter-offer to the State. And, if the parties continue to dispute the calculation after this process, the Settlement Agreement provides that Class Counsel will represent the class member in any adjudication of the class member's claims before the claims administrator or claims appeal panel.

30. Finally, the awards to class members will not be reduced in any way for attorneys' fees and costs in connection with prosecution of this (and the state court) action or the determination of their individual claims. Rather, such fees and costs will be paid directly to counsel by the State of Connecticut – which is also paying an additional sum to compensate for the anticipated administrative costs that counsel will incur in order to assist class members, as necessary, in the claims administration process. Under the Settlement Agreement, the State of Connecticut is also assuming all of the (considerable) costs of (a) first class mail notice to more than 3,700 class members, (b) email notice to all active State employees, (c) publication notice in eight separate Connecticut newspapers and USA Today on two separate occasions each, (d) obtaining salary, benefit, pension, and unemployment compensation information on each of more than 3,700 class members, (e) undertaking the initial calculation of economic damages for each of those more than 3,700 class members, and (f) mailing checks to all of the class members who

are no longer in active State service (likely in excess of 10,000) and who are entitled to receive their awards of damages in installment payments in lieu of vacation and personal time credit.

b. The Complexity, Expense, and Likely Duration of Continued Litigation and the Risks of Establishing Liability and Damages

31. The Settlement is also eminently fair in light of the certain complexity, expense and duration of continued litigation. Even with the mandate from the Second Circuit directing entry of summary judgment for plaintiffs on their official capacity claims in this action (the only claims on which plaintiffs have prevailed to date in either this or the state court litigation), further pursuit of plaintiffs' claims in court would have been procedurally complex, time-consuming and expensive. Absent settlement, the parties would have had to return to this Court for determination of any equitable relief available to class members with continuing losses due to the failure to have been restored to the positions they held prior to the layoff orders. Such litigation would have necessarily required extensive discovery and inquiry into, *inter alia*, (1) the availability of vacant positions in the State workforce that could potentially be used to remediate class members' continuing losses; (2) whether other positions could be developed or made available within the State workforce to provide equitable remedies to class members without running afoul of Eleventh Amendment proscriptions against payments of funds from the state treasury; and (3) whether individual class members were eligible and capable of filling any vacancies that might be available for an award of prospective equitable relief.

32. Significantly, because only the official capacity claims were adjudicated in the Second Circuit, class members' claims for *economic* damages would have had to be litigated in the separate pending proceeding in Connecticut Superior Court in Hartford. Based on the

parties' prior stipulation that resolution of the First Amendment claims in this action would control the determination in the state court actions of whether the plaintiffs in those cases had stated cognizable claims for adverse employment action in violation of the First Amendment, the Second Circuit's opinion would have been sufficient to enable plaintiffs to establish a *prima facie* case of a violation of Conn. Gen. Stats. § 31-51q, a statute that waives the State's sovereign immunity, in the state court litigation. But any defenses to plaintiffs' claims pursuant to Gen. Stats. § 31-51q have yet to be litigated.³

33. Even if liability were established, proof of damages would be complex and time consuming, requiring in particular, evidence as to whether each class member mitigated his or her damages and whether such efforts at mitigation were reasonable.⁴ In addition, to the extent that the compensatory damages made available in this Settlement were dependent on plaintiffs' individual capacity claims against defendants Rowland and Ryan, the Settlement obviates litigation of those individual capacity claims – including litigation of any defense of qualified immunity which might apply to those claims.

34. In short, in order for plaintiffs to obtain all of the elements of damages that have been recovered in the Settlement, plaintiffs would have had to continue the cases through

³ Discovery was stayed in the state court actions pending the Connecticut Supreme Court's review of the trial court's ruling on the motion to dismiss. The state court cases were subsequently stayed on remand from the Connecticut Supreme Court pending adjudication of this action.

⁴ Significantly, the Settlement Agreement in this action also substantially relaxes class members' burdens as to proof of mitigation, establishing a presumption as to the amount of mitigation for those class members who were laid off for a year or less, and, in the case of most class members laid off for longer than one year, calculating damages based on *actual* mitigation without requiring a demonstration that such actual mitigation efforts was reasonable.

multiple trials in two separate fora, at substantial expense to the class. Moreover, the availability and amount of punitive damages – under both federal and state law – had yet to be litigated, leaving substantial risk that attorneys’ fees and costs would be deducted from plaintiff class members’ recovery.

35. Absent this settlement, class members also faced the likelihood of significant further delay – in the litigation of potential available relief in this Court, in any subsequent appeal to the Second Circuit and in any subsequent petition for *certiorari* in the United States Supreme Court. And, of course, there were substantial risks that defendants could obtain a grant of *certiorari* and could prevail in the United States Supreme Court on their claims. And, even if the class was successful at both trials, defendants’ inevitable appeals would have been extremely costly not only in terms of Class Counsel’s fees and expenses, but also in terms of the protracted delay it would cause to the class.

c. The Reaction of the Class to the Settlement

36. Although a small number of the approximately 3,700 class members who were laid off, transferred or otherwise sustained economic loss as a result of the layoffs initially objected to the Settlement or sought to opt out of the Class, all of those individuals - after discussions with Class Counsel and further explanation of the terms of the Settlement - have withdrawn their objections and opt-out elections. *See* Notice Re Withdrawals of Objections and Opt-Out Elections filed this day (Doc. 284). The absence of any objections or opt-outs from Class members is “strong evidence” of the fairness of the Settlement. *See Grinnell*, 495 F.2d at 462; *Wal-Mart Stores, Inc.*, 396 F.3d at 119.

d. The Stage of the Proceedings and the Amount of Discovery Completed

37. As this Court is well aware from its active involvement in the management of this case, this action was heavily litigated for nearly twelve years. Defendants continuously asserted aggressive defenses, vigorously resisted discovery, and argued that the class would not prevail on the claims asserted and had pursued an interlocutory appeal to the Second Circuit (and had defended a second appeal to the Second Circuit by plaintiffs). By the time the Settlement was reached, Class Counsel had reviewed and analyzed more than 40,000 pages of documents produced by defendants, defended multiple substantive motions challenging plaintiffs' causes of action and engaged in extensive arm's-length settlement negotiations. Given the late stage of the proceedings and the extensive document discovery taken before the Settlement was negotiated, the extensive motions practice, and the multiple and rulings of this Court and of the Second Circuit, Class Counsel unquestionably had sufficient information – indeed, a full record – to evaluate the strengths and weaknesses of the claims and defenses asserted and the propriety of settlement. As a result, Class Counsel had a full understanding of the strength and weaknesses of the claims, as well as the difficulties they would face in obtaining a favorable jury verdict and surviving the inevitable appeal.

e. The Ability of the Defendants to Withstand a Greater Judgment

38. In assessing the fairness of the Settlement, this Court may also consider the defendants' ability to withstand a judgment greater than that secured by the Settlement. In this regard, the Court may properly consider that there is a risk that a greater judgment after a full trial and appeal would either enter during a period of substantial budgetary crisis in the State or contribute to creating one. Any such budgetary crisis, in turn, could create an economic necessity

justifying substantial layoffs of State employees – hurting the very class members the proposed Settlement seeks to help.

39. This risk, moreover, is certainly more than hypothetical: the State is currently experiencing a significant budget crisis and class members were only able to obtain the benefits of a certain recovery because the settlement process allowed the State the flexibility to offer those substantial benefits in kind (and/or to defer monetary outlays in exchange for the payment to class members of additional interest) – a flexibility which would be unavailable in the event of a judgment after litigation.

f. The Reasonableness of the Settlement in Light of the Best Possible Recovery and the Attendant Risks of Litigation

40. Finally, this Court may properly consider whether the settlement amount is reasonable in light of the possible recovery and the risks of litigating the case on the merits. When weighed against the risks of continued litigation, the proposed Settlement compares favorably with the result the Settlement Class could have obtained.

41. Under this Settlement, each class member who suffered actual economic damages as a result of the conduct at issue in this litigation will receive an economic damages award – in cash or in vacation pay equivalent equal to 70% of actual losses – and compensatory damages awards of up to \$1,500 or the equivalent of 15 vacation days. And every class member – i.e., every unionized State employee who was employed as of the date of the announced layoffs – will receive at least some damages, even in the absence of any actual out-of-pocket economic loss.

42. The Settlement also offers real value to every class member in the form of cost avoidance. The claims administration provisions in the Settlement Agreement require the State

to assume the burden and expense of many aspects of damages determination that would, in the absence of a settlement, otherwise be part of each individual plaintiff's burden of production and proof. Thus, pursuant to the Settlement, the State is undertaking to obtain the pay, benefit, pension, and unemployment compensation information necessary to calculate the economic damages of each of the class members who have sustained such damages and is further creating the computer programs necessary to calculate – and is actually performing the preliminary calculation of – the economic damages of each of those class members.

43. The State is also assuming the costs of administration of the Settlement – costs generally deducted from the ultimate recovery in class action litigation. These (substantial) costs include, *inter alia*: (a) the cost of printing and mailing first class mail notice to more than 3,700 class members, as well as the personnel costs to oversee that process; (b) the cost of publication notice in eight separate Connecticut newspapers and USA Today on two separate occasions each; (c) the personnel costs to obtaining the relevant information for determination of class members' economic damages and performing the necessary calculations; and (d) undertaking the initial calculation of economic damages for each of those approximately 3,700 class members, and (d) the cost of processing and mailing checks to all of the class members who are no longer in active State service (likely in excess of 10,000) and who are entitled to receive their awards of damages in installment payments in lieu of vacation and personal time credit. And, importantly, the State has also assumed responsibility for Class Counsel's attorneys fees, which would otherwise, contractually, have been deducted from plaintiffs' recoveries.

44. In light of the unpredictability of litigation and the inevitable appellate process (and the risk of reversal) that would otherwise follow, this very substantial Settlement falls

squarely within the “range of reasonableness.” See *Wal-Mart Stores, Inc. V. Visa U.S.A., Inc.*, 396 F.3d 96, 119 (2d Cir. 2005) (“there is a range of reasonableness with respect to a settlement—a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion”) (citation omitted); *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D.104, 129-30 (S.D.N.Y. 1997) (“Fundamental to analyzing a settlement's fairness is the need to compare the terms of the compromise with the likely rewards of litigation; ... This determination is not susceptible of a mathematical equation yielding a particular sum; but turns on whether the settlement falls within a range of reasonableness”) (citations omitted); *In re Michael Milken and Assoc. Sec. Litig.*, 150 F.R.D. 57, 67 (S.D.N.Y. 1993) (noting proposed settlement in Grinnell was 3.2% to 3.7% of the potential recovery); *In re Merrill Lynch Tyco*, 246 F.R.D. at 167 (“recovery of between approximately 3% and 7% of estimated damages is within the range of reasonableness for recovery in the settlement of large securities class actions.”) (citations omitted); *Hicks v. Stanley*, No. 01CV10071(RJH),2005 WL 2757792, at *7 (S.D.N.Y. Oct. 24, 2005) (finding a settlement representing 3.8% of plaintiffs' estimate to be within the range of reasonableness).

Arms' Length Negotiation and Reasonableness of Attorneys' Fees

45. Subsequent to the negotiation of the settlement terms with respect to both the economic damages to be paid to those class members who sustained actual economic damages and the compensatory damages to be paid to the union membership – and after all of those terms were agreed upon – the parties separately negotiated provisions for Class Counsel's attorneys' fees and costs. The parties agreed that such attorneys' fees and costs would be paid directly by

the State and will not be deducted from the class members' individual claim proceeds. Pursuant to the Settlement, the State of Connecticut has agreed to pay directly to Class Counsel 17.5% of the value of the award to each class member. The State has further agreed to pay Class Counsel an additional \$400,000.00 in reimbursement of litigation expenses in this action – including both litigation expenses incurred up to the date of the Settlement Agreement as well as expenses anticipated in connection with the administration of the Settlement. The State has also agreed to pay the law firm of Livingston, Adler, Pulda, Meiklejohn, & Kelly, P.C., the sum of \$250,000.00 for legal services rendered by that firm to the plaintiff unions in connection with this action (and the concurrent state court litigation).

46. These provisions for direct payment of counsel's attorneys' fees and costs by the State were the product of an arms'-length negotiation. Class Counsel's fee agreements with the individual plaintiffs in the state court actions pursuant to Gen. Stats. § 31-51q – which is the principal legal basis for award of lost wages and economic damages – provided for a contingent fee of 33 1/3%, a customary fee agreement in Connecticut for cases of this type. [A copy of Class Counsel's contingency fee agreement with the lead named plaintiff in the *Conboy* action is attached hereto as Exhibit A.] During the settlement discussions with the State, Class Counsel agreed to compromise any claim for prevailing party legal fees at 17.5%.

47. During the negotiations for the Settlement Agreement, the parties were also aware that Class Counsel was separately entitled to recovery of prevailing party attorneys' fees in this action, pursuant to 42 U.S.C. § 1988. *See Missouri v. Jenkins*, 491 U.S. 274, 283 (1989). As part of the compromise during the negotiations, Class Counsel agreed to waive any claim for fees pursuant to § 1988. That compromise was significant. Up to the time of the negotiations for the

Settlement Agreement, Class Counsel had expended in excess of 2,500 hours of legal time in the prosecution of this action, with a resulting lodestar in excess of \$1.4 million. Since the finalization of the Settlement Agreement at the end of April 2015, Class Counsel have expended hundreds of additional hours of time:

- preparing the necessary pleadings for preliminary and final approval of the settlement (including the mail and publication notices);
- working with representatives of the relevant State of Connecticut agencies (and reviewing plaintiffs' own documentation) to develop the necessary databases of class members to effectuate the Settlement;
- developing the SEBAC Class Action website and the other elements of the Court-approved Notice Program;
- monitoring the success of the efforts to provide class notice;
- working with representatives of the relevant State of Connecticut agencies to develop the protocol for calculation of individual class members' economic damages;
- working with representatives of the relevant State of Connecticut agencies and with Judge Fitzsimmons to develop the protocol and infrastructure for the claims administration and adjudication process; and
- maintaining ongoing contact with the class membership, including responding to hundreds of email and telephone contacts concerning the Settlement.

48. Moreover, Class Counsel's responsibility to the class is ongoing: As part of the settlement, Class Counsel has undertaken to represent each of approximately 3,700 individual class members who received mail notice or otherwise sustained economic damages in the administrative process created by the Settlement Agreement to determine and/or adjudicate class members' claims for economic damages, including through any appeals to the Claims Administrator or the Claims Appeal Panel established by the Agreement. Class Counsel

estimate, conservatively, that such representation will entail anywhere between one and ten hours per class member, with the more complicated cases (or those requiring hearings before the Claims Administrator), requiring well in excess of 10 hours per claimant. Class Counsel only recover a fee on those class members' recoveries when each class member's economic damages are agreed upon or adjudicated.

49. Based on all of the above, Class Counsel respectfully submit that the proposed Settlement is fair, reasonable and adequate and should be approved by the Court. Class Counsel further respectfully submit that the provisions in the Settlement Agreement for payment of attorney's fees and costs are fair and reasonable and should be approved by the Court.

I declare pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the foregoing is true and correct.

Executed on September 21, 2015.

/s/ David S. Golub
DAVID S. GOLUB

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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EXHIBIT A

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January 13, 2006

Robert Conboy
35 Northfield Drive
East Hartford, CT 06118

RE: Robert Conboy, et al v. State of Connecticut
Our File No. 16,404

Dear Bob:

I am writing to confirm that you have authorized this office to institute an action against the State of Connecticut arising out of the State's termination of state union member employees in 2002-03. Enclosed is a copy of the Complaint that has been served on the State of Connecticut and filed with the court. As we discussed, the action seeks relief on behalf of you (and three other named plaintiffs) and further seeks class certification for all terminated state union employees. I will keep you advised of developments in the case.

I am also writing to set forth our agreement concerning my firm's representation of you in connection with the action. As we discussed, my firm is willing to represent you on a contingent fee basis, with our fee equal to 33 1/3 percent of any recovery obtained by way of judgment or settlement, (with a credit for any attorneys' fees that may be awarded by the court). My firm, or SEBAC, will be responsible for payment of any costs incurred in litigating the action.

In addition, as I believe I indicated to you in our telephone discussion, in the event that the actions certified as a class action, we will review and modify as appropriate the contingency fee provisions set forth above to insure that the percentage remains appropriate in light of the increased potential recovery.

I would request that you confirm your understanding and approval of this letter and fee agreement by signing the enclosed copy of this letter and returning it to me.

SILVER GOLUB & TEITELL LLP

Robert Conboy
January 13, 2005
Page 2

Of course, if you have any questions concerning this letter or the fee agreement or wish to discuss it further, please give me a call.

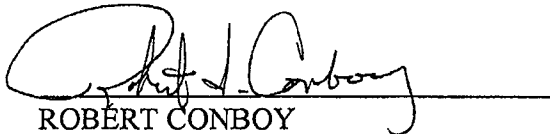
Very truly yours,



DAVID S. GOLUB

DSG/ng
Enclosures

AGREED TO:


ROBERT CONBOY

DATED: 01/21/2006