STATE OF MICHIGAN

COURT OF CLAIMS

GRANT BAUSERMAN and TEDDY BROE, individually and on behalf of a class of similarly-situated persons,

Plaintiff,

v

STATE OF MICHIGAN UNEMPLOYMENT INSURANCE AGENCY,

Defendant.

Case No. 2015-202-MM

HON. DOUGLAS B. SHAPIRO

_______________________________/

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UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF AMENDED SETTLEMENT AGREEMENT DATED NOVEMBER 14, 2022, CERTIFICATION OF SETTLEMENT CLASS PURSUANT TO MCR 3.501(B)(3)(B), APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL, APPOINTMENT OF MEGAN NORRIS AS SPECIAL MASTER, APPOINTMENT OF ANALYTICS CONSULTING LLC AS CLAIMS ADMINISTRATOR, APPROVAL OF PROPOSED CLASS NOTIFICATION PLAN, APPROVAL OF PROPOSED CLASS NOTICE, APPROVAL OF PROPOSED PLAN OF ALLOCATION, APPROVAL OF CLASS REPRESENTATIVE SERVICE AWARDS, APPROVAL OF ATTORNEY FEES, COSTS OF LITIGATION AND ADMINISTRATIVE COSTS, AND APPROVAL OF CASE MANAGEMENT ORDER AND TIMELINE

INTRODUCTION

Plaintiffs Grant Bauserman and Teddy Broe, by and through their attorneys, move for an Order certifying this action as a class action, for settlement purposes only, pursuant to MCR 3.501 of the Michigan Rules of Civil Procedure. Along with with class certification, Plaintiffs also request that the Court approve the Amended Settlement Agreement, appoint Bauserman and Broe as Class Representatives, appoint Plaintiffs' counsel as Class Counsel, appoint Megan Norris as special master, appoint Analytics Consulting LLC as Claims Administrator, approve the proposed class notification plan, approve the proposed class notice, approve the proposed plan of allocation, approve representative service awards, approve attorney fees, costs of litigation, and administrative costs, and approve the case management order and timeline. Defendant does not oppose the requested relief. The Court has scheduled a hearing on these issues for January 9, 2023.

RELIEF REQUESTED

1. Plaintiffs seek certification of a settlement class defined as follows:

> Those individuals who received an initial Determination or Re-Determination of Intentional Misrepresentation issued by the Agency between October 1, 2013, and August 31, 2015, issued initially through the Agency's auto-adjudication process, and suffered a first Collection on or after March 9, 2015, and who does not opt-out of the Settlement.

2. Plaintiffs request that the Court Approve the Settlement Agreement.

3. Plaintiffs request that the Court Certify the Settlement Class pursuant to MCR 3.501 (B)(3)(B).

4. Plaintiffs Grant Bauserman and Teddy Broe request that they be appointed class representatives.

5. Plaintiffs further request that their counsel, Pitt, McGehee, Palmer, Bonanni & Rivers, PC, be appointed as class counsel.

6. Plaintiffs request that Megan Norris be appointed Special Master.

7. Plaintiffs request that Analytics Consulting be approved as Claims Administrator.

8. Plaintiffs request their proposed Method of Notice of the Settlement to the Settlement Class be approved by this Court.

9. Plaintiffs request that the Court approve the Proposed Plan of Allocation.

10. Plaintiffs request that the Court approve the proposed class representative service awards.

11. Finally, Plaintiffs request that the Court approve Plaintiffs' request for attorney fees, reimbursement of costs, set aside for administrative costs and approve the case management order and timeline.

12. In support of this motion, Plaintiffs rely upon the Brief and Declaration filed contemporaneously with this motion.

13. Defendant does not oppose this motion.

Respectfully submitted,

PITT, MCGEHEE, PALMER & RIVERS, P.C.

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Dated: December 16, 2022

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BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF AMENDED SETTLEMENT AGREEMENT DATED NOVEMBER 14, 2022, CERTIFICATION OF SETTLEMENT CLASS PURSUANT TO MCR 3.501(B)(3)(B), APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL, APPOINTMENT OF MEGAN NORRIS AS SPECIAL MASTER, APPOINTMENT OF ANALYTICS CONSULTING LLC AS CLAIMS ADMINISTRATOR, APPROVAL OF PROPOSED CLASS NOTIFICATION PLAN, APPROVAL OF PROPOSED CLASS NOTICE, APPROVAL OF PROPOSED PLAN OF ALLOCATION, APPROVAL OF CLASS REPRESENTATIVE SERVICE AWARDS, APPROVAL OF ATTORNEY FEES, COSTS OF LITIGATION AND ADMINISTRATIVE COSTS, AND APPROVAL OF CASE MANAGEMENT ORDER AND TIMELINE.

STATEMENT OF ISSUES PRESENTED

1. Should the Court certify the Settlement Class, which satisfies the requirements of MCR 3.501 for class certification?

   Answer: Yes.

2. Should the Court appoint Plaintiffs Grant Bauserman and Teddy Broe as Class Representatives?

   Answer: Yes.

3. Should the Court appoint Plaintiffs' counsel as counsel for the class?

   Answer: Yes.

4. Should the Court grant preliminary approval of the Class Action Settlement?

   Answer: Yes.

5. Should the Court approve the proposed Class Notice?

   Answer: Yes.

6. Should the Court approve the proposed Class Notification Plan?

Answer: Yes.

7. Should the Court appoint Analytics Consulting LLC as Claims Administrator?

Answer: Yes.

8. Should the Court approve the proposed Plan of Allocation?

Answer: Yes.

9. Should the Court appoint Megan Norris as Special Master?

Answer: Yes.

10. Should the Court approve Plaintiffs' requested attorney fees, reimbursement of costs, and a set-aside of money from the settlement for administrative costs?

Answer: Yes.

11. Should the Court approve service awards to Class Representatives Bauserman and Broe?

Answer: Yes.

12.Should the Court approve the proposed Case Management Order and Timeline?

Answer: Yes.

CONTROLLING AUTHORITY

Cases

A&M Supply Co v Microsoft Corp, 252 Mich. App. 580 (2002) 13
Amchem Prods., Inc. v. Windsor, 521 U.S. 591 (1997). 10
Bauserman et al v. Unemployment Agency, 503 Mich 169 (2019) 12
Cotter v. Lyft, Inc, 176 F. Supp. 3d 930 (ND Cal 2016) 18
Cypress v. Newport News General and Nonsectarian Hospital Ass'n, 375 F.2d 648 (4th Cir.1967) 11
Fernandez v. Victoria Secret Stores, LLC,
No. 06 Civ. 04149, 2008 WL 8150856 (C.D. Cal. July 21, 2008) 19
Grigg v Michigan National Bank, 405 Mich 148 (1979) 14
Hanlon v. Chrysler Corp., 150 F.3d 1011 (9th Cir. 1998) 16
Hill v City of Warren, 276 Mich. App. 299 (2007) 13
In re American Medical Systems, Inc, 75 F3d 1069 (6th Cir 1996) 14
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In re Tableware Antitrust Litig., 484 F. Supp. 2d 1078 (N.D. Cal. 2007) 17
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Ruch v. AM Retail Grp, Inc, No. 14-cv-05352-MEJ, 2016 WL 1161453 (N.D. Cal. Mar. 24, 2016) 17
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Young v. Nationwide Mut. Ins. Co., 693 F.3d 532 (6th Cir. 2012) 11
Zine v. Chrysler Corp., 236 Mich. App. 261 (1999) 11, 12

Rules

MCR 3.501 .... passim

Other Authorities

Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions § 11:22 (4th ed. 2002) 16
Manual for Complex Litigation §§ 21.632-634 (4th ed. 2004) 15

I. Introduction.

Plaintiffs Grant Bauserman and Teddy Broe ("Plaintiffs"), on behalf of themselves and the class they seek to represent, allege that, after separating from their employer, they were subjected to unconstitutional fraud determinations and/or collection practices by Defendant, the State of Michigan Unemployment Insurance Agency ("UIA" or "Agency"). After years of litigation and months of negotiations, the parties have reached a proposed settlement ("Settlement Agreement"), which, if approved by the Court, would resolve the Plaintiffs' claims and those of other similarly situated Michigan residents who were subjected to Defendant's inaccurate fraud determination and/or collection practices.

Plaintiffs seek certification, *for settlement purposes only*, of the following class:

> Those individuals who received an initial Determination or Re-Determination of Intentional Misrepresentation issued by the Agency between October 1, 2013, and August 31, 2015, issued initially through the Agency's auto-adjudication process, and suffered a first Collection on or after March 9, 2015, and who does not opt-out of the Settlement.

For the reasons explained below, the Settlement Class should be certified, the Settlement Agreement should be approved, Grant Bauserman and Teddy Broe should be named class representatives, Plaintiffs' counsel Pitt, McGehee, Palmer, Bonanni & Rivers should be appointed class counsel, Megan Norris should be named Special Master, Analytics Consulting LLC should be named claims administrator, the proposed class notification plan and notice should be approved, the proposed plan of allocation should be approved, the proposed class representative service awards should be approved, and Plaintiffs' request for attorney fees, reimbursement of costs, and proposed set aside for administrative costs should be approved.

Defendant does not oppose Plaintiffs' motion.

II. Background.

A. Statement of Facts.

On September 30, 2013, the UIA implemented an automated decision-making system known as the Michigan Integrated Data Automated System ("MiDAS"). Plaintiffs are former recipients of unemployment compensation benefits who allege that the UIA, using MiDAS, unlawfully seized their property without affording due process of the law.

Plaintiff Grant Bauserman received unemployment insurance payments from October 2013 through March 2014. In October 2014, the UIA sent Bauserman and his former employer, Eaton Aeroquip ("Eaton"), a questionnaire regarding suspected earnings that Bauserman received from Eaton while he was receiving unemployment compensation. Bauserman was assessed by the UIA as owing $19,910 in overpayments, penalties, and interest for intentionally misleading the Agency and/or concealing information to obtain compensation for which he was not eligible. Ultimately, on June 16, 2015, the UIA intercepted Bauserman's state and federal income tax refunds. On September 9, 2015, Bauserman filed a putative class action against the Agency in the Michigan Court of Claims alleging that the UIA's seizure of his refunds violated the due process clause in Article I § 17 of the Michigan Constitution.

On October 19, 2015, Bauserman filed an amended complaint which added the second named class representative, Teddy Broe, as a named plaintiff to the action. From April 2013 to August 2013, Broe received unemployment compensation for which he had initially been determined eligible as he had been laid off by his employer Fifth Third Bank ("Fifth Third" or "Bank"), which the Bank contested as voluntary, prompting requests for information from the Agency. As a result, the UIA informed Broe that he owed $8,302 in overpayments, penalties, and interest. In May 2015, the Agency intercepted Broe's state and federal tax refunds.

B. Procedural History and Settlement Discussions.

Plaintiffs filed this action in the Court of Claims on September 9, 2015, and filed an amended complaint on October 19, 2015. In lieu of filing an answer, Defendant filed a motion to dismiss Plaintiffs' Complaint. Defendant's motion argued, in part, that Plaintiffs' claims were not timely filed pursuant to the notice provisions of the Court of Claims Act, specifically arguing that Plaintiffs claims "accrued" more than six months prior to the filing of the complaint. Defendant also argued that Plaintiffs could not bring a claim for damages against an agency of the State of Michigan for violation of the Michigan Constitution. On May 10, 2016, the Court issued an opinion and order denying Defendant's motion, holding that Plaintiff's claims were timely and that Plaintiffs stated a claim for damages. Defendant appealed.

On July 18, 2017, the Court of Appeals reversed the Court of Claims, holding that the six-month notice period began to run "on the date that defendant notified them of their alleged fraudulent conduct, and the impact it would have on their unemployment benefits." *Bauserman v. Unemployment Ins Agency*, No. 333181, 2017 WL 3044120, at *7 (Mich App July 18, 2017), aff'd in part, rev'd in part, 503 Mich 169, 931 NW 2d 539 (2019). The Court of Appeals did not reach the second issue raised on appeal – whether Plaintiffs could obtain a remedy of money damages for Defendant's violation of the State Constitution.

On April 5, 2019, the Michigan Supreme Court reversed the Court of Appeals, holding that Plaintiffs' claims were timely because they did not incur an "actionable harm" in their due process claims until they were deprived of their property when their income tax refunds were seized, or their wages were garnished, and Plaintiffs filed their complaint within six months of the actual seizure or garnishment giving rise to their claims. *Bauserman v Unemployment Ins Agency*, 503 Mich 169, 190, 193, 931 NW 2d 539 (2019) (Docket No. 156398). The Supreme Court remanded

the case to the Court of Appeals to consider Defendant's second argument – whether Plaintiffs could bring a claim for money damages against an agency of the State of Michigan for the alleged violation of Art. I § 17 of the Michigan Constitution.

On remand, the Court of Appeals affirmed the trial court's decision denying summary disposition, holding that the plaintiffs' allegations, "if established to be true and correct, certainly demonstrate that plaintiffs' rights to due process as guarded by Const. 1963, art. 1, § 17 were violated, and that the alleged violations 'arose from actions taken by state actors pursuant to governmental policy.'" *Bauserman (on remand)*, No. 333181, 2019 WL 6622945, at *8 (quoting *Mays v Snyder*, 323 Mich App at 64, 916 NW 2d 227).

On July 26, 2022, the Michigan Supreme Court affirmed the Court of Appeals, holding that Plaintiffs had alleged a cognizable constitutional tort claim for which Plaintiffs could recover money damages to enforce their rights under Const 1963, art 1 § 17. The Supreme Court held that a damages remedy was proper because enforcement of art 1 § 17 was not delegated to the Legislature and because no other adequate remedy exists to redress the alleged violations of Plaintiffs' rights.

With the assistance of a neutral mediator, the parties engaged in extensive settlement negotiations throughout most of 2022. In August 2022, the parties ultimately agreed to a final settlement in the amount of $20,000,000. The parties executed a Settlement Agreement. (See Exhibit 1). Plaintiffs now seek to certify the proposed Settlement Class so that the terms of the Settlement Agreement can be presented to the Court for preliminary approval and distribution of notice. Along with class certification, Plaintiffs also request various forms of administrative relief to effectuate the Class Settlement, as summarized above. Defendants do not oppose the relief requested in this motion.

III. The Court Should Certify the Settlement Class.

Plaintiffs have adequately pled a basis for Class status. Exhibit 2, Amended Complaint. Plaintiffs preserved their right to Class status by filing a proper Motion for Class Certification within the term permitted by MCR 3,501(B)(1)(a) (91 days after the Complaint is filed). The trial court did not rule on the Motion for Class Certification because of the pending appeals.

Classes certified for settlement purposes, like classes certified for the litigation process, must meet the requirements of MCR 3.501(A)(1).[1] *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). A class is properly certified under MCR 3.501(A)(1) where:

(a) The class is so numerous that joinder of all members is impracticable;

(b) There are questions of law or fact common to the members of the class that predominate over questions affecting only individual class members;

(c) The claims or defenses of the representative parties are typical of the claims or defenses of the class;

(d) The representative parties will fairly and adequately assert and protect the interests of the class; and

(e) The maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenience administration of justice.

(Emphasis added)

As explained below, the Settlement Class satisfies each of the requirements of the rule.

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[1] "[T]he rules governing class certification in MCR 3.501(A) very closely mirror the federal prerequisites for class certification found in" Fed. R. Civ. P. 23. *Henry v. Dow Chemical Co.*, 484 Mich. 483, 503 (2009). Thus, Michigan Courts often rely on federal case law construing Fed. R. Civ. P. 23. *See Neal v. James*, 252 Mich. App. 12, 21 (2002) *overruled on other grounds by Henry .v. Dow Chemical Co.*, 484 Mich. 483 (2009). Thus, where relevant, Plaintiffs rely on similar provisions of federal law.

A. Plaintiffs Have Satisfied the Numerosity Requirement.

To satisfy numerosity, the settlement class must be "so numerous that joinder of all members is impracticable." MCR 3.501(A)(1)(a). "While no strict numerical test exists, 'substantial' numbers of affected consumers are sufficient to satisfy this requirement." *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 541 (6th Cir. 2012). "There is no particular minimum number of members necessary to meet the numerosity requirement, and the exact number of members need not be known as long as general knowledge and common sense indicate that the class is large." *Zine v. Chrysler Corp.*, 236 Mich. App. 261, 288 (1999). Generally, when a class consists of 25 or more individuals, joinder is presumed to be impracticable. *Talbott v. GC Services Ltd Partnership*, 191 FRD 99, 102 (W.D. Va 2000); *In Re Kirschner Medical Corporation Securities Litigation*, 139 F.R.D. 74, 78 (D.Md.1991); *see also Zeidman v. J. Ray McDermott & Co.*, 651 F.2d 1030, 1038 (5th Cir.1981) (recognizing that courts certify classes with 25-30 members); *Philadelphia Elec. Co. v. Anaconda Am. Brass Co.*, 43 F.R.D. 452 (E.D.Pa.1968) (certifying class with 25 members) (finding "no necessity for encumbering the judicial process with 25 lawsuits, if one will do."); *Cypress v. Newport News General and Nonsectarian Hospital Ass'n*, 375 F.2d 648, 653 (4th Cir.1967) (certifying class with 18 members).

In the present case, the Settlement Class is so numerous as to make joinder impracticable. According to Defendant's records, more than 8,000 class members received initial Determinations or Re-Determinations of Intentional Misrepresentation automatically issued by MiDAS between October 1, 2013, and August 31, 2015, and suffered a collection action without due process- in the time frame established in the class definition.[2] General knowledge and common sense dictate that

[2] To qualify as a Class Member, the recipient of UIA benefits must have experienced their first collection activity on or after March 9, 2015. This is because, in the first appeal, the Michigan Supreme Court held that while the complaint was timely filed under the Court of Claims Act, only

this class of 8,000 people is so substantial in size as to satisfy the numerosity requirement, or else risk thousands of individual actions against the agency. Plaintiffs have therefore satisfied the numerosity requirement.

B. Plaintiffs Have Satisfied the Commonality Requirement.

To satisfy Commonality, there must exist "questions of law or fact common to the members of the class that predominate over questions affecting only individual members." MCR 3.501(A)(1)(b). Commonality "is concerned with whether there 'is a common issue the resolution of which will advance the litigation.'" *Zine*, 236 Mich App at 289. "[A] common question is one where the same evidence will suffice for each member to make a prima facie showing or the issue is susceptible to generalized, class-wide proof." *Tyson Foods, Inc v Bouaphakeo*, 577 U.S. 442, 452 (2016).

In the present case, members of the Settlement Class share a common question of fact and law that predominates over any question affecting only individual members. Settlement Class members were all subjected to a government taking without due process when they were auto-adjudicated for Intentional Misrepresentation or Fraud by the UIA. All class members were thus forced to pay, or had their tax refunds intercepted, without the opportunity to present exculpatory evidence or otherwise be heard. Every Settlement Class member's claim arises out of this lack of due process. Although the amount of damages per individual class member is varied, "the amount of damages need not be uniform as long as the trial court has some basis for concluding that all members of the class had a common injury that could be demonstrated with generalized proof, rather than evidence unique to each class member." *Hill v City of Warren*, 276 Mich. App. 299,

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those individuals that had money taken by the Agency for the first time within six months of the filing of Plaintiffs' original complaint (on or after March 9, 2015) could maintain a claim against the Agency. *Bauserman et al v. Unemployment Agency*, 503 Mich 169 (2019) (Bauserman I).

312 (2007), quoting *A&M Supply Co v Microsoft Corp*, 252 Mich. App. 580, 588 (2002). Here, the UIA possesses documentation reflecting each class member's monies owed. Therefore, commonality is satisfied.

C. Plaintiffs Have Satisfied the Typicality Requirement.

To satisfy Typicality, "the claims or defenses of the representative parties [must be] typical of the claims or defenses of the class." MCR 3.501(A)(1)(c). This "directs the court 'to focus on whether the named representatives' claims have the same essential characteristics as the claims of the class at large.'" *Neal v. James*, 252 Mich. App. 12, 21 (2002) overruled on other grounds by *Henry v. Dow Chemical Co.*, 484 Mich. 483 (2009). "[T]he representative's interests [must] be aligned with those of the represented group, and in pursing [their] own claims, the named plaintiff[s] [must] also advance the interests of the class members." *Young*, 693 F.3d at 542. Typicality and commonality are similar and tend to merge. *Gen Tel Co of the Southwest v Falcon*, 457 US 147, 157 n 13 (1982).

In the present case, the claims of representatives Bauserman and Broe are the same as those of the Settlement Class members. The UIA engaged in the same wrongful conduct towards Bauserman and Broe as it did the members of the class. Bauserman and Broe's claims are typical cases with essential characteristics that are reflected across the entire class. All class members, including Bauserman and Broe, were deprived of property without specific notice or an opportunity to be heard or present evidence, and all were auto-adjudicated guilty of fraud. These are the "same essential characteristics as the claims of the class at large." *Neal*, 252 Mich. App. at 121. As a result, typicality is satisfied.

D. Plaintiffs Have Satisfied the Adequacy Requirement.

To satisfy adequacy, "the representative parties [must] fairly and adequately assert and protect the interests of the class." MCR 3.501(A)(1)(d). A named plaintiff is an adequate class representative if he or she will pursue the rights of the class vigorously through qualified counsel. *In re American Medical Systems, Inc*, 75 F3d 1069, 1083 (6th Cir 1996); *Grigg v Michigan National Bank*, 405 Mich 148, 175 (1979); *Smolen v Dahlmann Apartments Ltd*, 127 Mich App 108, 121 (1983).

Throughout the course of litigation over the past seven years, Plaintiffs Bauserman and Broe have proven themselves to be zealous advocates of the class and have committed themselves to fulfilling this duty for the Settlement Class. Bauserman and Broe have suffered the same injury as the prospective Class Members. Plaintiffs and class members share identical interests of recovery, and therefore Plaintiffs' interests are not antagonistic to the Settlement Class as a whole, consistent with *Neal*, 252 Mich. App. 22.

Moreover, class counsel Michael L. Pitt, Jennifer L. Lord, Kevin M. Carlson, and Beth M. Rivers possess decades of experience with class action litigation, having litigated this case alone for seven years to a successful resolution.

For these reasons, Plaintiffs and Plaintiffs' Counsel have demonstrated their commitment to the Settlement Class and have satisfied the Adequacy requirement.

E. Plaintiffs Have Satisfied the Superiority Requirement.

Superiority is satisfied where "the maintenance of the action as a class action [is] superior to other available methods of adjudication in promoting the convenient administration of justice." MCR 3.501(A)(1)(e). In other words, a "class action, rather than individual suits, [are] the most convenient way to decide the legal questions presented, making a class action a superior form of

action." *A&M*, supra, at 601. "Use of the class method is warranted [where] … class members are not likely to file individual actions [and] the cost of litigation … dwarf[s] any potential recovery." *In re Whirlpool Corp. Front-Loading Washer Prods. Liability Litig.*, 722 F.3d 838, 861 (6th Cir. 2013).

The impracticality of some 8,000 plus individual recovery actions demonstrates that a class action is the superior method of adjudication that would promote the convenient administration of justice for all parties and for the Court. The central question of law and fact at issue here is shared by every Settlement Class member. While some claimants' recoveries may be in the thousands and others in the hundreds, it is unlikely that any individual class member has damages high enough to a pursue separate action against the Agency. A class action provides the most equitable and efficient pathway to ensure settlement funds are disbursed to eligible claimants regardless of their damage amount. For these reasons, a certified Settlement Class is the superior method of resolution.

IV. The Court Should Appoint Plaintiffs Grant Bauserman and Teddy Broe Class Representatives and Their Counsel as Class Counsel.

Throughout the course of litigation over the past seven years, Plaintiffs Bauserman and Broe have proven themselves to be zealous advocates of the class and have committed themselves to fulfilling this duty for the Settlement Class. Bauserman and Broe have suffered the same injury as the prospective Class Members. Plaintiffs and class members share identical interests of recovery, and therefore Plaintiffs' interests are not antagonistic to the Settlement Class as a whole, consistent with *Neal*, 252 Mich. App. 22.

Moreover, class counsel Michael L. Pitt, Jennifer L. Lord, Kevin M. Carlson, and Beth M. Rivers possess decades of experience with class action litigation, having litigated this case alone for seven years to a successful resolution.

Michael Pitt has successfully served as Class Counsel in numerous complex cases including the Flint Water Cases (currently in claims administration phase, $625 million settlement), Doe v MDOC (juvenile assault case, $90 million compensation fund created), Neal v MDOC (female prisoner assault case, $100 million compensation fund created), Saginaw Jail Case (Strip search case $1 million compensation fund created), Livingston Jail case (gender disparity and privacy claims $980,000 compensation fund created), Gilford Case (race and age case against DTE, $45 million compensation fund created), and Ford Motor case (age discrimination case, $12 million compensation fund created).[3]

Furthermore, Plaintiffs' counsel, using their expertise, have prepared the necessary framework for a responsible, equitable, and efficient disbursement of funds to the Settlement Class. Therefore, counsel should be appointed Counsel of the Settlement Class.

Bauserman and Broe have fulfilled the full scope of their duties as class representatives and with the assistance of Class Counsel will continue to do so. The Court should appoint them class representatives.

V. The Court Should Approve the Class Settlement.

A. General principles governing class settlement approval.

The Amended Settlement Agreement is presented to the Court for approval. Exhibit 1, Amended Settlement Agreement dated November 14, 2022.

Settlement approval "involves a two-step process in which the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted." *Nat'l Rural Telecomm. Coop. v.*

[3] Proposed class counsel Beth Rivers, Jennifer Lord, and Kevin Carlson's qualifications are detailed in the request for attorney fees below.

DirectTV, Inc., 221 F.R.D. 523, 525 (C.D. Cal. 2004); see also Manual for Complex Litigation §§ 21.632-634 (4th ed. 2004). As a general rule, "[t]he validity of use of a temporary settlement class is not usually questioned." Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions § 11:22 (4th ed. 2002).

Preliminary approval first requires a determination that the settlement class meets the requirements for class certification and second that the settlement is fair, reasonable, and adequate. *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1025-26 (9th Cir. 1998). For the reasons set forth above, the settlement class meets the requirements for class certification. For the reasons set forth below, the proposed settlement is fair, reasonable, and adequate. Typically, this analysis reviews the proposed agreement for "obvious deficiencies," with preliminary approval granted if the settlement is non-collusive and within the range of possible final approval. *In re Tableware Antitrust Litig*., 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007); see also *Ruch v. AM Retail Grp, Inc*, No. 14-cv-05352-MEJ, 2016 WL 1161453, at *11 (N.D. Cal. Mar. 24, 2016)(focusing preliminary approval on "non-collusive negotiations," the lack of "obvious deficiencies," and "preferential treatment," and whether the overall settlement is "within the range of possible approval"); Alba Conte and Herbert B. Newberg, 4 Newberg on Class Actions, § 11.41 (4th ed. 2006).

At the preliminary stage, Courts may focus on the following factors, which are also further assessed at the final approval stage: (1) "the strength of the plaintiffs' case," "the risk, expense, complexity, and likely duration of further litigation," and "the risk of maintaining class action status throughout the trial," (2) the amount offered in settlement," (3) "the extent of discovery completed and the stage of the proceedings," and (4) the experience and views of counsel." *Hanlon*, 150 F.3d at 1026. In addition, courts review "the presence of a governmental participant"

and "the reaction of the class members to the proposed settlement." *Id*. In this case, Defendant is a "governmental participant," and the reaction of class members cannot be measured at this stage.

B. Litigation concerns regarding strength, risk, expense, complexity, and duration all support approval of the proposed class settlement.

Here, while Plaintiffs are confident in the merits of their case, they also recognize that there are significant concerns regarding the expense, complexity, and duration of further litigation, which would involve costly electronic discovery, depositions, lengthy trial proceedings, and possible appeals. The proposed settlement achieves a substantial recovery for the Plaintiff class members while avoiding the risk, expense, complexity, and extended duration of further litigation.

C. The settlement amount is appropriate.

"[P]erhaps the most important factor" courts consider in determining whether to grant preliminary approval is "plaintiffs' expected recovery balanced against the value of the settlement offer." *Cotter v. Lyft, Inc*, 176 F. Supp. 3d 930, 935 (ND Cal 2016)(internal quotation marks omitted).

In this case, the total exposure is readily ascertainable. The parties worked with a neutral mediator to facilitate disclosure of the total amount of money that was taken from all potential class members within the time period for damages claims. The information disclosed through the mediation process shows that the total exposure for economic damages claims is $11,450,000. In addition to those economic damages, class members may be eligible for additional awards for non-economic damages. Attorneys' fees and costs will be paid from the total settlement fund, as well as the costs of claims and notice administration.

Thus, the proposed settlement of $20,000,000.00 is fair, reasonable, and adequate compensation for the Class members, considering the potential value of their claims, because such an amount provides for (1) compensation for a substantial portion of class members' economic

damages, plus (2) additional compensation for non-economic damages, plus (3) attorneys' fees and costs, as well as (4) the costs of claims and notice administration.

D. The extent of discovery supports settlement.

A settlement requires adequate discovery. The touchstone of the analysis is whether "the parties have sufficient information to make an informed decision about settlement," including formal and informal discovery. *In re Mego Fin Corp Sec Litig*, 213 F.3d 454, 459 (9th Cir. 2000). Here, beginning in July of 2021, while the litigation was pending before the Michigan Supreme Court, the Parties engaged the services of Megan P. Norris, an experienced and well-respected mediator. The Agency provided the Mediator with substantial information from its databases including the potential class members with timely claims, the amount of their loses, the manner in which the Agency collected payments from the identified class members, and the amount of Agency refund, if any. Thus, the parties had access to the information necessary to make an informed decision about settlement.

E. Counsel's Experience and Views support approval.

"Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation." *Nat'l Rural Telecomms Coop*, 221 FRD at 528. "Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation." *Rodriguez v. W. Publ'g Corp*, 563 F. 3d 948, 967 (9th Cir. 2009)(internal quotation marks and modifications omitted).

As discussed above, Plaintiffs' counsel has extensive experience in civil rights and class action litigation. Based on their understanding of the underlying facts and legal issues in the case, Plaintiffs' counsel unequivocally supports and recommends the proposed class settlement.

F. The parties reached the settlement through arms-length negotiations with the assistance of an experienced neutral mediator.

In approving class settlements, courts often "put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution." *Rodriguez*, 563 F.3d at 965. A settlement reached "in good faith after a well-informed arms-length negotiation" is presumed to be fair. *Fernandez v. Victoria Secret Stores, LLC*, No. 06 Civ. 04149, 2008 WL 8150856, at *4 (C.D. Cal. July 21, 2008); *Wren v. RGIS Inventory Specialists*, No. 06-cv-05778-JCS, 2011 WL 1230826, at *6 (ND Cal Apr. 1, 2011); see also *Tijero v. Aaron Bros*., *Inc*., 301 FRD 314, 325 (ND Cal 2013) (participation in private mediation "support[s] the conclusion that the settlement process was not collusive").

In this case, the parties engaged in extensive arms-length negotiations over the period of several months, starting in July 2021. After fourteen months of negotiations, on September 27, 2022, Mediator Norris recommended to the Parties that payment by the State of Michigan of $20 million represented a fair and reasonable resolution of this case and encouraged the Parties to accept her recommendation. The Parties accepted the Mediator's recommendation, and a term sheet was executed on September 27, 2022. The proposed class settlement is the product of patient, arms-length negotiation and should be approved.

VI. The Court Should Appoint Megan Norris as Special Master.

To ensure fairness to putative class members, class counsel has established a plan of allocation which provides an appeal process by which claimants can challenge determinations of eligibility and the amount of UIA collections initially made by the Claims Administrator based on information provided by the UIA. For that important role, class counsel has selected Megan Norris to serve as special master.

Ms. Norris is uniquely qualified for the role based on her skills and experience as an attorney and prior involvement with this case. Ms. Norris currently serves as Miller Canfield's Chief Executive Officer. In this role, she oversees the firm's 18 offices in six countries. Prior to becoming CEO, Megan served as the leader of the firm's Employment and Labor Group, overseeing a large team of employment and labor attorneys and staff. She also served for eight years on the firm's Board of Managing Directors, the last six years as chair. She is also an experienced and skilled litigator having tried more than 30 cases in state and federal courts. Megan Norris has also served as a mediator, facilitator and arbitrator for employment matters for many years. Thus Ms. Norris clearly has the skills and experience required for this role.

Relevant to this case, Ms. Norris was retained by the parties as a mediator who helped achieve the settlement of this case. In this role, she was required to obtain and familiarize herself with data from the UIA as well as the mechanics of how the false fraud determinations were made and the improper of collections of funds from claimants occurred. To facilitate the settlement, Ms. Norris worked with many different spreadsheets and data collection sources, making her uniquely qualified to serve in this role.

As special master, Ms. Norris will review UIA data and materials provided by claimants who dispute the information provided by the UIA as to eligibility for participation in the settlement, specifically the date of the UIA's first collection from the claimant to determine if the claimant is eligible to participate in the settlement. Similarly, Ms. Norris will review UIA data and materials provided by claimants who dispute the amount of the collections by the UIA to determine the amount of economic damages suffered by the claimant. The information provided by the claimant must establish that the UIA's information is inaccurate by clear and convincing evidence. Ms. Norris' findings, as special master, is final and binding.

VII. The Court Should Appoint Analytics Consulting LLC as Claims and Notice Administrator.

With the potential of 8,000 claimants, it was the considered judgment of Class Counsel that the services of a professional claims administrator would best serve the class. Class Counsel interviewed two highly regarded claims administrators: Analytics Consulting LLC (Analytics) headquartered in Minnesota, and Simpluris of California.

Both organizations were equal in apparent ability to satisfy three criteria: Robust plan to distribute Notice and to communicate effectively with potential Class members, Efficient claims administration using advanced technology such as mobile phone accessibility and Qualified Settlement Fund (QSF) management and disbursements.

Simpluris' quote for the project was $978,008. Analytics' quote for the project was $64,389.

Class Counsel interviewed representatives of both companies and checked references. Class Counsel determined that the ability to provide timely services for notice distribution, claims administration of QSF management and disbursements was equal. Class Counsel, after due diligence, selected Analytics as the most cost effective and best fit for this project.

Richard Simmons is the President of Analytics. His affidavit and CV are attached to this Brief as Exhibit 3. Simmons has 32 years of direct experience in designing and implementing class actions and notice campaigns. He has worked on more than 2,500 matters of this type. Analytics performs all functions in-house from its headquarters in Chanhassen, Minnesota. Analytics does not farm out the work to sub-contractors or utilize overseas claims evaluators.

Mr. Simmons has proposed a robust notice campaign using state of the art technology to ensure that all potential class members receive timely notice. Mr. Simmons has worked closely with Class Counsel to develop understandable language to be used in the Notice and Plan of

Analytics. With the assistance of Analytics, these documents will provide Class Members with clear instructions on how to make a claim and explains in simple terms the criteria that will be used to evaluate claims and make awards.

Mr. Simmons employs senior claims evaluators who with worked with him for many years. His staff is first rate and Class Counsel is confident that the administration of the claims will be completed efficiently, correctly and on time.

The Court has already approved Analytics as the QSF Administrator. As QSF administrator, Analytics will deposit the settlement funds with Huntington Bank. The funds will be in FDIC insured accounts and invested in money market funds consisting solely of United States treasury instruments. Current interest rates are at a favorable 3.65%. Class Counsel is familiar with the Huntington Bank QSF activities from their work on the Flint Water Cases settlement. Huntington bank is highly qualified to invest the settlement funds conservatively and safely. Since disbursements are not likely to take place until September 2023, the interest will add more than $400,000 to the settlement funds for distribution to the Class. Analytics will charge only $7,630 for distribution services. Some QSF administrators take a sizeable portion of the earned interest as its fee. Analytics does not engage in this practice. Huntington Bank will not carve out any of the earned interest as its fee. Huntington Bank has a fee sharing agreement with the money market manager so that the Class benefits from all the earned interest.

Class Counsel has done its due diligence in selecting a highly qualified and cost-efficient claims administrator and QSF administrator. Analytics' track record is impressive. The Court should appoint Analytics as the Claims Administrator for the Class.

VIII. The Court Should Approve the Proposed Method of Notice.

Plaintiffs further request the Court's approval of the parties' Notice to Settlement Class Members pursuant to MCR 3.501(C)(1-7). The parties' proposed Notice satisfies MCR 3.501(C)(4) and (C)(5) as to the Manner and Content of the Notice, respectively. Defendant does not oppose the approval of Notice. The proposed Notice, approved by the retained notice expert, Richard Simmons, is made part of this submission.

A. Plaintiffs' proposed Manner of Notice satisfies MCR 3.501(C)(4) requirement for approval.

Plaintiffs submit the affidavit of Richard W. Simmons, the President of Analytics Consulting, LLC, in support of their proposed notification plan. Exhibit 3, Simmons Affidavit. Plaintiffs request that the Court approve the Class Notification Plan set forth in Mr. Simmons's Affidavit. Defendant does not oppose this request.

Simmons has decades of experience in the design and implementation of legal notice campaigns, *Id.* at ¶¶1, 5, is a nationally recognized subject matter expert in that field, *Id*. at ¶¶ 7-9, and has been recognized by courts for his opinion on methods of class notification. *Id*. at ¶8. In his Affidavit, Simmons concludes that the proposed notification plan "is the best practicable notice under the circumstances and fulfills all due process requirements." *Id*. at ¶ 10.

Plaintiffs proposed class notification plan, which Mr. Simmons refers to in his Affidavit as the "Notice Program," provides for: 1) a Class Notice via U.S. Mail for all Settlement Class Member for whom a mailing address is available; and 2) direct notice via email (the Email Notice) to all Settlement Class Members for whom the Defendant has an email address. Ex 3, Simmons Affidavit, ¶ 11. Additionally, the full-length notice will be mailed upon request, and will also be available for download at the Settlement Website. *Id.* The Notice Program also includes a Settlement Website and toll-free telephone line where individuals can learn more about their rights

and responsibilities in the litigation. *Id.* at ¶ 12. "This Notice Plan, supported by the details outlined below, conforms to the best practices identified in the Federal Judicial Center's (or "FJC") Publication "Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide" (2010) and provides the best practicable notice in this litigation." *Id.* at ¶ 13.

Plaintiffs' proposed class notification plan should be approved because it will provide the best practicable notice to settlement class members under the circumstances, and it is fully consistent with due process and MCR 3.501. The Court should therefore grant Plaintiffs' motion and approve the proposed class notification plan as described in the Affidavit of Mr. Simmons.

This manner of notice fully satisfies MCR 3.501(C)(4) and due process requirements. *See e.g., Thacker v Chesapeake Appalachia, LLC*, 695 F Supp 2d 521, 526 (ED Ky, 2010) (Notice delivered through first-class mail and printed in local publications fully satisfied Fed. R. Civ. P. 23 and due process standards because it was "directed in a reasonable manner to all prospective class members…and in a manner that could be understood by the average prospective class member, fairly apprised the prospective class members of the proposed Settlement Agreement and their options with respect to their decision…" *Thacker*, 695 F.Supp.2d at 526.These proposed notice methods fully satisfy MCR 3.501(C)(4).

IX. Plaintiffs' Content of Notice satisfies MCR 3.501(C)(5) requirement for approval.

For the Content of the Notice to be approved by the Court, it must satisfy MCR 3.501(C)(5)(a-h) and include, among other things, (a) a general description of the action; (b) a statement of the right of a class member to be excluded from the action; (c) financial consequences for the class; (d) a description of any counterclaims or notice to intent to assert them; (e) a statement explaining that those not excluded from the action are bound to judgement; (f) a statement that any class member may intervene in the action; and (g) the address of counsel to whom questions may

be directed. The proposed Notice and its content meet all the necessary requirements stated above and comports with due process. Exhibit 4, Proposed Class Notice.

For these reasons, this Court should approve the proposed manner and content of Notice to the Settlement Class.

X. The Court Should Approve the Proposed Plan of Allocation.

The Plan of Allocation (POA) creates a compensation plan that provides for the creation of two settlement pools of funds to satisfy claims. Exhibit 5, Proposed Plan of Allocation and Questionnaires. The Economic Loss Pool (ELP) will be funded with approximately $8 million. The Hardship Impact Fund (HIP) will be funded with approximately $4 million. Unused funds from the ELP will pour into the HIP for distribution to HIP claimants.[4] Based on information received from Special master Megan Norris, the $8 million in the ELP should provide claimants with more than 50% of their actual economic losses stemming from the wrongful collection. The percentage of recovery will depend on the number of ELP claimants. There are over 8,000 potential claimants and if only 50% of the potential claimants make claims, the recoveries for claimants will be considerably higher.

Class members will be informed in the Notice of Class Settlement that they must make important decisions by April 5, 2023. Class Members interested in the compensation plan must register by that date. If a class member elects not to participate in compensation plan, he/she may opt out and they will not be bound by the class action settlement. The Opt Out request must be

[4] The funding of the ELP and HIP is based on an estimated Net Settlement amount of $11.4 million. Class Counsel has requested approval of attorney fees, reimbursement of litigation expenses and projected administrative costs of $500,000. This is a Pro Forma projection. The actual amount of the Net Settlement will be calculated after the Court enters its Preliminary Approval Order which will include an award of attorney fees to Class Counsel, reimbursement for litigation expenses and projected administrative costs of $500,000.

received by April 5, 2023. Finally, Class Members who register but who wish to object to any part of the settlement must file his/her objection by April 5, 2023.

A centerpiece of the POA is the Class List. The Class List has been prepared by the Special Master after her team has shifted through various UIA databases. The Class List will identify for each Class Member, the type of wrongful collection (i.e., garnishment, tax refund intercept etc), the amount of the collection, the date of the collection and the amount of any refund. The Claims Administrator will also have access to additional UIA data through a UIA designated Liaison.

Eligibility to participate in the compensation plan can be established in one of two ways. First, if the registrant is on the Class List prepared by the Special Master, that individual is automatically deemed eligible. If the registrant is not on the Class List and he/she believes that they are eligible (i.e., first wrongful collection occurred on or after March 9, 2015), the POA provides for a two-step appeal process. First, an appeal to the Claims Administrator is provided for in the POA. Second, a second and final appeal to the Special mater is provided for in the POA,

If an Eligible claimant accepts the economic loss data contained on the Class List, the claimant has no further obligations, and the claim is perfected. If the claimant disagrees with the economic loss data found on the Class List, the claimant may appeal that determination using the same two- step appeal process described above. The Claims Administrator will handle all aspects of the claims made against the ELP.

The HIP claims process will be handled by Class Counsel with the assistance of the Claims Administrator. The HIP claims will require a greater degree of evaluation and Class Counsel are better suited for this task. The HIP awards will be based on a point system that is described in the POA. Points will be awarded to the clamant if the wrongful collection was a contributing factor to certain adverse events such as bankruptcy, eviction, foreclosure, repossession of personal property,

credit rating decline, mental health treatment, mental health impact, loan declinations, job loss, divorce, impairment of family relationships or other similar adverse life events.

The aggregate number of points awarded to all HIP claimants will be divided into the available funds (including any pour over funds from the ELP). This calculation will establish the value of point. Claimant awards will be the product of the number of points awarded and- the value of a point.

Claimants to the HIP will be required to complete a Supplemental Hardship Impact Form and supply supporting documents on request from Class Counsel. Deficiency notices will be issued where appropriate. HIP claimants will be given 30 days to correct deficiencies. Appeals to the Special Master will be permitted.

The Court should approve the POA as fair, reasonable, and relatively simple. There is a likelihood that claimants to the ELP will do significantly better than the 50% projection proffered by Class Counsel. The Claims Administrator has reviewed the POA and agrees that it fair, workable, and efficient. Due process standards are met. Class Counsel has agreed to handle the more evaluative part of the process and this commitment will enhance the likelihood that the HIP awards will be consistent and meet all standards of equity and fairness.

The Court should approve the POA as fair, reasonable, and adequate.

XI. The Court Should Approve Service Awards for Class Representatives Grant Bauserman and Teddy Broe.

As Class Representatives, Plaintiffs Bauserman and Broe should receive service awards in the amount of $15,000 each. This amount reflects the time and effort Plaintiffs expended in bringing and assisting in this litigation. The amount of the incentive awards is aligned with and proportional to the expected recovery for the class members, and therefore the Court is satisfied

that the interests of the Class Representatives, including their interest in receiving a service award, is fully aligned with the interests of the other Class Members.

XII. The Court Should Approve Attorney fees, Reimbursement of Litigation Expenses and Set Aside for Anticipated Future Administrative Costs.

Class Counsel achieved a $20 million settlement of this complex and long-standing dispute.[5] Plaintiffs' Counsel filed this action more than 7 years ago and have successfully shepherded it twice to the Michigan Supreme Court; achieving groundbreaking rulings on the contours of Constitutional torts and the rule for accrual under the Michigan Court of Claims Act. The settlement will provide a program to compensate nearly 8200 Michiganders who were wrongfully accused of fraud in connection with their receipt of unemployment benefits and who had money seized by the Unemployment Insurance Agency without due process.

For more than 7 years, Plaintiffs' Counsel worked without compensation of any kind. Plaintiffs' counsel has invested and will continue to invest substantial time and resources into implementing this settlement. To compensate Plaintiffs' Counsel for their services and for the risk they undertook in prosecuting this case, Plaintiffs request that the Court approve their proposed award of costs and attorneys' fees ("Fee Proposal"). The Fee Proposal is supported by Exhibit 6, Affidavit of Class Counsel Jennifer Lord.

The Fee Proposal is designed to provide reasonable and fair compensation to Plaintiffs' Counsel. The work performed by Plaintiffs' Counsel has benefitted all class members in this litigation. Plaintiffs' Counsel's efforts have produced a sizable recovery for the Plaintiffs. Plaintiffs' Counsel also took considerable risk in litigating this complex case on a contingency fee

[5] The factual background of this case is outlined at length in Plaintiffs' Motion to Certify the Settlement Class.

basis. Long-standing precedent recognizes that counsel is entitled to compensation for such common fund work.

The settlement is a significant and important result of Plaintiffs' efforts litigating novel legal theories to the Michigan Supreme Court on two occasions. Plaintiffs' counsels' investment of more than 7 years of attorney and staff time, including significant efforts by four (4) partners at Pitt, McGehee, Palmer, Bonanni & Rivers, P.C. justify a significant and equitable award of attorneys' fees. Class counsel requests that this Honorable Court approve a fee of one-third of the total recovery. Specifically, Plaintiffs request this Court approve a common fund award of $6.48 million and $38,664.36[6] in reimbursement of Plaintiffs' Counsel's out of pocket costs (Exhibit A)[7] Plaintiffs also request that the Court authorize Class Counsel to set aside $500,000 of the $20 million settlement to fund the retention of subject matter experts and consultants to assist Class Counsel with the administration of the settlement.

A. The Court Should Award Attorney Fees Using the Percentage-of-the-Fund Approach.

Plaintiffs' request for Attorney's fees is fair, reasonable and consistent with the law. It is designed to provide reasonable compensation to Plaintiffs' Counsel for common benefit work benefiting the entire Settlement Class. An award of attorney's fees in common fund cases need only be reasonable under the circumstances. *Bowling v Pfizer, Inc.*, 102 F. 3d 777, 779 (6th Cir. 1996). It is well established that counsel who performs common benefit work resulting in recovery of a common fund are entitled to compensation for those services from the fund. The U.S. Supreme Court held in *Boeing Co. v Van Gemert*, 444 U.S. 472, 478 (1980):

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[6] This figure represents Plaintiffs' out of pocket costs as of December 2, 2022.
[7] The Defendant does not contest Plaintiffs' Fee Petition.

"[T]his Court has recognized consistently that a litigant or 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…The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense. Jurisdiction over the fund involved in the litigation allows a court to prevent…inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefitted by the suit."

Michigan Courts have recognized that the "common-fund exception provides for an award of attorney fees to a party that, alone, has borne the expenses of litigation that created or protected a common fund for the benefit of others as well as itself." *In re Attorney Fees of Kelman, Loria, Downing, Schneider & Simpson*, 406 Mich 497, 503-504 (1979); *Amerisure Ins. Co. v Folts*, 181 Mich App 288, 291 (1989). Here, the Class Settlement is a classic example of a common fund case, "where the named Plaintiffs have created a common fund by securing a recovery for themselves and the class they represent." *N.Y. State Tchrs.' Ret. Sys*. 315 F.R.D. at 242 (quoting *In re DPL Inc., Sec. Litig*., 307 F. Supp. 2d 947, 949 (S.D. Ohio 2004). The Bauserman Plaintiffs have created a common fund by securing a $20 million recovery not just for themselves, but for the class that they represent. Class Counsel should be compensated for the results that they achieved and the risk and expense that they have borne. Plaintiffs' Counsel's request for a fee award of $6.6 million or one-third of the settlement is reasonable under the circumstances.

Courts approve of awarding fees from a common fund based on the percentage-of-the-fund method. *Blum v Stenson*, 465 U.S. 886, 900 n. 16 (1984) (stating that in common fund cases "a reasonable fee is based on a percentage of the fund bestowed on the class"); *Camden I Condo. Ass'n, Inc. v Dunkle*, 946 F2d 768, 773 (11th Cir. 1991) ("Indeed, every Supreme Court case

addressing the computation of a common fund fee award has determined such fees on a percentage of the fund basis."). The Sixth Circuit has observed a 'trend towards adoption of a percentage of the fund method in [common fund] cases. *N.Y. State Tchrs.' Ret Sys*., 315 F.R.D. at 245 (quoting *Rawlings*, 9 F. 3d at 515). A percentage-of-the-fund approach fosters judicial economy by eliminating a detailed, cumbersome, and time-consuming lodestar analysis. *Rawlings*, 9 F.3d at 516-17; *N.Y. State Tchrs.' Ret. Sys*., 315 F.R.D. at 243; *Stanley v U.S. Steel Co*., 2009 WL 4646647 at *1 (E.D. Mich) (Use of the percentage method also decreases the burden imposed on the Court by eliminating a full-blown, detailed and time-consuming lodestar analysis while assuring that the beneficiaries do not experience undue delay in receiving their share of the settlement); *In re Cardizem CD*, 218 F.R.D. at 532. In addition to the attorney fee, "[e]xpense awards are customary when litigants have created a common settlement fund for the benefit of a class." *In re Delphi*, 248 F.R.D. 483, 504 (E.D. Mich. 2008).

Here, Plaintiffs' Counsel's efforts over the past 7 years have resulted in the creation of a common fund of $20 million. Plaintiffs' Counsel requests that this Court calculate the attorney fee as a straightforward one third percentage of the fund fee and award Plaintiffs their out-of-pocket expenses incurred in prosecuting this claim. This equitable fee calculation eliminates the need for a complex, burdensome, and time-consuming lodestar analysis.

B. Calculation of the Fee.

On September 27, 2022, Plaintiffs secured a settlement of $20,000,000 from the State of Michigan Unemployment Insurance Agency. As of December 2, 2022, Plaintiffs' Counsel have expended $38,664.36 in costs to prosecute the claim. Plaintiffs' costs will continue to increase significantly between now and the final Fairness Hearing as Plaintiffs expect to retain claims administrators, financial advisors, and subject matter experts to assist in the payout to claimants.

Plaintiffs are seeking Court approval to set aside $500,000 of the settlement to ensure that funds are available to pay outstanding costs until this matter is closed, unused portions of the set aside will flow back to the fund used to compensate claimants.

Below are the calculations:

$20,000,000 (gross recovery) - $38,664.36 (costs as of December 2, 2022)

- $500,000 (costs set aside) =

$19,461,335.60 (net recovery) ÷ 1/3 =

$6,487,111.88 (attorney fee).

Plaintiffs request an award from this Court authorizing an attorney fee of $6,487,111.88, reimbursement of out-of-pocket costs as of the date of the fairness hearing, and a set aside of $500,000 to cover expert and consultant fees.

C. The Relevant Factors to Justify the Fee Proposal.

A Court is tasked with ensuring that counsel is fairly compensated for the work performed and the result achieved. *Rawlings* at 516. Courts may evaluate the reasonableness of the requested fee award using 6 factors: 1) The value of the benefit; 2) Society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others, 3) Whether the services were taken on a contingency fee basis; 4) The value of the services on an hourly basis, 5) the complexity of the litigation and, 6) the professional skill and standing of counsel involved on both sides. *Ramey v. Cincinnati Enquirer*, Inc. 508 F.2d 1188 (1974).

1. The Value of the Benefit Rendered.

The first *Ramey* factor—the value of the benefit rendered is widely regarded as the most important factor. *In re: Cardinal Health Inc. Sec. Litig.,* 528 F. Supp. 2d 764 (2007). The Plaintiffs' Counsel obtained a $20 million settlement after 7 years of litigation and two hotly contested

appeals to the Michigan Supreme Court. The $20 million settlement will be divided by roughly 8200 claimants from whom the Agency wrongfully seized property. The settlement is expected to cover most, if not all the value of the property that was seized.

2. Society's Stake in Rewarding Attorneys.

The next *Ramey* factor requires that the Court evaluate the policy considerations of encouraging counsel to accept cases such as this one. *Ramey* at 1196. The interest in encouraging lawyers to bring complicated cases, which likely will involve a multi-year commitment without any assured compensation, particularly where thousands of Michiganders were falsely accused of fraud and suffered a state sponsored unjust seizure of property without due process. See *Bowling v Pfizer*, Inc., 922 F. Supp. 1261, 1282 (S.D. Oh. 1996) ("Clearly the global settlement negotiated by Counsel in this case is providing benefits to a class of people who are very much in need of help"). Claimants' Counsel spent a significant commitment of time and expense that some in the legal profession may be discouraged from undertaking. This factor weighs in favor of awarding the requested fee award.

3. Services Rendered on a Contingency Fee Basis.

The third *Ramey* factor, whether the lawyers' services were undertaken on a contingent fee basis, is also met. This factor "stands as a proxy for the risk that attorneys will not recover compensation for the work they put into a case." *In re Cardinal Health*, 528 F. Supp. 2d at 1196. The presence of a contingent fee arrangement is "an important factor in determining the fee award." *Stanley v. U.S. Steel*, 2009 WL 4646647 at *3 (E.D. Mich. 2009). Claimants Counsel have engaged in this work on a contingency basis and have not yet received compensation of any kind. Contingency fee agreements present a genuine risk that counsel, having brought and litigated the case, might not recoup their fees or costs. The risk was heightened by the Agency's dual appeals

to the Michigan Supreme Court on important issues of law that could very well have gone against Claimants.

Michigan imposes a one-third cap on attorney fees in personal injury cases. Mi. Ct. R. 8.121. "Research indicates that, taken as a whole, the evidence suggests that one-third is the benchmark for privately negotiated contingent fees, but that significant variation up and occasional variation down exist as well." *In re: Flint Water Cases*, 583 F. Supp. 3d 911, 939 (2022) quoting Eisenberg, Theodore and Miller, Geoffrey P., "Attorney Fees in Class Action Settlements: An Empirical Study" (2004), *Cornell Law Faculty Publications*, Paper 356, pp. 35. Claimants counsel has entered into one-third contingent fee agreements with the named plaintiffs. Consistent with that "benchmark," Claimants counsel is requesting an attorney fee of one-third of the total settlement. Claimants submit that this factor weighs in favor of granting the fee award.

4. Value of Services on an Hourly Basis.

As outlined above, the most important factor is the value of the benefit received. This settlement will fairly, adequately, and reasonably compensate approximately 8,200 people who were injured when the UIA falsely accused them of fraud and seized their property to pay the bogus "debts." Claimants will receive a benefit from Class Counsels' work rather than waiting for years for a jury trial and final judgment. Class Counsel could have drawn this matter out, insisted on complex and time-consuming discovery, and spent hundreds of hours preparing for trial. Instead, Plaintiffs' Counsel recognized that an award of damages to claimants after trial would be vastly diminished by the expense and duration of trial. Plaintiffs' Counsel should be adequately and fairly compensated for maximizing the value of the settlement for claimants.

5. The Complexity of the Litigation.

The fifty Ramey *factor*, the complexity of the litigation, is another factor to evaluate when determining whether an attorney fee award is reasonable. See *In re Delphi*, 248 F.R.D. at 504. As Judge Levy noted in *In re Flint Water Cases,* 583 F. Supp. 3d 911, 945 (2022) "[c]lass actions are, in general, "inherently complex." This class action has woven its way to the Michigan Supreme Court *twice*. The rulings from the Supreme Court provided new guidance to significant legal questions namely, whether plaintiffs may sue the State for money damages when the State violates the Michigan Constitution and when does a claim accrue for purposes of maintaining suit in the Michigan Court of Claims. Had this settlement not been reached, this case would have been litigated

for many years. The substantial time and expense of continuing litigation to trial, along with the fact that Plaintiffs' ultimate success at trial is far from certain. The fifth *Ramey* factor is met.

6. Counsel's Skill Level.

The sixth Ramey factor requires the Court to consider both the "professional skill and standing of counsel as well as the quality of opposing counsel. Plaintiffs' Counsel Michael Pitt, Beth Rivers, Jennifer Lord, and Kevin Carlson all expended significant time and effort on this matter. Michael L. Pitt, a founding partner of the firm, has been a member of the State Bar of Michigan for more than 35 years. Pitt was President of the Michigan Association of Justice from 2004-2005 and has been a Fellow of the College of Labor and Employment Lawyers since 2004. Pitt has authored chapters published by ICLE on Employment law since 1990. He has been listed in Best Lawyers in the Employment Law Section every year since 1989. In 2008, Pitt received the "Trial Lawyer of the Year" award from the Public Justice Foundation and the Labor and Employment Section of the State Bar of Michigan, the FBA for the Eastern District of Michigan,

and the National Lawyers Guild. In 2018, Pitt received the "Champion of Justice" award from the Michigan Association of Justice. He has been named a Super Lawyer in Michigan every year from 2006 to the present.

Michael Pitt has successfully served as Class Counsel in numerous complex cases including the Flint Water Cases (currently in claims administration phase, $625 million settlement), Doe v MDOC (juvenile assault case, $90 million compensation fund created), Neal v MDOC (female prisoner assault case, $100 million compensation fund created), Saginaw Jail Case (Strip search case $1 million compensation fund created), Livingston Jail case (gender disparity and privacy claims $980,000 compensation fund created), Gilford Case (race and age case against DTE, $45 million compensation fund created), and Ford Motor case (age discrimination case, $12 million compensation fund created).

Co-counsel, Beth M. Rivers, has been licensed to practice law since 1980. Throughout her career, she has represented plaintiffs in employment litigation. She is currently an Equity Partner at Pitt, McGehee where she has been employed since 2001. Rivers has also been named a Best Lawyer and Super Lawyer for many years. Rivers was selected as a Fellow of the College of Labor and Employment Lawyers in 2017.

Co-counsel Jennifer Lord is a partner with Pitt McGehee Palmer Bonanni & Rivers PC and has been a member of the Michigan Bar for thirty years. Lord has successfully handled complex employment litigation including nationwide class actions, group actions and single plaintiff cases. Lord has assumed a leadership role throughout her career including election to the Oakland County Bar Association Board of Directors. Lord is a regular speaker before organizations including ICLE, the Michigan Association of Justice ("MAJ"), the Federal Bar Association and the Michigan State Bar. Lord has been recognized for her contributions to the legal community by several

organizations including the Michigan Lawyer's Weekly (Women in the Law), Crain's Detroit ("Top Litigator"), and SuperLawyers, among others. Lord has been recognized by her peers with an AV rating from Martindale Hubbell.

Plaintiffs' counsel Kevin Carlson is a partner at Pitt, McGehee, Palmer, Bonanni & Rivers. He has been licensed to practice law in the State of Michigan since 2004. From 2004-2006, he worked as a judicial clerk for United States District Court Judge Arthur J. Tarnow in Detroit. He has actively practiced in the area of civil rights litigation since 2006. Carlson has served as an adjunct clinical professor at the University of Michigan Law School, supervising 2nd and 3rd year law students in various stages of federal appellate litigation on behalf of indigent criminal defendants. He also served as an adjunct clinical professor at Detroit Mercy Law School, directing its Federal Pro Se Legal Assistance Clinic for two years. Under Kevin's supervision, the Clinic provided free limited scope representation and legal advice to litigants in federal court who did not otherwise have counsel. Carlson has presented at seminars conducted by the State Bar of Michigan and the American Bar Association, and he is a frequent contributor to ICLE, where his contributions include: Dealing with Difficult Opposing Counsel During Deposition (Top Tips in Ten Minutes); Dealing with Problem Deposition Witnesses (Top Tips in Ten Minutes); and Essential Deposition Skills: An Employment Case (Certificate Program). He is one of several authors contributing to Michigan Courtroom Evidence Annotated, Fifth Edition, and the current author the civil rights chapter of Torts: Michigan Law and Practice, Second Edition.

Counsel for Defendant, Debbie Taylor and Jason Hawkins are experienced and respected in the legal community. They vigorously represented their clients. They challenged elements of Plaintiffs' claims all the way to the Michigan Supreme Court. Notably, Counsel for Defendant does not challenge Claimant Counsels' request for an award of fees and costs.

XIII. The Court Should Approve the Proposed Case management Order and Timeline.

Table of Important Dates

Filing of Motion for Preliminary Approval before Judge Shapiro	12/16/22
Hearing on Motion for Preliminary Approval before Judge Shapiro	1/09/23 at 10a ET via video conference
Preliminary Approval Order issued by Judge Shapiro	1/19/23
Mailing of Notice by or Before2/1/23 and Posting on Website/Registration Window, Time for Registrations, Opt-Outs and Objections and Claims Opens up	2/1/23
Deadline or End Date for Filing Registration Forms, Opt-Outs or Objections	4/5/23
Last Date for Eligibility Notice by Claims Administrator (Per Plan of Allocation. Claims Administrator has 5 business days after receipt of Registration to issue Eligibility Notice)	4/12/23
Deadline for Submitting Claim Forms	4/12/23
Notice of Deficiencies on Hardship Impact Claim issued from Class Counsel	4/21/23
Deadline or End Date for Claimant to file Eligibility/Collections Amount Dispute with CA (Claimant has 21 days to dispute Eligibility or Collections determination amount per Plan of Allocation.	5/5/23
Deadline or End Date for Claim Administrator to Respond to Eligibility/Collections Amount Challenge by Claims Administrator (7 days after receipt of Claimant dispute per Plan of Allocation.)	5/12/23
Deadline or End date for Claimant to appeal of Claim Administrator's Unfavorable Decision on Eligibility/Collections Challenge to Special Master due (Appeal due 7 days after receiving unfavorable determination on Eligibility or Collection Amount per Plan of Allocation)	5/19/23

Deadline or End Date for Special Master decision after receiving appeal of Unfavorable Eligibility or Collection Amount determination	5/26/23
Deadline for Providing Documentation/Curing Deficiencies of Hardship Impact Claim.	5/22/23
Deadline for Class Counsel Decision on Hardship Impact Claim.	5/30/23
Deadline for Hardship Impact Claimant to appeal to Special Master.	6/7/23
Deadline for Special Master to decide Hardship Impact Claim Appeals	6/14/23
Claim Administrator issues final Awards	6/21/23
Filing Date for Motion for Fairness Hearing and Final Approval	6/30/23
Fairness Hearing to hear objections and approve settlement before Judge Shapiro Michigan Court of Claims Hall of Justice, 925 W. Ottawa St, P.O. Box 30185 Lansing, MI 48909-7522 Phone: 517.373.0807 Email: CClersOffice@couerts.mi,gov	7/21/23 at 10a ET in person
Order of Final Approval issued by Judge Shapiro	7/28/23
Effective Date of Order (assuming no appeal of Final Approval order)	8/18/23
Window for Issuance of Payments (approximate)	8/19/23 – 9/8/23

XIV. Proposed Approval and Appointment Order.

Class Counsel has prepared a Proposed Approval and Appointment Order that is designed to assist the Court deciding the issues presented in this Motion. Exhibit 7, Proposed Approval and Appointment Order.

For the reasons stated above, Plaintiffs, with the concurrence of Defendant, hereby respectfully request that this Court grant their motion (1) Certify the Settlement Class, (2) Approve the Settlement, (3) Approve the Method of Notice to the Settlement Class (4) Appoint Bauserman

and Broe Class Representatives; (5) Appoint Plaintiffs' counsel as Class Counsel; (6) Approve Appointment of Megan Norris as Special Master; (7) Approve Appointment of Analytics Consulting, LLC as Claims Administrator; (8) Approve Proposed Class Action Notification Plan and Proposed Class Notice; (9) Approve the Proposed Plan of Allocation; (10) Approve the Class Representative Service Awards and (11) Approve Plaintiffs' Request for Attorney Fees, Reimbursement of Costs, and Set Aside for Administrative Costs and Case Management Order and Timeline.

Respectfully submitted,

PITT, MCGEHEE, PALMER & RIVERS, P.C.

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Dated: December 16, 2022