IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

PHONES PLUS, INC, Plan Administrator of the Phones Plus Retirement Savings Plan, On Behalf of Itself and All Others Similarly Situated,	:	Case No. 3:06-cv-1835 (AVC)
Plaintiff,	:	
vs.	:	
HARTFORD LIFE INSURANCE COMPANY and NEUBERGER BERMAN MANAGEMENT, LLC,	:	
Defendants.	:	February 11, 2010

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT WITH DEFENDANT HARTFORD LIFE INSURANCE CO.

I. INTRODUCTION

Plaintiff, Phones Plus, Inc. (the "Plaintiff" or "Named Plaintiff"), on behalf of itself and the proposed Settlement Classes defined below, respectfully submits this Memorandum in Support of Plaintiff's Motion for Preliminary Approval of Settlement with Defendant, Hartford Life Insurance Company ("Hartford Life"). For the reasons set forth below, the proposed Settlement Agreement is fair, reasonable and adequate and is the product of arm's-length negotiations between counsel for the proposed Settlement Classes ("Class Counsel") and Hartford Life.[1]

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[1]As detailed in the accompanying Settlement Agreement, the parties have agreed, for purposes of settlement only, to certification of two Settlement Classes: (1) the Monetary Relief

As the Court is aware, this is a proposed class action in which Plaintiff challenges Hartford Life's receipt of revenue sharing payments from mutual funds and similar entities. The proposed settlement ("Settlement") provides the following substantial and meaningful relief to the Settlement Classes:

- Hartford Life will deposit $13,775,000 in a common fund to provide compensatory relief to the Monetary Relief Class;
- Hartford Life will pay up to $300,000 for costs of notice and administration, as well as related costs incurred in connection with the effectuation of the Settlement, for the benefit of both the Monetary Relief Class and the Structural Changes Class;
- Hartford Life will make a number of changes to its business practices that relate directly to Plaintiff's allegations in this case, are squarely directed at addressing a number of the aspects of the challenged conduct in this case and provide clarity in the disclosures with respect to Hartford Life's challenged conduct, all of which will directly benefit the Structural Changes Class:
    - Hartford Life will eliminate the following language from its Qualified Retirement Plan Basic Plan Documents: "Notwithstanding the preceding sentence, the Prototype Sponsor may, as a condition of making the Plan available to the Adopting Employer, limit the types of property in which

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Class [*i.e.*, all current and former trustees, sponsors, fiduciaries, and administrators of employee pension benefit plans covered by the Employee Retirement Income Security Act of 1974 ("ERISA") subject to Internal Revenue Code ("IRC") §§ 401(a) or 401(k) for which employee pension benefit plans Hartford Life has acted as a service provider at any time from November 14, 2003 through the date that the Court enters the Preliminary Approval Order]; and (2) the Structural Changes Class [*i.e.*, all trustees, sponsors, fiduciaries, and administrators of employee pension benefit plans covered by ERISA subject to IRC §§ 401(a) or 401(k) for which employee pension benefit plans Hartford Life acts as a service provider on the date that the Court enters the Preliminary Approval Order and all trustees, sponsors, fiduciaries, and administrators of employee pension benefit plans covered by ERISA subject to IRC §§ 401(a) or 401(k) for which employee pension benefit plans Hartford Life acts as a service provider after the date the Preliminary Approval Order is entered]. In other words, the Monetary Relief Class relates to current and past retirements plan customers, while the Structural Changes Class relates to current and future retirement plan customers. It also bears noting that approximately eighty percent (80%) of the members of the Monetary Relief Class are members of the Structural Changes Class, including Plaintiff.

the assets of the Plan may be invested." In addition, with respect to any customer that has adopted a Qualified Retirement Plan Basic Plan Document containing this language, Hartford Life has agreed that, as part of this Settlement, it will not enforce this language in any of its Qualified Retirement Plan Basic Plan Documents as a means to restrict a plan's selection of investment options from the Overall Menu.

- Hartford Life will make the following changes with respect to the language, interpretation and/or enforcement of its Group Annuity Contracts and Group Funding Agreements:

  - Hartford Life agrees that it will not enforce the following sentence in any of its Separate Account Riders without receiving the instruction and consent of each retirement plan regarding the mode of investment: "In addition, The Hartford may periodically invest such assets in short term money market instruments, cash, or cash equivalents."

  - Hartford Life will commence the process of seeking approval from the relevant Departments of Insurance to revise the portion of its Group Annuity Contract and Group Funding Agreement that addresses mutual fund availability to make clear Hartford Life will not delete or substitute an investment option chosen by a plan from the Overall Menu and offered to that plan's participants, unless the investment option is no longer available either (a) due to a change in applicable law or (b) due to a change or event initiated by a Fund Company, including, but not limited to, a merger, liquidation or closure. Hartford Life will begin using this new Group Annuity Contract and Group Funding Agreement for customers who purchase such products as soon as practicable after receipt of approvals from the Departments of Insurance. In addition, Hartford Life has agreed that it will not enforce any provision of its Separate Account Rider that is inconsistent with the foregoing revisions.

  - All Structural Changes Class Members will be deemed to have directed that all dividends and capital gains distributions payable on the shares of any Fund shall be paid in the form of additional shares of the Fund, and Hartford Life agrees that it will follow such direction. All account opening documents for any Structural Changes Class Member that becomes a customer of Hartford Life after the date that the new Group Annuity Contract and Group Funding Agreement become operative shall contain a disclosure

that all dividends and capital gains distributions payable on the shares of any Fund are paid in the form of additional shares of that Fund, if available, and an instruction from the customer that all such dividends and capital gains distributions should be received in such form so long as available.

- Hartford Life will include language in its disclosure documents or related materials supplied to new customers, or newly supplied to existing customers, disclosing that all of the mutual fund investment options available on the Overall Menu make Revenue Sharing payments to Hartford Life or an affiliate, so long as such a statement remains true.

- Hartford Life will make available to all current and future Structural Changes Class Members a list of all investment options offered for such plan's product and the Revenue Sharing rates paid by the relevant Fund Company.

- Hartford Life will make available to each current and future Structural Changes Class Member the following information: (i) the Revenue Sharing rate for the investment options offered by the Class Member to its participants; (ii) the published expense ratio for the investment options offered by the Class Member to its participants; (iii) an estimate of the dollar amount of Revenue Sharing received by Hartford Life in relation to the investments of the Class Member (based on an estimated dollar amount of a plan's account balance in each applicable investment option); (iv) a note explaining how the estimate described in subparagraph [4.4(c)(iii)] was calculated; (v) a narrative description of Revenue Sharing; and (vi) a listing of the Separate Account fee (in percentage and dollar terms), the annual maintenance fee (in dollar terms), and the per-participant fee (in dollars per participant terms). Hartford Life will notify each such plan by either electronic or first class mail that this information has been made available and the communication shall describe the information being made available.

Hartford Life agrees that it will begin to implement the changes set forth above within sixty (60) days of the Effective Date. Unless otherwise provided in the Settlement Agreement, Hartford Life has agreed that it will make diligent and good faith efforts to ensure that the implementation of these changes is concluded within six (6) months of the Effective Date. In addition, Hartford Life agrees that the above actions will remain in effect for a minimum of five

(5) years from the Effective Date of the Settlement Agreement.[2] As explained below, Plaintiff has established all necessary prerequisites for preliminary approval of the Settlement. In addition, in connection with seeking final approval of the Settlement, Plaintiff also will provide

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[2]Plaintiff's expert estimates that the information being provided by Hartford Life to the Structural Changes Class has a value of at least $625 per plan. Hartford Life also will be required to incur significant expenses to make these structural and related changes. The Settlement provides for payment of up to $6,862,500 in attorneys' fees and costs (an amount that equates to a relatively small percentage of the total Settlement value) and is less than Class Counsel's total lodestar devoted to this matter (*i.e.*, the costs and fees, based on Class Counsel's normal hourly rates, expended in prosecuting this case for over the past three (3) years), which Plaintiff believes is fair and reasonable under applicable law. *See, e.g., Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) ("The question of whether a particular fee is reasonable must be guided by consideration of such factors as "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation ...; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy"); *see also See Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 122 (2d Cir. 2005)("Consistent with these guidelines, a reasonable attorneys' fee may be calculated using either the percentage method or the lodestar method, though the recent trend in this Circuit has been to use the percentage method"*); In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3rd Cir. 2005)(awarding 25% of value of settlement and multiplier of 4.5 to 8.5). Finally, the Settlement provides for the payment of a Case Contribution Fee to Plaintiff in the amount of $25,000 in recognition of its invaluable contributions to the prosecution of this action. Such awards are commonplace in class actions, especially where, as here, a Plaintiff has made significant contributions to the Settlement, and are intended "to compensate the named plaintiff for any personal risk incurred ... or any additional effort expended by the [named plaintiff] for the benefit of the lawsuit." *Dornberger v. Metropolitan Life Ins. Co.*, 203 F.R.D. 118, 124 (S.D.N.Y. 2001) (citation omitted); *see, e.g., In Re Publication Paper Antitrust Litig.*, No. 3:04-MD-1631 (SRU), 2009 WL 2351724, at *1 (D. Conn. July 30, 2009) (same); *Fears v. Wilhelmina Model Agency, Inc.*, No. 02 Civ. 4911 (HB), 2005 WL 1041134, at *3 (S.D.N.Y. May 5, 2005) (same; approving "incentive awards" of $25,000 for each named plaintiff who was deposed and $15,000 for each class representative), *vacated and remanded on other grounds*, *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423 (2d Cir. 2007); *RMED Intern., Inc. v. Sloan's Supermarkets, Inc.*, No. 94 Civ. 5587 (PKL), 2003 WL 21136726, at *2 (S.D.N.Y. May 15, 2003) (same; approving $25,000 "incentive award" to named plaintiff in recognition of its intimate involvement in the litigation). In connection with seeking final approval of the Settlement, Plaintiff will submit more detailed information, including affidavits regarding the time and expenses devoted to this matter and the time spent by Plaintiff in prosecuting this class action litigation, in support of the request for an award of attorneys' fees and expenses, as well as a case contribution fee.

the Court with the opinion and report of an independent fiduciary,[3] which reviews and approves of all aspects of the Settlement as fair and reasonable under the circumstances.

II. FACTUAL BACKGROUND RELEVANT TO PRELIMINARY APPROVAL

A. Procedural History And History Of Settlement Negotiations

The Parties' Settlement Agreement was reached after over three (3) years of hard fought litigation, including extensive discovery (both formal and informal) from Hartford Life that entailed the production of hundreds of thousands of pages of documents, over twenty (20) depositions and thorough investigation by experienced counsel. The Settlement terms were arrived at only after three (3) full days of mediation, as well as a number of telephone conferences, with one of the most respected mediators in the United States, Professor Eric D. Green of Boston University School of Law and Resolutions, LLC, which occurred over the course of over one (1) year and involved extensive and protracted negotiations. The Settlement also was reached after extensive consultation with well-regarded experts and a full evaluation of the evidence. The Parties were fully aware of the issues and risks associated with their respective claims and defenses.

The Settlement Agreement is the result of arm's-length and often difficult negotiations that began in the Fall of 2008, which were protracted and led to what all Parties considered to be potential impasse on a number of occasions. During the course of these negotiations, the Parties and their respective counsel had discussions concerning the best manner in which this Litigation could be resolved, as well as the risks attendant in connection with the theories being advanced

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[3]This opinion is being provided, to the extent applicable, pursuant to the Department of Labor's Prohibited Transaction Exemption ("PTE") No. 2003-39.

in the prosecution and defense of this case. As a result of those discussions, Plaintiff and Hartford Life, by and through their respective counsel, and with the substantial assistance of Professor Green, ultimately reached agreement as to all material terms and then memorialized those terms in the Settlement Agreement.

The Parties, as described above, have engaged in extensive discovery. Plaintiff has received and reviewed hundreds of thousands of pages of documents, obtained expert reports on liability and damages, consulted with experts regarding potential theories of liability and damages, deposed numerous fact witnesses and pursued and obtained third-party discovery. In addition, the Parties fully briefed both class certification and summary judgment, as well as numerous other issues implicating liability and damages, in this case. Thus, the Settlement was reached after considerable investigation and careful consideration and discussions. Finally, it bears noting that, at the time that the essential terms of the Settlement were agreed upon, no class action challenging revenue sharing practices of this kind had been certified, while one case against Principal Life Insurance Company resulted in the denial of class certification and entry of judgment in favor of Defendant with respect to all revenue sharing related claims. *See Ruppert v. Principal Life Insurance Company*, 4:07-CV-00344-JAJ-TJS (S.D. Iowa).

B. The Settlement Provisions

The full terms of the Settlement are embodied in the Settlement Agreement attached hereto as Exhibit "1." The Agreement clearly is fair and reasonable to the Classes, as it provides significant and meaningful benefits to all members of the Classes. Moreover, as explained above, the terms of the Settlement have been carefully crafted and relate directly to the conduct that Plaintiff challenged in this case. In sum, the Settlement calls for a significant monetary

payment to the Monetary Relief Class and provides substantial and meaningful benefits to the Structural Changes Class in the form of significant changes in the manner in which Hartford Life conducts its business and the provision of clear, detailed information regarding revenue sharing payments, as well as direct fees and expenses paid by the Classes' retirement plans.

III. ARGUMENT

A. The Court Should Certify The Classes' Claims, Respectively, Under Rule 23(b)(1) And Rule 23(b)(3) Of The Federal Rules Of Civil Procedure

Plaintiff has already moved for certification of a proposed class' claims under Fed.R.Civ.P. 23(b)(1) and/or 23(b)(3) and, as a predicate to the parties' Settlement Agreement, Hartford Life has agreed, solely for the purposes of this Settlement, that certification of the Monetary Relief Class' claims should occur under Fed. R. Civ. P. 23(b)(3), and certification of the Structural Changes Class' claims should occur under Fed. R. Civ. P. 23(b)(1). The Court already has approved the propriety of Rule 23(b)(1) certification in the context of the partial settlement reached with Defendant, Neuberger Berman, LLC,[4] and, in its pending Renewed Motion for Class Certification, Plaintiff sought certification under Fed. R. Civ. P. 23(b)(1) or, in the alternative, under Fed.R.Civ.P. 23(b)(3). For the reasons set forth in those papers,

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[4]Hartford Life objected, in part, to the certification of the Neuberger settlement class and, as part of the parties' Settlement, Plaintiff has agreed only to seek certification for purposes of settlement under Rule 23(b)(1) with respect to the Structural Changes Class, while seeking certification for purposes of settlement under Rule 23(b)(3) with respect to the Monetary Relief Class. The consequence of proceeding in this manner is that members of the Monetary Relief Class will have the opportunity to exclude themselves from that Class if they so choose. Moreover, since the Classes are being certified for settlement purposes only, no manageability concerns are implicated. *See, e.g., In re Motor Fuel Temperature Sales Practices Litigation*, 258 F.R.D. 671, 675 (D.Kan. 2009), *citing Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997)("In deciding whether to certify a settlement class, the Court need not inquire whether the case, if tried, would present difficult management problems under Rule 23(b)(3)(D)").

certification of the Classes in this case under Rule 23(b)(1) and Rule 23(b)(3), respectively, is fair and appropriate.[5]

B. The Class Notice Is The Best Practicable

To comport with the due process rights of absent members of the Classes, notice must be the best practicable given all the circumstances. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175 (1974). Here, Hartford Life has agreed to provide first class mail notice to all identifiable members of the Classes. There is no question that such notice is the best notice practicable and is adequate. *See, e.g., Mullane v. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *see also Bourlas v. Davis Law Associates*, 237 F.R.D. 345, 356 (E.D. N.Y. 2006)(delivery of the notice by first class mail to each individual class member in a class action is deemed the best notice practicable under the circumstances, where there is no indication that any of the class members could not be identified through reasonable efforts). Moreover, publication notice of the Settlement also will be provided in the *Wall Street Journal*, thereby supplementing and improving the direct notice that the Settlement contemplates.

The proposed notices (*i.e.*, the Long Form Notice that will be mailed and emailed, as well as the Summary Notice that will be published) describe the Settlement in "plain English," explains Plaintiff's claims and the Litigation, inform members of the identity of Class Counsel, and details the Class Members' rights and obligations, and how to obtain additional information. Thus, the class notice meets all requirements of applicable law with respect to notice. *Uhl v. Thoroughbred Technology and Telecommunications, Inc.*, 2001 WL 987840 at ** 9, 20 (S.D.Ind.

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[5]If the Settlement is not approved, Plaintiff understands that Hartford Life will continue to vigorously contest Plaintiff's Renewed Motion for Class Certification.

Aug. 28, 2001)(noting that notice should be clear and comprehensive while attaining "a reasonable balance between lawyerly precision and plain English").

C. The Settlement Agreement Merits Preliminary Approval

The issue now before the Court is whether the Settlement is within the range of what might later be found to be fair, reasonable and adequate, so that notice of the proposed Settlement should be given to Class Members and a hearing scheduled to consider final approval of the Parties' Settlement Agreement. *Mehling v. New York Life Ins. Co.*, 246 F.R.D. 467, 472 (E.D.Pa. 2007)(Although "[t]he ultimate approval of a class action settlement depends on 'whether the settlement is fair, adequate, and reasonable,' *Walsh v. Great Atl. & Pac. Tea Co.*, 726 F.2d 956, 965 (3d Cir.1983), [i]n evaluating a proposed settlement for preliminary approval ... the Court is required to determine only whether 'the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval'"); *Spann v. AOL Time Warner Inc.*, 2005 WL 1330937 (S.D.N.Y. June 7, 2005)(same).

Courts favor the settlement of class action litigation and will approve a settlement if it is "fair, reasonable, and adequate" when viewed in its entirety. *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996); *Spann v. AOL Time Warner Inc.*, *supra* at * 6 ("public policy favors settlement, especially in the case of class actions"). "In evaluation of a proposed settlement, the court recognizes that the 'essence of settlement is compromise'" and will not represent a total win for either side. *Id.* at 1200 (*quoting Armstrong v. Board of Sch. Dir.*, 616 F.2d 305, 315 (7th Cir. 1980)). "Accordingly, the court is not called upon to determine whether the settlement reached

by the parties is the best possible deal, not whether class members will receive as much from a settlement as they might have recovered from victory at trial." *In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d 1002, 1014 (N.D. Ill. 2000) (citations omitted).

The approval of a class action settlement is a two-step process, whereby the court first grants preliminary approval of the negotiated settlement. *See Armstrong v. Bd. of School Dirs.*, 616 F.2d 305, 314 (7th Cir. 1980) (*citing* Manual For Complex Litigation, §1.46, at 53-55 (West 1977)(footnote omitted), *overruled on other grounds, Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998); *see also Spann v. AOL Time Warner Inc.*, *supra*. In the second step, the court holds a fairness hearing before granting final approval of the settlement agreement. *Id.* The goal of the ultimate fairness or final approval hearing is "to adduce all information necessary to enable the judge intelligently to rule on whether the proposed settlement is 'fair, reasonable, and adequate.'" *Id.* (*quoting* Manual For Complex Litigation at 57); *see also Diaz v. Romer*, 801 F. Supp. 405, 407 (D. Colo. 1992), *aff'd* 9 F.3d 116 (10th Cir. 1993), *citing Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982) (granting final approval of the settlement of it is fair, reasonable, and adequate); *Spann v. AOL Time Warner Inc.*, *supra* at * 6 (same).[6]

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[6]In assessing the fairness, reasonableness and adequacy of a class settlement at a final approval or fairness hearing, the court must balance the following nine factors:

(a) the complexity, expense and likely duration of the litigation;
(b) the reaction of the class to the settlement;
(c) the stage of the proceedings and the amount of discovery completed;
(d) the risks of establishing liability;
(e) the risks of establishing damages;
(f) the risks of maintaining the class action through the trial;
(g) the ability of the defendants to withstand a greater judgment;
(h) the range of reasonableness of the settlement fund in light of the best possible recovery; and
(i) the range of reasonableness of the settlement fund to a possible recovery in

As is the case here, "[t]here is usually an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for court approval." 2 Herbert B. Newberg And Alba Conte, Newberg On Class Actions, §11.41, at 11-88 (3d ed. 1992); *see also Hispanics United v. Village of Addison,* 988 F. Supp. 1130, 1150 n.6 (N.D. Ill. 1997) ("A strong initial presumption of fairness attaches to the proposed settlement when it is shown to be the result of this type of a negotiating process." (citation omitted)). The standard for granting preliminary approval of the proposed settlement is a determination of "whether the proposed settlement is 'within the range of possible approval.'" *Armstrong*, 616 F.2d at 314. The purpose of the preliminary approval process is for the court to ascertain whether reason exists to proceed by notifying the class members of the settlement and to hold a fairness hearing. *Id.* In considering whether to grant a motion of preliminary approval of a proposed settlement agreement, the Court utilizes a "threshold inquiry" intended merely to disclose conspicuous defects. *See In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330,

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> light of all the attendant risks of litigation and the strength of plaintiff's case, weighed against the settlement offer.

Spann v. AOL Time Warner Inc., *supra* at * 6 (stating the factors outlined in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 462 (2d Cir.1974)); *In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d at 1014 (articulating similar standard); *see also Armstrong*, 616 F.2d at 314 (*citing* Manual For Complex Litigation 56 (1977) and 3B James Wm. Moore et al., Moore's Federal Practice 23.80(4), at 23-521 (2d ed. 1978)). At this time, as the only question before the Court is whether to grant preliminary approval to the proposed Settlement, the Court's consideration of these factors should await the final approval (*i.e.*, the fairness) hearing. In other words, the standard at the preliminary approval stage is different. *Armstrong*, 616 F.2d at 314. Preliminary approval is given before class members are notified that a settlement agreement has been reached. Thus, the pre-notification preliminary approval process requires a less rigorous standard of judicial scrutiny than the final fairness hearing. *Odon USA Meats, Inc. v. Ford Motor Credit Corp.*, 1994 WL 529339 at * 7 (N.D. Ill. Sept. 27, 1994).

337-38 (N.D. Ohio 2001). Thus, preliminary approval is appropriate:

> If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval....

Manual For Complex Litigation §30.41 at 265 (3d ed. 2000). Unless the Court's initial examination "disclose[s] grounds to doubt its fairness or other obvious deficiencies," the Court should order that notice of a formal fairness hearing be given to class members under Rule 23(e). *Id.* Considering the issues, evidence and nature of the settlement negotiations in this case, preliminary approval clearly is proper in this instance.

1. The Settlement Agreement Is A Result Of Non-Collusive Negotiations

The proposed Settlement Agreement is a product of "serious, informed, non-collusive negotiations." Manual For Complex Litigation §30.41 at 265 (3d ed. 2000); *see also Armstrong*, 616 F.2d at 314. Settlement discussions lasted over a period of one (1) year before an agreement was reached by the Parties. As the Court knows, this case has been hard fought, and the settlement negotiations were extensive and adversarial in nature. Moreover, the Parties were able to reach the settlement only after working with one of the most respected mediators in the United States (Professor Eric D. Green) for a period of more than three (3) full days. There plainly was no collusion with respect to this proposed Settlement Agreement.

As a distinguished commentator on class actions has noted:

> There is usually an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's-length by counsel for the class, is presented for court approval

* * *

> The initial presumption of fairness of a class settlement may be established by showing:
>
> 1. That the settlement has been arrived at by arm's length bargaining.
>
> 2. That sufficient discovery has been taken or investigation completed to enable counsel and the court to act intelligently; and
>
> 3. That the proponents of the settlement are counsel experienced in similar litigation.

Herbert B. Newberg And Alba Conte, Newberg On Class Actions §11.41 at 11-88, 11-91 (3d ed. 1992); *see also City P'ship Co. v. Atl. Acquisition ltd. P'ship*, 100 F.3d 1041, 1043 (1st Cir. 1996). In this case, as explained above, the terms of the Settlement Agreement were reached during extensive arm's-length negotiations by experienced counsel after thorough investigation. Also, the Parties have vigorously litigated this case and have thoroughly explored the issues in this Litigation. Finally, counsel for Plaintiff and Hartford Life are experienced in ERISA and class action litigation. Therefore, the Court should find that an initial presumption of fairness exists to support preliminary approval of the Settlement Agreement.

2. The Settlement Has No Obvious Deficiencies

The terms of the Settlement Agreement are fair and reasonable and adequately resolve the dispute as to Hartford Life, particularly in light of the risks posed to each side by continued litigation. The Settlement provides substantial and meaningful benefits in the form of cash payments and changes in business practices and the disclosure of important, meaningful information regarding revenue sharing, as well as regarding expenses. There are no obvious deficiencies in the proposed Settlement.

3. Class Counsel Recognize That The Litigation Was Hard Fought, The Outcome Was Far From Certain And That A Possibility Existed That Continued Litigation Against Hartford Life Could Have Resulted In Little Or No Recovery

It is Class Counsel's considered opinion that the recovery from Hartford Life under this Settlement is fair and reasonable. Although Plaintiff and Class Counsel would have obviously sought more in any trial, the value of the Settlement constitutes a substantial recovery under all of the circumstances. Moreover, notwithstanding the confidence of Class Counsel in the merits of the Plaintiff's claims against Hartford Life, Class Counsel are cognizant that no case is a sure winner at trial and that Hartford Life had arguments and potential defenses available to it. Those arguments and defenses include those reflected in Hartford Life's pending summary judgment motion, as well as arguments that Hartford Life indicated it would present to limit or restrict the potential damages available to the Monetary Relief Class even in the event of a judgment in its favor. Moreover, class certification has not been decided and was being vigorously contested. If class certification was denied and that denial was affirmed on appeal, the value of Plaintiff's claims would have amounted in the thousands of dollars at most. Under all of these circumstances, the proposed Settlement Agreement is clearly fair, reasonable, and adequate.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant Plaintiff's Motion for Preliminary Approval of Settlement with Hartford Life and that the Court approve the form of Class Notice, grant conditional certification of the Classes for settlement purposes only, and establish a date for a final approval hearing.

Respectfully submitted,

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