

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

BARBARA CRAW, <i>et al.</i> ,	X	
	X	
Plaintiffs,	X	CASE NO: 18-CV-12149-LTS
	X	
vs.	X	
	X	
HOMETOWN AMERICA, LLC, <i>et al.</i> ,	X	
	X	
Defendants.	X	
	X	

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF BARBARA CRAW’S
MOTION FOR APPROVAL OF ATTORNEY’S FEES AND EXPENSES
AND CLASS REPRESENTATIVE AWARD**

INTRODUCTION

Plaintiff Barbara Crow resides in a mobile home sited at the Oakhill Manufactured Housing Community located in Attleboro, Massachusetts (“Oakhill”). Oakhill is operated by Defendants Hometown America, LLC, Hometown America Management, LLC and Hometown Oakhill, LLC (collectively, “Oakhill Defendants”). Like the other residents of Oakhill, Ms. Crow pays rent each month to one or more of the Oakhill Defendants so that her home may sit on land owned by those Defendants, land which is also called a home site. In exchange for that monthly rent, the Oakhill Defendants must provide a critical set of services to ensure that Ms. Crow’s home site – as well as all other home sites at Oakhill – are habitable and otherwise fit for occupancy by a manufactured home. Such critical services include ensuring that residents’ leased home sites are properly graded, maintaining the functionality of drainage infrastructure on or around each resident’s home site and ensuring that paved walkways or driveways on each site pitch toward the street or other drainage infrastructure – the collective goal of which is to prevent water from accumulating under or around residents’ homes.

In the First Amended Class Action Complaint, Ms. Craw has alleged that, since at least September of 2012, the Oakhill Defendants have unlawfully failed to provide these services at Oakhill and, in doing so, have injured Craw as well as all current or former Oakhill residents by depriving them of maintenance services for which their rent was supposed to pay. By this lawsuit, Ms. Craw has sought equitable relief requiring the Oakhill Defendants to comply with their legal obligations and provide these essential services to the residents that currently occupy home sites at Oakhill. By this lawsuit, Ms. Craw has further sought monetary relief in the form of damages corresponding to the value of those services for which all current and former Oakhill residents paid with their rent monies since September of 2012 but which Craw alleges they never received.

After nearly three years of litigation, which included approximately one year of settlement negotiations, the Court preliminarily approved a Stipulation of Settlement which provides substantial relief – both injunctive and monetary – to the Settlement Class of current and former Oakhill residents on whose behalf Ms. Craw has been prosecuting this action. With respect to injunctive relief, the Settlement obligates the Oakhill Defendants for a period of at least five years to implement an infrastructure maintenance protocol which will ensure that the community's stormwater management systems are properly maintained and in good working order – a requirement which may be extended by the Court upon a showing that the Oakhill Defendants have not complied with their obligations. The Settlement also mandates specific infrastructure improvements to the section of Oakhill most adversely impacted by poor drainage and water accumulation. With respect to monetary relief, the proposed settlement creates a Settlement Fund of \$500,000 earmarked for distribution to members of the Class on a claims-made basis, as compensation for their injuries, and creates an additional fund of approximately

\$10,000 earmarked for the payment of settlement administration expenses. Other than paying for settlement administration expenses in excess of this budgeted amount, the Settlement's Plan of Allocation requires that the Settlement Fund be distributed in its entirety to Class-member claimants.

In addition to the monies outlined above, the Settlement also commits the Oakhill Defendants to paying the Attorney's Fees and Expenses of Ms. Craw's counsel – as Class Counsel – in the amount of \$162,500, as well as a Class Representative Award to Craw in the amount of \$17,500. As outlined in greater detail below, the \$162,500 award of Attorney's Fees and Expenses is reasonable in light of the number of hours spent by Class Counsel pursuing the claims of the Settlement Class, the skill with which Class Counsel handled this litigation and the substantial benefits obtained for Class members in the proposed Settlement. As outlined in greater detail below, the \$17,500 Class Representative Award is similarly reasonable in light of the significant efforts undertaken by Ms. Craw on behalf of the Settlement Class throughout this litigation. Accordingly, based on the foregoing as well as the arguments submitted below, Ms. Craw respectfully requests that the Court grant the Motion filed herewith, approve the proposed Attorney's Fees and Expenses of \$162,500 as well as Class Representative Award of \$17,500 and incorporate such approval into the Final Order and Judgment resolving this litigation.

THE OAKHILL LITIGATION

On September 25, 2018, Ms. Craw commenced the instant action before the Superior Court of Plymouth County, Massachusetts and challenged the lawfulness of the maintenance policies at the Oakhill and Oak Point Manufactured Housing Communities; Ms. Craw was at that time and still is a resident of Oakhill. *See* Suppl. Decl. of Ethan R. Horowitz (“Suppl. Horowitz Decl.”) at ¶ 5; Doc. No. 1-1 at ¶¶ 2-3 & Sub-Ex. B. Shortly thereafter, Ms. Craw served upon defense

counsel her first motion for class certification. *See* Suppl. Horowitz Decl. at ¶ 6; Doc. No. 1-4 at p. 2. On October 31, 2018, after the instant action was removed to this Court, Ms. Craw filed an amended complaint so as to conform her claims to the federal forum and to add the claims of her co-Plaintiff Joan Shurtleff who at that time was, and still is, a resident of Oak Point. *See* Suppl. Horowitz Decl. at ¶ 7; Doc. Nos. 1 & 10. Ms. Craw and Ms. Shurtleff subsequently filed a second motion for class certification, Doc. Nos. 11-12, which was denied without prejudice, Doc. No. 63, opposed a motion to dismiss, Doc. No. 44, which was denied in its entirety, Doc. No. 59, and twice moved affirmatively for partial summary judgment, Doc. Nos. 42-43, 74-75 – both of which motions were denied without prejudice, Doc. Nos. 63, 90. *See* Suppl. Horowitz Decl. at ¶ 8. Following this flurry of motion practice, the parties by agreement spent the next eleven months conducting discovery on Ms. Craw’s and Ms. Shurtleff’s individual claims – discovery which included Plaintiffs’ production of approximately 8,000 pages of documents, Defendants’ production of approximately 70,000 pages of documents, nine depositions – three noticed by Defendants and six by Plaintiffs – and more than one-dozen business record subpoenas or public record requests to third parties. *See id.* at ¶ 9. During the course of discovery, Ms. Craw responded to substantial amounts of written discovery propounded by Defendants and concerning Craw or Oakhill, written discovery which resulted in the production of over 900 pages of documents. *See id.* at ¶ 13. During the course of discovery, Defendants noticed Ms. Craw’s deposition and Craw spent an entire day at a deposition in defense counsel’s office in downtown Boston, where she testified for approximately six hours. *See id.* at ¶ 14. During the course of discovery, Defendants requested and Ms. Craw agreed that Defendants’ panel of experts be permitted to inspect her home and made her home as well as home site available to those six experts. *See id.* at ¶ 15.

In March of 2020, following the conclusion of discovery, as well as additional discovery-related and other motion practice, Doc. Nos. 100-122, the parties successfully sought a stay of the pending litigation and began settlement negotiations mediated by mediation attorney John J. Perry, Jr. *See* Suppl. Horowitz Decl. at ¶ 10; Doc. Nos. 123-25. After approximately one year of extensive arm’s-length negotiations, which included the disclosure of informal discovery, Ms. Craw and the Oakhill Defendants reached a proposed agreement – the Stipulation of Settlement – designed to resolve Craw’s claims in the above-captioned litigation. *See* Suppl. Horowitz Decl. at ¶ 11; Doc. No. 171-1. On May 7, 2021, the Court preliminarily approved the Stipulation. Doc. No. 174. During the course of this litigation, Ms. Craw assisted the undersigned with organizing at least one Oakhill residents meeting at which the undersigned presented, among other things, information about the status of the above-captioned action. *See* Suppl. Horowitz Decl. at ¶ 16. Following the Court’s preliminary approval of the proposed Stipulation of Settlement, Ms. Craw spent no fewer than two days with interns from the undersigned’s office knocking on the doors of Oakhill residents, answering questions about the proposed Settlement and ensuring that all Oakhill residents had the information they needed to make an informed decision about their rights in the instant litigation. *See id.* at ¶ 17.

ARGUMENT

I. APPLICABLE LAW

Fed. R. Civ. P. 23(h) permits a district court to award reasonable attorney’s fees and litigation costs if such fees and costs “are authorized by law or by the parties’ agreement.” In reviewing the reasonableness of an attorney’s fee award authorized by Fed. R. Civ. P. 23(h), a district court sitting in its diversity jurisdiction applies the substantive law of the forum state in assessing whether the award is independently reasonable in relation to the work performed by the

attorney. See *In re Volkswagen & Audi Warranty Extension Litig.*, 692 F.3d 4, 15 (1st Cir. 2012) [*“Volkswagen I”*] (“We also start with the basic premise that the issue of attorney’s fees has long been considered for *Erie* purposes to be substantive and not procedural, and so state-law principles normally govern the award of fees.”). While Massachusetts law provides that “what constitutes a reasonable fee is a question that is committed to the sound discretion of the judge,” Courts of the Commonwealth typically channel their discretion through application of the “lodestar method.” *In re Volkswagen & Audi Warranty Extension Litig.*, 89 F. Supp. 3d 155, 164 (D. Mass. 2015) (Young, J.) [*“Volkswagen II”*] (internal quotation omitted) (applying Massachusetts law).¹ Specifically, the application of the lodestar method requires that reviewing courts identify a reasonable number of hours the attorney spent litigating the matter, multiply that number by the attorney’s reasonable hourly rate and then multiply that number again by a “multiplier” which enhances the “lodestar appropriately to reflect, for example, the scale of the results achieved ... or the risks counsel took in pursuing contingent fees.” *Id.* at 165. Courts similarly assess the reasonableness of a proposed class representative incentive award and typically measure the award against a class representative’s active participation in the litigation as well as her “important function in promoting class action settlements.” *In re Lupron Mktg. & Sales Practices Litig.*, 228 F.R.D. 75, 98 (D. Mass. 2005) (Stearns, J.); accord *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 82 (D. Mass. 2005) (Young, C.J.); see also *Eldridge v. Provident*

¹ Massachusetts courts have adopted the lodestar method as an effective shorthand for reviewing the various factors mandated by the Supreme Judicial Court in assessing the reasonableness of a fee award “including the nature of the case and the issues presented, the time and labor required, the amount of damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases.” *Volkswagen II*, 89 F. Supp. 3d at 164 (internal quotations omitted); see also, e.g., *In re AMICAS, Inc. Shareholder Litig.*, 27 Mass. L. Rptr. 568, *3 (Mass. Super. Ct. 2010) (Neel, J.) [*“AMICAS”*] (same factors).

Cos., Inc., 18 Mass. L. Rptr. 678, *1 (Mass. Super. Ct. 2005) (Sanders, J.) (“... it is undisputed that a court has discretion to make [class representative incentive] awards ...”).

II. THE PROPOSED AMOUNT OF ATTORNEY’S FEES AND EXPENSES IS REASONABLE

The undersigned submits that he vigorously pursued the above-captioned action – both in litigation and settlement postures – on behalf of the Settlement Class and that the proposed \$162,500 of Attorney’s Fees and Expenses is reasonable in light of these efforts as well as the results obtained for the Class. After careful review of his time records, the undersigned has identified 267 hours spent on tasks which primarily benefitted the Settlement Class and which should be accounted for in the resolution of the Settlement Class’s claims – including 108.75 hours participating in discovery for or otherwise managing the investigation of the Settlement Class’s claims and 158.25 hours negotiating the Settlement as well as taking the steps necessary to ensure the Court’s approval of the same. *See* Suppl. Horowitz Decl. at ¶¶ 21-26 & Sub-Exhs. A-E.² Given the skill with which he has prosecuted this litigation and given that he is the managing attorney of a civil legal aid law firm who has been practicing law for approximately

² Given the respective sizes of the Oakhill and Oak Point Manufactured Housing Communities, the Settlement Class is likely to be about five times smaller than the putative class of current and former residents of the Oak Point Manufactured Housing Community. In light of this disparity in size, the undersigned submits that the fairest way to apportion his fees between the two groups is to seek an Attorney’s Fees and Expenses award in this Settlement for the cost of tasks which primarily benefitted the Settlement Class – *i.e.*, the Oakhill Class. The undersigned will seek an award in the remaining Oak Point case for the cost of all remaining tasks – including tasks which jointly benefitted both communities. Accordingly, by this Motion, the undersigned only seeks an Attorney’s Fee and Expenses award in this Settlement for the following groups of activities and will seek compensation in the remaining Oak Point litigation for all other tasks not listed here: investigating conditions at Ms. Craw’s home site or Oakhill in general and reviewing expert reports concerning the same, *see* Suppl. Horowitz Decl. at ¶ 25, handling Ms. Craw’s written discovery responses and document productions primarily attributable to Craw, *see id.* at ¶ 22, defending Ms. Craw’s deposition and taking the deposition of Oakhill Community Manager Josephine Santa Fe, *see id.* at ¶¶ 23-24, and participating in settlement negotiations as well as settlement proceedings which have implicated the Settlement Class. *See id.* at ¶ 26.

twelve years, *see id.* at ¶¶ 1–4, the undersigned submits that his work should be valued at no less than \$340 per hour. This rate is a reasonable one insofar as it falls well within the range of what junior partners charge at Boston-area law firms when undertaking complex litigation, *see, e.g., Com. Care All. v. AstraZeneca Pharm., L.P.*, 2013 WL 6268236, *1 (Mass. Super. Ct. Aug. 5, 2013) (Sanders, J.) (collecting cases regarding reasonable fees), and was recently approved as a reasonable rate for the work performed by the undersigned in manufactured housing community class-action litigation pending before the Middlesex Superior Court. *See* Suppl. Horowitz Decl. at ¶ 19; *Layes, et al. v. RHP Properties, Inc., et al.*, 15-CV-02722 at Doc. Nos. 70-71 (Mass. Super. Ct. Apr. 29, 2021) (Hogan, J.).³ Moreover, given the risk he assumed in undertaking this litigation as well as the results he achieved, the undersigned respectfully submits that his work merits the standard multiplier of two for litigation without a paying client that involves novel issues of law and implicates substantial questions of public import. *See, e.g., Volkswagen II*, 89 F. Supp. 3d at 166-67, 171 (adopting multiplier of 2); *Com. Care All.*, 2013 WL 6268236 at *2 (same); *see also, e.g., Roberts v. TJX Cos., Inc.*, 2016 WL 8677312, at *13 (D. Mass. Sep. 30, 2016) (Burroughs, J.) (collecting cases where “[m]ultipliers of 2 and more have been found reasonable”). Accordingly, Ms. Craw respectfully submits that the proposed \$162,500 in Attorney’s Fees and Expenses is a reasonable component of this Settlement, and Defendants do not oppose the request.⁴

³ While the undersigned acknowledges that in previous fee petitions he has requested a rate of \$250 per hour for his work, this requested rate was based on the undersigned’s most recent hourly rate while working in the private sector – work which concluded approximately five years ago and which was akin to that of a law firm associate. *See* Suppl. Horowitz Decl. at ¶¶ 2–3. The undersigned’s work on behalf of the Settlement Class has been substantially more complex and reflective of the work of a law firm partner that merits a higher rate. *See id.* at ¶ 19.

⁴ “Massachusetts appellate courts have not expressly authorized the use of the percentage method” to calculate reasonable attorney’s fees in a common-fund case. *AMICAS*, 27 Mass. L. Rptr. 568 at *3. Nevertheless even if the percentage standard is applicable to this settlement – *cf.*

III. THE PROPOSED CLASS REPRESENTATIVE AWARD IS REASONABLE

Ms. Craw also submits that the requested \$17,500 Class Representative Award properly reflects Craw's extensive cooperation with the undersigned and participation in the above-captioned action to ensure that the Settlement Class has been properly represented. As described above, Ms. Craw's efforts on behalf of the Class included: responding to extensive written discovery, *see* Suppl. Horowitz Decl. at ¶ 13, sitting for a day-long deposition, *see id.* at ¶ 14, agreeing to an intrusive inspection of her home and home site by Defendants' panel of experts, *see id.* at ¶ 15, attempting to organize other Oakhill residents to ensure that putative class members were informed of the status of this litigation, *see id.* at ¶ 16, and canvassing the Oakhill community for two days to ensure that Class members were aware of their rights under the proposed Settlement. *See id.* at ¶ 17. Moreover, Ms. Craw's efforts not only benefitted herself or her neighbors in the Oakhill community but effected a public service by both seeking and obtaining a judicial interpretation of the Massachusetts Manufactured Housing Community Regulations that protects the rights of manufactured housing community residents across the Commonwealth. *See, e.g., Eldridge*, 18 Mass. L. Rptr. 678 at *2 (class representative incentive award also justifiable as "compensation for a public service rendered by the enforcement of laws intended to protect the general population."); Doc. No. 59. Accordingly, given Ms. Craw's active and prolonged participation in this litigation as well as the substantial results she achieved, Craw submits that the requested \$17,500 incentive award is reasonable and Defendants do not

Volkswagen I, 692 F.3d at 15-17 – the undersigned's fee request is reasonable. The undersigned's requested \$162,500 is just shy of 25% of the approximate \$690,000 in funds Defendants will pay for this Settlement if the requested Attorney's Fees and Expenses and Class Representative Award are approved – a percentage which is widely deemed reasonable in such cases and comports with the contingency in the undersigned's standard retainer agreement. *See* Suppl. Horowitz Decl., at ¶ 4; *see also, e.g., Ark. Teacher Ret. Sys. v. State Street Bank & Tr. Co.*, 512 F. Supp. 3d 196, 217 (D. Mass. 2020) (Wolf, J.) (noting that "the 20-30% range generally [is] presumed to be reasonable").

oppose the request. *See, e.g., Eldridge*, 18 Mass. L. Rptr. 678 at *3 (\$12,500 incentive payment found reasonable as “acknowledgement that [plaintiffs] have done far more than any other plaintiff to advance [the] litigation and to assist in obtaining the outcome that now brings [the] lawsuit to an end.”) *Com. Care All.*, 2013 WL 6268236 at *1 (approving \$15,000 incentive payment for individual plaintiff); *Gordan v. Mass. Mut. Life Ins. Co.*, 2016 WL 11272044, *3 (D. Mass. Nov. 3, 2016) (Ponsor, J.) (approving \$20,000 incentive payment for individual plaintiff).

CONCLUSION

In this way, and based on the foregoing, Ms. Craw respectfully requests that the Court grant the Motion filed herewith, approve the proposed Attorney’s Fees and Expenses of \$162,500 as well as Class Representative Award of \$17,500 and incorporate such approval into the Final Order and Judgment resolving this litigation.

Respectfully submitted,

BARBARA CRAW,
By her attorney,

This 25th day of August, 2021

/s/ Ethan Horowitz

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CERTIFICATE OF SERVICE

I hereby certify that on August 25th, 2021, the foregoing Memorandum was electronically filed with the Clerk of the Court through the CM/ECF system, which will send notification of such filing to registered participants, including counsel for the Defendants.

/s/ Ethan Horowitz

Dated: August 25th, 2021

Ethan R. Horowitz
BBO # 674669