

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

**ROBERTA RICCI, DACHELLE L.
THREATS,
VINCENT PIZZI, DIANE DINOBILE,
ABIGAIL TORRES, JOHN BORDEN, and
NORTH AMERICAN AUTO LEASING, LLC,
individually, and on behalf of all others
similarly situated,**

Plaintiffs,

v.

**CITY OF PROVIDENCE, by and through its
Treasurer, James J. Lombardi, III,**

Defendant.

**CIVIL ACTION NO.
1:18-cv-00171-JJM-PAS**

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR ATTORNEYS’ FEES AND
REIMBURSEMENT OF COSTS AND EXPENSES AND FOR
PLAINTIFFS’ INDIVIDUAL SERVICE AWARDS**

I. INTRODUCTION

Roberta Ricci, Dachele L. Threats, Vincent Pizzi, Diane Dinobile, Abigail Torres, John Borden, and North American Auto Leasing, LLC, (hereafter collectively also referred to as “Plaintiffs” or “Named Plaintiffs” or “Class Representatives”), individually and on behalf of the proposed settlement class (hereafter also referred to as “Settlement Class” or “Class”), with the assent of Defendant, City of Providence (hereafter also referred to as “Defendant” or “City”) respectfully submit this Memorandum of Law in Support of Plaintiffs’ Unopposed Motion for Attorneys’ Fees and Reimbursement of Costs and Expenses and for Plaintiffs’ Individual Service Awards.

Class counsel have achieved a class-wide settlement in this litigation which provides

relief for thousands of class members. Moreover, the Settlement provides an additional benefit to the Class Members: it requires Defendant to revise its summonses as well as to comply with all the statutory provisions of the School Speed Zone Act. Plaintiffs' goal in filing this class action lawsuit was not just to recover damages for the Class, but also to ensure that Defendant comply with the statutory requirements of the School Speed Zone Act and by securing Defendant's agreement to these requirements, the Settlement achieves that goal.

Class counsel now respectfully moves this Court for an award of attorneys' fees in the amount of \$69,541.50 and for costs and expenses in the amount of \$5,458.50 for a total amount of seventy-five thousand dollars (\$75,000.00). Defendant does not oppose this request since the requested attorneys' fees and costs were the result of negotiation and compromise among Plaintiffs and Defendant. The Attorneys' Fees will be paid by the Defendant separately from the Class benefit, and therefore will not diminish the Class recovery.

In negotiating the Settlement, class counsel and the parties were well-informed as to the merits of their claims and defenses. The Court has granted preliminary approval of the proposed settlement. There is no doubt that the Settlement is fair and reasonable. As the substantive terms of the settlement reflect the results of intensive negotiations between experienced and well-informed counsel, and the substantial benefits it confers on class members are preferable to the cost, delay, and uncertainty of protracted litigation, and are all relevant factors that weigh strongly in favor of granting the Unopposed Motion for Attorneys' Fees and Reimbursement of Costs and Expenses and for Plaintiffs' Individual Service Awards.

II. FACTUAL AND PROCEDURAL BACKGROUND

In 2016, the Rhode Island General Assembly enacted the Automated Speed Zone Act, which authorized the use of automated camera technology to capture motor vehicles that have exceeded a school zone speed limit. The City of Providence installed and began operation, on or about January 16, 2018, of an automated speed camera technology system in the City of Providence in certain school zones and began issuing summonses that resulted in a fine of ninety-five (\$95.00) dollars per violation.

Plaintiffs filed a Class Action Complaint in Rhode Island State Superior Court, on March 23, 2018. On March 26, 2018, Plaintiffs filed a motion in State Court requesting a temporary restraining order. On March 30, 2018, the Defendant removed the Class Action lawsuit to the United States District Court for the District of Rhode Island. On April 2, 2018, Plaintiffs filed a motion for a preliminary injunction, and after a hearing on April 10, 2018, the Court denied the Plaintiffs' motion. Subsequently, Plaintiffs and Defendant decided to enter mediation, and after a day-long mediation session, with a private mediator, entered into the Proposed Settlement.

This Class Action alleges, among other things, the City failed to comply with the Rhode Island Automated School-Zone-Speed Enforcement System Act of 2016, R.I.G.L. § 31-41.3 et seq., when issuing summonses to those who received allegedly defective and deficient summons(es) from the City for motor vehicle speeding infractions in school zones. Plaintiffs claim that the City's uniform course of conduct in issuing summonses was misleading and deficient.

Based on these allegations, Plaintiffs, on behalf of themselves and the Class, claim that the City violated state common law, state statutory law, and federal statutory law, and

therefore seek damages, restitution, and injunctive relief against the City based on claims that the summonses issued by the City were defective and deficient in a manner that is common to the entire Class.

The excellent result for the Class, despite the significant procedural and substantive hurdles the Plaintiffs faced, and the hard-fought, settlement negotiations -- including a mediation session with Judge Pfeiffer, a retired Rhode Island Superior Court Judge, all are testaments to the non-collusive nature of the Settlement. Unquestionably, the Settlement was the result of arm's-length negotiations by experienced litigation lawyers and class action lawyers.

III. ATTORNEYS' FEES

A. The Attorneys' Fees Request is Unopposed by Defendant and the Result of Compromise

In *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983), the United States Supreme Court held that it is ideal for parties to strive toward negotiated, agreed-upon attorneys' fee provisions. Class counsels' fee request resulted from a negotiated, agreed-upon attorneys' fee. A contested attorney fee award may have been higher or lower than the agreed amount, but class counsel submits that the agreed upon attorneys' fees is a fair compromise.

B. The Attorneys' Fees Request Will be Paid Separate and Apart from the Class Recovery

The attorneys' fees will not diminish the recovery of class members since it will be paid separate and apart from the class members' recovery. *See In Re Vitamin Antitrust Litig.*, 2004 WL 608000, *5 (D.D.C. Oct 22, 2004) ("The fact that "the proposed fee [did] not diminish the Plaintiffs' recovery was an important factor supporting this Court's approval of the first fee petition.") (citations omitted).

To calculate lodestar, a court takes the number of hours reasonably expended on the litigation multiplied by an hourly rate. *See, e.g. Lipsett v. Blanco*, 975 F.2d 934, 037 (1st Cir. 1992). Class Counsel, in this litigation, has spent 302.6 hours, on the investigation, litigation, and settlement of this lawsuit, for a total lodestar of \$182,025.00. See declaration of Peter N. Wasylyk attached to this memorandum as Exhibit “A”, and declaration of Peter J. Petrarca attached to this memorandum as Exhibit “B”. Class Counsels’ lodestar exceeds \$75,000.00, which provides further support for the reasonableness of the total attorneys’ fees request.

C. Class Counsel’s Rates Have Been Approved in Other Class Action Settlements Achieved by Class Counsel

As reflected in the declaration of Attorney Peter N. Wasylyk, attached as Exhibit “A” to this memorandum, the rates utilized by Attorney Wasylyk in this case, are similar to rates approved by courts in other class action settlements achieved by Attorney Wasylyk.

D. The Agreed-Upon Attorneys’ Fees, Costs and Expenses are Reasonable and Warrant Approval

Class Counsel requests approval of attorneys’ fees in an amount not to exceed \$75,000.00, which Defendant has agreed not to oppose. As Class Counsel puts forth in detail in this memorandum and the attached declarations, the requested attorneys’ fees are reasonable when applying the lodestar method.

Class Counsel have spent considerable time, that is with great risk of nonpayment due to the contingent nature of the litigation. There are numerous examples of cases in which plaintiffs’ counsel have spent thousands of hours and received no attorneys’ fees. *See, e.g., Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (class counsel’s jury verdict for the Plaintiffs was reversed on appeal after eleven years of litigation and class counsel did not

receive any attorneys' fees).

The settlement has received preliminary approval from this Court and is a favorable result for the settlement class. The time Class Counsel has invested and risked in this litigation and the favorable settlement result achieved in a relatively short period of time warrants approval of the attorneys' fees by this Court.

IV. PLAINTIFFS' INDIVIDUAL SERVICE AWARDS

"Courts have often stated that class representatives perform a public function and may be rewarded accordingly." *5 Newberg on Class Actions*, § 17:3, at 505. Class Counsel requests the Court award a modest service award of \$500.00 to each of the Named Plaintiffs, which Defendant has agreed not to oppose. Even though no formal discovery was conducted in this litigation, the Named Plaintiffs brought their complaints to Class Counsel and agreed to step forward and serve as Class Representatives to represent members of the class. The \$500.00 service awards to each Named Plaintiff is relatively modest even taking into consideration the fact that no formal discovery took place in this litigation and therefore this Court should approve Plaintiffs' modest service awards. *See, e.g., In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp 2d 448, 469 (awarding \$8,000 incentive award per Class Representative to be paid from the settlement fund, where "no Class Representative was ever deposed as the instant litigation did not proceed to a discovery phase."); *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1041(N.D. Ill. 2011) ("Given that the parties undertook no formal discovery, the Class Representatives' roles were largely prospective....Nevertheless, their role...and willingness to take a more active role if necessary, warrants a \$5,000 reward.").

V. Conclusion

The Proposed Settlement is fair, reasonable, and adequate. The Class should be conditionally certified for settlement purposes. Plaintiffs therefore request the Court to approve the Settlement on a preliminary basis so that Notice may be sent to Class Members, conditionally certify the Class for purposes of settlement, designate Named Plaintiffs as the Class Representatives and their counsel as Class Counsel, and schedule the final approval hearing.

Dated: June 8, 2018

Respectfully submitted,

/s/ Peter N. Wasylyk
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/s/ Peter J. Petrarca
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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2018, I electronically filed Plaintiffs' Unopposed Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Attorneys' Fees and Reimbursement of Costs and Expenses and for Plaintiffs' Individual Service Awards. Notice of this filing will be sent by e-mail to all Attorneys of Record by operation of the Court's Electronic Filing as indicated on the Notice of Electronic Filing. This document is available for viewing and downloading from the Court's Electronic Case Filing System.

/s/ Peter N. Wasyluk
Peter N. Wasyluk (R.I. Bar No. 3351)
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EXHIBIT “A”

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

**ROBERTA RICCI,
DACHELLE L. THREATS,
VINCENT PIZZI, DIANE
DINOBILO,
ABIGAIL TORRES, JOHN
BORDEN, and
NORTH AMERICAN
AUTO LEASING, LLC,
individually, and on behalf
of all others similarly
situated,**

Plaintiffs,

v.

**CITY OF PROVIDENCE,
by and through its
Treasurer, James J.
Lombardi, III,**

Defendant.

**CIVIL ACTION
NO.
1:18-cv-00171-
JJM-PAS**

**DECLARATION
OF
PETER N. WASYLYK**

**DECLARATION OF ATTORNEY PETER N. WASYLYK IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES
AND REIMBURSEMENT OF COSTS AND EXPENSES**

I, Peter N. Wasylyk, declare and state as follows:

1. My name is Peter N. Wasylyk and I am an attorney and a principal with the Law Offices of Peter N. Wasylyk. I respectfully submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees and Reimbursement of Costs and Expenses reasonably incurred in connection with services rendered in the above-captioned litigation.

2. I am over twenty-one years of age, of sound mind, have never been convicted of a felony, have personal knowledge of all the facts stated herein and am fully competent to make this declaration.

3. I am a member in good standing of the bar of the State of Rhode Island. I have been practicing law for the past 33 years and have practiced class action litigation before federal and state courts for the past 22 years. I have been class counsel in numerous class action lawsuits in both federal and state courts.

4. Since before the filing of this class action, I have played a very active role in the initiating and litigating of this case with co-counsel. Together with co-counsel, I have been involved in all aspects of the litigation, including but not limited to: interviewing, consulting and communications with the named plaintiffs; legal and factual research and investigation of the claims; development of the claims and strategy of the case; drafting and filing of the class action complaint, the mediation statement, the preliminary approval motion and memorandum; received and responded to a multitude of emails and phone calls from both co-counsel and the named plaintiffs as well as class members; and, participation in the settlement strategy and in the ultimate terms of the settlement. Additionally, I utilized the assistance of a paralegal, Obinna Anugweje, who acted in the capacity of an independent contractor, and was assigned the task of returning hundreds of telephone calls from class members.

5. The total number of hours I have expended on this litigation is 224.6 hours broken down as follows: (1) interviewing, consulting and communications with the named plaintiffs, 28.2 hours; (2) legal and factual research and investigation of the claims, development of the claims and strategy of the case, 38.6 hours; (3) drafting and filing of the class action complaint, the mediation statement, the preliminary approval motion and memorandum, 95.5 hours; (4) received and responded to a multitude of emails and phone calls from both co-counsel and the named plaintiffs as well as class members, 55.8 hours; and, (5) participation in the settlement strategy and in the ultimate terms of the settlement, 6.5 hours. Based on my

current hourly billing rate of \$675.00, my total lodestar is \$150,520.00. In my opinion, all the hours I expended in connection with this litigation were reasonably and necessarily incurred. My current rates are appropriate as compared to prevailing rates for similar legal services provided by lawyers of reasonably comparable skill, experience, and reputation. Legal services contracts between myself and plaintiff clients are primarily contingency fee agreements and the nature of contingency fees are that they are inherently uncertain and require counsel to assume more risk than cases where compensation is based on billable hours.

6. Based on my knowledge of other attorneys with similar experience and doing similar work, I also believe that my rate is fair and reasonable, and in line with the rates charged by other attorneys that do such work. I have submitted hourly billing rates exceeding \$600.00 in several other settled class actions: (1) *In Re Google Buzz User Privacy Litigation*, United States District Court for the Northern District of California, San Jose Division, Case No. 10-00672-JW, attorney fee declaration filed December 20, 2010, hourly billing rate of \$625.00; (2) *Trombley v. Bank of America Corporation*, United States District Court for the District of Rhode Island, Case No. 08-00456-JD-LM, attorney fee declaration filed October 7, 2011, hourly billing rate of \$625.00; (3) *Nash v. CVS Caremark Corporation*, United States District Court for the District of Rhode Island, Case No. 09-00079-M, attorney fee declaration filed March 7, 2012, hourly billing rate of \$625.00; (4) *Vought v. Bank of America*, United States District Court for the Central District of Illinois, Urbana Division, Case No. 10-02052-MPM-DGB, attorney fee declaration filed May 23, 2012, hourly billing rate of \$625.00; (5) *Cappalli v. BJ's Wholesale Club*, United States District Court for the District of Rhode Island, Case No. 10-00407-S-PAS, attorney fee declaration filed December 5, 2013, hourly billing rate of \$625.00; and, (6) *Lopez v. American Express Bank*, United States District Court for the

Central District of California, Case No. 09-07335-SJO-MAN, attorney fee declaration filed July 15, 2016, hourly billing rate of \$650.00. Accordingly, in my opinion a lodestar of \$150,520.00 was reasonably and necessarily incurred in connection with this litigation.

7. In connection with the prosecution of this litigation, I have incurred \$ 3,242.00 in unreimbursed expenses during this litigation as follows: (1) lexisadvance and courtlink research, \$640.00; (2) paralegal, Obinna Anugweje, \$2,580.00; (3) postage \$22.00. In my opinion, all these expenses and their amounts were reasonably and necessarily incurred in the prosecution of this litigation.

8. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: September 7, 2018
Providence, Rhode Island

/s/ Peter N. Wasyluk
Peter N. Wasyluk

EXHIBIT “B”

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

**ROBERTA RICCI, DACHELLE L. THREATS,
VINCENT PIZZI, DIANE DINOBILE,
ABIGAIL TORRES, JOHN BORDEN, and
NORTH AMERICAN AUTO LEASING, LLC,
individually, and on behalf of all others similarly
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Plaintiffs,

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**CITY OF PROVIDENCE, by and through its
Treasurer, James J. Lombardi, III,**

Defendant.

**CIVIL ACTION NO.
1:18-cv-00171-JJM-PAS**

**DECLARATION OF ATTORNEY PETER J. PETRARCA IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES AND
REIMBURSEMENT OF COSTS AND EXPENSES**

I, Peter J. Petrarca, declare as follows:

1. My name is Peter J. Petrarca and I am an attorney in good standing of the bar of the State of Rhode Island and practice law at Petrarca & Petrarca Law Offices. I respectfully submit this declaration in support of Plaintiffs' Motion for an award of attorneys' fees as well as the reimbursement of costs and expenses reasonably incurred in the above-captioned litigation.

2. I am over twenty-one years of age, of sound mind, have never been convicted of a felony, have personal knowledge of all the facts stated herein and am fully competent to make this declaration.

3. Together with co-counsel, I have been actively involved in all aspects of the litigation, including but not limited to: interviewing, consulting and communications with the named plaintiffs; legal and factual research and investigation of the claims; development of the claims

and strategy of the case; drafting the temporary restraining order documents; assisting co-counsel in the drafting and filing of the class action complaint, the mediation statement, the preliminary approval motion and memorandum; receiving and responding to numerous phone calls from class members; and, participation in the settlement issues.

4. The total number of hours I have expended on this litigation is 78 hours. Based on my current hourly billing rate of \$390.00, my total lodestar is \$30,420.00. In my opinion, all the hours I expended in connection with this litigation were reasonably and necessarily incurred. I believe that my rate is fair and reasonable, and in line with the rates charged by other attorneys that do such work.

5. In connection with the prosecution of this litigation, I incurred a total of \$2,216.50 in unreimbursed expenses during this litigation as follows: (1) court filing fees, \$186.50; (2) service of process, \$90.00; (3) westlaw research, \$400.00; and (4) mediator fee to Honorable Mark Pfeiffer, \$1,540.00. In my opinion, all these expenses and their amounts were reasonably and necessarily incurred in the prosecution of this litigation.

6. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: September 7, 2018
Providence, Rhode Island

/s/ Peter J. Petrarca
Peter J. Petrarca