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September 18, 2026

The Honorable Cathy Seibel
United States District Court for the Southern District of New York
300 Quarropas Street
White Plains, NY 10601

Re: *Arbuckle Funding, LLC et al. v. Talcott Resolution Life & Ann. Ins. Co. et al.*,
No. 7:23-cv-07972-CS

Dear Judge Seibel:

Plaintiffs respectfully submit this letter in response to the Court's September 15, 2026 Order directing Plaintiffs to address *In re Literary Works in Electronic Databases Copyright Litigation*, 654 F.3d 242 (2d Cir. 2011), and its progeny, including *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litigation*, 827 F.3d 223 (2d Cir. 2016). See ECF No. 138.

As explained below, named plaintiffs are adequate representatives of all class members, including those with only Retaliatory Tax Rate claims, and neither *Literary Works* nor *Payment Card* counsels otherwise. There is no fundamental conflict here because, by the time the parties began settlement negotiations, all class members' interests were aligned to maximize recovery for the Retaliatory Tax Rate claims. In addition, Defendants' admissions and the sequence of litigation and settlement negotiations here provide the structural assurance those cases require. The Court should accordingly grant final approval and class certification.

I. Unlike *Literary Works*, There Is No Fundamental Conflict Because Class Members' Interests Were Aligned When Settlement Negotiations Began, Particularly Given Defendants' Admissions Regarding the Address/Rate Update Claims.

Under Rule 23(a)(4), "the proposed class representative must have an interest in vigorously pursuing the claims of the class, and must have no interests antagonistic to the interests of other class members." *Literary Works*, 654 F.3d at 249 (citation omitted). "In the event a court identifies

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a ‘fundamental’ conflict that goes ‘to the very heart of the litigation,’ the conflict must be addressed with a ‘structural assurance of fair and adequate representation for the diverse groups and individuals’ among the class.” *In re Petrobras Sec. Litig.*, 317 F. Supp. 3d 858, 867 (S.D.N.Y. 2018) (first quoting *Charron v. Wiener*, 731 F.3d 241, 250 (2d Cir. 2013), then quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 627 (1997) (internal citations omitted)), *aff’d*, 784 F. App’x 10 (2d Cir. 2019). “Fundamental” conflicts arise “where the named plaintiff’s incentives will compromise the named plaintiff’s ability to prosecute claims and seek a resolution that is best for all class members.” *Torres v. MMS Grp. LLC*, 2025 WL 2933687, at *11 (S.D.N.Y. Jan. 27, 2025), *report and recommendation adopted*, 2025 WL 2647699 (S.D.N.Y. Sept. 16, 2025); *see also Chalmers v. City of New York*, 2024 WL 6837881, at *4 (S.D.N.Y. Jan. 16, 2024) (identifying fundamental conflict where class representatives held claims to both past damages and future pay adjustment, “posing a risk that they would ‘sell out’ [class members] with only pay adjustment claims ‘for terms that would tilt toward’ the class representatives’ other claims” for past damages (quoting *Payment Card*, 827 F.3d at 233)); *In re Foreign Exch. Benchmark Rates Antitrust Litig.*, 407 F. Supp. 3d 422, 439 (S.D.N.Y. 2019) (identifying fundamental conflict precluding certification where “[t]he class representatives lack[ed] sufficient incentives to prove that their counterparties were injured by Defendants’ conduct” because “doing so would reduce the representatives’ own damages”).

In *Literary Works*, the Second Circuit vacated approval of a settlement where claims were divided into three categories based on the registration status of the copyrighted works: Category A (registered in time for statutory damages), Category B (registered but too late for statutory damages), and Category C (unregistered). *See* 654 F.3d at 246. The settlement capped the defendants’ total liability at \$18 million and provided that, if total claims exceeded that cap, payments to Category C claims would be reduced before any other claim was affected. *Id.* at 246. So even though “Category C claims comprise[d] more than 99% of authors’ total claims,” they received the worst treatment. *Id.* The class representatives held combinations of all three categories of claims. *Id.* at 251–52.

The Second Circuit found a “fundamental conflict” between class representatives holding claims in multiple categories and class members holding only Category C claims. *Id.* at 251–54. The court noted that because only 1% of claimants had Category A and B claims, named plaintiffs with all three claims would benefit from a greater allocation to Category A and B claims, rather than “spread over the far greater quantity of Category C claims.” *Id.* at 252. Representatives with claims in all three categories could “maximiz[e] their individual compensation” by “sacrific[ing] their Category C claims in exchange for more favorable compensation on their Category A and B claims.” *Id.* at 251–52. Compounding this problem, the Second Circuit had “no assurance that anyone ‘advanced the strongest arguments in favor’ of the disfavored claims” because the named plaintiffs represented the class as a whole. *Payment Card*, 827 F.3d at 233 (discussing and quoting *Literary Works*, 654 F.3d at 253).

Here, unlike in *Literary Works*, no “fundamental” conflict exists. The class representatives had no incentive, or ability, to maximize their benefits at the expense of the Retaliatory Tax claimants. By the time the parties began negotiating the settlement in this case, Defendants had all but conceded liability on the Address/Rate Update claims and even corrected the underlying errors.

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See ECF No. 81 (Pre-Motion Letter) at 2 n.1; ECF No. 136-2 (Settlement Agreement) §§ I.H & I.I.1 (Defendants “acknowledged” mistakes). As a result, the *only* seriously disputed claims were the Retaliatory Tax Rate claims. So unlike the class representatives in *Literary Works*, who could have enhanced their own recovery by sacrificing the weaker claims, the named plaintiffs here had *already* maximized their recovery on the Address/Rate Update claims. They thus had every incentive to maximize recovery on the only remaining claims—the Retaliatory Tax Rate claims—because that was the only route to maximize their overall recovery. Put differently, this is not a settlement where a cap was set and then the allocation worked backwards from there. Further, unlike *Literary Works*, where the named plaintiffs’ favored claims comprised only 1% of all claims, leading the named plaintiffs to prefer an allocation heavy to those groups, here, the vast majority of the putative class members with Retaliatory Tax Rate claims also have a Rate Update and/or Address Update claim.¹

Further, even if the conflict were deemed fundamental (which it is not), the sequencing of this litigation provides structural assurance that was absent in *Literary Works*. See *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 627 (1997) (requiring “structural assurance of fair and adequate representation”); *Juris v. Inamed Corp.*, 685 F.3d 1294, 1324 n.25 (11th Cir. 2012) (“[C]ertification of subclasses is just one example of structural protection capable of ensuring adequate representation in the face of intra-class conflicts.” (collecting sources)). In *Literary Works*, the court had no assurance that class counsel did anything to account for divergent interests of Category C claimants. Here, by contrast, by the time the parties began settlement negotiations, Defendants had essentially conceded liability on the Address/Rate Update claims and fixed the underlying issues going forward. As a result, the settlement negotiations focused on the contested Retaliatory Tax Rate claims, ensuring that the interests of class members with only those claims were not “traded away” to benefit other class members. See *In re Coll. Athlete NIL Litig.*, 803 F. Supp. 3d 959, 1015–16 (N.D. Cal. 2025) (approving unitary representation where “sequencing the negotiations . . . served as a structural protection that ensured fair and adequate representation for all class members,” and finding “no indication that the interests of one class were traded away to benefit those of another”); *In re Turquoise Hill Res. Ltd. Sec. Litig.*, 2025 WL 2984717, at *6 (S.D.N.Y. Oct. 23, 2025) (finding class representative adequate despite concern that representative “could use the threat of a recovery for the class in this lawsuit to leverage benefits for itself in other fora,” including in separate litigation, and noting that “at the time of settlement negotiations here, Lead Plaintiff had no continuing interest” in a separate lawsuit because it had settled).

More generally, unlike in *Literary Works*, the merits and strength of the different claims were litigated in full view of this Court and can be objectively evaluated. Talcott’s concessions

¹ This is because the Rate Update claim is, in part, predicated on Connecticut’s reduction in premium tax rate from 1.75% to 1.50%, and Connecticut’s premium tax rate is the benchmark for retaliatory tax rates. Policyholders that reside in a retaliatory tax state (*i.e.*, a state that has a lower premium tax rate than Connecticut) and who continued to be charged 1.75% after Connecticut’s rate reduction thus have two claims: (i) that the 1.75% should have been reduced to 1.50% (the Rate Update claim), which Defendants acknowledged should have been done and fixed going forward, and (ii) that Connecticut’s rate should have been ignored entirely (the Retaliatory Tax Rate claim), which Defendants heavily dispute.

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with respect to the Address/Rate Update claims appear in discovery responses and the record. *See, e.g.*, ECF No. 46 (Answer), ¶¶ 12, 39; ECF No. 81 (Pre-Motion Letter) at 2 n.1; ECF No. 85-1 (Discovery Response) at 3. The merits of the Retaliatory Tax claim, by contrast, were debated in pre-motion letters and at a hearing before the Court. *See* ECF Nos. 81 & 85 (Pre-Motion Letters); ECF No. 136-3 (July 28, 2025 Pre-Motion Hrg. Tr.). So this is not a situation like *Literary Works* where a court is left to guess as to what horse-trading might have gone on behind the scenes, or whether class counsel “advanced the strongest arguments in favor of [the Retaliatory Tax] recovery.” *Literary Works*, 654 F.3d at 253. The reasons for the allocation are objective and apparent on the public record; class representatives had every incentive to maximize the recovery for the Retaliatory Tax Claim, which will receive the majority of the settlement relief, because that was the only way to maximize the overall recovery; and this Court is well-equipped to evaluate whether the settlement and allocation are fair in light of that record. This unique scenario—involving two acknowledged mistakes and one heavily-disputed claim—provides further structural protections that were not present in *Literary Works*.

II. Payment Card Is Inapposite Because This Case Involves a Single Class Seeking Monetary Relief.

The Second Circuit’s decision in *Payment Card* is also inapposite. There, the court vacated approval of a settlement involving both (b)(2) and (b)(3) classes because “[s]tructural defects in this class action created a fundamental conflict between the (b)(3) and (b)(2) classes and sapped class counsel of the incentive to zealously represent the latter.” 827 F.3d at 236. The court was concerned that the (b)(2) class members seeking injunctive relief were denied the ability to opt out, while their interests conflicted with the damages class members. *Id.* at 233–34.

Those concerns are absent here. This case involves a single (b)(3) class seeking monetary relief, not competing classes seeking different forms of relief. Any class member could object or opt out if any were dissatisfied with the proposed allocation. And unlike in *Payment Card*, where counsel’s fee was tied exclusively to the damages class—creating an incentive to maximize monetary recovery at the expense of injunctive relief—here class counsel had every incentive to maximize recovery for *all* claimants, including those with only Retaliatory Tax Rate claims, because their proposed fee is tied to the aggregate common fund. *See id.* at 234; *see also* ECF No. 132 (Attorneys’ Fees Motion Memo. of Law).

III. The Favorable Class Reaction Confirms Adequate Representation.

The favorable class reaction further confirms that the named plaintiffs adequately represented all class members. At this Court’s request, the class notice was specifically revised to notify class members of the priority of claims and the fact that “Settlement Class Members with Address Update claims and Rate Update claims will receive 100% of any alleged Rate Update and Address Update overcharges, less the proportional share of fees, expenses, and awards associated with those acknowledged claims.” ECF No. 126-2 (Revised Class Notice) at 8. Not a single class member objected to the proposed settlement, and there has been only one opt-out. *See* ECF No. 137 (Timm Decl. to Final Approval Motion) at ¶¶ 16, 18. And like the named plaintiffs, that opting-out class member holds both types of claims. No class member with only Retaliatory Tax

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Rate claims opted out or objected to the settlement or plan of allocation. This favorable response strongly supports a finding of adequate representation. *See Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 660 (S.D.N.Y. 2015) (citing “the fact that no members of the prospective classes have opted out or opposed this settlement” as “confirmation” of adequacy of representation under Rule 23(a)); *Payment Card*, 827 F.3d at 234 (suggesting opt-out rights provide some form of structural assurance). *Cf. In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *14 (S.D.N.Y. July 21, 2020) (noting absence of objections and approving plan of allocation).

* * *

For these reasons, Plaintiffs respectfully submit that the named plaintiffs are adequate representatives of all class members, including those with only Retaliatory Tax Rate claims. The Court should accordingly grant final approval and certify the settlement class.

Respectfully submitted,

/s/ Ryan C. Kirkpatrick

CC: Counsel of Record (via ECF)
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