UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Rita Kohari, John Radolec, and Mohani Jaikaran, individually and as representatives of a class of similarly situated persons, and on behalf of the MetLife 401(k) Plan (f/k/a the Savings and Investment Plan for Employees of Metropolitan Life and Participating Affiliates),

Plaintiffs,

v.

MetLife Group, Inc., Metropolitan Life Insurance Company, the MetLife Group Benefit Plans Investment Advisory Committee, the Employee Benefits Committee of MetLife Group, Inc., and John and Jane Does 1-20,

Defendants.

Case No. 1:21-cv-6146-JHR-KHP

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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INTRODUCTION

On September 16, 2024, this Court preliminarily approved the Parties' Settlement Agreement, which resolves Plaintiffs' class action claims against MetLife Group, Inc., Metropolitan Life Insurance Company, the MetLife Group Benefit Plans Investment Advisory Committee, the Employee Benefits Committee of MetLife Group, Inc., and John and Jane Does 1–20 (collectively "Defendants"), under the Employee Retirement Income Security Act ("ERISA"), for their management of the MetLife 401(k) ("Plan"). Order Prelim. Approving Class Action Settlement, Approving Procedure & Form of Notice, & Scheduling Final Approval Hr'g, ECF No. 127, at ¶ 1 (hereinafter "Prelim. Approval Order"). The Court found on a preliminary basis that the Settlement's terms are "fair, reasonable, and adequate," as well as in accordance with all applicable requirements of law, and approved the distribution of the Class Notice as specified in the Settlement Agreement. *Id.* at 2. Since that time, an Independent Fiduciary has confirmed that the Settlement terms are reasonable, and no Settlement Class members have objected to the settlement. *See* Decl. of Brock Specht in Supp. of Pls.' Mot. for Final Approval of Class Action Settlement ("Fourth Specht Decl.") at ¶¶ 4, 7, Ex. 1 at 3, Ex. 2 at ¶ 22. Accordingly, Plaintiffs respectfully request that the Court grant final approval of the Settlement. Although Defendants dispute Plaintiffs' allegations, and deny liability for any alleged violations of ERISA or any other law, as parties to the Settlement Defendants do not oppose this motion.[1]

BACKGROUND

I. PROCEDURAL HISTORY[2]

On July 19, 2021, Plaintiffs Rita Kohari, John Radolec, and Mohani Jaikaran filed this

[1] All capitalized terms not specifically defined herein shall have the definitions provided in the Settlement Agreement.

[2] This case's procedural history has already been outlined in connection with Plaintiffs' motion for preliminary approval, ECF No. 110 at 2–3, and motion for attorneys' fees and costs, administrative expenses, and case contribution awards. ECF No. 128 at 2–3. For ease of reference, Plaintiffs have recounted that history here.

action alleging that Defendants (1) breached its ERISA fiduciary duties by applying an imprudent and disloyal preference for MetLife's own index fund products within the Plan, despite the index funds' poor performance, high costs, and lack of uptake with fiduciaries of similarly sized plans, and (2) failed to monitor the Plan's fiduciaries. *See* ECF No. 1 at ¶ 21–24. On October 6, 2021, MetLife moved to dismiss the Complaint for failure to state a claim. ECF No. 34. Plaintiffs responded to MetLife's motion on November 3, 2021, ECF No. 36, and MetLife replied on November 24, 2021. ECF No. 39.

On August 1, 2022, the Court denied MetLife's motion to dismiss. *Kohari v. MetLife Grp., Inc.*, No. 21-Civ.-6146, 2022 WL 3029328, at *1 (S.D.N.Y. Aug. 1, 2022) (ECF No. 44). On August 30, 2022, Plaintiffs sought leave to file an amended complaint. ECF No. 49. The Court granted leave that same day, ECF No. 50, and Plaintiff's Amended Complaint was filed effective August 31, 2022. ECF No. 51. The Amended Complaint added additional MetLife-related parties as defendants as well as provided additional information supporting Plaintiffs' allegations. *See id.* On September 30, 2022, MetLife answered the Amended Complaint. ECF No. 60. On May 31, 2023, Plaintiffs moved for class certification. ECF No. 75. MetLife opposed that motion. ECF No. 86. When the Parties reached a settlement, the class certification motion was still pending before the Court.

On August 31, 2023, Class Counsel and MetLife's counsel engaged in private mediation facilitated by District Judge James F. Holderman (ret.). Declaration of Brock J. Specht, ECF No. 111, at ¶ 17 (hereinafter "Second Specht Decl."). While the Parties were unable to reach a final settlement during the mediation, substantial progress was achieved and counsel for both sides continued to work toward a negotiated resolution following mediation. *Id.* Ultimately, the Parties reached an agreement in principle to resolve the case on a class-wide basis, ECF No. 105, and

subsequently drafted the comprehensive Settlement Agreement. On November 20, 2023, Plaintiffs moved for preliminary approval of the Settlement. ECF No. 109. On September 10, 2024, the Parties jointly moved for the referral of the preliminary approval motion to a magistrate judge. ECF No. 119. The Court approved the referral the next day. ECF No. 120. On September 16, 2024, the Court preliminarily approved the Settlement and set a final approval hearing for January 9, 2025, at 10:00 A.M. Order Prelim. Approving Class Action Settlement, Approving Procedure & Form of Notice, & Scheduling Final Approval Hr'g, ECF No. 127 at 2–3 (hereinafter "Prelim. Approval Order"). On November 22, 2024, Class Counsel filed a motion for attorney fees and costs, administrative expenses, and case contribution awards. ECF No 128. This motion for final approval of the Settlement follows.

II. OVERVIEW OF SETTLEMENT TERMS

A. Settlement Class

In granting preliminary approval of the Settlement, the Court preliminarily certified the following Settlement Class:

> All participants and beneficiaries of the MetLife 401(k) Plan who were invested in the MetLife Index Funds at any time on or after July 19, 2015, through December 31, 2021, excluding any persons with responsibility for the Plan's investment or administrative functions.

Prelim. Approval Order, ECF No. 127, at ¶ 3. Based on the information provided by the Settlement Administrator, JND Legal Administration ("JND"), there are 48,817 Settlement Class members. Fourth Specht Decl. Ex. 2 at ¶ 8 (hereinafter "Follensbee Decl."). This Settlement Class is consistent with certified classes in several similar ERISA suits, as it includes all participants in the

Plan during the Class Period except those with fiduciary responsibilities relating to the Plan.[3] *See* Second Specht Decl. Ex. A, ECF No. 111-1, at ¶ 1.9 (hereinafter "Settlement") (excluding from the Class "any persons with responsibility for the Plan's investment or administrative functions").

B. Monetary Relief

Under the Settlement, Defendants contributed a Settlement Amount of $4,500,000 to a Qualified Settlement Fund. Settlement at ¶¶ 1.29, 4.2. After accounting for any Attorneys' Fees and Costs, Administrative Expenses, and Case Contribution Awards approved by the Court, the Net Settlement Amount will be distributed to eligible Settlement Class members in accordance with the Plan of Allocation in the Settlement. *Id.* at ¶¶ 1.35, 5.1–5.9. Current Participant Settlement Class members will have their Plan accounts automatically credited with their share of the Net Settlement Fund. *Id.* at ¶ 5.3(c)–(d). Former Participant Settlement Class members will receive a direct payment by check unless they elect to have their distribution rolled over to an individual retirement account or other eligible employer plan. *Id.* at ¶ 5.4. Under no circumstances will any monies revert to Defendants. *Id.* at ¶ 5.7(b) Any uncashed checks will be transferred to the Plan's forfeiture account and treated as a forfeiture under the terms of the Plan. *Id.*

C. Release of Claims

In exchange for the relief provided by the Settlement, the Named Plaintiffs, the Plan and Settlement Class will release Defendants and affiliated persons and entities ("Defendant Releasees") from all claims:

[3] *See, e.g.*, *Wildman v. Am. Century Servs. LLC*, No. 16-CV-00737, 2017 WL 6045487, at *7 (W.D. Mo. Dec. 6, 2017) (certifying litigation class of all plan participants and beneficiaries excluding Defendants, members of the board, and "employees with responsibility for the Plan's investment or administrative functions"); *Moreno v. Deutsche Bank Ams. Holding Corp.*, 15-Civ.-9936, 2017 WL 3868803, at *11 (S.D.N.Y Sept. 5, 2017) (same); *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, No. 15-CV-1614, 2017 WL 2655678, at *9 (C.D. Cal. June 15, 2017) (same); *see also Moreno v. Deutsche Bank Ams. Holding Corp.*, No. 15-CV-09936, at ¶ 4 (S.D.N.Y. Oct. 9, 2018) (ECF No. 335) (certifying similar class for settlement purposes); *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, No. 15-CV-1614, 2018 WL 3000490, at *2–3, *7 (C.D. Cal. Feb. 6, 2018) (same).

- That arise out of the same operative facts as those alleged in the Complaint;
- That were asserted in the Complaint, or arise out of the conduct alleged in the Complaint whether or not pleaded in the Complaint;
- That arise out of, relate to, are based on, or have any connection with (i) the selection, oversight, retention, or performance of the Plan's investments, or (ii) the fees, costs, or expenses charged in connection with the Plan's investments, directly or indirectly; or
- That would be barred by *res judicata* or claim preclusion had the Action been fully litigated to a final judgment; or
- That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation, implementation or administration of the Net Settlement Fund to the Plan or any member of the Settlement Class in accordance with the Plan of Allocation; or
- That relate to the approval by the Independent Fiduciary of the Settlement Agreement.

See id. at ¶¶ 1.40, 7.1(a)–(b). The Released Claims do not include claims to enforce the Settlement Agreement. *Id.* at ¶¶ 1.40, 7.1(c).

D. Class Notice and Reaction to the Settlement

Under the Court's Order preliminarily approving the Settlement, JND sent Class Notice by U.S. first class mail and/or by electronic means to 48,817 Settlement Class members. Follensbee Decl. at ¶¶ 9–12. Prior to sending these Class Notices, JND cross-referenced the addresses on the class list with the United States Postal Service National Change of Address database. *Id.* at ¶ 8. In the event that any Class Notices were returned, JND re-mailed the Class Notice to any forwarding address that was provided and performed a skip trace in an attempt to ascertain a valid address for the Settlement Class member in the absence of a forwarding address. *Id.* at ¶ 12–13. As a result, the notice program was very effective. JND was able to successfully distribute Class Notice to all but 13 Settlement Class members (99.9% of the Settlement Class). *Id.* at ¶ 14.

If any Settlement Class members desired further information, they could visit the Settlement Website that JND established at www.MetLife401kPlanSettlement.com. *Id.* at ¶ 15.

Among other things, the Settlement Website includes case and settlement documents for download (including the Settlement Agreement, Class Notices for Current and Former Participants, Former Participant Rollover Form, Amended Complaint, the Court's Preliminary Approval Order, and Plaintiffs' Motion for Attorneys' Fees and Costs, Administrative Expenses, and Case Contribution Awards and related documents). *Important Documents*, MetLife 401(k) Plan Settlement, www.metlife401kplansettlement.com/documents (last visited Dec. 18, 2024). JND also created and maintained a toll-free telephone support line (1-888-995-0245) as a resource for Settlement Class members seeking additional information. *Id.* at ¶ 17.

The deadline to submit objections to the Settlement was December 6, 2024. *See* Prelim. Approval Order, ECF No. 127, at ¶ 11. No objections were received. *See* Fourth Specht Decl. at ¶ 7; Follensbee Decl. at ¶ 22. On November 30, 2023, JND also sent the notices and documents required by the Class Action Fairness Act, 28 U.S.C. § 1715, to the appropriate federal and state officials. *See* Follensbee Decl. at ¶¶ 4–5, Ex. A.

E. Review and Approval by Independent Fiduciary

In accordance with Paragraph 2.2 of the Settlement Agreement and applicable ERISA regulations,[4] the Settlement was submitted to an Independent Fiduciary (Newport Trust) for review following the Court's Preliminary Approval Order. *See* Fourth Specht Decl. Ex. 1, at 1 (hereinafter "Indep. Fiduciary Report"). Based on its evaluation of the relevant documents and information associated with the class action and the Settlement, interviewing counsel for each of the Parties, and taking into account the fiduciary obligations imposed by ERISA, the Independent Fiduciary concluded, among other things, that:

> [T]he Settlement terms, including the scope of the release of claims, the $4,500,000 Settlement amount and non-monetary relief

[4] *See* Prohibited Transaction Exemption 2003–39, 68 Fed. Reg. 75632 (Dec. 31, 2003), *as amended*, 75 Fed. Reg. 33830.

> provided for in the Settlement, and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone. . . .

Id. at 2–3. Accordingly, the Independent Fiduciary "has determined that the Plan should not object to the Settlement or any portion thereof, including but not limited to the requested attorneys' fees and costs, and as such authorizes the Plan's participation in the Settlement." *Id.* at 3.

ARGUMENT

I. STANDARD OF REVIEW

To approve a proposed class settlement that would bind potential class members, the Court must conduct a hearing and find that the settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). To find that the settlement is fair, reasonable, and adequate, the Court must consider: (1) adequacy of representation, (2) existence of arm's-length negotiations, (3) adequacy of relief, and (4) equitableness of treatment of class members. *Id.* Courts in the Second Circuit also traditionally consider the *Grinnell* Factors as part of their review: (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all of the attendant risks of litigation. *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), *overruled on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000); *Wal-Mart Stores, Inc. v. Visa*

U.S.A., Inc., 396 F.3d 96, 117 (2d Cir. 2005) (applying the *Grinnell* Factors post-*Goldberger*).[5] When conducting this assessment, the Court should remain "mindful of the strong judicial policy in favor of settlements, particularly in the class action context." *Wal-Mart Stores*, 396 F.3d at 116 (quotation omitted).

II. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

The relevant factors outlined above overwhelmingly favor approval of the Settlement in this case. Further, the Independent Fiduciary's report and the total absence of objections from Settlement Class members further confirm that the Settlement is fair, reasonable, and adequate.

A. The Class Representatives and Class Counsel Have Adequately Represented the Class

"Rule 23(e)(2)(A) requires a Court to find that 'the class representatives and class counsel have adequately represented the class' before preliminarily approving a settlement." *GSE Bonds*, 2019 WL 6842332, at *2. This adequacy standard is easily met here.

The Named Plaintiffs have adequately represented the Settlement Class. At the outset of litigation, the Named Plaintiffs signed written acknowledgements of their duties as class representatives, and each of them has sought to fulfill those duties throughout the course of this case. *See* Decl. Rita Kohari Supp. Pls.' Mot. Prelim. Approval Class Action Settlement, ECF No. 112, at ¶ 3 & Ex. 1; Decl. John Radolec Supp. Pls.' Mot. Prelim. Approval Class Action Settlement, ECF No. 114, at ¶ 3 & Ex. 1; Decl. Mohani Jaikaran Supp. Pls.' Mot. Prelim. Approval Class Action Settlement, ECF No. 113, at ¶ 3 & Ex. 1.

[5] The Rule 23(e) factors "supplement rather than displace these *Grinnell* factors." *In re GSE Bonds Antitrust Litig.*, No. 19-CV-1704, 2019 WL 6842332, at *1 (S.D.N.Y. Dec. 16, 2019). Consistent with the intent of the 2018 amendments to the Federal Rules of Civil Procedure, only those *Grinnell* factors that are relevant to this Settlement are addressed here. *See* Fed. R. Civ. P. 23(e), Comm. Notes on Rules—2018 Amend. ("This amendment therefore directs the parties to present the settlement to the court in terms of a shorter list of core concerns, by focusing on the primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the proposal.").

Class Counsel have also adequately represented the Class. The lawyers at Nichols Kaster are experienced ERISA litigators with a proven track record. *See* Second Specht Decl. at ¶¶ 19–27. Indeed, Nichols Kaster "is one of the relatively few firms in the country that has the experience and skills necessary to successfully litigate a complex ERISA action such as this." *Karpik v. Huntington Bancshares Inc.*, No. 17-CV-1153, 2021 WL 757123, at *9 (S.D. Ohio Feb. 18, 2021). As detailed in the attorney declarations accompanying the preliminary approval and fees motions, Nichols Kaster has (1) won favorable rulings on dispositive motions and/or class certification in over a dozen ERISA cases; (2) recently tried three ERISA class actions; (3) successfully litigated an appeal before the First Circuit in *Brotherston v. Putnam Invs., LLC*, 907 F.3d 17 (1st Cir. 2018); and (4) negotiated numerous ERISA class action settlements in addition to the present settlement. *See* Second Specht Decl. at ¶¶ 21–22; Decl. Brock J. Specht Supp. Pls.' Mot. Att'ys' Fees & Costs, Admin. Expenses, & Case Contribution Awards, ECF No. 130, at ¶¶ 4–5 (hereinafter "Third Specht Decl."). Given this, Class Counsel are well qualified to represent the Class. *See In re Global Crossing Secs. & ERISA Litig.*, 225 F.R.D. 436, 453 (S.D.N.Y. 2004) (finding class counsel adequate where they had "extensive experience" in ERISA litigation and federal class actions).

B. Class Counsel and Defense Counsel Negotiated this Settlement at Arm's Length

The second factor examines whether "the proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). A class action settlement "will enjoy a presumption of fairness" where the settlement "is the product of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation." *In re Excess Value Ins. Coverage Litig.*, No. MDL-1339, 2004 WL 1724980, at *10 (S.D.N.Y. July 30, 2004) (quotation omitted); *see also Wal-Mart*, 396 F.3d at 116. That is exactly the situation here. Class Counsel and Defendants' counsel (Willkie Farr & Gallagher LLP) are knowledgeable and experienced in complex class actions such as this,

in addition to well-respected members of the ERISA class action bar. *See* Second Specht Decl. at ¶¶ 23–25. At all times, the negotiations were conducted at arm's length. *Id.* at ¶ 17. Accordingly, this factor also favors settlement approval.

"[T]he stage of the proceedings and the amount of discovery completed" are also pertinent to the Court's review. *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, No. 15-CV-1113, 2016 WL 6542707, at *8 (D. Conn. Nov. 3, 2016) (quotation omitted). "This factor explores the information that was available to the settling parties to assess whether Class Counsel 'have weighed their position based on a full consideration of the possibilities facing them.'" *Id.* (quoting *In re Global Crossing*, 225 F.R.D. at 458). To that end, Class Counsel was well-informed during settlement negotiations and carefully weighed Plaintiffs' positions against the facts of this case.

This action settled at a key point in litigation: extensive fact discovery and expert discovery had been conducted and Plaintiffs' motion for class certification was pending before the Court. Second Specht Decl. at ¶ 10–16. To that point, Class Counsel had (1) conducted a thorough investigation of the class-wide claims; (2) drafted a detailed Complaint, ECF No. 1, and subsequently drafted an Amended Complaint, ECF No. 53; (3) drafted responses to Defendants' letter motion to dismiss, ECF No. 28; (4) responded to Defendants' motion to dismiss, ECF No. 36; (5) propounded discovery requests and met and conferred with Defendants regarding discovery; (6) analyzed over 400,000 pages of documents produced by Defendants and additional data regarding the class; (7) produced over 3,000 pages of documents; (8) pursued relevant discovery from two non-parties and reviewed documents produced by those non-parties; (9) took five depositions of fact witnesses and defended the deposition of the named Plaintiffs; (10) engaged two testifying experts and a consulting expert and assisted with drafting expert reports; (11) analyzed opening and rebuttal reports from two defense experts; (12) participated in a

mediation with Hon. James Holderman and the Defendants, and prepared a mediation statement in advance; (13) drafted the Settlement Agreement and exhibits thereto (including the Settlement Notices, Former Participant Rollover Form, and the proposed preliminary and final approval orders); (14) prepared Plaintiffs' Preliminary Approval Motion papers; (15) solicited bids for settlement administration services, reviewed the bids submitted by three potential vendors, negotiated the fees, and engaged JND Legal Administration ("JND") as the Settlement Administrator; (16) reviewed the final drafts of the Settlement Notices prepared by JND, and ensured that they were timely mailed by JND; (17) worked with JND to create a settlement website and telephone line for Class Members who wished to obtain additional information about the Settlement; (18) communicated with Class Members who contacted our office; (19) consulted with Plaintiffs as the named Class Representatives throughout the course of the case; and (21) prepared the present motion and supporting papers. Third Specht Decl. at ¶ 11.

These circumstances favor approval of the Settlement. Courts routinely find that class counsel can properly weigh their claims without the benefit of formal discovery. *See Kemp-DeLisser*, 2016 WL 6542707, at *8 ("Although formal discovery had yet to occur at the time the parties engaged in settlement negotiations, Class Counsel conducted extensive investigation into the facts, circumstances, and legal issues associated with this case before agreeing to the Settlement."). Here, Class Counsel had completed fact discovery and were well into expert discovery. Second Specht Decl. at ¶¶ 10–16. The Settlement was negotiated with that information in mind, lending it further weight under the "stage of litigation" factor.[6]

[6] Although this case settled before class certification or summary judgment, Class Counsel are no strangers to the later stages of ERISA litigation. As noted above, Class Counsel have recently taken three ERISA class cases to trial, and litigated the *Deutsche Bank* ERISA action in this District to the very eve of trial before it was settled. *See Moreno v. Deutsche Bank Ams. Holding Corp.*, No. 15-Civ.-09936, slip op. at 5 (S.D.N.Y. Aug. 14, 2018) (ECF No. 321) ("[T]he parties reached a settlement-in-principle on July 8, 2018 immediately preceding the scheduled start date of trial." (internal parentheses omitted)).

C. The Settlement Provides Significant Relief to the Class

The third factor under Rule 23 is whether "the relief provided for the class is adequate" in light of "the costs, risks, and delay" of further litigation and other relevant considerations.[7] The parties' negotiations resulted in a Settlement that provides substantial relief to the Class. The negotiated monetary relief represents a significant portion of the alleged losses sustained by the Plan. At the time of the settlement, Plaintiffs' damages models estimated that the total losses ranged from $16.3 million to $23.5 million. Second Specht Decl. at ¶ 4. Based on this estimate, the $4.5 million recovery represents approximately 19% to 27% of the total estimated losses. *Id.* This compares favorably with numerous other ERISA class action settlements that have been approved across the country.[8] And, as the Independent Fiduciary noted in its Report, the recovery provided by the Settlement is "reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone." Indep. Fiduciary Report at 3.

Moreover, each of the adequacy factors enumerated in Rule 23(e)(2)(C) support approval of the Settlement. These factors include:

(i) the costs, risks, and delay of trial and appeal;

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[7] Other relevant considerations include (1) the terms of any award of attorneys' fees, (2) any related agreement, and (3) the effectiveness of any proposed distribution method. The first consideration has been addressed in connection with Plaintiffs' Motion for Attorneys' Fees, *see* Mem. Law Supp. Pls.' Mot. Attorney's Fees & Costs, Admin. Expenses, & Case Contribution Awards, ECF No. 70, at 9–17, and with respect to the second consideration, there are no agreements relating to the Settlement other than the fee agreement that Class Counsel already has reported in connection with that motion. *See* Third Specht Decl. at ¶ 15 n.1. The third criteria is discussed below, *infra* at 17–18.

[8] *See, e.g.*, *Goldstein v. Mutual of Am. Life Ins. Co.*, No. 22-CV-07862, slip op. at 11 (S.D.N.Y. Sept. 20, 2023) (ECF No. 71), *approved by* ECF No. 77 (S.D.N.Y. Oct. 5, 2023) (requesting and approving settlement that represented approximately 26% of alleged losses); *Toomey v. Demoulas Super Mkts., Inc.*, No. 19-CV-11633, 2021 WL 2649156, slip op. at 10 (D. Mass. Mar. 24, 2021) (ECF No. 95), *approved by* ECF No. 100 (D. Mass. Apr. 7, 2021) (15% to 20% of alleged losses); *Beach v. JPMorgan Chase Bank, Nat'l Ass'n*, No. 17-CV-00563, slip op. at 21 (S.D.N.Y. May 20, 2020) (ECF No. 211), *approved by* 2020 WL 6114545 (S.D.N.Y. Oct. 7, 2020) (16% of alleged losses); *Price v. Eaton Vance Corp.*, No. 18-CV-12098, slip op. at 12 (D. Mass. May 6, 2019) (ECF No. 32), *approved by* ECF No. 57 (D. Mass. Sept. 24, 2019) (23% alleged losses); *Sims v. BB&T Corp.*, No. 15-CV-732, 2019 WL 1995314, at *5 (M.D.N.C. May 6, 2019) (19% of estimated losses); *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, No. 15-CV-01614, 2018 WL 8334858, at *4 (C.D. Cal. July 30, 2018) ("*Urakhchin III*") (approximately 17.7% of losses under plaintiffs' highest loss model); *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*, No. 16-CV-03698, 2018 WL 2183253, at *5 (N.D. Cal. May 11, 2018) (approximately 10% of losses under plaintiffs' highest loss model).

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
(iii) the terms of any proposed award of attorney's fees, including timing of payment; and
(iv) any agreement required to be identified under rule 23(e)(3) . . . .

Fed. R. Civ. P. 23(e)(2)(C). Each of these factors are briefly discussed below.

1. Continued Litigation Would Have Entailed Significant Costs and Risks

In the absence of a settlement, Plaintiffs would have faced potential litigation risks. *See In re WorldCom, Inc. ERISA Litig.*, No. 02-Civ.-4816 2004 WL 2338151, at *6 (S.D.N.Y. Oct. 18, 2004) (noting that there is a "general risk inherent in litigating complex claims such as these to their conclusion."); *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997) ("Litigation inherently involves risks."), *aff'd sub nom. In re PaineWebber Inc. Ltd. P'ships Litig.*, 117 F.3d 721 (2d Cir. 1997). While Plaintiffs are confident that they would have prevailed on the pending class certification motion, there was a risk that the Court might have declined to certify a class. And, if the case proceeded to trial, Defendants still might have prevailed.[9] Finally, even if Plaintiffs prevailed on liability, issues regarding proof of loss would have remained.[10]

None of this is to say that Plaintiffs lacked confidence in their claims. But continuing the litigation would have resulted in complex and costly proceedings, and it would have delayed any relief to the Class, even if Plaintiffs ultimately prevailed. ERISA 401(k) cases such as this "often

[9] *See, e.g.*, *Rozo v. Principal Life Ins. Co*., No. 14-CV-00463, 2021 WL 1837539 (S.D. Iowa Apr. 8, 2021); *Sacerdote v. N.Y. Univ.*, 328 F. Supp. 3d 273 (S.D.N.Y. 2018), *aff'd*, 9 F.4th 95 (2d Cir. 2021), *cert. denied*, 142 S. Ct. 1112 (2022); *Wildman v. Am. Century Servs., LLC*, 362 F. Supp. 3d 685 (W.D. Mo. 2019); *Reetz v. Lowe's Cos., Inc.*, No. 18-CV-00075, 2021 WL 4771535, at *60 (W.D.N.C. Oct. 12, 2021), *aff'd sub nom. Reetz v. Aon Hewitt Inv. Consulting, Inc.*, 74 F.4th 171 (4th Cir. 2023); *Vellali v. Yale Univ.*, No. 16-CV-1345, slip op. at 2 (D. Conn. July 13, 2023) (ECF No. 622), *appeal docketed*, No. 23-1082 (2d. Cir. July 25, 2023) (ECF No. 1).

[10] *See* Restatement (Third) of Trusts § 100, Cmt. on Liab. of Tr. Under Clause (a) at b(1) (describing determination of losses in breach of fiduciary duty cases as "difficult"); *Sacerdote*, 328 F. Supp. 3d at 280 (finding that "while there were deficiencies in the Committee's [fiduciary] processes—including that several members displayed a concerning lack of knowledge relevant to the Committee's mandate—plaintiffs have not proven that . . . the Plans suffered losses as a result."); *Vellali*, No. 16-CV-1345, slip op. at 1–2 (D. Conn. June 28, 2023) (ECF No. 576) (jury verdict finding breach of fiduciary duty but no proven loss to plan).

lead[] to lengthy litigation." *Krueger v. Ameriprise Fin., Inc.*, No. 11–CV–02781, 2015 WL 4246879, at *1 (D. Minn. July 13, 2015). In fact, these cases can extend for a decade before final resolution, sometimes going through multiple appeals. *See, e.g.*, *Tussey v. ABB, Inc.*, 850 F.3d 951, 954–56 (8th Cir. 2017) (recounting lengthy procedural history of case that was initially filed in 2006 before remanding to district court a second time); *Tibble v. Edison Int'l*, No. 07-5359, 2017 WL 3523737, at *1, *15 (C.D. Cal. Aug. 16, 2017) (outlining remaining issues ten years after suit was filed in 2007). The duration of these cases is, in part, a function of their complexity, which further weighs in favor of the Settlement. *See Abbott v. Lockheed Martin Corp.*, No. 06-CV-701, 2015 WL 4398475, at *2 (S.D. Ill. July 17, 2015) (noting that ERISA cases such as this are "particularly complex"). Given the risks, cost, and delay of further litigation, it was reasonable and appropriate for Plaintiffs to reach a settlement on the terms that were negotiated. *See Kruger v. Novant Health, Inc.*, No. 14-CV-208, 2016 WL 6769066, at *5 (M.D.N.C. Sept. 29, 2016) ("[S]ettlement of a 401(k) excessive fee case benefits the employees and retirees in multiple ways.").

2. The Proposed Method of Distributing Relief to the Class is Effective

The proposed method for distributing the Settlement proceeds is fair and reasonable. Current Participant Settlement Class members will have their Plan accounts automatically credited with their share of the Settlement, and Former Participant Settlement Class members will automatically receive their distribution via check unless they elect a tax-qualified rollover of their distribution to an individual retirement account or other eligible employer plan. Settlement at ¶¶ 5.3–5.4. This method of distribution is both effective and efficient. No monies will revert to Defendants, and any uncashed checks shall be paid to the Plan for the purpose of defraying administrative fees and expenses of the Plan. *Id.* at ¶ 5.7(b). In authorizing the Settlement, the Independent Fiduciary found that the Settlement terms are reasonable. Indep. Fiduciary Report at

2–3. And no Settlement Class members have objected to the Settlement. *See* Fourth Specht Decl. at ¶ 7; Follensbee Decl. at ¶ 22.

3. The Settlement Imposes a Reasonable Limitation on Attorneys' Fees

The Settlement terms relating to attorneys' fees and expenses are also fair and reasonable. The Settlement does not provide for the award of a specific amount of attorneys' fees and is not conditioned on the award of *any* such fees, which will be reserved to the Court in its discretion upon consideration of the application by Class Counsel. *See* Settlement at ¶ 6.1. Moreover, with respect to the timing of payment, any attorneys' fees and expenses will be distributed at the same time funds are distributed to the Class. *Id.* at ¶¶ 4.8

4. No Separate Agreements Bear on the Adequacy of Relief to the Class

As the Settlement states:

> This Settlement Agreement and all of the exhibits appended hereto constitute the entire agreement of the Parties with respect to the subject matter of the Action and supersede any prior agreement, whether written or oral, as to that subject matter. No representations or inducements have been made by any Party hereto concerning the Settlement Agreement or its exhibits other than those contained and memorialized herein.

Id. at ¶ 11.5. Accordingly, there are no separate agreements bearing on the adequacy of relief to the Class. *See* Fed. R. Civ. P. 23(e)(2)(C)(iv).

D. The Settlement Treats Settlement Class Members Equitably

Finally, the Settlement also treats Settlement Class members equitably. The same allocation formula is used to calculate settlement payments for all eligible Settlement Class members (both Current Participant Settlement Class members and Former Participant Settlement Class members). Settlement at ¶ 5.2. Moreover, that allocation formula is carefully tailored to the claims that were asserted in the case. *Compare* Am. Compl., ECF No. 51, at ¶¶ 21, 63–77 (alleging a failure to prudently and loyally administer and monitor the Plan based on the use of MetLife's

proprietary index funds for seven of the Plan's nine investment options), *with* Settlement at ¶ 5.2 (calculating settlement award based on the Class Member's average balance invested in the index funds in question over six years, in accord with ERISA's six-year statute of limitations). This further supports approval of the Settlement.

E. The Independent Fiduciary and All Class Members Support the Settlement

The positive responses from the Independent Fiduciary and the Settlement Class also support approval. Based on its review, the Independent Fiduciary affirmed that the Settlement terms, the amount of attorneys' fees and other amounts paid from the recovery, and the scope of the release of claims are reasonable. *See* Indep. Fiduciary Report at 2–3. As a result, the Independent Fiduciary "determined that the Plan should not object to the Settlement or any portion thereof" and "authorizes the Plan's participation in the Settlement." *Id.* at 3. And the Settlement received unanimous approval from the Settlement Class, as no class members objected to the Settlement. *See* Fourth Specht Decl. at ¶ 7; Follensbee Decl. at ¶ 22; *Wal-Mart Stores*, 396 F.3d at 118 (holding that "the absence of substantial opposition is indicative of class approval").

III. THE CLASS NOTICE PROGRAM WAS REASONABLE AND EFFECTIVE

The class notice program in this case was also reasonable and satisfied the requirements of Rule 23 and due process. The "best notice" practicable under the circumstances includes individual notice to all class members who can be identified through reasonable effort. Fed. R. Civ. P. 23(c)(2)(B). That is the type of notice that was provided here.

As noted above, the Settlement Administrator sent the Court-approved Class Notices to Settlement Class members via email where possible, and U.S. first class mail where no email address was available. Follensbee Decl. at ¶¶ 9–12. This type of notice is presumptively reasonable. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985) (holding that "a fully descriptive notice . . . sent first-class mail to each class member . . . satisfies due process"); *Melito*

v. Am. Eagle Outfitters, Inc., No. 14-CV-2440, 2017 WL 3995619, at *15 (S.D.N.Y. Sept. 11, 2017), *aff'd*, 923 F.3d 85 (2d Cir. 2019) (finding reasonable and adequate class notices sent via email). The record reflects that 99.9% of Class Notices were successfully delivered, Follensbee Decl. at ¶ 14, which highlights the notice program's effectiveness. *See, e.g.*, *In re Facebook, Inc., IPO Sec. & Deriv. Litig.*, 343 F. Supp. 3d 394, 411 (S.D.N.Y. 2018) (finding notice reasonable where 95% of packets were delivered, noting "[t]he relevant question is not whether some individual shareholders got adequate notice, but rather whether the class as a whole had notice adequate to flush out whatever objections might reasonably be raised." (quotation omitted)).

The Class Notice's content also was reasonable. The Class Notice included, among other things: (1) a summary of the lawsuit; (2) a clear definition of the Settlement Class; (3) a description of the material terms of the Settlement; (4) a disclosure of the release of claims; (5) notice that payments will be issued automatically and instructions for former participants to elect a rollover in lieu of a mailed check; (6) instructions as to how to object to the Settlement and a date by which Settlement Class members must object; (7) the date, time, and location of the Fairness Hearing; (8) contact information for the Settlement Administrator; and (9) information regarding Class Counsel and the amount that Class Counsel would seek in attorneys' fees. *See* Settlement at Exs. 1–2. This was more than sufficient to "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Wal-Mart Stores*, 396 F.3d at 114 (quoting *Weinberger v. Kendrick*, 698 F.2d 61, 70 (2d Cir. 1982)); *see also In re Michael Milken & Assocs. Sec. Litig.*, 150 F.R.D. 57, 60 (S.D.N.Y. 1993) ("[S]ettlement notices need only describe the terms of the settlement generally."). Notably, no Settlement Class member has claimed that the Class Notice was deficient, and to the extent they had any questions, they could review the settlement website, call the toll-free telephone

line, or contact the Settlement Administrator or Class Counsel. Fourth Specht Decl. at ¶ 7 (no objections from Class Members received); Follensbee Decl. at ¶ 22 (same); *see also id.* at ¶¶ 15–18 (discussing website and telephone line where Class Members could receive more information).

Finally, the notice requirements of the Class Action Fairness Act have also been fully satisfied. *See* 28 U.S.C. § 1715(b) (setting forth notice requirements); Follensbee Decl. at ¶¶ 4–5.

IV. THE COURT SHOULD REAFFIRM CERTIFICATION OF THE SETTLEMENT CLASS

In its Order for Preliminary Approval of the Settlement, the Court preliminarily certified the following Settlement Class:

> All participants and beneficiaries of the MetLife 401(k) Plan who were invested in the MetLife Index Funds at any time on or after July 19, 2015, through December 31, 2021, excluding any persons with responsibility for the Plan's investment or administrative functions.

ECF No. 127 at ¶ 3. In support of preliminary approval, Plaintiffs previously established that: (1) the class is numerous; (2) common issues pertain to all Settlement Class members; (3) Plaintiffs' claims are typical of other Settlement Class members' claims; (4) Plaintiffs are adequate class representatives; (5) Class Counsel are experienced and competent; (6) class certification is appropriate under Rule 23(b)(1)(A) due to the risk of inconsistent adjudications; and (7) class certification is also appropriate under Rule 23(b)(1)(B) because any individual adjudication would be dispositive of other Settlement Class members' interests. ECF No. 110 at 16–20. Nothing has changed since the Court preliminarily certified the Settlement Class. Accordingly, the Court should reaffirm its certification of the class.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the settlement and enter the accompanying proposed Final Approval Order.

Dated: December 19, 2024

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2024 a true and correct copy of the foregoing was served by CM/ECF to the parties registered to the Court's CM/ECF system.

Dated: December 19, 2024

s/ Brock J. Specht
Brock J. Specht