UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

LAURA A. OWENS and JOSHUA R. SMITH, individually and on behalf of two classes of all others similarly situated,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 2:14-CV-00074-RWS
METROPOLITAN LIFE INSURANCE COMPANY,	:	
Defendant.	:	

PLAINTIFF SMITH'S UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARD

Pursuant to Fed. R. Civ. P. 23(h), Plaintiff Joshua R. Smith ("Plaintiff"), through undersigned counsel ("Class Counsel"), respectfully moves for an incentive award in the amount of $10,000, and an award of attorneys' fees and expenses to Class Counsel in the amount of $1,666,666.67. The grounds for these requests are set forth in the supporting brief and Declaration of John C. Bell, Jr. filed herewith, as well as the record in this action.[1]

[1] A form proposed Order and Final Judgment was filed as Exhibit A to the Settlement Agreement. Dkt. 213-1. Capitalized terms used herein are defined in the Settlement Agreement. Plaintiff will, to the extent possible, fill in the blanks (without making any other changes) and file this version of the proposed Order and

Dated: October 4, 2019.

Respectfully submitted,

s/ John C. Bell, Jr.

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Final Judgment as the proposed order for his Motion for Final Approval of the Settlement. Blanks remain in paragraph 14 for the relief requested in this motion. The relief sought in this motion can be effectuated by filling in these blanks.

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(D)

I certify that this document complies with Local Rule 7.1(D) because it is prepared in 14 point Times New Roman font.

Dated: October 4, 2019.

s/ John C. Bell, Jr.
John C. Bell, Jr.

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing document to be served upon opposing counsel on October 4, 2019, via electronic mail and via the Court's electronic filing system which will cause a copy of same to be delivered electronically to all counsel of record.

s/ John C. Bell, Jr.
COUNSEL FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
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LAURA A. OWENS and JOSHUA R. SMITH, individually and on behalf of two classes of all others similarly situated,	:	
Plaintiffs,	:	
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Defendant.	:	

BRIEF IN SUPPORT OF PLAINTIFF SMITH'S UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARD

Plaintiff Joshua R. Smith ("Plaintiff"), through undersigned counsel ("Class Counsel"), submits this brief in support of his unopposed motion for an incentive award and an award of attorneys' fees and expenses for Class Counsel.

I. Introduction.

This lawsuit concerns MetLife's use of retained asset accounts called "Total Control Accounts" ("TCAs") to settle claims for death benefits due under employee benefit plans ("Plans") governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq*. The suit was brought as a class action

on behalf of beneficiaries whose Plans were insured by insurance policies that provided that their death benefits would be paid to them "in one sum," but whose benefits were retained by MetLife using TCAs. Doc. 1, ¶38. The Complaint alleges that MetLife violated ERISA's fiduciary standards and prohibited transaction rules by investing the funds it retained using TCAs for its own account. *Id*. at ¶¶46-79.

A. Brief Procedural History.

This action was filed in 2014 and has been litigated vigorously by the parties for over five years. Declaration of John C. Bell, Jr., ¶1.

MetLife moved to dismiss the Complaint on numerous grounds. Doc. 25-1. MetLife's chief argument was that its creation of the TCAs complied with the policies' "one sum" payment provision and discharged all of its duties under ERISA. *Id*. at 11-22, citing *Faber v. Metropolitan Life Ins. Co.*, 648 F.3d 98 (2d Cir. 2011); *Edmonson v. Lincoln Nat'l Life Ins. Co.*, 725 F.3d 406 (3d Cir. 2013); *Merrimon v. Unum Life Ins. Co. of Am.*, 758 F.3d 46 (1st Cir. 2014); and *Vander Luitgaren v. Sun Life Assur. Co. of Canada*, 765 F.3d 59 (1st Cir. 2014).

The Court denied the motion, distinguishing *Faber* and its progeny on the ground that they involved policies that permitted claims to be settled using retained asset accounts, while Plaintiff Laura Owens's policy does not. Doc. 41 at 13-16.

Thereafter, Class Counsel engaged in exhaustive fact and expert discovery to establish the merits of the claims asserted in this action and to demonstrate that the claims are appropriate for adjudication on a class-wide basis. Bell Dec., ¶2.

On November 30, 2015, the parties filed cross motions for summary judgment. Doc. 74, 76. The motions were briefed extensively. Doc. 89-90, 95-96, 99-106, 108-109. The central issue was whether MetLife's "creation of the TCA constituted payment of the Policy proceeds in one sum." Doc. 110 at 12. The Court found that it did not, *id*. at 12-19, and on September 27, 2016, entered an order granting Plaintiff Laura Owens summary judgment as to counts 2, 3, and 5 of the Complaint and denying both parties' motions as to the remaining counts. *Id*. at 19-26.

MetLife asked the Court to reconsider, or certify its decision for interlocutory appeal, Doc. 111-112, but the Court declined. Doc. 136.

On October 27, 2016, Plaintiff Laura Owens moved for class certification. Doc. 113. This motion was briefed extensively. Doc. 124, 137, 142-150. On September 29, 2017, the Court granted the motion and certified a class of beneficiaries whose insurance policies provided for payment "in one sum," but whose benefits were retained by MetLife using TCAs ("*Owens* class"). Doc. 151.

MetLife petitioned for permission to appeal this ruling, and proceedings were stayed until February 28, 2018, when its petition was denied. Doc. 154, 172, 175.

Thereafter, the parties spent over a year engaged in exhaustive efforts to identify the members of the class and quantify the amount of their damages. Bell Dec. ¶3. Through this process, it was determined that there are approximately 118,000 members of the *Owens* class. *Id*. It was also determined that there are approximately 129,000 beneficiaries whose claims were settled using a TCA, but whose policies expressly permitted the practice ("*Smith* class"). *Id*.

B. Settlement Negotiations.

Counsel for the parties agreed that it made sense to explore the possibility of settlement before notice was issued to the class and class-wide merits discovery resumed. *Id*. at ¶5. The parties agreed to participate in mediation under the auspices of Hunter Hughes, Esq., a prominent mediator who had previously helped successfully mediate a similar case. *Id*. The parties exchanged information concerning essential, non-monetary settlement terms prior to the mediation and participated in a lengthy in-person mediation session on April 29, 2019, at which the parties reached an agreement in principle to settle the claims of the *Smith* class for $5,000,000. *Id*.

C. Settlement and Preliminary Approval.

Counsel for the parties continued to negotiate the precise terms of the settlement over the course of the next three months before finally agreeing to the Settlement Agreement that was presented to the Court on July 25, 2019. Doc. 213. On August 1, 2019, the Court preliminarily approved the settlement and directed that class members be notified of the settlement. Doc. 216.

D. Settlement Terms.

The Settlement Agreement provides for the creation of a Settlement Fund in the amount of $5,000,000, Doc. 213-1 at 20, ¶5.1, and provides that the net fund after deducting fees and expenses will be distributed to class members pursuant to a formula. *Id*. at 29, ¶9.5. If there are any unclaimed funds after the first distribution, the funds will be redistributed to class members whose checks were negotiated. *Id*. at 30, ¶9.8. In the unlikely event that any unclaimed funds remain after the second distribution, they first will be used to cover any unforseen costs associated with the administration of the settlement after which any remaining funds will be distributed as ordered by the Court under the *cy pres* doctrine. *Id*. In all events, no unclaimed funds will revert to MetLife. *Id*.

The Settlement Agreement permits Plaintiff to apply for an incentive award of up to $10,000 for his service to the *Smith* class and permits Class Counsel to apply for an award of attorneys' fees and expenses of up to one-third of the Settlement Fund. *Id*. at 24, ¶¶7.2-7.3. MetLife does not oppose these requests. *Id*.

E. Reaction of the Class to the Settlement.

The Class Notice was mailed on August 26, 2019. Declaration of American Legal Claims Services, LLC ("ALCS"), ¶5. The Notice stated the amount of the settlement and the amounts that Plaintiff and Class Counsel would seek to be paid from the settlement. *Id*. at Ex. A, ¶¶4, 11. It further informed class members of their rights to opt out of or object to the settlement. *Id*. at ¶¶10-11. The deadline for opt out requests to be received by ALCS and for objections to be filed with the Court was September 25, 2019. *Id*. As of that date, ALCS had received opt out requests from only **37** of the 128,750 class members and only **two** class members had filed an objection with the Court. *Id*.

Significantly, neither class member objected to the terms of the settlement, including its amount or the amounts that Plaintiff and Class Counsel seek to be paid from the Settlement Fund. Instead, they objected to class actions generally characterizing them as "frivolous" and as a "virus." Doc. 218; Doc. 220.

ARGUMENT AND CITATION OF AUTHORITY

I. The Attorneys' Fee Request Is Reasonable and Should Be Granted.

The Eleventh Circuit has held that "attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class." *Camden I Condo. Assoc. v. Dunkel*, 946 F.2d 768, 774 (11th Cir. 1991). It adopted this approach because "a common fund is itself the measure of success[,]" *id*., and because the alternative "lodestar" approach can create undesirable incentives and inefficiencies, including an incentive for lawyers to delay settlement in favor of generating more hours and burdening courts with the laborious task of reviewing attorneys' time records. *Id*. at 773-774. Consequently, "courts in this Circuit regularly award fees based on a percentage of the recovery, without discussing lodestar at all." *In re Checking Account Overdraft Litig*., MDL No. 2036, 2013 WL 11319392, *14 (S.D. Fla. Aug. 5, 2013).

"There is no hard and fast rule mandating a certain percentage of a common fund which may reasonably be awarded as a fee[.]" *Id*. The Eleventh Circuit "noted that 'the majority of common fund fee awards fall between 20% to 30% of the fund[,]'" and "directed district courts to view this range as a 'benchmark' which 'may be adjusted in accordance with the individual circumstances of each case,'" using

certain factors. *Waters v. Int'l Precious Metals Corp*., 190 F.3d 1291, 1294 (11th Cir. 1999), *quoting Camden I*, 946 F.2d at 775. These factors include the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), *abrogated on other grounds, Blanchard v. Bergeron*, 489 U.S. 87 (1989), other factors identified in *Camden I*, and "any additional factors unique to a particular case which are relevant to the district court's consideration." *Camden I*, 946 F.2d at 775.

The following analysis of these factors demonstrates that the fee requested by Class Counsel in this case is appropriate and should be approved.

A. All of the *Johnson* Factors Support Class Counsel's Fee Request.

The *Johnson* factors are: (1) "the time and labor required," (2) "the novelty and difficulty of the questions," (3) "the skill requisite to perform the legal service properly," (4) "the preclusion of other employment by the attorney due to acceptance of the case," (5) "the customary fee," (6) "whether the fee is fixed or contingent," (7) "time limitations imposed by the client or the circumstances," (8) "the amount involved and the results obtained," (9) "the experience, reputation, and ability of the attorneys," (10) "the 'undesirability' of the case," (11) "the nature and length of the professional relationship with the client," and (12) "awards in similar cases." 488 F.2d

at 717-719.

1. The Case Required Substantial Time and Labor.

Class Counsel have expended substantial time and resources to investigate, prosecute, and resolve this case. Bell Dec., ¶6. The case involved extensive discovery, including multiple rounds of written discovery that resulted in the production and review of over 76,000 pages of documents, expert discovery, the deposition of fourteen fact and expert witnesses at locations around the country, and the review of policy forms that MetLife filed with numerous state insurance departments. *Id*. at ¶7. It also involved significant motion practice, including a motion to dismiss, cross-motions for summary judgment, a *Daubert* motion, a motion for class certification, and multiple motions for reconsideration and/or for permission to appeal. *Id*. Class Counsel prevailed on each of these motions and defeated MetLife's attempts to appeal the Court's rulings. Through these efforts on behalf of the Class, Class Counsel obtained favorable rulings on summary judgment and class certification that allowed them to negotiate a favorable settlement. The time and resources devoted to this case by Class Counsel support their fee request.

2. The Case Involved Difficult Questions and Presented Significant Risk for Class Counsel.

The second and tenth *Johnson* factors consider "the novelty and difficulty of the questions" presented by the case and the "undesirability" of the case. 488 F.2d at 718-719. These factors recognize that class counsel "should be appropriately compensated for accepting the challenge" of undertaking challenging cases, *id*., and "must be evaluated from the standpoint of plaintiffs' counsel as of the time they commenced the suit, not retroactively, with the benefit of hindsight." *In re Checking Account Overdraft Litig*., 2013 WL 11319392 at *15.

When Class Counsel commenced this suit, MetLife had already defeated a similar putative class action, *Faber v. Metro. Life Ins. Co.*, 648 F.3d 98 (2d Cir. 2011), and other insurers had defeated similar suits. *Edmonson v. Lincoln Nat'l Life Ins. Co.*, 725 F.3d 406 (3d Cir. 2013); *Merrimon v. Unum Life Ins. Co. of Am*., 758 F.3d 46 (1st Cir. 2014); *Vander Luitgaren v. Sun Life Assur. Co.*, 765 F.3d 59 (1st Cir. 2014). Thus, from the outset, Class Counsel faced the daunting task of distinguishing this case from these adverse precedents. The difficulty inherent in this task, and the resulting risk that Class Counsel undertook when they agreed to accept this case on a contingent basis, strongly support their fee request.

3. Class Counsel Skillfully Prosecuted this Action to a Successful Conclusion Against Capable Opposing Counsel.

The third and ninth *Johnson* factors are "the skill requisite to perform the legal service properly" and "the experience, reputation, and ability of the attorneys." 488 F.2d at 718-719. In evaluating these factors, "[t]he trial judge should closely observe the attorney's work product, his preparation, and general ability before the court. The trial judge's expertise gained from past experience as a lawyer and his observation from the bench of lawyers at work become highly important in this consideration." *Id.* at 718.

Class Counsel have extensive experience prosecuting complex litigation, including class actions of the variety at issue in this case, Bell Dec., ¶8, and this Court so found when it appointed them to serve as Class Counsel. Doc. 151 at 20 (finding Plaintiff's counsel is "qualified, experienced, and will vigorously prosecute the action."). Class Counsel's experience and skill permitted them to prosecute this case efficiently and effectively to a successful conclusion.

"In evaluating the quality of representation by Class Counsel, the Court should also consider the quality of opposing counsel." *Lunsford v. Woodforest Nat'l Bank*, No. 12-cv-103-CAP, 2014 WL 12740375, *13 (N.D. Ga. May 19, 2014). Here,

MetLife is the largest life insurance company in this country and spared no expense to defend itself by hiring several of the best attorneys at several of the nation's leading law firms to represent it in this case. *Id*. at ¶9. The fact that Class Counsel were able to prosecute this case to a successful conclusion against capable opposing counsel further speaks to their skill and to the quality of representation they have provided to the class.

4. Class Counsel Have Devoted Substantial Time and Effort to this Case to the Exclusion of Others for the Past Five Years.

The fourth and ninth *Johnson* factors consider the "time limitations imposed by the client or the circumstances[,]" and whether other available business was foreclosed by "the fact that once the employment is undertaken the attorney is not free to use the time spent on the client's behalf for other purposes." 488 F.2d at 718. These factors recognize that "[p]riority work that delays the lawyer's other work is entitled to some premium." *Id*. These factors weigh in favor of the requested fee award because during the five years that this case has been litigated, Class Counsel have devoted substantial time and effort to this case to the exclusion of others. Bell Dec., ¶10.

5. Class Counsel Assumed Significant Risk by Undertaking this Case Purely on a Contingent Basis.

The fifth and sixth *Johnson* factors consider "the customary fee" and "whether the fee is fixed or contingent." 488 F.2d at 718. "The customary fee in class actions is a contingency fee, because it is not practical to find any individual that will pay attorneys on an hourly basis to prosecute the claims of numerous strangers and take on the significant additional expenses of fighting with the defendant over class certification." *Columbus Drywall & Insulation, Inc. v. Masco Corp*., No. 1:04-cv-3066-JEC, 2012 WL 12540344, *4 (N.D. Ga. Oct. 26, 2012).

> A contingency arrangement often justifies an increase in the award of attorney's fees. This rule helps assure that the contingency fee arrangement endures. If this "bonus" methodology did not exist, very few lawyers could take on the representation of a class given the significant investment of substantial time, effort, and money, especially in light of the risks of recovering nothing.

Id. (citation omitted).

Class Counsel undertook this case purely on a contingent basis. Bell Dec., ¶11. In so doing, they assumed a significant risk that they would not be paid for their work, a risk that was very real at the time given lead counsel's recent losses in *Faber and Edmonson*. The substantial risk of nonpayment that Class Counsel assumed when they undertook this case on a contingent basis strongly supports their fee request.

6. The Fee Request Is Reasonable in Light of the Excellent Result Obtained for the Class.

The seventh *Johnson* factor – the result obtained for the class – is the most important factor in the fee calculus. *Camden I*, 946 F.2d at 774 ("Monetary results achieved predominate over all other criteria."); *Manual for Complex Litigation* (4th) § 14.121 (2004) ("The greatest emphasis is the size of the fund created, because a common fund is itself a measure of success and represents the benchmark from which a reasonable fee will be awarded.")(citations and internal quotations omitted).

The *Smith* class consists of beneficiaries whose policies expressly permitted MetLife to settle their claims using TCAs. Doc. 213-1 at 2. The First, Second, and Third Circuits have all held that when a policy permits claims to be settled using a retained asset account, the insurer discharges its fiduciary duties when it establishes the account and does not violate ERISA when it invests the funds backing the account for its own enrichment. *Faber*, 648 F.3d at 106-107; *Edmonson*, 725 F.3d at 428; *Merrimon*, 758 F.3d at 57; and *Vander Luitgaren*, 765 F.3d at 65, n. 5.

Thus, if members of the *Smith* class were to litigate their claims to final judgment, they likely would lose. However, MetLife is willing to pay these class members $5,000,000 to settle their claims in order to obtain "global peace" with

respect to its TCA practices. This is an excellent result for these class members considering their dim prospects for success on the merits. Class Counsel's fee request is reasonable in light of this result.

7. Class Counsel Are Unlikely to Receive Any Future Business or Benefit from Plaintiff as a Result of this Representation.

The eleventh *Johnson* factor is "the nature of and length of the professional relationship with the client." 488 F.2d at 719. This factor recognizes that "[a] lawyer in private practice may vary his fee for similar work in light of the professional relationship of the client with his office[,]" *id*., by, for example, "discount[ing] his or her fees in anticipation of obtaining repeat business with an established client." *Columbus Drywall*, 2012 WL 12540344 at *6. Here, Plaintiff and members of the class are individual consumers who are unlikely to provide any significant future business to Class Counsel. As such, Class Counsel's compensation for their work on this case "must come entirely from the settlement fund, rather than future business from these clients." *Id*. Accordingly, this factor supports Class Counsel's fee request. *Id*.

8. The Fee Request Is Reasonable Considering Fee Awards in Similar Cases.

The final *Johnson* factor considers the reasonableness of the fee request in relation to "awards in similar cases." 488 F.2d at 719. In the *Mogel, Otte*, and *Huffman* cases, which involved the same practices and claims as this case, class counsel received attorneys' fee awards equal to one-third of the recoveries, *plus* reimbursement of their expenses. Bell Dec., ¶12. Here, Class Counsel seek an award of one-third of the recovery to cover *both* their attorneys' fees and the expenses they have incurred to prosecute this matter.[1] Because this request is inclusive of expenses, it would result in an attorneys' fee award of slightly less than one-third of the recovery. This percentage is reasonable relative to the percentages that have been awarded in similar cases and is especially appropriate here in light of the excellent result obtained for the class and the significant amount of work and risk that Class Counsel undertook to achieve that result.

It is also reasonable in relation to fee awards in other cases in this District, Circuit, and beyond. "[E]mpirical studies show that ... fee awards in class actions average around one-third of the recovery[,]" and [t]he average percentage awarded in

[1] Class Counsel's litigation expenses total $70,764.60. Bell Dec., ¶13.

the Eleventh Circuit mirrors that of awards nationwide – roughly one third." *Wolff v. Cash 4 Titles*, No. 03-cv-22778, 2012 WL 5290155, *5 (S.D. Fla. Sept. 26, 2012) (collecting cases), *adopted*, 2012 WL 5289628 (S.D. Fla. Oct. 25, 2012); *accord George v. Academy Mortg. Corp*., 369 F.Supp.3d 1356, 1382 (N.D. Ga. 2019) (collecting cases from the Northern District of Georgia and other districts within the Eleventh Circuit in which fees were awarded in the amount of one-third of the recovery); *Waters v. Int'l Precious Metals Corp*., 190 F.3d 1291, 1294-95 (11th Cir. 1999)(affirming a fee award of one-third of a $40 million settlement plus expenses); *Muransky v. Godiva Chocolatier, Inc*., 922 F.3d 1175, 1195-96 (11th Cir. 2019) (affirming a fee award of one-third of a $6.3 million settlement).

A fee award of slightly less than one-third of the recovery is reasonable in this case in light of the result obtained for the class and the substantial amount of work and risk that Class Counsel undertook to achieve that result.

B. All of the *Camden I* Factors Support the Fee Request.

The *Camden I* factors are: (1) "the time required to reach a settlement," (2) "whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel," (3) "any non-monetary benefits conferred upon the class by the settlement," and (4) "the economics involved in

prosecuting a class action." 946 F.2d at 775. All of these factors support Class Counsel's fee request.

1. The Time Required to Reach a Settlement Supports the Fee Request.

The settlement in this case did not come quickly or easily. It was reached only after five years of hard-fought litigation during which the parties engaged in extensive discovery and motion practice and Class Counsel secured favorable rulings on class certification and summary judgment. As a result, Class Counsel were able to develop an adequate appreciation of the merits of this case before they engaged in settlement negotiations and were able to negotiate from a position of strength.

2. The Absence of Substantive Objections Strongly Supports the Fee Request.

The Notice informed class members of the amounts that Plaintiff and Class Counsel would seek to be paid from the Settlement Fund and of their right to object. *Supra* at 6. Of the 128,750 class members to whom the Notice was issued, only two filed an objection. *Id*. Significantly, neither class member objected to the substance of the settlement. *Id*. Instead, they objected to the concept of class actions generally. *Id*. The fact that only two class members filed an objection, and neither objected to the settlement's substance strongly supports Class Counsel's fee request. *Columbus*

Drywall, 2012 WL 12540344 at *7 (awarding 33.3% of a $75 million settlement fund and finding it significant that the notice informed class members that class counsel would apply for such an award and no class member objected to it).

3. The All-Cash, Claimant-Friendly Nature of the Settlement Supports the Fee Request.

The settlement is an all-cash deal. It contains no "non-monetary benefits," such as coupons, that class members might not want or use. The all-cash nature of the deal supports Class Counsel's fee request. *Ressler v. Jacobson*, 149 F.R.D. 651, 656 (M.D. Fla. 1992) (finding an "all-cash settlement" supported class counsel's fee request because it provides "the best relief possible to class members: the prompt payment of money.").

Further, unlike some settlements in which class members are required to make a claim in order to receive a payment, this settlement does not require class members to do anything in order to receive a payment – instead, they will be issued a check for their share of the settlement automatically upon final approval of the settlement. Furthermore, the settlement precludes any unclaimed funds from reverting to MetLife – instead, any unclaimed funds will be distributed to class members whose checks were negotiated and if any funds remain unclaimed after this second distribution, they

will be distributed as ordered by the Court under the *cy pres* doctrine. The fact that the settlement is structured to ensure that as much money as possible is distributed to class members and precludes any funds from reverting to MetLife supports Class Counsel's fee request. *In re Flonase Antitrust Litig*., 291 F.R.D. 93, 103 (E.D. Pa. 2013)(finding the fact that "[e]very dollar of the settlement fund will be distributed to class members" supported the fee request).

4. The Economics of Prosecuting Class Actions Favors the Fee Request.

The economics of prosecuting a class action can be daunting. Class counsel often work for small law firms with limited resources, but face off against large corporations and large law firms with virtually unlimited resources. Class counsel often devote substantial amounts of their own time and money to prosecute class actions on a contingent basis and sometimes receive little or nothing for their efforts. Such economic considerations are relevant when determining what constitutes an appropriate fee. *In re Checking Account Overdraft Litig*., 2013 WL 11319392 at *17 ("The burdens of this litigation and the relatively small size of the firms representing Plaintiffs lend support to the fee awarded. This fee is firmly rooted in 'the economics involved in prosecuting a class action.'"); *Ressler*, 149 F.R.D. at 657 ("In evaluating

this factor the Court will not ignore the pecuniary loss suffered by plaintiff's counsel in other actions where counsel received little or no fee.").

Class Counsel faced similar economic challenges in this case. Most of Class Counsel are members of small law firms; they have devoted substantial time and resources to the prosecution of this case on a contingent basis; they have done so against a large corporation represented by skilled defense counsel; and although they may receive a fee for their success in this case, lead counsel received nothing for the time and money they spent prosecuting the *Faber*, *Edmonson*, *Merrimon* and *Vander Luitgaren* cases which they lost. These economic considerations support Class Counsel's fee request in this case.

5. Public Policy Favors this Fee Request.

"Attorneys who undertake the risk [to bring class actions] to vindicate legal rights that may otherwise go unredressed function as 'private attorneys general.'" *Allapattah Services, Inc. v. Exxon Corp.*, 454 F.Supp.2d 1185, 1271 (S.D. Fla. 2006), *quoting Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 338 (1980). "If the plaintiffs' bar is not adequately compensated for its risk, responsibility, and effort when it is successful, then effective representation for plaintiffs in these cases will disappear[.]" *Lunsford*, 2014 WL 12740375 at *11; *accord Allapattah Servs., Inc.*,

454 F.Supp.2d at 1217 ("Unless that risk is compensated with a commensurate award, few firms, no matter how large or well financed, will have any incentive to represent the small stake holders in class actions against corporate America, no matter how worthy the cause or wrongful the defendant's conduct.").

Public policy favors fee awards that encourage capable attorneys to undertake socially desirable litigation. *Columbus Drywall*, 2012 WL 12540344 at *7 ("[C]ourts should award fees that provide capable attorneys with a suitable incentive to represent clients in this type of litigation and compensation for success in doing so."); *Wolff*, 2012 WL 5290155 at *5 ("Mindful of the need to attract counsel of this high caliber, courts have recognized the importance of providing incentives to experienced counsel who take on complex litigation cases on a contingent fee basis so those cases can be prosecuted both efficiently and effectively."); *Swift v. BancorpSouth Bank,* No. 1:10-cv-00090-GRJ, 2016 WL 11529613, *19 (N.D. Fla. July 15, 2016) ("The undersigned is convinced that proper incentives must be maintained to insure that attorneys of this caliber are available to take on cases of significant public importance like this one.").

Numerous courts have found that a fee award of one-third of the recovery or more is appropriate to reward class counsel for their success and to provide them with an incentive to continue to undertake socially desirable cases in the future. *Lunsford*,

2014 WL 12740375 at *11 (awarding 33.3% of the recovery); *Columbus Drywall*, 2012 WL 12540344 at *7 (same); *Wolff*, 2012 WL 5290155 at *5 (same); *Swift*, 2016 WL 11529613 at *19-20 (awarding 35% of the recovery).[2]

Class Counsel respectfully submit that a similar award is appropriate here to compensate them for their work on behalf of the Class and to create an incentive for attorneys to continue to undertake similar socially desirable litigation.

II. The Incentive Award for the Plaintiff Is Reasonable Considering His Efforts on Behalf of the Class.

"Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). "[I]ncentive awards may be given to compensate class representatives for work done on behalf of the class, to make up for financial ... risk undertaken in bringing the action, ... to recognize their willingness to act as a private attorney general, ... and to induce an individual to become a named plaintiff." *Muransky*, 922 F.3d at 1197

[2] In *Allapattah Servs., Inc*., the court awarded a slightly smaller percentage of the settlement fund (31.33%), 454 F.Supp.2d at 1218, but the fund exceeded $1 billion, *id*. at 1192, and the class representatives received substantial incentive awards, *id*. at 1242-1243, which raised the total combined fee and incentive awards to close to one-third of the recovery.

(internal citations and quotations omitted). "Although these considerations will certainly weigh differently in different cases, together they help illuminate the fact that class representatives ... have typically done something that other class members have not – stepped forward and worked on behalf of the class." *Id*.

Incentive awards have ranged from as low as $1,500 to over $1 million. *Allapattah Servs., Inc.*, 454 F.Supp.2d at 1218-1219, 1242-1243 (collecting cases involving incentive awards of $25,000, $20,000, $10,000, $3,000, $2,000, and $1,500 and ultimately awarding $1,7666,666.00 to each of eight class representatives and $1,325,000.00 to a ninth representative); *Ingram*, 200 F.R.D. at 694 (awarding incentive awards of $300,000 to each named plaintiff).

Joshua Smith agreed to serve as a named plaintiff in this case and has worked with Class Counsel for the benefit of the *Smith* class. Bell Dec., ¶15. His efforts have helped bring about a settlement that will provide meaningful monetary relief for the *Smith* class. The Settlement Agreement permits Mr. Smith to apply for an incentive award of $10,000 to compensate and reward him for his service in this case. Doc. 213-1 at 24, ¶7.2. No class member has objected to his receipt of such an award, *supra* at 6, and Class Counsel submit that such an award is appropriate in this case considering Mr. Smith's service on behalf of the class and the extent to which the class will benefit

from that service.

CONCLUSION

For the reasons set forth above, Plaintiff's unopposed motion for an award of attorneys' fees and expenses and incentive award should be granted.

Respectfully submitted,

s/ John C. Bell, Jr.
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COUNSEL FOR PLAINTIFFS

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(D)

I certify that this document complies with Local Rule 7.1(D) because it is prepared in 14 point Times New Roman font.

s/ John C. Bell, Jr.
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing document to be served upon opposing counsel on October 4, 2019, via electronic mail and via the Court's electronic filing system which will cause a copy of same to be delivered electronically to all counsel of record.

October 4, 2019.

s/ John C. Bell, Jr.
COUNSEL FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

LAURA A. OWENS and JOSHUA R. SMITH, individually and on behalf of two classes of all others similarly situated,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 2:14-CV-00074
METROPOLITAN LIFE INSURANCE COMPANY,	:	
Defendant.	:	

DECLARATION OF JOHN C. BELL, JR.

I, John C. Bell, Jr., declare as follows:

1.

This action was filed in 2014, and has been litigated vigorously by the parties for over five years.

2.

Following the denial of MetLife's motion to dismiss, Class Counsel engaged in exhaustive fact and expert discovery to establish the merits of Plaintiff's claims and to demonstrate that the claims are appropriate for adjudication on a class-wide basis.

3.

Following the Eleventh Circuit's denial of MetLife's petition for permission to appeal the Court's order certifying this action to proceed as a class action, the parties spent over a year engaged in exhaustive efforts to identify the members of the class and quantify the amount of their damages. Through this process, it was determined that there are approximately 118,000 members of the class that was certified by the Court ("*Owens* class"). It was also determined that there are approximately 129,000 beneficiaries whose claims were settled using a TCA, but whose policies expressly permitted the practice ("*Smith* class").

4.

The parties' estimates of the damages for the *Owens* class varied widely. Plaintiff asserted that class members should be entitled to recover the amount that MetLife actually earned investing their money and estimated this amount to be $192,038,424. MetLife, on the other hand, contended that any recovery should be based on a risk-free rate of return and estimated the class-wide damages to total less than one million dollars.

5.

Although the parties' damage estimates varied widely, counsel for the parties agreed that it made sense to explore the possibility of settlement before notice was issued to the class and class-wide merits discovery resumed. The parties agreed to participate in mediation under the auspices of Hunter Hughes, Esq., a prominent mediator who had previously helped successfully mediate a similar case. The parties exchanged information concerning essential, non-monetary settlement terms prior to the mediation and participated in a lengthy in-person mediation session on April 29, 2019, at which the parties reached an agreement in principle to settle the claims of the *Owens* class for $75,000,000 and the claims of the *Smith* class for $5,000,000.

6.

Class Counsel have expended substantial time and resources to investigate, prosecute, and resolve this case and will continue to devote time to the case going forward until the settlements are finally approved and administered.

7.

The case involved extensive discovery, including multiple rounds of written discovery that resulted in the production and review of over 76,000 pages of documents, expert discovery, the deposition of fourteen fact and expert witnesses at

locations around the country, and the review of policy forms that MetLife filed with numerous States' insurance departments. It also involved significant motion practice, including a motion to dismiss, cross-motions for summary judgment, a *Daubert* motion, a motion for class certification, and multiple motions for reconsideration and/or for permission to appeal.

8.

Bell & Brigham has extensive experience prosecuting complex litigation, including class actions of the variety at issue in this case. Our firm's experience is detailed in the affidavit that I gave in support of Plaintiff's motion for class certification, Doc. 113-2, and includes serving as lead counsel for the plaintiff in *Mogel v. Unum Life Ins. Co. of Am.*, 547 F.3d 23 (1st Cir. 2008), which was the first case in this country to challenge an insurer's use of retained asset accounts to settle claims for benefits due under ERISA-governed employee benefit plans. Many of our co-counsel also have experience litigating retained asset account cases, including their representation of the plaintiff in *Garrison v. Jackson Nat'l Life Ins. Co.*, 908 F.Supp. 2d 1293 (N.D. Ga. 2012). The favorable decisions that Class Counsel obtained in *Mogel* and *Garrison* were instrumental to this Court's decisions denying MetLife's motion to dismiss and granting in part Plaintiff's motion for summary

judgment in this case. Doc. 41 at 13-16; Doc. 110 at 7-19. Michael B. Terry and Jason J. Carter of the firm Bondurant, Mixon & Elmore, LLP, also have extensive experience prosecuting class actions. Their experience is set forth in their separate declaration filed in support of this motion.

9.

MetLife is the largest life insurance company in this country and spared no expense to defend itself in this matter by hiring several of the best attorneys at several of the nation's leading law firms to represent it.

10.

During the five plus years that this case has been pending, Class Counsel have devoted substantial time and effort to this case to the exclusion of others.

11.

Class Counsel agreed to prosecute this class action purely on a contingent basis.

12.

In the *Mogel, Otte*, and *Huffman* cases, which involved the same practices and claims as this case, class counsel received attorneys' fee awards equal to one-third of the settlements, *plus* reimbursement of their expenses. S*ee Mogel v. Unum Life Ins.*

Co. of Am., No. 07-cv-10955-NMG (D. Mass.), Doc. 99 at 4; *Otte v. Life Ins. Co. of N. Am.*, No 1:09-cv-11537-RGS (D. Mass.), Doc. 116 at 8; *Huffman v. Prudential Ins. Co. of Am.*, No. 2:10-cv-05135-JFL (E.D. Pa.), Docs. 196-197.

13.

Class Counsel have incurred $70,764.60 in expenses in connection with the prosecution of this case. These expenses are of the type that courts have found are reasonably incurred in the prosecution of a class action, such as expenses for filing fees, service fees, witness fees, experts, mediators, court reporters, travel, postage, photocopies, etc. I certify that these expenses were reasonably incurred to prosecute this matter and note that we had a strong incentive to be frugal given that we prosecuted this case on a contingent basis with no guarantee that we would recover our expenses.

14.

Laura Owens agreed to serve as a named plaintiff in this case and has actively worked on behalf of the *Owens* class by, among other things, providing Class Counsel with the information that was necessary to file this lawsuit, responding to written discovery, being deposed at length, staying in touch with Class Counsel to monitor the progress of the case, and otherwise diligently performing her duties

throughout the pendency of the case. These efforts have helped bring about a settlement that will provide substantial monetary relief for the *Owens* class.

15.

Joshua Smith is twenty-six years old and has long lived in Lumpkin County, Georgia. He graduated from Georgia Southern University with a degree in criminal justice. He is employed by the Sheriff of White County, Georgia. He was the beneficiary of a MetLife insurance policy provided to his grandmother through an ERISA-governed employee benefit plan of AT&T that expressly provides that claims for death benefits can be settled by providing a retained asset account, which he received following the passing of his grandmother. Todd Lord has long been Mr. Smith's family's lawyer. They have known each other for years.

I met at length with Mr. Smith in Mr. Lord's office, discussing with him in great detail our claims concerning the use of retained asset accounts and the role and duties of a class representative, following which he agreed to serve as representative of the class he now represents.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct of my own personal knowledge.

Executed: October 2, 2019.

John C. Bell, Jr.

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing document to be filed with the Court's electronic filing system which will deliver a copy of same to all counsel on record.

October 4, 2019.

s/ John C. Bell, Jr.
COUNSEL FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

LAURA A. OWENS and JOSHUA R. SMITH, individually and on behalf of two classes of all others similarly situated, Plaintiffs, v. METROPOLITAN LIFE INSURANCE COMPANY Defendant.	Civil Action File 2:14-cv-00074-RWS

DECLARATION OF AMERICAN LEGAL CLAIM SERVICES, LLC REGARDING DUE DILLIGENCE IN SMITH CLASS NOTICE ADMINISTRATION

I, **KEITH SALHAB**, declare as follows:

1. I am a Director for American Legal Claim Services, LLC ("ALCS"). I am over twenty-one years of age, not a party to this action, and am authorized to make this declaration on behalf of ALCS and myself.

2. Pursuant to the Settlement Agreement, on August 2, 2019, at the direction of Defendant's Counsel, ALCS directed a Notice of Proposed Class Action Settlement under 28 U.S.C. § 1715 ("CAFA Notice") to the attorneys general of 50 states, plus the territories of Puerto Rico, Guam, American Samoa, the US Virgin Islands and the Northern Mariana Islands; the Attorney General of the United States, the District of Columbia's Corporate Counsel, and United States' Department of Labor via certified mail through the U.S. Postal Service. The CAFA Notice package contained a cover letter on behalf of Defendants, as well as a CD-ROM that included the following: (1) the Complaint and any materials filed with the Complaint, (2) Notice of the Proposed Settlement and Each Class Member's Right to

Object to or Opt-Out of the Class Action, (3) Settlement Agreement, and (4) an Estimate of the Number of Class Members who Reside in Each State.

3. ALCS was retained to provide noticing services by counsel to the plaintiffs in the above referenced class action. As such, ALCS was tasked with producing and mailing the Notice of Class Action Settlement (the "Notice"), maintaining a website with information about the case, and responding to class member inquiries.

4. ALCS received a data file from Defendant's Counsel that contained 128,750 class member records. The data was analyzed for duplicate records and 0 records were identified and removed from the final mailing database. Subsequently, 128,750 records were run against the National Change of Address database (NCOA) in order to find updated addresses for any class members who filed a change of address form with the United States Postal Service (USPS).

5. ALCS initially mailed the Notice on August 26, 2019. A representative sample is attached hereto as **Exhibit A.** From August 26, 2019 through September 25, 2019 ("the notice period"), there were notices that were returned with an address provided by the USPS ("FOE") and notices that were returned by the USPS with no address provided ("UAA"). The FOE notices were processed, and addresses were updated in the class list. FOE Notices returned prior to the exclusion deadline were re-mailed as soon as practicable after they were returned and processed. The UAA notices that were returned prior to the exclusion deadline were processed and the addresses were run against the Lexis Nexis Accurint database in an attempt to find an alternative address to which we could resend the Notice. The UAA Notices for which alternative addresses were obtained were re-mailed as soon as practicable after they were returned.

6. ALCS also emailed the Notice on August 26, 2019 to Class Members whose record contained an email address.

7. **USPS Noticing Summary**. The following is a summary of the USPS noticing associated with this Class, as of the date of this declaration:

- Total Records Received: 128,750
- Number initially mailed on August 26, 2019: 128,750
- Number of Notices Returned FOE: 394
- Number of Notices Returned UAA: 10,991
- Number of Notices Re-mailed: 7,818
- Number of Notices Deemed Undeliverable: 3,567
- Percentage of class members assumed to have received notice: 97.23%[1]

8. **Email Noticing Summary**. The following is a summary of the email noticing associated with this Class, as of the date of this declaration:

- Total Records Received: 128,750
- Number of Account Holders with an email: 3,157
- Number of Notices Reported as Delivered: 2,896
- Number of Notices Reported as Undelivered: 261

9. **Website**. On August 26, 2019, ALCS established a website (https://www.smithclassaction.com) dedicated to this case to provide additional information to the Class Members and to answer frequently asked questions. The website allowed visitors to download a copy of the Notice, Settlement Agreement, Distribution Plan, and other documents filed with the Court. The

[1] ALCS may continue to receive and process mail, for which no forwarding address is available. The number of pieces of this type of mail are likely to increase and the presumed delivery rate will be reduced as processing continues.

Notice, Settlement Agreement, and Distribution Plan was available to Class Members in English & Spanish.

10. **Exclusions**. The Class Notice informs Class Members that they may exclude themselves from the settlement. It further states that Class Members must mail their request for exclusion so that it is received by the Settlement Administrator no later than September 25, 2019. As of the date of this declaration, 37 valid Exclusions and 2 untimely, invalid Exclusions were submitted to ALCS.[2]

11. **Objections**. The Class Notice informs Class Members that they may object to the settlement. It further states that Class Members must mail or electronically file any objection with the Court so that it is received by the Clerk no later than September 25, 2019. As of the date of this declaration, there were 2 objections were filed with the Clerk of the Court.

12. As of the date of this declaration, ALCS has not received any notices from class members stating they intend to appear at the final approval hearing. ALCS also reviewed the Court's docket and did not identify any such documents filed with the Court.

13. As of the date of this declaration, based upon preliminary calculations applying the Distribution Plan, it is anticipated that approximately 37,000 accounts will receive more than the $10.00 De Minimus Rule threshold. The following table illustrates a breakdown of the preliminary calculations of anticipated class member distributions:

[2] ALCS may continue to receive and process exclusions after the date of this declaration. Any exclusion received after this declaration is filed will be provided to Plaintiff's Counsel and Defense Counsel.

Smith Class	
Distribution Range	**Approximate Count**
$10-$50	23,936
$50.01-$100	6,261
$100.01-$250	4,473
$250.01- $1,000	2,212
$1,000.01 and Greater	195

I declare under penalty of perjury that the above is true and correct to the best of my knowledge, information and belief. Executed this 4 day of October 2019.

Keith Salhab

EXHIBIT A

Smith Class Action
c/o Settlement Administrator
P.O. Box 23369
Jacksonville, FL 32241-3369

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

LAURA A. OWENS and JOSHUA R. SMITH, individually and on behalf of two classes of all others similarly situated,	:	
Plaintiffs,	:	
v.	:	Civil Action File 2:14-cv-00074-RWS
METROPOLITAN LIFE INSURANCE COMPANY,	:	
Defendant.	:	

NOTICE OF SMITH CLASS ACTION SETTLEMENT

A federal court authorized this notice.
This is not a solicitation from a lawyer.

YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT, OR DON'T ACT. READ THIS NOTICE CAREFULLY. These rights and options—**and the deadlines to exercise them**—are explained in this notice.

Your Legal Rights and Options in this Settlement:	
Do Nothing:	You will be paid a proportional share of the net settlement proceeds in accordance with the Distribution Plan as long as your calculated distribution is not less than $10.00. Class members whose calculated distribution is less than $10.00 will not receive a distribution under this settlement. See section 4 of this notice for more details.
Exclude Yourself	Get no payment. If you exclude yourself, you cannot object to the settlement, but you would not be barred by the settlement from bringing a suit of your own.
Object:	Write to the Court about why you don't like the settlement and do not want it approved. Act by September 25, 2019. See section 11 of this notice for more details.
Go to a Hearing:	Ask to speak in Court about the fairness of the settlement on November 19, 2019. See section 13 of this notice for more details.

1. Why did I receive this notice?

You received this notice because it appears from MetLife's records that you are a member of the Smith class that is covered by this lawsuit. The Court directed that this notice be sent to you to inform you about a proposed settlement of this lawsuit and your rights and options.

2. What is this lawsuit about?

This lawsuit concerns MetLife's use of retained asset accounts called "Total Control Accounts" to settle claims for life insurance benefits due under ERISA-governed employee benefit plans ("Plans"). A retained asset account is a method of settling claims in which an insurance company: (a) establishes an interest-bearing account through a bank for the beneficiary, (b) issues the beneficiary a book of blank drafts that resembles a checkbook to use to access the settlement amount, and (c) retains and invests the money owed to the beneficiary until it is called upon to transfer funds to the bank to cover drafts drawn on the account.

The Plaintiff alleges that MetLife's use of Total Control Accounts to settle claims is unfair because MetLife may earn income by investing the funds held in the Total Control Accounts. The Plaintiff further alleges that the practice is improper because MetLife controls how much income it receives from the practice and does not disclose this income to the Plans. The Plaintiff alleges that these practices violate a federal law, the Employee Retirement Income Security Act of 1974 ("ERISA"), that requires persons who administer employee benefit plans to act in accordance with the plans' terms and solely in the interests of the plans' beneficiaries ("Count 1"), and prohibits plan administrators from engaging in certain types of transactions due to their potential for abuse. (Counts 2-4).

MetLife denies these allegations and contends that its conduct was at all times lawful under ERISA.

3. What has happened so far in the case?

The parties have now reached a proposed settlement for a class ("Class") defined as follows:

> All life insurance beneficiaries of ERISA-governed employee benefit plans that were insured by group life insurance policies issued by MetLife that provide for payment in "one sum" for whom MetLife established a "Total Control Account" (a) between January 1, 2013 and March 31, 2019; and (b) between April 18, 2008 and December 31, 2012 for all policies that, at the time of the insured's death, contained the statement in the policy certificate or an endorsement to the policy certificate that expressly states that claims for benefits can be settled "by establishing an account that earns interest."[1]

The Class Representative and his attorneys think the settlement is in the best interests of all Smith Class Members.

4. What does the settlement provide?

MetLife has agreed to pay Five Million Dollars ($5,000,000.00) to settle the lawsuit, which will be paid into the Settlement Fund (as defined in the Settlement Agreement). The settlement proceeds will be distributed to each Smith Class Member based upon his or her share in accordance with the Distribution Plan. The amount payable to each Class Member will vary, depending on, among other things, the size of the Class Member's life insurance benefit, how long his or her Total Control Account was open, the amount of interest credited to the Class Member's Total Control Account, and the passage of time. Should the amount allocated to any Class Member be less than $10.00 (net of fees and expenses), that Class Member will not receive a payment.

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[1] For purposes of this settlement, by agreement of the parties, a policy certificate is deemed to include this language as of the date that MetLife's records produced in this litigation indicate MetLife: (a) issued to the policyholder a rider that purported to amend or clarify the policy to include this language; or (b) included such language in a newly-issued certificate. In addition, based upon documents produced by MetLife and deposition testimony provided on its behalf, for all policies and customers for whom a specific rider or certificate has not been identified and produced to Plaintiffs as of March 31, 2019, all such policies are deemed to include this language (a) as of September 1, 2012, for all policies associated with customers MetLife categorizes as "National Accounts" or "Regional Market" accounts; and (b) as of December 31, 2012 for all policies associated with customers MetLife categorizes as "Local Market" accounts.

The Settlement Agreement, the Distribution Plan and other papers, in both English and Spanish, can be found at www.smithclassaction.com.

5. When and where will the Court decide whether to approve the settlement?

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to. The hearing will be held on November 19, 2019, at 10:00 a.m., United State Courthouse, 121 Spring Street, Gainesville, Georgia 30501. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. At or after the hearing, the Court will decide whether to approve the settlement.

The Court has reserved the right to change the date and time of the Final Approval Hearing without further notice to the Class. If you would like to attend the hearing, please check the website www.smithclassaction.com for any changes of the hearing date.

6. How and when can I receive payment?

You need to do nothing. If the settlement is approved and your share of the settlement (net of fees and expenses) is $10.00 or more, a check will be mailed to you at this same address. If there is an appeal, then settlement checks will not be issued until the appeal is resolved and the order approving the settlement is approved by the appeals court.

7. What if I currently have a balance in a Total Control Account?

If you currently have a balance in a Total Control Account, MetLife will continue to administer the account in accord with the account agreement. MetLife will continue to guarantee the balance and credit interest on that balance. MetLife will be free to invest the funds associated with that balance as it sees fit. MetLife may make more investment income using your funds than the interest that it pays to you. Part of this settlement includes a release of all claims relating to the rate of interest credited to Total Control Accounts issued under the Plans. As was always the case, you may choose to close your Total Control Account or keep it open.

8. Do I have a lawyer in this case?

The Court appointed John C. Bell, Jr., Esq., Lee W. Brigham, Esq., Wm Gregory Dobson, Esq., Michael J. Lober, Esq., John W. Oxendine, Esq., Todd L. Lord, Esq., Jason J. Carter, Esq. and Michael B. Terry, Esq. to represent you and other Class Members. These lawyers are called Class Counsel. You will not be personally charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

9. How will the lawyers be paid?

Class Counsel will ask the Court to award attorneys' fees and will seek reimbursement of their expenses incurred to prosecute this action and administer this settlement of no more than one-third of the Settlement Fund, and to seek an incentive award of up to ten thousand dollars ($10,000.00) to the Class Representative, all to be paid from the Settlement Fund. Attorneys' fees, expenses and incentive awards will be determined by the Court following a hearing and will be based upon the evidence presented and legal principles that govern such awards. The Court may award less than the amounts requested. MetLife has agreed not to oppose the application for attorneys' fees, expenses and the incentive award.

10. How do I get out of the settlement?

To exclude yourself from the settlement, you must submit to the Administrator at the address listed below, a written, signed, and dated statement that you are opting out of the Class and that you understand that you will receive no money from the Settlement of this Action. To be effective, this opt-out statement (i) must be received by the Administrator no later than September 25, 2019, (ii) include your name and last four digits of your social security number, and (iii) must be personally signed and dated by you.

Smith Class Action
c/o Settlement Administrator
P.O. Box 23369
Jacksonville, FL 32241-3369

You can't exclude yourself on the phone or by e-mail. If you are excluded, you will not get any settlement payment, you cannot object to the settlement, you will not be legally bound by anything that happens in this lawsuit, and you may be able to sue (or continue to sue) MetLife in the future for these same claims, but your claims may be time-barred.

11. How do I object to the settlement?

If you are a Class Member, you can object to the settlement. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to the settlement. The letter must include certain information. This information is described in paragraph 3.6 of the Settlement Agreement, which is available online at www.smithclassaction.com.

DO NOT CALL THE COURT. Mail or electronically file the objection with the Clerk of the Court, James A. Hatten, U.S. Courthouse, 121 Spring Street, Gainesville, Georgia 30501, so that is received by the Clerk no later than September 25, 2019.

12. Do I have to come to the hearing?

No, but you are welcome to come at your own expense. If you send an objection, you don't have to come to Court. As long as you submitted your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but this is not necessary.

13. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear." Include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be received by October 21, 2019, by the Clerk of the Court at the address noted in question 11.

14. Are there more details about the settlement?

You may visit the website at www.smithclassaction.com, where you will find copies of the Settlement Agreement and significant orders, as well as other information that may help you determine whether you are a Class Member and whether you are eligible for a payment. You may also call **1-800-501-9615** toll free or write to Smith Class Action, c/o Settlement Administrator, P.O. Box 23369, Jacksonville, FL 32241-3369.

The papers filed in this case are also available for inspection during business hours at the Office of the Clerk of Court, United States District Court for the Northern District of Georgia, 121 Spring Street, Gainesville, Georgia 30501, or on the internet at http://www.gand.uscourts.gov/.