

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARCUS CREIGHTON, <i>et al.</i> , individually	:	
and on behalf of all others similarly situated,	:	
	:	
Plaintiffs,	:	15cv8321
	:	
-against-	:	<u>MEMORANDUM &amp; ORDER</u>
	:	
METROPOLITAN LIFE INSURANCE	:	
COMPANY,	:	
	:	
Defendant.	:	
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WILLIAM H. PAULEY III, Senior United States District Judge:

In May 2015, Marcus Creighton filed a class action in Northern District of Illinois alleging that MetLife discriminated on the basis of race against African-American financial services representatives (“FSRs”) with respect to compensation and other practices, in violation of 42 U.S.C. § 1981. Shortly after the transfer of that action to the Southern District of New York, plaintiffs added Title VII claims and six new plaintiffs. The parties settled this action for \$32.5 million on behalf of 657 class members. Class counsel moves for a final installment payment of attorney’s fees. For the reasons that follow, class counsel’s application is granted.

BACKGROUND

On June 21, 2017, this Court conducted a fairness hearing that in part addressed the approval of fees and costs. Specifically, this Court found that a maximum award of \$7,150,000 was fair and reasonable, which represented 22% of the \$32.5 million settlement fund. Although class counsel at that time sought approval of fees already incurred as well as fees to be incurred in administering the settlement and conducting individual assessments, this Court concluded that fees should be awarded in two tranches given the uncertainty in measuring the

future effort to be expended by class counsel. Accordingly, this Court directed that half of the \$7,150,000, or \$3,575,000, be wired directly to class counsel (along with expenses incurred by counsel). While this Court also permitted class counsel to apply for additional installments of attorney's fees as the settlement process unfolded, it received no further applications. Instead, class counsel opted to apply for one final installment of \$3,575,000.

### DISCUSSION

In calculating attorney's fees, the prevailing trend in this Circuit is to employ the percentage-of-the-fund approach "because it directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." Dial Corp. v. News Corp., 317 F.R.D. 426, 433 (S.D.N.Y. 2016). As discussed above, in June 2017, this Court held a maximum award of \$7,150,000—or 22% of the total settlement fund—to be fair and reasonable, citing to the exceptional work performed by counsel.

Nonetheless, "the lodestar approach provides an effective cross-check on the reasonableness of the . . . percentage." Goldberger v. Integrated Res., Inc., 209 F.3d 43, 50 (2d Cir. 2000). Where the lodestar approach is used as a cross-check, "the hours documented by counsel need not be exhaustively scrutinized by the district court." Gattinella v. Kors, 2016 WL 690877, at \*2 (S.D.N.Y. Feb. 9, 2016). Courts applying the lodestar approach "generally apply a multiplier to take into account the contingent nature of the fee, the risks of non-payment, the quality of representation, and the results achieved." See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 121 (2d Cir. 2005). Here, the lodestar for fees incurred after June 13, 2017 is \$1,416,081.25 for 3,002.50 hours of work, with additional work to be performed.

Combining the post-June 13, 2017 lodestar with the pre-June 13, 2017 lodestar of \$1,839,362.50 for 3,246.10 hours of work yields a total lodestar of \$3,255,443.75 for 6,248.60

hours of work. Based on these combined numbers, the lodestar multiplier for a \$7,150,000 total award is 2.19. In the abstract, a multiplier of 2.19 approaches the high end of common fund multipliers in this Circuit. See In re Tremont Secs. Law, State Law & Ins. Litig., 699 F. App'x 8, 18 (2d Cir. 2017) (summary order) (citing various securities class action settlements for the proposition that “[a] lodestar multiplier of 2.5 would be considered high for a standard common fund case in this Circuit”); Gattinella, 2016 WL 690877, at \*2 (noting that “a lodestar multiplier of 2.4 is higher than what other courts, including this one, have typically awarded”). But see Velez v. Novartis Pharm. Corp., 2010 WL 4877852, at \*23 (S.D.N.Y. Nov. 30, 2010) (employment discrimination class action noting that a multiplier of 2.4 “falls well within (indeed, at the lower end) of the range of multipliers accepted within the Second Circuit”).

Yet as some courts in this Circuit have recently observed, higher multipliers may be justified when attorneys “face a significant risk that their case may not succeed.” Moses v. Apple Hospitality REIT, Inc., 2018 WL 1513631, at \*9 (E.D.N.Y. Mar. 27, 2018); see In re Tremont, 699 F. App'x at 17 (noting that contingency risk “is generally the most important in determining whether to award a lodestar multiplier”). This risk is particularly prominent for an employment discrimination class action, Bellifemine v. Sanofi-Aventis U.S. LLC, 2010 WL 3119374, at \*3 (S.D.N.Y. Aug. 6, 2010) (observing that “discrimination class actions are notoriously complex”), and this case’s success was far from certain in light of the increased difficulty in securing class certification after Wal-Mart v. Dukes, 564 U.S. 338 (2011). Class counsel not only surmounted these obstacles, but procured a larger settlement in the aggregate and per capita than any discrimination settlement achieved in the country in 2016.

While the predominance of partner-level billing may in some cases warrant a reduction in fees, see, e.g., In re Platinum & Palladium Commodities Litig., 2015 WL 4560206,

at \*4 (S.D.N.Y. July 7, 2015); Pa. Pub. Sch. Emps. Ret. Sys. v. Bank of Am. Corp., 318 F.R.D. 19, 25 (S.D.N.Y. 2016), this Court is not convinced that such a reduction is warranted here given the structure of class counsel's firm. Moreover, class counsel has represented that they do not intend to seek future attorney's fees, despite indicating that they "will need to devote additional time and resources to the settlement process in the future." (Class Counsel's Application for Final Installment Payment of Attorneys' Fees, ECF No. 183, at 2.) Such additional efforts will cause the multiplier to be lower than 2.19. See Velez, 2010 WL 4877852, at \*23; Bellifemine, 2010 WL 3119374, at \*6. Thus, this Court approves the payment of the second \$3,575,000 tranche to class counsel.

CONCLUSION

For the foregoing reasons, class counsel's application for a final installment payment of attorney's fees is granted. Class counsel shall submit a proposed order by May 25, 2018 that directs the transfer of the approved funds to class counsel. The Clerk of Court is directed to terminate the motion pending at ECF No. 183.

Dated: May 18, 2018  
New York, New York

SO ORDERED:

  
WILLIAM H. PAULEY III  
U.S.D.J.