United States District Court, S.D. New York.
Stella MITCHELL, Hwa-Mei C. Gee, Durpatty Persaud, and Janet Ramsey, on behalf of themselves and all others similarly situated, and Barbara LaChance, individually, Plaintiffs,
v.
METROPOLITAN LIFE INSURANCE COMPANY, INC., dba Metlife, Defendant.
No. 01-Civ-2112 (WHP).
October 24, 2003.

Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of the Settlement Class and Consent Decree

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I. PRELIMINARY STATEMENT

Plaintiffs submit this Memorandum in Support of their motion for Final Approval of the $13.4 million class action settlement between them and Metropolitan Life Insurance Co., Inc. (“MetLife”), which was preliminarily approved by the Court on August 18, 2003. The Consent Decree is fair, adequate, and just, and the Court should grant final approval based on its terms and the parties' carrying out of the Order of Preliminary Approval entered on August 18, 2003. The results of the Notice and Claims forms sent to class members, and the class members' response to that Notice, provide further evidence that the settlement merits final approval.

The applicable standards and evidence which support approval of the Consent Decree were thoroughly set out in Plaintiffs' Memorandum in Support of its Motion for Certification of the Settlement Class, Preliminary Approval of Consent Decree and Award of Attorneys' Fees and Costs and Approval of Class Notice (“Plaintiffs' Preliminary Approval Motion”), filed July 30, 2003 (attached hereto for the Court's convenience as Exhibit 12 in the Appendix of Documents In Support of Final Approval of Settlement and Fees Award (“Appendix”) submitted herewith). There is no need to repeat what is set forth in the Plaintiffs' Preliminary Approval Motion, which is largely applicable to final approval of the Consent Decree as well as preliminary approval. Plaintiffs hereby incorporate the reasons and authorities set forth in that Memorandum by this reference. In this Memorandum, Plaintiffs set forth additional reasons, based on the notice procedure and its results, for granting final approval of the Consent Decree.

II. FACTUAL BACKGROUND

For purposes of this motion, Plaintiffs briefly summarize the factual background of this case. A more detailed summary can be found in Plaintiffs' Preliminary Approval Motion at 2-4. This action began on March 13, 2001, when five female current and former MetLife Financial Services' ("MLFS") employees filed a complaint on behalf of themselves individually and others similarly situated alleging that MetLife engaged in a nationwide policy, pattern, or practice of gender discrimination in promotions, compensation, and other terms, conditions and privileges of employment.

The parties engaged in extensive discovery during 2002 and early 2003, including the taking and defending of numerous depositions of both fact and expert witnesses, the exchange of voluminous documents, and completing detailed analyses of statistical data. *See* Plaintiffs' Preliminary Approval Motion at 2-3.

The parties began preliminary settlement discussions in November 2002, and continued their discussions while simultaneously litigating the case. The parties reached a tentative settlement in May 2003, and thereafter, the parties continued to meet to work out the final details of the Consent Decree. *See id.* at 3-4. The parties agreed that the extensive formal discovery conducted in this action was sufficient to assess the merits of the respective parties' positions and to compromise on the issues on a fair and reasonable basis. *See id.* at 4. As a result of these settlement negotiations, a proposed Consent Decree (attached as Exhibit 2 of the Appendix) was negotiated and signed by the parties.

The Consent Decree provides for extensive injunctive relief including: increasing Human Resources staff; requiring diversity and sales management training; increasing recruitment of women for sales and sales management positions; establishing benchmarks for increasing the number of women in sales management positions; developing objective job descriptions and selection criteria for sales management positions; developing objective criteria for the distribution of sales leads and other business development resources within MLFS; and providing for monitoring of Decree compliance during the three year term. *See id.* at 6-8; and *infra* at pp. 11-13. Under the Consent Decree, MetLife expressly allocates $5 million to implement these injunctive relief provisions. In addition, the Decree provides for an additional $5 million to be paid into a Qualified Settlement Fund to pay the claims of the named plaintiffs and to be distributed to class members pursuant to a claims procedure, and for an additional sum of up to $3.4 million in current and future attorneys' fees and expenses.

On July 30, 2003, Plaintiffs filed their unopposed motion for conditional class certification, preliminary approval of the Consent Decree, and award of attorneys' fees and costs. Plaintiffs submitted the proposed Consent Decree (which included the terms of the injunctive and monetary relief and proposed class notice) for review by the Court, together with a Memorandum of Law and declarations in support of Plaintiffs' motion. The Court granted that motion in all respects by an order entered on August 18, 2003 (hereinafter "Preliminary Approval Order," attached as Exhibit 1 hereto of the Appendix).

III. THE NOTICE PROCEDURES REQUIRED BY THE PRELIMINARY APPROVAL ORDER HAVE BEEN CARRIED OUT, AND THE RESULTS OF THAT PROCEDURE INDICATE THAT THE CLASS MEMBERS SUPPORT THE SETTLEMENT TERMS.

In granting conditional certification of the settlement class and preliminary approval of the Consent Decree and award of attorneys' fees and costs, the Court also adopted the Class Notice procedures outlined in the Consent Decree. Specifically, the Court found that the proposed Class Notice (attached as Exhibit F to the proposed Consent Decree) fairly and adequately advised the class members of the terms of the proposed settlement and of the claims process available to them to obtain monetary relief provided by the settlement. The Court also found that the Class Notice fairly and adequately advised the class members of their rights to object to the settlement and/or to opt out of the class, and to appear at the Fairness Hearing that the Court set to determine whether the Consent Decree will be given final approval.

The Preliminary Approval Order's requirements for class notice procedure have been fully and properly carried out pursuant to its terms. In compliance with the Preliminary Approval Order, the Claims Administrator, Rosenthal & Company, sent the Class Notice and Individualized Claims Forms and Instructions (attached as Exhibit E to the proposed Consent Decree) to 3,626 class members by first class mail at their last known address on August 25, 2003. *See* Declaration of Daniel Rosenthal, filed herewith (hereafter "Rosenthal Decl.") (Exhibit 7 of the Appendix), ¶¶ 3, 4, 7. The list of class members and their most current known addresses was developed by the Claims Administrator using class member information provided by MetLife. *See id.* at ¶ 3. Subsequent to that mailing, MetLife produced another 114 class members' addresses, and notice and claims were sent to those class members on September 17, 2003. *See id.* at ¶ ¶ 8-9. From those two mailings, only 175 notice and claims forms were returned as undeliverable. *See id.* at ¶ 12. A subsequent address search of those 175 returned mailings resulted in finding 159 updated addresses, to which the Claims Administrator sent a second mailing. *See id.* Ultimately, there were only 29 class members with inaccurate addresses that could not be corrected. *See id.* at ¶ 13. In addition, in order to encourage notification and participation of class members, the Claims Administrator sent 2,325 reminder post-cards (attached as Exhibit C to the Rosenthal Declaration) by first-class mail to class members who had not responded to the Class Notice by September 16, 2003. *See id.* at ¶ 14.

The Claims Administrator also provided a free telephone response service to assist class members with questions about the Notice and Claims forms. The Claims Administrator created a toll-free number and staffed it with personnel trained in the details of the Consent Decree. *See id.* at ¶ 5. From August 25 to October 13, 2003, these operators received and responded to 499 telephone calls from class members. *See id.* at ¶ 10. Also, the Claims Administrator created a website (the address of which was published in the Notice and Claims forms), which provided forms and filings to download, including the Consent Decree and the Notice and Claims forms. *See id.* at ¶ 6.

As of the date of the Rosenthal Declaration, 1,900 completed claim forms have been submitted and processed by the Claims Administrator, reflecting participation by over 50% of the total class. *See id.* at ¶ 17. It is expected that claim forms will continue to come in until the filing deadline, November 24, 2003. *See id.* at ¶ 17. Up to the date of the Rosenthal Declaration, only 15 class members have submitted timely valid Request for Exclusion forms by which they have opted out of the settlement. *See id.* at ¶ 15. Of those, three have rescinded their exclusion requests, *see id.* at ¶ 15, and four opted out because they have pending individual claims or lawsuits against MetLife. *See* Supplemental Declaration of David Borgen ("Borgen Decl.") (Exhibit 4 in the Appendix), ¶ 14. The remaining eight opt-outs constitute less than 0.3 % of the class members who received the Class Notice. In contrast, over 50% of such class members have so far submitted Claim forms to participate in the settlement's monetary relief provisions. *See id.* at ¶ 13. The period for class members to file claims extends until November 24, 2003, the deadline established by the Preliminary Approval Order; however, the period for requesting exclusion or filing objections has closed.

One of the remaining 12 opt-outs is named plaintiff Stella Mitchell. Ms. Mitchell's decision to opt-out does not impact the ultimate reasonableness or fairness of the settlement given her decision not to object to the settlement but only exclude herself from its provisions. Moreover, class action settlements can be approved by the court over the preferences of named plaintiffs because "a contrary view would put too much power in a wishful thinker ... to thwart a result that is in the best interests" of others. *Maywalt v. Parker & Parsley Petroleum Co.,* 67 F.3d 1072, 1078 (2d Cir. 1995) (citing *Sayior v. Lindsley* 456 F.2d 896, 899-900 (2d Cir. 1972)) (other citation omitted); *see also Martens v. Smith Barney, Inc.,* 181 F.R.D. 243, 265 (S.D.N.Y. 1998) (the fact that the lead named plaintiff opted out and objected to the employment discrimination class action settlement was not fatal to the final approval of the settlement by the court).

Not a single class member has submitted timely written objections to the Consent Decree to either the Class Administrator or Class Counsel as of the date of the Rosenthal Declaration. *See* Rosenthal Decl., ¶ 16, Borgen Decl., ¶ 15.

The large number of submitted claims, the tiny number of opt-outs, and the complete absence of objections by class

members weigh heavily in favor of approval of the Consent Decree. *See, e.g., D'Amato v. Deutsche Bank,* 236 F.3d 78, 87 (2d Cir. 2001) (holding that the district court appropriately held that the small number of objectors and opt outs favors approval of class settlement); *Marisol v. Giuliani,* 185 F.R.D. 152, 163 (S.D.N.Y. 1999) ("the small number of comments from a plaintiff class ...[is] evidence of the Settlement Agreement's fairness, reasonableness, and adequacy"); *In re Warner Communications Secs. Litig.,* 618 F. Supp. 735, 746 (S.D.N.Y. 1985) (noting small number of objections and opt-outs in approving settlements).

IV. THE CONSENT DECREE SATISFIES THE CRITERIA FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS UNDER F.R.C.P. 23(E).

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure (F.R.C.P.), any class action settlement requires court approval.[FN1] In examining the appropriateness of the settlement, the court looks to whether the settlement is "fair, adequate, and reasonable, and not a product of collusion." *Joel A. v. Giuliani,* 218 F.3d 132, 138 (2d Cir. 2000). "In so doing, the court must 'eschew any rubber stamp approval' yet simultaneously 'stop short of the detailed and thorough investigation that it would take it if were actually trying the case.' " *Sheppard v. Consolidated Edison Co. of New York, Inc.,* 2002 WL 2003206, *3 (E.D.N.Y. Aug. 1, 2002) (citing *City of Detroit v. Grinnell Corp.,* 495 F.2d 448, 462 (2d Cir. 1974). The courts should exercise such judicial discretion while keeping in mind the strong judicial and public policies that favor consensual resolution of cases. *Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini,* 258 F. Supp. 2d 254, 257 (S.D.N.Y. 2003) (citing *In re Ivan F. Boesky Secs. Litig.,* 948 F.2d 1358, 1368 (2d Cir. 1991); *Newman v. Stein,* 464 F.2d 689, 692 (2d Cir. 1972); *In re Michael Milken & Assocs. Secs. Litig.,* 150 F.R.D. 46, 53 (S.D.N.Y. 1993)).

> FN1. The presently pending revisions of Rule 23 are not applicable to this proceeding because they do not take effect until December 1, 2003. *See* Report of the Civil Rules Advisory Committee, available at *http// www.uscourts.gov/rules/ic09-2002/cvruleshc.pdf.* However, the settlement and the procedures followed in reaching it satisfy all of the requirements of the new Rule 23(e) provisions and of *Amchem Products v. Windsor,* 521 U.S. 591 (1997), which inspired many of the amended Rule 23's new provisions.

In evaluating the fairness and reasonableness of a class action settlement, the courts look to both the procedural fairness (i.e., the adequacy of the parties' information and the negotiations that led to the settlement) and the substantive fairness (i.e., the terms of the settlement) of the agreement. *See In re Holocaust Victim Assets Litig.,* 105 F. Supp. 2d 139, 145 (E.D.N.Y. 2000). The Second Circuit has enumerated several factors for courts to examine in evaluating the fairness and reasonableness of class action settlements pursuant to F.R.C.P. 23(e):

(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, (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation[.]

County of Suffolk v. Long Island Lighting Co., 907 F.2d 1295, 1323-24 (2d Cir. 1990) (citing *Robertson v. National Basketball Ass'n.* 556 F.2d 682, 684 n. 1 (2d Cir. 1977) (quoting *City of Detroit v. Grinnell Corp.,* 495 F.2d 448, 463 (2d Cir. 1974)); *see also Grant v. Bethlehem Steel Corp.,* 823 F.2d 20, 24 (2d Cir. 1987) (finding no error in the trial court's examination of substantially similar factors in assessing the reasonableness of a class action settlement). The Consent Decree is fair and adequate in all of these respects.

A. *Procedural Fairness.*

The settlement is procedurally fair because the Consent Decree was the result of extensive, informed, arm's length negotiations between attorneys with substantial litigation and trial experience, including experience in complex and/or class action employment discrimination cases. *See* July 24, 2003 Declaration of David Borgen (attached to Plaintiffs' Preliminary Approval Motion and attached as Exhibit 3 in the Appendix) (hereafter "7/24/03 Borgen Decl."), ¶¶ 22-31; Declaration of Adam T. Klein (attached to Plaintiffs' Preliminary Approval Motion and attached hereto as Exhibit 5 in the Appendix) (hereafter "7/29/03 Klein Decl."), ¶¶ 8-16. Moreover, the attorneys involved in the settlement negotiations were fully familiar with the legal and factual issues of the case. The extensive discovery in the case (details of which were provided in Plaintiffs' preliminary approval motion) included analysis of voluminous documents and databases and the taking and defending of numerous depositions, which provided an ample factual basis for the parties to evaluate the merits of their cases. *See* 7/24/03 Borgen Decl., ¶¶ 3-11; 7/29/03 Klein Decl., ¶¶ 3-7. Class Counsel- Outten & Golden, who have been attorneys for plaintiffs during the entire span of the litigation, and Goldstein, Demchak, Baller, Borgen & Dardarian, who have been attorneys for plaintiffs since April 2002- will continue to represent the class during the three year term of the Consent Decree. Both firms have substantial experience and success in complex and class action litigation, and have successfully prosecuted, tried, and/or settled major employment discrimination class actions. *See* 7/24/03 Borgen Decl., ¶ 28; 7/29/03 Klein Decl., ¶ 15.

The negotiation process resulted from hard bargaining between adverse parties. Attorneys for the parties met numerous times over a seven-month period to discuss their respective positions. *See* Borgen Decl., ¶¶ 4-5. Both parties relied on detailed reports from their respective statisticians as a basis for their arguments on the parameters of the injunctive and monetary relief provisions. *See id.* at ¶ 5. The parties furthered their discussions by telephone in between their face-to-face meetings and relied on feedback sought from the Human Resources department of MetLife on the proposed injunctive relief provisions. *See id.* The amount of monetary funds to be dedicated to injunctive relief for the class was hard-fought between the parties. *See id.* at ¶ 6. Ultimately, the Consent Decree provides for a set aside amount of $5 million that will be expended by MetLife in the implementation of the injunctive relief measures for the benefit of class members who continue to work in MLFS jobs. Likewise, the amount of monetary relief for plaintiffs and the class was the subject of difficult negotiations. *See id.* In the end, a bargain for another $5 million was struck. These are compromise figures that reflect the best obtainable result for the class members given the extremely divergent positions of the parties on the merits of the case.

Accordingly, given the good-faith negotiation process between competent counsel and the sufficiency of their information based on exhaustive discovery, the Court should conclude that the Consent Decree was the product of a fair, adequate, and reasonable settlement process and was not the product of collusion between the parties.

B. *Substantive Fairness.*

1. *The complexity, expense, and likely duration of the litigation.*

Employment discrimination cases are notoriously expensive and time-consuming to prosecute. This case involves classwide allegations of a nationwide policy, pattern, or practice of gender discrimination in promotions, compensation, and other terms and conditions of employment in violation of federal and state anti-discrimination laws, against a major corporation with numerous offices across the country. These allegations would have been tested under both the disparate treatment and disparate impact legal standards. *See Watson v. Fort Worth Bank & Trust,* 487 U.S. 977 (1988). The parties' briefs and supporting documents on plaintiffs' Motion for Class Certification, filed in February and April 2003, well illustrate how difficult and complex the issues were. Plaintiffs' submissions in support of their motion included approximately 1,500 pages of documentation, including excerpts from 18 depositions, as well as 36 declarations. Similarly, defendant's submissions in reply to the class certification brief included approximately 1,100 pages of documentation, including excerpts from 18 depositions and 27 declarations. Whatever the Court's ruling on the motion for class certification, the losing side would certainly have sought review on an interlocutory appeal under Rule 23(f) of the Federal Rules of Civil Procedure.

Preparing and putting on their evidence on the complex factual and legal issues at trial on the merits would have consumed tremendous amounts of time and resources for both sides, as well as requiring substantial judicial resources to adjudicate the parties' disputes. Large amounts of additional discovery would have been required to establish liability. A complicated trial would have been necessary, featuring dueling experts and sophisticated statistical analyses, as well as extensive testimony by MetLife managers and executives, plaintiffs, and numerous class members, all presented to a jury on legal issues, with a concurrent bench trial on equitable issues. Any verdict would have likely been appealed, thereby extending the duration of the litigation. Had the Court denied the motion for class certification, the alternative to a class action -- multiple individual litigations -- would have taxed private and judicial resources over a period of years, and the high burden of proof for individual litigants would have deterred a great number of individuals from pursuing their legal rights. The settlement, on the other hand, makes both injunctive and monetary relief available to all class members in a prompt and efficient manner.

2. *The reaction of the class to the settlement.*

As outlined in detail in section II of this Memorandum, the reaction of the class has been extremely positive. Out of a class of approximately 3,700 people, only seven (constituting less 0.3% percent of the class) opted out of the settlement for any reason other than to pursue their own pre-existing cases in litigation, and not one class member objected to the settlement. The lack of any objectors and the extremely small number of opt-outs weigh heavily in favor of approval of the settlement. *See e.g., D'Amato,* 236 F.3d at 87 (2d Cir. 2001); *Marisol,* 185 F.R.D. at 163; *In re Warner Communications Secs. Litig.,* 618 F. Supp. at 746.

3. *The stage of the proceedings and the amount of discovery completed.*

At the time this case was submitted to the Court for preliminary approval of the classwide settlement, the parties had engaged in hard-fought litigation for over two years. Class Counsel also had the benefit of one year of pre-filing investigation of the evidence supporting the class-wide allegations. *See* July 29, 2003 Klein Decl. at ¶ 4. Prior to entering into the Consent Decree, the parties engaged in extensive discovery (as outlined in Plaintiffs' Preliminary Approval motion), motion practice (including a motion for class certification), and many rounds of in-depth settlement negotiations. Given the lengthy and well-developed exchange of discovery, the Consent Decree represents negotiations between informed parties who were able to make well reasoned judgments about the merits of the case and the settlement.

4. *The risks of establishing liability and damages, as well as maintaining the class action through trial.*

A trial in this case would involve significant risks to plaintiffs because of the extremely complex nature of the proof required in pattern and practice discrimination cases, and the substantial and vigorous defenses MetLife mounted against plaintiffs' claims as illustrated by defendant's Memorandum of Law in Support of Defendant's Opposition to Plaintiff's Motion for Class Certification. The complexity of the case was compounded by the complicated nature of the statistical and anecdotal class evidence and the various defenses to class certification and classwide liability that plaintiffs would have had to overcome. MetLife's defenses include the individualized nature of the decision making structure of the company, the downsizing of the company's local offices (which MetLife contended limited promotional opportunities for nondiscriminatory reasons and explained some of the facial disparities shown in plaintiffs' statistical data), and the applicable statute of limitations. While Class Counsel believe the class claims are meritorious, counsel are experienced and realistic, and understand that the resolution of the class certification and liability issues, the outcome of the trial, and the inevitable appeal process are inherently uncertain in terms of both outcome and duration. Moreover, the ability to prove classwide damages would have been challenging given the arguably individualized nature of damages in promotion and compensation discrimination cases.

5. *The adequacy of inhunctive relief and its benefits to currently employed class members.*

The Section X of the Consent Decree includes $5 million as a set aside amount that MetLife must spend for implementation of the extensive injunctive relief measures, which are aimed at ending policies and procedures alleged to be responsible for gender disparities in MetLife's MLFS and sales management sales workforce and compensation and at recruitment of professional level women employees in MLFS. These injunctive relief measures include a panoply of specific, detailed, and creative programs, summarized below. First, the Decree requires substantial increases in human resource support and improvements in MetLife's internal complaint procedure. *See* Consent Decree, Sections XI.B and - C (MetLife required to hire at least six additional HR Generalists whose duties will include carrying out investigation of discrimination complaints by women in MLFS under a rigorous procedure specified in the Decree). Second, the Decree establishes benchmarks requiring MetLife to increase the representation of women in management positions. *See* Consent Decree, Section IX.H (MetLife required to make its "Best Efforts" to attain specific numerical benchmarks, defined in Sec. IX.H.5 and - 6, designed "to increase the percentage of women I the Functional Manger, Agency Director ... and managing Director positions;" failure to attain the benchmarks is subject to review under the decree's Dispute Resolution Procedure (Section VII)). Third, the Decree commits MetLife to implement extensive training and evaluation procedures. *See* Consent Decree, Section XI.H and - J (MetLife to train MLFS managers with respect to diversity and EEOC goals as well as enhancement of the sales skills and productivity of Sales Representatives, the MLFS job with the largest number and percentage of female employees). Fourth, MetLife must undertake increased recruitment of female candidates for sales and sales management positions. *See* Consent Decree, Section IX.K (with provision that MetLife support this recruitment effort with specific required funding of $600,000). Fifth, MetLife is required to develop an equal employment opportunity management development program. *See* Consent Decree, Section IX.L (program is designed to prepare high potential sales personnel for management positions, with women to receive at least 30% of the slots). Sixth, MetLife will develop written criteria for the equal distribution of business resources and assistance. *See* Consent Decree, Sections IX.M, - N and - O (programs to enhance women's opportunities to get a fair share of business generation leads and development assistance, with monitoring to assure gender fairness). Seventh, MetLife must provide extensive reporting to Class Counsel for monitoring purposes, and assure retention of relevant records. *See* Consent Decree, Sections XI and IX.A.2.a.(iv) and - (v) (requiring reports for MLFS sales management positions on employment and compensation data, by gender, with any unexplained discrepancies subject to the Dispute Resolution Procedure). Eighth, MetLife will create a powerful Decree Monitor position to oversee implementation of the Decree over its three-year term. *See* Consent Decree, Section IX.A (assuring the Monitor and her staff will have the resources as well as the obligation to conduct extensive compliance reviews, with funding of $750,000 over that period). These relief measures are aimed at, and will surely be effective in, significantly increasing opportunities for the current and future female employees of the MLFS in professional jobs.

6. *The reasonableness of the settlement fund for monetary relief in light of the best possible recovery and the attendant risks of litigation.*

Under Section XI.A.I.a of the Consent Decree, MetLife will pay $5 million into a Qualified Settlement Fund to be used to compensate class members pursuant to a claims procedure. Each qualified claimant will receive a minimum payment of $1,000, and she will also be assigned points based on the claimant's years of employment, the positions(s) she held, the time and effort she spent participating in pre-class certification discovery, and whether she is a former employee. *See* Consent Decree, Section XI.F. Monetary relief will be allocated to each claimant based on her pro rata share of the total points of all claimants. *See* Consent Decree, Sec. XII.E, - F. Payments from this fund are not limited to incumbent employees but will benefit previously employed class members who make timely claims. Former female MLFS employees who cannot take advantage of the injunctive relief measure but who file claims will benefit from additional compensation.

If at least 60% of the class submit claim forms by the cut off date[FN2], the average monetary award per class member will be $2,500. For class members who are former employees, who have five to ten years of tenure, who held a management position, and who supplied a declaration and or deposition in the litigation, it is likely that the recovery will reach or exceed $5,000. The range of $1,000 to $5,000 reflects substantial recoveries, particularly when made available to a large class of individuals.

FN2. A 60% return of claim forms is a realistic assumption given that over 50% of class members have sent in claim forms as of October 20, 2003, and claim forms will be timely if mailed by November 24, 2003.

As part of the Qualified Settlement Fund, the four named plaintiffs who have not opted out of the litigation will share a liquidated sum of $180,000,[FN3] in settlement of their individual claims, recognition of the efforts they have undertaken and the risk they incurred on behalf of the class, and in exchange for a broader release of their individual claims than that given by other class members. The named plaintiffs' efforts, as well as the case law that supports such incentive payments, were detailed in the Plaintiffs' Preliminary Approval Motion at 10-11.

FN3. Section XI.A.l.c of the Consent Decree provides for a liquidated sum of $235,000 for the named plaintiffs who do not opt out of the litigation. *See* Consent Decree at 43. Because one of the named plaintiffs (i.e., Ms. Mitchell) has opted out of the litigation, her allocated share ($55,000, *see* Preliminary Approval Brief at 10, fn. 4) will be deducted from the total, leaving $180,000 in incentive payments to the named plaintiffs.

7. *Advantages of the settlement.*

Under the Consent Decree, the class members are entitled to far-reaching and immediate advantages, which will also positively impact future female MLFS employees. The injunctive relief measures (as described above) will create significant opportunities for current female MLFS employees, including promotions to more responsible and higher paying jobs that will enhance their compensation and career development opportunities. Moreover, the settlement will increase the total number of female sales personnel in MLFS by the establishment of a targeted recruiting effort by MetLife, and these beneficial provisions will go into effect soon after the settlement's approval. This settlement is not only a win-win result for the parties but will advance the law's goal of equal employment opportunities as applicable to MLFS by a broad range of non-exclusionary programs. *See, e.g, Alexander v. Gardner-Denver Co.,* 415 U.S. 36, 44 (1974) (cooperation and voluntary compliance were selected as the preferred means for achieving Title VII's goal of equal employment opportunities); *Wrenn v. Secretary. Dept. of Veterans Affairs,* 918 F.2d 1073, 1078 (2d Cir. 1990) (same).

With regard to the monetary relief provision, because this is an employment discrimination class action, the best possible recovery for the class is difficult to ascertain with specificity. Back pay and front pay for lost sales business opportunities and compensatory and punitive damages are difficult to gauge, especially on a class wide basis. However, here, the settlement provides $5 million for extensive injunctive relief, including a three-year monitoring period, and $5 million in monetary relief which is available to individual class members based on their work histories and claims. Each class member who files a timely claim form will obtain one to several thousand dollars within a short time. Accordingly, the proposed Consent Degree terms are objectively reasonable, especially when considered against the attendant risks and delays of litigation, as outlined above.

V. CONCLUSION

The settlement embodied in the Consent Decree is fair and adequate under the Second Circuit's criteria for approval pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. Therefore, the Court should grant plaintiffs' motion for final approval of the Consent Decree and enter the Consent Decree as an order of the Court.[FN4]

FN4. By a separately filed Memorandum of Law in Support of Plaintiffs' Application for Award of Attorney's Fees and Costs, plaintiffs concurrently seek approval of the provision of Section XIII of the Consent Decree for payment of $3.4 million to plaintiffs' counsel.

Stella MITCHELL, Hwa-Mei C. Gee, Durpatty Persaud, and Janet Ramsey, on behalf of themselves and all others similarly situated, and Barbara LaChance, individually, Plaintiffs, v. METROPOLITAN LIFE INSURANCE COMPANY, INC., dba Metlife, Defendant.