UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CITY OF WESTLAND POLICE AND FIRE RETIREMENT SYSTEM, et al.,

Plaintiffs,

-against-

METLIFE, INC., et al.,

Defendants.

- x

12 Civ. 0256 (LAK) (AJP)

REPORT & RECOMMENDATION

ANDREW J. PECK, United States Magistrate Judge:

To the Honorable Lewis A. Kaplan, United States District Judge:

Lead plaintiff Central States, Southeast and Southwest Areas Pension Fund ("Central States") seeks to represent a class of persons who purchased or acquired MetLife stock from defendants MetLife, Inc., current and former MetLife officers and directors, and several underwriters during two public offerings in 2010 and 2011. (See generally Dkt. No. 94: Williams Aff. Ex. A: 3d Am. Compl.) Presently before the Court is Central States' motion for class action certification pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure; to appoint Central States as class representative; and, pursuant to Rule 23(g), to appoint the law firm of Robbins Geller Rudman & Dowd LLP ("Robbins Geller") as class counsel. (Dkt. No. 122: Central States Mot. To Certify Class.) For the reasons set forth below, Central States' motion should be GRANTED.

BACKGROUND

MetLife, Inc. is a publicly traded company that provides "insurance, annuities and employee benefit programs, serving 90 million customers in over 60 countries." (Dkt. No. 94:

Williams Aff. Ex. A: 3d Am. Compl. ¶¶ 3, 30.) On August 3, 2010 and March 4, 2011, MetLife publicly offered 86.25 million and 146 million shares of common stock, respectively. (Id. ¶¶ 88-91, 105, 114, 214-17 & n.33.) Central States is "a multi-employer defined-benefit fund based in Illinois . . . [w]ith approximately $15 billion in assets" that "provides pension services and benefits to nearly 400,000 participants." (Dkt. No. 125: Condon Aff. ¶ 1.) "Central States purchased 8,394 shares of MetLife common stock . . . in [MetLife's] August 3, 2010 stock offering" and "72,120 shares of MetLife common stock . . . in [MetLife's] March 4, 2011 stock offering." (Id. ¶ 2; see 3d Am. Compl. ¶ 29.)

Central States alleges that in connection with the August 2010 and March 2011 offerings, MetLife filed registration statements with the SEC that "contained knowing or reckless false . . . statements" regarding MetLife's financial condition. (3d Am. Compl. ¶¶ 90, 112, 214-15 & n.32, 217-19 & n.33.) Central States alleges that MetLife's filings failed "to account for liabilities from deceased policyholders" (Dkt. No. 123: Central States Br. at 1, 3-8; see also, e.g., 3d Am. Compl. ¶¶ 121, 221), and omitted "the existence and material risks of" multiple state's insurance regulators' investigations into MetLife's unclaimed property practices (Central States Br. at 1, 3; see also, e.g., 3d Am. Compl. ¶¶ 165-68, 223). According to Central States, such "misconduct resulted in the material overstatement of income and earnings per share . . . and the understatement of" incurred but not reported reserves. (Central States Br. at 5; see also 3d Am. Compl. ¶¶ 87, 180, 238.)

Central States commenced this action on January 12, 2012. (Dkt. No. 1: Compl.) The Third Amended Complaint alleges that MetLife's conduct violated §§ 11, 12(a)(2) and 15 of the Securities Act of 1933—codified in 15 U.S.C. §§ 77k, 77*l*(a)(2) and 77*o*. (3d Am. Compl. ¶¶ 212-13.) Central States alleges that MetLife's violation of these provisions renders it liable for

statutory damages to a class of "all those who acquired shares of MetLife common stock traceable to the Company's false and misleading August 3, 2010 Registration Statement and March 4, 2011 Registration Statement for its IPO . . . , and who were damaged thereby." (3d Am. Compl. ¶ 277; see also Central States Br. at 2.)[1/]

Judge Kaplan designated Central States as lead plaintiff and Robbins Geller as lead counsel on March 29, 2012. (Dkt. No. 14: Memo Endorsed Order.) After a series of motions to dismiss (see Dkt. Nos. 38, 42, 70, 73, 85-86, 96, 99), resulting orders (see Dkt. Nos. 52, 84, 90, 115) and amended complaints (see Dkt. Nos. 20, 57, 92, 95), Central States filed the instant motion for class certification (Dkt. No. 122: Central States Mot. To Certify Class). Central States' motion omits the phrase "and who were damaged thereby" from its proposed class definition—language that is present in the Third Amended Complaint's proposed class definition. (Compare 3d Am. Compl. ¶ 277, with Central States Mot. To Certify Class at 1; Central States Br. at 2; see also Dkt. No. 145: MetLife Opp. Br. at 2-3, 17 & n.8.)

In support of its class certification motion, Central States submitted the affidavit of James P. Condon, Central States' Deputy Chief Legal Officer, stating that he, "on behalf of Central States, ha[s] monitored the progress of this litigation and ha[s] regularly conferred with Lead Counsel [Robbins Geller] concerning the litigation and overseen and directed the efforts of Lead Counsel in prosecuting the case." (Condon Aff. ¶ 3.) Condon also avers that Central States understands that as class representative, it "owes fiduciary duties to all members of the Class to

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[1/] The proposed class excludes "defendants and their families, the officers and directors of [MetLife, Inc.], at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest." (3d Am. Compl. ¶ 277; see also Central States Br. at 2.)

provide fair and adequate representation," and that Central States "is committed to continuing to actively direct this litigation and maximize the recovery." (Id. ¶ 4.)

In opposition to Central States' motion, MetLife submits a number of exhibits pertaining to Central States' impending insolvency. (See MetLife Opp. Br. at 1-13; Dkt. No. 146: Greenfield Aff. Exs. 1-14.) MetLife argues that these exhibits demonstrate that Central States' insolvency is inevitable without a government bailout (MetLife Opp. Br. at 7-8) and that, contrary to Central States' own prediction of insolvency by 2025 (id. at 8; see also, e.g., Greenfield Aff. Ex. 2: Actuarial Status Certification at 8), insolvency could occur as early as 2022 (see MetLife Opp. Br. at 8-11; see also, e.g., Greenfield Aff. Ex. 9: Projected Pension Fund Insolvency and Effect on Asset Allocation at 6). MetLife also notes that since 1982, Central States has been operating under a consent decree resulting from an investigation into mismanagement and subsequent litigation brought by the U.S. Department of Labor. (MetLife Opp. Br. at 13-17; Greenfield Aff. Exs. 15-20.)

ANALYSIS

I. CENTRAL STATES' CLASS CERTIFICATION MOTION SHOULD BE GRANTED

To obtain class certification, Central States must satisfy the Rule 23(a) requirements—numerosity, commonality, typicality, adequacy, and the implied requirement of ascertainability—and the Rule 23(b) predominance and superiority requirements. Fed. R. Civ. P. 23(a)(1)-(4), (b)(3); see also, e.g., Fogarazzo v. Lehman Bros., Inc., 263 F.R.D. 90, 97 (S.D.N.Y. 2009) ("[T]he courts have added an 'implied requirement of ascertainability' to the express requirements of Rule 23(a)." (quoting In re Initial Pub. Offerings Sec. Litig., 471 F.3d 24, 30 (2d Cir. 2006))).

"Rule 23 does not set forth a mere pleading standard." Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350, 131 S. Ct. 2541, 2551 (2011). "The party seeking class certification bears

the burden of establishing by a preponderance of the evidence that each of Rule 23's requirements has been met." Myers v. Hertz Corp., 624 F.3d 537, 547 (2d Cir. 2010), cert. denied, 565 U.S. 930, 132 S. Ct. 368 (2011); see also, e.g., Wal-Mart Stores, Inc. v. Dukes, 564 U.S. at 350, 131 S. Ct. at 2551; Johnson v. Nextel Commc'ns Inc., 780 F.3d 128, 137 (2d Cir. 2015).

The Second Circuit requires a liberal, rather than restrictive, interpretation of Rule 23 of the Federal Rules of Civil Procedure. Marisol A. v. Giuliani, 126 F.3d 372, 377 (2d Cir. 1997) ("'Rule 23 is given liberal rather than restrictive construction, and courts are to adopt a standard of flexibility. . . .'"); accord, e.g., In re Facebook, Inc., IPO Sec. & Derivative Litig., 312 F.R.D. 332, 340 (S.D.N.Y. 2015) ("'[T]he Second Circuit has directed district courts to apply Rule 23 according to a liberal rather than a restrictive interpretation.'"). Courts have substantial discretion in determining whether to certify a class. See, e.g., In re Petrobras Sec., 862 F.3d 250, 260 & n.11 (2d Cir. 2017); Myers v. Hertz Corp., 624 F.3d at 547; Hamelin v. Faxton-St. Luke's Healthcare, 274 F.R.D. 385, 392 (N.D.N.Y. 2011); Shabazz v. Morgan Funding Corp., 269 F.R.D. 245, 249 (S.D.N.Y. 2010).

Nevertheless, courts must undertake a "rigorous analysis" to ensure that Rule 23's requirements have been satisfied. Wal-Mart Stores, Inc. v. Dukes, 564 U.S. at 350-51, 131 S. Ct. at 2551.[2/] "To do so, any factual disputes relevant to each Rule 23 requirement must be resolved, and any underlying facts relevant to a particular Rule 23 requirement must be established." Poplawski v. Metroplex on the Atl., LLC, No. 11-CV-3765, 2012 WL 1107711 at *5 (E.D.N.Y. Apr.

2/ Accord, e.g., Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 161, 102 S. Ct. 2364, 2372 (1982); In re Petrobras Sec., 862 F.3d at 260 n.11; Newman v. RCN Telecom Servs., Inc., 238 F.R.D. 57, 71 (S.D.N.Y. 2006) (Marrero, D.J. & Peck, M.J.); In re NTL, Inc. Sec. Litig., 02 Civ. 3013, 2006 WL 330113 at *4 (S.D.N.Y. Feb. 14, 2006) (Peck, M.J.), R. & R. adopted, 2006 WL 568225 (S.D.N.Y. Mar. 9, 2006) (Kaplan, D.J.); Fogarazzo v. Lehman Bros., Inc., 232 F.R.D. 176, 179 (S.D.N.Y. 2005).

2, 2012) (Weinstein, D.J.); accord, e.g., Wal-Mart Stores, Inc. v. Dukes, 564 U.S. at 351, 131 S. Ct. at 2551-52 ("Frequently that 'rigorous analysis' will entail some overlap with the merits of the plaintiff's underlying claim. That cannot be helped. '"[T]he class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff's cause of action."'").[3/] "Sometimes the issues are plain enough from the pleadings to determine whether the interests of the absent parties are fairly encompassed within the named plaintiff's claim, and sometimes it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question." Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. at 160, 102 S. Ct. at 2372.[4/]

"Doubts about whether Rule 23 has been satisfied should be resolved in favor of certification." Hamelin v. Faxton-St. Luke's Healthcare, 274 F.R.D. at 392; accord, e.g., Spencer v. No Parking Today, Inc., 12 Civ. 6323, 2013 WL 1040052 at *10 (S.D.N.Y. Mar. 15, 2013) (Peck, M.J.), R. & R. adopted, 12 Civ. 6323, 2013 WL 2473039 (S.D.N.Y. June 7, 2013); Colozzi v. St.

[3/] See also, e.g., Eng-Hatcher v. Sprint Nextel Corp., 07 Civ. 7350, 2009 WL 7311383 at *5 n.8 (S.D.N.Y. Nov. 13, 2009) ("While the Court should not decide the merits of the claims at the class certification stage, Rule 23 certification 'can be made only if the judge resolves factual disputes relevant to each Rule 23 requirement and finds that whatever underlying facts are relevant to a particular Rule 23 requirement have been established."); In re Initial Pub. Offerings Sec. Litig., 471 F.3d at 41.

[4/] Accord, e.g., Wal-Mart Stores, Inc. v. Dukes, 564 U.S. at 350, 131 S. Ct. at 2551; Shahriar v. Smith & Wollensky Rest. Grp., Inc., 659 F.3d 234, 251 (2d Cir. 2011) ("In deciding a motion for class certification under Rule 23, 'the district judge must receive enough evidence, by affidavits, documents, or testimony, to be satisfied that each Rule 23 requirement has been met.'"); In re Initial Pub. Offerings Sec. Litig., 471 F.3d at 42 ("A district judge is to assess all of the relevant evidence admitted at the class certification stage and determine whether each Rule 23 requirement has been met, just as the judge would resolve a dispute about any other threshold prerequisite for continuing a lawsuit.").

Joseph's Hosp. Health Ctr., 275 F.R.D. 75, 82 (N.D.N.Y. 2011); Meyers v. Crouse Health Sys., Inc., 274 F.R.D. 404, 412 (N.D.N.Y. 2011).[5/]

A. Rule 23(a)(1) Numerosity

1. Numerosity Standards

Rule 23(a) requires that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "'[J]oinder of all members need not be impossible, but only impracticable in the sense that joinder would "needlessly complicate and hinder efficient resolution of the litigation."'" Newman v. RCN Telecom Servs., Inc., 238 F.R.D. 57, 72 (S.D.N.Y. 2006) (Marrero, D.J. & Peck, M.J.) (quoting In re Avon Sec. Litig., 91 Civ. 2287, 1998 WL 834366 at *5 (S.D.N.Y. Nov. 30, 1998)).[6/]

"Although precise calculation of the number of class members is not required, and it is permissible for the court to rely on reasonable inferences drawn from available facts, numbers in excess of forty generally satisfy the numerosity requirement." Fogarazzo v. Lehman Bros., Inc.,

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[5/] See also, e.g., Morangelli v. Chemed Corp., 275 F.R.D. 99, 104 (E.D.N.Y. 2011) ("The Second Circuit . . . has shown a preference for granting rather than denying class certification." (quotations omitted)); Shabazz v. Morgan Funding Corp., 269 F.R.D. at 249 ("As the Second Circuit stated . . . 'if there is to be an error made, let it be in favor and not against the maintenance of the class action, for it is always subject to modification should later developments during the course of the trial so require.'" (quoting Green v. Wolf Corp., 406 F.2d 291, 298 (2d Cir. 1968), cert. denied, 395 U.S. 977, 89 S. Ct. 2131 (1969))).

[6/] Accord, e.g., In re MF Glob. Holdings Ltd. Inv. Litig., 11 Civ. 7866, 2015 WL 4610874 at *4 (S.D.N.Y. July 20, 2015); Ligon v. City of N.Y., 288 F.R.D. 72, 79 (S.D.N.Y. Feb. 11, 2013); Scaggs v. N.Y.S. Dep't of Educ., No. 06-CV-799, 2009 WL 890587 at *4 (E.D.N.Y. Mar. 31, 2009) ("To satisfy the numerosity requirement, plaintiffs need only show that 'in the absence of a class action, joinder would be "difficult" or "inconvenient."'"); In re NTL, Inc. Sec. Litig., 02 Civ. 3013, 2006 WL 330113 at *5 (S.D.N.Y. Feb. 14, 2006) (Peck, M.J.), R. & R. adopted, 2006 WL 568225 (S.D.N.Y. Mar. 9, 2006) (Kaplan, D.J.); Fogarazzo v. Lehman Bros., Inc., 232 F.R.D. 176, 179 (S.D.N.Y. 2005); In re Indep. Energy Holdings PLC Sec. Litig., 210 F.R.D. 476, 479 (S.D.N.Y. 2002); see generally 5 Moore's Federal Practice § 23.22[2] (3d ed. 2017).

232 F.R.D. at 179; see, e.g., Marisol A. v. Giuliani, 126 F.3d 372, 376 (2d Cir. 1997); Consol. Rail Corp. v. Town of Hyde Park, 47 F.3d 473, 483 (2d Cir.) ("numerosity is presumed at a level of 40 members"), cert. denied, 515 U.S. 1122, 115 S. Ct. 2277 (1995); Korn v. Franchard Corp., 456 F.2d 1206, 1209 (2d Cir. 1972).[7/]

"'In securities fraud class actions relating to publicly owned and nationally listed corporations, the numerosity requirement may be satisfied by a showing that a large number of shares were outstanding and traded during the relevant period.'" In re Facebook, Inc., IPO Sec. & Derivative Litig., 312 F.R.D. 332, 341 (S.D.N.Y. 2015). Courts in this district have inferred sufficient numerosity to render joinder impracticable in securities fraud cases based on large public offerings. See, e.g., id. at 341 (inferring "a great deal more than 40 plaintiffs" where case concerned 421,233,615 shares sold in an IPO); In re Prestige Brands Holdings, Inc. Sec. Litig., 05 Civ. 6924, 2007 WL 2585088 at *2 (S.D.N.Y. Sept. 5, 2007) (inferring numerosity where "approximately 32.2 million shares of [defendant's] stock were purchased in [the challenged] IPO").

2. Numerosity Is Established

Because 86.25 million shares of MetLife stock were offered on August 3, 2010 and another 146 million shares were offered on March 4, 2011, Central States asserts that, although "the exact number of persons who purchased or acquired such shares cannot be determined before relevant discovery has been completed, . . . the members of the Class likely number in the thousands

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[7/] See also, e.g., Newman v. RCN Telecom Servs., Inc., 238 F.R.D. at 72; In re NTL, Inc. Sec. Litig., 2006 WL 330113 at *5; Presbyterian Church of Sudan v. Talisman Energy, Inc., 226 F.R.D. 456, 466 (S.D.N.Y. 2005) ("Numerosity is presumed when a class consists of forty or more members."); In re Avon Sec. Litig., 1998 WL 834366 at *5 ("In general, 'numbers in excess of forty, particularly those exceeding one hundred or one thousand have sustained the requirement.'"); Trief v. Dun & Bradstreet Corp., 144 F.R.D. 193, 198 (S.D.N.Y. 1992); 5 Moore's Federal Practice § 23.22[1][b].

and reside in many states." (Dkt. No. 123: Central States Br. at 12.) MetLife does not contest this assertion. (See generally Dkt. No. 145: MetLife Opp. Br.) The Court agrees that the size of the offerings at issue is sufficient to establish that joinder is impracticable. See, e.g., Kaplan v. S.A.C. Capital Advisors, L.P, 311 F.R.D. 373, 378 (S.D.N.Y. 2015) (concluding that numerosity was established in securities fraud case after noting that "plaintiffs need not provide evidence of an exact class size to establish numerosity" and defendants did "not dispute numerosity in their opposition").

B. Rule 23(a)(2) Commonality

1. Commonality Standards

Commonality requires a showing that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "The commonality requirement is met if plaintiffs' grievances share a common question of law or of fact." Newman v. RCN Telecom Servs., Inc., 238 F.R.D. 57, 73 (S.D.N.Y. 2006) (Marrero, D.J. & Peck, M.J.) (quotations omitted, citing cases). "This requisite 'does not mean that all issues must be identical as to each member, but it does require that plaintiffs identify some unifying thread among the members' claims that warrants class treatment.'" Id. The commonality requirement is satisfied "if the class shares a single common question of law or fact," and "factual differences in the claims of the class do not preclude a finding of commonality." 5 Moore's Federal Practice § 23.23[2] (3d ed. 2017);[8/] see, e.g., In re Facebook, Inc., IPO Sec. & Derivative Litig., 312 F.R.D. 332, 341 (S.D.N.Y. 2015) ("'The commonality requirement has been

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[8/] Accord, e.g., Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350, 131 S. Ct. 2541, 2551 (2011) ("Their claims must depend upon a common contention—for example, the assertion of [unlawful conduct] on the part of the same supervisor. That common contention, moreover, must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke."); Newman v. RCN Telecom Servs., Inc., 238 F.R.D. at 73.

applied permissively by courts in the context of securities fraud litigation, and minor variations in the class members' positions will not suffice to defeat certification.'"). "The Commonality Requirement has been characterized as a 'low hurdle.'" In re MF Glob. Holdings Ltd. Inv. Litig., 310 F.R.D. 230, 235 (S.D.N.Y. 2015); accord, e.g., In re Facebook, Inc., IPO Sec. & Derivative Litig., 312 F.R.D. at 342.

2. Commonality Is Established

Central States argues that the commonality requirement is satisfied because MetLife "made uniform misrepresentations to the investing public through the Offering Materials and in [MetLife's] incorporated filings with the SEC" and MetLife's "material misrepresentations and omissions injured each Class member who purchased or acquired MetLife Common Stock in the relevant offerings." (Dkt. No. 123: Central States Br. at 13.) MetLife does not contest the commonality assertion. (See generally Dkt. No. 145: MetLife Opp. Br.) The Court agrees that commonality is established because "[t]he alleged falsity of [MetLife's] statement[s] is common to all putative class members" and the "alleged misstatement[s'] materiality is a common question for the putative class, because materiality is an objective determination based on what information 'would have been viewed by [a] reasonable investor as having significantly altered the "total mix" of information made available.'" N.J. Carpenters Health Fund v. DLJ Mortg. Capital, Inc., 08 Civ. 5653, 2014 WL 1013835 at *5 (S.D.N.Y. Mar. 17, 2014).[9/]

[9/] See also, e.g., In re Facebook, Inc., IPO Sec. & Derivative Litig., 312 F.R.D. 332, 341 (S.D.N.Y. 2015) ("Plaintiffs' primary claim is that the [Free Writing Prospectus] and Amended Registration Statement contain material misrepresentations or omissions. Notwithstanding any unique facts as to any Plaintiff, the success or failure of any and all investor claims necessarily turns on several determinative liability questions." (citation omitted)); In re MF Glob. Holdings Ltd. Inv. Litig., 310 F.R.D. 230, 235 (S.D.N.Y. 2015) ("The [commonality] requirement is 'plainly satisfied' in a securities case where 'the alleged

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C. Rule 23(a)(3) Typicality

1. Typicality Standards

Typicality under Rule 23(a) "requires that the claims of the class representatives be typical of those of the class, and 'is satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability.'" Marisol A. v. Giuliani, 126 F.3d 372, 376 (2d Cir. 1997) (quoting In re Drexel Burnham Lambert Grp., Inc., 960 F.2d 285, 291 (2d Cir. 1992), cert. dismissed, 506 U.S. 1088, 113 S. Ct. 1070 (1993)).[10/] "The commonality and typicality requirements of Rule 23(a) tend to merge. Both serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 158 n.13, 102 S. Ct. 2364, 2371 n.13 (1982).[11/]

[9/] (...continued)
misrepresentations in the prospectus relate to all the investors, [because the] existence and materiality of such misrepresentations obviously present important common issues.'"); In re Sanofi-Aventis Sec. Litig., 293 F.R.D. 449, 457 (S.D.N.Y. 2013) ("As is often the case in securities class actions, whether Defendants' statements were materially misleading to a reasonable investor is an issue 'subject to generalized proof, and thus applicable to the class as a whole.'"); Billhofer v. Flamel Techs., S.A., 281 F.R.D. 150, 156 (S.D.N.Y. 2012) ("Common questions of law and fact are present where, as here, the alleged fraud involves material misrepresentations and omissions in documents circulated to the investing public.").

[10/] Accord, e.g., Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C., 504 F.3d 229, 245 (2d Cir. 2007); In re Virtus Inv. Partners, Inc. Sec. Litig., 15 Civ. 1249, 2017 WL 2062985 at *3 (S.D.N.Y. May 15, 2017); Newman v. RCN Telecom Servs., Inc., 238 F.R.D. 57, 76 (S.D.N.Y. 2006) (Marrero, D.J. & Peck, M.J.) (& cases cited therein).

[11/] Accord, e.g., Sykes v. Mel S. Harris & Assocs. LLC, 780 F.3d 70, 80 (2d Cir. 2015); (continued...)

"'While it is settled that the mere existence of individualized factual questions with respect to the class representative's claim will not bar class certification, class certification is inappropriate where a putative class representative is subject to unique defenses which threaten to become the focus of the litigation.'" Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp., 222 F.3d 52, 59 (2d Cir. 2000).[12/] "However, 'the rule barring certification of plaintiffs subject to unique defenses is not rigidly applied in this Circuit'; it has generally been applied only where a full defense is available against an individual plaintiff's action." Koppel v. 4987 Corp., 191 F.R.D. 360, 365 (S.D.N.Y. 2000) (quoting In re Frontier Ins. Grp., Inc. Sec. Litig., 172 F.R.D. 31, 41 (E.D.N.Y. 1997)). The unique defense rule is "intended to protect [the] plaintiff class—not to shield defendants from a potentially meritorious suit." Trief v. Dun & Bradstreet Corp., 144 F.R.D. 193, 200-01 (S.D.N.Y. 1992); accord, e.g., Vincent v. Money Store, 304 F.R.D. 446, 455 (S.D.N.Y. 2015); Newman v. RCN Telecom Servs., Inc., 238 F.R.D. at 77. "Thus, '[w]hen it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of minor variations in the fact patterns underlying individual claims.'" N.J. Carpenters Health Fund v. DLJ Mortg. Capital, Inc., 08 Civ. 5653, 2014 WL 1013835 at *5 (S.D.N.Y. Mar. 17, 2014).

2. Typicality Is Established

Central States argues that its "claims are typical of, if not identical to, the claims of the other Class members" because, "[l]ike all other members of the Class, [it] purchased MetLife

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[11/] (...continued)
Marisol A. v. Giuliani, 126 F.3d at 376; In re Digital Music Antitrust Litig., 06 Civ. 1780, --- F.R.D. ----, 2017 WL 3037577 at *16 (S.D.N.Y. July 18, 2017); Newman v. RCN Telecom Servs., Inc., 238 F.R.D. at 76 (& cases cited therein).

[12/] Accord, e.g., In re Digital Music Antitrust Litig., 2017 WL 3037577 at *17; Newman v. RCN Telecom Servs., Inc., 238 F.R.D. at 76; 5 Moore's Federal Practice § 23.24[5] (3d ed. 2017).

common stock from the offerings which contained the same materially untrue statements or omissions." (Dkt. No. 123: Central States Br. at 15-16.) Central States also asserts that it is not "subject to any unique defenses that would likely become a major focus of litigation" and notes that "the class-wide methodology for calculating damages is fixed by statute and therefore common to all Class members." (Id. at 16, citing 15 U.S.C. § 77k(e).) MetLife does not contest these assertions. (See generally Dkt. No. 145: MetLife Opp. Br.) The Court agrees that typicality is established. See, e.g., Pub. Emps.' Ret. Sys. of Miss. v. Merrill Lynch & Co., 277 F.R.D. 97, 109 (S.D.N.Y. 2011) ("'As long as plaintiffs assert, as they do here, that defendants committed the same wrongful acts in the same manner, against all members of the class, they establish [the] necessary typicality.'").

D. Rule 23(a)(4) Adequacy Of Representation And Rule 23(g) Appointment Of Class Counsel

Central States must show that it "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Under Rule 23(a)(4), adequacy of representation is measured by two standards. First, class counsel must be 'qualified, experienced and generally able' to conduct the litigation. Second, the class members must not have interests that are 'antagonistic' to one another." In re Drexel Burnham Lambert Grp., Inc., 960 F.2d 285, 291 (2d Cir. 1992), cert. dismissed, 506 U.S. 1088, 113 S. Ct. 1070 (1993); accord, e.g., In re Flag Telecom Holdings, Ltd. Sec. Litig., 574 F.3d 29, 35 (2d Cir. 2009); Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp., 222 F.3d 52, 60 (2d Cir. 2000); Marisol A. v. Giuliani, 126 F.3d 372, 378 (2d Cir. 1997).[13/]

[13/] See, e.g., In re Petrobras Sec. Litig., 312 F.R.D. 354, 361 (S.D.N.Y. 2016), aff'd in relevant part, 862 F.3d 250 (2d Cir. 2017); Ligon v. City of N.Y., 288 F.R.D. 72, 80 (S.D.N.Y. 2013); Brooklyn Ctr. for Indep. of the Disabled, 290 F.R.D. 409, 419 (S.D.N.Y. 2012); In re NTL, Inc. Sec. Litig., 02 Civ. 3013, 2006 WL 330113 at *11 (S.D.N.Y. Feb. 14, 2006) (Peck, (continued...)

1. Central States' Counsel Is Adequate

As a result of the 2003 amendments to the Federal Rules of Civil Procedure, the appropriateness of class counsel is guided by Rule 23(g) rather than Rule 23(a)(4). See 2003 Advisory Comm. Notes to Rule 23 ("Rule 23(a)(4) will continue to call for scrutiny of the proposed class representative, while [Rule 23(g)] will guide the court in assessing proposed class counsel as part of the certification decision."); accord, e.g., Kulig v. Midland Funding, LLC, 13 Civ. 4175, 2014 WL 5017817 at *2 (S.D.N.Y. Sept. 26, 2014); Eldred v. Comforce Corp., No. 08-CV-1171, 2010 WL 812698 at *16 n.5 (N.D.N.Y. Mar. 2, 2010); Mendoza v. Casa de Cambio Delgado, Inc., 07 Civ. 2579, 2008 WL 3399067 at *6 n.6 (S.D.N.Y. Aug. 12, 2008); In re NTL, Inc. Sec. Litig., 02 Civ. 3013, 2006 WL 330113 at *11 (S.D.N.Y. Feb. 14, 2006) (Peck, M.J.) (citing cases), R. & R. adopted, 2006 WL 568225 (S.D.N.Y. Mar. 9, 2006) (Kaplan, D.J.); see 5 Moore's Federal Practice § 23.25[3] (3d ed. 2017).

Rule 23(g) requires that the Court appoint class counsel based on a specific set of criteria. Fed. R. Civ. P. 23(g). In appointing class counsel, the Court "'must consider the following: (1) the work counsel has done in identifying or investigating potential claims in the action, (2) counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action, (3) counsel's knowledge of the applicable law, and (4) the resources counsel will commit to representing the class.'" In re NTL, Inc. Sec. Litig., 2006 WL 330113 at *11 n.18.[14/]

[13/] (...continued)
M.J.) (citing cases), R. & R. adopted, 2006 WL 568225 (S.D.N.Y. Mar. 9, 2006) (Kaplan, D.J.); see generally 5 Moore's Federal Practice § 23.25 (3d ed. 2017).

[14/] Accord, e.g., Sanchez v. N.Y. Kimchi Catering, Corp., 16 Civ. 7784, 2017 WL 2799863 at *8-9 (S.D.N.Y. June 28, 2017); Balderramo v. Go N.Y. Tours Inc., 15 Civ. 2326, 2017 WL 2819863 at *6 (S.D.N.Y. June 28, 2017); see also, e.g., In re Pfizer Inc. Sec. Litig., 282 (continued...)

"The Court may also consider 'any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class.' Above all else, '[c]lass counsel must fairly and adequately represent the interests of the class.'" Balderramo v. Go N.Y. Tours Inc., 2017 WL 2819863 at *6 (quoting Fed. R. Civ. P. 23(g)).

Central States argues that Robbins Geller should be appointed class counsel because the firm "has either served or is serving as lead counsel in many of the largest and most significant securities class actions" and, "like the litany of complex securities class actions it has litigated throughout the United States, [it] has committed substantial time and resources to investigating and prosecuting this action." (Dkt. No. 123: Central States Br. at 18.) Central States also submitted a "Firm Resume" for Robbins Geller detailing, inter alia, the firm's extensive experience litigating securities fraud cases. (See Dkt. No. 124: Williams Aff. Ex. A: Robbins Geller Firm Resume at 2-6.) MetLife does not contest Robbins Geller's adequacy. (See generally Dkt. No. 145: MetLife Opp. Br.) The Court agrees that Robbins Geller's adequacy is established. See, e.g., Tiro v. Pub. House Invs., LLC, 288 F.R.D. 272, 280 (S.D.N.Y. 2012) ("There does not seem to be a real dispute concerning the adequacy of Plaintiffs' counsel. . . . Given . . . the fact that Defendants do not contest the adequacy of representation, I find no reason that Rule 23(a)(4) is not met."); see also, e.g., Carpenters Pension Tr. Fund of St. Louis v. Barclays PLC, 310 F.R.D. 69, 100 & n.219 (S.D.N.Y. 2015) ("Courts within this Circuit have repeatedly found Robbins Geller to be adequate and

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14/ (...continued)
F.R.D. 38, 47 (S.D.N.Y. 2012) (considering "[t]he record of the instant litigation" in determining class counsel's adequacy); Velez v. Novartis Pharm. Corp., 244 F.R.D. 243, 268-69 (S.D.N.Y. 2007) (Lynch, D.J.); In re NTL, Inc. Sec. Litig., 2006 WL 330113 at *11 ("'[I]n determining the adequacy of counsel, the court looks beyond reputation built upon past practice and examines counsel's competence displayed by present performance.'").

well-qualified for the purpose of litigating class action lawsuits" (citing cases)). Indeed, Judge Kaplan already approved Robbins Geller as lead counsel. (See page 3 above.)

2. Central States Is An Adequate Class Representative

With regard to Rule 23(a)(4)'s mandate that the proposed class representative's interests not be "antagonistic to the interests of other class members," In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig., 827 F.3d 223, 231 (2d Cir. 2016), cert. denied, 137 S. Ct. 1374 (2017), the Second Circuit has clarified that "[a] conflict or potential conflict alone will not . . . necessarily defeat class certification—the conflict must be 'fundamental.'" Denney v. Deutsche Bank AG, 443 F.3d 253, 268 (2d Cir. 2006) (emphasis added).[15/] Moreover, although class representatives cannot satisfy Rule 23(a)(4)'s adequacy requirement if they have "'so little knowledge of and involvement in the class action that they would be unable or unwilling to protect the interests of the class against the possibly competing interests of the attorneys,'" Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp., 222 F.3d 52, 61 (2d Cir. 2000),[16/] "it is well established that in complex litigations . . . a plaintiff need not have expert knowledge of all aspects of the case

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[15/] Accord, e.g., In re Digital Music Antitrust Litig., 06 Civ. 1780, 2017 WL 3037577 at *18 (S.D.N.Y. July 18, 2017) ("'[C]onflict that will prevent a plaintiff from meeting the Rule 23(a)(4) prerequisite must be fundamental, and speculative conflict should be disregarded at the class certification stage.'"); Samaniego v. Titanium Constr. Servs., Inc., 16 Civ. 1113, 2017 WL 2992500 at *4 (S.D.N.Y. July 14, 2017) ("'[N]ot every potential disagreement between a representative and the class members will stand in the way of a class suit.' To be disqualifying, the conflict must be 'fundamental.'" (citation omitted)); In re J.P. Morgan Stable Value Fund ERISA Litig., 12 Civ. 2548, 2017 WL 1273963 at *9 (S.D.N.Y. Mar. 31, 2017); N.J. Carpenters Health Fund v. Royal Bank of Scotland Grp., PLC, 08 Civ. 5310, 2016 WL 7409840 at *5 (S.D.N.Y. Nov. 4, 2016); Fort Worth Emps.' Ret. Fund v. J.P. Morgan Chase & Co., 301 F.R.D. 116, 134 (S.D.N.Y. 2014).

[16/] Accord, e.g., In re NTL, Inc. Sec. Litig., 02 Civ. 3013, 2006 WL 330113 at *11 (S.D.N.Y. Feb. 14, 2006) (Peck, M.J.), R. & R. adopted, 2006 WL 568225 (S.D.N.Y. Mar. 9, 2006) (Kaplan, D.J.); see 5 Moore's Federal Practice § 23.25[2][c] (3d ed. 2017).

to qualify as a class representative, and a great deal of reliance upon the expertise of counsel is to be expected," In re NTL, Inc. Sec. Litig., 2006 WL 330113 at *11 (quotations omitted).[17/]

Central States contends that its "interests are neither antagonistic to, nor in conflict with, the interests of the other Class members," that it "will also continue to vigorously prosecute the claims of Class members," and that "[n]o Class members have been or will be disadvantaged by Central States' representation of the action." (Dkt. No. 123: Central States Br. at 17.) Central States also cites Condon's affidavit (see pages 3-4 above) to support its assertions that Central States "(i) understands the responsibilities of serving as a class representative in a securities class action; (ii) has reviewed key pleadings in this action; (iii) intends to continue to supervise and monitor the progress of this litigation; and (iv) intends to continue working with counsel to maximize the recovery to the Class" (Central States Br. at 17-18).

MetLife challenges Central States' adequacy on three grounds: (1) the sole evidence submitted in support of Central States' adequacy is Condon's affidavit (see pages 3-4 above; Dkt. No. 145: MetLife Opp. Br. at 5); (2) Central States' impending insolvency (see page 4 above; see generally MetLife Opp. Br. at 4-13); and (3) Central States' past mismanagement leading to the still effective consent decree (see page 4 above; MetLife Opp. Br. at 13-17).

i. Condon's Affidavit And Deposition Testimony Are Sufficient To Establish Central States' Adequacy

MetLife argues that Condon's affidavit solely consists of "boilerplate statements," and that finding Central States an adequate class representative on the basis of such statements

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[17/] Accord, e.g., Tsereteli v. Residential Asset Securitization Tr. 2006-A8, 283 F.R.D. 199, 209 (S.D.N.Y. 2012) (Kaplan, D.J.); In re Pfizer Inc. Sec. Litig., 282 F.R.D. 38, 51 (S.D.N.Y. 2012); 5 Moore's Federal Practice § 23.25[2][c][ii].

"would be tantamount to applying a presumption in favor of class certification." (Dkt. No. 145: MetLife Opp. Br. at 5.) MetLife cites no cases in support of its argument. (See id.)

Courts in this Circuit routinely rely on plaintiffs' affidavits to establish Rule 23(a)(4)'s adequacy requirement. See, e.g., Gomez v. Lace Entm't, Inc., 15 Civ. 3326, 2017 WL 129130 at *9 (S.D.N.Y. Jan. 6, 2017) ("Courts in this circuit have found that plaintiffs' affidavits can properly satisfy the adequacy requirement.").[18/] This is so, even when such affidavits might be described as "boilerplate." See, e.g., Hamelin v. Faxton-St. Luke's Healthcare, 274 F.R.D. 385, 396 (N.D.N.Y. 2011) ("Defendants dispute the named plaintiffs' adequacy based on their 'cookie cutter affidavits' . . . . The affidavits of the named plaintiffs exhibit sufficient knowledge concerning the class claims and no class members have interests antagonistic to one another."); Leone v. Ashwood Fin., Inc., 257 F.R.D. 343, 352 (E.D.N.Y. 2009) (named plaintiff was an adequate class representative where, inter alia, she "submitted an affidavit stating that she understands the responsibilities of a class representative and that she has knowledge of this action").[19/] Thus, Condon's affidavit is relevant evidence of adequacy.

Condon's affidavit is not the sole evidence supporting Central States' adequacy: Condon's deposition as Central States' Rule 30(b)(6) witness (see Dkt. No. 157: Williams Reply Aff.

[18/] Accord, e.g., Flores v. Anjost Corp., 284 F.R.D. 112, 130 (S.D.N.Y. 2012); Espinoza v. 953 Assocs. LLC, 280 F.R.D. 113, 128 (S.D.N.Y. 2011).

[19/] See also, e.g., Hart v. BHH, LLC, 15 Civ. 4804, 2017 WL 2912519 at *6 (S.D.N.Y. July 7, 2017) (named plaintiffs were adequate where sworn affidavits established that they "have regularly communicated with [class] counsel, participated in discovery, and appear to be invested in the strategy and outcome of this action"); Flores v. Anjost Corp., 284 F.R.D. at 130 ("[T]he sworn affidavits of named Plaintiffs clearly demonstrate that Plaintiffs are familiar with, and are actively participating in, this litigation.").

¶ 27 & Ex. A: Condon Dep.)[20/] and Central States' production of discovery (see, e.g., Williams Reply Aff. ¶¶ 19-20) demonstrate its knowledge of and willingness to actively participate in the litigation of this case. See, e.g., In re Scotts EZ Seed Litig., 304 F.R.D. 397, 406 (S.D.N.Y. 2015) ("Lead plaintiffs have each demonstrated their commitment to pursuing these claims by responding to extensive written discovery requests and sitting for lengthy depositions."); Mendez v. U.S. Nonwovens Corp., 312 F.R.D. 81, 107 (E.D.N.Y. 2014) ("Here, there is no question that Mendez and the other seven named Plaintiffs have shown a willingness [to] pursue this litigation. They have all filed sworn declarations in support of their present motion and complied with discovery requests from the Defendants for depositions and responses to interrogatories, actions which show that they are actively participating in this litigation.").

When combined with Condon's affidavit statements, such facts adequately establish that Central States "has adequate incentive to pursue the class's claim," In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig., 827 F.3d 223, 231 (2d Cir. 2016), cert. denied, 137 S. Ct. 1374 (2017), and that it has a demonstrated "knowledge of and involvement in the class action" such that it would be willing and able "to protect the interests of the class against the possibly competing interests of the attorneys.'" Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp., 222 F.3d 52, 61 (2d Cir. 2000).

[20/] Similarly, Jessica Hart was deposed as a Rule 30(b)(6) witness on behalf of Northern Trust Investment Inc. concerning Northern Trust's fiduciary relationship with Central States. (See Williams Reply Aff. ¶ 28.)

ii. Central States' Allegedly Impending Insolvency Does Not Render It An Inadequate Class Representative

MetLife devotes a significant portion of its opposition brief to summarizing evidence of Central States' financial condition. (See Dkt. No. 145: MetLife Opp. Br. at 5-11; see also page 4 above; Dkt. No. 146: Greenfield Aff. Exs. 1-14.) On the basis of such evidence, MetLife argues:

> As it seeks to forestall insolvency, Central States might, for example, reject a favorable settlement because it seeks a windfall. Or it might seek to settle for a lower amount because it needs a quick influx of cash. Either way, its interests would not be aligned with the interests of the putative class.

(MetLife Opp. Br. at 11.) MetLife similarly argues that Central States' "rapidly deteriorating financial circumstances will demand substantial time and attention from Central States." (Id. at 12.) MetLife cites Baker v. Arnold, No. C 03-05642, slip op. (N.D. Cal. May 17, 2004), in which the court declined to appoint Central States lead plaintiff because, inter alia, Central States "was facing a 'projected funding deficiency' and was 'under federal supervision as to its financial condition.'" (MetLife Opp. Br. at 12.)

Central States replies—and the Court agrees—that MetLife's assertions regarding Central States' potential incentive to shirk its fiduciary duty to the class by either demanding too much or accepting too little during settlement negotiations are speculative, self-contradictory and in any event fail to constitute the sort of "fundamental" conflict necessary to render it an inadequate class representative. (Dkt. No. 156: Central States Reply Br. at 3-5.) See, e.g., N.J. Carpenters Health Fund v. Royal Bank of Scotland Grp., PLC, 08 Civ. 5310, 2016 WL 7409840 at *6 (S.D.N.Y. Nov. 4, 2016) (rejecting defendants' adequacy arguments where "'any perverse incentives' that theoretically could arise on the part of [the proposed class representatives] are 'merely speculative at this stage,' and not fundamental"); Tsereteli v. Residential Asset Securitization Tr. 2006-A8, 283 F.R.D. 199, 209-10 (S.D.N.Y. 2012) ("Any potential conflict that may arise in settlement

negotiations is, at this point, 'largely conjectural,' and certainly does not rise to the requisite level of a 'fundamental' conflict."); see also cases cited on page 16 & n.15 above.[21/] Indeed, the theoretical temptation for a class representative to either "reject a favorable settlement because it seeks" more money or "seek to settle for a lower amount because it" wants "a quick influx of cash" presumably exists in nearly every class action case.

Nor does the record support an analogy to Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 626, 117 S. Ct. 2231, 2251 (1997), in which the Supreme Court held that the interests of the proposed class representatives—individuals needing immediate relief because they were treating ongoing injuries resulting from exposure to asbestos—conflicted with the interests of members of the proposed class who had merely been exposed to asbestos and were seeking an inflation-protected fund for the future. (See MetLife Opp. Br. at 11-12.) Central States' desired relief—"to obtain the maximum recovery possible," without reference to immediacy (see Dkt. No. 125: Condon Aff. ¶ 4)—does not differ from that of the class as a whole. The fact that Central States could be

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[21/] Notably, the courts in N.J. Carpenters Health Fund and Tsereteli were addressing alleged differences in legal theories (and potential resulting conflicts of interest) between the class and proposed class representative. See N.J. Carpenters Health Fund v. Royal Bank of Scotland Grp., PLC, 2016 WL 7409840 at *6; Tsereteli v. Residential Asset Securitization Tr. 2006-A8, 283 F.R.D. at 209-10. MetLife makes no such argument in this case. (See generally MetLife Opp. Br. at 5-11.) Indeed, Central States' adequacy as class representative is further bolstered by the finding (see page 13 above) that its claims satisfy the typicality requirement. See, e.g., Tiro v. Pub. House Invs., LLC, 288 F.R.D. 272, 280 (S.D.N.Y. 2012) ("[M]eeting the typicality requirement is strong evidence that Plaintiffs' 'interests are not antagonistic to those of the class; the same strategies that will vindicate plaintiffs' claims will vindicate those of the class.'"); Whitehorn v. Wolfgang's Steakhouse, Inc., 275 F.R.D. 193, 200 (S.D.N.Y. 2011) ("As already established, Plaintiffs seek recovery stemming from the same unlawful conduct allegedly perpetrated by Defendants. . . . Adequacy of the representatives is established.").

insolvent as early as 2022 creates, at most, only a weak—and fundamentally speculative[22/]—inference that it will seek immediate relief for itself at the cost of the class.

Nor does Central States' conduct in litigating this case thus far indicate that its impending financial insolvency will distract it in any way from its obligations as class representative. As evidenced by the court's order in Baker v. Arnold—on which MetLife relies (see page 20 above)—Central States' financial troubles have existed since at least 2004 (see MetLife Opp. Br. at 12; Greenfield Aff. Ex. 14: Baker Order). Indeed, it was argued in Baker that "projected funding deficienc[ies] will distract Central States from adequately representing the interests of the class." (Baker Order at 6.) Such financial difficulties, however, did not distract Central States from securing multiple multi-million dollar class recoveries since 2004. (See Central States Reply. Br. at 6, listing recoveries in cases where Central States served as class representative.) See also Kuriakose v. Fed. Home Loan Mortg. Co., 08 Civ. 7281, 2008 WL 4974839 at *6-8 (S.D.N.Y. Nov. 24, 2008) (distinguishing Baker and finding Central States to be an adequate lead plaintiff).

Finally, the Court agrees with Central States that Baker is distinguishable. (See Central States Reply Br. at 7-8.) In Baker, Central States' financial difficulties were only one factor contributing to the court's decision that a different entity would better serve as lead plaintiff. (See Baker Order at 4-8.) Although the Baker court articulated concerns about the effects of Central States' "projected funding deficiency" (see id. at 5-6), those concerns never came to fruition: Central

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[22/] Summary judgment motions are presently due in March 2018 (see Dkt. No. 121: Pretrial & Scheduling Ord.), and both parties agree that cases like this rarely go to trial (MetLife Opp. Br. at 2; Central States Reply Br. at 9 n.6).

States has remained solvent and, as noted above, has ably served as class representative in multiple cases (see Central States Reply Br. at 6).[23/]

iii. Central States' History Of Mismanagement And The 1985 Consent Decree Do Not Render Central States An Inadequate Class Representative

MetLife argues that "[t]he rampant corruption and disregard for fiduciary duties that resulted in the [Central States] Consent Decree, and the fact that those charged with closely monitoring Central States continue to believe that it cannot be trusted to act in the best interests of its participants, are sufficient reasons to find Central States an inadequate class representative." (Dkt. No. 145: MetLife Opp. Br. at 13.) Specifically, MetLife cites Police & Fire Ret. Sys. of City of Detroit v. SafeNet, Inc., 06 Civ. 5797, 2007 WL 7952453 at *3 (S.D.N.Y. Feb. 21, 2007), in which the court relied partly on Central States' "checkered past" and continuing oversight by "a court appointed monitor[]" to support "reasonable doubts as to whether Central States . . . can be an adequate representative." (See MetLife Opp. Br. at 14.)[24/] MetLife also notes that "since 2007 Central States could have sought to free itself from the strict oversight" of the consent decree, and that "[t]he only reasonable explanation" for its failure to do so "is that Central States believes the DOL could show, and the court would find, good cause not to terminate the Consent Decree." (MetLife Opp. Br. at 15.)

[23/] Central States notes (see Central States Reply Br. at 8) that the "funding deficiency" discussed in Baker "was averted in July 2005 when the [IRS] granted Central States a ten-year extension for amortizing its unfunded liabilities." See Kuriakose v. Fed. Home Loan Mortg. Co., 2008 WL 4974839 at *6. On April 28, 2016, Central States was granted a further amortization extension from the IRS. (Central States Reply Br. at 8 (citing Dkt. No. 157: Williams Reply Aff. Ex. A: Condon Dep. at 103-04, 127-28).)

[24/] The court in Baker v. Arnold articulated similar concerns about Central States' ability to act as a "'free agent'" given its federal supervision under the consent decree. (See Dkt. No. 146: Greenfield Aff. Ex. 14: Baker Order at 6.)

With regard to Central States' past misconduct, MetLife fails to proffer any argument—speculative or otherwise—as to how such misconduct might affect Central States' litigation of this case. (See generally MetLife Opp. Br. at 13-17.) Although

> [t]he Second Circuit has allowed for the consideration of characteristics such as honesty, trustworthiness, and credibility in judging the adequacy of a class representative pursuant to Rule 23(a)[,] . . . considerations of trustworthiness and credibility are . . . restricted to their relevance to issues in the litigation . . . such that the problems could become the focus of cross-examination and unique defenses at trial, to the detriment of the class.

In re NYSE Specialists Sec. Litig., 240 F.R.D. 128, 144 (S.D.N.Y. 2007) (quotations omitted). Although Central States' history contributed to the court's decision to select a competing lead plaintiff in Baker and SafeNet, Inc., 2007 WL 7952453 at *3, MetLife makes no argument that the conduct giving rise to the consent decree could become relevant to issues in this litigation. The Court agrees with Central States, moreover, that "misconduct occurring in the 1960's is far too remote to be probative of Central States' adequacy" in 2017. (Dkt. No. 156: Central States Reply Br. at 7 n.3 (citing In re SLM Corp. Sec. Litig., 08 Civ. 1029, 2012 WL 209095 (S.D.N.Y. Jan. 24, 2012)).)

With regard to the consent decree itself, Central States notes (see Central States Reply Br. at 8) that Condon testified (see Dkt. No. 157: Williams Reply Aff. Ex. A: Condon Dep. at 30) and Judge Keenan has found that "the consent decree does not place any restrictions whatsoever on Central States' conduct of litigation or ability to serve as lead plaintiff." Kuriakose v. Fed. Home Loan Mortg. Co., 08 Civ. 7281, 2008 WL 4974839 at *6 (S.D.N.Y. Nov. 24, 2008). MetLife has proffered no evidence to the contrary. Indeed, MetLife filed an affidavit by James Condon, originally submitted in Lehigh Cty. Emps. Ret. Sys. v. Novo Nordisk, 3:17-cv-00209 (D.N.J.), stating, inter alia, that Central States' "ability to conduct this litigation and pursue a

resolution of the Fund's legal claims is entirely unaffected by the Consent Decree" and that Central States "is, and always has been, a free agent with respect to the conduct and resolution of securities fraud claims." (Dkt. No. 146: Greenfield Aff. Ex. 20 ¶¶ 9-10.)

The Court is unpersuaded by MetLife's insinuation that Central States must still be engaged in questionable behavior given that it has declined to seek dissolution of the consent decree. (See generally MetLife Opp. Br. at 15-17.) Rather, the Court credits Condon's sworn testimony that Central States enjoys benefits by virtue of voluntarily remaining subject to the consent decree (Williams Reply Aff. Ex. A: Condon Dep. at 80-85)—notwithstanding MetLife's conclusory assertions to the contrary (see MetLife Opp. Br. at 16-17).[25/]

Finally, Judge Kaplan already named Central States lead plaintiff, thus approving its typicality and adequacy. (Dkt. No. 14; see Dkt. No. 8: Central States Br. re: Lead Pl. Status at 5-7.) MetLife's arguments come too late in the case.

Accordingly, the Court finds "there is nothing in the record to suggest that the class representative[] [is] inadequate." Shahriar v. Smith & Wollensky Rest. Grp., Inc., 659 F.3d 234, 253 (2d Cir. 2011).

E. Rule 23(a)'s Implied Ascertainability Requirement

1. Ascertainability Standards

"'[T]he requirement that there be a class will not be deemed satisfied unless the class description is sufficiently definite so that it is administratively feasible for the court to determine

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[25/] The Court disregards as conclusory MetLife's assertion that it is "absurd" that the consent decree "provides for an exchange of information with the Department of Labor and with the Court." (MetLife Opp. Br. at 17.) Similarly unavailing is MetLife's criticism that at his deposition, Condon was "unable to cite a specific benefit with the sole exception" (id.) of the anecdote that Condon explicitly described as merely "one example of the type of access . . . to the Court I think we have under the consent decree" (see Condon Dep. at 85).

whether a particular individual is a member.'" Fogarazzo v. Lehman Bros., Inc., 263 F.R.D. 90, 97 (S.D.N.Y. 2009). "An identifiable class exists if its members can be ascertained by reference to objective criteria." Id. (quotations omitted).[26/]

2. Ascertainability Is Established

Central States proposes a class of "all persons who purchased or acquired MetLife, Inc. common stock in the Company's August 3, 2010 Offering or the Company's March 4, 2011 Offering." (Dkt. No. 122: Central States Mot. To Certify Class at 1; see pages 2-3 above.) These are objective criteria establishing membership within definite boundaries, and ascertaining members of the class will be administrable easily by reference to investor records. See, e.g., In re Petrobras Sec., 862 F.3d 250, 269-70 (2d Cir. 2017) ("The Classes include persons who acquired specific securities during a specific time period, as long as those acquisitions occurred in 'domestic transactions.' These criteria—securities purchases identified by subject matter, timing, and location—are clearly objective. The definition is also sufficiently definite: there exists a definite subset of Petrobras Securities holders who purchased those Securities in 'domestic transactions' during the bounded class period." (fn. & citation omitted)); In re Facebook, Inc., IPO Sec. & Derivative Litig., 312 F.R.D. 332, 353 (S.D.N.Y. 2015) ("Given that the subclasses may be ascertained with reference to investor records, it is administratively feasible to determine whether an investor is a member of the institutional investor subclass, the retail investor subclass, or no subclass at all. Though documentation may be required, mini-hearings on the merits of each

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[26/] Accord, e.g., In re Petrobras Sec., 862 F.3d 250, 269 (2d Cir. 2017) ("The ascertainability requirement, as defined in this Circuit, asks district courts to consider whether a proposed class is defined using objective criteria that establish a membership with definite boundaries. This modest threshold requirement will only preclude certification if a proposed class definition is indeterminate in some fundamental way.").

investor's inclusion in the subclasses will not be." (record citation omitted)); Fogarazzo v. Lehman Bros., Inc., 232 F.R.D. 176, 183 (S.D.N.Y. 2005) ("[B]ecause the proposed class includes all purchasers of RSL securities during a given time period, it presents no unusual difficulties in ascertaining class membership.").

Accordingly, while neither party directly addressed the ascertainability factor in their briefs, the Court finds that the proposed class is sufficiently ascertainable to satisfy this implied requirement.

F. Rule 23(b)(3) Predominance

1. Predominance Standards

"In order to meet the predominance requirement of Rule 23(b)(3), a plaintiff must establish that the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole, . . . predominate over those issues that are subject only to individualized proof." In re NTL, Inc. Sec. Litig., 02 Civ. 3013, 2006 WL 330113 at *12 (S.D.N.Y. Feb. 14, 2006) (Peck, M.J.) (quotations omitted, citing cases), R. & R. adopted, 2006 WL 568225 (S.D.N.Y. Mar. 9, 2006) (Kaplan, D.J.).[27/] Ultimately, "[t]he Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 623, 117 S. Ct. 2231, 2249 (1997).[28/]

[27/] Accord, e.g., In re Petrobras Sec., 862 F.3d 250, 270 (2d Cir. 2017); In re Am. Int'l Grp., Inc. Sec. Litig., 689 F.3d 229, 240 (2d Cir. 2012); N.J. Carpenters Health Fund v. Rali Series 2006-Q01 Tr., 477 F. App'x 809, 812 (2d Cir. 2012); Myers v. Hertz Corp., 624 F.3d 537, 547 (2d Cir. 2010), cert. denied, 565 U.S. 930, 132 S. Ct. 368 (2011); Fogarazzo v. Lehman Bros., Inc., 232 F.R.D. 176, 181-82 (S.D.N.Y. 2005).

[28/] Accord, e.g., Myers v. Hertz Corp., 624 F.3d at 547; In re NTL, Inc. Sec. Litig., 2006 WL 330113 at *12.

"Common issues may predominate when liability can be determined on a class-wide basis, even when there are some individualized damage issues." In re NTL, Inc. Sec. Litig., 2006 WL 330113 at *12 (quotations omitted, citing cases).[29/] "When determining whether common questions predominate courts focus on the liability issue . . . and if the liability issue is common to the class, common questions are held to predominate over individual questions." In re NTL, Inc. Sec. Litig., 2006 WL 330113 at *12 (quotations omitted).[30/] "Predominance is a test readily met in certain cases alleging . . . securities fraud." Amchem Prods., Inc. v. Windsor, 521 U.S. at 625, 117 S. Ct. at 2250.[31/]

2. Predominance Is Established

In the Third Amended Complaint, Central States alleges that MetLife violated sections 11, 12 and 15 of the Securities Act. (See pages 2-3 above.) Central States argues that common issues predominate with regard to its claims under § 11 because such claims will not require analysis of scienter, reliance, or loss causation (Dkt. No. 123: Central States Br. at 20),[32/] but

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[29/] Accord, e.g., Roach v. T.L. Cannon Corp., 778 F.3d 401, 408 (2d Cir. 2015); Shahriar v. Smith & Wollensky Rest. Grp., Inc., 659 F.3d 234, 253 (2d Cir. 2011); Shayler v. Midtown Investigations, Ltd., 12 Civ. 4685, 2013 WL 772818 at *5 (S.D.N.Y. Feb. 27, 2013).

[30/] Accord, e.g., Masoud v. 1285 Bakery Inc., 15 Civ. 7414, 2017 WL 448955 at *6 (S.D.N.Y. Jan. 26, 2017); In re Lehman Bros. Sec. & ERISA Litig., 09 MD 2017, 2013 WL 440622 at *3 (S.D.N.Y. Jan. 23, 2013); Tiro v. Pub. House Invs., LLC, 288 F.R.D. 272, 280 (S.D.N.Y. 2012); see 5 Moore's Federal Practice § 23.45[2][a] (3d ed. 2017).

[31/] Accord, e.g., In re JPMorgan Chase & Co. Sec. Litig., 12 Civ. 3852, 2015 WL 10433433 at *4 (S.D.N.Y. Sept. 29, 2015); Yang v. Focus Media Holding Ltd., 11 Civ. 9051, 2014 WL 4401280 at *13 (S.D.N.Y. Sept. 4, 2014); Billhofer v. Flamel Techs., S.A., 281 F.R.D. 150, 158 (S.D.N.Y. 2012) ("This Court has echoed the Supreme Court's acknowledgment that the predominance requirement is a test readily met in certain cases alleging . . . securities fraud." (quotations omitted)).

[32/] See, e.g., In re Morgan Stanley Info. Fund Sec. Litig., 592 F.3d 347, 359 (2d Cir. 2010)

(continued...)

rather will focus on the existence and materiality of the alleged omissions and/or untrue statements made in connection with the two offerings at issue. See, e.g., Lapin v. Goldman Sachs & Co., 254 F.R.D. 168, 181 (S.D.N.Y. 2008) (existence of "alleged misrepresentations and/or omissions [is] susceptible to generalized proof"); In re IndyMac Mortg.-Backed Sec. Litig., 286 F.R.D. 226, 235 (S.D.N.Y. 2012) (Kaplan, D.J.) ("[M]ateriality for Securities Act claims is an issue subject to generalized proof.").[33/] Central States argues that liability for the individual defendants[34/] is similarly subject to generalized proof. (Central States Br. at 21.) See, e.g., Menkes v. Stolt-Nielsen S.A., 270 F.R.D. 80, 91 (D. Conn. 2010) ("[E]ach class member's control person claim should be identical given that Defendants' conduct alone is relevant to satisfying the applicable standard, and given that each class member's claim arises from the same statements made by Defendants.").[35/] Finally,

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[32/] (...continued)
("[U]nlike securities fraud claims pursuant to section 10(b) of the Securities Exchange Act of 1934 . . . plaintiffs bringing claims under sections 11 and 12(a)(2) need not allege scienter, reliance, or loss causation."); City of Westland Police & Fire Ret. Sys. v. MetLife, Inc., 129 F. Supp. 3d 48, 88 (S.D.N.Y. 2015) (Kaplan, D.J.) ("Section 11 plaintiffs, unlike Section 10(b) plaintiffs, 'need not allege scienter, reliance, or loss causation' in order to state a cognizable claim.").

[33/] Accord, e.g., Pub. Emps.' Ret. Sys. of Miss. v. Goldman Sachs Grp., Inc., 280 F.R.D. 130, 139 (S.D.N.Y. 2012) ("The question[] of materiality . . . [is] subject to objective standards and generalized proof."); N.J. Carpenters Health Fund v. Residential Capital, LLC, 272 F.R.D. 160, 168 (S.D.N.Y. 2011), aff'd, 477 F. App'x 809 (2d Cir. 2012).

[34/] "Liability under § 15 [of the Securities Act] is derivative of liability under §§ 11 and 12(a)(2), whereby a 'control person' may be liable for an underlying primary violation of the securities laws by the 'controlled person.' A 'control person' is one who has 'the power, directly or indirectly, "to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise."'" Pub. Emps.' Ret. Sys. of Miss. v. Goldman Sachs Grp., Inc., 280 F.R.D. at 136.

[35/] Accord, e.g., In re Beacon Assocs. Litig., 282 F.R.D. 315, 333 (S.D.N.Y. 2012) ("Questions of the individual control and culpability . . . will apply class-wide, given no evidence that any of the individual defendants occupied different roles with respect to different investors (continued...)

Central States asserts (see Central States Br. at 21) that common issues predominate with regard to damages. See, e.g., In re IndyMac Mortg.-Backed Sec. Litig., 286 F.R.D. at 235 ("[D]amages in Securities Act claims are calculated based on a statutory formula, so any differences in damages awards do not defeat class certification." (fn. omitted, citing 15 U.S.C. § 77k(e))).

MetLife does not contest these assertions. (See generally Dkt. No. 145: MetLife Opp. Br.) The Court finds that Central States has satisfied the predominance requirement.

G. Rule 23(b)(3) Superiority

1. Superiority Standards

"The superiority requirement asks courts to balance, in terms of fairness and efficiency, the advantages of a class action against those of alternative available methods of adjudication." In re Vivendi Universal, S.A., 242 F.R.D. 76, 91 (S.D.N.Y. 2007), aff'd, 838 F.3d 223 (2d Cir. 2016). Rule 23(b)(3) sets forth a non-exclusive list of factors pertinent to the Court's inquiry into the superiority of a class action:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
>
> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
>
> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
>
> (D) the likely difficulties in managing a class action.

35/ (...continued)
or clients.").

Fed. R. Civ. P. 23(b)(3)(A)-(D); see generally 5 Moore's Federal Practice § 23.46[2][a] (3d ed. 2017). "'In general, securities suits . . . easily satisfy the superiority requirement of Rule 23.'" Lapin v. Goldman Sachs & Co., 254 F.R.D. 168, 187 (S.D.N.Y. 2008).

2. Superiority Is Established

Central States asserts that class action is superior in this case because: (1) "[d]efendants' alleged violations of the federal securities laws caused economic injury to a large number of geographically dispersed investors, making the cost of pursuing individual claims plainly impracticable"; (2) "[r]esolving the claims in this case on a class-wide basis will promote judicial economy since the alternative would be to have thousands of separate individual actions, which offers no practical recourse for most class members, and would indisputably burden the judicial system"; (3) "there is no reason to expect any difficulties in the management of this case as a class action" because "[a]s discussed above, all of the proposed Class members here were subject to the same alleged misstatements and omissions made by defendants, thus requiring the same proof to establish Securities Act violations"; and (4) "it is highly unlikely that absent class members have sufficient resources or incentives to pursue individual actions." (Dkt. No. 123: Central States Br. at 23.) MetLife does not contest these assertions. (See generally Dkt. No. 145: MetLife Opp. Br.) The Court agrees that Central States has satisfied the superiority requirement. See, e.g., In re Facebook, Inc., IPO Sec. & Derivative Litig., 312 F.R.D. 332, 352 (S.D.N.Y. 2015) ("'Most violations of the federal securities laws . . . inflict economic injury on large numbers of geographically dispersed persons such that the cost of pursuing individual litigation to seek recovery is often not feasible. Multiple lawsuits would be costly and inefficient, and the exclusion of class members who cannot afford separate representation would neither be "fair" nor an adjudication of their claims. Moreover, although a large number of individuals may have been injured, no one

person may have been damaged to a degree which would induce him to institute litigation solely on his own behalf.'").

II. THE PROPOSED CLASS DEFINITION DOES NOT BEAR ON STANDING

MetLife argues that by removing the phrase "and who were damaged thereby" from the definition of the proposed class, Central States has defined its class to include persons who lack Article III standing. (Dkt. No. 145: MetLife Opp. Br. at 17-20.) Article III of the U.S. Constitution "confines constitutional standing to plaintiffs who can establish that they have suffered some injury-in-fact." Kendall v. Emps. Ret. Plan of Avon Prods., 561 F.3d 112, 118 (2d Cir. 2009). Thus, "to satisfy Article III's standing requirements, a plaintiff must show," inter alia, that "it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 180, 120 S. Ct. 693, 704 (2000).

The Court agrees with Central States (see Dkt. No. 156: Central States Reply Br. at 9 & n.8) that Central States' own Article III standing—which MetLife does not dispute—establishes standing for the entire class. Kendall v. Emps. Ret. Plan of Avon Prods., 561 F.3d at 118 ("In a class action, once standing is established for a named plaintiff, standing is established for the entire class."); Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C., 504 F.3d 229, 241 (2d Cir. 2007) ("[O]nly one of the named Plaintiffs is required to establish standing in order to seek relief on behalf of the entire class."). Although the Supreme Court has suggested that "there is some 'tension' in its case law as to whether 'variation' between (1) a named plaintiff's claims and (2) the claims of putative class members 'is a matter of Article III standing . . . or whether it goes to the propriety of class certification,'" NECA-IBEW Health & Welfare Fund v.

Goldman Sachs & Co., 693 F.3d 145, 160 (2d Cir. 2012), cert. denied, 568 U.S. 1228, 133 S. Ct. 1624 (2013), no such variation exists in this case. (See pages 10, 13 above.)

The Court further agrees that inclusion of the boilerplate "damaged thereby" language "is unnecessary because only class members with damages will recover." (Central States Reply Br. at 10.) At least one court in this district has noted that in the context of a proposed class definition, the phrase "and were damaged thereby" is "simply superfluous because an investor who is not damaged would not have a viable claim." In re Initial Pub. Offering Sec. Litig., 671 F. Supp. 2d 467, 492 (S.D.N.Y. 2009). The proposed class definition's lack of language aptly described as "superfluous" does not bear on Article III standing; "[t]he Constitution deals with substance, not shadows." Cummings v. Missouri, 71 U.S. 277, 325, 4 Wall. 277, 325 (1866). Although shareholders who earn a profit on a stock are statutorily prohibited from recovering under §§ 11 or 12 (see MetLife Opp. Br. at 19),

> [t]he Supreme Court has recently clarified . . . that what has been called "statutory standing" in fact is not a standing issue, but simply a question of whether the particular plaintiff "has a cause of action under the statute." This inquiry "does not belong" to the family of standing inquiries because "the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction, i.e., the court's statutory or constitutional power to adjudicate the case."

Am. Psychiatric Ass'n v. Anthem Health Plans, Inc., 821 F.3d 352, 359 (2d Cir. 2016) (quoting Lexmark Int'l, Inc. v. Static Control Components, Inc., --- U.S. ----, 134 S. Ct. 1377, 1387 & n.4 (2014)).

CONCLUSION

For the reasons set forth above, Central States' motion to certify the class (Dkt. No. 122) should be GRANTED.

FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections (and any responses to objections) shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable Lewis A. Kaplan, 500 Pearl Street, Room 2240, and to my chambers, 500 Pearl Street, Room 1370. Any requests for an extension of time for filing objections must be directed to Judge Kaplan (with a courtesy copy to my chambers). Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140, 106 S. Ct. 466 (1985); Ingram v. Herrick, 475 F. App'x 793, 793 (2d Cir. 2012); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993), cert. denied, 513 U.S. 822, 115 S. Ct. 86 (1994); Roldan v. Racette, 984 F.2d 85, 89 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir.), cert. denied, 506 U.S. 1038, 113 S. Ct. 825 (1992); Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989); Wesolek v. Canadair Ltd., 838 F.2d 55, 57-59 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 (2d Cir. 1983).

Dated: New York, New York
August 22, 2017

Respectfully submitted,

Andrew J. Peck
United States Magistrate Judge

Copies **by ECF** to: All Counsel
Judge Kaplan