

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 20-80545-CIV-MARRA

SHARON PROLOW and
MARK LEMMERMAN,
on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

AETNA LIFE INSURANCE
COMPANY,

Defendant.

**PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND COSTS
AND APPROVAL OF GENERAL RELEASE PAYMENT
AND INCORPORATED MEMORANDUM OF LAW**

Pursuant to Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure, Plaintiff Mark Lemmerman, on behalf of a proposed Settlement Class defined in the Settlement Agreement,¹ moves for an award of attorneys' fees and costs in the amount of \$1,675,000, and seeks approval of a separate, agreed-upon general release payment of \$15,000 to Mark Lemmerman. As part of the Settlement, Class Counsel agreed not to seek payment of any amount of attorneys' fees and costs in excess of \$1,675,000, and Aetna agreed not to oppose Plaintiff's request for an award of attorneys' fees and costs of up to \$1,675,000.

The Court preliminarily approved the Settlement on June 10, 2025, and authorized dissemination of Notice to the provisionally certified Settlement Class. (ECF No. 275.) Pursuant to the deadlines approved by the Court, Plaintiff will move for Final Approval of the Settlement on October 20, 2025, and a Final Approval Hearing shall take place on November 18, 2025. Should there be any Class member objection to the relief requested in this Motion,² Plaintiff will address such objections in the Motion for Final Approval or in a supplemental filing, with leave of the Court.

I. INTRODUCTION

After five years of hard-fought litigation, including nearly two years of settlement negotiations, Class Counsel obtained an excellent settlement on behalf

¹ The Settlement Agreement ("SA" or "Settlement"), including all exhibits thereto, is filed at docket entry 272-1. Unless otherwise defined, all capitalized terms shall have the same definitions and meanings as set forth in the Settlement.

² See *Johnson v. NPAS Sols., LLC*, 975 F.3d 1244, 1252 (11th Cir. 2020) ("We hold that Rule 23(h)'s plain language requires a district court to sequence filings such that class counsel file and serve their attorneys'-fee motion *before* any objection pertaining to fees is due.").

of Plaintiff and the Settlement Class that will allow claimants to receive a reimbursement of up to \$48,000 for proton beam radiation therapy (PBT) for the treatment of localized prostate cancer. Aetna agreed to make a total of \$3,408,000 available to the potential 71 Settlement Class Members, which guarantees that there will be no pro rata reduction in payments at the end of the Class Period (i.e., \$3,408,000 is \$48,000 multiplied by 71).

The requested attorneys' fees and costs will be paid by Aetna separately from the amounts Settlement Class Members may recover under the Settlement. An award of fees and costs to Class Counsel will not reduce the funds available to the Settlement Class. As part of the Settlement, Aetna agreed not to oppose Plaintiff's request for an award of attorneys' fees and costs of up to \$1,675,000.

Also separate and apart from the benefits to the Settlement Class, Aetna has agreed to make a payment of \$15,000 to Plaintiff Lemmerman, upon Court approval, in exchange for a general release of all claims, including claims unrelated to denials of health insurance coverage for PBT for his prostate cancer diagnosis during the Class Period (the "Individual General Release"). (ECF No. 272-1, at § 1.R, at p. 8; § 26-28, at p. 32-33.) The Individual General Release Payment will not reduce the funds available to the Settlement Class.

The Settlement presents an excellent recovery and delivers tangible and immediate benefits to the Settlement Class.

II. BACKGROUND AND PROCEDURAL HISTORY

A. Factual Background

This case arises from Aetna's denial of coverage for PBT treatment for the

treatment of localized prostate cancer. This matter commenced on March 31, 2020, by Plaintiff Sharon Prolow only. (ECF No. 1.) Plaintiff alleged that Aetna systematically applied its PBT medical guidelines to deny PBT on the basis that it was “unproven” or “not medically necessary.” Plaintiff alleged that, in doing so, Aetna ignored the recommendation from Settlement Class Members’ oncologists and generally accepted medical standards that PBT is an established, effective, and medically appropriate treatment of cancer. Plaintiff alleged that Aetna’s conduct violated ERISA and asserted claims under 29 U.S.C. § 1132. (TAC, ECF No. 83). Following two rounds of motions to dismiss (ECF Nos. 7, 40, 49, 63), Aetna answered Plaintiff Prolow’s Amended Complaint and denied her claims. (ECF No. 66.)

On April 28, 2021, Plaintiff Mark Lemmerman was added as a plaintiff in a Second Amended Complaint, filed with Aetna’s consent pursuant to Rule 15(a)(2). (ECF No. 67.) To streamline the case, Plaintiffs subsequently filed a Third Amended Complaint (“TAC”) that conformed to additional evidence produced in the case and removed allegations that related to counts that had been previously dismissed; the TAC was filed with Aetna’s consent pursuant to Rule 15(a)(2). (ECF No. 83.) Aetna moved to dismiss the TAC, which the Court denied. (ECF Nos. 88, 103). Aetna then answered the TAC, and denied Plaintiffs’ claims therein. The TAC is the operative complaint in this case. (ECF No. 104.)

On November 1, 2021, Aetna filed a motion for summary judgment on Plaintiffs’ individual claims, and Plaintiffs filed a cross motion for partial summary judgment as to Aetna’s liability with regard to Plaintiffs’ individual claims. (ECF Nos. 110, 112.) The Court denied Aetna’s motion and granted Plaintiffs’ cross

motion, finding Aetna liable to Plaintiffs on their individual claims. (ECF No. 138.)

The parties subsequently engaged in extensive class discovery and motion practice related to discovery and case management issues. (See Joint Declaration of Proposed Class Counsel [hereinafter, “Counsel Decl.”], ECF No. 272-2, at ¶ 9-12.) Aetna served 63 requests for production of documents, 7 interrogatories, and 22 requests for admissions on Plaintiff Lemmerman. Plaintiff Lemmerman served 61 requests for production of documents, 13 interrogatories, and 27 requests for admissions on Aetna. (*Id.* ¶ 9.) The parties also engaged in third-party discovery. (*Id.*) The parties exchanged and reviewed over 796,000 pages of documents. (*Id.*) Plaintiffs also worked with their experts to review those records and analyze the issues in the case. (*Id.* ¶ 11.)

Upon the parties’ joint motion, on April 10, 2023, the Court entered an Order staying all deadlines in this case pending mediation. (ECF Nos. 235, 236.) The parties attended an initial mediation session on May 24, 2023, with Harry Schafer, Esq., an experienced mediator with extensive knowledge of healthcare-related class action issues. (ECF No. 272-2, at ¶ 13, 15.) Over the next 2 years, the parties held four additional mediation sessions with Mr. Schafer—on June 23, 2023; October 6, 2023; June 29, 2024; and August 27, 2024. (*Id.* ¶ 15.) Between mediation sessions, the parties continued to discuss settlement terms under the supervision of Mr. Schafer and Aetna produced additional records to inform the negotiations. (*Id.* ¶ 15-16.) The parties expended significant efforts in negotiating and ironing out the numerous details of the Settlement in addition to formal mediation. (*Id.* ¶ 17.)

On November 15, 2024, Plaintiff Prolow dismissed her individual claims

against Aetna; the stipulation of dismissal did not affect the claims asserted by Plaintiff Lemmerman on behalf of himself or the class he represents. (ECF No. 262.)

On January 31, 2025, the parties informed the Court that they had reached an agreement in principle to settle the remaining claims in this case on a class-wide basis, subject to Court approval. (ECF No. 264.) The parties spent the next several months negotiating the details of the Settlement and executed the Agreement on June 5, 2025. (ECF No. 272-2, at ¶ 19.)

B. The Settlement Provides Substantial Relief to the Class.

The Settlement provides Settlement Class Members with a remedy that is directly responsive to the harm they incurred. Each Class Member who submits a timely claim form establishing their membership in the Class will receive a minimum payment of \$12,000. (ECF No. 272-1, at § 3.A-C, at p. 17.) However, in the event a Settlement Class Member paid or incurred debt of over \$12,000 to receive PBT, that Settlement Class Member is eligible to receive up to \$48,000 in reimbursement. (*Id.*) Settlement Class Members filing claims under the Settlement will not have to demonstrate medical necessity for the PBT treatment. (*See id.*, at Ex. D.)

Aetna will make a total of \$3,408,000 available to the Settlement Class Members for the payment of Settlement Claims. (*Id.* at § 3.C, at p. 17.) This amount represents \$48,000 multiplied by the 71 potential Settlement Class Members identified through Aetna's records. Thus, no *pro rata* reduction to Class Member recoveries (up to the individual cap of \$48,000 for each) will be required. Should there be funds that remain unclaimed or undistributed after the payment of all valid Settlement Claims, an amount up to but not to exceed the total amount paid to the

Settlement Class Members with respect to the Settlement Claims (up to \$3,408,000) will be paid as a *cy pres* award to NRG Oncology Foundation, Inc. (ECF No. 272-1, at § 3.E, at p. 18.) Any portion of the Settlement Amount remaining after payment to the Settlement Class Members and payment of the *cy pres* award reverts to Aetna. (*Id.*)

Settlement administration costs will also be paid by Aetna separately from the amounts Settlement Class Members may recover under the settlement. (ECF No. 272-1, at § 1.FF, at p. 10; ECF No. 272-2, at ¶ 37.) At this time, claim administration costs are estimated to be \$10,139. (Joint Declaration of Class Counsel [hereinafter, “Jnt. Fee Decl.”], attached to this Motion, at ¶ 26.)

C. The Individual Release Payment Is Separate and Apart From the Class Benefits.

Separate and apart from the benefits to the Settlement Class Members, Aetna has agreed to make a payment of \$15,000 to Plaintiff Mark Lemmerman, upon Court approval, in exchange for a general release of all claims, including claims unrelated to his precertification or post-service claim denials of health insurance coverage for PBT for his prostate cancer diagnosis during the Class Period (the “Individual General Release”). (ECF No. 272-1, at § 1.R, at p. 8; § 26-28, at p. 32-33.) This is not a payment related to the Settlement Claims, nor does it reduce the funds available to the Settlement Class Members. (*See id.*; ECF No. 272-2, at ¶ 36.)

D. Attorneys’ Fees and Expenses

The parties did not negotiate Class Counsel’s attorneys’ fees and costs before reaching an agreement on the terms of relief for the Class. (ECF No. 272-2, at ¶ 20,

35.) Class Counsel seek \$1,675,000 in reasonable attorneys' fees and reimbursement of litigation. Any Court-approved award of attorneys' fees and costs will be paid separately by Aetna and will not reduce the benefits made available to the Class. (*Id.* ¶ 37.)

III. LEGAL STANDARD

Rule 23 permits a court to award "reasonable attorney's fees . . . that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). A district court "has great latitude in formulating attorney's fees awards subject only to the necessity of explaining its reasoning." *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1293 (11th Cir. 1999).

IV. ARGUMENT

As set forth above, the parties reached agreement regarding attorneys' fees and costs only after reaching agreement on all other material terms, and the payment of fees will not reduce the benefits to the Settlement Class. *Supra* § II.D. The Court should afford deference to the parties' agreement given the absence of collusion regarding attorney's fees. *See Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 695 (N.D. Ga. 2001) (giving substantial weight to negotiated fee amount in the absence of any evidence of collusion); *see also Smith v. Floor & Decor Outlets of Am., Inc.*, 2017 WL 11495273, at *4 (N.D. Ga. Jan. 10, 2017) (where "the amount of attorneys' fees to be paid by [Defendant] was proposed after the other terms of the settlement had been agreed upon . . . the parties' agreement is entitled to substantial weight.").

A. The Requested Fee Award is Reasonable and Well Supported.

"Courts calculate attorney's fees using one of two methods: the percentage

method or the lodestar method.” *In re Home Depot Inc.*, 931 F.3d 1065, 1076 (11th Cir. 2019). “Under the percentage method, courts award counsel a percentage of the class benefit.” *Id.* “The class benefit generally includes any benefits resulting from the litigation that go to the class.” *Id.* Thus, attorneys’ fees are calculated on the benefits made available to the Class, even if not all Class Members submit claims and receive the payment to which they are entitled. *See, e.g., Waters*, 190 F.3d at 1295-96 (11th Cir. 1999) (rejecting argument that fees should have been calculated based on actual payout); *Janicijevic v. Classica Cruise Operator, Ltd.*, 2021 WL 2012366, at *7 (S.D. Fla. May 20, 2021) (“The United States Supreme Court, the Court of Appeals for the Eleventh Circuit and this Court, have all expressly approved calculating fees by applying the percentage-of-recovery method to the total value of the settlement.”).

ERISA contains a fee-shifting provision. 29 U.S.C. §1132(g). In statutory fee-shifting cases, courts ordinarily use the lodestar method. *In re Home Depot Inc.*, 931 F.3d at 1081. “Under the lodestar method, courts determine attorney’s fees based on the product of the reasonable hours spent on the case and a reasonable hourly rate.” *In re Home Depot Inc.*, 931 F.3d at 1076 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). Courts may apply to the lodestar a multiplier, such as an enhancement or an upward adjustment, to reward counsel on top of their hourly rates. *Id.*

The Eleventh Circuit has explained that “the key distinction between common-fund and fee-shifting cases is whether the attorney’s fees are paid by the client (as in common-fund cases) or by the other party (as in fee-shifting cases).” *In re Home Depot Inc.*, 931 F.3d at 1079. Here, the Defendant is paying the attorney’s

fees, because the attorney's fees and costs will not come out of the benefits made available to the class. However, the Eleventh Circuit has also recognized the concept of a "constructive common fund," where "the defendant negotiated the payment to the class and the payment to counsel as a 'package deal.'" *In re Home Depot Inc.*, 931 F.3d at 1080. In *Home Depot*, the court concluded the fees were not part of a package deal because the parties did not negotiate fees and did not agree to a cap on the amount of fees; rather the question of the amount of fees to be awarded was left entirely to the district court's discretion. *Id.*

The Settlement in this case creates a constructive common fund. *Id.* ("Usually, when courts have applied the constructive common-fund doctrine, the parties at least agreed to a cap on the attorney's fees."); *Farmer v. Humana Inc.*, 2022 WL 22855817, at *3 (M.D. Fla. Dec. 28, 2022), *report and recommendation adopted as modified*, 2023 WL 11877830 (M.D. Fla. Feb. 13, 2023) (finding constructive common fund applied where fees were negotiated separately after the substantive terms of the settlement were agreed upon, but the amount of fees was not left completely undetermined in the settlement agreement); *Peoples v. TurtleFTPierce, LLC*, 2023 WL 11956551, at *1 (S.D. Fla. Nov. 8, 2023) ("a cap [on fees and costs] is indicative of a common fund.").

A court has substantial discretion in determining the appropriate fee percentage. *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991) ("*Camden I*") ("There is no hard and fast rule . . . because the amount of any fee must be determined upon the facts of each case"). Nevertheless, "[t]he majority of common fund fee awards fall between 20% to 30% of the fund," although "an upper

limit of 50% of the fund may be stated as a general rule, although even larger percentages have been awarded.” *Id.* at 774-75.

The value of the constructive common fund is calculated by adding the cash amount made available to the Settlement Class Members, plus attorneys’ fees and costs the defendant has agreed to pay outside of the Class benefits, plus settlement administration costs. *See In re Home Depot Inc.*, 931 F.3d at 1080 (quoting Manual for Complex Litigation (Fourth) § 21.7 (2004): “If an agreement is reached on the amount of a settlement fund and a separate amount for attorney fees and expenses, ... the sum of the two amounts ordinarily should be treated as a settlement fund for the benefit of the class, with the agreed-on fee amount constituting the upper limit on the fees that can be awarded to counsel.”); *Marcrum v. Hobby Lobby Stores, Inc.*, 2021 WL 3710133, at *6 (N.D. Ala. Aug. 20, 2021) (“Whether the cash portion of the settlement is used to pay attorneys or to distribute certificates to class members, the expenditures of the fund inure to the benefit of the class. Accordingly, the calculation of the value of the common fund should include all cash used to pay attorneys’ fees and the expenses of claims administration.”) (quoting *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 354 (N.D. Ga. 1993)) (internal citations omitted); *In re Progressive Ins. Corp. Underwriting & Rating Practices Litig.*, 2008 WL 11348505, at *4 (N.D. Fla. Oct. 1, 2008) (“where a defendant agrees upon benefits for the class members and agrees to a separate additional amount of money to be paid to plaintiffs for attorneys’ fees, the aggregate of both recoveries is the common fund for purposes of determining the percentage of the fund to be paid as attorneys’ fees”).

As part of the “package deal” in this Settlement, Aetna has agreed to pay

\$3,408,000 in Settlement Class benefits, \$1,675,000 in fees and costs, and all administration costs, which at present are estimated to be \$10,139³. The value of the constructive common fund is therefore at least \$5,093,139 and the requested attorneys' fees and costs amount to roughly 33% of the constructive common fund. Class Counsel's requested fee is in line with fee awards approved in this Circuit and appropriate in light of the substantial work undertaken in this case.

B. The *Johnson* Factors Support the Requested Fee.

The Eleventh Circuit has approved the use of the factors identified in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), in determining an appropriate percentage fee award. *See Camden I*, 946 F.2d at 775. A consideration of the *Johnson* factors⁴ supports the requested fee.

a. The Time and Labor Involved.

This litigation required substantial time and labor. Together, as of June 30, 2025, Class Counsel spent approximately 3,575 hours litigating this case. This included time spent in pre-suit investigation; briefing three motions to dismiss and cross-motions for summary judgment; engaging in comprehensive paper discovery and conferrals; briefing multiple motions to compel; reviewing almost 800,000 pages of produced

³ Should the amount of administrative costs change, Plaintiffs will update this value in their motion for final approval. Plaintiffs do not include the \$15,000 Individual General Release Payment here, as it does not inure to the benefit of the Class.

⁴ *Johnson* lists twelve factors, two of which are either not implicated or are neutral, and therefore are not addressed in depth here: the undesirability of the case and the nature of the attorney-client relationship. This matter is not an "unpopular" case that would lead Class Counsel to face hardships. Class Counsel also does not have a continuing attorney-client relationship with the named plaintiffs that would have caused them to offer a volume discount or reduced fee to obtain future business.

documents; working with experts; participating in five mediation sessions and continuing extensive negotiations with the assistance of Mr. Schafer; and drafting and executing the Settlement and associated notice documents. (ECF No. 272-2, at ¶¶ 5-10.)

Moreover, based on the experience of Class Counsel with similar settlements, it is expected that additional attorney hours will necessarily be expended seeking final approval, assisting members of the Class with their claim submissions, overseeing the claims process, responding to class member inquiries, and distributing the Settlement Benefits. (Jnt. Fee Decl. at ¶¶ 13, 22.)

This work is reasonable and justified in view of the complexity of the case, and the result. This significant investment of time and effort supports the requested fee.

b. The Novelty and Difficulty of the Questions.

ERISA class actions are notoriously complex and difficult to prove. *Ford v. Takeda Pharms. U.S.A., Inc.*, 2023 WL 3679031, at *3 (D. Mass. Mar. 31, 2023) (“ERISA claims are complicated.”). Moreover, “[i]t is common knowledge that class action suits have a well-deserved reputation as being most complex.” *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 2012 WL 12540344, at *3 (N.D. Ga. Oct. 26, 2012) (internal citation omitted). This case is no exception.

Among other things, Class Counsel needed to develop an understanding of PBT treatment and traditional radiation treatment, including the medical research regarding the effectiveness and appropriateness of PBT for treatment of cancer. Counsel also had to understand the complex medical billing system applicable to PBT to analyze the data provided by Aetna. Counsel consulted with both medical experts and billing experts so that they fully understood the scope of appropriate relief needed

by the class. Counsel also had to analyze and understand the Aetna guidelines as well as other guidelines related to PBT. And Counsel had to understand the applicable plan language and ERISA regulations so as to craft relief that was consistent with the rights of all plan participants. The complexity is evidenced by the fact that it took two years, five mediations, and numerous conference calls and emails to reach a settlement agreement.

The overall settlement value and the requested fee appropriately reflect the challenges taken on by Class Counsel. This factor supports approval of the fee request.

c. The Skill Required and the Experience, Reputation, and Ability of Counsel.

“[T]he prosecution and management of a complex national class action requires unique legal skills and abilities.” *Columbus*, 2012 WL 12540344, at *4. As previously demonstrated, Class Counsel have extensive experience litigating complex and class actions, including ERISA cases. (ECF No. 272-2, at ¶¶ 2-3.) Class Counsel drew on this experience to efficiently litigate this complex matter and succeeded in reaching a Settlement that provides substantial benefits to the Class, despite the legal and factual challenges of the case.

Further, Class Counsel’s experience and skill was needed given the complexity of the case and the quality of the defense counsel in this matter. *See In re Ethicon Physiomesh Flexible Composite Hernia Mesh Prods. Liab. Litig.*, 2022 WL 17687425, at *11 (N.D. Ga. Nov. 14, 2022) (“[t]he quality of opposing counsel is also important in evaluating the quality of the work done by Plaintiffs’ Counsel.”). Aetna was represented

by highly skilled and reputable law firms that regularly practice before this Court and defend complex class actions, with ERISA expertise. This factor thus weighs in favor of the requested fee award.

d. The Customary Fee, Contingent Nature of the Fee, and Preclusion of Other Employment.

“[A] determination of a fair fee for Class Counsel must include consideration of the contingent nature of the fee, the wholly contingent outlay of out-of-pocket sums by Class Counsel, and the fact that the risks of failure and nonpayment in a class action are extremely high.” *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1339 (S.D. Fla. 2007). Class Counsel took this case on a contingent basis and advanced the costs of litigation over five years. The “customary fee” in a class action lawsuit is a contingency fee because no individual class member possesses a sufficiently large enough stake in the litigation to justify paying attorneys on an hourly basis. *See Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992).

The Court should give weight to the contingent nature of Class Counsels’ fees when assessing the fee request. *See Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988), *aff’d*, 899 F.2d 21 (11th Cir. 1990). If Class Counsel had not achieved a recovery, they would receive nothing, and would suffer significant out-of-pocket losses due to all the litigation expenses they advanced. This risk justifies their requested fee. *See Newberg and Rubenstein on Class Actions* § 15:87 (6th ed.) (“A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is

paid no more, competent counsel will be reluctant to accept fee award cases.”) (citation omitted).

Further, the time spent on this litigation over the past five years was time that could not be spent on other matters. *See Yates v. Mobile Cnty Pers. Bd.*, 719 F.2d 1530, 1535 (11th Cir. 1983) (recognizing that the expenditure of significant blocks of time, “necessarily had some adverse impact upon the ability of counsel for plaintiff to accept other work”). The hours expended on this case demonstrates the significant time commitment devoted to its litigation; but for this case, Co-Lead Class Counsel would have spent that significant time on other cases. (Jnt. Fee Decl. at ¶¶ 15, 25.) Combined with the nature of contingent fees, this factor further supports the requested fee.

e. The Amount Involved and Results Obtained.

The “most critical factor” in determining reasonable attorney’s fees “is the degree of success obtained” by Class Counsel. *Hensley*, 461 U.S. at 436. Class Counsel secured an outstanding benefit for the Settlement Class that is directly responsive to the harm they incurred, despite the legal and factual challenges presented by the case. The Settlement ensures that Settlement Class Members receive reimbursement of a minimum of \$12,000 up to a maximum of \$48,000 for PBT, with no *pro rata* reduction to Settlement Class Member’s recoveries required. (ECF No. 272-1, at § 3.A-C, at p. 17; ECF No. 272-2, at ¶ 29.) The recovery available to each Settlement Class Member—up to \$48,000—is significant and fair.⁵ (See ECF No. 272-2, at ¶ 30; ECF No. 272-3, at ¶ 4.) A reasonable estimate is that Settlement Class Members will, on average, have paid

⁵ For comparison, Plaintiff Lemmerman individually paid \$35,036.76 for PBT treatment for his prostate cancer.

around \$ 42,975 to \$51,570 for PBT for the treatment of prostate cancer. (ECF No. 272-3, at ¶¶ 10-13.)

This is an excellent result that compares favorably with other ERISA class action settlements. *See, e.g., Cunningham v. Wawa, Inc.*, 2021 WL 1626482, at *6 (E.D. Pa. Apr. 21, 2021) (finding ERISA settlement where recovery was 18%-28% of maximum losses was in line with other cases); *Hochstadt v. Boston Scientific Corp.*, 708 F.Supp.2d 95, 109 (D. Mass 2010) (holding over objection of class member that 27% recovery was “plainly reasonable” in ERISA class action involving allegations of misleading disclosures). Given the notoriously complex nature of ERISA cases, courts approving ERISA settlements have described settlements of 29% to be “an exceptional result”); *Hurtado v. Rainbow Disposal Co., Inc.*, 2021 WL 2327858, at *4 (C.D. Cal. May 21, 2021) (ERISA settlement between 23% and 34% of losses was an “impressive result”).

Class Counsel believe this is an outstanding Settlement that will provide substantial relief to Class members. This factor weighs in favor of approval of the requested fee award.

f. Fee Awards in Similar Cases.

The requested fee award (33% of the constructive common fund) is in line with awards in other ERISA class actions. *See, e.g., High St. Rehab., LLC v. Am. Specialty Health Inc.*, 2019 WL 4140784, at *13 (E.D. Pa. Aug. 29, 2019) (awarding attorney’s fees of 33.3% of the settlement fund in ERISA class action); *Norris v. Mazzola*, 2017 WL 6493091, at *13 (N.D. Cal. Dec. 19, 2017) (approving ERISA class counsel fee award representing 44% of the total settlement fund where Class Counsel “engaged in extensive motion practice and discovery and ultimately achieved a significant victory at

summary judgment”); *Fernandez v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 2017 WL 7798110, at *4 (S.D. Fla. Dec. 18, 2017) (approving attorney’s fees of 35% of the settlement fund in ERISA class action); *Stephens v. US Airways Group, Inc.*, 102 F. Supp. 3d 222, 230 (D.D.C. 2015) (awarding attorney’s fees of approximately 38% of the total settlement in ERISA class action).

g. The Risks Undertaken by Class Counsel and the Economics Involved in Prosecuting a Class Action.

As described above, the economics involved in prosecuting a class action on a contingency basis supports the requested fee. For five years, Class Counsel devoted substantial time to this case without revenue and while advancing costs. If not awarded fees, “very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing[.]” *In re Checking Account Overdraft Litig.*, 2014 WL 11370115, at *17 (S.D. Fla. Jan. 3, 2014). This factor supports approval of the requested fee.

C. A Lodestar Cross-Check Confirms the Reasonableness of Class Counsel’s Requested Fee.

Even though the Eleventh Circuit does not require that a lodestar cross-check be done in determining common benefit fee awards, “[c]ourts often use a cross-check to ensure that the fee produced by the chosen method is in the ballpark of an appropriate fee.” *In re Home Depot Inc.* 931 F.3d at 1091; *Waters*, 190 F.3d at 1298 (noting that “while we have decided in this circuit that a lodestar calculation is not proper in common fund cases, we may refer to that figure for comparison.”).

A lodestar cross-check confirms the reasonableness of the requested fee here. As of June 30, 2025, Class Counsel have expended 3,575.10 hours on this litigation.

When those hours are multiplied by the biller's standard hourly rates, the total lodestar is \$2,170,583. Class Counsel seek \$1,675,000 in attorneys' fees and costs (less than their lodestar), demonstrating the requested fee is reasonable.

D. Class Counsel's Incurred Expenses Were Reasonable and Necessary.

Class Counsel's fee application includes a request for reimbursement of \$107,542.42 in costs that were reasonable and necessary to the litigation. "Courts routinely note that counsel is entitled to reimbursement from the common fund for reasonable litigation expenses." *Fernandez*, 2017 WL 7798110, at *5.

The expenses incurred are kept in the usual course of business by Class Counsel and were all necessary in this matter. (Jnt. Fee Decl. ¶ 7, 17.) These costs include filing fees, expert fees, travel expenses, research and e-discovery costs, and postage, mailing, and printing costs. (*Id.*) All of these out-of-pocket expenses were reasonably and necessarily incurred and paid in furtherance of the prosecution of this action, and are paid separately (as part of the requested \$1,675,000) from benefits that flow to the Class members as a result of the settlement. *See Gevaerts v. TD Bank*, 2015 WL 6751061, at *14 (S.D. Fla. Nov. 5, 2015) (approving Class Counsel costs, including fees for experts, photocopies, travel, online research, translation services, mediator fees, and document review and coding expenses).

The Court should approve Class Counsel's request for costs.

E. The Individual General Release Payment Should be Approved.

Separate and apart from the benefits to the Settlement Class Members, Aetna has agreed to make a payment of \$15,000 to Plaintiff Mark Lemmerman, upon Court

approval, in exchange for a general release of all claims, including claims unrelated to his precertification or post-service claim denials of health insurance coverage for PBT for his prostate cancer diagnosis during the Class Period (the “Individual General Release”). (ECF No. 272-1, at § 1.R, at p. 8; § 26-28, at p. 32-33.)

Courts within the Eleventh Circuit, including the Southern District of Florida, have approved similar general release payments. *See, e.g., Cornelius v. Deere Credit Servs., Inc.*, 2025 WL 502089, at *3 (S.D. Ga. Feb. 13, 2025) (approving payment to named plaintiff “in exchange for providing general release in favor of [defendant]”); *Baja v. Costco Wholesale Corp.*, 2022 WL 22928880, at *2 (S.D. Fla. Dec. 20, 2022) (finding payment “in consideration for [named plaintiff’s] release of any and all claims he individually could have or did assert in the action, including claims under federal law, state or local laws, statutes, regulations, ordinances, or federal or state common law” did not constitute a prohibited incentive award).

The Individual General Release Payment is appropriate because it is “separate and apart from the Settlement Fund and [Lemmerman’s] pro-rata share of the same.” *Sinkfield v. Persolve Recoveries, LLC*, 2023 WL 511195, at *3 (S.D. Fla. Jan. 26, 2023) (approving general release payment to named plaintiff in class action). The payment will not reduce the benefits available to the Settlement Class. Additionally, it was not negotiated until after the benefits to the Settlement Class were agreed-upon. (ECF No. 272-2, at ¶ 36.) *See Taylor v. Citizens Telecom Servs. Co., LLC*, 584 F. Supp. 3d 1101, 1105 n.1 (M.D. Fla. 2022) (approving general release payment to named plaintiff and noting the “general release was negotiated after all of the terms of the class settlement were agreed on”).

Rather, the general release resolves any existent individual claims that could be brought by a plaintiff who “has already shown, by this case, that he is prepared to avail himself of the court system.” *See id.* Because it is not “a salary, a bounty, or both,’ but in exchange for agreeing to a broader release of claims than the release the other Class Members have given, this payment doesn’t violate the strictures of *Johnson v. NPAS Solutions, LLC*, 975 F.3d 1244, 1258 (11th Cir. 2020).” *Sinkfield*, 2023 WL 511195, at *3.

The Court should approve the Individual General Release Payment to Plaintiff Lemmerman.

V. CONCLUSION

For the foregoing reasons, Plaintiff Mark Lemmerman, respectfully requests that the Court grant this Motion, and (1) award Class Counsel \$1,675,000.00 in fees and costs, and (2) approve the Individual General Release Payment in the amount of \$15,000 to Plaintiff Lemmerman.

Local Rule 7.3 Certification

Pursuant to Local Rule 7.3(a), the undersigned certify that they conferred with counsel for Defendant regarding the relief sought in this Motion during the settlement of this case. As part of the Settlement, Class Counsel agreed not to seek payment of any amount of attorneys’ fees and costs in excess of \$1,675,000, and Defendant agreed not to oppose Plaintiff’s request for an award of attorneys’ fees and costs of up to \$1,675,000. Further, as part of the Settlement, Aetna agreed to pay \$15,000 to Mark Lemmerman in exchange for a general release from him. Thus, the relief requested in this Motion is unopposed.

Dated: July 10, 2025

Respectfully submitted,
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– and –

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Attorneys for Plaintiff and the Settlement Class

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 20-80545-CIV-MARRA

SHARON PROLOW and
MARK LEMMERMAN,
on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

AETNA LIFE INSURANCE
COMPANY,

Defendant.

_____ /

**JOINT DECLARATION OF CLASS COUNSEL IN SUPPORT
OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND COSTS**

We, Stephanie A. Casey, Maria D. Garcia, and Robert J. Neary, on behalf of Colson Hicks Eidson PA ("CHE") and Kozyak Tropin & Throckmorton, LLP ("KTT") respectively, and as preliminarily appointed Class Counsel declare as follows:

1. We are attorneys duly licensed to practice in all courts in the State of Florida. We are counsel of record in the above-entitled matter. We make this declaration of our own personal knowledge, except for those matters stated on information and belief. If called as a witness, we could and would testify competently to the following.

2. Our background and credentials are set forth in the Joint Declaration of Proposed Class Counsel in Support of Motion for Preliminary Approval of Class Settlement ("Class Counsel Declaration"). (ECF No. 272-2).

3. A description of the work performed by CHE and KTT is also set forth in the Class Counsel Declaration. (*Id.*).

4. In the Order Granting Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and Approval of Class Notice, this Court preliminarily appointed Stephanie A. Casey of CHE and Maria D. Garcia and Robert J. Neary of KTT as Class Counsel. (ECF No. 275, ¶ 5).

5. The Court also ordered Class Counsel to file any petition for attorneys' fees, litigation costs and award to the Named Plaintiff within 30 days of the entry of the order, or by July 10, 2025. (*Id.*, ¶ 16).

6. We participated in the extended settlement negotiations in this matter which led to the settlement approved by this Court. The parties did not negotiate attorneys' fees and costs or Plaintiff's Individual General Release Payment before reaching an agreement on the terms of relief for the Class.

A. CHE's Costs

7. To date, CHE has incurred \$65,131.28 in unreimbursed, reasonable, and necessary litigation costs incurred in connection with the investigation, prosecution, and settlement of this litigation. Attached hereto as **Exhibit A** is a description of such costs. These costs were for items including court filing fees; hearing transcripts; expert fees; postage and shipping; medical record and document reproduction costs; research; and mediation costs. These costs are commonly billed to paying clients in litigation and recoverable in class action matters.

8. CHE anticipates incurring additional costs through the settlement process and final approval for which it will not seek additional reimbursement.

B. CHE's Attorneys' Fees

9. Throughout this litigation, all attorneys and paralegals at CHE were instructed to keep contemporaneous records of the time spent on this matter. Stephanie Casey controlled the assignment of work performed by CHE and monitored the time being spent by associate Sabrina Saieh, and paralegal Michelle Roberto to

ensure that such work was being done effectively, efficiently, and economically and to avoid unnecessary expenditures of time or money.

10. CHE revises its hourly billing rates periodically to reflect market rates. From 2019, when CHE began its investigation into the claims asserted in this matter, CHE's billing rates have increased for partner and associate time. Rate adjustments over the five years of this litigation are reflected in **Exhibit B**, which is a summary of the hours expended by CHE in this matter along with the hourly rates of the attorneys and paralegal who worked on this matter. The total amount of fees incurred by our firm in this matter through June 30, 2025, is \$1,117,667.50.

11. Each attorney's hourly rate—taking into account the results obtained on behalf of the Class Members, and their level of experience, training, and education—is reasonable and routinely charged in similar complex class action litigation.

12. The description of the time spent by the attorneys and other professionals of CHE in this litigation were prepared from contemporaneous, daily time records and reflect a true and accurate accounting of the work performed.

13. The hours reflected in Exhibit B do not include time spent on Plaintiff's Motion for Attorneys' Fees and Costs and Approval of General Release Payment, nor does it include the additional time CHE will expend on the settlement claims administration and seeking final approval of the settlement for which CHE will not seek reimbursement.

14. CHE has carefully reviewed Exhibit B to ensure that the time did not include hours that were excessive, redundant, or otherwise unnecessary, including time spent solely on matters pertaining to Plaintiff Sharon Prolow, whose individual claims were voluntarily dismissed by stipulation of the parties. (ECF No. 262). We have reduced time where appropriate.

15. CHE litigated this matter on a contingent basis and received no compensation for their efforts in the litigation. The complexity of this matter and the time required to devote to it meant forgoing the ability to take on or devote time to other matters.

16. As exhibited by his execution of the Settlement Agreement, Plaintiff Mark Lemmerman supports the terms of the Settlement, including approval of an award of Class Counsel's fees and costs.

C. KTT's Costs

17. Attached hereto as **Exhibit C** is a description of the unreimbursed, reasonable, and necessary costs KTT has incurred to date in this matter. That amount is \$42,411.14. These costs are commonly billed to paying clients in litigation and recoverable in class action matters.

18. KTT anticipates incurring additional costs through the settlement process and final approval for which they will not seek additional reimbursement.

D. KTT's Attorneys' Fees

19. Attached hereto as **Exhibit D** is a true and correct copy of the hours expended by KTT in this matter along with the hourly rates of the attorneys and paralegals who worked on this matter. The total amount of fees expended by KTT in this matter to date is \$1,052,915.50.

20. Each attorney's hourly rate—taking into account the results obtained on behalf of the Class Members, and their level of experience, training, and education—is reasonable and routinely charged in similar complex class action litigation¹

¹ As reflected in Exhibit B, Kozyak Tropin & Throckmorton, periodically revises its hourly billing rates to reflect the market. This litigation began in 2020 and the billing rates for partner, associate, and paralegal time have increased over the six years of litigation. (*See id.*).

21. The description of the time spent by the attorneys and other professionals of KTT in this litigation were prepared from contemporaneous, daily time records and reflect a true and accurate accounting of the work performed.

22. The hours reflected in Exhibit B do not include time spent on Class Counsel's Motion for Attorneys' Fees, Reimbursement of Expenses, and Request for Plaintiff Service Awards, nor does it include the additional time KTT will expend on the settlement claims administration and seeking final approval of the settlement for which Class Counsel will not seek reimbursement.

23. KTT has carefully reviewed its time sheets to ensure that the time did not include hours that were excessive, redundant, or otherwise unnecessary. We have reduced time where appropriate.

24. In addition, KTT has reviewed their time and removed all entries that related solely to the former class representative, Sharon Prolow pursuant to Ms. Prolow's Stipulation of Dismissal. (ECF No. 262).

25. KTT, along with its co-Class Counsel, litigated this matter on a contingent basis and received no compensation for their efforts in the litigation. The complexity of this matter and the time required to devote to it meant forgoing the ability to take on or devote time to other matters.

26. Defendant's counsel has represented to Class Counsel that claim administration costs are estimated to be \$10,139.

We declare under penalty of perjury under the laws of the State of Florida and the United States of America that the foregoing is true and correct.

Executed on July 10, 2025, at Coral Gables, Florida.

Stephanie A. Casey
Stephanie A. Casey

Maria D. Garcia
Maria D. Garcia

Robert J. Neary
Robert J. Neary

EXHIBIT A

Colson Hicks Eidson Expenses	
Description	Amount
Court Filing Fee	\$400
Hearing Transcripts	\$695.15
Postage, Shipping, and Other Mailing	\$24.67
Medical Records	\$34.02
Printing and Copying	\$1,510.40
Expert Fees	\$41,860.03
PACER Fees	\$27.46
Legal research	\$15,329.55
Mediation	\$5,250
TOTAL	\$65,131.28

EXHIBIT B**Colson Hicks Eidson Time Summary as of June 30, 2025**

2019				
Name	Position	Hours	Hourly Rate	Amount
Stephanie Casey	Partner	10.50	650.00	6,825.00
TOTAL (2019)		10.50		\$ 6,825.00

2020				
Name	Position	Hours	Hourly Rate	Amount
Stephanie Casey	Partner	182.30	700.00	127,610.00
Sabrina Saieh	Associate	11.10	475.00	5,272.50
Michelle Roberto	Paralegal	10.90	275.00	2,997.50
TOTAL (2020)		204.30		\$ 135,880.00

2021				
Name	Position	Hours	Hourly Rate	Amount
Stephanie Casey	Partner	393.30	750.00	294,975.00
Sabrina Saieh	Associate	50.50	500.00	25,250.00
Michelle Roberto	Paralegal	46.20	275.00	12,705.00
TOTAL (2021)		490.00		\$ 332,930.00

2022				
Name	Position	Hours	Hourly Rate	Amount
Stephanie Casey	Partner	330.80	800.00	264,640.00
Sabrina Saieh	Associate	135.10	500.00	67,550.00
Michelle Roberto	Paralegal	55.60	275.00	15,290.00
TOTAL (2022)		521.50		\$ 347,480.00

2023				
Name	Position	Hours	Hourly Rate	Amount
Stephanie Casey	Partner	119.20	850.00	101,320.00
Sabrina Saieh	Associate	175.30	550.00	96,415.00
Michelle Roberto	Paralegal	11.70	275.00	3,217.50
TOTAL (2023)		306.20		\$ 200,952.50

2024				
Name	Position	Hours	Hourly Rate	Amount
Stephanie Casey	Partner	54.70	900.00	49,230.00
Sabrina Saieh	Associate	4.50	550.00	2,475.00
TOTAL (2024)		59.20		\$ 51,705.00

2025				
Name	Position	Hours	Hourly Rate	Amount
Stephanie Casey	Partner	44.10	950.00	41,895.00
TOTAL (2025)		44.10		\$ 41,895.00

Fee Summary 2019-2025			
Name	Position	Hours	Amount
Stephanie Casey	Partner	1,134.90	886,495.00
Sabrina Saieh	Associate	376.50	196,962.50
Michelle Roberto	Paralegal	124.40	34,210.00
TOTAL FEES		1,635.80	\$1,117,667.50

EXHIBIT C

KOZYAK TROPIN & THROCKMORTON COSTS

EXPENSE	Amount
BW Copies	\$471.75
Legal Research	\$828.50
PACER Copies	\$49.10
Color Copies	\$132.25
Digital Images	\$30.90
Miscellaneous	\$267.50
Overnight Courier	\$32.11
E-Discovery	\$20,245.77
Professional fees	\$20,000.00
Court Docket Research	\$353.26
<u>Total Costs for this matter</u>	\$42,411.14

EXHIBIT D

KOZYAK TROPIN & THROCKMORTON SUMMARY OF FEES

Atty/PL Code	Attorney/Paralegal Name	Hours	Rate	Amount
PL	YAMILE C. CASTRO	3.80	275.00	1,045.00
PL	YAMILE C. CASTRO	93.90	300.00	28,170.00
PL	YAMILE C. CASTRO	2.00	315.00	630.00
PL	YAMILE C. CASTRO	0.60	350.00	210.00
Atty	DARLYN DE LA ROSA	116.80	350.00	40,880.00
Atty	DARLYN DE LA ROSA	113.60	400.00	45,440.00
Atty	FRANK A. FLORIO	51.80	400.00	20,720.00
Atty	JESSICA D. SANTOS	399.30	375.00	149,737.50
Atty	JESSICA D. SANTOS	3.50	425.00	1,487.50
Atty	MARIA D. GARCIA	197.10	550.00	108,405.00
Atty	MARIA D. GARCIA	260.00	750.00	195,000.00
Atty	MARIA D. GARCIA	84.20	775.00	65,255.00
Atty	MARIA D. GARCIA	19.80	825.00	16,335.00
Atty	RACHEL SULLIVAN	80.10	675.00	54,067.50
Atty	ROBERT NEARY	229.80	550.00	126,390.00
Atty	ROBERT NEARY	119.00	600.00	71,400.00
Atty	ROBERT NEARY	63.70	800.00	50,960.00
Atty	ROBERT NEARY	33.60	900.00	30,240.00
PL	FAROLA SAINT REMY	0.20	275.00	55.00
PL	FAROLA SAINT REMY	32.60	300.00	9,780.00
PL	FAROLA SAINT REMY	1.20	315.00	378.00
Atty	HARLEY S. TROPIN	31.80	1,100.00	34,980.00
Atty	HARLEY S. TROPIN	0.90	1,500.00	1,350.00
Total for Services		1,939.30		1,052,915.50