

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Stuart Krohnengold, Wayne Antoine, Lee Webber, Anthony Medici, Joseph Bendrihem, Larry Gilbert, Rafael Musni, Thomas Lantz, Sandra Scanni, and Claudia Gonzalez, as representatives of a class of similarly situated persons, and on behalf of the New York Life Insurance Employee Progress Sharing Investment Plan, and the New York Life Insurance Company Agents Progress Sharing Plan,

Case No. 1:21-cv-01778 - JMF

Plaintiffs,

v.

New York Life Insurance Company; the Fiduciary Investment Committee; the Board of Trustees; Katherine O'Brien; Anthony R. Malloy; Yie-Hsin Hung; Arthur A. Seter; Scott L. Lenz; Robert J. Hynes; and John and Jane Does 1-20,

Defendants.

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (the "Settlement Agreement"), is made and entered into by and among: (i) Plaintiffs Amy Laurence (as a surviving beneficiary and Court-approved substitute party for Stuart Krohnengold), Wayne Antoine, Lee Webber, Anthony Medici, Joseph Bendrihem, Larry Gilbert, Rafael Musni, Thomas Lantz, Sandra Scanni, and Claudia Gonzalez, by and through their counsel of record in the Action; and (ii) Defendants New York Life Insurance Company; the Fiduciary Investment Committee; the Board of Trustees; Katherine O'Brien; Anthony R. Malloy; Yie-Hsin Hung; Arthur A. Seter; Scott L. Lenz; and Robert J. Hynes, by and through their counsel of record in the Action.¹ The Settlement Agreement is intended to fully, finally, and forever resolve, discharge, and settle the Released Claims, subject to the approval of the Court and the terms and conditions set forth in this Settlement Agreement.

¹ Except as otherwise specified, all capitalized terms shall have the meanings set forth in Article I of this Settlement Agreement.

ARTICLE I

DEFINITIONS

1.1 “Action” means the civil action captioned *Krohnengold, et al. v New York Life Insurance Company, et al.*, Civil Action No. 1:21-cv-01778-JMF, pending in the United States District Court for the Southern District of New York.

1.2 “Active Participant” means any Class Member who, as of the date of the Court’s entry of the Preliminary Approval Order, has an account in the Plans with a balance greater than \$0.00 and is eligible to make contributions to the account.

1.3 “Administrative Expenses” means all expenses incurred in the administration of this Settlement Agreement, including but not limited to (a) all fees, expenses, and costs associated with the production and dissemination of the Notice to Class Members; (b) all expenses incurred by the Settlement Administrator in administering and effectuating this Settlement and related tax expenses (including taxes and tax expenses described in Section 4.5); (c) all fees and expenses associated with the Settlement Website and telephone support line described in Article III; (d) all fees charged by the Settlement Administrator; and (e) all fees and expenses charged by the Independent Fiduciary and Escrow Agent. All Administrative Expenses shall be paid from the Gross Settlement Amount.

1.4 “Alternate Payee” means a person, other than an Active Participant, Inactive Participant, Former Participant, or Beneficiary, who is entitled to a benefit under the Plans as a result of a Qualified Domestic Relations Order.

1.5 “Affiliated Funds” means the MainStay Epoch U.S. All Cap Fund, MainStay Epoch U.S. Small Cap Fund, MainStay ICAP Equity Fund, MainStay MAP Fund, MainStay Income Builder Fund, MainStay International Equity Fund, any MainStay Retirement Fund, or the Fixed Dollar Account in the Plans.

1.6 “Attorneys’ Fees and Expenses” means the amount awarded by the Court as compensation for the services provided by Class Counsel and the expenses incurred by Class Counsel in connection with the Action, including the investigation leading to it, which shall be recovered from the Gross Settlement Amount.

1.7 “Beneficiary” means a person who currently is entitled to receive a benefit under the Plans that is derivative of the interest of an Active Participant, Inactive Participant, or Former Participant, other than an Alternate Payee. A Beneficiary includes, but is not limited to, a spouse, surviving spouse, domestic partner, or child who currently is entitled to a benefit.

1.8 “CAFA Notice” means the notice required to be provided pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715 (“CAFA”).

1.9 “Class” or “Settlement Class” means all participants and beneficiaries of the New York Life Insurance Company Employee Progress-Sharing Investment Plan or the New

York Life Insurance Company Agents Progress-Sharing Investment Plan who held assets in the MainStay Epoch U.S. All Cap Fund, MainStay Epoch U.S. Small Cap Fund, MainStay Income Builder Fund, any MainStay Retirement Fund, or the Fixed Dollar Account in the Plans at any time from March 2, 2015 to the Effective Date of Settlement, excluding Defendants, any of their directors, and any members of the Committees during the Class Period.

1.10 “Class Counsel” means Cohen Milstein Sellers & Toll PLLC.

1.11 “Class Member” means a member of the Settlement Class.

1.12 “Class Period” means March 2, 2015 through the Effective Date of the Settlement.

1.13 “Class Representatives” or “Plaintiffs” means the named Plaintiffs in this Action: Amy Laurence (as a surviving beneficiary and Court-approved substitute party for Stuart Krohnengold), Wayne Antoine, Lee Webber, Anthony Medici, Joseph Bendrihem, Larry Gilbert, Rafael Musni, Thomas Lantz, Sandra Scanni, and Claudia Gonzalez.

1.14 “Committees” means the Board of Trustees of the New York Life Insurance Company Employee Progress-Sharing Investment Plan, the Board of Trustees of the New York Life Insurance Company Agents Progress-Sharing Investment Plan, the Fiduciary Investment Committee of the New York Life Insurance Company Employee Progress-Sharing Investment Plan, and the Fiduciary Investment Committee of the New York Life Insurance Company Agents Progress-Sharing Investment Plan, as well as all subcommittees and other committees to the Committees.

1.15 “Company” means New York Life Insurance Company.

1.16 “Complaints” means, collectively, the document filed in this Action at ECF No. 4 on March 3, 2021, the document filed at ECF No. 38 on June 15, 2021, and the document filed at ECF No. 63 on September 8, 2022.

1.17 “Confidentiality Order” means the Stipulation and Confidentiality Order entered on November 18, 2022 in the Action.

1.18 “Court” means the United States District Court for the Southern District of New York.

1.19 “Defendants” means Defendants New York Life Insurance Company; the Fiduciary Investment Committee; the Board of Trustees; Katherine O’Brien; Anthony R. Malloy; Yie-Hsin Hung; Arthur A. Seter; Scott L. Lenz; and Robert J. Hynes.

1.20 “Defendants’ Counsel” means Goodwin Procter LLP.

1.21 “Defendants’ Released Claims” means any and all claims, actions, demands, rights, obligations, liabilities, damages, attorneys’ fees, expenses, costs, and causes of action, whether known or unknown (including Unknown Claims as defined herein), based on

facts existing as of the date of the Preliminary Approval Order, which have been, or could have been, asserted in the Action or in any court or forum, by Defendants against any of the Released Plaintiff Parties, Plaintiffs or any Class Members, or their attorneys (including Class Counsel), which arise out of the institution, prosecution or settlement of the Action, except for claims to enforce the Settlement Agreement.

1.22 “Disputed Investments” means the MainStay Epoch U.S. All Cap Fund, MainStay Epoch U.S. Small Cap Fund, MainStay Income Builder Fund, any MainStay Retirement Fund, or the Fixed Dollar Account in the Plans.

1.23 “Effective Date” means one business day following the later of (a) the date of the Final Approval Order, or in the event of any objections to the Settlement, the date upon which the time expires for filing or noticing any appeal of the Final Approval Order; or (b) if there are any appeals, the date of dismissal or completion of any appeal, in a manner that finally affirms and leaves in place the Final Approval Order without any material modifications, and all proceedings arising out of the appeal(s) (including, but not limited to, the expiration of all deadlines for motions for reconsideration or rehearing or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal(s) following decisions on remand).

1.24 “Entitlement Amount” means that portion of the Net Settlement Amount payable to an individual Class Member, as determined according to the procedures described in Article V herein.

1.25 “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

1.26 “Escrow Account” means an account at an established financial institution established by Class Counsel for the deposit of the Gross Settlement Amount and amounts relating to it, such as income earned on the investment of the Gross Settlement Amount.

1.27 “Escrow Agent” means an independent contractor to be retained by Class Counsel that will serve as the escrow agent for any portion of the Gross Settlement Amount deposited in or accruing in the Escrow Account pursuant to this Settlement Agreement.

1.28 “Fairness Hearing” means the hearing to be held before the Court pursuant to Federal Rule of Civil Procedure 23 to determine whether the Settlement Agreement should receive final approval by the Court.

1.29 “Final Approval Order” means the order and final judgment of the Court approving the Settlement, in substantially the form submitted in connection with Plaintiffs’ Motion for Final Approval of the Settlement.

1.30 “Former Participant” means any Class Member who had an account in the Plans with a balance greater than \$0.00 during the Class Period but who does not have an account in the Plans with a balance greater than \$0.00 as of the date of the entry of the Preliminary Approval Order.

1.31 “Former Participant Rollover Form” means the form described generally in Section 5.3 herein, substantially in the form attached as Exhibit B hereto.

1.32 “Former Participant Rollover Form Deadline” means a date that is no later than ten (10) calendar days before the Fairness Hearing.

1.33 “Gross Settlement Amount” means the sum of nineteen million U.S. dollars (USD \$19,000,000.00), contributed to the Qualified Settlement Fund as described in Article IV herein. The Gross Settlement Amount shall be the full and sole monetary payment to the Plaintiffs, Class Members, and Class Counsel made on behalf of Defendants in connection with this Settlement Agreement. Neither Defendants nor their insurers shall at any time have to pay more than the Gross Settlement Amount in connection with this Settlement.

1.34 “Inactive Participant” means any Class Member who, as of the date of the Preliminary Approval Order, has an account in the Plans with a balance greater than \$0.00 and is ineligible to make contributions to the account.

1.35 “Independent Fiduciary” means the person or entity selected by the Company in consultation with Class Counsel to serve as an independent fiduciary with respect to the Settlement Agreement for the purpose of rendering the determination described in Section 2.2 herein.

1.36 “Net Settlement Amount” means the Gross Settlement Amount, plus any interest or income earned on the Qualified Settlement Fund, less Administrative Expenses, Attorneys’ Fees and Expenses, any Service Awards, and any other Court-approved deductions.

1.37 “Non-Rollover-Electing Former Participant” means a Former Participant who has not submitted a completed, satisfactory Former Participant Rollover Form by the Former Participant Rollover Form Deadline set by the Court, or whose Former Participant Rollover Form is rejected by the Settlement Administrator.

1.38 “Notice” means the form of Court-approved notice of this Settlement that is disseminated to Class Members. The Parties shall propose that the Court approve the form of notice attached as Exhibit A hereto. The Notice to Former Participants will include the Former Participant Rollover Form.

1.39 “Parties” means Plaintiffs and Defendants.

1.40 “Plaintiffs’ Released Claims” means any and all actual or potential claims, actions, demands, rights, obligations, liabilities, damages, interest, attorneys’ fees, expenses, costs, expert or consulting fees, and any other liability whatsoever or causes of action, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, and whether class, derivative, or individual in nature, and whether known or unknown (including Unknown Claims as defined herein), against any of the Released Defendant Parties based on facts existing as of the Effective Date, regardless of when

the Class Member became a member of the Class:

- (a) That were asserted in the Action or that arise out of, relate to, are based on, or have any connection with any of the allegations, acts, omissions, purported conflicts, representations, misrepresentations, facts, events, matters, transactions or occurrences that were asserted in the Action (including any assertion set forth in any of the Complaints, and in any submissions made by Plaintiffs in connection with the Action or any other submission made by the Plaintiffs, Class Members, or their expert witnesses or Class Counsel in connection with the Action) or could have been asserted based on the same factual predicate, whether or not pleaded in the Complaints, including but not limited to those that arise out of, relate to, are based on, or have any connection with: (1) the overall structure, management, or monitoring of the Plans' investment menus; (2) use of Affiliated Funds in the Plans; (3) the selection, monitoring, oversight, retention, share classes, fees, costs, expenses, performance, or crediting rate of any of the Plans' Disputed Investments, or of the type of investment vehicle through which the Disputed Investments were offered in the Plans, or any other characteristics or attributes of the Plans' Disputed Investments; (4) the selection, monitoring, oversight, and retention of the Plans' default investment option; (5) the compliance with the Plans' governing documents and investment policy statements with respect to the selection, retention, and monitoring of the Plans' Disputed Investments; (6) the compliance with the Plans' governing documents and investment policy statements with respect to the selection, retention, and monitoring of the Plans' default investment option; (7) alleged self-dealing, conflicts of interest, or prohibited transactions in relation to the Plans' Disputed Investments; (8) disclosures or failures to disclose information concerning the Plans' Disputed Investments; (9) sub-transfer agency fees not paid or not recaptured in connection with the Plans' Disputed Investments; (10) the manner and process by which the Fixed Dollar Account's crediting rate was set for the Plans; and (11) any assertions with respect to any fiduciaries of the Plans (or the selection or monitoring of those fiduciaries) in connection with the foregoing;
- (b) that would be barred by *res judicata* based on the Court's entry of the Final Approval Order;
- (c) that arise from or relate to the direction to calculate, the calculation of, and/or the method or manner of the allocation of the Net Settlement Amount pursuant to the Plan of Allocation; or
- (d) that arise from or relate to the approval by the Independent

Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone.

Notwithstanding anything herein, the following shall not be included in the definition of Plaintiffs' Released Claims: (i) claims to enforce the Settlement Agreement, and (ii) claims for denial of benefits from the Plans.

1.41 "Plans" means the New York Life Insurance Company Employee Progress-Sharing Investment Plan and the New York Life Insurance Company Agents Progress-Sharing Investment Plan.

1.42 "Plan of Allocation" means the methodology for allocating and distributing the Net Settlement Amount as described in Article V herein.

1.43 "Preliminary Approval Order" means the order of the Court preliminarily approving the Settlement Agreement, in substantially the form submitted in connection with Plaintiffs' motion for preliminary approval of the Settlement

1.44 "PTE 2003-39" means U.S. Department of Labor Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75,632 (Dec. 31, 2003), as amended.

1.45 "Qualified Domestic Relation Order" means a judgment, decree, or order (including the approval of a property settlement) that is made pursuant to state domestic relations law (including community property law) and that relates to the provision of child support, alimony payments, or marital property rights for the benefit of a spouse, former spouse, child, or other dependent of an Active Participant, Inactive Participant, or Former Participant and which has been determined qualified pursuant to the Plans' procedures.

1.46 "Qualified Settlement Fund" means the interest-bearing settlement fund account to be established and maintained by the Escrow Agent as described in Article IV herein.

1.47 "Recordkeeper" means Alight, Inc., or any successor entity engaged to provide or responsible for providing recordkeeping services for the Plans.

1.48 "Released Defendant Parties" (each a "Released Defendant Party") means (a) each Defendant, each of the Committees, and each member of the Committees during the Class Period; (b) each Defendant's present, former, or future corporation(s), subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns; (c) with respect to (a) and (b), all of their affiliates, agencies, agents, assigns, associates, directors, employees, officers, parents, partners, representatives, subsidiaries, predecessors and successors, and all respective heirs, executors, administrators, agents, attorneys, personal representatives, predecessors, successors, stockholders, partners, subrogees, officers, directors, associates, controlling persons, employees, attorneys, insurers, and reinsurers; and (d) the Plans and any and all administrators, fiduciaries, parties in interest, and trustees of the Plans.

1.49 "Released Parties" means the Released Defendant Parties and Released

Plaintiff Parties, collectively.

1.50 “Released Plaintiff Parties” means each Plaintiff and Class Member, and Class Counsel.

1.51 “Rollover-Electing Former Participant” means a Former Participant who has submitted a completed, satisfactory Former Participant Rollover Form by the Former Participant Rollover Form Deadline set by the Court and whose Former Participant Rollover Form is accepted by the Settlement Administrator.

1.52 “Service Awards” means any service awards that the Court awards to the Plaintiffs for their participation in the Action.

1.53 “Settlement” or “Settlement Agreement” means the compromise and resolution embodied in this agreement and its exhibits.

1.54 “Settlement Administrator” means an independent contractor to be retained by Class Counsel, with Defendants’ approval, for purposes of administering the Settlement.

1.55 “Settlement Allocation Score” has the meaning ascribed to it in Section 5.1 herein.

1.53 “Settlement Website” means the internet website established by the Settlement Administrator as described in Section 3.3 herein.

1.54 “Unknown Claims” means any and all of Plaintiffs’ Released Claims which any Plaintiff or any Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendant Parties, and any and all of Defendants’ Released Claims which any Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Plaintiff Parties which if known by him, her or it might have affected his, her, or its decision(s) with respect to the release of the Released Parties, or might have affected his, her, or its decision(s) not to object to this Settlement Agreement. With respect to any and all of Plaintiffs’ Released Claims, the Parties stipulate and agree that upon the Effective Date, the Parties and Class Members shall be deemed to have waived, and by operation of the entry of the Final Approval Order shall have expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties acknowledge, and Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Plaintiffs’ Released Claims was separately bargained for and was a material and necessary element of the Settlement.

ARTICLE II

SETTLEMENT APPROVAL

2.1 Preliminary approval by Court. On or before February 26, 2024, Plaintiffs, through Class Counsel, shall apply to the Court for entry of the unopposed Preliminary Approval Order, in substantially the form attached hereto as Exhibit C, which shall include, among other provisions, a request that the Court:

- (a) preliminarily approve this Settlement subject to final review in connection with the Fairness Hearing;
- (b) approve the form and contents of the Notice (including the Former Participant Rollover Form to be sent to Former Participants) and hold that mailing copies of the Notice to Class Members by first class mail, postage prepaid complies fully with the requirements of Federal Rule of Civil Procedure 23, the United States Constitution, and any other applicable law;
- (c) preliminarily bar and enjoin all Class Members from the institution and prosecution of any of Plaintiffs’ Released Claims against any of the Released Defendant Parties and preliminarily bar and enjoin Defendants from the institution and prosecution of any of Defendants’ Released Claims against any of the Released Plaintiff Parties, pending final approval of this Settlement Agreement;
- (d) provide that Class Members may object to the Settlement prior to the Fairness Hearing according to a designated schedule; and
- (e) schedule a Fairness Hearing to (1) review comments and/or objections regarding this Settlement and/or Class Counsel’s request for any Attorneys’ Fees and Expenses and Service Awards, (2) consider the fairness, reasonableness, and adequacy of this Settlement Agreement, (3) consider whether the Court should issue a Final Approval Order approving this Settlement Agreement, awarding any Attorneys’ Fees and Expenses and Service Awards, approving Administrative Expenses incurred and a reserve for any anticipated future Administrative Expenses, and dismissing this Action with prejudice, and (4) consider such other matters as the Court may deem appropriate.

2.2 Review by Independent Fiduciary. The Company shall select and retain

the Independent Fiduciary, on behalf of the Plans, to determine whether to approve the Settlement and authorize Plaintiffs' Released Claims as exempt from certain prohibited transaction restrictions as set forth in PTE 2003-39 on behalf of the Plans.

(a) The Independent Fiduciary shall comply with all relevant requirements set forth in PTE 2003-39.

(b) The Independent Fiduciary shall notify the Company of its determination in writing and in accordance with PTE 2003-39, which notification shall be delivered no later than fifty (50) calendar days before the Fairness Hearing. The Company will provide Class Counsel with a copy of the Independent Fiduciary's written notification no later than fourteen (14) calendar days before the deadline to move for final approval of the Settlement, for the purpose of submitting the Independent Fiduciary's written notification to the Court in connection with the final approval process.

(c) If the Independent Fiduciary disapproves or otherwise does not authorize the Settlement Agreement, or refuses to approve the release of Plaintiffs' Released Claims on behalf of the Plans, then the Parties, through their counsel, shall meet and confer in good faith in an effort to modify the Settlement to satisfy the objections of the Independent Fiduciary to the Settlement. If the Parties are unable to reach agreement on any modification required by the Independent Fiduciary, the Defendants (and only the Defendants) may (but need not) terminate the Settlement Agreement in accordance with Section 9.2.

(d) The Parties shall comply with reasonable requests for information made by the Independent Fiduciary.

(e) All fees and expenses associated with the Independent Fiduciary's retention and determination shall be considered Administrative Expenses.

2.3 Final approval by Court. No later than fourteen (14) calendar days before the Fairness Hearing, or by such other deadline as specified by the Court, Class Counsel shall apply to the Court for entry of the Final Approval Order, which shall include, among other provisions, a request that the Court:

- (a) dismiss the Action with prejudice and without costs, except as contemplated by this Settlement Agreement;
- (b) decree that neither the Final Approval Order nor this Settlement Agreement constitutes an admission by any Defendant or any of the Released Defendant Parties of any liability or wrongdoing whatsoever;
- (c) bar and enjoin all Class Members from asserting any of Plaintiffs' Released Claims, on their own behalf or on behalf of the Class Members, or derivatively to secure relief for the Plans against any of the Released Defendant Parties;
- (d) bar and enjoin all Defendants from asserting any of Defendants' Released

Claims against any of the Released Plaintiff Parties;

- (e) determine that this Settlement Agreement is entered into in good faith and represents a fair, reasonable, and adequate settlement that is in the best interests of the Class Members;
- (f) order that each Class Member shall release Defendants, Defendants' Counsel, Plaintiffs, Plaintiffs' expert, Class Counsel, the Released Parties, and the Plans from any claims, liabilities, and attorneys' fees and expenses arising from the allocation of the Gross Settlement Amount or Net Settlement Amount pursuant to the Settlement (including the identification or classification of persons as having been defaulted into the Fixed Dollar Account for purposes of Section 5.1(a)(v) of the Settlement), and for all tax liability and associated penalties and interest as well as related attorneys' fees and expenses;
- (g) determine that all applicable CAFA requirements have been satisfied;
- (h) provide that the Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Active Participant, each Inactive Participant, and each Former Participant pursuant to the Plan of Allocation approved by the Court; and
- (i) preserve the Court's continuing and exclusive jurisdiction over the Parties and all Class Members to administer, construe, and enforce this Settlement Agreement in accordance with its terms for the mutual benefit of the Parties, but without affecting the finality of the Final Approval Order.

ARTICLE III

SETTLEMENT ADMINISTRATION

3.1 CAFA Notice. No later than ten (10) calendar days after Plaintiffs' filing of this Settlement Agreement with the Court and motion for preliminary approval of the Settlement, the Settlement Administrator shall provide appropriate notice of this Settlement Agreement to all appropriate federal officials and any appropriate state official of a state in which a Class Members resides, as specified in 28 U.S.C. § 1715(b). Upon completing such notice, the Settlement Administrator shall provide written notice to Class Counsel and Defendants' Counsel.

3.2 Notice to Class Members.

(a) The Company shall cause the Recordkeeper (or its designee) to provide to the Settlement Administrator all information necessary to disseminate the Notice to Class Members no later than thirty (30) calendar days after the entry of the Preliminary Approval Order, and shall provide all information necessary to implement the Plan of Allocation no later than sixty (60) days after Notices are mailed.

(b) No later than forty five (45) calendar days after the entry of the Preliminary Approval Order, or by such other deadline as specified by the Court, the Settlement Administrator shall send the Notice by first-class mail, postage prepaid to Class Members.

(c) The Notice shall be in the form approved by the Court, which shall be in substantially the form attached as Exhibit A hereto. The Notice to Former Participants will include the Former Participant Rollover Form.

(d) The Notice shall be sent to the last known address of each Class Member provided by the Recordkeeper (or its designee), unless an updated address is obtained by the Settlement Administrator through its efforts to verify the last known address provided by the Recordkeeper (or its designee). If any updated mailing address is obtained by the Settlement Administrator, the Settlement Administrator shall provide the address to the Company and the Recordkeeper for purposes of administration of the Plans.

(e) The Settlement Administrator shall use commercially reasonable efforts to locate any Class Member whose Notice is returned and mail such Notices to those Class Members one additional time.

(f) The Settlement Administrator shall post a copy of the Notice and the Former Participant Rollover Form on the Settlement Website.

(g) The Settlement Administrator shall be bound by the Confidentiality Order and must safeguard participant data and use processes consistent with the U.S. Department of Labor's cybersecurity standards. The Settlement Administrator shall use the data provided by the Company and the Plans' recordkeeper solely for the purpose of meeting its obligations as Settlement Administrator, and for no other purpose. The Parties shall have the right to approve a written protocol to be provided by the Settlement Administrator concerning how the Settlement Administrator will maintain and store information provided to it in order to ensure that reasonable and necessary precautions are taken to safeguard the privacy and security of such information.

3.3 Settlement Website.

(a) No later than forty five (45) calendar days after the entry of the Preliminary Approval Order, the Settlement Administrator shall establish the Settlement Website. The Settlement Administrator shall maintain the Settlement Website until one year after the Effective Date or thirty (30) calendar days after providing the notice referenced in Section 5.5, whichever is later, at which point the Settlement Administrator shall take down the Settlement Website.

(b) The Settlement Website shall contain a copy of the Notice, Former Participant Rollover Form, and relevant case documents, including but not limited to a copy of all documents filed with the Court in connection with the Settlement. No other information or documents will be posted on the Settlement Website unless agreed to in advance by the Parties in writing.

(c) The Settlement Website shall also include a toll-free telephone number and mailing address through which Class Members may contact the Settlement Administrator (or its designee) directly. With approval and input from Class Counsel and Defendants' Counsel, the Settlement Administrator shall develop a question-and-answer script for use with callers to the toll-free telephone number.

3.4 Distribution of Net Settlement Amount. The Settlement Administrator shall distribute the Net Settlement Amount to Class Members in accordance with the Plan of Allocation as described in Article V herein. Within thirty (30) calendar days after entry of the Final Approval Order, the Company shall use reasonable efforts to cause the Recordkeeper (or its designee) to provide an updated list of Active Participants and Inactive Participants prior to the distribution, so as to identify any such participants who have taken a full distribution from their account in the Plans and no longer have an account in the Plans with a balance greater than \$0.00.

3.5 Maintenance of records. The Settlement Administrator shall maintain reasonably detailed records of its activities carried out under this Settlement Agreement. The Settlement Administrator shall maintain all such records as required by applicable law in accordance with its business practices and provide the same to Class Counsel and Defendants' Counsel upon their request. The Settlement Administrator shall provide such information as may reasonably be requested by Plaintiffs or Defendants or their counsel relating to the administration of the Settlement Agreement.

3.6 No liability. Defendants, Defendants' Counsel, Plaintiffs, Class Counsel, Plaintiffs' expert, the Plans, and the Released Parties shall have no responsibility or liability whatsoever with respect to:

- (a) any act, omission, or determination of the Settlement Administrator;
- (b) any act, omission, or determination of another party or another party's counsel or designees or agents in connection with the administration of the Settlement Agreement;
- (c) the management, investment, or distribution of the Qualified Settlement Fund; or
- (d) the determination, administration, calculation, or payment of any claims asserted against the Qualified Settlement Fund (including the identification or classification of persons as having been defaulted into the Fixed Dollar Account for purposes of Section 5.1(a)(v) of the Settlement).

ARTICLE IV
ESTABLISHMENT OF QUALIFIED SETTLEMENT FUND

4.1 Establishment of the Qualified Settlement Fund. Following the entry of the Preliminary Approval Order, the Escrow Agent shall establish the Escrow Account. The Parties agree that the Escrow Account is intended to be, and will be, an interest-bearing Qualified Settlement Fund within the meaning of U.S. Department of Treasury Regulation § 1.468B-1 (26 C.F.R. § 1.468B-1). In addition, the Escrow Agent timely shall make such elections as necessary or advisable to carry out the provisions of this paragraph, including the “relation-back election” (as defined in 26 C.F.R. § 1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and deliver, in a timely and proper manner, the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. Pending final distribution of the Net Settlement Amount in accordance with the Plan of Allocation, the Escrow Agent will maintain the Escrow Account.

4.2 Funding of the Qualified Settlement Fund.

(a) In consideration of all the promises and agreements set forth in the Settlement Agreement, the Company and/or its insurers will contribute, or cause to be contributed, the Gross Settlement Amount to the Qualified Settlement Fund. No other Defendant shall have any obligation to contribute financially to the Qualified Settlement Fund.

(b) Within thirty (30) calendar days after the later of (i) the date the Preliminary Approval Order is entered, or (ii) the Escrow Account described in Section 4.1 is established and the Escrow Agent shall have furnished to Defendants in writing the Escrow Account name, IRS W-9 form, and all necessary wiring instructions, the Company or its insurers shall deposit thirty-three (33) percent of the Gross Settlement Amount (\$6,270,000.00) to the Qualified Settlement Fund.

(c) Within thirty (30) calendar days after the Effective Date of the Settlement, the Company or its insurers shall contribute the balance of the Gross Settlement Amount (\$12,730,000.00) to the Qualified Settlement Fund. This funding, in the aggregate, together with any interest and investment earnings thereon, shall constitute the Qualified Settlement Fund.

(d) All expenses of Notice and other Administrative Expenses necessary to effectuate the Settlement prior to the date of the entry of the Final Approval Order shall be paid out of the Qualified Settlement Fund without prior Court approval.

4.3 Qualified Settlement Fund administrator. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 468B), and the regulations promulgated thereunder, the administrator of the Qualified Settlement Fund shall be the Escrow Agent. The Escrow Agent, or the Settlement Administrator on its behalf, shall timely and properly cause to be filed all informational and other tax returns necessary or advisable with respect to the Gross Settlement Amount (including without limitation applying for a taxpayer

identification number for the Qualified Settlement Fund and filing the returns described in 26 C.F.R. § 1.468B-2(k). Such returns, as well as the election described in Section 4.1, shall be consistent with this Article and, in all events, shall reflect that all taxes (including any estimated taxes, interest, or penalties) on the income earned by the Qualified Settlement Fund shall be deducted and paid from the Qualified Settlement Fund as described in Section 4.5 herein.

4.4 Investment of the Qualified Settlement Fund. The Escrow Agent shall invest the Qualified Settlement Fund in short-term United States agency or Treasury securities or other instruments backed by the full faith and credit of the United States government or an agency thereof, or fully insured by the United States government or an agency thereof, and shall reinvest the proceeds of these investments as they mature in similar instruments at their then-current market rates.

4.5 Taxes on the income of the Qualified Settlement Fund. All taxes on any income of the Qualified Settlement Fund and expenses and costs incurred in connection with the taxation of the Qualified Settlement Fund (including, without limitation, expenses of tax attorneys and accountants) are Administrative Expenses and shall be timely paid by the Escrow Agent out of the Qualified Settlement Fund. The Escrow Agent, or the Settlement Administrator on its behalf, shall be responsible for making provision for the payment from the Qualified Settlement Fund of all taxes and tax expenses, if any, owed with respect to the Qualified Settlement Fund and for all tax reporting, remittance, and/or withholding obligations, if any, for amounts distributed from it. Defendants, Defendants' Counsel, Released Defendant Parties, and Class Counsel have no responsibility or any liability for any taxes or tax expenses owed by, or any tax reporting or withholding obligations, if any, of the Qualified Settlement Fund.

4.6 The Escrow Agent shall not disburse the Qualified Settlement Fund or any portion except as provided in this Settlement Agreement, in an order of the Court, or in a subsequent written stipulation between Class Counsel and Defendants' Counsel. Subject to the orders of the Court, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of this Settlement Agreement.

ARTICLE V. PLAN OF ALLOCATION

5.1 Calculation of payments to individual Class Members. Payments to each Class Member shall be calculated by the Settlement Administrator as follows, based on information provided by the Recordkeeper:

(a) For each Class Member, the Settlement Administrator shall determine a *Settlement Allocation Score*. A Class Member's *Settlement Allocation Score* shall be the sum of his or her *Fund Allocation Scores* for each of the Disputed Investments, determined as follows:

(i) MainStay U.S. Epoch All Cap Fund: (average personal month-end balance² in the fund from March 2015 to December

² Neither the Company, the Plans, nor the Recordkeeper have end-of-month participant balance data as of the end of

2020), *divided by* (average aggregate month-end balance in the fund from March 2015 to December 2020 for all Class Members), *multiplied by* (54,989,635)

(ii) MainStay U.S. Epoch Small Cap Fund: (average personal month-end balance in the fund from March 2015 to February 2019), *divided by* (average aggregate month-end balance in the fund from March 2015 to February 2019 for all Class Members), *multiplied by* (9,568,683)

(iii) MainStay Retirement Funds: (average personal month-end balance in all such funds from March 2015 to February 2019), *divided by* (average aggregate month-end balance in all such funds from March 2015 to February 2019 for all Class Members), *multiplied by* (3,490,229)

(iv) MainStay Income Builder Fund: (average personal month-end balance in the fund from March 2015 to November 2022), *divided by* (average aggregate month-end balance in the fund from March 2015 to November 2022 for all Class Members), *multiplied by* (4,647,776)

(v) Fixed Dollar Account (FDA): (average personal month-end balance in the FDA from March 2015 to December 2023), *divided by* (average aggregate month-end balance in the FDA from March 2015 to December 2023 for all Class Members), *multiplied by* (8,265,491). For any Class Member identified as enrolled in the FDA by default during the Class Period, their Fund Allocation Score for the FDA shall be further multiplied by 1.5. The Parties agree that, for purposes of this calculation only, the Class Members identified as enrolled in the FDA by default will be those Class Members identified as having been defaulted into the FDA by Plaintiffs' expert Dr. Pomerantz in connection with his October 13, 2023 expert report (based on data provided by Defendants and the Recordkeeper), and that neither the Parties nor the Recordkeeper will conduct any further or supplemental analysis of defaulted Class Members.

(b) The Settlement Administrator shall determine the Entitlement Amount of each Class Member by calculating each such Class Member's pro rata share of the Net Settlement Amount based on his or her *Settlement Allocation Score* compared to the sum of the *Settlement Allocation Scores* for all Class Members. If the dollar amount of the settlement payment to a Class Member is calculated by the Settlement Administrator to be less than \$2.00, then that Class Member's payment or pro rata share shall be zero for all purposes, and shall be

May, September, and November 2015, or July and August 2016. The calculations described in Section 5.1 will therefore omit those months.

reallocated among the remaining Class Members on a pro rata basis.

(c) The aggregate of all Class Members' Entitlement Amounts may not exceed the Net Settlement Amount. In the event that the Settlement Administrator determines that aggregate monetary payment pursuant to the Plan of Allocation would exceed the Net Settlement Amount, the Settlement Administrator is authorized to make such pro rata changes as are necessary to ensure that the aggregate monetary payment pursuant to the Plan of Allocation does not exceed the Net Settlement Amount.

5.2 Payments to Active Participants and Inactive Participants.

(a) Upon completing the calculation of each Class Member's Entitlement Amount and no later than thirty (30) calendar days following the Effective Date, the Settlement Administrator shall provide Defendants' Counsel, Class Counsel, and the Recordkeeper information in a mutually agreeable format concerning each Active Participant's and each Inactive Participant's Entitlement Amount, and any other information requested by the Company or the Recordkeeper as necessary to effectuate this Article.

(b) No later than twenty (20) calendar days after completing the steps described in Section 5.2(a) herein and upon written notice to the Company and the Recordkeeper, the Settlement Administrator shall effect a transfer from the Qualified Settlement Fund to the Plans of all monetary payments payable to Active Participants and Inactive Participants. The Recordkeeper shall thereafter credit the individual account in the Plans of each Active Participant and Inactive Participant in an amount equal to that individual's Entitlement Amount, so long as the Entitlement Amount is not less than \$2.00.

(c) Each Active Participant's Entitlement Amount shall be invested in accordance with and in proportion to such Active Participant's investment elections then on file for new contributions to his or her account in the Plans. For Inactive Participants and for any Active Participant who does not have an investment election on file, then such individual shall be deemed to have directed payment of his or her Entitlement Amount to be invested in the Plans' default investment.

(d) If, as of the date on which the Recordkeeper credits the individual account in the Plans of each Active Participant and Inactive Participant with his or her Entitlement Amount, an individual believed to be an Active Participant or an Inactive Participant no longer has an account in the Plans with a balance greater than \$0.00, he or she will be treated as a Former Participant. The Recordkeeper shall promptly transmit a list of such individuals to the Settlement Administrator, who shall effectuate payment to such individuals in accordance with Section 5.3 herein.

5.3 Payments to Former Participants.

(a) Each Former Participant (or the Beneficiaries or Alternate Payees of Former Participants) will have the opportunity to elect a tax-qualified rollover of his or her Entitlement Amount to an individual retirement account or other eligible employment plan,

which he or she has identified on the Former Participant Rollover Form, provided that the Former Participant supplies adequate information to the Settlement Administrator by the Former Participant Rollover Form Deadline to effect the rollover. Payments to each Former Participant shall depend on whether each is a Rollover- Electing Former Participant or a Non-Rollover- Electing Former Participant:

(i) Rollover-Electing Former Participants. Upon completing the calculation of each Class Member's Entitlement Amount and no later than fifty (50) calendar days following the Effective Date, the Settlement Administrator shall effect a rollover from the Qualified Settlement Fund to the individual retirement account or other eligible employer plan elected by each Rollover-Electing Former Participant in his or her Former Participant Rollover Form (if the conditions for such rollover are satisfied) and any associated paperwork necessary to transfer such Entitlement Amount by rollover, so long as the Entitlement Amount is not less than \$2.00. If the Settlement Administrator is unable to effectuate the rollover instructions of any Rollover-Electing Former Participant as provided in his or her Former Participant Rollover Form, he or she will be treated as a Non-Rollover- Electing Former Participant.

(ii) Non-Rollover-Electing Former Participants. Upon completing the calculation of each Class Member's Entitlement Amount and no later than fifty (50) calendar days following the Effective Date, the Settlement Administrator shall issue a check from the Qualified Settlement Fund to each Non-Rollover-Electing Former Participant, in the amount of each Former Participant's Entitlement Amount (less any withholdings), so long as the Entitlement Amount is not less than \$2.00.

5.4 Payments to Beneficiaries and Alternate Payees.

(a) Beneficiaries of Active Participants or Inactive Participants that are entitled to receive all or a portion of an Active Participant's or Inactive Participant's Entitlement Allocation under this Article shall receive such settlement payments in the form of a check issued by the Settlement Administrator. Beneficiaries of Former Participants that are entitled to receive all or a portion of a Former Participant's Entitlement Allocation under this Article will receive such settlement payments under the methods described in Section 5.3 for Former Participants.

(b) Alternate Payees of Active Participants or Inactive Participants that are entitled to receive all or a portion of an Active Participant's or Inactive Participant's Entitlement Allocation under this Article shall receive such settlement payments pursuant to the terms of the applicable Qualified Domestic Relations Order. Alternate Payees of Former Participants that are entitled to receive all or a portion of a Former Participant's Entitlement Allocation under this Article will receive such settlement payments under the methods described in Section 5.3 for Former Participants.

(c) The Settlement Administrator shall have sole and final discretion to determine the amounts to be paid to Beneficiaries and Alternate Payees in accordance with the Plan of Allocation set forth in this Article and as ordered by the Court.

(d) All checks issued in accordance with the Plan of Allocation shall be mailed to the address of each Class Member (or his or her Beneficiary or Alternate Payee) provided by the Recordkeeper or any updated address obtained by the Settlement Administrator.

(e) All checks issued in accordance with the Plan of Allocation shall expire no later than one hundred twenty (120) calendar days after their issue date. All checks that are undelivered or are not cashed before their expiration date shall revert to the Qualified Settlement Fund, which limitation shall be printed on the face of each check. The voidance of checks shall have no effect on Class Members' release of claims, obligations, representations, or warranties as provided herein, which shall remain in full effect.

5.5 Notice of completion of Plan of Allocation. Within ten (10) business days of completing all aspects of the Plan of Allocation, the Settlement Administrator shall provide written notice of its implementation of the Plan of Allocation to Class Counsel and Defendants' Counsel. Such notice shall provide, in reasonable detail, a summary of the steps taken to implement the Plan of Allocation.

5.6 Disbursement of undistributed monies from the Qualified Settlement Fund. No sooner than one hundred and fifty (150) calendar days following the last date on which any check was mailed pursuant to Section 5.4(d) herein, any portion of the Qualified Settlement Fund remaining after distributions have been made, including Administrative Expenses, taxes and tax expenses, Attorneys' Fees and Expenses, any Service Awards, and any other Court-approved deductions, shall be paid to the Plans for the purpose of defraying administrative fees and expenses of the Plans.

5.7 Responsibility for taxes. Each Class Member who receives a payment pursuant to the Settlement Agreement shall be fully and ultimately responsible for payment of any and all federal, state or local taxes resulting from or attributable to the payment received by such person. Each Class Member shall hold Defendants, Defendants' Counsel, Released Defendant Parties, Class Counsel, and the Settlement Administrator harmless from (a) any tax liability, including without limitation penalties and interest, related in any way to payments or credits under the Settlement Agreement, and (b) the costs (including, without limitation, fees, costs and expenses of attorneys, tax advisors, and experts) of any proceedings (including, without limitation, any investigation, response, and/or suit), related to such tax liability.

5.8 Restorative Payments. The Net Settlement Amount to be allocated and distributed to the Former Participants and to the Plans for distribution to Active and Inactive Participants in accordance with the Plan of Allocation shall constitute "restorative payments" within the meaning of Revenue Ruling 2002-45 for all purposes.

ARTICLE VI **ATTORNEYS' FEES AND EXPENSES AND CLASS REPRESENTATIVE** **SERVICE AWARDS**

6.1 Attorneys' Fees and Expenses. No later than fourteen (14) days prior to the deadline provided in the Preliminary Approval Order for Class Members to object to the

Settlement Agreement, Class Counsel may file an application with the Court for payment of their reasonable Attorneys' Fees and Expenses, to be deducted from the Gross Settlement Amount, as well as for Administrative Expenses incurred to date and a reserve for anticipated future Administrative Expenses. Notwithstanding anything herein, the Court's failure to approve, in whole or in part, any application for Attorneys' Fees and Expenses sought by Class Counsel shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination of the Settlement.

6.2 Service Awards. No later than fourteen (14) days prior to the deadline provided in the Preliminary Approval Order for Class Members to object to the Settlement Agreement, Class Counsel may file an application with the Court for payment of reasonable Service Awards to Plaintiffs. Notwithstanding anything herein, the Court's failure to approve, in whole or in part, any application for a Service Award to Plaintiffs shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination of the Settlement.

6.3 Payment of Attorneys' Fees. Attorneys' fees shall be paid from the Escrow Account upon the Court's granting final approval of the Settlement and upon award of such attorneys' fees by the Court notwithstanding any objections or appeals of the Settlement or the requested fee award. If the Settlement is terminated pursuant to the terms of this Settlement Agreement or, if as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of Attorneys' Fees and Expenses is reduced or reversed, Class Counsel shall make the appropriate refund or repayment, along with interest at the same rate of interest earned by the Qualified Settlement Fund, in full no later than twenty (20) days after (a) receiving notice of a termination of the Settlement, or (b) any order reducing or reversing the award of Attorneys' Fees and Expenses, becoming final.

ARTICLE VII

RELEASES AND COVENANT NOT TO SUE

7.1 Releases. Subject to Article IX below, the obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition and settlement of any and all of Plaintiffs' Released Claims.

(a) Upon the Effective Date, Plaintiffs and every Class Member on behalf of themselves, their heirs, executors, administrators, successors, and assigns, and the Plans (subject to Independent Fiduciary approval as described in Section 2.2 herein) shall, with respect to each and every Plaintiffs' Released Claim, be deemed to fully, finally and forever release, relinquish and forever discharge each and every Plaintiffs' Released Claim (including Unknown Claims) against any and all of the Released Defendant Parties, and forever shall be enjoined from prosecuting any such Plaintiffs' Released Claim, whether or not Class Members received the Notice, whether or not the Class Members received a payment in connection with this Settlement Agreement, whether or not such Class Members have filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Expenses, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed.

(b) Upon the Effective Date, Defendants, on behalf of themselves and their successors and assigns shall, with respect to each and every Defendants' Released Claim, be deemed to fully, finally and forever release, relinquish and forever discharge each and every Defendants' Released Claim (including Unknown Claims), and forever shall be enjoined from prosecuting any such Defendants' Released Claim against any and all of the Released Plaintiff Parties.

(c) Nothing herein shall preclude any action to enforce the Settlement Agreement.

7.2 Covenant not to sue. As of the Effective Date, Plaintiffs, the Class Members and the Plans (subject to Independent Fiduciary approval as described in Section 2.2 herein) acting individually or together, or in combination with others, shall not sue or seek to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to a U.S. Internal Revenue Service determination letter proceeding, a U.S. Department of Labor proceeding, an arbitration, or a proceeding before any state insurance or other department or commission), any cause of action, demand, or claim adverse to the Released Defendant Parties on the basis of, in connection with, relating to, or arising out of any of Plaintiffs' Released Claims. Nothing herein shall preclude any action to enforce the Settlement Agreement.

7.3 The Plaintiffs, Class Counsel, the Plans, or the Class Members may hereafter discover facts in addition to or different from those that they know or believe to be true with respect to the Plaintiffs' Released Claims. Such facts, if known by them, might have affected the decision to settle with Defendants, the Plans, and the Released Defendant Parties, or the decision to release, relinquish, waive, and discharge the Plaintiffs' Released Claims, or the decision of a Class Member not to object to the Settlement. Notwithstanding the foregoing, the Plaintiffs and each Class Member and the Plans shall expressly, upon the Settlement Effective Date, be deemed to have, and by operation of the Final Approval Order, shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged any and all Plaintiffs' Released Claims, including Unknown Claims. The Plaintiffs and each of the Class Members and the Plans acknowledge and shall be deemed by operation of the Final Approval Order to have acknowledged that the foregoing waiver was bargained for separately and is a key element of the Settlement embodied in this Settlement Agreement of which this release is a part.

ARTICLE VIII **REPRESENTATIONS AND WARRANTIES**

8.1 Parties' representations and warranties. The Parties represent and warrant as follows, and each Party acknowledges that each other Party is relying on these representations and warranties in entering into the Settlement Agreement:

- (a) that they are voluntarily entering into the Settlement Agreement as a result of arm's-length negotiations, and that in executing this Settlement Agreement they are relying solely upon their own judgment, belief, and knowledge, and upon the advice and recommendations of counsel, concerning the nature, extent, and

duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof;

- (b) that they assume the risk of mistake as to facts or law;
- (c) that they recognize that additional evidence may come to light, but that they nevertheless desire to avoid the expense and uncertainty of litigation by entering into the Settlement Agreement;
- (d) that they have carefully read the contents of the Settlement Agreement, and the Settlement Agreement is signed freely by each individual executing the Settlement Agreement on behalf of each Party; and
- (e) that they have made such investigation of the facts pertaining to the subject matter of the Settlement Agreement as they deem necessary.

8.2 Signatories' representations and warranties. The persons executing the Settlement Agreement represent that they have been duly authorized to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Settlement Agreement in order to effectuate its terms.

ARTICLE IX **TERMINATION**

9.1 Right to terminate by each Party. Each Party shall have the right to terminate and abandon the Settlement Agreement by providing written notice of their election to do so to the other Party no later than fourteen (14) calendar days after:

- (a) the Court declines to approve the Settlement Agreement or any material part of it;
- (b) the Court declines to enter the Preliminary Approval Order or materially modifies the contents of the Preliminary Approval Order;
- (c) the Court declines to enter the Final Approval Order or materially modifies the contents of the Final Approval Order; or
- (d) the Final Approval Order is vacated, reversed, or modified in any material respect on any appeal or other review or in a collateral proceeding occurring prior to the Effective Date.

Notwithstanding anything herein, no order of the Court, or modification or reversal on appeal of any order of the Court, solely concerning Attorneys' Fees and Expenses or any Service Awards shall constitute grounds for termination of the Settlement Agreement.

9.2 Right to terminate by Defendants. If the Independent Fiduciary

disapproves or otherwise does not authorize the Settlement, or refuses to approve the Plans' release of Plaintiffs' Released Claims, and the parties are unable to modify the Settlement to address the Independent Fiduciary's objections to the Settlement after meeting and conferring in good faith in accordance with Section 2.2(c), Defendants (and only Defendants) shall have the right to terminate and abandon the Settlement Agreement. In such an event, no later than fourteen (14) calendar days after receipt of the Independent Fiduciary's determination, Defendants shall provide written notice to Plaintiffs of their election to exercise their right to terminate and abandon the Settlement Agreement.

9.3 Right to terminate by Plaintiffs. Plaintiffs shall have the right to terminate and abandon the Settlement Agreement in the event that the Company and/or its insurers fail to fund the Settlement in accordance with Section 4.2.

9.4 Reversion to prior positions. If the Settlement Agreement is terminated in accordance with this Article, then (i) the Parties and Class Members will be restored to their respective positions immediately before the execution of the Settlement Agreement, (ii) the Gross Settlement Amount, plus all interest and accretions thereto shall revert to the Company and its insurers based on their respective contributions to the Escrow Account (subject to Section 9.5 below), (iii) this Action shall proceed in all respects as if the Settlement Agreement and any related orders had not been entered, (iv) any order entered by the Court pursuant to the terms of this Settlement Agreement shall be treated as vacated *nunc pro tunc*, (v) the fact of this Settlement Agreement and the terms contained herein shall not be admissible in any proceeding for any purpose, and (vi) the Parties expressly and affirmatively reserve all claims, remedies, defenses, arguments, and motions as to all claims and requests for relief that might have been or might be later asserted in the Action.

9.5 In the event that the Settlement Agreement is terminated, Administrative Expenses incurred prior to the termination shall be paid first from the interest earned, if any, on the Qualified Settlement Fund. Administrative Expenses in excess of the interest earned on the Qualified Settlement Fund shall be split evenly and paid by Class Counsel, on the one hand, and the Company and/or its insurers, on the other hand.

ARTICLE X

NO ADMISSION OF WRONGDOING

10.1 The Settlement Agreement, whether or not consummated, and any proceedings taken pursuant to it, is for settlement purposes only and entered into solely for the purpose of avoiding possible future expenses, burdens, risks, or distractions of litigation, and Defendants and the Released Defendant Parties deny any and all wrongdoing. Defendants and the Released Defendant Parties specifically and expressly deny any and all liability in connection with any claims which have been made or could have been made, or which are the subject matter of, arise from, or are connected, directly or indirectly, with or related in any way to the Action, including, but not limited to, any violation of ERISA or any other any federal or state law (whether statutory or common law), rule, or regulation. Defendants and the Released Defendant Parties additionally specifically and expressly deny all allegations of wrongdoing made in any of the Complaints and in any submissions made by Plaintiffs in connection with the Action or any other submission made by the Plaintiffs, Class Members, or their expert witnesses or Class

Counsel in connection with the Action. Defendants and the Released Defendant Parties further specifically and expressly deny that the Plaintiffs, the Class Members, the Plans, or any of the Plans' current or former participants suffered any losses. Defendants and the Released Defendant Parties maintain that they acted prudently and loyally at all times when acting in any fiduciary capacity with respect to the Plans.

10.2 Based upon their investigation, prosecution, and mediation of the case, Plaintiffs and Class Counsel have concluded that the terms and conditions of this Settlement Agreement are fair, reasonable, and adequate to Plaintiffs and the Settlement Class, and in their best interests. The Settlement Agreement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Plaintiffs of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of Defendants' defenses to liability had any merit.

10.3 The Settlement Agreement, whether or not consummated, and any negotiations, proceedings, or agreements relating to the Settlement Agreement, and any matters arising in connection with settlement negotiations, proceedings, or agreements:

(a) shall not be offered or received against Defendants, or any of the Released Defendant Parties as evidence of, or be construed as or deemed to be evidence of, any presumption, concession, or admission by Defendants or a Released Defendant Party of the truth of any fact alleged by Plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing on the part of Defendants or any of the Released Defendant Parties, or the appropriateness of certifying a non-settlement class;

(b) shall not be offered or received against Defendants or any of the Released Defendant Parties as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by Defendants or any of the Released Defendant Parties;

(c) shall not be offered or received against Defendants or any of the Released Defendant Parties as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against Defendants or any of the Released Defendant Parties, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement; provided, however, that if this Settlement Agreement is approved by the Court, Defendants or the Released Defendant Parties may refer to it to effectuate the liability protection granted them hereunder; and

(d) shall not be construed against Defendants or any of the Released Defendant Parties as an admission or concession that the consideration to be given hereunder represents the amount which could or would have been recovered after trial of the Action.

ARTICLE XI
MISCELLANEOUS

11.1 Exhibits included. The exhibits to the Settlement Agreement are integral parts of the Parties' agreement and are incorporated by reference as if set forth herein.

11.2 Cooperation. Class Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Court entry of the Preliminary Approval Order and Final Approval Order.

11.3 Non-Disparagement.

- (a) While maintaining their position that the claims asserted in the Action are meritorious, Class Counsel shall not make any public statements (whether or not for attribution) that disparage the business, conduct, or reputation of any Defendants, Released Defendant Parties, or Defendants' Counsel, that characterize the discovery record in the Action as it relates to Defendants' oversight of the Plans, or characterize the discovery record in the Action more generally in a way that suggests Plaintiffs would have prevailed at trial. While maintaining their position that the claims asserted in the Action are not meritorious, Defendants and Defendants' Counsel shall not make any public statements (whether or not for attribution) that disparage the business, conduct, or reputation of Plaintiffs or Class Counsel relating to the Action. Nothing in this paragraph shall prevent Class Counsel, Defendants, or Defendants' Counsel from discussing public information about the Action, including the claims alleged, the legal arguments made by the parties, or the terms or benefits of the Settlement.
- (b) Plaintiffs agree that they will not make any disparaging statements about the Defendants, Released Defendant Parties, or Defendants' Counsel relating to the Action that are (i) known to be false or are deliberate or reckless falsehoods, (ii) misleading, defamatory or otherwise unlawful, (iii) attacks upon Defendants, the Released Defendant Parties, or Defendants' Counsel in a manner reasonably calculated to harm their reputation and reduce their income, or (iv) false or misleading and deliberately inflict on Defendants, the Released Defendant Parties, or Defendants' Counsel economic harm unnecessary to legitimate concerted activities. This paragraph does not prevent Plaintiffs from maintaining their position that the claims asserted in the Action are meritorious, or engaging in any speech or conduct that is protected by the National Labor Relations Act.

11.4 Compliance with Confidentiality Order. Within one hundred (100) calendar days after the Effective Date, the Parties shall either (a) return to the producing parties,

or (b) destroy, all documents, communications, or things produced in discovery under a claim of confidentiality pursuant to the Confidentiality Order, including, but not limited to, documents, information, or things produced under a claim of privilege. Each Party shall serve a written notice to each producing party certifying that the Party has carried out the obligations imposed by this Section 11.4. The Parties, Class Counsel, and Defendants' Counsel agree that at all times they will honor the requirements of the Confidentiality Order, notwithstanding the settlement of the Action.

11.5 Entire agreement. This Settlement Agreement and all of the exhibits appended hereto constitute the entire agreement of the Parties with respect to their subject matter and supersede any prior agreement, whether written or oral, as to that subject matter. No representations or inducements have been made by any Party hereto concerning the Settlement Agreement or its exhibits other than those contained and memorialized in such documents. The provisions of the Settlement Agreement and its exhibits may not be modified or amended, nor may any of their provisions be waived, except by a writing signed by all Parties hereto or their successors-in-interest.

11.6 Waiver. The waiver by any Party of a breach of the Settlement Agreement by any other Party shall not be deemed a waiver of any other breach of the Settlement Agreement.

11.7 Construction of agreement. This Settlement Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that the Settlement Agreement is the result of arm's-length negotiations between the Parties and all Parties have contributed substantially and materially to its preparation.

11.8 Headings. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

11.9 Governing law. The Settlement Agreement and all documents necessary to effectuate it shall be governed by the internal laws of the State of New York without regard to its conflict of law doctrines, except to the extent that federal law requires that federal law govern, and except that all computations of time with respect to the Settlement Agreement shall be governed by Federal Rule of Civil Procedure 6.

11.10 Fees and expenses. Except as otherwise expressly set forth herein, each Party shall pay all fees, costs, and expenses incurred in connection with the Action, including fees, costs, and expenses incident to the negotiation, preparation, or compliance with the Settlement Agreement, and including any fees, expenses, and disbursements of its counsel and other advisors. Nothing in the Settlement Agreement shall require Defendants or their insurers to pay any monies other than as expressly provided herein.

11.11 Execution in counterparts. The Settlement Agreement may be executed in one or more counterparts and may be executed by facsimile signature. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties shall exchange among themselves signed counterparts.

11.12 Notices. Unless otherwise provided herein, any notice, demand, or other communication under the Settlement Agreement (other than Notices to Class Members or other notices provided at the direction of the Court) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and delivered by hand, sent by registered or certified mail postage prepaid, or delivered by reputable express overnight courier as follows:

(a) if to Plaintiffs:

Michelle C. Yau
COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Ave. NW • Fifth Floor
Washington, DC 20005

(b) if to Defendants:

James O. Fleckner
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, Massachusetts 02210

11.13 Retention of jurisdiction. The Parties shall request that the Court retain jurisdiction of this matter after the Effective Date and enter such orders as are necessary or appropriate to effectuate the terms of the Settlement Agreement.


AGREED TO ON BEHALF OF PLAINTIFFS Amy Laurence (as a surviving beneficiary and Court-approved substitute party for Stuart Krohnengold), Wayne Antoine, Lee Webber, Anthony Medici, Joseph Bendrihem, Larry Gilbert, Rafael Musni, Thomas Lantz, Sandra Scanni, and Claudia Gonzalez, individually and as Class Representatives.

Dated: 2/22/2024


Michelle C. Yau
Cohen Milstein Sellers & Toll PLLC
1100 New York Ave. NW • Fifth Floor
Washington, DC 20005
Tel: (202) 408-4600
myau@cohenmilstein.com

AGREED TO ON BEHALF OF DEFENDANTS New York Life Insurance Company; the Fiduciary Investment Committee; the Board of Trustees; Katherine O'Brien; Anthony R. Malloy; Yie-Hsin Hung; Arthur A. Seter; Scott L. Lenz; and Robert J. Hynes.

Dated: 2/22/2024

DocuSigned by:

7C984F63E4AB4C5
James O. Fleckner

Goodwin Procter LLP
100 Northern Avenue
Boston, MA 02210
Tel: (617) 570-1000
jfleckner@goodwinlaw.com