

# EXHIBIT A

## CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Settlement Agreement”) is entered into between and among the Plaintiffs, the Plan and Settlement Class, and Defendant.

### **1. Article 1 – Recitals**

**1.1** On April 11, 2022, Plaintiffs Patrick L. Gaines, Jessica J. Kelly, and Anthony Tse, individually and as representatives of a class of participants and beneficiaries of the BDO USA, LLP Retirement Plan (the “Plan”), filed their complaint in the United States District Court for the Northern District of Illinois. Case No. 22-01878, Doc. 1 (the “Lawsuit”). Plaintiffs brought this action under 29 U.S.C. §§ 1109 and 1132 alleging that Defendants BDO USA, P.C. (“BDO”),<sup>1</sup> the Board of Directors of BDO, and the Retirement Plan Committee breached their fiduciary duties relating to the management, operation, and administration of the Plan. Plaintiffs sought to recover all losses to the Plan resulting from each breach of duty under 29 U.S.C. § 1109(a) and other equitable and remedial relief.

**1.2** On March 21, 2023, the district court granted in part and denied in part Defendants’ motion to dismiss (Doc. 28).

**1.3** On December 14, 2023, the parties engaged in mediation and reached an agreement on all terms to fully and finally resolve all claims and to certify a settlement class defined as follows:

The Class Representatives and all persons who participated in the Plan at any time during the Class Period, including any Beneficiary of a deceased Person who participated in the Plan at any time during the Class Period, and any Alternate Payee of a Person subject to a QDRO who participated in the Plan at any time during the Class Period, excluding Defendants including the Board of Directors of BDO, and the members of the Retirement Plan Committee of BDO.

**1.4** The terms of the parties’ settlement are memorialized in this Settlement Agreement. The settlement resolves all of the Plaintiffs’ claims in the Lawsuit and waives all parties’ rights to appeal the Court’s dismissal ruling of Defendants’ Motion to Dismiss.

**1.5** The Settlement Class Representatives and Class Counsel consider it desirable and in the Settlement Class Members’ best interests that the claims in the Lawsuit be settled on behalf of the Settlement Class Representatives and the Settlement Class Members upon the terms set forth below, and they have concluded that such terms are fair, reasonable, and adequate and that this Settlement will result in benefits to the Settlement Class Representatives and the Settlement Class Members.

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<sup>1</sup> BDO converted from a limited liability partnership to a professional corporation in August 2023.

- 1.6 Defendants admit no wrongdoing or liability with respect to any of the allegations or claims in the Lawsuit and maintain that the Plan was managed, operated, and administered in full compliance with ERISA and applicable regulations. This Settlement Agreement, and the discussions between the parties preceding it, shall in no event constitute, be construed as, or be deemed evidence of, an admission or concession of fault or liability of any kind by Defendants or any of the Released Parties, as defined below.
- 1.7 The parties, as defined below, have concluded it is desirable that this matter be finally settled upon the terms and conditions set forth in this Settlement Agreement.
- 1.8 Therefore, the parties, in consideration of the promises, covenants, and agreements herein described, acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree to the terms of this Settlement Agreement.

## **2. Article 2 – Definitions**

As used in this Settlement Agreement and the Exhibits hereto, unless otherwise defined, the following terms have the meanings specified below:

- 2.1 “Active Account” means an individual investment account in the Plan with a balance greater than \$0 as of the time of calculation of the Final Entitlement Amount defined in the Plan of Allocation.
- 2.2 “Administrative Expenses” means expenses incurred in the administration of this Settlement Agreement, including but not limited to (a) all fees, expenses, and costs associated with providing the Settlement Notices to the Class, including but not limited to the fees of the Plan’s recordkeeper to identify the names and addresses of Class Members; (b) related tax expenses (including taxes and tax expenses as described in Paragraph 5.3); (c) all expenses and costs associated with the distribution of funds to the Plan to offset recordkeeping fees under the Plan of Allocation, including but not limited to the fees of the Plan’s recordkeeper associated with implementing this Settlement Agreement; (d) all fees and expenses of the Settlement Administrator and Escrow Agent; (e) all fees and expenses of the Independent Fiduciary, not to exceed \$15,000; and (f) all fees, expenses, and costs associated with providing notices required by the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711–1715. Excluded from Administrative Expenses are the parties’ respective legal expenses. Administrative Expenses shall be paid from the Gross Settlement Amount.
- 2.3 “Alternate Payee” means a person other than a participant or Beneficiary in the Plan who is entitled to a benefit under the Plan as a result of a Qualified Domestic Relations Order (“QDRO”), where the QDRO relates to the participant’s balance during the Class Period.
- 2.4 “Attorneys’ Fees and Costs” means the amount awarded by the Court as compensation for the services provided by Class Counsel and to be provided in the future during the Settlement Period. The amount of attorneys’ fees for Class

Counsel shall not exceed 33 1/3% of the Gross Settlement Amount (or \$750,000), which shall be recovered from the Gross Settlement Amount, and will not include attorneys' fees (1) from the interest earned on the Gross Settlement Amount; (2) for time associated with administering the Settlement; and (3) for work required to enforce the proposed Settlement, if necessary. Class Counsel also will seek reimbursement from the Gross Settlement Amount for all litigation costs and expenses incurred in prosecuting this action, including expenses incurred during the pre-litigation investigation period, not to exceed \$25,000.

- 2.5** “Beneficiary” means a person who currently is entitled to receive a benefit under the Plan upon the death of a Plan participant, other than an Alternate Payee. A Beneficiary includes, but is not limited to, a surviving spouse, domestic partner, child, or other person designated by the participant Class Member in accordance with the terms of the Plan who currently is entitled to a benefit.
- 2.6** “CAFA” means the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711–1715.
- 2.7** “Claims Deadline” means a date that is no later than ten (10) calendar days before the Fairness Hearing.
- 2.8** “Class Counsel” means Edelson Lechtzin LLP and Capozzi Adler, P.C.
- 2.9** “Class Members” means all individuals in the Settlement Class, including the Class Representatives, on behalf of themselves and the Plan.
- 2.10** “Class Period” means the period from April 11, 2016, through the date of preliminary approval settlement.
- 2.11** “Class Representatives” means Plaintiffs Patrick L. Gaines, Jessica J. Kelly, and Anthony Tse.
- 2.12** “Class Representatives’ Compensation” means an amount to be determined by the Court, but not to exceed \$5,000.00 for each Class Representative, which shall be paid from the Gross Settlement Amount directly to each Class Representative.
- 2.13** “Confidentiality Agreement” means the Stipulated Protective Order entered by the Court in the Lawsuit. ECF No. 34.
- 2.14** “Court” means the United States District Court for the Northern District of Illinois.
- 2.15** “Current Participant” means a person who participated in the Plan during the Class Period and had an Active Account as of the date of preliminary approval.
- 2.16** “Defendant” means BDO USA, P.C. “Defendants” mean BDO, the Board of Directors of BDO, the Retirement Plan Committee, and John Does 1-30, all of which (other than BDO) were dismissed from the Lawsuit.
- 2.17** “Defendants’ Counsel” means McDERMOTT, WILL & EMERY LLP.

- 2.18** “Escrow Agent” means Analytics LLC.
- 2.19** “Fairness Hearing” means the hearing scheduled by the Court to consider (a) any objections from Class Members to the Settlement Agreement, (b) Class Counsel’s petition for Attorneys’ Fees and Costs and Class Representatives’ Compensation, and (c) whether to finally approve the Settlement under Fed. R. Civ. P. 23.
- 2.20** “Final Order” means the entry of the order and final judgment approving the Settlement Agreement, implementing the terms of this Settlement Agreement, and dismissing the Lawsuit with prejudice, to be proposed by the parties for approval by the Court, in substantially the form attached as Exhibit 3 hereto.
- 2.21** “Final” means with respect to any judicial ruling, order, or judgment that the period for any motions for reconsideration, motions for rehearing, appeals, petitions for certiorari, or the like (“Review Proceeding”) has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that it has been fully and finally resolved, either by court action or by voluntary action of any party, without any possibility of a reversal, vacatur, or modification of any judicial ruling, order, or judgment, including the exhaustion of all proceedings in any remand or subsequent appeal and remand. The parties agree that absent an appeal or other attempted Review Proceeding, the period after which the Final Order becomes Final is thirty-five (35) calendar days after its entry by the Court.
- 2.22** “Former Participant” means a member of the Settlement Class who does not have an Active Account as of the time of calculation of the Final Entitlement Amount defined in the Plan of Allocation.
- 2.23** “Gross Settlement Amount” means the sum of two million two hundred fifty thousand dollars (\$2,250,000.00), contributed to the Qualified Settlement Fund in accordance with Article 5. The Gross Settlement Amount shall be the full and sole monetary payment to the Settlement Class, the Plan, Plaintiffs, and Class Counsel made in connection with the Settlement effectuated through this Settlement Agreement. Defendants and their insurers will make no additional payment in connection with the Settlement of the Lawsuit.
- 2.24** “Independent Fiduciary” means an independent fiduciary who will serve as a fiduciary to the Plan at the election of the Defendant in accordance with Article 3 that has no relationship or interest in any of the parties.
- 2.25** “Mediator” means Robert Meyer, or, if he is unavailable, another mediator mutually agreed upon by the parties.
- 2.26** “Net Settlement Amount” means the Gross Settlement Amount plus interest (as contemplated by Article 5, below) minus: (a) all Attorneys’ Fees and Costs paid to Class Counsel; (b) all Class Representatives’ Compensation as authorized by the Court; (c) all Administrative Expenses; and (d) a contingency reserve not to exceed an amount to be mutually agreed upon by the parties that is set aside by the Settlement Administrator for: (1) Administrative Expenses incurred before the Settlement

Effective Date but not yet paid, (2) Administrative Expenses estimated to be incurred after the Settlement Effective Date but before the end of the Settlement Period, and (3) an amount estimated for adjustments of data or calculation errors.

- 2.27** “Plaintiffs” means the Class Representatives Patrick L. Gaines, Jessica J. Kelly, and Anthony Tse.
- 2.28** “Plan” means the BDO USA, LLP Retirement Plan as well as any predecessor or successor plans that existed during the Class Period.
- 2.29** “Plan of Allocation” means the methodology for allocating and distributing the Net Settlement Amount in accordance with Article 6 herein.
- 2.30** “Preliminary Order” means the order proposed by the parties and approved by the Court in connection with the Motion for Entry of the Preliminary Order, attached as Exhibit 1 hereto, as described in Paragraph 3.3.
- 2.31** “Qualified Settlement Fund” or “Settlement Fund” means the interest-bearing settlement fund account to be established and maintained by the Escrow Agent in accordance with Article 5 herein and referred to as the Qualified Settlement Fund (within the meaning of Treas. Reg. § 1.468B-1).
- 2.32** “Released Parties” means (a) Defendants, (b) Defendants’ past or present insurers, co-insurers, and reinsurers, (c) Defendants’ past, present, and future parent corporation(s), (d) Defendants’ past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns, (e) to the extent not covered by (a)-(d), past and present members of the Board of Directors of BDO USA, PC, the Retirement Plan Committee, and John Does 1-30 as originally named in Plaintiffs’ complaint but dismissed by agreement between the parties, and, as applicable and with respect to (a) through (e) above, each of their respective boards of directors and managers, past, present and future members of the boards of directors, officers, trustees, partners, principals, agents, investment advisers or consultants, managers, members, shareholders (in their capacity as such), employees, attorneys, insurers, co-insurers, reinsurers, accountants, auditors, personal representatives, owners, spouses, heirs, executors, administrators, and members of their immediate families, and all persons acting under, by, through, or in concert with any of them.
- 2.33** “Released Claims” means any and all actual or potential claims, actions, demands, rights, obligations, liabilities, damages, attorneys’ fees, expenses, costs, and causes of action, whether arising under federal, state or local law, whether by statute, contract or equity, whether brought in an individual or representative capacity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, arising from conduct occurring from April 11, 2016, to the entry of the Preliminary Order that were or could have been brought against Released Parties, as well as those:

- 2.33.1** That were asserted in the Lawsuit, or that arise out of, relate to, or are based on any of the allegations, acts, omissions, facts, matters, transactions, or occurrences that were alleged, asserted, or set forth in the Lawsuit’s complaint (Doc. 1); or
- 2.33.2** That arise out of, relate in any way to, are based on, or have any connection with the Plan, including but not limited to: (1) the selection, oversight, retention, monitoring, compensation, fees, or performance of the Plan’s investment options and service providers, including without limitation any advice rendered in connection with the selection, oversight, monitoring, compensation, fees, or performance of the Plan’s investment options and service providers; (2) fees, costs, or expenses charged to, or paid or reimbursed by, the Plan or any Class Member; (3) disclosures or failures to disclose information regarding the Plan’s investment options or service providers; (4) the investment options offered to Plan participants; (5) the compensation received by the Plan’s service providers; (6) the services provided to the Plan or the costs of those services; (7) the payment of compensation to the Plan’s service providers; (8) the restructuring or modification of the Plan’s investment lineup; or (9) any alleged breach of the duties of loyalty, care, prudence, diversification, or any other fiduciary duties or prohibited transactions; or
- 2.33.4** That were dismissed by the Court as part of its March 21, 2023 order granting in part and denying in part Defendants’ motions to dismiss (Doc. 28); or
- 2.33.5** That would be barred by *res judicata* based on entry of the Final Order; or
- 2.33.6** That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund in accordance with the Plan of Allocation; or
- 2.33.7** That relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone.
- 2.33.8** “Released Claims” exclude claims arising exclusively from conduct after the entry of the Final Order or as prohibited by law.
- 2.33.9** All parties release any claims to reimbursement of their costs from any other party, including any Defendants.
- 2.34** “Settlement” or “Settlement Agreement” refers to this agreement and its exhibits.
- 2.35** “Settlement Administrator” means an independent contractor to be retained by Class Counsel to administer the Settlement and Plan of Allocation.
- 2.36** “Settlement Agreement Execution Date” means that date on which the final signature is affixed to this Settlement Agreement.



**2.37** “Settlement Class” means the Class Representatives and all persons who participated in the Plan at any time during the Class Period, including any Beneficiary of a deceased Person who participated in the Plan at any time during the Class Period, and any Alternate Payee of a Person subject to a QDRO who participated in the Plan at any time during the Class Period, excluding Defendants.

**2.38** “Settlement Class Member” means any persons who participated in the Plan at any time during the Class Period, including any Beneficiary of a deceased Person who participated in the Plan at any time during the Class Period, and any Alternate Payee of a Person subject to a QDRO who participated in the Plan at any time during the Class Period who qualifies for the Settlement Class, excluding Defendants.

**2.39** “Settlement Class Representatives” means Plaintiffs Patrick L. Gaines, Jessica J. Kelly, and Anthony Tse.

**2.40** “Settlement Effective Date” means the date on which the Final Order is Final, provided that by such date the Settlement has not been terminated in accordance with Article 10.

**2.41** “Settlement Notice” means the Notices of Class Action Settlement and Fairness Hearing to be sent to Class Members identified by the Settlement Administrator following the Court’s issuance of the Preliminary Order, in substantially the form attached hereto as Exhibit 2. The Settlement Notice informs Class Members of a Fairness Hearing to be held before the Court, on a date to be determined by the Court, at which time any Class Member satisfying the conditions set forth in the Preliminary Order and the Settlement Notice may be heard regarding: (a) the terms of the Settlement Agreement; (b) the petition of Class Counsel for award of Attorneys’ Fees and Costs; (c) payment of and reserve for Administrative Expenses; and (d) Class Representatives’ Compensation.

**2.42** “Settlement Period” shall be from the Settlement Effective Date and continuing for a period of one year thereafter.

**2.43** “Settlement Website” means the internet website established in accordance with Paragraph 11.2.

**3. Article 3 – Review and Approval by Independent Fiduciary, Preliminary Settlement Approval, and Notice to the Class**

**3.1** Defendant shall have the option of submitting the Settlement Agreement to an Independent Fiduciary. If Defendant, in their sole discretion, decides to submit the agreement for review by an Independent Fiduciary, the Independent Fiduciary shall have the following responsibilities:

**3.1.1** The Independent Fiduciary shall comply with all relevant conditions set forth in Prohibited Transaction Class Exemption 2003-39, “Release of Claims and Extensions of Credit in Connection with Litigation,” issued December 31, 2003,



by the United States Department of Labor, 68 Fed. Reg. 75,632, as amended (“PTE 2003-39”), in making its determination.

- 3.1.2** Before providing the final written determination specified in Paragraph 3.1.3, the Independent Fiduciary shall raise any questions or concerns about the Settlement Agreement with Class Counsel and Defendants’ Counsel and provide the parties with an opportunity to address those questions or concerns.
- 3.1.3** The Independent Fiduciary shall notify Class Counsel directly of its determination, in writing (with copies to Defendants’ Counsel), which notification shall be delivered no later than thirty (30) calendar days before the Fairness Hearing. Class Counsel shall notify Defendants’ Counsel of the Independent Fiduciary’s determination within ten (10) calendar days of its receipt.
- 3.1.4** All fees and expenses associated with the Independent Fiduciary’s determination and performance of its other obligations in connection with the Settlement, up to \$15,000, will constitute Administrative Expenses to be deducted from the Gross Settlement Amount.
- 3.1.5** Defendants’ Counsel and Class Counsel shall respond to reasonable requests by the Independent Fiduciary for information so that the Independent Fiduciary can review and evaluate the Settlement Agreement.
- 3.1.6** If Class Counsel concludes that the Independent Fiduciary’s determination does not comply with PTE 2003-39 or is otherwise deficient, Class Counsel shall so inform the Independent Fiduciary within fifteen (15) calendar days of receipt of the determination, copying Defendants’ Counsel.
- 3.2** Defendants may, at any time, decide to forego the Independent Fiduciary review and may, in their sole discretion, decide to terminate the review of the Settlement Agreement by the Independent Fiduciary.
- 3.3** The Class Representatives, through Class Counsel, on February 6, 2024, will file with the Court a motion seeking preliminary approval of this Settlement Agreement, certification of the Settlement Class, and the entry of a proposed Preliminary Order. The proposed Preliminary Order is attached hereto as Exhibit 1. If granted, the proposed Preliminary Order would, among other things:

  - 3.3.1** Grant the motion to certify the Settlement Class under Fed. R. Civ. P. 23(a) and (b)(1);
  - 3.3.2** Approve the text of the Settlement Notice for sending by U.S. mail and electronic means to Class Members to notify them (1) of the Settlement Agreement, (2) of the Fairness Hearing, and (3) that notice of changes to the Settlement Agreement, future orders regarding the Settlement, modifications to the Class Notice, changes in the date or timing of the Fairness Hearing, or other modifications to the Settlement,

including the Plan of Allocation, may be provided to the Settlement Class through the Settlement Website without requiring additional mailed or electronic notice;

- 3.3.3** Determine that under Rule 23(c)(2) of the Federal Rules of Civil Procedure, the Settlement Notices constitute the best notice practicable under the circumstances, provide due and sufficient notice of the Fairness Hearing and of the rights of all Class Members, and comply fully with the requirements of Fed. R. Civ. P. 23, the Constitution of the United States, and any other applicable law;
- 3.3.4** Cause the Settlement Administrator to send by U.S. mail and electronic means, the Settlement Notice to each Class Member identified by the Settlement Administrator, based upon the data provided by the Plan's recordkeeper;
- 3.3.5** Provide that, pending final determination of whether the Settlement Agreement should be approved, no Class Member may directly, through representatives, or in any other capacity, commence any action or proceeding in any court or tribunal asserting any of the Released Claims against Defendants or the Released Parties;
- 3.3.6** Set the Fairness Hearing for no sooner than one hundred twenty (120) calendar days after the date that this Settlement Agreement is filed, in order to determine whether (i) the Court should approve the Settlement as fair, reasonable, and adequate, (ii) the Court should enter the Final Order, and (iii) the Court should approve the application for Attorneys' Fees and Costs, Class Representatives' Compensation, Administrative Expenses incurred to date, and a reserve for anticipated future Administrative Expenses;
- 3.3.7** Provide that any objections to any aspect of the Settlement Agreement shall be heard, and any papers submitted in support of said objections shall be considered, by the Court at the Fairness Hearing if they have been filed validly with the Clerk of the Court and copies provided to Class Counsel and Defendants' Counsel. To be filed validly, the objection and any notice of intent to appear or supporting documents must be filed at least thirty (30) days prior to the scheduled Fairness Hearing. Any person wishing to speak at the Fairness Hearing shall file and serve a notice of intent to appear within the time limitation set forth above;
- 3.3.8** Provide that the parties may, but are not required to, serve discovery requests, including requests for documents and notices of deposition not to exceed two (2) hours in length, on any objector within ten (10) days of receipt of the objection, and that any responses to discovery or depositions must be completed within ten (10) days of the discovery request being served on the objector;
- 3.3.9** Provide that any party may file a response to an objection by a Class Member at least fourteen (14) days before the Fairness Hearing;

- 3.3.10** Provide that the Fairness Hearing may, without further direct notice to the Class Members, other than by notice to Class Counsel, be adjourned or continued by order of the Court; and
- 3.3.11** Approve the Form of the CAFA Notices attached as Exhibit 4 and order that upon mailing of the CAFA Notices, CAFA obligations have been fulfilled.
- 3.4** Defendants and Defendants' Counsel shall use reasonable efforts to respond timely to written requests, including by e-mail, from the Settlement Administrator, and Defendants' Counsel shall use reasonable efforts to coordinate with the Plan's recordkeeper to obtain readily accessible data that are reasonably necessary to determine the feasibility of administering the Plan of Allocation or to implement the Plan of Allocation. The actual and reasonable expenses of any third party, other than the Plan's recordkeepers, that are necessary to perform such work shall be Administrative Expenses to be deducted from the Gross Settlement Amount. Further, the Plan's recordkeepers shall take commercially reasonable steps to ensure the data provided is complete as it exists in the Recordkeeper's systems. Neither Plaintiffs, Class Counsel, Defendants, or Defense Counsel will be responsible or liable in any way for ensuring the completeness or accuracy of the information provided by the Recordkeeper pursuant to this Section.

  - 3.4.1** The Settlement Administrator shall be bound by the Confidentiality Agreement and any non-disclosure or security protocol required by the parties.
  - 3.4.2** The Settlement Administrator shall use the data provided by Defendants' Counsel and the Plan's recordkeepers solely for the purpose of meeting its obligations as Settlement Administrator, and for no other purpose.
  - 3.4.3** At the request of the parties, the Settlement Administrator shall provide a written protocol 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.
- 3.5** By the date and in the manner set by the Court in the Preliminary Order, and unless otherwise set forth below, the Settlement Administrator shall:

  - 3.5.1** Cause to be sent to each Class Member identified by the Settlement Administrator a Settlement Notice in the form and manner to be approved by the Court, which shall be in substantially the form attached hereto as Exhibit 2 and approved by the Court. The Settlement Notice shall be sent to the last known e-mail address of each Class Member provided by the Plan's recordkeepers and/or Defendants' Counsel (or their designee(s)), unless an updated address is obtained by the Settlement Administrator through its efforts to verify the last known addresses provided by to the Settlement Administrator. Class Counsel also shall post a copy of the Settlement Notice on the Settlement Website. The Settlement Administrator shall use commercially reasonable

efforts to locate any Class Member whose Settlement Notice is returned and re-send such documents one additional time.

- 3.6** No later than ten (10) calendar days after the filing of this Settlement Agreement, the Settlement Administrator shall serve the CAFA notices in substantially the form attached as Exhibit 4 hereto on the Attorney General of the United States, the Secretary of the Department of Labor, and the attorneys general of all states in which members of the Class reside, as specified by 28 U.S.C. § 1715.

**4. Article 4 – Final Settlement Approval**

- 4.1** No later than fourteen (14) days before the Fairness Hearing, Class Counsel shall submit to the Court a motion for entry of the Final Order (Exhibit 3) in the form approved by Class Counsel and Defendants' Counsel, which shall request approval by the Court of the terms of this Settlement Agreement and entry of the Final Order in accordance with this Settlement Agreement. The Final Order as proposed by the parties shall provide for the following, among other things, as is necessary to carry out the Settlement consistent with applicable law and governing Plan documents:

- 4.1.1** Approval of the Settlement of the Released Claims covered by this Settlement Agreement adjudging the terms of the Settlement Agreement to be fair, reasonable, and adequate to the Plan and the Class Members and directing the parties to take the necessary steps to effectuate the terms of the Settlement Agreement;
- 4.1.2** A determination under Rule 23(c)(2) of the Federal Rules of Civil Procedure that the Settlement Notice constitutes the best notice practicable under the circumstances and that due and sufficient notice of the Fairness Hearing and the rights of all Class Members has been provided;
- 4.1.3** Dismissal with prejudice of the Lawsuit as against Defendants and all Released Claims asserted therein whether asserted by Class Representatives on their own behalf or on behalf of the Class Members, and on behalf of the Plan, as against Defendants, without costs to any of the parties other than as provided for in this Settlement Agreement;
- 4.1.4** That the Court should declare that neither the Final Approval Order nor this Settlement Agreement constitutes an admission by Defendants of any liability, fault, or wrongdoing of any kind.
- 4.1.5** That the Court shall retain jurisdiction to enforce the terms of the Settlement Agreement;
- 4.1.6** That the Plan and each Class Member (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns) shall be (i) conclusively deemed to have, and by operation of the Final Order shall have, fully, finally, and forever settled, released, relinquished, waived, and

discharged the Released Parties from all Released Claims, and (ii) barred and enjoined from suing the Released Parties in any action or proceeding alleging any of the Released Claims. The provisions (i) and (ii) shall apply even if any Class Member may thereafter discover facts in addition to or different from those which the Class Members or Class Counsel now know or believe to be true with respect to the Lawsuit and the Released Claims, whether or not such Class Members have received a monetary benefit from the Settlement, 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 Costs, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed;

**4.1.7** That each Class Member shall release the Released Parties, current and dismissed Defendants' Counsel, and Class Counsel for any claims, liabilities, and attorneys' fees and expenses arising from the allocation of the Gross Settlement Amount or Net Settlement Amount and for all tax liability and associated penalties and interest as well as related attorneys' fees and expenses;

**4.1.8** That all applicable CAFA requirements have been satisfied;

**4.1.9** That the Settlement Administrator shall have final authority to determine the allocation of the Net Settlement Amount to the Plan in order to minimize recordkeeping fees in accordance with the Plan of Allocation approved by the Court;

**4.1.10** That, with respect to any matters that arise concerning the implementation of the Plan of Allocation, all questions not resolved by the Settlement Agreement shall be resolved by Defendants in accordance with applicable law and governing terms of the Plan; and

**4.1.11** That within twenty-one (21) calendar days following the issuance of all settlement payments to the Plan as provided by the Plan of Allocation approved by the Court, the Settlement Administrator shall prepare and provide to Class Counsel and Defendants' Counsel an affidavit containing the details of the settlement payment from the Qualified Settlement Fund to the Plan to offset the Plan's recordkeeping fees, and the amount of such payment.

**4.2** The Final Order and judgment entered by the Court approving the Settlement Agreement shall provide that upon its entry all parties, the Settlement Class, and the Plan shall be bound by the Settlement Agreement and by the Final Order.

## **5. Article 5 – Establishment of Qualified Settlement Fund**

**5.1** No later than ten (10) business days after entry of the Preliminary Order, the Escrow Agent shall establish an 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 Treas. Reg. § 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

5.1, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) 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.

**5.2** For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” 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 Fund and filing the returns described in Treas. Reg. § 1.468B-2(k)). Such returns as well as the election described in Paragraph 5.1 shall be consistent with this Article 5 and, in all events, shall reflect that all taxes (as defined in Paragraph 5.3 below) (including any estimated taxes, interest, or penalties) on the income earned by the Gross Settlement Amount shall be deducted and paid from the Gross Settlement Amount as provided in Paragraph 5.3 hereof.

**5.3** Taxes and tax expenses are Administrative Expenses to be deducted and paid from the Gross Settlement Amount, including but not limited to: (1) any and all taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Gross Settlement Amount, including any taxes or tax detriments that may be imposed upon Defendants, Defendants’ insurers or Defendants’ Counsel with respect to any income earned by the Gross Settlement Amount for any period during which the Gross Settlement Amount does not qualify as a “qualified settlement fund” for federal or state income tax purposes, and (2) any and all tax expenses and costs incurred in connection with the operation and implementation of this Article 5 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Article 5). Such taxes and tax expenses shall be Administrative Expenses and shall be paid timely by the Escrow Agent out of the Gross Settlement Amount without prior order from the Court. The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to the Plan any funds necessary to pay such amounts, including the establishment of adequate reserves for any taxes and tax expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)); neither the Released Parties, Defendants’ Counsel, nor Class Counsel are responsible nor shall they have any liability therefor. The parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Article 5.

**5.4** Within thirty (30) calendar days after the later of (a) the date the Preliminary Order is entered, or (b) the date the escrow account described in Paragraph 5.1 is established and the Escrow Agent shall have furnished to Defendants’ Counsel in writing the escrow account name, IRS W-9 Form, and all necessary wiring instructions, the



Defendant and/or its insurer shall deposit one hundred thousand dollars (\$100,000) of the Gross Settlement Amount of two million two hundred fifty thousand dollars (\$2,250,000), into the Qualified Settlement Fund. The balance of the Gross Settlement Amount, totaling two million one hundred fifty thousand dollars (\$2,150,000) shall be deposited into the escrow account within thirty (30) calendar days after the Settlement Effective Date.

- 5.5** The Escrow Agent shall, at the written direction of Class Counsel, 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.
- 5.6** 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.
- 5.7** Within one-hundred twenty (120) calendar days after the Settlement Effective Date, the Gross Settlement Amount will be distributed from the Qualified Settlement Fund as follows: (a) first, all approved Attorneys' Fees and Costs shall be paid to Class Counsel within three (3) business days after the Settlement Effective Date; (b) second, all Administrative Expenses not paid previously shall be paid within five (5) business days after the Settlement Effective Date; (c) third, any Class Representatives' Compensation ordered by the Court shall be paid within five (5) business days after the Settlement Effective Date; (d) fourth, a contingency reserve not to exceed an amount to be mutually agreed upon by the parties shall be set aside by the Settlement Administrator for: (1) Administrative Expenses incurred before the Settlement Effective Date but not yet paid, (2) Administrative Expenses estimated to be incurred after the Settlement Effective Date but before the end of the Settlement Period, (3) an amount estimated for adjustments of data or calculation errors, and (e) fifth, the Net Settlement Amount will be distributed in accordance with the Plan of Allocation. Pending final distribution of the Net Settlement Amount in accordance with the Plan of Allocation, the Escrow Agent will maintain the Qualified Settlement Fund.
- 5.8** 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. The Released Parties, Defendants' Counsel, and/or 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.



**5.9** No later than February 15 of the year following the calendar year in which the Defendants, their insurers, or agents make a transfer to the Qualified Settlement Fund in accordance with the terms of this Article 5, the Defendant, its insurers, or agents shall timely furnish a statement to the Escrow Agent, or the Settlement Administrator on its behalf, that complies with Treas. Reg. § 1.468B-3(e)(2), which may be a combined statement under Treas. Reg. § 1.468B3(e)(2)(ii), and shall attach a copy of the statement to their federal income tax returns filed for the taxable year in which the Defendant, its insurers, or agents made a transfer to the Qualified Settlement Fund.

**6. Article 6 – Plan of Allocation**

**6.1** After the Settlement Effective Date, the Settlement Administrator shall cause the Net Settlement Amount to be allocated and distributed to the Plan in accordance with the Plan of Allocation set forth in this Article 6 and as ordered by the Court.

**6.2** Implementation of the Plan of Allocation. Class Counsel shall propose to the Court a Plan of Allocation, in substantial conformity to the one attached hereto as Exhibit B, which shall provide for the calculation, allocation, and distribution of the Net Settlement Amount. The Settlement Administrator shall be exclusively responsible and liable for calculating the amounts payable to the Class Members pursuant to the Plan of Allocation.

**6.2.1.** Upon Final Approval, Class Counsel shall direct the Escrow Agent to disburse the Net Settlement Amount as provided by this Settlement Agreement and the Plan of Allocation.

**6.2.2.** The Recordkeeper or Authorized Administrator shall allocate to the Plan accounts of Class Members who are not Former Participants any Net Settlement Amount as calculated by the Settlement Administrator according to the Plan of Allocation, documentation of which Class Counsel shall direct the Settlement Administrator to provide to the Authorized Administrator pursuant to the Plan of Allocation no later than the distribution of the Net Settlement Amount. The Settlement Administrator shall promptly notify Class Counsel as to the date(s) and amounts(s) of said allocation(s) made to Class Members who are not Former Participants. The Settlement Administrator shall be responsible for distributing the Net Settlement Amount allocated to the Former Participants as provided by the Plan of Allocation, as well as complying with all tax laws, rules, and regulations and withholding obligations with respect to Former Participants. Defendants shall have no liability related to the structure or taxability of such payments. Nothing herein shall constitute approval or disapproval of the Plan of Allocation by Defendants, and Defendants shall have no responsibility or liability for the Plan of Allocation and shall take no position for or against the Plan of Allocation.

**6.2.3** The total payment that the Settlement Administrator shall authorize from the Qualified Settlement Fund to the Plan shall not exceed the Net Settlement Amount.

- 6.2.4** The Settlement Administrator shall inform Class Counsel and Defendants' Counsel within thirty (30) business days after the Settlement Effective Date of the total payment that shall be made to the Class Members.
- 6.2.5** The Released Parties shall not have any responsibility for or any liability whatsoever with respect to the Plan of Allocation, including, but not limited to, the determination of the Plan of Allocation or the reasonableness of the Plan of Allocation.
- 6.2.6** Neither the Released Parties, Defendants' Counsel, nor Class Counsel shall have any responsibility for or any liability whatsoever with respect to any tax advice given to Class Members in connection with this Settlement Agreement.
- 6.3** If the Settlement Administrator concludes that it is impracticable to implement any provision of this Plan of Allocation, the parties will modify the terms of this Plan of Allocation and present such modified terms, first, to the Independent Fiduciary (if Defendant retains one) for its review and approval and, second, to the Court for its approval. Direct mailed or electronic notice to Class Members of such proposed modification of the Plan of Allocation shall not be required. However, notice of such proposed modification shall be posted on the Settlement Website within five (5) business days of the date that the proposed modification is submitted to the Court for its approval. If the proposed modification is implemented, notice of such modification shall be posted on the Settlement Website within five (5) business days of the date that the modification was implemented. The Settlement Administrator shall be solely responsible for performing any calculations required by this Plan of Allocation.
- 6.4** Within ten (10) business days of completing all aspects of this Plan of Allocation, the Settlement Administrator shall send to Class Counsel and Defendants' Counsel one or more affidavits stating the following: (a) the name of each Class Member to whom the Settlement Administrator sent the Settlement Notice, and the electronic mail address of such mailing; (b) the name and/or electronic mail address of each Class Member whose Settlement Notice was returned as undeliverable; (c) the efforts made by the Settlement Administrator to find the correct address and to deliver the Settlement Notice for each such Class Member; and (d) the date on which the Settlement Administrator transmitted the Net Settlement Amount to the Plan's recordkeeper to be applied to offset recordkeeping fees incurred by the Plan.
- 6.5** The parties acknowledge that any payments to Class Representatives, their attorneys (including Class Counsel), or the Plan may be subject to applicable tax laws. Defendants' Counsel, Defendants' agents and/or insurers, Class Counsel, and Class Representatives will provide no tax advice to the Class Members and make no representation regarding the tax consequences of any of the settlement payments described in this Settlement Agreement. To the extent that any portion of any settlement payment is subject to income or other tax, the recipient of the payment shall be responsible for payment of such tax. Deductions will be made, and reporting will be performed by the Settlement Administrator, as required by law in respect of

all payments made under the Settlement Agreement. Payments from the Qualified Settlement Fund shall not be treated as wages by the parties.

**6.6** Each Class Member, Beneficiary, or Alternate Payee whose recordkeeping fees through the Plan are offset by virtue of a payment made under this 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 such Class Member, Beneficiary, or Alternate Payee shall hold the Released Parties, Defendants' Counsel, Class Counsel, and the Settlement Administrator harmless from any tax liability, including penalties and interest, related in any way to payments under the Settlement Agreement, and shall hold the Released Parties, Defendants' Counsel, Class Counsel, and the Settlement Administrator harmless from the costs (including, for example, attorneys' fees and disbursements) of any proceedings (including, for example, investigation and suit), related to such tax liability.

**6.7** No sooner than thirty (30) calendar days following the end of the Settlement Period, any Net Settlement Amount remaining in the Qualified Settlement Fund after distributions, including costs, taxes and interest-earned on the Qualified Settlement Fund, shall be paid to the Plan for the purpose of defraying recordkeeping fees that would otherwise be charged to the Plan's participants. In no event shall any part of the Settlement Fund be used to reimburse Defendants or otherwise offset settlement related costs incurred by Defendants.

**7. Article 7 – Attorneys' Fees and Costs**

**7.1** Class Counsel intends to seek to recover their attorneys' fees not to exceed \$750,000.00, and litigation costs and expenses advanced and carried by Class Counsel for the duration of this litigation, not to exceed \$25,000.00, which shall be recovered from the Gross Settlement Amount. Class Counsel also intends to seek Class Representatives' Compensation, in an amount not to exceed \$5,000.00 for each Class Representative (Patrick L. Gaines, Jessica J. Kelly, and Anthony Tse), which shall be recovered from the Gross Settlement Amount.

**7.2** Class Counsel will file a motion for an award of Attorneys' Fees and Costs at least thirty (30) days before the deadline set in the Preliminary Order for objections to the proposed settlement, which may be supplemented thereafter.

**8. Article 8 – Release and Covenant Not to Sue**

**8.1** As of the Settlement Effective Date, the Plan and the Class Members (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns), on their own behalf and on behalf of the Plan, shall be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged all Released Parties from the Released Claims, whether or not such Class Members have received a monetary benefit from the Settlement, and 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 Costs.

- 8.2** As of the Settlement Effective Date, the Class Representatives, the Class Members and the Plan, expressly agree that they, 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 an IRS determination letter proceeding, a 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 on the basis of, connected with, or arising out of any of the Released Claims. Nothing herein shall preclude any action to enforce the terms of this Settlement Agreement in accordance with the procedures set forth in this Settlement Agreement.
- 8.3** Class Counsel, the Class Representatives, Class Members, or the Plan may hereafter discover facts in addition to or different from those that they know or believe to be true with respect to the Released Claims. Such facts, if known by them, might have affected the decision to settle with the Released Parties, or the decision to release, relinquish, waive, and discharge the Released Claims, or the decision of a Class Member not to object to the Settlement. Notwithstanding the foregoing, each Class Member and the Plan shall expressly, upon the entry of the Final Order, be deemed to have, and, by operation of the Final Order, shall have fully, finally, and forever settled, released, relinquished, waived, and discharged any and all Released Claims. The Class Representatives, Class Members and the Plan acknowledge and shall be deemed by operation of the Final 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.
- 8.4** Each Class Representative, each Class Member, and the Plan hereby stipulate and agree with respect to any and all Released Claims that, upon entry of the Final Order, the Class Members and the Plan shall be conclusively deemed to, and by operation of the Final Order shall, settle, release, relinquish, waive, and discharge any and all rights or benefits they may now have, or in the future may have against Defendants, under any law relating to the releases of unknown claims pertaining specifically to Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which 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.

Also, the Class Representatives and Class Members shall, upon entry of the Final Order with respect to the Released Claims, waive any and all provisions, rights and benefits conferred by any law or of any State or territory within the United States or any foreign country, or any principle of common law, which is similar, comparable or equivalent in substance to Section 1542 of the California Civil Code.

**9. Article 9 – Representations and Warranties**

**9.1** The parties represent:

- 9.1.1** That they are voluntarily entering into this Settlement Agreement as a result of arm's length negotiations among their counsel, 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 their own independently selected 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;
- 9.1.2** That they assume the risk of mistake as to facts or law;
- 9.1.3** 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;
- 9.1.4** That they have read carefully the contents of this Settlement Agreement, and this Settlement Agreement is signed freely by each individual executing this Settlement Agreement on behalf of each of the parties; and that they have made such investigation of the facts pertaining to the Settlement and all matters pertaining thereto, as they deem necessary.
- 9.1.5** That Plaintiffs have not assigned or otherwise transferred any interest in any Released Claim against any Released Parties, and that they shall not assign or otherwise transfer any interest in any Released Claims.
- 9.1.6** That Plaintiffs, on behalf of themselves and the Class, will have no surviving claims or causes of action against any of the Defendants or Released Parties for any of the Released Claims, from and after the Settlement Effective Date.

**9.2** Each individual executing this Settlement Agreement on behalf of a party does hereby personally represent and warrant to the other parties that he/she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each principal that each such individual represents or purports to represent.

**10. Article 10 – Termination, Conditions of Settlement, and Effect of Disapproval, Cancellation, or Termination**

**10.1** The Settlement Agreement shall automatically terminate, and thereby become null and void with no further force or effect if:

- 10.1.1** The Preliminary Order or the Final Order is not entered by the Court in substantially the form submitted by the parties or in a form which is otherwise agreed to by the parties;

- 10.1.2** If the Court denies the motion described in Paragraph 3.3, then the Defendant shall have the sole option of terminating and cancelling this Settlement Agreement. However, prior to such determination to terminate or cancel the Settlement Agreement, the parties are required to engage in good faith meet and confer discussions for the purpose of maintaining or preserving the Settlement Agreement. Defendant may exercise that option in writing at least three (3) business days prior to the date set for the Final Approval Hearing.
- 10.1.3** If the Defendant retains an Independent Fiduciary, pursuant to Paragraph 3.1, and the Independent Fiduciary objects to the Settlement, then the Defendant shall have the sole option of terminating and cancelling this Settlement Agreement. However, prior to such determination to terminate or cancel the Settlement Agreement, the parties are required to engage in good faith meet and confer discussions for the purpose of modifying the terms of the Settlement Agreement in such a manner that the Independent Fiduciary will withdraw any such objection.
- 10.1.4** The Settlement Class is not certified as defined herein or in a form which is otherwise agreed to by the parties;
- 10.1.5** This Settlement Agreement is disapproved by the Court or fails to become effective for any reason whatsoever; or
- 10.1.6** The Preliminary Order or Final Order is finally reversed on appeal, or is modified on appeal, and the parties do not mutually agree to any such modifications.
- 10.2** If the Settlement Agreement is terminated, deemed null and void, or has no further force or effect, the Lawsuit and the Released Claims asserted by Class Representatives shall for all purposes with respect to the parties revert to their status as though the parties never executed the Settlement Agreement. All funds deposited in the Qualified Settlement Fund, and any interest earned thereon, shall be returned to Defendant, its agents, or insurers pro rata based on their contributions to the Qualified Settlement Fund within thirty (30) calendar days after the Settlement Agreement is finally terminated or deemed null and void, except as provided for in Paragraph 10.4.
- 10.3** It shall not be deemed a failure to approve the Settlement Agreement if the Court denies, in whole or in part, Class Counsel's request for Attorneys' Fees and Costs and/or Class Representatives' Compensation and/or modifies any of the proposed orders relating to Attorneys' Fees and Costs and/or Class Representatives' Compensation.
- 10.4** 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 Defendant and/or its insurers or agents, on the other hand.

**11. Article 11 – Confidentiality of the Settlement Negotiations and Permitted Settlement-Related Communications**

- 11.1** Except as set forth explicitly below, the parties, Class Counsel, and Defendants’ Counsel agree to keep confidential all positions, assertions, and offers made during settlement negotiations relating to the Lawsuit and the Settlement Agreement, except that they may discuss the negotiations with the Class Members, Defendants, and the Independent Fiduciary. Moreover, they may discuss those items with their tax, legal, and regulatory advisors, provided in each case that they (a) secure written agreements with such persons or entities that such information shall not be further disclosed and (b) comply with this Article 11 in all other respects. Defendant, Class Representatives, Class Counsel, and Defendants’ Counsel agree that they will not issue any press release regarding the Settlement, affirmatively contact any media sources regarding the Settlement, or respond to any request for comment on the Settlement by the media other than to state that the party will not comment on ongoing litigation.
- 11.2** The Settlement Administrator will establish a Settlement Website on which it will post the following documents or links to the following documents on or following the date of the Preliminary Order: the operative Complaint, Settlement Agreement and its Exhibits, Settlement Notice, Class Representatives’ Motion for Attorneys’ Fees and Costs and Award of Compensation to Class Representatives, any Court orders related to the Settlement, any amendments or revisions to these documents, and any other documents or information mutually agreed upon by the parties (“Settlement Website Information”). No other information or documents will be posted on the Settlement Website unless agreed to in advance by the parties in writing. Class Counsel will take down the Settlement Website ninety (90) calendar days after the receipt of the affidavit(s) referenced in Paragraph 6.4.
- 11.3** Nothing in this Settlement Agreement shall be construed as terminating the Confidentiality Agreement. The parties remain bound by the requirements of the Confidentiality Agreement.
- 11.4** Within sixty (60) calendar days after the Settlement Period, the parties shall either return to the producing parties, or destroy, all documents produced under a claim of confidentiality in accordance with the Confidentiality Agreement. The parties agree that at all times they will honor the requirements of the Confidentiality Agreement and treat all settlement negotiations as confidential notwithstanding settlement of the Lawsuit.

**12. Article 12 – General Provisions**

- 12.1** The parties agree to cooperate fully with each other in seeking Court approvals of the Preliminary Order and the Final Order, and to do all things as may reasonably



be required to effectuate preliminary and final approval and the implementation of this Settlement Agreement according to its terms. The parties agree to provide each other with copies of any filings necessary to effectuate this Settlement reasonably in advance of filing.

- 12.2** This Settlement Agreement, whether or not consummated, and any negotiations or proceedings hereunder are not, and shall not be construed as, deemed to be, or offered or received as evidence of an admission by or on the part of any Released Party of any wrongdoing, fault, or liability whatsoever by any Released Party, or give rise to any inference of any wrongdoing, fault, or liability or admission of any wrongdoing, fault, or liability in the Lawsuit or any other proceeding, and the Defendants and Released Parties admit no wrongdoing, fault, or liability with respect to any of the allegations or claims in the Lawsuit. This Settlement Agreement, whether or not consummated, and any negotiations or proceedings hereunder, shall not constitute an admission of any liability of any kind, whether legal or factual. Subject to Federal Rule of Evidence 408, the Settlement and the negotiations related to it are not admissible as substantive evidence, for purposes of impeachment, or for any other purpose.
- 12.3** Neither the parties, Class Counsel, Defendants nor Defendants' Counsel shall have any responsibility for or liability whatsoever with respect to (i) any act, omission, or determination of the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Gross Settlement Amount or otherwise; (ii) the determination of the Independent Fiduciary; (iii) the management, investment, or distribution of the Qualified Settlement Fund; (iv) the Plan of Allocation as approved by the Court; (v) the determination, administration, calculation, or payment of any claims asserted against the Qualified Settlement Fund; (vi) any losses suffered by, or fluctuations in the value of, the Qualified Settlement Fund; or (vii) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Qualified Settlement Fund or tax reporting, or the filing of any returns. Further, neither Defendants nor Defendants' Counsel shall have any responsibility for, or liability whatsoever with respect to, any act, omission, or determination of Class Counsel in connection with the administration of the Gross Settlement Amount or otherwise.
- 12.4** Only Class Counsel shall have standing to seek enforcement of this Settlement Agreement on behalf of Plaintiffs, the Class Representatives, and Class Members. Any individual concerned about compliance with this Settlement Agreement may so notify Class Counsel and direct any requests for enforcement to them. Class Counsel shall have the full and sole discretion to take whatever action they deem appropriate, or to refrain from taking any action, in response to such request. Any action by Class Counsel to monitor or enforce the Settlement Agreement shall be done without additional fee or reimbursement of expenses beyond the Attorneys' Fees and Costs determined by the Court.

- 12.5** This Settlement Agreement shall be interpreted, construed, and enforced in accordance with applicable federal law and, to the extent that federal law does not govern, Illinois law.
- 12.6** The parties, their counsel, and their agents shall refrain from making derogatory or disparaging public comments or remarks regarding the Settlement, the Named Plaintiffs, the Class Representatives, the Settlement Class Members, the Defendants, and/or the Released Parties in connection with the Settlement.
- 12.7** The Parties agree that the Court has personal jurisdiction over the Settlement Class and Defendants and shall maintain personal and subject-matter jurisdiction for purposes of resolving any disputes between the Settling Parties concerning compliance with this Settlement Agreement. Any motion or action to enforce this Settlement Agreement—including by way of injunction—may be filed in the U.S. District Court for the Northern District of Illinois or asserted by way of an affirmative defense or counterclaim in response to any action asserting a violation of the Settlement Agreement. However, to minimize the need for Court intervention, the parties agree that any and all disputes concerning compliance with the Settlement Agreement shall be addressed as follows:
- 12.7.1** If a party has reason to believe that a legitimate dispute exists concerning the Settlement Agreement the party raising the dispute shall first promptly give written notice under the Settlement Agreement to the other party including in such notice: (a) a reference to all specific provisions of the Settlement Agreement that are involved; (b) a statement of the alleged non-compliance; (c) a statement of the remedial action sought; and (d) a brief statement of the specific facts, circumstances, and any other arguments supporting the position of the party raising the dispute;
- 12.7.2** Within twenty (20) days after receiving the notice described in Paragraph 12.7.1, the receiving party shall respond in writing with its position and the facts and arguments it relies on in support of its position;
- 12.7.3** For a period of not more than twenty (20) days following mailing of the response described in Paragraph 12.7.2, the parties shall undertake good-faith negotiations, which may include meeting in person or conferring by telephone, to attempt to resolve the dispute;
- 12.7.4** If the dispute is not resolved during the period described in Paragraph 12.7.3, the parties shall conduct a mediation of the dispute with the Mediator on the earliest reasonably practicable date; provided, however, that the scope of such mediation shall be expressly limited to the dispute;
- 12.7.5** Within 30 days after the conclusion of the Mediator’s attempt to resolve the dispute (the date of the conclusion of the mediation shall be determined by agreement of the parties or by the Mediator), if the dispute persists, the parties shall submit the dispute to the Court.

- 12.7.6** The parties intend to resolve any disputes quickly, expeditiously, and inexpensively. Accordingly, there shall be no discovery allowed in connection with mediation under Paragraphs 12.7.4 and 12.7.5, and no witnesses shall be presented or examined during the mediation.
- 12.7.7** In any mediation under Paragraphs 12.7.4 and 12.7.5, each party shall bear its own attorneys' fees and costs.
- 12.8** The Settlement Agreement may be executed by exchange of executed signature pages, and any signature transmitted by DocuSign, facsimile or e-mail attachment of scanned signature pages for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. The Settlement Agreement may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed an original, and all such counterparts shall together constitute the same instrument.
- 12.9** Each party to this Settlement Agreement hereby acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Settlement Agreement and that this Settlement Agreement has been explained to that party by his, her, or its counsel.
- 12.10** Any headings included in this Settlement Agreement are for convenience only and do not in any way limit, alter, or affect the matters contained in this Settlement Agreement or the Articles or Paragraphs they caption. References to a person are also to the person's permitted successors and assigns, except as otherwise provided herein. Whenever the words "include," "includes" or "including" are used in this Settlement Agreement, they shall not be limiting but shall be deemed to be followed by the words "without limitation."
- 12.11** Before entry of the Preliminary Approval Order, this Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all parties. Following entry of the Preliminary Approval Order, this Settlement Agreement may be modified or amended only by written agreement signed on behalf of all parties and approved by the Court.
- 12.12** This Settlement Agreement and the exhibits attached hereto constitute the entire agreement among the parties and no representations, warranties, or inducements have been made to any party concerning the Settlement other than those contained in this Settlement Agreement and the exhibits thereto.
- 12.13** The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party and specifically waiving such provisions. The waiver of any breach of this Settlement Agreement by any party shall not be deemed to be or construed as a waiver of any other breach or waiver by any other party, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

- 12.14** Each of the parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that it will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter of this Settlement Agreement.
- 12.15** The provisions of this Settlement Agreement are not severable.
- 12.16** All of the covenants, representations, and warranties, express or implied, oral or written, concerning the subject matter of this Settlement Agreement are contained in this Settlement Agreement. No party is relying on any oral representations or oral agreements. All such covenants, representations, and warranties set forth in this Settlement Agreement shall be deemed continuing and shall survive the Effective Date of Settlement.
- 12.17** All of the exhibits attached hereto are incorporated by reference as though fully set forth herein. The exhibits shall be: Exhibit 1 – Proposed Preliminary Order; Exhibit 2 – Notice of Class Action Settlement and Fairness Hearing; Exhibit 3 – Proposed Final Order; and Exhibit 4 – Form of CAFA Notices.
- 12.18** No provision of the Settlement Agreement or of the exhibits attached hereto shall be construed against or interpreted to the disadvantage of any party to the Settlement Agreement because that party is deemed to have prepared, structured, drafted, or requested the provision.
- 12.19** Any notice, demand, or other communication under this Settlement Agreement (other than the Settlement Notice, or other notices given 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 personally delivered, sent by registered or certified mail postage prepaid, or delivered by reputable express overnight courier

**IF TO THE CLASS REPRESENTATIVES:**

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markg@capozziadler.com

IF TO DEFENDANT:

McDERMOTT WILL & EMERY LLP  
Attn: J. Christian Nemeth  
Allyson Riemma  
444 West Lake Street, Suite 4000  
Chicago, IL 60606-0029  
Tel: (312) 372-2000

Dated: February 5, 2024

On behalf of Plaintiff, the Plan, and the  
Settlement Class:

/s/ Eric Lechtzin

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