

**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.

**DECLARATION OF KAI RICHTER IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Kai Richter, declare as follows:

1. I am Of Counsel at Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein") and a member of the firm's Employee Benefits/ERISA Practice Group. Cohen Milstein is counsel for Plaintiffs in this action, and I have served as Cohen Milstein's lead counsel in the action.

2. I submit this Declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and Cohen Milstein's accompanying request to be appointed Class Counsel for purposes of the Settlement.¹

¹ All capitalized terms herein have the meaning ascribed to them in the Settlement Agreement.

Settlement Terms

3. Attached hereto as Exhibit 1 is a true and correct copy of the proposed Class Action Settlement Agreement (the “Settlement”). The Settlement resolves Plaintiffs’ class action claims against Defendants relating to the administration and management of the New York Life Insurance Company Employee Progress-Sharing Investment Plan and the New York Life Insurance Company Agents Progress-Sharing Investment Plan (the “Plans”).

4. The Settlement Agreement applies to the following Settlement Class:

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 (the “Plans”) 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.^[2]

Settlement, § 1.9. Based on preliminary information provided by Defendants in discovery, it is estimated that there are more than 40,000 Class Members.

5. Under the terms of the proposed Settlement, Defendants or their insurers will pay a Gross Settlement Amount of nineteen million dollars (\$19,000,000) into a Qualified Settlement Fund for the benefit of the Settlement Class. *Id.* §§ 1.33, 4.2. Prior to settlement, Plaintiffs’ investment expert estimated that the losses associated with the alleged fiduciary breaches (i.e., the retention of the subject MainStay Funds and the continued designation of the Fixed Dollar Account as the default investment) totaled between \$76,799,261 and \$93,413,328 from the start of the class period through 3Q 2023, broken down as follows:

² For purposes of this class definition, the term “Committees” includes 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. *Id.* § 1.14.

Fund	Model #1	Model #2
All Cap	\$61,271,209	\$54,989,635
Small Cap	\$10,031,357	\$9,568,683
Income Builder	\$12,033,171	\$4,647,776
Retirement Funds	\$3,490,229	\$3,490,229
TOTAL MAINSTAY FUNDS	\$86,825,966	\$72,696,323
FDA default	\$6,587,362	\$4,102,938
GRAND TOTAL	\$93,413,328	\$76,799,261

Based on this estimate, the \$19 million recovery represents approximately 20–25% of the total calculated losses associated with the alleged fiduciary breaches.

6. Plaintiffs' expert also estimated the profits to New York Life on *all* monies invested in the Fixed Dollar Account (not just defaulted assets) because Plaintiffs' prohibited transaction claims involving the Fixed Dollar Account were not limited to monies invested in the Fixed Dollar Account by default. Based on his analysis, these profits totaled between \$8,265,491 and \$9,512,443. If these amounts are added to the estimated losses above for purposes of analyzing the recovery, the \$19 million Gross Settlement Amount represents a recovery rate of approximately 18–22%.

7. After accounting for any Attorneys' Fees and Expenses, Administrative Expenses, and Class Representative service awards approved by the Court, the Net Settlement Amount will be distributed to eligible Class Members in accordance with the Plan of Allocation in the Settlement. *Settlement*, §§ 5.1-5.4.

8. In summary, the Plan of Allocation provides for calculation of a Settlement Allocation Score for each Class Member based on the sum of his or her underlying Fund Allocation Scores in connection with the Disputed Investments. The Fund Allocation Score for each Disputed Investment is calculated based on the Class Member's level of investment in such Disputed Investment on a monthly basis during the Class Period relative other Class Members, and the amount of estimated losses (or profits, in the case of the Fixed Dollar Account) associated with

such Disputed Investment.³ *Id.* § 5.1(a). To account for the estimated losses specific to Class Members who were defaulted into the Fixed Dollar Account, any Class Members who were identified as defaulted by Plaintiffs' expert for purposes of his loss analysis (based on data provided by Defendants and the Plans' Recordkeeper) will have their underlying Fund Allocation Score specific to the Fixed Dollar Account multiplied by 1.5. *Id.* § 5.1(a)(v). This 50% enhancement reflects the fact that approximately \$4.1 million in losses were calculated for such Fixed Dollar Account defaultees in addition to the approximately \$8.2 million in profits from all Fixed Dollar Account investors (a ratio of 50%), based on the most conservative estimates of Plaintiffs' expert.

9. Once these calculations are completed, the Settlement Administrator will then determine the Entitlement Amount of each Class Member (the amount they will be paid) 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. *Id.* § 5.1(b). 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 (to minimize administrative expenses associated with any *de minimis* payments), and shall be reallocated among the remaining Class Members on a pro rata basis. *Id.*

10. Active and Inactive Participants (those with a Plan account balance greater than \$0) will automatically receive their share of the Settlement via a deposit to their Plan account. *Id.* § 5.2. Former Participants will automatically receive their payment by check, unless they elect to have their distribution rolled over to an individual retirement account or other eligible employer

³ For purposes of the allocation, the most conservative figures were used (i.e., \$54,989,635 for the MainStay U.S. Epoch All Cap Fund, \$9,568,683 for the MainStay U.S. Epoch Small Cap Fund, \$3,490,229 for the MainStay Retirement Funds, \$4,647,776 for the MainStay Income Builder Fund, and \$8,265,491 (in profits) for the Fixed Dollar Account). *Id.* § 5.1(a)(i)-(v).

plan. *Id.* § 5.3. The Settlement Agreement also provides for automatic payments to Beneficiaries and Alternate Payees under a Qualified Domestic Relations Order. *Id.* § 5.4. Participants are not required to submit a claim form to receive payment.

11. Given the risks of litigation (which are outlined in the accompanying Memorandum of Law), the costs and potential delays associated with prosecuting the case through trial and any appeals, and the amounts recovered in similar cases, I believe that the Settlement is fair, reasonable, and adequate. I also believe the plan of allocation and manner of distribution of funds are fair, reasonable, and equitable based on the claims asserted in the action.

Case Investigation and Proceedings

12. Cohen Milstein has vigorously prosecuted this action throughout the course of the litigation.

13. Cohen Milstein conducted a thorough investigation of the relevant facts and claims, subsequently defeated two motions to dismiss (in whole or in part), and served multiple rounds of discovery requests on Defendants. In addition, we sought third-party discovery from the Plans' current and former investment consultants, NEPC, LLC ("NEPC") and LCG Associates ("LCG"). In total, Defendants produced over 179,000 pages of documents, and the Plans' investment consultants produced over 100,000 pages of additional documents in response to subpoenas.

14. Deposition discovery was also extensive. In total, we took the depositions of eight defense witnesses, deposed three third-party witnesses (from NEPC, LCG, and the Plans' recordkeeper, Alight Solutions, LLC), and defended ten named Plaintiff depositions.

15. We also engaged two experienced experts (Dr. Steve Pomerantz as Plaintiffs' investment expert and Marcia Wagner as Plaintiffs' fiduciary process expert), submitted both initial reports and reply reports from those experts, and defended their depositions. In addition, we took the depositions of both of Defendants' rebuttal experts, after receiving their reports.

16. By the time the Parties engaged in mediation and reached a settlement in this case, all of this work was complete, which helped to ensure the negotiations were fully informed.

Mediation

17. On January 18, 2024, the Parties participated in a full-day mediation with Robert Meyer from JAMS. Mr. Meyer is an experienced mediator who has substantial experience mediating ERISA cases and other class action cases.⁴ Following extensive arm’s length negotiations throughout the day (which lasted approximately ten hours), the parties reached a settlement-in-principle. The Parties then negotiated the details of the comprehensive Settlement Agreement that is the subject of the present motion. For the reasons explained above and in Plaintiffs’ motion papers, I believe the Settlement is fair, reasonable, and adequate.

Personal Background

18. I am a member in good standing of the State Bar of Minnesota, and I am admitted to practice before this Court *pro hac vice*. I also have been admitted in numerous federal courts across the country, including the following:

United States Supreme Court
1st Circuit Court of Appeals
2nd Circuit Court of Appeals
3rd Circuit Court of Appeals
4th Circuit Court of Appeals
6th Circuit Court of Appeals
8th Circuit Court of Appeals
9th Circuit Court of Appeals
10th Circuit Court of Appeals
District of Minnesota
District of Colorado
Eastern District of Michigan
Western District of New York
Eastern District of Wisconsin

⁴ Mr. Meyer’s biography can be found at <https://www.jamsadr.com/meyer/>.

19. I have been actively engaged in the practice of law since 1999, and have substantial class action experience and other complex litigation experience.

20. For the past thirteen years, at both Cohen Milstein and my former law firm, my practice has focused exclusively on class action cases. I have been appointed class counsel for litigation or settlement purposes in over thirty class action cases in total. In connection with those cases, I have personally negotiated class action settlements providing for more than \$450 million in available relief to class members nationwide.

21. The principal types of class action cases that I have handled are consumer class actions and ERISA class actions. In the course of my former consumer practice, I spearheaded class action litigation against several major financial institutions, including JPMorgan Chase, Bank of America, U.S. Bank, Wells Fargo, Citibank, GMAC Mortgage, RBS Citizens, and MidFirst Bank. For example, I successfully argued contested class certification motions in *Hofstetter v. Chase Home Finance, LLC*, 2011 WL 1225900 (N.D. Cal. Mar. 31, 2011) and *Ellsworth v. U.S. Bank, N.A.*, 2014 WL 2734953 (N.D. Cal. June 13, 2014), successfully argued before the First Circuit Court of Appeals in *Lass v. Bank of America, N.A.*, 695 F.3d 129 (1st Cir. 2012), and successfully argued and/or briefed dispositive motions in a number of other consumer class cases, including *Jackson v. Wells Fargo Bank, N.A.*, 2013 WL 5945732 (W.D. Pa. Nov. 6, 2013); *Leghorn v. Wells Fargo Bank, N.A.*, 950 F. Supp. 2d 1093 (N.D. Cal. 2013); *Casey v. Citibank, N.A.*, 915 F. Supp. 2d 255 (N.D.N.Y. 2013); *Berger v. Bank of America, N.A.*, 931 F. Supp. 2d 292 (D. Mass. 2013); *Morris v. Wells Fargo Bank, N.A.*, 2012 WL 3929805 (W.D. Pa. Sept. 7, 2012); *Ulbrich v. GMAC Mortgage, LLC*, 2012 WL 3516499 (S.D. Fla. Aug. 15, 2012); *Walls v. JPMorgan Chase Bank, N.A.*, 2012 WL 3096660 (W.D. Ky. July 30, 2012); *Skansgaard v. Bank*

of America, N.A., 896 F. Supp. 2d 944 (W.D. Wash. 2011); and *Wulf v. Bank of America, N.A.*, 798 F. Supp. 2d 586 (E.D. Pa. 2011).

22. More recently, I have focused on ERISA class action litigation. I was a co-founder of the ERISA litigation practice at my former law firm, and have continued to focus on ERISA class action cases since joining Cohen Milstein in March 2022. I have served as counsel of record in two dozen cases involving retirement plans where classes were certified for litigation and/or settlement purposes, including *Andrus v. New York Life Ins. Co.*, No. 1:16-cv-05698 (S.D.N.Y.), *Beach v. JPMorgan Chase Bank, N.A.*, 1:17-cv-00563 (S.D.N.Y.) (Furman, J.), and other cases in the Southern District of New York. A list of these cases is provided below:

- *Andrus v. New York Life Ins. Co.*, No. 1:16-cv-05698 (S.D.N.Y.);
- *Main v. Am. Airlines, Inc.*, No. 3:16-cv-01033 (N.D. Tex.);
- *Sims v. BB&T Corp.*, No. 1:15-cv-00732 (M.D.N.C.);
- *Stevens v. SEI Invs. Co.*, No. 2:18-cv-04205 (E.D. Pa.);
- *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, No. 8:15-cv-01614 (C.D. Cal.);
- *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*, No. 5:16-cv-03698 (N.D. Cal.);
- *In re M&T Bank Corp. ERISA Litig.*, No. 1:16-cv-00375 (W.D.N.Y.);
- *Wildman v. Am. Century Servs., LLC*, No. 4:16-cv-00737 (W.D. Mo.);
- *Moreno v. Deutsche Bank Ams. Holding Corp.*, No. 1:15-cv-09936 (S.D.N.Y.);
- *Clark v. Oasis Outsourcing Holdings Inc.*, No. 9:18-cv-81101 (S.D. Fla.);
- *Velazquez v. Mass. Fin. Servs. Co.*, No. 1:17-cv-11249 (D. Mass.);
- *Beach v. JPMorgan Chase Bank, N.A.*, No. 1:17-cv-00563 (S.D.N.Y.);
- *Intravaia v. Nat'l Rural Elec. Coop. Assoc.*, No. 1:19-cv-00973 (E.D. Va.);
- *Larson v. Allina Heath Sys.*, No. 17-cv-03835 (D. Minn.);
- *Brotherston v. Putnam Invs., LLC*, No. 1:15-cv-13825 (D. Mass.);
- *Mass v. The Regents of the Univ. of Cal.*, No. RG17-879223 (Alameda Cnty. Sup. Ct.);

- *Moitoso v. FMR LLC*, No. 1:18-cv-12122 (D. Mass.);
- *Reetz v. Lowe’s Cos., Inc.*, No. 5:18-cv-00075 (W.D.N.C.);
- *Toomey v. Demoulas Super Mkts., Inc.*, No. 1:19-cv-11633 (D. Mass);
- *Bhatia v. McKinsey & Co., Inc.*, No. 1:19-cv-01466 (S.D.N.Y.);
- *Kirk v. Ret. Comm. of CHS/Cnty. Health Sys., Inc.*, No. 3:19-cv-00689 (M.D. Tenn.);
- *Baker v. John Hancock Life Ins. Co. (U.S.A.)*, No. 1:20-cv-10397 (D. Mass.);
- *Kinder v. Koch Indus., Inc.*, No. 1:20-cv-02973 (N.D. Ga.); and
- *Hill v. Mercy Health Sys. Corp.*, No. 3:20-cv-50286 (N.D. Ill.).

23. I have tried three ERISA class action cases: the *Putnam* case in 2017, the *American Century* case in 2018, and the *Lowe’s* case in 2021. I also have negotiated numerous settlements that have received final court approval, including in *Andrus v. New York Life*, *American Airlines*, *SEI*, *Allianz*, *Fujitsu*, *M&T*, *Deutsche Bank*, *Oasis Outsourcing*, *Massachusetts Financial Services*, *National Rural Electric Cooperative Association* (“NRECA”), *Putnam*, *Huntington*, *FMR* (“Fidelity”), *Lowe’s* (partial settlement with one defendant), *Demoulas*, *McKinsey*, *CHS*, *John Hancock*, *Koch*, and *Mercy Health*.⁵

24. In several of the above cases, I successfully briefed and/or argued contested class certification motions, including *BB&T*, *Allianz*, *American Century*, *Deutsche Bank*, *JPMorgan Chase*, *Putnam*, and *University of California*, and reached stipulations concerning class certification in cases with *Massachusetts Financial Services*, *Fidelity*, *Lowe’s*, and *John Hancock*.

25. I have spoken by invitation at several national conferences and seminars on ERISA litigation, including: (1) a Practicing Law Institute seminar on ERISA Investment Basics, where I served on a panel regarding “401(k) Plan Fiduciary Fundamentals” (March 21, 2023); (2) five annual employee benefits programs sponsored by the American Law Institute (September 2018 –

⁵ In addition to the foregoing, I also helped litigate *BB&T*, *JPMorgan Chase*, and *Allina* to court-approved settlements, but did not serve as lead counsel and was not directly involved in the negotiation of those settlements.

October 2022); (3) a webinar on “Fee Litigation” sponsored by the American Bar Association (November 12, 2019); (4) a Professional Liability Directors & Officers conference on a panel regarding “Plan Fee Litigation” (February 6, 2019); (5) an American Bankers Association Insurance Risk Management Conference on a panel concerning excessive fee ERISA class actions (February 5, 2019); (6) an American Law Institute webcast on Excessive Fee Litigation (November 28, 2018); (7) the American Conference Institute’s National Forum on ERISA Litigation (on both March 1, 2017 and November 2, 2017), where I was a member of the “Fiduciary Investment Litigation Update” panel; and (8) the Retirement Advisor Council’s annual meeting (May 22, 2018), where I was a member of a panel on “The Moving Litigation Frontier.”

26. Prior to my work at Cohen Milstein and my former firm, I served as the Manager of the Complex Litigation Division of the Office of the Minnesota Attorney General. During my tenure (from February 2008 to March 2010), I supervised and handled a large number of complex matters. For example, in June and September of 2009, I co-chaired a three-week trial involving claims for fraudulent sales of annuities and legal plans to over 1,200 Minnesota senior citizens, which ultimately resulted in a favorable judgment from the trial court. In addition, I handled a significant consumer enforcement action against Sprint Nextel relating to wrongfully imposed contracts and termination fees, which resulted in a comprehensive settlement in October 2009.

27. I also had significant prior class action experience, including two multi-week class action trials: a statewide wage and hour class action against Wal-Mart Stores in Minnesota (tried in 2007) and a landmark class action against the University of Michigan Law School, *see Grutter v. Bollinger*, 539 U.S. 306 (2003).

28. I received my law degree from University of Minnesota Law School in 1999, and my B.A. from Dartmouth College in 1995.

Law Firm Background

29. I am honored to be a member of Cohen Milstein's ERISA litigation team. Cohen Milstein is widely-recognized as a leader in class action litigation, and has a highly-regarded ERISA class action practice.

30. Cohen Milstein was named one of the ten "Most Feared Plaintiffs Firms" by *Law360*, and *Forbes* has called the firm a "class action powerhouse." In 2022, the *U.S. News - Best Lawyers* "Best Law Firms" rankings recognized Cohen Milstein among the "Top Firms Nationally."

31. Cohen Milstein's Employee Benefits/ERISA Practice Group has been specifically recognized for the quality of its work. In 2022, our Practice Group was named by *Law360* as "Practice Group of the Year – Benefits" and earned that distinction for three out of four years. *Chambers USA* has also given Cohen Milstein its highest ranking for ERISA litigation on behalf of plaintiffs nationwide (Band 1). In conferring this honor, *Chambers USA* noted that "Cohen Milstein Sellers & Toll is highly regarded for its representation of plaintiffs in ERISA class actions. The firm is regularly sought out to represent plan participants and beneficiaries in a range of ERISA claims including breach of fiduciary duty."

32. Cohen Milstein's Employee Benefits/ERISA Practice Group has successfully litigated and resolved numerous ERISA cases on behalf of its clients, including in the area of proprietary funds affiliated with 401(k) plan sponsors. Within the past 2½ years alone, the Group received final approval of three class action settlements in cases involving proprietary funds: *Becker v. Wells Fargo & Co.*, No. 0:20-cv-02016, ECF 283 (D. Minn. Aug. 31, 2022) (\$32.5 million); *Feinberg v. T. Rowe Price Group, Inc., et al.*, No. 1:17-cv-00427, ECF 258 (D. Md. July 6, 2022) (\$7 million); and *Baird v. BlackRock Institutional Trust Co.*, No. 4:17-cv-01892, ECF 490

(N.D. Cal. Nov. 3, 2021) (\$9.65 million). Moreover, the Group previously has achieved extraordinary results in other ERISA cases as well, including *In re Merrill Lynch, & Co., Inc. Securities, Derivative and ERISA Litigation*, No. 07-cv-10268 (S.D.N.Y.) (\$75 million settlement), and *In re Beacon Associates Litigation*, No. 09-cv-00777 (S.D.N.Y.) (\$219 million).

33. We also have achieved favorable pretrial rulings in several recent ERISA cases, including this case, *see* ECF 58 (denying motion to dismiss in part); ECF 93 (denying motion to dismiss in full); and *Lloyd v. Argent Tr. Co.*, 2022 WL 17542071 (S.D.N.Y. Dec. 6, 2022) (denying motions to compel arbitration and motion to dismiss for lack of standing). Further, we achieved a favorable appellate ruling in *Harrison v. Envision Management Holding, Inc. Board of Directors*, 59 F.4th 1090 (10th Cir. 2023).

34. Each of my colleagues who are counsel of record in this case are seasoned class action litigators with experience handling high-profile ERISA cases such as this.

35. The Chair of the Practice Group, Michelle Yau, has approximately 20 years of ERISA litigation experience since graduating from Harvard Law School in 2003 (including as an Honors Program attorney at the Department of Labor before joining Cohen Milstein), and also has financial expertise as a former financial analyst in the Financial Institutions Group of the Investment Banking Division at Goldman Sachs. Like myself, Ms. Yau is a frequent speaker at ERISA seminars across the country.

36. Eleanor Frisch was a lead author of plaintiffs' appeal brief in *Brotherston v. Putnam Investments, LLC*, 907 F.3d 17, 31 (1st Cir. 2018), a successful appeal that resulted in a partial vacatur of the trial court's adverse judgment on plaintiffs' ERISA claims (and ultimately, to an eight-figure settlement post-appeal). Ms. Frisch also has significant additional class action

experience since graduating *magna cum laude* from the University of Minnesota Law School in 2014 and clerking for the Eighth Circuit.

37. Daniel Sutter was recently named by *Chambers USA* as an “Associate to Watch” in the area of plaintiff-side ERISA Litigation, and has extensive experience litigating ERISA class action cases since graduating from George Washington University Law School in 2016 and joining our Practice Group. Before that, he also worked for Cohen Milstein as both a law clerk and analyst.

38. Jacob Schutz served with me on the *Putnam* trial team and also served as counsel of record in several ERISA class cases with me, including the *Deutsche Bank* case in this District and the *M&T Bank* case in the Western District of New York. Mr. Schutz earned his undergraduate degree from the University of Pennsylvania and his law degree from the University of Minnesota.

39. Caroline Bressman also has experience litigating multiple ERISA class actions, and is an adjunct faculty member at the University of Minnesota Law School. Ms. Bressman earned her undergraduate degree from St. Olaf College and her law degree from the University of Minnesota Law School.

40. Further information regarding Cohen Milstein’s Employee Benefits/ERISA Practice Group and the attorneys in the Group is available at <https://www.cohenmilstein.com/practice-area/employee-benefits-erisa>.

41. If appointed Class Counsel, Cohen Milstein will continue to diligently handle this Action and attend to matters relating to the Settlement as provided by the Settlement Agreement.

42. I am not aware of any conflicts of interest that would impair or impede our ability to represent Plaintiffs and the Class Members as we have done to date.

Settlement Administrator and Escrow Agent

43. Plaintiffs solicited bids from three potential settlement administrators, and have retained Analytics Consulting LLC (“Analytics”) as the Settlement Administrator. Analytics

provided the lowest bid among the candidates and has extensive experience handling similar ERISA settlements, including the court-approved settlements in *Andrus v. New York Life Ins. Co.*, No. 1:16-cv-05698 (S.D.N.Y.) and *Beach v. JPMorgan Chase Bank, N.A.*, 1:17-cv-00563 (S.D.N.Y.) (among others).

44. Plaintiffs have retained Eagle Bank as the Escrow Agent for the Qualified Settlement Fund. Eagle Bank previously served as the escrow agent in connection with the ERISA class action settlement in *Becker v. Wells Fargo Co.*, No. 0:20-cv-02016 (D. Minn.) (another case involving funds affiliated with the plan sponsor), and has agreed to serve as the Escrow Agent for a fraction of the amount that other financial institutions have charged for this service.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: February 26, 2024

/s/ Kai Richter
Kai Richter

EXHIBIT 1

**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

EXHIBIT A

CLASS ACTION NOTICE
UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

If you participated in or were a beneficiary of the New York Life Insurance Employee Progress Sharing Investment Plan or the New York Life Insurance Company Agents Progress Sharing Plan (the “Plans” and each a “Plan”) at any time from March 2, 2015 to the present, and your Plan account was invested in one or more of the following funds, you are a part of a class action settlement:

MainStay Epoch U.S. All Cap Fund
MainStay Epoch U.S. Small Cap Fund
MainStay Income Builder Fund
any MainStay Retirement Fund
Fixed Dollar Account

PLEASE READ THIS NOTICE CAREFULLY
THIS NOTICE RELATES TO THE SETTLEMENT OF A CLASS ACTION LAWSUIT AND CONTAINS
IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND CERTAIN DEADLINES

*A Federal Court authorized this notice. You are not being sued.
This is not a solicitation from a lawyer.*

- A Settlement has been reached in a class action lawsuit against New York Life Insurance Company (“New York Life”), the Plans’ Fiduciary Investment Committees (the “Committees”), their predecessor Boards of Trustees (“Boards”), and certain current and former members of the Committees and Boards (collectively, the “Defendants”).¹ The class action lawsuit involves whether Defendants complied with the Employee Retirement Income Security Act (“ERISA”) in managing the Plans and retaining certain Disputed Investments affiliated with New York Life.
- You are included as a Class Member if you are or were a Plan participant or beneficiary at any time from March 2, 2015 to the Effective Date of the Settlement (the “Class Period”) and your Plan account was invested in one or more of the following investments: 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 (the “Disputed Investments”).
- New York Life and/or its insurers have agreed to pay \$19,000,000.00 into a settlement fund to resolve the claims of the Settlement Class. Class Members are eligible to receive a pro rata share of the Net Settlement Fund, which is the amount in the settlement fund remaining after payment of administrative expenses, taxes, tax expenses, any attorneys’ fees and expenses that the Court awards to Class Counsel, and any class representative service awards to Plaintiffs. The amount of each Class Member’s payment will be based on a Plan of Allocation that takes into account each Class Member’s investment in the Disputed Investments. Payments to current Plan participants will be deposited into their respective Plan accounts. Beneficiaries entitled to receive payment on behalf of a current Plan participant will receive their payment by check. Payments to former Plan participants (or their beneficiaries) will be made directly by check, unless they elect to receive their payment through a rollover to a qualified retirement account. **If you are a Former Participant (or beneficiary of a Former Participant) and would prefer to receive your settlement payment through a rollover to a qualified retirement account, you must complete, sign, and mail the enclosed Former Participant Rollover Form by [RETURN DATE SET FORTH IN PRELIMINARY APPROVAL ORDER].**

¹ The named Committee and/or Board member defendants are Katherine O’Brien, Anthony R. Malloy, Yie-Hsin Hung, Arthur A. Seter, Scott L. Lenz, and Robert J. Hynes.

- Please read this notice carefully. Your legal rights are affected whether you act, or don't act.

THIS TABLE CONTAINS A SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	You will get a share of the Settlement benefits to which you are entitled and will give up your rights to sue the Defendants about the allegations in this case. Eligible current Plan participants will receive their share of the Settlement via a deposit to their Plan account. Eligible beneficiaries of current Plan participants will receive their share of the Settlement by check. Eligible former Plan participants and their beneficiaries will receive their Settlement payments by check, unless they affirmatively elect to receive their payment through a rollover to a qualified retirement account.
SUBMIT A ROLLOVER FORM (FORMER PLAN PARTICIPANTS AND THEIR BENEFICIARIES ONLY).	If you are a former Plan participant or beneficiary, and you would like to receive your settlement payment through a rollover to a qualified retirement account, you must complete, sign, and mail the enclosed Former Participant Rollover Form by [RETURN DATE SET FORTH IN PRELIMINARY APPROVAL ORDER] .
OBJECT BY [DATE]	You may write to the Court if you don't like the Settlement to explain why you object.
ATTEND A HEARING	You may ask to speak in Court about the fairness of the Settlement.

BASIC INFORMATION

1. What is this notice and why should I read it?

A court authorized this notice to let you know about a proposed settlement of a class action lawsuit called *Krohnengold, et al. v New York Life Insurance Company, et al.*, Civil Action No. 1:21-cv-01778-JMF (the "Action"), brought on behalf of the Class Members (as described in Question 5 below), and pending in the United States District Court for the Southern District of New York. You need not live in New York to get a benefit under the Settlement. This notice describes the Settlement. Please read this notice carefully. Your rights and options – and the deadlines to exercise them – are explained in this notice. Please understand that if you are a Class Member, your legal rights are affected regardless of whether you act.

2. What is a class action lawsuit?

A class action is a lawsuit in which one or more plaintiffs – in this case certain current and former participants in the Plans – sue on behalf of a group of people who allegedly have similar claims. After the Parties reached an agreement to settle this case, the Court granted preliminary approval of the Settlement and authorized the distribution of this notice to the Class. Among other things, this permits Class Members to voice their support for or opposition to the Settlement before the Court makes a final determination as to whether to approve the Settlement. In a class action, the court resolves the issues for all class members.

THE CLAIMS IN THE LAWSUIT AND THE SETTLEMENT

3. What is this lawsuit about?

Plaintiffs filed a class action complaint against New York Life and the other Defendants on behalf of a class of participants in the Plans alleging that Defendants breached their fiduciary duties and engaged in prohibited transactions under ERISA by including the Disputed Investments in the Plans, by making the Fixed Dollar Account the Plans' default investment, and by failing to adequately monitor the fees and performance of those funds. A more complete description of what Plaintiffs alleged is in the Second Amended Complaint, which is available on the Settlement Website at [www.WEBSITENAME.com].

New York Life and the other Defendants deny Plaintiffs' claims of wrongdoing or liability, and assert that they have always acted prudently and in the best interests of the Plans' participants and beneficiaries when taking actions as fiduciaries of the Plans. New York Life also believes that the Plans provide a very generous benefit. The Defendants are settling the lawsuit solely to avoid the expense, inconvenience, and inherent risk and disruption of litigation.

4. Why is there a Settlement?

The Court has not decided in favor of either side in the case. Instead, both sides agreed to a settlement. That way, both sides avoided the cost and risk of a trial, and the affected Class Members will get benefits that they would not have received if Plaintiffs had litigated the case and lost. The Plaintiffs and their attorneys think the Settlement is in the best interests of the Class.

WHO'S INCLUDED IN THE SETTLEMENT?

5. How do I know if I am in the Class?

The Court decided that everyone who fits the following description is a member of the **Settlement Class**:

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 (as defined in the Settlement Agreement), excluding Defendants, any of their directors, and any members of the Committees (including the predecessor Boards) from March 2, 2015 to the Effective Date of the Settlement.

If you meet the definition above, you are a member of the Class.

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

Gross Settlement Amount. New York Life has agreed to pay \$19,000,000.00 to settle the lawsuit. That amount, less amounts for expenses associated with administering the Settlement, the Independent Fiduciary who will review the Settlement on behalf of the Plans, taxes, tax expenses, as well as attorneys' fees, litigation expenses, and service awards to Plaintiffs (the latter three categories of which must be approved by the Court), is the "Net Settlement Amount" that will be paid to the Class. The Net Settlement Amount will be allocated to Class Members in accordance with a Plan of Allocation that is based on their Plan account balances invested in one or more of the Disputed Investments during the Class Period.

Plan of Allocation. Payments to each Class Member will be calculated by the Settlement Administrator as follows, based on information provided by the Plans' 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 and as stated in further detail in the Settlement Agreement:
- MainStay U.S. Epoch All Cap Fund: (average personal month-end balance in the fund from March 2015 to December 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)
 - 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)
 - 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)
 - 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)
 - 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 based on the methodology set forth in the Settlement Agreement, their Fund Allocation Score for the FDA shall be further multiplied by 1.5.
- (b) The Settlement Administrator shall determine the total settlement payment available to each Class Member by calculating each such Class Member's pro rata share of the Net Settlement Fund 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 reallocated among the remaining Class Members on a pro rata basis.

Release. In exchange for the monetary relief provided above, all Class Members will release and forever discharge New York Life and the other Released Defendant Parties from Plaintiffs' Released Claims.

The Released Defendant Parties include, but are not limited to, the Plans, each Defendant, each of the Committees, each member of the Committees and Boards during the Class Period, and each of their present, former, or future 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, and insurers.

Plaintiffs' Released Claims include, but are not limited to, all claims 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 or could

have been asserted in the Action based on the same factual predicate. The Plaintiffs' Released Claims also include those that would be barred by the legal doctrine of *res judicata*; that 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 that relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone.

This is only a summary of the Released Defendant Parties and Plaintiffs' Released Claims, and is not a binding description of either. The governing release language is found within the Settlement Agreement, which is available at [www.websitename.com]. Generally, the release means that Class Members will not have the right to sue the Defendants, the Plans, or related parties for conduct during the Class Period arising out of or relating to the allegations in the lawsuit.

HOW TO GET BENEFITS

7. How do I get benefits?

Class Members do not have to submit claim forms in order to receive settlement benefits.

If you are a Class Member and are currently a Plan participant, your payment will be deposited into your Plan account in accordance with your investment elections for new contributions. If you do not have such an election on file, or are not eligible to make new contributions, your payment will be invested in the Plan's default investment.

If you are a beneficiary entitled to receive payment on behalf of a current Plan participant, you will receive your payment under the Settlement directly in the form of a check. If you are an alternate payee entitled to receive payment on behalf of a current Plan participant pursuant to a Qualified Domestic Relations Order (an "Alternate Payee"), you will receive your payment under the Settlement pursuant to the terms of your Qualified Domestic Relations Order.

If you are a Class Member and who formerly participated in the Plan but no longer do so (or you are a beneficiary or an Alternate Payee of such a Class Member), then you will receive a payment under the Settlement directly in the form of a check, unless you elect to receive a rollover to a qualified retirement account. ***If you would prefer to receive your settlement payment through a rollover to a qualified retirement account, you must complete, sign, and mail the enclosed Former Participant Rollover Form by [10 days before Fairness Hearing, 2024].***

8. When will I get my payment?

Payments to Class Members will be distributed approximately fifty (50) days after the Effective Date of the Settlement, if the Settlement is finally approved by the Court. These payments may have certain tax consequences; you should consult your tax advisor.

The final hearing to consider the fairness of the Settlement is scheduled for [_____, 2024]. If the Settlement is not approved by the Court, the Settlement will not become effective.

THE LAWYERS REPRESENTING YOU

9. Who represents the Settlement Class?

For purposes of the Settlement, the Court has appointed lawyers from the law firm of Cohen Milstein Sellers & Toll PLLC as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense. In addition, the Court appointed the named 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, to serve as the Class Representatives. They are also Class Members.

Subject to approval by the Court, up to \$10,000 may be paid to each of the Plaintiffs as the Class Representatives in recognition of time and effort they expended on behalf of the Class. The Court will determine the proper amount of any award to the Plaintiffs. The Court may award less than that amount.

10. How will the lawyers be paid?

From the beginning of the case, which was filed in March 2021, to the present, Class Counsel have not received any payment for their services in prosecuting the case or obtaining the Settlement, nor have they been paid for any litigation expenses they have incurred. Class Counsel will apply to the Court for an award of attorneys' fees not to exceed 33% of the \$19,000,000.00 settlement amount plus their litigation expenses incurred in the prosecution of the case. The Court will determine the proper amount of any attorneys' fees and expenses to award Class Counsel.

Any attorneys' fees and expenses awarded by the Court will be paid to Class Counsel from the settlement fund. Class Members will not have to separately pay anything toward the fees or expenses of Class Counsel.

INDEPENDENT FIDUCIARY

11. Will the Settlement be reviewed by anyone other than the Court?

Yes. New York Life will select and retain an experienced Independent Fiduciary to review the Settlement on behalf of the Plans and determine whether to authorize the Plans to release the Plans' claims against Defendants and whether it is necessary to file an objection to the Settlement on behalf of the Plans. As an impartial third party, the Independent Fiduciary will review the Action and the Settlement, including the claims alleged against the Defendants, the terms of the Settlement, the Plan of Allocation, and the request for attorneys' fees and expenses. The Independent Fiduciary will submit its findings to New York Life in a written report, which will then provide that report to Class Counsel. Class Counsel will file the Independent Fiduciary's report with the Court before the Fairness Hearing.

YOUR RIGHTS AND OPTIONS

12. What is the effect of final approval of the Settlement?

If the Court grants final approval of the Settlement, a final order and judgment dismissing the case will be entered in the Action. Payments under the Settlement will then be processed and distributed, and the release by Class Members will also take effect. No Class Member will be permitted to continue to assert Plaintiffs' Released Claims in any other litigation against the Defendants or the other persons and entities covered by the release, as described in Question No. 6.

If the Settlement is not approved, the case will proceed as if no settlement had been attempted or reached. In that event, there is no assurance that members of the Settlement Class will recover more than what is provided for under the Settlement, or anything at all.

13. What happens if I do nothing at all?

If you do nothing, you will release any claims you may have against New York Life and the Released Defendant Parties that are included in the Plaintiffs' Released Claims (*see* Question 6). You may also receive a settlement payment as described above.

14. How do I get out of the Settlement?

If the Court approves the Settlement, you will be bound by it (including the release) and will receive whatever benefits you are entitled to under its terms. You cannot exclude yourself from the Settlement (i.e., opt-out), but you may notify the Court of any objection you may have to the Settlement. (See Question No. 16.) If the Court approves the Settlement, it will certify the Class under Federal Rule of Civil Procedure 23(b)(1), which does not permit Class Members to opt out of the Class.

15. Can I sue New York Life for the same thing later?

No. If the Court approves the Settlement, you will have given up any right to sue New York Life or any of the Released Defendant Parties for the Plaintiffs' Released Claims.

16. How do I object to the Settlement?

You can object to the Settlement if you don't like any part of it. If you object, you must give the reasons why you think the Court should not approve the Settlement. The Court will consider your views. Your objection to the Settlement must be postmarked no later than [redacted], 2024 and must be sent to the attorneys for the Parties at the addresses below, who will share your objection with the Court at the time the Parties seek final approval of the Settlement:

Class Counsel	Defendants' Counsel
Michelle C. Yau COHEN MILSTEIN SELLERS & TOLL PLLC 1100 New York Ave. NW Fifth Floor Washington, DC 20005	James O. Fleckner GOODWIN PROCTER LLP 100 Northern Avenue Boston, MA 02210

The objection must be in writing and include the case name *Krohnengold, et al. v New York Life Insurance Company, et al.*, Civil Action No. 1:21-cv-01778-JMF; as well as include your (a) name; (b) address; (c) a statement that you are a member of the Class; (d) the specific grounds for the objection (including all arguments, citations, and evidence supporting the objection); (e) all documents or writings that you desire the Court to consider (including all copies of any documents relied upon in the objection); (f) your signature; and (g) a notice of intention to appear at the Fairness Hearing (if applicable). (If you are represented by counsel, you or your counsel must file your objection through the Court's CM/ECF system.) The objection must state whether it applies only to the objector, to a specific subset of the Class or to the entire Class. The Court will consider all properly filed comments from Class Members. If you wish to appear and be heard at the Fairness Hearing in addition to submitting a written objection to the Settlement, you or your attorney must say so in your written objection.

Class Counsel will file with the Court and post on the Settlement Website their request for attorneys' fees and expenses two weeks prior to [objection deadline]. You may also object to the requested attorneys' fees and expenses or the proposed administrative expenses or class representative service awards.

THE COURT'S FAIRNESS HEARING**17. When and where will the Court hold a hearing on the fairness of the Settlement?**

A Fairness Hearing has been set for [date] at [time], before The Honorable Jesse M. Furman at the Thurgood Marshall United States Courthouse, 40 Foley Square New York, NY 10007 in [courtroom]. At the hearing, the Court will hear any comments, objections, and arguments concerning the fairness of the proposed Settlement,

including the amount requested by Class Counsel for attorneys' fees and expenses, the proposed administrative expenses, and the proposed service awards to Plaintiffs as the Class Representatives. You do not need to attend this hearing. You also do not need to attend to have an objection considered by the Court.

Note: The date and time of the Fairness Hearing are subject to change by Court Order, but any changes will be posted at [www.[WEBSITENAME.com](#)].

18. Do I have to come to the Fairness Hearing?

No. Class Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as any written objection you choose to make was submitted on time and meets the criteria described above (*see* Question 16), the Court will consider it. You may also pay another lawyer to attend, but you don't have to.

19. May I speak at the hearing?

You may ask the Court for permission to speak at the hearing concerning any part of the proposed Settlement by following the instructions in Question 16 above.

GETTING MORE INFORMATION

20. Where can I get additional information?

This notice provides only a summary of the matters relating to the Settlement. For more detailed information, you may wish to review the Settlement Agreement. You can view the Settlement Agreement and get more information at [www.[WEBSITENAME.com](#)]. You can also get more information by writing to the Settlement Administrator at [REDACTED] or calling toll-free at 1-[number]. The Settlement Agreement and all other pleadings and papers filed in the case are available for inspection and copying during regular business hours at the office of the Clerk of Court, Ruby J. Krajick, located at the Thurgood Marshall United States Courthouse, 40 Foley Square New York, NY 10007. For a fee, all papers filed in the Action are available at www.pacer.gov. All capitalized terms herein have the meaning ascribed to them in the Settlement Agreement.

PLEASE DO NOT CONTACT THE COURT, THE JUDGE, OR NEW YORK LIFE WITH QUESTIONS ABOUT THE SETTLEMENT.

EXHIBIT B

New York Life 401(k) Plans Settlement Administrator

[Address]

[Address]

www.WEBSITE.com

FORMER PARTICIPANT ROLLOVER FORM

JOHN Q CLASSMEMBER
123 MAIN ST APT 1
ANYTOWN, ST 12345

Claim Number: 1111111

You may be eligible to receive a payment from a class action settlement. The court has preliminarily approved the class settlement of *Krohnengold, et al. v New York Life Insurance Company, et al.*, Civil Action No. 1:21-cv-01778-JMF (S.D.N.Y.). That settlement provides for allocation of monies to certain persons who participated in or were beneficiaries of the New York Life Insurance Company Employee Progress-Sharing Investment Plan or the New York Life Insurance Company Agents Progress-Sharing Plan (“Plans”) at any time between March 2, 2015 and [the Effective Date of Settlement], and whose individual accounts were invested in one or more of the following funds during that time: 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 (“Class Members”). The terms of that Settlement are summarized in the accompanying Notice of Class Action Settlement that is included with this form. For additional information, please review the Notice, visit www.[WEBSITE].com or call 1-[#####].

This Former Participant Rollover Form is **ONLY** for Class Members who are **Former Participants**, or the beneficiaries or alternate payees of Former Participants (all of whom will be treated as Former Participants) in the Plans. A Former Participant is a Class Member who does not have a Plan account with a balance greater than \$0.00 as of the date of [the Preliminary Approval Order].

Former Participants who would like to elect to receive their settlement payment through a rollover to a qualified retirement account must complete, sign, and mail this form with a postmark on or before **10 days before Fairness Hearing, 2024**. Please review the instructions below carefully. **Former Participants who do not complete and timely return this form will receive their settlement payment by a check payable to themselves (subject to applicable tax withholding).** If you have questions regarding this form, you may contact the Settlement Administrator as indicated below:

WWW.[WEBSITE].COM OR CALL 1-[#####]

PART 1: INSTRUCTIONS FOR COMPLETING FORMER PARTICIPANT ROLLOVER FORM

1. If you would like to receive your settlement payment through a rollover to a qualified retirement account, complete this rollover form. You should also keep a copy of all pages of your Former Participant Rollover Form, including the first page with the address label, for your records.
2. **Mail your completed Former Participant Rollover Form postmarked on or before 10 days before the Fairness Hearing to the Settlement Administrator at the following address:**

New York Life 401(k) Plans Settlement Administrator

[Address]

[Address]

It is your responsibility to ensure the Settlement Administrator has timely received your Former Participant Rollover Form.

3. Other Reminders:

- You must provide all required information (including date of birth and social security number) and sign and date your form where indicated below.
- If you omit to provide all necessary information or fail to sign and date your form, payment will be made to you by check.
- If you change your address after sending in your Former Participant Rollover Form, please provide your new address to the Settlement Administrator.
- **Timing of Payments to Eligible Class Members.** The timing of the distribution of the Settlement payments are conditioned on several matters, including the Court's final approval of the Settlement and any approval becoming final and no longer subject to any appeals in any court. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur **within three months** of the Court's Final Approval Order.

4. **Questions?** If you have any questions about this Former Participant Rollover Form, please call the Settlement Administrator at 1-#####. The Settlement Administrator will provide advice only regarding completing this form and will not provide financial, tax or other advice concerning the Settlement. You therefore may want to consult with your financial or tax advisor. Information about the status of the approval of the Settlement and the Settlement administration is available on the settlement website, at www.[Website].com.

[FORMER PARTICIPANT ROLLOVER FORM CONTINUES ON THE NEXT PAGE]

PART 2: PARTICIPANT INFORMATION

First Name	Middle	Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Mailing Address		
<input type="text"/>		
City	State	Zip Code
<input type="text"/>	<input type="text"/>	<input type="text"/>
Home Phone	Work Phone or Cell Phone	
<input type="text"/> - <input type="text"/> - <input type="text"/>	<input type="text"/> - <input type="text"/> - <input type="text"/>	
Participant's Social Security Number	Participant's Date of Birth	
<input type="text"/> - <input type="text"/> - <input type="text"/>	<input type="text"/> - <input type="text"/> - <input type="text"/>	
Email Address	M M	D D Y Y Y Y
<input type="text"/>		

PART 3: BENEFICIARY OR ALTERNATE PAYEE INFORMATION (IF APPLICABLE)

Check here if you are the **surviving spouse or other beneficiary** for the Former Participant and the Former Participant is deceased. **Documentation must be provided showing current authority of the representative to file on behalf of the deceased.** Please complete the information below and then continue on to Parts 4 and 5 on the next page.

Check here if you are an alternate payee under a qualified domestic relations order (QDRO). The Settlement Administrator may contact you with further instructions. Please complete the information below and then continue on to Parts 4 and 5 on the next page.

First Name	Middle	Last Name
Mailing Address		
City	State	Zip Code
Home Phone	Work Phone or Cell Phone	
Participant's Social Security Number	Participant's Date of Birth	
Email Address	M M D D Y Y Y Y	

PART 4: PAYMENT ELECTION

Direct Rollover to an Eligible Plan – Check only one box below and complete the Rollover Information Section below:

- Government 457(b) 401(a)/401(k) 403(b)
- Direct Rollover to a Traditional IRA Direct Rollover to a Roth IRA (subject to ordinary income tax)

Rollover Information:

Company or Trustee's Name (to whom the check should be made payable)

Company or Trustee's Mailing Address 1

Company or Trustee's Mailing Address 2

Company or Trustee's City

State Zip Code

Your Account Number

Company or Trustee's Phone Number

-

-

PART 5: SIGNATURE, CONSENT, AND SUBSTITUTE IRS FORM W-9

UNDER PENALTIES OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA, I CERTIFY THAT ALL OF THE INFORMATION PROVIDED ON THIS FORMER PARTICIPANT ROLLOVER FORM IS TRUE, CORRECT, AND COMPLETE AND THAT I SIGNED THIS FORMER PARTICIPANT ROLLOVER FORM.

1. The Social Security number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. person (including a U.S. resident alien).

M M

D D

Y Y Y Y

-

-

Participant Signature

Date Signed (Required)

Note: If you are subject to backup withholding, you must cross out item 2 above. The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholding.

EXHIBIT C

**UNITED STATES DISTRICT COURT
FOR THE 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

Plaintiff,

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.

**[PROPOSED]
ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT,
PRELIMINARILY CERTIFYING SETTLEMENT CLASS, APPROVING PROCEDURE
AND FORM OF NOTICE, AND SCHEDULING FAIRNESS HEARING**

This matter came before the Court on Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Motion"). Upon reviewing the proposed Settlement Agreement, the Preliminary Approval Motion papers, and the arguments of counsel, the Court hereby preliminarily approves the proposed Settlement and finds and orders as follows:

1. The Court preliminarily approves the Settlement Agreement (including the exhibits thereto) in its entirety. Unless otherwise defined herein, all defined terms in this Order shall have the meanings ascribed to them in the Settlement Agreement.

2. The Court has conducted an initial evaluation of the Settlement under Federal Rule

of Civil Procedure 23, and preliminarily finds that the Settlement is fair, reasonable, and adequate. The Court also preliminarily finds that the Plan of Allocation is fair and reasonable. Subject to further consideration at the Fairness Hearing, the Court will likely be able to grant final approval of Settlement Agreement based on the factors set forth in Rule 23(e)(2) and finally certify the Settlement Class for purposes of judgment. Accordingly, the Court determines that it is appropriate to provide notice of the Settlement to the Settlement Class.

3. For settlement purposes, the Court preliminarily certifies the following Settlement Class pursuant to Fed. R. Civ. P. 23(b)(1):

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 (the “Plans”) 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]

4. For settlement purposes, the Court preliminarily approves the appointment of Plaintiffs Amy Laurence (as a surviving beneficiary and substitute party for Stuart Krohnengold), Wayne Antoine, Lee Webber, Anthony Medici, Joseph Bendrihem, Larry Gilbert, Rafael Musni, Thomas Lantz, Sandra Scanni, and Claudia Gonzalez as class representatives.

5. For settlement purposes, the Court preliminarily approves the appointment of Cohen Milstein Sellers & Toll PLLC as Class Counsel.

6. For settlement purposes, Analytics Consulting LLC (“Analytics”) is hereby appointed to serve as the Settlement Administrator and shall be required to perform all the duties

¹ For purposes of this class definition, the term “Committees” includes the Board of Trustees of the New York Life Insurance Employee Progress Sharing Investment Plan, the Board of Trustees of the New York Life Insurance Company Agents Progress Sharing Plan, the Fiduciary Investment Committee of the New York Life Insurance Employee Progress Sharing Investment Plan, and the Fiduciary Investment Committee of the New York Life Insurance Agents Progress Sharing Investment Plan, as well as all subcommittees and other committees to the Committees.

of the Settlement Administrator as set forth in the Settlement Agreement.

7. For settlement purposes, Eagle Bank is hereby appointed to serve as the Escrow Agent and shall be required to perform all the duties of the Escrow Agent as set forth in the Settlement Agreement.

8. On [date no earlier than 133 days following preliminary approval] at [time], or at such other date and time later set by Court Order,² in Courtroom [] of the Daniel Patrick Moynihan U.S. Courthouse, 500 Pearl Street, New York, New York 10007, the Court will hold a Fairness Hearing to (1) review comments and/or objections regarding the Settlement and/or Class Counsel's request for approval of any Attorneys' Fees and Expenses, Administrative Expenses, and Service Awards, (2) finally consider the fairness, reasonableness, and adequacy of the 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.

9. No later than fourteen (14) days prior to the Fairness Hearing, Plaintiffs shall file papers in support of final approval of the Settlement and in response to any written objections. Defendants may also file a response to any objections at that time.

10. No later than fourteen (14) days prior to the deadline for Class Members to object to the Settlement, Class Counsel shall file an application for approval of Attorneys' Fees and Expenses, Administrative Expenses, and Service Awards. The application also shall be posted on the Settlement Website. Pending approval, any Administrative Expenses necessary to effectuate

² Any change in the date, time, location, or format of the hearing shall be posted on the Settlement Website.

the Settlement may be paid from the Qualified Settlement Fund.

11. The Court hereby approves the form and contents of the proposed Notice (including the Former Participant Rollover Form), and finds that mailing copies of the Notice to Class Members by first class mail, postage prepaid, constitutes the best notice practicable under the circumstances and complies fully with the requirements of Federal Rule of Civil Procedure 23, the United States Constitution, due process, and applicable law. The Court finds that the proposed Notice (including the Former Participant Rollover Form) constitutes due and sufficient notice of the Settlement and the Fairness Hearing to all persons affected by or entitled to participate in the Settlement, and fairly and adequately:

- a. Summarizes the claims asserted;
- b. Describes the terms and effect of the Settlement;
- c. Notifies the Class that Class Counsel will seek compensation from the Qualified Settlement Fund for Attorneys' Fees and Expenses, Service Awards to the Plaintiffs, and Administrative Expenses of Settlement;
- d. Gives notice to the Class of the time and place of the Fairness Hearing, and of Class Members' right to appear; and
- e. Describes how the recipients of the Notice may object to the Settlement, or any requested Attorneys' Fees, Expenses, or Service Awards.

12. The Court also approves the establishment of a Settlement Website and toll-free telephone support line as set forth in the Settlement Agreement. No later than forty-five (45) calendar days following the entry of this Preliminary Approval Order, the Settlement Administrator shall establish the Settlement Website and telephone support line, and shall

disseminate the proposed Notice to the Class together with the Former Participant Rollover Form.

13. Former Participant Class Members (and their Beneficiaries and Alternate Payees) must submit a Former Participant Rollover Form to the Settlement Administrator no later than then (10) calendar days before the Fairness Hearing to be eligible for a rollover.

14. Any Class Member may comment on the Settlement and/or object to the Settlement or the proposed Attorneys' Fees and Expenses, Administrative Expenses, or Service Awards; provided, however, that all comments and objections shall only be considered by the Court at the Fairness Hearing if they have been timely sent to Class Counsel and Defendants' Counsel. To be timely, the comment and/or objection and any supporting documents must be mailed or otherwise delivered to Class Counsel and Defendant's Counsel no later twenty-eight (28) calendar days prior to the date of the Fairness Hearing (or filed via ECF if the Class Member has retained separate counsel for purposes of the comment and/or objection). All objections from Class Members must include in the written objection the Class Member's name and address; state that the person submitting the objection is a Class Member; state the specific grounds for the objection; include all arguments, citations, and evidence supporting the objection (including copies of any documents relied on); provide a physical signature for the objecting Class Member; and provide a statement indicating whether the objector intends to appear at the Fairness Hearing. The objection must also state whether it applies only to the objector, to a specific subset of the Class, or to the entire Class. Any Class Member who fails to object in the manner prescribed herein shall be deemed to have waived such Class Member's objections and forever be barred from making any such objections in this Action or in any other action or proceeding.

15. A Class Member who objects to the Settlement need not appear at the Fairness

Hearing for the Class Member's comment to be considered by the Court. Class Counsel shall file any objections to any aspect of the Settlement with the Court as part of their motion for Final Approval of the Settlement.

16. Each Class Member and their heirs, executors, administrators, successors, and assigns, as well as each of the Plans, is preliminarily barred and enjoined from the institution or prosecution of any of Plaintiffs' Released Claims against any of the Released Defendant Parties pending final approval of the Settlement, 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 Action and the Released Claims. Defendants are also preliminarily barred and enjoined from the institution or prosecution of any of Defendants' Released Claims against any of the Released Plaintiff Parties pending final approval of the Settlement.

17. Neither this Order, the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendants of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind.

18. In the event that the Settlement Agreement is terminated pursuant to its terms or is not finally approved by the Court, or such approval is reversed, vacated, or modified by this or any other Court, then the Parties and Class Members will be restored to their respective positions immediately before the execution of the Settlement Agreement; this Action shall proceed in all respects as if the Settlement Agreement and any related orders had not been entered; any order entered by the Court pursuant to the terms of the Settlement Agreement shall be treated as vacated *nunc pro tunc*; the fact of the Settlement Agreement and the terms contained therein shall not be

admissible in any proceeding for any purpose; and the Parties shall 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.

19. The Court reserves the right to adjourn the date of the Fairness Hearing without further notice to the members of the Class (other than through the Settlement Website), and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class (other than through the Settlement Website).

IT IS SO ORDERED this ___ day of _____, 2024.

Hon. Jesse M. Furman
United States District Judge