

COHENMILSTEIN

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June 26, 2024

VIA ECF

The Honorable Jesse M. Furman
United States District Court
Southern District of New York
40 Centre Street, Room 2202
New York, NY 10007

Re: *Krohnengold et al. v. New York Life Inc. Co. et al.*, No. 1:21-cv-01778-JMF

Dear Judge Furman:

I write to inform the Court that the parties received one “objection” from Class member Leslie Marsh via mail on June 25, following the filing of Plaintiffs’ motion for final settlement approval in the above-captioned action.¹ Though styled as an objection, Mr. Marsh’s correspondence, attached hereto as Exhibit 1, does not object to either the Settlement amount, the fee and expense request, or any other specified terms of the Settlement. Instead, Mr. Marsh states:

I object to the case on the grounds that I am currently involved in a legal dispute with New York Life Insurance Company. I do not want acceptance of any financial claim resulting from the class action case to affect my suit with New York Life Insurance Company. This objection only applies to me, the objector, not to anyone else in the Class.

Although Plaintiffs understand Mr. Marsh’s desire to preserve his individual claims against New York Life, those claims are not in any way affected by the class action settlement in this case. Under Paragraph 1.40 of the Settlement Agreement, “Plaintiffs’ Released Claims” are specific to claims asserted in the Action or that relate to matters or facts asserted in the Action. *See* Settlement Agreement, ECF No. 176-1, ¶ 1.40(a).² Mr. Marsh’s claims against New York Life, which are set forth in the state court complaint attached hereto as Exhibit 2, are entirely unrelated to this Action,

¹ The objection was only sent to defense counsel, who then shared it with our firm as class counsel.

² Subparagraphs (b)-(d) of the class release are not at issue.

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and do not concern the at-issue 401(k) Plans, the Disputed Investments in the Plans, or ERISA.³ As such, they are not released.

Class Counsel has conferred with Defendants' counsel regarding Mr. Marsh's objection, and counsel for Defendants indicated that "NYL agrees that Marsh's claims in his separate lawsuit will not be barred or impacted by the Krohngold settlement and release." Accordingly, Plaintiffs respectfully request that Mr. Marsh's "objection" be overruled for the reasons set forth above.⁴ *See In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, 2007 WL 313474, at *10-11 (S.D.N.Y. Feb. 1, 2007) (overruling objection where release in settlement agreement did not release claims in separate pending case with overlapping defendants, as confirmed by defendants' counsel).

Sincerely,

/s/ Kai Richter
Kai Richter

³ In his complaint, Mr. Marsh asserts 6 counts: (1) breach of contract related to certain alleged agent's contracts; (2) breach of the implied covenant of good faith related to the same alleged contracts; (3) tortious interference with prospective economic advantage for allegedly "failing to pay compensation due Marsh, retaining commissions and successor agent commissions and competing with Marsh in violation of NYL and NYLA policies, regulations, handbooks and directives"; (4) constructive fraud based on the foregoing claims; (5) defamation for allegedly "publishing false and unprivileged writings that exposed him to hatred, contempt, ridicule, strong public criticism"; and, (6) punitive damages. *See* Ex. 2 ¶ 17.

⁴ The objection is also procedurally defective because it was not filed with the Court or mailed to counsel for both parties in accordance Paragraph 14 of the Court's Preliminary Order (ECF 188) and paragraph 16 of the Settlement Notice (ECF 196-1). *See Moore v. Verizon Communications Inc.*, 2013 WL 4610764, at *12 (N.D. Cal. Aug. 28, 2013) ("[The class member's] objection is OVERRULED because it . . . was not filed with the Court.").