

Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

JEREMY KARG, MATTHEW R.
LAMARCHE, CYNTHIA K. MARSHALL,
SHIRLEY RHODES, and JEANINE E. VEGA,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

TRANSAMERICA CORPORATION;
TRUSTEES OF THE AEGON USA, INC.
PROFIT SHARING TRUST; and DOES 1–40;

Defendants.

Case No. 1:18-cv-00134-CJW-KEM

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**

Judge: Hon. C.J. Williams
Magistrate: Hon. Kelly Mahoney

This Settlement Agreement and Release (“Agreement”) is entered into by and among Plaintiffs, on their own behalves and on behalf of the Class and the Plan, on the one hand, and the Defendants, on the other hand, in consideration of the promises, covenants, and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate.

The capitalized terms used in the preceding sentence and in this Agreement are defined in Part I below.

I. DEFINITIONS

1.1. “Action” shall mean *Karg, et al. v. Transamerica Corp., et al.*, No. 1:18-cv-00134-CJW-KEM (N.D. Iowa, filed December 28, 2018), and any and all cases now or hereafter consolidated with it.

1.2. “Administration Costs” shall mean (a) the costs and expenses associated with the production and dissemination of the Notice; (b) all reasonable costs incurred by the Settlement Administrator in administering and effectuating this Settlement, including costs of distributing

the Settlement Amount, which costs are necessitated by performance and implementation of this Agreement and any court orders relating thereto; and (c) all reasonable fees charged by the Settlement Administrator, pursuant to Section 4.1(l) below.

1.3. “Attorneys’ Fees and Expenses” shall mean the attorneys’ fees, costs (including fees and costs charged or incurred by retained experts or consultants), and expenses incurred by Class Counsel in connection with this Action and resulting Settlement.

1.4. “Case Contribution Awards” shall have the meaning ascribed to it in Section 8.1.

1.5. “Challenged Funds” shall mean the Transamerica International Equity Portfolio, the Transamerica Small Core Portfolio, the Transamerica Large Value Portfolio, the Transamerica Large Growth Portfolio, the Transamerica High Yield Bond Portfolio, and the Transamerica Mid Value Portfolio.

1.6. “Class” shall mean the class certified by the Court on March 25, 2020, consisting of: “All participants and beneficiaries of the Transamerica 401(k) Retirement Savings Plan (the “Plan”) who invested in (a) the Transamerica International Equity Portfolio, (b) the Transamerica Small Core Portfolio, (c) the Transamerica Large Value Portfolio, (d) [the] Transamerica Large Growth Portfolio, (e) [the] Transamerica High Yield Bond Portfolio, and/or (f) the Transamerica Mid Value Portfolio . . . at any time from December 28, 2012 through the date of judgment, excluding defendants.”

1.7. “Class Counsel” shall mean J. Barton Goplerud of Shindler, Anderson, Goplerud & Weese, P.C. and Kevin H. Sharp, Charles Field, Shaun M. Rosenthal, David Sanford, Alexandra Harwin, David Tracey, and Robert Van Someren Greve of Sanford Heisler Sharp, LLP.

1.8. “Class Member” shall mean a member of the Class.

1.9. “Court” shall mean the United States District Court for the Northern District of Iowa.

1.10. “Company” shall mean Transamerica Corporation.

1.11. “Compliance Period” shall mean a period lasting three years from the Effective Date.

1.12. “Current Participant” shall mean any Class Member who, as of the date of the Preliminary Approval Order, has a Plan account with a positive balance.

1.13. “Defendants” shall mean Transamerica Corporation and the Trustees.

1.14. “Defendants’ Counsel” shall mean Catalina J. Vergara and Randall W. Edwards of O’Melveny & Myers LLP and Wilford H. Stone of Lynch Dallas, P.C.

1.15. “Defendant Released Parties” shall mean (a) Defendants and, as applicable, each of their predecessors, successors, current and former parents, subsidiaries, affiliates, divisions, related companies, assigns, descendants, dependents, beneficiaries, marital community, heirs, executors, and administrators; (b) each of the current and former officers, directors, trustees, and fiduciaries, committees, employees, investment consultants, administrators, actuaries, agents, insurers, representatives, attorneys, and retained experts of the entities and individuals in (a); and (c) all current and former Trustees.

1.16. “Distributable Settlement Amount” shall have the meaning set forth in Section 4.2(a).

1.17. “Effective Date” shall mean (a) the date upon which the applicable period to appeal the Final Approval Order and Judgment has expired, if no appeal is taken during such period; or (b) if, during the appeals period, an appeal is taken from such Final Approval Order and Judgment, the date upon which all appeals, including further petitions for review, rehearing, or certiorari, and any proceedings resulting therefrom, have been finally disposed of, or the date upon which the applicable period to initiate such further petitions or proceedings has expired. The Parties shall agree in writing when the Effective Date has occurred, and any dispute shall be resolved by the Court. It is expressly agreed by the Parties and their counsel that no Party intends this provision or any other part of this Agreement to establish or acknowledge that anyone is entitled to or has the right to appeal from the Final Approval Order and Judgment.

1.18. “Escrow Account” shall mean an account at an established Financial Institution agreed upon by the Parties that is established for the deposit of the Settlement Amount and amounts relating to it, such as income earned on investment of the Settlement Amount.

1.19. “Escrow Agent” shall mean the entity approved by the Parties to act as escrow agent for any portion of the Settlement Amount deposited in or accruing in the Escrow Account pursuant to this Agreement.

1.20. “Fee and Expense Application” shall mean the petition to be filed by Class Counsel seeking approval of an award of Attorneys’ Fees and Expenses.

1.21. “Final Approval Hearing” shall mean the hearing to be held before the Court pursuant to Federal Rule of Civil Procedure 23(e) to determine whether the Agreement should receive final approval by the Court. The Parties will request that the Final Approval Hearing be scheduled for a date no earlier than one hundred ten (110) calendar days after the entry of the Preliminary Approval Order.

1.22. “Final Approval Order and Judgment” shall mean a final order entered by the Court after the Final Approval Hearing, substantially the same in all material respects to that attached hereto as **Exhibit A**, granting its approval of the Settlement. The Parties may agree to additions or modifications to the form of the Final Approval Order and Judgment as they agree are appropriate at the time that it is submitted to the Court for final approval of the Settlement.

1.23. “Financial Institution” shall mean the institution at which the Escrow Account is established.

1.24. “Former Participant” shall mean any Class Member who maintained a positive balance in the Plan on or after December 28, 2012, but who does not have any account with a positive balance in the Plan as of the date of the Preliminary Approval Order.

1.25. “Independent Fiduciary” shall mean the independent fiduciary that the Company selects to review the Settlement independently on behalf of the Plan.

1.26. “Independent Fiduciary Fees and Costs” shall mean all reasonable fees, costs, and expenses of the Independent Fiduciary.

1.27. “Notice” shall mean the notice, identical in all material respects to that attached hereto as **Exhibit B**, to be provided directly to Class Members pursuant to Section 2.4 and made available on the Settlement Website and the website of Class Counsel.

1.28. “Parties” shall mean Plaintiffs, the Class, and Defendants.

1.29. “Plaintiffs” shall mean the named plaintiffs Jeremy Karg, Matthew R. LaMarche, Cynthia K. Marshall, Shirley Rhodes, and Jeanine E. Vega.

1.30. “Plan” shall mean the Transamerica 401(k) Retirement Savings Plan.

1.31. “Plan of Allocation” shall mean the framework for allocating the Settlement Fund that is approved by the Court, which framework shall be in the form attached hereto as **Exhibit C**.

1.32. “Plan Recordkeeper” shall mean Transamerica Retirement Solutions, Inc.

1.33. “Preliminary Approval Order” shall mean an order entered by the Court preliminarily approving the Settlement, pursuant to Section 2.1 below, which order is substantially the same in all material respects to that attached hereto as **Exhibit D**.

1.34. “Regulatory Change” shall have the meaning ascribed to it in Section 3.4.

1.35. “Released Claims” shall be any and all claims for monetary, injunctive, and all other relief against the Defendant Released Parties through the date the Court enters the Final Approval Order and Judgment (including, without limitation, any Unknown Claims) arising out of or in any way related to: (a) the conduct alleged in the complaints in this Action, whether or not included as counts in the complaints; (b) the selection, retention and monitoring of the Plan’s investment options, including but not limited to the Challenged Funds; (c) the performance, fees and other characteristics of the Plan’s investment options, including but not limited to the Challenged Funds; (d) the nomination, appointment, retention, monitoring and removal of the Plan’s Trustees; and (e) the approval by the Independent Fiduciary of the Settlement (except a claim that could only be brought against the Independent Fiduciary); except that the Released Claims shall not include claims to enforce the covenants or obligations set forth in this Agreement, nor do they include, and this Agreement does not in any way bar, limit, waive, or

release, any individual claim by the Plaintiffs or a Class Member to vested benefits that are otherwise due under the terms of the Plan. With respect to the Released Claims, it is the intention of the Parties and all other Class Members and the Plan expressly to waive to the fullest extent of the law: (i) the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides that “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”; and (ii) the provisions, rights and benefits of any similar statute or common law of any other jurisdiction that may be, or may be asserted to be, applicable.

1.36. “Settlement” shall mean the compromise and resolution embodied in this Agreement.

1.37. “Settlement Administrator” shall mean Analytics Consulting LLC.

1.38. “Settlement Amount” shall mean five million four hundred thousand dollars (\$5,400,000).

1.39. “Settlement Fund” shall have the meaning set forth in Section 4.1(c).

1.40. “Settlement Website” shall have the meaning ascribed to it in Section 2.5.

1.41. “Taxes” shall have the meaning ascribed to it in Section 4.1(i).

1.42. “Tax-Related Costs” shall have the meaning ascribed to it in Section 4.1(i).

1.43. “Trustees” shall mean the Trustees of the Transamerica 401(k) Retirement Savings Trust (formerly known as the Trustees of the Aegon, USA, Inc. Profit Sharing Trust).¹

1.44. “Unknown Claims” shall mean any Released Claims that Plaintiffs and/or any Class Members do not know or suspect to exist in their favor at the time of the release of the Defendant Released Parties, including claims which, if known by them, might have affected their settlement with the Defendants and release of the Defendant Released Parties, or might have affected their decision not to object to this Settlement. Plaintiffs and/or any Class Members may

¹ The Aegon USA, Inc. Profit Sharing Trust was renamed the Transamerica 401(k) Retirement Savings Trust on June 9, 2020.

later discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiffs and all Class Members, upon the date of the Court's entry of the Final Approval Order and Judgment, shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiffs and all Class Members shall be deemed by operation of the Final Approval Order and Judgment to have acknowledged that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

II. SETTLEMENT APPROVAL

2.1. ***Motion for Preliminary Approval.*** On a date to be mutually agreed by the parties, Plaintiffs shall move the Court for preliminary approval of the Settlement, including entry of an order identical in all material respects to the form of the Preliminary Approval Order. Defendants will not object to Plaintiffs' motion for preliminary approval but reserve the right to challenge the Fee and Expense Application and request for Case Contribution Awards in full.

2.2. ***Rights of Exclusion.*** Class Members shall not be permitted to exclude themselves from the Class.

2.3. ***Right to Object.*** Class Members shall be permitted to object to the Settlement. Requirements for filing an objection shall be set forth in the Preliminary Approval Order.

2.4. ***Class Notice.*** Within forty (40) calendar days of the entry of the Preliminary Approval Order or as may be modified by the Court, the Settlement Administrator shall send the Notice by electronic mail (if available) or first-class mail to the Class Members. The Notice shall be sent to the last known electronic mail address or last known mailing address of the Class

Members that are available through the Plan Recordkeeper. The Settlement Administrator shall update mailing addresses through the National Change of Address database before mailing (with all returned mail skip-traced and promptly re-mailed).

2.5. ***Settlement Website.*** Within thirty (30) calendar days of the entry of the Preliminary Approval Order and no later than the first date that the e-mailing or the mailing of the Notice occurs, or as may be extended by the Court on application of the Parties, the Settlement Administrator shall establish a website containing the Notice and this Agreement and its exhibits (the “Settlement Website”). The Notice will identify the web address of the Settlement Website.

2.6. ***Settlement Information Line.*** Within thirty (30) calendar days of the entry of the Preliminary Approval Order and no later than the first date that the e-mailing or the mailing of the Notice occurs, or as may be extended by the Court on application of the Parties, the Settlement Administrator shall establish a toll-free telephone number to which Class Members can direct questions about the Settlement. The Settlement Administrator shall develop a question-and-answer-type script, with input and approval from Defendants’ Counsel and Class Counsel, for the use of persons who answer calls to this line.

2.7. ***Approval of Settlement by Independent Fiduciary.***

(a) The Independent Fiduciary shall review the Settlement and provide any requested authorizations, including the authorization required by Employee Retirement Income Security Act of 1974 (“ERISA”) Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632 (Dec. 31, 2003), as amended by 75 Fed. Reg. 33830 (June 15, 2010). The Parties shall comply with reasonable requests for information made by the Independent Fiduciary.

(b) At least thirty (30) calendar days prior to the Final Approval Hearing, the Independent Fiduciary shall have approved and authorized in writing the Settlement, and given a release in its capacity as fiduciary of the Plan for and on behalf of the Plan, on the terms set forth in Section 6.1, in accordance with Prohibited Transaction Class

Exemption 2003-39. Should the Independent Fiduciary fail to approve and authorize the Settlement or fail to give a release on behalf of the Plan, the Agreement shall be terminable, pursuant to Section 9.3 below.

(c) The parties shall comply with all reasonable requests for information made by the Independent Fiduciary.

2.8. ***Class Action Fairness Act Notice.*** The Settlement Administrator shall comply with the notice requirements of 28 U.S.C. § 1715, and pursuant to the Preliminary Approval Order, shall file a notice with the Court confirming compliance prior to the Final Approval Hearing.

2.9. ***Motion for Final Approval.*** Plaintiffs shall move the Court for final approval of the Settlement no later than the deadline set by the Court in the Preliminary Approval Order, or as may be extended by the Court on application of the Parties. On or after the date set by the Court for the Final Approval Hearing pursuant to Federal Rule of Civil Procedure 23(e)(2), the Court shall determine, among other things, (a) whether to enter the Final Order and Judgment finally approving the Settlement; and (b) what, if any, Case Contribution Awards and/or Attorneys' Fees and Expenses should be awarded to Plaintiffs and Class Counsel, respectively, pursuant to Sections 8.1 and 8.2 of this Agreement.

III. NON-MONETARY RELIEF

3.1. ***Overview.*** In consideration of all the promises and agreements set forth in this Agreement, Defendants agree to adopt certain commitments related to the Plan, as set forth in Sections 3.2 and 3.3 below, for the duration of the Compliance Period. It is understood and agreed by the Parties that by making these commitments, Defendants do not agree with or in any way admit, and shall not be deemed to agree with or in any way admit, any theories of Plaintiffs or Class Counsel regarding Defendants' liability in the Action, including, without limitation, that any of Defendants' prior or existing practices violates any federal or state laws, statutes, or regulations.

3.2. ***Fiduciary Training.*** For the duration of the Compliance Period, the Plan will continue to offer fiduciary training to the Trustees. The training will be conducted on a yearly basis by outside legal counsel or by the Plan’s unaffiliated investment consultant, at Transamerica’s election. If a new Trustee joins the Trustees between annual fiduciary training sessions during the Compliance Period, they shall be provided with a copy of the most recent fiduciary training materials as part of their onboarding.

3.3. ***Unaffiliated Investment Consultant.*** For the duration of the Compliance Period, the Plan will continue to retain an unaffiliated investment consultant to provide independent investment consulting services to the Trustees on approximately a quarterly basis.

3.4. ***Impact of Regulatory Changes.*** Notwithstanding anything in this Part III to the contrary, Defendants shall not be required to comply with any provision of this Part III should Congress, the Department of Labor, or any other applicable regulatory or self-regulatory body impose substantive requirements that render such compliance unduly burdensome, whether through statute, regulation, guidance, or otherwise (“Regulatory Change”). Defendants shall have the right, at their sole option, to modify any of the commitments described in Sections 3.2 or 3.3 following such a Regulatory Change; provided, however, that, in the event of a Regulatory Change that affects only certain of the provisions of this Part III, Defendants shall be required to continue to comply with all other provisions of Part III that are not affected by the Regulatory Change. In the event of a Regulatory Change, (i) Defendants shall notify Class Counsel about the change and Defendants’ resulting modification, and (ii) Defendants’ compliance with the new regulatory requirements and/or guidance shall be deemed compliant with the terms of this Agreement.

IV. MONETARY RELIEF

4.1. ***The Settlement Fund.***

(a) No later than five (5) business days after entry of the Preliminary Approval Order, the Escrow Agent shall establish an escrow account. The Parties agree that the Escrow Account is intended to be, and will be, an interest-bearing “Qualified

Settlement Fund” within the meaning of Treasury Regulation 26 C.F.R. § 1.468B-1. The Settlement Administrator, as administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation 26 C.F.R. § 1.468B-2(k)(3), shall be solely responsible for filing tax returns for the Escrow Account and paying from the Escrow Account any Taxes owed with respect to the Escrow Account. The Company agrees to provide the Settlement Administrator with the statement described in Treasury Regulation 26 C.F.R. §1.468B-3(e). Neither Defendants, Defendants’ Counsel, the Defendant Released Parties, Plaintiffs, nor Class Counsel shall have any liability or responsibility of any sort for filing any tax returns or paying any taxes with respect to the Escrow Account.

(b) In consideration of all of the promises and agreements set forth in this Agreement, the Company will pay the Settlement Amount. None of the other Defendant Released Parties shall have any obligation to contribute financially to this Settlement. It is understood and agreed by the Parties that by paying the Settlement Amount, Defendants do not agree with or in any way admit, and shall not be deemed to agree with or in any way admit, any theories of Plaintiffs or Class Counsel regarding Defendants’ liability in the Action, including, without limitation, that any of Defendants’ prior or existing practices violates any federal or state laws, statutes, or regulations.

(c) The Company shall pay the Settlement Amount in two segments, and this funding, in the aggregate, together with any interest and investment earnings thereon, shall constitute the “Settlement Fund.” First, the Company shall cause one hundred and fifty thousand dollars (\$150,000) of the Settlement Amount to be deposited by wire transfer into the Escrow Account as soon as reasonably possible following the entry of the Preliminary Approval Order, but no later than thirty (30) calendar days after entry of the order, to fund any Administration Costs and Independent Fiduciary Fees and Costs that arise before the Court’s entry of the Final Approval Order and Judgment. Second, the Company shall cause the remaining portion of the Settlement Amount to be deposited by wire transfer into the Escrow Account within thirty (30) calendar days following the

Effective Date, subject to the provisions of Section 9.5.

(d) The Settlement Fund shall be used solely for the purposes set forth in Section 4.1(j) below.

(e) Subject to Court approval and oversight, the Escrow Account will be controlled by the Settlement Administrator. Neither Defendants nor Plaintiffs shall have any liability whatsoever for the acts or omissions of the Settlement Administrator appointed by the Court. The Settlement Administrator shall not disburse the Settlement Amount or any portion of the Settlement Fund except as provided for in this Agreement, by an order of the Court, or with prior written agreement of Class Counsel and Defendants' Counsel.

(f) The Settlement Administrator is authorized to execute transactions on behalf of Class Members that are consistent with the terms of this Agreement and with orders of the Court.

(g) All funds held in the Escrow Account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until the funds are distributed in accordance with this Agreement.

(h) The Settlement Administrator shall, to the extent practicable and prudent, invest the Settlement Fund in discrete and identifiable instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. The Settlement Administrator shall maintain records identifying in detail each instrument in which the Settlement Fund or any portion thereof has been invested, and identifying the precise location (including any safe deposit box number) and form of holding of each such instrument. Neither the Settlement Fund nor any portion thereof shall be commingled with any other monies in any instruments. Any cash portion of the Settlement Fund not invested in instruments of the type described in the first sentence of this Section 4.1(h)

shall be maintained by the Settlement Administrator, and not commingled with any other monies, in a bank account, which shall promptly be identified to the Parties at any Party's request by bank and account number and any other identifying information. The Settlement Administrator and Class Members shall bear all risks related to investment of the Settlement Fund.

(i) All taxes on the income of the Escrow Account ("Taxes") and expenses and costs incurred in connection with the taxation of the Escrow Account (including, without limitation, expenses of tax attorneys and accountants) ("Tax-Related Costs") shall be timely paid by the Settlement Administrator out of the Escrow Account.

(j) The following amounts associated with the Settlement shall be paid solely from the Settlement Fund:

- (1) Distributions to Class Members in accordance with Section 4.2;
- (2) Case Contribution Awards approved by the Court;
- (3) Attorneys' Fees and Expenses approved by the Court;
- (4) Independent Fiduciary Fees and Costs;
- (5) Administration Costs; and
- (6) Taxes and Tax-Related Costs (not including the taxes discussed in Section 4.3 below).

(k) The Independent Fiduciary Fees and Costs shall be paid from the Settlement Fund upon the Settlement Administrator's receipt of an invoice from the Independent Fiduciary.

(l) The Settlement Administrator will reserve from the Settlement Fund its estimated Administration Costs. Beginning thirty (30) calendar days after the entry of the Preliminary Approval Order, and on every thirtieth (30th) calendar day thereafter, the Settlement Administrator shall provide the Parties with a detailed accounting of any Administration Costs expended to date and an invoice for the amount of such Administration Costs. The invoices will be payable upon the consent of both Parties.

Any disputes as to whether amounts billed by the Settlement Administrator are reasonable and necessary under this Agreement shall be resolved by the Court.

4.2. *Distributions to Class Members.*

(a) Following the deduction of Case Contribution Awards, Attorneys' Fees and Expenses, Independent Fiduciary Fees and Costs, Administration Costs, and Taxes and Tax-Related Costs from the Settlement Fund, the remainder (the "Distributable Settlement Amount") shall be distributed to Class Members in accordance with the proposed Plan of Allocation as soon as reasonably possible following the Effective Date.

(b) It is understood and agreed by the Parties that the proposed Plan of Allocation is not part of this Agreement and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceeding relating to the proposed Plan of Allocation shall not operate to terminate or cancel this Agreement or affect the finality of the Court's Final Approval Order and Judgment approving the Settlement or any other orders entered pursuant to the Agreement. Notwithstanding the foregoing or anything else in this Agreement, any revisions to the proposed Plan of Allocation that would increase the Settlement Amount or require the Company or its affiliates to incur additional expenses or costs or to provide data not readily available shall be deemed a material alteration of this Agreement and shall entitle the Company, at its election, to terminate the Agreement.

(c) Class Members who receive a check from the Settlement Administrator under the proposed Plan of Allocation must cash their checks within ninety (90) calendar days of issuance. If they do not do so, the checks will be void, and the Settlement Administrator shall be instructed to return any such funds to the Settlement Fund pursuant to Section 4.4. This limitation shall be printed on the face of each check. Notwithstanding these requirements, the Settlement Administrator shall have the authority to reissue checks to Class Members where it determines there is good cause to do so, provided that doing so will not compromise the Settlement Administrator's ability

to implement the Plan of Allocation. The voidance of checks shall have no effect on the Class Members' release of claims, obligations, representations, or warranties as provided herein, which shall remain in full effect.

(d) As noted in the proposed Plan of Allocation, Class Members shall be entitled to a settlement payment of at least ten dollars (\$10.00).

4.3. ***Responsibility for Taxes on Distribution.*** Each Class Member who receives a payment under this 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, the Defendant Released 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 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.

4.4. ***Treatment of Undistributed Funds and Uncashed Checks.*** Any funds associated with checks that are not cashed within ninety (90) calendar days of issuance and any funds that cannot be distributed to Class Members for any other reason, together with any interest earned on them, and any funds remaining after the payment of any applicable Taxes by the Escrow Agent, shall be returned to the Settlement Fund by the Settlement Administrator to be distributed as described in Paragraph 12 of the proposed Plan of Allocation.

4.5. ***Entire Monetary Obligation.*** Notwithstanding anything else in this Agreement, except with respect to any obligations it may be required to incur with respect to implementation of the non-monetary relief described in Section III, in no event shall Defendants be required to pay any amounts other than the Settlement Amount under this Agreement or otherwise.

V. SETTLEMENT ADMINISTRATION

5.1. Defendants shall provide the Settlement Administrator, as soon as reasonably possible following the entry of the Preliminary Approval Order, but no later than thirty (30)

calendar days after entry of the order, the participant data sufficient to effectuate the Notice, implement the Plan of Allocation, and distribute the Settlement Fund. Subject to at least thirty (30) calendar days' written notice from the Settlement Administrator, Defendants shall also provide an updated list of Current Participants and Former Participants prior to the distribution, in order to identify any such participants who have taken a full distribution from their Plan account and no longer have a Plan account with a positive balance. The Company shall not otherwise be obligated to assist with effecting Notice, implementation of the Plan of Allocation, or distribution of the Settlement Fund.

5.2. The Settlement Administrator shall administer the Settlement subject to the supervision of Class Counsel, Defendants' Counsel, and the Court as circumstances may require.

5.3. Defendants, Defendants' Counsel, and the Defendant Released Parties shall have no responsibility for, interest in, or liability whatsoever, with respect to: (a) any act, omission or determination of the Settlement Administrator, Class Counsel, or designees or agents of Class Counsel or the Settlement Administrator; (b) any act, omission or determination of Class Counsel or their designees or agents in connection with the administration of the Settlement; (c) the management, investment, or distribution of the Settlement Fund; or (d) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund.

5.4. The Settlement Administrator shall provide to Class Counsel and Defendants' Counsel, no less frequently than monthly, a full accounting of all expenditures made in connection with the Settlement, including Administration Costs (as noted in Section 4.1(l) above), and any distributions from the Settlement Fund.

5.5. The Settlement Administrator shall provide such information as may be reasonably requested by Plaintiffs or Defendants or their counsel relating to the administration of this Agreement.

VI. RELEASES, COVENANTS AND JUDICIAL FINDINGS

6.1. ***Release of Defendants and the Defendant Released Parties.*** Subject to Part IX below, upon and through the date of the Court's entry of the Final Approval Order and

Judgment, Plaintiffs and each Class Member (on behalf of themselves, their current and former beneficiaries, their representatives and successors-in-interest), and the Plan (by and through the Independent Fiduciary pursuant to Section 2.7(b)) absolutely and unconditionally release and forever discharge all Released Claims.

6.2. ***Covenant Not to Sue.*** The Parties recognize that the non-monetary relief described in Part III above and the monetary relief described in Part IV above are designed to benefit the Class and to eliminate any potential future controversies over the Released Claims. In order to ensure that these terms are not subject to future potentially inconsistent challenges or standards, Class Members agree that, for the duration of the Compliance Period, none of them will institute, maintain, prosecute, sue, or assert in any action or proceeding, whether individually, in a representative capacity, or on behalf of the Plan, any claim based on conduct subsequent to, or any liability or damages claimed to arise or occur after, the date of the Court's entry of the Preliminary Approval Order, with respect to any of the conduct or practices this Agreement requires Defendants to undertake.

6.3. ***Releases of Plaintiffs, the Plan, the Class, and Class Counsel.*** Upon and through the date of the Court's entry of the Final Approval Order and Judgment, the Company (on behalf of itself and any successors-in-interest) shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged, and shall forever be enjoined from prosecution of Plaintiffs, the Plan, the Class, and Class Counsel from any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys' fees and costs, whether under local, state or federal law, whether by statute, contract, common law or equity, whether brought in an individual, representative or any other capacity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, relating to the pursuit of the Action.

6.4. ***Taxation of Settlement Fund.*** Plaintiffs acknowledge that the Defendant Released Parties have no responsibility for any taxes due on funds deposited in or distributed

from the Settlement Fund, or on any funds that Plaintiffs or Class Counsel receive from the Settlement Fund, including through any Case Contribution Awards or Attorneys' Fees and Expenses award, as applicable.

6.5. ***Use of Settlement Administrator Information.*** Class Counsel, Defendants' Counsel, and the Defendants shall have equal access to information held by the Settlement Administrator given that such information is necessary to administer this Settlement, except to the extent the Settlement Administrator receives or provides information protected by attorney-client privilege.

6.6. ***Use of Company and Plan Information.*** Class Counsel and their agents, including without limitation the Settlement Administrator, shall use any information provided by the Company and/or the Plan Recordkeeper pursuant to this Agreement solely for the purpose of providing the Notice and administering this Settlement and for no other purpose. Such information shall be marked "Confidential" and treated as such under the Protective Order governing this Action.

VII. REPRESENTATIONS AND WARRANTIES

7.1. ***Parties' Representations and Warranties.*** The Parties, and each of them, represent and warrant as follows, and each Party acknowledges that each other Party is relying on these representations and warranties in entering into this Settlement Agreement:

(a) That they have diligently investigated the claims in this Action; that they are voluntarily entering into this Agreement as a result of arm's-length negotiations among their counsel; that in executing this Agreement they are relying solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently-selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof; and that, except as provided in this Agreement, they have not been influenced to any extent whatsoever in executing this Agreement by any representations, statements, or omissions pertaining to any of the foregoing matters by any Party or by

any person representing any Party. Each Party assumes the risk of mistake as to facts or law.

(b) That they have carefully read the contents of this Agreement and this Agreement is signed freely by each signatory executing the Agreement on behalf of the applicable Party. The Parties, and each of them, further represent and warrant to each other that he, she, or it has made such investigation of the facts pertaining to this Settlement, this Agreement, and all of the matters pertaining thereto, as he, she or it deems necessary.

7.2. ***Signatories' Representations and Warranties.*** Each person executing this Agreement on behalf of any other person does hereby personally represent and warrant that he or she has the authority to execute this Agreement on behalf of, and fully bind, each principal whom such individual represents or purports to represent and that no right or claim compromised pursuant to this Agreement has been assigned or hypothecated to any third party.

VIII. CASE CONTRIBUTION AWARDS, ATTORNEYS' FEES AND COSTS

8.1. *Case Contribution Awards*

(a) Plaintiffs will seek Case Contribution Awards not to exceed the amount of fifteen thousand dollars (\$15,000.00) per Plaintiff, which awards shall be subject to Court approval (the "Case Contribution Awards"). Defendants reserve all rights to oppose Plaintiffs' request for Case Contribution Awards in full. Any Case Contribution Awards approved by the Court shall be paid within thirty (30) calendar days of the Effective Date. The Case Contribution Awards shall be paid by the Settlement Administrator solely out of the Settlement Fund and shall be deducted (to the extent approved by the Court) from the Settlement Fund on or after the Effective Date and prior to the distribution of the Settlement Fund to the Class Members. Plaintiffs shall also be entitled to distribution under this Settlement pursuant to Section 4.2 as Class Members.

(b) Notwithstanding any other provision of this Agreement to the contrary, the procedure for and the allowance or disallowance (in whole or in part) by the Court of any

application for the Case Contribution Awards shall be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceedings relating to the Case Contribution Awards, or any appeal of any order relating thereto, shall not operate to terminate or cancel this Agreement or be deemed material thereto.

(c) Defendants shall have no obligations whatsoever with respect to any Case Contribution Award to Plaintiffs, which shall be payable solely out of the Settlement Fund.

8.2. *Attorneys' Fees and Expenses*

(a) Class Counsel will submit a Fee and Expense Application seeking an award of Attorneys' Fees not exceeding thirty-three and a third percent (33.3%) of the combined value of the Settlement Fund and the value of the Non-Monetary Relief, plus costs. Defendants reserve all rights to oppose the Fee and Expense Application in full. Any amount awarded by the Court in response to such Fee and Expense Application shall be paid by the Settlement Administrator solely out of the Settlement Fund and shall be deducted (to the extent approved by the Court) from the Settlement Fund and paid to Class Counsel within thirty (30) calendar days of the Effective Date.

(b) Notwithstanding any other provision of this Agreement to the contrary, the procedure for and the allowance or disallowance (in whole or in part) by the Court of the Fee and Expense Application to be paid out of the Settlement Fund shall be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceedings relating to the award of Attorneys' Fees and Expenses, or any appeal of any order relating thereto, shall not operate to terminate or cancel this Agreement or be deemed material thereto.

(c) Defendants shall have no obligations whatsoever with respect to any Attorneys' Fees and Expenses incurred by Class Counsel, which shall be payable solely out of the Settlement Fund.

IX. CONTINGENCIES, EFFECT OF DISAPPROVAL OR TERMINATION OF SETTLEMENT

9.1. This Agreement and the Settlement shall terminate and be cancelled if, within ten (10) business days after any of the following events, one of the Parties provides written notification of an election to terminate the Settlement:

(a) The Court declines to provide preliminary approval of this Agreement, or declines to enter, or materially modifies, the contents of the Preliminary Approval Order, or the Preliminary 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;

(b) The Court declines to provide final approval of this Agreement, or declines to enter, or materially modifies, the contents of the Final Approval Order and Judgment;

(c) The Court's Final Approval Order and Judgment 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; or

(d) The Effective Date does not occur for some other reason.

9.2. For purposes of this Agreement, no order of the Court, or modification or reversal on appeal of any order of the Court, solely concerning the proposed Plan of Allocation, the administration of the Settlement or the persons performing such administrative functions, or the amount or award of any Attorneys' Fees and Expenses or Case Contribution Awards shall constitute grounds for cancellation or termination of the Agreement.

9.3. This Agreement and the Settlement shall terminate and be cancelled if the Independent Fiduciary disapproves or otherwise does not authorize the Settlement or refuses to approve the release on behalf of the Plan of the Released Claims. Alternatively, the Company shall have the option to waive this condition. Unless otherwise agreed by the Parties, either option is to be exercised in writing within the earlier of: (a) ten (10) business days after the

Parties' receipt of the Independent Fiduciary's written determination under Section 2.7; or (b) three (3) business days prior to the date set for the Final Approval Hearing.

9.4. This Agreement and the Settlement shall terminate and be cancelled if (a) any federal or state authorities object to, or request material modifications to, the Agreement; and (b) within ten (10) business days after the deadline set in the Preliminary Approval Order for such objections or requests, or within ten (10) business days of receiving any such objection or request, if later, the Company provides written notice of its election to terminate the Settlement.

9.5. If for any reason this Agreement is terminated or fails to become effective, then:

(a) The Parties shall be deemed to have reverted to their respective status in the Action as of the date of signature of the last signatory to the Agreement, the Action shall then resume proceedings in the Court, and, except as otherwise expressly provided in this Agreement, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered.

(b) Class Counsel and Defendants' Counsel shall within ten (10) business days after the date of termination of the Agreement jointly notify the Financial Institution in writing to return to the Company, or its designee, the full amount contained in the Settlement Fund, with all interest and income earned thereon, after deduction of any amounts earlier disbursed and/or incurred by the Settlement Fund as of the termination, and direct the Financial Institution to effect such return within fourteen (14) calendar days after such notification. Prior to the return of amounts contemplated by this Section 9.5(b), the Financial Institution shall fully and finally fulfill and set aside for any and all tax obligations of the Settlement Fund as set forth in Section 4.1(i) and the Company shall have no past, present, or future liability whatsoever for any such tax obligations.

(c) This Part IX and its provisions shall survive any termination of this Settlement, as will Sections 4.3, 5.3, 6.4, and 6.6 above.

X. NO ADMISSION OF WRONGDOING

10.1. The Parties understand and agree that this Agreement embodies a compromise settlement of disputed claims, and that nothing in this Agreement, including the furnishing of consideration for this Agreement, shall be deemed to constitute any finding or admission of any wrongdoing or liability by any of the Defendants or the Defendant Released Parties, or give rise to any inference of wrongdoing or liability in the Action or any other proceeding. This Agreement and the consideration provided hereunder are made in compromise of disputed claims and are not admissions of any liability of any kind, whether legal or factual. The Defendants and the Defendant Released Parties specifically deny any such liability or wrongdoing and the Company states that it is entering into the Agreement solely to eliminate the burden and expense of protracted litigation. Further, Plaintiffs, while believing that all Claims brought in the Action have merit, have concluded that the terms of this Agreement are fair, reasonable, and adequate to the Plan, themselves, and the Class Members given, among other things, the inherent risks, difficulties and delays in complex ERISA litigation such as the Action. Neither the fact, nor the terms, of this Agreement shall be used or offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this Agreement, whether affirmatively or defensively.

XI. MISCELLANEOUS

11.1. *No Disparaging Statements.* Defendants, Defendants' Counsel, Plaintiffs, and Class Counsel shall make no statements to the press or make any other public statements describing this Settlement that disparage any Party or Defendant Released Parties or accuse any Party or Defendant Released Parties of wrongdoing.

11.2. *Waiver.* The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving Party. The waiver by any Party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

11.3. **Dispute Resolution.** If a dispute arises regarding compliance with any of the provisions of this Agreement, it shall first be mediated in non-binding mediation by a mutually agreed mediator. The cost of any mediation shall be split equally between Plaintiffs and the Company.

11.4. **Entire Agreement.** This Agreement is the entire agreement among the Parties and it supersedes any prior agreements, written or oral, between the Parties. This Agreement cannot be altered, modified or amended except through a writing executed either by Plaintiffs and Defendants or by Class Counsel and Defendants' Counsel.

11.5. **Construction of Agreement.** This Agreement shall be construed to effectuate the intent of the Parties to resolve all disputes encompassed by the Agreement. All Parties have participated in the drafting of this Agreement, and any ambiguity shall not be resolved by virtue of a presumption in favor of any Party. The Agreement was reached at arm's length by the Parties represented by counsel. None of the Parties shall be considered to be the drafter of this Agreement or any provision hereof for the purposes of any statute, case law, or rule of interpretation or construction.

11.6. **Principles of Interpretation.** The following principles of interpretation apply to this Agreement:

- (a) The headings of this Agreement are for reference only and do not affect in any way the meaning or interpretation of this Agreement.
- (b) Definitions apply to the singular and plural forms of each term defined.
- (c) Definitions apply to the masculine, feminine, and neutral genders of each term defined.
- (d) References to a person are also to the person's permitted successors and assignees.
- (e) Whenever the words "include," "includes," or "including" are used in this Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

11.7. ***Executed in Counterparts.*** This Agreement may be executed in counterparts, all of which shall be considered the same as if a single document had been executed. The Agreement shall be deemed executed by all Parties when such counterparts have been signed by each of the Parties' counsel and delivered to the other Party. Counterpart copies of signature pages, whether delivered in original, by electronic mail in pdf format and/or by facsimile, taken together shall all be treated as originals and binding signatures.

11.8. ***Notices.*** Unless otherwise provided herein, any notice, request, instruction, application for Court approval, or application for Court order sought in connection with the Agreement, shall be in writing and delivered personally or sent by certified mail or overnight delivery service, postage prepaid, with copies by facsimile or e-mail to the attention of Class Counsel or Defendants' Counsel, as applicable (as well as to any other recipients that a court may specify). Parties may change the person(s) to whom such notices should be directed by giving notice pursuant to this Section 11.8. As of the date hereof, the respective representatives are as follows:

For Defendants:

Catalina J. Vergara
O'Melveny & Myers LLP
400 South Hope Street, 18th Floor
Los Angeles, California 90071
Telephone: (213) 430-6000
Facsimile: (213) 430-6407
Email: cvergara@omm.com

For Plaintiffs:

Kevin H. Sharp
Sanford Heisler Sharp, LLP
611 Commerce Street, Suite 3100
Nashville, TN 37203
Telephone: (615) 434-7000
Facsimile: (615) 434-7020
Email: ksharp@sanfordheisler.com

11.9. **Extensions of Time.** The Parties may agree, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of the Agreement.

11.10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of Iowa without giving effect to any conflict of law provisions that would cause the application of the laws of any jurisdiction other than Iowa.

11.11. **Fees and Expenses.** Except as otherwise expressly set forth herein, each Party hereto shall pay all fees, costs and expenses incurred in connection with the Action, including fees, costs, and expenses incident to his, her, or its negotiation, preparation, or compliance with this Agreement, and including any fees, expenses, and disbursements of its counsel, accountants, and other advisors. Nothing in this Agreement shall require Defendants to pay any monies other than as expressly provided herein.

11.12. **Communication With Participants.** Nothing in this Agreement or Settlement shall prevent or inhibit the Company's ability to communicate with Current or Former Participants of the Plan. The Plaintiffs acknowledge and do not object to the fact that the Company informed the Class Members of this Settlement prior to their receipt of the Notice under this Agreement.

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 necessary or appropriate to effectuate the terms of the Agreement.

Agreed to on behalf of plaintiffs Jeremy Karg, Matthew R. LaMarche, Cynthia K. Marshall, Shirley Rhodes, and Jeanine E. Vega

Dated: June 22, 2021

By: 

Kevin H. Sharp
Sanford Heisler Sharp, LLP
611 Commerce Street, Suite 3100
Nashville, TN 37203
Telephone: (615) 434-7000
Facsimile: (615) 434-7020
Email: ksharp@sanfordheisler.com

Agreed to on behalf of defendants Transamerica Corporation and Trustees of the Transamerica 401(k) Retirement Savings Trust

Dated: 6/19/2021 | 8:09 PDT

DocuSigned by:
Holly Waters
By: 3AF6399EB430430...

Holly Waters

Senior Vice President & Chief People Officer
Transamerica Corporation

Trustee of the Transamerica 401(k) Retirement
Savings Trust