

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

**BECKY A. MATTHEWS PEASE,
individually and on behalf of all others
similarly situated,**

Civil Action No.: 17-CV-00284-JTN-ESC

Plaintiff,

v.

**JACKSON NATIONAL LIFE INSURANCE
COMPANY,**

Defendant.

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Settlement Agreement”) is entered into between and among the Class Representative, on behalf of herself and on behalf of all Class Members and the Plan, on the one hand, and Defendant on the other, all as defined herein.

1. Article 1 - Recitals

- 1.1** On March 29, 2017, Becky A. Matthews Pease (“the Class Representative”), a participant in the defined contribution 401(k) retirement plan known as the Jackson National Life Insurance Company Defined Contribution Retirement Plan (“the Plan”), filed a Complaint against Jackson National Life Insurance Company (“Defendant”) in the United States District Court for the Western District of Michigan (“the Action”) as a representative of a putative class (“the Class”) asserting various claims of breaches of fiduciary duty and violations of the anti-inurement and prohibited transaction provisions of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”).
- 1.2** The Class Representative and Defendant subsequently agreed to participate in a private mediation in an effort to resolve all claims that were raised or could have been raised in the Action.
- 1.3** Prior to the mediation, Defendant produced pertinent documents and information to the Class Representative and her counsel (“Class Counsel”). Based on the documents and information produced by Defendant, and Class Counsel’s own investigation into the relevant facts, the Class Representative and Class Counsel believe they had sufficient information to participate in the mediation and negotiate a settlement. After extensive arm’s length negotiations supervised by Mediator Hunter Hughes, the parties reached a settlement. The terms of the settlement are memorialized in this Settlement Agreement.

- 1.4** The Class Representative and Class Counsel consider it desirable and in the best interests of the Class that the claims against Defendant be settled on behalf of the Class Representative and the Class upon the terms set forth below, and they have concluded that such terms are fair, reasonable, and adequate and that this settlement will result in significant benefits to the Class.
- 1.5** Defendant admits no wrongdoing or liability with respect to any of the allegations or claims in the Action. This Settlement Agreement, and the discussions preceding it, shall in no event constitute, be construed as, or be deemed evidence of, an admission or concession of fault or liability of any kind by Defendant.
- 1.6** Therefore, Defendant and the Class Representative, on behalf of herself and on behalf of all Class Members and the Plan, in consideration of the promises, covenants, and agreements herein described, acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree to the terms of this Settlement Agreement.
- 2. Article 2 - Definitions**
- 2.1** “Action” means *Becky A. Matthews Pease v. Jackson National Life Insurance Company*, Case No. 17-CV-00284 (W.D.Mich.).
- 2.2** “Administrative Expenses” means expenses incurred in the administration of this Settlement Agreement, including (a) all fees, expenses, and costs associated with providing the Settlement Notice to the Class, (b) all related tax expenses (including taxes and tax expenses as described in Paragraph 5.3), (c) all expenses and costs associated with the calculations pursuant to the Plan of Allocation, and (d) all fees and expenses of the Settlement Administrator and Escrow Agent. Excluded from Administrative Expenses are Defendant’s internal expenses relating to the collection and provision of Class Members’ account balances and last known contact information by, through, or at the direction of Defendant or Defense Counsel, and the Settling Parties’ respective legal expenses. All Administrative Expenses shall be paid from the Gross Settlement Fund.
- 2.3** “Active Account” means an individual investment account in the Plan with a balance greater than \$0.
- 2.4** “Alternate Payee” means a person other than a participant or Beneficiary in the Plan who is entitled to a benefit under the Plan as a result of a Qualified Domestic Relations Order (“QDRO”), where the QDRO relates to a participant’s balance during the Class Period, and the relevant Plan account included an investment in the Jackson National Funds during the Class Period.
- 2.5** “Attorneys’ Fees and Costs” means the amount awarded by the Court as compensation for the services provided by Class Counsel. The amount of attorneys’ fees for Class Counsel shall be recovered from the Gross Settlement Amount. Class Counsel also will seek reimbursement for all litigation costs and expenses advanced and carried by Class Counsel for the duration of this litigation, which also shall be recovered from the Gross Settlement Amount.

- 2.6** “Beneficiary” means a person who is entitled to receive a benefit under the Plan that is derivative of a deceased Current Participant’s or Former Participant’s interest in the Plan, other than an Alternate Payee. A Beneficiary includes, but is not limited to, a spouse, surviving spouse, domestic partner, child or other individual or trust designated by the Current Participant or Former Participant or determined under the terms of the Plan who currently is entitled to a benefit.
- 2.7** “CAFA” means the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711-1715.
- 2.8** “Case Contribution Award” means the amount awarded by the Court as compensation for the services provided by the Class Representative in the Action and the risks assumed by the Class Representative in the Action;
- 2.9** “Claims” means any and all claims, counterclaims, crossclaims, complaints, charges, demands, actions, causes of action, judgments, debts, expenses, losses, liabilities, forfeitures, damages, promises and obligations, including attorneys’ fees, expenses and costs.
- 2.10** “Class” means a settlement class certified under Fed. R. Civ. P. 23(b)(1) consisting of all persons who participated in the Plan whose Plan account included an investment in the Jackson National Funds at any time during the Class Period, including any Beneficiary of a deceased person who participated in the Plan at any time during the Class Period, and/or, Alternate Payees, in the case of a person subject to a QDRO who participated in the Plan at any time during the Class Period. Excluded from this Class are all current and/or former employees of Defendant who served during the Class Period as a Plan fiduciary as defined in ERISA, 29 U.S.C. §1002 (21).
- 2.11** “Class Counsel” means, collectively, Viviano, Pagano & Howlett PLLC, Schneider Wallace Cottrell Konecky Wotkyns LLP, Carson Lynch Sweet Kipela Carpenter, LLP, and the Kehoe Law Firm.
- 2.12** “Class Members” means all individuals in the Class, including the Class Representative. Class Members shall not be permitted to exclude themselves from the Class.
- 2.13** “Class Period” means the period from March 29, 2011 through June 12, 2018.
- 2.14** “Class Representative” means Becky A. Matthews Pease.
- 2.15** “Court” means the United States District Court for the Western District of Michigan.
- 2.16** “Court of Appeals” means the United States Court of Appeals for the Sixth Circuit.
- 2.17** “Current Participant” means a person who has an Active Account in the Plan as of the date the Motion for Preliminary Approval of the Settlement is filed and whose Plan account included an investment in the Jackson National Funds during the Class Period.
- 2.18** “Defendant” means Jackson National Life Insurance Company.

- 2.19** “Defense Counsel” means counsel for Defendant, Morgan, Lewis & Bockius LLP.
- 2.20** “Effective Approval Order” means the Final Approval Order once it becomes Effective.
- 2.21** “Effective” means with respect to any judicial ruling, order, or judgment in the Action that the period for any motions for reconsideration, motions for rehearing, appeals, petitions for certiorari, or the like (“Review Proceeding”) has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that it has been fully and finally resolved, either by court action or by voluntary action of any party, without any possibility of a reversal, vacatur, or modification of any judicial ruling, order, or judgment, including the exhaustion of all proceedings in any remand or subsequent appeal and remand. The Settling Parties agree that absent an appeal or other attempted Review Proceeding, the Final Approval Order shall become Effective thirty-three (33) calendar days after its entry.
- 2.22** “Escrow Agent” means Huntington National Bank.
- 2.23** “Fairness Hearing” means the hearing scheduled by the Court to consider (a) any objections from Class Members to the Settlement Agreement, (b) Class Counsel’s request for Attorneys’ Fees and Costs, (c) Class Counsel’s request for the Case Contribution Award, and (d) whether to finally approve the Settlement Agreement pursuant to Fed. R. Civ. P. 23.
- 2.24** “Final Approval Order” means the entry of the order and final judgment approving the Settlement Agreement, implementing the terms of this Settlement Agreement, and dismissing the Action with prejudice, to be proposed by the Settling Parties for approval by the Court in substantially the form attached as Exhibit 3.
- 2.25** “Former Participant” means a person whose Plan account included an investment in the Jackson National Funds during the Class Period and who does not have an Active Account in the Plan as of the date the Motion for Preliminary Approval of the Settlement is filed.
- 2.26** “Gross Settlement Amount” means the sum of four million five hundred thousand dollars (\$4,500,000), contributed to the Qualified Settlement Fund pursuant to Article 5. Except as provided in Paragraphs 2.2 and 3.1.3, neither Defendant nor any of the other Released Parties as defined in Paragraph 2.36 shall have any obligation other than the Gross Settlement Amount for any payment to or on behalf of any Class Member, Class Counsel, the Class Representative, the Settlement Administrator, the Escrow Agent and/or any other person or entity in connection with the settlement effectuated through this Settlement Agreement.
- 2.27** “Independent Fiduciary” means the person or entity selected and paid by Defendant to serve as an independent fiduciary to the Plan with respect to the Settlement Agreement as defined in Paragraph 3.1.
- 2.28** “Jackson National Funds” means JNL/Mellon Capital Management International Index Fund B; JNL/Mellon Capital Management Small Cap Index Fund B; JNL/Mellon Capital Management S&P 400 Mid Cap Index Fund B; JNL/S&P Managed Moderate Growth

Fund; JNL/S&P Managed Aggressive Growth Fund; JNL/S&P Managed Conservative Fund; JNL/S&P Managed Moderate Fund; JNL/S&P Managed Growth Fund; JNL/Mellon Capital Management Bond Index Fund B; JNL/Mellon Capital Management S&P 500 Index Fund B; JNL/Goldman Sachs Mid Cap Value Fund B; MFS Institutional International Equity Fund; JNL/WMC Value; JNL/T. Rowe Price Established Growth Fund B; JNL/T. Rowe Price Mid-Cap Growth Fund B; JNL/PIMCO Total Return Bond Fund B; JNL/PPM America High Yield Bond Fund B; JNL Associate Annuity; and JNL /WMC Money Market.

- 2.29** “Mediator” means Hunter Hughes, Hunter ADR, 1075 Peachtree Street NW, Suite 2550, Atlanta, Georgia 30309.
- 2.30** “Net Settlement Amount” means the Gross Settlement Amount minus (a) all Attorneys’ Fees and Costs paid to Class Counsel, (b) any Case Contribution Award to the Class Representative approved by the Court, and (c) all Administrative Expenses.
- 2.31** “Plaintiffs” means the Class Representative and all other Class Members.
- 2.32** “Plan” means the Jackson National Life Insurance Company Defined Contribution Retirement Plan.
- 2.33** “Plan of Allocation” means the methodology for allocating and distributing the Net Settlement Amount pursuant to Article 6, as it may be presented, modified or revised pursuant to the Preliminary Order or the Final Approval Order.
- 2.34** “Preliminary Order” means the order proposed by the Settling Parties and approved by the Court in connection with the Motion for Entry of the Preliminary Order to be filed by Class Representative through Class Counsel, as described in Paragraph 3.2 and in substantially the form attached as Exhibit 1.
- 2.35** “Qualified Settlement Fund” or “Settlement Fund” means the interest-bearing, settlement fund account to be established and maintained by the Escrow Agent pursuant to Article 5 herein as the Qualified Settlement Fund within the meaning of Treas. Reg. § 1.468B-1.
- 2.36** “Released Parties” means (a) Defendant, (b) Defendant’s past, present, and future parent corporation(s), and (c) Defendant’s past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns, including but not limited to Jackson National Life Distributors LLC, Jackson National Asset Management, LLC and PPM America, Inc., (d) with respect to (a) through (c) above, all of their employees, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), administrators, service providers, consultants, subcontractors, boards of trustees, boards of directors, officers, trustees, directors, partners, agents, managers, members, independent contractors, representatives, attorneys, insurers, co-insurers, reinsurers, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, associates, members of their immediate families, and all persons acting under, by, through, or in concert with any of them, and (e) the Plan and all administrators, fiduciaries, parties in interest, service providers, and trustees of the Plan.

- 2.37** “Released Claims” means any and all actual or potential claims, actions, demands, rights, obligations, liabilities, damages, attorneys’ fees, expenses, costs, and causes of action, including both known and unknown claims, based on facts existing as of the date of the Preliminary Order against any of the Released Parties:
- a. That were asserted in the Action or that arise out of the conduct alleged in the Complaint;
 - b. That relate to (1) the selection, oversight, retention, or performance of the Jackson National Funds, (2) fees, costs, or expenses for the Jackson National Funds, and (3) distribution, disbursement, allocation, or “sharing” of fees, costs, expenses or revenue arising from the Plan or its offering of the Jackson National Funds;
 - c. That would be barred by *res judicata* based on entry by the Court of the Final Approval Order;
 - d. That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Net Settlement Amount pursuant to the Plan of Allocation, except as to the collection and provision of Class Members’ account balances as provided by, through, or at the direction of Defendant or Defense Counsel; or
 - e. That relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone.
- 2.38** “Settlement Agreement” means the compromise and settlement embodied in this document and its exhibits.
- 2.39** “Settlement Administrator” means KCC.
- 2.40** “Settlement Agreement Execution Date” means that date on which the final signature is affixed to this Settlement Agreement.
- 2.41** “Settlement Effective Date” means the date on which the Final Approval Order becomes Effective, provided that by such date the Settlement Agreement has not been terminated pursuant to Article 10.
- 2.42** “Settlement Notice” means the Notice of Class Action Settlement and Fairness Hearing to be mailed by first class mail by the Settlement Administrator to Class Members following the Court’s issuance of the Preliminary Order, in substantially the form attached hereto as Exhibit 2, the Notice of Class Action Settlement and Fairness Hearing to Class Members. The Settlement Notice shall inform Class Members of all information required by Rule of Civil Procedure 23 and due process, including the Fairness Hearing to be held before the Court, on a date to be determined by the Court, at which any Class Member satisfying the conditions set forth in the Preliminary Order and the Settlement Notice may be heard regarding (a) the terms of the Settlement Agreement, (b) Class Counsel’s request for award of Attorneys’ Fees and Costs, (c) the requested Case Contribution Award to the Class Representative, and (d) payment of Administrative Expenses.

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

2.44 “Settlement Website” means the internet website established pursuant to Paragraph 11.2.

2.45 “Settling Parties” means Defendant and the Class Representative, on behalf of herself and on behalf of all Class Members and the Plan.

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

3.1 The Independent Fiduciary shall determine whether to approve and authorize the settlement of the Released Claims on behalf of the Plan, and shall have the following responsibilities in connection with that determination:

3.1.1 The Independent Fiduciary shall comply with all relevant conditions set forth in Prohibited Transaction Class Exemption 2003-39, “Release of Claims and Extensions of Credit in Connection with Litigation,” issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632, as amended (“PTE 2003-39”) in making its determination.

3.1.2 The Independent Fiduciary shall notify Defendant of its determination in writing and in accordance with PTE 2003-39, which notification shall be delivered no later than thirty (30) calendar days before the Fairness Hearing.

3.1.3 All fees and expenses associated with the Independent Fiduciary’s determination and performance of its other obligations in connection with the Settlement Agreement will be paid by Defendant.

3.2 Within fourteen (14) calendar days of the Settling Parties’ execution of this Settlement Agreement, the Class Representative, through Class Counsel, shall file with the Court motions seeking preliminary approval of this Settlement Agreement, class certification for settlement purposes only under Fed. R. Civ. P. 23(b)(1), and for entry of the Preliminary Order in substantially the form attached as Exhibit 1. The Preliminary Order to be presented to the Court shall, among other things:

3.2.1 Grant the motion to certify the Class for settlement purposes only under Fed. R. Civ. P. 23(b)(1);

3.2.2 Approve the text of the Settlement Notice for mailing to Class Members;

3.2.3 Cause the Settlement Administrator to mail by first class mail the Settlement Notice to each Class Member;

3.2.4 Determine that pursuant to Fed. R. Civ. P. 23(c)(2) and 23(e), mailing the Settlement Notice and publication of the Settlement Website and its materials constitutes the best notice plan practicable under the circumstances, provides due and sufficient notice of the Fairness Hearing and of the rights of all Class Members,

and complies fully with the requirements of Fed. R. Civ. P. 23, the Constitution of the United States, and any other applicable law;

- 3.2.5** Preliminarily enjoin each Class Member and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns, from suing any of the Released Parties in any action or proceeding alleging any of the Released Claims, 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;
 - 3.2.6** Provide that, pending final determination of whether the Settlement Agreement should be approved, no Class Member may directly, through representatives, or in any other capacity, commence any action or proceeding in any court or tribunal asserting any of the Released Claims against any of the Released Parties;
 - 3.2.7** Set the Fairness Hearing for no sooner than one hundred twenty (120) calendar days after the date the motion for entry of the Preliminary Order is filed, to determine whether the Court should (a) approve the Settlement Agreement as fair, reasonable, and adequate, (b) enter the Final Approval Order, and (c) approve the application for Attorneys' Fees and Costs and Administrative Expenses, and the Class Representative's Case Contribution Award;
 - 3.2.8** Provide that Class Members may object to any aspect of the Settlement Agreement and that any such objections shall be heard, and any papers submitted in support of said objections shall be considered, by the Court at the Fairness Hearing if they have been filed validly with the Clerk of the Court and copies provided to Class Counsel and Defense Counsel. To be filed validly, the objection and any supporting documents must be filed at least thirty (30) calendar days prior to the Fairness Hearing. Any person wishing to speak at the Fairness Hearing shall file and serve a notice of intent to appear within the time limitation set forth above;
 - 3.2.9** Approve the form of CAFA notices attached as Exhibit 4 and order that upon mailing of the CAFA notices, Defendant shall have fulfilled their obligations under CAFA;
 - 3.2.10** Provide that any party may file a response to an objection by a Class Member at least fourteen (14) calendar days before the Fairness Hearing;
 - 3.2.11** Approve the form and substance of the Plan of Allocation; and
 - 3.2.12** Provide that the Fairness Hearing may, without further direct notice to the Class Members, other than by notice to Class Counsel, be adjourned or continued by order of the Court.
- 3.3** By the date and in the manner set by the Court in the Preliminary Order, and unless otherwise set forth below, the Settlement Administrator shall:

3.3.1 Cause to be mailed to each Class Member a Settlement Notice in the form and manner to be approved by the Court, which shall be in substantially the form attached as Exhibit 2 or a form subsequently agreed to by the Settling Parties and the Court. The Settlement Notice shall be sent by first-class mail, postage prepaid, to the last known address of each Class Member provided by the Plan's recordkeeper (or its designee) through Defense Counsel, unless an updated address is obtained by the Settlement Administrator through its efforts to verify the last known addresses provided by the Plan's recordkeeper (or its designee). The Settlement Administrator also shall post a copy of the Settlement Notice on the Settlement Website, in addition to the materials listed herein in Paragraph 11.2 as well as any additional materials later agreed to by Plaintiffs and Defendant. The Settlement Administrator shall use commercially reasonable efforts to locate any Class Member whose Settlement Notice is returned and re-mail such documents one additional time.

4. Article 4 - Final Settlement Approval

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

4.1.1 For approval of the Settlement of the Released Claims covered by this Settlement Agreement, adjudging the terms of the Settlement Agreement to be fair, reasonable, and adequate to the Plan and the Class Members, and directing the Settling Parties to take the necessary steps to effectuate the terms of the Settlement Agreement;

4.1.2 For a determination pursuant to Fed. R. Civ. P. 23(c)(2) and 23(e) that mailing the Settlement Notice and publication of the Settlement Website and its materials constituted the best notice plan practicable under the circumstances and that due and sufficient notice of the Fairness Hearing and the rights of all Class Members has been provided, consistent with the Federal Rules of Civil Procedure and the requirements of due process under the United States Constitution;

4.1.3 For dismissal with prejudice of the Action and all Released Claims asserted therein whether asserted by the Class Representative on her own behalf or on behalf of the Class Members, or derivatively to secure relief for the Plan, without costs to any of the Settling Parties other than as provided for in this Settlement Agreement;

4.1.4 That each Class Member and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns, shall be (a) conclusively deemed to have, and by operation of the Effective Approval Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged the Released

Parties from all Released Claims, and (b) barred and enjoined from suing any of the Released Parties in any action or proceeding alleging any of the Released Claims, even if any Class Member may thereafter discover facts in addition to or different from those which the Class Member or Class Counsel now know or believe to be true with respect to the Class Action and the Released Claims, whether or not such Class Members have filed an objection to the Settlement Agreement, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed;

- 4.1.5** That the Plan and each Class Member (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns) on behalf of the Plan shall be (a) conclusively deemed to have, and by operation of the Effective Approval Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged the Released Parties from all Released Claims, and (b) barred and enjoined from suing any of the Released Parties in any action or proceeding alleging any of the Released Claims, even if the Plan or any Class Member on behalf of the Plan may thereafter discover facts in addition to or different from those which the Plan or any Class Member now knows or believes to be true with respect to the Action and the Released Claims;
- 4.1.6** That each Class Member shall release the Released Parties, Defense Counsel, and Class Counsel, from any claims, liabilities, and attorneys' fees and expenses arising from the allocation of the Gross Settlement Amount or Net Settlement Amount and for all tax liability and associated penalties and interest as well as related attorneys' fees and expenses;
- 4.1.7** That all applicable CAFA requirements have been satisfied;
- 4.1.8** That the Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Class Member pursuant to the Plan of Allocation approved by the Court;
- 4.1.9** That with respect to payments or distributions to Class Members, all questions not resolved by the Settlement Agreement shall be resolved by the Settlement Administrator in its sole and exclusive discretion;
- 4.1.10** That within twenty-one (21) calendar days following the issuance of all settlement payments to Class Members as provided by the Plan of Allocation, the Settlement Administrator shall prepare and provide to Class Counsel and Defense Counsel a list of each person who received a settlement payment or contribution from the Qualified Settlement Fund and the amount of such payment or contribution; and
- 4.1.11** The Court shall retain jurisdiction to enforce and interpret the Settlement Agreement.
- 4.2** The Final Approval Order and judgment entered by the Court approving the Settlement Agreement shall provide that upon becoming Effective, all Settling Parties, the Settlement

Class, and the Plan shall be bound by the Settlement Agreement and by the Final Approval Order.

5. Article 5 - Establishment of Qualified Settlement Fund

- 5.1** No later than ten (10) calendar days after the entry of the Preliminary Order, the Escrow Agent shall establish an escrow account. The Settling Parties agree that the escrow account is intended to be, and will be, an interest-bearing Qualified Settlement Fund within the meaning of Treas. Reg. § 1.468B-1. In addition, the Escrow Agent timely shall make such elections as necessary or advisable to carry out the provisions of this Paragraph 5.1, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and deliver, in a timely and proper manner, the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.
- 5.2** For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent, or the Settlement Administrator on its behalf, shall timely and properly cause to be filed all informational and other tax returns necessary or advisable with respect to the Gross Settlement Amount (including without limitation applying for a Taxpayer Identification Number for the Fund and filing the returns described in Treas. Reg. § 1.468B-2(k)). Such returns as well as the election described in Paragraph 5.1 shall be consistent with this Article 5 and, in all events, shall reflect that all taxes (as defined in Paragraph 5.3) (including any estimated taxes, interest, or penalties) on the income earned by the Gross Settlement Amount shall be deducted and paid from the Gross Settlement Amount as provided in Paragraph 5.3.
- 5.3** Taxes and tax expenses are Administrative Expenses to be deducted and paid from the Gross Settlement Amount, including but not limited to (a) all taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Gross Settlement Amount, including any taxes or tax detriments that may be imposed upon Defendant or Defense Counsel with respect to any income earned by the Gross Settlement Amount for any period during which the Gross Settlement Amount does not qualify as a “qualified settlement fund” for federal or state income tax purposes, and (b) all tax expenses and costs incurred in connection with the operation and implementation of this Article 5 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Article 5). Such taxes and tax expenses shall be Administrative Expenses and shall be paid timely by the Escrow Agent out of the Gross Settlement Amount without prior order from the Court. The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any Class Member any funds necessary to pay such amounts, including the establishment of adequate reserves for any taxes and tax expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)); neither Defendant, Defense Counsel, nor Class Counsel are responsible nor shall they have any liability therefor. The Settling Parties agree to

cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Article 5.

- 5.4** Within five (5) business days after the later of (a) the Settlement Effective Date, or (b) the escrow account described in Paragraph 5.1 is established and the Escrow Agent shall have furnished to Defendant in writing the escrow account name, IRS W-9 Form, and all necessary wiring instructions, Defendant will deposit the Gross Settlement Amount of four million five hundred thousand dollars (\$4,500,000) into the Qualified Settlement Fund.
- 5.5** The Escrow Agent shall, at the written direction of Class Counsel, invest the Qualified Settlement Fund in short-term United States Agency or Treasury Securities or other instruments backed by the Full Faith and Credit of the United States Government or an Agency thereof, or fully insured by the United States Government or an Agency thereof, and shall reinvest the proceeds of these investments as they mature in similar instruments at their then-current market rates.
- 5.6** The Escrow Agent shall not disburse the Qualified Settlement Fund or any portion except as provided in this Settlement Agreement, in an order of the Court, or in a subsequent written stipulation between Class Counsel and Defense Counsel. Subject to the orders of the Court, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of this Settlement Agreement.
- 5.7** All Court approved Attorneys' Fees and Costs shall be paid to Class Counsel out of the Qualified Settlement Fund at Class Counsels' direction within seven (7) business days after the Settlement Effective Date.
- 5.8** As soon as practicable, but in any event no later than one-hundred twenty (120) calendar days after the Settlement Effective Date, the Gross Settlement Amount will be distributed from the Qualified Settlement Fund as follows: (a) first, all Attorneys' Fees and Costs shall be paid to Class Counsel; (b) second, any Case Contribution Award approved by the Court shall be paid within seven (7) calendar days after the Settlement Effective Date; (c) third, any Administrative Expenses incurred through the Settlement Effective Date shall be paid; (d) fourth, a contingency reserve not to exceed an amount to be mutually agreed upon by the Settling Parties shall be set aside by the Settlement Administrator for additional Administrative Expenses incurred or anticipated after the Settlement Effective Date; and (e) fifth, the Net Settlement Amount will be distributed pursuant to the Plan of Allocation. Pending final distribution of the Net Settlement Amount in accordance with the Plan of Allocation, the Escrow Agent will maintain the Qualified Settlement Fund.
- 5.9** 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. Defendant, Defense Counsel, and/or Class Counsel have no responsibility or any liability for any taxes or tax expenses owed by, or any tax reporting or withholding obligations, if any, of the Qualified Settlement Fund.

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

6. Article 6 - Plan of Allocation

- 6.1** After the Settlement Effective Date, the Settlement Administrator shall cause the Net Settlement Amount to be allocated and distributed to the Former Participants as set forth in Paragraph 6.6 and to the Plan for distribution to the accounts of Current Participants as set forth in Paragraph 6.5.
- 6.2** To be eligible for a distribution from the Net Settlement Amount via the Court approved Plan of Allocation, a person must be (i) a Current Participant; (ii) a Former Participant whose allocable portion of the Net Settlement Amount is at least twenty-five dollars (\$25); or (iii) a Beneficiary or Alternate Payee of any eligible Class Member.
- 6.3** Beneficiaries will receive settlement payments as described in this Article 6 in amounts corresponding to their entitlement as beneficiaries of the Class Member with respect to which the payment is made. This includes settlement payments to Beneficiaries determined by the participant's Plan account during the Class Period and/or by the Beneficiary's own Plan account during the Class Period if an account was created in the Plan for the Participant's Beneficiary. Alternate Payees will receive settlement payments if and to the extent they are entitled to receive a portion of a Class Member's allocation under this Article 6 pursuant to the terms of the applicable QDRO. Beneficiaries and Alternate Payees with Active Accounts as of the date of the Motion for Preliminary Approval will receive payments by the method described in this Article 6 for Current Participants. Beneficiaries and Alternate Payees who do not have Active Accounts as of the date of the Motion for Preliminary Approval will receive payments by the method described in this Article 6 for Former Participants. 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 6 and as ordered by the Court.
- 6.4** The proportion of the settlement allocated to each Class Member shall be calculated, in general, as the sum of month-end account balances of a Class Member during the Class Period divided by the sum of the month-end annual account balances of all Class Members during the Class Period. The Settlement Administrator shall also obtain, in writing, an agreement between the Settling Parties as to the amount of the Net Settlement Amount. The amounts due to each Class Member shall be calculated by the Settlement Administrator as follows:

STEP 1: The Settlement Administrator shall obtain the opening balance as of March 31, 2011 and each of the month-end account balances for every Class Member for the Class

Period. The last month-end account balance to be used in the calculation will be the account balances of June 30, 2018.

STEP 2: The Settlement Administrator shall sum each Class Member's opening account balance and month-end balances for the Class Period ("Total Balance"), and for any Class Member with a positive sum, shall divide that sum by the sum of all the Class Members' Total Balances for the Class Period, with the quotient representing the Entitlement Percentage for each such Class Member. *(Total Balance For Each Class Member (positive only) ÷ Sum of Total Balances for all Class Members = Entitlement Percentage)*

STEP 3: The Settlement Administrator shall next multiply each Class Member's Entitlement Percentage by the Net Settlement Amount, with the product representing the Preliminary Entitlement Amount. *(Entitlement Percentage x Net Settlement Amount = Preliminary Entitlement Amount)*

STEP 4: All Current Participants as of the distribution date will receive an allocation from the Settlement Administrator to be deposited in his or her Plan account, regardless of the amount of the Preliminary Entitlement Amount. Former Participants who do not have an Active Account and whose Preliminary Entitlement Amount is less than \$25 shall receive no disbursement (the "No Payment Group"). The Settlement Administrator shall recalculate the Entitlement Percentage described in STEP 2 for each Class Member other than the No Payment Group after reducing the denominator by the Total Balances of all Class Members in the No Payment Group.

STEP 5: The Settlement Administrator shall then repeat STEP 3 to determine the Final Entitlement Amounts for each Class Member after eliminating the No Payment Group.

STEP 6: The Final Entitlement Amount for each Current Participant as of the distribution date will be deposited into the Class Member's Plan account and shall be treated as additional earnings, as further outlined in Paragraph 6.5.

STEP 7: The Final Entitlement Amount for each Former Participant whose Preliminary Entitlement Amount is more than \$25 will be transferred to an automatic rollover individual retirement account, as that term is described in 29 C.F.R 2550.404a-2, sponsored by Retirement Clearinghouse, LLC.

6.5 Current Participant Allocation.

6.5.1 Within five (5) calendar days after the Settlement Administrator has completed all payment calculations for all Current Participants, the Settlement Administrator will provide Defendant (or its designee) and Class Counsel, in a format and via a delivery method mutually agreed upon by the Settlement Administrator and Defendant, with an Excel spreadsheet containing the name, Social Security number (or alternative identifier(s) mutually acceptable to the Settlement Administrator and Defendant), and amount of the settlement payment to be made into the Active Account(s) for each of the Current Participants. In the event the Excel spreadsheet includes Social Security numbers, the Settlement Administrator will transmit the

spreadsheet in a manner to protect the confidentiality of the Current Participants' Social Security Numbers or other "personally identifiable information" as that term is defined by the National Institute of Standards and Technology.

- 6.5.2** Thereafter, within ten (10) calendar days after the later of (i) the submission to Defendant and Class Counsel described in Paragraph 6.5.1 (or its designee), or (ii) the Settlement Effective Date, the Settlement Administrator shall effect a transfer from the Qualified Settlement Fund to the Plan of the aggregate amount of all settlement payments payable to Current Participants, as reflected in the spreadsheet provided by the Settlement Administrator. Defendant (or its designee) shall direct the Plan's recordkeeper to credit the individual Active Account(s) of each Current Participant and the accounts of all eligible Former Participants created pursuant to Section 6.6 of this Agreement in an amount equal to that stated on the spreadsheet provided by the Settlement Administrator in relation to such Current Participant.
- 6.5.3** The settlement payment for each Current Participant who is an active employee or agent of Defendant will be invested in accordance with and proportionate to such Current Participant's investment elections then on file for new contributions. If the Current Participant is no longer an active Defendant employee or agent, or does not have an investment election on file, then such Current Participant shall be deemed to have directed such payment to be invested in the Plan's default investment option. Payments made to all eligible Former Participants shall be invested in the Plan's default investment option.
- 6.5.4** The Plan's recordkeeper shall process the allocation of the Net Settlement Amount to the Plan accounts of eligible Class Members within thirty (30) calendar days of the Plan's receipt of the transfer from the Qualified Settlement Fund described in Section 6.5.2 of this Agreement.
- 6.5.5** The Plan may be amended, to the extent necessary, to reflect the settlement allocation to Former Participants and to Current Participants' Active Account(s) in accordance with this Article 6.
- 6.5.6** If, as of the date when distributions pursuant to this Settlement Agreement are made, a Current Participant no longer has an Active Account, he or she will be treated as a Current Participant for purposes of the settlement distribution and will have an account established in the Plan to receive his or her payment from the Settlement Administrator as described in this Paragraph 6.5.

6.6 Former Participant Allocation

- 6.6.1** For each Former Participant whose settlement payment is \$25 or more, Defendant shall cause the Plan's recordkeeper to establish or re-establish a Plan account to which the amount allocable to each Former Participant shall be deposited.
- 6.7** This Plan of Allocation is based upon preliminary data regarding the Class Members who may be entitled to settlement payments. If the Settlement Administrator concludes that it is impracticable to implement any provision of this Plan of Allocation, the Settling Parties,

if they agree, will modify promptly the terms of this Plan of Allocation and present such modified terms to the Court for its approval. Direct mailed notice to Class Members of such proposed modification of the Plan of Allocation shall not be required. However, notice of such proposed modification shall be posted by the Settlement Administrator on the Settlement Website. The Settlement Administrator shall be solely responsible for performing any calculations required by this Plan of Allocation.

- 6.8** Within ten (10) calendar days of completing all aspects of this Plan of Allocation, the Settlement Administrator shall send to Class Counsel, Defense Counsel, and Defendant one or more affidavits stating the following: (a) the name of each Class Member to whom the Settlement Administrator sent the Settlement Notice, and the address of such mailing; (b) the date(s) upon which the Settlement Administrator sent the Settlement Notice; (c) the name of each Class Member whose Settlement Notice was returned as undeliverable; (d) the efforts made by the Settlement Administrator to find the correct address and to deliver the Settlement Notice for each such Class Member; and (e) the name of each Class Member to whom the Settlement Administrator made a distribution from the Net Settlement Amount, together with the amount and form of the distribution, the name of the payee, the date of distribution, the amount of tax withholdings, if applicable, and the date of remittance of tax withholdings to the appropriate tax authority, if applicable.
- 6.9** The Settling Parties acknowledge that any payments to Class Members or their attorneys may be subject to applicable tax laws. Defendant, Defense Counsel, Class Counsel, and Class Representative will provide no tax advice to the Class Members and make no representation regarding the tax consequences of any of the settlement payments described in this Settlement Agreement. To the extent that any portion of any settlement payment is subject to income or other tax, the recipient of the payment shall be responsible for payment of such tax. Deductions will be made, and reporting will be performed by the Settlement Administrator, as required by law in respect of all payments made under the Settlement Agreement. Payments from the Qualified Settlement Fund shall not be treated as wages by the Settling Parties.
- 6.10** Each Class Member who receives a payment under this Settlement Agreement shall be fully and ultimately responsible for payment of any and all federal, state, or local taxes resulting from or attributable to the payment received by such person. Each Class Member shall hold the Released Parties, Defense Counsel, Class Counsel, and the Settlement Administrator harmless from any tax liability, including penalties and interest, related in any way to payments under the Settlement Agreement, and shall hold the Released Parties, Defense Counsel, Class Counsel, and the Settlement Administrator harmless from the costs (including, for example, attorneys' fees and disbursements) of any proceedings (including, for example, investigation and suit), related to such tax liability.
- 6.11** No sooner than thirty (30) calendar days following the end of the Settlement Period, any Net Settlement Amount remaining in the Qualified Settlement Fund after distributions, including costs and taxes, shall be paid to the Plan for the purpose of defraying administrative fees and expenses of the Plan that would otherwise be charged to the Plan's participants.

7. Article 7 - Attorneys' Fees and Costs and Class Representative's Case Contribution Award

- 7.1** Class Counsel will seek approval from the Court of their attorneys' fees and litigation costs and expenses advanced and carried by Class Counsel for the duration of this litigation. Defendant will take no position with the Court regarding Class Counsel's request for Attorneys' Fees and Costs, to the extent it does not exceed one million five hundred thousand dollars (\$1,500,000). Any such award shall be paid from the Gross Settlement Amount. Defendant shall have no independent responsibility or liability for any amounts awarded by the Court.
- 7.2** Class Counsel intends to seek a Case Contribution Award not to exceed the amount of \$5,000 for the Class Representative, which shall be subject to Court approval. Defendant agrees not to oppose or object to any proposed Case Contribution Award up to that amount. The Settlement Administrator shall pay any Case Contribution Award approved by the Court within seven (7) calendar days of the Settlement Effective Date. The Case Contribution Award shall be paid by the Settlement Administrator solely out of the Gross Settlement Amount and shall be deducted (to the extent approved by the Court) from the Gross Settlement Amount on or after the date of the Effective Approval Order and prior to the distribution to the Class Members. Defendant shall have no independent responsibility or liability for any amounts awarded by the Court. The Class Representative shall also be entitled to a distribution under this Settlement Agreement pursuant to the Plan of Allocation as a Class Member. Notwithstanding any other provision of this Settlement 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 Award shall be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement Agreement, and any Order or proceedings relating to the Case Contribution Award, or any appeal of any Order relating thereto, shall not operate to terminate or cancel this Settlement Agreement or be deemed material thereto.
- 7.3** Class Counsel will file a motion for an award of Attorneys' Fees and Costs and Class Representative's Case Contribution Award at least thirty (30) calendar days before the deadline set in the Preliminary Order for objections to the proposed settlement, which may be supplemented thereafter.

8. Article 8 - Release and Covenant Not to Sue

- 8.1** As of the Settlement Effective Date, the Plan (subject to Independent Fiduciary approval as required by Paragraph 3.1) and all Class Members (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns) shall be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged the Released Parties from the Released Claims.
- 8.2** As of the Settlement Effective Date, all Class Members and the Plan are enjoined from instituting, maintaining, prosecuting, or asserting any cause of action, demand, or claim on the basis of, connected with, or arising out of any of the Released Claims. Nothing herein

shall preclude any action to enforce the terms of this Settlement Agreement pursuant to the procedures set forth in this Settlement Agreement.

8.3 Class Counsel and 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 Released Claims. Such facts, if known by them, might have affected the decision to settle with Defendant or the decision to release, relinquish, waive, and discharge the Released Claims, or the decision of a Class Member not to object to the Settlement Agreement. Notwithstanding the foregoing, each Class Member and the Plan 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 Released Claims. The Class Members and the Plan acknowledge and shall be deemed by operation of the Effective Approval Order to have acknowledged that the foregoing release was bargained for separately and is a key element of the settlement embodied in this Settlement Agreement.

8.4 Without admitting that California law applies to this Settlement Agreement, the Settling Parties agree that as of the Settlement Effective Date, the Class Members and the Plan shall be conclusively deemed to, and by operation of the Effective Approval Order shall, settle, release, relinquish, waive and discharge any and all rights or benefits they may now have, or in the future may have, under any law relating to the release of unknown claims pertaining specifically to Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

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

9. Article 9 - Representations and Warranties

9.1 The Settling Parties represent:

9.1.1 That they are voluntarily entering into this 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 their own counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof;

9.1.2 That they assume the risk of mistake as to facts or law;

- 9.1.3** That they recognize that additional evidence may have come to light, but that they nevertheless desire to avoid the expense and uncertainty of litigation by entering into the Settlement Agreement;
- 9.1.4** That they have read carefully the contents of this Settlement Agreement, and this Settlement Agreement is signed freely by each individual executing this Settlement Agreement on behalf of each of the Settling Parties; and
- 9.1.5** That they have made such investigation of the facts pertaining to the Settlement Agreement and all matters pertaining thereto, as they deem necessary.
- 9.2** Each individual executing this Settlement Agreement on behalf of a Settling Party does hereby personally represent and warrant that he/she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each principal that each such individual represents or purports to represent.
- 10. Article 10 - Termination, Conditions of Settlement, and Effect of Disapproval, Cancellation, or Termination**
- 10.1** The Settlement Agreement shall automatically terminate, and thereby become null and void with no further force or effect if:
- 10.1.1** Pursuant to Paragraph 3.1, (a) either the Independent Fiduciary does not approve the release or the Settlement Agreement, or disapproves the release or the Settlement Agreement for any reason whatsoever, or Defendant reasonably concludes that the Independent Fiduciary's approval does not include the determinations required by PTE 2003-39, and (b) the Settling Parties do not mutually agree to modify the terms of this Settlement Agreement to facilitate an approval by the Independent Fiduciary or the Independent Fiduciary's determinations required by PTE 2003-39;
- 10.1.2** The Preliminary Order and the Final Approval Order are not entered by the Court in substantially the form submitted by the Settling Parties or in a form which is otherwise agreed to by the Settling Parties;
- 10.1.3** The Settlement Class is not certified pursuant to Fed. R. Civ. P. 23(b)(1) as defined herein or in a form which is otherwise agreed to by the Settling Parties;
- 10.1.4** This Settlement Agreement is disapproved by the Court or fails to become effective for any reason whatsoever; or
- 10.1.5** The Preliminary Order or Final Approval Order is finally reversed on appeal, or is materially modified on appeal, and the Settling Parties do not mutually agree to any such material modifications.
- 10.2** Notwithstanding Paragraph 10.1 above, in the event that the Court declines to grant final approval of the Settlement Agreement, Defendant agrees that the Settlement Agreement is not terminated so long as Plaintiffs timely appeal/petition the appropriate Court of Appeals

and/or Supreme Court of the United States for review(s) of such denial(s) of approval. The settlement will remain effective during the pendency of any such appeal, petition, or review. However, should the appropriate Court of Appeals and/or Supreme Court reject the appeal(s), the Settlement Agreement shall be terminated as outlined in Paragraph 10.1.

- 10.3** If the Settlement Agreement is terminated, deemed null and void, or has no further force or effect, then (a) the Action and the Released Claims asserted by the Class Representative shall for all purposes with respect to the Settling Parties revert to their status as though the Settling Parties never executed the Settlement Agreement, (b) all funds deposited in the Qualified Settlement Fund, and any interest earned thereon, shall be returned to Defendant within thirty (30) calendar days after the Settlement Agreement is finally terminated or deemed null and void, except as provided for in Paragraph 10.4, and (c) the certification of the Class shall be vacated and the Action shall proceed as though the Class had never been certified.
- 10.4** It shall not be deemed a failure to approve the Settlement Agreement if the Court denies, in whole or in part, Class Counsel's request for Attorneys' Fees and Costs.
- 10.5** 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 paid by Class Counsel.

11. Article 11 - Public Comments Regarding the Action or Settlement Agreement

- 11.1** The Class Representative and Class Counsel agree that they will not at any time publicly disparage or encourage or induce others to publicly disparage any of the Released Parties.
- 11.2** The Settlement Administrator will establish a Settlement Website on which it will post the following documents or links to the following documents on or following the date of the Preliminary Order: the operative Complaint, the Settlement Agreement and its exhibits, the Settlement Notice, the Class Representative's Motion for Attorneys' Fees and Costs, any Court orders related to the Settlement Agreement, any amendments or revisions to these documents, and any other documents or information mutually agreed upon by the Settling Parties ("Settlement Website Information"). No other information or documents will be posted on the Settlement Website unless agreed to in advance by the Settling Parties in writing. The Settlement Administrator will take down the Settlement Website ninety (90) calendar days after the receipt of the affidavit(s) referenced in Paragraph 6.8.
- 11.3** Other than the Settlement Website Information and a description of the Settlement Agreement's terms and status on Class Counsel's individual websites, the Class Representative and Class Counsel agree that they will not issue any other public statement regarding the settlement, including press releases.
- 11.4** The Class Representative and Class Counsel agree that they will keep the settlement confidential and will not disclose the fact of the settlement to anyone until after the Motion for Preliminary Approval has been filed with the Court, other than as necessary for the administration of the settlement including to the Settlement Administrator.

12. Article 12 - General Provisions

- 12.1** This Settlement Agreement, whether or not consummated, and any negotiations or proceedings hereunder are not, and shall not be construed as, deemed to be, or offered or received as evidence of an admission by or on the part of any of the Released Parties of any wrongdoing, fault, or liability whatsoever, or give rise to any inference of any wrongdoing, fault, or liability or admission of any wrongdoing, fault, or liability in the Action or any other proceeding. The Released Parties admit no wrongdoing or liability with respect to any of the allegations or claims in the Action.
- 12.2** The Class Representative, Released Parties, Class Counsel, and Defense Counsel shall have no responsibility for or liability whatsoever with respect to (a) any act, omission, or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Gross Settlement Amount or otherwise, (b) the determination of the Independent Fiduciary, (c) the management, investment, or distribution of the Qualified Settlement Fund, (d) the Plan of Allocation as approved by the Court, (e) the determination, administration, calculation, or payment of any claims asserted against the Qualified Settlement Fund, (f) any losses suffered by, or fluctuations in the value of, the Qualified Settlement Fund, or (g) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Qualified Settlement Fund or tax reporting, or the filing of any returns. Further, neither the Released Parties nor Defense Counsel shall have any responsibility for, or liability whatsoever with respect to, any act, omission, or determination of Class Counsel in connection with the administration of the Gross Settlement Amount or otherwise.
- 12.3** This Settlement Agreement shall be interpreted, construed, and enforced in accordance with applicable federal law and, to the extent that federal law does not govern, Michigan law.
- 12.4** Class Counsel, Defense Counsel, and the Settling Parties agree that any and all disputes concerning compliance with the Settlement Agreement, with the exception of any and all disputes concerning compliance with Article 8, shall be exclusively resolved as follows:
- 12.4.1** If Class Counsel, Defense Counsel, or a Settling Party has reason to believe that a legitimate dispute exists concerning the Settlement Agreement, the party raising the dispute shall first promptly give written notice under the Settlement Agreement to the other party including in such notice (a) a reference to all specific provisions of the Settlement Agreement that are involved, (b) a statement of the alleged non-compliance, (c) a statement of the remedial action sought, and (d) a brief statement of the specific facts, circumstances, and any other arguments supporting the position of the party raising the dispute.
- 12.4.2** Within twenty (20) calendar days after receiving the notice described in Paragraph 12.4.1, the receiving party shall respond in writing with its position and the facts and arguments it relies on in support of its position.

- 12.4.3** For a period of not more than twenty (20) calendar days following mailing of the response described in Paragraph 12.4.2, the Parties shall undertake good-faith negotiations, which may include meeting in person or conferring by telephone, to attempt to resolve the dispute.
- 12.4.4** If the dispute is not resolved during the period described in Paragraph 12.4.3, the parties shall conduct a mediation of the dispute with the Mediator on the earliest reasonably practicable date; provided, however, that the scope of such mediation shall be expressly limited to the dispute.
- 12.4.5** Within thirty (30) calendar days after the conclusion of the Mediator's attempt to resolve the dispute (the date of the conclusion of the mediation shall be determined by agreement of the parties or by the Mediator), if the dispute persists, either party may request that the Court resolve the dispute.
- 12.4.6** The Settling Parties will attempt to resolve any disputes quickly, expeditiously, inexpensively, and in good faith.
- 12.4.7** In connection with any disputes concerning compliance with the Settlement Agreement, each party shall bear its own fees and costs unless the Court orders otherwise.
- 12.5** The Settling Parties agree that the Court has personal jurisdiction over the Class Members and Defendant and shall maintain that jurisdiction for purposes of resolving any disputes between the Settling Parties concerning compliance with the Settlement Agreement.
- 12.6** The Settlement Agreement may be executed by exchange of executed signature pages, and any signature transmitted by facsimile or e-mail attachment of scanned signature pages for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. The Settlement Agreement may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed an original, and all such counterparts shall together constitute the same instrument.
- 12.7** The Settling Parties hereby acknowledge that they have consulted with and obtained the advice of counsel prior to executing this Settlement Agreement.
- 12.8** Any headings included in this Settlement Agreement are for convenience only and do not in any way limit, alter, or affect the matters contained in this Settlement Agreement or the Articles or Paragraphs they caption. References to a person are also to the person's permitted successors and assigns, except as otherwise provided herein. Whenever the words "include," "includes" or "including" are used in this Settlement Agreement, they shall not be limiting but shall be deemed to be followed by the words "without limitation."
- 12.9** Before approval of the Independent Fiduciary, this Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Settling Parties. Following approval by the Independent Fiduciary, this Settlement Agreement may be modified or amended only if such modification or amendment is set forth in a written agreement signed by or on behalf of all Settling Parties and only if the Independent

Fiduciary approves such modification or amendment in writing. Following entry of the Final Approval Order, this Settlement Agreement may be modified or amended only by written agreement signed on behalf of all Settling Parties, and only if the modification or amendment is approved by the Independent Fiduciary in writing and approved by the Court.

- 12.10** This Settlement Agreement and the attached exhibits constitute the entire agreement among the Settling Parties and no representations, warranties, or inducements have been made to any party concerning the Settlement other than those contained in this Settlement Agreement and the attached exhibits.
- 12.11** The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party and specifically waiving such provisions. The waiver of any breach of this Settlement Agreement by any party shall not be deemed to be or construed as a waiver of any other breach or waiver by any other party, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.
- 12.12** The Settling Parties agree, without further consideration, and as part of finalizing the settlement hereunder, that they will in good faith execute and deliver such other documents and provide such data and information (as noted herein) and take such other actions as may be necessary to consummate and effectuate the subject matter of this Settlement Agreement.
- 12.13** All of the attached exhibits are incorporated by reference as though fully set forth herein. The exhibits shall be: Exhibit 1 - Preliminary Order; Exhibit 2 - Notice of Class Action Settlement and Fairness Hearing to Class Members; Exhibit 3 - Final Approval Order; Exhibit 4 - CAFA Notice; and Exhibit 5 – Plan of Allocation.
- 12.14** No provision of the Settlement Agreement or of the attached exhibits shall be construed against or interpreted to the disadvantage of any party to the Settlement Agreement because that party is deemed to have prepared, structured, drafted, or requested the provision.
- 12.15** To the extent that any deadline in this Settlement Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.
- 12.16** Any notice, demand, or other communication under this Settlement Agreement (other than the Settlement Notice, or other notices given at the direction of the Court) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail postage prepaid, or delivered by reputable express overnight courier:

IF TO THE CLASS REPRESENTATIVES:

Garrett W. Wotkyns
John J. Nestico
Schneider Wallace Cottrell Konecky Wotkyns LLP
8501 N Scottsdale Rd., Suite 270

IF TO DEFENDANT:

Joseph J. Costello
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103

Scottsdale, AZ 85253
Tel: (480) 428-0142
gwotkyns@schneiderwallace.com

Benjamin J. Sweet
Carlson Lynch Sweet Kilpela & Carpenter, LLP
1133 Penn Ave., 5th Floor
Pittsburgh, PA 15222
Tel: (412) 322-9243

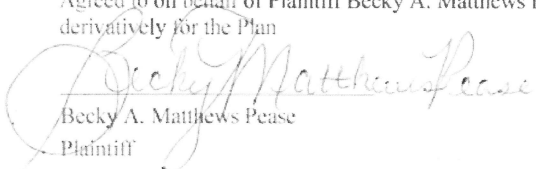
Tel: (215) 963-5572
joseph.costello@morganlewis.com

and

Jackson National Life Insurance Company
Attn: General Counsel
1 Corporate Way
Lansing, MI 48951

with each other in seeking Court approvals of the Preliminary Order and the Final Approval Order, and to do all things as may reasonably be required to effectuate preliminary and final approval and the implementation of this Settlement Agreement according to its terms.

Agreed to on behalf of Plaintiff Becky A. Matthews Pease, individually, as Class Representative, and derivatively for the Plan


Becky A. Matthews Pease
Plaintiff

Dated: 10/31/2018

Garrett W. Wotkins
Schneider Wallace Cottrell Konecky Wotkins LLP
8501 N Scottsdale Rd., Ste. 270
Scottsdale, AZ 85253
Tel: (480) 428-0142
gwotkins@schneiderwallace.com

Joseph C. Pagano
Viviano, Pagano & Howlet PLLC
48 South Main Street, Suite 2
Mount Clemens, MI 48403
Tel: (586) 569-1580
jpagano@vivianolaw.com

Benjamin J. Sweet
Carlson Lynch Sweet Kilpela & Carpenter, LLP
1133 Penn Ave., 5th Fl.
Pittsburgh, PA 15222
Tel: (412) 322-9243

Michael K. Yarnoff
Kchoe Law Firm
1500 JFK Blvd, Suite 1020
Philadelphia, PA 19102
Tel: (215) 792-6676
myarnoff@kchoelawfirm.com

Agreed to on behalf of Defendant Jackson National Life Insurance Company

Jackson National Life Insurance Company

By: _____

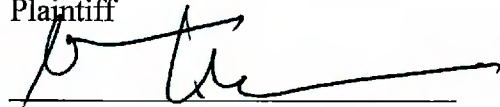
Joseph J. Costello
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
Tel: (215) 963-5000
joseph.costello@morganlewis.com

Dated: _____

12.17 The undersigned counsel, on behalf of themselves and the Settling Parties, agree to cooperate fully with each other in seeking Court approvals of the Preliminary Order and the Final Approval Order, and to do all things as may reasonably be required to effectuate preliminary and final approval and the implementation of this Settlement Agreement according to its terms.

Agreed to on behalf of Plaintiff Becky A. Matthews Pease, individually, as Class Representative, and derivatively for the Plan.

Becky A. Matthews Pease
Plaintiff



Garrett W. Wotkyns
Schneider Wallace Cottrell Konecky Wotkyns LLP
8501 N Scottsdale Rd., Suite 270
Scottsdale, AZ 85253
Tel: (480) 428-0142
gwotkyns@schneiderwallace.com

Dated: _____

Joseph C. Pagano
Viviano, Pagano & Howlet PLLC
48 South Main Street, Suite 2
Mount Clemens, MI 48403
Tel: (586) 569-1580
jpagano@vivianolaw.com

Benjamin J. Sweet
Carlson Lynch Sweet Kilpela & Carpenter, LLP
1133 Penn Ave., 5th Floor
Pittsburgh, PA 15222
Tel: (412) 322-9243

Michael K. Yarnoff
Kehoe Law Firm
1500 JFK Blvd. Suite 1020
Philadelphia, PA 19102
Tel: (215) 792-6676
myarnoff@kehoelawfirm.com

Agreed to on behalf of Defendant Jackson National Life Insurance Company

Jackson National Life Insurance Company

By: _____

Joseph J. Costello
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
Tel: (215) 963-5000
joseph.costello@morganlewis.com

Dated: _____

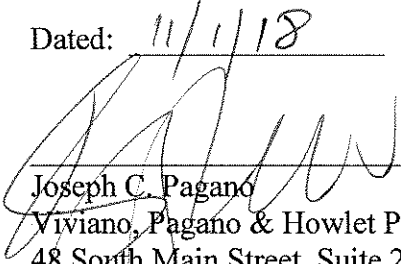
12.17 The undersigned counsel, on behalf of themselves and the Settling Parties, agree to cooperate fully with each other in seeking Court approvals of the Preliminary Order and the Final Approval Order, and to do all things as may reasonably be required to effectuate preliminary and final approval and the implementation of this Settlement Agreement according to its terms.

Agreed to on behalf of Plaintiff Becky A. Matthews Pease, individually, as Class Representative, and derivatively for the Plan

Becky A. Matthews Pease
Plaintiff

Garrett W. Wotkins
Schneider Wallace Cottrell Konecky Wotkins LLP
8501 N Scottsdale Rd., Ste. 270
Scottsdale, AZ 85253
Tel: (480) 428-0142
gwotkins@schneiderwallace.com

Dated: 11/1/18



Joseph C. Pagano
Viviano, Pagano & Howlet PLLC
48 South Main Street, Suite 2
Mount Clemens, MI 48403
Tel: (586) 569-1580
jpagano@vivianolaw.com

Benjamin J. Sweet
Carlson Lynch Sweet Kilpela & Carpenter, LLP
1133 Penn Ave., 5th Fl.
Pittsburgh, PA 15222
Tel: (412) 322-9243

Michael K. Yarnoff
Kehoe Law Firm
1500 JFK Blvd. Suite 1020
Philadelphia, PA 19102
Tel: (215) 792-6676
myarnoff@kehoelawfirm.com

Agreed to on behalf of Defendant Jackson National Life Insurance Company

Jackson National Life Insurance Company

By: _____

Joseph J. Costello
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
Tel: (215) 963-5000
joseph.costello@morganlewis.com

Dated: _____

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Agreed to on behalf of Plaintiff Becky A. Matthews Pease, individually, as Class Representative, and derivatively for the Plan.

Becky A. Matthews Pease
Plaintiff

Dated: _____

Garrett W. Wotkyns
Schneider Wallace Cottrell Konecky Wotkyns LLP
8501 N Scottsdale Rd., Suite 270
Scottsdale, AZ 85253
Tel: (480) 428-0142
gwotkyns@schneiderwallace.com

Joseph C. Pagano
Viviano, Pagano & Howlet PLLC
48 South Main Street, Suite 2
Mount Clemens, MI 48403
Tel: (586) 569-1580
jpagano@vivianolaw.com



Benjamin J. Sweet
Carlson Lynch Sweet Kilpela & Carpenter, LLP
1133 Penn Ave., 5th Floor
Pittsburgh, PA 15222
Tel: (412) 322-9243

Michael K. Yarnoff
Kehoe Law Firm
1500 JFK Blvd. Suite 1020
Philadelphia, PA 19102
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myarnoff@kehoelawfirm.com

Agreed to on behalf of Defendant Jackson National Life Insurance Company

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Agreed to on behalf of Plaintiff Becky A. Matthews Pease, individually, as Class Representative, and derivatively for the Plan

Becky A. Matthews Pease
Plaintiff

Dated: _____

Garrett W. Wotkyns
Schneider Wallace Cottrell Konecky Wotkyns LLP
8501 N Scottsdale Rd., Ste. 270
Scottsdale, AZ 85253
Tel: (480) 428-0142
gwotkyns@schneiderwallace.com

Joseph C. Pagano
Viviano, Pagano & Howlet PLLC
48 South Main Street, Suite 2
Mount Clemens, MI 48403
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Benjamin J. Sweet
Carlson Lynch Sweet Kilpela & Carpenter, LLP
1133 Penn Ave., 5th Fl.
Pittsburgh, PA 15222
Tel: (412) 322-9243



Michael K. Yarnoff
Kehoe Law Firm
1500 JFK Blvd. Suite 1020
Philadelphia, PA 19102
Tel: (215) 792-6676
myarnoff@kehoelawfirm.com

Agreed to on behalf of Defendant Jackson National Life Insurance Company

Jackson National Life Insurance Company

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Morgan, Lewis & Bockius LLP
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Philadelphia, PA 19103
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Agreed to on behalf of Plaintiff Becky A. Matthews Pease, individually, as Class Representative, and derivatively for the Plan

Becky A. Matthews Pease
Plaintiff

Dated: _____


Garrett W. Wotkyns
Schneider Wallace Cottrell Konecky Wotkyns LLP
8501 N Scottsdale Rd., Ste. 270
Scottsdale, AZ 85253
Tel: (480) 428-0142
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Viviano, Pagano & Howlet PLLC
48 South Main Street, Suite 2
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Michael K. Yarnoff
Kehoe Law Firm
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Philadelphia, PA 19102
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myarnoff@kehoelawfirm.com

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Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
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Jackson National Life Insurance Company

By:  _____

Dated: 10/31/18