

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

CAROL FOSTER and THEO )  
FOREMAN, on behalf of themselves, )  
individually, and on behalf of a class of all )  
others similarly situated, )

Case No.: 18-cv-02723-JSC

Plaintiffs, )

v. )

ADAMS AND ASSOCIATES, INC., )  
ROY A. ADAMS, DANIEL B. NOREM, )  
and THE DANIEL NOREM )  
REVOCABLE TRUST DATED )  
JANUARY 9, 2002, )

Defendants. )

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**CLASS ACTION SETTLEMENT AGREEMENT**

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## **INTRODUCTION**

Subject to approval by the United States District Court for the Northern District of California, this Class Action Settlement Agreement is made and entered into by and among Plaintiffs, individually and on behalf of the Class, and Adams and Associates, Inc., Roy Adams, Daniel B. Norem, and The Daniel Norem Revocable Trust Dated January 9, 2002 (collectively, the “Defendants”) to settle claims against Defendants, subject to the terms and conditions below. All capitalized terms will have the meaning ascribed thereto in Section I of this Agreement.

## **RECITALS**

A. Plaintiffs Carol Foster and Theo Foreman filed the original Complaint (ECF No. 001) on May 9, 2018, docketed as Case No. 18-cv-02723-JSC in the United States District Court for the Northern District of California, asserting claims on behalf of themselves and a class of participants of the ESOP and their beneficiaries for alleged violations of ERISA during the October 2012 Transaction and related to the ESOP’s Summary Plan Description and indemnity provisions.

B. Plaintiffs filed an Amended Complaint on October 25, 2018 (ECF No. 040), which among other things, added The Daniel Norem Revocable Trust Dated January 9, 2002 as a Defendant. Plaintiffs filed a Second Amended Complaint on March 5, 2019, which among other things, voluntarily dismissed Alan Weissman’s widow, Janice U. Weissman, as a Defendant. ECF No. 065.

C. Defendants responded to the Complaint by filing a motion to dismiss on July 30, 2018 (ECF No. 018), which they supplemented on February 7, 2019 (ECF No. 059). The Court denied Defendants’ motion on February 26, 2019. ECF No. 061. Defendants thereafter answered the Second Amended Complaint on March 26, 2018. ECF No. 070.

D. Plaintiffs filed a Motion for Class Certification on June 27, 2019 (ECF No. 079) which was granted by the Court on September 3, 2019 (ECF No. 089).

E. The Parties conducted extensive discovery (oral and written) during this litigation, including document requests, interrogatories, requests for admissions, subpoenas on third parties, expert discovery and depositions.

F. Plaintiffs filed a motion for partial summary judgement on January 30, 2020 (ECF No. 102) and Defendants filed a cross-motion for summary judgment on April 9, 2020 (ECF No. 137). The Court denied Plaintiffs' motion and granted Defendants' motion in part on July 6, 2020. ECF No. 153.

G. Plaintiffs and Defendants conducted arms-length negotiations at settlement conferences with the Honorable Judge DeMarchi on December 4, 2020, January 21, 2021, July 22, 2021 and July 28, 2021. On July 28, 2021, Judge DeMarchi made a mediator's proposal whereby Defendants would resolve this case by paying \$3 million to the Class, in addition to a number of non-monetary terms. The Parties accepted the mediator's proposal on July 29, 2021.

H. As a result of the factual investigation, expert consultation, legal research, and extensive litigation conducted by Class Counsel concerning the claims asserted in the Action and the discovery conducted in the Action, Class Counsel have concluded that the terms of this Settlement are fair, reasonable, adequate and in the best interests of both the Class certified by the Court and have agreed to settle the Action on the terms set forth herein.

I. Defendants deny the allegations asserted in the Action, deny any wrongdoing or liability whatsoever and state that they are entering into the Settlement to avoid the cost, disruption, and uncertainty of litigation.

J. The Parties desire to promptly and fully resolve and settle with finality all of the claims on the terms set forth herein and subject to the approval of the Court.

## I. DEFINITIONS

As used in this Agreement, the following terms have the following meanings, unless a section or subsection of this Agreement specifically provides otherwise. Capitalized terms used in this Agreement, but not defined in this Section I, will have the meaning ascribed to them elsewhere in this Agreement.

A. “2012 ESOP Transaction” means the transaction in which the Adams and Associates, Inc. Employee Stock Ownership Plan purchased 100% of the stock of Adams and Associates, Inc. from Defendants Roy A. Adams, Daniel B. Norem, and the Daniel Norem Revocable Trust Dated January 9, 2002 (the “Norem Trust”) for \$33.5 million.

B. “AAI” means Adams and Associates, Inc.

C. “AAI ESOP,” “ESOP,” or the “Plan” means the Adams and Associates, Inc. Employee Stock Ownership Plan.

D. “AAI 401(k) Plan” means the Adams and Associates, Inc. 401(k) Profit Sharing Plan or any successor plan.

E. “Action” means the class action lawsuit styled *Carol Foster and Theo Foreman, on behalf of themselves, individually, and on behalf of a class of all others similarly situated, Plaintiffs, v. Adams And Associates, Inc., Roy A. Adams, Daniel B. Norem, and The Daniel Norem Revocable Trust Dated January 9, 2002, Defendants*, docketed as Case No. 18-cv-02723-JSC in the United States District Court for the Northern District of California.

F. “CAFA” will have the meaning set forth in Section XIII.1 of this Agreement.

G. “Cash Settlement Amount” means three million dollars (\$3,000,000.00) paid by or on behalf of Defendants (other than AAI), described in Section III.1 below.

H. “Class” means the Class as certified by the Court in its Order dated September 3, 2019 (ECF No. 089) except that the definition of the Class will be modified to have an end date of December 31, 2020 or the date of judgment, whichever is earlier.

I. “Class Counsel” means Co-Lead Class Counsel R. Joseph Barton of Block & Leviton LLP and Daniel Feinberg of Feinberg, Jackson, Worthman, & Wasow LLP.

J. “Class Member” means an individual who is a member of the Class.

K. “Class Notice” means the form of notice provided to the Class Members that complies with the requirements of Section II.2 in this Agreement, Fed. R. Civ. P. Rule 23, and as approved by the Court.

L. “Class Notice Packet” means the Class Notice and any other forms approved or directed by the Court.

M. “Class Representatives” mean the Plaintiffs who were appointed by and continue to be the representatives of the Class appointed by the Court.

N. “Complaint” means the Second Amended Complaint (ECF No. 065) and any subsequent operative complaints filed in this Action.

O. “Court” means the United States District Court for the Northern District of California.

P. “Defendants” mean Adams and Associates, Inc., Roy A. Adams, Daniel B. Norem, and The Daniel Norem Revocable Trust Dated January 9, 2002.

Q. “Defense Counsel” means the undersigned counsel for Defendants.

R. “Election Distribution Packet” means any necessary forms and information for a Class Member to elect to receive a distribution (including a rollover) from the AAI 401(k) Plan.

S. “Excluded Persons” means the following persons who are excluded from the Class: (a) Defendants; (b) persons who are named fiduciaries of the AAI ESOP who are alleged to have engaged in prohibited transactions or breaches of corporate fiduciary duties or who had decision-making or administrative authority relating to the administration, modification, funding or interpretation of the AAI ESOP; and (c) legal representatives, successors, heirs, and assigns of any such excluded persons.

T. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

U. “Escrow Account” means an account established by the Settlement Administrator into which the Cash Settlement Amount is to be paid.

V. “Expense Award” will have the meaning set forth in Section VIII.1 of this Agreement.

W. “Fee Award” will have the meaning set forth in Section VIII.1 of this Agreement.

X. “Final Approval Motion” means the motion to be filed by Class Counsel requesting that the Court grant final approval of the Settlement pursuant to Fed. R. Civ. P. 23(e).

Y. “Final Order” means the Order and Final Judgment, substantially in the form of an Order described in Section X.2 below.

Z. “Independent Fiduciary” means the person(s) or entity hired by Defendants pursuant to Section XII.

AA. “Non-Appealable” means an order entered by the Court is no longer subject to appeal, which will occur when: (i) if no appeal is taken therefrom, on the date on which the time to appeal therefrom (including any extension of time) has expired; or (ii) if any appeal is taken therefrom, on the date on which all appeals therefrom, including any petitions for rehearing or

re-argument, petitions for rehearing *en banc*, and petitions for writ of *certiorari* or any other writ, or any other form or review, have been finally disposed of, such that the time to appeal therefrom (including any extension of time) has expired, in a manner resulting in an affirmance of the Final Order.

BB. “Parties” means collectively all Plaintiffs, individually and on behalf of the Class, and all Defendants collectively; “Party” refers to any one of them.

CC. “Plan of Allocation” means the plan for distribution of the proceeds of the Settlement Fund as proposed by Class Counsel to be approved by the Court.

DD. “Preliminary Approval Order” means the “Order Preliminarily Approving Settlement, Approving Form of Notice, and Setting Final Approval Hearing” in this Action, substantially in the form described in Section X.1.

EE. “Plaintiffs” mean Carol Foster and Theo Foreman.

FF. “Plaintiffs’ Counsel” means Class Counsel.

GG. “Service Awards” will have the meaning set forth in Section VIII.1 of this Agreement.

HH. “Settled Class Claims” means the claims that the Class will release pursuant to this Settlement as provided in Section XIV.1.

II. “Settlement” means the settlement and compromise of this Action as provided for in this Settlement Agreement.

JJ. “Settlement Administrator” means the person whom Class Counsel proposes, subject to Court approval, who is to be responsible for, among other things, providing the Class Notice Packet to Class Members and/or assisting with the administration of the Settlement.



KK. “Settlement Agreement” means this Class Action Settlement Agreement and any accompanying Exhibits, including any subsequent amendments thereto and any Exhibits to such amendments.

LL. “Settlement Fund” means the Cash Settlement Amount plus any earnings and interest thereon, minus any Court-approved deductions and expenses.

MM. “Settling Parties” or “Parties” means Plaintiffs, on behalf of themselves and the Class, and the Defendants.

NN. “Tax” or “Taxes” means any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority, including income tax and other taxes and charges on or regarding franchises, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers’ compensation, unemployment compensation, or net worth; taxes or other charges in the nature of excise, withholding, *ad valorem*, stamp, transfer, value added or gains taxes; license, registration, and documentation fees; and customs’ duties, tariffs, and similar charges.

OO. “Termination Notice” will have the meaning set forth in Section XV.1 of this Settlement Agreement.

## II. CLASS NOTICE

1. **Provision of Class Notice.** Upon the date specified in the Court’s Preliminary Approval Order, the Settlement Administrator will be responsible for providing Class Notice to the Class Members.

2. **Contents.** The Class Notice, in a form approved by the Court, will contain: a brief description of the claims advanced by the Class; a summary of the terms of the Settlement Agreement; information on the attorneys’ fees and costs sought by Class Counsel; a

description of the proposed Plan of Allocation of the Settlement Fund to the Class; the estimated settlement allocation for the Class Member; and will provide information about the Final Approval Hearing,

3. **Method of Providing Class Notice.** Class Notice will be provided to each individual Class Member: (a) by mailing via first class U.S. Mail to all Class Members, and (b) by posting the Class Notice (and other documents filed in the litigation) on a website maintained by the Settlement Administrator. Defendants will cooperate with Class Counsel to facilitate providing Class Notice and other settlement-related communications by providing mailing addresses for all Class Members, to the extent such information is reasonably available in the records of Defendants.

4. **Additional Information Provided with the Class Notice.** Along with the Class Notice, every Class Member will be provided with any necessary information about how to request a distribution or rollover of his or her Settlement proceeds from his/her AAI 401(k) Plan account or provide instructions to the Plan Administrator as to how to invest the Settlement proceeds. Any Class Member who is eligible for a distribution from the AAI 401(k) Plan will be entitled to request and receive the necessary forms to elect a distribution of his or her share of the Settlement Fund. Any distributions from the Settlement Fund will be subject to the same rules as a distribution from the AAI 401(k) Plan except that any employee entitled to request a distribution from the AAI 401(k) Plan will not be charged a fee to receive the proceeds of this Settlement.

5. **Settlement Administrator.** A Settlement Administrator shall be appointed by the Court pursuant to Section VII.1 of this Agreement. The Parties and their

counsel will reasonably cooperate with the Settlement Administrator to facilitate providing Notice and other settlement-related communications and administration.

6. **Undeliverable Notices.** In the event that a Class Notice sent by U.S. Mail is returned as undeliverable, the Settlement Administrator will make reasonable efforts to obtain a valid mailing address and promptly resend the Class Notice to the Class Member by U.S. Mail.

7. **Class Data.** On or before October 6, 2021, Defendants will provide Class Counsel and the Settlement Administrator with the following contact information in electronic form for each Class Member, to the extent such information is reasonably available in Defendants' files: (1) name; (2) a street mailing address; (3) telephone number(s); (4) e-mail address(es); (5) Social Security number; (6) sufficient information identifying the beneficiary Class Member (including any persons who have a QDRO) for each participant Class Member; and (7) the number of vested shares held in the Class Member's ESOP account as of December 31, 2020, or, if the Class Member received a prior distribution from the ESOP, the number of vested shares held in the Class Member's ESOP account prior to any such distribution. In addition, Defendants will provide Class Counsel and the Settlement Administrator a list of all persons excluded from the Class. Defendants will also provide other information reasonably requested by Class Counsel or the Settlement Administrator.

8. **Class Notice and Settlement Administration Costs and Expenses.** Defendants (other than AAI) will bear all costs of administration of the Settlement, including any costs relating to distribution of the Settlement. No fees, expenses, costs or other charges will be imposed on any Class Member to receive their proceeds from this Settlement or otherwise related to administration of the Settlement. To the extent that some service provider of the ESOP

imposes a charge for distribution of settlement funds to Class Members, any such costs will be borne by Defendants (other than AAI).

9. **Declaration Regarding Class Notice.** Within 30 days after the date on which Notice is required to be sent, the Settlement Administrator will file a declaration with the Court confirming that the Notice and related information was sent in accordance with the Preliminary Approval Order.

### **III. SETTLEMENT FUND**

1. **Payment of Cash Settlement Amount into Escrow Account.** As settlement of the Class claims, Defendants other than AAI, will pay, or cause to be paid, the Cash Settlement Amount of three million dollars (\$3,000,000.00) into the Escrow Account on or before September 27, 2021.

2. **Custody of Settlement Fund.** The Settlement Fund held in the Escrow Account will be deemed to be in the custody of the Court and will remain subject to the jurisdiction of the Court and will be administered in accordance with the terms of this Settlement Agreement and the Orders of the Court. Except as provided herein, the Settlement Fund will not be paid to the Class Members pursuant to the Plan of Allocation until the Final Order becomes Non-Appealable.

3. **Management of the Settlement Fund.** Until the Final Order becomes Non-Appealable or until the Settlement is terminated in accordance with this Agreement, the Settlement Fund will be held in an Escrow Account. After the Final Order becomes Non-Appealable, Class Counsel will have the sole right and duty to manage the Settlement Fund in compliance with the terms of the Final Order. At no time will Defendants have any duty or authority to hold, manage, or invest any portion of the Settlement Fund prior to the receipt by the AAI 401(k) Plan of any such portion from the Settlement Fund. After receipt of the proceeds of

the Settlement Fund by the AAI 401(k) Plan, the Settlement Fund will be held, managed, and invested consistent with this Settlement Agreement and consistent with the fiduciary duties of the fiduciary of the AAI 401(k) Plan (and any amendment of the AAI 401(k) Plan to make the terms of the AAI 401(k) Plan consistent with this Settlement Agreement). Any earnings or interest earned by the Settlement Fund will become part of the Settlement Fund.

4. **Qualified Settlement Fund.** The Settlement Fund is intended by the Settling Parties to be a “qualified settlement fund” for federal income tax purposes under Treas. Reg. § 1.468B-1 at the earliest date possible.

#### **IV. DISTRIBUTIONS FROM THE SETTLEMENT FUND**

1. **Expenses Before the Effective Date.** Until the Final Order becomes Non-Appealable or the Settlement is terminated in accordance with this Agreement, Class Counsel will be authorized to pay from the Settlement Fund upon notice to Counsel for the Defendants (a) any actual or estimated taxes on any income earned on the Settlement Fund, and (b) all costs and expenses related to the preparation of such tax filings or payments. Any dispute regarding the reasonableness of any expense incurred, paid, or owing will be adjudicated by the Court, but in no event will such a dispute require Class Counsel to cause or allow the Settlement Fund to fail to make a tax payment in a timely manner.

2. **Attorneys’ Fees, Expenses/Costs, and Service Awards.** Pursuant to any deadline set by the Court, Class Counsel may file any motion with the Court requesting the payment of attorneys’ fees, reimbursement of litigation expenses and costs, and/or Service Awards to the Class Representatives out of the Settlement Fund. Any amounts so awarded by the Court will be paid from the Settlement Fund as directed by Class Counsel before Distribution to the Class, subject to Section VIII.4. of this Agreement.

3. **Tax Reserve After the Effective Date:** Upon the Final Order becoming Non-Appealable, Class Counsel will be authorized to establish a reserve from the Settlement Fund to pay any taxes that are or will be owed (but not yet due) and for expenses related to payment of taxes or filing of tax returns or to the extent that there are other costs of administration of the Settlement not paid by Defendants.

4. **Distribution to Class Members.** After the Final Order becomes Non-Appealable, the following payments will be made from the Settlement Fund prior to any distributions to Class Members: (a) any Taxes on the income or earnings by the Settlement Fund, any tax-related expenses, and the creation of any reserve for future expenses (as described above); (b) any expenses incurred in connection with the administration of the Settlement Fund (to the extent that there are any under this Settlement); and (c) any award of attorneys' fees, reimbursement of any litigation expenses and costs to Class Counsel, and/or payment of any Service Award to the Class Representatives. After the deduction of any court-awarded attorneys' fees, expenses and class representative service awards, the net settlement amount will be distributed to Class Members pursuant to the Court-approved Plan of Allocation proposed by Class Counsel. Defendants will not have input into the Proposed Plan of Allocation.

5. **Distributions of the Settlement to the Class.** Distributions to Class Members who are entitled to receive an allocation from the Settlement Fund will be made as follows:

(a) For Class Members who are eligible for an immediate distribution from the ESOP or the AAI 401(k) Plan prior to the Final Approval Hearing and who elect to receive an immediate distribution prior to Final Approval, those Class Members' settlement proceeds shall be distributed by check to those Class Members directly by the

Settlement Administrator, unless the Class Member elects to roll over his or her settlement proceeds into an IRA account or another tax-qualified account, but the Parties and the Settlement Administrator shall have no responsibility or liability for or in connection with the determination of whether or not such Class Member is eligible to elect such a rollover. The Settlement Administrator shall make such distributions within the later of (i) 30 days of the Final Order becoming Non-Appealable or (ii) 30 days after the Settlement Administrator has received amounts from the Settlement Fund and a direction or approval from Class Counsel regarding the allocation of any portion of the net proceeds of the Settlement Fund for these Class Members.

(b) For Class Members who are not eligible for a distribution from the AAI 401(k) Plan or for those Class Members who do not make a distribution election prior to Final Approval (and for those Class Members who made an election pursuant to Paragraph 5(a) but fail to timely cash their checks), proceeds from the Settlement shall be transferred to each Class Member's existing account in the AAI 401(k) Plan. If the Class Member does not have an existing AAI 401(k) Plan account, such an account will be established within the later of (i) 30 days of the Final Order becoming Non-Appealable or (ii) thirty (30) days after the Plan Administrator has received amounts from the Settlement Fund and a direction from the Settlement Administrator (or Class Counsel) regarding the allocation of any portion of the net proceeds of the Settlement Fund. For Class Members with an existing AAI 401(k) Plan Account, the Class Member's settlement proceeds will be invested according to that Class Member's pre-existing investment instructions for contributions in that Class Member's AAI 401(k) Plan account. For Class Members without an existing AAI 401(k) Plan Account, the Class

Member's settlement proceeds will be invested in the AAI 401(k) Plan's default investment option. After the initial allocations are made, Class Members will be permitted to direct investment of their proceeds from this Settlement into any of the available investment options in the AAI 401k Plan according to the terms of the AAI 401k Plan and will be able to request and receive distributions from the AAI 401(k) Plan according to the terms of the AAI 401k Plan, and as provided in this Settlement Agreement.

(c) For all Class Members whose Settlement Proceeds are paid into the AAI 401(k) Plan, all reasonable efforts will be taken to ensure that the distribution complies with ERISA and the relevant provisions of the Internal Revenue Code (and any corresponding state tax provisions) in order to preserve the tax-favored treatment of the amounts distributed to those Class Members.

6. **Amendment of AAI 401(k) Plan to Effectuate Provisions Related to the Distribution of the Settlement Funds.** As necessary to effectuate the provisions related to distribution, administration, and investment of the proceeds of the Settlement, AAI, as the Plan Sponsor of the AAI 401(k) Plan, will adopt and implement an amendment (the "Amendment") to the AAI 401(k) Plan consistent with the provisions of this Settlement Agreement within 15 days of the date on which the Final Order becomes Non-Appealable. Defendants will provide Class Counsel with a proposed draft of the Amendment to be adopted by the Plan at least 30 calendar days prior to the time that the Final Approval Motion is due. In the event of a dispute, the Court will decide whether the language of the proposed Amendment is consistent with the terms of this Settlement Agreement. Defendants will provide Class Counsel with a copy of the actual Amendment as adopted within 14 calendar days after its adoption. The Amendment may not be



rescinded, modified, or eliminated without written notification to Class Counsel at least 10 business days before the adoption of any such modification or elimination and the approval of the Court.

7. **Costs and Expenses Related to Settlement Administration and Distribution.** Defendants other than AAI will bear all costs of administration of the Settlement including any costs relating to administration and distribution of the Settlement Fund, including any expenses to prepare any tax filings related to the Settlement Fund and will pay such expenses no later than 30 days of receipt of any invoice for such expenses (regardless of whether the Settlement is terminated). Any dispute about the expenses incurred by Class Counsel or the Settlement Administrator will be decided by the Court. No fees, expenses, costs, or other charges that Defendants incur or for which Defendants are responsible will be charged to the Settlement Fund, including the costs of CAFA Notice, or the costs of the Independent Fiduciary. To the extent that the administration or distribution of amounts from the Settlement Fund or the Plan to Class members involves any charges, such costs will be borne by Defendants.

8. **Restrictions on Administration and Distribution Expenses.** No fees, expenses, costs, or other charges will be imposed on Class Members to receive their proceeds from this Settlement at any time or otherwise related to administration of the Settlement, including any charges that would otherwise be imposed by the Plan on distributions or other administrative costs that would have been charged by the Plan (or any service provider) to any Class Member until the proceeds are distributed to that Class Member.

9. **Tax Liability.** The Settling Parties will not have any liability or responsibility for the payment of any Taxes incurred by or with respect to the Settlement Fund, and any such Taxes will be paid out of the Settlement Fund.

## V. PLAN OF ALLOCATION

1. **Proposed Plan of Allocation.** Class Counsel will propose and submit a Plan of Allocation to the Court as to the recommended method of determining and distributing the proceeds of the Settlement Fund (net of attorneys' fees, expenses, and any Service Awards approved by the Court) to Class Members.

2. **Defendants' Non-Involvement.** Defendants will have no responsibility for preparing or any right to provide input into and will take no position on the Plan of Allocation.

3. **Modification of Plan of Allocation.** In the event that the proposed Plan of Allocation is rejected or modified by the Court or on appeal, such rejection or modification will not constitute a material modification of this Settlement Agreement, will not void this Settlement Agreement, and will not provide a basis for any Party to withdraw from this Settlement Agreement. However, the Plan of Allocation must prevent the Excluded Persons from receiving any distribution from the Settlement Fund and no modification of the Plan of Allocation will allow any of the Excluded Persons to receive any distribution from the Settlement Fund.

4. **Class Members' Right to Demonstrate Membership and/or Submit ESOP Account Data.** Before the Final Approval Hearing and by a deadline to be established by the Court, any person who claims to meet the definition of a Class Member but who has not been identified as a Class Member in the data provided by Defendants will be entitled to demonstrate membership in the Class and any person claiming that the data provided by Defendants about a participant's ESOP account is erroneous will be entitled to demonstrate that such an error will impact the amount allocated to that participant under the Plan of Allocation. Such submissions will only be used to determine whether a person qualifies as a Class Member for purpose of this

Settlement, subject to Court approval, and to adjust amounts allocated to Class Members, subject to Court approval, under the Plan of Allocation.

5. **Excluded Persons Prohibited from Receiving Settlement Funds.** None of the Excluded Persons will either directly or indirectly receive any of the proceeds from this Settlement. Defendants Adams and Associates, Inc., Roy A. Adams, Daniel B. Norem, and The Daniel Norem Revocable Trust Dated January 9, 2002 acknowledge that they will not receive any allocation of any amount from this Settlement and further agree to obtain, if necessary, an authorization from any beneficiary (including a spouse) necessary to forego any such allocation.

6. **No Claim Based on Distribution in Accordance with the Plan of Allocation.** The Class and its members will not have any claim against, and will hold harmless, Plaintiffs, the ESOP, Defendants, counsel to any of the foregoing (including Class Counsel), the Settlement Administrator, or other individuals involved in the distribution under the Plan of Allocation, from any claim based on any distributions of the Settlement Fund made substantially in accordance with this Settlement Agreement, the Plan of Allocation, or as otherwise may be authorized by the Court.

## **VI. OTHER CONSIDERATION PROVIDED BY DEFENDANTS**

1. **No Indemnification.** AAI will not incur or pay for any costs or expenses related to the Settlement including administration of the Settlement. AAI will not indemnify or provide an indemnification to the other Defendants (including for defense costs). To the extent that AAI has previously paid for any expenses related to the litigation, all amounts will be refunded to AAI within 30 days after preliminary approval. Defendants will provide affidavits, in a form that is acceptable to Class Counsel that aver either that no such payments have been made or that all such amounts have been refunded to AAI and state the amount refunded. Defendants will provide their affidavits to Class Counsel at least 30 days before the deadline for

Plaintiffs' Motion for Final Approval and Defendants will file those final affidavits at the same time as the Motion for Final Approval.

2. **Revision of Summary Plan Description.** AAI will issue a revised Summary Plan Description (SPD) that is compliant with ERISA. Defendants will provide a draft of the proposed SPD to Class Counsel at least 30 days before the deadline for Plaintiffs' Motion for Final Approval. To the extent that Class Counsel and Defendants cannot agree upon the final version of the SPD, the Court will determine whether the proposed revised SPD complies with ERISA. AAI will provide the revised SPD to all participants in the ESOP within 30 days after the Final Approval Order is Non-Appealable. AAI will file an affidavit with the Court averring that it has issued the revised SPD to all participants 30 days after the revised SPD is sent.

## **VII. SETTLEMENT ADMINISTRATION**

1. **Appointment of Settlement Administrator.** A Settlement Administrator who will be approved by the Court will be appointed to administer the Settlement and will report to Class Counsel and the Court. The Settlement Administrator will have experience providing notice to Class Members and administering settlements in employment or employee benefit class action settlements, and in supervising and administering large and complex settlement funds. In the event that the Parties cannot agree upon a proposed Settlement Administrator, Plaintiff and Defendants will each propose one candidate and the Settlement Administrator will be selected by the Court.

2. **Settlement Administrator's Responsibilities.** The Settlement Administrator will undertake the following tasks to administer this Settlement consistent with the terms of this Settlement, the Plan of Allocation, and the Orders of the Court and such other procedures required by the Court or as jointly directed by Class Counsel and Defense Counsel:

- (a) Print and mail the Class Notice Packet to the Class Members in accordance

with this Settlement Agreement and any order of the Court and undertake to trace and re-mail all undeliverable Class Notice Packets or other reasonable steps to locate missing Class Members;

(b) Provide any information on any new addresses to the AAI 401(k) Plan in order to facilitate the establishment of any new accounts for Class Members;

(c) Provide Class Counsel and Defense Counsel with copies of any objections to the Settlement (to the extent such objections are not filed with the Court);

(d) Provide Class Counsel and Counsel for the Defendants with any challenges to Defendants' data, including all information submitted in support of each challenge;

(e) Respond to questions from Class Members or refer Class Members to Class Counsel for responses;

(f) Maintain and staff a toll-free phone number and a web site until at least six (6) months after distributions of the Settlement Fund have been made to Class Members;

(g) File with the Court a declaration confirming compliance with the procedures approved by the Court for providing notice to the Class;

(h) Determine for purposes of allocation of the Settlement Fund, subject to the approval by Class Counsel and the Court, whether any Class Members challenging their account data have sufficiently established the Defendants' data is erroneous and send notice of the determinations to those persons;

(i) Issue Payment of the Settlement Proceeds to any Class Members who are eligible to receive a distribution or rollover from the AAI 401(k) Plan;

- (j) Instruct the Plan Administrator, consistent with the court-approved Plan of Allocation, as to how the Cash Settlement Amount is allocated among the Class and to the AAI 401(k) Plan accounts of individual Class Members;
- (k) Establish and monitor the Qualified Settlement Fund and file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitations the returns described in Treas. Reg. Section 1.468B-2(k));
- (l) Pay the Net Settlement Amount to the Class Members or the AAI 401(k) Plan, consistent with instructions from Class Counsel and the court-approved Plan of Allocation; and
- (m) Any other responsibilities set forth in this Agreement and any other responsibilities agreed to by the Settling Parties related to administration of the Settlement and consistent with the orders of the Court or any other responsibilities ordered by the Court.

3. **Plan Administrator.** The administrator of the AAI 401(k) Plan will be responsible for allocating the settlement payments to the Class Members' accounts consistent with the Plan of Allocation and the directions from the Settlement Administrator and/or Class Counsel. The Plan Administrator will comply with the instructions of the Settlement Administrator and/or Class Counsel in accordance with the Plan of Allocation regarding the amounts to allocate to Class Members. Defendants will not have any input as to how the Cash Settlement Amount is allocated among Class Members.

4. **Prohibition on Assessment of Expenses to the Class.** The Class Members will not be charged or assessed any amount by the AAI 401(k) Plan (or its service

providers), for any of the following: (1) payment of the Class Members' pro rata share of the Settlement Fund, (2) expenses related to administration or implementation of this Settlement, or (3) expenses incurred in allocating or distributing any amounts paid into the AAI 401(k) Plan or to the Class Members (or according to their distribution elections).

5. **Tax Treatment of the Plan.** Defendants will use their best efforts to ensure that the Settlement will not adversely affect the tax-qualified status of the AAI 401(k) Plan and that Class Members' rollover distributions from the Settlement Amount paid qualify for tax-deferred treatment. Defendants will be responsible for all costs associated with any steps that they undertake to ensure the tax favored treatment of the Settlement Payment into the AAI 401(k) Plan and the continued tax qualification of the AAI 401(k) Plan with respect to the Settlement.

#### **VIII. PAYMENT OF FEES, SERVICE AWARDS, AND REIMBURSEMENT OF COSTS AND EXPENSES**

1. **Attorneys' Fees and Expenses and Service Awards from the Settlement Fund.** Prior to the deadline for Class Members to object to the Settlement Agreement and by a date to be set by the Court, Class Counsel will be entitled to file any motion with the Court for an award from the Settlement Fund of: (a) attorneys' fees (the "Fee Award"), (b) service awards for Plaintiffs/Class Representatives ("Service Awards"), and (c) reimbursement of litigation costs and expenses (the "Expense Award"). Any Fee Award, Expense Award, or Service Award will be paid solely from the Settlement Fund and is subject to the Court's approval at the Final Approval Hearing.

2. **Defendants' Non-Opposition.** Defendants and their counsel will take no position regarding the application for or an award of the Fee Award, the Service Awards, or the

Expense Award, provided that the application for the Fee Award does not exceed 33% of the Cash Settlement Amount.

3. **Payment of Fees/Expenses to Class Counsel.** All amounts to be paid pursuant to this Section will be paid into an account designated by Class Counsel to be distributed and allocated among any Plaintiffs' Counsel as directed by Class Counsel. Neither Defendants nor their insurers will have any input as to the division of such fees and expenses among Plaintiffs' Counsel.

4. **Timing of Payment of Attorneys' Fees and Reimbursement of Expenses.** In the event that the Court grants any Fee Award, Expense Award, or Service Award, disbursement of any Fee Award, Expense Award, or Service Award from the Settlement Fund may be made upon the Final Order becoming Non-Appealable. In the event that there is no appeal of the Final Judgment of the Settlement, but an appeal solely of a Fee Award, an Expense Award, or a Service Award, Class Counsel will be entitled to a disbursement from the Settlement Fund of such amount of attorneys' fees and/or such amount of expenses/costs as to which there is no appeal or the amount which is not contested on appeal.

5. **Non-Materiality of Award of Attorneys' Fees, Reimbursement of Expenses, or Service Award to Settlement.** In the event that this Court refuses to award attorneys' fees, allow reimbursement of expenses/costs, or permit a service award, in whole or in part, or any such award is rejected or modified on appeal, such rejection or modification will not constitute a material modification of this Settlement Agreement, will not void this Settlement Agreement, and will not provide a basis for any Party to withdraw from this Settlement Agreement.



6. **Defendants' Attorneys' Fees & Expenses.** No amount of the attorneys' fees, expenses, or costs of this Litigation incurred by Defendants, or the administration of this Settlement incurred by any of the Defendants (including AAI and the Defendants) or the AAI 401(k) Plan, or service providers thereto, will be paid by, or charged to, any amounts paid in this Settlement or, directly or indirectly, to any Class Member.

#### **IX. NO ADMISSION OF WRONGDOING**

1. This Settlement Agreement embodies a compromise of disputed claims and nothing in the Settlement Agreement will be interpreted or deemed to constitute any finding of wrongdoing by Defendants or give rise to any inference of liability in this or any other proceeding. This Settlement Agreement will not be offered or received against Defendant(s) as any admission by any such Party with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that had been or could have been asserted in the Action or in any litigation or of any liability, negligence, fault, or wrongdoing of any such Party.

2. This Settlement Agreement is not, nor may it be deemed to be, nor may it be used as an admission of, or as evidence of any infirmity in the claims asserted by Plaintiffs and Class Members.

3. This Settlement Agreement may be used in such proceedings as may be necessary to consummate or enforce this Settlement Agreement or the Final Order, and any Party may file this Settlement Agreement and/or the Final Order in any action that may be brought against it to support a claim, a defense, or a counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim, or in any action that may be brought to enforce any claim assigned pursuant to this Settlement Agreement.

Defendants may use and disclose this Settlement Agreement in connection with any proceeding

involving any of their accountants, attorneys, insurers or any governmental agency with respect to the AAI ESOP or the AAI 401(k) Plan.

**X. PRELIMINARY APPROVAL ORDER**

1. **Preliminary Approval Order.** Class Counsel, on behalf of the Class, will move the Court to enter the Preliminary Approval Order (“Preliminary Approval Motion”). The Preliminary Approval Motion will seek an Order in a form agreed upon by the Settling Parties which will provide for or set forth, among other things:

(a) Modification of the definition of the Class to propose a date of December 31, 2020, whichever is earlier.

(b) Preliminary Approval of the Settlement as set forth in this Settlement Agreement, subject to further hearing and determination under Fed. R. Civ. P. 23(e);

(c) Approval of the form of Class Notice, substantially in the form agreed-upon by the Parties, and the manner of distribution and publication which is consistent with this Agreement, Fed. R. Civ. P. Rule 23, and the requirements of due process;

(d) Appointment of the Settlement Administrator;

(e) Set deadlines by which Defendants must provide affidavits regarding their compliance with the Anti-Indemnification provisions of this Settlement Agreement and to provide a revised SPD to Class Counsel.

(f) Deadlines by which all objections to the Settlement must be made or any submissions to the Settlement Administrator regarding their ESOP account data must be made;

(g) A schedule for a hearing date for the Court to determine whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate, and whether an Order finally approving the Settlement Agreement should be entered (“Final Approval Hearing”);

(h) That no objection to the Settlement Agreement will be heard and no papers submitted in support of said objection will be received and considered by the Court at the Final Approval Hearing unless the objection and reasons therefore, along with copies of any supporting papers, are filed with the Clerk of the Court and served on the Parties within forty-five (45) days of the publication and/or distribution of the Class Notice;

(i) That the Final Approval Hearing may be continued from time to time by Order of the Court if necessary, and without further notice to the Class;

(j) A deadline for filing of a Final Approval Motion and for Class Counsel’s application for Fee Award, Service Awards, and Expense Award;

(k) A requirement for Defendants to produce the Class Data required pursuant to this Agreement; and

(l) To the extent requested by Defendants, approval of the form of notice by Defendants under the Class Action Fairness Act of 2005 (“CAFA”).

2. **Final Approval of the Settlement.** If the Court preliminarily approves this Settlement, and if neither Class Counsel nor Defendants have exercised their right to withdraw pursuant to Section XV, below, Class Counsel will file a Final Approval Motion. Defendants will either join in or not oppose the Final Approval Motion. The Final Approval

Motion will seek entry of a proposed Final Order in a form to be agreed-upon by the Settling Parties and will, among other things:

- (a) Order Final Approval of the Settlement set forth in this Settlement Agreement;
- (b) Adjudge that the Settlement is fair, reasonable, and adequate to the Class pursuant to Fed. R. Civ. P. 23(e);
- (c) Approve the Plan of Allocation;
- (d) Dismiss the Action against Defendants with prejudice;
- (e) Adjudge that Plaintiffs and the Class will be deemed conclusively to have released and waived any and all Settled Class Claims against Defendants as provided in this Settlement Agreement;
- (f) Bar and permanently enjoin the Parties and the Class from prosecuting any and all Settled Class Claims, as provided in this Settlement Agreement, against any Party from whom they have released claims;
- (g) Determine Class Counsel's request(s) for Fee Award, Service Awards, and Expense Award;
- (h) Approve the revised SPD and set deadlines for AAI to issue the revised SPD to participants and a deadline for AAI to file an affidavit confirming compliance.
- (i) Retain exclusive jurisdiction, without affecting the finality of the Order entered, with regard to: (i) implementation of this Settlement Agreement; (ii) disposition of the Settlement Fund and distributions from the Settlement Fund;

and (iii) enforcement and administration of this Settlement Agreement, including the release provisions thereof; and

(j) To the extent that Defendants have timely complied with CAFA and provided CAFA Notice consistent with this Agreement, find that notice to the appropriate state and federal officials has been provided as required by CAFA and Defendants have satisfied their obligations pursuant to 28 U.S.C. § 1715.

## **XI. CONDITIONS OF SETTLEMENT**

1. **Court Approval.** Each of the following is an express condition of Settlement: (a) the Court enters a Preliminary Approval Order substantially in the form as required by this Agreement; and (b) the Court enters the Final Order, substantially in the form as required by this Agreement.

2. **Non-Conditional Matters.** Court approval of the Fee Award, Service Awards, or Expense Award are not conditions of the Settlement. No action by the Court or any courts of appeal related to the Fee Award, the Service Awards, or the Expense Award, will prevent the Final Order allowing the approval of the Settlement from becoming Non-Appealable.

## **XII. INDEPENDENT FIDUCIARY**

Defendants, at their own expense, will hire an Independent Fiduciary to approve the Settlement consistent with Prohibited Transaction Exemption 2003-39 and issue a release to Defendants on behalf of the ESOP on terms comparable to the releases given by Plaintiffs and the Class. No later than twenty-one (21) days prior to the hearing on Final Approval, the Independent Fiduciary will issue its final opinion. If at any point, the Independent Fiduciary issues an opinion that does not approve all aspects of this Settlement Agreement, Defendants or Class Counsel will have the right, but not the obligation, to withdraw from the Settlement Agreement so long as such right is exercised within seven (7) days of receipt of the Independent

Fiduciary's opinion. If either Class Counsel or one of Defendants exercises such right under this provision, then the entire Settlement Agreement will be terminated.

### **XIII. ISSUANCE OF NOTICE UNDER THE CLASS ACTION FAIRNESS ACT**

1. **CAFA Notice.** Pursuant to CAFA, Defendants, at the expense of Defendants other than AAI, will prepare and provide the CAFA Notice, including the notices to the United States Department of Justice, the United States Department of Labor, and to the Attorneys General of all states in which the Class Members reside, as specified by 28 U.S.C. § 1715, within twenty-one (21) days of the execution of this Settlement Agreement.

2. **CAFA Notice Provided to Class Counsel.** Defendants will provide Class Counsel with a copy of the CAFA Notice and materials that Defendants sent within three (3) business days after such notices have been sent. The CAFA Notice and materials will be provided automatically and without further request by Class Counsel.

### **XIV. RELEASES**

Upon the Final Order becoming Non-Appealable, and provided that each Party has performed all of the respective obligations under this Settlement Agreement to be performed on or prior to such date by such Party:

1. **Release of Defendants by the Plaintiffs and the Class.** Plaintiffs and the Class Members (including their heirs, executors, administrators, successors, and assigns), solely in their capacity as participants in the ESOP or as beneficiaries of Class Members who are participants in the ESOP, fully and finally release Defendants themselves and as applicable depending on whether the Party is an individual or an entity, their past, present, and future officers, directors, shareholders, members, affiliates, agents, attorneys, insurers, reinsurers, insurance administrators, heirs, executors, devisees, conservators, representatives, parents, subsidiaries, predecessors-in-interest, successors-in-interest, trusts, and assigns, from any and all

claims, or causes of action, including any claims for costs, attorneys' fees, and/or expenses, whether in law or in equity, whether known or unknown, whether fixed or contingent, that the Class Members have against Defendants that (a) arise out of the 2012 ESOP Transaction or (b) relating to disclosure violations based on the same factual predicate as those set forth in Count IV of the Complaint through the date of Settlement.

2. **Release of Plaintiffs and the Class by Defendants.** Defendants and their insurers fully and finally release Plaintiffs, each Class Member, and Class Counsel from any and all claims or causes of action, whether in law or in equity, whether known or unknown, that Defendants have or have had against Plaintiffs, each Class Member, or Class Counsel that could have been asserted in this Action related to the filing of this Action, including any claims for attorneys' fees, costs, expenses, or sanctions, that relate to the filing, commencement, prosecution, or settlement of this Action, whether such Claim arises under ERISA or any federal law, state law, foreign law, common law doctrine, rule, regulation, or otherwise.

3. **Waiver of California Civil Code Section 1542.** The Parties, on behalf of themselves and all persons and entities on whose behalf they are providing the releases herein, acknowledge and understand that there is a risk that, subsequent to the execution of this Agreement, they may accrue, obtain, incur, suffer, or sustain claims which in some conceivable way arise out of, are caused by, are connected with, or relate to the 2012 ESOP Transaction or the disclosure violations based on the same factual predicate as those set forth in Count IV of the Complaint, and that such claims are unanticipated at the time this Agreement is signed, or are not presently capable of being ascertained. The Parties further acknowledge that there is a risk that any claims as are known or should be known may become more serious than they now expect or anticipate. Nevertheless, the Parties hereby expressly waive all rights they may have in such

unknown consequences or results. The Parties acknowledge that they have had the benefit of and the opportunity to consult with their counsel, understand the import of Civil Code section 1542, and expressly waive the protection of Civil Code section 1542, which provides as follows:

**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.**

4. **Correctness of Class Data.** Neither the ESOP, nor any of the fiduciaries on behalf of the ESOP, will assert any claims that challenge the correctness of any of the Class Data provided by Defendants for purpose of this Settlement or challenge the prior allocations or distributions to Class Members resulting from the 2012 ESOP Transaction or an allocation to or distributions from any of the Class Members' ESOP accounts unless that Class Member challenges the data.

5. **Non-Released Claims.** Notwithstanding the foregoing or any other language in this Settlement Agreement, the Settling Parties are not releasing Claims to enforce this Settlement Agreement.

## **XV. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION**

1. **Termination Notice.** In the event that the Court refuses to grant Preliminary Approval or enter the Final Approval Order, or approval of the Settlement is reversed on appeal or materially altered, either Class Counsel or Defendants may void this Settlement by providing written notice to counsel for all other Parties to the Settlement within fourteen days (14) days after the event prompting the right to terminate ("Termination Notice"). In the event that the Final Order has not become Non-Appealable, the Party providing such Termination Notice will be entitled to withdraw based on the specified condition not being met and may void the Settlement within the time period specified in Section XV.2.



2. **Effectiveness of Termination Notice.** The Termination Notice will become effective to void the Settlement Agreement only if and after the Settling Parties have failed to reach a written agreement within thirty (30) days of the Termination Notice to modify this Settlement Agreement to resolve the issue.

3. **Effect of Withdrawal.** In the event that the Court refuses to grant Preliminary Approval or enter the Final Approval Order, or such approval is reversed on appeal and one of the Settling Parties exercises his/her/their/its right to withdraw from the Settlement Agreement within the time specified above, or any other circumstance which causes the Final Order to not become Non-Appealable and the Parties have not entered into a written modification of the Settlement Agreement within thirty (30) days of such occurrence: (a) the monies in the Escrow Account (including any interest or earnings accrued while in Escrow, but less any amount paid or owing for taxes or other expenses incurred in connection with administering the Settlement Agreement while in Escrow, including any amounts necessary to prepare tax returns or monies paid or owing to the Settlement Administrator), will be returned to each payor, pro rata according to the amount of its/his/her respective payment(s) into the Settlement Fund upon written request within ten (10) business days of such written request; (b) the Settling Parties will not be released from the claims asserted in this Litigation; (c) this Agreement will be void *ab initio*; and (d) the Parties' positions, rights, defenses and responsibilities will be deemed to have reverted to their respective status in this Action as of July 29, 2021, and, except as may otherwise be expressly provided herein, the Settling Parties will proceed in all respects as if this Settlement Agreement never existed.

## **XVI. MISCELLANEOUS PROVISIONS**

1. **Return or Destruction of Confidential Information under the Protective Order.** For purposes of Paragraph 4 and 13 of the Stipulated Protective Order (ECF

No. 017), final disposition will have been deemed to have occurred when Counsel for Defendants provide written notice to Class Counsel that, pursuant to Section IV.5, (a) the settlement monies have been paid into the accounts of Class Members in the AAI 401(k) Plan, and (b) the distribution of proceeds of the Settlement has been completed for Class Members who requested a distribution or rollover. In addition to the archival copies of documents to which Counsel for any Party is entitled to retain pursuant to Paragraph 13 of the Stipulated Protective Order, Class Counsel may maintain the Class Data used to provide Class Notice or to calculate Distributions of the Settlement to the Class for one year following final disposition, but such materials will remain subject to the terms of the Protective Order. Additionally, the Settlement Administrator may maintain the Class Data used to provide Class Notice or to calculate Distributions of the Settlement to the Class for one year following final disposition, on the condition that the Settlement Administrator agrees to and does maintain such materials subject to the terms of the Protective Order.

2. **Tax Obligations and Tax Advice.** No opinion or advice concerning the Tax consequences of the Settlement Agreement has been given or will be given by the Settling Parties' counsel involved in the Action to the Class, nor is any representation or warranty in this regard made by virtue of this Settlement Agreement. The Tax obligations of the Class and the determination thereof are the sole responsibility of each Class Member, and it is understood that the Tax consequences may vary depending on the particular circumstances of each Class Member. No charge or claim may be asserted against any Class Member, Class Counsel, Defendants or their counsel, or the Settlement Fund for reimbursement of any Tax, including any penalty or excise tax, imposed or sought to be imposed upon any Defendant in relation to or as a consequence of this Agreement.

3. **Binding Effect.** This Settlement Agreement will be binding upon, and inure to the benefit of, the successors, assigns, executors, administrators, affiliates, heirs, spousal beneficiaries, and legal representatives of the Settling Parties, provided, however, that no assignment by any Settling Party will operate to relieve such Party of his/her/their/its obligations hereunder.

4. **Good Faith.** The Settling Parties: (a) acknowledge that it is their intent to consummate this Settlement; (b) agree to exercise their best efforts and to act in good faith to cooperate to the extent necessary to effectuate and implement all terms and conditions of this Settlement Agreement; and (c) agree to exercise their best efforts and to act in good faith to cooperate to the extent necessary to obtain the fullest possible participation of all Class Members in any Settlement. The Settling Parties and their counsel agree to cooperate fully with one another in seeking entry of the Preliminary Approval Order and final approval of the Settlement. The Settling Parties also agree to promptly execute and/or provide such documentation as may be reasonably required to obtain preliminary and final approval of this Settlement.

5. **Modification.** This Settlement Agreement may be amended or modified only by written instrument signed by Class Counsel on behalf of Plaintiffs and the Class and by Defense Counsel on behalf of Defendant(s) that they represent or their respective successors in interest.

6. **Representations.** This Settlement Agreement constitutes the entire agreement among the Settling Parties, and no representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement or the Agreement in Principle, other than the representations, warranties, and covenants contained and memorialized in such documents.

7. **Authorization.** Each signatory to this Settlement Agreement represents that he or she is authorized to enter into this Settlement Agreement on behalf of the respective Parties he or she represents. Should any non-signing Party ever contend that they did not authorize their counsel to sign this Settlement Agreement on their behalf, counsel and their law firms shall defend, indemnify, and hold harmless the other Parties with respect to any and all claims, demands, actions, causes of action, or losses related to such contention.

8. **Counterparts.** This Settlement Agreement may be executed in one or more original, photocopied, electronic or facsimile counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument.

9. **Governing Law.** All terms of this Settlement Agreement will be governed by and interpreted according to the laws of the State of California without regard to its rules of conflicts of law and in accordance with the laws of the United States, except that ERISA will govern (and preempt California law) to the extent applicable.

10. **Waiver.** The waiver by one Party of any breach of this Settlement Agreement by any other Party will not be deemed a waiver of any other breach of this Settlement Agreement. The provisions of this Settlement Agreement may not be waived except by a writing signed by the affected Party, or counsel for that Party, or orally on the record in court proceedings.

11. **Continuing Jurisdiction.** The Settling Parties agree to submit to the jurisdiction of the Court and will be bound by the terms of this Settlement Agreement, including, without limitation, disputes related to implementing and enforcing the Settlement embodied in this Settlement Agreement. Any and all disputes related to claims that are not satisfactorily

resolved by the Settling Parties will be submitted to the Court for final resolution. The Final Order will provide that the Court will have continuing jurisdiction over this Settlement.

12. **Enforcement of this Agreement.** In the event that any Party to this Agreement believes that another Party to this Agreement has breached the terms of this Agreement, that Party will notify the alleged breaching Party and Counsel in writing setting forth the nature of the breach and the requested method to cure the breach at least 14 days prior to filing any litigation to enforce the terms of the Settlement Agreement (and if the allegedly breaching Party is a Class Member regardless of whether that Class Member has separate counsel, Defendants must also notify Class Counsel in writing). In the event that the allegedly breaching Party fails to cure the alleged breach as set forth in the written notification after 14 days, the other Party may then file an action to enforce the Settlement Agreement. A Party who substantially prevails in any action to enforce the Settlement Agreement will be entitled to attorneys' fees and expenses consistent with the standards of ERISA § 502(g)(1); however, attorneys' fees and expenses will not be available to a Party that failed to provide the breaching Party written notification to cure the breach as set forth in this Paragraph.

13. **Extensions.** The Settling Parties reserve the right, subject to the Court's approval, to request any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

14. **Evidentiary Effect.** Neither this Settlement Agreement nor the Settlement, nor any negotiation, nor act performed, nor document executed, nor proceedings held pursuant to or in forbearance of this Settlement Agreement or the Settlement, even if this Settlement Agreement is cancelled or terminated: (a) is, or may be deemed to be, or may be used as an admission of, or evidence of the validity of any Settled Class Claims, or of any

wrongdoing, negligence, misrepresentation, violation, or liability of any Settling Party; (b) is, or may be deemed to be, or may be used as an admission of, or evidence of any infirmity in the Complaint or claims asserted by the Class; or (c) is, may be deemed to be, or may be used as an admission of, or evidence of, any fault or omission of any Settling Party in any civil, criminal, or administrative proceeding in any court, administrative agency, or tribunal, including in this Action. This Settlement Agreement may be used in such proceedings as may be necessary to consummate or enforce this Settlement Agreement, the Settlement, or the Final Order; and any Settling Party may file this Settlement Agreement and/or the Final Order in any action to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

15. **Final and Complete Resolution.** The Settling Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to this Action. The Settlement compromises claims which are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties agree that the amount paid to the Settlement Fund and the other terms of the Settlement Agreement were negotiated in good faith at arm's-length by the Settling Parties and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

16. **Duplicative Provisions.** In interpreting this Settlement Agreement, duplicative and/or overlapping release provisions will not be presumed or construed to be intended to release separate claims or have different meanings.

The Parties hereto, intending to be legally bound hereby, have caused this Settlement Agreement to be executed by them or their duly authorized counsel, on the date set forth below.

DATED: September 23, 2021



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