

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**Paul Andrus and Ronald Berresford,
individually and as representatives of a
class of similarly situated persons, and on
behalf of the New York Life Agents
Progress-Sharing Investment Plan and the
New York Life Insurance Company
Employee Progress-Sharing Investment
Plan,**

Plaintiffs,

v.

**New York Life Insurance Company, New
York Life Investment Management LLC,
New York Life Investment Management
Holdings LLC, Cornerstone Capital
Management Holdings LLC, Cornerstone
Capital Management LLC, Board Of
Trustees Of The New York Life Agents
Progress-Sharing Plan, Board Of Trustees
Of The New York Life Insurance Company
Employee Progress-Sharing Plan, Maria J.
Mauceri, Barry A. Schub, John Y. Kim,
Arthur H. Seter, Drew E. Lawton, Michael
M. Oleske, Robert J. Hynes, And John Does
1-30,**

Defendants.

Civil Action No.: 1:16-cv-05698

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Settlement Agreement”) is entered into between and among the Class Representatives, all Class Members, and the Defendants, as defined herein.

1. Article 1 – Recitals

- 1.1** On July 18, 2016, Paul Andrus and Ronald Berresford, participants in defined contribution 401(k) retirement plans known as the New York Life Insurance Company Agents Progress-Sharing Investment Plan and the New York Life Insurance Company Employee Progress-Sharing Investment Plan (“the Plans”), respectively, filed a Complaint (Case No. 1:16-cv-05698) against New York Life

Insurance Company, New York Life Investment Management LLC, New York Life Investment Management Holdings LLC, Cornerstone Capital Management Holdings LLC, and Cornerstone Capital Management LLC (collectively, “NY Life”), as well as the Boards of Trustees of the Plans and Maria J. Mauceri, Barry A. Schub, John Y. Kim, Drew E. Lawton, Michael M. Oleske, Robert J. Hynes, and Arthur Seter (collectively with NY Life, “Defendants”) in the United States District Court for the Southern District of New York as representatives of a putative class asserting various claims of breaches of fiduciary duty and seeking relief under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”).

- 1.2** Prior to the deadline for Defendants to respond to the Complaint (which was postponed for purposes of mediation), the Class Representatives and Defendants agreed to engage in private mediation before the Mediator. In the absence of such a mediation, Defendants would have moved to dismiss the Complaint and would have asserted numerous defenses to the claims asserted in the Complaint.
- 1.3** Prior to the mediation, Defendants produced pertinent documents and information to Class Counsel. Based on the documents and information produced by Defendants, and Class Counsel’s own investigation into the relevant facts, the Class Representatives 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 the Mediator, the parties reached a settlement. The terms of the parties’ settlement are memorialized in this Settlement Agreement.
- 1.4** The Class Representatives and Class Counsel consider it desirable and in the Class Members’ best interests that the claims against Defendants be settled on behalf of the Class Representatives 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** Defendants admit no wrong doing or liability with respect to any of the allegations or claims in the Complaint. This Settlement Agreement, and the discussions between the settling parties 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 NY Life or any of the other Defendants named in the Complaint and identified in the Settlement Agreement.
- 1.6** The Settling Parties, as defined below, have concluded that it is desirable that this matter be finally settled upon the terms and conditions set forth in this Settlement Agreement.
- 1.7** Therefore, the Settling Parties, 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

As used in this Settlement Agreement and the Exhibits hereto (as listed in Paragraph 12.14), unless otherwise defined, the following terms have the meanings specified below:

- 2.1** “Administrative Expenses” means expenses incurred in the administration of this Settlement Agreement, including (a) all fees, expenses, and costs associated with providing the Settlement Notices to the Class; (b) 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 Defendants’ internal expenses and the Settling Parties’ respective legal expenses. NY Life shall separately pay (in addition to the Gross Settlement Amount) up to \$50,000 in Administrative Expenses. Any Administrative Expenses that exceed \$50,000 shall be paid from the Gross Settlement Fund.
- 2.2** “Active Account” means an individual investment account in any of the Plans with a balance greater than \$0.
- 2.3** “Alternate Payee” means a person other than a participant or Beneficiary in any of the Plans who is entitled to a benefit under any of the Plans 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 MainStay S&P 500 Index Fund (“MainStay S&P 500 Fund”) during the Class Period.
- 2.4** “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 not exceed \$1,000,000, which 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, not to exceed \$25,000 which also shall be recovered from the Gross Settlement Amount.
- 2.5** “Authorized Former Participant” means a Former Participant who has submitted a completed, satisfactory Former Participant Claim Form by the Claims Deadline set by the Court in the Preliminary Order and whose Former Participant Claim Form is accepted by the Settlement Administrator.
- 2.6** “Beneficiary” means a person who is entitled to receive a benefit under any of the Plans that is derivative of a deceased Current Participant’s or Former Participant’s interest in any of the Plans, 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 Plans 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** “Claims Deadline” means a date that is no later than ten (10) calendar days before the Fairness Hearing.
- 2.9** “Class Action” means *Paul Andrus, et al. v. New York Life Insurance Company, et al.*, Case No. 1:16-cv-05698 in the United States District Court for the Southern District of New York.
- 2.10** “Class Counsel” means Nichols Kaster, PLLP, 4600 IDS Center, 80 S. 8th Street, Minneapolis, MN 55402.
- 2.11** “Class Members” means all individuals in the Settlement Class.
- 2.12** “Class Period” means the period from July 18, 2010 through July 19, 2016.
- 2.13** “Class Representatives” means Paul Andrus and Ronald Berresford.
- 2.14** “Class Representatives’ Compensation” means an amount to be determined by the Court, but not to exceed \$10,000 for each Class Representative, which shall be paid from the Gross Settlement Amount.
- 2.15** “Court” means the United States District Court for the Southern District of New York.
- 2.16** “Court of Appeals” means the United States Court of Appeals for the Second Circuit.
- 2.17** “Current Participant” means a person who has an Active Account in any of the Plans as of the date the Motion for Preliminary Approval of the Settlement is filed and whose Plan account included an investment in the MainStay S&P 500 Fund during the Class Period.
- 2.18** “Defendants” means New York Life Insurance Company, New York Life Investment Management LLC, New York Life Investment Management Holdings LLC, Cornerstone Capital Management Holdings LLC, and Cornerstone Capital Management LLC, the Boards of Trustees of the Plans, Maria J. Mauceri, Barry A. Schub, John Y. Kim, Drew E. Lawton, Michael M. Oleske, Robert J. Hynes, and Arthur Seter.
- 2.19** “Defense Counsel” means counsel for Defendants, Morgan, Lewis & Bockius LLP.
- 2.20** “Escrow Agent” means an entity agreed to by the Settling Parties.

- 2.21** “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 and Class Representatives’ request for Class Representatives’ Compensation, and (c) whether to finally approve the Settlement pursuant to Fed. R. Civ. P. 23.
- 2.22** “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 Class Action with prejudice, to be proposed by the Settling Parties for approval by the Court, in substantially the form attached as Exhibit 5 hereto.
- 2.23** “Effective Approval Order” means the Final Approval Order once it becomes Effective.
- 2.24** “Effective” means with respect to any judicial ruling, order, or judgment 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 becomes Effective thirty-three (33) calendar days after its entry.
- 2.25** “Former Participant” means a person who had an account in any of the Plans whose Plan account included an investment in the MainStay S&P 500 Fund during the Class Period and who does not have an Active Account in any of the Plans as of the date the Motion for Preliminary Approval of the Settlement is filed.
- 2.26** “Former Participant Claim Form” means the form described generally in Paragraph 3.3.2 and substantially in the form attached as Exhibit 1.
- 2.27** “Gross Settlement Amount” means the sum of three million dollars (\$3,000,000), contributed to the Qualified Settlement Fund pursuant to Article 5. The Gross Settlement Amount shall be the full and sole monetary payment to the Settlement Class, Plaintiffs, and Class Counsel made on behalf of Defendants in connection with the Settlement effectuated through this Settlement Agreement, other than the payment for Administrative Expenses of up to \$50,000 referenced in Paragraph 2.1 above.
- 2.28** “Independent Fiduciary” means the person or entity selected and paid by Defendants to serve as an independent fiduciary to the Plans with respect to the Settlement Agreement as defined in Article 3 herein.

- 2.29** “Mediator” means Hunter Hughes, Hunter ADR, 1075 Peachtree Street NW, suite 2550, Atlanta, Georgia 30309, or if he is unavailable, another mediator mutually agreed upon by the Settling Parties.
- 2.30** “Net Settlement Amount” means the Gross Settlement Amount minus: (a) all Attorneys’ Fees and Costs paid to Class Counsel; (b) all Class Representatives’ Compensation as authorized by the Court; (c) all Administrative Expenses exceeding \$50,000; and (d) a contingency reserve not to exceed an amount to be mutually agreed upon by the Settling Parties that is set aside by the Settlement Administrator for Administrative Expenses.
- 2.31** “NY Life” means New York Life Insurance Company, New York Life Investment Management LLC, New York Life Investment Management Holdings LLC, Cornerstone Capital Management Holdings LLC, and Cornerstone Capital Management LLC.
- 2.32** “Plaintiffs” means the Class Representatives and the Class Members.
- 2.33** “Plans” means the New York Life Insurance Company Agents Progress-Sharing Investment Plan and the New York Life Insurance Company Employee Progress-Sharing Investment Plan.
- 2.34** “Plan of Allocation” means the methodology for allocating and distributing the Net Settlement Amount pursuant to Article 6 herein.
- 2.35** “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 Representatives through Class Counsel, as described in Paragraph 3.2 and in substantially the form attached hereto as Exhibit 2.
- 2.36** “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.
- 2.37** “Released Parties” means (a) each Defendant, (b) each Defendant’s past, present, and future parent corporation(s), and (c) each Defendant’s past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns, (d) with respect to (a) through (c) above, all of their affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, assigns, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), administrators, service providers (including their owners and employees), consultants, subcontractors, boards of trustees, boards of directors, officers, trustees, directors, partners, agents, managers, members, employees, independent contractors, representatives, attorneys, administrators, fiduciaries, insurers, co-insurers, reinsurers, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, members of their immediate families, and all persons

acting under, by, through, or in concert with any of them, and (e) the Plans and any and all administrators, fiduciaries, parties in interest, and trustees of the Plans.

- 2.38** “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 Class Action, or that arise out of the conduct alleged in the Complaint, regarding holdings in the MainStay S&P 500 Fund for the Plans;
 - b. That relate to: (1) the selection, oversight, retention, or performance of the MainStay S&P 500 Fund, (2) fees, costs, or expenses for the MainStay S&P 500 Fund, and (3) disclosures or failures to disclose information regarding the MainStay S&P 500 Fund;
 - 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 Fund pursuant to the Plan of Allocation; or
 - e. That relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone.
- 2.39** “Settlement” or “Settlement Agreement” refers to the agreement embodied in this agreement and its exhibits.
- 2.40** “Settlement Administrator” means Analytics, an independent contractor to be retained by Class Counsel and approved by the Court.
- 2.41** “Settlement Agreement Execution Date” means that date on which the final signature is affixed to this Settlement Agreement.
- 2.42** “Settlement Class” means all persons who participated in the Plans whose Plan account included an investment in the MainStay S&P 500 Fund at any time during the Class Period, including any Beneficiary of a deceased person who participated in the Plans at any time during the Class Period, and/or, Alternate Payees, in the case of a person subject to a Qualified Domestic Relations Order who participated in the Plans at any time during the Class Period.
- 2.43** “Settlement Effective Date” means the date on which the Final Approval Order becomes Effective, provided that by such date the Settlement has not been terminated pursuant to Article 10.

- 2.44** “Settlement Notice” means the Notices 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 Exhibits 3 and 4, including the Notice of Class Action Settlement and Fairness Hearing to Current Participants, and the Notice of Class Action Settlement and Fairness Hearing to Former Participants, respectively. 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) payment of Administrative Expenses up to \$50,000 and reserve for Administrative Expenses beyond \$50,000; and (d) any requested Class Representatives’ Compensation. The Settlement Notice also shall inform Former Participants of the Claims Deadline by which they must submit a completed Former Participant Claim Form to the Settlement Administrator in order to be eligible for a distribution pursuant to the Plan of Allocation.
- 2.45** “Settlement Period” shall be from the Settlement Effective Date and continuing for a period of one year thereafter.
- 2.46** “Settlement Website” means the internet website established pursuant to Paragraph 11.2.
- 2.47** “Settling Parties” means the Defendants and the Class Representatives, on behalf of themselves and each of the Class Members.
- 3. Article 3 – Review and Approval by Independent Fiduciary, Preliminary Settlement Approval, and Notice to the Class**
- 3.1** The Independent Fiduciary retained by Defendants shall have the following responsibilities on behalf of the Plans including whether to approve and authorize the settlement of Released Claims on behalf of the Plans.
- 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, for the purpose of Defendants’ reliance on PTE 2003-39.
- 3.1.2** The Independent Fiduciary shall notify NY Life 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 will be paid by NY Life.
- 3.1.4** NY Life, Defense Counsel, and Class Counsel shall provide the Independent Fiduciary with sufficient information so that the Independent Fiduciary can review and evaluate the Settlement Agreement.
- 3.2** At least fourteen (14) days before the Fairness Hearing, the Class Representatives, through Class Counsel, shall file with the Court motions seeking preliminary approval of this Settlement Agreement, class certification for settlement purposes only, and for entry of the Preliminary Order in substantially the form attached hereto as Exhibit 2. The Preliminary Order to be presented to the Court, as to the Class Action, shall, among other things:

 - 3.2.1 Grant the motion to certify the class for settlement purposes only;
 - 3.2.2 Approve the text of the Settlement Notices for mailing to Class Members and the Former Participant Claim Form for mailing to Former Participants;
 - 3.2.3 Cause the Settlement Administrator to mail by first class mail the Settlement Notice to each Class Member and the Former Participant Claim Form to each Former Participant;
 - 3.2.4 Determine that pursuant to Rules 23(c)(2) and (e) of the Federal Rules of Civil Procedure, mailing the Settlement Notices constitutes the best notice 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 Defendants, the Plans, or 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 Class 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 the Defendants, the Released Parties, or the Plans;

- 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, in order to determine whether (i) the Court should approve the Settlement as fair, reasonable, and adequate, (ii) the Court should enter the Final Approval Order, and (iii) the Court should approve the application for Attorneys' Fees and Costs, Class Representatives' Compensation, Administrative Expenses exceeding \$50,000 incurred to date, and a reserve for anticipated future Administrative Expenses exceeding \$50,000;
 - 3.2.8 Provide that any objections to any aspect of the Settlement Agreement 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) days prior to the scheduled Final Approval 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 6 and order that upon mailing of the CAFA notices, Defendants 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) days before the Fairness Hearing;
 - 3.2.11 Set a deadline of no later than the date of the Fairness Hearing by which each Former Participant must file a Former Participant Claim Form with the Settlement Administrator in order to be considered for a distribution pursuant to 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 hereto as Exhibits 3 and 4, to Current Participants and Former Participants, respectively, 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 Plans' 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 Plans' recordkeeper (or its designee). The Settlement Administrator also shall post a copy of the Settlement Notice on the Settlement Website. 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; and

- 3.3.2 Cause the Former Participant Claim Form, which shall be in substantially the form attached as Exhibit 1, or a form subsequently agreed to by the Settling Parties and the Court, to be included with the Settlement Notice that is mailed to the Former Participants.

4. Article 4 – Final Settlement Approval

- 4.1 No later than fourteen (14) days before the Fairness Hearing, Class Counsel shall submit to the Court a motion for entry of the Final Approval Order (Exhibit 5), 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 Settlement 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 Plans 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 Rules 23(c)(2) and (e) of the Federal Rules of Civil Procedure that mailing the Settlement Notice constitutes the best notice 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 Class Action and all Released Claims asserted therein whether asserted by the Class Representatives on their own behalf or on behalf of the Class Members, or derivatively to secure relief for the Plans, 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 (i) conclusively deemed to have, and by operation of the Effective Approval Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged Defendants, the Plans, and the

Released Parties from all Released Claims, and (ii) barred and enjoined from suing Defendants, the Plans, or 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 executed and delivered a Former Participant Claim Form, whether or not such Class Members have filed an objection to the Settlement, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed;

- 4.1.5 That the Plans 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 Plans shall be (i) conclusively deemed to have, and by operation of the Effective Approval Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged Defendants and the Released Parties from all Released Claims, and (ii) barred and enjoined from suing Defendants or the Released Parties in any action or proceeding alleging any of the Released Claims, even if the Plans or any Class Member on behalf of the Plans may thereafter discover facts in addition to or different from those which the Plans or any Class Member now knows or believes to be true with respect to the Class Action and the Released Claims;
- 4.1.6 That each Class Member shall release Defendants, Defense Counsel, Class Counsel, the Released Parties, and the Plans from any claims, liabilities, and attorneys' fees and expenses arising from the allocation of the Gross Settlement Amount or Net Settlement Amount 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 Current Participant and each Authorized Former Participant pursuant to the Plan of Allocation approved by the Court;
- 4.1.9 That, with respect to payments or distributions to Authorized Former Participants, 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 approved by the Court, 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 Plans 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) business days after 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 below) (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 hereof.

5.3 Taxes and tax expenses are Administrative Expenses to be deducted and paid from the Gross Settlement Amount, including but not limited to: (1) 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 Defendants 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 (2) 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 Defendants, 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 twenty (20) business days after the later of (a) the date the Preliminary Approval Order is entered, or (b) the escrow account described in Paragraph 5.1 is established and the Escrow Agent shall have furnished to Defendants in writing the escrow account name, IRS W-9 Form, and all necessary wiring instructions, Defendants, or their agents or insurers, will deposit the Gross Settlement Amount of three million dollars (\$3,000,000) 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** Separate from the Gross Settlement Amount contributed to the Qualified Settlement Fund, NY Life will pay up to \$50,000 for Administrative Expenses upon receipt of invoices for such expenses from the Settlement Administrator.
- 5.8** Within 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 within five (5) business days after the Settlement Effective Date; (b) second, any Administrative Expenses incurred through the Settlement Effective Date exceeding \$50,000 that are not paid pursuant to Paragraph 5.7 above shall be

paid within five (5) business days after the Settlement Effective Date; (c) third, any Class Representatives' Compensation ordered by the Court shall be paid within five (5) business days after the Settlement Effective Date; (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. Defendants, 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 Defendants, their insurers, or agents make a transfer to the Qualified Settlement Fund pursuant to the terms of this Article 5, Defendants, their insurers, or agents 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 Defendants, their insurers, or agents make 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 Authorized Former Participants as set forth in Paragraph and 6.6 below, and to the Plans for distribution to the accounts of Current Participants as set forth in Paragraph 6.5 below, both in accordance with the Plan of Allocation set forth in this Article 6 and as ordered by the Court.
- 6.2** To be eligible for a distribution from the Net Settlement Amount, a person must be a Current Participant or an Authorized Former Participant, or a Beneficiary or Alternate Payee of such a person. Current Participants shall receive their settlement payments as contributions to their Plan account(s), as provided for in Paragraph 6.5 below. Authorized Former Participants shall receive their settlement payments in the form of tax-qualified rollovers to an individual retirement account or other eligible employer plan or in the form of checks, as provided in Paragraph 6.6 below.

6.3 Beneficiaries will receive settlement payments as described in this Article 6 in amounts corresponding to their entitlement as beneficiaries of the Current Participant or of the Authorized Former Participant 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 either of the Plans 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 Current Participant's or Authorized Former Participant's allocation under this Article 6 pursuant to the terms of the applicable Qualified Domestic Relations Order. 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 Authorized 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 Calculation of Settlement Payments. Payments to Authorized Former Participants and Current Participants (including Beneficiaries and Alternate Payees) shall be calculated by the Settlement Administrator pursuant to the Plan of Allocation as follows:

6.4.1 For each Authorized Former Participant and Current Participant, the Settlement Administrator shall determine an Average MainStay Account Balance, as follows:

- Each participant's average, aggregate quarter-ending account balance invested in the MainStay S&P 500 Fund in the Plans for the period July 18, 2010 through July 19, 2016 (the "Average MainStay Account Balance").

6.4.2 The Settlement Administrator shall determine the total settlement payment available to each Authorized Former Participant and Current Participant by calculating each such participant's pro-rata share of the Net Settlement Fund based on his or her Average MainStay Account Balance compared to the sum of the Average MainStay Account Balances for all Authorized Former Participants and Current Participants. If the dollar amount of the settlement payment to an Authorized Former Participant is calculated by the Settlement Administrator to be less than \$1.00, then that Authorized Former Participant's payment or pro rata share shall be zero for all purposes.

6.4.3 The Settlement Administrator shall utilize the calculations required to be performed herein for (a) making the required payments to Authorized

Former Participants under Paragraphs 6.6 of the Settlement Agreement; and (b) instructing Defendants as to the amount of the Net Settlement Fund to be allocated to Current Participants under Paragraph 6.5 of the Settlement Agreement and calculating the total amount to deposit into each Current Participant's Active Account(s) to fulfill this instruction.

6.4.4 The total amount of all tax-qualified rollovers or checks to be written by the Settlement Administrator for Authorized Former Participants, plus the total amount of all allocations that Defendants are instructed to make to Current Participants may not exceed the Net Settlement Amount. Nothing in this Paragraph 6.4.4 is intended to modify the requirements of Paragraph 6.7 below. In the event that the Settlement Administrator determines that the Plan of Allocation total would otherwise exceed the Net Settlement Amount, the Settlement Administrator is authorized to make such *pro rata* changes as are necessary to the Plan of Allocation such that said totals do not exceed the Net Settlement Amount.

6.5 Payments to Current Participants Generally. Current Participants will not be required to submit a Former Participant Claim Form to receive a settlement payment.

6.5.1 Within two (2) business days after the Settlement Administrator has completed all payment calculations for all Current Participants, the Settlement Administrator will provide NY Life (or its designee), in a format and via a delivery method mutually agreed upon by the Settlement Administrator and NY Life, with an Excel spreadsheet containing the name, Social Security number (or alternative identifier(s) mutually acceptable to the Settlement Administrator and NY Life), 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.

6.5.2 Thereafter, within ten (10) business days' written notice to NY Life (or its designee), the Settlement Administrator shall effect a transfer from the Qualified Settlement Fund to the Plans of the aggregate amount of all settlement payments payable to Current Participants, as reflected in the spreadsheet provided by the Settlement Administrator. NY Life (or its designee) shall direct the Plans' recordkeeper to credit the individual Active Account(s) of each Current Participant 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 NY Life 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 NY Life 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 relevant Plan's default investment option.

6.5.4 The Plans' recordkeeper shall process all Current Participant transactions within thirty (30) calendar days of receiving direction from NY Life (or its designee) for any Current Participant.

6.5.5 The Plans may be amended, to the extent necessary, to reflect the settlement allocation 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 **Payments to Authorized Former Participants.** For each Authorized Former Participant whose settlement payment is \$1.00 or more, the Authorized Former Participant will have the opportunity to elect a tax-qualified rollover of his or her settlement payment to an individual retirement account or other eligible employer plan, which he or she has identified on the Claim Form, provided that the Authorized Former Participant supplies adequate information to the Settlement Administrator to effect the rollover. Otherwise, the Authorized Former Participant will receive his or her settlement payment directly by check. The distributions shall be issued as follows:

6.6.1 The Settlement Administrator will either effect the rollover from the Qualified Settlement Fund elected by the Authorized Former Participant in the Claim Form (if the conditions for such rollover are satisfied) and any associated paperwork necessary to effect these settlement distributions by rollover, *or* issue a check from the Qualified Settlement Fund to the Authorized Former Participant and mail the check to the address of such Authorized Former Participant listed in his or her Former Participant Claim Form or, in the case of ambiguity or uncertainty, to the address of such person as determined by the Settlement Administrator using commercially reasonable means.

6.6.2 For each check issued, other than a rollover, the Settlement Administrator shall (i) calculate and withhold any applicable taxes associated with the payments allocable to the Authorized Former Participant; (ii) report such payments and remit such tax withholdings to the Internal Revenue Service and applicable state revenue agents; and (iii) issue appropriate tax forms to the Authorized Former Participants.

- 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 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) business days of completing all aspects of this Plan of Allocation, the Settlement Administrator shall send to Class Counsel, Defense Counsel, and Defendants one or more affidavits stating the following: (a) the name of each Class Member to whom the Settlement Administrator sent the Settlement Notice and/or the Former Participant Claim Form, and the address of such mailing; (b) the date(s) upon which the Settlement Administrator sent the Settlement Notice and/or the Former Participant Claim Form; (c) the name of each Class Member whose Settlement Notice and/or Former Participant Claim Form was returned as undeliverable; (d) the efforts made by the Settlement Administrator to find the correct address and to deliver the Settlement Notice and/or Former Participant Claim Form 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. Defendants, Defense Counsel, Class Counsel, and Class Representatives 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 Defendants, Releasees, 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 Defendants, 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 All checks issued pursuant to this Plan of Allocation shall expire one hundred twenty (120) calendar days after their issue date. All checks that are undelivered or are not cashed before their expiration date shall revert to the Qualified Settlement Fund.
- 6.12 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 Plans for the purpose of defraying administrative fees and expenses of the Plans that would otherwise be charged to the Plans' participants.

7. Article 7 – Attorneys' Fees and Costs

- 7.1 Class Counsel will seek approval from the Court of their attorneys' fees not to exceed \$1,000,000, and litigation costs and expenses advanced and carried by Class Counsel for the duration of this litigation, not to exceed \$25,000. Any such award shall be paid from the Gross Settlement Amount. Defendants shall have no independent responsibility or liability for such attorneys' fees and costs.
- 7.2 Class Counsel will file a motion for an award of Attorneys' Fees and Costs at least thirty (30) days before the deadline set in the Preliminary Order for objections to the proposed settlement, which may be supplemented thereafter. Defendants will take no position with the Court regarding Class Counsel's request for Attorneys' Fees and Costs, to the extent it does not exceed the amounts set forth in Article 7, and shall take no position with the Court regarding any request for Class Representatives' Compensation that does not exceed \$10,000 per Class Representative.

8. Article 8 – Release and Covenant Not to Sue

- 8.1 As of the Settlement Effective Date, the Plans (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 Defendants, the Plans, and all Released Parties from the Released Claims.
- 8.2 As of the Settlement Effective Date, all Plaintiffs and Class Members 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 Plaintiffs, 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 Defendants, the Plans, and the Released Parties, 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. Notwithstanding the foregoing, each Class Member and the Plans shall expressly, upon the Effective date of the Final Approval Order, 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 Plans acknowledge and shall be deemed by operation of the Effective Approval Order to have acknowledged that the foregoing waiver was bargained for separately and is a key element of the Settlement embodied in this Settlement Agreement of which this release is a part.

8.4 Each Plaintiff and Class Member and the Plans hereby stipulate and agree with respect to any and all Released Claims that, upon the Effective Approval Order, the Class Members 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 releases 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.

Also, the Plaintiffs and Class Members with respect to the Released Claims shall, 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;
 - 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 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 to the other Settling Parties 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, (1) 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 Defendants reasonably conclude that the Independent Fiduciary's approval does not include the determinations required by the PTE; and (2) 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 the PTE;

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 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** If the Settlement Agreement is terminated, deemed null and void, or has no further force or effect, the Class Action and the Released Claims asserted by Class Representatives shall for all purposes with respect to the Settling Parties revert to their status as though the Settling Parties never executed the Settlement Agreement. All funds deposited in the Qualified Settlement Fund, and any interest earned thereon, shall be returned to Defendants, their agents, or insurers pro rata based on their contributions to the Qualified Settlement Fund 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.
- 10.3** 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 and/or Class Representatives' Compensation.
- 10.4** In the event that the Settlement Agreement is terminated, Administrative Expenses incurred prior to the termination shall be paid first from the interest earned, if any, on the Qualified Settlement Fund. Administrative Expenses in excess of the interest earned on the Qualified Settlement Fund shall be split evenly and paid by Class Counsel, on the one hand and Defendants, on the other hand.
- 11. Article 11 – Public Comments Regarding the Class Action or Settlement Agreement**
- 11.1** The Class Representatives and Class Counsel agree that they will not at any time publicly disparage or encourage or induce others to publicly disparage any of the Settling or 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, Settlement Agreement and its Exhibits, Settlement Notice, Former Participants Claim Form, Class Representatives' Motion for Attorneys' Fees and Costs and Award of Compensation to Class Representatives, any Court orders related to the Settlement, 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.
- 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 Defendants of any wrongdoing, fault, or liability whatsoever by any of Defendants, or give rise to any inference of any wrongdoing, fault, or liability or admission of any wrongdoing, fault, or liability in the Class Action or any other proceeding, and Defendants admit no wrong doing or liability with respect to any of the allegations or claims in the Class Action. This Settlement Agreement, whether or not consummated, and any negotiations or proceedings hereunder, shall not constitute admissions of any liability of any kind, whether legal or factual.

12.2 Defendants, the Released Parties, Class Counsel, and Defense Counsel shall have no responsibility for or liability whatsoever with respect to (i) 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; (ii) the determination of the Independent Fiduciary; (iii) the management, investment, or distribution of the Qualified Settlement Fund; (iv) the Plan of Allocation as approved by the Court; (v) the determination, administration, calculation, or payment of any claims asserted against the Qualified Settlement Fund; (vi) any losses suffered by, or fluctuations in the value of, the Qualified Settlement Fund; or (vii) 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 Defendants 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, New York 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) 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) days following mailing of the response described in Paragraph 12.4.2, the Settling 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 30 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 Plaintiffs, Class Members and Defendants 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** Each party to this Settlement Agreement hereby acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Settlement Agreement and that this Settlement Agreement has been explained to that party by his, her, or its counsel.
- 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 exhibits attached hereto 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 exhibits thereto.
- 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** Each of the Settling Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that it will in good faith execute and deliver such other documents 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 covenants, representations, and warranties, express or implied, oral or written, concerning the subject matter of this Settlement Agreement are contained in this Settlement Agreement. No party is relying on any oral representations or oral agreements. All such covenants, representations, and warranties set forth in this Settlement Agreement shall be deemed continuing and shall survive the Effective Date of Settlement.
- 12.14** All of the exhibits attached hereto are incorporated by reference as though fully set forth herein. The exhibits shall be: Exhibit 1 – Former Participant Claim Form; Exhibit 2 – Preliminary Order; Exhibit 3 – Notice of Class Action Settlement and Fairness Hearing to Current Participants; Exhibit 4 – Notice of Class Action Settlement and Fairness Hearing to Former Participants; Exhibit 5 – Final Approval Order; and Exhibit 6 – CAFA Notice.
- 12.15** No provision of the Settlement Agreement or of the exhibits attached hereto 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.

12.16 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:

Kai Richter (krichter@nka.com)
Carl Engstrom
Brandon McDonough
Michele Fisher
NICHOLS KASTER, PLLP
4600 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Tel: (612) 256-3200
Fax: (612) 256-6870

IF TO DEFENDANTS:

Jeremy P. Blumenfeld (jeremy.blumenfeld@morganlewis.com)
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Tel: (215) 963-5258
Fax: (215) 963-5001

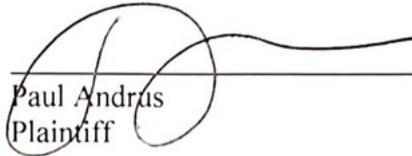
and

NEW YORK LIFE INSURANCE COMPANY
Attn: Chief Legal Officer
51 Madison Avenue
New York, NY 10010

12.18 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.

ON BEHALF OF PLAINTIFFS Paul Andrus and Ronald Berresford, Individually and as
Representatives of the Class

Dated: 2/14/2017



Paul Andrus
Plaintiff

Ronald Berresford
Plaintiff

Kai Richter (admitted pro hac vice)
NICHOLS KASTER, PLLP
4600 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Telephone: (612) 256-3200
Facsimile: (612) 256-6870
*Attorneys for Plaintiffs and Class
Representatives*

ON BEHALF OF ALL DEFENDANTS

Dated: _____

Jeremy P. Blumenfeld
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Tel: (215) 963-5258
Fax: (215) 963-5001
Attorneys for Defendants

ON BEHALF OF PLAINTIFFS Paul Andrus and Ronald Berresford, Individually and as
Representatives of the Class

Dated: Feb 14, 2017

Paul Andrus
Plaintiff



Ronald Berresford
Plaintiff

Kai Richter (admitted pro hac vice)
NICHOLS KASTER, PLLP
4600 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Telephone: (612) 256-3200
Facsimile: (612) 256-6870
*Attorneys for Plaintiffs and Class
Representatives*

ON BEHALF OF ALL DEFENDANTS

Dated: _____

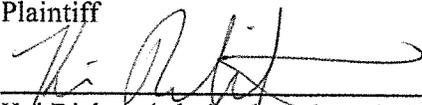
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ON BEHALF OF PLAINTIFFS Paul Andrus and Ronald Berresford, Individually and as
Representatives of the Class

Dated: 2/14/2017

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Plaintiff

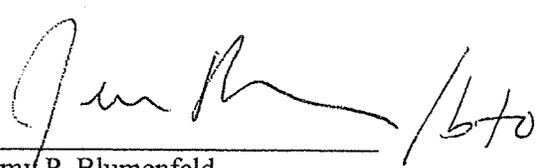
Ronald Berresford
Plaintiff



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