

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

*In re J.P. Morgan Stable Value Fund ERISA
Litigation*)) Master File No. 12-cv-2548-VSB

SECOND AMENDED CLASS ACTION SETTLEMENT AGREEMENT

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

1. Article 1 – Recitals

- 1.1** On April 3, 2012, Plaintiff Richard Whitley filed a complaint captioned *Whitley v. J.P. Morgan Chase & Co. et al.*, No. 12-cv-2548, in the U.S. District Court for the Southern District of New York (the “Court”) as the representative 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”) (the “*Whitley Action*”). Dkt. 1.
- 1.2** Two actions were subsequently filed in the circuit court of the State of Missouri: *Adams et al. v. J.P. Morgan Retirement Plan Service, LLC, et al.*, No. 1216-CV2520; and *Ashurst et al. v. J.P. Morgan Retirement Plan Service, LLC, et al.*, No. 1216-CV23784. Two further actions were filed in the U.S. District Court of the Western District of Missouri: *Evans et al. v. JPMorgan Chase Bank, N.A.*, No. 4:13-cv-00686-DW; and *Stolwyk v. JPMorgan Chase Bank, N.A.*, No. 4:13-CV-00880-DW. An additional action was filed in the U.S. District Court for the Southern District of New York: *Knee et al. v. J.P. Morgan Retirement Plan Services, LLC, et al.*, No. 13-CV-6337 (JGK). (Together, along with the *Whitley Action*, the “Consolidated Actions.”)¹
- 1.3** On December 8, 2014, the Court ordered the consolidation of the Consolidated Actions (and any subsequently filed related actions) under the caption *In re J.P. Morgan Stable Value Fund ERISA Litigation*, Master File No. 12-cv-2548-VSB (S.D.N.Y.) (the “Class Action”). Dkt. 178. On December 16, 2014, Plaintiffs filed a Consolidated and Amended Complaint (the “Consolidated Complaint”). Dkt. 182. The parties completed fact discovery in the Class Action on December 4, 2015, which included the production of more than 97,000 documents by Defendants, consisting of more than 800,000 pages, 11,500 documents by Plaintiffs, and the depositions of over 40 fact witnesses. Dkt. 309. The parties completed expert discovery on April 22, 2016, which included the exchange of reports from five experts and seven expert depositions. Dkt. 322. Defendants filed a motion for summary judgment on May 16, 2016. Dkts. 330-336. Plaintiffs filed a

¹ The action *Adair et al. v. JP Morgan Chase & Co. et al.*, No. 4:12-cv-01120-SWH, was filed in the U.S. District Court for the Western District of Missouri, but was voluntarily dismissed without prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A) on August 31, 2012.

motion for partial summary judgment as to Defendants' affirmative defenses on May 27, 2016. Dkts. 340-344. On March 31, 2017, the Court certified one class and three subclasses in the Class Action (together, and as expressly defined in the Court's class certification order dated March 31, 2017, the "Class"). Dkt. 377. The Court's certification order appointed the law firms of Schneider Wallace Cottrell Konecky Wotkyns LLP and the Law Offices of Michael M. Mulder as co-lead class counsel for the Class ("Class Counsel"). Dkt. 377 at 2, 33-34.

- 1.4** Among other claims, Plaintiffs specifically alleged that Defendants violated ERISA in two fundamental ways. First, Plaintiffs allege that Defendants managed Plaintiffs' investments imprudently in violation of their fiduciary duties by causing Defendants' stable value funds to invest in the Intermediate Bond Fund ("IBF") and the Intermediate Public Bond Fund ("IPBF"), which, in turn, invested in risky, highly leveraged assets, including, among other things, mortgage-related assets. Second, Plaintiffs allege that Defendants, as fiduciaries for the relevant plans and their participants and beneficiaries, breached their obligations under ERISA §§ 404(a)(1)(B), 404(a)(1)(C) and 404(a)(1)(A) to comply with the duties of prudence and diversification and to discharge their duties solely in the interests of plan participants and beneficiaries, and for the exclusive purpose of providing benefits to the plan participants and beneficiaries.

Plaintiffs also claim that Defendants engaged in transactions prohibited by ERISA §§ 406(a)(1)(A), 406(a)(1)(D), and 406(b)(1)-(3), and the proposed JPMorgan Stable Value Fund (the "ACSAF/JPM Stable Value Fund") subclass Plaintiffs make additional claims against all Defendants for engaging in transactions prohibited by those provisions. Finally, Plaintiffs plead in the alternative that the JPM entities other than J.P. Morgan Chase & Co. are liable under ERISA § 405(a) for knowing participation in a breach of fiduciary duty.

Defendants denied and deny the allegations and claims made by Plaintiffs.

- 1.5** The parties agreed to participate in a mediation session that was held on June 9, 2017, in the offices of mediator Hunter Hughes (the "Mediator") in Atlanta, Georgia.
- 1.6** No settlement was reached at the mediation. Over the next two months, the parties continued to negotiate through the Mediator.
- 1.7** After extensive arm's length negotiations supervised by the Mediator, Plaintiffs Richard Whitley, Caroleta M. Duran, Terry J. Koch, Mark D. Grandy, John M. Gates, Scott Newell, Michael Knee, and Eric M. Murphy ("Settling Plaintiffs"), represented by Class Counsel and on behalf of the Class, agreed to a Settlement. On August 31, 2017, the Court was notified that the Settling Parties had reached a provisional settlement. On September 6, 2017, the Court, considering the anticipated motion for preliminary approval of the settlement, denied as moot the pending motions for summary judgment without prejudice to refile. Dkt. 391. The terms of the parties' Settlement are memorialized in this Settlement Agreement.

- 1.8** The Settling Plaintiffs and Class Counsel consider it desirable and in the Class Members' best interests that the claims in the Class Action be settled on 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.
- 1.9** 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, unless otherwise defined, the following terms have the meanings specified below:

- 2.1** “Active Account” means an individual participant investment account in any of the Plans with a balance greater than \$0 as of the most current participant data received by Class Counsel.
- 2.2** “Administrative Expenses” means expenses incurred in the administration of this Settlement Agreement, including but not limited to (i) all fees, expenses, and costs associated with providing the Settlement Notices to the Class; (ii) related tax expenses (including taxes and tax expenses as described in Paragraph 5.3); (iii) all expenses and costs associated with performing the calculations pursuant to the Plan of Allocation, including but not limited to the fees of the Plans or the Plans' recordkeepers associated with implementing this Settlement Agreement and facilitating the distribution of funds pursuant to the Plan of Allocation; and (iv) all fees and expenses of the Settlement Administrator and Escrow Agent. Excluded from Administrative Expenses are the Class Representative Service Awards, Attorneys' Fees and Costs, Defendants' internal expenses, and any other attorneys' fees, costs, and/or legal expenses incurred by the Settling Parties.
- 2.3** “Alternate Payee” means any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under one of the Plans that invested in JPM Stable Value Funds 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 and to be provided in the future during the Settlement Period, as a common fund attorneys' fees and costs award, which shall also be recovered from the Gross Settlement Amount. The attorneys' fees for Class Counsel and the Plaintiffs' law firms participating in prosecuting this Action with them will not exceed \$25,000,000. 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 \$1,750,000, which also will be recovered from the Gross Settlement Amount.

- 2.5** “Authorized Former Participant” means a Former Participant who has submitted a completed Former Participant Claim Form by the Claims Deadline and whose Former Participant Claim Form is accepted as satisfactory by the Settlement Administrator.
- 2.6** “Authorized Participant With Proof of Eligibility” means a Participant Requiring Proof of Eligibility who has submitted a completed Proof of Eligibility Claim Form by the Claims Deadline and whose Proof of Eligibility Claim Form is accepted as satisfactory by the Settlement Administrator.
- 2.7** “Benchmark” means the Lehman Brothers Intermediate Aggregate Index (later renamed the Barclays Intermediate Aggregate Index).
- 2.8** “Beneficiary” means a person who currently is entitled to receive a benefit under any of the Plans that is derivative of a 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, or child who currently is entitled to a benefit.
- 2.9** “CAFA” means the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711–1715.
- 2.10** “Claims Deadline” means the date on or before which the Settlement Administrator must have received a completed, signed, and otherwise valid Claim Form in order for a Former Participant to receive any portion of the Settlement proceeds.
- 2.11** “Class Action” means *In re J.P. Morgan Stable Value Fund ERISA Litigation*, Master File No. 12-cv-2548, in the United States District Court for the Southern District of New York, and all actions consolidated or subsumed into it.
- 2.12** “Class Counsel” means Schneider Wallace Cottrell Konecky Wotkyns LLP and the Law Offices of Michael M. Mulder.
- 2.13** “Class Members” means all persons who are members of the Class, as defined by the Court’s class certification order, Dkt. 377, based on a Class Member’s Stable Value Account’s underperformance compared to the Benchmark.
- 2.14** “Class Period” means the period from January 1, 2009, through December 31, 2010, except for the ACSAF/JP Morgan Stable Value Fund Subclass, where the “Class Period” means from September 17, 2007, through December 31, 2010.
- 2.15** “Class Representatives” means Plaintiffs Richard Whitley, Caroleta M. Duran, Terry J. Koch, Mark D. Grandy, John M. Gates, Scott Newell, Michael Knee, Eric M. Murphy, Nancy Dye, John Stolwyk, Clay Hedges, and Rosemary Dotson.
- 2.16** “Class Representative Service Awards” means an amount to be determined by the Court, but not to exceed \$20,000 for each Class Representative, which shall be paid from the Gross Settlement Amount.
- 2.17** “Court” means the United States District Court for the Southern District of New York.

- 2.18** “Court of Appeals” means the United States Court of Appeals for the Second Circuit.
- 2.19** “Current Participant” means a Class Member who, as of December 31, 2016, had an Active Account balance with any of the Plans that had invested in JPM Stable Value Funds during the Class Period.
- 2.20** “Defendants” or “JPMorgan” means JPMorgan Chase & Co., JPMorgan Chase Bank N.A., and J.P. Morgan Investment Management Inc.
- 2.21** “Defense Counsel” means counsel for Defendants, Morgan, Lewis & Bockius LLP.
- 2.22** “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.
- 2.23** “Effective Approval Order” means the Final Approval Order once it becomes Effective.
- 2.24** “Escrow Agent” means an entity agreed to by the Settling Parties.
- 2.25** “Fairness Hearing” means the hearing scheduled by the Court to consider (i) any objections from Class Members to the Settlement Agreement, (ii) Class Counsel’s request for Attorneys’ Fees and Costs, and Class Representative Service Awards, and (iii) whether to finally approve the Settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure (“Rules”).
- 2.26** “Final Approval Order Effective Date” means the date on which the Final Approval Order becomes Effective, which shall be five (5) calendar days after the following have taken place: (i) the entry of the Final Approval Order; and (ii) expiration of all applicable appeal periods for the appeal of the Final Approval Order without any appeal having been filed or, if any appeal is filed, either the denial of the petition to appeal or else the entry of an order affirming the Final Approval Order and, in either case, the exhaustion of any and all applicable opportunities for the further reconsideration, rehearing, or appeal of such orders. The Settling Parties agree that absent an appeal or other attempted review proceeding, the period after which the Final Order becomes Effective is thirty-five (35) calendar days after its entry.
- 2.27** “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 mutually agreed upon by the Settling Parties for approval by the Court, in substantially the form attached as Exhibit 4 hereto.

- 2.28** “Former Participant” means a Class Member who, as of December 31, 2016, did not have an Active Account balance with any of the Plans that had invested in JPM Stable Value Funds during the Class Period.
- 2.29** “Former Participant Claim Form” means the form attached as Exhibit 5.
- 2.30** “Gross Settlement Amount” means the sum of \$75,000,000, contributed to the Qualified Settlement Fund pursuant to Article 5. The Gross Settlement Amount shall be the full and sole monetary payment made on behalf of Defendants in connection with the Settlement effectuated through this Settlement Agreement.
- 2.31** “Individual Underperformance Amount” means the amount by which the individual participant’s stable value investment underperformed, if any, when compared to the Benchmark, as determined by the Settlement Administrator.
- 2.32** “JPMorgan Stable Value Funds” means the JPMorgan stable value products the participants invested in.
- 2.33** “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.
- 2.34** “Net Settlement Amount” means the Gross Settlement Amount minus: (a) all Attorneys’ Fees and Costs paid to Class Counsel; (b) all Class Representatives’ Service Awards as authorized by the Court; (c) all Administrative Expenses; 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: (1) Administrative Expenses incurred before the Settlement Effective Date but not yet paid, (2) Administrative Expenses estimated to be incurred after the Settlement Effective Date but before the end of the Settlement Period, and (3) an amount estimated for adjustments of data or calculation errors.
- 2.35** “Participants Requiring Proof of Eligibility” means participants or beneficiaries who must complete a Proof of Eligibility Claim Form because the Settlement Administrator does not have the necessary information from their employer’s 401(k) plan, including identification and/or account balance information, to make a settlement distribution determination, and their employer’s 401(k) plan is therefore on the “List of Plans Requiring Additional Information.”
- 2.36** “Plans” means the plans through which Class Members invested in JPM Stable Value Funds during the Class Period, and any successor Plans.
- 2.37** “Plan of Allocation” means the methodology for allocating and distributing the Net Settlement Amount pursuant to Article 6 below.
- 2.38** “Preliminary Order” means the order to be mutually agreed upon by the Settling Parties and approved by the Court in connection with the Motion for Entry of the Preliminary Order to be filed by Settling Plaintiffs through Class Counsel, as described in Paragraph 3.1 and in substantially the form attached hereto as Exhibit 1.

- 2.39** “Proof of Eligibility Claim Form” means the form attached as Exhibit 9.
- 2.40** “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 hereof and referred to as the Qualified Settlement Fund (within the meaning of Treas. Reg. § 1.468B-1).
- 2.41** “Released Parties” means (i) each Defendant as well as each of the defendants named in the Class Action or the Consolidated Actions (including J.P. Morgan Chase & Co., JPMorgan Chase Bank N.A., J.P. Morgan Investment Management Inc., and J.P. Morgan Retirement Plan Services), (ii) the past, present, and future parent corporation(s) of each entity identified under (i) above, and (iii) the past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns of each entity identified under (i) above, and (iv) with respect to (i) through (iii) above, all of their affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, assigns, employee benefit plan fiduciaries, 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, including but not limited to Empower Retirement, Great-West Life & Annuity Insurance Company, and Great-West Lifeco Inc.
- 2.42** “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 claims that are both known unknown, suspected, unsuspected, asserted, or unasserted:
- 2.42.1** That were or could have been asserted in the Class Action or the Consolidated Actions, or that did or could arise out of the conduct alleged in the Consolidated Complaint or the complaints (including any amendments) filed in the Consolidated Actions; or
- 2.42.2** That relate to any stable value fund investments, the holdings of any stable value fund investments, or disclosures regarding any stable value investments; or
- 2.42.3** That would be barred by *res judicata* based on entry by the Court of the Final Approval Order; or
- 2.42.4** 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.
- 2.43** “Settlement” or “Settlement Agreement” refers to the agreement embodied in this agreement and its exhibits.

- 2.44** “Settlement Administrator” means JND Legal Administration, an independent contractor to be retained by Class Counsel and approved by the Court.
- 2.45** “Settlement Agreement Execution Date” means that date on which the final signature is affixed to this Settlement Agreement.
- 2.46** “Settlement Class” means all persons who are Class Members except that a person shall cease to be a member of the Settlement Class if that person submits a valid opt-out form or is otherwise excluded from the Settlement Class by order of the Court.
- 2.47** “Settlement Effective Date” means the Final Approval Order Effective Date, provided that by such date the Settlement has not been terminated pursuant to Article 10.
- 2.48** “Settlement Notice” means the Notices of Class Action Settlement and Fairness Hearing to be mailed by first-class U.S. mail, where the Settlement Administrator has mailing addresses, and provided on the Settlement Website. The Settlement Notice shall inform Class Members of the information required by Rule 23 and due process including a 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: (i) the terms of the Settlement Agreement; (ii) the petition of Class Counsel for award of Attorneys’ Fees and Costs; (iii) payment of and reserve for Administrative Expenses; and (iv) Class Representatives’ Service Awards. The Settlement Notice shall inform Former Participants and Participants Requiring Proof of Eligibility of the Claims Deadline by which they must file a completed Former Participant Claim Form and Proof of Eligibility Claim Form, respectively, to be eligible for a distribution pursuant to the Plan of Allocation. The Settlement Notice will set forth the Court’s findings and conclusions, if any, as to whether those Class Members who exclude themselves from the Class will be time barred under ERISA’s six-year statute of repose from bringing their own actions or, if the Court fails to make such a ruling, state that their claims may potentially be time-barred for those reasons. Following the Court’s issuance of the Preliminary Order, the Settlement Administrator shall provide notice to the Class Members in substantially the form attached hereto as Exhibits 2, 3, 4, and 8.
- 2.49** “Settlement Period” means the period that begins on the Settlement Effective Date and ends two years after the Settlement Effective Date.
- 2.50** “Settlement Website” means the internet website established pursuant to Article 11.
- 2.51** “Settling Parties” means the Defendants and the Settling Plaintiffs on behalf of themselves, the Class Members, and the Plans.
- 2.52** “Settling Plaintiffs” means Richard Whitley, Caroleta M. Duran, Terry J. Koch, Mark D. Grandy, John M. Gates, Scott Newell, Michael Knee, and Eric M. Murphy.
- 2.53** “Stable Value Account” means the account containing a Class Member’s investment in a JPMorgan stable value product.

- 2.54** “Sub-Class” means the three subclasses certified by the Court in its order on class certification dated March 31, 2017: (1) the “SAIF Subclass”; (2) the “ACSAF/JP Morgan Stable Value Fund Subclass; and (3) the “Caterpillar Subclass.” Dkt. 377 at 7-9 & n.7.
- 2.55** “Summary Notice” means the Notice of the Class Action Settlement and Fairness Hearing to be published in two national newspapers in the form attached hereto as Exhibit 4.
- 2.56** “Total Underperformance Amount” means the sum of all calculated Individual Underperformance Amounts as determined by the Settlement Administrator.

3. Article 3 – Preliminary Settlement Approval and Notice to the Class

3.1 By November 3, 2017, or as soon as possible after that date, the Settling Plaintiffs, through Class Counsel, shall file with the Court a motion seeking preliminary approval of this Settlement Agreement and for entry of the Preliminary Order in substantially the form attached hereto as Exhibit 1. The Preliminary Order to be presented to the Court shall, among other things:

- 3.1.1** Require notice to Class Members to include the Court’s finding, if any, that Class Members who request exclusion from the Class will be time-barred from filing their own actions based on *California Public Employees’ Retirement Systems v. ANZ Securities, Inc.*, 582 U.S. ___, 1375 S.Ct. 2042 (2017), that ERISA’s six-year state of repose has expired, or, if the Court does not make such a finding, require notice to class members to state that such claims may potentially be time-barred for those reasons;
- 3.1.2** Approve the text of the Settlement Notice and the Former Participant Claim Form for mailing to Class Members and Former Participants identified by the Settlement Administrator to notify them: (i) of the Fairness Hearing; (ii) that notice of changes to the Settlement Agreement, future orders regarding the Settlement, modifications to the Settlement Notice, changes in the date or timing of the Fairness Hearing, or other modifications to the Settlement, including the Plan of Allocation, may be provided to the Class through the Settlement Website without requiring additional mailed notice; and (iii) that if they opt out or request to be excluded from the Class they will (or may) not be able to bring their own lawsuit because ERISA’s statute of repose has run, and any such action would (or may) be time barred;
- 3.1.3** Approve the text of the Summary Notice for publication in accordance with Paragraph 3.2.1 below;
- 3.1.4** Determine that, pursuant to Rules 23(c)(2) and (e), publishing and 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 Rule 23, the Constitution of the United States, and any other applicable law;

- 3.1.5** 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 Released Parties;
- 3.1.6** Set the Fairness Hearing for no sooner than one hundred (100) calendar days after the Notice of Proposed Settlement is mailed to the Class, 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, and Class Representative Service Awards;
- 3.1.7** 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 promptly served on Class Counsel and Defense Counsel. To be filed validly, the objection and any supporting documents must be filed within forty (40) calendar days after the Notice of Proposed Settlement is mailed to the Class. 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;
- 3.1.8** Approve the form of CAFA notices attached as Exhibit 5 and order that upon mailing of the CAFA notices, Defendants shall have fulfilled their obligations under CAFA;
- 3.1.9** Provide that any party may file with the Court a response to an objection by a Class Member on or before seventy (70) calendar days after the Notice of Proposed Settlement is mailed to the Class; and
- 3.1.10** 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.
- 3.2** As soon as reasonably possible after Class Counsel finishes the discovery it has undertaken from the record keepers for the Plans in order to obtain Class Members' contact information and as otherwise directed by the Court, the Settlement Administrator shall do the following:
- 3.2.1** Cause the Summary Notice to be published to the Class in the form and matter approved by the Court, which shall be in substantially the form attached hereto as Exhibit 2.
- 3.2.1.1** The Summary Notice shall be published in the national edition of *The Wall Street Journal* and *The New York Times*, and *The New York Times International Edition*.
- 3.2.1.2** Published notice shall be at least one-eighth of a page in size and appear in a major section of the publications.

- 3.6** Defendants shall have no responsibility for providing publication or distribution of the Settlement or any notice of the Settlement to Class Members or for paying the cost of providing notice of the Settlement to Class Members.
- 3.7** In order for a Class Member to be excluded from the Settlement, the Class Member must request exclusion by sending a complete, signed, and valid opt-out letter to the Clerk of the Court and Class Counsel at the addresses described in the Settlement Notice, and the opt-out form must be received no later than forty (40) days after Settlement Notice is mailed to the Class. Any Class Member who submits a timely and valid opt-out request shall be excluded from the Settlement Class and shall not be entitled to participate in the Settlement.

4. Article 4 – Final Settlement Approval

- 4.1** No later than seventy (70) days after the Notice of Proposed Settlement is mailed to the Class, Class Counsel shall submit to the Court a motion for entry of the Final Approval Order, which shall request approval by the Court of the terms of this Settlement Agreement and entry of the Final Approval Order in substantially the form attached hereto as Exhibit 4. The Final Approval Order may also address the objections filed by any members of the Class. The Final Approval Order as mutually agreed upon by the Settling Parties shall provide for the following, among other things, as is necessary to carry out the Settlement consistent with applicable law:
- 4.1.1** For approval of the Settlement, adjudging the terms of the Settlement Agreement to be fair, reasonable, and adequate to the Settlement Class and the Plans, 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) that publishing and 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 members of the Settlement Class has been provided, consistent with the Rules and the requirements of due process under the United States Constitution;
- 4.1.3** For dismissal with prejudice of the Class Action and all claims asserted therein whether asserted by the Settling Plaintiffs on their own behalf or on behalf of the Settlement Class, or derivatively to secure relief on behalf of the Plans, without costs to any of the Settling Parties other than as provided for in this Settlement Agreement;
- 4.1.4** That all members of the Settlement Class (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns), on their individual behalf and derivatively 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 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 any Settlement Class member on his or her own behalf may thereafter discover facts in addition to or different from those which the plan or any Settlement Class member now knows or believes to be true with respect to the Class Action and the Released Claims;

- 4.1.5** That each Settlement Class member shall release Defendants, Defense Counsel, Class Counsel, and the Released Parties 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;
- 4.1.6** That all applicable CAFA requirements have been satisfied;
- 4.1.7** That the Court approves the Benchmark as the objective measure for the Settlement Administrator to use in determining Individual Underperformance Amounts and Total Underperformance Amount as set forth in the Plan of Allocation;
- 4.1.8** That the Settlement Administrator shall have the authority to facilitate claims from 401(k) participants who may not appear in the data it has collected or whose information is not sufficient to determine their eligibility to receive a distribution from the Settlement. In such instances, the Settlement Administrator shall provide a Proof of Eligibility Claim Form to any 401(k) participant who requests one. The Settlement Administrator shall determine the eligibility of any such claimants to receive a distribution from the Settlement Fund provided they complete and timely submit their Claim Form;
- 4.1.9** That the Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Current Participant, each Authorized Former Participant, and each Authorized Participant With Proof of Eligibility pursuant to the Plan of Allocation approved by the Court, including that the Settlement Administrator may audit the information provided by Participants Requiring Proof of Eligibility;
- 4.1.10** That, with respect to payments or distributions to Settlement Class members, all questions not resolved by the Settlement Agreement shall be resolved by the Settlement Administrator in its sole and exclusive discretion;
- 4.1.11** That within thirty (30) calendar days following the issuance of all settlement payments to Settlement 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

4.1.12 The Court shall retain jurisdiction to enforce and interpret the Settlement Agreement. Such retention of jurisdiction shall not affect the finality of the Court's judgment.

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 and the Settlement Class, both on their own behalf and derivatively on behalf of 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 The Settling Parties shall agree on the Escrow Agent, who may, or may not, also be the Settlement Administrator, and who will establish an interest-bearing escrow account with a JPMorgan bank. The Settlement Amount will be deposited into the escrow account no later than ten (10) business days after entry of the Preliminary Order or as soon as is reasonably possible thereafter once any information required for the deposit has been provided. 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. Any failure to ensure that the Settlement Fund complies with Treasury Regulation § 1.468B-2, and the consequences thereof, shall be the sole responsibility of Class Counsel. In addition, the Settlement Administrator 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 Settlement Administrator 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 Settlement Administrator. The Settlement Administrator 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: (i) 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 (ii) 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 Settlement Administrator out of the Gross Settlement Amount without prior order from the Court. The Settlement Administrator shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any Settlement 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 Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Article 5.

- 5.4** The Settlement Administrator shall not disburse or cause to be disbursed 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 entered into between Class Counsel and Defense Counsel and approved by the Court. Subject to the orders of the Court, the Settlement Administrator is authorized to execute such transactions as are consistent with the terms of this Settlement Agreement.
- 5.5** The Escrow Agent will, at the written direction of Class Counsel, invest the Qualified Settlement Fund in an interest bearing account with JPMorgan Chase Bank, N.A. Prior to the deposit of the Settlement Fund, the Settling Parties shall agree on the type of interest bearing account the Settlement Fund is to be invested in. All risks related to the investment of the Qualified Settlement Fund will be borne by the Qualified Settlement Fund.
- 5.6** 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: (i) first, all Attorneys’ Fees and Costs shall be paid to Class Counsel within ten (10) business days after the Settlement Effective Date; (ii) second, any Administrative Expenses incurred through the Settlement Effective Date shall be paid within five (5) business days after the Settlement Effective Date; (iii) third, any Class Representative Service Awards ordered by the Court shall be paid within five (5) business days after the Settlement Effective Date; and (iv) fourth, 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.
- 5.7** The Settlement Administrator 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.

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 Settlement Class in accordance with this Plan of Allocation as approved by the Court.
- 6.2** To be eligible for a distribution from the Net Settlement Amount, a person must be a Current Participant, an Authorized Former Participant, or an Authorized Participant with Proof of Eligibility, a Beneficiary, or the Alternate Payee of such a person. Current Participants will receive their settlement payments as contributions to their Plan accounts as described in this Article 6 unless, as of the date of the settlement payments, they no longer have an account in one of the of the Plans. In the event the Plan or the Plan record keepers are unable or unwilling to accept or distribute the settlement payments, then the Current Participants will have their checks sent to them under the provisions of Paragraph 6.6 below. Authorized Former Participants will receive their settlement payments in the form of checks as provided in Paragraph 6.7 below. Authorized Participants With Proof of Eligibility will receive their settlement payments in the form of checks as provided in Paragraph 6.7 below.
- 6.3** Beneficiaries will receive checks as described in this Article 6 in amounts corresponding to their entitlement as beneficiaries of the Current Participant, of the Authorized Former Participant, or of the Authorized Participant With Proof of Eligibility with respect to which the payment is made. Alternate Payees will receive checks if and to the extent that they are entitled to receive a portion of a Current Participant's, Authorized Former Participant's, or Authorized Participant With Proof of Eligibility's allocation under this Article 6 pursuant to the terms of the applicable Qualified Domestic Relations Order. The Settlement Administrator will 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** Payments to Authorized Former Participants, Current Participants, and Authorized Participants With Proof of Eligibility will be calculated by the Settlement Administrator pursuant to the Plan of Allocation as follows:
- 6.4.1** The Net Settlement Amount will be divided among Authorized Former Participants, Current Participants, and Authorized Participants With Proof of Eligibility based upon the underperformance, if any, of their investments in JPM Stable Value Funds compared to the Benchmark;
- 6.4.2** The Settling Parties will continue to work together to provide the Settlement Administrator quarter-ending account balances and units invested in JPM Stable Value Funds for each Class Member during the Class Period;

- 6.4.3** The Settlement Administrator will first calculate the Individual Underperformance Amounts by comparing the underperformance, if any, of the JPM Stable Value Funds by comparing the crediting rate of the Plans the participants invested in, with a crediting rate derived from the Benchmark. If the calculation shows that a Plan did not experience any underperformance compared to the Benchmark then the participants in those Plans are not by definition Class Members because they did not suffer from any underperformance damages. For those Plans that experienced underperformance the second step will be for the Settlement Administrator to calculate the Individual Underperformance Amounts as the total dollar value amount by which each participant's individual investment in JPM Stable Value Funds underperformed the Benchmark during the relevant time periods. For the Class and Subclasses with the exception of the commingled JPM Stable Value Fund, the specific difference in crediting rates between what each participant received and the Benchmark return is multiplied by the participant's average quarterly balance from 2009 through 2012, with the exception that, for the period from 2011 through 2012, the year-end 2010 participant balance will apply and any additional investments after 2010 will not be included in the calculation unless the quarterly balance goes down after 2010. If the quarterly balance decreases after 2010, the calculation is performed on the remaining balance, not on the year-end 2010 balance. For members of the ACSAF/JP Morgan Stable Value Fund Subclass, the starting date will be September 17, 2007;
- 6.4.4** The Settlement Administrator will then determine the Total Underperformance Amount as the sum of all calculated Individual Underperformance Amounts;
- 6.4.5** After the Settlement Administrator has calculated the underperformance amounts, it will calculate the payments to the Current Participants, Authorized Former Participants, and Authorized Participants With Proof of Eligibility by multiplying the Net Settlement Amount by the ratio of each Class Member's Individual Underperformance Amount to the Total Underperformance Amount;
- 6.4.6** The Settlement Administrator will utilize the calculations required to be performed herein for (a) making the required distributions to Authorized Former Participants, Current Participants, and Authorized Participants With Proof of Eligibility under Paragraphs 6.5, 6.6 and 6.7 of the Settlement Agreement; and (b) instructing the Plans (or their designees) as to the amounts to be distributed to Current Participants and calculating the total amount to deposit in the Plans to fulfill this instruction; and
- 6.4.7** The total amount distributed to Current Participants, Authorized Former Participants, and Authorized Participants With Proof of Eligibility may not exceed the Net Settlement Amount. Nothing in this Paragraph 6.4.7 is intended to modify the requirements of Paragraph 6.8 below. In the event that the Settlement Administrator determines that the Plan of Allocation would otherwise require payments exceeding the Net Settlement Amount, the Settlement Administrator is

authorized to make such changes as are necessary to the Plan of Allocation such that said totals do not exceed the Net Settlement Amount.

- 6.4.8** If a Participant Requiring Proof of Eligibility cannot, to the best of their knowledge and belief, state on the Proof of Eligibility Claim Form that they invested through their employer's 401(k) plan in a JPMorgan stable value fund investment offering at some point during the period January 1, 2009 through December 31, 2010, then they will not receive a distribution from the Settlement.
- 6.4.9** If an Authorized Participant With Proof of Eligibility no longer has records showing the balance in their JPMorgan stable value fund investment from their 401(k) plan account or cannot estimate the amounts of their investment in the class period, the Settlement Administrator will award that Authorized Participant With Proof of Eligibility one-half of the average class member award for participants from plans where balance information was available, or where the Settlement Administrator acquires data bearing on the claim, in its discretion it may use the data to determine the amount of the distribution if any.
- 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. The Settlement Administrator will complete all payment calculations for all Current Participants and Authorized Former Participants within thirty (30) business days after the Settlement Effective Date. Within two (2) business days after the Settlement Administrator has completed all payment calculations for all Current Participants, the Settlement Administrator will provide the Plans (or their designees) with an Excel spreadsheet containing the name, account identification if available and the amount of the settlement payment to be made into the Active Account(s) for each of the Current Participants. The Plans (or their designees) will then have thirty days to identify any Current Participants on the Excel spreadsheet who no longer have an Active Account. The Plans will also be asked to confirm that they are willing and able to accept the settlement check and credit it to the remaining Current Participants' Active Accounts. Upon receipt of the Plan's confirmation, the Settlement Administrator will have ten (10) business days to send the Plans a check in the amount of the settlement payments to be made to the remaining Current Participants.
- 6.5.1** To the extent any Current Participant, Authorized Former Participant, or Authorized Participant With Proof of Eligibility's payment is five (5) dollars or less, the Settlement Administrator shall zero out those claims and no distribution to those participants or their Beneficiaries shall be made.
- 6.5.2** Thereafter, upon ten (10) business days' written notice to the Plans (or their designees), the Settlement Administrator will effect a transfer from the Qualified Settlement Fund to each of the respective Plans (or their designees) of an amount equal to the aggregate damages of the Current Participants in such Plan. The Plans (or their designees) will direct the Plans' recordkeeper to credit the individual account of each Current Participant in an amount equal to that stated on the Excel

spreadsheet provided by the Settlement Administrator in relation to such Current Participants to each of the Plans (or their designees).

- 6.5.3** The settlement payment for each Current Participant will be invested in accordance with such Current Participant's investment elections then on file. If there is no investment election on file for any Current Participant, then such Current Participant will be deemed to have directed such payment to be invested in the Plans' "Qualified Default Investment Alternative," as defined in 29 C.F.R. § 2550.404c-5. The settlement payment will be reflected in the Current Participant's Plan account as additional earnings. The Plans' recordkeeper will be asked to process all Current Participant transactions within thirty (30) calendar days of receiving the settlement payment for any Current Participants.
- 6.6** 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 an Authorized Former Participant for purposes of the settlement distribution only and will receive his or her payment from the Settlement Administrator in one settlement check as described in Paragraph 6.7. A Current Participant who no longer has an Active Account on the date of his or her Settlement distribution need not complete a Former Participant Claim Form. The Settlement Administrator will ask that settlement payments that cannot be made by a Plan's recordkeeper within thirty (30) calendar days of receipt of the funds described in Paragraph 6.5.2 because the Class Member no longer has an Active Account be returned by the recordkeeper to the Settlement Administrator for distribution under this Paragraph 6.6 within ten (10) calendar days thereafter.
- 6.7** Payments to Authorized Former Participants and Authorized Participants With Proof of Eligibility. The Settlement Administrator will issue a single check from the Qualified Settlement Fund and mail it to the address of such Authorized Former Participant and Authorized Participant With Proof of Eligibility listed in his or her Former Participant Claim Form or Proof of Eligibility Claim Form, respectively, or, in the case of ambiguity or uncertainty, to the address of such person as determined by the Settlement Administrator using commercially reasonable means.
- 6.7.1** The Settlement Administrator will advise Authorized Former Participants and Authorized Participants With Proof of Eligibility that any distribution pursuant to the Settlement is rollover eligible and of their right to rollover such an amount. The Settlement Administrator will follow proper rollover instructions provided by an Authorized Former Participant or Authorized Participant With Proof of Eligibility.
- 6.7.2** With respect to settlement payments that are not rolled over to a qualified account, the Settlement Administrator will: (i) calculate and withhold any applicable taxes from such settlement payments; (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 and Authorized Participants With Proof of Eligibility.

- 6.8** 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 agree promptly to discuss modifications to 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 will not be required. However, notice of such proposed modification will be posted on the Settlement Website within five (5) business days of the date that the proposed modification is submitted to the Court for its approval. If the proposed modification is implemented, notice of such modification will be posted on the Settlement Website within five (5) business days of the date that the modification was implemented. The Settlement Administrator will be solely responsible for performing any calculations required by this Plan of Allocation.
- 6.9** Within ten (10) business days of completing all aspects of this Plan of Allocation, the Settlement Administrator will send to Class Counsel and Defense Counsel one or more affidavits stating the following: (i) the name of each Class Member to whom the Settlement Administrator sent the Settlement Notice or the Former Participant Claim Form; (ii) the date(s) upon which the Settlement Administrator sent the Settlement Notice or the Former Participant Claim Form; (iii) the name of each Class Member whose Settlement Notice or Former Participant Claim Form was returned as undeliverable; (iv) the efforts made by the Settlement Administrator to find the correct address and to deliver the Settlement Notice or Former Participant Claim Form for each such Class Member; and (v) the name of each Class Member to whom the Settlement Administrator made a distribution from the Net Settlement Amount, together with the amount 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.
- 6.10** 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 will 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 will not be considered wages by the Settling Parties.
- 6.11** Each Settlement Class member who receives a payment under this Settlement Agreement will be fully and ultimately responsible for payment of any federal, state, or local taxes resulting from or attributable to the payment received by such person. Each Class Member will hold Defendants, 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 will 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.

6.12 All checks issued pursuant to this Plan of Allocation will expire no later than one hundred twenty (120) calendar days after their issue date. All checks that are undelivered or are not cashed before their expiration date will revert to the Qualified Settlement Fund.

6.13 There shall be established a reserve fund, made up of 1% of the Net Settlement Amount. The Settlement Administrator may use the reserve fund to cover Administrative Expenses after first exhausting funds that have been set aside from the Gross Settlement Amount. The reserve fund shall also include (i) amounts representing checks issued but uncashed as of the deadline for negotiating the checks and which have reverted to the Qualified Settlement Fund under Paragraph 6.12; and (ii) interest on the Qualified Settlement Fund not yet distributed. The reserve fund shall be used to make the following payments, in the order described below:

6.13.1 First, the reserve fund shall be used to pay expenses incurred by the Settlement Administrator or expenses incurred in connection with the Qualified Settlement Fund after the entry of the Final Approval Order;

6.13.2 Second, after the expiration of the time for cashing checks under 6.12, the reserve fund, and any settlement administrative funds that were not expended from the Gross Settlement Amount, shall be used to make any additional payments to Settlement Class members in the Settlement Administrator's discretion and as approved by the Settling Parties for: (i) late-filed claims; (ii) expired checks where the Settlement Class member requests a new check; (iii) additional distributions to Settlement Class members who were not sent payments because such payments would be below the *de minimis* threshold of five (5) dollars set forth in Paragraph 6.5.1 above; (iv) other payments to Settlement Class members who had not yet received complete payment as determined under the Plan of Allocation; or (v) other payments to Authorized Participants With Proof of Eligibility who received a distribution of one-half the average class member award for participants from plans where balance information was available, provided that their total payment be no more than equal to the average award. In no event will any such payment to a Settlement Class member be more than the pro rata share that such Settlement Class member would have been entitled under the Plan of Allocation if that Settlement Class member's claim had been timely and/or not *de minimis*, except as provided in 6.13.2(v) above; and

6.13.3 Third, if there are any funds remaining after the payments under Paragraphs 6.13.1 and 6.13.2 are made, the remaining balance, if any, shall revert to JPMorgan.

7. Article 7 – Attorneys' Fees and Costs

7.1 Class Counsel will seek approval from the Court of their attorneys' fees not to exceed one third of the Settlement Amount, or twenty-five million (\$25,000,000), and litigation

costs and expenses advanced and carried by Class Counsel for the duration of this litigation, not to exceed \$1,750,000. Any such award shall be paid from the Gross Settlement Amount. Defendants shall have no responsibility for, and no liability whatsoever with respect to, any payment(s) to Class Counsel for attorneys' fees, costs and expenses and/or to any other person who may assert some claim thereto, or any fee and expense award the Court may make in the Class Action.

- 7.2** Class Counsel will file a motion for an award of Attorneys' Fees and Costs, and Class Representative Service Awards, no later than twenty (20) days after Settlement Notice is mailed to the Class, 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 Representative Enhancements that does not exceed \$20,000 per Class Representative.

8. Article 8 – Release and Covenant Not to Sue

- 8.1** As of the Settlement Effective Date, all Settlement Class members (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns), on their own behalf and derivatively on behalf of the Plans, shall be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged all Released Parties from the Released Claims.
- 8.2** As of the Settlement Effective Date, all Plaintiffs and Settlement 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 Settlement 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 and the Released Parties, or the decision to release, relinquish, waive, and discharge the Released Claims, or the decision of a Settlement Class member not to object to the Settlement. Notwithstanding the foregoing, each Settlement Class member 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 Settlement Class members, on their own behalf and derivatively on behalf of 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 Settlement Class member hereby stipulates and agrees with respect to any and all Released Claims that, upon the Effective Approval Order, each Settlement

Class member 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 Settlement 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** Defendants may, in their sole and absolute discretion, terminate this Settlement Agreement by delivering a notice of termination to Class Counsel at least 10 days prior to the Fairness Hearing if any of the following occur:
- 10.1.1** More than three percent (3%) of the total number of individuals identified as Class Members submit valid and timely opt-outs; or
 - 10.1.2** Any counsel for Settling Plaintiffs breaches the Settlement Agreement; or
 - 10.1.3** If, prior to the time for deadline for objections to the Settlement to be filed, the United States Department of Labor has not agreed that upon Final Approval of the Settlement it will close any existing investigations into any issues related to the Class Action or the underlying allegations in the Class Action without imposing, or seeking to impose, any additional requirements on Defendants.
- 10.2** Either Defendants or Class Counsel may, in their sole and absolute discretion, terminate this Settlement Agreement by delivering a notice of termination to the other party at least ten (10) days prior to the Fairness Hearing or, if the event leading to termination occurs after that time, within ten (10) days of that event if any of the following occur:
- 10.2.1** This Settlement Agreement or any material part of it, including the exhibits attached thereto, is disapproved by the Court or fails to become effective for any reason whatsoever; or
 - 10.2.2** Either the Preliminary Order or the Final Approval Order entered by the Court contains any material modification from the terms set forth in the Settlement Agreement or the proposed Preliminary Order or Final Approval Order attached hereto as Exhibits 1 and 6, respectively, and the Settling Parties do not mutually agree to any such material modification; or
 - 10.2.3** The Court enters any order, including but not limited to the Preliminary Order and Final Approval Order, that has the effect of modifying in any way the class definitions set forth in the Proposed Preliminary Order attached hereto as Exhibit 1, and the Settling Parties do not mutually agree to any such modification; or
 - 10.2.4** The Court enters any alternative judgment, or any alternative judgment is modified or reversed by a court of appeal or any higher court in any material respect, and the Settling Parties do not mutually agree to any such material modification; or
 - 10.2.5** The Preliminary Order or Final Approval Order is reversed on appeal or is materially modified on appeal, including, but not limited to, any modification of the class definitions therein, and the Settling Parties do not mutually agree to any such material modifications.
- 10.3** 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 Settling Plaintiffs 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 within thirty (30) calendar days after the Settlement Agreement is finally terminated or deemed null and void, except for the costs of Class Notice and any other Administrative Expenses properly charged to the Qualified Settlement Fund and incurred prior to the date the Settlement Agreement is terminated, deemed null and void, or has no further force or effect. The Escrow Agent or its designee shall apply for any tax refund owed to the Settlement Fund and pay the proceeds to JPMorgan, after deduction of any fees or expenses reasonably incurred in connection with such application(s) for refund. Any Attorneys' Fees and Costs or Class Representative Enhancements, as well as any payments to the Settlement Class, must be returned to the Qualified Settlement Fund.

- 10.4** The Court's denial, in whole or in part, of Class Counsel's request for Attorneys' Fees and Costs and/or Class Representative Enhancements shall not constitute a failure to approve the Settlement Agreement and shall not impact the validity and enforceability of the rest of the Settlement Agreement.

11. Article 11 – Public Comments Regarding the Class Action or Settlement Agreement

- 11.1** Except as set forth explicitly in Paragraph 11.5 below, the Settling Parties, Class Counsel, and Defense Counsel agree to keep confidential all positions, assertions, and offers made during settlement negotiations relating to the Class Action and the Settlement Agreement, except that they may discuss the negotiations with the Class Members and the Settling Parties' tax advisors and other consultants, provided that in each case that they (i) secure agreements with such persons or entities that such information will not be further disclosed and (ii) comply with Article 11 in all other respects.
- 11.2** The Settling Plaintiffs and Class Counsel agree that they will not at any time publicly disparage or encourage or induce others to publicly disparage Defendants or the Released Parties.
- 11.3** At least by the date that Settlement Notice is mailed to the Class, the Settlement Administrator will establish a Settlement Website on which it will post the following documents or links to the following documents (to the extent such documents are or become available): the operative Consolidated Complaint, Settlement Agreement and its Exhibits, Plaintiffs' Motion for Preliminary Approval of the Settlement, Mailed Settlement Notice, Summary Notice, Settling Plaintiffs' Motion for Attorneys' Fees, Costs, and Class Representative Service Awards, any Court orders related to the Settlement, any amendments or revisions to these documents, and any other documents or information mutually agreed in advance upon by the Settling Parties ("Settlement Website Information"). No other information or documents will be posted on the Settlement Website.
- 11.4** Settling Plaintiffs and Class Counsel shall not make any public statements, whether through the press, social media, or any other means, regarding the Settlement of Class Action other than Court-approved Settlement Notice, the Settlement Website Information, and a press release approved by Defendants to be issued following final

approval of the Settlement by the Court that includes the statement that nothing in the Settlement is, or should be construed as, an admission of any fact, wrong doing, or liability with respect to any of the allegations or claims in the Class Action or any other proceeding.

11.5 Notwithstanding the provisions and requirements of Paragraphs 11.1 and 11.4:

11.5.1 Class Counsel, Defendants, and Defense Counsel may discuss the facts of the case, the handling of the case, or the relief obtained with (i) attorneys involved in the Class Action, (ii) the Court, (iii) the Court of Appeals, or (iv) any experts who are requested to provide opinions in connection with the Plan of Allocation or Class Counsel's request for Attorneys' Fees and Costs;

11.5.2 Defendants will be permitted to disclose information set forth in Paragraph 11.1 as necessary and appropriate in the following circumstances: (i) to entities in connection with the preparation of financial statements; (ii) to accountants, tax advisors, auditors, and other consultants; (iii) in public filings; (iv) to government regulatory agencies or their representatives in response to direct inquiries or as otherwise required by law; (v) to the Plans, the fiduciaries of the Plans, and the recordkeepers for the Plans; and (vi) to any local, state, or federal taxing authority;

11.5.3 Nothing in this Settlement Agreement restricts Class Counsel's ability to respond to inquiries regarding the Class Action made by Class Members, beneficiaries, or their representatives to the extent necessary to represent them in connection with the Settlement Agreement;

11.5.4 Nothing in this Settlement Agreement restricts the ability of Defendants and Defense Counsel to discuss the Class Action, the Settlement, and/or the Settlement Agreement with (i) Released Parties or their representatives, (ii) their current, future, or former employees and their representatives, (iii) any current, future, and former Plan participants (or their beneficiaries) or their representatives, current or former employees, and (iv) Defendants' insurers or their representatives, or the Plans or the Plans' recordkeepers;

11.5.5 Nothing in this Settlement Agreement restricts the ability of the Settling Parties to make disclosures regarding the Class Action, the Settlement, and/or the Settlement Agreement in response to, or in connection with, any actual or threatened attempt to assert any of the Released Claims in connection with any legal claim, action, or proceeding; and

11.5.6 Consistent with the foregoing paragraphs, the Settling Parties, Class Counsel, and Defense Counsel will characterize the Settlement and/or its provisions in a positive manner.

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, offered as, or received as evidence of an admission by or on the part of Defendants of any fact, 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 fact, wrongdoing, fault, or liability in the Class Action or any other proceeding, and Defendants admit no fact, wrong doing or liability with respect to any of the allegations or claims in the Class Action or any other proceeding. 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 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 management, investment, or distribution of the Qualified Settlement Fund; (iii) the Plan of Allocation as approved by the Court; (iv) the determination, administration, calculation, or payment of any claims asserted against the Qualified Settlement Fund; (v) any losses suffered by, or fluctuations in the value of, the Qualified Settlement Fund; or (vi) 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 or Article 10, 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: (i) a reference to all specific provisions of the Settlement Agreement that are involved; (ii) a statement of the alleged non-compliance; (iii) a statement of the remedial action sought; and (iv) 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 to attempt to resolve the dispute;
- 12.4.4** If the dispute is not resolved during the period described in Paragraph 12.4.3, the parties shall conduct a mediation of the dispute with the Mediator on the earliest reasonably practicable date, provided, however, that the scope of such mediation shall be expressly limited to the dispute;
- 12.4.5** Within thirty (30) 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; and
- 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 concerning 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** 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 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:
- 12.14.1** Exhibit 1 – Preliminary Order;
 - 12.14.2** Exhibit 2 – Mailed Notice of Class Action Settlement and Fairness Hearing to Current Participants;
 - 12.14.3** Exhibit 3 – Mailed Notice of Class Action Settlement and Fairness Hearing to Former Participants;
 - 12.14.4** Exhibit 4 – Published Notice of Class Action Settlement and Fairness Hearing to Class Members;
 - 12.14.5** Exhibit 5 – Claim Form for Former Participants;
 - 12.14.6** Exhibit 6 – Final Approval Order;
 - 12.14.7** Exhibit 7 – CAFA Notices;

- 12.14.8** Exhibit 8 – Notice for Participants Requiring Proof of Eligibility with List of Plans Requiring Additional Information; and
- 12.14.9** Exhibit 9 – Proof of Eligibility Claim Form.
- 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 SETTLING PLAINTIFFS:

Michael M. Mulder
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and

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IF TO DEFENDANTS:

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Email: jeremy.blumenfeld@morganlewis.com

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

Agreed to on behalf of themselves and on behalf of the Settlement Class:

DATED: August 8, 2018



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Tel: (312) 263-0272
Fax: (847) 563-2301
Co-Lead Class Counsel for Plaintiffs

DATED: August 8, 2018



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Co-Lead Class Counsel for Plaintiffs

DATED: August 8, 2018



Kevin Madonna
Kennedy & Madonna, LLP
Counsel for Plaintiffs

DATED: August 8, 2018



Joseph Peiffer
Peiffer Rosca Wolf Abdullah
Carr & Kane, APLC
Counsel for Plaintiffs

DATED: August 8, 2018



Peter Mougey
Levin Papantonio Thomas
Mitchell Rafferty & Proctor, P.A.
Counsel for Plaintiffs

Agreed to on behalf of Defendants:

DATED: August 8, 2018

 /CMD

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