

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DIEGO CERVANTES, Individually and	)	Civil Action No. 1:18-cv-02551-AT
on Behalf of the Invesco 401(k) Plan	)	
and All Others Similarly Situated,	)	<u>CLASS ACTION</u>
	)	
Plaintiff,	)	SETTLEMENT AGREEMENT
	)	
vs.	)	
	)	
INVESCO HOLDING COMPANY	)	
(US), INC., et al.,	)	
	)	
Defendants.	)	
	)	

This Class Action Settlement Agreement, dated March 6, 2020 (the “Settlement Agreement”), is made and entered into by and among: (i) Plaintiff Diego Cervantes (“Plaintiff”) (on behalf of himself and each Class Member), by and through his counsel of record in the Action; and (ii) Invesco Holding Company (US), Inc. (“Invesco” or the “Company”), Invesco LTD., Invesco National Trust Company, Invesco Advisers, Inc., Invesco Benefits Plan Committee, Suzanne Christensen, John Coleman, Washington Dender, Peter Gallagher, David Genova, Douglas Sharp, Ben Utt, Gary Wendler, Kevin M. Carome, Loren M. Starr, and John Does 1-20 (collectively, “Defendants”), by and through their counsel of record in the Action.¹ The Settlement Agreement is intended to fully, finally, and forever resolve, discharge, and settle the released claims, subject to the approval of the Court and the terms and conditions set forth in this Stipulation.

I. ARTICLE I

DEFINITIONS

1.1 “Action” means the civil action captioned *Diego Cervantes v. Invesco Holding Company (US), Inc., et al.*, Civil Action No. 1:18-cv-02551-AT, pending in the United States District Court for the Northern District of Georgia.

¹ Except as otherwise specified, all capitalized terms shall have the meanings set forth in this Stipulation.

1.2 “Active Participant” means any Class Member who, as of the date of the Preliminary Approval Order, has a Plan account with a balance greater than \$0.00 and is eligible to make contributions to the account.

1.3 “Alternate Payee” means a person, other than an Active Participant, Inactive Participant, Former Participant, or Beneficiary, who is entitled to a benefit under the Plan as a result of a Qualified Domestic Relations Order.

1.4 “Amended Complaint” means the document captioned Amended Complaint for Liability Under ERISA, filed at ECF No. 60 on September 7, 2018 in this Action.

1.5 “Attorneys’ Fees and Expenses” means the amount awarded by the Court as compensation for the services provided by Class Counsel and the litigation expenses incurred by Class Counsel in connection with the Action, which shall be recovered from the Settlement Fund.

1.6 “Beneficiary” means a person who currently is entitled to receive a benefit under the Plan that is derivative of the interest of an Active Participant, Inactive Participant, or Former Participant, 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.

1.7 “CAFA Notice” means the notice required to be provided pursuant to the Class Action Fairness Act, 28 U.S.C. §1715.

1.8 “Class” means all participants in the Invesco 401(k) Plan from May 25, 2012 to the date of the Final Judgment and Order of Dismissal with Prejudice (the “Class Period”). Excluded from the Class are Defendants and members of the Invesco Benefits Plan Committee.

1.9 “Class Counsel” means Robbins Geller Rudman & Dowd LLP.

1.10 “Class Member” means a member of the Class.

1.11 “Class Period” means May 25, 2012 through the date of the Final Judgment and Order of Dismissal with Prejudice, inclusive.

1.12 “Class Representative” means the named Plaintiff in this Action, Diego Cervantes.

1.13 “Company” means Invesco Holding Company (US), Inc.

1.14 “Court” means the United States District Court for the Northern District of Georgia.

1.15 “Defendants” means Invesco Holding Company (US), Inc., Invesco LTD., Invesco National Trust Company, Invesco Advisers, Inc., Invesco Benefits Plan Committee, Suzanne Christensen, John Coleman, Washington Dender, Peter

Gallagher, David Genova, Douglas Sharp, Ben Utt, Gary Wendler, Kevin M. Carome, Loren M. Starr, and John Does 1-20.

1.16 “Defendants’ Counsel” means Jones Day and Skadden, Arps, Slate, Meagher & Flom LLP.

1.17 “Defendants’ Released Claims” means all claims, whether known or unknown (including Unknown Claims), and whether arising under federal, state, or any other law, which have been, or could have been, asserted in the Action or in any court or forum, by Defendants against Plaintiff or any Class Members, or their attorneys (including Class Counsel), which arise out of or relate in any way to the institution, prosecution or settlement of the Action, except for claims to enforce the Settlement Agreement.

1.18 “Effective Date” means one business day following the later of (a) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order; or (b) if there are any appeals, the date of dismissal or completion of any appeal, in a manner that finally affirms and leaves in place the Final Approval Order without any material modifications, of all proceedings arising out of the appeal(s) (including, but not limited to, the expiration of all deadlines for motions for reconsideration or rehearing or petitions for review and/or certiorari, all proceedings

ordered on remand, and all proceedings arising out of any subsequent appeal(s) following decisions on remand).

1.19 “Entitlement Amount” means that portion of the Net Settlement Amount payable to an individual Class Member, as determined according to the procedures described in Article V herein.

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

1.21 “Escrow Account” means an account at an established financial institution that is established for the deposit of the Settlement Amount and amounts relating to it, such as income earned on the investment of the Settlement Amount.

1.22 “Escrow Agent” means Robbins Geller Rudman & Dowd LLP, which will serve as escrow agent for any portion of the Settlement Amount deposited in or accruing in the Escrow Account pursuant to this Settlement.

1.23 “Fairness Hearing” means the hearing to be held before the Court pursuant to Federal Rule of Civil Procedure 23(e) to determine whether the Settlement Agreement should receive final approval by the Court.

1.24 “Final Judgment and Order of Dismissal with Prejudice” means the order and final judgment of the Court approving the Settlement, in substantially the form attached hereto as Exhibit B.

1.25 “Former Participant” means any Class Member who had a Plan account with a balance greater than \$0.00 during the Class Period but who does not have a Plan account with a balance greater than \$0.00 as of the date of the Preliminary Approval Order.

1.26 “Former Participant Rollover Form” means the form described generally in Section 5.3 herein, substantially in the form attached as Exhibit A-2 hereto.

1.27 “Former Participant Rollover Form Deadline” means a date that is no later than ten (10) calendar days before the Fairness Hearing.

1.28 “Inactive Participant” means any Class Member who, as of the date of the Preliminary Approval Order, has a Plan account with a balance greater than \$0.00 and is ineligible to make contributions to the account.

1.29 “Incentive Award” means the amount of incentive or service award awarded by the Court to the Plaintiff.

1.30 “Independent Fiduciary” means Fiduciary Counselors, the entity selected by Invesco Holding Company to serve as an independent fiduciary with respect to the Settlement Agreement for the purpose of rendering the determination described in Section 2.2 herein.

1.31 “Net Settlement Fund” means the Settlement Amount, plus any interest or income earned on the Escrow Account, less Notice and Administration Costs, the

Attorneys' Fees and Expenses, and any Incentive Award, awarded by the Court, and any other Court-approved deductions.

1.32 "Non-Proprietary Funds" means the following funds, regardless of share class: Artisan Mid Cap Value, DFA Inflation-Protected Securities, LASSO Long&Short Strategic Opportunities, PIMCO Real Return, SSgA Global Equity ex U.S. Index NL SF, SSgA REIT Index NL SF, SSgA Russell Large Cap Growth Index NL SF (formerly SSgA Russell 1000 Growth Index), SSgA Russell Large Cap Value Index NL SF (formerly SSgA 1000 Value Index), SSgA S&P Midcap R Index NL SF (formerly SSgA Mid Cap Index), SSgA US Bond Index NL SF (formerly SSgA Passive Bond Market Index Index), SSgA US Inflation Protected Bond Index NL (formerly SSgA Treasury Inflation Protected Securities Index), Victory Sycamore Established Value, SSgA US Aggregate Bond Market Index, and the Schwab Personal Choice Retirement Account.

1.33 "Non-Rollover-Electing Former Participant" means a Former Participant who has not submitted a completed, satisfactory Former Participant Rollover Form by the Former Participant Rollover Form Deadline set by the Court, or whose Former Participant Rollover Form is rejected by the Settlement Administrator.

1.34 "Notice" means the Notice of Pendency and Settlement of Class Action substantially in the form of notice attached as Exhibit A-1 hereto or as otherwise

approved by the Court. The Notice provided to Former Participants will include the Former Participant Rollover Form.

1.35 “Notice and Administration Costs” means expenses incurred in the administration of this Settlement Agreement, including (a) all fees, expenses, and costs associated with the production and dissemination of the Notice to Class Members; (b) all expenses incurred by the Settlement Administrator in administering and effectuating this Settlement (including taxes and tax expenses described in Section 4.5); (c) all fees and expenses associated with the Settlement Website and telephone support line described in Article III; (d) all fees charged by the Settlement Administrator; and (e) all fees and expenses charged by the Independent Fiduciary and Escrow Agent. Administrative Costs shall be paid from the Settlement Fund.

1.36 “Parties” means Plaintiff and Defendants.

1.37 “Plaintiff” means Diego Cervantes.

1.38 “Plaintiff’s Released Claims” means any and all claims, actions, demands, rights, obligations, liabilities, damages, attorneys’ fees, expenses, costs, and causes of action, whether known or unknown (including Unknown Claims as defined herein), against any of the Released Parties with respect to the Plan:

(a) that were asserted in the Action or could have been asserted in the Action, or that arise out of, relate to, are based on, or have any connection with any of

the allegations, acts, omissions, purported conflicts, representations, misrepresentations, facts, events, matters, transactions, or occurrences asserted in the Action, whether or not pleaded in the Amended Complaint, including but not limited to those that arise out of, relate to, are based on, or have any connection with: (1) the selection, retention, and monitoring of the Plan's investment options and service providers, (2) the performance, fees, and other characteristics of the Plan's investment options and their specific share classes, (3) the Plan's fees and expenses, including without limitation fees and expenses associated with the provision of recordkeeping and subadvisory services, (4) the nomination, appointment, retention, monitoring, and removal of the Plan's fiduciaries, and (5) the approval by the Independent Fiduciary of the Settlement Agreement;

(b) that would be barred by *res judicata* based on the Court's entry of the Final Judgment and Order of Dismissal with Prejudice;

(c) that relate to the direction to calculate, the calculation of, and/or the method or manner of the allocation of the Net Settlement Fund pursuant to the Plan of Allocation; or

(d) that relate to the approval by the Independent Fiduciary of the Settlement Agreement.

Plaintiff's Released Claims do not include (i) claims to enforce the Settlement Agreement, and (ii) claims for denial of benefits from the Plan.

1.39 "Plan" means the defined-contribution plan, established and effective as of January 1, 2000, to provide retirement income for the Invesco subsidiaries: (i) IVZ Inc., (ii) Invesco Management Group Inc., (iii) Invesco Group Services, Inc., and (iv) Invesco North American Holding, Inc.

1.40 "Plan of Allocation" means the methodology for allocating and distributing the Net Settlement Fund as described in Article V herein.

1.41 "Preliminary Approval Order" means the order of the Court preliminarily approving the Settlement Agreement, in substantially the form attached as Exhibit A hereto.

1.42 "Proprietary Funds" means the following funds, regardless of share class: Invesco American Franchise (formerly Invesco Van Kampen American Franchise), Invesco American Franchise Trust, Invesco Balanced-Risk Allocation Trust, Invesco Core Plus Fixed Income Trust (formerly Invesco Core Fixed Income Trust), Invesco Developing Markets, Invesco Diversified Dividend, Invesco Diversified Dividend Trust, Invesco Dynamics, Invesco Emerging Market Equity Trust, Invesco Equity Real Estate Securities Trust, Invesco Floating Rate, Invesco Growth and Income (formerly Invesco Van Kampen Growth and Income), Invesco Growth and Income

Trust, Invesco High Yield, Invesco International Equity Trust, Invesco International Growth Equity Trust, Invesco International Growth Trust, Invesco Mid Cap Growth, Invesco Mid Cap Growth Trust, Invesco Retire Trust 500 Index (formerly Invesco S&P 500 Index Trust), Invesco Small Cap Growth, Invesco Stable Value Trust, Invesco Stock Fund, Invesco US Quantitative Small Value Trust, and Invesco US REITs Trust.

1.43 “PTE 2003-39” means U.S. Department of Labor Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75,632 (Dec. 31, 2003), as amended.

1.44 “Qualified Domestic Relations Order” means a judgment, decree, or order (including the approval of a property settlement) that is made pursuant to state domestic relations law (including community property law) and that relates to the provision of child support, alimony payments, or marital property rights for the benefit of a spouse, former spouse, child, or other dependent of an Active Participant, Inactive Participant, or Former Participant and which has been determined qualified pursuant to the Plan’s procedures.

1.45 “Recordkeeper” means Schwab Retirement Plan Services, Inc.

1.46 “Released Parties” means each Defendant and its present or former affiliates, agencies, agents, assigns, associates, directors, employees, officers, parents, partners, representatives, subsidiaries, predecessors and successors, and all respective

heirs, executors, administrators, agents, attorneys, personal representatives, predecessors, successors, stockholders, partners, servicers, subrogees, officers, directors, associates, controlling persons, employees, attorneys, counselors, insurers, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, or advisors of any of the foregoing.

1.47 “Rollover-Electing Former Participant” means a Former Participant who has submitted a completed, satisfactory Former Participant Rollover Form by the Former Participant Rollover Form Deadline set by the Court and whose Former Participant Rollover Form is accepted by the Settlement Administrator.

1.48 “Self-Directed Account Investment Options” means the investment options available to Plan participants through the self-directed option of the Plan.

1.49 “Settlement” or “Settlement Agreement” means the compromise and resolution embodied in this Settlement Agreement and its exhibits.

1.50 “Settlement Administrator” means Analytics, an independent contractor to be retained by Class Counsel and approved by the Court.

1.51 “Settlement Allocation Score” has the meaning ascribed to it in Section 5.1 herein.

1.52 “Settlement Amount” means the sum of three million, four hundred and seventy thousand U.S. dollars (USD \$3,470,000.00), contributed to the Escrow

Account, as described in Article IV herein. The payment of the Settlement Amount shall be the full and sole monetary payment to the Plaintiff, Class Members, and Class Counsel made on behalf of Defendants in connection with this Settlement Agreement.

1.53 “Settlement Fund” means the Settlement Amount and all interest and accretions thereto.

1.54 “Settlement Website” means the internet website established by the Settlement Administrator as described in Section 3.3 herein.

1.55 “Unknown Claims” means any and all of Plaintiff’s Released Claims which Plaintiff or any Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Parties, which if known by him, her or it might have affected his, her, or its decision(s) with respect to the release of the Released Parties, or might have affected his, her, or its decision(s) not to object to this Settlement Agreement. With respect to any and all of Plaintiff’s Released Claims, the Parties stipulate and agree that upon the Effective Date, the Parties and Class Members shall be deemed to have waived, and by operation of the entry of the Final Approval Order shall have expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties acknowledge, and Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Plaintiff’s Released Claims was separately bargained for and was a material and necessary element of the Settlement.

II. ARTICLE II

SETTLEMENT APPROVAL

2.1 Preliminary approval by Court. Plaintiff, through Class Counsel, shall apply to the Court for entry of the Preliminary Approval Order in substantially the form attached as Exhibit A hereto, which shall include, among other provisions, a request that the Court:

- (a) appoint Plaintiff as Class Representative of the Class;
- (b) appoint Class Counsel to represent the Class;
- (c) approve the Parties’ selection of Settlement Administrator and Escrow Agent;
- (d) conditionally certify the Class under Federal Rule of Civil Procedure 23(b)(1) for settlement purposes only and without prejudice to Defendants’

right to contest class certification if the Final Judgment and Order of Dismissal with Prejudice is not entered;

(e) preliminarily approve this Settlement for purposes of disseminating notice to the Class;

(f) approve the form and contents of the Notice (including the Former Participant Rollover Form to be sent to Former Participants) and hold that mailing copies of the Notice to Class Members by first class mail, postage prepaid, complies fully with the requirements of Federal Rule of Civil Procedure 23, the United States Constitution, and any other applicable law;

(g) preliminarily bar and enjoin the institution and prosecution of any Plaintiff's Released Claims against any Defendant and the Released Parties by Plaintiff and the Class;

(h) provide that Class Members may object to the Settlement prior to the Fairness Hearing according to a designated schedule; and

(i) schedule a Fairness Hearing to (1) review comments and/or objections regarding this Settlement, and/or Class Counsel's request for an award of attorneys' fees and expenses and Incentive Award to Plaintiff, (2) consider the fairness, reasonableness, and adequacy of this Settlement, (3) consider whether the Court should issue a Final Judgment and Order of Dismissal with Prejudice approving

this Settlement, awarding any Attorneys' Fees and expenses, and Incentive Award; and dismissing this Action with prejudice, and (4) consider such other matters as the Court may deem appropriate.

2.2 Review by Independent Fiduciary. The Company shall, in consultation with Plaintiff's counsel, select and retain the Independent Fiduciary, on behalf of the Plan, to determine whether to approve and authorize Plaintiff's Released Claims on behalf of the Plan.

(a) The Independent Fiduciary shall comply with all relevant requirements set forth in PTE 2003-39.

(b) The Independent Fiduciary shall notify the Company and Class Counsel 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.

(c) If the Independent Fiduciary disapproves or otherwise does not authorize the Settlement Agreement or refuses to execute the release on behalf of the Plan, the Parties may (but need not) terminate the Settlement Agreement.

(d) The Parties shall comply with reasonable requests for information made by the Independent Fiduciary.

(e) All fees and expenses associated with the Independent Fiduciary's retention and determination shall be considered part of the Notice and Administration Costs.

2.3 Final approval by Court. No later than 35 calendar days before the Fairness Hearing, or by such other deadline as specified by the Court, Class Counsel shall apply to the Court for entry of the Final Judgment and Order of Dismissal with Prejudice in substantially the form attached as Exhibit B hereto, which shall include, among other provisions, a request that the Court:

(a) dismiss the Action with prejudice and without costs, except as provided by this Settlement Agreement;

(b) decree that neither the Final Judgment and Order of Dismissal with Prejudice nor this Settlement Agreement constitutes an admission by any Defendant or Released Party of any liability or wrongdoing whatsoever;

(c) bar and enjoin all Class Members from asserting any of Plaintiff's Released Claims against any of the Released Parties;

(d) determine that this Settlement Agreement is entered into in good faith and represents a fair, reasonable, and adequate settlement that is in the best interests of the Class Members; and

(e) preserve the Court's continuing and exclusive jurisdiction over the Parties and all Class Members to administer, construe, and enforce this Settlement Agreement in accordance with its terms for the mutual benefit of the Parties, but without affecting the finality of the Final Approval Order.

III. ARTICLE III

SETTLEMENT ADMINISTRATION

3.1 CAFA Notice. No later than ten (10) calendar days after Plaintiff's filing of this Settlement Agreement and motion for entry of the Preliminary Approval Order with the Court, the Settlement Administrator shall provide appropriate notice of this Settlement Agreement to the Attorney General of the United States and to the Attorneys General of all states in which Class Members reside, as specified in 28 U.S.C. §1715(b). Upon completing such notice, the Settlement Administrator shall provide written notice to Class Counsel and Defendants' Counsel.

3.2 Notice to Class Members.

(a) All Notice and Administration Costs shall be paid from the Settlement Fund.

(b) The Company shall cause the Recordkeeper (or its designee) to provide to the Settlement Administrator all information necessary to disseminate the

Notice to Class Members and implement the Plan of Allocation no later than fourteen (14) calendar days after the entry of the Preliminary Approval Order.

(c) No later than thirty (30) calendar days after the entry of the Preliminary Approval Order, or by such other deadline as specified by the Court, the Settlement Administrator shall send the Notice by first-class mail, postage prepaid, to Class Members.

(d) The Notice shall be in the form approved by the Court, which shall be in substantially the form attached as Exhibit A-1 hereto. The Notice to Former Participants will include the Former Participant Rollover Form.

(e) The Notice shall be sent to the last known address of each Class Member provided by the Recordkeeper (or its designee), unless an updated address is obtained by the Settlement Administrator through its efforts to verify the last known address provided by the Recordkeeper (or its designee).

(f) The Settlement Administrator shall use commercially reasonable efforts to locate any Class Member whose Notice is returned and mail such Notices to those Class Members one additional time.

(g) The Settlement Administrator shall post a copy of the Notice and the Former Participant Rollover Form on the Settlement Website.

3.3 Settlement Website.

(a) No later than thirty (30) calendar days after the entry of the Preliminary Approval Order, the Settlement Administrator shall establish the Settlement Website. The Settlement Administrator shall maintain the Settlement Website until no later than one year after the Effective Date or thirty (30) calendar days after the receipt of the notice(s) referenced in Section 5.5, whichever is earlier, at which point the Settlement Administrator shall take down the Settlement Website.

(b) The Settlement Website shall contain a copy of the Notice, Former Participant Rollover Form, and relevant case documents, including but not limited to a copy of all documents filed with the Court in connection with the Settlement. No other information or documents will be posted on the Settlement Website unless agreed to in advance by the Parties in writing.

(c) The Settlement Website shall also include a toll-free telephone number and mailing address through which Class Members may contact the Settlement Administrator (or its designee) directly. The Settlement Administrator and Class Counsel, with approval from Defendants' Counsel, shall develop a question-and-answer script for use with callers to the toll-free telephone number.

3.4 Distribution of Net Settlement Amount. The Settlement Administrator shall distribute the Net Settlement Amount to Class Members in accordance with the

Plan of Allocation as described in Article V herein. Subject to at least thirty (30) calendar days' written notice from the Settlement Administrator, the Company shall use reasonable efforts to cause the Recordkeeper (or its designee) to provide an updated list of Active Participants and Inactive Participants prior to the distribution, so as to identify any such participants who have taken a full distribution from their Plan account and no longer have a Plan account with a balance greater than \$0.00.

3.5 Maintenance of records. The Settlement Administrator shall maintain reasonably detailed records of its activities carried out under this Settlement Agreement. The Settlement Administrator shall maintain all such records as required by applicable law in accordance with its business practices and provide same to Class Counsel and Defendants' Counsel upon their request. The Settlement Administrator shall provide such information as may reasonably be requested by Plaintiff or Defendants or their counsel relating to the administration of the Settlement Agreement.

3.6 No liability. Defendants, Defendants' Counsel, and Released Parties shall have no responsibility for, interest in, or liability whatsoever, with respect to:

(a) any act, omission, or determination of the Settlement Administrator;

(b) any act, omission, or determination of Class Counsel or their designees or agents in connection with the administration of the Settlement Agreement;

(c) the management, investment, or distribution of the Settlement Fund; or

(d) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund.

IV. ARTICLE IV

ESTABLISHMENT OF THE ESCROW ACCOUNT AND SETTLEMENT FUND

4.1 Establishment of the Escrow Account. No later than five (5) business days after entry of the Preliminary Approval Order, the Escrow Agent shall establish the Escrow Account. The Parties agree that the Escrow Account is intended to be, and will be, an interest-bearing “qualified settlement fund” within the meaning of U.S. Department of Treasury Regulation §1.468B-1 (26 C.F.R. §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, including the “relation-back election” (as defined in 26 C.F.R. §1.468B-1(j)(2)) 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.

4.2 Funding of the Escrow Account. In consideration of all the promises and agreements set forth in the Settlement Agreement, the Company will contribute, or cause to be contributed, the Settlement Amount to the Escrow Account no later than fourteen (14) calendar days after the later of: (i) the Preliminary Order is entered, or (ii) the Escrow Account 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. No other Defendant shall have any obligation to contribute financially to the Escrow Account. The Company shall contribute the Settlement Amount to the Escrow Account.

4.3 Settlement Fund administrator. For the purpose of §468B of the Internal Revenue Code of 1986, as amended (26 U.S.C. §468B) and the regulations promulgated thereunder, the administrator of the Settlement Fund 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 Settlement Amount (including without limitation applying for a taxpayer identification number for the Settlement Fund and filing the

returns described in 26 C.F.R. §1.468B-2(k)). Such returns, as well as the election described in Section 4.1, shall be consistent with this Article and, in all events, shall reflect that all taxes (including any estimated taxes, interest, or penalties) on the income earned by the Settlement Fund shall be deducted and paid from the Settlement Fund, as described in Section 4.5 herein.

4.4 Investment of the Settlement Amount. The Escrow Agent shall invest the Settlement Amount only in 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.

4.5 Taxes on the income of the Settlement Fund. All taxes on any income of the Settlement Fund and expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants) are part of the Notice and Administration Costs and shall be timely paid by the Escrow Agent out of the Settlement Fund. The Escrow Agent, or the Settlement Administrator on its behalf, shall be responsible for making provision for the payment from the Settlement Fund of all taxes and tax expenses, if any, owed with respect to the Settlement Fund and for all tax reporting, remittance, and/or withholding obligations, if any, for amounts distributed from it. Defendants,

Defendants' Counsel, and 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 Settlement Fund.

V. ARTICLE V

PLAN OF ALLOCATION

5.1 Calculation of payments to individual Class Members. Payments to each Class Member shall be calculated by the Settlement Administrator as follows, based on information provided by the Recordkeeper:

(a) A *Settlement Allocation Score* shall be a participant's aggregate quarter-ending account balance measured in points such that each dollar invested in Proprietary Funds equals four (4) points, and each dollar invested in Non-Proprietary Funds equals one (1) point.² A participant's *Average Settlement Allocation Score* shall be the average of the participant's *Settlement Allocation Scores* during the Class Period, weighted by the percentage of days in the quarter for partial quarters at the beginning of the Class Period.³

² Mathematically stated, each quarterly *Settlement Allocation Score* calculation is as follows: (Proprietary Funds quarter ending balance * 4) + (Non-Proprietary Funds quarter ending balance).

³ Mathematically stated, the *Average Settlement Allocation Score* shall be calculated as follows: (Q2 2012 Settlement Allocation Score * 36/91) + (Q3 2012 Settlement Allocation Score) + (Q4 2012 Settlement Allocation Score) + (Q1 2013

(b) The Settlement Administrator shall determine the total settlement payment available to each Class Member by calculating each such participant's pro rata share of the Net Settlement Fund based on his or her *Average Settlement Allocation Score* compared to the sum of the *Average Settlement Allocation Scores* for all Class Members.

(c) The aggregate of all Class Members' total settlement payments may not exceed the Net Settlement Amount. In the event that the Settlement Administrator determines that the aggregate monetary payment pursuant to the Plan of Allocation would exceed the Net Settlement Amount, the Settlement Administrator is authorized to make such pro rata changes as are necessary to ensure the aggregate

Settlement Allocation Score) + (Q2 2013 Settlement Allocation Score) + (Q3 2013 Settlement Allocation Score) + (Q4 2013 Settlement Allocation Score) + (Q1 2014 Settlement Allocation Score) + (Q2 2014 Settlement Allocation Score) + (Q3 2014 Settlement Allocation Score) + (Q4 2014 Settlement Allocation Score) + (Q1 2015 Settlement Allocation Score) + (Q2 2015 Settlement Allocation Score) + (Q3 2015 Settlement Allocation Score) + (Q4 2015 Settlement Allocation Score) + (Q1 2016 Settlement Allocation Score) + (Q2 2016 Settlement Allocation Score) + (Q3 2016 Settlement Allocation Score) + (Q4 2016 Settlement Allocation Score) + (Q1 2017 Settlement Allocation Score) + (Q2 2017 Settlement Allocation Score) + (Q3 2017 Settlement Allocation Score) + (Q4 2017 Settlement Allocation Score) + (Q1 2018 Settlement Allocation Score) + (Q2 2018 Settlement Allocation Score) + (Q3 2018 Settlement Allocation Score) + (Q4 2018 Settlement Allocation Score) + (Q1 2019 Settlement Allocation Score) + (Q2 2019 Settlement Allocation Score) + (Q3 2019 Settlement Allocation Score) + (Q4 2019 Settlement Allocation Score) **divided by** 30.40 quarters during the Class Period.

monetary payment pursuant to the Plan of Allocation does not exceed the Net Settlement Amount.

5.2 Payments to Active Participants and Inactive Participants.

(a) Upon completing the calculation of each Class Member's Entitlement Amount and no later than thirty (30) calendar days following the Effective Date, the Settlement Administrator shall provide the Company (or its designee), Class Counsel, and the Recordkeeper information in a mutually agreeable format concerning each Active Participant and each Inactive Participant's Entitlement Amount, and any other information requested by the Company or the Recordkeeper as necessary to effectuate this Article.

(b) No later than ten (10) calendar days after completing the steps described in Section 5.2(a) herein and upon written notice to the Company and the Recordkeeper, the Settlement Administrator shall effect a transfer from the Settlement Fund to the Plan of all monetary payments payable to Active Participants and Inactive Participants. The Recordkeeper shall thereafter credit the individual Plan account of each Active Participant and Inactive Participant in an amount equal to that individual's Entitlement Amount.

(c) Each Active Participant and each Inactive Participant's Entitlement Amount shall be invested in accordance with and in proportion to such Active

Participant's investment elections then on file for new contributions to his or her Plan account. If the Active Participant or Inactive Participant does not have an investment election on file, then such individual shall be deemed to have directed payment of his or her Entitlement Amount to be invested in the Plan's qualified default investment alternative, as defined in 29 C.F.R. § 2550.404c-5.

(d) If, as of the date on which the Recordkeeper credits the individual Plan account of each Active Participant and Inactive Participant with his or her Entitlement Amount, an individual believed to be an Active Participant or an Inactive Participant no longer has a Plan account balance greater than \$0.00, he or she will be treated as a Former Participant. The Recordkeeper shall promptly transmit a list of such individuals to the Settlement Administrator, who shall effectuate payment to such individuals in accordance with Section 5.3 herein.

5.3 Payments to Former Participants. Each Former Participant (or the Beneficiaries or Alternate Payees of Former Participants) will have the opportunity to elect a tax-qualified rollover of his or her Entitlement Amount to an individual retirement account or other eligible employment plan, which he or she has identified on the Former Participant Rollover Form, provided that the Former Participant supplies adequate information to the Settlement Administrator to effect the rollover.

Payments to each Former Participant shall depend on whether each is a Rollover-Electing Former Participant or a Non-Rollover-Electing Former Participant:

(a) Rollover-Electing Former Participants. Upon completing the calculation of each Class Member's Entitlement Amount and no later than forty (40) calendar days following the Effective Date, the Settlement Administrator shall effect a rollover from the Settlement Fund to the individual retirement account or other eligible employer plan elected by each Rollover-Electing Former Participant in his or her Former Participant Rollover Form (if the conditions for such rollover are satisfied) and any associated paperwork necessary to transfer such Entitlement Amount by rollover. If the Settlement Administrator is unable to effectuate the rollover instructions of any Rollover-Electing Former Participant as provided in his or her Former Participant Rollover Form, he or she will be treated as a Non-Rollover-Electing Former Participant.

(b) Non-Rollover-Electing Former Participants. Upon completing the calculation of each Class Member's Entitlement Amount and no later than forty (40) calendar days following the Effective Date, the Settlement Administrator shall issue a check from the Settlement Fund to each Non-Rollover-Electing Former Participant, in the amount of each Former Participant's Entitlement Amount (less any withholdings).

5.4 Payments to Beneficiaries and Alternate Payees.

(a) Beneficiaries of Active Participants or Inactive Participants that are entitled to receive all or a portion of an Active Participant's or Inactive Participant's Entitlement Amounts under this Article shall receive such settlement payments in the form of a check issued by the Settlement Administrator. Beneficiaries of Former Participants that are entitled to receive all or a portion of a Former Participant's Entitlement Amounts under this Article will receive such settlement payments under the methods described in Section 5.3 for Former Participants.

(b) Alternate Payees of Active Participants or Inactive Participants that are entitled to receive all or a portion of an Active Participant's or Inactive Participant's Entitlement Amounts under this Article shall receive such settlement payments pursuant to the terms of the applicable Qualified Domestic Relations Order. Alternate Payees of Former Participants that are entitled to receive all or a portion of a Former Participant's Entitlement Amounts under this Article will receive such settlement payments under the methods described in Section 5.3 for Former Participants.

(c) 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 and as ordered by the Court.

(d) All checks issued in accordance with the Plan of Allocation shall be mailed to the address of each Class Member (or his or her Beneficiary or Alternate Payee) provided by the Recordkeeper or any updated address obtained by the Settlement Administrator.

5.5 Notice of completion of Plan of Allocation. Within ten (10) business days of completing all aspects of the Plan of Allocation, the Settlement Administrator shall provide written notice of its implementation to Class Counsel and Defendants' Counsel. Such notice shall provide, in reasonable detail, a summary of the steps taken to implement the Plan of Allocation.

5.6 Disbursement of undistributed monies from the Settlement Fund. If for any reason, there is a portion of the Settlement Fund remaining after distributions have been made, including Notice and Administration Costs, taxes and tax expenses, attorneys' fees and litigation expenses and any Incentive Award to the Plaintiff, shall be paid to the Plan for the purpose of defraying administrative fees and expenses of the Plan.

5.7 Responsibility for taxes. Each Class Member who receives a payment pursuant to the 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. Defendants, Defendants' Counsel, Released Parties, Class Counsel, and the Settlement Administrator shall have no responsibility for or liability from: (a) any tax liability, including without limitation penalties and interest, related in any way to payments or credits under the Settlement Agreement, and (b) the costs (including, without limitation, fees, costs and expenses of attorneys, tax advisors, and experts) of any proceedings (including, without limitation, any investigation, response, and/or suit), related to such tax liability.

VI. ARTICLE VI

CHANGES TO THE PLAN

6.1 Modifications to Self-Directed Account Investment Options. Defendants agree to modify the investment options offered through the Plan's self-directed investment account so that participants will be permitted to invest in non-proprietary Exchange Traded Funds ("ETFs"), in addition to the proprietary ETFs offered to Participants during the Class Period.

VII. ARTICLE VII

ATTORNEYS' FEES AND EXPENSES AND PLAINTIFF'S INCENTIVE AWARD

7.1 Attorneys' Fees and Expenses. Class Counsel may submit an application for an award from the Settlement Fund for their reasonable Attorneys' Fees and

Expenses, and any interest on such attorneys' fees and expenses at the same rate and for the same periods as earned on the Settlement Fund. The fee and expense award shall be paid to Class Counsel from the Settlement Fund immediately upon the Court's execution of an order awarding such fees and expenses, notwithstanding the existence of any appeal therefrom. The Court's failure to approve in part any application for Attorneys' Fees and Expenses sought by Class Counsel shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination of the Settlement.

7.2 Incentive Award. Class Counsel may file an application with the Court for payment of an Incentive Award to Plaintiff in an amount not to exceed five thousand U.S. dollars (USD \$5,000.00). An Incentive Award shall be paid from the Settlement Fund. The Court's failure to approve in part any application for an Incentive Award sought by Class Counsel shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination of the Settlement.

VIII. ARTICLE VIII

RELEASES

8.1 Releases. Subject to Article X herein, the obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition and settlement of any and all of Plaintiff's Released Claims.

(a) Upon the Effective Date, Plaintiff and every Class Member on behalf of themselves, their heirs, executors, administrators, successors, and assigns, and the Plan (subject to Independent Fiduciary approval as described in Section 2.2 herein) shall, with respect to each and every Plaintiff's Released Claims, be deemed to fully, finally and forever release, relinquish and forever discharge each and every Plaintiff's Released Claims (including Unknown Claims) against any and all of Defendants and the Released Parties, and forever shall be enjoined from prosecuting any such Plaintiff's Released Claims.

(b) Upon the Effective Date, Defendants and the Released Parties, on behalf of themselves and their successors and assigns shall be deemed to fully, finally and forever release, relinquish and forever discharge each and every Defendants' Released Claims (including Unknown Claims), as to Plaintiff, the Class and their attorneys (including Class Counsel), and forever shall be enjoined from prosecuting any such claims.

(c) Nothing herein shall preclude any action to enforce the Settlement Agreement.

8.2 Upon the Effective Date, Plaintiff and the Class acting individually or together, or in combination with others, are forever barred and enjoined from commencing, instituting, or continuing to prosecute any action or proceeding in any

court of law or equity, arbitration tribunal, administrative forum or other forum of any kind asserting any of the Plaintiff's Released Claims against Defendant and any of the Released Parties.

IX. ARTICLE IX

REPRESENTATIONS AND WARRANTIES

9.1 Parties' representations and warranties. The parties represent and warrant as follows, and each Party acknowledges that each other Party is relying on these representations and warranties in entering into the Settlement Agreement:

(a) that they are voluntarily entering into the 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 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;

(b) that they assume the risk of mistake as to facts or law;

(c) that they recognize that additional evidence may come to light, but that they nevertheless desire to avoid the expense and uncertainty of litigation by entering into the Settlement Agreement;

(d) that they have carefully read the contents of the Settlement Agreement, and the Settlement Agreement is signed freely by each individual executing the Settlement Agreement on behalf of each Party;

(e) that they have made such investigation of the facts pertaining to the subject matter of the Settlement Agreement as they deem necessary; and

(f) that at all relevant times the Parties and their respective counsel have complied with Rule 11 of the Federal Rules of Civil Procedure.

9.2 Signatories' representations and warranties. The persons executing the Settlement Agreement represent that they have been duly authorized to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Settlement Agreement in order to effectuate its terms.

X. ARTICLE X

TERMINATION

10.1 Each Party shall have the right to terminate and abandon the Settlement Agreement by providing written notice of their election to do so to the other Party no later than fourteen (14) calendar days after:

(a) the Court declines to approve the Settlement Agreement or any material part of it;

(b) the Court declines to enter the Preliminary Approval Order or materially modifies the contents of the Preliminary Approval Order;

(c) the Court declines to enter the Final Approval Order or materially modifies the contents of the Final Approval Order; or

(d) the Final Approval Order is vacated, reversed, or modified in any material respect on any appeal or other review or in a collateral proceeding occurring prior to the Effective Date.

Notwithstanding anything herein, no order of the Court, or modification or reversal on appeal of any order of the Court, solely concerning Attorneys' Fees and Expenses or any Incentive Award to Plaintiff shall constitute grounds for termination of the Settlement Agreement.

10.2 Right to terminate by Defendants. Defendants (and only Defendants) shall have the right to terminate and abandon the Settlement Agreement in the event that the Independent Fiduciary disapproves or otherwise does not authorize the Settlement Agreement or refuses to approve the Plan's release of Plaintiff's Released Claims. In such an event, no later than fourteen (14) calendar days after receipt of the Independent Fiduciary's determination, Defendants shall provide written notice to Plaintiff of (a) their election to exercise their right to terminate and abandon the Settlement Agreement, or (b) their election to waive that right.

10.3 Reversion to prior positions. If the Settlement Agreement is terminated in accordance with this Article, then the Parties and Class Members will be restored to their respective positions immediately before the execution of the Settlement Agreement, this Action shall proceed in all respects as if the Settlement Agreement and any related orders had not been entered, any order entered by the Court pursuant to the terms of this Settlement Agreement shall be treated as vacated *nunc pro tunc*, the fact of this Settlement Agreement and the terms contained herein shall not be admissible in any proceeding for any purpose, and the Parties expressly and affirmatively reserve all claims, remedies, defenses, arguments, and motions as to all claims and requests for relief that might have been or might be later asserted in the Action. Further, Defendants' right to oppose a later-filed motion for class certification, if any, will be unimpaired by this Settlement Agreement and related proceedings.

XI. ARTICLE XI

NO ADMISSION OF WRONGDOING

11.1 The Settlement Agreement, whether or not consummated, and any proceedings taken pursuant to it, is for settlement purposes only and entered into solely for the purpose of avoiding possible future expenses, burdens, or distractions of litigation, and Defendants and the Released Parties deny any and all wrongdoing.

Defendants and the Released Parties specifically and expressly deny any and all liability in connection with any claims which have been made or could have been made, or which are the subject matter of, arise from, or are connected, directly or indirectly, with or related in any way to the Action, including, but not limited to, any violation of any federal or state law (whether statutory or common law), rule, or regulation, and Defendants and the Released Parties deny that any violation of any such law, rule, or regulation has ever occurred.

11.2 The Settlement Agreement, whether or not consummated, and any negotiations, proceedings, or agreements relating to the Settlement Agreement, and any matters arising in connection with settlement negotiations, proceedings, or agreements:

(a) shall not be offered or received against Defendants or any of the Released Parties as evidence of, or be construed as or deemed to be evidence of, any presumption, concession, or admission by Defendants or a Released Party of the truth of any fact alleged by Plaintiff or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing on the part of Defendants or any of the Released Parties, or the appropriateness of certifying a non-settlement class;

(b) shall not be offered or received against Defendants or any of the Released Parties as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by Defendants or any of the Released Parties;

(c) shall not be offered or received against Defendants or any of the Released Parties as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against Defendants or any of the Released Parties, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement; provided, however, that if this Settlement Agreement is approved by the Court, Defendants or the Released Parties may refer to it to effectuate the liability protection granted them hereunder; and

(d) shall not be construed against Defendants or any of the Released Parties as an admission or concession that the consideration to be given hereunder represents the amount which could or would have been recovered after trial of the Action.

11.3 In the event that the Settlement Agreement does not become final for any reason, Defendants reserve their rights to oppose certification of any Plaintiff's claim

in future proceedings. In such circumstances, this Settlement Agreement shall not be described as, construed as, offered, or received against any Released Party as *res judicata*, issue preclusion, law of the case, estoppel, or any other legal or equitable theory as to the propriety of certification of any class under Federal Rule of Civil Procedure 23.

XII. ARTICLE XII

MISCELLANEOUS

12.1 Exhibits included. The exhibits to the Settlement Agreement are integral parts of the Parties' agreement and are incorporated by reference as if set forth herein.

12.2 Cooperation. Class Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Court entry of the Preliminary Approval Order and Final Approval Order.

12.3 Entire agreement. This Settlement Agreement and all of the exhibits appended hereto constitute the entire agreement of the Parties with respect to their subject matter and supersede any prior agreement, whether written or oral, as to that subject matter. No representations or inducements have been made by any Party hereto concerning the Settlement Agreement or its exhibits other than those contained and memorialized in such documents. The provisions of the Settlement Agreement

and its exhibits may not be modified or amended, nor may any of their provisions be waived, except by a writing signed by all Parties hereto or their successors-in-interest.

12.4 Waiver. The waiver by any Party of a breach of the Settlement Agreement by any other Party shall not be deemed a waiver of any other breach of the Settlement Agreement.

12.5 Construction of agreement. This Settlement Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that the Stipulation is the result of arm's-length negotiations between the Parties and all Parties have contributed substantially and materially to its preparation.

12.6 Headings. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

12.7 Governing law. The Settlement Agreement and all documents necessary to effectuate it shall be governed by the internal laws of the State of Georgia without regard to its conflict of law doctrines, except to the extent that federal law requires that federal law govern, and except that all computations of time with respect to the Settlement Agreement shall be governed by Federal Rule of Civil Procedure 6.

12.8 Fees and expenses. Except as otherwise expressly set forth herein, each Party shall pay all fees, costs, and expenses incurred in connection with the Action,

including fees, costs, and expenses incident to the negotiation, preparation, or compliance with the Settlement Agreement, and including any fees, expenses, and disbursements of its counsel and other advisors. Nothing in the Settlement Agreement shall require Defendants to pay any monies other than as expressly provided herein.

12.9 Execution in counterparts. The Settlement Agreement may be executed in one or more counterparts and may be executed by facsimile signature. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties shall exchange among themselves signed counterparts.

12.10 Notices. Unless otherwise provided herein, any notice, demand, or other communication under the Settlement Agreement (other than Notices to Class Members or other notices provided 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 delivered by hand, sent by registered or certified mail, postage prepaid, or delivered by reputable express overnight courier as follows:

(a) if to Plaintiff:

Evan J. Kaufman
Robbins Geller Rudman & Dowd LLP
58 South Service Road, Suite 200
Melville, New York 11747

(b) if to Defendants:

James R. Carroll
Michael S. Hines
Skadden, Arps, Slate, Meagher & Flom LLP
500 Boylston Street
Boston, Massachusetts 02116

12.11 Retention of jurisdiction. The Parties shall request that the Court retain jurisdiction of this matter after the Effective Date and enter such orders as are necessary or appropriate to effectuate the terms of the Settlement Agreement.

IN WITNESS WHEREOF, the Parties have caused the Settlement Agreement to be executed, by their duly authorized attorneys.

DATED: March 6th, 2020

HERMAN JONES LLP



JOHN C. HERMAN

(Georgia Bar No. 348370)

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DATED: March 5, 2020

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Counsel for Defendants

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DIEGO CERVANTES, Individually and)	Civil Action No. 1:18-cv-02551-AT
on Behalf of the Invesco 401(k) Plan)	
and All Others Similarly Situated,)	<u>CLASS ACTION</u>
Plaintiff,)	
vs.)	[PROPOSED] ORDER
INVESCO HOLDING COMPANY)	PRELIMINARILY APPROVING
(US), INC., et al.,)	SETTLEMENT AND PROVIDING
Defendants.)	FOR NOTICE
_____)	EXHIBIT A

WHEREAS, an action is pending before this Court entitled *Diego Cervantes v. Invesco Holding Company (US), Inc., et al.*, Civil Action No. 1:18-cv-02551-AT (the “Action”);

WHEREAS, Plaintiff having made application, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the Settlement of this Action, in accordance with a Settlement Agreement dated as of March 6, 2020, which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed Settlement of the Action and for dismissal of the Action with prejudice upon the terms and conditions set forth therein; and the Court having read and considered the Settlement Agreement and the exhibits annexed thereto; and

WHEREAS, unless otherwise defined, all terms used herein have the same meanings as set forth in the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court has reviewed the Settlement Agreement and does hereby preliminarily approve the Settlement set forth therein as fair, reasonable, and adequate, subject to further consideration at the Settlement Hearing described below.

2. Pursuant to Rules 23(a) and (b)(1) of the Federal Rules of Civil Procedure, and for purposes of this Settlement only, the Action is hereby preliminarily certified as a class action on behalf of all participants in the Invesco 401(k) Plan from

May 25, 2012 to the date of the Final Judgment and Order of Dismissal with Prejudice. Excluded from the Class are Defendants and members of the Invesco Benefits Plan Committee.

3. The Court finds, for the purposes of the Settlement only, that the prerequisites for a class action under Rules 23(a) and (b)(1) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the Plaintiff are typical of the claims of the Class it seeks to represent; (d) Plaintiff and Class Counsel have and will fairly and adequately represent the interests of the Class; (e) prosecuting separate actions by individual Class Members would create a risk of: (i) inconsistent or varying adjudications with respect to individual Class Members that would establish incompatible standards of conduct for Defendants, and (ii) adjudication with respect to individual Class Members that, as a practical matter, would be dispositive of the other members of the Class or would substantially impair or impede their ability to protect their interests.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, Plaintiff is preliminarily certified as the Class

Representative and Robbins Geller Rudman & Dowd LLP is preliminarily certified as Class Counsel.

5. The Court preliminarily finds that the proposed Settlement should be approved as: (i) the result of serious, extensive arm's-length and non-collusive negotiations; (ii) falling within a range of reasonableness warranting final approval; (iii) having no obvious deficiencies; and (iv) warranting notice of the proposed Settlement to Class Members and further consideration of the Settlement at the fairness hearing described below.

6. A hearing (the "Settlement Hearing") shall be held before this Court on _____, 2020, at _____ [a date that is at least 100 calendar days from the date of this Order], at the United States District Court for the Northern District of Georgia, 2388 Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive, SW, Atlanta GA 30303-3309, to determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate to the Class and should be approved by the Court; whether the proposed Final Judgment and Order of Dismissal with Prejudice as provided under the Settlement Agreement should be entered; whether the proposed Plan of Allocation is fair, reasonable, and adequate and should be approved; to determine whether the Class should be finally certified for purposes of the

Settlement only; to determine whether Plaintiff and Class Counsel should be finally appointed as Class Representative and Class Counsel, respectively, for purposes of the Settlement only; to determine the amount of fees and expenses that should be awarded to Class Counsel; to determine whether an Incentive Award should be awarded to Plaintiff; and to address such other matters relating to this Settlement as may properly be before the Court. The Court may adjourn the Settlement Hearing without further notice to the members of the Class.

7. The Court approves, as to form and content, the Notice and Former Participant Rollover Form annexed hereto as Exhibits A-1 and A-2, respectively, and finds that the mailing and distribution of the Notice substantially in the manner and form set forth in ¶9 of this Order: (a) constitute the best notice to Class Members practicable under the circumstances; (b) are reasonably calculated, under the circumstances, to describe the terms and effect of the Settlement Agreement and of the Settlement and to apprise Class Members of their right to object to the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive such notice; and (d) satisfy all applicable requirements of the Federal Rules of Civil Procedure (including Rules 23(c)-(e)), the United States Constitution (including the Due Process Clause), the Rules of this Court, and other applicable law.

8. The firm of Analytics (“Claims Administrator”) is hereby appointed to supervise and administer the notice procedure as well as implement the Plan of Allocation and to distribute the Net Settlement Amount to Class Members as more fully set forth below.

9. Not later than _____, 2020 [ten (10) business days after the Court signs and enters this Order] (the “Notice Date”), the Claims Administrator shall commence mailing the Notice (and for Former Participants will include the Former Participant Rollover Form), substantially in the forms annexed hereto, by First-Class Mail to all Class Members who can be identified with reasonable effort, and to be posted on its website at www.InvescoERISASettlement.com.

10. At least seven (7) calendar days prior to the Settlement Hearing, Class Counsel shall serve on Defendants’ Counsel and file with the Court proof, by affidavit or declaration, of such mailing.

11. Any member of the Class may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. If they do not enter an appearance, they will be represented by Class Counsel.

12. Any member of the Class may appear and show cause why the proposed Settlement of the Action should or should not be approved as fair, reasonable, and adequate, why a judgment should or should not be entered thereon, why the Plan of

Allocation should or should not be approved, why attorneys' fees and expenses should or should not be awarded to counsel for Plaintiff, or why an Incentive Award to Plaintiff should or should not be awarded; provided, however, that no Class Member or any other person shall be heard or entitled to contest such matters, unless that person has delivered by hand or sent by First-Class Mail written objections and copies of any papers and briefs such that they are received, not simply postmarked, on or before _____, 2020 [a date twenty-one (21) calendar days before the Settlement Hearing], by Robbins Geller Rudman & Dowd LLP, Evan J. Kaufman, 58 South Service Road, Suite 200, Melville, NY 11747; and Skadden, Arps, Slate, Meagher & Flom LLP, James R. Carroll, 500 Boylston Street, Boston, MA 02116, and filed said objections, papers, and briefs with the Clerk of the United States District Court for the Northern District of Georgia, 2388 Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303-3309, on or before _____, 2020 [a date twenty-one (21) calendar days before the Settlement Hearing]. Any objections must: (i) state the name, address, and telephone number of the objector and must be signed by the objector; (ii) state that the objector is objecting to the proposed Settlement, Plan of Allocation, or application for attorneys' fees or expenses in this Action; (iii) state the objection(s) and the specific reasons for each objection, including any legal and evidentiary support the objector wishes to bring to the Court's

attention; and (iv) include documents sufficient to prove the objector's membership in the Class. The Court will consider a Class Member's objection only if the Class Member has complied with the above requirements. Any member of the Class who does not make his, her or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement as set forth in the Settlement Agreement, to the Plan of Allocation, or to the award of attorneys' fees and expenses to counsel for Plaintiff or expenses of Plaintiff, unless otherwise ordered by the Court. Class Members submitting written objections are not required to attend the Settlement Hearing, but any Class Member wishing to be heard orally in opposition to the approval of the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and expenses must file a written objection and indicate in the written objection their intention to appear at the hearing.

13. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Settlement Agreement and/or further order(s) of the Court.

14. All opening briefs and supporting documents in support of the Settlement, the Plan of Allocation, and any application by counsel for Plaintiff for

attorneys' fees and expenses and Incentive Award for Plaintiff shall be filed and served by _____, 2020 [a date thirty-five (35) calendar days before the Settlement Hearing]. Replies to any objections shall be filed and served by _____, 2020 [a date seven (7) calendar days before the Settlement Hearing].

15. None of the Released Parties nor the Defendants' counsel shall have any responsibility for the Plan of Allocation or any application for attorneys' fees or expenses submitted by Class Counsel or Plaintiff, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement.

16. At or after the Settlement Hearing, the Court shall determine whether the Plan of Allocation proposed by Class Counsel, and any application for attorneys' fees or payment of expenses, shall be approved.

17. All reasonable expenses incurred in identifying and notifying Class Members, as well as administering the Settlement Fund, shall be paid as set forth in the Settlement Agreement. In the event the Settlement is not approved by the Court, or otherwise fails to become effective, neither Plaintiff nor any of his counsel shall have any obligation to repay any amounts incurred and properly disbursed pursuant to ¶¶3.2(a) or 4.5 of the Settlement Agreement.

18. Neither this Order, the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be

construed as an admission or concession by the Defendants of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind.

19. The Court reserves the right to adjourn the date of the Settlement Hearing without further notice to the members of the Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

20. If the Settlement Agreement and the Settlement set forth therein is not approved or consummated for any reason whatsoever, the Settlement Agreement and Settlement and all proceedings had in connection therewith shall be without prejudice to the rights of the Parties *status quo ante* as set forth in ¶10.3 of the Settlement Agreement.

21. Until otherwise ordered by the Court, the Court shall continue to stay all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement. Pending final determination of whether the proposed Settlement should be approved, neither the Plaintiff nor any Class Member, directly or indirectly, representatively, or in any other capacity, shall commence or prosecute against any of the Defendants, any action or proceeding in any court or tribunal asserting any of the Plaintiff's Released Claims.

22. Except to the extent the Parties may agree to resolve through mediation or arbitration any disputes that may arise prior to the entry of judgment, the Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement.

IT IS SO ORDERED.

DATED: _____

THE HONORABLE AMY TOTENBERG
UNITED STATES DISTRICT JUDGE

EXHIBIT A-1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DIEGO CERVANTES, Individually and	)	Civil Action No. 1:18-cv-02551-AT
on Behalf of the Invesco 401(k) Plan	)	
and All Others Similarly Situated,	)	<u>CLASS ACTION</u>
	)	
Plaintiff,	)	NOTICE OF PENDENCY AND
	)	PROPOSED SETTLEMENT OF
vs.	)	CLASS ACTION
	)	
INVESCO HOLDING COMPANY	)	EXHIBIT A-1
(US), INC., et al.,	)	
	)	
Defendants.	)	
	)	

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
OF GEORGIA**

If you are currently a participant in the Invesco 401(k) Plan (the “Plan”) or were a participant in the Plan at any time from May 25, 2012 to the present, you are a part of a class action settlement.¹

**IMPORTANT
PLEASE READ THIS NOTICE CAREFULLY
THIS NOTICE RELATES TO THE PENDENCY OF A CLASS ACTION
LAWSUIT AND, IF YOU ARE A SETTLEMENT CLASS MEMBER,
CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS TO
OBJECT TO THE SETTLEMENT**

***A Federal Court authorized this notice. You are not being sued.
This is not a solicitation from a lawyer.***

- A Settlement has been reached in a class action lawsuit against Invesco Holding Company (US), Inc., Invesco LTD., Invesco National Trust Company, Invesco Advisers, Inc., Invesco Benefits Plan Committee, Suzanne Christensen, John Coleman, Washington Dender, Peter Gallagher, David Genova, Douglas Sharp, Ben Utt, Gary Wendler, Kevin M. Carome, Loren M. Starr, and John Does 1-20 (collectively, “Invesco”). The class action lawsuit involves whether Invesco complied with its fiduciary duties under the Employee Retirement Income Security Act of 1974 (“ERISA”) in managing the Plan.
- You are included as a Class Member if you are currently a Plan participant, or if you were a Plan participant at any time from May 25, 2012 to the present (the “Class Period”).
- Invesco has agreed to pay \$3,470,000.00 into a settlement fund. Class Members are eligible to receive a pro rata share of the Net Settlement Fund, which is the amount in the settlement fund remaining after payment of

¹ All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings provided in the Settlement Agreement dated March 6, 2020 (the “Settlement Agreement”).

administrative expenses, taxes, tax expenses, any attorneys' fees and expenses that the Court awards to Plaintiff's lawyers, and any incentive award to Plaintiff. The amount of each Class Member's payment is based on his or her Plan account balance. Payments to current Plan participants will be deposited into their respective Plan accounts. Payments to former Plan participants will be made directly to former Plan participants by check, or former Plan participants can instead elect to receive their payment through a rollover to a qualified retirement account.

- Please read this notice carefully. Your legal rights are affected whether you act, or don't act.

THIS TABLE CONTAINS A SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
OBJECT BY [DATE]	You may write to the Court if you don't like the Settlement to explain why you object.
ATTEND A HEARING	You may ask to speak in Court about the fairness of the Settlement.
DO NOTHING	You will get a share of the Settlement benefits to which you are entitled and will give up your rights to sue Invesco about the allegations in this case.

BASIC INFORMATION

1. What is this notice and why should I read it?

A court authorized this notice to let you know about a proposed settlement of a class action lawsuit called *Diego Cervantes v. Invesco Holding Company (US), Inc., et al.*, Civil Action No. 1:18-cv-02551-AT (the "Action"), brought on behalf of the Class Members, and pending in the United States District Court for the Northern District of Georgia. You need not live in Georgia to get a benefit under the Settlement. This notice describes the Settlement. Please read this notice carefully to determine whether you wish to participate in the Settlement. Your rights and options – **and the deadlines to exercise them** – are explained in this notice. Please understand that if you are a Class Member, your legal rights are affected regardless of whether you act.

2. What is a class action lawsuit?

A class action is a lawsuit in which one or more plaintiffs sue on behalf of a group of people who allegedly have similar claims (“Plaintiff”). After the Parties reached an agreement to settle this case, the Court granted preliminary approval of the Settlement and preliminarily determined that the case should be treated as a class action for settlement purposes. Among other things, this preliminary approval permits Class Members to voice their support for or opposition to the Settlement before the Court makes a final determination as whether to approve the Settlement. In a class action, the court resolves the issues for all class members.

THE CLAIMS IN THE LAWSUIT AND THE SETTLEMENT

3. What is this lawsuit about?

Plaintiff filed a class action complaint against Defendants Invesco Holding Company (US), Inc., Invesco LTD., Invesco National Trust Company, Invesco Advisers, Inc., Invesco Benefits Plan Committee, Suzanne Christensen, John Coleman, Washington Dender, Peter Gallagher, David Genova, Douglas Sharp, Ben Utt, Gary Wendler, Kevin M. Carome, Loren M. Starr, and John Does 1-20 on behalf of a class of Plan participants alleging that Invesco breached its fiduciary duties and committed prohibited transactions under ERISA by including investment options in the Plan that are affiliated with Invesco (“Affiliated Funds”). A more complete description of what Plaintiff alleges is in the Amended Complaint for Liability Under ERISA, which is available on the Settlement Website at www.InvescoERISASettlement.com.

Invesco denies Plaintiff’s claims of wrongdoing or liability against it, and asserts that its conduct was lawful. Invesco is settling the Action solely to avoid the expense, inconvenience, and inherent risk and disruption of litigation.

4. Why is there a Settlement?

The Court has not decided in favor of either side in the case. Instead, both sides agreed to a settlement. That way, both sides avoided the cost and risk of a trial, and the affected current and former Plan participants will get substantial benefits that they would not have received if Plaintiff had litigated the case and lost. The Plaintiff and his attorneys think the Settlement is in the best interests for everyone who participated in the Plan during the Class Period.

WHO'S INCLUDED IN THE SETTLEMENT?

5. How do I know if I am in the Class?

The Court decided that everyone who fits this description is a member of the **Class**:

All current and former participants in the Plan who carried a positive account balance from May 25, 2012 to the date on which the Settlement is finally approved by the Court.

The Court has excluded from the Class Invesco Holding Company (US), Inc., Invesco LTD, Invesco National Trust Company, Invesco Advisers, Inc., the Invesco Benefits Plan Committee, Suzanne Christensen, John Coleman, Washington Dender, Peter Gallagher, David Genova, Douglas Sharp, Ben Utt, Gary Wendler, Kevin M. Carome, and Loren M. Starr during the Class Period.

If you meet the definition above, you are a member of the Class.

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

Invesco has agreed to pay \$3,470,000.00 to Class Members. That amount, less amounts for expenses associated with administering the Settlement, taxes, tax expenses, as well as attorneys' fees, litigation expenses, and an incentive award to Plaintiff (the latter three categories of which must be approved by the Court), is the "Net Settlement Fund." Class Members will receive their pro rata share of the Net Settlement Fund. (See Question No. 8.) The amount of each Class Member's payment is based on the size of his or her Plan account balance, including the proportion of his or her Plan account balance that is invested in Affiliated Funds.

Calculation of payments to individual Class Members. Payments to each Class Member shall be calculated by the Settlement Administrator as follows, based on information provided by the Recordkeeper:

(a) A *Settlement Allocation Score* shall be a participant's aggregate quarter-ending account balance invested measured in points such that each dollar invested in

Proprietary Funds² equals four (4) points, and each dollar invested in Non-Proprietary Funds³ equals one (1) point.⁴ A participant's *Average Settlement Allocation Score* shall be the average of the participant's *Settlement Allocation Scores* during the Class

² "Proprietary Funds" means the following funds, regardless of share class: Invesco American Franchise (formerly Invesco Van Kampen American Franchise), Invesco American Franchise Trust, Invesco Balanced-Risk Allocation Trust, Invesco Core Plus Fixed Income Trust (formerly Invesco Core Fixed Income Trust), Invesco Developing Markets, Invesco Diversified Dividend, Invesco Diversified Dividend Trust, Invesco Dynamics, Invesco Emerging Market Equity Trust, Invesco Equity Real Estate Securities Trust, Invesco Floating Rate, Invesco Growth and Income (formerly Invesco Van Kampen Growth and Income), Invesco Growth and Income Trust, Invesco High Yield, Invesco International Equity Trust, Invesco International Growth Equity Trust, Invesco International Growth Trust, Invesco Mid Cap Growth, Invesco Mid Cap Growth Trust, Invesco Retire Trust 500 Index (formerly Invesco S&P 500 Index Trust), Invesco Small Cap Growth, Invesco Stable Value Trust, Invesco Stock Fund, Invesco US Quantitative Small Value Trust, and Invesco US REITs Trust.

³ "Non-Proprietary Funds" means the following funds, regardless of share class: Artisan Mid Cap Value, DFA Inflation-Protected Securities, LASSO Long&Short Strategic Opportunities, PIMCO Real Return, SSgA Global Equity ex U.S. Index NL SF, SSgA REIT Index NL SF, SSgA Russell Large Cap Growth Index NL SF (formerly SSgA Russell 1000 Growth Index), SSgA Russell Large Cap Value Index NL SF (formerly SSgA 1000 Value Index), SSgA S&P Midcap R Index NL SF (formerly SSgA Mid Cap Index), SSgA US Bond Index NL SF (formerly SSgA Passive Bond Market Index Index), SSgA US Inflation Protected Bond Index NL (formerly SSgA Treasury Inflation Protected Securities Index), Victory Sycamore Established Value, SSgA US Aggregate Bond Market Index, and the Schwab Personal Choice Retirement Account.

⁴ Mathematically stated, each quarterly *Settlement Allocation Score* calculation is as follows: (Proprietary Funds quarter ending balance * 4) + (Non-Proprietary Funds quarter ending balance).

Period, weighted by the percentage of days in the quarter for partial quarters at the beginning of the Class Period.⁵

(b) The Settlement Administrator shall determine the total settlement payment available to each participant by calculating each such participant's pro rata share of the Net Settlement Fund based on his or her Average Settlement Allocation Score compared to the sum of the Average Settlement Allocation Scores for all Participants.

If you are a Class Member (see Question No. 5) and you are currently a Plan participant, your payment will be deposited into your Plan account in accordance with your investment elections for new contributions. If you have not made any such elections, your payment will be invested in the Plan's qualified default investment alternative.

If you are a beneficiary entitled to receive payments on behalf of a Class Member (a "Beneficiary"), you will receive your payment under the Settlement directly in the form of a check. If you are an alternate payee entitled to receive payments on behalf of a Class Member pursuant to a Qualified Domestic Relations Order (an "Alternate

⁵ (Q2 2012 Settlement Allocation Score * 36/91) + (Q3 2012 Settlement Allocation Score) + (Q4 2012 Settlement Allocation Score) + (Q1 2013 Settlement Allocation Score) + (Q2 2013 Settlement Allocation Score) + (Q3 2013 Settlement Allocation Score) + (Q4 2013 Settlement Allocation Score) + (Q1 2014 Settlement Allocation Score) + (Q2 2014 Settlement Allocation Score) + (Q3 2014 Settlement Allocation Score) + (Q4 2014 Settlement Allocation Score) + (Q1 2015 Settlement Allocation Score) + (Q2 2015 Settlement Allocation Score) + (Q3 2015 Settlement Allocation Score) + (Q4 2015 Settlement Allocation Score) + (Q1 2016 Settlement Allocation Score) + (Q2 2016 Settlement Allocation Score) + (Q3 2016 Settlement Allocation Score) + (Q4 2016 Settlement Allocation Score) + (Q1 2017 Settlement Allocation Score) + (Q2 2017 Settlement Allocation Score) + (Q3 2017 Settlement Allocation Score) + (Q4 2017 Settlement Allocation Score) + (Q1 2018 Settlement Allocation Score) + (Q2 2018 Settlement Allocation Score) + (Q3 2018 Settlement Allocation Score) + (Q4 2018 Settlement Allocation Score) + (Q1 2019 Settlement Allocation Score) + (Q2 2019 Settlement Allocation Score) + (Q3 2019 Settlement Allocation Score) + (Q4 2019 Settlement Allocation Score) **divided by** 30.40 quarters during the Class Period.

Payee”), you will receive your payment of the Settlement (pursuant to the terms of your Qualified Domestic Relations Order) directly in the form of a check.

If you are a Class Member and you **previously** participated in the Plan but no longer do so (or you are a Beneficiary or an Alternate Payee of such a Class Member), then you will receive a payment under the Settlement directly in the form of a check. You do not have to submit a claim to receive a payment under the settlement. If, however, you would prefer to receive your settlement payment through a rollover to a qualified retirement account, you must complete, sign, and mail the enclosed Former Participant Rollover Form by [10 days before Fairness Hearing, 2020].

HOW TO GET BENEFITS

7. How do I get benefits?

Class Members do not have to submit claim forms in order to receive settlement benefits.

The benefits of the Settlement will be distributed automatically once the Court approves the Settlement, either to Class Members’ Plan accounts (for current Plan participants) or by check (for former Plan participants, and eligible Beneficiaries and Alternate Payees of Class Members). (See Question No. 6.) **Former Plan participants who would prefer to receive their settlement payment through a rollover to a qualified retirement account must complete, sign, and mail the enclosed Former Participant Rollover Form by [10 days before Fairness Hearing, 2020].** Former Plan participants who fail to complete, sign, and mail their Former Participant Rollover Form will receive their Settlement distribution by check.

8. When will I get my payment?

If you are a current Plan participant, then you will receive your pro rata share of the Net Settlement Fund in the form of a deposit into your Plan account effective no later than forty (40) days after the Settlement has received final approval and/or after any appeals have been resolved in favor of the Settlement. The hearing to consider the final fairness of the Settlement is scheduled for [_____, 2020].

Any eligible Beneficiaries or Alternate Payees will receive their payment under the Settlement in the form of a check within forty (40) days after the Settlement has

received final approval and/or after any appeals have been resolved in favor of the Settlement.

If you are a former Plan participant (or a Beneficiary or Alternate Payee of such participant) who timely submits a Former Participant Rollover Form, the Settlement Administrator will effect a rollover of your pro rata share of the Net Settlement Fund to your qualified retirement account selected in that form within forty (40) days after the settlement has received final approval and/or after any appeals have been resolved in favor of the settlement. If you are a former Plan participant (or a Beneficiary or Alternate Payee of such participant) who does not submit a Former Participant Rollover Form, a check in the amount of your pro rata share of the Net Settlement Fund will be issued to you within forty (40) days after the Settlement has received final approval and/or after any appeals have been resolved in favor of the Settlement.

These payments may have certain tax consequences; you should consult your tax advisor.

THE LAWYERS REPRESENTING YOU

9. Who represents the Settlement Class?

For purposes of the Settlement, the Court has appointed lawyers from the law firm of Robbins Geller Rudman & Dowd LLP as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense. In addition, the Court appointed Plaintiff Diego Cervantes to serve as the Class Representative. He is also a Class Member.

Subject to approval by the Court, Class Counsel has proposed that up to \$5,000 may be paid to Plaintiff as the Class Representative in recognition of time and effort he expended on behalf of the Class. The Court will determine the proper amount of any award to Plaintiff. The Court may award less than that amount.

10. How will the lawyers be paid?

From the beginning of the case, which was filed in May 2018, to the present, Class Counsel have not received any payment for their services in prosecuting the case or obtaining the Settlement, nor have they been paid for any litigation expenses they have incurred. Class Counsel will apply to the Court for an award of attorneys' fees not to exceed 33% of the \$3,470,000.00 settlement amount plus their litigation

expenses incurred in the prosecution of the case. The Court will determine the proper amount of any attorneys' fees and expenses to award Class Counsel.

Any attorneys' fees and expenses awarded by the Court will be paid to Class Counsel from the \$3,470,000 settlement fund. Class Members will not have to pay anything toward the fees or expenses of Class Counsel.

YOUR RIGHTS AND OPTIONS

11. What is the effect of final approval of the Settlement?

If the Court grants final approval of the Settlement, a final order and judgment dismissing the case will be entered in the Action. Payments under the Settlement will then be processed and distributed. The release by Class Members will also take effect. All members of the Class will release and forever discharge Invesco and each of the Released Parties from any and all Released Claims (as defined in the Settlement Agreement). Please refer to Article I of the Settlement Agreement for a full description of the claims and persons that will be released upon final approval of the Settlement.

No Class Member will be permitted to continue to assert Released Claims in any other litigation against Invesco or the other persons and entities covered by the release. If you object to the terms of the Settlement Agreement, you may notify the Court of your objection. (See Table on page ____ of this Notice.) If the Settlement is not approved, the case will proceed as if no settlement had been attempted or reached.

If the Settlement is not approved and the case resumes, there is no assurance that a class would be certified for litigation purposes or that members of any certified class will recover more than is provided for under the Settlement, or anything at all.

12. What happens if I do nothing at all?

If you do nothing, you will release any claims you may have against Invesco or the Released Parties concerning the conduct Plaintiff alleges in his complaint. (See Question No. 14.) You may also receive a payment as described in Question No. 8.

13. How do I get out of the Settlement?

If the Court approves the Settlement, you will be bound by it and will receive whatever benefits you are entitled to under its terms. You cannot exclude yourself from the Settlement, but you may notify the Court of your objection to the Settlement. (See Question No. 15.) If the Court approves the Settlement, it will do so under Federal Rule of Civil Procedure 23(b)(1), which does not permit Class Members to opt out of the Class.

14. Can I sue Invesco for the same thing later?

No. If the Court approves the Settlement, you will have given up any right to sue Invesco for the claims being resolved by this Settlement.

15. How do I object to the Settlement?

You can object to the Settlement if you don't like any part of it. If you object, you must give the reasons why you think the Court should not approve the Settlement. The Court will consider your views. Your objection to the Settlement must be postmarked no later than _____, 2020 and must be sent to the Court and the attorneys for the Parties at the addresses below:

Court	Class Counsel	Defendants' Counsel
Clerk of the Court United States District Court Northern District of Georgia 2388 Richard B. Russell Federal Building and United States Courthouse 75 Ted Turner Drive, SW Atlanta, GA 30303-3309	Evan J. Kaufman ROBBINS GELLER RUDMAN & DOWD LLP 58 South Service Road Suite 200 Melville, NY 11747	James R. Carroll Eben P. Colby Michael S. Hines SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP 500 Boylston Street Boston, MA 02116

The objection must be in writing and include the case name *Diego Cervantes v. Invesco Holding Company (US), Inc., et al.*, Civil Action No. 1:18-cv-02551-AT; as well as include your (a) name; (b) address; (c) a statement that you are a member of the Class; (d) the specific grounds for the objection (including all arguments, citations, and evidence supporting the objection); (e) all documents or writings that you desire the Court to consider (including all copies of any documents relied upon in the

objection); (f) your signature; and (g) a notice of intention to appear at the Fairness Hearing (if applicable). (If you are represented by counsel, you or your counsel must file your objection through the Court's CM/ECF system.) The objection must state whether it applies only to the objector, to a specific subset of the Class or to the entire Class. The Court will consider all properly filed comments from Class Members. If you wish to appear and be heard at the Fairness Hearing in addition to submitting a written objection to the Settlement, you or your attorney must say so in your written objection.

Class Counsel will file with the Court and post on the Settlement Website its request for attorneys' fees and expenses two weeks prior to [objection deadline].

THE COURT'S FAIRNESS HEARING

16. When and where will the Court hold a hearing on the fairness of the Settlement?

A Fairness Hearing has been set for [date] at [time], before The Honorable Amy Totenberg at the Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303-3309 in [courtroom]. At the hearing, the Court will hear any comments, objections, and arguments concerning the fairness of the proposed Settlement, including the amount requested by Class Counsel for attorneys' fees and expenses and the incentive award to Plaintiff as the Class Representative. You do not need to attend this hearing. You also do not need to attend to have an objection considered by the Court. (See Question No. 19.)

Note: The date and time of the Fairness Hearing are subject to change by Court Order, but any changes will be posted at www.InvescoERISASettlement.com.

17. Do I have to come to the Fairness Hearing?

No. Class Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as any written objection you choose to make was filed and mailed on time and meets the other criteria described in the Settlement Agreement, the Court will consider it. You may also pay another lawyer to attend, but you don't have to.

18. May I speak at the hearing?

You may ask the Court for permission to speak at the hearing concerning any part of the proposed Settlement by following the instructions in Question No. 15 above.

GETTING MORE INFORMATION

19. Where can I get additional information?

This notice provides only a summary of the matters relating to the Settlement. For more detailed information, you may wish to review the Settlement Agreement. You can view the Settlement Agreement and get more information at www.InvescoERISASettlement.com. You can also get more information by writing to the Settlement Administrator at [address] or calling toll-free [_____]. The Settlement Agreement and all other pleadings and papers filed in the case are available for inspection and copying during regular business hours at the office of the Clerk of the U.S. District Court located at the Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303-3309.

If you would like additional information, you can also call Class Counsel at [800 number].

**PLEASE DO NOT CONTACT THE COURT, THE JUDGE, OR INVESCO
WITH QUESTIONS ABOUT THE SETTLEMENT.**

EXHIBIT A-2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DIEGO CERVANTES, Individually and	)	Civil Action No. 1:18-cv-02551-AT
on Behalf of the Invesco 401(k) Plan	)	
and All Others Similarly Situated,	)	<u>CLASS ACTION</u>
	)	
Plaintiff,	)	FORMER PARTICIPANT
	)	ROLLOVER FORM
vs.	)	
	)	EXHIBIT A-2
INVESCO HOLDING COMPANY	)	
(US), INC., et al.,	)	
	)	
Defendants.	)	
	)	

Invesco 401(k) Plan Settlement Administrator

**P.O. Box [number]
[City, State, ZIP]
[www.settlementwebsite.com]**

FORMER PARTICIPANT ROLLOVER FORM

JOHN Q CLASSMEMBER
123 MAIN ST APT 1
ANYTOWN, ST 12345

Claim Number: 1111111

This Former Participant Rollover Form is **ONLY** for Class Members who are **Former Participants**, or the beneficiaries or alternate payees of Former Participants (all of whom will be treated as Former Participants). A Former Participant is a Class Member who does not have a Plan account with a balance greater than \$0.00 as of the date of [the Preliminary Approval Order].

Former Participants that would like to elect to receive their settlement payment through a rollover to a qualified retirement account must complete, sign, and mail this form with a postmark on or before **10 days before Fairness Hearing, 2020**. Please review the instructions below carefully. **Former Participants who do not complete and timely return this form will receive their settlement payment by a check payable to you.** If you have questions regarding this form, you may contact the Settlement Administrator as indicated below:

WWW.SETTLEMENTWEBSITE.COM OR CALL [PHONE NUMBER]

PART 1: INSTRUCTIONS FOR COMPLETING FORMER PARTICIPANT ROLLOVER FORM

1. If you would like to receive your settlement payment through a rollover to a qualified retirement account, complete this rollover form. You should also keep a copy of all pages of your Former Participant Rollover Form, including the first page with the address label, for your records.
2. **Mail your completed Former Participant Rollover Form postmarked on or before 10 days before the Fairness Hearing to the Settlement Administrator at the following address:**

**Invesco 401(k) Savings Plan Settlement Administrator
P.O. Box [number]
[City, State, ZIP]**

It is your responsibility to ensure the Settlement Administrator has timely received your Former Participant Rollover Form.

3. Other Reminders:

- You must provide date of birth, social security number, signature, and a completed Substitute IRS Form W-9, which is attached as part 5 to this form.
- If you desire to do a rollover and you fail to complete all of the rollover information in Part 4, below, payment will be made to you by check.

- If you change your address after sending in your Former Participant Rollover Form, please provide your new address to the Settlement Administrator.
- **Timing of Payments to Eligible Class Members.** The timing of the distribution of the settlement payments are conditioned on several matters, including the Court's final approval of the Settlement and any approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval order may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur within six months of the Court's Final Approval Order.

4. **Questions?** If you have any questions about this Former Participant Rollover Form, please call the Settlement Administrator at [phone number]. The Settlement Administrator will provide advice only regarding completing this form and will not provide financial, tax or other advice concerning the Settlement. You therefore may want to consult with your financial or tax advisor. Information about the status of the approval of the Settlement and the Settlement administration is available on the settlement website, [www.settlementwebsite.com].

You are eligible to receive a payment from a class action settlement. The court has preliminarily approved the Class Settlement of *Diego Cervantes v. Invesco Holding Company (US), Inc., et al.*, Civil Action No. 1:18-cv-02551-AT (N.D. Ga.). That settlement provides allocation of monies to the individual accounts of certain persons who participated in the Invesco 401(k) Plan ("Plan") at any time between May 25, 2012 and [Date of Prelim Order Executed] ("Class Members"). Class Members who had a Plan account with a balance greater than \$0.00 during the Class Period but who do not have a Plan account with a balance greater than \$0.00 as of the date of Date of Preliminary Approval ("Former Participants") will receive their allocations in the form of a check or in the form of a rollover if and only if they mail a valid Former Participant Rollover Form postmarked on or before **10 days before Fairness Hearing, 2020** to the Settlement Administrator with the required information to effectuate the rollover. For more information about the Settlement, please see the Notice of Pendency and Settlement of Class Action, visit [www.settlementwebsite.com], or call [phone number].

Because you are a Former Participant in the Plan, you must decide whether you want your payment (1) sent payable to you directly by check or (2) to be rolled over into another eligible retirement plan or into an individual retirement account ("IRA"). To elect a rollover, please complete and mail this Former Participant Rollover Form postmarked on or before **10 days before Fairness Hearing, 2020** to the Settlement Administrator. If you do not return this form, your payment will be sent to you directly by check.

PART 2: PARTICIPANT INFORMATION

First Name	Middle	Last Name
Mailing Address		
City	State	Zip Code
Home Phone	Work Phone or Cell Phone	
Participant's Social Security Number	Participant's Date of Birth	
Email Address	M M D D Y Y Y Y	

[FORMER PARTICIPANT ROLLOVER FORM CONTINUES ON THE NEXT PAGE]

PART 3: BENEFICIARY OR ALTERNATE PAYEE INFORMATION (IF APPLICABLE)

☐ Check here if you are the **surviving spouse or other beneficiary** for the Former Participant and the Former Participant is deceased. **Documentation must be provided showing current authority of the representative to file on behalf of the deceased.** Please complete the information below and then continue on to Parts 4 and 5 on the next page.

☐ Check here if you are an alternate payee under a qualified domestic relations order (QDRO). The Settlement Administrator may contact you with further instructions. Please complete the information below and then continue on to Parts 4 and 5 on the next page.

First Name	Middle	Last Name
Mailing Address		
City	State	Zip Code
Home Phone	Work Phone or Cell Phone	
- -	- -	
Participant's Social Security Number	Participant's Date of Birth	
- -	- -	
Email Address	M M	D D Y Y Y Y

PART 4: PAYMENT ELECTION

Direct Rollover to an Eligible Plan – Check only one box below and complete the Rollover Information Section below:

- ☐ Government 457(b) ☐ 401(a)/401(k) ☐ 403(b)
- ☐ Direct Rollover to a Traditional IRA ☐ Direct Rollover to a Roth IRA (subject to ordinary income tax)

Rollover Information:

Company or Trustee's Name (to whom the check should be made payable)

[illegible]

Company or Trustee's Mailing Address 1

[illegible]

Company or Trustee's Mailing Address 2

[illegible]

Company or Trustee's City

State

Zip Code

[illegible]

Your Account Number

Company or Trustee's Phone Number

--	--

PART 5: SIGNATURE, CONSENT, AND SUBSTITUTE IRS FORM W-9

UNDER PENALTIES OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA, I CERTIFY THAT ALL OF THE INFORMATION PROVIDED ON THIS FORMER PARTICIPANT ROLLOVER FORM IS TRUE, CORRECT, AND COMPLETE AND THAT I SIGNED THIS FORMER PARTICIPANT ROLLOVER FORM.

1. The Social Security number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to back up withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. person (including a U.S. resident alien).

M M D D Y Y Y Y

Date Signed (Required)

Participant Signature

Note: If you are subject to backup withholding, you must cross out item 2 above. The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholding.

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DIEGO CERVANTES, Individually and	)	Civil Action No. 1:18-cv-02551-AT
on Behalf of the Invesco 401(k) Plan	)	
and All Others Similarly Situated,	)	<u>CLASS ACTION</u>
	)	
Plaintiff,	)	[PROPOSED] FINAL JUDGMENT
	)	AND ORDER OF DISMISSAL WITH
vs.	)	PREJUDICE
	)	
INVESCO HOLDING COMPANY	)	EXHIBIT B
(US), INC., et al.,	)	
	)	
Defendants.	)	
	)	

This matter having come before the Court on Plaintiff's motion for final approval of a proposed class action settlement of the above-captioned action (the "Action") between Plaintiff Diego Cervantes ("Plaintiff"), individually and on behalf of a class of participants in the Invesco 401(k) Plan (the "Plan"), and Defendants Invesco Holding Company (US), Inc., Invesco LTD., Invesco National Trust Company, Invesco Advisers, Inc., Invesco Benefits Plan Committee, Suzanne Christensen, John Coleman, Washington Dender, Peter Gallagher, David Genova, Douglas Sharp, Ben Utt, Gary Wendler, Kevin M. Carome, Loren M. Starr, and John Does 1-20 (collectively, "Defendants"), as set forth in the Parties' Settlement Agreement dated March 6, 2020 (the "Settlement Agreement"), and having duly considered the papers and arguments of counsel, the Court hereby finds and orders as follows:

WHEREAS, Plaintiff in the Action on his own behalf and on behalf of the Class and the Plan, on the one hand, and Defendants on the other hand, have entered into the Settlement Agreement that provides for a complete dismissal with prejudice of all claims asserted in the Action against Defendants by the Class on the terms and conditions set forth in the Settlement Agreement, subject to the approval of this Court;

WHEREAS, the capitalized terms not defined in this Final Judgment and Order of Dismissal with Prejudice (“Final Judgment”) have the same meaning ascribed to them in the Settlement Agreement;

WHEREAS, by Order dated _____, 2020 (the “Preliminary Approval Order”), this Court (1) preliminarily approved the Settlement Agreement; (2) conditionally certified a Class for purposes of settlement only under Federal Rule of Civil Procedure 23(b)(1); (3) preliminarily approved the appointment of Plaintiff as Class Representative; (4) preliminarily approved the appointment of Robbins Geller Rudman & Dowd LLP as Class Counsel; (5) directed notice be given to the Class and approved the form and manner of Notice; and (6) scheduled a Fairness Hearing;

WHEREAS, due and adequate notice has been given to the Class;

WHEREAS, the Court conducted a hearing on _____, 2020 (the “Fairness Hearing”) to consider, among other things, (1) whether the proposed Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class and should be finally approved by the Court; (2) whether Class Counsel’s application for an award of attorneys’ fees and expenses is reasonable and should be approved; (3) whether Plaintiff’s request for an Incentive Award is reasonable and should be approved; and (4) whether this Final Judgment should be entered dismissing with prejudice all claims asserted in the Action against Defendants; and

WHEREAS, the Court having reviewed and considered the Settlement Agreement, all papers filed and proceedings held herein in this Action in connection with the Settlement, all oral and written comments received regarding the Settlement, and the record in the Action, and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement Agreement, as well as personal jurisdiction over all of the Parties and each of the Class Members.

2. This Final Judgment incorporates and makes a part hereof: (a) the Settlement Agreement; and (b) the Notice approved by the Court on _____, 2020.

3. The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice reasonably practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise all Class Members of the pendency of the Action, of the effect of the Settlement Agreement (including the releases provided for therein), of their right to object to the Settlement and appear at the Fairness Hearing, of Class Counsel's application for attorneys' fees and expenses, and of Plaintiff's request for an incentive award; (d) constituted due, adequate, and

sufficient notice to all persons or entities entitled to receive notice of the proposed Settlement Agreement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution, including the Due Process Clause, and all other applicable law and rules.

4. The Court finds [findings regarding any objections].

5. Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement Agreement in all respects including, without limitation, the terms of the Settlement Agreement; the releases provided for therein; and the dismissal with prejudice of the claims asserted in the Action, and finds that the Settlement Agreement is, in all respects, fair, reasonable and adequate, and is in the best interests of Plaintiff and Class Members. The Parties are directed to implement, perform, and consummate the terms and provisions of the Settlement Agreement.

6. As of the Effective Date, pursuant to Federal Rule of Civil Procedure 54(b), all of the claims asserted in this Action against Defendants are hereby dismissed with prejudice. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Settlement Agreement.

7. The terms of the Settlement Agreement and of this Final Judgment shall be forever binding on Plaintiff, Defendants, and all Class Members, as well as their

respective current and former beneficiaries, heirs, descendants, dependents, administrators, executors, representatives, predecessors, successors, and assigns.

8. The releases set forth in the Settlement Agreement (the “Releases”), are expressly incorporated herein in all respects. The Releases are effective as of the date of the entry of this Final Judgment. Accordingly, this Court orders that:

(a) Upon the Effective Date, Plaintiff and every Class Member on behalf of themselves, their heirs, executors, administrators, successors, and assigns, and the Plan (subject to Independent Fiduciary approval as described in Section 2.2 of the Settlement Agreement) shall, with respect to each and every Plaintiff’s Released Claims, be deemed to fully, finally and forever release, relinquish and forever discharge each and every Plaintiff’s Released Claims (including Unknown Claims) against any and all of Defendants and the Released Parties, and forever shall be enjoined from prosecuting any such Plaintiff’s Released Claims.

(b) Upon the Effective Date, Defendants and the Released Parties, on behalf of themselves and their successors and assigns shall be deemed to fully, finally and forever release, relinquish and forever discharge each and every Defendants’ Released Claims (including Unknown Claims), as to Plaintiff, the Class and their attorneys (including Class Counsel), and forever shall be enjoined from prosecuting any such claims.

(c) Nothing herein shall preclude any action to enforce the Settlement Agreement.

9. The Court finds and concludes that the Parties and their respective counsel have complied in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure in connection with the commencement, maintenance, prosecution, defense, and settlement of the claims asserted in the Action.

10. This Final Judgment, the Preliminary Approval Order, the Settlement Agreement (whether or not consummated), including the exhibits thereto, the negotiations that led to the agreement-in-principle reached by the Parties, the negotiation of the Settlement Agreement and its exhibits, and any papers submitted in support of approval of the Settlement Agreement, and any proceedings taken pursuant to or in connection with the Settlement Agreement, including any arguments proffered in connection therewith:

(a) shall not be offered or received against Defendants or any of the Released Parties as evidence of, or be construed as or deemed to be evidence of, any presumption, concession, or admission by Defendants or a Released Party of the truth of any fact alleged by Plaintiff or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any

liability, negligence, fault, or wrongdoing on the part of Defendants or any of the Released Parties, or the appropriateness of certifying a non-settlement class;

(b) shall not be offered or received against Defendants or any of the Released Parties as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by Defendants or any of the Released Parties;

(c) shall not be offered or received against Defendants or any of the Released Parties as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against Defendants or any of the Released Parties, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement; provided, however, that if this Settlement Agreement is approved by the Court, Defendants or the Released Parties may refer to it to effectuate the liability protection granted them hereunder; and

(d) shall not be construed against Defendants or any of the Released Parties as an admission or concession that the consideration to be given hereunder represents the amount which could or would have been recovered after trial of the Action.

11. Without affecting the finality of this Final Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation and enforcement of the Settlement Agreement; (b) the disposition of the Settlement Fund; (c) Class Counsel's application for an award of attorneys' fees and expenses and Plaintiff's request for an incentive award; and (d) Class Members for all matters relating to the Action.

12. A separate order shall be entered on Class Counsel's application for an award of attorneys' fees and expenses and Plaintiff's request for an incentive award. Such order shall in no way affect or delay the finality of this Final Judgment and shall not affect or delay the Effective Date of the Settlement.

13. Without further approval from the Court, the Parties are hereby authorized to agree to and adopt such amendments or modifications of the Settlement Agreement or any exhibits attached thereto that: (a) are not materially inconsistent with this Final Judgment; and (b) do not materially limit the rights of Class Members in connection with the Settlement Agreement.

14. If the Settlement Agreement does not go into effect or is terminated as provided for therein, then this Final Judgment (and any orders of the Court relating to the Settlement Agreement) shall be vacated, rendered null and void and be of no further force or effect, except as otherwise provided by the Settlement Agreement.

15. There is no just reason to delay entry of this Final Judgment as a final judgment with respect to the claims asserted in the Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this Final Judgment pursuant to Federal Rule of Civil Procedure 54(b).

IT IS SO ORDERED.

DATED: _____

THE HONORABLE AMY TOTENBERG
UNITED STATES DISTRICT JUDGE