

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DANIEL NYKIEL and ANNEMARI
COOLEY, individually and as the
representatives of a class of similarly situated
persons, and on behalf of The Smith & Nephew
U.S. Savings Plan,

Plaintiffs,

v.

SMITH & NEPHEW, INC., BOARD OF
DIRECTORS OF SMITH & NEPHEW, INC.,
US PENSION AND BENEFITS EXECUTIVE
COMMITTEE OF SMITH & NEPHEW, INC.,

Defendants.

Civil Action No. 1:24-cv-12247-NMG

**DECLARATION OF PAUL M. SECUNDA IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Paul M. Secunda, declare and state as follows:

1. I am a partner at Walcheske Luzi, LLC ("Walcheske Luzi"), and am one of the attorneys of record for Plaintiffs in the above captioned action. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

Settlement Terms

2. Attached hereto as **Exhibit A** is a true and correct copy of the proposed Class Action Settlement Agreement. The Settlement resolves Plaintiffs Daniel Nykiel and Annemari Cooley's (collectively, "Plaintiffs") class action claims against Defendants Smith & Nephew, Inc. ("Smith & Nephew" or "the Company"), the Board of Directors of Smith & Nephew, Inc., (the "Board"), and the US Pension and Benefits Executive Committee of Smith & Nephew, Inc. (the

“Committee” and, collectively with the Board and the Company, “Defendants”), relating to the management of The Smith & Nephew U.S. Savings Plan (“Smith & Nephew Plan” or “Plan”).

3. The Settlement Agreement applies to the following Settlement Class:

All persons who were participants in or beneficiaries of the Smith & Nephew US Savings Plan at any time between August 30, 2018, and the date upon which the Preliminary Approval Order is entered.

Settlement, ¶ E. In turn, the “Class Period” is defined as August 30, 2018 through the date upon which the Preliminary Approval of this Settlement by this Court is entered. Settlement, ¶ F. There are approximately 29,184 Settlement Class Members.

4. Under the terms of the proposed Settlement, a Gross Settlement Amount of \$350,000.00 thousand dollars will be paid to resolve the claims that were asserted in the Action. Settlement ¶ 1(t). Based on Plaintiffs’ estimates, the Gross Settlement Amount represents 18.4% of the total amount demanded (\$1.9 million) for excessive managed account (MA) fees.

5. Under the terms of the proposed Settlement, Smith & Nephew also agreed to direct the Smith & Nephew Plan’s fiduciaries to conduct a request for proposal (“RFP”) related to the MA services offered under the Plan on or before December 31, 2027, with that RFP to be conducted in the manner and at the time chosen by the Plan’s fiduciaries in their sole discretion.

6. Finally, under the terms of the proposed Settlement, all costs of the Independent Fiduciary will be paid by Smith & Nephew independent from the Qualified Settlement Fund.

7. After accounting for any Attorneys’ Fees and Costs, Administrative Expenses, and Class Representative Compensation approved by the Court, the Net Settlement Amount will be distributed to eligible Class Members in accordance with the Plan of Allocation in the Settlement. Settlement, ¶¶ 35-40.

8. The Plan of Allocation is Exhibit 2 to the Settlement Agreement, and sets out the methodology for allocating and distributing the Net Settlement Amount. Settlement Agreement,

Ex. 2. It is submitted to the Court for approval in connection with the Preliminary Approval of the Settlement.

9. Class Counsel will retain the Settlement Administrator to calculate the amounts payable to Settlement Class Members. *Id.*, ¶¶ 36-37.

10. In the absence of a settlement, Plaintiffs would have faced uncertainty and risk in connection with their claims. Given these risks (which are outlined in the accompanying Memorandum of Law), and the costs and potential delays associated with further litigation, I believe that the Settlement is fair, reasonable, and adequate.

Case Proceedings

11. Prior to filing the operative Amended Complaint in this action, I conducted a thorough investigation of the claims that were asserted and the factual basis for those claims. As a result of our investigatory efforts, we were able to file a detailed, 51-page Complaint on August 30, 2024 (Dkt. 1), and a 43-page Amended Complaint on November 22, 2024 (Dkt. 28).

12. After the Court denied in part and granted in part Defendants' motion to dismiss the Amended Complaint, the parties recognized that an early settlement of Plaintiffs' remaining managed account claims was possible.

13. Although the parties engaged in settlement negotiations for almost four months to reach a settlement, exchanging limited discovery and damage calculations, they reached a settlement-in-principle on December 5, 2025. The Parties then negotiated the details of the comprehensive Settlement Agreement that is the subject of the present motion. For the reasons explained above, I believe the Settlement is fair, reasonable, and adequate.

Professional Overview

14. I am a currently a Partner at the law of firm of Walcheske & Luzi, LLC in Brookfield, Wisconsin, where I concentrate my practice on labor and employment law, with an emphasis on all

aspects of employee benefits (ERISA) litigation. As part of this employment, I litigate cases involving employer-sponsored retirement benefit plans and welfare benefit plans under ERISA. I am licensed to practice law in the State of Wisconsin, and also have been admitted to practice in several federal district courts and appellate courts across the country. A list of jurisdictions in which I have been admitted is set forth below:

Supreme Court of the United States
6th Circuit Court of Appeals
7th Circuit Court of Appeals
8 th Circuit Court of Appeals
U.S.D.C. for the Eastern District of Wisconsin
U.S.D.C. for the Western District of Wisconsin
U.S.D.C. for the Northern District of Illinois
U.S.D.C. for the Western District of Michigan
U.S.D.C. for the Southern District of Indiana
Wisconsin Supreme Court

15. I have been actively engaged in the practice of law since 1998 and have substantial class action experience and other complex litigation experience. I was a full professor of law over an 18-year academic career at two separate law schools, focusing on workplace and employee benefits law under ERISA. Since joining Walcheske & Luzi LLC in May 2020, my practice has focused primarily on ERISA class action litigation on behalf of plan participants and beneficiaries.

16. As the head of our firm's ERISA Team, I have led ERISA class action litigation against several major companies, including Baystate Health, Bronson Healthcare, Costco, Clean Harbors, Froedtert Health, John Muir Health, Kimberly-Clark, Munson Healthcare, Pactiv Evergreen Services, Prevea, ThedaCare, U.S. Bank, Quad/Graphics, General Dynamics, Kerry Foods, and RR Donnelley & Sons.

17. In addition to the present case, the firm's lawyers (including myself) have brought litigation in over sixty (60) other cases involving retirement plans, including:

- *Reichert v. Juniper Network, Inc.*, No. 4:21-cv-06213 (N.D. Cal.)

- *Gleason et al. v. Bronson Healthcare*, No. 1:21-cv-00379 (W.D. Mich.)
- *Seidner et al. v. Kimberly Clark Corp.*, No. 3:21-cv-00867-L (N.D. Tex.)
- *Walter v. Kerry Inc.*, No. 2:21-cv-00539-BHL (E.D. Wis.)
- *Bangalore v. Froedtert Health, Inc.*, No. 2:20-cv-893-PP (E.D. Wis.)
- *Shaw v. Quad/Graphics, Inc.*, No. 2:20-cv-01645-PP (E.D. Wis.)
- *Tolomeo v. RR Donnelley Inc.*, No. 1:20-cv-07158 (N.D. Ill.)
- *Soulek v. Costco Corp.*, No. 1:20-cv-937-WCG (E.D. Wis.)
- *Nohara v. Prevea Clinic, Inc.*, No. 2:20-cv-1079-WCG (E.D. Wis.)
- *Glick v. ThedaCare, Inc.*, 1:20-cv-1236-WCG (E.D. Wis.)
- *Hughes v. Mercy Health Corp.*, No. 3:20-cv-50286 (N.D. Ill.)
- *Hanson et al. v. General Dynamics*, No. 0:21-cv-00988-PAM-ECW (D. Minn.)

18. Walcheske & Luzi is viewed as a leader in ERISA 401(k) fee litigation. I have been interviewed by the Wall Street Journal, Washington Post, Barrons', Financial Times, BenefitsPro, Law360, Bloomberg, Investment News, Pensions & Investments, Plan Advisor, and several trade publications in connection with my ERISA work. As a law professor, I have published sixteen law review articles, two book chapters, and three books on employee benefit plan-related topics. Overall, I have published over seventy law review articles and shorter pieces on workplace law, benefits law, and related fields.

19. I also have been a lecturer, moderator, and panelist at dozens of conferences and symposia throughout the country and the world, presenting on ERISA and employee benefit plan topics sponsored by a myriad of organizations, including: the Association of American Law Schools, American Bar Association, the Southeastern Association of Law Schools, Law and Society Association, New York University Annual Conference on Labor, and the Center for the Interdisciplinary Study of Work and Social Capital at the Washington University School of Law.

20. I have served as testifying expert in the following ERISA and employee benefits law cases around the country: *Pierson et al. v. Millennium Trust Co.*, Case No. 1340017140 (JAMS) (Ill. 2019), *Physical Therapy, U.S.A. Inc., et al. v. United Healthcare of Arizona, Inc., et al.*, Case No. CV-08-457-PHX-ROS (D. Az.), *Moyle v. Liberty Mutual Retirement Benefit Plan*, 3:10-CV-02179 (S.D. Cal.); *Gillis v. Burns & Levinson*, File No. 337.08466 (Middlesex Superior Ct. Mass.); and *Sayles v. Driskell* (settled) (state court, Kansas City, Mo.).

21. I served as a non-testifying consultant in the following ERISA and employee benefit law cases: *Diversified Services of Wisconsin, Inc. v. AJ Restaurant Accounting, LLC*, Case No. 09CV-005985 (Dane County Cir. Ct. Wis.); *Nauman v. Abbott Labs*, No. 04 C 7199 (N.D. Ill.); *Smith v. Medical Benefit Administrators Service Group, Inc.*, Case No. 2:09-cv-00538-RTR (E.D. Wis.); and *In re Rothschild Merchant Banking* (2018).

22. I served as Court Amicus in the following U.S. Supreme Court and Seventh Circuit cases: U.S. Supreme Court *Brief for Law Professors as Amici Curiae in Support of the Petitioners in Tibble v. Edison International*, No. 13-550; U.S. Supreme Court *Brief of Law Professors in Support of the Respondents in Fifth Third Bancorp v. Dudenhoeffer*, No. 12-751; U.S. Supreme Court *Brief of Law Professors in Support of Respondents, Conkright v. Frommert*, No. 08-810; and Seventh Circuit *Brief of Law Professors in Support of Rehearing En Banc, Hecker v. Deere*, Nos. 07-3605 & 08-1224.

23. Prior to this position with Walcheske & Luzi, I was a full Professor of Law, with tenure at the Marquette University Law School in Milwaukee, Wisconsin. I joined the Marquette University Law School faculty in 2008, after having been an Assistant Professor of Law at the University of Mississippi School of Law from 2002 through 2008. I have been a visiting professor of law at several other universities, including Melbourne University Law School (Australia), Justus Liebig Universitat School of Law (Germany), Hong Kong Polytech University (China), the

University of Wisconsin-Madison School of Law, Université de Paris at Nanterre Law Faculty (France), Western Ontario School of Law (Canada), and the Osgoode Hall School of Law at York University (Canada).

24. I received my law degree, *magna cum laude*, from the Georgetown University Law Center in 1997, and my B.A., *cum laude*, from Harvard College in 1993. Following law school, I was a federal law clerk for Judge Murray M. Schwartz of the United State District Court for the District of Delaware from 1997-1998. I then practiced law as an associate labor and employment law attorney, focusing on ERISA and workplace litigation, with the Philadelphia law firms of Montgomery, McCracken, Walker & Rhoads, and Morgan, Lewis & Bockius from 1998 to 2002. I am a current member of the Bar of Wisconsin (2009) and the U.S. Supreme Court (2009).

25. I am an elected Fellow of the American College of Employee Benefit Counsel (ACEBC); a Senior Fulbright Scholar (in employee benefits law); an elected Fellow of the American Bar Foundation (ABF); and an elected member of the American Law Institute (ALI), serving as a member of the Consultative Group on the Restatement of Employment Law.

26. In December of 2012, I was appointed by the United States Secretary of Labor, Hilda L. Solis, to the 2013 ERISA Advisory Council. The ERISA Advisory Council is established pursuant to ERISA Section 512. The duties of the council are to advise the Secretary and submit recommendations regarding the Secretary's functions under ERISA. The council consists of 15 members appointed by the Secretary of Labor. I was appointed Chairman of the Council in 2015 by then-Secretary of Labor Thomas Perez. Over my three years on the Council, I helped draft nine expert reports on all aspects of employee benefit law, including a number of issues concerning excessive fees associated with employer-sponsored retirement plans.

Law Firm Overview

27. Walcheske & Luzi has been engaged in the practice of law for over 14 years, and is devoted to representing the interests of employees. The firm has offices in Brookfield and Appleton, Wisconsin, and Chicago, Illinois, and currently employs six attorneys.

28. Walcheske & Luzi has extensive class action and collective action experience. The firm has been appointed lead counsel or co-counsel in hundreds of class and collective actions and has recovered over \$75 million for its clients.

29. Based on my personal experience and Walcheske & Luzi's firm-wide experience litigating ERISA cases, I believe we were well-equipped to negotiate the Settlement.

30. Jonathan M. Feigenbaum, local counsel, also has extensive class action experience in the ERISA space. His firm has been appointed to lead counsel or co-counsel in numerous class actions, many of them involving complex ERISA matters.

31. Based on my personal experience, I know Mr. Feigenbaum to be well-versed in ERISA class action litigation and other class action litigation. Mr. Feigenbaum has provided timely and wise counsel in his role as local counsel in this matter.

Settlement Administrator

32. Analytics Consulting, LLC ("Analytics") has been selected to serve as the settlement administrator in this matter. Analytics has extensive experience administering ERISA class action settlements and has previously served as the settlement administrator in connection with settlements in this District and other settlements within this Circuit. Analytics' profile is attached as **Exhibit B**.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 13, 2026

s/Paul M. Secunda
Paul M. Secunda

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2026, I caused a copy of the foregoing to be electronically filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

s/Paul M. Secunda
Paul M. Secunda

Exhibit A

SETTLEMENT AGREEMENT & STIPULATION

Plaintiffs Daniel Nykiel and Annemari Cooley (collectively, “Plaintiffs”), and Defendants Smith & Nephew, Inc. (“Smith & Nephew” or “the Company”), the Board of Directors of Smith & Nephew, Inc., (the “Board”), and the US Pension and Benefits Executive Committee of Smith & Nephew, Inc. (the “Committee” and, collectively with the Board and the Company, “Defendants”) hereby enter into this Settlement Agreement and Stipulation (the “Agreement” or the “Stipulation”).

RECITALS

A. The Plaintiffs brought an action against Defendants in the United States District Court for the District of Massachusetts (the “District Court”) on August 30, 2024, Case No. 1:24-cv-12247-NMG (the “Action”), amending their claim with the operative First Amended Class Action Complaint (the “Complaint”) on November 22, 2024.

B. In the Complaint, Plaintiffs brought five claims pursuant to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), against Defendants, alleging that Defendants were fiduciaries of the Smith & Nephew US Savings Plan (the “Plan”), and that Defendants breached their fiduciary duties owed to the Plan in certain ways. Specifically, Plaintiffs alleged that the Committee engaged in prohibited transactions under ERISA by (1) allowing the Plan to pay allegedly excessive recordkeeping fees, (2) using the Plan’s forfeiture account to pay those allegedly excessive recordkeeping fees, and (3) using the Plan’s forfeiture account to offset future employer contributions (Counts I through III). Plaintiffs also alleged that the Committee violated ERISA’s duty of prudence owed to the Plan by allowing excessive managed account service fees (Count IV), and that Smith & Nephew and the Board violated ERISA by failing to monitor the Committee in its work around those allegedly excessive managed account service fees

(Count V).

C. Defendants filed a Motion to Dismiss Plaintiff's First Amended Class Action Complaint, which was granted in part when the Court dismissed Counts I through III related to alleged prohibited transactions under ERISA for failure to state a claim. Thereafter, the only remaining claims in the Action were a claim against the Committee for breach of ERISA's fiduciary duty of prudence in allowing alleged excessive managed account services fees and a derivative failure to monitor claim against Smith & Nephew and the Board.

Settlement Negotiations

D. Following the entry of the Court's Order on Defendant's Motion to Dismiss Plaintiff's First Amended Class Action Complaint, the Parties through counsel, conducted extensive, arm's-length negotiations concerning a possible compromise and settlement of the Action. This included analysis of information available to all Parties regarding the recordkeeping fees paid by Plan participants, the forfeiture funds available to the Plan for use, the manner and the amount of forfeiture funds used by the Plan and for what purpose, the amount of fees paid by Plan participants for managed account services, as well as available marketplace information regarding recordkeeping fees and managed account fees paid by other retirement plans. The Parties also each engaged consulting experts who provided expert analysis and input related to this available Plan information. After these extensive discussions regarding the fiduciary management of the recordkeeping services and managed account services for the Plan, the Parties reached an agreed settlement in principle and now set forth herein in full detail the terms of their agreed settlement (the "Settlement").

E. The terms "Settlement Class" as used in this Agreement shall refer to:

All persons who were participants in or beneficiaries of the Smith & Nephew US Savings Plan at any time between August 30, 2018, and the date upon which the Preliminary Approval Order is entered.

F. The “Class Period” shall be defined as August 30, 2018 through the date upon which the Preliminary Approval of this Settlement by the District Court is entered.

G. Defendants deny each and every allegation of wrongdoing made in the Action and Defendants contend that they have no liability in the Action. Defendants specifically deny the allegations that they breached any fiduciary duty or any other provisions of ERISA in connection with the administration of the Plan or the administrative fees or expenses incurred by the Plan (including specifically but not limited to managed account service fees), at any time, and further deny that they in any way failed to act prudently or loyally as to the Plan’s participants and beneficiaries.

H. Counsel for Plaintiffs has conducted a thorough investigation into the facts, circumstances, and legal issues associated with the Action. This investigation has included: (i) researching the applicable law with respect to the claims asserted and the potential defenses thereto; (ii) analyzing Plan documents and evaluating the administration of the Plan, including data pertaining to the administrative fees and expenses paid by the Plan for managed account services during the Class Period; (iii) investigating comparable 401(k) Plans to assess steps that reasonable fiduciaries in similar circumstances take, in order to protect and advance the interests of participants and beneficiaries; and (iv) obtaining analyses from consulting experts on liability and loss issues.

I. Defendants’ counsel has investigated the underlying events and transactions alleged in the Complaint and the operation and administration of the Plan. Defendants’ counsel has reviewed numerous documents, conducted assessments of potential liability and losses including by

obtaining analyses from consulting experts on liability and loss issues , and made a thorough study of the applicable legal principles governing Plaintiffs' claims and Defendants' defenses.

J. Based on their investigation of the merits of the claims in the Action, the course of the litigation to date, and knowledge and experience with respect to similar ERISA litigation, counsel for the Plaintiffs believe that the Settlement will provide substantial benefits to the Settlement Class and is in the best interest of the Settlement Class. When the benefits conferred by the Settlement are weighed against the attendant risks of continuing to prosecute the claims in the Action, counsel for Plaintiffs believe that the Settlement represents a reasonable and fair resolution of the claims asserted against Defendants. In reaching this conclusion, counsel for the Plaintiffs has considered, among other things, the risks of litigation (including the risks of establishing both liability and any loss to the Plan), the time necessary to achieve a final resolution through litigation and any appeals, the complexity of the claims set forth in the Complaint, the ability of Defendants to withstand judgment, the existence of insurance coverage, and the benefits accruing to the Plan's participants under the Settlement.

K. Although Defendants have denied and continue to deny all liability with respect to the claims alleged in the Action, Defendants nevertheless consider it desirable that any and all possible controversies and disputes arising during the Class Period that relate to the matters, transactions, and occurrences that in any way concern the fiduciary administration of the Plan be conclusively resolved and terminated on the terms and conditions set forth below. The Settlement and the attendant final dismissal of the Action will avoid the substantial expense, inconvenience, and risk of continued litigation and will bring Plaintiffs' claims to an end.

L. The Parties agree that this Settlement fully resolves the claims and defenses in the Action.

M. The Parties have reached the Settlement, by and through their respective undersigned counsel, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the Parties, in consideration of the promises, covenants, and agreements herein described, and the Parties intending to be legally bound:

1. As used in this Settlement Agreement and the Exhibits thereto, unless otherwise defined, the following terms have the meanings specified below:

- a. “Active Account” means an individual account in the Plan with a balance greater than \$0.00 as of the date when the Preliminary Approval Order is entered.
- b. “Administrative Expenses” means expenses incurred in the administration of this Settlement Agreement, including (i) all fees, expenses, and costs associated with providing the Settlement Notice to the Settlement Class; (ii) related tax expenses (including taxes and tax expenses as described in Section 4.3); (iii) all fees, expenses, and costs associated with providing CAFA Notice; (iv) all fees and expenses of the Settlement Administrator; and (v) all expenses and costs associated with the distribution of funds under the Plan of Allocation, including any fees and expenses of the Plan’s Recordkeeper in connection with the same. Excluded from Administrative Expenses are the costs associated with the Independent Fiduciary, Defendants’ internal expenses, and the Parties’ respective legal fees and expenses. Administrative Expenses shall be paid from the Gross Settlement Amount.
- c. “Attorneys’ Fees and Costs” means the amount awarded by the Court as compensation for the services provided by Class Counsel and litigation costs and expenses advanced and carried by Class Counsel. The amount of Attorneys’ Fees and Costs for Class Counsel shall not exceed one-third of the Gross Settlement Amount and shall be recovered from the Gross Settlement Amount.
- d. “Authorized Administrator” means any entity, other than the Recordkeeper, with appropriate administrative authority under the Plan.
- e. “Beneficiary” means any individual, trust, estate, or other recipient entitled to receive death benefits payable under the Plan, on either a primary or contingent basis.
- f. “CAFA” means the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711 – 1715.
- g. “CAFA Notice” means notice of this proposed Settlement to the appropriate federal and state officials pursuant to CAFA, to be issued by Smith & Nephew with the assistance of the Settlement Administrator.

- h. “Case Contribution Awards” means the monetary amount awarded by the Court to the Plaintiffs in recognition of the Plaintiffs’ assistance in the prosecution of the Action, for which Class Counsel may seek an amount not exceeding \$10,000 from the Gross Settlement Amount. Any such Case Contribution Award shall be subject to the approval of the Court.
- i. “Class Counsel” means Walcheske & Luzi, LLC and Jonathan M. Feigenbaum, Esq.
- j. “Class Members” means all individuals in the Settlement Class, including the Plaintiffs.
- k. “Class Period” means the period from August 30, 2018, through the date when the Preliminary Approval Order is entered by the District Court.
- l. “Court” or “District Court” means the United States District for the District of Massachusetts.
- m. “Current Participant” means a member of the Settlement Class who has an Active Account as of the date when the Preliminary Approval Order is entered.
- n. “Defendants” means Smith & Nephew, Inc.; the Board of Directors of Smith & Nephew, Inc.; and the US Pension and Benefits Executive Committee of Smith & Nephew, Inc.
- o. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.*
- p. “Fairness Hearing” means the final fairness hearing scheduled by the Court to consider: (i) any objections by Class Members to the Settlement; (ii) Class Counsel’s petition for Attorneys’ Fees and Costs and Class Representatives’ Case Contribution Awards; and (iii) whether to finally approve the Settlement under Fed. R. Civ. P. 23(e). The Fairness Hearing may be conducted in person, telephonically, or by videoconference, at the sole discretion of the presiding United States District Court Judge or United States Magistrate Judge.
- q. “Final” means, with respect to any judicial ruling, order, or judgment, that the period for any motions for reconsideration, motions for rehearing, appeals, petitions for certiorari, or the like has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that it has been fully and finally resolved, either by court action or by voluntary action of any party, without any possibility of a reversal, vacatur, or modification of any judicial ruling, order, or judgment, including the exhaustion of all proceedings in any remand or subsequent appeal and remand. The Settling Parties agree that absent an appeal or other attempted Review Proceeding, the Final Approval Order becomes Final thirty (30) calendar days after its entry by the Court.
- r. “Final Approval Order” means the entry of the order and final judgment approving

the Settlement Agreement, implementing the terms of this Settlement Agreement, and dismissing the Action, with prejudice, to be proposed by the Settling Parties for approval by the Court, in substantially the form attached as **Exhibit 1** hereto.

- s. “Former Participant” means a member of the Settlement Class who does not have an Active Account as of the date the Preliminary Approval Order is entered.
- t. “Gross Settlement Amount” means the sum of THREE HUNDRED AND FIFTY THOUSAND DOLLARS (\$350,000.00), contributed to the Qualified Settlement Fund. The Gross Settlement Amount shall be paid by Defendants and/or their fiduciary liability insurer. The Gross Settlement Amount shall be the full and sole monetary payment to the Settlement Class, Plaintiffs and/or Class Counsel, made by or on behalf of Defendants in connection with the Settlement, effectuated through this Settlement Agreement. Neither Defendants nor their insurer will make any additional payment in connection with the Settlement.
- u. The “Action” means *Nykiel v. Smith & Nephew, Inc. et al.*, Case No. 1:24-cv-12247-NMG, in the United States District Court for the District of Massachusetts.
- v. “Complaint” means the operative pleading in the Action.
- w. “Plaintiffs” or “Class Representatives” means Daniel Nykiel and Annemari Cooley.
- x. “Independent Fiduciary” means an independent fiduciary mutually agreed to by the Parties which has no relationship to any of the Settling Parties and will serve as the independent fiduciary to the Plan with the power to approve or authorize the settlement of Released Claims on behalf of the Plan.
- y. “Net Settlement Amount” means the Gross Settlement Amount minus: (a) all Attorneys’ Fees and Costs paid to Class Counsel as authorized by the Court; (b) all Case Contribution Awards as authorized by the Court; (c) all Administrative Expenses; and (d) a contingency reserve not to exceed \$10,000 that is set aside by the Settlement Administrator for: (1) Administrative Expenses incurred before the Settlement becomes Final but not yet paid; (2) Administrative Expenses estimated to be incurred after the Settlement is Final; and (3) an amount estimated for adjustments of data or calculation errors.
- z. “Persons” means an individual, partnership, corporation, governmental entity or any other form of entity or organization.
- aa. “Personally Identifiable Information” means or refers to information or data that can identify a specific Class Member, such as name, address, social security number, e-mail address, Plan account balance data, phone number, date and place of birth, and other information regarded as personal data.
- bb. “Plan” means the Smith & Nephew US Savings Plan, and each of its predecessor plans or successor plans, individually and collectively, and any trust created and attendant to all such plans.

- cc. “Plan of Allocation” means the method of allocating the Net Settlement Amount to Class Members. A proposed form of the Plan of Allocation is attached hereto as **Exhibit 2**.
- dd. “Preliminary Approval Order” means the order of the Court in substantially the form attached hereto as **Exhibit 3**, whereby the Court preliminarily approves the Settlement.
- ee. “Qualified Settlement Fund” means the interest-bearing settlement fund account to be established and maintained by the Settlement Administrator and referred to as the Qualified Settlement Fund within the meaning of Treasury Reg. § 1.468B-1.
- ff. “Recordkeeper” means the entity or entities that maintain electronic records of the Plan’s participants and their individual accounts.
- gg. “Released Claims” means any and all past, present, and future actual or potential claims (including but not limited to claims for any and all losses, damages, unjust enrichment, attorneys’ fees, disgorgement, litigation costs, injunction, declaration, contribution, indemnification or any other type of or nature of legal or equitable relief), actions, demands, rights, obligations, liabilities, expenses, costs, and causes of action, accrued or not, whether arising under federal, state, or local law, whether by statute, contract, common law, or equity, whether brought in individual or representative capacity, whether accrued or not, whether known or unknown, suspected or unsuspected, foreseen or unforeseen based in whole or in part on acts or failures to act during the Class Period:
 - a. That were or could have been asserted in the Action, or that arise out of, relate to, or are based on any of the allegations, acts, omissions, facts, matters, documents, transactions, or occurrences that were alleged, asserted, referenced, or set forth in the Complaint; or
 - b. That arise out of, relate in any way to, or are based on, or have any connection with the administration of the Plan and ERISA’s fiduciary responsibilities related to the Plan, including but not limited to: (i) the selection, oversight, retention, monitoring, compensation, fees, or performance of the Plan’s investment options; (ii) disclosures or failure to disclose information regarding the Plan’s investment options; (iii) payments to or costs of managed account services, recordkeeping, or other fees and expenses of the Plan’s service providers other administrative costs; (iv) causing the Plan to pay excessive direct or indirect fees, compensation, excessive float compensation, and/or excessive revenue sharing compensation; (v) use of Plan forfeitures; (vi) any conduct related to fiduciary involvement with the Plan’s forfeiture account and/or the use of Plan proceeds from the forfeiture account for allegedly improper purposes that purportedly do not serve the best interests of Plan participants; (vii) the management, oversight or administration of the Plan; (viii) the conduct of the Plan’s fiduciaries with respect to any aspect of management, oversight,

or administration of the Plan; and/or (ix) any alleged breach of the duty of loyalty, care, prudence, diversification, or any other fiduciary duties, or prohibited transactions or self-dealing, under ERISA with respect to the foregoing.

- c. “Released Claims” includes any and all claims that would be barred by *res judicata* based on entry of the Final Approval Order.
- d. For the Plaintiffs, but not for other Class Members or the Plan, “Released Claims” includes any and all claims Plaintiffs may have against any Released Party, of any nature whatsoever, provided that such claims may be validly released and waived under the law, up to and including the date the Court enters the Preliminary Approval Order.
- e. Plaintiffs, Class Members, and the Plan knowingly and expressly waive and relinquish, to the fullest extent permitted by law, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which provides that “A general release does not extend to the 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,” and any similar state, federal or other law, rule or regulation or principle of common law of any domestic governmental entity.
- f. “Released Claims” does not include any individual or single-plaintiff claims for benefits that the Class Representatives or the Settlement Class have as to the value of their respective vested account balances under the terms of the Plan and according to the Plan’s records as of the date the Settlement becomes Final where such claims arise solely under ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), and solely to the extent such claims do not relate to the Released Claims described herein.
- hh. “Released Parties” means: (i) Defendants; (ii) Defendants’ insurers, co-insurers, and reinsurers; (iii) Defendants’ direct and indirect past, present, and future affiliates, parents, subsidiaries, divisions, control group entities, joint ventures, predecessors, successors, Successors-In-Interest, assigns, boards of trustees, boards of directors, officers, trustees, directors, partners, agents, managers, members, employees or heirs (including any individuals who serve or served in any of the foregoing capacities, such as members of the boards of trustees or boards of directors that are associated with any of Defendants’ past, present, and future affiliates), and each Person that controls, is controlled by, or is under common control with them; (iv) the Plan and the Plan’s current and past fiduciaries, committees, subcommittees, administrators, plan administrators, recordkeepers, service providers, consultants, attorneys, agents, insurers and parties-in-interest; and (v) Defendants’ independent contractors, Representatives, attorneys, administrators, insurers, fiduciaries, accountants, auditors, advisors, consultants, personal Representatives, spouses, heirs, executors, administrators, associates,

employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, employee benefit plan committees and subcommittees, service providers to the Plan (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them.

- ii. “Representatives” shall mean representatives, attorneys, agents, directors, officers, or employees.
- jj. “Review Proceeding” shall mean any appeal, petition, objection, or other judicial process that seeks to review, reverse, vacate, modify, or otherwise challenge the Court’s Final Approval Order of the Settlement.
- kk. “Settlement” means the settlement to be consummated under this Settlement Agreement and its exhibits, including any modifications or amendments.
- ll. “Settlement Account” means the non-interest-bearing FDIC-insured account identified by the Settlement Administrator.
- mm. “Settlement Administrator” means the entity mutually agreed to by the Parties and selected and retained by Class Counsel to administer the Settlement.
- nn. “Settlement Agreement Execution Date” is the date the final signature is applied to the Settlement Agreement.
- oo. “Settlement Class” means all persons who were participants in or beneficiaries of the Plan during the Class Period.
- pp. “Settlement Effective Date” means the date on which the Final Approval Order is Final, provided that by such date the Settlement has not been terminated.
- qq. “Settlement Notice” means the Notice of Class Action Settlement and Fairness Hearing to be sent to Class Members identified by the Settlement Administrator following the Court’s issuance of the Preliminary Approval Order, in substantially the form attached hereto as **Exhibit 4**. The Settlement Notice shall inform Class Members of a Fairness Hearing to be held by the Court, on a date to be determined by the Court, at which any Class Member satisfying the conditions set forth in the Preliminary Approval Order and the Settlement Notice may be heard regarding: (i) the terms of the Settlement Agreement; (ii) the petition of Class Counsel for award of Attorneys’ Fees and Litigation Expenses; (iii) payment of Administrative Expenses; and (iv) Class Representatives’ Case Contribution Awards.
- rr. “Settlement Website” means the internet website established in accordance with Paragraph 54.
- ss. “Settling Parties” means the Defendants and Released Parties as well as the Plaintiffs, the Settlement Class, and the Plan.

- tt. “Successor-In-Interest” shall mean a Person or party’s estate, legal representatives, heirs, successors or assigns, including successors or assigns that result from corporate mergers or other structural changes.
- uu. “Transferor” means Smith & Nephew, Inc., or its insurer, as the “transferor” within the meaning of Treas. Reg. § 1.468B-1(d)(1).

Preliminary Approval

2. As soon as reasonably practicable upon the full execution of this Settlement Agreement by the Settling Parties, but with at least three (3) days’ advance notice to Smith & Nephew’s counsel, Class Counsel shall file a Motion for Preliminary Approval with the District Court, seeking entry of an order substantially in the form attached hereto as **Exhibit 3** (the Preliminary Approval Order) and approval of notice to the Settlement Class, substantially in the form attached hereto as **Exhibit 5** (the Class Notice). Class Counsel shall request that a Fairness Hearing be held at least one hundred and twenty (120) days from the date of the entry of the Preliminary Approval Order for the District Court to consider whether the terms of the Settlement are fair, reasonable, and adequate and thus should be finally approved and implemented by the District Court pursuant to Federal Rule of Civil Procedure 23(e). Defendants shall not oppose the relief requested in the Motion for Preliminary Approval, provided it is consistent with the terms and conditions of the Settlement.

3. If the Settlement (including any modification thereto made with the consent of the Parties as provided for herein) is approved preliminarily by the District Court, the Settlement Administrator shall cause the Class Notice to be disseminated in the manner and on the dates set in the Preliminary Approval Order to the Settlement Class. Costs associated with the Class Notice and its dissemination shall be paid out of the Gross Settlement Amount, as that term is defined herein.

Settlement Administrator

4. Smith & Nephew and its counsel shall use reasonable efforts to respond timely to written requests, including by e-mail, from the Settlement Administrator for readily accessible data that is reasonably necessary to determine the feasibility of administering the Plan of Allocation or to implement the Plan of Allocation.

5. The Settlement Administrator must agree to be bound by any non-disclosure or security protocol required by the Parties.

6. The Settlement Administrator shall use the data provided by Smith & Nephew and the Plan's Recordkeeper solely for the purposes of meeting its obligations as Settlement Administrator, and for no other purpose. The Settlement Administrator will create an anonymous numerical identification system allowing only the Settlement Administrator to identify Class Members. In furtherance of protecting and masking Class Member Personally Identifiable Information, Class Counsel agrees they will not receive Class Member Personally Identifiable Information but instead will receive Class Member information and data based upon the anonymous numerical identification system created by the Settlement Administrator.

7. At the request of the Parties, the Settlement Administrator shall provide a written protocol addressing how the Settlement Administrator will maintain and store information provided to it in order to ensure that reasonable and necessary precautions are taken to safeguard the privacy and security of such information.

Settlement Notice

8. By the date and in the manner set by the Court in the Preliminary Approval Order, and unless otherwise set forth below, the Settlement Administrator shall cause to be sent to each Class Member identified by the Settlement Administrator a Settlement Notice in the form and manner to be approved by the Court, which shall be substantially in the form attached hereto as **Exhibit 4** or a form subsequently agreed to by the Parties and approved by the Court. The

Settlement Administrator shall use commercially reasonable efforts to locate any Class Member whose Settlement Notice is returned and re-send such documents one additional time.

9. No later than ten (10) calendar days after the filing of the Motion for Preliminary approval of the Settlement, Smith & Nephew will cause to be mailed the CAFA Notice via United States Mail, first class postage, certified, return receipt requested or via overnight delivery via a commercial overnight delivery carrier, in substantially the form attached hereto as **Exhibit 5**, together with a CD ROM or USB drive containing the relevant case pleadings, to the Attorney General of the United States, the Secretary of the Department of Labor, and the attorneys general of all states in which Class Members reside, as specified in 28 U.S.C. § 1715.

Final Approval

10. If the Settlement (including any modification thereto made with the consent of the Parties as provided for herein) is preliminarily approved by the District Court, no later than forty-five (45) calendar days before the Fairness Hearing, Class Counsel shall move the District Court for an award of Attorneys' Fees, Expenses and Case Contribution Awards. No later than fourteen days (14) calendar days before the Fairness Hearing, Class Counsel shall move the District Court to enter an Order and Final Judgment substantially in the form attached hereto as **Exhibit 1** (the Final Approval Order), which, among other things:

- a. approves the Settlement, adjudges the terms thereof to be fair, reasonable, adequate, and in the best interests of the Settlement Class, and directs consummation of the Settlement in accordance with the terms and conditions of this Agreement;
- b. determines that the requirements of Federal Rule of Civil Procedure 23 and due process have been satisfied in connection with the distribution of the Class Notice to the Settlement Class;

- c. approves a Plan of Allocation, attached as **Exhibit 2**;
- d. determines what legal fees and expenses should be awarded or reserved for award to Class Counsel;
- e. determines whether case contribution awards should be provided to the Plaintiffs;
- f. dismisses the Action with prejudice as to Defendants and operates to extinguish, discharge, and release any and all Released Claims against the Released Parties, without costs except as herein provided, said dismissal being subject only to compliance by the Parties with the terms of this Agreement and any order of the District Court concerning this Agreement;
- g. bars and enjoins the Settlement Class and the Plan from the commencement and prosecution, either directly or indirectly, of any other actions in any court asserting any and all Released Claims against any and all Released Parties; and
- h. permanently enjoins Plaintiffs, the Settlement Class, and the Plan from asserting, commencing, prosecuting, or continuing, either directly, individually, representatively, derivatively or in any other capacity, any other actions in any court asserting such Released Claims or from receiving any additional recovery or relief from any Released Parties with respect thereto.

Date of Complete Settlement Approval

11. For purposes of this Agreement, “Complete Settlement Approval” shall occur when all of the following have taken place: (a) entry of the Final Approval Order approving the

Settlement; and (b) the expiration of all applicable appeal periods for any appeals of the Final Approval Order, without any appeal having been filed or, if an appeal is taken, upon entry of an order affirming the Final Approval Order, and the expiration of any applicable period for the reconsideration, rehearing, or appeal of such affirmance without any motion for reconsideration, rehearing, or further appeal having been filed. Upon Complete Settlement Approval, the Settlement shall become “Final.”

Release

12. The Parties intend the Settlement to be a final and complete resolution of all disputes asserted or which could have been asserted by the Plaintiffs, the Settlement Class, and the Plan against the Released Parties with respect to the Released Claims. Accordingly, upon Complete Settlement Approval, the Plaintiffs and Defendants agree not to assert in any public forum that the claims asserted in the Action were brought or defended in bad faith or without a reasonable basis. The Parties shall not assert any contention regarding a violation of Rule 11 of the Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of the Action and agree that, except as expressly set forth herein, each party shall bear his, her, or its own costs and expenses, including attorneys’ fees.

13. Notwithstanding any other provision of the Settlement Agreement, the Plaintiffs and Settlement Class shall not be deemed to have barred, waived, or released any claim by any individual participant concerning his or her individual eligibility for benefits under the Plan, or to contest the correct amount of such benefit, except to the extent that such claim may relate to or arise from the Released Parties’ administration of the Plan and/or the Released Parties’ performance of fiduciary responsibilities for the Plan, including, but not limited to, the events, transactions and occurrences described in the Complaint.

Payment of Gross Settlement Amount and Managed Account Services RFP

14. In consideration of all the promises and agreements set forth in this Agreement, Smith & Nephew or Defendants' insurers will cause a monetary payment to be made in the amount of THREE HUNDRED AND FIFTY THOUSAND DOLLARS AND NO CENTS (\$350,000.00) (the "Gross Settlement Amount") in full settlement of the claims asserted in the Action against Defendants and in consideration for release of the Released Claims specified above.

15. In further consideration of all the promises and agreements set forth in this Agreement, Smith & Nephew agrees to direct the Plan's fiduciaries to conduct a request for proposal related to the managed account services offered under the Plan on or before December 31, 2027, with that request for proposal related to managed account services offered under the Plan to be otherwise conducted in the manner and at the time chosen by the Plan's fiduciaries in their sole discretion.

16. Within thirty (30) business days after the District Court enters a Preliminary Approval Order or after Smith & Nephew receives the appropriate account information and instructions to process payment from Class Counsel, whichever is later, Smith & Nephew shall pay and/or shall cause the Defendants' insurance carrier to pay FIFTY THOUSAND DOLLARS AND NO CENTS (\$50,000.00) of the Gross Settlement Amount to the Settlement Administrator to cover the initial Settlement Administrative Expenses, including the costs of sending Notice to the Settlement Class. If the Settlement is not approved by the District Court or either party has withdrawn from the Settlement or the Settlement has been terminated as per Paragraphs 47, 48 and 50 of this Agreement, the initial payment will be returned to Smith & Nephew within ten (10) calendar days of such withdrawal or termination of the Settlement, less amounts already incurred by the Settlement Administrator.

17. Within thirty (30) calendar days after the Settlement Effective Date, Smith & Nephew shall pay and/or shall cause the Defendants' insurance carrier to pay the remaining balance of THREE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$300,000.00) of the Gross Settlement Amount to the Settlement Account using the same information provided for the payment in Paragraph 16. Smith & Nephew shall pay and/or cause the Defendants' insurance carrier to pay the remaining \$300,000.00 balance of the Gross Settlement Amount consistent with the terms of the Settlement. Except as otherwise provided herein, under no circumstances shall Smith & Nephew or Defendants' insurance carrier be required to pay, or cause to be paid, any amounts that exceed the Gross Settlement Amount. Upon payment of the Gross Settlement Amount, all of Defendants' payment obligations under this Agreement shall be satisfied and discharged in full. To the extent the Settlement Amount will be funded by insurance proceeds, for purposes of this Agreement, any such amounts shall be considered to have been paid by Defendants.

18. The Gross Settlement Amount delivered to the Settlement Account shall constitute the Qualified Settlement Fund, which shall be governed by the terms of this Agreement. At the earliest possible date, and in all events no later than five (5) calendar days following the District Court's entry of the Preliminary Approval Order, the Settlement Administrator shall provide to Smith & Nephew, on the letterhead of Plaintiffs' Counsel, the following information: (i) the name and street address of the financial institution; (ii) the account name; (iii) the payee name; (iv) ACH routing number; (v) account number; and (vi) the W-9 for the Settlement Account. The Qualified Settlement Fund will be subject to the jurisdiction of the District Court.

19. The Parties agree that the Qualified Settlement Fund is intended to be, and will be, an interest-bearing "qualified settlement fund" within the meaning of Section 468B of the Code

and Treas. Reg. § 1.468B-1. If applicable, the Settlement Administrator and the Transferor shall fully cooperate in filling the “relation-back election” (as defined in Treas. Reg. § 1.468B-1(j)(2)) to treat the Qualified Settlement Fund as coming into existence as a “qualified settlement fund” within the meaning of Section 468B of the Code and Treas. Reg. § 1.468B-1 as of the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Settlement Administrator to prepare and deliver, in a timely and proper manner, the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to be timely made.

20. The “administrator” of the Qualified Settlement Fund, within the meaning of Treas. Reg. § 1.468B-2(k)(3), shall be the Settlement Administrator. The Settlement Administrator shall timely and properly cause to be filed on behalf of the Qualified Settlement Fund all information and other tax returns required to be filed in accordance with Treas. Regs §§ 1.468B-2(k) and -2(l) with respect to the Gross Settlement Amount (including, without limitation, applying for a taxpayer identification number for the Qualified Settlement Fund pursuant to the Internal Revenue Service Form SS-4 and in accordance with Treas. Reg. § 1.468B-2(k)(4)). Such returns shall be consistent with the terms set forth in this Agreement, and, in all events, shall reflect that all taxes (including any estimated taxes, interest, or penalties) on the income earned by the Qualified Settlement Fund shall be deducted and paid from the Gross Settlement Amount.

21. Taxes and tax expenses of the Qualified Settlement Fund are Administrative Expenses, as defined in this Agreement, to be deducted and paid from the Gross Settlement Amount, including but not limited to: (a) all taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Qualified Settlement Fund, including any taxes or tax detriments that may be imposed upon Defendants with respect to any income

earned by the Qualified Settlement Fund for any period during which the Qualified Settlement Fund does not qualify as a “qualified settlement fund” within the meaning of Section 468B of the Code and Treas. Reg. § 1.468B-1; and (b) all tax expenses and costs incurred in connection with the operation and implementation of the actions described in this Agreement (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses related to filing or failing to file the returns described in this Agreement). Such taxes and tax expenses shall be Administrative Expenses and shall be paid timely by the Settlement Administrator out of the Gross Settlement Amount without prior order from the Court. The Settlement Administrator is responsible for withholding and reporting requirements in accordance with Treas. Reg. § 1.468B-2(l) and shall be obligated to make all taxable withholdings from distributions to any Class Member of funds necessary to pay such amount, including the establishment of adequate reserves for any taxes and tax expenses. Neither the Released Parties, Defendants’ counsel, nor Class Counsel are responsible, nor shall they have any liability, for taxable withholding, compliance, or reporting requirements involving the Qualified Settlement Fund or any distributions. The Parties agree to cooperate with the Settlement Administrator and any escrow agent thereof, each other, and their tax attorneys and accountants (if any) to the extent reasonably necessary to carry out the provisions of this Agreement.

22. The Settlement Administrator shall, at the written direction of Class Counsel, cause the Qualified Settlement Fund to be invested in short-term United States Agency or Treasury Securities or other instruments backed by the Full Faith and Credit of the United States Government or an agency thereof, or fully insured by the United States Government or any agency thereof, and shall cause the proceeds of these investments to be reinvested as they mature in similar instruments to their then-current market rates.

23. The Settlement Administrator shall be responsible for making provision for the payment from the Qualified Settlement Fund of all taxes and tax expenses, if any, owed with respect to the Qualified Settlement Fund, and for all tax reporting, remittance, and/or withholding obligations, if any, for amounts distributed from it. The Released Parties, Defendants' counsel, and/or Class Counsel have no responsibility or any liability for any taxes or tax expenses owed by, or any tax reporting or withholding obligations, if any, of the Qualified Settlement Fund.

24. No later than February 15 of the year following the calendar year in which Smith & Nephew or Defendants' insurer(s) makes any transfer of the Gross Settlement Amount, or any other amount, to the Qualified Settlement Fund on behalf of the Transferor pursuant to the terms of this Agreement, the Transferor shall timely furnish a statement to the Settlement Administrator that complies with Treas. Reg. § 1.468B-3(e)(2), which may be a combined statement under Treas. Reg. § 1.468B-3(e)(2)(ii), and shall attach a copy of the statement to its federal income tax return filed for the taxable year in which Smith & Nephew or Defendants' insurer(s) make a transfer on the Transferor's behalf to the Qualified Settlement Fund.

25. With the sole exception of Smith & Nephew's obligation to make payments or to cause Defendants' insurance carrier to make payments to be paid to the Settlement Account, Defendants, their insurance carrier(s), the Released Parties, and Defendants' counsel shall have no liability with respect to the Settlement Account for the monies maintained in the Qualified Settlement Fund, including, without limitation, any liability related to any fees, taxes,¹ investment decisions, losses or value fluctuations, maintenance, supervision, or distributions of any portion of

¹ "Taxes" means all taxes (federal, state, county or municipal) on the income of the Settlement Fund and expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, interest, penalties and the expenses of tax attorneys and accountants).

the Gross Settlement Amount. In addition, Defendants, the Released Parties, the Plaintiffs and their respective counsel shall have no responsibility for or liability with respect to any act, omission, or determination of the Settlement Account by the Settlement Administrator or any of its respective designees or agents, in connection with the calculations of the distribution and administration of the Settlement or the determination, administration, calculation, or payment of any claims asserted against the Qualified Settlement Fund.

Payment of Settlement Administrative Expenses

26. Upon preliminary approval by the District Court, all reasonable expenses incurred by the Settlement Administrator associated with identifying the Settlement Class and effecting dissemination of the Class Notice as required by the District Court in the Preliminary Approval Order may be paid from the initial payment of \$50,000.00 to the Settlement Account.

27. Administrative Expenses are defined above and include all of the costs and expenses of the Settlement Administrator in connection with the administration of the Settlement. All Administrative Expenses shall be paid from the Qualified Settlement Fund.

Payment of Fees and Expenses of the Independent Fiduciary

28. With the mutual consent and agreement of Plaintiffs, Smith & Nephew shall retain the Independent Fiduciary to review and consider the Settlement on behalf of the Plan and its current fiduciaries and determine whether the Settlement is reasonable and fair. All costs of the Independent Fiduciary shall be paid by Smith & Nephew independent from the Qualified Settlement Fund.

Payment of Attorneys' Fees and Expenses

29. Class Counsel's attorneys' fees and expenses will be subject to the District Court's approval and shall be paid out of the Qualified Settlement Fund. Defendants shall take no position directly or indirectly on Class Counsel's application for attorneys' fees and expenses, provided

that Class Counsel do not request an award of attorneys' fees and expenses higher than one-third of the Gross Settlement Amount. The Parties shall leave the amount of Class Counsel's attorneys' fees and expenses to the sound discretion of the District Court.

30. The District Court's consideration of requests for Class Counsel's fees and expenses are matters separate and apart from the Settlement between the Parties.

31. No later than forty-five (45) calendar days prior to the Fairness Hearing, and more than two weeks before any Independent Fiduciary retained by Smith & Nephew files its report, Class Counsel will apply to the District Court for an award of attorneys' fees and reimbursement of litigation expenses. Defendants shall have no obligations whatsoever with respect to any attorneys' fees or expenses incurred by Class Counsel, which shall be payable solely from the Qualified Settlement Fund, subject first to Court Approval.

Case Contribution Awards

32. No later than forty-five (45) calendar days prior to the Fairness Hearing, Class Counsel may also apply to the District Court for case contribution awards for the Plaintiffs in an amount not to exceed \$10,000 for each Plaintiff. Defendants will take no position with respect to any such application. Defendants shall have no obligations whatsoever with respect to any case contribution awards, which shall be payable solely from the Qualified Settlement Fund.

Class Notice

33. Smith & Nephew shall send the names, last known street addresses, Social Security numbers, account/plan information, balances, and other pertinent information of the Settlement Class, as per Defendants' records, to the Settlement Administrator in electronic form as soon as practicable, but no later than forty-five (45) days after entry of the Preliminary Approval Order.

34. No later than sixty (60) days before the Fairness Hearing, the Settlement Administrator shall send the Notice by first-class mail to the Settlement Class. The Notice will be

sent to the last known mailing address of each of the Settlement Class in the form attached hereto as **Exhibit 4**.

Plan of Allocation

35. The Plan of Allocation is attached as **Exhibit 2**. The District Court's approval of the Plan of Allocation is not a material or integral part of or condition to the Settlement, and the District Court's rejection or modification of the Plan of Allocation shall neither entitle the Plaintiffs or Defendants to withdraw from or terminate the Settlement, nor affect the finality of the Settlement or Final Approval thereof.

36. Class Counsel, with the mutual consent of Defendants, shall retain the Settlement Administrator to calculate the amounts payable to Settlement Class. The Settlement Administrator shall be exclusively responsible for calculating the amounts payable to Settlement Class pursuant to the Plan of Allocation based on information to be provided by the Plan's recordkeepers or fiduciaries. Defendants, the Released Parties, the Plaintiffs, and their respective counsel shall have no responsibility or liability for the Plan of Allocation, corresponding calculations, or the expenses incurred in connection with the calculations.

37. The Settlement Administrator shall be exclusively responsible for calculating the amounts payable to the Class Members pursuant to the Plan of Allocation. Upon the Final Approval of the Settlement, and after the expenses payable pursuant to this Agreement have been disbursed, or, in the case of future estimated expenses, set aside and withheld, Class Counsel shall direct the Settlement Administrator to disburse the Net Settlement Amount as provided by this Settlement Agreement. The Recordkeeper or Authorized Administrator shall allocate to the Plan accounts of Class Members who have Active Accounts any Net Settlement Amount as calculated by the Settlement Administrator according to the Plan of Allocation, documentation of which Class

Counsel shall direct the Settlement Administrator to provide to the Authorized Administrator pursuant to the Plan of Allocation no later than the distribution of the Net Settlement Amount. The Settlement Administrator shall promptly notify Class Counsel and Defendants' counsel as to the date(s) and amounts(s) of said allocation(s) made to Class Members who have Active Accounts. The Settlement Administrator shall be responsible for distributing the Net Settlement Amount allocated to Settlement Class members without Active Accounts as provided by the Plan of Allocation and shall promptly notify Class Counsel and Defendants' counsel as to the date(s) and amounts(s) of said distributions made to Settlement Class members who are Former Participants. Defendants shall have no liability related to the structure or taxability of such payments. Nothing herein shall constitute approval or disapproval of the Plan of Allocation by Defendants, and Defendants shall have no responsibility or liability for the Plan of Allocation and shall take no position for or against the Plan of Allocation.

38. Any portion of the Qualified Settlement Fund remaining after distributions to the Settlement Class, including costs and taxes and Settlement Class member payments which remain uncashed after one hundred and eighty (180) days following their distribution, shall be paid to the Plan for the purpose of defraying administrative fees and expenses of the Plan.

39. The Plan of Allocation shall distribute the Net Settlement Amount in a manner that the distributions shall constitute "restorative payments" within the meaning of Revenue Ruling 2002-45 for all purposes.

40. Defendants, the Released Parties, Plaintiffs and their respective counsel shall have no responsibility or liability for the tax-qualified status or distribution of the Qualified Settlement Fund to the Settlement Class.

Final List of Class Members

41. Prior to the disbursement of the Net Settlement Amount, the Settlement Administrator shall provide to Defendants' counsel and Class Counsel a final list of Class Members, in electronic format, to whom the Net Settlement Amount will be distributed in accordance with the Plan of Allocation. Such list shall be final, and only persons on the list or their Beneficiaries or Alternate Payees shall be eligible to receive any recovery from this Settlement.

42. After the distribution of the Net Settlement Amount and allocation of the Net Settlement Amount pursuant to the Plan of Allocation, amounts allocable to Class Members who cannot be located or otherwise cannot receive their Settlement payment shall revert to the Qualified Settlement Fund for distribution consistent with the Plan of Allocation.

Release and Covenant Not to Sue

43. When the Settlement becomes Final, the Plan and Settlement Class members (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns), on their own behalf and on behalf of the Plan, shall fully, finally, and forever settle, release, relinquish, waive, and discharge all Released Parties from the Released Claims, whether or not any Settlement Class member may discover facts in addition to or different from those which the Settlement Class or Class Counsel now know or believe to be true with respect to the Action and the Released Claims; whether or not any Settlement Class member receives a monetary benefit from the Settlement, actually received the Settlement Notice, filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Litigation Expenses and expenses or for an award of Plaintiffs' Case Contribution Award; and whether or not the objections or claims for distribution of any Class Member have been approved or allowed.

44. Class Counsel, Plaintiffs, Settlement Class members, or the Plan may hereafter discover facts in addition to or different from those that they know or believe to be true with respect

to the Released Claims. Such facts, had they been known, might have affected the decision to settle with the Released Parties, or the decision to release, relinquish, waive, and discharge the Released Claims, or the decision of a Settlement Class member not to object to the Settlement. Notwithstanding the foregoing, each Class Member and the Plan shall expressly, upon the entry of the Final Approval Order, be deemed to have, and, by operation of the Final Approval Order, shall have fully, finally, and forever settled, released, relinquished, waived, and discharged any and all Released Claims. Plaintiffs, Settlement Class members and the Plan acknowledge and shall be deemed by operation of the Final Approval Order to have acknowledged that the foregoing waiver was bargained for separately and is a key element of the Settlement embodied in this Settlement Agreement of which this release is a part. As of the Settlement Effective Date, Plaintiffs, the Class Members, and the Plan expressly agree that they, acting individually or together, or in combination with others, shall not sue or seek to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a Department of Labor proceeding, an arbitration or a proceeding before any state insurance agency or other department or commission), any cause of action, demand, or claim on the basis of, connected with, or arising out of any of the Released Claims. Nothing herein shall preclude any action to enforce the terms of this Settlement Agreement in accordance with the procedures set forth in this Settlement Agreement.

45. Plaintiffs, each Class Member, and the Plan hereby stipulate and agree with respect to any and all Released Claims that, upon entry of the Final Approval Order, the Class Members and Plan shall be conclusively deemed to, and by operation of the Final Approval Order shall knowingly settle, release, relinquish, waive, and discharge any and all rights or benefits they may now have, or in the future may have, under any law relating to the releases of unknown claims

pertaining specifically to Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims 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.

46. Plaintiffs, Class Members, and the Plan also hereby stipulate and agree with respect to any and all Released Claims that, upon entry of the Final Approval Order, that the Class Members and the Plan shall be conclusively deemed to, and by operation of the Final Approval Order shall knowingly waive any and all provisions, rights, and benefits conferred by any law or of any State or territory within the United States or any foreign country, or any principle of common law, which is similar, comparable, or equivalent in substance to Section 1542 of the California Civil Code.

Right to Withdraw From the Settlement

47. Each of the Parties shall have the option to withdraw unilaterally from and terminate the Settlement in the event that: (a) either the Preliminary Approval Order or the Final Approval Order referred to above is not entered substantially in the forms specified herein, including such modifications thereto as may be ordered by the District Court with the consent of the Parties; or (b) the Settlement is not approved by the District Court, or is disapproved, or is materially modified upon appeal.

48. At their sole discretion, Defendants shall have the right to withdraw from this Settlement and terminate the Agreement if:

- a. on or before fourteen (14) calendar days before the District Court's Fairness Hearing, the United States Department of Labor files any objection to the Agreement or Settlement in any court, brings a claim against any Released Parties relating to the Released Claims, or notifies any Releasee that it

intends to file such a claim;

- b. another party files a separate class action that raises comparable claims against the same Released Parties during some part of the same class period addressed by the claimed alleged in the Complaint; or
- c. the Independent Fiduciary retained by Smith & Nephew fails to approve the Settlement on or before fourteen (14) calendar days prior to the District Court's Fairness Hearing. Notwithstanding any provision to the contrary, the Settlement is contingent upon the Independent Fiduciary's (i) approving the Settlement in writing and giving a release in its capacity as a fiduciary of the Plan and for and on behalf of the Plan coextensive with the release from the Plaintiffs, and the Settlement Class; (ii) authorizing the Settlement in accordance with Prohibited Transaction Class Exemption 2003-39; and (iii) finding that the Settlement does not constitute a prohibited transaction under ERISA § 406(a). All Parties shall cooperate in providing information to the Independent Fiduciary upon request.

49. In the event that the Settlement is terminated pursuant to this Agreement, then: (a) the Settlement proposed herein shall be of no further force and effect and each Party shall be restored to his, her, or its respective position as it existed prior to the execution of this Agreement. If Defendants are responsible for the Settlement being terminated, any funds contributed to the Settlement Account, less amounts expended in furtherance of the administration of this Settlement in accordance with the terms hereof, shall be returned to the payor (whether Smith & Nephew or Defendants' insurance carrier) within ten (10) business days, together with a full accounting of the expenditures. If the Plaintiffs are responsible for the termination of Settlement, all funds

contributed to the Settlement Account shall be returned to the payor (whether Smith & Nephew or Defendants' insurance carrier) within five (5) business days. If the Parties are unable to agree, the matter will be submitted to and determined by a mediator mutually agreed to by the Parties.

50. The Settlement Agreement shall *automatically* terminate, and thereby become null and void with no further force or effect if: (I) (a) the Independent Fiduciary does not approve the Settlement Agreement or disapproves the Settlement Agreement for any reason whatsoever, or Defendants reasonably conclude that the Independent Fiduciary's approval does not include the determinations required by the PTE 2003-39; and (b) the Parties do not mutually agree to modify the terms of this Settlement Agreement to facilitate an approval by the Independent Fiduciary or the Independent Fiduciary's determinations required by PTE 2003-39; and (c) Defendants do not exercise their option to waive this condition; or (II) the Preliminary Approval Order or the Final Approval Order is not entered by the Court in substantially the form submitted by the Parties or in a form which is otherwise agreed to by the Parties; or (III) the Settlement Class is not maintained as set forth herein or in a form which is otherwise agreed to by the Parties; or (IV) this Settlement Agreement is disapproved by the Court or fails to become effective and the Parties do not mutually agree to modify the Settlement Agreement in order to obtain the Court's approval or otherwise effectuate the Settlement; or (V) the Preliminary Order or Final Approval Order is finally reversed on appeal, or is modified on appeal, and the Parties do not mutually agree to any such modifications.

51. If the Settlement Agreement is terminated, deemed null and void, or has no further force or effect, the Action and the Released Claims asserted by the Plaintiffs shall for all purposes with respect to the Parties revert to their status as though the Parties never executed the Settlement Agreement. All funds deposited in the Qualified Settlement Fund, and any interest earned thereon,

shall be returned to Smith & Nephew or Defendants' insurer(s) within thirty (30) calendar days after the Settlement Agreement is finally terminated or deemed null and void.

52. It shall not be deemed a failure to approve the Settlement Agreement if the Court denies, in whole or in part, Class Counsel's request for Attorneys' Fees and Litigation Expenses and/or Plaintiffs' Case Contribution Award and/or modifies any of the proposed orders relating to Attorneys' Fees and Litigation Expenses and/or Plaintiffs' Case Contribution Award.

Confidentiality

53. Except as set forth explicitly below, the Parties, Class Counsel, and Defendants' counsel agree to keep confidential all positions, assertions, and offers made during settlement negotiations relating to the Action, and the Settlement Agreement, except that they may discuss the negotiations with the Settlement Class, Defendants' insurers and auditors, the Independent Fiduciary, and the Parties' tax, legal, and regulatory advisors, provided in each case that they comply with this Agreement in all other respects.

54. The Settlement Administrator, at the direction of Class Counsel, will establish a Settlement Website on which it will post the following documents or links to the following documents following the date of the Preliminary Approval Order: the Complaint; the Settlement Agreement and its Exhibits; the Settlement Notice; the motions for Final Approval, for awards of Attorneys' Fees and Litigation Expenses, and for Class Representative's Case Contribution Award; any Court orders related to the Settlement; any amendments or revisions to these documents; and any other documents or information mutually agreed upon by the Parties. The Settlement Administrator shall maintain the Settlement Website until no later than one year after the entry of the Final Approval Order at which point the Settlement Administrator shall take down the Settlement Website.

55. Defendants, Plaintiffs, Class Counsel, and Defendants' counsel agree that they will

not at any time make (or encourage or induce others to make) any public statement regarding the Action or the Settlement that disparages any Released Party; provided, however, that this prohibition does not preclude Class Counsel from restating: the allegations made in the Complaint and for purposes of the motion for Preliminary Approval of the Settlement; Motion for Final Approval of the Settlement; the request for Attorneys' Fees and Litigation Expenses, Administrative Expenses, and Class Representative Compensation; or as necessary to provide notice to the Settlement Class. This prohibition does not prohibit any Party from making any statements pursuant to a valid legal process, a request by a regulatory agency, or as required by law.

56. Defendants, Plaintiffs, Class Counsel, and Defendants' counsel agree that they will not publicly disclose the terms of the Settlement until after the motion for Preliminary Approval of the Settlement has been filed with the Court, other than as necessary to administer the Settlement, or unless such disclosure is pursuant to a valid legal process, a request by a regulatory agency, or as otherwise required by law, government regulations, or order of the Court.

Severability

57. The provisions of this Agreement are not severable.

Authority

58. Each of the individuals executing the Agreement on behalf of one or more of the Parties hereto warrants and represents that he or she has been duly authorized and empowered to execute this Agreement and Stipulation on behalf of his or her respective Party and/or Parties.

Stipulation of Settlement Not an Admission

59. The provisions contained in this Agreement and all negotiations, statements and proceedings in connection therewith shall not be deemed a presumption, a concession, or an admission by Defendants of any fault, liability, or wrongdoing as to any fact or claim alleged or

asserted in the Action or any other actions or proceedings and shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in these or any other actions or proceedings, whether civil, criminal or administrative, except in a proceeding to enforce the terms or conditions of this Agreement. Defendants have denied and continue to deny each and every claim alleged in the Action. Furthermore, this Agreement shall not be construed as or received in evidence as an admission, concession, or presumption against any of the Plaintiffs or any of the Class Members that any of their claims are without merit, or that any defenses asserted by Defendants have any merit, or that losses recoverable in the Action would not have exceeded the Gross Settlement Amount. Accordingly, neither this Agreement nor the Settlement nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or invalidity of any Released Claim, or of any wrongdoing or liability or lack thereof of any Released Party; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission or lack thereof of any Released Party in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. The Released Parties may file the Agreement and/or the Final Approval Order in any action that may be brought against them to support a defense or counterclaim based on principles of res judicata, collateral estoppel, claim or issue preclusion, accord and satisfaction, release, good-faith settlement, judgment bar, or reduction or any other similar defense or counterclaim. The Parties and their counsel, and each of them, agree, to the extent permitted by law, that all agreements made relating to the confidentiality of information shall survive and be unaffected by this Agreement.

Covenants

60. Defendants shall cooperate with Class Counsel by using reasonable efforts to

provide, to the extent reasonably accessible, information to identify Class Members and to implement the Plan of Allocation.

61. Defendants or Defendants' counsel shall work with the Recordkeeper to provide to the Settlement Administrator and/or Class Counsel data regarding Class Members (including names, dates of birth, the final four digits of social security numbers, dates of employment, last known primary address, Beneficiary and Alternate Payee information (as applicable), and end-of-year account balances throughout the Class Period), for purposes of effecting the administration of the Plan of Allocation. Neither the Plaintiffs, Class Counsel, Defendants, or Defendants' counsel will be responsible or liable in any way for ensuring the completeness or accuracy of the information provided by the Recordkeeper pursuant to this section.

62. The Settlement Administrator shall use the information provided by Defendants, Defendants' counsel, and/or the Recordkeeper pursuant to this Agreement to compile a preliminary list of Class Members for purposes of sending the Class Notice and calculating payments pursuant to the Plan of Allocation.

63. Class Counsel and their agents will use any information provided by Defendants, Defendants' counsel, and/or the Recordkeeper pursuant to this Agreement solely and for no other purpose than providing notice and administering this Settlement and will take all reasonable and necessary steps as required by law to maintain the security and confidentiality of this information.

64. The Parties shall reasonably cooperate with each other to effectuate this Settlement, including with respect to the Plan of Allocation, and shall not do anything or take any position inconsistent with obtaining a prompt Final Approval Order approving the Settlement unless expressly permitted by this Settlement Agreement. The Parties shall suspend any and all efforts to

prosecute and to defend the Action pending entry of the Final Approval Order or, if earlier, termination of the Settlement Agreement.

Representations and Warranties

65. The Parties, and each of them, represent and warrant as follows, and each Party acknowledges that each other Party is relying on these representations and warranties in entering into this Settlement Agreement: (a) that they have diligently prepared the case pursuant to the Court's orders; that they are voluntarily entering into this Settlement Agreement as a result of arm's-length negotiations; that in executing this Settlement Agreement they are relying solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; and that, except as provided herein, they have not been influenced to any extent whatsoever in executing this Settlement Agreement by any representations, statements, or omissions pertaining to any of the foregoing matters by any Party or by any Person representing any Party to this Settlement Agreement. Each Party assumes the risk of mistake as to facts or law. Each Party further recognizes 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; and (b) that they have carefully read the contents of this Settlement Agreement, and this Settlement Agreement is signed freely by each Person executing this Settlement Agreement on behalf of each of the Parties. The Parties, and each of them, further represent and warrant to each other that he, she, they, or it has made such investigation of the facts pertaining to the Settlement, this Settlement Agreement, and all of the matters pertaining thereto, as he, she, they, or it deems necessary.

66. Each Person executing this Settlement Agreement on behalf of any other Person does hereby personally represent and warrant to the other Parties that he, she, or it has the authority

to execute this Settlement Agreement on behalf of, and fully bind, each principal whom such individual represents or purports to represent.

Conditions to Finality of Settlement

67. In the event that any of the government officials who received a CAFA Notice objects to and requests modification(s) to the Settlement, Class Representatives and Class Counsel agree to cooperate and work with Defendants and their Counsel to overcome such objection(s) and requested modification(s). In the event such objection(s) or requested modification(s) are not overcome, Defendants shall have the right to terminate the Settlement Agreement.

68. At least twenty-one (21) calendar days before the Fairness Hearing, the Independent Fiduciary shall have approved and authorized in writing the Settlement and given a release to all of the Released Parties in its capacity as fiduciary of the Plan for and on behalf of the Plan in accordance with PTE 2003-39. If the Independent Fiduciary disapproves or otherwise does not authorize the Settlement or refuses to execute the release on behalf of the Plan, then the Parties may mutually agree to modify the terms of this Settlement Agreement as necessary to facilitate an approval by the Independent Fiduciary and/or the Independent Fiduciary's release on behalf of the Plan. Otherwise, Defendants shall have the option to (a) terminate the Settlement Agreement; or (b) waive this condition, in which case such option is to be exercised in writing within ten (10) business days after the Parties' receipt of the Independent Fiduciary's written determination, unless otherwise agreed by the Parties.

Counterparts

69. This Agreement may be executed in any number of actual or telecopied (including without limitation, by email transmission of one or more PDF files) counterparts and by each of the different Parties thereto on several counterparts, each of which when so executed and delivered shall be an original. The executed signature page(s) from each actual or telecopied counterpart

may be joined together and attached to one such original and shall constitute one and the same instrument.

Waiver

70. The waiver by any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

Arm's-Length Negotiations

71. The Parties represent and warrant that they are voluntarily entering into this Agreement as a result of arm's-length negotiations among their counsel, that in executing this Agreement they are relying solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel. Each Party assumes the risk of mistake as to facts or law. None of the Parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

Entire Agreement; Amendments

72. This Agreement and the attached Exhibits, incorporated herein by reference, constitute the entire agreement of the Parties with respect to the subject matter hereof, and may not be amended, or any of their provisions waived, except by a writing executed by all Parties hereto. The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of the Stipulation. The Parties intend this Agreement to be a final and complete resolution of all disputes between them, relating to or arising out of, the subject matter of the

Action, or which otherwise constitute Released Claims as defined in this Agreement. Accordingly, the Parties agree that the terms of the Agreement represent a good-faith settlement of the claims, reached voluntarily after consultation with experienced counsel.

Successors and Assigns

73. This Agreement, upon becoming operative, shall be binding upon and inure to the benefit of the Parties hereto, the Released Parties, and their respective successors, assigns, heirs, estates, executors and administrators and upon any corporation, partnership or entity into or with which any such person or entity may merge or consolidate.

Governing Law

74. This Agreement shall be governed by the laws of the United States, including federal common law, except to the extent that, as a matter of federal law, state law controls, in which case Massachusetts law will apply without regard to conflict-of-law principles.

Continuing Jurisdiction

75. The administration, effectuation, and enforcement of the Stipulation as provided for herein will be under the authority of the District Court. The District Court will retain continuing and exclusive jurisdiction over the Parties and the Settlement Class and over the administration, effectuation, and enforcement of the terms of the Stipulation and the benefits to the Settlement Class hereunder, and for such other matters that may properly come before the District Court, including any dispute or controversy arising with respect to the interpretation, enforcement, or implementation of the Stipulation or any of its terms. Any such dispute or controversy must be brought to the attention of the District Court by written motion. The Parties and each of the Settlement Class consent to the jurisdiction of the District Court with respect to any proceedings brought to enforce or interpret this Settlement and hereby waive all objections to venue and

personal and subject matter jurisdiction in that regard.

General Provisions

76. Defendants and Released Parties admit no wrongdoing, fault, or liability with respect to any of the allegations or claims in the Action. This Settlement Agreement, whether or not consummated, and any negotiations or proceedings hereunder, shall not constitute admissions of any liability of any kind, whether legal or factual. Subject to Federal Rule of Evidence 408, the Settlement and the negotiations related to it are not admissible as substantive evidence, for purposes of impeachment, or for any other purpose

77. Defendants and the Released Parties deny all allegations of wrongdoing. Defendants believe that the Plan has been managed, operated, and administered at all relevant times reasonably and prudently, in the best interest of the Plan's participants, and in accordance with ERISA, including the fiduciary duty and prohibited transaction provisions of ERISA.

78. Neither the Parties, Class Counsel, nor Defendants' counsel shall have any responsibility for or liability whatsoever with respect to: (a) any act, omission, or determination of the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Gross Settlement Amount or otherwise; (b) the determination of the Independent Fiduciary; (c) the management, investment, or distribution of the Qualified Settlement Fund; (d) the Plan of Allocation as approved by the Court; (e) the determination, administration, calculation, or payment of any claims asserted against the Qualified Settlement Fund; (f) any losses suffered by, or fluctuations in the value of, the Qualified Settlement Fund; or (g) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Qualified Settlement Fund or tax reporting, or the filing of any returns. Further, neither Defendants nor their counsel shall have any responsibility for or liability whatsoever with respect to any act,

omission, or determination of Class Counsel in connection with the administration of the Gross Settlement Amount, or otherwise.

79. The Released Parties shall not have any responsibility for or liability whatsoever with respect to the Plan of Allocation, including but not limited to the determination of the Plan of Allocation or the reasonableness of the Plan of Allocation.

80. The Parties acknowledge that any payments to Class Members or their attorneys may be subject to applicable tax laws. Defendants, Defendants' counsel, Class Counsel, and Class Representatives will provide no tax advice to the Class Members and make no representation regarding the tax consequences of any of the settlement payments described in the Settlement Agreement. To the extent that any portion of any Settlement payment is subject to income or other tax, the recipient of the payment shall be responsible for payment of such tax. The Settlement Administrator is authorized by the Parties to comply with any withholding or reporting requirements under any federal, state, local, or non-U.S. law. Payments from the Qualified Settlement Fund shall not be treated as wages by the Parties.

81. Each Class Member who receives a payment under this Settlement Agreement shall be fully and ultimately responsible for payment of any and all federal, state, or local taxes resulting from or attributable to the payment received by such person. Each such Class Member shall hold the Released Parties, Defendants' counsel, Class Counsel, and the Settlement Administrator harmless from any tax liability, including penalties and interest, related in any way to payments under the Settlement Agreement, and shall hold the Released Parties, Defendants' counsel, Class Counsel, and the Settlement Administrator harmless from the costs (including, for example, Attorneys' Fees and disbursements) of any proceedings (including, for example, investigation and suit), related to such tax liability.

82. Only Class Counsel may seek enforcement of this Settlement Agreement on behalf of the Plan, Plaintiffs, and the Settlement Class. Any individual concerned about Defendants' compliance with this Settlement Agreement may notify Class Counsel and direct any requests for enforcement to them. Class Counsel shall have the full and sole discretion to take whatever action they deem appropriate that is not in contravention to this Settlement Agreement, or to refrain from taking any action, in response to such request.

83. The Parties agree that the Court has personal jurisdiction over the Settlement Class and Defendants and shall maintain personal and subject-matter jurisdiction for purposes of resolving any disputes between the Parties concerning compliance with this Settlement Agreement. Any motion or action to enforce this Settlement Agreement shall be filed in this Action unless ordered differently by the Court, or asserted by way of an affirmative defense or counterclaim in response to any action asserting a violation of the Settlement Agreement.

84. Each party to this Settlement Agreement hereby acknowledges that he, she, they, or it has consulted with and obtained the advice of counsel prior to executing this Settlement Agreement and that this Settlement Agreement has been explained to that party by his, her, their, or its counsel.

85. Before entry of the Preliminary Approval Order and approval of the Independent Fiduciary, this Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Parties. Following approval by the Independent Fiduciary, this Settlement Agreement may be modified or amended only if such modification or amendment is set forth in a written agreement signed by or on behalf of all Parties and only if the Independent Fiduciary approves such modification or amendment in writing. Following entry of the Preliminary Approval Order, this Settlement Agreement may be modified or amended only by written

agreement signed on behalf of all Settling Parties, and only if the modification or amendment is approved by the Independent Fiduciary in writing and approved by the Court.

86. The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party and specifically waiving such provisions. The waiver of any breach of this Settlement Agreement by any party shall not be deemed to be or construed as a waiver of any other breach or waiver by any other party, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

87. Each of the Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that it will in good faith execute and deliver such other documents and take such other actions as may be reasonably necessary to consummate and effectuate the subject matter of this Settlement Agreement.

88. All of the exhibits attached hereto are incorporated by reference as though fully set forth herein.

89. No provision of the Settlement Agreement or of the exhibits attached hereto shall be construed against or interpreted to the disadvantage of any party to the Settlement Agreement because that party is deemed to have prepared, structured, drafted, or requested the provision.

90. The following principles of interpretation shall apply to this Settlement Agreement:

- (a) any headings included in this Settlement Agreement are for convenience only and do not in any way limit, alter, or affect the matters contained in this Settlement Agreement or the Articles or Sections they caption;
- (b) definitions apply to the singular and plural forms of each term defined;
- (c) definitions apply to the masculine, feminine, non-binary, and neutral genders of each term defined;
- (d) references to a Person are also to the Person's permitted successors and assigns, except as otherwise provided herein;
- (e) whenever the words "include," "includes," or "including" are

used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words “without limitation.”

91. All of the covenants, representations, and warranties, express or implied, oral or written, concerning the subject matter of this Settlement Agreement are contained in this Settlement Agreement. No Party is relying on any oral representations or oral agreements. All such covenants, representations, and warranties set forth in this Settlement Agreement shall be deemed continuing and shall survive the Settlement Effective Date.

92. This Settlement Agreement and the exhibits attached hereto constitute the entire agreement among the Settling Parties. No representations, warranties, or inducements have been made to any party concerning the Settlement other than those contained in this Settlement Agreement and the exhibits thereto. It specifically supersedes any settlement terms or settlement agreements relating to the Defendants that were previously agreed upon orally or in writing by any of the Settling Parties.

93. This Settlement Agreement binds and inures to the benefit of the Settling Parties hereto, their assigns, heirs, administrators, executors, and successors.

94. The Parties agree that the preliminary and final lists of Class Members are deemed Confidential, and that the Parties shall have the right to continue to designate documents provided to any party in connection with this Settlement Agreement as Confidential.

95. Any notice, demand, or other communication under this Settlement Agreement (other than the Settlement Notice, or other notices given at the direction of the Court) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail postage prepaid, or delivered by reputable express overnight courier or via e-mail:

IF TO CLASS REPRESENTATIVES:

Paul M. Secunda
WALCHESKE & LUZI, LLC
235 N. Executive Dr., Suite 240
Brookfield, WI 53005
psecunda@walcheskeluzi.com

IF TO DEFENDANTS:

Wesley E. Stockard
LITTLER MENDELSON, P.C.
3424 Peachtree Road NE
Suite 1200, Monarch Tower
Atlanta, GA 30326
wstockard@littler.com

96. The Parties and their Counsel all agree to cooperate fully with one another in seeking the District Court's approval of this Agreement and the Settlement and to use their best efforts to effect final District Court approval of this Agreement and the Settlement.

[signatures on the following pages]

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates set forth below.

Paul M. Secunda

Plaintiffs' Counsel

By: Paul M. Secunda For: Plaintiffs

Daniel Nykiel and Annemari

Cooley_____

Date:

2/12/2026_____

W. Stockard

Defendants' Counsel

By: Wesley E. Stockard

For: Defendants Smith & Nephew, Inc.,

the Board of Directors of Smith &

Nephew, Inc., and the US Pension and

Benefits Executive Committee of Smith

& Nephew, Inc.

Date: 02/12/2026_____

Exhibit 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DANIEL NYKIEL and ANNEMARI
COOLEY, individually and as the
representatives of a class of similarly situated
persons, and on behalf of The Smith &
Nephew U.S. Savings Plan,

Plaintiffs,

v.

SMITH & NEPHEW, INC., BOARD OF
DIRECTORS OF SMITH & NEPHEW, INC.,
US PENSION AND BENEFITS EXECUTIVE
COMMITTEE OF SMITH & NEPHEW, INC.,

Defendants.

Civil Action No. 1:24-cv-12247-NMG

FINAL APPROVAL ORDER AND FINAL JUDGEMENT

This action came on for a final Fairness Hearing, held on [REDACTED], 2026, on a proposed Settlement (the “Settlement”) of this class action (the “Action”) and the issues having been duly heard and a decision having been duly rendered,

IT IS HEREBY ORDERED AND ADJUDGED:

To the extent not otherwise defined herein, all terms shall have the same meaning as used in the Settlement Agreement & Stipulation executed on February 12, 2026 (“Settlement Agreement”).

The Court has jurisdiction over the subject matter of this Action and over all Parties to this Action, including all Class Members of the Settlement Class.

The Court hereby approves and confirms the Settlement embodied in the Settlement Agreement as being a fair, reasonable, and adequate settlement and compromise of this Action, adopts the Settlement Agreement as its judgment, and orders that the Settlement Agreement shall be effective, binding, and enforced according to its terms and conditions.

The Court determines that Plaintiffs have asserted claims on behalf of the Smith & Nephew U.S. Savings Plan (the “Plan”) to recover losses alleged to have occurred as a result of violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.* (“ERISA”).

The Court determines that the Settlement, which requires the payment of \$350,000 on behalf of Defendants Smith & Nephew, Inc. (“Smith & Nephew” or “the Company”), the Board of Directors of Smith & Nephew, Inc., (the “Board”), and the US Pension and Benefits Executive Committee of Smith & Nephew, Inc. (the “Committee” and, collectively with the Board and the Company, “Defendants”) has been negotiated vigorously and at arm’s length by Class Counsel, and further finds that, at all times, Plaintiffs have acted independently and that their interests are aligned with the interests of the Plan and the Settlement Class. The Court further finds that the Settlement arises from a genuine controversy between the Parties and is not the result of collusion, nor was the Settlement procured by fraud or misrepresentation.

The Court finds that the Plan’s participation in the Settlement is on terms no less favorable than Plaintiffs’ and the Settlement Class’s.

The Court determines that the Settlement is not part of an agreement, arrangement, or understanding designed to benefit a party in interest, but rather is designed and intended to benefit the Plan and the Plan’s participants and beneficiaries.

Accordingly, the Court determines that the negotiation and consummation of the Settlement by Plaintiffs on behalf of the Plan and the Settlement Class do not constitute “prohibited transactions” as defined by ERISA §§ 406(a) or (b), 29 U.S.C. §§ 1106(a) or (b). Further, the Court finds that in light of the analysis and opinion provided by the Independent Fiduciary, to the extent any of the transactions required by the Settlement constitute a transaction

prohibited by ERISA § 406(a), 29 U.S.C. §§ 1106(a), such transactions satisfy the provisions of Prohibited Transaction Exemption 2003-39. 68 Fed. Reg. 75632 (2003).

The Court determines that the Class Notice transmitted to the Settlement Class, pursuant to the Preliminary Approval Order concerning the Settlement and the other matters set forth therein, is the best notice practicable under the circumstances and included individual notice to all Members of the Settlement Class who could be identified through reasonable efforts. Such Class Notice provides valid, due and sufficient notice of these proceedings and of the matters set forth therein, including the Settlement described in the Stipulation to all persons entitled to such Class Notice, and such Class Notice has fully satisfied the requirements of Federal Rule of Civil Procedure 23 and the requirements of due process.

The Court hereby approves the maintenance of the Action for settlement purposes as a non-opt-out class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(1) with the Settlement Class being defined as:

All persons who were participants in or beneficiaries of the Smith & Nephew US Savings Plan at any time between August 30, 2018, and the date upon which the Preliminary Approval Order is entered.

A person was a participant in or beneficiary of the Plan during the Class Period if they had an account balance in the Plan at any time during the Class Period of August 30, 2018, through the date upon which the Preliminary Approval Order was entered.

Pursuant to Federal Rule of Civil Procedure 23(g), the Court hereby confirms its prior appointment of Walcheske & Luzi, LLC and Jonathan M. Feigenbaum, Esq., as Class Counsel.

Based on the Settlement, the Court hereby dismisses the Complaint and the Action against Defendants with prejudice.

As of the date of Final Settlement Approval and payment of the Settlement Amount, Plaintiffs, the Plan, and each Class Member of the Settlement Class on their own behalf and on

behalf of their present or former agents, employees, attorneys, accountants, representatives, advisers, investment bankers, trustees, parents, heirs, estates, executors, administrators, successors, and assigns, shall be deemed to have released each and all of the Released Parties from the Released Claims.

As of the date of Final Settlement Approval and payment of the Settlement Amount, all release provisions in the Settlement Agreement shall be given full force and effect in accordance with each and all of their express terms and provisions, including those terms and provisions relating to unknown, unsuspected, or future claims, demands, or causes of action. Further, Plaintiffs assume for themselves (and on behalf of the Settlement Class) and Defendants assume the risk of any subsequent discovery of any matter, fact, or law, that, if now known or understood, would in any respect have affected or could have affected any such Person's entering into the Stipulation.

The Court further determines that Defendants have fully complied with the notice requirements of the Class Action Fairness Act of 2005, to the extent possible.

All members of the Settlement Class and the Plan are hereby barred and enjoined from the institution and prosecution, either directly or indirectly, of any other actions in any court asserting any and all Released Claims against any and all Released Parties.

The litigation expenses incurred by Class Counsel in the course of prosecuting this action are reasonable. Accordingly, Class Counsel is awarded expenses in the amount of \$_____, to be paid from the Qualified Settlement Fund. The attorney's fees sought by Class Counsel in the amount of \$116,667.67 (1/3 of Qualified Settlement Fund) of the common fund established in this Action are reasonable in light of the successful results achieved by Class Counsel, the monetary benefits obtained in this Action, the substantial risks associated with the Action, Class Counsel's skill and experience in class action litigation of this type, and the fee awards in

comparable cases. Accordingly, Class Counsel is awarded attorneys' fees in the amount of 116,667.67 percent (1/3 of QSF) of the common fund established in this Action, specifically \$350,000.00.

Plaintiffs Daniel Nykiel and Annemari Cooley are hereby awarded case contribution awards in the amount of \$10,000.00 each.

Class Counsel's attorney's fees and Plaintiffs' case contribution awards shall be paid pursuant to the timing requirements described in the Settlement Agreement.

The Plan of Allocation is approved as fair, reasonable, and adequate. Any modification or change in the Plan of Allocation that may hereafter be approved shall in no way disturb or affect this judgment and shall be considered separate from this judgment.

Without affecting the finality of this judgment, the Court retains jurisdiction for purposes of implementing the Settlement Agreement and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the Settlement, as may from time to time be appropriate, and resolution of any and all disputes arising thereunder.

SO ORDERED

Honorable Nathaniel M. Gorton
United States District Court Judge

Exhibit 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DANIEL NYKIEL and ANNEMARI
COOLEY, individually and as the
representatives of a class of similarly situated
persons, and on behalf of The Smith &
Nephew U.S. Savings Plan,

Plaintiffs,

v.

SMITH & NEPHEW, INC., BOARD OF
DIRECTORS OF SMITH & NEPHEW, INC.,
US PENSION AND BENEFITS EXECUTIVE
COMMITTEE OF SMITH & NEPHEW, INC.,

Defendants.

Civil Action No. 1:24-cv-12247-NMG

PLAN OF ALLOCATION

Payments to Settlement Class members shall be calculated by the Settlement Administrator pursuant to the following Plan of Allocation:

1. The Settlement Administrator will calculate an average account balance for each Settlement Class member based on his or her total annual ending account balances on the last business day of the calendar year invested in the Plan for the Class Period (“Average Account Balance”). For 2026, the Settlement Administrator will use account balances as of the date of the Preliminary Approval Order.

2. The Settlement Administrator will sum the Average Account Balances for all Settlement Class members.

3. The Settlement Administrator will then determine the total settlement payment available to each Settlement Class member by calculating each such person’s pro-rata share of the Net Settlement Amount based on his or her Average Account Balance compared to the sum of the Average Account Balances for all Settlement Class members.

4. If the dollar amount of the settlement payment to Settlement Class members is calculated by the Settlement Administrator to be less than \$10.00, then that Settlement Class member's payment or pro rata share shall be zero for all purposes.

5. The total amount of payments to Settlement Class members pursuant to this Plan of Allocation may not exceed the Net Settlement Amount. In the event that the Settlement Administrator determines that the Plan of Allocation total would otherwise exceed the Net Settlement Amount, the Settlement Administrator is authorized to make such pro rata changes to the Plan of Allocation as are necessary to ensure that said total does not exceed the Net Settlement Amount.

6. The Settlement Administrator's calculations regarding settlement payments will be final and binding under the Court-approved Plan of Allocation.

Exhibit 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DANIEL NYKIEL and ANNEMARI
COOLEY, individually and as the
representatives of a class of similarly situated
persons, and on behalf of The Smith &
Nephew U.S. Savings Plan,

Plaintiffs,

v.

SMITH & NEPHEW, INC., BOARD OF
DIRECTORS OF SMITH & NEPHEW, INC.,
US PENSION AND BENEFITS EXECUTIVE
COMMITTEE OF SMITH & NEPHEW, INC.,

Defendants.

Civil Action No. 1:24-cv-12247-NMG

ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT

Currently before the Court for preliminary approval is a settlement (the “Settlement”) of *Nykiel et al. v Smith & Nephew, Inc. et al.*, Case No. 1:24-cv-12247-NMG (D. Mass) (the “Action”), wherein Plaintiffs have asserted claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq. (“ERISA”), with respect to the Smith & Nephew U.S. Savings Plan (the “Plan”) against Defendants Smith & Nephew, Inc. (“Smith & Nephew” or “the Company”), the Board of Directors of Smith & Nephew, Inc., (the “Board”), and the US Pension and Benefits Executive Committee of Smith & Nephew, Inc. (the “Committee” and, collectively with the Board and the Company, “Defendants”). The terms of the Settlement are set out in a Settlement Agreement & Stipulation (“Settlement Agreement”) executed on February 12, 2026, which has been signed by Plaintiffs on behalf of themselves and the proposed Settlement Class and by Defendants (collectively, Plaintiffs and Defendants are referred to as the “Parties”). Capitalized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the Settlement

Agreement. The “Settlement Class” is defined both in that Settlement Agreement and in this Order below.

Having considered Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (ECF No. 80) and the Settlement Agreement attached thereto in order to determine, among other things, whether the Settlement is sufficient to warrant the issuance of notice to members of the proposed Settlement Class, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

Jurisdiction. The Court has jurisdiction over the subject matter of this Action and over all Parties to this Action, including all members of the Settlement Class.

Class Findings. The Court preliminarily finds, for purposes of the Settlement, that the requirements of the Federal Rules of Civil Procedure, the United States Constitution, the Local Rules of Civil Procedure for the District of Massachusetts, and any other applicable law have been met as to the Settlement Class, in that:

- (a) the Settlement Class is ascertainable from records kept with respect to the Plan and from other objective criteria, and the members of the Settlement Class are so numerous that their joinder before the Court would be impracticable.
- (b) Based on allegations in Plaintiffs’ First Amended Class Action Complaint (the “Complaint”), the Court preliminarily finds that there are one or more questions of fact and/or law common to members of the Settlement Class.
- (c) Based on allegations in the Complaint, the Court preliminarily finds that the claims of Plaintiffs are typical of the claims of the Settlement Class.
- (d) Plaintiffs will fairly and adequately protect the interests of the Settlement Class in that: (i) the interests of Plaintiffs and the nature of their alleged claims are consistent with those of the members of the Settlement Class; (ii) there are no significant conflicts between or among Plaintiffs and the Settlement Class; and (iii) Plaintiffs are represented by qualified, reputable counsel who are experienced in preparing and prosecuting ERISA class actions of this type.
- (e) The prosecution of separate actions by individual members of the Settlement Class would create a risk of: (i) inconsistent or varying adjudications as to individual class members, that would establish

incompatible standards of conduct for the parties opposing the claims asserted in the Action; or (ii) adjudications as to individual class members that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede those persons' ability to protect their interests.

Class Certification. Based on the findings set out above, the Court **PRELIMINARILY CERTIFIES** the following Settlement Class for settlement purposes under Federal Rule of Civil Procedure 23(b)(1) in this litigation (hereinafter the "Settlement Class"):

All persons who were participants in or beneficiaries of the Smith & Nephew US Savings Plan at any time between August 30, 2018, and the date upon which the Preliminary Approval Order is entered.

The "Class Period" shall be defined as August 30, 2018, through the date of this Preliminary Approval Order. A person was a participant in or beneficiary of the Plan during the Class Period if they had an account balance in the Plan during such period.

The Court also finds that Walcheske & Luzi, LLC and Jonathan M. Feigenbaum, Esq., have and will continue to represent fairly and adequately the interests of the Class. Accordingly, pursuant to Federal Rule of Civil Procedure 23(g)(2) the Court preliminarily designates Walcheske & Luzi, LLC and Jonathan M. Feigenbaum, Esq. as class counsel ("Class Counsel") with respect to the Settlement Class.

As indicated above, the Court finds that Plaintiffs are adequate and typical class representatives for the Settlement Class and, therefore, hereby appoints Plaintiffs Daniel Nykiel and Annemari Colley as the representatives of the Settlement Class.

The Court having determined preliminarily that this Action may proceed as a non-opt out class action under Fed. R. Civ. P. 23(a) and 23(b)(1), members of the Settlement Class shall be bound by any judgment concerning the Settlement in this Action, subject to the Court's final determination as to whether this Action may so proceed.

Preliminary Approval of Settlement. The Settlement documented in the Settlement Agreement is hereby **PRELIMINARILY APPROVED**, as the Court preliminarily finds that:

(a) the proposed Settlement resulted from arm's-length negotiations; (b) the Settlement Agreement was executed only after Class Counsel had researched and investigated multiple legal and factual issues pertaining to Plaintiffs' claims; (c) the Parties engaged in extensive arms-length negotiations and discussion regarding fiduciary management of the Plan to analyze for settlement evaluation purposes; (d) there is a genuine controversy between the Parties involving Defendants' compliance with the fiduciary requirements of ERISA; (e) the Settlement appears on its face to be fair, reasonable, and adequate; and (f) the Settlement evidenced by the Settlement Agreement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Settlement to the Settlement Class.

Fairness Hearing. A hearing (the "Fairness Hearing") pursuant to Fed. R. Civ. P. 23(e) is hereby **SCHEDULED** to be held before the Court on 2026, at in Courtroom 4, 3rd Floor of the U.S. District Court, John Joseph Moakley United States Federal Courthouse, 1 Courthouse Way, Suite 2300 Boston, MA 02210, to determine finally, among other things:

- (a) Whether the Settlement should be approved as fair, reasonable, and adequate;
- (b) Whether the Settlement Class satisfies the requirements of Fed. R. Civ. P. 23, and should be finally certified as preliminarily found by the Court;
- (c) Whether the litigation should be dismissed with prejudice pursuant to the terms of the Settlement Agreement;
- (d) Whether the Final Approval Order attached to the Settlement Agreement should be entered and whether the Releasees should be released of and from the Released Claims, as provided in the Settlement Agreement;
- (e) Whether the notice and notice methodology implemented pursuant to the Settlement Agreement (i) were reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Fairness Hearing; (ii) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice; and (iii) met all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable law;

- (f) Whether Class Counsel adequately represents the Settlement Class for purposes of entering into and implementing the Settlement Agreement as required by Fed. R. Civ. P. 23(g) and as preliminarily found by the Court;
- (g) Whether the proposed Plan of Allocation of the Net Settlement Amount is fair, reasonable, and adequate and should be approved by the Court;
- (h) Whether the Settlement has been negotiated at arm's length by Class Counsel on behalf of the Plan and the Settlement Class, whether Plaintiffs have acted independently, whether Plaintiffs' interests are identical to the interests of the Plan and the Settlement Class, and whether the negotiations and consummation of the Settlement by Plaintiffs on behalf of the Plan and the Settlement Class does not constitute "prohibited transactions" as defined by ERISA §§ 406(a) or (b) and/or qualify for a class exemption from the prohibited transaction rules, including Prohibited Transaction Exemption 2003-39;
- (i) Whether the application for attorneys' fees and expenses to be filed by Class Counsel should be approved;
- (j) Whether case contribution awards should be awarded to Plaintiffs; and
- (k) Any other issues necessary for approval of the Settlement.

Class Notice. The Parties have presented to the Court a proposed Class Notice which is appended to the Settlement Agreement as Exhibit 4. The Court **APPROVES** the form and content of the Class Notice finding that it fairly and adequately: (1) describes the terms and effect of the Settlement Agreement and Settlement; (2) gives notice to the Settlement Class of the time and place of the Fairness Hearing; and (3) describes how the recipients of the Class Notice may object to approval of the Settlement. The Parties have proposed the following manner of communicating the notice to members of the Settlement Class, and the Court finds that such proposed manner is adequate, and directs that Plaintiffs shall:

- (a) By no later than 60 days before the Fairness Hearing, cause the Class Notice, with such non-substantive modifications thereto as may be agreed upon by the Parties, to be disseminated to the last known address of each member of the Settlement Class who can be identified by reasonable effort.
- (b) By no later than 60 days before the Fairness Hearing, cause the Class Notice, with such non-substantive modifications thereto as may be agreed upon by the Parties, to be disseminated to the last known e-mail address of each member of the Settlement Class who can be identified by reasonable effort.

- (c) By no later than 60 days before the Fairness Hearing, cause the Class Notice, with such non-substantive modifications thereto as may be agreed upon by the Parties, to be electronically published on a website maintained by the Settlement Administrator.

At or before the Fairness Hearing, Class Counsel shall file with the Court proof of timely compliance with the foregoing mailing and publication requirements.

Objections to Settlement. “Objector” shall mean any member of the Settlement Class who wishes to object to the fairness, reasonableness or adequacy of the Settlement, to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed case contribution awards, or to the proposed award of attorney fees and expenses. Any Objector must file with the Court a statement of his, her, or its objection(s), specifying the reason(s), if any, for each such objection made, including any legal support and/or evidence that such Objector wishes to bring to the Court’s attention or introduce in support of such objection. Any objection must be signed by the objecting Settlement Class member. The Objector must also mail the objection and all supporting law and/or evidence to counsel for the Parties, as stated below. The addresses for filing objections with the Court and service on counsel are as follows:

COURT CLERK Clerk U.S. District Court John Joseph Moakley United States Federal Courthouse, 1 Courthouse Way Suite 9200 Boston, MA 02210	PLAINTIFFS’ COUNSEL Paul M. Secunda WALCHESKE & LUZI, LLC 235 N. Executive Dr., Suite 240 Brookfield, WI 53005	DEFENDANTS’ COUNSEL Wesley E. Stockard Littler Mendelson, P.C. 3424 Peachtree Road NE Suite 1200, Monarch Tower Atlanta, GA 30326
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The Objector, or, if represented by counsel, his, her, or its counsel, must both effect service of the objection on counsel listed above and file the objection with the Court at the address above at least fourteen (14) calendar days prior to the Fairness Hearing, or by no later than [REDACTED], 2026. Any member of the Settlement Class or other person who does

not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement and any untimely objection shall be barred.

Appearance at Fairness Hearing. An Objector who files and serves a timely, written objection in accordance with the paragraph above may also appear at the Fairness Hearing either in person or through counsel retained at the Objector's expense. Objectors or their attorneys intending to appear at the Fairness Hearing must effect service of a "Notice of Intention to Appear" setting forth, among other things, the name, address, and telephone number of the Objector (and, if applicable, the name, address, and telephone number of the Objector's attorney) on counsel identified above and file it with the Court at the address above at least fourteen (14) calendar days prior to the Fairness Hearing, or by no later than [REDACTED], 2026. Any Objector who does not timely file and serve a "Notice of Intention to Appear" in accordance with this paragraph shall not be permitted to appear at the Fairness Hearing, except for good cause shown. The Parties' counsel shall promptly furnish each other with copies of any and all objections that come into their possession.

Response to Objectors. The Parties shall respond to any Objector at least seven (7) calendar days prior to the Fairness Hearing, or by no later than [REDACTED], 2026.

Compliance with Class Action Fairness Act. Defendants shall, on or before ten (10) calendar days prior to the Fairness Hearing, file with the Court proof of compliance with the Class Action Fairness Act of 2005, as specified in 28 U.S.C. § 1715 and paragraph 2 of the Stipulation.

Notice Expenses. Reasonable expenses of effectuating Class Notice shall be paid out of the Qualified Settlement Fund.

Fees and Expenses Incurred by the Independent Fiduciary. The Court understands that the Plan's fiduciaries have retained or will retain an Independent Fiduciary for the purpose of evaluating the Settlement to determine whether to authorize the Settlement on behalf of the Plan. The Independent Fiduciary fees shall be borne by and independently paid by Defendants, and are not part of the Qualified Settlement Fund.

Application for Attorneys' Fees. Any application by Class Counsel for attorneys' fees and reimbursement of expenses, for a case contribution award to the Plaintiffs, and all papers in support thereof, shall be filed with the Court and served on all counsel of record at least forty-five (45) calendar days prior to the Fairness Hearing.

Motion for Final Approval of Settlement and Plan of Allocation. Class Counsel shall file with the Court a motion for entry of the Final Approval Order at least fourteen (14) calendar days prior to the Fairness Hearing.

Injunction. Pending final determination of whether the Settlement should be approved, all members of the Settlement Class and the Plan are each hereby **BARRED AND ENJOINED** from instituting or prosecuting any action that asserts any Released Claim against any Released Party.

Termination of Settlement. If the Settlement is terminated in accordance with the Settlement Agreement or does not become Final under the terms of the Settlement Agreement for any other reason, this Order and all class findings shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order.

Use of Order. In the event this Order becomes of no force or effect, no part of it shall be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability, nor shall the Order be construed or used as an admission,

concession, or declaration by or against Plaintiffs or the Settlement Class that their claims lack merit or that the relief requested in the Action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she, or it may have.

Continuance of Hearing. The Court reserves the right to continue the Fairness Hearing without further written notice.

SO ORDERED.

Honorable Nathaniel M. Gorton
United States District Court Judge

Exhibit 4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DANIEL NYKIEL and ANNEMARI
COOLEY, individually and as the
representatives of a class of similarly situated
persons, and on behalf of The Smith &
Nephew U.S. Savings Plan,

Plaintiffs,

v.

SMITH & NEPHEW, INC., BOARD OF
DIRECTORS OF SMITH & NEPHEW, INC.,
US PENSION AND BENEFITS EXECUTIVE
COMMITTEE OF SMITH & NEPHEW, INC.,

Defendants.

Civil Action No. 1:24-cv-12247-NMG

NOTICE OF CLASS ACTION SETTLEMENT

This notice advises you of the Settlement of *Nykiel, et al., v. Smith & Nephew, Inc., et al.*, Case No. 1:24-cv-12247-NMG (D. Mass) (the “Action”).

On August 30, 2024, Plaintiffs Daniel Nykiel and Annemari Cooley filed a Class Action Complaint on behalf of the Smith & Nephew U.S. Savings Plan (the “Plan”) asserting claims under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1109, 1132, for breach of fiduciary duties against Smith & Nephew, Inc. (“Smith & Nephew” or “the Company”), the Board of Directors of Smith & Nephew, Inc., (the “Board”), and the US Pension and Benefits Executive Committee of Smith & Nephew, Inc. (the “Committee” and, collectively with the Board and the Company, “Defendants”) during the period from August 30, 2018 through [DATE OF PRELIMINARY APPROVAL] (the “Class Period”).

The parties in the Action have reached a Settlement and, if approved by the Court, the Settlement will release Defendants and related parties from any claims filed against them in the Action or arising out of the administration of the Plan during the Class Period. The terms and conditions of the Settlement are set forth in a Settlement Agreement & Stipulation (the “Settlement Agreement”). Capitalized terms used in this Notice but not defined in this Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement and additional information with respect to the Action and the Settlement are available at [website].

The Parties have agreed to settle this case for \$350,000.00 (the “Gross Settlement Amount”). The Parties have also agreed that, as part of the Settlement, Smith & Nephew will direct the Plan’s fiduciaries to conduct a request for proposal related to the managed account services offered under the Plan on or before December 31, 2027, with that request for proposal related to managed account services to be conducted in the manner and at the time chosen by the Plan’s fiduciaries in their sole discretion. The Court has scheduled a hearing concerning Final Approval of the Settlement and Class Counsel’s anticipated motion for attorney’s fees and costs. That hearing, before the Honorable Nathaniel M. Gorton is scheduled on [REDACTED], 2026, at [REDACTED]:00 .m. in Courtroom 4, 3rd Floor of the U.S. District Court, John Joseph Moakley United States Federal Courthouse, 1 Courthouse Way, Suite 2300 Boston, MA 02210.

If Final Approval is granted, the Settlement will bind you as a member of the Settlement Class. You may appear at this hearing and/or object to the Settlement. Any objection to the Settlement and/or the motion for attorney’s fees and costs must be served in writing on the Court and the Parties’ counsel. More information about the hearing and how to object is explained below.

YOUR LEGAL RIGHTS WILL BE AFFECTED WHETHER OR NOT YOU TAKE ANY ACTION. READ THIS NOTICE CAREFULLY. PLEASE DO NOT CONTACT DEFENDANTS OR THE COURT. THEY WILL NOT BE ABLE TO ANSWER YOUR QUESTIONS.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
You can do nothing. (No action is necessary to receive a payment.)	If the Settlement is approved by the Court and you are a member of the Settlement Class entitled to a payment under the Plan of Allocation, you need not do anything to receive a payment.
You can submit an objection. (It must be postmarked by [REDACTED], 2026.)	If you wish to object to any part of the Settlement, you may write to the Court and Counsel and explain why. For more information and where to send your objection, see Question 13, below.
You can appear at the Final Fairness Hearing on [REDACTED], 2026.	If you submit a written objection to the Settlement before the Court-Approved Deadline, you may (but do not have to) speak in Court about the fairness of the Settlement.

SUMMARY OF ACTION

As described in more detail below, Plaintiffs' Class Action Complaint alleges on behalf of the Plan that Defendants breached ERISA fiduciary duties of prudence owed to participants in and beneficiaries of the Plan during the Class Period related to the Defendants' fiduciary choices made around the Plan's managed account services. Defendants deny these allegations. The Action is brought on behalf of the Plan and seek recovery on behalf of the Plan during the Class Period.

Copies of the Class Action Complaint, Settlement Agreement, and related documents are available at [[website](#)].

SUMMARY OF THE SETTLEMENT AGREEMENT

The Settlement Agreement provides that Defendants will pay \$350,000.00, which will be deposited into an account called the Qualified Settlement Fund. After payment of attorneys' fees and litigation costs, and any expenses related to administration of the Settlement, the amount remaining in the Qualified Settlement Fund shall constitute the Net Settlement Amount and will be allocated among members of the Settlement Class according to a Plan of Allocation to be approved by the Court.

The Parties have also agreed that, as part of the Settlement, Smith & Nephew will direct the Plan's fiduciaries to conduct a request for proposal related to the managed account services offered under the Plan on or before December 31, 2027, with that request for proposal related to managed account services to be conducted in the manner and at the time chosen by the Plan's fiduciaries in their sole discretion.

STATEMENT OF POTENTIAL OUTCOME OF THE ACTION

Class Counsel believe that the claims against Defendants are well-grounded in law and fact and that ERISA violations have occurred in the Action. However, as with any litigated case, members of the Settlement Class would face an uncertain outcome if the Action was to continue against Defendants. Continued litigation of the Action could result in a range of possible recoveries, including a judgment or verdict greater or less than the recovery under the Settlement Agreement, or no recovery at all.

Class Counsel believe that this Settlement reflects a reasonable compromise in light of the range of possible outcomes. Class Counsel believe that the Settlement is preferable to continued litigation and is in the best interest of the members of the Settlement Class because the Settlement provides certainty with respect to the amount of recovery and results in a prompt recovery.

Throughout this litigation, Defendants have denied and continue to deny the claims and contentions alleged by Plaintiffs. Defendants have strong and well-thought-out defenses. Nevertheless, Defendants have concluded that it is desirable for the Action to be fully and finally settled as to it and the other Released Parties on the terms and conditions set forth in the Settlement Agreement.

The Court has not ruled in favor of either side. Both sides agreed to the Settlement to ensure a resolution and avoid the cost and risk of further litigation.

**STATEMENT OF FEES AND EXPENSES INCURRED BY AN
INDEPENDENT FIDUCIARY AND THE SETTLEMENT
ADMINISTRATOR**

An Independent Fiduciary is evaluating the Settlement and will be asked to authorize the Settlement on behalf of the Plan. The fees and expenses incurred by the Independent Fiduciary (including fees and expenses incurred by consultants, attorneys, and other professionals retained or employed by the Independent Fiduciary and fees associated with the recordkeeper's administration of the Settlement) in the course of evaluating and authorizing the Settlement on behalf of the Plan will be independently paid by Defendants and are not part of the Gross Settlement Amount.

A Settlement Administrator has been engaged to mail the notice to the Members of the Settlement Class, administer the Settlement, and allocate the Net Settlement Amount among Members of the Settlement Class. The fees and expenses for the Settlement Administrator will be paid from the Gross Settlement Amount. Class Counsel believe and are informed that the Settlement Administrator's fees and expenses will not exceed \$100,000.00.

**STATEMENT OF ATTORNEY'S FEES AND EXPENSES
SOUGHT IN THE ACTION**

Class Counsel will submit a fee petition to the Court in which they will ask the Court to award them attorneys' fees in an amount not to exceed 33% of the

Gross Settlement Amount, plus reimbursement of out-of-pocket costs and expenses advanced by Class Counsel and reasonably incurred in prosecuting the Action.

QUESTIONS AND ANSWERS

1. Why did I receive a notice in the mail?

You received this Notice because you or someone in your family is or may have been a participant in or a beneficiary of the Plan at some time between August 30, 2018, through the present.

The Court ordered this notice to be sent to you because you have a right to know about the Settlement and all the options available to you regarding the Settlement before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Net Settlement Amount will be allocated among members of the Settlement Class according to a Court-approved Plan of Allocation.

The Court in charge of this case is the United States District Court for District of Massachusetts. The individuals who sued are called the “Plaintiffs,” and the parties they sued are called the “Defendants.” The legal Action that is the subject of this notice and the Settlement is titled *Nykiel v. Smith & Nephew, Inc.*, Case No. 1:24-cv-12247-NMG (D. Mass).

2. What is the Action about?

While Defendants obtained successful dismissal of some alleged claims, the remaining viable claims in the Action assert that Defendants were fiduciaries to the Plan and violated statutory obligations under ERISA that Defendants owed to the Plan and the Plan’s participants and beneficiaries. Plaintiffs allege Defendants breached certain fiduciary duties by causing the Plan to incur higher administrative fees and expenses than reasonable and necessary in relation to the managed account services used by the Plan.

Defendants deny each and every allegation of wrongdoing made in the Complaint and contend that they have no liability in the Action. Defendants specifically deny the allegations that they breached any fiduciary duty or any other provisions of ERISA in connection with the administrative fees or expenses incurred by the Plan, including but not limited to in the Plan’s use of managed account services, and further deny that they in any way failed to act prudently or loyally to the Plan’s participants and beneficiaries.

3. Why is this case a class action?

In a class action, one or more plaintiffs sue on behalf of a large number of people who have similar claims. All the individuals on whose behalf the plaintiffs are suing are “Class Members.” One court resolves the issues for all Class Members. In its order setting the Final Fairness Hearing, the Court preliminarily certified the Settlement Class in the Action.

4. Why is there a settlement?

The Court has not reached any final decision in connection with Plaintiffs’ claims against the Defendants. Instead, Plaintiffs and Defendants have agreed to a Settlement. In reaching the Settlement, they have avoided the cost, risks, time, and disruption of prolonged litigation and trial.

Class Counsel believe that the Settlement is the best option for the Settlement Class members.

5. How do I know whether I am part of the Settlement Class?

The Court has held that this Settlement shall proceed on behalf of everyone who fits the following description:

All persons who were participants in or beneficiaries of the Smith & Nephew U.S. Savings Plan at any time between August 30, 2018, and the date upon which this Preliminary Approval Order is entered.

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

The Settlement provides that Smith & Nephew or Defendants’ insurers will pay \$350,000.00 (the “Gross Settlement Amount”) into an account at a financial institution identified by the Settlement Administrator. The net amount of the Gross Settlement Amount, after payment of Court-approved attorneys’ fees and costs, and any expenses incurred administering the Settlement, will be allocated to the members of the Settlement Class according to a Plan of Allocation to be approved by the Court if and when the Court enters an order finally approving the Settlement.

In addition, the Settlement provides that Smith & Nephew will direct the Plan's fiduciaries to conduct a request for proposal related to the managed account services offered under the Plan on or before December 31, 2027, with that request for proposal related to managed account services to be conducted in the manner and at the time chosen by the Plan's fiduciaries in their sole discretion.

7. How much will my payment be?

If you qualify, you will receive a *pro rata* share of the Net Settlement Amount. Class Counsel have filed a detailed Plan of Allocation. It is available at [website]. The Plan of Allocation describes the manner in which the Net Settlement Amount will be distributed to members of the Settlement Class. In general terms, the Plan of Allocation will provide that each Settlement Class member's share of the Net Settlement Amount will be calculated as follows:

A. The Settlement Administrator will calculate an average account balance for each Settlement Class member based on his or her total annual-ending account balances invested in the Plan for the Class Period ("Average Account Balance").

B. The Settlement Administrator will sum the Average Account Balances for all Settlement Class members.

C. The Settlement Administrator will then determine the total settlement payment available to each Settlement Class member by calculating each such person's pro-rata share of the Net Settlement Amount based on his or her Average Account Balance compared to the sum of the Average Account Balances for all Settlement Class members.

D. If the dollar amount of the settlement payment to a Settlement Class member is calculated by the Settlement Administrator to be less than \$10.00, then that Settlement Class member's payment or pro rata share shall be zero for all purposes.

E. The Settlement Administrator's calculations regarding settlement payments will be final and binding under the Court-approved Plan of Allocation.

8. How can I get a payment?

If the Settlement is given final approval, you will not have to do anything to get a payment from the Settlement if you are entitled to one under the Plan of Allocation.

9. When will I get my payment?

The balance of the Net Settlement Amount will be allocated to members of the Settlement Class pursuant to the Plan of Allocation after final approval has been obtained for the Settlement, including any appeals. Any appeal of the final approval may take a year or more. Please be patient.

There will be no payments if the Settlement is terminated.

The Settlement may be terminated on several grounds, which are described in the Settlement Agreement. In the event any of these conditions occur, there will be no Settlement payment made, and the litigation will resume.

10. Can I opt out of the Settlement?

No. In some class actions, class members have the opportunity to exclude themselves from the Settlement. This is sometimes referred to as “opting out” of the Settlement. Because of the legal issues involved in the Action, however, the class of participants affected by this Settlement has been preliminarily certified as a mandatory class. This means you cannot opt out of the benefits of the Settlement in order to pursue your own claims or for any other reason. Therefore, you will be bound by any judgments or orders that are entered in this Action, and if the Settlement is approved, you will be deemed to have released Defendants from any and all claims that were or could have been asserted in this case on your behalf or on behalf of the Plan or that are otherwise included in the release in the Settlement, other than your right to obtain the relief provided to you, if any, by the Settlement. Although you cannot opt out of the Settlement, you can object to the Settlement and ask the Court not to approve the Settlement, as described below.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in the Action?

The Court has designated Walcheske & Luzi, LLC and Jonathan M. Feigenbaum, Esq as Class Counsel for the Settlement Class. If you want to be represented by your own lawyer, you may hire one at your own expense.

12. How will the lawyers be paid?

Class Counsel will file a petition for an award of attorneys’ fees and expenses by [REDACTED], 2026, after which a copy will be posted on the settlement website

([website]). This petition will be considered at the Final Fairness Hearing. Class Counsel have agreed to limit their application for an award of attorneys' fees to not more than 33% of the Settlement Amount, plus out-of-pocket costs.

You have the right to object to this aspect of the Settlement even if you approve of the other aspects of the Settlement.

OBJECTING TO THE SETTLEMENT OR THE ATTORNEYS' FEES

You can tell the Court that you do not agree with the Settlement or some part of it.

13. How do I tell the Court that I object to the Settlement?

If you are a member of the Settlement Class, you can object to the Settlement if you disagree with any part of it. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views. To object, you must send a letter or other written filing saying that you object to the Settlement. Be sure to include the following case caption and notation of: *Nykiel v. Smith & Nephew, Inc.*, Case No. 1:24-cv-12247-NMG (D. Mass).

In addition, your objection must also include your name, address, telephone number, signature, and the reasons why you object to the Settlement. Any objection must be signed by the Settlement Class member even if an attorney is retained by the Settlement Class member. **Mail the objection to each of the addresses listed below, postmarked no later than [redacted], 2026. You must mail your objection by this date. If you fail to do so, the Court will not consider your objection.** If you plan to speak at the Fairness Hearing, you must send a Notice of Intention to Appear along with your objection, as described below:

COURT CLERK Clerk U.S. District Court John Joseph Moakley United States Federal Courthouse, 1 Courthouse Way Suite 9200 Boston, MA 02210	PLAINTIFFS' COUNSEL Paul M. Secunda WALCHESKE & LUZI, LLC 235 N. Executive Dr., Suite 240 Brookfield, WI 53005	DEFENDANTS' COUNSEL Wesley E. Stockard Littler Mendelson, P.C. 3424 Peachtree Road NE Suite 1200, Monarch Tower Atlanta, GA 30326
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14. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing to decide whether to approve the Settlement as fair, reasonable, and adequate. You may attend the Final Fairness

Hearing, and you may ask to speak, but you do not have to attend. The Court will hold the Final Fairness Hearing on [REDACTED], 2026, at [REDACTED]:00 [REDACTED].m. in Courtroom 4, 3rd Floor of the U.S. District Court, John Joseph Moakley United States Federal Courthouse, 1 Courthouse Way, Suite 2300 Boston, MA 02210. At that hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Final Fairness Hearing, the Court will decide whether to approve the Settlement. The Court will also rule on the motions for attorney's fees and expenses.

15. Do I have to come to the hearing?

No, but you are welcome to come at your own expense. If you send an objection, you do not have to attend the Fairness Hearing and voice your objection in person. As long as you mail your written objection on time, the Court will consider it when determining whether to approve the Settlement as fair, reasonable, and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but attendance is not necessary.

16. May I speak at the hearing?

Only if you have previously filed an objection to the Settlement may you ask the Court for permission to speak at the Final Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Final Fairness Hearing," in *Nykiel v. Smith & Nephew, Inc.*, Case No. 1:24-cv-12247-NMG (D. Mass). Be sure to include your name, address, telephone number, and signature. Your Notice of Intention to Appear must be postmarked no later than [REDACTED], 2026 and be sent to the Clerk of the Court, Class Counsel, and Defendants' counsel at the addresses listed above.

IF YOU DO NOTHING

17. What happens if I do nothing at all?

If you do nothing and you are a member of the Settlement Class and the Settlement is approved, you will participate in the Settlement of the Action as described in this notice.

GETTING MORE INFORMATION

18. Are there more details about the Settlement?

This notice summarizes the proposed Settlement. *The complete Settlement is set forth in the Settlement Agreement.* You may obtain a copy of the Settlement

Agreement on the settlement website, [website], or you may request one be mailed to you by contacting the Settlement Administrator at [info].

19. How do I get more information?

You may contact the Settlement Administrator at [phone] or by email using the Contact Us section of the website, [website]. Class Counsel may be reached at: Paul M. Secunda, Walcheske & Luzi, LLC, 235 N. Executive Dr., Suite 240, Brookfield, WI 53005, email psecunda@walcheskeluzi.com, telephone: (414) 828-2372. Documents are also available at the office of the Clerk located at the U.S. District Court Courthouse, U.S. District Court, John Joseph Moakley United States Federal Courthouse, 1 Courthouse Way, Suite 9200, Boston, MA 02210.

EXHIBIT 5

By First Class Mail, Return Receipt Requested

The Honorable «AddressBlock»

Re: *Nykiel v. Smith & Nephew, Inc., Case No. 1:24-cv-12247-NMG (D. Mass).*

Dear Attorney General «GreetingLine»:

Pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, Defendant Smith & Nephew, Inc. (“Smith & Nephew”), through undersigned counsel, writes to give notice of a proposed settlement in the above-referenced matters.

On _____, 202__, Plaintiffs’ Counsel filed a Motion for Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval”) notifying the United States District Court for the District of Massachusetts of a proposed settlement of the above-captioned matter. The Settlement Agreement contemplates settlement of a class (previously certified) defined as: All persons who were participants in or beneficiaries of the Smith & Nephew U.S. Savings Plan at any time between August 30, 2018, through the date of entry of an order preliminarily approving the settlement (the “Class Period”).

In accordance with 28 U.S.C. § 1715(b), Smith & Nephew provides the following documents on the enclosed electronic drive:

1. Plaintiffs’ Class Action Complaint and Amended Class Action Complaint;
2. The Court’s Order and Report and Recommendation granting in part Defendants’ Motion to Dismiss;
3. Plaintiffs’ Unopposed Motion for Preliminary Approval, along with the supporting materials, which include:
 - i. Declaration from Plaintiffs’ Counsel in Support of Plaintiffs’ Motion for Preliminary Approval;
 - ii. Exhibit A, Class Action Settlement Agreement;
 - iii. Exhibit 1, Proposed Final Approval Order and Final Judgment; and
 - iv. Exhibit 2, Proposed Plan of Allocation;
 - v. Exhibit 3, Proposed Order Preliminarily Approving Class Action Settlement;
 - vi. Exhibit 4, Notice of Class Action Settlement;
 - vii. Exhibit 5, CAFA Notice template;

Also, we attach to this letter a table providing a reasonable estimate of the number of class members residing in each state.

The material terms of the settlement are as follows:

Defendants agree that Smith & Nephew or Defendants' insurers will pay or cause to be paid \$350,000.00 into a Qualified Settlement Fund. Settlement Class members are eligible to receive a pro rata share of the amount in the settlement fund remaining after payment of administrative expenses, any attorneys' fees and expenses the Court may award to Plaintiffs' Counsel, recordkeeping costs associated with administering the settlement, and any case contribution award to the Plaintiffs. The amount of each Settlement Class member's payment will be based proportionately on his or her Plan investments during the Class Period and will be determined according to a Plan of Allocation that was submitted by Class Counsel to the District Court Judge as part of the preliminary approval proceedings.

In addition, the Settlement provides that Smith & Nephew will direct the Plan's fiduciaries to conduct a request for proposal related to the managed account services offered under the Plan on or before December 31, 2027, with that request for proposal related to managed account services to be conducted in the manner and at the time chosen by the Plan's fiduciaries in their sole discretion

There are no other agreements between Class Counsel and Counsel for Defendants. There are no final judgments or notices of dismissal in this matter, nor are there written judicial opinions relating to the materials described under 28 U.S.C. §§ 1715(b)(3)-(6).

We appreciate your time and attention to this matter. Please contact me with any questions or concerns.

Sincerely yours,

Enclosures

Approximate Number of Class Members in Each State or Territory

State / Territory	Number of Class Members
Alabama	
Alaska	
Arizona	
Arkansas	
California	
Colorado	
Connecticut	
Delaware	
District of Columbia	
Florida	
Georgia	
Hawaii	
Idaho	
Illinois	
Indiana	
Iowa	
Kansas	
Kentucky	
Louisiana	
Maine	
Maryland	
Massachusetts	
Michigan	
Minnesota	
Mississippi	
Missouri	
Montana	
Nebraska	
Nevada	
New Hampshire	
New Jersey	
New Mexico	
New York	
North Carolina	
North Dakota	
Ohio	
Oklahoma	
Oregon	
Pennsylvania	
Rhode Island	
South Carolina	
South Dakota	

Tennessee	
Texas	
Utah	
Vermont	
Virginia	
Washington	
West Virginia	
Wisconsin	
Wyoming	
Armed Forces/Military	
American Samoa	
Guam	
Puerto Rico	
Northern Mariana Islands	
U.S. Virgin Islands	

Class Action Consulting Services

Exhibit B



ANALYTICS



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1 INTRODUCTION

Analytics is one of the premier providers of class action consulting and administration services - including the planning, notification, claims processing and distribution of settlement funds.

Top law firms, corporate legal departments, Special Masters, and other legal professionals rely on Analytics to plan and implement complex notice and claims programs, including collective and class action settlements, governmental settlements, and regulatory remediation engagements. Our experienced staff, tested systems, and turn-key operations centers are in place to meet the most complex of notice and settlement requirements.

Analytics' program and claims management practice provides:

- PMP-certified project managers
- SOC 1 Type II audited data intake, case management, and distribution process
- FISMA-Moderate accredited infrastructure and applications that includes:
 - Call Centers
 - Claims Resolution
 - Application and Data Hosting
 - Mail Processing
 - Treasury Management and Distribution Services
- Experience providing expert testimony and consulting services regarding legal and operational issues as they relate to the management of claims facilities and communications programs.

1.1 Company Information

1.1.1 Analytics

Analytics was established in 1970, two years after the revisions to Federal Rules of Civil Procedure Rule 23 that made federal class action litigation practical. Throughout our 49-year history, Analytics has assisted clients in managing class action settlements around the globe involving more than 250 million class members and \$6 billion dollars. With decades of experience, Analytics has the demonstrated ability to customize fund administration solutions for every sector and to manage engagements ranging from less than 25 to over 80 million individuals. Our clients include law firms, Special Masters, Fortune 500 corporations, and the United States Government. Analytics has been retained under multi-year contracts to provide expert consulting and administration services to the following agencies to support their consumer and investor protection missions: The Consumer Financial Protection Bureau, Federal Trade Commission, Securities and Exchange Commission, and the Department of Justice.

Our experience covers the full range of collective action, class action and mass tort litigation, including antitrust, building products, consumer fraud, employment, ERISA, racial and sexual discrimination, insurance, privacy, securities, and truth-in-lending litigation. We have



administered settlements ranging in size from fewer than 100 class members to more than 40 million, including one of the largest mailed-notice campaigns in history.

1.1.2 Why Analytics?

There are several qualities that distinguish Analytics as a notice and claims administrator:

- **EXPERTS IN CLASS ACTION NOTICE AND SETTLEMENT ADMINISTRATION.** Our management team includes experts in law, economics, and e-commerce, and averages more than three decade's worth of class action notice and settlement administration experience. The unique perspective this team brings gives us the ability to meet the challenges of modern legal notice and claims administration.
- **WE ARE E-COMMERCE AND TECHNOLOGY EXPERTS.** We are committed to investments in technology to improve the administration process for clients and class members. From load-tested applications designed to accommodate surges in claimant interest, to websites designed for smartphones that encourage participation; our systems are designed to meet the needs of modern notice and claims administration.
- **WE'RE OBSESSIVE ABOUT THE DETAILS.** Our processes are based upon decades of experience and detailed planning and undergo an annual SOC 1 Type II audit. For each engagement, project plans result in defined deliverables as well as measured and transparent results.
- **PERSONALIZED SERVICE FOR CLIENTS AND CLASS MEMBERS** We understand that every engagement is personal: personal to the lawyers who litigated the matter and personal to the class members who participate in the settlement process. For clients, we provide a single point of contact that oversees and coordinates all aspects of each engagement. For class members – we provide the administration support they need in the mode best suited to their needs.
- **WE HAVE NO CONFLICTS.** We have no conflicts of interest that could compromise our services or undermine the trust of the parties. Due to our closely held nature, Analytics has never had a conflict of interest, however remote, in any matter that we've assisted in administering.
- **WE NEVER OUTSOURCE.** All consulting services are performed in house, and we do not offshore any portion of our administration work. This provides us with greater control over our work product and tighter data security for our clients.

Our focused approach to class action consulting provides a single, fully dedicated point of contact who is responsible for overseeing and coordinating all aspects of each engagement. In addition to a single point of contact for each engagement, we provide an unmatched level of access to senior management (all of whom are actively involved with every case we administer). Our management team has regular and direct contact with all employees, from the mailroom, processing staff and customer service representatives working directly with class members, to IT and accounting departments.



While Analytics administers cases of all sizes and scope, we are a recognized as the leader in bespoke case administration. Analytics' Minneapolis facility has 25,000 square feet of floor space (with access to an additional 30,000 of contiguous flexible space) and includes an on-site call center and on-demand, on-premise printing and mail center.

Our success stems from our leadership in the development of methods to notify consumers of their rights and our development of processes that ease the manner in which they participate in a settlement or judgement. Our focus on improving the process and participation rates is backed by our proprietary software application, CARMEN. We pioneered the class action claims administration process - and have incorporated the lessons that we've learned into carefully documented, scalable, notice and administration best practices.

2 EXPERTS – NOTICE AND ADMINISTRATION

State and Federal Courts, the Department of Justice, the Federal Trade Commission, and the Securities and Exchange Commission have all recognized Analytics (and members of the executive team) as experts regarding class notification and notice procedures. Significantly, we have:

- testified regarding the adequacy of notice procedures in direct notice cases;
- testified regarding the adequacy of published notice plans;
- been appointed as a Distribution Fund Administrator by the Securities and Exchange Commission tasked with developing Distribution Plans for court approval;
- been retained as an expert by the Federal Trade Commission to testify regarding the effectiveness of competing notice plans and procedures.

Attached is a biography for Richard Simmons, Analytics' president and principal consultant with respect to notification issues. This biography identifies matters in which Analytics testified as to the adequacy of published notice, including quotes from relevant orders.

This does not include the hundreds of instances where we testified as to notice procedures employed by Analytics so that a court could have a basis for a ruling regarding the adequacy of notice. These cases are reflected in the Partial List of Class Action Consulting Experience that accompanies the biography.

Additionally,

- In 2011, Mr. Simmons was a panelist at the Federal Judicial Center's workshop/meeting regarding class action notice and settlement administration.
- In 2014, we were interviewed by the Consumer Financial Protection Bureau regarding notice and claims administration in class action litigation as part of their study on arbitration and consumer class litigation waivers.
- In 2016, we worked with the Federal Trade Commission's Class Action Notice Project to design and test alternate forms of notice.



- In 2017, Mr. Simmons is the primary author for the Duke Law Center's standards for evaluating class action notice programs.

3 PROJECT MANAGEMENT AND IMPLEMENTATION

Analytics provides turnkey solutions for the management of collective action, class action, and mass tort notice and claims programs. Every engagement is managed using a project management structure designed to meet the standards of the Project Management Institute and our annual SOC 1 audit. We will work closely with each client detailed Project Plan that addresses the lifecycle of the matter from initial database development through distribution of funds. This ensures that the scope of the work is clearly identified, appropriate responsibilities are assigned, and realistic timelines are established for key milestones. This ensures accuracy, timeliness, and cost efficiency for clients.

3.1 Project Management Plan

After a project is awarded to Analytics, a project team is assembled to work with the client to document the matter, coordinate data transfer, and begin the initial process. We will work closely with each client to prepare a detailed Project Plan that addresses the lifecycle of the distribution fund. This ensures that the scope of the work is clearly identified for engagement, appropriate responsibilities are assigned, and realistic timelines are established for milestones.

Analytics senior management team chairs a weekly management meeting that is attended by project managers and a representative from each department that supports their engagements (i.e., Data Services, Shared Services [Call Center and Data Capture], Document Center, and Treasury Management). During this meeting, Project Managers and Executive team will review Analytics' performance against commitments to our clients. This ensures Analytics' senior management is fully informed of each engagement, and that resources are made available so that we meet or exceed client expectations.

3.2 Project Implementation

Analytics leverages its capabilities from startup to closeout to complete all services within the scope of the contract in a timely manner. Analytics' consulting services are based on a tested technology infrastructure and documented processes to securely collect, manage, and distribute data. Consequently, we are able to efficiently and cost-effectively manage matters of any size. We have available for our clients use:

- Applications hosted in secure Tier III data centers;
- Imaging and scanning facilities with a capacity of more than 200,000 pages/day
- Call-center capacity suitable for direct notification programs of up to 40 million consumers; and
- Inbound mail-processing center engineered for volumes that accompany direct notification programs of up to 40 million consumers.



3.2.1 Claims

In a typical engagement, claims are submitted in one of two ways:

- **Online Claims:** A claimant may prepare and submit (or upload) a claim using a secure online claims portal.
- **Paper Claim Submission:** Claimant may submit an original claim form, including supporting documentation (if any) to Analytics.

Our claims processing team is supported by dedicated applications designed to meet the specific needs and workflows of class action settlements. These applications allow for:

- **Document Imaging:** Our applications provide scanned images of claims and supporting documentation and have the ability to interpret the information.
- **Process Management:** Our systems are designed to enforce the criteria of each settlement agreement to ensure claimant eligibility and claim valuation is appropriate and correct.
- **Analysis:** Our systems provide pattern matching for claim validation and identify duplicate claims.
- **Data Security:** Analytics' applications enforce a secure audit trail, and we separate duties for claims processing and review to reduce the risk of fraud.

3.2.2 Claim Controls

In each engagement, we perform comprehensive audits and reviews to ensure that all claims are processed accurately and that the settlement fund is protected against fraud.

3.2.2.1 *Fraud Prevention*

Analytics is an industry leader in addressing and preventing fraudulent transactions. This has been accomplished through statistical analysis of transactions and extensive training of claims analysts to keep a watchful eye for suspicious claims. All staff members are trained to investigate red flag alerts.

Analytics employs an experienced and trained disbursements staff. These professionals are highly skilled in detecting potential check fraud and performing daily fraud and abuse monitoring activities in addition to account reconciliation. The disbursements team has appropriate quality controls in place to ensure error-free processing of financial transactions once the case has reached the disbursement phase.

3.2.2.2 *Misuse of Data*

Analytics has also implemented internal procedures to prevent unscrupulous activity and to protect our clients' and class members' private information. These controls include:

- Configuring all of Analytics' systems so that modifications can only be made to data through the use of Analytics' proprietary applications. Individuals are not allowed direct access to underlying production databases.



- Tracking all modifications to Analytics computer programs with a version control system and auditing all changes.
- Authorizing only designated individuals to perform work on a matter and access data on which any distribution will be based.
- If an individual has the security clearance to make changes in data, all original data is maintained, a copy of the edited data is maintained, and the system records the identity of the individual who made the change.

3.2.3 Claims Support & Contact Center

In a world where consumers expect 24/7 availability, we are committed to providing class members the support that they need, when and how they need it. Each engagement is staffed with dedicated agents and supported by an enterprise grade contact center infrastructure that integrates calls, emails, and online chat into a single system:

- **Interactive Voice Response:** Calls are initially routed to an automated system that answers to 90% of callers' questions. We monitor caller selections to optimize class member experience. If they request to speak to an agent, and hold times are above average, callers can request a return call rather than remain on hold. When requested, voice recognition in multiple languages is available.
- **Call Center Agents:** Calls are routed based on skill sets to agents that are trained on the specific engagement. Agents have access to online scripts (approved by our clients) that provide them with answers frequently asked questions. Inquiries not covered by the script can be immediately queued to a supervisor, and then on to the client if appropriate. We also have Spanish, French, and Chinese speaking agents and can accommodate other languages upon request.
- **Email:** Each email is routed to ticketing systems and immediately acknowledged. Class members know that we've received their inquiry, and we track and report on the response to every email. Where possible, responses are standardized, ensuring that class members receive correct, client approved answers to all of their questions.

Analytics has a full service, in-house call center in its Minneapolis facility with capacity for more than 200 agents (including flexible space). For larger projects, remote locations offer the ability to scale our capacity significantly.

Analytics' contact center system employs VOIP (Voice-Over Internet Protocol) technology that provides clients with local access/toll free/free phone numbers across the globe and allows us to route calls to any location in the world. With real-time monitoring, Analytics is also able to allocate staff as needed to a particular program – all dependent on the amount of incoming calls, number of calls in queue and average hold time. Staffing projections and budget monitoring are also better informed given the detailed, historical information routinely available.

The “average” Analytics' agent has supported callers on hundreds of settlements, and has received training regarding Analytics' applications, policies, and procedures. This training includes



engagement specific information as well as customer service-oriented training to ensure that the answers to callers' questions are delivered in a conversational manner.

Agents are supported in accurate information by a knowledgebase that is integrated into the contact center software that scripts information about each engagement and answers of the most commonly discussed topics.

Call center agents are monitored and coached on an ongoing basis to ensure that consistent messages are delivered regarding each litigation. To further ensure the quality of the experience and the accuracy of the information we provide, calls are anonymously monitored through digital call recordings, and are graded for compliance with standards of accuracy and service.

3.2.4 Distribution Services

Following the completion of the data capture process, Analytics coordinates the distribution of checks or other forms of compensation to eligible recipients. All checks are printed in-house by Analytics, ensuring quick and accurate payment to all eligible claimants once payment amounts are approved.

Analytics has breadth of experience in the distribution of awards on qualifying claims. Fund management and disbursement services are handled on-site by accounting and tax professionals. Rigorous controls that exceed banking and federal government-sector security and audit standards are followed.

Checks are printed on-site with MICR encoding and secure check stock. All financial instruments are handled with dual custody and in areas secured by access keys and recorded digital camera monitoring. Daily account reviews are conducted, and positive pay presentments escalated to the business unit. Monthly reconciliations and account reporting are available for review.

3.3 Technology and Data Security

In managing settlement, Analytics brings decades of experience handling the sensitive and complex data for clients across a range of industries, from financial and healthcare to manufacturing and services. Analytics' pre-existing management processes and years of operations with complex systems and infrastructure to deliver proven value to our clients.

In light of uncertainty and marketing representations made regarding the "alphabet soup" of information security standards (HIPAA, ISO 27001, NIST, PCI/DSS, SAS70, SOC2, SSAE16, for example), Analytics chose to implement the National Institute of Standards and Technology ("NIST") Cybersecurity Framework. This Framework embodies best practices from the various bodies and can be mapped directly to any of these standards¹. It requires us to conduct a risk assessment regarding the data that we maintain (be it credit card data, health, or financial

¹ For example, SOC2 compliance does not indicate NIST compliance, but NIST compliance at the level that Analytics maintains indicates full SOC2 compliance.



information), develop a System Security Plan to address those risks, and then continuously test our compliance with that plan.

Within this standard – also in NIST Publication 800-53 (Security and Privacy Controls for Federal Information Systems and Organizations) - there are various tiers of commitments to information security. After consultation with the Federal Trade Commission (the agency charged with enforcing data privacy), we chose to implement one of the highest standards within this framework– “FISMA” Moderate² (meeting the information security requirements for the top 10% of Federal systems). We hold a FISMA-moderate “authority to operate” or “authority to use” from the US Federal Trade Commission, the US Bureau of Consumer Financial Protection, and the US Securities and Exchange Commission.

Highlights of Analytics’ commitment to technology and data security include:

- **High Availability:** The systems that we utilize support 24/7 operations, are architected for redundancy (i.e., no critical single points of failure) and have a business continuity management strategy in place.
- **Secure Data Transfer:** Analytics takes the protection of personal information very seriously. Analytics will receive encrypted data files from clients using sFTP or encrypted media. The data elements sent by the client may vary from case to case and may include personally identifiable information (PII) such as: full name, address, telephone numbers, date of birth, and social security number
- **Secure Data Storage:** Once Analytics has retrieved the data, it will be processed and stored in Analytics’ secure network. Analytics uses state-of-the-art enterprise database server technology for data storage, and our database and application solution.
- **Audited and Controlled Access:** Analytics staff, including processing and technical support personnel, will have access to the CARMEN Database. IT specialists and Analytics technical and operational program managers will access CARMEN and the CARMEN Database to ensure system performance and to audit the use of the system. All of these users and other authorized users, whose identity and need for access have been validated, will have varying levels of access to CARMEN Database.
- **Physical Security:** Analytics maintains access levels at the physical, software, and database levels. In addition to the many layers of data security, Analytics data processing facilities are physically secured – at the perimeter and within datacenters – through the use of electronic key cards, biometric access controls, and monitoring equipment. Anyone visiting our facility must sign in and out and be accompanied by an employee at all times.
- **Information Governance:** A comprehensive, written Information Security Plan designed to comply with applicable state and Federal laws and to ensure the confidentiality, integrity, and availability of client data.

² FISMA is the acronym for the Federal Information Security Management Act of 2002 that established the initial NIST authority and framework.



- A dedicated information security team, including an Information Technology Security officer, with specific responsibility of implementing and overseeing the Information Security Plan.
- An on-site 3,000 square foot enterprise grade Tier III data center.
- All Analytics personnel who have full access to client data have undergone comprehensive background checks
- Periodic evaluations of the implementation of Analytics' Information Security Plan, including:
 - Annual reviews by the Federal Trade Commission, the Department of Justice, and other external auditors.