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 preliminary 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.

<u>Date of Complete Settlement Approval</u>

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.

<u>Payment of Gross Settlement Amount and Managed Account Services RFP</u>

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 Teas. 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______________

____
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________