

# **Exhibit 1**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

MELISSA JACKSON and MARTA MEDA,

*Plaintiffs,*

v.

Civil Action No. 23-cv-12208-RGS

NEW ENGLAND BIOLABS, INC.;  
PERSONAL REPRESENTATIVE OF  
DONALD COMB; JAMES V. ELLARD;  
RICHARD IRELAND; COMMITTEE OF  
NEW ENGLAND BIOLABS, INC.  
EMPLOYEES' STOCK OWNERSHIP  
PLAN;

*Defendants,*

*and*

NEW ENGLAND BIOLABS, INC. NON-  
VOTING STOCK OWNERSHIP PLAN

*Nominal Defendant*

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**CLASS ACTION SETTLEMENT AGREEMENT**

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## INTRODUCTION

Subject to approval by the United States District Court for the District of Massachusetts, this Class Action Settlement Agreement is made and entered into by and among Plaintiffs Melissa Jackson and Marta Meda, individually and on behalf of the Class, and Defendants New England Biolabs, Inc., the Personal Representative of Donald Comb, James V. Ellard, Richard Ireland, and the Committee of New England Biolabs, Inc. Employees' Stock Ownership Plan, to settle the Class Claims and the Subclass Claims asserted by Plaintiffs against Defendants, subject to the terms and conditions below. All capitalized terms will have the meaning ascribed by Section I of this Agreement.

## RECITALS

A. Plaintiff Melissa Jackson, on behalf of a Class, filed the original Complaint on September 26, 2023, docketed as Civil Action No. 23-cv-12208-RGS in the United States District Court for the District of Massachusetts, under the Employee Retirement Income Security Act of 1974 ("ERISA") on behalf of a class and subclass of former employee participants in the New England Biolabs, Inc. Non-Voting Stock Ownership Plan (the "Plan"). ECF No. 1. Defendants moved to dismiss Plaintiff's complaint on December 1, 2023. ECF No. 20.

B. On December 22, 2023, Plaintiffs Melissa Jackson and Marta Meda filed an Amended Complaint. ECF No. 31. The Amended Complaint added Ms. Meda as a Plaintiff and alleged (1) claims on behalf of a Class for breaches of fiduciary duty under ERISA by the fiduciaries of the Plan and engaging in prohibited transactions under ERISA regarding the valuation and/or liquidation of NEB stock in the Plan, and (2) claims on behalf of a Subclass challenging the adoption and implementation of an amendment to the Plan in 2019.

C. After being initially assigned to Judge Myong J. Joun, the case was transferred to Judge Stearns on January 22, 2024. ECF No. 37.

D. Defendants filed a motion to dismiss the Amended Complaint on January 29, 2024. ECF No. 44.

E. On April 3, 2024, the Court granted in part and denied in part Defendants' motion to dismiss. ECF No. 56. As to the Class Claims, the Court held that (1) Counts I and II—the prohibited transaction claims—plausibly alleged NEB had engaged in a prohibited transaction by purchasing NEB stock from the Plan; (2) Count III plausibly alleged that the Trustees breached their fiduciary duties by failing to appropriately investigate the value of NEB stock. The Court dismissed all the Subclass Claims and certain portions of Counts I, II and III.

F. On April 18, 2024, Plaintiffs sought reconsideration of the dismissal of Count IV, which the Court denied on April 22, 2024. ECF No 58.

G. After the decision on the Motion to Dismiss, Defendants filed their Answer to the Amended Complaint on April 17, 2024. ECF No. 57.

H. On April 24, 2024, the Court granted the parties' Joint Motion for Entry of Stipulated Protective Order, which stipulated that any disclosure, discovery materials and information produced or generated in *New England Biolabs, Inc. v. Ralph T. Miller*, Civ. Act. No. 1:20-cv-11234-DJD (D. Mass.) that one or more of the Parties designated as confidential would be deemed to be produced in this litigation. ECF Nos. 62, 63.

I. Before mediation, Plaintiffs issued discovery requests for admissions and interrogatories, and both Parties exchanged initial disclosures.

J. On May 10, 2024, the Parties filed a joint motion to stay the case pending mediation. ECF No. 66. The Parties subsequently sought to continue the stay during the settlement discussions through February 14, 2025. ECF Nos. 70, 74, 77, 79. The Court granted each of these motions. ECF Nos. 68, 71, 73, 76, 78, 82.

K. In connection with settlement discussion and mediation, Defendants produced certain data about the Class on which Plaintiffs and Class Counsel relied to formulate a demand on behalf of the Class for purposes of the settlement conference. This production included a spreadsheet showing liquidations and repurchases of NEB stock held by Plan participants for the Plan Years 2017 through 2020 (the Class Account Data). *See* ECF No. 79. NEB represents that the Class Account Data provided to Class Counsel about the members of the Class was and remains materially accurate as of the date of this Settlement.

L. The Parties attended a hybrid mediation with Robert A. Meyer at JAMS on November 1, 2024, where some counsel for each side attended in person and the parties attended remotely. After the mediation, the Parties continued settlement discussions through Mr. Meyer.

M. The Parties reached a settlement in principle on February 14, 2025, and then filed a joint motion for stay through April 2, 2025, until settlement was finalized, and the Parties could file a Motion for Preliminary Approval. ECF No. 83.

N. As a result of the factual investigation, expert consultation, and legal research conducted by Class Counsel concerning the claims asserted in the Action and the discovery conducted in the Action, including the data about the Class provided by Defendants, Class Counsel have concluded that terms of this Settlement are fair, reasonable, adequate and in the best interests of both the Class and the Plan, and have agreed to settle the Action on the terms set forth herein.

O. Defendants deny the material allegations asserted by Plaintiffs in the Action, deny any wrongdoing or liability whatsoever and state that they are entering into the Settlement to avoid the cost, disruption, and uncertainty of litigation.

P. The Parties desire to promptly and fully resolve and settle with finality all of the claims on the terms set forth herein and subject to the approval of the Court.

## **I. DEFINITIONS**

As used in this Agreement, the following terms have the following meanings, unless a section or subsection of this Agreement specifically provides otherwise. Capitalized terms used in this Agreement, but not defined in this Section I, will have the meaning ascribed to them elsewhere in this Agreement.

A. “Action” means the lawsuit styled *Jackson v. Personal Representative of Donald Comb et al.*, docketed as Civil Action No. 23-cv-12208-RGS in the United States District Court for the District of Massachusetts.

B. “CAFA” means the provisions of the Class Action Fairness Act which apply to this Agreement as forth in Section X.1 of this Agreement.

C. “Cash Settlement Amount” means seven million one hundred fifty thousand (\$7,150,000.00) paid by or on behalf of Defendants, other than the Plan.

D. “Class” means all participants in the New England BioLabs Inc. Non-Voting Stock Ownership Plan whose NEB stock in their Plan account was liquidated (in whole or in part) between September 29, 2017 and December 31, 2021 – including all participants to whom NEB shares were distributed in kind (i.e. in the form of physical share certificates) between September 29, 2017 and September 30, 2019 and which were subsequently repurchased by NEB or the Plan before December 31, 2020 – and the beneficiaries of such participants, except the Excluded Persons.

E. The “Class Claims” means Counts I, II, III, VII and VIII in Plaintiffs’ Amended Complaint (ECF No. 31).

F. “Class Counsel” means Co-Lead Class Counsel R. Joseph Barton of The Barton Firm LLP and Jonathan M. Feigenbaum.

G. “Class Account Data” means the spreadsheet provided by Defendants to Class Counsel on January 31, 2025 that reflects the liquidations and repurchases of NEB stock for the Plan Years 2017 through 2020.

H. “Class Data” means the Data required to be produced pursuant to Section II.10 of this Agreement and the Class Account Data.

I. “Class Member” means an individual who is a member of the Class.

J. “Class Notice” means the form of notice provided to the Class Members that complies with the requirements of Section II.5 of this Agreement, Fed. R. Civ. P. Rule 23, and as approved by the Court.

K. “Class Notice Packet” means the Class Notice and any other forms approved or directed by the Court.

L. “Class Representative” means Plaintiffs Melissa Jackson and Marta Meda, subject to their appointment by the Court.

M. “Court” means the United States District Court for the District of Massachusetts.

N. “Defendants” means Defendants New England Biolabs, Inc., the Personal Representative of Donald Comb, James V. Ellard, Richard Ireland, and the Committee of New England Biolabs, Inc. Employees’ Stock Ownership Plan.

O. “Election Distribution Packet” means any necessary forms and information for a Class Member to elect to receive a distribution (including a rollover) from the Plan.

P. “Excluded Persons” means the following persons who are excluded from the Class: (a) Defendants, (b) officers and directors of NEB, (c) any fiduciaries of the Plan at any



time during September 2017 and December 30, 2021, (d) the beneficiaries of such persons (e) immediate family members of any of the foregoing, (f) any participant who previously settled claims alleged in the Amended Complaint, and (g) the legal representatives, successors, and assigns of any such excluded persons.

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

R. “Escrow Account” means an account established by Class Counsel in the name of “NEB ESOP Settlement Fund II” into which the Cash Settlement Amount is to be paid.

S. “Expense Award” will have the meaning set forth in Section VII.1 of this Agreement.

T. “Fee Award” will have the meaning set forth in Section VII.1 of this Agreement.

U. “Final Approval Motion” means the motion to be filed by Class Counsel requesting that the Court grant final approval of the Settlement pursuant to Fed. R. Civ. P. 23(e).

V. “Final Order” means the Order and Final Judgment, substantially in the form of an Order described in Section VIII.2 below.

W. “Independent Fiduciary” means the person(s) or entity hired by Defendants pursuant to Section IX.

X. “NEB” means New England Biolabs, Inc. and any successor-in-interest.

Y. “Non-Appealable” means an order entered by the Court that is no longer subject to appeal, which will occur when: (i) if no appeal is taken therefrom, on the date on which the time to appeal therefrom (including any extension of time) has expired; or (ii) if any appeal is taken therefrom, on the date on which all appeals therefrom, including any petitions for rehearing or re-argument, petitions for rehearing *en banc*, and petitions for writ of *certiorari* or any other

writ, or any other form of review, have been finally disposed of, such that the time to appeal therefrom (including any extension of time) has expired, in a manner resulting in an affirmance of the Final Order.

Z. “Parties” or “Settling Parties” means collectively Jackson, Meda and Defendants; “Party” refers to any one of them.

AA. “Plan” means the New England Biolabs, Inc. Non-Voting Stock Ownership Plan (formerly known as the New England Biolabs, Inc. Employee Stock Ownership Plan and Trust).

BB. “Plan Administrator” shall mean the Plan Administrator of the Plan as defined in Section 3(16)(A) of ERISA.

CC. “Plaintiffs” mean Melissa Jackson and Marta Meda.

DD. “Plaintiffs’ Counsel” means R. Joseph Barton of The Barton Firm LLP (f/k/a Barton & Downes LLP) and Jonathan M. Feigenbaum and the other attorneys and employees of or associated with either of their firms.

EE. “Plan of Allocation” means the plan for distribution of the proceeds of the Settlement Fund as proposed by Class Counsel to be approved by the Court.

FF. “Preliminary Approval Order” means the “Order Preliminarily Approving Settlement, Approving Form of Notice, and Setting Final Approval Hearing” in this Action, substantially in the form described in Section VIII.1.

CG. “Service Award” means a Court-approved award to the Class Representatives as described in Section VII.1.

HH. “Settled Claims” means the Class Claims as well as other claims released pursuant to this Settlement provided in Section XIII.

II. “Settled Class Claims” means the claims that the Class will release pursuant to this Settlement as provided in Section XIII.1.

JJ. “Settlement” means the settlement and compromise of this Action as provided for in this Settlement Agreement.

KK. “Settlement Administrator” means the person whom Class Counsel may hire, subject to Court approval, who is to be responsible for, among other things, providing the Class Notice Packet to Class Members and/or assisting with the administration of the Settlement.

LL. “Settlement Agreement” means this Class Action Settlement Agreement and any accompanying Exhibits, including any subsequent amendments thereto and any Exhibits to such amendments.

MM. “Settlement Fund” means the Cash Settlement Amount plus any earnings and interest thereon, minus any Court-approved deductions and expenses.

NN. “Subclass Claims” means Counts IV, V and VI in Plaintiffs’ Amended Complaint.

OO. “Supplemental Confidential Agreement” means the confidential Supplemental Agreement executed by Class Counsel and counsel for Defendants (filed under Seal with the Court) that sets forth the conditions on which Defendants will have the option to terminate this Settlement in the event that the Court certifies the Class under Rule 23(b)(3) rather than Rule 23(b)(1) or (b)(2).

PP. “Tax” or “Taxes” means any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority, including income tax and other taxes and charges on or regarding franchises, windfall or other

profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers' compensation, unemployment compensation, or net worth; taxes or other charges in the nature of excise, withholding, *ad valorem*, stamp, transfer, value added or gains taxes; license, registration, and documentation fees; and customs' duties, tariffs, and similar charges.

QQ. "Termination Notice" will have the meaning set forth in Section XII.1 of this Settlement Agreement.

RR. "Trust" means the trust created under the Plan to hold Plan assets.

## II. CLASS CERTIFICATION AND CLASS NOTICE

1. **Motion.** In connection with the Motion for Preliminary Approval, Plaintiffs will file a motion seeking to certify the Class Claims on behalf of the Class pursuant to Rule 23(b)(1) and/or (2) and may alternatively seek to certify the Class pursuant to Rule 23(b)(3).

2. **Parties' Cooperation.** The Parties shall cooperate and each use their best reasonable efforts to obtain certification of a mandatory settlement class under Rule 23(b)(1) and/or Rule 23 (b)(2) if possible, or alternatively pursuant to Rule 23(b)(3); however, the Parties have entered into a Supplemental Confidential Agreement (filed under Seal with the Court) that sets forth the conditions on which Defendants have the option to terminate this Settlement in the event that (a) the Court certifies the Class under Rule 23(b)(3) rather than Rule 23(b)(1) or (b)(2) and (b) certain other conditions set forth in the Confidential Supplemental Agreement are met.

3. **Non-Opposition.** Neither Defendants nor any other fiduciary of the Plan will oppose certification of the Class for settlement purposes, including on any appeal concerning the approval of this Settlement.

4. **Provision of Class Notice.** Upon the date specified in the Court's Preliminary Approval Order, the Settlement Administrator (or if no Settlement Administrator is appointed, Class Counsel) will be responsible for providing Class Notice to the Class Members.

5. **Contents.** The Class Notice, in a form approved by the Court will contain: a brief description of the claims advanced by the Class; a summary of the terms of the Settlement Agreement; information on the attorneys' fees and costs sought by Class Counsel; a description of the proposed Plan of Allocation of the Settlement Fund to the Class; the estimated settlement allocation for the Class Member; and information about the Final Approval Hearing,

6. **Method of Providing Class Notice.** Class Notice will be provided to each individual Class Member: (a) by mailing via first class U.S. Mail to Class Members, and (b) by posting the Class Notice (and other documents filed in the litigation) on a dedicated website. Defendants will cooperate with Class Counsel to facilitate providing Class Notice and other settlement-related communications by providing mailing addresses for all Class Members, to the extent such information is reasonably available in the records of Defendants.

7. **Additional Information Provided.** In addition to the Class Notice, the Plan Administrator will provide within the time set forth in Section IV.5(a) every Class Member with any necessary information about how to request a distribution or rollover of his or her allocation from the Settlement Fund from his/her Plan account. Any Class Member will be entitled to request and receive the necessary forms from the Plan Administrator to elect a distribution of his or her share of the Settlement Fund. Any distributions from the Settlement Fund will be subject to the same rules as a distribution from the Plan except that any employee entitled to request a distribution from the Plan will not be charged a fee to receive the proceeds of this Settlement.

8. **Settlement Administrator.** A Settlement Administrator will be appointed by the Court consistent with Section VI.1 of this Agreement. The Parties and their counsel will reasonably cooperate with any Settlement Administrator to facilitate providing Notice and other settlement-related communications and settlement administration.

9. **Undeliverable Notices.** In the event that a Class Notice is returned as undeliverable, the Settlement Administrator will make reasonable efforts to obtain a valid mailing address and promptly resend the Class Notice to the Class Member by U.S. Mail.

10. **Class Data.** Within 30 days after this Settlement Agreement is executed, Defendants will, to the extent not already disclosed, provide Class Counsel and any Settlement Administrator with the following:

(a) The following information in electronic form for each Class Member, to the extent such information is reasonably available in Defendants' files: (1) name; (2) a street mailing address; (3) telephone number(s); (4) Social Security number; (5) sufficient information identifying the beneficiary Class Member (including any persons who have a QDRO) for each participant Class Member; (6) the dates on which the NEB stock in their accounts in the Plan were liquidated, or distributed in kind (i.e. in the form of physical share certificates) and subsequently repurchased by NEB or the Plan; (7) the number of shares of NEB stock in their accounts that were liquidated as of such dates, or distributed in kind and subsequently repurchased; and (8) the price at which their NEB stock was liquidated or repurchased. Defendants will also provide other information reasonably requested by Class Counsel or the Settlement Administrator, including information to locate or contact Class Members whose mail is returned as

undeliverable.

(b) The following information about any Excluded Persons: (1) name and (2) sufficient information to identify them in any the Class Data and (3) as to any person whom Defendants claim is excluded based on settling the claims covered by the Complaint, a copy of the agreement that settles these claims to the extent not already in the possession of Class Counsel.

11. **Class Notice Costs and Expenses.** The costs of Class Notice will be paid from the Settlement Fund subject to the Court's approval of the amount at Final Approval.

12. **Declaration Regarding Class Notice.** Within 30 days after the date on which Notice is required to be sent, the Settlement Administrator will file a declaration with the Court confirming that the Class Notice and related information was sent in accordance with the Preliminary Approval Order.

### **III. SETTLEMENT FUND**

1. **Payment of Cash Settlement Amount into Escrow Account.** As settlement of the Class's claims, Defendants, other than the Plan, will pay, or cause to be paid, the Cash Settlement Amount (i.e. \$7,150,000.00) into the Escrow Account within 21 days after the later of (a) the date the Preliminary Approval Order is entered, or (b) the date the Escrow Account is established and Class Counsel has furnished to Defense Counsel in writing the Escrow Account's IRS W-9 Form and all necessary wiring or payment instructions. In the event that the Court has not entered the Preliminary Approval Order within 45 days after the Motion for Preliminary Approval is filed and so long as the Escrow Account is established and Class Counsel has provided Defense Counsel with the Escrow Account's IRS W-9 Form and all necessary wiring or payment instructions in writing within 31 days after the Motion for Preliminary Approval is filed, Defendants will pay \$4,500,000.00 into the Escrow Account

within 45 days after the Motion for Preliminary Approval is filed, with the remainder of the Cash Settlement Amount to be paid within 21 days after the Preliminary Approval Order is entered.

2. **Custody of Settlement Fund.** The Settlement Fund held in the Escrow Account will be deemed to be in the custody of the Court and will remain subject to the jurisdiction of the Court and will be administered in accordance with the terms of this Settlement Agreement and the Orders of the Court. Except as provided herein, the Settlement Fund will not be paid to the Class Members pursuant to the Plan of Allocation until the Final Order becomes Non-Appealable.

3. **Management of the Settlement Fund.** Until the Final Order becomes Non-Appealable or until the Settlement is terminated in accordance with this Agreement, the Settlement Fund will be held in the Escrow Account established by Class Counsel, for which an Escrow Agent will act pursuant to the terms of the Escrow Agreement or as ordered by the Court. After the Final Order becomes Non-Appealable, Class Counsel will have the sole right and duty to manage the Settlement Fund in compliance with the terms of the Final Order. At no time will Defendants have any duty or authority to hold, manage, or invest any portion of the Settlement Fund prior to the receipt by the Plan of any such portion from the Settlement Fund. After receipt of the proceeds of the Settlement Fund by the Plan, the Settlement Fund will be held, managed, and invested consistent with this Agreement and consistent with the fiduciary duties of the fiduciary of the Plan (and any amendment of the Plan to make the terms of the Plan consistent with this Settlement Agreement). Any earnings or interest earned by the Settlement Fund will become part of the Settlement Fund.



4. **Qualified Settlement Fund.** The Settlement Fund is intended by the Settling Parties to be a “qualified settlement fund” for federal income tax purposes under Treas. Reg. § 1.468B-1 at the earliest date possible.

#### **IV. DISTRIBUTIONS FROM THE SETTLEMENT FUND**

1. **Expenses Before the Effective Date.** Until the Final Order becomes Non-Appealable or the Settlement is terminated in accordance with this Agreement, the Escrow Agent will be authorized to pay from the Settlement Fund in accordance with the terms of the Escrow Agreement (a) any actual or estimated taxes on any income earned on the Settlement Fund, (b) all costs and expenses related to the preparation of such tax filings or payments, and (c) all costs and expenses related to providing the Class Notice including any charges reasonably incurred by the Settlement Administrator. Any dispute regarding the reasonableness of any expense incurred, paid, or owing will be adjudicated by the Court, but in no event will such a dispute require Class Counsel to cause or allow the Settlement Fund to fail to make a tax payment in a timely manner.

2. **Expenses/Costs.** Any amounts awarded by the Court from the Settlement Fund as or as part of any Fee Award, Expense Award or Service Award will be paid from the Settlement Fund as directed by Class Counsel before Distribution to the Class.

3. **Tax Reserve After the Effective Date:** Upon the Final Order becoming Non-Appealable, Class Counsel will be authorized to establish a reserve from the Settlement Fund to pay any taxes that are or will be owed (but not yet due) and for expenses related to payment of taxes or filing of tax returns or to the extent that there are other costs of administration of the Settlement not paid by Defendants.

4. **Distribution to Class Members.** After the Final Order becomes Non-Appealable, the Settlement Fund will be transferred from the Escrow to the Trust and distributed to Class Members pursuant to the Court-approved Plan of Allocation. The following payments

will be made from the Settlement Fund prior to any distributions to Class Members: (a) any Taxes on the income or earnings by the Settlement Fund, any tax-related expenses, and the creation of any reserve for future expenses (as described above); (b) any expenses incurred in connection with the administration of the Settlement Fund; and (c) any Fee Award or Expense Award awarded to Class Counsel from the Settlement Fund, and (d) any Service Award awarded to the Class Representatives. After deduction of the foregoing, the remaining amount of the Settlement Fund (referred to below as the “Net Settlement Fund”) will be distributed to the Class Members in accordance with the Plan of Allocation, and in amounts to each individual Class Member as directed by Class Counsel or the Settlement Administrator.

5. **Distributions of the Settlement to the Class.** Distributions from the Net Settlement Fund will be paid through the Trust and then distributed to Class Members who are entitled to receive an allocation from the Settlement Fund as follows:

(a) As soon as practicable after, but not later than 14 days after, the date on which the applicable Net Settlement Fund is transferred to the Trust (which deadline can be extended, if necessary, with the agreement of Class Counsel, which consent will not be unreasonably withheld), the Plan Administrator will send each Class Member an Election Distribution Packet. For all requests for distributions received within 90 days after this initial Election Distribution Packet is sent to Class Members, the Plan Administrator will make a distribution (or rollover) to that Class Member as directed by the election form within the later of: (i) 30 days of receiving the distribution or rollover instructions from the Class Member, or (ii) 30 days after the Trust has received amounts from the Settlement Fund and the Plan Administrator has received a direction from Class Counsel or the Settlement Administrator regarding the allocation of any portion of the net

proceeds of the Settlement Fund to each Class Member. For all requests for distributions received more than 90 days after the initial Election Distribution Packet is sent to Class Members, the Plan Administrator will make a distribution (or rollover) to that Class Member as directed by the election form as soon as practicable after, but not later than 30 days after, receiving the distribution or rollover instructions from the Class Member.

(b) Until a Class Member makes an election to receive a distribution of their Settlement, that Class Member's proceeds from this Settlement will be invested in a short term principal preservation fund.

(c) For all Class Members whose Settlement Proceeds are paid into the Trust, all reasonable efforts will be taken to ensure that the distribution complies with ERISA and the relevant provisions of the Internal Revenue Code (and any corresponding state tax provisions) in order to preserve, if possible, the tax-favored treatment of the amounts distributed to those Class members.

**6. Costs and Expenses Related to Settlement Administration and Distribution.** Defendants will bear all costs of administration of the Settlement (other than the costs of the Class Notice Packet) once the amounts are deposited into the Trust, including any costs relating to distribution of the Settlement Fund. No fees, expenses, costs, or other charges will be imposed on Class members to receive their proceeds from this Settlement or otherwise related to administration of the Settlement or the costs of the Independent Fiduciary. To the extent that the distribution of amounts from the Settlement Fund to Class members involves any charges, such costs will be borne by Defendants.

**7. Restrictions on Administration and Distribution Expenses.** No fees, expenses, costs, or other charges will be imposed on Class Members to receive their proceeds

from this Settlement at any time, including any charges that would otherwise be imposed by the Plan on distributions. For any Class Member who has made a request to the Plan Administrator for a distribution within 90 days after the initial Election Distribution Packet is sent to Class Members, no administrative costs will be charged by the Plan (or any service provider) to any Class Member. For those Class Members who do not elect a distribution within 90 days after the initial Election Distribution Packet is sent to Class Members, any costs related to administration of the Plan (but not costs for distributions) or related to the investment of Plan assets will be charged as permitted by the Plan.

8. **Amendment of Plan to Effectuate Provisions Related to the Distribution of the Settlement Funds.** To the extent necessary to effectuate the provisions related to distribution, administration, and investment of the proceeds of the Settlement, NEB, as the Plan Sponsor of the Plan, will adopt and implement any amendment (the “Amendment”) to the Plan consistent with the provisions of this Settlement Agreement within 15 days of the date on which the Final Order becomes Non-Appealable. Defendants will provide Class Counsel with a copy of any actual Amendment as adopted within 14 calendar days after its adoption. In the event of a dispute, the Court will decide whether the language of the proposed Amendment is consistent with the terms of this Settlement Agreement. The Amendment may not be rescinded, modified, or eliminated without written notification to Class Counsel at least 10 business days before the adoption of any such modification or elimination and the approval of the Court; provided, however, the Amendment may be rescinded, modified or eliminated without such notice or approval at any time after the Settlement Fund is fully distributed.

9. **Tax Liability.** The Settling Parties will not have any liability or

responsibility for the payment of any Taxes incurred by or with respect to the Settlement Fund, and any such Taxes will be paid out of the Settlement Fund.

## **V. PLAN OF ALLOCATION**

1. **Proposed Plan of Allocation.** Class Counsel will propose and submit a Plan of Allocation to the Court as to the recommended method of determining and distributing the proceeds of the Net Settlement Fund to members of the Class.

2. **Defendants' Non-Involvement.** Defendants will have no responsibility for preparing or any right to provide input into and will take no position on the Plan of Allocation except to the extent that the Plan of Allocation would result in adverse Tax consequences to the Plan.

3. **Modification of Plan of Allocation.** In the event that the proposed Plan of Allocation is rejected or modified by the Court or on appeal, such rejection or modification will not constitute a material modification of this Settlement Agreement, will not void this Settlement Agreement, and will not provide a basis for any Party to withdraw from this Settlement Agreement. However, the Plan of Allocation must prevent the Excluded Persons from receiving any distribution from the Settlement Fund.

4. **Class Members' Right to Submit Plan Account Data.** Before the Final Approval Hearing and by a deadline to be established by the Court, any person identified by NEB as a Class Member claiming that the data provided by Defendants about a participant's Plan account is erroneous will be entitled to demonstrate that such an error will impact the amount allocated to that participant under the Plan of Allocation. Such submissions will only be used to adjust amounts allocated to Class Members, subject to Court approval, under the Plan of Allocation or by Class Counsel as to the material condition regarding Class Account Data in Section XI.2 of this Agreement.

5. **Excluded Persons Prohibited from Receiving Settlement Funds.** None of the Excluded Persons will either directly or indirectly receive any of the proceeds from this Settlement. Any of Defendants who is or was a participant in the Plan acknowledge that they will not receive any allocation of any amount from this Settlement and further agree to obtain, if necessary, an authorization from any beneficiary (including a spouse) necessary to forego any such allocation.

6. **No Claim Based on Distribution in Accordance with the Plan of Allocation.** The Class and its members will not have any claim against, and will hold harmless, Plaintiffs, the Plan, Defendants, counsel to any of the foregoing (including Class Counsel), the Settlement Administrator, or other individuals involved in the distribution under the Plan of Allocation, from any claim based on any distributions of the Settlement Fund made substantially in accordance with this Settlement Agreement, the Plan of Allocation, or as otherwise may be authorized by the Court.

## **VI. SETTLEMENT ADMINISTRATION**

1. **Appointment of Settlement Administrator.** Class Counsel will propose a Settlement Administrator to administer this Settlement and the Settlement Administrator will be approved by the Court. The Settlement Administrator will have experience providing notice to Class Members and administering settlements in employment or employee benefit class action settlements. After approval by the Court, the Settlement Administrator will report to Class Counsel and the Court.

2. **Settlement Administrator's Responsibilities.** The Settlement Administrator will undertake the following tasks to administer this Settlement consistent with the terms of this Settlement, the Plan of Allocation, and the Orders of the Court and such other procedures required by the Court:

- (a) Print and mail the Class Notice Packet to the Class Members in accordance with this Settlement Agreement and any order of the Court and undertake to trace and re-mail all undeliverable Class Notice Packets or other reasonable steps to locate missing Class Members;
- (b) Provide any information on any new addresses to the Plan in order to facilitate the establishment of any new accounts for Class Members;
- (c) Provide Class Counsel and counsel for Defendants with copies of any requests for exclusions or objections to the Settlement (to the extent not filed with the Court);
- (d) Provide Class Counsel and counsel for Defendants with any challenges to Defendants' data, including all information submitted in support of each challenge;
- (e) Respond to questions from Class Members or refer Class Members to Class Counsel for responses;
- (f) Maintain and staff a toll-free phone number and a web site until at least six (6) months after distributions of the Settlement Fund have been made to Class Members;
- (g) File with the Court a declaration confirming compliance with the procedures approved by the Court for providing notice to the Class;
- (h) Determine for purposes of allocation of the Settlement Fund, subject to the approval by Class Counsel and the Court, whether any Class Members challenging their account data have sufficiently established Defendants' data is erroneous and send notice of the determinations to those persons;
- (i) To the extent that any Class Members are not eligible to receive their

Settlement Proceeds through the Plan, issue Payment of the Settlement Proceeds to any such Class Members;

(j) Instruct the Plan Administrator, consistent with the court-approved Plan of Allocation, as to how the Cash Settlement Amount is allocated among the Class and to the accounts of individual Class Members;

(k) Monitor the Qualified Settlement Fund and file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitations the returns described in Treas. Reg. Section 1.468B-2(k)); and

(l) Any other responsibilities set forth in this Agreement and any other responsibilities agreed to by the Settling Parties related to administration of the Settlement and consistent with the orders of the Court or any other responsibilities ordered by the Court.

3. **Plan Administrator.** The Plan Administrator will be responsible for allocating the settlement payments to the Class Members' accounts consistent with the Plan of Allocation and the directions from the Settlement Administrator or Class Counsel and then distributing the settlement payments to the Class Members. The Plan Administrator will comply with the instructions of the Settlement Administrator or Class Counsel in accordance with the Plan of Allocation regarding the amounts to allocate to Class Members. The Plan Administrator, any fiduciary of the Plan and Defendants will not have any input as to how the Cash Settlement Amount is allocated among Class Members, and will not have any liability with regard to any action taken, or omitted to be taken, in accordance with and consistent with such instructions of the Settlement Administrator and/or Class Counsel.



4. **Prohibition on Assessment of Expenses to the Class.** The Class Members will not be charged or assessed any amount by the Plan (or its service providers), for any of the following: (1) payment of the Class Members' pro rata share of the Settlement Fund, (2) expenses related to administration or implementation of this Settlement, or (3) expenses incurred in allocating or distributing any amounts paid into the Plan or to the Class Members (or according to their distribution elections).

5. **Tax Treatment of the Plan.** Defendants will use their reasonable best efforts to ensure that the Settlement will not adversely affect the tax-qualified status of the Plan and that the distributions from the Settlement Amount paid to Class Members qualify for tax-deferred treatment, but they will not and do not guarantee any such result. Defendants will be responsible for all costs associated with any steps that they undertake to facilitate the tax favored treatment of the Settlement Payment into the Plan and the continued tax qualification of the Plan with respect to the Settlement.

## **VII. ATTORNEYS' FEES, EXPENSES/COSTS AND SERVICE AWARD**

1. **Awards from the Settlement Fund.** By a date to be set by the Court, Class Counsel will be entitled to file any motion with the Court requesting approval of the following to be paid from the Settlement Fund: (a) an award of attorneys' fees (the "Fee Award"); (b) reimbursement of litigation costs and expenses (the "Expense Award"); (c) payment of any settlement administration expenses; and (d) awards to the Class Representatives ("Service Award"). Any Fee Award, Expense Award, Service Award and settlement administration expenses will be paid solely from the Settlement Fund and is subject to the Court's approval at the Final Approval Hearing.

2. **Defendants' Non-Opposition.** Defendants and their counsel will take no position regarding the application for or an award of the Fee Award, the Expense Award or the

Service Award. Defendants will take no position on the payment of any settlement administration expenses so long as they do not require payment of more than \$25,000 before the Final Order is Non-Appealable.

3. **Payment of Fees/Expenses to Class Counsel.** All amounts to be paid pursuant to this Section will be paid into an account designated by Class Counsel to be distributed and allocated among any Class Counsel as directed by Class Counsel. Neither Defendants nor their insurers will have any input as to the division of such fees and expenses among Class Counsel.

4. **Timing of Payment of Attorneys' Fees and Reimbursement of Expenses.** In the event that the Court grants any Fee Award or Expense Award from the Settlement Fund, disbursement of any Fee Award or Expense Award from the Settlement Fund may be made upon the Final Order becoming Non-Appealable. In the event that there is no appeal of the Final Judgment of the Settlement, but an appeal solely of a Fee Award or Expense Award from the Settlement Fund, Class Counsel will be entitled to a disbursement from the Settlement Fund of any such Fee Award or Expense Award as to which there is no appeal or the amount which is not contested on appeal.

5. **Non-Materiality of Award of Attorneys' Fees and Reimbursement of Expenses to Settlement.** In the event that this Court allows or refuses to award attorneys' fees or reimbursement of expenses/costs in whole or in part, or any such award is rejected or modified on appeal, such rejection or modification will not constitute a material modification of this Settlement Agreement, will not void this Settlement Agreement, and will not provide a basis for any Party to withdraw from this Settlement Agreement.

6. **Defendants' Attorneys' Fees & Expenses.** Defendants will bear their own attorneys' fees, expenses, and costs. None of Defendants will be entitled to seek attorneys' fees, costs or expenses out the Settlement Fund. Nor will Defendants be entitled to seek attorneys' fees, costs or expenses from Plaintiffs or Class Counsel. No amount of the attorneys' fees, expenses, or costs of this Litigation incurred by Defendants or the administration of this Settlement incurred by any of Defendants (including NEB) or the Plan, or service providers thereto, will be paid by, or charged to, any amounts paid in this Settlement or, directly or indirectly, to any Class Member.

### **VIII. APPROVAL OF SETTLEMENT**

1. **Preliminary Approval Order.** Class Counsel, on behalf of the Class, will move the Court to enter the Preliminary Approval Order ("Preliminary Approval Motion"). The Preliminary Approval Motion will seek an Order in a form agreed upon by the Settling Parties which will provide for or set forth, among other things:

(a) Certifying the Class Claims on behalf of the Class for settlement purposes pursuant to Rule 23(a) and Rule 23(b)(1) and/or (b)(2) of the Federal Rules of Civil Procedure.

(b) Preliminary Approval of the Settlement as set forth in this Settlement Agreement, subject to further hearing and determination under Fed. R.

Civ. P. 23(e);  
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(c) Approval of the form of Class Notice, substantially in the form agreed-upon by the Parties, and the manner of distribution and publication which is consistent with this Agreement, Fed. R. Civ. P. Rule 23, and the requirements of due process;

(d) Appointment of the Settlement Administrator;

(e) Find that the Settlement Fund meets the requirements of a “qualified settlement fund” for federal income tax purposes under Treas. Reg. § 1.468B-1.

(f) Deadlines by which all objections to the Settlement must be made or any submissions to the Settlement Administrator regarding their Plan account data must be made;

(g) A schedule for a hearing date for the Court to determine whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate, and whether an Order finally approving the Settlement Agreement should be entered (“Final Approval Hearing”);

(h) That no objection to the Settlement Agreement will be heard and no papers submitted in support of said objection will be received and considered by the Court at the Final Approval Hearing unless the objection and reasons therefore, along with copies of any supporting papers, are filed with the Clerk of the Court and served on the Parties within forty-five (45) days of the publication and/or distribution of the Class Notice;

(i) That the Final Approval Hearing may be continued from time to time by Order of the Court if necessary, and without further notice to the Class;

C926 T-53-CV-15508-BG2 Document 88-3 Filed 06/17/15 Page 38 of 41 (j) A deadline for filing of a Final Approval Motion;

(k) A deadline for Class Counsel to file any motion for a Fee Award, an Expense Award or Service Award to be paid from the Settlement Fund;

(l) A requirement for Defendants to produce the Class Data required pursuant to Section II.10 of this Agreement; and

(m) To the extent requested by Defendants, approval of the form of notice by Defendants under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1711 et seq.

2. **Final Approval of the Settlement.** If the Court preliminarily approves this Settlement, and if neither Class Counsel nor Defendants have exercised their right to withdraw pursuant to Section XII, below, Class Counsel will file a Final Approval Motion. Defendants will either join in or not oppose the Final Approval Motion. The Final Approval Motion will seek entry of a proposed Final Order in a form to be agreed-upon by the Settling Parties and will, among other things:

(a) Order Final Approval of the Settlement set forth in this Settlement Agreement;

(b) Adjudge that the Settlement is fair, reasonable, and adequate to the Class pursuant to Fed. R. Civ. P. 23(e);

(c) Adjudge that Plaintiffs and the Class will be deemed conclusively to have released and waived any and all Settled Class Claims against Defendants as provided in this Settlement Agreement;

(d) Adjudge that Defendants have released and waived any and all Settled Claims against Plaintiffs and the Class as provided in this Settlement Agreement;

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(e) Bar and permanently enjoin the Parties and the Class from prosecuting any and all Settled Claims, as provided in this Settlement Agreement, against any Party from whom they have released claims;

(f) Determine Class Counsel’s request(s) for a Fee Award, an Expense Award and any request for Class Representative Service Awards;

- (g) Dismiss the Action against Defendants with prejudice, except to provide that the Court will retain exclusive jurisdiction, without affecting the finality of the Order entered, with regard to: (i) implementation of this Settlement Agreement; (ii) disposition of the Settlement Fund and distributions from the Settlement Fund; and (iii) enforcement and administration of this Settlement Agreement, including the release provisions thereof; and
- (h) To the extent that Defendants have timely complied with CAFA and provided CAFA Notice consistent with Section X of this Agreement, find that notice to the appropriate state and federal officials has been provided as required by CAFA and Defendants have satisfied their obligations pursuant to 28 U.S.C. § 1715.

## **IX. INDEPENDENT FIDUCIARY**

1. **Hiring.** Defendants, at their own expense and in their discretion, may hire an Independent Fiduciary (for which the specific person or entity hired will be subject to Class Counsel's consent and such consent will not be unreasonably withheld) to approve the Settlement consistent with Prohibited Transaction Exemption ("PTE") 2003-39. Any expense of an Independent Fiduciary will not be paid out of the Settlement Fund.

2. **Timing.** To the extent that Defendants engage an Independent Fiduciary, the Independent Fiduciary will issue its final opinion and deliver that final opinion to Defendants and Class Counsel no later than twenty-one (21) days prior to the hearing on Final Approval. If an Independent Fiduciary is engaged and the Independent Fiduciary delivers its opinion within the time required by this Paragraph and the Independent Fiduciary's opinion does not conclude that this Settlement Agreement meets the requirements of PTE 2003-39, Defendants or Class Counsel will have the right, but not the obligation, to withdraw from the Settlement Agreement

so long as such right is exercised within seven (7) days of receipt of the Independent Fiduciary's opinion. If either Class Counsel or one of Defendants exercises such right under this provision (and the 30 days in Section XII.2 expires without an agreed modification), then the entire Settlement Agreement will be terminated as provided in Section XII.3.

## **X. NOTICE UNDER THE CLASS ACTION FAIRNESS ACT**

1. **CAFA Notice.** To the extent that CAFA applies, Defendants, at their own expense, will prepare and provide the CAFA Notice, including the notices to the Attorney General of the United States and to the Attorneys General of all states in which a Class Member resides, as specified by 28 U.S.C. § 1715, within ten (10) days after the Settlement Agreement is filed with the Court.

2. **CAFA Notice Provided to Class Counsel.** Defendants will provide Class Counsel with a copy of the CAFA Notice and materials that Defendants sent within three (3) business days after such notices have been sent. The CAFA Notice and materials will be provided automatically and without further request by Class Counsel.

## **XI. CONDITIONS OF SETTLEMENT**

1. **Conditions.** Each of the following is an express condition of Settlement:

(a) the Court certifies the Class Claims pursuant to Federal Rule of Civil Procedure 23(b)(1) and/or 23(b)(2) or alternatively under Rule 23(b)(3); (b) the Court enters a Preliminary Approval Order substantially in the form as required by this Agreement; (c) the Excluded Persons do not receive any allocation of the Settlement; (d) the Class Account Data provided by NEB to Class Counsel was and remains materially accurate; (e) if the Class Claims are certified pursuant to Federal Rule of Civil Procedure 23(b)(3), the NEB shares of Class Members who validly opt-out as listed in the Class Account Data do not meet or exceed the thresholds set forth in the

Supplemental Confidential Agreement; and (f) the Court enters the Final Order, substantially in the form as required by this Agreement.

2. **Material Correctness of the Class Account Data Previously Provided by Defendants.** A condition of this Settlement is that the spreadsheet provided by Defendants to Class Counsel on January 31, 2025 accurately reflects the liquidations and repurchases of NEB stock for the Plan Years 2017 through 2020 (the “Class Account Data”). The Class Account Data will be considered materially accurate so long as the number of NEB shares (Non-Voting, Voting and Post-86 Voting shares) held by Class Members in the Plan that were liquidated and repurchased during the Class Period does not exceed 204,050. For the avoidance of doubt, the Class Account Data excludes the 4,104 Non-Voting shares in the January 31, 2025 spreadsheet at K101, which were distributed in-kind to the participant in the form of physical share certificates after September 30, 2019 and subsequently repurchased by the Plan at \$1,278 per share in 2021. In the event that the Class Account Data produced by Defendants to Class Counsel was not materially accurate, Class Counsel will have the right prior to the Final Approval Hearing to withdraw from and void this Settlement so long as the notice of the exercise of such right is provided to the opposing Party within 14 days after the date Class Counsel learns of the material inaccuracy of the information. Nothing in this provision affects other rights or remedies which the Parties may have under state or federal law beyond those provided in this Agreement, except to the extent released by this Agreement.

3. **Non-Conditional Matters.** Each of the following are not a condition of the Settlement: (a) the Court *sua sponte* modifies the Class Definition to exclude persons whose accounts were liquidated prior to September 2019 or modifies the Class Definition to exclude shares that were distributed in-kind in September 2019 and repurchased in 2020 and that decision



is sustained on appeal; (b) the Court awarding attorneys' fees or expenses to Class Counsel; (c) the Court awarding a service award to one or both Plaintiffs; or (d) approval of the Plan of Allocation proposed by Class Counsel. No action by the Court or any courts of appeal as to any of the foregoing will prevent the Final Order allowing the approval of the Settlement from becoming Non-Appealable.

## **XII. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION**

1. **Termination Notice.** In the event that one of the Conditions in Section XI is not met and the Final Order has not become Non-Appealable, either Class Counsel or Defendants may void this Settlement by providing written notice to counsel for all other Parties to the Settlement within fourteen days (14) days after the event prompting the right to terminate ("Termination Notice"). After issuing the Termination Notice, the Party providing such Termination Notice will be entitled to withdraw based on the condition specified in the Termination Notice and may void the Settlement within the time period specified in Section XII.2.

2. **Effectiveness of Termination Notice.** The Termination Notice will become effective to void the Settlement Agreement only if and after the Settling Parties have failed to reach a written agreement within thirty (30) days of the Termination Notice to modify this Settlement Agreement to resolve the issue or to extend the time to reach such agreement.

3. **Effect of Withdrawal.** In the event that one of the Settling Parties exercises its right to withdraw from the Settlement Agreement within the time specified above, or any other circumstance which causes the Final Order to not become Non-Appealable and the Parties have not within thirty (30) days of such occurrence either entered into a written modification of the Settlement Agreement or agreed to extend the time to reach such agreement:

(a) the monies in the Escrow Account (including any interest or earnings accrued while in

Escrow, but less any amount paid or owing for taxes or other expenses incurred in connection with administering the Settlement Agreement while in Escrow, including any amounts necessary to prepare tax returns or monies paid or owing to the Settlement Administrator, will be returned to each payor, pro rata according to the amount of its/his respective payment(s) into the Settlement Fund upon written request within ten (10) business days of such written request; (b) the Settling Parties will not be released from the claims asserted in this Litigation; (c) this Agreement will be void *ab initio*; and (d) the Parties' positions, rights, and responsibilities will be deemed to have reverted to their respective status in this Action as of May 10, 2024 and, except as may otherwise be expressly provided herein, the Settling Parties will proceed in all respects as if this Settlement Agreement never existed.

### **XIII. RELEASES**

Upon the Final Order becoming Non-Appealable, and provided that each Party has performed all of the respective obligations under this Settlement Agreement to be performed on or prior to such date by such Party:

1. **Release of Defendants by the Class.** Plaintiffs and the Class Members (including their heirs, executors, administrators, successors, and assigns), solely in their capacity as participants in the Plan or as beneficiaries of Class Members who are participants in the Plan, fully and finally release the Defendants, the Plan, and all fiduciaries of the Plan themselves and each of them and as applicable depending on whether such releasee is an individual or an entity, their past, present and future officers, directors, shareholders, members, affiliates, independent contractors, agents, insurers, insurance administrators, employees, attorneys, fiduciaries, trustees, heirs, administrators, executors, devisees, conservators, representatives, parents, subsidiaries, predecessors-in-interest, successors-in-interest, trusts, spouses, and assigns, from any and all

claims, or causes of action, whether in law or in equity, whether known or unknown, whether fixed or contingent, that Plaintiffs or the Class Members have that are asserted in the Amended Complaint, or are based on or arise out of the same factual predicate alleged in the Amended Complaint, including any and all claims concerning or relating to the liquidation or repurchase by NEB or the Plan, of NEB stock in or from Class Members' account in the Plan, at any time from September 29, 2017 through September 30, 2021 (including NEB shares that were distributed in kind (i.e. in the form of physical share certificates) between September 29, 2017 and September 30, 2019 and which were subsequently repurchased by NEB or the Plan before December 31, 2020), at prices based on valuations of NEB stock in the Plan as of September 30, 2016, September 30, 2017, September 30, 2018, September 30, 2019 or September 30, 2020 (the "Released Class Claims"). Plaintiffs and the Class further covenant not to sue any of the persons or entities released herein for the Released Class Claims. The Released Class Claims do not include claims concerning or relating to (i) the liquidation or repurchase by NEB or the Plan, of NEB stock held by or distributed from the Plan, at prices that were based on valuations of NEB stock before September 30, 2016 or after September 30, 2021, or (ii) the repurchase by the Plan on or after December 31, 2020 of NEB shares that were distributed in kind (i.e., the form of physical share certificates) after September 30, 2019.

2. **Release of Plaintiffs and the Class by Defendants.** Defendants fully and finally release Plaintiffs, each Class Member, Plaintiffs' Counsel (and any of its attorneys) and Class Counsel from any and all claims or causes of action, whether in law or in equity, whether known or unknown, that Defendants have or have had against Plaintiffs, each Class Member, Plaintiffs' Counsel (and any attorneys of those firms) or Class Counsel (a) related to the correctness of the amount in any of the Class Member's Plan accounts (as reflected in the data

provided by Defendants) or (b) any claims, including for attorneys' fees, costs, expenses, sanctions, that relate to the filing, commencement, prosecution, or settlement of this Action as to the Class Claims.

3. **Representation, Warranty & Indemnity as to Class Data.** Defendants represent, warrant and, certify the correctness of the Class Data provided by Defendants for purposes of this Settlement. NEB further agrees to indemnify and hold harmless any Class Member against any claim by the Plan, Defendants, or any fiduciary of the Plan challenging the correctness of such Class Data, or the correctness of the number of shares of NEB stock that such Class Data indicates were allocated to and/or liquidated from any Class Members' Plan account. For purposes of this Paragraph, claim will include any amount awarded in or paid in settlement of any judicial, administrative, or arbitration action, suit, investigation or proceeding and NEB's indemnity includes any reasonable attorneys' fees, costs or expenses (including court filing fees, court costs, arbitration fees, witness fees, and other professionals' fees and disbursements) incurred in such suit, investigation or proceeding or any related investigation or negotiation.

4. **Waiver of California Civil Code Section 1542.** The Parties on behalf of themselves and all persons and entities on whose behalf they are providing the releases herein, acknowledge and understand that there is a risk that, subsequent to the execution of this Agreement, they may accrue, obtain, incur, suffer, or sustain claims which in some conceivable way are based on or arise out of the same factual predicate alleged in the Class Claim, including any claims concerning or relating to the valuation of NEB stock based on the same factual predicate as the Class Claim, and that such claims are unanticipated at the time this Agreement is signed, or are not presently capable of being ascertained. The Parties further acknowledge that there is a risk that any claims as are known or should be known may become more serious than

they now expect or anticipate. Nevertheless, the Parties hereby expressly waive all rights they may have in such unknown consequences or results. The Parties acknowledge that they have had the benefit of and the opportunity to consult with their counsel, understand the import of Civil Code section 1542, and expressly waive the protection of Civil Code section 1542, which provides as follows:

**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.**

5. **Non-Released Claims.** Notwithstanding the foregoing or any other language in this Settlement Agreement, the Settling Parties are not releasing Claims to enforce this Settlement Agreement.

#### **XIV. NO ADMISSION OF WRONGDOING**

1. **No Admission of Wrongdoing.** This Settlement Agreement embodies a compromise of disputed claims and nothing in the Settlement Agreement will be interpreted or deemed to constitute any finding of wrongdoing by the Parties or give rise to any inference of liability in this or any other proceeding. This Settlement Agreement will not be offered or received against the Parties as any admission by any such Party with respect to the truth of any fact alleged or the validity of any claim that has been or could have been asserted in the Action ~~or in any litigation or of any liability, negligence, fault, or wrongdoing of any such Party;~~ however, this does not preclude Plaintiffs or Class Counsel from arguing that this Settlement Agreement establishes a basis or entitlement for a Fee Award and an Expense Award under Section VII.1 of this Settlement Agreement.

2. **No Admission of Infirmity of Claims.** This Settlement Agreement is not, nor may it be deemed to be, nor may it be used as an admission of, or as evidence of any infirmity in any of the claims asserted by Plaintiffs, Class Members or Defendants.

3. **Use in Proceedings** This Settlement Agreement may be used in connection with Class Counsel's request for attorneys' fees and expenses under Section VII.1 of this Settlement Agreement and in such proceedings as may be necessary to consummate or enforce this Settlement Agreement or the Final Order. Any Party may file this Settlement Agreement and/or the Final Order in any action brought against it to support a claim, a defense, or a counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim, or in any action that may be brought to enforce any claim arising pursuant to this Settlement Agreement or related to Class Counsel's request for attorneys' fees under Section VII.1 of this Settlement Agreement. Defendants may use and disclose this Settlement Agreement in connection with any proceeding involving any of their insurers or any governmental agency with respect to the Plan.

## **XV. MISCELLANEOUS PROVISIONS**

1. **Return or Destruction of Confidential Information under the Protective Order.** For purposes of the Stipulated Protective Order (Dkt. No. 63), Final Disposition will have been deemed to have occurred when counsel for Defendants provides written notice to Class Counsel that, pursuant to Section IV.5: (a) the settlement monies have been paid into the accounts of Class Members in the Plan, and (b) the distribution of proceeds of the Settlement from the Plan has been completed for Class Members who requested a distribution. In addition to the archival copies of documents to which Counsel for any Party is entitled to retain pursuant to Paragraph 13 of the Stipulated Protective Order, Class Counsel may

maintain the Class Data used to provide Class Notice and the Class Account Data to calculate distributions of the Settlement to the Class following Final Disposition, but such materials will remain subject to the terms of the Protective Order. Additionally, the Settlement Administrator may maintain the Class Data used to provide Class Notice or the Class Account Data used to calculate distributions of the Settlement to the Class for one year following final disposition, on the condition that the Settlement Administrator agrees to and does maintain such materials subject to the terms of the Protective Order.

2. **Tax Obligations and Tax Advice.** No opinion or advice concerning the Tax consequences of the Settlement Agreement has been given or will be given by counsel involved in the Action to the Class, nor is any representation or warranty in this regard made by virtue of this Settlement Agreement. The Tax obligations of the Class and the determination thereof are the sole responsibility of each Class Member, and it is understood that the Tax consequences may vary depending on the particular circumstances of each Class Member. No charge or claim may be asserted against any Class Member, Class Counsel, or the Settlement Fund for reimbursement of any Tax, including any penalty or excise tax, imposed or sought to be imposed upon Defendants in relation to or as a consequence of this Agreement.

3. **Binding Effect.** This Settlement Agreement will be binding upon, and inure to the benefit of, the successors, assigns, executors, administrators, affiliates, heirs, spousal beneficiaries, and legal representatives of the Settling Parties, provided, however, that no assignment by any Settling Party will operate to relieve such Party of its obligations hereunder.

4. **Good Faith.** The Settling Parties: (a) acknowledge that it is their intent to consummate this Settlement; (b) agree to exercise their best efforts and to act in good faith to cooperate to the extent necessary to effectuate and implement all terms and conditions of this

Settlement Agreement; and (c) agree to exercise their best efforts and to act in good faith to cooperate to the extent necessary to obtain the fullest possible participation of all Class Members in any Settlement. The Settling Parties and their counsel agree to cooperate fully with one another in seeking entry of the Preliminary Approval Order and final approval of the Settlement. The Settling Parties also agree to promptly execute and/or provide such documentation as may be reasonably required to obtain preliminary and final approval of this Settlement.

5. **Modification.** This Settlement Agreement may be amended or modified only by written instrument signed by Class Counsel on behalf of Plaintiffs and the Class and by counsel for Defendants on behalf of Defendants or their respective successors in interest. To the extent that such modification is made after Final Approval, the modification or amendment will only be effective upon approval by the Court (or an appellate court).

6. **Representations.** This Settlement Agreement constitutes the entire agreement among the Settling Parties and no representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement other than the representations, warranties, and covenants contained and memorialized in this Agreement.

7. **Authorization.** Each signatory to this Settlement Agreement represents that he or she is authorized to enter into this Settlement Agreement on behalf of the respective Parties he or she represents. Should any non-signing Party ever contend that they did not authorize their counsel to sign this Settlement Agreement on their behalf, counsel and their law firms shall defend, indemnify, and hold harmless the other Parties with respect to any and all claims, demands, actions, causes of action, or losses related to such contention.



8. **Counterparts.** This Settlement Agreement may be executed in one or more original, photocopied, or facsimile counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument.

9. **Governing Law.** All terms of this Settlement Agreement will be governed by and interpreted according to the laws of the state of Massachusetts without regard to its rules of conflicts of law and in accordance with the laws of the United States, except that ERISA will govern (and preempt Massachusetts law) to the extent applicable.

10. **Waiver.** The waiver by one Party of any breach of this Settlement Agreement by any other Party will not be deemed a waiver of any other breach of this Settlement Agreement. The provisions of this Settlement Agreement may not be waived except by a writing signed by the affected Party, or counsel for that Party, or orally on the record in court proceedings.

11. **Continuing Jurisdiction.** The Settling Parties agree to submit to the jurisdiction of the Court and will be bound by the terms of this Settlement Agreement, including, without limitation, disputes related to implementing and enforcing the Settlement embodied in this Settlement Agreement. Any and all disputes related to claims that are not satisfactorily resolved by the Settling Parties will be submitted to the Court for final resolution (except that such disputes will be subject to appeal). The Final Order will provide that the Court will have continuing jurisdiction over this Settlement.

12. **Enforcement of this Agreement.** In the event that any Party to this Agreement believes that another Party to this Agreement has breached the terms of this Agreement, that Party will notify counsel for the alleged breaching Party in writing setting forth the nature of the breach and the requested method to cure the breach at least 14 days prior to

filing any litigation to enforce the terms of the Settlement Agreement (and if the allegedly breaching Party is a Class Member regardless of whether that Class Member has separate counsel, Defendants must also notify Class Counsel in writing). In the event that the allegedly breaching Party fails to cure the alleged breach as set forth in the written notification after 14 days, the other Party may then file an action to enforce the Settlement Agreement. A Party who substantially prevails in any action to enforce the Settlement Agreement will be entitled to attorneys' fees and expenses consistent with the standards of ERISA § 502(g)(1); however, attorneys' fees and expenses will not be available to a Party that failed to provide the breaching Party written notification to cure the breach as set forth in this Paragraph.

13.     **Extensions.** The Settling Parties reserve the right, subject to the Court's approval, to request any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

14.     **Evidentiary Effect.** Except as provided elsewhere in this Agreement, neither this Settlement Agreement nor the Settlement, nor any negotiation, nor act performed, nor document executed, nor proceedings held pursuant to or in forbearance of this Settlement Agreement or the Settlement, even if this Settlement Agreement is cancelled or terminated: (a) is, or may be deemed to be, or may be used as an admission of, or evidence of the validity of any Settled Class Claims, or of any wrongdoing, negligence, misrepresentation, violation, or liability of any Settling Party; (b) is, or may be deemed to be, or may be used as an admission of, or evidence of any infirmity in the claims asserted by any Party; or (c) is, may be deemed to be, or may be used as an admission of, or evidence of, any fault or omission of any Settling Party in any civil, criminal, or administrative proceeding in any court, administrative agency, or tribunal, including in this Action.

15. **Final and Complete Resolution.** The Settling Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to this Action. The Settlement compromises claims which are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties agree that the amount paid to the Settlement Fund and the other terms of the Settlement Agreement were negotiated in good faith at arm's-length by the Settling Parties and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

16. **Duplicative Provisions.** In interpreting this Settlement Agreement, duplicative and/or overlapping release provisions will not be presumed or construed to be intended to release separate claims or have different meanings.

The Parties hereto, intending to be legally bound hereby, have caused this Settlement Agreement to be executed by them or their duly authorized counsel, on the date set forth below.

Agreed to by:

*Counsel for Plaintiffs Jackson and Meda*

Dated: April 3, 2025



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*Counsel for Defendants*

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Committee of New England Biolabs, Inc.  
Employees' Stock Ownership Plan*

Agreed to by:

*Counsel for Plaintiffs Jackson and Meda*

Dated: April 3, 2025



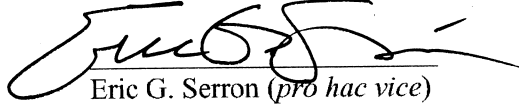
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