UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MELISSA JACKSON and MARTA MEDA,

Plaintiffs,

v.

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

Civil Action No. 1:23-cv-12208-RGS

ORDER CERTIFYING CLASS & GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

This case came before the Court on Plaintiffs' Unopposed Motion for Class Certification, ECF No. 87 and Unopposed Motion for Preliminary Approval of Class Action Settlement, ECF No. 88. Based upon the Court's review of the motions and the memoranda and exhibits submitted with them, the Court certifies the Class, grants preliminary approval of the Settlement, and finds as follows:

Class Certification

1. Counts I, II, III, VII and VIII in the Amended Complaint (ECF No. 31) (the "Class Claims") are hereby certified as a class action pursuant to Rule 23(b)(1) and (b)(2) on

behalf of the following Class:

> All participants in the New England BioLabs 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.
>
> "Excluded Persons" means the following persons who are excluded from the Class: (a) Defendants, (b) officers and directors of New England Biolabs, Inc., (c) any fiduciaries of the Plan at any time during September 2017 and December 30, 2021, (d) the beneficiaries of such persons or (e) the 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.

2. The Court finds that the Class Claims satisfy the requirements of Fed. R. Civ. P. 23(a) as follows:

a. The Class consists of approximately 80 participants in the Plan plus their respective beneficiaries. Weighing judicial economy, the claimants' ability and motivation to litigate as joined plaintiffs, the financial resources of class members, and the fact that the claims are for injunctive relief, joinder of all Class members would be impracticable. *See Garcia–Rubiera v. Calderon*, 570 F.3d 443, 460 (1st Cir. 2009) ("No minimum number of plaintiffs is required to maintain a suit as a class action, but generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met.").

b. The Class Claims raise common questions of law and fact. The issues of liability on each count are common to all members of the Class and are capable of common answers as those issues primarily focus on Defendants' acts. *See New England Biolabs, Inc. v. Miller*, No. 1:20-CV-

11234-RGS, 2022 WL 20583575, at *1 (D. Mass. Oct. 26, 2022) (Stearns, J.) The claims on behalf of a Class involved whether Defendants breached their fiduciary duties under ERISA and engaged in prohibited transactions under ERISA regarding the valuation and/or liquidation of NEB stock in the Plan. *Id.*

c. Plaintiffs' claims are typical of those of the Class because they arise from the same event, practice and/or course of conduct and seek the same relief. *See Miller*, 2022 WL 20583575, at *1. Plaintiffs' claims are also typical because they generally seek recovery and relief on behalf of the Plan. *Id.* Defendants do not have any unique defenses against Plaintiffs as to their Class Claims.

d. Plaintiffs and their counsel have no interests antagonistic to the Class and Plaintiffs have retained counsel with extensive experience litigating ERISA class actions. *See Miller*, 2022 WL 20583575, at *1. Plaintiffs and their counsel will fairly and adequately protect the interests of the Class.

3. The Class Claims meet the requirements of Fed. R. Civ. P. 23(b)(1). As Defendants are all fiduciaries, they are required by law to consistently apply the terms of the Plan to all similarly-situated participants. *See Miller*, 2022 WL 20583575, at *2. As such, varying or inconsistent adjudications regarding the rights of participants under the Plan, or the adequacy of Defendants' disclosures would establish incompatible standards of conduct. *Id.* For similar reasons, an adjudication regarding these issues would, as a practical matter, adjudicate these issues with respect to the other participants in the Plan. *Id.* Additionally, the monetary relief sought would be paid to the Plan and then allocated to Class members' individual accounts.

Id.

4. The Class Claims also meet the requirements of Fed. R. Civ. P. 23(b)(2). First, Defendants have acted on the same grounds as to all members of the Class by allegedly breaching their fiduciary duties in connection with the valuation of NEB stock in the Plan. *See Miller*, 2022 WL 20583575, at *2. Second, the Class Claims primarily seek declaratory and injunctive relief. *Id.* Any monetary relief would flow from the declaratory relief. *Id.* As a result, the monetary relief will not determine the key procedures to be used, will not introduce any new and significant factual or legal issues, and will not require individualized hearings. *Id.* Thus, the lawsuit primarily, if not exclusively, seeks final declaratory and injunctive relief. *Id.*

5. Because the Class is suited for certification under Fed. R. Civ. P. 23(b)(1) and 23(b)(2), the Court need not address whether the Class may also be certified under 23(b)(3).

6. Melissa Jackson and Marta Meda are appointed the representatives of the Class.

7. Attorneys R. Joseph Barton and Jonathan Feigenbaum are appointed Co-Lead Class Counsel pursuant to Rule 23(g).

Preliminary Approval of the Settlement

8. Preliminary approval is the first step in the class settlement process. *Miller*, 2022 WL 20583575, at *2 (citing *Manual for Complex Litigation* § 21.632 (4th ed. 2004)). The request for preliminary approval only requires an "initial evaluation" of the fairness of the proposed settlement. *Id.* (citing *Manual for Complex Litigation* § 21.632 (4th ed. 2004)).

9. "Preliminary approval should not be confused for a final finding of reasonableness or fairness. *Miller*, 2022 WL 20583575, at *2. The first step is merely to 'ascertain whether notice of the proposed settlement should be sent to the class ....'" *Id.* (citing *Sesto v. Prospect CharterCARE, LLC*, No. CV 18-328 WES, 2019 WL 2394251, at *1 (D.R.I.

June 6, 2019) (quoting 4 William B. Rubenstein, Newberg on Class Actions § 13:13 (5th ed. 2018))).

10. In granting preliminary approval, the Court considers "whether to direct notice of the proposed settlement to the class, invite the class's reaction, and schedule a fairness hearing." *Miller*, 2022 WL 20583575, at *2 (citing William B. Rubenstein *et al.*, *Newberg on Class Actions* § 13:10 (5th ed. 2013)). At this stage, the Court need only "determine whether the proposed settlement appears to fall within the range of possible final approval." *Id.* (citing *Trombley v. Bank of Am. Corp.*, No. 08-CV-456-JD, 2011 WL 3740488, at *4 (D.R.I. Aug. 24, 2011)). A proposed settlement of a class action may be given preliminary approval "where it is the result of serious, informed, and non-collusive negotiations, where there are no grounds to doubt its fairness and no other obvious deficiencies (such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys), and where the settlement appears to fall within the range of possible approval." *Id.* (citing *Trombley*, No. 08-CV-456-JD, 2011 WL 3273930, at *5 (D.R.I. July 29, 2011)).

11. The Court finds that the Settlement Agreement is the result of serious, informed, and non-collusive negotiations. A settlement is presumed to be reasonable when it is achieved by arm's length negotiations conducted by experienced counsel. *Miller*, 2022 WL 20583575, at *3 (citing *Nat'l Ass'n of Deaf v. Massachusetts Inst. of Tech.*, No. 3:15-CV-30024-KAR, 2020 WL 1495903, at *4 (D. Mass. Mar. 27, 2020)). The assistance of a neutral mediator, Robert A. Meyer, reinforces that the Settlement Agreement is non-collusive.

12. The proposed Settlement provides substantial relief to the Class and falls within the range of reason. The monetary component of the Settlement Agreement provides for payment of $7,150,000.00 to a settlement fund for the benefit of the Class, which Class Counsel

represents is approximately 48% of the maximum amount of their losses that Class members could potentially recover at trial based on the valuation claims. This is an excellent result compared to other ERISA class settlements approved by other courts of this Circuit. *Baptista v. Mut. of Omaha Ins. Co.*, 859 F. Supp. 2d 236, 241 (D.R.I. 2012) (approving settlement equivalent to 40% of maximum possible recovery); *Hochstadt v. Bos. Sci. Corp.*, 708 F. Supp. 2d 95, 109 (D. Mass. 2010) (approving 27% recovery in employer stock case as "plainly reasonable"); *Toomey v. Demoulas Super Markets, Inc.*, No. 1:19-cv-11633, Dkt. 95 at 10 (Mar. 24, 2021), approved Dkt. 100 (D. Mass. Apr. 7, 2021) (approving settlement that represented approximately 15–20% of alleged losses); *Price v. Eaton Vance Corp.*, No. 18-12098, Dkt. 32 at 12 (May 6, 2019), approved Dkt. 57 (D. Mass. Sept. 24, 2019) (23% alleged losses); *see also Sims v. BB&T Corp.*, 2019 WL 1995314, at *5 (M.D.N.C. May 6, 2019) (19% of estimated losses); *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, 2018 WL 8334858 (C.D. Cal. July 30, 2018) (25% of estimated losses); *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*, 2018 WL 2183253, at *6–7 (N.D. Cal. May 11, 2018) (approximately 10% of losses under Plaintiffs' highest model); *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 463 (D. Md. 2014) (approving settlement that recovered 3.2% of estimated maximum damages).

13. The average gross recovery of more than $89,000.00 per class member in this Settlement dwarfs the amount recovered in many other approved ERISA class actions. *E.g. Marshall v. Northrop Grumman Corp.*, No. 16-CV-6794 AB (JCX), 2020 WL 5668935, at *2 (C.D. Cal. Sept. 18, 2020) (describing settlement amounting to $77.34 average gross recovery as "exceptional"); *Sims v. BB&T Corp.*, No. 1:15-CV-732, 2019 WL 1995314, at *5 (M.D.N.C. May 6, 2019) (average gross award of $342); *Will v. Gen. Dynamics Corp.*, No. CIV. 06-698-GPM, 2010 WL 4818174, at *1 (S.D. Ill. Nov. 22, 2010) (average gross award of $96.62). It is

substantially higher than even the settlement this Court approved in *Miller*. *Miller*, 2022 WL 20583575, at *3 (noting the average gross recovery of more than $11,000 per class member).

14. The Settlement Agreement does not suffer from any obvious deficiencies, such as preferential treatment of the Class representatives. *See Miller*, 2022 WL 20583575, at *3. No class member or group of Class members will receive unduly favorable treatment under the terms of the Settlement Agreement. *Id.* The Class will receive a monetary distribution and Class Counsel's distribution will not be disproportionate and will be paid from the Settlement Fund with the Court's approval.

15. The Court finds that there are no grounds to doubt the fairness of the Settlement Agreement and concludes that the proposed Settlement Agreement is within the range of possible settlement approval, such that notice to the class is appropriate.

Class Notice

16. The Court approves the Proposed Notice of Class Action Settlement ("Class Notice") and directs its distribution to the Class.

17. The content of the Class Notice fully complies with due process and Federal Rule of Civil Procedure 23. The proposed notice to the Class provides appropriate information to Class Members concerning: (i) the nature of the action; (ii) the definition of the Class certified; (iii) the Class claims, issues, and defenses; (iv) that a Class Member may enter an appearance through an attorney if the Member so desires; (v) that a Class Member may object to the Settlement before it is approved; (vi) the time and manner for making objections; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3). *See Miller*, 2022 WL 20583575, at *3 (citing Manual for Complex Litigation, supra, § 21.312). It also informs Class Members about their rights under the Settlement as well as their right to be heard at the final

Fairness Hearing.

18. Notice provided by first class mail is sufficient when the names and addresses of the Class Members are known. *Miller*, 2022 WL 20583575 at *4 (citing *Loestrin 24 Fe Antitrust Litig.*, 1:13-MD-2472-S-PAS, 2020 WL 5203323, at *2 (D.R.I. Sept. 1, 2020) (finding notice by email and/or US Mail plus posting information on a website satisfied Rule 23 and due process)). Here, the names and addresses of the Class Members are known, and thus notice to the Class by first class mail is appropriate.

19. The Court appoints Analytics Consulting LLC as the Settlement Administrator for providing Class Notice and otherwise assisting in administration of the Settlement. The Settlement Administrator shall provide notice to the Class no later than May 12, 2025. The Settlement Administrator will file a declaration with the Court confirming that the Class Notice was sent in accordance with this Order by June 11, 2025.

Plan of Allocation

20. The plan for allocating settlement proceeds, like the settlement itself, should be approved if it is fair, reasonable and adequate. *Miller*, 2022 WL 20583575 (citing *Hill v. State St. Corp.*, CIV.A. 09-12146-GAO, 2015 WL 127728, at *11 (D. Mass. Jan. 8, 2015) (citing cases)). A plan of allocation is fair and reasonable as long as it has a "reasonable, rational basis. *Id.* In determining whether a plan of allocation is fair and reasonable, courts give great weight to the opinion of experienced counsel. *Id.* "An approach [that] ties each class member's portion of the settlement amount to the number of shares the class member owned and the price of the stock at time of sale" is "grounded in a reasonable and rational basis, and is fair to the members of the class." *Id.* (approving allocation plan as reasonable and equitable); *Medoff v. CVS Caremark Corp.*, 09-CV-554-JNL, 2016 WL 632238, at *7 (D.R.I. Feb. 17, 2016) (approving allocation

plan); *Walsh v. Popular, Inc.*, 839 F. Supp. 2d 476, 482 (D.P.R. 2012) (approving plan of allocation dividing settlement proceeds in ERISA class action pro rata based on class members' "losses relative to those of the class as a whole").

21. A plan of allocation "need not necessarily treat all class members equally." but may allocate funds based on the extent of class members' injuries and "consider the relative strength and values of different categories of claims." *Hill v. State Street Corp.*, 2015 WL 127728, at *11 (D. Mass. 2015). The *Hill* court approved a plan of allocation that was based on the difference between the values of the stock, but also included a 15% enhancement for certain claims based on Class Counsel's assessment of the strength of those claims. *Id.*; *see In re New Motor Vehicles Canadian Export Antitrust Litigation*, 2011 WL 1398485, at *6 (D. Me. 2011) (approving a plan of allocation that differentiated among class members by weighting their recoveries according to the month and year they purchased, as well as the make and model of the vehicle purchased"). In an ERISA case in which plaintiffs raised similar claims challenging the valuation of employer stock liquidated from their Plan accounts and challenging an amendment that forced the liquidation of the stock in their plan accounts, the court approved a plan of allocation that proposed to allocate the funds *pro rata* basis according to the number of [shares of employer stock] previously held by the Class Member," but providing additional amount for members of the Class to account "for the additional claim[s]" by those class members relating to the "right to continue holding [employer] stock until [a certain] age." *Cunningham v. Wawa, Inc.*, 2021 WL 1626482, at *6 (E.D. Pa. 2021). Here, the Plan of Allocation proposes that the Settlement Fund will be divided among Plan participants on a *pro rata* basis based on their losses and includes an additional amount for class members who were liquidated pursuant to the 2019 Amendment. This plan of allocation is substantially similar to the one approved in *Wawa*. A

participant Class Member's share of the Net Settlement Amount depends on the losses suffered by that participant as a share of the losses suffered by all Class Members. Such a plan of allocation is reasonable and equitable.

22. The Settlement Fund meets the requirements of a "qualified settlement fund" for federal income tax purposes under Treas. Reg. § 1.468B-1.

Class Action Settlement Procedures

23. Defendants shall produce to Class Counsel the Class Data required pursuant to Section II.10, to the extent not already produced, by no later than May 21 2025.

24. Any Class Member who wishes to challenge the data with respect to his or her contributions or establish that he or she is a Class Member must submit such a challenge to the Settlement Administrator that has a postmark of no later than July 11, 2025. The Challenge must set forth at least the following: (a) the full name, address and contact information for the persons submitting the Challenge; (b) a written statement explaining why the data is incorrect, (c) sufficient supporting documentation and (d) the signature of the person submitting the challenge.

25. Any Class Member who wishes to object to this Settlement or otherwise to be heard concerning this Settlement shall timely inform the District Court in writing of his or her intent to object to this Settlement and/or to appear at the Fairness Hearing by following the procedures set forth in the Class Notice ("Objection"). To be considered timely, the Objection must bear a postmark that is no later than July 11 2025. The Objection must set forth at least the following: (a) the full name, address and contact information for the Objector and the name and address of counsel (if represented by counsel); (b) a written statement of any and all objections to this Settlement and any supporting papers and arguments; (c) the signature of the Objector (or his attorney).

26. Any Class Member or other person who fails to make his, her or its Objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed settlement as incorporated in the Settlement Agreement, to the Judgment, to the Plan of Allocation, to the award of attorneys' fees and reimbursement of expenses to Class Counsel, unless otherwise ordered by the Court. To the extent that any objections or comments are transmitted to Settlement Administrator, or the Parties' counsel, but are not filed with the Court, those persons are hereby directed to file such objections with the Court.

27. The Settlement Fund will be deemed and considered to be *in custodia legis* of the Court and will remain subject to the jurisdiction of the Court until such time as such funds will be distributed pursuant to the Settlement Agreement and/or the order of the Court.

Class Action Fairness Act Notice

28. The Court approves the form of notice to be provided by Defendants under the Class Action Fairness Act of 2005 ("CAFA") as consistent with the requirements of 28 U.S.C. § 1715(b).

Deadlines

29. Class Counsel will file any Motion for Attorneys' Fees, Expenses and Costs, by June 27, 2025.

30. Class Counsel will file any Motion for Class Representative Service Award by July 3, 2025.

31. Class Counsel shall file a Motion for Final Approval of the Settlement by July 25, 2025.

32. The Court will hold a final Fairness Hearing on August 6, 2025 at 2 p.m., at

the United States District Court for the District of Massachusetts, John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Courtroom 21, Boston, Massachusetts 02210. The Court may continue the date of the final fairness hearing if necessary, without further notice to the Class, but any such continuance will be publicized on the settlement website.

It is so ORDERED this 21 day of April, 2025.

Richard G. Stearns

Hon. Richard G. Stearns
United States District Judge