

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

JENNIFER M. PROBST, on behalf of herself and all others similarly situated,	)	
	)	
Plaintiff	)	CASE NO. 1:22-cv-01986-SEB-MJD
	)	
VS.	)	
	)	
ELI LILLY AND COMPANY,	)	
	)	
Defendant	)	

**JOINT STIPULATION OF SETTLEMENT AND RELEASE**

1. This Joint Stipulation of Settlement and Release (the “Stipulation of Settlement”) is made and entered into by and between Plaintiff Jacob Lynch (“Plaintiff” or “Class Representative”), on behalf of himself and all members of the “Plaintiff Class” as defined herein, on the one hand, and Defendant Eli Lilly and Company, on behalf of itself and any subsidiary and affiliate company participating in The Lilly Employee Welfare Plan (“Defendant”), on the other hand. Nothing in this Stipulation of Settlement, nor the fact of the Stipulation of Settlement itself, shall be construed or deemed an admission of liability, culpability, negligence or wrongdoing of any kind by Defendant.

2. Class Representative, the Plaintiff Class, and Defendant are referred to collectively herein as the “Parties.”

3. “Class Counsel” means Robert P. Kondras, Jr. of Hassler Kondras Miller LLP and Scott S. Luzi of Walcheske & Luzi, LLC.

4. “Defendant’s Counsel” means Joel H. Spitz and Michael R. Phillips of McGuireWoods LLP.

5. “Plaintiff Class” or “Plaintiff Class Members” means all Indiana-based employees of Defendant who purchased vacation time under Defendant’s Holiday and Vacation Plan, a component plan of The Lilly Employee Welfare Plan (the “H&V Plan”) between October 10, 2020 and the date on which the Court enters an Order preliminarily approving the terms and conditions of this Stipulation of Settlement.

6. “Released Claims” shall have the meaning described in paragraph 57 hereof.

7. “Settlement Class” or “Settlement Class Members” means all Plaintiff Class Members who have not timely opted-out of the settlement described in this Stipulation of Settlement before the Objection / Exclusion Deadline (as defined below).

## **BACKGROUND AND OVERVIEW OF SETTLEMENT**

8. On October 10, 2022, Jennifer Probst (“Probst”) filed a putative class action Complaint against Defendant in the United States District Court for the Southern District of Indiana, Case No. 22-cv-1986 therein, which is pending before the Honorable Sarah Evans Barker and Magistrate Judge Kendra M. Klump (the “Lawsuit”).

9. In the Lawsuit, Probst alleged claims for improper wage deductions in violation of the Indiana Wage Assignment Statute, I.C. 22-2-6-2, based upon alleged vacation purchase wage deductions (the “Vacation Purchase Claim”) and alleged fleet deductions (the “Fleet Claim”), as well as a claim in the alternative for unjust enrichment under Indiana law.

10. The Lawsuit also seeks certification of a Rule 23 class of “all eligible Eli Lilly employees who participated in the Eli Lilly ‘Vacation Purchase’ program and were subjected to one or more ‘Vacation Purchase’ wage deductions from October 7, 2020, to present.”

11. The Parties engaged in formal exchanges of documents and information, including data regarding the Plaintiff Class Members’ purchase of vacation time.

12. On May 19, 2022, the Parties participated in a private mediation with Lynn Cohn. At the conclusion of the mediation, the Parties reached an agreement to resolve the Vacation Purchase Claim on a classwide basis for Indiana-based employees only, subject to Probst (who was not an Indiana-based employee) amending the Complaint to add the Class Representative or another Indiana-based employee as the class representative for the Vacation Purchase Claim settlement class and further subject to court approval. The Parties also separately reached an agreement to resolve Probst’s Fleet Claim on an individual basis and to dismiss her unjust enrichment claim with prejudice.

13. Accordingly, Plaintiff has filed a First Amended Complaint which: a) adds Plaintiff as a Class Representative; b) adds Lilly USA LLC as a Defendant; and c) asserts the Fleet Claim for Probst on an individual basis only.

14. The Parties thus intend to fully, finally, and forever settle, compromise, and discharge all disputes and claims that were raised in the Lawsuit, including but not limited to requests for legal or equitable relief that have been asserted by Probst individually or by the Class Representative on behalf of members of the Plaintiff Class.

15. The Parties expressly acknowledge that nothing in this Stipulation of Settlement, nor the fact of the Stipulation of Settlement itself, shall be construed or deemed an admission of liability, culpability, negligence or wrongdoing of any kind by Defendant, nor shall it constitute an admission on behalf of Defendant of any fact or allegations against it, including any allegation that this matter is suitable for class treatment. Defendant specifically denies any liability to Probst, the Class Representative or the Plaintiff Class.

16. The Parties intend that this Stipulation of Settlement shall include a full and complete release of all claims against Defendant and each of its past, present, and future officers, directors, agents, employees, servants, associates, spouses, representatives, subsidiaries, affiliated companies, parent companies, joint ventures and joint venturers, partnerships and partners,

members, stockholders, shareholders, bondholders, unitholders, beneficiaries, trustees, insurers, reinsurers, divisions, agents, attorneys, administrators, advisors, predecessors, successors, heirs, and assigns, including Lilly USA LLC (“Lilly USA”) and Eli Lilly International Corporation (“Lilly International”), which were raised or could have been raised in the Lawsuit through the date of preliminary approval of the Stipulation of Settlement.

17. Class Counsel represent that they have conducted a thorough investigation into the facts of the Lawsuit, and have diligently pursued an investigation of the claims of the Plaintiff Class against Defendant. Based on their own independent investigation and evaluation and all known facts and circumstances, including the risk of defenses asserted by Defendant regarding class certification and the merits of the claims, Class Counsel are of the opinion that the settlement with Defendant is fair, reasonable, adequate, and in the best interest of the Plaintiff Class. With respect to the Fleet Claim, Class Counsel represents that based upon its investigation, a classwide settlement of that claim on behalf of the Plaintiff Class would not be possible.

18. Defendant denies that it has violated the law in any manner alleged in the Lawsuit. Nonetheless, Defendant has concluded that further litigation of the Released Claims encompassed by this Stipulation of Settlement would be protracted and expensive and would also divert management and employee time. Defendant has taken into account the uncertainty and risks inherent in litigation and has, therefore, concluded that it is desirable that the claims in the Lawsuit be settled in the manner and upon the terms and conditions set forth in this Stipulation of Settlement. Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or as an admission that a class should be certified for any purpose other than settlement purposes.

19. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this settlement and to effectuate all aspects of this Stipulation of Settlement.

20. The total settlement fund payment under this Stipulation of Settlement, including, without limitation, the payments to the Settlement Class, Class Counsel’s attorneys’ fees and costs, any incentive award for Class Representative awarded by the Court, all taxes payable on awards to Settlement Class Members and all costs associated with administering the settlement is Two Million Nine-Hundred Thirty-Five Thousand Dollars (\$2,935,000) (“Gross Settlement Fund”).

21. The amount remaining after deducting from the Gross Settlement Fund the amount of payment to the Class Counsel’s attorneys’ fees and costs, any incentive award for Class Representative awarded by the Court, any taxes payable on awards to Settlement Class Members and all costs associated with administering the settlement shall be referred to as the “Net Settlement Fund.” As described further below, all payments to the Settlement Class shall be made from the Net Settlement Fund.

**CERTIFICATION OF THE PLAINTIFF CLASS  
FOR SETTLEMENT PURPOSES ONLY**

22. The Parties enter into this Stipulation of Settlement on a conditional basis. This Stipulation of Settlement is expressly conditioned upon the occurrence of all of the following



events: (i) the Court granting leave for Class Counsel to amend the Complaint to add Class Representative or another Indiana-based employee as a class representative for the Vacation Purchase Claim; (ii) the Court entering an order granting preliminary approval of the Stipulation of Settlement; (iii) the Court entering an order granting final approval of the Settlement reflected in the Agreement; and (iv) the occurrence of the Effective Date, as defined in Paragraph 24(h) below. Unless the Court orders otherwise, this Stipulation of Settlement shall be deemed null and void *ab initio* upon the failure of any of these four conditions to occur.

23. For settlement purposes only, the Parties agree that the Plaintiff Class shall be conditionally certified and this Stipulation of Settlement is contingent upon the approval and certification by the Court of the Plaintiff Class. Defendant does not waive, and instead expressly reserves, its rights to challenge the propriety of class certification for any purpose should the Court not approve the Stipulation of Settlement. In connection with the proposed certification of the Plaintiff Class, the Parties shall cooperate and present to the Court for its consideration competent evidence, as may be requested by the Court, under the applicable due process requirements and standards for class certification.

#### **SETTLEMENT APPROVAL PROCEDURE**

24. This Stipulation of Settlement will become final and effective upon occurrence of all of the following events described in the following sub-paragraphs (a) – (h), inclusive:

- a. Execution of this Stipulation of Settlement by the Parties and their respective counsel of record.
- b. Filing of an Amended Complaint, with leave of Court, adding Class Representative as a class representative for the Vacation Purchase Claim.
- c. Submission of the Stipulation of Settlement to the Court for preliminary approval.
- d. Entry of an order by the Court (1) granting preliminary approval of the Stipulation of Settlement, including conditional certification of the Plaintiff Class for settlement purposes only, (2) appointing Class Counsel; (3) appointing the Class Representative or another appropriate class representative as class representative for the Plaintiff Class; and (4) appointing a Claims Administrator. The Parties agree to propose Analytics Consulting as Claims Administrator in this matter.
- e. Court approval of the form and content of a Notice of Pendency of Class Action, Proposed Settlement and Hearing Date (“Class Notice”) advising the members of the Plaintiff Class of material terms and provisions of this Stipulation of Settlement, the procedure for approval thereof, and their rights with respect thereto. The Parties propose the Class Notice attached as Exhibit A.
- f. Filing by Class Counsel, on or before the date of the final approval hearing, the Claims Administrator’s verification, in writing, that the Class Notice to the Plaintiff Class Members has been disseminated in accordance with the Court’s

order.

- g. Entry of an order by the Court granting final approval of the Stipulation of Settlement and entering judgment thereon.
- h. Occurrence of the “Effective Date,” which is defined as: (a) If no objections to the Stipulation of Settlement are filed, the date on which the time to appeal the final approval of the Stipulation of Settlement by the Court has expired; (b) If objections to the Stipulation of Settlement are filed and overruled and no appeal is taken of the final approval order, twenty (20) days after the time to appeal has expired; (c) If any appeal is taken from the Court’s overruling of objections to the Stipulation of Settlement, the later of (i) twenty (20) days after the appeal is withdrawn or (ii) twenty (20) days after an appellate decision affirming the final approval decision becomes final and no further appeal or petition of writ of certiorari is available.

25. As soon as practicable after this Stipulation of Settlement has been signed by all parties and their counsel and the Amended Complaint adding Class Representative or another appropriate class representative for the Plaintiff Class has been filed, Class Counsel shall move the Court for preliminary approval of this Stipulation of Settlement, and request an order:

- a. Conditionally certifying the Plaintiff Class;
- b. Preliminarily approving this Stipulation of Settlement as fair, reasonable, and adequate;
- c. Preliminarily appointing and approving Plaintiff as Class Representative;
- d. Preliminarily appointing and approving Robert P. Kondras, Jr. of Hassler Kondras Miller LLP and Scott S. Luzi of Walcheske & Luzi, LLC as Class Counsel;
- e. Preliminarily appointing and approving Analytics Consulting as the Claims Administrator;
- f. Approving the procedure for sending notice to the members of the Plaintiff Class as set forth in this Stipulation of Settlement;
- g. Approving the Class Notice to be sent to the Plaintiff Class Members in substantially the same form as Exhibit A to this Stipulation of Settlement, or as modified by the Court;
- h. Authorizing the Claims Administrator to mail the approved Class Notice to the Plaintiff Class Members.

26. Class Counsel shall prepare and provide Defendant’s Counsel with no less than five court days to review, provide comments to, and otherwise approve the motion for preliminary

approval of the Stipulation of Settlement before the motion and supporting papers are filed with the Court.

27. Class Counsel shall be responsible for ensuring that at least the following documents are filed with the Court in advance of the final approval hearing so that the Court will have a sufficient basis upon which to evaluate and finally approve the Stipulation of Settlement:

- a. A final report by the Claims Administrator providing details regarding the execution of the approved notice process, the rate (if any) of opt-outs and objections, and other information necessary to the Court's assessment of the fairness of the Stipulation of Settlement at the final approval hearing;
- b. A duly-noticed motion, accompanying memorandum of points and authorities prepared by Class Counsel (and approved by Defendant's Counsel), and such other pleadings, evidence, or other documents as may be necessary for the Court to determine that the settlement documented by this Stipulation of Settlement is fair, adequate and reasonable;
- c. A [Proposed] Order for the Court's signature (i) finally approving the Stipulation of Settlement as being fair, adequate and reasonable; (ii) permanently enjoining all of the Settlement Class Members who do not timely exclude themselves from the Stipulation of Settlement from pursuing, or seeking to reopen, any Released Claims against any and all Releasees; (iii) dismissing the Lawsuit with prejudice and entering Judgment consistent with this Stipulation of Settlement so as to permanently bar all Settlement Class Members from prosecuting against any and all Releasees each of the Released Claims; and (iv) dismissing the Lawsuit with prejudice and with leave to reinstate for ninety (90) days for purposes of enforcing the settlement.
- d. A [Proposed] Judgment and Notice of Entry of Judgment (collectively, "Judgment").

28. Class Counsel shall provide Defendant's Counsel with no less than five court days to review, provide comments to, and otherwise approve the motion for final approval of the Stipulation of Settlement, [Proposed] Order, and Judgment thereon before the motions and supporting papers are filed with the Court.

#### **SETTLEMENT PAYMENT AND CALCULATION OF CLAIM**

29. In consideration of the mutual covenants and promises set forth herein, the Parties agree, subject to the Court's approval, as follows:

30. Without admitting any liability whatsoever, Defendant will settle the claims of the Plaintiff Class released by this Stipulation of Settlement by depositing, within thirty (30) calendar days after the Effective Date of the Stipulation of Settlement, the amount of the Gross Settlement Fund into a qualified settlement fund created under Section §486(b) of the Internal Revenue Code, which shall be established and administered by the Claims Administrator (the "Qualified Settlement Fund"). Any interest accrued on this deposit shall be retained by Defendant. If final



approval of the Stipulation of Settlement is reversed on appeal, then Defendant shall be entitled to prompt return of the principal and all interest accrued. No money shall be distributed from the Qualified Settlement Fund unless and until the Effective Date occurs.

31. All amounts paid as part of this Stipulation of Settlement shall be paid out of the Qualified Settlement Fund. These amounts shall include (1) all payments to Settlement Class Members under this Stipulation of Settlement; (2) any incentive payment to Class Representative as approved by the Court; (3) any and all costs of administering the settlement; (4) Class Counsel's Attorneys' Fees and Costs as approved by the Court; and (5) any other amounts required to be paid under this Stipulation of Settlement, including any taxes payable on awards to Settlement Class Members. Defendant shall have no obligation under this Stipulation of Settlement to make any payment whatsoever beyond its obligation to make payments to the Qualified Settlement Fund in an amount equal to the designated Gross Settlement Fund.

32. Claims Administration Charges. All costs associated with administering the settlement (the "Claims Administration Charges"), whether foreseen or unforeseen, will be paid from the Qualified Settlement Fund. The Claims Administration Charges for administration of the settlement include, but are not limited to, identification of Plaintiff Class Members' best address, printing and mailing of the Class Notice, creating and instituting a dedicated settlement website, processing disputes, requests for exclusion, and objections in accordance with this Stipulation of Settlement, calculating preliminary and final payment amounts and tax withholdings for Plaintiff Class Members, responding to inquiries from Plaintiff Class Members, issuing and mailing settlement payments and checks, reasonable efforts to locate Plaintiff Class Members, and preparing any required tax returns and tax reports. Assuming that there is no significant change in the proposed scope of work or size of the class, the Claims Administrator's costs in administering the settlement of this Lawsuit is estimated to be \$40,000.00, and shall be reserved from the Qualified Settlement Fund by the Claims Administrator. Payments to the Claims Administrator shall be made after the Effective Date. Any unused funds allocated to the Claims Administration Charges shall be paid back into the Net Settlement Fund.

33. Class Counsel's Attorneys' Fees and Costs. No less than fourteen (14) days before the final approval hearing, Class Counsel will file a motion for an award of reasonable attorneys' fees and reimbursement of reasonable costs in connection with the Lawsuit. Class Counsel will seek Court approval for payment of attorneys' fees in the amount of up to 1/3 of the Gross Settlement Fund, or Nine Hundred Seventy-Eight Thousand, Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$978,333.33), plus actual litigation costs, which are currently estimated to be approximately Eight Thousand Five Hundred Dollars (\$8,500.00). An appropriate IRS Form 1099 shall be provided to Class Counsel for such payments. The Parties expressly agree that the Court's approval or denial of any request for attorneys' fees and costs are not material conditions to the Stipulation of Settlement and are to be considered by the Court separately from the fairness, reasonableness, adequacy, and good faith of the Stipulation of Settlement. Any order or proceeding relating to the application by Class Counsel for an award for attorneys' fees and costs shall not operate to terminate or cancel this Stipulation of Settlement. Any reduction in Class Counsel's request for fees and costs shall revert to the Net Settlement Fund.

34. Class Representative Incentive. Class Representative may seek Court approval for an incentive payment in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00) to be paid

from the Gross Settlement Fund. This payment is intended to compensate Class Representative for his efforts on behalf of the Plaintiff Class, which have substantially benefitted the Plaintiff Class. Defendant will not oppose Class Representative's request for an incentive payment of up to Fifteen Thousand Dollars (\$15,000.00). The final amount of any incentive payment awarded to Class Representative by the Court shall be binding on Class Representative. Any incentive payment to Class Representative will be treated as non-wage payments and reported as such by the Claims Administrator to the appropriate government taxing authorities, with Class Representative being solely responsible for paying any and all taxes due on any such payment. The Parties expressly agree that the Court's approval or denial of any request for an incentive payment to Class Representative is not a material condition to the Stipulation of Settlement, and is to be considered by the Court separately from the fairness, reasonableness, adequacy, and good faith of the Stipulation of Settlement. Any order or proceeding relating to the application by Class Counsel for an incentive award to Class Representative shall not operate to terminate or cancel this Stipulation of Settlement. Any reduction in the request for incentive payments shall revert to the Net Settlement Fund.

35. Individual Settlement Shares. The gross payment amount to each member of the Settlement Class shall be referred to as their "Individual Settlement Share." Individual Settlement Shares will be based on the Settlement Class Member's pro rata share of the Net Settlement Fund and will be calculated based upon the amount of wages reduced for purchased vacation. More specifically, the Individual Settlement Shares for the Settlement Class Members will be determined by dividing the Net Settlement Fund by the amount of wages reduced for purchased vacation between October 10, 2020 and the date of preliminary approval of the settlement for all Settlement Class Members, and then multiplying that figure by the amount of wages reduced for purchased vacation for each Settlement Class Member between October 10, 2020 and the date of preliminary approval of the settlement, provided that in no event shall an Individual Settlement Share be less than Seventy-Five Dollars (\$75.00).

36. The Parties agree that the amount distributed to each Settlement Class Member will be considered wages and will be subject to employee withholdings required under federal, state and local laws and any other payroll charges required to be paid or deposited with the pertinent federal, state and local taxing agencies. All Parties represent that they have not received, and shall not rely on, advice or representations from other Parties or their agents regarding the tax treatment of payments under federal, state, or local law.

37. No employee benefit provided by Defendant to any Settlement Class Member, including but not limited to any 401(k) benefits, shall increase or accrue as a result of any payment made in accordance with this Stipulation of Settlement.

38. The Parties are mindful that the total consideration payable hereunder is comprised of a claim for damages and penalties by Class Representative and the Plaintiff Class Members. Accordingly, having considered the matter in detail, having performed their own separate and independent computations and estimation of the damages and penalties potentially awardable to the Plaintiff Class Members at trial, and having done the foregoing with complete and satisfactory access to, and advice from, accounting and legal advisors, the Parties mutually consent and agree that the Net Settlement Fund be apportioned among the Settlement Class Members in this action as set forth above. Moreover, the Parties mutually consent and agree, and hereby represent to the



Court in this judicially-supervised settlement transaction, that the apportionment of the Net Settlement Fund as stated above is a reasonable and arm's length determination of the character of the Individual Settlement Shares for all purposes, including for tax purposes.

#### **APPOINTMENT OF CLAIMS ADMINISTRATOR**

39. The Parties have agreed, subject to the Court's approval, to the appointment of Analytics Consulting to perform the duties of a Claims Administrator for the purposes of verifying any amounts due to Settlement Class Members as described in this Stipulation of Settlement. The Claims Administrator will administer disbursements from the Gross Settlement Fund paid by Defendant into the Qualified Settlement Fund, including, but not limited to, distributing the Class Notice, calculating Individual Settlement Shares, calculating the employee's share of payroll tax, calculating interest owed, preparing and issuing all disbursements to be paid to Settlement Class Members, Class Counsel, and the local state and federal payroll tax authorities, and handling inquiries and/or disputes about the calculation of the Individual Settlement Shares. The Claims Administrator shall be responsible for the timely filing of all federal, state and local tax returns of the Qualified Settlement Fund and making the timely payment of any and all taxes and withholdings required with such returns. The Claims Administrator shall coordinate as necessary with Defendant to report and remit all state and unemployment payroll taxes to the proper agencies. The Claims Administrator shall establish a dedicated settlement website, an email address and toll-free telephone number to direct inquiries regarding the Class Notice and determination of Individual Settlement Shares. All questions by Plaintiff Class Members shall be directed to the Claims Administrator and Class Counsel. The Claims Administrator shall be responsible for providing weekly reports regarding the number of notices mailed and delivered, the number of undeliverable notices and the number of opt-outs and objections (if any) to Class Counsel and Defendant's Counsel. All disputes relating to the Claims Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Stipulation of Settlement, until all payments and obligations contemplated by the Stipulation of Settlement have been fully carried out. All Claims Administration Charges associated with administering disbursements from the Qualified Settlement Fund including, but not limited to, the fees and costs of the Claims Administrator and the cost of the Class Notice, shall be paid entirely from the Gross Settlement Fund, as set forth in Paragraph 31, above. The Parties expect that the Claims Administrator shall conduct all administration of all disbursements of the Gross Settlement Fund and that Class Counsel shall receive no portion of the Claims Administration Charges paid to the Claims Administrator.

#### **NOTICE TO THE PLAINTIFF CLASS**

40. Defendant will provide to the Claims Administrator, within ten (10) business days of the entry of an order granting preliminary approval of the Stipulation of Settlement and Class Notice, a spreadsheet including the following information for each member of the Plaintiff Class: (1) last known address, telephone number and email address, (2) Social Security number, and (3) data pertaining to amount of wages reduced for purchased vacation (the "Class Data"). Defendant agrees to provide the Class Data in a format reasonably acceptable to the Claims Administrator. The Claims Administrator will keep the Class Data confidential, stored in a secure location with access controls, use it only for the purposes described herein, and return it to Defendant upon final approval of the Stipulation of Settlement, or otherwise certify that it has been permanently and

irreversibly destroyed. Unless otherwise agreed by the Parties, all eligibility and Individual Settlement Shares shall be based solely on Defendant's employment records.

41. If the Claims Administrator discovers a breach of security relating to the Class Data, the Claims Administrator shall: (1) provide written notice to the Defendant of the breach within 48 hours of the Claims Administrator's discovery of the breach; (2) investigate and remediate the effects of the breach, and provide the Defendant with assurance reasonably satisfactory to the Defendant that the breach shall not recur; and (3) provide sufficient information about the breach that the Defendant can ascertain the size and scope of the breach. The Claims Administrator shall cooperate with the Defendant or law enforcement in investigating any such security incident.

42. Within fourteen (14) calendar days of receipt by the Claims Administrator of the Class Data, the Claims Administrator will mail to all members of the Plaintiff Class, via First-Class United States Mail, the Court-approved Class Notice. The Class Notice shall inform the Plaintiff Class Members that, unless they follow the procedures for opting out (described in Paragraph 46 below), they will be deemed to have accepted the settlement and the terms of this Stipulation of Settlement. Prior to the mailing, the Claims Administrator shall run the addresses through the U.S. Postal Service's National Change of Address database and update the Class Data as necessary.

43. With respect to those Plaintiff Class Members whose envelope containing the Class Notice is returned to the Claims Administrator as undeliverable, the Claims Administrator shall promptly attempt to obtain a valid mailing address by use of one or more skip trace databases such as the Equifax and NCOA ("National Change of Address") database search. If another address is identified, the Claims Administrator shall immediately thereafter send the Class Notice to the new address.

44. In addition, no later than fourteen (14) calendar days following the receipt of the Class Data from Defendant, the Claims Administrator shall create and institute a dedicated website. The dedicated website shall include: (a) a brief welcome page approved by the Parties; (b) the Class Notice; (c) contact information for Class Counsel; (d) contact information for the Claims Administrator; and (e) all applicable deadlines. The dedicated website shall be taken down within seven (7) calendar days following the Objection / Exclusion Deadline.

45. Class Counsel shall provide the Court, at least fourteen (14) calendar days prior to the final approval hearing, a declaration by the Claims Administrator of due diligence and proof of mailing with regard to the mailing of the Class Notice.

#### **OBJECTIONS AND REQUESTS FOR EXCLUSION FOR PLAINTIFF CLASS MEMBERS**

46. Plaintiff Class Members may exclude themselves from the Settlement Class by mailing to the Claims Administrator a request for exclusion, which expresses their desire to be excluded from the Settlement Class, including their name (and former names, if any), current address, telephone number, and social security number. Any such request for exclusion must be signed by the individual and returned to the Claims Administrator as indicated on the Class Notice no later than sixty (60) days after the date the Claims Administrator first mails the Class Notice to



the Plaintiff Class Members (the “Objection / Exclusion Deadline”). The date of submission of a request for exclusion to the Claims Administrator is deemed to be the earlier of: (a) the date the request for exclusion is deposited in the U.S. Mail, postage pre-paid, as evidenced by the postmark; (b) the date the request for exclusion is tendered to an overnight service for delivery, as indicated by a shipping envelope; or (c) the date the request for exclusion is received by the Claims Administrator. Absent a showing of good cause or by agreement of the Parties, or as otherwise ordered by the Court, no request for exclusion will be honored if postmarked after the Objections / Exclusion Deadline. Requests for exclusion from the Settlement Class that do not include all required information, or that are not submitted on a timely basis, will be deemed null, void, and ineffective unless otherwise agreed by the Parties or ordered by the Court. Persons who are eligible to and do submit valid and timely requests for exclusion from the Settlement Class will not participate in the settlement, nor will they be bound by the terms of the Stipulation of Settlement, if it is approved, or the final Judgment in the Lawsuit.

47. Plaintiff Class Members may object to the settlement by filing an objection with the clerk of the Court (and serve it on the Claims Administrator and all counsel identified in the notice) on or before the Objection / Exclusion Deadline. Any Plaintiff Class Member who fails to timely file such a written statement of his or her intention to object, or who requests to exclude themselves from the settlement, shall be foreclosed from making any objection to this Stipulation of Settlement, unless otherwise agreed by the Parties or ordered by the Court.

48. Counsel for the Parties shall file any response to any objections to the Stipulation of Settlement submitted by any Plaintiff Class Member at least fourteen (14) court days before the date of the final approval hearing, or as otherwise ordered by the Court.

#### **DISPUTE PROCESS**

49. The Class Notice will apprise each Plaintiff Class Member of the amount of wages reduced for purchased vacation and their estimated Individual Settlement Share. These calculations shall be based on Defendant’s records, as described above in Paragraph 40.

50. If a Plaintiff Class Member does not wish to challenge the information set forth in the Class Notice, then the Plaintiff Class Member need do nothing, and payment will be made pursuant to this Stipulation of Settlement based on Defendant’s records.

51. If a Plaintiff Class Member wishes to challenge the information set forth in the Class Notice, then the member must submit a written, signed challenge under penalty of perjury, along with any supporting documents to the Claims Administrator at the address provided on the Class Notice on or before the Objection / Exclusion Deadline. No dispute will be timely if submitted after the Objection / Exclusion Deadline. Counsel for the Parties may stipulate to a compromise or stipulate to allow the Claims Administrator to resolve the challenge and make a final and binding determination without hearing or right of appeal. Thereafter, the Claims Administrator shall inform the Plaintiff Class Member whether his or her dispute was resolved in his or her favor within ten (10) days after the challenge is made. In the case of a dispute, the Plaintiff Class Member shall have the burden of proof to show that Defendant’s records are incorrect. If any other dispute arises with regard to the propriety of the Class Notice, counsel for the Parties may stipulate to a compromise or stipulate to allow the Claims Administrator to resolve



the dispute and make a final and binding determination without hearing or right of appeal. Engaging in the dispute process set forth in this paragraph does not extend the time to opt out of the class.

### **FUNDING OF SETTLEMENT AND DISBURSEMENTS**

52. Funding of Qualified Settlement Fund. Within thirty (30) calendar days after the Effective Date, Defendant shall wire money to the Claims Administrator for deposit into the Qualified Settlement Fund in an amount equal to the Gross Settlement Fund.

53. Disbursement of Settlement Awards, Attorneys' Fees and Costs, and Incentives. No later than ten (10) business days after Defendant has wired the amount described in Paragraph 52 into the Qualified Settlement Fund, the Claims Administrator shall issue and mail the checks representing the Individual Settlement Shares to the Settlement Class Members, as well as disburse any court-approved attorney's fees and costs, Claims Administration Charges, and court-approved incentive payments. With the exception of any incentive payments, each Settlement Class Member's Individual Settlement Share will be paid in one check equal to the Individual Settlement Share, less applicable deductions and withholdings, for which an IRS Form W-2 will issue. The mailing of Individual Settlement Shares shall be by first-class United States mail to the last known mailing address of each Settlement Class Member. Class Counsel shall be paid via wire transfer per the written instructions provided by Class Counsel to the Claims Administrator. The mailing of any incentive payments shall be by first-class United States mail to Class Counsel.

54. The Claims Administrator shall make the required payments as set forth in the Court's Final Order and Judgment. The Claims Administrator must keep counsel for the Parties apprised of all distributions of Individual Settlement Shares and, upon completion of the mailing of the Individual Settlement Shares, the Claims Administrator shall promptly provide a written report to counsel for the Parties showing all payments made to Settlement Class Members, tax authorities, Class Representative, Class Counsel, and the Claims Administrator.

55. Checks to the Settlement Class Members shall remain valid and negotiable for 120 days from the date of their issuance and may thereafter automatically be canceled if not cashed within that time period. The Claims Administrator shall provide a list of any settlement checks that are not cashed/negotiated ("Uncashed Checks") to counsel for the Parties at the conclusion of the 120-day period. Within 10 business days after the expiration of the 120-day period, the Claims Administrator shall transfer any funds from Uncashed Checks to Defendant.

56. Upon completion of the administration of the settlement under this Stipulation of Settlement, the Claims Administrator shall provide to Defendant's Counsel the following: (a) specimens of all form documents sent to Plaintiff Class Members, including the Class Notice; (b) copies of all non-privileged documents actually sent to the Plaintiff Class Members, including without limitation, those itemized in (a), *supra*; and (c) a register listing all Settlement Class Members and the payment made to each Settlement Class Member under this Stipulation of Settlement. In addition, the Claims Administrator shall provide to Defendant a register of all Plaintiff Class Members who excluded themselves from the Settlement Class.

## RELEASE OF CLAIMS

57. Upon the final approval by the Court of this Stipulation of Settlement, and except as to such rights or claims as may be created by this Stipulation of Settlement, all Plaintiff Class Members who have not opted out of the Settlement Class fully release and discharge Defendant and each of its past, present, and future officers, directors, agents, employees, servants, associates, spouses, representatives, subsidiaries, affiliated companies, parent companies, joint ventures and joint venturers, partnerships and partners, members, stockholders, shareholders, bondholders, unitholders, beneficiaries, trustees, insurers, reinsurers, divisions, agents, attorneys, administrators, advisors, predecessors, successors, heirs, and assigns, including Lilly USA and Lilly International (“Releasees”), from any and all individual and class claims, arbitrations, mediations, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorneys’ fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, whether past, present or future, that were alleged or could have been alleged in the Lawsuit, including, but not limited to any claims under federal or state law that are alleged in the Lawsuit, or that any of the Releasing Parties could assert directly or indirectly against the Released Parties, arising out of or relating in any way to the subject matter of the Lawsuit (the “Released Claims”). The Released Claims include, but are not necessarily limited to, any claim for violation of any federal, state, or local statute, rule, or regulation relating to the payment of wages and deductions from wages. This includes claims under the Indiana Wage Payment Statute, the Indiana Wage Assignment Statute, the Fair Labor Standards Act (the “FLSA”), the Indiana Minimum Wage Law, and Indiana state law for alleged improper deductions and failure to pay wages, and for any statutory or civil penalties or liquidated damages under any statute, ordinance, or otherwise arising from or related to alleged improper wage deductions by Defendant for participation in the H&V Plan or failure to pay wages.

58. The Parties stipulate that beyond the Gross Settlement Fund, Defendant shall not owe any further monies to the Class Representative, Settlement Class Members, or to Class Counsel based upon the claims made and facts alleged in the Lawsuit.

59. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge the Released Claims. Upon entry of an order granting final approval and judgment in the Lawsuit, Class Representative and each and every Settlement Class Member shall be bound by the terms of this Stipulation of Settlement and shall have recourse exclusively to the benefits, rights, and remedies provided hereunder. Class Representative and each and every Settlement Class Member shall be deemed to have, and by operation of the judgment and final approval order entered by the Court shall have fully, finally, and forever released, relinquished, and discharged each and all of the Releasees from any and all Released Claims through the date of entry of Judgment in the Lawsuit.

60. Upon final approval by the Court of this Stipulation of Settlement, and for and in consideration of the payment of an incentive payment to Class Representative for services performed on behalf of the Plaintiff Class Members, Class Representative and his respective heirs, representatives, attorneys, administrators, executors, successors and assigns, fully release and discharge Releasees from any and all actions, causes of action, grievances, obligations, costs, expenses, damages, losses, claims, liabilities, suits, debts, demands, and benefits (including attorneys’ fees and costs actually incurred), of whatever character, in law or in equity, known or



unknown, suspected or unsuspected, matured or unmatured, of any kind or nature whatsoever, based on any act, omission, event, occurrence, or nonoccurrence from the beginning of time to the effective date of this Stipulation of Settlement, including but not limited to any claims or causes of action arising out of or in any way relating to Class Representative's employment relationship with Defendant or any Releasee. Class Representative agrees that this release of claims includes, but is not limited to, claims for breach of any implied or express contract or covenant; claims for promissory estoppel; claims of entitlement to any pay; claims of wrongful denial of insurance and employee benefits; claims for wrongful termination, public policy violations, defamation, invasion of privacy, emotional distress or other common law or tort matters; claims of harassment, retaliation, or discrimination under federal, state, or local law; claims based on any federal, state, or other governmental statute, regulation or ordinance, including, without limitation, the FLSA, Title VII of the Civil Rights Act, as amended, the Americans with Disabilities Act, as amended, the Family and Medical Leave Act, the Indiana Civil Rights Act, the Indiana Wage Payment Statute, the Indiana Wage Assignment Statute, the Indiana Minimum Wage Law, and the Employee Retirement Income Security Act.

61. In addition to Class Representative's full and general release, Class Representative agrees that he will not at any time in the future, seek, apply for, or accept employment with Defendant or any of its parent companies or subsidiaries.

62. Plaintiff's Counsel represents that they are not currently representing any person who intends to bring claims similar to the Vacation Purchase Claim in any state outside of Indiana or any person who intends to bring claims similar to the Fleet Claim or unjust enrichment claim in a separate action.

#### **VOIDING THE STIPULATION OF SETTLEMENT**

63. In the event the Court does not preliminarily approve the Stipulation of Settlement, the Parties agree to make good faith efforts to modify the Stipulation of Settlement in order to obtain Court approval. If, after good faith efforts have been exhausted, the Court does not approve any material condition of this Stipulation of Settlement or effects a fundamental change of the Stipulation of Settlement, the entire Stipulation of Settlement will be voidable and unenforceable. The Parties expressly agree that the Court's approval or denial of any request for attorneys' fees and costs or any incentive payment to Class Representative are not material conditions to this Stipulation of Settlement, and are to be considered by the Court separately from the fairness, reasonableness, adequacy, and good faith of the Stipulation of Settlement.

#### **MUTUAL FULL COOPERATION**

64. The Parties agree to fully cooperate with each other to accomplish the terms of this Stipulation of Settlement, including but not limited to, execution of such documents as may reasonably be necessary to implement the terms of this Stipulation of Settlement. The Parties to this Stipulation of Settlement shall use their best efforts, including all efforts contemplated by this Stipulation of Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Stipulation of Settlement. As soon as practicable after execution of this Stipulation of Settlement, Class Counsel shall, with the assistance and cooperation of



Defendant's Counsel, take all necessary steps to secure the Court's final approval of this Stipulation of Settlement.

#### **NO ADMISSION OF LIABILITY**

65. Each of the Parties has entered into this Stipulation of Settlement with the intention to avoid further disputes and litigation with the attendant risk, inconvenience and expense. Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. This Stipulation of Settlement is a settlement document and shall, pursuant to Indiana Rules of Evidence 408, and Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding. The preceding sentence shall not apply to an action or proceeding to approve, interpret, or enforce this Stipulation of Settlement.

#### **CONSTRUCTION AND INTERPRETATION**

66. The Parties agree that the terms and conditions of this Stipulation of Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Stipulation of Settlement shall not be construed in favor of or against any of the Parties by reason of their participation in the drafting of this Stipulation of Settlement.

67. Paragraph titles are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Stipulation of Settlement or any of its provisions. Each term of this Stipulation of Settlement is contractual and not merely a recital.

68. This Stipulation of Settlement shall be subject to and governed by the laws of the State of Indiana and subject to the continuing jurisdiction of the United States District Court for the Southern District of Indiana.

#### **MODIFICATION**

69. This Stipulation of Settlement may not be changed, altered, or modified, except in writing and signed by counsel for the Parties, and approved by the Court. This Stipulation of Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by counsel for the Parties.

#### **INTEGRATION CLAUSE**

70. This Stipulation of Settlement and any agreement between the Parties concerning minimum participation in the settlement contain the entire agreement between the Parties relating to any and all matters addressed in the Stipulation of Settlement, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, with respect to such matters are extinguished. No rights hereunder may be waived or modified except in a writing signed by all Parties.

### **BINDING ON ASSIGNS**

71. This Stipulation of Settlement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

### **EFFECT OF NOTICE**

72. It is agreed that it is impossible or impractical to have each Settlement Class Member execute this Stipulation of Settlement. The Notice will advise all Settlement Class Members of the binding nature of the release and such shall have the same force and effect as if each Settlement Class Member executed this Stipulation of Settlement.

### **EACH PARTY TO BEAR OWN COSTS**

73. Except as specifically provided herein, the Parties hereto will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of this Lawsuit, and will not seek reimbursement thereof from any Party to this Stipulation of Settlement.

### **CONFIDENTIALITY**

74. Class Representative and Class Counsel agree not to publicize the terms of this Agreement, including but not limited to granting media interviews or statements or social media postings. Class Representative further agrees not to discuss the settlement terms with any third parties other than his counsel, spouse, immediate family members and tax advisers. Defendant agrees not to disclose the terms of the Stipulation of Settlement to third parties, other than its attorneys, accountants, auditors or as required by law or legal process and will disclose the terms of the Stipulation of Settlement internally only on a need-to-know basis. The Parties acknowledge and agree that the terms of the Stipulation of Settlement may be disclosed to the Court and/or the Settlement Administrator in connection with the approval, administration, or enforcement of the Stipulation of Settlement and nothing herein shall restrict or prohibit such disclosure. The Parties further acknowledge and agree that Defendant may communicate with Plaintiff Class Members for any reason, including, but not limited to, the mailing and content of the Notice and any employment matters. Notwithstanding the foregoing, the Parties may not otherwise publicly disclose, publicize or issue press releases regarding the terms of this Stipulation of Settlement.

### **STAY OF PROCEEDINGS**

75. The Parties agree to stay all proceedings in the Lawsuit, except such proceedings as may be necessary to implement the Stipulation of Settlement, until the Effective Date or until the Stipulation of Settlement is voided or not approved.

76. The Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Stipulation of Settlement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement embodied in this Stipulation of Settlement and all orders and judgments entered in connection therewith.

**PARTIES' AUTHORITY**

77. The signatories represent that they are fully authorized to enter into this Stipulation of Settlement and bind the Parties to its terms and conditions.

78. The signatories represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of the claims, causes of action, demands, rights, and liabilities of every nature and description released under this Stipulation of Settlement.

**ENFORCEMENT OF AGREEMENT**

79. Either Party may seek enforcement of this Stipulation of Settlement if the other Party breaches or violates any of the promises set forth in Paragraphs 57, 60, 61, and 74 of this Stipulation of Settlement. In the event a breach of this Stipulation of Settlement is established, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs, in addition to any other relief that may be awarded.

**COUNTERPARTS**

80. This Stipulation of Settlement may be executed in one or more counterparts and by facsimile or email. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Stipulation of Settlement shall exchange among themselves signed counterparts.

**IT IS SO STIPULATED AND AGREED:**

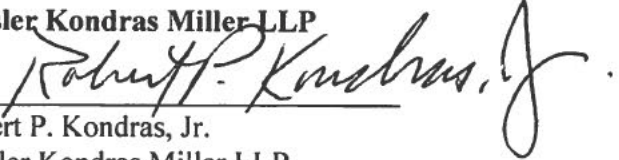
[SIGNATURES TO FOLLOW]



**PLAINTIFF/CLASS REPRESENTATIVE AND CLASS COUNSEL**

Dated:

**Hassler Kondras Miller LLP**

By: 

Robert P. Kondras, Jr.  
Hassler Kondras Miller LLP  
100 Cherry Street  
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(812) 232-9691  
[kondras@hkmlawfirm.com](mailto:kondras@hkmlawfirm.com)

Dated:

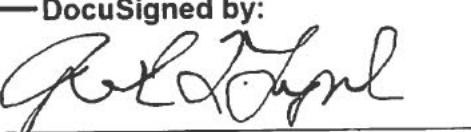
**Walcheske & Luzi, LLC**

By: 

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[sluzi@walcheskeluzi.com](mailto:sluzi@walcheskeluzi.com)

Dated: 8/22/2023

**DocuSigned by:**



Jacob Lynn  
A9ADE7217427...  
Plaintiff/Class Representative

**DEFENDANT AND COUNSEL FOR DEFENDANT**

Dated: September 8, 2023

**MCGUIREWOODS LLP**

By:   
\_\_\_\_\_

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Dated:

**ELI LILLY AND COMPANY**

By:   
\_\_\_\_\_

Karen Quirk

Title: Sr. Vice President, Deputy General Counsel