

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MICHAEL WACHALA, et al.,

Plaintiffs,

v.

ASTELLAS US LLC, et al.,

Defendants.

Case No. 1:20-cv-03882

Hon. Martha M. Pacold

CLASS ACTION

UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT

Plaintiffs move this Court for final approval of the Class Action Settlement and move the Court for the entry of the submitted proposed Final Order. Defendants do not oppose the granting of this motion.

This motion is supported by Plaintiffs' Memorandum in Support of Joint Motion for Preliminary Approval of Class Settlement (Doc. 226); this Court's Order preliminarily approving this Settlement (Doc. 231); Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards for Named Plaintiffs (Doc. 233); the Declaration of Analytics Consulting LLC, the Settlement Administrator; the Statement of Gallagher Fiduciary Advisors, LLC, serving as the Independent Fiduciary, approving the Settlement, including attorneys' fees and expenses (attached to Plaintiffs' Memorandum as Exhibit 1); and Plaintiffs' accompanying Memorandum in Support of Final Approval.

October 19, 2023

Respectfully submitted,

SCHLICHTER BOGARD LLP

/s/ Troy A. Doles

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on October 19, 2023.

/s/ Troy A. Doles

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

MICHAEL WACHALA, MARY BETH PREUSS,
PATRICIA WALSH, SADE ADENEYE,
MICHAEL BICKLE AND JACQUELINE
GOUGH, individually and as representatives of a
class of participants and beneficiaries on behalf of
the Astellas US Retirement and Savings Plan,

Plaintiffs,

v.

ASTELLAS US LLC, THE BOARD OF
DIRECTORS OF ASTELLAS US LLC, THE
ASTELLAS RETIREMENT PLAN
ADMINISTRATIVE COMMITTEE, AND AON
HEWITT INVESTMENT CONSULTING, INC
(NKA AON INVESTMENTS USA, INC),

Defendants.

No. 1:20-cv-03882

CLASS ACTION

[PROPOSED] FINAL ORDER AND JUDGMENT

Upon consideration of the Plaintiffs' Motion for Final Approval of the Settlement of the above-referenced litigation under the terms of a Class Action Settlement Agreement dated June 23, 2023 (the "Settlement Agreement"), the Court hereby orders and adjudges as follows:

1. For purposes of this Final Order and Judgment, capitalized terms used herein have the definitions set forth in the Settlement Agreement, which is incorporated herein by reference.

2. In accordance with the Court's Preliminary Approval Order, Settlement Notice was timely distributed by electronic or first-class mail to all Class Members who could be identified with reasonable effort, and Settlement Notice was published on the Settlement Website maintained by the Settlement Administrator. In addition, pursuant to the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.*, notice was provided to the Attorneys General for each of the

states in which a Class Member resides, the Attorney General of the United States, and the United States Secretary of Labor.

3. The form and methods of notifying the Settlement Class of the terms and conditions of the proposed Settlement Agreement met the requirements of Fed. R. Civ. P. 23(c)(2), any other applicable law, and due process, and constituted the best notice practicable under the circumstances; and due and sufficient notices of the Fairness Hearing and the rights of all Class Members have been provided to all people, powers and entities entitled thereto.

4. All requirements of the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.*, have been met.

5. Class Members had the opportunity to be heard on all issues regarding the resolution and release of their claims by submitting objections to the Settlement Agreement to the Court.

6. Each and every objection to the Settlement is overruled with prejudice.

7. The Motion for Final Approval of the Settlement Agreement is hereby **GRANTED**, the Settlement of the Litigation is **APPROVED** as fair, reasonable, and adequate to the Plan and the Settlement Class, and the Settling Parties are hereby directed to take the necessary steps to effectuate the terms of the Settlement Agreement.

8. The operative complaint and all claims asserted therein in the Class Action are hereby dismissed with prejudice and without costs to any of the Settling Parties and Released Parties other than as provided for in the Settlement Agreement.

9. The Plan, the Class Representatives, and the Class Members (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, predecessors, successors, assigns, agents, and attorneys) hereby fully, finally, and

forever settle, release, relinquish, waive, and discharge all Released Parties (including Defendants) from the Released Claims, regardless of whether or not such Class Member receives a monetary benefit from the Settlement, executed and delivered a Former Participant Claim Form, filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Costs, and whether or not the objections or claims for distribution of such Class Member have been approved or allowed.

10. The Class Representatives, the Class Members, and the Plan acting individually or together, or in combination with others, are hereby barred from suing or seeking to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a Department of Labor proceeding, an arbitration, or a proceeding before any state insurance or other department or commission) any cause of action, demand, or claim on the basis of, connected with, or arising out of any of the Released Claims. Nothing herein shall preclude any action to enforce the terms of the Settlement Agreement in accordance with the procedures set forth in the Settlement Agreement.

11. The Plan, the Class Representatives, and the Class Members (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns), on their own behalf and on behalf of the Plan, have fully, finally, and forever settled, released, relinquished, waived, and discharged all Released Parties, except for any Plan recordkeeper, from any claims arising from the use by the Plan's recordkeeper during the three year period following the Settlement Effective Date of Plan participant data for selling Individual Retirement Accounts, life insurance, disability insurance, non-Plan investment products, and wealth management services.

12. The Plan, the Class Representatives, and the Class Members expressly agree that they, acting individually or together, or in combination with others, shall not sue or seek to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a Department of Labor proceeding, an arbitration or a proceeding before any state insurance or other department or commission) against any Released Party any cause of action, demand, or claim on the basis of, connected with, or arising out of any use by the Plan's recordkeeper during the three year period following the Settlement Effective Date of Plan participant data for selling Individual Retirement Accounts, life insurance, disability insurance, non-Plan investment products, and wealth management services, unless such action is brought exclusively against a Plan recordkeeper.

13. Class Counsel, the Class Representatives, the Class Members, or the Plan may hereafter discover facts in addition to or different from those that they know or believe to be true with respect to the Released Claims. Such facts, if known by them, might have affected the decision to settle with the Defendants and the other Released Parties, or the decision to release, relinquish, waive, and discharge the Released Claims, or the decision of a Class Member not to object to the Settlement. Notwithstanding the foregoing, each Class Representative, each Class Member, and the Plan has and have hereby fully, finally, and forever settled, released, relinquished, waived, and discharged any and all Released Claims. The Class Representatives, Class Members, and the Plan have hereby acknowledged that the foregoing waiver was bargained for separately and is a key element of the Settlement embodied in the Settlement Agreement of which this release is a part.

14. The Class Representatives, Class Members, and the Plan hereby settle, release, relinquish, waive, and discharge any and all rights or benefits they may now have, or in the

future may have, under any law relating to the releases of unknown claims, including without limitation, Section 1542 of the California Civil Code, which provides: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that if known by him or her would have materially affected his or her settlement with the debtor or released party.” The Class Representatives, Class Members, and the Plan with respect to the Released Claims also hereby waive any and all provisions, rights and benefits conferred by any law or of any State or territory within the United States or any foreign country, or any principle of common law, which is similar, comparable, or equivalent in substance to Section 1542 of the California Civil Code.

15. The Court finds that it has subject matter jurisdiction over the claims herein and personal jurisdiction over Class Members herein pursuant to the provisions of ERISA, and expressly retains that jurisdiction for purposes of enforcing this Final Order and the Settlement Agreement. Any motion to enforce paragraphs 8 through 12 of this Final Order or the Settlement Agreement, including by way of injunction, may be filed in this Court, and the provisions of the Settlement Agreement and/or this Final Order may also be asserted by way of an affirmative defense or counterclaim in response to any action that is asserted to violate the Settlement Agreement.

16. Each Class Member shall hold harmless Defendants, Defense Counsel, and the Released Parties for any claims, liabilities, attorneys’ fees, and expenses arising from the allocation of the Gross Settlement Amount or Net Settlement Amount and for all tax liability and associated penalties and interest as well as related attorneys’ fees and expenses.

17. The Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Current Participant and each Authorized Former Participant.

18. With respect to payments or distributions to Authorized Former Participants, all questions not resolved by the Settlement Agreement shall be resolved by the Settlement Administrator in its sole and exclusive discretion.

19. With respect to any matters that arise concerning the implementation of distributions to Current Participants (after allocation decisions have been made by the Settlement Administrator in its sole discretion), all questions not resolved by the Settlement Agreement shall be resolved by the Plan administrator or other fiduciaries of the Plan in accordance with applicable law and the governing terms of the Plan.

20. Within seven (7) calendar days following the issuance of all settlement payments to Class Members, the Settlement Administrator shall prepare and provide to Class Counsel and Defense Counsel a list of each person who was issued a settlement payment and the amount of such payment.

21. Upon entry of this Order, all Class Members shall be bound by the Settlement Agreement (including any amendments) and by this Final Order.

IT IS SO ORDERED.

DATED: _____, 2023

HON. MARTHA M. PACOLD
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MICHAEL WACHALA, et al.,

Plaintiffs,

v.

ASTELLAS US LLC, et al.,

Defendants.

Case No. 1:20-cv-03882

Hon. Martha M. Pacold

CLASS ACTION

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION
FOR FINAL APPROVAL OF CLASS SETTLEMENT**

Plaintiffs brought this action alleging that Defendants breached their fiduciary duties and committed prohibited transactions by, among other things, including the Aon Hewitt Collective Investment Trusts (“Aon Funds”) in the Plan. Doc. 173. Defendants denied and continue to deny these allegations.

For over three years, this case was extensively litigated with discovery and motion practice, including discovery motions, heavily contested class certification, and trial preparations. See Doc. 226 at 2–3. After extensive arm’s length negotiations, the parties reached a Settlement that provides substantial monetary and non-monetary relief to each Class member. In light of the litigation risks further prosecution of this action would inevitably entail, coupled with the resounding support of this Settlement, the Court should finally approve the proposed Settlement as fair, reasonable, and adequate, and enter the proposed Final Order and Judgment.

BACKGROUND

On July 1, 2020, Plaintiffs brought this action on behalf of the Astellas US Retirement and Savings Plan (“Plan”) against Astellas US LLC, The Board of Directors of Astellas US LLC,

The Astellas Retirement Plan Administrative Committee, and AON Investments USA, Inc. (fka AON Hewitt Investment Consulting, Inc.) (“Aon”) (“Defendants”) for alleged violations of the Employee Retirement Income Security Act of 1974. Doc. 1. Broadly stated, Plaintiffs alleged that Defendants breached their fiduciary duties by causing the Plan to suffer millions of dollars in losses resulting from Defendants’ retention of Aon as a discretionary fiduciary and the inclusion and retention of Aon’s proprietary collective investment trusts in the Plan. *Id.*

For over three years, this case was extensively litigated with substantial discovery and motion practice, including dismissal motions, discovery motions, and class certification. On February 10, 2022, the Court certified this matter as a class action. Doc. 169. In that same class certification order, the Court appointed individuals to serve as class representatives and appointed the law firm of Schlichter Bogard LLP as Class Counsel. *Id.*

This case was set for trial on July 17, 2023. Doc. 190. Leading up to trial, after several months of arm’s-length negotiations, the Parties reached a Settlement. As part of the Settlement, and contemporaneous with the parties’ request that the Court preliminarily approve the Settlement, the parties agreed to a Settlement Class for settlement purposes only. The Settlement Class is defined as:

All persons who participated in the Plan at any time during the Class Period, including any Beneficiary of a deceased person who participated in the Plan at any time during the Class Period, and any Alternate Payee of a person subject to a Qualified Domestic Relations Order who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are each of the individual members of the Committee during the Class Period.

Doc. 231.

On June 29, 2023, the Court preliminarily approved the Settlement and modified the class definition as stated above for settlement purposes only. Doc. 231.

I. The Terms of the Proposed Settlement

In exchange for the dismissal of the Class Action and for entry of the Judgment as provided for in the Settlement Agreement, Defendants will make available to Settlement Class Members the benefits described below.

A. Monetary Relief

Defendants will deposit \$9,500,000 (the “Gross Settlement Amount”) in an interest-bearing settlement account. The Gross Settlement Amount will be used to pay the Class Members’ recoveries as well as Class Counsel’s Attorneys’ Fees and Costs, Administrative Expenses of the Settlement, and Class Representatives’ Compensation as described in the Settlement Agreement.

B. Non-Monetary Terms.

Defendants agreed to substantial non-monetary relief in accordance with Article 10 of the Settlement. A summary of these terms includes the following:

- Within one year of the Settlement Effective Date, and with the assistance of an independent consultant, the Astellas Defendants shall conduct a request for proposal (“RFP”) for the provision of Plan investment advisory services; and,
- Within 90 days of the Settlement Effective Date, the Astellas Defendants will instruct the Plan’s recordkeeper that for the three-year period following the Settlement Effective Date, the recordkeeper may not use information received as a result of providing services to the Plan and/or the Plan participants to solicit current Plan participants to purchase non-Plan products and services.

The non-monetary terms add to the total value of the Settlement and these benefits represent a significant value to the Plan above and beyond the monetary settlement.

C. Notice and Class Representatives’ Compensation.

The costs to administer the Settlement have been and will be paid from the Gross Settlement

Amount. Payments to the named Class Representatives for their invaluable contributions to this case, in an amount to be approved by the Court, will also be paid out of the Gross Settlement Amount. Plaintiffs seek \$20,000 for each of the Class Representatives. This amount is in line with precedent recognizing the value of individuals stepping forward to successfully represent classes—particularly in a case, like the present, where the potential benefit to any individual does not outweigh the cost of prosecuting the claim and there are significant risks, including the risk of no recovery, the risk of alienation from their employer and peers, and the risk of uncompensated time and energy devoted to a lawsuit with uncertain prospects for success.

Beesley v. Int'l Paper Co., No. 06-703, 2014 U.S. Dist. LEXIS 12037, at *13–14 (S.D.Ill. Jan. 31, 2014)(Herndon, J.)(approving \$25,000 each to six surviving named plaintiffs in 401(k) fee settlement and noting that “ERISA litigation against an employee’s current or former employer carries unique risks and fortitude, including alienation from employers or peers.”).

D. Attorneys’ Fees and Costs.

Class Counsel requests an award of attorneys’ fees to be paid out of the Gross Settlement Fund in an amount not more than one-third of the Gross Settlement Amount, or \$3,166,667, as well as reimbursement for Class Counsel’s costs incurred of \$525,568.08. Doc. 233. A one-third fee is consistent with the market rate in settlements in this Circuit concerning this particularly complex area of law. *Ramsey v. Philips N.A.*, No. 18-1099, 2018 U.S. Dist. LEXIS 226672 (S.D.Ill. Oct. 15, 2018)(Rosenstengel, N.); *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 U.S. Dist. LEXIS 93206, at *7 (S.D. Ill. July 17, 2015)(Reagan, J.); *Beesley*, 2014 U.S. Dist. LEXIS 12037 at *7; *Spano v. Boeing Co.*, No. 06-743, 2016 U.S. Dist. LEXIS 161078, at *7 (S.D. Ill. Mar. 31, 2016)(Reagan, J.); *Will v. General Dynamics Corp.*, No. 06-698, 2010 U.S. Dist. LEXIS 123349, *9 (S.D.Ill. Nov. 22, 2010)(Murphy, J.). Further, none of the Gross Settlement Amount will be returned to Defendants.

Class Counsel will not seek fees on the interest earned on the Gross Settlement Amount. Class Counsel will seek no further fees or costs for review of compliance, document review, or for communications with Class Members or Defendants during the three-year Settlement Period. Class Counsel will not seek fees or costs if mediation or enforcement of the Settlement Agreement is necessary and bears the risk of half of the costs of pursuing the Settlement if the Settlement is not approved or otherwise terminated.

E. Motions for Preliminary Approval and for Attorneys' Fees and Costs.

On June 29, 2023, the Court certified a class for settlement purposes and granted preliminary approval to the Settlement. Doc. 231. Settlement Notices to 7,688 Settlement Class Members were initially mailed or e-mailed on September 1, 2023. Declaration of Jeff Mitchell of Analytics Consulting, LLC ("Analytics Decl.") at ¶7. On September 1, 2023, Plaintiffs filed a Motion for Attorneys' Fees, Reimbursement of Expenses and Case Contribution Awards for Named Plaintiffs. Doc. 232.

F. Class Member reaction.

Each Class Member was provided the opportunity to object to the Settlement by writing the Court and lodging their formal objection to the Settlement or any component of the Settlement by October 3, 2023. As of the filing of this motion, no Class Member has filed an objection to any component of the Settlement.

G. Support for the Settlement.

Since the submission of the Settlement for preliminary approval, an additional review of the fairness of the proposed Settlement and requested attorneys' fees and expenses has been undertaken.¹ Gallagher Fiduciary Advisors, LLC, the Independent Fiduciary appointed per the

¹ Unlike other class actions, class actions under ERISA typically require that an independent fiduciary approve the terms of the settlement, and in particular, any release of claims to satisfy the Prohibited

terms of this Settlement, has offered its approval to all aspects of the Settlement, including Class Counsel's request for Attorneys' Fees and Costs and Class Representatives' Compensation. See statement of Gallagher Fiduciary Advisors, LLC attached hereto as Exhibit 1.

ARGUMENT

Federal courts favor the settlement of class action litigation. *Isby v. Bayh*, 75 F.3d 1191, 1197 (7th Cir. 1996)(citing, e.g., *E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 888-89 (7th Cir. 1985), cert. denied, 478 U.S. 1004 (1986)). Although such settlements must be approved by the district court, its inquiry is limited to the consideration of whether the proposed settlement is lawful, fair, reasonable, and adequate. *Id.* (citing *Hiram Walker*, 768 F.2d at 889); *Synfuel Tech., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 652 (7th Cir. 2006)(citing Fed. R. Civ. P. 23(e)(2)). This Settlement satisfies all applicable criteria for approval, including the well-established factors frequently cited by district courts in the Seventh Circuit. Accordingly, the Settlement should be approved as fair, reasonable, and adequate in all respects.

There is a strong presumption that a class action settlement meets this standard when it is the result of arms-length negotiations. *Great Neck Capital Appreciation Inc. Partnership, L.P. v. PricewaterhouseCoopers, LLP*, 212 F.R.D. 400, 410 (W.D. Wis. 2002); see also Newberg on Class Actions § 11.41 at 11-88 (3d ed. 1992). The Settlement here is the result of lengthy and contentious arm's-length negotiations between the parties. Doc. 227 at ¶2. Counsel for the Plaintiffs and Defendants are experienced and thoroughly familiar with the factual and legal issues presented in this action. *Id.*

Starting with a presumption in favor of approving the settlement, the Court should then consider five factors in determining the "fairness" of a class action settlement. *Synfuel*, 463 F.3d

Transaction Exemption 2003-39.

at 653; *Isby*, 75 F.2d at 1198–99. As demonstrated below, each factor is satisfied.

I. The strength of the Plaintiffs’ case on the merits.

Plaintiffs maintain that they had strong underlying claims against Defendants related to their management and administration of the Plan. In October 2016, Defendants replaced established and well-performing investment options with newly created Aon Funds managed by the Plan’s newly hired delegated investment manager (Aon). Doc. 226 at 9–10. Plaintiffs contend that Defendants made this decision without a thorough and independent investigation of the merits of available investment alternatives. *See In re Unisys Sav. Plan Litig.*, 74 F.3d 420, 435 (3d Cir. 1996) (“[T]he duty to conduct an independent [investigation into the merits of a particular investment] is “the most basic of ERISA’s investment fiduciary duties.”). Moreover, Plaintiffs contend that Aon made the decision to replace the Plan’s legacy investment options to advance its own business interests rather than acting solely in Plan participants’ interests. *Leigh v. Engle*, 727 F.2d 113, 125 (7th Cir. 1984) (ERISA requires that a plan fiduciary “act with complete and undivided loyalty to the beneficiaries of the trust.”) (citation and internal quotation marks omitted). Plaintiffs further allege that, had the Plan’s legacy investments options not been replaced by the Aon Funds, the Plan would not have suffered substantial losses. These allegations support claims of a breach of fiduciary duty. Doc. 99 at 7–8; *see also Pledger v. Reliance Tr. Co.*, 240 F.Supp.3d 1314, 1325–27 (N.D. Ga. 2017); *Krueger v. Ameriprise Fin., Inc.*, No. 11-2781, 2012 U.S. Dist. LEXIS 166191, at *28 (D. Minn. Nov. 20, 2012).

Although Plaintiffs continue to believe in the underlying merits of their claims, there are unique facts to this case that present legal obstacles and significant defenses. First, Defendants denied and continue to deny Plaintiffs’ allegations. They dispute that any of the Plan’s fiduciaries committed or participated in any fiduciary breach related to the use of the Aon Funds or Aon as a delegated fiduciary. In particular and given the unique timing of the challenged

funds in the Plan in this case, Aon contends that the Plan suffered no losses as a result of the Plan's investment in the Aon Funds. *See* Doc. 202. As supplemental authority, the Astellas Defendants later and again raised this argument based on a recent summary judgment decision from the District of Massachusetts in *Turner v. Schneider Elec. Holdings, Inc.*, No. 20-11006, 2023 U.S. Dist. LEXIS 12528 (D. Mass. Jan. 24, 2023), which they contend was “materially identical” to this matter. Doc. 215 at 1–2. In *Schneider*, as here, plaintiffs alleged that defendants (including Aon) breached their fiduciary duties by selecting and retaining *certain* Aon Funds, which the defendants contended caused no plan losses because they outperformed the plaintiffs' prudent alternatives. *Id.* at *9–10, 13. The district court granted summary judgment in favor of defendants expressing doubt as to plaintiffs' ability to proffer evidence of the plan's losses. *Id.* at *9–13.

Plaintiffs dispute Defendants' contentions regarding the Plan's losses or the impact of the unique facts in the *Turner* case on their claims in this case. *See, e.g.*, Doc. 216. They continue to believe that their claims are meritorious. However, proceeding to trial would entail a risk of non-recovery.

II. The complexity, length and expense of continued litigation.

“ERISA 401(k) fiduciary breach class actions are extremely complex and require a willingness to risk significant resources in time and money, given the uncertainty of recovery and the protracted and sharply-contested nature of ERISA litigation.” *Allegretti v. Walgreen Co.*, No. 19-05392, 2022 U.S. Dist. LEXIS 31985, at *10 (N.D. Ill. Jan. 4, 2022). This case is no different.

As referenced above, this case was filed three years ago and was filled with extensive and intense litigation. However, the case was far from over. Both Defendants filed separate Motions for Summary Judgment and, moreover, the case was set for trial on July 17, 2023. Doc. 190. In

advance of that date, the parties began extensive pretrial preparations, which would have included the submission of lengthy findings of fact and conclusions of law, extensive exhibit lists, deposition designations, and briefing on anticipated motions in *limine*, among other pretrial submissions. This was just the tip of the iceberg. Even if Plaintiffs prevailed at trial, further resources would be devoted to defend the judgment on appeal, which would result in years of delay in recovery for Class Members.

Years of delay is no exaggeration. This has been the experience of Class Counsel in other cases that were successful at trial on similar claims. For instance, in *Tussey v. ABB*, Case No. 06-4305 (W.D.Mo.), a case filed in 2006, the plaintiffs tried the case in a four-week trial in January 2010, and judgment was entered in March 2012. After two separate appeals to the Eighth Circuit Court of Appeals and remands to the district court, a full twelve years since its filing of the case, the case settled in 2019. *Id.* at Doc. 870 (August 16, 2019).

In light of the above, this Settlement provides substantial value to Class Members that is not further delayed through protracted litigation. Rather than years of delay in obtaining any recovery and enduring the risk of non-payment, Class Members will immediately share in significant monetary relief to resolve Plaintiffs' claims and will also benefit from improvements to the Plan that ensure that all employees and retirees have a prudently administered 401(k) plan in which to invest their retirement savings. See Doc. 233 at 15–16.

III. The absence of collusion

The Settlement with Defendants was the result of extensive, arm's-length negotiation. Doc. 227 at ¶2. The parties negotiated on many occasions in attempts to resolve differences on settlement terms. *Id.* Settlement discussions between the parties were fully informed because of detailed factual discovery and ongoing legal developments in similar ERISA fiduciary breach litigation. The negotiations were vigorous and both sides argued their respective positions

strenuously. *Id.* The resulting Settlement was undeniably the product of arm's-length bargaining.

IV. The opinion of competent counsel as to the reasonableness of the settlement

Class Counsel is not only experienced and competent, but has been recognized as the leading firm in this complex area of law by district courts within the Seventh Circuit. *Bell v. Pension Comm. Of ATH Holding Co. LLC*, No. 15-2062, 2019 U.S. Dist. LEXIS 150302, at *3 (S.D. Ind. Sep. 4, 2019)(Class Counsel “have continuously demonstrated an unwavering and zealous commitment to represent American employees and retirees seeking to recover losses incurred due to alleged retirement plan mismanagement”); *Spano v. Boeing Co.*, No. 06-743-NJR, 2016 U.S. Dist. LEXIS 161078, at *9 (S.D. Ill. Mar. 31, 2016)(Class Counsel “added great value to [that] Class throughout the litigation through their persistence and skill of their attorneys” and the “law firm Schlichter, Bogard & Denton has significantly improved 401(k) plans across the country by bringing cases such as this one[.]”); *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 U.S. Dist. LEXIS 93206, at *9 (S.D.Ill. July 17, 2015)(J. Reagan)(“The law firm Schlichter, Bogard & Denton has had a humongous impact over the entire 401(k) industry, which has benefited employees and retirees throughout the country by bringing sweeping changes to fiduciary practices.”); *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 U.S. Dist. LEXIS 12037, at *4–5 (S.D.Ill. Jan 31, 2014)(J. Herndon)(“The Court remains impressed with Class Counsel’s navigation of the challenging legal issues involved in this trailblazing litigation and Class Counsel’s commitment and perseverance in bringing this case to this resolution.”); *Will v. Gen. Dynamics Corp.*, No. 06-698, 2010 U.S. Dist. LEXIS 123349, at *10 (S.D.Ill. Nov. 22, 2010)(J. Murphy)(“Counsel’s actions have led to dramatic changes in the 401(k) industry, including heightened disclosure and protection of employees’ and retirees’ retirement assets”); *Nolte v. Cigna Corp.*, No. 07-2046, 2013 U.S. Dist. LEXIS 184622, at *5 (C.D.Ill. Oct. 15, 2013)(J. Baker)(“The law firm Schlichter, Bogard & Denton is the leader in

401(k) fee litigation.”).

Class Counsel firmly believes the Settlement to be fair and reasonable in light of the procedural and substantive risks Plaintiffs would face if litigation were to continue. Doc. 227 at ¶2 (noting that, in the opinion the undersigned ... “the proposed settlement is not only within the range of reasonableness for ERISA cases, but also is fair, reasonable, adequate, and in the best interests of the Plan and its participants in light of the procedural and substantive risks Plaintiffs would face if litigation were to continue”).

V. The reaction of the Class

As a final matter, the reaction of class members is a factor the Court should consider when determining whether to grant final approval of a settlement. *E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 888–89 (7th Cir. 1985); *Mangone v. First USA Bank*, 206 F.R.D. 222, 226–27 (S.D.Ill. 2001) (J. Reagan). As noted above, over seven thousand notices were disseminated and not a single objection has been lodged. This shows the overwhelming support of the Class Members for the Settlement. *Mangone*, 206 F.R.D. 222 at 227 (calling an objection rate of 0.0052% “miniscule”); *Meyenburg v. Exxon Mobile Corp.*, Case No. 05-15, 2006 U.S. Dist. LEXIS 97057 at 6 (S.D.Ill. June 5, 2006)(J. Wilkerson)(finding that nine objectors out of a class which “potentially has thousands of members” is “very small, if not minuscule” and constitutes “strong circumstantial evidence that the settlement is fair.”).

CONCLUSION

Plaintiffs respectfully request that the Court approve the proposed Settlement as fair, reasonable, and adequate, and enter the proposed Final Order and Judgment.

October 19, 2023

Respectfully submitted,

SCHLICHTER BOGARD LLP

/s/ Troy A. Doles

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Local Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on October 19, 2023.

/s/ Troy A. Doles



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WACHALA, ET AL. V. ASTELLAS US LLC, ET AL.

SETTLEMENT OF ERISA LITIGATION

September 26, 2023

I. Summary

Gallagher Fiduciary Advisors, LLC (“Gallagher”) was appointed to act as an independent fiduciary of the Astellas US Retirement and Savings Plan (the “Plan”) in connection with the settlement, as evidenced by the settlement agreement defined below, executed by counsel for the parties and preliminarily approved by the Court on June 29, 2023 of Wachala, et al. v. Astellas US LLC, et al., 1:20-cv-03882 (N.D. Ill.) (the “Litigation”) that resolves the ERISA class action claims brought in the Litigation (the “Settlement”). All terms not otherwise defined herein shall have the meanings set forth in the Class Action Settlement Agreement (the “Settlement Agreement”).

Gallagher’s responsibilities pursuant to its agreement and the Settlement Agreement are to (i) determine whether to approve and authorize the settlement of Released Claims on behalf of the Plan and (ii) determine whether the Settlement satisfies the requirements of Prohibited Transaction Class Exemption 2003-39 (the “Class Exemption”).

Gallagher engaged in the following activities: (i) we reviewed documents filed with the Court, including the Complaint, the Motion to Dismiss, the Order of the Court granting in part the Motion to Dismiss, the Amended Complaint, the Motion for Summary Judgement, the Motion for Preliminary Approval of Class Action Settlement and the Court’s preliminary approval thereof, the Settlement Agreement, and the Motion for Attorney Fees; (ii) we interviewed Troy Doles of Schlichter Bogard LLP, lead counsel for Plaintiffs; and (iii) we interviewed Christopher Boran of Morgan, Lewis & Bockius, LLP, counsel for Defendants.

Requirements of the Class Exemption

In order for the Class Exemption to apply, the following conditions must be met:



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1. Where the litigation has not been certified as a class action by the court, and no federal or state agency is a plaintiff in the litigation, an attorney or attorneys retained to advise the plan on the claim, and having no relationship to any of the parties other than the plan, determines that there is a genuine controversy involving the plan.
 - This condition has been met. The Court certified the Class on February 10, 2022.
2. The settlement is authorized by a fiduciary (the authorizing fiduciary) that has no relationship to, or interest in, any of the parties involved in the claims, other than the plan, that might affect the exercise of such person's best judgment as a fiduciary.
 - Gallagher has no relationship to, or interest in, any of the parties involved in the Litigation that could affect the exercise of its judgment, and hereby authorizes the settlement.
3. The settlement terms, including the scope of the release of claims; the amount of cash received by the plan; the proposed attorney's fee award; any non-monetary relief included in the Settlement, and any other sums to be paid from the recoveries, are reasonable in light of the plan's likelihood of full recovery, the value of claims foregone and the risks and costs of litigation.

On July 1, 2020, Plaintiffs filed their Complaint alleging that Defendants had breached their ERISA fiduciary duties and committed prohibited transactions relating to the management, operation, and administration of the Plan. The Plaintiffs alleged that the Plan suffered millions of dollars in losses resulting from Defendants' retention of Aon Investments USA, Inc. as a discretionary fiduciary and the inclusion and retention of Aon's proprietary collective investment trusts in the Plan in replacement of many of the Plan's prior investment options. Defendants filed a motion to dismiss the Complaint, which the Court granted in part and denied in part on April 13, 2021.

On April 21, 2022 the Court granted Defendants' motion to strike Plaintiffs' demand for a jury trial. On November 2, 2022, the Defendants filed a motion for summary judgement.



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The parties engaged in nearly three years of contentious litigation and significant discovery efforts. After extensive discussions, the parties were able to reach a Settlement less than two months before trial, without the need for mediation.

The Settlement includes a cash payment to the Plan of \$9,500,000, less attorneys' fees, legal expenses and cash awards to the Named Plaintiffs.

The Settlement also provides for non-monetary prospective relief. Within one year from the effective date of the Settlement Agreement, Defendants will use the services of an independent consultant to assist with a request for proposal for a provider of investment advisory services. In addition, the Plan's recordkeeper will be instructed not to use Plan participant information to cross-sell non-Plan products and services.

Plaintiffs' counsel intends to apply to the Court to approve a fee request of up to one-third of the Settlement amount or \$3,166,666, as well as reimbursement of its litigation costs and settlement administration expenses in the amount of \$525,568.08 and an award to each of the Class Representatives of \$20,000. Plaintiffs' counsel stated that the requested fee equates to less than one third of its lodestar rate. The Court ultimately will determine the fairness of these requests.

After a thorough review of the pleadings and interviews with the parties' counsel, Gallagher has concluded that an arm's-length Settlement was achieved after hard-fought negotiations between the parties, and is reasonable given the uncertainties of a larger recovery for the Class at trial and the value of claims foregone. The fee request is also reasonable in light of the effort expended by Plaintiffs' counsel in the Litigation.

4. The terms and conditions of the transaction are no less favorable to the plan than comparable arms-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.
 - This condition has been met. The Settlement is at least as favorable as an arms-length transaction agreed to by unrelated parties would likely have been. Counsel for both sides confirmed that the Settlement was the product of hard fought, extensive negotiations.
5. The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest.



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- Although the transaction will have the incidental effect of releasing the fiduciaries, the Settlement is not designed to benefit those fiduciaries but rather to resolve claims that have not been fully adjudicated and to enable the Plan to recover a portion of its losses.
6. Any extension of credit by the plan to a party in interest in connection with the settlement of a legal or equitable claim against the party in interest is on terms that are reasonable, taking into consideration the creditworthiness of the party in interest and the time value of money.
- This condition is not applicable in that the Settlement does not require the Plan to extend credit to any party in interest.
7. The transaction is not described in Prohibited Transaction Class Exemption (PTE) 76-1 (relating to delinquent employer contributions to multiemployer and multiple employer collectively bargained plans).
- Neither the Settlement nor the underlying claims relate to delinquent employer contributions, and the Settlement is therefore not described in PTE 76-1.
8. All the terms of the settlement are specifically described in a written settlement agreement or consent decree.
- This condition has been met.
9. Assets other than cash may be received by the plan from a party in interest in connection with a settlement in limited, specified circumstances. To the extent assets other than cash are received by the plan in exchange for the release of the plan's or the plan fiduciary's claims, such assets must be specifically described in the written settlement agreement and valued at their fair market value, as determined in accordance with section 5 of the Voluntary Fiduciary Correction (VFC) Program.
- This condition does not apply because the monetary portion of the Settlement is being paid in cash.
10. The plan does not pay any commissions in connection with the acquisition of assets.



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- This condition will be met in that the Settlement provides for a cash payment, and no commission is indicated under the terms of the Settlement.
- 11.** The authorizing fiduciary acting on behalf of the plan has acknowledged in writing that it is a fiduciary with respect to the settlement of the litigation on behalf of the plan.
- This condition has been met.
- 12.** The plan fiduciary maintains or causes to be maintained for a period of six years the records necessary to enable authorized persons to determine whether the conditions of the exemption have been met.
- This condition will be met.

In light of the above factors, it is fair to conclude that the Settlement on the terms described above meets the requirements of the Class Exemption.

Investment advisory, named and independent fiduciary services are offered through Gallagher Fiduciary Advisors, LLC, an SEC Registered Investment Adviser. Gallagher Fiduciary Advisors, LLC is a single-member, limited-liability company, with Gallagher Benefit Services, Inc. as its single member. Neither Arthur J. Gallagher & Co., Gallagher Fiduciary Advisors, LLC nor their affiliates provide accounting, legal or tax advice.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

MICHAEL WACHALA, et al.,

Plaintiffs,

v.

ASTELLAS US LLC, et al.,

Defendants.

Case No. 1:20-cv-03882

Hon. Martha M. Pacold

CLASS ACTION

DECLARATION OF ANALYTICS CONSULTING, LLC

I, Jeffrey J. Mitchell, pursuant to 28 U.S.C. §1746, state as follows:

1. I am over the age of twenty-one. I am competent to give this declaration. This declaration is true and correct to the best of my knowledge, information and belief.

2. I am a Project Manager for Analytics Consulting, LLC (hereinafter “Analytics”), located at 18675 Lake Drive East, Chanhassen, Minnesota, 55317. Analytics provides consulting services to the design and administration of class action and mass tort litigation settlements and notice programs. The settlements Analytics has managed over the past twenty-five years range in size from fewer than 100 class members to more than 40 million, including some of the largest and most complex notice and claims administration programs in history.

3. Analytics’ clients include corporations, law firms (both plaintiff and defense), the Department of Justice, the Securities and Exchange Commission, and the Federal Trade Commission, which since 1998 has retained Analytics to administer and provide expert advice regarding notice and claims processing in their settlements/distribution funds.

4. In my capacity as Project Manager, I have been assigned to matters relating to the Settlement Administration for the above-captioned litigation and Settlement.

5. Analytics was responsible for providing notice to Settlement Class Members. Specifically, the Notice was to be sent by electronic means or mailed by first class mail, postage prepaid, to the last known address of each Settlement Class Member who could be identified by the Plan's recordkeeper through commercially reasonable means.

6. Analytics received from the Plan's recordkeeper data files containing the names, addresses, and social security numbers of members of the Settlement Class. Additionally, some records contained available e-mail addresses for members of the Settlement Class. The data was consolidated into a single database, and was updated using the National Change of Address ("NCOA") database maintained by the United States Postal Service ("USPS"),¹ certified via the Coding Accuracy Support System ("CASS"),² and verified through Delivery Point Validation ("DPV").³ This resulted in mailable address records or e-mail records for 7,688 Settlement Class Members, including 2,327 Former Participant Class Members and 5,361 Current Participant Class Members.

7. On September 1, 2023, Analytics caused Settlement Notice to be mailed or e-mailed to all 7,688 Settlement Class Members as follows:

- (a) 225 Former Participant Notice and Claim Forms were mailed to Class Members who were determined to be Former Participants;

¹ The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms, and lists submitted to it are automatically updated with any reported move based on a comparison with the person's name and last known address.

² Coding Accuracy Support System is a certification system used by the USPS to ensure the quality of ZIP + 4 coding systems.

³ Records that are ZIP + 4 coded are then sent through Delivery Point Validation to verify the address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of addresses and reports exactly what is wrong with incorrect addresses.

- (b) 2,102 Former Participants for which an e-mail address was provided were e-mailed the Former Participant Notice with a link to an electronic version of the Former Participant Claim Form;
- (c) 345 Current Participant Notices were mailed to Class Members whom were determined to be Current Participants; and,
- (d) 5,016 Current Participants for which an e-mail address was provided were e-mailed the Current Participant Notice.

8. Copies of templates of the Former Participant Notice and Claim Form as well as the Current Participant Notice are attached as Exhibit A.

9. Analytics developed an electronic Former Participant Claim Form application which was also placed on the settlement website and referenced in the e-mail version of the Former Participant Notice sent to Class Members. The Former Participant Claim Form application allows Class Members to complete and submit electronically.

10. Shortly after Settlement Notices were sent, Analytics analyzed the records of Class Members who were sent an e-mail Notice and promptly mailed Notice to Class Members whose e-mail Notice was un-deliverable as follows: (1) 51 Former Participant Notice and Claim Forms were mailed to Former Participant Class Members; (2) 41 Current Participant Notices were mailed to Current Participant Class Members.

11. On September 8, 2023, Analytics sent another e-mail Notice to Current Participant Class Members, and Former Participant Class Members who had not submitted a claim at that time.

12. On September 25, 2023, Analytics mailed the Former Participant Notice and Claim Form to 1,690 Former Participants who had not submitted a Claim within 14 days of the initial Notice date.

13. To date, the USPS has returned 81 Notices as undeliverable. Of these undeliverable Notices, Analytics located 55 new addresses through a third-party commercial data source, Experian. Analytics re-mailed the Notices to the afflicted Class Members at these updated addresses.

14. Analytics established and is maintaining a toll-free phone number (1-888-963-6359) for the Settlement to provide Class Members with additional information regarding the settlement. The toll-free number became operational on or before September 1, 2023, and automated service was available 24 hours per day, 7 days per week.

15. Analytics hosts a settlement website at www.astellas401ksettlement.com.

16. To date, Analytics has received 964 completed Former Participant Claim Forms.

17. I am not aware of any objections to the Settlement.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on October 19, 2023.

DocuSigned by:

13EC110C92464EC...
Jeffrey Mitchell
Analytics Consulting, LLC

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

MICHAEL WACHALA, MARY BETH PREUSS,
PATRICIA WALSH, SADE ADENEYE, MICHAEL
BICKLE AND JACQUELINE GOUGH, individually
and as representatives of a class of participants and
beneficiaries on behalf of the Astellas US Retirement
and Savings Plan,

Plaintiffs,

v.

ASTELLAS US LLC, THE BOARD OF DIRECTORS
OF ASTELLAS US LLC, THE ASTELLAS
RETIREMENT PLAN ADMINISTRATIVE
COMMITTEE, AND AON HEWITT INVESTMENT
CONSULTING, INC (NKA AON INVESTMENTS
USA, INC),

Defendants.

No. 1:20-cv-03882

Hon. Martha M. Pacold

CLASS ACTION

NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING

Your legal rights might be affected if you are a member of the following class:

All participants and beneficiaries of the Astellas US Retirement and Savings Plan (the “Plan”) from October 3, 2016 through March 31, 2023, excluding Defendants.

If you are a Class Member, and this Settlement is finally approved by the Court, your legal rights are affected whether you do or do not act.

**IF YOU HAVE ANY OBJECTION TO THE SETTLEMENT DESCRIBED IN THIS NOTICE, YOU
HAVE UNTIL OCTOBER 3, 2023, TO FILE YOUR WRITTEN OBJECTION WITH THE COURT.**

PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.

The Court has given its preliminary approval to a proposed settlement (the “Settlement”) of a class action lawsuit brought by certain participants in the Plan alleging violations of the Employee Retirement Income Security Act (“ERISA”). The Settlement will provide for the allocation of monies directly into the individual accounts of the Settlement Class who had Plan accounts during the Class Period with a balance greater than \$0 as of March 31, 2023 (“Current Participants”). Class Members who are entitled to a distribution but who no longer had a Plan account with a balance greater than \$0 as of March 31, 2023 (“Former Participants”) will receive their allocation in the form of a check mailed to their last known address or a rollover, if elected.

The terms and conditions of the Settlement are set forth in the Settlement Agreement dated June 23, 2023. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at www.astellas401ksettlement.com. Any amendments to the Settlement Agreement or any other settlement documents will be posted on this website. You should visit that website if you would like more information about the Settlement and any subsequent amendments to the Settlement Agreement or other changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.

Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice. Only if the Court gives final approval to the Settlement, and only if that approval is upheld in the event of an appeal, will payments under the Settlement be made.

A hearing on the final approval of the Settlement and for approval of the Class Representatives' petition for Attorneys' Fees and Costs and for Class Representatives' Compensation will take place on **November 2, 2023, at 8:30 a.m.**, before United States District Court Judge Martha M. Pacold in the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Courtroom 1425, Chicago, IL 60604.

Any objections to the Settlement, to the petition for Attorneys' Fees and Costs, or to Class Representatives' Compensation, must be served in writing on Class Counsel and Defendants' Counsel, as identified on page 7 of this Settlement Notice.

Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at www.astellas401ksettlement.com.

According to the Plan's records, you are a Former Participant. If you believe instead that you meet the definition of a Current Participant, please contact the Settlement Administrator. Former Participants are individuals who no longer had an account balance in the Plan greater than \$0 as of March 31, 2023.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:

<p>OUR RECORDS INDICATE THAT YOU ARE A FORMER PARTICIPANT. TO RECEIVE YOUR SHARE OF THE NET SETTLEMENT AMOUNT, YOU MUST RETURN THE ENCLOSED FORMER PARTICIPANT CLAIM FORM BY OCTOBER 23, 2023.</p>	<p><u>Our records indicate that you are a Former Participant.</u> To receive your share of the Net Settlement Amount, you must return a Former Participant Claim Form that is postmarked or electronically filed by October 23, 2023. If you do not return the Former Participant Claim Form that is postmarked or electronically filed by October 23, 2023, you will forfeit your share of the Net Settlement Amount, even though you will be bound by the Settlement, including the release. A claim form is enclosed with this notice but may also be obtained by accessing www.astellas401ksettlement.com.</p>
<p>YOU CAN OBJECT (NO LATER THAN OCTOBER 3, 2023).</p>	<p>If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the parties to seek information through discovery from any person who files an objection, which means you could be required to produce documents and appear at a deposition to be interviewed and asked questions.</p>
<p>YOU CAN ATTEND A HEARING ON NOVEMBER 2, 2023.</p>	<p>If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel by October 3, 2023, of your intention to appear at the hearing.</p>

The Class Action

The case is called *Wachala, et al. v. Astellas US LLC, et al.*, No. 20-cv-03882 (N.D. Ill.) (the “Class Action”). The Court supervising the case is the United States District Court for the Northern District of Illinois. The individuals who brought this suit are called Class Representatives, and the entities they sued are called the Defendants. The Class Representatives are current and former participants in the Plan. The Defendants are Astellas US LLC and certain affiliates and individuals and Aon Hewitt Investment Consulting, Inc. (nka Aon Investments USA, Inc.). The Class Representatives’ claims are described below, and additional information about them is available at www.astellas401ksettlement.com.

The Settlement

The Settlement was reached on June 23, 2023. Class Counsel filed this action on July 1, 2020. Since the time the case was filed, Class Counsel devoted substantial time and effort to review and analyze tens of thousands of pages of documents produced by Defendants and hundreds of thousands of pages of other documents to support their underlying claims. The Settling Parties engaged in substantial settlement discussions. Only after extensive arm’s-length negotiations were the Settling Parties able to agree to the terms of the Settlement.

Under the Settlement, a Qualified Settlement Fund of \$9,500,000 will be established to resolve the Class Action. The Net Settlement Amount is \$9,500,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys’ Fees and Costs, Class Representatives’ Compensation, and other approved expenses of the litigation.

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Class Members fall into two categories: Current Participants and Former Participants. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing accounts in the Plan(s). Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

Additional Provisions in the Settlement

The Settlement further provides the following additional terms for a Settlement Period of three years from the Settlement Effective Date:

Release

All Class Members and anyone making a claim on their behalf will fully release the Plan as well as all Defendants and other “Released Parties” from “Released Claims.” The Released Parties include (a) Astellas US LLC, the Board of Directors of Astellas US LLC, the Astellas Retirement Plan Administrative Committee, and Aon Hewitt Investment Consulting, Inc (nka Aon Investments USA, Inc.); (b) their insurers, co-insurers, and reinsurers; (c) their past, present, and future parent corporation(s); (d) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns; (e) their past, present, and future agents, officers, employees, trustees, boards of trustees, members of their board of trustees, board of directors, members of the board of directors, managers, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plan (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them; and (f) the Plan and the Plan’s fiduciaries, administrators, plan administrators, recordkeepers, service providers, consultants, and parties-in-interest.

The Released Claims include all claims that were asserted or might have been asserted in the Class Action and all claims relating to the implementation of the Settlement.

This is only a summary of the Released Claims and not a binding description of the Released Claims. The actual governing release is found within the Settlement Agreement at www.astellas401ksettlement.com. Generally, the release means that Class Members will not have the right to sue the Defendants, the Plan, or the Released Parties for conduct arising out of or relating to the allegations in the Class Action.

This is only a summary of the Settlement. The entire Settlement Agreement is at www.astellas401ksettlement.com.

Statement of Attorneys' Fees and Costs Sought in the Class Action

Class Counsel has devoted many hours investigating potential claims, bringing this case, and handling it. Class Counsel reviewed thousands of pages of documents produced in this case and, prior to filing this action, analyzed thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing this action. Class Counsel has also agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) to monitor for three years compliance with the Settlement Agreement; (3) to enforce the Settlement Agreement in accordance with its terms; and (4) to do (1)-(3) without additional pay.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$3,166,666.67, in addition to no more than \$550,000 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys' Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund and must be approved by the Court.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payments, not to exceed \$20,000 each, for six Class Representatives who took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the case to conclusion. Their activities also included assisting in the factual investigation of the case by Class Counsel and providing information for the case. Any Class Representatives' Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full application for Attorneys' Fees and Costs and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, www.astellas401ksettlement.com.

1. Why Did I Receive This Settlement Notice?

The Court caused this Settlement Notice to be sent to you because the Plan's records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals, if any, are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

2. What Is The Class Action About?

In the Class Action, Class Representatives claim that, during the Class Period, the Defendants violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, *et seq.*, with respect to its management, operation, and administration of the Plan, including selecting and retaining Aon Hewitt collective investment trusts as investment options in the Plan and engaging in prohibited transactions.

Defendants have denied and continue to deny the claims and contentions of the Class Representatives, that they are liable at all to the Class, and that the Class or the Plan have suffered any harm or damage for which Defendants could or should be held responsible. Defendants contend that they acted prudently and in keeping with their fiduciary responsibilities under ERISA, and in the best interests of the Plan's participants.

3. Why Is There A Settlement?

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between

Class Counsel and Defendants' counsel. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

4. How Much Will My Distribution Be?

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan's recordkeeper(s), or, if on March 31, 2023, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former Participant Claim Form. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To be eligible for a distribution from the Net Settlement Amount, you must either be a (1) "Current Participant" as defined on page 1, or (2) an "Authorized Former Participant" (a "Former Participant" as defined on page 1 who submitted a completed, satisfactory Former Participant Claim Form that is postmarked by the deadline), or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

The Plan of Allocation will allocate the Net Settlement Fund among Current and Authorized Former Participants as follows:

- A. The Current Participants and Authorized Former Participants will be separated into two categories: (a) all Current Participants and Authorized Former Participants, and (b) Current Participants and Authorized Former Participants who invested in the Aon Collective Investment Trusts. The categories are not mutually exclusive, and individuals who satisfy the definition of both categories will receive a payment that reflects the total of the calculation performed under both category (a) and category (b).
- B. After taking account of the De Minimis Amounts (as described below), those in category (a) will receive 10% of the Net Settlement Amount, and those in category (b) will receive 90% of the Net Settlement Amount.
- C. Within each category, the allotted percentage of the Net Settlement Amount will be divided using the following method:
 1. The end-of-quarter balances for the Class Period of each Current Participant and each Authorized Former Participant are identified for each quarter;
 2. All end-of-quarter balances identified in step 1 are summed together for each Current Participant and each Authorized Former Participant;
 3. An average end-of-quarter balance for each Current Participant and each Authorized Former Participant is calculated for the Class Period (with a zero included as the balance for any quarter during which the individual did not participate in the Plan);
 4. For each Current Participant and each Authorized Former Participant, the average end-of-quarter balance of step 3 is divided by the average end-of-quarter balance for the Class Period of all Current and Authorized Former Participants;
 5. Each Current Participant and each Authorized Former Participant will receive a fraction of the total Net Settlement amount assigned to their respective category.
- D. Class Members who are entitled to a distribution of less than ten dollars (\$10.00) will receive a payment of \$10.00 (the "De Minimis Amount") from the Net Settlement Amount. The Settlement Administrator shall progressively increase Class Members' awards falling below the De Minimis Amount until the lowest participating Class Member award is the De Minimis Amount, i.e., ten dollars (\$10.00). The resulting calculation shall be known as the "Final Entitlement Amount" for each Class Member.

There are approximately 4,000 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, you will receive payment by check if and to the extent you are entitled to receive a portion of a Current Participant's or Authorized Former Participant's allocation under the Settlement Agreement in accordance with the plan of allocation as if you are a Current Participant or Authorized Former Participant.

5. How Can I Receive My Distribution?

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a "Current Participant" or a "Former Participant." **According to the Plan's records, you are a Former Participant. Therefore, if this is correct, you need to submit a claim form to receive your share of the Settlement.**

6. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount depends on several matters, including the Court's final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur in January 2024.

There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.

7. Can I Get Out Of The Settlement?

No. The Class was certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Action for all claims that were asserted in the Class Action or are otherwise included as Released Claims under the Settlement.

8. Do I Have A Lawyer In The Case?

The Court has appointed the law firm Schlichter Bogard LLP, in St. Louis, Missouri, as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

9. How Will The Lawyers Be Paid?

Class Counsel will file a petition for the award of Attorneys' Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys' Fees and Costs to not more than \$3,166,666.67 in fees and \$550,000 in costs and Class Counsel will also monitor compliance with the Settlement for three years without charge and has committed to bring an enforcement action, if needed, to enforce the Settlement, also with no charge. The Court will determine what fees and costs will be approved.

10. How Do I Tell The Court If I Don't Like The Settlement?

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Wachala, et al. v. Astellas US LLC, et al.*, No. 20-cv-03882 (N.D. Ill.). Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than **October 3, 2023**. The Court's address is United States District Court for the Northern District of Illinois, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Courtroom 1425, Chicago, IL 60604. Your written objection also must be mailed to the lawyers listed below, no later than **October 3, 2023**. Please note that the Court's Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served to the objector.

CLASS COUNSEL	DEFENDANTS' COUNSEL
SCHLICHTER BOGARD LLP Attn: Astellas US LLC 401(k) Settlement 100 S. Fourth St., Suite 1200 St. Louis, MO 63102 astellas401ksettlement@uselaws.com	O'MELVENY & MYERS LLP Attn: Shannon Barrett Brian Boyle Will Pollak 1625 Eye Street, NW Washington D.C., 20006 MORGAN, LEWIS & BOCKIUS LLP Attn: Samuel D. Block Jeremy Blumenfeld Chris Boran Matthew Russell 110 North Wacker Drive Chicago, IL 60606

11. When And Where Will The Court Decide Whether To Approve The Settlement?

The Court will hold a Fairness Hearing on **November 2, 2023**, at the United States District Court for the Northern District of Illinois, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Courtroom 1425, Chicago, IL 60604.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

12. Do I Have To Attend The Fairness Hearing?

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

13. May I Speak At The Fairness Hearing?

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Wachala, et al. v. Astellas US LLC, et al.*, No. 20-cv-03882 (N.D. Ill.)." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 10, **no later than October 3, 2023**.

14. What Happens If I Do Nothing At All?

If you are a "Current Participant" as defined on page 1, and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved.

If you are a "Former Participant" as defined on page 1, and you do nothing, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, **BUT YOU WILL NOT RECEIVE ANY MONEY UNLESS YOU SUBMIT A FORMER PARTICIPANT CLAIM FORM.**

According to the Plan's records, you are a Former Participant, so you will need to submit a Former Participant Claim Form in order to receive your share of the Settlement.

15. How Do I Get More Information?

If you have general questions regarding the Settlement, you can visit this website: www.astellas401ksettlement.com, call (888) 963-6359, or write to the Settlement Administrator at:

Astellas 401(k) Settlement Administrator
P.O. Box 2004
Chanhassen, MN 55317-2004

Astellas 401(k) Settlement Administrator
P.O. Box 2004
Chanhassen, MN 55317-2004
www.astellas401ksettlement.com

FORMER PARTICIPANT CLAIM FORM

This Former Participant Claim Form is **ONLY** for Class Members who are **Former Participants**, or the beneficiaries, alternate payees, or attorneys-in-fact of Former Participants (all of whom will be treated as Former Participants). A Former Participant is a Class Member who did not have an account in the Plan (as defined below) with a balance greater than \$0 as of March 31, 2023. This form must be completed, signed, and mailed to the Settlement Administrator with a postmark date on or October 23, 2023, or electronically filed online at www.astellas401ksettlement.com no later than **October 23, 2023**, for you to receive your share of the Settlement proceeds. **Former Participants who do not complete and timely return this form will not receive any Settlement payment.** Please review the instructions below carefully. If you have questions regarding this Claim Form, you may contact the Settlement Administrator as indicated below.

PART 1: INSTRUCTIONS FOR COMPLETING FORMER PARTICIPANT CLAIM FORM

1. Complete this claim form and keep a copy of all pages of your Former Participant Claim Form, including page 1 with the address label, for your records.
2. Mail your completed Former Participant Claim Form postmarked no later than **October 23, 2023**, to the Settlement Administrator at the following address:

Astellas 401(k) Settlement Administrator
P.O. Box 2004
Chanhassen, MN 55317-2004

Claim Forms may also be completed and submitted to the Settlement Administrator electronically online at www.astellas401ksettlement.com. Electronic Claim Forms must be submitted no later than **October 23, 2023**.

It is your responsibility to ensure the Settlement Administrator has timely received your Former Participant Claim Form.

3. Other Reminders:
 - You must provide date of birth, signature, and a completed Substitute IRS Form W-9, which is attached as Part 5 to this form.
 - If you desire to do a rollover but do not complete in full the rollover information in Part 4 Payment Election of the Settlement Distribution Form, payment will be made to you directly.
 - If you change your address after sending in your Former Participant Claim Form, please send your new address to the Settlement Administrator.
 - **Timing Of Payments To Eligible Settlement Class Members.** Please note that Settlement payments are subject to the Settlement Agreement's receiving final Court approval. If the Settlement Agreement is approved and if you are entitled to a Settlement payment under the terms of the Settlement, such payments will be distributed no earlier than January 7, 2024 due to the need to process and verify information for all Settlement Class Members who are entitled to a payment and to compute the amount of each payment. Payments may be further delayed if any appeals are filed.
4. **Questions?** If you have any questions about this Former Participant Claim Form, please call the Settlement Administrator at (888) 963-6359.
5. The Settlement Administrator will provide advice only regarding completing this form and will not provide financial, tax, or other advice concerning the Settlement. You therefore may want to consult with your financial or tax advisor. Information about the status of the approval of the Settlement, Settlement administration, and claim processing is available on the lawsuit website, www.astellas401ksettlement.com.

PART 4: PAYMENT ELECTION

Payment to Self – A check subject to mandatory federal and applicable state withholding tax will be mailed to your address on the previous page.

Direct Rollover to an Eligible Plan – Check only one box below and complete Rollover Information Section Below:

Government 457(b)

401(a)/401(k)

403(b)

Direct Rollover to a Traditional IRA

Direct Rollover to a Roth IRA (subject to ordinary income tax)

Rollover Information:

Company or Trustee's Name (to whom the check should be made payable)

[Grid for Company or Trustee's Name]

Company or Trustee's Mailing Address 1

[Grid for Company or Trustee's Mailing Address 1]

Company or Trustee's Mailing Address 2

[Grid for Company or Trustee's Mailing Address 2]

Company or Trustee's City

State

Zip Code

[Grid for Company or Trustee's City]

[Grid for State]

[Grid for Zip Code]

Your Account Number

Company or Trustee's Phone Number

[Grid for Your Account Number]

[Grid for Phone Number Area 1]

[Grid for Phone Number Area 2]

[Grid for Phone Number Area 3]

PART 5: SIGNATURE, CONSENT, AND SUBSTITUTE IRS FORM W-9

UNDER PENALTIES OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA, I CERTIFY THAT ALL OF THE INFORMATION PROVIDED ON THIS FORMER PARTICIPANT CLAIM FORM IS TRUE, CORRECT, AND COMPLETE AND THAT I SIGNED THIS FORMER PARTICIPANT CLAIM FORM.

1. The Social Security number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. person (including a U.S. resident alien).

M M D D Y Y Y Y
[Grid for Date Signed]

Participant Signature

Date Signed (Required)

Note: If you have been notified by the IRS that you are subject to backup withholding, you must cross out item 2 above. The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholding.

QUESTIONS? VISIT: WWW.ASTELLAS401KSETTLEMENT.COM, OR CALL (888) 963-6359

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

MICHAEL WACHALA, MARY BETH PREUSS,
PATRICIA WALSH, SADE ADENEYE, MICHAEL
BICKLE AND JACQUELINE GOUGH, individually and
as representatives of a class of participants and beneficiaries
on behalf of the Astellas US Retirement and Savings Plan,

Plaintiffs,

v.

ASTELLAS US LLC, THE BOARD OF DIRECTORS OF
ASTELLAS US LLC, THE ASTELLAS RETIREMENT
PLAN ADMINISTRATIVE COMMITTEE, AND AON
HEWITT INVESTMENT CONSULTING, INC (NKA
AON INVESTMENTS USA, INC),

Defendants.

No. 1:20-cv-03882

Hon. Martha M. Pacold

CLASS ACTION

NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING

Your legal rights might be affected if you are a member of the following class:

All participants and beneficiaries of the Astellas US Retirement and Savings Plan (the “Plan”) from October 3, 2016 through March 31, 2023, excluding Defendants.

**IF YOU HAVE ANY OBJECTION TO THE SETTLEMENT DESCRIBED IN THIS NOTICE, YOU HAVE
UNTIL OCTOBER 3, 2023 TO FILE YOUR WRITTEN OBJECTION WITH THE COURT.**

PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.

The Court has given its preliminary approval to a proposed settlement (the “Settlement”) of a class action lawsuit brought by certain participants in the Plan alleging violations of the Employee Retirement Income Security Act (“ERISA”). The Settlement will provide for the allocation of monies directly into the individual accounts of the Settlement Class who had Plan accounts during the Class Period with a balance greater than \$0 as of March 31, 2023 (“Current Participants”). Class Members who are entitled to a distribution but who no longer had a Plan account with a balance greater than \$0 as of March 31, 2023 (“Former Participants”) will receive their allocation in the form of a check mailed to their last known address or a rollover, if elected.

The terms and conditions of the Settlement are set forth in the Settlement Agreement dated June 23, 2023. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at www.astellas401ksettlement.com. Any amendments to the Settlement Agreement or any other settlement documents will be posted on this website. You should visit that website if you would like more information about the Settlement and any subsequent amendments to the Settlement Agreement or other changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.

Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice.

Only if the Court gives final approval to the Settlement, and only if that approval is upheld in the event of an appeal, will payments under the Settlement be made.

A hearing on the final approval of the Settlement and for approval of the Class Representatives’ petition for Attorneys’ Fees and Costs and for Class Representatives’ Compensation will take place on November 2, 2023, at 8:30 a.m., before United States District Court Judge Martha M. Pacold in the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Courtroom 1425, Chicago, IL 60604.

Any objections to the Settlement, to the petition for Attorneys' Fees and Costs, or to Class Representatives' Compensation must be served in writing on Class Counsel and Defendants' Counsel, as identified on page 7 of this Settlement Notice. Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at www.astellas401ksettlement.com.

According to the Plan's records, you are a Current Participant. If you believe instead that you meet the definition of a Former Participant, please contact the Settlement Administrator. Current Participants include both participants who are current employees and participants who are no longer employed by Astellas US LLC but continue to have an account balance in the Plan.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:

<p>OUR RECORDS INDICATE THAT YOU ARE A CURRENT PARTICIPANT. YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT</p>	<p><u>Our records indicate that you are a Current Participant because you had an account balance in the Plan as of March 31, 2023.</u> If, however, you are a Former Participant who participated in the Plan during the Class Period and did not have a balance greater than \$0 as of March 31, 2023, or are the beneficiary, alternate payee, or attorney-in-fact of such a person, then, unlike a Current Participant, you must return a Former Participant Claim Form that is postmarked or electronically filed by October 23, 2023, to receive a check for your share of the Net Settlement Amount. If you are a Former Participant, and you do not return the Former Participant Claim Form that is postmarked or electronically filed by October 23, 2023, you will forfeit your share of the Net Settlement Amount. We have not included a claim form in your notice because Current Participants do not need to submit a claim form. However, if you believe you are a Former Participant, a claim form may be obtained by accessing www.astellas401ksettlement.com.</p>
<p>YOU CAN OBJECT (NO LATER THAN OCTOBER 3, 2023)</p>	<p>If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the parties to seek information through discovery from any person who files an objection, which means you could be required to produce documents and appear at a deposition to be interviewed and asked questions.</p>
<p>YOU CAN ATTEND A HEARING ON NOVEMBER 2, 2023</p>	<p>If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel by October 3, 2023, of your intention to appear at the hearing.</p>

The Class Action

The case is called *Wachala, et al. v. Astellas US LLC, et al.*, No. 20-cv-03882 (N.D. Ill.) (the "Class Action"). The Court supervising the case is the United States District Court for the Northern District of Illinois. The individuals who brought this suit are called Class Representatives, and the entities they sued are called the Defendants. The Class Representatives are current and former participants in the Plan. The Defendants are Astellas US LLC and certain affiliates and individuals and Aon Hewitt Investment Consulting, Inc. (nka Aon Investments USA, Inc.). The Class Representatives' claims are described below, and additional information about them is available at www.astellas401ksettlement.com.

The Settlement

The Settlement was reached on June 23, 2023. Class Counsel filed this action on July 1, 2020. Since the time the case was filed, Class Counsel devoted substantial time and effort to review and analyze tens of thousands of pages of documents produced by Defendants and hundreds of thousands of pages of other documents to support their underlying claims. The Settling Parties engaged in substantial settlement discussions. Only after extensive arm's-length negotiations were the Settling Parties able to agree to the terms of the Settlement.

Under the Settlement, a Qualified Settlement Fund of \$9,500,000 will be established to resolve the Class Action. The Net Settlement Amount is \$9,500,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys' Fees and Costs, Class Representatives' Compensation, and other approved expenses of the litigation.

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Class Members fall into two categories: Current Participants and Former Participants. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing accounts in the Plan(s). Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

Additional Provisions in the Settlement

The Settlement further provides the following additional terms for a Settlement Period of three years from the Settlement Effective Date:

Release

All Class Members and anyone making a claim on their behalf will fully release the Plan as well as all Defendants and other "Released Parties" from "Released Claims." The Released Parties include (a) Astellas US LLC, the Board of Directors of Astellas US LLC, the Astellas Retirement Plan Administrative Committee, and Aon Hewitt Investment Consulting, Inc (nka Aon Investments USA, Inc.); (b) their insurers, co-insurers, and reinsurers; (c) their past, present, and future parent corporation(s); (d) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns; (e) their past, present, and future agents, officers, employees, trustees, boards of trustees, members of their board of trustees, board of directors, members of the board of directors, managers, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plan (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them; and (f) the Plan and the Plan's fiduciaries, administrators, plan administrators, recordkeepers, service providers, consultants, and parties-in-interest.

The Released Claims include all claims that were asserted or might have been asserted in the Class Action and all claims relating to the implementation of the Settlement.

This is only a summary of the Released Claims and not a binding description of the Released Claims. The actual governing release is found within the Settlement Agreement at www.astellas401ksettlement.com. Generally, the release means that Class Members will not have the right to sue Defendants, the Plan, or the Released Parties for conduct arising out of or relating to the allegations in the Class Action.

This is only a summary of the Settlement. The entire Settlement Agreement is at www.astellas401ksettlement.com.

Statement of Attorneys' Fees and Costs Sought in the Class Action

Class Counsel has devoted many hours investigating potential claims, bringing this case, and handling it. Class Counsel reviewed thousands of pages of documents produced in this case and, prior to filing this action, analyzed thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing this action. Class Counsel has also agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) to monitor for three years compliance with the Settlement Agreement; (3) to enforce the Settlement Agreement in accordance with its terms; and (4) to do (1)-(3) without additional pay.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$3,166,666.67, in addition to no more than \$550,000 in litigation costs. Class Counsel will not seek to receive any interest

earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys' Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund and must be approved by the Court.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payments, not to exceed \$20,000 each, for six Class Representatives who took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the case to conclusion. Their activities also included assisting in the factual investigation of the case by Class Counsel and providing information for the case. Any Class Representatives' Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full application for Attorneys' Fees and Costs and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, www.astellas401ksettlement.com.

1. Why Did I Receive This Settlement Notice?

The Court caused this Settlement Notice to be sent to you because the Plan's records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals, if any, are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

2. What Is The Class Action About?

In the Class Action, Class Representatives claim that, during the Class Period, Defendants violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, *et seq.*, with respect to its management, operation, and administration of the Plan, including selecting and retaining Aon Hewitt collective investment trusts as investment options in the Plan and engaging in prohibited transactions.

Defendants have denied and continue to deny the claims and contentions of the Class Representatives, that they are liable at all to the Class, and that the Class or the Plan have suffered any harm or damage for which Defendants could or should be held responsible. Defendants contend that they acted prudently and in keeping with their fiduciary responsibilities under ERISA, and in the best interests of the Plan's participants.

3. Why Is There A Settlement?

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defendants' counsel. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

4. How Much Will My Distribution Be?

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan's recordkeeper(s), or, if on March 31, 2023, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former Participant Claim Form. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To be eligible for a distribution from the Net Settlement Amount, you must either be a (1) "Current Participant" as defined on page 1, or (2) an "Authorized Former Participant" (a "Former Participant" as defined on page 1 who submitted a completed, satisfactory Former Participant Claim Form that is postmarked by the deadline), or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

The Plan of Allocation will allocate the Net Settlement Fund among Current and Authorized Former Participants as follows:

- A. The Current Participants and Authorized Former Participants will be separated into two categories: (a) all Current Participants and Authorized Former Participants, and (b) Current Participants and Authorized Former Participants who invested in the Aon Collective Investment Trusts. The categories are not mutually exclusive, and individuals who satisfy the definition of both categories will receive a payment that reflects the total of the calculation performed under both category (a) and category (b).
- B. After taking account of the De Minimis Amounts (as described below), those in category (a) will receive 10% of the Net Settlement Amount, and those in category (b) will receive 90% of the Net Settlement Amount.
- C. Within each category, the allotted percentage of the Net Settlement Amount will be divided using the following method:
 1. The end-of-quarter balances for the Class Period of each Current Participant and each Authorized Former Participant are identified for each quarter;
 2. All end-of-quarter balances identified in step 1 are summed together for each Current Participant and each Authorized Former Participant;
 3. An average end-of-quarter balance for each Current Participant and each Authorized Former Participant is calculated for the Class Period (with a zero included as the balance for any quarter during which the individual did not participate in the Plan);
 4. For each Current Participant and each Authorized Former Participant, the average end-of-quarter balance of step 3 is divided by the average end-of-quarter balance for the Class Period of all Current and Authorized Former Participants;
 5. Each Current Participant and each Authorized Former Participant will receive a fraction of the total Net Settlement amount assigned to their respective category.
- D. Class Members who are entitled to a distribution of less than ten dollars (\$10.00) will receive a payment of \$10.00 (the “De Minimis Amount”) from the Net Settlement Amount. The Settlement Administrator shall progressively increase Class Members’ awards falling below the De Minimis Amount until the lowest participating Class Member award is the De Minimis Amount, i.e., ten dollars (\$10.00). The resulting calculation shall be known as the “Final Entitlement Amount” for each Class Member.

There are approximately 4,000 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, you will receive payment by check if and to the extent you are entitled to receive a portion of a Current Participant’s or Authorized Former Participant’s allocation under the Settlement Agreement in accordance with the plan of allocation as if you are a Current Participant or Authorized Former Participant.

5. How Can I Receive My Distribution?

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a “Current Participant” or a “Former Participant.” **According to the Plan’s records, you are a Current Participant. Therefore, if this is correct, you do not need to do anything to receive your share of the Settlement.**

6. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount depends on several matters, including the Court’s final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur in January 2024.

There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.

7. Can I Get Out Of The Settlement?

No. The Class was certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are

bound by any judgments or orders that are entered in the Class Action for all claims that were asserted in the Class Action or are otherwise included as Released Claims under the Settlement.

8. Do I Have A Lawyer In The Case?

The Court has appointed the law firm Schlichter Bogard LLP, in St. Louis, Missouri, as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

9. How Will The Lawyers Be Paid?

Class Counsel will file a petition for the award of Attorneys' Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys' Fees and Costs to not more than \$3,166,666.67 in fees and \$550,000 in costs and Class Counsel will also monitor compliance with the Settlement for three years without charge and has committed to bring an enforcement action, if needed, to enforce the Settlement, also with no charge. The Court will determine what fees and costs will be approved.

10. How Do I Tell The Court If I Don't Like The Settlement?

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Wachala, et al. v. Astellas US LLC, et al.*, No. 20-cv-03882 (N.D. Ill.). Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than **October 3, 2023**. The Court's address is United States District Court for the Northern District of Illinois, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Courtroom 1425, Chicago, IL 60604. Your written objection also must be mailed to the lawyers listed below, **no later than October 3, 2023**. Please note that the Court's Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served to the objector.

CLASS COUNSEL	DEFENDANTS' COUNSEL
SCHLICHTER BOGARD LLP Attn: Astellas US LLC 401(k) Settlement 100 S. Fourth St., Suite 1200 St. Louis, MO 63102 astellas401ksettlement@uselaws.com	O'MELVENY & MYERS LLP Attn: Shannon Barrett Brian Boyle Will Pollak 1625 Eye Street, NW Washington D.C., 20006 MORGAN, LEWIS & BOCKIUS LLP Attn: Samuel D. Block Jeremy Blumenfeld Chris Boran Matthew Russell 110 North Wacker Drive Chicago, IL 60606

11. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Fairness Hearing on **November 2, 2023**, at the United States District Court for the Northern District of Illinois, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Courtroom 1425, Chicago, IL 60604.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final

approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

12. Do I Have To Attend The Fairness Hearing?

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

13. May I Speak At The Fairness Hearing?

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Wachala, et al. v. Astellas US LLC, et al.*, No. 20-cv-03882 (N.D. Ill.)." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 10, **no later than October 3, 2023**.

14. What Happens If I Do Nothing At All?

If you are a "Current Participant" as defined on page 1, and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved. According to the Plan's records, you are a Current Participant.

If you are a "Former Participant" as defined on page 1, and you do nothing, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, **BUT YOU WILL NOT RECEIVE ANY MONEY UNLESS YOU SUBMIT A FORMER PARTICIPANT CLAIM FORM.**

15. How Do I Get More Information?

If you have general questions regarding the Settlement, you can visit this website: www.astellas401ksettlement.com, call (888) 963-6359, or write to the Settlement Administrator at:

**Astellas 401(k) Settlement Administrator
P.O. Box 2004
Chanhassen, MN 55317-2004**

Astellas 401(k) Settlement Administrator

P.O. Box 2004

Chanhassen, MN 55317-2004

COURT-AUTHORIZED NOTICE

ABC1234567890

Claim Number: 1111111



JOHN Q CLASSMEMBER

123 MAIN ST

ANYTOWN, ST 12345