

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

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<b>LISA KWESELL; CHRISTINE</b>	:	<b>CIVIL ACTION NO.:</b>
<b>TURECEK; AND JASON SCHWARTZ,</b>	:	
<b>individually and on behalf all others</b>	:	<b>3:19-cv-01098 (KAD)</b>
<b>similarly situated,</b>	:	
	:	
<b>Plaintiffs,</b>	:	<b>CLASS ACTION</b>
	:	
<b>v.</b>	:	
	:	
<b>YALE UNIVERSITY,</b>	:	
	:	
<b>Defendant.</b>	:	

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**PLAINTIFFS' UNOPPOSED MOTION TO GRANT PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Plaintiffs Lisa Kwesell, Christine Turecek, and Jason Schwartz, individually and on behalf of all others similarly situated, will, and hereby do, move this Court for an Order: (i) preliminarily approving the proposed settlement of this proposed class action, (ii) preliminarily certifying a settlement class, (iii) approving the form and manner of notice; and (iv) setting a date for a Final Approval Hearing regarding this settlement.

This Motion is made on the grounds that the Settlement is the product of arms-length and good-faith negotiations, and is fair, reasonable, and adequate to the Class. This Motion is based on the accompanying Memorandum of Law and supporting exhibits and any oral or documentary evidence presented at the hearing on the Motion. Defendant, Yale University, does not oppose this motion.

Date: March 4, 2022

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 4th day of March, 2022, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system and by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

By: /s/ Dara S. Smith  
Dara S. Smith

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

<b>LISA KWESELL; CHRISTINE</b>	:	<b>CASE NO: 3:19-cv-01098 (KAD)</b>
<b>TURECEK; AND JASON SCHWARTZ,</b>	:	
<b>individually and on behalf all others</b>	:	
<b>similarly situated,</b>	:	<b>MEMORANDUM IN SUPPORT OF</b>
	:	<b>MOTION FOR PRELIMINARY</b>
	:	<b>APPROVAL OF CLASS ACTION</b>
<b>Plaintiffs,</b>	:	<b>SETTLEMENT</b>
	:	
<b>v.</b>	:	
	:	
<b>YALE UNIVERSITY,</b>	:	
	:	
<b>Defendant.</b>	:	<b>March 4, 2022</b>

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**MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL**

**I. INTRODUCTION**

Plaintiffs Lisa Kwesell, Christine Turecek, and Jason Schwartz (“Plaintiffs”), on behalf of themselves and the class they seek to represent, respectfully move this Court for preliminary approval of the class action settlement reached in this Action. The Stipulation and Agreement of Settlement (“Settlement” or “Agreement”) is attached hereto as Exhibit 1. The Settlement fully and finally resolves Plaintiffs’ claims against Yale University (“Yale” or “Defendant”) arising out of Yale’s operation of an employee wellness program, known as the Health Expectations Program (“HEP” or the “Program”). Plaintiffs alleged that the HEP violated the Americans with Disabilities Act (“ADA”) and the Genetic Information Nondiscrimination Act (“GINA”) because Plaintiffs and the class were required to either participate in the Program or pay a \$25 per week opt-out fee.

As further described below, the Settlement provides substantial monetary benefits to all class members (without the need to submit any claim form) as well as significant programmatic relief, including cessation of the collection of HEP fees for four years, or until there is a change in law, as well as modifications to Yale’s data-sharing practices. Specifically, Yale’s business associate Healthmine will no longer send data to Yale’s HEP vendor, TrestleTree, for purposes of health coaching, without express consent and Yale will instruct TrestleTree to purge data related to prior health coaching engagements from its records.

The proposed Settlement readily satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure. The Settlement is a result of good-faith and arms’ length negotiations after key discovery was conducted and after full briefing of cross-motions for summary judgment. The Settlement was reached following a full-day mediation with Linda Singer, Esq. of

JAMS, an experienced mediator with extensive experience in class litigation, as well as follow-up negotiations over multiple weeks. As more fully detailed below, Plaintiffs respectfully submit that the Settlement is fair, reasonable, and in the best interests of the Class, and should therefore be preliminarily approved. Defendant has no objection to the granting of this motion.

## **II. BACKGROUND**

On July 16, 2019, Plaintiffs filed the original complaint on behalf of themselves and all current and former employees of Yale who are or were required to participate in the HEP or pay a fine of \$25 per week between January 1, 2017 and present.<sup>1</sup> Plaintiffs alleged that Yale's HEP violated the ADA and GINA because the Program was not "voluntary." The ADA and GINA generally prohibit employers from imposing medical examinations or inquiries or acquiring employees' genetic information unless those exams, inquiries, and genetic information acquisition are either job-related or part of a "voluntary" wellness program. 42 U.S.C. §§ 12112(a), (d)(4)(a)-(b), 2000ff-1(b)(2).

Plaintiffs alleged that Yale's Program was not "voluntary" because employees either had to participate and undergo medical exams, and, in some circumstances, medical inquiries, or pay \$25 per week for opting-out of the Program, and because Yale released Plaintiffs' spouses' insurance claims data to a wellness vendor without Plaintiffs' or their spouses' authorization. On October 17, 2019, Plaintiffs filed an Amended Complaint, asserting the same causes of action and including additional allegations gathered during Plaintiffs' continued investigation. Yale answered Plaintiffs' Amended Complaint on November 15, 2019.

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<sup>1</sup> Tracking of compliance with the HEP's requirements did not begin until September 2018 and Yale ceased charging the opt-out fee on May 14, 2020. Accordingly, the Parties have agreed that the class will be defined to include only those individuals who were eligible for the HEP between those periods and were either required to participate in the HEP or pay an opt-out fee.

On November 26, 2019, Defendant moved to stay this action because the Equal Employment Opportunity Commission (“EEOC”) indicated that it would issue new regulations defining “voluntary” under the ADA and GINA, and Yale argued that those regulations would significantly impact the trajectory of the litigation. Prior to Plaintiffs’ filing a written response to the motion to stay, the Parties appeared for a previously scheduled Scheduling Conference on December 2, 2019. During that conference, the Court heard arguments on the Motion to Stay and denied the motion. The Parties also discussed moving for summary judgment on the meaning of “voluntary” at the outset of the case in order to streamline additional proceedings.

On January 21, 2020, the Parties filed a Supplemental Rule 26(f) Report, that provided for cross-motions of summary judgment on the issue of voluntariness. Prior to filing motions, the Parties engaged in targeted discovery. Plaintiffs issued Requests for Production, and Yale produced responsive documents. On January 30, 2020, Plaintiffs conducted the deposition of Hugh Penny as a corporate representative of Yale University with knowledge of the HEP. The Parties then filed cross motions for summary judgment. Briefing was completed on July 3, 2020.

On February 1, 2021, the Court ordered the parties to appear for oral argument on March 1, 2021. Prior to oral argument, the Parties met to discuss settlement. After meeting informally, the Parties determined that they should engage in formal mediation with the assistance of an experienced mediator and requested to postpone the oral argument until they had completed mediation. The Parties retained Linda Singer, Esq. of JAMS, an experienced mediator with vast experience in class actions, to assist with mediation. The Parties drafted confidential mediation statements for the mediator’s review. On August 11, 2021, the Parties engaged in a full-day mediation session with Linda Singer, Esq. Although the Parties did not reach a resolution that day, they made significant progress and continued to communicate via Linda

Singer in the days that followed. On September 22, 2021, the Parties reached a settlement in principle and executed a term sheet. During the following months, the parties negotiated the details of the Settlement, which is attached as Exhibit 1 hereto.

### **III. OVERVIEW OF THE SETTLEMENT**

The Class is defined as:

All current or former Yale University employees who were required to participate in the HEP or pay an opt-out fee<sup>2</sup> from the time when Yale began tracking compliance with the HEP in September 2018 through May 14, 2020, the date Yale ceased collecting the opt-out fee.

The Settlement benefits are described below in further detail but include substantial monetary compensation to all class members (via automatic distribution) as well as programmatic changes. The duration of the programmatic changes outlined below will be four years from the date the Settlement is approved or until there is a change in the law that Yale reasonably interprets to permit the collection of fees associated with an employee wellness program, whichever is sooner. A change in the law shall be limited to a change in statutory language, agency regulations, or a decision of the United States Court of Appeals for the Second Circuit.

#### **A. Monetary Relief**

The Settlement provides a total settlement fund of \$1.29 million. This common fund shall be used to make monetary distributions to Class Members and to pay court-approved attorneys' fees and costs as well as service awards to the named Plaintiffs and other individuals

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<sup>2</sup> This includes employees in Local 34 UNITE HERE (the clerical and technical union), Local 35 UNITE HERE (the service and maintenance union), the Yale University Security Officers Association (YUSOA), and clerical and technical employees excluded from the bargaining unit. The Class membership will be determined based on data provided by HealthMine, a vendor who assisted in operating the HEP. To avoid double payments, in the event that an individual was both a Yale employee and a spouse of another Yale employee, the individual will only be treated in one capacity, and that capacity will be determined by Healthmine's data.

named in the Amended Complaint. The Settlement fund shall provide a payment to all Class Members, including those who paid no fees but who Plaintiffs allege participated in Yale's HEP to avoid the monetary penalty. Defendant shall bear the costs of administering the Settlement.

As detailed in the Plan of Allocation, each Class Member who paid fees will receive a percentage of the amount deducted from their pay for those fees. This percentage is currently estimated to be 50% of the total amount paid in fees, but will ultimately depend on the final data regarding Class Member participation in the HEP provided by Healthmine, the number of Participating Class Members (those who do not opt-out) and the amounts awarded for attorneys' fees and costs. Class Members who attended health coaching will receive \$225. Class Members whose spouses attended health coaching will receive \$50. Each Class Member who did not attend health coaching but was deemed compliant with the HEP will receive \$50. The recovery is additive in nature such that Class Members who fall into multiple categories will receive the cumulative value of all payments, except that individuals who receive \$225 for their participation in health coaching will not also receive \$50 for being deemed compliant with the HEP.<sup>3</sup>

Plaintiffs are also seeking service awards for the named Plaintiffs of \$5,000-10,000 depending on the extent of their engagement in the action as well as service awards of \$1,000 for other individuals whose names and stories were shared in the Amended Complaint. Plaintiffs will also seek attorneys' fees and costs.<sup>4</sup> The Settlement is not contingent on the approval of any

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<sup>3</sup> As noted in the proposed Settlement Agreement, Section 7.2, payments will be made without the use of a claim form because payment amounts to be paid to Class Members are based on specific actions taken under the HEP, which are also reflected in Yale's (or Yale's business associates') records.

<sup>4</sup> A motion further detailing the attorneys' fees and costs incurred in this litigation will be filed along with Plaintiffs' motion for final approval. As reflected in Section 6.1 of the proposed Settlement, Plaintiffs will be requesting attorneys' fees not to exceed \$200,000, which is approximately 15.5% of the settlement fund and costs not to exceed \$10,000. The fees requested are significantly less than Plaintiffs' Counsel's lodestar, as will be described in more detail in the forthcoming motion for attorneys' fees and costs.

specific amount of services awards, attorneys' fees or costs. If the Court does not approve those awards in full, such funds will simply increase the amount to be disbursed among Class Members who paid opt-out fees in proportion to the share of opt-out fees each individual paid.

### **B. Injunctive/Programmatic Relief**

Yale will stop the collection of HEP fees during the duration of the proposed Settlement. Yale will also direct Healthmine, one of its business associates, not to send data to TrestleTree for the purpose of health coaching referrals. Yale will direct TrestleTree to purge all data relating to completed prior health coaching engagements from its records.<sup>5</sup> For those individuals who are actively engaged in health coaching currently, TrestleTree will notify individuals in advance and give them the option to have their records retained (or purged) and continue coaching (or not) as they desire, with no penalty for refusal.

## **IV. LEGAL STANDARD**

“Preliminary approval of a class action settlement, in contrast to final approval, is at most a determination that there is what might be termed ‘probable cause’ to submit the proposal to class members and hold a full-scale hearing as to its fairness.” *Menkes v. Stolt-Nielsen S.A.*, 270 F.R.D. 80, 101 (D. Conn. 2010) (internal quotations omitted). “Preliminary approval is thus the first stage of the settlement process, and the court’s primary objective at that point is to establish whether to direct notice of the proposed settlement to the class, invite the class’s reaction, and schedule a final fairness hearing.” 4 Newberg on Class Actions § 13.10 (5th Ed. 2017).

Preliminary approval of a class action settlement is appropriate where the proposed settlement “is the result of serious, informed, and non-collusive negotiations, where there are no grounds to doubt its fairness and no other obvious deficiencies . . . and where the settlement

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<sup>5</sup> TrestleTree also conducted health coaching that was not based on a referral through the HEP. Any records in connection with such coaching engagements are not subject to the Settlement.

appears to fall with the range of possible approval.” *Menkes*, 270 F.R.D. at 101. The District Court determines a settlement’s fairness by examining the negotiating process leading up to the settlement as well as the settlement’s substantive terms. *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001). A “presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel, after meaningful discovery.” *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005); *see also Maced. Church v. Lancaster Hotel, LP*, 2011 U.S. Dist. LEXIS 62063 at \*26 (D. Conn. June 9, 2011) (there is a “strong presumption” in finding a settlement fair if it has been negotiated at arms-length.).

Finally, there is a “strong judicial policy in favor of settlements, particularly in the class action context.” *Visa*, 396 F.3d at 117. Settlement of complex litigation is “encouraged by the courts and favored by public policy.” *Id.*

**V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT BECAUSE IT IS THE PRODUCT OF ARMS’-LENGTH NEGOTIATIONS AND IS FAIR, REASONABLE, AND ADEQUATE**

**A. The Proposed Settlement is the Result of Non-Collusive, Arms’-Length Negotiations**

The proposed Settlement is the product of serious, informed, non-collusive negotiations between experienced, capable counsel, presided over by Linda Singer, Esq. of JAMS. Plaintiffs’ Counsel AARP Foundation and Garrison Levin-Epstein, Fitzgerald & Pirrotti, P.C. are both highly respected and experienced counsel who have prosecuted numerous employment discrimination and civil rights cases, including class actions. Yale’s Counsel, Wiggin and Dana, is a premier firm with vast litigation and negotiation experience. The Parties’ counsel negotiated at arm’s-lengths with the aid of Linda Singer, a highly experienced and well-regarded mediator. <https://www.jamsadr.com/singer/>. The use of a neutral mediator supports the non-collusive

nature of the proposed Settlement. *See, e.g., Kemp-Delisser v. Saint Francis Hospital and Medical Center*, No. 3:15-cv-1113, 2016 WL 10033380, at \*4 (D. Conn. July 12, 2016) (noting the use of a mediator when determining negotiations were arm's-length and non-collusive); *Castagna v. Madison Square Garden, L.P.*, 2011 U.S. Dist. LEXIS 64218, at \*14 (S.D.N.Y. June 7, 2011) (“Arm's-length negotiations involving counsel and a mediator raise a presumption that the settlement they achieved meets the requirements of due process.”).

The Parties' initial negotiations took several weeks. After providing confidential mediation statements to the mediator, the Parties engaged in an all-day mediation session. Although the Parties did not reach agreement during that session, they continued to negotiate through Linda Singer in the days following the mediation. On September 22, 2021, the Parties executed a term sheet. The Parties then worked over the following months to obtain the data needed for the Settlement and to finalize the terms.

**B. The Proposed Settlement is Fair and Reasonable, Particularly in Light of the Risks and Cost of Continued Litigation**

The proposed Settlement is fair and reasonable in terms of recovery for Plaintiffs and the Class. First, the proposed Settlement provides significant monetary recovery for *all* Class Members, not just those that paid opt-out fees. This is a significant feature of the proposed Settlement because Plaintiffs maintain that those Class Members who participated in the HEP only because of the opt-out fee also suffered compensable damages. As outlined in the Plan of Allocation, the proposed Settlement provides for \$1.29 million, minus any court awarded attorneys' fees and costs, to be disbursed among Class Members. Any Class Member who paid HEP fees will receive a substantial percentage of the amount deducted from their pay for those fees (the percentage is currently estimated at 50%, but will ultimately be determined by the formula in the Plan of Allocation). Each Class Member who participated in health coaching will receive \$225,



each Class Member whose spouse attended health coaching will receive \$50, and each class member who did not attend health coaching but was at any time deemed compliant with the HEP will receive \$50.

Additionally, the proposed Settlement provides significant injunctive relief to all Class Members. First, Yale will cease the collection of HEP fees for a period of four years, or until there is a change in the law that permits wellness programs to collect fees. Next, Yale will direct Healthmine, one of its business associates, to no longer send data to TrestleTree for health coaching referrals without express prior consent, and TrestleTree will purge all data relating to prior completed health coaching engagements conducted as part of the HEP.

The proposed Settlement is especially fair, adequate, and reasonable when the risks and expense of continued litigation are considered. At the time the proposed Settlement was reached, the Parties had fully briefed cross-motions for summary judgment. If the Court were to have ruled in favor of Yale on those motions, the trajectory of this litigation would have been significantly altered. Depending on the Court's decision, class certification may have been impossible and/or Plaintiffs' case may have been dismissed in its entirety, with no avenue for even individual relief. Even if Plaintiffs were to have prevailed, an appeal would have been likely, and significant litigation at the district court level would have ensued. Plaintiffs would have had to conduct extensive discovery and file motions for class certification, which Yale would have opposed. If no settlement was reached, the case would have proceeded to trial, which is costly and time-consuming, further delaying recovery to Plaintiffs and the Class. A settlement now ensures certain and immediate recovery to Plaintiffs and Class Members.

### C. The Requested Service Awards are Fair and Reasonable

The proposed Settlement provides service awards for each of the Plaintiffs, as well as those individuals who are named in the Amended Complaint. Lisa Kwesell and Christine Turecek would each receive \$10,000 and Jason Schwartz would receive \$5,000. Each individual named in the Amended Complaint would receive \$1,000. Plaintiffs and Counsel believe that such awards are reasonable and appropriate given the Plaintiffs dedication to this action, their involvement in the Settlement process, and their valor in filing a suit against their current employer.

Courts in the Second Circuit routinely approve incentive payments in class action settlements as a way of compensating representatives for lending their names, reputations, and efforts to the prosecution of litigation on behalf of others, and to promote class settlements while encouraging plaintiffs to act as “private attorneys general” in the enforcement of federal law. *See, e.g., Aros v. United Rentals, Inc.*, 2012 U.S. Dist. LEXIS 104429, \*8 (D. Conn. 2012) (“Named plaintiffs in class and collective actions play a crucial role in bringing justice to those who would otherwise be hidden from judicial scrutiny.”) (citing *Parker v. Jekyll & Hyde Entm’t Holdings, L.L.C.*, 2010 U.S. Dist. LEXIS 12762 (S.D.N.Y. Feb. 9, 2010) (“Enhancement awards for class representatives serve the dual functions of recognizing the risks incurred by named plaintiffs and compensating them for their additional efforts.”); *Velez v. Majik Cleaning Serv.*, 2007 U.S. Dist. LEXIS 46223 (S.D.N.Y. June 22, 2007) (“[I]n employment litigation, the plaintiff is often a former or current employee of the defendant, and thus, by lending his name to the litigation, he has, for the benefit of the class as a whole, undertaken the risk of adverse actions by the employer or co-workers.”); *see also Sheppard v. Consol. Edison Co. of New York*,

*Inc.*, 2002 U.S. Dist. LEXIS 16314, at \*19-20 (E.D.N.Y. Aug. 1, 2002) (collecting cases approving incentive payments).

Courts in the Second Circuit have approved incentive payments in the range of the ones requested in this case. *See, e.g., Kiefer, et. al. v. Moran Foods, LLC, et. al.*, No. 12-CV-756 (D. Conn. Aug. 5, 2014) (ECF No. 328) (granting final settlement approval , awarding incentive payment to main named plaintiff of \$30,000 and to two named plaintiffs of \$10,000 each); *Willix v. Healthfirst, Inc.*, 2011 U.S. Dist. LEXIS 21102 (E.D.N.Y. Feb. 18, 2011) (approving service awards of \$30,000, \$15,000, and \$7,500); *Duchene v. Michael Cetta, Inc.*, 2009 U.S. Dist. LEXIS 85955 (S.D.N.Y. Sept. 10, 2009) (approving an award of \$25,000); *Sewell v. Bovis Lend Lease LMB, Inc.*, 2012 U.S. Dist. LEXIS 53556 at \*40 (S.D.N.Y. Apr. 16, 2012) (approving service payments of \$10,000 and \$15,000); *Parker v. Jekyll & Hyde Entm't Holdings, L.L.C.*, 2010 U.S. Dist. LEXIS 12762, at \*5 (S.D.N.Y. Feb. 9, 2010) (finding individual incentive awards ranging up to \$15,000 to be appropriate); *Reyes v. Altamarea Grp., LLC*, 2011 U.S. Dist. LEXIS 115984 (S.D.N.Y. Aug. 16, 2011) (approving service awards of \$15,000 and \$5,000); *Khait v. Whirlpool Corp.*, 2010 U.S. Dist. LEXIS 4067, at \*26 (E.D.N.Y. Jan. 20, 2010) (approving incentive awards of \$15,000 and \$10,000 to named plaintiffs).

The service award payments proposed here are within the range of previously approved awards in the Second Circuit and are reasonable. Plaintiffs regularly met with counsel, provided valuable information for use in the initial complaint and the Amended Complaint, helped counsel get in contact with additional Class Members to gather information, met with counsel on numerous occasions, met separately with the mediator prior to mediation, and attended the mediation. Plaintiffs were involved in this litigation throughout the 2 years the case was litigated. Moreover, without the assistance of Plaintiffs Kwesell and Turecek, it would have been

significantly more difficult, if not impossible, to litigate this case. Both Plaintiffs reached out to numerous other class members to encourage them to provide vital evidence to counsel. And, all individuals named in the Complaint sacrificed their privacy about sensitive medical and genetic information to help prove the Class' case.

**VI. THE FORM AND MANNER OF NOTICE TO THE CLASS SHOULD BE APPROVED**

The proposed Notice, Exhibit A to the Settlement Agreement, is the “best notice that is practicable under the circumstances,” Fed. R. Civ. P. 23(c)(2)(B) and is “reasonable,” Fed. R. Civ. P. 23(e)(1). The Notice is easily understandable. It includes a brief description of the claims and includes (1) contact information for Class Counsel to answer questions; (2) the address for a website, maintained by the Settlement Administrator<sup>6</sup> that will link to the Notice, the Amended Complaint, the Settlement Agreement, the order preliminarily approving the Settlement and any other important documents in the case; and (3) instructions on how to access the case docket. The Notice states the date of the final approval hearing and that the date may change without further notice to the Class. The Notice further advises Class Members that they should check the settlement website and/or the Court’s PACER site to confirm that the date has not been changed. The Notice also explains the timeline and procedures for opting-out or objecting to the Settlement.

Additionally, the manner of disseminating the Notice is reasonable. The Settlement Administrator will send direct Notice to Class Members via first-class mail, postage prepaid. Because Yale has records relating to all Class Members, including address information (which will be updated by the Settlement Administrator prior to the sending of Notice), this Notice is

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<sup>6</sup> Under the Settlement, Yale has the option to administer the Settlement itself (in which case, any reference to Settlement Administrator shall mean Yale) or to retain a third-party Settlement Administrator to perform some or all of the Settlement Administration functions under the Settlement.

well-targeted to reach the Class Members and is the best practicable means under the circumstances.

**VII. THE COURT SHOULD PRELIMINARILY CERTIFY THE CLASS FOR SETTLEMENT PURPOSES**

The preliminary approval process is utilized to certify a settlement class when a class has not been previously certified by the court. *See, e.g., Edwards v. North American Power & Gas LLC*, No. 3:14-cv-01714, 2018 WL 1582509, at \*4, \*5 (D. Conn. March 30, 2018) (noting that Rule 23’s prerequisites apply “equally to conditional certification for a class for settlement purposes” and certifying proposed settlement class). Rule 23(a) sets forth four requirements for class certification: (i) numerosity; (ii) commonality; (iii) typicality; and (iv) adequacy of representation. Here, each of these requirements is readily met. Plaintiffs seek certification under Federal Rule of Civil Procedure 23(b)(3) and, as demonstrated below, those requirements are also satisfied.

**A. The Proposed Settlement Class Satisfies Federal Rule of Civil Procedure 23(a)**

First, the class is sufficiently numerous. According to records produced by Yale, the class includes roughly 6,000 individuals.

Second, commonality is also satisfied. Commonality is met when questions of law and fact are common as to all members of the Class. Here, common questions of law and fact include:

- whether Yale’s acts violated the ADA;
- whether Yale’s acts violated GINA; and
- whether the medical exams and inquires and requests for genetic information in Yale’s HEP are voluntary.

Third, typicality is also satisfied. Rule 23 requires that the claims or defenses of the representative parties are typical of the claims and defenses of the class. Here, Plaintiffs and the Class Members' claims arise from the same HEP policy and course of conduct on behalf of Yale, and Plaintiffs' claims are based on the same legal and remedial theories as the proposed Class and involve similar factual circumstances.

Fourth, adequacy is satisfied because the "representative parties will fairly and adequately protect the interests of the class." Fed. Rule 23(a)(4). Adequacy requires the "class representative [to] be a part of the class and possess the same interest and suffer the same injury as the class members." *Easterling v. Connecticut D.O.C.*, 265 F.R.D. 45, 51 (D. Conn. 2010). Courts must look to whether the "plaintiff's interests are antagonistic to the interest of other members of the class." *Id.* Here, Plaintiffs and the Class Members they seek to represent share an interest in vigorous prosecution of the claims they assert and Plaintiffs have no claims that are antagonistic to the Class. Further, Plaintiffs have retained counsel who are highly experienced in employment discrimination cases and class actions, and have therefore secured adequate representation.

While Defendant reserves its right to challenge all class certification criteria should the settlement not be approved, they do not object to certification of the class for settlement purposes only.

**B. The Proposed Settlement Class Satisfies Federal Rule of Civil Procedure 23(b)(3)**

Rule 23(b)(3) requires that common questions "predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Both of these requirements are met here.

The predominance requirements “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Haddock v. Nationwide Fin. Serv. Inc.*, 293 F.R.D. 272, 281 (D. Conn. 2013) (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997)). “In the Second Circuit, the requirement is satisfied if resolution of some of the legal or factual questions that qualify each class member’s case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof.” *Id.* Thus, “if the liability issue is common to the class, common questions predominate over individual ones.” *Id.* Here, common questions predominate over the individualized issues. Yale subjected all Class Members to the same policy, and generalized proof of Yale’s policy and action would serve to resolve the Class’ claims. In other words, the same set of facts give rise to liability. A class action is also a superior method of adjudication because if each Class Member pursued their own claims, they would be required to prove the same wrongdoing time and again, which would not be a prudent use of judicial resources.

### **C. Plaintiffs’ Counsel Should be Appointed as Class Counsel**

In appointing class counsel, the Court must consider: (1) the work counsel has done in identifying or investigation potential claims in the action; (2) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (3) counsel’s knowledge of the applicable law; and (4) the resources that counsel will commit to representing the class. Here, proposed Class Counsel have undertaken significant efforts to investigate and identify the claims in this Action, including outreach and interviews with dozens of Class Members. Counsel are also highly experienced in litigating employment cases, as well as complex litigation and class action, including, specifically, legal issues involving the

voluntariness of employee wellness programs. Given this experience, counsel is highly knowledgeable about the applicable law. Finally, proposed Class Counsel has already committed significant resources to representing the Class and will continue to dedicate any resources necessary to represent that class throughout the administration of the proposed Settlement.

#### VIII. PROPOSED SCHEDULE OF EVENTS

<b>Mail Notice</b>	Within forty-five (45) days of the entry of the Preliminary Approval Order.
<b>Deadline to File Final Approval Papers and Fee Petition</b>	At least ninety-one (91) days from the date of initial Notice mailing.
<b>Deadline for Opting-Out of the Settlement</b>	Within sixty-three (63) days of the initial Notice mailing.
<b>Deadline for Objecting to the Settlement</b>	Within sixty-three (63) days of the initial Notice mailing.
<b>Reply to Objections (if any)</b>	No later than seven (7) days before the Final Approval Hearing.
<b>Final Approval Hearing</b>	Not earlier than ninety-eight (98) days after Notices are disseminated, subject to the Court's availability.

#### IX. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (1) preliminarily approve the Settlement, including the payment of Service Awards to Plaintiffs; (2) conditionally certify the proposed Class for settlement purposes only; (3) appoint Plaintiffs as the Class Representatives and Plaintiffs' Counsel as Class Counsel; (4) approve the form and manner of Notice; and (5) schedule a Final Approval Hearing.

Dated: March 4, 2022

Respectfully Submitted,

/s/ Dara S. Smith

Dara S. Smith (*pro hac vice*)

Elizabeth Aniskevich (*pro hac vice*)

Daniel B. Kohrman (*pro hac vice*)

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Counsel for Plaintiffs

# **EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

<b>LISA KWESELL; CHRISTINE</b>	:	<b>CASE NO: 3:19-cv-01098 (KAD)</b>
<b>TURECEK; AND JASON SCHWARTZ,</b>	:	
<b>individually and on behalf all others</b>	:	
<b>similarly situated,</b>	:	
	:	
<b>Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>YALE UNIVERSITY,</b>	:	
	:	
<b>Defendant.</b>	:	

**CLASS ACTION SETTLEMENT AGREEMENT**

This Stipulation and Agreement of Settlement (the “Agreement” or “Settlement”) is made and entered into between Lisa Kwesell, Christine Turecek, and Jason Schwartz (collectively “Plaintiffs”), on behalf of themselves and each of the Class Members (as defined below) and Yale University (“Yale” or “Defendant” and collectively with Plaintiffs the “Parties”) and subject to the approval of the United States District Court for the District of Connecticut, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

**1. RECITALS**

WHEREAS a class action complaint was filed on July 16, 2019, in the United States District Court for the District of Connecticut alleging that aspects of Yale’s Health Expectations Program (“HEP”) violate the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101, et seq., and the Genetic Information Nondiscrimination Act (“GINA”), Pub. L. No. 110-233, 122 Stat. 881, by, inter alia, requiring participants to pay an opt-out fee if they wished not to participate and by disclosing spousal medical information without prior knowing, voluntary, written consent;

WHEREAS an amended class action complaint (the “Amended Complaint”) was filed on October 17, 2019. The Amended Complaint asserted the same basis for liability as the initial complaint, but also included additional information collected from Class Members through continued investigation;

WHEREAS Yale denied, and continues to deny, that any aspect of the HEP violates the ADA, GINA, or any other statute or regulation;

WHEREAS the Parties engaged in targeted discovery, including document production and one deposition, necessary to develop the factual record for summary judgment;

WHEREAS the Parties filed cross-motions for summary judgment, which were fully briefed;

WHEREAS the Parties engaged in a full-day mediation on August 11, 2021, with Linda Singer of JAMS, an experienced mediator with extensive experience in complex litigation;

WHEREAS the Parties reached an agreement-in-principle on September 22, 2021;

WHEREAS, the Parties recognize that, in the absence of an approved Settlement, they would face a long course of litigation, including extensive, costly and time-consuming further discovery, extensive motion practice (including a motion for class certification), trial, and potential appellate proceedings, that would consume time and resources and present each of them with ongoing litigation risks and uncertainties;

WHEREAS, the Parties wish to avoid these risks and uncertainties, as well as the consumption of time and resources, through settlement pursuant to the terms and conditions set forth herein;

WHEREAS, based on their analysis and evaluation of a number of factors, and recognizing the substantial risk of continued litigation, including the possibility that the

litigation, if not settled now, might result in no recovery or a recovery that is less favorable to the Plaintiffs and Class Members, Counsel for Plaintiffs is satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that this Settlement is in the best interests of the Class Members;

WHEREAS, it is the desire of the Parties to fully, finally and forever settle, compromise, and discharge all disputes and claims arising from or related to the litigation which exist between the Parties;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, as well as the good and valuable consideration provided for herein, the Parties agree to a full and complete settlement of the litigation on the following terms and conditions:

**1. DEFINITIONS**

- 1.1. Action** means *Kwesell v. Yale University*, 3:19-cv-01098 (KAD) (D. Conn.).
- 1.2. Agreement** means this settlement agreement and all attached exhibits.
- 1.3. CAFA Notice** means the notice required pursuant to 28 U.S.C. § 1715(b).
- 1.4. Class Members/Class** means all current or former Yale University employees who were required to participate in the HEP or pay an opt-out fee<sup>1</sup> from the time when Yale began tracking compliance with the HEP in September 2018 until May 14, 2020, when Yale ceased collecting the opt-out fee.
- 1.5. Court** means the United States District Court for the District of Connecticut.
- 1.6. Defendant or Yale** means Yale University.

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<sup>1</sup> This includes employees in Local 34 UNITE HERE (the clerical and technical union), Local 35 UNITE HERE (the service and maintenance union), the Yale University Security Officers Association (YUSOA), and clerical and technical employees excluded from the bargaining unit. The Class Members will be determined based on data provided by HealthMine, a vendor who assisted in operating the HEP. To avoid double payments, in the event that an individual was both a Yale employee and a spouse of another Yale employee, the individual will only be treated in one capacity, and that capacity will be determined by Healthmine's data.

- 1.7. Defendant's Counsel** means the law firm of Wiggin and Dana LLP.
- 1.8. Effective** means that the Settlement has been finally approved by the Court and judgment has been entered and the period for appeal has expired without appeal therefrom or, if appeal is taken, the date on which all appeals (and/or any other efforts to challenge the Settlement) are exhausted and the Settlement is affirmed by the Court.
- 1.9. Final Approval Hearing** means the hearing during which the Court shall decide whether to finally approve the Settlement and make such other rulings as are contemplated by this Settlement or as modified by any subsequent mutual agreement of the Parties in writing and approved by the Court.
- 1.10. Final Approval Order** means the final order entered by the Court after the Final Approval Hearing. The Final Approval Order must be substantively and substantially in the form set out in Ex. C.
- 1.11. HEP Fees** means opt-out fees collected by Yale in the course of administering the HEP.
- 1.12. Health Expectations Program or HEP** means the employee wellness program or employee health program that applied to certain of Yale's employees beginning in September 2018.
- 1.13. Healthmine** means Healthmine, Inc., a Yale Group Health Plan business associate responsible for administering the HEP.
- 1.14. Joint Press Release** means the press release agreed on and to be released by the Parties, attached as Ex. D.

- 1.15. Named Individual** means a Class Member whose name appears in the Amended Complaint, other than Plaintiffs.
- 1.16. Net Amount** means the difference between the Total Settlement Amount of \$1,290,000 and the total of all Court-approved attorneys' fees, costs, and Service Awards.
- 1.17. Notice** means the Notice of Class Action Settlement to be sent to Class Members, substantially as attached as Ex. A and as approved by the Court.
- 1.18. Objection** means a Class Member's written signed statement, sent to the Settlement Administrator, indicating that the Class Member is objecting to the Settlement. Such statement must meet the criteria identified in Section 10 below.
- 1.19. Objector** means anyone who files an objection to the Settlement.
- 1.20. Opt-Out Period** means the period of sixty-three (63) days for Class Members to opt-out or submit objections. This period will begin to run on the date of the initial Notice mailing.
- 1.21. Opt-Out Statement** means a Class Member's written, signed statement to the Settlement Administrator, that the Class Member is opting out of the Settlement. Such statement must meet the criteria identified in Section 9 below.
- 1.22. Participating Class Members** means Class Members who do not opt out of the Settlement.
- 1.23. Plaintiffs** means Lisa Kwesell, Christine Turecek, and Jason Schwartz.
- 1.24. Plaintiffs' Counsel** means attorneys at AARP Foundation, and the law firm of Garrison, Levin-Epstein, Fitzgerald, and Pirrotti, P.C.

- 1.25. Preliminary Approval Order** means the Order entered by the Court preliminarily approving, *inter alia*, the terms and conditions of this Agreement, the manner and timing of providing Notice, and the time period for, and the manner of, opt-outs and objections. The Preliminary Approval Order shall be substantively substantially in the form set out in Ex. B.
- 1.26. Public Statement** means a communication reasonably anticipated to be widely disseminated, including communications with press or media entities and social media posts, and not including communications with the AARP Foundation Board of Directors or statements made in the context of collective bargaining negotiations.
- 1.27. Released Claims** means the claims described in Section 12 below.
- 1.28. Service Awards** means the awards approved by the Court for Plaintiffs and the Named Individuals.
- 1.29. Settlement Administrator** means the entity selected to perform the settlement administration duties enumerated in this Agreement. The Settlement Administrator will be Yale unless Yale, in its sole discretion, determines that a third-party entity is necessary to administer the Settlement. Throughout this Agreement, if a reference is made to the Settlement Administrator, such reference means Yale or the third-party administrator that it designates.
- 1.30. Total Settlement Amount** means \$1,290,000, the total amount allocated for monetary awards and Court-approved Service Awards, attorneys' fees, and costs.
- 1.31. TrestleTree** means TrestleTree, Inc., a Yale Group Health Plan business associate responsible for administering health coaching as part of the HEP.



**2. PARTIES' AUTHORITY**

- 2.1.** All Parties have been represented by counsel throughout all negotiations which preceded the execution of this Agreement and this Agreement is made with the consent and advice of counsel. Plaintiffs' Counsel represent that the terms and conditions of this Settlement are fair, reasonable, adequate, beneficial to and in the best interest of Plaintiffs and Class Members. Plaintiffs and Plaintiffs' Counsel represent that they are fully authorized to enter into this Agreement and to bind the Class Members to the terms and conditions thereof.
- 2.2.** All of the Parties acknowledge that they have been represented by competent, experienced counsel throughout all negotiations which preceded the execution of this Agreement, and this Agreement is made with the consent and advice of counsel who have jointly prepared this Agreement.
- 2.3.** It is agreed that because the Class Members are so numerous, it is impractical to have each member execute this Agreement. The Notice will advise all Class Members that the release described in this Agreement will bind them, with or without additional action by them, unless they request exclusion from the Settlement, and that the release will have the same force and effect as if this Agreement were executed by each Class Member.
- 2.4.** The Agreement will be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

**3. GENERAL TERMS**

- 3.1. Full resolution.** The Parties desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or related to this

Action, which exist between them, and between the Class Members and the Defendant. In exchange for (a) the dismissal of this Action with prejudice; (b) the settlement and release of all Released Claims as defined in Section 12; and (c) otherwise subject and pursuant to the terms and conditions of this Agreement, Yale agrees to pay a total of \$1,290,000, which common fund shall be used to make monetary payments to Participating Class Members, as well as to pay attorney's fees, expenses and costs in amounts to be determined by the Court. Yale shall also separately pay any costs of administering the Settlement.

- 3.2. Complete settlement and release.** The Parties intend that this Agreement constitute a full and complete settlement and release of all Released Claims, as defined in Section 12 against Yale and a dismissal of all pending actions covered by the Released Claims.
- 3.3. Class treatment for settlement.** The Parties stipulate that this action may proceed as a class action under Rule 23 of the Federal Rules of Civil Procedure for purposes of settlement.
- 3.4. No admission of liability.** This Agreement reflects a compromise of disputed claims. Nothing in this Agreement shall be deemed or used as evidence of, or as an admission of, liability by Defendant, or of any fault or wrongdoing whatsoever, or as evidence that, or as an admission that, this action may proceed as a class action under Rule 23 of the Federal Rules of Civil Procedure for any purpose other than settlement.
- 3.5. Cooperation.** The Parties agree to cooperate and shall aim to effectuate and implement all terms and conditions of this Agreement and to obtain the Court's

approval of this Agreement and all of its terms. The Parties, upon the request of the other, agree to perform such further acts and to execute and deliver such other documents, data, and information as are reasonably necessary to carry out the provisions of this Agreement.

#### **4. PROGRAMMATIC RELIEF**

**4.1. Duration:** The duration of the programmatic relief provided by this Settlement shall be four years from the Court's approval of the Settlement or earlier if there is a change in law that Yale University reasonably interprets to permit the collection of fees associated with non-participation or non-compliance with an employee wellness program or employee health program, whichever is sooner. A change in the law shall be limited to a change in statutory language, agency regulations, or a decision of the United States Court of Appeals for the Second Circuit.

**4.2. HEP Fees:** Yale University will cease collection of any HEP fees during the duration of the Settlement.

**4.3. Privacy Protections:**

**4.3.1.** Yale will direct Healthmine not to send data to TrestleTree for the purpose of health coaching referrals, except as indicated in Section 4.3.3 below. Yale will direct TrestleTree to purge all data relating to completed prior health coaching engagements from its records. Such purging shall be completed within a reasonable time and no later than thirty (30) days after such direction is provided by Yale. For those individuals who are actively engaged in health coaching currently, TrestleTree will notify individuals

in advance and give them the option to have their records retained (or purged) and to continue coaching (or not) as they desire.

**4.3.2.** If a health coach entered a note in the patient's electronic medical record, that note (which is not part of TrestleTree's records) will not be purged.

**4.3.3.** TrestleTree also provides coaching outside of the context of the HEP.

Records associated with coaching outside the HEP will not be affected by this Agreement.

**4.3.4.** Yale will otherwise retain the right to use business associates (including Healthmine, TrestleTree or others) in connection with the management of the Yale Group Health Plan, including for data analysis and to send reminders regarding recommended health activities. Reminders will not indicate that any activity is mandatory or that failure or refusal to complete it will result in any monetary penalty. Additionally, in the future, if an individual elects to participate in health coaching, they may request that TrestleTree be provided access to their health information, including information possessed by Healthmine or in their electronic medical record. In such event, those records would not be subject to the purging requirement discussed above.

## **5. MONETARY RELIEF**

**5.1. Payment:** Within twenty-eight (28) calendar days after the Final Approval Order becomes Effective, the Settlement Administrator will distribute the Total Settlement Amount of \$1,290,000 in accordance with the plan of allocation, as described below.

**5.2. Total Settlement Amount Allocation:** The Total Settlement Amount will be allocated as follows:

**5.2.1.** Plaintiffs and Named Individual Service Awards as described in Section 5.3.6 and approved by the Court.

**5.2.2.** Attorneys' fees and costs as described in Section 6 and approved by the Court.

**5.2.3.** The Net Amount shall be equal to the total settlement fund of \$1,290,000 minus the amounts approved for Named and Individual Service Awards and attorneys' fees and costs. The Net Amount shall be allocated among the Participating Class Members according to the plan set forth in Section 5.3 and distributed as set forth herein and pursuant to orders of the Court.

**5.3. Plan of Allocation for Individual Monetary Awards.** Each Participating Class Member will receive a monetary award as outlined below.

**5.3.1.** Each Participating Class Member who **paid any HEP fees** will receive a percentage of the HEP fees deducted from their pay for these fees. This percentage is estimated to be 50% of the total amount paid in fees. The percentage will be calculating by taking the Net Amount and subtracting from that amount the total payments provided for in Sections 5.3.2-5.2.5. (E.g., If the total amount remaining is equal to 52% of all opt-out fees paid by Participating Class Members, then each Participating Class Member will receive 52% of the opt-out fees they paid back.)

**5.3.2.** Each Participating Class Member who **attended health coaching** will receive \$225.00.

- 5.3.3.** Each Participating Class Member whose **spouse attended health coaching** will receive \$50.00.
- 5.3.4.** Each Participating Class Member who **did not attend health coaching but was at any time deemed compliant with the HEP**, will receive \$50.00. This includes any individuals who paid HEP fees at some point but were also deemed compliant for any time period before Yale stopped collecting fees under the HEP.
- 5.3.5. Additive nature of awards.** Participating Class Members who fall into multiple categories described in Sections 5.3.1-5.3.4 will receive the cumulative value of all payments to which they are entitled, except that individuals who receive \$225 for their participation in health coaching *will not also receive* \$50 for being deemed compliant with the HEP.
- 5.3.6. Service Awards.** At least seven (7) days before the Final Approval Hearing, Plaintiffs' Counsel shall apply to the Court to receive no more than the following amounts as Service Awards: \$10,000 for Plaintiff Lisa Kwesell; \$10,000 for Plaintiff Christine Turecek; \$5,000 for Plaintiff Jason Schwartz; \$1,000 for each Named Individual whose name appears in the Amended Complaint (10 individuals). These payments shall be in recognition of these individuals' services to the Class, and shall be in addition to the individual's recovery from the Net Amount. Should the Court award a lesser amount of Service Awards, the difference between these amounts and the amounts awarded for Service Awards shall be added to the Net Amount Yale University will not oppose Plaintiffs'

request for Court approval of Service Awards up to the amount specified herein.

**5.4. Uncashed Checks.** Settlement payments will be made by the Settlement Administrator via check. In the event that a Participating Class Member fails to cash their Settlement check within 120 days of issuance, the check shall be void. Any amounts which are not successfully cashed shall be paid to the Connecticut Bar Foundation to fund the delivery of legal services to the poor and for law school scholarships. No amount shall revert to Yale.

**5.5. Tax Treatment.** Plaintiffs and Class Members will be responsible for paying applicable taxes, if any, and no tax advice is being provided by any attorneys in this case.

**5.6. Final Report by Settlement Administrator:** Within twenty-eight (28) calendar days after all disbursements of money required by the Settlement have been made, the Settlement Administrator shall provide Plaintiffs' Counsel with a final report on the disbursements of all funds.

## **6. ATTORNEYS' FEES AND COSTS**

**6.1.** Plaintiffs' Counsel will petition the Court for an award of attorneys' fees not to exceed \$200,000, which is approximately 15.5% of the Total Settlement Amount, and actual costs not to exceed \$10,000. This shall fully compensate Plaintiffs' Counsel for the attorneys' fees and litigation costs incurred at any time in connection with the Litigation. Should the Court award a lesser amount of fees or costs, the difference between this amount and the amount awarded for fees and costs shall be added to the Net Amount.

- 6.2. Yale agrees that Plaintiffs and Plaintiffs' Counsel are entitled to an award of reasonable attorneys' fees and costs and shall not oppose Plaintiffs' Counsel's request for fees and cost up to the amount set forth above. The Parties agree that the full amount of attorneys' fees and costs awarded in this action shall be paid from the Total Settlement Amount.
- 6.3. The outcome of any proceeding related to Plaintiffs' Counsel's application for attorneys' fees and costs shall not terminate this Agreement or otherwise affect the Court's Final Approval ruling.
- 6.4. Payment of Plaintiffs' Counsel's attorneys' fees and costs approved by the Court shall be made within twenty-eight (28) days after the Final Approval Order is Effective.

## 7. **FORM OF NOTICE**

- 7.1. **Notice:** All Class Members shall receive a Notice substantially identical to the form set forth in Exhibit A, attached hereto.
- 7.2. **No Claim Form:** This is an automatic distribution Settlement. Because the plan of allocation determines payment amounts to be paid to Class Members based on specific actions taken under the HEP, which are also reflected in the records of Yale or its business associates, there is no need for a claim form in order to administer this Agreement.
- 7.3. **Mail and website:** The Notice shall be sent by first-class mail. The Settlement Administrator shall maintain a website to allow Class Members to review the Notice and other important documents in this case.



**7.4. Undelivered Notices:** The Settlement Administrator shall provide to Plaintiffs' Counsel and Defendant's Counsel, at least twenty-one (21) calendar days prior to the close of the Opt-Out Period, a list of Class Members to whom Notices were returned as undeliverable and for whom efforts to obtain an alternative address failed.

**7.5. Mailing and Due Diligence Declaration:** Plaintiffs' Counsel shall provide the Court, before the Final Approval Hearing, a declaration from the Settlement Administrator, attesting to its due diligence and proof of mailing with regard to the mailing of the Notice.

## **8. SETTLEMENT ADMINISTRATION**

**8.1. Settlement Administrator:** Yale University will administer the Settlement by performing all duties assigned to it herein, unless, in its sole discretion, it chooses to appoint a third-party settlement administrator to perform some or all of the administration tasks. If Yale appoints a third-party settlement administrator, it will do so at its own expense. In this event, the Parties will ensure the third-party settlement administrator performs all administration duties required by this Agreement, as well as any other additional duties that may be necessary.

### **8.2. Settlement Administrator's List of Duties:**

**8.2.1. CAFA notice.** The Settlement Administrator will provide notice of the proposed Settlement to state and federal officials as required by the Class Action Fairness Act, 28 U.S.C. § 1715(b), no later than ten (10) calendar days after the Court's Preliminary Approval Order of the Settlement. The

Settlement Administrator will draft and prepare the CAFA notice in conformity with 28 U.S.C. § 1715.

**8.2.2. Calculation and distribution of awards.** The Settlement Administrator will calculate and distribute all individual monetary awards, Court-approved Service Awards, attorneys' fees, and costs. Within fourteen (14) days after the Opt-Out Deadline, the Settlement Administrator shall prepare a report with a preliminary calculation of individual monetary awards, based on the assumption that the full amount of attorney's fees, costs and Service Awards requested by Plaintiff's Counsel are approved. Such report shall be transmitted to Plaintiff's Counsel. The final calculation of individual monetary awards cannot be performed until after the Final Approval Order is issued and the approved amount of attorney's fees, costs and Service Awards is known. The Settlement Administrator shall provide a supplemental report to Plaintiff's counsel with the final calculated amounts within fourteen (14) days after the issuance of the Final Approval Order. The Settlement Administrator shall distribute monetary payments to Participating Class Members within twenty-eight calendar (28) days after the Settlement becomes Effective.

**8.2.3. Other duties.** The Settlement Administrator will perform other duties assigned in this Agreement and any other duties reasonably appropriate to carry out its responsibilities described in this Agreement and/or ordered by the Court.

**8.2.4. Notice Procedures**

**8.2.4.1. Notice mailing:** The Settlement Administrator will send the Notice to Class Members within forty-five (45) days of the entry of the Preliminary Approval Order. Notice will be sent to Class Members via first-class mail.

**8.2.4.2. Website:** The Settlement Administrator shall also maintain a secure website to enable Class Members to review the Notice and other important documents.

**8.3. Costs:** Yale University will incur all costs related to the administration of the Settlement.

## **9. OPT-OUTS**

**9.1.** Class Members may request exclusion from the monetary portion of the Settlement by “opting-out” of the Settlement.

**9.2.** The deadline for Class Members to opt-out of the Settlement shall be sixty-three (63) calendar days from the date of the initial Notice mailing (“Opt-Out Period”). To be considered timely, any opt-out request must be postmarked within sixty-three (63) days from the date of the initial Notice mailing. The postmark date of the mailing envelope shall be the exclusive means used to determine whether an Opt-Out Statement has been timely submitted.

**9.3.** Any individual who chooses to opt-out must mail a written, signed statement to the Settlement Administrator indicating that the Class Member is opting out (“Opt-Out Statement”). The Opt-Out Statement must contain the name, address, and telephone number of the individual to be valid. It must also contain the following words in order to be valid: “I decline to provide a release of claims and

instead elect to exclude myself from the monetary relief provision in the Settlement in *Kwesell v. Yale University*. That means I will not be entitled to any of the monetary proceeds of the Settlement.”

- 9.4.** If the Settlement Administrator receives a statement it reasonably interprets to be intended as an Opt-Out Statement, but which does not meet the conditions described herein, it will notify the Class Member who submitted the statement that the Class Member has not effectively opted out of the Settlement and explain what the Class Member must do to effectively opt out.
- 9.5.** During the Opt-Out Period, the Settlement Administrator shall provide Plaintiffs’ Counsel and Defendant’s Counsel with copies of each Opt-Out request no later than five (5) business days after receipt thereof.
- 9.6.** The Settlement Administrator, shall, within five (5) business days after the end of the Opt-Out Period, email a final list of all Opt-Out Statements to Plaintiffs’ Counsel and Defendant’s Counsel. Should the Settlement Administrator receive any additional timely Opt-Out Statements after five (5) business days after the close of the Opt-Out period, it will email them to Plaintiffs’ Counsel and Defendant’s Counsel as soon as possible, but no later than within one (3) business day of receipt. The Settlement Administrator shall retain the stamped originals of all mailed Opt-Out Statements in its files until such time as the Settlement Administrator is relieved of its duties and responsibilities under this Agreement.
- 9.7.** The Parties agree that the decision to opt out should be left to each Class Member. If contacted by a Class Member about opting-out, Plaintiffs’ Counsel may direct the Class Member to the portion of the Notice or Settlement Agreement that

explains the process for opting-out. If Defendant's Counsel is contacted by Class Members regarding opting-out of the Settlement, Defendant's Counsel shall refer the call or communication to Plaintiffs' Counsel. In addition, at no time shall Plaintiffs, Defendant, or their respective counsel, seek to solicit or otherwise encourage Class Members or any other persons to submit Opt-Out Statements. If Defendant or its Counsel is contacted with general questions relating to the Settlement, they shall refer Class Members to the settlement website and/or Plaintiff's Counsel.

## **10. OBJECTIONS**

- 10.1.** Class Members who wish to present objections to the Settlement at the Final Approval Hearing must do so in a written, signed statement delivered to the Settlement Administrator. To be considered, such Objections must be mailed to the Settlement Administrator, or filed with the United States District Court for the District of Connecticut, no later than sixty-three (63) calendar days from the date of the initial Notice mailing, the particular date of which will be specified in the Notice. The postmarked date of the objection shall be the exclusive means for determining that an objection is timely.
- 10.2.** The objection statement must contain the name, address, and telephone number of the Class Member to be valid. If the Objector is represented by counsel, the objection statement must also list the name, address and telephone number of that counsel. The objection statement must set forth the legal and factual basis for the objection. Class Members who fail to make objections in the manner specified

herein shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Agreement.

- 10.3.** If the Settlement Administrator receives any objections, it shall indicate on the original of any mailed objection or on the printed version of any emailed objection the date it was received, and shall send copies of each objection to Plaintiffs' Counsel and Defendant's Counsel by email not later than five (5) business days after receipt thereof. Plaintiffs' Counsel shall file the objections with the Clerk of Court within fourteen (14) days after the end of the Opt-Out Period. Should the Settlement Administrator receive any additional timely objections after the end of the Opt-Out Period, the Settlement Administrator will email those to Plaintiffs' Counsel and Defendant's Counsel as soon as possible, but no later than within one (3) business days. Plaintiffs' Counsel must promptly file each objection it receives from any source other than the Court.
- 10.4.** An objector who wishes to appear at the Final Approval Hearing must file with the Clerk of the Court and serve upon counsel a notice of intention to appear at the Final Approval Hearing ("Notice of Intention to Appear") no later than the deadline for the objection set forth in Section 10.1. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objector (or his/her counsel) shall present to the Court in connection with the Final Approval Hearing. The Notice of Intention to Appear must also list any other class settlements to which the individual has objected. Any Class Member who files a Notice of Intention to Appear must be willing to promptly make themselves available for deposition by the Parties. If the Objector is represented

by counsel, the Notice of Intention to Appear must identify the name, address and phone number of Counsel. Any Class Member who does not provide a Notice of Intention to Appear in complete accordance with the deadlines and other specifications set forth in the Notice and this Agreement, and who has not filed an objection in complete accordance with the deadlines and other specifications set forth in this Agreement and the Notice, shall, subject to the Court's final determination in the exercise of its discretion, be deemed to have waived their opportunity to speak or otherwise present any views at any Final Approval Hearing.

- 10.5.** Any lawyer representing a Class Member for the purpose of making an objection must also file a Notice of Appearance with the Court by the deadline for objection and must also serve copies by mail on counsel for the Parties.
- 10.6.** An objector may withdraw his/her objections at any time.
- 10.7.** Any individual who has requested exclusion by submitting a valid Opt-Out Statement may not also submit objections to the Settlement.
- 10.8.** Plaintiffs' Counsel and/or Defendant's Counsel should respond to any objections in the Final Approval Motion, any reply brief, and/or, if appropriate, a separate submission at least seven (7) days before the Final Approval Hearing.
- 10.9.** Provided that the Court's dismissal order is consistent with the terms and conditions of this Agreement, then Plaintiffs and Class Members who did not properly object to the Settlement and their counsel, as well as Defendant and its counsel, hereby waive any and all rights to appeal the dismissal order, including all rights to any post-dismissal proceeding and appellate proceeding, such as a

motion to vacate the dismissal, a motion for new trial, a motion under Federal Rule of Civil Procedure 60, and any extraordinary writ.<sup>2</sup> The waiver does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-dismissal proceedings. Notwithstanding the foregoing, Plaintiffs and their counsel do not waive their right to appeal any order regarding attorneys' fees or costs. Should any such appeal be filed, however, the Settlement would not be Effective until thirty days after all appeals were exhausted.

**10.10.** The Parties agree that the decision to object should be left to each Class Member.

If contacted by a Class Member who wishes to object, Plaintiffs' Counsel may suggest that the individual obtain other counsel. Plaintiff's Counsel will not provide any substantive advice to objecting Class Members, nor provide specific referrals to other counsel, given that an Objector's interests are contrary to the interests of Plaintiffs and other non-objecting Class Members. If Defendant's Counsel is contacted by a Class Member who wishes to object, Defendant's Counsel shall recommend that the individual consider consulting counsel of their choosing. In addition, at no time shall Plaintiffs, Defendant, or their respective counsel seek to solicit or otherwise encourage Class Members or any other persons to object to the Settlement.

## **11. PRELIMINARY AND FINAL APPROVAL**

**11.1.** Within fourteen (14) days after this Settlement Agreement is executed by all Parties, Plaintiffs' Counsel shall submit to the Court a Motion for Preliminary Approval of the Settlement ("Preliminary Approval Motion"). The Preliminary

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<sup>2</sup> Notwithstanding the foregoing, the Effective date shall still not run until the deadline for appeal has expired without appeal therefrom.



Approval Motion shall seek conditional certification of the Class and the setting of dates for opt-outs, objections, and a Final Approval Hearing and shall present the [Proposed] Preliminary Approval Order attached hereto as Ex. B.

- 11.2.** Plaintiffs' Counsel shall seek to obtain from the Court a Final Approval Order, substantially in the form attached as Ex. by motion. The Final Approval Motion shall, among other things, seek: (a) final certification of the Class for purposes of settlement; (b) final approval of the Settlement as fair, adequate, reasonable, and binding on all Class Members who have not opted-out; (c) approval of an award of attorneys' fees and costs to be made from the Settlement fund; (d) approval of service awards to Plaintiffs and the Named Individuals to be made from the Settlement fund; and (e) an entry of judgment in accordance with this Settlement. The Final Approval Motion shall be filed at the Plaintiff's convenience, but not earlier than ninety-one (91) days after the date of the initial mailing of Notice.
- 11.3.** The Final Approval Hearing shall be held at the Court's convenience, but not earlier than ninety-eight (98) calendar days after the initial mailing of Notices.
- 11.4.** In the event that the Court voids any provision of the Settlement Agreement and/or any of its exhibits, the Settlement Agreement and any orders effectuating it shall be void. If they wish, the Parties shall renegotiate the Settlement to the mutual satisfaction of both Parties before resubmitting to the Court for approval. No Party shall be bound by the terms of the Settlement if the Court voids any provision of the Settlement and/or any of its exhibits, and the Parties fail to come to a written, binding agreement submitted to the Court that addresses the Court's order.

**12. RELEASE**

**12.1.** By operation of this Agreement and the Final Approval Order, and except as to such rights or claims as may be created by this Agreement or those nonwaivable by law, Plaintiffs and all Participating Class Members, and their current, former and future heirs, spouses, executors, administrators, agents, and attorneys, shall hereby irrevocably and unconditionally forever and fully release and covenant not to sue or otherwise pursue claims that were raised in this lawsuit or which could have been raised in this litigation relating to the operation of HEP (“Released Claims”), against Yale, and its current and former affiliates, assigns, employees, agents, officers, directors, and business associates involved in administering the HEP.

**13. PUBLICITY**

**13.1.** Counsel for the Parties have drafted and agreed to the attached Joint Press Release announcing the Settlement (Ex. D). Plaintiffs’ and Defendant’s Counsel will issue this release within three (3) days of the filing of the Motion for Preliminary Approval.

**13.2.** All subsequent Public Statements (defined in Section 1.26) by Counsel for the Parties and by the Plaintiffs will be materially consistent with the Joint Press Release.

**14. INTERPRETATION AND ENFORCEMENT**

**14.1.** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous

negotiations and understandings between the Parties shall be deemed merged into this Agreement.

- 14.2.** Upon execution of this Agreement by the Parties and their counsel, this Agreement shall be binding upon the Parties unless the Court fails to approve the Agreement as set forth herein or the Agreement does not become Effective.
- 14.3.** The Parties have negotiated all the terms and conditions of this Agreement at arm's length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement. Notwithstanding the foregoing, the Parties acknowledge that minor changes to the dates or timeline specified herein are not material and agree to work together should such change be necessary. However, under no circumstances shall any payment under this Settlement be owed unless and until the Settlement is Effective.
- 14.4.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.
- 14.5.** This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of Connecticut, without regard to its choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

- 14.6.** The Court shall retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the Settlement contemplated thereby for four years following the Court's entry of a Final Approval Order. Should the Parties at any time have a dispute regarding the interpretation or requirements of this Agreement, they shall first mediate any dispute prior to requesting intervention by the Court. The Parties shall mediate with Linda Singer if she is available or another JAMS mediator if she is not.
- 14.7.** No waiver, modification, or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by, or on behalf of all Parties and then only to the extent set forth in such written waiver, modification, or amendment, subject to any required Court approval. Any failure by any Party to insist upon the strict performance by the other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.
- 14.8.** The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if the Parties had signed the same instrument.
- 14.9.** Any Party may execute this Agreement by transmitting their signature page via facsimile or email. Any signature made and transmitted by facsimile or email for

the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party.

**15. DUTIES FOLLOWING APPROVAL**

**15.1.** In connection with the Final Approval by the Court of this Agreement, Class Counsel, and Counsel for Defendant shall submit a proposed Final Approval Order and judgment, substantially in the form set out in Ex. C:

**15.1.1.** Granting Final Approval to the Agreement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;

**15.1.2.** Granting final certification of the Class for settlement purposes;

**15.1.3.** Dismissing the Civil Action with prejudice and permanently barring all Participating Class Members, including the Plaintiffs, from prosecuting against any Released Parties any of the Released Claims.

[SIGNATURES ON FOLLOWING PAGE]

Each of the Parties, and their counsel, have executed Agreement, individually or by their duly authorized officer, as of the day and year set forth below:

**PLAINTIFFS**

Dated: March 3, 2022   
Lisa Kwesell, Plaintiff

Dated: 3-3-2022   
Christine Turecek, Plaintiff

Dated: \_\_\_\_\_  
Jason Schwartz, Plaintiff

Dated: \_\_\_\_\_  
Dara Smith  
AARP Foundation  
Counsel for Plaintiffs

**YALE UNIVERSITY**

Dated: \_\_\_\_\_  
John Whelan  
Vice President, Human Resources  
Yale University

Dated: \_\_\_\_\_  
Kim Rinehart  
Wiggin and Dana LLP  
Counsel for Yale University

Each of the Parties, and their counsel, have executed Agreement, individually or by their duly authorized officer, as of the day and year set forth below:

**PLAINTIFFS**

Dated:

\_\_\_\_\_  
Lisa Kwesell, Plaintiff

Dated:

\_\_\_\_\_  
Christine Turecek, Plaintiff

Dated: Jason Schwartz 03/03/2022

  
\_\_\_\_\_  
Jason Schwartz, Plaintiff

Dated:

\_\_\_\_\_  
Dara Smith  
AARP Foundation  
Counsel for Plaintiffs

**YALE UNIVERSITY**

Dated:

\_\_\_\_\_  
John Whelan  
Vice President, Human Resources  
Yale University

Dated:

\_\_\_\_\_  
Kim Rinehart  
Wiggin and Dana LLP  
Counsel for Yale University

Each of the Parties, and their counsel, have executed Agreement, individually or by their duly authorized officer, as of the day and year set forth below:

**PLAINTIFFS**

Dated:

\_\_\_\_\_  
Lisa Kwesell, Plaintiff

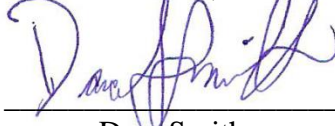
Dated:

\_\_\_\_\_  
Christine Turecek, Plaintiff

Dated:

\_\_\_\_\_  
Jason Schwartz, Plaintiff

Dated:

  
\_\_\_\_\_  
Dara Smith  
AARP Foundation  
Counsel for Plaintiffs

**YALE UNIVERSITY**

Dated:

\_\_\_\_\_  
John Whelan  
Vice President, Human Resources  
Yale University

Dated:

\_\_\_\_\_  
Kim Rinehart  
Wiggin and Dana LLP  
Counsel for Yale University



Each of the Parties, and their counsel, have executed Agreement, individually or by their duly authorized officer, as of the day and year set forth below:

**PLAINTIFFS**

Dated:

\_\_\_\_\_  
Lisa Kwesell, Plaintiff

Dated:

\_\_\_\_\_  
Christine Turecek, Plaintiff

Dated:

\_\_\_\_\_  
Jason Schwartz, Plaintiff

Dated:

\_\_\_\_\_  
Dara Smith  
AARP Foundation  
Counsel for Plaintiffs

**YALE UNIVERSITY**

Dated:

3/3/2022

\_\_\_\_\_  
John Whelan  
Vice President, Human Resources  
Yale University

Dated:

3/4/22

\_\_\_\_\_  
Kim Rinehart  
Wiggin and Dana LLP  
Counsel for Yale University

# **EXHIBIT A**

Kwesell, et al., v. Yale University, Case No. 3:19-cv-01098 (KAD)

United States District Court for the District of Connecticut

## **Class Action Settlement Notice**

**A federal court authorized this notice. This is not a solicitation from a lawyer.**

**Why am I receiving this?** You are receiving this notice because the records of Yale University (“Yale”) indicate that you either participated in Yale’s employee wellness program, known as the Yale Health Expectations Program (“HEP”), or paid an opt-out fee in connection with the program. On [insert date of court order granting preliminary approval], the Court in the above action (the “Action” or “Lawsuit”) granted preliminary approval of a proposed class action settlement relating to the HEP as set forth in the parties’ Stipulation of Agreement and Settlement (“Settlement” or “Agreement”). Because you participated in the HEP or paid an opt-out fee, you are eligible to participate in the Settlement process.

**What is the Lawsuit about?** The individuals who brought the Action, known as “the Plaintiffs,” allege that the HEP violated the Americans with Disabilities Act (“ADA”) and the Genetic Information Nondiscrimination Act (“GINA”) by requiring employees to pay a weekly opt-out fee if they and/or their spouses did not undertake certain health actions (i.e., doctor’s visits, diagnostic tests, and in some cases health coaching), and by transferring spousal insurance claims data to a wellness vendor without their consent. The ADA and GINA permit voluntary employer wellness programs, but Plaintiffs contended that the opt-out fee rendered the HEP non-voluntary. The HEP was developed by Yale in conjunction with two unions as part of a collective bargaining agreement. At the time the program was developed, federal regulations authorized the charging of opt-out fees. However, those regulations were subsequently invalidated, resulting in uncertainty regarding the permissible use and amount of opt-out fees. While Yale contends its conduct is now, and always was, lawful, the parties have elected to resolve the Lawsuit to avoid the uncertainty and cost of further litigation.

**What benefits does the Settlement provide Class Members?** All Class Members who do not opt-out of the Settlement will be entitled to an automatic monetary distribution, equal to a percentage of the opt-out fees paid by the Class Member (currently estimated at approximately 50% of the opt-out fees paid, but ultimately to be determined by the Settlement’s Plan of Allocation), plus other payments depending on whether the Class Member complied with the HEP’s requirements, participated in health coaching, and if the employee’s spouse participated in health coaching. Further details about the calculation of these payments are set out below in Section 6. In addition to the monetary benefits provided by the Settlement, Yale has agreed not to collect the opt-out fees for HEP non-participation and to modify its data sharing practices for the duration of the Settlement.

**What is this notice?** This notice only summarizes the Settlement. For more information, visit [insertwebsite].

YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.  
 READ THIS NOTICE CAREFULLY.

<b>Summary of Your Legal Rights and Options</b>	
<b>Exclude yourself from the Settlement</b>	Get no payment. Keep any rights to bring or join a case against Yale about the claims being resolved by this Settlement. You will lose the ability to recover any monetary payment under the Settlement.
<b>Object to the Settlement</b>	Write to the Court about why you do not like the Settlement to help the Court decide whether to approve the Settlement. Note that the Court cannot order that you receive more money from the Settlement even if it agrees with you. If the Court does not approve the Settlement, the parties will continue to litigate the Action.
<b>Do nothing and receive payment</b>	If you do nothing, you will get a payment automatically, release your claims that are covered by the Settlement, and give up your right to assert the claims being resolved by this Settlement.

These rights and options—**and the deadlines to exercise them**—are explained in this notice.

The Court has not yet decided whether to finally approve the Settlement. Payments will be made only if the Court finally approves the Settlement and after appeals, if any, are resolved. Please be patient.

## What This Notice Contains

### BASIC INFORMATION

1. Why did I get this notice package?
2. What is this lawsuit about?
3. Why is this a class action?
4. Why is there a settlement?

### WHO IS IN THE SETTLEMENT

5. Who is included in the Settlement?

### THE SETTLEMENT BENEFITS—WHAT YOU GET

6. What does the Settlement provide?

### HOW YOU GET A PAYMENT

7. How can I get a payment?
8. When would I get my payment?

### RELEASE AGREEMENT

9. What am I giving up to get a payment?

### THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in this case?
11. How will Class Counsel, Class Representatives, and Declarants be paid?

### EXCLUDING YOURSELF FROM THE SETTLEMENT

12. What does excluding yourself from the Settlement mean?
13. How do I get out of the Settlement?

### OBJECTING TO THE SETTLEMENT

14. What does objecting to the Settlement mean?
15. How do I tell the Court that I do not like the Settlement?
16. What's the difference between objecting and excluding?

### THE COURT'S FINAL APPROVAL HEARING

17. When and where will the Court decide whether to approve the Settlement?
18. Do I have to come to the hearing?
19. May I speak at the hearing?

### IF YOU DO NOTHING

20. What happens if I do nothing at all?

### GETTING MORE INFORMATION

21. Are there more details about the Settlement?

## **Basic Information**

### **1. Why did I get this notice package?**

The purpose of this notice is to let you know that the Parties in the case have reached a Settlement, subject to Court approval in the class action known as *Kwesell, et al. v. Yale University*, No. 3:19-cv-01098 (KAD), pending in the United States District Court for the District of Connecticut (the “Lawsuit”). You have received this notice because Yale’s records show that you were required to participate in the Health Expectations Program (“HEP”) or pay an opt-out fee between September 2018, when compliance with the HEP began to be tracked, and May 14, 2020, when Yale ceased collecting the opt-out fee.

The Court authorized that you be sent this notice because you have a right to know about the proposed Settlement of the Lawsuit and about your options before the Court decides whether to grant final approval of the Settlement. If the Court approves the Settlement and after any objections and appeals are resolved, the Settlement Administrator will make the payments provided by the Settlement. This notice provides you with instructions on the options available to you and how you can receive payment under this Settlement.

### **2. What is this Lawsuit about?**

In the Lawsuit, Plaintiffs allege that Yale violated the Americans with Disabilities Act (“ADA”) and the Genetic Information Nondiscrimination Act (“GINA”) by requiring employees to pay a weekly opt-out fee if they and/or their spouses did not undertake certain health actions (i.e., doctor’s visits, diagnostic tests and in some instances, health coaching), and by transferring spousal insurance claims data from Healthmine (a Yale business associate involved in operating the HEP) to TrestleTree, another vendor involved in providing health coaching to HEP participants. Yale denies these allegations and asserts that the HEP is now, and always has been, lawful.

### **3. Why is this a class action?**

In a class action, one or more people, called “Class Representatives” or “Plaintiffs” (in this case, Lisa Kwesell, Christine Turecek, and Jason Schwartz) sue on behalf of people who have similar claims. In a class action, all people with similar class claims are called “class members.” Class members do not need to do anything to be part of a class action. Once the Court decides that a case can proceed as a class action (as the Court here has done conditionally for purposes of this Settlement), all class members are included in the class by default, except for those who exclude themselves (the process for excluding yourself is described in section 12-14, below). In a class action, the court resolves the issues for all class members in one legal proceeding. “Class Members” for purposes of this Settlement are defined in section 5, below.

The Honorable Kari A. Dooley, United States District Judge, is presiding over this class action.

#### 4. Why is there a settlement?

The Court did not decide in favor of either party. Instead, both sides agreed to a settlement, which, if approved, brings the Lawsuit to an end. That way, Plaintiffs and Yale avoid the cost, delay, and uncertainty of moving forward in litigation to trial and possible appeals, and the Class Members can get compensation. The Class Representatives and their attorneys (“Class Counsel”) believe that the Settlement is fair, reasonable, adequate and in the best interests of the Class Members.

### Who is in the Settlement

#### 5. Who is included in the Settlement?

The Settlement provides benefits to the Class Members. Class Members are:

All current or former Yale University employees who were required to participate in the HEP or pay an opt-out fee<sup>1</sup> from the time when Yale began tracking compliance with the HEP in September 2018 through May 14, 2020, the date Yale ceased collecting the opt-out fee.

### The Settlement Benefits—What You Get

#### 6. What does the Settlement provide?

**Monetary relief.** Yale has agreed to pay a Total Settlement Amount of \$1,290,000, to provide monetary compensation to Class Members who do not opt-out (“Participating Class Members”) and to pay any court-approved Service Awards to the Class Representatives and other individuals named in the Amended Complaint who assisted with the litigation, as well as to pay any court-approved attorneys’ fees and costs incurred by Class Counsel. Court approved service awards, attorneys’ fees and costs shall be deducted from the Total Settlement Amount to yield a Net Amount, available for distribution to Participating Class Members.

Participating Class members—that is, anyone who does not opt-out—will receive money from the Settlement fund. They will be paid according to the following allocation:

- Each Participating Class Member who attended health coaching will receive \$225.00.

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<sup>1</sup> This includes employees in Local 34 UNITE HERE (the clerical and technical union), Local 35 UNITE HERE (the service and maintenance union), the Yale University Security Officers Association (YUSOA), and clerical and technical employees excluded from the bargaining unit. The Class membership will be determined based on data provided by HealthMine, a vendor who assisted in operating the HEP. To avoid double payments, in the event that an individual was both a Yale employee and a spouse of another Yale employee, the individual will only be treated in one capacity, and that capacity will be determined by Healthmine’s data.

- Each Participating Class Member whose spouse attended health coaching will receive \$50.00.
- Each Participating Class Member who did not attend health coaching but was at any time deemed compliant with the HEP will receive \$50.00. This includes any individual who paid HEP fees at some point but who was also deemed compliant for any time period before Yale stopped collecting fees under the HEP.
- *Additive nature of awards.* Participating Class Members who fall into multiple categories described above will receive the cumulative value of all payments to which they are entitled, except that individuals who receive \$225 for their participation in health coaching will not also receive \$50 for being deemed compliant with the HEP.
- Each Participating Class Member who paid any HEP opt-out fees will receive a percentage of the amount deducted from their pay for these fees. The percentage of fees will be determined by taking the Net Amount and subtracting the value of the payments set out above for compliance, coaching and spousal coaching. The parties currently estimate that the percentage will be approximately 50% of the opt-out fees paid by each Class Member, but the final amount will depend on a variety of factors including the number of Class Members who opt-out, and the amount of service awards and attorneys' fees and costs approved by the Court.

Yale has also agreed to take the following actions for the duration of the settlement, which is four (4) years or until there is a change in the law regarding the use of financial incentives in employee wellness programs, whichever comes first:

- **HEP Fees:** Yale University will not collect any HEP fees.
- **Privacy Protections:**
  - Yale will direct Healthmine not to send data to TrestleTree for the purpose of health coaching referrals without express consent. Yale will direct TrestleTree to purge all data relating to completed prior health coaching engagements from its records. For those individuals who are actively engaged in health coaching currently, TrestleTree will notify individuals in advance and give them the option to have their records retained (or purged) and to continue coaching (or not) as they desire.
  - If a health coach entered a note in the patient's electronic medical record, that note (which is not part of TrestleTree's records) will not be purged.
  - TrestleTree also provides coaching outside of the context of the HEP. Records associated with coaching outside the HEP will not be affected by this Agreement.
  - Yale will otherwise retain the right to use business associates (including Healthmine, TrestleTree or others) in connection with the management of the Yale Group Health Plan, including for data analysis and to send



reminders regarding recommended health activities. Reminders will not indicate that any activity is mandatory or that failure or refusal to complete it will result in any monetary penalty.

**Tax treatment of awards.** You will be responsible for correctly reporting any award you receive for tax purposes and for paying any taxes on the amounts received, if applicable. Yale, Defendant's Counsel, and Class Counsel are not providing tax advice to you, and they make no representations regarding the tax characterization of any Settlement payments or any tax obligations of, or tax consequences to, any Class Member.

## **How You Get a Payment**

### **7. How can I get a payment?**

You do not need to do anything to receive a payment. If you do not opt out of the Settlement within the allowed time period, and the Settlement is approved by the Court, you will automatically receive a payment. The payment will be sent via check. You will need to cash the check within 120 days or it will be void.

### **8. When would I get my payment?**

The terms and conditions of this Settlement are subject to Court approval. The Court will hold a hearing on [insert final approval hearing date], to decide whether to approve the Settlement. (That date is subject to change without further notice.) If the Court approves the Settlement, and there are no appeals, we estimate that payment will be made around [insert approximate date]. However, because it is always possible for there to be unexpected delays or appeals, the payment may be delayed by a year or more, or an appeals court may determine that the payments cannot be made. If the Court does not approve the Settlement, no payment will be distributed to any individual, the entire Settlement will be void and unenforceable, and the Parties shall be restored to the status quo ante, that is, their respective positions that existed in this Lawsuit prior to entering into this Settlement Agreement.

The Settlement Administrator will provide regular updates on the status of the Settlement at [website]. If your contact information changes, please inform the Settlement Administrator.

## **Release Agreement**

### **9. What am I giving up to get a payment?**

**Release.** Unless you exclude yourself from the Settlement, you are staying in the Settlement Class, and that means that you cannot sue, continue to sue, or be part of any other lawsuit against Yale or other released parties about the legal issues resolved by this Settlement. The full text of the release is provided in Section 12 of the Settlement. It also means that all the Court's orders will apply to you and legally bind you. If you do not exclude yourself, you are knowingly and voluntarily releasing and waiving any claims against Yale and other released parties that were raised in this Lawsuit or which could have been raised in this litigation relating

to the operation of HEP. This applies to you and anyone else who could or can raise claims on your behalf.

## **The Lawyers Representing You**

### **10. Do I have a lawyer in this case?**

The Court appointed attorneys to represent you and the other Class Members: Dara Smith, Elizabeth Aniskevich, and Daniel Kohrman of the charitable nonprofit AARP Foundation, and Joshua Goodbaum of the law firm Garrison, Levin-Epstein, Fitzgerald and Pirrotti, P.C.

Together, these lawyers are called Class Counsel or Plaintiffs' Counsel. You will not be personally charged for these lawyers' work in securing the Settlement benefits for you and the other Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense.

### **11. How will Class Counsel, Class Representatives, and Named Individuals be paid?**

Class Counsel will ask the Court for attorneys' fees of up to \$200,000 which amounts to 15.5 percent of the \$1,290,000 Settlement fund and reimbursement of out-of-pocket costs of up to \$10,000 consistent with the terms of the Settlement Agreement. In addition, Class Counsel will apply to the Court for a service award of up to \$10,000 for Lisa Kwesell and Christine Turecek, and \$5,000 for Jason Schwartz, and \$1,000 for each Named Individual who appears in the Amended Complaint (for a total of \$14,000 allotted to Named Individuals). These service awards are being requested in recognition of the time and effort incurred by these individuals in securing the benefits of this Settlement for you and the Class Members. The Court will decide whether to approve these requests.

## **Excluding Yourself from the Settlement**

### **12. What does excluding yourself from the Settlement mean?**

If you want to preserve your right to sue Yale on your own about the legal issues in this case, then you need to take steps to get out. This is called excluding yourself from—or opting out of—the Settlement.

### **13. How do I get out of the Settlement?**

To exclude yourself from (opt out of) the Settlement and not release any claims, you must send a letter saying that you want to be excluded from the Settlement, and that you understand that you will not receive money from it. You must include your (1) name, (2) address, (3) telephone number, and the following statement: "I decline to provide a release of claims and instead elect to exclude myself from the monetary relief provision in the Settlement in *Kwesell v. Yale University*. That means I will not be entitled to any of the monetary proceeds of the Settlement."

Your opt-out request must be received or postmarked by [insert date]. Opt-out requests should be sent by mail to the Settlement Administrator, whose contact information is listed in section 21.

If you ask to be excluded, you will not get any Settlement payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this Lawsuit, and the Settlement will not affect any right you might have, if any, to pursue legal action against Yale on your own.

## **Objecting to the Settlement**

### **14. What does objecting to the Settlement mean?**

You can tell the Court what you think about the Settlement.

### **15. How do I tell the Court that I do not like the Settlement?**

If you do not opt-out, you are a Participating Class Member, and you can object to the Settlement.

The Court cannot order a larger (or smaller, or otherwise different) settlement; it can only approve or deny the Settlement. If the Court denies approval, there will be no Settlement at this time, no Settlement payments will be sent out, and the Lawsuit will continue.

Any objection to the proposed Settlement must be sent to the Settlement Administrator or filed with the Court by [insert date]. The objection statement must be in writing and signed and must include the case name, *Kwesell, et al., v. Yale University*, Case No. 3:19-cv-01098 (KAD), your name, address, and telephone number to be valid. The objection statement must also set forth the legal and factual basis for the objection. If you are represented by counsel, the objection statement must also list the name, address and telephone number of that counsel. If you retain counsel, it will be your obligation to compensate such counsel. Class Members who fail to make objections in the manner specified herein shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

Your objection will be considered by the Court whether or not you appear at the final approval hearing to discuss it. However, if you who wish to appear at the Final Approval Hearing to present your objection, you must file with the Clerk of the Court and serve upon counsel a notice of intention to appear at the Final Approval Hearing (“Notice of Intention to Appear”) no later than [INSERT DATE]. The Notice of Intention to Appear must adhere to those requirements applicable to all objections but must also include copies of any papers, exhibits, or other evidence that you (or your counsel) intend to present to the Court in connection with the Final Approval Hearing. The Notice of Intention to Appear must also list any other class settlements to which you have objected. If you file a Notice of Intention to Appear, you must be willing to promptly make yourself available for deposition by the Parties. If you are represented by counsel, the Notice of Intention to Appear must identify the name, address and phone number of your counsel. Any Class Member who does not file a Notice of Intention to Appear in

complete accordance with the deadlines and other specifications set forth in this Notice and the Agreement, shall, subject to the Court's final determination in the exercise of its discretion, be deemed to have waived their opportunity to speak or otherwise present any views at any Final Approval Hearing.

**16. What's the difference between objecting and excluding?**

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement. Excluding yourself is telling the Court that you do not want to be part of the Class to preserve your right to assert these claims in another lawsuit. If you exclude yourself, you have no basis to object because you are not part of the Class, so the case no longer affects you.

**The Court's Final Approval Hearing**

The Court will hold a final approval hearing to decide whether to approve the Settlement. You need not attend, but you may do so.

**17. Where and when will the Court decide whether to approve the Settlement?**

The Court will hold a final approval hearing at [insert time and date], at the United States District Court for the District of Connecticut, 915 Lafayette Boulevard, Bridgeport, Connecticut 06604, Courtroom 4, before the Honorable Kari A. Dooley, United States District Judge.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Dooley will listen to people who wish to speak at the hearing, so long as they have filed a Notice of Intent to Appear that meets the requirements of Section 15 above. The Court will also decide how much to pay Class Counsel, the Class Representatives and the Named Individuals. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. The final approval hearing may be postponed without further notice to you. If you plan to attend the hearing, you should check [settlement website] or the Court's PACER site at <https://ecf.ctd.uscourts.gov> to confirm that the date has not been changed.

**18. Do I have to come to the hearing?**

No. Unless you opt out of the Settlement, Class Counsel will represent you and will answer any questions Judge Dooley may have. But you are welcome to come at your own expense. If you send a comment (including an objection), you do not have to come to Court to talk about it. As long as you submitted it on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

**19. May I speak at the hearing?**

You may ask the Court for permission to speak at the fairness hearing. To do so, you must submit a Notice of Intention to Appear in accordance with the procedures set out in section 15 above. This requirement may be excused upon a showing of good cause.

You cannot speak at the hearing if you excluded yourself, because the case no longer affects you.

## **If You Do Nothing**

### **20 What happens if I do nothing at all?**

If you do nothing, and the Settlement is approved, you will receive a payment from the settlement fund and you will be bound by all terms of the Settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Yale for the claims you are releasing in this Settlement.

## **Getting More Information**

### **21 Are there more details about the Settlement?**

This Notice is intended to be a summary of the terms of the Settlement. The Stipulation and Agreement of Settlement, the Amended Complaint, the Preliminary Approval Order, and other important documents are all available at [www.uscourts.gov](http://www.uscourts.gov).

You may also obtain this information by Class Counsel at AARP Foundation at (202) 464-6280, by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.ctd.uscourts.gov> or by visiting the office of the Clerk of the Court for the United States District Court for the District of Connecticut at 915 Lafayette Boulevard, Bridgeport, Connecticut 06604, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

By order of the United States District Court for the District of Connecticut.

Dated: [DATE]

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

LISA KWESELL; CHRISTINE	:	CIVIL ACTION NO.:
TURECEK; AND JASON SCHWARTZ,	:	
individually and on behalf all others	:	3:19-cv-01098 (KAD)
similarly situated,	:	
	:	
Plaintiffs,	:	CLASS ACTION
	:	
v.	:	
	:	
YALE UNIVERSITY,	:	
	:	
Defendant.	:	

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**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED  
CLASS ACTION SETTLEMENT**

Before the Court is Plaintiffs Lisa Kwesell, Christine Turecek, and Jason Schwartz’s (collectively “Plaintiffs”) Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement. Defendant, Yale University, does not oppose Plaintiffs’ Motion. For good cause shown, and as more fully explained below, the Motion is GRANTED and the Court ORDERS as follows:

**I. Preliminary Approval of Settlement**

The Court, for purposes of this Preliminary Approval Order, hereby adopts and incorporates by reference the definitions in the Stipulation and Agreement of Settlement (“Settlement” or “Agreement”), and all capitalized terms used herein, unless otherwise defined, shall have the same meanings as ascribed to them in the Settlement.

The Court has reviewed the terms of the Settlement, including the plan of allocation and the release of claims. The Court has also read and considered all supporting documents submitted with the Motion for Preliminary Approval. Based on a review of those papers, the

Court finds and concludes that the Settlement is the result of arms-length negotiations conducted between the Parties. The assistance of an experienced mediator in the settlement process supports the finding that the Settlement is non-collusive. The Settlement has no obvious defects and falls within the range of possible approval as fair, adequate, and reasonable, such that notice to the Class is appropriate. Accordingly, the Court concludes that the Settlement meets the criteria for preliminary approval and the Settlement is hereby preliminarily approved.

**II. Certification of Rule 23 Settlement Class**

For settlement purposes only, the Court preliminarily certifies the following class (the “Class”), pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3):

All current or former Yale University employees who were required to participate in the HEP or pay an opt-out fee<sup>1</sup> from the time when Yale began tracking compliance with the HEP in September 2018 through May 14, 2020, the date Yale ceased collecting the opt-out fee.

With respect to the Class, the Court preliminarily finds, for purposes of settlement only, that the prerequisites for class certification under Rule 23(a) and 23(b)(3) have been satisfied, in that: (1) the number of class members is so numerous that joinder of all class members is impracticable; (2) there are questions of law and fact common to the class members; (3) the named Plaintiffs’ claims are typical of the Class’s claims; (4) the class representatives have and will fairly and adequately represent and protect the interests of the Class and have retained experienced counsel to represent them and the Class; (5) questions of law and fact common to

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<sup>1</sup> This includes employees in Local 34 UNITE HERE (the clerical and technical union), Local 35 UNITE HERE (the service and maintenance union), the Yale University Security Officers Association (YUSOA), and clerical and technical employees excluded from the bargaining unit. The Class membership will be determined based on data provided by HealthMine, a vendor who assisted in operating the HEP. To avoid double payments, in the event that an individual was both a Yale employee and a spouse of another Yale employee, the individual will only be treated in one capacity, and that capacity will be determined by Healthmine’s data.



class members predominate over any individual questions; and (6) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

If final approval of the proposed Settlement is not obtained, or if Final Judgment as contemplated herein is not granted, this Order shall be vacated *ab initio* and the Parties shall be restored without prejudice to their respective litigation positions prior to the date of this Order of Preliminary Approval. Neither this Preliminary Approval Order, the Settlement, nor any pleading or other paper related in any way to the Settlement, nor any act or communication in the course of negotiating, implementing or seeking approval of the Agreement, shall be deemed an admission by Defendants that certification of a class is appropriate in any other litigation, or otherwise shall preclude Defendants from opposing or asserting any argument they may have with respect to certification of any class(es) or subclass(es) in any proceeding (including in this case should the settlement not become final), or shall be used as precedent in any way as to any subsequent conduct of Defendants, except as set forth in the Agreement.

**III. Appointment of Class Representatives and Class Counsel**

The Court finds and concludes that Lisa Kwesell, Christine Turecek, and Jason Schwartz (collectively, the “Class Representatives”) are adequate representatives of the Class. The Court therefore appoints Lisa Kwesell, Christine Turecek, and Jason Schwartz to serve as Class Representatives.

The Court finds and concludes that AARP Foundation and Garrison, Levin-Epstein, Fitzgerald & Pirrotti, P.C. have extensive experience in handling employment discrimination cases and class actions and will fairly and adequately represent the Class. The Court appoints AARP Foundation and Garrison, Levin-Epstein, Fitzgerald & Pirrotti as Class Counsel.

**IV. Approval of the Notice and Notice Plan**

**A. Best Notice Practicable**

The Court finds and concludes that the Notice provided by the Settlement satisfies due process and is the best notice practicable under the circumstances and allows class members full and fair opportunity to consider the Settlement. The Notice fairly, plainly, accurately, and reasonably informs the class members of appropriate information about: (1) the nature of this action, the definition of the Settlement Class, the identity of Class Counsel, and the essential terms of the Settlement, including the plan of allocation, and the address for a website, maintained by the Settlement Administrator<sup>2</sup>, that has or will have links to the Notice, the Settlement, the Amended Complaint, this order, and any other important documents in the case; (3) how class members' settlement amounts will be calculated; (4) this Court's procedures for final approval of the Settlement, and the class members' right to appear through counsel if they desire; (5) how to object or opt-out of the Settlement; (6) how to obtain additional information regarding this action and the Settlement, including instructions on how to access the case docket via PACER or in person at any of the Court's locations; and (7) the date of the Final Approval Hearing and that the date may change without further notice to the Settlement Class, but that class members may check the settlement website or the Court's PACER site to confirm that the date has not been changed. Accordingly, the Court approves the form of Notice.

The proposed plan for distributing the Notice likewise is a reasonable method calculated to reach all individuals who would be bound by the Settlement. As the Settlement involves current and former employees of Yale, Yale will provide to the Settlement Administrator data

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<sup>2</sup> Under the Settlement, Yale may act as the Settlement Administrator or, at its election, retain a third-party administrator to handle some or all of the administration functions. References to the Settlement Administrator refer to Yale or the administrator that it retains. In either event, Yale shall bear the costs of administration.

relating to the Class Members to enable Notice to be mailed. The Settlement Administrator shall distribute the Notice to all class members by first-class mail, postage pre-paid to their last known mailing addresses (which will be updated by the Settlement Administrator prior to mailing) within forty-five (45) days after entry of the Preliminary Approval Order.

Plaintiffs shall file with their motion for final approval, a declaration from the Settlement Administrator, verifying that the mailing of Notice occurred as provided by this Order.

Accordingly, the Court approves the proposed plan for distributing the Notice.

**B. CAFA Notice of Proposed Settlement**

Within ten (10) calendar days after the Court's entry of the Preliminary Approval Order, Yale University or the Settlement Administrator shall provide notice of the proposed Settlement to state and federal officials as required by the Class Action Fairness Act, 28 U.S.C. § 1715(b). The Court finds and concludes that the above-referenced actions will discharge Yale University's obligations under CAFA to provide notice to the appropriate federal and state officials.

**V. Procedures for Final Approval of the Settlement**

**A. Final Approval Hearing**

The Court hereby schedules a hearing to determine whether to grant final approval of the Settlement (the "Final Approval Hearing") for \_\_\_\_\_ [Date must be at least 143 days after the issuance of this Order], 2022, at \_\_\_ a.m./p.m. The date of the hearing may be changed without further notice to class members. However, if the hearing date is changed, the settlement website shall be promptly updated to reflect such a change.

**B. No Claim Form Required**

This is an automatic distribution settlement. Any Class Member that does not opt-out will receive a distribution from the Settlement fund in accordance with the plan of allocation without

the need to submit a claim form. If the Settlement is finally approved, funds will be distributed within twenty-eight days after the Final Approval Order becomes Effective.

### **C. Opting-Out of the Settlement**

#### **1. Form of Opt-Out Request**

Any Class Member may opt-out of participating in the monetary portion of the Settlement by submitting a signed letter to the Settlement Administrator, stating that he or she chooses to opt-out of the monetary portion of the Settlement. The Opt-Out Statement must contain the name, address, and telephone number of the individual to be valid. It must also contain the following words to be valid: “I decline to provide a release of claims and instead elect to exclude myself from the monetary relief provisions in the Settlement in *Kwesell v. Yale University*. That means I will not be entitled to any of the monetary proceeds of the Settlement.” To be effective, the Opt-Out Statement must be sent via mail and postmarked by a date certain specified in the Notice. The postmark date of the mailing envelop shall be the exclusive means used to determine whether an opt-out has been timely submitted.

#### **2. Deadline for Opting-Out**

An Opt-Out Statement will be deemed timely submitted to the Settlement Administrator if it is mailed by first-class mail and post-marked by not later than sixty-three (63) days after the Settlement Administrator first mails the Notice to class members. Only those class members who submit their Opt-Out statements within the time provided and in the manner set forth in this Order will be excluded from the Settlement. Pursuant to Federal Rule of Civil Procedure 23(b)(3) and (c)(2), the Settlement will have no binding effect on any class member who properly opts-out of the Settlement in the manner required by this Order.

All Class Members who do not opt out of the Class shall be bound by any Approval Order and Final Judgment entered pursuant to the Settlement, and shall be barred and enjoined, now and in the future, from asserting any and all of the Released Claims, as defined in the Settlement, and any such Class Member shall be conclusively deemed to have released any and all such Released Claims.

**D. Filing Comments or Objections to the Settlement**

Any Class Member who wishes to comment or object to the fairness, reasonableness, or adequacy of the Settlement must do so in writing as provided in the Notice. The comment or objection must (a) clearly identify the case name and number, *Kwesell v. Yale University*, 3:19-cv-1098, (b) contain the name, address, and telephone number of the class member; (c) set forth the legal and factual basis for the objection, and (d) be postmarked within sixty-three days (63) after the date of the Notice mailing and/or filed with the United States District Court for the District of Connecticut within the same time period. Any Class Member who fails to object in the manner prescribed by this Order will be deemed to have waived, and will be foreclosed from raising, any such comment or objection, except for good cause shown.

An objector who wishes to appear at the Final Approval Hearing must file with the Clerk of the Court and serve upon counsel a notice of intention to appear at the Final Approval Hearing (“Notice of Intention to Appear”) no later than the deadline for the objection. In addition to the criteria applicable to all objections, the Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objector (or his/her counsel) shall present to the Court in connection with the Final Approval Hearing. The Notice of Intention to Appear must also list any other class settlements to which the individual has objected. Any Class Member who files a Notice of Intention to Appear must be willing to promptly make themselves available for

deposition by the Parties. If the objector is represented by counsel, the Notice of Intention to Appear must identify the name, address and phone number of Counsel. Any Class Member who does not provide a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in this Order and the Agreement, or who has not filed an objection in complete accordance with the deadlines and other specifications set forth therein, shall, subject to the Court's final determination in the exercise of its discretion, be deemed to have waived their opportunity to speak or otherwise present any views at any Final Approval Hearing. Any lawyer representing a Class Member for the purpose of making an objection must also file a Notice of Appearance with the Court by the deadline for objection and must also serve copies by mail on counsel for the Parties.

**E. Deadline for Submitting Motion for Final Approval**

At least ninety (91) days after the initial Notice mailing date, and at least seven (7) days before the Final Approval Hearing, Plaintiffs will file a motion for final approval of the Settlement. Plaintiffs may respond or reply to any Objections at that time as well.

**F. Deadline for Motion for Class Counsel Attorneys' Fees and Costs**

At least ninety (91) days after the initial Notice mailing date, and at least seven (7) days before the Final Approval Hearing, Class Counsel will file a motion for approval of their attorneys' fees and costs.

**VI. APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

The Court appoints Yale University as Settlement Administrator. Yale University may perform the settlement administration duties outlined in the Settlement and in this Order or, at its election, may retain a third-party Settlement Administrator to assist it in performing some or all of the tasks.

## **VII. ADDITIONAL PROVISIONS**

The Settlement fits within the parameters necessary for potential final approval, and is therefore hereby preliminarily approved, but is not to be deemed an admission of liability or fault by Defendant or by any other person, or a finding of the validity of any claims asserted in the Action or of any wrongdoing or of any violation of law by Defendant. The Settlement is not a concession and shall not be used as an admission of any fault or omission by Defendant or any other person or entity. Neither the terms or provisions of the Settlement, nor any related document, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action nor proceeding, to establish any liability or admission by Defendant except in any proceedings brought to enforce the Settlement, except that the Released Persons may file this Order in any action that may be brought against any of them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion, or similar defense or counterclaim.

Upon motion of any party, the Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Class. Pending final determination as to whether the Settlement should be finally approved, no Class Member shall commence, prosecute, pursue, or litigate any Released Claims against any Released Person, whether directly, representatively, or in any capacity, and regardless of whether any such Class Member has appeared in the Action.

Pending final determination of whether the Proposed Settlement should be approved, all proceedings in the Action shall be stayed until further order of the Court, except such

proceedings as may be necessary either to implement the Proposed Settlement or to comply with or effectuate the terms of the Stipulation of Settlement.

**IT IS SO ORDERED.**

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**The Honorable Kari A. Dooley**  
**United States District Judge**



**EXHIBIT C**

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

LISA KWESELL; CHRISTINE	:	CIVIL ACTION NO.:
TURECEK; AND JASON SCHWARTZ,	:	
individually and on behalf all others	:	3:19-cv-01098 (KAD)
similarly situated,	:	
	:	
Plaintiffs,	:	CLASS ACTION
	:	
v.	:	
	:	
YALE UNIVERSITY,	:	
	:	
Defendant.	:	

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT**

On \_\_\_\_\_, 2022, a hearing was held on the unopposed motion of Plaintiffs Lisa Kwesell, Christine Turecek, and Jason Schwartz for final approval of the settlement set forth in the Stipulation and Agreement of Settlement (“Settlement” or “Agreement”).

On \_\_\_\_\_, 2022, this Court granted preliminary approval of the proposed Settlement and issued a Preliminary Approval Order (ECF#\_). In that order, the Court granted conditional certification of the class for settlement purposes and set a date for the Final Approval Hearing. The Court also approved the procedure for disseminating the Notice to Class Members. The Court finds that the Notice plan was executed and that due and adequate notice was provided to Class Members, as required in the Court’s order.

The Court has reviewed the papers filed in support of the Motion for Final Approval, including the Settlement and exhibits thereto and the memorandum of law and arguments in support thereof. Based on the papers filed with the Court and the presentations made to the Court by the Parties and any other interested persons at the Final Approval Hearing, the Court

determines that the Settlement is fair, adequate, and reasonable, and in the best interests of the Class Members.

Therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. **Definitions:** This Judgment incorporates by reference the definitions in the Settlement and all capitalized terms used, but not defined herein, shall have the same meaning as in the Settlement.
2. **Jurisdiction:** This Court has jurisdiction over the subject matter of this action and over all parties to the action, including Class Members and venue in this Court is proper.
3. **Settlement Class:** This Court hereby finally certifies this Action as a class action.

The Class is defined as follows:

All current or former Yale University employees who were required to participate in the HEP or pay an opt-out fee<sup>1</sup> from the time when Yale began tracking compliance with the HEP in September 2018 through May 14, 2020, the date Yale ceased collecting the opt-out fee.

The Court finds, for settlement purposes only, that class certification under Fed. R. Civ. P. 23(a) and 23(b)(3) is appropriate in that, in the settlement context, (a) the Class Members are so numerous that joinder is impracticable; (b) there are questions of law and fact common to the Class Members which predominate over any individual questions; (c) the claims of the Plaintiffs are typical of the claims of Class Members; (d) the Plaintiffs will fairly and adequately represent and protect the interests of the Class Members because their interests are co-extensive with the

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<sup>1</sup> This includes employees in Local 34 UNITE HERE (the clerical and technical union), Local 35 UNITE HERE (the service and maintenance union), the Yale University Security Officers Association (YUSOA), and clerical and technical employees excluded from the bargaining unit. The Class membership was determined based on data provided by HealthMine, a vendor who assisted in operating the HEP. To avoid double payments, in the event that an individual was both a Yale employee and a spouse of another Yale employee, the individual will only be treated in one capacity, and that capacity will be determined by Healthmine's data.

Class Members, and they have retained experience counsel to represent them; (e) common issues predominate over individualized issues and (f) a class action is superior to other available methods for fair and efficient adjudication of the controversy.

4. **Designation of Class Representatives and Class Counsel.** The Court appoints Lisa Kwesell, Christine Turecek, and Jason Schwartz as Class Representatives, and counsel of record representing Plaintiffs in this action as Class Counsel.

5. **Approval of Class Notice.** The form and means of disseminating Notice as provided for in the Preliminary Approval Order constituted the best notice practicable under the circumstances and the Notice fully satisfied the requirements of Federal Rule of Civil Procedure 23 and complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution.

6. **Settlement Approval:** Pursuant to Federal Rule of Civil Procedure 23, this Court hereby approves the Settlement set forth in the Agreement and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Parties. The Court further finds that the Settlement set forth in the Stipulation is the result of good faith arm's-length negotiations between experienced counsel representing the interests of the Parties.

7. **Objections/Opt-Outs:** [Insert description of any objections and number of opt-outs, if any]. Any individual who has opted-out of the Settlement is not bound by the Settlement or this Order.

8. **Release:** The release set for the in the Stipulation, Section 12, is expressly made effective by operation of this Judgment. The Court hereby approves the release as contained and incorporated in Section 12 of the Agreement. The Participating Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released,

relinquished, and discharged all Released Claims (including unknown claims) against the released parties.

9. **Attorneys' Fees and Expenses:** Plaintiffs and Class Counsel have moved for an award of attorneys' fees in the amount of \$200,000, and costs and expenses not to exceed \$10,000. The Class was given notice of this request, and [insert information regarding objections, if any]. The Court has considered this application separately from this Judgment. The Court finds that an award of \$ \_\_\_\_\_ in attorneys' fees and \$ \_\_\_\_\_ in litigation costs and expenses is fair and reasonable, and the Court approves Class Counsel attorneys' fees, costs, and expenses in this amount.

10. **Service Awards:** Plaintiffs have also moved for service awards in the amount of \$10,000 for Lisa Kwesell, \$10,000 for Christine Turecek, and \$5,000 for Jason Schwartz, as well as \$1,000 for each of the fourteen Named Individuals who appears in the Amended Complaint (for a total of \$14,000 to the Named Individuals). The Court finds that service awards in the following amounts are fair and reasonable: Lisa Kwesell: \$\_\_\_\_, Christine Turecek \$\_\_\_\_, Jason Schwartz \$\_\_\_\_, and Named Individuals \$ \_\_\_\_ each. The Court therefore approves Service Awards in the total of amount \$\_\_\_\_\_.

11. **Settlement Distributions:** The Total Settlement Amount of \$1,290,000 shall be used to make monetary distributions to Participating Class Members and to pay the Service Awards and attorneys' fees, costs and expenses approved by the Court. The Net Amount available for distribution to Participating Class Members shall be determined by subtracting the Court-approved amounts for Service Awards, attorneys' fees and costs and expenses from the Total Settlement Amount. The Net Amount shall be distributed to Participating Class Members as provided by the plan of allocation set out in Section 5 of the Settlement. Distributions shall be

made within twenty-eight calendar days of the Effective date of the Settlement. In the event that Settlement checks are not cashed by Class Members within 120 days, such checks shall be void. Any amounts which are not successfully cashed shall be paid to the Connecticut Bar Foundation to fund the delivery of legal services to the poor and for law school scholarships. No amount shall revert to Yale. Yale shall separately pay for the expenses of administration of the Settlement.

12. **Programmatic Relief.** Yale shall implement the programmatic relief specified in Section 4 of the Settlement for the duration specified therein.

13. **Dismissal with Prejudice:** Final Judgment is hereby entered with respect to the Released Claims and the Released Claims in this action are hereby dismissed in their entirety with prejudice with each side to bear its own costs and attorneys' fees except as provided by the Settlement and the Court's orders. Nothing herein is intended to waive or prejudice the rights of the Class Members who have timely excluded themselves.

14. **No Admission:** Neither this Final Judgment, the Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendants of the truth of any of the allegations made in this action, or of any liability, fault, or wrongdoing of any kind whatsoever on the part of Defendant. To the extent permitted by law, neither this Final Judgment, the Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding, to establish any liability or admission by Defendant, except in any proceedings brought to enforce the Agreement and except that Yale or any released person may file this Order in any action that may be brought against them in order to support a defense or

counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. Neither this Final Judgment, the Agreement, nor any pleading or other paper related in any way to the Agreement, nor any act or communication in the course of negotiating, implementing or seeking approval of the Agreement, shall be deemed an admission by Defendants that certification of a class or subclass is appropriate in any other litigation, or otherwise shall preclude Defendants from opposing or asserting any argument they may have with respect to certification of any class(es) or subclass(es) in any proceeding (including in this case should there be an appeal and the Settlement not become final), or shall be used as precedent in any way as to any subsequent conduct of Defendants, except as set forth in the Agreement.

15. **Continuing Jurisdiction:** Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over the administration, consummation, enforcement, and interpretation of the Settlement, the Final Judgment, and for any other necessary purpose.

16. **Class Action Fairness Act Notice:** Yale has provided notification through the Settlement Administrator to all appropriate federal and state officials regarding the Settlement as required by 28 U.S.C. 1715.

17. **Implementation of the Settlement Agreement:** The Parties are hereby ordered to comply with the terms of the Settlement. Without further order of this Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Agreement.

18. **Entry of Final Judgment:** Entry by the Clerk of the Court of this Order and Final Judgment is hereby directed.

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
The Honorable Kari A. Dooley  
United States District Court Judge



**EXHIBIT D**

## **Settlement Achieved in Class Action Lawsuit Challenging Yale's Workplace Wellness Program**

*New Haven, Conn.*— Yale University and certain of its employees have agreed to settle a class action lawsuit, *Kwesell v. Yale University*, subject to Court approval. The lawsuit alleges that Yale's Health Expectations Program violated federal statutes because it required employees and their spouses to either participate in the wellness program, which requires routine checkups and diagnostic testing, or pay a weekly opt-out fee. Under federal law, voluntary employer wellness programs are permissible. The Plaintiffs alleged that the \$25 opt-out fee rendered the Program involuntary under the Americans with Disabilities Act and the Genetic Information Non-Discrimination Act. Plaintiffs in the case were represented by attorneys from AARP Foundation and Garrison, Levin-Epstein, Fitzgerald & Pirrotti, P.C.

Yale implemented the Program as part of a collective bargaining agreement with two of its unions, under which most union employees paid no premium for their health plan coverage. At the time the program was developed, federal regulations authorized the charging of opt-out fees. Those regulations were later invalidated and to date have not been replaced, resulting in legal uncertainty regarding the permissible use and amount of opt-out fees.

“We designed the Health Expectations Program with our union partners and the advice of healthcare and legal experts,” remarked Stephanie Spangler, Vice Provost for Health Affairs and Academic Integrity on behalf of Yale. “Nevertheless, we feel it is best to resolve what would have been expensive litigation and move forward. Our relationship with our employees is an important priority.”

Under the proposed settlement agreement, Yale will continue to offer the Health Expectations Program, but will not charge opt-out fees for a four-year period and will change its practices regarding the transfer of health data in connection with the Program. Yale will also pay \$1.29 million, to be distributed among employees who were covered by the Program and to cover plaintiffs' attorneys' fees and costs to the extent approved by the Court.

“We are very pleased with the settlement in this important case, both because of the significant amount of compensation for Yale's employees and because of the example Yale is setting for other employers by eliminating their opt-out fees,” said William Alvarado Rivera, senior vice president for litigation at AARP Foundation. “We believe participating in a wellness program should be entirely voluntary, with no element of coercion, financial or otherwise.”

Plaintiffs in the case were represented by AARP Foundation lawyers, Dara S. Smith and Elizabeth Aniskevich, as well as Joshua Goodbaum of Garrison, Levin-Epstein, Fitzgerald & Pirrotti, P.C. Yale University was represented by Jonathan Freiman and Kim Rinehart of Wiggin and Dana LLP.