

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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HELEN HANKS, on behalf of herself and all	)	
others similarly situated,	)	Civil Action No. 16-cv-6399
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
VOYA RETIREMENT INSURANCE	)	
AND ANNUITY COMPANY,	)	
formerly known as Aetna Life	)	
Insurance and Annuity Company,	)	
Defendant.	)	
	)	
	)	

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**[PROPOSED] ORDER PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT**

WHEREAS, Class Counsel has applied for an order preliminarily approving the terms and conditions of the Settlement as set forth in the Settlement Agreement, which is attached as Exhibit 2 to the January 6, 2022 Declaration of Seth Ard (“Ard Declaration”);

WHEREAS, the Settlement requires, among other things, that all Released Claims against Released Parties be settled and compromised; and

WHEREAS, this Court has considered the Settlement Agreement, Class Plaintiff Helen Hanks’ Motion for Preliminary Approval of Class Action Settlement, and all papers filed in support of the motion and the entire docket in this matter.

NOW THEREFOR, pursuant to Federal Rule of Civil Procedure 23, it is hereby ORDERED that:

1. The capitalized terms used herein shall have the meanings set forth in the Settlement Agreement.
2. Class Counsel has provided the Court with information sufficient to enable it to determine whether to give notice of the proposed settlement to the Class pursuant to Rule 23(e)(1)(A).
3. The Court will direct notice, as described below, to Class Members because the Court certified a class on March 13, 2019 (Dkt. 110); the definition of Class in the Settlement Agreement is the same as the certified class, with the exception of policyowners who timely and validly opted-out after class certification; and Class Counsel has shown that the Court will likely be able to approve the Settlement under Rule 23(e)(2). *See* Rule 23(e)(1)(B).
4. Specifically, the Court preliminarily approves the Settlement as set forth in the Settlement Agreement, including the releases contained therein, and the proposed plan of allocation and distribution described in Exhibit 4 to the Ard Declaration, because the Court will

likely be able to find that the Settlement is fair, reasonable and adequate after considering the Rule 23(e)(2)(A)–(D) factors and the factors identified in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000).

5. The Court also approves an additional opt-out period pursuant to Rule 23(e)(4), as described below.

6. Settlement Class Member retain the right to challenge the fairness, reasonableness, or adequacy of the Settlement Agreement and to show cause, if any exists, why a final judgment dismissing the Action against defendant Voya Retirement Insurance and Annuity Company (“Voya”), and ordering the release of the Released Claims against Released Parties, should not be entered after due and adequate notice to the Class as set forth in the Settlement Agreement and after a hearing on final approval.

7. The Court appoints JND Legal Administration LLC (“JND”), a competent firm, as the Settlement Administrator. Funds required to pay the Settlement Administrator may be paid from the Settlement Fund as they become due as set forth in the Settlement Agreement.

8. The Court approves the Notice Plan, as set forth in paragraphs 24–29 of the Ard Declaration and paragraphs 11–17 and Exhibits B–C of the January 6, 2022 Declaration of Jennifer Keough (“Keough Declaration”). The form and content of the notices, as well as the manner of dissemination described below, meet the requirements of Rule 23 and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.

9. The Court approves the form and contents of the Short-Form Notice and Long-Form Notices (collectively, the “Notices”) attached as Exhibits B and C, respectively, to the

Keough Declaration. The proposed form and content of the Notices meet the requirements of Federal Rule of Civil Procedure 23(c)(2)(B). The Notices shall be amended prior to mailing to update the placeholders (identified by brackets) currently in the Notices.

10. By no later than seven (7) days after the entry of this Order, Voya and Lincoln must complete production to Class Counsel and JND of Class Members' last known addresses.

11. Within thirty (30) days after the entry of this Order (the "Notice Date"), JND shall cause the Short-Form Notice attached as Exhibit B to the aforementioned Keough Declaration to be mailed, by first-class mail, postage prepaid, to all Class Members. Prior to mailing, JND will update the addresses using the National Change of Address database. JND will re-mail any Short-Form Notices returned by the United State Postal Service with a forwarding address.

12. JND shall simultaneously cause of copy of the Long-Form Notice attached as Exhibit C to the aforementioned Keough Declaration to be posted on the website designed for this lawsuit—<https://www.voyacoiligation.com/>—from which Class members may download copies of the Long-Form Notice.

13. JND will establish and maintain an automated toll-free number that Class Members may call to obtain information about the litigation.

14. Class Counsel shall file with the Court proof of mailing of the Short-Form Notice and proof of website posting for the Long-Form Notice within fifteen (15) days of the Notice Date.

15. Class Members who wish to be excluded from the Settlement Class must send a letter to JND requesting exclusion from the *Hanks v. Voya Retirement Insurance and Annuity Company* class action, with his, her, or its name, address, telephone number, email address and signature, and must identify by policy number the Voya insurance policy or policies to be

excluded. A Class Member with multiple Voya policies included in the Class may request to exclude some policies while participating in the Settlement Class with respect to other policies. The exclusion request must be postmarked no later than forty-five (45) days after the Notice Date (the “Exclusion Deadline”).

16. Settlement Class Members will be legally bound by all Court orders and judgments made in this class action and will not be able to maintain a separate lawsuit against Voya or Lincoln for the same legal claims that are the subject of this lawsuit.

17. Proceeds will be mailed within 30 days after the Final Settlement Date.

18. Within one year plus 30 days after the date the Settlement Administrator mails the first Settlement Fund Payments, any funds remaining in the Settlement Fund shall be redistributed on a pro rata basis to Settlement Class Members who previously cashed the checks they received, to the extent feasible and practical in light of the costs of administering such subsequent payments, unless the amounts involved are too small to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair. All costs associated with the disposition of residual funds—whether through additional distributions to Settlement Class Members and/or through an alternative plan approved by the Court—shall be borne solely by the Settlement Fund.

19. Settlement Class Members may object to this Settlement by filing a written objection with the Court and serving any such written objection on counsel for the respective Parties (as identified in the Class Notice) no later than 45 calendar days after the Notice Date. The objection must contain: (1) the full name, address, telephone number, email address, if any, of the Settlement Class Member; (2) Policy number; (3) a written statement of all grounds for the objection accompanied by any legal support for the objection (if any); (4) copies of any papers,

briefs, or other documents upon which the objection is based; (5) a list of all persons who will be called to testify in support of the objection (if any); (6) a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing; and (7) the signature of the Settlement Class Member or his/her counsel, and a list of any objections by the Settlement Class' Member and/or counsel in any class action settlements submitted to any state or federal court in the United States in the previous five years. If an objecting Settlement Class Member intends to appear at the Fairness Hearing through counsel, the written objection must also state the identity of all attorneys representing the objecting Settlement Class Member who will appear at the Settlement Hearing. Settlement Class Members who do not timely make their objections as provided in this Paragraph will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the Settlement.

20. The Court hereby schedules a Final Fairness Hearing to occur on \_\_\_\_\_, 2022 at \_\_\_\_\_ a.m./p.m. before the Honorable P. Kevin Castel in the United States District Court for the Southern District of New York, at the following location \_\_\_\_\_

\_\_\_\_\_ ,  
to determine whether (i) the proposed Settlement as set forth in the Settlement Agreement, should be finally approved as fair, reasonable and adequate pursuant to Federal Rule of Civil Procedure 23; (ii) an order approving the Settlement Agreement and a Final Judgment should be entered; (iii) an order approving a proposed plan of allocation should be entered; and (iv) the application of Class Counsel for an award of attorneys' fees, expense reimbursements, and incentive awards ("Fee and Expense Request") in this matter should be approved. All papers in support of any Fee and Expense Request shall be filed no later than sixty (60) days after the entry of this Order. All papers in support of the proposed distribution plan and in support of final

approval of the Settlement shall be filed no later than twenty (20) days before the Final Fairness Hearing. No later than seven (7) days before the Final Fairness Hearing, all relevant reply papers shall be filed and served by the parties to the action

21. In the event that the Settlement Agreement is terminated in accordance with its provisions, the Settlement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the status quo ante rights of Plaintiff Helen Hanks, the Class Members, or Voya.

22. No later than ten (10) days after the Motion for Preliminary Approval of the Settlement has been filed with the Court, Voya will serve the Class Action Fairness Act (“CAFA”) Notice on the Attorney General of the United States and the state attorneys general as required by 28 U.S.C. § 1715(b). Thereafter, Voya will serve any supplemental CAFA Notice as appropriate.

23. This Order may be modified by the Court upon motion by either or both parties, for good cause shown.

DATED:

SO ORDERED:

\_\_\_\_\_  
P. Kevin Castel  
UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing instrument has been served on the following counsel, this January 6, 2022.

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*Attorneys for Voya Retirement Insurance and Annuity Company, formerly known as Aetna Life Insurance and Annuity Company*

/s/ Nicholas N. Spear  
Nicholas N. Spear