

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

----- X

In re:	:	Chapter 11
AIG FINANCIAL PRODUCTS CORP.,	:	Case No. 22-11309 (MFW)
Debtor. ¹	:	

AIG FINANCIAL PRODUCTS CORP.,	:	
Plaintiff,	:	
v.	:	Adv. Pro. No. 23-50110 (MFW)
LEE ARTHURS; DAVID ACKERT;	:	
MITCHELL BELL; ERIK BENGTSON;	:	
PAUL BRADSHAW; THOMAS BUTTKE;	:	
JOHN CAPPETTA; DAVID CHANG;	:	
ROBERT CHANG; JASON DESANTIS;	:	
RICHARD FABBRO; KENNETH FARRAR;	:	
JONATHAN FRAADE; CARL GIESLER	:	
JR.; JAMES HAAS; CHARLES HSIEH;	:	
THOMAS KALB; THOMAS KUSHNER;	:	
ROBERT LEARY; JONATHAN	:	
LIEBERGALL; NATHANIEL LITWAK;	:	
BRENDAN LYNCH; ALFRED MEDIOLI;	:	
MATTHEW MIHALY; JOANN PALAZZO;	:	
EUGENE PARK; ANDREW PARTNER;	:	
CARL PETERSON; STEVEN PIKE;	:	
THOMAS PLAGEMANN; ROBERT	:	
POWELL; DANIEL RAAB; ANN REED;	:	
PAUL SCHREINER; DMITRY	:	
SATANOVSKY; MARY HEATHER	:	
SINGER; KEITH STEIN; FRANK	:	
STROHM; TIMOTHY SULLIVAN JR.;	:	
CHRISTIAN TOFT; JOE TOM; RYAN	:	
VETTER; STEVEN WAGAR; THOMAS	:	
WARD; MARTIN WAYNE; JAMES WOLF	:	
Defendants.	:	

----- X

¹ The Debtor in this case, along with the last four digits of the Debtor's federal tax identification number, is: AIG Financial Products Corp. (9410). The Debtor's address is 50 Danbury Road, Wilton, Connecticut 06897.

**ANSWER AND AFFIRMATIVE AND OTHER DEFENSES OF
INTERVENOR AND THIRD-PARTY DEFENDANT AIG TO
FORMER EXECUTIVES' COUNTERCLAIMS**

American International Group, Inc. (“AIG”), Intervenor and Third-Party Defendant, submits the following Answer and Affirmative and Other Defenses (“Answer”) to the Counterclaims and Third-Party Claims filed by Lee Arthurs, David Ackert, Mitchell Bell, Erik Bengtson, Paul Bradshaw, Thomas Buttke, John Cappetta, David Chang, Robert Chang, Jason Desantis, Richard Fabbro, Kenneth Farrar, Jonathan Fraade, Carl Giesler Jr., James Haas, Charles Hsieh, Thomas Kalb, Thomas Kushner, Robert Leary, Jonathan Liebergall, Nathaniel Litwak, Brendan Lynch, Alfred Mediolli, Matthew Mihaly, Joann Palazzo, Eugene Park, Andrew Partner, Carl Peterson, Steven Pike, Thomas Plagemann, Robert Powell, Daniel Raab, Ann Reed, Paul Schreiner, Dmitry Satanovsky, Mary Heather Singer, Keith Stein, Frank Strohm, Emily Sullivan, Christian Toft, Joe Tom, Ryan Vetter, Steven Wagar, Thomas Ward, Martin Wayne, and James Wolf (collectively, the “Former Executives”).

This Answer is based on AIG’s investigation to date and AIG reserves the right to amend this Answer as its investigation continues over the course of this proceeding. This Answer restates the allegations in the Counterclaims and Third-Party Claims solely for the convenience of the Court and the parties. Unless expressly admitted, AIG denies each and every allegation. Additionally, to the extent that the headings or any other non-numbered statements contain any allegations, AIG denies each and every such allegation.

**COUNTERCLAIM AGAINST AIG FP AND CLAIMS AGAINST THIRD-PARTY
INTERVENOR AIG INC.**

Introduction

1. In December 2019, the Employee Plaintiffs—46 former employees of AIG FP, a wholly-owned subsidiary of AIG Inc.—commenced an action in the Superior Court of

Connecticut, to recover millions of dollars in damages caused by AIG FP's breaches of contract and violations of Connecticut labor law in failing to pay them certain earned and vested deferred compensation.

ANSWER 1: AIG admits that the Former Executives commenced an action in the Superior Court of Connecticut in December 2019 alleging damages caused by AIG FP; refers the Court to the complaint in that action for a complete and accurate description of the allegations contained therein; and otherwise denies the allegations contained in Paragraph 1.

2. After three years of hard-fought litigation in Connecticut, which included the Connecticut court's denial of a motion to strike the Employee Plaintiffs' claims, AIG FP waited until December 14, 2022, when certain sensitive, and presumably damaging, documents were due to be produced by court order, and just months before trial, to file its Chapter 11 Case. In support of its forum shopping, AIG FP claimed to be insolvent because it purportedly owed approximately \$37 billion to its parent AIG Inc., despite having represented to other tribunals, rating agencies, and others that it was in fact solvent in the fifteen years leading up to the Petition Date.

ANSWER 2: AIG admits the Connecticut court denied a motion to strike the Former Executive's complaint and that the parties thereafter engaged in discovery; admits that AIG FP filed for Chapter 11 on December 14, 2022; admits that AIG FP is insolvent and owes approximately \$37 billion to AIG; and otherwise denies the allegations contained in Paragraph 2.

3. There is a good reason that AIG FP had so consistently claimed to be solvent –the so-called debt claimed to be owed was in fact equity, having all the indicia of an investment by the parent, AIG Inc., in its wholly owned subsidiary, AIG FP. The purported “revolving line of credit” extended by AIG Inc. is bereft, however, of the hallmarks of valid debt: it has no set interest rate, no term of payment, and was never expected to be repaid. The supposed debt serves as merely a convenient pretext to avoid paying Employee Plaintiffs the money they earned, and which AIG FP borrowed from them during the financial downturn in 2008.

ANSWER 3: AIG refers the Court to the revolving credit agreement between AIG Funding Inc. and AIG FP (the “AIG FP Revolving Credit Agreement”) referenced in Paragraph 3 for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 3.

4. Indeed, email exchanges uncovered in discovery by the Employee Plaintiffs in the Connecticut Litigation identified that the purported loan was considered by AIG Inc. to be an equity infusion in AIG FP from the very beginning. For example, in a September 2010 email, Brian

Reilly (CFO of AIG Financial Services Division) and David Herzog (CFO of AIG Inc.) confirmed that the amounts extended by AIG Inc. to AIG FP was a “capital contribution”:

Reilly: Will call you to discuss item below. Appears that [AIG]FP deferred comp liability is balance sheet driven and not income statement driven.

Herzog: **I don’t care how it’s driven, we’re not paying the deferred comp. We’ll reverse / rescind the capital contribution before we pay deferred comp. Nothing should be done until this is resolved. NO entries.**

(emphasis added). Herzog’s subtext was clear: AIG Inc. was determined to avoid paying Employee Plaintiffs.

ANSWER 4: AIG refers to the document referenced in Paragraph 4 for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 4.

5. Based on false assurances by AIG FP that it would repay the deferred compensation that had been borrowed to address the liquidity crisis, the Employee Plaintiffs continued to work for AIG FP through the financial crisis and assisted it in navigating and maximizing the wind-down of the business.

ANSWER 5: AIG denies knowledge or information sufficient to form a belief as to the truth or falsity of the purported reasons why each of the Former Executives continued to work for AIG FP; and otherwise denies the allegations contained in Paragraph 5.

6. By the express terms of the Compensation Plans, AIG FP was required to either restore account balances or adopt a plan of repayment by no later than December 31, 2013 or extend that date so long as the extension did not violate section 409A of the Internal Revenue Code. Given that it had the ability to pay on or before the end of 2013, it was also required to repay the deferred compensation it had borrowed from them by that date.

ANSWER 6: AIG responds that the allegations contained in Paragraph 6 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations; refers the Court to the Deferred Compensation Plan (“DCP”) and Special Incentive Plan (“SIP”) for a complete and accurate description of their contents; and otherwise denies the allegations contained in Paragraph 6.

7. AIG FP, however, had no intention of paying. Instead, AIG FP, in collusion with, and at the direction of, AIG Inc., invented false legal impediments and played games with its consolidated balance sheet for the purpose of avoiding its obligations to the Employee Plaintiffs.

ANSWER 7: AIG denies the allegations contained in Paragraph 7.

8. This scheme to avoid payment was controlled and orchestrated by AIG Inc., for its benefit, notwithstanding that the deferred compensation documents expressly provided that adoption of the repayment plan “**shall not be subject to the approval of AIG [Inc.]**.” (emphasis added). AIG Inc.’s disregard of the express guardrails to repayment is startling in its arrogance.

ANSWER 8: AIG refers the Court to the DCP and SIP for a complete and accurate description of their contents; and otherwise denies the allegations contained in Paragraph 8.

9. Ironically, with the skilled assistance of many of the Employee Plaintiffs, AIG FP continued to generate billions of dollars of profits during the financial crisis. As far back as 2010, and in subsequent years, AIG FP had positive cashflow of billions of dollars that rendered it able to pay the Employee Plaintiffs their deferred compensation.

ANSWER 9: AIG denies the allegations contained in Paragraph 9.

10. Instead of paying its loyal employees, AIG FP, at the direction of AIG Inc., invented a fictional condition of profitability that was nowhere in the DCP and SIP, and then used that as a strawman to not only refuse to pay, but also to avoid adopting a plan to pay the Employee Plaintiffs. Even if profitability were an actual condition, AIG FP was profitable at that time and able to pay.

ANSWER 10: AIG denies the allegations contained in Paragraph 10.

11. In furtherance of this scheme, AIG FP also sent statements to the Employee Plaintiffs suggesting that they had negative balances in their DCP and SIP Accounts of hundreds of millions of dollars to make it seem as if AIG FP would have to recoup those negative amounts before restoring the plan balances and that AIG FP’s ability to repay those funds was remote. The DCP and SIP do not explicitly or implicitly allow for negative account balances. This too was an invented accounting fiction, as these negative balances suggested an obligation on the part of the Employee Plaintiffs to repay AIG FP, which AIG FP agreed were not actual obligations. There was no business or accounting justification to report negative balances on the DCP and SIP account statements other than to deter action by Plan Participants to enforce their rights.

ANSWER 11: AIG refers the Court to the DCP, SIP, and the referenced documents for a complete and accurate description of their contents; and responds that the allegations contained in Paragraph 11 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations.

12. In order to prevent AIG FP from being rewarded for its bad conduct, the Employee Plaintiffs seek a declaratory judgment confirming that the alleged “debt” under the so-called Revolving Credit Agreement was an equity infusion.

ANSWER 12: AIG responds that the allegations contained in Paragraph 12 consist of the Former Executives' characterization of this action and the relief they seek to which no response is required; and to the extent a response is required, AIG denies those allegations.

13. The Employee Plaintiffs also seek relief from AIG FP's parent, AIG Inc., because it wrongfully and tortiously controlled AIG FP's decision not to pay the Employee Plaintiffs in violation of the express terms of the Compensation Plans and orchestrated the stripping of hundreds of millions of dollars of AIG FP's cash and other assets. The Employee Plaintiffs further seek a declaratory judgment confirming AIG FP transferred substantially all of its assets to AIG Inc. (or entities it controls) and that AIG Inc. has assumed all of the obligations of AIG FP under the DCP and SIP. The Employee Plaintiffs also seek relief against AIG Inc. for breach of the DCP and SIP.

ANSWER 13: AIG responds that the allegations contained in Paragraph 13 consist of the Former Executives' characterization of this action to which no response is required; and to the extent a response is required, AIG denies those allegations.

14. Insofar as AIG FP and AIG Inc. seek the protection of a subordination provision in the deferred compensation plans that they claim is triggered by the filing of this bankruptcy, they should be precluded from availing themselves of this convenient claim by reason of their prior breach of those agreements. AIG FP, directed by AIG Inc.'s tortious interference, breached the Compensation Plans in 2013 by not adopting a plan of repayment, not paying the deferred compensation owed on or before December 31, 2013 at a time when AIG FP could pay and there was no bankruptcy, and not extending the lapse date when it was permitted to do so as long as the extension did not violate section 409A of the Internal Revenue Code. Because the breach occurred before the filing of this bankruptcy, the subordination provisions should be assessed as of the time of the breach, rendering them inoperative here. By reason of this prior breach and the depth of bad faith conduct by AIG FP and AIG Inc., the Employee Plaintiffs seek a declaration against AIG Inc. equitably subordinating AIG Inc.'s claimed debt to the Employee Plaintiffs' claims as well as affirmative relief under Connecticut law for claims of *prima facie* tort, and tortious interference with contractual relations.

ANSWER 14: AIG responds that the Court determined in its ruling of May 9, 2024 that the Former Executives "are still subject to subordination by the express terms of the Compensation Plans" despite any alleged breaches of the Plans (ECF No. 82 at 55); and further responds that the allegations contained in Paragraph 14 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations.

THE PARTIES

The Defendants-Counterclaim Plaintiffs-Third-Party Claim Plaintiffs (the Employee Plaintiffs):

15. Plaintiff Lee Arthurs is a resident of New York, New York. Mr. Arthurs was employed by AIG FP from August of 1988 to January of 2006.

ANSWER 15: AIG admits that Mr. Arthurs was employed by AIG FP in August 1988; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15.

16. Plaintiff David Ackert is a resident of Nevada. Mr. Ackert was employed by AIG FP from March of 1994 to February of 2007.

ANSWER 16: AIG admits that Mr. Ackert's employment with AIG FP ended in February 2007; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16.

17. Plaintiff Mitchell Bell is a resident of Connecticut. Mr. Bell was employed by AIG FP from March of 1998 to August of 2011.

ANSWER 17: AIG admits that Mr. Bell was employed by AIG FP or an affiliate of AIG from March 1998 to August 2011; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17.

18. Plaintiff Erik Bengtson is a resident of New York. Mr. Bengtson was employed by AIG FP from June of 1994 to June of 2009.

ANSWER 18: AIG admits that Mr. Bengtson was hired by AIG FP in June 1994; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18.

19. Plaintiff Paul Bradshaw is a resident of Westport, Connecticut. Mr. Bradshaw was employed by AIG FP from February of 1996 to September of 2010.

ANSWER 19: AIG admits that Mr. Bradshaw's employment at AIG FP or an affiliate of AIG ended in September 2010; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19.

20. Plaintiff Thomas Buttke is a resident of Weston, Connecticut. Mr. Buttke was employed by AIG FP from August of 1997 to July of 2009.

ANSWER 20: AIG admits that Mr. Buttke's employment at AIG FP ended in July 2009; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20.

21. Plaintiff John Cappetta is a resident of La Jolla, California. Mr. Cappetta was employed by AIG FP from October of 1992 to February of 2006.

ANSWER 21: AIG admits that Mr. Cappetta was hired by AIG FP in October 1992; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21.

22. Plaintiff David Chang is a resident of Connecticut. Mr. Chang was employed by AIG FP from May of 2001 to November of 2015.

ANSWER 22: AIG admits that Mr. Chang was employed by AIG FP or an affiliate of AIG from May 2001 to November 2015; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22.

23. Plaintiff Robert Chang is a resident of Greenwich, Connecticut. Mr. Chang was employed by AIG FP from March of 1995 to December of 2015.

ANSWER 23: AIG admits that Mr. Chang was employed by AIG FP or an affiliate of AIG from March 1995 to December 2015; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23.

24. Plaintiff Jason DeSantis is a resident of Redding, Connecticut. Mr. DeSantis was employed by AIG FP from June of 1998 to May of 2009.

ANSWER 24: AIG admits that Mr. DeSantis' employment at AIG FP ended in May 2009; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24.

25. Plaintiff Richard Fabbro is a resident of Scarsdale, New York. Mr. Fabbro was employed by AIG FP from March of 1994 to February of 2010.

ANSWER 25: AIG admits that Mr. Fabbro's employment at AIG FP or an affiliate of AIG ended in February 2010; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25.

26. Plaintiff Kenneth Farrar is a resident of Norwalk, Connecticut. Mr. Farrar was employed by AIG FP from April of 2003 to October of 2008.

ANSWER 26: AIG admits that Mr. Farrar was hired by AIG FP in April 2003; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26.

27. Plaintiff Jonathan Fraade is a resident of Connecticut. Mr. Fraade was employed by AIG FP from April of 1996 to May of 2009.

ANSWER 27: AIG admits that Mr. Fraade was employed by AIG FP in April 1996; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27.

28. Plaintiff Carl Giesler Jr. is a resident of Texas. Mr. Giesler was employed by AIG FP from September of 2007 to December of 2008.

ANSWER 28: AIG admits the allegations contained in the second sentence of Paragraph 28; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28.

29. Plaintiff James Haas is a resident of Florida. Mr. Haas was employed by AIG FP from March of 1996 to July of 2011.

ANSWER 29: AIG admits that Mr. Haas was employed by AIG FP in March 1996; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29.

30. Plaintiff Charles Hsieh is a resident of Stamford, Connecticut. Mr. Hsieh was employed by AIG FP from September of 2000 to March of 2010.

ANSWER 30: AIG admits that Mr. Hsieh was employed by AIG FP or an affiliate of AIG from September 2000 to March 2010; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30.

31. Plaintiff Thomas Kalb is a resident of Houston, Texas. Mr. Kalb was employed by AIG FP from July of 2003 to June of 2006.

ANSWER 31: AIG admits the allegations contained in the second sentence of Paragraph 31; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31.

32. Plaintiff Thomas Kushner is a resident of Connecticut. Mr. Kushner was employed by AIG FP from July of 2004 to October of 2008.

ANSWER 32: AIG admits that Mr. Kushner was employed by AIG FP in July 2004; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32.

33. Plaintiff Robert Leary is a resident of Florida. Mr. Leary was employed by AIG FP from April of 1995 to July of 2007.

ANSWER 33: AIG admits the allegations contained in the second sentence of Paragraph 33; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33.

34. Plaintiff Jonathan Liebergall is a resident of South Carolina. Mr. Liebergall was employed by AIG FP from May of 1991 to January of 2016.

ANSWER 34: AIG admits that Mr. Liebergall was employed by AIG FP or an affiliate of AIG from May 1991 to January 2016; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34.

35. Plaintiff Nathaniel Litwak is a resident of Chappaqua, New York. Mr. Litwak was employed by AIG FP from May of 2002 to May of 2009.

ANSWER 35: AIG admits that Mr. Litwak was employed by AIG FP in May 2002; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 35.

36. Plaintiff Brendan Lynch is a resident of Fairfield, Connecticut. Mr. Lynch was employed by AIG FP from November of 1993 to January of 2011.

ANSWER 36: AIG admits that Mr. Lynch was employed by AIG FP in November 1993; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36.

37. Plaintiff Alfred Medioli is a resident of New Jersey. Mr. Medioli was employed by AIG FP from November of 1991 to August of 2009.

ANSWER 37: AIG admits that Mr. Medioli was employed by AIG FP; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37.

38. Plaintiff Matthew Mihaly is a resident of Trumbull, Connecticut. Mr. Mihaly was employed by AIG FP from March of 1998 to October of 2011.

ANSWER 38: AIG admits that Mr. Mihaly was employed by AIG FP in March 1998; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 38.

39. Plaintiff JoAnn Palazzo is a resident of Connecticut. Ms. Palazzo was employed by AIG FP from January of 1990 to December of 2006.

ANSWER 39: AIG admits the allegations contained in the second sentence of Paragraph 39; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 39.

40. Plaintiff Eugene Park is a resident of Weston, Connecticut. Mr. Park was employed by AIG FP from March of 2000 to January of 2007.

ANSWER 40: AIG admits that Mr. Park was employed by AIG FP; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 40.

41. Plaintiff Andrew Partner is a resident of Norwalk, Connecticut. Mr. Partner was employed by AIG FP from November of 1987 to June of 2016.

ANSWER 41: AIG admits that Mr. Partner was employed by AIG FP or an affiliate of AIG from November 1987 to June 2016; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 41.

42. Plaintiff Carl Peterson is a resident of Texas. Mr. Peterson was employed by AIG FP from July of 2003 to March of 2008.

ANSWER 42: AIG admits that Mr. Peterson was employed by AIG FP; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 42.

43. Plaintiff Steven Pike is a resident of Littleton, Colorado. Mr. Pike was employed by AIG FP from July of 2003 to April of 2007.

ANSWER 43: AIG admits that Mr. Pike was employed by AIG FP; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 43.

44. Plaintiff Thomas Plagemann is a resident of New York, New York. Mr. Plagemann was employed by AIG FP from October of 2004 to September of 2009.

ANSWER 44: AIG admits that Mr. Plagemann's employment at AIG FP ended in September 2009; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 44.

45. Plaintiff Robert Powell is a resident of Connecticut. Mr. Powell was employed by AIG FP from October of 1997 to October of 2009.

ANSWER 45: AIG admits the allegations contained in the second sentence of Paragraph 45; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 45.

46. Plaintiff Daniel Raab is a resident of New Jersey. Mr. Raab was employed by AIG FP from July of 2003 to April of 2009.

ANSWER 46: AIG admits that Mr. Raab was employed by AIG FP; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 46.

47. Plaintiff Ann Reed is a resident of Darien, Connecticut. Ms. Reed was employed by AIG FP from February of 2003 to July of 2009.

ANSWER 47: AIG admits that Ms. Reed was employed by AIG FP; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 47.

48. Plaintiff Dmitry Satanovsky is a resident of Weston, Connecticut. Mr. Satanovsky was employed by AIG FP from January of 2004 to March of 2019.

ANSWER 48: AIG admits that Mr. Satanovsky's employment at AIG FP or an affiliate of AIG ended in March 2019; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48.

49. Plaintiff Paul Schreiner is a resident of Connecticut. Mr. Schreiner was employed by AIG FP from April of 1998 to August of 2009.

ANSWER 49: AIG admits that Mr. Schreiner was employed by AIG FP in April 1998; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49.

50. Plaintiff Mary Heather Singer is a resident of West Hartford, Connecticut. Ms. Singer was employed by AIG FP from February of 1997 to February of 2006.

ANSWER 50: AIG admits the allegations contained in the second sentence of Paragraph 50; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50.

51. Plaintiff Keith Stein is a resident of Weston, Connecticut. Mr. Stein was employed by AIG FP from November of 1993 to March of 2007.

ANSWER 51: AIG admits the allegations contained in the second sentence of Paragraph 51; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51.

52. Plaintiff Frank Strohm is a resident of Austin, Texas. Mr. Strohm was employed by AIG FP from January of 1994 to May of 2006.

ANSWER 52: AIG admits the allegations contained in the second sentence of Paragraph 52; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 52.

53. Plaintiff Timothy Sullivan Jr. was a resident of Houston, Texas. Mr. Sullivan was employed by AIG FP from July of 2003 to April of 2007.

ANSWER 53: AIG admits that Mr. Sullivan was employed by AIG FP; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53.

54. Plaintiff Chris Toft is a resident of Weston, Connecticut. Mr. Toft was employed by AIG FP from April of 2003 to November of 2015.

ANSWER 54: AIG admits that Mr. Toft was employed by AIG FP or an affiliate of AIG from April 2003 to November 2015; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54.

55. Plaintiff Joe Tom is a resident of River Vale, New Jersey. Mr. Tom was employed by AIG FP from June of 1996 to April of 2015.

ANSWER 55: AIG admits that Mr. Tom was employed by AIG FP or an affiliate of AIG from June 1996 to April 2015; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55.

56. Plaintiff Ryan Vetter is a resident of New York. Mr. Vetter was employed by AIG FP from April of 2006 to October of 2008.

ANSWER 56: AIG admits that Mr. Vetter was employed by AIG FP in April 2006; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56.

57. Plaintiff Steven Wagar is a resident of Norwalk, Connecticut. Mr. Wagar was employed by AIG FP from February of 1996 to May of 2016.

ANSWER 57: AIG admits that Mr. Wagar's employment at AIG FP or an affiliate of AIG ended in May 2016; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 57.

58. Plaintiff Thomas Ward is a resident of Connecticut. Mr. Ward was employed by AIG FP from February of 1987 to April of 2017.

ANSWER 58: AIG admits that Mr. Ward was employed by AIG FP or an affiliate of AIG from February 1987 to April 2017; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58.

59. Plaintiff Martin Wayne is a resident of Bedford, New York. Mr. Wayne was employed by AIG FP from January of 1987 to late 2008.

ANSWER 59: AIG admits that Mr. Wayne was employed by AIG FP in January 1987; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 59.

60. Plaintiff James Wolf is a resident of Texas. Mr. Wolf was employed by AIG FP from February of 1995 to January of 2007.

ANSWER 60: AIG admits the allegations contained in the second sentence of Paragraph 60; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 60.

The Debtor (AIG FP):

61. The Debtor, AIG Financial Products Corp., is a wholly owned subsidiary of AIG Inc. AIG FP is located at 50 Danbury Road, Wilton, Connecticut, 06897.

ANSWER 61: AIG admits the allegations contained in Paragraph 61.

The Third-Party Intervenor (AIG Inc.):

62. Third-Party Intervenor American International Group Inc. intervened in this Adversary Proceeding with full participation rights as a party. *See Order Approving Stipulation Permitting AIG, Inc. to Intervene in Adversary Proceeding* [D.I. 8]. In connection with its request to intervene, which was effectuated by stipulation, AIG Inc. affirmatively declared that it “has an interest in the subject matter of the Adversary Proceeding that may be affected by its disposition.” *See Proposed Order and Stipulation re AIG Intervening in Adversary Proceeding* [D.I. 6-1]. AIG Inc. is located at 1271 6th Avenue, New York, NY 10020.

ANSWER 62: AIG admits that it intervened in this Adversary Proceeding with full participation rights as a party; admits it is located at 1271 Sixth Avenue, New York, NY 10020; and refers the Court to the May 23, 2023 Order Approving Stipulation Permitting AIG, Inc. to Intervene, *AIG Financial Products Corp. v. Arthurs*, No. 23-50110-MFW, ECF No. 8 (D. Del. Bankr.) and the May 22, 2023 Order and Stipulation re AIG Intervening in Adversary Proceeding, *AIG Financial Products Corp. v. Arthurs*, No. 23-50110-MFW, ECF No. 6-1 (D. Del. Bankr.) for a complete and accurate descriptions of their contents.

JURISDICTION AND VENUE

63. This Court has jurisdiction over the counterclaims and third-party claims in this Adversary Proceeding pursuant to 28 U.S.C. §§ 1334 and 1367, 28 U.S.C. § 157, and 28 U.S.C. §§ 2201 and 2202. Pursuant to Local Rule 9013-1(f), the Employee Plaintiffs do not consent to the entry of a final order or judgment by the Court in connection with this Adversary Proceeding to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

ANSWER 63: AIG admits that this Court has jurisdiction over the counterclaims and third party claims in this Adversary Proceeding. The remaining allegations in Paragraph 63 consist of legal arguments or conclusions to which no response is required.

64. Venue of this adversary proceeding is proper before the Court pursuant 28 U.S.C. §§ 1408 and 1409.

ANSWER 64: AIG admits the allegations contained in Paragraph 64.

FACTUAL BACKGROUND

A. AIG FP'S DEFERRED COMPENSATION OBLIGATIONS TO THE EMPLOYEE PLAINTIFFS

65. While working for AIG FP before and during the 2008 financial crisis, the Employee Plaintiffs were required to participate in certain bonus compensation plans that required them to defer significant portions of their bonus and other compensation: the DCP, the SIP, and the ERP. Each of the Employee Plaintiffs was a participant in the DCP and a number also participated in the SIP and the ERP.

ANSWER 65: AIG admits that the Former Executives were participants in the DCP and a number also participated in the SIP and /or the ERP; refers the Court to the DCP, the SIP, and the ERP for complete and accurate descriptions of their contents; states that the allegations concerning whether the “Employee Plaintiffs were required to participate in certain bonus compensation plans that required them to defer significant portions of their bonus and other compensation” consist of legal arguments or conclusions to which no response is required; and otherwise denies the allegations contained in Paragraph 65.

66. None of the Employee Plaintiffs were involved in the drafting of these deferred compensation plans, or negotiated how the plans would work, nor were they involved in

establishing the amount of their compensation that would be automatically deferred under the plans.

ANSWER 66: AIG denies the allegations contained in Paragraph 66.

67. Pursuant to the Compensation Plans, the Employee Plaintiffs' deferred compensation was credited to DCAs established by the DCP, or SIP Accounts established by the SIP. The DCAs and SIP Accounts were created in each of the Employee Plaintiffs' names and maintained on AIG FP's books.

ANSWER 67: AIG admits the allegations contained in the first sentence of Paragraph 67; admits that AIG FP's financial records identified DCA and SIP Account Balances for the Former Executives who had DCA and SIP Accounts; refers the Court to the DCP and SIP for a complete and accurate description of their contents; and otherwise denies the allegations contained in Paragraph 67.

68. According to the Compensation Plans, AIG FP was to make installment payments with interest on the Employee Plaintiffs' DCA and SIP Account balances. AIG FP was also permitted to use the money in the Employee Plaintiffs' DCAs and SIP Accounts as capital to fund its business, so long as it later restored and paid the money it took from the Employee Plaintiffs' accounts.

ANSWER 68: AIG responds that the allegations contained in Paragraph 68 consist of legal arguments or conclusions to which no response is required; refers the Court to the DCP and SIP for a complete and accurate description of their contents; and otherwise denies the allegations in Paragraph 68.

69. In addition to the compensation the Employee Plaintiffs were required to defer into their DCAs and SIP Accounts, AIG FP repeatedly implored the Employee Plaintiffs to voluntarily defer more money into the accounts and assured them that they were making a good investment in their employer's business.

ANSWER 69: AIG refers the court to the DCP and SIP for a true and accurate description of their contents; and otherwise denies the allegations contained in Paragraph 69.

70. In or around 2007 through early 2009, AIG Inc. and AIG FP experienced a liquidity crisis.

ANSWER 70: AIG admits the allegations contained in Paragraph 70.

71. Around this time, AIG FP began crediting its losses against the Employee Plaintiffs' DCAs and SIP Account balances—which resulted in the fiction that the DCA and SIP Account balances were negative.

ANSWER 71: AIG admits that AIG FP's losses reduced certain DCP and SIP account balances, in accordance with the terms of the DCP and SIP Plans; and otherwise denies the allegations contained in Paragraph 71.

72. Thereafter, AIG FP stopped making installment payments to the Employee Plaintiffs on the purported basis that the DCA and SIP Account balances were negative.

ANSWER 72: AIG admits that AIG FP ceased making installment payments to the Former Executives from DCP and SIP Accounts after the account balances were reduced; and otherwise denies the allegations contained in Paragraph 72.

73. At the same time, AIG FP repeatedly assured its employees that it would restore the DCA and SIP Account balances (as AIG FP was contractually obligated to do by the terms of the Compensation Plans) and pay the Employee Plaintiffs the money they were owed.

ANSWER 73: AIG responds that the allegations contained in Paragraph 73 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations.

74. With these assurances in place, AIG FP continued to require the Employee Plaintiffs to defer compensation into their DCAs and SIP Accounts and to encourage them to defer even more compensation into these accounts voluntarily. Thus, despite the fictional negative balances in their accounts, and in the midst of the financial crisis, the Employee Plaintiffs were required to continue to defer their compensation into their DCA and SIP Accounts with the understanding that AIG FP would eventually pay them back.

ANSWER 74: AIG refers the Court to the DCP and SIP for a complete and accurate description of their contents; denies knowledge or information sufficient to form a belief as to the understanding of the Former Executives; and otherwise denies the allegations contained in Paragraph 74.

75. After the 2008 financial crisis, AIG Inc. returned to profitability in July 2011 and repaid all debts owed to the U.S. Government by December 2012 so that the Government realized a profit of over \$20 billion. Similarly, AIG FP also returned to profitability.

ANSWER 75: AIG admits that it repaid all debts owed to the U.S. Government; admits that the U.S. Government publicly disclosed that it realized a profit; avers that AIG reported a net loss of \$4.1B for the quarter ended September 30, 2011; and otherwise denies the allegations contained in Paragraph 75.

76. Pursuant to the DCP and SIP, AIG FP was required to restore the Employee Plaintiffs' DCA and SIP Account balances to their full amounts. In particular, AIG FP had until the end of 2013 to restore and pay the amounts AIG FP took from the DCA and SIP Accounts, plus interest. AIG FP also had an obligation to extend the payment date unless such an extension violation [sic] section 409A of the Internal Revenue Code.

ANSWER 76: AIG responds that the allegations contained in Paragraph 76 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations; refers the Court to the DCP and SIP for a complete and accurate description of their contents; and otherwise denies the allegations contained in Paragraph 76.

77. However, in breach of its obligations, in a letter dated July 31, 2014, AIG FP informed the Employee Plaintiffs that it would not restore or pay their DCA or SIP Account balances.

ANSWER 77: AIG responds that the allegations contained in Paragraph 77 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations; refers the Court to the referenced letter for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 77.

78. Pursuant to the General Guarantee Agreement between AIG Inc. and AIG FP, AIG Inc. is required to pay the obligations of AIG FP, which meant that AIG FP had the financial backing of its parent and therefore did not struggle to pay amounts it owed.

ANSWER 78: AIG admits that a general guarantee agreement exists; refers the Court to the General Guarantee Agreement dated December 4, 1995 for a complete and accurate description of its contents; avers that AIG has no obligation to guarantee any AIG FP liabilities under the DCP

or SIP, as those agreements expressly disclaim any AIG guarantee; responds that the remaining allegations contained in Paragraph 78 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations; and otherwise denies the allegations contained in Paragraph 78.

79. Despite AIG Inc.'s repayment of its government obligations, AIG FP's return to profitability, its continuation as a solvent business, and its legal obligations under the Compensation Plans, AIG FP did not adopt a repayment plan to restore the deferred compensation it owed to the Employee Plaintiffs.

ANSWER 79: AIG admits that it repaid its debts owed to the U.S. Government; admits that AIG FP did not adopt a repayment plan to restore amounts reduced from the DCP and SIP accounts; avers that AIG FP did not repay in full its debts to AIG; refers the Court to the DCP and SIP for a complete and accurate description of their contents; responds that the remaining allegations contained in Paragraph 78 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations; and otherwise denies the allegations contained in Paragraph 79.

80. As a result of, among other things, AIG FP's failure to (i) restore and pay the DCA and SIP Account balances by the end of 2013, or (ii) AIG FP's failure to adopt a restoration plan, or extend the lapse date, when it was able to do so to return the money it owes to the Employee Plaintiffs, the Employee Plaintiffs have been harmed. Damages include the amount of the Employee Plaintiffs' Plan Account balances borrowed by AIG FP in the approximate amount of \$194 million, plus doubled damages under Connecticut's Wage and Hour law as a result of AIG FP's bad faith conduct and accrued interest to date.

ANSWER 80: AIG avers that AIG FP acted at all times in good faith and in accordance with the governing contracts; responds that the allegations contained in Paragraph 80 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations; and otherwise denies the allegations contained in Paragraph 80.

1. The DCP Agreement

81. The DCP is an agreement among participating employees and AIG FP.

ANSWER 81: AIG responds that the allegations contained in Paragraph 83 consist of legal arguments or conclusions to which no response is required; and refers the Court to the DCP for a complete and accurate description of its contents.

82. The DCP was adopted in or around December 1995, and was amended thereafter. The relevant version of the DCP is attached as Exhibit A.

ANSWER 82: AIG admits the allegations contained in Paragraph 82.

83. The DCP is governed by Connecticut law. *See* DCP § 4.05.

ANSWER 83: AIG responds that the allegations contained in Paragraph 83 consist of legal arguments or conclusions to which no response is required; and refers the Court to the DCP for a complete and accurate description of its contents.

84. Each of the Employee Plaintiffs was a “Participant” in the DCP. *See* DCP § 1.13 (“‘Participant’ shall mean an Executive who is participating in this Deferred Compensation Plan.”).

ANSWER 84: AIG responds that the allegations contained in Paragraph 84 consist of legal arguments or conclusions to which no response is required; and refers the Court to the DCP for a complete and accurate description of its contents.

85. The purpose of the DCP was to incentivize employees with bonuses, encourage retention, and promote AIG FP’s business.

ANSWER 85: AIG responds that the allegations contained in Paragraph 85 consist of legal arguments or conclusions to which no response is required; and refers the Court to the DCP for a complete and accurate description of its contents and its stated purpose; and otherwise denies the allegations contained in Paragraph 85.

86. Pursuant to the terms of the DCP, each Participant was assigned a deferred compensation account, or DCA, on AIG FP’s books. “Deferred Compensation Account” was defined to mean “the account established on AIG Financial Product Corp.’s books in the name of each Participant and of AIG [Inc.] in which, pursuant to Section 3 of this Deferred Compensation Plan, Deferred Compensation amounts are credited to such Participants and to AIG.” DCP § 1.07.

ANSWER 86: AIG responds that the allegations contained in Paragraph 86 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations; refers the Court to the DCP for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 86.

87. AIG FP was required to provide Plan Participants with quarterly statements that included information about their DCA balances and AIG FP's financial performance. For example, DCP § 4.07 provided:

For so long as the Deferred Compensation Plan is in effect, AIGFP shall provide each Participant and AIG [Inc.] with quarterly Deferred Compensation account statements setting forth (i) the Participant's or AIG [Inc.]'s (as the case may be) Deferred Compensation account balance, (ii) the amount of interest and, for account statements covering the quarterly period in which such amounts would be paid, the Additional Return Payment and Installment Payment, if any, paid on such balance during such quarterly period and (iii) the Installment Payment schedule for the Participant or AIG [Inc.]. In addition, AIGFP shall provide Participants and AIG [Inc.] with an AIGFP annual financial summary (which shall include a statement of the average life of AIGFP's swap transaction portfolio as of the date of such financial information), and shall endeavor to keep Participants who are then employees of AIGFP apprised of material developments involving AIGFP's business or accounting procedures applicable to AIGFP insofar as they relate to the Deferred Compensation Plan.

DCP § 4.07.

ANSWER 87: AIG responds that the allegations contained in Paragraph 87 consist of legal arguments or conclusions to which no response is required; refers the Court to the DCP for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 87.

88. AIG FP was permitted to reduce DCA balances in the event that AIG FP sustained realized losses, so long as AIG FP adopted a repayment plan with a defined payment schedule. For example, DCP § 4.01(b) provided:

The outstanding balance credited to the Deferred Compensation Accounts of each Participant and of AIG [Inc.] shall be subject to reduction, from time to time, to the extent of any losses incurred (i) by AIGFP (excluding AIGTG) or (ii) by AIGTG resulting from transactions entered into on or after January 1, 2003, which losses in the case of (i) and (ii) for any year in the aggregate exceed the outstanding market and credit reserves and current year income of AIGFP (excluding outstanding

market and credit reserves relating to transactions entered into by AIGTG before January 1, 2003), but before base capital of AIGFP (for the avoidance of doubt including AIGTG, and consisting of equity, retained earnings, if any, and subordinated debt). Such reductions shall be made among the Participants . . . and AIG [Inc.] on a pro rata basis. **AIG Financial Products Corp. shall be obligated subsequently to restore amounts so deducted from Participants' and AIG [Inc.]'s account balances, plus accrued interest thereon at the interest rate determined in accordance with Section 3.03 and, in connection therewith, the Board shall adopt a plan (which shall not be subject to the approval of AIG [Inc.] or the Participants) setting forth a schedule under which AIG Financial Products Corp. shall restore amounts deducted from Participants' and AIG [Inc.]'s account balances (plus accrued interest thereon).** Any such restoration plan shall provide that any restored amounts shall be paid in 2013; to the extent amounts have not been restored by December 31, 2013, all restoration rights shall permanently lapse except to the extent AIG Financial Products Corp. determines that it may amend the Plan to provide for payment of restored amounts without violating Internal Revenue Code Section 409A.

DCP § 4.01(b) (emphasis added).

ANSWER 88: AIG responds that the allegations contained in Paragraph 88 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations; refers the Court to the DCP for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 88.

2. The SIP Agreement

89. The SIP is an agreement among AIG FP and certain Employee Plaintiffs ("Covered Executives"). The relevant version of the SIP is attached as Exhibit B.

ANSWER 89: AIG responds that the allegations contained in Paragraph 89 consist of legal arguments or conclusions to which no response is required; and refers the Court to the SIP for a complete and accurate description of its contents.

90. The Employee Plaintiffs who were Covered Executives under the SIP include: Mitchell Bell, Erik Bengtson, Paul Bradshaw, Thomas Buttke, David Chang, Robert Chang, Jason DeSantis, Richard Fabbro, Kenneth Farrar, Jonathan Fraade, James Haas, Charles Hsieh, Thomas Kushner, Jonathan Liebergall, Nathaniel Litwak, Brendan Lynch, Alfred Mediolli, Matthew Mihaly, Andrew Partner, Thomas Plagemann, Robert Powell, Daniel Raab, Ann Reed, Paul Schreiner, Chris Toft, Joe Tom, Steven Wagar, Thomas Ward, and Martin Wayne.

ANSWER 90: AIG responds that the allegations contained in Paragraph 90 consist of legal arguments or conclusions to which no response is required; and refers the Court to the SIP for a complete and accurate description of its contents.

91. The SIP was adopted in January 2008, and was amended thereafter.

ANSWER 91: AIG admits that the SIP was adopted in or around January 2008 and was amended thereafter; and refers the Court to the SIP for a complete and accurate description of its contents.

92. The SIP is governed by Connecticut law. *See* SIP § 4.05.

ANSWER 92: AIG responds that the allegations contained in Paragraph 92 consist of legal arguments or conclusions to which no response is required; and refers the Court to the SIP for a complete and accurate description of its contents.

93. As with the DCP, AIG FP was obligated under the SIP to restore any amounts deducted from SIP Accounts and was obligated to create a restoration plan in order to do so:

The outstanding balance credited to the SIP Accounts of each Covered Executive and of AIG [Inc.] shall be subject to reduction, from time to time, to the extent of any losses incurred (i) by AIGFP (excluding AIGTG) or (ii) by AIGTG resulting from transactions entered into on or after January 1, 2003, which losses in the case of (i) and (ii) for any year in the aggregate exceed the outstanding market and credit reserves and current year income of AIGFP (excluding outstanding market and credit reserves relating to transactions entered into by AIGTG before January 1, 2003), but before base capital of AIGFP (for the avoidance of doubt including AIGTG, and consisting of equity, retained earnings, if any, and subordinated debt). Such reductions shall be made on a pro rata basis among the SIP Accounts under the 2007 SIP, and the Deferred Compensation Accounts under the Deferred Compensation Plan, of Covered Executives and AIG [Inc.]. **AIG Financial Products Corp. shall be obligated subsequently to restore amounts so deducted from Covered Executives' and AIG [Inc.]'s account balances, plus accrued interest thereon at the interest rate determined in accordance with Section 3.03 and, in connection therewith, the Board shall adopt a plan (which shall not be subject to the approval of AIG or the Covered Executives) setting forth a schedule under which AIG Financial Products Corp. shall restore amounts deducted from Covered Executives' and AIG [Inc.]'s account balances (plus accrued interest thereon).** Any such restoration plan shall provide that any restored amounts shall be paid in 2013; to the extent amounts have not been restored by December 31, 2013, all restoration rights shall permanently lapse except to the

extent AIG Financial Products Corp. determines that it may amend the Plan to provide for payment of restored amounts without violating Internal Revenue Code Section 409A.

SIP § 4.01(b) (emphasis added).

ANSWER 93: AIG responds that the allegations contained in Paragraph 93 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations; refers the Court to the SIP for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 93.

B. AIG FP BREACHES PLANS IN BAD FAITH

1. AIG FP Fails to Pay Employee Plaintiffs Under the DCP and SIP

94. On Monday, September 15, 2008, Lehman Brothers Holdings filed for Chapter 11 protection in New York, an event which triggered a global financial crisis.

ANSWER 94: AIG admits that on Monday, September 15, 2008, Lehman Brothers filed for Chapter 11 protection in New York; admits that Lehman Brothers' bankruptcy was one of the events which contributed to the global financial crisis in 2008; and otherwise denies the allegations contained in Paragraph 94.

95. Shortly after the Lehman bankruptcy, in October 2008, AIG FP and AIG Inc. reportedly were brought to the brink of collapse. Purportedly, AIG FP's 2008 losses overwhelmed not only reserves, current year income, and DCA balances, but also base capital. Deeming AIG Inc. "too big to fail," the Federal Reserve Bank of New York provided AIG Inc. with emergency funding. The funding was agreed in principle on September 16, 2008, and formalized shortly thereafter.

ANSWER 95: AIG admits that AIG FP's 2008 losses overwhelmed not only reserves, current year income, and DCA balances, but also base capital; admits that the FRBNY provided AIG with emergency funding, that the funding was agreed to in principle on September 16, 2008 and formalized shortly thereafter (the "Fed Loan"); and otherwise denies the allegations contained in Paragraph 95.

96. Pursuant to its agreement with the Federal Government, AIG Inc. received a revolving credit facility of \$85 billion. AIG Inc. then infused AIG FP with \$65 billion, via AIG Inc.'s subsidiary (AIG Funding), utilizing what was purported to also be a revolving credit facility. Although the two credit facilities were formalized on the same day, September 22, 2008, the marked differences between the two agreements underscore that the transaction between AIG Inc. and AIG FP was never intended to be debt, as discussed *infra* in Section E.

ANSWER 96: AIG admits that the FRBNY extended AIG a revolving credit facility of up to \$85 billion (the Fed Loan), and that AIG used those funds to extend, via AIG Funding, Inc., a revolving credit facility to AIG FP of up to \$65 billion (the AIG FP Revolving Credit Agreement); refers the court to those loan agreements for a complete and accurate description of their contents; and otherwise denies the allegations contained in Paragraph 96.

97. In September 2008, as part of AIG Inc.'s bailout, then-Chairman of Allstate Insurance, Edward Liddy, was appointed as AIG Inc.'s interim chairman and chief executive officer ("CEO").

ANSWER 97: AIG admits the allegations contained in Paragraph 97.

98. Executive compensation was a source of political tension over the bailout. For example, in a letter to Mr. Liddy, dated October 22, 2008, then Attorney General of New York, Andrew Cuomo, cautioned that "until the taxpayers are repaid with interest . . . no funds should be paid out of [AIG's deferred compensation and bonus] pools to any executives."

ANSWER 98: AIG admits that executive compensation at AIG was a source of political tension in 2008 and 2009; refers the Court to the October 22, 2008 letter from Attorney General of New York, Andrew Cuomo to Mr. Liddy for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 98.

99. Despite the difficult political climate, AIG Inc. publicly proclaimed that employees of the AIG group, including the Employee Plaintiffs, were entitled to and would receive the compensation they were owed in connection with work they had already performed. In an October 16, 2008 Joint Statement from the N.Y. Attorney General and AIG Inc., Attorney General Cuomo said, "[t]hese actions are not intended to jeopardize the hard-earned compensation of the vast majority of AIG's employees, including retention and severance arrangements, who are essential to rebuilding AIG [Inc.] and the economy of New York."

ANSWER 99: AIG refers the Court to the October 16, 2008 Joint Statement referenced in Paragraph 99 for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 99.

100. In early October 2008, AIG FP decided that at the year end, Plan Participants' balances would be stated as negative amounts, not merely as nil balances. Doing so enabled AIG FP to reduce future Compensation Plan balances.

ANSWER 100: AIG denies the allegations contained in Paragraph 100.

101. Recognizing the importance of retaining its employees in its effort to rebuild, the head of AIG's Financial Services Division, William Dooley (AIG FP's Acting CEO), assured AIG FP's employees in an October 2008 letter that any negative balances in their DCP and SIP Accounts would be restored, as "[b]oth the SIP and the DCP provide for the adoption of a plan for restoring these reductions to AIG [Inc.] and AIG FP participants' deferred compensation accounts."

ANSWER 101: AIG refers the Court to the October 2008 letter from William Dooley to AIGFP employees for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 101.

102. At the end of 2008, AIG FP also instituted the ERP, which was another bonus plan designed to incentivize certain employees to stay with AIG FP, and to compensate those employees who did not receive their 2007 bonus compensation or equity kicker.

ANSWER 102: AIG admits that AIG FP adopted the ERP in April 2008 and that among its purposes was employee retention; refers the Court to the ERP for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 102.

103. In a letter dated March 14, 2009, Mr. Liddy confirmed that AIG Inc. was aware of its legally enforceable obligation to pay AIG FP's employees the amounts they were owed under the deferred compensation plans. Mr. Liddy explained to Timothy Geithner (Mr. Paulson's successor as Treasury Secretary) that "[i]n the first quarter of 2008, prior management took significant retention steps at AIG Financial Products," which "guaranteed a minimum level of pay for both 2008 and 2009." Mr. Liddy advised Mr. Geithner that "quite frankly, AIG [Inc.]'s hands are tied" and that "[o]utside counsel has advised that these are legal, binding obligations of AIG [Inc.], and there are serious legal, as well as business, consequences for not paying."

ANSWER 103: AIG refers the Court to the March 14, 2009 letter from Mr. Liddy to Timothy Geithner for a complete and accurate description of its contents; admits that Timothy

Geithner succeeded Henry Paulson as Treasury Secretary; and otherwise denies the allegations contained in Paragraph 103.

104. Other internal documents of AIG Inc. and/or AIG FP demonstrate that AIG FP was obligated to restore the Employee Plaintiffs' DCP and SIP Account balances and repay plaintiffs the amounts they were owed pursuant to the Compensation Plans.

ANSWER 104: AIG responds that the allegations contained in Paragraph 104 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations.

105. In addition, a publicly-available March 16, 2009 letter from AIG Inc.'s and AIG FP's attorneys to the Office of the General Counsel of the Federal Reserve Bank of New York further confirmed that AIG FP's Compensation Plans, including the ERP, constituted "clear contractual obligation[s] on the part of AIG FP."

ANSWER 105: AIG refers the Court to the letter referenced in Paragraph 105 for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 105.

**C. AIG FP INDUCED ITS EMPLOYEES TO CONTINUE DEFERRING
COMPENSATION TO BOLSTER ITS FINANCES**

106. Throughout this time, AIG FP assured the Employee Plaintiffs by reaffirming the terms of the DCP and SIP, and incentivized the Employee Plaintiffs to continue working, performing under employment obligations, and waiting for AIG Inc. and AIG FP's financial woes to improve.

ANSWER 106: AIG denies the allegations contained in Paragraph 106.

107. For example, a January 21, 2008 e-mail from William Shirley (AIG FP's General Counsel) to all employees said, "[The SIP] now provides that any amounts by which SIP Accounts are reduced pursuant to Section 3.02(a) or (b) (for example, where an employee resigns in 2008 or 2009) will be available for distribution to AIG FP employees in 2013 (in the same manner as, in addition to, the 30% portion of annual Distributable Income that is allocable to AIG FP employees that year)."

ANSWER 107: AIG refers the Court to the referenced document for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 107.

108. In 2009, relying on AIG FP's assurances, many of AIG FP's employees—including many of the Employee Plaintiffs in this action—agreed to receive part of the compensation they were owed under the ERP in the form of deferred compensation credited to the SIP plan, with the remainder to be paid in cash.

ANSWER 108: AIG denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 108 regarding the motivations of AIG FP employees; and otherwise denies the allegations contained in Paragraph 108.

109. In 2009, AIG FP also requested that many of the AIG FP employees—including some of the Employee Plaintiffs—voluntarily pay back a portion of their cash compensation, in order to help the company address its financial woes and for the purpose of maintaining a positive public perception. When certain AIG FP employees refused to return their compensation, AIG FP began to pressure those individuals.

ANSWER 109: AIG admits that, in 2009, AIG FP requested many of the AIG FP employees—including some of the Former Executives—to voluntarily give back a portion of their bonuses; and otherwise denies the allegations contained in Paragraph 109.

110. In 2010, AIG FP again requested that employees voluntarily pay back some or all of a second cash payment made pursuant to the ERP.

ANSWER 110: AIG admits that, in 2010, AIG FP requested that certain AIG FP employees voluntarily pay back some of a second cash payment made pursuant to the ERP; and otherwise denies the allegations contained in Paragraph 110.

111. As a result of these requests, and in many cases substantial pressure, in 2010, some employees, including some of the Employee Plaintiffs, returned substantial portions of their hard-earned compensation, ranging up to 20% of their overall compensation for that year.

ANSWER 111: AIG admits that AIG FP asked some of its employees to voluntarily return a portion of their compensation, and that in 2010, some employees, including some of the Former Executives, waived portions of their compensation; denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 111 regarding the motivations of AIG FP employees; and otherwise denies the allegations contained in Paragraph 111.

D. AFTER AIG INC. AND AIG FP RETURNED TO PROFITABILITY, AIG FP REFUSED TO PAY PLAINTIFFS THE AMOUNTS THEY ARE OWED, CREATE A PLAN OF RESTORATION OR EXTEND THE LAPSE DATE

112. AIG Inc. was able to return to profitability in 2011 and to repay any amounts owed to the Treasury and the Federal Reserve in 2012, plus a profit of over \$20 billion. Upon information and belief, AIG FP also returned to profitability before December 2013.

ANSWER 112: AIG admits that it repaid all debts owed to the U.S. government; admits that the government publicly reported that it realized a profit; avers that AIG reported a net loss of \$4.109B for the quarter ending in September 30, 2011; and otherwise denies the allegations contained in Paragraph 112.

113. By December 31, 2013, AIG FP should have restored and paid the DCA and SIP Account balances. *See, e.g.*, DCP § 4.01(b); SIP § 4.01(b).

ANSWER 113: AIG responds that the allegations contained in Paragraph 113 consist of legal arguments or conclusions to which no response is required; refers the Court to the DCP and SIP for a complete and accurate description of their contents; and otherwise denies the allegations contained in Paragraph 113.

114. In fact, AIG FP could have restored—as it was obligated to do under the Compensation Plans—the DCA and SIP Account balances, and repaid the Employee Plaintiffs from general corporate funds or via the Revolving Credit Agreement that was in place between AIG Inc. and AIG FP. The Revolving Credit Agreement was available to AIG FP for it to meet all “*direct and legitimate business needs.*”

ANSWER 114: AIG responds that the allegations contained in Paragraph 114 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations; refers the Court to the DCP, SIP, and the AIG FP Revolving Credit Agreement for a complete and accurate description of their contents; and otherwise denies the allegations contained in Paragraph 114.

115. However, in a letter dated July 31, 2014, AIG FP informed the Employee Plaintiffs that it would not restore their DCA or SIP Account balances, nor would it pay them the amounts

it owed them under the DCP and SIP. *See* July 31, 2014 Letter from AIG FP to DCP and SIP Plan Participants, attached as Exhibit C.

ANSWER 115: AIG refers the Court to the referenced letter for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 115.

116. By this point in time, AIG Inc.'s financial health had been restored, and the company became profitable. AIG FP continued as a solvent, wholly-owned subsidiary of AIG Inc., relying on AIG Inc. to cover its financial obligations pursuant to the General Guarantee Agreement.

ANSWER 116: AIG admits that AIG FP continued as a wholly-owned subsidiary of AIG; avers that AIG reported a net income of \$2.201B for the quarter ending in September 30, 2014; refers the Court to the General Guarantee Agreement for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 116.

117. Despite AIG Inc.'s financial health; AIG FP's continued existence as a going concern and wholly-owned subsidiary of AIG Inc.; AIG Inc.'s and AIG FP's acknowledgement of and promise to honor the financial obligations stemming from the DCP and SIP; and AIG Inc.'s obligations under the General Guarantee Agreement; AIG FP refused to restore the Employee Plaintiffs' DCA or SIP Account balances, pay the Employee Plaintiffs the amounts they are owed for their work, create a plan of restoration or extend the lapse date.

ANSWER 117: AIG refers the Court to the DCP, SIP, and General Guarantee Agreement for a complete and accurate description of their contents; and otherwise denies the allegations contained in Paragraph 117.

E. AIG FP'S SUSPECT ACCOUNTING & MISCHARACTERIZATION OF AIG INC.'S DISGUISED EQUITY INFUSION

1. Financial Crisis and FRBNY Loan

118. On September 22, 2008, the FRBNY extended an \$85 billion line of credit to AIG Inc. As a result, AIG Inc. (through its subsidiary AIG Funding) made available up to \$65 billion to AIG FP. Before the disbursement of these funds from AIG Inc., AIG FP was undercapitalized.

ANSWER 118: AIG admits the allegations contained in the first and second sentences of Paragraph 118; refers the Court to the Fed Loan and the AIG FP Revolving Credit Agreement for

a complete and accurate description of their contents; and denies the allegations contained in the third sentence of Paragraph 118.

119. The funding from insider, AIG Inc., to AIG FP was papered as a purported “revolving credit agreement.” However, the purported Revolving Credit Agreement included certain key terms which were fundamentally inconsistent with those of a debt instrument. The agreement provided no deadline for repayment of the funds and the note had no maturity or term. Put simply, the agreement merely provided that AIG FP “unconditionally promise[d] to pay to the order of AIG Funding, Inc... the aggregate unpaid principal amount of all loans made by AIG Funding to the Borrower pursuant to the Revolving Credit Agreement dated as of September 22, 2008” Additionally, AIG FP itself has admitted that no third party was willing to loan it money under any terms even with its parent’s “backing.” As such, the Revolving Credit Agreement was not an arm’s length bargain.

ANSWER 119: AIG admits that the loan from AIG to AIG FP (via AIG Funding Inc.) was documented in the AIG FP Revolving Credit Agreement; admits that around September 2008, no third party was willing to lend AIG FP suitable funding that was sufficient to meet its liquidity needs at the time; refers the Court to the AIG FP Revolving Credit Agreement for a complete and accurate description of its contents; further responds that the allegations contained in Paragraph 119 consist of legal arguments or conclusions to which no response is required; and otherwise denies the allegations contained in Paragraph 119.

120. The AIG FP “revolving credit agreement” did not specify a fixed interest rate or method for determining a variable rate, but rather it provided that interest would be “at a mutually agreed rate per annum which the parties may determine, from time to time”

ANSWER 120: AIG responds that the allegations contained in Paragraph 120 consist of legal arguments or conclusions to which no response is required; refers the Court to the AIG FP Revolving Credit Agreement for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 120.

121. By comparison, the FRBNY line of credit to AIG Inc. had real terms. The original October 22, 2008 FRBNY \$85 billion line of credit had a two-year maturity, a variable interest rate of three-month Libor plus 850 basis points, and collateral—it transferred 79.9% of AIG Inc.’s equity to the Treasury.

ANSWER 121: AIG admits that the initial terms of the FRBNY line of credit to AIG (the Fed Loan) had a two-year term, a variable interest rate of three-month Libor plus 850 basis points, and provided the U.S. government with a 79.9 percent equity interest in AIG; refers the Court to the Fed Loan for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 121.

2. AIG FP “Revolving Credit Agreement” Treated as Equity

122. It was well understood by all parties, including the FRBNY (the ultimate source of the funds), that the substance of this revolving credit agreement was to provide AIG FP the cash required to satisfy financial obligations as they came due and successfully complete its wind-down with no realistic expectation of repayment to AIG Inc. It served the purpose of equity.

ANSWER 122: AIG admits that the funds loaned to AIG by the FRBNY were intended to meet guaranteed obligations of AIG and certain of its subsidiaries, including those of AIG FP; denies knowledge or information sufficient to form a belief as to the understanding of the FRBNY; and otherwise denies the allegations contained in Paragraph 122.

123. The characteristics of the cash transfers from AIG Funding to AIG FP, regardless of being papered as purported debt, should have been (and at convenient times were) accounted for as equity contributions—consistent with their underlying economic characteristics. In this instance, AIG FP had no probable future sacrifice of economic benefits, meaning the funding arrangement was not a “liability” of AIG FP. Moreover, as it was in “wind-down” mode, AIG FP never established a sinking fund nor otherwise set aside an account or fund that would help safeguard amounts that could be used to repay the purported debt. Likewise, AIG Inc. at no point in time insisted on additional protections—as an ordinary arms-length creditor would do even though AIG FP was winding down.

ANSWER 123: AIG admits that AIG FP never established a sinking fund; and otherwise denies the allegations contained in Paragraph 123.

124. The wind-down of AIG FP was clearly orchestrated and controlled by AIG Inc. for the benefit of AIG Inc. and AIG Inc. provided the cash to make it happen. While AIG FP and AIG Inc. went through the motions, there was no economic substance to the payment of interest. David Herzog, AIG Inc.’s CFO affirmed such lack of economic substance. In an email dated September 7, 2010, Herzog wrote to Elias Habayeb, CFO Financial Services Division, and Robert Gender, AIG Corporate Treasurer, in relation to the proposed recapitalization plan: “Another idea. Drop interest rate to zero, leave the debt.”

ANSWER 124: AIG refers the Court to the referenced document for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 124.

125. While dressed up as a “loan,” the cash payments to AIG FP by AIG Funding were, in substance, contributions to AIG FP’s equity that were made to facilitate the wind-down of AIG FP. This strategy was designed to permit AIG FP to take immediate losses and transfer assets considered to have long-term upside potential to other segments or vehicles that ultimately benefited AIG Inc. and other parties (but not AIG FP).

ANSWER 125: AIG denies the allegations contained in Paragraph 125.

3. AIG Inc.’s and AIG FP’s Representations to the Rating Agencies

126. AIG Inc. itself did not consider this blank check to represent “real” liabilities of AIG FP or to impact the “real” solvency of AIG FP. Indeed, it is precisely because AIG FP received the equity infusions from its parent that it could make assertions to ratings agencies that it was solvent. In materials prepared for a discussion with Fitch Ratings on May 13, 2009, AIG FP proffered the following conclusion: “Long Term AIGFP Solvency – AIG will continue its wind-down of AIGFP, where over time the fair market value of assets is expected to exceed liabilities.”

ANSWER 126: AIG refers the Court to the referenced document for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 126.

127. In the same presentation, AIG FP generated a chart showing that the ultimate asset cash inflows totaled \$37.5 billion and the ultimate liability outflows totaled \$34.3 billion. Clearly, the \$34.3 billion in outflows did not include the purported funding from AIG Inc. which, at the time, totaled approximately \$55.7 billion.

ANSWER 127: AIG refers the Court to the referenced document for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 127.

128. Similarly, AIG Inc. gave another presentation to Standard & Poor’s which included an “overview of [AIG FP’s] liabilities” as of July 23, 2010. The presentation listed eight categories of liabilities with a total remaining principal of \$23.4 billion—once again excluding the AIG Inc. funding, which at the time, totaled \$56.0 billion.

ANSWER 128: AIG refers the Court to the referenced document for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 128.

129. In numerous additional presentations, AIG FP continued to show rating agencies breakdowns of liabilities that did not include the AIG Funding “loan” as a liability. That concealment was for good reason: If Standard & Poor’s, Moody’s Investors Service, and Fitch Ratings downgraded AIG Inc. and AIG FP’s credit rating, it would have triggered requirements forcing AIG Inc. to immediately pay hundreds of millions of dollars to post collateral to AIG FP’s credit default swap counterparties and return collateral received by AIG Inc.’s insurance subsidiaries in connection with securities lending programs.

ANSWER 129: AIG refers the Court to the referenced documents for a complete and accurate description of their contents; and otherwise denies the allegations contained in Paragraph 129.

4. Representations Regarding AIG FP’s Solvency

130. The amounts documented and recorded as purported loans from AIG Inc. to AIG FP were in substance equity contributions provided by AIG Inc. As such, AIG FP has in fact been a solvent entity from 2008 to the present.

ANSWER 130: AIG denies the allegations contained in Paragraph 130.

131. The amounts “loaned” by AIG Inc. to AIG FP were made so that AIG FP could pay its other obligations as they came due—the definition of solvency. The purported note’s payment history reveals that hundreds of millions of dollars routinely flowed back and forth between AIG Inc. and AIG FP based on the latter’s cash flow needs.

ANSWER 131: AIG admits that it loaned money (via AIG Funding Inc.) to AIG FP so that AIG FP could pay its guaranteed obligations and that AIG FP made repayments to AIG; and responds that the remaining allegations contained in Paragraph 131 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations.

132. In the Connecticut Litigation, Mark Balfan, AIG FP’s CFO, confirmed that as a result of the funding from AIG Inc., AIG FP was able to meet its obligations and *remain solvent*:

Q. Between 2002 and 2017 [the period when Mr. Balfan was employed at AIG FP], to your knowledge, was there ever a debt that FP owed but didn't pay?

A. To my knowledge, there was not.

Q. . . . From the time [of] those losses [on the super senior CDSs that were the primary driver behind the elimination of deferred compensation balances] are you ever aware of FP taking the position that it was insolvent?

A. No.

ANSWER 132: AIG refers the Court to the referenced testimony for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 132.

133. In fact, AIG FP even took the position that it was solvent in other tribunals. In the Brookfield Asset Management Litigation, AIG FP clearly represented that it “[was], and always has been, *solvent on both a cash flow and balance sheet basis.*” (emphasis added).

ANSWER 133: AIG refers the Court to the referenced document for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 133.

134. AIG FP's representation that it had always been balance sheet solvent could only be true if the “loans” from AIG Inc. to AIG FP were accounted for as equity contributions.

ANSWER 134: AIG denies the allegations contained in Paragraph 134.

135. In fact, Herzog (AIG Inc.'s former CFO) has even testified that AIG Inc. did not account for the Parent Investment as a “loan” either to its own investors or to rating agencies at any time and declined to comment on why it treated the investment as a loan in connection with the Plan Participants.

ANSWER 135: AIG denies the allegations contained in Paragraph 135.

5. AIG FP's Attempts to Properly Recognize the Purported Debt as Equity

136. The conclusion that the funding by AIG Inc. constituted equity contributions is also consistent with how AIG Inc. and AIG FP viewed these purported “loans” and described them to the Federal Reserve Bank of New York.

ANSWER 136: AIG denies the allegations contained in Paragraph 136.

137. In 2010, AIG Inc. and AIG FP began planning to clean up their books and records to align with the reality of the Parent Investment by formally recognizing the purported debt as equity. However, AIG Inc. and AIG FP abruptly changed course when they were advised that these entries could trigger AIG FP's payment obligations under the DCP and SIP.

ANSWER 137: AIG denies the allegations contained in Paragraph 137.

138. The decision to not recharacterize the debt (*e.g.*, by accurately reflecting it as an equity infusion) was made solely to avoid triggering AIG FP's obligations to deferred compensation Plan Participants—not a valid basis to mischaracterize the equity as debt.

ANSWER 138: AIG denies the allegations contained in Paragraph 138.

139. As regulated financial institutions, AIG FP and AIG Inc. had legal obligations to ensure that their financial statements accurately described the substance of transactions and the impact those transactions have on financial statements, particularly the balance sheet of the publicly-traded parent, AIG Inc.

ANSWER 139: AIG responds that the allegations contained in Paragraph 139 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations.

140. In July 2010, AIG Inc. and AIG FP developed a “recapitalization plan” that would have essentially either “forgiven” the purported loan or used book entries to inject enough equity to repay the loan. In either situation, the recapitalization plan would have properly accounted for the “loan” as equity.

ANSWER 140: AIG admits that in 2010, a potential recapitalization of some of the amount that AIG FP owed AIG under the AIG FP Revolving Credit Agreement was discussed; and otherwise denies the allegations contained in Paragraph 140.

141. AIG Inc.'s and AIG FP's top executives began circulating memoranda detailing this recapitalization plan. In one presentation, Ankur Bhandari (AIG's Assistant Treasurer), noted that:

*In order to better manage the unwind process and **correctly reflect the amount collectible from FP**, the following is proposed: . . . Recapitalize to make [AIG FP's] equity zero. (emphasis added).*

ANSWER 141: AIG refers the Court to the referenced document for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 141.

142. The proposed recapitalization plan would have been executed through book entries with no actual movement of cash between the entities. According to AIG FP's internal documents, the "in-substance capital contribution" (proposed recapitalization plan) would not have had any adverse tax impacts for either party nor would it have created any income or loss on the parent's consolidated financial statement.

ANSWER 142: AIG refers the Court to the referenced document for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 142.

143. In fact, the proposed recapitalization plan would have allowed AIG Inc. and AIG FP to receive a \$310+ million deferred tax asset. On February 24, 2014, Mark Balfan drafted a memorandum entitled "Connecticut Deferred Tax Asset for AIG FP" (the "Balfan Memo"). After explaining that certain CDS positions pulled to par, Balfan explained that "there was evidence suggesting that AIGFP would *continue* to be profitable well into the future." (emphasis added). Therefore, AIG Inc.'s tax department had recorded a \$310 million deferred tax asset on its books. AIG FP was asked to evaluate whether there was any possibility of utilizing the deferred tax asset.

ANSWER 143: AIG refers the Court to the referenced document for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 143.

144. Balfan explained that the company could receive the deferred tax asset if AIG Inc. classified all or a portion of the purported intercompany loan as equity (the recapitalization plan). However, the plan would have "unforeseen ramifications" such as "trigger[ing] payment obligations to the former employees." Since that outcome would have been too untenable for AIG Inc. and AIG FP, Balfan concluded that the "Connecticut State valuation allowance must remain" on the companies' books. As Elias Habayeb (AIG Inc.'s former CFO) testified, the only reason not to recapitalize the Parent Investment was to avoid "value leakage" to AIG Inc., meaning an economic loss to AIG Inc. caused by properly describing the purported debt as equity and "subordinating [AIG Inc.'s] position below the deferreds."

ANSWER 144: AIG refers the Court to the referenced document and testimony for a complete and accurate description of their contents; and otherwise denies the allegations contained in Paragraph 144.

145. It should also be noted that on February 24, 2014, Balfan expressly acknowledged that future events could “trigger payment obligations to the former employees.” Yet, today, AIG FP now contends that its liabilities to the Employee Plaintiffs were extinguished on December 31, 2013.

ANSWER 145: AIG refers the Court to the referenced document for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 145.

146. Although AIG FP had an obligation to restore account balances, create a restoration plan or extend the lapse date, AIG FP’s top executives, including William Dooley (AIG FP’s CEO), Mark Balfan (AIG FP’s CFO), and Gerard Pasciucco (AIG FP’s COO), deliberately breached that obligation for the benefit of the parent company—AIG Inc. In fact, these top executives—all of whom were involved in the proposed recapitalization plan—testified in the Connecticut Litigation that their true loyalties lied with the parent, not AIG FP. In other words, they placed their allegiance to AIG Inc. ahead of AIG FP’s contractual obligation to restore the Employee Plaintiffs’ deferred compensation, which obligation “**shall not be subject to the approval of AIG.**” (emphasis added).

ANSWER 146: AIG refers the Court to the referenced depositions and the DCP for a complete and accurate description of their contents; responds that the allegations contained in Paragraph 146 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations; and otherwise denies the allegations contained in Paragraph 146.

147. Once these top executives and AIG FP realized that the proposed recapitalization plan could obligate AIG FP to pay the Employee Plaintiffs, AIG FP and AIG Inc. quickly shifted course. In 2011, AIG Inc. required AIG FP to formulate a partial recapitalization—using entries to set off an \$18.5 billion intercompany tax receivable against the purported loan. The partial recapitalization allowed the “remaining intercompany borrowings” to stay on AIG FP’s balance sheet so as to not trigger obligations under the Compensation Plans.

ANSWER 147: AIG admits that, in 2011, AIG set off an approximately \$18.3 billion intercompany tax receivable against the outstanding balance owed by AIG FP under the AIG FP Revolving Credit Agreement; and otherwise denies the allegations contained in Paragraph 147.

148. After AIG FP, at the direction of AIG Inc., decided to abandon its original recapitalization plan, its purported “liabilities” far exceeded its assets—by tens of billions of dollars. Nonetheless, AIG FP continued to operate as a going concern for the next decade while

using the Parent Investment as a pretense for avoiding repaying Plan Participants for years, including in 2014 and 2015.

ANSWER 148: AIG admits that AIG FP's liabilities exceeded its assets by tens of billions of dollars; admits that that up until its chapter 11 filing, AIG FP continued as a going concern; and otherwise denies the allegations contained in Paragraph 148.

6. The FRBNY Begins to Ask Questions

149. Although AIG Inc. fully repaid the FRBNY in 2012, the FRBNY continued to list it as a Systemically Important Financial Institution (SIFI) through at least 2015. As a SIFI, AIG Inc. and its subsidiaries were required to submit certain financial reports to the FRBNY. Eventually, the FRBNY began to question AIG FP's suspect accounting practices.

ANSWER 149: AIG admits that AIG fully repaid the FRBNY in 2012; admits that the FRBNY continued to list it as a Systemically Important Financial Institution (SIFI) through at least 2014; admits that as a SIFI, AIG and its subsidiaries had certain financial reporting obligations; avers that the SIFI designation was removed September 29, 2017; and otherwise denies the allegations contained in Paragraph 149.

150. On February 11, 2015, the FRBNY sent a letter to AIG Inc. objecting to its accounting treatment of the intercompany "loan" and its purported negative equity in AIG FP. The FRBNY asked AIG Inc. to justify the \$35 billion negative equity investment AIG FP was reporting on its balance sheet.

ANSWER 150: AIG refers the Court to the referenced document for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 150.

151. Of particular import is that the \$35 billion of "negative equity" perfectly coincided with the roughly \$35 billion "loan" AIG FP purportedly owed under the revolving credit agreement. In fact, Balfan explained to the FRBNY, and others, that the AIG FP "deficit" and "loan" went hand in hand. As Peter Paulson (AIG Inc.'s Associate General Counsel) explained, AIG FP had a "deficit," "not just a 'loan'".

ANSWER 151: AIG refers the Court to the referenced document for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 151.

152. An internal email thread among AIG FP and AIG Inc. executives reveals that “technically” AIG FP “was supposed to report the negative investment” as a liability on its balance sheet. However, “[t]he only reason” AIG FP reported the negative equity was because of “concerns around the litigation related to the historical FP Deferred Comp Plan.” Jamie Alexander (AIG FP’s Chief Accounting Officer) further admitted that AIG FP did not use this rationale for *any other* negative equity situation.

ANSWER 152: AIG refers the Court to the referenced document for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 152.

153. Christine Button (AIG Inc.’s Associate General Counsel) prepared a document for the FBRNY that explained the legal reasons why AIG Inc. chose not reclassify the intercompany “debt” as equity. It provided in part:

[I]f AIG were required to provide an infusion of equity into its AIGFP subsidiary by, for example, *reconstituting the debt that AIGFP owes to AIG as equity*, [the UK claimants] and perhaps others would likely argue that they should benefit from that infusion by having the losses on deferred compensation restored. *Similarly, if AIG were to reclassify its negative equity in AIGFP to a liability to AIGFP on its regulatory reports, the UK claimants and perhaps others might argue that the obligation that AIGFP has to its parent has been forgiven and they should benefit from that forgiveness by having the losses on deferred compensation restored.*

(emphasis added).

ANSWER 153: AIG refers the Court to the referenced document for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 153.

154. In July 2015, AIG FP sent a reply letter to Kenneth Lamar at the FRBNY further explaining its unique accounting practice (the “Lamar Letter”). AIG FP represented that its unique accounting practices were consistent with “the unusual circumstances surrounding the losses suffered during the financial crisis” and that deviating from the accounting practice would result in “unintended and unjustified consequences.” The Lamar Letter plainly reveals those “unjustified consequences”—bolstering “the claims of certain former employees against two AIG FP deferred compensation plans.”

ANSWER 154: AIG refers the Court to the referenced document for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 154.

155. As these records reveal, AIG FP and its parent disguised an equity infusion as debt for the sole purpose of avoiding contractual obligations owed to the Employee Plaintiffs. AIG FP used its parent's capital to remain balance sheet and cash flow solvent while neither AIG FP nor AIG Inc. genuinely expected AIG FP to repay the purported loan. AIG FP and its parent relied on sophisticated legal counsel to devise a scheme to keep AIG FP "hopelessly insolvent" while nonetheless operating the business as a going concern for more than a decade—until AIG FP and its parent needed a strategy to forum shop their two-party creditor dispute with the Employee Plaintiffs.

ANSWER 155: AIG denies the allegations contained in Paragraph 155.

7. AIG FP's Attempt to Conceal This Scheme

156. AIG FP and its parent have gone to great lengths to conceal their inequitable conduct. For instance, AIG FP has admitted that it failed to produce certain relevant and material documents to the UK claimants in the UK Action. On November 9, 2022, AIG FP stipulated that it had not produced the Balfan Memo, the Lamar Letter, or twenty other recapitalization plan documents in the UK Action (together the "Stipulation Documents").

ANSWER 156: AIG refers the Court to the November 9, 2022 document referenced for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 156.

157. In the Connecticut Litigation, AIG FP originally attempted to withhold the Stipulation Documents by improperly asserting the attorney-client privilege. After Employee Plaintiffs lodged objection after objection, AIG FP reluctantly produced the Stipulated Documents with redactions.

ANSWER 157: AIG denies the allegations contained in Paragraph 157.

158. The Employee Plaintiffs subsequently moved to compel production of these entire documents and the Connecticut court ordered the production of certain portions of them, recognizing a subject matter waiver and admonishing that AIG FP could not invoke the privilege as a sword and a shield, and requiring AIG FP to produce certain sensitive documents in unredacted form (the "Connecticut Discovery Order").

ANSWER 158: AIG admits that the Former Executives moved to compel production of certain documents and the Connecticut court ordered the production of certain portions of them;

refers the Court to the referenced order for a complete and accurate description of its contents; avers that AIG FP had the right to move for reconsideration of the referenced order as of the time it filed the Chapter 11 case; avers that AIG has since produced certain of the challenged documents pursuant to a non-waiver stipulation and order entered by this Court; and otherwise denies the allegations contained in Paragraph 158.

159. However, AIG FP filed this Chapter 11 bankruptcy rather than complying with the Connecticut Discovery Order. In this Chapter 11 Case, the Employee Plaintiffs again requested the production of the documents referenced in the Connecticut Discovery Order but AIG FP outright refused—brazenly contending that the judge in the Connecticut Litigation had “wrongly decided” the privilege issues.

ANSWER 159: AIG denies the allegations contained in Paragraph 159.

F. THE AIG INC.-AIG FP SCHEME CONTINUES TO THE PRESENT

160. AIG Inc. and AIG FP have been working together since 2008 to deprive the Employee Plaintiffs of their hard-earned and contractually due compensation. In addition to conspiring to disguise an equity contribution as debt and conceal the true nature of that capital contribution, AIG FP and its parent have also worked together to dissipate assets and shrink the bankruptcy estate—for the benefit of the parent, AIG Inc.

ANSWER 160: AIG denies the allegations contained in Paragraph 160.

1. AIG Inc.’s Control of the Bankruptcy Process

161. AIG Inc. dominated the bankruptcy planning process from the very beginning.

ANSWER 161: AIG denies the allegations contained in Paragraph 161.

162. For example, William Kosturos, the Chief Restructuring Officer for AIG FP, testified at his March 15, 2023 deposition that he did not know whether when he first spoke with representatives at AIG Inc. concerning his engagement they were wearing their AIG Inc. “hat” or their AIG FP “hat.”

ANSWER 162: AIG refers the Court to the referenced testimony for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 162.

163. Similarly, it was AIG Inc.’s counsel—Weil Gotschal [sic] & Manges LLP (“Weil”)—who first approached Mr. Dubel to serve as one of the independent directors of AIG

FP, after an unfavorable development in the UK Action, only to later inform Mr. Dubel that his services were no longer needed once it appeared that the tides were turning on AIG FP's litigation luck.

ANSWER 163: AIG admits that Weil initially approached Mr. Dubel about the potential to serve as an independent director of AIG FP; and otherwise denies the allegations contained in Paragraph 163.

164. Weil's involvement was not limited to choosing and hiring key decision-makers at AIG FP who would be tasked with shepherding AIG FP through bankruptcy. In January 2022, AIG Inc.'s counsel also delivered a presentation to Mr. Dubel and Pamela Corrie (AIG FP's second independent director), in which they asserted that the Chapter 11 strategy could help put an end to the Employee Plaintiffs' claims against AIG FP. Significantly, this presentation took place before the Special Committee itself began assessing AIG Inc.'s purported claim against AIG FP in what they claimed was an independent investigation.

ANSWER 164: AIG admits that on or around January 27, 2022, Latham sent Mr. Dubel and Ms. Corrie a copy of a presentation, refers the Court to that presentation for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 164.

165. AIG Inc.—and not AIG FP—served as the mastermind of AIG FP's bankruptcy planning and strategy.

ANSWER 165: AIG denies the allegations contained in Paragraph 165.

2. AIG FP's Dissipation of Assets

166. In May 2022, AIG FP had approximately \$299 million in cash held in an AIG Inc. "pooled account." On August 5, 2022, AIG FP's Board of Directors—that is, the Special Committee, composed of Ms. Corrie and Mr. Dubel, and director Paul Stubbs—met for, among other things, a presentation by Debevoise & Plimpton, counsel for AIG FP in the Connecticut Litigation.

ANSWER 166: AIG admits that the AIG FP Board of Directors met on August 5, 2022; refers the Court to minutes of that meeting for a complete and accurate description of that meeting; and otherwise denies the allegations contained in Paragraph 166.

167. That same day and at that same meeting, Mr. Stubbs announced that he would begin contacting swap counterparties to begin discussions concerning AIG FP's novation of its swap

portfolio to AIG Matched Funding Corp. (“AIG Matched Funding”) and AIG Markets, Inc. (“AIG Markets”) as part of the novation process that served no business purpose for AIG FP, but saved AIG Inc. from owing hundreds of millions of dollars to swap counterparties when AIG FP declared bankruptcy.

ANSWER 167: AIG admits that the AIG FP Board of Directors met on or around August 5, 2022; refers the Court to the minutes of that meeting for a complete and accurate description of its contents; further admits that AIG FP undertook a process to novate or terminate certain of its swap portfolio in the months leading up to AIG FP’s bankruptcy filing; and otherwise denies the allegations contained in Paragraph 167.

168. From May 2022 until the beginning of December 2022, throughout the novation process, AIG FP’s cash balance went from \$299 million to approximately \$175 million. On November 29, 2022, the Connecticut court ordered AIG FP to produce, by December 14, 2022, fourteen (14) specific documents relating to AIG FP’s obligation to pay the Employee Plaintiffs under the DCP and SIP plans.

ANSWER 168: AIG admits that between May 2022 and December 2022, AIG FP’s cash balance declined; refers the Court to the referenced order for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 168.

169. Less than one week later, on December 5, 2022, counsel for the Employee Plaintiffs sent a letter (the “Asset Dissipation Letter”) to AIG FP, requesting that AIG FP: “(i) confirm that the information provided in discovery about the current level of assets is accurate as of today, (ii) provide adequate assurances that [AIG FP] will preserve sufficient assets to pay any judgment in this Action, and (iii) cease any efforts to further dissipate the assets of the company that could prejudice our clients’ rights to collect what is owed to them.”

ANSWER 169: AIG admits that on December 5, 2022, counsel for the Former Executives sent a letter to AIG FP; refers the Court to that letter for a complete and accurate description of its contents; and otherwise denies the allegations in Paragraph 169.

170. AIG FP did not respond to the requests in the Asset Dissipation Letter. Instead, on the morning of December 6, 2022, AIG Inc., its outside counsel Weil, and Latham & Watkins LLP (“Latham”), and the Special Committee participated in an “all-hands” meeting at Weil’s offices, during which “the filing of a bankruptcy in the event that every one of the 46 plaintiffs that were suing FP *did not quickly fall in line and agree to a settlement*” was discussed (emphasis added).

ANSWER 170: AIG admits that on or around December 6, 2022, representatives from each of AIG, Weil, Latham, and the AIG FP Special Committee met at Weil's offices; refers the Court to the testimony quoted in Paragraph 170 for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 170.

171. On the evening of December 5, 2022, Weil emailed the Employee Plaintiffs, on behalf of AIG Inc., with a proposed standstill agreement to be entered between the Employee Plaintiffs and AIG FP (the "Standstill Agreement"). This was the first time the Employee Plaintiffs became aware of Weil's involvement in the Connecticut Litigation. Weil gave the Employee Plaintiffs 24 hours to agree the Standstill Agreement and it was executed on December 6, 2022.

ANSWER 171: AIG admits that on or around December 5, 2022, representatives from Weil emailed the Former Executives a proposed standstill agreement and that it was executed on December 6, 2022; refers the Court to that document for a complete and accurate description of its contents; denies knowledge or information sufficient to form a belief as to the truth of whether "[t]his was the first time the Employee Plaintiffs became aware of Weil's involvement in the Connecticut Litigation"; and otherwise denies the allegations contained in Paragraph 171.

172. Also on December 6, 2022, the Board of AIG FP sent \$35 million to AIG Matched Funding, the affiliate to which AIG FP novated its swap portfolio, using funds from the "pooled" account that AIG FP held at AIG Inc. that functioned as its primary operating account.

ANSWER 172: AIG admits that on or around December 6, 2022, AIG FP sent \$35 million to AIG Matched Funding; and otherwise denies the allegations contained in Paragraph 172.

173. Prior to any outreach being made to the Employee Plaintiffs, the Special Committee took the position that AIG Inc. would have to approve any settlement with the Employee Plaintiffs. Indeed, Mr. Dubel explained that "no matter what . . . any settlement discussions would require us to basically go to AIG as our largest creditor and inform them that we would like to settle it and that whatever settlement amount that we were going to agree to would effectively come out of the recovery that they would be entitled to as our largest creditor."

ANSWER 173: AIG refers the Court to the referenced testimony for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 173.

174. Ms. Corrie likewise explained, “we had to talk to our parent . . . because any money we paid to—in settlement would come out of money that we felt was owed to our parent [W]e didn’t feel that we could—we would have access to that money, we could use that money without the consent of the parent.”

ANSWER 174: AIG refers the Court to the referenced testimony for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 174.

175. On December 12, 2022, the Standstill Agreement expired and the Employee Plaintiffs, AIG FP and AIG Inc. had not reached a settlement. No serious settlement discussions took place other than AIG Inc. and AIG FP making threats about filing for bankruptcy.

ANSWER 175: AIG admits that on December 12, 2022, the agreement referenced in Paragraph 175 expired and that the parties had not reached a settlement agreement by that time; and otherwise denies the allegations contained in Paragraph 175.

176. The same day the Standstill Agreement expired, AIG Inc. “swept” \$130 million from AIG FP’s cash “pooled” account controlled by AIG Inc. As a result of that “sweep,” AIG FP lost access to those funds and was left with the \$10 million in cash that appeared in AIG FP’s first-day bankruptcy disclosures.

ANSWER 176: AIG admits that AIG FP’s cash balance declined between May 2022 and December 2022; refers the Court to the testimony of multiple AIG FP witnesses who have testified about this decline in the Chapter 11 case and the Adversary Proceeding; and otherwise denies the allegations contained in Paragraph 176.

177. AIG FP, under the stewardship of the Special Committee, was aware that such a sweep would likely take place, but did nothing to stop it. Nor did AIG FP seek to negotiate the return of that cash.

ANSWER 177: AIG admits that AIG FP was aware that its cash balance declined between May 2022 and December 2022; refers the Court to the testimony of multiple AIG FP witnesses who have testified this decline in the Chapter 11 case and in the Adversary Proceeding; and otherwise denies the allegations contained in Paragraph 177.

178. Instead, two days later, on December 14, 2022, AIG FP filed for bankruptcy. The Chapter 11 filing was preceded by and authorized via a board resolution, executed on December 13, 2022, in lieu of a formal board meeting. The Special Committee could not identify a specific meeting, discussion, or procedure to authorize the Chapter 11 filing because it was a foregone conclusion that if the Employee Plaintiffs did not settle, AIG FP would file for bankruptcy.

ANSWER 178: AIG admits that on December 14, 2022, AIG FP filed for bankruptcy and the Chapter 11 filing was preceded by and authorized via a board resolution, executed on December 13, 2022; refers the Court to the referenced board resolution for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 178.

179. On January 19, 2023, AIG FP Chief Financial Officer Timothy Allison testified at the Section 341 meeting. In response to a question from the Office of the U.S. Trustee seeking the status of AIG FP's investigation of "an aggregate amount of approximately \$250 million from certain non-debtor affiliates on account of a potential historical overpayment for certain company shared services," Mr. Allison responded that the investigation is "ongoing."

ANSWER 179: AIG admits that on January 19, 2023, AIG FP Chief Financial Officer Timothy Allison testified at the Section 341 meeting; refers the Court to the transcript of that meeting for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 179.

180. To date, AIG FP has not pursued repayment of the \$250 million overpayment, despite believing that those amounts should be returned to AIG FP and despite AIG Inc. guaranteeing the liability. Nor has AIG FP made any efforts to recoup the approximately \$130 million swept by AIG Inc.

ANSWER 180: AIG denies the allegations contained in Paragraph 180.

3. AIG FP's Chapter 11 Plan

181. Ironically, AIG FP's proposed Chapter 11 Plan ("Chapter 11 Plan") seeks to do exactly what it and its parent thought about doing years ago—substituting the purported "debt" for equity. Only now, AIG FP is attempting to use the bankruptcy process to ensure that the recapitalization cannot "trigger" payment of the obligations under the Compensation Plans and to otherwise seek to subordinate the Employee Plaintiffs' claims.

ANSWER 181: AIG admits that AIG FP filed a proposed Chapter 11 plan; and otherwise denies the allegations contained in Paragraph 181.

182. Under the Chapter 11 Plan, AIG Inc. would retain its existing interests in AIG FP in exchange for cancelling its so-called loan. In the event that the Chapter 11 Plan cannot be confirmed, AIG FP intends to toggle to a Section 363 sale in which AIG Inc. will be able to credit bid its debt—virtually ensuring that no other party can place a competitive bid. In either scenario, AIG Inc. will retain its equity in AIG FP and the purported loan will be extinguished.

ANSWER 182: AIG admits that AIG FP filed a proposed Chapter 11 plan; refers the Court to that plan for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 182.

183. To be clear, the purported intercompany loan was in fact a disguised equity contribution subordinate to the Employee Plaintiffs claims. To the extent the Court does not recharacterize the intercompany loan as equity, the intercompany loan should be equitably subordinated to the Employee Plaintiffs' claims because the AIG Inc. and AIG FP, at the direction of AIG Inc., engaged in a decades-long scheme to deny the Employee Plaintiffs their contractually owed compensation.

ANSWER 183: AIG responds that the allegations contained in Paragraph 183 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations.

COUNTERCLAIM AGAINST AIG FP

COUNT ONE

Declaratory Judgment – The Parent Investment Was an Equity Infusion, Not Debt (Against AIG FP and AIG Inc.)

184. The allegations set forth above are incorporated by reference.

ANSWER 184: AIG reasserts and repeats its responses to Paragraphs 1 through 183 of the Former Executives' counterclaims as if fully set forth herein.

185. The Employee Plaintiffs seek a declaration that the Parent Investment in AIG FP, which was papered as part of a "revolving line of credit," was always an equity investment and was not a "loan" because it had all the hallmarks of an equity infusion – no maturity date, no payment terms, no interest rate, and the so-called "loan" was not described as such in communications with rating agencies, regulators, and others.

ANSWER 185: AIG responds that the allegations contained in Paragraph 185 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations.

186. There is a real, substantial, and justiciable controversy as to whether the Parent Investment in AIG FP is equity or debt. This controversy is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201-2.

ANSWER 186: AIG responds that the allegations contained in Paragraph 186 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations.

187. The Parent Investment in AIG FP was clearly intended to be an infusion of capital because, although it was labeled as part of a revolving line of credit, there was no maturity date, no set interest rate, and no term of payment.

ANSWER 187: AIG denies the allegations contained in Paragraph 187.

188. The parties' de facto treatment of the Parent Investment as a capital contribution is reflected by the fact that documents submitted by AIG FP to the FRBNY listed a \$35 billion negative equity investment that AIG FP was reporting on its balance sheet. Of particular import is that the \$35 billion of "negative equity" perfectly coincided with the roughly \$35 billion "loan" under the Revolving Credit Agreement.

ANSWER 188: AIG denies the allegations contained in Paragraph 188.

189. An internal email thread among AIG FP and AIG Inc. executives further reveals that "technically" AIG FP "was supposed to report the negative investment" as a liability on its balance sheet. However, "[t]he only reason" AIG FP reported the negative equity was because of "concerns around the litigation related to the historical FP Deferred Comp. Plan." Jamie Alexander (AIG FP's Chief Accounting Officer) further admitted that AIG FP did not use this rationale for any other negative equity situation.

ANSWER 189: AIG refers the Court to the referenced document for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 189.

190. The parties' intent to treat this transaction as an equity investment, rather than debt, is also evidenced by the fact that AIG Inc. did not account for the Parent Investment as a "loan" to either its own investors or to rating agencies. For example, in materials prepared for discussion with Fitch Ratings, AIG FP declared: "Long Term AIGFP Solvency – AIG will continue its wind-

down of AIGFP, where over time the fair market value of assets is expected to exceed liabilities.” Additionally, a chart prepared by AIG FP for Fitch Ratings showed that the ultimate asset cash inflows totaled \$37.5 billion and the ultimate liability outflows totaled \$34.3 billion. Clearly, the \$34.3 billion in outflows did not include the purported funding from AIG, Inc., which, at the time, totaled approximately \$55.7 billion. Further, in materials prepared for Standard & Poor’s, AIG FP listed “an overview of [AIG FP’s] liabilities” as of July 23, 2010 but did not list the Parent Investment, which at that time totaled \$56.0 billion. In numerous additional presentations, AIG FP continued to show rating agencies breakdowns of its liabilities that did not include the purported “loan” as a liability.

ANSWER 190: AIG refers the Court to the referenced documents for a complete and accurate description of their contents; and otherwise denies the allegations contained in Paragraph 190.

191. Undoubtedly, had AIG FP reported the Parent Investment as a loan to the ratings agencies, Standard & Poor’s, Moody’s Investor Service, and Fitch Ratings likely would have downgraded credit ratings which would have triggered requirements forcing AIG Inc. to immediately pay hundreds of millions of dollars to post collateral to AIG FP’s credit default swap counterparties and return collateral received by AIG Inc.’s insurance subsidiaries in connection with securities lending programs.

ANSWER 191: AIG denies the allegations contained in Paragraph 191.

192. Nor did AIG Inc. call the so-called “loan” prior to the filing of this bankruptcy. Instead, AIG FP and AIG Inc. embarked upon a coordinated effort to deny the Employee Plaintiffs the amounts they were owed under the DCP and SIP and to strip hundreds of millions of dollars from AIG FP’s accounts. As David Herzog, AIG Inc.’s CFO, declared: “[w]e’re not paying the deferred comp. We’ll reverse/rescind the capital contribution before we pay deferred comp. Nothing should be done until this is resolved. NO entries.”

ANSWER 192: AIG refers the Court to the referenced document for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 192.

193. AIG FP’s use of creative accounting to disguise the equity infusion is further reflected by the fact that AIG FP began a process to make its books and records properly classify the Parent Investment as equity, but that process was abruptly stopped when AIG FP realized that it would create “value leakage,” *i.e.*, paying its employees the amounts it owed them. As a result of this potential “value leakage,” AIG FP abandoned efforts to use a \$300+ million deferred tax asset. AIG FP and AIG Inc. did, however, use entries to set off an \$18.5 billion intercompany tax receivable against the purported “loan” under the Revolving Credit Agreement. This partial recapitalization allowed the “remaining intercompany borrowings” to stay on AIG FP’s balance sheet so as not to trigger obligations under the DCP or SIP.

ANSWER 193: AIG denies the allegations contained in Paragraph 193.

194. AIG FP and AIG Inc. also worked together to strip hundreds of millions of dollars of AIG FP's assets (which included assets held by AIG FP as well as funds that were being held in a pooled account controlled by AIG Inc. for AIG FP's benefit) by transferring the cash to other AIG Inc. affiliates prior to the commencement of this bankruptcy. This includes but is not limited to:

- a. Transferring \$35 million from AIG FP to AIG Matched Funding on December 6, 2022 – the day after Employee Plaintiffs sent to AIG FP the Asset Dissipation Letter in connection with the Connecticut Litigation, which requested that AIG FP (i) confirm that the information provided in discovery about the current level of assets is accurate as of today, (ii) provide adequate assurances that AIG FP will preserve sufficient assets to pay any judgment.
- b. Transferring to AIG Inc. \$130 million in cash that was being held in the “pooled” account controlled by AIG Inc. for AIG FP's benefit and leaving only \$10 million in the pooled account for AIG FP.
- c. AIG FP failing to account for the aggregate amount of \$250 million in potential overpayments to non-debtor AIG Inc. affiliates despite the U.S. Trustee's inquiry into these items at the Section 341 meeting.
- d. AIG FP and AIG Inc. did not disclose these transfers to the Employee Plaintiffs until AIG FP filed its Chapter 11 petition.
- e. Upon information and belief, discovery is likely to show additional transfers of value from AIG FP to AIG Inc. or entities it controls as not long before the bankruptcy AIG FP had well over a billion dollars in assets.

ANSWER 194: AIG denies the allegations contained in Paragraph 194.

195. The coordinated scheme of AIG FP and AIG Inc. to sweep more than a hundred million dollars of AIG FP's assets to AIG Inc. or other AIG-related entities instead of paying the Employee Plaintiffs the compensation which they had earned was further effectuated by AIG FP's selective reading of certain provisions of the DCP and SIP. For example, notwithstanding the DCP's and SIP's restoration obligation and payment provisions, AIG FP—at AIG's insistence—refused to restore the account balances, create a restoration plan, or extend the lapse date, even though it had a positive cash flow and was solvent on a balance sheet basis. Although AIG FP ignored its restoration obligation under the DCP and SIP, it points to other language in Section 4.01(b) of the DCP (and a similar provision in the SIP) to assert that the Plan Participants allegedly have an unsecured claim against AIG FP that is subordinated and junior in payment to all other obligations of AIG FP in bankruptcy.

ANSWER 195: AIG denies the allegations contained in Paragraph 195.

196. In the fifteen years leading up to this action, AIG FP represented to other tribunals, rating agencies, and others that it was solvent because, if it did not, there would have been a credit default with AIG FP's counterparties. Now that AIG FP and AIG Inc. have completed the derivatives novations (undertaken in the months before the bankruptcy filing), they have suddenly taken the position that the Parent Investment was a "loan" that makes it insolvent instead of an equity infusion so as to avoid paying the Employee Plaintiffs their hard-earned compensation. AIG FP should not be allowed to take different positions about its ability and obligation to pay depending on whether it is beneficial to AIG entities or to the Employee Plaintiffs.

ANSWER 196: AIG denies the allegations contained in Paragraph 196.

197. In view of the above-mentioned conduct of AIG FP and AIG Inc., this Court should enter a declaratory judgment confirming that the Parent Investment in AIG FP was an equity infusion and not a loan because that was the intent of the parties at the time and how it was and has been actually treated for years.

ANSWER 197: AIG responds that the allegations contained in Paragraph 197 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations.

CLAIMS AGAINST THIRD-PARTY INTERVENOR AIG INC.

COUNT ONE

Equitable Subordination (Against AIG Inc.)

198. The allegations set forth above are incorporated by reference.

ANSWER 198: AIG reasserts and repeats its responses to Paragraphs 1 through 197 of the Former Executives' counterclaims as if fully set forth herein.

199. AIG Inc. engaged in and benefited from inequitable and wrongful conduct, including but not limited to orchestrating a scheme to deprive the Employee Plaintiffs of the amounts contractually owed to them and diverting assets of AIG FP to AIG Inc. and other AIG entities. This has resulted in an injury to the Employee Plaintiffs and has conferred an unfair advantage to AIG Inc. This Court should exercise its equitable powers to cure this inequity.

ANSWER 199: AIG denies the allegations contained in Paragraph 199.

200. AIG Inc. is an insider under 11 U.S.C. § 101(31)(E) because it is an affiliate of AIG FP and a person in control of AIG FP, and also because it used its close relationship to conduct a transaction that was not an arm's length transaction. For example, the purported "revolving line of credit" has no set interest rate, no term of payment, and was never expected to be repaid. In addition, AIG FP has admitted that, at the time of the Parent Investment, no third party was willing

to loan it money. As an insider, AIG Inc.'s conduct must be rigorously scrutinized and AIG Inc. bears the burden to prove the fairness of its transactions with AIG FP.

ANSWER 200: AIG responds that the allegations contained in Paragraph 200 consist of legal arguments or conclusions to which no response is required; and otherwise denies the allegations contained in Paragraph 200.

201. AIG Inc. improperly and wrongfully dominated and controlled the actions of AIG FP so that it could gain an unfair advantage by directing AIG FP to refuse to honor its contractual payment obligations to the Employee Plaintiffs. An example of this bad faith conduct is evidenced by a September 2010 email, wherein Brian Reilly (CFO of AIG Financial Services Division) and David Herzog (CFO of AIG Inc.) had the following exchange concerning the abject refusal to honor AIG FP's obligations to pay the Employee Plaintiffs their deferred compensation:

Reilly: Will call you to discuss item below. Appears that [AIG] FP deferred comp *liability* is balance sheet driven and not income statement driven.

Herzog: I don't care how it's driven, we're not paying the deferred comp. We'll reverse / rescind the capital contribution before we pay deferred comp. Nothing should be done until this is resolved. NO entries.

(emphasis added).

ANSWER 201: AIG refers the Court to the referenced document for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 201.

202. The coordinated willful misconduct of AIG Inc. and AIG FP (acting at the behest of AIG Inc.) to deny the Employee Plaintiffs of the amounts that they are contractually owed is further evidenced by the fact that, in the fifteen years leading up to this action, AIG FP represented to other tribunals and rating agencies that it was solvent even though AIG Inc. and AIG FP now claim that the Parent Investment is a "loan" instead of equity and that, as such, AIG FP is insolvent. Undoubtedly, this benefited AIG Inc. by avoiding paying hundreds of millions of dollars in connection with AIG FP's derivatives contracts.

ANSWER 202: AIG denies the allegations contained in Paragraph 202.

203. Upon information and belief, AIG Inc. coordinated with AIG FP to mislead the Employee Plaintiffs about AIG FP's true financial condition and coordinated and directed AIG FP in connection with the following wrongful actions:

- a. To disguise AIG Inc.'s equity infusion (which curiously was sometimes booked as debt and sometimes accounted for as equity contributions);

- b. To refuse to restore the account balances, create a restoration plan or extend the lapse date even though, upon information and belief, AIG FP has had a positive cashflow since 2010;
- c. To conceal documents establishing AIG FP's shifting and inconsistent positions on the equity infusion (*i.e.*, AIG FP has admitted that it failed to produce certain relevant and material documents to the UK claimants in the UK Action and was ordered by the Connecticut court to produce documents on this topic that were improperly withheld from the Employee Plaintiffs); and
- d. To take inconsistent positions when it suited AIG FP and AIG Inc. (*i.e.*, representing to rating agencies, other tribunals, and others that AIG FP was solvent and now taking a directly contrary position).

ANSWER 203: AIG denies the allegations contained in Paragraph 203.

204. AIG Inc. also orchestrated the diversion of hundreds of millions of dollars of AIG FP's assets (which included funds held by AIG FP as well as funds that were being held in a pooled account controlled by AIG Inc. for AIG FP's benefit) by transferring the cash to other AIG Inc. affiliates prior to the commencement of this bankruptcy. This includes but is not limited to:

- a. Orchestrating the transfer of \$35 million from AIG FP to AIG Matched Funding on December 6, 2022 – the day after Employee Plaintiffs sent AIG FP the Asset Dissipation Letter in connection with the Connecticut Litigation, which requested that AIG FP (i) confirm that the information provided in discovery about the current level of assets is accurate as of today, (ii) provide adequate assurances that AIG FP will preserve sufficient assets to pay any judgment;
- b. Sweeping \$130 million in cash that was being held in the “pooled” account controlled by AIG Inc. for AIG FP's benefit and leaving only \$10 million in the pooled account;
- c. Upon information and belief, directing AIG FP not to account for the aggregate amount of \$250 million in potential overpayments to non-debtor AIG Inc. affiliates despite the U.S. Trustee's inquiry into these items at the Section 341 meeting;
- d. Controlling the timing of appointment of special committee and the timing of this bankruptcy proceedings so that the Chapter 11 petition was filed after AIG FP's assets were stripped; and
- e. Upon information and belief, discovery is likely to reveal additional diversions of assets as not long before the bankruptcy AIG FP had over a billion dollars in assets on its balance sheet.

These transactions unfairly benefitted AIG Inc. and its affiliates to the detriment of the Employee Plaintiffs.

ANSWER 204: AIG denies the allegations contained in Paragraph 204.

205. The above-described inequitable conduct has resulted in harm to the Employee Plaintiffs—who are AIG FP’s only non-insider creditors—and conferred an unfair advantage on AIG Inc. because AIG Inc. has created a scenario, through a complex set of transactions, where it and its entities wind up with all of AIG FP’s assets and the Employee Plaintiffs end up with next to nothing. This is exactly the type of injustice for which the doctrine of equitable subordination was designed to remedy.

ANSWER 205: AIG denies the allegations contained in Paragraph 205.

206. As a result of the foregoing, the Employee Plaintiffs have suffered an actual harm because they are likely to recover far less than the full amounts due to them as a result of AIG Inc.’s conduct.

ANSWER 206: AIG denies the allegations contained in Paragraph 206.

207. Under principles of equitable subordination, in equity and good conscience, any and all claims that have been or may be asserted by, on behalf, or for the benefit of AIG Inc. against AIG FP in any capacity should be subordinated for purposes of distribution, pursuant to Sections 510(c)(1) and 105(a) of the Bankruptcy Code, such that no claim of AIG Inc. is paid ahead of the claim of the Employee Plaintiffs.

ANSWER 207: AIG denies the allegations contained in Paragraph 207.

208. Even if, assuming *arguendo*, AIG Inc. was found to be an outside creditor (which the Employee Plaintiffs dispute), its conduct is so egregious as to warrant equitable subordination.

ANSWER 208: AIG denies the allegations contained in Paragraph 208.

209. In view of the foregoing, the claims of AIG Inc. must be equitably subordinated to the claims of the Employee Plaintiffs, pursuant to Section 510(c) of the Bankruptcy Code, in order to prevent an unfair result.

ANSWER 209: AIG denies the allegations contained in Paragraph 209.

COUNT TWO

Prima Facie Tort (Against AIG Inc.)

210. The allegations set forth above are incorporated by reference.

ANSWER 210: AIG reasserts and repeats its responses to Paragraphs 1 through 209 of the Former Executives’ counterclaims as if fully set forth herein.

211. AIG Inc. engaged in a pattern of intentional and wrongful conduct designed to continually and repeatedly thwart the Employee Plaintiffs from recovering the amounts owed pursuant to the DCP and the SIP, which caused injury to the Employee Plaintiffs. This continuous course of conduct includes but is not limited to:

- a. Controlling AIG FP's accounting entries concerning the Parent Investment;
- b. Disguising AIG Inc.'s equity infusion (which curiously was sometimes booked as debt and sometimes accounted for as equity contributions);
- c. Controlling AIG FP's decisions regarding the adoption of a restoration plan notwithstanding express contract language directing that any such decision was AIG FP's alone to make;
- d. Stripping hundreds of millions of dollars of AIG FP's assets (which included funds held by AIG FP as well as funds that were being held in a pooled account controlled by AIG Inc. for AIG FP's benefit) by transferring the cash to other AIG Inc. affiliates prior to the commencement of this bankruptcy;
- e. Orchestrating the transfer of \$35 million from AIG FP to AIG Matched Funding on December 6, 2022 – the day after Employee Plaintiffs sent to AIG FP the Asset Dissipation Letter in connection with the Connecticut Litigation, which requested that AIG FP (i) confirm that the information provided in discovery about the current level of assets is accurate as of today, (ii) provide adequate assurances that AIG FP will preserve sufficient assets to pay any judgment;
- f. Sweeping \$130 million in cash that was being held in the “pooled” account controlled by AIG Inc. for AIG FP's benefit and leaving only \$10 million in the pooled account;
- g. Upon information and belief, directing AIG FP not to account for the aggregate amount of \$250 million in potential overpayments to non-debtor AIG Inc. affiliates despite the U.S. Trustee's inquiry into these items at the Section 341 meeting;
- h. Controlling the timing of appointment of special committee and the timing of this bankruptcy proceedings so that the Chapter 11 petition was filed after AIG FP's assets were stripped; and
- i. Upon information and belief, discovery is likely to reveal additional diversions of assets as not long before the bankruptcy AIG FP had over a billion dollars in assets on its balance sheet.

ANSWER 211: AIG denies the allegations contained in Paragraph 211.

212. This inequitable conduct has resulted in harm to the Employee Plaintiffs – who are the only non-insider creditors – and conferred an unfair advantage on AIG Inc. because AIG Inc. has created a scenario, through a complex set of transactions, where it and its entities wind up with all of AIG FP's assets and the Employee Plaintiffs end up with next to nothing

ANSWER 212: AIG denies the allegations contained in Paragraph 212.

213. AIG Inc. lacks any reasonable justification for its wrongful conduct.

ANSWER 213: AIG denies the allegations contained in Paragraph 213.

214. As a result of the AIG Inc.'s conduct, the Employee Plaintiffs have been injured.

ANSWER 214: AIG denies the allegations contained in Paragraph 214.

COUNT THREE

Tortious Interference with Contractual Relations (Against AIG Inc.)

215. The allegations set forth above are incorporated by reference.

ANSWER 215: AIG reasserts and repeats its responses to Paragraphs 1 through 214 of the Former Executives' counterclaims as if fully set forth herein.

216. The Employee Plaintiffs and AIG FP had a contractual or beneficial relationship by virtue of the DCP, SIP, and ERP.

ANSWER 216: AIG responds that the allegations contained in Paragraph 216 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations.

217. AIG Inc. knew of the existence of the DCP, SIP, and ERP.

ANSWER 217: AIG admits the allegations contained in Paragraph 217.

218. AIG Inc. engaged in a continuous pattern of intentional and wrongful conduct designed to continually and repeatedly interfere with Employee Plaintiffs' contractual rights under the DCP, SIP, and ERP by, *inter alia*, preventing AIG FP from restoring plan balances, creating a restoration plan or extending the lapse date, and thereby preventing the Employee Plaintiffs from recovering the amounts owed pursuant to the deferred compensation plans, which caused injury to the Employee Plaintiffs. This continuous course of conduct includes but is not limited to:

- a. Controlling AIG FP's accounting entries concerning the Parent Investment;
- b. Disguising AIG Inc.'s equity infusion (which curiously was sometimes booked as debt and sometimes accounted for as equity contributions);
- c. Controlling AIG FP's decisions regarding the adoption of a restoration plan notwithstanding express contract language directing that any such decision was AIG FP's alone to make;
- d. Stripping hundreds of millions of dollars of AIG FP's assets (which included funds held by AIG FP as well as funds that were being held in a pooled account controlled by

AIG Inc. for AIG FP's benefit) by transferring the cash to other AIG Inc. affiliates prior to the commencement of this bankruptcy;

e. Orchestrating the transfer of \$35 million from AIG FP to AIG Matched Funding on December 6, 2022 – the day after Employee Plaintiffs sent to AIG FP the Asset Dissipation Letter in connection with the Connecticut Litigation, which requested that AIG FP (i) confirm that the information provided in discovery about the current level of assets is accurate as of today, (ii) provide adequate assurances that AIG FP will preserve sufficient assets to pay any judgment;

f. Sweeping \$130 million in cash that was being held in the “pooled” account controlled by AIG Inc. for AIG FP's benefit and leaving only \$10 million in the pooled account;

g. Upon information and belief, directing AIG FP not to account for the aggregate amount of \$250 million in potential overpayments to non-debtor AIG Inc. affiliates despite the U.S. Trustee's inquiry into these items at the Section 341 meeting;

h. Controlling the timing of appointment of special committee and the timing of this bankruptcy proceedings so that the Chapter 11 petition was filed after AIG FP's assets were stripped; and

i. Upon information and belief, discovery is likely to reveal additional diversions of assets as not long before the bankruptcy AIG FP had over a billion dollars in assets on its balance sheet.

ANSWER 218: AIG denies the allegations contained in Paragraph 218.

219. AIG Inc.'s above-mentioned interference with the Employee Plaintiffs' contracts rights caused the Employees Plaintiffs to so suffer monetary damages because, *inter alia*, they have been deprived of their expectation damages under the DCP, SIP, and ERP.

ANSWER 219: AIG denies the allegations contained in Paragraph 219.

COUNT FOUR

Declaratory Judgment–AIG FP Has Transferred Substantially All of Its Assets to or Otherwise Combined with AIG Inc. under Section 4.01 of the DCP and SIP and AIG Inc. Must Assume All of the Obligations of AIG FP under the DCP and SIP (Against AIG Inc)

220. The allegations set forth above are incorporated by reference.

ANSWER 220: AIG reasserts and repeats its responses to Paragraphs 1 through 219 of the Former Executives' counterclaims as if fully set forth herein.

221. In addition to requiring that AIG FP restore Plan Participants' DCP and SIP account balances, create a plan of restoration and extend the lapse date, Section 4.01 of the DCP and SIP

also provides, “[f]or the avoidance of doubt, if AIG Financial Products Corp. consolidates or amalgamates with, or merges with or into, **or transfers all or substantially all of its assets to, another entity**, then the resulting, surviving or transferee entity shall assume all of the obligations of AIG Financial Products Corp. hereunder” (emphasis added) (the “Transfer Provision”).

ANSWER 221: AIG refers the Court to the DCP and SIP for a complete and accurate description of their contents; and otherwise denies the allegations contained in Paragraph 221.

222. Upon information and belief, AIG Inc., acting directly or through its affiliates or subsidiaries, and AIG FP have engaged in a concerted effort to transfer assets away from AIG FP for the benefit of AIG Inc. for years with the culmination of those transfers happening over the course of 2022 as AIG FP was preparing for bankruptcy.

ANSWER 222: AIG denies the allegations contained in Paragraph 222.

223. Upon information and belief, in May 2022, AIG FP had approximately \$300 million in cash in a “pooled” account controlled by AIG Inc. By late October 2022, AIG FP had only approximately \$175 million in that account. By the time of AIG FP’s December 2022 Chapter 11 filing, AIG FP had only approximately \$10 million in cash remaining (all of which was earmarked for the payment of AIG FP’s bankruptcy professionals).

ANSWER 223: AIG admits that AIG FP’s cash balance declined between May 2022 and December 2022; refers the Court to the testimony of multiple AIG FP witnesses who have testified about this decline in the Chapter 11 case and in the Adversary Proceeding; and otherwise denies the allegations contained in Paragraph 223.

224. As part of AIG FP and AIG Inc.’s scheme to strip assets from AIG FP, AIG FP novated the majority of its derivatives contracts to AIG Matched Funding in the months prior to commencing the Chapter 11 in order to avoid defaults on those derivatives contracts had they been held by AIG FP at the time of its bankruptcy filing. Such defaults, in turn, would have caused AIG Inc. to incur financial obligations in the hundreds of millions of dollars to derivative counterparties, pursuant to the General Guarantee Agreement. On December 6, 2022, AIG FP transferred \$35 million from its cash “pooled” account to AIG Matched Funding as part of the novation process.

ANSWER 224: AIG admits that on or around December 6, 2022, AIG FP sent \$35 million to AIG Matched Funding; and otherwise denies the allegations contained in Paragraph 224.

225. The timing of AIG FP’s Chapter 11 filing was tied to both pressures from the Connecticut Litigation (as AIG FP faced a court order to produce sensitive documents to the Employee Plaintiffs on the day the Chapter 11 was filed) and protecting the financial interests of its parent, AIG Inc. While AIG FP claims that it was in “financial distress” such that bankruptcy was both appropriate and necessary, AIG FP delayed the commencement of its Chapter 11 filing

for months in order to complete a complex novation process that ultimately benefitted *only* AIG Inc.

ANSWER 225: AIG denies the allegations contained in Paragraph 225.

226. On August 5, 2022, Paul Stubbs, the CEO and President of AIG FP and a member of its Board of Directors, announced at a Board meeting that he would begin contacting swap counterparties to discuss AIG FP's novation of its swap portfolio. AIG FP did not file for Chapter 11 until four months later in December 2022, following the substantial completion of the novation process.

ANSWER 226: AIG admits that at the August 5, 2022 Meeting of the Board of Directors of AIGFP, Mr. Stubbs informed the Board that he would be reaching out to counterparties in the coming weeks; refers the Court to the referenced minutes for a complete and accurate description of its contents; admits that AIG FP filed its Chapter 11 case in December 2022; and otherwise denies the allegations contained in Paragraph 226.

227. AIG FP has conceded that reason for the novations was not to benefit creditors or preserve AIG FP's assets, but to help avoid the termination damages that would be sought by swap counterparties upon the filing of a bankruptcy and to relieve AIG Inc. from potentially needing to pay up to \$1 billion to those counterparties on account of the General Guarantee Agreement. One of AIG FP's Special Committee members, Pamela Corrie explained that if the Chapter 11 was filed prior to completing the novations "it would cause massive harm to FP and that that harm would be also felt by AIG" and AIG FP engaged in a months-long process, delaying any bankruptcy filing, in order "to novate those contracts, to the greatest extent possible, outside of a bankruptcy, before a bankruptcy filing." Additionally, Mr. Stubbs explained that "the reality" of the termination damages from the default of AIG FP's swap portfolio if it filed for bankruptcy without novating the portfolio to its affiliates "could be a billion" dollars. Therefore, as Ms. Corrie explained, the Special Committee recommended AIG FP "file once the novations were completed and after discussions with the DCP plaintiffs terminated in the event that they terminated without a successful resolution."

ANSWER 227: AIG refers the Court to the referenced testimony for a complete and accurate description of their contents; and otherwise denies the allegations contained in Paragraph 227.

228. Notwithstanding this substantial benefit to parent AIG Inc., AIG FP did not receive anything close to reasonably equivalent value in return. AIG Inc. was the sole beneficiary of a novation process that served no business purpose for AIG FP, but saved AIG Inc. from owing hundreds of millions of dollars to swap counterparties when AIG FP declared bankruptcy.

ANSWER 228: AIG denies the allegations contained in Paragraph 228.

229. Upon information and belief, the asset transfers (by way of novations or otherwise) and related cash transfer to AIG Matched Funding should be deemed a transfer to AIG Inc. because AIG Inc. received the benefit of these transfers and AIG Matched Funding is a wholly owned subsidiary company of AIG FP, which is itself a wholly owned subsidiary company of AIG Inc.

ANSWER 229: AIG admits that AIG Matched Funding is a wholly owned subsidiary company of AIG FP; admits that AIG FP is a wholly owned subsidiary company of AIG; and responds that the allegations contained in Paragraph 229 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations.

230. On December 12, 2022, AIG Inc. swept approximately \$130 million from AIG FP's cash "pooled" account, leaving AIG FP with only \$10 million in cash. The Special Committee tasked with overseeing AIG FP's pre-petition actions stated they were unconcerned by AIG Inc.'s cash sweep of approximately \$130 million right before the petition date, did not take steps to prevent that cash sweep, and did not seek to negotiate the return of that cash.

ANSWER 230: AIG admits that AIG FP's cash balance declined between May 2022 and December 2022; refers the Court to referenced testimony for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 175.

231. Upon information and belief, discovery is likely to reveal additional diversions of assets to AIG Inc. or entities it controls as not long before the bankruptcy AIG FP had over a billion dollars in assets on its balance sheet.

ANSWER 231: AIG denies the allegations contained in Paragraph 231.

232. By virtue of the various transfers of value from AIG FP to AIG Inc. (acting either directly or through its affiliates or subsidiaries (including AIG Matched Funding)) in preparing AIG FP for a bankruptcy filing in 2022 and the years prior, including, but not limited to, AIG Inc.'s December 2022 sweep of \$130 million from AIG FP's cash "pooled" account, AIG FP transferred substantially all of its assets to AIG Inc. triggering the Transfer Provision.

ANSWER 232: AIG denies the allegations contained in Paragraph 232.

233. As the recipient of substantially all of AIG FP's assets, as of at least December 2022, AIG Inc. is the "transferee entity," which has now assumed all of the obligations of AIG FP under the DCP and SIP.

ANSWER 233: AIG denies the allegations contained in Paragraph 233.

234. AIG Inc. is therefore liable for the breaches of AIG FP which include, among others, to the failure (i) to restore and pay the DCA and SIP Account balances by the end of 2013, or (ii) to adopt a restoration plan when it was able to do so to return the money it owes to the Employee Plaintiffs in breach of the DCP and SIP or extend the lapse date.

ANSWER 234: AIG denies the allegations contained in Paragraph 234.

235. The Employee Plaintiffs have been harmed. Damages include the amount of the Employee Plaintiffs' Plan Account balances borrowed by AIG FP in the approximate amount of \$194 million, plus doubled damages under Connecticut's Wage and Hour law as a result of AIG FP's bad faith conduct and accrued interest to date.

ANSWER 235: AIG denies the allegations contained in Paragraph 235.

236. AIG Inc., having assumed the obligations of AIG FP under the DCP and SIP has assumed AIG FP's liability for breach of the DCP and SIP and responsibility for any damages thereunder.

ANSWER 236: AIG denies the allegations contained in Paragraph 236.

237. Furthermore, in the alternative, AIG FP has in substance merged or otherwise combined with AIG Inc. Rather than being a standalone entity that controls its own operations, finances, and employees, AIG FP is entirely dependent on AIG Inc. for its limited remaining business functions. It has no direct employees and does not administer its own corporate functions. It relies on AIG Inc. and other affiliates to lend it employees and for "the day-to-day management of [its] remaining business" and receives from AIG Inc. and other affiliates certain services including "cash management, derivatives transaction, legal, compliance, administrative, operations, risk management, strategic advisory, investment management, and other related services." *See* First Day Declaration at Paragraph 29. Moreover, AIG Inc. had control over the "pooled" account that held AIG FP's cash funds prior to the Bankruptcy filing and exerted complete control over those funds when it swept \$130 million from AIG FP. The conduct of AIG FP and AIG Inc. evidence that AIG FP no longer operates as an independent going concern.

ANSWER 237: AIG refers the Court to the referenced document for a complete and accurate description of its contents; and otherwise denies the allegations contained in Paragraph 237.

238. In view of the above-mentioned conduct of AIG FP and AIG Inc., including AIG FP's transfer of substantially all of its assets to AIG Inc. and its effective merger with AIG Inc., this Court should enter a declaratory judgment confirming that AIG Inc. is the surviving transferee entity which has assumed all of the obligations of AIG FP under the DCP and SIP.

ANSWER 238: AIG denies the allegations contained in Paragraph 238.

COUNT FIVE

Breach of Contract (Against AIG Inc.)

239. The allegations set forth above are incorporated by reference.

ANSWER 239: AIG reasserts and repeats its responses to Paragraphs 1 through 238 of the Former Executives' counterclaims as if fully set forth herein.

240. AIG Inc. and AIG FP repeatedly encouraged the Employee Plaintiffs to defer additional portions of their compensation into the DCP and SIP so as to provide additional capital to AIG FP.

ANSWER 240: AIG denies the allegations contained in Paragraph 240.

241. The Employee Plaintiffs performed under the DCP and SIP. For example, they continued their employment through the relevant payment periods and deferred their compensation as required by the DCP and SIP.

ANSWER 241: AIG responds that the allegations contained in Paragraph 241 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations.

242. Pursuant to the DCP and SIP, over the course of their employment with AIG FP, the Employee Plaintiffs deferred substantial portions of their compensation from AIG FP into their DCP and SIP Accounts.

ANSWER 242: AIG admits that under the DCP and SIP, portions of the Former Executives' compensation from AIG FP were deferred subject to the DCP and SIP's terms; refers the Court to the DCP and SIP for a complete and accurate description of their contents; and otherwise denies the allegations contained in Paragraph 242.

243. Under Section 4.01 of the DCP and SIP, AIG FP was permitted to borrow from the DCP and SIP Plan Accounts by reducing account balances to absorb losses for a given year, but was also obligated to restore (i) restore and pay the DCP and SIP Account balances by the end of 2013, or (ii) adopt a restoration plan when it was able to do so to return the money it owes to the Employee Plaintiffs.

ANSWER 243: AIG refers the Court to the DCP and SIP for a complete and accurate description of their contents, and responds that the allegations contained in Paragraph 243 consist

of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations.

244. Section 4.01(b) also permitted AIG FP to extend the period to pay the restored deferred compensation beyond 2013 as long as it could do so without violating Internal Revenue Code Section 409A:

“Any such restoration plan shall provide that any restored amounts shall be paid in 2013; to the extent amounts have not been restored by December 31, 2013, all restoration rights shall permanently lapse *except to the extent AIG Financial Products Corp. determines that it may amend the Plan to provide for payment of restored amounts without violating Internal Revenue Code Section 409A.*”

DCP Section 4.01(b) (“Lapse Provision”).

ANSWER 244: AIG refers the Court to the DCP and SIP for a complete and accurate description of their contents, and responds that the allegations contained in Paragraph 244 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations.

245. The Lapse Provision does not restrict the timing of such an amendment or such a payment to December 31, 2013 or to periods either before or after December 31, 2013. Instead, the Lapse Provision covers any amendment providing for the payment of restored deferred compensation, regardless of the time of the amendment, as long as the amendment and payment would not violate section 409A. Such an amendment would not violate Section 409A and could have been adopted by AIG FP to allow for payment in conformance with Section 409A.

ANSWER 245: AIG refers the Court to the DCP and SIP for a complete and accurate description of their contents, and responds that the allegations contained in Paragraph 245 consist of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations.

246. Moreover, at the time of AIG FP’s decision not to repay the DCP and SIP Account balances, AIG FP took no steps to consider or formulate a restoration plan or to investigate whether it could amend the Compensation Plans and pay the deferred compensation owed without violating Section 409A (which it could have).

ANSWER 246: AIG refers the Court to the DCP and SIP for a complete and accurate description of their contents, and responds that the allegations contained in Paragraph 246 consist

of legal arguments or conclusions to which no response is required; and to the extent a response is required, AIG denies those allegations.

247. AIG FP failed to adopt a restoration plan required by the Restoration Provision and failed to amend the DCP and SIP to provide for payment of the deferred compensation owed to Plan Participants in conformance with Section 409A in breach of the DCP and SIP.

ANSWER 247: AIG denies the allegations contained in Paragraph 247.

248. AIG Inc., having assumed all of the obligations under the DCP and SIP, is now obligated to restore and pay the DCP and SIP account balances, which were not paid by AIG FP.

ANSWER 248: AIG denies the allegations contained in Paragraph 248.

249. AIG Inc. has failed to perform under the DCP and SIP contracts by failing to pay the Employee Plaintiffs the amounts owed to them, create a plan of restoration or extend the lapse date, as required by Section 4.01(b) of the DCP and SIP in breach of those contracts.

ANSWER 249: AIG denies the allegations contained in Paragraph 249.

250. As a result of AIG Inc.'s breach of the DCP and SIP, the Employee Plaintiffs have been damaged in excess of \$194 million.

ANSWER 250: AIG denies the allegations contained in Paragraph 250.

PRAYER FOR RELIEF

To the extent the "WHEREFORE" clause requires a response, AIG denies that Former Executives are entitled to any of the relief requested, and further denies that Former Executives are entitled to any relief whatsoever from AIG.

DEFENSES AND AFFIRMATIVE DEFENSES

AIG asserts the following affirmative and other defenses and hereby reserves its rights to assert any other and additional defenses, claims, counterclaims, and third-party claims not asserted herein of which it may become aware through discovery or other investigation as may be appropriate at a later time. In asserting these defenses, AIG does not assume any burden of proof,

persuasion, or production with respect to any issue where the applicable law places the burden on the Former Executives.

FIRST DEFENSE

1. The Former Executives' counterclaim and claims fail, in whole or in part, to state a claim upon which relief can be granted.

SECOND DEFENSE

2. The Former Executives' counterclaim and claims fail, in whole or in part, because AIG owes no contractual obligations to the Former Executives under the DCP, SIP, or ERP.

THIRD DEFENSE

3. Even if AIG was found to owe contractual obligations under the DCP or SIP, the Former Executives' counterclaim and claims are barred, in whole or in part, based on the terms of the DCP and SIP agreements, the fact that each of AIG and AIG FP acted at all times in accordance with the agreements, and the Former Executives' claims are subordinated under of the terms of the agreements.

FOURTH DEFENSE

4. Even if AIG was found to owe contractual obligations under the DCP or SIP, neither agreement imposes an obligation to pay previously reduced account balances in the absence of Distributable Income (as defined in each respective agreement), and any payment obligation accordingly lapsed after December 31, 2013.

FIFTH DEFENSE

5. The Former Executives' counterclaim and claims are barred, in whole or in part, because the deferred payments under the Compensation Plans are not "wages" within the meaning of Connecticut's Wage and Hour Law.

SIXTH DEFENSE

6. Even if the Former Executives were able to obtain a declaratory judgment that the \$65 billion revolving credit facility loaned from AIG (via AIG Funding Inc.) to AIG FP is equity, then any amounts allegedly owed to the Former Executives under the DCP or the SIP would also be equity, and the Former Executives' recovery would still be subordinated to AIG's recovery.

SEVENTH DEFENSE

7. Even if the Former Executives were able to obtain a declaratory judgment that the \$65 billion revolving credit facility loaned from AIG (via AIG Funding Inc.) to AIG FP is equity, then any amounts allegedly owed to the Former Executives under the DCP or the SIP would still be subordinated to the \$65 billion equity obligation to AIG because the DCP and SIP are "subordinate and junior in right of payment and otherwise, to the prior payment in full of all other obligations" of AIG FP. *See* DCP §4.01; SIP §4.01

EIGHTH DEFENSE

8. The Former Executives' counterclaim and claims alleged and the relief sought in this action are barred, in whole or in part, under the doctrine of waiver and/or release, including because certain of the Former Executives signed releases and covenanted not to sue AIG, AIG FP, or their affiliates in their separation agreements.

NINTH DEFENSE

9. The Former Executives' counterclaim and claims are barred, in whole or in part, under the doctrine of acquiescence and/or equitable estoppel because certain of the Former Executives failed to object for many years while these alleged violations of their rights were occurring, implicitly granting their acquiescence to these developments.

TENTH DEFENSE

10. The Former Executives’ counterclaim and claims are barred, in whole or in part, as untimely under the relevant statutes of limitations, statutes of repose, and/or the doctrine of laches.

ELEVENTH DEFENSE

11. The Former Executives’ counterclaim and claims are barred, in whole or in part, because they have not been damaged and, even to the extent they were damaged, the Former Executives failed to mitigate such damages.

TWELFTH DEFENSE

12. The Former Executives’ counterclaim and claims alleged are barred, in whole or in part, because none of the allegations rise to the level of “inequitable conduct” justifying the drastic remedy of equitable subordination. Because none of AIG’s actions – including loaning money to AIG FP, forgoing recapitalizing AIG FP, and engaging in a pre-petition novation process—are “inequitable,” the Former Executives fail to state a claim.

THIRTEENTH DEFENSE

13. The Former Executives’ counterclaim and claims alleged are barred, in whole or in part, because AIG cannot be held liable for breach of contract because the purpose of the contracts at issue were frustrated. The purpose of the contracts at issue was to align the interest of executives with AIG FP and to compensate executives to the extent AIG FP was a profitable and solvent company, which it ceased to be.

FOURTEENTH DEFENSE

14. The Former Executives’ counterclaim and claims for declaratory judgment are barred because they are duplicative of other alleged claims.

FIFTEENTH DEFENSE

15. The Former Executives are not entitled to recover the type of declaratory relief sought in their counterclaim and claims.

SIXTEENTH DEFENSE

16. Former Executives voluntarily assumed the risk of the losses alleged in the Former Executives' counterclaim and claims.

SEVENTEENTH DEFENSE

17. The Former Executives' counterclaim and claims are barred, in whole or in part, by the economic loss rule.

EIGHTEENTH DEFENSE

18. The Former Executives' counterclaim and claims are barred, in whole or in part, because the Former Executives' own conduct caused their alleged losses. The Former Executives were executives of AIG FP and contributed and/or caused the financial hardship that resulted in losses to their compensation under the DCP, SIP, and ERP.

NINETEENTH DEFENSE

19. The Former Executives' counterclaim and claims are barred, in whole or in part, by the doctrine of unclean hands and/or in pari delicto.

TWENTIETH DEFENSE

20. The Former Executives' counterclaim and claims are barred, in whole or in part, by the doctrines of collateral estoppel and/or res judicata.

TWENTY-FIRST DEFENSE

21. The Former Executives lack standing to pursue the counterclaim and claims asserted.

TWENTY-SECOND DEFENSE

22. Even if AIG FP had transferred all or substantially all of its assets to AIG, AIG has not assumed any of AIG FP's obligations or liabilities including because it is not a continuation of AIG FP's business.

TWENTY-THIRD DEFENSE

23. AIG has insufficient knowledge or information upon which to form a belief as to whether there may be as yet unstated defenses and affirmative defenses available and expressly: (i) reserves the right to amend or supplement this Answer, its defenses and affirmative defenses, and all other pleadings, and (ii) reserves the right to (a) assert any and all additional defenses under any applicable federal, state, common, or foreign law if discovery shows that such defense would be appropriate; and (b) assert any cross-claims, counterclaims, and third-party claims when if they become appropriate in this action.

Dated: June 6, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ Robert J. Stearn, Jr.

RICHARDS, LAYTON & FINGER, P.A.

Robert J. Stearn, Jr. (No. 2915)

Zachary I. Shapiro (No. 5103)

Cory D. Kandestin (No. 5025)

One Rodney Square

920 North King Street

Wilmington, Delaware 19801

Telephone: (302) 651-7700

E-mail: stearn@rlf.com

shapiro@rlf.com

kandestin@rlf.com

-and-

WEIL, GOTSHAL & MANGES LLP

Jonathan D. Polkes

Jeffrey D. Saferstein

Stacy Nettleton

Garrett A. Fail

Zachary D. Tripp

767 Fifth Avenue

New York, New York 10153

Telephone: (212) 310-8000

Facsimile: (212) 310-8007

*Attorneys for American International
Group, Inc.*