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16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **OAKLAND DIVISION**

19 MARLON H. CRYER, individually and on
20 behalf of a class of all others similarly situated,
21 and on behalf of the Franklin Templeton 401(k)
22 Retirement Plan,

22 Plaintiffs,

24 v.

25 FRANKLIN RESOURCES, INC., the Franklin
26 Templeton 401(k) Retirement Plan Investment
27 Committee, and DOES 1-25,

28 Defendants.

Lead Case No. 4:16-cv-04265-CW
[Consolidated with Case No. 4:17-cv-06409-CW]

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**

PRELIMINARY APPROVAL ORDER

Judge: Hon. Claudia Wilken

PRELIMINARY APPROVAL ORDER

- (1) **GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT;**
- (2) **APPOINTING A SETTLEMENT ADMINISTRATOR;**
- (3) **ENJOINING CLASS MEMBERS FROM PURSUING ANY CLAIMS THAT ARISE OUT OF OR RELATE IN ANY WAY TO THE RELEASED CLAIMS PENDING FINAL APPROVAL OF THE SETTLEMENT;**
- (4) **DIRECTING NOTICE TO CLASS MEMBERS AND APPROVING THE FORM AND MANNER OF NOTICE;**
- (5) **APPROVING THE PLAN OF ALLOCATION;**
- (6) **SCHEDULING A FINAL APPROVAL HEARING; AND**
- (7) **SCHEDULING A HEARING ON CLASS COUNSEL’S FEE AND EXPENSE APPLICATION AND PLAINTIFFS’ REQUEST FOR CASE CONTRIBUTION AWARDS**

The Court, having received and considered the Unopposed Motion for a Preliminary Approval Order (the “Motion”) by Plaintiffs Marlon Cryer and Nelly Fernandez (“Plaintiffs”) in the above-captioned action (the “Action”) and the supporting papers, including the Settlement Agreement and Release dated February 15, 2019 (the “Agreement”) and the declarations of counsel, having further considered the arguments of counsel and the pleadings and record in this case, and finding good cause for granting the Motion,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms not defined in this Order shall have the meaning ascribed to them in Part I of the Agreement.
2. This Court has jurisdiction to consider the Motion and the relief requested therein under 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).
3. Venue before the Court is proper pursuant to 29 U.S.C. § 1132(e)(2).
4. The terms set forth in the Agreement are hereby preliminarily approved, subject to further consideration at the hearing the Court will hold pursuant to Federal Rule of Civil

1 Procedure 23(e) to determine whether the Settlement should receive final approval by the Court,
2 as provided for below (the “Final Approval Hearing”). Having considered the terms of the
3 Settlement and the submissions in support of preliminary approval, the Court determines, in
4 accordance with Fed. R. Civ. P. 23(e)(1)(B), that it is likely that the Court will be able to grant
5 final approval of the Settlement under Fed. R. Civ. P. 23(e)(2) following notice and a hearing.
6 The Settlement Agreement is sufficiently within the range of reasonableness to warrant the
7 preliminary approval of the Agreement, the scheduling of the Final Approval Hearing, and the
8 mailing of Notice to Class Members, each as provided for in this Order.
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10 5. The Court approves the retention by Class Counsel of Angeion Group as the
11 Settlement Administrator.

12 6. In further aid of the Court’s jurisdiction to review, consider, implement, and
13 enforce the Settlement, the Court orders that Plaintiffs, all Class Members, and the Plan are
14 preliminarily enjoined and barred from commencing, prosecuting, or otherwise litigating, in
15 whole or in part, either directly, individually, representatively, derivatively, or in any other
16 capacity, whether by complaint, counterclaim, defense, or otherwise, in any local, state, or federal
17 court, arbitration forum, or in any agency or other authority or forum wherever located, any
18 contention, allegation, claim, cause of action, matter, lawsuit, or action (including but not limited
19 to actions pending as of the date of this Order), including, without limitation, any Unknown
20 Claim, that arises out of or relates in any way to the Released Claims.
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22 7. The Court approves the Notice to Class Members in substantially the form
23 attached as Exhibit C to Plaintiffs’ Supplemental Filing.
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25 8. The Court finds that the Plan of Allocation proposed by Plaintiffs and Class
26 Counsel for allocating the Settlement Amount to Class Members is fair and reasonable.
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Manner of Giving Notice

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2 9. The Company shall use reasonable efforts to cause the Plan Recordkeepers to
3 provide to the Settlement Administrator, within twenty-eight (28) calendar days of the entry of
4 this Preliminary Approval Order, the participant data (including names and last known addresses
5 and email addresses, if available) sufficient to effectuate the Notice, implement the Plan of
6 Allocation, and distribute the Settlement Fund on the terms provided for in the Agreement. The
7 names and addresses provided to the Settlement Administrator pursuant to this Order shall be
8 used solely for the purpose of providing Notice of this Settlement and distribution of the
9 Settlement Fund, and for no other purpose and shall be treated as “Confidential” under the
10 Protective Order governing this Action.
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12 10. Within twenty-eight (28) calendar days of the entry of this Order and no later than
13 the first date that the e-mailing or the mailing of the Notice occurs, the Settlement Administrator
14 shall establish a website containing, at a minimum, the Notice, the Agreement, its exhibits, and
15 this Order.
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17 11. Within twenty-eight (28) calendar days of the entry of this Order and no later than
18 the first date that the e-mailing or the mailing of the Notice occurs, the Settlement Administrator
19 shall establish a toll-free telephone number to which Class Members can direct questions about
20 the Settlement.
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22 12. Within forty-two (42) calendar days after entry of this Order, or as may be
23 modified by the Court, the Settlement Administrator shall cause copies of the Notice to be sent by
24 first-class mail or electronic mail (if available) to all Class Members through the notice procedure
25 described in the Agreement.
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1 13. Not later than seven (7) business days after sending the Notice to Class Members,
2 the Settlement Administrator shall provide to Class Counsel and to Defendants' Counsel a
3 declaration attesting to compliance with the sending of the Notice, as set forth above.

4 14. The Court finds that the Notice to be provided as set forth in this Order is the best
5 means of providing notice to the Class Members as is practicable under the circumstances and,
6 when completed, shall constitute due and sufficient notice of the Settlement and the Final
7 Approval Hearing to all persons affected by or entitled to participate in the Settlement or the Final
8 Approval Hearing, in full compliance with the requirements of due process and the Federal Rules
9 of Civil Procedure.
10

11 15. All reasonable costs incurred by the Settlement Administrator for providing the
12 Notice as well as for administering the Settlement shall be paid as set forth in the Agreement.
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14 **Final Approval Hearing**

15 16. The Court will hold the Final Approval Hearing at 2:30 pm on September 24,
16 2019, in Courtroom 6 of the United States District Court for the Northern District of California,
17 Ronald V. Dellums Federal Building & United States Courthouse, 1301 Clay Street, Oakland, CA
18 94612, for the following purposes: (a) to determine whether the proposed Settlement on the
19 terms and conditions provided for in the Agreement is fair, reasonable, adequate, and in the best
20 interests of the Class and should be finally approved by the Court; (b) to determine whether Class
21 Counsel's Fee and Expense Application is reasonable and should be approved; (c) to determine
22 whether Plaintiffs' request for Case Contribution Awards is reasonable and should be approved;
23 (d) to determine whether a Final Approval Order and Judgment substantially in the form attached
24 as Exhibit A to the Agreement should be entered dismissing with prejudice all claims asserted in
25 the Action against Defendants; and (e) to consider any other matters that may properly be brought
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1 before the Court in connection with the Settlement. Notice of the Settlement and the Final
2 Approval Hearing shall be given to Class Members as set forth in Paragraph 7 of this Order.

3 17. The Court may adjourn the Final Approval Hearing and approve the Settlement
4 with such modification as the Parties may agree to, if appropriate, without further notice to the
5 Class.

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7 18. Not later than fifty-six (56) calendar days before the Final Approval Hearing,
8 Class Counsel shall submit their papers in support of final approval of the Agreement, and in
9 support of Class Counsel's Fee and Expense Application and Plaintiffs' request for Case
10 Contribution Awards.

11 19. Not later than twenty-eight (28) calendar days before the Final Approval Hearing,
12 the Independent Fiduciary shall submit its report pursuant to Section 2.7 of the Agreement.

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14 20. Not later than twenty-eight (28) calendar days before the Final Approval Hearing,
15 the Settlement Administrator shall submit its declaration pursuant to Section 2.8 of the
16 Agreement.

17 **Objections to the Settlement**

18 21. The Court will consider written comments and objections to the Settlement, to the
19 proposed Fee and Expense Application, and to Plaintiffs' request for Case Contribution Awards.
20 Any objection to the proposed Settlement must be in writing, and must (a) clearly identify the
21 case name and number (*Cryer v. Franklin Resources, Inc.*, Lead Case No. 4:16-cv-04265-CW),
22 and (b) be submitted to the Court either by mailing it to the Class Action Clerk, United States
23 District Court for the Northern District of California, Ronald V. Dellums Federal Buildings &
24 United States Courthouse, 1301 Clay Street, Oakland, CA 94612, or by filing it in person at any
25 location of the United States District Court for the Northern District of California. Any Class
26 Members' objections must be filed or postmarked on or before fourteen (14) calendar days before
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1 the Final Approval Hearing. Any objections submitted by federal or state authorities must be
2 filed no later than fourteen (14) calendar days before the Final Approval Hearing.

3 22. Any Class Member who does not timely file and serve a written objection shall be
4 deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement
5 Agreement, and any untimely objection shall be barred absent an order from the Court. The
6 Plaintiffs or the Defendants may, bearing their own fees and costs, take discovery, including
7 depositions, from anyone who files an objection with respect to any of the issues raised in the
8 objection.

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10 23. Any Class Member who files and serves a timely, written comment or objection in
11 accordance with this Order may also appear at the Final Approval Hearing either in person or
12 through qualified counsel retained at their own expense. Those Class Members or their attorneys
13 intending to appear at the Final Approval Hearing must effect service of a notice of intention to
14 appear setting forth, among other things, the name, address, and telephone number of the Class
15 Member (and, if applicable, the name, address, and telephone number of that Class Member's
16 attorney) on Class Counsel and Defendants' Counsel and file it with the Court Clerk by no later
17 than fourteen (14) calendar days before the Final Approval Hearing. Anyone who does not
18 timely file and serve a notice of intention to appear in accordance with this paragraph shall not be
19 permitted to appear at the Final Approval Hearing, except by Order of the Court for good cause
20 shown. Any comment or objection that is timely filed will be considered by the Court even in the
21 absence of a personal appearance by the Class Member or that Class Member's counsel.

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23 24. The Parties may file written responses to any objections not later than five (5) days
24 before the Final Approval Hearing.
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1 **Termination of Settlement**

2 25. This Order shall become null and void, *ab initio*, and shall be without prejudice to
3 the rights of the Parties, all of whom shall be deemed to have reverted to their respective status in
4 the Action as of February 15, 2019, if the Settlement is terminated in accordance with the terms
5 of the Settlement Agreement.
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7 **Use of Order**

8 26. This Order is not admissible as evidence for any purpose against the Defendant
9 Released Parties in any pending or future litigation. This Order (a) shall not give rise to any
10 inference of, and shall not be construed or used as an admission, concession, or declaration
11 against any of the Defendant Released Parties of wrongdoing or liability in the Action or any
12 other proceeding; (b) is not an admission of any liability of any kind, whether legal or factual;
13 (c) shall not be used or received in evidence in any action or proceeding for any purpose, except
14 in an action or proceeding to enforce the Agreement, whether affirmatively or defensively; (d)
15 shall not be construed or used as an admission, concession, or declaration by or against Plaintiffs,
16 the Plan, or the Class that their claims lack merit or that the relief requested in the Action is
17 inappropriate, improper or unavailable; and (e) shall not be construed or used as an admission,
18 concession, declaration or waiver by any Party of any arguments, defenses, or claims he, she, or it
19 may have in the event that the Agreement is terminated. This Order and the Agreement and any
20 proceedings taken pursuant to the Agreement are for settlement purposes only.
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23 **Jurisdiction**

24 27. The Court hereby retains jurisdiction during the Three-Year Settlement Period for
25 purposes of implementing the Agreement, and reserves the power to enter additional orders to
26 effectuate the fair and orderly administration and consummation of the Agreement as may from
27 time to time be appropriate, and to resolve any and all disputes arising thereunder.
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SO ORDERED this 3rd day of June, 2019.



The Honorable Claudia A. Wilken
United States District Judge