UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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

Plaintiffs,

v.

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

Defendants.

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

Judge: Hon. Claudia Wilken

DECLARATION OF BRIAN MANIGAULT REGARDING THE SETTLEMENT NOTICE PROGRAM; WEBSITE; TELEPHONE LINE; AND REPORT ON OBJECTIONS

I, Brian Manigault, declare:

1. I am Project Manager with Angeion Group ("Angeion"), located at 1650 Arch Street, Suite 2210, Philadelphia, PA 19103. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. By way of background, Angeion is a class action notice and claims administration company formed by an experienced team of executives with more than 65 combined years of experience implementing claims administration and notice solutions for class action settlements and judgments. With executives that have had extensive tenures at five other nationally recognized

claims administration companies, collectively, the management team at Angeion has overseen more than 2,000 class action settlements and distributed over $10 billion to class members.

3. Angeion was retained as Settlement Administrator and appointed by the Court pursuant to the Preliminary Approval Order (the "Order") entered on June 3, 2019.

4. The purpose of this declaration is to provide the Parties and the Court with a summary and the results of the work performed by Angeion related to the Settlement Class Notice Program for the Cryer et al. v. Franklin Resources, Inc., et al., *Case No. 4:16-cv-04265-CW [Consolidated with Fernandez, et al. v. Franklin Resources, Inc., et al., N.D. Cal. Case No. 4:17-cv-06409-CW]* following the Court's June 3, 2019 Order.

SETTLEMENT NOTICE PROGRAM

5. On February 25, 2019, pursuant to 28 U.S.C. §§ 1715(b), Angeion caused Notice regarding the Settlement to be sent to the Attorneys General of all states and territories and the Attorney General of the United States ("CAFA Notice"). The CAFA Notice mailings included copies of the documents listed in the CAFA Notice. A true and correct copy of the CAFA Notice is attached hereto as Exhibit A.

6. On July 1, 2019, Angeion received an electronic list ("Class List") containing the names, addresses and email addresses for 8,473 Class Members

7. On July 15, 2019, Angeion caused the Notice of Proposed Class Action Settlement ("Notice") to be emailed to 4,163 Class Members whose Class List record contained an email address. A copy of the email notice is attached hereto as Exhibit B.

8. On July 15, 2019, Angeion caused the Notice to be sent via first-class mail to 4,310 Class Members whose email address was not provided on the Class List. A copy of the mailed notice is attached hereto as Exhibit C.

9. On July 25, 2019, Angeion received a supplemental electronic list ("Supplemental Class List") containing the names and addresses for 156 Class Members.

10. On July 29, 2019, Angeion caused the Notice to be sent via first-class mail to 156 Class Members whose name and address was provided on the Supplemental Class List.

11. As of the date of this declaration, the USPS has returned 404 Notices as undeliverable without forwarding address. These Notices will be skip traced and re-mailed if a new address is located.

SETTLEMENT WEBSITE

12. On July 15, 2019, Angeion established the following website devoted to this Settlement: www.FRI401kClassAction.com ("Settlement Website"). The Settlement Website contains general information about the Settlement, including answers to frequently asked questions, important dates and deadlines pertinent to this matter, and copies of important documents. Visitors to the Settlement Website can download (1) Plaintiff Marlon Cryer's Complaint, (2) Defendant Franklin Resources, Inc's Answer and Affirmative Defenses to Plaintiff Marlon Cryer's Complaint, (3) Plaintiff Nelly Fernandez's Complaint, (4) Plaintiff Nelly Fernandez's First Amended Complaint , (5) Defendants' Answer and Affirmative Defense to Plaintiff Nelly Fernandez First Amended Complaint, (6) Notice, (7) Settlement Agreement, (8) Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, (9) Plaintiffs' Memorandum of Law in Support of Motion for Preliminary Approval of Settlement, (10) Plaintiffs' Memorandum in Further Support of the Motion for Preliminary Approval of Settlement Approval, (11) the Order, and (12) the Plan of Allocation. The Settlement Website also has a "Contact Us" page whereby Class Members can submit questions regarding the Settlement to a dedicated email address: info@FRI401kClassAction.com. As of July 29, 2019, the Settlement

Website has had 1,591page views and 701 sessions which represents the number of individual sessions initiated by all users on the website.

SETTLEMENT TELEPHONE LINE

13. On July 15, 2019, Angeion established the following toll-free line dedicated to this case: 1-855-648-7266. The toll-free line utilizes an interactive voice response ("IVR") system to provide Class Members with responses to frequently asked questions, including information about filing a claim and important dates and deadlines. The toll-free line is accessible 24 hours a day, 7 days a week. Class Members can also speak to a live operator during business hours. As of July 29, 2019, the toll-free number has received 37 calls, totaling 117 minutes.

OBJECTING TO THE SETTLEMENT

14. The Notice also informed Class Members that the deadline to object to the Settlement is September 10, 2019. As of the date of this declaration, Angeion has not received any written objections and has not been made aware of any objections to the Settlement. Angeion shall inform counsel of any objections that are sent to Angeion after the date of this declaration.

I declare under penalty of perjury that the foregoing is true and correct.

BRIAN MANIGAULT

DATED: JULY 30, 2019

EXHIBIT A

ANGEION GROUP

1650 Arch Street, Suite 2210
Philadelphia, PA 19103
(p) 215-563-4116
(f) 215-563-8839
www.angeiongroup.com

February 25, 2019

VIA USPS PRIORITY MAIL

United States Attorney General &
Appropriate Officials

Re: Notice of Class Action Settlement
Cryer, et al. v. Franklin Resources, Inc., et al.

Dear Counsel or Official:

On behalf of the defendants in the litigation described below, Angeion Group, an independent claims administrator, hereby provides your office with notice of the following proposed class action settlement pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715:

Case Name: *Cryer et al. v. Franklin Resources, Inc., et al.*

Case Number: 4:16-cv-04265-CW [Consolidated with *Fernandez, et al. v. Franklin Resources, Inc., et al.*, N.D. Cal. Case No. 4:17-cv-06409-CW]

Jurisdiction: United States District Court, Northern District of California, Oakland Division

Date Settlement Filed with Court: February 15, 2019

The defendants specifically deny any liability or wrongdoing, and elected to enter into the settlement agreement solely to eliminate the burden and expense of protracted litigation. In accordance with the requirements of 28 U.S.C. § 1715, defendants provide the following information regarding the settlement. Copies of the referenced documents can be found on the enclosed CD.

1. **28 U.S.C. § 1715(b)(1) - Complaint and Related Materials:** The enclosed CD contains copies of the Complaint filed in *Cryer* on July 28, 2016; the related Answer filed on January 27, 2017; the Complaint filed in *Fernandez* on November 2, 2017; the First Amended Complaint filed in *Fernandez* on February 6, 2018; and the related Answer filed on April 20, 2018.

2. **28 U.S.C. § 1715(b)(2) - Notice of Any Scheduled Judicial Hearings:** The enclosed CD contains Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, Approval of Class Notice and Scheduling of Fairness Hearing, filed on February 15, 2019. The motion will be set for hearing, but that date has yet to be scheduled. The are no other judicial hearings currently scheduled.

3. **28 U.S.C. § 1715(b)(3) - Notification to Class Members:** The enclosed CD contains the Notice of Proposed Class Action Settlement, filed on February 15, 2019.

4. **28 U.S.C. § 1715(b)(4) - Class Action Settlement Agreement:** The enclosed CD contains the Settlement Agreement, filed on February 15, 2019.

5. **28 U.S.C. § 1715(b)(5) - Any Settlement or Other Agreements:** Other than the Settlement Agreement (including the Plan of Allocation referenced in and attached to the Settlement Agreement), no other settlements or agreements have been contemporaneously entered into between the parties.

6. **28 U.S.C. § 1715(b)(6) - Final Judgment:** The Court has not entered a final judgment or notice of dismissal as of the date of this CAFA Notice.

7. **28 U.S.C. § 1715(b)(7)(B) - Estimate of Class Members:** As of the date of this CAFA Notice, defendants do not yet have information sufficient to identify the names and addresses of all Class Members who reside in each state or the estimated proportionate share of their claims to the entire Settlement. Nor do defendants yet have information sufficient to provide an estimate of the number of Class Members residing in each state or the estimated proportionate share of each Class Member's claim to the entire Settlement. Defendants estimate there are approximately 7,000 total Class Members, and based on the locations in which the Class Members were employed during the Class Period, defendants anticipate that the majority of the Class Members reside in California, Florida, and New York.

8. **28 U.S.C. §1715(b)(8) - Judicial Opinions Related to the Settlement:** As of the date of this CAFA Notice, the Court has not issued a judicial opinion related to the Settlement.

If you have questions about this CAFA Notice, the proposed settlement, or the enclosed materials, or if you did not receive any of the above-listed materials, please contact defendants' counsel using the following contact information:

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Sincerely,

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Enclosures

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHER DISTRICT OF CALIFORNIA

MARLON H. CRYER, individually and on behalf of a class of all other persons similarly situated, and on behalf of the Franklin Templeton 401(k) Retirement Plan,

Plaintiffs,

v.

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

Defendants.

Case No. 16-cv-4265

COMPLAINT FOR VIOLATIONS OFTHE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA")

1. Plaintiff Marlon H. Cryer, individually and as representative of a class of similarly situated persons, ("Plaintiffs") brings this action pursuant to 29 U.S.C. §1132(a)(2) and (3) on behalf of the Franklin Templeton 401(k) Retirement Plan (the "Plan") against Defendants Franklin Resources, Inc. (hereinafter "Franklin Templeton"), Franklin Templeton 401(k) Retirement Plan Investment Committee ("Investment Committee"), and Doe Defendants 1–25, who are, or during the Class Period were, members of the Investment Committee (collectively "Defendants") for breach of fiduciary duties and state the following as their cause of action.

2. Plaintiff alleges that Defendants breached their fiduciary duties by causing the Plan to invest in funds offered and managed by Franklin Templeton ("Franklin Funds"), when better-performing and lower-cost funds were available. Plaintiff further alleges that Defendants were motivated to cause the Plan to invest in Franklin Funds to benefit Franklin Templeton's investment management business.

I. JURISDICTION AND VENUE

3. This court has exclusive jurisdiction over the subject matter of this action under 29 U.S.C. § 1132(e)(1) and 28 U.S.C. § 1331 because it is an action under 29 U.S.C. § 1132(a)(2) and (3).

4. This district is the proper venue for this action under 29 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1391(b) because it is the district in which the subject plan is administered, where at least one of the alleged breaches took place, and where at least one defendant may be found.

II. PARTIES

A. Plaintiff

5. Plaintiff Marlon H. Cryer is a citizen and resident of Lutz, Florida and was a participant in the Plan from at least 2010 through the present. During the Class Period Plaintiff invested his Plan account in at least four Proprietary Mutual Funds, the

Mutual Global Discovery Fund, the Rising Dividends Fund, the Flex Cap Growth Fund, and the Growth Opportunities Fund.

B. Defendants

6. The Investment Committee consists of at least five members appointed by the Board of Directors of Franklin Templeton. It is responsible for, among other things, analyzing the performance and fees of investment options under the Plan, selecting new investment options to be offered under the Plan, and monitoring and removing or replacing investment options offered under the Plan. Accordingly, it had the fiduciary duty to select, monitor, and remove the Plan's investment options at all times relevant herein. There identities are not now known, and so they are named herein as Does 1-25 and sued under such fictitious names. Plaintiff will amend this Complaint to identify and name them individually when their identities are ascertained.

7. The Investment Committee is a fiduciary of the Plan under 29 U.S.C. §1002(21) because it exercised discretionary authority or control respecting the management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and/or had discretionary authority or responsibility respecting the administration of the Plan.

8. The Members of the Investment Committee and any individual or entity to whom the Committee delegated any of its fiduciary functions, the nature and extent of which have not been disclosed to Plaintiffs, are fiduciaries of the Plan under 29 U.S.C. § 1002(21) because they exercised authority or control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and/or had discretionary authority or discretionary responsibility respecting the administration of the Plan.

9. Defendant Franklin Templeton is the Plan sponsor and a party in interest to the Plan under 29 U.S.C. §1002(14). In certain situations, Franklin

Templeton also acts as the Plan Administrator. Franklin Templeton is a corporation organized under the laws of the state of Delaware, with its corporate headquarters and principal place of business in the city and county of San Mateo, California.

10. Upon information and belief, Franklin Templeton, acting through its officers, directors, employees, or agents was a fiduciary to the Plan under 29 U.S.C. § 1002(21) because it exercised discretionary authority or control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and/or had discretionary authority or responsibility respecting the administration of the Plan.

11. Franklin Templeton, acting by and/or through its Board of Directors, is a fiduciary within the meaning of ERISA, and thus subject to the fiduciary standard of care, because it appoints and removes the members of the Investment Committee.

12. Upon information and belief, Franklin Templeton has exercised control over the activities of its employees, internal departments and subsidiaries that performed fiduciary functions with respect to the Plan, and can hire or appoint, terminate, and replace such employees at will. Franklin Templeton is therefore liable for the fiduciary breaches alleged herein of its employees, internal departments and subsidiaries.

13. Franklin Templeton cannot act on its own. In this regard, on information and belief, Franklin Templeton relied directly on the other Defendants to carry out its fiduciary responsibilities under the Plan and ERISA and the acts of its officers and employees alleged herein are the acts of Franklin Templeton.

III. THE PLAN

14. The Plan is sponsored by Franklin Resources, Inc. It was established on October 1, 1981 and amended on October 1, 2010.

15. The Plan is an "employee pension benefit plan" within the meaning of 29 U.S.C. §1002(2).

16. The Plan is an "individual account plan" or "defined contribution plan" within the meaning of 29 U.S.C. § 1002(34).

17. The Plan purports to be a "401(k) Plan" under 26 U.S.C. §401.

18. The Plan covers substantially all employees of Franklin Templeton and its U.S. subsidiaries who meet certain employment requirements.

IV. THE PLAN'S INVESTMENTS

19. Defendants' fiduciary duties are among the "highest [duties] known to the law." *Donovan v. Bierwirth*, 680 F.2d 263, 272 (2d Cir. 1982). Consistent with these fiduciary duties, Defendants had a fiduciary duty to Plaintiff, the Plan, and the other participants in the Plan to offer only prudent investment options. A fiduciary has "a continuing duty of some kind to monitor investments and remove imprudent ones" and "a plaintiff may allege that a fiduciary breached the duty of prudence by failing to properly monitor investments and remove imprudent ones." *Tibble v. Edison Int'l.*, 135 S.Ct. 1823, 1829 (2015). Defendants therefore breached their fiduciary duty of prudence under ERISA §404(a)(1)(B); 29 U.S.C. §1104(a)(1)(B).

A. The Proprietary Mutual Funds

20. There is no shortage of reasonably priced and well-managed investment options in the 401(k) plan marketplace.

21. Despite the many investment options available in the market, the Plan has invested hundreds of millions of dollars in mutual funds managed by Franklin Templeton and its subsidiaries. These investment options were chosen because they were managed by, paid fees to, and generated profits for Franklin Templeton and its subsidiaries.

22. All forty mutual funds offered by the Plan are managed by Franklin Templeton or its subsidiaries (the "Proprietary Funds"). The Plan also includes a Company Stock Fund, which invests in common stock of Franklin Templeton, and a collective trust, managed by State Street Global Advisors, which is intended to track

domestic large-capitalization stocks as represented in the S&P 500 Index. In 2015, the Plan also added three other collective trusts, also managed by State Street Global Advisors, to offer index tracking for international stocks, domestic small and mid-capitalization stocks, and bonds. Prior to 2015, the S&P 500 Index Fund was the only passively managed, and only non-proprietary, option in the Plan.

23. The Plan's investments were chosen and retained by or at the direction of the Investment Committee.

24. The Plan's investment in the Proprietary Funds averaged approximately $750 million per year from 2010 to the present.

25. The Proprietary Funds generated millions of dollars in fees for Franklin Templeton and its subsidiaries.

26. At all times relevant herein, the Proprietary Funds charged and continue to charge Plan participants and beneficiaries fees that were and are unreasonable for this Plan. The fees charged were and are significantly higher than the median fees for comparable mutual funds in 401(k) plans as reported by the Investment Company Institutes, in The Economics of Providing 401(k) Plans: Services, Fees and Expenses and by BrightScope, Inc. an independent provider of 401(k) ratings and data, based on its review of 1,667 large 401(k) plans reported in Real Facts about Target Date Funds.

27. The fees, moreover, are and were significantly higher than the fees available from alternative mutual funds, including Vanguard Institutional Funds with similar investment styles that were readily available as Plan investment options throughout the relevant time. The percentage of excess compared to the fees charged by comparable Vanguard Institutional Funds is shown in Column D below. That difference was even larger at the time most of these investments were selected, as current — and cheaper — R6 share classes of the Proprietary Funds were not offered in the Plan prior to May 2013. Fees are measured in basis points ("bps") where one basis point equals 0.01%:

Fund	R6 Fee	Vanguard Fund	Vanguard Fee	Excess over Vanguard
Money Fund	47 bps	VMRXX	10 bps	370%
Balance Sheet Inv. Fund	50 bps	VMVAX	8 bps	525%
Flex Cap Growth Fund	48 bps	VIGIX	7 bps	586%
Growth Fund	46 bps	VIGIX	7 bps	557%
Growth Opportunities Fund	68 bps	VIGIX	7 bps	871%
High Income Fund	47 bps	VWEAX	13 bps	261%
Income Fund	38 bps	VTWIX	13 bps	192%
International Growth Fund	102 bps	VWILX	34 bps	200%
Large Cap Value Fund	84 bps	VIVIX	7 bps	1,100%
LifeSmart Income Fund	68 bps	VTINX	14 bps	386%
LifeSmart 2020 Fund	72 bps	VTWNX	14 bps	413%
LifeSmart 2025 Fund	73 bps	VTTVX	15 bps	387%
LifeSmart 2030 Fund	75 bps	VTHRX	15 bps	400%
LifeSmart 2035 Fund	74 bps	VTTHX	15 bps	393%
LifeSmart 2040 Fund	76 bps	VFORX	16 bps	375%
LifeSmart 2045 Fund	75 bps	VTIVX	16 bps	369%
LifeSmart 2050 Fund	75 bps	VFIFX	16 bps	369%
Low Duration Total Return	42 bps	VSTBX	7 bps	500%
MicroCap Value Fund	80 bps	VSIIX	7 bps	1,043%
Mutual Beacon Fund	70 bps	VIVIX	7 bps	900%
Mutual European	89 bps	VESIX	9 bps	889%
Mutual Global Discovery	82 bps	VFWSX	11 bps	645%
Real Return Fund	50 bps	VIPIX	7 bps	614%
Rising Dividend Fund	52 bps	VDADX	9 bps	478%
Small Cap Growth Fund	72 bps	VSGIX	7 bps	929%
Small Cap Value Fund	61 bps	VSIIX	7 bps	771%
Small-Mid Cap Growth	48 bps	VIEIX	7 bps	586%
Strategic Income	47 bps	VCOBX	15 bps	213%
Conservative Allocation	92 bps	VASIX	12 bps	667%
Growth Allocation	82 bps	VASGX	15 bps	447%
Moderate Allocation	94 bps	VSMGX	14 bps	571%
Total Return Fund	46 bps	VBIMX	6 bps	667%
U.S. Gov. Securities Fund	47 bps	VFIUX	10 bps	370%
Templeton Developing Mkts	122 bps	VEMIX	12 bps	917%
Templeton Foreign Fund	72 bps	VTRIX	46 bps	57%
Templeton Frontier Markets	165 bps	VEMIX	12 bps	1,275%
Templeton Global Bond Fund	50 bps	VTIFX	9 bps	456%
Templeton Global Smaller Co	94 bps	VTWIX	13 bps	623%

Templeton Growth Fund	70 bps	VTWIX	13 bps	438%
Templeton World Fund	72 bps	VTWIX	13 bps	454%

28. Additionally, each Proprietary Fund charges fees in excess of the fees the Plan would have paid by purchasing comparable separately managed accounts. As the Department of Labor reports, for plans like Franklin Templeton's Plan, the "[t]otal investment management expenses can commonly be reduced to one-fourth of the expenses incurred through retail mutual funds." *Study of 401(k) Plan Fees and Expenses*, April 13, 1998.

29. With an operating margin of over 37%, very high for the mutual fund industry, Defendants made a fortune off of the Plan's investments in Proprietary Funds.

30. Many of the Proprietary Funds had and continue to have poor performance histories compared to prudent alternatives Defendants could have chosen for inclusion in the Plan.

31. For example, from the beginning of the relevant time period until at least September, 2013, the Plan included three Asset Allocation Funds, the Conservative Allocation Fund, Moderate Allocation Fund, and Growth Allocation Fund, which were all Proprietary Funds managed by T. Anthony Coffey and Thomas A. Nelson of Franklin Templeton.

32. The Asset Allocation Funds had been performing poorly. All three trailed their Morningstar peer median returns in 2011 and 2012, with only the Conservative Allocation Fund beating its peers in 2013 — after finishing in the 90th and 76th percentiles the prior two years.

33. In July, 2013, Franklin Templeton created a series of target date funds. Both asset allocation funds and target date funds are similar in that both invest their assets in a collection of mutual funds which in turn invest in foreign and domestic stocks and bonds, providing asset allocation within a single fund. Mssers. Coffey and

Nelson, the unsuccessful managers of the Allocation Funds, were also the managers of these new, untested funds.

34. Defendants decided to replace the Allocation Funds with Target Date Funds shortly before or during 2014. At the time, there was no shortage of established, cheaper target date fund families in the marketplace. Instead of selecting one of these cheaper, better funds, Defendants chose for the Plan the untested, expensive Proprietary Target Date Funds, despite the poor performance of its managers managing similar Asset Allocation Funds. A prudent, un-conflicted fiduciary would not have chosen untested, more expensive funds, particularly in light of the individual manager's inability to succeed managing similar funds in the recent past.

35. The Target Date Funds have subsequently underperformed the cheaper, established, prudent alternative funds which, upon information and belief, were not even considered by Defendants when they decided to invest Plan assets in the Target Date Funds. In fact, all eight target date funds are rated in the bottom 10 percent of their peer groups for the most recent period, January 1 — June 30, 2016. Since their inception in July, 2013, the Target Date Funds have underperformed their Vanguard peers by over $3 million.

36. The Target Date Funds' underperformance is not unique. In 2015, only 24% of Franklin Templeton mutual funds outperformed their peer median.

37. Many of the Proprietary Funds were and are poorly rated by Morningstar, the independent rating service, compared to prudent alternatives the Committee could have chosen for inclusion in the Plan. For example, not a single Proprietary Fund is rated 5-stars (out of 5), the highest rating, by Morningstar, and none was rated 5-stars at any point during the statutory period. To the contrary, the Templeton World Fund, Templeton Frontier Markets Fund, and Franklin High Income Fund are all rated 1-star, the lowest rating. Ten other Proprietary Funds have 2-star ratings and most of the rest have mediocre 3-star ratings.

38. Prudent investors fled Franklin Templeton's mutual funds, including the Proprietary Funds. In the fiscal year ending September 30, 2015, investors on net withdrew $59.2 billion from Franklin Templeton funds. The following quarter, they withdrew an additional $20.6 billion. In the first quarter of 2016, investors withdrew an additional $24.6 billion and in just the month of April, 2016, the latest data available, another $2.8 billion were withdrawn.

39. Despite the poor performance, high fees, and low Morningstar ratings, the only Proprietary Funds removed from the Plan during the entire Class Period were the three Asset Allocation Funds, which were replaced, as discussed above, with eight proprietary Target Date Funds using the same failed managers as the Asset Allocation Funds.

40. Meanwhile, three Proprietary Funds, as well as the Target Date Funds, were added to the Plan during the Class Period. They are the International Growth Fund, for which Franklin Templeton charges 102 bps, the Templeton Frontier Markets Fund, for which Franklin Templeton charges 165 bps, and the Real Return Fund, for which Franklin Templeton charges 50 bps.

41. The Plan lost in excess of $64 million during the class period as a result of losses sustained by the Proprietary Funds compared to prudent alternatives such as comparable Vanguard Funds.

B. The Franklin Money Market Fund

42. Stable value funds and money market funds are two investment vehicles designed to preserve principal while providing a return.

43. Stable value funds are a common investment in defined contribution plans and in fact are designed specifically for use in large defined contribution plans.

44. The structure of stable value funds allows them to outperform money market funds in virtually all market conditions and over any appreciable time period. See, *Abbott v. Lockheed Martin Corp.*, 725 F.3d 803, 806 (7th Cir. 2013); see also Paul J.

Donahue, *Plan Sponsor Fiduciary Duty for the Selection of Options in Participant-Directed Defined Contribution Plans and the Choice Between Stable Value and Money Market*, 39 AKRON L. REV. 9, 20–27 (2006).

45. Stable Value Funds hold longer duration instruments generating excess returns over money market investments. Stable value funds also provide a guaranteed rate of return to the investor, referred to as a crediting rate, and protect against the loss of principal and accrued interest. This protection is provided through a wrap contract issued by a bank, insurance company or other financial institution that guarantees the book value of the participant's investment.

46. Even during the period of market turbulence in 2008, "stable value participants received point-to-point protection of principal, with no sacrifice of return[.]" Paul J. Donahue, *Stable Value Re-examined*, 54 RISKS AND REWARDS 26, 28 (Aug. 2009).[1]

47. Because they offer higher returns than money market funds, greater consistency of returns, and less risk to principal, large defined contribution plans commonly offer stable value funds to participants.

48. A 2011 study from Wharton Business School analyzed money market and stable value fund returns from the previous two decades and concluded that "any investor who preferred more wealth to less wealth should have avoided investing in money market funds when [stable value] funds were available, irrespective of risk preferences." David F. Babbel & Miguel A. Herce, *Stable Value Funds: Performance to Date*, at 16 (Jan. 1, 2011).[2]

49. According to the 2015 Stable Value Study published by MetLife, over 80% of plan sponsors offer a stable value fund. MetLife, *2015 Stable Value Study: A Survey*

[1] Available at http://www.soa.org/library/newsletters/risks-and-rewards/2009/august/rar-2009-iss54-donahue.pdf.

[2] Available at http://fic.wharton.upenn.edu/fic/papers/11/11-01.pdf (last accessed June 24, 2016).

of Plan Sponsors, Stable Value Fund Providers and Advisors at 5 (2015).[3] The study also notes that stable value returns were "*more than double*" the returns of money market funds from 1988 to 2015, and 100% of stable value providers and almost 90% of financial advisors to defined contribution plans "agree that stable value returns have outperformed money market returns over the last 25 years." *Id.* at 7 (emphasis added).

50. Unlike the majority of defined contribution plans, the Plan has not offered a stable value fund. Instead, the Plan offered the Franklin Funds Money Market Fund, a fund managed by Franklin and paying Franklin up to 47 bps per year, while paying nothing at all to the Plan and its participants.

51. In real terms, investors in this most-conservative options have lost over 12% of their buying power over the Class Period. Had Defendants used a comparable stable value fund, the plan participants would have seen their assets grow by over 22% during that period.

52. Had these assets been invested in a stable value fund instead, they would have had inflation-beating returns. For example, one alternative, the Vanguard Stable Value Fund has enjoyed the following returns:

Fund	2009	2010	2011	2012	2013	2014	2015
Stable Value	3.66%	4.06%	3.56%	2.68%	2.06%	2.00%	2.21%
Inflation	2.63%	1.63%	2.93%	1.59%	1.58%	-0.09%	1.37%
Plan Money Market	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

53. Franklin does not manage any stable value funds.

[3] Available at https://www.metlife.com/assets/cao/institutional-retirement/plan-sponsor/stable-value/Stable-Value-Vs-Money-Market/2015_StableValueStudyWebFinal.pdf.

54. In addition to the breaches of loyalty resulting from the selection and maintenance of the Money Market Fund, by including and failing to remove the Money Market Fund, Defendants failed to discharge their duties with respect to the Plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

55. The Plan lost in excess of $9 million during the class period as a result of losses sustained by the Money Market Fund compared to Stable Value alternatives.

C. Excessive Total Plan Cost

56. In addition to paying the bloated expense ratios charged by Franklin Templeton on the Proprietary Funds, the Plan pays a separate administrative fee, charged to each participant at a rate of $12.00 per quarter, or $48 per year. Additional charges are also incurred for services provided to the Plan by other vendors.

57. The Plans' Form 5500 filings with the U.S. Department of Labor contain an Independent Auditor's Report, which state that on September 30, 2014 the Plan's assets were $1,178,463,741 and on September 30, 2015, the Plan's assets were $1,095,737,878.

58. In total, the Plan paid $6.5 million per year in investment management and administrative fees. Given the Plan size, the average Total Plan Cost was over 57 bps in 2014 and 2015.

59. A recently published report shows that in 2013, the most recent year available, the average 401(k) defined contribution plan with more than a billion dollars in assets bore a total plan cost as a percentage of assets of 31 basis points. See BrightScope and Investment Company Institute, The BrighScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 47 (Dec. 2015), available at: https://www.ici.org/pdf/ppr_15_dcplan_profile_401k.pdf

60. Thus, the total plan cost, including investment and administrative fees, was nearly double the cost of comparable plans that are not subject to conflicted fiduciary decision-making. This difference is almost entirely the result of the mutual fund fees paid to Franklin Templeton.

61. In the six-year period 2010–2015, the Plan paid approximately $15 million more at the 57 basis points fee rate than did a plan at the 31 basis points fee rate.

62. These facts support an inference that Defendants allowed Franklin Templeton to receive excessive compensation by larding the Plan with excessively expensive Proprietary Funds.

V. ERISA'S FIDUCIARY STANDARDS

63. ERISA imposes strict fiduciary duties of loyalty and prudence upon Defendants as fiduciaries of the Plan. ERISA § 404(a), 29 U.S.C.§ 1104(a), provides, in relevant part, as follows:

> [A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and —
> (A) for the exclusive purpose of:
> (i) providing benefits to participants and their beneficiaries; and
> (ii) defraying reasonable expenses of administering the plan; [and]
> (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims;
> (C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so[.]

64. Under ERISA, fiduciaries who exercise discretionary authority or control over the selection of plan investments and the selection of plan service providers must act prudently and solely in the interest of participants and beneficiaries of the plan when performing such functions. Thus, "the duty to conduct an independent

investigation into the merits of a particular investment" is "the most basic of ERISA's investment fiduciary duties." *In re Unisys Savings Plan Litig.*, 74 F.3d 420, 435 (3d Cir. 1996).

65. As the Department of Labor explains,

> [T]o act prudently, a plan fiduciary must consider, among other factors, the availability, riskiness, and potential return of alternative investments for his or her plan. [Where an investment], if implemented, causes the Plan to forego other investment opportunities, such investments would not be prudent if they provided a plan with less return, in comparison to risk, than comparable investments available to the plan, or if they involved a greater risk to the security of plan assets than other investments offering a similar return.

DOL Opinion 88-16A (1988).

66. Pursuant to these duties, fiduciaries must ensure that the services provided to the plan are necessary and that the fees are reasonable:

> Under section 404(a)(1) of ERISA, the responsible Plan fiduciaries must act prudently and solely in the interest of the Plan participants and beneficiaries … in determining which investment options to utilize or make available to Plan participants or beneficiaries. In this regard, the responsible Plan fiduciaries must assure that the compensation paid directly or indirectly by the Plan to [service providers] is reasonable . . .

DOL Opinion 97-15A (1997); DOL Opinion 97-16A (1997).

67. A fiduciary's duty of loyalty requires a fiduciary to act solely in the interest of plan participants and beneficiaries. As the Department of Labor has warned:

> [T]he Department has construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to participants and beneficiaries, as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives. In other words, in deciding whether and to what extent to invest in a particular investment, or to make a particular fund available as a designated investment alternative,

> a fiduciary must ordinarily consider only factors relating to the interests of plan participants and beneficiaries in their retirement income. A decision to make an investment, or to designate an investment alternative, may not be influenced by non-economic factors unless the investment ultimately chosen for the plan, when judged solely on the basis of its economic value, would be equal to or superior to alternative available investments.

DOL Opinion 98-04A (1998); *see also* DOL Opinion 88-16A (1988). The Department of Labor has repeatedly warned that:

> While the law does not specify a permissible level of fees, it does require that fees charged to a plan be "reasonable." After careful evaluation during the initial selection, the plan's fees and expenses should be monitored to determine whether they continue to be reasonable.

Meeting Your Fiduciary Responsibilities, U.S. Dep't of Labor Employee Benefits Security Admin. (Feb. 2012),

http://www.dol.gov/ebsa/publications/fiduciaryresponsibility.html.

68. In a separate publication, the Department of Labor writes as follows:

> The Federal law governing private-sector retirement plans, the Employee Retirement Income Security Act (ERISA), requires that those responsible for managing retirement plans -- referred to as fiduciaries -- carry out their responsibilities prudently and solely in the interest of the plan's participants and beneficiaries. Among other duties, fiduciaries have a responsibility to ensure that the services provided to their plan are necessary and that the cost of those services is reasonable.
>
> * * *
>
> Plan fees and expenses are important considerations for all types of retirement plans. As a plan fiduciary, you have an obligation under ERISA to prudently select and monitor plan investments, investment options made available to the plan's participants and beneficiaries, and the persons providing services to your plan. Understanding and evaluating plan fees and expenses associated with plan investments, investment options, and services are an important part of a fiduciary's responsibility. This responsibility is ongoing. After careful evaluation

> during the initial selection, you will want to monitor plan fees and expenses to determine whether they continue to be reasonable in light of the services provided.
>
> * * *
>
> By far the largest component of plan fees and expenses is associated with managing plan investments. Fees for investment management and other related services generally are assessed as a percentage of assets invested. Employers should pay attention to these fees. They are paid in the form of an indirect charge against the participant's account or the plan because they are deducted directly from investment returns. Net total return is the return after these fees have been deducted. For this reason, these fees, which are not specifically identified on statements of investments, may not be immediately apparent to employers.

Understanding Retirement Plan Fees and Expenses, U.S. Dep't of Labor Employee Benefits Security Admin. (Dec. 2011), http://www.dol.gov/ebsa/publications/undrstndgrtrmnt.html.

69. ERISA § 409, 29 U.S.C. § 1109, provides, inter alia, that any person who is a fiduciary with respect to a plan and who breaches any of the responsibilities, obligations, or duties imposed on fiduciaries by Title I ERISA shall be personally liable to make good to the plan any losses to the plan resulting from each such breach and to restore to the plan any profits the fiduciary made through use of the plan's assets. ERISA § 409, 29 U.S.C. § 1109, further provides that such fiduciaries are subject to such other equitable or remedial relief as a court may deem appropriate.

VI. CLASS ALLEGATIONS

70. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), permits a plan fiduciary, participant, beneficiary, or the Secretary of Labor to bring a suit individually on behalf of the Plan to recover for the Plan the remedies provided under ERISA § 409, 29 U.S.C. § 1109(a).

71. In acting in this representative capacity and to enhance the due process protections of unnamed participants and beneficiaries of the Plan, as an alternative to

direct individual actions on behalf of the Plan under 29 U.S.C. § 1132(a)(2), Plaintiffs seek to certify this action as a class action on behalf of the following class:

All participants in the Franklin Templeton 401(k) Retirement Plan from July 28, 2010 to the date of judgment. Excluded from the class are Defendants, Defendants' beneficiaries, and Defendants' immediate families.

72. Class certification is appropriate under Fed. R. Civ. P. 23(a) and (b)(1), (b)(2), and/or (b)(3).

(a) The class satisfies the numerosity requirement of Rule 23(a) because it is composed of over one thousand persons, in numerous locations. The number of class members is so large that joinder of all its members is impracticable.

(b) The class satisfies the commonality requirement of Rule 23(a) because there are questions of law and fact common to the Class and these questions have common answers. Common legal and factual questions include, but are not limited to: who are the fiduciaries liable for the remedies provided by ERISA § 409(a), 29 U.S.C. §1109(a); whether the fiduciaries of the Plan breached their fiduciary duties to the Plan by causing the Plan to invest in excessively expensive funds and by failing to prudently remove the funds from the Plan; whether the decision to include and not to remove a fund was made solely in the interests of Plan participants and beneficiaries; what are the losses to the Plan resulting from each breach of fiduciary duty; and what are the profits of any breaching fiduciary that were made through the use of Plan assets by the fiduciary.

(c) The class satisfies the typicality requirement of Rule 23(a) because Plaintiffs' claims are typical of the claims of the members of the Class because Plaintiffs' claims, and the claims of all Class members, arise out

of the same conduct, policies and practices of Defendants as alleged herein, and all members of the Class are similarly affected by Defendants' wrongful conduct. Plaintiff was and remains an investor in the Plan for the entirety of the Class Period.

(d) The class satisfies the adequacy requirement of Rule 23(a). Plaintiff will fairly and adequately represent the Class and have retained counsel experienced and competent in the prosecution of ERISA class action litigation. Plaintiff has no interests antagonistic to those of other members of the Class. Plaintiff is committed to the vigorous prosecution of this action and anticipates no difficulty in the management of this litigation as a class action.

(e) Class action status in this action is warranted under Rule 23(b)(1)(A) because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants. Class action status also warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that, as a practical matter, would be dispositive of the interests of other members not parties to this action, or that would substantially impair or impede their ability to protect their interests.

(f) In the alternative, certification under Rule 23(b)(2) is warranted because Defendants acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

(g) In the alternative, certification under Rule 23(b)(3) is appropriate because questions of law or fact common to members of the Class

predominate over any questions affecting only individual members, and class action treatment is superior to the other available methods for the fair and efficient adjudication of this controversy.

VII. CLAIMS FOR RELIEF

First Claim For Relief: Breach of Fiduciary Duty

73. Plaintiff repeats and realleges each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

74. Defendants are responsible for selecting, monitoring, and removing investment options in the Plan.

75. Defendants caused the Plan to invest nearly a billion of dollars in imprudent investment options, many of which were more expensive than prudent alternatives, unlikely to outperform their benchmarks, and laden with excessive fees which were paid to Franklin Templeton and its subsidiaries.

76. Defendants failed to remove the funds even though a prudent fiduciary would have done so given the high fees, poor performance prospects, and availability of lower-cost alternatives.

77. By the conduct and omissions described above, Defendants failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

78. Defendants failed to discharge their duties with respect to the Plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

79. As a direct and proximate result of these breaches of fiduciary duties, the Plan and its participants have paid, directly and indirectly, substantial excess investment management and other fund-related fees during the Class Period, and suffered lost-opportunity costs which continue to accrue, for which Defendants are jointly and severally liable pursuant to ERISA § 409, 29 U.S.C. § 1109, and ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2).

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

A. A declaration that the Defendants breached their fiduciary duties under ERISA § 404;

B. An order compelling the disgorgement of all fees paid and incurred, directly or indirectly, to Franklin Templeton and its subsidiaries by the Plan or by Proprietary Mutual Funds as a result of the Plan's investments in their funds, including disgorgement of profits thereon;

C. An order compelling the Defendant to restore all losses to the Plan arising from Defendants' violations of ERISA, including lost-opportunity costs;

D. An order granting appropriate equitable monetary relief against Defendants;

E. An order granting such other equitable or remedial relief as may be appropriate, including the permanent removal of Defendants from any positions of trust with respect to the Plan, the appointment of independent fiduciaries to administer the Plan, and rescission of the Plan's investments in Proprietary Funds;

F. An order certifying this action as a class action, designating the Class to receive the amounts restored or disgorged to the Plan, and imposing a constructive trust for distribution of those amounts to the extent

required by law;

G. An order enjoining Defendants collectively from any further violations of their ERISA fiduciary responsibilities, obligations, and duties;

H. An order awarding Plaintiffs and the Class their attorneys' fees and costs pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g), and/or the Common Fund doctrine, along with pre- and post-judgment interest; and

I. An order awarding such other and further relief as the Court deems equitable and just.

Dated: July 28, 2016

Respectfully submitted,

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ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from each of the other signatories.

Dated: July 28, 2016

/s/ Joseph A. Creitz
Joseph A. Creitz

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

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

Plaintiffs,

v.

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

Defendants.

Case No. 4:16-cv-04265-CW

DEFENDANT FRANKLIN RESOURCES, INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED

Judge: Hon. Claudia Wilken

ANSWER AND AFFIRMATIVE DEFENSES

Pursuant to Rules 7 and 8 of the Federal Rules of Civil Procedure, Defendant Franklin Resources, Inc. ("Defendant") hereby answers Plaintiff Marlon H. Cryer's ("Plaintiff") Complaint for Violations of the Employee Retirement Income Security Act of 1974, as Amended ("Complaint") as follows:

GENERAL DENIALS

Except as expressly admitted below, Defendant denies each and every allegation against it and denies liability to Plaintiff. With respect to those allegations in the Complaint that specify no applicable time period, Defendant has answered as of the present date. With respect to those allegations referring to "Franklin Templeton," Plaintiff's defined term for Defendant Franklin Resources, Inc., Defendant has answered on behalf of Franklin Resources, Inc.

Plaintiff includes in the Complaint lettered and numbered headings purporting to characterize certain actions or events. Because the headings are not set forth in numbered paragraphs, they are not properly pleaded facts, and no response is necessary. To the extent that Plaintiff has included headings that are inappropriate under Rules 8 and 12(f) of the Federal Rules of Civil Procedure, no response is necessary, and any such inappropriate material should be stricken. To the extent Plaintiff's headings purport to state facts to which a response is required, Defendant denies each and every such allegation. Plaintiff's headings are repeated below, solely for organizational purposes. Defendant specifically denies, and does not adopt, the characterizations set forth in these headings.

Defendant expressly reserves the right to seek to amend and/or supplement this Answer as may be necessary.

RESPONSES TO SPECIFIC ALLEGATIONS

In addition to and incorporating the above general denials, Defendant further answers the numbered paragraphs in the Complaint as follows:

1. Answering Paragraph 1 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent that such allegations require a response, Defendant admits that Plaintiff purports to assert his claims under ERISA, 29 U.S.C. § 1132(a)(2) and (3) on behalf of the Franklin Templeton 401(k) Retirement Plan (the "Plan") and seeks the relief described; and, except as admitted, denies each and every allegation in said paragraph and denies Plaintiff's entitlement to any requested relief.

2. Answering Paragraph 2 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent that such allegations require a response, Defendant admits that the investment options made available to Plan participants included certain funds offered and managed by Defendant, acting through its subsidiaries; and, except as admitted, denies each and every allegation in said paragraph.

I. JURISDICTION AND VENUE

3. Answering Paragraph 3 of the Complaint, Defendant states that said paragraph asserts conclusions of law to which no response is required; to the extent that such allegations require a response, Defendant admits that this Court has jurisdiction over Plaintiff's ERISA claims.

4. Answering Paragraph 4 of the Complaint, Defendant states that said paragraph asserts conclusions of law to which no response is required; to the extent that such allegations require a response, Defendant admits that venue is proper in this district; admits that some administrative functions of the Plan occur or have occurred in this district and that at least one defendant may be found in this district; and, except as admitted, denies each and every allegation in said paragraph.

II. PARTIES

A. Plaintiff

5. Answering Paragraph 5 of the Complaint, Defendant admits that Plaintiff was a participant in the Plan until May 19, 2016, and invested in the Mutual Global Discovery Fund, the Rising Dividends Fund, the Flex Cap Growth Fund, and the Growth Opportunities Fund; denies that Plaintiff is currently a Plan participant; and, except as admitted or denied, states that it lacks information or belief sufficient to answer the allegations in said paragraph.

B. Defendants

6. Answering Paragraph 6 of the Complaint, Defendant states that said paragraph asserts conclusions of law to which no response is required; to the extent such allegations require a response, Defendant states that the phrase "all times relevant herein" is overly ambiguous and that Defendant shall answer as of the present date; admits that Defendant's Board of Directors appoints five individuals to the Investment Committee; admits that the Investment Committee is responsible for analyzing the performance and fees of investment options made available to Plan participants, selecting new investment options to be offered to Plan participants, and removing or replacing investment options offered to Plan participants; and, except as admitted, denies each and every allegation in said paragraph.

7. Answering Paragraph 7 of the Complaint, Defendant states that said paragraph asserts conclusions of law to which no response is required; to the extent such allegations require a response, Defendant admits that the Investment Committee exercised discretionary authority or control with respect to the management of the Plan and Plan assets; and, except as admitted, denies each and every allegation in said paragraph.

8. Answering Paragraph 8 of the Complaint, Defendant states that said paragraph asserts conclusions of law to which no response is required; to the extent such allegations require a response, Defendant admits that members of the Investment Committee exercised discretionary authority or control with respect to the management of the Plan

and Plan assets; and, except as admitted, denies each and every allegation in said paragraph.

9. Answering Paragraph 9 of the Complaint, Defendant states that said paragraph asserts conclusions of law to which no response is required; to the extent that such allegations require a response, Defendant admits that it is the Plan Sponsor and a party in interest to the Plan under 29 U.S.C. § 1002(14); admits that it is a corporation that is organized under the laws of the State of Delaware; admits that it has its corporate headquarters and principal place of business in San Mateo, California; and, except as admitted, denies each and every allegation in said paragraph.

10. Answering Paragraph 10 of the Complaint, Defendant states that said paragraph asserts conclusions of law to which no response is required; to the extent such allegations require a response, Defendant admits that it is the Plan Sponsor, and certain employees of Defendant and Defendant's subsidiaries exercise discretionary authority or control with respect to the management and administration of the Plan; and, except as admitted, denies each and every allegation in said paragraph.

11. Answering Paragraph 11 of the Complaint, Defendant states that said paragraph asserts conclusions of law to which no response is required; to the extent such allegations require a response, Defendant admits that, through its Board of Directors, it appoints and removes members of the Investment Committee; and, except as admitted, denies each and every allegation in said paragraph.

12. Answering Paragraph 12 of the Complaint, Defendant states that said paragraph asserts conclusions of law to which no response is required; to the extent such allegations require a response, Defendant admits that it is the Plan Sponsor, and that certain employees of Defendant and Defendant's subsidiaries perform investment management and administration services; and, except as admitted, denies each and every allegation in said paragraph.

13. Answering Paragraph 13 of the Complaint, Defendant states that said paragraph asserts conclusions of law to which no response is required; to the extent such

allegations require a response, Defendant admits that it is the Plan Sponsor, and that certain employees of Defendant and Defendant's subsidiaries perform investment management and administration services; and, except as admitted, denies each and every allegation in said paragraph.

III. THE PLAN

14. Answering Paragraph 14 of the Complaint, Defendant admits that the Plan is sponsored by Franklin Resources, Inc., and that the Plan document was last amended effective October 1, 2010; and, except as admitted, denies each and every allegation in said paragraph.

15. Answering Paragraph 15 of the Complaint, Defendant admits each and every allegation in said paragraph.

16. Answering Paragraph 16 of the Complaint, Defendant admits each and every allegation in said paragraph.

17. Answering Paragraph 17 of the Complaint, Defendant admits each and every allegation in said paragraph.

18. Answering Paragraph 18 of the Complaint, Defendant admits that eligible employees may participate in the Plan, pursuant to its terms; and, except as admitted, denies each and every allegation in said paragraph.

IV. THE PLAN'S INVESTMENTS

19. Answering Paragraph 19 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendant states that Plaintiff appears to be referring to specific court opinions and that such opinions speak for themselves.

A. The Proprietary Mutual Funds

20. Answering Paragraph 20 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant admits that there are a variety of

investment options available in the 401(k) plan market; and, except as admitted, denies each and every allegation in said paragraph.

21. Answering Paragraph 21 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant denies each and every allegation in said paragraph.

22. Answering Paragraph 22 of the Complaint, Defendant admits that the mutual funds offered to Plan participants (the "Proprietary Funds") are managed through Defendant's subsidiaries; and, admits each and every other allegation in said paragraph.

23. Answering Paragraph 23 of the Complaint, Defendant admits that the investment options made available to Plan participants were selected by or at the direction of the Investment Committee; and, except as admitted, denies each and every allegation in said paragraph.

24. Answering Paragraph 24 of the Complaint, Defendant denies each and every allegation in said paragraph.

25. Answering Paragraph 25 of the Complaint, Defendant admits that its subsidiaries that act as investment adviser or service provider to the Proprietary Funds are compensated in connection with the investment products and services they offer retail and institutional investors; and, except as admitted, denies each and every allegation in said paragraph.

26. Answering Paragraph 26 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendant states that Plaintiff appears to be referring to excerpted data from specific documents and that such documents speak for themselves; denies that the mutual funds referenced in those documents are comparable to the Proprietary Funds; and, except as admitted, denies each and every allegation in said paragraph.

27. Answering Paragraph 27 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendant admits that the Plan offers an R6 share class for Proprietary Funds; denies that the Vanguard Institutional Funds referenced have investment styles that are "similar" to those of the Proprietary Funds; states that it lacks information or belief sufficient to answer the allegations regarding the fees cited; and, except as admitted, denies each and every allegation in said paragraph.

28. Answering Paragraph 28 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant states that Plaintiff appears to be referring to a specific document and that such document speaks for itself; and, except as admitted, denies each and every allegation in said paragraph.

29. Answering Paragraph 29 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant denies that Defendant currently has an operating margin of over 37%; and otherwise denies each and every allegation in said paragraph.

30. Answering Paragraph 30 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant denies each and every allegation in said paragraph.

31. Answering Paragraph 31 of the Complaint, Defendant admits that from July 2010, until at least September 2013, the Plan included three Asset Allocation Funds; and admits that the Asset Allocation Funds were managed by a subsidiary of Defendant with Messers. Coffey and Nelson serving as portfolio managers.

32. Answering Paragraph 32 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent

such allegations require a response, Defendant states that Plaintiff appears to be referring to a specific document and that such document speaks for itself.

33. Answering Paragraph 33 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant admits that Defendant, acting through its subsidiaries, began offering target date funds to Plan participants on July 1, 2014; admits that asset allocation funds and target date funds both provide asset allocation in a single fund by investing assets in a collection of mutual funds that invest in foreign and domestic stocks and bonds; admits that a subsidiary of Defendant managed the Allocation Funds and Target Date Funds, with Messers. Coffey and Nelson serving as portfolio managers; and, except as admitted, denies each and every allegation in said paragraph.

34. Answering Paragraph 34 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant admits that the Target Date Funds replaced the Allocation Funds in the Plan lineup on July 1, 2014; and, except as admitted, denies each and every allegation in said paragraph.

35. Answering Paragraph 35 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant states that it lacks information or belief sufficient to answer the allegations regarding the Target Date Funds' unspecified "peer group" or "peers" and, on that basis, denies each and every allegation in said paragraph.

36. Answering Paragraph 36 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant states that it lacks information or belief sufficient to answer the allegations regarding the Target Date Funds' or unspecified Proprietary Funds' unspecified "peer median" and, on that basis, denies each and every allegation in said paragraph.

37. Answering Paragraph 37 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant states that Plaintiff appears to be referring to specific documents and that such documents speak for themselves.

38. Answering Paragraph 38 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant states that Plaintiff appears to be referring to specific, unidentified documents and that such documents speak for themselves.

39. Answering Paragraph 39 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant admits that the three Asset Allocation Funds were removed from the Plan lineup during the putative class period and replaced by Franklin Target Date Funds; admits that a subsidiary of Defendant managed the Allocation Funds and the Target Date Funds, with Messers. Coffey and Nelson serving as portfolio managers; and, except as admitted, denies each and every allegation in said paragraph.

40. Answering Paragraph 40 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant admits that the International Growth Fund, Templeton Frontier Markets Fund, Real Return Fund, and Target Date Funds were added to the Plan lineup during the putative class period; and, except as admitted, denies each and every allegation in said paragraph.

41. Answering Paragraph 41 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant denies each and every allegation in said paragraph.

B. The Franklin Money Market Fund

42. Answering Paragraph 42 of the Complaint, Defendant admits that stable value funds and money market funds are capital preservation investment options; and, except as admitted, denies each and every allegation in said paragraph.

43. Answering Paragraph 43 of the Complaint, Defendant admits that stable value funds are included in the lineups of some defined contribution plans; and, except as admitted, denies each and every allegation in said paragraph.

44. Answering Paragraph 44 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant states that Plaintiff appears to be referring to specific documents and that such documents speak for themselves.

45. Answering Paragraph 45 of the Complaint, Defendant admits that stable value funds provide a guaranteed rate of return, or crediting rate, to the investor through a wrap contract issued by a financial institution; and, except as admitted, denies each and every allegation in said paragraph.

46. Answering Paragraph 46 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant states that Plaintiff appears to be referring to a specific document and that such document speaks for itself.

47. Answering Paragraph 47 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant admits that stable value funds are included in the lineups of some defined contribution plans; and, except as admitted, denies each and every allegation in said paragraph.

48. Answering Paragraph 48 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant states that Plaintiff appears to be referring to a specific document and that such document speaks for itself.

49. Answering Paragraph 49 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant states that Plaintiff appears to be referring to a specific document and that such document speaks for itself.

50. Answering Paragraph 50 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant admits that the Plan lineup does not include a stable value fund; admits that the Plan lineup does include the Franklin Funds Money Market Fund; and, except as admitted, denies each and every allegation in said paragraph.

51. Answering Paragraph 51 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant denies each and every allegation in said paragraph.

52. Answering Paragraph 52 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant states that Plaintiff appears to be relying on unspecified documents for such allegations and that any such documents speak for themselves.

53. Answering Paragraph 53 of the Complaint, Defendant admits each and every allegation in said paragraph.

54. Answering Paragraph 54 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent that such allegations require a response, Defendant admits that the Franklin Money Fund is offered to Plan participants; and, except as admitted, denies each and every allegation in said paragraph.

55. Answering Paragraph 55 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent

such allegations require a response, Defendant denies each and every allegation in said paragraph.

C. Excessive Total Plan Cost

56. Answering Paragraph 56 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant admits that Plan participants currently pay a flat recordkeeping fee of $12.00 per quarter, or $48 per year; and, except as admitted, denies each and every allegation in said paragraph.

57. Answering Paragraph 57 of the Complaint, Defendant states that Plaintiff appears to be referring to specific documents and that such documents speak for themselves.

58. Answering Paragraph 58 of the Complaint, Defendant states that Plaintiff appears to be referring to specific documents and that such documents speak for themselves.

59. Answering Paragraph 59 of the Complaint, Defendant states that Plaintiff appears to be referring to a specific document and that such document speaks for itself.

60. Answering Paragraph 60 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant denies each and every allegation in said paragraph.

61. Answering Paragraph 61 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant denies each and every allegation in said paragraph.

62. Answering Paragraph 62 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant denies each and every allegation in said paragraph.

V. ERISA'S FIDUCIARY STANDARDS

63. Answering Paragraph 63 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent that such allegations require a response, Defendant states that Plaintiff appears to be referring to ERISA § 404(a), 29 U.S.C.§ 1104(a), and that the statute speaks for itself.

64. Answering Paragraph 64 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent that such allegations require a response, Defendant states that Plaintiff appears to be referring to a specific court opinion and that such opinion speaks for itself.

65. Answering Paragraph 65 of the Complaint, Defendant states that Plaintiff appears to be referring to a specific document and that such document speaks for itself.

66. Answering Paragraph 66 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent that such allegations require a response, Defendant states that Plaintiff appears to be referring to a specific document and that such document speaks for itself.

67. Answering Paragraph 67 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent that such allegations require a response, Defendant states that Plaintiff appears to be referring to specific documents and that such documents speak for themselves.

68. Answering Paragraph 68 of the Complaint, Defendant states that Plaintiff appears to be referring to a specific document and that such document speaks for itself.

69. Answering Paragraph 69 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant states that Plaintiff appears to be referring to ERISA § 409, 29 U.S.C.§ 1109, and that the statute speaks for itself.

VI. CLASS ALLEGATIONS

70. Answering Paragraph 70 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant states that Plaintiff appears to be referring to ERISA § 502(a)(2), 29 U.S.C. § 1132(a), and that the statute speaks for itself.

71. Answering Paragraph 71 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant admits that Plaintiff purports to assert his claims on behalf of certain Plan participants and purports to exclude certain persons or entities from the class he purports to represent, but denies that class certification is appropriate; and except as admitted, denies each and every allegation in said paragraph.

72. Answering Paragraph 72 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendant denies each and every allegation in said paragraph, and specifically denies that class certification is appropriate.

VII. CLAIMS FOR RELIEF

First Claim for Relief: Breach of Fiduciary Duty

73. Answering Paragraph 73 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant restates and reincorporates by reference all responses to the allegations in the previous paragraphs of the Complaint.

74. Answering Paragraph 74 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendant admits that it is the Plan Sponsor and that certain employees of Defendant and Defendant's subsidiaries are responsible for selecting, monitoring, and removing the investment options made available to Plan participants.

75. Answering Paragraph 75 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; and to the extent such allegations require a response, Defendant denies each and every allegation in said paragraph.

76. Answering Paragraph 76 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; and to the extent such allegations require a response, Defendant denies each and every allegation in said paragraph.

77. Answering Paragraph 77 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; and to the extent such allegations require a response, Defendant denies each and every allegation in said paragraph.

78. Answering Paragraph 78 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; and to the extent such allegations require a response, Defendant denies each and every allegation in said paragraph.

79. Answering Paragraph 79 of the Complaint, Defendant states that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent that such allegations require a response, Defendant denies each and every allegation in said paragraph and denies Plaintiff's entitlement to any of the requested relief.

VIII. PRAYER FOR RELIEF

Answering Plaintiff's Prayer for Relief, Defendant states that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent that such allegations require a response, Defendant denies each and every allegation in said paragraph and denies Plaintiff's entitlement to any of the requested relief.

AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses. By alleging these affirmative defenses, Defendant does not agree or concede that it has the burden of proof on any of the issues raised in these defenses or that any particular issue or subject matter herein is relevant to Plaintiff's allegations.

First Affirmative Defense
(Failure to State a Claim)

Plaintiff fails to state a claim or cause of action upon which relief can be granted.

Second Affirmative Defense
(Standing)

Plaintiff lacks constitutional and/or statutory standing to bring the claims alleged.

Third Affirmative Defense
(Standing–Covenant Not to Sue)

Plaintiff lacks constitutional and/or statutory standing to bring the claims alleged based on the covenant not to sue executed by Plaintiff on February 13, 2016, upon the termination of his employment.

Fourth Affirmative Defense
(Standing–No Injury)

Plaintiff lacks constitutional and/or statutory standing to bring the claims alleged because he has suffered no injury related to the purported breaches of fiduciary duties.

Fifth Affirmative Defense
(Statutes of Limitations and Repose)

Plaintiff's claims are barred in whole or in part by the applicable statute of limitations and statute of repose, including but not limited to 29 U.S.C. § 1113.

Sixth Affirmative Defense
(Failure to Allege Fraud With Particularity)

Insofar as Plaintiff purports to allege claims of breach of fiduciary duty as a result of misrepresentations, the circumstances constituting the alleged fraud or mistake have not been alleged with the requisite particularity required by Federal Rule of Civil Procedure 9(b).

Seventh Affirmative Defense
(Not Appropriate Relief under ERISA § 502(a)(2))

The requested relief does not constitute appropriate relief under ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2).

Eighth Affirmative Defense
(Prudent Action)

Without conceding that any Defendant is a fiduciary with respect to the conduct complained of by Plaintiff, Plaintiff's claims are barred in whole or in part because Defendants' actions were both procedurally and substantively prudent and cannot give rise to fiduciary liability under ERISA § 409(a), 29 U.S.C. § 1109(a).

Ninth Affirmative Defense
(Laches)

Plaintiff's claims are barred in whole or in part by the doctrine of laches.

Tenth Affirmative Defense
(Independent Control)

Plaintiff's claims, and those of the members of the putative class, are barred in whole or in part to the extent that Plaintiff and the putative class exercised independent control over their Plan accounts.

Eleventh Affirmative Defense
(Independent Control/ERISA § 404(c))

Plaintiff's claims, and those of the members of the putative class, are barred in whole or in part by application of ERISA § 404(c), 29 U.S.C. § 1104(c).

Twelfth Affirmative Defense
(Causation)

Plaintiff's claims are barred in whole or in part because any losses alleged by Plaintiff were not caused by any alleged breach of fiduciary duty by the Defendants.

Thirteenth Affirmative Defense
(Waiver)

Plaintiff's claims are barred in whole or in part by the doctrine of waiver.

Fourteenth Affirmative Defense
(Estoppel)

Plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

Fifteenth Affirmative Defense
(Reasonable Fees)

Plaintiff's claims, and those of the members of the putative class, are barred, in whole or in part, because the challenged fees and expenses are not excessive or unreasonable.

Sixteenth Affirmative Defense
(No Fiduciary Status)

Plaintiff's claims, and those of the members of the putative class, are barred, in whole or in part, because Defendants are not ERISA fiduciaries with respect to the

conduct alleged in the Complaint.

Seventeenth Affirmative Defense
(Disgorgement)

Without conceding that any Defendant is a fiduciary with respect to the conduct complained of by Plaintiff, Plaintiff's claims, and those of members of the putative class, are barred in whole or in part because disgorgement of revenue is unavailable under ERISA § 409(a), 29 U.S.C. § 1109(a).

Eighteenth Affirmative Defense
(Failure to Satisfy Rule 23)

This action may not be maintained as a class action because Plaintiff cannot satisfy the prerequisites of Federal Rules of Civil Procedure 23.

Nineteenth Affirmative Defense
(Failure to Satisfy Rule 23)

Plaintiff's claims may not be maintained as a class action because any alleged injury cannot be proven on a class-wide basis with common methods of proof.

Twentieth Affirmative Defense
(Failure to Satisfy Rule 23)

Plaintiff's claims may not be maintained as a class action because damages cannot be proven on a class-wide basis.

Twenty-First Affirmative Defense
(Failure to Satisfy Rule 23)

Plaintiff's claims may not be maintained as a class action because Plaintiff does not adequately represent the interests of proposed class members.

Twenty-Second Affirmative Defense
(Failure to Satisfy Rule 23)

Plaintiff's claims may not be maintained as a class action because Plaintiff's claim is not typical of the claims of the putative class.

Reservation of Rights to Assert Additional Defenses

Defendant reserves the right to assert, and hereby gives notice that it intends to rely upon, any other defense that may become available or appear during discovery proceedings or otherwise in this case and hereby reserves the right to amend its Answer to assert any such defense.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff take nothing by the Complaint;
2. That the Complaint, and each cause of action therein, be dismissed with prejudice;
3. That Defendant be awarded its costs of suit, including attorneys' fees; and
4. That the Court award such other relief as it deems just and appropriate.

Dated: January 27, 2017

Respectfully submitted,

BRIAN D. BOYLE
CATALINA J. VERGARA
O'MELVENY & MYERS LLP

By: /s/ *Catalina J. Vergara*
Catalina J. Vergara

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Attorneys for the Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

NELLY F. FERNANDEZ, individually and on behalf of a class of all other persons similarly situated, and on behalf of the Franklin Templeton 401(k) Retirement Plan,	)	
Plaintiffs,	)	Case Number:
v.	)	
FRANKLIN RESOURCES, INC., Franklin	)	

Templeton 401(k) Retirement Plan Investment Committee, Norman Frisbie, Jennifer Johnson, Penelope Alexander, Kenneth Lewis, Dan Carr, Nicole Smith, Alison Baur, Matthew Gulley, The Franklin Resources, Inc. Board of Directors, Gregory E. Johnson, Rupert H. Johnson, Jr., Charles B. Johnson, Charles E. Johnson, Peter K. Barker, Mariann Byerwalter, Mark C. Pigott, Chutta Ratnathicam, Laura Stein, Seth Waugh, Geoffrey Y. Yang, Samuel Armacost, Joseph Hardiman, Laura Stein, Anne Tatlock, And John Doe Defendants 1–10.

Defendants.

COMPLAINT

1. Plaintiff Nelly F. Fernandez, individually and as representative of a class of similarly situated persons, ("Plaintiffs") brings this action pursuant to 29 U.S.C. §1132(a)(2) and (3) on behalf of the Franklin Templeton 401(k) Retirement Plan (the "Plan") against Defendants Franklin Resources, Inc. (hereinafter "Franklin Templeton"), Franklin Templeton 401(k) Retirement Plan Investment Committee ("Investment Committee"), and individual Investment Committee Members Norman Frisbie, Jennifer Johnson, Penelope Alexander, Kenneth Lewis, Dan Carr, Nicole Smith, Alison Baur, and Matthew Gulley, the Franklin Resources, Inc. Board of Directors, responsible for monitoring the Investment Committee and appointing and removing its members, and members of the Board of Directs, Defendants Gregory E. Johnson, Rupert H. Johnson, Jr., Charles B. Johnson, Charles E. Johnson, Peter K. Barker, Mariann Byerwalter, Mark C. Pigott, Chutta Ratnathicam, Laura Stein, Seth Waugh, Geoffrey Y. Yang, Samuel Armacost, Joseph Hardiman, Laura Stein, Anne Tatlock, and John Doe Defendants 1–10 (collectively "Defendants") for breach of fiduciary duties and state the following as their cause of action.

2. Plaintiff alleges that Defendants breached their fiduciary duties by causing the Plan to invest in funds offered and managed by Franklin Templeton ("Franklin Funds"), when better-performing and lower-cost funds were available. Plaintiff further alleges that Defendants were motivated to cause the Plan to invest in Franklin Funds to benefit Franklin Templeton's investment management business. Plaintiff also alleges that Defendants offered the Plan inferior arrangements compared to that offered to non-captive plans, and, in so doing, engaged in prohibited transactions.

I. JURISDICTION AND VENUE

3. This court has exclusive jurisdiction over the subject matter of this action under 29 U.S.C. § 1132(e)(1) and 28 U.S.C. § 1331 because it is an action under 29 U.S.C. § 1132(a)(2) and (3).

4. This district is the proper venue for this action under 29 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1391(b) because it is the district in which the subject plan is administered, where at least one of the alleged breaches took place, and where at least one defendant may be found.

II. PARTIES

A. Plaintiff

5. Plaintiff Nelly F. Fernandez is a citizen and resident of Coral Springs, Florida and was a participant in the Plan from at least 2011 through 2016. During the Class Period Plaintiff invested her Plan account in at least four Proprietary Mutual Funds, the Mutual Global Discovery Fund, the Income Fund, the Templeton World Fund, and the Mutual European Fund.

B. Defendants

6. The Investment Committee consists of at least five members appointed by the Board of Directors of Franklin Templeton. It is responsible for, among other things, analyzing the performance and fees of investment options under the Plan,

selecting new investment options to be offered under the Plan, and monitoring and removing or replacing investment options offered under the Plan. Accordingly, it had the fiduciary duty to select, monitor, and remove the Plan's investment options at all times relevant herein. During the Class Period, Norman Frisbie, Jennifer Johnson, Penelope Alexander, Kenneth Lewis, Dan Carr, Nicole Smith, Alison Baur and Matthew Gulley, served as members of the Investment Committee.

7. The Investment Committee is a fiduciary of the Plan under 29 U.S.C. §1002(21) because it exercised discretionary authority or control respecting the management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and/or had discretionary authority or responsibility respecting the administration of the Plan.

8. The Members of the Investment Committee and any individual or entity to whom the Committee delegated any of its fiduciary functions, the nature and extent of which have not been disclosed to Plaintiffs, are fiduciaries of the Plan under 29 U.S.C. § 1002(21) because they exercised authority or control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and/or had discretionary authority or discretionary responsibility respecting the administration of the Plan.

9. Defendant Franklin Templeton is the Plan sponsor and a party in interest to the Plan under 29 U.S.C. §1002(14). In certain situations, Franklin Templeton also acts as the Plan Administrator. Franklin Templeton is a corporation organized under the laws of the state of Delaware, with its corporate headquarters and principal place of business in the city and county of San Mateo, California.

10. Upon information and belief, Franklin Templeton, acting through its officers, directors, employees, or agents was a fiduciary to the Plan under 29 U.S.C. § 1002(21) because it exercised discretionary authority or control respecting management of the Plan, exercised authority or control respecting management or

disposition of the Plan's assets, and/or had discretionary authority or responsibility respecting the administration of the Plan.

11. Franklin Resources, Inc., acting by and/or through its Board of Directors (the "Board of Directors"), is a fiduciary within the meaning of ERISA, and thus subject to the fiduciary standard of care, because it appoints and removes the members of the Investment Committee, as well as designating the Plan Administrator, the named fiduciary for the Plan. The Board is also responsible for monitoring Investment Committee's exercise of its discretionary authority over the Plan.

12. During the relevant period, the Board of Directors consists or has consisted of Defendants Gregory E. Johnson, Rupert H. Johnson, Jr., Charles B. Johnson, Charles E. Johnson, Peter K. Barker, Mariann Byerwalter, Mark C. Pigott, Chutta Ratnathicam, Laura Stein, Seth Waugh, Geoffrey Y. Yang, Samuel Armacost, Joseph Hardiman, Laura Stein, Anne Tatlock, and John Doe Defendants 1–10.

13. The Board of Directors may remove any member of the Committee at any time with or without advance notice. Vacancies on the Committee are filled by the Board of Directors.

14. Upon information and belief, Franklin Templeton has exercised control over the activities of its employees, internal departments and subsidiaries that performed fiduciary functions with respect to the Plan, and can hire or appoint, terminate, and replace such employees at will. Franklin Templeton is therefore liable for the fiduciary breaches alleged herein of its employees, internal departments and subsidiaries.

15. Franklin Templeton cannot act on its own. In this regard, on information and belief, Franklin Templeton relied directly on the other Defendants to carry out its fiduciary responsibilities under the Plan and ERISA and the acts of its officers and employees alleged herein are the acts of Franklin Templeton.

III. THE PLAN

16. The Plan is sponsored by Franklin Resources, Inc. It was established on October 1, 1981 and amended on October 1, 2010.

17. The Plan is an "employee pension benefit plan" within the meaning of 29 U.S.C. §1002(2).

18. The Plan is an "individual account plan" or "defined contribution plan" within the meaning of 29 U.S.C. § 1002(34).

19. The Plan purports to be a "401(k) Plan" under 26 U.S.C. §401.

20. The Plan covers substantially all employees of Franklin Templeton and its U.S. subsidiaries who meet certain employment requirements.

IV. THE PLAN'S INVESTMENTS

21. Defendants' fiduciary duties are among the "highest [duties] known to the law." *Donovan v. Bierwirth*, 680 F.2d 263, 272 (2d Cir. 1982). Consistent with these fiduciary duties, Defendants had a fiduciary duty to Plaintiff, the Plan, and the other participants in the Plan to offer only prudent investment options. A fiduciary has "a continuing duty of some kind to monitor investments and remove imprudent ones" and "a plaintiff may allege that a fiduciary breached the duty of prudence by failing to properly monitor investments and remove imprudent ones." *Tibble v. Edison Int'l.*, 135 S.Ct. 1823, 1829 (2015). Defendants therefore breached their fiduciary duty of prudence under ERISA §404(a)(1)(B); 29 U.S.C. §1104(a)(1)(B).

A. The Proprietary Mutual Funds

22. There is no shortage of reasonably priced and well-managed investment options in the 401(k) plan marketplace.

23. Despite the many investment options available in the market, the Plan has invested hundreds of millions of dollars in mutual funds managed by Franklin Templeton and its subsidiaries. These investment options were chosen because they

were managed by, paid fees to, and generated profits for Franklin Templeton and its subsidiaries.

24. Over the relevant time period, over forty mutual funds offered by the Plan were, and continue to be, managed by Franklin Templeton or its subsidiaries (the "Proprietary Funds"). The Plan also includes a Company Stock Fund, which invests in common stock of Franklin Templeton, and a collective trust, managed by State Street Global Advisors, which is intended to track domestic large-capitalization stocks as represented in the S&P 500 Index. In 2015, the Plan also added three other collective trusts, also managed by State Street Global Advisors, to offer index tracking for international stocks, domestic small and mid-capitalization stocks, and bonds. Prior to 2015, the S&P 500 Index Fund was the only passively managed, and only non-proprietary, option in the Plan.

25. The Plan's investments were chosen and retained by or at the direction of the Investment Committee.

26. The Plan's investment in the Proprietary Funds averaged over $750 million per year from 2011 to the present.

27. The Proprietary Funds generated millions of dollars in fees for Franklin Templeton and its subsidiaries.

28. At all times relevant herein, the Proprietary Funds charged and continue to charge Plan participants and beneficiaries fees that were and are unreasonable for this Plan. The fees charged were and are significantly higher than the median fees for comparable mutual funds in 401(k) plans as reported by the Investment Company Institutes, in The Economics of Providing 401(k) Plans: Services, Fees and Expenses and by BrightScope, Inc. an independent provider of 401(k) ratings and data, based on its review of 1,667 large 401(k) plans reported in Real Facts about Target Date Funds.

29. The fees, moreover, are and were significantly higher than the fees available from alternative mutual funds, including Vanguard Institutional Funds, with similar investment styles that were readily available as Plan investment options throughout the relevant time. The percentage of excess compared to the fees charged by comparable Vanguard Institutional Funds is shown in Column D below. That difference was even larger at the time most of these investments were selected, as current — and cheaper — R6 share classes of the Proprietary Funds were not offered in the Plan prior to 2014. Fees are measured in basis points ("bps") where one basis point equals 0.01%:

Fund	**R6 Fee**	**Vanguard Fund**	**Vanguard Fee**	**Excess over Vanguard**
Money Fund	47 bps	VMRXX	10 bps	370%
Balance Sheet Inv. Fund	50 bps	VMVAX	8 bps	525%
Flex Cap Growth Fund	48 bps	VIGIX	7 bps	586%
Growth Fund	46 bps	VIGIX	7 bps	557%
Growth Opportunities Fund	68 bps	VIGIX	7 bps	871%
High Income Fund	47 bps	VWEAX	13 bps	261%
Income Fund	38 bps	VTWIX	13 bps	192%
International Growth Fund	102 bps	VWILX	34 bps	200%
Large Cap Value Fund	84 bps	VIVIX	7 bps	1,100%
LifeSmart Income Fund	68 bps	VTINX	14 bps	386%
LifeSmart 2020 Fund	72 bps	VTWNX	14 bps	413%
LifeSmart 2025 Fund	73 bps	VTTVX	15 bps	387%

LifeSmart 2030 Fund	75 bps	VTHRX	15 bps	400%
LifeSmart 2035 Fund	74 bps	VTTHX	15 bps	393%
LifeSmart 2040 Fund	76 bps	VFORX	16 bps	375%
LifeSmart 2045 Fund	75 bps	VTIVX	16 bps	369%
LifeSmart 2050 Fund	75 bps	VFIFX	16 bps	369%
Low Duration Total Return	42 bps	VSTBX	7 bps	500%
MicroCap Value Fund	80 bps	VSIIX	7 bps	1,043%
Mutual Beacon Fund	70 bps	VIVIX	7 bps	900%
Mutual European	89 bps	VESIX	9 bps	889%
Mutual Global Discovery	82 bps	VFWSX	11 bps	645%
Real Return Fund	50 bps	VIPIX	7 bps	614%
Rising Dividend Fund	52 bps	VDADX	9 bps	478%
Small Cap Growth Fund	72 bps	VSGIX	7 bps	929%
Small Cap Value Fund	61 bps	VSIIX	7 bps	771%
Small-Mid Cap Growth	48 bps	VIEIX	7 bps	586%
Strategic Income	47 bps	VCOBX	15 bps	213%
Conservative Allocation	92 bps	VASIX	12 bps	667%
Growth Allocation	82 bps	VASGX	15 bps	447%
Moderate Allocation	94 bps	VSMGX	14 bps	571%
Total Return Fund	46 bps	VBIMX	6 bps	667%
U.S. Gov. Securities Fund	47 bps	VFIUX	10 bps	370%
Templeton Developing Mkts	122 bps	VEMIX	12 bps	917%

Templeton Foreign Fund	72 bps	VTRIX	46 bps	57%
Templeton Frontier Markets	165 bps	VEMIX	12 bps	1,275%
Templeton Global Bond Fund	50 bps	VTIFX	9 bps	456%
Templeton Global Smaller Co	94 bps	VTWIX	13 bps	623%
Templeton Growth Fund	70 bps	VTWIX	13 bps	438%
Templeton World Fund	72 bps	VTWIX	13 bps	454%

30. Prior to July 1, 2014, the Plan invested in the Advisor share class of each Proprietary Fund.

31. During the period the Plan invested in the Advisor share class of the Proprietary Funds, the Proprietary Funds' Transfer Agent, Franklin Templeton Investor Services, LLC, paid Charles Schwab, the Plan's Recordkeeper and Trustee, $1 per plan participant account per month. Franklin Templeton Investor Services, LLC collected those fees from the Franklin mutual funds, reducing the value of the mutual funds for all shareholders. In 2013, those Plan-related payments totaled approximately $400,000.

32. Plaintiff was, until 2017, not aware of these existence, let alone the extent, of these payments.

33. The Plan was, at that time, liable to Schwab for $70 per participant per year in administrative fees. If the payments to Charles Schwab from the Plan's mutual funds were less than the $70 per participant per year rate, the Plan was liable to Charles Schwab for the difference.

34. Likewise, if the payments to Charles Schwab from the Plan's mutual funds exceeded the $70 per participant per year rate, the overage would be used to pay other plan expenses.

35. During the Class Period, because Franklin offered the Plan lower shareholder service fees, the Plan both had to pay additional administrative fees to the Plan's recordkeeper and lost the opportunity to benefit from the reimbursement of fees to the Plan for other purposes.

36. At the same time, for other shareholders of the same Advisor share class of the Proprietary Funds, Franklin offers a 15 bp beneficial owner servicing credit, which was also paid by Franklin Templeton Investors Services, LLC using fees collected from the Franklin mutual funds and reducing the value of the mutual funds for all shareholders, including the Plan. The 15 bp beneficial owner servicing credit was offered to Franklin-fund shareholders such as the Mercury General Corporation Profit Sharing Plan, but was not available to the Plan.

37. Upon information and belief, other shareholders in the Advisor share class benefitted from the additional 15 bps through payments to their advisors, including Franklin Templeton Institutional, LLC, the funds' distributor, Franklin Templeton Distributors, Inc., or entities who had entered into selling agreements with Franklin Templeton Distributors, Inc.

38. Had Franklin made 15 bps available for the benefit of the Plan, as it did with other shareholders, the Plan and Charles Schwab would have received beneficial owners servicing credits of approximately $1.1 million per year, an increase of $700,000 per year from the benefit offered by Franklin for its own Plan.

39. Conversely, had Franklin offered all shareholder the same arrangement as it had with Charles Schwab for the Plan, the amount of the payments made from each fund would have been less, causing the value of the Plan's investments in the Franklin Funds to be higher.

40. Plaintiff did not know of the Plan fee offsets, the beneficial owner servicing credits, the $1 per plan participant account per month arrangement between Franklin and Schwab, or the 15 bps payments to other Plans until after the institution of this Action.

41. Additionally, each Proprietary Fund charges fees in excess of the fees the Plan would have paid by purchasing comparable institutional products such as separately managed accounts. As the Department of Labor reports, for plans like Franklin Templeton's Plan, the "[t]otal investment management expenses can commonly be reduced to one-fourth of the expenses incurred through retail mutual funds." *Study of 401(k) Plan Fees and Expenses*, April 13, 1998.

42. Franklin offers and sells investment products similar or identical to those in the Plan to institutional clients through separately=managed accounts and sub-advised portfolios.

43. For example, the Plan invested over $30 million in the Templeton Global Bond Fund, which charged a fee of over 50 basis points. However, Defendants offered a Templeton Global Bond Fund separately managed account to institutional investors with at least $500,000, for negotiated fees which, upon information and belief, were often less than the fees charged to investors in the Templeton Global Bond Fund mutual fund.

44. With an operating margin of over 37%, very high for the mutual fund industry, Defendants made a fortune off of the Plan's investments in Proprietary Funds.

45. Many of the Proprietary Funds had and continue to have poor performance histories compared to prudent alternatives Defendants could have chosen for inclusion in the Plan.

46. For example, from the beginning of the relevant time period until at least September, 2013, the Plan included three Asset Allocation Funds, the Conservative

Allocation Fund, Moderate Allocation Fund, and Growth Allocation Fund, which were all Proprietary Funds managed by T. Anthony Coffey and Thomas A. Nelson of Franklin Templeton.

47. The Asset Allocation Funds had been performing poorly. All three trailed their Morningstar peer median returns in 2011 and 2012, with only the Conservative Allocation Fund beating its peers in 2013 — after finishing in the 90th and 76th percentiles the prior two years.

48. In July, 2013, Franklin Templeton created a series of target date funds. Both asset allocation funds and target date funds are similar in that both invest their assets in a collection of mutual funds which in turn invest in foreign and domestic stocks and bonds, providing asset allocation within a single fund. Mssers. Coffey and Nelson, the unsuccessful managers of the Allocation Funds, were also the managers of these new, untested funds.

49. Defendants decided to replace the Allocation Funds with Target Date Funds shortly before or during 2014. At the time, there was no shortage of established, cheaper target date fund families in the marketplace. Instead of selecting one of these cheaper, better funds, Defendants chose for the Plan the untested, expensive Proprietary Target Date Funds, despite the poor performance of its managers managing similar Asset Allocation Funds. A prudent, un-conflicted fiduciary would not have chosen untested, more expensive funds, particularly in light of the individual manager's inability to succeed managing similar funds in the recent past.

50. The Target Date Funds have subsequently underperformed the cheaper, established, prudent alternative funds which, upon information and belief, were not even considered by Defendants when they decided to invest Plan assets in the Target Date Funds. The most conservative Target Date Fund, the Retirement Income Fund, has performed worse than two-thirds of its Morningstar peers each and every year of

its existence. The most aggressive, the 2055 Fund, underperformed 97% of its peers in 2016, the only full year of its existence, and continues to underperform its Morningstar peer category thus far in 2017. Except for the Retirement Income Fund, which finished in the bottom third, all of the proprietary Target Date Funds in the Plan finished 2016 in the bottom 10 percent of their peer groups Since their inception in July, 2013, the Target Date Funds have underperformed their Vanguard peers by over $3 million.

51. The Target Date Funds' underperformance is not unique. In 2015, only 24% of Franklin Templeton mutual funds outperformed their peer median.

52. Many of the Proprietary Funds were and are poorly rated by Morningstar, the independent rating service, compared to prudent alternatives the Committee could have chosen for inclusion in the Plan. For example, not a single Proprietary Fund is rated 5-stars (out of 5), the highest rating, by Morningstar. To the contrary, the Templeton World Fund and Templeton Frontier Markets Fund, are rated 1-star, the lowest rating. Other Proprietary Funds have 2-star ratings and most of the rest have mediocre 3-star ratings.

53. Prudent investors fled Franklin Templeton's mutual funds, including the Proprietary Funds. In the fiscal year ending September 30, 2015, investors on net withdrew $59.2 billion from Franklin Templeton funds. The following quarter, they withdrew an additional $20.6 billion. In 2016, investors withdrew another $42.5 billion. In 2017, the outflows have continued, with investors withdrawing an additional $18.3 billion during the first half of the year.

54. Despite the poor performance, high fees, and low Morningstar ratings, the only Proprietary Funds removed from the Plan during the entire Class Period were replaced with other Proprietary Funds. For example, the three Asset Allocation Funds were replaced, as discussed above, with eight proprietary Target Date Funds using the same failed managers as the Asset Allocation Funds. In addition, in 2016 five

Proprietary Funds were removed and their assets transferred to other Franklin Funds, with the result being over $100,000 per year in *additional fees* to Franklin at the expense of the Plan and its participants.

Removed Fund	Removed Fund Fee	Replacement Fund	Replacement Fund Fee	Assets in Removed Fund	Additional Fees to Franklin
US Gov. Securities Fund	47 bps	Total Return Fund	46 bps	$18,777,486	-$1,878
Balanced Sheet Fund	50 bps	Rising Dividend Fund	52 bps	$6,805,384	$1,361
Flex Cap Growth Fund	46 bps	Growth Opportunities Fund	68 bps	$13,992,198	$30,783
Small Mid Cap Growth Fund	48 bps	Small Cap Growth	66 bps	$38,729,155	$69,712
High Income Fund	47 bps	Strategic Income Fund	48 bps	$9,586,381	$959

55. Meanwhile, four Proprietary Funds, as well as the Target Date Funds, were added to the Plan during the Class Period. They are the International Growth Fund, for which Franklin Templeton charges 102 bps, the Templeton Frontier Markets Fund, for which Franklin Templeton charges 165 bps, and the Real Return Fund, for which Franklin Templeton charges 50 bps, and the Templeton Foreign Equity Fund, for which Franklin Templeton charges 72 bps.

56. The Plan lost in excess of $60 million during the class period as a result of losses sustained by the Proprietary Funds compared to prudent alternatives such as comparable Vanguard Funds.

B. The Franklin Money Market Fund

57. Stable value funds and money market funds are two investment vehicles designed to preserve principal while providing a return.

58. Stable value funds are a common investment in defined contribution plans and in fact are designed specifically for use in large defined contribution plans.

59. The structure of stable value funds allows them to outperform money market funds in virtually all market conditions and over any appreciable time period. See, *Abbott v. Lockheed Martin Corp.*, 725 F.3d 803, 806 (7th Cir. 2013); see also Paul J. Donahue, *Plan Sponsor Fiduciary Duty for the Selection of Options in Participant-Directed Defined Contribution Plans and the Choice Between Stable Value and Money Market*, 39 AKRON L. REV. 9, 20–27 (2006).

60. Stable Value Funds hold longer duration instruments generating excess returns over money market investments. Stable value funds also provide a guaranteed rate of return to the investor, referred to as a crediting rate, and protect against the loss of principal and accrued interest. This protection is provided through a wrap contract issued by a bank, insurance company or other financial institution that guarantees the book value of the participant's investment.

61. Even during the period of market turbulence in 2008, "stable value participants received point-to-point protection of principal, with no sacrifice of return[.]" Paul J. Donahue, *Stable Value Re-examined*, 54 RISKS AND REWARDS 26, 28 (Aug. 2009).[1]

62. Because they offer higher returns than money market funds, greater consistency of returns, and less risk to principal, large defined contribution plans commonly offer stable value funds to participants.

63. A 2011 study from Wharton Business School analyzed money market and stable value fund returns from the previous two decades and concluded that "any

[1] Available at http://www.soa.org/library/newsletters/risks-and-rewards/2009/august/rar-2009-iss54-donahue.pdf.

investor who preferred more wealth to less wealth should have avoided investing in money market funds when [stable value] funds were available, irrespective of risk preferences." David F. Babbel & Miguel A. Herce, *Stable Value Funds: Performance to Date*, at 16 (Jan. 1, 2011).[2]

64. According to the 2015 Stable Value Study published by MetLife, over 80% of plan sponsors offer a stable value fund. MetLife, *2015 Stable Value Study: A Survey of Plan Sponsors, Stable Value Fund Providers and Advisors* at 5 (2015).[3] The study also notes that stable value returns were "*more than double*" the returns of money market funds from 1988 to 2015, and 100% of stable value providers and almost 90% of financial advisors to defined contribution plans "agree that stable value returns have outperformed money market returns over the last 25 years." *Id.* at 7 (emphasis added).

65. Unlike the majority of defined contribution plans, the Plan has not offered a stable value fund. Instead, the Plan offered the Franklin Funds Money Market Fund, a fund managed by Franklin and paying Franklin up to 47 bps per year, while paying nothing at all to the Plan and its participants.

66. In real terms, investors in this most-conservative option have lost over 12% of their buying power over the Class Period. Had Defendants used a comparable stable value fund, the plan participants would have seen their assets grow by over 22% during that period. These losses could also have been mitigated had Defendants considered any of the numerous superior non-proprietary money market funds available in the marketplace throughout the class period.

[2] Available at http://fic.wharton.upenn.edu/fic/papers/11/11-01.pdf (last accessed June 24, 2016).

[3] Available at https://www.metlife.com/assets/cao/institutional-retirement/plan-sponsor/stable-value/Stable-Value-Vs-Money-Market/2015_StableValueStudyWebFinal.pdf.

67. Had these assets been invested in a stable value fund instead, they would have had inflation-beating returns. For example, one alternative, the Vanguard Stable Value Fund has enjoyed the following returns:

Fund	2009	2010	2011	2012	2013	2014	2015	2016
Stable Value	3.66%	4.06%	3.56%	2.68%	2.06%	2.00%	2.21%	2.22%
Inflation	2.63%	1.63%	2.93%	1.59%	1.58%	-0.09%	1.37%	2.07%
Plan Money Market	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

68. Franklin does not manage any stable value funds.

69. In addition to the breaches of loyalty resulting from the selection and maintenance of the Money Market Fund, by including and failing to remove the Money Market Fund, Defendants failed to discharge their duties with respect to the Plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

70. The Plan lost in excess of $9 million during the class period as a result of losses sustained by the Money Market Fund compared to Stable Value alternatives.

C. Excessive Total Plan Cost

71. In addition to paying the bloated expense ratios charged by Franklin Templeton on the Proprietary Funds, the Plan pays a separate administrative fee, charged to each participant at a rate of $12.00 per quarter, or $48 per year. Additional charges are also incurred for services provided to the Plan by other vendors.

72. The Plans' Form 5500 filings with the U.S. Department of Labor contain an Independent Auditor's Report, which state that on September 30, 2014 the Plan's assets were $1,178,463,741 and on September 30, 2015, the Plan's assets were $1,095,737,878. The Plan has remained above $1 billion in assets ever since.

73. In total, the Plan paid $6.5 million per year in investment management and administrative fees. Given the Plan size, the average Total Plan Cost was over 57 bps in 2014 and 2015.

74. A recently published report shows that in 2013, the average 401(k) defined contribution plan with more than a billion dollars in assets bore a total plan cost as a percentage of assets of 31 basis points. See BrightScope and Investment Company Institute, The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 47 (Dec. 2015), available at: https://www.ici.org/pdf/ppr_15_dcplan_profile_401k.pdf. In 2014, that dropped to 30 basis points. See BrightScope and Investment Company Institute, The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 49 (Dec. 2016), available at: https://www.ici.org/pdf/ppr_16_dcplan_profile_401k.pdf.

75. Thus, the total plan cost, including investment and administrative fees, was nearly double the cost of comparable plans that are not subject to conflicted fiduciary decision-making. This difference is almost entirely the result of the mutual fund fees paid to Franklin Templeton.

76. In the six-year period 2011–2016, the Plan paid approximately $15 million more at the 57 basis points fee rate than did a plan at the 31 (or 30) basis points fee rate.

77. These facts support an inference that Defendants allowed Franklin Templeton to receive excessive compensation by larding the Plan with excessively expensive Proprietary Funds.

D. Individual Defendants' Conflicts of Interest

78. The Individual Defendants suffered from direct, personal, and pecuniary conflicts when serving as fiduciaries for the Plan.

79. Director Defendants and brothers Charles B. Johnson and Rupert H. Johnson, Jr. each own and owned over 100 million shares of Franklin Resources, Inc.,

holdings which were, for much of the class period, valued at over $3 billion and 15% of the company, each.

80. Charles B. Johnson and Rupert H. Johnson, Jr. are the sons of Rupert H. Johnson, Sr., who founded Franklin Resources in 1947.

81. Director Defendants and brothers Charles E. Johnson and Gregory E. Johnson each own over 5 million shares of Franklin Resources, Inc., holdings which were, for much of the class period, valued at over $150 million each. Charles E. Johnson and Gregory E. Johnson are the sons of Charles B. Johnson.

82. Investment Committee member, and sister of Gregory E. Johnson, Jennifer M. Johnson, owns over 4 million shares of Franklin Resources, Inc., holdings which were, for much of the class period, valued at over $130 million each. Ms. Johnson is the President and Chief Operating Officer of Franklin Resources, Inc. She is also responsible for Franklin Templeton's global retail and institutional distribution efforts, including product development.

83. In addition, the Committee included Ken Lewis, Franklin's Chief Financial Officer, Dan Carr, Franklin's Secretary and General Counsel, and Rick Frisbie, Franklin's former Chief Administrative Officer and Executive VP responsible for overseeing the asset allocation and target date funds.

84. These individuals personally benefited from the Plan's investments in Franklin Funds.

V. ERISA'S FIDUCIARY STANDARDS

85. ERISA imposes strict fiduciary duties of loyalty and prudence upon Defendants as fiduciaries of the Plan. ERISA § 404(a), 29 U.S.C.§ 1104(a), provides, in relevant part, as follows:

> [A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and —
>
> (A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan; [and]

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so[.]

86. Under ERISA, fiduciaries who exercise discretionary authority or control over the selection of plan investments and the selection of plan service providers must act prudently and solely in the interest of participants and beneficiaries of the plan when performing such functions. Thus, "the duty to conduct an independent investigation into the merits of a particular investment" is "the most basic of ERISA's investment fiduciary duties." *In re Unisys Savings Plan Litig.*, 74 F.3d 420, 435 (3d Cir. 1996).

87. As the Department of Labor explains,

> [T]o act prudently, a plan fiduciary must consider, among other factors, the availability, riskiness, and potential return of alternative investments for his or her plan. [Where an investment], if implemented, causes the Plan to forego other investment opportunities, such investments would not be prudent if they provided a plan with less return, in comparison to risk, than comparable investments available to the plan, or if

> they involved a greater risk to the security of plan assets than other investments offering a similar return.
>
> DOL Opinion 88-16A (1988).

88. Pursuant to these duties, fiduciaries must ensure that the services provided to the plan are necessary and that the fees are reasonable:

> Under section 404(a)(1) of ERISA, the responsible Plan fiduciaries must act prudently and solely in the interest of the Plan participants and beneficiaries … in determining which investment options to utilize or make available to Plan participants or beneficiaries. In this regard, the responsible Plan fiduciaries must assure that the compensation paid directly or indirectly by the Plan to [service providers] is reasonable . . .

DOL Opinion 97-15A (1997); DOL Opinion 97-16A (1997).

89. A fiduciary's duty of loyalty requires a fiduciary to act solely in the interest of plan participants and beneficiaries. As the Department of Labor has warned:

> [T]he Department has construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to participants and beneficiaries, as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries in their retirement income to unrelated

> objectives. In other words, in deciding whether and to what extent to invest in a particular investment, or to make a particular fund available as a designated investment alternative, a fiduciary must ordinarily consider only factors relating to the interests of plan participants and beneficiaries in their retirement income. A decision to make an investment, or to designate an investment alternative, may not be influenced by non-economic factors unless the investment ultimately chosen for the plan, when judged solely on the basis of its economic value, would be equal to or superior to alternative available investments.

DOL Opinion 98-04A (1998); *see also* DOL Opinion 88-16A (1988). The Department of Labor has repeatedly warned that:

> While the law does not specify a permissible level of fees, it does require that fees charged to a plan be "reasonable." After careful evaluation during the initial selection, the plan's fees and expenses should be monitored to determine whether they continue to be reasonable.

Meeting Your Fiduciary Responsibilities, U.S. Dep't of Labor Employee Benefits Security Admin. (Feb. 2012), http://www.dol.gov/ebsa/publications/fiduciaryresponsibility.html.

90. In a separate publication, the Department of Labor writes as follows:

> The Federal law governing private-sector retirement plans, the Employee Retirement Income Security Act (ERISA), requires that those responsible for managing retirement plans -- referred to as fiduciaries -- carry out their responsibilities prudently and solely in the interest of the plan's participants and beneficiaries. Among other duties, fiduciaries have a responsibility to ensure that the services provided to their plan are necessary and that the cost of those services is reasonable.
>
> * * *
>
> Plan fees and expenses are important considerations for all types of retirement plans. As a plan fiduciary, you have an obligation under ERISA to prudently select and monitor plan investments, investment options made available to the plan's participants and beneficiaries, and the persons providing services to your plan. Understanding and evaluating plan fees and expenses associated with plan investments, investment options, and services are an important part of a fiduciary's responsibility. This responsibility is ongoing. After careful evaluation during the initial selection, you will want to monitor plan fees and

> expenses to determine whether they continue to be reasonable in light of the services provided.
>
> * * *
>
> By far the largest component of plan fees and expenses is associated with managing plan investments. Fees for investment management and other related services generally are assessed as a percentage of assets invested. Employers should pay attention to these fees. They are paid in the form of an indirect charge against the participant's account or the plan because they are deducted directly from investment returns. Net total return is the return after these fees have been deducted. For this reason, these fees, which are not specifically identified on statements of investments, may not be immediately apparent to employers.

Understanding Retirement Plan Fees and Expenses, U.S. Dep't of Labor Employee Benefits Security Admin. (Dec. 2011), http://www.dol.gov/ebsa/publications/undrstndgrtrmnt.html.

91. ERISA § 409, 29 U.S.C. § 1109, provides, inter alia, that any person who is a fiduciary with respect to a plan and who breaches any of the responsibilities, obligations, or duties imposed on fiduciaries by Title I ERISA shall be personally liable to make good to the plan any losses to the plan resulting from each such breach and to restore to the plan any profits the fiduciary made through use of the plan's assets. ERISA § 409, 29 U.S.C. § 1109, further provides that such fiduciaries are subject to such other equitable or remedial relief as a court may deem appropriate.

VI. ERISA'S PROHIBITED TRANSACTION

92. The general duties of loyalty and prudence imposed by 29 U.S.C. §1004 are supplemented by a detailed list of transactions that are expressly prohibited by 29 U.S.C. §1106, and are considered violations unless an exemption applies.

93. Section 1106(a)(1) states, in pertinent part, that:

[A] fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect —

> (A) sale or exchange, or leasing, of any property between the plan and a party in interest;
>
> * * *
>
> (C) furnishing of goods, services, or facilities between the plan and a party in interest;
>
> (D) transfer to, or use by or for the benefit of a party in interest, of any assets of the plan…

94. Section 1106(b) provides, in pertinent part, that:

> [A] fiduciary with respect to the plan shall not —
>
> (1) deal with the assets of the plan in his own interest or for his own account,
>
> (2) in his individual or in any other capacity act in a transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or
>
> (3) receive any consideration for his own personal account from any party dealing with such plan in

connection with a transaction involving the assets of the plan.

95. Accordingly, Defendants, as plan fiduciaries, were and are prohibited from causing the plan to engage in transactions with Franklin, including causing the plan to invest assets in the investment management and other products offered by a party in interest or plan fiduciary and the payment of investment management or other fees in connection with such investments, unless an express exemption is available.

96. Prohibited Transaction Class Exemption 77-3 provides a limited exemption for a mutual fund company to include proprietary mutual funds like those in the Plan, however the exemption requires that the plan must not "have dealings with the fund on terms any less favorable to the plan than such dealings are to other shareholders." 42 Fed. Reg. at 18735.

97. Because Franklin offered and made service fee credits to other shareholders, such as the Mercury General Corporation Profit Sharing Plan, far in excess of the credits offered actually paid to the Plan's recordkeeper for the benefit of the Plan, Franklin's dealings with the Plan were on terms less favorable to the Plan than its dealings with other shareholders, and PTE 77-3 does not apply.

98. 29 U.S.C. § 1132(a)(3) provides a cause of action against a party in interest, such as Franklin, for participating in the breach of a fiduciary.

99. 29 U.S.C. § 1105(a) provides a cause of action against a fiduciary, such as Defendants, for knowingly participating in a breach by another fiduciary and knowingly failing to cure any breach.

VII. CLASS ALLEGATIONS

100. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), permits a plan fiduciary, participant, beneficiary, or the Secretary of Labor to bring a suit individually on behalf of the Plan to recover for the Plan the remedies provided under ERISA § 409, 29 U.S.C. § 1109(a).

101. In acting in this representative capacity and to enhance the due process protections of unnamed participants and beneficiaries of the Plan, as an alternative to direct individual actions on behalf of the Plan under 29 U.S.C. § 1132(a)(2), Plaintiffs seek to certify this action as a class action on behalf of the following class:

All participants in the Franklin Templeton 401(k) Retirement Plan from July 28, 2010 to the date of judgment. Excluded from the class are Defendants, Defendants' beneficiaries, and Defendants' immediate families.

102. Class certification is appropriate under Fed. R. Civ. P. 23(a) and (b)(1), (b)(2), and/or (b)(3).

(a) The class satisfies the numerosity requirement of Rule 23(a) because it is composed of over one thousand persons, in numerous locations. The number of class members is so large that joinder of all its members is impracticable.

(b) The class satisfies the commonality requirement of Rule 23(a) because there are questions of law and fact common to the Class and these questions have common answers. Common legal and factual questions include, but are not limited to: who are the fiduciaries liable for the remedies provided by ERISA § 409(a), 29 U.S.C. §1109(a); whether the fiduciaries of the Plan breached their fiduciary duties to the Plan by causing the Plan to invest in excessively expensive funds and by failing to prudently remove the funds from the Plan; whether the decision to include and not to remove a fund was made solely in the interests of Plan participants and beneficiaries; what are the losses to the Plan resulting from each breach of fiduciary duty; and what are the profits of any breaching fiduciary that were made through the use of Plan assets by the fiduciary.

(c) The class satisfies the typicality requirement of Rule 23(a) because Plaintiffs' claims are typical of the claims of the members of the Class because Plaintiffs' claims, and the claims of all Class members, arise out of the same conduct, policies and practices of Defendants as alleged herein, and all members of

the Class are similarly affected by Defendants' wrongful conduct. Plaintiff was and remains an investor in the Plan for the entirety of the Class Period.

(d) The class satisfies the adequacy requirement of Rule 23(a). Plaintiff will fairly and adequately represent the Class and have retained counsel experienced and competent in the prosecution of ERISA class action litigation. Plaintiff has no interests antagonistic to those of other members of the Class. Plaintiff is committed to the vigorous prosecution of this action and anticipates no difficulty in the management of this litigation as a class action.

(e) Class action status in this action is warranted under Rule 23(b)(1)(A) because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants. Class action status also warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that, as a practical matter, would be dispositive of the interests of other members not parties to this action, or that would substantially impair or impede their ability to protect their interests.

(f) In the alternative, certification under Rule 23(b)(2) is warranted because Defendants acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

(g) In the alternative, certification under Rule 23(b)(3) is appropriate because questions of law or fact common to members of the Class predominate over any questions affecting only individual members, and class action treatment is superior to the other available methods for the fair and efficient adjudication of this controversy.

VIII. CLAIMS FOR RELIEF

First Claim For Relief: Breach of Fiduciary Duty

103. Plaintiff repeats and realleges each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

104. The Committee and its members are responsible for selecting, monitoring, and removing investment options in the Plan.

105. The Board of Directors and its members are responsible for appointing, monitoring, and removing members of the Committee.

106. Defendants caused the Plan to invest nearly a billion of dollars in imprudent investment options, many of which were more expensive than prudent alternatives, unlikely to outperform their benchmarks, and laden with excessive fees which were paid to Franklin Templeton and its subsidiaries.

107. Defendants failed to remove the funds even though a prudent fiduciary would have done so given the high fees, poor performance prospects, and availability of lower-cost alternatives.

108. By the conduct and omissions described above, Defendants failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

109. Defendants failed to discharge their duties with respect to the Plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

110. As a direct and proximate result of these breaches of fiduciary duties, the Plan and its participants have paid, directly and indirectly, substantial excess

investment management and other fund-related fees during the Class Period, and suffered lost-opportunity costs which continue to accrue, for which Defendants are jointly and severally liable pursuant to ERISA § 409, 29 U.S.C. § 1109, and ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2).

Second Claim For Relief: 29 U.S.C. § 1106(a) Prohibited Transactions

111. Plaintiff repeats and realleges each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

112. This Count alleges prohibited transactions against all Defendants

113. Defendants caused the Plan to use Proprietary mutual funds as investment options when they knew or should have known those transactions constituted a direct or indirect furnishing of services between the Plan and a party in interest for more than reasonable compensation and a transfer of assets of the Plan to a party in interest.

114. As Plan Sponsor, Franklin and its subsidiaries were parties in interest.

115. As a direct and proximate result of these prohibited transaction violations, the Plan, directly or indirectly, paid millions of dollars in investment management and other fees that were prohibited by ERISA and suffered millions of dollars in losses.

116. Pursuant to 29 U.S.C. §§ 1109(a) and 1132(a)(2), Defendants are liable to restore all losses suffered by the Plan as a result of the prohibited transactions and disgorge all revenues received and/or earned by Franklin from the fees paid by the Plan to Franklin and its subsidiaries and affiliates as well as appropriate equitable relief.

Third Claim For Relief: 29 U.S.C. § 1106(b) Prohibited Transactions

117. Plaintiff repeats and realleges each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

118. This Court alleges prohibited transactions against all Defendants.

119. Defendants dealt with the assets of the plan in their own interest and for their own account when they caused the Plan to use Proprietary mutual funds as investment options.

120. In causing the Plan to use Proprietary mutual funds, Defendants acted in a transaction involving the plan on behalf of Franklin, a party whose interests were adverse to the interests of the plan, its participants and beneficiaries.

121. Further, Franklin received consideration for its own personal account from the Proprietary mutual funds in connection with their inclusion in the Plan.

122. For the reasons stated above, Defendants are fiduciaries and parties in interest with respect to the Plan.

123. Defendants knew of should have known that the transfer of Plan assets to the investment options selected and maintained in the Plan by Defendants allowed Franklin to benefit both financially, through fees paid by the options to Franklin, and commercially, by increasing the assets under management for the Franklin-managed investment options.

124. As a direct result of these prohibited transactions, the Plan, directly or indirectly, paid millions of dollars in investment management and other fees that were prohibited by ERISA and suffered millions of dollars in losses.

125. Pursuant to 29 U.S.C. §1109(a) and 1132(a)(2), Defendants are liable to restore all losses suffered by the Plan as a result of the prohibited transactions and disgorge all revenues received by Franklin from the fees paid by the Plan to Franklin, as well as other appropriate equitable relief.

Fourth Claim For Relief: Failure to Monitor Fiduciaries

126. Plaintiff repeats and realleges each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

127. This Count alleges breach of fiduciary duties against the Board of Directors and its members, and Franklin Resources, Inc. (collectively the "Monitoring Defendants").

128. As alleged above, the Monitoring Defendants are fiduciaries pursuant to 29 U.S.C. § 1002(21). Thus, they are bound by the duties of loyalty, exclusive purpose, and prudence.

129. As alleged above, the scope of the fiduciary responsibility of the Monitoring Defendants includes the responsibility to appoint, and remove, and thus, monitor the performance of other fiduciaries.

130. A monitoring fiduciary must ensure that the monitored fiduciaries are performing their fiduciary obligations, including those with respect to the investment and holding of plan assets, and must take prompt and effective action to protect the plan and plan participants when they are not.

131. The Monitoring Fiduciaries breached their fiduciary monitoring duties by, among other things:

a. Failing to monitor their appointees, to evaluate their performance, or to have a system in place for doing so, and standing idly by as the Plan suffered enormous losses as a result of their appointees' imprudent actions and inaction with respect to the Plan;

b. Failing to monitor their appointees' fiduciary process, which would have alerted any prudent fiduciary to the potential breach because of the widespread use of proprietary funds from which Franklin — and by extension the Johnson family — received profits in violation of ERISA;

c. Failing to ensure that the monitored fiduciaries appreciated the ready availability of comparable and better performing Plan fund options that charged significantly lower fees and expenses than the Plan's Franklin funds; and

d. Failing to remove appointees whose performance was inadequate in that they continued to maintain the imprudent, and proprietary, options for participants' retirement savings in the Plan during the Class Period, and who breached their fiduciary duties under ERISA.

132. As a consequence of the Monitoring Defendants' breaches of fiduciary duty, the Plan suffered substantial losses. If the Monitoring Defendants had discharged their fiduciary monitoring duties prudently as described above, the losses suffered by the Plan would have been minimized or avoided. Therefore, as a direct result of the breaches of fiduciary duty alleged herein, the Plan, and indirectly the Plaintiff and other Class members, lost tens of millions of dollars in retirement savings.

133. Pursuant to 29 U.S.C. §§ 1109(a), 1132(a)(2) and (a)(3), the Monitoring Defendants are liable to restore the losses to the Plan caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

A. A declaration that the Defendants breached their fiduciary duties under ERISA § 404 and engaged in Prohibited Transactions in violation of ERISA §406;

B. An order compelling the disgorgement of all fees paid and incurred, directly or indirectly, to Franklin Templeton and its subsidiaries by the Plan or by Proprietary Mutual Funds as a result of the Plan's investments in their funds, including disgorgement of profits thereon;

C. An order compelling the Defendant to restore all losses to the Plan arising from Defendants' violations of ERISA, including lost-opportunity costs;

D. An order granting appropriate equitable monetary relief against Defendants;

E. An order granting such other equitable or remedial relief as may be appropriate, including the permanent removal of Defendants from any positions of trust with respect to the Plan, the appointment of independent fiduciaries to administer the Plan, and rescission of the Plan's investments in Proprietary Funds;

F. An order certifying this action as a class action, designating the Class to receive the amounts restored or disgorged to the Plan, and imposing a constructive trust for distribution of those amounts to the extent required by law;

G. An order enjoining Defendants collectively from any further violations of their ERISA fiduciary responsibilities, obligations, and duties;

H. An order awarding Plaintiffs and the Class their attorneys' fees and costs pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g), and/or the Common Fund doctrine, along with pre- and post-judgment interest; and

I. An order awarding such other and further relief as the Court deems equitable and just.

Dated: November 2, 2017

Respectfully submitted,

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Attorneys for Plaintiffs

ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from each of the other signatories.

Dated: November 2, 2017

/s/ Gregory Y. Porter
Gregory Y. Porter

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
Fernandez, Nelly F.

(b) County of Residence of First Listed Plaintiff Broward County, Florida
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
See attachment

DEFENDANTS
Franklin Resources, Inc., et al.

County of Residence of First Listed Defendant San Mateo County, CA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment Of Veteran's Benefits
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury -Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury – Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities–Employment
- ☐ 446 Amer. w/Disabilities–Other
- ☐ 448 Education

PRISONER PETITIONS

HABEAS CORPUS
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

OTHER
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee–Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC § 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC § 158
- ☐ 423 Withdrawal 28 USC § 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent–Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS–Third Party 26 USC § 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC § 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced & Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation–Transfer ☐ 8 Multidistrict Litigation–Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
29 U.S.C. Sec. 1132(a)(2) and (3)
Brief description of cause:
Breaches of Fiduciary Duty and Prohibited transactions under ERISA

VII. REQUESTED IN COMPLAINT:
✓ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, Fed. R. Civ. P.
DEMAND $
CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S), IF ANY *(See instructions):*
JUDGE Hon. Claudia Wilken DOCKET NUMBER 4:16-cv-04265

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only) ☒ **SAN FRANCISCO/OAKLAND** ☐ **SAN JOSE** ☐ **EUREKA-MCKINLEYVILLE**

DATE 11/02/2017 **SIGNATURE OF ATTORNEY OF RECORD**

ATTACHMENT TO CIVIL COVER SHEET

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Attorneys for the Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

NELLY F. FERNANDEZ, individually and on behalf of a class of all other persons similarly situated, and on behalf of the Franklin Templeton 401(k) Retirement Plan, Plaintiffs, v. FRANKLIN RESOURCES, INC., Franklin	)	Case Number: 17-cv-06409

Templeton 401(k) Retirement Plan Investment Committee, Franklin Templeton 401(k) Retirement Plan Administrative Committee, Norman Frisbie, Jennifer Johnson, Penelope Alexander, Kenneth Lewis, Dan Carr, Nicole Smith, Alison Baur, Matthew Gulley, The Franklin Resources, Inc. Board of Directors, Gregory E. Johnson, Rupert H. Johnson, Jr., Charles B. Johnson, Charles E. Johnson, Peter K. Barker, Mariann Byerwalter, Mark C. Pigott, Chutta Ratnathicam, Laura Stein, Seth Waugh, Geoffrey Y. Yang, Samuel Armacost, Joseph Hardiman, Anne Tatlock, And John Doe Defendants 1–10.	)
Defendants.	)

FIRST AMENDED COMPLAINT

1. Plaintiff Nelly F. Fernandez, individually and as representative of a class of similarly situated persons, ("Plaintiffs") brings this action pursuant to 29 U.S.C. §1132(a)(2) and (3) on behalf of the Franklin Templeton 401(k) Retirement Plan (the "Plan") against Defendants Franklin Resources, Inc. (hereinafter "Franklin Templeton"), Franklin Templeton 401(k) Retirement Plan Administrative Committee ("Administrative Committee"), Franklin Templeton 401(k) Retirement Plan Investment Committee ("Investment Committee"), and individual Investment Committee Members Norman Frisbie, Jennifer Johnson, Penelope Alexander, Kenneth Lewis, Dan Carr, Nicole Smith, Alison Baur, and Matthew Gulley, the Franklin Resources, Inc. Board of Directors, responsible for monitoring the Investment Committee and appointing and removing its members, and members of the Board of Directs, Defendants Gregory E. Johnson, Rupert H. Johnson, Jr., Charles B. Johnson, Charles E. Johnson, Peter K. Barker, Mariann Byerwalter, Mark C. Pigott, Chutta Ratnathicam, Laura Stein, Seth Waugh, Geoffrey Y. Yang, Samuel Armacost, Joseph

Hardiman, Anne Tatlock, and John Doe Defendants 1–10 (collectively "Defendants") for breach of fiduciary duties and state the following as their cause of action.

2. Plaintiff alleges that Defendants breached their fiduciary duties by causing the Plan to invest in funds offered and managed by Franklin Templeton ("Franklin Funds"), when better-performing and lower-cost funds were available. Plaintiff further alleges that Defendants were motivated to cause the Plan to invest in Franklin Funds to benefit Franklin Templeton's investment management business. Plaintiff also alleges that Defendants offered the Plan inferior arrangements compared to that offered to non-captive plans, and, in so doing, engaged in prohibited transactions.

I. JURISDICTION AND VENUE

3. This court has exclusive jurisdiction over the subject matter of this action under 29 U.S.C. § 1132(e)(1) and 28 U.S.C. § 1331 because it is an action under 29 U.S.C. § 1132(a)(2) and (3).

4. This district is the proper venue for this action under 29 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1391(b) because it is the district in which the subject plan is administered, where at least one of the alleged breaches took place, and where at least one defendant may be found.

II. PARTIES

A. Plaintiff

5. Plaintiff Nelly F. Fernandez is a citizen and resident of Coral Springs, Florida and was a participant in the Plan from at least 2011 through 2016. During the Class Period Plaintiff invested her Plan account in at least four Proprietary Mutual Funds, the Mutual Global Discovery Fund, the Income Fund, the Templeton World Fund, and the Mutual European Fund.

B. Defendants

6. The Investment Committee consists of at least five members appointed by the Board of Directors of Franklin Templeton. It is responsible for, among other things, analyzing the performance and fees of investment options under the Plan, selecting new investment options to be offered under the Plan, and monitoring and removing or replacing investment options offered under the Plan. Accordingly, it had the fiduciary duty to select, monitor, and remove the Plan's investment options at all times relevant herein. During the Class Period, Norman Frisbie, Jennifer Johnson, Penelope Alexander, Kenneth Lewis, Dan Carr, Nicole Smith, Alison Baur and Matthew Gulley, served as members of the Investment Committee.

7. The Investment Committee is a fiduciary of the Plan under 29 U.S.C. §1002(21) because it exercised discretionary authority or control respecting the management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and/or had discretionary authority or responsibility respecting the administration of the Plan.

8. The Members of the Investment Committee and any individual or entity to whom the Committee delegated any of its fiduciary functions, the nature and extent of which have not been disclosed to Plaintiffs, are fiduciaries of the Plan under 29 U.S.C. § 1002(21) because they exercised authority or control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and/or had discretionary authority or discretionary responsibility respecting the administration of the Plan.

9. The Administrative Committee consists of at least five members appointed by the Board of Directors of Franklin Templeton. It is responsible for, among other things, hiring and firing plan service providers, including the Plan's recordkeeper, maintaining reporting requirements, and interpreting terms of the Plan e.

10. The Administrative Committee is a fiduciary of the Plan under 29 U.S.C. §1002(21) because it exercised discretionary authority or control respecting the management of the Plan, exercised authority or control respecting management of disposition of the Plan's assets, and/or had discretionary authority or responsibility respecting the administration of the Plan.

11. Defendant Franklin Templeton is the Plan sponsor and a party in interest to the Plan under 29 U.S.C. §1002(14). In certain situations, Franklin Templeton also acts as the Plan Administrator. Franklin Templeton is a corporation organized under the laws of the state of Delaware, with its corporate headquarters and principal place of business in the city and county of San Mateo, California.

12. Upon information and belief, Franklin Templeton, acting through its officers, directors, employees, or agents was a fiduciary to the Plan under 29 U.S.C. § 1002(21) because it exercised discretionary authority or control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and/or had discretionary authority or responsibility respecting the administration of the Plan.

13. Franklin Resources, Inc., acting by and/or through its Board of Directors (the "Board of Directors"), is a fiduciary within the meaning of ERISA, and thus subject to the fiduciary standard of care, because it appoints and removes the members of the Investment Committee, as well as designating the Plan Administrator, the named fiduciary for the Plan. The Board is also responsible for monitoring Investment Committee's exercise of its discretionary authority over the Plan.

14. During the relevant period, the Board of Directors consists or has consisted of Defendants Gregory E. Johnson, Rupert H. Johnson, Jr., Charles B. Johnson, Charles E. Johnson, Peter K. Barker, Mariann Byerwalter, Mark C. Pigott, Chutta Ratnathicam, Laura Stein, Seth Waugh, Geoffrey Y. Yang, Samuel Armacost, Joseph Hardiman, Anne Tatlock, and John Doe Defendants 1–10.

15. The Board of Directors may remove any member of the Committee at any time with or without advance notice. Vacancies on the Committee are filled by the Board of Directors.

16. Upon information and belief, Franklin Templeton has exercised control over the activities of its employees, internal departments and subsidiaries that performed fiduciary functions with respect to the Plan, and can hire or appoint, terminate, and replace such employees at will. Franklin Templeton is therefore liable for the fiduciary breaches alleged herein of its employees, internal departments and subsidiaries.

17. Franklin Templeton cannot act on its own. In this regard, on information and belief, Franklin Templeton relied directly on the other Defendants to carry out its fiduciary responsibilities under the Plan and ERISA and the acts of its officers and employees alleged herein are the acts of Franklin Templeton.

III. THE PLAN

18. The Plan is sponsored by Franklin Resources, Inc. It was established on October 1, 1981 and amended on October 1, 2010.

19. The Plan is an "employee pension benefit plan" within the meaning of 29 U.S.C. §1002(2).

20. The Plan is an "individual account plan" or "defined contribution plan" within the meaning of 29 U.S.C. § 1002(34).

21. The Plan purports to be a "401(k) Plan" under 26 U.S.C. §401.

22. The Plan covers substantially all employees of Franklin Templeton and its U.S. subsidiaries who meet certain employment requirements.

IV. THE PLAN'S INVESTMENTS

23. Defendants' fiduciary duties are among the "highest [duties] known to the law." *Donovan v. Bierwirth*, 680 F.2d 263, 272 (2d Cir. 1982). Consistent with these fiduciary duties, Defendants had a fiduciary duty to Plaintiff, the Plan, and the

other participants in the Plan to offer only prudent investment options. A fiduciary has "a continuing duty of some kind to monitor investments and remove imprudent ones" and "a plaintiff may allege that a fiduciary breached the duty of prudence by failing to properly monitor investments and remove imprudent ones." *Tibble v. Edison Int'l.*, 135 S.Ct. 1823, 1829 (2015). Defendants therefore breached their fiduciary duty of prudence under ERISA §404(a)(1)(B); 29 U.S.C. §1104(a)(1)(B).

A. The Proprietary Mutual Funds

24. There is no shortage of reasonably priced and well-managed investment options in the 401(k) plan marketplace.

25. Despite the many investment options available in the market, the Plan has invested hundreds of millions of dollars in mutual funds managed by Franklin Templeton and its subsidiaries. These investment options were chosen because they were managed by, paid fees to, and generated profits for Franklin Templeton and its subsidiaries.

26. Over the relevant time period, over forty mutual funds offered by the Plan were, and continue to be, managed by Franklin Templeton or its subsidiaries (the "Proprietary Funds"). The Plan also includes a Company Stock Fund, which invests in common stock of Franklin Templeton, and a collective trust, managed by State Street Global Advisors, which is intended to track domestic large-capitalization stocks as represented in the S&P 500 Index. In 2015, the Plan also added three other collective trusts, also managed by State Street Global Advisors, to offer index tracking for international stocks, domestic small and mid-capitalization stocks, and bonds. Prior to 2015, the S&P 500 Index Fund was the only passively managed, and only non-proprietary, option in the Plan.

27. The Plan's investments were chosen and retained by or at the direction of the Investment Committee.

28. The Plan's investment in the Proprietary Funds averaged over $750 million per year from 2011 to the present.

29. The Proprietary Funds generated millions of dollars in fees for Franklin Templeton and its subsidiaries.

30. At all times relevant herein, the Proprietary Funds charged and continue to charge Plan participants and beneficiaries fees that were and are unreasonable for this Plan. The fees charged were and are significantly higher than the median fees for comparable mutual funds in 401(k) plans as reported by the Investment Company Institutes, in The Economics of Providing 401(k) Plans: Services, Fees and Expenses and by BrightScope, Inc. an independent provider of 401(k) ratings and data, based on its review of 1,667 large 401(k) plans reported in Real Facts about Target Date Funds.

31. The fees, moreover, are and were significantly higher than the fees available from alternative mutual funds, including Vanguard Institutional Funds, with similar investment styles that were readily available as Plan investment options throughout the relevant time. The percentage of excess compared to the fees charged by comparable Vanguard Institutional Funds is shown in Column D below. That difference was even larger at the time most of these investments were selected, as current — and cheaper — R6 share classes of the Proprietary Funds were not offered in the Plan prior to 2014. Fees are measured in basis points ("bps") where one basis point equals 0.01%:

Fund	**R6 Fee**	**Vanguard Fund**	**Vanguard Fee**	**Excess over Vanguard**
Money Fund	47 bps	VMRXX	10 bps	370%
Balance Sheet Inv. Fund	50 bps	VMVAX	8 bps	525%

Flex Cap Growth Fund	48 bps	VIGIX	7 bps	586%
Growth Fund	46 bps	VIGIX	7 bps	557%
Growth Opportunities Fund	68 bps	VIGIX	7 bps	871%
High Income Fund	47 bps	VWEAX	13 bps	261%
Income Fund	38 bps	VTWIX	13 bps	192%
International Growth Fund	102 bps	VWILX	34 bps	200%
Large Cap Value Fund	84 bps	VIVIX	7 bps	1,100%
LifeSmart Income Fund	68 bps	VTINX	14 bps	386%
LifeSmart 2020 Fund	72 bps	VTWNX	14 bps	413%
LifeSmart 2025 Fund	73 bps	VTTVX	15 bps	387%
LifeSmart 2030 Fund	75 bps	VTHRX	15 bps	400%
LifeSmart 2035 Fund	74 bps	VTTHX	15 bps	393%
LifeSmart 2040 Fund	76 bps	VFORX	16 bps	375%
LifeSmart 2045 Fund	75 bps	VTIVX	16 bps	369%
LifeSmart 2050 Fund	75 bps	VFIFX	16 bps	369%
Low Duration Total Return	42 bps	VSTBX	7 bps	500%
MicroCap Value Fund	80 bps	VSIIX	7 bps	1,043%
Mutual Beacon Fund	70 bps	VIVIX	7 bps	900%
Mutual European	89 bps	VESIX	9 bps	889%
Mutual Global Discovery	82 bps	VFWSX	11 bps	645%
Real Return Fund	50 bps	VIPIX	7 bps	614%
Rising Dividend Fund	52 bps	VDADX	9 bps	478%

Small Cap Growth Fund	72 bps	VSGIX	7 bps	929%
Small Cap Value Fund	61 bps	VSIIX	7 bps	771%
Small-Mid Cap Growth	48 bps	VIEIX	7 bps	586%
Strategic Income	47 bps	VCOBX	15 bps	213%
Conservative Allocation	92 bps	VASIX	12 bps	667%
Growth Allocation	82 bps	VASGX	15 bps	447%
Moderate Allocation	94 bps	VSMGX	14 bps	571%
Total Return Fund	46 bps	VBIMX	6 bps	667%
U.S. Gov. Securities Fund	47 bps	VFIUX	10 bps	370%
Templeton Developing Mkts	122 bps	VEMIX	12 bps	917%
Templeton Foreign Fund	72 bps	VTRIX	46 bps	57%
Templeton Frontier Markets	165 bps	VEMIX	12 bps	1,275%
Templeton Global Bond Fund	50 bps	VTIFX	9 bps	456%
Templeton Global Smaller Co	94 bps	VTWIX	13 bps	623%
Templeton Growth Fund	70 bps	VTWIX	13 bps	438%
Templeton World Fund	72 bps	VTWIX	13 bps	454%

32. Prior to July 1, 2014, the Plan invested in the Advisor share class of each Proprietary Fund.

33. During the period the Plan invested in the Advisor share class of the Proprietary Funds, the Proprietary Funds' Transfer Agent, Franklin Templeton Investor Services, LLC, paid Charles Schwab, the Plan's Recordkeeper and Trustee, $1 per plan participant account per month. Franklin Templeton Investor Services, LLC collected those fees from the Franklin mutual funds, reducing the value of the mutual funds for all shareholders. In 2013, those Plan-related payments totaled approximately $400,000.

34. Plaintiff was, until 2017, not aware of these existence, let alone the extent, of these payments.

35. The Plan was, at that time, liable to Schwab for $70 per participant per year in administrative fees. If the payments to Charles Schwab from the Plan's mutual funds were less than the $70 per participant per year rate, the Plan was liable to Charles Schwab for the difference.

36. Likewise, if the payments to Charles Schwab from the Plan's mutual funds exceeded the $70 per participant per year rate, the overage would be used to pay other plan expenses.

37. During the Class Period, because Franklin offered the Plan lower shareholder service fees, the Plan both had to pay additional administrative fees to the Plan's recordkeeper and lost the opportunity to benefit from the reimbursement of fees to the Plan for other purposes.

38. At the same time, for other shareholders of the same Advisor share class of the Proprietary Funds, Franklin offers a 15 bp beneficial owner servicing credit, which was also paid by Franklin Templeton Investors Services, LLC using fees collected from the Franklin mutual funds and reducing the value of the mutual funds for all shareholders, including the Plan. The 15 bp beneficial owner servicing credit was offered to Franklin-fund shareholders such as the Mercury General Corporation Profit Sharing Plan, but was not available to the Plan.

39. Upon information and belief, other shareholders in the Advisor share class benefitted from the additional 15 bps through payments to their advisors, including Franklin Templeton Institutional, LLC, the funds' distributor, Franklin Templeton Distributors, Inc., or entities who had entered into selling agreements with Franklin Templeton Distributors, Inc.

40. Had Franklin made 15 bps available for the benefit of the Plan, as it did with other shareholders, the Plan and Charles Schwab would have received beneficial owners servicing credits of approximately $1.1 million per year, an increase of $700,000 per year from the benefit offered by Franklin for its own Plan.

41. Conversely, had Franklin offered all shareholder the same arrangement as it had with Charles Schwab for the Plan, the amount of the payments made from each fund would have been less, causing the value of the Plan's investments in the Franklin Funds to be higher.

42. Plaintiff did not know of the Plan fee offsets, the beneficial owner servicing credits, the $1 per plan participant account per month arrangement between Franklin and Schwab, or the 15 bps payments to other Plans until after the institution of this Action.

43. Additionally, each Proprietary Fund charges fees in excess of the fees the Plan would have paid by purchasing comparable institutional products such as separately managed accounts. As the Department of Labor reports, for plans like Franklin Templeton's Plan, the "[t]otal investment management expenses can commonly be reduced to one-fourth of the expenses incurred through retail mutual funds." *Study of 401(k) Plan Fees and Expenses*, April 13, 1998.

44. Franklin offers and sells investment products similar or identical to those in the Plan to institutional clients through separately=managed accounts and sub-advised portfolios.

45. For example, the Plan invested over $30 million in the Templeton Global Bond Fund, which charged a fee of over 50 basis points. However, Defendants offered a Templeton Global Bond Fund separately managed account to institutional investors with at least $500,000, for negotiated fees which, upon information and belief, were often less than the fees charged to investors in the Templeton Global Bond Fund mutual fund.

46. With an operating margin of over 37%, very high for the mutual fund industry, Defendants made a fortune off of the Plan's investments in Proprietary Funds.

47. Many of the Proprietary Funds had and continue to have poor performance histories compared to prudent alternatives Defendants could have chosen for inclusion in the Plan.

48. For example, from the beginning of the relevant time period until at least September, 2013, the Plan included three Asset Allocation Funds, the Conservative Allocation Fund, Moderate Allocation Fund, and Growth Allocation Fund, which were all Proprietary Funds managed by T. Anthony Coffey and Thomas A. Nelson of Franklin Templeton.

49. The Asset Allocation Funds had been performing poorly. All three trailed their Morningstar peer median returns in 2011 and 2012, with only the Conservative Allocation Fund beating its peers in 2013 — after finishing in the 90th and 76th percentiles the prior two years.

50. In July, 2013, Franklin Templeton created a series of target date funds. Both asset allocation funds and target date funds are similar in that both invest their assets in a collection of mutual funds which in turn invest in foreign and domestic stocks and bonds, providing asset allocation within a single fund. Mssers. Coffey and Nelson, the unsuccessful managers of the Allocation Funds, were also the managers of these new, untested funds.

51. Defendants decided to replace the Allocation Funds with Target Date Funds shortly before or during 2014. At the time, there was no shortage of established, cheaper target date fund families in the marketplace. Instead of selecting one of these cheaper, better funds, Defendants chose for the Plan the untested, expensive Proprietary Target Date Funds, despite the poor performance of its managers managing similar Asset Allocation Funds. A prudent, un-conflicted fiduciary would not have chosen untested, more expensive funds, particularly in light of the individual manager's inability to succeed managing similar funds in the recent past.

52. The Target Date Funds have subsequently underperformed the cheaper, established, prudent alternative funds which, upon information and belief, were not even considered by Defendants when they decided to invest Plan assets in the Target Date Funds. The most conservative Target Date Fund, the Retirement Income Fund, has performed worse than two-thirds of its Morningstar peers each and every year of its existence. The most aggressive, the 2055 Fund, underperformed 97% of its peers in 2016, the only full year of its existence, and continues to underperform its Morningstar peer category thus far in 2017. Except for the Retirement Income Fund, which finished in the bottom third, all of the proprietary Target Date Funds in the Plan finished 2016 in the bottom 10 percent of their peer groups Since their inception in July, 2013, the Target Date Funds have underperformed their Vanguard peers by over $3 million.

53. The Target Date Funds' underperformance is not unique. In 2015, only 24% of Franklin Templeton mutual funds outperformed their peer median.

54. Many of the Proprietary Funds were and are poorly rated by Morningstar, the independent rating service, compared to prudent alternatives the Committee could have chosen for inclusion in the Plan. For example, not a single Proprietary Fund is rated 5-stars (out of 5), the highest rating, by Morningstar. To the

contrary, the Templeton World Fund and Templeton Frontier Markets Fund, are rated 1-star, the lowest rating. Other Proprietary Funds have 2-star ratings and most of the rest have mediocre 3-star ratings.

55. Prudent investors fled Franklin Templeton's mutual funds, including the Proprietary Funds. In the fiscal year ending September 30, 2015, investors on net withdrew $59.2 billion from Franklin Templeton funds. The following quarter, they withdrew an additional $20.6 billion. In 2016, investors withdrew another $42.5 billion. In 2017, the outflows have continued, with investors withdrawing an additional $18.3 billion during the first half of the year.

56. Despite the poor performance, high fees, and low Morningstar ratings, the only Proprietary Funds removed from the Plan during the entire Class Period were replaced with other Proprietary Funds. For example, the three Asset Allocation Funds were replaced, as discussed above, with eight proprietary Target Date Funds using the same failed managers as the Asset Allocation Funds. In addition, in 2016 five Proprietary Funds were removed and their assets transferred to other Franklin Funds, with the result being over $100,000 per year in *additional fees* to Franklin at the expense of the Plan and its participants.

Removed Fund	Removed Fund Fee	Replacement Fund	Replacement Fund Fee	Assets in Removed Fund	Additional Fees to Franklin
US Gov. Securities Fund	47 bps	Total Return Fund	46 bps	$18,777,486	-$1,878
Balanced Sheet Fund	50 bps	Rising Dividend Fund	52 bps	$6,805,384	$1,361
Flex Cap Growth Fund	46 bps	Growth Opportunities Fund	68 bps	$13,992,198	$30,783

Small Mid Cap Growth Fund	48 bps	Small Cap Growth	66 bps	$38,729,155	$69,712
High Income Fund	47 bps	Strategic Income Fund	48 bps	$9,586,381	$959

57. Meanwhile, four Proprietary Funds, as well as the Target Date Funds, were added to the Plan during the Class Period. They are the International Growth Fund, for which Franklin Templeton charges 102 bps, the Templeton Frontier Markets Fund, for which Franklin Templeton charges 165 bps, and the Real Return Fund, for which Franklin Templeton charges 50 bps, and the Templeton Foreign Equity Fund, for which Franklin Templeton charges 72 bps.

58. The Plan lost in excess of $60 million during the class period as a result of losses sustained by the Proprietary Funds compared to prudent alternatives such as comparable Vanguard Funds.

B. The Franklin Money Market Fund

59. Stable value funds and money market funds are two investment vehicles designed to preserve principal while providing a return.

60. Stable value funds are a common investment in defined contribution plans and in fact are designed specifically for use in large defined contribution plans.

61. The structure of stable value funds allows them to outperform money market funds in virtually all market conditions and over any appreciable time period. See, *Abbott v. Lockheed Martin Corp.*, 725 F.3d 803, 806 (7th Cir. 2013); see also Paul J. Donahue, *Plan Sponsor Fiduciary Duty for the Selection of Options in Participant-Directed Defined Contribution Plans and the Choice Between Stable Value and Money Market*, 39 AKRON L. REV. 9, 20–27 (2006).

62. Stable Value Funds hold longer duration instruments generating excess returns over money market investments. Stable value funds also provide a guaranteed rate of return to the investor, referred to as a crediting rate, and protect against the loss of principal and accrued interest. This protection is provided through a wrap

contract issued by a bank, insurance company or other financial institution that guarantees the book value of the participant's investment.

63. Even during the period of market turbulence in 2008, "stable value participants received point-to-point protection of principal, with no sacrifice of return[.]" Paul J. Donahue, *Stable Value Re-examined*, 54 RISKS AND REWARDS 26, 28 (Aug. 2009).[1]

64. Because they offer higher returns than money market funds, greater consistency of returns, and less risk to principal, large defined contribution plans commonly offer stable value funds to participants.

65. A 2011 study from Wharton Business School analyzed money market and stable value fund returns from the previous two decades and concluded that "any investor who preferred more wealth to less wealth should have avoided investing in money market funds when [stable value] funds were available, irrespective of risk preferences." David F. Babbel & Miguel A. Herce, *Stable Value Funds: Performance to Date*, at 16 (Jan. 1, 2011).[2]

66. According to the 2015 Stable Value Study published by MetLife, over 80% of plan sponsors offer a stable value fund. MetLife, *2015 Stable Value Study: A Survey of Plan Sponsors, Stable Value Fund Providers and Advisors* at 5 (2015).[3] The study also notes that stable value returns were "*more than double*" the returns of money market funds from 1988 to 2015, and 100% of stable value providers and almost 90% of financial advisors to defined contribution plans "agree that stable

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[1] Available at http://www.soa.org/library/newsletters/risks-and-rewards/2009/august/rar-2009-iss54-donahue.pdf.

[2] Available at http://fic.wharton.upenn.edu/fic/papers/11/11-01.pdf (last accessed June 24, 2016).

[3] Available at https://www.metlife.com/assets/cao/institutional-retirement/plan-sponsor/stable-value/Stable-Value-Vs-Money-Market/2015_StableValueStudyWebFinal.pdf.

value returns have outperformed money market returns over the last 25 years." *Id.* at 7 (emphasis added).

67. Unlike the majority of defined contribution plans, the Plan has not offered a stable value fund. Instead, the Plan offered the Franklin Funds Money Market Fund, a fund managed by Franklin and paying Franklin up to 47 bps per year, while paying nothing at all to the Plan and its participants.

68. In real terms, investors in this most-conservative option have lost over 12% of their buying power over the Class Period. Had Defendants used a comparable stable value fund, the plan participants would have seen their assets grow by over 22% during that period. These losses could also have been mitigated had Defendants considered any of the numerous superior non-proprietary money market funds available in the marketplace throughout the class period.

69. Had these assets been invested in a stable value fund instead, they would have had inflation-beating returns. For example, one alternative, the Vanguard Stable Value Fund has enjoyed the following returns:

Fund	2009	2010	2011	2012	2013	2014	2015	2016
Stable Value	3.66%	4.06%	3.56%	2.68%	2.06%	2.00%	2.21%	2.22%
Inflation	2.63%	1.63%	2.93%	1.59%	1.58%	-0.09%	1.37%	2.07%
Plan Money Market	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

70. Franklin does not manage any stable value funds.

71. In addition to the breaches of loyalty resulting from the selection and maintenance of the Money Market Fund, by including and failing to remove the Money Market Fund, Defendants failed to discharge their duties with respect to the Plan with the care, skill, prudence, and diligence under the circumstances then

prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

72. The Plan lost in excess of $9 million during the class period as a result of losses sustained by the Money Market Fund compared to Stable Value alternatives.

C. Excessive Total Plan Cost

73. In addition to paying the bloated expense ratios charged by Franklin Templeton on the Proprietary Funds, the Plan pays a separate administrative fee, charged to each participant at a rate of $12.00 per quarter, or $48 per year. Additional charges are also incurred for services provided to the Plan by other vendors.

74. The Plans' Form 5500 filings with the U.S. Department of Labor contain an Independent Auditor's Report, which state that on September 30, 2014 the Plan's assets were $1,178,463,741 and on September 30, 2015, the Plan's assets were $1,095,737,878. The Plan has remained above $1 billion in assets ever since.

75. In total, the Plan paid $6.5 million per year in investment management and administrative fees. Given the Plan size, the average Total Plan Cost was over 57 bps in 2014 and 2015.

76. A recently published report shows that in 2013, the average 401(k) defined contribution plan with more than a billion dollars in assets bore a total plan cost as a percentage of assets of 31 basis points. See BrightScope and Investment Company Institute, The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 47 (Dec. 2015), available at: https://www.ici.org/pdf/ppr_15_dcplan_profile_401k.pdf. In 2014, that dropped to 30 basis points. See BrightScope and Investment Company Institute, The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 49 (Dec. 2016), available at: https://www.ici.org/pdf/ppr_16_dcplan_profile_401k.pdf.

77. Thus, the total plan cost, including investment and administrative fees, was nearly double the cost of comparable plans that are not subject to conflicted

fiduciary decision-making. This difference is almost entirely the result of the mutual fund fees paid to Franklin Templeton.

78. In the six-year period 2011–2016, the Plan paid approximately $15 million more at the 57 basis points fee rate than did a plan at the 31 (or 30) basis points fee rate.

79. These facts support an inference that Defendants allowed Franklin Templeton to receive excessive compensation by larding the Plan with excessively expensive Proprietary Funds.

D. Total Recordkeeping Fees Were Excessive

80. Recordkeeping is a service necessary for every defined contribution plan. The market for recordkeeping services is highly competitive. There are numerous recordkeepers in the marketplace who are equally capable of providing a high level of service to a large defined contribution plan like the Plan. These recordkeepers primarily differentiate themselves based on price, and vigorously compete for business by offering the best price.

81. To ensure that plan administrative and recordkeeping expenses are and remain reasonable for the services provided, prudent fiduciaries of large defined contribution plans put the plan's recordkeeping and administrative services out for competitive bidding at regular intervals, every 3–5 years.

82. Upon information and belief, Defendants failed to competitively bid the Plan's recordkeeping services between 2005 and 2013.

83. The cost of recordkeeping services depends on the number of participants, not on the amount of assets in the participant's account. The cost of providing recordkeeping services is the same regardless of account balance. For this reason, prudent fiduciaries of defined contribution plans negotiate recordkeeping fees on the basis of a fixed dollar amount for each participant in the plan rather than as a percentage of plan assets. Otherwise, as plan assets increase through participant contributions or investment gains, the recordkeeping

compensation increases without any change in the recordkeeping and administrative services.

84. Large defined contribution plans, like the Plan,[1] experience economies of scale for recordkeeping and administrative services. As the number of participants in the plan increases, the per participant fee charged for recordkeeping and administrative services decline. These lower administrative expenses are readily available for plans with a greater number of participants.

85. The Plan initially contracted with the 401k Company (subsequently purchased by Schwab) to use their recordkeeping services. Franklin Templeton paid $70 per person to Schwab under the Plan.

86. After 2013, the Investment Committee and Administrative Committee selected Bank of America Merrill Lynch ("BAML") as the Plan recordkeeper. Those fees were $48 per person.

87. BAML is a corporate partner of Franklin Templeton. BAML recordkeeps and administers other benefit plans for Franklin Templeton. Franklin Templeton markets its mutual funds to BAML advisors and shares revenue with BAML based on BAML's ability to sell Franklin Templeton funds. Franklin Templeton sponsors BAML conferences[4], and BAML serves as financial advisors to Franklin Templeton subsidiaries.[5]

88. Market prices for mega-plans, like the Plan, are typically considerably lower because of available economies of scale and the bargaining power exerted by prudent fiduciaries. *See, e.g.*, *Spano v. Boeing*, Case 06-743, Doc. 466, at 26 (S.D. Ill. Dec. 30, 2014) (recordkeeping fees were $32 per participant in 2012); *Spano*, Doc. 562-2 (Jan 29, 2016) (declaration that Boeing's 401(k) plan recordkeeping fees were $18 per participant for the past two years); *George v. Kraft Foods Global, Inc.*, 641 F.3d 786 (7th Cir. 2011) (reversing

[1] http://www.plansponsor.com/2015-Recordkeeping-Survey/
[4] https://www.franklintempleton.com/en-us-retail/investor/approach/firm/press-article.page?DocID=jbnanpqb
[5] https://www.franklintempleton.com/en-us-retail/investor/approach/firm/press-article.page?DocID=jbnanpqb

grant of summary judgment where plaintiffs' expert opined market rate of $20–$27 and plan paid recordkeeper $43–$65 per participant for a smaller plan than the Plan); *Gordon v. Mass Mutual*, Case 13-30184, Doc. 107-2 at ¶10.4 (D.Mass. June 15, 2016) (401(k) fee settlement committing the plan to pay not more than $35 per participant for recordkeeping, also involving a smaller 401(k) plans).

89. Recordkeeping fees of $48 per person was excessive and unreasonable for the Plan and participants. The recordkeeping fees for a plan the size of the Plan should have been below $35 per participant.

90. Many of the market leaders in mega-plan recordkeeping are — unlike BAML — competitors of Franklin Templeton's mutual fund business, including Fidelity, TIAA, Vanguard and JP Morgan (whose recordkeeping business was subsequently sold to Mass Mutual).

91. Upon information and belief, the Investment Committee and Administrative Committee excluded these asset managers from recordkeeping the Plan, preventing the Plan from securing recordkeeping fees at market rates.

92. As a result of the forgoing, the Plan and its participants paid hundreds of thousands of dollars per year in excessive recordkeeping fees.

E. Individual Defendants' Conflicts of Interest

93. The Individual Defendants suffered from direct, personal, and pecuniary conflicts when serving as fiduciaries for the Plan.

94. Director Defendants and brothers Charles B. Johnson and Rupert H. Johnson, Jr. each own and owned over 100 million shares of Franklin Resources, Inc., holdings which were, for much of the class period, valued at over $3 billion and 15% of the company, each.

95. Charles B. Johnson and Rupert H. Johnson, Jr. are the sons of Rupert H. Johnson, Sr., who founded Franklin Resources in 1947.

96. Director Defendants and brothers Charles E. Johnson and Gregory E. Johnson each own over 5 million shares of Franklin Resources, Inc., holdings which were, for much of the class period, valued at over $150 million each. Charles E. Johnson and Gregory E. Johnson are the sons of Charles B. Johnson.

97. Investment Committee member, and sister of Gregory E. Johnson, Jennifer M. Johnson, owns over 4 million shares of Franklin Resources, Inc., holdings which were, for much of the class period, valued at over $130 million each. Ms. Johnson is the President and Chief Operating Officer of Franklin Resources, Inc. She is also responsible for Franklin Templeton's global retail and institutional distribution efforts, including product development.

98. In addition, the Committee included Ken Lewis, Franklin's Chief Financial Officer, Dan Carr, Franklin's Secretary and General Counsel, and Rick Frisbie, Franklin's former Chief Administrative Officer and Executive VP responsible for overseeing the asset allocation and target date funds.

99. These individuals personally benefited from the Plan's investments in Franklin Funds.

V. ERISA'S FIDUCIARY STANDARDS

100. ERISA imposes strict fiduciary duties of loyalty and prudence upon Defendants as fiduciaries of the Plan. ERISA § 404(a), 29 U.S.C.§ 1104(a), provides, in relevant part, as follows:

> [A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and —
>
> (A) for the exclusive purpose of:
>
> (i) providing benefits to participants and their beneficiaries; and
>
> (ii) defraying reasonable expenses of administering the plan; [and]

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so[.]

101. Under ERISA, fiduciaries who exercise discretionary authority or control over the selection of plan investments and the selection of plan service providers must act prudently and solely in the interest of participants and beneficiaries of the plan when performing such functions. Thus, "the duty to conduct an independent investigation into the merits of a particular investment" is "the most basic of ERISA's investment fiduciary duties." *In re Unisys Savings Plan Litig.*, 74 F.3d 420, 435 (3d Cir. 1996).

102. As the Department of Labor explains,

> [T]o act prudently, a plan fiduciary must consider, among other factors, the availability, riskiness, and potential return of alternative investments for his or her plan. [Where an investment], if implemented, causes the Plan to forego other investment opportunities, such investments would not be prudent if they provided a plan with less return, in comparison to risk, than comparable investments available to the plan, or if they involved a greater risk to the security of plan assets than other investments offering a similar return.
>
> DOL Opinion 88-16A (1988).

103. Pursuant to these duties, fiduciaries must ensure that the services provided to the plan are necessary and that the fees are reasonable:

> Under section 404(a)(1) of ERISA, the responsible Plan fiduciaries must act prudently and solely in the interest of the Plan participants and beneficiaries … in determining which investment options to utilize or make available to Plan participants or beneficiaries. In this regard, the responsible Plan fiduciaries must assure that the compensation paid directly or indirectly by the Plan to [service providers] is reasonable . . .

DOL Opinion 97-15A (1997); DOL Opinion 97-16A (1997).

104. A fiduciary's duty of loyalty requires a fiduciary to act solely in the interest of plan participants and beneficiaries. As the Department of Labor has warned:

> [T]he Department has construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to participants and beneficiaries, as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives. In other words, in deciding whether and to what extent to invest in a particular investment, or to make a particular fund available as a designated investment alternative, a fiduciary must ordinarily

> consider only factors relating to the interests of plan participants and beneficiaries in their retirement income. A decision to make an investment, or to designate an investment alternative, may not be influenced by non-economic factors unless the investment ultimately chosen for the plan, when judged solely on the basis of its economic value, would be equal to or superior to alternative available investments.

DOL Opinion 98-04A (1998); *see also* DOL Opinion 88-16A (1988). The Department of Labor has repeatedly warned that:

> While the law does not specify a permissible level of fees, it does require that fees charged to a plan be "reasonable." After careful evaluation during the initial selection, the plan's fees and expenses should be monitored to determine whether they continue to be reasonable.

Meeting Your Fiduciary Responsibilities, U.S. Dep't of Labor Employee Benefits Security Admin. (Feb. 2012), http://www.dol.gov/ebsa/publications/fiduciaryresponsibility.html.

105. In a separate publication, the Department of Labor writes as follows:

> The Federal law governing private-sector retirement plans, the Employee Retirement Income Security Act

(ERISA), requires that those responsible for managing retirement plans -- referred to as fiduciaries -- carry out their responsibilities prudently and solely in the interest of the plan's participants and beneficiaries. Among other duties, fiduciaries have a responsibility to ensure that the services provided to their plan are necessary and that the cost of those services is reasonable.

* * *

Plan fees and expenses are important considerations for all types of retirement plans. As a plan fiduciary, you have an obligation under ERISA to prudently select and monitor plan investments, investment options made available to the plan's participants and beneficiaries, and the persons providing services to your plan. Understanding and evaluating plan fees and expenses associated with plan investments, investment options, and services are an important part of a fiduciary's responsibility. This responsibility is ongoing. After careful evaluation during the initial selection, you will want to monitor plan fees and expenses to determine whether they continue to be reasonable in light of the services provided.

* * *

> By far the largest component of plan fees and expenses is associated with managing plan investments. Fees for investment management and other related services generally are assessed as a percentage of assets invested. Employers should pay attention to these fees. They are paid in the form of an indirect charge against the participant's account or the plan because they are deducted directly from investment returns. Net total return is the return after these fees have been deducted. For this reason, these fees, which are not specifically identified on statements of investments, may not be immediately apparent to employers.

Understanding Retirement Plan Fees and Expenses, U.S. Dep't of Labor Employee Benefits Security Admin. (Dec. 2011), http://www.dol.gov/ebsa/publications/undrstndgrtrmnt.html.

106. ERISA § 409, 29 U.S.C. § 1109, provides, inter alia, that any person who is a fiduciary with respect to a plan and who breaches any of the responsibilities, obligations, or duties imposed on fiduciaries by Title I ERISA shall be personally liable to make good to the plan any losses to the plan resulting from each such breach and to restore to the plan any profits the fiduciary made through use of the plan's assets. ERISA § 409, 29 U.S.C. § 1109, further provides that such fiduciaries are subject to such other equitable or remedial relief as a court may deem appropriate.

VI. ERISA'S PROHIBITED TRANSACTION

107. The general duties of loyalty and prudence imposed by 29 U.S.C. §1004 are supplemented by a detailed list of transactions that are expressly prohibited by 29 U.S.C. §1106, and are considered violations unless an exemption applies.

108. Section 1106(a)(1) states, in pertinent part, that:

[A] fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect —

(A) sale or exchange, or leasing, of any property between the plan and a party in interest;

* * *

(C) furnishing of goods, services, or facilities between the plan and a party in interest;

(D) transfer to, or use by or for the benefit of a party in interest, of any assets of the plan…

109. Section 1106(b) provides, in pertinent part, that:

[A] fiduciary with respect to the plan shall not —

(1) deal with the assets of the plan in his own interest or for his own account,

(2) in his individual or in any other capacity act in a transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or

(3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

110. Accordingly, Defendants, as plan fiduciaries, were and are prohibited from causing the plan to engage in transactions with Franklin, including causing the plan to invest assets in the investment management and other products offered by a

party in interest or plan fiduciary and the payment of investment management or other fees in connection with such investments, unless an express exemption is available.

111. Prohibited Transaction Class Exemption 77-3 provides a limited exemption for a mutual fund company to include proprietary mutual funds like those in the Plan, however the exemption requires that the plan must not "have dealings with the fund on terms any less favorable to the plan than such dealings are to other shareholders." 42 Fed. Reg. at 18735.

112. Because Franklin offered and made service fee credits to other shareholders, such as the Mercury General Corporation Profit Sharing Plan, far in excess of the credits offered actually paid to the Plan's recordkeeper for the benefit of the Plan, Franklin's dealings with the Plan were on terms less favorable to the Plan than its dealings with other shareholders, and PTE 77-3 does not apply.

113. 29 U.S.C. § 1132(a)(3) provides a cause of action against a party in interest, such as Franklin, for participating in the breach of a fiduciary.

114. 29 U.S.C. § 1105(a) provides a cause of action against a fiduciary, such as Defendants, for knowingly participating in a breach by another fiduciary and knowingly failing to cure any breach.

VII. CLASS ALLEGATIONS

115. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), permits a plan fiduciary, participant, beneficiary, or the Secretary of Labor to bring a suit individually on behalf of the Plan to recover for the Plan the remedies provided under ERISA § 409, 29 U.S.C. § 1109(a).

116. In acting in this representative capacity and to enhance the due process protections of unnamed participants and beneficiaries of the Plan, as an alternative to direct individual actions on behalf of the Plan under 29 U.S.C. § 1132(a)(2), Plaintiffs seek to certify this action as a class action on behalf of the following class:

All participants in the Franklin Templeton 401(k) Retirement Plan from July 28, 2010 to the date of judgment. Excluded from the class are Defendants, Defendants' beneficiaries, and Defendants' immediate families.

117. Class certification is appropriate under Fed. R. Civ. P. 23(a) and (b)(1), (b)(2), and/or (b)(3).

(a) The class satisfies the numerosity requirement of Rule 23(a) because it is composed of over one thousand persons, in numerous locations. The number of class members is so large that joinder of all its members is impracticable.

(b) The class satisfies the commonality requirement of Rule 23(a) because there are questions of law and fact common to the Class and these questions have common answers. Common legal and factual questions include, but are not limited to: who are the fiduciaries liable for the remedies provided by ERISA § 409(a), 29 U.S.C. §1109(a); whether the fiduciaries of the Plan breached their fiduciary duties to the Plan by causing the Plan to invest in excessively expensive funds and by failing to prudently remove the funds from the Plan; whether the decision to include and not to remove a fund was made solely in the interests of Plan participants and beneficiaries; what are the losses to the Plan resulting from each breach of fiduciary duty; and what are the profits of any breaching fiduciary that were made through the use of Plan assets by the fiduciary.

(c) The class satisfies the typicality requirement of Rule 23(a) because Plaintiffs' claims are typical of the claims of the members of the Class because Plaintiffs' claims, and the claims of all Class members, arise out of the same conduct, policies and practices of Defendants as alleged herein, and all members of the Class are similarly affected by Defendants' wrongful conduct. Plaintiff was and remains an investor in the Plan for the entirety of the Class Period.

(d) The class satisfies the adequacy requirement of Rule 23(a). Plaintiff will fairly and adequately represent the Class and have retained counsel experienced

and competent in the prosecution of ERISA class action litigation. Plaintiff has no interests antagonistic to those of other members of the Class. Plaintiff is committed to the vigorous prosecution of this action and anticipates no difficulty in the management of this litigation as a class action.

(e) Class action status in this action is warranted under Rule 23(b)(1)(A) because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants. Class action status also warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that, as a practical matter, would be dispositive of the interests of other members not parties to this action, or that would substantially impair or impede their ability to protect their interests.

(f) In the alternative, certification under Rule 23(b)(2) is warranted because Defendants acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

(g) In the alternative, certification under Rule 23(b)(3) is appropriate because questions of law or fact common to members of the Class predominate over any questions affecting only individual members, and class action treatment is superior to the other available methods for the fair and efficient adjudication of this controversy.

VIII. CLAIMS FOR RELIEF

First Claim For Relief: Breach of Fiduciary Duty

118. Plaintiff repeats and realleges each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

119. The Committee and its members are responsible for selecting, monitoring, and removing investment options in the Plan.

120. The Board of Directors and its members are responsible for appointing, monitoring, and removing members of the Committee.

121. Defendants caused the Plan to invest nearly a billion of dollars in imprudent investment options, many of which were more expensive than prudent alternatives, unlikely to outperform their benchmarks, and laden with excessive fees which were paid to Franklin Templeton and its subsidiaries.

122. Defendants failed to remove the funds even though a prudent fiduciary would have done so given the high fees, poor performance prospects, and availability of lower-cost alternatives.

123. Defendants permitted Schwab, and later Bank of America Merrill Lynch, to receive excessive compensation for recordkeeping and administrative services to the Plan, instead of prudently including in their fiduciary decision-making process lower-cost market-priced vendors, such as JP Morgan, Fidelity and Vanguard.

124. By the conduct and omissions described above, Defendants failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

125. Defendants failed to discharge their duties with respect to the Plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

126. As a direct and proximate result of these breaches of fiduciary duties, the Plan and its participants have paid, directly and indirectly, substantial excess investment management and other fund-related fees during the Class Period, and suffered lost-opportunity costs which continue to accrue, for which Defendants are

jointly and severally liable pursuant to ERISA § 409, 29 U.S.C. § 1109, and ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2).

Second Claim For Relief: 29 U.S.C. § 1106(a) Prohibited Transactions

127. Plaintiff repeats and realleges each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

128. This Count alleges prohibited transactions against all Defendants

129. Defendants caused the Plan to use Proprietary mutual funds as investment options when they knew or should have known those transactions constituted a direct or indirect furnishing of services between the Plan and a party in interest for more than reasonable compensation and a transfer of assets of the Plan to a party in interest.

130. As Plan Sponsor, Franklin and its subsidiaries were parties in interest.

131. As a direct and proximate result of these prohibited transaction violations, the Plan, directly or indirectly, paid millions of dollars in investment management and other fees that were prohibited by ERISA and suffered millions of dollars in losses.

132. Pursuant to 29 U.S.C. §§ 1109(a) and 1132(a)(2), Defendants are liable to restore all losses suffered by the Plan as a result of the prohibited transactions and disgorge all revenues received and/or earned by Franklin from the fees paid by the Plan to Franklin and its subsidiaries and affiliates as well as appropriate equitable relief.

Third Claim For Relief: 29 U.S.C. § 1106(b) Prohibited Transactions

133. Plaintiff repeats and realleges each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

134. This Court alleges prohibited transactions against all Defendants.

135. Defendants dealt with the assets of the plan in their own interest and for their own account when they caused the Plan to use Proprietary mutual funds as investment options.

136. In causing the Plan to use Proprietary mutual funds, Defendants acted in a transaction involving the plan on behalf of Franklin, a party whose interests were adverse to the interests of the plan, its participants and beneficiaries.

137. Further, Franklin received consideration for its own personal account from the Proprietary mutual funds in connection with their inclusion in the Plan.

138. For the reasons stated above, Defendants are fiduciaries and parties in interest with respect to the Plan.

139. Defendants knew of should have known that the transfer of Plan assets to the investment options selected and maintained in the Plan by Defendants allowed Franklin to benefit both financially, through fees paid by the options to Franklin, and commercially, by increasing the assets under management for the Franklin-managed investment options.

140. As a direct result of these prohibited transactions, the Plan, directly or indirectly, paid millions of dollars in investment management and other fees that were prohibited by ERISA and suffered millions of dollars in losses.

141. Pursuant to 29 U.S.C. §1109(a) and 1132(a)(2), Defendants are liable to restore all losses suffered by the Plan as a result of the prohibited transactions and disgorge all revenues received by Franklin from the fees paid by the Plan to Franklin, as well as other appropriate equitable relief.

Fourth Claim For Relief: Failure to Monitor Fiduciaries

142. Plaintiff repeats and realleges each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

143. This Count alleges breach of fiduciary duties against the Board of Directors and its members, and Franklin Resources, Inc. (collectively the "Monitoring Defendants").

144. As alleged above, the Monitoring Defendants are fiduciaries pursuant to 29 U.S.C. § 1002(21). Thus, they are bound by the duties of loyalty, exclusive purpose, and prudence.

145. As alleged above, the scope of the fiduciary responsibility of the Monitoring Defendants includes the responsibility to appoint, and remove, and thus, monitor the performance of other fiduciaries.

146. A monitoring fiduciary must ensure that the monitored fiduciaries are performing their fiduciary obligations, including those with respect to the investment and holding of plan assets, and must take prompt and effective action to protect the plan and plan participants when they are not.

147. The Monitoring Fiduciaries breached their fiduciary monitoring duties by, among other things:

a. Failing to monitor their appointees, to evaluate their performance, or to have a system in place for doing so, and standing idly by as the Plan suffered enormous losses as a result of their appointees' imprudent actions and inaction with respect to the Plan;

b. Failing to monitor their appointees' fiduciary process, which would have alerted any prudent fiduciary to the potential breach because of the widespread use of proprietary funds from which Franklin — and by extension the Johnson family — received profits in violation of ERISA;

c. Failing to ensure that the monitored fiduciaries appreciated the ready availability of comparable and better performing Plan fund options that charged significantly lower fees and expenses than the Plan's Franklin funds; and

d. Failing to remove appointees whose performance was inadequate in that they continued to maintain the imprudent, and proprietary, options for participants' retirement savings in the Plan during the Class Period, and who breached their fiduciary duties under ERISA.

148. As a consequence of the Monitoring Defendants' breaches of fiduciary duty, the Plan suffered substantial losses. If the Monitoring Defendants had discharged their fiduciary monitoring duties prudently as described above, the losses suffered by the Plan would have been minimized or avoided. Therefore, as a direct result of the breaches of fiduciary duty alleged herein, the Plan, and indirectly the Plaintiff and other Class members, lost tens of millions of dollars in retirement savings.

149. Pursuant to 29 U.S.C. §§ 1109(a), 1132(a)(2) and (a)(3), the Monitoring Defendants are liable to restore the losses to the Plan caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

A. A declaration that the Defendants breached their fiduciary duties under ERISA § 404 and engaged in Prohibited Transactions in violation of ERISA §406;

B. An order compelling the disgorgement of all fees paid and incurred, directly or indirectly, to Franklin Templeton and its subsidiaries by the Plan or by Proprietary Mutual Funds as a result of the Plan's investments in their funds, including disgorgement of profits thereon;

C. An order compelling the Defendant to restore all losses to the Plan arising from Defendants' violations of ERISA, including lost-opportunity costs;

D. An order granting appropriate equitable monetary relief against Defendants;

E. An order granting such other equitable or remedial relief as may be appropriate, including the permanent removal of Defendants from any positions of trust with respect to the Plan, the appointment of independent fiduciaries to administer the Plan, and rescission of the Plan's investments in Proprietary Funds;

F. An order certifying this action as a class action, designating the Class to receive the amounts restored or disgorged to the Plan, and imposing a constructive trust for distribution of those amounts to the extent required by law;

G. An order enjoining Defendants collectively from any further violations of their ERISA fiduciary responsibilities, obligations, and duties;

H. An order awarding Plaintiffs and the Class their attorneys' fees and costs pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g), and/or the Common Fund doctrine, along with pre- and post-judgment interest; and

I. An order awarding such other and further relief as the Court deems equitable and just.

Dated: February 6, 2018

Respectfully submitted,

/s/ Gregory Y. Porter
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ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from each of the other signatories.

Dated: February 6, 2018

/s/ Gregory Y. Porter
Gregory Y. Porter

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of February 2018, a true and correct copy of the foregoing was filed with the Court using the CM/ECF system and service upon all participants in this case who are CM/ECF users will be accomplished by operation of that system.

/s/ Gregory Y. Porter
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

NELLY F. FERNANDEZ, individually and on behalf of a class of all other persons similarly situated, and on behalf of the Franklin Templeton 401(k) Retirement Plan,

Plaintiffs,

v.

FRANKLIN RESOURCES, INC., the Franklin Templeton 401(k) Retirement Plan Investment Committee, the Franklin Templeton 401(k) Retirement Plan Administrative Committee, Norman Frisbie, Jennifer Johnson, Penelope Alexander, Kenneth Lewis, Dan Carr, Nicole Smith, Alison Baur, Matthew Gulley, The Franklin Resources, Inc. Board of Directors, Gregory E. Johnson, Rupert H. Johnson, Jr., Charles B. Johnson, Charles E. Johnson, Peter K. Barker, Mariann Byerwalter, Mark C. Pigott, Chutta Ratnathicam, Laura Stein, Seth Waugh, Geoffrey Y. Yang, Samuel Armacost, Joseph Hardiman, Anne Tatlock, and John Doe Defendants 1–10,

Defendants.

Case No. 4:17-cv-06409-CW

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S FIRST AMENDED COMPLAINT

Judge: Hon. Claudia Wilken
Am. Compl. Filed: February 6, 2018

ANSWER AND AFFIRMATIVE DEFENSES

Pursuant to Rules 7 and 8 of the Federal Rules of Civil Procedure, Defendants Franklin Resources, Inc. ("FRI"), Norman Frisbie, Jennifer Johnson, Penelope Alexander, Kenneth Lewis, Dan Carr, Nicole Smith, Alison Baur, Madison ("Mat") Gulley, Gregory E. Johnson, Rupert H. Johnson, Jr., Charles E. Johnson, Peter K. Barker, Mariann Byerwalter, Mark C. Pigott, Chutta Ratnathicam, Laura Stein, Seth Waugh, Geoffrey Y. Yang, Samuel Armacost, Joseph Hardiman, and Anne Tatlock (collectively, "Defendants") hereby answer Plaintiff Nelly F. Fernandez's ("Plaintiff") First Amended Complaint ("FAC") as follows:

GENERAL DENIALS

Except as expressly admitted below, Defendants deny each and every allegation against them and deny liability to Plaintiff. With respect to those allegations in the FAC that specify no applicable time period, Defendants have answered as of the present date. With respect to those allegations referring to "Franklin Templeton," Plaintiff's defined term for Defendant FRI, Defendants have answered on behalf of FRI.

Plaintiff includes in the FAC lettered and numbered headings purporting to characterize certain actions or events. Because the headings are not set forth in numbered paragraphs, they are not properly pleaded facts, and no response is necessary. To the extent that Plaintiff has included headings that are inappropriate under Rules 8 and 12(f) of the Federal Rules of Civil Procedure, no response is necessary, and any such inappropriate material should be stricken. To the extent Plaintiff's headings purport to state facts to which a response is required, Defendants deny each and every such allegation. Plaintiff's headings are repeated below, solely for organizational purposes. Defendants specifically deny, and do not adopt, the characterizations set forth in these headings.

Defendants expressly reserve the right to seek to amend and/or supplement this Answer as may be necessary.

RESPONSES TO SPECIFIC ALLEGATIONS

In addition to and incorporating the above general denials, Defendants further answer the numbered paragraphs in the FAC as follows:

1. Answering Paragraph 1 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph and deny Plaintiff's entitlement to any requested relief.

2. Answering Paragraph 2 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants admit that the investment options made available to Plan participants included certain funds offered and managed by FRI, acting through its subsidiaries; and, except as admitted, deny each and every allegation in said paragraph.

I. JURISDICTION AND VENUE

3. Answering Paragraph 3 of the FAC, Defendants state that said paragraph asserts conclusions of law to which no response is required; to the extent such allegations require a response, Defendants admit that this Court has jurisdiction over Plaintiff's ERISA claims.

4. Answering Paragraph 4 of the FAC, Defendants state that said paragraph asserts conclusions of law to which no response is required; to the extent such allegations require a response, Defendants admit that venue is proper in this district; admit that some administrative functions of the Plan occur or have occurred in this district and at least one defendant may be found in this district; and, except as admitted, deny each and every allegation in said paragraph.

II. PARTIES

A. Plaintiff

5. Answering Paragraph 5 of the FAC, Defendants admit that Plaintiff was a participant in the Plan until December 2016; admit that Plaintiff invested in the Mutual

Global Discovery Fund, the Income Fund, the Templeton World Fund, and the Mutual European Fund; and, except as admitted, state that they lack information or belief sufficient to answer the allegations in said paragraph.

B. Defendants

6. Answering Paragraph 6 of the FAC, Defendants state that said paragraph asserts conclusions of law to which no response is required; to the extent such allegations require a response, Defendants state that the phrase "all times relevant herein" is overly ambiguous and that Defendant shall answer as of the present date; admit that, as laid out in the Plan document, the Investment Committee consists of at least five members appointed by FRI's Board of Directors; admit that, as laid out in the Plan document, the Investment Committee is responsible for analyzing the performance and fees of investment options made available to Plan participants, selecting new investment options to be offered to Plan participants, and removing or replacing investment options offered to Plan participants; admit that at some time between July 28, 2010 and the present, Norman Frisbie, Jennifer Johnson, Penelope Alexander, Kenneth Lewis, Dan Carr, Alison Baur, and Madison ("Mat") Gulley each served as voting members of the Investment Committee; admit that at some time between July 28, 2010 and the present, Nicole Smith served as a non-voting member of the Investment Committee; and, except as admitted, deny each and every allegation in said paragraph.

7. Answering Paragraph 7 of the FAC, Defendants state that said paragraph asserts conclusions of law to which no response is required; to the extent such allegations require a response, Defendants admit that, as laid out in the Plan document, the Investment Committee exercised discretionary authority or control with respect to the management of the Plan and Plan assets; and, except as admitted, deny each and every allegation in said paragraph.

8. Answering Paragraph 8 of the FAC, Defendants state that said paragraph asserts conclusions of law to which no response is required; to the extent such allegations require a response, Defendants admit that, as laid out in the Plan document, the

Investment Committee had discretionary authority to control and manage the assets of the Plan; and, except as admitted, deny each and every allegation in said paragraph.

9. Answering Paragraph 9 of the FAC, Defendants admit that, as laid out in the Plan document, the Administrative Committee consists of at least five members appointed by FRI's Board of Directors; admit that the Administrative Committee's responsibilities, as laid out in the Plan document, include entering into agreements on the Plan's behalf with respect to Plan administrative matters, interpreting the terms of the Plan to determine questions of participant eligibility and benefits, and maintaining records necessary or appropriate for the proper administration of the Plan and/or which are necessary to comply with reporting requirements; and, except as admitted, deny each and every allegation in said paragraph.

10. Answering Paragraph 10 of the FAC, Defendants state that said paragraph asserts conclusions of law to which no response is required; to the extent such allegations require a response, Defendants admit that, as laid out in the Plan document, the Administrative Committee has discretionary authority to control and manage the operation and administration of the Plan; and, except as admitted, deny each and every allegation in said paragraph.

11. Answering Paragraph 11 of the FAC, Defendants state that said paragraph asserts conclusions of law to which no response is required; to the extent that such allegations require a response, Defendants admit that FRI is the Plan Sponsor and a party in interest to the Plan under 29 U.S.C. § 1002(14); admit that it is a corporation that is organized under the laws of the State of Delaware; admit that it has its corporate headquarters and principal place of business in San Mateo, California; and, except as admitted, deny each and every allegation in said paragraph.

12. Answering Paragraph 12 of the FAC, Defendants state that said paragraph asserts conclusions of law to which no response is required; to the extent such allegations require a response, Defendants admit that FRI is the Plan Sponsor, and certain employees of FRI and its subsidiaries exercise discretionary authority or control with respect to the

management and administration of the Plan; and, except as admitted, deny each and every allegation in said paragraph.

13. Answering Paragraph 13 of the FAC, Defendants state that said paragraph asserts conclusions of law to which no response is required; to the extent such allegations require a response, Defendants admit that, as laid out in the Plan document, the FRI Board of Directors appoints the members of the Investment Committee and the Administrative Committee; admit that, as laid out in the Plan document, the FRI Board of Directors may remove any member of the Investment Committee or the Administrative Committee; and, except as admitted, deny each and every allegation in said paragraph.

14. Answering Paragraph 14 of the FAC, Defendants admit that, at some time between July 28, 2010 and the present, each of Gregory E. Johnson, Rupert H, Johnson, Jr., Charles B. Johnson, Charles E. Johnson, Peter K. Barker, Mariann Byerwalter, Mark C. Pigott, Chutta Ratnathicam, Laura Stein, Seth Waugh, Geoffrey Y. Yang, Samuel Armacost, Joseph Hardiman, and Anne Tatlock served as a member of the FRI Board of Directors; and, except as admitted, deny each and every allegation in said paragraph.

15. Answering Paragraph 15 of the FAC, Defendants admit that, as laid out in the Plan document, the FRI Board of Directors appoints the members of the Investment Committee and the Administrative Committee; admit that, as laid out in the Plan document, the FRI Board of Directors may remove any member of the Investment Committee or the Administrative Committee with or without advance written notice; and, except as admitted, deny each and every allegation in said paragraph.

16. Answering Paragraph 16 of the FAC, Defendants state that said paragraph asserts conclusions of law to which no response is required; to the extent such allegations require a response, Defendants admit FRI is the Plan Sponsor, and that certain employees of FRI and its subsidiaries perform investment management and administration services; and, except as admitted, deny each and every allegation in said paragraph.

17. Answering Paragraph 17 of the FAC, Defendants state that said paragraph asserts conclusions of law to which no response is required; to the extent such allegations

require a response, Defendants admit that FRI is the Plan Sponsor, and that certain employees of FRI and its subsidiaries perform investment management and administration services; and, except as admitted, deny each and every allegation in said paragraph.

III. THE PLAN

18. Answering Paragraph 18 of the FAC, Defendants admit that the Plan is sponsored by FRI, and that the Plan document was amended effective October 1, 2010 and thereafter effective January 1, 2013; and, except as admitted, deny each and every allegation in said paragraph.

19. Answering Paragraph 19 of the FAC, Defendants admit each and every allegation in said paragraph.

20. Answering Paragraph 20 of the FAC, Defendants admit each and every allegation in said paragraph.

21. Answering Paragraph 21 of the FAC, Defendants admit each and every allegation in said paragraph.

22. Answering Paragraph 22 of the FAC, Defendants admit that eligible employees may participate in the Plan, pursuant to its terms; and, except as admitted, deny each and every allegation in said paragraph.

IV. THE PLAN'S INVESTMENTS

23. Answering Paragraph 23 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to specific court opinions, which opinions speak for themselves; to the extent Plaintiff misconstrues or misrepresents any material contained in said court opinions , Defendants deny such allegations and refer to the court opinions for their contents.

A. The Proprietary Mutual Funds

24. Answering Paragraph 24 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants admit that there are a variety of investment

options available in the 401(k) plan market; and, except as admitted, deny each and every allegation in said paragraph.

25. Answering Paragraph 25 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

26. Answering Paragraph 26 of the FAC, Defendants admit that the mutual funds offered to Plan participants (the "Proprietary Funds") are managed through FRI's subsidiaries; and admits each and every other allegation in said paragraph.

27. Answering Paragraph 27 of the FAC, Defendants admit that the investment options made available to Plan participants were selected by or at the direction of the Investment Committee; and, except as admitted, deny each and every allegation in said paragraph.

28. Answering Paragraph 28 of the FAC, Defendants deny each and every allegation in said paragraph.

29. Answering Paragraph 29 of the FAC, FRI admits that its subsidiaries that act as investment adviser or service provider to the Proprietary Funds are compensated in connection with the investment products and services they offer retail and institutional investors; and, except as admitted, deny each and every allegation in said paragraph.

30. Answering Paragraph 30 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to excerpted data from specific documents and that such documents speak for themselves; to the extent Plaintiff misconstrues or misrepresents any material contained in said documents, Defendants deny such allegations and refer to the documents for their contents; Defendants further specifically deny that the mutual funds referenced in those documents are comparable to the Proprietary Funds; and, except as admitted, deny each and every allegation in said paragraph.

31. Answering Paragraph 31 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants admit that the Plan offers an R6 share class for Proprietary Funds; deny that the referenced Vanguard Institutional Funds have investment styles that are "similar" to those of the Proprietary Funds; state that it lacks information or belief sufficient to answer the allegations regarding the fees cited; and, except as admitted, deny each and every allegation in said paragraph.

32. Answering Paragraph 32 of the FAC, Defendants deny each and every allegation in said paragraph.

33. Answering Paragraph 33 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants admit that, during Schwab's tenure as recordkeeper to the Plan, it was paid annual recordkeeper servicing fees of $1/month/account for recordkeeping services rendered to the Plan; and, except as admitted, deny each and every allegation in said paragraph.

34. Answering Paragraph 34 of the FAC, Defendants state that they lack information or belief sufficient to answer the allegations in said paragraph, but note that participant communications described Plan-related administrative fees.

35. Answering Paragraph 35 of the FAC, Defendants admit that, during Schwab's tenure as Plan recordkeeper, Schwab's compensation for recordkeeping services was, under certain circumstances, $70/participant/year; admit that the recordkeeper servicing fees paid as a pass-through mutual fund expense through Franklin Templeton Investor Services, LLC were used to offset the Plan's recordkeeping fees; and, except as admitted, deny each and every allegation in said paragraph.

36. Answering Paragraph 36 of the FAC, Defendants admit that, during Schwab's tenure as recordkeeper, if the recordkeeping servicing fees received from the underlying mutual funds were greater than Schwab's recordkeeping fees in a given year, the surplus would be used to pay Plan expenses; and, except as admitted, deny each and

every allegation in said paragraph.

37. Answering Paragraph 37 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

38. Answering Paragraph 38 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants admit that certain share classes of FTI mutual fund options offered in the Plan make available recordkeeping servicing fees, including, for example, up to 15 basis points or at a fixed rate; admit that the individual amounts paid by Franklin Templeton Investor Services, LLC and reimbursed by the funds vary by recordkeeper; and, except as admitted, deny each and every allegation in said paragraph.

39. Answering Paragraph 39 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

40. Answering Paragraph 40 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

41. Answering Paragraph 41 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

42. Answering Paragraph 42 of the FAC, Defendants state that they lack information or belief sufficient to answer the allegations in said paragraph, but note that participant communications described Plan-related administrative fees.

43. Answering Paragraph 43 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to a specific document and that such document speaks for itself; to the extent Plaintiff misconstrues or misrepresents any material contained in said document, Defendants deny such allegations and refer to the document for its contents.

44. Answering Paragraph 44 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants admit that FRI, offers, through its subsidiaries, certain separately-managed accounts and sub-advised portfolios to institutional clients; deny that these products are "identical" to the mutual funds offered to Plan participants; admit that certain of these products pursue investment strategies similar to certain mutual funds offered to Plan participants; and, except as admitted, deny each and every allegation in said paragraph.

45. Answering Paragraph 45 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants admit that, during the putative class period, the value of the Plan's assets invested in the Templeton Global Bond Fund exceeded $30 million; and, except as admitted, deny each and every allegation in said paragraph.

46. Answering Paragraph 46 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny that FRI currently has an operating margin of over 37%; and otherwise denies each and every allegation in said paragraph.

47. Answering Paragraph 47 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

48. Answering Paragraph 48 of the FAC, Defendants admit that from July 2010, until at least September 2013, the Plan included three Asset Allocation Funds; and admits that the Asset Allocation Funds were managed by a subsidiary of FRI with Messers. Coffey and Nelson serving as portfolio managers.

49. Answering Paragraph 49 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to a specific document and that such document speaks for itself; to the extent Plaintiff misconstrues or misrepresents any material contained in said document, Defendants deny such allegations and refer to the document for its contents.

50. Answering Paragraph 50 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants admit that FRI, acting through its subsidiaries, began offering target date funds to Plan participants on July 1, 2014; admit that asset allocation funds and target date funds both provide asset allocation in a single fund by investing assets in a collection of mutual funds that invest in foreign and domestic stocks and bonds; admit that a subsidiary of FRI managed the Allocation Funds and target Date Funds, with Messers. Coffey and Nelson serving as portfolio managers; and, except as admitted, deny each and every allegation in said paragraph.

51. Answering Paragraph 51 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants admit that the Target Date Funds replaced the Allocation Funds in the Plan lineup on July 1, 2014; and, except as admitted, deny each and every allegation in said paragraph.

52. Answering Paragraph 52 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to specific documents and such documents speak for themselves; to the extent Plaintiff

misconstrues or misrepresents any material contained in said documents, Defendants deny such allegations and refer to the documents for their contents.

53. Answering Paragraph 53 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants state that they lack information or belief sufficient to answer the allegations regarding the Target Date Funds' or unspecified Proprietary Funds' unspecified "peer median," and, on that basis, deny each and every allegation in said paragraph.

54. Answering Paragraph 54 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal response to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring specific documents and that such documents speak for themselves; to the extent Plaintiff misconstrues or misrepresents any material contained in said documents, Defendants deny such allegations and refer to the documents for their contents.

55. Answering Paragraph 55 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to specific, unidentified documents and that such documents speak for themselves; to the extent Plaintiff misconstrues or misrepresents any material contained in said documents, Defendants deny such allegations and refer to the documents for their contents.

56. Answering Paragraph 56 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants admit that the three Asset Allocation Funds were removed from the Plan lineup during the putative class period and replaced by the Franklin Target Date Funds; and, except as admitted, deny each and every allegation in said paragraph.

57. Answering Paragraph 57 of the FAC, Defendants state that Plaintiff appears to be referring to specific documents and such documents speak for themselves; to the

extent Plaintiff misconstrues or misrepresents any material contained in said documents, Defendants deny such allegations and refer to the documents for their contents.

58. Answering Paragraph 58 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

B. The Franklin Money Market Fund

59. Answering Paragraph 59 of the FAC, Defendants admit that stable value funds and money market funds are capital preservation investment options; and, except as admitted, deny each and every allegation in said paragraph.

60. Answering Paragraph 60 of the FAC, Defendants admit that stable value funds are included in the lineups of some defined contribution plans; and, except as admitted, deny each and every allegation in said paragraph.

61. Answering Paragraph 61 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to specific documents and that such documents speak for themselves; to the extent Plaintiff misconstrues or misrepresents any material contained in said documents, Defendants deny such allegations and refer to the documents for their contents.

62. Answering Paragraph 62 of the FAC, Defendants admit that stable value funds are intended to provide a certain rate of return to investors and to protect against the loss of capital through a wrap contract issued by a financial institution; and, except as admitted, deny each and every allegation in said paragraph.

63. Answering Paragraph 63 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to a specific document and that such document speaks for itself; to the extent Plaintiff misconstrues or misrepresents any material contained in said document, Defendants deny

such allegations and refer to the document for its contents.

64. Answering Paragraph 64 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants admit that stable value funds may be included in the lineups of some defined contribution plans; and, except as admitted, deny each and every allegation in said paragraph.

65. Answering Paragraph 65 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to a specific document and that such document speaks for itself; to the extent Plaintiff misconstrues or misrepresents any material contained in said document, Defendants deny such allegations and refer to the document for its contents.

66. Answering Paragraph 66 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to a specific document and that such document speaks for itself; to the extent Plaintiff misconstrues or misrepresents any material contained in said document, Defendants deny such allegations and refer to the document for its contents.

67. Answering Paragraph 67 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

68. Answering Paragraph 68 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

69. Answering Paragraph 69 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such

allegations require a response, Defendants state that Plaintiff appears to be relying on unspecified documents for such allegations and that any such documents speak for themselves; to the extent Plaintiff misconstrues or misrepresents any material contained in said documents, Defendants deny such allegations and refer to the documents for their contents.

70. Answering Paragraph 70 of the FAC, Defendants admit each and every allegation in said paragraph.

71. Answering Paragraph 71 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

72. Answering Paragraph 72 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

C. Excessive Total Plan Cost

73. Answering Paragraph 73 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants admit that Plan participants currently pay a flat recordkeeping fee of $12.00 per quarter, or $48.00 per year; and, except as admitted, deny each and every allegation in said paragraph.

74. Answering Paragraph 74 of the FAC, Defendants state that Plaintiff appears to be referring to specific documents and that such documents speak for themselves; to the extent Plaintiff misconstrues or misrepresents any material contained in said documents, Defendants deny such allegations and refer to the documents for their contents.

75. Answering Paragraph 75 of the FAC, Defendants state that Plaintiff appears to be referring to specific documents and that such documents speak for themselves; to the extent Plaintiff misconstrues or misrepresents any material contained in said documents,

Defendants deny such allegations and refer to the documents for their contents.

76. Answering Paragraph 76 of the FAC, Defendants state that Plaintiff appears to be referring to a specific document and that such document speaks for itself; to the extent Plaintiff misconstrues or misrepresents any material contained in said document, Defendants deny such allegations and refer to the document for its contents.

77. Answering Paragraph 77 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

78. Answering Paragraph 78 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

79. Answering Paragraph 79 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

D. Total Recordkeeping Fees Were Excessive

80. Answering Paragraph 80 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent such allegations require a response, Defendants admit that recordkeeping is a necessary service for every defined contribution plan; and, except as admitted, deny each and every allegation in said paragraph.

81. Answering Paragraph 81 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

82. Answering Paragraph 82 of the FAC, Defendants deny each and every allegation in said paragraph.

83. Answering Paragraph 83 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

84. Answering Paragraph 84 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

85. Answering Paragraph 85 of the FAC, Defendants admit that, beginning in 2005, the Plan contracted with The 401(k) Company to serve as the Plan recordkeeper; admit that The 401(k) Company was subsequently acquired by Charles Schwab ("Schwab") during the putative class period; admit that under the terms of The 401(k) Company service agreement, to which Schwab agreed to be bound, Schwab received annual recordkeeping fees of $70 per participant under certain circumstances; and, except as admitted, deny each and every allegation in said paragraph.

86. Answering Paragraph 86 of the FAC, Defendants admit that the Administrative Committee selected Bank of America Merrill Lynch ("BAML") to serve as the Plan recordkeeper in 2013; and admit that under the Plan's service agreement with BAML, Plan participants are charged an annual recordkeeping fee of $48 per participant.

87. Answering Paragraph 87 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

88. Answering Paragraph 88 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to

specific court opinions or filings, which opinions or filings speak for themselves and for which no response is required; to the extent Plaintiff misconstrues or misrepresents any material contained in said court opinions or filings, Defendants deny such allegations and refer to the court opinions or filings for their contents.

89. Answering Paragraph 89 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

90. Answering Paragraph 90 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

91. Answering Paragraph 91 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

92. Answering Paragraph 92 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

E. Individual Defendants' Conflicts of Interest

93. Answering Paragraph 93 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

94. Answering Paragraph 94 of the FAC, Defendants state that it appears that Plaintiff is referring to specific documents or public filings and that such documents or filings speak for themselves; to the extent Plaintiff misconstrues or misrepresents any

material contained in said documents or public filings, Defendants deny such allegations and refer to the documents or filings for their contents.

95. Answering Paragraph 95 of the FAC, Defendants admit each and every allegation in said paragraph.

96. Answering Paragraph 96 of the FAC, Defendants admit that Charles E. Johnson and Gregory E. Johnson are the sons of Charles B. Johnson; and, except as admitted, state that it appears that Plaintiff is referring to specific documents or public filings and that such documents or filings speak for themselves; to the extent Plaintiff misconstrues or misrepresents any material contained in said documents or public filings, Defendants deny such allegations and refer to the documents or filings for their contents.

97. Answering Paragraph 97 of the FAC, Defendants admit that, at various points over the Relevant Time Period, Jennifer M. Johnson has served as the President and Chief Operating Officer of FRI and in that position has been responsible for, among other things, FRI's global retail and institutional distribution efforts; admit that Jennifer M. Johnson is a member of the Investment Committee and the sister of Gregory E. Johnson; and, except as admitted, state that it appears that Plaintiff is referring to specific documents or public filings and that such documents or filings speak for themselves; to the extent Plaintiff misconstrues or misrepresents any material contained in said documents or public filings, Defendants deny such allegations and refer to the documents or filings for their contents.

98. Answering Paragraph 98 of the FAC, Defendants admit that Ken Lewis, FRI's Chief Financial Officer, is a member of the Investment Committee; admit that Dan Carr was formerly employed by a FRI subsidiary as Senior Associate General Counsel and served as a member of the Investment Committee during a portion of the putative class period; admit that at different times in the putative class period, Norman (Rick) Frisbie was formerly employed by FRI subsidiaries, first as Chief Administrative Officer and later as Executive Vice President and Head of Franklin Templeton Solutions; admit that Mr. Frisbie served as a member of the Investment Committee during a portion of the

putative class period; admit that the asset allocation and target date funds were within the Franklin Templeton Solutions group; and, except as admitted, deny each and every allegation in said paragraph.

99. Answering Paragraph 99 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

V. ERISA'S FIDUCIARY STANDARDS

100. Answering Paragraph 100 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to ERISA § 404(a), 29 U.S.C. § 1104(a), and that the statute speaks for itself; to the extent Plaintiff misconstrues or misrepresents said statute, Defendants deny such allegations and refer to the statute for its contents.

101. Answering Paragraph 101 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to a specific court opinion and that such opinion speaks for itself; to the extent Plaintiff misconstrues or misrepresents said court opinion, Defendants deny such allegations and refer to the court opinion for its contents.

102. Answering Paragraph 102 of the FAC, Defendants state that Plaintiff appears to be referring to a specific document and that such document speaks for itself.

103. Answering Paragraph 103 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to a specific document and that such document speaks for itself; to the extent Plaintiff misconstrues or misrepresents any material contained in said document, Defendants deny such allegations and refer to the document for its contents.

104. Answering Paragraph 104 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to specific documents and that such documents speak for themselves; to the extent Plaintiff misconstrues or misrepresents any material contained in said documents, Defendants deny such allegations and refer to the documents for their contents.

105. Answering Paragraph 105 of the FAC, Defendants state that Plaintiff appears to be referring to a specific document and that such document speaks for itself; to the extent Plaintiff misconstrues or misrepresents any material contained in said document, Defendants deny such allegations and refer to the document for its contents.

106. Answering Paragraph 106 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to ERISA § 409, 29 U.S.C. § 1109, and that the statute speaks for itself; to the extent Plaintiff misconstrues or misrepresents said statute, Defendants deny such allegations and refer to the statute for its contents.

VI. ERISA'S PROHIBITED TRANSACTION

107. Answering Paragraph 107 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to 29 U.S.C. §§ 1004, 1106, and that those statutes speak for themselves; to the extent Plaintiff misconstrues or misrepresents said statutes, Defendants deny such allegations and refer to the statutes for their contents.

108. Answering Paragraph 108 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to 29 U.S.C. § 1106(a)(1), and that the statute speaks for itself; to the extent Plaintiff misconstrues or misrepresents said statute, Defendants deny such allegations and

refer to the statute for its contents.

109. Answering Paragraph 109 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to 29 U.S.C. § 1106(b), and that the statute speaks for itself; to the extent Plaintiff misconstrues or misrepresents said statute, Defendants deny such allegations and refer to the statute for its contents.

110. Answering Paragraph 110 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required.

111. Answering Paragraph 111 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to Prohibited Transaction Exemption 77-3, and that the regulation speaks for itself; to the extent Plaintiff misconstrues or misrepresents said regulation, Defendants deny such allegations and refer to the regulation for its contents.

112. Answering Paragraph 112 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

113. Answering Paragraph 113 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to 29 U.S.C. § 1132(a)(3), and that the statute speaks for itself; to the extent Plaintiff misconstrues or misrepresents said statute, Defendants deny such allegations and refer to the statute for its contents.

114. Answering Paragraph 114 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to

be referring to 29 U.S.C. § 1105(a), and that the statute speaks for itself; to the extent Plaintiff misconstrues or misrepresents said statute, Defendants deny such allegations and refer to the statute for its contents.

VII. CLASS ALLEGATIONS

115. Answering Paragraph 115 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants state that Plaintiff appears to be referring to ERISA § 502(a)(2), 29 U.S.C. § 1132(a), and that the statute speaks for itself; to the extent Plaintiff misconstrues or misrepresents said statute, Defendants deny such allegations and refer to the statute for its contents.

116. Answering Paragraph 116 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants admit that Plaintiff purports to assert her claims on behalf of certain Plan participants and purports to exclude certain persons or entities from the class she purports to represent, but denies that class certification is appropriate and further denies that the appropriate class period for Plaintiff's claims begins on July 28, 2010 (more than six years before this litigation was instituted); and, except as admitted, deny each and every allegation in said paragraph.

117. Answering Paragraph 117 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph, and specifically deny that class certification is appropriate.

VIII. CLAIMS FOR RELIEF

First Claim for Relief: Breach of Fiduciary Duty

118. Answering Paragraph 118 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants restate and reincorporate by reference all responses to the allegations in the previous paragraphs of the Complaint.

119. Answering Paragraph 119 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants admit each and every allegation in said paragraph.

120. Answering Paragraph 120 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants admit that, as laid out in the Plan document, the FRI Board of Directors appoints the members of the Investment Committee and the Administrative Committee; admit that, as laid out in the Plan document, the FRI Board of Directors may remove any member of the Investment Committee or the Administrative Committee; and, except as admitted, deny each and every allegation in said paragraph.

121. Answering Paragraph 121 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

122. Answering Paragraph 122 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

123. Answering Paragraph 123 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

124. Answering Paragraph 124 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

125. Answering Paragraph 125 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

126. Answering Paragraph 126 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph and deny Plaintiff's entitlement to any of the requested relief.

Second Claim for Relief: 29 U.S.C. § 1106(a) Prohibited Transactions

127. Answering Paragraph 127 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants restate and reincorporate by reference all responses to the allegations in the previous paragraphs of the FAC.

128. Answering Paragraph 128 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required.

129. Answering Paragraph 129 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

130. Answering Paragraph 130 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

131. Answering Paragraph 131 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

132. Answering Paragraph 132 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph and deny Plaintiff's entitlement to any of the requested relief.

Third Claim for Relief: 29 U.S.C. § 1106(b) Prohibited Transactions

133. Answering Paragraph 133 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants restate and reincorporate by reference all responses to the allegations in the previous paragraphs of the FAC.

134. Answering Paragraph 134 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required.

135. Answering Paragraph 135 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

136. Answering Paragraph 136 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

137. Answering Paragraph 137 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

138. Answering Paragraph 138 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required.

139. Answering Paragraph 139 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every

allegation in said paragraph.

140. Answering Paragraph 140 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

141. Answering Paragraph 141 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph and deny Plaintiff's entitlement to any of the requested relief.

Fourth Claim for Relief: Failure to Monitor Fiduciaries

142. Answering Paragraph 142 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent such allegations require a response, Defendants restate and reincorporate by reference all responses to the allegations in the previous paragraphs of the FAC.

143. Answering Paragraph 143 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required.

144. Answering Paragraph 144 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required.

145. Answering Paragraph 145 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required.

146. Answering Paragraph 146 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required.

147. Answering Paragraph 147 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

148. Answering Paragraph 148 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required;

to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph.

149. Answering Paragraph 149 of the FAC, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law to which no response is required; to the extent such allegations require a response, Defendants deny each and every allegation in said paragraph and deny Plaintiff's entitlement to any of the requested relief.

IX. PRAYER FOR RELIEF

Answering Plaintiff's Prayer for Relief, Defendants state that said paragraph asserts Plaintiff's legal position to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph and deny Plaintiff's entitlement to any of the requested relief.

AFFIRMATIVE DEFENSES

Defendants assert the following affirmative defenses. By alleging these affirmative defenses, Defendants do not agree or concede that they have the burden of proof on any of the issues raised in these defenses or that any particular issue or subject matter herein is relevant to Plaintiff's allegations.

First Affirmative Defense

(Failure to State a Claim)

Plaintiff fails to state a claim or cause of action upon which relief can be granted.

Second Affirmative Defense

(Standing)

Plaintiff lacks constitutional and/or statutory standing to bring the claims alleged.

Third Affirmative Defense

(Standing–Covenant Not to Sue)

Plaintiff lacks constitutional and/or statutory standing to bring the claims alleged based on the covenant not to sue executed by Plaintiff on December 17, 2015, upon the termination of her employment.

Fourth Affirmative Defense

(Standing–No Injury)

Plaintiff lacks constitutional and/or statutory standing to bring the claims alleged because she has suffered no injury related to the purported breaches of fiduciary duty.

Fifth Affirmative Defense

(Statutes of Limitations and Repose)

Plaintiff's claims are barred in whole or in part by the applicable statute of limitations and statute of repose, including but not limited to 29 U.S.C. § 1113.

Sixth Affirmative Defense

(Failure to Allege Fraud With Particularity)

Insofar as Plaintiff purports to allege claims of breach of fiduciary duty as a result of misrepresentations, the circumstances constituting the alleged fraud or mistake have not been alleged with the requisite particularity required by Federal Rule of Civil Procedure 9(b).

Seventh Affirmative Defense

(Not Appropriate Relief under ERISA § 502(a)(2))

The requested relief does not constitute appropriate relief under ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2).

Eighth Affirmative Defense

(Prudent Action)

Without conceding that any Defendant is a fiduciary with respect to the conduct complained of by Plaintiff, Plaintiff's claims are barred in whole or in part because Defendants' actions were both procedurally and substantively prudent and cannot give rise to fiduciary liability under ERISA § 409(a), 29 U.S.C. § 1109(a).

Ninth Affirmative Defense

(Laches)

Plaintiff's claims are barred in whole or in part by the doctrine of laches.

Tenth Affirmative Defense

(Independent Control)

Plaintiff's claims, and those of the members of the putative class, are barred in whole or in part to the extent that Plaintiff and the putative class exercised independent control over their Plan accounts.

Eleventh Affirmative Defense

(Independent Control/ERISA § 404(c))

Plaintiff's claims, and those of the members of the putative class, are barred in whole or in part by application of ERISA § 404(c), 29 U.S.C. § 1104(c).

Twelfth Affirmative Defense

(Causation)

Plaintiff's claims are barred in whole or in part because any losses alleged by Plaintiff were not caused by any alleged breach of fiduciary duty by the Defendants.

Thirteenth Affirmative Defense

(Waiver)

Plaintiff's claims are barred in whole or in part by the doctrine of waiver.

Fourteenth Affirmative Defense

(Estoppel)

Plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

Fifteenth Affirmative Defense

(Reasonable Fees)

Plaintiff's claims, and those of the members of the putative class, are barred, in whole or in part, because the challenged fees and expenses are not excessive or unreasonable.

Sixteenth Affirmative Defense

(No Fiduciary Status)

Plaintiff's claims, and those of the members of the putative class, are barred, in whole or in part, because Defendants are not ERISA fiduciaries with respect to the conduct alleged in the FAC.

Seventeenth Affirmative Defense

(Disgorgement)

Without conceding that any Defendant is a fiduciary with respect to the conduct complained of by Plaintiff, Plaintiff's claims, and those of members of the putative class, are barred in whole or in part because disgorgement of revenue is unavailable under ERISA § 409(a), 29 U.S.C. § 1109(a).

Eighteenth Affirmative Defense

(Failure to Satisfy Rule 23)

This action may not be maintained as a class action because Plaintiff cannot satisfy the prerequisites of Federal Rule of Civil Procedure 23.

Nineteenth Affirmative Defense

(Failure to Satisfy Rule 23)

Plaintiff's claims may not be maintained as a class action because any alleged injury cannot be proven on a class-wide basis with common methods of proof.

Twentieth Affirmative Defense

(Failure to Satisfy Rule 23)

Plaintiff's claims may not be maintained as a class action because damages cannot be proven on a class-wide basis.

Twenty-First Affirmative Defense

(Failure to Satisfy Rule 23)

Plaintiff's claims may not be maintained as a class action because Plaintiff does not adequately represent the interests of proposed class members.

Twenty-Second Affirmative Defense

(Failure to Satisfy Rule 23)

Plaintiff's claims may not be maintained as a class action because Plaintiff's claim is not typical of the claims of the putative class.

Twenty-Third Affirmative Defense

(Prohibited Transaction Exemptions)

To the extent that Plaintiff has alleged that Defendants have committed any transactions prohibited by ERISA § 406, 29 U.S.C. § 1106, Plaintiff's claims are barred in whole or in part because ERISA § 408, 29 U.S.C. § 1108, and the Prohibited Transactions Exemptions promulgated by the Department of Labor pursuant thereto, exempt all such transactions.

Reservation of Rights to Assert Additional Defenses

Defendants reserve the right to assert, and hereby give notice that they intend to rely upon, any other defense that may become available or appear during discovery proceedings or otherwise in this case and hereby reserve the right to amend their Answer to assert any such defense.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiff take nothing by the FAC;
2. That the FAC, and each cause of action therein, be dismissed with prejudice;
3. That Defendants be awarded their costs of suit, including attorneys' fees; and
4. That the Court award such other relief as it deems just and appropriate.

Dated: April 20, 2018

Respectfully submitted,

BRIAN D. BOYLE
CATALINA J. VERGARA
O'MELVENY & MYERS LLP

By: /s/ Catalina J. Vergara
Catalina J. Vergara

Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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

Plaintiffs,

v.

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

Defendants.

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

Judge: Hon. Claudia Wilken

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

A federal court has authorized this Notice. This is not a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS

You are receiving this notice (the "Notice") because the records of the Franklin Templeton 401(k) Retirement Plan (the "Plan") indicate that you have been a participant in the Plan and maintained an account with a positive balance at some point since July 28, 2010. As such, your rights may be affected by a proposed settlement of this class action litigation (the "Settlement").

This Notice summarizes the proposed Settlement. The complete terms and conditions of the Settlement are described in the Settlement Agreement, which is available at www._____.com, or by contacting class counsel, Mark G. Boyko at mboyko@baileyglasser.com or Oren Faircloth at ofaircloth@ikrlaw.com, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.cand.uscourts.gov, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, Ronald V. Dellums Federal Building & United States Courthouse, 1301 Clay Street, Oakland, CA 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

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

What this Litigation is About

This consolidated class action litigation is brought on behalf of participants in the Plan. Marlon H. Cryer and Nelly F. Fernandez (collectively referred to as "Plaintiffs" or "Class Representatives") are the named plaintiffs and the representatives on behalf of all members of the Class in the litigation. One of the consolidated lawsuits was filed in July 2016, and the other in November 2017.

Plaintiffs sued Franklin Resources, Inc. ("Franklin"), the Franklin Templeton 401(k) Retirement Plan Investment Committee (the "Investment Committee"), the individual members of the Investment Committee, and others alleged to have served in fiduciary roles to the Plan (together, "Defendants") alleging primarily that Defendants violated their fiduciary duties by choosing for the Plan allegedly imprudent and expensive investment funds that were managed by Franklin's investment adviser subsidiaries, and by allegedly failing to negotiate lower record keeping fees with the Plan's third-party recordkeepers. Plaintiffs allege that there were superior, less expensive investment options available that Defendants should have chosen for the Plan. Plaintiffs also allege that between 2010 and 2013, Franklin engaged in transactions prohibited by the Employee Retirement Income Security Act of 1974 ("ERISA"). After the lawsuits were filed, Plaintiffs agreed voluntarily to dismiss from the litigation a claim for alleged breach of fiduciary duty relating to monitoring of the Plan fiduciaries as well as certain individual defendants, and the Court granted summary judgment to Defendants on Plaintiffs' alleged excessive recordkeeping fee claim.

Defendants deny all allegations of wrongdoing, fault, liability or damage to the Plaintiffs and the Class and deny that they have engaged in any wrongdoing or violation of law or breach of duty. Defendants maintain that they acted in the best interests of Plan participants at all times and complied with their fiduciary obligations to the Plan and its participants. Among other things, Defendants contend that the Plan fiduciaries employed a robust and thorough process for selecting, monitoring, and removing Plan investment options and for monitoring Plan-related fees.

The Terms of the Settlement

To avoid the time and expense of further litigation, Plaintiffs and Defendants have agreed to resolve the consolidated litigation. The Settlement is the product of extensive negotiations between the parties, who were assisted in their negotiations by a neutral private mediator. The parties have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. If the Settlement is approved by the Court, the Class will obtain the benefits of the Settlement without the further delay and uncertainty of additional litigation. The Settlement resolves all issues regarding the Plan's investment options and fees from July 28, 2010 through such time as the Court grants final approval of the Settlement.

The terms of the Settlement are set forth in the Settlement Agreement and Release dated February 15, 2019 (the "Settlement Agreement"), which is available at www._____.com. Those terms are summarized below. Nothing in the Settlement Agreement is an admission or concession on Defendants' part of any fault or liability whatsoever, nor is it an admission or concession on Plaintiffs' part that their claims lacked merit.

1. The Class Covered by the Settlement. The Court certified a Class on July 26, 2017, and the Settlement applies to, and is binding on, that Class. The Class is defined as:

> All participants in the Franklin Templeton 401(k) Retirement Plan from July 28, 2010 to the date of judgment. Excluded from the class are Defendants, Defendants' beneficiaries, and Defendants' immediate families.

Plan records indicate that you may be a member of the Class because you are a current or former participant in the Plan who has maintained a positive account balance at some point since July 28, 2010.

2. Relief Provided to the Class by the Settlement. Under the proposed Settlement, (1) Franklin will contribute thirteen million, eight hundred fifty thousand dollars ($13,850,000) to a Settlement Fund (the "Settlement Amount"); (2) Franklin will provide an additional benefit to the Plan by increasing its existing match contributions to the Plan from its current rate of seventy-five percent (75%) of each participant's eligible salary deferrals to eighty-five percent (85%) of such deferrals for a period of three years (the "Increased Match");[1] and (3) the Investment Committee responsible for selecting investment options for the Plan will add a non-proprietary target date fund (TDF) to the Plan as an additional investment option.

The Settlement Amount—after the deduction of amounts to be approved by the Court for Class Counsel's Attorneys' Fees and Expenses and Case Contribution Awards to the named Plaintiffs, as well as Administration Costs, Independent Fiduciary Fees and Costs, and Taxes and Tax-Related Costs[2]—and Anticipated Future Benefit will be distributed to eligible Class Members pursuant to a Plan of Allocation to be approved by the Court. Individual benefits under the Settlement for each Class Member will be determined in accordance with that Plan of Allocation. The proposed Plan of Allocation, which is generally based on the average year-end account balances of each participant from a period between 2010 and 2018 and the Class Member's current or former participant status in the Plan, as shown in the Plan's records, is available at [URL].

On a summary level, Settlement benefits will be distributed as follows: current Plan participants with positive account balances who are no longer eligible to contribute to their account (generally, former employees) will receive their allocation from the Settlement Fund by

[1] The value of a 10% match increase is subject to fluctuation depending on future Plan participant counts and deferrals over the three-year period. Using participant data from 2017, a 10% match increase would have provided an incremental benefit of approximately $4.3 million to Plan participants in that year. For purposes of estimating the value of the Increased Match, $4.3 million will be used as the annual estimate (the "Anticipated Future Benefit").

[2] All capitalized terms not defined in this Notice are defined in the Settlement Agreement, which can be viewed at [URL].

electronic payment to their Plan accounts; and former participants (those who have closed out, or rolled over, their Plan accounts) will receive their allocation from the Settlement Fund by check. In either case, no payment to such Class Members shall be less than $10.00. Current Plan participants with positive account balances who are still eligible to contribute to the Plan (generally, current employees) will receive their allocation first through the Increased Match, as described in the Plan of Allocation, and may also receive an allocation from the Settlement Fund after the conclusion of the Increased Match Period if the Increased Match received over that period was less than they would have been entitled to had they been entitled to participate in the initial settlement distribution. All inquiries related to distributions should be addressed solely to the Settlement Administrator at the addresses listed below.

[ADDRESS]

3. Summary of the Claims Released by the Class. In exchange for the Settlement Amount and other terms of the Settlement, all members of the Class will release any and all claims for monetary, injunctive, and all other relief against the Defendant Released Parties through the date the Court enters the Final Approval Order and Judgment (including, without limitation, any Unknown Claims) arising out of or in any way related to: (a) the conduct alleged in the operative Complaints, whether or not included as counts in the Complaints; (b) the selection, retention and monitoring of the Plan's investment options and service providers; (c) the performance, fees and other characteristics of the Plan's investment options; (d) the Plan's fees and expenses, including without limitation, its recordkeeping fees; (e) the nomination, appointment, retention, monitoring and removal of the Plan's fiduciaries; and (f) the approval by the Independent Fiduciary of the Settlement; except that the Released Claims shall not include claims to enforce the covenants or obligations set forth in the Agreement and shall not in any way bar, limit, waive, or release, any individual claim by any Class Member to vested benefits that are otherwise due under the terms of the Plan.

Class Members will not have the right to sue the Defendants or other Defendant Released Parties, whether individually or on behalf of the Plan, for conduct pertaining to the Plan during the Class Period or conduct that the Settlement requires Defendants to undertake during its Compliance Period. The entire release is set forth in the Settlement Agreement, which can be viewed online at www._____.com, or requested from Class Counsel.

The Settlement Approval Process

The Court has granted preliminary approval of the proposed Settlement and approved this Notice. The Settlement will not take effect, and there will be no benefits distributed under the Settlement, however, if the Court does not enter a Final Approval Order and Judgment or the Settlement otherwise does not become effective. The Court will hold a Final Approval Hearing on _____ in Courtroom 6 at the United States District Court for the Northern District of California, Ronald V. Dellums Federal Building & United States Courthouse, 1301 Clay Street, Oakland, California. Class Counsel will attend the hearing to answer any questions the Court may have. You are not required to attend the Final Approval Hearing.

The date and location of the Final Approval Hearing is subject to change by order of the Court without further notice to the Class. If you would like to attend the Final Approval

Hearing, you should check the Settlement Website, [URL], or the Court's online docket to confirm that the date has not been changed. Prior to the Final Approval Hearing, an Independent Fiduciary will be asked to approve the Settlement and Released Claims on behalf of the Plan, as may be required by ERISA Prohibited Transaction Exemption 2003-39 or any other applicable class or statutory exemptions. Defendants have the unilateral right not to proceed with the Settlement in the absence of such Independent Fiduciary approval.

The Opportunity to Object to the Settlement

As a Class Member, you can ask the Court to deny approval of the Settlement by filing an objection. You cannot, however, ask the Court to order settlement on different terms; the Court can only approve or reject the Settlement on the terms reached by the Parties. If the Court denies approval, the Settlement Amount will not be distributed, the Increased Match will not be implemented, and the litigation will resume.

Any objection to the proposed Settlement must be made in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Cryer v. Franklin Resources, Inc.*, Lead Case No. 4:16-cv-04265-CW), (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, Ronald V. Dellums Federal Building & United States Courthouse, 1301 Clay Street, Oakland, CA 94612, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before [DATE].

Those Class Members or their attorneys intending to appear at the Final Approval Hearing must give notice of their intention to appear setting forth, among other things, the name, address, and telephone number of the Class Member (and, if applicable, the name, address, and telephone number of that Class Member's attorney) on Class Counsel and Defendants' Counsel and file it with the Court Clerk on or before [DATE].

If the Court approves the Settlement, you will be bound by it and will receive whatever benefits you are entitled to under its terms. You cannot exclude yourself from the Settlement. The Court certified the Class under Federal Rule of Civil Procedure 23(b)(1), which does not permit Class Members to opt out of the Class.

Attorneys' Fees and Case Contribution Awards for Named Plaintiffs

The Class is represented by Class Counsel. The attorneys for the Class are as follows:

Gregory Y. Porter
Mark G. Boyko
BAILEY & GLASSER LLP
1055 Thomas Jefferson Street NW
Suite 540
Washington, DC 20007

mboyko@baileyglasser.com
314-863-5446

Robert A. Izard
Mark P. Kindall
Douglas P. Needham
IZARD, KINDALL & RAABE LLP
29 South Main Street, Suite 305
West Hartford, CT 06107

Class Counsel and the Class Representatives have devoted many hours to investigating the claims, bringing this litigation, and pursuing it for over two years. During that time, Class Counsel incurred litigation expenses in addition to the time spent by attorneys, paralegals, and others. Class Counsel also took the risk of litigation and have not been paid for their time and expenses while this litigation has been pending before the Court.

Class Counsel will file a motion with the Court seeking approval of payment from the Settlement Fund of reasonable attorneys' fees and reimbursement of the expenses they incurred in prosecuting the litigation. They will request (1) attorneys' fees of $7,490,000, which represents approximately 28% of the aggregate value of the Settlement Amount and the estimated value of the three-year Increased Match, and (2) reimbursement of expenses of $xxx. Plaintiffs will also request that the Court order Case Contribution Awards of $25,000 for Plaintiff Cryer and $15,000 for Plaintiff Fernandez from the Settlement Fund. Defendants have reserved the right to object to such requested amounts.

Plaintiffs' preliminary approval motion and supporting papers were filed on February 15, 2019, and their papers in support of their fee and expense motion, as well as their papers in support of final approval of the Settlement, will be filed on or before [DATE]. You may review these filings at www._____.com. Any award of Attorneys' Fees and Expenses and Case Contribution Awards approved by the Court, in addition to the Administration Costs, Independent Fiduciary Fees and Costs, and Taxes and Tax-Related Costs will be paid from the Settlement Fund.

Getting More Information

You do not need to do anything to be a part of this Class or, if the Settlement is approved, to be eligible to receive your share of the Settlement Fund and/or Increased Match, as applicable. If you still have a Plan account with a positive balance when Settlement Fund distributions are made, your Settlement benefits will be distributed to your Plan account. If you no longer have a Plan account, a check will be mailed to you.

You can visit the Settlement Website at www._____.com, where you will find the full Settlement Agreement, the Court's order granting preliminary approval, this Notice, and other relevant documents. If there are any changes to the deadlines identified in this Notice, the date of the Final Approval Hearing, or the Settlement Agreement, those changes will be posted to the Settlement Website. You will not receive an additional mailed notice with those changes, unless separately ordered by the Court. If you cannot find the information you need on the

website, you may also contact **1-800-xxx-xxxx** for more information. Please do not contact the Court or counsel for Defendants to get additional information.

Dated: _____, 2019

By Order of the United States District Court
District Judge Claudia Wilken

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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

Plaintiffs,

v.

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

Defendants.

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

SETTLEMENT AGREEMENT

Judge: Hon. Claudia Wilken

This Settlement Agreement and Release ("Agreement") is entered into on February 15, 2019, by and among Plaintiffs, on their own behalves and on behalf of the Class and the Plan, on the one hand, and the Defendants, on the other hand, in consideration of the promises, covenants, and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate.

The capitalized terms used in the preceding sentence and in this Agreement are defined in Part I below.

I. DEFINITIONS

1.1. "Action" shall mean *Cryer, et al. v. Franklin Resources, Inc., et al.*, N.D. Cal. Case No. 4:16-cv-04265-CW, consolidated with *Fernandez, et al. v. Franklin Resources, Inc., et al.*, N.D. Cal. Case No. 4:17-cv-06409-CW, and any and all cases now or hereafter consolidated herewith.

1.2. "Active Participant" shall mean any Class Member who, as of the date of the Preliminary Approval Order, has a Plan account with a positive balance and is eligible to make additional contributions to the account.

1.3. "Administration Costs" shall mean (a) the costs and expenses associated with the production and dissemination of the Notice; (b) all reasonable costs incurred by the Settlement Administrator in administering and effectuating this Settlement, including costs of distributing the Settlement Amount, which costs are necessitated by performance and implementation of this Agreement and any court orders relating thereto; and (c) all reasonable fees charged by the Settlement Administrator.

1.4. "Attorneys' Fees and Expenses" shall mean any and all attorneys' fees, costs (including fees and costs charged or incurred by retained experts or consultants), and expenses of Class Counsel for their past, present, and future work, efforts, and expenditures in connection with this Action and resulting Settlement.

1.5. "Case Contribution Awards" shall have the meaning ascribed to it in Section 8.1.

1.6. "Class" shall mean the class certified by the Court on July 26, 2017, consisting of all participants in the Franklin Templeton 401(k) Retirement Plan from July 28, 2010, to the date

of judgment, excluding Defendants, Defendants' beneficiaries, and Defendants' immediate families.

1.7. "Class Counsel" shall mean Robert Izard of Izard Kindall & Raabe LLP and Gregory Porter of Bailey & Glasser LLP.

1.8. "Class Member" shall mean a member of the Class.

1.9. "Court" shall mean the United States District Court for the Northern District of California.

1.10. "Company" shall mean Franklin Resources, Inc.

1.11. "Compliance Period" shall mean a period lasting three years from the Effective Date.

1.12. "Defendants" shall mean Franklin Resources, Inc., the Franklin Templeton 401(k) Retirement Plan Investment Committee, the Franklin Templeton 401(k) Retirement Plan Administrative Committee, Norman Frisbie, Jennifer Johnson, Penelope Alexander, Kenneth Lewis, Dan Carr, Nicole Smith, Alison Baur, Madison Gulley (erroneously sued as "Matthew Gulley"), the Franklin Resources, Inc. Board of Directors, Gregory E. Johnson, Rupert H. Johnson, Jr., Charles B. Johnson, Charles E. Johnson, Peter K. Barker, Mariann Byerwalter, Mark C. Pigott, Chutta Ratnathicam, Laura Stein, Seth Waugh, Geoffrey Y. Yang, Samuel Armacost, Joseph Hardiman, and Anne Tatlock.

1.13. "Defendants' Counsel" shall mean Brian D. Boyle and Catalina J. Vergara of O'Melveny & Myers LLP.

1.14. "Defendant Released Parties" shall mean (a) Defendants and, as applicable, each of their predecessors, successors, current and former parents, subsidiaries, affiliates, divisions, related companies, assigns, descendants, dependents, beneficiaries, marital community, heirs, executors, and administrators; (b) Franklin Templeton sponsored funds, investment vehicles, or other products; and (c) each of the current and former officers, directors, trustees, and fiduciaries (including but not limited to the current and former trustees and fiduciaries of the Plan, with the exception of the Independent Fiduciary), committees, employees, investment consultants,

administrators, actuaries, agents, insurers, representatives, attorneys, and retained experts of the entities and individuals in (a) and (b).

1.15. "Effective Date" shall mean (a) the date upon which the applicable period to appeal the Final Approval Order and Judgment has expired, if no appeal is taken during such period; or (b) if, during the appeals period, an appeal is taken from such Final Approval Order and Judgment, the date upon which all appeals, including further petitions for review, rehearing, or certiorari, and any proceedings resulting therefrom, have been finally disposed of, or the date upon which the applicable period to initiate such further petitions or proceedings has expired. The Parties shall agree in writing when the Effective Date has occurred, and any dispute shall be resolved by the Court. It is expressly agreed by the Parties and their counsel that no Party intends this provision or any other part of this Agreement to establish or acknowledge that anyone is entitled to or has the right to appeal from the Final Approval Order and Judgment.

1.16. "Escrow Account" shall mean an account at an established Financial Institution agreed upon by the Parties that is established for the deposit of the Settlement Amount and amounts relating to it, such as income earned on investment of the Settlement Amount.

1.17. "Escrow Agent" shall mean the entity approved by the Parties to act as escrow agent for any portion of the Settlement Amount deposited in or accruing in the Escrow Account pursuant to this Agreement.

1.18. "Fee and Expense Application" shall mean the petition to be filed by Class Counsel seeking approval of an award of Attorneys' Fees and Expenses.

1.19. "Final Approval Hearing" shall mean the hearing to be held before the Court pursuant to Federal Rule of Civil Procedure 23(e) to determine whether the Agreement should receive final approval by the Court. The Parties will request that the Final Approval Hearing be scheduled for a date no earlier than one hundred ten (110) calendar days after the entry of the Preliminary Approval Order.

1.20. "Final Approval Order and Judgment" shall mean a final order entered by the Court after the Final Approval Hearing, substantially the same in all material respects to that attached hereto as **Exhibit A**, granting its approval of the Settlement. The Parties may agree to

additions or modifications to the form of the Final Approval Order and Judgment as they agree are appropriate at the time that it is submitted to the Court for final approval of the Settlement.

1.21. "Financial Institution" shall mean the institution at which the Escrow Account is established.

1.22. "Former Participant" shall mean any Class Member who maintained a positive balance in the Plan on or after July 28, 2010, but who does not have any account with a positive balance in the Plan as of the date of the Preliminary Approval Order.

1.23. "Inactive Participant" shall mean any Class Member who, as of the date of the Preliminary Approval Order, has a Plan account with a positive balance but who is no longer eligible to make contributions to the Plan account.

1.24. "Increased Match" shall have the meaning ascribed to it in Section 3.3.

1.25. "Increased Match Period" shall have the meaning ascribed to it in Section 3.3.

1.26. "Independent Fiduciary" shall mean the qualified and experienced independent fiduciary that the Company selects to review the Settlement independently on behalf of the Plan (subject to the consent of Plaintiffs, which consent shall not be unreasonably withheld).

1.27. "Independent Fiduciary Fees and Costs" shall mean all reasonable fees, costs, and expenses of the Independent Fiduciary. The Independent Fiduciary Fees and Costs shall be paid from the Settlement Fund after such funds are deposited with the Escrow Agent and upon receipt of an invoice from the Independent Fiduciary.

1.28. "Notice" shall mean the notice, identical in all material respects to that attached hereto as **Exhibit B**, to be provided directly to Class Members pursuant to Section 2.4 and made available on the Settlement Website and the website of Class Counsel.

1.29. "Parties" shall mean Plaintiffs, the Class, and Defendants.

1.30. "Plaintiffs" shall mean Plaintiffs Marlon H. Cryer and Nelly J. Fernandez.

1.31. "Plan" shall mean the Franklin Templeton 401(k) Retirement Plan.

1.32. "Plan of Allocation" shall mean the framework for allocating the Settlement Fund that is approved by the Court, which framework shall be in the form attached hereto as **Exhibit C**.

1.33. "Plan Recordkeepers" shall mean Charles Schwab Retirement Plan Services Company and Bank of America Merrill Lynch.

1.34. "Preliminary Approval Order" shall mean an order entered by the Court preliminarily approving the Settlement, pursuant to Section 2.1 below, which order is substantially the same in all material respects to that attached hereto as **Exhibit D**.

1.35. "Regulatory Change" shall have the meaning ascribed to it in Section 3.4(a).

1.36. "Released Claims" shall be any and all claims for monetary, injunctive, and all other relief against the Defendant Released Parties through the date the Court enters the Final Approval Order and Judgment (including, without limitation, any Unknown Claims) arising out of or in any way related to: (a) the conduct alleged in the *Cryer* and *Fernandez* operative Complaints, whether or not included as counts in the Complaints; (b) the selection, retention and monitoring of the Plan's investment options and service providers; (c) the performance, fees and other characteristics of the Plan's investment options; (d) the Plan's fees and expenses, including without limitation, its recordkeeping fees; (e) the nomination, appointment, retention, monitoring and removal of the Plan's fiduciaries; and (f) the approval by the Independent Fiduciary of the Settlement; except that the Released Claims shall not include claims to enforce the covenants or obligations set forth in this Agreement, nor do they include, and this Agreement does not in any way bar, limit, waive, or release, any individual claim by the Plaintiffs or a Class Member to vested benefits that are otherwise due under the terms of the Plan. With respect to the Released Claims, it is the intention of the Parties and all other Class Members and the Plan expressly to waive to the fullest extent of the law: (i) the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides that "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor"; and (ii) the provisions, rights and benefits of any similar statute or common law of any other jurisdiction that may be, or may be asserted to be, applicable.

1.37. "Settlement" shall mean the compromise and resolution embodied in this Agreement.

1.38. "Settlement Administrator" shall mean Angeion Group.

1.39. "Settlement Amount" shall mean thirteen million eight hundred fifty thousand dollars ($13,850,000).

1.40. "Settlement Fund" shall have the meaning set forth in Section 4.1(b).

1.41. "Settlement Website" shall have the meaning ascribed to it in Section 2.5.

1.42. "Structural Changes" shall mean the Plan changes set forth in Sections 3.2 and 3.3.

1.43. "Taxes" shall have the meaning ascribed to it in Section 4.1(i).

1.44. "Tax-Related Costs" shall have the meaning ascribed to it in Section 4.1(i).

1.45. "Unknown Claims" shall mean any Released Claims that Plaintiffs and/or any Class Members do not know or suspect to exist in their favor at the time of the release of the Defendant Released Parties, including claims which, if known by them, might have affected their settlement with the Defendants and release of the Defendant Released Parties, or might have affected their decision not to object to this Settlement. Plaintiffs and/or any Class Members may later discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiffs and all Class Members, upon the date of the Court's entry of the Final Approval Order and Judgment, shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiffs and all Class Members shall be deemed by operation of the Final Approval Order and Judgment to have acknowledged that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

II. SETTLEMENT APPROVAL

2.1. ***Motion for Preliminary Approval.*** No later than February 15, 2019, Plaintiffs shall move the Court for preliminary approval of the Settlement, including entry of an order identical in all material respects to the form of the Preliminary Approval Order. Plaintiffs' papers seeking preliminary settlement approval will make clear that before the Parties reached this Settlement and independent of any settlement discussions, Plaintiffs agreed voluntarily to dismiss, with prejudice, the Franklin Resources, Inc. Board of Directors, the individual current and former Franklin Board members named in the suit (Gregory E. Johnson, Rupert H. Johnson, Jr., Charles B. Johnson, Charles E. Johnson, Peter K. Barker, Mariann Byerwalter, Mark C. Pigott, Chutta Ratnathicam, Laura Stein, Seth Waugh, Geoffrey Y. Yang, Samuel Armacost, Joseph Hardiman, and Anne Tatlock), and Plaintiff Fernandez's monitoring claim, which dismissal will be effected as part of the Final Approval Order and Judgment. Defendants will not object to Plaintiffs' motion for preliminary approval but reserve the right to challenge the Fee and Expense Application and request for Case Contribution Awards referenced therein in full.

2.2. ***Rights of Exclusion.*** Class Members shall not be permitted to exclude themselves from the Class.

2.3. ***Right to Object.*** Class Members shall be permitted to object to the Settlement. Requirements for filing an objection shall be set forth in the Preliminary Approval Order.

2.4. ***Class Notice.*** Within forty-five (45) calendar days of the entry of the Preliminary Approval Order or as may be modified by the Court, the Settlement Administrator shall send the Notice by electronic mail (if available) or first-class mail to the Class Members. The Notice shall be sent to the last known electronic mail address or last known mailing address of the Class Members that are available through the Plan Recordkeepers. The Settlement Administrator shall update mailing addresses through the National Change of Address database before mailing (with all returned mail skip-traced and promptly re-mailed).

2.5. ***Settlement Website.*** Within thirty (30) calendar days of the entry of the Preliminary Approval Order and no later than the first date that the e-mailing or the mailing of the Notice occurs, or as may be extended by the Court on application of the Parties, the Settlement

Administrator shall establish a website containing the Notice and this Agreement and its exhibits (the "Settlement Website"). The Notice will identify the web address of the Settlement Website.

2.6. ***Settlement Information Line.*** Within thirty (30) calendar days of the entry of the Preliminary Approval Order and no later than the first date that the e-mailing or the mailing of the Notice occurs, or as may be extended by the Court on application of the Parties, the Settlement Administrator shall establish a toll-free telephone number to which Class Members can direct questions about the Settlement. The Settlement Administrator shall develop a question-and-answer-type script, with input and approval from Defendants' Counsel and Class Counsel, for the use of persons who answer calls to this line.

2.7. ***Approval of Settlement by Independent Fiduciary.***

(a) The Independent Fiduciary shall review the Settlement and provide any requested authorizations, including the authorization required by Employee Retirement Income Security Act of 1974 ("ERISA") Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632 (Dec. 31, 2003), as amended by 75 Fed. Reg. 33830 (June 15, 2010). The Parties shall comply with reasonable requests for information made by the Independent Fiduciary.

(b) At least thirty (30) calendar days prior to the Final Approval Hearing, the Independent Fiduciary shall have approved and authorized in writing the Settlement, and given a release in its capacity as fiduciary of the Plan for and on behalf of the Plan, on the terms set forth in Section 6.1, in accordance with Prohibited Transaction Class Exemption 2003-39. Should the Independent Fiduciary fail to approve and authorize the Settlement or fail to give a release on behalf of the Plan, the Agreement shall be terminable, pursuant to Section 9.3 below.

2.8. ***Class Action Fairness Act Notice.*** The Settlement Administrator shall comply with the notice requirements of 28 U.S.C. § 1715, and pursuant to the Preliminary Approval Order, shall file a notice with the Court confirming compliance at least thirty (30) calendar days prior to the Final Approval Hearing.

2.9. ***Motion for Final Approval.*** Plaintiffs shall move the Court for final approval of the Settlement no later than the deadline set by the Court in the Preliminary Approval Order, or as may be extended by the Court on application of the Parties. On or after the date set by the Court for the Final Approval Hearing pursuant to Federal Rule of Civil Procedure 23(e)(2), the Court shall determine, among other things, (a) whether to enter the Final Order and Judgment finally approving the Settlement; and (b) what, if any, Case Contribution Awards and/or Attorneys' Fees and Expenses should be awarded to Plaintiffs and Class Counsel, respectively, pursuant to Sections 8.1 and 8.2 of this Agreement.

III. STRUCTURAL CHANGES

3.1. ***Overview.*** In consideration of all the promises and agreements set forth in this Agreement, Defendants agree to make certain Plan Structural Changes, as set forth in Sections 3.2 and 3.3 below. It is understood and agreed by the Parties that by making these Structural Changes, Defendants do not agree with or in any way admit, and shall not be deemed to agree with or in any way admit, any theories of Plaintiffs or Class Counsel regarding Defendants' liability in the Action, including, without limitation, that any of Defendants' prior or existing practices violates any federal or state laws, statutes, or regulations.

3.2. ***Addition to Investment Lineup.*** No later than thirty (30) calendar days following the Effective Date, unless otherwise stipulated by the Parties to address any implementation issues, the fiduciaries to the Plan with responsibility for selecting Plan investment options will add a nonproprietary target date fund option ("TDF") to the Plan lineup, and such TDF (or another nonproprietary TDF) will be maintained as a Plan investment option for the duration of the Compliance Period, in addition to the Plan's Qualified Default Investment Alternative (currently the LifeSmart Target Date Funds). The choice of TDF will be made by the fiduciaries responsible for selecting Plan investment options in a manner consistent with their fiduciary oversight responsibilities, following a search of nonproprietary TDF options conducted by the Plan's independent investment consultant, Callan Associates, Inc.

3.3. ***Additional Plan Benefit Consisting of Increased Match Contributions by the Company.*** The Company agrees to provide an additional benefit to the Plan consisting of an

increase of the Company's existing match contributions to the Plan from a rate of seventy-five percent (75%) of each participant's eligible salary deferrals to the rate of eighty-five percent (85%) (the "Increased Match"), beginning with the first full quarter of participant deferrals following the Effective Date, for a period of three years (the "Increased Match Period"). The Increased Match will apply to participants eligible to receive match contributions under the Plan document. The Company may elect, in its sole discretion, to accelerate the Increased Match Period starting with deferrals made by eligible participants during the calendar year in which the Increased Match is implemented, by making retroactive "true-up" Increased Match contributions (i.e., at a rate of 10%) to the Plan accounts of those Participants who received a 75% match contribution during that calendar year. Should the Company elect to do so, the three-year Increased Match Period shall be deemed to have commenced on the first day of the first quarter in which the Increased Match was first applied, even if that date is prior to the Effective Date. (Thus, by way of illustration only, if the Effective Date falls on September 1, 2019, such that the Increased Match under this Agreement would otherwise first apply beginning with eligible participant deferrals made in the fourth calendar quarter of 2019, the Company could instead elect to apply the Increased Match to eligible participant deferrals made beginning in the first calendar quarter of 2019 and forward. Under this example, those Plan participants who received 75% match contributions during any of the quarters in 2019, would receive retroactive Increased Match contributions in their Plan accounts, based on their eligible deferrals in 2019, and the Increased Match Period would end on December 31, 2021.) Under all circumstances, the Plan's vesting rules will apply to the Increased Match.

3.4. ***Impact of Regulatory Changes.***

(a) Notwithstanding anything in this Part III to the contrary, Defendants shall not be required to comply with any provision of this Part III should Congress, the Department of Labor, or any other applicable regulatory or self-regulatory body impose substantive requirements that render such compliance unlawful, whether through statute, regulation, guidance, or otherwise ("Regulatory Change").

(b) Notwithstanding anything in this Part III to the contrary, Defendants shall

have the right, at their sole option, to modify any of the Structural Changes described in Part III following a Regulatory Change; provided, however, that, in the event of a Regulatory Change that affects only certain of the provisions of this Part III, Defendants shall be required to continue to comply with all other provisions of Part III that are not affected by the Regulatory Change. In the event of a Regulatory Change, (i) Defendants shall notify Class Counsel about the change and Defendants' resulting modification and (ii) Defendants' compliance with the new regulatory requirements and/or guidance shall be deemed compliant with the terms of this Agreement.

3.5. ***Compliance Reporting.*** Defendants shall file a notice with the Court within thirty (30) calendar days following (a) the end of the first full quarter in which the Increased Match is implemented or (b) the end of the first full quarter after the Effective Date, whichever is later, or as may be extended by the Court on application of the Parties, attesting that they have implemented the Structural Changes.

IV. PAYMENTS TO THE CLASS

4.1. ***The Settlement Amount.***

(a) In consideration of all of the promises and agreements set forth in this Agreement, the Company will pay the Settlement Amount. None of the other Defendant Released Parties shall have any obligation to contribute financially to this Settlement. It is understood and agreed by the Parties that by paying the Settlement Amount, Defendants do not agree with or in any way admit, and shall not be deemed to agree with or in any way admit, any theories of Plaintiffs or Class Counsel regarding Defendants' liability in the Action, including, without limitation, that any of Defendants' prior or existing practices violates any federal or state laws, statutes, or regulations.

(b) The Company shall pay the Settlement Amount in two segments, and this funding, in the aggregate, together with any interest and investment earnings thereon, shall constitute the "Settlement Fund." First, the Company shall cause seventy-five thousand dollars ($75,000) of the Settlement Amount to be deposited by wire transfer into the Escrow Account within fifteen (15) calendar days of the entry of the Preliminary

Approval Order to fund any Administration Costs and Independent Fiduciary Fees and Costs that arise before the Court's entry of the Final Approval Order and Judgment. Second, the Company shall cause the remaining portion of the Settlement Amount to be deposited by wire transfer into the Escrow Account within fifteen (15) calendar days following the Court's entry of the Final Approval Order and Judgment, subject to the provisions of Section 9.5.

(c) The Settlement Amount shall be used solely for the purposes set forth in Section 4.1(j) below.

(d) Subject to Court approval and oversight, the Escrow Account will be controlled by the Settlement Administrator. Neither Defendants nor Plaintiffs shall have any liability whatsoever for the acts or omissions of the Settlement Administrator appointed by the Court. The Settlement Administrator shall not disburse the Settlement Amount or any portion of the Settlement Fund except as provided for in this Agreement, by an order of the Court, or with prior written agreement of Class Counsel and Defendants' Counsel.

(e) The Settlement Administrator is authorized to execute transactions on behalf of Class Members that are consistent with the terms of this Agreement and with orders of the Court.

(f) All funds held in the Escrow Account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until the funds are distributed in accordance with this Agreement.

(g) The Settlement Administrator shall, to the extent practicable and prudent, invest the Settlement Fund in discrete and identifiable instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. The Settlement Administrator shall maintain records identifying in detail each instrument in which the Settlement Fund or any portion thereof has been invested, and identifying the precise

location (including any safe deposit box number) and form of holding of each such instrument. Neither the Settlement Fund nor any portion thereof shall be commingled with any other monies in any instruments. Any cash portion of the Settlement Fund not invested in instruments of the type described in the first sentence of this Section 4.1(g) shall be maintained by the Settlement Administrator, and not commingled with any other monies, in a bank account, which shall promptly be identified to the Parties at any Party's request by bank and account number and any other identifying information. The Settlement Administrator and Class Members shall bear all risks related to investment of the Settlement Fund.

(h) The Escrow Account is intended to be a "Qualified Settlement Fund" within the meaning of Treasury Regulation § 1.468B-1. The Settlement Administrator, as administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing tax returns for the Escrow Account and paying from the Escrow Account any Taxes owed with respect to the Escrow Account. The Company agrees to provide the Settlement Administrator with the statement described in Treasury Regulation §1.468B-3(e). Neither Defendants, Defendants' Counsel, the Defendant Released Parties, Plaintiffs, nor Class Counsel shall have any liability or responsibility of any sort for filing any tax returns or paying any taxes with respect to the Escrow Account.

(i) All taxes on the income of the Escrow Account ("Taxes") and expenses and costs incurred in connection with the taxation of the Escrow Account (including, without limitation, expenses of tax attorneys and accountants) ("Tax-Related Costs") shall be timely paid by the Settlement Administrator out of the Escrow Account.

(j) The Settlement Fund will be used to pay the following amounts associated with the Settlement:

(1) Compensation to Class Members determined in accordance with Section 4.2;

(2) Any Case Contribution Awards approved by the Court;

(3) All Attorneys' Fees and Expenses approved by the Court;

(4) Independent Fiduciary Fees and Costs;

(5) Administration Costs; and

(6) Taxes and Tax-Related Costs.

4.2. ***Distribution to Class Members.***

(a) The Settlement Fund will be distributed to Class Members in accordance with the Plan of Allocation.

(b) It is understood and agreed by the Parties that the proposed Plan of Allocation is not part of this Agreement and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceeding relating to the Plan of Allocation shall not operate to terminate or cancel this Agreement or affect the finality of the Court's Final Approval Order and Judgment approving the Settlement or any other orders entered pursuant to the Agreement. Notwithstanding the foregoing or anything else in this Agreement, any revisions to the Plan of Allocation that would increase the Settlement Amount or require the Company or its affiliates to incur additional expenses or costs or to provide data not readily available shall be deemed a material alteration of this Agreement and shall entitle the Company, at its election, to terminate the Agreement.

(c) Class Members who receive a check from the Settlement Administrator under the Plan of Allocation must cash their checks within ninety (90) calendar days of issuance. If they do not do so, the checks will be void, and the Settlement Administrator shall be instructed to return any such funds to the Settlement Fund pursuant to Section 4.4. This limitation shall be printed on the face of each check. Notwithstanding these requirements, the Settlement Administrator shall have the authority to reissue checks to Class Members where it determines there is good cause to do so, provided that doing so will not compromise the Settlement Administrator's ability to implement the Plan of Allocation. The voidance of checks shall have no effect on the Class Members' release of claims, obligations, representations, or warranties as provided herein, which shall remain

in full effect.

4.3. ***Responsibility for Taxes on Distribution.*** Each Class Member who receives a payment under this Agreement shall be fully and ultimately responsible for payment of any and all federal, state or local taxes resulting from or attributable to the payment received by such person. Each Class Member shall hold Defendants, Defendants' Counsel, the Defendant Released Parties, Class Counsel, and the Settlement Administrator harmless from (a) any tax liability, including without limitation penalties and interest, related in any way to payments or credits under the Agreement, and (b) the costs (including, without limitation, fees, costs and expenses of attorneys, tax advisors, and experts) of any proceedings (including, without limitation, any investigation, response, and/or suit), related to such tax liability.

4.4. ***Treatment of Undistributed Funds and Uncashed Checks.*** Any funds associated with checks that are not cashed within ninety (90) calendar days of issuance and any funds that cannot be distributed to Class Members for any other reason, together with any interest earned on them, and any funds remaining after the payment of any applicable Taxes by the Escrow Agent, shall be returned to the Settlement Fund by the Settlement Administrator to be distributed as described in the Plan of Allocation.

4.5. ***Administration Costs.*** The Administration Costs shall be paid from the Settlement Fund. The Settlement Administrator will reserve from the Settlement Fund its estimated Administration Costs. Beginning thirty (30) calendar days after the entry of the Preliminary Approval Order, and on every thirtieth (30th) calendar day thereafter, the Settlement Administrator shall provide the Parties with a detailed accounting of any Administration Costs expended to date and an invoice for the amount of such Administration Costs. Any disputes as to whether amounts billed by the Settlement Administrator are reasonable and necessary under this Agreement shall be resolved by the Court.

4.6. ***Entire Monetary Obligation.*** Notwithstanding anything else in this Agreement, in no event shall Defendants be required to pay any amounts under this Agreement or otherwise, other than the Settlement Amount, or the costs of the Structural Changes described in Part III.

V. SETTLEMENT ADMINISTRATION

5.1. The Company shall use reasonable efforts to cause the Plan Recordkeepers to provide to the Settlement Administrator, within thirty (30) calendar days of the entry of the Preliminary Approval Order, the participant data sufficient to effectuate the Notice, implement the Plan of Allocation, and distribute the Settlement Fund. Subject to at least thirty (30) calendar days' written notice from the Settlement Administrator, the Company shall also use reasonable efforts to cause the current Plan Recordkeeper to provide an updated list of Active Participants and Inactive Participants prior to the distribution, in order to identify any such participants who have taken a full distribution from their Plan account and no longer have a Plan account with a positive balance. The Company shall not otherwise be obligated to assist with effecting Notice, implementation of the Plan of Allocation, or distribution of the Settlement Fund.

5.2. The Settlement Administrator shall administer the Settlement subject to the supervision of Class Counsel, Defendants' Counsel, and the Court as circumstances may require.

5.3. Defendants, Defendants' Counsel, and the Defendant Released Parties shall have no responsibility for, interest in, or liability whatsoever, with respect to:

(a) any act, omission or determination of the Settlement Administrator, Class Counsel, or designees or agents of Class Counsel or the Settlement Administrator;

(b) any act, omission or determination of Class Counsel or their designees or agents in connection with the administration of the Settlement;

(c) the management, investment, or distribution of the Settlement Fund; or

(d) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund.

5.4. The Settlement Administrator shall provide to Class Counsel and Defendants' Counsel, no less frequently than monthly, a full accounting of all expenditures made in connection with the Settlement, including Administration Costs (as noted in Section 4.5 above), and any distributions from the Settlement Fund.

5.5. The Settlement Administrator shall provide such information as may be reasonably requested by Plaintiffs or Defendants or their counsel relating to administration of this Agreement.

VI. RELEASES, COVENANTS AND JUDICIAL FINDINGS

6.1. ***Release of Defendants and the Defendant Released Parties.*** Subject to Part IX below, upon and through the date of the Court's entry of the Final Approval Order and Judgment, Plaintiffs and each Class Member (on behalf of themselves, their current and former beneficiaries, their representatives and successors-in-interest), and the Plan (by and through the Independent Fiduciary pursuant to Section 2.7(b)) absolutely and unconditionally release and forever discharge all Released Claims.

6.2. ***Covenant Not to Sue.*** The Parties recognize that the Structural Changes in Part III above and the Settlement Amount in Part IV above are designed to benefit the Class and to eliminate any potential future controversies over the Released Claims. In order to ensure that these practices affecting the Plan are not subject to future potentially inconsistent challenges or standards, Class Members agree that, for the duration of the Compliance Period, none of them will institute, maintain, prosecute, sue, or assert in any action or proceeding, whether individually, in a representative capacity, or on behalf of the Plan, any claim based on conduct subsequent to, or any liability or damages claimed to arise or occur after, the date of the Court's entry of the Preliminary Approval Order, with respect to any of the conduct or practices this Agreement requires Defendants to undertake, including without limitation the requirement to add a nonproprietary TDF investment option. Notwithstanding this Section 6.2, any claim concerning the substantive prudence of the particular TDF ultimately added to the Plan lineup pursuant to Section 3.2 is preserved.

6.3. ***Releases of Plaintiffs, the Plan, the Class, and Class Counsel.*** Upon and through the date of the Court's entry of the Final Approval Order and Judgment, the Company (on behalf of itself and any successors-in-interest) shall be deemed to have, and by operation of the Final Approval Order and Judgment, shall have, fully, finally, and forever released, relinquished, and discharged, and shall forever be enjoined from prosecution of Plaintiffs, the Plan, the Class and

Class Counsel from any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys' fees and costs, whether under local, state or federal law, whether by statute, contract, common law or equity, whether brought in an individual, representative or any other capacity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, relating to the pursuit of the Action.

6.4. ***Taxation of Settlement Fund.*** Plaintiffs acknowledge that the Defendant Released Parties have no responsibility for any taxes due on funds deposited in or distributed from the Settlement Fund, or on any funds that Plaintiffs or Class Counsel receive from the Settlement Fund, including through any Case Contribution Awards or Attorneys' Fees and Expenses award, as applicable.

6.5. ***Use of Settlement Administrator Information.*** Class Counsel, Defendants' Counsel, and the Defendants shall have equal access to information held by the Settlement Administrator given that such information is necessary to administer this Settlement, except to the extent the Settlement Administrator receives or provides information protected by attorney-client privilege.

6.6. ***Use of Company and Plan Information.*** Class Counsel and their agents, including without limitation the Settlement Administrator, shall use any information provided by the Company and/or the Plan Recordkeepers pursuant to this Agreement solely for the purpose of providing the Notice and administering this Settlement and for no other purpose. Such information shall be marked "Confidential" and treated as such under the Protective Order governing this Action.

VII. REPRESENTATIONS AND WARRANTIES

7.1. ***Parties' Representations and Warranties.*** The Parties, and each of them, represent and warrant as follows, and each Party acknowledges that each other Party is relying on these representations and warranties in entering into this Settlement Agreement:

(a) That they have diligently investigated the claims in this Action; that they are voluntarily entering into this Agreement as a result of arm's-length negotiations

among their counsel; that in executing this Agreement they are relying solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently-selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof; and that, except as provided in this Agreement, they have not been influenced to any extent whatsoever in executing this Agreement by any representations, statements, or omissions pertaining to any of the foregoing matters by any Party or by any person representing any Party. Each Party assumes the risk of mistake as to facts or law.

(b) That they have carefully read the contents of this Agreement and this Agreement is signed freely by each signatory executing the Agreement on behalf of the applicable Party. The Parties, and each of them, further represent and warrant to each other that he, she, or it has made such investigation of the facts pertaining to this Settlement, this Agreement, and all of the matters pertaining thereto, as he, she or it deems necessary.

7.2. ***Signatories' Representations and Warranties.*** Each person executing this Agreement on behalf of any other person does hereby personally represent and warrant that he or she has the authority to execute this Agreement on behalf of, and fully bind, each principal whom such individual represents or purports to represent and that no right or claim compromised pursuant to this Agreement has been assigned or hypothecated to any third party.

VIII. MONETARY PAYMENTS

8.1. ***Case Contribution Awards***

(a) Plaintiff Cryer will seek a Case Contribution Award not to exceed the amount of twenty-five thousand dollars ($25,000.00) and Plaintiff Fernandez will seek a Case Contribution Award not to exceed the amount of fifteen thousand dollars ($15,000), which awards shall be subject to Court approval (the "Case Contribution Awards"). Defendants reserve all rights to oppose Plaintiffs' request for Case Contribution Awards in full. Any Case Contribution Awards approved by the Court shall be paid within thirty (30) calendar days of the Effective Date. The Case Contribution Awards shall be paid by

the Settlement Administrator solely out of the Settlement Fund and shall be deducted (to the extent approved by the Court) from the Settlement Fund on or after the Effective Date and prior to the distribution of the Settlement Fund to the Class Members. Plaintiffs shall also be entitled to distribution under this Settlement pursuant to Section 4.2 as Class Members.

(b) Notwithstanding any other provision of this Agreement to the contrary, the procedure for and the allowance or disallowance (in whole or in part) by the Court of any application for the Case Contribution Awards shall be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceedings relating to the Case Contribution Awards, or any appeal of any order relating thereto, shall not operate to terminate or cancel this Agreement or be deemed material thereto.

(c) Defendants shall have no obligations whatsoever with respect to any Case Contribution Award to Plaintiffs, which shall be payable solely out of the Settlement Fund.

8.2. ***Attorneys' Fees and Expenses***

(a) Class Counsel will submit a Fee and Expense Application seeking an award of Attorneys' Fees not to exceed seven million four hundred ninety thousand dollars ($7,490,000), plus reasonable litigation Expenses. Defendants reserve all rights to oppose the Fee and Expense Application in full. Any amount awarded by the Court in response to such Fee and Expense Application shall be paid by the Settlement Administrator solely out of the Settlement Fund and shall be deducted (to the extent approved by the Court) from the Settlement Fund and paid to Class Counsel within thirty (30) calendar days of the Effective Date.

(b) Notwithstanding any other provision of this Agreement to the contrary, the procedure for and the allowance or disallowance (in whole or in part) by the Court of the Fee and Expense Application to be paid out of the Settlement Fund shall be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy

of the Settlement, and any order or proceedings relating to the award of Attorneys' Fees and Expenses, or any appeal of any order relating thereto, shall not operate to terminate or cancel this Agreement or be deemed material thereto.

(c) Defendants shall have no obligations whatsoever with respect to any Attorneys' Fees and Expenses incurred by Class Counsel, which shall be payable solely out of the Settlement Fund.

IX. CONTINGENCIES, EFFECT OF DISAPPROVAL OR TERMINATION OF SETTLEMENT

9.1. This Agreement and the Settlement shall terminate and be cancelled if, within ten (10) business days after any of the following events, one of the Parties provides written notification of an election to terminate the Settlement:

(a) The Court declines to provide preliminary approval of this Agreement, or declines to enter, or materially modifies, the contents of the Preliminary Approval Order, or the Preliminary Approval Order is vacated, reversed or modified in any material respect on any appeal or other review or in a collateral proceeding occurring prior to the Effective Date;

(b) The Court declines to provide final approval of this Agreement, or declines to enter, or materially modifies, the contents of the Final Approval Order and Judgment;

(c) The Court's Final Approval Order and Judgment is vacated, reversed or modified in any material respect on any appeal or other review or in a collateral proceeding occurring prior to the Effective Date; or

(d) The Effective Date does not occur for some other reason.

9.2. For purposes of this Agreement, no order of the Court, or modification or reversal on appeal of any order of the Court, solely concerning the administration of the Settlement or the persons performing such administrative functions, or the amount or award of any Attorneys' Fees and Expenses or Case Contribution Awards shall constitute grounds for cancellation or termination of the Agreement.

9.3. This Agreement and the Settlement shall terminate and be cancelled, at the sole election of the Company, if the Independent Fiduciary disapproves or otherwise does not authorize the Settlement or refuses to approve the release on behalf of the Plan of the Released Claims. Alternatively, the Company shall have the option to waive this condition. Unless otherwise agreed by the Parties, either option is to be exercised in writing within the earlier of: (a) ten (10) business days after the Parties' receipt of the Independent Fiduciary's written determination under Section 2.7 or (b) three (3) business days prior to the date set for the Final Approval Hearing.

9.4. This Agreement and the Settlement shall terminate and be cancelled if (a) any federal or state authorities object to, or request material modifications to, the Agreement; and (b) within ten (10) business days after the deadline set in the Preliminary Approval Order for such objections or requests, or within ten (10) business days of receiving any such objection or request, if later, the Company provides written notice of its election to terminate the Settlement.

9.5. If for any reason this Agreement is terminated or fails to become effective, then:

(a) The Parties shall be deemed to have reverted to their respective status in the Action as of February 15, 2019, the Action shall then resume proceedings in the Court, and, except as otherwise expressly provided in this Agreement, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered.

(b) Class Counsel and Defendants' Counsel shall within ten (10) business days after the date of termination of the Agreement jointly notify the Financial Institution in writing to return to the Company, or its designee, the full amount contained in the Settlement Fund, with all interest and income earned thereon, after deduction of any amounts earlier disbursed and/or incurred by the Settlement Fund as of the termination, and direct the Financial Institution to effect such return within fourteen (14) calendar days after such notification. Prior to the return of amounts contemplated by this Section 9.5(b), the Financial Institution shall fully and finally fulfill and set aside for any and all tax obligations of the Settlement Fund as set forth in Section 4.1(i) and the Company shall have no past, present, or future liability whatsoever for any such tax obligations.

(c) This Part IX and its provisions shall survive any termination of this Settlement, as will Sections 4.3, 5.3, 6.4, and 6.6 above.

X. NO ADMISSION OF WRONGDOING

10.1. The Parties understand and agree that this Agreement embodies a compromise settlement of disputed claims, and that nothing in this Agreement, including the furnishing of consideration for this Agreement, shall be deemed to constitute any finding or admission of any wrongdoing or liability by any of the Defendants or the Defendant Released Parties, or give rise to any inference of wrongdoing or liability in the Action or any other proceeding. This Agreement and the consideration provided hereunder are made in compromise of disputed claims and are not admissions of any liability of any kind, whether legal or factual. The Defendants and the Defendant Released Parties specifically deny any such liability or wrongdoing and the Company states that it is entering into the Agreement solely to eliminate the burden and expense of protracted litigation. Further, Plaintiffs, while believing that all Claims brought in the Action have merit, have concluded that the terms of this Agreement are fair, reasonable, and adequate to the Plan, themselves, and the Class Members given, among other things, the inherent risks, difficulties and delays in complex ERISA litigation such as the Action. Neither the fact, nor the terms, of this Agreement shall be used or offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this Agreement, whether affirmatively or defensively.

XI. MISCELLANEOUS

11.1. ***No Disparaging Statements***. Defendants, Defendants' Counsel, Plaintiffs, and Class Counsel shall make no statements to the press or make any other public statements describing this Settlement that disparage any Party or Defendant Released Parties or accuse any Party or Defendant Released Parties of wrongdoing. Nothing in this Agreement shall be construed to prevent Plaintiffs and Class Counsel from freely and frankly communicating with the Class Members.

11.2. ***Waiver.*** The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving Party. The waiver by any Party of any breach of this

Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

11.3. ***Dispute Resolution.*** If a dispute arises regarding compliance with any of the provisions of this Agreement, it shall first be mediated in non-binding mediation by a mutually agreed mediator. The cost of any mediation shall be split equally between Plaintiffs and the Company.

11.4. ***Entire Agreement.*** This Agreement is the entire agreement among the Parties and it supersedes any prior agreements, written or oral, between the Parties. This Agreement cannot be altered, modified or amended except through a writing executed by either Plaintiffs and Defendants, or by Class Counsel and Defendants' Counsel.

11.5. ***Construction of Agreement.*** This Agreement shall be construed to effectuate the intent of the Parties to resolve all disputes encompassed by the Agreement. All Parties have participated in the drafting of this Agreement, and any ambiguity shall not be resolved by virtue of a presumption in favor of any Party. The Agreement was reached at arm's length by the Parties represented by counsel. None of the Parties shall be considered to be the drafter of this Agreement or any provision hereof for the purposes of any statute, case law, or rule of interpretation or construction.

11.6. ***Principles of Interpretation.*** The following principles of interpretation apply to this Agreement:

(a) The headings of this Agreement are for reference only and do not affect in any way the meaning or interpretation of this Agreement.

(b) Definitions apply to the singular and plural forms of each term defined.

(c) Definitions apply to the masculine, feminine, and neutral genders of each term defined.

(d) References to a person are also to the person's permitted successors and assignees.

(e) Whenever the words "include," "includes," or "including" are used in this Agreement, they shall not be limiting but rather shall be deemed to be followed by the

words "without limitation."

11.7. ***Executed in Counterparts.*** This Agreement may be executed in counterparts, all of which shall be considered the same as if a single document had been executed. The Agreement shall be deemed executed by all Parties when such counterparts have been signed by each of the Parties' counsel and delivered to the other Party. Counterpart copies of signature pages, whether delivered in original, by electronic mail in pdf format and/or by facsimile, taken together shall all be treated as originals and binding signatures.

11.8. ***Notices.*** Unless otherwise provided herein, any notice, request, instruction, application for Court approval, or application for Court order sought in connection with the Agreement, shall be in writing and delivered personally or sent by certified mail or overnight delivery service, postage prepaid, with copies by facsimile or e-mail to the attention of Class Counsel or Defendants' Counsel, as applicable (as well as to any other recipients that a court may specify). Parties may change the person(s) to whom such notices should be directed by giving notice pursuant to this Section 11.8. As of the date hereof, the respective representatives are as follows:

For Defendants:

Brian D. Boyle
O'Melveny & Myers LLP
1625 Eye Street, NW
Washington, D.C. 20006
Telephone: (202) 383-5300
Facsimile: (202) 383-5414
Email: bboyle@omm.com

For Plaintiffs:

Gregory Y. Porter
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11.9. ***Extensions of Time.*** The Parties may agree, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of the Agreement.

11.10. ***Governing Law.*** This Agreement shall be governed by and construed in accordance with the laws of California without giving effect to any conflict of law provisions that would cause the application of the laws of any jurisdiction other than California.

11.11. ***Fees and Expenses***. Except as otherwise expressly set forth herein, each Party hereto shall pay all fees, costs and expenses incurred in connection with the Action, including fees, costs and expenses incident to his, her or its negotiation, preparation or compliance with this Agreement, and including any fees, expenses and disbursements of its counsel, accountants, and other advisors. Nothing in this Agreement shall require Defendants to pay any monies other than as expressly provided herein.

11.12. ***Communication With Participants.*** Nothing in this Agreement or Settlement shall prevent or inhibit the Company's ability to communicate with Active, Inactive, or Former Participants of the Plan. The Plaintiffs acknowledge and do not object to the fact that the Company informed the Class Members of this Settlement prior to their receipt of Notice under this Agreement.

11.13. ***Retention of Jurisdiction.*** The Parties shall request that the Court retain jurisdiction of this matter after the Effective Date and enter such orders as necessary or appropriate to effectuate the terms of the Agreement.

Dated: February 15, 2019

MARK P. KINDALL
ROBERT A. IZARD
IZARD KINDALL & RAABE LLP

GREGORY Y. PORTER
MARK G. BOYKO
BAILEY & GLASSER

By: _____
Gregory Y. Porter

Attorneys for Plaintiffs

Dated: February 15, 2019

BRIAN D. BOYLE
CATALINA J. VERGARA
O'MELVENY & MYERS LLP

By: _____
Catalina J. Vergara
Attorneys for Defendants

EXHIBIT A

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Attorneys for the Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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

Plaintiffs,

v.

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

Defendants.

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

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

Judge: Hon. Claudia Wilken

JUDGMENT APPROVING SETTLEMENT OF CLASS ACTION

WHEREAS, Marlon Cryer and Nelly Fernandez (the "Plaintiffs") in the above-captioned consolidated litigation (the "Action") on their own behalf and on behalf of the Class and the Plan, on the one hand, and Defendants Franklin Resources, Inc., the Franklin Templeton 401(k) Retirement Plan Investment Committee, the Franklin Templeton 401(k) Retirement Plan Administrative Committee, Norman Frisbie, Jennifer Johnson, Penelope Alexander, Kenneth Lewis, Dan Carr, Nicole Smith, Alison Baur, Madison Gulley (erroneously sued as Matthew Gulley), the Franklin Resources, Inc. Board of Directors, Gregory E. Johnson, Rupert H. Johnson, Jr., Charles B. Johnson, Charles E. Johnson, Peter K. Barker, Mariann Byerwalter, Mark C. Pigott, Chutta Ratnathicam, Laura Stein, Seth Waugh, Geoffrey Y. Yang, Samuel Armacost, Joseph Hardiman, and Anne Tatlock (the "Defendants"), on the other hand, have entered into a Settlement Agreement and Release dated February 15, 2019, (the "Agreement"), that provides for a complete dismissal with prejudice of all claims asserted in the Action against Defendants by the Class on the terms and conditions set forth in the Agreement, subject to the approval of this Court (the "Settlement");

WHEREAS, the capitalized terms not defined in this Final Approval Order and Judgment shall have the same meaning ascribed to them in Part I of the Agreement;

WHEREAS, by Order dated _____ (the "Preliminary Approval Order"), this Court (1) preliminarily approved the Settlement; (2) appointed a Settlement Administrator; (3) directed notice be given to the Class and approved the form and manner of Notice; (4) approved the Plan of Allocation; (5) scheduled a Final Approval Hearing; and (6) scheduled a hearing on Class Counsel's Fee and Expense Application and Plaintiffs' request for Case Contribution Awards;

WHEREAS, due and adequate notice has been given to the Class;

WHEREAS, the Court conducted a hearing on _____ (the "Final Approval Hearing") to consider, among other things, (1) whether the proposed Settlement on the terms and conditions provided for in the Agreement is fair, reasonable, adequate, and in the best interests of the Class and should be finally approved by the Court; (2) whether Class Counsel's Fee and Expense Application is reasonable and should be approved; (3) whether Plaintiffs' request for Case Contribution Awards is reasonable and should be approved; and (4) whether this Final Approval Order and Judgment should be entered dismissing with prejudice all claims asserted in the Action against Defendants; and

WHEREAS, the Court having reviewed and considered the Agreement, all papers filed and proceedings held herein in this Action in connection with the Settlement, all oral and written comments received regarding the Settlement, and the record in the Action, and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Jurisdiction:** The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the Class Members.

2. **Incorporation of Settlement Documents:** This Final Approval Order and Judgment incorporates and makes a part hereof: (a) the Agreement filed with the Court on February 15, 2019, including the Plan of Allocation submitted therewith; and (b) the Notice approved by the Court on _____.

3. **Notice:** The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice reasonably practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise all Class Members of the pendency of the Action,

of the effect of the Settlement (including the releases provided for therein), of their right to object to the Settlement and appear at the Final Approval Hearing, of Class Counsel's Fee and Expense Application, and of Plaintiffs' request for Case Contribution Awards; (d) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution including the Due Process Clause, and all other applicable law and rules.

4. **Objections:** The Court finds _____.

5. **Final Settlement Approval:** Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Agreement in all respects including, without limitation, the terms of the Settlement; the releases provided for therein; and the dismissal with prejudice of the claims asserted in the Action, and finds that the Settlement is, in all respects, fair, reasonable and adequate, and is in the best interests of Plaintiffs and the Class. The Parties are directed to implement, perform and consummate the Settlement in accordance with the terms and provisions of the Agreement.

6. **Dismissal of Claims:** As of the Effective Date, pursuant to Fed. R. Civ. P. 54(b), all of the claims asserted in this Action against Defendants are hereby dismissed with prejudice. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Agreement.

7. **Binding Effect:** The terms of the Agreement and of this Final Approval Order and Judgment shall be forever binding on Defendants, Plaintiffs, and all Class Members, as well as their respective current and former beneficiaries, heirs, descendants, dependents, administrators, executors, representatives, predecessors, successors, and assigns.

8. **Releases:** The releases set forth in the Agreement (the "Releases"), are expressly incorporated herein in all respects. The Releases are effective as of the date of the entry of this Final Approval Order and Judgment. Accordingly, the Court orders that, as of that date:

a) Plaintiffs and each Class Member (on behalf of themselves, their current and former beneficiaries, heirs, descendants, dependents, administrators, executors, representatives, predecessors, successors, and assigns), and the Plan (by and through the Independent Fiduciary), shall be deemed to have, and by operation of law and of this Final Approval Order and Judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived, discharged, and dismissed with prejudice all Released Claims, including any and all claims for monetary, injunctive, and all other relief against the Defendant Released Parties through the date the Court enters the Final Approval Order and Judgment (including, without limitation, any Unknown Claims) arising out of or in any way related to: (a) the conduct alleged in the *Cryer* and *Fernandez* operative Complaints, whether or not included as counts in the Complaints; (b) the selection, retention and monitoring of the Plan's investment options and service providers; (c) the performance, fees and other characteristics of the Plan's investment options; (d) the Plan's fees and expenses, including without limitation, its recordkeeping fees; (e) the nomination, appointment, retention, monitoring and removal of the Plan's fiduciaries; and (f) the approval by the Independent Fiduciary of the Settlement, and shall forever be enjoined from prosecuting any or all of the Released Claims, including any or all Unknown Claims, against the Defendant Released Parties, as more fully set forth in the Settlement Agreement; and

b) The Company (on behalf of itself and any successors-in-interest) shall be deemed to have, and by operation of law and of this Judgment shall have fully, finally, and forever released, relinquished, and discharged, and shall forever be enjoined from prosecution of

Plaintiff, the Plan, the Class, and Class Counsel from any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys' fees and costs, whether under local, state or federal law, whether by statute, contract, common law or equity, whether brought in an individual, representative or any other capacity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, relating to the pursuit of the Action, as more fully set forth in the Settlement Agreement.

9. **Rule 11 Findings:** The Court finds and concludes that the Parties and their respective counsel have complied in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure in connection with the commencement, maintenance, prosecution, defense and settlement of the claims asserted in the Action.

10. **No Admissions:** This Final Approval Order and Judgment, the Preliminary Approval Order, the Agreement (whether or not consummated), including the exhibits thereto and the Plan of Allocation contained therein (or any other plan of allocation that may be agreed-upon by the Parties or approved by the Court), the negotiations that led to the agreement-in-principle reached by the Parties on December 3, 2018, the negotiation of the Agreement and its exhibits, and any papers submitted in support of approval of the Settlement, and any proceedings taken pursuant to or in connection with the Agreement or approval of the Settlement, including any arguments proffered in connection therewith: (a) shall not give rise to any inference of, and shall not be construed or used as an admission, concession, or declaration against any of the Defendant Released Parties of wrongdoing or liability in the Action or any other proceeding; (b) are not an admission of any liability of any kind, whether legal or factual; (c) shall not be used or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce the Agreement, whether affirmatively or defensively; (d) shall not be construed or used as

an admission, concession, or declaration by or against Plaintiffs, the Plan, or the Class that their claims lack merit or that the relief requested in the Action is inappropriate, improper or unavailable; and (e) shall not be construed or used as an admission, concession, declaration or waiver by any Party of any arguments, defenses, or claims he, she, or it may have in the event that the Agreement is terminated. This Order and the Agreement and any proceedings taken pursuant to the Agreement are for settlement purposes only.

11. **Retention of Jurisdiction:** Without affecting the finality of this Final Approval Order and Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation and enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) Class Counsel's Fee and Expense Application and Plaintiffs' request for Case Contribution Awards; and (d) the Class Members for all matters relating to the Action.

12. **Fees and Awards:** A separate order shall be entered on Class Counsel's Fee and Expense Application and Plaintiffs' request for Case Contribution Awards. Such order shall in no way affect or delay the finality of this Final Approval Order and Judgment and shall not affect or delay the Effective Date of the Settlement.

13. **Modification of Settlement Agreement:** Without further approval from the Court, Plaintiffs and Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Agreement or any exhibits attached thereto to effectuate this Settlement that: (a) are not materially inconsistent with this Final Approval Order and Judgment; and (b) do not materially limit the rights of Class Members in connection with the Settlement.

14. **Termination:** If the Settlement does not go into effect or is terminated as provided for in the Agreement, then this Final Approval Order and Judgment (and any orders of

the Court relating to the Settlement) shall be vacated, rendered null and void and be of no further force or effect, except as otherwise provided by the Agreement.

15. **Entry of Final Judgment:** There is no just reason to delay entry of this Final Approval Order and Judgment as a final judgment with respect to the claims asserted in the Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this Final Approval Order and Judgment pursuant to Fed. R. Civ. P. 54(b) as against Defendants.

SO ORDERED this _____ day of _____, 2019.

_____
The Honorable Claudia A. Wilken
United States District Judge

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MARLON H. CRYER, individually and on behalf of a class of all others similarly situated, and on behalf of the Franklin Templeton 401(k) Retirement Plan, Plaintiffs, v. FRANKLIN RESOURCES, INC., the Franklin Templeton 401(k) Retirement Plan Investment Committee, and DOES 1-25, Defendants.	**Lead Case No. 4:16-cv-04265-CW** [Consolidated with Case No. 4:17-cv-06409-CW] Judge: Hon. Claudia Wilken

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

A federal court has authorized this Notice. This is not a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS

You are receiving this notice (the "Notice") because the records of the Franklin Templeton 401(k) Retirement Plan (the "Plan") indicate that you have been a participant in the Plan and maintained an account with a positive balance at some point since July 28, 2010. As such, your rights may be affected by a proposed settlement of this class action litigation (the "Settlement").

This Notice summarizes the proposed Settlement. The complete terms and conditions of the Settlement are described in the Settlement Agreement, which is available at www._____.com, or by contacting class counsel, Mark G. Boyko at mboyko@baileyglasser.com or Oren Faircloth at ofaircloth@ikrlaw.com, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.cand.uscourts.gov, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, Ronald V. Dellums Federal Building & United States Courthouse, 1301 Clay Street, Oakland, CA 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

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

What this Litigation is About

This consolidated class action litigation is brought on behalf of participants in the Plan. Marlon H. Cryer and Nelly F. Fernandez (collectively referred to as "Plaintiffs" or "Class Representatives") are the named plaintiffs and the representatives on behalf of all members of the Class in the litigation. One of the consolidated lawsuits was filed in July 2016, and the other in November 2017.

Plaintiffs sued Franklin Resources, Inc. ("Franklin"), the Franklin Templeton 401(k) Retirement Plan Investment Committee (the "Investment Committee"), the individual members of the Investment Committee, and others alleged to have served in fiduciary roles to the Plan (together, "Defendants") alleging primarily that Defendants violated their fiduciary duties by choosing for the Plan allegedly imprudent and expensive investment funds that were managed by Franklin's investment adviser subsidiaries, and by allegedly failing to negotiate lower record keeping fees with the Plan's third-party recordkeepers. Plaintiffs allege that there were superior, less expensive investment options available that Defendants should have chosen for the Plan. Plaintiffs also allege that between 2010 and 2013, Franklin engaged in transactions prohibited by the Employee Retirement Income Security Act of 1974 ("ERISA"). After the lawsuits were filed, Plaintiffs agreed voluntarily to dismiss from the litigation a claim for alleged breach of fiduciary duty relating to monitoring of the Plan fiduciaries as well as certain individual defendants, and the Court granted summary judgment to Defendants on Plaintiffs' alleged excessive recordkeeping fee claim.

Defendants deny all allegations of wrongdoing, fault, liability or damage to the Plaintiffs and the Class and deny that they have engaged in any wrongdoing or violation of law or breach of duty. Defendants maintain that they acted in the best interests of Plan participants at all times and complied with their fiduciary obligations to the Plan and its participants. Among other things, Defendants contend that the Plan fiduciaries employed a robust and thorough process for selecting, monitoring, and removing Plan investment options and for monitoring Plan-related fees.

The Terms of the Settlement

To avoid the time and expense of further litigation, Plaintiffs and Defendants have agreed to resolve the consolidated litigation. The Settlement is the product of extensive negotiations between the parties, who were assisted in their negotiations by a neutral private mediator. The parties have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. If the Settlement is approved by the Court, the Class will obtain the benefits of the Settlement without the further delay and uncertainty of additional litigation. The Settlement resolves all issues regarding the Plan's investment options and fees from July 28, 2010 through such time as the Court grants final approval of the Settlement.

The terms of the Settlement are set forth in the Settlement Agreement and Release dated February 15, 2019 (the "Settlement Agreement"), which is available at www._____.com. Those terms are summarized below. Nothing in the Settlement Agreement is an admission or concession on Defendants' part of any fault or liability whatsoever, nor is it an admission or concession on Plaintiffs' part that their claims lacked merit.

1. The Class Covered by the Settlement. The Court certified a Class on July 26, 2017, and the Settlement applies to, and is binding on, that Class. The Class is defined as:

> All participants in the Franklin Templeton 401(k) Retirement Plan from July 28, 2010 to the date of judgment. Excluded from the class are Defendants, Defendants' beneficiaries, and Defendants' immediate families.

Plan records indicate that you may be a member of the Class because you are a current or former participant in the Plan who has maintained a positive account balance at some point since July 28, 2010.

2. Relief Provided to the Class by the Settlement. Under the proposed Settlement, (1) Franklin will contribute thirteen million, eight hundred fifty thousand dollars ($13,850,000) to a Settlement Fund (the "Settlement Amount"); (2) Franklin will provide an additional benefit to the Plan by increasing its existing match contributions to the Plan from its current rate of seventy-five percent (75%) of each participant's eligible salary deferrals to eighty-five percent (85%) of such deferrals for a period of three years (the "Increased Match");[1] and (3) the Investment Committee responsible for selecting investment options for the Plan will add a non-proprietary target date fund (TDF) to the Plan as an additional investment option.

The Settlement Amount—after the deduction of amounts to be approved by the Court for Class Counsel's Attorneys' Fees and Expenses and Case Contribution Awards to the named Plaintiffs, as well as Administration Costs, Independent Fiduciary Fees and Costs, and Taxes and Tax-Related Costs[2]—and Anticipated Future Benefit will be distributed to eligible Class Members pursuant to a Plan of Allocation to be approved by the Court. Individual benefits under the Settlement for each Class Member will be determined in accordance with that Plan of Allocation. The proposed Plan of Allocation, which is generally based on the average year-end account balances of each participant from a period between 2010 and 2018 and the Class Member's current or former participant status in the Plan, as shown in the Plan's records, is available at [URL].

On a summary level, Settlement benefits will be distributed as follows: current Plan participants with positive account balances who are no longer eligible to contribute to their account (generally, former employees) will receive their allocation from the Settlement Fund by

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[1] The value of a 10% match increase is subject to fluctuation depending on future Plan participant counts and deferrals over the three-year period. Using participant data from 2017, a 10% match increase would have provided an incremental benefit of approximately $4.3 million to Plan participants in that year. For purposes of estimating the value of the Increased Match, $4.3 million will be used as the annual estimate (the "Anticipated Future Benefit").

[2] All capitalized terms not defined in this Notice are defined in the Settlement Agreement, which can be viewed at [URL].

electronic payment to their Plan accounts; and former participants (those who have closed out, or rolled over, their Plan accounts) will receive their allocation from the Settlement Fund by check. In either case, no payment to such Class Members shall be less than $10.00. Current Plan participants with positive account balances who are still eligible to contribute to the Plan (generally, current employees) will receive their allocation first through the Increased Match, as described in the Plan of Allocation, and may also receive an allocation from the Settlement Fund after the conclusion of the Increased Match Period if the Increased Match received over that period was less than they would have been entitled to had they been entitled to participate in the initial settlement distribution. All inquiries related to distributions should be addressed solely to the Settlement Administrator at the addresses listed below.

[ADDRESS]

3. Summary of the Claims Released by the Class. In exchange for the Settlement Amount and other terms of the Settlement, all members of the Class will release any and all claims for monetary, injunctive, and all other relief against the Defendant Released Parties through the date the Court enters the Final Approval Order and Judgment (including, without limitation, any Unknown Claims) arising out of or in any way related to: (a) the conduct alleged in the operative Complaints, whether or not included as counts in the Complaints; (b) the selection, retention and monitoring of the Plan's investment options and service providers; (c) the performance, fees and other characteristics of the Plan's investment options; (d) the Plan's fees and expenses, including without limitation, its recordkeeping fees; (e) the nomination, appointment, retention, monitoring and removal of the Plan's fiduciaries; and (f) the approval by the Independent Fiduciary of the Settlement; except that the Released Claims shall not include claims to enforce the covenants or obligations set forth in the Agreement and shall not in any way bar, limit, waive, or release, any individual claim by any Class Member to vested benefits that are otherwise due under the terms of the Plan.

Class Members will not have the right to sue the Defendants or other Defendant Released Parties, whether individually or on behalf of the Plan, for conduct pertaining to the Plan during the Class Period or conduct that the Settlement requires Defendants to undertake during its Compliance Period. The entire release is set forth in the Settlement Agreement, which can be viewed online at www._____.com, or requested from Class Counsel.

The Settlement Approval Process

The Court has granted preliminary approval of the proposed Settlement and approved this Notice. The Settlement will not take effect, and there will be no benefits distributed under the Settlement, however, if the Court does not enter a Final Approval Order and Judgment or the Settlement otherwise does not become effective. The Court will hold a Final Approval Hearing on _____ in Courtroom 6 at the United States District Court for the Northern District of California, Ronald V. Dellums Federal Building & United States Courthouse, 1301 Clay Street, Oakland, California. Class Counsel will attend the hearing to answer any questions the Court may have. You are not required to attend the Final Approval Hearing.

The date and location of the Final Approval Hearing is subject to change by order of the Court without further notice to the Class. If you would like to attend the Final Approval

Hearing, you should check the Settlement Website, [URL], or the Court's online docket to confirm that the date has not been changed. Prior to the Final Approval Hearing, an Independent Fiduciary will be asked to approve the Settlement and Released Claims on behalf of the Plan, as may be required by ERISA Prohibited Transaction Exemption 2003-39 or any other applicable class or statutory exemptions. Defendants have the unilateral right not to proceed with the Settlement in the absence of such Independent Fiduciary approval.

The Opportunity to Object to the Settlement

As a Class Member, you can ask the Court to deny approval of the Settlement by filing an objection. You cannot, however, ask the Court to order settlement on different terms; the Court can only approve or reject the Settlement on the terms reached by the Parties. If the Court denies approval, the Settlement Amount will not be distributed, the Increased Match will not be implemented, and the litigation will resume.

Any objection to the proposed Settlement must be made in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Cryer v. Franklin Resources, Inc.*, Lead Case No. 4:16-cv-04265-CW), (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, Ronald V. Dellums Federal Building & United States Courthouse, 1301 Clay Street, Oakland, CA 94612, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before [DATE].

Those Class Members or their attorneys intending to appear at the Final Approval Hearing must give notice of their intention to appear setting forth, among other things, the name, address, and telephone number of the Class Member (and, if applicable, the name, address, and telephone number of that Class Member's attorney) on Class Counsel and Defendants' Counsel and file it with the Court Clerk on or before [DATE].

If the Court approves the Settlement, you will be bound by it and will receive whatever benefits you are entitled to under its terms. You cannot exclude yourself from the Settlement. The Court certified the Class under Federal Rule of Civil Procedure 23(b)(1), which does not permit Class Members to opt out of the Class.

Attorneys' Fees and Case Contribution Awards for Named Plaintiffs

The Class is represented by Class Counsel. The attorneys for the Class are as follows:

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Suite 540
Washington, DC 20007

mboyko@baileyglasser.com
314-863-5446

Robert A. Izard
Mark P. Kindall
Douglas P. Needham
IZARD, KINDALL & RAABE LLP
29 South Main Street, Suite 305
West Hartford, CT 06107

Class Counsel and the Class Representatives have devoted many hours to investigating the claims, bringing this litigation, and pursuing it for over two years. During that time, Class Counsel incurred litigation expenses in addition to the time spent by attorneys, paralegals, and others. Class Counsel also took the risk of litigation and have not been paid for their time and expenses while this litigation has been pending before the Court.

Class Counsel will file a motion with the Court seeking approval of payment from the Settlement Fund of reasonable attorneys' fees and reimbursement of the expenses they incurred in prosecuting the litigation. They will request (1) attorneys' fees of $7,490,000, which represents approximately 28% of the aggregate value of the Settlement Amount and the estimated value of the three-year Increased Match, and (2) reimbursement of expenses of $xxx. Plaintiffs will also request that the Court order Case Contribution Awards of $25,000 for Plaintiff Cryer and $15,000 for Plaintiff Fernandez from the Settlement Fund. Defendants have reserved the right to object to such requested amounts.

Plaintiffs' preliminary approval motion and supporting papers were filed on February 15, 2019, and their papers in support of their fee and expense motion, as well as their papers in support of final approval of the Settlement, will be filed on or before [DATE]. You may review these filings at www._____.com. Any award of Attorneys' Fees and Expenses and Case Contribution Awards approved by the Court, in addition to the Administration Costs, Independent Fiduciary Fees and Costs, and Taxes and Tax-Related Costs will be paid from the Settlement Fund.

Getting More Information

You do not need to do anything to be a part of this Class or, if the Settlement is approved, to be eligible to receive your share of the Settlement Fund and/or Increased Match, as applicable. If you still have a Plan account with a positive balance when Settlement Fund distributions are made, your Settlement benefits will be distributed to your Plan account. If you no longer have a Plan account, a check will be mailed to you.

You can visit the Settlement Website at www._____.com, where you will find the full Settlement Agreement, the Court's order granting preliminary approval, this Notice, and other relevant documents. If there are any changes to the deadlines identified in this Notice, the date of the Final Approval Hearing, or the Settlement Agreement, those changes will be posted to the Settlement Website. You will not receive an additional mailed notice with those changes, unless separately ordered by the Court. If you cannot find the information you need on the

website, you may also contact **1-800-xxx-xxxx** for more information. Please do not contact the Court or counsel for Defendants to get additional information.

Dated: _____, 2019

By Order of the United States District Court
District Judge Claudia Wilken

EXHIBIT C

Exhibit C – Plan of Allocation

I. For purposes of this Plan of Allocation:

a. Class Members shall be considered "Former Participants" if they maintained a balance in the Plan on or after July 28, 2010, but do not have any account with a positive balance in the Plan as of the date of the Preliminary Approval Order;

b. Class Members shall be considered "Inactive Participants" if, as of the date of the Preliminary Approval Order, they have a Plan account with a positive balance but are no longer eligible to make contributions to the Plan account;

c. Class Members shall be considered "Active Participants" if, as of the date of the Preliminary Approval Order, they have a Plan account with a positive balance and are eligible to make additional contributions to the account;

d. The "Distributable Settlement Amount" shall mean the money remaining in the Settlement Fund after the Settlement Administrator (1) withdraws and pays Class Counsel's Attorneys' Fees and Expenses approved by the Court, Administration Costs (including an estimated provision for the costs of the distribution to Class Members and other post-distribution related Administration Costs, as proposed by the Settlement Administrator and approved by Class Counsel and Defendants' Counsel as reasonable), Independent Fiduciary Fees and Costs, Case Contribution Awards approved by the Court, and Taxes and Tax-Related Costs, and (2) holds back at least $150,000 for the Second Distribution;

e. The "Anticipated Future Benefit" shall mean the estimated potential value of the Increased Match over the Increased Match Period. Participant data from 2017 indicates that a 10% Company match increase would have amounted to an approximately $4.3 million benefit to Plan participants in that year. The actual value of the Increased Match here over the agreed three-year period is subject to fluctuation depending on future participant counts and deferrals; however, for purposes of calculating the Anticipated Future Benefit, $4.3 million will be used as the annual estimate, for a total estimate of $12.9 million over the Increased Match Period;

f. The "Allocation Amount" shall be the Distributable Settlement Amount plus the Anticipated Future Benefit;

g. The "Initial Distribution" shall be the distribution made to Former Participants and Inactive Participants from the Settlement Fund following the Effective Date of the Settlement Agreement;

h. The "Second Distribution" shall be the distribution made to Active Participants from the Settlement Fund following the conclusion of the Increased Match Period;

i. The "Participant Data" shall have the meaning ascribed to it in Paragraph II(a) below;

j. A Class Member's "Pro Rata Percentage" shall mean that Class Member's Plan investments as a percentage of the Plan investments as a whole, calculated by dividing the aggregate of his or her individual year-end account balances from the beginning of the Class Period through December 31, 2018, by the Plan's total aggregate year-end balances through December 31, 2018;

k. The "Raw Allocation" shall mean, for each Class Member, the Allocation Amount multiplied by that Class Member's Pro Rata Percentage;

l. The "Reconciliation Payment" shall have the meaning ascribed to it in Paragraph III(b) below; and

m. All capitalized terms not defined herein shall have the meanings ascribed to them in Part I of the Settlement Agreement.

II. The Initial Distribution shall be made as follows:

a. The Settlement Administrator shall obtain from the Plan's current and former Recordkeepers the year-end account balances for each Class Member from the beginning of the Class Period through December 31, 2018 (the "Participant Data").

b. Based on the Plan's data, the Settlement Administrator shall calculate, for each Class Member, his or her Pro Rata Percentage and Raw Allocation.

c. Any Former Participant or Inactive Participant whose Raw Allocation is less than $10.00 shall be deemed entitled to receive a payment of $10.00, with the Raw Allocation for all Remaining Class Members adjusted proportionally (the "Adjusted Allocation").

d. If the aggregate of the Adjusted Allocation amounts owed the Former Participants and Inactive Participants exceeds the Distributable Settlement Amount, their Adjusted Allocations shall be reduced pro rata, except that in no event shall their Adjusted Allocations be reduced to less than $10.00.

e. The Settlement Administrator shall mail checks to Former Participants for their Adjusted Allocations (less any required withholdings) without the need to complete any claim form.

f. Relying on the calculations performed by the Settlement Administrator, the Plan Recordkeeper shall deposit the Adjusted Allocations due to Inactive Participants directly into their Plan accounts, also without the need to complete any claim form.

g. Active Participants shall not receive any portion of the Initial Distribution.

III. Any assets in the Settlement Fund following the Initial Distribution, including any interest earned on the amounts in the Settlement Fund, shall be distributed in the Second Distribution, and any amounts remaining after the Second Distribution shall be distributed, as follows:

a. Once the Increased Match Period has concluded, the Settlement Administrator shall obtain from the Plan Recordkeeper a data file detailing the amount of the Increased Match actually provided to each Active Participant during the Increased Match Period.

b. Active Participants who have not received at least their Adjusted Allocation through the Increased Match during the Increased Match Period will be entitled to receive a one-time payment from the Settlement Fund (their "Reconciliation Payment") following the conclusion of the Increased Match Period equal to the difference between the Active Participant's Adjusted Allocation and the amount he or she received through the Increased Match over the Increased Match Period.

c. If there are insufficient funds in the Settlement Fund to pay all Reconciliation Payments, recoveries will be proportionally reduced across all Active Participants deemed eligible to recover under the Second Distribution.

d. Relying on the calculations performed by the Settlement Administrator, the Plan Recordkeeper will deposit the Reconciliation Payments due to Active Participants (less any proportionate reduction) directly into their Plan accounts, if they have a Plan account with a positive balance on the date Reconciliation Payments are made. If an Active Participant no longer maintains a Plan account with a positive balance on the date the Reconciliation Payments are paid, the Settlement Administrator will mail that Class Member a check for his or her Reconciliation Payment (less any required withholdings or proportionate reduction). However, no checks will be mailed for Reconciliation Payments that are less than $10.00. Any Class Member owed a Reconciliation Payment of less than $10.00 that does not have a Plan account with a positive balance on the date that Reconciliation Payments are made will not receive a Reconciliation Payment.

e. If the funds in the Settlement Fund are sufficient to cover the Reconciliation Amounts in full and more than $50,000 remains, a final distribution will be made to those Class Members who have a Plan account with a positive balance at that time, via direct deposit into their Plan accounts on an equal share basis.

f. If $50,000 or less remains in the Settlement Fund after the payment of the Reconciliation Amounts, or if any funds remain following the distribution

described in Paragraph III(e) above, the remaining amount will be deposited in the Plan's forfeiture account, to be used to pay Plan administrative expenses.

IV. Changes to the Plan of Allocation:

a. In the event that the Settlement Administrator determines that this Plan of Allocation would require payments exceeding the amounts in the Settlement Fund at any point in time, the Settlement Administrator is authorized, subject to the approval of the Parties, to make such changes to the Plan of Allocation as are necessary to ensure that the payments under this Plan of Allocation do not exceed the amounts in the Settlement Fund.

b. If the Settlement Administrator concludes that it is impracticable to implement any provision of the Plan of Allocation, it shall be authorized, subject to the approval of the Parties, to make such changes to the Plan of Allocation as are necessary to implement as closely as possible the terms of the Settlement Agreement, so long as the payments under this Plan of Allocation do not exceed the amounts in the Settlement Fund.

EXHIBIT D

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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

Plaintiffs,

v.

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

Defendants.

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

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

[PROPOSED] 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

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

5. The Court approves the retention by Class Counsel of Angeion Group as the Settlement Administrator.

6. In further aid of the Court's jurisdiction to review, consider, implement, and enforce the Settlement, the Court orders that Plaintiffs, all Class Members, and the Plan are preliminarily enjoined and barred from commencing, prosecuting, or otherwise litigating, in whole or in part, either directly, individually, representatively, derivatively, or in any other capacity, whether by complaint, counterclaim, defense, or otherwise, in any local, state, or federal court, arbitration forum, or in any agency or other authority or forum wherever located, any contention, allegation, claim, cause of action, matter, lawsuit, or action (including but not limited to actions pending as of the date of this Order), including, without limitation, any Unknown Claim, that arises out of or relates in any way to the Released Claims.

7. The Court approves the Notice to Class Members in substantially the form attached as Exhibit B to the Agreement.

8. The Court finds that the Plan of Allocation proposed by Plaintiffs and Class Counsel for allocating the Settlement Amount to Class Members is fair and reasonable.

Manner of Giving Notice

9. The Company shall use reasonable efforts to cause the Plan Recordkeepers to provide to the Settlement Administrator, within thirty (30) calendar days of the entry of this Preliminary Approval Order, the participant data (including names and last known addresses and email addresses, if available) sufficient to effectuate the Notice, implement the Plan of Allocation, and distribute the Settlement Fund on the terms provided for in the Agreement. The names and addresses provided to the Settlement Administrator pursuant to this Order shall be used solely for the purpose of providing Notice of this Settlement and distribution of the Settlement Fund, and for no other purpose and shall be treated as "Confidential" under the Protective Order governing this Action.

10. Within thirty (30) calendar days of the entry of this Order and no later than the first date that the e-mailing or the mailing of the Notice occurs, the Settlement Administrator shall establish a website containing, at a minimum, the Notice, the Agreement, its exhibits, and this Order.

11. Within thirty (30) calendar days of the entry of this Order and no later than the first date that the e-mailing or the mailing of the Notice occurs, the Settlement Administrator shall establish a toll-free telephone number to which Class Members can direct questions about the Settlement.

12. Within forty-five (45) calendar days after entry of this Order, or as may be modified by the Court, the Settlement Administrator shall cause copies of the Notice to be sent by first-class mail or electronic mail (if available) to all Class Members through the notice procedure described in the Agreement.

13. Not later than seven (7) business days after sending the Notice to Class Members, the Settlement Administrator shall provide to Class Counsel and to Defendants' Counsel a declaration attesting to compliance with the sending of the Notice, as set forth above.

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

15. All reasonable costs incurred by the Settlement Administrator for providing the Notice as well as for administering the Settlement shall be paid as set forth in the Agreement.

Final Approval Hearing

16. The Court will hold the Final Approval Hearing on _____ in Courtroom _____ of the United States District Court for the Northern District of California, Ronald V. Dellums Federal Building & United States Courthouse, 1301 Clay Street, Oakland, CA 94612, for the following purposes: (a) to determine whether the proposed Settlement on the terms and conditions provided for in the Agreement is fair, reasonable, adequate, and in the best interests of the Class and should be finally approved by the Court; (b) to determine whether Class Counsel's Fee and Expense Application is reasonable and should be approved; (c) to determine whether Plaintiffs' request for Case Contribution Awards is reasonable and should be approved; (d) to determine whether a Final Approval Order and Judgment substantially in the form attached as Exhibit A to the Agreement should be entered dismissing with prejudice all claims asserted in the Action against Defendants; and (e) to consider any other matters that may properly be brought

before the Court in connection with the Settlement. Notice of the Settlement and the Final Approval Hearing shall be given to Class Members as set forth in Paragraph 7 of this Order.

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

18. Not later than thirty (30) calendar days before the Final Approval Hearing, Class Counsel shall submit their papers in support of final approval of the Agreement, and in support of Class Counsel's Fee and Expense Application and Plaintiffs' request for Case Contribution Awards.

19. Not later than thirty (30) calendar days before the Final Approval Hearing, the Independent Fiduciary shall submit its report pursuant to Section 2.7 of the Agreement.

20. Not later than thirty (30) calendar days before the Final Approval Hearing, the Settlement Administrator shall submit its declaration pursuant to Section 2.8 of the Agreement.

Objections to the Settlement

21. The Court will consider written comments and objections to the Settlement, to the proposed Fee and Expense Application, and to Plaintiffs' request for Case Contribution Awards. Any objection to the proposed Settlement must be in writing, and must (a) clearly identify the case name and number (*Cryer v. Franklin Resources, Inc.*, Lead Case No. 4:16-cv-04265-CW), and (b) be submitted to the Court either by mailing it to the Class Action Clerk, United States District Court for the Northern District of California, Ronald V. Dellums Federal Buildings & United States Courthouse, 1301 Clay Street, Oakland, CA 94612, or by filing it in person at any location of the United States District Court for the Northern District of California. Any Class Members' objections must be filed or postmarked on or before fifteen (15) calendar days before

the Final Approval Hearing. Any objections submitted by federal or state authorities must be filed no later than thirty (30) calendar days before the Final Approval Hearing.

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

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

24. The Parties may file written responses to any objections not later than five (5) business days before the Final Approval Hearing.

Termination of Settlement

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

Use of Order

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

Jurisdiction

27. The Court hereby retains jurisdiction for purposes of implementing the Agreement, and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the Agreement as may from time to time be appropriate, and to resolve any and all disputes arising thereunder.

SO ORDERED this _____ day of _____, 2019.

_____
The Honorable Claudia A. Wilken
United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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

Plaintiffs,

v.

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

Defendants.

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

PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, APPROVAL OF CLASS NOTICE AND SCHEDULING OF FAIRNESS HEARING

Judge: Hon. Claudia Wilken

Plaintiffs respectfully file this Motion under Rule 23 of the Federal Rules of Civil Procedure for preliminary approval of a Class Settlement, as well as approval of Class Notice and Scheduling of Fairness Hearing.

1. This action was originally filed in this Court on July 18, 2016. Plaintiffs allege that the Defendants' breached their fiduciary duties under ERISA by, among other things, allowing excessive fees to be charged to the Plan and selecting and maintaining investments in the Plan for the benefit of Franklin.

2. On February 15, 2019, after multiple mediations and months of arm's-length negotiation, the Parties entered into a Settlement Agreement and request that the Court preliminarily approve the Settlement Agreement that is attached hereto as Exhibit A.

3. The Settlement is fundamentally fair, adequate, and reasonable in light of the circumstances of this case and preliminary approval of the Settlement is in the best interests of the Class Members.

4. Pursuant to the recently amended FED. R. CIV. P. 23(e), for a court to preliminarily approve a settlement, the settling parties "must provide the court with information to enable it to determine whether to give notice of the proposal to the class." FED. R. CIV. P. 23(e). To order that notice should be given, the court must determine that it will likely be able to approve the settlement at the final approval stage. FED. R. CIV. P. 23(e)(1)(B).

5. The Settlement reached between the Parties here more than satisfies this standard given the significant nature of the case and the result reached by the Plaintiffs.

Preliminary approval will not foreclose interested persons from objecting to the Settlement and thereby presenting dissenting viewpoints to the Court.

6. Plaintiffs also submit to the Court a Memorandum in Support of this Motion, as well as Declarations of the Class Counsel. Defendants are not submitting a Memorandum addressing the Motion.

WHEREFORE, Plaintiffs request the following:

- That the Court enters an Order granting its preliminary approval of the Settlement Agreement in the form attached to the Settlement Agreement;
- That the Court order any interested party to file any objections to the Settlement within the time limit set by the Court, with supporting documentation, and order such objections, if any, be served on counsel as set forth in the proposed Preliminary Approval Order and Class Notice;
- That the Court schedule a Fairness Hearing for the purpose of receiving evidence, argument, and any objections relating to the Parties' Settlement Agreement; and
- That following the Fairness Hearing, the Court enter an Order granting final approval of the Parties' Settlement and dismissing the Complaint in this Litigation with prejudice.

Dated: February 15, 2019 Respectfully submitted,

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By: /s/ *Mark G. Boyko*
Mark G. Boyko

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15th day of February, 2019, a true and correct copy of the foregoing was filed with the Court using the CM/ECF system and service upon all participants in this case who are CM/ECF users will be accomplished by operation of that system.

/s/ Mark G. Boyko

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARLON H. CRYER, individually and as representative of a class of similarly situated persons, Plaintiffs, v. FRANKLIN RESOURCES, INC., et al., Defendants.	)	Case No. 4:16-cv-4265-CW **(lead case consolidated with)** Case No. 3:17-cv-6409-CW **PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT** Hearing Date: Time: Judge: Hon. Claudia Wilkens Courtroom: 2, 4th Floor

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Plaintiffs Marlon Cryer and Nelly Fernandez (collectively, "Plaintiffs") submit this Memorandum of Law in support of their Motion for Preliminary Approval of the Settlement Agreement dated February 12, 2019, memorializing the settlement in principle the parties reached on December 3, 2018. Plaintiffs seek an Order: (1) preliminarily approving the Settlement under FED. R. CIV. P. 23(e); (2) approving the manner for notifying the Class of the Settlement; and (3) setting a date for the Final Approval Hearing, as well as other deadlines.[1]

I. INTRODUCTION

Plaintiffs brought their consolidated cases under ERISA to challenge the decisions that Defendants made concerning the 401(k) plan (the "Plan") offered to qualified employees of Franklin Resources, Inc. ("Franklin") and its subsidiaries (together with Franklin, the "Company"). Plaintiffs alleged that Defendants maintained underperforming proprietary investments in the Plan because they generated fees for Franklin, and that in doing so they violated their fiduciary duties of prudence and loyalty pursuant to 29 U.S.C. § 1104(a). In addition, Ms. Fernandez asserted claims that these arrangements violated 29 U.C.S. § 1106. While these allegations concerned each of the proprietary funds offered in the Plan, Plaintiffs' claims focused on the decision to maintain the Franklin Money Market Fund as the Plan's capital preservation option, decision to add Franklin's target date funds as the sole asset allocation funds offered in the Plan, and decision to keep Franklin's Large Cap Value Fund in the Plan for a time despite a history of underperformance.

After more than two years of litigation, multiple dispositive and discovery motions, a contested class certification motion, complete document, deposition, and expert discovery, and a month before trial, Plaintiffs and Defendants have agreed to settle the combined claims in the *Cryer* and *Fernandez* consolidated action. The parties have resolved the matter for

[1] All capitalized terms not defined herein have the meanings ascribed to them in Part I of the Settlement Agreement.

$13.85 million, plus an additional Plan benefit consisting of an increase in Franklin's existing matching contributions from 75% to 85% for a period of three years (referred to as the "Increased Match"). The Increased Match is anticipated to add $4.3 million annually to the Plan through higher payments by Franklin, based on 2017 Plan data).[2] The Class will also benefit from the addition of a nonproprietary target date fund to the Plan, alongside the Plan's existing target date fund (which serves as the Plan's qualified default investment alternative).

Even before this litigation commenced, Defendants had already removed the Large Cap Value Fund from the Plan. Since the commencement of this litigation, Defendants removed the Franklin Money Market Fund and replaced it with a non-proprietary capital preservation fund. Thus, in addition to compensation directed to current and former plan participants, Plaintiffs' primary concerns regarding the Plan have been addressed.

The Settlement is a fair, reasonable, and adequate resolution of the Class's claims and should be preliminarily approved under Rule 23(e). In particular, we estimate that the settlement represents nearly one-third of the Class's potential damages and eliminates the numerous, substantial risks, expenses, and potential delays that would lay ahead if they continued prosecuting this case. The Settlement, negotiated at arm's length by experienced counsel on both sides and with the help of an experienced mediator, is an excellent result and in the Class Members' best interests.

Lastly, Plaintiffs ask the Court to approve the proposed Notice to the members of the Class and schedule a Final Approval Hearing, as well as other deadlines.

[2] While the actual value of the Increased Match over the agreed three-year period will vary depending on future Plan participant numbers and deferral rates, for purposes of allocating the Increased Match benefit, the Increased Match will be calculated as $4.3 million annually, ($12.9 million total over the full Increased Match Period) based on historical data from the Plan's most recent Form 5500. In 2017, Franklin contributed $32.1 million to the Plan in matching contributions, an obligation which would have been $4.3 million higher had it matched at a rate of 85% instead of 75%. If Plan participants contribute a greater or lesser amount than they have done historically, the aggregate value of the Increased Match could be higher or lower.

II. LITIGATION HISTORY

The history of this case is well known to the Court. See, e.g., *Fernandez* Dkt. 116 at 2–4. Plaintiff Cryer filed his original complaint on July 28, 2016. Dkt. 1. Defendants responded by filing a motion to dismiss and a motion for summary adjudication, Dkts. 19 and 21, asserting, among other things, that Mr. Cryer's action violated a severance agreement he had with Franklin. After extensive briefing, the Court denied those dispositive motions on January 17, 2017. Dkt. 44. After the start of discovery, Mr. Cryer filed a motion for class certification (Dkt. 53), which the Court granted (Dkt. 67), and a motion to amend the complaint (Dkt. 56), which the Court denied. Dkt. 66. Defendants moved for reconsideration of the order certifying the class (Dkt. 73), which the Court agreed to hear and then denied. Dkt. 83.

Shortly thereafter, Plaintiff Fernandez filed a separate action, making allegations substantively identical to those Mr. Cryer had raised in his proposed First Amended Complaint. *Fernandez* Dkt. 1. Defendants filed a motion to dismiss and motion for summary adjudication asserting, among other things, that Ms. Fernandez's action violated her severance agreement with Franklin. The Court denied Defendants' motions. *Fernandez* Dkt. 52. At the same time, the Court consolidated the two cases. *Id.*

Subsequent to the Court's consolidation of the *Cryer* and *Fernandez* actions for trial and the close of fact and expert discovery, the parties briefed and argued cross motions for Summary Judgment. On November 16, 2018, those motions were largely denied, and the case was set for a one-week trial to commence on January 14, 2019. Dkt. 149. In the weeks leading up to trial (and independent of any settlement discussions), Plaintiffs agreed to dismiss, with prejudice, the Franklin Resources, Inc. Board of Directors, the individual current and former Franklin Board members named in the suit (Gregory E. Johnson, Rupert H. Johnson, Jr., Charles B. Johnson, Charles E. Johnson, Peter K. Barker, Mariann Byerwalter, Mark C. Pigott, Chutta Ratnathicam, Laura Stein, Seth Waugh, Geoffrey Y. Yang, Samuel Armacost, Joseph Hardiman, and Anne Tatlock), and Plaintiff Fernandez's

monitoring claim. Later, as trial preparations continued, the parties reached an agreement in principle to settle the case, informed the Court of this agreement on December 3, 2018, and filed a Notice of Settlement on December 6, 2018. Cryer Dkt. 150.

III. THE SETTLEMENT AGREEMENT

A. The Settlement Benefits.

The Settlement resolves all claims of the certified Class — current and former participants in the Plan since July 28, 2010.

Class Members will receive compensation in three different ways:

(1) Former Participants — Class Members who are no longer employed by the Company and do not have any account with a positive balance in the Plan — will receive a check for their pro rata share of the Allocation Amount (defined as the distributable portion of the $13.85 million payment plus the estimated value of the Increased Match), which will be mailed to them shortly after the Settlement becomes effective.

(2) Inactive Participants — Class Members who are no longer eligible to make contributions in their Plan accounts but who have a Plan account with a positive balance — will receive their pro rata share of the Allocation Amount directly into their Plan account shortly after the Settlement becomes effective. This method of distribution will provide eligible Class Members with the added benefit that a direct deposit in a qualified retirement plan is tax deferred.

(3) Active Participants — Class Members who are currently making contributions to their Plan accounts — will receive their compensation through Franklin's agreement to provide an additional Plan benefit consisting of an increase in Franklin's existing matching contributions from 75% to 85% for a period of three years .[3]

[3] The Settlement provides that the three-year Increased Match Period will begin with the first full quarter of participant deferrals following the Effective Date of the Settlement. However, Franklin may elect to accelerate the Increased Match contributions on deferrals made by eligible participants during the calendar year in which the Increased Match is first implemented, by making retroactive "true-up" Increased Match contributions (i.e., at a rate of 10%) to the Plan accounts of those Participants who received a 75% match contribution during that calendar year. Should the Company elect to do so, the three-year Increased

Active Participants whose Increased Match during the Increased Match Period fails to equal or exceed what their recovery would have been had they been entitled to participate in the initial settlement distribution will receive a one-time payment after the end of the Increased Match Period from money in the Settlement Fund not distributed initially, but set aside to ensure that Class Members are no worse off by being classified as Active Participants. These distributions will be made directly into the Plan accounts of such Active Participants with a Plan balance at the end of the Increased Match Period, and by check to those who have since closed their accounts.

To allocate the Settlement benefit, the $13.85 million payment, after the deduction of taxes, costs, expenses, and fees, will be combined with the estimated $12.9 million Increased Match (based on the full Increased Match Period). The resulting figure will be allocated to the Class Members in proportion to their account balances during the Class Period, which shall serve as a proxy for their alleged losses, as fully described in the Plan of Allocation attached to the Settlement Agreement. Settlement at Exhibit C. Class members will not need to make a claim to receive their share of the Settlement Fund. Any Class Member whose payment due is less than ten dollars ($10.00) in the initial distribution will receive a payment of ten dollars ($10.00).

After a three-year period, amounts remaining in the Settlement Fund will first be paid to Active Participants who did not receive at least their entitlement amount through the Increased Match. Any remainder will be distributed to Class Members who continue to have an account in the Plan at that time, and paid electronically into their Plan accounts, unless the amount available for distribution is under $50,000. Any remainder under $50,000 (and any assets remaining after that distribution) will be transferred to the Plan's forfeiture account and used for payment of Plan administrative expenses. No portion of the Settlement Fund will revert back to Franklin or the Defendants.

Match Period shall be deemed to have commenced on the first day of the first quarter in which the Increased Match was applied, even if that first date is prior to the Effective Date.

B. Released Claims.

Under the Settlement Agreement, the "Released Claims" are any and all claims for monetary, injunctive, and all other relief against the Defendant Released Parties through the date the Court enters the Final Approval Order and Judgment (including, without limitation, any Unknown Claims) arising out of or in any way related to: (a) the conduct alleged in the *Cryer* and *Fernandez* operative Complaints, whether or not included as counts in the Complaints; (b) the selection, retention and monitoring of the Plan's investment options and service providers; (c) the performance, fees and other characteristics of the Plan's investment options; (d) the Plan's fees and expenses, including without limitation, its recordkeeping fees; (e) the nomination, appointment, retention, monitoring and removal of the Plan's fiduciaries; and (f) the approval by the Independent Fiduciary of the Settlement. The Released Claims include certain exceptions, including claims to enforce the covenants or obligations set forth in the Parties' Settlement Agreement, and individual claims to vested benefits that are otherwise due under the terms of the Plan.

C. Notice to Class Members.

All Class Members are current or former Plan participants and many are current employees of the Company. Under the Settlement, Franklin's current and former third-party recordkeepers will provide the Settlement Administrator with the names and last known addresses of Class Members to allow the Settlement Administrator to provide them with notice of the Settlement. Notice by First Class Mail or e-mail, where possible, will be sent to all Class Members using addresses submitted by the Class Members for communications involving their Plan accounts. For undelivered or returned mail to Class Members, the Settlement Administrator will engage in standardized processes to identify and locate Class Members.

The proposed Class Notice, attached as Exhibit B to the Settlement, informs Class Members about the Actions, the class definition, the class claims, issues and defenses, that a class member may enter an appearance through an attorney if the member so desires, the

terms of the Settlement, including the release and the binding effect of the Settlement, and the procedures for objecting to the Settlement. In addition, the Settlement Administrator will establish a website containing the operative *Cryer* and *Fernandez* complaints, the Notice, the Settlement Agreement, and other key documents in the case. Class Members will also be provided with a toll-free number staffed by live operators as well as a telephone number and email address to reach Class Counsel.

IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT.

As a matter of public policy, federal courts strongly favor and encourage settlements, particularly in class actions and other complex matters, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting the "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned"). Indeed, "there is an overriding public interest in settling and quieting litigation," and this is "particularly true in class action suits." *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see also In re Howrey LLP*, No. 14-cv-03062-JD, 2014 WL 3427304, at *5 (N.D. Cal. July 14, 2014). As the Ninth Circuit noted, "there is a strong judicial policy that favors settlements particularly where complex class action litigation is concerned. . . .This policy is also evident in the Federal Rules of Civil Procedure. . . which encourage facilitating the settlement of cases." *In re Synocor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008).

Effective December 1, 2018, for a court to preliminarily approve a settlement, the settling parties must provide the court with sufficient information to enable it to determine that it will likely be able to approve the settlement at the final approval stage. FED. R. CIV. P. 23(e)(1)(B). In other words, the court should review whether the settlement "is fair, reasonable, and adequate." FED. R. CIV. P. 23(e)(2). The revised Federal Rule directs courts, in making that evaluation, to consider "whether: (A) the class representatives and class

counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate . . . and (D) the proposal treats class members equitably relative to each other." FED. R. CIV. P. 23(e)(2). The adequacy of the proposed relief must be considered in light of "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." *Id.*

A. Plaintiffs and Class Counsel have adequately represented the Class.

Class Counsel and Plaintiffs have pursued this litigation for over two years, all through fact and expert discovery, class certification, dispositive motions, and within a month of trial. Class Counsel have specialized expertise in proprietary fund 401(k) litigation. The Class representatives and Class Counsel have already been found adequate by this Court at the class certification stage. Dkt. 67, at 14–15.

The Settlement also does not unduly favor the Plaintiffs. Plaintiffs' shares of the Settlement will be based on the Plan of Allocation, a formula based on the claimed losses to their Plan accounts. While Plaintiffs also intend to request incentive awards, the Settlement is not contingent on Plaintiffs receiving an award in a specified amount. "Incentive awards that are intended to compensate class representatives for work undertaken on behalf of a class 'are fairly typical in class action cases.'" *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (quoting *Rodriguez*, 563 F.3d at 958). Incentive awards are generally approved so long as the awards are reasonable and do not undermine the adequacy of the class representatives. *See Radcliffe v. Experian Info. Solutions*, 715 F.3d 1157, 1164 (9th Cir. 2013) (finding incentive award must not "corrupt the settlement by undermining the adequacy of the class representatives and class counsel"). Here, Plaintiffs have represented the Class through years of litigation, and have taken the risks associated with having their names associated with high-profile class litigation. Moreover, the amounts that Plaintiffs

intend to request — $25,000 for Plaintiff Cryer, and $15,000 for Plaintiff Fernandez — are consistent with awards in other cases. *See, e.g.*, *Kruger*, 2016 WL 6769066, at *6 (awarding class representatives $25,000 each for their contributions); *In re Northrop Grumman ERISA Litig.*, No. 06-cv-6213, Dkt. 803 at 16 (C.D. Cal. Oct. 24, 2017) (awarding class representatives $25,000 each from $16.75 million settlement concerning allegedly improper 401(k) fees and investments).

Likewise, the Settlement does not excessively compensate Class Counsel. The amount of fees that Class Counsel intend to request, $7,490,000, is reasonable and significantly less than awards in other ERISA cases. *Spano v. The Boeing Co.*, 2016 WL 3791123, at *2 (S.D. Ill. March 31, 2016) (collecting cases and awarding one-third of $57 million ERISA settlement); *Denard v. Transamerica Corporation*, No. 15-cv-30, 2016 WL 3554978, at *2 (N.D. Iowa June 24, 2016) (preliminarily approving settlement in ERISA class action where class counsel could seek fees of up to one third of the settlement fund); *Kruger*, 2016 WL 6769066 at *2 (approving attorney fees of one-third of a $27 million settlement in ERISA 401(k) fiduciary breach class action concerning proprietary funds); *In re Northrop Grumman ERISA Litig.*, No. 06-cv-6213, Dkt. 803 at 16 (awarding Class Counsel one-third of $16.75 million ERISA class action settlement reached in the Central District of California); *Kanawi v. Bechtel Corp.*, No. 06-cv-5566, 2011 WL 782244 at *1 (N.D. Cal. Mar. 1, 2011) (finding upward adjustment from presumptive 25% to 30% appropriate in $18.5 million ERISA class action alleging excessive fees and self-dealing).

B. The Settlement was negotiated at arm's length.

At different times in the history of the *Cryer* and *Fernandez* actions, the parties have engaged in settlement discussions. Counsel for Plaintiffs and Defendants had in person mediations on April 14, 2017, and July 10, 2018, with the assistance of a neutral mediator, Robert A. Meyer, following the exchange of detailed mediation statements and exhibits. Discussions continued, with and without the assistance of Mr. Meyer, at different times. Porter Decl. ¶ 5. The Court ordered the parties to participate in further mediation efforts

upon issuance of its ruling on the parties' cross-motions for summary judgment. On December 3, 2018, the parties reached a settlement-in-principle, and so notified the Court on December 3, resulting in a joint Notice of Settlement, including a request for a stay of all scheduled dates, filed with the Court on December 6, 2018. Dkt. 150.

Class Counsel was fully aware of the case strengths and weaknesses when negotiating the Settlement, which supports the Settlement's preliminary approval. Class Counsel also has in-depth knowledge of the legal framework applicable to this case. Class Counsel have decades of experience prosecuting, settling, and trying ERISA cases on behalf of retirement plan participants, which they used to evaluate and negotiate the Settlement. Porter Decl. at ¶ 4. As the Ninth Circuit observed, "[t]his circuit has long deferred to the private consensual decision of the parties" and their counsel in settling an action. *Rodriguez*, 563 F.3d at 965; *see also Omnivision*, 559 F. Supp. 2d at 1043 ("The recommendations of plaintiffs' counsel should be given a presumption of reasonableness."). It is Class Counsel's opinion that the proposed Settlement is fair and reasonable, a factor which supports the Settlement's approval.

Because the Settlement was negotiated by experienced counsel with the aid of a mediator, there is a presumption that it was the product of arm's length negotiations. *Satchell v. Fed. Express Corp.*, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007) ("The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive."). The Settlement was also reached after multiple rounds of negotiation, and after all fact discovery and dispositive motions were decided. Plaintiffs were thus fully informed of the merits and position of their case. *See, e.g., Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (no basis to disturb settlement in the absence of any evidence suggesting "that the settlement was negotiated in haste or in the absence of information.").

C. The relief provided for the Class is adequate.

The parties have resolved the matter for $13.85 million, plus an additional Plan benefit consisting of an increase in Franklin's existing matching contributions from 75% to 85% for

a period of three years. As noted above, the Increased Match is anticipated to add $4.3 million annually to the Plan through higher payments by Franklin, based on 2017 Plan data. The combination of these benefits is just under one-third of the Class's potential damages. Porter Decl. at ¶ 7. This percentage, in and of itself, is reasonable and warrants preliminary approval. *See, e.g.*, *Newbridge Networks Sec. Litig.*, No. 94-1678, 1998 WL 765724, at *2 (D.D.C. Oct. 23, 1998) ("an agreement that secures roughly six to twelve percent of a potential recovery . . . seems to be within the targeted range of reasonableness"). *Urakchin v. Allianz Asset Mgmt. of Amer., L.P.*, No. 15-cv-1614, 2018 WL 3000490, at *4 (C.D. Cal. Feb. 6, 2018) (granting preliminary approval to settlement of proprietary fund 401k ERISA case that represented between 25.5% of plaintiffs' losses) and Docket Entries 185 and 186 (final approval order and judgment of that settlement). In addition, the Plan is already benefitting from a non-proprietary stable value fund for a low-risk capital preservation option, and will benefit from a non-proprietary target date fund alternative.

D. The costs, risks, and delay of trial and appeal.

The adequacy of the Settlement is even more evident when the cost, risk and delay associated with continued litigation are considered. Despite Plaintiffs' confidence in their case, they face significant hurdles in proving their claims. While "[a] pure heart and an empty head are not enough" for defendants to avoid liability (*Donovan v. Cunningham*, 716 F.2d 1455, 1467 (5th Cir. 1983), *cert denied*, 467 U.S. 1251 (1984)), breach of fiduciary duty claims under ERISA depend heavily on the process by which decisions were made rather than the results of those decisions. *See White v. Chevron Corp.*, No. 16-793, 2017 WL 2352137, at *4 (N.D. Cal. May 31, 2017), *aff'd*, No. 17-16208, 2018 WL 5919670 (9th Cir. Nov. 13, 2018) (finding the "prudence analysis focuses a fiduciary's 'conduct in arriving at an investment decision, not on its results, and ask[s] whether a fiduciary employed the appropriate methods to investigate and determine the merits of a particular investment.'"); *see also Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 595 (8th Cir. 2009).

Here, the Plan's investment decisions were made by the Investment Committee. The minutes from the Investment Committee's meetings indicate that the Investment Committee evaluated the Plan's options regularly and, at certain times, removed Franklin funds, including the Large Cap Value Fund, from the Plan's lineup. Porter Decl. at ¶ 6. The Investment Committee used an independent investment consultant, who produced data on each fund for each quarterly Investment Committee meeting and was in contact with Investment Committee members and staff between meetings to raise issues concerning particular investment products. The consultant also assessed each fund compared to guidelines established by the Investment Committee and codified in an Investment Policy Statement, which itself was reviewed and revised during the Class Period. Whenever possible, the Investment Committee utilized the lowest cost share class of each Franklin fund.

If Plaintiffs established that Defendants breached their fiduciary duty, proving damages would not be a given. Some funds in the Plan performed well during the proposed Class Period, outperforming their benchmarks and peer group, and the majority of the funds Plaintiffs alleged were imprudent had particular years where they performed well, often during the period at the beginning of the Class Period. While Plaintiffs' expert opined that damages were $92 million, that amount was a "best case" scenario, based on the immediate removal of all proprietary funds on the first day of the Class Period, a damage number that Defendants would try to minimize if not eliminate at trial by asserting particular funds were prudently selected and maintained until after performance had deteriorated.

Albeit a decision on the pleading standard on a Rule 12(b)(6) motion, the Eighth Circuit's recent decision in *Meiners v. Wells Fargo & Co.*, 898 F.3d 820 (8th Cir. 2018) may also impact the benchmarks that Plaintiffs could use for their damages calculation. In *Meiners*, the Eighth Circuit rejected a comparison of the performance and fees of Wells Fargo's actively managed target date funds with a passively managed alternative. *Meiners*, 898 F.3d at 823–24. The same alternative was used by Plaintiffs' expert here to calculate

damages and the same methodology was used to compare Franklin funds to passive alternatives.

While this settlement comes at the time of trial, it nevertheless provides significant savings to the Class. Not only are the costs of trial and appeal saved, but the Class receives its recovery now instead of after protracted appeals.

Courts have repeatedly recognized that ERISA 401(k) cases "often lead [] to lengthy litigation." *Krueger v. Ameriprise*, No. 11-cv-2781, 2015 WL 4246879, at *1 (D. Minn. July 13, 2015). It is not unusual for ERISA fee cases to last for a decade or longer. *See, e.g.*, *Tussey v. ABB, Inc.*, No. 06-cv-4305, 2017 WL 6343803, at *3 (W.D. Mo. Dec. 12, 2017) (requesting proposed findings on amount of damages more than 10 years after the suit was filed); *Tibble v. Edison Int'l*, No. 07-cv-5359, 2017 WL 3523737, at *15 (C.D. Cal. Aug. 16, 2017) (outlining issues for trial in a case filed in 2007). The potential for protracted litigation supports the Settlement's approval.

Even if Plaintiffs prevailed at trial and established damages that began at the start of the Class Period and reflected Plaintiffs' experts' methodology, they faced not only the ordinary risks of appeal and delay, but also the particularized risk that a Supreme Court ruling in *Munro v. USC* would lead to a reversal of this Court's determination that the covenants not to sue and class action waivers signed by Mr. Cryer and Ms. Fernandez (as well as most Franklin employees) barred these actions and the Plan's recovery. Dkt. 119 (order denying motion to stay).

E. The effectiveness of distribution to the Class.

No Class Member will be required to do anything to receive a monetary payment from the Settlement. The Plan's Recordkeepers maintain detailed records of its current and former participants, which will enable the Settlement Administrator to deliver notices and distributions with reasonable confidence that the distributions are being sent to the correct people and the correct addresses.

Additionally, distributions will be done in a way that minimizes or defers tax consequences, thus adding additional value to the Class. Class Members who are still contributing to the Plan will receive their benefit primarily through the Increased Match, which both allows for the potential of additional monetary benefit if they elect to increase their eligible salary deferrals into the Plan — and therefore their ability to take advantage of the Increased Match — and provides the additional benefit of dollar-cost averaging because the deferrals are made during regular pay periods. Meanwhile, these participants do not need to increase, or even maintain, their contributions in the Plan to receive their full benefit, as the Plan of Allocation provides a secondary distribution to Plan participants for whom the Increased Match fails to equal or exceed the benefit they would have received if they were no longer in the Plan.

F. The terms of the proposed attorney's fee award

Class Counsel intend to file a motion for an award of attorneys' fees of $7,490,000 (28% of the $13.85 million payment plus the estimated value of the Increased Match, without accounting for the value of the new Target Date Funds) and reimbursement of expenses at a later date. A percentage of the common fund is the typical method by which high-stakes ERISA class litigation is funded. While the base-line fee in the Northern District of California is one-quarter of the settlement, that amount can be adjusted based on a number of factors present here. *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1048 (9th Cir. 2002).

Judge Breyer applied the enhancement factors enumerated in *Vizcaino* and approved a 30% award in *Kanawi v. Bechtel Corp*., an $18.5 million settlement of a similar case alleging plan fiduciaries violated ERISA §§ 404 and 406 by selecting and maintaining plan investment options in order to benefit the plan sponsor and the Bechtel family. As this Court noted in approving the 30 percent fee award, the fee request here "is only modestly more than the Ninth Circuit's 25% 'benchmark'" and is "within the usual range of percentages awarded in similar cases." *Kanawi v. Bechtel Corp*., No. 06-cv-5566, 2011 WL 782244 at *1

(N.D. Cal. Mar. 1, 2011) (awarding 30% fee and $1,571,102.56 in costs); *Vedachalam v. Tata Consultancy Services, Ltd.*, No. C 06-0963-CW, 2013 WL 3941319, at *2 (N.D. Cal. July 18, 2013) (awarding 30% fee in $29.75 million settlement).[4]

Plaintiffs anticipate filing a fee petition based on approximately 5,800 hours spent litigating this case, with a lodestar in excess of $2.9 million. Thus, the lodestar multiplier of Class Counsel's $7.49 million request will be approximately 2.6. *Vizcaino v. Microsoft Corp*., 290 F.3d 1043 at *1047 (9th Cir. 2002) (upholding approval of 28% fee where lodestar cross-check resulted in a multiplier of 3.65). Class Counsel's ordinary hourly rates are provided for in the attached Declarations of Messrs. Porter and Izard. The lodestar multiplier will be even lower by the end of this litigation in light of Class Counsel's additional communications with Class Members, oversight of the settlement administrator, cooperation with the Independent Fiduciary, attendance at the final approval hearing, and oversight of Franklin's compliance with the Settlement Agreement.

Class Counsel have been extraordinarily efficient. In *Kanawi v. Bechtel Corp*., the plaintiffs incurred over $1.5 million in expenses and class counsel spent over 21,000 attorney hours. *Kanawi v. Bechtel Corp*., No. 06-cv-5566, 2011 WL 782244 at *2 (N.D. Cal. Mar. 1, 2011). In *In re Northrop Grumman ERISA Litig*., class counsel spent over 23,000 hours. *In re Northrop Grumman ERISA Litig*., No. 06-cv-6213, Dkt. 803 at 5 (C.D. Cal. Oct. 24, 2017) (awarding 33% fee, $1,159,114 in costs, and incentive awards to named plaintiffs of $25,000).

In addition, Class Counsel have incurred costs and expenses of approximately $430,000 to date. All of these expenses were actually incurred and were necessary to the successful prosecution of the actions. Approximately two-thirds of the expenses were fees paid to Plaintiffs' testifying experts.

[4] Most other courts recognize a one-third fee as the market rate in proprietary fund settlements like this one. *Krueger v. American Financial, Inc*., 2015 WL 4246879 at *2 (D. Min. July 13, 2015) (In "ERISA class actions asserting breaches of fiduciary duties…courts have consistently awarded one-third contingent fees"); *Spano v. Boeing Company*, 2016 WL 3791123 at *2 (S.D. Ill. March 31, 2016) ("Comprising 33 1/3 % of the monetary recovery…Class Counsel's fee application is reasonable").

Defendants have reserved all rights to object to the motion in full.

G. Agreements made in connection with the Settlement.

The Settlement Agreement represents the entire agreement between Plaintiffs and Defendants.

H. The proposal treats Class Members equitably relative to each other.

As described above, the settlement treats each Class Member equitably. Damage calculations are based on each individual Class Member's Plan account balance during the Class Period. Because nearly all investments in the Plan as directed by Class Members were in the proprietary funds, Plan account balances are a reasonable proxy for the alleged harm.

Meanwhile, participants are treated equitably regardless of their current status within the Plan. All Plan participants will benefit to on a pro rata basis— whether through a lump-sum payment or through the Increased Match, and the Plan of Allocation is designed to ensure that Class Members who will benefit from the Increased Match obtain that full benefit even if their participant status changes before the Increased Match Period ends. The Settlement also provides for distribution of unclaimed Settlement Fund assets to Class Members who have a Plan account with a positive balance at that time, with any remainder to go to the Plan's forfeiture account to pay for Plan administrative expenses.

V. THE COURT SHOULD APPROVE THE PROPOSED NOTICE.

Notice of a class action settlement must be provided in a "reasonable manner". Fed.R.Civ.P. 23(e)(1)(B). This means that it is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank Tr. Co.*, 339 U.S. 306, 314 (1950) (citation omitted). Here, the proposed form and method of Notice satisfy all due process considerations and Rule 23(e)(1). The proposed Class Notice describes the lawsuit in plain English, including the terms of the proposed Settlement, the considerations that caused Plaintiffs and Class Counsel to conclude that the Settlement is fair and adequate, the attorneys' fees and expenses, plus costs and incentive awards, that are being sought; the

procedure for objecting to the Settlement, and the date and place of the Fairness Hearing. *See* the SA at Exhibit B.

The method for distributing the Notice is also designed to reach all Class Members. *See Mullane*, 339 U.S. at 314 (holding that a "fundamental requirement of due process [is]… to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections") (citation omitted). With the Court's approval, the Class Notice will be sent to the (last known) address or e-mail address Class Members provided to the Plan's recordkeeper for Plan-related communications. The Notice also requires the Settlement Administrator to send follow-up mailings to any Class Members whose notice letters are returned because they no longer reside at such address. In addition, the Settlement Agreement, Class Notice, the Complaint, and various other documents from the case will be published on the Settlement Website. Thus, the proposed plan for delivering notice of the Settlement will fairly apprise Class Members of the Settlement Agreement and their options with respect thereto, and therefore fully satisfy due process requirements. *See Newberg on Class Actions*, Vol. 3, §§ 8:12, 8:15, 8:28, 8:33, 8:34 (5th ed. 2014).

VI. SETTLEMENT ADMINISTRATION

On January 9, 2019, Class Counsel submitted Requests for Proposals to four settlement administrators. Class Counsel received proposals from Rust, KCC, Angeion, and JND and, following a review based on the overall merits of each proposal, as well as cost, selected Angeion. Based on certain assumptions with respect to the Class as a whole and the Class's utilization of particular services (usage of toll-free number, requests for notices to be re-mailed, etc.) the administrator anticipates administration expenses of $50,000, which will be paid from the Settlement Fund. Porter Decl. ¶ 8. Over the past two years, neither Bailey Glasser nor Izard, Kindall & Raabe, LLP has used this administrator.

In addition, ERISA requires that the Settlement be approved by an independent fiduciary, whose fees will be paid from the Settlement Fund.

VII. PAST DISTRIBUTIONS

Mr. Porter and Mr. Boyko of Bailey Glasser recently settled a comparable case brought on behalf of 27,058 participants in the retirement plan offered to TIAA-CREF employees. *Richards-Donald v. TIAA*, No. 15-cv-8040 (S.D.N.Y.). As here, that plan included a number of proprietary funds, which Plaintiffs alleged were imprudently and disloyally selected and maintained in the plan. The settlement created a $5 million settlement fund. The cost to administer that settlement was $77,501 and the administrator for that settlement, KCC, also submitted a proposal to administer this settlement. Porter Decl. ¶ 13. The court, noting that the settlement was reached early in the litigation, awarded a 25% attorneys' fee. *Richards-Donald v. TIAA*, No. 15-cv-8040 at Dkt. 56 (S.D.N.Y. Oct. 20, 2017). Of the $5 million settlement, $3,562,082.24 was distributed to the Class. Similar to the plan for effecting notice of the Settlement in this case, current and former plan participants in the TIAA-CREF case received their notices by first class mail — in addition to a website — and were not required to submit a claim form. Porter Decl. ¶ 13. However, under the terms of that settlement, participants entitled to receive less than $10 did not receive a distribution. Porter Decl. ¶ 13. 18,604 class members received a distribution, with the average distribution being $191.47.

Last year, Mr. Porter and Mr. Boyko also settled a case against Citigroup concerning proprietary funds included in the Citigroup employees' 401(k) plan between 2001 and 2005. That case settled for $6.9 million and the class consists of 367,382 current and former Citigroup employees. Epiq is the settlement administrator for that settlement, and Epiq also submitted a proposal to administer this settlement. Porter Decl. ¶ 13. The court awarded attorneys' fees of one-third of the settlement, or $2.3 million, as well as reimbursement of $374,101.12 in costs and expenses and $15,000 each to two named plaintiffs. While administration is ongoing, the expected administrative cost is $375,550. As a result, the total amount distributed is expected to be $3.82 million and the average recovery is expected to be approximately $11.

Mr. Porter also settled a third case, this time against Fidelity, concerning the use of proprietary funds in the employee 401(k) plan. *Bilewicz v. FMR LLC*, No. 13-cv-10636 (D. Mass.). That settlement involved 92,498 class members, who were mailed notices. The case settled for $12 million and Class Counsel were awarded attorneys' fees of $4 million (one-third of the settlement).

VIII. PROPOSED SCHEDULE

The following schedule that the parties propose for final approval of the Settlement is based on the need to provide the Class with fair notice and the opportunity to be heard, as well as to provide notice to appropriate federal and state officials as required by the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§ 1332(d), 1453, and 1711–1715.

The Settlement requires that notice be given to Class Members after the Court enters a Preliminary Approval Order. Class Members should have at least 45 calendar days following notice to decide whether or not to object to the Settlement, and should have the ability to review Plaintiffs' motion for final approval and supporting papers prior to that date. Accordingly, the parties propose that the Final Approval Hearing be scheduled at least 110 calendar days after the issuance of the Preliminary Approval Order, with Plaintiffs' motions for final approval and for the award of attorneys' fees and expenses due 30 calendar days prior to the Final Approval Hearing, objections due 14 calendar days before the Final Approval Hearing and responses to objections due five business days before the Final Approval Hearing. The parties propose that the Final Approval Hearing occur as soon after the 110th calendar day from entry of the Preliminary Approval Order as the Court can accommodate. Below is the proposed schedule in chart form.

Plaintiffs and Defendants agree to the following schedule of events subject to the Court's approval:

Event	Timing
Preliminary Approval Hearing	To be set by the Court if required
Plan Recordkeepers to provide Settlement Administrator with Class Members' names and contact information	Thirty calendar days after entry of Preliminary Approval Order
Settlement Administrator to create Settlement Website and set up Toll-Free Settlement Information Line	Thirty calendar days after entry of Preliminary Approval Order
Settlement Administrator to mail/email Settlement Notice	Forty-five calendar days after entry of Preliminary Approval Order
Settlement Administrator to provide Parties with declaration on notice	Seven business days after deadline to mail/email Notice
Plaintiffs' motion for final approval of the Settlement, an award of Attorneys' Fees and Expenses and Case Contribution Awards to be filed	At least thirty calendar days before the Final Approval Hearing
Objections to the Settlement by any federal or state authorities to be filed	Thirty calendar days before the Final Approval Hearing
Objections to the Settlement by any Class Members and notice of the intention to appear at Final Approval Hearing to be filed or postmarked	Fifteen calendar days before the Final Approval Hearing
Independent Fiduciary report to be filed	Thirty calendar days before Final Approval Hearing
Settlement Administrator's declaration on CAFA notices to be filed	Thirty calendar days before Final Approval Hearing
Response to objections to be filed	Five business days before Final Approval Hearing
Final Approval Hearing	At least 110 calendar days after entry of Preliminary Approval Order

IX. CONCLUSION

For the reasons set forth above, the Settlement meets the standard for preliminary approval under Rule 23. Accordingly, Plaintiffs seek an Order: (1) preliminary approving to the Settlement under FED. R. CIV. P. 23(e); (2) approving the manner of notifying the Class of the Settlement; and (3) setting a date for a Final Approval Hearing.

Dated: February 15, 2019

Respectfully submitted,

/s/*Mark G. Boyko*
Gregory Y. Porter, *pro hac vice*
Mark G. Boyko, *pro hac vice*
Bailey & Glasser LLP
1055 Thomas Jefferson Street, NW Suite 540
Washington, DC 20007
Telephone: (202) 463-2101
Facsimile: (202) 463-2103
gporter@baileyglasser.com
mboyko@baileyglasser.com

/s/*Mark P. Kindall*
Mark P. Kindall, Cal. Bar No. 138703
Robert A. Izard, *pro hac vice*
IZARD KINDALL & RAABE LLP
29 South Main Street, Suite 305
West Hartford, CT 06107
Telephone: (860) 493-6292
Facsimile: (860) 493-6290
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mkindall@ikrlaw.com

/s/ *Joseph A. Creitz*
Joseph A. Creitz, Cal. Bar No. 169552
Lisa S. Serebin, Cal Bar No. 146312
CREITZ & SEREBIN LLP
100 Pine Street, Suite 1250
San Francisco, CA 94111
Telephone: (415) 466-3090
Facsimile: (415) 513-4475
joe@creitzserebin.com
lisa@creitzserebin.com

Attorneys for Plaintiffs

ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from each of the other signatories.

Dated: February 15, 2019

/s/ *Mark G. Boyko*
Mark G. Boyko

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15th day of February, 2019, a true and correct copy of the foregoing was filed with the Court using the CM/ECF system and service upon all participants in this case who are CM/ECF users will be accomplished by operation of that system.

/s/ Mark G. Boyko

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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

Plaintiffs,

v.

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

Defendants.

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

Judge: Hon. Claudia Wilken

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

A federal court has authorized this Notice. This is not a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS

You are receiving this notice (the "Notice") because the records of the Franklin Templeton 401(k) Retirement Plan (the "Plan") indicate that you have been a participant in the Plan and maintained an account with a positive balance at some point since July 28, 2010. As such, your rights may be affected by a proposed settlement of this class action litigation (the "Settlement").

This Notice summarizes the proposed Settlement. The complete terms and conditions of the Settlement are described in the Settlement Agreement, which is available at www.FRI401kClassAction.com, or by contacting class counsel, Mark G. Boyko at mboyko@baileyglasser or Oren Faircloth at ofaircloth@ikrlaw.com, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.cand.uscourts.gov, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, Ronald V. Dellums Federal Building & United States Courthouse, 1301 Clay Street, Oakland, CA 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

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

What this Litigation is About

This consolidated class action litigation is brought on behalf of participants in the Plan. Marlon H. Cryer and Nelly F. Fernandez (collectively referred to as "Plaintiffs" or "Class Representatives") are the named plaintiffs and the representatives on behalf of all members of the Class in the litigation. One of the consolidated lawsuits was filed in July 2016, and the other in November 2017.

Plaintiffs sued Franklin Resources, Inc. ("Franklin"), the Franklin Templeton 401(k) Retirement Plan Investment Committee (the "Investment Committee"), the individual members of the Investment Committee, and others alleged to have served in fiduciary roles to the Plan (together, "Defendants") alleging primarily that Defendants violated their fiduciary duties by choosing for the Plan allegedly imprudent and expensive investment funds that were managed by Franklin's investment adviser subsidiaries, and by allegedly failing to negotiate lower recordkeeping fees with the Plan's third-party recordkeepers. Plaintiffs allege that there were superior, less expensive investment options available that Defendants should have chosen for the Plan. Plaintiffs also allege that between 2010 and 2013, Franklin engaged in transactions prohibited by the Employee Retirement Income Security Act of 1974 ("ERISA"). After the lawsuits were filed, Plaintiffs agreed voluntarily to dismiss from the litigation a claim for alleged breach of fiduciary duty relating to monitoring of the Plan fiduciaries as well as certain individual defendants, and the Court granted summary judgment to Defendants on Plaintiffs' alleged excessive recordkeeping fee claim.

Defendants deny all allegations of wrongdoing, fault, liability or damage to the Plaintiffs and the Class and deny that they have engaged in any wrongdoing or violation of law or breach of duty. Defendants maintain that they acted in the best interests of Plan participants at all times and complied with their fiduciary obligations to the Plan and its participants. Among other things, Defendants contend that the Plan fiduciaries employed a robust and thorough process for selecting, monitoring, and removing Plan investment options and for monitoring Plan-related fees.

The Terms of the Settlement

To avoid the time and expense of further litigation, Plaintiffs and Defendants have agreed to resolve the consolidated litigation. The Settlement is the product of extensive negotiations between the parties, who were assisted in their negotiations by a neutral private mediator. The parties have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. If the Settlement is approved by the Court, the Class will obtain the benefits of the Settlement without the further delay and uncertainty of additional litigation. The Settlement resolves all issues regarding the Plan's investment options and fees from July 28, 2010 through such time as the Court grants final approval of the Settlement.

The terms of the Settlement are set forth in the Settlement Agreement and Release dated February 15, 2019 (the "Settlement Agreement"), which is available at www.FRI401kClassAction.com. Those terms are summarized below. Nothing in the Settlement Agreement is an admission or concession on Defendants' part of any fault or liability whatsoever, nor is it an admission or concession on Plaintiffs' part that their claims lacked merit.

1. The Class Covered by the Settlement. The Court certified a Class on July 26, 2017, and the Settlement applies to, and is binding on, that Class. The Class is defined as:

> All participants in the Franklin Templeton 401(k) Retirement Plan from July 28, 2010 to the date of judgment. Excluded from the class are Defendants, Defendants' beneficiaries, and Defendants' immediate families.

Plan records indicate that you may be a member of the Class because you are a current or former participant in the Plan who has maintained a positive account balance at some point since July 28, 2010.

2. Relief Provided to the Class by the Settlement.[1] Under the proposed Settlement, (1) Franklin will contribute thirteen million, eight hundred fifty thousand dollars ($13,850,000) to a Settlement Fund (the "Settlement Amount"); (2) Franklin will provide an additional benefit to the Plan by increasing its existing match contributions to the Plan from its current rate of seventy-five percent (75%) of each participant's eligible salary deferrals to eighty-five percent (85%) of such deferrals for a period of three years (the "Increased Match");[2] and (3) the Investment Committee responsible for selecting investment options for the Plan will add a non-proprietary target date fund (TDF) to the Plan as an additional investment option.

The Distributable Settlement Amount will be distributed to eligible Class Members pursuant to a Plan of Allocation to be approved by the Court.[3] Individual benefits under the Settlement for each Class Member will be determined in accordance with that Plan of Allocation, and cannot be stated with certainty for any individual Class Member at this time. That is in part because the exact Distributable Settlement Amount and number of Class Members are not known at this time, although a preliminary review of Plan records suggests that approximately 6,900 individuals will be included in the Class. The proposed Plan of Allocation is available at www.FRI401kClassAction.com.

On a summary level, the Plan of Allocation will work as follows: The Settlement Administrator will determine the Distributable Settlement Amount to be allocated to Class Members. The Settlement Administrator will then calculate the portion of the Distributable Settlement Amount to be allocated to each Class Member, based on that Class Member's year-end account balance for each year from 2010 through 2018. Thus, a Class Member's allocation will depend on both the amount he or she maintained in the Plan over the Class Period and the number

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[1] All capitalized terms not defined in this Notice are defined in the Settlement Agreement, which can be viewed at www.FRI401kClassAction.com

[2] The value of a 10% match increase is subject to fluctuation depending on future Plan participant counts and deferrals over the three-year period. Using participant data from 2017, a 10% match increase would have provided an incremental benefit of approximately $4.3 million to Plan participants in that year. For purposes of estimating the value of the Increased Match, $4.3 million will be used as the annual estimate (the "Anticipated Future Benefit").

[3] The Distributable Settlement Amount is the Settlement Amount plus the Anticipated Future Benefit, minus (i) the amounts approved by the Court for Class Counsel's Attorneys' Fees and Expenses and Case Contribution Awards to the named Plaintiffs; (ii) Administration Costs; (iii) Independent Fiduciary Fees and Costs; (iv) Taxes and Tax-Related Costs; and (v) a hold-back of at least $150,000 to be used to ensure Class Members receive the allocations they are entitled to under the Settlement.

of years during the Class Period in which the Class Member maintained a balance. To ensure that no Class Member receives less than $10, any Class Member entitled to receive less than $10 will be allocated $10, and the remaining allocations will be adjusted proportionally.

The following hypotheticals illustrate how the Plan of Allocation is designed to work. It is important to stress that these hypotheticals have been calculated using preliminary estimates of (i) the dollar amount to be distributed to Class Members; (ii) the number of Class Members; and (iii) the Class Members' Plan account data over only a portion of the Class Period (through 2017). The final allocations will depend on the final figures for each of those three factors, which will not be known until later in the settlement administration process. That said, based on these preliminary numbers:

- Hypothetical Participant A, who had an average yearly Plan balance of $100,000 and was in the Plan for four years of the Class Period, may recover approximately $1,000.
- Hypothetical Participant B, who had the same average yearly balance of $100,000, but was in the Plan for just two years of the Class Period, may recover approximately $500. (That is because, all things being equal, a Class Member who participated in the Plan for longer will get a larger allocation.)
- Hypothetical Participant C, who had an average yearly Plan balance of $200,000 (double the average yearly balance of Hypothetical Participant A), but was in the Plan for the same four years as Hypothetical Participant A, may recover approximately $2,000. (That is because, all things being equal, a participant with a higher yearly Plan balances will get a larger allocation.)

Settlement benefits will be distributed as follows: current Plan participants with positive account balances who are no longer eligible to contribute to their accounts (generally, former employees) will receive their allocations from the Settlement Fund by electronic payment to their Plan accounts; and former participants (those who have closed out, or rolled over, their Plan accounts) will receive their allocations from the Settlement Fund by check. Current Plan participants with positive account balances who are still eligible to contribute to the Plan (generally, current employees) will receive their allocations first through the Increased Match, as described in the Plan of Allocation, and may also receive an allocation from the Settlement Fund after the conclusion of the Increased Match Period if the Increased Match received over that period was less than they would have been entitled to had they been entitled to participate in the initial settlement distribution.

Actual allocation amounts will depend on the final Distributable Settlement Amount, the final number of Class Members, and the individual Class Member's aggregate yearly account balances and number of years in the Plan during the Class Period. It is possible that some Class Members may receive the minimum recovery of $10.

All inquiries related to distributions should be addressed solely to the Settlement Administrator at the addresses listed below.

Settlement Administrator
Re: Franklin Resources, Inc.
1650 Arch Street, Suite 2210
Philadelphia, PA 19103
Email: info@FRI401kClassAction.com

3. Summary of the Claims Released by the Class. In exchange for the Settlement Amount and other terms of the Settlement, all members of the Class will release any and all claims for monetary, injunctive, and all other relief against the Defendant Released Parties through the date the Court enters the Final Approval Order and Judgment (including, without limitation, any Unknown Claims) arising out of or in any way related to: (a) the conduct alleged in the operative Complaints, whether or not included as counts in the Complaints; (b) the selection, retention and monitoring of the Plan's investment options and service providers; (c) the performance, fees and other characteristics of the Plan's investment options; (d) the Plan's fees and expenses, including without limitation, its recordkeeping fees; (e) the nomination, appointment, retention, monitoring and removal of the Plan's fiduciaries; and (f) the approval by the Independent Fiduciary of the Settlement; except that the Released Claims shall not include claims to enforce the covenants or obligations set forth in the Agreement and shall not in any way bar, limit, waive, or release, any individual claim by any Class Member to vested benefits that are otherwise due under the terms of the Plan.

Class Members will not have the right to sue the Defendants or other Defendant Released Parties, whether individually or on behalf of the Plan, for conduct pertaining to the Plan during the Class Period or conduct that the Settlement requires Defendants to undertake during its Compliance Period. The entire release is set forth in the Settlement Agreement, which can be viewed online at www.FRI401kClassAction.com, or requested from Class Counsel.

The Settlement Approval Process

The Court has granted preliminary approval of the proposed Settlement and approved this Notice. The Settlement will not take effect, and there will be no benefits distributed under the Settlement, however, if the Court does not enter a Final Approval Order and Judgment or the Settlement otherwise does not become effective. The Court will hold a Final Approval Hearing on September 24, 2019, in Courtroom 6 at the United States District Court for the Northern District of California, Ronald V. Dellums Federal Building & United States Courthouse, 1301 Clay Street, Oakland, California. Class Counsel will attend the hearing to answer any questions the Court may have. You are not required to attend the Final Approval Hearing.

The date and location of the Final Approval Hearing is subject to change by order of the Court without further notice to the Class. If you would like to attend the Final Approval Hearing, you should check the Settlement Website, www.FRI401kClassAction.com, or the Court's online docket to confirm that the date has not been changed. Prior to the Final Approval Hearing, an Independent Fiduciary will be asked to approve the Settlement and Released Claims on behalf of the Plan, as may be required by ERISA Prohibited Transaction Exemption 2003-39 or any other

applicable class or statutory exemptions. Defendants have the unilateral right not to proceed with the Settlement in the absence of such Independent Fiduciary approval.

The Opportunity to Object to the Settlement

As a Class Member, you can ask the Court to deny approval of the Settlement by filing an objection. You cannot, however, ask the Court to order settlement on different terms; the Court can only approve or reject the Settlement on the terms reached by the Parties. If the Court denies approval, the Settlement Amount will not be distributed, the Increased Match will not be implemented, and the litigation will resume.

Any objection to the proposed Settlement must be made in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Cryer v. Franklin Resources, Inc.*, Lead Case No. 4:16-cv-04265-CW); (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, Ronald V. Dellums Federal Building & United States Courthouse, 1301 Clay Street, Oakland, CA 94612, or by filing them in person at any location of the United States District Court for the Northern District of California; and (c) be filed or postmarked on or before September 10, 2019.

Those Class Members or their attorneys intending to appear at the Final Approval Hearing must give notice of their intention to appear setting forth, among other things, the name, address, and telephone number of the Class Member (and, if applicable, the name, address, and telephone number of that Class Member's attorney) on Class Counsel and Defendants' Counsel and file it with the Court Clerk on or before September 10, 2019.

If the Court approves the Settlement, you will be bound by it and will receive whatever benefits you are entitled to under its terms. You cannot exclude yourself from the Settlement. The Court certified the Class under Federal Rule of Civil Procedure 23(b)(1), which does not permit Class Members to opt out of the Class.

Attorneys' Fees and Case Contribution Awards for Named Plaintiffs

The Class is represented by Class Counsel. The attorneys for the Class are as follows:

Gregory Y. Porter
Mark G. Boyko
BAILEY & GLASSER LLP
1055 Thomas Jefferson Street NW
Suite 540
Washington, DC 20007
mboyko@baileyglasser.com
314-863-5446

Robert A. Izard
Mark P. Kindall
Douglas P. Needham
IZARD, KINDALL & RAABE LLP
29 South Main Street, Suite 305
West Hartford, CT 06107

Class Counsel and the Class Representatives have devoted many hours to investigating the claims, bringing this litigation, and pursuing it for over two years. During that time, Class Counsel incurred litigation expenses in addition to the time spent by attorneys, paralegals, and others. Class Counsel also took the risk of litigation and have not been paid for their time and expenses while this litigation has been pending before the Court.

Class Counsel will file a motion with the Court seeking approval of payment from the Settlement Fund of reasonable attorneys' fees and reimbursement of the expenses they incurred in prosecuting the litigation. They will request (1) attorneys' fees of $7,490,000, which represents approximately 28% of the aggregate value of the Settlement Amount and the estimated value of the three-year Increased Match; and (2) reimbursement of expenses of approximately $440,000. Plaintiffs will also request that the Court order Case Contribution Awards of $25,000 for Plaintiff Cryer and $15,000 for Plaintiff Fernandez from the Settlement Fund. Defendants have reserved the right to object to such requested amounts.

Plaintiffs' preliminary approval motion and supporting papers were filed on February 15, 2019, and their papers in support of their fee and expense motion, as well as their papers in support of final approval of the Settlement, will be filed on or before July 30, 2019. You may review these filings at www.FRI401kClassAction.com. Any award of Attorneys' Fees and Expenses and Case Contribution Awards approved by the Court, in addition to the Administration Costs, Independent Fiduciary Fees and Costs, and Taxes and Tax-Related Costs will be paid from the Settlement Fund.

Getting More Information

You do not need to do anything to be a part of this Class or, if the Settlement is approved, to be eligible to receive your share of the Settlement Fund and/or Increased Match, as applicable. If you still have a Plan account with a positive balance when Settlement Fund distributions are made, your Settlement benefits will be distributed to your Plan account. If you no longer have a Plan account, a check will be mailed to you.

You can visit the Settlement Website at www.FRI401kClassAction.com, where you will find the full Settlement Agreement, the Court's order granting preliminary approval, this Notice, and other relevant documents. If there are any changes to the deadlines identified in this Notice, the date of the Final Approval Hearing, or the Settlement Agreement, those changes will be posted to the Settlement Website. You will not receive an additional email notice with those changes, unless separately ordered by the Court. If you cannot find the information you need on the website, you may also contact **1-855-648-7266** for more information. Please do not contact the Court or counsel for Defendants to get additional information.

Dated: June 3, 2019

By Order of the United States District Court
District Judge Claudia Wilken

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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

Plaintiffs,

v.

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

Defendants.

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

Judge: Hon. Claudia Wilken

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

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PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS

You are receiving this notice (the "Notice") because the records of the Franklin Templeton 401(k) Retirement Plan (the "Plan") indicate that you have been a participant in the Plan and maintained an account with a positive balance at some point since July 28, 2010. As such, your rights may be affected by a proposed settlement of this class action litigation (the "Settlement").

This Notice summarizes the proposed Settlement. The complete terms and conditions of the Settlement are described in the Settlement Agreement, which is available at www.FRI401kClassAction.com, or by contacting class counsel, Mark G. Boyko at mboyko@baileyglasser or Oren Faircloth at ofaircloth@ikrlaw.com, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.cand.uscourts.gov, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, Ronald V. Dellums Federal Building & United States Courthouse, 1301 Clay Street, Oakland, CA 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

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

What this Litigation is About

This consolidated class action litigation is brought on behalf of participants in the Plan. Marlon H. Cryer and Nelly F. Fernandez (collectively referred to as "Plaintiffs" or "Class Representatives") are the named plaintiffs and the representatives on behalf of all members of the Class in the litigation. One of the consolidated lawsuits was filed in July 2016, and the other in November 2017.

Plaintiffs sued Franklin Resources, Inc. ("Franklin"), the Franklin Templeton 401(k) Retirement Plan Investment Committee (the "Investment Committee"), the individual members of the Investment Committee, and others alleged to have served in fiduciary roles to the Plan (together, "Defendants") alleging primarily that Defendants violated their fiduciary duties by choosing for the Plan allegedly imprudent and expensive investment funds that were managed by Franklin's investment adviser subsidiaries, and by allegedly failing to negotiate lower recordkeeping fees with the Plan's third-party recordkeepers. Plaintiffs allege that there were superior, less expensive investment options available that Defendants should have chosen for the Plan. Plaintiffs also allege that between 2010 and 2013, Franklin engaged in transactions prohibited by the Employee Retirement Income Security Act of 1974 ("ERISA"). After the lawsuits were filed, Plaintiffs agreed voluntarily to dismiss from the litigation a claim for alleged breach of fiduciary duty relating to monitoring of the Plan fiduciaries as well as certain individual defendants, and the Court granted summary judgment to Defendants on Plaintiffs' alleged excessive recordkeeping fee claim.

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The Terms of the Settlement

To avoid the time and expense of further litigation, Plaintiffs and Defendants have agreed to resolve the consolidated litigation. The Settlement is the product of extensive negotiations between the parties, who were assisted in their negotiations by a neutral private mediator. The parties have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. If the Settlement is approved by the Court, the Class will obtain the benefits of the Settlement without the further delay and uncertainty of additional litigation. The Settlement resolves all issues regarding the Plan's investment options and fees from July 28, 2010 through such time as the Court grants final approval of the Settlement.

The terms of the Settlement are set forth in the Settlement Agreement and Release dated February 15, 2019 (the "Settlement Agreement"), which is available at www.FRI401kClassAction.com. Those terms are summarized below. Nothing in the Settlement Agreement is an admission or concession on Defendants' part of any fault or liability whatsoever, nor is it an admission or concession on Plaintiffs' part that their claims lacked merit.

1. The Class Covered by the Settlement. The Court certified a Class on July 26, 2017, and the Settlement applies to, and is binding on, that Class. The Class is defined as:

> All participants in the Franklin Templeton 401(k) Retirement Plan from July 28, 2010 to the date of judgment. Excluded from the class are Defendants, Defendants' beneficiaries, and Defendants' immediate families.

Plan records indicate that you may be a member of the Class because you are a current or former participant in the Plan who has maintained a positive account balance at some point since July 28, 2010.

2. Relief Provided to the Class by the Settlement.[1] Under the proposed Settlement, (1) Franklin will contribute thirteen million, eight hundred fifty thousand dollars ($13,850,000) to a Settlement Fund (the "Settlement Amount"); (2) Franklin will provide an additional benefit to the Plan by increasing its existing match contributions to the Plan from its current rate of seventy-five percent (75%) of each participant's eligible salary deferrals to eighty-five percent (85%) of such deferrals for a period of three years (the "Increased Match");[2] and (3) the Investment Committee responsible for selecting investment options for the Plan will add a non-proprietary target date fund (TDF) to the Plan as an additional investment option.

The Distributable Settlement Amount will be distributed to eligible Class Members pursuant to a Plan of Allocation to be approved by the Court.[3] Individual benefits under the Settlement for each Class Member will be determined in accordance with that Plan of Allocation, and cannot be stated with certainty for any individual Class Member at this time. That is in part because the exact Distributable Settlement Amount and number of Class Members are not known at this time, although a preliminary review of Plan records suggests that approximately 6,900 individuals will be included in the Class. The proposed Plan of Allocation is available at www.FRI401kClassAction.com.

On a summary level, the Plan of Allocation will work as follows: The Settlement Administrator will determine the Distributable Settlement Amount to be allocated to Class Members. The Settlement Administrator will then calculate the portion of the Distributable Settlement Amount to be allocated to each Class Member, based on that Class Member's year-end account balance for each year from 2010 through 2018. Thus, a Class Member's allocation will depend on both the amount he or she maintained in the Plan over the Class Period and the number

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[1] All capitalized terms not defined in this Notice are defined in the Settlement Agreement, which can be viewed at www.FRI401kClassAction.com

[2] The value of a 10% match increase is subject to fluctuation depending on future Plan participant counts and deferrals over the three-year period. Using participant data from 2017, a 10% match increase would have provided an incremental benefit of approximately $4.3 million to Plan participants in that year. For purposes of estimating the value of the Increased Match, $4.3 million will be used as the annual estimate (the "Anticipated Future Benefit").

[3] The Distributable Settlement Amount is the Settlement Amount plus the Anticipated Future Benefit, minus (i) the amounts approved by the Court for Class Counsel's Attorneys' Fees and Expenses and Case Contribution Awards to the named Plaintiffs; (ii) Administration Costs; (iii) Independent Fiduciary Fees and Costs; (iv) Taxes and Tax-Related Costs; and (v) a hold-back of at least $150,000 to be used to ensure Class Members receive the allocations they are entitled to under the Settlement.

of years during the Class Period in which the Class Member maintained a balance. To ensure that no Class Member receives less than $10, any Class Member entitled to receive less than $10 will be allocated $10, and the remaining allocations will be adjusted proportionally.

The following hypotheticals illustrate how the Plan of Allocation is designed to work. It is important to stress that these hypotheticals have been calculated using preliminary estimates of (i) the dollar amount to be distributed to Class Members; (ii) the number of Class Members; and (iii) the Class Members' Plan account data over only a portion of the Class Period (through 2017). The final allocations will depend on the final figures for each of those three factors, which will not be known until later in the settlement administration process. That said, based on these preliminary numbers:

- Hypothetical Participant A, who had an average yearly Plan balance of $100,000 and was in the Plan for four years of the Class Period, may recover approximately $1,000.
- Hypothetical Participant B, who had the same average yearly balance of $100,000, but was in the Plan for just two years of the Class Period, may recover approximately $500. (That is because, all things being equal, a Class Member who participated in the Plan for longer will get a larger allocation.)
- Hypothetical Participant C, who had an average yearly Plan balance of $200,000 (double the average yearly balance of Hypothetical Participant A), but was in the Plan for the same four years as Hypothetical Participant A, may recover approximately $2,000. (That is because, all things being equal, a participant with a higher yearly Plan balances will get a larger allocation.)

Settlement benefits will be distributed as follows: current Plan participants with positive account balances who are no longer eligible to contribute to their accounts (generally, former employees) will receive their allocations from the Settlement Fund by electronic payment to their Plan accounts; and former participants (those who have closed out, or rolled over, their Plan accounts) will receive their allocations from the Settlement Fund by check. Current Plan participants with positive account balances who are still eligible to contribute to the Plan (generally, current employees) will receive their allocations first through the Increased Match, as described in the Plan of Allocation, and may also receive an allocation from the Settlement Fund after the conclusion of the Increased Match Period if the Increased Match received over that period was less than they would have been entitled to had they been entitled to participate in the initial settlement distribution.

Actual allocation amounts will depend on the final Distributable Settlement Amount, the final number of Class Members, and the individual Class Member's aggregate yearly account balances and number of years in the Plan during the Class Period. It is possible that some Class Members may receive the minimum recovery of $10.

All inquiries related to distributions should be addressed solely to the Settlement Administrator at the addresses listed below.

Settlement Administrator
Re: Franklin Resources, Inc.
1650 Arch Street, Suite 2210
Philadelphia, PA 19103
Email: info@FRI401kClassAction.com

3. Summary of the Claims Released by the Class. In exchange for the Settlement Amount and other terms of the Settlement, all members of the Class will release any and all claims for monetary, injunctive, and all other relief against the Defendant Released Parties through the date the Court enters the Final Approval Order and Judgment (including, without limitation, any Unknown Claims) arising out of or in any way related to: (a) the conduct alleged in the operative Complaints, whether or not included as counts in the Complaints; (b) the selection, retention and monitoring of the Plan's investment options and service providers; (c) the performance, fees and other characteristics of the Plan's investment options; (d) the Plan's fees and expenses, including without limitation, its recordkeeping fees; (e) the nomination, appointment, retention, monitoring and removal of the Plan's fiduciaries; and (f) the approval by the Independent Fiduciary of the Settlement; except that the Released Claims shall not include claims to enforce the covenants or obligations set forth in the Agreement and shall not in any way bar, limit, waive, or release, any individual claim by any Class Member to vested benefits that are otherwise due under the terms of the Plan.

Class Members will not have the right to sue the Defendants or other Defendant Released Parties, whether individually or on behalf of the Plan, for conduct pertaining to the Plan during the Class Period or conduct that the Settlement requires Defendants to undertake during its Compliance Period. The entire release is set forth in the Settlement Agreement, which can be viewed online at www.FRI401kClassAction.com, or requested from Class Counsel.

The Settlement Approval Process

The Court has granted preliminary approval of the proposed Settlement and approved this Notice. The Settlement will not take effect, and there will be no benefits distributed under the Settlement, however, if the Court does not enter a Final Approval Order and Judgment or the Settlement otherwise does not become effective. The Court will hold a Final Approval Hearing on September 24, 2019, in Courtroom 6 at the United States District Court for the Northern District of California, Ronald V. Dellums Federal Building & United States Courthouse, 1301 Clay Street, Oakland, California. Class Counsel will attend the hearing to answer any questions the Court may have. You are not required to attend the Final Approval Hearing.

The date and location of the Final Approval Hearing is subject to change by order of the Court without further notice to the Class. If you would like to attend the Final Approval Hearing, you should check the Settlement Website, www.FRI401kClassAction.com, or the Court's online docket to confirm that the date has not been changed. Prior to the Final Approval Hearing, an Independent Fiduciary will be asked to approve the Settlement and Released Claims on behalf of the Plan, as may be required by ERISA Prohibited Transaction Exemption 2003-39 or any other

applicable class or statutory exemptions. Defendants have the unilateral right not to proceed with the Settlement in the absence of such Independent Fiduciary approval.

The Opportunity to Object to the Settlement

As a Class Member, you can ask the Court to deny approval of the Settlement by filing an objection. You cannot, however, ask the Court to order settlement on different terms; the Court can only approve or reject the Settlement on the terms reached by the Parties. If the Court denies approval, the Settlement Amount will not be distributed, the Increased Match will not be implemented, and the litigation will resume.

Any objection to the proposed Settlement must be made in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Cryer v. Franklin Resources, Inc.*, Lead Case No. 4:16-cv-04265-CW); (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, Ronald V. Dellums Federal Building & United States Courthouse, 1301 Clay Street, Oakland, CA 94612, or by filing them in person at any location of the United States District Court for the Northern District of California; and (c) be filed or postmarked on or before September 10, 2019.

Those Class Members or their attorneys intending to appear at the Final Approval Hearing must give notice of their intention to appear setting forth, among other things, the name, address, and telephone number of the Class Member (and, if applicable, the name, address, and telephone number of that Class Member's attorney) on Class Counsel and Defendants' Counsel and file it with the Court Clerk on or before September 10, 2019.

If the Court approves the Settlement, you will be bound by it and will receive whatever benefits you are entitled to under its terms. You cannot exclude yourself from the Settlement. The Court certified the Class under Federal Rule of Civil Procedure 23(b)(1), which does not permit Class Members to opt out of the Class.

Attorneys' Fees and Case Contribution Awards for Named Plaintiffs

The Class is represented by Class Counsel. The attorneys for the Class are as follows:

Gregory Y. Porter
Mark G. Boyko
BAILEY & GLASSER LLP
1055 Thomas Jefferson Street NW
Suite 540
Washington, DC 20007
mboyko@baileyglasser.com
314-863-5446

Robert A. Izard
Mark P. Kindall
Douglas P. Needham
IZARD, KINDALL & RAABE LLP
29 South Main Street, Suite 305
West Hartford, CT 06107

Class Counsel and the Class Representatives have devoted many hours to investigating the claims, bringing this litigation, and pursuing it for over two years. During that time, Class Counsel incurred litigation expenses in addition to the time spent by attorneys, paralegals, and others. Class Counsel also took the risk of litigation and have not been paid for their time and expenses while this litigation has been pending before the Court.

Class Counsel will file a motion with the Court seeking approval of payment from the Settlement Fund of reasonable attorneys' fees and reimbursement of the expenses they incurred in prosecuting the litigation. They will request (1) attorneys' fees of $7,490,000, which represents approximately 28% of the aggregate value of the Settlement Amount and the estimated value of the three-year Increased Match; and (2) reimbursement of expenses of approximately $440,000. Plaintiffs will also request that the Court order Case Contribution Awards of $25,000 for Plaintiff Cryer and $15,000 for Plaintiff Fernandez from the Settlement Fund. Defendants have reserved the right to object to such requested amounts.

Plaintiffs' preliminary approval motion and supporting papers were filed on February 15, 2019, and their papers in support of their fee and expense motion, as well as their papers in support of final approval of the Settlement, will be filed on or before July 30, 2019. You may review these filings at www.FRI401kClassAction.com. Any award of Attorneys' Fees and Expenses and Case Contribution Awards approved by the Court, in addition to the Administration Costs, Independent Fiduciary Fees and Costs, and Taxes and Tax-Related Costs will be paid from the Settlement Fund.

Getting More Information

You do not need to do anything to be a part of this Class or, if the Settlement is approved, to be eligible to receive your share of the Settlement Fund and/or Increased Match, as applicable. If you still have a Plan account with a positive balance when Settlement Fund distributions are made, your Settlement benefits will be distributed to your Plan account. If you no longer have a Plan account, a check will be mailed to you.

You can visit the Settlement Website at www.FRI401kClassAction.com, where you will find the full Settlement Agreement, the Court's order granting preliminary approval, this Notice, and other relevant documents. If there are any changes to the deadlines identified in this Notice, the date of the Final Approval Hearing, or the Settlement Agreement, those changes will be posted to the Settlement Website. You will not receive an additional mailed notice with those changes, unless separately ordered by the Court. If you cannot find the information you need on the website, you may also contact **1-855-648-7266** for more information. Please do not contact the Court or counsel for Defendants to get additional information.

Dated: June 3, 2019

By Order of the United States District Court
District Judge Claudia Wilken