

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ELYSEE NICOLAS, Individually and as	:
representative of a class of participants and	: Civil Action No.: 17-3695 (AET)(DEA)
beneficiaries on behalf of the Princeton	:
University 403(b) Plans,	:
	:
<i>Plaintiff,</i>	:
	:
v.	:
	:
THE TRUSTEES OF PRINCETON	:
UNIVERSITY,	:
	:
<i>Defendant.</i>	:
	:

STIPULATION OF SETTLEMENT

Plaintiff Elysee Nicolas (“Plaintiff”) and Defendant The Trustees of Princeton University (“Defendant” or “University”) (collectively with Plaintiff, the “Parties”), enter into this Stipulation of Settlement (the “Agreement” or the “Stipulation”).

RECITALS

A. Plaintiff brought this action against Defendant in the United States District Court for the District of New Jersey (the “District Court”) on May 23, 2017, Case No. 2:17-cv-03695 (the “Action”).

B. In the Complaint (ECF No. 1, the “Complaint”), Plaintiff alleged a number of causes of action pursuant to Section 502 of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. § 1132. Plaintiff alleged that Defendant was a fiduciary of the Princeton University Retirement Plan (“Retirement Plan”) and the Princeton University Savings Plan (“Retirement Savings Plan”) (together, the “Plans”), and breached fiduciary duties owed to the Plans and the Plans’ participants under ERISA by causing the Plans to incur higher administrative fees and expenses than reasonable and necessary. Plaintiff also alleged that

Defendant breached its fiduciary duties by continuing to permit investment by the Plans' participants in the CREF Stock Account and the TIAA Real Estate Account. The Complaint sought equitable and compensatory relief pursuant to ERISA §§ 409 and 502(a)(2), specifically the restoration by Defendant to the Plans of losses allegedly caused by Defendant's alleged breaches of fiduciary duties. The Complaint also sought costs and attorneys' fees pursuant to ERISA § 502(g) and the common fund doctrine.

C. Plaintiff brought this action on behalf of a proposed class of current and former participants in the Plans. (ECF No. 1, at ¶ 87).

D. Defendant moved to dismiss the Complaint (ECF No. 7), and, on September 25, 2017, the Court granted in part, and denied in part, Defendant's motion to dismiss (ECF No. 14). Defendant filed a Motion for Reconsideration (ECF No. 20) and a Motion to Stay (ECF No. 21), and, on December 20, 2017, the Court denied the Motion for Reconsideration but granted the Motion to Stay. (ECF No. 29). On May 22, 2019, the Court lifted the stay and granted Defendant's request to Renew its Motion for Reconsideration. (ECF No. 38). Defendant filed another Motion for Reconsideration on June 10, 2019 (ECF No. 39) and, on August 15, 2019, the Court denied that motion. (ECF No. 42). Defendant filed an Answer to the Complaint on September 12, 2019. (ECF No. 45).

E. The Parties, through their counsel, have conducted extensive, arm's-length negotiations concerning a possible compromise and settlement of the Action, including participating in a day-long mediation in Los Angeles before Robert Meyer of JAMS on February 4, 2020. In advance of mediation, Defendant provided Plaintiff with extensive documentation, including benefits committee and investment committee meeting minutes and meeting materials, information made available to Plan participants concerning matters that included Plan investment

options and Plan expenses, and reports and advice that consultants provided Defendant in connection with the operation, costs and investment options of the Plans. The Parties exchanged mediation statements, which included argument, analysis, and the input of consulting experts. Following all-day negotiations on February 4, 2020, the Parties reached agreement on principal terms, including the amount of the settlement fund, but negotiations continued for more than eight weeks on the nature and scope of structural relief for the benefit of the Plans and their participants. On April 9, 2020, the Parties reached an agreement in principle on all terms of the Settlement, including Plan structural relief (the “Settlement”).

F. The terms “Settlement Class” or “Settlement Class Members” as used in this Agreement shall refer to:

All participants and beneficiaries who had an account balance in either the Princeton University Retirement Plan or the Princeton University Retirement Savings Plan (the “Plans”) during the Class Period, excluding any participant who is currently serving as a fiduciary or has served as a fiduciary to the Plans during the Class Period. Also excluded from the Class are the Judges to whom this case is assigned as well as the Judges’ immediate families.

The “Class Period” shall be defined as May 24, 2011 through the date of Preliminary Approval, as defined in paragraph 2 below.

G. Defendant denies each and every allegation of wrongdoing made in the Complaint and contends that it has no liability in the Action. Defendant specifically denies the allegations that it breached any fiduciary duty or any other provisions of ERISA in connection with the administration of the Plans, the administrative fees or expenses incurred by the Plans, or the investments in the Plans, at any time, and further denies that it in any way failed to act prudently or loyally as to the Plans’ participants and beneficiaries.

H. Plaintiff’s counsel have conducted a thorough investigation into the facts, circumstances, and legal issues associated with the Action. This investigation has included:

(i) researching the applicable law with respect to the claims asserted and the potential defenses thereto; (ii) analyzing numerous documents concerning the Plans and the administration of the Plans, including thousands of pages of documents produced by Defendants in advance of mediation, particularly as such documents pertain to the administrative fees and expenses paid by the Plans and the investments in the Plans during the Class Period; and (c) investigating numerous other 403(b) plans with respect to steps that reasonable fiduciaries in similar circumstances take in order to protect and advance the interests of participants and beneficiaries.

I. Defendant's counsel have conducted a thorough investigation into Plaintiff's claims, the underlying events and transactions alleged in the Complaint, and the operation and administration of the Plans. Defendant's counsel have reviewed numerous documents and made a thorough study of the legal principles applicable to Plaintiff's actual and potential claims and defenses to those claims in the Action.

J. Based on their investigation of the merits of this Action, the course of the litigation to date, and their knowledge and experience with respect to similar ERISA litigations, Plaintiff's counsel believe that the Settlement will provide substantial benefits to the Settlement Class. When the benefits conferred by the Settlement are weighed against the attendant risks of continuing to prosecute the Action, Plaintiff's counsel believe that the Settlement represents a reasonable and fair resolution of the claims of the Settlement Class. In reaching this conclusion, Plaintiff's counsel have considered, among other things, the risks of litigation (including the risks of establishing both liability and any loss to the Plans), the time necessary to achieve a final resolution through litigation and any appeals, the complexity of the claims set forth in the Complaint, the ability of Defendant to withstand judgment, the existence of insurance coverage, and the benefits accruing to the Plans' participants under the Settlement.

K. Although Defendant continues to deny all liability with respect to the claims alleged in the Complaint, Defendant nevertheless considers it desirable that any and all possible controversies and disputes arising out of or during the Class Period that relate to the matters, transactions, and occurrences referenced in the Complaint be conclusively resolved and terminated on the terms and conditions set forth below. The Settlement and the attendant final dismissal of the Complaint will avoid the substantial expense, inconvenience, and risk of continued litigation and will bring Plaintiff's claims and potential claims to an end.

L. The Parties have reached the Settlement, by and through their respective undersigned counsel, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the Parties, in consideration of the promises, covenants, and agreements herein described, and the Parties intending to be legally bound:

Stipulation to Certification of the Settlement Class

1. The Parties stipulate and agree that for Settlement purposes only, this Action shall proceed as a non-opt out class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(1), with Plaintiff's counsel Lite DePalma Greenberg LLC, Schneider Wallace Cottrell Konecky LLP, and Berger Montague PC as co-lead class counsel ("Class Counsel"), and with a Settlement Class as defined in Paragraph F of this Agreement.

Preliminary Approval

2. Promptly after the execution of this Agreement by the Parties, Plaintiff shall file a Motion for Preliminary Approval with the Court, seeking entry of an order substantially in the form attached hereto as **Exhibit 1** (the "Preliminary Approval Order") and approval of notice to the Settlement Class Members, substantially in the form attached hereto as **Exhibit 2** (the "Class Notice"). Plaintiff shall request that a final fairness hearing be held at least one hundred and ten

(110) days from the date of the entry of the Preliminary Approval Order for the Court to consider whether the terms of the Settlement are fair, reasonable, and adequate and thus should be finally approved and implemented by the Court pursuant to Federal Rule of Civil Procedure 23(e). Defendant shall in good faith support and not oppose the Motion for Preliminary Approval, provided it is consistent with the terms and conditions of the Settlement. Pursuant to the Class Action Fairness Act of 2005 (“CAFA”), Defendant shall, at its own expense, cause to be prepared and provided the notices required by CAFA, as specified by 28 U.S.C. § 1715, within ten (10) calendar days of filing the Motion for Preliminary Approval of Settlement. Defendants’ Counsel will provide Class Counsel with a sample of the CAFA notice provided by Defendant pursuant to this Paragraph.

3. If the Settlement (including any modification thereto made with the consent of the Parties as provided for herein) is approved preliminarily by the Court, Class Counsel shall retain at their discretion a person or firm to administer and provide the Class Notice to the Settlement Class Members (the “Settlement Administrator”), subject to Defendant’s reasonable approval. The Settlement Administrator shall cause the Class Notice to be disseminated in the manner and on the dates set in the Preliminary Approval Order to the Settlement Class Members. Costs associated with the Class Notice shall be paid out of the Settlement Fund, as that term is defined herein.

Final Approval

4. If the Settlement (including any modification thereto made with the consent of the Parties as provided for herein) is preliminarily approved by the Court, Class Counsel shall move the Court to enter an Order and Final Judgment substantially in the form attached hereto as **Exhibit 3** (the “Final Approval Order”), which, among other things:

(a) approves the Settlement, adjudges the terms thereof to be fair, reasonable, adequate, and in the best interests of the Settlement Class, and directs consummation of the Settlement in accordance with the terms and conditions of the Stipulation;

(b) certifies the Settlement Class as a non-opt-out class meeting the applicable requirements for a settlement class imposed by Federal Rule of Civil Procedure 23;

(c) determines that the requirements of Federal Rule of Civil Procedure 23 and due process have been satisfied in connection with the distribution of the Class Notice to the Settlement Class;

(d) approves a Plan of Allocation consistent with Paragraph 29 of this Agreement;

(e) determines what legal fees and expenses should be awarded or reserved for award to Class Counsel out of the Settlement Amount as contemplated by Paragraphs 22-25 of this Agreement;

(f) determines what amount, if any, should be awarded to Plaintiff for his participation in this Action as contemplated by Paragraph 26 of this Agreement;

(g) dismisses the Action with prejudice as to Defendant and operates to extinguish, discharge, and release any and all Released Claims against the Releasees (as defined in Paragraph 7 of this Agreement), without costs except as herein provided, said dismissal being subject only to compliance by the Parties with the terms of this Agreement and any order of the Court concerning this Agreement;

(h) bars and enjoins Settlement Class Members and the Plans from the institution and prosecution, either directly or indirectly, of any other actions in any court asserting any and all Released Claims against any and all Releasees;

(i) permanently enjoins Plaintiff, Settlement Class Members, and the Plans from asserting, commencing, prosecuting or continuing, either directly, individually, representatively, derivatively or in any other capacity, any other actions in any court asserting such Released Claims or from receiving any additional recovery or relief from any Releasees with respect thereto; and

(j) except as provided in subsection (i) below, enjoins Plaintiff, Settlement Class Members and the Plans from asserting, commencing, prosecuting or continuing, either directly, individually, representatively, derivatively or in any other capacity, any other actions in any court asserting any claims related to the Prospective Relief defined in Paragraphs 30 and 31 of the Agreement for five (5) years.

(k) solely for the avoidance of doubt, it is the intent of the parties that the Released Claims include all breach of fiduciary duty and prohibited transaction claims that were brought or could have been brought against the Releasees relating to TIAA's collateralized participant loan program. It is not the intent of the parties to release Settlement Class Members' claims, if any, against TIAA arising in *Haley v. Teachers Insurance and Annuity Association*, 1:17-cv-00855-JPO (S.D.N.Y.) regarding TIAA's collateralized loan program (the "*Haley Claims*"). Additionally, either directly or through counsel, Defendant shall not assert in any proceeding in connection with *Haley v. Teachers Insurance and Annuity Association* that the Release set forth in Section 7 hereof effectively releases TIAA with respect to any claims Settlement Class Members may possess in the *Haley* litigation.

5. Class Counsel shall file with the Court a motion for entry of the Final Approval Order no later than twenty-eight (28) calendar days before the final fairness hearing.

Date of Complete Settlement Approval

6. For purposes of this Agreement, “Complete Settlement Approval” shall occur when all of the following have taken place: (a) entry of the Final Approval Order approving the Settlement; and (b) the expiration of all applicable appeal periods for any appeals of the Final Approval Order, without any appeal having been filed or, if an appeal is taken, upon entry of an order affirming the Final Approval Order, and the expiration of any applicable period for the reconsideration, rehearing, or appeal of such affirmance without any motion for reconsideration, rehearing, or further appeal having been filed. Upon Complete Settlement Approval, the Settlement shall become “Final.” The pendency of unresolved issues regarding the Plan of Allocation and/or attorneys’ fees/expenses shall not affect the finality of the Settlement.

Release

7. Upon Complete Settlement Approval, Plaintiff, Settlement Class Members and the Plans (by and through the Independent Fiduciary) shall release any and all claims of any nature whatsoever concerning the Plans or any and all claims concerning the Plans (including claims for any and all losses, damages, unjust enrichment, attorneys’ fees, disgorgement of fees, litigation costs, injunction, declaration, contribution, indemnification or any other type or nature of legal or equitable relief), including, for the avoidance of any doubt, all claims asserted in the Complaint for losses suffered by the Plans, or by Plans’ participants or beneficiaries, whether accrued or not, whether already acquired or acquired in the future, whether known or unknown, in law or equity, brought by way of demand, complaint, cross-claim, counterclaim, third-party claim or otherwise, arising out of any or all of the acts, omissions, facts, matters, transactions or occurrences that are, were or could have been alleged, asserted, or set forth in the Complaint, so long as they are related to any of the allegations or claims asserted in the Complaint, or would be barred by principles of *res judicata* had the claims asserted in the Complaint been fully litigated and resulted in a final

judgment or order, including but not limited to claims that Defendant and/or any fiduciaries of the Plans breached ERISA fiduciary duties during the Class Period or engaged in any prohibited transactions in connection with: (a) the selection, retention and/or monitoring of the investment options available in the Plans, (b) the appointment and/or monitoring of the Plans' fiduciaries and service providers, (c) the recordkeeping fees, administrative fees, and expenses incurred by the Plans, (d) the prudence and loyalty of the Plans' fiduciaries, (e) the TIAA collateralized loan program and/or (f) the inclusion of CREF Stock Account and the TIAA Real Estate Account as investment options available under the Plans ("Released Claims"); provided, however, Released Claims shall not include the *Haley* Claims solely against TIAA.

8. Released Claims shall extend to Defendant and the insurers and re-insurers, directors, officers, trustees, employees, committees, fiduciaries, administrators, agents, attorneys, affiliates, predecessors, and successors of Defendant, including, without limitation, any and all current or former fiduciaries of the Plans, their counsel, and all service providers to the Plans, including TIAA and Vanguard, during the Class Period (collectively, the "Releasees").

9. Upon Complete Settlement Approval, Plaintiff, Settlement Class Members, and the Plans (by and through the Independent Fiduciary) expressly waive and relinquish, to the fullest extent permitted by law, any and all provisions, rights, and benefits conferred by (a) § 1542 of the California Civil Code, which provides that a "general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party," and (b) any similar state, federal, or other law, rule or regulation or principle of common law of any domestic or foreign governmental entity. Plaintiff, Settlement Class Members, and the Plans may hereafter discover facts other than or

different from those that they know or believe to be true with respect to the subject matter of the Released Claims with respect to any Releasees, but Plaintiff, Settlement Class Members, and the Plans hereby expressly waive and fully, finally and forever settle and release any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim with respect to the Released Claims as to the Releasees, without regard to the subsequent discovery or existence of such other or different facts.

10. Upon Complete Settlement Approval, Defendant absolutely and unconditionally releases and forever discharges Plaintiff, the Settlement Class, and Class Counsel (collectively, the “Plaintiff Released Parties”) from any and all Claims relating to the institution or prosecution of the Action or the settlement of any Released Claims, except that the release shall not include claims relating to the covenants or obligations set forth in this Settlement Agreement. The Parties intend the Settlement to be a final and complete resolution of all disputes asserted or which could have been asserted by Plaintiff, the Settlement Class, the Plans, and Class Counsel against the Releasees with respect to the Released Claims. Accordingly, Plaintiff and Defendant agree not to assert in any forum that the claims asserted in the Action were brought or defended in bad faith or without a reasonable basis. The Parties shall not assert any contention regarding a violation of Rule 11 of the Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of the Action and agree that, except as expressly set forth herein, each party shall bear his, her, or its own costs and expenses, including attorneys’ fees.

11. Notwithstanding any other provision of the Stipulation, Plaintiff and Settlement Class Members shall not be deemed to have barred, waived, or released any claim: a) by any individual participant concerning his or her individual eligibility for benefits under the Plans or to contest the correct amount of such benefit except to the extent that such claim may relate to the

claims asserted in the Complaint; or b) asserted in *Haley v. Teachers Insurance and Annuity Association*, 17-CIV-00855 (S.D.N.Y.) but specifically against only TIAA.

Payment of Settlement Amount

12. Plaintiff, on behalf of the Settlement Class and the Plans, agrees to settle and resolve fully the claims asserted in the Action against the Releasees, including the Released Claims, for five million eight hundred thousand dollars (\$5,800,000) (the “Settlement Amount”). In full settlement of the claims asserted in the Action against Defendant and in consideration of the releases specified in Paragraphs 7-11 above, Defendant shall pay and/or shall cause the Defendant’s insurance carrier to pay the Settlement Amount.

13. Within fifteen (15) business days after the Court enters a Preliminary Approval Order or after the Defendant receives the appropriate account information and instructions to process payment, whichever is later, Defendant shall pay and/or shall cause the Defendant’s insurance carrier to pay \$100,000 of the Settlement Amount to a non-interest bearing FDIC-insured account identified by Class Counsel (the “Settlement Account”) to cover the initial Settlement Administrative Expenses and the costs of sending Notice to the Settlement Class. If the Settlement is not approved by the Court or either party has withdrawn from the Settlement as per paragraphs 37-39 of this Agreement, the \$100,000 will be returned to the Defendant within 10 days of such termination of the Settlement, less amounts expended to provide Class Notice.

14. Within fifteen (15) business days after Complete Settlement Approval, Defendant shall pay and/or shall cause the Defendant’s insurance carrier to pay the remaining balance (\$5,700,000) of the Settlement Amount to the Settlement Account using the same information provided for the payment in Paragraph 13. Defendant shall pay and/or cause the Defendant’s insurance carrier to pay the Settlement Amount consistent with the terms of the Settlement. Except as otherwise provided herein, under no circumstances shall Defendant or Defendant’s insurance

carrier be required to pay, or cause to be paid, any amounts that exceed the Settlement Amount specified in Paragraph 11. Upon payment of the Settlement Amount, all of Defendant's payment obligations under this Agreement shall be satisfied and discharged in full. To the extent the Settlement Amount will be funded by insurance proceeds, for purposes of this Agreement, any such amounts shall be considered to have been paid by Defendant.

15. The Settlement Amount delivered to the Settlement Account shall constitute the "Settlement Fund," which shall be governed by the terms of this Agreement. No later than five (5) calendar days following the Court's entry of the Preliminary Approval Order, Class Counsel shall provide Defendant with the name of the financial institution and the payee name along with the W-9 for the Settlement Account. The Settlement Fund will be subject to the jurisdiction of the Court.

16. The Settlement Fund shall be used to pay for: (a) all Settlement Administration Expenses as described in Paragraphs 20; (b) the attorneys' fee and expense award, if any, referred to in Paragraphs 22-25, (c) the Plaintiff case contribution awards if any, referred to in Paragraph 26; and (d) any amounts for the Independent Fiduciary ("Independent Fiduciary Fees Amount") referred to in Paragraph 21. The balance of the Settlement Fund (inclusive of interest earned) after the matters described in this Paragraph and after the payment of any taxes or other charges allowed against the Settlement Fund under the terms of this Agreement shall be the Net Settlement Fund.

17. Although Defendant denies any fault, liability, or wrongdoing, the Parties agree that the payment of the Settlement Amount is intended as settlement of this Action for alleged breach of fiduciary duty claims under ERISA for allegedly lost earnings on the Plans assets and shall be treated as earnings for all purposes under the Plans.

18. With the sole exception of the Defendant's obligation to make payments or to cause Defendant's insurance carrier to make payments to be paid to the Settlement Account as provided for in Paragraphs 12-15, the Defendant, its insurance carrier, the Releasees, and Defendant's Counsel shall have no liability with respect to the Settlement Account for the monies maintained in the Settlement Fund, including, without limitation, any liability related to any fees, taxes,¹ investment decisions, losses or value fluctuations, maintenance, supervision, or distributions of any portion of the Settlement Amount. In addition, Defendant, the Releasees, Plaintiff and their respective counsel shall have no responsibility or liability with respect to any act, omission, or determination of the Settlement Account by the Settlement Administrator or any of its respective designees or agents, in connection with the calculations of the distribution and administration of the Settlement or the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund.

Payment of Settlement Administrative Expenses

19. Upon preliminary approval by the Court, all reasonable expenses incurred by the Settlement Administrator associated with identifying the Settlement Class Members and effecting dissemination of the Class Notice as required by the Court in the Preliminary Approval Order may be paid from the initial payment of \$100,000 to the Settlement Account referenced in Paragraph 13.

20. "Settlement Administration Expenses" includes all of the costs and expenses of the Settlement Administrator in connection with the tasks set forth in Paragraphs 19, 25, 30, 31, and 32, and such expenses of the Settlement Administrator, in connection with the tasks set forth in

¹ "Taxes" means all taxes (federal, state, county or municipal) on the income of the Settlement Fund and expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, interest, penalties and the expenses of tax attorneys and accountants).

Paragraph 32 as are approved by the Settlement Administrator and Class Counsel. All Settlement Administration Expenses shall be borne by and paid from the Settlement Fund.

Payment of Fees and Expenses of the Independent Fiduciary

21. Plaintiff, with the approval of Defendant, shall select and retain an independent fiduciary to review and consider the Settlement on behalf of the Plans and its current fiduciary or fiduciaries, and determine whether the Settlement is reasonable and fair, as more fully described in Paragraph 38(b) below. All costs of the Independent Fiduciary shall be borne by and paid from the Settlement Fund.

Payment of Attorneys' Fees and Expenses

22. Class Counsel's attorneys' fees and expenses will be subject to the Court's approval and shall be paid out of the Settlement Fund as specified in Paragraph 15 of this Agreement. Defendant shall take no position directly or indirectly on Class Counsel's application for attorneys' fees and expenses, provided that Class Counsel do not request an award of attorneys' fees higher than one-third (1/3) of the Settlement Amount. The Parties shall leave the amount of Class Counsel's attorneys' fees and expenses to the sound discretion of the Court.

23. The Court's consideration of requests for Class Counsel's fees and expenses are matters separate and apart from the Settlement between the Parties, and the Court's decision concerning the attorneys' fees and expenses of Class Counsel shall not affect the validity of the Agreement or finality of the Settlement in any manner.

24. Class Counsel shall be solely responsible for allocating the Class Counsel's fees and expenses among Plaintiff's counsel. Any award of attorneys' fees shall be allocated among Plaintiff's counsel in a fashion that, in the opinion of Class Counsel, fairly compensates Plaintiff's counsel for their respective contributions in the prosecution of the Action. Defendant shall bear

no responsibility for this allocation or be subject to any claims or suit under this Agreement or otherwise.

25. No later than twenty-eight (28) calendar days prior to the final fairness hearing, Class Counsel will apply to the Court for a collective award of attorneys' fees and reimbursement of litigation expenses. Upon funding of the Settlement Fund following Complete Settlement Approval, as contemplated in Paragraph 13, Class Counsel may instruct the Settlement Administrator in writing to disburse such payments immediately from the Settlement Account in accordance with the Court's Final Approval Order. Defendant shall have no obligations whatsoever with respect to any attorneys' fees or expenses incurred by Class Counsel, which shall be payable solely from the Settlement Fund.

26. No later than twenty-eight (28) calendar days prior to the final fairness hearing, Class Counsel may also apply to the Court for case contribution awards to Plaintiff in an amount not to exceed \$7,500. Defendant will take no position with respect to any such application for Plaintiff's case contribution award. Defendant shall have no obligations whatsoever with respect to any case contribution awards, which shall be payable solely from the Settlement Fund. Upon funding of the Settlement Fund following Complete Settlement Approval, as contemplated in Paragraph 13, Class Counsel may instruct the Settlement Administrator to disburse such case contribution award immediately from the Settlement Account in accordance with the Court's Final Approval Order.

Class Notice

27. Defendant shall send the names, last known addresses, Social Security numbers, account/plan information, balances, and other pertinent information of the Settlement Class Members, as per Defendant's records, to the Settlement Administrator in electronic form as soon

as practicable but no later than fifteen (15) business days after entry of the Preliminary Approval Order.

28. Within forty-five (45) days of the entry of the Preliminary Approval Order, the Settlement Administrator shall send the Notice by first-class mail to the Settlement Class Members. The Notice will be sent to the last known mailing address of each of the Settlement Class Members in the form attached hereto as Exhibit 2.

Plan of Allocation

29. The Plan of Allocation shall be prepared by Class Counsel and submitted to the Court for approval in connection with Final Approval of the Settlement. The Court's approval of the Plan of Allocation is not a material or integral part of or condition to the Settlement, and the Court's rejection or modification of the Plan of Allocation shall neither entitle Plaintiff or Defendant to withdraw from or terminate the Settlement, nor affect the finality of the Settlement or Final Approval thereof.

30. Class Counsel shall retain the Settlement Administrator to calculate the amounts payable to Settlement Class Members. The Settlement Administrator shall be exclusively responsible for calculating the amounts payable to Settlement Class Members pursuant to the Plan of Allocation based on information to be provided by the Plans' recordkeepers or fiduciaries. Defendant, the Releasees, Plaintiff and their respective counsel shall have no responsibility or liability for the Plan of Allocation calculations or the expenses incurred in connection with the calculations.

31. For those Settlement Class Members who have an account in one of the Plans as of the date of entry of the Final Approval Order (the "Account Members"), the distribution will be made into his or her account in the Retirement Plan or the Retirement Savings Plan. For Account

Members who have accounts in both Plans, the distribution will be made into the Account Member's Retirement Plan account. The Settlement Administrator shall cause an amount equal to the portion of the Net Settlement Fund allocated under the Plan of Allocation to the Account Members, along with data and other supporting information identifying the Settlement share amount owed to each Account Member, to be transferred to the Plans' existing recordkeepers in accordance with the recordkeepers' requirements for receiving same. The Plans' recordkeepers will then distribute the individual settlement shares to the Account Members pursuant to the data and other supporting information provided by the Settlement Administrator, and in accordance with instructions from Class Counsel and the Plan of Allocation.

32. For those Settlement Class Members who no longer have an account in either of the Plans at the time of the distribution of the share amounts owed to Class Members (the "Non-Account Members"), the distribution will be made via a tax-qualified distribution process with the assistance of the Settlement Administrator. The Settlement Administrator shall cause an amount equal to the portion of the Net Settlement Fund allocated under the Plan of Allocation to the Non-Account Members, along with data and other supporting information identifying the settlement share amount owed to each Non-Account Member, to be transferred to Retirement Clearinghouse in accordance with Retirement Clearinghouse's requirements for receiving same. Retirement Clearinghouse will then distribute the individual Settlement shares to the Non-Account Members pursuant to the data and other supporting information provided by the Settlement Administrator, and in accordance with instructions from Class Counsel and the Plan of Allocation. No Non-Account Member whose entitlement to payment pursuant to the Plan of Allocation would otherwise be less than twenty-five dollars (\$25) shall receive any payment from the Net Settlement Fund.

33. Defendant, the Releasees, Plaintiff and their respective counsel shall have no responsibility or liability for the tax qualification or distribution of the Net Settlement Fund to the Settlement Class Members.

Prospective Relief

34. As a material component of the Settlement consideration, Defendant agrees as follows (collectively, the “Prospective Relief”):

(a) upon signing this Agreement, Defendant will not increase the Plans’ recordkeeping fees for three years and will use commercially reasonable best efforts to continue to attempt to reduce recordkeeping fees;

(b) within three years of Complete Settlement Approval, Defendant will conduct a Request for Proposal (“RFP”) process for recordkeeping-administrative services and outside independent investment consulting services (nothing in this Agreement prohibits Princeton from retaining the Plans’ current recordkeeper-administrator or independent investment consultant based on the RFP and relevant factors);

(c) by the date of Complete Settlement Approval, Defendant’s Benefits Committee and Investment Committee will amend their respective charter and/or operating documents, to the extent necessary, to adopt and follow best practices for 403(b) plans as described by the Plans’ current independent investment consultant;

(d) for a period of five years following Complete Settlement Approval, Defendant’s Investment Committee will meet not less than four times per year with the Plans’ current independent investment consultant (or another independent investment consultant selected after an RFP), to evaluate the expense and performance of each investment option in the Plans, to review and consider changes to the investment option line-up, to review administrative and recordkeeping

costs of the Plans, and to investigate and pursue further strategies to reduce Plan costs; after each such meeting, the Investment Committee will report to the Benefits Committee the results of the meeting;

(e) for a period of five years following Complete Settlement Approval, Defendant's Benefits Committee will meet with the Investment Committee and the independent investment consultant once a year to evaluate the expense and performance of each investment option in the Plans, to review and consider changes to the investment option line-up, to review administrative and recordkeeping costs of the Plans, and to investigate and pursue further strategies to reduce Plan costs (nothing in this Agreement prohibits the Benefits Committee from delegating any responsibilities to the Investment Committee or supersedes any previous delegation);

(f) by July 2020, Defendant will review the TIAA collateralized loan program with, but not limited to, its independent investment consultant and Plans' counsel; Defendant agrees to terminate and replace that loan program by March 2021, if not sooner, if it is found that it should be replaced based on that review or if TIAA ceases to offer it;

(g) Defendant's current independent investment consultant (or another independent investment consultant selected after an RFP) will continue to evaluate the CREF Stock Account and the TIAA Real Estate Account to determine whether they continue to be appropriate investment options in the Plans;

(h) Defendant will correct the Plans' disclosures to Plan participants and beneficiaries to identify the CREF Stock Account as an investment that invests in U.S. and non-U.S. equities following Complete Settlement Approval.

35. Effective October 1, 2019, Defendant negotiated a significant reduction in the Plans' recordkeeping fees with TIAA, reducing annual fees from 6 basis points (0.06) to 2.9 basis

points (0.029). It was further agreed that TIAA would refund to the Plans any fees or other revenue sharing (including 12b-1 fees) in excess of 2.9 basis points. As a result, the Plans' total expenses on a per-participant (or "all-in") basis were reduced to approximately \$49 per year.

36. The Parties recognize that the Prospective Relief described in Paragraph 34 will benefit the Plans' participants, including the Settlement Class Members. In order to ensure that these prospective actions affecting the Plans are not subject to future potentially inconsistent challenges or standards, and in recognition of the Defendant having agreed to make such prospective actions, Plaintiff and the Settlement Class Members agree that, for a period of five (5) years from the date of entry of the Final Approval Order, barring Defendant's violation of this Agreement, they will not sue Defendant or the Releasees for any and all claims relating to (i) conduct relating to the evaluation of and the amount of (or formula for determining the amount of) compensation for recordkeeping and administrative services of TIAA or any other recordkeeping or administrative service provider; (ii) any failure to engage in a robust process for monitoring investments, recordkeeping and expenses for the Plans; (iii) any failure to conduct an RFP process for the selection and/or retention of recordkeepers/administrators and/or investment consultants for the Plans, (iv) selection and retention of the investment line-up in the Plans as of the date this Agreement is executed, and (iv) the TIAA collateralized loan program, excepting the claims currently being pursued against TIAA in the litigation known as *Haley v. TIAA*, Civil Action No. 1:17-cv-00855, pending in the Southern District of New York (the "Covenant Not to Sue").

Right to Withdraw from the Settlement

37. Each of the Parties shall have the option to withdraw unilaterally from and terminate the Settlement in the event that: (a) either the Preliminary Approval Order or the Final Approval Order referred to above is not entered substantially in the forms specified herein,

including such modifications thereto as may be ordered by the Court with the consent of the Parties; or (b) the Settlement is not approved by the Court or is disapproved or materially modified upon appeal.

38. Defendant shall have the right to withdraw from this Settlement and terminate the Agreement if:

(a) on or before fourteen (14) calendar days before the Court's final fairness hearing, the United States Department of Labor files any objection to the Agreement or Settlement in any court, brings a claim against any Releasees relating to the Released Claims, or notifies any Releasee that it intends to file such a Claim; or

(b) the Independent Fiduciary retained by Plaintiffs and approved by Defendant evaluates fails to approve the Settlement on or before fourteen (14) calendar days prior to the Court's final fairness hearing. The Settlement is contingent upon the Independent Fiduciary's (i) approving the Settlement in writing and giving a release in its capacity as a fiduciary of the Plans and for and on behalf of the Plans coextensive with the release from the Plaintiff and the Settlement Class Members; (ii) authorizing the Settlement in accordance with Prohibited Transaction Class Exemption 2003-39; and (iii) finding that the Settlement does not constitute a prohibited transaction under ERISA § 406(a). All Parties shall cooperate in providing information to the Independent Fiduciary upon request.

39. In the event that the Settlement is terminated pursuant to Paragraphs 37 or 38 of this Agreement, then: (a) the Settlement proposed herein shall be of no further force and effect; (b) the agreements and stipulations in this Agreement concerning class definition or class certification will not be used as evidence or argument to support class certification or class definition, and Defendant will retain all rights to oppose class certification; and (c) this Agreement

and all negotiations, proceedings, and statements relating thereto, and any amendment thereof, shall be null and void, shall not be submitted or admitted in the Action or any other proceeding, and shall be without prejudice to any party hereto, and each party shall be restored to his, her, or its respective position as it existed prior to the execution of this Stipulation. If Defendants are responsible for the Settlement being terminated, any funds contributed to the Settlement Account, less amounts expended in furtherance of the administration of this Settlement in accordance with the terms hereof, shall be returned to the payor (whether Defendant or their insurance carrier) within five (5) business days, together with a full accounting of the expenditures. If Plaintiffs are responsible for the termination of Settlement, all funds contributed to the Settlement Account shall be returned to the payor (whether Defendant or their insurance carrier) within five (5) business days. If the parties are unable to agree, the matter will be submitted to and determined by mediator Robert Meyer.

Severability

40. The provisions of this Agreement are not severable.

Authority

41. Each of the individuals executing the Agreement on behalf of one or more of the Parties hereto warrants and represents that he or she has been duly authorized and empowered to execute this Stipulation on behalf of his or her respective Party.

Stipulation of Settlement Not an Admission

42. The provisions contained in this Agreement and all negotiations, statements and proceedings in connection therewith shall not be deemed a presumption, a concession, or an admission by Defendant of any fault, liability, or wrongdoing as to any fact or claim alleged or asserted in the Action or any other actions or proceedings and shall not be interpreted, construed,

deemed, invoked, offered, or received in evidence or otherwise used by any person in these or any other actions or proceedings, whether civil, criminal or administrative, except in a proceeding to enforce the terms or conditions of this Stipulation. Defendant has denied and continues to deny each and every claim alleged in the Action. Furthermore, this Agreement shall not be construed as or received in evidence as an admission, concession, or presumption against any Plaintiff or any of the Settlement Class Members that any of their claims are without merit, or that any defenses asserted by Defendant have any merit, or that damages recoverable under the Action would not have exceeded the Settlement Amount. Accordingly, neither this Agreement nor the Settlement nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or invalidity of any Released Claim, or of any wrongdoing or liability or lack thereof of any Releasee; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission or lack thereof of any Releasee in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. The Releasees may file the Agreement and/or the Final Approval Order in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, claim or issue preclusion, release, good-faith settlement, judgment bar, or reduction or any other similar defense or counterclaim. The Parties and their counsel, and each of them, agree, to the extent permitted by law, that all agreements made relating to the confidentiality of information shall survive and be unaffected by this Agreement.

Counterparts

43. This Stipulation may be executed in any number of actual or telecopied (including without limitation, by email transmission of one or more PDF files) counterparts and by each of

the different Parties thereto on several counterparts, each of which when so executed and delivered shall be an original. The executed signature page(s) from each actual or telecopied counterpart may be joined together and attached to one such original and shall constitute one and the same instrument.

Waiver

44. The waiver by any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

Arm's-Length Negotiations

45. The Parties represent and warrant 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. Each Party assumes the risk of mistake as to facts or law. None of the Parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

Entire Agreement; Amendments

46. This Agreement and the attached Exhibits, incorporated herein by reference, constitute the entire agreement of the Parties with respect to the subject matter hereof, and may not be amended, or any of their provisions waived, except by a writing executed by all Parties hereto. The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation and to exercise their best efforts to accomplish the foregoing terms

and conditions of the Stipulation. The Parties intend this Agreement to be a final and complete resolution of all disputes between them, relating to or arising out of, the subject matter of the Action, or which otherwise constitute Released Claims. Accordingly, the Parties agree that the terms of the Agreement represent a good-faith settlement of the claims, reached voluntarily after consultation with experienced counsel.

Successors and Assigns

47. This Agreement, upon becoming operative, shall be binding upon and inure to the benefit of the Parties hereto, Releasees, and Plaintiff Released Parties and their respective successors, assigns, heirs, estates, executors and administrators and upon any corporation, partnership or entity into or with which any such person or entity may merge or consolidate.

Governing Law

48. This Agreement shall be governed by the laws of the United States, including federal common law, except to the extent that, as a matter of federal law, state law controls, in which case New Jersey law will apply without regard to conflict of law principles.

Continuing Jurisdiction

49. The administration, effectuation, and enforcement of the Stipulation as provided for herein will be under the authority of the Court. The Court will retain continuing and exclusive jurisdiction over the Parties and the Settlement Class Members and over the administration, effectuation, and enforcement of the terms of the Stipulation and the benefits to the Settlement Class Members hereunder, and for such other matters that may properly come before the Court, including any dispute or controversy arising with respect to the interpretation, enforcement, or implementation of the Stipulation or any of its terms. Any such dispute or controversy must be brought to the attention of the Court by written motion. The Parties and each of the Settlement

Class Members consent to the jurisdiction of the Court with respect to any proceedings brought to enforce or interpret this Settlement and hereby waive all objections to venue and personal and subject matter jurisdiction in that regard.

Best Efforts

50. The Parties hereto and their attorneys agree to cooperate fully with one another in seeking the Court's approval of this Agreement and the Settlement and to use their best efforts to effect the confirmation of this Agreement and the Settlement.

51. In addition, the Parties hereto and their attorneys agree to cooperate fully with one another and use their best efforts to obtain the names and last known addresses of the Settlement Class Members.

This 27th day of July, 2020.

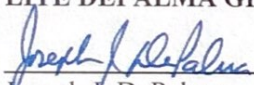
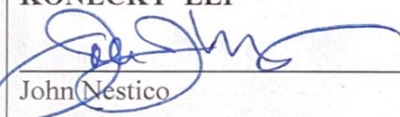
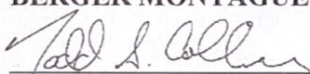

<p>BY PLAINTIFF'S COUNSEL:</p> <p>LITE DEPALMA GREENBERG LLC</p> <p> _____ Joseph J. DePalma</p> <p>SCHNEIDER WALLACE COTTRELL KONECKY LLP</p> <p> _____ John Nestico</p> <p>BERGER MONTAGUE PC</p> <p> _____ Todd Collins</p>	<p>BY DEFENDANT'S COUNSEL:</p> <p>JACKSON LEWIS PC</p> <p> _____ Stacey Cerrone Howard Shapiro</p>
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EXHIBIT 1

Proposed Preliminary Approval Order

hereby **ORDERED, ADJUDGED AND DECREED** as follows:

Jurisdiction. The Court has jurisdiction over the subject matter of this Action and over all Parties to this Action, including all Settlement Class Members.

Class Findings. The Court preliminarily finds, solely for purposes of the Settlement, that the requirements of the Federal Rules of Civil Procedure, the United States Constitution, the Rules of the Court and any other applicable law have been met as to the Settlement Class, in that:

- (a) The Settlement Class is ascertainable from records kept with respect to the Plans and from other objective criteria, and the Settlement Class Members are so numerous that their joinder before the Court would be impracticable.
- (b) Based on allegations in Plaintiff's Complaint (the "Complaint"), the Court preliminarily finds that there are one or more questions of fact and/or law common to the Settlement Class.
- (c) Based on allegations in the Complaint, the Court preliminarily finds that Plaintiff's claims are typical of the claims of the Settlement Class.
- (d) Plaintiff will fairly and adequately protect the interests of the Settlement Class in that: (i) the interests of Plaintiff and the nature of Plaintiff's claims are consistent with those of the Settlement Class Members; (ii) there are no significant conflicts between Plaintiff and the Settlement Class or among the Settlement Class; and (iii) Plaintiff is represented by qualified, reputable counsel who are experienced in preparing and prosecuting ERISA class actions of this type.
- (e) The prosecution of separate actions by individual Settlement Class Members would create a risk of: (i) inconsistent or varying adjudications as to individual class members that would establish incompatible standards of conduct for the parties opposing the claims asserted in the Action; or (ii) adjudications as to individual class members that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede those persons' ability to protect their interests.

Class Certification. Based on the findings set out above, the Court **PRELIMINARILY CERTIFIES** the following Settlement Class solely for settlement purposes under Federal Rule of Civil Procedure 23(b)(1) in this litigation (hereinafter the "Settlement Class"):

All participants and beneficiaries who had an account balance in either the Princeton University Retirement Plan or the Princeton University Retirement Savings Plan (the

“Plans”) during the Class Period, excluding any participant who is currently serving as a fiduciary or has served as a fiduciary to the Plans during the Class Period. Also excluded from the Class are the Judges to whom this case is assigned as well as the Judges’ immediate families.

The “Class Period” shall be defined as May 24, 2011 through the date of this Order.

The Court finds that the Settlement Class is sufficiently well-defined and cohesive to warrant certification as a non-opt-out class under Fed. R. Civ. P. 23(a) and 23(b)(1). As required by Fed. R. Civ. P. 23(g), the Court has considered: (i) the work Class Counsel has done in identifying or investigating potential claims in this Action; (ii) Class Counsel’s experience in handling class actions, other complex litigation, and claims of the type asserted in this Action; (iii) Class Counsel’s knowledge of the applicable law and, in particular, its knowledge of ERISA as it applies to claims of the type asserted in this Action; and (iv) the resources Class Counsel has committed to representing the class. Based on these factors, the Court finds that Class Counsel has and will continue to represent fairly and adequately the interests of the Settlement Class. Accordingly, pursuant to Federal Rule of Civil Procedure 23(g)(2) the Court preliminarily designates Lite DePalma Greenberg LLC, Schneider Wallace Cottrell Konecky LLP, and Berger Montague PC as co-lead class counsel (“Class Counsel”) with respect to the Settlement Class in this Action.

As indicated above, the Court finds that Plaintiff is adequate and typical class representatives for the Settlement Class and, therefore, hereby appoints Plaintiff Elysee Nichols as the representative of the Settlement Class.

The Court having determined preliminarily that this Action may proceed as a non-opt out class action under Fed. R. Civ. P. 23(a) and 23(b)(1) solely for purposes of the Settlement, Settlement Class Members shall be bound by any judgment concerning the Settlement in this Action, subject to the Court’s final determination as to whether this Action may so proceed.

Preliminary Approval of Settlement. The Settlement documented in the Stipulation of Settlement is hereby **PRELIMINARILY APPROVED**, as the Court preliminarily finds that: (a) the proposed Settlement resulted from arm's-length negotiations; (b) the Stipulation of Settlement was executed only after Class Counsel had researched and investigated multiple legal and factual issues pertaining to Plaintiff's claims; (c) for purposes of the Settlement there is a genuine controversy between the Parties involving Defendant's compliance with the fiduciary requirements of ERISA; (d) the Settlement appears on its face to be fair, reasonable, and adequate; and (e) the Settlement evidenced by the Stipulation is sufficiently fair, reasonable, and adequate to warrant sending notice of the Action and the Settlement to the Settlement Class.

Fairness Hearing. A hearing (the "Fairness Hearing") pursuant to Fed. R. Civ. P. 23(e) is hereby SCHEDULED to be held before the Court on _____ 2020, at _____.m. in Courtroom ___ at the U.S. District Court, Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street Room 2020, Trenton, New Jersey 08608 to determine finally, among other things:

- (a) Whether the Settlement should be approved as fair, reasonable, and adequate;
- (b) Whether the Settlement Class satisfies the requirements of Fed. R. Civ. P. 23, and should be finally certified as preliminarily found by the Court;
- (c) Whether the litigation should be dismissed with prejudice pursuant to the terms of the Stipulation;
- (d) Whether the Final Approval Order attached to the Stipulation should be entered and whether the Releasees should be released of and from the Released Claims, as provided in the Stipulation;
- (e) Whether the notice and notice methodology implemented pursuant to the Stipulation (i) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Fairness Hearing; (ii) are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to notice; and (iii) meet all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable law;

- (f) Whether Class Counsel adequately represents the Settlement Class for purposes of entering into and implementing the Stipulation as required by Fed. R. Civ. P. 23(g) and as preliminarily found by the Court;
- (g) Whether the proposed Plan of Allocation of the Net Settlement Fund is fair, reasonable, and adequate and should be approved by the Court;
- (h) Whether the Settlement has been negotiated at arm's length by Class Counsel on behalf of the Plans and the Settlement Class, whether Plaintiff has acted independently, whether Plaintiff's interests are identical to the interests of the Plans and the Settlement Class, and whether the negotiations and consummation of the Settlement by Plaintiff on behalf of the Plans and the Settlement Class do not constitute "prohibited transactions" as defined by ERISA §§ 406(a) or (b), including whether Prohibited Transaction Exemption 2003-39 or another class exemption from the prohibited transaction rules applies;
- (i) Whether the application for attorney's fees and expenses to be filed by Class Counsel should be approved;
- (j) Whether a case contribution award should be awarded to Plaintiff; and
- (k) Any other issues necessary for approval of the Settlement.

At the discretion of the Court, the Fairness Hearing may be conducted telephonically or electronically, provided all parties, counsel of record, Objectors and persons who have filed a timely Notice of Intention to Appear are provided reasonable notice and the opportunity to participate in the telephonic or electronic proceedings.

Class Notice. The Parties have presented to the Court a proposed Class Notice, which is appended to the Stipulation as Exhibit 2. The Court **APPROVES** the form and content of the Class Notice, finding that it fairly and adequately: (1) describes the terms and effect of the Stipulation and of the Settlement; (2) gives notice to the Settlement Class of the time and place of the Fairness Hearing; and (3) describes how the recipients of the Class Notice may object to approval of the Settlement. The Parties have proposed the following manner of communicating the notice to Settlement Class Members, and the Court finds that such proposed manner is

adequate, and directs that Plaintiff shall by no later than 45 days before the Fairness Hearing, cause the Class Notice, with such non-substantive modifications thereto as may be agreed upon by the Parties, to be disseminated to the last known address of each Member of the Settlement Class who can be identified by reasonable effort. At or before the Fairness Hearing, Class Counsel shall file with the Court a proof of timely compliance with the foregoing mailing and publication requirements.

Objections to Settlement. “Objector” shall mean any Settlement Class Member who wishes to object to the fairness, reasonableness or adequacy of the Settlement, to the Plan of Allocation, to any term of the Stipulation of Settlement, to the proposed case contribution awards, or to the proposed award of attorney’s fees and expenses. Any Objector must file with the Court a statement of his, her, or its objection(s), specifying the reason(s), if any, for each such objection made, including any legal support or evidence that such Objector wishes to bring to the Court’s attention or introduce in support of such objection. Any objection must be signed by the Settlement Class member. The Objector must also mail the objection and all supporting law and evidence to counsel for the Parties, as stated below. The addresses for filing objections with the Court and service on counsel are as follows:

COURT CLERK

Clerk, US District Court
Clarkson S. Fisher
Building & U.S.
Courthouse, 402 East
State Street Room 2020,
Trenton, New Jersey
08608

PLAINTIFF’S COUNSEL

Todd Collins
Berger Montague PC
1818 Market St.
Suite 3600
Philadelphia, PA 19103

John Nestico
Schneider Wallace
Cottrell Konecky LLP
6000 Fairview Rd. Ste. 1200
Charlotte, NC 28210

DEFENDANT’S COUNSEL

Howard Shapiro
Stacey C.S. Cerrone
Jackson Lewis
650 Poydras St.
Suite 1800
New Orleans, LA 70130

The Objector, or, if represented by counsel, his, her, or its counsel, must both effect service

of the objection on counsel listed above and file the objection with the Court at least fourteen (14) calendar days prior to the Fairness Hearing, or by no later than _____, 2020. Any Member of the Settlement Class or other person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement and any untimely objection shall be barred.

Appearance at Fairness Hearing. An Objector who files and serves a timely, written objection in accordance with the paragraph above may also appear at the Fairness Hearing either in person or through counsel retained at the Objector's expense. Objectors or their attorneys intending to appear at the Fairness Hearing must effect service of a "Notice of Intention to Appear", setting forth, among other things, the name, address, and telephone number of the Objector (and, if applicable, the name, address, and telephone number of the Objector's attorney) on counsel identified above and file it with the Court at least fourteen (14) calendar days prior to the Fairness Hearing, or by no later than _____, 2020. Any Objector 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 Fairness Hearing, except for good cause shown. The Parties' counsel shall promptly furnish each other with copies of any and all objections that come into their possession.

Response to Objectors. The Parties shall respond to any Objector at least seven (7) calendar days prior to the Fairness Hearing, or by no later than _____, 2020.

Compliance with Class Action Fairness Act. Defendant shall, on or before ten (10) calendar days prior to the Fairness Hearing, file with the Court proof of compliance with the Class Action Fairness Act of 2005, as specified in 28 U.S.C. § 1715 and paragraph 2 of the Stipulation.

Notice Expenses. Reasonable expenses of effectuating Class Notice shall be paid out of the Settlement Fund.

Fees and Expenses Incurred by the Independent Fiduciary and Settlement Administrator. The Court understands that the Plaintiff will retain an Independent Fiduciary, with Defendant's approval, for the purpose of evaluating the Settlement to determine whether to authorize the Settlement on behalf of the Plans. All fees and expenses incurred by the Independent Fiduciary (including fees and expenses incurred by consultants, attorneys, and other professionals retained or employed by the Independent Fiduciary) in the course of evaluating and authorizing the Settlement on behalf of the Plans shall be paid out of the Settlement Fund (the "Independent Fiduciary Fees Amount"). The Court understands that the expenses incurred by the Settlement Administrator in administering the Settlement and allocating the Settlement Fund pursuant to the Plan of Allocation approved by the Court shall be paid out of the Settlement Fund.

Application for Attorney's Fees. Any application by Class Counsel for attorney's fees and reimbursement of expenses, for a case contribution award to the Plaintiff, and all papers in support thereof, shall be filed with the Court and served on all counsel of record at least twenty-eight (28) calendar days prior to the Fairness Hearing, or by no later than _____, 2020.

Motion for Final Approval of Settlement and Plan of Allocation. Class Counsel shall file with the Court a motion for entry of the Final Approval Order and approval of the Plan of Allocation at least twenty-eight (28) calendar days prior to the Fairness Hearing, or by no later than _____, 2020.

Injunction. Pending final determination of whether the Settlement should be approved, all Settlement Class Members and the Plans are each hereby **BARRED AND ENJOINED** from

instituting or prosecuting any action that asserts any Released Claim against any Releasees.

Termination of Settlement. If the Settlement is terminated in accordance with the Stipulation of Settlement or does not become Final under the terms of the Stipulation of Settlement for any other reason, this Order and all Class Findings shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order.

Use of Order. In the event this Order becomes of no force or effect, no part of it shall be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, liability, or that a class should be certified, nor shall the Order be construed or used as an admission, concession, or declaration by or against Plaintiff or the Settlement Class that their claims lack merit or that the relief requested in the Action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she, or it may have.

Continuance of Hearing. The Court reserves the right to continue the Fairness Hearing without further written notice.

SO ORDERED this _____ day of _____, 2020.

Hon. Douglas E. Arpert
Magistrate Judge, United States District
Court for the District of New Jersey

EXHIBIT 2

NOTICE OF CLASS ACTION SETTLEMENT, SETTLEMENT FAIRNESS HEARING, AND MOTION FOR AN INCENTIVE AWARD FOR PLAINTIFF AND ATTORNEY’S FEES AND REIMBURSEMENT OF ATTORNEY EXPENSES

This notice advises you of the Settlement of *Nicolas v. The Trustees of Princeton University*, Case No. 17-3695 (AET)(DEA) (D. N.J.) (the “Action”), a class action lawsuit brought by Elysee Nicolas (“Plaintiff”) on behalf of himself, the Princeton University Retirement Plan (“Retirement Plan”) and the Princeton University Savings Plan (“Retirement Savings Plan”), and the Settlement Class Members described below, against Defendant The Trustees of Princeton University (“Defendant” or “University”) (collectively with Plaintiff, the “Parties”). The Action was brought under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). The Settlement would release Defendant and related parties from any claims filed against them in the Action. The terms and conditions of the Settlement are set forth in a Stipulation of Settlement (“Stipulation”). Capitalized terms used in this notice but not defined in this notice have the meanings assigned to them in the Stipulation. The Stipulation and additional information with respect to the Action and the Settlement are available [\[here/hyperlink\]](#) or by contacting Class Counsel as described below.

The Parties have agreed to settle this case for \$5,800,000 (the “Settlement Amount”) plus certain prospective relief. The Court has preliminarily approved the Settlement, which provides for allocation of Settlement funds to Settlement Class Members.

The Court has scheduled a hearing concerning final approval of the Settlement and Class Counsel’s motion for attorney’s fees and expenses and for an incentive award to Plaintiff. That hearing, before the Honorable Douglas E. Arpert, is scheduled on _____, _____, 2020, at _____ in Courtroom ____ at the U.S. District Court, Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street Room 2020, Trenton, New Jersey 08608. (However, on notice to all parties, counsel of record, Objectors (as described below), and persons who have filed timely Notices of Intention to appear (as described below), the Court in its discretion may determine to conduct the hearing by telephonic or electronic means.) If final approval is granted, the Settlement will bind you as a Settlement Class Member. You may appear at this hearing and/or object to the Settlement. Any objections to the Settlement, the motion for attorney’s fees and expenses, and/or the request for Plaintiff’s incentive award must be served in writing on the Court and the Parties’ counsel. More information about the hearing and how to object is explained below.

YOUR LEGAL RIGHTS WILL BE AFFECTED WHETHER OR NOT YOU TAKE ANY ACTION. READ THIS NOTICE CAREFULLY. PLEASE DO NOT CONTACT DEFENDANT OR THE COURT. THEY WILL NOT BE ABLE TO ANSWER YOUR QUESTIONS.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
You can do nothing. (No action is necessary to receive an allocated payment.)	If the Settlement is approved by the Court and you are a Settlement Class Member entitled to a payment under the Plan of Allocation, you do not need to do anything to receive a payment.
You can submit an objection. (It must be mailed by _____, 2020.)	If you wish to object to any part of the Settlement, you may write to the Court and Counsel and explain why, as described below.
You can appear at the Fairness Hearing on _____.	If you submit a written objection to the Settlement before the Court-approved deadline, you may (but do not have to) speak in Court about the fairness of the Settlement.

- These rights and options—and the deadlines to exercise them—are explained in this notice.
- Information concerning your individual share of the Net Settlement Fund, if any, will not be available for several months after the Court grants final approval of the Settlement and any appeals are resolved. Thank you for your patience.

SUMMARY OF CASE

As described in more detail below and in Plaintiff's Complaint, this Action alleges that Defendant breached fiduciary duties owed to participants in and beneficiaries of the Plans during the Class Period. Defendant vigorously denies the allegations. Copies of the Stipulation related to the Settlement are available [\[here/hyperlink\]](#).

SUMMARY OF SETTLEMENT

The Stipulation provides that Defendant will pay or cause its fiduciary insurance carrier to pay \$5,800,000 in cash, which will be deposited into an account called the Settlement Fund. After payment of attorney's fees and expenses, costs of notice, Plaintiff's incentive award, and any excess fees and expenses related to administration of the Settlement, the amount remaining in the account shall constitute the Net Settlement Fund and be allocated among Settlement Class Members according to a Plan of Allocation to be approved by the Court. In addition, Defendant has agreed to Prospective Relief, including not increasing the Plans' recordkeeping fees for three years, using commercially reasonable best efforts to continue to attempt to reduce recordkeeping fees for the Plans, and conducting a Request for Proposal process for recordkeeping-administrative services and outside independent investment consulting services.

STATEMENT OF POTENTIAL OUTCOME OF THE ACTION

Class Counsel believe that the claims against Defendant are well-grounded in law and fact and that breaches of fiduciary duty under ERISA occurred in this case. However, as with any litigated case, Settlement Class Members would face an uncertain outcome if the Action were to continue against Defendant. Continued litigation of the Action could result in a range of possible recoveries, including a judgment or verdict greater or less than the recovery under the Stipulation, or no recovery at all. Class Counsel also have taken into account the limited availability of insurance.

Class Counsel believe that this Settlement reflects a reasonable compromise in light of the range of possible outcomes. Class Counsel believe that the Settlement is preferable to continued litigation and is in the best interest of the Settlement Class Members because the Settlement provides certainty with respect to the amount of recovery and results in a prompt recovery.

Throughout this litigation, Defendant has denied and continues to deny the claims and contentions alleged by Plaintiff. Nevertheless, Defendant has concluded that it is desirable for the Action to be fully and finally settled as to it and the other Releasees on the terms and conditions set forth in the Stipulation.

The Court has not ruled in favor of either side. Both sides agreed to the Settlement to ensure a resolution and avoid the cost and risks of further litigation.

STATEMENT OF FEES AND EXPENSES INCURRED BY THE INDEPENDENT FIDUCIARY AND THE SETTLEMENT ADMINISTRATOR

An Independent Fiduciary is evaluating the Settlement and will be asked to authorize the Settlement on behalf of the Plans. The fees and expenses incurred by the Independent Fiduciary (including fees and expenses incurred by consultants, attorneys, and other professionals retained or employed by the Independent Fiduciary) in the course of evaluating and authorizing the Settlement on behalf of the Plan will be deducted from the Settlement Fund.

A Settlement Administrator has been engaged to mail the notice to the Settlement Class Members, administer the Settlement and allocate the Net Settlement Fund among Settlement Class Members. The fees and expenses for the Settlement Administrator will be paid from the Settlement Fund.

STATEMENT OF ATTORNEY'S FEES AND EXPENSES AND PLAINTIFF INCENTIVE AWARDS SOUGHT IN THE ACTION

Class Counsel will submit a fee petition to the Court in which they will ask the Court to award them attorney's fees in an amount not to exceed one-third of the Settlement Fund, plus reimbursement of costs and expenses. In addition, Class Counsel will request that the Court make an incentive award to Plaintiff in the amount of \$7,500.

QUESTIONS AND ANSWERS

Why did I receive a notice in the mail?

You received a notice because you or someone in your family is or may have been a participant in or beneficiary of one of the Plans some time between May 24, 2011 and **[DATE]**.

The Court ordered this notice to be sent to you because you have a right to know about the Settlement and all of the options available to you regarding the Settlement before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Net Settlement Fund will be allocated among Settlement Class Members according to a Court-approved Plan of Allocation.

The Court in charge of this case is the United States District Court for the District of New Jersey. The individual who sued is called “Plaintiff,” and the entity he sued is called the “Defendant.” The legal action that is the subject of this notice and the Settlement is titled *Nicolas v. The Trustees of Princeton University*, Case No. 17-3695 (AET)(DEA) (D. N.J.).

What is the Action about?

The Action claims that the Defendant was a fiduciary to the Plans and violated fiduciary duties under ERISA that it owed to the Plans’ participants and beneficiaries. Plaintiff alleges Defendant breached certain fiduciary duties by causing the Plans to incur higher administrative fees and expenses than reasonable and necessary. Plaintiff also alleges Defendant breached certain fiduciary duties by continuing to permit investment by the Plans’ participants in the CREF Stock Account and the TIAA Real Estate Account. In the Complaint, Plaintiff has asserted causes of action for losses he contends were suffered by the Plans as the result of these alleged breaches of fiduciary duty by Defendant.

Defendant vigorously denies each and every allegation of wrongdoing made in the Complaint and contends that it has no liability in the Action. Defendant specifically denies the allegations that it breached any fiduciary duty or any other provisions of ERISA in connection with the administrative fees or expenses incurred by the Plans, or the investments in the Plans, and further denies that it in any way failed to act prudently or loyally to the Plans’ participants and beneficiaries.

Why is this case a class action?

In a class action, one or more plaintiffs called “Class Representatives” sue on behalf of a large number of people who have similar claims. All of the individuals on whose behalf the Class Representatives are suing are “Class Members.” One court resolves the issues for all Class Members. In its order setting the Fairness Hearing, the Court preliminarily certified the Settlement Class in the Action.

The Class Representative in this Action, Elysee Nichols, was a participant in the Plans during the Class Period and is referred to as the “Plaintiff.”

Why is there a settlement?

The Court has not reached any final decision in connection with Plaintiff's claims against the Defendant. Instead, Plaintiff and Defendant have agreed to a Settlement. In reaching the Settlement, they have avoided the cost, risks, time, and disruption of prolonged litigation and trial.

Class Counsel believe that the Settlement is the best option for the Settlement Class Members, as described above in the section entitled "Statement of Potential Outcome of the Action."

How do I know whether I am part of the Settlement?

The Court has conditionally certified that this Settlement shall proceed on behalf of everyone who fits the following description:

All participants and beneficiaries who had an account balance in either the Princeton University Retirement Plan or the Princeton University Retirement Savings Plan (the "Plans") during the Class Period, excluding any participant who is currently serving as a fiduciary or has served as a fiduciary to the Plans during the Class Period. Also excluded from the Class are the Judges to whom this case is assigned as well as the Judges' immediate families.

The "Class Period" is defined as May 24, 2011 through [DATE].

THE SETTLEMENT BENEFITS

What does the Settlement provide?

The Settlement provides that Defendant will pay or cause its fiduciary insurance carrier to pay \$5,800,000 (the "Settlement Amount") into an account at a financial institution identified by Class Counsel, which shall constitute the Settlement Fund. The net amount of the Settlement Fund, after payment of Court-approved attorney's fees and expenses, an incentive award to Plaintiff, excess fees and expenses incurred by the Independent Fiduciary, and any fees and expenses incurred by the Settlement Administrator, will be allocated to the Settlement Class Members according to a Plan of Allocation to be approved by the Court if and when the Court enters an order finally approving the Settlement. In addition, the Settlement provides Prospective Relief, including not increasing the Plans' recordkeeping fees for three years, using commercially reasonable best efforts to continue to attempt to reduce recordkeeping fees for the Plans, and conducting a Request for Proposal process for recordkeeping-administrative services and outside independent investment consulting services.

How much will my payment be?

If you qualify, you will receive a share of the Net Settlement Fund. The Settlement payment is a compromise. It does not compensate participants for 100% of their claimed losses.

Class Counsel will file a detailed Plan of Allocation in advance of the Fairness Hearing. The Plan of Allocation will describe the manner in which the Net Settlement Fund will be distributed to Settlement Class Members.

Those Settlement Class Members who are former Plan participants and whose pro rata share is less than \$25.00 (the "*De Minimis* Amount") shall receive an allocation of zero from the Net Settlement Fund.

The Settlement Administrator will perform all calculations and determine your amount. The Settlement Administrator will have access to all available records, so you do not need to be concerned if you no longer have your account statements. The Court will be asked to approve the Plan of Allocation, a copy of which will be available along with other settlement documents [here](#) after it has been filed.

How can I get a payment?

If the Settlement is given final approval, you will **not** have to do anything to get a payment from the Settlement if you are entitled to one under the Plan of Allocation.

When will I get my payment?

The balance of the Net Settlement Fund will be allocated to Settlement Class Members pursuant to the Plan of Allocation as soon as possible after final approval has been obtained for the Settlement, including any appeals. Any appeal of the final approval may take a year or more. Please be patient.

There will be no payments if the Settlement is terminated.

The Stipulation may be terminated on several grounds, which are described in the Stipulation. In the event any of these conditions occur, there will be no settlement payment made, and the litigation will resume.

Can I opt out of the Settlement?

No. In some class actions, class members have the opportunity to exclude themselves from the Settlement. This is sometimes referred to as “opting out” of the Settlement. Because of the legal issues involved in the Action, however, the class of participants affected by this Settlement has been preliminarily certified for Settlement purposes as a mandatory class. This means you cannot opt out of the benefits of the Settlement in order to pursue you own claims or for any other reason. **Therefore, you will be bound by any judgments or orders that are entered in this Action, and if the Settlement is approved, you will be deemed to have released Defendant from any and all claims that were or could have been asserted in this case on your behalf or on behalf of the Plans or that are otherwise included in the release in the Settlement, other than your right to obtain the relief provided to you, if any, by the Settlement.**

Although you cannot opt out of the Settlement, you can object to the Settlement and ask the Court not to approve the Settlement, as described below.

THE LAWYERS REPRESENTING YOU

Do I have a lawyer in the Action?

The Court has preliminarily designated Lite DePalma Greenberg LLC, Schneider Wallace Cottrell Konecky LLP, and Berger Montague PC as Class Counsel for the Settlement Class. If you want to be represented by your own lawyer, you may hire one at your own expense.

How will the lawyers be paid?

Class Counsel will file a petition for the award of attorney's fees and expenses by _____, 2020, after which a copy will be posted **here**. This petition will be considered at the Fairness Hearing. Defendant has agreed not to oppose the amount of attorney's fees, costs, or expenses or any award to the Plaintiff to the extent such fees, costs, expenses, and awards are consistent with the terms of the Stipulation. Class Counsel have agreed to limit their application for an award of attorney's fees to not more than one-third of the Settlement Amount, plus out-of-pocket costs.

Plaintiff will also request a case contribution award from the Settlement Fund to compensate him for the time and effort he spent assisting with the investigation and prosecution of the case. Class Counsel will request that the Court approve case contribution awards of \$7,500 for the Plaintiff.

You have the right to object to this aspect of the Settlement even if you approve of the other aspects of the Settlement.

OBJECTING TO THE SETTLEMENT OR THE ATTORNEY'S FEES

You can tell the Court that you do not agree with the Settlement or some part of it.

How do I tell the Court that I object to the Settlement?

If you are a Settlement Class Member, you can object to the Settlement if you do not agree with any part of it. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views. To object, you must send a letter or other written filing saying that you object to the Settlement. Be sure to include the following case caption and notation: "*Nicolas v. The Trustees of Princeton University*, Case No. 17-3695 (AET)(DEA) (D. N.J.)." In addition, your objection must also include your name, address, telephone number, and signature and the reasons why you object to the Settlement. Any objection must be signed by the Settlement Class Member even if an attorney is retained by the Settlement Class Member. **Mail the objection to each of the addresses listed below, postmarked no later than [REDACTED]. You must mail your objection by this date. If you fail to do so, the Court will not consider your objections.** If you plan to speak at the Fairness Hearing, you must send a Notice of Intention to Appear along with your objection, as described below.

COURT CLERK

Clerk, US District Court
Clarkson S. Fisher
Building & U.S.
Courthouse, 402 East
State Street Room 2020,
Trenton, New Jersey
08608

PLAINTIFF'S COUNSEL

Todd Collins
Berger Montague PC
1818 Market St.
Suite 3600
Philadelphia, PA 19103

John Nestico
Schneider Wallace
Cottrell Konecky LLP
8501 N. Scottsdale Rd.,
Suite 270
Scottsdale, AZ 85253

DEFENDANT'S COUNSEL

Howard Shapiro
Stacey C.S. Cerrone
Jackson Lewis
650 Poydras St.
Suite 1800
New Orleans, LA 70130

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but it is not necessary.

When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing to decide whether to approve the Settlement as fair, reasonable, and adequate. You may attend the Fairness Hearing, and you may ask to speak, but you do not have to attend. The Court will hold the Fairness Hearing on **at** **in** at the U.S. District Court, Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street Room 2020, Trenton, New Jersey 08608. (However, on notice to all parties, counsel of record, Objectors (as described above), and persons who have filed timely Notices of Intention to appear (as described below), the Court in its discretion may determine to conduct the hearing by telephonic or electronic means.) At that hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to approve the Settlement. The Court will also rule on the motions for attorney's fees and expenses and the request for a Plaintiff incentive award.

Do I have to come to the hearing?

No, but you are welcome to come at your own expense. If you send an objection, you do not have to attend the Fairness Hearing to voice your objection in person. As long as you mail your written objection on time, the Court will consider it when determining whether to approve the Settlement as fair, reasonable, and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but attendance is not necessary.

May I speak at the hearing?

Only if you have previously filed an objection to the Settlement may you ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Nicolas v. The Trustees of Princeton University*, Case No. 17-3695 (AET)(DEA) (D. N.J.)." Be sure to include your name, address, telephone number, and signature. Your Notice of Intention to Appear must be postmarked no later than **and** be sent to the Clerk of the Court, Class Counsel, and Defendant's counsel at the addresses listed above.

IF YOU DO NOTHING

What happens if I do nothing at all?

If you do nothing and you are a Settlement Class Member and the Settlement is approved, you will participate in the Settlement of the Action as described in this notice.

GETTING MORE INFORMATION

Are there more details about the Settlement?

This notice summarizes the proposed Settlement. The complete Settlement is set forth in the Stipulation of Settlement. You may obtain a copy of the Stipulation of Settlement **here**.

How do I get more information?

Class Counsel may be reached at : Todd Collins, Berger Montague PC, 1818 Market Street, Suite 3600, Philadelphia, PA 19103; tcollins@bm.net; (215) 875-3000, John Nestico, Schneider Wallace Cottrell Konecky LLP, 8501 N. Scottsdale Rd., Suite 270, Scottsdale, AZ 85253; jnestico@schneiderwallace.com; (480) 428-0145

[REDACTED]

Documents are also available at the office of the Clerk located at the U.S. District Court, Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street Room 2020, Trenton, New Jersey 08608.

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EXHIBIT 3

Proposed Final Approval Order

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ELYSEE NICOLAS, Individually and as	:	
representative of a class of participants and	:	Civil Action No.: 17-3695 (AET)(DEA)
beneficiaries on behalf of the Princeton	:	
University 403(b) Plans,	:	
	:	
<i>Plaintiff,</i>	:	
	:	
v.	:	
	:	
THE TRUSTEES OF PRINCETON	:	
UNIVERSITY,	:	
	:	
<i>Defendant.</i>	:	
	:	

[PROPOSED] FINAL APPROVAL ORDER AND FINAL JUDGMENT

This action came on for a final fairness hearing, held on _____, 2020, on a proposed Settlement (the “Settlement”) of this class action (the “Action”) preliminarily certified for settlement purposes, and the issues having been duly heard and a decision having been duly rendered,

IT IS HEREBY ORDERED AND ADJUDGED:

To the extent not otherwise defined herein, all terms shall have the same meaning as used in the Stipulation of Settlement executed on ____, 2020 (the “Stipulation”).

The Court has jurisdiction over the subject matter of this Action and over all Parties to this Action, including all Settlement Class Members.

The Court hereby approves and confirms the Settlement embodied in the Stipulation as being a fair, reasonable, and adequate settlement and compromise of this Action, adopts the Stipulation as its Judgment, and orders that the Stipulation shall be effective, binding, and enforced according to its terms and conditions.

The Court determines that Plaintiff has asserted claims on behalf of the Princeton University Retirement Plan (“Retirement Plan”) and the Princeton University Savings Plan (“Retirement Savings Plan”) (together, the “Plans”) to recover losses alleged to have occurred as a result of violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.* (“ERISA”).

The Court determines that the Settlement, which includes the payment of \$5,800,000 on behalf of Defendant, as well as Prospective Relief, including Defendant’s not increasing the Plans’ recordkeeping fees for three years, using commercially reasonable best efforts to continue to attempt to reduce recordkeeping fees for the Plans, and conducting a Request for Proposal process for recordkeeping-administrative services and outside independent investment consulting services, has been negotiated vigorously and at arm’s length by Class Counsel, and further finds that, at all times, Plaintiff has acted independently and that his interests are identical to the interests of the Plans and the Settlement Class. The Court further finds that the Settlement arises from a genuine controversy between the Parties and is not the result of collusion, nor was the Settlement procured by fraud or misrepresentation.

The Court finds that the Plans’ participation in the Settlement is on terms no less favorable than Plaintiff’s and the Settlement Class’ and that the Plans do not have any additional claims above and beyond those asserted by or could have been asserted by Plaintiff that are released as a result of the Settlement.

The Court determines that the Settlement is not part of an agreement, arrangement, or understanding designed to benefit a party in interest, but rather is designed and intended to benefit the Plans, and the Plans participants and beneficiaries.

Accordingly, the Court determines that the negotiation and consummation of the

Settlement by Plaintiff on behalf of the Plans and the Settlement Class do not constitute “prohibited transactions” as defined by ERISA §§ 406(a) or (b), 29 U.S.C. §§ 1106(a) or (b). Further, the Court finds that in light of the analysis and opinion provided by the Independent Fiduciary, to the extent any of the transactions required by the Settlement constitute a transaction prohibited by ERISA § 406(a), 29 U.S.C. §§ 1106(a), such transactions satisfy the provisions of Prohibited Transaction Exemption 2003-39. 68 Fed. Reg. 75632 (2003).

The Court determines that the Class Notice transmitted to the Settlement Class, pursuant to the Preliminary Approval Order concerning the Settlement and the other matters set forth therein, is the best notice practicable under the circumstances and included individual notice to all Settlement Class Members who could be identified through reasonable efforts. Such Class Notice provides valid, due and sufficient notice of these proceedings and of the matters set forth therein, including the Settlement described in the Stipulation, to all persons entitled to such Class Notice, and such Class Notice has fully satisfied the requirements of Federal Rule of Civil Procedure 23 and the requirements of due process.

The Court hereby approves the maintenance of the Action as a non-opt-out class action solely for Settlement purposes, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(1) with the Settlement Class being defined as:

All participants and beneficiaries who had an account balance in either the Princeton University Retirement Plan or the Princeton University Retirement Savings Plan (the “Plans”) during the Class Period, excluding any participant who is currently serving as a fiduciary or has served as a fiduciary to the Plans during the Class Period. Also excluded from the Class are the Judges to whom this case is assigned as well as the Judges’ immediate families.

The “Class Period” is defined as May 24, 2011 through *[the date of Preliminary Approval Order.]*

Pursuant to Federal Rule of Civil Procedure 23(g), the Court hereby confirms its prior appointment of Lite DePalma Greenberg LLC, Schneider Wallace Cottrell Konecky LLP, and

Berger Montague PC as co-lead class counsel (“Class Counsel”).

Based on the Settlement, the Court hereby dismisses the Complaint and the Action against Defendant with prejudice.

As of the date of Complete Settlement Approval and payment of the Settlement Amount, Plaintiff, the Plans, and each Member of the Settlement Class on their own behalf and on behalf of their present or former agents, employees, attorneys, accountants, representatives, advisers, investment bankers, trustees, parents, heirs, estates, executors, administrators, successors, and assigns, shall be deemed to have released each and all of the Releasees from the Released Claims.

As of the date of Complete Settlement Approval and payment of the Settlement Amount, Defendant, including their present or former agents, employees, attorneys, accountants, representatives, advisers, investment bankers, trustees, parents, heirs, estates, executors, administrators, successors, and assigns, shall be deemed to have released the Released Parties from any claims that may have arisen out of this Action.

As of the date of Complete Settlement Approval and payment of the Settlement Amount, all release provisions shall be given full force and effect in accordance with each and all of their express terms and provisions, including those terms and provisions relating to unknown, unsuspected, or future claims, demands, or causes of action. Further, Plaintiff assumes for himself, and on behalf of the Settlement Class, and Defendant assumes the risk of any subsequent discovery of any matter, fact, or law, that, if now known or understood, would in any respect have affected or could have affected any such Person’s entering into the Stipulation.

The Court further determines that Defendant has fully complied with the notice requirements of the Class Action Fairness Act of 2005, to the extent possible.

All Settlement Class Members and the Plans are hereby barred and enjoined from the

institution and prosecution, either directly or indirectly, of any other actions in any court asserting any and all Released Claims against any and all Releasees.

The litigation expenses incurred by Class Counsel in the course of prosecuting this action are reasonable. Accordingly, Class Counsel are awarded expenses in the amount of \$ _____, to be paid from the Settlement Fund. The attorney's fees sought by Class Counsel in the amount of ____ percent (___%) of the common fund established in this Action are reasonable in light of the successful results achieved by Class Counsel, the monetary benefits obtained in this Action, the substantial risks associated with the Action, Class Counsel's skill and experience in class action litigation of this type, and the fee awards in comparable cases. Accordingly, Class Counsel are awarded attorneys' fees in the amount of ____ percent (___%) of the common fund established in this Action, specifically \$ _____.

Plaintiff Elysee Nichols is hereby awarded a case contribution award in the amount of \$ _____.

Class Counsel's attorney's fees and expenses and Plaintiff's incentive or case contribution award shall be paid pursuant to the timing requirements described in the Stipulation.

The Plan of Allocation for the Settlement Fund is approved as fair, reasonable, and adequate. Any modification or change in the Plan of Allocation that may hereafter be approved shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

Without affecting the finality of this Judgment, the Court retains jurisdiction for purposes of implementing the Stipulation and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the Stipulation and Settlement, as may from time to time be appropriate, and resolution of any and all disputes arising thereunder.

SO ORDERED this _____ day of _____, 2020.

Hon. Douglas E. Arpert
Mfagistrate Judge, United States District
Court for the District of New Jersey

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