

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CONNIE SELLERS AND SEAN COOPER,
INDIVIDUALLY AND AS THE
REPRESENTATIVES OF A CLASS OF
SIMILARLY SITUATED PERSONS, AND
ON BEHALF OF THE BOSTON COLLEGE
401(K) RETIREMENT PLAN I AND THE
BOSTON COLLEGE 401(K) RETIREMENT
PLAN II,

Plaintiffs,

V.

TRUSTEES OF BOSTON COLLEGE, PLAN
INVESTMENT COMMITTEE, and JOHN and
JANE DOES 1-10,

Defendants.

Civil Action No.: 22-cv-10912-WGY

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (the “Agreement”) is entered into by and among Named Plaintiffs, Connie Sellers (“Sellers”) and Sean Cooper (“Cooper”) (collectively, the “Named Plaintiffs”), individually and on behalf of the Subclasses and the Boston College 401(k) Plan I (“Plan I”) and Boston College 401(k) Plan II (“Plan II”), and Defendants, Trustees of Boston College (“Trustees”) and Plan Investment Committee (“Committee”) (collectively, “Boston College” or “Defendants”), for the purpose of addressing all claims that were asserted or could have been asserted in the above-captioned action pending before the United States District Court for the District of Massachusetts (the “Court”), as Civil Action No. 22-10912-WGY (“Action”). The Agreement is intended to fully, finally, and forever resolve, discharge, and settle the Released Claims, subject to the approval of the Court and terms and conditions set forth in this Agreement.

The Named Plaintiffs and the Defendants are collectively referred to as the “Parties.” Plan I and Plan II are collectively referred to as the “Plans”. Other capitalized terms used in this Agreement are defined in the “Definitions” section and paragraphs, below.

This Agreement includes the following attachments: **Exhibit 1: Notice of Proposed Settlement of Class Action Lawsuit**; **Exhibit 2: Proposed Order Granting Preliminary Approval of Proposed Class Action Settlement**; **Exhibit 3: Proposed Final Approval Order and Judgment**; **Exhibit 4: Proposed CAFA Notice**.

RECITALS

WHEREAS, on June 10, 2022, the Named Plaintiffs commenced this Action, challenging the Defendants' exercise of fiduciary duties as to The Boston College 401(k) Plan I ("Plan I") and The Boston College 401(k) Plan II ("Plan II");

WHEREAS, on May 19, 2023, the Court issued an order (ECF No. 46) granting the Named Plaintiffs' Assented-To Motion for Class Certification, pursuant to the Parties' stipulation that Sellers serve as class representative for four proposed subclasses ("Subclasses"), as further described and defined below, and that Cooper serve as a class representative for Subclasses (i), (ii), and (iii), as further described and defined below;

WHEREAS, on April 11, 2024, the Court issued a Memorandum of Decision on Defendants' Motion for Summary Judgment ("Summary Judgment Order") (ECF No. 107), in which the Court (a) denied the Defendants' motion as it related to the Recordkeeping Fees Claim (as defined in that decision), but limited the scope of that claim to the period following the 2018 Request for Proposal, (b) denied the Defendants' motion as it related to the CREF Stock Account portion of the Challenged Investment Claim (as defined in that decision), but limited the scope of that claim to the period following the December 2020 decision to place that fund on a "watch list," as recommended by the Defendants' consultant, (c) granted the Defendants' motion as it related to the TIAA Real Estate Account portion of the Challenged Investment Claim, (d) granted the Defendants' motion as to claims that they violated plan documents, and (e) granted the Defendants' motion as to claims that the Trustees failed prudently to monitor its fiduciaries, all as more specifically set forth in the Court's Memorandum of Decision;

WHEREAS, on May 17, 2024, the Defendants filed a Motion to Decertify the Plan I Investment Subclass and to Dismiss the Investment Claim for Lack of Standing ("Plan I Decertification and Dismissal Motion") (ECF No. 110), which was opposed by the Named Plaintiffs but which remains pending in the Court;

WHEREAS, on May 21, 2024, the Defendants filed a Motion to Decertify the Plan I and Plan II Recordkeeping Subclasses (ECF No. 113), which was opposed by the Named Plaintiffs but which remains pending in the Court;

WHEREAS, this Action was scheduled for the Court's running trial list for July 2024;

WHEREAS, on June 18, 2024, following extensive arm's-length negotiations that resulted in an agreement as to material terms of a proposed settlement, the parties filed a Notice of Settlement (ECF No. 130);

WHEREAS, in agreeing to the terms embodied in this Agreement, the Named Plaintiffs have considered: (i) the facts developed during their investigation and litigation of the Action and the law applicable thereto; (ii) the attendant risks of continued litigation and the uncertainty of the outcomes of the Action; and (iii) the desirability of permitting a settlement to be consummated according to the terms of this Agreement;

WHEREAS, after consideration of all relevant circumstances, the Named Plaintiffs have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that it is in the best interests of the Named Plaintiffs and the Subclasses to settle the Action as set forth below; and

WHEREAS, Defendants deny the material allegations of the Complaint in the Action, including all allegations of wrongdoing, fault, liability, or damage to the Named Plaintiffs or any members of the Subclasses, deny that they engaged in any wrongdoing, deny that they committed any violation of law, deny that they acted improperly in any way, believe that they acted properly at all times, and believe the Action has no merit, but are entering into this Agreement solely because the proposed Settlement would eliminate the burden, expense, and risk of further litigation.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by all Parties,

IT IS HEREBY STIPULATED AND AGREED, by and among the Named Plaintiffs, individually and on behalf of the Subclasses and the Plans, and the Defendants, that, subject to the approval of the Court and the other conditions set forth herein, the Action shall be resolved.

TERMS AND CONDITIONS

DEFINITIONS

1. Capitalized terms used in this Agreement shall have the meanings ascribed to them therein. In addition, the following capitalized terms shall have the meanings specified below:

(a) “Action” means the civil action captioned *Sellers, et al. v. Trustees of Boston College, et al.*, Case No. 22-cv-10912, pending in the United States District Court for Massachusetts.

(b) “Active Account” means an individual investment account in Plan I or Plan II with a balance greater than \$0 as of the date the Preliminary Approval Order is entered by the Court.

(c) “Administrative Expenses” means expenses incurred in the administration of this Agreement, including (a) all fees, expenses, and costs associated with providing the Settlement Notice to the members of the Subclasses as provided in this Agreement; (b) all expenses and costs associated with the distribution of funds pursuant to Paragraph 16 of this Agreement; (c) all fees and expenses of the Administrator; (d) all fees and expenses of the Independent Fiduciary, not to exceed \$15,000 or such other amount as the Parties may agree is reasonable and necessary; and (e) all related tax expenses. Excluded from Administrative Expenses are Defendants’ internal expenses and the Parties’ respective legal fees and expenses. Administrative Expenses shall be paid from the Gross Settlement Amount.

(d) “Administrator” is the third-party administrator who will be retained by Class Counsel to administer this Agreement. The Administrator shall be responsible for all tasks

assigned to it by Class Counsel or the Court, including, without limitation, disseminating any required notices of the Settlement to members of the Subclasses, collecting and reporting on any objections or other responses thereto, collecting and distributing any settlement proceeds as approved by the Court, and any tax reporting that it is required to do under state or federal law.

(e) “Agreement” means this agreement embodying the terms of the Settlement, including any modifications or amendments hereto.

(f) “Alternate Payee” means a Person other than a Current Participant, a Former Participant, or Beneficiary in the Plan who is entitled to a benefit under Plan I or Plan II as a result of a QDRO.

(g) “Beneficiary” means any individual, trust, estate, or other recipient entitled to receive benefits payable under Plan I or Plan II, on either a primary or contingent basis, other than a Current Participant, a Former Participant, or an Alternate Payee.

(h) “CAFA” means the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711–1715.

(i) “CAFA Notice” means notice of this proposed Settlement to the appropriate federal and state officials pursuant to CAFA, to be issued by Defendants, substantially in the form set forth in Exhibit 4 hereto.

(j) “Class Counsel” means attorneys Stephen Churchill and Osvaldo Vazquez of Fair Work, P.C.

(k) “Complaint” means the Complaint filed on June 10, 2022 (ECF No. 1).

(l) “Court” means the United States District Court for the District of Massachusetts.

(m) “Current Participant” means a member of the Subclasses who had an Active Account as of the date the Preliminary Approval Order is entered by the Court.

(n) “Defendants” means Trustees of Boston College (“Trustees”) and Plan Investment Committee (“Committee”).

(o) “ERISA” means the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.*

(p) “Effective Date” means thirty-seven (37) days following the date of the Court’s final approval of this Agreement, provided no notice of appeal is filed; or, if a notice of appeal is filed, ten (10) business days after an appellate court finally disposes of such appeal (including any motions or petitions for rehearing or further appellate review) in a manner that has the effect of affirming the Court’s final approval in its entirety.

(q) “Fairness Hearing” means the hearing scheduled by the Court to consider: (a) any objections by members of the Subclasses to the Settlement; (b) Class Counsel’s petition for Attorneys’ Fees and Litigation Expenses and Named Plaintiffs’ Service Award Payment; and (c) whether to finally approve the Settlement under Fed. R. Civ. P. 23(e). The Fairness Hearing may be conducted telephonically or by videoconference.

(r) “Final Approval Order” means the entry of the order and final judgment by the Court approving the Settlement Agreement, implementing the terms of this Settlement Agreement, and dismissing the Class Action with prejudice, in substantially the form attached as Exhibit 3 hereto.

(s) “Former Participant” means a member of the Subclasses who had a Plan I or Plan II account with a balance greater than \$0 as of January 1, 2019 but who does not have an Active Account as of the date the Preliminary Approval Order is entered by the Court.

(t) “Gross Settlement Amount” means the amount of Three Hundred and Thirty Thousand Dollars (\$330,000.00), contributed to the Settlement Account in accordance with Paragraph 4. Defendants shall cause the Gross Settlement Amount to be paid to the Qualified Settlement Fund. The Gross Settlement Amount shall be the full and sole monetary payment to the Subclasses, Named Plaintiffs, and Class Counsel made on behalf of Defendants in connection with the Settlement effectuated through this Agreement. Other than as specified herein, neither Defendants nor their insurer(s) will make any additional payment in connection with the Settlement of the Action.

(u) “Independent Fiduciary” means a qualified and independent third-party appointed by Defendants on behalf of the Plans that has no relationship to any of the Parties and will serve as an independent fiduciary to the Plans to approve and authorize the settlement of released claims on behalf of the Plans in accordance with Paragraph 3.

(v) “Net Settlement Amount” is the portion of the Gross Settlement Amount that remains after the payment of attorneys’ fees and costs, Administrative Expenses, and service payments to the Named Plaintiffs, all as approved by the Court.

(w) “Plan I” means the Boston College 401(k) Plan I, and each of its predecessor plans or successor plans, individually and collectively, and any trust created under such plans.

(x) “Plan II” means the Boston College 401(k) Plan II, and each of its predecessor plans or successor plans, individually and collectively, and any trust created under such plans.

(y) “Plans” collectively refers to Plan I and Plan II, as defined in this Agreement.

(z) “Preliminary Approval Order” means the order of the Court in substantially the form attached hereto as Exhibit 2, whereby the Court preliminarily approves this Settlement.

(aa) “QDRO” means a Qualified Domestic Relations Order within the meaning of 26 U.S.C. § 414(p).

(bb) “Qualified Settlement Fund” means the interest-bearing qualified settlement fund account to be established and maintained by the Escrow Agent in accordance with Paragraph 13 herein and referred to as the Qualified Settlement Fund (within the meaning of Section 468B of the Internal Revenue Code (the “Code”) and Treas. Reg. § 1.468B-1).

(cc) “Recordkeeper” means the entit(ies) that maintains electronic records of the Plan I or Plan II participants and their individual accounts.

(dd) “Released Claims” means the released claims defined in Paragraph 18 of this Agreement, notwithstanding the limitation contained in Paragraph 19.

(ee) “Released Parties” means (a) each Defendant; (b) each Defendant’s insurers, co-insurers, and reinsurers; (c) each Defendant’s direct and indirect past, present, and future affiliates, parents, subsidiaries, divisions, joint ventures, predecessors, successors, Successors-In-Interest, assigns, boards of trustees, boards of directors, officers, trustees, directors, partners, agents, managers, members, employees or heirs (including any individuals who serve or served in any of the foregoing capacities, such as members of the boards of trustees or boards of directors that are associated with any of Defendants’ past, present, and future affiliates), and each Person that controls, is controlled by, or is under common control with them; (d) the Plans’ and the Plans’ current and past fiduciaries, committees, subcommittees, administrators, plan administrators, recordkeepers, service providers, consultants, attorneys, agents, insurers and parties-in-interest; (e) Defendants’ independent contractors, Representatives, attorneys, administrators, insurers, fiduciaries, accountants, auditors, advisors, consultants, personal Representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, employee benefit plan committees and subcommittees, service providers to the Plan (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them; and (f) the individual members of the Committee, the spouses, members of the immediate families, representatives, and heirs of the individual members of the Committee, as well as any trust of which an individual member of the Committee is a settlor or which is for the benefit of the individual member of the Committee and/or member(s) of his/her family, and each of their heirs, executors, administrators, predecessors, successors, and assigns of the foregoing.

(ff) “Settlement” means the settlement to be consummated under this Agreement and its exhibits, including any modifications or amendments adopted pursuant to Paragraph 31.

(gg) “Settlement Account” means a duly established Qualified Settlement Fund controlled by the Administrator, into which the Gross Settlement Amount will be deposited. No other funds shall be commingled within the Settlement Account.

(hh) “Settlement Notice” means the Notice of Class Action Settlement and Fairness Hearing to be sent to members of the Subclasses identified by the Settlement Administrator following the Court’s issuance of the Preliminary Approval Order, in substantially the form attached hereto as Exhibit 1. The Settlement Notice shall inform members of the Subclasses of a Fairness Hearing to be held by the Court, on a date to be determined by the Court, at which any member of the Subclasses satisfying the conditions set forth in the Preliminary Approval Order and the Settlement Notice may be heard regarding: (a) the terms of the Settlement Agreement; (b) the petition of Class Counsel for award of Attorneys’ Fees and Litigation Expenses; (c) payment of Administrative Expenses; and (d) Class Representatives’ Service Award Payment.

(ii) “Subclasses” is defined as follows: (i) on behalf of Plan I, all participants of Plan I, except Defendants and their immediate family members, between June 10, 2016 through the date of judgment as to all claims alleging excessive recordkeeping expenses (“Subclass (i)”); (ii) on behalf of Plan I, all participants of Plan I except Defendants and their immediate family members, between June 10, 2016 through the date of judgment as to all claims alleging imprudent investment decisions (“Subclass (ii)”); (iii) on behalf of Plan II, all participants of Plan II, except Defendants and their immediate family members, between June 10, 2016 through the date of judgment as to all claims alleging excessive recordkeeping expenses (“Subclass (iii)”); (iv) on behalf of Plan II, all participants of Plan II except Defendants and their immediate family members, between June 10, 2016 through the date of judgment as to all claims alleging imprudent investment decisions (“Subclass (iv)”).

NO ADMISSION OF LIABILITY

2. By entering into this Agreement, Defendants in no way admit any violation of law or any liability whatsoever to the Named Plaintiffs or members of the Subclasses, individually or collectively, or to the Plans. Any and all such liability to the Named Plaintiffs, the members of the Subclasses, or the Plans is expressly denied by Defendants. Defendants have elected to enter into this Agreement to avoid further protracted litigation and to fully and finally resolve and settle all disputes with the Named Plaintiffs, individually and on behalf of the members of the Subclasses and the Plans. The Parties understand and agree that this Agreement is a settlement document and shall be inadmissible in evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce the terms of the Agreement.

INDEPENDENT FIDUCIARY

3. The Independent Fiduciary, retained by Defendants on behalf of the Plan, shall have the following responsibilities, including determining whether to approve and authorize the settlement of Released Claims on behalf of the Plan.

(a) The Independent Fiduciary shall comply with all relevant conditions set forth in Prohibited Transaction Class Exemption 2003-39, “Release of Claims and Extensions of Credit in Connection with Litigation,” issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632, as amended (“PTE 2003-39”), in making its determination.

(b) The Independent Fiduciary shall notify Defendants directly of its determination, in writing (with copies to Class Counsel and counsel for Defendants), which

notification shall be delivered no later than forty-five (45) calendar days before the Fairness Hearing.

(c) All fees and expenses associated with the Independent Fiduciary's determination and performance of its other obligations in connection with the Settlement, up to \$15,000 or such other amount as the Settling Parties may agree is reasonable and necessary, will constitute Administrative Expenses to be deducted from the Gross Settlement Amount.

(d) Defendants, counsel for Defendants, and Class Counsel shall respond to reasonable requests by the Independent Fiduciary for information so that the Independent Fiduciary can review and evaluate the Settlement Agreement.

(e) If Defendants conclude that the Independent Fiduciary's determination does not comply with PTE 2003-39 or is otherwise deficient, Defendants shall so inform the Independent Fiduciary within ten (10) calendar days of receipt of the determination.

(f) A copy of the Independent Fiduciary determination letter and/or report shall be provided to Class Counsel, who may file it with the Court in support of final approval of the Settlement.

SETTLEMENT AMOUNT

4. **Settlement Amount.** The Defendants shall pay, or cause to be paid, the Gross Settlement Amount, on behalf of all Defendants, as consideration for this Agreement. The Gross Settlement Amount shall be Defendants' total obligation under this Agreement to the Administrator, the Named Plaintiffs, members of the Subclasses, the Plans, and Class Counsel.

5. **Allocation of Settlement Amount.** The Gross Settlement Amount shall be allocated as follows:

(a) Subject to Court approval, one-third of the Gross Settlement Amount (not to exceed \$110,000.00) will be paid for attorneys' fees and costs of litigation incurred by Class Counsel.

(b) Subject to Court approval, Administrative Expenses to be paid and allocated in accordance with the Agreement.

(c) Subject to Court approval, the Named Plaintiffs will each receive a service payment not to exceed \$2,500.00 to compensate them for their services and efforts in pursuing the Action, participating in discovery in the Action, assuming the risks associated with the Action, and in exchange for the General Release below.

(d) The Net Settlement Amount will be allocated to members of Subclasses as discussed in more detail below.

(e) Neither the Named Plaintiffs nor the Defendants make any representations as to the tax treatment of any distributions of the Gross Settlement Amount.

SETTLEMENT APPROVAL PROCEDURES

6. **Contingency of Agreement.** This Settlement shall be contingent upon each of the following conditions in Paragraphs 6(a) – 6(g) being satisfied. The Parties agree that if any of these conditions are not satisfied, then this Agreement is terminated (subject to Defendants’ right to waive the condition set forth in Paragraph 6(c)) and the Action will, for all purposes with respect to the Settling Parties, revert to its status as of the Agreement execution date. This Settlement will become final and effective upon the Effective Date. The Parties agree that necessary approvals shall be sought and sequenced as follows.

(a) **Preliminary Approval.** As soon as reasonably possible upon the full execution of this Settlement Agreement by the Parties, Class Counsel shall file an assented-to motion for preliminary approval of this Agreement, which shall include, among any other required exhibits, a form of proposed notice to the Subclasses and a proposed order of preliminary approval to be entered by the Court. The preliminary approval papers shall be submitted to Defendants for their review and assent at least five (5) business days prior to filing, and shall include a proposed order substantially similar to the Preliminary Approval Order attached as Exhibit 2 to this Agreement.

(b) **Dismissal Without Prejudice of CREF Stock Account Claim.** As soon as reasonably possible following the Court’s entry of an order of preliminary approval, the Parties shall file a stipulation of dismissal without prejudice of any claim that remained viable in the Action subsequent to the Summary Judgment Order as to the Defendants’ alleged breach of fiduciary duties with respect to the investment performance of the CREF Stock Account (“CREF Stock Account Claim”). If the Court ultimately denies the request to issue an order granting final approval of this Agreement, the Parties agree that they will stipulate to reinstate the CREF Stock Account Claim as a claim in this Action, in which event the Defendants will have the same rights to oppose and defend against that claim as they had before the execution of this Agreement, including, without limitation, renewal of the Plan I Decertification and Dismissal Motion. For the avoidance of doubt, if the Court ultimately denies the request to issue an order granting final approval of this Agreement, the Parties agree that they will be in the same position vis-à-vis the Action as they were on June 18, 2024, before the filing of the Notice of Settlement, subject to Paragraph 6(g), below.

(c) **Settlement Authorized by Independent Fiduciary.** At least forty-five (45) calendar days before the Fairness Hearing, the Independent Fiduciary shall have approved and authorized in writing the Settlement and given a release to all of the Released Parties in its capacity as fiduciary of the Plans for and on behalf of the Plans in accordance with PTE 2003-39. If the Independent Fiduciary disapproves or otherwise does not authorize the Settlement or refuses to execute the release on behalf of the Plans, then the Parties may mutually agree to modify the terms of this Settlement Agreement as necessary to facilitate an approval by the Independent Fiduciary and/or the Independent Fiduciary’s release on behalf of the Plans. Otherwise, Defendants shall have the option to waive this condition, in which case such option is to be exercised in writing within ten (10) business days after the Parties’ receipt of the Independent Fiduciary’s written determination, unless otherwise agreed by the Parties.

(d) **Final Approval.** As required by the Court in any order granting preliminary approval of this Agreement, Class Counsel shall file an assented-to motion for final approval of this Agreement, which shall include, among any other required exhibits, a proposed order of final approval to be entered by the Court. The final approval papers shall be submitted to Defendants for their review and assent at least five (5) business days prior to filing, and shall include a proposed order substantially similar to the Final Approval Order attached as Exhibit 3 to this Agreement.

(e) **Petition for Attorneys' Fees and Expenses.** Class Counsel's request for an award of attorneys' fees and costs from the Gross Settlement Amount may be included as part of the motion for final approval of this Agreement, or through a separate assented-to motion, in the discretion of Class Counsel or as ordered by the Court. If requested through a separate motion, any such motion papers shall be submitted to Defendants for their review and assent at least three (3) business days prior to filing.

(f) **Final Court Approval.** The Settlement will not become final until the Court shall have maintained certification of the Subclasses for settlement purposes (to which Defendants will not object), the Settlement shall have been approved by the Court, the Court shall have entered the Final Approval Order, and the Settlement Effective Date shall have occurred.

(g) **Dismissal with Prejudice.** Upon entry of the Final Approval Order, the Action and all other Released Claims shall be dismissed with prejudice in accordance with the terms in Paragraph 23 of this Agreement.

(h) **Parties to Take Reasonable Steps to Secure Approval.** In the event: (i) the Court does not approve the Settlement, except as to the approval of attorneys' fees and costs to Class Counsel and service payments to the Named Plaintiffs (which amounts Class Counsel and the Named Plaintiffs agree to accept in such amounts as approved by the Court), or (ii) the Settlement does not become final for any other reason, the Parties agree to use their best efforts to seek reconsideration by the Court or otherwise to negotiate a revised agreement to resolve the Action.

(i) **Resolution of CAFA Objections (If Any).** In the event that any of the government officials who received a CAFA Notice objects to and requests modification(s) to the Settlement, Named Plaintiffs and Class Counsel agree to cooperate and work with Defendants and counsel for Defendants to overcome such objection(s) and requested modification(s). In the event such objection(s) or requested modification(s) are not overcome, Defendants shall have the right to terminate the Settlement Agreement.

SETTLEMENT ADMINISTRATION PROCEDURES

7. **Provision of Class List and Data to Administrator.** Within twenty-one (21) calendar days after the Court enters an order granting preliminary approval of this Agreement, Defendants will provide, or cause to be provided, to the Administrator all data reasonably necessary to (i) issue any required notices to members of the Subclasses via first class mail or (if

approved by the Court) electronically, and (ii) allocate shares of the Net Settlement Amount to members of Subclass (i) and Subclass (iii). The Administrator will keep all such data strictly confidential and use it only for purposes of performing its duties pursuant to this Agreement and the Protective Order issued in the matter (ECF No. 35).

8. **Mailing of Settlement Notice.** As approved or required by the Court, the Administrator will send the Settlement Notice to all members of the Subclasses by first class mail (and, where possible, by electronic means) within fourteen (14) calendar days after receiving the data described in Paragraph 7. The Administrator will perform an address update of any data through a recognized address update database. Unless a notice is returned to the Administrator by U.S. Postal Service as undeliverable, each notice shall be deemed received by the member of the Subclasses to whom it was sent. With regard to any notice that is returned to the Administrator as undeliverable, the Administrator will perform customary database searches or skip traces to locate a current address and, if a current address is located, shall promptly re-mail the notice. The Administrator shall also promptly send or re-send the notice to a member of the Subclasses upon request by that individual or by Class Counsel.

9. **No Claim Forms Required.** Member of the Subclasses who are eligible for any share of the Net Settlement Amount will not be required to submit a claim form or other document in order to receive their shares.

10. **Objections.** Members of the Subclasses who object to the Settlement must file objections within 60 days of issuance of the Settlement Notice. Any objection must be made by mailing a written, signed objection to the Administrator. The written, signed objection must include all reasons for the objection and any supporting documentation; the objector's name, address, and telephone number; and a list of all other objections, if any, filed by the objector or their counsel to any class action settlements pending in any court in the United States in the previous five years. To be valid, any objection must be postmarked by United States Postal Service on or before the objection deadline. Objectors will have the right to appear at the Fairness Hearing to be heard concerning their objections, either in person or through counsel. Any objector wishing to appear at the Fairness Hearing must state their intention to do so in writing on their written objection.

11. **CAFA Notices.** No later than ten (10) calendar days after the filing of the motion for preliminary approval of the Settlement, Defendants, through the Settlement Administrator, shall serve the CAFA Notice on the Attorney General of the United States, the Secretary of the Department of Labor, and the attorneys general of all states in which Class Members reside, as specified by 28 U.S.C. § 1715. The costs of such notice shall be considered an Administrative Expense. Upon completing such notice, the Settlement Administrator shall provide written notice to Class Counsel and counsel for Defendants.

12. **Administrator Reporting on Claims Process.** Within seven (7) calendar days of the deadline for any objections, the Administrator shall provide Class Counsel with a report on the results of the notice process, including the date(s) on and manner in which notice(s) were sent, the number of undeliverable notices, the number of such undeliverable notices for which updated addresses were obtained, the number of such undeliverable notices for which updated addresses

could not be obtained, and all information regarding any objections, including copies of any submissions from members of the Subclasses.

SETTLEMENT FUNDING AND DISTRIBUTION OF PAYMENTS

13. **Settlement Account.** No later than ten (10) days after the Final Approval Order is issued, the Administrator shall open and administer the Settlement Account in such a manner as to qualify and maintain the qualification of the Settlement Account as a “Qualified Settlement Fund” under the Internal Revenue Code. In no event shall the Administrator withdraw, transfer, pledge, impair, or otherwise make use of the funds in the Settlement Account except as expressly provided in this Agreement.

(a) The Parties agree that the Qualified Settlement Fund is intended to be, and will be structured and managed to qualify as, an interest-bearing “qualified settlement fund” within the meaning of Section 468B of the Code and Treas. Reg. § 1.468B-1, *et seq.* In addition, the Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 13. If applicable, the Administrator (as the “administrator” pursuant to Paragraph 13(b)) and the Transferor shall fully cooperate in filing the “relation-back election” (as defined in Treas. Reg. § 1.468B-1(j)(2)) to treat the Qualified Settlement Fund as coming into existence as a “qualified settlement fund” within the meaning of Section 468B of the Code and Treas. Reg. § 1.468B-1 as of the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Settlement Administrator to prepare and deliver, in a timely and proper manner, the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to be timely made.

(b) The “administrator” within the meaning of Treas. Reg. § 1.468B-2(k)(3) shall be the Settlement Administrator. The Settlement Administrator shall timely and properly cause to be filed on behalf of the Qualified Settlement Fund all informational and other tax returns required to be filed in accordance with Treas. Reg. §§ 1.468B-2(k) and -2(l) with respect to the Gross Settlement Amount (including, without limitation, applying for a taxpayer identification number for the Qualified Settlement Fund pursuant to Internal Revenue Service Form SS-4 and in accordance with Treas. Reg. § 1.468B-2(k)(4)). Such returns as well as any election described in Paragraph 13 shall be consistent with the terms of this Agreement and, in all events, shall reflect that all taxes (including any estimated taxes, interest, or penalties) on the income earned by the Qualified Settlement Fund shall be deducted and paid from the Gross Settlement Amount as provided in Paragraph 14.

(c) The Administrator shall not disburse the Gross Settlement Amount or any portion thereof from the Qualified Settlement Fund except as provided in this Agreement, in an order of the Court, or in a subsequent written stipulation between Class Counsel and counsel for Defendants. Subject to the orders of the Court, the Administrator is authorized to execute such transactions as are consistent with the terms of this Settlement Agreement.

14. **Taxes and Tax Expenses.** Taxes and tax expenses are Administrative Expenses to be deducted and paid from the Gross Settlement Amount, including but not limited to: (a) all taxes (including any estimated taxes, interest, or penalties) arising with respect to the income

earned by the Qualified Settlement Fund, including any taxes or tax detriments that may be imposed upon Defendants with respect to any income earned by the Qualified Settlement Fund for any period during which the Qualified Settlement Fund does not qualify as a “qualified settlement fund” within the meaning of Section 468B of the Code and Treas. Reg. § 1.468B-1; and (b) all tax expenses and costs incurred in connection with the operation and implementation of this Agreement (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Agreement). Such taxes and tax expenses shall be Administrative Expenses and shall be paid timely by the Administrator out of the Gross Settlement Amount without prior order from the Court. The Administrator shall ensure compliance with withholding and reporting requirements in accordance with Treas. Reg. § 1.468B-2(l) and shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any member of the Subclasses any funds necessary to pay such amounts, including the establishment of adequate reserves for any taxes and tax expenses; neither the Released Parties, counsel for Defendants, nor Class Counsel are responsible nor shall they have any liability therefor. The Parties agree to cooperate with the Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Agreement.

(a) The Administrator shall be responsible for making provision for the payment from the Qualified Settlement Fund of all taxes and tax expenses, if any, owed with respect to the Qualified Settlement Fund, and for all tax reporting, remittance, and/or withholding obligations, if any, for amounts distributed from it. The Released Parties, counsel for Defendants, and/or Class Counsel have no responsibility or any liability for any taxes or tax expenses owed by, or any tax reporting or withholding obligations, if any, of the Qualified Settlement Fund.

(b) No later than February 15 of the year following the calendar year in which Defendants or their insurer(s) make any transfer of the Gross Settlement Amount, or any other amount, to the Qualified Settlement Fund on behalf of the Transferor pursuant to the terms of this Article 4, the Transferor shall timely furnish a statement to the Administrator that complies with Treas. Reg. § 1.468B-3(e)(2), which may be a combined statement under Treas. Reg. § 1.468B-3(e)(2)(ii), and shall attach a copy of the statement to its federal income tax return filed for the taxable year in which Defendants or their insurer(s) make a transfer on the Transferor’s behalf to the Qualified Settlement Fund.

15. **Funding of the Settlement.** Within fourteen (14) calendar days after the later of (a) the date the Effective Date, or (b) the date the Qualified Settlement Fund is established and the Settlement Administrator (or Class Counsel) has furnished to Defendants and/or counsel for Defendants in writing the Qualified Settlement Fund name, IRS W-9 Form, and all necessary wiring instructions, then Defendants shall cause the Gross Settlement Amount to be paid into the Settlement Account.

16. **Calculation and Disbursement of Payments Pursuant to the Settlement After the Settlement Effective Date.** Settlement Payments shall be calculated and disbursed by the Administrator as follows:

(a) **Calculation of Settlement Payments.** The shares of the Net Settlement Amount for members of the Subclasses will be calculated by the Administrator based on data

provided on behalf of Defendants or the Recordkeepers for the Plans. The Settlement Administrator shall determine the pro rata percentage share (“Percentage Share”) for each Current Participant or Former Participant, or for their Beneficiary or Alternate Payee, where applicable (collectively referred to for purposes of this paragraph as “Payee”), by: (i) determining the sum of the year-end account balances in the Plans of each Payee during the period January 1, 2019 to June 30, 2024; and (ii) dividing the sum of each Payee’s year-end account balances in the Plans during the period January 1, 2019 to June 30, 2024 by the total sum of year-end asset amounts in the Plans during the Class Period. For 2024, the relevant account balances shall be determined as of June 30, 2024, instead of as of year-end. Each Payee’s monetary share (“Monetary Share”) of the Net Settlement Amount shall be determined by multiplying their Percentage Share by the Net Settlement Amount.

Prior to the disbursement of the Net Settlement Amount, the Administrator shall provide to Defendants’ counsel and Class Counsel a final list of members in the Subclasses, in electronic format, to whom the Net Settlement Amount will be distributed in accordance with the terms of this Agreement. Such list shall be final, and only persons on the list or their beneficiaries or alternate payees shall be eligible to receive any recovery from this Settlement. Class Counsel and Defendants’ counsel shall review share calculations only for purposes of confirming accurate application of the above provisions.

To the extent reasonably practicable, Monetary Shares will be disbursed to Payees by crediting Active Accounts. Where a Payee has Active Accounts in both Plan I and Plan II, that Payee’s Monetary Share will be divided equally between each of the Plans. In any case where it is not reasonably practicable to credit Active Accounts, including but not limited to because the Payee is a Former Participant in the Plans, the Payee shall be issued a check in the amount of the Payee’s Monetary Share, unless the amount of that check would be less than \$2.00, in which event that Monetary Share shall be deposited into Revenue Credit Accounts for Plan I and Plan II, in equal parts.

(b) **Timing of Payment of Service Award Payments to Named Plaintiffs.**

The Service Award Payments, as approved by the Court, shall be mailed by the Administrator to the Named Plaintiffs promptly upon receipt of the Gross Settlement Amount.

(c) **Timing of Payment of Attorneys’ Fee Award and Cost Reimbursement to Class Counsel.** The award for attorneys’ fees and costs, as approved by the Court, shall be mailed or wired by the Administrator to Class Counsel promptly upon receipt of the Gross Settlement Amount.

(d) **Expiration of Settlement Checks.** Any checks not cashed 120 days after mailing to members of the Subclasses shall be cancelled. The full amount of any such cancelled checks, net of any bank fees charged for their cancellation, shall be deposited into Revenue Credit Accounts for Plan I and Plan II, in equal parts.

(e) **No Additional Benefits.** All distributions shall be deemed to be paid solely in the year in which such payments are issued. It is expressly understood and agreed that the receipt of any payment will not entitle the Named Plaintiffs and members of the Subclasses to additional compensation or benefits under any other compensation or benefit plan or agreement.

RELEASE AND WAIVER

17. **Release by Named Plaintiffs, Members of the Subclasses, and the Plans.**

Notwithstanding the limitation provided in Paragraphs 19 and 23 with respect to the members of the Subclasses and Plan I, the Plans (subject to Independent Fiduciary Approval as required by Paragraph 3), the Named Plaintiffs, and the members of the Subclasses (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns), on their own behalf and on behalf of the Plans, hereby fully, finally, forever, irrevocably, and unconditionally settle, release, relinquish, waive, and discharge all Released Parties from the Released Claims (as defined in Paragraph 18 of this Agreement), whether or not any Named Plaintiffs, members of the Subclasses, or Class Counsel now know or believe to be true with respect to the Action and the Released Claims and agree and covenant not to sue or bring any complaints, charges, or claims against the Defendants; whether or not any member of the Subclasses receives a monetary benefit from the Settlement, actually received notice of the Settlement, filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Litigation Expenses and expenses or for the Named Plaintiffs' Service Payment Awards; and whether or not the objections or claims for distribution of any member of the Subclasses have been approved or allowed.

18. **Released Claims.** Subject to the limitation provided in Paragraphs 19 and 23 with respect to the Members of Subclass (ii) and Plan I, for the purposes of this Agreement, "Released Claims" means any and all past, present, and future actual or potential claims of any nature (including claims for any and all losses, damages, unjust enrichment, attorneys' fees, disgorgement, litigation costs, injunction, declaration, contribution, indemnification or any other type or nature of legal or equitable relief), actions, demands, rights, obligations, liabilities, expenses, costs, and causes of action, accrued or not, whether arising under federal, state, or local law, whether by statute, contract, or equity, whether brought in an individual or representative capacity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen based in whole or in part on facts existing, acts, or failures to act during the Class Period and through the entry of the Final Approval Order, by or on behalf of the Plans, the Named Plaintiffs, each and every member of the Subclasses, and their respective heirs, beneficiaries, executors, administrators, past and present parties, agents, attorneys, and assigns:

(a) That were asserted or could have been asserted in the Action, or that arise out of, relate to, or are based on any of the allegations, acts, omissions, facts, matters, transactions, or occurrences that were alleged, asserted, or set forth in the operative Complaint; or

(b) That arise out of, relate in any way to, are based on, or have any connection with: (a) the selection, oversight, retention, monitoring, fees, expenses, or performance of the Plans' investment options; (b) the selection, oversight, retention, monitoring, fees, expenses, or performance of the Plans' service providers; (c) fees, costs, or expenses charged to, paid, or reimbursed by, or authorized to be paid or reimbursed to the Plans' investment options or to the Plans for their investment options; (d) fees, costs, or expenses charged to, paid, or reimbursed by, or authorized to be paid or reimbursed to the Plans by the Plans' service providers,

investment consultants, or any other third parties; (e) disclosures, filings, or failures to disclose information regarding the Plans' investment options or fees; (f) disclosures or failures to disclose relationships among fiduciaries, service providers, and investment managers for the Plans; (g) compliance with the Plans' governing documents with respect to the selection and monitoring of the Plans' investments or service providers; (h) the management, oversight or administration of the Plans or their fiduciaries with respect to the foregoing; (i) alleged breach of the duty of loyalty, care, prudence, diversification, or any other fiduciary duties or prohibited transactions under ERISA with respect to the foregoing; or (j) arise out of the Action or are in any way related to any of the acts, omissions, facts, matters, transactions, or occurrences alleged in the Complaint; or

(c) That would be barred by *res judicata* based on entry of the Final Approval Order; or

(d) That arise out of or relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund to the Plans or any member of the Subclasses in accordance with Paragraph 16, including all tax liability and associated penalties and interest as well as related attorneys' fees and expenses; or

(e) That arise out of or relate to the approval by the Independent Fiduciary of the Settlement, unless brought against the Independent Fiduciary alone.

The Released Claims shall not include any claims arising from a breach of this Agreement.

19. **Limitations on Release by Members of the Subclasses and the Plans.** It is expressly understood and agreed that this Agreement and the Released Claims described above in Paragraph 18 does not release the "CREF Stock Account Claim" defined above as it pertains to the Subclass (ii) members or Plan I. Rather, upon final approval by the Court of the Agreement, the CREF Stock Account Claim will be dismissed in accordance with Paragraph 23.

20. As of the Settlement Effective Date, the Named Plaintiffs, the members of the Subclasses, and the Plans (subject to Independent Fiduciary approval as required by Paragraph 3) expressly agree that they, acting individually or together, or in combination with others, shall not sue or seek to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a Department of Labor proceeding, an arbitration or a proceeding before any state insurance agency or other department or commission), any cause of action, demand, or claim on the basis of, connected with, or arising out of any of the Released Claims. Nothing herein shall preclude any action to enforce the terms of this Agreement in accordance with the procedures set forth in this Agreement.

21. Class Counsel, the Named Plaintiffs, the members of the Subclasses, or the Plans may hereafter discover facts in addition to or different from those that they know or believe to be true with respect to the Released Claims. Such facts, had they been known, might have affected the decision to settle with the Released Parties, or the decision to release, relinquish, waive, and

discharge the Released Claims, or the decision of a member of the Subclasses not to object to the Settlement. Notwithstanding the foregoing, each Named Plaintiff, member of the Subclasses, and the Plans shall expressly, upon the entry of the Final Approval Order, be deemed to have, and, by operation of the Final Approval Order, shall have fully, finally, and forever settled, released, relinquished, waived, and discharged any and all Released Claims. The Named Plaintiffs, members of the Subclasses, and the Plans acknowledge and shall be deemed by operation of the Final Approval Order to have acknowledged that the foregoing waiver was bargained for separately and is a key element of the Settlement embodied in this Agreement of which this release is a part.

22. **Waiver of Rights Under California Civil Code Section 1542.** The Named Plaintiffs, each member of the Subclasses, and the Plans hereby stipulate and agree with respect to any and all Released Claims that, upon entry of the Final Approval Order, the members of the Subclasses and Plans shall be conclusively deemed to, and by operation of the Final Approval Order shall settle, release, relinquish, waive, and discharge any and all rights or benefits they may now have, or in the future may have, under any law relating to the releases of unknown claims pertaining specifically to Section 1542 of the California Civil Code, which provides:

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.

Also, the Named Plaintiffs, members of the Subclasses, and the Plans hereby stipulate and agree with respect to any and all Released Claims that, upon entry of the Final Approval Order, that the Named Plaintiffs, the members of the Subclasses and the Plans shall be conclusively deemed to, and by operation of the Final Approval Order shall waive any and all provisions, rights, and benefits conferred by any law or of any State or territory within the United States or any foreign country, or any principle of common law, which is similar, comparable, or equivalent in substance to Section 1542 of the California Civil Code.

23. **Dismissal With Prejudice.** Upon entry of the Final Approval Order, the Action and all other Released Claims shall be dismissed with prejudice as to the Named Plaintiffs, the Members of the Subclasses, and the Plans. Upon entry of the Final Approval Order, the CREF Stock Account Claim will be deemed dismissed with prejudice as to only the Named Plaintiffs, and will be dismissed without prejudice as to the members of the Subclasses and Plan I.

24. **No Impact on Prior Releases.** The Released Claims in the Action shall not invalidate or impair any prior release of claims by any Named Plaintiffs or Members of the Subclasses against any of the Released Parties.

CONFIDENTIALITY/NON-DISCLOSURE

25. **Prior to the Preliminary Approval Motion.** Until the assented-to motion for preliminary approval of this Agreement is filed, the Parties agree to maintain in confidence the terms and conditions of this Agreement. Disclosure of this Agreement with the Defendants'

insurer(s) and one or more potential Administrators and Independent Fiduciaries is permitted, subject to their agreement to keep the terms and conditions of this Agreement confidential.

26. **After the Preliminary Approval Motion.** After the assented-to motion for preliminary approval of this Agreement is filed, except for communications expressly permitted pursuant to this Agreement and communications with members of the Subclasses, the Parties agree that neither they nor their agents will publicize, discuss, disclose, or in any way convey any information concerning the negotiations leading to this settlement. Nothing in this Section shall prevent the Parties from discussing the Agreement with the Court, pursuant to a valid legal process, a request by a regulatory agency, as otherwise required by law, government regulations or order of the Court, with each other, or with their attorneys, insurers, tax consultants, or spouses.

27. **Non-Disparagement.** Named Plaintiffs and Class Counsel agree that they will not at any time make (or encourage or induce others to make) any public statement regarding the Action or the Settlement that disparages any Released Party; provided, however, that this prohibition does not preclude Class Counsel from restating the allegations made in the Complaint for purposes of the motion for Preliminary Approval of the Settlement, motion for final approval of the Settlement, or the request for Attorneys' Fees and Litigation Expenses, Administrative Expenses, and Named Plaintiffs' Service Award Payment, or as necessary to provide notice to the members of the Subclasses. This prohibition does not prohibit any Settling Party from making any statements pursuant to a valid legal process, a request by a regulatory agency, or as required by law.

OTHER PROVISIONS

28. **Commitments by Defendants.** Defendants agree that they will continue to retain the services of a consultant to advise the Committee – including, without limitation, as to recordkeeping benchmarking and investment fund performance and selection – for a period of five years after the execution of this Agreement. Defendants further agree that, for that same five-year period, they will require any Recordkeeper for Plan I or Plan II – including current Recordkeepers or any of their successors – to provide any survey data that the Recordkeepers obtain or collect from participants of Plan I or Plan II, including, without limitation, any data as to participant satisfaction, preferences, complaints, or experiences with the recordkeepers. These commitments shall be considered material terms of this Agreement, and the Defendants agree and acknowledge that the commitments are material inducements for the Named Plaintiffs' willingness to enter into this Agreement.

29. **Governing Law.** This Agreement shall be governed and interpreted in accordance with the laws of the Commonwealth of Massachusetts, without regard to the conflict of law provisions thereof.

30. **Complete Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties and supersedes any prior agreements or understanding between the Parties with respect to the subjects of this Agreement. In entering into this Agreement, no party is relying on any promise, warranty, inducement, or representation other than those set forth in this Agreement.

31. **Amendments.** This Agreement may be amended or modified only by a written instrument signed by all Parties.

32. **Resolution of Disputes Regarding Agreement.** In the event of any dispute or disagreement with respect to the meaning, effect, or interpretation of the Agreement that the Parties are unable to resolve, the Parties agree that such dispute will be adjudicated only by the Court. The Court shall retain jurisdiction for purposes of resolving any disputes under this Agreement without affecting the finality of the Agreement.

33. **Successors.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors, transferees, and assigns, and upon any corporation or other entity with which any Party hereto may merge, consolidate, or reorganize.

34. **Cooperation in Drafting.** This Agreement shall be deemed to have been mutually prepared by the Parties and shall not be construed against any of them by reason of authorship. The Parties agree that the terms and conditions of this Agreement were negotiated at arm's length and in good faith by the Parties and reflect terms that were reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

35. **Non-Waiver.** The waiver by one Party of any breach of the Agreement by any other Party shall not be deemed a waiver of any other breach of this Agreement.

36. **Severability.** If any part of this Agreement is found to be illegal, invalid, inoperative, or unenforceable in law or equity, such finding shall not affect the validity of any other provisions of this Agreement, which shall be construed, reformed, and enforced to effect the purposes thereof to the fullest extent permitted by law. If one or more of the provisions contained in the Agreement shall for any reason be held to be excessively broad in scope, with respect to subject matter or otherwise, so as to be unenforceable at law, the Parties agree that such provision(s) shall be construed to be limited or reduced so as to be enforceable to the maximum extent under the applicable law.

37. **Knowing and Voluntary Agreement.** The Named Plaintiffs and Class Counsel each agree that they are entering into this Agreement knowingly, voluntarily, and with full knowledge of its significance. The Named Plaintiffs further affirm that they have not been coerced, threatened, or intimidated into signing this Agreement; that they have been advised to consult with an attorney; and that they in fact have consulted with an attorney before signing this Agreement.

38. **Notices.** Any notices issued pursuant to the terms of this Agreement shall be sent to the Parties at the addresses of their respective counsel as follows:

For the Named Plaintiffs and members of the Subclasses: For Defendants:

Stephen Churchill
Fair Work, P.C.
102 South Street, Suite 450
Boston, MA 02111
steve@fairworklaw.com

James O. Fleckner
Goodwin Procter LLP
100 Norther Avenue
Boston, MA 02210
jfleckner@goodwinlaw.com

Matthew L. Riffie
Goodwin Procter LLP
1900 N Street, NW
Washington, DC 20036
mriffie@goodwinlaw.com

39. **Time Periods.** In the event that any time period described in this Agreement expires on a Saturday, Sunday, or state holiday, such time period shall be extended through the next subsequent business day. All dates herein are to be calculated based on calendar days, unless otherwise specified.

40. **Execution in Counterparts; Transmission by Electronic Mail.** This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement provided that counsel for the Parties shall exchange among themselves signed counterparts. The Agreement must be executed by all Parties either by ink signature or through a verified electronic signature platform such as DocuSign. The Parties agree that their ink and/or verified electronic signatures may be transmitted by electronic mail to counsel for the other Party, and that such transmission by electronic mail shall be deemed an original signature for the purpose of this Agreement and shall be binding upon the Party whose counsel transmits the signature by electronic mail.

IN WITNESS THEREOF, the Parties have executed this Agreement on the dates set forth below.

NAMED PLAINTIFFS / REPRESENTATIVES OF THE PLANS AND THE SUBCLASSES
(INDIVIDUALLY AND ON BEHALF OF THE PLANS AND SUBCLASSES)

DocuSigned by
Connie Sellers

Connie Sellers (Named Plaintiff and Representative of the Plans and the Subclasses)

Date: 8/30/2024

Signed by
Sean Cooper

Sean Cooper (Named Plaintiff and Representative of the Plans and the Subclasses)

Date: 9/1/2024

**ON BEHALF OF DEFENDANTS TRUSTEES OF BOSTON COLLEGE AND PLAN INVESTMENT
COMMITTEE, COLLECTIVELY ("DEFENDANTS" OR "BOSTON COLLEGE")**



Outside Counsel for and on behalf of Boston College

James O. Fleckner
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210
Telephone: (617) 570-1000
Email: jfleckner@goodwinlaw.com

Matthew L. Riffiee
GOODWIN PROCTER LLP
1900 N Street, NW
Washington, DC 20036
Telephone: (202) 346-4000
Email: mriffiee@goodwinlaw.com

Date: August 30, 2024

EXHIBIT 1

Sellers v. Trustees of Boston College
United States District Court for the District of Massachusetts
Civil Action No. 22-cv-10912-WGY

Notice of Proposed Settlement of Class Action Lawsuit

You are receiving this Notice because you are a current or former participant of The Boston College 401(k) Plan I (“Plan I”), which is administered by TIAA, and/or The Boston College 401(k) Plan II (“Plan II”), which is administered by Fidelity Investments (“Fidelity”).

A federal court authorized this Notice. It is not a solicitation from a lawyer. You are not being sued, but your legal rights might be affected by this case, so please read this Notice carefully. This Notice informs you about a proposed settlement and explains your rights in connection with that proposed settlement.

Background

On June 10, 2022, Connie Sellers and Sean Cooper filed the lawsuit captioned above (“Action”) on behalf of themselves, as representatives of a class of similarly situated persons, and on behalf of Plan I and Plan II. In class action cases like this, Ms. Sellers and Mr. Cooper are referred to as “Named Plaintiffs.” The case was filed against the Trustees of Boston College, the Plan Investment Committee (“Committee”), and the Committee’s members. Boston College appointed the Committee to act as fiduciaries responsible for monitoring Plan I and Plan II. For simplicity, the Defendants are referred to in this notice as “BC.” The lawsuit was filed to challenge BC’s exercise of those fiduciary duties, focusing on two primary issues: (1) the selection of investment options made available in the Plans, and (2) the amount of fees charged by TIAA and Fidelity for providing recordkeeping services for the Plans.

The Court previously decided that this lawsuit would proceed as a class action on behalf of a four groups, or “subclasses.” The Court defined those four subclasses as follows: “(i) on behalf of Plan I, all participants of Plan I, except Defendants and their immediate family members, between June 10, 2016 through the date of judgment as to all claims alleging excessive recordkeeping expenses; (ii) on behalf of Plan I, all participants of Plan I except Defendants and their immediate family members, between June 10, 2016 through the date of judgment as to all claims alleging imprudent investment decisions; (iii) on behalf of Plan II, all participants of Plan II, except Defendants and their immediate family members, between June 10, 2016 through the date of judgment as to all claims alleging excessive recordkeeping expenses; (iv) on behalf of Plan II, all participants of Plan II except Defendants and their immediate family members, between June 10, 2016 through the date of judgment as to all claims alleging imprudent investment decisions.”

After extensive litigation, the Court determined that there were two specific claims that warranted a trial. The first claim, called the “CREF Stock Account Claim,” was whether BC should have taken further action with respect to one specific fund, the CREF Stock Account, following a December 2020 decision to place that fund on a “watch list.” The second claim, called the “Recordkeeping Claim,” was whether BC should have consolidated the Plans with a single recordkeeper following a 2018 request for proposal concerning recordkeeping services. The Court otherwise determined that there were no other actionable claims that warranted a trial against BC

concerning the Plans, their respective fees, the investments offered therein, or BC's exercise of its fiduciary duties with respect to the Plans. BC has denied and continues to deny any wrongdoing or liability, and will continue to vigorously defend the lawsuit if the proposed settlement is not approved.

Proposed Settlement

Following extensive settlement negotiations, the parties agreed to the terms of a proposed settlement. Under federal law, the proposed settlement must be reviewed and approved by the Court. The Court has preliminarily approved the settlement and will hold a fairness hearing on [DATE] to determine whether to grant final approval of the settlement. You may obtain a copy of the proposed settlement on the settlement website, [INSERT].

Although BC vigorously denies that it engaged in any wrongdoing and denies any liability, the parties have agreed to resolve the case to avoid the burden, expense, inconvenience, and inherent disruption and risk of continued litigation. The parties agreed that the CREF Stock Account Claim would be dismissed without prejudice, meaning that you or any other participant will retain any right you might have to pursue that claim in a separate lawsuit if the proposed settlement is approved. The parties further agreed that they would reach a compromise settlement to resolve all other claims asserted in the Action, including the Recordkeeping Claim, in the amount of \$330,000. If approved by the Court, one-third of the settlement proceeds will be used to pay attorneys' fees and litigation costs for Class Counsel, who brought and prosecuted this lawsuit. A copy of Class Counsel's request for an award of fees and costs will be made available on the settlement website within 30 days of the mailing of this Notice. In addition, subject to Court approval, the settlement fund will be used to pay for the costs of administering the settlement, including a fairness review of the settlement by an independent fiduciary. The two Named Plaintiffs who brought the case, and who assisted in the prosecution of these claims, will each receive service payments of \$2,500, representing compensation for the risk and burdens they undertook.

The remainder of the settlement will be distributed in proportion to each class member's account balances in the Plans during the period January 1, 2019 to June 30, 2024. Class members who have active accounts in the Plans will receive credits directly into their accounts. Class members who no longer have active accounts will receive checks.

Your Rights

You have the right to get more information about the case or the proposed settlement by contacting Class Counsel (see contact information below) at no cost to you. A copy of the proposed settlement is also available on the settlement website. You also may consult with any attorneys of your choice, at your own expense.

You also have the right to object to the proposed settlement. Any objection must be made by mailing a written, signed objection to the Class Administrator (identified below) on or before [DATE]. The written, signed objection must include all reasons for the objection and any supporting documentation; your name, address, and telephone number; and a list of all other objections, if any, filed by you or your counsel (if you have separate counsel) to any class action

settlements pending in any court in the United States in the previous five years. To be valid, the objection must be postmarked by United States Postal Service on or before [DATE]. If you mail an objection, you are strongly urged to confirm with the Settlement Administrator that it received your objection. You also have the right to appear at the Fairness Hearing to be heard concerning your objection, either in person or through your counsel. If you wish to appear at the Fairness Hearing, you must state your intention to do so in writing on your written objection on or before [DATE].

Action Required

If you do not object to the proposed settlement, you do not need to do anything. If the proposed settlement is approved by the Court and you are eligible for a share of the settlement funds, you will receive your share through a credit to your account or by a check, as described in more detail in “Your Rights” above. If you need to update your contact information to receive future notices in this case or your payment at a different address, you may do so by mail or email to the Class Administrator (see below for contact information).

If you do object to the proposed settlement, you must mail a written, signed objection to the Class Administrator (identified below) on or before [DATE], as described in more detail in “Your Rights” above.

Release of Claims

If the proposed settlement is approved, all members of the subclasses will release BC and associated parties from any and all claims or liabilities arising from BC’s prior oversight and monitoring of the Plans, except for the CREF Stock Account Claim, as described in more detail in the proposed agreement. More information about the claims being released are set forth in the proposed agreement, a copy of which you can request from Class Counsel.

Fairness Hearing

There will be a court hearing at [TIME] on [DATE] in Courtroom 18 at the United States District Court, District of Massachusetts, 1 Courthouse Way, Boston, MA. You have the right to attend the hearing *but you are not required to attend*. At this hearing, the Court will consider whether to enter a final order approving the settlement. If the settlement is not approved by the Court, the litigation will continue.

Contact Information

Here is the contact information for the **Class Administrator**:

[INSERT]

Here is the contact information for **Class Counsel**:

Oswaldo Vazquez
Stephen Churchill
Fair Work, P.C.

192 South Street, Suite 450
Boston, MA 02111
617-607-3260
oz@fairworklaw.com
steve@fairworklaw.com

**THIS NOTICE HAS BEEN SENT TO YOU BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS**

EXHIBIT 2

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CONNIE SELLERS AND SEAN COOPER,
INDIVIDUALLY AND AS THE
REPRESENTATIVES OF A CLASS OF
SIMILARLY SITUATED PERSONS, AND
ON BEHALF OF THE BOSTON COLLEGE
401(K) RETIREMENT PLAN I AND THE
BOSTON COLLEGE 401(K) RETIREMENT
PLAN II,

Plaintiffs,

V.

TRUSTEES OF BOSTON COLLEGE, PLAN
INVESTMENT COMMITTEE, and JOHN and
JANE DOES 1-10,

Defendants.

Civil Action No.: 22-cv-10912-WGY

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL
OF PROPOSED CLASS ACTION SETTLEMENT**

This matter is before the Court on Plaintiff's Assented-To Motion for Preliminary Approval of Class Action Settlement (the "Motion for Preliminary Approval"). The Court having considered all papers filed and proceedings had herein, and having reviewed the record in the above captioned matter,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. On May 19, 2023, this Court issued an order (ECF No. 46) granting the Named Plaintiffs' Assented-To Motion for Class Certification, pursuant to the Parties' stipulation as to four subclasses ("Subclasses"), defined as follows: (i) on behalf of Plan I, all participants of Plan I, except Defendants and their immediate family members, between June 10, 2016 through the date of judgment as to all claims alleging excessive recordkeeping expenses; (ii) on behalf of Plan I, all participants of Plan I except Defendants and their immediate family members, between

June 10, 2016 through the date of judgment as to all claims alleging imprudent investment decisions; (iii) on behalf of Plan II, all participants of Plan II, except Defendants and their immediate family members, between June 10, 2016 through the date of judgment as to all claims alleging excessive recordkeeping expenses; (iv) on behalf of Plan II, all participants of Plan II except Defendants and their immediate family members, between June 10, 2016 through the date of judgment as to all claims alleging imprudent investment decisions. The Court appointed Plaintiff Connie Sellers as representative for all four Subclasses and Plaintiff Sean Cooper as representative for Subclasses (i), (ii), and (iii). The Court appointed Stephen Churchill and Osvaldo Vazquez as Class Counsel for the Subclasses.

2. On April 11, 2024, the Court issued a Memorandum of Decision on Defendants' Motion for Summary Judgment ("Summary Judgment Order") (ECF No. 107), in which the Court (a) denied the Defendants' motion as it related to the Recordkeeping Fees Claim (as defined in that decision), but limited the scope of that claim to the period following the 2018 Request for Proposal, (b) denied the Defendants' motion as it related to the CREF Stock Account portion of the Challenged Investment Claim (as defined in that decision), but limited the scope of that claim to the period following the December 2020 decision to place that fund on a "watch list," as recommended by the Defendants' consultant, (c) granted the Defendants' motion as it related to the TIAA Real Estate Account portion of the Challenged Investment Claim, (d) granted the Defendants' motion as to claims that they violated plan documents, and (e) granted the Defendants' motion as to claims that the Trustees failed prudently to monitor its fiduciaries, all as more specifically set forth in the Court's Memorandum of Decision.

3. On May 17, 2024, the Defendants filed a Motion to Decertify the Plan I Investment Subclass and to Dismiss the Investment Claim for Lack of Standing ("Plan I

Decertification and Dismissal Motion”) (ECF No. 110), which was opposed by the Plaintiffs but which remains pending in the Court.

4. On May 21, 2024, the Defendants filed a Motion to Decertify the Plan I and Plan II Recordkeeping Subclasses (ECF No. 113), which was opposed by the Named Plaintiffs but which remains pending in the Court.

5. This Action was scheduled for the Court’s running trial list for July 2024. On June 18, 2024, the parties filed a Notice of Settlement (ECF No. 130).

6. The Court finds on a preliminary basis that the settlement memorialized in the Settlement Agreement and Release of Claims (“Settlement”), attached to the Motion for Preliminary Approval as Exhibit 1, falls within the range of reasonableness and otherwise meets the requirements for preliminary approval.

7. Pursuant to Fed. R. Civ. P. 23(e)(1), the Court approves the content and proposed distribution of the Notice of Proposed Settlement of Class Action Lawsuit (“Settlement Notice”), attached to the Settlement as Exhibit 1.

8. The form of notice under the Class Action Fairness Act of 2005 (“CAFA”), attached to the Settlement as Exhibit 4, complies with the requirements of CAFA and shall, upon mailing, discharge the Defendants’ obligations under CAFA.

9. Members of the Subclasses who object to the Settlement must file objections within 60 days of issuance of the Settlement Notice. Any objection must be made by mailing a written, signed objection to the Settlement Administrator. The written, signed objection must include all reasons for the objection and any supporting documentation; the objector’s name, address, and telephone number; and a list of all other objections, if any, filed by the objector or their counsel to any class action settlements pending in any court in the United States in the

previous five years. To be valid, any objection must be postmarked by United States Postal Service on or before the objection deadline. Objectors will have the right to appear at the Fairness Hearing to be heard concerning their objections, either in person or through counsel. Any objector wishing to appear at the Fairness Hearing must state their intention to do so in writing on their written objection. Objectors who do not comply with this paragraph may not be permitted to speak at the Fairness Hearing, except for good cause shown.

10. Any petition by Class Counsel for an award of attorneys' fees and litigation costs shall be filed and posted on the settlement website within 30 days after issuance of the Settlement Notice.

11. The Court will conduct a Fairness Hearing on _____ at _____ a.m./p.m.¹ to determine the overall fairness of the settlement. Class Counsel shall submit an Assented-To Motion for Final Approval no later than seven (7) days before the Fairness Hearing.

IT IS SO ORDERED.

Dated: _____, 2024

¹ In order to accommodate the notice process and time for Class Counsel to submit the Assented-To Motion for Final Approval, the parties request that the date for the Fairness Hearing be set for a date that is no earlier than 120 days after the entry of this Order.

EXHIBIT 3

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CONNIE SELLERS AND SEAN COOPER,
INDIVIDUALLY AND AS THE
REPRESENTATIVES OF A CLASS OF
SIMILARLY SITUATED PERSONS, AND
ON BEHALF OF THE BOSTON COLLEGE
401(K) RETIREMENT PLAN I AND THE
BOSTON COLLEGE 401(K) RETIREMENT
PLAN II,

Plaintiffs,

V.

TRUSTEES OF BOSTON COLLEGE, PLAN
INVESTMENT COMMITTEE, and JOHN and
JANE DOES 1-10,

Defendants.

Civil Action No.: 22-cv-10912-WGY

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

This matter is before the Court on Plaintiff's Assented-To Motion for Final Approval of Class Action Settlement (the "Motion for Final Approval"). The Court having considered all papers filed and proceedings had herein, and having reviewed the record in the above captioned matter,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. On May 19, 2023, this Court issued an order (ECF No. 46) granting the Named Plaintiffs' Assented-To Motion for Class Certification, pursuant to the Parties' stipulation as to four subclasses ("Subclasses"), defined as follows: (i) on behalf of Plan I, all participants of Plan I, except Defendants and their immediate family members, between June 10, 2016 through the date of judgment as to all claims alleging excessive recordkeeping expenses; (ii) on behalf of Plan I, all participants of Plan I except Defendants and their immediate family members, between June 10, 2016 through the date of judgment as to all claims alleging imprudent investment

decisions; (iii) on behalf of Plan II, all participants of Plan II, except Defendants and their immediate family members, between June 10, 2016 through the date of judgment as to all claims alleging excessive recordkeeping expenses; (iv) on behalf of Plan II, all participants of Plan II except Defendants and their immediate family members, between June 10, 2016 through the date of judgment as to all claims alleging imprudent investment decisions. The Court appointed Plaintiff Connie Sellers as representative for all four Subclasses and Plaintiff Sean Cooper as representative for Subclasses (i), (ii), and (iii). The Court appointed Stephen Churchill and Osvaldo Vazquez as Class Counsel for the Subclasses.

2. On [DATE], the Court, having reviewed the proposed Settlement Agreement and Release of Claims (“Settlement”) issued an Order granting preliminary approval of the Settlement and authorizing the issuance of a Settlement Notice to the Subclasses. The Settlement Notice, the final version of which is attached to the Motion for Final Approval as Exhibit ___, was duly issued by the Settlement Administrator on [DATE]. The Court now finds that the content and distribution of the Settlement Notice provided fair and sufficient notice of the Settlement, satisfied the requirements of Fed. R. Civ. P. 23, and provided due process.

3. The form of notice under the Class Action Fairness Act of 2005 (“CAFA”), attached to the Settlement as Exhibit 4, complied with the requirements of CAFA and was duly issued, discharging the Defendants’ obligations under CAFA.

4. The Court finds that the Settlement is fair, reasonable, and adequate. More specifically, the Court finds that (a) the Named Plaintiffs and Class Counsel have adequately represented the Subclasses; (b) the Settlement was negotiated at arm’s length; (c) the relief provided to the Subclasses is adequate taking into account: (i) the burden, expense, risks, and delay of trial and appeal, (ii) the effectiveness of the proposed method of distributing relief to the

Subclasses, (iii) the terms of the proposed award of attorneys' fees, including the time of payment, and (iv) the absence of any agreement required to be identified under Fed. R. Civ. P. 23(e)(3). The Court further finds that the Settlement treats class members equitably relative to each other.

5. The Court awards Class Counsel an award of attorneys' fees and litigation costs in the amount of \$110,000, for substantially the reasons set forth in the Assented-To Motion for Award of Attorney's Fees and Litigation Costs.

6. The Court awards the two Named Plaintiffs, Connie Sellers and Sean Cooper, service awards in the amount of \$2,500 each.

7. The Court has duly considered and overrules any objections to the Settlement.

8. The Court otherwise approves the terms and provisions of the Settlement and orders that the Settlement be consummated and implemented in accordance with its terms.

9. This Action is hereby dismissed with prejudice and without costs to any parties, other than as expressly provided for in the Settlement.

10. The Court shall retain jurisdiction to resolve any disputes, challenges, or other issues that might arise as to the Settlement.

IT IS SO ORDERED.

Dated: _____, 2024

EXHIBIT 4

September __, 2024

VIA USPS PRIORITY MAIL

TO: Federal and State Officials Identified on Attached Distribution List, *Mail Merge*.

Re: *Connie Sellers, et al. v. Trustees of Boston College, et al.*
United States District Court for the District of Massachusetts
Case No. 1:22-cv-10912-WGY

CAFA Notice Pursuant to 28 U.S.C. § 1715

Dear CAFA Notice Recipient:

[NAME OF ADMINISTRATOR], an independent claims administrator, on behalf of Defendants, the Trustees of Boston College and the Plan Investment Committee (collectively, “Defendants,” and with Plaintiffs, the “Settling Parties”), hereby provides your office with this notice under the provisions of the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, to advise you of the proposed settlement of the above-captioned class action lawsuit (the “Class Action”) currently pending in the United States District Court for the District of Massachusetts.

Plaintiffs filed a Settlement Agreement (“Settlement Agreement”) and associated documents with the Court on [DATE], 2024. A hearing on preliminary approval of the settlement is currently scheduled for [DATE] at [TIME] before the Honorable Judge William G. Young at the United States District Court for the District of Massachusetts, John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Boston, MA 02210, in Courtroom [NO.].

In reference to this letter, a website has been set up for viewing the documents associated with this case. The website is [INSERT] and on this website, under the folder with the case name, the following documents can be found:

(1) The Complaint and any materials filed with the Complaint.

The original complaint (Dkt. No.¹ 1) in the Action is available on the above referenced website. In addition, the complaint, amended complaint, and all other unsealed pleadings and records filed in the Class Action are available on the internet through the federal government’s PACER service at <https://ecf.mad.uscourts.gov/cgi-bin/ShowIndex.pl>. Additional information about the PACER service may be found at <https://www.pacer.gov>.

(2) Notice of any scheduled judicial hearing in the class action.

The Court has scheduled a hearing on Plaintiffs’ motion to preliminarily approve the settlement on [DATE] at [TIME] before the Honorable Judge William G. Young at the United States District Court for the District of Massachusetts, John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Boston, MA 02210, in Courtroom [NO.]. Information

¹ Citations to “Dkt. No. __” refer to docket entries in Case No. 1:22-cv-10912-WGY.

concerning any changes to the date, time, and location of the hearing will be available through PACER and can be accessed as described in section (1) above.

(3) Any proposed or final notification to class members.

Plaintiffs' Motion for Preliminary Approval of Settlement (Dkt. No. __), the Memorandum in Support of Plaintiffs' Motion for Preliminary Approval of Settlement (Dkt. No. __), and all supporting documents (Dkt. Nos. __ & __) are available on the above referenced website. The parties' Settlement Agreement and its Exhibits 1-4 (Dkt. No. __) are available on the above referenced website.

The proposed form of direct notice to class members, which provides notice of the proposed settlement, is included as Exhibit 1 of the Settlement Agreement is available on the above referenced website.

(4) Any proposed or final class action settlement.

As discussed in section (3) above, the parties' Settlement Agreement and its Exhibits 1-4 (Dkt. No. __) are available on the above referenced website.

(5) Any settlement or other agreement contemporaneously made between Class Counsel and counsel for Defendants.

There are no additional agreements between Class Counsel and counsel for Defendants.

(6) A final judgment or notice of dismissal.

No final judgment or notice of dismissal has yet been entered in the Class Action. Upon entry, a copy of the Final Order and Judgment will be available through PACER and can be accessed as described in section (1) above. A proposed Final Approval Order, as filed with the Court on [DATE], 2024 as Exhibit 3 to the Settlement Agreement, is available on the above referenced website.

(7) Names of class members who reside in each state and the estimated proportionate share of the claims of such members to the entire settlement.

Given the nature of the claims in the Class Action, it is not feasible at this time to ascertain the names of all the members of the class who reside in each state or the estimated proportionate share of the claims of such members to the proceeds of the Settlement. It also is not feasible to provide an estimate of the number of members of the class residing in each state and the estimated proportionate share of the claims of such members to the Settlement. Because this is a settlement class under Federal Rule of Civil Procedure 23(b)(1), class members do not have a right to request exclusion from the class.

(8) Any written judicial opinion relating to the materials described in sections (3) through (6).

No written judicial opinions have been issued relating to the proposed settlement as of this time.

The Defendants in this matter are represented by James O. Fleckner of Goodwin Procter LLP, 100 Northern Avenue Boston, MA 02210 and Matthew L. Riffie of Goodwin Procter LLP, 1900 N Street NW Washington, DC 20036. Should you have any questions regarding this matter, please do not hesitate to contact James O. Fleckner at (617) 570-1000 or Matthew L. Riffie at (202) 346-4000.

Thank you for your attention to this matter.

Sincerely,

[SETTLEMENT ADMINISTRATOR SIGNATURE BLOCK]