

**IN UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
BALTIMORE DIVISION**

DAVID G. FEINBERG, et al., and all
others similarly situated,

Plaintiffs,

vs.

T. ROWE PRICE GROUP, INC., et al.,

Defendants.

Case No. 1:17-cv-00427-JKB

**MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT, THE FORM AND MANNER
OF CLASS NOTICE, MODIFICATION OF CLASS DEFINITION, SUBSTITUTION OF
CLASS COUNSEL, AND SCHEDULING OF A FAIRNESS HEARING**

Plaintiffs respectfully move the Court for an Order: (1) preliminarily approving the Parties' proposed Class Action Settlement; (2) approving the form and method of providing Class Notice; (3) approving two minor modifications of the Class definition to facilitate the settlement process; (4) substituting Mary J. Bortscheller for Karen L. Handorf as one of the named Class Counsel, and (5) setting a time for a Fairness Hearing to determine whether to finally approve the proposed Settlement, approve the requested attorneys' fees and expenses, and approve the requested service awards for the Class Representatives.

Plaintiffs' memorandum of law, declaration of James Moore in support of this motion, and declaration of Steve Pomerantz, Ph.D. are filed herewith. Exhibits to this motion are 1 – the Settlement Agreement; 2 – a proposed Plan of Allocation; 3 – a proposed preliminary approval order; 4 – a proposed Class Notice; and 5 – professional biography of Mary J. Bortscheller.

/s/ James A. Moore

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**PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT, THE FORM AND MANNER OF CLASS NOTICE,
MODIFICATION OF CLASS DEFINITION, SUBSTITUTION OF CLASS COUNSEL, AND
SCHEDULING OF A FAIRNESS HEARING**

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I. INTRODUCTION

This class action lawsuit is an ERISA civil enforcement action brought pursuant to 29 U.S.C. §1132(a) on behalf of the T. Rowe Price U.S. Retirement Program (“Plan”) a defined contribution 401(k) plan. Plaintiffs are Plan participants who seek to recover losses to the Plan that Plaintiffs allege resulted from Defendants’ corporate self-dealing and breaches of their fiduciary duties of loyalty and prudence related to the offering of T. Rowe Price’s own in-house funds in the Plan. The litigation has been hard-fought and vigorously litigated at every stage, and all that remains is trial. It has included a broad motion to dismiss, extensive fact discovery including sixteen fact depositions and Plaintiffs’ review of over 100,000 pages of Defendants’ documents, six expert reports from Plaintiffs’ experts, three expert reports from Defendants’ experts, six expert depositions, and comprehensive summary judgment motions from each side involving hundreds of exhibits.

The Parties have now agreed to a settlement which Plaintiffs present to the Court for preliminary approval.¹ The proposed settlement provides significant relief to the Class, including (i) a cash payment of \$7,000,000 (the “Settlement Amount”), and (ii) the addition of a Brokerage Window feature which will allow Plan participants, for the first time, to invest in funds other than T. Rowe Price Funds. As discussed further below, the litigation also resulted, as this Court acknowledged in its summary judgment opinion, in a payment by T. Rowe Price of \$6.6 million in 2019 to many Class members. (As is discussed further below, assuming it earned the overall Plan return, that \$6.6 million would have appreciated to over \$11 million through June 30, 2021).

¹ The Settlement Agreement is submitted as Exhibit 1 to the Preliminary Approval Motion. The provisions of the Settlement Agreement, including all definitions and defined terms, are incorporated by reference. Thus, capitalized terms not otherwise defined herein have the same meaning as in the Settlement Agreement.

The Parties agreed to the settlement only after arms-length negotiations, which were conducted by highly experienced Class Counsel and Defense Counsel who have litigated many similar cases. The principal settlement negotiations were mediated by U.S. Magistrate Judge A. David Copperthite of this Court; Robert Meyer of JAMS mediated a dispute regarding one issue.

Plaintiffs believe the proposed Settlement is a good result under the circumstances, which includes a summary judgment opinion in which the Court expressed skepticism regarding whether Plaintiffs' claims could succeed. The Settlement provides for a substantial, immediate payment to Class members, greater and unprecedented investment flexibility for Plan participants, and eliminates the risk and cost of trial, which could have resulted in no relief at all. As set forth below, the settlement is fair, reasonable, and adequate under governing law, and meets all requirements for preliminary approval.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties and the Class

The Named Plaintiffs and Class Representatives are Michelle Bourque, James Collins, David G. Feinberg, Daniel Fialkoff, Thomas Henry, Jitesh Jani, Sital Jani, Daniel Newman, Farrah Qureshi, Maria Stanton, and Regina Widderich. Defendants are alleged to be Plan fiduciaries and include (i) T. Rowe Price Group, Inc.; (ii) T. Rowe Price Associates, Inc.; (iii) T. Rowe Price Trust Company; (iv) the T. Rowe Price Group, Inc. Management Committee; (v) T. Rowe Price Group, Inc. Management Compensation Committee; (vi) T. Rowe Price Group Inc. Board of Directors; and (vii) Plan Trustees Preston Athey, Steve Banks, Cynthia Crocker, Celine Dufetel, Eric Gee, Michael McGonigle, Kenneth Moreland, Larry Puglia, and Meredith Stewart.

Pursuant to the Court's May 17, 2019 class certification order the Class in this case is currently defined as follows:

All participants in the T. Rowe Price U.S. Retirement Program who had a balance in their plan account at any time from February 14, 2011 through the date of judgment. Any individual Defendants, any members of the T. Rowe Price Board of Directors, the Management Committee, the Management Compensation Committee, and their beneficiaries and immediate families are excluded from the class.

(Dkt. No. 83 ¶4). Plaintiffs estimate, based on data Defendants have provided, that there are approximately 18,000 Class members.

B. Claims for Relief

Plaintiffs' claims concern Defendants' conduct as Plan fiduciaries in favoring T. Rowe Price proprietary investments for the Plan. The claims alleged in the operative complaint are:

COUNT I: Breach of Duties of Loyalty and Prudence for Imprudent and Disloyal Monitoring and Selection of 401(k) Plan Investments during the Class Period, which Caused Losses to the 401(k) Plan

COUNT II: The Appointing Fiduciary Defendants Breached their ERISA Fiduciary Duties by Failing to Remove and Prudently Monitor the 401(k) Plan Trustees

COUNT III: Breach of Duties of Loyalty and Prudence by Providing Imprudent and Self-Interested Investment Advice to Committee Defendants

COUNT IV: Liability for Breach of Co-Fiduciary

COUNT V: Liability for Failing to Remedy Breach of Predecessor Fiduciaries

COUNT VI: Liability for Committing Prohibited Transactions in Violation of ERISA, 29 U.S.C. §1106

COUNT VII: Other Equitable Relief Based on Ill-Gotten Proceeds In Violation of ERISA, 29 U.S.C. §1132(a)(3)

(Second Amended Class Action Complaint (Dkt. No. 84) ¶¶120-63).

C. Procedural History

After Class Counsel's investigation and development of the claims and causes of action asserted, Plaintiff David G. Feinberg filed the original complaint in this case on February 14, 2017. Defendants filed a motion to dismiss, contending, *inter alia*, that Plaintiff lacked standing with respect to some of his claims. (Dkt. No. 27). Plaintiff filed an amended complaint adding ten additional named Plaintiffs. (Dkt. No. 32). Defendants moved to dismiss again, but dropped their

standing objections. (Dkt. No. 35). One of Defendants' principal arguments for dismissal was that their actions as fiduciaries with respect to offering T. Rowe Price's own funds in the Plan were mandated by the governing Plan document. After the Defendants' second motion to dismiss was fully briefed, oral argument was held before the Hon. Judge Garbis. (Dkt. No. 50). Judge Garbis subsequently retired; Chief U.S. District Judge James K. Bredar was assigned to the case. Judge Bredar listened to the recording of the oral argument and denied Defendants' motion to dismiss. (Dkt. Nos. 58, 59).

Following the denial of Defendants' motion to dismiss, the litigation entered the discovery phase. Class Counsel propounded 52 requests for production of documents, 22 requests for admission, and 17 interrogatories; Defense Counsel propounded 22 document requests and 14 interrogatories. (Moore Decl. ¶¶ 3-4).² Class Counsel and their staff had the over 114,000 pages of documents produced by Defendants loaded into an electronic document database and coded and reviewed them. *Id.* ¶¶ 2. There was also discovery-related motion practice, with Plaintiffs filing two motions to compel, and Defendants one. (Dkt. Nos. 74, 120, 121). Class Counsel deposed ten fact witnesses, and Defense Counsel deposed six Class Representatives; Plaintiffs' three proposed expert witnesses submitted initial and reply expert reports, Defendants' three experts submitted rebuttal reports, and each side deposed the other side's three experts. (Moore Decl. ¶¶ 5-6).

Subsequently, each side prepared voluminous summary judgment motions in the hope of resolving the case in their favor prior to trial. (Dkt. Nos. 142-86). Each motion was accompanied by more than 200 exhibits and statements of material facts spanning hundreds of pages. *Id.* On February 10, 2021, the Court denied in large part the Parties' motions for summary judgment.

² "Moore Decl." refers to the *Declaration of James Moore in Support of Plaintiffs' Motion for Preliminary Approval of Settlement*, filed herewith.

(Dkt. No. 200). However, the Court expressed skepticism regarding Plaintiffs' claims, e.g. indicating that on the record before it, it believed it "likely" that a fact-finder would find facts favorable to Defendants' position. *Id.* at 17. Plaintiffs subsequently filed a motion for reconsideration, and a motion for certification for interlocutory appeal to the United States Court of Appeals for the Fourth Circuit. Both motions were denied. (Dkt. Nos. 209, 219).

A trial date of September 13, 2021 was set by the Court. (Dkt. No. 206). The trial was subsequently postponed in light of the Parties' agreement on a Settlement in principle on July 23, 2021. (Dkt. No. 221). Defendants subsequently provided Plaintiffs data necessary to implement the settlement and the Parties exchanged numerous drafts of settlement papers. Further mediation before Judge Copperthite, as well as a private JAMS mediator, Robert Meyer, was necessary to fully resolve remaining disagreements between the Parties. A full settlement agreement was finalized on December 16, 2021.

D. The Proposed Settlement

The Action and the proposed settlement will provide (or have provided) significant relief to the Class in three ways: (i) a cash payment of \$7,000,000 (Settlement Agreement §§5-6); (ii) addition of a Brokerage Window feature which will allow Plan participants to invest in non-T. Rowe Price funds, *id.* §7; and (iii) a 2019 payment by T. Rowe Price of \$6.6 million to many Class members that resulted from this lawsuit.

1. \$7 Million Cash Payment to be Distributed According to the Plan of Allocation

The \$7 million Settlement Amount will be allocated to Class members pursuant to the proposed Plan of Allocation.³ Under the Plan of Allocation all Class members will receive a

³ The Plan of Allocation is Exhibit 2 to the instant motion.

minimum \$20 payment from the settlement. The remaining amount will be allocated pro rata based on the extent of a Class member's investments during the Class Period in the 39 Challenged Funds – T. Rowe Price funds that Plaintiffs contend underperformed.⁴ The amount of each Class Member's investments in these funds is assessed on a quarterly basis.⁵

2. Addition of a Brokerage Window

Under the Settlement, Defendants are required to begin offering a Brokerage Window feature to all Plan participants within six months of the Settlement's effective date. Since its

⁴ The "Challenged Funds" are defined in the Settlement Agreement as:

(i) the following thirty-one T. Rowe Price Funds that Plaintiffs contend should have been removed at the inception of the Class Period: Balanced, Corporate Income, Emerging Europe, Emerging Markets Bond, Emerging Markets Stock, Equity Income, Equity Index Trust-C, Extended Equity Market Index, GNMA, Global Infrastructure, Global Real Estate, Global Technology, Growth Stock, Growth and Income, High Yield, Inflation Protected Bond, International Discovery, International Stock, International Value Equity, Mid-Cap Value, Overseas Stock, Real Estate, Science and Technology, Short-Term Bond, Spectrum Growth, Spectrum Moderate Allocation, Summit Cash Reserves Fund, Summit GNMA, Total Equity Market Index, U.S. Treasury Long-Term, Value, and U.S. Treasury Money Fund; and (ii) the following eight T. Rowe Price funds that were added to the Plan during the Class Period and Plaintiffs contend should not have been added: Dynamic Global Bond (added 1/1/2016), Emerging Markets Discovery Stock (added 10/1/2016), Emerging Markets Local Currency Bond (added 6/1/2011), Floating Rate (added 8/1/2011), Institutional Frontier Markets Equity (added 8/1/2015), Institutional Global Value Equity (added 7/1/2014), International Disciplined Equity (added 8/1/2017), and Real Assets (added 6/1/2012). (In some cases, these funds include multiple versions or types, e.g. when what was originally offered in the plan was a mutual fund but was later replaced with a similar collective trust version of the same strategy).

(Ex. 1, §1.10).

⁵ To the extent a Class member received the Special Payment referenced in §3 below, the amount of that payment will offset any allocation deriving from the Class member's investments in the Challenged Funds from 2011-2013. This adjustment (i) is appropriately limited to 2011-2013 because the Special Payment was only distributed to Class members who had a balance in their account for those years and was paid by Defendants to offset expenses for those years and (ii) is equitable because those who received a distribution from the Special Payment did not pay attorneys fees or expenses on those distributions.

inception, only T. Rowe Price funds have been offered in the Plan. The Brokerage Window will allow Plan participants, for the first time, to invest in a wide range of non-T. Rowe Price investment funds, including mutual funds and exchange traded funds, offered by other mutual fund families. This will allow participants to invest outside of T. Rowe Price in those situations where they believe there are better options elsewhere. Defendants will be required to offer this new feature for at least ten years.

3. \$6.6 Million Already Paid to Class Members

In January 2019, Defendants paid \$6.6 million to Plan participants who had a balance in their Plan accounts and were T. Rowe Price employees at the end of the years 2011, 2012, or 2013. (Dkt. No. 200 at 21-22). As this Court recognized in its summary judgment opinion in this case, this Special Payment was in response to this lawsuit. *Id.* Defendants made this payment in an attempt to mitigate their liability for Plaintiffs' claims that Defendants violated ERISA's self-dealing proscriptions by causing Plan assets to be used to pay fees for the use of T. Rowe Price's own mutual funds in the Plan. The payment was intended to put the Plan on an equal footing, for the years 2011-2013, with other plans offering T. Rowe Price funds that received credit for record-keeping fees. (See *id.* and sources cited therein for more information).

If that payment had been invested in the Plan and earned the overall Plan return, it would have an estimated appreciated value through June 30, 2021 (the latest date for which Defendants have provided Plaintiffs with relevant data) of over \$11 million. (Pomerantz Decl. ¶5).⁶ Over 6000 Class members were eligible for, and received, distributions from the Special Payment. Based on data Defendants have provided to Plaintiffs, all of these distributions exceeded \$240, and some were as much as \$1310.

⁶ "Pomerantz Decl." refers to the *Declaration of Steve Pomerantz Ph.D.*, filed herewith.

4. **Attorneys Fees and Expenses and Class Representative Service Awards**

The Settlement Agreement provides that Class Counsel may seek up to \$3.5 million in attorneys fees from the Gross Settlement Fund. (Settlement Agr. §8.1). This constitutes 19% of the \$18 million total monetary benefit that could accrue to the Class through the proposed settlement (i.e. the sum of the settlement amount – \$7 million – and the appreciated value of the Special Payment – \$11 million).⁷ As noted above, the proposed settlement also provides for injunctive relief in the form of a Brokerage Window feature being added to the Plan. The monetary value of this injunctive relief to the Class is difficult to quantify given the uncertainties of predicting how Class members will use this feature. However, Plaintiffs’ expert determined the Plan had \$58.9 million in losses during the Class Period through January 31, 2020 from using the 39 underperforming T. Rowe Price Challenged Funds compared to widely available Vanguard or Fidelity funds. (Dkt. No. 144-11 at 4). Hence, the Brokerage Window has the potential to be the most valuable feature of the Settlement for Plan participants since they could conceivably utilize it to mitigate or eliminate the large losses from these funds going forward. Thus, the injunctive relief also supports an award of attorneys fees.

Class Counsel will submit a detailed petition for attorneys fees and expenses prior to the hearing on final approval of the settlement, but they note now that a one-third fee is commonly awarded in ERISA class actions such as this. Kelly v. Johns Hopkins Univ., No. 1:16-cv-2835-GLR, 2020 WL 434473, at *3, U.S. Dist. LEXIS 14772, at *8 (D. Md. Jan. 28, 2020) (in “ERISA excessive fee cases...courts have consistently recognized that a one-third fee is the market rate”). It should also be noted that, as discussed further below, Class Counsel are highly

⁷ It would constitute 26% of the Settlement amount plus the *initial value of the* \$6.6 million Special Payment.

experienced and have exceptional qualifications for this type of litigation. Moreover, when Class Counsel submit their fee petition, the data will show that there is a negative lodestar multiplier for their work in this case, indicating that they would be providing their services to the Class at a discount.⁸

The Settlement Agreement also anticipates that Class Counsel will seek reimbursement for the reasonable litigation expenses they have incurred in litigating this action, which include, for example, payments to their three experts. (Ex. 1, §8.1). Class Counsel expect these expenses to be approximately \$565,000.

The Settlement Agreement also provides that Class Counsel may seek service awards not to exceed \$15,000 for each of the eleven Class Representatives, *id.*, who provided valuable assistance to Class Counsel in prosecuting the action. All the Class Representatives produced discovery in this case pursuant to document requests and interrogatories and followed its progress; six were deposed and several attended court hearings and mediation conferences. All also exposed themselves to the risk of adverse career consequences by being involved in a suit against their former or current employer.

This request is in line with service awards approved by courts in this Circuit in similar cases, which recognize the valuable contributions Class Representatives make to actions such as this that benefit the Class as a whole. Kelly v. Johns Hopkins Univ., 2020 WL 434473, at *7-8, U.S. Dist. LEXIS 14772, at *21 (approving \$20,000 service awards to each of eight class

⁸ Where the lodestar analysis supports it, even an award of 50% of the Settlement Fund has been considered appropriate by courts in this Circuit. *See Chado v. Nat'l Auto Insp.*, No. JKB-17-2945, 2020 WL 4368106, at *6, U.S. Dist. LEXIS 135472, at *18 (D. Md. July 29, 2020) (Bredar, J., approving 45% fee and noting that courts approve similar high percentages where the lodestar approach supports it); Reed v. Big Water Resort, LLC, No. 2:14-cv-01583-DCN, 2016 WL, at *11, n.3, U.S. Dist. LEXIS 187745, at *36 n. 3 (D.S.C. May 26, 2016) (50% held reasonable in appropriate circumstances).

representatives in similar ERISA class action); Sims v. BB&T Corp., No. 1:15-CV-732, 2019 U.S. Dist. LEXIS 75839 at *18 (M.D.N.C. May 6, 2019) (approving \$20,000 service awards to each of ten class representatives in similar ERISA proprietary fund class action).

5. Class Notice

Included as Exhibit C to the Settlement Agreement is a proposed Class Notice providing extensive information to Class members regarding the Settlement and related procedures. As is further discussed below, the notice will be sent to all Class members by first class mail or an email address used by the Plan for Plan communications. A Settlement Website will also be created where the Notice and other key documents will be posted and made accessible to Class members. A toll-free number will be provided for Class members who require additional information.

III. THE PROPOSED SETTLEMENT SATISFIES THE STANDARD FOR PRELIMINARY APPROVAL

A. The Standard for Preliminary Approval of a Class Action Settlement

Under Fed. R. Civ. P. 23, the Court is to direct notice of a proposed settlement if it seems “likely” that it would give final approval of the settlement. Fed. R. Civ. P. 23(e)(1)(B). Hence, at the preliminary approval stage, the Court is required to assess whether there is “‘probable cause’ to submit the proposal to members of the class and to hold a full-scale hearing on its fairness.” In re Am. Cap. S’holder Derivative Litig., No. 11-2424-PJM, 2013 WL 3322294, at *3, U.S. Dist. LEXIS 90973, at *8 (D.Md. June 28, 2013) (quoting In re Mid-Atlantic Toyota Antitrust Litig., 564 F.Supp. 1379, 1384 (D. Md.1983)). There must be a “basic showing” that the proposed settlement “is sufficiently within the range of reasonableness so that notice should be given.” *Id.* (internal quotation marks and ellipsis omitted). The court makes “a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms” and “direct[s] the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing.” *Id.* (quoting *Manual for Complex Litigation (Fourth)*, §21.632 (2004)).

There are two primary prongs to the preliminary assessment of a class action settlement: fairness and adequacy. *Id.* The fairness prong focuses on the procedural propriety of the proposed settlement, while the adequacy prong focuses on “substantive propriety.” *Id.*

B. The Settlement Satisfies the Fairness Prong for Preliminary Approval

The court considers the following factors in assessing the procedural fairness of the proposed settlement:

[1] whether the proposed settlement is the product of good faith bargaining at arm's length; [2] the posture of the case at settlement; [3] the extent and sufficiency of discovery conducted; [4] counsel's experience with similar litigation and their relevant qualifications; and [5] any pertinent circumstances surrounding the negotiations

Id. These factors support preliminary approval here.

1. The Settlement is the Product of Good Faith Bargaining at Arm's Length

There is a strong initial presumption that a proposed class action settlement is fair and reasonable when it is the result of arm's-length negotiations. Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 855 F. Supp. 825, 830 (E.D.N.C. 1994); In re MicroStrategy, Inc. Sec. Litig., 148 F.Supp.2d 654, 663 (E.D.Va. 2001).

The negotiations here were definitely at arm's length. This case was vigorously contested and settled only upon the brink of trial. On January 9, 2020, the Court referred the case to Magistrate Judge A. David Copperthite for a Settlement Conference. (Dkt. No. 133). Plaintiffs did not believe settlement discussions would be productive at that time, so Judge Copperthite canceled the Settlement Conference in June. (Dkt. No. 141). After the Court's February 10, 2021 summary judgment opinion, (Dkt. No. 200), the Parties decided settlement discussions might be productive, and Judge Copperthite scheduled a Settlement Conference for April 13, 2021. (Dkt. No. 207). The settlement negotiations included a Settlement Conference

mediated by Judge Copperthite that took place via Zoom. Both sides provided Judge Copperthite with their respective mediation statements and ex parte letters and exchanged proposals and counter-proposals concerning potential settlement terms. Despite Judge Copperthite and the Parties' efforts an agreement on settlement was not reached. As trial approached, at Judge Copperthite's urging, the Parties revisited settlement discussions and agreed to a settlement in principle and term sheet on July 23, 2021. Judge Copperthite subsequently stayed associated deadlines. (Dkt. No. 221).

The Parties encountered some disagreements in attempting to complete a comprehensive Settlement Agreement and ancillary documents. Pursuant to the Term Sheet, Judge Copperthite mediated these differences between the Parties in October 2021. Some differences remained after this mediation, and in November the Parties mediated the remaining differences before a private JAMS mediator, Robert Meyer, who has experience in complex litigation, including ERISA class actions. The Parties continued to exchange drafts of settlement papers and finalized the Settlement Agreement on December 16, 2021.

The extended settlement negotiations mediated by an impartial U.S. Magistrate Judge and an experienced private mediator make clear that the negotiations were at arm's length. This factor thus supports a preliminary approval. Hutton v. Nat'l Bd. of Exam'rs in Optometry, No. JKB-16-3025, 2019 WL 3183651, at *5, 2019 U.S. Dist. LEXIS 120558, at *18 (D. Md. July 15, 2019) (Bredar, J.) ("reliance on a neutral mediator experienced in complex litigation [or a court-affiliated mediator], indicate the Settlement is fair and that it should be approved").

2. The Posture of this Case at the Time of Settlement – at the Brink of Trial – Also Supports Preliminary Approval

As summarized above in §II.C, this case has been vigorously litigated at every stage and the settlement in principle was agreed to on the brink of trial, which was scheduled to begin less

than two months before the settlement was reached (July 23 settlement – September 13 trial). There were multiple motions to dismiss, multiple motions to compel, and each party filed voluminous summary judgment motions. Plaintiffs reviewed over 114,000 pages of documents produced by Defendants. This was obviously not a case of Class Counsel seeking a quick settlement shortly after filing suit.

Hence, the posture of this case at the time the settlement was agreed to also supports preliminary approval.

3. The Extent and Sufficiency of Discovery Conducted Supports Preliminary Approval

As summarized above in §II.C, there was extensive discovery conducted in this case. Class Counsel served numerous discovery requests and reviewed over 114,000 pages of documents produced by Defendants, as well as Defendants' responses to Plaintiffs' interrogatories and requests for admission. There was also discovery-related motion practice, with Plaintiffs filing multiple motions to compel, and Defendants one. Class Counsel deposed ten fact witnesses, and Defense Counsel deposed six Class Representatives; Plaintiffs submitted initial and reply reports from each of their three experts; Defendants submitted a rebuttal report from each of their three experts; and each side deposed the other side's three experts. At scheduling conferences and through their motions to compel, Plaintiffs sought even more extensive discovery, though this Court and Magistrate Judge Coulson decided it was not warranted. (*See, e.g.*, Dkt. Nos. 76, 111, 128).

The extent and sufficiency of discovery, including extensive expert reports, thus also supports preliminary approval.

4. Class Counsel's Experience with Similar Litigation and Their Qualifications Supports Preliminary Approval

Class Counsel's experience with similar litigation and their qualifications also supports preliminary approval. Class Counsel are unaware of any group of attorneys with more years of experience advocating on behalf of plan participants in ERISA class actions than themselves. (See firm resumes at Dkt. Nos. 77-6, 77-7). Each of the named Class Counsel has been practicing in this field for more than 20 years. *Id.* McTigue Law LLP ("McTigue Law") has been a pioneer in the field, being among the first law firms to bring an ERISA class action on behalf of 401(k) plan participants in 1997 (Blyler v. Agee, et al., D-Id., 97-cv-0332- (BLW) (D. Idaho) and Presley v. CHH, et al., 97-cv-04316 (SC) (N.D. Cal.)), and bringing some of the first cases challenging high investment fees and the use of proprietary funds in 401(k) plans in 2005 and 2006.⁹ The employee benefits litigation group of Cohen Milstein Sellers & Toll LLP ("Cohen Milstein") was recognized as "Benefits Group of the Year" for 2019 by the legal publication *Law360*.¹⁰

Furthermore, there is likely no group of attorneys with more experience in the particular

⁹ For the record, the statement by a court in this district that "no attorney or law firm ever filed an excessive fee ERISA case before [Schlichter, Bogard & Denton LLP]," Kelly v. Johns Hopkins Univ., No. 1:16-CV-2835-GLR, 2020 WL 434473, at *6, 2020 U.S. Dist. LEXIS 14772, at *18 (D. Md. Jan. 28, 2020), is not correct. This incorrect claim was adopted from statements in that same law firm's filings seeking approval of the settlement. The Schlichter, Bogard & Denton LLP firm filed its first such action on September 11, 2006, but both the instant Class Counsel firms were involved in such cases before then. Cohen Milstein Sellers & Toll LLP was among the firms representing the plaintiffs in an ERISA case filed in 1999 that sought to recoup "overpaid investment management costs." Mehling v. N.Y. Life Ins. Co., 413 F. Supp. 2d 476, 479 (E.D. Pa. 2005). Further, both the 2005 and 2006 McTigue Law cases referenced in the text above complaining of excessive investment management fees were filed by McTigue Law (or its predecessor firms) before September 11, 2006. See McCullough v. Aegon USA, Inc., 2:05-cv-07215 (C. D. Cal. Oct. 5, 2005) (brought on behalf of participants in Transamerica 401(k) Plan); David v. Alphin, 3:06-cv-04763 C-06-04763-WHA (N. D. Cal. Aug. 7, 2006) (brought on behalf of participants in Bank of America 401(k) Plan).

¹⁰ <https://www.law360.com/articles/1232627/benefits-group-of-the-year-cohen-milstein>

type of ERISA class action at issue here, referred to in the field as a proprietary fund case. McTigue Law is a pioneer in this field, and was the first firm to have filed two such cases on behalf of participants. (*See* n. 9, *supra*). This is the sixth such case McTigue Law has litigated; and the sixth case litigated by Cohen Milstein. Prior to this case, both firms litigated In re SunTrust Banks, Inc. 401(k) Plan Affiliated Funds ERISA Litig., Case No. 1:11-cv-784 (N. D. Ga.), which settled for \$29 million, (see Dkt. No. 302 of that case (July 20, 2020)), one of the largest settlements ever for a proprietary fund case.¹¹ Class Counsel's experience litigating and settling cases with similar issues weighs in favor of preliminary approval of this settlement. *See In re Jiffy Lube Sec. Litig.*, No. Y-89-1939, 1990 WL 39127, at *7 (D. Md. Jan. 2, 1990) (finding co-lead counsel were "eminently well-qualified and experienced" in the area of law at issue, resulting in the informed and realistic assessment of the benefits of settlement).

C. The Settlement Satisfies the Adequacy Prong for Preliminary Approval

The court considers the following factors in assessing the substantive adequacy of the proposed settlement:

- [1] the relative strength [and weaknesses] of the plaintiffs' case on the merits...;
- [2] the cost of additional litigation; [3] defendants' ability to pay a judgment;
- and [4] any opposition to the settlement

In re Am. Capital S'holder Derivative Litig., No. 11-2424-PJM, 2013 WL 3322294, at *3, U.S. Dist. LEXIS 90973, at *10 (D. Md. June 28, 2013) (internal quotation marks and citations omitted).

These factors support preliminary approval.

1. The Strengths and Weaknesses of Plaintiffs' Case on the Merits Supports Preliminary Approval

While Class Counsel believe they have a strong case that Defendants breached their

¹¹ A June 2019 compilation of information regarding 59 suits involving proprietary fund claims only noted two (slightly) higher value settlements. See <https://www.groom.com/wp-content/uploads/2019/10/Proprietary-Funds-Litigation-Chart-updated-June-2019.pdf>

ERISA fiduciary duties and committed self-dealing transactions prohibited by ERISA, the most important opinion for assessing the settlement value of a case is, of course, the opinion of the Court. As noted above, both sides filed summary judgment motions in this case that were supported by hundreds of exhibits as well as expert reports. While the Court denied in large part the Parties' motions for summary judgment, the Court indicated that on the record before it at that time, it believed it "likely" that a fact-finder would find facts favorable to Defendants' position that would likely result in judgment in their favor. (Dkt. No. 200 at 17).

Furthermore, this case involves an issue of first impression regarding the significance of a provision in the Plan Document, which Defendants referred to as the "hardwiring" amendment, that required all and only T. Rowe Price funds be offered as investment options in the Plan. (*See* Dkt. No. 213-1). Plaintiffs have argued that this provision is void under ERISA, but the Court rejected that position and delayed until trial a further decision regarding the provision's significance. (Dkt. No. 209 at 5).

In its summary judgment opinion, the Court also reversed itself on a key legal issue regarding Plaintiffs' claims that Defendants engaged in self-dealing transactions prohibited by ERISA, which significantly limited the scope of those claims. (Dkt. No. 200 at 24 ("...having now had the benefit of extensive briefing on the issue, the Court concludes that the §1108(b)(8) exemption can apply to the §1106(b) prohibitions")). Further, it found that those claims would also likely be significantly limited by ERISA's statute of repose. *Id.* at 29 (the Fourth Circuit's decision in "*Alphin* provides strong support for Defendants' position").

All these findings have an obvious and substantial adverse impact on the settlement value of Plaintiffs' case. Despite this adverse impact, Plaintiffs would achieve, through the litigation and its proposed Settlement, a financial benefit of over \$18 million for the Class as

well as significant non-monetary relief. (*See supra* §II.D).

Consideration of the strengths and weaknesses of Plaintiffs' case in comparison to the settlement achieved, including the risk that not settling might have resulted in no relief to the Class, supports preliminary approval.

2. The Cost of Additional Litigation Supports Preliminary Approval

As noted above, the initial agreement to settle the case occurred on the brink of trial. Trial had been projected to last approximately two weeks and would have been expensive. Costs include weeks of preparation and trial time for multiple attorneys and their staff, preparation of evidentiary exhibits, creation of demonstrative exhibits, and preparation, travel, and trial time for the three experts on each side.

Moreover, considering the novel issues involved in the case, it is likely that there would have been an appeal by the losing side. This would mean more delay and expense.

Avoiding the cost and expense of a lengthy trial and a likely appeal – which might well have resulted in a judgment adverse to, and with no relief awarded to, the Class – also supports preliminary approval.

3. Other Factors

Other factors noted by courts are not material in this case and/or at this stage. Defendant is a large corporation and is obviously able to pay any judgment. Class Notice has not yet been issued, so it is not known whether there will be objections to the proposed settlement.

IV. THE PROPOSED NOTICE PLAN SHOULD BE APPROVED

Rule 23 only requires that the court “direct notice in a reasonable manner to all class members who would be bound by” the proposed settlement. Fed. R. Civ. P. 23(e)(1)(B). Due process does not require that each person affected by judicial action actually receive notice of a proposed settlement, but does require that “a serious effort” be made to inform interested parties.

See Snider Int'l v. Town of Forest Heights, Md., 739 F.3d 140, 146 (4th Cir. 2014) (citation omitted). Notice to class members must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306, 314 (1950). “Individual notice must be provided to those class members who are identifiable through reasonable effort.” Eisen v. Carlisle and Jacquelin, 417 U.S. 156, 175 (1974).

The proposed Class Notice, submitted as Exhibit 4, meets this standard. The Notice Plan includes multiple components designed to reach the largest number of Class members reasonably possible.

First, the Class Notice will be sent at least 60 days prior to the Fairness Hearing either (i) by first-class mail to the Class members' last known address, or (ii) via an email address the Plan uses for Plan communications to each Class member. Because each Class member currently has or had during the Class Period a Plan account, and the Plan has a social security number and a last-known address for each such person, there is usually a relatively high rate of success in reaching class members in such circumstances. For any Notices returned as undeliverable, reasonable efforts will be made to identify current addresses.

Additionally, by that same date, the Class Notice, along with other documents and information related to the litigation, will be posted on a dedicated Settlement Website. The Settlement Administrator will also establish and monitor a dedicated, toll-free Settlement telephone number that will include an Interactive Voice Response (“IVR”) system with answers to frequently asked questions and contact information for Class Counsel should Class members have other questions.

The proposed Class Notice describes in plain English all key features of the Settlement

and approval process, including: (i) the key Settlement terms and plan of allocation; (ii) the nature and extent of the release of claims; (iii) the maximum attorneys' fees, litigation expenses, and Class Representative Service Awards that may be sought; (iv) the procedure and timing for objecting to the Settlement; and (v) the date and place of the Fairness Hearing.

In sum, the proposed Notice Plan satisfies the requirements of due process and should be approved. *See* 4 Newberg on Class Actions § 11:53 (4th ed. 2010) (“The notice need not be unduly specific. The notice of the Proposed Settlement, to satisfy both Rule 23(e) requirements and constitutional due process protections, need only be reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the settlement proposed and to afford them an opportunity to present their objections.”) Similar notice plans have been approved by courts within this district in ERISA class actions involving defined contribution plans. *See, e.g., Kelly v. Johns Hopkins Univ.*, No. 1:16-cv-2835-GLR, Dkt. No. 87 at 11-13 (D. Md. Aug. 16, 2019).

V. FOR PRACTICAL REASONS, TWO MINOR CHANGES TO THE CLASS DEFINITION ARE NECESSARY

For purposes of this settlement, Plaintiffs are requesting two minor changes to the Class definition.

First, the current definition extends the Class Period through “the date of judgment,” but entry of judgment would typically not occur until the settlement is finally approved. That would mean Plaintiffs could not know precisely who was in or out of the Class until that date. However, Plaintiffs need to have a determinate group of Class members in order to send out the Class Notice. Accordingly, Plaintiffs are requesting that the Class definition be changed so the Class Period extends through the date of the entry of an order preliminarily approving the settlement.

Second, the Parties are in agreement that beneficiaries with an account balance should also

be included in the Class and be eligible for a distribution from the Settlement Fund.

The proposed changes are indicated below (underlined text is being added and text with strikethrough is being deleted):

All participants and beneficiaries in the T. Rowe Price U.S. Retirement Program who had a balance in their plan account at any time from February 14, 2011 through the date of ~~judgment~~ entry of an order preliminarily approving a settlement. Any individual Defendants, any members of the T. Rowe Price Board of Directors, the Management Committee, the Management Compensation Committee, and their beneficiaries and immediate families are excluded from the class.

VI. AS ONE OF THE ORIGINAL NAMED CLASS COUNSEL HAS RECENTLY WITHDRAWN FROM THE CASE, PLAINTIFFS REQUEST APPROVAL FOR SUBSTITUTION OF ANOTHER ATTORNEY FROM THE SAME FIRM AS CLASS COUNSEL

One of the four original named Class Counsel in this action, Karen Handorf of Cohen Milstein Sellers & Toll, LLP, has withdrawn from this case and left that firm. (Dkt. No. 232). Plaintiffs ask the Court to approve another partner from the same firm, Mary J. Bortscheller, as substitute Class Counsel. Ms. Bortscheller's professional biography is attached as Exhibit 5.

VII. CONCLUSION

Plaintiffs respectfully move the Court to grant their Motion for Preliminary Approval of Class Action Settlement, Approval of Form and Manner of Class Notice, Request for Modification of Class Definition, Request for Substitution of Class Counsel, and Scheduling of Fairness Hearing.

Respectfully submitted,

/s/ James A. Moore

J. Brian McTigue, *admitted pro hac vice*

James A. Moore, *admitted pro hac vice*

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Counsel for Plaintiffs and the Class

**IN UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
BALTIMORE DIVISION**

DAVID G. FEINBERG, et al., and all
others similarly situated,

Plaintiffs,

vs.

T. ROWE PRICE GROUP, INC., et al.,

Defendants.

Case No. 1:17-cv-00427-JKB

**DECLARATION OF JAMES MOORE IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF SETTLEMENT**

James Moore declares:

1. I am an attorney and partner with McTigue Law LLP, and one of the Class Counsel appointed to represent the Plaintiffs and the Class in this action. I have been actively involved in all stages of this litigation since its inception.
2. Based on data collected by my law firm's staff in the ordinary course of business, Defendants produced at least 114,336 pages of documents in discovery in this case. These documents were loaded into an electronic document database and coded and reviewed by a team of reviewers.
3. Plaintiffs propounded at least 52 document requests, 22 requests for admission, and 17 interrogatories.
4. Defendants propounded 22 document requests and 14 interrogatories.

5. Class Counsel deposed ten fact witnesses, all of whom were employed by T. Rowe Price. Defense counsel deposed six of the Named Plaintiffs, who are also Class Representatives in this case.

6. Plaintiffs and Defendants each identified three experts. Each of these three focused on one of three areas: fiduciary process, damages and investment performance, and T. Rowe Price's profits resulting from offering its own funds in its 401(k) Plan. Each of Plaintiffs' experts submitted initial and reply expert reports; Defendants' experts submitted rebuttal reports. Each side deposed the experts of the other side.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ James A. Moore

James A. Moore, *admitted pro hac vice*

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**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
BALTIMORE DIVISION**

David G. Feinberg, et al.,

Plaintiffs,

v.

Case No. 1:17-cv-00427-MJG

T. Rowe Price Group, Inc., et al.,

Defendants.

DECLARATION OF STEVE POMERANTZ, PH.D.

Steve Pomerantz, Ph.D. declares:

1. I am one of Plaintiffs' proposed expert witnesses in this action. I earned a Ph.D. in mathematics from the University of California – Berkeley. My curriculum vitae is included in my initial expert report in this matter. (See Dkt. No. 142-3, Ex. 11).

2. I am more than 18 years of age and would be competent to testify at trial regarding the facts stated herein.

3. Class Counsel have informed me that on January 23, 2019 a Special Payment of \$6,623,238 was distributed to the accounts of over 6000 Class Members in the T. Rowe Price U.S. Retirement Program ("Plan"), which is the 401(k) Plan at issue in this case. They have asked me to estimate the value that amount would have on June 30, 2021 if it earned the overall or average Plan return during that time period.

4. Plaintiffs' counsel provided me with the following data regarding the T. Rowe Price U.S. Retirement Program ("Plan"), which is the 401(k) Plan at issue in this case. I was

informed that the data from 2018 through 2020 is taken from Plan forms 5500 filed with the U.S. Department of Labor. Data for 2021 is based on information provided to Plaintiffs' counsel from Defendants.

	Total Assets at End of Period (Sch. H, Line 1f)	Total Contributions (Sch. H, Line 2a(3))	Total Benefit Payouts (Sch. H Line 2e(4))	Return = (Ending Assets + Benefits – Contributions) / Beginning Assets - 1
2018	\$2,446,776,116	\$169,904,392	\$89,643,087	
2019	\$3,117,017,204	\$170,735,631	\$111,800,265	25.0%
2020	\$3,878,105,507	\$196,221,522	\$116,072,895	21.8%
1/1/21-6/30/21	\$4,295,458,300 (not from public data)			9.7%

5. First, I calculated the overall cumulative Plan investment return from January 1, 2019 through June 30, 2021 to be 67%. I then applied that return to the \$6,623,238; if that Special Payment had earned that return over that time period, the appreciated value would be \$11,067,644.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed December 27, 2021 in New York, New York, USA.



Steve Pomerantz, PhD

Exhibit 1

SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Settlement Agreement”) is entered into between and among the Class Representatives on behalf of themselves and all Class members, and Defendants, as defined in § 1 below. Capitalized terms and phrases have the meanings provided in § 1 below or as specified elsewhere in this Settlement Agreement.

1. DEFINITIONS

1.1. “Action” means *Feinberg et al. v. T. Rowe Price Group, Inc., et al.*, No. 1:17-cv-427-JKB, a class action pending in the United States District Court for the District of Maryland.

1.2. “Active Account” means a participant or beneficiary account in the Plan that has neither been closed nor had all assets distributed.

1.3. “Administrative Expenses” means fees and expenses of the Settlement Administrator and Escrow Agent incurred in administering the Settlement Agreement, including all fees, expenses, and costs associated with providing the Settlement Notice to the Class; all fees, expenses, and costs associated with distributing funds to Former Participants under the Plan of Allocation; and related tax expenses. Administrative Expenses shall be paid from the Gross Settlement Amount. Excluded from Administrative Expenses are any fees and costs billed by the Independent Fiduciary; any other costs incurred by Class Counsel, Defendants, or the Plan in effectuating the Settlement Agreement (including all fees, expenses, and costs incurred by Class Counsel, Defendants, or the Plan in connection with distributing settlement proceeds to Current Participants under the Plan of Allocation); and the Parties’ respective legal expenses.

1.4. “Allocation Method” means the calculation method for allocating the Net Settlement Amount to Class members based on their holdings in the Plan during the Class Period. The Allocation Method is set forth in the Plan of Allocation which Class Counsel shall include as an attachment to their motion for preliminary approval of the settlement.

1.5. “Attorneys’ Fees and Expenses” means the amount awarded by the Court as compensation for the services provided by Class Counsel.

1.6. “Beneficiary” means a person who is entitled to receive a benefit under the Plan upon the death of a Plan participant. A Beneficiary includes, but is not limited to, a surviving spouse, domestic partner, or child of a Plan participant, or other individual or entity designated by the participant, or determined under the terms of the Plan to be entitled to a benefit.

1.7. “Brokerage Window” means a Plan option Defendants have agreed for the first time to offer to Plan participants as a condition of this Settlement, as further described in § 7 below. The Brokerage Window will allow Plan participants to invest in a variety of non-T. Rowe Price funds.

1.8. “CAFA” means the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711-1715.

1.9. “Calendar days” has the meaning given in Federal Rule of Civil Procedure 6 and such days shall be computed as defined by that Rule.

1.10. “Challenged Funds” means (i) the following thirty-one T. Rowe Price Funds that Plaintiffs contend should have been removed at the inception of the Class Period: Balanced, Corporate Income, Emerging Europe, Emerging Markets Bond, Emerging Markets Stock, Equity Income, Equity Index Trust-C, Extended Equity Market Index, GNMA, Global Infrastructure, Global Real Estate, Global Technology, Growth Stock, Growth and Income, High Yield, Inflation Protected Bond, International Discovery, International Stock, International Value Equity, Mid-Cap Value, Overseas Stock, Real Estate, Science and Technology, Short-Term Bond, Spectrum Growth, Spectrum Moderate Allocation, Summit Cash Reserves Fund, Summit GNMA, Total Equity Market Index, U.S. Treasury Long-Term, Value, and U.S. Treasury Money Fund; and (ii) the following eight T. Rowe Price Funds that were added to the Plan during the Class Period and Plaintiffs contend should not have been added: Dynamic Global Bond (added 1/1/2016), Emerging Markets Discovery Stock (added 10/1/2016), Emerging Markets Local Currency Bond (added 6/1/2011), Floating Rate (added 8/1/2011), Institutional Frontier Markets Equity (added 8/1/2015), Institutional Global Value Equity (added 7/1/2014), International Disciplined Equity (added 8/1/2017), and Real Assets (added 6/1/2012). (In some cases, these funds include multiple versions or types, e.g., when what was originally offered in the Plan was a mutual fund but was later replaced with a similar collective trust version of the same strategy).

1.11. “Class” means the certified class in this Action, with the definition modified with the underlined text in order for there to be a determinate class in order to send Class Notice before any final approval of the Settlement and to make clear the Parties’ intent to include in the Class anyone, including beneficiaries, that had a balance in a Plan account during the Class Period:

All participants and beneficiaries in the T. Rowe Price U.S. Retirement Program who had a balance in their plan account at any time from February 14, 2011 through the date of entry of the order preliminarily approving the Settlement. Any individual Defendants, any members of the T. Rowe Price Board of Directors, the Management Committee, the Management Compensation Committee, and their beneficiaries and immediate families are excluded from the class.

1.12. “Class Counsel” for purposes of this agreement means McTigue Law LLP and its attorneys J. Brian McTigue and James A. Moore and Cohen Milstein Sellers & Toll PLLC and its attorneys Mary J. Bortscheller and Scott M. Lempert.

1.13. “Class Member Distribution” means the Settlement payment that a Class member is entitled to receive pursuant to the Plan of Allocation.

1.14. “Class Period” means the period from February 14, 2011 through the date the Preliminary Approval Order is entered by the Court.

1.15. “Class Representatives” means Michelle Bourque, James Collins, David G. Feinberg, Daniel Fialkoff, Thomas Henry, Jitesh Jani, Sital Jani, Daniel Newman, Farrah Qureshi, Maria Stanton, and Regina Widderich.

1.16. “Company” means T. Rowe Price Group, Inc., and its subsidiaries.

1.17. “Complaint” means the Second Amended Class Action Complaint, Dkt. No. 84, the First Amended Class Action Complaint, Dkt. No. 32, and the Class Action Complaint, Dkt. No. 1.

1.18. “Confidentiality Agreement” means the stipulated protective order entered by the Court on February 19, 2019, Dkt. No. 69.

1.19. “Court” means the United States District Court for the District of Maryland.

1.20. “Current Participant” means a Class member who has an Active Account in the Plan as of the date the Preliminary Approval Order is entered by the Court.

1.21. “Defendants” means the following defendants named in the Complaint: (i) T. Rowe Price Group, Inc.; (ii) T. Rowe Price Associates, Inc.; (iii) T. Rowe Price Trust Company; (iv) the T. Rowe Price Group, Inc. Management Committee; (v) T. Rowe Price Group, Inc. Management Compensation Committee, (vi) T. Rowe Price Group Inc. Board of Directors, and (vii) Preston Athey, Steve Banks, Celine Dufetel, Eric Gee, Michael McGonigle, Kenneth Moreland, Larry Puglia, and Meredith Stewart.

1.22. “Defense Counsel” means O’Melveny & Myers LLP.

1.23. “Effective Date” or “Settlement Effective Date” means the date on which the Final Approval Order and final judgment are entered by the Court as set forth in § 4 of this Settlement Agreement and the Settlement shall have become Final.

1.24. “ERISA” means the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as amended, including all regulations promulgated thereunder.

1.25. “Escrow Agent” means the custodian of the Qualified Settlement Fund, which shall be selected by Class Counsel.

1.26. “Fairness Hearing” means the hearing scheduled by the Court to consider any objections from Class members to the Settlement Agreement; Class Counsel’s petitions for Attorneys’ Fees and Expenses, and Service Awards to Class Representatives; and whether to finally approve the settlement under Federal Rule of Civil Procedure 23.

1.27. “Final” means, with respect to any judicial ruling or order in the Action, that the period for any appeals, petitions, motions for reconsideration, rehearing, or certiorari or any other proceedings for review (“Review Proceeding”) has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that there has occurred a full and completed disposition of any such Review Proceeding, including the exhaustion of proceedings in any remand and/or subsequent appeal on remand. For avoidance of doubt, the Parties agree that absent an appeal or other attempted Review Proceeding, the period after which the Final Approval Order becomes Final is thirty-five calendar days after its entry by the Court.

1.28. “Final Approval Order” means the order and final judgment, in substantially the form attached as Exhibit B, approving the Settlement Agreement, implementing the terms of this Settlement Agreement, and dismissing the Action with prejudice.

1.29. “Former Participant” means a Class member who maintained a balance in the Plan during the Class Period, but who does not have an Active Account as of the date the Preliminary Approval Order is entered by the Court.

1.30. “Gross Settlement Amount” means the sum of seven million dollars (\$7,000,000), contributed to the Qualified Settlement Fund in accordance with § 5. As of the Effective Date, no portion of the Gross Settlement Amount shall be returned to Defendants.

1.31. “Independent Fiduciary” means the independent fiduciary that has no relationship to or interest in any of the Parties, selected by the Plan Administrator, with the consent of Class Counsel (which consent shall not unreasonably be withheld).

1.32. “Net Settlement Amount” means the Gross Settlement Amount plus any returns accrued on the same while held in the Qualified Settlement Fund, minus: (a) all Attorneys’ Fees and Expenses paid to Class Counsel as approved by the Court; (b) all Service Awards as authorized by the Court; (c) all Administrative Expenses; and (d) a contingency reserve reasonably determined by Class Counsel that is set aside by the Settlement Administrator for: (1) Administrative Expenses incurred before the Settlement Effective Date but not yet paid, (2) Administrative Expenses estimated to be incurred after the Settlement Effective Date but before the end of the first full calendar year of the Settlement Period, (3) an amount estimated for adjustments of data or calculation errors, and (4) an amount estimated for payment of necessary taxes of interest earned on the Qualified Settlement Fund.

1.33. “Party” or “Parties” means the Plaintiffs and Defendants, either individually or collectively.

1.34. “Plaintiffs” or “Named Plaintiffs” means Michelle Bourque, James Collins, David G. Feinberg, Daniel Fialkoff, Thomas Henry, Jitesh Jani, Sital Jani, Daniel Newman, Farrah Qureshi, Maria Stanton, and Regina Widderich.

1.35. “Plan” means the T. Rowe Price U.S. Retirement Program.

1.36. “Plan Administrator” means the current administrator of the Plan.

1.37. “Plan of Allocation” means the methodology for allocating the Net Settlement Amount, and any amendment, that Class Counsel shall include as an attachment to their motion for preliminary approval of the settlement. Defendants shall have no responsibility or liability for the Plan of Allocation.

1.38. “Plan Data” means reasonably accessible data in the possession, custody, and control of Defendants that is necessary to implement the Plan of Allocation, including, for each Class member, their first name, middle name or initial (if available in the Plan Recordkeeper’s records), and last name; most current address available in the Plan Recordkeeper’s records; T. Rowe Price email address (in the case of Class members who are current employees of the Company) or most current email address available in the Plan Recordkeeper’s records, if any (in the case of Class members not currently employed by the Company); the Social Security number (or last four digits thereof); and individual Plan account allocations to Plan investment options during the Class Period on a quarterly basis.

1.39. “Plan Recordkeeper” means the current recordkeeper of the Plan.

1.40. “Preliminary Approval Order” means the order, in substantially the form attached as Exhibit A, entered by the Court granting preliminary approval of the Settlement.

1.41. "Qualified Domestic Relations Order" means, for the purposes of this Agreement, a Qualified Domestic Relations Order as defined in 29 U.S.C. § 1056(d)(3)(K).

1.42. "Qualified Settlement Fund" means the settlement fund escrow account to be established by Class Counsel and maintained by the Escrow Agent in accordance with § 5 herein (within the meaning of Treas. Reg. § 1.468B-1) in which the Gross Settlement Fund is deposited.

1.43. "Released Claims" means all claims, rights, demands, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys' fees actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature, and description whatsoever, whether direct, derivative, individual, class, representative, legal, equitable, or of any other type (known or unknown), whether based on state, local, foreign, federal, statutory, regulatory, common, or other law or rule, that Plaintiffs or any and all members of the Class, in his, her, or their capacity as a participant in the Plan, ever had, now have, or may have or otherwise could, can, or might assert, against the Released Parties (a) that were asserted in the Complaint or Action or that, whether or not pleaded in the Complaint or Action, could be predicated on the same allegations, acts, omissions, facts, events, matters, conduct, or transactions alleged in the Complaint or Action, or (b) that relate to or challenge:

- (i) the selection, oversight, monitoring, or retention of the Plan's investment options;
- (ii) fees, costs, or expenses charged to, paid by, or reimbursed by the Plan, directly or indirectly, in connection with the Plan's mutual fund or collective trust fund investments;
- (iii) investment advice relating to the Plan, or to its investments or fees;
- (iv) the Administrative Budget Contribution provided for under § 4.12 of the Plan Document, including without limitation the formulation, calculation, or allocation thereof;
- (v) the Special Payment referenced in § 8.1 of this Settlement Agreement, including without limitation the calculation or allocation thereof;
- (vi) any provision or amendment of the Plan Document with respect to investment options to be offered under the Plan, or the timing thereof;
- (vii) any direction to calculate, calculation of, and/or method or manner of allocating the Qualified Settlement Fund to the Plan or any member of the Class in accordance with the Plan of Allocation; and/or
- (viii) the approval by the Independent Fiduciary of the Settlement Agreement unless brought against the Independent Fiduciary alone.

"Released Claims" specifically exclude:

- (i) any rights or duties arising out of the Settlement Agreement, including the enforcement of the Settlement Agreement;
- (ii) claims of individual denial of Plan benefits under ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), that do not fall within §§ 1.43(a)-1.43(b) above;
- (iii) wages, labor, or employment claims unrelated to the Plan; and
- (iv) claims arising exclusively from conduct after the close of the Class Period.

For the avoidance of doubt, nothing in this Settlement Agreement shall release, or be construed to release, any claim whatsoever brought on behalf of any person or entity other than a member of the Class or the Plan against the Released Parties, or the Released Parties against a member of the Class or Class Counsel.

1.44. "Released Parties" means (a) Defendants; (b) their insurers, co-insurers, and reinsurers; (c) their past, present, and future parent corporation(s), (d) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns; (e) their past, present, and future members of their respective boards of trustees or boards of directors, committees, agents, officers, employees, independent contractors, representatives, attorneys, administrators, fiduciaries (with the exception of the Independent Fiduciary), accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, associates, members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them; and (f) the Plan's fiduciaries, administrators, recordkeepers, service providers, consultants, and other parties-in-interest.

1.45. "Service Award" means any amount determined by the Court, but not to exceed \$15,000 for each Class Representative, which shall be paid from the Gross Settlement Amount directly to each Class Representative.

1.46. "Settlement" or "Settlement Agreement" means the agreement between Plaintiffs and Defendants embodied in this document.

1.47. "Settlement Administrator" means an independent contractor selected and retained by Class Counsel which shall operate under the supervision of Class Counsel.

1.48. "Settlement Notice" or "Class Notice" means the Notice of Class Action Settlement to be sent to Class members identified by the Settlement Administrator following the Court's issuance of the Preliminary Approval Order in substantially the form attached as Exhibit A. The Settlement Notice also shall inform Class members of a Fairness Hearing to be held before the Court, on a date to be determined by the Court, at which any Class member 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 Expenses; (c) payment of and reserve for Administrative Expenses; and (d) Service Awards to Class Representatives.

1.49. "Settlement Period" means the period lasting ten years after the Settlement Effective Date.

1.50. "Settlement Website" means the website to be established by Class Counsel within seven calendar days of entry of the Preliminary Approval Order and in accordance with § 3.

1.51. "Special Payment" means the \$6,623,238 payment by T. Rowe Price Group, Inc., in January 2019 to more than five thousand Plan participants.

1.52. "T. Rowe Price Funds" means the T. Rowe Price-sponsored and/or -advised investment options offered in the Plan during the Class Period.

1.53. "Unknown Claims" means any and all Released Claims which the Named Plaintiffs or the Class members do not know or suspect to exist in their favor as of the Settlement Effective Date, which if known by the Named Plaintiffs or Class members might have affected their decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Settlement Effective Date, the Named Plaintiffs and Defendants shall expressly waive, and each Class member shall be deemed to have waived, and by operation of the Court's entry of the Final Approval Order shall have expressly waived, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code or by any law of any state of the United States, or principle of common law or otherwise, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. Section 1542 of the California Civil Code provides, in relevant part:

A general release does not extend to claims which 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.

Named Plaintiffs and Defendants acknowledge, and the Class members by operation of law shall be deemed to have acknowledged, that the inclusion of Unknown Claims within the definition of Released Claims was separately bargained for and was a key element of the Settlement.

2. RECITALS

2.1. On February 14, 2017, David G. Feinberg filed a complaint on behalf of himself and similarly situated participants in the Plan, alleging that defendants breached their fiduciary duties and engaged in prohibited transactions in connection with defendants' offering of solely T. Rowe Price Funds in the Plan. On July 21, 2017, Plaintiffs filed an Amended Complaint in which Mr. Feinberg was joined as Named Plaintiff by the ten additional Named Plaintiffs. The operative complaint is the Second Amended Complaint (Dkt. No. 84).

2.2. On May 17, 2019, the Court certified the Action as a class action pursuant to Fed. R. Civ. P. 23(b)(1). (Dkt. No. 83).

2.3. On January 9, 2020, the Court referred this matter to Magistrate Judge A. David Copperthite for a settlement conference. (Dkt. No. 133). On June 10, 2020, Judge Copperthite canceled a settlement conference after receiving communications from the Parties but invited the Parties to contact his chambers if they believed a settlement conference would be of assistance. (Dkt. No. 141).

2.4. On February 10, 2021, the Court denied in large part the Parties' motions for summary judgment. (Dkt. No. 201). However, the Court indicated that on the record before it at that time, it believed it "likely" that a fact-finder would find facts favorable to Defendants' position. *Id.* at 17.

2.5. On February 25, 2021, the Court set a September 13, 2021 date for a bench trial. (Dkt. No. 206).

2.6. On April 13, 2021, the Parties participated in a Settlement Conference mediated by Magistrate Judge Copperthite, but it did not result in a settlement.

2.7. In July 2021, the Parties resumed settlement negotiations mediated by Magistrate Judge Copperthite. These negotiations resulted in an agreement in principle to settle the Action on July 23, 2021. Disputes arose during the finalization process, and the disputes were mediated with private mediator Robert Meyer of JAMS, with the result that the terms and conditions of the Parties' agreement are now memorialized in this Settlement Agreement.

2.8. The Class Representatives and Class Counsel consider it desirable and in the Plan's and Class members' best interests that the Action be settled upon the terms set forth below. The Class Representatives and Class Counsel believe that such terms are fair, reasonable, and adequate and that this Settlement will result in benefits to the Plan and the Class.

2.9. Defendants deny all allegations of wrongdoing and deny all liability for the claims in this Action. Defendants maintain that the Plan has been managed, operated, and administered at all times in compliance with ERISA and applicable laws and regulations. This Settlement Agreement, and the prior negotiations between the Parties, shall in no event constitute, be construed as, or be deemed evidence of, or an admission or concession of, any wrongdoing, fault, or liability of any kind by Defendants.

2.10. Plaintiffs assert that all the claims asserted in this Action are meritorious. This Settlement Agreement, and the prior negotiations between the Parties, shall in no event constitute, be construed as, or be deemed evidence of, or an admission or concession of, any lack of merit of any kind by Plaintiffs with respect to the claims asserted.

2.11. The Parties have concluded that it is desirable that the Action be finally settled on behalf of the Class upon the terms and conditions set forth in this Settlement Agreement.

2.12. Therefore, the Parties, in consideration of the promises, covenants, and agreements herein described, acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows.

3. REVIEW AND APPROVAL BY INDEPENDENT FIDUCIARY, PRELIMINARY SETTLEMENT APPROVAL, AND NOTICE TO THE CLASS

3.1. Class Representatives, through Class Counsel, shall file with the Court motions seeking preliminary approval of this Settlement Agreement and for entry of the Preliminary Approval

Order in substantially the form attached hereto as Exhibit A. The proposed Preliminary Approval Order to be presented to the Court would, if entered, among other things:

- 3.1.1 Approve the text of the Settlement Notice for mailing or sending by electronic means to Class members identified by the Settlement Administrator to notify them of the Settlement, the Fairness Hearing, and the Settlement Website.
- 3.1.2 Determine that under Rule 23(c)(2)(A) of the Federal Rules of Civil Procedure, the Settlement Notice constitutes appropriate notice under the circumstances, provides due and sufficient notice of the Fairness Hearing and of the rights of all Class members, and complies fully with the requirements of Fed. R. Civ. P. 23, the Constitution of the United States, and any other applicable law.
- 3.1.3 Cause the Settlement Administrator to mail by first class mail or by electronic means the Settlement Notice to each Class member identified by the Settlement Administrator based upon the Plan Data provided by the Plan Recordkeeper.
- 3.1.4 Provide that, pending final determination of whether the Settlement Agreement should be approved, no Class member may directly, through representatives, or in any other capacity commence any action or proceeding in any court or tribunal asserting any of the Released Claims against any of the Released Parties or the Plan.
- 3.1.5 Set the Fairness Hearing for no sooner than one hundred calendar days after the date the Preliminary Approval Order is entered by the Court, in order to determine whether (i) the Court should approve the Settlement as fair, reasonable, and adequate, (ii) the Court should enter the Final Approval Order, and (iii) the Court should approve the application for Attorneys' Fees and Expenses, Class Representatives' Service Awards, Administrative Expenses incurred to date, and a reserve for anticipated future Administrative Expenses.
- 3.1.6 Provide that any objections to the Settlement Agreement shall be heard, and any papers submitted in support of those objections shall be considered, by the Court at the Fairness Hearing if they have been filed validly with the Clerk of the Court and copies provided to Class Counsel and Defense Counsel. To be filed validly, the objection and any notice of intent to appear or supporting documents must be filed at least twenty-eight calendar days prior to the scheduled Fairness Hearing. Any person wishing to speak at the Fairness Hearing shall file and serve a notice of intent to appear within the time limitation set forth above.
- 3.1.7 Provide that the Parties may, but are not required to, serve discovery requests, including requests for documents and notices of deposition not

to exceed two hours in length, on any objector within ten calendar days of receipt of the objection and that any responses to discovery or depositions must be completed within ten calendar days of the discovery request being served on the objector.

3.1.8 Provide that any Party may file a response to an objection by a Class member at least ten calendar days before the Fairness Hearing.

3.1.9 Provide that the Fairness Hearing may, without further direct notice to the Class members, other than by notice to Class Counsel, be adjourned or continued by order of the Court.

3.2. Any Independent Fiduciary retained by the Plan Administrator, on behalf of the Plan, shall have the following responsibilities, including whether to approve and authorize the settlement of the Released Claims on behalf of the Plan and to advise the Plan Administrator, Class Counsel, and Defense Counsel in writing of its conclusion in that regard.

3.2.1 In connection with its review of the Settlement, the Independent Fiduciary shall, if it elects to approve and authorize the settlement of the Released Claims on behalf of the Plan, provide the authorization required by Prohibited Transaction Exemption 2003-39, "Release of Claims and Extensions of Credit in Connection with Litigation," issued December 31, 2003, by the U.S. Department of Labor, 68 Fed. Reg. 75,632, as amended ("PTE 2003-39"), so as to enable Defendants to rely on PTE 2003-39.

3.2.2 The Independent Fiduciary shall notify the Plan Administrator directly of its determination in writing (with copies to Class Counsel and Defense Counsel), which notification shall be delivered no later than forty-eight calendar days before the Fairness Hearing.

3.2.3 The Parties, Defense Counsel, and Class Counsel shall comply with reasonable written requests from the Independent Fiduciary for information necessary to evaluate the Settlement Agreement on behalf of the Plan.

3.3. Defendants and Defense Counsel shall respond timely to written requests, including by email, from the Settlement Administrator for readily accessible Plan Data that are reasonably necessary to implement the Plan of Allocation, provided that Defendants shall not be obligated to honor any request for Plan Data other than as set forth in §§ 3.5, 3.6, & 6.10 below unless the Settlement Administrator or Class Counsel has presented good cause for such request.

3.3.1 The Settlement Administrator shall be bound by the Confidentiality Agreement and any further non-disclosure or security protocol required by the Parties.

3.3.2 The Settlement Administrator (and Class Counsel, to the extent information supplied to the Settlement Administrator is also made available to Class Counsel) shall use the data provided by Defendants

and the Plan Recordkeeper solely for the purpose of meeting its obligations as Settlement Administrator (or, in the case of Class Counsel, enabling the Settlement Administrator to do so) and for no other purpose.

3.3.3 The Parties shall have the right to approve a written protocol to be provided by the Settlement Administrator concerning how the Settlement Administrator will maintain and store information provided to it in order to ensure that reasonable and necessary precautions are taken to safeguard the privacy and security of such information. Such protocol shall be consistent with the U.S. Department of Labor's cybersecurity guidance, reflected in the Department's 2021 publications "Cybersecurity Program Best Practices" (available at <https://www.dol.gov/sites/dolgov/files/ebsa/key-topics/retirement-benefits/cybersecurity/best-practices.pdf>) and "Tips for Hiring a Service Provider with Strong Cybersecurity Practices" (<https://www.dol.gov/sites/dolgov/files/ebsa/key-topics/retirement-benefits/cybersecurity/tips-for-hiring-a-service-provider-with-strong-security-practices.pdf>).

3.4. By the date and in the manner set by the Court in the Preliminary Approval Order, and unless otherwise set forth below, the Settlement Administrator shall cause to be sent to each Class member identified by the Settlement Administrator a Settlement Notice in the form and manner to be approved by the Court, which shall be in substantially the form attached as Exhibit C or a form subsequently agreed to by the Parties and the Court. The Settlement Notice shall be sent to the last known address, or email address if sent electronically, of each Class member provided by Defendants, as applicable, unless an updated address is obtained by the Settlement Administrator through its efforts to verify the last known addresses provided by the Plan Recordkeeper (or its designee(s)). Class Counsel also shall post the Settlement Notice on the Settlement Website. The Settlement Administrator shall use commercially reasonable efforts to locate any Class member whose Settlement Notice is returned and re-send such documents one additional time.

3.5. By no later than fourteen calendar days following the entry of the Preliminary Approval Order, Defendants shall cause the Plan Recordkeeper to provide to the Settlement Administrator and Class Counsel an electronic datafile in active Excel format containing the first name, middle name or initial (if available in the Plan Recordkeeper's records), and last name (each name in separate fields); last four digits of the Social Security number; the last known address and email address, if available; of each participant or beneficiary with a balance in the Plan on or after February 14, 2011 through the date of entry of the Preliminary Approval Order; and, for any participant reflected as deceased in Plan records with a date of death on or after February 14, 2011 through the date of entry of the Preliminary Approval Order, the beneficiary designation.

3.6. By no later than twenty-one calendar days following the entry of the Preliminary Approval Order, Defendants shall cause the Plan Recordkeeper to provide to the Settlement

Administrator and Class Counsel electronic datafiles in active Excel format containing, for each participant or beneficiary with a balance in the Plan on or after February 14, 2011 through the date of entry of the Preliminary Approval Order, such participant's or beneficiary's first name, middle name or initial (if available in the Plan Recordkeeper's records), and last name (each name in separate fields); last four digits of the Social Security number; and the participant's or beneficiary's balances in each of the Plan's investment options as of both (a) the end of the third quarter of 2021 (September 30, 2021) (and any subsequent quarters ending before the entry of the Preliminary Approval Order) and (b) the date of entry of the Preliminary Approval Order (supplementing the Plan Recordkeeper's prior production to Class Counsel of quarterly participant and beneficiary balances for earlier portions of the Class Period).

4. FINAL SETTLEMENT APPROVAL

4.1. No later than forty-five calendar days prior to the Fairness Hearing, Class Counsel shall file with the Court the motion for final approval of this Settlement Agreement and for entry of the Final Approval Order substantially in the form attached as Exhibit B.

4.2. The Final Approval Order as proposed shall provide for the following, among other things, to carry out the Settlement consistent with applicable law and governing Plan documents:

- 4.2.1 Approval of the settlement of the Released Claims covered by this Settlement Agreement adjudging the terms of the Settlement Agreement to be fair, reasonable, and adequate to the Plan and the Class members and directing the Parties to take the necessary steps to effectuate the terms of the Settlement Agreement;
- 4.2.2 A determination under Rule 23(c)(2)(A) of the Federal Rules of Civil Procedure that the Settlement Notice constitutes appropriate notice under the circumstances and that due and sufficient notice of the Fairness Hearing and the rights of all Class members has been provided;
- 4.2.3 Dismissal with prejudice of the Action and all Released Claims asserted therein whether asserted by Class Representatives on their own behalf or on the behalf of the Class members, or derivatively to secure relief for the Plan, without costs to any of the Parties other than as provided for in this Settlement Agreement;
- 4.2.4 That the Plan and each Class member (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns) shall be conclusively deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged the Released Parties and the Plan from all Released Claims;
- 4.2.5 That Defendants have satisfied all applicable CAFA requirements;

- 4.2.6 That the Independent Fiduciary retained by the Plan Administrator, on behalf of the Plan, has reviewed and approved the Settlement (or, in the alternative, that Defendants have elected to proceed with the Settlement notwithstanding the Independent Fiduciary's determination not to approve the Settlement);
- 4.2.7 That the Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Class member in accordance with the Plan of Allocation; and
- 4.2.8 That the payments made from the Qualified Settlement Fund to effect the distributions to Class members who are eligible for a Class Member Distribution or to effect the Plan of Allocation constitute restorative payments in accordance with Revenue Ruling 2002-45.

4.3. The Final Approval Order and final judgment entered by the Court approving the Settlement shall provide that upon its entry all Parties including the Plan and the Class shall be bound by the Settlement Agreement and the Final Approval Order.

5. ESTABLISHMENT OF QUALIFIED SETTLEMENT FUND

5.1. No later than seven calendar days after entry of the Preliminary Approval Order, Class Counsel shall establish an escrow account, trustee by the Escrow Agent. The escrow account shall be the Qualified Settlement Fund within the meaning of Treas. Reg. § 1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to 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 Escrow Agent 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 occur.

5.2. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The Escrow Agent, or the Settlement Administrator on its behalf, shall timely and properly cause to be filed all informational and other tax returns ("Tax Filings") necessary or advisable with respect to the Gross Settlement Amount (including without limitation applying for a Taxpayer Identification Number for the Qualified Settlement Fund and filing the returns described in Treas. Reg. § 1.468B-2(k)). Such returns as well as the election described in § 5.1 shall be consistent with this § 5 and, in all events, shall reflect that all taxes (as defined in § 5.3 below, including any estimated taxes, interest, or penalties) on the income earned by the Gross Settlement Amount shall be deducted and paid from the Gross Settlement Amount as provided in § 5.3.

5.3. Taxes and tax expenses are Administrative Expenses to be deducted and paid from the Gross Settlement Amount, to the extent they are: (1) any taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Gross Settlement Amount, including any taxes or tax detriments that may be imposed upon Defendants with respect to any income earned by the Gross Settlement Amount for any period during which the Gross

Settlement Amount does not qualify as a “qualified settlement fund” for federal or state income tax purposes, and (2) any tax expenses and costs incurred in connection with the operation and implementation of this § 5 (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 § 5). Such taxes and tax expenses shall be paid timely by the Escrow Agent from the Gross Settlement Amount without prior order from the Court. The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from any distribution destined to any Class member any funds necessary to pay such amounts, including the establishment of adequate reserves for any taxes and tax expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)); neither the Released Parties, Defense Counsel, nor Class Counsel are responsible nor shall they have any liability therefor. The Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this § 5.

5.4. Within twenty-one calendar days after the later of (a) the entry of the Preliminary Approval Order, or (b) establishment of the Qualified Settlement Fund described in § 5.1 where the Escrow Agent shall have furnished to Defendants in writing the Qualified Settlement Fund account name, IRS W-9 Form, and all necessary wiring instructions, Defendants shall cause the deposit of five hundred thousand dollars (\$500,000) into the Qualified Settlement Fund. Within fourteen calendar days following the Settlement Effective Date, Defendants shall cause the deposit of the remaining six million five hundred thousand dollars (\$6,500,000) into the Qualified Settlement Fund.

5.5. The Escrow Agent shall, at the written direction of Class Counsel, invest the Qualified Settlement Fund in (i) short-term United States Agency or Treasury Securities or other interest-bearing instruments backed by the Full Faith and Credit of the United States Government or an Agency thereof, or fully insured by the United States Government or an Agency thereof, and shall reinvest the proceeds of these investments as they mature in similar instruments at their then-current market rates; (ii) a mutual fund investing in such securities; or (iii) multiple FDIC insured bank accounts that collectively insure the entire Qualified Settlement Fund and which, if reasonably available, pay interest.

5.6. The Escrow Agent shall not disburse the Qualified Settlement Fund or any portion thereof except as provided in this Settlement Agreement, in an order of the Court, or in a subsequent written stipulation between the Parties. Subject to the orders of the Court, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of this Settlement Agreement.

5.7. The Gross Settlement Amount will be distributed from the Qualified Settlement Fund as follows: (i) all Attorneys’ Fees and Expenses shall be paid to Class Counsel as set forth in § 8.3; (ii) all Administrative Expenses not paid previously shall be paid within forty-five calendar days after the Effective Date; (iii) any Service Awards ordered by the Court shall be paid within thirty calendar days after the Effective Date; (iv) a contingency reserve shall be determined by Class Counsel and set aside by the Settlement Administrator within twenty-eight calendar days after the Effective Date for: (1) Administrative Expenses incurred before the Effective Date but not yet paid, (2) Administrative Expenses estimated to be incurred after the Effective Date but before the

end of the first full calendar year of the Settlement Period, and (3) an amount estimated for adjustments of data or calculation errors; and (v) the Net Settlement Amount shall be distributed in accordance with the Plan of Allocation. Until the final distribution of the Net Settlement Amount in accordance with the Plan of Allocation, the Escrow Agent will maintain the Qualified Settlement Fund.

5.8. The Escrow Agent, or the Settlement Administrator on its behalf, 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, Defense Counsel, and Class Counsel shall have no responsibility or liability for any taxes or tax expenses owed by, or any tax reporting or withholding obligations, if any, of the Qualified Settlement Fund.

6. DISTRIBUTION OF SETTLEMENT FUNDS TO CLASS MEMBERS

6.1. After the Settlement Effective Date, the Settlement Administrator shall cause the Net Settlement Amount to be allocated and distributed in accordance with the Plan of Allocation.

6.2. The Settlement Administrator shall be solely responsible for performing any calculations required by the Plan of Allocation.

6.3. To be eligible for a distribution from the Net Settlement Amount, a person must be a Current Participant, a Former Participant, or a Beneficiary under the Plan of a Current Participant who became entitled to all or a portion of a Current Participant's account after the date of the Preliminary Approval Order.

6.4. Current Participants with an Active Account as of the date of distribution shall receive their settlement payments as credits to their Plan account(s), as provided in § 6.11. In crediting the accounts of such Class members, the Defendants shall cause the Plan Recordkeeper (or other responsible Plan entity or service provider) to identify the credit as an "Other Credit" provided on the date of Settlement allocation and include a Plan account statement message that describes the amounts represented as "Other Credit" and credited on that date as a distribution from the settlement of *Feinberg, et al. v. T. Rowe Price Group, Inc., et al.*, Case No. 17-cv-427, in the U.S. District Court for the District of Maryland.

6.5. Former Participants and any Current Participants without an Active Account as of the date of distribution shall receive their settlement payments as provided in § 6.12 & § 6.13.

6.6. Beneficiaries under the Plan who become entitled to all or a portion of a Current Participant's account after the date of the Preliminary Approval Order (other than those such Beneficiaries who have Active Accounts as of the date of distribution, whose payments will be credited to their Plan account(s) as described in § 6.4) will receive checks as described in this § 6 in amounts corresponding to their entitlement as Beneficiaries of the Current Participant with respect to which the payment is made.

6.7. The Settlement Administrator shall complete all settlement payment calculations for all Current Participants and Former Participants within forty-five calendar days after the Settlement Effective Date.

6.8. Within five calendar days after the Settlement Administrator has completed all payment calculations for all Current Participants and Former Participants as described in § 6.7, the Settlement Administrator will provide the Plan Administrator with a spreadsheet in active Excel format containing the first name, middle name or initial (if available), and last name; last four digits of the Social Security number; and the amount of the Net Settlement Amount to be allocated to each Current Participant and Former Participant (the "Settlement Spreadsheet").

6.9. The Parties acknowledge that any payments to Class members in accordance with the Settlement Agreement or the Plan of Allocation will be governed by applicable tax laws. Further, the Parties agree to work in good faith to take reasonable steps to minimize any adverse tax consequences on Class members resulting from this Settlement Agreement. Defendants, Defense Counsel, Class Counsel, and Class Representatives will provide no tax advice to Class members and make no representation regarding the tax consequences of any of the settlement payments described in this Settlement Agreement. Neither the Released Parties, Defense Counsel, nor Class Counsel shall have any responsibility for or liability whatsoever with respect to any tax advice given to Current Participants or Former Participants. To the extent that any portion of any settlement payment is subject to income or other tax, the recipient of the payment shall be responsible for payment of such tax. Deductions will be made, and reporting will be performed by the Settlement Administrator, as required by law in respect of all payments made under the Settlement Agreement. Payments from the Qualified Settlement Fund shall not be treated as wages by the Parties.

6.10. Within fourteen calendar days of receipt of the Settlement Spreadsheet referenced in § 6.8 from the Settlement Administrator, the Plan Recordkeeper will notify the Settlement Administrator and Class Counsel of which Current Participants and Former Participants listed in the Settlement Spreadsheet have neither an Active Account as of that date nor an Active Account for a Beneficiary with respect to such individual as of that date. Simultaneously therewith, the Plan Recordkeeper will also cause to be provided to the Settlement Administrator the full Social Security number for each Class member who does not have an Active Account as of the date of the Plan Recordkeeper's receipt of the Settlement Spreadsheet referenced in § 6.8, in order to facilitate the Settlement Administrator's distribution of payments as described in §§ 6.12 and 6.13 below. In the event that an individual listed in the Settlement Spreadsheet was a Current Participant that has died since the date of the Preliminary Approval Order, and whose Beneficiaries no longer have an Active Account as of the date on which the Settlement Spreadsheet is processed, the Plan Recordkeeper will cause the Beneficiary designation for such Current Participant, along with the last known address of any Beneficiary or Beneficiaries, to be provided to the Settlement Administrator and Class Counsel. The Settlement Administrator shall treat any such Beneficiary, as well as any Current Participant that does not have an Active Account at this point, as a Former Participant under § 6.13 for purposes of distributing their share of the Net Settlement Amount.

6.11. Payments to Current Participants With Active Accounts. Payments to Current Participants with Active Accounts as of the date of the notice referenced in § 6.10 above shall be distributed as follows:

- 6.11.1 Within five calendar days after receiving from the Plan Administrator the notice referenced in § 6.10 above, the Settlement Administrator shall effect a transfer from the Qualified Settlement Fund, using wire instructions to be provided by the Plan Administrator, of the aggregate amount of all settlement payments payable to individuals other than those to be treated as Former Participants under § 6.10.
- 6.11.2 The Plan trustee will credit the individual Active Account(s) of each Current Participant with an Active Account as of the distribution date in an amount equal to that stated on the spreadsheet provided by the Settlement Administrator in relation to such Current Participant.
- 6.11.3 The settlement payment for each Current Participant with an Active Account as of the distribution date will be invested in accordance with and proportionate to such Current Participant's investment elections then on file. If there is no investment election on file for a Current Participant, then such Current Participant shall be deemed to have directed such payment to be invested in the relevant Plan "Qualified Default Investment Alternative," as defined in 29 C.F.R. § 2550.404c-5.
- 6.11.4 The Parties understand that the Plan Recordkeeper will process all credits or payments to Current Participants with Active Accounts within thirty calendar days of receiving the distribution of funds described in § 6.11.1 from the Settlement Administrator.
- 6.11.5 The Plan may be amended, to the extent necessary, to reflect the settlement allocation to Current Participants' Active Account(s) in accordance with this § 6.

6.12. Payments to Current Participants Who No Longer Have Active Account(s) as of the Date the Settlement Payments are Made. Settlement payments that cannot be credited to a Current Participant's Active Account(s) within thirty calendar days of receiving the distribution of funds described in § 6.11.1 from the Settlement Administrator, because the Current Participant no longer has an Active Account in the Plan nor an Active Account of a Beneficiary with respect to such individual, shall be returned by the Plan trustee to the Settlement Administrator for distribution pursuant to § 6.13 below within twenty calendar days.

6.13. Payments to Former Participants. Payments to Former Participants, including Current Participants who no longer have Active Accounts as described in § 6.12 above, shall be distributed as follows:

- 6.13.1 For each Former Participant, the Settlement Administrator will issue a single check from the Qualified Settlement Fund and mail the check to the address on file for such Former Participant or, in the case of ambiguity or uncertainty, to the address of such person as determined by the Settlement Administrator using commercially reasonable means. The check shall be issued as follows:

- (a) For each check issued, the Settlement Administrator shall: (i) calculate and withhold any applicable taxes associated with the payments allocable to the Former Participant; (ii) report such payments and remit such tax withholdings to the Internal Revenue Service and applicable state revenue agents; and (iii) issue appropriate tax forms to the Former Participants.
- (b) The Settlement Administrator shall advise the Former Participant that any distribution in accordance with the Settlement is rollover eligible and of their right to rollover such an amount.
- (c) Class members who are Former Participants shall receive a letter with their settlement payment stating that they alone bear responsibility for complying with any Qualified Domestic Relations Order that may apply to the payment.

6.14. The method of distribution described in this section is based upon preliminary data regarding the Class members who may be entitled to settlement payments. If the Settlement Administrator concludes that it is impracticable to implement these provisions, the method of distribution will be modified and any modification, if material, presented to the Independent Fiduciary for its review and approval.

6.15. Within fourteen calendar days of completing the steps described in §§ 6.1-6.13, the Settlement Administrator shall send to Class Counsel and Defense Counsel one or more affidavits stating the following: (a) the name of each Class member to whom the Settlement Administrator sent the Settlement Notice, and the address of such mailing; (b) the date(s) upon which the Settlement Administrator sent the Settlement Notice; (c) the name of each Class member whose Settlement Notice was returned as undeliverable; (d) the efforts made by the Settlement Administrator to find the correct address and to deliver the Settlement Notice for each such Class member; and (e) the name of each Class member to whom the Settlement Administrator made a distribution from the Net Settlement Amount, together with the amount of the distribution, the name of the payee, the date of distribution, the amount of tax withholdings, if applicable, and the date of remittance of tax withholdings to the appropriate tax authority, if applicable.

6.16. Each Class member who receives a payment under this Settlement Agreement shall be fully and ultimately responsible for payment of any and all federal, state, or local taxes resulting from or attributable to the payment received by such person. Each Class member shall hold the Released Parties, Class Counsel, and the Settlement Administrator harmless from any tax liability, including penalties and interest, related in any way to payments under the Settlement Agreement, and shall hold the Released Parties, Class Counsel, and the Settlement Administrator harmless from the costs (including, for example, attorneys' fees and disbursements) of any proceedings (including, for example, investigation and suit) related to such tax liability.

6.17. All checks issued in accordance with the Plan of Allocation shall expire no later than one hundred twenty calendar days after their issue date. All checks that are undelivered or are not cashed before their expiration date shall revert to the Qualified Settlement Fund.

6.18. No sooner than thirty calendar days following the end of the first full calendar year of the Settlement Period, any Net Settlement Amount remaining in the Qualified Settlement Fund after distributions, including costs, taxes, and interest earned on the Qualified Settlement Fund, shall be paid to the Plan and distributed by the Plan Recordkeeper across Active Accounts existing on such date on a per capita basis. In no event shall any part of the Qualified Settlement Fund be used to reimburse any Defendants or otherwise offset settlement-related costs incurred by any Defendant.

7. REQUIREMENT TO MAKE AVAILABLE A BROKERAGE WINDOW

7.1. As soon as reasonably practicable, and in no event later than six months after the Settlement Effective Date, Defendants shall cause the Plan to make available to Plan participants a Brokerage Window option for the duration of the Settlement Period, and to permit Plan participants to allocate all or a portion of their Plan balances to investments available through such Brokerage Window.

7.2. The Brokerage Window required by this § 7 shall afford Plan participants the option of investing in a wide range of pooled investment vehicles (such as mutual funds, exchange traded funds, and, if available, collective investment trusts). To the extent such a Brokerage Window product is commercially available during the Settlement Period, the Brokerage Window shall offer a wide range of investment funds in different asset classes and from different fund families, encompassing both active and passively managed strategies. Nothing in this Settlement Agreement requires Defendants to furnish to the Plan a Brokerage Window that allows participants to invest in the securities of individual companies.

7.3. Neither T. Rowe Price Group, Inc., nor its affiliates will collect account maintenance fees or other fees from Plan participants in connection with their use of the Brokerage Window option required by this § 7. To the extent Defendants cause the Plan to make available a Brokerage Window through a provider unaffiliated with T. Rowe Price Group, Inc., however, nothing in this Settlement Agreement precludes Plan participants from being charged fees by the Brokerage Window provider in connection with their use of the Brokerage Window option, provided that those fees do not exceed the fees customarily charged by the Brokerage Window provider to similarly situated plans with similar amounts of total assets. With the exception of any additional costs incurred by T. Rowe Price Retirement Plan Services, Inc., in creating or maintaining connectivity with the selected Brokerage Window provider for the plans on its recordkeeping platform, nothing in this § 7.3 shall preclude T. Rowe Price Group, Inc., from recovering from the Plan any necessary and reasonable "direct expenses" of Plan administration (as the term "direct expenses" is used in 29 C.F.R. § 2550.408b-2(e)(3)) incurred by T. Rowe Price Group, Inc., or its affiliates, in connection with offering the Brokerage Window option in the Plan.

7.4. The Brokerage Window may be removed from the Plan prior to the expiration of the Settlement Period in either of the following circumstances: (a) upon the determination by an experienced, competent, and professional independent fiduciary (appointed for this specific purpose and paid by Defendants) that there has been a change in circumstances and it would violate ERISA's duty of prudence to continue to offer such a Brokerage Window to participants under such circumstances; or (b) if Defendants reasonably conclude that there has been a change in law or regulation relating to fiduciary monitoring or reporting requirements for investment offerings available through a Brokerage Window that makes such monitoring or reporting materially more burdensome or costly than it is today. Defendants shall provide a written notification to Class

Counsel of the occurrence of one of these two events at least thirty days in advance of removal of the Brokerage Window option from the Plan.

8. ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS

8.1. Class Counsel intend to seek an award of their attorneys' fees in an amount not to exceed \$3.5 million plus all reasonable litigation costs and expenses advanced and carried by Class Counsel for the duration of this Action, both of which shall be recovered from the Gross Settlement Amount. Class Counsel believe such an award is warranted in light of the relief obtained for the Class as a result of the Action, which includes: (i) a \$7 million direct payment from Defendants; (ii) as will be further discussed in subsequent Court filings, a \$6.6 million Special Payment by T. Rowe Price Group, Inc., in 2019 to thousands of Plan participants; and (iii) the addition of the Brokerage Window as a Plan option discussed in § 7 above. Class Counsel also intend to seek Service Awards, in an amount not to exceed \$15,000 per Class Representative, which shall be recovered from the Gross Settlement Amount. For avoidance of doubt, nothing in this Settlement Agreement bars Defendants from opposing any award of Attorneys' Fees and Expenses, nor contesting the amount of such award, although Defendants agree not to contest Plaintiffs' contention that the filing of the Complaint was a catalyst for the Special Payment.

8.2. Class Counsel will file a motion for an award of Attorneys' Fees and Expenses and to seek Service Awards at least forty-five calendar days before the date of the Fairness Hearing, which may be supplemented thereafter.

8.3. The amount the Court awards to Class Counsel for Attorneys' Fees and Expenses shall be transferred to Class Counsel from the Qualified Settlement Fund within fourteen calendar days after the Settlement Effective Date (or such later time as Class Counsel shall direct).

9. RELEASES AND COVENANT NOT TO SUE

9.1. As of the Effective Date, the Plan (subject to the approval of the Independent Fiduciary, as provided for herein), the Class Representatives (and their respective heirs, beneficiaries, executors, administrators, estates, successors, assigns, agents, and attorneys), on their own behalves and on behalf of the Class, and the Class shall be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged all Released Parties and the Plan from the Released Claims, regardless of whether or not (1) Class members have filed an objection to the Settlement or to Class Counsel's application for an award of Attorneys' Fees and Expenses, (2) the objections of such Class members have been approved or allowed by the Court, and (3) they received any monetary benefit from the Settlement.

9.2. As of the Effective Date, the Class Representatives and the Class expressly agree that they, acting individually or together or in combination with others, shall not sue or seek to institute, maintain, prosecute, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a U.S. Department of Labor proceeding, an arbitration, or a proceeding before any state insurance or other department or commission), any cause of action, demand, or claim against any of the Released Parties (i) asserting any of the Released Claims or (ii) asserting that the Released Parties violated ERISA or other applicable law by causing the Plan to make available a Brokerage Window as described in § 7 above. Nothing herein shall preclude

any action to enforce the terms of this Settlement Agreement in accordance with the procedures set forth in this Settlement Agreement.

9.3. With respect to the Released Claims and the additional claims described in § 9.2 above, it is the intention of the Parties and all Class members and the Plan to expressly waive to the fullest extent of the law: (a) the provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides that “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor”; and (b) the provisions, rights, and benefits of any similar statute or common law of any other jurisdiction that may be, or may be asserted to be, applicable.

9.4. As of the Settlement Effective Date, Defendants (and their respective heirs, beneficiaries, executors, administrators, estates, successors, assigns, representatives, agents, and attorneys), shall be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged the Class Representatives and Class Counsel from any and all claims, actions, causes of action, controversies, demands, disputes, duties, debts, damages, obligations, contracts, agreements, promises, issues, judgments, liabilities, liens, losses, sums of money, matters, suits, proceedings, and rights of every nature and description, whether known or unknown, suspected or unsuspected, concealed or unconcealed, foreseen or unforeseen, fixed or contingent, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether based on federal, state, local or foreign statutory law, rule, regulation, common law or equity, that, from the beginning of time, Defendants ever had, now have, or hereafter can, shall, or may have on the basis of, connected with, or arising out of the prosecution of the Action. Notwithstanding anything to the contrary in this Settlement Agreement, nothing herein will release the Class Representatives, Class Counsel, or the Class from their obligations under this Settlement Agreement.

10. REPRESENTATIONS AND WARRANTIES

10.1. The Parties represent and warrant as follows:

- 10.1.1 The Parties are voluntarily entering into this Settlement Agreement as a result of arm’s length negotiations among their counsel, and in executing this Settlement Agreement they are relying solely upon their own judgment, belief, and knowledge, and upon the advice and recommendations of their own independently selected counsel concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof;
- 10.1.2 The Parties assume the risk of mistake as to facts or law;
- 10.1.3 The Parties recognize that additional evidence may have come to light, but that they nevertheless desire to avoid the expense and uncertainty of litigation by entering into the Settlement;
- 10.1.4 The Parties have carefully read the contents of this Settlement Agreement, and this Settlement Agreement is signed freely by each individual executing this Settlement Agreement on behalf of each of the Parties; and

10.1.5 The Parties have made such investigation of the facts pertaining to the Settlement and all matters pertaining thereto, as they deem necessary.

10.2. Each individual executing this Settlement Agreement on behalf of any other person does hereby personally represent and warrant to the other Parties that he or she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each principal which such individual represents or purports to represent.

11. TERMINATION, CONDITIONS OF SETTLEMENT, AND EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION

11.1. The Parties are obligated to attempt, in good faith, to cure any disagreements or issues with respect to this Settlement Agreement in the event of any events listed in § 11.2, including but not limited to Court ordered modifications to the Settlement.

11.2. This Settlement Agreement shall automatically terminate, and thereupon become null and void, in the following circumstances:

11.2.1 (1) Either the Independent Fiduciary does not approve the Settlement Agreement for any reason whatsoever, or the Plan Administrator reasonably concludes that the Independent Fiduciary's approval does not include the determinations necessary to satisfy PTE 2003-39; and (2) the Parties do not mutually agree either to modify the terms of this Settlement Agreement to facilitate an approval by the Independent Fiduciary or the Independent Fiduciary's determinations required by PTE 2003-39, or to proceed with implementation of the Settlement Agreement without approval by the Independent Fiduciary.

11.2.2 The Preliminary Approval Order or Final Approval Order is not entered by the Court substantially in the form submitted by Class Counsel or in a form which is otherwise agreed to by the Parties in writing;

11.2.3 The Settlement Agreement is disapproved by the Court or fails to become effective for any reason; or

11.2.4 The Preliminary Approval Order or Final Approval Order is finally reversed on appeal, or is modified on appeal and the Parties do not mutually agree to any such modifications in writing.

11.3. If the Settlement Agreement is terminated and rendered null and void for any reason, the Action shall for all purposes with respect to the Parties revert to its status as of July 22, 2021. All funds deposited in the Qualified Settlement Fund, and any returns thereon, shall be returned to Defendants within thirty calendar days after the Settlement Agreement is finally terminated or deemed null and void, except as provided for in § 11.5.

11.4. It shall not be deemed a disapproval of the Settlement Agreement within the meaning of § 11.2.3 if Class Counsel's application for Attorneys' Fees and Expenses and/or Service Awards

is denied, in whole or in part, and/or any of the proposed orders relating to Attorneys' Fees and Expenses and/or Service Awards are modified accordingly.

11.5. In the event that the Settlement Agreement is terminated, Administrative Expenses incurred prior to the termination shall be paid first from positive returns, if any, on the Qualified Settlement Fund, and then the remainder shall be paid in equal shares by Defendants and Class Counsel.

12. GENERAL PROVISIONS

12.1. The Parties agree to cooperate fully with each other in seeking Court approval of the Settlement and to do all things as may reasonably be required to effectuate such approvals and the implementation of this Settlement Agreement according to its terms (subject, in the case of Defendants, to §§ 8.1 & 12.18 of this Agreement).

12.2. Defendants shall cooperate reasonably to provide Class member contact information to the Settlement Administrator in an electronic format accessible by such vendor, to the extent the contact information exists in such a format or otherwise can be readily obtained.

12.3. Neither the Parties, Class Counsel, nor Defense Counsel shall have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Gross Settlement Amount or otherwise; (ii) the management, investment, or distribution of the Qualified Settlement Fund; (iii) the Plan of Allocation as approved by the Court; (iv) the determination, administration, calculation, or payment of any claims asserted against the Qualified Settlement Fund; (v) any losses suffered by, or fluctuations in the value of, the Qualified Settlement Fund; or (vi) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Qualified Settlement Fund or tax reporting, or the filing of any returns. Further, neither Defendants nor Defense Counsel shall have any responsibility for, or liability whatsoever with respect to, any act, omission, or determination of Class Counsel in connection with the administration of the Gross Settlement Amount or otherwise.

12.4. The Court shall retain jurisdiction over all Parties, the Action, and this Settlement Agreement to resolve any dispute that may arise regarding this Settlement Agreement or the orders and notice referenced herein, including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or termination of the Settlement Agreement, and no Party shall oppose the reopening and reinstatement of the Action on the Court's active docket for the purposes of effecting this paragraph. Any motion to enforce this Settlement Agreement may be filed in the U.S. District Court for the District of Maryland, or asserted by way of an affirmative defense or counterclaim in response to any action asserting a violation of the Settlement Agreement.

12.5. This Settlement 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 Maryland law will apply without regard to conflict of law principles.

12.6. In the event that Defendants breach this Settlement Agreement, Plaintiffs and the Class will continue to have any and all remedies for such breach. In the event that Plaintiffs breach this Settlement Agreement, Defendants will continue to have any and all remedies for such breach.

12.7. Each Party to this Settlement Agreement hereby acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Settlement Agreement and that this Settlement Agreement has been explained to the Party by his, her, or its counsel.

12.8. Except as expressly specified otherwise, the provisions of this Settlement Agreement are not severable.

12.9. Each of the Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that it will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter of this Settlement Agreement.

12.10. All of the covenants, representations, and warranties, express or implied, oral or written, concerning the subject matter of this Settlement Agreement are contained in this Settlement Agreement. No Party is relying on any oral representations or oral agreements. All such covenants, representations, and warranties set forth in this Settlement Agreement shall be deemed continuing and shall survive the Effective Date.

12.11. The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving Party. The waiver by any Party of any breach of this Settlement Agreement shall not be deemed to be or construed as a waiver of any other breach of this Settlement Agreement, whether prior, subsequent, or contemporaneous with this Settlement Agreement.

12.12. None of the Parties hereto shall be considered to be the drafter of this Settlement 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 a drafter.

12.13. The following principles of interpretation apply to this Settlement Agreement:

- 12.13.1 The headings of this Settlement Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Settlement Agreement.
- 12.13.2 Unless the context indicates otherwise, definitions apply to the singular and plural forms of each term defined, and to the masculine, feminine, and neuter genders of each term defined.
- 12.13.3 Whenever the words "include," "includes," or "including" are used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

12.14. This Settlement Agreement may be executed by exchange of faxed or emailed executed signature pages, and any signature transmitted by facsimile or email for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

12.15. This Settlement Agreement binds and inures to the benefit of the Parties, their assigns, heirs, administrators, executors, and successors-in-interest.

12.16. Any notice, demand, or other communication between or to the Parties under this Settlement Agreement (other than notices to members of the Class) shall be in writing and shall be deemed duly given if it is addressed to each of the intended recipients as set forth below and sent by email with confirmation given of the receipt of that email, except that any notice or demand by any Class member to the Parties under this Settlement Agreement need only be addressed to Class Counsel and Defense Counsel.

A. IF TO PLAINTIFFS:

J. Brian McTigue
James A. Moore
MCTIGUE LAW LLP
bmctigue@mctiguelaw.com
jmoore@mctiguelaw.com

Mary J. Bortscheller
Scott M. Lempert
COHEN MILSTEIN SELLERS & TOLL, PLLC
mbortscheller@cohenmilstein.com
slempert@cohenmilstein.com

B. IF TO DEFENDANTS:

Brian D. Boyle
O'MELVENY & MYERS LLP
bboyle@omm.com

12.17. The allocation of the Net Settlement Amount to Class members is a matter separate and apart from the proposed Settlement between the Parties. Any decision by the Court concerning the Plan of Allocation shall not affect the validity or finality of the proposed Settlement. It is not a condition of the Settlement that any particular plan of allocation be approved by the Court. Class Representatives and Class Counsel may not cancel or terminate the Settlement based on the Court's or any appellate court's ruling with respect to the Plan of Allocation or any plan of allocation in this Action. There shall be no distribution of any of the Qualified Settlement Fund to any Class member (excepting Service Awards) until an order approving a plan of allocation is Final.

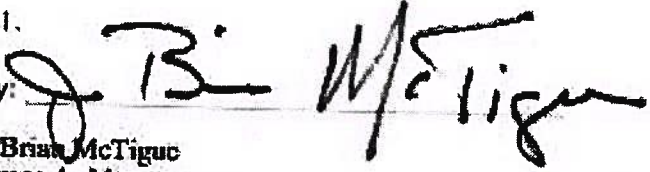
12.18. The exhibits to this Settlement Agreement represent the versions of documents Plaintiffs intend to present with the settlement approval motions they file with the Court. By agreeing to this Settlement Agreement, Defendants are not admitting to the statements contained in those exhibits, and reserve their rights to object to those statements and/or the versions of the exhibits Plaintiffs present to the Court, as well as Plaintiffs' Plan of Allocation.

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

FOR NAMED PLAINTIFFS AND THE CLASS

Dated this 16 day of December 2021.

By:


J. Brian McTigue
James A. Moore
MCTIGUE LAW LLP
bmctigue@mctiguelaw.com
jmoore@mctiguelaw.com

By:


Mary J. Bortscheller
Scott M. Lempert
COHEN MILSTEIN SELLERS & TOLL, PLLC
mbortscheller@cohenmilstein.com
slempert@cohenmilstein.com

Class Counsel

FOR ALL DEFENDANTS

Dated this the 17th day of December 2021.

By: 

Brian D. Boyle
O'MELVENY & MYERS LLP
1625 Eye Street NW
Washington, DC 20006

Attorneys for Defendants

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
BALTIMORE DIVISION

DAVID G. FEINBERG, et al., and all others
similarly situated,

Plaintiffs,

vs.

T. ROWE PRICE GROUP, INC., et al.,

Defendants.

Case No. 1:17-cv-00427-JKB

**[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT, THE FORM AND MANNER OF CLASS NOTICE,
MODIFICATION OF CLASS DEFINITION, SUBSTITUTION OF CLASS COUNSEL,
AND SCHEDULING OF A FAIRNESS HEARING**

Currently before the Court is Plaintiffs' motion for preliminary approval of class action settlement, the form and manner of class notice, modification of class definition, substitution of class counsel, and scheduling of a fairness hearing. This class action ("Action") alleges breaches of fiduciary duties and prohibited transactions in violation of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1001 *et seq.*, with respect to the T. Rowe Price U.S. Retirement Program ("Plan"). Plaintiffs allege that Defendants violated their ERISA duties through their management, operation, and administration of the Plan. Defendants deny these allegations.

The Court has considered the proposed Settlement, as well as Plaintiffs' proposed Plan of Allocation.¹ The Settlement terms are set forth in a Class Action Settlement Agreement ("Settlement Agreement") executed on _____, 2021. The Settlement terms provide the following

¹ For purposes of this Order, if not defined herein, capitalized terms have the definitions used in the Settlement Agreement, which is incorporated by reference.

relief to the Class: (i) Defendants are to pay seven million dollars to be distributed to the Class pursuant to the proposed Plan of Allocation, and (ii) Defendants will include a Brokerage Window feature in the Plan, allowing Plan participants, for the first time, to invest in non-proprietary investment funds. In addition, the initiation of the Action provided the catalyst for Defendants' Special Payment of \$6.6 million to many Class members in January 2019.

Pursuant to Plaintiffs' Motion for Preliminary Approval, and having reviewed the Settlement Agreement and the accompanying and supporting papers, it is **ORDERED** as follows:

1. **Jurisdiction:** The Court has jurisdiction over the subject matter of this Action and over all Parties, including all Class members.

2. **Class Certification:** The Court previously certified the Action as a class action with a class defined as follows:

All participants in the T. Rowe Price U.S. Retirement Program who had a balance in their plan account at any time from February 14, 2011 through the date of judgment. Any individual Defendants, any members of the T. Rowe Price Board of Directors, the Management Committee, the Management Compensation Committee, and their beneficiaries and immediate families are excluded from the class.

(Dkt. No. 83). The Action was certified under Fed. R. Civ. P. 23(b)(1) and therefore is a non-opt-out class action. The Court appointed the following Named Plaintiffs as Class Representatives: Michelle Bourque, James Collins, David G. Feinberg, Daniel Fialkoff, Thomas Henry, Jitesh Jani, Sital Jani, Daniel Newman, Farrah Qureshi, Maria Stanton, and Regina Widderich. Pursuant to Federal Rule of Civil Procedure 23(g), the Court appointed J. Brian McTigue and James Moore of McTigue Law LLP and Karen Handorf and Scott Lempert of Cohen Milstein Sellers & Toll PLLC ("CMST") as Class Counsel and Adam Farra of the latter law firm as local/liaison counsel. (Mr. Farra was subsequently replaced by Douglas J. McNamara of Cohen Milstein Sellers & Toll PLLC as local/liaison counsel).

4. **Modification of Class Definition and Substitution of Class Counsel.** The Parties have agreed and the Court so orders that, due to the practicalities of needing to have a determinate class to which to send the Class Notice, the aforementioned Class definition is modified, so that the words “through the date of judgment” are replaced with “through the date of entry of the order preliminarily approving the settlement” (i.e., this order). The Parties are also agreed that all those with a balance in the Plan during the class period, including beneficiaries, should be considered class members. Therefore the words “and beneficiaries” will be inserted after the words “All participants.” The class as defined with the modified definition is referred to herein as the “Class.” In addition, attorney Karen Handorf has withdrawn from the Action, and another partner at CMST, Mary J. Bortscheller, has appeared in the Action. The Court further modifies its previous class certification order (Dkt. No. 83) to substitute Mary J. Bortscheller for Karen Handorf.

5. Because this Action is certified as a non-opt-out class action, Class members shall be bound by any judgment concerning the Settlement in this Action.

6. **Preliminary Findings Regarding Proposed Settlement:** The Settlement is hereby PRELIMINARILY APPROVED, as the Court preliminarily finds that:

A. The proposed Settlement resulted from arm’s-length negotiations under the supervision of Magistrate Judge A. David Copperthite of this Court as well as private mediation through JAMS and its mediator Robert Meyer;

B. The Settlement Agreement was executed only after the Parties engaged in intensive litigation for over four years, including extensive fact and expert discovery, and there were numerous decisions on discovery and dispositive motions;

C. Class Counsel has concluded that the Settlement Agreement is fair, reasonable, and adequate; and

D. The Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Settlement to the Class.

7. **Fairness Hearing:** A hearing is scheduled at the United States District Court for the District of Maryland, the Honorable Judge James K. Bredar presiding, at ____ a.m./p.m. on _____, 2022, [not before 100 days after the date of this Order] (the “Fairness Hearing”) to determine, among other issues:

A. Whether the Settlement should be approved as fair, reasonable, and adequate;

B. Whether the notice, publication of the notice, and notice methodology were performed as directed by this Court;

C. Whether the motion for attorneys’ fees and expenses to be filed by Class Counsel should be approved;

D. Whether the amount of Service Awards to the Class Representatives should be approved; and

E. Whether the Administrative Expenses to administer the settlement specified in the Settlement Agreement and requested by the Parties should be approved for payment from the Gross Settlement Amount.

8. **Establishment of Qualified Settlement Fund:** A settlement fund is agreed to by the Parties in the Settlement Agreement and is hereby authorized and shall be known as the T. Rowe Price U.S. Retirement Program Litigation Settlement Fund (the “Settlement Fund” or “Gross Settlement Amount”). The Settlement Fund shall be a “qualified settlement fund” within the meaning of Treasury Regulations § 1.468-1(a) promulgated under Section 468B of the Internal Revenue Code. Upon final approval of the Settlement, the Settlement Fund shall consist of

\$7,000,000 (seven million dollars) and any return thereon. The Settlement Fund shall be administered as follows:

A. The Settlement Fund is authorized exclusively for the purposes of: (a) making distributions to Class Representatives and the Class specified in the Settlement Agreement; (b) making payments for all settlement administration and notice expenses; (c) making payments of all Attorneys' Fees and Expenses to Class Counsel as awarded by the Court in this Action; and (d) payment of applicable taxes, all in accordance with the terms of the Settlement Agreement and this Order. Other than the payment of Administrative Expenses or as otherwise expressly provided in the Settlement Agreement, no distribution shall be made from the Settlement Fund until after the Settlement Effective Date.

B. Subject to the provisions of the Settlement Agreement, Defendants shall cause \$7,000,000 to be deposited into the Settlement Fund.

C. Defendants shall have no withholding, reporting, or tax reporting responsibilities with regard to the Settlement Fund or its distribution, except as otherwise specifically identified herein. Moreover, Defendants shall have no liability, obligation, or responsibility for administration of the Settlement Fund or the disbursement of any monies from the Settlement Fund except for: (1) their obligation to cause \$7,000,000 to be deposited into the Settlement Fund; and (2) their agreement, as specifically set forth in the Settlement Agreement, to provide certain information to facilitate distribution of the Settlement proceeds by the Settlement Administrator.

D. The oversight of the Settlement Fund is the responsibility of the Settlement Administrator. The status and powers of the Settlement Administrator are as defined by this Order and in the Settlement Agreement.

E. The \$7,000,000 that Defendants will deposit into the Settlement Fund pursuant to the Settlement Agreement, and all income generated on the amount, shall be *in custodia legis* and immune from attachment, execution, assignment, hypothecation, transfer, or similar process by any person. Except as described in the Settlement Agreement, once the Settlement Effective Date occurs and the Settlement Fund vests, it is irrevocable during its term and Defendants will have divested themselves of all right, title, or interest, whether legal or equitable, in the Settlement Fund, if any; provided, however, in the event the Settlement Agreement is not approved by the Court or the Settlement Agreement is terminated or fails to become effective in accordance with its terms (or, if following Court approval, such approval is reversed or modified), the Parties shall be restored to their respective positions as of July 22, 2021; the terms and provisions of the Settlement Agreement and this Order shall be void and have no force and effect and shall not be used in this case or in any proceeding for any purpose; and the Settlement Fund and income earned thereon shall immediately be returned to Defendants, except that income may be applied to offset Administrative Expenses (as defined in the Settlement Agreement) incurred prior to such time.

F. The Settlement Administrator may make disbursements out of the Settlement Fund only in accordance with this Order or any additional Orders issued by the Court.

G. The Settlement Fund shall expire after the Settlement Administrator distributes all of the assets of the Settlement Fund in accordance with § 6 of the Settlement Agreement, provided, however, that the Settlement Fund shall not terminate until its liability for any and all government fees, fines, taxes, charges, and excises of any kind, including income taxes, and any interest, penalties, or additions to such amounts, are, in the Settlement Administrator's sole discretion, finally determined and all amounts have been paid by the Settlement Fund.

H. The Settlement Fund shall be used to make payments to Class members under the Plan of Allocation submitted by Plaintiffs. Payments to individuals outside of the Plan are subject to tax withholding as required by law and as described in the Class Notice and its attachments unless directly rolled over into a tax-sheltered account. In addition, all Class Representatives' and Named Plaintiffs' Service Awards, all Administrative Expenses, and all Attorneys' Fees and Expenses of Class Counsel shall be paid from the Settlement Fund.

I. The Court and the Settlement Administrator recognize that there will be tax payments, withholding, and reporting requirements in connection with the administration of the Settlement Fund. The Settlement Administrator shall, pursuant to the Settlement Agreement, determine, withhold, and pay over to the appropriate tax authorities any taxes due with respect to any distribution from the Settlement Fund and shall make and file with the appropriate taxing authorities any reports or returns due with respect to any distributions from the Settlement Fund. The Settlement Administrator also shall determine and pay any income taxes owing with respect to the income earned by the Settlement Fund. Additionally, the Settlement Administrator shall file returns and reports with the appropriate taxing authorities with respect to the payment and withholding of taxes.

J. The Settlement Administrator, in its discretion, may request expedited review and decision by the Internal Revenue Service or the applicable state or local taxing authorities, with regard to the correctness of the returns filed for the Settlement Fund and shall establish reserves to assure the availability of sufficient funds to meet the obligations of the Settlement Fund itself and the Settlement Administrator as fiduciaries of the Settlement Fund. Reserves may be established for taxes on the Settlement Fund income or on distributions.

K. The Settlement Administrator shall have all the necessary powers and take all necessary ministerial steps to effectuate the terms of the Settlement Agreement and Plan of Allocation, including the payment of all distributions. Such powers include investing, allocating, and distributing the Settlement Fund, and in general supervising the implementation of the Settlement Agreement and Plan of Allocation in accordance with their terms and this Order.

L. The Settlement Administrator shall keep detailed and accurate accounts of all investments, receipts, disbursements, and other transactions of the Settlement Fund. All accounts, books, and records relating to the Settlement Fund shall be open for reasonable inspection by such persons or entities as the Court orders. Included in the Settlement Administrator's records shall be complete information regarding actions taken with respect to the award of any payments to any person; the nature and status of any payment from the Settlement Fund; and other information which the Settlement Administrator considers relevant to showing that the Settlement Fund is being administered, and awards are being made, in accordance with the purposes of the Settlement Agreement, this Order, and any future orders that the Court may issue.

M. The Settlement Administrator may establish protective conditions concerning the disclosure of information it maintains if publication of such information would violate any law, including rights to privacy. Any person entitled to such information and who is denied access to the Settlement Fund's records may submit a request to the Court for such information. However, the Settlement Administrator shall supply such information to any claimant as may be reasonably necessary to allow him or her to accurately determine his or her federal, state, and local tax liabilities. Such information shall be supplied in the form and manner prescribed by relevant law.

N. This Order will bind any successor Settlement Administrator. The successor Settlement Administrator(s) shall have, without further act on the part of anyone, all the duties, powers, functions, immunities, and discretion granted to the original Settlement Administrator. Any Settlement Administrator(s) who is replaced (by reason other than death) shall execute all instruments, and do all acts, that may be necessary or that may be ordered or requested in writing by the Court or by any successor Settlement Administrator(s), to transfer administrative powers over the Settlement Fund to the successor Settlement Administrator(s). The appointment of a successor Settlement Administrator(s), if any, shall not under any circumstances require any Defendant to make any further payment of any nature into the Settlement Fund or otherwise.

9. **Class Notice:** The Parties have presented to the Court a proposed form of Class Notice, attached hereto as Exhibit ____.

A. The Court finds that the proposed form of Class Notice and website referenced therein fairly and adequately:

- i. Describe the terms and effect of the Settlement Agreement and of the Settlement;
- ii. Notify the Class concerning the proposed Plan of Allocation;
- iii. Notify the Class that Class Counsel will seek Service Awards from the Settlement Fund for the Class Representatives, and Attorneys' Fees and Expenses;
- iv. Notify the Class that Administrative Expenses related to the implementation of the Settlement will be paid from the Settlement Fund;
- v. Give notice to the Class of the time and place of the Fairness Hearing; and

vi. Describe how the recipients of the Class Notice may object to any of the relief requested and the rights of the Parties to discovery concerning such objections.

B. The Parties have proposed the following manner of communicating the notice to members of the Class, and the Court finds that such proposed manner is appropriate notice under the circumstances, and directs that the Settlement Administrator shall, by no later than sixty 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 either (i) mailed, by first-class mail, postage prepaid, to the last known address of each member of the Class it identifies, or (ii) emailed to any Class Member whose email address has been provided to the Settlement Administrator by the Plan's Recordkeeper or is otherwise known by the Settlement Administrator. The names, email addresses, last-known addresses, and Social Security numbers or other unique identifiers obtained by the Settlement Administrator pursuant to the terms of the Settlement Agreement shall be safeguarded by the Settlement Administrator and used solely for the purpose of providing notice of this Settlement and as required for purposes of tax withholding and reporting.

C. For any Class Notice returned as undeliverable (whether sent via first-class mail or email), the Settlement Administrator shall utilize information it has obtained from the Plan's Recordkeeper to attempt to determine the current address of the Class Member and shall mail notice to that address via first-class mail.

D. At or before the Fairness Hearing, Class Counsel or the Settlement Administrator shall file with the Court a proof of timely compliance with the foregoing requirements.

E. The Court directs Class Counsel, no later than sixty days before the Fairness Hearing, to publish the Class Notice on the website identified in the Class Notice.

10. **Objections to Settlement:** Any member of the Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed award of attorneys' fees and expenses, or to any request for compensation for the Class Representatives must file an Objection in the manner set out in this Order.

A. A member of the Class wishing to raise an objection to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed award of attorneys' fees and expenses, or to any request for Service Awards for the Class Representatives must do the following: (1) 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; and (2) serve copies of the objection and all supporting authorities or evidence to Class Counsel and Defense Counsel. The addresses for filing objections with the Court and for service of such objections on counsel for the Parties are as follows:

Clerk of the Court
U.S. District Court for the District of Maryland
101 W. Lombard St.
Baltimore, MD 21201

MCTIGUE LAW LLP
Attn: J. Brian McTigue
4530 Wisconsin Avenue NW
Suite 300
Washington, DC 20016

COHEN MILSTEIN SELLERS & TOLL, PLLC
Attn: Scott M. Lempert
1100 New York Avenue N.W.

Suite 500
Washington, DC 20005

O'MELVENY & MYERS LLP

Attn: Brian D. Boyle
1625 Eye Street NW
Washington, DC 20006

B. The objector or his, her, or its counsel (if any) must serve copies of the objection(s) on the attorneys listed above and file it with the Court no later than twenty-eight days before the date of the Fairness Hearing.

C. If an objector hires an attorney to represent him, her, or it for the purposes of making such objection pursuant to this paragraph, the attorney must serve a notice of appearance on the attorneys listed above and file it with the Court by no later than twenty-eight days before the date of the Fairness Hearing.

D. Failure to serve objection(s) on either the Court or the Parties' counsel shall constitute a waiver of the objection(s). Any Class member or other Person who does not timely file and serve a written objection complying with the terms of this Order shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.

E. Any Party may serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector within ten days of receipt of the objection and require that any responses to discovery or depositions be completed within ten days of the request being served on the objector.

F. Class Counsel may file a response to an objection, and serve the response on all Parties, no later than seven days before the Fairness Hearing.

11. **Appearance at Fairness Hearing:** Any objector who files and serves a timely, written objection in accordance with the terms of this Order as set out in Paragraph 10 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 speak at the Fairness Hearing must serve a notice of intention to speak 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 Class Counsel and Defense Counsel (at the addresses set out above) and file it with the Court by no later than ten days before the date of the Fairness Hearing. Any objector (or objector's attorney) who does not timely file and serve a notice of intention to speak in accordance with this paragraph shall not be permitted to speak at the Fairness Hearing.

12. **Service of Papers:** Defense Counsel and Class Counsel shall promptly furnish each other with copies of all objections that come into their possession unless such objection has already been entered on the docket.

13. **Termination of Settlement:** This Order 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 on July 22, 2021, if the Settlement is terminated in accordance with the Settlement Agreement.

14. **Use of Order:** This Order shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability or a waiver of any claims or defenses, including but not limited to those as to the propriety of any amended pleadings or the propriety and scope of class certification. This Order shall not be construed or used as an admission, concession, or declaration by or against any named plaintiff, Class Representative, or the Class that their claims lack merit, or that the relief requested in the

Class Action is inappropriate, improper, or unavailable. This Order shall not be construed or used as a waiver by any party of any arguments, defenses, or claims he, she, or it may have.

15. **Parallel Proceedings:** Pending final determination of whether the Settlement Agreement should be approved, every Class Member is prohibited and enjoined from directly, through representatives, or in any other capacity, commencing any action or proceeding in any court or tribunal asserting any of the Released Claims against Defendants, the Released Parties, or the Plan.

16. **Motion in Support of Final Settlement Approval, Application for Fee, Expense and Service Awards:** The motion in support of final approval of the Settlement and related relief shall be filed with the Court and served on all counsel of record at least forty-five calendar days prior to the Fairness Hearing. Further, any application by Class Counsel for attorneys' fees and reimbursement of litigation expenses and Service Awards for Class Representatives, and all papers in support thereof, shall be filed with the Court and served on all counsel of record at least forty-five calendar days prior to the Fairness Hearing. Copies of such materials shall be made available on the website identified in the Class Notice.

17. **Supplemental Briefs:** Any supplemental brief filed by Class Counsel regarding the Settlement shall be filed with the Court at least seven calendar days prior to the Fairness Hearing.

18. **Continuance of Hearing:** The Court may continue the Fairness Hearing in its discretion without direct notice to the Class, other than by notice to Class Counsel and Defense Counsel, and any Class member wishing to appear should check the Court's docket or call the Clerk's office three days before the scheduled date of the Fairness Hearing.

IT IS SO ORDERED.

Dated: _____, 202__

Hon. James K. Bredar
Chief United States District Judge

Exhibit B

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
BALTIMORE DIVISION

DAVID G. FEINBERG, et al., and all others
similarly situated,

Plaintiffs,

vs.

T. ROWE PRICE GROUP, INC., et al.,

Defendants.

Case No. 1:17-cv-00427-JKB

[PROPOSED] FINAL ORDER AND JUDGMENT

This ____ day of _____, 2022, upon consideration of the Plaintiffs' motion for final approval of the settlement ("Settlement") of this litigation (the "Action"), previously certified as a non-opt-out class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(1); the proposed Plan of Allocation submitted by Plaintiffs; and Plaintiffs' motion for an award of attorneys' fees and reimbursement of expenses, and for Service Awards for Class Representatives; and the Court having read and considered these motions, heard any arguments of counsel, granted preliminary approval of the Settlement by Order dated _____, 202_ (ECF No. ____) (the "Preliminary Approval Order"), and considered any objections raised; and all Parties having consented to the entry of this Order;

IT IS HEREBY ORDERED AND ADJUDGED:

1. For purposes of this Final Order and Judgment, capitalized terms have the Definitions in the Settlement Agreement, which is incorporated by reference.
2. The Court has jurisdiction over the subject matter of this Action and over all Parties, including all Class members.

3. The Court determines that Plaintiffs are asserting claims on behalf of the T. Rowe Price U.S. Retirement Program (“Plan”) pursuant to ERISA 29 U.S.C. §§ 1132(a)(2) and 1132(a)(3), to recover losses alleged to have occurred as a result of Defendants’ breaches of fiduciary duty and prohibited transactions related to the use of only proprietary funds in the Plan, and to seek other equitable relief. Defendants deny Plaintiffs’ allegations of wrongdoing and deny all liability for the claims asserted in this Action. Despite their divergent views about the ultimate merits of Plaintiffs’ claims, the Parties have mutually concluded that it is desirable that the Action be finally settled on behalf of the Class upon the terms and conditions set forth in the Settlement Agreement. The Court finds that the Settlement represents a reasonable compromise between the Parties.

4. The Court finds that the Settlement includes significant and meaningful relief to the Class, including (i) Defendants’ payment of seven million dollars to be distributed to the Class pursuant to the preliminarily approved Plan of Allocation, and (ii) the addition of a Brokerage Window feature to the Plan that will allow participants, for the first time, to invest in non-proprietary investment funds. The Court also finds that the Action provided the catalyst for Defendants’ \$6.6 million Special Payment distributed to many Class members in January 2019.

5. The Court determines that the Settlement has been negotiated vigorously and at arm’s length by and between Class Counsel and Defense Counsel under the supervision of Magistrate Judge A. David Copperthite of this Court and private JAMS mediator Robert Meyer. The Court finds that, at all times, the Class Representatives have acted independently, and that the Class Representatives and Class Counsel have fairly and adequately represented the Class in connection with the Action and the Settlement Agreement. 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.

6. The Court hereby approves and confirms the Settlement embodied in the Settlement Agreement as constituting a fair, reasonable, and adequate settlement and compromise in this Action in accordance with all applicable laws, including Federal Rule of Civil Procedure 23, and orders that the Settlement Agreement shall be effective, binding, and enforced according to its terms and conditions. The Parties are hereby directed to take the necessary steps to effectuate the terms of the Settlement Agreement.

7. In accordance with the Court's Preliminary Approval Order, notice of the Settlement was timely distributed by first-class mail or electronic mail to all Class members who could be identified with reasonable effort, and notice was published on a website maintained by Class Counsel.

8. The form and methods of notifying the Class of the terms and conditions of the proposed Settlement met the requirements of Fed. R. Civ. P. 23, any other applicable law, and due process, and constituted reasonable and appropriate notice under the circumstances; and due and sufficient notice of the fairness hearing and the rights of all Class Members have been provided to all people, powers, and entities entitled thereto.

9. In addition, the Court has reviewed the sworn declaration submitted by Defendants' counsel regarding service of notice of the Settlement as required by the Class Action Fairness Act, 28 U.S.C. §§ 1332, 1454, and 1711-1715, and based on that declaration, the Court finds that Defendants have provided due and sufficient notice to the Attorneys General for each of the states in which a Class Member resides, the Attorney General of the United States, and the United States Secretary of Labor. The Court determines that Defendants have fully complied with all requirements of the Class Action Fairness Act, 28 U.S.C. §§ 1332, 1454, and 1711-1715.

10. The Court hereby approves the maintenance of the Action as a non-opt-out class action under Federal Rules of Civil Procedure 23(a) and 23(b)(1), with the Class defined in its Preliminary Approval Order as follows:

All participants and beneficiaries in the T. Rowe Price U.S. Retirement Program who had a balance in their plan account at any time from February 14, 2011 through the date of entry of the order preliminarily approving the settlement (____, 202__). Any individual Defendants, any members of the T. Rowe Price Board of Directors, the Management Committee, the Management Compensation Committee, and their beneficiaries and immediate families are excluded from the class.

The Court has already appointed the following Named Plaintiffs as Class Representatives: Michelle Bourque, James Collins, David G. Feinberg, Daniel Fialkoff, Thomas Henry, Jitesh Jani, Sital Jani, Daniel Newman, Farrah Qureshi, Maria Stanton, and Regina Widderich. Pursuant to Federal Rule of Civil Procedure 23(g), the Court has already appointed J. Brian McTigue and James A. Moore of McTigue Law LLP and Mary J. Bortscheller and Scott M. Lempert of Cohen Milstein Sellers & Toll PLLC as Class Counsel and Douglas J. McNamara of Cohen Milstein Sellers & Toll PLLC as local/liaison counsel.

11. Class members had the opportunity to be heard on all issues regarding the resolution and release of their claims by submitting objections to the Settlement Agreement to the Court.

12. Any Objection to the Settlement is overruled with prejudice.

13. Based on the Settlement, the Court hereby dismisses the operative Complaint, all claims asserted at any point in the Action, and the Action with prejudice on the merits and without costs to any of the Parties other than as provided for in the Settlement Agreement.

14. The Court approves the releases and covenant not to sue set forth in Paragraph 9 of the Settlement Agreement, and they are incorporated herein.

15. Notwithstanding any other provision of the Settlement Agreement, the Class

Representatives and Class members shall not be deemed to have waived or released any claim by any individual Plan participant concerning his or her right to vested benefits under the Plan or to contest the correct amount of such benefit, except to the extent that such claim may relate to the Released Claims.

16. The Court expressly retains its subject matter jurisdiction over the claims and directions herein and personal jurisdiction over Class members for purposes of enforcing this Final Order and the Settlement Agreement. Any motion to enforce paragraphs 13 through 14 of this Final Order or the Settlement Agreement, including by way of injunction, may be filed in this Court, and the provisions of the Settlement Agreement and/or this Final Order may also be asserted by way of an affirmative defense or counterclaim in response to any action that is asserted to violate the Settlement Agreement.

17. Class Counsel are hereby awarded attorneys' fees in the amount of \$_____ (the "Attorneys' Fees"). The Attorneys' Fees have been determined by the Court to be fair, reasonable, and appropriate given the relief achieved for the Class and the considerable time and effort expended by Class Counsel. No other fees may be awarded to Class Counsel in connection with the Settlement Agreement. The Attorneys' Fees shall be paid to Class Counsel in accordance with the terms of the Settlement Agreement.

18. Class Counsel are hereby awarded reimbursement of expenses in the sum of \$_____ (the "Attorneys' Expenses"). The Attorneys' Expenses have been determined by the Court to be fair, reasonable, and appropriate. No other costs or expenses may be awarded to counsel in connection with the Settlement Agreement.

19. The Class Representatives are hereby awarded Service Awards in the amount of \$_____ for each Class Representative. The Service Awards have been determined by

the Court to be fair, reasonable, and appropriate. In addition to his or her Service Award, each Class Representative is also eligible for a share of the payment from the Settlement Fund as a Class member pursuant to the terms of the Plan of Allocation. Other than these payments, no other amount shall be awarded to the Class Representatives in connection with the Settlement Agreement. The Service Awards shall be paid to the Class Representatives in accordance with the terms of the Settlement Agreement.

20. Each Class member shall hold harmless Defendants, Defense Counsel, the Released Parties, and the Plan for any claims, liabilities, or attorneys' fees and expenses arising from the allocation of the Gross Settlement Amount or Net Settlement Amount, and for all tax liability and associated penalties and interest as well as related attorneys' fees and expenses.

21. The Plan of Allocation for the distribution of the Net Settlement Amount, as submitted by the Plaintiffs, is approved as fair, reasonable, and adequate.

22. The Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Class member.

23. The Court finds that the payment and distribution of the Net Settlement Amount to members of the Class is a "restorative payment" as defined in IRS Revenue Rule 2002-45.

24. Within fourteen calendar days following the issuance of all payments from the Net Settlement Fund to Class members, the Settlement Administrator shall prepare and provide to Class Counsel and Defense Counsel a list with the name of each Class member to whom the Settlement Administrator made a distribution from the Net Settlement Amount, together with the amount of the distribution.

25. Upon entry of this Order, all Class members and the Plan shall be bound by the

Settlement Agreement (including any amendments) and by this Final Order.

SO ORDERED:

DATED: _____, 2022

Hon. James K. Bredar
Chief United States District Court Judge

Exhibit C

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

DAVID G. FEINBERG, et al., and all others
similarly situated,

Plaintiffs,

vs.

Case No. 1:17-cv-00427-JKB

T. ROWE PRICE GROUP, INC., et al.,

Defendants.

NOTICE OF PROPOSED SETTLEMENT
OF CLASS ACTION LAWSUIT AND SETTLEMENT FAIRNESS HEARING

Your legal rights will be affected if you are a member of the following class of persons and the proposed Settlement is approved:

All participants and beneficiaries in the T. Rowe Price U.S. Retirement Program ("Plan") who had a balance in their Plan account at any time from February 14, 2011 through ____, 202__ (the "Class Period"). (Excluded from the class are individual Defendants, members of the T. Rowe Price Board of Directors, the Management Committee, the Management Compensation Committee, and their beneficiaries and immediate families.)

PLEASE READ THIS ENTIRE NOTICE CAREFULLY. THE COURT PROCEEDINGS DESCRIBED IN THIS NOTICE WILL AFFECT YOUR RIGHTS IF YOU ARE A MEMBER OF THE CLASS

This Notice contains summary information with respect to the Settlement of a class action lawsuit. The terms and conditions of the Settlement are set forth in the Class Action Settlement Agreement ("Settlement Agreement"). The Settlement Agreement, and additional information about the lawsuit and the Settlement, are available on the Settlement Website _____ or from Class Counsel, who are listed on page 7 below. Any amendments to the Settlement Agreement and other settlement documents will be posted on that website. You should visit that website if you would like more information about the Settlement or other matters described in this notice.

The United States District Court for the District of Maryland ("Court") has given its preliminary approval to a proposed settlement ("Settlement") of a class action lawsuit brought by certain participants in the Plan against T. Rowe Price Group, Inc., and related individuals and entities (listed below). The Court has also preliminarily approved the Plan of Allocation that specifies how the Settlement monies will be distributed to Class members. The lawsuit alleges violations of the Employee Retirement Income Security Act ("ERISA"), a federal law governing employee retirement plans such as the Plan, relating to the use of T. Rowe Price's own funds in the Plan.

The Settlement will provide the following relief to the Class: (i) Defendants' payment of seven million dollars (\$7,000,000), the net amount of which is to be distributed to the Class, and (ii) as is further discussed below, the addition of a Brokerage Window feature to the Plan that will allow participants, for the first time, to invest in a wide range of non-T. Rowe Price investment funds. The Court has also found that the initiation of the Action served as the catalyst for Defendants' payment of \$6.6 million (the "Special Payment") to many Class members in January 2019.

Your rights and options—and the deadlines to exercise them—are explained in this Settlement Notice.

The Court has not yet given its final approval to the Settlement or the Plan of Allocation. Payments under the Settlement will be made only if the Court finally approves the Settlement and that final approval is upheld in the event of any appeal.

A hearing on the final approval of the Settlement and for approval of Plaintiffs' petition for Attorneys Fees and Expenses and for the Class Representatives' Service Awards ("Fairness Hearing") will take place on _____, 2022, at _____, before Chief U.S. District Court Judge James K. Bredar at the U.S. District Court for the District of Maryland, Courtroom _____, 101 W. Lombard St., Baltimore, MD 21201. If approved, the Settlement will legally bind you as a member of the Class.

You may appear at the Fairness Hearing and/or object to the Settlement if you wish. Any objections to the Settlement, to the petition for Attorneys Fees and Expenses, or to Class Representatives' Service Awards must be served in writing on the Court and on Class Counsel and on Defendants' Counsel, as identified on pages 7-8 of this Notice. More information about the hearing and how to object is provided on pages 7-8 of this Notice.

PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE CLASS TO WHOM THIS NOTICE IS ADDRESSED AND THE SETTLEMENT IS APPROVED, THE SETTLEMENT WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT NEED TO APPEAR IN COURT, AND YOU DO NOT NEED TO HIRE AN ATTORNEY IN THIS CASE. IF YOU ARE IN FAVOR OF THE SETTLEMENT, YOU DO NOT NEED TO DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE SETTLEMENT UNDER THE PROCEDURES DESCRIBED BELOW.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:

<p>YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT</p>	<p>If the Settlement is approved by the Court and you are a member of the Class, you do not need to do anything to receive a payment.</p> <p>If you are entitled to receive a payment under the Settlement and our records indicate you have an active account in the Plan when those payments are made, the Plan's recordkeeper will allocate the payment into your Plan account in the manner you have already designated for Plan contributions without your taking further action. If you are entitled to receive a payment under the Settlement and our records indicate you do not have an active account in the Plan as of the date payments are made, your allocated amount will be paid directly to you by check (subject to tax withholding).</p>
<p>YOU CAN OBJECT (NO LATER THAN _____, 2022)</p>	<p>If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the parties to seek discovery, including the production of documents and appearance at a deposition, from any person who files an objection.</p>
<p>YOU CAN ATTEND A HEARING ON _____, 2022</p>	<p>If you submit a written objection to the Settlement to the Court, Plaintiffs' Counsel, and Defendants' Counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and Plaintiffs' and Defendants' Counsel of your intention to appear at the hearing, in person or through counsel of your own choosing and expense, by _____, 2022.</p>

SUMMARY OF THE LAWSUIT

This lawsuit is called *Feinberg, et al. v. T. Rowe Price Group, Inc., et al.*, No. 1:17-cv-427-JKB (the "Class Action"). The Court supervising the case is the United States District Court for the District of Maryland. The individuals who brought this suit are called Plaintiffs, and the individuals and entities they sued are called Defendants. The Plaintiffs are current and former participants in the Plan, and have been appointed by the Court as Class Representatives to represent the interests of the Class. The Defendants are (i) T. Rowe Price Group, Inc.; (ii) T. Rowe Price Associates, Inc.; (iii) T. Rowe Price Trust Company; (iv) the T. Rowe Price Group, Inc. Management Committee; (v) the T. Rowe Price Group, Inc. Management Compensation Committee; (vi) the T. Rowe Price Group, Inc. Board of Directors, and (vii) Preston Athey, Steve Banks, Cynthia Crocker, Celine Dufetel, Eric Gee, Michael McGonigle, Kenneth Moreland, Larry Puglia, and Meredith Stewart (each of whom served as a Trustee of the Plan). The Class Representatives' claims are described below, and additional information about their claims, including copies of the Amended Complaint and relevant Court Orders, are available at _____.

SUMMARY OF THE SETTLEMENT

The Settlement was reached on _____, 2021. For a period of more than four years after this Action was filed in 2017, the Parties vigorously litigated the case. In 2021, the Parties participated in a settlement conference before a Court-appointed mediator, U.S. Magistrate Judge A. David Copperthite of the U.S. District Court for the District of Maryland. Following negotiation and additional mediation supervised by a private mediator, the Parties were able to agree to the terms of the Settlement.

If the Settlement is approved, a Qualified Settlement Fund of \$7,000,000 will be established. The Net Settlement Amount is \$7,000,000 minus any Administrative Expenses, taxes, tax expenses, any Court-approved Attorneys Fees and Expenses, any Court-approved Class Representatives' Service Awards, and other approved expenses of the litigation. The Net Settlement Amount will be allocated to Class members according to a Plan of Allocation to be approved by the Court.

The Settlement also provides that within six months of the Settlement's effective date Defendants will add a Brokerage Window feature to the Plan, as further discussed below.

STATEMENT OF ATTORNEYS FEES AND EXPENSES SOUGHT IN THE CLASS ACTION

Since 2017, Class Counsel have devoted many hours to this Class Action, including investigating potential claims, drafting pleadings, motion practice, taking depositions of defendants and their experts, defending depositions of the Class Representatives and their experts, reviewing over 110,000 pages of documents produced by Defendants, and negotiating the proposed settlement. Class Counsel took the risk of litigation and have not been paid for any of their time or for any of their expenses incurred in bringing and litigating this lawsuit for almost five years.

Class Counsel will apply to the Court for payment of Attorneys Fees and Expenses for their work in the lawsuit. The amount of attorneys fees that Class Counsel will request will not exceed \$3.5 million, and Class Counsel estimate their expenses of pursuing this action at \$_____. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund; interest, if any, will be added to the amount paid to the Class. Any Attorneys Fees and Expenses awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund.

As is customary in class action cases in which the Class Representatives have volunteered to spend time and effort on the litigation to represent the Class, Class Counsel will also ask the Court to approve Service Awards not to exceed \$15,000 for each of the eleven Class Representatives who took on the risk of litigation, possible career repercussions, and committed to spend the time necessary to bring the case to conclusion. Their activities included assisting in the factual investigation of the case by searching for and producing documents, attending the settlement conference, providing answers to written questions, and being deposed by defense counsel. Any Class Representatives' Service Awards approved by the Court will be paid from the Qualified Settlement Fund.

A full application for Attorneys Fees and Expenses and for Class Representatives' Service Awards will be filed with the Court and made available on the Settlement Website, _____.

1. Why Did I Receive This Settlement Notice?

The Court caused this Settlement Notice to be sent to you because the Plan's records indicate that you may be a Class member. If you fall within the definition of the Class, you have a right to know about the Settlement and about the options available to you before the Court decides whether to finally approve the Settlement.

2. What Is This Class Action Lawsuit About?

This lawsuit began in February 2017 when the first complaint was filed against Defendants. The Class Representatives assert claims on behalf of the Plan's participants and their beneficiaries. They allege that, during the Class Period (February 14, 2011 through _____, 202 [date of entry of preliminary approval order]), Defendants violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1001 et seq., with respect to their management, operation, and administration of the Plan. The Class Representatives alleged that Defendants were fiduciaries of the Plan and they breached fiduciary duties under federal pension law owed to the Plan's participants by, among other things, offering in the Plan solely T. Rowe Price proprietary funds whose fees were paid to T. Rowe Price at the expense of Plan participants. The Class Representatives allege that Defendants did this despite knowing that in many cases there were non-proprietary funds with lower fees and better performance. The Class Representatives also allege that Defendants engaged in self-dealing transactions prohibited by ERISA by causing T. Rowe Price, a party-in-interest with respect to the Plan, to collect fees on the proprietary funds offered in the Plan.

Defendants have vigorously denied and continue to deny the allegations, claims, and contentions of the Class Representatives, deny that they are liable at all to the Class, and deny that the Class or the Plan have suffered any harm or damage for which Defendants could or should be held responsible. Defendants maintain that the Plan has been managed, operated, and administered at all relevant times in full compliance with ERISA, and that statutory and regulatory exemptions under ERISA specifically permitted T. Rowe Price investment options to be offered in the Plan. In addition, Defendants maintain that the Plan's participants have benefitted economically from the Plan's use of T. Rowe Price investment options,

with the Plan's investment options collectively accruing more than half a billion dollars in returns ahead of their benchmark objectives during the Class Period.

Following the denial of Defendants' motion to dismiss, the merits of the lawsuit began to be litigated in 2018. This began with the discovery (i.e. fact-finding) phase of the litigation, which included Class Counsel's review of over a hundred thousand pages of documents produced by Defendants, Class Counsel's taking ten depositions of fact witnesses, Defense Counsel's depositions of six of the Class Representatives, submission of three expert reports by each side, and depositions of each side's three experts. Subsequently, each side prepared voluminous summary judgment motions in the hope of resolving the case in their favor prior to trial. Each motion was accompanied by more than 200 exhibits. On February 10, 2021, the Court denied in large part the Parties' motions for summary judgment. However, the Court indicated that on the record before it at that time, it believed it "likely" that a fact-finder would find facts favorable to Defendants' position.

A trial date of September 13, 2021 was set by the Court. The trial was subsequently postponed in light of the Parties' agreement on a Settlement.

3. Why Is There a Settlement?

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defense Counsel that began in April 2021, with a Settlement Conference supervised by U.S. Magistrate Judge A. David Copperthite, and continued through December of that year. The Parties have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. Class Counsel, who are highly experienced in such matters, believe that the Settlement is best for all Class members. Without a settlement, there would be a substantial risk that, after trial, the Class would receive nothing at all. Settling now also avoids the cost of trial.

4. What Does the Settlement Provide?

The Settlement provides two forms of relief: (i) a payment by Defendants of \$7,000,000 and (ii) a requirement that Defendants offer a Brokerage Window feature in the Plan that will allow Plan participants, for the first time, to invest in a wide range of non-T. Rowe Price funds. In addition, as a result of the lawsuit, Defendants paid \$6.6 million to over 5,000 Class members in January 2019 (the "Special Payment") who were in the Plan and employed by T. Rowe Price on the last day of one or more of the years 2011-2013. Plaintiffs have estimated that if that \$6.6 million remained invested it would have appreciated in value, as of [date of entry of preliminary approval order], to approximately _____.

Under the Settlement, Defendants are to deposit \$7,000,000 into an escrow account (the "Escrow Account"). The Net Settlement Amount (the amount remaining after payment of Court-approved attorneys fees and expenses, Court-approved Class Representative Service Awards, and administrative expenses associated with the Settlement), will be allocated to 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.

Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing Plan accounts. Former Participants who are entitled to a distribution will receive it via check, and will alone bear responsibility for complying with any Qualified Domestic Relations Order that may apply to the payment.

Under the Settlement, Defendants are also required to begin offering the Brokerage Window feature within six months of the Settlement's effective date. Since its inception, only T. Rowe Price funds have been offered in the Plan. The Brokerage Window will allow Plan participants, for the first time, to invest in a wide range of non-T. Rowe Price investment funds, including mutual funds and exchange traded funds, offered by other fund families. Defendants will be required to offer this new feature for at least ten years unless there is a change in circumstances that makes continuing to offer the Brokerage Window imprudent or materially more burdensome.

All Class members and anyone claiming through them will fully release what are referred to as the "Released Parties" from the "Released Claims." The Released Parties include (i) T. Rowe Price Group, Inc.; (ii) T. Rowe Price Associates, Inc.; (iii) T. Rowe Price Trust Company; (iv) the T. Rowe Price Group, Inc. Management Committee; (v) the T. Rowe Price Group, Inc. Management Compensation Committee; (vi) the T. Rowe Price Group, Inc. Board of Directors; (vii) past and present Plan Trustees Preston Athey, Steve Banks, Celine Dufetel, Eric Gee, Michael McGonigle, Kenneth Moreland, Larry Puglia, and Meredith Stewart; and (viii) the Plan's fiduciaries, administrators, recordkeepers, service providers, consultants, and

other parties-in-interest. The full list of Released Parties is found in the Settlement Agreement, which can be accessed at _____.

The Released Claims include claims that were asserted in the lawsuit, or that are based on or related to the allegations, facts, or occurrences asserted in the lawsuit. The Released Claims also specifically include all claims that relate to or challenge the selection, monitoring, or retention of the Plan's investment options; fees, costs, or expenses charged to, paid by, or reimbursed by the Plan in connection with its investments; investment advice relating to the Plan; and/or the formulation or allocation of the Administrative Budget Contribution or Special Payment referenced in the Settlement Agreement; as well as all claims relating to the implementation of the Settlement. This is only a summary of the Released Claims; the full governing release is found in the Settlement Agreement which can be accessed at _____. **Generally, the release means that Class members will not have the right to sue Defendants, the Plan, or the Released Parties for conduct arising out of or relating to the allegations in the lawsuit.**

This is only a summary of the Settlement. The entire Settlement Agreement is available on the Settlement Website _____.

5. How Much Will My Distribution Be?

Under the proposed Plan of Allocation (which is subject to the Court's approval) all Class members will receive a minimum \$20 payment from the Settlement Fund.

The remaining amount, if any, that will be allocated to you will be based upon the Plan records showing your balances in any of the 39 funds Plaintiffs allege underperformed (henceforth the "Challenged Funds") at the end of each calendar quarter during the Class Period, and on the date of Preliminary Approval. The amount you receive will depend upon the amount you invested in the Challenged Funds and over how long a period you invested in them – the more you invested and the greater the time period, the more you will be allocated. (If you were one of the Class members who received a distribution of the 2019 Special Payment, that may reduce the amount you receive as further described below. Plaintiffs have included this provision because they believe it makes the distribution fairer and to account for the fact that no attorneys fees or case expenses were deducted from the Special Payment; fees and expenses have only been deducted from the settlement amount.) Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

Simplifying for the sake of clarity, the Plan of Allocation will allocate the remainder of the Net Settlement Amount (after \$20 is allocated to each Class member) as follows:

1. The quarterly balances of Class members who invested in the Challenged Funds during the Class Period will be identified for each calendar quarter from the quarter ending March 31, 2011 through the quarter ending _____, 202_ [will be determined by date of preliminary approval order], as well as for the date of the preliminary approval order;
2. For each Class member, the Settlement Administrator will determine the participant's total balance in the Challenged Funds over all quarters of the Class Period;
3. The Settlement Administrator will add together the participants' quarterly balances in the Challenged Funds to get the "Aggregate Challenged Funds Balance" for all Class members;
4. Each Class member will have their total balance for the Challenged Funds divided by the Aggregate Challenged Funds Balance for all Class members, and multiplied by the Net Settlement Amount (after \$20 is allocated to each Class member) to calculate the Class member's award related to their investment in the Challenged Funds;
5. Any portion of the January 2019 Special Payment, referenced above, that a Class member received will be deducted from any portion of the award calculated in ¶4 that is attributable to investments held from 2011-2013. (This offset is

¹ The "Challenged Funds" are: Balanced, Corporate Income, Emerging Europe, Emerging Markets Bond, Emerging Markets Stock, Equity Income, Equity Index Trust-C, Extended Equity Market Index, GNMA, Global Infrastructure, Global Real Estate, Global Technology, Growth Stock, Growth and Income, High Yield, Inflation Protected Bond, International Discovery, International Stock, International Value Equity, Mid-Cap Value, Overseas Stock, Real Estate, Science and Technology, Short-Term Bond, Spectrum Growth, Spectrum Moderate Allocation, Summit Cash Reserves Fund, Summit GNMA, Total Equity Market Index, U.S. Treasury Long-Term, Value, U.S. Treasury Money Fund, Dynamic Global Bond, Emerging Markets Discovery Stock, Emerging Markets Local Currency Bond, Floating Rate, Institutional Frontier Markets Equity, Institutional Global Value Equity, International Disciplined Equity, and Real Assets.

limited to investments in 2011-2013 because the Special Payment was paid to participants who were employed by T. Rowe Price on the last day of one or more of the years 2011-2013.)² The amounts deducted will be allocated to Class members who did not receive the Special Payment in proportion to their investments in the Challenged Funds.

The full details of the allocation method are described in the Plan of Allocation available at _____.

6. How Do I Receive My Distribution if I Have An Active Account in the Plan?

If you are entitled to receive a payment under the Settlement and our records indicate you have an active account in the Plan when those payments are made, your distribution will be automatically allocated to your Plan account in the manner you have already designated for Plan contributions without your taking further action.

7. How Do I Receive My Distribution if I Do Not Have an Active Account in the Plan?

If you are entitled to receive a payment under the Settlement and our records indicate you do not have an active account in the Plan as the date payments are made, you will receive your allocated amount by a check sent to you (subject to tax withholding).

8. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the timing of the Court's final approval of the Settlement and that approval becoming final and no longer subject to any appeals. If there is an appeal of the final approval order and judgment, it may take several years for that appeal to be fully resolved. If the Court approves the Settlement, and there are no appeals, the Settlement distribution likely will occur in mid-2022 for Class members with active Plan accounts at the time the payment is paid, and a few months later for Class members without active Plan accounts at that time.

There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.

9. Can I Choose Not to Be Part of the Settlement?

No. The lawsuit was certified as a class action under Federal Rule of Civil Procedure 23(b)(1), which does not permit Class members to opt out. Therefore, as a Class member, you are bound by any judgments or orders that are entered for all claims that were asserted or are otherwise included as Released Claims under the Settlement.

10. Do I Have a Lawyer in the Lawsuit?

The Court has appointed J. Brian McTigue and James Moore of the law firm McTigue Law LLP and Mary J. Bortscheller and Scott M. Lempert of the law firm Cohen Milstein Sellers & Toll PLLC as Class Counsel to represent the interests of the Class in the lawsuit. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How Will the Lawyers Be Paid?

Class Counsel have pursued this Action on a contingent basis and will file with the Court a motion for an award of attorneys fees and expenses. This motion will be considered at the Fairness Hearing. Class Counsel have agreed to limit their application for an award of attorneys fees to no more than \$3.5 million, plus their expenses of pursuing this Action (which Class Counsel currently estimate at \$ _____). Class Counsel believe that such an award of attorney fees and expenses is fair and reasonable in light of the total financial benefits to the Class achieved by Class Counsel in this case. The Court will determine what attorneys fees and expenses will be approved.

12. How Do I Tell the Court If I Don't Like the Settlement?

² Payments analogous to the Special Payment, which Defendants refer to as an Administrative Budget Contribution, have been made to the Plan on an annual basis since 2014. The Special Payment was intended by Defendants to retroactively put the Plan in the same economic position as if the Administrative Budget Contribution had been made in 2011-2013 as well. Further information regarding this issue can be found in the Court's February 10, 2021 Memorandum Opinion on the parties' motions for summary judgment, which is available on the Settlement Website _____.

If you are a Class member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Feinberg, et al. v. T. Rowe Price Group, Inc., et al.*, No. 1:17-cv-427-JKB. Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court **no later than** _____, 202___. The Court's address is Clerk of the Court, U.S. District Court for the District of Maryland, 101 W. Lombard St., Baltimore, MD 21201. Your written objection must also be mailed to the lawyers listed below, **no later than** _____, 202___. Please note that the Court's Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

CLASS COUNSEL	DEFENDANTS' COUNSEL
<p>J. Brian McTigue MCTIGUE LAW LLP 4530 Wisconsin Ave., NW, Suite 300 Washington, DC 20016 Fax: (202) 364-9960</p> <p>Scott M. Lempert COHEN MILSTEIN SELLERS & TOLL, PLLC 1100 New York Ave., NW, Suite 500 West Washington, DC 20005 Fax: (202) 408-4699</p>	<p>Brian D. Boyle O'MELVENY & MYERS LLP 1625 Eye Street NW Washington, DC 20006</p>

13. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Fairness Hearing at _____ on _____, 202__, at the U.S. District Court for the District of Maryland, Courtroom ____, 101 W. Lombard St., Baltimore, MD.

At the Fairness 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 give its final approval to the Settlement. The Court also will consider the requests for Class Counsel's Attorneys Fees and Expenses and the Class Representatives' Service Awards.

14. Do I Have to Attend the Fairness Hearing?

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

15. May I Speak at The Fairness Hearing?

If you are a Class member, you may 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 *Feinberg, et al. v. T. Rowe Price Group, Inc., et al.*, No. 1:17-cv-427-JKB." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to Class Counsel and Defendants' Counsel and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 12 above, **no later than** _____, 202__.

16. What Happens If I Do Nothing at All?

If you are a member of the Class as defined on page 1, and you do *nothing*, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved, and your right to bring any Released Claims will be foreclosed.

17. How Do I Get More Information?

If you have general questions regarding the Settlement, you can visit this website: _____, call 1-888-____-____, or write to the Settlement Administrator at:

In re T. Rowe Price 401(k) Plan
Litigation

c/o _____

Exhibit 2

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
BALTIMORE DIVISION

DAVID G. FEINBERG, et al., and all
others similarly situated,

Plaintiffs,

vs.

T. ROWE PRICE GROUP, INC., et al.,

Defendants.

Case No. 1:17-cv-00427-JKB

PLAN OF ALLOCATION

This *Plan of Allocation*¹ describes how the *Net Settlement Amount* is to be allocated to *Class* members.

The first step in the *Plan of Allocation* is to allocate \$20 to each *Class* member.

Next, the remainder of the *Net Settlement Amount* after making this payment will be allocated pro rata based on quarterly balances during the *Class Period* in the 39 *Challenged Funds*, all of which were offered in the T. Rowe Price Retirement Program (“*Plan*”) during the *Class Period*, which runs from February 14, 2011 through _____ [will be determined by the date the preliminary approval order is entered (assuming one is)].²

¹ The capitalized italicized terms in this *Plan of Allocation* have the same meaning as in the *Settlement Agreement*, or, if not defined there, have the meaning ascribed to them here.

² For purposes of the *Plan of Allocation*, the first two months of the *Class Period* are treated as a full quarter because *Class* member balances are available for March 31, 2011 and treating the data as of March 31, 2011 as representing a full quarter in the *Class Period* simplifies and streamlines administration and implementation of the *Plan of Allocation*. The last quarter of the *Class Period* is _____ [to be determined].

The pro rata allocation of the remainder of the *Net Settlement Amount* will then be reduced for those *Class* members who previously received a distribution of the 2019 *Special Payment*. Specifically, for any portion of a *Class* member's pro rata allocation attributable to their investments from 2011-2013, the amount of any distribution they received from the *Special Payment* will be subtracted. The sum of the offset amounts will be allocated pro rata in proportion to investments in the *Challenged Funds* but only to *Class* members who did not receive the *Special Payment*.

To be eligible for a distribution from the *Net Settlement Amount*, a *Class* member must be a *Current Participant*, a *Former Participant*, or a *Beneficiary* of such a person.

A *Beneficiary* will receive their payment as described in this *Plan of Allocation* in an amount corresponding to their entitlement as a *Beneficiary* of a *Current Participant* or of a *Former Participant* with respect to which the payment is made.

Allocation Method

Part One – Allocate the \$20 Minimum

- (a) Allocate \$20 to each *Class* member from the *Net Settlement Amount*. The remainder is the *Remaining Net Settlement Amount*.

Part Two – Determine Preliminary Allocations Relating to Investments in the Challenged Funds

- (b) Determine each *Challenged Fund Class* member quarterly balance for each of the *Challenged Funds* and for each *Class* member at the close of each quarter of the *Class Period* from the reasonably available data provided by *Defendants*.
- (c) Determine each individual *Class* member's total balance in all *Challenged Funds* at the close of each quarter of the *Class Period* by adding together balances for all *Challenged Funds* for a single quarter for each *Class* member from (b) above.
- (d) Determine each individual *Class* member's *Challenged Funds* aggregate balance by adding together all of the quarters in the *Class Period* for each *Class* member from (c) above.

- (e) Determine the aggregate *Challenged Funds* balance for all *Class* members by adding together each single *Class* member *Challenged Funds* aggregate balance from (d) above.
- (f) Determine each *Preliminary Class Member Allocation* by dividing each single *Class* member *Challenged Funds* aggregate balance by the aggregate *Challenged Funds* balance for all *Class* members, and multiply the result by the *Remaining Net Settlement Amount* (((d)/(e)) x *Remaining Net SA*)).

Part Three – Apply the *Special Payment* Offset to the Preliminary Allocations

- (g) Subtract from the portion of each *Preliminary Class Member Allocation* deriving from investments that *Class* member held in 2011, 2012, or 2013 all amounts that the *Class* member received from the *Special Payment* (any negative amount should be changed to zero). The *Preliminary Class Member Allocation* for each *Class* member partially offset in this fashion is the *Preliminary Adjusted Class Member Allocation*.
- (h) Subtract the aggregate of the *Preliminary Adjusted Class Member Allocations* for all *Class* members from the *Remaining Net Settlement Amount*. This is the *Total Special Payment Offset*.

Part Four – Determine the Final Allocation

- (i) Determine the *Final Class Member Allocation* for each *Class* member by adding to the *Preliminary Adjusted Class Member Allocation* for each *Class* member (1) the \$20 payment specified in (a), and (2) allocating pro rata the *Total Special Payment Offset* only to those *Class* members who did not receive the *Special Payment* using the same method specified in (f) that was used for allocating pro rata the *Remaining Net Settlement Amount*.

Neither *Defendants* nor *Defense Counsel* shall have any responsibility for or liability whatsoever with respect to the *Plan of Allocation*, including, but not limited to, the determination of the *Plan of Allocation* or the reasonableness of the *Plan of Allocation*.

Exhibit 3

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
BALTIMORE DIVISION

DAVID G. FEINBERG, et al., and all others
similarly situated,

Plaintiffs,

vs.

T. ROWE PRICE GROUP, INC., et al.,

Defendants.

Case No. 1:17-cv-00427-JKB

**[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT, THE FORM AND MANNER OF CLASS NOTICE,
MODIFICATION OF CLASS DEFINITION, SUBSTITUTION OF CLASS COUNSEL,
AND SCHEDULING OF A FAIRNESS HEARING**

Currently before the Court is Plaintiffs’ motion for preliminary approval of class action settlement, the form and manner of class notice, modification of class definition, substitution of class counsel, and scheduling of a fairness hearing. This class action (“Action”) alleges breaches of fiduciary duties and prohibited transactions in violation of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1001 *et seq.*, with respect to the T. Rowe Price U.S. Retirement Program (“Plan”). Plaintiffs allege that Defendants violated their ERISA duties through their management, operation, and administration of the Plan. Defendants deny these allegations.

The Court has considered the proposed Settlement, as well as Plaintiffs’ proposed Plan of Allocation.¹ The Settlement terms are set forth in a Class Action Settlement Agreement (“Settlement Agreement”) agreed to on December 16, 2021. The Settlement terms provide the

¹ For purposes of this Order, if not defined herein, capitalized terms have the definitions used in the Settlement Agreement, which is incorporated by reference.

following relief to the Class: (i) Defendants are to pay seven million dollars to be distributed to the Class pursuant to the proposed Plan of Allocation, and (ii) Defendants will include a Brokerage Window feature in the Plan, allowing Plan participants, for the first time, to invest in non-proprietary investment funds. In addition, the initiation of the Action provided the catalyst for Defendants' Special Payment of \$6.6 million distributed to many Class members in January 2019.

Pursuant to Plaintiffs' Motion for Preliminary Approval, and having reviewed the Settlement Agreement and the accompanying and supporting papers, it is **ORDERED** as follows:

1. **Jurisdiction:** The Court has jurisdiction over the subject matter of this Action and over all Parties, including all Class members.

2. **Class Certification:** The Court previously certified the Action as a class action with a class defined as follows:

All participants in the T. Rowe Price U.S. Retirement Program who had a balance in their plan account at any time from February 14, 2011 through the date of judgment. Any individual Defendants, any members of the T. Rowe Price Board of Directors, the Management Committee, the Management Compensation Committee, and their beneficiaries and immediate families are excluded from the class.

(Dkt. No. 83). The Action was certified under Fed. R. Civ. P. 23(b)(1) and therefore is a non-opt-out class action. The Court appointed the following Named Plaintiffs as Class Representatives: Michelle Bourque, James Collins, David G. Feinberg, Daniel Fialkoff, Thomas Henry, Jitesh Jani, Sital Jani, Daniel Newman, Farrah Qureshi, Maria Stanton, and Regina Widderich. Pursuant to Federal Rule of Civil Procedure 23(g), the Court appointed J. Brian McTigue and James Moore of McTigue Law LLP and Karen Handorf and Scott Lempert of Cohen Milstein Sellers & Toll PLLC ("CMST") as Class Counsel and Adam Farra of the latter law firm as local/liaison counsel. (Mr. Farra was subsequently replaced by Douglas J. McNamara of Cohen Milstein Sellers & Toll PLLC as local/liaison counsel).

4. **Modification of Class Definition and Substitution of Class Counsel.** The Parties have agreed and the Court so orders that, due to the practicalities of needing to have a determinate class to which to send the Class Notice, the aforementioned class definition is modified, so that the words “through the date of judgment” are replaced with “through the date of entry of the order preliminarily approving the settlement” (i.e., this order). The Parties are also agreed that all those with a balance in the Plan during the Class Period, including beneficiaries, should be considered class members. Therefore the words “and beneficiaries” will be inserted after the words “All participants.” The class as defined with the modified definition is referred to herein as the “Class.” In addition, attorney Karen Handorf has withdrawn from the Action, and another partner at CMST, Mary J. Bortscheller, has appeared in the Action. The Court further modifies its previous class certification order (Dkt. No. 83) to substitute Mary J. Bortscheller for Karen Handorf.

5. Because this Action is certified as a non-opt-out class action, Class members shall be bound by any judgment concerning the Settlement in this Action.

6. **Preliminary Findings Regarding Proposed Settlement:** The Settlement is hereby PRELIMINARILY APPROVED, as the Court preliminarily finds that:

A. The proposed Settlement resulted from arm’s-length negotiations under the supervision of Magistrate Judge A. David Copperthite of this Court as well as private mediation through JAMS and its mediator Robert Meyer;

B. The Settlement Agreement was executed only after the Parties engaged in intensive litigation for over four years, including extensive fact and expert discovery, and there were numerous decisions on discovery and dispositive motions;

C. Class Counsel has concluded that the Settlement Agreement is fair, reasonable, and adequate; and

D. The Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Settlement to the Class.

7. **Fairness Hearing:** A hearing is scheduled at the United States District Court for the District of Maryland, the Honorable Judge James K. Bredar presiding, at ____ a.m./p.m. on _____, 2022, [**not before 100 days after the date of this Order**] (the “Fairness Hearing”) to determine, among other issues:

A. Whether the Settlement should be approved as fair, reasonable, and adequate;

B. Whether the notice, publication of the notice, and notice methodology were performed as directed by this Court;

C. Whether the motion for attorneys’ fees and expenses to be filed by Class Counsel should be approved;

D. Whether the amount of Service Awards to the Class Representatives should be approved; and

E. Whether the Administrative Expenses to administer the settlement specified in the Settlement Agreement and requested by the Parties should be approved for payment from the Gross Settlement Amount.

8. **Establishment of Qualified Settlement Fund:** A settlement fund is agreed to by the Parties in the Settlement Agreement and is hereby authorized and shall be known as the T. Rowe Price U.S. Retirement Program Litigation Settlement Fund (the “Settlement Fund” or “Gross Settlement Amount”). The Settlement Fund shall be a “qualified settlement fund” within the meaning of Treasury Regulations § 1.468-1(a) promulgated under Section 468B of the Internal Revenue Code. Upon final approval of the Settlement, the Settlement Fund shall consist of

\$7,000,000 (seven million dollars) and any return thereon. The Settlement Fund shall be administered as follows:

A. The Settlement Fund is authorized exclusively for the purposes of: (a) making distributions to Class Representatives and the Class specified in the Settlement Agreement; (b) making payments for all settlement administration and notice expenses; (c) making payments of all Attorneys' Fees and Expenses to Class Counsel as awarded by the Court in this Action; and (d) payment of applicable taxes, all in accordance with the terms of the Settlement Agreement and this Order. Other than the payment of Administrative Expenses or as otherwise expressly provided in the Settlement Agreement, no distribution shall be made from the Settlement Fund until after the Settlement Effective Date.

B. Subject to the provisions of the Settlement Agreement, Defendants shall cause \$7,000,000 to be deposited into the Settlement Fund.

C. Defendants shall have no withholding, reporting, or tax reporting responsibilities with regard to the Settlement Fund or its distribution, except as otherwise specifically identified herein. Moreover, Defendants shall have no liability, obligation, or responsibility for administration of the Settlement Fund or the disbursement of any monies from the Settlement Fund except for: (1) their obligation to cause \$7,000,000 to be deposited into the Settlement Fund; and (2) their agreement, as specifically set forth in the Settlement Agreement, to provide certain information to facilitate distribution of the Settlement proceeds by the Settlement Administrator.

D. The oversight of the Settlement Fund is the responsibility of the Settlement Administrator. The status and powers of the Settlement Administrator are as defined by this Order and in the Settlement Agreement.

E. The \$7,000,000 that Defendants will deposit into the Settlement Fund pursuant to the Settlement Agreement, and all income generated on the amount, shall be *in custodia legis* and immune from attachment, execution, assignment, hypothecation, transfer, or similar process by any person. Except as described in the Settlement Agreement, once the Settlement Effective Date occurs and the Settlement Fund vests, it is irrevocable during its term and Defendants will have divested themselves of all right, title, or interest, whether legal or equitable, in the Settlement Fund, if any; provided, however, in the event the Settlement Agreement is not approved by the Court or the Settlement Agreement is terminated or fails to become effective in accordance with its terms (or, if following Court approval, such approval is reversed or modified), the Parties shall be restored to their respective positions as of July 22, 2021; the terms and provisions of the Settlement Agreement and this Order shall be void and have no force and effect and shall not be used in this case or in any proceeding for any purpose; and the Settlement Fund and income earned thereon shall immediately be returned to Defendants, except that income may be applied to offset Administrative Expenses (as defined in the Settlement Agreement) incurred prior to such time.

F. The Settlement Administrator may make disbursements out of the Settlement Fund only in accordance with this Order or any additional Orders issued by the Court.

G. The Settlement Fund shall expire after the Settlement Administrator distributes all of the assets of the Settlement Fund in accordance with § 6 of the Settlement Agreement, provided, however, that the Settlement Fund shall not terminate until its liability for any and all government fees, fines, taxes, charges, and excises of any kind, including income taxes, and any interest, penalties, or additions to such amounts, are, in the Settlement Administrator's sole discretion, finally determined and all amounts have been paid by the Settlement Fund.

H. The Settlement Fund shall be used to make payments to Class members under the Plan of Allocation submitted by Plaintiffs. Payments to individuals outside of the Plan are subject to tax withholding as required by law and as described in the Class Notice and its attachments unless directly rolled over into a tax-sheltered account. In addition, all Class Representatives' and Named Plaintiffs' Service Awards, all Administrative Expenses, and all Attorneys' Fees and Expenses of Class Counsel shall be paid from the Settlement Fund.

I. The Court and the Settlement Administrator recognize that there will be tax payments, withholding, and reporting requirements in connection with the administration of the Settlement Fund. The Settlement Administrator shall, pursuant to the Settlement Agreement, determine, withhold, and pay over to the appropriate tax authorities any taxes due with respect to any distribution from the Settlement Fund and shall make and file with the appropriate taxing authorities any reports or returns due with respect to any distributions from the Settlement Fund. The Settlement Administrator also shall determine and pay any income taxes owing with respect to the income earned by the Settlement Fund. Additionally, the Settlement Administrator shall file returns and reports with the appropriate taxing authorities with respect to the payment and withholding of taxes.

J. The Settlement Administrator, in its discretion, may request expedited review and decision by the Internal Revenue Service or the applicable state or local taxing authorities, with regard to the correctness of the returns filed for the Settlement Fund and shall establish reserves to assure the availability of sufficient funds to meet the obligations of the Settlement Fund itself and the Settlement Administrator as fiduciaries of the Settlement Fund. Reserves may be established for taxes on the Settlement Fund income or on distributions.

K. The Settlement Administrator shall have all the necessary powers and take all necessary ministerial steps to effectuate the terms of the Settlement Agreement and Plan of Allocation, including the payment of all distributions. Such powers include investing, allocating, and distributing the Settlement Fund, and in general supervising the implementation of the Settlement Agreement and Plan of Allocation in accordance with their terms and this Order.

L. The Settlement Administrator shall keep detailed and accurate accounts of all investments, receipts, disbursements, and other transactions of the Settlement Fund. All accounts, books, and records relating to the Settlement Fund shall be open for reasonable inspection by such persons or entities as the Court orders. Included in the Settlement Administrator's records shall be complete information regarding actions taken with respect to the award of any payments to any person; the nature and status of any payment from the Settlement Fund; and other information which the Settlement Administrator considers relevant to showing that the Settlement Fund is being administered, and awards are being made, in accordance with the purposes of the Settlement Agreement, this Order, and any future orders that the Court may issue.

M. The Settlement Administrator may establish protective conditions concerning the disclosure of information it maintains if publication of such information would violate any law, including rights to privacy. Any person entitled to such information and who is denied access to the Settlement Fund's records may submit a request to the Court for such information. However, the Settlement Administrator shall supply such information to any claimant as may be reasonably necessary to allow him or her to accurately determine his or her federal, state, and local tax liabilities. Such information shall be supplied in the form and manner prescribed by relevant law.

N. This Order will bind any successor Settlement Administrator. The successor Settlement Administrator(s) shall have, without further act on the part of anyone, all the duties, powers, functions, immunities, and discretion granted to the original Settlement Administrator. Any Settlement Administrator(s) who is replaced (by reason other than death) shall execute all instruments, and do all acts, that may be necessary or that may be ordered or requested in writing by the Court or by any successor Settlement Administrator(s), to transfer administrative powers over the Settlement Fund to the successor Settlement Administrator(s). The appointment of a successor Settlement Administrator(s), if any, shall not under any circumstances require any Defendant to make any further payment of any nature into the Settlement Fund or otherwise.

9. **Class Notice:** The Parties have presented to the Court a proposed form of Class Notice, attached hereto as Exhibit ____.

A. The Court finds that the proposed form of Class Notice and website referenced therein fairly and adequately:

- i. Describe the terms and effect of the Settlement Agreement and of the Settlement;
- ii. Notify the Class concerning the proposed Plan of Allocation;
- iii. Notify the Class that Class Counsel will seek Service Awards from the Settlement Fund for the Class Representatives, and Attorneys' Fees and Expenses;
- iv. Notify the Class that Administrative Expenses related to the implementation of the Settlement will be paid from the Settlement Fund;
- v. Give notice to the Class of the time and place of the Fairness Hearing; and

vi. Describe how the recipients of the Class Notice may object to any of the relief requested and the rights of the Parties to discovery concerning such objections.

B. The Parties have proposed the following manner of communicating the notice to members of the Class, and the Court finds that such proposed manner is appropriate notice under the circumstances, and directs that the Settlement Administrator shall, by no later than sixty 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 either (i) mailed, by first-class mail, postage prepaid, to the last known address of each member of the Class it identifies, or (ii) emailed to any Class member whose email address has been provided to the Settlement Administrator by the Plan's Recordkeeper or is otherwise known by the Settlement Administrator. The names, email addresses, last-known addresses, and Social Security numbers or other unique identifiers obtained by the Settlement Administrator pursuant to the terms of the Settlement Agreement shall be safeguarded by the Settlement Administrator and used solely for the purpose of providing notice of this Settlement and as required for purposes of tax withholding and reporting.

C. For any Class Notice returned as undeliverable (whether sent via first-class mail or email), the Settlement Administrator shall utilize information it has obtained from the Plan's Recordkeeper to attempt to determine the current address of the Class Member and shall mail notice to that address via first-class mail.

D. At or before the Fairness Hearing, Class Counsel or the Settlement Administrator shall file with the Court a proof of timely compliance with the foregoing requirements.

E. The Court directs Class Counsel, no later than sixty days before the Fairness Hearing, to publish the Class Notice on the website identified in the Class Notice.

10. **Objections to Settlement:** Any member of the Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed award of attorneys' fees and expenses, or to any request for compensation for the Class Representatives must file an Objection in the manner set out in this Order.

A. A member of the Class wishing to raise an objection to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed award of attorneys' fees and expenses, or to any request for Service Awards for the Class Representatives must do the following: (1) 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; and (2) serve copies of the objection and all supporting authorities or evidence to Class Counsel and Defense Counsel. The addresses for filing objections with the Court and for service of such objections on counsel for the Parties are as follows:

Clerk of the Court
U.S. District Court for the District of Maryland
101 W. Lombard St.
Baltimore, MD 21201

MCTIGUE LAW LLP
Attn: J. Brian McTigue
4530 Wisconsin Avenue NW
Suite 300
Washington, DC 20016

COHEN MILSTEIN SELLERS & TOLL, PLLC
Attn: Mary J. Bortscheller
1100 New York Avenue N.W.

Suite 500 West
Washington, DC 20005

O'MELVENY & MYERS LLP

Attn: Brian D. Boyle
1625 Eye Street NW
Washington, DC 20006

B. The objector or his, her, or its counsel (if any) must serve copies of the objection(s) on the attorneys listed above and file it with the Court no later than twenty-eight days before the date of the Fairness Hearing.

C. If an objector hires an attorney to represent him, her, or it for the purposes of making such objection pursuant to this paragraph, the attorney must serve a notice of appearance on the attorneys listed above and file it with the Court by no later than twenty-eight days before the date of the Fairness Hearing.

D. Failure to serve objection(s) on either the Court or the Parties' counsel shall constitute a waiver of the objection(s). Any Class member or other Person who does not timely file and serve a written objection complying with the terms of this Order shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.

E. Any Party may serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector within ten days of receipt of the objection and require that any responses to discovery or depositions be completed within ten days of the request being served on the objector.

F. Class Counsel may file a response to an objection, and serve the response on all Parties, no later than seven days before the Fairness Hearing.

11. **Appearance at Fairness Hearing:** Any objector who files and serves a timely, written objection in accordance with the terms of this Order as set out in Paragraph 10 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 speak at the Fairness Hearing must serve a notice of intention to speak 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 Class Counsel and Defense Counsel (at the addresses set out above) and file it with the Court by no later than ten days before the date of the Fairness Hearing. Any objector (or objector's attorney) who does not timely file and serve a notice of intention to speak in accordance with this paragraph shall not be permitted to speak at the Fairness Hearing.

12. **Service of Papers:** Defense Counsel and Class Counsel shall promptly furnish each other with copies of all objections that come into their possession unless such objection has already been entered on the docket.

13. **Termination of Settlement:** This Order 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 on July 22, 2021, if the Settlement is terminated in accordance with the Settlement Agreement.

14. **Use of Order:** This Order shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability or a waiver of any claims or defenses, including but not limited to those as to the propriety of any amended pleadings or the propriety and scope of class certification. This Order shall not be construed or used as an admission, concession, or declaration by or against any named plaintiff, Class Representative, or the Class that their claims lack merit, or that the relief requested in the

Class Action is inappropriate, improper, or unavailable. This Order shall not be construed or used as a waiver by any party of any arguments, defenses, or claims he, she, or it may have.

15. **Parallel Proceedings:** Pending final determination of whether the Settlement Agreement should be approved, every Class Member is prohibited and enjoined from directly, through representatives, or in any other capacity, commencing any action or proceeding in any court or tribunal asserting any of the Released Claims against Defendants, the Released Parties, or the Plan.

16. **Motion in Support of Final Settlement Approval, Application for Fee, Expense and Service Awards:** The motion in support of final approval of the Settlement and related relief shall be filed with the Court and served on all counsel of record at least forty-five calendar days prior to the Fairness Hearing. Further, any application by Class Counsel for attorneys' fees and reimbursement of litigation expenses and Service Awards for Class Representatives, and all papers in support thereof, shall be filed with the Court and served on all counsel of record at least forty-five calendar days prior to the Fairness Hearing. Copies of such materials shall be made available on the website identified in the Class Notice.

17. **Supplemental Briefs:** Any supplemental brief filed by Class Counsel regarding the Settlement shall be filed with the Court at least seven calendar days prior to the Fairness Hearing.

18. **Continuance of Hearing:** The Court may continue the Fairness Hearing in its discretion without direct notice to the Class, other than by notice to Class Counsel and Defense Counsel, and any Class member wishing to appear should check the Court's docket or call the Clerk's office three days before the scheduled date of the Fairness Hearing.

IT IS SO ORDERED.

Dated: _____, 2022

Hon. James K. Bredar
Chief United States District Judge

Exhibit 4

DAVID G. FEINBERG, et al., and all others
similarly situated,

Plaintiffs,

vs.

T. ROWE PRICE GROUP, INC., et al.,

Defendants.

Case No. 1:17-cv-00427-JKB

NOTICE OF PROPOSED SETTLEMENT
OF CLASS ACTION LAWSUIT AND SETTLEMENT FAIRNESS HEARING

Your legal rights will be affected if you are a member of the following class of persons and the proposed Settlement is approved:

All participants and beneficiaries in the T. Rowe Price U.S. Retirement Program (“Plan”) who had a balance in their Plan account at any time from February 14, 2011 through ____, 2022 (the “Class Period”). (Excluded from the class are individual Defendants, members of the T. Rowe Price Board of Directors, the Management Committee, the Management Compensation Committee, and their beneficiaries and immediate families.)

PLEASE READ THIS ENTIRE NOTICE CAREFULLY. THE COURT PROCEEDINGS DESCRIBED IN THIS NOTICE WILL AFFECT YOUR RIGHTS IF YOU ARE A MEMBER OF THE CLASS

This Notice contains summary information with respect to the Settlement of a class action lawsuit. The terms and conditions of the Settlement are set forth in the Class Action Settlement Agreement (“Settlement Agreement”). The Settlement Agreement, and additional information about the lawsuit and the Settlement, are available on the Settlement Website [www._____](http://www._____.com) or from Class Counsel, who are listed on page 7 below. Any amendments to the Settlement Agreement and other settlement documents will be posted on that website. You should visit that website if you would like more information about the Settlement or other matters described in this notice.

The United States District Court for the District of Maryland (“Court”) has given its preliminary approval to a proposed settlement (“Settlement”) of a class action lawsuit brought by certain participants in the Plan against T. Rowe Price Group, Inc., and related individuals and entities (listed below). The Court has also preliminarily approved the Plan of Allocation that specifies how the Settlement monies will be distributed to Class members. The lawsuit alleges violations of the Employee Retirement Income Security Act (“ERISA”), a federal law governing employee retirement plans such as the Plan, relating to the use of T. Rowe Price’s own funds in the Plan.

The Settlement will provide the following relief to the Class: (i) Defendants’ payment of seven million dollars (\$7,000,000), the net amount of which is to be distributed to the Class, and (ii) as is further discussed below, the addition of a Brokerage Window feature to the Plan that will allow participants, for the first time, to invest in a wide range of non-T. Rowe Price investment funds. The Court has also found that the initiation of the Action served as the catalyst for Defendants’ payment of \$6.6 million (the “Special Payment”) to many Class members in January 2019.

Your rights and options—and the deadlines to exercise them—are explained in this Settlement Notice.

The Court has not yet given its final approval to the Settlement or the Plan of Allocation. Payments under the Settlement will be made only if the Court finally approves the Settlement and that final approval is upheld in the event of any appeal.

A hearing on the final approval of the Settlement and for approval of Plaintiffs’ petition for Attorneys Fees and Expenses and for the Class Representatives’ Service Awards (“Fairness Hearing”) will take place on ____, 2022, at ____, before Chief U.S. District Court Judge James K. Bredar at the U.S. District Court for the District of Maryland, Courtroom ____, 101 W. Lombard St., Baltimore, MD 21201. If approved, the Settlement will legally bind you as a member of the Class.

You may appear at the Fairness Hearing and/or object to the Settlement if you wish. Any objections to the Settlement, to the petition for Attorneys Fees and Expenses, or to Class Representatives' Service Awards must be served in writing on the Court and on Class Counsel and on Defendants' Counsel, as identified on page 7 of this Notice. More information about the hearing and how to object is provided on page 7 of this Notice.

PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE CLASS TO WHOM THIS NOTICE IS ADDRESSED AND THE SETTLEMENT IS APPROVED, THE SETTLEMENT WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT NEED TO APPEAR IN COURT, AND YOU DO NOT NEED TO HIRE AN ATTORNEY IN THIS CASE. IF YOU ARE IN FAVOR OF THE SETTLEMENT, YOU DO NOT NEED TO DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE SETTLEMENT UNDER THE PROCEDURES DESCRIBED BELOW.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:	
YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT	<p>If the Settlement is approved by the Court and you are a member of the Class, you do not need to do anything to receive a payment.</p> <p>If you are entitled to receive a payment under the Settlement and our records indicate you have an active account in the Plan when those payments are made, the Plan's recordkeeper will allocate the payment into your Plan account in the manner you have already designated for Plan contributions without your taking further action. If you are entitled to receive a payment under the Settlement and our records indicate you do not have an active account in the Plan as of the date payments are made, your allocated amount will be paid directly to you by check (subject to tax withholding).</p>
YOU CAN OBJECT (NO LATER THAN _____, 2022)	<p>If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the parties to seek discovery, including the production of documents and appearance at a deposition, from any person who files an objection.</p>
YOU CAN ATTEND A HEARING ON _____, 2022	<p>If you submit a written objection to the Settlement to the Court, Plaintiffs' Counsel, and Defendants' Counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and Plaintiffs' and Defendants' Counsel of your intention to appear at the hearing, in person or through counsel of your own choosing and expense, by _____, 2022.</p>

SUMMARY OF THE LAWSUIT

This lawsuit is called *Feinberg, et al. v. T. Rowe Price Group, Inc., et al.*, No. 1:17-cv-427-JKB (the "Class Action"). The Court supervising the case is the United States District Court for the District of Maryland. The individuals who brought this suit are called Plaintiffs, and the individuals and entities they sued are called Defendants. The Plaintiffs are current and former participants in the Plan, and have been appointed by the Court as Class Representatives to represent the interests of the Class. The Defendants are (i) T. Rowe Price Group, Inc.; (ii) T. Rowe Price Associates, Inc.; (iii) T. Rowe Price Trust Company; (iv) the T. Rowe Price Group, Inc. Management Committee; (v) the T. Rowe Price Group, Inc. Management Compensation Committee; (vi) the T. Rowe Price Group, Inc. Board of Directors, and (vii) Preston Athey, Steve Banks, Cynthia Crocker, Celine Dufetel, Eric Gee, Michael McGonigle, Kenneth Moreland, Larry Puglia, and Meredith Stewart (each of whom served as a Trustee of the Plan). The Class Representatives' claims are described below, and additional information about their claims, including copies of the Amended Complaint and relevant Court Orders, are available at www._____.

SUMMARY OF THE SETTLEMENT

The Settlement was reached on December 16, 2021. For a period of more than four years after this Action was filed in 2017, the Parties vigorously litigated the case. In 2021, the Parties participated in a settlement conference before a Court-appointed mediator, U.S. Magistrate Judge A. David Copperthite of the U.S. District Court for the District of Maryland. Following negotiation and additional mediation supervised by a private mediator, the Parties were able to agree to the terms of the Settlement.

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If the Settlement is approved, a Qualified Settlement Fund of \$7,000,000 will be established. The Net Settlement Amount is \$7,000,000 minus any Administrative Expenses, taxes, tax expenses, any Court-approved Attorneys Fees and Expenses, any Court-approved Class Representatives' Service Awards, and other approved expenses of the litigation. The Net Settlement Amount will be allocated to Class members according to a Plan of Allocation to be approved by the Court.

The Settlement also provides that within six months of the Settlement's effective date Defendants will add a Brokerage Window feature to the Plan, as further discussed below.

STATEMENT OF ATTORNEYS FEES AND EXPENSES SOUGHT IN THE CLASS ACTION

Since 2017, Class Counsel have devoted many hours to this Class Action, including investigating potential claims, drafting pleadings, motion practice, taking depositions of defendants and their experts, defending depositions of the Class Representatives and their experts, reviewing over 110,000 pages of documents produced by Defendants, and negotiating the proposed settlement. Class Counsel took the risk of litigation and have not been paid for any of their time or for any of their expenses incurred in bringing and litigating this lawsuit for almost five years.

Class Counsel will apply to the Court for payment of Attorneys Fees and reimbursement of Expenses for their work in the lawsuit. The amount of attorneys fees that Class Counsel will request will not exceed \$3.5 million, and Class Counsel estimate their request for reimbursement of expenses of pursuing this action will be approximately \$565,000. (Much of the expenses constitute payments for the work of the three testifying experts who were crucial to Plaintiffs' case). Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund; interest, if any, will be added to the amount paid to the Class. Any Attorneys Fees and Expenses awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund.

As is customary in class action cases in which the Class Representatives have volunteered to spend time and effort on the litigation to represent the Class, Class Counsel will also ask the Court to approve Service Awards not to exceed \$15,000 for each of the eleven Class Representatives who took on the risk of litigation, possible career repercussions, and committed to spend the time necessary to bring the case to conclusion. Their activities included assisting in the factual investigation of the case by searching for and producing documents, attending the settlement conference, providing answers to written questions, and being deposed by defense counsel. Any Class Representatives' Service Awards approved by the Court will be paid from the Qualified Settlement Fund.

A full application for Attorneys Fees and Expenses and for Class Representatives' Service Awards will be filed with the Court and made available on the Settlement Website, www._____.

1. Why Did I Receive This Settlement Notice?

The Court caused this Settlement Notice to be sent to you because the Plan's records indicate that you may be a Class member. If you fall within the definition of the Class, you have a right to know about the Settlement and about the options available to you before the Court decides whether to finally approve the Settlement.

2. What Is This Class Action Lawsuit About?

This lawsuit began in February 2017 when the first complaint was filed against Defendants. The Class Representatives assert claims on behalf of the Plan's participants and their beneficiaries. They allege that, during the Class Period (February 14, 2011 through _____, 2022[date of entry of preliminary approval order]), Defendants violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1001 et seq., with respect to their management, operation, and administration of the Plan. The Class Representatives alleged that Defendants were fiduciaries of the Plan and they breached fiduciary duties under federal pension law owed to the Plan's participants by, among other things, offering in the Plan solely T. Rowe Price proprietary funds whose fees were paid to T. Rowe Price at the expense of Plan participants. The Class Representatives allege that Defendants did this despite knowing that in many cases there were non-proprietary funds with lower fees and better performance. The Class Representatives also allege that Defendants engaged in self-dealing transactions prohibited by ERISA by causing T. Rowe Price, a party-in-interest with respect to the Plan, to collect fees on the proprietary funds offered in the Plan.

Defendants have vigorously denied and continue to deny the allegations, claims, and contentions of the Class Representatives, deny that they are liable at all to the Class, and deny that the Class or the Plan have suffered any harm or damage for which Defendants could or should be held responsible. Defendants maintain that the Plan has been managed, operated, and administered at all relevant times in full compliance with ERISA, and that statutory and regulatory exemptions

under ERISA specifically permitted T. Rowe Price investment options to be offered in the Plan. In addition, Defendants maintain that the Plan's participants have benefitted economically from the Plan's use of T. Rowe Price investment options, with the Plan's investment options collectively accruing more than half a billion dollars in returns ahead of their benchmark objectives during the Class Period.

Following the denial of Defendants' motion to dismiss, the merits of the lawsuit began to be litigated in 2018. This began with the discovery (i.e. fact-finding) phase of the litigation, which included Class Counsel's review of over a hundred thousand pages of documents produced by Defendants, Class Counsel's taking ten depositions of fact witnesses, Defense Counsel's depositions of six of the Class Representatives, submission of three expert reports by each side, and depositions of each side's three experts. Subsequently, each side prepared voluminous summary judgment motions in the hope of resolving the case in their favor prior to trial. Each motion was accompanied by more than 200 exhibits. On February 10, 2021, the Court denied in large part the Parties' motions for summary judgment. However, the Court indicated that on the record before it at that time, it believed it "likely" that a fact-finder would find facts favorable to Defendants' position.

A trial date of September 13, 2021 was set by the Court. The trial was subsequently postponed in light of the Parties' agreement on a Settlement.

3. Why Is There a Settlement?

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defense Counsel that began in April 2021, with a Settlement Conference supervised by U.S. Magistrate Judge A. David Copperthite, and continued through December of that year. The Parties have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. Class Counsel, who are highly experienced in such matters, believe that the Settlement is best for all Class members. Without a settlement, there would be a substantial risk that, after trial, the Class would receive nothing at all. Settling now also avoids the cost of trial.

4. What Does the Settlement Provide?

The Settlement provides two forms of relief: (i) a payment by Defendants of \$7,000,000 and (ii) a requirement that Defendants offer a Brokerage Window feature in the Plan that will allow Plan participants, for the first time, to invest in a wide range of non-T. Rowe Price funds. In addition, as a result of the lawsuit, Defendants paid \$6.6 million to over 5,000 Class members in January 2019 (the "Special Payment") who were in the Plan and employed by T. Rowe Price on the last day of one or more of the years 2011-2013. Plaintiffs have estimated that if that \$6.6 million remained invested in the Plan it would have appreciated in value, as of June 30, 2021 (the last date for which Plaintiffs have relevant data), to over \$11,000,000. (This estimate is based upon the assumption that the funds would earn the same overall return as the Plan as a whole did.)

Under the Settlement, Defendants are to deposit \$7,000,000 into an escrow account (the "Escrow Account"). The Net Settlement Amount (the amount remaining after payment of Court-approved attorneys fees and expenses, Court-approved Class Representative Service Awards, and administrative expenses associated with the Settlement), will be allocated to 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.

Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing Plan accounts. Former Participants who are entitled to a distribution will receive it via check, and will alone bear responsibility for complying with any Qualified Domestic Relations Order that may apply to the payment.

Under the Settlement, Defendants are also required to begin offering the Brokerage Window feature within six months of the Settlement's effective date. Since its inception, only T. Rowe Price funds have been offered in the Plan. The Brokerage Window will allow Plan participants, for the first time, to invest in a wide range of non-T. Rowe Price investment funds, including mutual funds and exchange traded funds, offered by other fund families. Defendants will be required to offer this new feature for at least ten years unless there is a change in circumstances that makes continuing to offer the Brokerage Window imprudent or materially more burdensome.

All Class members and anyone claiming through them will fully release what are referred to as the "Released Parties" from the "Released Claims." The Released Parties include (i) T. Rowe Price Group, Inc.; (ii) T. Rowe Price Associates, Inc.; (iii) T. Rowe Price Trust Company; (iv) the T. Rowe Price Group, Inc. Management Committee; (v) the T. Rowe Price Group,

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Inc. Management Compensation Committee; (vi) the T. Rowe Price Group, Inc. Board of Directors; (vii) past and present Plan Trustees Preston Athey, Steve Banks, Celine Dufetel, Eric Gee, Michael McGonigle, Kenneth Moreland, Larry Puglia, and Meredith Stewart; and (viii) the Plan's fiduciaries, administrators, recordkeepers, service providers, consultants, and other parties-in-interest. The full list of Released Parties is found in the Settlement Agreement, which can be accessed at www._____.

The Released Claims include claims that were asserted in the lawsuit, or that are based on or related to the allegations, facts, or occurrences asserted in the lawsuit. The Released Claims also specifically include all claims that relate to or challenge the selection, monitoring, or retention of the Plan's investment options; fees, costs, or expenses charged to, paid by, or reimbursed by the Plan in connection with its investments; investment advice relating to the Plan; and/or the formulation or allocation of the Administrative Budget Contribution or Special Payment referenced in the Settlement Agreement; as well as all claims relating to the implementation of the Settlement. This is only a summary of the Released Claims; the full governing release is found in the Settlement Agreement which can be accessed at www._____. **Generally, the release means that Class members will not have the right to sue Defendants, the Plan, or the Released Parties for conduct** arising out of or relating to the allegations in the lawsuit.

This is only a summary of the Settlement. The entire Settlement Agreement is available on the Settlement Website www._____.

5. How Much Will My Distribution Be?

Under the proposed Plan of Allocation (which is subject to the Court's approval) all Class members will receive a minimum \$20 payment from the Settlement Fund.

The remaining amount, if any, that will be allocated to you will be based upon the Plan records showing your balances in any of the 39 funds Plaintiffs allege underperformed (henceforth the "Challenged Funds"¹) at the end of each calendar quarter during the Class Period, and on the date of Preliminary Approval. The amount you receive will depend upon the amount you invested in the Challenged Funds and over how long a period you invested in them – the more you invested and the greater the time period, the more you will be allocated. (If you were one of the Class members who received a distribution of the 2019 Special Payment, that may reduce the amount you receive as further described below. Plaintiffs have included this provision because they believe it makes the distribution fairer and to account for the fact that no attorneys fees or case expenses were deducted from the Special Payment; fees and expenses have only been deducted from the settlement amount.) Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

Simplifying for the sake of clarity, the Plan of Allocation will allocate the remainder of the Net Settlement Amount (after \$20 is allocated to each Class member) as follows:

1. The quarterly balances of Class members who invested in the Challenged Funds during the Class Period will be identified for each calendar quarter from the quarter ending March 31, 2011 through the quarter ending _____, 202_[will be determined by date of preliminary approval order], as well as for the date of the preliminary approval order;
2. For each Class member, the Settlement Administrator will determine the participant's total balance in the Challenged Funds over all quarters of the Class Period;
3. The Settlement Administrator will add together the participants' quarterly balances in the Challenged Funds to get the "Aggregate Challenged Funds Balance" for all Class members;

¹ The "Challenged Funds" are: Balanced, Corporate Income, Emerging Europe, Emerging Markets Bond, Emerging Markets Stock, Equity Income, Equity Index Trust-C, Extended Equity Market Index, GNMA, Global Infrastructure, Global Real Estate, Global Technology, Growth Stock, Growth and Income, High Yield, Inflation Protected Bond, International Discovery, International Stock, International Value Equity, Mid-Cap Value, Overseas Stock, Real Estate, Science and Technology, Short-Term Bond, Spectrum Growth, Spectrum Moderate Allocation, Summit Cash Reserves Fund, Summit GNMA, Total Equity Market Index, U.S. Treasury Long-Term, Value, U.S. Treasury Money Fund, Dynamic Global Bond, Emerging Markets Discovery Stock, Emerging Markets Local Currency Bond, Floating Rate, Institutional Frontier Markets Equity, Institutional Global Value Equity, International Disciplined Equity, and Real Assets.

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- Each Class member will have their total balance for the Challenged Funds divided by the Aggregate Challenged Funds Balance for all Class members, and multiplied by the Net Settlement Amount (after \$20 is allocated to each Class member) to calculate the Class member's award related to their investment in the Challenged Funds;
 - Any portion of the January 2019 Special Payment, referenced above, that a Class member received will be deducted from any portion of the award calculated in ¶4 that is attributable to investments held from 2011-2013. (This offset is limited to investments in 2011-2013 because the Special Payment was paid to participants who were employed by T. Rowe Price on the last day of one or more of the years 2011-2013.)² The amounts deducted will be allocated to Class members who did not receive the Special Payment in proportion to their investments in the Challenged Funds.

The full details of the allocation method are described in the Plan of Allocation available at www._____.

6. How Do I Receive My Distribution if I Have An Active Account in the Plan?

If you are entitled to receive a payment under the Settlement and our records indicate you have an active account in the Plan when those payments are made, your distribution will be automatically allocated to your Plan account in the manner you have already designated for Plan contributions without your taking further action.

7. How Do I Receive My Distribution if I Do Not Have an Active Account in the Plan?

If you are entitled to receive a payment under the Settlement and our records indicate you do not have an active account in the Plan as the date payments are made, you will receive your allocated amount by a check sent to you (subject to tax withholding).

8. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the timing of the Court's final approval of the Settlement and that approval becoming final and no longer subject to any appeals. If there is an appeal of the final approval order and judgment, it may take several years for that appeal to be fully resolved. If the Court approves the Settlement, and there are no appeals, the Settlement distribution likely will occur in mid-2022 for Class members with active Plan accounts at the time the payment is paid, and a few months later for Class members without active Plan accounts at that time.

There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.

9. Can I Choose Not to Be Part of the Settlement?

No. The lawsuit was certified as a class action under Federal Rule of Civil Procedure 23(b)(1), which does not permit Class members to opt out. Therefore, as a Class member, you are bound by any judgments or orders that are entered for all claims that were asserted or are otherwise included as Released Claims under the Settlement.

10. Do I Have a Lawyer in the Lawsuit?

The Court has appointed J. Brian McTigue and James Moore of the law firm McTigue Law LLP and Mary J. Bortscheller and Scott M. Lempert of the law firm Cohen Milstein Sellers & Toll PLLC as Class Counsel to represent the interests of the Class in the lawsuit. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How Will the Lawyers Be Paid?

Class Counsel have pursued this Action on a contingent basis and will file with the Court a motion for an award of attorneys fees and reimbursement of expenses. This motion will be considered at the Fairness Hearing. Class Counsel have agreed to limit their application for an award of attorneys fees to no more than \$3.5 million, plus their expenses of pursuing this Action (which Class Counsel currently estimate to be approximately \$565,000). Class Counsel believe that such an award of

² Payments analogous to the Special Payment, which Defendants refer to as an Administrative Budget Contribution, have been made to the Plan on an annual basis since 2014. The Special Payment was intended by Defendants to retroactively put the Plan in the same economic position as if the Administrative Budget Contribution had been made in 2011-2013 as well. Further information regarding this issue can be found in the Court's February 10, 2021 Memorandum Opinion on the parties' motions for summary judgment, which is available on the Settlement Website www._____.

12. How Do I Tell the Court If I Don't Like the Settlement?

If you are a Class member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Feinberg, et al. v. T. Rowe Price Group, Inc., et al.*, No. 1:17-cv-427-JKB. Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court **no later than _____, 2022**. The Court's address is Clerk of the Court, U.S. District Court for the District of Maryland, 101 W. Lombard St., Baltimore, MD 21201. Your written objection must also be mailed to the lawyers listed below, **no later than _____, 2022**. Please note that the Court's Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

CLASS COUNSEL	DEFENDANTS' COUNSEL
<p>J. Brian McTigue MCTIGUE LAW LLP 4530 Wisconsin Ave., NW, Suite 300 Washington, DC 20016 Fax: (202) 364-9960</p> <p>Mary J. Bortscheller COHEN MILSTEIN SELLERS & TOLL, PLLC 1100 New York Ave., NW, Suite 500 West Washington, DC 20005 Fax: (202) 408-4699</p>	<p>Brian D. Boyle O'MELVENY & MYERS LLP 1625 Eye Street NW Washington, DC 20006</p>

13. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Fairness Hearing at _____ on _____, 2022, at the U.S. District Court for the District of Maryland, Courtroom ____, 101 W. Lombard St., Baltimore, MD.

At the Fairness 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 give its final approval to the Settlement. The Court also will consider the requests for Class Counsel's Attorneys Fees and Expenses and the Class Representatives' Service Awards.

14. Do I Have to Attend the Fairness Hearing?

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

15. May I Speak at The Fairness Hearing?

If you are a Class member, you may 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 *Feinberg, et al. v. T. Rowe Price Group, Inc., et al.*, No. 1:17-cv-427-JKB." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to Class Counsel and Defendants' Counsel and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 12 above, **no later than _____, 2022**.

16. What Happens If I Do Nothing at All?

If you are a member of the Class as defined on page 1, and you do *nothing*, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved, and your right to bring any Released Claims will be foreclosed.

17. How Do I Get More Information?

If you have general questions regarding the Settlement, you can visit this website: www._____, call 1-888-____-____, or write to the Settlement Administrator at:

In re T. Rowe Price 401(k) Plan
Litigation
c/o _____

Exhibit 5



Mary J. Bortscheller, Partner

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Practice Areas

- Employee Benefits/ERISA

Admissions

- District of Columbia
- Illinois
- Minnesota

Education

- American University
Washington College of Law, J.D., *cum laude*, 2010
- Gustavus Adolphus College, B.A., *cum laude*, 2004

Mary J. Bortscheller is a Partner at Cohen Milstein and a member of the firm's Employee Benefits Practice Group. In this role, Ms. Bortscheller represents the interests of employees, retirees, and plan participants and beneficiaries in ERISA cases in the district court and on appeal.

Ms. Bortscheller is a hands-on, strategic litigator, thoroughly versed in the complexities of ERISA law. In 2019, she was named a *Law360* "Rising Star," recognizing lawyers under the age of 40 whose professional accomplishments transcend their age.

Ms. Bortscheller is involved in a series of groundbreaking cases involving employer-sponsored defined benefit plans known as "church plans," where non-profit health care systems in the United States claim their benefit plans are exempt from ERISA regulation under the church plan exemption. Ms. Bortscheller also represents employees in litigation involving 401(k) plans and Employee Stock Ownership Plans (ESOPs) in complex breach of fiduciary duty litigation under ERISA.

Ms. Bortscheller is currently litigating the following matters:

- **AT&T Pension Benefit Plan Litigation (N.D. Cal.):** Cohen Milstein represents plaintiffs and a putative class of participants and beneficiaries in the AT&T Pension Benefit Plan in a case alleging AT&T improperly calculated the pension benefits of certain retirees who retired early and/or took a joint and survivor annuity. As a result of the improper calculation, plaintiffs received a lower pension benefit than they were entitled to under ERISA.
- **Triad Manufacturing, Inc. ESOP Litigation (N.D. Ill.):** Cohen Milstein is representing participants and beneficiaries in the Triad Manufacturing, Inc. Employee Stock Ownership Plan in this case alleging the defendant selling shareholders and ESOP trustee breached their fiduciary duties and engaged in prohibited transactions in connection with the sale of Triad Manufacturing, Inc. to the ESOP. On August 21, 2020, U.S. District Judge Ronald A. Guzmán denied defendants' Motion to Compel Arbitration. On September 10, 2021, the Seventh Circuit upheld Judge Guzmán's decision, citing an exception to the Federal Arbitration Act that permits a court to overrule an arbitration agreement if it blocks a party from being able to bring claims under federal law.

- **Western Milling ESOP Litigation (E.D. Cal.):** Cohen Milstein is representing plaintiff in a suit brought on behalf of participants and beneficiaries of the Western Milling Employee Stock Ownership Plan. Plaintiff, a participant in the ESOP, alleges that the ESOP's fiduciaries breached their fiduciary duties and engaged in prohibited transactions under ERISA by causing the ESOP to purchase 100% of Kruse-Western, Inc. company stock at an inflated stock price which did not take into account significant liabilities of the company. The value of the company stock subsequently dropped by 90% shortly after the purchase and has not significantly recovered.

Ms. Bortscheller was also significantly involved in the following high-profile successes:

- **BlackRock 401(k) Plan Litigation (N.D. Cal.):** Cohen Milstein represented participants in the BlackRock 401(k) Plan, who allege that the Plan fiduciaries violated their duties under ERISA by investing employees' 401(k) savings almost exclusively in BlackRock proprietary funds and by using BlackRock subsidiaries to broker securities lending deals using the Plan's assets. In November 2021, the court granted final approval of a \$9.65 million settlement.
- **Bon Secours Health System Church Litigation (D. Md.):** Cohen Milstein served as lead counsel to a class of defined benefit participants of seven Bon Secours Health System Inc. pension plans which plaintiffs alleged improperly operated under the "church plan" exemption of ERISA. In May 2017, the court granted final approval of a settlement of over \$102 million, one of the largest settlements of its kind.
- **Trinity Health Corporation Church Plan Litigation (D. Md.):** Cohen Milstein served as co-lead counsel to a class of defined benefit participants of Trinity Health Corp. pensions plans which plaintiffs alleged improperly operated under the "church plan" exemption of ERISA. In May 2017, the court granted final approval of a \$75 million settlement.
- **Advocate Health Care Church Plan Litigation (N.D. Ill.):** Cohen Milstein served as co-lead counsel to a class of defined benefit participants, who alleged that the hospital's plan was not a church plan and thus the class was entitled to ERISA's protections. After the Supreme Court redirected this case back to the district court, in June 2018, the court granted final approval of a settlement, which provides a guarantee of accrued benefits for ten years and significant non-monetary equitable consideration.
- **SSM Health Care Church Plan Litigation (E.D. Mo.):** Cohen Milstein served as lead counsel to a class of defined benefit participants who alleged that SSM Health improperly operated its defined benefit pension plans under the ERISA church plan exemption, thereby underfunding the plans as required by ERISA to the detriment of plan benefits. In June 2019, the court granted final approval of a \$60 million settlement.

In addition to her ERISA case work, Ms. Bortscheller has represented, *pro bono*, unaccompanied minor clients in immigration proceedings. Prior to joining Cohen Milstein in 2013, Ms. Bortscheller practiced at a boutique commercial litigation firm based in Chicago, where she represented plaintiffs in antitrust and qui tam matters, as well as defendants in general commercial litigation.

Ms. Bortscheller graduated from Gustavus Adolphus College with a B.A., *cum laude*, in Political Science, and received her J.D., *cum laude*, from American University, Washington College of Law. During law school, she served as Features Editor and Senior Editor of *Sustainable Development Law & Policy* and was a staff member of the *American University International Law Review*. Ms. Bortscheller served as a judicial intern with the United States District Court for the District of Minnesota.

Before attending law school, Ms. Bortscheller served in the United States Peace Corps teaching English as a foreign language in Sichuan Province, China. Following law school, she was a volunteer for the Chicago Legal Clinic, Inc.'s Foreclosure Defense Project.