

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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

~~PROPOSED~~ ORDER PRELIMINARILY APPROVING SETTLEMENT

Currently before the Court for preliminary approval is a Settlement (the “Settlement”) of this class action (the “Action”) wherein Plaintiff Elysee Nicolas (“Plaintiff”) has asserted claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.* (“ERISA”), with respect to the Princeton University Retirement Plan (“Retirement Plan”) and the Princeton University Savings Plan (“Retirement Savings Plan”) (together, the “Plans”) against Defendant The Trustees of Princeton University (“Defendant” or “University”). The terms of the Settlement are set out in a Stipulation of Settlement executed on July 27, 2020 (the “Stipulation”), which has been signed on behalf of Plaintiff and the proposed Settlement Class and on behalf of Defendant (collectively with Plaintiff, the “Parties”). Capitalized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the Stipulation. The “Settlement Class” is defined in this Order below.

Having considered Plaintiff’s Motion for Preliminary Approval of Proposed Settlement (ECF No. 58) and the Stipulation in order to determine, among other things, whether the Settlement is sufficient to warrant the issuance of notice to members of the proposed Settlement Class, it is

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

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

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

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

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

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

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

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

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

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

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

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

Fairness Hearing. A hearing (the "Fairness Hearing") pursuant to Fed. R. Civ. P. 23(e) is hereby SCHEDULED to be held before the Court on Dec. 22, 2020, at 10 a.m. in Courtroom 4W at the U.S. District Court, Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street Room 2020, Trenton, New Jersey 08608 to determine finally, among other things:

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

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

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

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

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

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

COURT CLERK

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

PLAINTIFF’S COUNSEL

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

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

DEFENDANT’S COUNSEL

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

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

of the objection on counsel listed above and file the objection with the Court at least fourteen (14) calendar days prior to the Fairness Hearing, or by no later than December 8, 2020. Any Member of the Settlement Class or other person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement and any untimely objection shall be barred.

Appearance at Fairness Hearing. An Objector who files and serves a timely, written objection in accordance with the paragraph above may also appear at the Fairness Hearing either in person or through counsel retained at the Objector's expense. Objectors or their attorneys intending to appear at the Fairness Hearing must effect service of a "Notice of Intention to Appear", setting forth, among other things, the name, address, and telephone number of the Objector (and, if applicable, the name, address, and telephone number of the Objector's attorney) on counsel identified above and file it with the Court at least fourteen (14) calendar days prior to the Fairness Hearing, or by no later than December 8, 2020. Any Objector who does not timely file and serve a "Notice of Intention to Appear" in accordance with this paragraph shall not be permitted to appear at the Fairness Hearing, except for good cause shown. The Parties' counsel shall promptly furnish each other with copies of any and all objections that come into their possession.

Response to Objectors. The Parties shall respond to any Objector at least seven (7) calendar days prior to the Fairness Hearing, or by no later than December 15, 2020.

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

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

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

Application for Attorney's Fees. Any application by Class Counsel for attorney's fees and reimbursement of expenses, for a case contribution award to the Plaintiff, and all papers in support thereof, shall be filed with the Court and served on all counsel of record at least twenty-eight (28) calendar days prior to the Fairness Hearing, or by no later than November 24, 2020.

Motion for Final Approval of Settlement and Plan of Allocation. Class Counsel shall file with the Court a motion for entry of the Final Approval Order and approval of the Plan of Allocation at least twenty-eight (28) calendar days prior to the Fairness Hearing, or by no later than November 24, 2020.

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


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

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

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

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

SO ORDERED this 31 day of August, 2020.



Hon. ~~Douglas E. Appert~~ Anne E. Thompson, U.S.D.J.
~~Magistrate Judge, United States District~~
Court for the District of New Jersey