

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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

Plaintiff,

v. \*

CIVIL NO. JKB-17-00427

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

Defendants. \*

\* \* \* \* \*

ORDER

The Court previously requested supplemental briefing regarding the breadth of the release in the Proposed Settlement Agreement, (ECF No. 248), which the parties have provided. (ECF Nos. 251, 252, 253.)

Defendants characterize the release as “a general provision foreclosing claims arising out of the complaint’s allegations, as well as provisions referring to specific categories of the conduct put at issue by the class plaintiffs” and explain that the enumerated categories “serve[] as a guide to future courts that must wrestle with attempts at re-litigation[,]” because “[l]eaving later courts no other tool than the operative complaint to parse the issues litigated in the earlier settled action . . . would create significant uncertainty about the settling defendants’ protection against repeat action.” (ECF No. 251 at 8, 9.) Class Counsel Cohen Milstein explains that this release “meets the identical factual predicate standard.” (ECF No. 253 at 3.)<sup>1</sup>

<sup>1</sup> Class Counsel McTigue Law, on the other hand, “agrees that §1.43(b) of the Settlement Agreement purports to release claims beyond the identical factual predicate outlined in the complaint.” (ECF No. 252 at 5.)

However, this contention is belied by the use of the disjunctive “or” in the release language. The release includes those claims “(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) specific enumerated categories. (See ECF No. 234-4 at 5.) Taking release (b)(i) as an example, Defendants explain that:

This subsection releases claims challenging “the selection, oversight, monitoring, or retention of the Plan’s investment options.” ECF No. 234-4 at 5. This language tracks Counts I and II of the operative complaint, which seek to hold Defendants liable for their conduct “monitoring and selecting 401(k) Plan investment options.” ECF No. 84 ¶ 123; *see also id.* ¶ 140 (challenging Defendants’ “selection and retention of the in-house funds”).

(ECF No. 251 at 11.) It is unclear why “or” would be appropriate here, if this category of released claims comes from the complaint itself. Rather, the more appropriate connector for releases (b)(i) through (b)(vi)—all of which are topics that were raised in the complaint or actually litigated—would seem to be “including” or another similar term.<sup>2</sup> Indeed, Defendants provide a compilation of purportedly similar settlement agreement release language, and the majority of them do not use “or” but rather use “including” or “and” language. (See, e.g., ECF No. 251-2 at A3–4, A12, A24, A27–28, A31, A38, A41–42, A46–47, A59–60, A68–69, A75, A87, A91, A99.)

The Court appreciates that it cannot “decide the outer limit of the release’s scope” and that “[t]o do so would be advisory.” *McAdams v. Robinson*, 26 F.4th 149, 160 (4th Cir. 2022) (finding a release appropriate where “[i]t encompass[ed] a large swath of claims that might have been brought”; “nothing on the face of the release purports to apply to cases with a different factual predicate”; and “the release is tied to cases arising out of a set action and time frame.”). However,

---

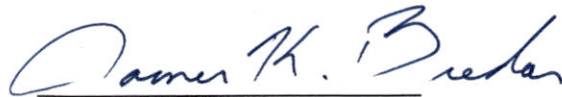
<sup>2</sup> The only released claims for which the “or” connector appears appropriate are (b)(vii) and (b)(viii), which release Defendants’ liability from litigation concerning the settlement itself. These releases appear appropriate and typical.

as explained in the Court's prior Order, the release *on its face* appears to apply to claims with a different factual predicate. By use of "or," the enumerated claims appear to be expressly not limited to those based on the same factual predicate of this case.

In light of the foregoing, the parties are DIRECTED to notify the Court by 5:00 p.m. on June 9, 2022 if they will alter the release terms to clarify the scope of the release. If the parties determine not to alter the terms of the release, the June 10, 2022 Fairness Hearing will be vacated and the Court will set further briefing on the appropriateness of the release as proposed and whether the Court's unwillingness to endorse this element of the Proposed Settlement would be fatal to its final approval.

DATED this 8 day of June, 2022.

BY THE COURT:

A handwritten signature in blue ink that reads "James K. Bedar". The signature is written in a cursive style and is positioned above a horizontal line.

James K. Bedar  
Chief Judge