IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CHANDRA CATES, et al., *Plaintiffs,* v. THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, *Defendant.*	No. 1:16-cv-06524-GBD

NOTICE OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

Please take notice that, upon the accompanying Memorandum of Law, dated May 21, 2021, Plaintiffs Chandra Cates, Kelly Stuart, Harry L. Brown, Olga S. Carr, Phyllis E. Hulen, Dr. Saul Silverstein, and William S. Valentine will move this Court before the Honorable George B. Daniels, at the Daniel Patrick Moynihan United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York 10007, at a time and date to be set by the Court, for an order granting preliminary approval of a class action settlement. Defendant does not oppose this motion.

Please take notice that opposing papers, if any, shall be served no later than June 3, 2021, and Plaintiffs shall serve reply papers, if any, no later than June 10, 2021.

May 21, 2021

Respectfully Submitted,

/s/ Jerome J. Schlichter
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CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2021, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the attorneys of record.

/s/ Jerome J. Schlichter
Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
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CHANDRA CATES, et al., *Plaintiffs,* v. THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, *Defendant.*	No. 1:16-cv-06524-GBD

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

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Plaintiffs move for the Court's preliminary approval of a settlement of the remaining claims currently set for trial. Plaintiffs allege that Defendant, the Trustees of Columbia University in the City of New York, breached their fiduciary duties and committed prohibited transactions under the Employee Retirement Income Security Act of 1974 ("ERISA") by causing the Retirement Plan for Officers of Columbia University and the Columbia University Voluntary Retirement Savings Plan ("the Plans") to pay unreasonable recordkeeping and administrative fees and to maintain high-cost and underperforming investment options. ECF No. 76-1. Defendant disputes these allegations and denies liability for any alleged fiduciary breach.

After the Court denied summary judgment, ECF No. 349, *report and recommendation adopted*, ECF No. 361, Plaintiffs and Defendant engaged in arms-length settlement discussions, reaching an agreement to settle the remaining claims. Considering the litigation risks that further prosecution of the remaining claim would inevitably entail, Plaintiffs respectfully request that this Court: (1) preliminarily approve the proposed settlement; (2) approve the proposed form and method of notice to the Class; and (3) schedule a hearing at which the Court will consider final approval of the settlement.[1]

BACKGROUND

I. The claims in this action.

On August 16, 2016, Jane Doe filed a complaint in the United District Court for the Southern District of New York (Case No. 16-cv-06488) on behalf of the Plans alleging breach of fiduciary duty and prohibited transactions under ERISA and seeking equitable relief. On August 17, 2016, Chandra Cates and Kelly Stuart filed a similar complaint on behalf of the Plans in the

[1] The capitalized terms used herein, to the extent not defined, shall have the meaning defined in the Settlement Agreement attached hereto as Exhibit A.

Southern District of New York (Case No. 16-cv-06524).[2]

On January 24, 2017, the Court consolidated the two actions. ECF No. 63. The operative complaint is the consolidated complaint filed on February 7, 2017 by Chandra Cates, Kelly Stuart, Harry L. Brown, Olga S. Carr, Phyllis E. Hulen, Dr. Saul Silverstein, William S. Valentine and Jane Doe against the following: The Trustees of Columbia University in the City of New York, Jeffery Scott, Lucinda During, Louis Bellardine, William L. Innes, Barbara Hough and Diane L. Kenney (the "Complaint").[3] ECF No. 76-1.

Plaintiffs alleged that Defendant breached its fiduciary duties and committed prohibited transactions relating to the management, operation, and administration of the Plans. Plaintiffs sought to recover all alleged losses to the Plans resulting from each breach of duty under 29 U.S.C. § 1109(a) and for other equitable and remedial relief.

On August 28, 2017, the Court granted in part and denied in part Defendant's motion to dismiss Plaintiffs' amended complaint. ECF No. 116. Following the Court's motion to dismiss order, Plaintiffs' remaining claims alleged Defendant violated ERISA 29 U.S.C. § 1104 by causing the Plans to pay excessive recordkeeping fees and including numerous imprudent investment options. *Id.* at 5. Defendant moved for partial reconsideration of that motion to dismiss order, which Plaintiffs opposed and which the Court denied. ECF No. 125.

The parties then proceeded to discovery. The parties submitted competing scheduling orders, ECF Nos. 128-1 and 128-2, a joint negotiated protective order, ECF No. 130-1, and a stipulation for discovery of hard copy documents and electronically stored information. ECF No. 132-1. The parties conducted extensive written discovery, with over 350,000 documents

[2] Doe subsequently voluntarily dismissed her claim. ECF No. 145.

[3] Columbia later agreed to accept responsibility for any breaches committed by the individual defendants, and the Parties stipulated to the individual defendants' dismissal. ECF No. 202.

produced by the parties or relevant third parties. These materials required extensive review by all parties, particularly Class Counsel. All documents produced required close and detailed analysis along with discussions with consultants and experts retained by Class Counsel. Decl. of Jerome J. Schlichter ¶ 4. In total, the parties took the depositions of seven named Plaintiffs, ten Columbia-affiliated witnesses, seven witnesses affiliated with service providers to the Plans, and six expert witnesses. *Id*. ¶ 5.

On November 15, 2018, the Court certified Plaintiffs' lawsuit as a class action under Federal Rule of Civil Procedure 23(b)(1), appointed Plaintiffs' undersigned attorneys as Class Counsel, appointed Plaintiffs Cates, Stuart, Brown, Carr, Hulen, Silverstein, and Valentine as Class Representatives, and defined the certified class as follows:

> All participants and beneficiaries of the Retirement Plan of the Officers of Columbia University and the Columbia University Voluntary Retirement Savings Plan from August 10, 2010, through the date of judgment, excluding the Defendants.

ECF No. 218.[4] On March 30, 2020, the Court denied Defendant's motion for summary judgment and Defendant's motions to exclude Plaintiffs' expert witnesses. ECF No. 361. Plaintiffs continued litigating the case after summary judgment, preparing all pretrial exchanges and fully preparing for trial. The matter was set for a bench trial starting on April 12, 2021. ECF No. 382. On April 7, 2021, the parties jointly notified the Court that they had reached an agreement to settle the case on a class-wide basis and requested a stay of all deadlines in the case. ECF No. 436. The Court granted the motion the following day. ECF No. 437.

II. The terms of the proposed settlement.

In exchange for the dismissal of all of Plaintiffs' remaining claims, Defendant will make

[4] In order to effectuate the Settlement, the parties require an ending date for the Class definition. The parties have chosen March 31, 2021 as the close of the Class period defining those Plan participants and former participants who will be included in the Class.

available to Class members the benefits described below.

A. Monetary Relief.

The Defendant will deposit $13,000,000 (the "Gross Settlement Amount") in an interest-bearing settlement account (the "Gross Settlement Fund"). The Gross Settlement Fund will be used to pay the Class Member's recoveries, administrative expenses to facilitate the Settlement, Class Counsel's attorneys' fees and costs, and the Class Representatives' Compensation if awarded by the Court.

B. Non-Monetary Terms.

In addition to the monetary component of the settlement, the Parties agreed to non-monetary terms in accordance with Article 10 of the Settlement Agreement. These terms include:

1. A three-year Settlement Period, during which Defendant shall continue to provide annual training to the Plans' fiduciaries regarding their fiduciary duties under ERISA.
2. Defendant agrees to continue the practice of negotiating fees on a per-participant or per-account basis.
3. To the extent revenue sharing is received by the Plans' recordkeeping vendor(s), any amount collected in excess of the per-participant or per-account fee for recordkeeping and administrative services and not used to defray reasonable expenses of administering the Plans shall be rebated back to Plan participants. The Plans shall continue to allocate excess amounts to participants in a manner the Plan fiduciaries determine to be fair, equitable, and appropriate under the circumstances.
4. Defendant or its agent or designee will inform all Plan participants, including those invested in the CREF Stock Account and the TIAA Real Estate Account, of their ability to redirect their assets held in any frozen investment options to investment options available in the updated investment menu.

5. For designated investment options and specifically excluding any self-directed brokerage window, Defendant agrees to maintain the lowest available share class of Plan investments in annuities and mutual funds on its active lineup and to evaluate the need for additional share class transitions within a reasonable period of time.
6. Defendant agrees to continue the practice of using an independent investment consultant to review the Plans' investments and make appropriate recommendations. Further, Defendant agrees that the Plans' Investment Advisory Committee shall continue to meet quarterly with the investment consultant to review the relevant information and make decisions on, among other things, any recommendations from the consultant.
7. Defendant is in the course of negotiating revised contracts for recordkeeping and administrative services. Absent exigent circumstances and only with the consent of the independent consultant, Defendant agrees that before the end of the Settlement Period, it will initiate a request for proposal for the Plans' recordkeeping and administrative services.
8. Defendant agrees to instruct the current recordkeeper(s) of the Plans in writing within ninety (90) calendar days of the Settlement Effective Date that, in performing contracted recordkeeping services (the "Services") with respect to the Plans, the recordkeeper shall not use information received as a result of providing the Services to the Plans and/or the Plans' participants to solicit the Plans' current participants for the purpose of cross-selling non-Plan products and services, including, but not limited to, Individual Retirement Accounts, non-Plan managed account services, life or disability insurance, investment products, and wealth management services, unless in

response to a request by a Plan participant. Nothing in this paragraph shall preclude Defendant from authorizing a Plan vendor to provide retirement planning services related to the participant's investments within the Plans and other assets identified by the participant.

C. Notice and Class Representatives' Compensation.

The costs to administer the settlement, including those associated with providing notice to the Class, will be paid from the Gross Settlement Amount. For the costs associated with the Independent Fiduciary and the Settlement Administrator, the parties have received competitive proposals from candidates to provide these services. After consideration of the proposed fees and the quality of the services to be provided by each candidate, an Independent Fiduciary will be agreed to by the parties. A Settlement Administrator will also be selected to provide notices electronically or by first class mail to each Class Member's physical or email address provided by Defendant's Counsel, Defendant, and/or the Plans' recordkeepers (or their designee(s)), unless an updated address is obtained by the Settlement Administrator through its efforts to verify the last known addresses provided by to the Settlement Administrator.[5] Class Counsel also shall post a copy of the Settlement Notice on the Settlement Website, and a link to the Settlement Website will also appear on Class Counsel's website.

Plaintiffs will seek an incentive award of $25,000 for each of the named plaintiffs. This amount is consistent with precedent recognizing the value of individuals stepping forward to represent a class, particularly in contested complex litigation like this where the potential benefit to any individual does not outweigh the cost of prosecuting class-wide claims, there are

[5] The proposed fee for the Settlement Administrator to provide notice to class members and other related services to facilitate the settlement is estimated based on information presently available to the parties and is subject to change once the number of class members is determined.

significant risks of no recovery, and risk of alienation from their employers and peers. *E.g.*, *Dial Corp. v. News Corp.*, 317 F.R.D. 426, 439 (S.D.N.Y. 2016) (approving incentive awards of $50,000 and noting that incentive awards "have generally ranged from $2,500 to $85,000"); *Dornberger v. Metro. Life Ins. Co.*,
203 F.R.D. 118, 125 (S.D.N.Y. 2001) (similar).

D. Attorneys' Fees and Costs.

Class Counsel will request attorneys' fees paid out of the Gross Settlement Fund in an amount not more than one-third of the Gross Settlement Amount, or $4,333,333.33, as well as reimbursement for costs incurred of no more than $700,000. Class Counsel "pioneer[ed]" 401(k) excessive fee litigation as recognized by multiple federal judges, *e.g., Abbott v. Lockheed Martin Corp.,* No. 06-701, 2015 WL 4398475, at *1 (S.D. Ill. July 17, 2015), and successfully handled the only ERISA excessive fee case taken by the Supreme Court, *Tibble v. Edison, Int'l*, 575 U.S. 523, 135 S. Ct. 1823 (2015). Class Counsel also filed the first 403(b) excessive fee cases in history, of which this case was one. Before Class Counsel filed both 401(k) cases and the 403(b) cases, no one had ever brought a case alleging excessive 401(k) or 403(b) fees. A contingent one-third fee for Class Counsel has been approved by other courts in settlements of complex ERISA excessive fee cases. *E.g.*, *Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 WL 434473, at *3 (D. Md. Jan. 20, 2020) (collecting cases); *Cassell v. Vanderbilt Univ.*, No. 16-2086, Doc. 174 (M.D. Tenn. Oct. 22, 2019); *Clark v. Duke*, No. 16-1044, 2019 WL 2579201, at *3–4 (M.D.N.C. June 24, 2019). It is also the rate contractually agreed to by the named Plaintiffs. Schlichter Decl. ¶7.

Although Class Counsel will not request a fee greater than one-third of the monetary recovery, the additional terms of the settlement provide meaningful value in addition to the monetary amount. This results in the requested fee being significantly lower than a one-third

award. In addition, Class Counsel will not seek attorneys' fees: (1) from the interest earned on the Gross Settlement Amount; (2) for time associated with communicating with class members or Defendant during the Settlement Period; and (3) for work required in future years to enforce the settlement, if necessary. Class Counsel will submit a formal application for attorneys' fees and costs and for the Class Representatives' incentive awards at least 30 days prior to the deadline for class members to file objections to the settlement. As courts in this District have held, "one-third of the common fund after deduction of legal costs . . . is consistent with the norms of class litigation in this circuit." *Gilliam v. Addicts Rehab. Ctr. Fund*, No. 05 CIV. 3452 (RLE), 2008 WL 782596, at *5 (S.D.N.Y. Mar. 24, 2008) (citing cases). Thus, Plaintiffs' request here is preliminarily reasonable.

ARGUMENT

Review of a proposed class action settlement is a two-step process. First, the court performs a preliminary review of the terms of the proposed settlement to determine whether to send notice to the class. *See* Fed. R. Civ. P. 23(e)(1). Second, after notice is sent to the class and a hearing is conducted, the Court determines whether to approve the settlement on a finding that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

A court should grant preliminary approval to authorize notice to the class upon a finding that it "will likely be able" to finally approve the settlement. *See* Fed. R. Civ. P. 23(e)(1)(B). In considering preliminary approval, a court looks to both the "negotiation process leading up to the settlement, *i.e.*, procedural fairness, as well as the settlement's substantive terms, *i.e.* substantive fairness." *In re Platinum & Palladium Commod. Litig.*, No. 10-3617-WHP, 2014 WL 3500655, at *11 (S.D.N.Y. July 15, 2014). The Court should grant preliminary approval in this matter because the proposed settlement is procedurally and substantively fair, reasonable, and

adequate.[6]

I. The settlement is the product of arm's length negotiations conducted by experienced counsel after extensive litigation.

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 by experienced, capable counsel after meaningful discovery. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (settlement may be presumed to be fair where it is "reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery"); *City of Providence v. Aeropostale, Inc.*, No. 11-712-CM-GWG, 2014 WL 1883494, at *4 (S.D.N.Y. May 9, 2014) ("This initial presumption of fairness and adequacy applies here because the Settlement was reached by experienced, fully-informed counsel after arm's-length negotiations."), *aff'd, Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015). The settlement is the result of lengthy and complex arm's-length negotiations overseen by an experienced, outside mediator. *See* Schlichter Decl. ¶2. Counsel on both sides are thoroughly familiar with the factual and legal issues presented and highly experienced in this type of litigation. It is recognized that the opinion of

[6] During the final approval phase, courts in the Second Circuit consider the following factors set forth in *City of Detroit v. Grinnell Corporation*, 495 F.2d 448 (2d Cir. 1974) when evaluating a class-action settlement:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceeding and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Id. at 463 (citations omitted), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000).

experienced and informed counsel supporting the settlement is entitled to considerable weight. *In re Michael Milken and Assocs. Secs. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y 1993) ("the view of experienced counsel favoring the settlement is entitled to great weight.") (citation and quotation marks omitted).

A. The settlement was reached after extended litigation and significant investigation of the claims asserted by Plaintiffs.

At the time the settlement was reached, the parties had engaged in more than four years of litigation, including extensive document and deposition discovery and dispositive motion practice. Class Counsel extensively developed the facts and legal theories supporting their claims. They conducted a substantial investigation of their claims prior to the filing of the complaint. Thereafter, they completed fact and expert discovery. The parties vigorously litigated the case during all stages of litigation resulting in two remaining claims after multiple rounds of dispositive motion practice. Only after years of hard-fought litigation and months of arm's length negotiations were the parties able to reach an agreement to resolve the claims remaining to be tried in this lawsuit.

B. Class Counsel is highly experienced and capable.

Class Counsel is not only highly experienced in handing ERISA class actions involving 401(k) and 403(b) plans, but "pioneer[ed]…the field of retirement plan litigation." *Abbott v. Lockheed Martin Corp.,* No. 06-701, 2015 WL 4398475, at *1 (S.D. Ill. July 17, 2015). Schlichter Bogard & Denton is the "preeminent firm" in excessive fee litigation having "achieved unparalleled results on behalf of its clients" in the face of "enormous risks." *Nolte v. Cigna Corp.,* No. 07-2046, 2013 WL 12242015, at *2–3 (C.D. Ill Oct. 15, 2013). They are "experts in ERISA litigation," *Krueger v. Ameriprise Fin., Inc*., No. 11-2781, 2015 WL 4246879, at *2 (D. Minn. July 13, 2015) (citation omitted), and "highly experienced." *In re*

Northrop Grumman Corp. ERISA Litig., No. 06-6213, 2017 WL 9614818, at *4 (C.D. Cal. Oct. 24, 2017).

District courts across the country have recognized the reputation, extraordinary skill and determination of Class Counsel. Recently, in similar cases against university 403(b) plan sponsors, Judge Catherine Eagles and Judge George L. Russell, III opined on Class Counsel's experience and competence. Judge Eagles noted that "these [ERISA] cases require a high level of skill on behalf of plaintiffs to achieve any recovery." *Clark*, ECF No. 165 at 6 (M.D.N.C. June 24, 2019). Judge Eagles concluded that "[Schlichter Bogard & Denton] has demonstrated diligence, skill, and determination in this matter and, more generally, in an area of law in which few attorneys and law firms are willing or capable of practicing." *Id*. at 7. Judge Russell noted that "Schlichter Bogard & Denton's work on behalf of participants in large 401(k) and 403(b) plans has significantly improved these plans, brought to light fiduciary misconduct that has detrimentally impacted the retirement savings of American workers, and dramatically brought down fees in defined contribution plans." *Kelly*, 2020 WL 434473, at *2. Judge Russell continued, "[w]ithout the unique and unparalleled foresight for this novel area of litigation by Schlichter, Bogard & Denton, the class would not have obtained any recovery for the alleged fiduciary breaches that affected the Johns Hopkins University 403(b) plan for years prior." *Id.* at *4.

II. The Settlement is substantively reasonable.

There were substantial risks in prosecuting this action, and further prosecution of this action to trial may have yielded limited or no recovery. Most of Plaintiffs' claimed damages arose from three individual annuities—CREF Stock, TIAA Real Estate, and CREF Growth—that Defendant argued could not be transferred or mapped by Defendant to different investments without each individual participant's consent. Plaintiffs disagreed and moved *in limine* to

exclude evidence and testimony that the assets held in those three annuities were not mappable, but the Court denied the motion, preserving the issue for trial. ECF No. 425. If the Court were to agree with Defendant's argument on this point at trial, as Judge Forrest did on the same issue in *Sacerdote v. New York University*, Plaintiffs' right to recovery would have been severely constrained. Instead, the settlement fund of $13,000,000 provides substantial recovery on Plaintiffs' claims. Considering the downside risk if Defendant's argument was accepted, and the inherent substantial risks of taking a complex case such as this one to trial, this settlement is clearly in the range of possible approval. *Grinnell*, 495 F.2d at 455 n.2 ("In fact there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery."); *see also Henderson v. Emory University*, No. 16-cv-2920 (N.D. Ga. 2020) ($16,750,000 settlement); *Sweda v. University of Pennsylvania*, No. 16-cv-4329 (E.D. Pa. 2020) ($13,000,000 settlement); *Cassell v. Vanderbilt University*, No. 16-cv-2086 (M.D. Tenn. 2019) ($14,500,000 settlement); *Kelly v. Johns Hopkins University*, No. 16-cv-2835 (D. Md. 2019) ($14,000,000 settlement); *Clark v. Duke University*, No. 16-cv-1044 (M.D.N.C. 2018) ($10,650,000 settlement).

III. This fair, reasonable, and adequate settlement warrants sending notice to the Class.

Under Rule 23(c)(2)(A) and (e)(1)(B), class notice for certification or settlement of a class certified under Rule 23(b)(1) needs to be "appropriate" or "in a reasonable manner." Due process and Rule 23(e) do not require that each Class Member receive notice, but they do require that the class notice 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). Here, Class Counsel intends to serve notice

via email, or, if there is no email address on file or if the email is returned as undeliverable, via first class mail. Even under the more stringent requirements of Rule 23(c)(2)(B) for classes certified under Rule 23(b)(3), notice by email can be the "best notice that is practicable." Fed R. Civ. P 23(c)(2)(B) ("The notice may be by one or more of the following: . . . electronic means . . . ."); *see also, e.g., Berkson v. Gogo LLC,* 147 F. Supp. 3d 123, 139 (E.D.N.Y. 2015) (approving notice by email only); *In re Pool Prod. Distribution Mkt. Antitrust Litig.*, 310 F.R.D. 300, 318 (E.D. La. 2015) (approving notice by email only). District courts in the Second Circuit routinely recognize that email notice is reasonable and often more effective than traditional mail. *Agonath v. Interstate Home Loans Ctr., Inc.*, No. 17-5267-JS-SIL, 2019 WL 1060627, at *7 (E.D.N.Y. Mar. 6, 2019) (collecting cases); *Sanchez v. Salsa Con Fuego, Inc.*, No. 16-473-RJS-BCM, 2016 WL 4533574, at *5–6 (S.D.N.Y. Aug. 24, 2016).

The proposed form and method of notice satisfies all due process considerations and meets the requirements of Rule 23(e)(1) because it is reasonably calculated to effect actual notice to the Settlement Class. The parties' proposed notice to current and former participants is attached as Exhibits 3 and 4, respectively, to the Settlement Agreement. The notice will fully apprise Class Members of the existence of the lawsuit, the proposed settlement, and the information they need to make informed decisions about their rights, including: (i) the terms and operation of the settlement; (ii) the nature and extent of the release; (iii) the maximum attorneys' fees and costs that will be sought; (iv) the procedure and timing for objecting to the settlement and the right of parties to seek limited discovery from objectors; (v) the date and place of the fairness hearing; and (vi) the website on which the full settlement documents and any modifications thereto will be posted.

The notice plan consists of multiple components designed to reach class members. First,

the notice will be sent by electronic email to all class members who have an email address known to Columbia University and/or the Plans' recordkeeper(s) and by first-class mail to the current or last known address of all class members for whom there is no email address on file or for whom emails bounced back to the Settlement Administrator shortly after entry of the order preliminarily approving the Settlement. In addition to the notice, Class Counsel will develop a dedicated website solely for the settlement, and a link to that website will appear on Class Counsel's website [www.uselaws.com]. The form of notice and proposed procedures for notice satisfy the requirements of due process and the Court should approve the notice plan as adequate.

CONCLUSION

Plaintiffs respectfully request that the Court grant preliminary approval of the settlement.

May 21, 2021

Respectfully submitted,

/s/ Jerome J. Schlichter

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2021, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the attorneys of record.

By: /s/ Jerome J. Schlichter
Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CHANDRA CATES, et al., *Plaintiffs,* v. THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, *Defendant.*	No. 1:16-cv-06524-GBD

DECLARATION OF JEROME J. SCHLICHTER IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

1. I am the founding partner of the law firm Schlichter Bogard & Denton LLP, counsel for the Plaintiffs in the above-referenced matters. This declaration is submitted in support of Plaintiffs' Memorandum in Support of the Unopposed Motion for Preliminary Approval of Class Settlement. I am familiar with the facts set forth below and able to testify to them.

2. There has been no collusion or complicity of any kind in connection with the negotiations for, or the agreement to, settle the Released Claim. As illustrated in Plaintiffs' Memorandum in Support of Motion for Preliminary Approval of Class Settlement, all settlement negotiations in this case were conducted at arm's length by adverse, represented parties. The negotiations were extensive and adversarial. It is my opinion that the proposed settlement is not only "within the range of reasonableness," but also is fair, reasonable, adequate, and in the best

interest of the Plans and their participants in light of the procedural and substantive risks Plaintiffs would face if litigation were to continue.

3. The parties engaged in extensive discovery before reaching a settlement. The parties submitted competing scheduling orders, ECF Nos. 128-1 and 128-2, a joint negotiated protective order, ECF No. 130-1, and a stipulation for discovery of hard copy documents and electronically stored information. ECF No. 132-1.

4. The parties conducted extensive written discovery, with over 350,000 documents produced by the parties or relevant third parties. These materials required extensive review by all parties, particularly Plaintiffs' counsel. All documents produced required close and detailed analysis along with discussions with consultant and experts retained by Plaintiffs' counsel.

5. In total, the parties took the depositions of seven named Plaintiffs, ten Columbia-affiliated witnesses, seven witnesses affiliated with service providers to the Plans, and six expert witnesses.

6. Attached to hereto as **Exhibit A** is a true and accurate copy of the Settlement Agreement between Plaintiffs and Defendants.

7. Each of the named plaintiffs in this litigation have a contract with this firm agreeing to a one-third fee to Schlichter Bogard & Denton LLP in the event of any recovery.

8. In recent ERISA cases settled by Schlichter Bogard & Denton LLP, notice programs have ranged from $32,813 to $103,638.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and that this declaration was executed on May 21, 2021, in St. Louis, Missouri.

/s/ Jerome J. Schlichter
Jerome J. Schlichter

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CHANDRA CATES, et al., *Plaintiffs,* v. THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, *Defendant.*	No. 1:16-cv-06524-GBD

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT OF RELEASED CLAIM

This litigation arises out of a class action alleging breaches of fiduciary duty and prohibited transactions against the Trustees of Columbia University in the City of New York ("Defendant") under the Employee Retirement Income Security Act of 1974 (ERISA), as amended, 29 U.S.C. § 1001, *et seq.*, with respect to its management, operation, and administration of the Retirement Plan for Officers of Columbia University and the Columbia University Voluntary Retirement Savings Plan (collectively the "Plans"). Defendant denies the allegations, claims, and contentions of the Class Representatives, denies that it is liable at all to the Settlement Class, and denies that the Settlement Class or the Plans have suffered any harm or damage for which Defendant could be held liable.

In their Unopposed Motion for Preliminary Approval of Class Settlement, Plaintiffs seek preliminary approval of a settlement of the claims asserted. The terms of the Settlement are set out in a Class Action Settlement Agreement dated May 21, 2021, executed by the Settling Parties and their counsel.

The Court has considered the proposed Settlement. For purposes of this Order, if not defined

herein, capitalized terms have the definitions in the Settlement Agreement, which is incorporated herein by reference. Having reviewed the Settlement Agreement and the accompanying and supporting papers, it is **ORDERED** as follows:

1. Preliminary Findings Regarding Proposed Settlement:

The Court preliminarily finds that:

A. The proposed settlement resulted from extensive arm's-length negotiations;

B. The Settlement Agreement was executed only after Class Counsel had conducted extensive pre-settlement motion practice and discovery, and after negotiations, including in-person mediation sessions and numerous teleconference mediation sessions and extensive telephonic and email communications with a skilled mediator, and on the eve of trial;

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.

2. Fairness Hearing:

A hearing is scheduled at the United States District Court for the Southern District of New York, Judge George B. Daniels presiding, at _____ on _____, 2021, (the "Fairness Hearing") to determine, among other issues:

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

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

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

D. Whether the motion for compensation to Class Representatives should be approved; and

E. Whether the Administrative Expenses specified in the Settlement Agreement and

requested by the parties should be approved for payment from the Settlement Fund.

3. Establishment of Qualified Settlement Fund:

A common fund is agreed to by the parties in the Settlement Agreement and is hereby established and shall be known as the *Cates, et al. v. Trustees of Columbia University in the City of New York* Settlement Fund (the "Settlement Fund"). 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. The Settlement Fund shall consist of $13,000,000 and any interest earned thereon. The Settlement Fund shall be administered as follows:

A. The Settlement Fund is established exclusively for the purposes of: (i) making distributions to Class Representatives and the Settlement Class specified in the Settlement Agreement; (ii) making payments for all settlement administration costs and costs of notice, including payments of all Administrative Expenses specified in the Settlement Agreement; (iii) making payments of all Attorneys' Fees and Costs to Class Counsel as awarded by the Court; and (iv) paying employment, withholding, income, and other 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. Within the time period set forth in the Settlement Agreement, Defendant or its insurer(s) shall cause $13,000,000 to be deposited into the Settlement Fund.

C. The Court directs the Settlement Administrator to provide the Settlement Notice, implementing the Plan of Allocation, and otherwise assisting in administration of the Settlement as set forth in the Settlement Agreement.

D. Defendant shall timely furnish a statement to the Settlement Administrator that complies with Treasury Regulation § 1.468B-3(e)(2), which may be a combined statement under Treasury

Regulation § 1.468B-3(e)(2)(ii) and shall attach a copy of the statement to their federal income tax returns filed for the taxable year in which Defendant makes a transfer to the Settlement Fund.

E. Defendant 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, Defendant 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 the Gross Settlement Amount to be paid; and (2) their agreement to cooperate in providing information that is necessary for settlement administration set forth in the Settlement Agreement.

F. 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 as approved in the Settlement Agreement.

G. The Gross Settlement Amount caused to be paid by the Defendant and/or its insurer(s) into the Settlement Fund in accordance with the Settlement Agreement, and all income generated by that amount, shall be *in custodia legis* and immune from attachment, execution, assignment, hypothecation, transfer, or similar process by any person. Once the Settlement Fund vests, it is irrevocable during its term and Defendant has divested itself 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 set forth in the Settlement Agreement is terminated or fails to become effective in accordance with its terms (or, if following approval by this Court, such approval is reversed or modified), the parties shall be restored to their respective positions in this case as of the day prior to the Settlement Agreement Execution Date; 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 the entity(ies) that

funded the Settlement Fund.

H. 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.

I. The Settlement Fund shall expire after the Settlement Administrator distributes all of the assets of the Settlement Fund in accordance with Article 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 such amounts have been paid by the Settlement Fund.

J. The Settlement Fund shall be used to make payments to Class Members under the Plan of Allocation set forth in the Settlement Agreement. Individual payments to Class Members will be subject to tax withholding as required by law and as described in the Class Notice and its attachments. In addition, all Class Representatives' Compensation, Administrative Expenses, and all Attorneys' Fees and Costs of Class Counsel shall be paid from the Settlement Fund.

K. 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, in accordance with the Settlement Agreement, determine, withhold, and pay over to the appropriate taxing 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.

L. The Settlement Administrator, in its discretion, may request expedited review and decision by the IRS 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.

M. The Settlement Administrator shall have all the necessary powers, and take all necessary ministerial steps, to effectuate the terms of the Settlement Agreement, including the payment of all distributions. Such powers include receiving and processing information from Former Participants pertaining to their claims and investing, allocating and distributing the Settlement Fund, and in general supervising the administration of the Settlement Agreement in accordance with its terms and this Order.

N. 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 find it necessary to issue.

O. The Settlement Administrator may establish protective conditions concerning the disclosure of information maintained by the Settlement Administrator if publication of such information would violate any law, including rights to privacy. Any person entitled to such

information 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.

P. 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 Defendant to make any further payment of any nature into the Settlement Fund or otherwise.

4. Class Notice:

The Settling Parties have presented to the Court proposed forms of Class Notice for current and former participants, which are appended hereto as Exhibit 3 and Exhibit 4, respectively.

A. The Court finds that the proposed forms and the website referenced in the Class Notice 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 compensation from the Settlement Fund for the Class Representatives, Attorneys' Fees and Costs;

iv. Notify the Class that Administrative Expenses related to the implementation of the Settlement will be paid from the Settlement Fund;

v. Notify 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 Settling Parties have proposed the following manner of communicating the notice to members of the Class, and the Court finds that such proposed manner is reasonable under the circumstances, and directs that the Settlement Administrator shall by no later than sixty (60) days before the Fairness Hearing, cause the Class Notice, with such non-substantive modifications thereto as may be agreed upon by the Settling Parties, to be sent by electronic mail to all Class Members for whom the Settlement Administrator is provided a current email address and mailed, by first-class mail, postage prepaid, to the last known address of all Class Members for whom there is no current email address and for whom can be identified through commercially reasonable means. Defendant shall cooperate with the Settlement Administrator by providing, in electronic format, the names, addresses, email addresses (to the extent available), and social security numbers of members of the Class. The names, addresses, email addresses (to the extent available), and Social Security numbers or other unique identifiers obtained in accordance with this Order shall be used solely for the purpose of providing notice of this settlement and as required for purposes of tax withholding and reporting, and for no other purpose.

C. For any Class Notice returned as undeliverable, the Settlement Administrator shall utilize the provided Social Security number to attempt to determine the current address of the Class Member and shall mail notice to that address.

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 (60) days before the Fairness Hearing, to cause the Class Notice to be published on the website identified in the Class Notice.

5. 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 costs, or to any request for compensation for the Class Representatives must file an Objection in the manner set out in this Order.

A. A Class Member 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 costs, or to any request for compensation for the Class Representatives must do the following: (A) 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; and (B) 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 to this matter are as follows:

Clerk of the Court
United States District Court for the Southern District of New York
500 Pearl Street, New York, NY 10007

Andrew D. Schlichter (aschlichter@uselaws.com)
Jerome J. Schlichter (jschlichter@uselaws.com)
Heather Lea (hlea@uselaws.com)
Joel D. Rohlf (jrohlf@uselaws.com)
Nathan H. Emmons (nemmons@uselaws.com)
SCHLICHTER BOGARD & DENTON
100 South Fourth St., Suite 1200
St. Louis, Missouri 63102
Tel: (314) 621-6115
Fax: (314) 621-5934

E. Brantley Webb (bwebb@mayerbrown.com)
Michelle N. Webster (mwebster@mayerbrown.com)
MAYER BROWN LLP
1999 K Street NW
Washington, DC 20006
Tel: (202) 263-3000
Fax: (202) 263-3300

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 by no later than thirty (30) 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 thirty (30) days before the date of the Fairness Hearing.

D. Failure to serve objections(s) on either the Court or counsel for the parties 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 wishing to obtain discovery from any objector may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two (2) hours in length, on any objector within ten (10) days of receipt of the objection and that any responses to discovery or depositions must be completed within ten (10) days of the request being served on the objector.

F. Any party wishing to file a response to an objection must do so, and serve the response on all parties, no later than five (5) days before the Fairness Hearing.

6. 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 5 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 thirty (30) 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 appear in accordance with this paragraph shall not be permitted to speak at the Fairness Hearing.

7. Claim Form Deadline:

All valid claim forms must be received by the Settlement Administrator with a postmark date or submitted online no later than _____.

8. Service of Papers:

Defense Counsel and Class Counsel shall promptly furnish each other with copies of all objections that come into their possession.

9. Effect of Termination of Settlement on this Order:

If the Settlement is terminated in accordance with the Settlement Agreement, this Order shall become null and void, and shall be without prejudice to the rights of the Settling Parties, all of whom shall be restored to their respective positions existing the day before the Settlement Agreement Execution Date.

10. Use of Order:

This Order shall not be construed or used as an admission, concession, or declaration by or

against Defendant 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 Representatives, or the Settlement Class that their claims lack merit, or that the relief requested by Plaintiffs 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, including but not limited to any objections by Defendant to class certification in the event that the Settlement Agreement is terminated.

11. Parallel Proceedings:

Pending final determination of whether the Settlement Agreement should be approved, the Class Representatives, every Class Member, and the Plans are 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 the Released Parties, including Defendant.

12. Class Action Fairness Act Notice:

The form of notice under the Class Action Fairness Act of 2005 ("CAFA") submitted as Exhibit 6 to the Settlement Agreement complies with the requirements of CAFA and will, upon mailing, discharge Defendant's obligations pursuant to CAFA.

13. Continuance of Hearing:

The Court may continue the Fairness Hearing in its discretion without direct notice to the Settlement 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 before the

scheduled date of the Fairness Hearing.

SO ORDERED:

DATED: _____, 2021

HON. GEORGE B. DANIELS

UNITED STATES DISTRICT JUDGE