

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT ILLINOIS  
EASTERN DIVISION**

WINIFRED J. DAUGHERTY et al.,	)	
	)	Case No. 1:17-cv-03736
Plaintiffs,	)	
	)	Hon. Judge Ruben Castillo
v.	)	
	)	
THE UNIVERSITY OF CHICAGO,	)	
	)	
Defendant.	)	
	)	

**PLAINTIFFS’ UNOPPOSED MOTION FOR PRELIMINARY  
APPROVAL AND RELATED RELIEF**

Plaintiff Winifred Daugherty, Walter James and Gloria Jackson (“Plaintiffs”), individually and on behalf of all others similarly situated, move this Court pursuant to Federal Rules of Civil Procedure 23, for an Order: (1) preliminarily approving the parties’ proposed \$6.5 million class action settlement (the “Settlement”); (2) approving class certification for settlement purposes; (3) approving the form and content of class notice; (4) appointing Class Counsel; (5) appointing a Settlement Administrator;<sup>1</sup> and (6) setting a hearing to consider granting final approval of the Settlement, consideration of the proposed Plan of Allocation, and consideration of Co-Lead Counsel’s motion for approval of Plaintiffs’ proposed Case Contribution Awards and Class Counsel’s request for an award of attorney’s fees and reimbursement of litigation expenses. Defendant takes no position on this Motion.

With this motion, Plaintiffs submit the following materials:

- Exhibit A, the Settlement Agreement (without exhibits)

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<sup>1</sup> All capitalized terms used herein shall have the meaning ascribed to them in the Class Action Settlement Agreement and Release dated May 22, 2018 (“Settlement Agreement”) entered between Plaintiffs and Defendant, the University of Chicago. The Settlement Agreement with all exhibits thereto is being filed as an exhibit to Plaintiff’s accompanying motion for preliminary approval.

- Exhibit B, proposed Class Notice (Exhibit B to the Settlement Agreement)
- Exhibit C, proposed Plan of Allocation (Exhibit C to the Settlement Agreement)
- Exhibit D, proposed Preliminary Approval Order (Exhibit D to the Settlement Agreement)
- Exhibit E, proposed Final Order and Judgment (Exhibit A to the Settlement Agreement)
- Exhibit F, firm resume of Berger & Montague, P.C.
- Exhibit G, firm resume of Schneider Wallace Cottrell Konecky Wotkyns LLP
- Exhibit H, firm resume of Wexler Wallace LLP

As reflected in the Settlement Agreement, the parties want to compromise and settle all issues and claims relating to the allegations made in this Action on behalf of all members of the proposed Classes. The proposed Plan of Allocation will fairly distribute the settlement proceeds among the Class Members.

WHEREFORE, Plaintiffs respectfully request that the Court grant their Unopposed Motion and enter the proposed Order attached as an Exhibit hereto (and, as noted, Exhibit D to the Settlement Agreement).

Dated: May 22, 2018

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 22, 2018 I caused to be served, via electronic mail a true and correct copy of PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL AND RELATED RELIEF to the following:

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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT ILLINOIS  
EASTERN DIVISION**

WINIFRED J. DAUGHERTY, et al. on behalf  
of themselves and a class,

Plaintiffs,

vs.

THE UNIVERSITY OF CHICAGO,

Defendant.

Civil Action No. 17-cv-03736

Hon. Ruben Castillo

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR  
PRELIMINARY APPROVAL OF THE PROPOSED SETTLEMENT  
AND RELATED MATTERS**

## I. INTRODUCTION

Plaintiffs Winifred Daugherty, Walter James, and Gloria Jackson (“Plaintiffs”), individually and on behalf of all others similarly situated, and the University of Chicago (the “University”) have entered into a Class Action Settlement (the “Settlement”) to resolve all claims asserted in this ERISA lawsuit in exchange for a \$6.5 million cash payment. As is required by Prohibited Transaction Exemption 2003-39, 68 FR 75632 (Dec. 31, 2003), an independent fiduciary will review and determine whether to authorize the proposed Settlement on behalf of the University of Chicago Retirement Income Plan for Employees (“ERIP”) and the University of Chicago Contributory Retirement Plan (“CRP”, together, the “Plans”).

Plaintiffs respectfully submit this Memorandum of Law in support of their unopposed motion for entry of an order that will (i) preliminarily approve the proposed \$6.5 million Settlement<sup>1</sup> of the claims asserted in this Action; (ii) certify the two proposed Settlement Classes; (iii) approve the form and manner of giving notice of the proposed Settlement and related matters to members of the affected Settlement Classes; (iv) appoint Class Counsel; (v) appoint a Settlement Administrator; and (v) set a date for a hearing on final approval of the Settlement, the Plan of Allocation, and the motion for Plaintiffs’ Case Contribution Awards and an award to Co-Lead Counsel of Attorneys’ Fees and Expenses.

The proposed Settlement is fair, reasonable, adequate, and in the best interests of Class members. It provides a substantial and immediate benefit to them in the form of a multi-million dollar cash payment. It is the product of hard-fought litigation, which included substantial motion practice, the exchange and review of key documents, the retention of knowledgeable and qualified

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<sup>1</sup> All capitalized terms used herein shall have the meaning ascribed to them in the Class Action Settlement Agreement and Release dated May 22, 2018 (“Settlement Agreement”) entered between Plaintiffs and Defendant, the University of Chicago. The Settlement Agreement with all exhibits thereto is being filed as an exhibit to Plaintiff’s accompanying motion for preliminary approval.

experts on both sides who performed critical damage analyses, and arm's-length negotiations between experienced ERISA class-action counsel directed by a seasoned and respected mediator who is a former federal magistrate judge in this Court. The benefit of the proposed Settlement must be considered in the context of the risk that further protracted litigation might lead to no recovery, or to a smaller recovery for Plaintiffs and proposed Class members. Defendant mounted a vigorous defense at all stages of the litigation, and Plaintiffs expect that it would have continued to do so during protracted discovery and trial and potentially through appeal.

In evaluating the terms of the Settlement Agreement, Class Counsel have concluded that the benefits provided to the Classes make the Settlement in the best interests of Class Members in light of, among other considerations: (1) the substantial monetary relief afforded to Class Members; (2) the risks and uncertainties of complex litigation such as this action; (3) the expense and length of time necessary to prosecute this action through trial and any subsequent appeals; and (4) the desirability of consummating the Settlement Agreement to provide prompt, effective relief to the Class Members. In light of these factors, and as discussed further below, Plaintiffs believe that the proposed fair and reasonable Settlement merits preliminary approval.

## **II. LITIGATION AND SETTLEMENT HISTORY**

### **A. Description of the Action**

On May 18, 2017, Plaintiffs<sup>2</sup> filed a class action complaint in this Court alleging that the University violated ERISA by imprudently selecting and maintaining certain investment options in the Plans.

The initial Complaint asserted that the University breached its ERISA fiduciary duties of loyalty and prudence by failing to prudently monitor two of Plans' investment options – the CREF

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<sup>2</sup> The original Complaint included Steven Millard as a named Plaintiff, but Mr. Millard voluntarily dismissed his claims. *See* ECF No. 5.

Stock Account and the TIAA Real Estate Account. Plaintiffs further alleged that the University improperly paid excessive recordkeeping and administrative fees to the Plans' service providers by, among things, retaining two recordkeeping companies when one would have sufficed and would have been less expensive. Plaintiffs also claimed violation of ERISA's prohibited transactions rules with respect to the Plans' participant loan program.

On July 18, 2017, the University filed a motion to dismiss the Complaint in its entirety for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) and for lack of standing as to the loan claim and as to the claims related to one of the plans (the Contributory Retirement Plan or "CRP") pursuant to Rule 12(b)(1). The University argued that the Complaint failed to allege sufficiently that the University breached its duty of loyalty, that the Plans paid excessive recordkeeping fees, that the University's process for evaluating investment options was deficient, and that the investment options at issue experienced chronic underperformance.<sup>3</sup> The University also moved to strike the jury demand.

On September 22, 2017, the Court issued an opinion granting in part and denying in part the University's motion to dismiss. The Court dismissed with prejudice the Complaint's claim that the University breached its duty of loyalty. It also dismissed with prejudice, on standing grounds, the Complaint's claims that the Plans offered a loan program that violated ERISA's prohibited transaction rules, and plaintiffs' claims related to CRP. The Court denied the University's motion to dismiss the breach of duty of prudence claims alleged in the Complaint regarding the ERIP. The Court also struck Plaintiffs' jury demand.

On October 27, 2017, Plaintiffs filed a First Amended Complaint ("FAC"). To address the Court's ruling on standing, the FAC added Plaintiff Walter James, a participant in the CRP, as a

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<sup>3</sup> See generally ECF No. 20.



named Plaintiff. The FAC asserts that the University breached its ERISA duty of prudence by allowing the CRP and the ERIP to be charged excessive amounts for recordkeeping and administrative services and by failing to monitor prudently two of the Plans' investment options, the CREF Stock Account and the TIAA Real Estate Account.

On November 10, 2017, the University answered the FAC. On the same date, it filed a second motion to dismiss on standing grounds, this time directed to Count I of the FAC, which concerned the excessive recordkeeping and administrative fees and expenses relating to the CRP plan. The Court denied Defendant's motion on January 10, 2018. On January 24, 2018, the University amended its answer to the FAC.

**B. Discovery**

While the motion practice was underway, Plaintiffs began discovery in earnest. They served two document requests and a set of interrogatories on the University and issued subpoenas to two third parties. The University made several productions totaling several thousand pages of documents to Plaintiffs, including critical documents about the nature of the processes followed by the plans' fiduciaries, which Plaintiffs reviewed. Defendants also served discovery requests, including requests for production, interrogatories, and requests for admission on each of the Plaintiffs. Plaintiffs also retained and worked with expert economic witnesses to develop estimates of the damages sustained by the Plaintiffs and the Plans. The parties were on the verge of beginning fact depositions and commencing the process of producing ESI when, encouraged by the Court, they agreed to mediation.

**C. Settlement Negotiations**

Following the denial of Defendant's second motion to dismiss, at the direction of the Court, the parties began meaningful settlement discussions. The parties jointly retained retired Magistrate

Judge Morton Denlow as mediator. As part of that process, the parties prepared and submitted detailed damage analyses and settlement proposals. Judge Denlow's mediation procedures required the parties to exchange settlement offers in advance and complete a class action checklist that addressed in detail terms and conditions of the various provisions that would likely be included in a potential class settlement.

The mediation procedures were extensive. Prior to submission of the mediation briefs, Class Counsel provided the University with an extensive list of additional documents they wanted to review based on review of the initial document production. The University produced all of the documents that were requested, and Class Counsel had ample time to review them. In addition, the parties agreed to hold a pre-mediation meeting. In that pre-mediation meeting, the University explained its position with respect to certain of the key documents (in particular, the mapping of monies from the TIAA annuities) and agreed to answer any questions from Class Counsel.

After this extensive pre-mediation process, the parties participated in an all-day, in-person mediation with Judge Denlow on April 14, 2018. After lengthy negotiations, the parties reached the principal terms of the Settlement. Judge Denlow's requirement of exchanging class action checklists allowed the parties to execute a term sheet based on an agreed checklist at the conclusion of the mediation. Thereafter, the parties negotiated the detailed terms of the Settlement Agreement and exhibits thereto presented to the Court on this motion, memorializing the terms of the class action Settlement for which Plaintiffs now seek preliminary approval, and developed the Notice plan and the Plan of Allocation on the basis of detailed Class Member and investment data.

During this litigation, the parties were able to fully develop the legal and factual record as a result of briefing two sets of dispositive motions, reviewing the relevant proprietary and public documents, the University's production of information in connection with the mediation, and the

retention of knowledgeable industry experts. The proposed Settlement was agreed upon after extensive arm's-length negotiations among experienced counsel, including an in-person mediation conducted by a seasoned and well-respected mediator. If approved, the Settlement will provide a substantial monetary benefit to Class Members, totaling \$6,500,000.

**D. The Settlement Agreement**

1. Benefits to Class Members

The Settlement Agreement provides for a cash payment of \$6.5 million (the "Settlement Amount") as compensation to the Settlement Classes. *See* Settlement Agreement § 3.1(a). The Settlement Amount will also cover the administrative costs associated with implementing the Settlement; any applicable taxes or tax-related costs; independent fiduciary fees in excess of \$25,000; any Case Contribution Awards for Plaintiffs approved by the Court; and any attorneys' fees and costs approved by the Court. *Id.* § 3.1(j). The remaining amount (the "Net Settlement Amount") will be distributed to members of the Settlement Classes pursuant to the terms of the Settlement Agreement and the proposed Plan of Allocation, which is attached as Exhibit C to the Settlement Agreement, or such other allocation plan as may be ordered by the Court. *Id.* § 3.2

Under the terms of the Settlement Agreement, \$100,000 of the Settlement Amount will be deposited into the Escrow Account within five days of entry of the Preliminary Approval Order to fund any Administrative Costs that arise before the Effective Date. The balance of \$6.4 million will be deposited into the Escrow Account within 15 days of the Effective Date. *Id.* § 3.1(b). The Settlement Fund will be administered by the Court-approved Settlement Administrator. *Id.* § 3.1(d). The Settlement Amount, less administration costs, and Court-approved fees, expenses, and Case Contribution Awards, shall be distributed to Monetary Relief Class Members in accordance with the Plan of Allocation, or such other allocation plan approved by the Court. *Id.* § 3.2. No

payment less than \$25 shall be distributed to any Class Member who is a Former Participant of the Plans, as defined in § 1.24 of the Agreement. Any undistributed funds shall be delivered to the Plans and used for participant education, provided that the amount is not sufficient to warrant a second distribution. *Id.* § 3.4. There will be no *cy pres* payment. *Id.*

All distributions of the Net Settlement Amount will be made according to the Plan of Allocation, based upon records concerning the year end account balances in the Plans for every Monetary Relief Class Member for each year the Member participated in the Plans. Class Members will not be required to submit claim forms to obtain a share of the Net Settlement Amount.

In addition, the University has agreed to retain certain structural changes to the Plans that will further benefit the Plans and their participants who are members of the proposed Settlement Classes. *Id.* § IV. The University agreed not to increase per-participant recordkeeping fees for three years from the date of Final Approval of the Settlement, and to use commercially reasonable best efforts to continue to attempt to reduce recordkeeping fees. *Id.* § 4.2. Moreover, effective April 2, 2018, the University implemented a new investment lineup for the Plans that reduced the total number of investment options, and removed the CREF Stock account as an investment option.<sup>4</sup> *Id.* § 4.3.

2. Retention of an Independent Fiduciary

As required by Prohibited Transaction Class Exemption 2003-39, 68 FR 75632 (Dec. 31, 2003), as amended 75 FR 33830 (June 15, 2010), the Settlement Agreement provides that the University will select an Independent Fiduciary to provide the authorization required by that Exemption to approve the Settlement on behalf of the Plans and approve the release for the

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<sup>4</sup> The TIAA Real Estate Account will continue to be available as an investment option in the new investment lineup, and participants will not be required to liquidate their holdings in CREF Stock. (They cannot contribute any additional money to the CREF Stock account.)

University and the Plan fiduciaries *Id.* § 2.9(a). The University has agreed to pay the costs associated with the retention of the independent fiduciary, up to \$25,000. *Id.* The Settlement Agreement provides that the Independent Fiduciary must provide a report authorizing the Settlement at least 15 days prior to the final approval hearing. *Id.* § 2.9(b).

Accordingly, in addition to this Court's review and approval, the Settlement will be evaluated by an experienced fiduciary whose sole loyalty is to the Settlement Class Members, and that fiduciary will evaluate the Settlement as to whether it is (1) reasonable in the light of the litigation risk and the value of the claims, (2) consistent with an arm's length agreement, and (3) not part of an agreement or arrangement to benefit a party in interest.

3. Attorneys' Fees, Costs and Service Award for Plaintiffs

Class Counsels' fees, costs and expenses and Plaintiffs' Case Contribution Awards will be paid from the Settlement Fund as the Court may so order. *See generally Id.* § 8. Class Counsel will petition the Court for Case Contribution Awards not to exceed \$10,000 per named Plaintiff in recognition of their service. *Id.* § 8.1(a). Class Counsel will also petition the Court for an award of attorneys' fees not to exceed 30% of the Settlement Amount plus reasonable expenses. All requests will be subject to Court approval. *Id.* §§ 8.1-8.2.

4. Release of Claims

Under the terms of the Settlement Agreement, Plaintiffs and the Settlement Class Members, on their own behalf and on behalf of their current and former beneficiaries, their representatives, and their successors-in-interest, and the Plans absolutely and unconditionally release and forever discharge the Chicago Releasees from the claims at issue in this case. *Id.* § 6.1. Additionally, Plaintiffs, the Classes and the Plans agree not to sue the University for any of the Structural Changes that have been made pursuant to the Settlement Agreement for a period of 3

years from the date of Final Approval. *Id.* § 6.2. The full scope of the releases and covenant not to sue is set forth in the Settlement Agreement at Section VI.

5. Notice and Objections

Pursuant to Federal Rule of Civil Procedure 23(e)(1) and (e)(5), the Settlement Agreement provides for notice to the Class and an opportunity for Class members to object to approval of the Settlement. *Id.* § 2.10. The Parties have agreed, subject to Court approval, to a notice plan that will provide the Class Members with sufficient information to make an informed decision about whether to object to the proposed Settlement. *Id.* The proposed Settlement Notice procedure includes first-class mail to the Monetary Relief Class Members of the Settlement Notice to the Class Members' last known mailing address, which will be supplied by TIAA and Vanguard and supplemented using the National Change of Address database.

The Notice will inform Class Members of the nature of the action, the litigation background and the terms of the Settlement Agreement, including the definition of the Settlement Classes, the relief provided by the Settlement Agreement, the intent of Class Counsel to seek fees and costs, the proposed Case Contribution Awards payable to Plaintiffs, and the scope of the release and binding nature of the Settlement on Class Members. It also describes the procedure for objecting to the Settlement and states the date, time and place of the final approval hearing. *Id.* The Settlement Agreement also provides that the Settlement Administrator shall establish a Settlement Website that will contain the Notice, the Settlement Agreement and its exhibits, and a Settlement Information Line. *Id.* §§2.12-2.13.

### **III. ARGUMENT**

#### **A. The Settlement Classes Meet All Requirements of 23(a) and (b)(1) and Should Be Certified.**

In connection with preliminary approval of the Settlement, Plaintiffs seek class certification for settlement purposes. Defendant takes no position on this motion. As part of the Settlement, Plaintiffs propose, and Defendants do not object to, for settlement purposes only, certification of the Settlement Classes defined as follows:

##### **(a) The Monetary Relief Class**

The “Monetary Relief Class” will consist of all participants and beneficiaries of The University of Chicago Contributory Retirement Plan and The University of Chicago Retirement Income Plan for Employees from May 18, 2011 through the date of preliminary approval, excluding the Defendant and any participant who is a fiduciary to the Plans.

##### **(b) The Structural Changes Class**

The “Structural Changes Class” will consist of all participants and beneficiaries of The University of Chicago Contributory Retirement Plan and The University of Chicago Retirement Income Plan for Employees from the date of final approval until the date that is three years after the date of final approval.

Before assessing whether the Settlement is within the range of reasonableness for the purposes of preliminary approval, the Court must conduct an independent class certification analysis. The Settlement Classes meet all of the requirements for certification under Federal Rule of Civil Procedure 23(a) and Rule 23(b)(1).

A class may be certified under Rule 23(a) when “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class;

and (4) the representative parties will fairly and adequately protect the interests of the class.” *Kleen Prods. LLC v. Int’l Paper Co.*, 831 F.3d 919, 923 (7th Cir. 2016) (quoting Fed. R. Civ. P. 23(a)).

1. The Class is so numerous that joinder is impracticable.

Rule 23(a)(1) requires that a class be so numerous that joinder of all class members is “impracticable.” “Generally, where class members number at least 40, joinder is considered impracticable and numerosity is satisfied.” *Physicians Healthsource, Inc. v. A-S Medication Sols., LLC*, No. 12-CV-05105, 2016 WL 5390952, at \*6 (N.D. Ill. Sept. 27, 2016) (quoting *Oplchenski v. Parfums Givenchy, Inc.*, 254 F.R.D. 489, 495 (N.D. Ill. 2009)); *see also Swanson v. Am. Consumer Indus., Inc.*, 415 F.2d 1326, 1333 (7th Cir 1969) (concluding that 151 class members met the numerosity requirement). Here, the proposed Settlement Classes potentially include roughly 40,000 people, making joinder impracticable.

2. There are questions of law and fact common to the Class.

Class certification is “‘peculiarly appropriate’ when the ‘issues involved are common to the class as a whole’ and ... ‘turn on questions of law applicable in the same manner to each [class] member.’” *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 155 (1982) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 701 (1979)). Rule 23(a)(2) does not require that every question of law or fact be common to each member of the class, rather “[a] common nucleus of operative fact is usually enough to satisfy the commonality requirement of Rule 23(a)(2).” *Keele v. Wexler*, 149 F.3d. 589, 595 (7th Cir. 1998); *see also George v. Kraft Foods Global, Inc.*, 270 F.R.D. 355 (N.D. Ill. 2010) (citations omitted).

In this case, the commonality requirement is readily satisfied because Plaintiffs’ allegations arise from the same common nucleus of operative facts, and all members of the proposed Settlement Classes will cite the same common evidence to prove their identical claims. Thus, in



this case, a “classwide proceeding [will] generate common answers apt to drive the resolution of the litigation.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (U.S. 2011).

Under these circumstances, commonality is easily satisfied. The legal and factual questions linking Class Members are related to the resolution of the litigation of every Class Member’s claims. Common questions of law and fact are presented about whether Defendant breached its fiduciary duties concerning the Plans’ investment options and recordkeeping and administrative fees charged. The many questions of law and fact common to the Class (and the nature of the common evidence used to prove these elements of the claims) include:

- a. Whether Defendant is a fiduciary under ERISA (answerable based on form documents);
- b. How Defendant selected, retained and oversaw the Plans’ investment options, including the TIAA Real Estate Fund and the CREF Stock Account (focused exclusively on Defendant’s conduct);
- c. How Defendant selected, retained and oversaw the Plans’ recordkeepers (focused exclusively on Defendant’s conduct);
- d. Whether Defendant, in arranging for, selecting, and retaining the investment options and Plan service providers discharged its fiduciary duties with respect to the Plans in a prudent manner (focused exclusively on Defendant’s conduct); and
- e. Whether Defendant’s actions proximately caused losses to the Plans and, if so, the appropriate relief to which the Plans are entitled (focused exclusively on Defendant’s conduct).

These are the core issues in this case and the alleged bases for the harms that unify all Class Members. The evidence necessary to resolve these issues is the same way. Classes consisting of ERISA plan participants are routinely certified in this and other courts. Thus, the commonality requirement is readily satisfied for the Class. *See, e.g., Nistra v. Reliance Trust Co.*, 2018 WL 835341 (N.D. Ill. Feb. 13, 2018); *Abbott v. Lockheed Martin Corp.*, 2014 WL 12570094 (S. D. Aug. 1, 2014); *Beesley v. International Paper Co.*, 2013 WL 12171727.

3. Plaintiffs' claims are typical of the claims of the Class.

Rule 23(a)(3)'s typicality requirement is similar to the commonality requirement, *Keele* 149 F.3d at 595, but examines whether the proposed class representatives have the same interests and seeks a remedy for the same injuries as other class members. *E. Tex. Motor Freight Sys., Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977). "A plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory." *Keele*, 149 F.3d at 595. "[T]here must be enough congruence between the named representative's claim and that of the unnamed members of the class to justify allowing the named party to litigate on behalf of the group." *Spano v. Boeing Co.*, 633 F.3d 574, 586 (7th Cir. 2011).

In this context, the typicality requirement is satisfied if the class representative is "invested in the same funds as the class members" or were participants in the same plans. *Id.* There is no dispute that this is so. For the same reasons that Plaintiffs' claims are common to all Class Members, they are also typical. Plaintiffs, like other members of the Class, (1) seek relief for the same losses, (2) caused by the same alleged breaches of fiduciary duties, (3) affecting the same Plans and funds. *Cf. Spano*, 633 F.3d at 586-87, 589-90. "Nothing more is required to satisfy Rule 23." *Kraft*, 270 F.R.D. at 367; *see also Brieger v. Tellabs, Inc.*, 245 F.R.D. 345, 350-55 (N.D. Ill. 2007) (holding that "plaintiffs' claims are typical of those of the putative class, principally because they seek relief on behalf of the Plan . . . for alleged fiduciary violations as to the Plan").

4. Plaintiffs will fairly and adequately represent the Settlement Classes.

Fed. R. Civ. P. 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." In order to satisfy the requirements of Rule 23(a)(4), the class representative must "possess the same interest and suffer the same injury as the class members." *Uhl v. Thoroughbred Tech. & Telecomms., Inc.*, 309 F.3d 978, 985 (7th Cir. 2002) (quoting *E.*

*Tex. Motor Freight*, 431 U.S. at 403). The adequacy determination is two-pronged. Both the adequacy of the named plaintiff's counsel, and the adequacy of "representation provided in protecting the different, separate, and distinct interest' of the class members." *Retired Chi. Police Ass'n v. City of Chicago*, 7 F.3d 584, 598 (7th Cir. 1993) (quoting *Sec'y of Labor v. Fitzsimmons*, 805 F.2d 682, 697 (7th Cir. 1986) (*en banc*)).

Here, the three named Plaintiffs who are the proposed Class Representatives are participants in the CRP and ERIP and allegedly suffered a *pro rata* loss as a result of Defendant's alleged fiduciary breaches with regard to excessive administrative and recordkeeping fees and deficient investment fund performance. Like other members of the Class, the proposed Class Representatives seek to maximize the recovery to the Class through this litigation. *Kanawi v. Bechtel Corp.*, 254 F.R.D. 102, 111 (N.D. Cal. 2008). None of the proposed Class Representatives has any interest that is antagonistic to the claims of any Class Member. *George v. Kraft Foods Global, Inc.*, 251 F.R.D. 338, 348 (N.D. Ill. 2008). The proposed Class Representatives' interests are thus fully aligned with the interests of Class Members.

Furthermore, the proposed Class Representatives have been and remain willing and able to take the required role in the litigation to protect the interests of those they seek to represent. As one district court has noted, it is sufficient for purposes of an ERISA case if a proposed class representative "understands that she had a retirement plan and believes that defendants failed to protect the money in the Plan" and, further, that she "understands her obligation to assist her attorneys and testify." *Rankin v. Rots*, 220 F.R.D. 511, 521 (E.D. Mich. 2004). All three proposed Class Representatives have that required understanding and have demonstrated their commitment to this case by providing materials in discovery and they were consulted about key terms of the Settlement. In addition, as discussed below, the proposed Class Representatives have retained

counsel with significant experience in ERISA class actions. In sum, the named Plaintiffs are adequate representatives of the proposed Settlement Classes.

5. The Class satisfies the requirements of Rule 23(b)(1).

Fed. R. Civ. P. 23(b)(1)(B) provides that a class may be certified where “prosecuting separate actions by . . . individual class members would create a risk of . . . adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.” Fed. R. Civ. P. 23(b)(1)(B). As the Supreme Court has explained, Rule 23(b)(1)(B) applies where “the shared character of rights claimed or relief awarded entails that any individual adjudication by a class member disposes of, or substantially affects, the interests of absent class members.” *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 834 (1999). “Classic examples” of suits appropriate for class resolution under Rule 23(b)(1)(B) classes include “actions charging a breach of trust by a . . . fiduciary similarly affecting the members of a large class of beneficiaries, requiring an accounting or similar procedure to restore the subject of the trust.” *Id.*

This is the type of case that Rule 23(b)(1) envisioned. Plaintiffs allege that the University breached its fiduciary duties to the Plans and that the breach similarly affected all Plan beneficiaries. The proposed class therefore satisfies Rule 23(b)(1)(A). *See Nistra v. Reliance Trust Co.*, 16-C-4773, 2018 WL 83541 (N.D. Ill. Feb. 13, 2018).

**B. The Settlement Should Be Preliminarily Approved**

It is well-established that there is an overriding public interest in settling and quieting litigation, and this is true particularly in class actions. *See Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) (“Federal courts naturally favor the settlement of class action litigation.”); *Williams v.*

*Quinn*, 748 F. Supp. 2d 892, 897 (N.D. Ill. 2010) (“Federal courts favor the settlement of class actions”); *Goldsmith v. Tech. Solutions Co.*, No. 92-4374, 1995 U.S. Dist. LEXIS 15093 (N.D. Ill. Oct. 10, 1995) at \*6 (“the federal courts look with great favor upon the voluntary resolution of litigation through settlement. In the class action context in particular, there is an overriding public interest in favor of settlement.”)

Preliminary approval is warranted when a proposed class-action settlement is “within the range of possible approval” so as to provide a “reason to notify the class members of the proposed settlement and to proceed with a fairness hearing.” *Armstrong v. Bd. of Sch. Dirs. of the City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980) (citing *Manual for Complex Litigation* § 1.46). “[T]he court’s task is . . . not to conduct a full-fledged inquiry into whether the settlement meets Rule 23(e)’s standards.” *Am. Int’l Grp., Inc. v. ACE INA Holdings, Inc.*, No. 07 C 2898, 2011 WL 3290302, at \*6 (N.D. Ill. July 26, 2011) (citing *Armstrong*, 616 F.2d at 314). In determining whether to approve a settlement preliminarily, “the court must consider ‘the strength of plaintiffs’ case compared to the amount of defendant’s settlement offer, an assessment of the likely complexity, length and expense of the litigation, and evaluation of the amount of opposition to settlement among affected parties, the opinion of competent counsel, and the stage of the proceedings and the amount of discovery completed at the time of settlement.” *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 227 (N.D. Ill. 2016) (quoting *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006)). All of these factors warrant preliminary approval of the proposed Settlement.

1. This Settlement Provides Substantial Monetary Relief to Class Members And Preserves Beneficial Changes to the Plans that the University Recently Implemented.

The Settlement provides substantial monetary relief. It provides for a multi-million dollar payment to the Plans for distribution to members of the Monetary Relief Class. It also preserves the beneficial changes to the Plans that the University recently implemented. Specifically, the University agrees not to increase recordkeeping fees for at least three years and will use its best efforts to reduce those fees further. The University also removed the CREF Stock Account as an investment option in the Plans.

2. The Settlement is the Result of Good-Faith, Arm's-Length Negotiations Conducted by Well-Informed and Experienced Counsel.

The Settlement was achieved only after arm's-length negotiations between well-informed and experienced counsel after hard-fought motion practice and a substantial exchange of discovery. It is the opinion of the counsel who achieved the Settlement that it is fair and reasonable to the members of the Classes. Each of these factors strongly supports preliminary approval of the Settlement.

First, courts recognize that the opinion of experienced counsel supporting a settlement is entitled to considerable weight. *See, e.g., Armstrong*, 616 F.2d at 325 (in determining the fairness of a class settlement, “the court is entitled to rely heavily on the opinion of competent counsel”); *Hispanics United*, 988 F. Supp. at 1170 (same); *Alliance to End Repression v. City of Chi.*, 561 F. Supp. 537, 548 (N.D. Ill. 1982) (“Judges should not substitute their own judgment as to optimal settlement terms for the judgment of the litigants and their counsel.”). Here, proposed Co-Lead Counsel – two law firms that are nationwide leaders in ERISA class-action litigation– have made a considered judgment based on adequate information derived from substantial discovery that the Settlement is not only fair and reasonable, but a favorable result for the Classes. Co-Lead

Counsel's beliefs are based on their deep familiarity with the factual and legal issues in this case and the risks associated with continued litigation.

The arm's-length nature of the settlement negotiations creates a presumption that the Settlement is fair. *See Nat'l Rural Telecomm Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) ("A settlement following sufficient discovery and genuine arm's-length negotiation is presumed fair."); *Mangone v. First USA Bank*, 206 F.R.D. 222, 226 (S.D. Ill. 2001) (a settlement proposal arrived at after arm's length negotiations by fully informed, experienced and competent counsel may be properly presumed to be fair and adequate) (*citing Susquehanna Corp. v. Korholz*, 84 F.R.D. 316, 320 (N.D. Ill. 1979)).

2. The Substantial Benefits for the Class, Weighed Against Litigation Risks, Support Preliminary Approval.

Absent this Settlement, continued litigation of this action would be complex and lengthy, requiring the investment of considerable resources by both parties and the Court. Liability in this case is heavily contested, and both sides would face considerable risks should the litigation proceed. In contrast to the complexity, delay, risk, and expense of continued litigation, the proposed Settlement will produce certain, and substantial recovery for Settlement Class Members.

The \$6.5 million cash payment represents a substantial recovery, and the result here is enhanced by the fact that the Settlement guarantees the preservation of beneficial Plan changes the University has implemented. These results are particularly beneficial to the Classes in light of the risks posed by continued litigation, including the possibility of the Court ultimately finding no liability or the inability to prove damages.

While Plaintiffs believe that the claims asserted against Defendant are meritorious, they recognize that their claims present a number of substantial risks to establishing both liability and damages and there was no certainty that Plaintiffs would have prevailed at trial. The University

mounted a vigorous defense to Plaintiffs' claims in this Action and have set forth multiple defenses in their pleadings. Their defenses include the defenses: of statute of limitation/laches, waiver, estoppel, standing, lack of proximate causation, failure to mitigate loss, release, comparative fault, and their contention that Plaintiffs exercised independent control over their investment elections in the Plan.

With respect to the primary question of Defendant's liability, the University claims that it properly managed its retirement plans and had prudent processes in place to evaluate both its recordkeeping fees and investment options. They claim that their choices were within the range of choices made by other similarly-situated plan fiduciaries at the time they were made. As to the record-keeping claim, in particular, the University claims that it repeatedly negotiated reductions in fees throughout the Class Period, including ones that were retroactive to the start of the class period. The University also contended in the mediation that Plaintiffs overstated the potential damages they could recover at trial, even assuming Plaintiffs could establish liability with regard to all claims.

Thus, Plaintiffs faced a risk that they would be unable to establish the University's liability, and if they were able to do so, they faced the further risk that a trier of fact would find no damages or damages that were less than the \$6.5 million Settlement the University offered. One factor that the parties weighed during the mediation was the fact that one of the 19 roughly similar retirement plan lawsuits against private universities was scheduled to go to trial less than a month after the date of the mediation. Both parties negotiated at the mediation knowing that the future outcome of that trial as well as the outcomes of the other lawsuits were risk factors for both sides. As of the date of this motion, the outcome of that trial remains unknown.



In light of all of these risks, Plaintiffs and their counsel believe the Settlement represents a favorable outcome for Class members. The Settlement will avoid the cost and expense of continued litigation and will achieve immediate relief for Class members.

**C. The Court should appoint Plaintiffs' Counsel as Co-Lead Class Counsel.**

Fed. R. Civ. P. 23(g) requires a court to appoint class counsel. In appointing class counsel, the Court "must" consider:

- the work counsel has done in identifying or investigating potential claims in the action;
- counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- counsel's knowledge of the applicable law; and
- the resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(A). The court "may" also consider "any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B).

Proposed Co-Lead Class Counsel, the law firms of Berger & Montague P.C., and Schneider Wallace Cottrell Konecky Wotkyns LLP, satisfy these criteria. This team of law firms, together with Wexler Wallace LLP, expended a great deal of time, effort and expense investigating the University's documents, practices, and actions prior to and since filing this action. Further, as set forth in the firm resumes submitted herewith, each firm is highly experienced in ERISA litigation. *See* Exs. F, G, and H. It is clear from each firm's track-record of success that Class Counsel are highly skilled and knowledgeable concerning ERISA law and class-action practice.

Berger & Montague, P.C., one of the oldest and most successful plaintiffs' class action firms in the nation, has for decades represented plaintiffs and plaintiffs' classes not only in ERISA actions, but also in the areas of antitrust, securities, mass tort, and consumer protection. The firm

has represented plaintiffs in many ERISA class actions, including as lead counsel in a recent case in this district that settled for \$36 million. *See Diebold v. Northern Trust Investments, N.A.*, No. 09-cv-1934. A fuller description of Berger Montague's experience litigating complex class actions, including a firm resume, is included herewith. *See* Ex. F.

Schneider Wallace has extensive experience in class action matters, including ERISA matters. Of note, Schneider Wallace (with co-counsel) was appointed co-lead counsel in a class action challenging the management of a leading collection of stable value funds managed by JP Morgan and affiliates, *In re J.P. Morgan Stable Value Fund ERISA Litigation*, Master File No. 12-cv-2548-VSB (S.D.N.Y.). That class was certified on March 31, 2017 and approval of the parties' \$75 million settlement is pending. Schneider Wallace also served as class counsel (with co-counsel) in *Glass Dimensions, Inc. v. State Street Corp. et al.*, Civ. No. 10-10588-FDS, an ERISA fiduciary breach class action that settled for \$10 million as well as substantial injunctive relief. Schneider Wallace has been appointed class counsel in many other similarly complex class actions, and attached as Exhibit G, included herewith, is a true and correct copy of a list of representative actions in which Schneider Wallace has been appointed lead counsel as well as a set of biographies for the attorneys principally working on this matter.

Wexler Wallace is a nationally-recognized leading firm in complex class-action and multidistrict litigation, and attorneys at the firm have been appointed to numerous leadership positions in class action cases across the country. The firm's resume, attached hereto as Exhibit H, describes many of the firm's successes, including in ERISA class-action cases. For example, just last year, Wexler Wallace served as co-lead class counsel—and trial counsel—for an ERISA class action which resulted in the district court affirming a unanimous advisory jury verdict for the class. *See Jammal, et al. v. American Family Insurance*, No. 13-cv-00437 (N.D. Ohio). As can be seen

by their commitment to prosecuting this case thus far as well as their track record, Class Counsel have made the investment and have the experience to represent the Class vigorously. Accordingly, the appointment of the proposed Co-Lead Class Counsel under Rule 23(g) is warranted.

**D. The Proposed Class Notice Is Appropriate and Should be Approved**

As set forth in the proposed Preliminary Approval Order, Class Counsel will cause Class Members to be notified of the pendency of the Action and the proposed Settlement by causing the Settlement Notice to be mailed to all Class Members. The Settlement Administrator will also establish a website related to the Settlement, with the Notice featured on it, as well as a Settlement Information Line. This procedure is designed to reach as many Class Members as reasonably practicable. The Settlement Notice informs Class Members of the nature of the Action, the definition of the Classes, the binding nature of the Settlement on Class Members, and the intent of Class Counsel to seek a Case Contribution Awards for Plaintiffs and an award of attorneys' fees and reimbursement for litigation expenses. It contains a detailed but easily-understandable summary of the terms of the Settlement (including the relief provided and the scope of the Release) and a copy of the proposed Plan of Allocation. It also informs Settlement Class Members how and when to file objections,<sup>5</sup> and states the date, time and place of the Settlement hearing.

The form and manner of providing notice to the Class satisfies all the requirements of Rule 23 and due process. A settlement must provide adequate notice to class members so that each can make an informed choice about whether to object. Rule 23(e) (1) provides that, in the event of a class settlement, “[t]he court must 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). To satisfy due process, the notice must be “reasonably calculated, under all circumstances, to apprise interested parties of the

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<sup>5</sup> As this is a Rule 23(b)(1) class action, there is no provision for opting out of the proposed Classes.

pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cen. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Courts have considerable discretion in approving an appropriate notice plan. *Eirhart v. Libbey-Owens-Ford Co.*, 921 F.2d 278, at \*1 (7th Cir. 1990) (table op.) (observing that a district court “has ‘virtually complete discretion’ as to the manner in which notice of a proposed settlement be given.”); *Manual for Complex Litig.* § 21.311 (“Determination of whether a given notification is reasonable under the circumstances of the case is discretionary.”).

The notice program set forth in the proposed Preliminary Approval Order meets these standards: it provides the best practicable notice under the circumstances and is reasonably calculated to reach substantially all members of the Class. Settlement Notices will be directly mailed to all Class Members, and that mailing will be supplemented by publication on the Settlement website. The Proposed Class Notice is clear, accurate, easy-to-understand, and satisfies due process.

## **V. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their Motion for Preliminary Approval of the Settlement and for certification of the proposed Classes for settlement purposes only, and enter the proposed Preliminary Approval Order.

Dated: May 22, 2018

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 22, 2018, I caused to be served, via electronic mail a true and correct copy of PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR PRELIMINARY APPROVAL OF THE PROPOSED SETTLEMENT AND RELATED MATTERS to the following:

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*Attorneys for The University of Chicago*

/s/ Mark R. Miller  
Mark R. Miller

## **EXHIBIT 1**

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WINIFRED J. DAUGHERTY et al., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 THE UNIVERSITY OF CHICAGO, )  
 )  
 Defendant. )

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**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**



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This Settlement Agreement and Release (“Agreement”) is entered into on May 22, 2018, by and among plaintiffs Winifred J. Daugherty, Walter R. James, and Gloria Jackson (“Plaintiffs”), on their own behalf and on behalf of the Settlement Classes (as defined below) and the Plans (as defined below), on the one hand, and the Defendant (as defined below) on the other, in consideration of the promises, covenants and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate.

**I. DEFINITIONS**

1.1 “Action” shall mean *Winifred J. Daugherty, et al. v. The University of Chicago*, No. 17 C 3736 (N.D. Ill.).

1.2 “Administration Costs” shall mean (i) the costs and expenses associated with the production and dissemination of the Notice (as defined in Section 2.10); (ii) all reasonable costs incurred by the Settlement Administrator (as defined in Section 1.40) in administering and effectuating this Settlement, which costs and expenses are necessitated by performance and implementation of this Agreement and any Court orders relating thereto; (iii) all reasonable fees charged by the Settlement Administrator; and (iv) any other costs associated with the settlement, including but not limited to any amounts charged by TIAA or Vanguard.

1.3 “Attorneys’ Fees and Expenses” shall mean the reasonable attorneys’ fees, costs (including expert costs) and expenses of Class Counsel (as defined in Section 1.7) for their past, present, and future work, efforts, and expenditures in connection with this Action and resulting Settlement.

1.4 “Case Contribution Award” shall have the meaning ascribed to it in Section 8.1.

1.5 “Chicago Releasees” shall mean, collectively, the Defendant Released Parties (as defined in Section 1.13 below) and Other Released Parties (as defined in Section 1.31 below).

1.6 “Claims” shall have the meaning ascribed to it in Section 1.38.

1.7 “Class Counsel” shall mean, collectively, Wexler Wallace LLP, Schneider Wallace Cottrell Konecky Wotkyns LLP, and Berger & Montague, P.C.

1.8 “Court” shall mean the United States District Court for the Northern District of Illinois.

1.9 “CRP” shall mean the Contributory Retirement Plan.

1.10 “Current Participant” shall mean a “Monetary Relief Class Member” (as defined below) who, as of the time of the entry of the Preliminary Approval Order, has an account balance in either of the Plans.

1.11 “Defendant” shall mean the University of Chicago (including all of its past and present individual employees, trustees, and affiliates).

1.12 “Defendant’s Counsel” shall mean Sidley Austin LLP.

1.13 “Defendant Released Parties” shall mean the University of Chicago and its affiliates, the Trustees of the University and the University’s affiliates, and any and all current and former employees of the University and the University’s affiliates including those who have acted as a fiduciary or provided services to one of the Plans at any time during the class period.

1.14 “Distributable Settlement Amount” shall have the meaning ascribed to it in Section 3.2(a).

1.15 “Effective Date” shall mean (a) the date upon which the applicable period to appeal the Final Approval Order and Judgment has expired, if no appeal on any issue is taken during such period; or (b) if, during the aforesaid appeals period, an appeal is taken in this case, the date upon which all appeals, including petitions for review, rehearing, or certiorari, and any proceedings resulting therefrom, have been finally disposed of, or the date of the expiration of

the time to initiate such petitions or proceedings. The Parties shall agree by written communication when the Effective Date has occurred; any dispute shall be resolved by the Court. It is expressly agreed by the Parties and their counsel that no Party intends that this provision nor any other part of this Agreement establishes or acknowledges that anyone is entitled to or has the right to appeal from any such orders which may be entered in connection herewith.

1.16 “ERIP” shall mean the Retirement Income Plan for Employees.

1.17 “Escrow Account” shall mean an account at an established Financial Institution, selected by Class Counsel with Defendant’s consent (which consent shall not be unreasonably withheld) that is established for the deposit of certain amounts relating to the Settlement.

1.18 “Escrow Agent” shall mean Huntington National Bank, or whatever other person or entity is selected by Class Counsel with Defendant’s consent (which consent shall not be unreasonably withheld) to act as escrow agent for any portion of the Settlement Amount (as defined in Section 3.1(a)) deposited in or accruing in the Escrow Account pursuant to this Agreement.

1.19 “Fee and Expense Application” shall mean the petition, to be filed by Class Counsel, seeking approval of an award of Attorneys’ Fees and Expenses.

1.20 “Final Approval Hearing” shall mean the hearing to be held before the Court pursuant to Federal Rule of Civil Procedure 23(e) to determine whether the Agreement should receive Final Approval (as defined in Section 1.21) by the Court. The Parties will request that the Final Approval Hearing shall be scheduled for a date no earlier than 110 days after the entry of the Preliminary Approval Order (as defined in Section 1.36).

1.21 “Final Approval” shall mean the entry of the Final Approval Order and Judgment.

1.22 “Final Approval Order and Judgment” or “Final Approval Order” shall mean a final order entered by the Court after the Final Approval Hearing, substantially the same in all material respects to the order attached hereto as Exhibit A, granting its approval of the Settlement. The Parties may agree to additions or modifications to the form of the Final Approval Order and Judgment as they agree are appropriate at the time that it is submitted to the Court for final approval of the Settlement.

1.23 “Financial Institution” shall mean the institution at which the Escrow Account is established, which is Huntington National Bank.

1.24 “Former Participant” shall mean a “Monetary Relief Class Member” (as defined below) who, as of the time of the entry of the Preliminary Approval Order, no longer has any account balance in either of the Plans.

1.25 “Independent Fiduciary” shall mean the qualified and experienced independent fiduciary that the University selects to independently review the Settlement (as defined in Section 1.39) on behalf of the Plans.

1.26 “Independent Fiduciary Fees” shall mean the fees and expenses of the Independent Fiduciary. Any Independent Fiduciary Fees up to \$25,000 shall be payable by Defendant; amounts in excess of \$25,000 shall be payable from the Settlement Amount after such funds are deposited with the Escrow Agent and upon receipt of an invoice from the Independent Fiduciary.

1.27 “Notice” shall mean the notice, identical in all material respects to that attached hereto as Exhibit B, to be delivered to Monetary Relief Class Members (as defined in

Section 1.30) pursuant to Section 2.10 and made available on the Settlement Website (as defined in Section 1.45).

1.28 “Member of the Settlement Classes” shall mean any Monetary Relief Class Member and any Structural Changes Class Member (as defined in Sections 1.30 and 1.48 respectively).

1.29 “Monetary Relief Class” shall have the meaning ascribed to it in Section 2.2(a).

1.30 “Monetary Relief Class Member(s)” shall mean any plan participant who is a member of the Monetary Relief Class or any person acting or claiming to act on behalf of such a class member.

1.31 “Other Released Parties” shall mean the University of Chicago’s insurers and all third parties that provided services to the Plans, including but not limited to Vanguard, TIAA, Aon, and any mutual fund company whose funds were designated investment alternatives at any time during the class period.

1.32 “Parties” shall mean Plaintiffs, the Settlement Classes, and the Defendant.

1.33 “Plaintiffs” shall mean, collectively, Winifred J. Daugherty, Walter R. James, and Gloria Jackson.

1.34 “Plan of Allocation” shall mean the formula for allocation of the Distributable Settlement Amount as approved by the Court, which formula shall govern the distribution of the Distributable Settlement Amount, in the form attached hereto as Exhibit C. Notwithstanding any other provision of this Agreement, any revisions by the Court or any appellate court or otherwise relating solely to the Plan of Allocation shall not operate to terminate or cancel or otherwise affect this Agreement, provided that any such revisions do not require the University

or its affiliates to incur additional expenses and costs to provide data not already readily available in the Plans' computer systems.

1.35 "Plans" shall mean the ERIP and CRP.

1.36 "Preliminary Approval Order" shall mean an order entered by the Court preliminarily approving the Settlement, pursuant to Section 2.2 below, that is substantially the same in all material respects to that attached hereto as Exhibit D.

1.37 "Regulatory Change" shall have the meaning ascribed to it in Section 4.4(b).

1.38 "Released Claims" shall mean any and all claims, debts, demands, rights or causes of action, suits, matters, and issues or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class, derivative, or individual in nature (collectively, "Claims"), including both known Claims and Unknown Claims, against any of the Chicago Releasees and Defendant's Counsel (i) that have been asserted in this litigation or which could have been asserted in this litigation, or (ii) that in any way arise out of, relate to, are based on, or have any connection with the Plans' management and administration, including, but not limited to any fees, expenses, investment option performance, monitoring of investment options, or Plan loans, or (iii) that would have been barred by res judicata had the Action been fully litigated to a final judgment. The Released Claims do not include (a) claims pertaining to errors in individual benefit calculations of failure to follow participant instructions or (b) any claims asserted against TIAA in *Haley v. Teachers Investment and Annuity Association*, 1:17-cv-00855-JPO (S.D.N.Y.).

With respect to the Released Claims, it is the intention of the Parties that the Parties and all other Settlement Class Members and the Plans 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.

1.39 “Settlement” shall mean the compromise and Settlement embodied in this Agreement.

1.40 “Settlement Administrator” shall mean Heffler Claims Group LLC.

1.41 “Settlement Amount” shall mean six million and five hundred thousand dollars (\$6,500,000).

1.42 “Settlement Classes” shall mean the classes composed of members of the Monetary Relief Class and the Structural Changes Class (as defined in Section 2.2).

1.43 “Settlement Class Member” shall mean a member of either or both of the Settlement Classes.

1.44 “Settlement Fund” shall have the meaning set forth in Section 3.1(b).

1.45 “Settlement Website” shall have the meaning ascribed to it in Section 2.12.

1.46 “Structural Changes” shall mean the changes described in Sections 4.1 through 4.3.

1.47 “Structural Changes Class” shall have the meaning ascribed to it in Section 2.2(b).



1.48 “Structural Changes Class Member” shall mean any participant of the Plans who is a member of the Structural Changes Class or any person acting or claiming to act on behalf of such a participant.

1.49 “Taxes” shall have the meaning ascribed to it in Section 3.1(i).

1.50 “Tax-Related Costs” shall have the meaning ascribed to it in Section 3.1(i).

1.51 “TIAA” shall mean the Teachers Investment and Annuity Association.

1.52 “University” shall mean the University of Chicago and its affiliates.

1.53 “Unknown Claims” shall mean any Released Claims which Plaintiffs, any Member of the Settlement Classes and/or any of the other Parties do not know or suspect to exist in their favor at the time of the release of the Chicago Releasees. Without admitting that California law in any way applies to this Agreement, with respect to any and all Released Claims, the Parties agree that, upon the Effective Date, Plaintiffs, each Monetary Relief Class Member and all other Parties shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, expressly waived the provisions, rights and benefits of California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiffs, each Monetary Relief Class Member and all other Parties shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, expressly waived all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542. Plaintiffs, any Monetary Relief Class Member, and any of the other Parties may later discover facts in addition to or different from those which they now know or believe to be true

with respect to the subject matter of the Released Claims, but Plaintiffs, any Monetary Relief Class Member and all of the other Parties, upon the Effective Date, shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiffs, any Monetary Relief Class Member and all of the other Parties shall be deemed by operation of the Final Approval Order and Judgment to have acknowledged that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

## **II. CONDITIONS TO FINALITY OF THE SETTLEMENT**

This Settlement shall be contingent upon each of the conditions in Sections 2.1 to 2.7, 2.9 to 2.11 and 2.14 being satisfied. The Parties agree that if any of these conditions is not satisfied, then this Agreement is terminated and the Action will for all purposes with respect to the Parties revert to its status as of March 21, 2018. In such event, Defendant will not be deemed to have consented to class certification as described in Section 2.2, the agreements and stipulations in this Agreement concerning class certification shall not be used as evidence or argument to support class certification, and the Defendant will retain all rights with respect to class certification.

2.1 ***Court Approval.*** The Settlement shall have been approved by the Court, as provided for in this Section II. The Parties shall cooperate in good faith to allow Plaintiffs to seek Court approval.

2.2 ***Motion for Preliminary Approval and Certification of Settlement Classes.*** As soon as is practicable after execution of this Agreement, Plaintiffs shall file a motion with the Court (to which Defendant will not object) seeking (i) for preliminary approval of the Settlement, including entry of an order identical in all material respects to the form of the Preliminary Approval Order, and (ii) for purposes of this Settlement only, conditional certification of the following two Settlement Classes:

(a) **The Monetary Relief Class**

The “Monetary Relief Class” will consist of all participants and beneficiaries of The University of Chicago Contributory Retirement Plan and The University of Chicago Retirement Income Plan for Employees from May 18, 2011 through the date of preliminary approval, excluding the Defendant or any participant who is a fiduciary to the Plans.

(b) **The Structural Changes Class**

The “Structural Changes Class” will consist of all participants and beneficiaries of The University of Chicago Contributory Retirement Plan and The University of Chicago Retirement Income Plan for Employees from the date of preliminary approval until the date that is three years after the date of final approval.

2.3 ***Basis for Certification of Settlement Classes.*** Plaintiffs will seek certification of the Monetary Relief Class and the Structural Changes Class under Rule 23(b)(1).

2.4 ***Certification for Settlement Purposes Only.*** Defendant shall not take any position with respect to certification of the Settlement Classes only for the limited purpose of effectuating this Agreement. Defendant reserves all rights to object to the propriety of class certification in the Action in all other contexts and for all other purposes.

2.5 ***The Fairness Hearing.*** On or after the date set by the Court for the final hearing pursuant to Federal Rule of Civil Procedure 23(e)(2) (the “Fairness Hearing”), the Court will determine (i) whether to enter a judgment finally approving the Settlement; and (ii) what, if

any, legal fees, compensation, and expenses should be awarded to Class Counsel and to Plaintiffs as contemplated by Sections 8.1 to 8.2 of this Agreement.

2.6 ***Entry of Judgment.*** The Court shall have judgment entered substantially in the form attached hereto as Exhibit A.

2.7 ***Funding of the Settlement Amount.*** The University shall cause the Settlement Amount to be deposited to the Settlement Fund and/or allocated to the Monetary Relief Class Members at the time(s) proscribed by and otherwise as provided for in Sections 3.1 and 3.2.

2.8 ***Vacating Settlement Certification and Reservation of Rights.*** The certification of the Settlement Classes shall be binding only with respect to the Settlement of the Action. If this Agreement is terminated, or is reversed, vacated, or modified in any material respect by the Court or any other court, the certification of the Settlement Classes shall be vacated, the Action shall proceed as though the Settlement Classes had never been certified, and no reference to the prior Settlement Classes or any documents related thereto shall be made for any purpose.

2.9 ***Settlement Authorized by Independent Fiduciary***

(a) ***Selection of Independent Fiduciary.*** The University will, in its sole discretion, select the Independent Fiduciary to provide the authorization required by Prohibited Transaction Exception 2003-39, 68 FR 75632 (Dec. 31, 2003), as amended 75 FR 33830 (June 15, 2010). The amounts charged by the Independent Fiduciary up to \$25,000, including the fees of the Independent Fiduciary for its service, shall be paid by the University. All costs of the Independent Fiduciary in excess of \$25,000 shall be borne by and paid from the Settlement Amount.

(b) At least fifteen (15) days prior to the Fairness Hearing, the Independent Fiduciary shall have approved and authorized in writing the Settlement, and given a release in its

capacity as fiduciary of the plans for and on behalf of the plans, on the terms set forth in Section 6.1, in accordance with Prohibited Transaction Class Exemption 2003-39. If the Independent Fiduciary disapproves or otherwise does not authorize the Settlement or refuses to execute the release on behalf of the plans, then the University shall have the option to waive this condition if so stipulated by the Parties. Such option is to be exercised in writing within the earlier of (i) five (5) days after the Parties' receipt of the Independent Fiduciary's written determination or (ii) three (3) days prior to the date set for the Fairness Hearing, unless otherwise agreed by the Parties. The Parties shall comply with reasonable requests made by the Independent Fiduciary.

**2.10 Class Notice**

(a) Within thirty (30) days of the entry of the Preliminary Approval Order, the Settlement Administrator shall send the Notice by first-class mail to the Monetary Relief Class Members. The Notice will be sent to the last known mailing address of each of the Monetary Relief Class Members, which mailing address will be supplied in a timely fashion by TIAA and/or Vanguard and updated through the National Change of Address database by the Settlement Administrator before mailing (with all returned mail skip-traced and promptly re-mailed), and will be in the form attached hereto as Exhibit B.

(b) The Settlement Administrator will make payments from the Distributable Settlement Amount on behalf of each Monetary Relief Class Member. For each Former Participant, the Settlement Administrator shall make payment in accord with Section 3.2(d) and (e) below. For each Current Participant, the Settlement Administrator shall direct the payment to TIAA, as recordkeeper for the Plans, which will credit the account of each Current Participant pursuant to the Plan of Allocation.

2.11 ***Class Action Fairness Act Notice.*** Defendant shall comply with the notice requirements of 28 U.S.C. § 1715 and shall file a notice confirming compliance prior to the Final Approval Hearing.

2.12 ***Settlement Website.*** Within ten (10) days of the entry of the Preliminary Approval Order and no later than the first date that the mailing of the Notice occurs, the Settlement Administrator shall establish the Settlement Website, which will contain the Notice, this Agreement and its exhibits. The Notice, attached hereto as Exhibit B, will identify the web address of the Settlement Website.

2.13 ***Settlement Information Line.*** Within ten (10) days of the entry of the Preliminary Approval Order, and no later than the first date of mailing of the Notice, the Settlement Administrator shall establish a toll-free telephone number (the “Settlement Information Line”) to which Settlement Class Members can direct questions about the Settlement. The Settlement Administrator shall develop a question-and-answer-type script, with input and approval from Defendant’s Counsel and Class Counsel, for the use of persons who answer calls to the Settlement Information Line.

2.14 ***Rights of Exclusion.*** Settlement Class Members shall not be permitted to exclude themselves from either of the Settlement Classes.

2.15 ***Right to Object.*** Members of the Settlement Classes shall be permitted to object to the Settlement. Requirements for filing an objection shall be as set forth in the Preliminary Approval Order.

### **III. PAYMENTS TO THE MONETARY RELIEF CLASS.**

#### ***3.1 The Settlement Amount.***

(a) In consideration of all of the promises and agreements set forth in this Agreement, the University will cause a monetary payment to be made in the amount of Six Million and Five

Hundred Thousand Dollars (\$6,500,000) (the “Settlement Amount”). No other of the Chicago Releasees shall have any obligation to contribute financially to this Settlement.

(b) The University shall cause one hundred thousand dollars (\$100,000) of the Settlement Amount to be deposited by check into the Escrow Account within fifteen (15) days of the entry of the Preliminary Approval Order to fund any Administrative Costs that arise before the Effective Date. The University shall cause the remaining six million four hundred thousand dollars (\$6.4 million) of the Settlement Amount to be deposited by check into the Escrow Account within fifteen (15) days of the Effective Date.

(c) The Settlement Amount shall be used solely for the purposes set forth in Section (j) below.

(d) Subject to Court approval and oversight, the Escrow Account will be controlled by the Settlement Administrator. Neither Defendant nor Plaintiffs shall have any liability whatsoever for the acts or omissions of the Settlement Administrator appointed by the Court. The Settlement Administrator shall not disburse the Settlement Amount or any portion thereof except as provided for in this Agreement, by an Order of the Court, or with prior written agreement of Class Counsel and Defendant’s Counsel.

(e) The Settlement Administrator is authorized to execute transactions on behalf of the Monetary Relief Class Members that are consistent with the terms of this Agreement and with Orders of the Court.

(f) All funds held in the Escrow Account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until the funds are distributed in accordance with this Agreement.

(g) The Settlement Administrator shall, to the extent necessary and practicable, invest the Settlement Amount in discrete and identifiable instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then current market rates. The Settlement Administrator shall maintain records identifying in detail each instrument in which the Settlement Amount or any portion thereof has been invested, and identifying the precise location (including safe deposit box number) of each such instrument. Neither the Settlement Amount nor any portion thereof shall be commingled with any other monies in any instruments. Any cash portion of the Settlement Amount not invested in instruments of the type described in the first sentence of this Section shall be maintained by the Settlement Administrator, and not commingled with any other monies, at a bank account, which shall promptly be identified to the Parties, at either party's request, by account number and any other identifying information. The Settlement Administrator and Monetary Relief Class Members shall bear all risks related to investment of the Settlement Amount.

(h) The Escrow Account is intended to be a "Qualified Settlement Fund" within the meaning of Treasury Regulation § 1.468B-1 (the "Settlement Fund"). The Settlement Administrator, as administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation §1.468B-2(k)(3), shall be solely responsible for filing tax returns for the Escrow Account and paying from the Escrow Account any Taxes owed with respect to the Escrow Account. Defendant agrees to provide the Settlement Administrator with the statement described in Treasury Regulation §1.468B-3(e). Neither Defendant, Defendant's Counsel,



Plaintiffs, nor Class Counsel shall have any liability or responsibility of any sort for filing any tax returns or paying any taxes with respect to the Escrow Account.

(i) All (i) taxes on the income of the Escrow Account (“Taxes”) and (ii) expenses and costs incurred in connection with the taxation of the Escrow Account (including, without limitation, expenses of tax attorneys and accountants) (“Tax-Related Costs”) shall be timely paid by the Settlement Administrator out of the Escrow Account.

(j) The Settlement Amount, together with any interest accrued thereon, will be used to pay the following amounts associated with the Settlement:

- (1) Compensation to Monetary Relief Class Members determined in accordance with Section 3.2;
- (2) Any Case Contribution Award approved by the Court;
- (3) All Attorneys’ Fees and Expenses approved by the Court;
- (4) Independent Fiduciary Fees in excess of Twenty-Five Thousand Dollars (\$25,000);
- (5) Administration Costs; and
- (6) Taxes and Tax-Related Costs.

**3.2 *Distribution to Monetary Relief Class Members.***

(a) The money remaining from the Settlement Amount, including any accrued interest thereon, after the payment of any approved Case Contribution Award, approved Attorneys’ Fees and Expenses, Independent Fiduciary Fees, Administration Costs, and Taxes and Tax-Related Costs (or any estimate of those amounts to be incurred in the future), shall constitute the funds available for distribution to Monetary Relief Class Members (the “Distributable Settlement Amount”).

(b) The Distributable Settlement Amount shall be divided among Monetary Relief Class Members in accordance with the Plan of Allocation attached hereto as Exhibit C or such other allocation plan as may be ordered by the Court. It is understood and agreed by the Parties that the proposed Plan of Allocation is not part of this Agreement and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceeding relating to the Plan of Allocation shall not operate to terminate or cancel this Agreement or affect the finality of the Court's Final Approval Order and Judgment approving the Settlement or any other Orders entered pursuant to the Agreement. Notwithstanding the foregoing, or anything else in this Agreement, any revisions to the Plan of Allocation that would require the University or its affiliates to pay more than the Settlement Amount or incur additional expenses or costs or to provide data not already readily available on the computer systems relating to the Plans shall be deemed a material alteration of this Agreement and entitle the University, at its election, to terminate the Agreement.

(c) The Settlement Administrator shall disburse the Distributable Settlement Amount as promptly as possible after the Effective Date, and, in any event, shall use reasonable best efforts to disburse the Distributable Settlement Amount no later than two hundred-seventy (270) days after the Effective Date.

(d) No Former Participant whose entitlement to payment pursuant to the Plan of Allocation would otherwise be less than twenty-five dollars (\$25) shall receive any payment from the Distributable Settlement Amount.

(e) Monetary Relief Class Members that are paid by check must cash those checks within ninety (90) days of issuance. If they do not do so, the checks will be void. This limitation shall be printed on the face of each check. The voidance of checks shall have no effect on the

Monetary Relief Class Members' release of claims, obligations, representations, or warranties as provided herein, which shall remain in full effect.

3.3 Each Monetary Relief Class Member who receives a payment under this 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 Monetary Relief Class Member shall hold Defendant, Defendant's Counsel, the Chicago Releasees, Plaintiffs, Class Counsel, and the Settlement Administrator harmless from any tax liability, including penalties and interest, related in any way to payments or credits under the Agreement, and shall hold Defendant, the Chicago Releasees, Defendant's Counsel, Plaintiffs, 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.

3.4 ***Treatment of Undistributed Funds and Uncashed Checks.*** Any funds associated with checks that are not cashed within ninety (90) days of issuance, and for which no request for reissuance is made by the Monetary Relief Class Member within ninety (90) days of issuance, and any funds that cannot be distributed to Monetary Relief Class Members for any other reason, together with any interest earned on them, and after the payment of any applicable taxes by the Escrow Agent, shall be delivered to the Plans and used by the Plans for participant education, provided that the amount is not sufficient to warrant a second distribution. There shall be no *cy pres* payment.

3.5 ***Administration Costs.*** The Administration Costs shall be paid from the Settlement Amount. Beginning thirty (30) days after the entry of the Preliminary Approval Order, and on every thirty (30) days thereafter, the Settlement Administrator shall provide the

Parties with a detailed accounting of any Administration Costs expended to date and an invoice for the amount of such Administration Costs. Any disputes as to whether amounts billed by the Settlement Administrator are reasonable and necessary under this Agreement shall be resolved by the Court.

3.6 ***Entire Monetary Obligation.*** In no event, and notwithstanding anything else in this Agreement (except with respect to any obligations they may be required to incur with respect to implementation of the structural changes described in Section IV below), shall the Defendant or its insurers be required to pay any amounts other than (i) the Settlement Amount and (ii) the costs of the Independent Fiduciary up to Twenty-Five Thousand Dollars (\$25,000). It is understood and agreed that the Defendant's and its insurers' monetary obligations under this Settlement Agreement will be fully discharged by paying the amount specified in Sections 2.9(a) and 3.1(a) above, and that the Defendant and its insurers shall have no other monetary obligations, or obligations to make any other payments under this Agreement or otherwise.

#### **IV. STRUCTURAL CHANGES.**

4.1 ***Recently Implemented Changes to the 403(b) Plans.*** Defendant has recently made certain changes to the practices affecting the University's 403(b) plans as set forth in the remaining Sections of this Section IV. It is understood and agreed by the Parties that by having recently made the changes described in this Section IV, Defendant has not agreed and does not agree with or in any way admit, and shall not be deemed to agree with or in any way admit, any theories of Plaintiffs or Class Counsel regarding Defendant's liability in the Action, including, without limitation, that any of Defendant's prior or existing practices violate any federal or state laws, statutes, or regulations. In recognition of Defendant having recently made the changes described in Sections 4.2-4.3, the Structural Changes Class Members agree to the covenants not to sue set forth in Section 6.2(a).

4.2 ***No Increase in Recordkeeping/Administrative Fees.***

(a) Defendant agrees not to increase per-participant recordkeeping fees for three years from the date of Final Approval, and will use commercially reasonable best efforts to continue to attempt to reduce recordkeeping fees.

(b) In exchange for Defendant's agreement not to increase recordkeeping fees and to use commercially reasonable best efforts to continue to attempt to reduce recordkeeping fees, the Structural Changes Class Members agree to the covenants not to sue set forth in Section 6.2(a).

4.3 ***New Investment Lineup***

(a) Effective April 2, 2018, the University implemented a new investment lineup for the University 403(b) plans that reduced the total number of investment options, and the CREF Stock Account will not be an investment option available to plan Participants in the new investment lineup. However, the TIAA Real Estate Account will continue to be available as an investment option in the University 403(b) plans' new investment lineup.

(b) In recognition of Defendant's elimination of the CREF Stock Account from the new investment lineup and the implementation of the new investment lineup, the Structural Changes Class Members agree to the covenants not to sue set forth in Section 6.2(a).

4.4 ***Impact of Regulatory Changes.***

(a) Notwithstanding anything in this Section IV to the contrary, Defendant shall not be required to comply with any provision of this Section IV should any change in applicable law render such compliance unlawful or impractical.

(b) Notwithstanding anything in this Section IV to the contrary, Defendant shall have the right, at its sole option, to modify any of the practices described in Section IV if Congress, the Department of Labor, or any other applicable regulatory or self-regulatory body imposes

different substantive requirements, whether through statute, regulation, guidance, or otherwise (a “Regulatory Change”). In the event of a Regulatory Change, Defendant’s compliance with the new regulatory requirements and/or guidance shall be deemed in compliance with the terms of this Agreement.

**V. SETTLEMENT ADMINISTRATION**

5.1 As soon as practicable, Defendant shall cause the Plans’ current and former recordkeepers, TIAA and Vanguard, to provide the Settlement Administrator with the participant data sufficient to effectuate class notice and to calculate each Monetary Relief Class Member’s allocable portion of the Distributable Settlement Amount.

5.2 The Settlement Administrator shall administer the Settlement subject to the supervision of Class Counsel, Defendant’s Counsel, and the Court as circumstances may require.

5.3 Defendant, Defendant’s insurers, and Defendant’s Counsel shall have no responsibility for, interest in, or liability whatsoever, with respect to:

(a) any act, omission or determination of the Settlement Administrator, Class Counsel, or designees or agents of Class Counsel or the Settlement Administrator;

(b) any act, omission or determination of Class Counsel or their designees or agents in connection with the administration of the Settlement;

(c) the management, investment, or distribution of the Settlement Amount or the Distributable Settlement Amount; or

(d) the determination, administration, calculation, or payment of any claims asserted against the Settlement Amount or the Distributable Settlement Amount.

5.4 The Settlement Administrator shall provide to Class Counsel and Defendant’s Counsel, no less than monthly, a full accounting of all expenditures made in connection with the Settlement, including Administration Costs, and any distributions from the Settlement Amount.

5.5 The Settlement Administrator shall provide such information as may be reasonably requested by Defendant relating to administration of this Agreement.

**VI. RELEASES, COVENANTS, AND JUDICIAL FINDINGS**

6.1 ***Releases of the Chicago Releasees.*** Subject to Section IX below, upon the Effective Date, Plaintiffs, each Settlement Class Member (on behalf of themselves, their current and former beneficiaries, their representatives and successors-in-interest), and the Plans (by and through the Independent Fiduciary pursuant to Section 2.9), absolutely and unconditionally release and forever discharge the Chicago Releasees from each and every Released Claim that Plaintiffs, the Settlement Classes, or the University 403(b) plans directly, indirectly, derivatively, or in any other capacity ever had, now have or hereafter may have, except that the release under this Section 6.1 shall not include claims relating to the covenants or obligations set forth in this Agreement, nor do they include, and this Agreement does not in any way bar, limit, waive, or release, any claims pertaining to errors in individual benefit calculations or failure to follow participant instructions, or any claims asserted against TIAA in *Haley v. Teachers Investment and Annuity Association*, 1:17-cv-00855-JPO (S.D.N.Y.).

6.2 ***Covenant Not to Sue.***

(a) The Parties recognize that the changes to the University 403(b) plans that are described in Sections 4.2-4.3 above will benefit plan participants, including the Structural Changes Class Members. In order to ensure that these recent changes affecting the University 403(b) plans are not subject to future potentially inconsistent challenges or standards, and in recognition of the University having made these changes, the Structural Changes Class Members agree that, for a period of three years from the date of Final Approval, they will not sue the Chicago Releases for any and all claims relating to the Structural Changes (as defined in Sections 4.1-4.3), so long as the University (1) does not increase the per-participant

recordkeeping fees for the next three years and (2) continues to conduct periodic reviews of the investment options in the new investment lineup, including the TIAA Real Estate Account (the “Covenant Not to Sue”).

(b) Notwithstanding anything in this Agreement to the contrary, in exchange for the University’s agreement to the conditions specified in Section 6.2(a)(1) and 6.2(a)(2) above, the Covenant Not to Sue (as defined in Section 6.2(a)) will remain in effect for each calendar year after the Effective Date that the University maintains the Structural Changes. In any event, the agreement to honor the Covenant Not to Sue shall expire at the end of the calendar year occurring three (3) years after Final Approval.

6.3 ***Taxation of Class Settlement Amount:*** Plaintiffs acknowledge that the Chicago Releasees have no responsibility for any taxes due on funds deposited in or distributed from the Settlement Amount or that Plaintiffs or Class Counsel receive from the Settlement Amount.

## **VII. REPRESENTATIONS AND WARRANTIES**

7.1 ***Settling Parties’ Representations and Warrants.*** The Parties, and each of them, represent and warrant as follows, and each settling Party acknowledges that each other Party is relying on these representations and warranties in entering into this Settlement Agreement:

(a) That they have diligently investigated the claims in this Action; that they are voluntarily entering into this Agreement as a result of arm’s-length negotiations among their counsel; that in executing this Agreement they are relying solely upon their own judgment, belief and knowledge, and 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 which relate in any way to the subject matter hereof; and that, except as provided in this Agreement, they have not been influenced to any extent whatsoever in executing



this Agreement by any representations, statements, or omissions pertaining to any of the foregoing matters by any Party or by any person representing any Settling Party. Each Party assumes the risk of mistake as to facts or law.

(b) That they have carefully read the contents of this Agreement and this Agreement is signed freely by each person executing the Agreement on behalf of each of the Parties. The Parties, and each of them, further represent and warrant to each other that he, she, or it has made such investigation of the facts pertaining to this Settlement, this Agreement, and all of the matters pertaining thereto, as he, she or it deems necessary.

7.2 ***Signatories' Representations and Warrants.*** Each person executing this Agreement on behalf of any other person does hereby personally represent and warrant that he or she has the authority to execute this Agreement on behalf of, and fully bind, each principal whom such individual represents or purports to represent and that no right or claim compromised pursuant to this Agreement has been assigned or hypothecated to any third party.

## **VIII. OTHER MONETARY PAYMENTS**

### ***8.1 Case Contribution Award***

(a) Plaintiffs intend to seek a Case Contribution Award not to exceed the amount of \$10,000.00 per named Plaintiff which shall be subject to Court approval (the "Case Contribution Award"). Defendant shall not oppose any Case Contribution Awards up to that amount. The Settlement Administrator shall use reasonable best efforts to pay any Case Contribution Award approved by the Court within seven (7) days of the Effective Date. The Case Contribution Award shall be paid by the Settlement Administrator solely out of the Settlement Amount and shall be deducted (to the extent approved by the Court) from the Settlement Amount on or after the Effective Date and prior to the distribution to the Monetary Relief Class Members. Plaintiffs

shall also be entitled to a distribution under this Settlement pursuant to Section 3.2 as a Monetary Relief Class Member.

(b) Notwithstanding any other provision of this Agreement to the contrary, the procedure for and the allowance or disallowance (in whole or in part) by the Court of any application for the Case Contribution Award shall be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and any Order or proceedings relating to the Case Contribution Award, or any appeal of any Order relating thereto, shall not operate to terminate or cancel this Agreement or be deemed material thereto.

(c) Defendant and its insurers shall have no obligations whatsoever with respect to any Case Contribution Award to Plaintiffs, which shall be payable solely out of the Settlement Amount.

(d) Defendant does not take any position on the propriety of such award.

## 8.2 *Attorneys' Fees and Expenses*

(a) Class Counsel intends to submit a Fee and Expense Application, seeking an award of attorneys' fees based on the value of the Settlement and the work performed not to exceed 30% of the Settlement Amount, plus reasonable expenses. Defendant takes no position on the propriety of this amount and will not oppose the Fee and Expense Application provided the fees requested do not exceed 30% of the Settlement Amount. Any amount awarded by the Court in response to such Fee and Expense Application shall be paid by the Settlement Administrator solely out of the Settlement Amount and shall be deducted (to the extent approved by the Court) from the Settlement Amount. The Settlement Administrator shall use reasonable best efforts to pay any attorneys' fees and expenses amount awarded to Class Counsel within seven (7) days of the Effective Date.

(b) Notwithstanding any other provision of this Agreement to the contrary, the procedure for and the allowance or disallowance (in whole or in part) by the Court of the Fee and Expense Application to be paid out of the Settlement Amount shall be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and any Order or proceedings relating to the award of Attorneys' Fees, or any appeal of any Order relating thereto, shall not operate to terminate or cancel this Agreement or be deemed material thereto.

(c) Defendant and its insurers shall have no obligations whatsoever with respect to any attorneys' fees or expenses incurred by Class Counsel, which shall be payable solely out of the Settlement Amount.

**IX. CONTINGENCIES, EFFECT OF DISAPPROVAL OR TERMINATION OF SETTLEMENT**

9.1 If the Court or, in the event of an appeal, any appellate court refuses to approve, or modifies any material aspect of this Agreement or the proposed Preliminary Approval Order or Final Approval Order and Judgment, Defendant may terminate this Agreement and the Settlement as set forth below.

9.2 This Agreement and the Settlement shall terminate and be cancelled if, within ten (10) business days after any of the following events, the University or Plaintiffs provide written notification of an election to terminate the Settlement:

(a) The Court declines to provide preliminary approval of this Agreement, or declines to enter or materially modifies the contents of the Preliminary Approval Order attached hereto as Exhibit D, or the Preliminary Approval Order is vacated, reversed or modified in any material respect on any appeal or other review or in a collateral proceeding occurring prior to the Effective Date;

(b) The Court declines to provide final approval of this Agreement, or declines to enter or materially modifies the contents of the Final Approval Order and Judgment attached hereto as Exhibit A;

(c) The Court's Final Approval Order and Judgment is vacated, reversed or modified in any material respect on any appeal or other review or in a collateral proceeding occurring prior to the Effective Date; or

(d) The Effective Date does not occur for some other reason.

9.3 For purposes of this Agreement and this Section 9.3, no Order of the Court, or modification or reversal on appeal of any Order of the Court, solely concerning the Plan of Allocation, the administration of the Settlement or the persons performing such administrative functions, or the amount of any award of Attorneys' Fees and Expenses or Case Contribution Award, shall constitute grounds for cancellation or termination of the Agreement.

9.4 This Agreement shall terminate if and when any of the conditions specified in Sections 2.1 to 2.7, 2.9 to 2.11 and/or 2.14 to 2.15 is not satisfied, and the Parties do not mutually agree to waive the condition, in writing, within ten (10) business days of its non-occurrence.

9.5 This Agreement and the Settlement shall terminate and be cancelled if (a) any federal or state authorities object to or request material modifications to the Agreement; and (b) within ten (10) business days after the deadline set in the Preliminary Approval Order for such objections or requests, or within ten (10) business days of receiving any such objection or request, if later, Defendant provides written notice of its election to terminate the Settlement.

9.6 If for any reason this Agreement is terminated or fails to become effective, then:

(a) The Settling Parties shall be deemed to have reverted to their respective status in the Action as of March 21, 2018, which shall then resume proceedings in the Court, and, except as otherwise expressly provided in this Agreement, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered.

(b) Class Counsel and Defendant's Counsel shall, within ten (10) days after the date of termination of the Agreement, jointly notify the Financial Institution in writing to return to the Illinois National Insurance Company, or its designee, the full amount contained in the Settlement Fund, with all net income earned thereon, after deduction of any amounts earlier disbursed for purposes of administering the Settlement and/or incurred by the Settlement Fund as of the termination, and direct the Financial Institution to effect such return within fourteen (14) days after such notification. Prior to the return of amounts contemplated by this Section 9.6(b), the Financial Institution shall fully and finally fulfill and set aside for any and all tax obligations of the Settlement Fund as set forth in Section 3.1(i) and the University and its insurers shall have no past, present, or future liability whatsoever for any such tax obligations.

(c) In addition to this Section IX and its provisions, Section 9.5 shall survive any termination of this Settlement.

**X. NO ADMISSION OF WRONGDOING**

10.1 The Parties understand and agree that this Agreement embodies a compromise settlement of disputed claims, and that nothing in this Agreement, including the furnishing of consideration for this Agreement, shall be deemed to constitute any finding or admission of any wrongdoing or liability by the Defendant, or give rise to any inference of wrongdoing or liability in the Action or any other proceeding. This Agreement and the consideration provided hereunder are made in compromise of disputed claims and are not admissions of any liability of any kind, whether legal or factual. The University specifically denies any such liability or wrongdoing and

states that it is entering into the Agreement solely to eliminate the burden and expense of further litigation. Further, Plaintiffs, while believing that all Claims brought in the Action have merit, has concluded that the terms of this Agreement are fair, reasonable, and adequate to the University 403(b) plans, themselves, and the Settlement Class Members given, among other things, the inherent risks, difficulties and delays in complex ERISA litigation such as the Action. Neither the fact nor the terms of this Agreement shall be used or offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this Agreement or arising out of or relating to the Judgment.

**XI. MISCELLANEOUS**

11.1 ***No Disparaging Statements.*** Plaintiffs and Class Counsel shall make no statements to the press or make any other public statements describing this Settlement that disparage any Chicago Releasee or accuse any Chicago Releasee of wrongdoing. Defendant's counsel shall make no statements to the press or make any other public statements describing this Settlement that disparage any Plaintiffs or Class Counsel or accuse any Plaintiffs or Class Counsel of wrongdoing. The University of Chicago will not issue any official statements disparaging any Plaintiffs or Class Counsel or accusing any Plaintiffs or Class Counsel of wrongdoing. The Parties will agree upon a joint statement to utilize in response to any inquiries from the press or otherwise regarding this Settlement.

11.2 ***No Confirmatory Discovery.*** The Parties agree that no further confirmatory discovery is necessary. The University has provided Plaintiffs with information sufficient to allow them to evaluate their position and the strength of their case prior to the mediation in this case.

11.3 ***Waiver.*** The provisions of this 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 Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

11.4 ***Dispute Resolution.*** If a dispute arises regarding compliance with any of the provisions of an approved and executed Agreement, the dispute will be mediated by Magistrate Judge Morton Denlow (ret.), or, if unavailable, another neutral party to be agreed upon by the Parties, who will make a non-binding decision regarding the dispute. The cost of any mediation shall be split equally between Plaintiffs and Defendant.

11.5 ***Entire Agreement.*** This Agreement is the entire agreement among the Parties and it supersedes any prior agreements, written or oral, between the Parties. This Agreement cannot be altered, modified or amended except through a writing executed by all Parties.

11.6 ***Construction of Agreement.*** This Agreement shall be construed to effectuate the intent of the Parties to resolve all disputes encompassed by the Agreement. All Parties have participated in the drafting of this Agreement, and any ambiguity shall not be resolved by virtue of a presumption in favor of any Party. The Agreement was reached at arm's-length by the Parties represented by counsel. None of the Settling Parties shall be considered to be the drafter of this Agreement or any provision hereof for the purposes of any statute, case law, or rule of interpretation or construction

11.7 ***Principles of Interpretation.*** The following principles of interpretation apply to this Agreement:

(a) The headings of this Agreement are for reference only and do not affect in any way the meaning or interpretation of this Agreement.

(b) Definitions apply to the singular and plural forms of each term defined.

(c) References to a person are also to the person's permitted successors and assignees.

(d) Whenever the words "include," "includes," or "including" are used in this Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

11.8 *Executed in Counterparts.* This Agreement may be executed in counterparts, all of which shall be considered the same as if a single document had been executed, and shall become effective when such counterparts have been signed by each of the Parties and delivered to the other Party. Counterpart copies of signature pages, whether delivered in original, by electronic mail in pdf format and/or by facsimile, taken together shall all be treated as originals and binding signatures.

11.9 *Notices.* Unless otherwise provided herein, any notice, request, instruction, application for Court approval, or application for Court Order sought in connection with the Agreement, shall be in writing and delivered personally or sent by certified mail or overnight delivery service, postage prepaid, with copies by facsimile or e-mail to the attention of Class Counsel or Defendant's Counsel (as well as to any other recipients that a court may specify). Parties may change the person(s) to whom such notices should be directed by giving notice pursuant to this Section. As of the date hereof, the respective representatives are as follows:

**For Defendant:**

**Mark B. Blocker**  
Sidley Austin LLP  
One South Dearborn Street  
Chicago, IL 60603  
Telephone: (312) 853-7000  
Facsimile: (312) 853-7036  
mblocker@sidley.com



**Kim Taylor**

Vice President and General Counsel  
The University of Chicago  
5801 S. Ellis Ave, Suite 619  
Chicago, IL 60637  
Telephone: (773) 702-7749  
[kimtaylor@uchicago.edu](mailto:kimtaylor@uchicago.edu)

**For Plaintiff:**

**John J. Nestico**

SCHNEIDER WALLACE COTTRELL  
KONECKY WOTKYNS, LLP  
8501 N. Scottsdale Road  
Suite 270  
Scottsdale, AZ 85253

11.10 *Extensions of Time*. The Parties may agree, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of the Agreement.

11.11 *Governing Law*. This Agreement shall be governed by and construed in accordance with the laws of Illinois without giving effect to any conflict of law provisions that would cause the application of the laws of any jurisdiction other than Illinois.


11.12 *Fees and Expenses*. Except as otherwise expressly set forth herein, each Party hereto shall pay all fees, costs and expenses incurred in connection with the Action, including fees, costs and expenses incident to his, her or its negotiation, preparation or compliance with this Agreement, and including any fees, expenses and disbursements of its counsel, accountants, and other advisors. Nothing in this Agreement shall require Defendant or its insurers to pay any monies other than as expressly provided herein.

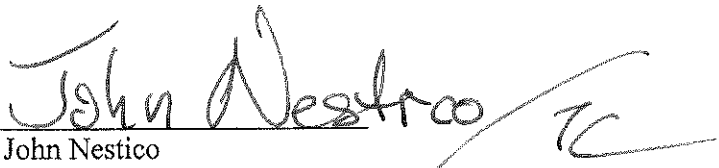
11.13 *Communication With Current Participants*. Nothing in this Agreement or Settlement shall prevent or inhibit the University's ability to communicate with current or former participants of the Plans.

11.14 ***Retention of Jurisdiction.*** The Parties shall request that the Court retain jurisdiction of this matter after the Effective Date and enter such Orders as are necessary or appropriate to effectuate the terms of the Agreement.

Agreed to on behalf of Winifred J. Daugherty, Walter R. James, Gloria Jackson, and on behalf of the Settlement Classes


Dated: May 22, 2018

By:   
Todd Collins  
**BERGER & MONTAGUE, P.C.**  
1622 Locust Street  
Philadelphia, PA 19103  
Tel: (215) 875-3040  
Fax: (215) 875-4604

By:   
John Nestico  
**SCHNEIDER WALLACE COTTRELL  
KONECKY WOTKYN, LLP**  
8501 N. Scottsdale Road  
Suite 270  
Scottsdale, AZ 85253  
Tel: (480) 315-3841  
Fax: (866) 505-8036  
jnestico@schneiderwallace.com

Agreed to on behalf of The University of Chicago.

Dated: May 22, 2018

By:   
Mark B. Blocker  
**SIDLEY AUSTIN LLP**  
One South Dearborn Street  
Chicago, IL 60603  
Tel.: (312) 853 7000  
Fax: (312) 853 7036  
mblocker@sidley.com

## **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT ILLINOIS  
EASTERN DIVISION**

WINIFRED J. DAUGHERTY et al.,	)	
	)	Case No. 1:17-cv-03736
Plaintiffs,	)	
	)	Hon. Judge Ruben Castillo
v.	)	
	)	
THE UNIVERSITY OF CHICAGO,	)	
	)	
Defendant.	)	
	)	

**FINAL APPROVAL ORDER**

WHEREAS, on \_\_\_\_\_ this Court conducted a hearing (1) to determine whether to finally certify the Monetary Relief Class<sup>1</sup> pursuant to Fed. R. Civ. P. 23(b)(1) and the Structural Changes Class pursuant to Fed. R. Civ. P. 23(b)(1); (2) to determine whether the terms of the Settlement Agreement and the proposed Settlement provided for therein are fair, reasonable, adequate and in the best interests of the Settlement Classes and should be approved by the Court; (3) to determine whether the proposed Plan of Allocation for distributing the Settlement proceeds among Monetary Relief Class Members should be approved by the Court; (4) to consider the applications for Attorneys’ Fees and Expenses, and Case Contribution Fees; and (5) to hear and rule upon such other matters as the Court may deem appropriate (both hearings are collectively referred to as the “Final Approval Hearing”);

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<sup>1</sup> All capitalized terms used herein shall have the meaning ascribed to them in the Class Action Settlement Agreement and Release dated May 22, 2018 (“Settlement Agreement”) entered between Plaintiffs and Defendant, the University of Chicago. The Settlement Agreement with all exhibits thereto is being filed as an exhibit to Plaintiff’s accompanying motion for preliminary approval.

WHEREAS, the Court was advised at the Final Approval Hearing that the Class Notice in the form approved by the Court was sent to the Settlement Classes pursuant to the terms of the Settlement Agreement and posted on the Settlement Website; and

WHEREAS, the Court, having considered all matters submitted to it at the Final Approval Hearing, including all written submissions and the arguments of counsel for the Parties and counsel for any objectors;

**NOW THEREFORE, IT IS HEREBY ORDERED:**

1. The Settlement Agreement, including the definitions contained therein, is incorporated by reference in this Final Approval Order and Judgment.

2. The Court has jurisdiction over Plaintiffs, all the Members of the Settlement Classes, Defendant, and the subject matter of this Action.

3. Pursuant to Fed. R. Civ. P. 23(b)(1), the Court hereby finally certifies, for purposes of effectuating the Settlement only, a Monetary Relief Class consisting of all participants and beneficiaries of The University of Chicago Contributory Retirement Plan and The University of Chicago Retirement Income Plan for Employees from May 18, 2011 through the date of preliminary approval, excluding the Defendant or any participant who is a fiduciary to the Plans.

4. Pursuant to Fed. R. Civ. P. 23(b)(1), the Court hereby finally certifies, for purposes of effectuating the Settlement only, a Structural Change Class consisting of all participants and beneficiaries of The University of Chicago Contributory Retirement Plan and The University of Chicago Retirement Income Plan for Employees from the date of preliminary approval until the date that is three years after the date of final approval.

5. The Court appoints Winifred J. Daugherty, Walter James, and Gloria Jackson as the Class Representatives for both the Monetary Relief Class and the Structural Changes Class (collectively, the “Settlement Classes”).

6. The Court appoints the following firms as counsel to the Settlement Classes: (a) Berger & Montague, P.C.; (b) Schneider Wallace Cottrell Konecky Wotkyns, LLP; and (c) Wexler Wallace LLP; and appoints Berger & Montague, P.C. and Schneider Wallace Cottrell Konecky Wotkyns, LLP as Co-Lead Counsel.

7. The Court finds that Defendant has complied with the notice requirements of 28 U.S.C. § 1715 and has previously filed a notice confirming its compliance.

8. The Class Notice was previously provided to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Classes of the terms and conditions of the proposed Settlement met the requirements of Fed. R. Civ. P. 23, due process, and any other applicable law; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons entitled thereto of the terms and conditions of the Settlement and the right to object.

9. Based on the evidence submitted by the parties, the Court concludes that the Settlement is fair, reasonable and adequate. The Settlement is therefore approved, and the Parties are directed to consummate the Settlement Agreement in accordance with its terms and conditions.

10. The Plan of Allocation is also hereby approved as fair, reasonable and adequate.

11. The Court finds that the members of the Settlement Class are in privity with the interests of the plans, their participants and their beneficiaries, and all private parties authorized to sue under ERISA sections 502(a)(2) and (3), that such private parties are adequately represented

by the Class Members, and all parties authorized to sue under ERISA sections 502(a)(2) and (3) are hereby bound by the Settlement and this Order.

12. The Action is hereby dismissed with prejudice in its entirety and without an award of costs, except as provided in the Settlement Agreement.

13. The Settlement agreement is hereby approved in its entirety.

14. For purposes of this Paragraph 14 of this Order, the following definitions (which are identical to the definitions in the Settlement Agreement, as modified above) shall apply:

a. “Chicago Releasees” shall mean, collectively, the Defendant Released Parties (as defined below) and Other Released Parties (as defined below).

b. “Defendant Released Parties” shall mean the University of Chicago and its affiliates, the Trustees of the University and the University’s affiliates, and any and all current and former employees of the University and the University’s affiliates including those who have acted as a fiduciary or provided services to one of the Plans at any time during the class period.

c. “Other Released Parties” shall mean the University of Chicago’s insurers and all third parties that provided services to the Plans, including but not limited to Vanguard, TIAA, Aon, and any mutual fund company whose funds were designated investment alternatives at any time during the class period.

d. “Released Claims” shall mean any and all claims, debts, demands, rights or causes of action, suits, matters, and issues or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent,



accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class, derivative, or individual in nature (collectively, “Claims”), including both known Claims and Unknown Claims, against any of the Chicago Releasees and Defendant’s Counsel (i) that have been asserted in this litigation or which could have been asserted in this litigation, or (ii) that in any way arise out of, relate to, are based on, or have any connection with the Plans’ management and administration, including, but not limited to any fees, expenses, investment option performance, monitoring of investment options, or Plan loans, or (iii) that would have been barred by *res judicata* had the Action been fully litigated to a final judgment. The Released Claims do not include (a) claims pertaining to errors in individual benefit calculations of failure to follow participant instructions or (b) any claims asserted against TIAA in *Haley v. Teachers Investment and Annuity Association*, 1:17-cv-00855-JPO (S.D.N.Y.).

Upon the occurrence of the Effective Date, all Monetary Relief Class Members and their successors and assignees are permanently enjoined, either directly, representatively, or in any other capacity, from prosecuting, instituting, or commencing any individual, class, or other action with respect to the Released Claims against any of the Chicago Releasees.

15. The terms of the Settlement Agreement and of this Final Approval Order and Judgment shall be forever binding on the Class Representatives, Structural Change Class Members, Monetary Relief Class Members, and all of their successors and assigns, and the Settlement shall have *res judicata* and other preclusive effect in all pending and future claims, lawsuits, or other proceedings involving the same or similar claims as those asserted in this Action, or that are otherwise encompassed by the Release and Covenant Not to Sue set forth in the

Settlement Agreement, and the Settlement Agreement may be pled as a full and complete defense to any such claims, lawsuits, or proceedings.

16. For as long as Defendant and its successors and assignees continue to comply with Section IV of the Agreement, in connection with which the University (1) does not increase the per-participant recordkeeping fees for the next three years and (2) continues to conduct periodic reviews of the investment options in the new investment lineup, including the TIAA Real Estate Account, all Structural Changes Class Members and their successors and assigns are enjoined from instituting, maintaining, prosecuting, suing, or asserting in any action or proceeding in any federal or state forum any claim, based on conduct subsequent to, or any liability or damages claimed to arise or occur after, the date of Preliminary Approval, with respect to any of the Structural Changes. This covenant not to sue shall expire at the end of the calendar year occurring three years from the date of this Order.

17. In recognition of their work, the time and expenses incurred on behalf of the Members of the Settlement Classes and the value of the results achieved on behalf of the Members of the Settlement Classes, pursuant to the terms of the Settlement Agreement, each named Plaintiff shall be entitled to receive out of the Settlement Amount a Case Contribution Fee in the amount of \$[10,000], and Class Counsel shall be entitled to receive out of the Settlement Amount reasonable attorneys' fees in the amount of \$[\_\_\_\_\_] plus reasonable costs and other expenses in the amount of \$[\_\_\_\_\_].

18. Without affecting the finality of this Final Approval Order and Judgment in any way, this Court hereby retains continuing jurisdiction over (a) implementation of the Settlement and any award or distribution of the Distributable Settlement Amount; and (b) the Parties and the

Members of the Settlement Classes for purposes of construing, enforcing and administering the Agreement.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
United States District Judge

## **EXHIBIT B**

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**If you were a participant in the University of Chicago's 403(b) Retirement Plans at any time from May 18, 2011 through [the date that the Court enters the Preliminary Approval Order], you may benefit from this class action settlement.**

*The case is Daugherty v. University of Chicago,  
1:17-cv-03736 (N.D. Ill.).*

*A Court authorized this notice. This is not a solicitation from a lawyer.*

This notice advises you of a settlement (the "Settlement") of a lawsuit against the University of Chicago (the "University"). In the lawsuit, Plaintiffs allege various claims related to the operation of the Contributory Retirement Plan ("CRP") and the Retirement Income Plan for Employees ("ERIP") (collectively the "Plans"). In particular, Plaintiffs claim that the University should not have selected and maintained the CREF Stock Account and TIAA Real Estate Account as investment options in the Plans. Plaintiffs also claim that the Plans paid higher recordkeeping and administrative fees than necessary to the Plans' recordkeepers. The University denies all of the allegations in the lawsuit and contends that its conduct was entirely proper. You should read this entire notice carefully because your legal rights will be affected whether you act or not.

This notice explains your rights and options, including the deadline for you to object if you are opposed to this Settlement.

## **BASIC INFORMATION**

### **1. Why did I get this notice?**

You are receiving this notice because the Plans' records indicate that you are or were a participant in one of the University's 403(b) plans during the period from May 18, 2011 through [insert date of preliminary approval order]. As such, your rights will be affected by the Settlement of this lawsuit.

**Please read the following information carefully to find out what the lawsuit is about, what the terms of the proposed settlement are, what rights you have to object to the proposed settlement agreement if you disagree with its terms, and the deadline to object to the proposed settlement.**

### **2. What this Lawsuit is about?**

A lawsuit was filed in the United States District Court for the Northern District of Illinois against the University. The lawsuit alleges that the University violated ERISA with respect to the Plans. The individuals who are pursuing the lawsuit ("Plaintiffs") claim that the University should not have selected and maintained the CREF Stock Account and TIAA Real Estate Account as investment options in the Plans, and that the Plans paid higher recordkeeping and administrative fees than necessary to the Plans' recordkeepers. Plaintiffs also previously claimed that loans made under the participant loan-program constituted prohibited transactions under ERISA, but the court dismissed that claim.

The University denies the allegations in the lawsuit and contends that its conduct was entirely proper. The University has asserted, and would assert should the litigation continue, a number of defenses to Plaintiffs' claims.

### **3. What is a class action lawsuit?**

In a class action lawsuit, one or more people called "class representatives" sue on their own behalf and on behalf of other people who have similar claims. One court resolves all the issues for all class members in a single lawsuit. Two ERIP participants and one CRP participant are the class representatives in this lawsuit.

### **4. Why is there a Settlement?**

The parties have agreed to the Settlement after extensive negotiations. By agreeing to the Settlement, the parties avoid the costs and risks of further litigation, and Plaintiffs and the other members of the settlement classes will receive compensation and other benefits. Class Counsel have conducted a review of the evidence in the case and the potential risks and benefits of continued litigation and believe that the Settlement is in the best interest of the class. The Court has not made any finding that the University has done anything wrong or violated any law or regulation.

The Plans have retained an independent fiduciary to evaluate the fairness of the Settlement. The independent fiduciary is Nicholas L. Saakvitne, Esquire.

### **5. How do I get more information about the Settlement?**

This notice is only a summary of the lawsuit and the proposed Settlement. It is not a complete description of the lawsuit or the proposed Settlement. You may inspect the pleadings and other papers (including the Settlement Agreement) that have been filed in this lawsuit at the office of the Clerk of the United States District Court for the Northern District of Illinois, which is located at 219 S. Dearborn Street, Chicago, IL 60604. You may also review documents electronically through Public Access to Court Records, which is available as [www.pacer.gov](http://www.pacer.gov).

If you have questions about this notice or the proposed Settlement, you may contact Class Counsel (see answer to Question 11 for contact information).

**Do not contact the Court or the Defendant for information about the Settlement. The Settlement Administrator or Class Counsel can answer any questions you may have about the proposed Settlement.**

## THE SETTLEMENT BENEFITS – WHAT YOU MAY GET

### 6. What does the Settlement provide?

Plaintiffs and the University have agreed to a settlement that involves both monetary payments to participants and the University's commitment to maintain recent changes it made to the Plans' investment options and fees. These and other terms of the Settlement are set forth in the Class Action Settlement Agreement dated May 22, 2018 ("Settlement Agreement"), and described briefly below.

As part of the Settlement, the University has agreed to make a one-time payment of \$6.5 million (the "Settlement Amount"). After deduction from the Settlement Amount for any amounts that the Court approves for settlement-related expenses (including a Case Contribution Award to Plaintiffs, Attorneys' Fees and Expenses to Class Counsel, certain fees for retaining an Independent Fiduciary Fees, Administration Costs, and Taxes and Tax-Related Costs), the remaining amount (known as the "Distributable Settlement Amount") will be distributed to Monetary Relief Class Members. Monetary Relief Class Members are participants and beneficiaries of the Plans from May 18, 2011 through the date the Court preliminarily approves the Settlement. However, to avoid disproportionate expenses in particular cases, the parties have agreed that no distribution will be made to any Monetary Relief Class Member who (1) is no longer a participant in either of the Plans and (2) would otherwise be entitled to an amount of less than \$25 from the Distributable Settlement Amount. Monetary Relief Class Members who remain participants of either of the Plans are *not* be subject to this restriction. The Plan of Allocation is attached to this notice as Appendix A.

In addition to the monetary payment, the University has agreed to maintain the following changes it recently made to the Plans and other University retirement plans before agreeing to the settlement, subject to any changes in applicable law:

- (a) The University has agreed not to increase per-participant recordkeeping fees for three years, and will use commercially reasonable best efforts to continue to attempt to reduce recordkeeping fees.
- (b) As of April 2, 2018, the CREF Stock Account is no longer offered as an investment option available to participants in the investment lineup of the Plans and other University 403(b) retirement plans.

**7. If I am entitled to a distribution, how will I receive the settlement proceeds?**

Monetary Relief Class Members who have a positive balance in their Plan account at the time of the distribution will receive any settlement proceeds through a deposit into their Plan account. To the extent feasible and ascertainable, those settlement proceeds will be invested in accordance with each Monetary Relief Class Member's instructions for investment of new contributions at the time the distribution is made, or, if no such instructions are in effect, to the applicable qualified default investment option. Monetary Relief Class Members who no longer have a positive balance in their Plan account as of the date of distribution ("Former Participants") will receive a check from the Settlement Administrator.

**8. How will I benefit from the Settlement?**

You may benefit in two ways. First, you may be entitled to receive a portion of the Distributable Settlement Amount. Only Monetary Relief Class Members are eligible to receive a portion of the Distributable Settlement Amount. (See the answer to Question 6 above.) Whether or not a person meets this definition will be based on the Plans' records. You have received this notice because, based on the Plans' records, you are believed to be a member of the Monetary Relief Class. The Plan of Allocation attached to this notice will determine the amount paid to each eligible participant.

Second, if you are a current participant in the University's 403(b) plans, you will receive the benefit of the changes that recently became effective and that the University has agreed to maintain (described in the answer to Question 6 above). Among other things, the University has agreed not to increase per-participant recordkeeping fees for three years and has discontinued offering the CREF Stock Account as an investment option in the Plans' investment lineup.

**9. What are the Class Representatives receiving from the Settlement?**

Each of the Class Representatives in this case may seek a Case Contribution Fee not to exceed \$10,000. Additionally, the Class Representatives will be entitled to receive benefits of the Settlement because they are Monetary Settlement Class Members.

**THE SETTLEMENT BENEFITS – WHAT YOU GIVE UP**

**10. What do I give up by participating in the Settlement?**

In exchange for the University's payment of the Settlement Amount, all Monetary Relief Class Members will release any claims they have related to the lawsuit and be prohibited from bringing or pursuing any other lawsuits or other actions based on such claims.

The Court will also be certifying as a class all persons who are participants of the Plans from the date of the Court's preliminary approval of the Settlement until three years after that date. These persons are known as the Structural Changes Class Members. Structural Change Class Members and Monetary Relief Class Members are collectively known as Settlement Class Members. Structural Changes Class Members are agreeing not to sue (the "Covenant") the University and certain other parties (defined in Sections 1.13, 1.14, 1.15 and 6.2 of the Settlement Agreement) with



respect to any of the subjects for which changes have been made to the operation of the Plans (described in the answer to Question 6 above), so long as the Plans (a) do not raise the per-participant recordkeeping fees for the next three years and (b) continue to conduct periodic reviews of the investment options in the new investment lineup, including the TIAA Real Estate Account. This Covenant expires at the end of the calendar year occurring three years after the Court's final approval of the Settlement. The Releases and the Covenant are set forth in full in the Settlement Agreement, which can be viewed online at [\[website\]](#), or requested from Class Counsel.

## THE LAWYERS REPRESENTING YOU

### 11. Do I have a lawyer in this case?

Yes. In granting preliminary approval of the proposed Settlement, the Court appointed the Plaintiffs' lawyers to serve as "Class Counsel" for the Settlement Class. The attorneys for the Settlement Class are as follows:

John J. Nestico  
SCHNEIDER WALLACE COTTRELL KONECKY WOTKYNS, LLP  
8501 N. Scottsdale Rd.  
Suite 270  
Scottsdale, AZ 85253

Todd Collins  
Ellen Noteware  
BERGER & MONTAGUE P.C.  
1622 Locust Street  
Philadelphia, PA 19103

Mark Richard Miller  
WEXLER WALLACE LLP  
55 W. Monroe Street  
#3300  
Chicago, IL 60603

You will not be charged separately for the work of these lawyers; their compensation will come from the Settlement Amount and will be determined by the Court. If you want to be represented by a different lawyer in this case, you may hire one at your own expense.

### 12. How will the lawyers (Class Counsel) be paid?

Class Counsel will file a motion with the Court seeking approval of their compensation, which will consist of (a) reasonable attorneys' fees and (b) reimbursement of the expenses they incurred in prosecuting the case. Class Counsel intend to seek attorneys' fees equal to 30% of the Settlement Amount plus reasonable expenses. The motion and supporting papers will be filed on or before \_\_\_\_\_, 2018. After that date you may review the motion and supporting papers at [\[website\]](#). Any attorneys' fees, expenses and Case Contribution Award approved by the Court, in addition to the fee and the expenses incurred by the Settlement Administrator in sending this notice and administering the Settlement, will be paid from the Settlement Amount. The University will pay the costs of the independent fiduciary up to \$25,000, and any amount in excess of \$25,000 will be paid from the Settlement Amount.

**OBJECTING TO THE SETTLEMENT**

**13. What does it mean to object?**

Objecting is simply telling the Court that you do not like something about the Settlement. Objecting will not have any bearing on your right to receive the benefits of the Settlement if it is approved by the Court.

**14. What is the procedure for objecting to the Settlement?**

Prior to the Fairness Hearing, Settlement Class Members will have the opportunity to object to approval of the Settlement. Settlement Class Members can object to the Settlement and give reasons why they believe that the Court should not approve it. To object, you must send your objection to the Court, at U.S. District Court, Northern District of Illinois, 219 S. Dearborn Street, Chicago, IL 60604, and to the Parties at the following addresses:

To Class Counsel:

John J. Nestico SCHNEIDER WALLACE COTTRELL KONECKY WOTKYNS, LLP 8501 N. Scottsdale Rd. Suite 270 Scottsdale, AZ 85253
--

To Defendant's Counsel:

Mark B. Blocker SIDLEY AUSTIN LLP One South Dearborn Street Chicago, IL 60603
--

Objections must be filed with the Court Clerk on or before \_\_\_\_\_, 2018. Objections filed after that date will not be considered. Any Settlement Class Member who fails to submit a timely objection will be deemed to have waived any objection they might have, and any untimely objection will be barred absent an order from the Court. Objections must include: (1) the case name and number; (2) your full name, current address, telephone number and signature; (3) a statement that you are a Settlement Class Member and an explanation of the basis upon which you claim to be a Settlement Class Member; (4) all grounds for the objection, accompanied by any legal support known to you or your counsel; (5) a statement as to whether you or your counsel intends to personally appear and/or testify at the Fairness Hearing; and (6) a list of any persons you or your counsel may call to testify at the Fairness Hearing in support of your objection.

**15. What if I do not want to be part of the lawsuit and want to exclude myself?**

The Settlement does not allow any Settlement Class Members to exclude themselves from the settlement or decide not to be a part of the Settlement. While some class action settlements allow class members to "opt out" of the settlement if they want, because of the nature of the claims Plaintiffs have asserted in this lawsuit, Settlement Class Members do not have any right to opt

out. Thus, if you dislike some portion of the settlement, your only recourse is to object to the settlement.

## THE COURT'S FAIRNESS HEARING

### 16. What is a fairness hearing?

The Court has granted preliminary approval of the proposed Settlement, finding that it is sufficiently reasonable to warrant such preliminary approval, and has approved delivery of this notice to Settlement Class Members. The Settlement will not take effect, however, until it receives final approval from the Court following an opportunity for Settlement Class Members to object to the Settlement. Following the deadline for objecting to the Settlement, the Court will hold a Fairness Hearing on \_\_\_\_\_, 2018 to consider any objections. The Fairness Hearing will take place at the United States District Court for the Northern District of Illinois, located at 219 S. Dearborn Street, Chicago, IL 60604. The date and location of the Fairness Hearing is subject to change by Order of the Court, which will appear on the Court's docket for this case.

### 17. Can I attend the Fairness Hearing?

Yes, anyone can attend the Fairness Hearing. But the Court will only allow those who file and serve a timely written objection in accordance with this notice to speak at the Fairness Hearing either in person or through counsel retained at his or her own expense. Those persons or their attorneys intending to speak at the Fairness Hearing must serve notice of their intention to appear setting forth on Class Counsel and Defendant's counsel (at the addresses set out above) and file it with the Court Clerk by no later than \_\_\_\_\_. The notice must include: (1) the name, address, and telephone number of the Settlement Class Member, and (2) if applicable, the name, address, and telephone number of that Settlement Class Member's attorney. Anyone 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, except by Order of the Court for good cause shown. Any comment or objection that is timely filed will be considered by the Court even in the absence of a personal appearance by the Settlement Class Member or that Settlement Class Member's counsel.

The Court will consider Settlement Class Member objections in deciding whether to grant final approval. Objectors are not required to attend the Fairness Hearing, but if you intend to appear you must state your intention to do so in the manner described above. Settlement Class Members who do not comply with these procedures, or who miss the deadline to file an objection, lose the opportunity to have their objection considered by the Court or to appeal from any order or judgment entered by the Court regarding the Settlement.

### 18. Where can I get more information?

You can visit the website at [URL] where you will find the full Settlement Agreement, the Court's order granting preliminary approval, this notice, and other relevant pleadings and documents. If you cannot find the information you need on the website, you may also contact Class Counsel for more information. Do not contact the Court to get additional information.

Dated: \_\_\_\_\_, 2018

By Order of the United States District  
Court District Judge Ruben  
Castillo

## **EXHIBIT C**

### Plan of Allocation

The proportion of the settlement allocated to each of Plaintiffs' claims shall be calculated by the Settlement Administrator as follows:

The Settlement Administrator shall first divide the Distributable Settlement Amount amongst the CREF Stock Account Claim, the TIAA Real Estate Account Claim, and the Recordkeeping Fees Claim (the "Claims") as follows:

- I. 60% of the Distributable Settlement Amount shall be allocated for payments related to the Recordkeeping Fees Claim;
- II. 20% of the Distributable Settlement Amount shall be allocated for payments related to the CREF Stock Account Claim; and
- III. 20% of the Distributable Settlement Amount shall be allocated for payments related to the TIAA Real Estate Account Claim.

The Settlement Administrator shall also obtain, in writing, an agreement between the parties as to the amount of the Distributable Settlement Amount.

The amounts due to each Monetary Relief Class Member shall be calculated by the Settlement Administrator as follows:

#### Recordkeeping Fees Claim

**STEP 1:** The Settlement Administrator shall obtain the year end account balances in the Plans for both Vanguard and TIAA for every Monetary Relief Class Member for the plan years 2011-2018 (the "Plan Years"). For the year 2018, the year end account balance shall be the account balance as of March 31, 2018.

**STEP 2:** The Settlement Administrator shall sum each Monetary Relief Class Member's year-end account balances for the Plan Years, and for any Monetary Relief Class Member with a positive sum, shall divide the sum of that class member's year-end balances by the sum of all the Monetary Relief Class Members' year-end balances for the Plan Years, with the quotient representing the Recordkeeping Entitlement Percentage for each such Monetary Relief Class Member.

*Sum of Year-End Account Balances For Each Monetary Relief Class Member (positive only) / Sum of Year-End Account Balances for all Monetary Relief Class Members = Recordkeeping Entitlement Percentage*

**STEP 3:** The Settlement Administrator shall next multiply the Recordkeeping Entitlement Percentage by 60% of the Distributable Settlement Amount, with the product representing the Recordkeeping Preliminary Entitlement Amount.

*Recordkeeping Entitlement Percentage x (.60 x Distributable Settlement Amount) = Recordkeeping Preliminary Entitlement Amount*

### **CREF Stock Account Claim**

**STEP 1:** The Settlement Administrator shall obtain the year end account balances in the CREF Stock Account for every Monetary Relief Class Member for the Plan Years. For the year 2018, the year end account balance shall be the account balance as of March 31, 2018.

**STEP 2:** The Settlement Administrator shall sum all of the year-end account balances for each Monetary Relief Class Member, and for any Monetary Relief Class Member with a positive sum, shall divide the sum of that class member's year-end balances by the sum of all the Monetary Relief Class Members' CREF Stock Account year-end balances for the Plan Years, with the quotient representing the CREF Stock Entitlement Percentage for each such Monetary Relief Class Member.

*Sum of Year-End Account Balances in CREF Stock Account For Each Monetary Relief Class Member (positive only) / Sum of Year-End CREF Stock Account Balances for all Monetary Relief Class Members = CREF Stock Entitlement Percentage*

**STEP 3:** The Settlement Administrator shall next multiply the CREF Stock Entitlement Percentage by 20% of the Distributable Settlement Amount, with the product representing the CREF Stock Preliminary Entitlement Amount.

*CREF Stock Entitlement Percentage x (.20 x Distributable Settlement Amount) = CREF Stock Preliminary Entitlement Amount*

### **TIAA Real Estate Account Claim**

**STEP 1:** The Settlement Administrator shall obtain the year end account balances in the TIAA Real Estate Account for every Monetary Relief Class Member for the Plan Years. For the year 2018, the year end account balance shall be the account balance as of March 31, 2018.

**STEP 2:** The Settlement Administrator shall sum all of the year-end account balances for each Monetary Relief Class Member, and for any Monetary Relief Class Member with a positive sum, shall divide the sum of that class member's year-end balances by the sum of all the Monetary Relief Class Members' TIAA Real Estate Account year-end balances for the Plan Years, with the quotient representing the TIAA Real Estate Entitlement Percentage for each such Monetary Relief Class Member.

*Sum of Year-End Account Balances in TIAA Real Estate Account For Each Monetary Relief Class Member (positive only) / Sum of Year-End TIAA Real Estate Account Balances for all Monetary Relief Class Members = TIAA Real Estate Entitlement Percentage*

**STEP 3:** The Settlement Administrator shall next multiply the TIAA Real Estate Entitlement Percentage by 20% of the Distributable Settlement Amount, with the product representing the TIAA Real Estate Preliminary Entitlement Amount.

*TIAA Real Estate Entitlement Percentage x (.20 x Distributable Settlement Amount) = TIAA Real Estate Preliminary Entitlement Amount*

### **Aggregate Entitlement Amount**

The Settlement Administrator shall calculate the Final Aggregate Entitlement Amount for each Monetary Relief Class Member as follows:

1. The Settlement administrator shall sum the Recordkeeping Preliminary Entitlement Amount, the CREF Stock Account Preliminary Entitlement Amount, and the TIAA Real Estate Preliminary Entitlement Amount for each Monetary Relief Class Member. This total amount will be the Preliminary Aggregate Entitlement Amount.
2. All Monetary Relief Class Members with an account in the Plans as of the distribution date (the “Payment Group”) will receive a disbursement from the Settlement Administrator, regardless of the amount of the Preliminary Aggregate Entitlement Amount. Any Monetary Relief Class Member who no longer has an account in either of the Plans with a Preliminary Entitlement Amount of less than \$25 shall receive no disbursement (the “No Payment Group”).
3. After all members of the No Payment Group have been eliminated, the Settlement Administrator shall repeat STEP 2 and STEP 3 for each of the Recordkeeping Fees Claim, CREF Stock Account Claim and TIAA Real Estate Account Claim for the Payment Group. The resulting products shall now be the Final Entitlement Amounts for each claim.
4. The Settlement Administrator shall then sum the Recordkeeping Final Entitlement Amount, the CREF Stock Account Final Entitlement Amount, and the TIAA Real Estate Final Entitlement Amount for each Monetary Relief Class Member. This total amount will be the Final Aggregate Entitlement Amount.

**EXHIBIT D**



**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT ILLINOIS  
EASTERN DIVISION**

\_\_\_\_\_  
WINIFRED J. DAUGHERTY et al.,

Plaintiffs,

v.

THE UNIVERSITY OF CHICAGO,

Defendant.

)  
) Case No. 1:17-cv-03736  
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) Hon. Judge Ruben Castillo  
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**PRELIMINARY APPROVAL ORDER**

This matter came to be heard before me on May \_\_, 2018, on Plaintiffs' Motion for Preliminary Approval of a class action settlement in this case. In connection with that motion, I have considered and reviewed the following materials: (a) Plaintiffs' motion for preliminary approval of the Settlement (the "Motion"), and the papers filed in connection therewith; and (b) the Class Action Settlement Agreement dated May 22, 2018 and the exhibits attached thereto (the "Settlement Agreement"). In addition, the Court has considered the arguments of counsel and the pleadings and record in this case. This Court has considered all of the foregoing materials and information and finds that there is good cause for granting the Motion.

**NOW THEREFORE, IT IS HEREBY ORDERED:**

1. Capitalized terms used in this Order that are not otherwise identified herein have the meaning assigned to them in the Settlement Agreement.

2. The Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).

3. Venue before this Court is proper pursuant to 29 U.S.C. § 1132(e)(2).

4. The terms set forth in the Settlement Agreement are hereby preliminarily approved, subject to further consideration at the Fairness Hearing provided for below. The Court concludes that the Settlement Agreement is sufficiently within the range of reasonableness to warrant the preliminary approval of the Settlement Agreement, the scheduling of the Fairness Hearing, and the mailing of notices to Monetary Relief Class Members, each as provided for in this Order. The Court further finds, on a preliminary basis, that the formula proposed by Plaintiffs and Class Counsel for allocating the Distributable Settlement Fund among Monetary Relief Class Members is fair and reasonable.

**Class Certification for Settlement Purposes**

5. Pursuant to Rule 23(a) and (b)(1) of the Federal Rules of Civil Procedure, the Court hereby certifies for settlement purposes only the following two non-opt-out Settlement Classes (the “Classes” or the “Settlement Classes”):

(a) **The Monetary Relief Class**

The “Monetary Relief Class” will consist of all participants and beneficiaries of The University of Chicago Contributory Retirement Plan and The University of Chicago Retirement Income Plan for Employees from May 18, 2011 through the date of preliminary approval, excluding the Defendant or any participant who is a fiduciary to the Plans.

(b) **The Structural Changes Class**

The “Structural Changes Class” will consist of all participants and beneficiaries of The University of Chicago Contributory Retirement Plan and The University of Chicago Retirement Income Plan for Employees from the date of preliminary approval until the date that is three years after the date of final approval.

6. Solely for settlement purposes, the Court finds that each element required for certification of the Classes pursuant to Rule 23 of the Federal Rules of Civil Procedure has been met: (a) the members of the Classes are so numerous that their joinder in the Action is

impracticable; (b) there are questions of law and fact common to the members of the Classes that predominate over any questions affecting only individual members of the Classes; (c) Plaintiffs' claims are typical of the claims of the Classes; (d) Plaintiffs and co-lead counsel have fairly and adequately represented and protected the interests of the Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the claims asserted in the Action against Defendant. The Court further finds that the requirements of Rule 23(b)(1)(A) have been met. Prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudications as to individual Members of the Classes that would establish incompatible standards of conduct for the parties opposing the claims asserted in this Action.

7. For settlement purposes, the Court hereby finds that pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs are adequate class representatives and certifies them as Class Representatives for both Classes, and appoints the law firms of Berger & Montague, P.C. and Schneider Wallace Cottrell Konecky Wotkyns, LLP as Co-Lead Counsel for the Classes. Plaintiffs and Co-Lead Counsel have fairly and adequately represented the Classes in terms of both litigating the claims of the Classes and entering into and implementing the Settlement and have satisfied all the requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g), respectively.

#### **Class Notice**

8. The Court approves the Notice of Proposed Class Action Settlement ("Notice") in the form attached as Exhibit B to the Settlement Agreement. The parties may make non-substantive changes to the Notice, such as filling in the applicable dates and correcting any typographical errors or addressing similar issues.

9. Defendant shall cause the Plans' current and former recordkeepers to provide to the Settlement Administrator with the last known mailing address for each Settlement Class Member.

The names and addresses provided to the Settlement Administrator pursuant to this Order shall be used solely for the purpose of providing notice of this Settlement and for no other purpose.

10. Within thirty (30) days after entry of this Order, the Settlement Administrator shall cause copies of the Notice, substantially in the form attached hereto as Exhibit 1 (the “Notice”), to be sent via first-class U.S. mail, postage pre-paid to each Settlement Class Member through the notice procedure described in the Settlement Agreement.

11. The Court finds that the notice to be provided as set forth in this Order is the best means of providing notice to the Monetary Relief Class Members as is practicable under the circumstances and, when completed, shall constitute due and sufficient notice of the Settlement and the Fairness Hearing, and the hearing on the motion for Plaintiffs’ Case Contribution Awards and award of Attorneys’ Fees and Expenses, to all persons affected by or entitled to participate in the Settlement in full compliance with the requirements of due process and the Federal Rules of Civil Procedure.

12. All reasonable costs incurred by Plaintiffs’ Counsel or the Settlement Administrator for providing the Notice as well as for administering the Settlement shall be paid as set forth in the Settlement Agreement without further order of the Court.

**Fairness Hearing**

13. The Court will hold a settlement hearing (the “Settlement Hearing”) on \_\_\_\_\_, 2018 at \_\_:\_\_ .m. in Courtroom \_\_\_ of the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, IL 60604, for the following purposes: (a) to determine whether the proposed Settlement is fair, reasonable, adequate and in the best interests of the Classes and should be approved by the Court; (b) to determine whether a Judgment substantially in the form attached as Exhibit A to the Settlement Agreement should be entered pursuant to the

terms of the Settlement, dismissing with prejudice all claims asserted in the Action against Defendant with respect to Members of the Settlement Classes; (c) to determine whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable and should be approved; (d) to determine whether the separate motion by Co-Lead Counsel for payment of Plaintiffs' Case Contribution Awards and an award of Attorneys' Fees and Expenses to Class Counsel should be approved; and (e) to consider any other matters that may properly be brought before the Court in connection with the Settlement. Notice of the Settlement and the Settlement Hearing shall be given to Class Members as set forth in Paragraph 10 of this Order.

14. The Court may adjourn the Settlement Hearing and approve the proposed Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Classes.

**Appearance and Objections at Settlement Hearing**

15. The Court will consider written comments and objections to the Settlement Agreement, to the Plan of Allocation, to the proposed award of Attorneys' Fees and Expenses, or to the request for a Case Contribution Award for the Plaintiffs only if such written comments or objections are filed with the Court Clerk not later than 21 days before the Fairness Hearing and comply with the requirements of Paragraph 17 below, and are served on the Parties at the following addresses:

For Filing with the Court:

United States District Court  
Northern District of Illinois  
219 S. Dearborn Street  
Chicago, IL 60604

To Class Counsel:

John J. Nestico  
SCHNEIDER WALLACE COTTRELL KONECKY WOTKYNS, LLP

8501 N. Scottsdale Rd.  
Suite 270  
Scottsdale, AZ 85253

To Defendant's Counsel:

Mark B. Blocker  
SIDLEY AUSTIN LLP  
One South Dearborn Street  
Chicago, IL 60603

16. The Court will only consider written comments and objections to the Settlement that are signed by the Settlement Class Member and are timely filed with the Court Clerk not later than 21 days before the Fairness Hearing and include all of the following: (a) the name and case number of the Action; (b) the Settlement Class Member's full name, address, telephone number, and signature; (c) a statement that the person submitting the comments or objections is a Settlement Class Member and an explanation of the basis upon which the person claims to be a Settlement Class Member; (d) all grounds for the objection, accompanied by any legal support known to the objector or his or her counsel, (e) a statement as to whether the Settlement Class Member or his or her counsel intends to personally appear and/or testify at the Fairness Hearing; and (f) a list of any persons the objector or his or her counsel may call to testify at the Fairness Hearing in support of the objection. 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 Agreement, and any untimely objection shall be barred absent an Order from the Court. The named Plaintiffs or Defendants may take discovery, including depositions, from anyone who files an objection with respect to any of the issues raised in the objection.

17. Anyone who files and serves a timely, written comment or objection in accordance with this Order may also appear at the Fairness Hearing either in person or through qualified

counsel retained at their own expense. Those persons 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 Settlement Class Member (and, if applicable, the name, address, and telephone number of that Settlement Class Member's attorney) on Class Counsel and Defendant's Counsel (at the addresses set out above) and file it with the Court Clerk by not later than 21 days before the Fairness Hearing. Anyone 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 by Order of the Court for good cause shown. Any comment or objection that is timely filed will be considered by the Court even in the absence of a personal appearance by the Settlement Class Member or that Settlement Class Member's counsel.

#### **Additional Issues**

18. The Court approves the retention by Co-Lead Counsel of Heffler Claims Group LLC (the "Settlement Administrator") to supervise and administer the Settlement.

19. The Court approves the selection of the Huntington National Bank as the Escrow Agent. The contents of the Settlement Fund held by Huntington National Bank as Escrow Agent shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court until such time as they shall be distributed or returned pursuant to the Settlement Agreement and/or further Order(s) of the Court.

20. In further aid of the Court's jurisdiction to review, consider, implement, and enforce the Settlement, the Court orders that Plaintiffs and all Settlement Class Members are preliminarily enjoined and barred from commencing, prosecuting, or otherwise litigating, in whole or in part, either directly, representatively, derivatively, or in any other capacity, whether by complaint,

counterclaim, defense, or otherwise, in any local, state, or federal court, or in any agency or other authority or forum wherever located, any contention, allegation, claim, cause of action, matter, lawsuit, or action (including but not limited to actions pending as of the date of this Order), that arises out of or relates in any way to the Released Claims.

### **Termination of Settlement**

21. If the Settlement is terminated or not approved, or if the Effective Date of the Settlement does not occur, this Order shall become null and void and be without prejudice to the rights of the plaintiffs, the Settlement Class Members, and Defendant, and the settling parties shall be deemed to have reverted to their respective positions in this Action as of March 21, 2018.

### **Supporting Papers**

22. Co-Lead Counsel shall file and serve their opening papers in support of the proposed Settlement, the proposed Plan of Allocation, and their motion for Plaintiffs' Case Contribution Awards and an Award of Attorneys' Fees and Expenses no later than twenty-eight (28) calendar days prior to the Settlement Hearing; reply papers by Co-Lead Counsel, if any, including any responses to written objections to the proposed Settlement, the proposed Plan of Allocation and/or the motion for Plaintiffs' Case Contribution Awards and an award of Attorneys' Fees and Expenses, will be filed and served no later than seven (7) calendar days prior to the Settlement Hearing.

### **Use of Order**

23. This Order is not admissible as evidence for any purpose against Defendant in any pending or future litigation involving any of the Parties. This Order (a) shall not give rise to any inference of, and shall not be construed or used as an admission, concession, or declaration against Defendant of, wrongdoing or liability in the Actions or any other proceeding; (b) is not an



admission of any liability of any kind, whether legal or factual; (c) shall not be used or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce the Settlement Agreement; (d) shall not be construed or used as an admission, concession, or declaration by or against Plaintiffs or the Settlement Classes that their claims lack merit or that the relief requested in the Actions is inappropriate, improper or unavailable; (e) shall not be construed or used as an admission, concession, declaration or 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. This Order and the Settlement Agreement and any proceedings taken pursuant to the Settlement Agreement are for settlement purposes only. Defendant specifically denies any fault, breach, liability or wrongdoing.

#### **Schedule**

24. On or before June \_\_, 2018, the Settlement Administrator shall cause copies of the Notice to be sent to each Settlement Class Member.

25. No later than June \_\_, 2018, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel a declaration attesting to compliance with the sending of the Settlement Notices.

26. Co-Lead Counsel shall file and serve their opening papers in support of the proposed Settlement and the Plan of Allocation, including their motion for Case Contribution Awards and Attorneys' Fees and Expenses, on or before \_\_\_\_\_ [28 days before Fairness Hearing].

27. All written comments and objections to the Settlement Agreement, the Settlement, the Plan of Allocation, or the motion for Case Contribution Awards and Attorneys' Fees and

Expenses shall be filed and served on or before \_\_\_\_\_ [21 days before Fairness Hearing].

28. Any Class Member who files a timely written comment or objection and wants to appear at the Fairness Hearing shall file and serve a notice of intention to appear on or before \_\_\_\_\_ [21 days before Fairness hearing].

29. The Parties written responses to any objections shall be filed on or before \_\_\_\_\_ [7 days before Fairness Hearing]

**Jurisdiction**

30. The Court hereby retains jurisdiction for purposes of implementing the Settlement Agreement, and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the Settlement Agreement as may from time to time be appropriate, and to resolve any and all disputes arising thereunder.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
United States District Judge