IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DIANE G. SHORT, JUDITH DAVIAU, and JOSEPH BARBOZA, Individually and as representatives of a class of participants and beneficiaries in and on behalf of the BROWN UNIVERSITY DEFERRED VESTING RETIREMENT PLAN, and the BROWN UNIVERSITY LEGACY RETIREMENT PLAN, Plaintiffs, vs. BROWN UNIVERSITY in Providence in the State of Rhode Island and Providence Plantations, Defendant.	)	CA NO. 1:17-CV-318-WES-PAS

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR AN ORDER: PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT; CERTIFYING THE PROPOSED SETTLEMENT CLASS; APPOINTING CLASS COUNSEL; APPROVING THE FORM AND MANNER OF CLASS NOTICE; APPOINTING A SETTLEMENT ADMINISTRATOR; AND SCHEDULING A FINAL SETTLEMENT HEARING AND HEARING ON ATTORNEY'S FEES AND EXPENSES

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I. INTRODUCTION

After vigorous advocacy and negotiation, Plaintiffs Diane G. Short, Judith Daviau and Joseph Barboza[1] ("Plaintiffs"), individually and on behalf of all others similarly situated, and Defendant Brown University (the "University" or "Defendant"), entered into a Class Action Settlement (the "Settlement") to resolve the claims under the Employee Retirement Income Security Act, 29 U.S.C. § 1000 *et seq.* ("ERISA") against the University alleged in Plaintiffs' Complaint in exchange for a $3.5 million cash payment and other, structural relief. The Settlement Agreement is attached hereto as **Exhibit 1**. As is required by Prohibited Transaction Exemption 2003-39, 68 FR 75632 (Dec. 31, 2003), an independent fiduciary will review the terms of the proposed Settlement and determine whether to authorize the proposed Settlement on behalf of the Plan and the release of Brown University and the Plan fiduciaries from the Released Claims, as that term is defined in the Settlement Agreement.

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 $3.5 million Settlement[2] of the claims asserted in this action; (ii) approve the form and manner of giving notice of the proposed Settlement to members of the affected class; (iii) certify the proposed Settlement class; (iv) appoint Class Counsel; and (v) set a date for the hearing on final approval of the Settlement and on Plaintiffs' counsel's request for attorney's fees and costs.

The proposed Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class. It provides a substantial and immediate benefit to them in the form of a multi-

[1] Plaintiff Samira Pardanani was voluntarily dismissed from this case on July 10, 2017. (ECF No. 3.)

[2] All capitalized terms used herein shall have the meaning ascribed to them in the Class Action Settlement Agreement and Release dated March 11, 2019 ("Settlement Agreement") entered between Plaintiffs and Defendant, Brown University. The Settlement Agreement with all exhibits thereto is being filed as Exhibit 1 to Plaintiffs' accompanying Motion for Preliminary Approval.

million dollar cash payment, and it provides affirmative, therapeutic relief. It is the product of hard-fought litigation, which included substantial motion practice, exchange and review of key documents, painstaking damage analyses, and arm's-length negotiations between experienced counsel directed by a seasoned and respected mediator. The benefit of the proposed Settlement must be considered in the context of the risk that protracted litigation might lead to no recovery, or to a smaller recovery for Plaintiffs and the proposed Settlement Class. Defendant mounted a vigorous defense at the early stages of the litigation, and Plaintiffs expect that they would have continued to do so during discovery, trial and, potentially, through appeal.

In evaluating the terms of the Settlement Agreement, Class Counsel have concluded that the Settlement is in the best interests of the Settlement Class in light of, among other considerations: (1) the substantial monetary and therapeutic relief afforded to the Settlement Class; (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 promptly in order to provide effective relief to the Settlement Class. In light of these risks, 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 July 6, 2017, Plaintiffs commenced this action by filing a class action complaint in this Court. (ECF No. 1.) Plaintiffs are participants in the Brown University Deferred Vesting Retirement Plan, and the Brown University Legacy Retirement Plan (the "Plans"). With more than $1 billion in assets and 6,325 participants as of December 31, 2015, the Legacy Retirement Plan alone qualifies as a "Mega" plan. The Deferred Vesting Retirement Plan had more than $244 million in assets and 9,594 participants as of December 31, 2015. (Complaint at ¶¶ 14-15, 21.) The

Plans provide the primary source of retirement income for many employees of the University. (*Id*. ¶ 13.) Defendant serves as the Plans' sponsor and administrator pursuant to 29 U.S.C. § 1002(16)(A)(i). (*Id*. ¶ 21.) Defendant has all discretionary authority to administer the Plans, including the discretionary authority to select the Plans' investment options and service providers. (*Id*. ¶¶ 22-24.)

Defendants retained both TIAA and Fidelity Investments as recordkeepers for the Plans, and approved an asset-based compensation structure for TIAA and Fidelity Investments without any per-participant limitations. (*Id*. ¶ 48.) This caused recordkeeping fees to grow unfettered as the Plans' assets have grown. From December 31, 2008 to December 31, 2015, the Legacy Plan's assets alone increased by approximately 68% from $733,681,683 to $1,075,013,274. (*Id*. ¶¶ 56-59.) Defendants could have capped the amount of revenue sharing at appropriate levels to ensure that any excessive amounts were returned to the Plans, but failed to do so, causing the Plans' participants to lose millions of dollars in their retirement savings. (*Id*. ¶¶ 60-61.) These asset-based fees were paid indirectly out of the Plans' investment options – which were exclusively TIAA and Fidelity Investments products. (*Id*. ¶ 91.)

Despite the long-recognized benefits of a single recordkeeper for a defined contribution plan, including lower administrative fees (*id*. ¶¶ 48-55), during most of the Class Period Defendant engaged two recordkeepers (TIAA and Fidelity Investments) to administer the Plans. (*Id*. ¶¶ 48-55.) Plaintiffs alleged that this structure was inefficient and caused the Plans' participants to pay duplicative, excessive, and unreasonable fees for recordkeeping and administrative services. (*Id*.) There was no prudent reason for Defendant's failure to engage in a process to reduce such duplicative services and fees. (*Id*.) Plaintiffs alleged that a reasonable recordkeeping fee for the Plans would have been a fixed amount between $500,000 and $650,000 (approximately $35 per

participant with an account balance). (*Id*. ¶ 55.) However, calculations based on disclosures in the Plans' Forms 5500 indicate that TIAA received indirect compensation for recordkeeping and administrative services of $3.9 million just from the CREF variable annuities, TIAA Real Estate Account, and TIAA Traditional Annuity. (*Id*. ¶¶ 56-57.) This amount does not include any other indirect compensation received from revenue sharing from TIAA and Fidelity Investments mutual funds. (*Id*.) Accordingly, Plaintiffs allege the Plans' participants are paying millions of dollars every year in excessive recordkeeping fees.

Defendant also breached its fiduciary duties to the Plans by including too many investment options, with each Plan offering at least 24 investments choices managed by TIAA-CREF and over 175 investment choices managed by Fidelity Investments. (*Id*. ¶¶ 7, 25-28.) Defendant also burdened the Plans with duplicative, expensive, and underperforming TIAA investment products, including the TIAA Traditional Annuity (*id*. ¶¶ 90-99), the CREF Stock Account (id. ¶¶ 63-76); and the TIAA Real Estate Account (*id*. ¶¶ 77-89.)

On October 20, 2017, the University filed a motion to dismiss the Complaint in its entirety on jurisdictional grounds and for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). The University argued that the Complaint failed to allege that the Plans paid excessive recordkeeping fees or that their process for evaluating investment options was deficient, and the investment options at issue did not show chronic underperformance.[3]

On July 11, 2018, the Court issued an opinion granting in part and denying in part the University's motion to dismiss. ECF No. 33. The Court dismissed on standing grounds Counts III and IV, which asserted claims that the University breached its fiduciary duty of loyalty and engaged in a transaction prohibited by ERISA by offering an illegal loan program.

[3] *See generally* ECF No. 21.

With respect to Counts I and II, the Court ruled that Plaintiffs failed to state a claim that Brown breached its duty of loyalty. With respect to Plaintiffs' breach of fiduciary duty of prudence claims in Count I, the Court found that Plaintiffs failed to state a claim based on allegations that the Plans offered investments with multiple layers of fees. Likewise, the Court rejected Plaintiffs' allegations that it was imprudent for Defendants to use asset-based fees and revenue sharing. The Court also dismissed the claim that the University was imprudent in offering too many investment options rather than a set of "core" investment options.

However, the Court ruled that Plaintiffs stated a claim that Brown acted imprudently by using more than one recordkeeper. Also, the Court held that Plaintiffs' claim that a prudent fiduciary in like circumstances would have solicited competitive bids plausibly alleged a breach of the duty of prudence. Finally, the Court found that Plaintiffs stated a claim regarding excessive fees and expenses.

As to Count II, the Court ruled that Plaintiffs stated a claim for breach of the duty of prudence concerning Brown's process for selecting and retaining the CREF Stock Account and the TIAA Real Estate Account, which had prolonged periods of underperformance and higher costs compared to similar funds. The Court dismissed Plaintiffs' claims concerning the imprudence of including the TIAA Traditional Annuity among Plan investment options.

On August 10, 2018, the University answered the Complaint. ECF No. 36.

B. Discovery

Following Defendants' Answer, on September 14, 2018, they served document requests on the University. The University produced more than 4,000 pages of documents to Plaintiffs, which Plaintiffs carefully reviewed. Plaintiffs also utilized an expert economist to develop estimates of the damages sustained by the Plaintiffs and the Plans.

C. Settlement Negotiations

Following the Court's partial denial of Defendants' motion to dismiss, the parties began meaningful settlement discussion, employing Retired Magistrate Judge Morton Denlow as mediator. After the parties prepared and submitted detailed damage analysis and settlement proposals, the parties participated in an all-day, in-person mediation with Judge Denlow on January 8, 2019.

No settlement was reached at the end of the January 8, 2019 mediation; however, discussions between the parties and Judge Denlow continued and, on January 30, 2019, the parties reached an agreement in principal on the terms of the proposed settlement. Thereafter, the parties negotiated the detailed terms of the Settlement Agreement and exhibits thereto, which are presented to the Court on this motion, memorializing the terms of the class action Settlement for which Plaintiffs now seek preliminary approval, and they negotiated the Notice plan and the Plan of Allocation. Although the parties reached their proposed Settlement after only a year-and-a-half of litigation, Plaintiffs fully developed the legal and factual record as a result of thorough pre-Complaint investigation; briefing the motion to dismiss; reviewing more than 4,000 pages of documents produced by Defendant, including key documents concerning the Plan fiduciaries' consideration of Plan recordkeeping and Plan investment options as well as documents with respect to administrative fees and expenses paid by the Plans; and negotiations with Defendant.

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 the Settlement Class totaling $3,500,000 plus affirmative relief.

D. The Settlement Agreement

1. Benefits to the Settlement Class

The Stipulation of Settlement establishes a Settlement Amount of $3.5 million as compensation to the Settlement Class to compensate them for the University's alleged fiduciary breaches. *See* Stipulation of Settlement ¶ 11. (Exh. 1).

Under the terms of the Stipulation of Settlement, within fifteen (15) calendar days after the Court enters a Preliminary Approval Order, the University will pay $100,000 of the Settlement Amount to an account identified by Class Counsel to cover the initial Settlement Administrative Expenses, including the costs of sending Notice to the Settlement Class. *Id.* ¶ 12. The University will deposit the remaining amount (the "Settlement Fund") of three million four hundred thousand ($3.4) dollars into the Settlement Account within fifteen (15) calendar days after Complete Settlement Approval. *Id.* ¶¶ 11-13 (Exh. 1).

The Settlement Fund will be used cover all the administrative costs associated with implementing the Settlement; any attorneys' fees and costs approved by the Court; any service awards for the Plaintiffs approved by the Court; amounts for the Independent Fiduciary; and any applicable taxes. *Id.* ¶ 14. The money in the Settlement Fund, less administration costs, and Court-approved fees, expenses, and case contribution awards, will be distributed to members of the Settlement Class pursuant to the terms of the Stipulation of Settlement and the proposed Plan of Allocation, which is attached as Appendix 1 to the Settlement Notice, or such other allocation plan as may be ordered by the Court. *Id.* ¶ 25. The Settlement Fund will be administered by Court-approved Settlement Administrator. *Id.* ¶ 26. The Settlement Administrator will be responsible for calculating the amounts payable to Members of the Settlement Class pursuant to the Plan of Allocation based on information to be provided by the Plans' recordkeepers or fiduciary. *Id.*

For Members of the Settlement Class who have an account in either of the Plans as of the date of entry of the Final Approval Order, the distribution will be made directly into his or her

account. *Id.* ¶ 27. For those Members of the Settlement Class who no longer have an account in the Plans as of the time of distribution, the distribution will be made via a tax-qualified distribution process, which will transfer such funds to Retirement Clearinghouse LLC, to be deposited into a safe-harbor automatic rollover individual retirement accounts as described in 29 C.F.R § 2550.404a-2. The Settlement Class pursuant to the data provided by the Plans' recordkeepers. *Id.* ¶ 28. No payment less than $25 shall be distributed to any Settlement Class Member who does not have an account in either of the Plans as of the date of entry of the Final Approval Order. *Id.*

In addition to monetary relief, the Settlement provides prospective relief to the Plans. Specifically, Defendant agrees: (a) to use commercially reasonable best efforts to continue to try to further reduce recordkeeping fees from the Plans' two recordkeepers for a period three (3) years from the date of entry of the Final Approval Order, and in the event that fees increase despite Brown's efforts, Brown will notify participants and explain the occurrence; and (b) to conduct a Request for Proposal process for the role of independent investment advisor to the Plans. *Id.* ¶ 30.

Pursuant to the terms of the Stipulation of Settlement, the cash payment will be made to Members of the Settlement Class who meet the class definition, without the need for submitting a claim form or other request for payment. The Stipulation of Settlement does not provide for a "claims made" Settlement, or for any "reversion" of the Settlement Fund to Defendants or any of their affiliates.

2. <u>Retention of an Independent Fiduciary</u>

As is required by Prohibited Transaction Exemption 2003-39, 68 FR 75632 (Dec. 31, 2003), as amended 75 FR 33830 (June 15, 2010), the Stipulation of Settlement provides that the University agrees to select an Independent Fiduciary to provide the authorization required by Prohibited Transaction Exemption 2003-39. *Id.* ¶ 19. The University agrees to pay the costs associated with the retention of the independent fiduciary, up to $25,000. *Id.* The Stipulation of

Settlement provides that the Independent Fiduciary must provide a report authorizing the Settlement at least 14 days prior to the Fairness Hearing, should one be scheduled by the Court. *Id.* ¶ 33(b).

Accordingly, the Settlement will be evaluated by a fiduciary whose sole loyalty is the Settlement Class, and that fiduciary will evaluate the Settlement as to whether it is (1) reasonable and fair 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. Attorney's Fees, Costs and Service Award for Plaintiffs

Plaintiffs' Counsel's fees, costs and expenses and Plaintiffs' Incentive Awards will be paid from the Settlement Fund, as the Court may so order. *Id.* ¶ 20. Class Counsel will petition the Court for an award of attorneys' fees and costs not to exceed 30% of the Settlement Amount. *Id.* Class Counsel also will petition the Court for Incentive Awards not to exceed $5,000 per named plaintiff in recognition of the service of Plaintiffs. *Id.* ¶ 24. All requests will be subject to Court approval. *Id.* ¶ 21.

4. Release of Claims

Under the terms of the Stipulation of Settlement, Settling Plaintiffs, the Members of the Settlement Class, and the Plans (by and through the Independent Fiduciary) shall release any and all claims, including all claims asserted in the Complaint, for losses suffered by the Plans, the Plans' participants, or beneficiaries, in connection with (a) the selection, retention and/or monitoring of the investment options available in the Plans, (b) the appointment and/or monitoring of the Plans' fiduciaries, (c) the recordkeeping fees, administrative fees, and expenses incurred by the Plans, (d) the prudence and loyalty of the Plans' fiduciaries, and/or (e) the TIAA participant loan program available under the Plans ("Released Claims"). *Id.* ¶ 7. The Released Claims shall not include claims relating to the covenants or obligations set forth in the Settlement Agreement,

and the Settlement Agreement does not bar, waive or release any individual claims pertaining to computations of or errors in individual benefit calculations or failure to follow participant instructions or failure to comply with the terms of the Plans (except to the extent that any such claim may relate to the claims asserted in the Complaint), or any claims against the Teachers Investment and Annuity Association as asserted or contemplated in *Haley v. Teachers Investment and Annuity Association*, 1:17-cv-00855-JPO (S.D.N.Y.). The full scope of the Parties' releases is set forth in the Stipulation of Settlement at ¶¶ 7-10 (Exh. 1).

5. Notice and Objections

Pursuant to Fed. R. Civ. P. 23(e)(1) and (e)(5), the Stipulation of Settlement provides for notice to the Settlement Class and an opportunity for Members of the Settlement Class to object to approval of the Settlement. *Id.* ¶ 2. The Parties have agreed, subject to Court approval, to a notice plan that will provide the Settlement Class with sufficient information to make an informed decision about whether to object to the proposed Settlement. *Id.* The proposed Settlement Notice procedure includes direct mailing of the Settlement Notice (attached as **Exhibit 3** to the Stipulation of Settlement), to the last known mailing address of each Member of the Settlement Class, which will be supplied by TIAA and Vanguard. The Notice will inform the Settlement Class of the nature of the action, the litigation background and the terms of the Stipulation of Settlement, including the definition of the Settlement Class, the relief provided by the Stipulation of Settlement, the intent of Class Counsel to seek fees and costs, the proposed Incentive Awards payable to Plaintiffs, and the scope of the release and binding nature of the Settlement on Members of the Settlement Class. It also describes the procedure for objecting to the Settlement and states the date, time and place of the final approval hearing. *Id*. The Stipulation of Settlement also provides that the

Settlement Administrator shall establish a Settlement Website that will contain the Notice, the Stipulation of Settlement and its exhibits.

III. ARGUMENT

A. The Settlement Class 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. As part of the Settlement, Plaintiffs propose, and Defendant does not object to, for settlement purposes only, certification of the Settlement Class defined as follows:

> All participants and beneficiaries who had an account balance in either the Brown University Deferred Vesting Retirement Plan or the Brown University Legacy Retirement Plan (the "Plans") during the Class Period, excluding any participant who is a fiduciary to either of the Plans.
>
> The "Class Period" is defined as July 6, 2011 through the date of Preliminary 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.

To obtain class certification, the plaintiff must establish the four elements of Rule 23(a) and one of several elements of Rule 23(b). *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). "The Rule 23(a) elements are (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation." *Smilow v. Sw. Bell Mobile Sys., Inc.*, 323 F.3d 32, 38 (1st Cir. 2003) (citation omitted).

Under Fed. R. Civ. P. 23(b)(3) a plaintiff seeking class certification must satisfy that provision's requirements of predominance and superiority. The prerequisites for class certification "should be construed in light of the underlying objectives of class actions." *Glass Dimensions, Inc. v. State St. Bank & Tr. Co.*, 285 F.R.D. 169, 176 (D. Mass. 2012) (quoting *Wal-Mart Stores, Inc.*

v. Dukes, 564 U.S. 338 (2011)). In the case of a class seeking certification under Fed. R. Civ. P. 23(b)(3), the court should consider the rule's objective of vindicating "the claims of consumers and other groups of people whose individual claims would be too small to warrant litigation." *Glass Dimensions, Inc.*, 285 F.R.D. at 176.

As shown below, the Settlement Class meet all of the requirements for certification under Fed. R. Civ. P. 23(a) and Rule 23(b)(1).

1. The Class is so Numerous that Joinder is Impracticable

"The numerosity requirement of Rule 23(a) is satisfied when the class is 'so numerous that joinder of all members is impracticable.'" *Glass Dimensions, Inc.*, 285 F.R.D. 169 (proposed class of 1,790 retirement plans was sufficiently numerous) (quoting *In re In re Bos. Sci. Corp. Sec. Litig.*, 604 F. Supp. 2d 275, 281 (D. Mass. 2009)). Here, according to the 2015 Form 5500s for the Plans, there were more than 9,500 participants in the Deferred Plan and 4,500 participants in the Legacy Plan. Some employees of Defendant participate in both Plans. Nonetheless, the proposed Settlement Class includes at least 9,500 Members making joinder impracticable, and satisfying the numerosity requirement.

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)). "Commonality requires that there be an issue that 'is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.'" *Glass Dimensions, Inc.*, 285 F.R.D. at 176–77 (quoting *Wal-Mart Stores, Inc.*, 564 U.S. 338). In order to meet this burden, "plaintiffs need show only a basic demonstration that there are common questions of law

or fact in the case." *In re Evergreen Ultra Short Opportunities Fund Sec. Litig.*, 275 F.R.D. 382, 388 (D. Mass. 2011).

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 Class 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.*, 564 U.S. 338.

Under these circumstances, commonality is easily satisfied. The legal and factual questions linking Members of the Settlement Class are unquestionably 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 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 prudently (focused exclusively on the conduct of Defendants);

(e) Whether Defendant's actions proximately caused losses to the Plans and, if so, the appropriate relief to which the Plans are entitled (same).

These are the core issues in this case and the alleged bases for the harms that unify all Members of the Settlement Class. The University's alleged conduct impacted Members of the Settlement Class in precisely the same way. Classes consisting of ERISA plan participants are routinely certified in this and other courts. *See*, *e.g.*, *Glass Dimensions, Inc.*, 285 F.R.D. at 178 (commonality requirement satisfied and class certified where there existed a common question as to whether managers reasonably charged each of the plans a fee of 50% of the income earned from funds' securities lending).

Thus, the commonality requirement is readily satisfied for the Class.

3. Plaintiffs' Claims Are Typical of the Claims of the Class

The typicality requirement set forth in Fed. R. Civ. P. 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "'The representative plaintiff satisfies the typicality requirement when its injuries arise from the same events or course of conduct as do the injuries of the class and when plaintiff's claims and those of the class are based on the same legal theory.'" *Hochstadt v. Bos. Sci. Corp.*, 708 F. Supp. 2d 95, 103 (D. Mass. 2010) (quoting *In re Credit Suisse-AOL Sec. Litig.*, 253 F.R.D. 17, 23 (D. Mass. 2008)). Under Rule 23, a class representative's "claims need not be identical, but 'only need to share the same essential characteristics.'" *Glass Dimensions, Inc.*, 285 F.R.D. at 178 (quoting *Payne v. Goodyear Tire & Rubber Co.*, 216 F.R.D. 21, 24–25 (D. Mass. 2003)).

Here, Plaintiffs have the same claims for breach of fiduciary duties under ERISA as the other members of the Class. *See Hochstadt*, 708 F. Supp. 2d at 103 (where plaintiff and the class both acquired Boston Scientific stock in the company's retirement plan, plaintiff's claim was typical because it was "based on the same basic legal theory as the claims of all other class members"). Like other members of the Class, Plaintiffs (1) seek relief for the same losses, (2)

caused by the same alleged breaches of fiduciary duties, (3) affecting the same Plans and funds. Thus, the typicality requirement is satisfied.

4. Plaintiffs Will Fairly and Adequately Represent the Settlement Class

Fed. R. Civ. P. 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." This entails a two-prong showing: "The moving party must show first that the interests of the representative party will not conflict with the interests of any of the class members, and second, that counsel chosen by the representative party is qualified, experienced and able to vigorously conduct the proposed litigation." *Hochstadt*, 708 F. Supp. 2d at 103 (quoting *Andrews v. Bechtel Power Corp.*, 780 F.2d 124, 130 (1st Cir. 1985)).

Here, the three named Plaintiffs, who are the proposed Class Representatives, are all participants in the Plans 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). Thus, Plaintiffs' "interests do not conflict with the interests of other class members." *Hochstadt*, 708 F. Supp. 2d at 103.

In addition, as discussed below, the proposed Class Representatives have retained counsel with significant experience in federal class actions, in particular, ERISA cases. *Hochstadt*, 708 F. Supp. 2d at 104 (adequacy requirement met where Plaintiffs' "counsel have demonstrated that they are qualified, experienced, and are fully prepared to represent the Settlement Class to the best of their abilities."); *Glass Dimensions, Inc.*, 285 F.R.D. at 179 (the second prong of adequacy satisfied where the record demonstrated that "Plaintiff's counsel has extensive experience in conducting ERISA securities class action suits).

In sum, Plaintiffs are adequate representatives of the proposed Settlement Class.

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.*

Not surprisingly, therefore, "[i]n light of the derivative nature of ERISA § 502(a)(2) claims, breach of fiduciary duty claims brought under § 502(a)(2) are paradigmatic examples of claims appropriate for certification as a Rule 23(b)(1) class, as numerous courts have held." *See Hochstadt*, 708 F. Supp. 2d at 105–06 ("Given that the present case involves an ERISA § 502(a)(2) claim brought on behalf of the Plan and alleging breaches of fiduciary duty on the part of Defendants that will, if true, be the same with respect to every class member, I find that Rule 23(b)(1)(B) is clearly satisfied."); *In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 604 (3d Cir. 2009); *Evans v. Akers*, No. 04–11380–WGY, slip op. at 4 (D. Mass. Oct. 7, 2009) (finding class certification appropriate under Rule 23(b)(1)(B) because "[g]iven the Plan-representative nature of Named Plaintiffs' breach of fiduciary duty claims, there is a risk that failure to certify the

Settlement Class would leave future plaintiffs without relief"); *Stanford v. Foamex L.P.*, 263 F.R.D. 156, 174 (E.D. Pa. 2009) ("because of the unique and representative nature of an ERISA § 502(a)(2) suit, numerous courts have held class certification proper pursuant to Rule 23(b)(1)(B)"); *In re Nortel Networks Corp. ERISA Litig.*, No. 3:03-MD-01537, 2009 WL 3294827, at *15 (M.D. Tenn. Sept. 2, 2009) (finding class certification appropriate under Rule 23(b)(1)(B) because "[i]f individual adjudications would be dispositive of the interests of other Plan Participants, it would be better for those Plan Participants to be members of a class"); *Jones v. NovaStar Fin., Inc.*, 257 F.R.D. 181, 193 (W.D. Mo. 2009) (certifying a class under Rule 23(b)(1)(B) because "[g]iven that [named plaintiff]'s claim seeks 'Plan-wide relief, there is a risk that failure to certify the class would leave future plaintiffs without relief' "); *In re Merck & Co., Inc. Sec., Derivative & ERISA Litig.*, No. CIV.A. 05-1151SRC, 2009 WL 331426, at *10 (D.N.J. Feb. 10, 2009) (finding class certification appropriate under Rule 23(b)(1)(B) because "[i]f the prudence claims proceeded individually, and one court removed a Plan fiduciary, this would be, as a practical matter, dispositive of the interests of the other Plan members in that particular regard"); *In re Tyco Int'l, Ltd.*, No. MD-02-1335-PB, 2006 WL 2349338, at *7 (D.N.H. Aug. 15, 2006) ("the majority of courts have concluded that certification under 23(b)(1)(B) is proper" for ERISA fiduciary class actions).

As the above-cited cases show, the instant ERISA class action is precisely 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)(B).

6. <u>The Members of the Proposed Class Are Ascertainable</u>

"The proposed class must be precisely defined and its members must be ascertainable through the application of 'stable and objective factors' so that a court can decide, among other

things, 'who will receive notice, who will share in any recovery, and who will be bound by the judgment.'" *In re Lupron Mktg. & Sales Practices Litig.*, 228 F.R.D. 75, 93 (D. Mass. 2005) (quoting *Van W. v. Midland Nat. Life Ins. Co.*, 199 F.R.D. 448, 451 (D.R.I. 2001) (finding insufficiently definite a class of persons harmed by the unspecified "wrongful conduct" of defendant's sales agents, whose practices differed from transaction to transaction)).

Here, the Plans' recordkeepers have precise electronic records of every participant and beneficiary of the Plans during the Class Period. Thus, ascertaining each and every member of the Class should be a relatively simple automated process.

B. The Settlement Should Be Preliminarily Approved

The fundamental duty of the Court when it reviews a settlement agreement for approval is to determine whether the proposed settlement is "fair, reasonable and adequate." *See* Fed. R. Civ. P. 23(e)(2); *see also In re Relafen Antitrust Litig.*, 360 F. Supp. 2d 166, 192 (D. Mass. 2005). "At the preliminary approval stage, the Court need not make a final determination regarding the fairness, reasonableness and adequateness of a proposed settlement; rather, the Court need only determine whether it falls within the range of possible approval." *In re Puerto Rican Cabotage Antitrust Litig.*, 269 F.R.D. 125, 140 (D.P.R. 2010) (citing *Scott v. First Am. Title Ins. Co.*, No. CIV. 06-CV-286-JD, 2008 WL 4820498, at *3 (D.N.H. Nov. 5, 2008)). "An illegal or collusive settlement agreement will not fall within the range of possible approval." *In re Puerto Rican Cabotage Antitrust Litig.*, 269 F.R.D. at 140 (citing *Scott*, 2008 WL 4820498, at *3).

Courts in this Circuit have adopted the Third Circuit's standard for assessing the appropriateness of preliminary approval of a class action settlement in *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995), and applied by the District Court for the District of Massachusetts in *In Re Lupron Market And Sales Prac. Litig.*, 345 F. Supp. 2d 135, 137 (D. Mass. 2004). Under the standard set forth in these cases, where the Court

makes four findings, "a presumption of fairness attaches to the court's determination" and preliminary approval is appropriate. *In re Puerto Rican Cabotage Antitrust Litigation*, 269 F.R.D. at 140 (quoting *In re Lupron Marketing and Sales Practices Litigation*, 345 F. Supp. 2d at 137; *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d at 785) (internal quotations omitted). Those four findings are that: "(1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected."[4] *Id.*

All of these factors warrant preliminary approval of the proposed Settlement.

1. The Proposed Settlement Falls within the Range of Possible Approval

a. 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 Class. 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.*, *Rolland v. Cellucci*, 191 F.R.D. 3, 10 (D. Mass. 2000) ("When the parties' attorneys are experienced and knowledgeable about the facts and claims, their representations to the court that the settlement provides class relief which is fair, reasonable and

[4] The fourth factor, percentage of the class who object, cannot be assessed until after the Court grants preliminary approval and notice of the Settlement is provided to the Class. *See In re Puerto Rican Cabotage Antitrust Litig.*, 269 F.R.D. at 141 (stating, "the ability of class members to object rests upon the Court's certification of a settlement class, preliminary approval of the settlement agreements and approval of notice to be sent to class members. Thus, the Court does not find that the lack of information as to objectors within the class weighs against preliminary approval of the settlement agreements.").

adequate should be given significant weight."); *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 Lead Class Counsel – two law firms that are nationwide leaders in class action litigation, and ERISA litigation in particular – have made a considered judgment based on adequate information derived from meaningful discovery that the Settlement is not only fair and reasonable, but a favorable result for the Class. Class 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 Telecommunications 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."). Accordingly, this factor supports preliminary approval.

b. <u>There Has Been Sufficient Discovery</u>

Proposed Class Counsel obtained sufficient discovery to enter into the proposed Settlement on a fully informed basis. Following the Court's partial denial of Defendant's motion to dismiss, Plaintiffs began discovery in earnest. On September 14, 2018, they served document requests on the University. In response, the University produced more than 4,000 pages of documents to Plaintiffs, which Plaintiffs carefully reviewed. Plaintiffs also utilized an expert economist to develop estimates of the damages sustained by the Plaintiffs and the Plans.

Based on this discovery, Class Counsel gained an understanding of both the strengths and weaknesses of Plaintiffs' claims. In particular, liability in this case is contested, and both sides would face considerable risks were the litigation to proceed. In contrast to the complexity, delay, risk, and expense of continued litigation, the proposed Settlement will produce certain, and substantial recovery for the Settlement Class. In contrast, the $3.5 million fund created for the

benefit of the Class by the Settlement represents a substantial recovery, and is particularly beneficial to the Class 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.

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 $3.5 million Settlement the University offered. In light of these risks, Settling Plaintiffs and their counsel believe the Settlement represents a favorable outcome for the Settlement Class. The Settlement will avoid the cost and expense of continued litigation and will achieve immediate relief for the Settlement Class.

c. The Proponents of the Settlement Are Experienced in Similar Litigation

As set forth in greater detail below and in the declarations appended to this motion, proposed Class Counsel are highly experienced and skilled in handling complex class actions, and in particular, ERISA class actions. Proposed Class Counsel have served in leadership positions in dozens of ERISA class actions and have successfully obtained meaningful recoveries for retirement plan participants through class litigation. Accordingly, this factor strongly supports granting preliminary approval.

C. The Court should appoint Plaintiffs' Counsel as 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 Lead Class Counsel, the law firms of Berger Montague, and Schneider Wallace Cottrell Konecky Wotkyns LLP, and Plaintiffs' Local Counsel Sonja L. Deyoe, satisfy these criteria. This team of law firms 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 proposed firm is highly experienced in ERISA and/or other complex class action litigation. *See* Declaration of Todd S. Collins ("Collins Decl.") (Exh. 2) and Declaration of Todd M. Schneider ("Schneider Decl.") (Exh. 3). It is clear from each firm's track record of success that proposed Class Counsel are highly skilled and knowledgeable concerning ERISA law and class action practice.

Berger's successes in ERISA lawsuits include, for example, serving as lead or co-lead counsel in *Diebold v. Northern Trust Investments, N.A.*, 1:09-cv-01934 (N.D. Ill.) ($36 million recovery); *In re Lucent Technologies, Inc. ERISA Litig.*, No. 01-cv-3491 (D.N.J.) ($69 million recovery)*; In re SPX Corporation ERISA Litig.*, No. 3:04-cv-192 (W.D.N.C.) (recovery on behalf of 401(k) plan participants totaling approximately 90 percent of estimated losses); *In re Nortel Networks ERISA Litigation*, Civil Action No. 01-cv-1855 (MD Tenn.) ($21.5 million settlement in 401(k) company stock case); and *Glass Dimensions, Inc. v. State Street Bank & Trust Co.,* 1:10-cv-10588-DPW (D. Mass) ($10 million recovery on behalf of 1,500 retirement plans that invested in defendants' collective investment funds). As the attached firm resume makes clear, the Berger firm has decades of experience successfully litigating all manner of complex and class action cases and has recovered billions of dollars on behalf of aggrieved plaintiffs. *See* Collins Decl., Ex. 2.

Over many years Schneider Wallace has committed time, energy and resources to investigating disloyal and imprudent misconduct by retirement plan fiduciaries and to vigorously representing retirement plan participants in court to recover lost retirement savings resulting from that fiduciary misconduct. Schneider Wallace has successfully represented plaintiffs in numerous ERISA class actions as lead or co-lead counsel, including *In Re J.P. Morgan Stable Value Fund ERISA Litigation*, No. 1:12-cv-02548 (S.D.N.Y.) (settled for $75 million – final approval pending); *Daugherty et al v. University of Chicago*, No. 1:17-cv-03736 (N.D. Ill.) (settled for $6.5 million); *Dennard v. Transamerica Corporation*, No. 1:15-cv-00030-EJM (N.D. Iowa) ($3.8 million cash settlement and approximately $8 million in prospective fee reductions); *Bilewicz v. FMR LLC*, No. 13-10636 (D. Mass.) ($12 million cash and structural changes); *Glass Dimensions, Inc. ex rel. Glass Dimensions, Inc. Profit Sharing Plan & Trust v. State Street Bank & Trust Co.*, No. 10-10588 (D. Mass.) ($10 million cash settlement); *Diebold v. Northern Trust Investments*, No. 09-7203 (N.D. Ill.) ($36 million cash settlement). Through these and other cases, Schneider Wallace has recovered more than $100 million in retirement savings for participants in ERISA covered retirement plans. Schneider Wallace's extensive experience with ERISA and class actions are set forth in more detail in the Firm Profile attached to the Schneider Declaration. *See* Schneider Decl., Ex. 3.

Plaintiffs' Local Counsel Sonja L. Deyoe also has substantial experience litigating class actions in Rhode Island and in this Court. Notably, Ms. Deyoe was class counsel in two matters that were certified pursuant to RI Sup. R. Civ. P. 23, *The Providence Retired Police and Firefighters Association v. City of Providence*, PC11-5853 and PC12-1350 (Prov. County Superior Court), and a third certified pursuant to Fed. R. Civ. P. 23, *K.L. v. Rhode Island Board of Education*, 14-77S-WES-LDA (DRI), by Judge Smith of this Court. Moreover, Ms. Deyoe is

highly experienced in litigation in the federal courts having engaged in litigation in more than one hundred (100) cases before this Court.

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 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 (attached as **Exhibit 1** to the Stipulation of Settlement Exh. 1), Class Counsel will cause the Settlement Class to be notified of the pendency of the Action and the proposed Settlement by mailing the Settlement Notice to all Members of the Settlement Class identified by Defendant based on their records. The Settlement Administrator will also establish a website related to the Settlement in this case and the Notice shall be featured on it. This procedure is designed to reach as many Members of the Settlement Class as reasonably practicable. The Settlement Notice informs the Settlement Class of the Nature of the Action, the definition of the Class, a detailed summary of the terms of the Settlement (including the relief provided and the scope of the Release), a summary of the proposed Plan of Allocation, the binding nature of the Settlement on Members of the Settlement Class, and the intent of Class Counsel to seek an award of attorney's fees and reimbursement for their litigation expenses. It also informs Members of the Settlement Class how and when to file objections[5] to the proposed Settlement, the motion for attorney's fees and expenses, and/or the request for Plaintiff Incentive Awards, and it states the date, time and place of the Settlement hearing.

[5] The Notice does not discuss procedures for submitting a claim, as a claim form is not required. Each Class Member's share of the Net Settlement Fund will be determined by the Settlement Administrator on the basis of records supplied by the Plans' recordkeepers. In addition, as this is a 12(b)(1) class action, there is no provision for opting out of the proposed Class.

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 the Settlement Class so that each Member can make an informed choice about whether to object or participate. 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 pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

Courts have considerable discretion in approving an appropriate notice plan. *See Manual for Complex Litig.* § 21.311 ("Determination of whether a given notification is reasonable under the circumstances of the case is discretionary.") Courts in this Circuit routinely approve similar notice programs. *See*, *e.g.*, *In re Cabletron Sys., Inc. Sec. Litig.*, 239 F.R.D. 30, 35–36 (D.N.H. 2006) (approving a notice program that distributed notice packets to individual investors and nominees, published a summary notice in one national newspaper, and provided a toll-free telephone hotline);

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 Members of the Settlement Class identified from Defendants' records and that mailing will be supplemented by publication on the Settlement website. The Proposed Class Notice is clear, accurate, and satisfies due process.

E. Proposed Schedule of Events

The schedule of events under the terms of the Settlement Agreement and proposed Preliminary Approval Order is set forth in the table below:

EVENT	DATE	SETTLEMENT AGREEMENT OR ORDER IF APPLICABLE
Motion for Preliminary Approval	March 11, 2019	
Class Counsel to provide Defendant name of financial institution and W-9 for Settlement Account	5 calendar days after entry of Preliminary Approval Order	¶ 12
Defendant to send CAFA notices	10 calendar days after the filing of Plaintiffs' Motion for Preliminary approval	¶ 2
Entry of Preliminary Approval Order	To be determined by Court	N/A
Defendant to provide information needed for Class Notice to Settlement Administrator	10 days after entry of Preliminary Approval Order	¶ 16
Defendant to pay $100,000 to Class Counsel for initial Settlement Administration Expenses	15 calendar days after entry of the Preliminary Approval Order	¶ 11
Mailing of Notice to the Settlement Class	60 days before the Fairness Hearing	Preliminary Approval Order
Deadline for Settlement Class Members to Object	14 calendar days prior to the Fairness Hearing	Preliminary Approval Order
Deadline for Settlement Class Members to Request to Appear at Fairness Hearing	14 calendar days prior to the Fairness Hearing	Preliminary Approval Order
Plaintiffs' Motion for Final Approval	28 calendar days before the Final Fairness Hearing	¶ 5
Plaintiffs' Motion for Approval of Fees and Expenses	28 calendar days before the Final Fairness Hearing	¶ 22
Plaintiffs' Application for Service Awards	28 calendar days before the Final Fairness Hearing	¶ 23
Independent Fiduciary to provide report authorizing the Settlement	14 days prior to the Final Fairness Hearing	¶ 33(b)
Defendant's deadline to withdraw from Settlement	14 calendar days before the Final Fairness Hearing	¶ 32
Final Fairness Hearing	At least 100 days after entry of the Preliminary Approval Order	¶ 2
Entry of Final Approval Order	To be determined by Court	N/A

Complete Settlement Approval	Expiration of applicable appeals period for Final Approval Order	¶ 6
Defendant to deposit remaining Settlement Fund of $3,400,000 into the Settlement Account	15 calendar days after Complete Settlement Approval	¶ 11

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their Motion for Preliminary Approval of the Settlement with Brown University and for certification of the proposed Settlement Class; enter the proposed Preliminary Approval Order, with exhibits, that is attached to the accompanying Preliminary Approval Motion; and direct that Notice be issued to the Class.

Respectfully submitted,

DATED: March 11, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2019 I caused to be served, via electronic mail a true and correct copy of Plaintiff's Brief In Support of Preliminary Approval of Class Action Settlement to the following:

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