SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

FIONA CHEW, TULA GOENKA, BARBARA JONES, AUDIE KLOTZ, and ELISABETH LASCH-QUINN, on behalf of themselves and all others similarly situated,	**Index No.: 525007/2021**
Plaintiffs,	
-against-	
SYRACUSE UNIVERSITY,	
Defendant.	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT

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PRELIMINARY STATEMENT

Subject to Court approval, the Parties[1] have reached an agreement to resolve pay equity and gender discrimination claims brought on behalf of female full-time faculty who work or worked for Syracuse University ("Defendant" or "Syracuse") between January 8, 2014 and October 1, 2021. This Settlement satisfies all of the criteria for preliminary approval under state law. *See* CPLR 901(a). With this motion, Plaintiffs respectfully request that the Court: (1) grant preliminary approval of the Joint Stipulation of Settlement and Release ("Settlement Agreement"), attached as Exhibit 1 to the Affirmation of Deirdre A. Aaron in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class and Collective Action Settlement ("Aaron Aff."); (2) preliminarily certify the settlement class for the purpose of effectuating the settlement; (3) appoint Plaintiffs' Counsel Outten & Golden LLP ("Plaintiffs' Counsel") as Class Counsel; (4) approve the proposed Notice of Proposed Class and Collective Action Settlement and Fairness Hearing ("Notice"), attached as Exhibit A to the Settlement Agreement, and direct its distribution; and (5) approve the proposed schedule for final settlement approval. Plaintiffs will submit a separate application for attorneys' fees and named Plaintiffs' Service Payments simultaneously with the motion for final approval of the Settlement. *See* Aaron Aff. ¶ 38.

As part of the Settlement Agreement, Defendant does not oppose this motion. Ex. 1 (Settlement Agreement) ¶ 3(d).

FACTUAL BACKGROUND

Plaintiffs are female faculty members employed by Syracuse as full-time faculty. *See* Complaint, filed with this Court on October 1, 2021 ("Compl.") ¶ 1. Syracuse is a private research university consisting of 13 schools and colleges with its main campus in Syracuse, New York, and

[1] Unless otherwise indicated, capitalized terms have the meaning as defined in the Settlement Agreement.

classrooms and academic centers in New York City, Washington D.C., and Los Angeles. *Id.* ¶¶ 2-3.

In their Complaint, Plaintiffs allege that Syracuse paid its female faculty members holding the ranks of Assistant, Associate, and full Professor less than similarly situated male faculty members, even though they held equivalent positions and, upon information and belief, performed the same or substantially similar work with similar or even superior results. *Id.* ¶¶ 5-6.

On December 10, 2017, Syracuse University issued a report of its review of faculty salaries with the key finding that there were "statistically significant" differences in salaries between genders in certain faculty positions and in certain schools and colleges ("Faculty Salary Review Report"). *Id.* ¶ 38. Plaintiffs allege upon information and belief that as reflected in the Faculty Salary Review Report, female faculty members earned less, on average, than their similarly-situated male peers in certain faculty positions and in certain schools and colleges; that Syracuse employed uniform procedures for evaluation that systematically underrated female faculty members relative to their male comparators; and that female faculty members were subjected to promotion standards that undervalued their contributions in favor of male peers in same or similar positions, including service and administrative roles, teaching obligations, and leaves. *Id.* ¶¶ 39-41.

Plaintiffs filed their Complaint in this Court on October 1, 2021, alleging violations of the Equal Pay Act of 1963 ("Federal EPA"), 29 U.S.C. § 206; New York's Equal Pay Law ("NY EPL"), as amended, Labor Law § 194; and the New York State Human Rights Law ("NYSHRL"), Executive Law §§ 296-301, on behalf of themselves and all other similarly situated current and former female full-time faculty employed by Syracuse University. Compl. ¶¶ 70-91.

PROCEDURAL BACKGROUND

I. INVESTIGATION

Prior to filing the present lawsuit, Plaintiffs' Counsel conducted a thorough investigation into the merits of the class claims, the proper measure of damages, the legal issues involved in pay equity and gender discrimination issues in major universities, and the likelihood of class certification. Aaron Aff. ¶ 12. Plaintiffs' Counsel conducted in-depth interviews with Plaintiffs and other female faculty to determine their compensation, their job responsibilities, their backgrounds and contributions, their comparator information, and other information relevant to their claims. *Id.* ¶ 13. Plaintiffs' Counsel also obtained and reviewed documents from Plaintiffs related to their work and promotion standards, and conducted in-depth background research on Syracuse, including filings and other public documents, to obtain information on its structure, locations, and promotion and pay policies. *Id.* ¶ 14.

II. MEDIATION AND SETTLEMENT NEGOTIATIONS

On December 2, 2019, in an effort to explore a potential pre-litigation resolution of these claims, Plaintiffs' Counsel initiated communications with Syracuse. *Id.* ¶ 15. The Parties agreed to engage in pre-litigation discussions in order to determine whether to pursue settlement. *Id.* ¶ 16. On or around January 14, 2020, the Parties entered into a tolling agreement. *Id.* ¶ 17.

As part of the Parties' pre-litigation settlement discussions, over the next several months, the Parties exchanged correspondence and engaged in telephone conferences, in which the Parties discussed the possibility of mediation and the strengths and weakness of the claims and defenses. *Id.* ¶ 18. Prior to the Parties' mediation, Defendant produced informal discovery, including policy and program documents on faculty compensation and promotion standards at Syracuse, information regarding Syracuse's prior Faculty Salary Review Report, and data on faculty composition and compensation. *Id.* ¶ 19.

Plaintiffs' Counsel retained an experienced economist firm, Ashenfelter & Ashmore, LLP ("AA Econ"), to analyze the compensation data provided to Plaintiffs by Syracuse. *Id.* ¶ 20. AA Econ analyzed the compensation data of Syracuse's faculty and worked closely with Plaintiffs' Counsel to evaluate Plaintiffs' claims of systemic gender disparities in pay and promotion. *Id.* Based on this, Plaintiffs performed initial backpay damages calculations based on the data Defendant provided. *Id.* ¶ 21. Plaintiffs' Counsel further investigated Plaintiffs' claims of systemic gender disparities by reviewing pertinent documents, including pay and promotion policies and practices, and through lengthy discussions with Plaintiffs and members of the proposed Class. *Id.* ¶ 22.

Based upon their investigation and expert analysis, Plaintiffs' Counsel assessed the merits, risks, and potential damages associated with the class claims of gender discrimination in pay, promotions, and assignments, and the Parties then agreed to mediate the class dispute. *Id.* ¶ 23. On May 29, 2020, the Parties held a preliminary two-hour session with Linda Singer, Esq., an experienced mediator for JAMS in class gender discrimination lawsuits. *Id.* ¶ 24. Subsequently, on August 13, 2020, the Parties attended a full-day mediation session with Ms. Singer. *Id.* ¶ 25. Although the Parties did not settle the dispute that day, the Parties continued to pursue intense settlement negotiations in the days and weeks that followed. *Id.* In late 2020, the Parties agreed to the general terms of a class settlement, which were memorialized in a settlement term sheet agreement on April 20, 2021. *Id.* ¶ 26. Other terms of the settlement were negotiated over the next five months and the Parties finalized the Settlement Agreement on September 30, 2021. *Id.* ¶ 27. At all times during the settlement negotiation process, negotiations were conducted on an arm's-length basis. *Id.* ¶ 28; *see* Ex. 1 (Settlement Agreement) ¶ 28.

III. THE LITIGATION

As contemplated in the Settlement Agreement, on October 1, 2021, Plaintiffs filed a Class and Collective Action Complaint against Defendant in this Court on behalf of themselves and others similarly situated, alleging that Defendant violated the Federal EPA, NY EPL, and NYSHRL by paying and promoting female faculty less than male faculty. Aaron Aff. ¶ 31. Plaintiffs' Complaint seeks recovery of backpay wages, plus interest, and attorneys' fees and costs. Compl. ¶ 92.

IV. THE SETTLEMENT CLASS

For settlement purposes only, Syracuse agrees to certification of the following Class defined as:

> all persons who: (i) have identified as female in Syracuse's business records; (ii) hold or have held a position identified with a job code description of Assistant Professor, Associate Professor, Professor, Assistant Teaching Professor, Associate Teaching Professor, Teaching Professor, Research Assistant Professor, Research Associate Professor, Research Professor, Assistant Professor of Practice, Associate Professor of Practice, Professor of Practice, Department Chair/Associate Professor, Department Chairperson/Professor, Interim Department Chair/Associate Professor, Department Chair/Distinguished Professor, Director/Professor, Director/Associate Professor, Director/Assistant Professor, Distinguished Professor, University Professor, or Trustee Professor with the rank of Assistant, Associate, or full Professor (regardless of whether they are tenured, on tenure-track, or non-tenure track); and (iii) have been employed by Syracuse as full-time faculty in one of the positions identified by the job code descriptions identified in 1.4(ii) above at Syracuse University for a minimum of one academic year during the Settlement Class Period. Provided, however, that if a person who otherwise qualifies as a "Class Member" held the positions of provost, associate provost, dean, senior associate dean, associate dean, senior vice president, vice president, associate vice president, senior associate vice president, assistant provost, or assistant dean, or was a professor with a temporary assignment (including, without limitation, visiting professors) at any time during the Applicable Class Period, that person is excluded for the time they spent in that position during the Settlement Class Period.

Ex. 1 (Settlement Agreement) ¶ 1.4; *see id.* ¶ 1.32. Based on Syracuse's records, there are approximately 680 Class Members. Aaron Aff. ¶ 32.

SUMMARY OF THE SETTLEMENT TERMS

The Parties have agreed to settle the class and collective claims in exchange for a total, non-reversionary payment by Syracuse of $3,713,000.00 ("Global Settlement Fund"). *See* Ex. 1 (Settlement Agreement) ¶ 1.12. This includes backpay payments to Participating Class Members, Service Payments to the Class Representatives, Settlement Administrator Fees and Costs for administrative expenses incurred in connection with the Settlement, and Attorneys' Fees and costs. *See id.* ¶ 1.14. The Parties agreed to the following gross settlement amounts for Class Members: $3,000,000.00 for tenured or tenure-track Associate and full Professors; $300,000.00 for non-tenure track Associate and full Professors; $340,000.00 for tenured or tenure-track Assistant Professors; and $73,000.00 for non-tenure track Assistant Professors. *See id.* ¶ 4(c)-(f). This allocation reflects Plaintiffs' expert economic analysis finding that gender pay inequity was experienced most acutely by certain tenured Associate and Full Professors on Syracuse's faculty. Aaron Aff. ¶ 37. The Net Settlement Fund[2] will be distributed to participating class members as set forth in the allocation formula below.

I. PARTICIPATING CLASS MEMBER SETTLEMENT PAYMENTS

Class Members who do not opt out of the Settlement ("Participating Class Members")[3] are entitled to receive payments from the Net Settlement Fund. Participating Class Members are

[2] The "Net Settlement Fund" is defined in the Settlement Agreement as the Global Settlement Fund less the amount of Attorneys' Fees, Lawsuit Costs, Reserve Fund, Settlement Administrator Fees and Costs, and Service Payments approved by the Court and shall be the amount available for Participating Class Member Payments and Participating Class Members' share of payroll taxes. Ex. 1 (Settlement Agreement) ¶ 1.14.

[3] Class Members opt in to the EPA Claims by not excluding themselves from the Settlement and cashing a settlement check that bears the legend: "I have received and read the

arranged in four groups of female faculty: (1) tenured and tenure-track Associate and full Professors; (2) non-tenure track Associate and full Professors; (3) tenured and tenure-track Assistant Professors; and (4) non-tenure track Assistant Professors. *Id.* ¶ 4(c)-(f).

Full-time female tenured or tenure-track Associate and full Professors will be allocated an Individual Settlement Amount based on job code description, rank (Associate or full Professor), school or college, and time in rank, using an agreed-upon regression pay equity analysis, agreed upon by the Parties in the Settlement Agreement. *Id.* ¶ 4(b). The pay equity analysis will regress salary on indicators for rank, year, contract length, length of service, and school. *Id.* ¶ 4(e). The anticipated gross individual settlement payment for Participating Class Members in this group who worked for Syracuse for the entire Settlement Class Period[4] is approximately between $1,140.00 and $19,000.00, depending on indicators. Aaron Aff. ¶ 33.

Full-time female non-tenure track Associate and full Professors will be allocated an Individual Settlement Amount based on job code description, rank (Associate or full Professor), school or college, and time in rank, using an agreed-upon regression pay equity analysis, agreed upon by the Parties in the Settlement Agreement. Ex. 1 (Settlement Agreement) ¶ 4(b). The pay equity analysis will regress salary on indicators for rank, year, contract length, and school. *Id.* ¶ 4(f). The anticipated gross individual settlement payment for Participating Class Members in this group who

Class Notice in *Chew, et al. v. Syracuse University.* By negotiating this check and accepting payment, I (i) consent to join in this lawsuit and the Equal Pay Act collective action, (ii) elect to participate in the Settlement, and (iii) agree that I have waived and released the Released Parties from all Released Claims as defined in the Notice in this lawsuit. This Release shall become effective on the Effective Date." Ex. 1 (Settlement Agreement) ¶ 10(f).

[4] The "Settlement Class Period" is defined in the Settlement Agreement as the time period of January 8, 2014 through the date of the filing of the Complaint (October 1, 2021). Ex. 1 (Settlement Agreement) ¶ 1.32.

worked for Syracuse for the entire Settlement Class Period is approximately between $725.00 and $11,200.00, depending on indicators. Aaron Aff. ¶ 34.

Full-time female tenured or tenure-track Assistant Professors will receive an Individual Settlement Amount representing an equal allocation of the portion of the Global Settlement Fund set aside for tenured or tenure-track Assistant Professors based on the number of years in the Settlement Class Period. Ex. 1 (Settlement Agreement) ¶ 4(c). The anticipated average gross individual settlement payment for Participating Class Members in this group who worked for Syracuse for the entire Settlement Class Period is approximately $2,500.00. Aaron Aff. ¶ 35.

Full-time female non-tenure track Assistant Professors will receive an Individual Settlement Amount representing an equal allocation of the portion of the Global Settlement Fund set aside for non-tenure-track Assistant Professors based on the number of years in the Settlement Class Period. Ex. 1 (Settlement Agreement) ¶ 4(d). The anticipated gross individual settlement payment for Participating Class Members in this group who worked for Syracuse for the entire Settlement Class Period is approximately $615.00. Aaron Aff. ¶ 36.

II. RELEASES

All Participating Class Members will release all claims asserted on behalf of the Class Members during the Class Settlement Period arising from or related to the facts alleged in the Complaint (including any amended Complaints filed with the Court), specified in the Settlement Term Sheet, Demand Letter and/or Mediation Statement, which include any and all Gender Pay Equity Claims. Ex. 1 (Settlement Agreement) ¶¶ 1.10, 13(a). Proposed Class Representatives Fiona Chew, Tula Goenka, Barbara Jones, Audie Klotz, and Elisabeth Lasch-Quinn, in consideration of any Service Payment they receive, will also release any individual employment retaliation claims under federal, state, or local law. *Id.* ¶ 13(b).

III. ATTORNEYS' FEES AND COSTS

Plaintiffs' Counsel will apply for one-third of the Global Settlement Fund ($1,237,666.67 – which is one-third of $3,713,000.00) as attorneys' fees. *Id.* ¶ 6. Plaintiffs' Counsel will also seek reimbursement for their reasonable litigation costs and expenses. *Id.* All fees and costs awarded will be deducted from the Global Settlement Fund. *Id.* Plaintiffs will submit an application for attorneys' fees and costs simultaneously with the motion for final approval of the settlement. *See* Aaron Aff. ¶ 38.

IV. SERVICE PAYMENTS

In addition to their individual awards under the allocation formula, Plaintiffs Fiona Chew, Audie Klotz, and Elisabeth Lasch-Quinn seek reasonable service payments of $15,000.00 each, and Plaintiffs Tula Goenka and Barbara Jones seek a reasonable service payment of $5,000.00 each, in recognition of the services they rendered on behalf of the Class as Proposed Class Representatives ("Service Payment"). Ex. 1 (Settlement Agreement) ¶ 7(a). These payments will be deducted from the Global Settlement Fund and are awarded in addition to their individual Participating Class Member Payments. *Id*. ¶ 7(b). Plaintiffs will submit a motion seeking Service Payments with the motion for final approval of the settlement. *See* Aaron Aff. ¶ 38.

V. SETTLEMENT CLAIMS ADMINISTRATOR

The Parties have selected ILYM Group to serve as the third-party settlement administrator ("Settlement Administrator") to send the Notice to Class Members, calculate settlement payments, distribute checks to Participating Class Members, and perform other tasks related to the administration of the Settlement. Aaron Aff. ¶ 39; *see* Ex. 1 (Settlement Agreement) ¶¶ 1.29, 10. Payment of fees and costs billed by the Settlement Administrator will be paid from the Global Settlement Fund. Ex. 1 (Settlement Agreement) ¶¶ 1.14, 8(e).

The Notice to each respective Class Member shall inform her of the Settlement, the claims she is releasing, and the formula used to calculate the payments to Class Members under the Settlement. *Id.* ¶ 10(a) & Ex. A (Notice) §§ 5-6, 10. The Notice will advise Class Members of their right to exclude themselves from the settlement and how to do so. *Id.* at Ex. A (Notice) § 11. It will also advise Class Members that they have the right to object to the settlement. *Id.* § 16. Class Members have the Notice Period to object to or be excluded from the Settlement; the Notice Period is the later of: (i) the 45-calendar day period beginning immediately after the Settlement Administrator first mails and/or emails the Notice to any of the Class Members; or (ii) 30 calendar days from the Settlement Administrator re-mailing the Notice that was returned as undeliverable (but in no event later than 90 days after the Settlement Administrator first mails and/or emails the Notice). Ex. 1 (Settlement Agreement) ¶¶ 1.16, 10(d).

VI. CLASS ACTION SETTLEMENT PROCEDURE

The Parties respectfully submit the following proposed schedule for final resolution of this matter for the Court's consideration and approval:

1. If the Court grants preliminary approval, within 14 days of the Court's Order, Defendant will produce to the Settlement Administrator a list containing the following information for each Class Member: (1) name; (2) street address; (3) email address for current employees, and (4) telephone numbers. *Id.* ¶ 9.

2. Within 30 days after entry of a Preliminary Approval Order, the Settlement Administrator will send the Notice by First Class U.S. Mail and email (if available) to each Class Member. *Id.* ¶ 10(b).

3. Plaintiffs will file Motions for Final Settlement Approval and for Service Payments and Attorneys' Fees prior to the date on which the Court holds a hearing to determine whether to grant final approval of the settlement ("Final Approval Hearing"). *See id.* ¶ 1.9, 3(c)-(d).

4. After the Final Approval Hearing, if the Court grants Final Approval of the Settlement, the Court will issue a Final Approval Order. If no party seeks a rehearing, reconsideration, or appeal of the Court's Final Order and Judgment, the "Effective Date" of the Settlement will be 35 days after the Court has entered its Order granting final approval. *Id.* ¶ 1.7.

5. Within 10 days after the Effective Date, Defendant shall deposit $3,713,000.00 into the Qualified Settlement Fund. *Id.* ¶ 5.

6. The Settlement Administrator will mail all settlement checks to Participating Class Members within 14 days of the Effective Date. *Id.* ¶ 10(i)(i).

7. The Settlement Administrator shall pay any Attorneys' Fees and Lawsuit Costs awarded by the Court in connection with this Settlement from the Qualified Settlement Fund to Class Counsel no later than 30 days after the Effective Date. *Id.* ¶ 6(b).

8. Sixty days after the initial distribution of checks to Participating Class Members, the Settlement Administrator will send a reminder via email and First Class U.S. Mail reminding them to negotiate their checks prior to the 90-day deadline. *Id.* ¶ 10(i)(iii).

ARGUMENT

I. THE PROPOSED SETTLEMENT SHOULD BE PRELIMINARILY APPROVED.

CPLR 908 specifies the conditions upon which New York courts approve a proposed "compromise" of a class action. New York courts regularly refer to the federal standards in making this determination, in recognition that the two statutory schemes are similar. *Fiala v. Metro. Life Ins. Co.*, 899 N.Y.S.2d 531, 537-38 (Sup. Ct., N.Y. County 2010) (collecting cases). Courts examine "the fairness of the settlement, its adequacy, its reasonableness and the best interests of the class members." *Id.* at 537 (citing *Klein v. Robert's Am. Gourmet Food, Inc.*, 28 A.D.3d 63, 73 (2d Dep't 2006)); *see also Rosenfeld v. Bear Stearns & Co.*, 237 A.D.2d 199, 199 (1st Dep't 1997) (same); *Joel A. v. Giuliani*, 218 F.3d 132, 138 (2d Cir. 2000) (settlement approval requires finding "fair[ness], adequa[cy], . . . [and] reasonable[ness]"). In an action seeking monetary damages, such as this one, a court's examination of the settlement involves "balancing the value of that settlement against the present value of the anticipated recovery following a trial on the merits, discounted for the inherent risks of litigation." *Klein*, 28 A.D.3d at 73; *see also Matter of Colt Indus. S'holder Litig.*, 155 A.D.2d 154, 160 (1st Dep't 1990).

Courts may also consider "support of the class members, the opinion of counsel, lack of collusion and counsels' and class representatives' adherence to fiduciary standards." *Fiala*, 899 N.Y.S.2d at 538. Application of the requirements should not "follow a formulistic approach; rather, it is the circumstance of the case itself which should mold the approach of the court in deciding the weight to be accorded to each of the components." *Klurfeld v. Equity Enters., Inc.*, 79 A.D.2d 124, 133 (2d Dep't 1981).

Courts grant preliminary approval "[w]here the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval." *In re Initial Pub. Offering Sec. Litig.*, 226 F.R.D 186, 191 (S.D.N.Y. 2005) (citing Manual for Complex Litig. (Third) § 30.41 (1995)) (quoting *In re Nasdaq Mkt.-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997)); *see also Ryan v. Volume Servs. Am., Inc.*, No. 652970/2012, 2012 WL 6065987 (Sup. Ct., N.Y. County Dec. 6, 2012) (granting preliminary approval where settlement was "the result of extensive, arm's length negotiations by counsel well-versed in the prosecution of wage and hour class and collective actions, and . . . the proposed settlement has no obvious deficiencies").

A. The Proposed Settlement Is Fair, Adequate, and Reasonable.

1. The Proposed Settlement Is the Product of Extensive, Arm's-Length Negotiations.

This settlement is the result of extensive, arm's-length negotiations. Aaron Aff. ¶ 28. As discussed above, the Parties engaged in informal discovery relating to liability and class-wide damages. *Id*. ¶ 19. Subsequently, Plaintiffs' Counsel performed damages calculations based on the data that Defendant provided. *Id*. ¶¶ 20-21. In addition, the Parties participated in a mediation with an experienced, third-party mediator, and engaged in subsequent, substantial negotiations to

reach a settlement. *Id*. ¶¶ 24-27. These negotiations were at all times at arm's-length, and they have produced a result that Plaintiffs' Counsel believes to be in the best interests of the Class Members in light of the costs and risks of continued litigation. *Id.* ¶¶ 28-29.

2. The Settlement Contains No Obvious Deficiencies.

The proposed settlement has no obvious deficiencies. As explained above, the proposed settlement was reached only after protracted, arm's-length negotiations between the Parties and their counsel, who considered the advantages and disadvantages of continued litigation. *Id*. Plaintiffs' Counsel believes that this settlement achieves the objectives of the litigation, namely a timely monetary settlement to female faculty who worked for Syracuse. Plaintiffs' Counsel, who have significant experience in the prosecution and resolution of employment discrimination class actions, have carefully evaluated the merits of the case and the proposed settlement. *See id*. ¶¶ 11-14, 21-23, 29-30.

3. The Reaction of the Class Has Been Positive.

At this early stage, the fact that all five named Plaintiffs have expressed their support for the settlement by signing the settlement agreement weighs in favor of preliminary approval. After notice issues and Class Members have an opportunity to participate in the settlement, object, or opt-out, the Court will be in a better position to assess the extent of the support from Class Members.

4. The Settlement Is Substantial in Light of the Risks of Litigation.

Plaintiffs recognize the substantial risks of the litigation, including the possibility that the lawsuit, if not settled now, might not result in any recovery or might result in a recovery less favorable to the Class. While Plaintiffs believe their pay equity class claims are strong, they are not without risk. The determination of whether female faculty performed substantially similar work to their male comparators would be fact-intensive. Plaintiffs would have to present evidence regarding their job responsibilities and duties within the different schools of the university, as well as

statistical proof to show a class wide violation, all of which likely would be disputed by Defendant. For example, based upon its 2017 Faculty Salary Review Report, Defendant would likely argue that there was no statistically significant pay disparity for female faculty employed in certain ranks and schools.

Although Plaintiffs believe their claims have merit, and are suitable for class and collective action treatment, they also recognize that they would face significant legal, factual, and procedural obstacles to recovering damages on their claims. Indeed, "if settlement has any purpose at all, it is to avoid a trial on the merits because of the uncertainty of the outcome." *In re Ira Haupt & Co.*, 304 F. Supp. 917, 934 (S.D.N.Y. 1969); *see also Velez v. Majik Cleaning Serv., Inc.*, No. 03 Civ. 8698, 2007 WL 7232783, at *6 (S.D.N.Y. June 25, 2007) ("The proposed settlement benefits each plaintiff in that he or she will recover a monetary award immediately, without having to risk that an outcome unfavorable to the plaintiffs will emerge from a trial.").

Syracuse denies that its treatment of its female faculty is unlawful or discriminatory and would contest the propriety of class certification. Syracuse would challenge Plaintiffs' claims at every stage of the litigation, including at the class certification stage, summary judgment, and trial. Notwithstanding these arguments, the overall settlement commits Syracuse to pay $3,713,000 to compensate the Class – a substantial amount ensuring that the recoveries by 680 individual Class Members will be meaningful. In light of the strengths and weaknesses of the case, the Settlement achieves significant benefits for the class in a case where failure at trial is certainly possible. Moreover, Plaintiffs are aware that if this lawsuit continued, any recovery may not occur for several years. *Cf.* Aaron Aff. ¶¶ 29-30. While Plaintiffs believe that they would ultimately prevail, the Settlement eliminates these risks and will allow all Class Members to recover now.

II. CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE.

Plaintiffs allege that Defendant uniformly violated the EPA, the NY EPL, and NYSHRL with respect to certain female full-time faculty by paying them wages less than similar male full-time faculty for equal work. As such, this motion seeks an Order pursuant to Article 9 of the CPLR certifying the following class for settlement purposes only:

> all persons who: (i) have identified as female in Syracuse's business records; (ii) hold or have held a position identified with a job code description of Assistant Professor, Associate Professor, Professor, Assistant Teaching Professor, Associate Teaching Professor, Teaching Professor, Research Assistant Professor, Research Associate Professor, Research Professor, Assistant Professor of Practice, Associate Professor of Practice, Professor of Practice, Department Chair/Associate Professor, Department Chairperson/Professor, Interim Department Chair/Associate Professor, Department Chair/Distinguished Professor, Director/Professor, Director/Associate Professor, Director/Assistant Professor, Distinguished Professor, University Professor, or Trustee Professor with the rank of Assistant, Associate, or full Professor (regardless of whether they are tenured, on tenure-track, or non-tenure track); and (iii) have been employed by Syracuse as full-time faculty in one of the positions identified by the job code descriptions identified in (ii) above at Syracuse University for a minimum of one academic year during the Settlement Class Period. Provided, however, that if a person who otherwise qualifies as a "Class Member" held the positions of provost, associate provost, dean, senior associate dean, associate dean, senior vice president, vice president, associate vice president, senior associate vice president, assistant provost, or assistant dean, or was a professor with a temporary assignment (including, without limitation, visiting professors) at any time during the Applicable Class Period, that person is excluded for the time they spent in that position during the Settlement Class Period.

The proposed class satisfies each of the five statutory requirements of CPLR 901 and the factors in CPLR 902. *See, e.g.*, *Pludeman v. N. Leasing Sys., Inc.*, 74 A.D.3d 420, 421-22 (1st Dep't 2010) (citing *Weinberg v. Hertz Corp.*, 116 A.D.2d 1, 4 (1st Dep't 1986) *aff'd* 69 N.Y.2d 979 (1987); *Ackerman v. Price Waterhouse*, 252 A.D.2d 179, 191 (1st Dep't 1998)). Accordingly, for the reasons set forth below, the proposed settlement class should be certified.

A. The Class Certification Statute Should Be Liberally Construed, Especially in the Context of Pay Equity Suits.

It is well established that, in deciding whether to certify a class, "a court must be mindful of [the Appellate Division's] holding that the class certification statute should be liberally construed." *Kudinov v. Kel-Tech Constr. Inc.*, 65 A.D.3d 481, 481 (1st Dep't 2009) (citing *Englade v. Harper Collins Publishers, Inc.*, 289 A.D.2d 159, 159 (1st Dep't 2001)); *see also Pruitt v. Rockefeller Ctr. Props., Inc.*, 167 A.D.2d 14, 21 (1st Dep't 1991) ("Appellate courts in this State have repeatedly held that the class action statute should be liberally construed. . . . '[A]ny error, if there is to be one, should be . . . in favor of allowing the class action.'" (citation omitted) (alteration in original) (quoting *Esplin v. Hirschi*, 402 F.2d 94, 101 (10th Cir. 1968))); *Friar v. Vanguard Holding Corp.*, 78 A.D.2d 83, 90-92 (2d Dep't 1980); *Pajaczek v. Cema Constr. Corp.*, 18 Misc. 3d 1140(A), 2008 N.Y. Slip Op. 50386(U), at *3 (Sup. Ct., N.Y. County Feb. 21, 2008) (citing *Brandon v. Chefetz*, 106 A.D.2d 162, 168 (1st Dep't 1985)); *Galdamez v. Biordi Constr. Corp.*, 13 Misc. 3d 1224(A), 2006 N.Y. Slip Op. 51969(U), at *2 (Sup. Ct., N.Y. County Oct. 17, 2006), *aff'd* 855 N.Y.S.2d 104 (1st Dep't 2008).

The flexible scheme of Article 9 was enacted to replace the previously rigid and undesirable restrictions that existed under former law. This legislative intent was acknowledged by the Appellate Division in *Brandon v. Chefetz*:

> In his scholarly and persuasive opinion in *Friar v. Vanguard Holding*, Justice Lazer stated that the criteria for class certification 'should be broadly construed not only because of the general command for liberal construction of all CPLR sections, but also because it is apparent that the Legislature intended article 9 to be a liberal substitute for the narrow class action legislation which preceded it.'

106 A.D.2d at 168 (citations omitted) (first citing *Friar*, 78 A.D.2d 83; and then citing CPLR 104).

The liberal construction of class certification standards is even more important in the

context of gender pay equity lawsuits. The State of New York is a leader in legislating for pay equity for women. New York has made it substantially easier for plaintiffs to pursue gender-based pay equity claims by amending its Equal Pay Act twice in recent years. *See* N.Y. Lab. Law § 194. First, the Act was amended effective January 2016, by the Achieve Pay Equity Act, which narrowed the defenses available to employers facing a claim of gender-based wage discrimination. Act of Oct. 21, 2015, 2015 N.Y. Sess. Laws Ch. 362 (S. 1) (amending subdivision 1(d) of section 194 of the New York Labor Law). Then, effective October 2019, the Act was further amended to lessen the burden on female employees to prove wage discrimination by requiring employers to ensure equal pay for "substantially similar" work, and not only "equal" work." Act of July 10, 2019, 2019 N.Y. Sess. Laws Ch. 93 (S. 5248-B) (amending subdivision 1 of section 194 of the New York Labor Law). Moreover, the damages available to each female employee suffering pay inequity has increased substantially as a result of the 2016 amendment. *See* N.Y. Lab. Law § 198(1-a) ("[L]iquidated damages may be up to three hundred percent of the total amount of the wages found to be due for a willful violation . . . ."); *see also Rana v. Islam*, 887 F.3d 118, 122 (2d Cir. 2018) ("The New York State Legislature has amended the NYLL liquidated damages provision twice since 2009, making it easier for employees to claim liquidated damages.").

In sum, while the instant action meets the requirements for class certification, as demonstrated below, any doubts must be resolved in favor of class certification. *Pruitt*, 167 A.D.2d at 21 ("[A]ny error, if there is to be one, should be . . . in favor of allowing the class action." (first alteration added) (quoting *Esplin*, 402 F.2d at 101)); *see also Brandon*, 106 A.D.2d at 168 (same); *Friar*, 78 A.D.2d at 100 (same).

B. This Action Satisfies All the Prerequisites of CPLR 901.

CPLR 901(a) provides that one or more members of a class may sue as representative parties on behalf of a class if:

1. the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable ["numerosity"];

2. there are questions of law or fact common to the class which predominate over any questions affecting only individual members ["predominance"];

3. the claims or defenses of the representative parties are typical of the claims or defenses of the class ["typicality"];

4. the representative parties will fairly and adequately protect the interests of the class; and

5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy ["superiority"].

1. The Class Is So Numerous that Joinder of All Members Is Impracticable.

CPLR 901(a)(1) requires that the class be so numerous that joinder of all class members is impracticable. Courts have held the general threshold for impracticability of joinder to be around 40, although numerosity has been satisfied with fewer than 40 class members. *See, e.g.*, *Pesantez v. Boyle Envtl. Servs.*, 251 A.D.2d 11, 11 (1st Dep't 1993); *Pajaczek*, 2008 N.Y. Slip Op. 50386(U), at *3. Here, there are approximately 680 Class Members in the proposed class. Aaron Aff. ¶ 32. Under these circumstances, joinder is both impracticable and undesirable, and the "numerosity" requirement has been easily satisfied.

2. The Questions of Law and Fact Common to the Class Predominate Over Questions Affecting Only Individual Class Members.

"To satisfy this requirement, plaintiffs must show that 'the nature of the claims is such as to indicate a predominance of common issues of law and fact over individual questions of damages.'" *Weinstein v. Jenny Craig Operations, Inc.*, 41 Misc. 3d 1220(A), 2013 N.Y. Slip Op. 51783(U), at *4 (Sup. Ct., N.Y. County 2013) (quoting *Pesantez*, 251 A.D.2d at 12); *Borden v. 400 East 55th St. Assocs., L.P.*, 24 N.Y.3d 382, 399 (2014) ("[T]he predominant legal question involves one that applies to the entire class."). This standard requires "predominance, not identity or unanimity,

among class members." *Krebs v. Canyon Club, Inc.*, 22 Misc.3d 1125(A), 2009 N.Y. Slip Op. 50291(U), at *8 (Sup. Ct., Westchester County 2009) (quoting *Friar*, 78 A.D.2d at 98); *see also id.* at *9-11 (holding that the differences in the manner in which the defendant obtained money from potential class members does not mean that individual questions predominate over common questions); *Stecko v. RLA Ins. Co*, 121 A.D.3d 542, 543 (1st Dep't 2014) (finding commonality where all class members shared claims that defendant failed to pay the appropriate wages and benefits).

"The fundamental issue . . . is whether the proposed class action asserts a common legal grievance, *i.e.*, whether the common issues predominate over or outweigh the subordinate issues that pertain to individual members of the class." *Geiger v. Am. Tobacco Co.*, 181 Misc.2d 875, 883 (Sup. Ct., Queens County 1999) (quoting 3 Jack B. Weinstein, Harold L. Korn & Arthur R. Miller, N.Y. Civil Practice ¶ 901.11); *see also Pesantez*, 251 A.D.2d at 12 (finding "predominance of common issues of law and fact over individual questions of damages" (citing CPLR 901(a); *Pruitt*, 167 A.D.2d at 22)). Whether common questions of law or fact predominate "should not be determined by any mechanical test, but rather, whether the use of a class action would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated." *Friar*, 78 A.D.2d at 97 (quoting *LaMar v. H&B Novelty & Loan Co.*, 55 F.R.D. 22, 25 (D. Or. 1972), *rev'd on other grounds*, 489 F.2d 461 (9th Cir. 1973)).

In determining whether the claims of a named plaintiff and putative class members share common questions of law or fact, "factual identity between the [p]laintiff's claim and those of the class he seeks to represent is not necessary if these claims arise, at least in part, from a common wrong or set of wrongs regardless of individual factors." *Pajaczek*, 2008 N.Y. Slip Op. 50386(U), at *3-4 (quoting *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 524 (6th Cir. 1975)). "The statute clearly envisions authorization of class actions even when there are subsidiary questions of law or

fact not common to the class." *Krebs*, 2009 N.Y. Slip Op. 50291(U), at *9 (quoting *Weinberg*, 116 A.D.2d at 6); *see also Borden*, 24 N.Y.3d at 399 ("It should be noted that the legislature enacted CPLR 901(a) with a specific allowance for class actions in cases where damages differed among the plaintiffs, stating 'the amount of damages suffered by each class member typically varies from individual to individual, but that fact will not prevent the suit from going forward as a class if the important legal or factual issues involving liability are common to the class.'" (citation omitted)).

Here, the named Plaintiffs and Class Members are unified by a common issue: whether Syracuse's compensation and promotion policies and practices discriminated against them because of their gender and resulted in pay inequity. Accordingly, Plaintiffs' gender pay equity claims are well-suited for class certification because they arise from the common question of whether the pay inequity alleged by Class Members violated state and federal law.

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

CPLR 901(a)(3) requires that a plaintiff's claims be "typical" of the proposed class. The typicality requirement is satisfied when a named plaintiff's claims "derive[] from the same practice or course of conduct that gave rise to the remaining claims of other class members and is based upon the same legal theory." *Friar*, 78 A.D.2d at 99; *see also Pajaczek*, 2008 N.Y. Slip Op. 50386(U), at *4 (same); *Galdamez*, 2006 N.Y. Slip Op. 51969(U), at *3 (finding typicality with claims arising from the same course of conduct and based on the same cause of action). The essence of typicality is that the representative party must have an individual cause of action and that the representative's interest must be closely identified with that of the class members. *See* 2 Weinstein, Korn & Miller, N.Y. Civ. Practice ¶ 901.09; Fed. R. Civ. P. 23(a)(3) (providing that "the claims or defenses of the representative parties are typical of the claims or defenses of the class").

To demonstrate typicality, "it is not necessary that the claims of the named plaintiff be identical to those of the class." *Super Glue Corp. v. Avis Rent-A-Car Sys., Inc.*, 132 A.D.2d 604,

607 (2d Dep't 1987), *aff'd as mod. on other grounds*, 159 A.D.2d 68 (2d Dep't 1990). Nevertheless, the named "[p]laintiffs' claims must not be antagonistic to or in conflict with the interest of other class members." *Gilman v. Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 93 Misc. 2d 941, 945 (Sup. Ct., N.Y. County 1978). Where an alleged defense may affect an individual's right to recover, but does not affect the liability issues for the class, this defense does not make the named plaintiffs' claims atypical. *See Lessard v. Metro. Life Ins. Co.*, 103 F.R.D. 608, 613 (D. Me. 1984).

In this case, Plaintiffs' claims are typical of the claims of the Class Members they seek to represent. Plaintiffs and the Class Members all worked for Defendant as full-time, female faculty during the proposed class period. Plaintiffs, like all Class Members, allege that Defendant's policies and practices discriminated against them and that Syracuse failed to pay them equally as compared to male faculty. Typicality is present because (i) the claims of Plaintiffs and all other members of the putative Class arise from the same alleged conduct; and (ii) Plaintiffs' and Class Members' claims are based on the same legal theory. *See, e.g.*, *Weinstein*, 2013 N.Y. Slip Op. 51783(U), at *5 (finding typicality where the plaintiffs' and class members' claim arose out of the same course of conduct); *Galdamez*, 2006 N.Y. Slip Op. 51969(U), at *3 (plaintiffs' claims typical where they arise out of same course of conduct as class members' claims and are based on same cause of action).

4. Plaintiffs Will Fairly and Adequately Protect the Interests of the Class.

CPLR 901(a)(4) requires that a class representative is "part of the class and possess[es] the same interest and suffer[s] the same injury as the class members." *Weinstein*, 2013 N.Y. Slip Op. 51783(U), at *5 (quoting *Lewis v. Alert Ambulette Serv. Corp.*, No. 11 Civ. 442, 2012 WL 170049, at *11 (E.D.N.Y. Jan. 19, 2012)). Adequacy of representation further requires that "counsel for the named Plaintiffs be competent and that the interests of the named Plaintiffs and

the members of the class not be adverse." *Pajaczek*, 2008 N.Y. Slip Op. 50386(U), at *5 (citing *Pruitt*, 167 A.D.2d at 24).

Here, Plaintiffs do stand to gain a pecuniary benefit through the successful prosecution of this action. However, Plaintiffs seek the same relief on behalf of all other Class Members – to receive equal wages owed to them for substantially similar work. Furthermore, Plaintiffs are familiar with the lawsuit and are fully aware of their claims, as well as the claims of the Class Members they seek to represent. Additionally, Plaintiffs are represented by counsel who are very experienced in class actions and labor and employment law. *See* Aaron Aff. ¶ 11. As such, the adequacy requirement is met. *See Borden*, 24 N.Y. 3d at 399-400 (upholding certification where the court "found no substantiated conflicts between the [class members] and a representative with 'adequate understanding of the case,' and competent attorneys." (quoting *Borden v. 400 E. 55th St. Assocs., L.P.*, 964 N.Y.S.2d 115, 117 (1st Dep't 2013))).

5. A Class Action Is Superior to Other Available Methods.

In accordance with CPLR 901(a)(5), numerous courts have concluded that a class action is the superior method for resolving plaintiffs' claims that they and putative class members were not paid correctly. *See, e.g.*, *Stecko*, 121 A.D.3d at 543; *Nawrocki v. Proto Constr. & Dev. Corp.*, 82 A.D.3d 534, 536 (1st Dep't 2011); *Pajaczek*, 2008 N.Y. Slip Op. 50386(U), at *5; *Galdamez*, 2006 N.Y. Slip Op. 51969(U), at *4. The class action method is particularly effective where common issues can be most efficiently and economically addressed on a class-wide basis. *See In re "Agent Orange" Prod. Liab. Litig.*, 506 F. Supp. 762, 791 (E.D.N.Y. 1980) (finding "class action is superior to any other available method" where "questions of law and fact common to the members of the class predominate[d] over questions of law or fact affecting only individual members"). Subjecting the court and the litigants to the expense and time of multiple trials would be wasteful, and resolving the common issues on a class-wide basis will create uniform resolution

of the issues, thereby providing a framework for the adjudication or settlement of whatever individual damage issues remain. *See Friar*, 78 A.D.2d at 97 (predominance is shown where the action can save time, effort and expense, and promote uniform resolution).

Employing the class device here will achieve economies of scale for putative Class Members, conserve judicial resources, and preserve public confidence in the system by avoiding repetitive proceedings and preventing inconsistent adjudications. Accordingly, a class action is superior to any alternative means of obtaining relief for Class Members. *Borden*, 24 N.Y.3d at 400 ("[T]o preserve judicial resources, class certification is superior to having these claims adjudicated individually.").

C. Consideration of CPLR 902 Factors Supports Conditional Certification.

CPLR 902 directs the Court to also consider the following factors in exercising its discretion in favor of class certification:

1. the interest of members of the class in individually controlling the prosecution or defense of separate actions;

2. the impracticability or inefficiency of prosecuting or defending separate actions;

3. the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

4. the desirability or undesirability of concentrating the litigation of the claim in the particular forum; and

5. the difficulties likely to be encountered in the management of a class action.

A number of the CPLR 902 factors mimic the requirements of CPLR 901. *See Gilman*, 93 Misc. 2d at 948.

To Plaintiffs' Counsel's knowledge, no other individual has instituted an action against Defendant to recover the wages being sought by Plaintiffs in this case. Thus, there is no competing litigation already commenced by any member of the class. The existence of approximately 680

Class Members, in and of itself, demonstrates both "the impracticability [and] inefficiency of prosecuting or defending separate actions." CPLR 902(2). Finally, there are very few difficulties in managing a class action based upon the claims herein, particularly when compared to complications of managing multiple actions. CPLR 902(5). Accordingly, for all of the foregoing reasons a class should be certified for purposes of implementing the Settlement.

III. PLAINTIFFS' COUNSEL SHOULD BE APPOINTED AS CLASS COUNSEL.

Plaintiffs' Counsel have done substantial work identifying, investigating, prosecuting, and settling the claims; have substantial experience prosecuting and settling employment discrimination class actions; are well-versed in employment and class action law; and are well-qualified to represent the interests of the Class. *See generally* Aaron Aff.; *see also Krebs*, 2009 N.Y. Slip Op. 50291(U), at *24 (appointing class counsel on the basis of attorney's affirmation containing a description of his experience in litigating class actions). Moreover, courts have found Plaintiffs' Counsel to be adequate class counsel in class and collective actions in New York State court. Aaron Aff. ¶ 11; *see also, e.g.*, *Parrish v. Heartland Brewery Holdings, Inc.*, No. 514519/2019 (Sup. Ct., Kings County Nov. 25, 2019) (attached to the Aaron Aff. as Exhibit 2); *Vidal v. Shake Shack Enters., LLC*, No. 651418/2016 (Sup. Ct., N.Y. County Dec. 13, 2016) (granting preliminary approval of class settlement and approving O&G as class counsel) (attached to the Aaron Aff. as Exhibit 3); *Mancia v. HSBC Secs. (USA) Inc.*, No. 9400/2015, 2016 WL 833232, at *4 (Sup. Ct., Kings County Feb. 19, 2016) (granting final approval of class settlement and approving attorneys' fees for O&G as class counsel); *Bickerton v. Rose*, No. 650780/2012, 2013 WL 3335076, at *4-5 (Sup. Ct., N.Y. County June 28, 2013) (granting final approval of class settlement in unpaid intern case and approving attorneys' fees for O&G as class counsel).

IV. THE PROPOSED NOTICES TO THE CLASS ARE APPROPRIATE.

CPLR 908 requires that "[n]otice of the proposed . . . compromise [of a class action] shall be given to all members of the class in such manner as the court directs." The Settlement Agreement provides that the Settlement Administrator will mail the Notices in accordance with the Court's Preliminary Approval Order to all putative Class Members by First Class U.S. Mail and email (if available). Ex. 1 (Settlement Agreement) ¶ 10(b). The Settlement Administrator will also post links to downloadable versions of the Notice on a website approved by counsel for the Parties. *Id.* ¶ 10(c). If any Notices are returned to the Settlement Administrator as undeliverable, the Settlement Administrator will attempt to locate current addresses through standard skip trace searching and engage in additional outreach efforts and additional mailings to Class Members. *Id*. ¶ 10(d).

The Notice proposed here clearly describes the terms of the Settlement, the relief available to Class Members, and the procedures for opting out of or objecting to the Settlement. Ex. 1 at Ex. A (Notice) §§ 5-6, 11, 16. The Notice also describes the fees and costs that Plaintiffs' Counsel will seek and the proposed Service Payments to the named Plaintiffs. *Id*. § 15. Finally, the Notice provides contact information for Plaintiffs' Counsel and discloses the date, time, and place of the Final Approval Hearing. *Id*. §§ 18-21.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court grant their Unopposed Motion for Preliminary Approval of Class and Collective Action Settlement and enter the Proposed Order.

Dated: October 1, 2021

Respectfully submitted,

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