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

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| CASEY CUNNINGHAM, et al.,<br><br>Plaintiffs,<br><br>v.<br><br>CORNELL UNIVERSITY, et al.<br><br>Defendants. | No. 1:16-CV-06525-PKC<br><br>**NOTICE OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT** |

Please take notice that, upon the accompanying Memorandum of Law, dated December 8, 2020, Plaintiffs Casey Cunningham, Charles E. Lance, Stanley T. Marcus, Lydia Pettis, and Joy Veronneau will move this Court before the Honorable P. Kevin Castel, at the Daniel Patrick Moynihan United States Courthouse for the Southern District of New York, 500 Pearl Street, Courtroom 11D, New York, New York 10007, on December 22, 2020 at 2:00 p.m., for an order granting final approval of a class action settlement pursuant to Federal Rule of Civil Procedure 23(e).

December 8, 2020

Respectfully Submitted,

/s/ Joel D. Rohlf

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 8, 2020, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the attorneys of record.

/s/ Joel D. Rohlf
*Counsel for Plaintiffs*

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

CASEY CUNNINGHAM, et al.,

*Plaintiffs*,

v.

CORNELL UNIVERSITY, et al.,

*Defendants*.

No. 1:16-CV-06525-PKC

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT**

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Plaintiffs move pursuant to Rule 23(e) for the Court's final approval of a settlement of the remaining claim after the Court's order on summary judgment. Plaintiffs allege that Defendants Cornell University, the Retirement Plan Oversight Committee, and Mary G. Opperman (collectively, the "Cornell Defendants") breached their fiduciary duties and committed prohibited transactions under the Employee Retirement Income Security Act of 1974 ("ERISA") by causing the Cornell University Retirement Plan for the Employees of the Endowed Colleges at Ithaca and the Cornell University Tax Deferred Annuity Plan ("the Plans") to pay unreasonable recordkeeping and administrative fees and to maintain high-cost and underperforming investment options, including investment options in higher-cost share classes. Docs. 1, 81. The Cornell Defendants dispute these allegations and deny liability for any alleged fiduciary breach. The Court dismissed or granted summary judgment on all of Plaintiffs' claims except Plaintiffs' allegation that the Cornell Defendants breached their duty of prudence by failing to adopt the institutional share classes of the TIAA-CREF Lifecycle Funds. Doc. 352 at 39.

The settlement reached in this case (the "Settlement") represents a substantial recovery on the TIAA-CREF Lifecycle Funds claim and leaves the dismissed claims available for appeal. Considering the litigation risks and costs that further prosecution of this action would entail, this Court should grant final approval of the Settlement as fair, reasonable and adequate.

## BACKGROUND

### I. Plaintiffs' Claims

Plaintiff Casey Cunningham filed his initial complaint on August 17, 2016. Doc. 1. On December 8, 2016, Cunningham, Charles E. Lance, Stanley T. Marcus, Lydia Pettis, and Joy Veronneau ("Plaintiffs"), filed an amended complaint. The Amended Complaint asserts claims against Cornell University, the Retirement Plan Oversight Committee, Mary G. Opperman, and

CAPTRUST Financial Advisors. Doc. 38. Plaintiffs filed a corrected amended complaint on February 24, 2017 to correct the name of CAPTRUST Financial Advisors to CapFinancial Partners, LLC d/b/a CAPTRUST Financial Advisors. Doc. 81.

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

## II. The Course of the Litigation

On September 29, 2017, the Court granted in part and denied in part Defendants' motion to dismiss Plaintiffs' Corrected Amended Complaint. Doc. 107. The parties completed fact and expert discovery and took the depositions of all five named Plaintiffs, seven Cornell-affiliated witnesses, two CapFinancial Partners-affiliated witnesses, four non-party witnesses, and seven expert witnesses. Decl. of J. Rohlf, Doc. 433, ¶¶ 19–24.

On January 22, 2019, the Court certified the following class:

> All participants and beneficiaries of the Cornell University Retirement Plan for the Employees of the Endowed Colleges at Ithaca and the Cornell University Tax Deferred Annuity Plan from August 17, 2010, through August 17, 2016, excluding the Defendants and any participant who is a fiduciary to the Plans.

Doc. 219 at 19. The Court appointed Class Representatives and Class Counsel. *Id.* On September 27, 2019, the Court granted in part and denied in part Defendants' motions for summary judgment. Doc. 352. The Court denied Defendants' motions insofar as Plaintiffs alleged that Defendants breached their duty of prudence by failing to adopt the institutional share classes of the TIAA-CREF Lifecycle Funds. *Id.* at 38. The Court granted the motions in all other respects. *Id.* Plaintiffs continued litigating the remaining claim after summary judgment, preparing all pretrial exchanges,

and fully preparing for trial. *See* Doc. 391. The matter was set for jury trial starting on September 29, 2020. Doc. 413.

After extensive litigation, Plaintiffs and the Cornell Defendants engaged in settlement discussions regarding the remaining claim in October 2019, May 2020 and August 2020. On September 18, 2020, the parties reached an agreement on all terms.

## III. The Terms of the Proposed Settlement.

Plaintiffs requested that the Court certify a Settlement Class consisting of:

> The set of persons who participated in the Plans and invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012, including any Beneficiary of a deceased person who participated in one or more of the Plans at any time during the Class Period and invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012, and any Alternate Payee of a person subject to a Qualified Domestic Relations Order who participated in one or more of the Plans at any time during the Class Period and invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012. Excluded from the Settlement Class are any individuals that served as members of the Retirement Plan Oversight Committee from August 17, 2010 to April 17, 2012.

Doc. 422.[1] In exchange for the dismissal of the TIAA-CREF Lifecycle Funds claim and for entry of the Judgment as provided for in the Settlement Agreement, the Cornell Defendants will make available to Settlement Class members the benefits described below.

The Cornell Defendants have deposited $225,000 (the "Gross Settlement Amount") in an interest-bearing settlement account (the "Gross Settlement Fund"). The Gross Settlement Fund will be used to pay the participants' recoveries, administrative expenses to facilitate the Settlement, Plaintiffs' counsel's attorneys' fees and costs, and the Class Representative's compensation if awarded by the Court.

[1] The Cornell Defendants did not oppose Plaintiffs' motion to certify a settlement-only sub-class.

## IV. Preliminary Approval of the Settlement and Plaintiffs' Motion for Attorneys' Fee and Class Representative Awards

Plaintiffs filed an unopposed motion for preliminary approval of the Settlement on September 21, 2020. Doc. 418. The Court granted the motion and preliminarily approved the Settlement on September 22, 2020. Doc. 426 ("Preliminary Approval Order"). On October 23, 2020, Plaintiffs filed a motion for attorneys' fees, class representative awards, and expenses. Doc. 430.

## V. Class Member Reaction

Class Members were provided the opportunity to object to the Settlement by writing to the Court and lodging their formal objections to the Settlement. On October 23, 2020, Settlement Administrator Analytics Consulting LLC ("Analytics") caused Settlement Notices to be e-mailed or mailed to 4,884 class members. *See* Declaration of Christopher Amundson ¶ 6 ("Amundson Decl.").

This Court's Preliminary Approval Order mandated that objections be filed by no later than 30 days before the date of the Fairness Hearing. Doc 426 ¶ 5(B). The Court scheduled the Fairness Hearing for December 22, 2020. *Id.* ¶ 2. Therefore, objections were due on November 23, 2020. No objections to the Settlement have been filed to date.

## ARGUMENT

"The compromise of complex litigation is encouraged by the courts and favored by public policy." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 117 (2d Cir. 2005). Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval of any class action settlement. In determining whether to approve a settlement, the Court must ensure that the settlement is "fair, adequate, and reasonable, and not a product of collusion." *Wal-Mart Stores*, 396 F.3d at 117 (quoting *Joel A. v. Giuliani*, 218 F.3d 132, 138 (2d Cir. 2000)). A determination of the

fairness of a settlement is in the sound discretion of the trial court. *Detroit v. Grinnell Corporation*, 495 F.2d 448, 455 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000); *Joel A.*, 218 F.3d at 139. The Second Circuit has dictated that the following factors should be used to assess a class action settlement:

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

*Grinnell*, 495 F.2d at 463. "A 'presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.'" *Wal-Mart*, 396 F.3d at 116 (quoting Manual for Complex Litigation, Third, § 30.42 (1995)).

In addition to the *Grinnell* factors, the December 2018 amendments to Rule 23(e) require that a court to consider whether:

1) "the class representatives and class counsel have adequately represented the class;"

2) "the proposal was negotiated at arm's length;"

3) "the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class including the method of processing class-member

claims, if required; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and"

4) "the proposal treats class members equitably relative to each other."

Fed. R. Civ. P. 23(e)(2). Courts consider the Rule 23(e)(2) factors "in tandem with the Second Circuit's *Grinnell* factors." *In re Namenda Direct Purchaser Antitrust Litig.*, 462 F. Supp. 3d 307, 311 (S.D.N.Y. 2020). As discussed in prior briefing related to this settlement (Doc. 423), and as described in greater detail here, all the *Grinnell* factors and Rule 23(e) factors are met.

## I. The Settlement Is Presumptively Reasonable

The Settlement, which was negotiated by experienced counsel after full discovery, is presumptively fair, reasonable, and adequate. The Second Circuit has held that there is "[a] presumption of fairness, adequacy, and reasonableness" for class action settlements "reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery." *Wal-Mart*, 396 F.3d at 116 (internal quotations omitted). As multiple courts have recognized, class counsel is not only experienced and capable regarding ERISA class actions, but ""pioneer[ed] . . . the field of retirement plan litigation." *Abbott v. Lockheed Martin Corp.*, No. 6-701, 2015 WL 4398475, at *1 (S.D. Ill. July 15, 2015); *see also Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 WL 434473, at *4 (D. Md. Jan. 28, 2020); *Bell v. Pension Comm. of ATH Holding Co., LLC*, No. 15-02062, 2019 WL 4193376, at *1 (S.D. Ind. Sept. 4, 2019); *Troudt v. Oracle Corp.*, 325 F.R.D. 373, 381 (D. Colo. 2018), *amended*, No. 16-175, 2019 WL 1006019 (D. Colo. Mar. 1, 2019). As discussed above, the Settlement was only reached after full discovery, including production of hundreds of thousands of pages of documents and over 20 depositions. *See supra* at 2. Additionally, the Settlement was reached through arms-length negotiations between the parties. *See* Schlichter Decl., Doc. 421, ¶ 2. Therefore, the Settlement is

presumptively fair, adequate, and reasonable. *Wal-Mart*, 396 F.3d at 116.

## II. All the *Grinnell* Factors Weigh in Favor of Approving the Settlement

### A. The Complexity, Expense, and Duration of the Litigation of the Case Proceeded to Trial Supports Approval (Factor 1)

As courts in this district have previously noted, ERISA claims are "complex." *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-3400-CM-PED, 2010 WL 4537550, at *23 (S.D.N.Y. Nov. 8, 2010). As the Supreme Court has recognized, "ERISA is a comprehensive and reticulated statute . . . and is enormously complex and detailed . . ." *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 447 (1999) (internal quotations and citations omitted). Excessive fee litigation "entails complicated ERISA claims" and "novel questions of law*." Martin v. Caterpillar, Inc.*, No. 07-1009, 2010 WL 3210448, at *2 (C.D. Ill. Aug. 12, 2010); *Tussey v. ABB, Inc.*, No. 06-4305, 2012 WL 5386033, at *3 (W.D. Mo. Nov. 2, 2012), *vacated and remanded*, 746 F.3d 327 (8th Cir. 2014).

Additionally, proceeding forward to trial would have created expensive litigation for an extended duration. A four-day trial with eight fact witnesses and two expert witnesses would have taken place in September. Doc. 370; Doc. 413. Moreover, counsel and out-of-state witnesses would have been required to quarantine in New York for two weeks prior to the trial adding to the expense. Class counsel's airfare and hotel costs alone (excluding costs for experts) for the trial would have cost between $30,000 and $45,000 dollars. Rohlf Decl. ¶ 3. Regardless of who won the trial, years of appeals to the Second Circuit and Supreme Court likely would have created further delay for recovery and expense.

Indeed, two cases in which Class Counsel were involved demonstrate the risk of prolonged litigation and appeals. In *Tibble v. Edison International*, a case filed in 2007, the district court entered judgment in favor of the plaintiffs on a limited portion of their claims in

2010. No. 07-5359, 2010 WL 2757153 (C.D. Cal. July 8, 2010). That case then went through six years of appeals, including the Supreme Court, until it ultimately was remanded for another trial in 2016. 843 F.3d 1187 (9th Cir. 2016). Only this year did the plan finally recover its damages. No. 07-5359, Doc. 612, (C.D. Cal. June 9, 2020). In *Tussey v. ABB, Inc.*, the plaintiffs filed suit in 2006 and obtained a judgment in their favor in 2012. No. 06-4305, 2012 WL 1113291 (W.D. Mo. March 31, 2012). That judgment was reversed in substantial part, 746 F.3d 327 (8th Cir. 2014), on remand the judgment was substantially reduced, 850 F.3d 951, 954–56 (8th Cir. 2017), that judgment was reversed on a second appeal, *id.* at 959–61, and on remand the case ultimately was settled in 2019, No. 06-4305, Doc. 869, (W.D. Mo. Aug. 16, 2019). In contrast to these protracted cases, the Settlement here provides immediate and substantial recovery. *Kruger v. Novant Health, Inc*., No. 14-208, 2016 WL 6769066, at *5 (M.D.N.C. Sep. 29, 2016).

**B. The Class's Reaction to the Settlement Strongly Supports Approval (Factor 2)**

As described above, the Settlement Administrator provided notice of the Settlement to 4,884 class members. Not a single objection was received. "'[T]he absence of objectors may itself be taken as evidencing the fairness of a settlement.'" *Guevoura Fund Ltd. v. Sillerman*, No. 15-07192-CM, 2019 WL 6889901, at *7 (S.D.N.Y. Dec. 18, 2019) (alteration in original) (quoting *In re PaineWebber Ltd. Partnerships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y.), *aff'd sub nom. In re PaineWebber Inc. Ltd. Partnerships Litig.*, 117 F.3d 721 (2d Cir. 1997)). Here, the lack of any objection from thousands of class members "strongly supports approval" of the Settlement. *Guevoura Fund*, 2019 WL 6889901, at *7.

**C. Settlement After Full and Complete Discovery Supports Approval (Factor 3)**

The fact that the parties had completed extensive discovery, fully briefed summary judgment, and the case was ready for trial weighs in favor of approval of the Settlement. "If all discovery has been completed and the case is ready to go to trial, the court obviously has

sufficient evidence to determine the adequacy of settlement." *Wal-Mart*, 396 F.3d at 118 (internal quotations omitted). In total, the Defendants and third parties produced over 150,000 pages of documents in discovery. Doc. 433 ¶ 19. The parties took over 15 fact witness depositions and seven expert depositions. *Id.* ¶¶ 11, 21, 24. The parties also filed several discovery motions, including motions to compel, that required extensive briefing and multiple conferences. *See* Docs. 171, 175, 177, 178, 191, 278, 282, 283, 307, 309, 323. Settlement after such extensive discovery supports approval.

**D. Plaintiffs Faced Significant Risk of Not Prevailing (Factors 4-6)**

Plaintiffs maintain confidence in their underlying claim related to the Cornell Defendants' imprudent retention of retail share classes of the TIAA-CREF Lifecycle funds when the Plans were eligible for lower-cost, institutional shares. Doc. 81 ¶¶ 142–52. Minimizing costs is a fundamental element of the fiduciary's duty of prudence. *Tibble v. Edison Int'l*, 843 F.3d 1187, 1198 (9th Cir. 2016) (*en banc*). Plaintiffs maintain that the facts supporting their claims have been found to support findings of fiduciary breach. *Tibble v. Edison Int'l*, 575 U.S. 523 (2015); *Tibble v. Edison Int'l*, No. 07-5359, 2017 WL 3523737, at *11–12 (C.D. Cal. Aug. 16, 2017).

Although class counsel continues to believe in the underlying merits of this claim, there are significant legal obstacles and defenses that render recovery in this case uncertain. The Cornell Defendants continue to deny all allegations of wrongdoing and continue to maintain that the Plans have been managed and operated in compliance with ERISA. Indeed, despite contrary Supreme Court precedent, a few courts have found that retention of higher cost share classes of a fund is not a fiduciary breach if the additional fees involve revenue sharing related to recordkeeping. *See, e.g.*, *Sacerdote v. New York Univ.*, No. 16-6284-KBF, 2017 WL 3701482, at *11 (S.D.N.Y. Aug. 25, 2017). Additionally, this action is among the first class actions brought

under ERISA against a private institution of higher education alleging that plan fiduciaries caused their 403(b) plan to incur unreasonable investment and administrative expenses and to suffer from other losses caused by underperforming and high-cost investments. The only similar case to be tried resulted in a verdict for defendant on all claims. *Sacerdote v. New York Univ.*, 328 F. Supp. 3d 273, 317 (S.D.N.Y. 2018).

While Plaintiffs are confident in their ability to demonstrate loss, the Cornell Defendants contend that Plaintiffs suffered no loss or significantly less loss because it is offset by recordkeeping expenses paid with revenue sharing or rebates of revenue sharing. Doc. 391 at 4. Defendants also argued that Plaintiffs' claims were barred by the statute of limitations. *Id.* Additionally, damages in ERISA cases require complex damages calculations that make loss determinations inherently risky. *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 140 (S.D.N.Y. 2010) ("Establishing damages in this case would have been a complicated endeavor. The complex damages calculations in ERISA cases like this one are expert intensive. . . . Here, the parties have exchanged expert damages reports that reach widely divergent conclusions."); *Kemp-DeLisser v. Saint Francis Hospital and Medical Center*, No. 15-113, 2016 WL 6542707, at *9 (D. Conn. Nov. 3, 2016) (finding complex damages analysis weighed in favor of ERISA class settlement); *Hill v. State Street Corp.*, No. 09-12146, 2015 WL 127728, at *9 (D. Mass. Jan. 8, 2015) (similar). Considering these risks, a settlement of nearly eighty percent of Plaintiffs' last damages calculation is an outstanding result. These significant risks of non-recovery support approval of the Settlement.

### E. The Defendants' Ability to Pay More Favors the Settlement or is Neutral (Factor 7)

While the Cornell Defendants may have financial resources to support a larger settlement amount, that alone is not enough to suggest that the Settlement is unfair. As the Second Circuit

has acknowledged "the defendants' ability to withstand a higher judgment . . . standing alone, does not suggest that the settlement is unfair." *D'Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d Cir. 2001). Rather, "evidence that the defendant will not be able to pay a larger award at trial tends to weigh in favor of approval of a settlement." *PaineWebber*, 171 F.R.D. at 129.

In short, the Cornell Defendants' ability to pay is neutral or favors approval of the Settlement.

**F. The Settlement is Outstanding in Light of the Best Possible Recovery and Risks of Litigation (Factors 8 and 9)**

The Settlement, which represents a gross recovery of nearly eighty percent recovery of the asserted damages, is more than reasonable considering the best possible recovery and the risks of litigation. "'There is a range of reasonableness with respect to a settlement—a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in . . . any litigation.'" *Wal-Mart*, 396 F.3d at 96 (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir.1972)). "Determining whether a settlement is reasonable 'is not susceptible of a mathematical equation yielding a particularized sum.'" *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 178 (S.D.N.Y. 2000) (quoting *In re Michael Milken and Associates Sec. Lit.*, 150 F.R.D. 57, 66 (S.D.N.Y.1993)), *aff'd sub nom. D'Amato*, 236 F.3d 78. Here, the settlement of $225,000 represents nearly eighty percent of the last damages calculation of Plaintiffs' expert, $283,803. Doc. 367-2 at 3. As discussed above, there was substantial risk of non-recovery or diminished recovery at trial. *See supra* at 9-10. Moreover, the cost of a weeklong trial would certainly be greater than $56,760, which is twenty percent of the maximum recovery. Finally, eighty percent recovery is multiples greater than the percentage of recovery found reasonable by other courts in this Circuit. *See Baudin v. Res. Mktg. Corp.*, LLC, No. 19-386, 2020 WL 4732083, at *9 (N.D.N.Y. Aug. 13, 2020), *on*

*reconsideration in part*, No. 19-386, 2020 WL 6131758 (N.D.N.Y. Oct. 19, 2020) (finding a settlement of 26.21% of possible recovery reasonable); *Woburn Ret. Sys. v. Salix Pharm., Ltd.*, No. 14-8925 -KMW, 2017 WL 3579892, at *4 (S.D.N.Y. Aug. 18, 2017) (approving a settlement of roughly 33% of possible recovery); *Dial Corp. v. News Corp.*, 317 F.R.D. 426, 432 (S.D.N.Y. 2016) (describing a settlement of 36% of maximum recovery as "outstanding"); *In re Bear Stearns Cos. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 269 (S.D.N.Y. 2012) (approving a settlement amounting to 11% of estimated damages); *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 191–92 (S.D.N.Y. 2012) (approving a settlement that represented 12% of maximum recovery); *In re Canadian Superior Sec. Litig.*, 2011 WL 5830110, at *4 (S.D.N.Y. Nov. 16, 2011) (approving a settlement worth 8.5% of the maximum amount of estimated damages); *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 135 (S.D.N.Y. 2008) (approving a settlement worth approximately 3% of total estimated damages). Considering the risk of litigation, the maximum recovery, and the cost of trial, the settlement of $225,000 is an outstanding result. *Dial*, 317 F.R.D. at 432.

## III. All the Rule 23(e) Factors Support Approval of the Settlement

### A. The Class Representative and Class Counsel Have Adequately Represented the Class

As this Court has already held, the class representative and class counsel have adequately represented the Class. Doc. 219 at 15 ("After considering all relevant submissions, the Court finds the named plaintiffs adequate under Rule 23(a)(4)."); *id.* at 17–18 (appointing class counsel because "[t]heir performance in the present case demonstrates competence to protect the interests of the class" and they have "significant prior experience litigating ERISA class actions involving similar claims for breach of fiduciary duties.") As discussed above, class counsel and the class representatives navigated multiple motions to dismiss, hundreds of thousands of pages of

documents, over 20 depositions, multiple summary judgment motions, and multiple motions *in limine* for over four years of litigation of this matter. *See supra* at 2. Class counsel is the "preeminent firm" in excessive fee litigation having "achieved unparalleled results on behalf of its clients" in the face of "enormous risks." *Nolte v. Cigna Corp.*, No. 07-2046, 2013 WL 12242015, at *2–3 (C.D. Ill Oct. 15, 2013). They are "experts in ERISA litigation," *Krueger v. Ameriprise Fin., Inc.*, No. 11-2781, 2015 WL 4246879, at *2 (D. Minn. July 13, 2015) (citation omitted), and "highly experienced," *In re Northrop Grumman Corp. ERISA Litig.*, No. 06-6213, 2017 WL 9614818, at *4 (C.D. Cal. Oct. 24, 2017). Additionally, no member of the class has objected to class counsel's requested attorney fees or the award to the class representative demonstrating that the class is satisfied with their representation.

**B. The Settlement was Negotiated at Arm's Length**

As discussed above, the Settlement was negotiated at arm's length by experienced counsel after years of litigation and complete discovery, all of which supports approval under Rule 23(e)(2)(B). *See supra* at 6-7.

**C. The Relief Provided for the Class in the Settlement is Adequate**

The adequacy analysis under Rule 23(e)(2)(C) "overlaps significantly with a number of *Grinnell* factors, which help guide the Court's application of Rule 23(e)(2)(C)." *Johnson v. Rausch, Sturm, Israel, Enerson & Hornik, LLP*, 333 F.R.D. 314, 321 (S.D.N.Y. 2019); *see also Namenda*, 462 F. Supp. 3d at 311–16 (discussing only the Grinnell factors when analyzing the adequacy of the settlement). As discussed above, the *Grinnell* factors clearly demonstrate that the Settlement was adequate.

**D. The Settlement Treats Class Members Equitably Relative to Each Other**

The Settlement treats class members fairly by allocating the settlement on a per-capita basis. "'[A]n allocation formula need only have a reasonable, rational basis, particularly if

recommended by experienced and competent Class counsel.'" *Namenda*, 462 F. Supp. 3d at 316 (alteration in original) (quoting *Hart v. RCI Hosp. Holdings*, 2015 WL 5577713, at *12 (S.D.N.Y. Sep. 22, 2015) and *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002)). While often settlements in ERISA excessive fees cases are allocated on a pro-rata basis, given the limited scope of the Settlement of this case, a per-capita distribution maximizes the benefits to the class while minimizing the amount of settlement proceeds absorbed by administrative costs. The Settlement Agreement provides that the Plans' recordkeepers are entitled to compensation for data they produce to assist in settlement calculations. Doc. 421-1 ¶¶ 2.1, 3.2. In the experience of class counsel, it can often cost tens of thousands of dollars to obtain individual account level data for thousands of participants to conduct a pro-rata calculation. Rohlf Decl. ¶ 5. For example, in a recent settlement involving one of the Plans' recordkeepers, the settlement fund was charged $71,000 by the recordkeeper for provision of data. *Id.* Additionally, more complicated pro-rata calculations cost more for the settlement administrator to implement. *Id.* ¶ 6. Given that even additional expenses of $22,500 dollars would represent 10% of the Settlement, it was more equitable to conduct a simple per-capita calculation in order to limit expenses.

In summary, all the factors under *Grinnell* and Rule 23(e)(2) favor approval of the Settlement.

## IV. The Notice was Performed as Directed By The Court

The Court ordered the Settlement Administrator to disseminate the Settlement Notice to the Settlement Class no later than October 23, 2020. Dkt. 426 ¶ 4(B). Notice of the proposed settlement was individually emailed or mailed to the Settlement Class members on October 23, 2020. Amundson Decl. ¶ 6. The Court-approved Settlement Notice was also published on a dedicated Settlement Website hosted by Class Counsel. Rohlf Decl. ¶ 7. Plaintiffs' counsel

established the dedicated website (https://cornell403bplansettlement.com/) and published the Court-approved Settlement Notice with the revised Settlement Agreement on that website on October 23, 2020. *Id.* In addition, the Settlement Administrator hosted a toll-free number for automated information and live operations to answer any questions for members of the Settlement Class. Amundson Decl. ¶ 10. As of December 7, 2020, there have been a total of 96 calls. *Id.*. Of those calls, 68 were connected with a live agent. *Id.*

## V. The Court Should Approve Plaintiffs' Motion for Attorneys' Fees and Costs

Class Counsel have submitted a detailed and unopposed motion along with supporting declarations that demonstrate the reasons that they should receive $75,000 in attorneys' fees and $15,349.17 in expenses from the Gross Settlement Fund. Doc. 430. Given the final fairness hearing will be held remotely, (Doc. 435), Plaintiffs amend their expense request to $13,017.25 to exclude budgeted expenses for the final hearing. For the reasons stated in the motion for attorneys' fees, Class Counsel requests that those fees and expenses be awarded from the Gross Settlement Amount.

## VI. The Court Should Approve a $1,000 Dollar Award to the Class Representative

Plaintiffs have requested that the Court award $1,000 to the Class Representative as an incentive award from the Gross Settlement Amount. Doc. 431 at 15−16. For the reasons stated in Plaintiffs' motion (Doc. 431), that award is reasonable and fair compensation for the work provided and risks undertaken by those representatives. *Id.*

## CONCLUSION

Plaintiffs respectfully request that the Court grant final approval of the Settlement as fair reasonable and adequate.

December 8, 2020

Respectfully submitted,

/s/ Joel D. Rohlf

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 8, 2020, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the attorneys of record.

/s/ Joel D. Rohlf
*Counsel for Plaintiffs*

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

| | |
|---|---|
| CASEY CUNNINGHAM, et al.,<br><br>Plaintiffs,<br><br>v.<br><br>CORNELL UNIVERSITY, et al.<br><br>Defendants. | No. 1:16-CV-06525-PKC<br><br>**DECLARATION OF JOEL D. ROHLF IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT** |

1. I am an attorney at the law firm of Schlichter Bogard & Denton, LLP. I am one of the attorneys representing Plaintiffs in this matter. This declaration is submitted in support of Plaintiffs' Unopposed Motion for Final Approval of Class Settlement.

2. I have been involved in all aspects of this litigation. I am familiar with the facts set forth below and able to testify to them based on my personal knowledge or review of the records and files maintained by this firm in the regular course of its representation of Plaintiffs in this case.

3. Schlichter Bogard & Denton received quotes for hotel and airfare for its attorneys and staff for the September 29, 2020 trial. Those quotes ranged between $30,000 and $45,000.

4. Schlichter Bogard & Denton has been involved in numerous ERISA excessive fee class action settlements. Those settlements often provide for pro-rata distributions of the settlement.

5. The cost of the individual account data from recordkeepers necessary to perform pro-rata calculations is tens of thousands of dollars. For example, a recent bill in a similar case from one of the Plans' recordkeepers to a settlement fund was $71,000.

6. Additionally, because pro-rata calculations are more complicated and time consuming, settlement administrators also charge more to conduct pro-rata calculations.

7. Schlichter Bogard & Denton uploaded the Class Notice and the Settlement Agreement to the settlement website on October 23, 2020.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and that this declaration was executed on December 8, 2020, in St. Louis, Missouri.

/s/ Joel D. Rohlf
Joel D. Rohlf

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

| | |
|---|---|
| CASEY CUNNINGHAM, et al.,<br><br>*Plaintiffs*,<br><br>v.<br><br>CORNELL UNIVERSITY, et al.,<br><br>*Defendants*. | No. 1:16-CV-06525-PKC<br><br>**DECLARATION OF ANALYTICS REGARDING TIMELY COMPLIANCE OF CLASS NOTICE** |

I, Christopher D. Amundson, declare as follows:

1. I am a Project Manager at Analytics Consulting LLC ("Analytics"), a firm with offices in Chanhassen, Minnesota that provides consulting services relating to the design and implementation of class action and mass tort litigation settlements and notice programs. I am responsible for Analytics' consulting services, including the implementation of the notice program in this matter. The following statements are based on my personal knowledge and information provided by other Analytics employees working under my supervision, and if called as a witness, I could and would testify competently thereto.

2. As set forth in the Order For Preliminary Approval Of Class Action Settlement Of Released Claim dated September 22, 2020 (the "Settlement Agreement"), Analytics was appointed by the Court to serve as the Settlement Administrator to supervise and administer the notice procedure in the above captioned settlement (the "Settlement"). Section 3 of the Settlement Agreement provides additional direction on the date and

manner of the notice procedure. I submit this Declaration in order to provide the Court and the parties to the Settlement with information regarding the mailing of the Notices of Class Action Settlement and Fairness Hearing ("the Notice"), the Claim Form, and other administrative activities in accordance with the Settlement Agreement.

3. As required by the Class Action Fairness Act ("CAFA"), Analytics caused to be served by Federal Express or Certified Return Receipt Requested First-Class mail, where applicable, a Notice of Proposed Settlement to all applicable State and Federal officials. A copy of the Notice of Proposed Settlement, excluding exhibits, is attached hereto as Exhibit A.

4. Analytics was responsible for providing Notice to Settlement Class Members. Specifically, the Notice was to be sent by electronic means or mailed by first class mail, postage prepaid, to the last known address or e-mail address of each Settlement Class Member who could be identified by the Plan's recordkeepers.

5. Analytics received from the Plan's recordkeepers data files containing the names, addresses, and social security numbers of members of the Settlement Class. Additionally, some records contained e-mail addresses for members of the Settlement Class. The data was consolidated into a single database, and was updated using the National Change of Address ("NCOA") database maintained by the United States Postal Service ("USPS");[1] certified via the Coding Accuracy Support System ("CASS");[2] and verified through

[1] The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms, and lists submitted to it are automatically updated with any reported move based on a comparison with the person's name and last known address.

[2] Coding Accuracy Support System is a certification system used by the USPS to ensure the quality of ZIP + 4 coding systems.

Delivery Point Validation ("DPV").[3] This resulted in mailing address or e-mail records for 4,884 Settlement Class Members.

6. On October 23, 2020, Analytics caused Settlement Notice to be mailed or e-mailed to all 4,884 Settlement Class Members as follows: 1) 221 Former Participant Notice and Claim Forms were mailed to Class Members for which no e-mail address was provided and whom were determined to be Former Participants, meaning persons who participated in the Plan during the Class Period and on September 1, 2020 did not have a Plan balance greater than $0. 2) 1,421 Former Participant Notices with a link to an electronic version of the Former Participant Claim Form were e-mailed to Class Members for which an e-mail address was provided and whom were determined to be Former Participants, meaning persons who participated in the Plan during the Class Period and on September 1, 2020 did not have a Plan balance greater than $0. 3) 726 Current Participant Notices were mailed to Class Members for which no e-mail address was provided and whom were determined to be Current Participants, meaning persons who participated in the Plan during the Class Period and on September 1, 2020 had a positive Plan balance. 4) 2,516 Current Participant Notices were e-mailed to Class Members for which an e-mail address was provided and whom were determined to be Current Participants, meaning persons who participated in the Plan during the Class Period and on September 1, 2020 had a positive Plan balance. Copies of Former Participant Notice and Claim Form as well as the Current Participant Notice in both mail and e-mail format are attached as Exhibit B.

[3] Records that are ZIP + 4 coded are then sent through Delivery Point Validation to verify the address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of addresses and reports exactly what is wrong with incorrect addresses.

7. Prior to the distribution of Class Notice described above; Analytics verified that the Notices and Claim Form were published on a Settlement website maintained by Class Counsel. Additionally, Analytics developed an electronic Former Participant Claim Form application which was also placed on the website maintained by Class Counsel and referenced in the e-mail version of the Former Participant Notice sent to Class Members. The Former Participant Claim Form application allows Class Members to fill out and electronically submit Former Participant Claim Forms and supporting documentation.

8. Shortly after Settlement Notices were sent, Analytics analyzed the records who were sent e-mail Notice and promptly mailed Notice to Class Members who's e-mail Notice was un-deliverable as follows: 1) 59 Former Participant Notice and Claim Forms were mailed to Former Participant Class Members 2) 96 Current Participant Notices were mailed to Current Participant Class Members.

9. As of the date of this declaration, the USPS has returned 7 Notices with an updated address for the class member (the period in which the USPS automatically forwards the notice had expired). Analytics re-mailed the Notices to these Class Members at their updated addresses. An additional 112 Notices were returned by the USPS as undeliverable. Of these undeliverable Notices, Analytics located 37 new addresses through a third-party commercial data source, Experian. Analytics re-mailed the Notices to those 37 Class Members at these updated addresses.

10. Analytics established and is maintaining a toll-free phone number (1-844-791-1288) for the Settlement to provide Class Members with additional information regarding the settlement. The toll-free number became operational on October 23, 2020, and automated service was available twenty-four hours a day, seven days a week. As of the

date of this declaration, Analytics has received a total of 96 telephone calls out of which 68 Class Members requested to speak with a customer service representative for assistance, all of which have been responded to in a timely manner.

11. The Settlement Agreement provides that Former Participants must file a completed Claim Form in order to be eligible for a settlement payment by November 23, 2020. As of the date of this declaration, Analytics has received 148 completed Claim Forms.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 7th day of December, 2020 in Minneapolis, Minnesota.

DocuSigned by:

C7AFF7397946498...

Christopher D. Amundson

Project Manager – Analytics LLC

# EXHIBIT A

November 3, 2020

**VIA FEDERAL EXPRESS**

ALABAMA ATTORNEY GENERAL
STEVE MARSHALL
501 WASHINGTON AVE
PO BOX 300152
MONTGOMERY, AL 36130-0152

Re: *Cunningham, et al., v. Cornell University, et al.*,
Case No. 16-cv-6525, (S.D.N.Y.), Notice Pursuant to 28 U.S.C. § 1715

Dear Sir or Madam:

Defendants Cornell University, the Retirement Plan Oversight Committee, and Mary G. Opperman (collectively "Cornell" or "Defendants") hereby provide this Notice of a Proposed Class Action Settlement in the above-referenced class actions pursuant to the Class Action Fairness Act of 2005 ("CAFA"). The proposed settlement will resolve the portion of Count V of the Corrected Amended Complaint related to the failure to adopt a lower cost share class of the TIAA-CREF Lifecycle Funds upon which summary judgment was denied in an order dated September 27, 2019. The remaining claims were dismissed on summary judgment.

In accordance with its obligations under CAFA, Cornell encloses the following:

**(1) The Complaint, any materials filed with the Complaint, and any Amended Complaints.**

Plaintiffs' Class Action Complaint and Corrected Amended Complaint filed in the *Cunningham, et al., v. Cornell University, et al*. case can be found on the enclosed CD as "Exhibit 1- Cunningham Complaints."

**(2) Notice of any scheduled judicial hearing in the class action.**

The Court has not yet scheduled a fairness hearing regarding the settlement. Once the Court sets a hearing date, such date(s) can be found on PACER as follows: (1) enter PACER through https://ecf.nysd.uscourts.gov/cgi-bin/ShowIndex.pl, (2) click the "Document Filing System" link, (3) click on "Query," (4) enter the civil case number, 16-cv-1756525, (5) click on "Run Query," and (6) click on the link "Docket Report." The order(s) scheduling hearing(s) will be found on the docket entry sheet.

**(3) Any proposed or final notification to class members.**

The proposed Notice of Class Action Settlement as submitted to the Court can be found on the enclosed CD as "Exhibit 2 – Notice of Class Action Settlement and Fairness Hearing to Class Members."

**(4) Any proposed or final class action settlement.**

The Settlement Agreement entered into by the parties and as submitted to the Court can be found on the enclosed CD as "Exhibit 3 – Settlement Agreement." There are no other agreements contemporaneously made between Class Counsel and counsel for the defendants.

**(5) A final judgment or notice of dismissal.**

Final judgment has not yet been entered. Upon entry, a copy of the Final Order and Judgment will be available through PACER and can be accessed online as follows: (1) enter PACER through https://ecf.nysd.uscourts.gov/cgi-bin/ShowIndex.pl, (2) click the "Document Filing System" link, (3) click on "Query," (4) enter the civil case number, 1:16-cv-175, (5) click on "Run Query," and (6) click on the link "Docket Report." The order(s) entering final judgment will be found on the docket entry sheet.

**(6) Names of class members who reside in each state and the estimated proportionate share of the claims of such members to the entire settlement.**

On the enclosed CD is a list of the names of Class Members who reside in your state. The specific settlement allocation to each Class Member will be determined by a Settlement Administrator appointed by the Court. As a result, we do not yet know which Class Members will receive settlement proceeds or how much each Class Member will receive, and it is not feasible to determine the estimated proportionate share of the claims of the Class Members who reside in each state to the entire settlement. Upon final approval of the Court, the settlement proceeds will be distributed among the Class Members according to the Plan of Allocation as set forth in the Settlement Agreement.

**(7) Any written judicial opinion relating to the materials described in (3) through (5).**

The Court has not yet entered a Preliminary Approval Order or any opinions relating to the materials described in sections (3) through (5). Upon entry, a copy of said Order or opinion can be found online through the process described in section (5) above.

Final judgment has not yet been entered. Upon entry, a copy of said judgment can be found online through the process described in section (5) above.

If you have questions about this notice, the lawsuits, or the enclosed materials, please do not hesitate to contact me.

Sincerely,

Chris Amundson /s/
Analytics LLC

Office: 952-404-5726

Enclosures

# EXHIBIT B

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

| | |
|---|---|
| CASEY CUNNINGHAM, *et al.*,<br>Plaintiffs,<br>v.<br>CORNELL UNIVERSITY, *et al.*,<br>Defendants. | No. 16-cv-6525-PKC |

# NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING

**Your rights might be affected if you are a member of the following class:**

All persons who participated in the Cornell University Retirement Plan for the Employees of the Endowed Colleges at Ithaca and the Cornell University Tax Deferred Annuity Plan and invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012, including any designated Beneficiary of a deceased person who participated in one or more of the Plans at any time during the Class Period and invested in the TIAA-CREF Lifecycle funds during the relevant time period, and any Alternate Payee of a person subject to a Qualified Domestic Relations Order who participated in one or more of the Plans at any time during the Class Period and invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012.

The Class Period is defined as August 17, 2010 through the date of the preliminary order. For purposes of this Notice, if not defined herein, capitalized terms have the definitions in the Settlement Agreement, which is incorporated herein by reference.

**PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.**

- The Court has given its preliminary approval to a proposed settlement (the "Settlement") of a class action lawsuit brought by certain participants in the Cornell University Retirement Plan for the Employees of the Endowed Colleges at Ithaca and the Cornell University Tax Deferred Annuity Plan (the "Plans") against Cornell University, the Retirement Plan Oversight Committee, and Mary G. Opperman (collectively "Cornell" or "Defendants"), alleging violations of the Employee Retirement Income Security Act ("ERISA") related to the retention of an imprudent share class of the TIAA-CREF Lifecycle Funds. The Settlement will provide for the allocation of monies directly into the individual accounts of the Settlement Class who invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012 and had Plan accounts during the Class Period with a balance greater than $0 as of September 1, 2020 ("Current Participants"). Class Members who are entitled to a distribution but who no longer had a Plan account with a balance greater than $0 as of September 1, 2020 ("Former Participants") will receive their allocation in the form of a check mailed to the address listed on the Former Participant Claim Form or a rollover, if elected.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated September 18, 2020. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at www.Cornell403bPlanSettlement.com. Any amendments to the Settlement Agreement or any other settlement documents will be posted on that website. You should visit that website if you would like more information about the Settlement and any subsequent amendments to the Settlement Agreement or other changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.
- Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice.
- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement and that final approval is upheld in the event of any appeal.

- A hearing on the final approval of the Settlement and for approval of the Class Representatives' petition for Attorneys' Fees and Costs and for Class Representatives' Compensation will take place on December 22, 2020 at 2:00 p.m., before United States District Court Judge P. Kevin Castel in Courtroom 11D, United States Courthouse, 500 Pearl St., New York, NY, 10007-1312.
- Any objections to the Settlement, to the petition for Attorneys' Fees and Costs or to Class Representatives' Compensation, must be served in writing on Class Counsel and Defendant's Counsel, as identified on page 6 of this Settlement Notice.
- Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at www.Cornell403bPlanSettlement.com.

**If you believe you had any balance invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012 and do not currently have an account in the Plans, you must complete a Former Participant Claim Form. If you are unsure whether you have an account with the Plan or invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012, contact the Settlement Administrator. Former Participants are individuals who no longer had an account balance in the Plan greater than $0 as of September 1, 2020.**

| YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT: | |
|---|---|
| **IF YOU ARE A FORMER PARTICIPANT THAT INVESTED IN THE TIAA-CREF LIFECYCLE FUNDS BETWEEN AUGUST 17, 2010 AND APRIL 17, 2012, YOU MUST RETURN THE FORMER PARTICIPANT CLAIM FORM BY NOVEMBER 23, 2020 TO PARTICIPATE IN THE SETTLEMENT** | If You Are A Former Participant, you must return a Former Participant Claim Form that is postmarked or submitted on-line at www.Cornell403bPlanSettlement.com by **November 23, 2020** to receive your share of the Net Settlement Amount. If you do not return the Former Participant Claim Form that is postmarked or submitted on-line by **November 23, 2020**, you will forfeit your share of the Net Settlement Amount even though you will be bound by the Settlement, including the release. A claim form may also be obtained by accessing www.Cornell403bPlanSettlement.com. |
| **ANY CLASS MEMBER CAN OBJECT (NO LATER THAN NOVEMBER 22, 2020)** | If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the Settling Parties to seek discovery, including the production of documents and appearance at a deposition, from any person who files an objection. |
| **YOU CAN ATTEND A HEARING ON DECEMBER 22, 2020** | If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel by December 12, 2020, of your intention to appear at the hearing. |

**The Class Action**

The case is called *Cunningham, et al., v. Cornell University, et al.*, Case No. 16-cv-6525 (S.D.N.Y.) (the "Class Action"). The Court supervising the case is the United States District Court for the Southern District of New York. The individuals who brought this suit are called Class Representatives, and the entity and individuals they sued are called the Defendants. The Class Representatives are current and former participants in the Plans. The Defendants are Cornell University, the Retirement Plan Oversight Committee, and Mary G. Opperman. The Class Representatives' claims are described below, and additional information about them is available at www.Cornell403bPlanSettlement.com.

**What Does the Settlement Provide?**

The Settlement was reached on September 18, 2020. Class Counsel filed this action on August 17, 2016. Since the filing of the case and for a period of over four years, the parties engaged in substantial litigation. Class Counsel devoted substantial time and effort to review and analyze voluminous pages of documents produced by Defendant and many other documents, including U.S. Department of Labor Forms 5500 and other publicly available documents, and conducted over 16 depositions to support their underlying claims, not all of which are addressed by the Settlement. The Settling Parties engaged in substantial settlement discussions. Only after extensive arm's length negotiation over a period of several months were the Settling Parties able to agree to the terms of the Settlement.

Under the Settlement, a Qualified Settlement Fund of $225,000 will be established to resolve Plaintiffs' claim that Defendants breached their duty of prudence by failing to adopt the institutional share classes of the TIAA-CREF Lifecycle Funds. This settlement does not include claims previously dismissed by the Court or claims to which the Court found that Defendants were entitled to summary judgment. Those claims may be appealed to the Second Circuit. The Net Settlement Amount is $225,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys' Fees and Costs, Class Representative's Compensation, and other approved expenses of the litigation.

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Class Members fall into two categories: Current Participants and Former Participants. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing Plan accounts. Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

**Release**

All Class Members and anyone making a claim on their behalf will fully release the Plan as well as Defendants and other "Released Parties" from "Released Claims." The Released Parties include (a) Cornell University, the Retirement Plan Oversight Committee, and Mary G. Opperman; (b) their insurers, co-insurers, and reinsurers; (c) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns; (d) their past, present, and future agents, officers, employees, trustees, boards of trustees, members of their board of trustees, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, (e) the Plans and the Plans' fiduciaries, administrators, plan administrators, recordkeepers, service providers, consultants, and parties-in-interest, other than CapFinancial Partners, LLC d/b/a Captrust Financial Advisors.

The Released Claims include the portion of Count V of the Corrected Amended Complaint related to the failure to adopt a lower cost share class of the TIAA-CREF Lifecycle Funds upon which summary judgment was denied in an order dated September 27, 2019. This agreement does not settle nor release any of the other claims in the Corrected Amended Complaint.

This is only a summary of the Released Claims and not a binding description of the Released Claims. The actual governing release is found within the Settlement Agreement at www.Cornell403bPlanSettlement.com. Generally, the release means that Class Members will not have the right to sue the Defendants or the Released Parties for conduct arising out of or relating to the Released Claims.

This is only a summary of the Settlement. The entire Settlement Agreement is at www.Cornell403bPlanSettlement.com.

**Statement of Attorneys' Fees and Costs Sought in the Class Action**

Since mid-2016, Class Counsel has devoted many hours investigating potential claims, bringing and handling this case. Class Counsel reviewed voluminous pages of documents produced in this case, conducted a substantial number

of depositions, and, prior to filing this action, analyzed thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing this action. Class Counsel has also agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) to enforce the Settlement Agreement in accordance with its terms; and (3) to do each of these without additional pay.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, $75,000, in addition to no more than $18,000 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys' Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund and must be approved by the Court.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payment, not to exceed $1,000 each, for one Class Representative who invested in the TIAA-CREF Lifecycle Funds and took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the case to conclusion. The Class Representative's activities also included assisting in the factual investigation of the case by Class Counsel, being deposed by Defense counsel, and providing information for the case. Any Class Representative Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full application for Attorneys' Fees and Costs and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, www.Cornell403bPlanSettlement.com.

## 1. Why Did I Receive This Settlement Notice?

The Court caused this Settlement Notice to be sent to you because the Plan's records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals, if any, are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

## 2. What Is The Class Action About?

In the Class Action, Class Representatives claim that, during the Class Period, the Defendant violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, *et seq*., with respect to its management, operation and administration of the Plan, including allowing excessive fees and imprudent investments in the Plan. The claim at issue involved in the Settlement only includes allegations that Defendants failed to adopt a lower cost share class of the TIAA-CREF Lifecycle Funds.

The district court dismissed some of Plaintiffs' claims for failure to state a viable claim, and determined that Defendants were entitled to summary judgment on the merits of all remaining claims except the claim pertaining to the TIAA-CREF Lifecycle Funds that is the subject of this settlement. Defendants maintain that they are without fault or liability with respect to that issue, as well as any of the allegations or claims asserted in this action that the Court already dismissed. Defendants are settling the Released Claim solely to avoid litigation costs and the risks associated with an in-person trial set for September 2020 amidst the current public health crisis.

## 3. Why Is There A Settlement?

The Court dismissed or granted summary judgment to Defendants as to all claims other than the portion of Count V of the Corrected Amended Complaint relating to the failure to adopt a lower cost share class of the TIAA-CREF Lifecycle Funds. The Court has not finally decided the final claim. Instead, the Class Representative and Defendants have agreed to the Settlement of that claim. The Settlement is the product of extensive negotiations between Class Counsel and Defendants' counsel. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representative and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

## 4. How Much Will My Distribution Be?

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan's recordkeeper, or, if on September 1, 2020, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former Participant Claim Form.

To be eligible for a distribution from the Net Settlement Amount, you must have invested in the TIAA-CREF Lifecycle Funds between August 17, 2010 and April 17, 2012. If you invested in these funds and no longer have a Plan account or have a Plan account with no money in it, you must submit a Former Participant Claim Form available at www.Cornell403bPlanSettlement.com and submit that form to the Settlement Administrator.

Current Participants shall receive their settlement payments as contributions to their account(s) in the Plans. For each Authorized Former Participant that completes a Former Participant Claim Form, the Settlement Administrator will issue a single check from the Qualified Settlement Fund and mail the check to the address of such Authorized Former Participant listed in his or her Former Participant Claim Form or will follow proper rollover instructions provided by the Authorized Former Participant.

The method of making these calculations is described in the Plan of Allocation, found in Article 6 of the Settlement Agreement and available at www.Cornell403bPlanSettlement.com.

There are approximately 7,000 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, you will receive a check if and to the extent you are entitled to receive a portion of a Current Participant's or Authorized Former Participant's allocation under the Settlement Agreement in accordance with the Plan of Allocation as if you are a Current Participant or Authorized Former Participant.

## 5. How Can I Receive My Distribution?

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a "Current Participant" or a "Former Participant." **It is your responsibility to determine whether you are a Former Participant.**

## 6. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the Court's final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur during the second half of 2021.

**There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.**

## 7. Can I Get Out Of The Settlement?

No. The Class was certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Actions for all claims that were asserted in the Class Actions or are otherwise included as Released Claims under the Settlement.

## 8. Do I Have A Lawyer In The Case?

The Court has appointed the law firm Schlichter Bogard & Denton, in St. Louis, Missouri, as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

## 9. How Will The Lawyers Be Paid?

Class Counsel will file a petition for the award of Attorneys' Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys' Fees and Costs to not more than $75,000 in fees and $18,000 in costs and Class Counsel has committed to bring an enforcement action, if needed, to enforce the Settlement, also with no charge. The Court will determine what fees and costs will be approved.

## 10. How Do I Tell The Court If I Don't Like The Settlement?

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Cunningham, et al., v. Cornell University, et al.*, Case No. 16-cv-6525 (S.D.N.Y.) Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than **November 22, 2020**. The Court's address is Clerk of the Court, United States District Court for the Southern District of New York, 500 Pearl St., New York, NY, 10007-1312. Your written objection also must be mailed to the lawyers listed below, no later than **November 22, 2020**. Please note that the Court's Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

| CLASS COUNSEL | DEFENDANTS' COUNSEL |
|---|---|
| SCHLICHTER, BOGARD & DENTON<br>Attn: Cornell 403b Plan Settlement<br>100 S. Fourth St., Suite 1200<br>St. Louis, MO 63102<br>Cornell403bPlanSettlement@uselaws.com | MAYER BROWN LLP<br>Attn: Brian D. Netter<br>1999 K Street NW<br>Washington, DC 20006<br>bnetter@mayerbrown.com |

## 11. When And Where Will The Court Decide Whether To Approve The Settlement?

The Court will hold a Fairness Hearing at 2:00 p.m. on December 22, 2020 at the United States District Court for the Southern District of New York, Courtroom 11D, 500 Pearl St., New York, NY, 10007-1312.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

## 12. Do I Have To Attend The Fairness Hearing?

No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it when the Court considers whether to approve the Settlement as fair, reasonable and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but such attendance is not necessary.

## 13. May I Speak At The Fairness Hearing?

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Cunningham, et al., v. Cornell University, et al.*, Case No. 16-cv-6525." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 10, **no later than December 12, 2020.**

## 14. What Happens If I Do Nothing At All?

If you are a "Current Participant" as defined on page 1, and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved.

**If you are a "Former Participant" as defined on page 1, and you do nothing, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, BUT YOU WILL NOT RECEIVE ANY MONEY UNLESS YOU SUBMIT A FORMER PARTICIPANT CLAIM FORM.**

## 15. How Do I Get More Information?

If you have general questions regarding the Settlement, you can visit this website: www.Cornell403bPlanSettlement.com, call 1-844-791-1288, or write to the Settlement Administrator at Cornell University Retirement Plans Settlement Administrator, P.O. Box 2003, Chanhassen, MN 55317-2003.

# SPECIAL TAX NOTICE FROM THE SETTLEMENT ADMINISTRATOR

## YOUR ROLLOVER OPTIONS

You are receiving this notice because all or a portion of a payment you are receiving as a result of the Settlement may be eligible to be rolled over to an individual retirement account ("IRA") or an employer-sponsored retirement plan. This notice is intended to help you decide whether to do such a rollover.

This notice describes the rollover rules that apply to payments from the Settlement that are not from a designated Roth account (a type of account with special tax rules in some employer plans).

Rules that apply to most payments are described in the "General Information About Rollovers" section below. Special rules that only apply in certain circumstances are described in the "Special Rules and Options" section below.

*This Notice does not constitute legal or tax advice, and you should consult with a professional tax advisor if you have specific questions about your specific tax situation.*

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## GENERAL INFORMATION ABOUT ROLLOVERS

### How can a rollover affect my taxes?

You will be taxed on a payment from the Settlement if you do not roll it over. If you are under age 59½ and do not do a rollover, you will also have to pay a 10% additional income tax on early distributions (unless an exception applies). However, if you do a rollover, you will not have to pay tax until you receive payments later and the 10% additional income tax will not apply if those payments are made after you are age 59½ (or if an exception applies).

### Where may I roll over the payment?

You may roll over the payment to either an IRA (an individual retirement account or individual retirement annuity) or an employer plan (a tax-qualified plan, section 403(b) plan, or governmental section 457(b) plan) that will accept the rollover. The rules of the IRA or employer plan that holds the rollover will determine your investment options, fees, and rights to payment from the IRA or employer plan (for example, no spousal consent rules apply to IRAs and IRAs may not provide loans). Further, the amount rolled over will become subject to the tax rules that apply to the IRA or employer plan.

### How do I do a rollover?

There are two ways to do a rollover. You can do either a direct rollover or a 60-day rollover.

<u>If you do a direct rollover</u>, the Settlement Administrator will make the payment directly to your IRA or an employer plan. You should contact the IRA sponsor or the administrator of the employer plan for information on how to do a direct rollover.

<u>If you do not do a direct rollover</u>, you may still do a rollover by making a deposit into an IRA or eligible employer plan that will accept it. You will have 60 days after you receive the payment from the Settlement Administrator to deposit it into the IRA or eligible employer plan. If you do not do a direct rollover, the Settlement Administrator is required to withhold 20% of the payment for federal income taxes (up to the amount of cash and property received other than employer stock). This means that, in order to roll over the entire payment in a 60-day rollover, you must use other funds to make up for the 20% withheld. If you do not roll over the entire amount of the payment, the portion not rolled over will be taxed and will be subject to the 10% additional income tax on early distributions if you are under age 59½ (unless an exception applies).

### How much may I roll over?

If you wish to do a rollover, you may roll over all or part of the amount eligible for rollover.

**If I don't do a rollover, will I have to pay the 10% additional income tax on early distributions?**

If you are under age 59½, you will have to pay the 10% additional income tax on early distributions for any payment from the Settlement (including amounts withheld for income tax) that you do not roll over, unless one of the exceptions listed below applies. This tax is in addition to the regular income tax on the payment not rolled over.

**Will I owe state income taxes?**

This notice does not describe any state or local income tax rules (including withholding rules).

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## SPECIAL RULES AND OPTIONS

**If you miss the 60-day rollover deadline**

Generally, the 60-day rollover deadline cannot be extended. However, the IRS has the limited authority to waive the deadline under certain extraordinary circumstances, such as when external events prevented you from completing the rollover by the 60-day rollover deadline. To apply for a waiver, you must file a private letter ruling request with the IRS. Private letter ruling requests require the payment of a nonrefundable user fee. For more information, see IRS Publication 590, Individual Retirement Arrangements (IRAs).

**If you were born on or before January 1, 1936**

If you were born on or before January 1, 1936, and receive a lump sum distribution that you do not roll over, special rules for calculating the amount of the tax on the payment might apply to you. For more information, see IRS Publication 575, Pension and Annuity Income.

**If you roll over your payment to a Roth IRA**

If you roll over the payment to a Roth IRA, later payments from the Roth IRA that are qualified distributions will not be taxed (including earnings after the rollover). A qualified distribution from a Roth IRA is a payment made after you are age 59½ (or after your death or disability, or as a qualified first-time homebuyer distribution of up to $10,000) and after you have had a Roth IRA for at least 5 years. In applying this 5-year rule, you count from January 1 of the year for which your first contribution was made to a Roth IRA. Payments from the Roth IRA that are not qualified distributions will be taxed to the extent of earnings after the rollover, including the 10% additional income tax on early distributions (unless an exception applies). You do not have to take required minimum distributions from a Roth IRA during your lifetime. For more information, see IRS Publication 590, Individual Retirement Arrangements (IRAs).

You cannot roll over a payment to a designated Roth account in an employer plan.

**If you are not a Plan participant**

Payments after death of the Plan participant. If you receive a distribution after the Plan participant's death that you do not roll over, the distribution will generally be taxed in the same manner described elsewhere in this notice. However, the 10% additional income tax on early distributions does not apply, and the special rule described under the section "If you were born on or before January 1, 1936" applies only if the participant was born on or before January 1, 1936.

**If you are a surviving spouse**

If you receive a payment from the Settlement as the surviving spouse of a deceased Plan participant, you have the same rollover options that the Plan participant would have had, as described elsewhere in this notice. In addition, if you choose to do a rollover to an IRA, you may treat the IRA as your own or as an inherited IRA.

An IRA you treat as your own is treated like any other IRA of yours, so that payments made to you before you are age 59½ will be subject to the 10% additional income tax on early distributions (unless an exception applies) and required minimum distributions from your IRA do not have to start until after you are age 70½.

If you treat the IRA as an inherited IRA, payments from the IRA will not be subject to the 10% additional income tax on early distributions. However, if the Plan participant had started taking required minimum distributions, you will have to receive required minimum distributions from the inherited IRA. If the Plan participant had not started taking required minimum distributions from the Plan, you will not have to start receiving required minimum distributions from the inherited IRA until the year the Plan participant would have been age 70½.

**If you are a surviving beneficiary other than a spouse**

If you receive a payment from the Settlement because of the Plan participant's death and you are a designated beneficiary other than a surviving spouse, the only rollover option you have is to do a direct rollover to an inherited IRA. Payments from the inherited IRA will not be subject to the 10% additional income tax on early distributions. You will have to receive required minimum distributions from the inherited IRA.

**Payments under a qualified domestic relations order**

If you are the spouse or former spouse of the Plan participant who receives a payment from the Settlement under a QDRO, you generally have the same options the participant would have (for example, you may rollover the payment to your own IRA or an eligible employer plan that will accept it). Payments under the QDRO will not be subject to the 10% additional income tax on early distributions.

**If you are a nonresident alien**

If you are a nonresident alien and you do not do a direct rollover to a U.S. IRA or U.S. employer plan, instead of withholding 20%, the Settlement is generally required to withhold 30% of the payment for federal income taxes. If the amount withheld exceeds the amount of tax you owe (as may happen if you do a 60-day rollover), you may request an income tax refund by filing Form 1040NR and attaching your Form 1042-S. See Form W-8BEN for claiming that you are entitled to a reduced rate of withholding under an income tax treaty. For more information, see also IRS Publication 519, U.S. Tax Guide for Aliens, and IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

**Other special rules**

If your payments for the year are less than $200 (not including payments from a designated Roth account in the Plan), the Settlement is not required to allow you to do a direct rollover and is not required to withhold for federal income taxes. However, you may do a 60-day rollover.

You may have special rollover rights if you recently served in the U.S. Armed Forces. For more information, see IRS Publication 3, Armed Forces' Tax Guide.

**FOR MORE INFORMATION**

You may wish to consult with the Settlement Administrator, or a professional tax advisor before taking a payment from the Settlement. Also, you can find more detailed information on the federal tax treatment of payments from employer plans in: IRS Publication 575, Pension and Annuity Income; IRS Publication 590, Individual Retirement Arrangements (IRAs); and IRS Publication 571, Tax-Sheltered Annuity Plans (403(b) Plans). These publications are available from a local IRS office, on the web at www.irs.gov, or by calling 1-800-TAX-FORM.

**From:** Cornell University Retirement Plans Settlement Administrator <cornell403bplansettlement@claims-administrator.com>
**Sent:** Friday, October 23, 2020 8:52 AM
**To:**
**Subject:** Court Ordered Notice Re: Cornell University Retirement Plans Settlement

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

CASEY CUNNINGHAM, *et al.*, No. 16-cv-6525-PKC

Plaintiffs,

v.

CORNELL UNIVERSITY, *et al.*,

Defendants.

**NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

**Your rights might be affected if you are a member of the following class:**

All persons who participated in the Cornell University Retirement Plan for the Employees of the Endowed Colleges at Ithaca and the Cornell University Tax Deferred Annuity Plan and invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012, including any designated Beneficiary of a deceased person who participated in one or more of the Plans at any time during the Class Period and invested in the TIAA-CREF Lifecycle funds during the relevant time period, and any Alternate Payee of a person subject to a Qualified Domestic Relations Order who participated in one or more of the Plans at any time during the Class Period and invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012.

The Class Period is defined as August 17, 2010 through the date of the preliminary order. For purposes of this Notice, if not defined herein, capitalized terms have the definitions in the Settlement Agreement, which is incorporated herein by reference.

**PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.**

File Your Claim

**Claim Number:**
**PIN:**

- The Court has given its preliminary approval to a proposed settlement (the "Settlement") of a class action lawsuit brought by certain participants in the Cornell University Retirement Plan for the Employees of the Endowed Colleges at Ithaca and the Cornell University Tax Deferred Annuity Plan (the "Plans") against Cornell University, the Retirement Plan Oversight Committee, and Mary G. Opperman (collectively "Cornell" or "Defendants"), alleging violations of the Employee Retirement Income Security Act

("ERISA") related to the retention of an imprudent share class of the TIAA-CREF Lifecycle Funds. The Settlement will provide for the allocation of monies directly into the individual accounts of the Settlement Class who invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012 and had Plan accounts during the Class Period with a balance greater than $0 as of September 1, 2020 ("Current Participants"). Class Members who are entitled to a distribution but who no longer had a Plan account with a balance greater than $0 as of September 1, 2020 ("Former Participants") will receive their allocation in the form of a check mailed to the address listed on the Former Participant Claim Form or a rollover, if elected.

- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated September 18, 2020. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at www.Cornell403bPlanSettlement.com. Any amendments to the Settlement Agreement or any other settlement documents will be posted on that website. You should visit that website if you would like more information about the Settlement and any subsequent amendments to the Settlement Agreement or other changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.

- Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice.

- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement and that final approval is upheld in the event of any appeal.

- A hearing on the final approval of the Settlement and for approval of the Class Representatives' petition for Attorneys' Fees and Costs and for Class Representatives' Compensation will take place on December 22, 2020 at 2:00 p.m., before United States District Court Judge P. Kevin Castel in Courtroom 11D, United States Courthouse, 500 Pearl St., New York, NY, 10007-1312.

- Any objections to the Settlement, to the petition for Attorneys' Fees and Costs or to Class Representatives' Compensation, must be served in writing on Class Counsel and Defendant's Counsel, as identified on page 6 of this Settlement Notice.

- Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at www.Cornell403bPlanSettlement.com.

**If you believe you had any balance invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012 and do not currently have an account in the Plans, you must complete a Former Participant Claim Form. If you are unsure whether you have an account with the Plan or invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012, contact the Settlement**

**Administrator. Former Participants are individuals who no longer had an account balance in the Plan greater than $0 as of September 1, 2020.**

## YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:

| | |
|---|---|
| **IF YOU ARE A FORMER PARTICIPANT THAT INVESTED IN THE TIAA-CREF LIFECYCLE FUNDS BETWEEN AUGUST 17, 2010 AND APRIL 17, 2012, YOU MUST RETURN THE FORMER PARTICIPANT CLAIM FORM BY NOVEMBER 23, 2020 TO PARTICIPATE IN THE SETTLEMENT** | If You Are A Former Participant, you must return a Former Participant Claim Form that is postmarked or submitted on- line at www.Cornell403bPlanSettlement.com by **November 23, 2020** to receive your share of the Net Settlement Amount. If you do not return the Former Participant Claim Form that is postmarked or submitted on-line by **November 23, 2020**, you will forfeit your share of the Net Settlement Amount even though you will be bound by the Settlement, including the release. A claim form may also be obtained by accessing www.Cornell403bPlanSettlement.com. |
| File Your Claim | **Claim Number:**<br>**PIN:** |
| **ANY CLASS MEMBER CAN OBJECT (NO LATER THAN NOVEMBER 22, 2020)** | If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the Settling Parties to seek discovery, including the production of documents and appearance at a deposition, from any person who files an objection. |
| **YOU CAN ATTEND A HEARING ON DECEMBER 22, 2020** | If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel by December 12, 2020, of your intention to appear at the hearing. |

### The Class Action

The case is called *Cunningham, et al., v. Cornell University, et al.*, Case No. 16-cv-6525 (S.D.N.Y.) (the "Class Action"). The Court supervising the case is the United States District Court for the Southern District of New York. The individuals who brought this suit are called Class Representatives, and the entity and individuals they sued are called the Defendants. The Class Representatives are current and former participants in the Plans. The Defendants are Cornell University, the Retirement Plan Oversight Committee, and Mary G. Opperman. The Class Representatives' claims are described below, and additional information about them is available at www.Cornell403bPlanSettlement.com.

### What Does the Settlement Provide?

The Settlement was reached on September 18, 2020. Class Counsel filed this action on August 17, 2016. Since the filing of the case and for a period of over four years, the parties engaged in substantial litigation. Class Counsel devoted substantial time and effort to review and analyze voluminous pages of documents produced by Defendant and many

other documents, including U.S. Department of Labor Forms 5500 and other publicly available documents, and conducted over 16 depositions to support their underlying claims, not all of which are addressed by the Settlement. The Settling Parties engaged in substantial settlement discussions. Only after extensive arm's length negotiation over a period of several months were the Settling Parties able to agree to the terms of the Settlement.

Under the Settlement, a Qualified Settlement Fund of $225,000 will be established to resolve Plaintiffs' claim that Defendants breached their duty of prudence by failing to adopt the institutional share classes of the TIAA-CREF Lifecycle Funds. This settlement does not include claims previously dismissed by the Court or claims to which the Court found that Defendants were entitled to summary judgment. Those claims may be appealed to the Second Circuit. The Net Settlement Amount is $225,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys' Fees and Costs, Class Representative's Compensation, and other approved expenses of the litigation.

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Class Members fall into two categories: Current Participants and Former Participants. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing Plan accounts. Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

**Release**

All Class Members and anyone making a claim on their behalf will fully release the Plan as well as Defendants and other "Released Parties" from "Released Claims." The Released Parties include (a) Cornell University, the Retirement Plan Oversight Committee, and Mary G. Opperman; (b) their insurers, co-insurers, and reinsurers; (c) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns;
(d) their past, present, and future agents, officers, employees, trustees, boards of trustees, members of their board of trustees, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, (e) the Plans and the Plans' fiduciaries, administrators, plan administrators, recordkeepers, service providers, consultants, and parties-in- interest, other than CapFinancial Partners, LLC d/b/a Captrust Financial Advisors.

The Released Claims include the portion of Count V of the Corrected Amended Complaint related to the failure to adopt a lower cost share class of the TIAA-CREF Lifecycle Funds upon which summary judgment was denied in an order dated September 27, 2019. This agreement does not settle nor release any of the other claims in the Corrected Amended Complaint.

This is only a summary of the Released Claims and not a binding description of the Released Claims. The actual governing release is found within the Settlement Agreement at www.Cornell403bPlanSettlement.com. Generally, the release means that Class Members will not have the right to sue the Defendants or the Released Parties for conduct arising out of or relating to the Released Claims.

This is only a summary of the Settlement. The entire Settlement Agreement is at www.Cornell403bPlanSettlement.com.

**Statement of Attorneys' Fees and Costs Sought in the Class Action**
Since mid-2016, Class Counsel has devoted many hours investigating potential claims, bringing and handling this case. Class Counsel reviewed voluminous pages of documents produced in this case, conducted a substantial number of depositions, and, prior to filing this action, analyzed thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing this action. Class Counsel has also agreed:
(1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved;
(2) to enforce the Settlement Agreement in accordance with its terms; and (3) to do each of these without additional pay.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, $75,000, in addition to no more than $18,000 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys' Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund and must be approved by the Court.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payment, not to exceed $1,000 each, for one Class Representative who invested in the TIAA-CREF Lifecycle Funds and took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the case to conclusion. The Class Representative's activities also included assisting in the factual investigation of the case by Class Counsel, being deposed by Defense counsel, and providing information for the case. Any Class Representative Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full application for Attorneys' Fees and Costs and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, www.Cornell403bPlanSettlement.com.

**1. Why Did I Receive This Settlement Notice?**
The Court caused this Settlement Notice to be sent to you because the Plan's records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals, if any, are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

**2. What Is The Class Action About?**
In the Class Action, Class Representatives claim that, during the Class Period, the Defendant violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, *et seq*., with respect to its management, operation and administration of the Plan, including allowing excessive fees and imprudent investments in the Plan. The claim at issue involved in the Settlement only includes allegations that Defendants failed to adopt a lower cost share class of the TIAA-CREF Lifecycle Funds.

The district court dismissed some of Plaintiffs' claims for failure to state a viable claim, and determined that Defendants were entitled to summary judgment on the merits of all remaining claims except the claim pertaining to the TIAA-CREF Lifecycle Funds that is the

subject of this settlement. Defendants maintain that they are without fault or liability with respect to that issue, as well as any of the allegations or claims asserted in this action that the Court already dismissed. Defendants are settling the Released Claim solely to avoid litigation costs and the risks associated with an in-person trial set for September 2020 amidst the current public health crisis.

**3. Why Is There A Settlement?**
The Court dismissed or granted summary judgment to Defendants as to all claims other than the portion of Count V of the Corrected Amended Complaint relating to the failure to adopt a lower cost share class of the TIAA-CREF Lifecycle Funds. The Court has not finally decided the final claim. Instead, the Class Representative and Defendants have agreed to the Settlement of that claim. The Settlement is the product of extensive negotiations between Class Counsel and Defendants' counsel. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representative and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

**4. How Much Will My Distribution Be?**
The amount, if any, that will be allocated to you will be based upon records maintained by the Plan's recordkeeper, or, if on September 1, 2020, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former Participant Claim Form.

To be eligible for a distribution from the Net Settlement Amount, you must have invested in the TIAA-CREF Lifecycle Funds between August 17, 2010 and April 17, 2012. If you invested in these funds and no longer have a Plan account or have a Plan account with no money in it, you must submit a Former Participant Claim Form available at www.Cornell403bPlanSettlement.com and submit that form to the Settlement Administrator.

Current Participants shall receive their settlement payments as contributions to their account(s) in the Plans. For each Authorized Former Participant that completes a Former Participant Claim Form, the Settlement Administrator will issue a single check from the Qualified Settlement Fund and mail the check to the address of such Authorized Former Participant listed in his or her Former Participant Claim Form or will follow proper rollover instructions provided by the Authorized Former Participant.

The method of making these calculations is described in the Plan of Allocation, found in Article 6 of the Settlement Agreement and available at www.Cornell403bPlanSettlement.com.

There are approximately 7,000 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, you will receive a check if and to the extent you are entitled to receive a portion of a Current Participant's or Authorized Former Participant's allocation under the Settlement Agreement in accordance with the Plan of Allocation as if you are a Current Participant or Authorized Former Participant.

**5. How Can I Receive My Distribution?**
Whether you need to submit a claim form to receive your distribution depends on whether you are considered a "Current Participant" or a "Former Participant." **It is your responsibility to determine whether you are a Former Participant.**

**6. When Will I Receive My Distribution?**
The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the Court's final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur during the second half of 2021.

**There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.**

**7. Can I Get Out Of The Settlement?**
No. The Class was certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Actions for all claims that were asserted in the Class Actions or are otherwise included as Released Claims under the Settlement.

**8. Do I Have A Lawyer In The Case?**
The Court has appointed the law firm Schlichter Bogard & Denton, in St. Louis, Missouri, as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

**9. How Will The Lawyers Be Paid?**
Class Counsel will file a petition for the award of Attorneys' Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys' Fees and Costs to not more than $75,000 in fees and $18,000 in costs and Class Counsel has committed to bring an enforcement action, if needed, to enforce the Settlement, also with no charge. The Court will determine what fees and costs will be approved.

**10. How Do I Tell The Court If I Don't Like The Settlement?**
If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Cunningham, et al., v. Cornell University, et al.*, Case No. 16-cv-6525 (S.D.N.Y.) Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than **November 22, 2020**. The Court's address is Clerk of the Court, United States District Court for the Southern District of New York, 500 Pearl St., New York, NY, 10007-1312. Your written objection also must be mailed to the lawyers listed below, no later than **November 22, 2020**. Please note that the Court's Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

**CLASS COUNSEL**

SCHLICHTER, BOGARD & DENTON
Attn: Cornell 403b Plan Settlement
100 S. Fourth St., Suite 1200
St. Louis, MO 63102
Cornell403bPlanSettlement@uselaws.com

**DEFENDANTS' COUNSEL**

MAYER BROWN LLP
Attn: Brian D. Netter
1999 K Street NW
Washington, DC 20006
bnetter@mayerbrown.com

**11. When And Where Will The Court Decide Whether To Approve The Settlement?**

The Court will hold a Fairness Hearing at 2:00 p.m. on December 22, 2020 at the United States District Court for the Southern District of New York, Courtroom 11D, 500 Pearl St., New York, NY, 10007-1312.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

**12. Do I Have To Attend The Fairness Hearing?**
No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it when the Court considers whether to approve the Settlement as fair, reasonable and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but such attendance is not necessary.

**13. May I Speak At The Fairness Hearing?**
If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Cunningham, et al., v. Cornell University, et al.*, Case No. 16-cv-6525." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 10, **no later than December 12, 2020**.

**14. What Happens If I Do Nothing At All?**
If you are a "Current Participant" as defined on page 1, and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved.

**If you are a "Former Participant" as defined on page 1, and you do nothing, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, BUT YOU WILL NOT RECEIVE ANY MONEY UNLESS YOU SUBMIT A FORMER PARTICIPANT CLAIM FORM.**

**15. How Do I Get More Information?**
If you have general questions regarding the Settlement, you can visit this website: www.Cornell403bPlanSettlement.com, call 1-844-791-1288, or write to the Settlement Administrator at Cornell University Retirement Plans Settlement Administrator, P.O. Box 2003, Chanhassen, MN 55317-2003.

Cornell University Retirement Plans Settlement Administrator | PO Box 2003, Chanhassen, MN 55317

Unsubscribe {recipient's email}

About our service provider

Sent by cornell403bplansettlement@claims-administrator.com

**THIS IS A TEST EMAIL ONLY.**
This email was sent by the author for the sole purpose of testing a draft message. If you believe you have received the message in error, please contact the author by replying to this message. Constant Contact takes reports of abuse very seriously. If you wish to report abuse, please forward this message to abuse@constantcontact.com.

**From:** Cornell University Retirement Plans Settlement Administrator <cornell403bplansettlement@claims-administrator.com>
**Sent:** Friday, October 23, 2020 8:20 AM
**To:**
**Subject:** Court Ordered Notice Re: Cornell University Retirement Plans Settlement

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

CASEY CUNNINGHAM, *et al.*, No. 16-cv-6525-PKC

Plaintiffs,

v.

CORNELL UNIVERSITY, *et al.*,

Defendants.

**NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

**Your rights might be affected if you are a member of the following class:**

All persons who participated in the Cornell University Retirement Plan for the Employees of the Endowed Colleges at Ithaca and the Cornell University Tax Deferred Annuity Plan and invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012, including any designated Beneficiary of a deceased person who participated in one or more of the Plans at any time during the Class Period and invested in the TIAA-CREF Lifecycle funds during the relevant time period, and any Alternate Payee of a person subject to a Qualified Domestic Relations Order who participated in one or more of the Plans at any time during the Class Period and invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012.

The Class Period is defined as August 17, 2010 through the date of the preliminary order. For purposes of this Notice, if not defined herein, capitalized terms have the definitions in the Settlement Agreement, which is incorporated herein by reference.

**PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.**

- The Court has given its preliminary approval to a proposed settlement (the "Settlement") of a class action lawsuit brought by certain participants in the Cornell University Retirement Plan for the Employees of the Endowed Colleges at Ithaca and the Cornell University Tax Deferred Annuity Plan (the "Plans") against Cornell University, the Retirement Plan Oversight Committee, and Mary G. Opperman (collectively "Cornell" or "Defendants"), alleging violations of the Employee Retirement Income Security Act ("ERISA") related to the retention of an imprudent share class of the TIAA-CREF Lifecycle Funds. The Settlement will provide for the allocation of monies directly into the individual accounts of the Settlement Class who

invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012 and had Plan accounts during the Class Period with a balance greater than $0 as of September 1, 2020 ("Current Participants"). Class Members who are entitled to a distribution but who no longer had a Plan account with a balance greater than $0 as of September 1, 2020 ("Former Participants") will receive their allocation in the form of a check mailed to the address listed on the Former Participant Claim Form or a rollover, if elected.

- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated September 18, 2020. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at www.Cornell403bPlanSettlement.com. Any amendments to the Settlement Agreement or any other settlement documents will be posted on that website. You should visit that website if you would like more information about the Settlement and any subsequent amendments to the Settlement Agreement or other changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.

- Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice.

- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement and that final approval is upheld in the event of any appeal.

- A hearing on the final approval of the Settlement and for approval of the Class Representatives' petition for Attorneys' Fees and Costs and for Class Representatives' Compensation will take place on December 22, 2020 at 2:00 p.m., before United States District Court Judge P. Kevin Castel in Courtroom 11D, United States Courthouse, 500 Pearl St., New York, NY, 10007-1312.

- Any objections to the Settlement, to the petition for Attorneys' Fees and Costs or to Class Representatives' Compensation, must be served in writing on Class Counsel and Defendant's Counsel, as identified on page 6 of this Settlement Notice.

- Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at www.Cornell403bPlanSettlement.com.

**If you believe you had any balance invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012 and do not currently have an account in the Plans, you must complete a Former Participant Claim Form. If you are unsure whether you have an account with the Plan or invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012, contact the Settlement Administrator. Former Participants are individuals who no longer had an account balance in the Plan greater than $0 as of September 1, 2020.**

## YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:

| | |
|---|---|
| **IF YOU ARE A FORMER PARTICIPANT THAT INVESTED IN THE TIAA-CREF LIFECYCLE FUNDS BETWEEN AUGUST 17, 2010 AND APRIL 17, 2012, YOU MUST RETURN THE FORMER PARTICIPANT CLAIM FORM BY NOVEMBER 23, 2020 TO PARTICIPATE IN THE SETTLEMENT** | If You Are A Former Participant, you must return a Former Participant Claim Form that is postmarked or submitted on- line at www.Cornell403bPlanSettlement.com by **November 23, 2020** to receive your share of the Net Settlement Amount. If you do not return the Former Participant Claim Form that is postmarked or submitted on-line by **November 23, 2020**, you will forfeit your share of the Net Settlement Amount even though you will be bound by the Settlement, including the release. A claim form may also be obtained by accessing www.Cornell403bPlanSettlement.com. |
| **ANY CLASS MEMBER CAN OBJECT (NO LATER THAN NOVEMBER 22, 2020)** | If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the Settling Parties to seek discovery, including the production of documents and appearance at a deposition, from any person who files an objection. |
| **YOU CAN ATTEND A HEARING ON DECEMBER 22, 2020** | If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel by December 12, 2020, of your intention to appear at the hearing. |

### The Class Action

The case is called *Cunningham, et al., v. Cornell University, et al.*, Case No. 16-cv-6525 (S.D.N.Y.) (the "Class Action"). The Court supervising the case is the United States District Court for the Southern District of New York. The individuals who brought this suit are called Class Representatives, and the entity and individuals they sued are called the Defendants. The Class Representatives are current and former participants in the Plans. The Defendants are Cornell University, the Retirement Plan Oversight Committee, and Mary G. Opperman. The Class Representatives' claims are described below, and additional information about them is available at www.Cornell403bPlanSettlement.com.

### What Does the Settlement Provide?

The Settlement was reached on September 18, 2020. Class Counsel filed this action on August 17, 2016. Since the filing of the case and for a period of over four years, the parties engaged in substantial litigation. Class Counsel devoted substantial time and effort to review and analyze voluminous pages of documents produced by Defendant and many other documents, including U.S. Department of Labor Forms 5500 and other publicly available documents, and conducted over 16 depositions to support their underlying claims, not all of which are addressed by the Settlement. The Settling Parties engaged in substantial settlement discussions. Only after extensive arm's length negotiation over a period of several months were the Settling Parties able to agree to the terms of the Settlement.

Under the Settlement, a Qualified Settlement Fund of $225,000 will be established to resolve Plaintiffs' claim that Defendants breached their duty of prudence by failing to adopt the institutional share classes of the TIAA-CREF Lifecycle Funds. This settlement does not include claims previously dismissed by the Court or claims to which the Court found that Defendants were entitled to summary judgment. Those claims may be appealed to the Second Circuit. The Net Settlement Amount is $225,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys' Fees and Costs, Class Representative's Compensation, and other approved expenses of the litigation.

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Class Members fall into two categories: Current Participants and Former Participants. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing Plan accounts. Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

**Release**

All Class Members and anyone making a claim on their behalf will fully release the Plan as well as Defendants and other "Released Parties" from "Released Claims." The Released Parties include (a) Cornell University, the Retirement Plan Oversight Committee, and Mary G. Opperman; (b) their insurers, co-insurers, and reinsurers; (c) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns; (d) their past, present, and future agents, officers, employees, trustees, boards of trustees, members of their board of trustees, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, (e) the Plans and the Plans' fiduciaries, administrators, plan administrators, recordkeepers, service providers, consultants, and parties-in- interest, other than CapFinancial Partners, LLC d/b/a Captrust Financial Advisors.

The Released Claims include the portion of Count V of the Corrected Amended Complaint related to the failure to adopt a lower cost share class of the TIAA-CREF Lifecycle Funds upon which summary judgment was denied in an order dated September 27, 2019. This agreement does not settle nor release any of the other claims in the Corrected Amended Complaint.

This is only a summary of the Released Claims and not a binding description of the Released Claims. The actual governing release is found within the Settlement Agreement at www.Cornell403bPlanSettlement.com. Generally, the release means that Class Members will not have the right to sue the Defendants or the Released Parties for conduct arising out of or relating to the Released Claims.

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**Statement of Attorneys' Fees and Costs Sought in the Class Action**

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litigation and has not been paid for any of their time or for any of their costs incurred in bringing this action. Class Counsel has also agreed:
(1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved;
(2) to enforce the Settlement Agreement in accordance with its terms; and (3) to do each of these without additional pay.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, $75,000, in addition to no more than $18,000 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys' Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund and must be approved by the Court.

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**1. Why Did I Receive This Settlement Notice?**
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In the Class Action, Class Representatives claim that, during the Class Period, the Defendant violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, *et seq*., with respect to its management, operation and administration of the Plan, including allowing excessive fees and imprudent investments in the Plan. The claim at issue involved in the Settlement only includes allegations that Defendants failed to adopt a lower cost share class of the TIAA-CREF Lifecycle Funds.

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The amount, if any, that will be allocated to you will be based upon records maintained by the Plan's recordkeeper, or, if on September 1, 2020, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former Participant Claim Form.

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Class Counsel will file a petition for the award of Attorneys' Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys' Fees and Costs to not more than $75,000 in fees and $18,000 in costs and Class Counsel has committed to bring an enforcement action, if needed, to enforce the Settlement, also with no charge. The Court will determine what fees and costs will be approved.

**10. How Do I Tell The Court If I Don't Like The Settlement?**
If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Cunningham, et al., v. Cornell University, et al*., Case No. 16-cv-6525 (S.D.N.Y.) Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than **November 22, 2020**. The Court's address is Clerk of the Court, United States District Court for the Southern District of New York, 500 Pearl St., New York, NY, 10007-1312. Your written objection also must be mailed to the lawyers listed below, no later than **November 22, 2020**. Please note that the Court's Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

**CLASS COUNSEL**

SCHLICHTER, BOGARD & DENTON
Attn: Cornell 403b Plan Settlement
100 S. Fourth St., Suite 1200
St. Louis, MO 63102
Cornell403bPlanSettlement@uselaws.com

**DEFENDANTS' COUNSEL**

MAYER BROWN LLP
Attn: Brian D. Netter
1999 K Street NW
Washington, DC 20006
bnetter@mayerbrown.com

**11. When And Where Will The Court Decide Whether To Approve The Settlement?**
The Court will hold a Fairness Hearing at 2:00 p.m. on December 22, 2020 at the United States District Court for the Southern District of New York, Courtroom 11D, 500 Pearl St., New York, NY, 10007-1312.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

**12. Do I Have To Attend The Fairness Hearing?**
No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it when the Court considers whether to approve the Settlement as fair, reasonable and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but such attendance is not necessary.

**13. May I Speak At The Fairness Hearing?**
If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Cunningham, et al., v. Cornell University, et al.*, Case No. 16-cv-6525." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 10, **no later than December 12, 2020**.

**14. What Happens If I Do Nothing At All?**
If you are a "Current Participant" as defined on page 1, and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved.

**If you are a "Former Participant" as defined on page 1, and you do nothing, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, BUT YOU WILL NOT RECEIVE ANY MONEY UNLESS YOU SUBMIT A FORMER PARTICIPANT CLAIM FORM.**

**15. How Do I Get More Information?**
If you have general questions regarding the Settlement, you can visit this website: www.Cornell403bPlanSettlement.com, call 1-844-791-1288, or write to the Settlement Administrator at Cornell University Retirement Plans Settlement Administrator, P.O. Box 2003, Chanhassen, MN 55317-2003.

Cornell University Retirement Plans Settlement Administrator | PO Box 2003, Chanhassen, MN 55317

Unsubscribe {recipient's email}

About our service provider

Sent by cornell403bplansettlement@claims-administrator.com

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**Cornell University Retirement Plans**
**SETTLEMENT ADMINISTRATOR**
**P.O. Box 2003**
**Chanhassen, MN 55317-2003**
**www.Cornell403bPlanSettlement.com**

# FORMER PARTICIPANT CLAIM FORM

ABC1234567890
JOHN Q CLASSMEMBER
123 MAIN ST
APT 1
ANYTOWN, ST 12345

Claim Number: 1111111

PIN: 12345

This Former Participant Claim Form is **ONLY** for Class Members who are **Former Participants**, or the beneficiaries, alternate payees or attorneys-in-fact of Former Participants (all of whom will be treated as Former Participants). A Former Participant is a Class Member who invested in the TIAA-CREF Lifecycle funds between August 17, 2010, and April 17, 2012, but did not have a plan account with a balance greater than $0 as of September 1, 2020.

This form must be completed, signed and submitted on-line at www.Cornell403bPlanSettlement.com on or before **November 23, 2020** or mailed with a postmark date no later than **November 23, 2020** to the Settlement Administrator in order for you to receive your share of the Settlement proceeds. **Former Participants who do not complete and timely return this form will not receive any Settlement payment.** Please review the instructions below carefully. If you have questions regarding this Claim Form, you may contact the Settlement Administrator as indicated below.

**********

## PART 1: INSTRUCTIONS FOR COMPLETING FORMER PARTICIPANT CLAIM FORM

1. Complete this claim form and keep a copy of all pages of your Former Participant Claim Form, including page 1 with the address label, for your records.
2. Submit on-line at www.Cornell403bPlanSettlement.com on or before **November 23, 2020** or Mail your completed Former Participant Claim Form postmarked no later than **November 23, 2020** to the Settlement Administrator at the following address:

   **Cornell University Retirement Plans**
   **SETTLEMENT ADMINISTRATOR**
   **P.O. Box 2003**
   **Chanhassen, MN 55317-2003**

   It is your responsibility to ensure the Settlement Administrator has timely received your Former Participant Claim Form.
3. Other Reminders:
   - You must provide date of birth, signature and a completed Substitute IRS Form W-9, which is attached as Part 5 to this form.
   - If you desire to do a rollover and you do not complete in full the rollover information in Part 4 Payment Election of the Settlement Distribution Form, payment will be made to the participant.
   - If you change your address after sending in your Former Participant Claim Form, please send your new address to the Settlement Administrator.
   - **Timing of Payments to Eligible Settlement Class Members.** Please note that Settlement payments are subject to the Settlement Agreement's receiving final Court approval. If the Settlement Agreement is approved and if you are entitled to a Settlement payment under the terms of the Settlement, such payments will be distributed no earlier than the first half of 2021 due to the need to process and verify information for all Settlement Class Members who are entitled to a payment and to compute the amount of each payment. Payments may be further delayed if any appeals are filed.
4. **Questions?** If you have any questions about this Former Participant Claim Form, please call the Settlement Administrator at 1-844-791-1288. The Settlement Administrator will provide instruction only regarding completing this form and will not provide financial, tax or other advice concerning the Settlement. You therefore may want to consult with your financial or tax advisor. Information about the status of the approval of the Settlement, Settlement administration, and claim processing is available on the lawsuit website, www.Cornell403bPlanSettlement.com.

You may be eligible to receive a payment from a class action settlement. The Court has preliminarily approved the class settlement of *Cunningham, et al., v. Cornell University, et al.*, Case No. 16-cv-6525 (S.D.N.Y.). That settlement provides allocation of monies to the individual accounts of Settlement Class Members who invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012. Settlement Class Members who are entitled to a distribution but who did not have a plan account with a positive balance as of September 1, 2020 ("Former Participants") will receive their allocation in the form of a check or rollover if and only if they mail a valid Former Participant Claim Form submitted on-line no later than **November 23, 2020** or postmarked no later than **November 23, 2020** to the Settlement Administrator. For more information about the Settlement, please see www.Cornell403bPlanSettlement.com, or call 1-844-791-1288.

If you are a Former Participant (or beneficiary of a Former Participant) in the Plans, you must decide whether you want your payment (1) sent payable to you directly or (2) to be rolled over into another eligible retirement plan or into an individual retirement account ("IRA"). To make that choice, please complete this Former Participant Claim Form and submit on-line at www.Cornell403bPlanSettlement.com no later than **November 23, 2020** or mail this Former Participant Claim Form that is postmarked no later than **November 23, 2020** to the Settlement Administrator. If you do not indicate a payment election, your payment will be sent payable to you directly.

## PART 2: PARTICIPANT INFORMATION

First Name | Middle | Last Name

Mailing Address

City | State | Zip Code

Home Phone

Work Phone or Cell Phone

Participant's Social Security Number

Participant's Date of Birth

M M D D Y Y Y Y

Email Address

☐ Check here if you were a Former Participant, but did not receive this Claim Form in the mail. This may be because you were a participant in the Plan only for a brief period.

## PART 3: BENEFICIARY OR ALTERNATE PAYEE INFORMATION (*IF APPLICABLE*)

☐ Check here if you are the **surviving spouse or other beneficiary** for the Former Participant and the Former Participant is deceased. **Documentation must be provided showing current authority of the representative to file on behalf of the deceased.** Please complete the information below and then continue on to Parts 4 and 5 on the next page.

☐ Check here if you are an **alternate payee under a qualified domestic relations order (QDRO), or attorney-in-fact** for the Former Participant. The Settlement Administrator may contact you with further instructions. Please complete the information below and then continue on to Parts 4 and 5 on the next page.

Your First Name | Middle | Last Name

Your Social Security Number or Tax ID Number

Your Date of Birth

M M D D Y Y Y Y

Your Mailing Address

City | State | Zip Code

## PART 4: PAYMENT ELECTION

☐ **Payment to Self** – A check subject to mandatory federal and applicable state withholding tax will be mailed to your address on the previous page.

☐ **Direct Rollover to an Eligible Plan** – Check only one box below and complete Rollover Information Section Below:

☐ Government 457(b) ☐ 401(a)/401(k) ☐ 403(b)

☐ Direct Rollover to a Traditional IRA ☐ Direct Rollover to a Roth IRA (*subject to ordinary income tax*)

**Rollover Information:**

Company or Trustee's Name (*to whom the check should be made payable*)

Company or Trustee's Mailing Address 1

Company or Trustee's Mailing Address 2

Company or Trustee's City State Zip Code

Account Number Company or Trustee's Phone Number

## PART 5: SIGNATURE, CONSENT, AND SUBSTITUTE IRS FORM W-9

UNDER PENALTIES OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA, I CERTIFY THAT ALL OF THE INFORMATION PROVIDED ON THIS FORMER PARTICIPANT CLAIM FORM IS TRUE, CORRECT AND COMPLETE AND THAT I SIGNED THIS FORMER PARTICIPANT CLAIM FORM.

1. The Social Security number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. person (including a U.S. resident alien).

M M D D Y Y Y Y

**Participant Signature** **Date Signed *(Required)***

Note: If you have been notified by the IRS that you are subject to backup withholding, you must cross out item 2 above. The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholding.

**QUESTIONS? VISIT: WWW.CORNELL403BPLANSETTLEMENT.COM, OR CALL 1-844-791-1288**

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

| | |
|---|---|
| CASEY CUNNINGHAM, *et al*.,<br>*Plaintiffs*,<br>v.<br>CORNELL UNIVERSITY, *et al*.,<br>*Defendants*. | No. 16-cv-6525-PKC |

**[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT**

This litigation arises out of a class action alleging breaches of fiduciary duties and prohibited transactions against the Defendants Cornell University, the Retirement Plan Oversight Committee, and Mary G. Opperman under the Employee Retirement Income Security Act of 1974 (ERISA), as amended, 29 U.S.C. § 1001, *et seq*., with respect to its management, operation, and administration of the Cornell University Retirement Plan for the Employees of the Endowed Colleges at Ithaca and the Cornell University Tax Deferred Annuity Plan (the "Plans"). The parties have negotiated a settlement of the portion of Count V of the Corrected Amended Complaint (Doc. 81) related to the failure to adopt a lower cost share class of the TIAA-CREF Lifecycle Funds upon which summary judgment was denied in an order dated September 27, 2019 (Doc. 352).

The terms of the Settlement are set out in a Class Action Settlement Agreement dated September 18, 2020, executed by the parties and their counsel.

The Court has considered the proposed Settlement. For purposes of this Order, if not defined herein, capitalized terms have the definitions in the Settlement Agreement, which is incorporated herein by reference. Having reviewed the Settlement Agreement and the accompanying and supporting papers, it is **ORDERED** as follows:

1. **Class Certification**: The Court confirms that the Class certified for settlement

purposes only under Fed. R. Civ. P. 23(b)(1) is appropriate, and the Court certifies the following non-opt-out sub-class: "The set of persons who participated in the Plans and invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012, including any Beneficiary of a deceased person who participated in one or more of the Plans at any time during the Class Period and invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012, and any Alternate Payee of a person subject to a Qualified Domestic Relations Order who participated in one or more of the Plans at any time during the Class Period and invested in the TIAA-CREF Lifecycle funds between August 17, 2010 and April 17, 2012. Excluded from the Settlement Class are any individuals that served as members of the Retirement Plan Oversight Committee from August 17, 2010 to April 17, 2012."

2. **Class Representative**: The Court confirms the appointment of Plaintiff Casey Cunningham as the Representative for the settlement sub-class.

3. **Class Counsel**: The Court confirms the appointment of Schlichter Bogard & Denton as Counsel for the settlement sub-class. Under Fed. R. Civ. P. 23(g), the Court has considered:

(a) the work Settlement Class Counsel has done in identifying or investigating potential claims in this Action;

(b) Settlement Class Counsel's experience in handling class actions and other complex litigation;

(c) Settlement Class Counsel's knowledge of the applicable law; and (d) the resources Settlement Class Counsel has committed to representing Plaintiffs and the settlement sub-class. Based on these factors, the Court finds that settlement sub-class Counsel has and will continue to fairly and adequately represent the interests of the

settlement sub-class with respect to the Settlement.

4. **Findings Regarding Notice of Settlement**: The Court finds as follows:

a. In accordance with the Court's Preliminary Approval Order, and as reflected in the information from the Settlement Administrator, Settlement Notices were timely distributed by electronic mail to all Class Members who had a current email address known to the Plans' recordkeepers, TIAA and Fidelity, or last known mailing addresses.

b. In addition, pursuant to the Class Action Fairness Act, 29 U.S.C. § 1711, *et seq.* ("CAFA"), a separate notice of the Settlement ("CAFA Notice") was provided by the Cornell Defendants via the Settlement Administrator to the Attorneys General for each of the states in which a Class Member resides and the Attorney General of the United States.

c. The form and methods of notifying the Class Members of the terms and conditions of the proposed Settlement Agreement met the requirements of Fed. R. Civ. P. 23(c)(2) and (e), and due process, and constituted reasonable notice under the circumstances; and due and sufficient notices of the Fairness Hearing and the rights of all Class Members have been provided to all people, powers and entities entitled thereto, consistent with the Federal Rules of Civil Procedure and the requirements of due process under the United States Constitution.

d. All requirements of CAFA have been met, and the Cornell Defendants have fulfilled their obligations under CAFA.

5. **Approval of Settlement:** Pursuant to Fed. R. Civ. P. 23(e), the Court hereby approves and confirms the Settlement Agreement and the terms therein as being a fair, reasonable, and adequate settlement and compromise of the claims asserted in the Class Action, based on the following findings of fact, conclusions of law, and determination of mixed fact/law questions:

a. The Settlement Agreement resulted from arm's-length negotiations by experienced and competent counsel;

b. The Settlement Agreement was negotiated only after the Settling Parties engaged in extensive litigation and discovery, and on the eve of trial, and Class Counsel has received extensive and pertinent information and documents from the Cornell Defendants;

c. The Settling Parties were well positioned to evaluate the value of the Class Action;

d. If the Settlement Agreement had not been achieved, both Plaintiffs and the Cornell Defendants faced the expense, risk, and uncertainty of extended litigation;

e. The amount of the Settlement — $225,000 — is fair, reasonable and adequate;

f. The Plan of Allocation is fair, reasonable and adequate;

g. At all times, the Class Representative has acted independently;

h. The Class Representative and Class Counsel have concluded that the Settlement Agreement is fair, reasonable and adequate;

i. Class Members had the opportunity to be heard on all issues regarding the resolution and release of their claims by submitting objections to the Settlement Agreement, including to the proposed Plan of Allocation, any requested Attorneys' Fees and Costs, or the Class Representative's Compensation, to the Court;

j. There were no objections to the Settlement; and

6. **Final Approval Granted:** The Motion for Final Approval of the Settlement Agreement is hereby GRANTED, the settlement of the Action is APPROVED as fair, reasonable and adequate to the Plans and the Class, and the Settling Parties are hereby directed to take the

necessary steps to effectuate the terms of the Settlement Agreement.

7. **Dismissal of the Action:** The operative Complaint and the remaining claim asserted therein after the Court's rulings on the motions to dismiss and motions for summary judgment, whether asserted by the Class Representative on his own behalf or on behalf of the Class Members, or on behalf of the Plans, is hereby dismissed with prejudice and without costs to any of the Settling Parties, except as otherwise provided for in the Settlement Agreement and in this Final Approval Order.

8. **Final Injunction:** The Court rules as follows:

a. Each Class Member and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns, shall be: (i) conclusively deemed to have, and by operation of the Effective Approval Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged the Released Parties from the Released Claim; and (ii) barred and enjoined from suing any of the Released Parties in any action or proceeding alleging the Released Claim, even if any Class Member may thereafter discover facts in addition to or different from those which the Class Member or Class Counsel now know or believe to be true with respect to the Class Action and the Released Claim, whether or not such Class Members received notice of the Settlement, whether or not such Class Members have filed an objection to the Settlement, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed.

b. The Plans and each Class Member (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns) on behalf of the Plans shall be: (i)

conclusively deemed to have, and by operation of the Effective Approval Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged the Released Parties from the Released Claim; and (ii) barred and enjoined from suing any of the Released Parties in any action or proceeding alleging the Released Claim, even if the Plans or any Class Member may thereafter discover facts in addition to or different from those which the Plans or any Class Member now knows or believes to be true with respect to the Class Action and the Released Claim.

9. **Release of Claims:** The Class Members and the Plans hereby settle, release, relinquish, waive and discharge the Released Claim, including but not limited to any and all rights or benefits they may now have, or in the future may have, under any law relating to the releases of unknown claims, including without limitation, Section 1542 of the California Civil Code, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." The Class Members and the Plans with respect to the Released Claim also hereby waive any and all provisions, rights and benefits conferred by any law of any State or territory of the United States or any foreign country, or any principle of common law, which are similar, comparable or equivalent in substance to Section 1542 of the California Civil Code.

10. **Release of Claims Related to the Settlement:** Each Class Member shall release the Released Parties, The Cornell Defendants' Counsel, and Class Counsel from any claims, liabilities, and attorneys' fees and expenses arising from the allocation of the Gross Settlement Amount or Net Settlement Amount and for all tax liability and associated penalties and interest as well as related attorneys' fees and expenses.

11. **Class Counsel Attorneys' Fees and Costs and Class Representative Compensation:** The Court awards Class Counsel Attorneys' Fees and Costs in the amount of $88,017.25, to be paid from the Gross Settlement Amount. The Court awards the Class Representative $1,000 as Class Representative Compensation, to be paid from the Gross Settlement Amount.

12. **Jurisdiction:** The Court finds that it has subject matter jurisdiction over the claims herein and personal jurisdiction over the Cornell Defendants, the Plans and the Class Members pursuant to the provisions of ERISA, and expressly retains that jurisdiction for purposes of enforcing this Final Approval Order and/or the Settlement Agreement. Any motion to enforce this Final Approval Order or the Settlement Agreement, including by way of injunction, shall be filed in this Court, and the provisions of the Settlement Agreement and/or this Final Approval Order may be asserted by way of an affirmative defense or counterclaim in response to any action that is asserted to violate the Settlement Agreement.

13. **Settlement Administrator Authority/Plan of Allocation:** The Court rules as follows: The Settlement Administrator shall have final authority to determine the amount of the Net Settlement Amount and to transmit such amount to the Plans' recordkeepers to be used to offset the Plan's recordkeeping fees, pursuant to the Plan of Allocation discussed in Article 6 of the Settlement Agreement, which the Court finds to be fair and reasonable.

14. **Final and Binding**: Upon the Effective Date of this Final Approval Order, all Settling Parties, Class Members and the Plans shall be bound by the Settlement Agreement and by this Final Approval Order.

15. **No Admission of Liability or Wrongdoing**: Under no circumstances shall this Order, the Settlement Agreement and its exhibits, or any of their terms and provisions, the

negotiations and proceedings connected therewith, or any of the documents or statements referred to therein, be construed, deemed or used as an admission, concession or declaration by or against the Cornell Defendants or Released Parties of any fault, wrongdoing, breach or liability.

16. **Null and Void if Final Approval Order Does Not Become Effective**: If this Final Approval Order does not become Effective, this Order and Judgment shall be null and void and shall be vacated nunc pro tunc and Article 10 of the Settlement Agreement shall govern the rights of the Settling Parties thereto.

**SO ORDERED:**

DATED: _____, 202_

_____
HON. P. KEVIN CASTEL
UNITED STATES DISTRICT JUDGE