UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF NORTH CAROLINA

DURHAM DIVISION

LUCIA BINOTTI, individually and on behalf of all others similarly situated, Plaintiff, v. DUKE UNIVERSITY, Defendant.	Case No. 1:20-cv-00470 **PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT** Fed. R. Civ. P. 23

TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT Plaintiff Lucia Binotti hereby moves the Court, pursuant to Federal Rule of Civil Procedure 23, for an order as follows:

1. Finally approving the Settlement with Duke University;

2. Certifying the Settlement Class;

3. Approving the Proposed Plan of Allocation;

4. Entering a Final Approval Order and Judgment.

This motion is based on the accompanying memorandum of points and authorities; the Supplemental Declaration of Amy Fringer on behalf of the settlement administrator; the Declaration of Dean M. Harvey; all exhibits to such documents; the pleadings and other documents on file in this case; and any argument that may be presented to the Court.

Dated: August 2, 2021

Respectfully submitted,

/s/ Dean M. Harvey

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CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2021, I electronically served the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Dean M. Harvey
Dean M. Harvey

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF NORTH CAROLINA

DURHAM DIVISION

LUCIA BINOTTI, individually and on behalf of all others similarly situated, Plaintiff. v. DUKE UNIVERSITY, Defendant.	Case No. 1:20-cv-00470 **BRIEF IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT** Fed. R. Civ. P. 23

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I. INTRODUCTION

Plaintiff Dr. Lucia Binotti and Defendant Duke University ("Duke") agreed to resolve the Class's claims for $19 million. Dkt. 40, 58. On April 22, 2021, the Court granted preliminary approval of the Settlement after finding that it was fair, reasonable, and adequate. Dkt. 55. The Court directed that notice of the Settlement be given to Class Members so that they could have an opportunity to weigh in, including by opting out or objecting. *Id.* at 12-13. The Settlement Administrator has completed the notice program ordered by the Court. Dkt. 65. Not a single Class Member objected. *Id.* ¶ 10. Only eight individuals out of approximately 15,789 Class Members opted out. Supp. Decl. of Amy Fringer ¶ 4. Thus, over 99% of Class Members chose to release their claims in exchange for their share of the Settlement. This support confirms the Court's preliminary conclusions.

Dr. Binotti respectfully requests that the Court now grant final approval to the Settlement and authorize disbursement of funds to the Class.

II. STATEMENT OF FACTS

A. Procedural Background

The procedural history of this case is set forth in Dr. Binotti's motion to direct notice to the Class and pending motion for approval of attorney's fees. Dkt. 40 at 1-3 & Dkt. 59-1 at 2-4. Nevertheless, Dr. Binotti briefly recounts the most significant milestones here. This case began on May 27, 2020, when Dr. Binotti alleged an illegal understanding between Duke and UNC to suppress competition for each other's non-

medical faculty (the "No-Poach Understanding"). Dkt. 1. Dr. Binotti's understanding of the relevant facts depended upon a closely-related prior case, *Seaman v. Duke University*, No. 1:15-cv-00462-CCE-JLW (M.D.N.C.), in which the undersigned served as Class Counsel. That case concerned claims of medical faculty of Duke and UNC, and was resolved by two settlements, the first with UNC and the second with Duke. Order Granting Final Approval Class Action Settlement ("UNC Order"), *Seaman v. Duke Univ.*, No. 1:15-cv-00462-CCE-JLW (M.D.N.C. Jan. 4, 2018), Dkt. 185; Order Granting Final Approval Proposed Class Action Settlement ("Duke Order"), *Seaman v. Duke Univ.*, No. 1:15-cv-00462-CCE-JLW (M.D.N.C. Sept. 24, 2019), Dkt. 387. The settlement with UNC included significant, university-wide injunctive relief. UNC Order, Dkt. 185. The settlement with Duke included a common fund of $54.5 million, and an unprecedented role for the United States Department of Justice to enforce injunctive relief provisions that concerned the entire university. Duke Order, Dkt. 387. While *Seaman* resolved the damages claims of medical faculty and provided injunctive relief to the benefit of all faculty, the damages claims of non-medical faculty remained unaddressed.

To obtain compensation for non-medical faculty such as herself, Dr. Binotti filed her Class complaint. Dkt. 1. On July 27, 2020, Duke answered the complaint and filed a Motion for Judgment on the Pleadings, arguing that (1) Dr. Binotti's claims were barred by the statute of limitations, and (2) Dr. Binotti failed to make factual allegations sufficient to toll the statute of limitations based on fraudulent concealment. Dkts. 16, 17. On November 9, 2020, the Court denied the motion regarding the statute of limitations.

Dkt. 33. The Court held it was plausible that the alleged multi-decade conspiracy continued beyond 2011 and that Duke continued to commit overt acts within the statute of limitations. *Id*. The Court, however, limited damages claims to those sustained after 2016, concluding that Dr. Binotti had not plausibly alleged an active act of concealment, the first prong of the fraudulent concealment test. *Id*.

The parties then made a renewed effort to resolve the matter, involving extensive negotiations that culminated in an arm's length, full-day mediation held on December 16, 2020 with mediator Jonathan Harkavy. Dkt. 41 ¶ 5. That mediation resulted in the proposed Settlement, which the Court preliminarily approved on April 22, 2021 (Dkt. 55), as amended on June 14, 2021 (Dkt. 58). Class counsel filed their motion for attorneys' fees and costs, and a service award for Dr. Binotti, on July 12, 2021. Dkt. 59.

The parties and the Settlement Administrator implemented the notice program according to the Court's order. Duke and UNC provided Class member data to the Settlement Administrator, Rust Consulting, Inc. ("Rust"), on May 21, 2021 and May 27, 2021. Dkt. 65 ¶ 2. On June 28, 2021, Rust sent the long-form notices approved by the Court to all Class Members by mail and e-mail. *Id.* Prior to mailing, Rust updated mailing addresses through the National Change of Address database. *Id.* Rust also established a website for the Class that included all Court documents concerning this Settlement. *Id*. ¶ 4.

The Notice program has been effective. The website has registered over 4,652 unique visits. Dkt. 65 ¶ 4. Only 2,566 mailed notices were returned as undeliverable, and the Notice Administrator was able to identify corrected addresses for 1,990 of those people. *Id*. ¶ 4. Additionally, the Settlement Administrator has received and responded to 29 Class Member inquiries via e-mail, and 197 via telephone. *Id*. ¶¶ 7, 8. Class Counsel received five email inquiries from Class Members or potential Class Members, responded directly to four individuals, and forwarded all inquiries to the claims administer for follow-up as needed. Decl. of Dean M. Harvey ¶ 2. Not a single Class Member objected to the Settlement, Dr. Binotti's request for a service award, or Class Counsel's request for attorney's fees and expenses. Dkt. 65 ¶ 10. In addition, only eight individuals requested to opt out of the Settlement. Supp. Fringer Decl. ¶ 4.

B. Terms of the Settlement

The Settlement Agreement was previously filed as an attachment to the Declaration of Dean M. Harvey in Support of Plaintiff's Unopposed Motion to Direct Notice to the Class. Dkt. 42 (hereinafter "Settlement"). The Settlement Class is the same one preliminary certified by the Court on April 22, 2021 and amended on June 14, 2021 (Dkts. 55, 58), with a Class period from October 1, 2012 to February 5, 2018. Dkt. 55 at 2.

1. Monetary Relief

Duke will pay $19 million into a non-reversionary common fund. Settlement ¶¶ III(1)-(3). Each Class Member's recovery will be calculated in approximate

proportion to their alleged harm, consistent with Dr. Binotti's damages theory. *See* Settlement, Ex. B (Plan of Allocation). The formula accounts for the fact that Class members who earned more or worked longer were allegedly harmed more than those who worked for a shorter period or earned lower compensation.

2. Release of Claims

The Settlement releases Class Members' claims against Duke up to the effective date of the Settlement regarding restraints on competition for faculty, but does not affect any claims that Class Members may have regarding their individual employment relationship with Duke University. Settlement ¶ V(1).

3. Opt-Out Period and Objections

Class Members who wished to opt-out of the Class were able to do so by submitting a request for exclusion to the Notice Administrator. Settlement ¶ II(E)(1). The opt-out period ended on July 28, 2021, 30 calendar days after the Notice Administrator published notice (through local newspapers and social media), mailed notice (through both email and U.S. Mail), made a case-specific website available, and provided a phone number that Class Members could use to ask questions. Dkt. 65 ¶¶ 3, 4, 8, 10. Only eight persons opted out. Supp. Fringer Decl. ¶ 4. Class Members also had the opportunity to object to the Settlement, ¶ II(D), but none did so. Dkt. 65 ¶ 10.¶

4. *Cy Pres* Recipient

The Settlement provides that, if monies remain following all distribution efforts and the remaining funds are insufficient to issue additional distributions to Class

Members, the remainder may be distributed *cy pres* to the American Antitrust Institute. Settlement ¶ IV(A)(8).

III. PROCEDURE FOR SETTLEMENT APPROVAL

A class action may not be settled without court approval. *See* Fed. R. Civ. P. 23(e). Approval is a two-step process of "preliminary" and "final" approval. *See Manual for Complex Litigation* § 21.632, at 414 (4th ed. 2004). The committee notes to the 2018 amendments to Rule 23 discuss the breadth and types of information parties should submit to the court when seeking preliminary approval of a settlement class. *See* Fed. R. Civ. P. 23(e) advisory committee's note to 2018 amendment. As a general standard, the notes state that the proponents of the settlement should ordinarily provide the court with "all available materials they intend to submit to support approval under Rule 23(e)(2) and that they intend to make available to class members." *Id*. That guidance exemplifies what has been called the "frontloading" effect of the 2018 amendments. This first step, the frontloading work of preliminary approval, is now behind us: the Court previously granted Dr. Binotti's motion to direct notice to the class. Dkts. 55, 58.

After the Court directs notice, "notice is sent to the class describing the terms of the proposed settlement, class members are given an opportunity to object or . . . to opt out of the settlement, and the court holds a fairness hearing at which class members may appear and support or object to the settlement." 4 William B. Rubinstein et al., *Newberg on Class Actions* § 13:1 (5th ed. 2019) ("*Newberg*"). Finally, "taking account of all the

information learned during that process, the court decides whether or not to give 'final approval' of the settlement." *Id.*

Having completed the notice program and provided the Court with all relevant details regarding Class Member's response to the Settlement, Dr. Binotti now requests that the Court take the final step of holding a fairness hearing and granting final approval of the Settlement.

The court may approve a class action settlement only after finding that it is fair, reasonable, and adequate. The 2018 amendments to Rule 23 provide new guidance to courts to determine whether settlements are fair, reasonable, and adequate. As amended, Rule 23(e)(2) specifically instructs courts to consider whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) 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;
>
> (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
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). While the text of Rule 23 has been expanded, the purpose of the amendment was not to increase the factors courts consider but rather to re-focus settlement approval on the core concerns. *See* Fed. R. Civ. P. 23(e) advisory committee's note to 2018 amendment.

In determining whether a settlement is fair, the district court examines whether "the settlement was reached as a result of good-faith bargaining at arm's length, without collusion, on the basis of (1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the relevant area of class action litigation." *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 159 (4th Cir. 1991); *see also Scardelletti v. Debarr*, 43 Fed. Appx. 525, 528 (4th Cir. 2002). The Court should also "be satisfied that the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval." *Cox v. Branch Banking & Tr. Co.*, No. 5:17-cv-1982, 2019 WL 164814, at *2 (S.D. W.Va. Jan. 10, 2019) (citation and omitted).

In considering the settlement's adequacy, the court considers the "(1) relative strength of [the plaintiffs'] case on the merits, (2) existence of any difficulties of proof or strong defenses [the plaintiffs] are likely to encounter if the case goes to trial, (3) anticipated duration and expense of additional litigation, (4) solvency of [the defendants]

and likelihood of recovery of a litigated judgment, and (5) degree of opposition to the settlement." *Id.*

IV. ARGUMENT

As the Court preliminarily found, the Settlement is fair, reasonable, and adequate. The Class's clear support for the Settlement, following an appropriate notice process, confirms the Court's preliminary conclusion. The Court should now grant final approval of the Settlement.

A. The Settlement is Excellent, Fair, and Reasonable

1. A $19 Million Cash Recovery

The Court already held that, in light of the risks of continued litigation, the $19 million monetary recovery "is a strong a result for the class." Dkt. 55 at 11. As explained in the motion to direct notice to the Class, the Settlement amount is excellent in light of the high-risk and complex nature of Dr. Binotti's claims. Regular rank faculty, who worked the longest and were paid the most, and thus suffered the most harm under Dr. Binotti's theory, will receive an average gross recovery of $3,207 per person. Non-regular rank faculty, who worked short periods of time and were paid much less and thus suffered less harm under Dr. Binotti's theory, will still receive an average gross recovery of $208. This result is excellent given the Court's decision that the claims for damages before 2016 are barred by the statute of limitations (Dkt. 33 at 2, 4-5), and for damages after 2016, the Class would face the challenge of persuading a jury that Duke and UNC continued their alleged no-poach agreement even after Dr. Seaman filed her complaint on

June 9, 2015. Dr. Binotti would have sought reconsideration of the decision, or an appeal, but there is no guarantee Dr. Binotti would have prevailed. This weighs in favor of final approval because "continued litigation risks the possibility of little or no recovery for Plaintiffs." *See Brunson v. La.-Pac. Corp*., 818 F.Supp.2d 922, 926 (D.S.C. 2011). Settling the case at this juncture "affords a substantial and immediate remedy for the Class Members while obviating the need for further expensive and time-consuming discovery and motion practice; a lengthy, uncertain and expensive trial; and appeals on numerous complex legal and factual issues." *Id*. at 927 (finding that the fairness of the settlement weighed in favor of final approval, particularly considering the risk, complexity, and expense of continued litigation).

In short, these risks counsel in favor of the Settlement. Class Counsel, based on its familiarity with the record, prior work in this case and *Seaman*, and consultation with Dr. Binotti, weighed these risks and concluded that a guarantee of $19 million would better serve the Class's interests than gambling with dispositive motions, potential appeals, and trial. As the Court recognized, "counsel for Dr. Binotti have extensive experience in antitrust and class action litigation, and their informed opinion is entitled to some weight." Dkt. 55 at 10. *See also Cox*, 2019 WL 164814, at *2 (recognizing that class counsel "who are both experienced in prosecuting and defending complex class action claims" and with a "clear view of the strengths and weaknesses of their cases" are "in a strong position to make an informed decision regarding the reasonableness of a potential settlement" (citation omitted)).

B. Dr. Binotti and Class Counsel Vigorously Advanced the Class's Interests

Dr. Binotti has represented the Class well. This is the first and only case asserting damages claims for non-medical faculty regarding the allegations in Dr. Binotti's complaint. Without the efforts of Dr. Binotti, these claims would have gone unaddressed, and the Class would not receive compensation for the misconduct Dr. Binotti alleges. After filing this action, Dr. Binotti closely monitored developments, helped the undersigned negotiate and evaluate possible settlements, and attended the mediation that ultimately resulted in an agreement. Dkt. 41 ¶ 11.

Class Counsel have also advanced the Class's interests, including vigorously defending against Duke's Motion for Judgment on the Pleadings. Dkt. 41 ¶¶ 2, 14. The motion involved complex questions of law, prompting the Court to grant permission for the Parties to supply supplemental briefing. Dkts. 28, 32. Class Counsel's work in this case depended upon their prior work in the *Seaman* litigation. When *Seaman* was filed, Dr. Seaman was only aware of the alleged no-poach agreement between the Duke and UNC medical schools. Through discovery in that litigation, Class Counsel unearthed documentary evidence and elicited witness testimony regarding an allegedly broader understanding between Duke and UNC that involved the entire universities. In *Binotti*, Class Counsel also retained qualified economic experts to estimate the extent to which the alleged misconduct suppressed Class pay. Dkt. 41 ¶ 5. That estimate informed the settlement negotiations with Duke. *Id.*

In sum, the Court should conclude that Class Counsel and Dr. Binotti have vigorously represented the Class's interests.

C. The Allocation Plan Compensates Class Members Based on The Degree of Harm

The Court previously concluded that "[t]he proposed allocation plan is fair and reasonable as it will compensate Class Members on a pro rata basis according to the degree of alleged harm they suffered." Dkt. 55 at 11-12. Specifically, each Class Member will receive an amount based on the total compensation they received from Duke or UNC while working in a Class position during the Class Period, divided by the total compensation received by all Class Members in those positions during that time. This formula accounts for the fact that employees who worked longer or with higher salaries were allegedly harmed more. *See* Dkt. 58 at 4; *In re High-Tech Antitrust Litig.*, No. 11-cv-02509-LHK, 2015 WL 5159441, at *6 (N.D. Cal. Sept. 2, 2015) (in no-poach case, approving identical allocation plan because it "provides a neutral and uniform metric by which to allocate the Settlement, consistent with Plaintiffs' expert opinions"); *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 461 (D. Md. 2014) (observing that allocation plan "need not meet standards of scientific precision" so long as it "[has] a reasonable and rational basis"); *In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 107 (E.D. Pa. 2013) ("In general, a plan of allocation that reimburses class members based on the type and extent of their injuries is reasonable." (citation omitted)).

No Class Member has objected to the allocation plan. The Court should affirm that the proposed pro-rata distribution is fair and reasonable.

D. The Proposed *Cy Pres* Recipient Is Appropriate

"[A] *cy pres* distribution is designed to be a way for a court to put any unclaimed settlement funds to their 'next best compensation use, e.g., for the aggregate, indirect, prospective benefit of the class.'" *Klier v. Elf Atochem N. Am., Inc.*, 658 F.3d 468, 474 (5th Cir. 2011) (quoting *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 436 (2d Cir. 2007). The doctrine does not require "that settling parties select a *cy pres* recipient that the court or class members would find ideal," but rather only that there be "a substantial nexus to the interests of the class members" in light of "the nature of the plaintiffs' lawsuit, the objectives of the underlying statutes, and the interests of the silent class members." *Lane v. Facebook, Inc.*, 696 F.3d 811, 821 (9th Cir. 2012) (citation omitted). Generally, courts approve *cy pres* distributions "only when more redistribution is no longer feasible." *Newberg* § 12:32. Here, a *cy pres* distribution would occur only if redistribution of any unclaimed funds to Class Members would not be economically feasible. Settlement ¶ IV(A)(8).

Dr. Binotti proposes that the Court designate the American Antitrust Institute (AAI) as the *cy pres* recipient. This is the same *cy pres* recipient the Court previously approved regarding the earlier Settlement in *Seaman*. Duke Order, Dkt. 387 at 11-12. The AAI is an independent, nonprofit organization devoted to promoting competition that protects consumers, businesses, and society. Its mission includes "research, education, and advocacy on the benefits of competition and the use of antitrust enforcement as a

vital component of national and international competition policy."[1] The AAI would be a suitable *cy pres* recipient in light of its track record advocating specifically against no-poach agreements on behalf of workers.[2] In Class Counsel's judgment, the AAI is an appropriate *cy pres* recipient whose mandate bears a sufficient nexus to this case and to the advancement of Class Members' interests. Thus, Class Counsel recommends the Court authorize *cy pres* funds to the AAI.

E. The Notice Effectively Apprised Class Members of Their Rights

As ordered by the Court, the Notice Administrator has delivered individual notice to Class Members by mail and e-mail. Dkt. 65 ¶ 3. The notice explained the nature of this case, the terms of the proposed Settlement, the requested attorney's fees and costs and service award, and provided Class Members with an opportunity to opt out or file an objection. *Id.*, Exs. A, B. All material case documents and Settlement-related documents were also posted to a publicly-accessible website, which included instructions to contact Class Counsel and the Settlement Administrator with questions about the Settlement. *Id.*

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[1] Am. Antitrust Inst., *Mission and History*, https://www.antitrustinstitute.org/about-us/ (last visited July 30, 2021).

[2] *See, e.g.*, Randy Stutz, *AAI Issues New White Paper on the Antitrust Treatment of Labor-Market Restraints*, Am. Antitrust Inst. (July 31, 2018), https://www.antitrustinstitute.org/work-product/2246/; Randy Stutz, *AAI Asks FTC and DOJ to Deliver on Promise of Tough Sanctions for Naked Wage-Fixing Agreements (In the Matter of Your Therapy Source)*, Am. Antitrust Inst. (Aug. 31, 2018), https://www.antitrustinstitute.org/work-product/aai-asks-ftc-and-doj-to-deliver-on-promise-of-tough-sanctions-for-naked-wage-fixing-agreements-in-the-matter-of-your-therapy-source/; Diana L. Moss & Randy Stutz, *AAI Says DOJ Too Lenient on Vertical Franchise No-Poaching Agreements*, Am. Antitrust Inst. (May 2, 2019), https://www.antitrustinstitute.org/work-product/aai-says-doj-too-lenient-on-vertical-franchise-no-poaching-agreements/.

¶ 4. The Settlement Administrator also published ads on LinkedIn and Facebook, which resulted in 763,310 impressions and 1,665 clicks, as well as the online publications of two local newspapers, the Daily Tar Heel and The Chronical, which resulted in a total of 79,393 impressions and 78 clicks. Suppl. Fringer Decl. ¶¶ 2,3, Exs. A, B. Further, Class Members are employees in a tightly-knit academic community in the same locale, and this case has already received publicity.[3] In light of these factors, the notice program comported with the requirements of Rule 23 and due process. *See* Fed. R. Civ. P. 23(e)(1)(B) (notice must be given to class "in a reasonable manner"); *Domonoske v. Bank of Am., N.A.*, 790 F.Supp.2d 466, 472 (W.D. Va. 2011) ("In the context of a class action, the due process requirements of the Fifth Amendment require reasonable notice combined with an opportunity to be heard and withdraw from the class." (citation omitted)).

F. The Requirements for Class Certification Are Met

Dr. Binotti also respectfully requests that the Court certify the following Settlement Class:

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[3] *See, e.g.*, Connie Gentry, *An Improper Pact Between UNC, Duke?*, Triangle Bus. J. (July 31, 2020), https://www.bizjournals.com/triangle/news/2020/07/31/duke-unc-class-action-lawsuit-salaries.html; Leah Boyd, *UNC Professor Sues Duke, Alleges Agreement with UNC to Suppress Competition for Faculty*, Duke Chron. (May 28, 2020), https://www.dukechronicle.com/article/2020/05/duke-university-unc-professor-sues-duke-alleges-agreement-suppress-competition-faculty-lawsuit; Daphne Zhang, *Insurer Must Face Duke's Suit Over Antitrust Class Actions*, Law 360 (June 8, 2021), https://www.law360.com/articles/1391964/insurer-must-face-duke-s-suit-over-antitrust-class-actions.

> All natural persons employed by Duke University or the University of North Carolina, Chapel Hill from October 1, 2001 through February 5, 2018, as a faculty member. Excluded from the Class are: members of the boards of directors and boards of trustees, boards of governors, senior administrators of Duke and UNC, unpaid faculty, and faculty with an academic appointment at the School of Medicine; and any and all judges and justices, and chambers' staff, assigned to hear or adjudicate any aspect of this litigation.

Dk. 58 at 5. The Court has already determined this proposed Settlement Class meets the Rule 23(a) prerequisites. Dkt. 55 at 3. First, the Court correctly concluded in its Order Granting Notice to the Class that the over 15,000 Settlement Class members are "so numerous that joinder of all members is impractical." Dkts. 55 at 3, 58. Second, the Court correctly held that commonality is satisfied because the question of whether Duke and UNC entered into a no-poach agreement restraining recruitment and hiring overshadows other issues. Dkt. 55 at 3. Third, the Court properly concluded Dr. Binotti has claims that are typical of the Settlement Class because she shares "the same alleged injuries arising from the same alleged conduct: suppression of [ ] compensation due to the alleged no-poach agreement." *Id*. at 3-4. Fourth, the Court correctly held Dr. Binotti adequately represents the Class because Dr. Binotti and the Class share the same interest in "proving that Duke's conduct violated antitrust laws and suppressed compensation and mobility as a result." *Id*.

The Court also correctly concluded the predominance and superiority requirements of Rule 23(b)(3) are satisfied. Dkt. 55 at 5. The Court held predominance is met because there are two important questions that can be answered with common proof absent individual inquiries: (1) whether the no-poach agreement injured Dr. Binotti

and the Class, and (2) whether damages can be measured through a common method. *Id.* at 6. The Court also held that superiority is satisfied because class treatment is the superior procedure given there is no other litigation concerning this matter currently pending and there is a substantial interest in resolving the issues raised in this litigation in one forum. *Id*. No facts or law have changed since the Court reached these conclusions. In sum, there is no reason for the Court to deviate from its previous conclusion that the Rule 23(a) and Rule (b)(3) requirements are met. The Court should certify the Class for the purpose of Settlement.

V. CONCLUSION

For the above reasons, Dr. Seaman respectfully requests that the Court: (1) finally approve the Settlement as fair, reasonable, and adequate; (2) certify the Class; (3) approve the proposed Plan of Allocation; and (4) enter a Final Approval Order and Judgment.

Dated: August 2, 2021

Respectfully submitted,

/s/ Dean M. Harvey

Dean M. Harvey*
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CERTIFICATE OF COMPLIANCE WITH CIVIL LOCAL RULE 7.3

I hereby certify that the BRIEF IN SUPPORT OF MOTION TO FILE UNDER SEAL complies with Local Rule 7.3(d) and contains fewer than 6,250 words.

This the 2nd day of August, 2021.

/s/ Dean M. Harvey
Dean M. Harvey

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2021, I electronically served the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Dean M. Harvey
Dean M. Harvey

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF NORTH CAROLINA

DURHAM DIVISION

LUCIA BINOTTI, individually and on behalf of all others similarly situated, Plaintiff. v. DUKE UNIVERSITY, Defendant.	Case No. 1:20-cv-00470 **[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

This matter comes before the Court on Plaintiff Dr. Lucia Binotti's motion for final approval of a class action settlement with Duke University ("Duke"). A final fairness hearing at which counsel for all parties and Class Members had an opportunity to appear was held on August 25, 2019. The Court having considered the motion, all other papers filed concerning that motion, and all other pertinent documents and pleadings filed in this action, and counsel and all interested parties having been heard at a final fairness hearing, hereby **GRANTS** Plaintiff's motion, enters final judgment, and dismisses this action with prejudice.

FACTORS FOR CLASS CERTIFICATION

1. The proposed Settlement Class is defined as:

> All natural persons employed by Duke University or the University of North Carolina, Chapel Hill from October 1, 2001 through February 5, 2018, as a faculty member. Excluded from the Class are: members of the boards of directors and boards of trustees, boards of governors, senior

administrators of Duke and UNC, unpaid faculty, and faculty with an academic appointment at the School of Medicine; and any and all judges and justices, and chambers' staff, assigned to hear or adjudicate any aspect of this litigation.

2. When a settlement is reached prior to Rule 23 certification, a Class may be certified solely for the purposes of settlement. *Covarrubias v. Capt. Charlie's Seafood, Inc.*, No. 2:10-CV-10-F, 2011 WL 2690531, at *2 (E.D.N.C. July 6, 2011).

3. The parties seeking class certification must meet the four prerequisites of Federal Rules of Civil Procedure 23(a)(1) through (4): numerosity, commonality, typicality, and adequacy. Fed. R. Civ. P. 23(a); *Cerrato v. Durham Pub. Sch. Bd. of Educ.*, No. 1:16CV1431, 2017 WL 2983301, at *2 (M.D.N.C. Mar. 17, 2017). The Court will certify the class for purposes of settlement.

a. First, the Settlement Class – which has over 15,000 members – is so numerous that joinder of all members is impracticable.

b. Second, commonality is satisfied because the common question of whether Duke and UNC entered into an unlawful agreement is "dispositive and over-shadow[s] other issues." *Lienhart v. Dryvit Sys., Inc.*, 255 F.3d 138, 146 (4th Cir. 2001). Specifically, the following major factual and legal issues are common to the Settlement Class: whether Duke and UNC entered into a no-poach agreement restraining recruitment and hiring, the agreement's scope and duration, and its effect on compensation.

c. Third, Dr. Binotti – who has worked as a non-medical faculty member at UNC since 1990, Doc. 1 at p.5, and allegedly was paid less during the Class Period as a result of the alleged agreement – has claims that are typical of the Settlement

Class. *Deiter v. Microsoft Corp.*, 436 F. 3d 461, 466 (4th Cir. 2006) ("[A] class representative must be part of the class and possess the same interest and suffer the same injury as the class members."). Dr. Binotti shares with the Settlement Class Members the same alleged injuries arising from the same alleged conduct: suppression of their compensation due to the alleged no-poach agreement.

d. Lastly, Dr. Binotti adequately represents the class. "The adequacy inquiry . . . serves to uncover conflicts of interest between named parties and the class they seek to represent." *Windsor*, 521 U.S. at 625. The Court has carefully evaluated whether Dr. Binotti adequately represents the Class, as intraclass conflicts may arise where, as here, some of the Class claims are potentially time-barred, if the settlement value of one set of claims (e.g., "timely" or "time-barred") is substantially higher than the other. *See In re Cmty. Bank of N Va. Marg. Lending Practices Litig.*, 795 F.3d 380, 389 (3d Cir. 2015); *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 220 (5th Cir. 1981). However, a conflict will only defeat the adequacy requirement if it is fundamental. *Sharp Farms v. Speaks*, 917 F.3d 276, 295 (4th Cir. 2019). A conflict is not fundamental if all class members: (1) "share common objectives and the same factual and legal positions," and (2) have the same interest in proving the defendant's liability. *Id.* (citation omitted). Here, Dr. Binotti and the Class have the same interest in proving that Duke's conduct violated antitrust laws and suppressed compensation and mobility as a result. *See In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 272-73 (3d Cir. 2009) (rejecting a time-period conflict argument because the class members "shared a unified

interest" in establishing liability). There is nothing to indicate that any unnamed Class Members would assert a different legal or factual position to prove Duke's liability or to measure the damages resulting from the alleged conspiracy. *See Sharp Farms*, 917 F.3d at 295 (holding a fundamental conflict existed where, because of divergent legal theories, the settlement "would provide broader relief to [part of] the settlement class at the expense of [other] class members . . . ."). Approximately 95% of Class Members have claims in both periods, Doc. 51 at ¶ 4, and, like Dr. Binotti, have an interest in maximizing damages for both periods. Moreover, the adequacy of the settlement does not rest only on the value of one set of claims; each set of claims had strengths and weaknesses and after careful investigation and consideration, Dr. Binotti and her counsel concluded that that there was no basis to value the claims of one period differently than the other. Doc. 49-1 at ¶¶ 5-6. There appears to be a reasonable and rational basis to distribute the settlement funds evenly throughout the Class Period, as proposed in the Settlement Agreement. *See Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 461 (D. Md. 2014) ("The proposed allocation need not meet standards of scientific precision, and given that qualified counsel endorses the proposed allocation, the allocation need only have a reasonable and rational basis.") (citation omitted); *see also In re Corrugated Container Antitrust Litig.*, 643 F.2d at 220 (listing circumstances in which an "even spread" across two time periods may be appropriate). In light of the percentage of Class Members with claims in both periods and the similar valuation of the claims, any intraclass conflict arising from the fact that the Class Period covers "timely" and "time-

barred" claims is minimal and is not a fundamental conflict sufficient to defeat the adequacy requirement at this stage.

4. Class certification is therefore appropriate if the predominance and superiority requirements of Rule 23(b)(3) are satisfied. Fed. R. Civ. P. 23(b)(3). First, "questions of law or fact common to class members [must] predominate over any questions affecting only individual members . . . ." *Id.* Second, "a class action [must be] superior to other available methods for fairly and efficiently adjudicating the controversy." *Id*. In settlement-only certification cases, "a district court need not inquire whether the case, if tried, would present intractable management problems, see Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial." *Windsor*, 521 U.S. 591 at 620.

a. Here, predominance is met because the significant legal and factual questions pertinent to the underlying cause of action that can be answered with common proof and without individual inquiries include whether (1) Duke entered an agreement violating the antitrust law; (2) the agreement injured Plaintiff and the Class; and (3) whether damages can be measured through a common method. *See In re Titanium Dioxide Antitrust Litig.*, 284 F.R.D. 328, 344 (D. Md. 2012). The same is true for impact and damages. Proof of injury is not individualized, but rather, depends on a common theory that pay structures at Duke and UNC were systematically suppressed, thus affecting all class members.

b. Superiority is also satisfied. Class treatment of the legal issues identified in this case would be superior to other procedures for the handling of the claims. No other litigation concerning this matter and filed by any of the parties involved in the present action is currently pending. Furthermore, this Court has a substantial interest in the resolution of the issues raised in this litigation occurring in one forum.

5. Based on these findings and reasons, the Court hereby certifies the Settlement Class under Rule 23(b)(3).

6. The Court hereby appoints Dr. Binotti and her counsel as Settlement Class Representative and Settlement Class Counsel.

a. Appointment of Dr. Binotti as Settlement Class Representative is appropriate because she is a member of the Settlement Class, she has adequately represented the interests of the Settlement Class in the past, and there is nothing to indicate that she will be unable to represent those interests in the future.

b. Appointment of Lieff, Cabraser, Heimann & Bernstein, LLP (LCHB), Elliot Morgan and Parsonage, P.A. (EMP), and Edelstein & Payne (EP) as Settlement Class Counsel is appropriate. In evaluating the appointment of class counsel, courts must consider: (i) counsel's work in identifying or investigating claims; (ii) counsel's experience in handling the types of claims asserted; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A).

i. Counsel's work in identifying and investigating the claims at issue in this action dates back many years. See Doc. 49-1 at ¶ 8, Doc. 41 at ¶ 13. LCHB and EMP successfully negotiated a settlement for the medical faculty at UNC and Duke in *Seaman v. Duke University*, No. 1:15-cv-00462 (M.D.N.C.), an action arising out of the same alleged no-poach agreement. Doc. 41 at ¶ 13; Doc. 49-1 at ¶¶ 6, 8. Through discovery in that litigation, counsel obtained documentary evidence and elicited witness testimony revealing the alleged agreement stretched beyond the medical schools. Doc. 41 at ¶ 13.

ii. Second, LCHB, EMP, and EP have significant experience handling class actions, including antitrust and employment class actions. Doc. 44 at ¶¶ 3-12; Doc. 43 at ¶¶ 3-7; Doc. 44 at ¶¶ 3-12.

iii. Third and relatedly, LCHB, EMP, and EP have demonstrated their knowledge of the applicable law by successfully negotiating the Settlement here and Seaman settlement, and defeating part of Duke's motion for judgment on the pleadings, despite the unsettled case law underlying some of its theories for proving liability. Doc. 33 at 3-4. Thereafter, counsel renewed settlement discussions with Duke, capitalizing on the fact that the Court's order highlighted the risks of litigation for both sides. Doc. 49-1 at ¶¶ 11-13.

iv. Fourth, LCHB, EMP, and EP have devoted ample resources to litigating this action and to negotiating the Settlement. *Id.* at ¶¶ 9-13; Doc. 43 at ¶¶ 8-9; Doc. 44 at ¶¶ 13-14.

FACTORS FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

7. Dr. Binotti's motion to grant final approval of the proposed Settlement is **GRANTED**.

8. Unless otherwise defined herein, all terms that are capitalized herein shall have the meanings ascribed to those terms in the Settlement Agreement.

9. The Court makes the following FINDINGS under Federal Rule of Civil Procedure 23:

a. "It has long been clear that the law favors settlement." *United States v. Manning Coal Corp.*, 977 F.2d 117, 120 (4th Cir. 1992). This is particularly true in class actions. *Reed v. Big Water Resort, LLC*, No. 2:14-cv-101583-DCN, 2016 WL 7438449, at *5 (D.S.C. May 26, 2016) (noting the "strong judicial policy in favor of settlements, particularly in the class action context" (citation omitted)); 4 William B. Rubenstein et al., *Newberg on Class Actions* § 13.44 & n.1 (5th ed. 2018) ("*Newberg*") (collecting cases).

b. The Court previously granted preliminary approval of the Settlement, finding that it was fair, reasonable, and adequate, and that the Court was likely to grant final approval of the Settlement pursuant to Federal Rule of Civil Procedure 23(e)(2). *See* Dkt. 55. Accordingly, notice to the Class was distributed on June 28, 2021, pursuant to the Court-approved notice plan. Dkt. 65 ¶ 3. The Class had 30 days to object or, if eligible, to opt-out of the Settlement. There were no objections and only 8 Class Members opted out. Supp. Decl. of Amy Fringer ¶ 4. "[T]aking

account all of the information learned during [the notice process], the court [now] decides whether or not to give 'final approval' to the settlement." *Newberg* § 13:1.

c. A class settlement may be approved if it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991). "In applying this standard, the Fourth Circuit has bifurcated the analysis into consideration of fairness, which focuses on whether the proposed settlement was negotiated at arm's length, and adequacy, which focuses on whether the consideration provided the class members is sufficient." *Beaulieu v. EQ Indus. Servs., Inc.*, No. 5:06-CV-00400BR, 2009 WL 2208131, at *23 (E.D.N.C. July 22, 2009) (citing *Jiffy Lube*, 927 F.2d at 158-59).

d. A four-factor test is applied to determine the fairness of a proposed settlement: "(1) the posture of the case at the time the proposed settlement was reached, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the settlement negotiations, and (4) counsel's experience in the type of case at issue." *Id.* at *24.

e. All four fairness factors favor approval here. As the Court held at preliminary approval, *see* Dkt. 55 at 11, the Settlement was reached after adversarial litigation, including Duke's Motion for Judgment on the Pleadings, which involved complex questions of law prompting the Court to grant permission for the Parties to supply supplemental briefing. Dkts. 28, 32. Further, Class Counsel's work in the *Seaman* litigation set the stage for these settlement negotiations. Class Counsel also

retained qualified economic experts to estimate the extent to which the alleged misconduct suppressed Class pay. Dkt. 41 ¶ 5. Counsel for both sides had sufficient information to evaluate the costs and benefits of settlement at this juncture. The parties' negotiations were adversarial and at arm's-length. The negotiations were facilitated through the capable work of a neutral third-party mediator, Jonathan Harkavy. Finally, counsel for Dr. Binotti have extensive experience in antitrust and class action litigation, and their informed opinion is entitled to weight.

f. The Court assesses the adequacy of the Settlement through the following factors: "(1) the relative strength of the plaintiffs' case on the merits, (2) any difficulties of proof or strong defenses the plaintiffs would likely encounter if the case were to go to trial, (3) the expected duration and expense of additional litigation, (4) the solvency of the defendants and the probability of recovery on a litigated judgment, and (5) the degree of opposition to the proposed settlement." *Beaulieu*, 2009 WL 2208131, at *26 (citing *Jiffy Lube*, 927 F.2d at 158; *Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 829-30 (E.D.N.C. 1994)).

g. As to the first and second factors, Dr. Binotti has adequately explained both the strengths and risks associated with continued litigation of her claims and trial. In particular, though Dr. Binotti had evidence of liability, Duke was prepared to introduce contrary evidence that the alleged no-poach agreement either did not exist or was not in force during the Class Period. Additionally, settlement is favorable at this stage given the Court's decision that the claims for damages before 2016 are barred by

the statute of limitations (Dkt. 33 at 2, 4-5), and for damages after 2016, the Class would face the challenge of persuading a jury that Duke and UNC continued their alleged no-poach agreement even after Dr. Seaman filed her complaint on June 9, 2015. Dr. Binotti could have sought reconsideration of the decision, or an appeal, but there is no guarantee Dr. Binotti would have prevailed. In light of these risks, the $19 million monetary recovery reflects a strong result for the Class. The proposed allocation plan is fair and reasonable as it will compensate class members on a pro rata basis according to the degree of alleged harm they suffered.

h. As to the third factor, the parties were fully informed about the strengths and weaknesses of the evidence. Continued litigation would involve considerable time and expense of the parties and the Court, and would have risked the chance of no recovery for the Class. The Settlement guarantees Class Members significant monetary and injunctive relief.

i. The fourth factor is irrelevant because there is no indication that Duke would be unable to satisfy a judgment.

j. The fifth factor, the degree of opposition to the Settlement, can now be evaluated because the Class has had an opportunity to comment in response to the notice program. Out of thousands of Class Members, not a single person objected to the Settlement, the proposed allocation plan, the proposed request for attorney's fees and reimbursement of costs, or the proposed service award for Dr. Binotti. Dkt. 65 ¶ 10. Furthermore, only 8 Class Members exercised their right to opt out of the Class. Supp.

Fringer Decl. ¶ 4. In other words, over 99% of Class Members have chosen to release their claims against Duke in exchange for relief under the Settlement. The lack of objections and the small number of exclusion requests are a strong indication of widespread support for the Settlement, and that the Settlement is fair, reasonable, and adequate. *See In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 257 (E.D. Va. 2009) ("[A]n absence of objections and a small number of opt-outs weighs significantly in favor of the settlement's adequacy."); *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975) ("The attitude of the members of the class, as expressed directly or by failure to object, after notice, to the settlement, is a proper consideration for the trial court . . . .").

k. The Court therefore concludes that the Settlement and proposed Plan of Allocation are fair, reasonable, and adequate and satisfy the criteria for final approval under Federal Rule of Civil Procedure 23.

Notice to Class Members

10. The Class notice was delivered by mail and e-mail to all Class Members. *See* Dkt. 65 ¶ 3, Exs. A-B. The mail and e-mail notices clearly explained Class Members' rights, including the nature of the action, the Class definition, the legal issues, Class Members' rights to make an appearance with an attorney, Class Members' right to request exclusion, Class Members' right to object to the Settlement, and the binding effect of a Class judgment. *See* Fed. R. Civ. P. 23(c)(2)(B)(i)-(vii). The Notice also apprised Class Members of Class Counsel's intent to request 25% of the common fund as

attorney's fees, to request reimbursement of costs, and to request a service award for Dr. Binotti.

11. Notice was also given through a case-specific website that published all relevant litigation documents and settlement notices, and which received over 4,652 unique visits. *See* Dkt. 65 ¶ 4. Additionally, the Settlement Administrator established a toll-free telephone number and handled calls from over 197 Class Members concerning the Settlement. *Id*. ¶ 8.

12. The Court finds that the notice program effectively apprised Class Members of their rights, was the best practicable under the circumstances, and complied with all due process requirements. *See* Fed. R. Civ. P. 23(e)(1)(B) (notice must be given to class "in a reasonable manner"); *Domonoske v. Bank of Am., N.A.,* 790 F.Supp.2d 466, 472 (W.D. Va. 2011) ("In the context of a class action, the due process requirements of the Fifth Amendment require [r]easonable notice combined with an opportunity to be heard and withdraw from the class." (citation omitted)).

Designation of *Cy Pres* Recipient

13. "[A] *cy pres* distribution is designed to be a way for a court to put any unclaimed settlement funds to their 'next best compensation use, e.g., for the aggregate, indirect, prospective benefit of the class.'" *Klier v. Elf Atochem N. Am., Inc.*, 658 F.3d 468, 474 (5th Cir. 2011) (quoting *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 436 (2d Cir. 2007). The doctrine does not require "that settling parties select a *cy pres* recipient that the court or class members would find ideal," but rather only that there

be "a substantial nexus to the interests of the class members" in light of "the nature of the plaintiffs' lawsuit, the objectives of the underlying statutes, and the interests of the silent class members." *Lane v. Facebook, Inc.*, 696 F.3d 811, 821 (9th Cir. 2012) (citation omitted). Generally, courts approve *cy pres* distributions "only when more redistribution is no longer feasible." *Newberg* § 12:32.

14. Pursuant to the parties' Settlement, a cy pres distribution is only contemplated if further redistribution of unclaimed funds to Class Members would not be economically feasible. *See* Settlement ¶ IV(A)(8). Dr. Binotti proposes that the Court designate the American Antitrust Institute (AAI) as the *cy pres* recipient. The AAI is an independent, nonprofit organization devoted to promoting competition that protects consumers, businesses, and society. Its mission includes "research, education, and advocacy on the benefits of competition and the use of antitrust enforcement as a vital component of national and international competition policy." *See* Am. Antitrust Inst., *Mission and History*, https://www.antitrustinstitute.org/about-us/ (last visited July 30, 2021). Further, the AAI has a track record of advocating specifically against no-poach agreements on behalf of workers. *See, e.g.*, Randy Stutz, *AAI Issues New White Paper on the Antitrust Treatment of Labor-Market Restraints*, Am. Antitrust Inst. (July 31, 2018), https://www.antitrustinstitute.org/work-product/2246/.

15. Having reviewed the organization's purpose and considered its nexus to this case and to the advancement of Class Members' interests, the Court concludes that the AAI is an appropriate *cy pres* recipient. Should unclaimed funds remain for which

further redistribution would be economically unfeasible, the Settlement Administrator is authorized to disburse those funds to the AAI.

For these reasons and based on the record before it, the Court **GRANTS** Plaintiff's motion for final approval of the Settlement.

IT IS SO ORDERED.

This the _____ day of _____, 2021.

_____

Hon. Catherine C. Eagles
United States District Judge

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF NORTH CAROLINA

DURHAM DIVISION

LUCIA BINOTTI, individually and on behalf of all others similarly situated, Plaintiff. v. DUKE UNIVERSITY, Defendant.	Case No. 1:20-cv-00470 **[PROPOSED] FINAL JUDGMENT AND DISMISSAL**

The Court hereby enters final judgment in this action as between Plaintiff Dr. Lucia Binotti, the Class, and Defendant Duke University ("Duke" together with Dr. Binotti and the Settlement Class, "Settling Parties"), as defined in Federal Rule of Civil Procedure 58(a).

The final Settlement Agreement between Dr. Binotti, the Class, and Duke is available at Docket Number 42, hereinafter "Settlement." Unless otherwise defined herein, all terms that are capitalized herein shall have the meanings ascribed to those terms in the Settlement.

The term "Settlement Class" shall be defined as follows:

> All natural persons employed by Duke University or the University of North Carolina, Chapel Hill from October 1, 2001 through February 5, 2018, as a faculty member. Excluded from the Class are: members of the boards of directors and boards of trustees, boards of governors, senior administrators of Duke and UNC, unpaid faculty, and faculty with an

academic appointment at the School of Medicine; and any and all judges and justices, and chambers' staff, assigned to hear or adjudicate any aspect of this litigation.

Pursuant to this Final Judgment:

1. All Released Claims of Dr. Binotti and the Settlement Class are hereby released as against Duke and all other Duke Releasees as defined in the Settlement.

2. The Settling Parties are hereby ordered to comply with the terms of the Settlement. The terms of the Settlement are hereby adopted as an order of this Court.

3. Without affecting the finality of the Court's judgment in any way, the Court retains exclusive and continuing jurisdiction over this matter for purposes of resolving any issues relating to the administration, enforcement, consummation, and interpretation of the Settlement, including the Settlement Fund.

4. The Settling Parties and Notice Administrator are authorized to disburse funds to the Class, to the *cy pres* recipient, to Class Counsel, to Dr. Binotti, and to the Notice Administrator, consistent with the terms of the Settlement Agreement and the Court's concurrently-filed order concerning Class Counsel's request for attorney's fees and reimbursement of costs and Dr. Binotti's service award.

5. This action is dismissed with prejudice as against Duke, each side to bear its own costs and attorneys' fees.

6. This document constitutes a final judgment and separate document for purposes of Federal Rule of Civil Procedure 58(a).

7. As this judgment resolves all claims against all remaining parties, the Clerk is directed to close the case.

IT IS SO ORDERED.

This the _____ day of _____.

_____
Hon. Catherine C. Eagles
United States District Judge