

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

CYNTHIA RICHARDS-DONALD and
MICHELLE DEPRIMA, individually and on
behalf of a class of all other persons similarly
situated, and on behalf of the Teachers
Insurance and Annuity Association of America
Code Section 401(k) Plan and the Teachers
Insurance and Annuity Association of America
Retirement Plan,

Plaintiffs,

v.

TEACHERS INSURANCE AND ANNUITY
ASSOCIATION OF AMERICA; and
TIAA PLAN INVESTMENT REVIEW
COMMITTEE,

Defendants.

Civ. A. No. 15-cv-08040-PKC

**UNOPPOSED MOTION FOR CERTIFICATION OF SETTLEMENT CLASS AND
APPOINTMENT OF CLASS COUNSEL**

Plaintiffs Cynthia Richard-Donald and Michelle DePrima, as representatives of a Class of similarly situated persons, and on behalf of the Teachers Insurance and Annuity Association of America Code Section 401(k) Plan and the Teachers Insurance and Annuity Association of America Retirement Plan (collectively “the Plans” and “Plaintiffs”), respectfully file this Motion pursuant to Rule 23 of the Federal Rules of Civil Procedure for certification of a settlement class and appointment of Class Counsel.

1. This action was originally filed in this Court on October 13, 2015 alleging that the Defendants breached their fiduciary duties by, among other things, allowing excessive fees and engaging in prohibited transactions with respect to the Plans. For their part, Defendants deny

any basis for liability and deny Plaintiffs' factual allegations, but admit for settlement purposes only that certification is proper under Fed.R.Civ.P. 23(b)(1).

2. On May 8, 2017, after months of arm-length negotiation, the Parties entered into a Settlement Agreement and requested that the Court preliminarily approve the Settlement Agreement.

3. The proposed Settlement Class is defined as:

All participants in the Teachers Insurance and Annuity Association of America Code Section 401(k) Plan and/or Teachers Insurance and Annuity Association of America Retirement Plan from October 14, 2009 to April 30, 2017. Excluded from the Class are Defendants and current and former members of the Committee, including their beneficiaries.

4. The proposed Settlement Class for settlement purposes meets the requirements of Rule 23(a) and of Rule 23(b)(1) of the Federal Rules of Civil Procedure.

5. Plaintiffs also submit to the Court a Memorandum in Support of the Motion for Certification of a Settlement Class.

WHEREFORE, Plaintiffs' request the Court grant an Order certifying for settlement purposes the above Class pursuant to Fed.R.Civ.P. 23(b)(1) and appoint Bailey & Glasser LLP as Class Counsel.

Dated: May 10, 2017

Respectfully submitted,

s/ Gregory Y. Porter

Gregory Y. Porter, *pro hac vice*

Ryan T. Jenny, *pro hac vice*

Mark G. Boyko, *pro hac vice to be filed*

Bailey & Glasser LLP

1054 31st Street, NW

Suite 230

Washington, DC 20007

Telephone: (202) 463-2101

Facsimile: (202) 463-2103

gporter@baileyglasser.com

rjenny @baileyglasser.com

Kevin Barrett
Bailey & Glasser LLP
137 Betsy Brown Road
Port Chester, NY 10573
Telephone: (646) 776-8580
kbarrett@baileyglasser.com

Major Khan
Major Khan LLC
1120 Avenue of the Americas
Suite 4100
New York, NY 10036
Telephone: (646) 546-5664
Facsimile: (646) 546-5755
mk@mk-llc.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May 2017, a true and correct copy of the foregoing was served upon all counsel of record by operation of this Court's CM/ECF system.

/s/ Gregory Y. Porter
Gregory Y. Porter