**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| CHICAGO TEACHERS UNION, LOCAL 1, et al., | ) | |
| Plaintiffs, | ) | Case Nos. 12-cv-10311, 15-cv-8149 |
| v. | ) | Judge Sara L. Ellis |
| | ) | Magistrate Judge Young Kim |
| BOARD OF EDUCATION OF THE CITY OF CHICAGO, a body politic and corporate, | ) | |
| Defendant. | ) | |

**PLAINTIFFS' UNOPPOSED MOTION FOR CERTIFICATION OF A SETTLEMENT CLASS**

Plaintiffs, the Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO ("CTU"); Donald L. Garrett Jr., Robert Green, and Vivonell Brown, Jr. (the "Named Plaintiffs"); and the class they represent (collectively, with the CTU and the Named Plaintiffs, "Plaintiffs"), through their attorneys, move this honorable Court to certify a Settlement Class in this matter. In support of this unopposed motion, Plaintiffs state as follows:

1. On December 26, 2012, the CTU and the Named Plaintiffs filed a Class Action Complaint (Case No. 12-cv-10311, herein, the "2012 Case") in the United States District Court for the Northern District of Illinois asserting individual and class claims of race discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* ("Title VII"), Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981, and Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. § 1983,

against the Board of Education of the City of Chicago ("Board") on behalf of African-American persons employed by the Board as teachers and paraprofessionals ("PSRPs") in any school or attendance center subject to reconstitution ("turnaround") on or after the 2012 calendar year, after filing charges with the United States Equal Employment Opportunity Commission ("EEOC").

2. On March 13, 2013, the Board answered and denied all material allegations in the complaint and denied any liability to the CTU and the Named Plaintiffs.

3. On September 16, 2015, the CTU and Edward Scott filed a Class Action Complaint (Case No. 15-cv-8149, herein the "2015 Case"; with the 2012 Case, the "Litigation") in the United States District Court for the Northern District of Illinois asserting individual and class claims of race discrimination under Title VII, Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981, and Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, against the Board on behalf of African-American persons employed by the Board as teachers and paraprofessionals in any school or attendance center subject to turnaround on or after the 2011 calendar year, including during the 2013 and 2014 calendar years.

4. On November 30, 2015, the Board answered and denied all material allegations in the complaint and denied any liability to the CTU and Edward Scott.

5. On December 9, 2015, the 2012 and 2015 Cases were consolidated.

6. On June 14, 2016, Mr. Scott was dismissed as a named plaintiff in the 2015 Case and the CTU remained as a plaintiff in its associational capacity, and the

CTU proceeded with the 2015 Case as to declaratory and injunctive relief only. The Court entered a schedule for briefing on class certification, but the CTU did not file a motion for class certification. The Board has asserted that any class claim and any claim for monetary damages were waived by the CTU and Mr. Scott in the 2015 Case.

7. In these cases, Plaintiffs claim that the Board engaged in intentional race discrimination by engaging in a pattern or practice of selecting schools with high percentages of African-American teachers and PSRPs for turnarounds instead of similarly situated schools with high percentages of white teachers and PSRPs. Accordingly, it is Plaintiffs' position that they did not need to ask for class certification in the 2015 Case because the 2012 Case is a pattern or practice case. As such, if Plaintiffs prove that the Board engaged in a pattern or practice of race discrimination, every African-American teacher and PSRP impacted by that pattern or practice is eligible for relief.

8. Plaintiffs also claim that in selecting schools for turnaround, the Board engaged in unintentional discrimination by using a facially neutral policy that had an adverse impact on African-American teachers and PSRPs.

9. The Board denies all claims as to liability, wrongdoing, damages, penalties, interest, fees, injunctive relief, and all other forms of relief, as well as the class allegations and individual claims asserted in the Litigation and asserts the turnarounds were necessary because the schools were chronically failing their

students year after year, and Illinois law authorized turnarounds as a remedy to fix these failing schools.

10. Plaintiffs contend that their claims are meritorious despite the Board's assertions.

11. On December 9, 2015, this Court certified a class of African-American teachers and PSRPs in the 2012 Case, pursuant to Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure (the "Certified Class"). The Certified Class was defined as follows:

> All African American persons employed by the Board of Education of the City of Chicago as a teacher or para-professional staff, as defined in the labor agreement between the Chicago Teachers Union and the Board of Education, in any school or attendance center subjected to reconstitution, or "turnaround," in the 2012 calendar year.

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12. The Court named Plaintiffs Donald L. Garrett Jr., Robert Green, and Vivonell Brown, Jr. as Class Representatives of the Certified Class.

13. The Parties have conducted extensive and comprehensive discovery, investigation and preparation for trial in this matter, now going into the 10th year of this contested litigation. Class Counsel, the CTU, and the Board all recognize that, in the absence of an approved settlement, they face uncertain prospects, including trial and appellate proceedings that will consume years of time and resources, presenting each of them with ongoing litigation risks.

14. Considering such risks and the benefits of settlement, the Parties have participated in extensive settlement negotiations, mediated by Magistrate Judge

Young Kim, since April 19, 2021. These negotiations have been conducted in good faith and at arm's length. Subject to the Court's review and approval, these efforts resulted in an agreement to settle this action in lieu of a trial on the merits.

15. As part of the settlement, Class Counsel, the CTU and the Board have agreed that the Plaintiffs will file this unopposed motion to certify a class for the purposes of settlement only under Rules 23(b)(3) and 23(e) of the Federal Rules of Civil Procedure (the "Settlement Class"). Plaintiffs, without objection from Defendant, request that the Court certify a Settlement Class defined as follows:

> All African American persons employed by the Board of Education of the City of Chicago as a teacher or para-professional staff, as defined in the labor agreement between the Chicago Teachers Union and the Board of Education, in any school or attendance center subjected to reconstitution, or "turnaround," in the 2013 and/or 2014 calendar years.

The parties agree that the Settlement Class is being certified only for purposes of settlement, and if the settlement is not effectuated for any reason whatsoever, the Settlement Class shall be immediately de-certified, and the Board shall retain all defenses, including all arguments opposing class certification.

16. Assuming the Court certifies the Settlement Class, a Certification and Settlement Notice will be mailed to each member of the Settlement Class. The members of the Settlement Class will be identified using information provided by the Board. Members of the Settlement Class will be given the option to opt out of the Settlement Class and the Litigation.

17. Plaintiffs request that the Class Representatives of the Certified Class also be named as Class Representatives for the Settlement Class.

18. The Settlement Class is appropriate for class certification under Rule 23 of the Federal Rules of Civil Procedure. The Settlement Class should be allowed to proceed because it meets the requirements for class certification under Rule 23(a) of the Federal Rules of Civil Procedure. First, joinder of the members of the Settlement Class, which has approximately 177 members, is impracticable. Fed. R. Civ. P. 23(a)(1). Second, there are many questions of law and fact common to the members of the Settlement Class. Fed. R. Civ. P. 23(a)(2). Third, the claims of the representative parties are typical of those of the Settlement Class. Fed. R. Civ. P. 23(a)(3). Finally, the representative parties will fairly and adequately protect the interest of the Settlement Class. Fed. R. Civ. P. 23(a)(4). Each of these requirements is discussed below.

19. The Settlement Class satisfies the numerosity requirement contained in Rule 23(a)(1) because joinder of all the class members would be impracticable. Numerosity requires that the class is "so numerous that joinder of all members is impossible." Fed. R. Civ. P. 23(a)(1). In making this determination, courts consider the number of potential class members as well as factors such as "judicial economy and the ability of members to bring individual law suits." *Gaspar v. Linvatec Corp.*, 167 F.R.D. 51, 56 (N.D. Ill. 1996). While "there is no magic number that satisfies the numerosity requirement, 'permissive joinder is typically deemed impracticable when the class members number 40 or more.'" *Acik v. I.C. System, Inc.*, 251 F.R.D. 332, 335 (N.D. Ill. 2008) (citation omitted).

20. The Settlement Class satisfies this numerosity requirement. The putative Settlement Class is estimated to be more 177 teachers and PSRPs who were displaced for their positions as the result of turnarounds in the 2013 and/or 2014 calendar years. Because of the number of class members in the proposed class, the numerosity requirement of Rule 23 is satisfied.

21. Rule 23(a)(2) requires the presence of questions of law or fact common to the class. "'Commonality' is met [where] the proposed class challenges 'standardized conduct' common to all putative class members." *Cancel v. City of Chicago*, 254 F.R.D. 501, 508 (N.D. Ill. 2008) (quoting *Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998)). This standardized conduct can consist of a "policy, pattern or practice of discrimination." *Hill v. AMOCO Oil Co.*, No. 97 C 7501, 2003 WL 262424, at *2 (N.D. Ill. Jan. 27, 2003); *see Daniels v. Fed. Reserve Bank of Chicago*, 194 F.R.D. 609, 614 (N.D. Ill. 2000). Similarly, a "common nucleus of operative fact [is] usually . . . enough" to satisfy the commonality requirement. *Owner-Operator Indep. Drivers Ass'n, Inc. v. Allied Van Lines, Inc.*, 231 F.R.D. 280, 282 (N.D. Ill. 2005) (citing *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992)). Moreover, as long as Plaintiffs demonstrate "*a single common question* of law or fact," the requirement is satisfied. *Bell v. PNC Bank, Nat. Ass'n*, 800 F.3d 360, 374 (7th Cir. 2015) (emphasis added).

22. In this case, the claims of the Settlement Class arise from a common nucleus of operative fact because all the Settlement Class members were displaced from schools the Board selected for turnarounds in calendar years 2013 and 2014.

The common questions of whether these turnarounds were the result of a pattern or practice of race discrimination and/or whether the turnarounds were the result of a facially neutral policy that has an adverse impact on African-American teachers and PSRPs are sufficient to satisfy the commonality requirement of Rule 23.

23. Rule 23(a)(3) requires that the class representative's claims are typical of the class. A class representative's claims are typical if they arise from the same practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory. *De La Fuente v. Stokely-Van Camp, Inc.,* 713 F.2d 225, 232 (7th Cir. 1983) (holding that typicality requirement was met where "the named representatives' claims [had] the same essential characteristics as the claims as the class at large"). The Seventh Circuit has explained that typicality is determined by looking to a defendant's actions, not the individual class member's experience or the defendant's defenses to certain class members' allegations. *See Wagner v. NutraSweet Co.*, 95 F.3d 527, 534 (7th Cir. 1996).

24. The class representatives' claims are typical because they arise from the same practice or course of conduct of the Board that gives rise to the claims of other class members and the claims are based on the same legal theories. The class representatives' claims, as with the Settlement Class members' claims, arise from the Board's pattern or practice of selecting schools for turnarounds.

25. Rule 23(a)(4) requires that the representative parties will provide adequate representation. Adequate representation requires two elements: first, the

class representatives must not have interests antagonistic to those of the class and, second, class counsel must be qualified, experienced and generally able to conduct the proposed litigation. *See Kaufman v. American Exp. Travel Related Services Co.*, 264 F.R.D. 438, 442-43 (N.D. Ill. 2009); *Retired Chicago Police Assn. v. City of Chicago*, 7 F.3d 584, 598 (7th Cir. 1983) (holding that adequacy of representation depends on adequacy of named plaintiffs' counsel and ability of named plaintiffs to protect interests of the class members). Courts in this circuit have explained that demonstrating adequacy is not a heavy burden. *See, e.g.*, *Lau v. Arrow Financial Services, LLC*, No. 06CV-3141, 2007 WL 1502118, at *6 (N.D. Ill. May 22, 2007).

26. The Named Plaintiffs in this matter will adequately represent the Settlement Class. The claims of the Named Plaintiffs are not antagonistic to the claims of potential class members who were also displaced by turnarounds in the 2013 and 2014 calendar years.

27. Adequacy of class counsel requires considering if counsel is "competent, experienced, qualified, and generally able to conduct the proposed litigation vigorously." *Gammon v. GC Services Ltd. Partnership*, 162 F.R.D. 313, 317 (N.D. Ill. 1995). The attorneys for the Settlement Class meet this standard. Plaintiffs and the classes are represented by attorneys experienced in class action and civil rights litigation. These attorneys will adequately and fairly represent the Settlement Class.

28. The Settlement Class should be allowed to proceed as a class because it satisfies the requirements of Rule 23(b)(3) of the Federal Rules of Civil Procedure.

Rule 23(b)(3) contains the requirement that the common issues of law or fact predominate over any individual claims of class members. "Common issues of fact and law predominate in particular when adjudication of questions of liability common to the class will achieve economies of time and expense." *Brown v. Cook Cty.*, 332 F.R.D. 229, 243 (N.D. Ill. 2019) (citation omitted).

29. In these cases, Plaintiffs contend that the Board engaged in a pattern or practice of race discrimination. It is the position of the Plaintiffs that if they prevail on their pattern or practice of race discrimination claims, the approximately 177 African American teachers and PSRPs displaced due to the 2013 and 2014 Turnarounds will also be entitled to damages as part of the 12-cv-10311 case because they were adversely affected by the same discriminatory pattern or practice as the 2012 class. *See International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 361 (1977); *Davis v. Coca-Cola Bottling Co. Consol.*, 516 F.3d 955, 966 (11th Cir. 2008); *see also Chicago Tchrs. Union, Loc. No. 1 v. Bd. of Educ. of City of Chicago*, 797 F.3d 426, 444 (7th Cir. 2015) (holding that "it will certainly be efficient and fair to answer the question" of whether the turnaround process was discriminatory "once for all plaintiffs [in the 12-cv-10311 case] rather than in piecemeal litigation").

30. The Settlement Class also satisfies Rule 23(b)(3)'s superiority requirement. "This requirement 'is comparative: the court must assess efficiency with an eye toward other available methods.'" *Brown*, 332 F.R.D. at 246 (quoting *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 664 (7th Cir. 2015)). Here, "a class

action is far superior to sending the [177 members of the Settlement Class] to file individual lawsuits." *Brown*, 332 F.R.D. at 247.

31. Finally, Plaintiffs request that, pursuant to Rule 23(g), the Court appoint Robin Potter and Patrick Cowlin of Fish Potter Bolaños, P.C.; and Randall D. Schmidt of the Edwin F. Mandel Legal Aid Clinic of the University of Chicago Law School as counsel for the Settlement Class.

32. While the Board does not oppose the relief sought through this Motion as part of the settlement of the Litigation, the Board expressly reserves all of its rights with respect to the law, including opposition to the certification of a class, and the Board's defenses in the event this settlement is not approved and to extent the Board must defend any opt out claims.

33. The Plaintiffs have prepared a proposed order granting certification of a class for settlement purposes only and submitted it to the Court's proposed order inbox.

WHEREFORE, without opposition from the Board, Plaintiffs ask that this Court certify a Settlement Class for purposes of settlement only, allow the Named Plaintiffs to proceed as representatives of the proposed Settlement Class, and appoint Plaintiffs' counsel as counsel for the Settlement Class.

Respectfully submitted,

For PLAINTIFFS and the CLASSES

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Dated: April 8, 2022

**CERTIFICATE OF SERVICE**

I hereby certify that on April 8, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. All counsel of record for Defendants are registered CM/ECF users and service will be accomplished by the CM/ECF system.

/s/ Patrick Cowlin
Patrick Cowlin