UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANDREW CORZO, SIA HENRY, ALEXANDER LEO-GUERRA, MICHAEL MAERLENDER, BRANDON PIYEVSKY, BENJAMIN SHUMATE, BRITTANY TATIANA WEAVER, and CAMERON WILLIAMS, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

BROWN UNIVERSITY, CALIFORNIA INSTITUTE OF TECHNOLOGY, UNIVERSITY OF CHICAGO, THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, CORNELL UNIVERSITY, TRUSTEES OF DARTMOUTH COLLEGE, DUKE UNIVERSITY, EMORY UNIVERSITY, GEORGETOWN UNIVERSITY, THE JOHNS HOPKINS UNIVERSITY, MASSACHUSETTS INSTITUTE OF TECHNOLOGY, NORTHWESTERN UNIVERSITY, UNIVERSITY OF NOTRE DAME DU LAC, THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA, WILLIAM MARSH RICE UNIVERSITY, VANDERBILT UNIVERSITY, and YALE UNIVERSITY,

Defendants.

Case No.: 1:22-cv-00125

Hon. Matthew F. Kennelly

PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT, PROVISIONAL CERTIFICATION OF PROPOSED SETTLEMENT CLASS, APPROVAL OF NOTICE PLAN, AND APPROVAL OF THE PROPOSED SCHEDULE FOR COMPLETING THE SETTLEMENT PROCESS

Plaintiffs Andrew Corzo, Sia Henry, Alexander Leo-Guerra, Michael Maerlender, Brandon Piyevsky, Benjamin Shumate, Brittany Tatiana Weaver, and Cameron Williams (collectively, "Plaintiffs"), on behalf of themselves and a proposed Settlement Class, hereby move for an order pursuant to Fed. R. Civ. P. 23:

1. Granting preliminary approval of a settlement between Plaintiffs and Defendant the University of Chicago (the "University"), and finding that the Settlement encompassed by the Settlement Agreement (attached as Exhibit 1 to the Memorandum of Law in Support of Plaintiffs' Motion for Prelminary Approval of Settlement, Provisional Certificatoin of Proposed Settlement Class, Approval of Notice Plan, and Approval of the Proposed Schedule for Completing the Settlement Process ("Preliminary Approval Brief")) is preliminarily determined to be fair, reasonable, adequate and in the best interests of the Settlement Class, raises no obvious reasons to doubt its fairness, and raises a reasonable basis for presuming that the Settlment and its terms satisfy the requirements of Fed. R. Civ. P. 23(c)(2) and 23(e).

2. Finding that the Court will likely find that the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) will be satisfied for settlement and judgment purposes only, and thus that the Court will likely be able to certify the Settlement Class as proposed in the Settlement Agreement.

3. Appointing appointing Andrew Corzo, Sia Henry, Alexander Leo-Guerra, Michael Maerlender, Brandon Piyevsky, Benjamin Shumate, Brittany Tatiana Weaver, and Cameron Williams as representatives of the Settlement Class ("Class Representatives");

4. Appointing Freedman Normand Friedland LLP, Gilbert Litigators & Counselors PC, and Berger Montague PC as Settlement Class Counsel under Fed R. Civ. P. 23(g);

5. Approving the proposed notice plan and authorizing dissemination of notice to the Settlement Class;

6. Pursuant to 34 C.F.R. § 99.37(a), finding that mailing addresses and email addresses in education records of current students of a Defendant constitute "directory information" and may be disclosed, without consent, to the Settlement Claims Administrator for

purposes of providing class notice in this litigation if (a) the Defendant has previously provided public notice that the mailing addresses and email addresses are considered "directory information" that may be disclosed to third parties including public notice of how students may restrict the disclosure of such information, and (b) the student has not exercised a right to block disclosure of current mailing addresses or email addresses ("FERPA Block"). Defendants shall not disclose from education records mailing addresses or email addresses subject to a FERPA Block.

7. Pursuant to 34 C.F.R. § 99.37(b), finding that mailing addresses and email addresses in education records of former students of a Defendant constitute "directory information" and may be disclosed, without consent, to the Settlement Claims Administrator for purposes of providing class notice in this litigation, provided that each Defendant continues to honor any valid and un-rescinded FERPA Block.

8. Appointing Angeion Group as Settlement Claims Administrator;

9. Appointing The Huntington National Bank ("Huntington Bank") as Escrow Agent;

10. Approving the proposed Settlement schedule, including setting a date for a final Fairness Hearing;

WHEREFORE, for the reasons set forth in the accompanying memorandum of law and exhibits, Plaintiffs respectfully request that the Court grant this motion and enter the Preliminary Approval Order filed herewith. Defendants do not oppose this motion.

Dated: August 14, 2023 Respectfully submitted,

By:*/s/Robert D. Gilbert*
Robert D. Gilbert
Elpidio Villarreal
Robert S. Raymar

Steven Magnusson
GILBERT LITIGATORS & COUNSELORS, P.C.
11 Broadway, Suite 615
New York, NY 10004
Phone: (646) 448-5269
rgilbert@gilbertlitigators.com
pdvillarreal@gilbertlitigators.com
rraymar@gilbertlitigators.com
smagnusson@gilbertlitigators.com

Eric L. Cramer
Caitlin G. Coslett
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: 215-875-3000
ecramer@bm.net
ccoslett@bm.net

Richard Schwartz
BERGER MONTAGUE PC
1720 W Division
Chicago, IL 60622
Tel: 773-257-0255
rschwartz@bm.net

/s/ Edward J. Normand
Edward J. Normand
Devin "Vel" Freedman
Peter Bach-y-Rita
Richard Cipolla
FREEDMAN NORMAND FRIEDLAND LLP
99 Park Avenue
Suite 1910
New York, NY 10016
Tel: 646-970-7513
tnormand@fnf.law
vel@fnf.law
pbachyrita@fnf.law
rcipolla@fnf.law

Daniel J. Walker
Robert E. Litan
Hope Brinn
BERGER MONTAGUE PC
2001 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20006
Tel: 202-559-9745
rlitan@bm.net
dwalker@bm.net
hbrinn@bm.net

Counsel for Plaintiffs and the Proposed Class

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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PROVISIONAL CERTIFICATION OF SETTLEMENT CLASS, PRELIMINARY APPROVAL OF PROPOSED PARTIAL SETTLEMENT, APPROVAL OF THE FORM AND MANNER OF NOTICE TO THE CLASS, AND PROPOSED SCHEDULE FOR A FAIRNESS HEARING

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Plaintiffs have reached a settlement with Defendant University of Chicago ("UChicago") and thus submit this Memorandum of Law in Support of their Motion for Provisional Certification of Settlement Class, Preliminary Approval of Proposed Partial Settlement, Approval of the Form and Manner of Notice to the Class, and Proposed Schedule for a Fairness Hearing.[1]

I. INTRODUCTION

Under the terms of a Settlement Agreement, dated August 7, 2023 (the "Settlement Agreement"), UChicago has agreed to make aggregate cash payments totaling $13.5 million to Plaintiffs and the proposed Settlement Class (defined below and in the Settlement Agreement), and to offer certain additional information, in exchange for Plaintiffs' agreement to dismiss their claims (on their own behalf and on behalf of the Settlement Class) against UChicago with prejudice and to provide certain releases (the "Settlement"). *See* Settlement Agreement, Joint Decl., Ex. A.[2] This Settlement is an excellent result for Plaintiffs and the proposed Settlement Class.

Plaintiffs and UChicago entered into the Settlement Agreement after nineteen months of litigation, including significant discovery, extensive arm's length negotiations, and Plaintiffs' extensive collaboration with consulting economists and other relevant experts. Counsel for both sides are highly experienced in antitrust litigation and well-positioned to assess the risks and merits of the case. Plaintiffs have reasonably concluded that the proposed cash settlement was in

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[1] A Joint Declaration of Settlement Class Counsel (Joint Decl.) is attached to this Memorandum of Law.

[2] UChicago will make a payment of $13.5 million into a settlement fund (the "Settlement Fund") within 30 days of preliminary approval, to be held in an escrow account that will be invested in interest-bearing instruments. Settlement Agreement ¶¶ 7(a), 8; *see* Escrow Agreement (attached to Joint Declaration as Ex. B).

the best interests of the Settlement Class, among other reasons because, if finally approved, the Settlement would assure the Settlement Class of a significant cash recovery without diminishing the joint and several liability of the remaining sixteen Defendants.[3] Moreover, under the Settlement Agreement, Plaintiffs will have the benefit of certain additional information from UChicago that Plaintiffs expect will help their understanding of the conduct of the 568 Group, which is at the heart of Plaintiffs' allegations. Notably, UChicago is a relatively small undergraduate institution, nearly unique among the Defendants for being located in the city in which the case is pending. And UChicago appears to have stopped participating in the alleged cartel about eight years before the case was filed, and to have done so because the cartel was limiting its ability to compete on price. UChicago claims to have withdrawn in 2014. UChicago thus has some colorable defenses that most other Defendants do not. The Settlement avoids the inherent risks of summary judgment, trial, and potential appeal, while preserving the ability to recover all of the damages allegedly suffered by the Settlement Class from the remaining sixteen Defendants. For these reasons, and as further detailed below, the Settlement satisfies the requirements for preliminary approval.

Accordingly, Plaintiffs respectfully request that the Court enter a proposed order (in the form attached hereto), providing as follows:

1. Provisional certification of the proposed Settlement Class (defined below);
2. Provisional appointment of Plaintiffs as Class Representatives;
3. Appointment of Plaintiffs' counsel as Settlement Class Counsel for the proposed Settlement Class;
4. Preliminary approval of the proposed Settlement Agreement;
5. Approval of the proposed notice plan, including a long-form notice and summary notice, and a settlement website as described below and in the Declaration of the

[3] "Defendants" is defined in the Settlement Agreement at pp. 1-2.

proposed Settlement Claims Administrator, Steven Weisbrot of Angeion Group (Weisbrot Decl., attached to this Memorandum of Law);

6. Pursuant to 34 C.F.R. § 99.37(a), finding that mailing addresses and email addresses in education records of current students of a Defendant constitute "directory information" and may be disclosed, without consent, to the Settlement Claims Administrator for purposes of providing class notice in this litigation if (a) the Defendant has previously provided public notice that the mailing addresses and email addresses are considered "directory information" that may be disclosed to third parties including public notice of how students may restrict the disclosure of such information, and (b) the student has not exercised a right to block disclosure of current mailing addresses or email addresses ("FERPA Block"). Defendants shall not disclose from education records mailing addresses or email addresses subject to a FERPA Block.
7. Pursuant to 34 C.F.R. § 99.37(b), finding that mailing addresses and email addresses in education records of former students of a Defendant constitute "directory information" and may be disclosed, without consent, to the Settlement Claims Administrator for purposes of providing class notice in this litigation, provided that each Defendant continues to honor any valid and un-rescinded FERPA Block created while a student was in attendance
8. Preliminary approval of the Plan of Allocation;
9. Appointment of Angeion Group as Settlement Claims Administrator;
10. Appointment of The Huntington National Bank ("Huntington") as Escrow Agent for the Settlement funds (Joint Decl., Ex. B);
11. Approval and establishment of the Settlement Fund under the Settlement Agreement as a qualified settlement fund ("QSF") pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder;
12. Staying of all litigation activity against UChicago on behalf of the Settlement Class pending final approval or termination of the Settlement; and
13. Approval of a proposed Settlement schedule, including the scheduling of a Fairness Hearing during which the Court will consider: (a) Plaintiffs' request for final approval of the Settlement and entry of a proposed order and final judgment; (b) Plaintiffs' counsel's application for attorneys' fees, reimbursement of expenses, service awards, and payment of administrative costs; and (c) Plaintiffs' request for dismissal of this action against UChicago only with prejudice.

II. BACKGROUND

A. Plaintiffs' Claims and Procedural Background

On January 9, 2022, Plaintiffs filed their complaint, which was subsequently amended (collectively, "Complaint"), alleging that sixteen elite universities violated the antitrust laws by

agreeing on a common formula and common principles regarding financial aid, and by exchanging competitively sensitive information concerning financial aid principles, formulas, and pricing, and subsequently amended the Complaint to include a seventeenth university defendant. *See Henry, et al. v. Brown University, et al.*, No. 22-cv-00125 (N.D. Ill.). From April through August 2022, the parties engaged in briefing and argument on Defendants' motions to dismiss. Defendants asserted in their motions that (a) Defendants fell within a statutory antitrust exemption, (b) Plaintiffs had failed to state a claim under the antitrust laws and failed to plausibly allege antitrust injury, and (c) several of the claims were time barred. UChicago also filed a separate motion with three other defendants, contending that Plaintiffs did not plausibly allege that these four defendants were members of the alleged cartel during the relevant period. *See* Joint Decl., ¶ 9.

On August 15, 2022, the Court denied Defendants' motions in their entirety. *See* ECF No. 185, *Carbone v. Brown Univ*., 621 F. Supp. 3d 878 (N.D. Ill. 2022). Since that time, the parties have engaged in extensive fact discovery. Plaintiffs have produced nearly 4,000 of their own documents to Defendants and have secured the production of more than one million documents from the Defendants and third parties, including almost 78,000 documents from UChicago alone. Plaintiffs have also deposed officials at six of the non-settling Defendants. Joint Decl., ¶ 11.

B. Settlement Negotiations and the Proposed Settlement

In April 2023, Plaintiffs initiated settlement discussions with UChicago with the goal of having UChicago be the first Defendant to settle. In agreeing to settle, Plaintiffs' counsel assessed the merits of Plaintiffs' claims, UChicago's defenses, and the risks of trial. Plaintiffs also evaluated the benefits of cooperation from UChicago, and the fact that due to joint and several liability, UChicago's settlement would not reduce the exposure of the remaining sixteen

Defendants. Plaintiffs ultimately concluded that settlement was in the best interests of the proposed Settlement Class. *See* Joint Decl., ¶¶ 23-24.

1. Monetary Relief.

Under the Settlement Agreement, UChicago will pay $13.5 million in cash for the benefit of all Settlement Class members in exchange for dismissal of the litigation between Plaintiffs and UChicago only, and certain releases. If the Settlement is approved, none of the funds paid in this Settlement would revert to UChicago. The Settlement Fund will be distributed to members of the Settlement Class according to a proposed Plan of Allocation (summary discussed below), net of payments for the expenses of the Settlement Claims Administrator and the costs of notice to the Settlement Class, any service awards the Court awards to the Class Representatives, Court awarded attorneys' fees and expenses, and any other administrative fees or costs that may be approved by the Court ("Net Settlement Fund").

2. Cooperation.

As part of the Settlement Agreement, UChicago has agreed to cooperate with Plaintiffs on certain discovery matters. *See* SA § 20. Among other things, UChicago has agreed to: (a) complete certain of the document productions pending in April 2023; (b) assist Plaintiffs in understanding UChicago's data production and remedy certain gaps (if any) identified by Plaintiffs in those data productions; (c) identify certain relevant documents to Plaintiffs from UChicago's production; (d) provide through its attorney a reasonably detailed description of the principal facts known to UChicago's outside counsel regarding UChicago's financial aid practices and UChicago's involvement in the 568 Group and the practices, procedures, and any enforcement mechanisms or enforcement efforts of, the 568 Group from UChicago's knowledge that may be at issue during the time period relevant to the Action; (e) facilitate a witness

interview with a former Director of College Aid for UChicago; (f) facilitate authentication at trial of certain documents or data it produced during discovery. *Id.*

3. Summary of Proposed Plan of Allocation.

According to the proposed Plan of Allocation Summary (the "Plan"), attached to the Joint Decl. as Exhibit D, all members of the Settlement Class who timely submit claims ("Claimants") will receive payments from Net Settlement Fund, *pro rata*, in proportion to the damages allegedly suffered. The Net Settlement Fund shall be disbursed in accordance with the Plan to be approved by the Court at the Final Approval Hearing.

In short, under the Plan, the proposed claims administrator, Angeion Group ("Angeion"), will calculate each Claimant's *pro rata* share of the Net Settlement Fund based on the formula discussed below. The Plan was designed in conjunction with Dr. Ted Tatos, an economist with the Econ One consulting group. Plan, Joint Decl., Ex. D at 2. By way of background, Plaintiffs allege that Defendants have conspired, through various activities undertaken as members of the "568 Presidents Group" (the "568 Group"), to deflate, artificially, the calculations of financial need of Settlement Class members, which in turn artificially inflated the net price Class members paid to attend Defendant institutions. *See* Complaint ¶¶ 7, 238, 241; Plan, Joint Decl., Ex. D at 2-4. The "Net Price," as that term is used here, includes the price of tuition, fees, room, and board minus all need-based and other forms of aid (excluding loans). Complaint ¶ 5. The website of the 568 Group acknowledged that one of its main goals was "to reduce much of the variance in need analysis results," to "diminish or eliminate . . . divergent results," and to do so in a "consistent manner." *Id.* ¶ 127.

Plaintiffs allege the challenged conduct artificially inflated the Net Price Claimants paid to attend each Defendant for each term a student attended. Given that Plaintiffs allege that the challenged conduct sought to affect Net Prices in a "consistent manner," it is reasonable to

conclude that Claimants suffered injury in rough proportion to the average Net Price charged by each school during the years Claimants attended. In other words, because the alleged overcharge is, roughly, a fixed percentage amount of the Net Price paid, a reasonable measure of the injury to each Claimant is the average Net Price each Defendant University charged during each year or term that Claimant attended.[4] As a result, to achieve the dual goals of efficiency and fairness, the Plan proposes to allocate the Net Settlement Fund to each Claimant in proportion to the average Net Price charged by the Defendant to each Claimant for each year or term during the Class Period that such Claimant attended that institution. Plan, Joint Decl., Ex. D at 3-4. This method can be carried out mechanically based on the data available to the Claims Administrator without requiring Claimants to provide any additional information or take any additional time other than simply filing out a Claim Form at the appropriate time after final approval.[5]

4. Notice and Settlement Administration Costs.

Settlement Class Counsel have retained Angeion, a highly experienced, well-regarded, third-party claims administrator to provide notice to the Settlement Class and to handle the administration of the claims. The proposed Notice Plan is described in the Declaration of Steven Weisbrot, Esq. of Angeion ("Weisbrot Decl.") (attached hereto). The Notice Plan includes, first, direct emailed summary notice (Weisbrot Decl., Ex. B) to the vast bulk of the Settlement Class.

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[4] Plaintiffs do not presently have sufficient data to determine the Net Price each individual Claimant paid for each year he or she attended a Defendant. Further, it would not be efficient or practical to require each Claimant, many of whom attended a Defendant more than a decade ago, to have records of the Net Prices each paid. Accordingly, the Plan proposes to use publicly available average annual Net Prices charged by each Defendant for each applicable academic year during the Class Period (defined in Settlement Agreement at p. 4), published by the U.S. Department of Education, as an estimate of the net amounts paid by Claimants. Plan, Joint Decl., Ex. D at 4-5.

[5] Plaintiffs intend to submit a proposal for a Claims Administration process, including a proposed form of Claim Form, in conjunction with their memorandum of law in support of final approval.

Second, Angeion will send the long-form notice (*id*., Ex. C) via the U.S. postal service to those Class members who request it. Weisbrot Decl., ¶ 12. Third, Angeion will conduct a multi-tiered, robust media campaign strategically designed to provide notice to the Settlement Class. The latter program includes targeted internet notice, social media notice, a paid search campaign and two press releases. *Id*., ¶ 13.

In addition, there will be a toll-free telephone number where members of the Settlement Class can learn more about their rights and options pursuant to the terms of the settlement. *Id*., ¶¶ 13, 39. The long-form notices, as well as the summary email/media campaign notice, will communicate to members of the Settlement Class their rights and options under the Settlement in plain, easily understood language. Finally, the Notice Plan will also implement a case-specific Settlement Website, where members of the Settlement Class can easily view general information about this Settlement, review relevant Court documents (including the long-form notice), and find important dates and deadlines pertinent to the settlement process. Weisbrot Decl., ¶ 38. The Settlement Website will be user-friendly and make it easy for members of the Settlement Class to find information about this case, request the long-form notice, and later in the process after final approval: sign-up to receive a claim form and submit claims online. *Id*.

5. Release.

In exchange for the monetary relief, UChicago and certain related parties identified in the Settlement Agreement will receive a release of all claims Settlement Class members brought or could have brought arising out of or relating to a common nucleus of operative facts with those alleged in the Complaint through the date of preliminary approval. The release is narrowly tailored to the claims and allegations arising out of this Action and takes care not to release certain unrelated claims that might arise between the parties in the "ordinary course." *See* Settlement Agreement, §§ 1(m), 13-14.

6. Attorneys' Fees and Costs for Settlement Class Counsel and Service Awards for Class Representatives.

Settlement Class Counsel intends to make an application to the Court for a reasonable attorneys' fee award in an amount not to exceed one-third of the gross Settlement Fund (*i.e.*, 1/3 of $13.5 million or $4.5 million), plus one-third of any accrued interest on the Settlement Fund, plus reimbursement all reasonable expenses incurred during the investigation and litigation of this case to date.

Settlement Class Counsel will also seek service awards for Class Representatives to be paid from the Settlement Fund, in an amount up to $5,000 for each of the eight Class Representatives ($40,000 total).[6] Each class representative reviewed the Complaint, produced documents, and devoted substantial time and energy to the matter to date. Joint Decl., ¶ 5. But for the service of the Class Representatives, members of the Settlement Class would be uncompensated. *See In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *18 (E.D. Pa. June 2, 2004) (noting that service awards were "particularly appropriate in this case because there was no preceding governmental action alleging a conspiracy"). Plaintiffs propose below a schedule

[6] Recent service awards for class representatives in other antitrust cases in this Circuit have ranged from $5,000 to $175,000. *See, e.g.*, *In re Nat'l Collegiate Athletic Ass'n Student-Athlete Concussion Inj. Litig.*, 332 F.R.D. 202, 228 (N.D. Ill. 2019) (approving $5,000 to each class representative); *Sanchez v. Roka Akor Chicago LLC*, 2017 WL 1425837, at *4 (N.D. Ill. Apr. 20, 2017) (approving $7,500 service award to class representative); *Rysewyk v. Sears Holdings Corp.*, 2019 WL 11553475, at *3 (N.D. Ill. Jan. 29, 2019) (approving $10,000 service award to each class representative); *Allegretti v. Walgreen Co.*, 2022 WL 484216, at *2 (N.D. Ill. Jan. 4, 2022) (approving $15,000 service award to each class representative); *Slaughter v. Wells Fargo Advisors, LLC*, 2017 WL 3128802, at *3 (N.D. Ill. May 4, 2017) (approving $175,000 service award to each class representative).

for the filing of the request for attorneys' fees, reimbursement of reasonable expenses, and service awards for the Class Representatives.

III. THE PROPOSED SETTLEMENT MEETS THE STANDARD FOR PRELIMINARY APPROVAL

As the Seventh Circuit has recognized, "[f]ederal courts naturally favor the settlement of class action litigation." *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996). Settlement "minimizes the litigation expense of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources." *Lechuga v. Elite Eng'g, Inc.*, 559 F. Supp. 3d 736, 744 (N.D. Ill. 2021) (internal citations omitted). Approval of this proposed class action settlement proceeds in two steps. First, the court grants preliminary approval to the settlement and provisionally certifies a settlement class. Second, after notice of the settlement is provided to the class and the court conducts a fairness hearing, the court may grant final approval of the settlement. *See The Manual for Complex Litigation (Fourth)* § 21.63 ("Manual").

Under Fed. R. Civ. P. 23(e), a class action settlement may be *finally* approved if it is "fair, reasonable and adequate" after analysis of the factors outlined in Rule 23(e)(2). At the *preliminary* approval stage, by contrast, a court need only assess whether the settlement is "within the range of possible approval." *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982); *see also In re Tiktok, Inc., Consumer Privacy Litig.*, 565 F. Supp. 3d 1076, 1083 (N.D. Ill. 2021) (court need only "ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing [and] not to conduct a full-fledged inquiry into whether the settlement meets Rule 23(e)'s standards" (internal citations and quotations omitted)). In making this assessment, courts perform "a more summary version of the final fairness inquiry" at the preliminary approval stage. *Id.* at *21; *see also In re NCAA Student-*

Athlete Concussion Injury Litig., 314 F.R.D. 580, 603 (N.D. Ill. 2016) ("Balancing the fairness factors in a summary fashion [] is appropriate on preliminary approval").

At preliminary approval, courts consider the following five factors: "the strength of plaintiff's case compared to the settlement amount, the complexity, length, and expense of the litigation, any opposition to settlement, the opinion of competent counsel, and the stage of the proceedings (including the amount of discovery completed) at the time of the settlement." *Guzman v. Nat'l Packaging Servs. Corp.*, 2022 U.S. Dist. LEXIS 37362, at *4-5 (E.D. Wis. Mar. 3, 2022); *In re TikTok*, 565 F. Supp. 3d 1076, 1084 (listing same factors). "The most important factor . . . is the strength of plaintiff's case on the merits balanced against the amount offered in the settlement." *Id.*; *see also Lucas*, 2017 WL 6733688, at *8. Consideration of the relevant factors, as shown below, supports preliminarily approving the Settlement Agreement and authorizing notice to the Settlement Class.

A. The Strength of Plaintiffs' Case Compared to the Terms of the Settlement

The first factor, which balances the strength of the class's claims on the merits against the value conferred by the proposed settlement, is satisfied here. While district courts often "assess the net expected value of continued litigation" by quantifying the range of possible outcomes as part of this analysis, *Lucas*, 2017 WL 6733688, at *8, the Seventh Circuit has held that courts need not engaged in such quantification "where there are other reliable indicators that the settlement reasonably reflects the merits of the case." *TikTok*, 565 F. Supp. 3d at 1087 (quoting *Kaufman v. Am. Express Travel Related Servs. Co.*, 877 F.3d 276, 285 (7th Cir. 2017)). Such reliable indicators are present where, as here, the settlement was reached through arms' length negotiations, highly experienced counsel negotiated the settlement, and substantial discovery has enabled the parties to analyze the strengths and weaknesses of the case. For example, in *TikTok*, because such factors were present, the court concluded that it "need not undertake [a] mechanical

mathematical valuation," and instead recognized that the proposed settlement ensured meaningful value to the class members as compared to the risks of seeking a better outcome at trial. *TikTok*, 565 F. Supp. 3d at 1088.[7]

Here, after significant document discovery, arms' length negotiations were engaged in by highly experienced counsel and no suspicious circumstances are present. Joint Decl., ¶ 7. The settlement achieves significant financial recovery in an "icebreaker" settlement that also provides certain elements of cooperation in discovery. On the other hand, in addition to the general risks of this litigation, some key factors complicated Plaintiffs' case against UChicago in particular, including that evidence supports UChicago's claims that it withdrew from the 568 Group and stopped attending 568 Group meetings in or around 2014. *See* Joint Decl., ¶ 8. Plaintiffs are also evaluating evidence that Chicago revised its financial aid formula and practices to become more generous after departing the Group. *Id*. Moreover, this case is pending in Chicago, and UChicago will likely tout to the jury that it has financial aid programs targeted at Chicago-area students. *Id*.

At the same time, the contemplated settlement does not reduce Plaintiffs' ultimate potential recovery in this case, as the sixteen non-settling Defendants remain jointly and severally liable for all of the alleged damages caused by UChicago's alleged involvement in the challenged conduct, and also have assets sufficient to pay any damages award. Finally, as just stated, this is the first resolution in this Action, and UChicago is providing certain assistance in discovery and authentication as part of the terms of the Settlement. *See* Joint Decl., ¶ 18. Accordingly, this factor weighs in favor of preliminary approval.

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[7] *See also Wong v. Accretive Health, Inc.*, 773 F.3d 859, 864 (7th Cir. 2014) (when there are no "suspicious circumstances" surrounding a settlement reached through arms' length negotiations by experienced counsel after the parties have sufficiently explored the merits of the case a court may preliminarily approve a settlement without quantifying the value of continued litigation).

B. The Complexity, Length, and Expense of Continued Litigation

When settlement enables the parties to avoid the costs and risks of litigating complex issues, this factor weighs in favor of preliminary approval. *Lucas*, 2017 WL 6733688, at *12. This settlement reduces the expense associated with prosecuting the case, narrows the number of adversaries that Plaintiffs face, ensures at least some monetary recovery for Settlement Class members, and increases the likelihood of further settlements. UChicago's agreement to provide cooperation, moreover, is a relevant factor, since it "will serve to minimize the costs and challenges" in Plaintiffs' case against the non-settling Defendants. *Id.* Accordingly, this factor weighs in favor of preliminary approval.

C. The Amount of Opposition to the Settlement

While the reaction of the Settlement Class can only be determined after the distribution of notice, the Representative Plaintiffs have all affirmed support for the settlement. Joint Decl., ¶ 5. If, upon the issuance of notice, objections are filed, the Court can consider them in determining whether to grant final approval. *See Lucas*, 2017 WL 6733688, at *12.

D. The Opinion of Competent Counsel

Courts often defer to the judgment of experienced counsel who have engaged in arms' length negotiations, understanding that vigorous, skilled negotiation protects against collusion and advances the fairness interests of Fed R. Civ. P. 23(e). *See, e.g.*, *TikTok*, 565 F. Supp. 3d at 1091 (plaintiffs' "well qualified" counsel attested to their belief that the settlement was fair, reasonable and adequate); *Lucas*, 2017 WL 6733688, at *12 (plaintiffs' counsel had "extensive experience" in subject matter of litigation and believed settlement to be in the best interest of the class).

Settlement Class Counsel believe that the settlement is fair and in the best interests of the Settlement Class. Joint Decl., ¶¶ 23-24. Settlement Class Counsel collectively have decades of

experience in antitrust litigation, including helping to spearhead the original Overlap Group case successfully prosecuted by the U.S. Department of Justice against the predecessor to the 568 Presidents Group. Joint Decl., ¶¶ 25-52; ECF No. 88 at 4-12 (Mem. ISO Mot. for Appt. of Interim Lead Counsel);[8] ECF No. 87-2, Gilbert Decl. ¶¶ 4-8. Settlement Class Counsel have applied their well-honed litigation skills, along with their years of experience handling substantial class action and antitrust cases, during settlement negotiations. They believe that the Settlement represents an excellent result. Accordingly, this factor weighs in favor of preliminary approval.

E. The Stage of the Proceedings

The importance of this factor relates to whether Settlement Class Counsel has "access to sufficient information such that they could effectively represent the Class." *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 588 (N.D. Ill. 2011). The relevant inquiry is not how much formal discovery occurred—or indeed if any formal discovery occurred—but rather, "how additional discovery would have been in the interest of the class or would have resulted in a better settlement." *Id*. (cleaned up). This proposed Settlement occurs neither at the beginning nor the completion of discovery, but rather midway. The parties have had sufficient opportunity to assess the strengths and weaknesses and "place value on their respective positions in this case." *In re Cap. One Tel. Consumer Prot. Act Litig*., 80 F. Supp. 3d 781, 793 (N.D. Ill. 2015). It also bears repeating that by entering into this Settlement, Plaintiffs do not reduce the overall value of their claim, because the non-settling Defendants remain jointly and severally liable. Accordingly, this factor weighs in favor of preliminary approval.

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[8] The Court previously denied Plaintiffs' Motion for Appointment of Interim Lead Counsel without prejudice. ECF No. 182.

F. The Plan of Allocation is Fair, Reasonable, and Adequate

The proposed Plan of Allocation, Joint Decl., Ex. D, would allocate the Net Settlement Fund to members of the Settlement Class in proportion to the injuries each allegedly suffered due to the challenged conduct. The Plan is fair, reasonable, adequate, *and* efficient. "The same standards of fairness, reasonableness and adequacy that apply to the settlement apply to the Plan of Allocation." *Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, 2001 WL 1568856, at *3 (N.D. Ill. Dec. 10, 2001).[9] "Federal courts have held that an allocation plan that reimburses class members based on the extent of their injuries is generally reasonable." *Lucas*, 2017 WL 6733688, at *13 (collecting cases).

As described above and in the Plan, the "Net Price," as that term is used here, includes the price of tuition, fees, room, and board minus all need-based and other forms of aid (excluding loans). *See* Plan, Joint Decl., Ex. D, at 3. Plaintiffs allege that Class members suffered antitrust injury (and damages) because they paid artificially inflated Net Prices to Defendants due to the challenged conduct. The website of the 568 Group acknowledged that one of its main goals was "to reduce much of the variance in need analysis results," to "diminish or eliminate . . . divergent results," and to do so in a "consistent manner." *Id.* 2-3.

The Plan proposes to use publicly available average annual Net Prices charged by each Defendant for each applicable academic year during the Class Period, as published by the U.S. Department of Education. These published prices will serve as estimates of the net amounts paid by Claimants at each school. *Id.* at 4-5.

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[9] *See also Heekin v. Anthem, Inc.*, 2012 WL 5472087, at *3 (S.D. Ind. Nov. 9, 2012) ("As with the approval of a settlement, courts must determine whether the plan for allocation of settlement funds is fair, reasonable, and adequate.") (citing *Summers v. UAL Corp. ESOP Comm.*, 2005 WL 3159450, at *2 (N.D. Ill. Nov. 22, 2005)).

The challenged conduct allegedly artificially inflated the Net Price Class members paid to attend each Defendant for each term a student attended. Given that, and also the evidence that the challenged conduct sought to effect Net Prices in a "consistent manner," it is reasonable to conclude, for purposes of the Plan, that Claimants suffered injury in rough proportion to the average Net Price charged by each school during the years Claimants attended. *Id*. at 3. In other words, because the alleged overcharge is, roughly, a fixed percentage amount of the Net Price paid, a reasonable measure of the injury to each Claimant is the average Net Price each Defendant charged during each year or term that Claimant attended. *Id*. As a result, a fair and efficient way to allocate the Net Settlement Fund would be to ensure that each Claimant receives its *pro rata* share of the Net Settlement Fund in proportion to the average Net Price charged by the Defendant for each year or term a Claimant attended that institution. *Id*. at 3-4.

At a later stage in the process, after final approval, Claimants who provide their addresses to the Claims Administrator will be provided pre-populated Claims Forms listing the Net Price charged by their respective schools during the periods they attended. To compute each Claimant's *pro rata* share, the Claims Administrator will do the following. First, the Claims Administrator would determine, for each Claimant, the number of years (or fractions thereof) that the Claimant paid a Defendant for cost of attendance during the Class Period. The Claims Administrator, on a Claimant-by-Claimant basis, would then assign to each Claimant the average annual Net Price charged by that Defendant for each year the Claimant attended (or fraction thereof) based on publicly available aggregated pricing data. The Net Prices assigned for each Claimant would be adjusted for fractions of years, where a student may not have attended for an entire school year. The Claims Administrator would then sum the average Net Prices over all the years for each Claimant, up to a maximum of four full academic years per Claimant. That sum

would be the numerator of each Claimant's *pro rata* allocation computation. Second, the Claims Administrator would add together all of the numerators for all Claimants, and that sum would serve as the denominator. Third, the Claims Administrator would divide the numerator from the first step for each Claimant by the denominator from the second step. That fraction would be the *pro rata* share for each Claimant. Fourth, and finally, to compute the total allocated sum for each Claimant, the Claims Administrator would multiply the fraction from the third step for each Claimant by the Net Settlement Fund, generating the dollar value of each Claimant's total allocation from the Net Settlement Fund. *Id.* at 6.

Plans of allocation like this one, recommended by experienced Settlement Class Counsel (in consultation with their consultants),[10] which distribute settlement funds based on a *pro rata* share of purchases, are routinely approved because they approximate the amount of relative damage sustained by each Settlement Class member.[11] Settlements in antitrust cases are

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[10] *See also Shah v. Zimmer Biomet Holdings, Inc.*, 2020 WL 5627171, at *6 (N.D. Ind. Sept. 18, 2020) ("When formulated by competent and experienced counsel, a plan for allocation of net settlement proceeds need have only a reasonable, rational basis in order to be fair and reasonable") (citation and internal quotation marks omitted); *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 667 (S.D.N.Y. 2015) ("An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.") (collecting cases) (cleaned up); *accord In re Auto. Parts Antitrust Litig*., 2019 WL 7877812, at *1 (E.D. Mich. Dec. 20, 2019).

[11] *See also In re High-Tech Emp. Antitrust Litig*., 2015 WL 5159441, at *6 (N.D. Cal. Sept. 2, 2015) ("A plan of allocation that reimburses class members based on the extent of their injuries is generally reasonable.") (quoting *In re Oracle Sec. Litig*., 1994 WL 502054, at *1 (N.D. Cal. June 18, 1994)); *In re Packaged Ice Antitrust Litig*., 2011 WL 6209188, at *15 (E.D. Mich. Dec. 13, 2011) ("Courts generally consider plans of allocation that reimburse class members based on the type and extent of their injuries to be reasonable.") (quoting *Meijer, Inc. v. 3M*, 2006 WL 2382718, at *17 (E.D. Pa. Aug. 14, 2006)); *Sullivan v. DB Invs., Inc*., 667 F.3d 273, 328 (3d Cir. 2011) (same) (internal quotation omitted); 4 Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 12.35, at 350 (4th ed. 2002) (noting that *pro-rata* allocation of a settlement fund "is the most common type of apportionment of lump sum settlement proceeds for a class of purchasers" and "has been accepted and used in allocating and distributing settlement proceeds in many antitrust class actions"); *Summers*, 2005 WL 3159450, at *2 ("Given that the settlement funds in the instant action will be disbursed on a pro rata basis to all class members, we find that the

commonly distributed to direct purchaser classes based on estimates of a purchaser's *pro rata* share.[12]

G. Angeion Is an Appropriate Settlement Claims Administrator

Plaintiffs ask the Court to appoint Angeion to oversee the administration of the Settlement, including disseminating notice to the Settlement Class, calculating each Settlement Class Member's *pro rata* share of the Net Settlement Fund, and distributing the funds. Angeion is an experienced settlement and claims administration firm with sophisticated technological capabilities and is staffed by personnel well-versed in antitrust issues and class action litigation. *See* Weisbrot Decl., ¶¶ 1-10.

Angeion, with oversight from Settlement Class Counsel and Plaintiffs' economic consultants, will handle all aspects of providing notice to potential members of the Settlement Class and administering their claims, including emailing, mailing and otherwise distributing the notice, managing a call center and settlement website to handle all questions regarding

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allocation plan is reasonable and, thus, we grant Plaintiffs' motion for approval of the allocation plan."); *Beneli v. BCA Fin. Servs., Inc*., 324 F.R.D. 89, 105-06 (D.N.J. 2018) ("In particular, *pro rata* distributions are consistently upheld, and there is no requirement that a plan of allocation differentiat[e] within a class based on the strength or weakness of the theories of recovery.") (citation and internal quotation marks omitted); *In re Packaged Ice Antitrust Litig*., 2011 WL 6209188, at *15 ("Typically, a class recovery in antitrust or securities suits will divide the common fund on a pro rata basis among all who timely file eligible claims, thus leaving no unclaimed funds.") (quoting 3 *Newberg on Class Actions* § 8:45 (4th ed. 2011)).

[12] *See, e.g.*, *In re Aftermarket Filters Antitrust Litig.*, No. 08-cv-4883, ECF No. 1082 (N.D. Ill. Mar. 20, 2014) (ordering *pro rata* distribution of settlement funds); *In re Plasma-Derivative Protein Therapies Antitrust Litig.*, 1:09-cv-07666, ECF No. 703 (N.D. Ill. Apr. 16, 2014) (approving *pro rata* Plan of Allocation, as described in ECF No. 696, Ex. 1 ¶¶ 18-19); *In re Brand Name Prescription Drugs Antitrust Litig.*, 1999 WL 639173, at *4 (N.D. Ill. Aug. 17, 1999) (approving *pro rata* distribution of funds based on claimant's share of qualifying purchases at issue); *acccord In re Namenda Direct Purchaser Antitrust Litig*., 462 F. Supp. 3d 307, 316 (S.D.N.Y. 2020); *In re Loestrin 24 FE Antitrust Litig.*, No. 1:13-md-02472, ECF No. 1462 (D.R.I. Sept. 1, 2020); *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig*., No. 14-md-2503, ECF No. 1179 (D. Mass. July 18, 2018).

completion and submission of the claim forms, physically processing the claims, informing Claimants about the completeness or possible deficiency of their claims, and ultimately distributing the Net Settlement Fund, subject to Court approval.

H. The Proposed Form and Manner of Notice Are Appropriate

Under Rule 23(e), class members are entitled to reasonable notice of a proposed settlement before it is finally approved by the Court, and to notice of the final Fairness Hearing. *See* MANUAL FOR COMPLEX LITIGATION, §§ 21.312, 21.633 (4th ed. 2005) ("MANUAL"). For 23(b)(3) classes, the court must "direct to class members the best notice that is practical under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). The two components of notice are: (1) the form of the notice; and (2) the manner in which notice is sent to class members.

1. Form of Notice.

The proposed forms of notice are based on notices approved by courts in similar cases.[13] The proposed long-form notice, Weisbrot Decl., Ex. C, is designed to alert Settlement Class members to the proposed Settlement by using a bold headline, and the plain language text provides important information regarding the terms of the proposed Settlement, including the nature of the action; the definition of the Settlement Class provisionally certified; the identity of the settling defendant (UChicago); the significant terms of the proposed Settlement, including the total amount UChicago has agreed to pay; that a Settlement Class member may object to all

[13] *See, e.g.*, *Balmoral Home, Inc. v. CMK Healthcare Training Center, LLC*, 2014 WL 11348989 (N.D. Ill. Aug. 28, 2014) (approving form and manner of notice); *Balmoral*, ECF No. 94-1 at 24 (N.D. Ill. Aug. 13, 2014); *Koerner v. Copenhaver*, 2014 WL 5544051, at *6 (C.D. Ill. Nov. 3, 2014) (approving form and manner of notice); *Koerner*, ECF No. 65-1 (C.D. Ill. Nov. 3, 2014) (notice); *Coleman v. Sentry Ins. a Mutual Company*, No. 3:15-cv-01411-SMY-SCW, ECF No. 46, ¶ 5 (S.D. Ill. June 29, 2016) (approving form and manner of notice); *Coleman*, ECF No. 40-1 at 23 (S.D. Ill. June 6, 2016) (notice).

or any part of the proposed Settlement or Settlement Class Counsel's petition for attorneys' fees and reimbursement of expenses, or the proposed service awards for the named Plaintiffs; and the process and deadline for doing so, including entering an appearance through an attorney if the Class member desires; that Settlement Class members may exclude themselves from the Settlement Class, the consequences of and process for doing so; the final approval process, including the schedule, for the proposed Settlement and Settlement Class Counsel's petition for attorneys' fees, request for reimbursement of litigation expenses; and the binding effect of a final judgment on members of the Settlement Class. *Id*.

The proposed summary notice, Weisbrot Decl., Ex. B, provides a concise summary of the key aspects of the Settlement, defines the Settlement Class, and provides information about how to obtain more information about any aspect of the Settlement. *Id*. In addition, the proposed notice plan will include a settlement website (containing all of the key settlement related documents, including the Settlement Agreement and all filings relating to the settlement and fee application), as well as toll-free contact information for the Claims Administrator. Weisbrot Decl., ¶¶ 38-39.

2. Manner of Notice.

Rule 23(c)(2)(B) requires a certified class to receive "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Similarly, Rule 23(e)(1) requires a court to "direct notice in a reasonable manner to all class members who would be bound by the proposal." *See also Air Lines Stewards & Stewardesses Ass'n Local 550 v. Am. Airlines, Inc.*, 455 F.2d 101, 108 (7th Cir. 1972) (All notice must do is "fairly apprise the members of the class of the proposed compromise and of the option open to dissenting class members in connection with the proceedings."). The notice may be provided by "United States mail, electronic means, or other

appropriate means." Fed. R. Civ. P. 23(c)(2). In circumstances in which all class members can be identified, the best method of notice is individual notice. *See* MANUAL, § 21.311 at 488 ("Rule 23(c)(2)(B) requires that individual notice in 23(b)(3) actions be given to class members who can be identified through reasonable effort."). *See, e.g.*, *Lucas,* 2017 WL 6733688 at *15 (approving direct notice by mail to individual class members). The Notice plan readily meets these standards.

As explained in the Weisbrot Declaration, Angeion, in consultation with Settlement Class Counsel, has designed a proposed Notice Program that will capitalize on the available contact information for Settlement Class members as well as substantial media coverage of this case by implementing a comprehensive media campaign. Weisbrot Decl., ¶¶ 12-30. Specifically, because Plaintiffs expect Defendants to produce email addresses from alumni and current student databases to Angeion for notice purposes, Angeion will email the publication notice to all Settlement Class members for whom such email information is available. Weisbrot Decl., ¶¶ 12-13. Angeion will also utilize a carefully tailored mix of programmatic display advertising, social media notice, search engine marketing and two press releases to effectively and efficiently diffuse notice of the Settlement through a variety of mediums. Weisbrot Decl., ¶¶ 16–30.

In addition, Angeion will send the long-form notice by U.S. mail to those Settlement Class members who request it either through the website or by contacting Angeion or Settlement Class Counsel directly. Weisbrot Decl., ¶¶ 12, 31-39. The long-form notice will also be posted on the Settlement Website for downloading and reviewing.

Accordingly, the proposed Notice Plan provides for a robust multi-tiered media campaign strategically designed to provide notice to Settlement Class Members via a variety of methods, including directly emailing the summary notice to a large share of the Settlement Class, mailing

the long-form notice to those who request it, as well as a state-of-the-art targeted internet notice, social media notice, a paid search campaign, a settlement website, and two press releases. Weisbrot Decl., ¶ 13.

Major milestones, including the U.S. Department of Justice's letter of interest, the Court's order on the motion to dismiss, and the UChicago settlement itself, have previously been covered by national media.[14] The Settlement Class is comprised of highly educated individuals likely to be reached by these traditional news sources, which further weighs in favor of preliminary approval. *In re TikTok, Inc., Consumer Priv. Litig*., 617 F. Supp. 3d 904, 921 (N.D. Ill. 2022), *appeal dismissed sub nom*. *In re Tiktok Inc., Consumer Priv. Litig*., 2022 WL 19079999 (7th Cir. Oct. 12, 2022) ("In addition to these notice efforts, there was considerable media coverage of the settlement. News outlets such as NBC News, Business Insider, and USA Today published online articles about the settlement that included links to the settlement website."); *White v. Nat'l Football League*, 822 F. Supp. 1389, 1401 (D. Minn. 1993) (noting that "the Settlement Agreement has received extensive media coverage, affording class members with substantial additional notice").

Finally, as just stated, the Notice Plan will also implement the creation of a case-specific Settlement Website, where members of the Settlement Class can easily view general information about this Settlement, review relevant Court documents, and view important dates and deadlines

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[14] Stephanie Saul and Anemona Hartocollis, *Lawsuit Says 16 Elite College Are Part of Price-Fixing Cartel*, THE NEW YORK TIMES (Jan. 14, 2022), https://www.nytimes.com/2022/01/10/us/financial-aid-lawsuit-colleges.html; Emma Whitford, *Financial Aid Blues: Elite Colleges See Federal Antitrust Exemption Expire As Price-Fixing Lawsuit Advances*, FORBES (Oct. 5, 2022), https://www.forbes.com/sites/emmawhitford/2022/10/05/financial-aid-blues-elite-colleges-see-federal-antitrust-exemption-expire-as-price-fixing-lawsuit-advances/?sh=5607249f3176; Mike Scarcella, *U. Chicago First to Settle Financial Aid Price-Fixing Claims in U.S. Court*, REUTERS (Apr. 20, 2023), https://www.reuters.com/legal/litigation/u-chicago-first-settle-financial-aid-price-fixing-claims-us-court-2023-04-20/.

pertinent to the Settlement. Weisbrot Decl., ¶ 38. The Settlement Website will be user-friendly and make it easy for members of the Settlement Class to find information about this case. *Id.* The Settlement Website will also have a "Contact Us" page whereby members of the Settlement Class can send an email with any additional questions to a dedicated email address. *Id.*

I. Huntington Bank Is an Appropriate Escrow Agent

Plaintiffs ask that Huntington be appointed as the Escrow Agent, and that the proposed Escrow Agreement (Joint Decl., Ex. B) be approved for that purpose. Huntington is a highly respected bank providing consumers, corporations, and others with a broad range of financial services. Joint Decl., ¶ 20. Huntington has served as escrow agent in many other antitrust class actions, including in this district, and should also be appointed as Escrow Agent here. *See, e.g.*, *In re EpiPen (Epinephrine Injection, USP) Marketing, Sales Practice and Antitrust Litig.*, No. 17-md-2785, ECF No. 2594 (D. Kan. Mar. 11, 2022) (order granting preliminary approval motion and appointing Huntington Bank as an escrow agent); *In re Opana ER Antitrust Litig.*, No. 14-cv-10150, ECF No. 1069 (N.D. Ill. Aug. 24, 2022) (same).

J. The Proposed Schedule Is Fair and Should Be Approved

Plaintiffs propose the following schedule for completing the Settlement approval process:

- No later than 30 days after the date of the order preliminarily approving the Settlement, Angeion shall begin the process of providing notice to the Settlement Class, in accordance with the Notice Plan;

- No later than 60 days after the date of the order preliminarily approving the settlement, Settlement Class Counsel shall file a motion for attorneys' fees, unreimbursed litigation costs and expenses, and service awards for the Class Representatives, pursuant to the terms of the Settlement Agreement.

- By no later than 75 days after of the date of the order preliminarily approving the settlement, Settlement Class Members may, using the method set out in the long-form notice and Settlement Agreement, request exclusion from the Settlement Class or submit any objection to the proposed settlement or to the proposed allocation plan summarized in the notice, or to Settlement Class Counsel's request

for attorneys' fees and unreimbursed litigation costs and expenses, or to the request for service awards to the Class Representatives.

- No later than 90 days after the date of this Order, Settlement Class Counsel shall file all briefs and materials in support of final approval of the settlement, including, inter alia, (a) a report to the court regarding the effectuation of the notice plan, and notifying the Court of any objections or exclusions, and (b) a process for effectuating the plan of allocation, including for deciding claims and distributing from the Net Settlement Fund.

- The Fairness Hearing shall take place at least 120 days after the Court's entry of this Order.

This schedule is fair to Settlement Class members since it provides ample time for consideration of the Settlement and Settlement Class Counsel's request for fees, costs, and expenses before the deadline for submitting objections or exclusions. Specifically, Settlement Class members will have the notice for 45 days before the deadline to object to the Settlement and will have Settlement Class Counsel's request for costs and expenses for more than two weeks before the deadline to object to Settlement Class Counsel's request for fees, costs, and expenses, and to the request for service awards to the Class Representatives. In addition, the schedule allows the full statutory period for UChicago to serve its CAFA notices pursuant to 28 U.S.C. § 1715, and for regulators to review the proposed Settlement and, if they choose, advise the Court of their view.

IV. THE REQUIREMENTS FOR CERTIFICATION OF A SETTLEMENT CLASS HAVE BEEN PROVISIONALLY MET

The proposed Settlement Class should be provisionally certified for settlement purposes only. To preliminarily approve the Settlement, the Court must also find that it will likely be able to certify the class for purposes of judgment on the Settlement. *See* Fed. R. Civ. P. 23(e)(1)(B)(i–ii). Under Fed. R. Civ. P. 23, class actions may be certified for settlement purposes only. *See, e.g.*, *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). The requirements of Rule 23 do

not change when certification is requested pursuant to settlement, except that "a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial." *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 224 (N.D. Ill. 2016) (quoting *Amchem Prods.*, 521 U.S. at 620); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 490 (N.D. Ill. 2015) (Kennelly, J.) ("The first question the Court must address is whether the class meets the requirements for class certification set forth in Federal Rule of Civil Procedure 23.").

The Court must still assess "the four requirements of Rule 23(a): [whether] '(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims and defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.'" *Gehrich*, 316 F.R.D. at 223. The district court must also determine whether the action can be maintained under Rule 23(b)(1), (2), or (3). *Id.* at 226.

The proposed Settlement Class is defined as follows:

All U.S. citizens or permanent residents who have during the Class Period (a) enrolled in one or more of Defendants' full-time undergraduate programs, and (b) received at least some need-based financial aid from one or more Defendants, and (c) directly purchased from one or more Defendants tuition, fees, room, or board that was not fully covered by the combination of any types of financial aid or merit aid (not including loans) in any undergraduate year.[15] The Class Period is defined as follows:

- For UChicago, Columbia, Cornell, Duke, Georgetown, MIT, Northwestern, Notre Dame, Penn, Rice, Vanderbilt, Yale—from 2003 through the date of preliminary approval.
- For Brown, Dartmouth, Emory—from 2004 through the date of preliminary approval.

[15] For avoidance of doubt, the Class does not include purchasers for whom the total cost they were charged by the Defendant or Defendants whose institution(s) they attended, including tuition, fees, room, or board for each undergraduate academic year, was covered by any form of financial aid or merit aid (not including loans) from one or more Defendants.

- For Caltech—from 2019 through the date of preliminary approval.
- For Johns Hopkins—from 2021 through the date of preliminary approval.

Excluded from the Class are:

- Any Officers and/or Trustees of Defendants, or any current or former employees holding any of the following positions: Assistant or Associate Vice Presidents or Vice Provosts, Executive Directors, or Directors of Defendants' Financial Aid and Admissions offices, or any Deans or Vice Deans, or any employees in Defendants in-house legal offices; and
- the Judge presiding over this Action, his or her law clerks, spouse, and any person within the third degree of relationship living in the Judge's household and the spouse of such a person.

Settlement Agreement, ¶ 1(c).

Courts regularly certify similar classes where direct purchasers allege that conspiracies in violation of the Sherman Act artificially inflated prices. *See Kleen Prod. LLC v. Int'l Paper Co.*, 831 F.3d 919, 922, 931 (7th Cir. 2016) (affirming certification of class of direct purchasers alleging Section 1 conspiracy artificially raised prices); *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 826 (7th Cir. 2012) (reversing denial of motion to certify class of direct purchasers alleging Section 2 claims); *In re Broiler Chicken Antitrust Litig.*, 2022 WL 1720468, at *3 (N.D. Ill. May 27, 2022) (certifying three classes of Broiler purchasers—including one class encompassing nearly every chicken retailer and another including "nearly every individual consumer of chicken in the United States"); *In re Opana ER Antitrust Litig.*, 2021 WL 3627733 (N.D. Ill. June 4, 2021) (certifying direct and indirect purchaser classes alleging Section 1 violations).

In the consumer case context, courts have also frequently certified classes of university students that paid tuition. *Arredondo v. Univ. of La Verne*, 618 F. Supp. 3d 937, 950 (C.D. Cal. 2022) (certifying class of all "undergraduate students…who paid tuition…during the Spring 2020 term/semester"); *Wright v. S. New Hampshire Univ.*, 565 F. Supp. 3d 193 (D.N.H. 2021) (granting provisional class certification in connection with preliminary settlement approval

where class was "[a]ll students and former students [of defendant Southern New Hampshire University] who paid, or on whose behalf payment was made to [defendant in connection with its] Spring 2020 Semester for tuition and fees for in-person educational services, and whose tuition and fees have not been refunded"); *Ninivaggi v. Univ. of Delaware*, 2023 WL 2734343, at *1 (D. Del. Mar. 31, 2023) (certifying class composed of "[a]ll undergraduate students enrolled in classes at the University of Delaware during the Spring 2020 semester who paid tuition").

A. The Requirements of Rule 23(a) Are Provisionally Satisfied

Rule 23(a) requires that (1) the proposed Settlement Class is so numerous that joinder of all individual class members is impracticable (numerosity); (2) there are questions of law or fact common to the proposed settlement class (commonality); (3) plaintiff's claims are typical of those of the class (typicality), and (4) the plaintiff and class counsel will adequately protect the interests of the class (adequacy). Fed. R. Civ. P. 23(a)(1)-(4); *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 340-44 (N.D. Ill. 2010). The Settlement Class satisfies each of these requirements.

1. Numerosity and Impracticability of Joinder.

Under Fed. R. Civ. P. 23(a)(1), certification is appropriate when the number of class members is sufficiently large so that joinder of all members would make litigation needlessly complicated and inefficient. The "class must be so large that joinder of all members is impracticable. In order to establish numerosity, plaintiffs need not allege the exact number of members of the proposed class. Generally, where the membership of the proposed class is at least 40, joinder is impracticable and the numerosity requirement is met. *Morris v. Risk Mgmt. Alternatives, Inc.*, 203 F.R.D. 336, 342 (N.D. Ill. 2001). The Settlement Class here includes approximately 200,000 members, Joint Decl., ¶ 17, so numerosity is satisfied.

2. Commonality.

The commonality requirement of Rule 23(a)(2) is met, as here, where plaintiffs' grievances share (at least) "even a single" common question of law or fact with members of the class. *Suchanek v. Sturm Foods, Inc.*, 764 F.3d 750 (7th Cir. 2014) (*quoting Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011)). "Where the same conduct or practice by the same defendant gives rise to the same kind of claims from all class members, there is a common question." *Id. at* 756. Common issues here include, among many others, whether all Defendants admitted all students without regard to the financial circumstances of the students or students' families; whether the 568 Presidents Group sought to and did in fact stabilize the net prices charged to students attending those institutions; whether Defendants agreed upon common principles for awarding financial aid and the reciprocal exchange of data and information relating to financial aid formulas and principles; whether the challenged conduct violated the antitrust laws; and the amount by which Defendants were able to suppress financial aid below competitive levels and increase Net Prices above competitive levels a result of the alleged conspiracy to the class as a whole. *See* Complaint, at ¶¶ 3-11, 228. Accordingly, the commonality requirement of Rule 23(a) is satisfied. *See Parker v. Risk Mgmt. Alternatives, Inc.*, 206 F.R.D. 211, 213 (N.D. Ill. 2002) ("[A] common nucleus of operative fact is usually enough to satisfy the [commonality] requirement.").

3. Typicality.

"A plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and [is] based on the same legal theory." *Lacy v. Cook Cnty., Ill.*, 897 F.3d 847, 866 (7th Cir. 2018) (*quoting Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992)) (cleaned up). "[T]ypicality does not require perfect identity of claims," but rather requires that they share the "same essential characteristics." *Brown v. Cook*

Cnty., 332 F.R.D. 229, 241 (N.D. Ill. 2019). "The typicality analysis invites the question of who the class members are, what their claims are, and how many class members actually have viable claims." *Smith v. City of Chicago*, 340 F.R.D. 262, 289 (N.D. Ill. 2021).

Plaintiffs are all current and former students of the Defendants during the relevant period who received financial aid for amounts less than the full cost of attendance. The Plaintiffs and Settlement Class members allege that they were all injured in the same way—paying artificially inflated Net Prices and receiving artificially reduced financial aid awards—by the same alleged conspiracy amongst the Defendants. That is sufficient for typicality. *See*, *e.g*., *Kleen Prod. LLC*, 831 F.3d at 923 (defendant conceded typicality of direct purchasers); *United Nat. Recs., Inc. v. MCA, Inc., et al.*, 99 F.R.D. 178, 180-82 (N.D. Ill. 1983) (holding direct purchasers satisfied typicality requirement). Courts have held that current and former student plaintiffs' claims are typical of classes composed of students in cases involving tuition overcharges. *Arredondo v. Univ. of La Verne*, 2022 WL 19692042 (C.D. Cal. Dec. 21, 2022); *Wright v. S. N.H. Univ.*, 565 F. Supp. 3d 193 (D.N.H. 2021); *Ninivaggi*, 2023 WL 2734343 at *4. For similar reasons, the typicality requirement is met here.

4. Adequacy of Representation.

The fourth and final Rule 23(a) requirement is "adequacy of representation," Fed. R. Civ. P. 23(a)(4), which has three components: The "Court must determine whether Plaintiff has: (1) antagonistic or conflicting claims with other members of the class; (2) a sufficient interest in the outcome of the case to ensure vigorous advocacy; and (3) competent, qualified, and experienced counsel who can vigorously conduct the litigation." *Magpayo v. Advoc. Health & Hosps. Corp.*, 2018 WL 950093, at *15 (N.D. Ill. Feb. 20, 2018).

The first two components of Rule 23(a)(4) are satisfied because the proposed Settlement Class representatives and Settlement Class members are all current and former students at

Defendant institutions, each of whom has a similar interest in maximizing and recovering alleged overcharges they collectively suffered as a result of the alleged conspiracy. To pursue that end, the proposed representatives engaged in vigorous advocacy, filing this class action lawsuit, prosecuting the case on behalf of the Settlement Class, responding to discovery, and considering and approving the settlement terms. Joint Decl., ¶ 5.

The third component of the Rule 23(a)(4) analysis is satisfied because Plaintiffs hired qualified and competent counsel who are experienced in class actions. Settlement Class Counsel has successfully investigated, commenced, and prosecuted many complex cases and class actions, including the instant action. Joint Decl., ¶¶ 26-52; *see also* ECF No. 88 (Mem. ISO Mot. for Appt. of Interim Lead Counsel); ECF No. 87-2, Gilbert Decl. ¶¶ 9-11. Accordingly, the adequacy of representation requirement is satisfied.

B. The Requirements of Rule 23(b)(3) Are Provisionally Satisfied

Seeking certification for settlement, under Rule 23(b)(3), Plaintiffs must also show (1) that common questions of law or fact predominate over questions affecting only individual class members (predominance); and (2) that a class action is superior to other available methods of resolving the controversy (superiority). Fed. R. Civ. P. 23(b)(3); *AT&T Mobility*, 270 F.R.D. at 344-45. Both requirements are satisfied by the proposed Settlement Class.

1. Common Issues Predominate.

Rule 23(b)(3)'s predominance requirement is satisfied here because "common questions represent a significant aspect of [a] case and ... can be resolved for all members of [a] class in a single adjudication." *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 815 (7th Cir. 2012) (*quoting* 7AA Wright & Miller, *Federal Practice & Procedure* § 1778 (3d ed. 2011). "Rule 23, when applied rigorously, will frequently lead to certification" in antitrust cases. *Id.* (*quoting* Robert H. Klonoff, *Antitrust Class Actions: Chaos in the Courts*, 11 STAN. J.L. BUS. &

FIN. 1, 7 (2005)). Common questions need only predominate; they need not be dispositive of the litigation. *Id.* (citing *In re Potash Antitrust Litig.*, 159 F.R.D. 682, 693 (D. Minn. 1995)); *cf. Scrap Metal*, 527 F.3d at 535-36 (holding issues regarding the amount of damages do not destroy predominance). "[T]he 'mere fact that questions peculiar to each individual member of the class action remain after the common questions of the defendant's liability have been resolved does not dictate the conclusion that a class action is impermissible.'" *Cason-Merenda v. VHS of Mich., Inc.*, 296 F.R.D.528, 535 (E.D. Mich. 2013) (quoting *Powers v. Hamilton Cnty. Public Defender Comm.*, 501 F.3d 595, 619 (6th Cir. 2007)). Further, the Supreme Court has instructed that "Rule 23(b)(3) requires a showing that *questions* common to the class predominate, not that those questions will be answered, on the merits, in favor of the class." *Amgen, Inc. v. Conn. Retirement Plans and Trust Funds*, 568 U.S. 455, 459 (2013).

The central questions in this case are all capable of resolution on a class-wide basis, including, among many others, whether the Defendants are collectively entitled to antitrust immunity; the scope of the 568 Presidents Group agreement; which if any aid formulas or principles were the subject of agreement; whether that agreement violated the antitrust laws; the impact, if any, of the agreement on financial aid formulas and the provision of aid to members of the Settlement Class; whether Settlement Class members were adversely impacted by the challenged conduct; and the total damages suffered by the Settlement Class as a whole.

As with most antitrust class actions, each of these questions will turn on evidence common to the Settlement Class as a whole: either the alleged conspiracy is immune under the relevant exemption or it is not as to all Settlement Class Members; either Defendants engaged in conduct in violation of the antitrust laws or they did not; either Defendants agreed upon common principles and/or features of a financial aid formula or not; whether Defendants' agreement led to

anticompetitive effects or it did not. *See Amchem*, 521 U.S. at 625 ("[p]redominance is a test readily met in certain cases alleging . . . violations of the antitrust laws, because proof of the *conspiracy* is a common question that is thought to predominate over the other issues of the case").

This Court's inquiry in the context of settlement class certification is less searching than for a litigation class. In *Amchem*, the Supreme Court recognized that the fact of a "[s]ettlement is relevant to a class certification[,]" 521 U.S. at 619, and instructed that the portion of the predominance analysis that typically focuses on the management of the trial becomes unnecessary and irrelevant when a class is being certified in light of settlement. *Id*. at 620. *See also Sullivan*, 667 F.3d at 306 (court need not "consider the available evidence and the method or methods by which plaintiffs propose to use the evidence to prove the disputed element at trial") (quotation omitted). Even in a litigation class context, "[p]redominance is a test readily met in certain cases alleging . . . violations of the antitrust laws," *Amchem*, 521 U.S. at 625, because they present issues that are capable of proof by generalized evidence that "are more substantial than the issues subject only to individualized proof." *Roach v. T.L. Cannon Corp.*, 778 F.3d 401, 405 (2d Cir. 2015) (quotation omitted).

Settlement Class member claims all focus on the same operative set of facts and legal theories. They allege that they were all harmed by Defendants' same conduct, and the evidence of conspiracy would be entirely common if presented in a litigation posture—which, again, is not at issue here, because the proposal is there would be no trial as to the claims against UChicago, and in turn, no evidence. In sum, the predominance requirement for a settlement class is met here as "[a]ll claims arise out of the same course of defendants' conduct; [and] all share a common

nucleus of operative fact, supplying the necessary cohesion." *In re Am. Int'l Grp., Inc. Sec. Litig.*, 689 F.3d 229, 240 (2d Cir. 2012) (quotation omitted).

2. A Class Action Is Superior to Other Methods of Adjudication.

Plaintiffs must demonstrate that a class action is superior to other available methods for fair and efficient adjudication of the controversy under Rule 23(b)(3). "A class action is superior where potential damages may be too insignificant to provide class members with incentive to pursue a claim individually." *Jackson v. Nat'l Action Fin. Servs., Inc.*, 227 F.R.D. 284, 290 (N.D. Ill. 2005). "Class treatment is especially appropriate for consumer claims," because "an individual consumer's claim would likely be too small to vindicate through an individual suit." *Murray v. New Cingular Wireless Servs., Inc.*, 232 F.R.D. 295, 303 (N.D. Ill. 2005). Moreover, class adjudication is superior when litigating claims separately "risks inconsistent determinations on common issues" and "require[s] multiple courts to evaluate the same evidence and analyze the same policies and practices in what would amount to a wastefully inefficient enterprise." *Cancel v. City of Chicago*, 254 F.R.D. 501, 512 (N.D. Ill. 2008).

In this class action, the damages suffered by individual Plaintiffs and other Settlement Class Members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendants. Even if Settlement Class Members could afford individual litigation, it would create a potential for inconsistent or contradictory rulings and judgments and increase the delay and expense to all parties and the court system. Class resolution is thus superior to alternative methods of resolution.

3. Settlement Class Counsel Meet the Requirements of Rule 23(g).

Under Fed. R. Civ. P. 23(g), a court that certifies a class must appoint class counsel. Class counsel is charged with fairly and adequately representing the interests of the class. Fed. R. Civ. P. 23(g)(1)(B). In appointing class counsel, the Court must consider: (1) the work counsel

has done in identifying or investigating potential claims; (2) counsel's experience in handling class actions, other complex litigation, and similar claims; (3) counsel's knowledge of the applicable law; and (4) the resources counsel will commit to representing the class. *See* Fed. R. Civ. P. 23(g)(1)(A)(iv); *Noble v. 93 Univ. Place Corp.*, 224 F.R.D. 330, 339-40 (S.D.N.Y. 2004).

In this case, the three law firms that have served as counsel for plaintiffs and the proposed class from the outset of this case readily satisfy the criteria of Rule 23(g), and should be jointly appointed as Settlement Class Counsel. Joint Decl., ¶¶ 26-52. First, Plaintiffs' counsel have devoted substantial time, effort, and resources to this litigation, beginning with their initial investigation and the filing of the initial complaint on January 9, 2022, continuing through the successful briefing and argument on the motion to dismiss, the extensive document and deposition discovery to date, and through months of arm's length settlement negotiations with UChicago. *See* Joint Decl., ¶¶ 7-15; *see also* ECF No. 88 (Mem. ISO Mot. for Appt. of Interim Lead Counsel); ECF No. 87-2, Gilbert Decl. ¶¶ 9-11. In addition, as previously described to the Court in seeking to be appointed interim Co-Lead Class Counsel, ECF No. 88, Plaintiffs' counsel have extensive experience in complex and class action litigation, in district courts of the Seventh Circuit and elsewhere, and have served as class counsel in other complex class actions and antitrust cases. *See* Joint Decl., ¶¶ 26-52; *see also* ECF No. 88 at 4-12; ECF No. 87-2, Gilbert Decl. ¶¶ 4-8. In addition, Berger Montague maintains a Chicago office, which obviates the need for the Plaintiffs to retain a separate local counsel firm.

V. CONCLUSION

Plaintiffs respectfully request, for the foregoing reasons, that the Court grant Plaintiffs' Motion and enter the proposed Order.

Dated: August 14, 2023 Respectfully submitted,

By:/s/Robert D. Gilbert
Robert D. Gilbert
Elpidio Villarreal
Robert S. Raymar
Steven Magnusson
GILBERT LITIGATORS & COUNSELORS, P.C.
11 Broadway, Suite 615
New York, NY 10004
Phone: (646) 448-5269
rgilbert@gilbertlitigators.com
pdvillarreal@gilbertlitigators.com
rraymar@gilbertlitigators.com
smagnusson@gilbertlitigators.com

/s/ Edward J. Normand
Edward J. Normand (pro hac vice)
Devin Freedman (pro hac vice)
Peter Bach-y-Rita (pro hac vice)
Richard Cipolla (pro hac vice)
FREEDMAN NORMAND FRIEDLAND LLP
99 Park Avenue
Suite 1910
New York, NY 10016
Tel: 646-970-7513
tnormand@fnf.law
vel@fnf.law
pbachyrita@fnf.law
rcipolla@fnf.law

Eric L. Cramer
Caitlin G. Coslett
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: 215-875-3000
ecramer@bm.net
ccoslett@bm.net

Daniel J. Walker
Robert E. Litan
Hope Brinn
BERGER MONTAGUE PC
2001 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20006
Tel: 202-559-9745
rlitan@bm.net
dwalker@bm.net
hbrinn@bm.net

Richard Schwartz
BERGER MONTAGUE PC
1720 W Division
Chicago, IL 60622
Tel: 773-257-0255
rschwartz@bm.net

Counsel for Plaintiffs and the Proposed Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANDREW CORZO, SIA HENRY, ALEXANDER LEO-GUERRA, MICHAEL MAERLENDER, BRANDON PIYEVSKY, BENJAMIN SHUMATE, BRITTANY TATIANA WEAVER, and CAMERON WILLIAMS, individually and on behalf of all others similarly situated, Plaintiffs, v. BROWN UNIVERSITY, CALIFORNIA INSTITUTE OF TECHNOLOGY, UNIVERSITY OF CHICAGO, THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, CORNELL UNIVERSITY, TRUSTEES OF DARTMOUTH COLLEGE, DUKE UNIVERSITY, EMORY UNIVERSITY, GEORGETOWN UNIVERSITY, THE JOHNS HOPKINS UNIVERSITY, MASSACHUSETTS INSTITUTE OF TECHNOLOGY, NORTHWESTERN UNIVERSITY, UNIVERSITY OF NOTRE DAME DU LAC, THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA, WILLIAM MARSH RICE UNIVERSITY, VANDERBILT UNIVERSITY, and YALE UNIVERSITY, Defendants.	Case No.: 1:22-cv-00125 **Hon. Matthew F. Kennelly**

JOINT DECLARATION OF ERIC L. CRAMER,
ROBERT D. GILBERT, & EDWARD NORMAND IN SUPPORT
OF PRELIMINARY APPROVAL OF SETTLEMENT

Pursuant to 28 U.S.C. §1746, we, Eric L. Cramer, Robert D. Gilbert, and Edward Normand jointly declare:

1. We are, respectively, partners or shareholders of the law firms of Berger Montague PC ("Berger Montague"), Gilbert Litigators and Counselors ("GLC"), and Freedman

Normand Friedland LLP ("FNF") (together, "Settlement Class Counsel"). We have been actively involved in investigating, initiating, and prosecuting this matter from the outset, and also in resolving this matter with defendant University of Chicago ("UChicago"). We are familiar with all of these proceedings and have personal knowledge of the matters set forth herein. If called upon and sworn as witnesses, we would be competent to testify thereto.

2. Unless otherwise defined herein, all capitalized terms have the same meanings set forth in the August 7, 2023 Settlement Agreement between Plaintiffs and the proposed Settlement Class ("Settlement Agreement"), attached hereto as Exhibit A.

3. We respectfully submit this Declaration in Support of the Motion for Provisional Certification of Settlement Class, Preliminary Approval of Proposed Partial Settlement, Approval of the Form and Manner of Notice to the Class, and Proposed Schedule for a Fairness Hearing ("Motion").

4. The Settlement Agreement provides for UChicago to make cash payments totaling $13.5 million to Plaintiffs and the proposed Settlement Class, and to offer cooperation in discovery. As described below, the Settlement is fair, reasonable, and adequate.

5. Proposed Class Representatives have been involved in assisting the litigation of the matter, helping to filing this class action lawsuit, responding to discovery, and have all considered and approved the terms of the Settlement Agreement.

6. We believe that the Settlement is an excellent result for the Settlement Class in light of, *inter alia*, the substantial and immediate cash payment for the benefit of the Settlement Class, the risks associated with delay, the promised cooperation in discovery, UChicago's claim to have left the 568 Group in 2014, and the fact that the remaining sixteen Defendants[1] in the

[1] "Defendants" is defined in the Settlement Agreement at 1-2.

matter are jointly and severally liable for, and capable of paying, the full amount of anticipated proved damages. Accordingly, we respectfully submit that pursuant to Federal Rule of Civil Procedure 23(e), the Settlement should be preliminarily approved.

SETTLEMENT CLASS COUNSEL'S PROSECUTION OF THE ACTION

7. Proposed Settlement Class Counsel has devoted substantial time, effort, and resources to this litigation, beginning with their initial investigation, through the filing of the Complaint, the successful briefing on the motion to dismiss, and the aggressive pursuit of document and deposition discovery. Further, Settlement Class Counsel pursued resolution with UChicago on a separate track over many months, including arm's length settlement negotiations and lengthy discussions of the details of the Settlement Agreement and associated documents. Settlement Class Counsel did not have the benefit of a governmental investigation or enforcement action in advance of filing the Action, but instead investigated and initiated the matter solely through their and their clients' own initiative, joint investigation, and collective resources.

8. Several factors complicated Plaintiffs' case against UChicago relative to that of the other Defendants in the Action, including that evidence supports UChicago's claims that it withdrew from the 568 Group and stopped attending 568 Group meetings in or around 2014, followed by claimed revisions to its financial aid formula and practices, allegedly, to become more generous after departing the Group; and that the case is pending in Chicago, and UChicago has significant financial aid programs targeted at Chicago-area students.

9. Plaintiffs filed the initial complaint on January 9, 2022. ECF No. 1. Defendants filed Motions to Dismiss on April 15, 2022. *See* ECF Nos. 145, 146, 148. On August 15, 2022, the Court issued an Order denying Defendants' Motions to Dismiss in their entirety. *See* ECF

No. 185. The Court analyzed Plaintiffs' claims and found that Plaintiffs had plausibly alleged, *inter alia*, that (1) the challenged conduct did not fall within an antitrust exemption, (2) that Defendants had committed violations of the Sherman Act, (3) that Plaintiffs injuries were sufficient to satisfy antitrust injury and antitrust standing requirements, and (4) that the claims were not time-barred. *Id.*

10. Over the next year, Settlement Class Counsel have aggressively litigated the case, including with regard to fact discovery and expert work. Both pursuits are critical to: establishing liability and the foundations for class certification; opposing Defendants' anticipated summary judgment and *Daubert* motions; preparing for the jury trial in this matter; and, defending any judgment on appeal.

11. To date, in discovery, Settlement Class Counsel have secured the production of 1,412,625 documents in total from all of the Defendants and multiple third parties, including nearly 78,000 documents from UChicago alone. Plaintiffs have also begun deposing the non-settling Defendants, including Defendants Dartmouth, MIT, Northwestern, Penn, Yale, and Vanderbilt.

12. Settlement Class Counsel also identified, collected, reviewed, and produced 3,814 documents from the Class Representatives. This process involved numerous calls and meetings (including in-person meetings) to identify and collect documents and identify electronic data sources subsequently collected by a retained vendor. Once Settlement Class Counsel responded to Defendants' document requests on behalf of the Class Representatives and negotiated search terms with Defendants, Settlement Class Counsel reviewed the universe of collected documents to locate those appropriate for production. Settlement Class Counsel also worked with the Class

Representatives to produce multiple rounds of Interrogatory Responses on behalf of the Class Representatives, as well as Initial Disclosures.

13. Settlement Class Counsel also felt it necessary to file motions to compel compliance with discovery requests served on Defendants. *See, e.g.*, ECF Nos. 331, 402.

14. In preparation for the thirteen important fact depositions taken in this case to date and the many more that are scheduled, Settlement Class Counsel (a) identified key documents to be used at each deposition, (b) prepared extensive deposition outlines, and (c) coordinated deposition strategy and questioning amongst the Plaintiffs' legal team, as well as logistics with Defendants.

15. Given the importance of expert issues, including economic and damages issues in this case, Settlement Class Counsel have spent significant time working with their retained economic experts and consultants to address issues including impact of the challenged conduct on the members of the proposed class, damages suffered by the class, and anticompetitive effects of the challenged conduct.

THE UCHICAGO SETTLEMENT

16. On August 7, 2023, Settlement Class Counsel and UChicago executed the Settlement Agreement (Exhibit A).

17. The Settlement Agreement provides for UChicago to make cash payments totaling $13.5 million to Plaintiffs and the proposed Settlement Class, and to offer cooperation in discovery. *See* Ex. A, ¶¶ 7, 20. The Proposed Settlement Class includes approximately 200,000 members.

18. By way of cooperation, under the Settlement Agreement, UChicago has promised to work in good faith to ensure the undergraduate financial aid structured data produced by it are

reasonably understandable to Settlement Class Counsel and their consultants. Ex. A, ¶ 20. UChicago has also agreed to complete its pending document production, and to identify by Bates number documents it produced that relate to information shared by participants in the 568 Group, UChicago's undergraduate financial aid practices while it attended 568 Group meetings, and UChicago's "need blind" policy. *Id.* Further, a lawyer for UChicago will meet with Settlement Class Counsel for up to seven hours to respond in good faith to reasonable questions about: UChicago's financial aid practices over time, its participation in the 568 Group, and its knowledge of the practices, procedures, and any enforcement mechanisms or efforts of the 568 Group. *Id*. UChicago has further agreed to ask its former Director of College Aid to meet with Settlement Class Counsel for a witness interview; to negotiate in good faith a declaration or affidavit in the event Settlement Class Counsel want testimony from a UChicago employee; and to provide a declaration supporting the business records exception to the hearsay rule in the event there is an authenticity or hearsay objection to documents kept in the ordinary course of business produced by UChicago. *Id.* This cooperation will assist Settlement Class Counsel in understanding the complex financial aid and other detailed factual questions in the case as well as in the broader prosecution of the case against the sixteen remaining Defendants.

19. The Settlement Agreement provides that if more than 650 proposed Class Members opt-out of the Settlement, UChicago will have the right to terminate the Settlement Agreement. Ex. A, ¶ 16.

20. A true and correct copy of the appointment of Huntington National Bank as Escrow Agent for the settlement funds is attached to the Settlement Agreement as Exhibit B. Huntington is a highly respected bank providing consumers, corporations, and others with a broad range of financial services.

21. A proposed preliminary approval order is attached hereto as Exhibit C. We note that the proposed order attached here to is slightly different than the version attached to the Settlement Agreement (which was executed earlier). The version of the proposed order attached hereto was updated, with UChicago's permission and Defendants' understanding and agreement, to include a provision covering to FERPA issues relating to Defendants' agreement to produce email and postal contact information for current and former students in the proposed Settlement Class.

22. We know of no separate agreements or conflicts that would affect the settlement amount, the eligibility of Settlement Class Members to participate in the Settlement, or the treatment of Settlement Class Members' claims.

23. We have collectively prosecuted numerous antitrust class actions as lead counsel or in other leadership positions. We have collectively negotiated many class and non-class litigation settlements. In our opinion, the Settlement Agreement with UChicago in this case is fair, reasonable, and adequate. It provides substantial benefits to members of the Settlement Class as described herein.

24. For the reasons set forth above and in the accompanying Memorandum of Law, we respectfully submit that under Rule 23(e), the Settlement's terms are fair, reasonable, and adequate in all respects and should be approved. Working in conjunction with economist Ted Tatos (at EconOne), Plaintiffs' counsel devised a fair, equitable, and efficient proposed Plan of Allocation, which is summarized in the Plan of Allocation attached hereto as Exhibit D. Mr. Tatos specializes in economic and statistical analysis, including in antitrust and higher education. He was previously an Adjunct Professor of economics at the University of Utah, where he has taught both graduate and undergraduate economics and statistics classes. He is also the Associate

Economics Editor of the *Antitrust Bulletin* journal. He regularly publishes in economic and law journals on antitrust, labor, statistics, higher education, and intellectual property issues. His work has appeared in the Antitrust Bulletin, the Harvard Journal of Sports & Entertainment Law, the Federal Circuit Bar Journal, the Appraisal Journal, and others. Plaintiffs' counsel intend to submit a detailed proposal and schedule for the claims process at the final approval stage.

PLAINTIFFS' COUNSEL SHOULD BE APPOINTED AS SETTLEMENT CLASS COUNSEL

25. Plaintiffs' counsel filed a motion to be appointed interim co-lead class counsel on February 9, 2022. ECF No. 87. The Court denied that motion as premature on August 7, 2022. ECF No. 182. We incorporate that motion, and the accompanying Declaration of Robert Gilbert, ECF No. 87-3, herein.

26. The three firms seeking to be appointed Settlement Class Counsel collectively have decades of experience in antitrust litigation, including one member who, while at the U.S. Department of Justice, spearheaded the original successful prosecution of the Overlap Group against several universities who were alleged to have colluded regarding financial aid practices prior to the initiation of the 568 Presidents Group.

27. Gilbert Litigators & Counselors (GLC) is a national litigation boutique that focuses on very substantial commercial cases. The Firm's founding partners are Robert Gilbert and Elpidio ("PD") Villarreal. Robert Gilbert is a 1982 graduate of the Yale Law School, where he was Senior Editor of the Yale Law Journal. For more than three decades, his practice concentrated on large complex commercial litigation and arbitration, and for approximately two decades he was an equity partner and a lead trial lawyer at AmLaw 100 firms, including at Mayer Brown and Dentons.

28. Robert Gilbert has very extensive litigation experience concerning disputes in which hundreds of millions of dollars or billions of dollars are in dispute. As lead counsel, he has represented several Fortune 100 and large multinational corporations including Samsung, General Electric, Hyundai Heavy Industries, and GlaxoSmithKline in commercial litigation or commercial arbitration disputes, including the representation of Samsung as lead counsel in a multi-billion dollar arbitration with SanDisk while he was a partner at Mayer Brown. He has repeatedly been selected as a New York Super Lawyer for commercial litigation, and his litigation approach has been described by the Legal 500 as "creative, thorough and aggressive." In the mid-l 990s, while Litigation Counsel at General Electric's Corporate Headquarters, he managed and directed the defense of GE in a major antitrust case that alleged collusion among GE, Westinghouse and Square Din the national circuit breaker market. *In re Circuit Breaker Litigation*, 984 F. Supp. 1267 (C.D. Cal. 1997).

29. Robert Gilbert has worked with or collaborated professionally with Elpidio "PD" Villarreal on a range of matters over the past 26 years, and he is now a partner in Gilbert Litigators & Counselors. Mr. Villarreal is a 1985 graduate of Yale Law School, who began his distinguished career as a Seventh Circuit clerk. He has over 35 years of litigation experience, as a former partner at major national law firm Sonnenschein, Nath & Rosenthal (now part of Dentons) and as chief of litigation for several large multinational companies for almost two decades, including the global head of litigation for GlaxoSmithKline ("GSK") for approximately a decade. He has lectured about litigation, conflict resolution and diversity at multiple elite universities, including Harvard Law School, Yale Law School, Stanford Law School, NYU Stern School of Business, and Notre Dame Mendoza College of Business. At Stern, he also lectures on leadership. In 2016, the Financial Times awarded global recognition to GSK as the "Litigation

Team of the Year." Harvard Law School and Harvard Business School each published a separate case study concerning Mr. Villarreal's innovative work in early dispute resolution, and their respective faculties each taught those case studies for several years**.**

30. Mr. Villarreal has particularly deep experience in complex litigation, including class actions, antitrust, product liability, intellectual property, and commercial litigation. He has managed a wide variety of significant antitrust and other actions involving GSK pharmaceutical products such as Asacol, Avandia, Lamictal, Namenda, and Paxil, where the claimed damages in each litigation were billions of dollars. He managed multiple leading national defense counsel, created litigation strategy, and saw that it was implemented, analyzed voluminous documents, edited memoranda of law prepared by leading law firms, led difficult negotiations to resolve the litigations, attended numerous contested proceedings in federal courts, in depositions, and took the leading role at settlement conferences on these multi-billion dollar matters.

31. Mr. Villarreal has very extensive experience in resolving multi-billion dollar class actions including multi-billion antitrust class actions. His vast experience includes the following:

a. *In re Avandia Marketing, Sales Practices & Products liability Litig.*, *see*, *e.g.*, 484 F. Supp. 3d (E.D. Pa. 2020);

b. *In re Lamictal Direct Purchaser Antitrust Litig., see, e.g.*, 957 F.3d 184 (3d Cir. 2020);

c. *In re Namenda Direct Purchaser Antitrust Litig., see, e.g.*, 33 I F. Supp. 3d 152 (S.D.N. Y. 2018);

d. *In re Asacol Antitrust Litigation, see, e.g.*, 907 F. 3d 42 (1st Cir. 2018);

e. *In re Paxil Litig.* in several federal and state forums.

32. Robert Gilbert has known Robert Raymar for more than 45 years and was his law partner in the early 1990s. Since that time, they have collaborated on a range of complex litigation matters. Mr. Raymar, now Special Counsel for Gilbert Litigators & Counselors, has had a long and distinguished legal career. After graduating from Yale Law School in 1972, where he was an Editor of the Yale Law Journal, he became a law clerk to Judge Leonard Garth of the United States District Court for the District of New Jersey and United States Court of Appeals for the Third Circuit. He subsequently served as assistant legal counsel to the Governor of New Jersey, as a deputy attorney general for the State of New Jersey in the Division of Criminal Justice and as a member of the New Jersey Executive Commission on Ethical Standards. He has had over forty years' experience in private practice litigating complex commercial cases. He has been repeatedly selected as a top-rated litigation attorney by Super Lawyers.

33. Mr. Raymar also has extensive experience in matters involving significant national public policy issues. He has served as a visiting lecturer at Princeton University's School of Public and International Affairs, on the Board of Trustees of the New Jersey Institute of Technology, and as a New Jersey delegate to several Democratic National Conventions. He was a member of the National Executive Committee of the Yale Law School Association and was twice president of the Yale Law School Association of New Jersey. He has been a member of the Boards of Directors of the Center for American Progress Action Fund, of One Fair Wage Action, and of the Advisory Council for the Alliance for Justice Building The Bench Initiative.

34. Sarah Schuster is a Senior Associate at Gilbert Litigators & Counselors, P.C. Ms. Schuster has extensive experience as a complex commercial litigator and regulatory lawyer, representing individual and corporate clients in a wide variety of litigations and investigations.

Ms. Schuster started her career at Schulte Roth & Zabel LLP and later worked at a New York-based boutique litigation firm before joining Gilbert Litigators in 2022. Ms. Schuster received her J.D. from New York University School of Law and her bachelor's degree from Brown University.

35. Freedman Normand Friedland LLP is a national law firm comprised of innovative and tech-savvy attorneys with stellar credentials. With experience from some of the most prestigious litigation firms in the country, FNF's legal team has a successful and decades-long track record of consistently achieving success in high-stakes and notable disputes on behalf of sophisticated clients. FNF's legal team has extensive experience litigating complex commercial, securities, antitrust, class action, and derivative matters on behalf of both plaintiffs and defendants in a broad range of industries. FNF couples a unique brand of creative thinking and technical expertise with well-balanced aggressive advocacy to achieve impressive results in complex, high value, and class action matters. As the firm continues to grow, it has focused on building a diverse attorney pool with cross-functional expertise.

36. Edward Normand is a founding partner of FNF. In addition to working on many of FNF's numerous class actions, Mr. Normand represented clients in class action, securities, and antitrust matters at Boies Schiller Flexner LLP for more than two decades. For example, Mr. Normand represented Vanguard in an opt-out from the securities class action against ARCP, *In re American Realty Capital Props., Inc. Litig.*, 1:15-mc-00040- AKH (S.D.N.Y.); represented HSBC in consolidated securities actions arising out of the sale of residential mortgage-backed securities, *FHFA v. HSBC N. Am. Holdings Inc.*, 11cv6189, 11cv6201 (DLC) (S.D.N.Y.); represented a class of employee health benefit plans in an ERISA action against Merck-Medco arising out of the defendant's management of pharmaceutical benefits, *C. States Southeast v.*

Merck-Medco, 7:03-md- 01508 (S.D.N.Y.); represented EchoStar in connection with its efforts to obtain FCC approval under the antitrust laws to acquire DirecTV; represented ValueAct Capital against the DOJ's allegations that the company violated the HSR Act in connection with acquisition of certain voting securities; and has written regarding the implications of the operation of the HSR Act in conjunction with the antitrust laws, the First Amendment, and Equal Protection clause, S. Gant, A. Michaelson & E. Normand, *The Hart-Scott-Rodino Act's First Amendment Problem*, 103 CORNELL L. REV. 1 (2017). Mr. Normand was the Editor-in-Chief of the University of Pennsylvania Law Review and served as a law clerk in both the Second Circuit Court of Appeals and the Eastern District of Pennsylvania.

37. Devin (Velvel) Freedman is a founding partner of FNF with substantial experience litigating complex commercial matters. He has been lead defense counsel in multiple class actions and class arbitrations. *See, e.g., Joe Rudy Reyes, et al. v. JPay, Inc. et al.*, 2:18-cv-00315-R-MRW (C.D. Cal.); *Rodriguez et. al. v. JPay Inc.*, *et. al.*, 2:19-cv-14137 (S.D. Fla.); *In the Matter of the Arbitration Between Shalanda Houston and Cynthia Kobel, individually and on behalf of all others similarly situated and JPay*, Inc, AAA Case No. 01- 15-0005-3477 (American Arbitration Association); *In the Matter of the Arbitration Between Oumer Salim, individually and on behalf of all others similarly situated and JPay, Inc.*, AAA Case No. 01-15-0005-8277 (American Arbitration Association). Finally, Freedman was a 2019 recipient of the Daily Business Review's professional excellence award as an attorney "On the Rise."

38. Eric Cramer is Chairman and an Executive Shareholder of the law firm of Berger Montague PC. He is a member in good standing of the State Bars of Pennsylvania and New York.

39. Described by *Chambers & Partners* as a "[b]outique firm with deep expertise in complex antitrust litigation," Berger Montague pioneered the antitrust class action and has been engaged in the practice of complex and class action litigation for more than fifty years. Since its founding by David Berger—one of the "fathers of the class action practice"—Berger Montague has been a leading national advocate for clients and class members in many of the most important complex antitrust cases ever litigated, including, serving as co-lead counsel most recently in the largest private antitrust settlement ever achieved (approximately $5.62 billion) in the *Payment Card Interchange Fee & Merchant Discount Antitrust Litig. (In re Payment Card)*, MDL No. 1720 (E.D.N.Y.), and the largest single-defendant settlement ever for a case alleging delayed generic competition in *In re: Namenda Direct Purchaser Antitrust Litig.*, No. 15-cv-7488 (S.D.N.Y.) ($750 million). The firm is headquartered in Philadelphia with offices in Chicago, Minneapolis, San Diego, San Francisco, Toronto, and Washington, DC.

40. Berger Montague PC is currently lead or co-lead counsel in more than two dozen of the largest and most complex antitrust class actions in courts around the country, including:

a. *Le v. Zuffa, LLC*, No. 15-cv-1045 (D. Nev.) (co-lead counsel representing a class of mixed martial arts fighters);

b. *In re Google Digital Advertising Antitrust Litig.*, No. 21-md-3010 (S.D.N.Y.) (co-lead counsel for the class of publishers against Google);

c. *Fusion Elite All Stars v. Varsity Brands LLC,* No. 20-cv-3390 (E.D. Pa.) (co-lead counsel for classes of gyms and spectators against an alleged monopolist in the All Star Cheer market);

d. *In re Rotavirus Vaccines Antitrust Litig.*, No. 18-cv-1734 (E.D. Pa.) (co-lead counsel for class of healthcare plans who purchased pediatric rotavirus vaccines);

e. *In re Geisinger Health and Evangelical Community Hospital Healthcare Workers Antitrust Litig.*, No. 21-cv-00196 (M.D. Pa.) (co-lead counsel for class of healthcare workers);

f. *Simon & Simon, P.C., et al. v. Align Technology, Inc.*, No. 20-cv-03754 (N.D. Cal.) (co- lead counsel for class of dental practice purchasers of clear dental aligners and scanners);

g. *In re Broiler Chicken Grower Antitrust Litig. (No. II)*, No. 20-md-02977 (E.D. Okla.) (co-lead counsel for class of chicken farmers);

h. *In re Bystolic Antitrust Litig.*, No. 20-cv-5735 (S.D.N.Y.) (co-lead counsel for class of direct purchasers of pharmaceutical products);

i. *In re EpiPen Direct Purchaser Litig.*, No. 20-cv-827 (D. Minn.) (co-lead counsel for class of direct purchasers of pharmaceutical products);

j. *In re Lipitor Antitrust Litig.*, No. 12-cv-2389 (D.N.J.) (co-lead counsel for class of direct purchasers of pharmaceutical products);

k. *In re Niaspan Antitrust Litig.*, No. 13-md-2460 (E.D. Pa.) (co-lead counsel for class of direct purchasers of pharmaceutical products);

l. *In re Opana ER Antitrust Litig.*, No. 14-cv-10150 (N.D. Ill.) (co-lead counsel for class of direct purchasers of pharmaceutical products);

m. *In re Commodity Exchange, Inc.*, *Gold Futures and Options Trading Litig.*, No. 14-md- 2548 (S.D.N.Y.) (co-lead counsel for a class of sellers of gold investments);

41. Berger Montague has won verdicts and settlements recovering over $40 billion for clients and class members. Examples of recent successes in antitrust class actions include:

a. *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, No. 05-md- 1720 (S.D.N.Y.) (settlement of approximately $5.6 billion);

b. *In re Namenda Direct Purchaser Antitrust Litig.*, No. 15-cv-7488 (S.D.N.Y.) ($750 million class settlement);

c. *King Drug Co. v. Cephalon, Inc.*, No. 06-cv-01797 (E.D. Pa.) ($512 million class settlement);

d. *In re Domestic Drywall Antitrust Litig.*, No. 13-2437 (E.D. Pa.) (settlements totaling $190.7 million);

e. *In re Commodity Exchange, Inc. Gold Futures & Options Trading Litigation*, No. 14-md- 02548 (S.D.N.Y.) (settlements totaling $152 million);

42. The U.S. edition of *The Legal 500* has recommended Berger Montague PC as a "Top Tier Firm" for representing plaintiffs in antitrust class action litigation and describes the firm as "excellent," "easy to deal with," and "noted for the depth of its team." The Firm has also appeared on *The National Law Journal*'s "Hot List" of the Top Plaintiffs' Law Firms in the United States in twelve of the last fifteen years the list was compiled (from 2003–2017). Beginning in 2018 and each year thereafter, *The National Law Journal* and Law.com have included Berger Montague PC in its list of "Elite Trial Lawyers," recognizing law firms that "have done exemplary and cutting-edge work on behalf of their clients and are established leaders in the area of plaintiff law." *Id.* Similarly, *Chambers & Partners* has repeatedly named the Firm a leading, "Band 1" national antitrust law firm for multiple years running. Berger Montague has served as lead or co-lead counsel in myriad antitrust cases representing plaintiff classes alleging price fixing, vertical trade restraints, monopolization, and other anticompetitive conduct in diverse markets.

43. Managing this case on a day-to-day basis for Berger Montague have been Eric Cramer, Robert Litan, Daniel Walker, Ellen Noteware, and Hope Brinn.

44. Eric Cramer is Chairman of Berger Montague and is also Co-Chair of the Firm's antitrust department. He has a national practice in the field of complex litigation, primarily in

antitrust. He is currently co-lead counsel in multiple significant antitrust class actions across the country in a variety of industries and is responsible for winning numerous significant settlements for his clients totaling well over $3 billion. Most recently, he has focused on representing workers claiming that anticompetitive practices have suppressed their pay, including cases on behalf of mixed-martial-arts fighters, luxury retail and healthcare workers, and chicken growers. Last year he served as one of the main trial counsel in a two-week jury trial in *In re Capacitors Antitrust Litig*. (N.D. Cal.), which resulted in a $160 million class settlement just before closing arguments.

45. In 2020, *Law360* named Cramer a Titan of the Plaintiffs Bar, and *Who's Who Legal* identified him as a Global Elite Thought Leader, stating that Mr. Cramer "comes recommended by peers as a top name for antitrust class action proceedings." In 2021, *Chambers & Partners* ranked him in the top tier nationally in antitrust, observing that "He excels in economic analysis. He is a real leader;" and that he has "a great presence in court and at trial," and is at the "[t]op of the profession; a phenomenal lawyer who is an expert on economics." In 2019, *The National Law Journal* awarded him the 2019 Keith Givens Visionary Award, which was developed to honor an outstanding trial lawyer who has moved the industry forward through his or her work within the legal industry ecosystem, demonstrating excellence in all aspects of work from client advocacy to peer education and mentoring. In 2018, he was named Philadelphia antitrust "Lawyer of the Year" by *Best Lawyers*, and in 2017, he won the American Antitrust Institute's Antitrust Enforcement Award for Outstanding Antitrust Litigation Achievement in Private Law Practice for his work in *Castro v. Sanofi Pasteur Inc.*, No. 11-cv-07178 (D.N.J.). In that case, he represented a national class of physicians challenging Sanofi Pasteur with

anticompetitive conduct in the market for meningitis vaccines, resulting in a settlement of more than $60 million for the class.

46. Cramer has stewarded multiple cartel cases to successful resolution as co-lead counsel, including *In re Dental Supplies Antitrust Litig.*, No. 1:16-cv-696 (E.D.N.Y.) (Cogan, J.) (one of four co-leads) (Section 1 price-fixing case against dental supplies distributors that resulted in an $80 million settlement in 2019) and *In re Domestic Drywall Antitrust Litig.*, 13-md-2437 (E.D. Pa.) (one of 3 co-leads) (Section 1 price fixing cases against drywall manufacturers that resulted in settlements totaling more than $190 million). He was also co-lead counsel in connection with a ground-breaking settlement in an antitrust case relating to the over-the- road fleet payment card market in *Comdata*, which provided for $130 million in cash plus valuable prospective relief that rolled back much of the conduct plaintiffs had challenged. *Id.* And he litigated as co-lead counsel an antitrust case against Abbott Labs, which settled for $54 million after three days of trial. *Meijer v. Abbott Labs.*, Nos. 04-cv-1511, 07-cv-5985 (N.D. Cal.). He is also currently co-lead in multiple antitrust class actions, including *Le v. Zuffa, LLC*, No. 15-cv-1045 (D. Nev.) (one of 3 co-leads); *In re Google Digital Advertising Antitrust Litig.*, No. 21-md-3010 (S.D.N.Y.) (one of 3 co-leads for the class of publishers); *Fusion Elite All Stars v. Varsity Brands LLC*, No. 2:20-cv-3390 (E.D. Pa.) (one of 3 co- leads); and *In re Rotavirus Vaccines Antitrust Litig.*, No. 2:18-cv-1734 (E.D. Pa.) (one of 2 co-leads).

47. Dr. Robert Litan, shareholder, is both an experienced antitrust attorney and a Ph.D. economist, with an extensive 40-plus year research publication record (as author or co-author of 30 books and over 250 articles in academic and popular publications) and economic expert testifying experience in over 20 legal or administrative matters. He has brought that experience to his class action antitrust litigation practice, working with economic experts and on

economic aspects of antitrust matters, including his work on this matter, his ongoing work in *In Re Google Digital Advertising Litig*, and his prior work with economic experts in *In Re Foreign Exchange Benchmark Rates Antitrust Litig.* (S.D.N.Y., No. 13 Civ. 7789 (LGS), and *In Re Google Play Consumer Antitrust Litig.* (N.D. Cal., No. 3:20-CV-05761-JD).

48. Dr. Litan is also a former Deputy Assistant Attorney General in the Justice Department's Antitrust Division, where, among other things, he directed the Department's first investigation of monopolization by Microsoft (which resulted in a consent decree in 1994), the initial stages of the Department's price-fixing investigation of NASDAQ (which also resulted in a consent decree in 1997), and personally directed the Department's settlement reached in December 1993 with the remaining Defendant, MIT, that did not sign an earlier consent decree in the Department's investigation of financial aid price-fixing through the "Overlap Agreement" between universities in the Ivy League and MIT. The terms of the DOJ-MIT settlement were partially incorporated into the text of the Section 568 antitrust exemption, at issue in this case.

49. Ellen Noteware is a Shareholder and member of the firm's antitrust department. Ms. Noteware has successfully represented investors, retirement plan participants, employees, consumers, and direct purchasers of prescription drug products in a variety of class action cases. She currently chairs the firm's Pro Bono Committee. Ms. Noteware served on the trial team for *Cook v. Rockwell Int'l Corp.* No. 90-181 (D. Colo.) and received, along with the entire trial team, the "Trial Lawyer of the Year" award in 2009 from the Public Justice Foundation for their work on the case, which resulted in a jury verdict of $554 million in February 2006, after a four-month trial, on behalf of thousands of property owners near the former Rocky Flats nuclear weapons plant located outside Denver, Colorado. Ms. Noteware also has played a leading role in numerous antitrust cases representing direct purchasers of prescription drugs. Many of these

cases have alleged that pharmaceutical manufacturers have wrongfully kept less expensive generic drugs off the market, in violation of the antitrust laws. Many of these cases have resulted in substantial cash settlements, including *In re: Namenda Direct Purchaser Antitrust Litigation*, (S.D.N.Y.) ($750 million settlement – largest single-defendant settlement ever for a case alleging delayed generic competition); *In re Loestrin 24 Fe Antitrust Litigation*, (D.R.I.) ($120 million settlement 3 weeks before trial was set to begin); *In re Ovcon Antitrust Litigation*, (D.D.C.) ($22 million settlement); *In re Tricor Direct Purchaser Antitrust Litigation*, (D. Del.) ($250 million settlement); *Meijer, Inc. v. Abbott Laboratories*, (N.D. Cal.) (Norvir) ($52 million); and *In re Celebrex*, No. 14-cv-00361 (E.D. Va.) ($95 million).

50. Ms. Noteware is also extensively involved in litigating breach of fiduciary duty class action cases under the Employee Retirement Income Securities Act ("ERISA"). Her ERISA settlements include: *In re Nortel Networks Corp. ERISA Litigation* (M.D. Tenn.) ($21 million settlement); *In re Lucent Technologies, Inc. ERISA Litigation* (D.N.J.) ($69 million settlement); *In re SPX Corporation ERISA Litigation* (W.D.N.C.) ($3.6 million settlement); *Short v. Brown University*, (D.R.I.) ($3.5M settlement plus requirement that independent adviser for ERISA plans be retained); *Dougherty v. The University of Chicago*, No. 1:17-cv-03736 (N.D. Ill.) ($6.5M settlement); and *Nicolas v. The Trustees of Princeton University*, No. 3:17-cv-03695 (D.N.J.) (settlement announced). Ms. Noteware is a graduate of Cornell University (B.S. 1989) and the University of Wisconsin-Madison Law School (J.D. *cum laude* 1993) where she won the Daniel H. Grady Prize for the highest grade point average in her class, served as Managing Editor of the Law Review, and earned Order of the Coif honors. She is currently a member of the Pennsylvania, New York, and District of Columbia bars.

51. Daniel J. Walker is a Shareholder and member of the firm's antitrust department and practices in Washington, DC, where he has been named a Super Lawyer for 2020-2021. Mr. Walker rejoined the firm in 2017 from the Federal Trade Commission, where he was an attorney in the Health Care Division. Mr. Walker litigates complex cases on behalf of consumers and workers and has helped recover hundreds of millions of dollars on behalf of plaintiffs. Significant past successes include *In re Loestrin 24 Fe Antitrust Litig.*, No. 13-md- 2472 (D.R.I.) (settlements totaling $120 million for purchasers of hormonal birth control pills), *In re High Tech Employee Antitrust Litig.*, No. 11-cv-2509 (N.D. Cal.) (settlements totaling $435 million for workers in the high tech industry), *Adriana Castro, M.D., P.A., et al. v. Sanofi Pasteur Inc.*, No. 11-cv-07178 (D.N.J.) ($61.5 million settlement on behalf of pediatricians who purchased meningococcal vaccine), and *In re Titanium Dioxide Antitrust Litig.*, No. 10-cv-318 (D. Md.) (settlements totaling $163.5 million for purchasers of titanium dioxide).

52. Hope Brinn is an Associate in the Washington DC office and practices in the Firm's Antitrust group, and has taken two of the four depositions taken by Berger Montague to date in this case. Prior to starting at the Firm, Hope clerked for the Honorable Janet Bond Arterton in the United States District Court for the District of Connecticut. Hope is a graduate of Swarthmore College, where she was a Lang Opportunity Scholar and Truman Scholar, and the University of Michigan Law School, where she was a Darrow Scholar.

Dated: August 14, 2023

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

<u>/s/ Eric L. Cramer</u>
Eric L. Cramer (*pro hac vice*)
BERGER MONTAGUE PC
1818 Market Street, Suite 3600

Philadelphia, PA 19106
Tel: (215) 875-3000
ecramer@bm.net

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ Robert D. Gilbert
Robert D. Gilbert
GILBERT LITIGATORS & COUNSELORS
11 Broadway, Suite 615
New York, NY 10004
Tel: (646) 448-5269
rgilbert@gilbertlitigators.com

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

s/ Edward Normand
Edward Normand (*pro hac vice*)
FREEDMAN NORMAND FRIEDLAND LLP
99 Park Ave., 1910
New York, NY 10016
Tel: (646) 350-0527
ted@fnf.law

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIA HENRY, et al., individually and on behalf of all others similarly situated,

Plaintiffs,

v.

BROWN UNIVERSITY, et al.,

Defendants.

Case No. 1:22-cv-125

Hon. Matthew F. Kennelly

SETTLEMENT AGREEMENT BETWEEN THE UNIVERSITY OF CHICAGO AND THE PROPOSED CLASS OF PLAINTIFFS

THIS SETTLEMENT AGREEMENT ("Settlement Agreement" or the "Settlement") is made and entered into as of August 7, 2023, by and between (a) defendant the University of Chicago ("University"); and (b) Plaintiffs,[1] individually and on behalf of the settlement class (the "Class" as defined in Paragraph 1 below, and together with University, the "Settling Parties"), in this Action (*Henry, et al. v. Brown University, et al.*, Case No. 1:22-cv-125 (N.D. Ill.)).

WHEREAS, Plaintiffs filed a lawsuit alleging that Defendants Brown University, California Institute of Technology, the University of Chicago, the Trustees of Columbia University in the City of New York, Cornell University, the Trustees of Dartmouth College, Duke University, Emory University, Georgetown University, Johns Hopkins University, Massachusetts Institute of Technology, Northwestern University, the University of Notre Dame Du Lac, the Trustees of the University of Pennsylvania, William Marsh Rice University, Vanderbilt University, and Yale

[1] Plaintiffs are Andrew Corzo, Sia Henry, Alexander Leo-Guerra, Michael Maerlender, Brandon Piyevsky, Benjamin Shumate, Brittany Tatiana Weaver, and Cameron Williams.

University (collectively, "Defendants") have restrained competition for undergraduate financial aid in violation of federal antitrust laws, and that Plaintiffs and Class members incurred damages as a result, as detailed in Plaintiffs' Complaint, filed in this Action on January 9, 2022 (ECF No. 1) and as subsequently amended ("Complaint");

WHEREAS, the University has asserted defenses to Plaintiffs' claims, denies each and every one of Plaintiffs' allegations of unlawful or wrongful conduct by the University, denies that any conduct of the University challenged by Plaintiffs caused any damage whatsoever, and denies all liability of any kind;

WHEREAS, the University has consented to the appointment of the law firms of Freedman Normand Friedland LLP, Gilbert Litigators & Counselors, PC, and Berger Montague PC as Settlement Class Counsel ("Settlement Class Counsel");

WHEREAS, Settlement Class Counsel and counsel for the University have engaged in arm's-length settlement negotiations, and have reached this Settlement Agreement, subject to Court approval, which embodies all of the terms and conditions of the Settlement between Plaintiffs, both individually and on behalf of the Class, and the University;

WHEREAS, Settlement Class Counsel have concluded, after extensive fact discovery and consultation with their consultants and experts, and after carefully considering the circumstances of this Action, including the claims asserted in the Complaint and the University's defenses thereto, that it would be in the best interests of the Class to enter into this Settlement Agreement and assure a benefit to the Class, and further, that Settlement Class Counsel consider the Settlement to be fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23, and in the best interests of the Class;

WHEREAS, the University has concluded, despite its belief that it is not liable for the claims asserted and that it has good defenses thereto, that it would be in its best interests to enter into this Settlement Agreement to avoid the risks and uncertainties inherent in complex litigation and also to avoid additional costs of further litigation;

WHEREAS, Plaintiffs and the University agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by the University, or of the truth of any of the claims or allegations alleged in the Complaint;

WHEREAS, Plaintiffs and the University agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence by Plaintiffs of the absence of any violation of any statute or law or of any absence of liability or wrongdoing by the University, or of the validity of any of the University's defenses, or of the lack of truth of any of the claims or allegations alleged in the Complaint; and

WHEREAS, Plaintiffs and the University agree that the University's consent to the Settlement Class shall not be deemed or construed as consent to, or otherwise supportive of, the certification of this or any other class for litigation purposes, and that, in the event the Settlement Agreement is terminated for any reason, the University may oppose the certification of any class.

NOW THEREFORE, it is agreed by the undersigned Settlement Class Counsel, on behalf of Plaintiffs and the Class, on the one hand, and the University on the other, that all claims brought by Plaintiffs and the Class against the University be fully, finally, and forever settled, compromised, discharged, and dismissed with prejudice as to the University, without costs as to Plaintiffs, the Class, or the University, subject to Court approval, on the following terms and conditions:

1. Definitions

a) "Action" means *Henry et al. v. Brown University et al.* No. 1:22-cv-00125 (N.D. Ill.).

b) "Claims Administrator" means the entity appointed by the Court to provide notice to the Class, process the claims submitted by Class Members, and carry out any other duties or obligations provided for by the Settlement.

c) The "Class" means the settlement-only class, which permits potential class members to opt out, including the following persons:

a. all U.S. citizens or permanent residents who have during the Class Period (a) enrolled in one or more of Defendants' full-time undergraduate programs, and (b) received at least some need-based financial aid from one or more Defendants, and (c) directly purchased from one or more Defendants tuition, fees, room, or board that was not fully covered by the combination of any types of financial aid or merit aid (not including loans) in any undergraduate year.[2] The Class Period is defined as follows:

   i. For Chicago, Columbia, Cornell, Duke, Georgetown, MIT, Northwestern, Notre Dame, Penn, Rice, Vanderbilt, Yale—from 2003 through the date the Court enters an order preliminarily approving the Settlement.

   ii. For Brown, Dartmouth, Emory—from 2004 through the date the Court enters an order preliminarily approving the Settlement.

   iii. For CalTech—from 2019 through the date of the Court enters an order preliminarily approving the Settlement.

   iv. For Johns Hopkins—from 2021 to the date the Court enters an order preliminarily approving the Settlement.

b. Excluded from the Class are:

   i. Any Officers and/or Trustees of Defendants, or any current or former employees holding any of the following positions: Assistant or Associate Vice Presidents or Vice Provosts, Executive Directors, or Directors of Defendants'

[2] For avoidance of doubt, the Class does not include purchasers for whom the total cost they were charged by the Defendant or Defendants whose institution(s) they attended, including tuition, fees, room, or board for each undergraduate academic year, was covered by any form of financial aid or merit aid (not including loans) from one or more Defendants.

Financial Aid and Admissions offices, or any Deans or Vice Deans, or any employees in Defendants in-house legal offices; and

ii. the Judge presiding over this action, his or her law clerks, spouse, and any person within the third degree of relationship living in the Judge's household and the spouse of such a person.

d) "Class Members" means the members of the Class who do not timely and validly exclude themselves from the Settlement.

e) "Effective Date" means the date on which all of the following have occurred: (i) the Settlement is not terminated pursuant to Paragraphs 15 or 16 below; (ii) the Settlement is approved by the Court as required by Fed. R. Civ. P. 23(e); (iii) the Court enters a final approval order; and (iv) the period to appeal the final approval order has expired and/or all appeals have been finally resolved.

f) "Escrow Account" means the qualified settlement escrow account which holds the University Settlement Fund.

g) "Escrow Agreement" means an agreement in the form annexed hereto as Exhibit B.

h) "Fee and Expense Award" means award(s) by the Court to Settlement Class Counsel for reasonable attorneys' fees and reimbursement of reasonable costs and expenses incurred in the prosecution of the Action, including any interest accrued thereon.

i) "Notice Expenses" means expenses relating to providing notice, including, *inter alia*, the cost of (a) publications, (b) printing and mailing the long-form notice, (c) the Claims Administrator's costs of maintaining and administering the notice website and toll-free phone number, and (d) the Claims Administrator's costs associated with designing and administering the notice plan.

j) "Plaintiffs' Claims" means Plaintiffs' claims against the University and other Defendants as stated in the Complaint.

k) "Releasees" means the University, the Board of Trustees of the University, individually or collectively, and all of their present, future and former parent, subsidiary and affiliated corporations and entities, the predecessors and successors in interest of any of them, and each of the foregoing's respective present, former and future officers, directors, trustees, affiliates, employees, faculty members, students, agents, representatives, volunteers, attorneys, outside counsel, predecessors, successors, and assigns.

l) "Releasors" means all Plaintiffs and Class Members, and those Plaintiffs' and Class Members' agents, attorneys, representatives (and as applicable each of their past, present, and future agents, attorneys, representatives, and all persons or entities that made payments to the University or other Defendants on behalf of Plaintiffs and Class Members), the predecessors, successors, heirs, executors, administrators, and representatives of each of the foregoing.

m) "Released Claims" means any claims, demands, actions, suits, causes of action, damages, and liabilities, of any nature whatsoever, including costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that Plaintiffs ever had, now have, or hereafter can, shall or may have, directly, representatively, derivatively, as assignees or in any other capacity, to the extent arising out of or relating to a common nucleus of operative facts with those alleged in the Complaint that Plaintiffs have asserted or could have asserted in the Action. For avoidance of doubt, claims between Class Members and the University arising in the ordinary course and not relating to or arising from the facts alleged in the Complaint or any claims with a common nucleus of operative facts as those alleged in the Complaint, will not be released.

n) "Settlement Class Counsel" means the law firms Freedman Normand Friedland LLP, Gilbert Litigators & Counselors, PC, and Berger Montague PC.

o) "Settling Parties" means the University, Plaintiffs, and the Class.

p) "University Payment" means Thirteen Million, Five Hundred-Thousand Dollars ($13,500,000.00).

q) "University Settlement Fund" means the University Payment, plus interest accrued on the Settlement Fund. It is understood that, at no additional cost to the University or the University Settlement Fund, the University Settlement Fund may be combined with settlement funds from other defendants in the event that Plaintiffs achieve settlements with additional defendants in this Action.

2. Reasonable Steps Necessary to Help Effectuate this Settlement. The Settling Parties agree to undertake in good faith all reasonable steps necessary to help effectuate the Settlement, including undertaking all actions contemplated by and steps necessary to carry out the terms of this Settlement and to secure the prompt, complete, and final dismissal with prejudice of all claims in this Action against the University. The Settling Parties also agree to the following:

a) The University agrees not to oppose the Plaintiffs' motions for preliminary or final approval of the Settlement, and agrees not to appeal any Court ruling granting in full either of these motions.

b) Settlement Class Counsel represent that Plaintiffs will support the Settlement and will not object to the Settlement or opt out of the Settlement Class.

c) The University will serve notice of this Settlement on the appropriate federal and state officials under the Class Action Fairness Act, 28 U.S.C. § 1715.

d) This Settlement is reached with Settlement Class Counsel who will seek Court approval to represent all of the Class, and is intended to be binding on all persons who are within the definition of the Class, except any persons who timely and validly opt out.

3. Motion for Preliminary Approval of the Settlement. Plaintiffs shall draft a motion for preliminary approval of the Settlement and all necessary supporting documents, which shall be consistent with this Settlement Agreement and which the University shall have a right to review and approve (which approval shall not be unreasonably withheld). The University may suggest revisions, which Plaintiffs agree to consider in good faith, as long as the University

provides its suggested revisions or comments within five (5) business days of having received any such document or documents from Plaintiffs, or such other time as the Settling Parties may agree. Unless the Settling Parties agree otherwise, Plaintiffs will file the motion for preliminary approval with the Court no later than the earlier of: (i) 45 days after the execution of this Settlement Agreement, or (ii) August 14, 2023. The University understands and accepts that Plaintiffs may file for preliminary approval of this Settlement jointly with other settlements in this Action. Nothing in this Settlement Agreement shall prevent Plaintiffs from consummating settlements with other defendants in this Action or from including such settlements as part of a joint preliminary approval motion. The motion for preliminary approval shall include a proposed form of order substantially similar to Exhibit A, including:

a) requesting preliminary approval of the Settlement as fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23, and finding that dissemination of notice to the Class is warranted;

b) finding that the proposed plan of notice complies with Rule 23 and due process, and seeking approval of short- and long-form notices;

c) preliminarily approving the Plan of Allocation;

d) providing that if final approval of the Settlement is not obtained, the Settlement shall be null and void, and the Settling Parties will revert to their positions ex ante without prejudice to their claims or defenses; and

e) setting a date for a motion for final approval, a deadline for objections and exclusions, and a date for a fairness hearing.

4. Stay of Proceedings; Subsequent Litigation Class. The motion for preliminary approval shall also provide for a stay of Plaintiffs' proceedings against the University pending final approval or termination of the Settlement. The University agrees not to oppose preliminary approval of the Settlement. Plaintiffs represent that the class definition in Paragraph 1 of this Settlement Agreement is at least as broad as that for which the Plaintiffs will seek certification in their Motion for Class Certification against the remaining Defendants in the Action, except as to

the end date of the class. In the event that Settlement Class Counsel seek to certify a class or classes in their Motion for Class Certification against the remaining defendants that include any class members not included in the class definition in Paragraph 1 herein (except as to the end date), Settlement Class Counsel agree that this Settlement Agreement shall be amended to include such additional class members and that in the event an Amended Motion for Preliminary Approval of this Settlement Agreement, any amended notices must be provided to the classes, or an Amended Motion for Final Approval of this Settlement Class are necessary, Settlement Class Counsel will file such amendments and provide such notice at no expense to the University.

5. Motion for Final Approval and Entry of Final Judgment. In the event the Court enters an order preliminarily approving the Settlement, the Plaintiffs shall draft a motion for final approval of the Settlement and all necessary supporting documents, which the University shall have a right to review and approve (which approval shall not be unreasonably withheld). The University may suggest revisions, which Plaintiffs agree to consider in good faith, as long as the University provides its suggested revisions or comments within five (5) business days of having received any such document or documents from Plaintiffs, or other such time as the Settling Parties may agree. Plaintiffs will file the motion for final approval pursuant to the schedule ordered by the Court. The final approval motion shall seek entry of a final approval order, including:

a) finding that notice given constitutes due, adequate, and sufficient notice and meets the requirements of due process and the Federal Rules of Civil Procedure;

b) finding the Settlement to be fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23 and directing consummation of the Settlement pursuant to its terms;

c) finding that all Class Members shall be bound by the Settlement Agreement and all of its terms;

d) finding that the Releasors shall be bound by the respective releases set forth in Paragraphs 13 and 14 of this Settlement Agreement, and shall be forever barred from asserting any claims or liabilities against the University covered by the respective Released Claims against any of the Releasees;

e) approving expressly the provisions in Paragraph 7(e) of the Settlement Agreement allowing payment of class counsel fees and expenses before the Effective Date pursuant to the terms of that paragraph;

f) directing that the Action be dismissed with prejudice as to the University and without costs;

g) determining under Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing that the judgment of dismissal with prejudice as to the University be final;

h) retaining exclusive jurisdiction over the Settlement, including the administration and consummation of the Settlement; and

i) directing that, for a period of five years, the Clerk of the Court shall maintain the record of the entities that have excluded themselves from the Class and that a certified copy of such records shall be provided to the University.

6. Finality of Settlement. This Settlement Agreement shall become final upon the Effective Date.

7. Monetary Relief; Notice Fees and Costs

a) The University shall transfer the University Payment to the Escrow Account within the later of: (i) 30 calendar days after entry by the Court of the preliminary approval order on the docket of the Action, or (ii) 14 calendar days after Settlement Class counsel provide University counsel in writing with wiring instructions for the Escrow Account.

b) The payment provided for in subparagraph 7(a) above shall be held in the Escrow Account subject to the terms and conditions of the Escrow Agreement, and in accordance with the provisions of Paragraphs 8-11, 16 and 17 below.

c) Before the granting of final approval, and upon the direction of Settlement Class Counsel, all reasonable costs of providing notice to the Class and any costs of settlement fund administration, including taxes, will be paid out of the Escrow Account on a non-recoupable basis. Settlement Class Counsel shall attempt to defray the costs of notice by combining the administration of multiple settlements, if such settlements occur and if permitted by the Court to

do so. If multiple settlements are noticed together, the notice costs shall be divided by the number of settlements and charged to the escrow account of each settlement pari passu. Settlement Class Counsel shall provide copies to the University's counsel of any invoices paid by Settlement Class Counsel for which money is withdrawn from the Escrow Account. Any withdrawals for reasonable costs from the Escrow Account pursuant to this provision shall be non-refundable in the event that the Settlement Agreement is terminated or not approved by the Court. Settlement Class Counsel agree to arrange for provision of notice to the Class in accordance with Fed. R. Civ. P. 23 and any orders of the Court. Settlement Class Counsel agree to provide the University reasonable advance notice of the notice plan and costs.

d) Following the Effective Date, any attorneys' fees, costs and expenses and class plaintiff service awards awarded to Settlement Class Counsel and Plaintiffs by the Court will be paid from the escrow account. The University will take no position on Settlement Class Counsel's application for attorneys' fees, costs and expenses or for service awards to the Plaintiffs unless requested to do so by the Court.

e) Notwithstanding the above, subject to and following both the Court's approval in the Final Approval Order and the posting of a non-revocable letter of credit issued by Northern Trust, Bank of America, Citibank, or Chase Bank agreed to in writing in advance by the Settling Parties in an amount equal to or greater than the amount of any funds paid under this paragraph, Settlement Class Counsel's attorneys' fees and/or reimbursement of out-of-pocket expenses of Settlement Class Counsel awarded by the Court, up to a maximum of $5,000,000, shall be payable from the Settlement Fund upon being awarded by order of the Court, notwithstanding the existence of any timely-filed objections thereto, or potential appeal therefrom, or collateral attack on the Settlement or any part thereof, including on the award of attorneys' fees and costs. Any payment pursuant to this Paragraph 7(e) shall be subject to Settlement Class Counsel's obligation to make appropriate refunds or repayments to the University Settlement Fund with interest that would have accrued to the University Settlement Fund if the early payment(s) had not been made, within five business days, if and when, as a result of any appeal or further proceedings on remand, action by

or ruling of the Court, or successful collateral attack, the fee or award of costs and expenses is reduced or reversed, or in the event the settlement does not become final or is rescinded or otherwise fails to become effective. If Settlement Class Counsel fail to make the required repayments in accordance with the time period in this paragraph, the University may call the letter of credit. If the provisions of this paragraph are followed, the University shall not object to such disbursements. If the Court does not approve this provision, that disapproval will have no effect otherwise on the Settling Parties Settlement Agreement. Nothing in this paragraph is intended to serve as a cap on, or limit to, the attorneys' fees or expenses that Settlement Class Counsel or Plaintiffs may be awarded by the Court and receive following the Effective Date.

f) Aside from the payments specified in this Paragraph 7, the University shall not pay any additional amount at any time, whether for attorneys' fees or expenses, incentive awards, settlement administration costs, escrow costs, taxes due from Escrow Account, or any other cost. The University shall not be liable for any monetary payments under the Settlement Agreement other than the University Payment.

8. The University Settlement Fund. At all times prior to the Effective Date, the University Settlement Fund shall be invested as set forth in Paragraph 3 of the Escrow Agreement, in instruments backed by the full faith and credit of the U.S. Government or fully insured by the U.S. Government or an agency thereof, including a U.S. Treasury Money Market Fund or a bank account insured by the FDIC up to the guaranteed FDIC limit subject to the review and approval of the University, such approval not to be unreasonably withheld. After the Effective Date, the University Settlement Fund shall be invested pursuant to Paragraph 7 of the Escrow Agreement as directed in writing by Settlement Class Counsel. All interest earned on the University Settlement Fund shall become part of the University Settlement Fund.

9. Disbursements: After the Effective Date, the University Settlement Fund shall be distributed in accordance with the Plan of Allocation and the Court's approval of subsequent request(s) for distribution.

10. Taxes

a) Settlement Class Counsel shall be solely responsible for directing the Escrow Agent (as defined in the Escrow Agreement) to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Escrow Account. Further, Settlement Class Counsel shall be solely responsible for directing the Escrow Agent to make any tax payments, including interest and penalties due, on income earned by the Escrow Account. Subject to Paragraph 7 above, Settlement Class Counsel shall be entitled to direct the Escrow Agent to pay customary and reasonable tax expenses, including professional fees and expenses incurred in connection with carrying out the Escrow Agent's or tax preparer's responsibilities as set forth in this paragraph, from the Escrow Account. Settlement Class Counsel shall notify the University through its counsel regarding any payments or expenses paid from the Escrow Account. The University shall have no responsibility to make any tax filings relating to this Settlement Agreement, the Escrow Account, or the Settlement Payments, and shall have no responsibility to pay taxes on any income earned by the Escrow Account.

b) For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "Administrator" of the Escrow Account shall be Settlement Class Counsel, who shall timely and properly file or cause to be filed on a timely basis all tax returns necessary or advisable with respect to the Escrow Account (including without limitation all income tax returns, all informational returns, and all returns described in Treas. Reg. § 1.468B-2(1)).

c) The Settling Parties and their counsel shall treat, and shall cause the Escrow Agent to treat, the Escrow Account as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. The Settling Parties, their counsel, and the Escrow Agent agree that they will not ask the Court to take any action inconsistent with the treatment of the Escrow Account in this manner. In addition, the Escrow Agent and, as required, the Settling Parties, shall timely make such elections under § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder as necessary or advisable to carry out the provisions of this

paragraph, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-l(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties and thereafter to cause the appropriate filing to occur. All provisions of this Settlement Agreement shall be interpreted in a manner that is consistent with the Escrow Account being a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1.

11. Full Satisfaction; Limitation of Interest and Liability. Plaintiffs and Class Members shall look solely to the University Payment for satisfaction of any and all Released Claims. If the Settlement becomes final pursuant to Paragraph 6 above, the University's payment of the University Payment will fully satisfy any and all Released Claims. Except as provided by order of the Court, no Class Member shall have any interest in the University Payment, Escrow Account, or any portion thereof.

12. Attorneys' Fees, Expenses, and Costs.

a) Settlement Class Counsel shall file any motion for attorneys' fees, reimbursement of expenses and costs ("Fees and Expense Award") in accordance with the Court's preliminary approval or final approval order. Settlement Class Counsel shall receive any Fees and Expense Award relating to this Settlement solely from the University Settlement Fund. Other than as provided in Paragraph 7(e) and approved by the Court, no portion of any Fees and Expense Award shall be released from the University Settlement Fund prior to the Effective Date. The University is not obligated to take, does not take, and, unless requested to do so by the Court, will not take any position with respect to the application by Settlement Class Counsel for reimbursement of attorneys' fees, expenses, and costs.

b) The procedures for and the allowance or disallowance by the Court of Settlement Class Counsel's application for a Fees and Expense Award to be paid from the University Settlement Fund are not part of this Agreement, and are to be considered by the Court separately from consideration of the fairness, reasonableness, and adequacy of the Settlement. Any order or

proceeding relating to the Fees and Expense Award, or any appeal from any such order, shall not operate to modify or cancel this Settlement Agreement, or affect or delay the finality of the judgment approving the Settlement. A modification or reversal on appeal of any amount of the Fees and Expense Award shall not be deemed a modification of the terms of this Settlement Agreement or final approval order, and shall not give rise to any right of termination.

13. Release. Upon the occurrence of the Effective Date, the Releasors hereby release and forever discharge, and covenant not to sue the Releasees only, with respect to, in connection with, or relating to any and all of the Released Claims.

14. Additional Release. In addition, each Releasor hereby expressly waives and releases, upon the Effective Date, any and all provisions, rights, and/or benefits conferred by Section 1542 of the California Civil Code, which reads:

> Section 1542. Release. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code, notwithstanding that the release in Paragraph 13 is not a general release and is of claims against Releasees only. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims that are the subject matter of Paragraph 13. Nonetheless, upon the Effective Date, each Releasor hereby expressly waives and fully, finally, and forever settles and releases any known or unknown, foreseen, or unforeseen, suspected or unsuspected, contingent or non-contingent claim that is the subject matter of Paragraph 13, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Releasor also hereby expressly waives and fully, finally, and forever settles, releases, and discharges any and all claims it may have against the Releasees under § 17200, *et seq.*, of the California Business and Professions Code or any similar comparable

or equivalent provision of the law of any other state or territory of the United States or other jurisdiction, which claims are expressly incorporated into the definition of the Released Claims.

15. Effect of Disapproval. If the Court (i) declines to approve this Settlement Agreement; (ii) does not enter the preliminary approval order containing the elements set forth in Paragraph 3 above; (iv) does not enter the final approval order containing the elements set forth in Paragraph 5 above; (v) enters the final approval order and appellate review is sought, and on such review, such final approval order is not affirmed, then Settlement Class Counsel or the University may elect to terminate this Settlement Agreement by sending written notice to the other party within 10 business days of the event allowing for termination. For the avoidance of doubt, any order of the Court or the Seventh Circuit Court of Appeals that is based on a determination that the Settlement is not fair, reasonable, or adequate or that: (a) materially changes or does not approve the scope of the releases and covenant not to sue contemplated by this Settlement; (b) purports to impose additional material obligations on the University; or (c) declines to enter a final judgment that meets the requirements set forth in Paragraph 5 above, except as otherwise agreed in writing by Settlement Class Counsel and the University, constitutes a failure to grant final approval of this Agreement and confers on Settlement Class Counsel and/or the University the right to terminate the Agreement. A modification or reversal on appeal of the Plan of Allocation, fees or expenses, or class plaintiffs' service awards shall not be deemed a modification of the terms of this Agreement or Final Approval Order and shall not give rise to any right of termination.

16. Opt-Out and Termination Rights.

a) Should more than 650 proposed Class Members (not including employees of any of the law firms representing Defendants in this case) opt-out of this Settlement, the University has the right to terminate this Settlement, as long as the University notifies Settlement Class Counsel in writing of its decision to terminate within 5 business days of having been informed that more than 650 proposed Class Members have opted out or such other time as the Settling Parties may agree, and provided that the University has been given timely information regarding any opt-outs within a reasonable time after such opt-out requests coming to the attention of Settlement

Class Counsel. In such instance of termination, the Settling Parties would return to their respective positions as of April 19, 2023. In the event of a termination, the Settling Parties agree to work in good faith to propose a schedule to the Court to restart the litigation between Plaintiffs and the University. The University agrees that its President, Provost, Vice President and General Counsel, or outside counsel shall take no actions, publicly or privately, directly or indirectly, to encourage any proposed Class Members to opt out of this Settlement, or to encourage opting out from any other settlements that Plaintiffs may enter into with other defendants in this Action, or from any class or classes that the Court may certify in this Action.

b) Any disputes regarding the application of this Paragraph 16 may be resolved by the Court, with Plaintiffs, the University, and the opt-out(s) all having the opportunity to be heard.

17. Reimbursement of the University Settlement Fund upon Termination. If the Settlement Agreement is terminated pursuant to the provisions of Paragraphs 15 or 16 above, the Escrow Agent shall return to the University the funds left in the University Settlement Fund consistent with Paragraph 7 at the time of termination. Subject to Paragraph 8 of the Escrow Agreement, the Escrow Agent shall disburse the funds left in the University Settlement Fund consistent with Paragraph 7 to the University in accordance with this paragraph within 15 calendar days after receipt of either (i) written notice signed by Settlement Class Counsel and the University's counsel stating that the Settlement has been terminated (such written notice will be signed by the non-terminating party within three days of receiving the written notice from the terminating party), or (ii) any order of the Court so directing. If the Settlement Agreement is terminated pursuant to Paragraphs 15 or 16, (1) any obligations pursuant to this Settlement Agreement other than (i) disbursement of the University Settlement Fund to the University as set forth above and (ii) Paragraph 23, shall cease immediately and (2) the releases set forth in Paragraphs 13 and 14 above shall be null and void.

18. Preservation of Rights. Except as expressly provided for in the Releases in Paragraphs 13 and 14 above, this Settlement Agreement, whether the Settlement becomes final or not, and any and all negotiations, documents, and discussions associated with it, shall be without

prejudice to the rights of any of the Settling Parties, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or lack thereof, of any liability or wrongdoing by the University or lack thereof, or of the truth or lack thereof of any of the claims or allegations contained in the Complaint or any other pleading, and evidence thereof shall not be discoverable or used directly or indirectly, in any way other than to enforce the terms of this Settlement Agreement. The Settling Parties expressly reserve all of their rights if the Settlement does not become final in accordance with the terms of this Settlement Agreement. Upon the Settlement becoming final, nothing in this Agreement shall prevent the University from asserting any release or citing this Settlement Agreement to offset any liability to any other parties not party to the Action, including but not limited to, claims filed by federal and state governments or any governmental entity.

19. No Admission of Liability by the University; No Admission of Absence of Merit by Plaintiffs. This Settlement Agreement shall not be deemed or construed to be an admission of the University's liability in this Action. The University denies any wrongdoing in relation to the claims brought by Plaintiffs in this Action. The University's consent to the Settlement Class shall not be deemed consent to the certification of this or any other class for litigation purposes, and in the event of Termination, the University may oppose the certification of any class. This Settlement Agreement shall not be deemed or construed to be an admission that Plaintiffs' Claims in this Action lack merit as to the University or otherwise.

20. Discovery Disclosures to Plaintiffs. Other than as set forth below, or as may subsequently be agreed to by the Settling Parties, the University and its current or former employees will not be subject to any further discovery or required to provide any further responses to existing discovery relating to the University as of April 19, 2023.

a) **Data**. Through counsel, the Settling Parties will work in good faith to ensure that the undergraduate financial aid structured data produced by the University are reasonably understandable to Settlement Class Counsel and their consultants. Moreover, the University agrees that, if Plaintiffs determine after reasonable review to be completed by July 31, 2023, that there

are material missing responsive structured data in the financial aid data produced by the University to date, the University will work with Settlement Class Counsel in good faith to complete its production to cure any such defects in a timely way to the extent it is not unduly burdensome.

b) **Documents**. The University will complete its pending document productions as of April 19, 2023 from existing custodians and non-custodial sources related to the University's undergraduate financial aid practices and its participation in the 568 Group in response to Plaintiffs' First Requests for Production of Documents, subject to the existing agreements between the Settling Parties. The University agrees to provide a privilege log limited to metadata for documents that have been withheld, provided that Plaintiffs may designate up to 50 documents for which the University will provide the privilege log information specified in the ESI Protocol. In addition, until November 30, 2023, the University will consider reasonable requests from Settlement Class Counsel for additional relevant information, including documents, about Plaintiffs' claims in the Action regarding undergraduate financial aid or the University's knowledge about the practices of, any enforcement mechanisms or enforcement efforts of, and its own participation in, the 568 Group, taking into account the information the University has or will produce in discovery, and whether providing the requested information will be burdensome.

c) **Disclosures to Plaintiffs**. On or before May 10, 2023, the University's counsel shall undertake a good faith review to the extent it is not unduly burdensome and identify for Plaintiffs, insofar as counsel is aware, documents by Bates number that it produced in discovery relating to or identifying (a) information shared by participants in the 568 Group, and (b) the University's undergraduate financial aid practices while it regularly attended 568 Group meetings and after it had stopped doing so, and (c) the University's "need blind" policy. Following the entry of an Order preliminarily approving the Settlement by the Court, the Settling Parties agree that the University's counsel, upon a good faith review of existing materials and interviews with relevant current or former employees of the University as needed, will meet with Plaintiffs' counsel at mutually agreed times and places or by video-conference. These meetings or conferences shall last, cumulatively, no more than seven hours, and shall be to provide certain information described

below, and also to respond in good faith to reasonable questions from Plaintiffs' counsel with respect to the University's undergraduate financial aid practices over the time period relevant to the Complaint, its participation in the 568 Group as alleged in the Complaint, and its knowledge of the practices, procedures, and any enforcement mechanisms or enforcement efforts of, the 568 Group during the time period relevant to the Complaint to the extent the University has such knowledge. The University's counsel shall provide a reasonably detailed description of the principal facts known to the University's counsel that are relevant to the alleged conduct regarding financial aid or the University's participation in, and knowledge about, the practices, procedures, and any enforcement mechanisms or enforcement efforts of, the 568 Group at issue in, and during the time period relevant to, the Action (the "Proffer"), including by providing the Bates Numbers of relevant documents identified in preparation for the Proffer and/or documents identified and discussed during the Proffer. Further, the University agrees that if it cannot provide material responsive information to certain of Plaintiffs' counsel's reasonable questions during the Proffer for which the University's counsel reasonably believes material information exists in the University's custody and that can be obtained without undue burden to the University, the University agrees that it will work in good faith to provide answers to such questions within a reasonable time frame after the Proffer. The Settling Parties understand and agree that neither the University nor its counsel will provide any joint defense privileged information to the Plaintiffs as part of this process. All of the foregoing obligations in Paragraph 10(c) shall terminate the later of (a) October 31, 2023, or (b) forty-five days after the Court preliminarily approves the Settlement.

d) **Witness interview**. After the Court enters an order granting preliminary approval of the Settlement, and in the event that Plaintiffs ask the University to do so, the University will ask its former Director of College Aid to agree to meet with Plaintiffs' counsel for no more than three-hours by video-conference or in-person at a place convenient to the former Director of College Aid. The Settling Parties also agree that notwithstanding any provision in this Settlement Agreement, Plaintiffs may exercise any rights they have under the Federal Rules of Civil Procedure to obtain a deposition of that former employee. In the event the former employee agrees to an

interview with Plaintiffs, and in fact such interview occurs no later than sixty days before the close of fact discovery in the Action, any deposition of that former employee by the Plaintiffs shall be limited to three and one-half hours of on the record time for any questioning by Plaintiffs. Furthermore, nothing in this Settlement Agreement shall prevent Plaintiffs from seeking to cause the University's former Director of College Aid to testify at any trial in this matter.

e) **Testimony**. In the event that Plaintiffs want testimony from a University witness (employed by the University as of the date of the request from Plaintiffs) with respect to the University's undergraduate financial aid processes or participation in, or knowledge, if any, about the policies and practices of, the 568 Group, Plaintiffs and the University agree to negotiate in good faith the scope of a declaration or affidavit of no more than 10 pages cumulatively from up to three witnesses. The foregoing obligations of Paragraph 20(e) shall terminate as of December 1, 2023. Furthermore, notwithstanding this Settlement Agreement, if any other party to the Action takes a deposition of a University-related witness, the University agrees that it will not object to making that witness available for deposition questioning by Plaintiffs' counsel for an equal amount of time, subject to a combined time limit as set in Fed. R. Civ. P. 30(d)(1). In the event that Plaintiffs receive a declaration or affidavit (as provided for in this paragraph) from the University's current Executive Director of Financial Aid that is found to be inadmissible for the truth of the matters asserted at a trial of the Action, the University agrees it will not object to Plaintiffs serving a trial or deposition subpoena through University counsel on the declarant or another University-affiliated witness, as determined by the University, to seek the declarant (or affiant) or other University-affiliated witness's testimony at trial, or at a deposition during the pre-trial period (*i.e.*, after the close of fact discovery if allowed by the Court), about the subjects covered in the declaration. In the event that the University's Executive Director of Financial Aid as of April 19, 2023 is no longer an employee of the University at the time Plaintiffs request a declaration or affidavit, the University agrees it will not object to Plaintiffs' seeking a deposition of that then-former Executive Director of Financial Aid pursuant to Plaintiffs' rights under the Federal Rules of Civil Procedure.

f) **Produced documents kept in the ordinary course of business and trial witness**. The University agrees that in the event the need arises in this Action, and there is an authenticity or hearsay objection made by one or more defendants in the Action to documents or data produced by the University in this litigation, the University will provide a declaration supporting authenticity or application of the Business Records Exception to the Hearsay Rule (Fed. R. Evid. 803(6)) to those documents or data. In the event that a declaration is not sufficient to meet the requirements of Fed. R. Evid. 803(6), the University will provide a records custodian witness to testify by deposition *de bene esse* or, if necessary, at trial, for the sole purpose of providing support for the authenticity of the documents or data or the application of the Business Records Exception to the Hearsay Rule for those documents or data.

g) **Confidentiality**: All non-public data, documents, information, testimony, and/or communications provided to Plaintiffs' counsel as part of subparts (a) to (f) above, if so designated by the University, shall be treated as "Confidential" or "Attorneys' Eyes Only" under the Confidentiality Order in the Action. The University understands and accepts that Plaintiffs shall have the ability to challenge such designations, after the fact, under the terms of the Confidentiality Order.

h) **Admissibility and Privilege**: Any statements made by the University's counsel in connection with subparts (a) to (f) above, including in response to questions from Plaintiffs' counsel in connection with subpart (c), and any statements made in any fact witness interviews, shall be deemed to be "conduct or statements made during compromise negotiations about the claims" and shall be inadmissible in evidence as provided, without limitation, under Federal Rule of Evidence 408 and state-law equivalents, and otherwise shall not be used for any other purpose (including at any hearing or trial, in connection with any motion, opposition, or other filing in the Action, or in any other federal, state, or foreign action or proceeding). In the event, for whatever reason, this Settlement is rescinded, canceled, or terminated or the Settlement is not approved by the Court, such inadmissibility and other limits on use shall survive. Further, nothing herein shall require University to provide information protected by the attorney-client privilege, attorney work-

product doctrine, joint-defense privilege or similar privileges, and University shall not waive any protections, immunities, or privileges. All provisions of the Confidentiality Order and other orders governing discovery in the Action otherwise will apply, including without limitation, provisions related to inadvertent disclosure.

21. Temporary Stay of Litigation. The Settling Parties agree that it appears unlikely a temporary stay of litigation will be necessary before the Court considers the stay requested as part of the motion for preliminary approval of the Settlement Agreement. In the event that either Party to this Settlement Agreement believes in good faith that it has become necessary to seek a stay of the litigation in order for that party to avoid work not contemplated by this Settlement Agreement or some other undue burden, the Settling Parties agree that they will seek a temporary stay of the litigation.

22. Resumption of Litigation in the Event of Termination. The Settling Parties agree that in the event that the Settlement Agreement is not approved by the Court, or if the Settlement does not become final pursuant to Paragraph 6 above, or if the Settlement Agreement is terminated pursuant to Paragraphs 15 or 16 above, Plaintiffs may resume litigation of the Action against the University in a reasonable manner to be approved by the Court upon a joint application by the Settling Parties, and upon full reimbursement to the University of the University Settlement Fund as provided for in Paragraph 17 above.

23. Maintaining Confidentiality of Litigation Materials. In the event that Plaintiffs or Settlement Class Counsel receive a subpoena or other legal process that would require disclosure of material covered by any protective order entered in the Action (the "Protective Order") or covered by Federal Rule of Evidence 408, such Plaintiff or Settlement Class Counsel shall promptly notify the University and forward a copy of such subpoena or legal process so that the University may seek a protective order or otherwise seek to maintain the confidentiality of material covered by the Protective Order or Rule 408; and such Plaintiff or Settlement Class Counsel shall object to the production of such material unless and until any such motion filed by the University is resolved. In addition, Plaintiffs and Settlement Class Counsel shall abide by the

terms of the Protective Order in this Action, including with respect to the destruction of materials and the limitations on the use of any material covered by the Protective Order to this Action, unless otherwise ordered by a court of competent jurisdiction.

24. Binding Effect. This Settlement Agreement shall be binding upon, and inure to the benefit of, the Releasors and the Releasees. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Settlement Class Counsel shall be binding upon Plaintiffs and all Class Members.

25. Integrated Agreement. This Settlement Agreement, together with the exhibits hereto and the documents referenced herein, contains the complete and integrated statement of every term in this Agreement, and supersedes all prior agreements or understandings, including the Memorandum of Understanding between the Parties executed on April 19, 2023, whether written or oral, between the Settling Parties with respect to the subject matter hereof. This Settlement Agreement shall not be modified except by a writing executed by Plaintiffs and the University.

26. Independent Settlement. This Settlement Agreement is not conditioned on the performance or disposition of any other settlement agreement between the Class and any other Defendant.

27. Headings. The headings in this Settlement Agreement are intended only for the convenience of the reader and shall not affect the interpretation of this Settlement Agreement.

28. No Party is the Drafter. None of the Settling Parties shall be considered the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law, or rule of construction that might cause any provision to be construed against the drafter hereof.

29. Consent to Jurisdiction. Each Class Member and the University hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the Northern District of Illinois for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein provided

that this consent to jurisdiction shall not affect the University's right or ability to assert this Settlement Agreement or the releases contained herein as a defense in an action filed in any other jurisdiction asserting Released Claims or concerning this Settlement Agreement or this Action.

30. Choice of Law. All terms of this Settlement Agreement shall be governed by and interpreted according to federal common law or, where state law must apply, Illinois law without regard to conflicts of law principles.

31. Representations and Warranties. Each party represents and warrants that it has the requisite authority to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated herein.

32. Notice. Where this Agreement requires either Settling Party to provide notice or any other communication or document to the other Settling Party, such notice shall be in writing and provided by email and overnight delivery to the counsel set forth in the signature block below for Settlement Class Counsel, respectively, or their designees or successors. For the University, notice shall be provided by email and overnight delivery to:

Vice President and General Counsel
Office of Legal Counsel
University of Chicago
5801 S. Ellis Ave.
Suite 619
Chicago, IL 60637
legalcounsel@uchicago.edu

James L. Cooper
Michael Rubin
Arnold & Porter
601 Massachusetts Ave., NW
Washington, D.C. 60001
James.cooper@arnoldporter.com
Michael.rubin@arnoldporter.com

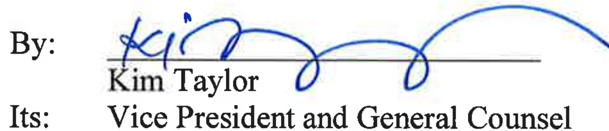
33. **Execution in Counterparts.** This Settlement Agreement may be executed in counterparts. A facsimile or .pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

34. **Confidentiality.** While the fact of settlement of the Action has been disclosed in open court, the terms of this Settlement Agreement shall remain confidential until Plaintiffs move for preliminary approval of the Settlement, unless the University and Settlement Class Counsel agree otherwise, provided that the University may disclose the terms of this Settlement Agreement to accountants, lenders, auditors, legal counsel, insurers, tax advisors, or in response to a request by any governmental, judicial, or regulatory authority or otherwise required by applicable law or court order, and Plaintiffs may disclose the terms of the Settlement Agreement to any entity that has applied to serve as Notice and Claims Administrator or Escrow Agent, who shall abide by the terms of this paragraph.

IN WITNESS WHEREOF, the parties hereto through their fully authorized representatives have agreed to this Settlement Agreement as of the date first herein above written.

Dated: August 7, 2023.

THE UNIVERSITY OF CHICAGO

By: 
Kim Taylor
Its: Vice President and General Counsel

By:________________
Robert D. Gilbert
Elpidio Villarreal
Robert S. Raymar
GILBERT LITIGATORS & COUNSELORS, P.C.
11 Broadway, Suite 615
New York, NY 10004
Phone: (646) 448-5269
rgilbert@gilbertlitigators.com
pdvillarreal@gilbertlitigators.com
rraymar@gilbertlitigators.com
sschuster@gilbertlitigators.com
amarquez@gilbertlitigators.com
smagnusson@gilbertlitigators.com

By:________________
Devin "Vel" Freedman
Edward J. Normand
FREEDMAN NORMAND FRIEDLAND LLP
99 Park Avenue
Suite 1910
New York, NY 10016
Tel: 646-970-7513
vel@fnf.law
tnormand@fnf.law
pbachyrita@fnf.law
rcipolla@fnf.law

By:________________
Eric L. Cramer
Caitlin G. Coslett
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: 215-875-3000
ecramer@bm.net
ccoslett@bm.net

Daniel J. Walker
Robert E. Litan
BERGER MONTAGUE PC
2001 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20006
Tel: 202-559-9745
rlitan@bm.net
dwalker@bm.net
hbrinn@bm.net

Richard Schwartz
BERGER MONTAGUE PC
1720 W Division
Chicago, IL 60622
Tel: 773-257-0255
rschwartz@bm.net

Counsel for Plaintiffs and the Proposed Class

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANDREW CORZO, SIA HENRY, ALEXANDER LEO-GUERRA, MICHAEL MAERLENDER, BRANDON PIYEVSKY, BENJAMIN SHUMATE, BRITTANY TATIANA WEAVER, and CAMERON WILLIAMS, individually and on behalf of all others similarly situated, Plaintiffs, v. BROWN UNIVERSITY, CALIFORNIA INSTITUTE OF TECHNOLOGY, UNIVERSITY OF CHICAGO, THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, CORNELL UNIVERSITY, TRUSTEES OF DARTMOUTH COLLEGE, DUKE UNIVERSITY, EMORY UNIVERSITY, GEORGETOWN UNIVERSITY, THE JOHNS HOPKINS UNIVERSITY, MASSACHUSETTS INSTITUTE OF TECHNOLOGY, NORTHWESTERN UNIVERSITY, UNIVERSITY OF NOTRE DAME DU LAC, THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA, WILLIAM MARSH RICE UNIVERSITY, VANDERBILT UNIVERSITY, and YALE UNIVERSITY, Defendants.	Case No.: 1:22-cv-00125 **Hon. Matthew F. Kennelly**

[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT, PROVISIONALLY CERTIFYING THE PROPOSED SETTLEMENT CLASS, APPROVING THE NOTICE PLAN, AND APPROVING THE PROCESS SCHEDULED FOR COMPLETING THE SETTLEMENT PROCESS

WHEREAS, on August 7, 2023, Plaintiffs Andrew Corzo, Sia Henry, Alexander Leo-Guerra, Michael Maerlender, Brandon Piyevsky, Benjamin Shumate, Brittany Tatiana Weaver, and Cameron Williams (collectively, "Plaintiffs"), on behalf of themselves and a proposed Settlement Class (defined below), and defendant the University of Chicago (the "University")

(Plaintiffs and the University together, the "Parties") entered into a settlement agreement that sets forth the terms and conditions of the Parties' proposed settlement and the release and dismissal with prejudice of the claims of the Plaintiffs and members of the proposed Settlement Class against the University (the "Settlement");

Whereas, on August __, 2023, Plaintiffs filed a Motion for Preliminary Approval of the Settlement, Provisional Certification of Proposed Settlement Class, Approval of Notice Plan, and Approval of the Proposed Schedule for Completing the Settlement Process, requesting the entry of an Order: (i) granting preliminary approval of the Settlement Agreement; (ii) finding that the standards for certifying the proposed Settlement Class under Fed. R. Civ. P. 23 for purposes of Settlement and judgment are likely satisfied and provisionally certifying the Settlement Class for purposes of settlement; (iii) appointing Andrew Corzo, Sia Henry, Alexander Leo-Guerra, Michael Maerlender, Brandon Piyevsky, Benjamin Shumate, Brittany Tatiana Weaver, and Cameron Williams as representatives of the Settlement Class ("Class Representatives"); (iv) appointing Freedman Normand Friedland LLP, Gilbert Litigators & Counselors PC, and Berger Montague PC as Settlement Class Counsel under Fed R. Civ. P. 23(g); (v) approving the proposed notice plan and authorizing dissemination of notice to the Settlement Class; (vi) appointing Angeion Group as Settlement Claims Administrator; (vii) appointing The Huntington National Bank ("Huntington Bank") as Escrow Agent; and (vii) approving the proposed Settlement schedule, including setting a date for a final Fairness Hearing;

WHEREAS, the University supports Plaintiffs' Motion; and

WHEREAS, the Court is familiar with and has reviewed the record in this case and the Settlement, and has found good cause for entering the following Order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

Jurisdiction

1. This Court has jurisdiction to enter this Order as it has jurisdiction over the subject matter of this action and over the University and Plaintiffs, including all members of the Settlement Class.

Settlement Class

2. Pursuant to Rule 23(e)(1)(B)(ii) of the Federal Rules of Civil Procedure, the Court provisionally finds that the Court will likely find that the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) have been satisfied for settlement and judgment purposes only. As to the requirements of Rule 23(a) for settlement purposes only, (i) the Settlement Class provisionally certified herein likely exceeds 100,000 individuals, and joinder of all would be impracticable; (ii) there are questions of law and fact common to the Settlement Class; (iii) Class Representatives' claims are typical of the claims of the Settlement Class they seek to represent for purposes of settlement; (iv) Class Representatives are adequate representatives of the Settlement Class. As to the requirements of Rule 23(b)(3) for settlement purposes only, questions of law and fact common to the Settlement Class predominate over any questions affecting any individual Settlement Class Member, and a class action on behalf of the Settlement Class is superior to other available means of settling and disposing of this dispute.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court preliminarily certifies, solely for purposes of effectuating the Settlement, the following "Settlement Class":

All U.S. citizens or permanent residents who have during the Class Period (a) enrolled in

one or more of Defendants'[1] full-time undergraduate programs, and (b) received at least some need-based financial aid from one or more Defendants, and (c) directly purchased from one or more Defendants tuition, fees, room, or board that was not fully covered by the combination of any types of financial aid or merit aid (not including loans) from one or more Defendants in any undergraduate year.[2] The Class Period is defined as follows:

- For Chicago, Columbia, Cornell, Duke, Georgetown, MIT, Northwestern, Notre Dame, Penn, Rice, Vanderbilt, Yale—from 2003 through the date of this Order.
- For Brown, Dartmouth, Emory—from 2004 through the date of this Order.
- For Caltech—from 2019 through the date of this Order.
- For Johns Hopkins—from 2021 through the date of this Order.

Excluded from the Class are:

- Any Officers and or Trustees of Defendants, or any current or former employees holding any of the following positions: Assistant or Associate Vice Presidents or Vice Provosts, Executive Directors, or Directors of Defendants' Financial Aid and Admissions offices, or any Deans or Vice Deans, or any employees in Defendants in-house legal offices; and
- the Judge presiding over this Action, his or her law clerks, spouse, and any person within the third degree of relationship living in the Judge's household and the

[1] Defendants are Brown University ("Brown"), California Institute of Technology ("Caltech"); University of Chicago ("Chicago"); The Trustees of Columbia University in the City of New York ("Columbia"); Cornell University ("Cornell"), Trustees of Dartmouth College ("Dartmouth"), Duke University ("Duke"), Emory University ("Emory"), Georgetown University ("Georgetown"), The Johns Hopkins University ("Johns Hopkins"), Massachusetts Institute of Technology ("MIT"), Northwestern University ("Northwestern"), University of Notre Dame du Lac ("Notre Dame"), The Trustees of the University of Pennsylvania ("Penn"), William Marsh Rice University ("Rice"), Vanderbilt University ("Vanderbilt"), and Yale University ("Yale") (together "Defendant Universities").

[2] For avoidance of doubt, the Class does not include purchasers for whom the total cost they were charged by the Defendant or Defendants whose institution(s) they attended, including tuition, fees, room, or board for each undergraduate academic year, was covered by any form of financial aid or merit aid (not including loans) from one or more Defendants.

spouse of such a person.

4. For settlement purposes only, the Court hereby appoints plaintiffs Andrew Corzo, Sia Henry, Alexander Leo-Guerra, Michael Maerlender, Brandon Piyevsky, Benjamin Shumate, Brittany Tatiana Weaver, and Cameron Williams as Class Representatives.

Preliminary Approval of Settlement

5. Pursuant to Fed. R. Civ. P. 23(e)(1)(B), based on "the parties' showing that the court will likely be able to (i) approve the proposal[s] under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal[s]," the Court hereby preliminarily approves the Settlement, as embodied in the Settlement Agreement.

6. Upon review of the record, the Court finds the Settlement was entered into after approximately sixteen months of hard-fought litigation, extensive discovery, and arm's length negotiations. Accordingly, the Court preliminarily finds that the Settlement meets all factors under Rule 23(e)(2) and will likely be granted final approval by the Court, subject to further consideration at the Court's final Fairness Hearing. The Court finds that the Settlement encompassed by the Settlement Agreement is preliminarily determined to be fair, reasonable, and adequate, and in the best interest of the Settlement Class, raises no obvious reasons to doubt its fairness, and that there is a reasonable basis for presuming that the Settlement and its terms satisfy the requirements of Federal Rule of Civil Procedure 23(c)(2) and 23(e) and due process so that notice of the Settlement should be given to members of the Settlement Class.

7. The Court has reviewed and hereby preliminarily approves the Plan of Allocation.

8. Angeion Group is hereby appointed as Settlement Claims Administrator.

9. Huntington Bank is hereby appointed as Escrow Agent pursuant to the Settlement.

10. The Court approves the establishment of the Settlement Fund under the Settlement Agreement as a qualified settlement fund ("QSF") pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder and retains continuing jurisdiction as to any issue that may arise in connection with the formation and/or administration of the QSF. In accordance with the Settlement Agreement, Settlement Class Counsel are authorized to withdraw funds from the QSF for the payment of the reasonable costs of notice, payment of taxes, and reasonable settlement administration costs.

11. Pending further Order of the Court, all litigation activity against the University on behalf of the Settlement Class is hereby stayed, and all hearings, deadlines, and other proceedings related to the Plaintiffs' claims against the University, other than those incident to the settlement process, are hereby taken off the Court's calendar. The stay shall remain in effect until such a time that: (i) the University or Plaintiffs exercise their right to terminate the Settlement pursuant to its terms; (ii) the Settlement is terminated pursuant to its terms; or (iii) the Court renders a final decision regarding approval of the Settlement, and if it approves the Settlement, enters final judgment and dismisses Plaintiffs' claims against the University with prejudice.

12. In the event that the Settlement fails to become effective in accordance with its terms, or if an Order granting final approval to the Settlement and dismissing Plaintiffs' claims against the University with prejudice is not entered or is reversed, vacated, or materially modified on appeal, this Order shall be null and void.

13. In the event the Settlement is terminated, not approved by the Court, or the Settlement does not become final pursuant to the terms of the Settlement, litigation against

Defendants shall resume in a reasonable manner as approved by the Court upon joint application of the Plaintiffs and the University.

Approval of Notice Plan

14. The Court approves, in form and substance, the long-form and publication/email notice, and the Settlement website described in the Declaration of Steven Weisbrot of Angeion Group ("Weisbrot Declaration"). The class notice plan specified by Plaintiffs and supported by the Weisbrot Declaration: (i) is the best notice practicable; (ii) is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency and status of this Action and of their right to participate in, object to, or exclude themselves from the proposed Settlement; (iii) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice of the Fairness Hearing; and (iv) fully satisfies the requirements of Fed. R. Civ. P. 23(e)(1), and constitutes due process, and is a reasonable manner of distributing notice to Settlement Class members who would be bound by the Settlement.

15. Angeion may modify the form and/or content of the targeted advertisements and banner notices as it deems necessary and appropriate to maximize their impact and reach, as long as those modifications substantially comport with the long-form and publication/email notices attached to the Weisbrot Declaration and are approved by the Parties.

16. Defendants shall provide notice of the Settlement as required by 28 U.S.C. § 1715.

Approval of Schedule

17. Angeion Group and the Parties shall adhere to the following schedule:

a. No later than 30 days after the date of this Order, Angeion Group shall begin the process of providing notice to the Settlement Class, in accordance with the Notice Plan.

b. No later than 75 days after the date of this Order, Settlement Class Counsel shall file a motion for attorneys' fees, unreimbursed litigation costs and expenses, and/or service awards for the Class Representatives, pursuant to the terms of the Settlement Agreement.

c. By no later than 90 days after the date of this Order, Settlement Class Members may request exclusion from the Class or submit any objection to the proposed Settlement or to the proposed allocation plan summarized in the notice, or to Settlement Class Counsel's request for attorneys' fees, unreimbursed litigation costs and expenses, and/or service awards to the Class Representatives. All objections must be in writing and filed with the Court, with copies sent to the Claims Administrator, and include the following information: (1) the name of the case (*Henry, et al. v. Brown University, et al.*, Case No. 1:22-cv-00125); (2) the individual's name and address and if represented by counsel, the name, address, and telephone number of counsel; (3) proof of membership (such as, for instance, evidence of an accepted financial aid award from a Defendant University), indicating that the individual is a member of the Settlement Class; (4) a statement detailing all objections to the Settlement; and (5) a statement of whether the individual will appear at the Fairness Hearing, either with or without counsel. All requests for exclusion from the Class must be in writing, mailed to the Claims Administrator, and include the following information: (1) the name of the case (*Henry, et al. v. Brown University, et al.*, Case No. 1:22-cv-00125); (2) the individual's name and address and if represented by counsel, the name, address, and telephone number of counsel; (3) proof of membership (such as, for instance, evidence of an accepted financial aid award from a Defendant University); (4) a statement indicating that the individual is a member of the proposed Settlement Class and wishes to be excluded from the Settlement Class; and (5) an individual signature by the Settlement Class member.

d. No later than 105 days after the date of this Order, Settlement Class Counsel shall file all briefs and materials in support of final approval of the Settlement.

e. A hearing on final approval of the Settlement shall be held before this Court on __________________________, 2023, at _________. The Fairness Hearing shall take place at least 120 days after the Court's entry of this Order.

Dated: ___________, 2023

SO ORDERED

____
Matthew F. Kennelly
United States District Judge

EXHIBIT B

CUSTODIAN/ESCROW AGREEMENT

This Custodian/Escrow Agreement dated August 4, 2023, is made among Berger Montague PC, Freedman Normand Friedland LLP, and Gilbert Litigators & Counselors, P.C. (collectively, "Class Counsel"), the University of Chicago, an Illinois not for profit corporation (the "University"), and **THE HUNTINGTON NATIONAL BANK**, as Custodian/Escrow agent ("Chicago Custodian/Escrow Agent").

Recitals

A. This Custodian/Escrow Agreement ("Chicago Custodian/Escrow Agreement") governs the deposit, investment and disbursement of the settlement funds that, pursuant to the Stipulation of Settlement (the "Settlement Agreement") dated August 7, 2023 attached hereto as Exhibit A, entered into by, among others, Class Counsel on behalf of the Plaintiffs,[1] individually and on behalf of the settlement class ("the Class"),[2] will be paid to settle the class action

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[1] Plaintiffs are Andrew Corzo, Sia Henry, Alexander Leo-Guerra, Michael Maerlender, Brandon Piyevsky, Benjamin Shumate, Brittany Tatiana Weaver, and Cameron Williams.

[2] The Class includes:

a. All U.S. citizens or permanent residents who have during the Class Period (a) enrolled in one or more of Defendants' full-time undergraduate programs, and (b) received at least some need-based financial aid from one or more Defendants, and (c) directly purchased from one or more Defendants tuition, fees, room, or board that was not fully covered by the combination of any types of financial aid or merit aid (not including loans) from one or more Defendants in any undergraduate year. The Class Period is defined as follows:
   i. For Chicago, Columbia, Cornell, Duke, Georgetown, MIT, Northwestern, Notre Dame, Penn, Rice, Vanderbilt, Yale—from 2003 through the date the Court enters an order preliminarily approving the Settlement.
   ii. For Brown, Dartmouth, Emory—from 2004 through the date the Court enters an order preliminarily approving the Settlement.
   iii. For Caltech—from 2019 through the date the Court enters an order preliminarily approving the Settlement.
   iv. For Johns Hopkins—from 2021 through the date the Court enters an order preliminarily approving the settlement.

b. Excluded from the Class are:
   i. Any Officers and/or Trustees of Defendants, or any current or former employees holding any of the following positions: Assistant or Associate Vice Presidents or Vice Provosts, Executive Directors, or Directors of Defendants' Financial Aid and Admissions offices, or any Deans or Vice Deans, or any employees in Defendants' in-house legal offices; and
   ii. The Judge presiding over this action, his or her law clerks, spouse, and any person within the third-degree of relationship living in the Judge's household and the spouse of such a person.

captioned *Henry et al. v. Brown Univ. et al.*, No. 1:22-cv-00125 ("the Action"), pending in the Northern District of Illinois (the "Court").

B. Pursuant to the terms of the Settlement Agreement, University has agreed to pay or cause to be paid the total amount of $13,500,000 in cash (the "Settlement Amount") in settlement of the claims brought against the University in the Action.

C. The Settlement Amount is to be deposited into a Custodian/Escrow account and, together with any interest accrued thereon, used to satisfy payments to authorized claimants, payments for attorneys' fees and expenses, payments for tax liabilities, and other costs pursuant to the terms of the Settlement Agreement.

D. Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Settlement Agreement.

Agreement

1. Appointment of Custodian/Escrow Agent. The Chicago Custodian/Escrow Agent is hereby appointed to receive, deposit and disburse the Settlement Amount upon the terms and conditions provided in this Chicago Custodian/Escrow Agreement, the Settlement Agreement and any other exhibits or schedules later annexed hereto and made a part hereof.

2. The Custodian/Escrow Account. The Chicago Custodian/Escrow Agent shall establish and maintain a Custodian/Escrow account titled as 568 Chicago Settlement Fund, to be held separate and apart from all other funds of any other party to the Settlement Agreement or of the Chicago Custodian/Escrow Agent (the "Chicago Custodian/Escrow Account"). Pursuant to the terms of the Settlement Agreement, the University shall cause the Settlement Amount to be deposited into the Chicago Custodian/Escrow Account. Chicago Custodian/Escrow Agent shall receive the Settlement Amount into the Chicago Custodian/Escrow Account; the Settlement Amount and all interest accrued thereon shall be referred to herein as the "Settlement Fund." The Settlement Fund shall be held and invested on the terms and subject to the limitations set forth herein, and shall be released by the Chicago Custodian/Escrow Agent in accordance with the terms and conditions hereinafter set forth and set forth in the Settlement Agreement and in orders of the Court approving the disbursement of the Settlement Fund.

3. Investment of Settlement Fund. At the written direction of Class Counsel, the Chicago Custodian/Escrow Agent shall invest the Settlement Fund exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation ("FDIC") or

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For avoidance of doubt, the Class does not include purchasers for whom the total cost they were charged by the Defendant or Defendants whose institution(s) they attended, including tuition, fees, room, or board for each undergraduate academic year, was covered by any form of financial aid or merit aid (not including loans) from one or more Defendants.

(b) secured by instruments backed by the full faith and credit of the United States Government. The University shall not bear any responsibility for or liability related to the investment of the Settlement Fund by the Chicago Custodian/Escrow Agent.

4. Custodian/Escrow Funds Subject to Jurisdiction of the Court. The Settlement Fund shall remain subject to the jurisdiction of the Court until such time as the Fund shall be distributed, pursuant to the Settlement Agreement and this Chicago Custodian/Escrow Agreement, and on further order(s) of the Court.

5. Tax Treatment & Report. Pursuant to the terms of the Settlement Agreement, the Settlement Fund shall be treated at all times as a "Qualified Settlement Fund" within the meaning of Treasury Regulation §1.468B-1. Class Counsel and, as required by law, the University, shall jointly and timely make such elections as necessary or advisable to fulfill the requirements of such Treasury Regulation, including the "relation-back election" under Treas. Reg. § 1.468B-1(j)(2) if necessary to the earliest permitted date. For purposes of §468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" of the Settlement Fund shall be Class Counsel. Class Counsel shall timely and properly prepare, deliver to all necessary parties for signature, and file all necessary documentation for any elections required under Treas. Reg. §1.468B-1. Class Counsel shall timely and properly prepare and file any informational and other tax returns necessary or advisable with respect to the Settlement Funds and the distributions and payments therefrom including without limitation the returns described in Treas. Reg. §1.468B-2(k), and to the extent applicable Treas. Reg. §1.468B-2(1).

6. Tax Payments of Settlement Fund. All Taxes with respect to the Settlement Fund, as more fully described in the Settlement Agreement, shall be treated as and considered to be a cost of administration of the Settlement Fund and the Chicago Custodian/Escrow Agent shall timely pay such Taxes out of the Settlement Fund without prior order of the Court, as directed by Class Counsel. Class Counsel shall be responsible for the timely and proper preparation and delivery of any necessary documentation for signature by all necessary parties, and the timely filing of all tax returns and other tax reports required by law. Class Counsel may engage an accounting firm or tax preparer to assist in the preparation of any tax reports or the calculation of any tax payments due as set forth in Sections 5 and 6, and the expense of such assistance shall be paid from the Settlement Fund by the Chicago Custodian/Escrow Agent at Class Counsel's direction. The Settlement Fund shall indemnify and hold the University harmless for any taxes that may be deemed to be payable by the University by reason of the income earned on the Settlement Fund, and the Chicago Custodian/Escrow Agent, as directed by Class Counsel, shall establish such reserves as are necessary to cover the tax liabilities of the Settlement Fund and the indemnification obligations imposed by this paragraph. If the Settlement Fund is returned to the University pursuant to the terms of the Settlement Agreement, the University shall provide the Chicago Custodian/Escrow Agent with a properly completed Form W-9.

7. Disbursement Instructions

(a) Class Counsel may, without further order of the Court or authorization by the University's Counsel, instruct the Chicago Custodian/Escrow Agent to disburse the funds necessary to pay Notice and Administration Expenses as set forth in the Settlement Agreement.

(b) After the Effective Date as set forth in the Settlement Agreement, disbursements other than those described in paragraph 7(a), including disbursements for distribution of Class Settlement Funds, must be authorized by either (i) an order of the Court, or (ii) the written direction of Eric Cramer or Class Counsel (any such direction to be made consistent with the Settlement Agreement).

(c) In the event funds transfer instructions are given (other than in writing at the time of execution of this Chicago Custodian/Escrow Agreement), whether in writing, by facsimile, e-mail, telecopier or otherwise, the Chicago Custodian/Escrow Agent will seek confirmation of such instructions by telephone call back when new wire instructions are established to the person or persons designated in subparagraphs (a) and (b) above, and the Chicago Custodian/Escrow Agent may rely upon the confirmations of anyone purporting to be the person or persons so designated. It will not be reasonably necessary to seek confirmation if the Chicago Custodian/Escrow Agent receives written letters authorizing a disbursement from each of the law firms required in subparagraphs (a) and (b), as applicable, on their letterhead and signed by one of the persons designated in subparagraphs (a) and (b). To assure accuracy of the instructions it receives, the Chicago Custodian/Escrow Agent may record such call backs. If the Chicago Custodian/Escrow Agent is unable to verify the instructions, or is not satisfied with the verification it receives, it shall not execute the instruction until all issues have been resolved. The persons and telephone numbers for call backs may be validly changed only in a writing that (i) is signed by the party changing its notice designations, and (ii) is received and acknowledged by the Chicago Custodian/Escrow Agent. Class Counsel will notify the Chicago Custodian/Escrow Agent of any errors, delays or other problems within 30 days after receiving notification that a transaction has been executed. If it is determined that the transaction was delayed or erroneously executed as a result of the Chicago Custodian/Escrow Agent's error, the Chicago Custodian/Escrow Agent's sole obligation is to pay or refund the amount of such error and any amounts as may be required by applicable law. Any claim for interest payable will be at the then-published rate for United States Treasury Bills having a maturity of 91 days.

(d) The Chicago Custodian/Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Chicago Custodian/Escrow Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees; (i) to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Chicago Custodian/Escrow Agent, including, without limitation, the risk of the Chicago Custodian/Escrow Agent acting on unauthorized instructions, and the risk or interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the the Chicago Custodian/Escrow Agent and that there may be more secure methods of transmitting instructions than the method(s) selected by the Chicago Custodian/Escrow Agent; and (iii) that

the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

8. Termination of Settlement. If the Settlement Agreement terminates in accordance with its terms, Class Counsel and the University shall jointly notify the Chicago Custodian/Escrow Agent of the termination of the Settlement Agreement. Upon such notification, the balance of the Settlement Fund, less any Notice and Administration Expenses paid and actually incurred in accordance with the terms of the Settlement Agreement but not yet paid, and any unpaid Taxes due, as determined by Class Counsel and the University, shall be returned to the University in accordance with instruction from the University's Counsel.

9. Fees. The Chicago Custodian/Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule attached as Exhibit B. All fees and expenses of the Chicago Custodian/Escrow Agent shall be paid solely from the Settlement Fund. The Chicago Custodian/Escrow Agent may pay itself such fees from the Settlement Fund only after such fees have been approved for payment by Class Counsel. If the Chicago Custodian/Escrow Agent is asked to provide additional services, such as the preparation and administration of payments to Authorized Claimants, a separate agreement and fee schedule will be entered into.

10. Duties, Liabilities and Rights of Custodian/Escrow Agent. This Chicago Custodian/Escrow Agreement sets forth all of the obligations of the Chicago Custodian/Escrow Agent, and no additional obligations shall be implied from the terms of this Chicago Custodian/Escrow Agreement or any other agreement, instrument or document.

(a) The Chicago Custodian/Escrow Agent may act in reliance upon any instructions, notice, certification, demand, consent, authorization, receipt, power of attorney or other writing delivered to it by Class Counsel, as provided herein, without being required to determine the authenticity or validity thereof or the correctness of any fact stated therein, the propriety or validity of the service thereof, or the jurisdiction of the court issuing any judgment or order. The Chicago Custodian/Escrow Agent may act in reliance upon any signature which is reasonably believed by it to be genuine, and may assume that such person has been properly authorized to do so.

(b) The Chicago Custodian/Escrow Agent may consult with legal counsel of its selection in the event of any dispute or question as to the meaning or construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected to the extent the Chicago Custodian/Escrow Agent acts in accordance with the reasonable opinion and instructions of counsel. The Chicago Custodian/Escrow Agent shall have the right to reimburse itself for reasonable legal fees and reasonable and necessary disbursements and expenses actually incurred from the Chicago Custodian/Escrow Account only (i) upon approval by Class Counsel and University Counsel or (ii) pursuant to an order of the Court.

(c) The Chicago Custodian/Escrow Agent, or any of its affiliates, is authorized to manage, advise, or service any money market mutual funds in which any portion of the Settlement Fund may be invested.

(d) The Chicago Custodian/Escrow Agent is authorized to hold any treasuries held hereunder in its federal reserve account.

(e) The Chicago Custodian/Escrow Agent shall not bear any risks related to the investment of the Settlement Fund in accordance with the provisions of paragraph 3 of this Chicago Custodian/Escrow Agreement. The Chicago Custodian/Escrow Agent will be indemnified by the Settlement Fund, and held harmless against, any an all claims, suits, actions, proceedings, investigations, judgments, deficiencies, damages, settlements, liabilities and expenses (including reasonable legal fees and expenses of attorneys chosen by the Chicago Custodian/Escrow Agent) as and when incurred, arising out of or based upon any act, omission, alleged act or alleged omission by the Chicago Custodian/Escrow Agent or any other cause, in any case in connection with the acceptance of, or performance or non-performance by the Chicago Custodian/Escrow Agent of, any of the Chicago Custodian/Escrow Agent's duties under this Agreement, except as a result of the Chicago Custodian/Escrow Agent's bad faith, willful misconduct or gross negligence.

(f) Upon distribution of all of the funds in the Chicago Custodian/Escrow Account pursuant to the terms of this Chicago Custodian/Escrow Agreement and any orders of the Court, the Chicago Custodian/Escrow Agent shall be relieved of any and all further obligations and released from any and all liability under this Chicago Custodian/Escrow Agreement, except as otherwise specifically set forth herein.

(g) In the event any dispute shall arise between the parties with respect to the disposition or disbursement of any of the assets held hereunder, the Chicago Custodian/Escrow Agent shall be permitted to interplead all of the assets held hereunder into a court of competent jurisdiction, and thereafter be fully relieved from any and all liability or obligation with respect to such interpleaded assets. The parties further agree to pursue any redress or recourse in connection with such a dispute, without making the Chicago Custodian/Escrow Agent a party to same.

11. Non-Assignability by Custodian/Escrow Agent. The Chicago Custodian/Escrow Agent's rights, duties and obligations hereunder may not be assigned or assumed without the written consent of Class Counsel and the University.

12. Resignation of Custodian/Escrow Agent. The Chicago Custodian/Escrow Agent may, in its sole discretion, resign and terminate its position hereunder at any time following 120 days prior written notice to the parties to the Chicago Custodian/Escrow Agreement herein. On the effective date of such resignation, the Chicago Custodian/Escrow Agent shall deliver this Chicago Custodian/Escrow Agreement together with any and all related instruments or documents and all funds and investments in the Chicago Custodian/Escrow Account to the successor Chicago Custodian/Escrow Agent, subject to this Chicago Custodian/Escrow

Agreement. If a successor Chicago Custodian/Escrow Agent has not been appointed prior to the expiration of 120 days following the date of the notice of such resignation, then the Chicago Custodian/Escrow Agent may petition the Court for the appointment of a successor Chicago Custodian/Escrow Agent, or other appropriate relief. Any such resulting appointment shall be binding upon all of the parties to this Chicago Custodian/Escrow Agreement.

13. Notices. Notice to the parties hereto shall be in writing and delivered by hand-delivery, facsimile, electronic mail or overnight courier service, addressed as follows:

If to Class Counsel:

GILBERT LITIGATORS & COUNSELORS, P.C.
Robert D. Gilbert
11 Broadway, Suite 615
New York, NY 10004
Phone: (646) 448-5269
rgilbert@gilbertlitigators.com

FREEDMAN NORMAND FRIEDLAND LLP
Edward J. Normand
99 Park Avenue
Suite 1910
New York, NY 10016
Tel: 646-970-7513
tnormand@fnf.law

BERGER MONTAGUE PC
Eric L. Cramer
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: 215-875-3000
ecramer@bm.net

If to Chicago Custodian/Escrow Agent:

THE HUNTINGTON NATIONAL BANK
Liz Lambert, Senior Managing Director
2 Great Valley Parkway, Suite 300
Malvern, PA 19355
Telephone: (215) 568-2382
E-mail: liz.lambert@huntington.com

Susan Brizendine, Trust Officer
Huntington National Bank
7 Easton Oval – EA5W63
Columbus, Ohio 43219
Telephone: (614) 331-9804
E-mail: susan.brizendine@huntington.com

If to University:

Arnold & Porter
James L. Cooper
Michael Rubin
601 Massachusetts Ave., NW
Washington, D.C. 20001
Telephone: 202-942-5014
James.cooper@arnoldporter.com
Michael.rubin@arnoldporter.com

14. Patriot Act Warranties. Section 326 of the USA Patriot Act (Title III of Pub. L. 107-56), as amended, modified or supplemented from time to time (the "Patriot Act"), requires financial institutions to obtain, verify and record information that identifies each person or legal entity that opens an account (the "Identification Information"). The parties to this Chicago Custodian/Escrow Agreement agree that they will provide the Chicago Custodian/Escrow Agent with such Identification Information as the Chicago Custodian/Escrow Agent may request in order for the Chicago Custodian/Escrow Agent to satisfy the requirements of the Patriot Act.

15. Entire Agreement. This Chicago Custodian/Escrow Agreement, including all Schedules and Exhibits hereto, constitutes the entire agreement and understanding of the parties hereto. Any modification of this Chicago Custodian/Escrow Agreement or any additional obligations assumed by any party hereto shall be binding only if evidenced by a writing signed by each of the parties hereto. To the extent this Chicago Custodian/Escrow Agreement conflicts in any way with the Settlement Agreement, the provisions of the Settlement Agreement shall govern.

16. Governing Law. This Chicago Custodian/Escrow Agreement shall be governed by the law of the State of Ohio in all respects. The parties hereto submit to the jurisdiction of the Court, in connection with any proceedings commenced regarding this Chicago Custodian/Escrow Agreement, including, but not limited to, any interpleader proceeding or

proceeding the Chicago Custodian/Escrow Agent may commence pursuant to this Chicago Custodian/Escrow Agreement for the appointment of a successor Chicago Custodian/Escrow agent, and all parties hereto submit to the jurisdiction of such Court for the determination of all issues in such proceedings, without regard to any principles of conflicts of laws, and irrevocably waive any objection to venue or inconvenient forum.

17. Termination of Custodian/Escrow Account. The Chicago Custodian/Escrow Account will terminate after all funds deposited in it, together with all interest earned thereon, are disbursed in accordance with the provisions of the Settlement Agreement and this Chicago Custodian/Escrow Agreement.

18. Miscellaneous Provisions.

(a) Counterparts. This Chicago Custodian/Escrow Agreement may be executed in one or more counterparts, each of which counterparts shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Chicago Custodian/Escrow Agreement.

(b) Further Cooperation. The parties hereto agree to do such further acts and things and to execute and deliver such other documents as the Chicago Custodian/Escrow Agent may request from time to time in connection with the administration, maintenance, enforcement or adjudication of this Chicago Custodian/Escrow Agreement in order (a) to give the Chicago Custodian/Escrow Agent confirmation and assurance of the Chicago Custodian/Escrow Agent's rights, powers, privileges, remedies and interests under this Agreement and applicable law, (b) to better enable the Chicago Custodian/Escrow Agent to exercise any such right, power, privilege or remedy, or (c) to otherwise effectuate the purpose and the terms and provisions of this Chicago Custodian/Escrow Agreement, each in such form and substance as may be acceptable to the Chicago Custodian/Escrow Agent.

(c) Electronic Signatures. The parties agree that the electronic signature (provided by the electronic signing service DocuSign initiated by the Custodian/Escrow Agent) of a party to this Escrow Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Escrow Agreement. The parties agree that any electronically signed document shall be deemed (i) to be "written" or "in writing," (ii) to have been signed, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files.

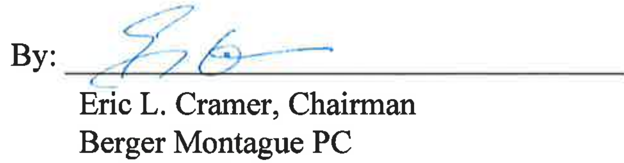
(d) Non-Waiver. The failure of any of the parties hereto to enforce any provision hereof on any occasion shall not be deemed to be a waiver of any preceding or succeeding breach of such provision or any other provision.

IN WITNESS WHEREOF, the parties hereto have executed this Chicago Custodia/Escrow Agreement as of the date first above written.

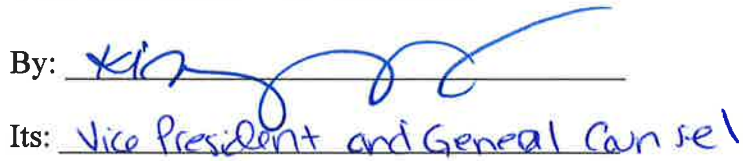
THE HUNTINGTON NATIONAL BANK, as the Chicago Custodian/Escrow Agent

By:
Liz Lambert, Senior Managing Director

Settlement Class Counsel

By: 
Eric L. Cramer, Chairman
Berger Montague PC

THE UNIVERSITY OF CHICAGO

By: 

Its: Vice President and General Counsel

Exhibit A

Settlement Agreement

Exhibit B

Fees of Custodian/Escrow Agent

Acceptance Fee:	**Waived**

The Acceptance Fee includes the review of the Chicago Custodian/Escrow Agreement, acceptance of the role as the Chicago Custodian/Escrow Agent, establishment of the Chicago Custodian/Escrow Account(s), and receipt of funds.

Annual Administration Fee:	**Waived**

The Annual Administration Fee includes the performance of administrative duties associated with the Chicago Custodian/Escrow Account including daily account management, generation of account statements to appropriate parties, and disbursement of funds in accordance with the Chicago Custodian/Escrow Agreement. Administration Fees are payable annually in advance without proration for partial years.

Out of Pocket Expenses:	**Waived**

Out of pocket expenses include postage, courier, overnight mail, wire transfer, and travel fees.

EXHIBIT B

CUSTODIAN/ESCROW AGREEMENT

This Custodian/Escrow Agreement dated August 4, 2023, is made among Berger Montague PC, Freedman Normand Friedland LLP, and Gilbert Litigators & Counselors, P.C. (collectively, "Class Counsel"), the University of Chicago, an Illinois not for profit corporation (the "University"), and **THE HUNTINGTON NATIONAL BANK**, as Custodian/Escrow agent ("Chicago Custodian/Escrow Agent").

Recitals

A. This Custodian/Escrow Agreement ("Chicago Custodian/Escrow Agreement") governs the deposit, investment and disbursement of the settlement funds that, pursuant to the Stipulation of Settlement (the "Settlement Agreement") dated August 7, 2023 attached hereto as Exhibit A, entered into by, among others, Class Counsel on behalf of the Plaintiffs,[1] individually and on behalf of the settlement class ("the Class"),[2] will be paid to settle the class action

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[1] Plaintiffs are Andrew Corzo, Sia Henry, Alexander Leo-Guerra, Michael Maerlender, Brandon Piyevsky, Benjamin Shumate, Brittany Tatiana Weaver, and Cameron Williams.

[2] The Class includes:

a. All U.S. citizens or permanent residents who have during the Class Period (a) enrolled in one or more of Defendants' full-time undergraduate programs, and (b) received at least some need-based financial aid from one or more Defendants, and (c) directly purchased from one or more Defendants tuition, fees, room, or board that was not fully covered by the combination of any types of financial aid or merit aid (not including loans) from one or more Defendants in any undergraduate year. The Class Period is defined as follows:
   i. For Chicago, Columbia, Cornell, Duke, Georgetown, MIT, Northwestern, Notre Dame, Penn, Rice, Vanderbilt, Yale—from 2003 through the date the Court enters an order preliminarily approving the Settlement.
   ii. For Brown, Dartmouth, Emory—from 2004 through the date the Court enters an order preliminarily approving the Settlement.
   iii. For Caltech—from 2019 through the date the Court enters an order preliminarily approving the Settlement.
   iv. For Johns Hopkins—from 2021 through the date the Court enters an order preliminarily approving the settlement.

b. Excluded from the Class are:
   i. Any Officers and/or Trustees of Defendants, or any current or former employees holding any of the following positions: Assistant or Associate Vice Presidents or Vice Provosts, Executive Directors, or Directors of Defendants' Financial Aid and Admissions offices, or any Deans or Vice Deans, or any employees in Defendants' in-house legal offices; and
   ii. The Judge presiding over this action, his or her law clerks, spouse, and any person within the third-degree of relationship living in the Judge's household and the spouse of such a person.

captioned *Henry et al. v. Brown Univ. et al.*, No. 1:22-cv-00125 ("the Action"), pending in the Northern District of Illinois (the "Court").

B. Pursuant to the terms of the Settlement Agreement, University has agreed to pay or cause to be paid the total amount of $13,500,000 in cash (the "Settlement Amount") in settlement of the claims brought against the University in the Action.

C. The Settlement Amount is to be deposited into a Custodian/Escrow account and, together with any interest accrued thereon, used to satisfy payments to authorized claimants, payments for attorneys' fees and expenses, payments for tax liabilities, and other costs pursuant to the terms of the Settlement Agreement.

D. Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Settlement Agreement.

Agreement

1. Appointment of Custodian/Escrow Agent. The Chicago Custodian/Escrow Agent is hereby appointed to receive, deposit and disburse the Settlement Amount upon the terms and conditions provided in this Chicago Custodian/Escrow Agreement, the Settlement Agreement and any other exhibits or schedules later annexed hereto and made a part hereof.

2. The Custodian/Escrow Account. The Chicago Custodian/Escrow Agent shall establish and maintain a Custodian/Escrow account titled as 568 Chicago Settlement Fund, to be held separate and apart from all other funds of any other party to the Settlement Agreement or of the Chicago Custodian/Escrow Agent (the "Chicago Custodian/Escrow Account"). Pursuant to the terms of the Settlement Agreement, the University shall cause the Settlement Amount to be deposited into the Chicago Custodian/Escrow Account. Chicago Custodian/Escrow Agent shall receive the Settlement Amount into the Chicago Custodian/Escrow Account; the Settlement Amount and all interest accrued thereon shall be referred to herein as the "Settlement Fund." The Settlement Fund shall be held and invested on the terms and subject to the limitations set forth herein, and shall be released by the Chicago Custodian/Escrow Agent in accordance with the terms and conditions hereinafter set forth and set forth in the Settlement Agreement and in orders of the Court approving the disbursement of the Settlement Fund.

3. Investment of Settlement Fund. At the written direction of Class Counsel, the Chicago Custodian/Escrow Agent shall invest the Settlement Fund exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation ("FDIC") or

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For avoidance of doubt, the Class does not include purchasers for whom the total cost they were charged by the Defendant or Defendants whose institution(s) they attended, including tuition, fees, room, or board for each undergraduate academic year, was covered by any form of financial aid or merit aid (not including loans) from one or more Defendants.

(b) secured by instruments backed by the full faith and credit of the United States Government. The University shall not bear any responsibility for or liability related to the investment of the Settlement Fund by the Chicago Custodian/Escrow Agent.

4. Custodian/Escrow Funds Subject to Jurisdiction of the Court. The Settlement Fund shall remain subject to the jurisdiction of the Court until such time as the Fund shall be distributed, pursuant to the Settlement Agreement and this Chicago Custodian/Escrow Agreement, and on further order(s) of the Court.

5. Tax Treatment & Report. Pursuant to the terms of the Settlement Agreement, the Settlement Fund shall be treated at all times as a "Qualified Settlement Fund" within the meaning of Treasury Regulation §1.468B-1. Class Counsel and, as required by law, the University, shall jointly and timely make such elections as necessary or advisable to fulfill the requirements of such Treasury Regulation, including the "relation-back election" under Treas. Reg. § 1.468B-1(j)(2) if necessary to the earliest permitted date. For purposes of §468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" of the Settlement Fund shall be Class Counsel. Class Counsel shall timely and properly prepare, deliver to all necessary parties for signature, and file all necessary documentation for any elections required under Treas. Reg. §1.468B-1. Class Counsel shall timely and properly prepare and file any informational and other tax returns necessary or advisable with respect to the Settlement Funds and the distributions and payments therefrom including without limitation the returns described in Treas. Reg. §1.468B-2(k), and to the extent applicable Treas. Reg. §1.468B-2(1).

6. Tax Payments of Settlement Fund. All Taxes with respect to the Settlement Fund, as more fully described in the Settlement Agreement, shall be treated as and considered to be a cost of administration of the Settlement Fund and the Chicago Custodian/Escrow Agent shall timely pay such Taxes out of the Settlement Fund without prior order of the Court, as directed by Class Counsel. Class Counsel shall be responsible for the timely and proper preparation and delivery of any necessary documentation for signature by all necessary parties, and the timely filing of all tax returns and other tax reports required by law. Class Counsel may engage an accounting firm or tax preparer to assist in the preparation of any tax reports or the calculation of any tax payments due as set forth in Sections 5 and 6, and the expense of such assistance shall be paid from the Settlement Fund by the Chicago Custodian/Escrow Agent at Class Counsel's direction. The Settlement Fund shall indemnify and hold the University harmless for any taxes that may be deemed to be payable by the University by reason of the income earned on the Settlement Fund, and the Chicago Custodian/Escrow Agent, as directed by Class Counsel, shall establish such reserves as are necessary to cover the tax liabilities of the Settlement Fund and the indemnification obligations imposed by this paragraph. If the Settlement Fund is returned to the University pursuant to the terms of the Settlement Agreement, the University shall provide the Chicago Custodian/Escrow Agent with a properly completed Form W-9.

7. Disbursement Instructions

(a) Class Counsel may, without further order of the Court or authorization by the University's Counsel, instruct the Chicago Custodian/Escrow Agent to disburse the funds necessary to pay Notice and Administration Expenses as set forth in the Settlement Agreement.

(b) After the Effective Date as set forth in the Settlement Agreement, disbursements other than those described in paragraph 7(a), including disbursements for distribution of Class Settlement Funds, must be authorized by either (i) an order of the Court, or (ii) the written direction of Eric Cramer or Class Counsel (any such direction to be made consistent with the Settlement Agreement).

(c) In the event funds transfer instructions are given (other than in writing at the time of execution of this Chicago Custodian/Escrow Agreement), whether in writing, by facsimile, e-mail, telecopier or otherwise, the Chicago Custodian/Escrow Agent will seek confirmation of such instructions by telephone call back when new wire instructions are established to the person or persons designated in subparagraphs (a) and (b) above, and the Chicago Custodian/Escrow Agent may rely upon the confirmations of anyone purporting to be the person or persons so designated. It will not be reasonably necessary to seek confirmation if the Chicago Custodian/Escrow Agent receives written letters authorizing a disbursement from each of the law firms required in subparagraphs (a) and (b), as applicable, on their letterhead and signed by one of the persons designated in subparagraphs (a) and (b). To assure accuracy of the instructions it receives, the Chicago Custodian/Escrow Agent may record such call backs. If the Chicago Custodian/Escrow Agent is unable to verify the instructions, or is not satisfied with the verification it receives, it shall not execute the instruction until all issues have been resolved. The persons and telephone numbers for call backs may be validly changed only in a writing that (i) is signed by the party changing its notice designations, and (ii) is received and acknowledged by the Chicago Custodian/Escrow Agent. Class Counsel will notify the Chicago Custodian/Escrow Agent of any errors, delays or other problems within 30 days after receiving notification that a transaction has been executed. If it is determined that the transaction was delayed or erroneously executed as a result of the Chicago Custodian/Escrow Agent's error, the Chicago Custodian/Escrow Agent's sole obligation is to pay or refund the amount of such error and any amounts as may be required by applicable law. Any claim for interest payable will be at the then-published rate for United States Treasury Bills having a maturity of 91 days.

(d) The Chicago Custodian/Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Chicago Custodian/Escrow Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees; (i) to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Chicago Custodian/Escrow Agent, including, without limitation, the risk of the Chicago Custodian/Escrow Agent acting on unauthorized instructions, and the risk or interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the the Chicago Custodian/Escrow Agent and that there may be more secure methods of transmitting instructions than the method(s) selected by the Chicago Custodian/Escrow Agent; and (iii) that

the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

8. Termination of Settlement. If the Settlement Agreement terminates in accordance with its terms, Class Counsel and the University shall jointly notify the Chicago Custodian/Escrow Agent of the termination of the Settlement Agreement. Upon such notification, the balance of the Settlement Fund, less any Notice and Administration Expenses paid and actually incurred in accordance with the terms of the Settlement Agreement but not yet paid, and any unpaid Taxes due, as determined by Class Counsel and the University, shall be returned to the University in accordance with instruction from the University's Counsel.

9. Fees. The Chicago Custodian/Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule attached as Exhibit B. All fees and expenses of the Chicago Custodian/Escrow Agent shall be paid solely from the Settlement Fund. The Chicago Custodian/Escrow Agent may pay itself such fees from the Settlement Fund only after such fees have been approved for payment by Class Counsel. If the Chicago Custodian/Escrow Agent is asked to provide additional services, such as the preparation and administration of payments to Authorized Claimants, a separate agreement and fee schedule will be entered into.

10. Duties, Liabilities and Rights of Custodian/Escrow Agent. This Chicago Custodian/Escrow Agreement sets forth all of the obligations of the Chicago Custodian/Escrow Agent, and no additional obligations shall be implied from the terms of this Chicago Custodian/Escrow Agreement or any other agreement, instrument or document.

(a) The Chicago Custodian/Escrow Agent may act in reliance upon any instructions, notice, certification, demand, consent, authorization, receipt, power of attorney or other writing delivered to it by Class Counsel, as provided herein, without being required to determine the authenticity or validity thereof or the correctness of any fact stated therein, the propriety or validity of the service thereof, or the jurisdiction of the court issuing any judgment or order. The Chicago Custodian/Escrow Agent may act in reliance upon any signature which is reasonably believed by it to be genuine, and may assume that such person has been properly authorized to do so.

(b) The Chicago Custodian/Escrow Agent may consult with legal counsel of its selection in the event of any dispute or question as to the meaning or construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected to the extent the Chicago Custodian/Escrow Agent acts in accordance with the reasonable opinion and instructions of counsel. The Chicago Custodian/Escrow Agent shall have the right to reimburse itself for reasonable legal fees and reasonable and necessary disbursements and expenses actually incurred from the Chicago Custodian/Escrow Account only (i) upon approval by Class Counsel and University Counsel or (ii) pursuant to an order of the Court.

(c) The Chicago Custodian/Escrow Agent, or any of its affiliates, is authorized to manage, advise, or service any money market mutual funds in which any portion of the Settlement Fund may be invested.

(d) The Chicago Custodian/Escrow Agent is authorized to hold any treasuries held hereunder in its federal reserve account.

(e) The Chicago Custodian/Escrow Agent shall not bear any risks related to the investment of the Settlement Fund in accordance with the provisions of paragraph 3 of this Chicago Custodian/Escrow Agreement. The Chicago Custodian/Escrow Agent will be indemnified by the Settlement Fund, and held harmless against, any an all claims, suits, actions, proceedings, investigations, judgments, deficiencies, damages, settlements, liabilities and expenses (including reasonable legal fees and expenses of attorneys chosen by the Chicago Custodian/Escrow Agent) as and when incurred, arising out of or based upon any act, omission, alleged act or alleged omission by the Chicago Custodian/Escrow Agent or any other cause, in any case in connection with the acceptance of, or performance or non-performance by the Chicago Custodian/Escrow Agent of, any of the Chicago Custodian/Escrow Agent's duties under this Agreement, except as a result of the Chicago Custodian/Escrow Agent's bad faith, willful misconduct or gross negligence.

(f) Upon distribution of all of the funds in the Chicago Custodian/Escrow Account pursuant to the terms of this Chicago Custodian/Escrow Agreement and any orders of the Court, the Chicago Custodian/Escrow Agent shall be relieved of any and all further obligations and released from any and all liability under this Chicago Custodian/Escrow Agreement, except as otherwise specifically set forth herein.

(g) In the event any dispute shall arise between the parties with respect to the disposition or disbursement of any of the assets held hereunder, the Chicago Custodian/Escrow Agent shall be permitted to interplead all of the assets held hereunder into a court of competent jurisdiction, and thereafter be fully relieved from any and all liability or obligation with respect to such interpleaded assets. The parties further agree to pursue any redress or recourse in connection with such a dispute, without making the Chicago Custodian/Escrow Agent a party to same.

11. Non-Assignability by Custodian/Escrow Agent. The Chicago Custodian/Escrow Agent's rights, duties and obligations hereunder may not be assigned or assumed without the written consent of Class Counsel and the University.

12. Resignation of Custodian/Escrow Agent. The Chicago Custodian/Escrow Agent may, in its sole discretion, resign and terminate its position hereunder at any time following 120 days prior written notice to the parties to the Chicago Custodian/Escrow Agreement herein. On the effective date of such resignation, the Chicago Custodian/Escrow Agent shall deliver this Chicago Custodian/Escrow Agreement together with any and all related instruments or documents and all funds and investments in the Chicago Custodian/Escrow Account to the successor Chicago Custodian/Escrow Agent, subject to this Chicago Custodian/Escrow

Agreement. If a successor Chicago Custodian/Escrow Agent has not been appointed prior to the expiration of 120 days following the date of the notice of such resignation, then the Chicago Custodian/Escrow Agent may petition the Court for the appointment of a successor Chicago Custodian/Escrow Agent, or other appropriate relief. Any such resulting appointment shall be binding upon all of the parties to this Chicago Custodian/Escrow Agreement.

13. Notices. Notice to the parties hereto shall be in writing and delivered by hand-delivery, facsimile, electronic mail or overnight courier service, addressed as follows:

If to Class Counsel:

GILBERT LITIGATORS & COUNSELORS, P.C.
Robert D. Gilbert
11 Broadway, Suite 615
New York, NY 10004
Phone: (646) 448-5269
rgilbert@gilbertlitigators.com

FREEDMAN NORMAND FRIEDLAND LLP
Edward J. Normand
99 Park Avenue
Suite 1910
New York, NY 10016
Tel: 646-970-7513
tnormand@fnf.law

BERGER MONTAGUE PC
Eric L. Cramer
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: 215-875-3000
ecramer@bm.net

If to Chicago Custodian/Escrow Agent:	THE HUNTINGTON NATIONAL BANK Liz Lambert, Senior Managing Director 2 Great Valley Parkway, Suite 300 Malvern, PA 19355 Telephone: (215) 568-2382 E-mail: liz.lambert@huntington.com Susan Brizendine, Trust Officer Huntington National Bank 7 Easton Oval – EA5W63 Columbus, Ohio 43219 Telephone: (614) 331-9804 E-mail: susan.brizendine@huntington.com
If to University:	**Arnold & Porter** James L. Cooper Michael Rubin 601 Massachusetts Ave., NW Washington, D.C. 20001 Telephone: 202-942-5014 James.cooper@arnoldporter.com Michael.rubin@arnoldporter.com

14. Patriot Act Warranties. Section 326 of the USA Patriot Act (Title III of Pub. L. 107-56), as amended, modified or supplemented from time to time (the "Patriot Act"), requires financial institutions to obtain, verify and record information that identifies each person or legal entity that opens an account (the "Identification Information"). The parties to this Chicago Custodian/Escrow Agreement agree that they will provide the Chicago Custodian/Escrow Agent with such Identification Information as the Chicago Custodian/Escrow Agent may request in order for the Chicago Custodian/Escrow Agent to satisfy the requirements of the Patriot Act.

15. Entire Agreement. This Chicago Custodian/Escrow Agreement, including all Schedules and Exhibits hereto, constitutes the entire agreement and understanding of the parties hereto. Any modification of this Chicago Custodian/Escrow Agreement or any additional obligations assumed by any party hereto shall be binding only if evidenced by a writing signed by each of the parties hereto. To the extent this Chicago Custodian/Escrow Agreement conflicts in any way with the Settlement Agreement, the provisions of the Settlement Agreement shall govern.

16. Governing Law. This Chicago Custodian/Escrow Agreement shall be governed by the law of the State of Ohio in all respects. The parties hereto submit to the jurisdiction of the Court, in connection with any proceedings commenced regarding this Chicago Custodian/Escrow Agreement, including, but not limited to, any interpleader proceeding or

proceeding the Chicago Custodian/Escrow Agent may commence pursuant to this Chicago Custodian/Escrow Agreement for the appointment of a successor Chicago Custodian/Escrow agent, and all parties hereto submit to the jurisdiction of such Court for the determination of all issues in such proceedings, without regard to any principles of conflicts of laws, and irrevocably waive any objection to venue or inconvenient forum.

17. Termination of Custodian/Escrow Account. The Chicago Custodian/Escrow Account will terminate after all funds deposited in it, together with all interest earned thereon, are disbursed in accordance with the provisions of the Settlement Agreement and this Chicago Custodian/Escrow Agreement.

18. Miscellaneous Provisions.

(a) Counterparts. This Chicago Custodian/Escrow Agreement may be executed in one or more counterparts, each of which counterparts shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Chicago Custodian/Escrow Agreement.

(b) Further Cooperation. The parties hereto agree to do such further acts and things and to execute and deliver such other documents as the Chicago Custodian/Escrow Agent may request from time to time in connection with the administration, maintenance, enforcement or adjudication of this Chicago Custodian/Escrow Agreement in order (a) to give the Chicago Custodian/Escrow Agent confirmation and assurance of the Chicago Custodian/Escrow Agent's rights, powers, privileges, remedies and interests under this Agreement and applicable law, (b) to better enable the Chicago Custodian/Escrow Agent to exercise any such right, power, privilege or remedy, or (c) to otherwise effectuate the purpose and the terms and provisions of this Chicago Custodian/Escrow Agreement, each in such form and substance as may be acceptable to the Chicago Custodian/Escrow Agent.

(c) Electronic Signatures. The parties agree that the electronic signature (provided by the electronic signing service DocuSign initiated by the Custodian/Escrow Agent) of a party to this Escrow Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Escrow Agreement. The parties agree that any electronically signed document shall be deemed (i) to be "written" or "in writing," (ii) to have been signed, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files.

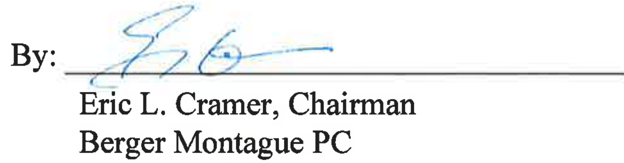
(d) Non-Waiver. The failure of any of the parties hereto to enforce any provision hereof on any occasion shall not be deemed to be a waiver of any preceding or succeeding breach of such provision or any other provision.

IN WITNESS WHEREOF, the parties hereto have executed this Chicago Custodia/Escrow Agreement as of the date first above written.

THE HUNTINGTON NATIONAL BANK, as the Chicago Custodian/Escrow Agent

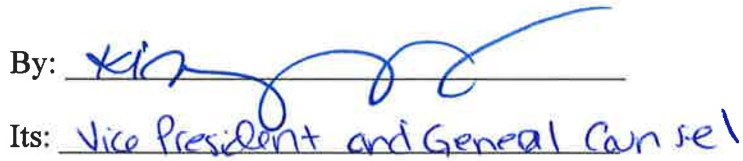
By: ______________________
Liz Lambert, Senior Managing Director

Settlement Class Counsel



By: ______________________
Eric L. Cramer, Chairman
Berger Montague PC

THE UNIVERSITY OF CHICAGO



By: ______________________

Its: Vice President and General Counsel

US 174345495v2

Exhibit A

Settlement Agreement

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIA HENRY, et al., individually and on behalf of all others similarly situated, Plaintiffs, v. BROWN UNIVERSITY, et al., Defendants.	Case No. 1:22-cv-125 Hon. Matthew F. Kennelly **SETTLEMENT AGREEMENT BETWEEN THE UNIVERSITY OF CHICAGO AND THE PROPOSED CLASS OF PLAINTIFFS**

THIS SETTLEMENT AGREEMENT ("Settlement Agreement" or the "Settlement") is made and entered into as of August 7, 2023, by and between (a) defendant the University of Chicago ("University"); and (b) Plaintiffs,[1] individually and on behalf of the settlement class (the "Class" as defined in Paragraph 1 below, and together with University, the "Settling Parties"), in this Action (*Henry, et al. v. Brown University, et al.*, Case No. 1:22-cv-125 (N.D. Ill.)).

WHEREAS, Plaintiffs filed a lawsuit alleging that Defendants Brown University, California Institute of Technology, the University of Chicago, the Trustees of Columbia University in the City of New York, Cornell University, the Trustees of Dartmouth College, Duke University, Emory University, Georgetown University, Johns Hopkins University, Massachusetts Institute of Technology, Northwestern University, the University of Notre Dame Du Lac, the Trustees of the University of Pennsylvania, William Marsh Rice University, Vanderbilt University, and Yale

[1] Plaintiffs are Andrew Corzo, Sia Henry, Alexander Leo-Guerra, Michael Maerlender, Brandon Piyevsky, Benjamin Shumate, Brittany Tatiana Weaver, and Cameron Williams.

University (collectively, "Defendants") have restrained competition for undergraduate financial aid in violation of federal antitrust laws, and that Plaintiffs and Class members incurred damages as a result, as detailed in Plaintiffs' Complaint, filed in this Action on January 9, 2022 (ECF No. 1) and as subsequently amended ("Complaint");

WHEREAS, the University has asserted defenses to Plaintiffs' claims, denies each and every one of Plaintiffs' allegations of unlawful or wrongful conduct by the University, denies that any conduct of the University challenged by Plaintiffs caused any damage whatsoever, and denies all liability of any kind;

WHEREAS, the University has consented to the appointment of the law firms of Freedman Normand Friedland LLP, Gilbert Litigators & Counselors, PC, and Berger Montague PC as Settlement Class Counsel ("Settlement Class Counsel");

WHEREAS, Settlement Class Counsel and counsel for the University have engaged in arm's-length settlement negotiations, and have reached this Settlement Agreement, subject to Court approval, which embodies all of the terms and conditions of the Settlement between Plaintiffs, both individually and on behalf of the Class, and the University;

WHEREAS, Settlement Class Counsel have concluded, after extensive fact discovery and consultation with their consultants and experts, and after carefully considering the circumstances of this Action, including the claims asserted in the Complaint and the University's defenses thereto, that it would be in the best interests of the Class to enter into this Settlement Agreement and assure a benefit to the Class, and further, that Settlement Class Counsel consider the Settlement to be fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23, and in the best interests of the Class;

WHEREAS, the University has concluded, despite its belief that it is not liable for the claims asserted and that it has good defenses thereto, that it would be in its best interests to enter into this Settlement Agreement to avoid the risks and uncertainties inherent in complex litigation and also to avoid additional costs of further litigation;

WHEREAS, Plaintiffs and the University agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by the University, or of the truth of any of the claims or allegations alleged in the Complaint;

WHEREAS, Plaintiffs and the University agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence by Plaintiffs of the absence of any violation of any statute or law or of any absence of liability or wrongdoing by the University, or of the validity of any of the University's defenses, or of the lack of truth of any of the claims or allegations alleged in the Complaint; and

WHEREAS, Plaintiffs and the University agree that the University's consent to the Settlement Class shall not be deemed or construed as consent to, or otherwise supportive of, the certification of this or any other class for litigation purposes, and that, in the event the Settlement Agreement is terminated for any reason, the University may oppose the certification of any class.

NOW THEREFORE, it is agreed by the undersigned Settlement Class Counsel, on behalf of Plaintiffs and the Class, on the one hand, and the University on the other, that all claims brought by Plaintiffs and the Class against the University be fully, finally, and forever settled, compromised, discharged, and dismissed with prejudice as to the University, without costs as to Plaintiffs, the Class, or the University, subject to Court approval, on the following terms and conditions:

1. Definitions

a) "Action" means *Henry et al. v. Brown University et al.* No. 1:22-cv-00125 (N.D. Ill.).

b) "Claims Administrator" means the entity appointed by the Court to provide notice to the Class, process the claims submitted by Class Members, and carry out any other duties or obligations provided for by the Settlement.

c) The "Class" means the settlement-only class, which permits potential class members to opt out, including the following persons:

a. all U.S. citizens or permanent residents who have during the Class Period (a) enrolled in one or more of Defendants' full-time undergraduate programs, and (b) received at least some need-based financial aid from one or more Defendants, and (c) directly purchased from one or more Defendants tuition, fees, room, or board that was not fully covered by the combination of any types of financial aid or merit aid (not including loans) in any undergraduate year.[2] The Class Period is defined as follows:

   i. For Chicago, Columbia, Cornell, Duke, Georgetown, MIT, Northwestern, Notre Dame, Penn, Rice, Vanderbilt, Yale—from 2003 through the date the Court enters an order preliminarily approving the Settlement.

   ii. For Brown, Dartmouth, Emory—from 2004 through the date the Court enters an order preliminarily approving the Settlement.

   iii. For CalTech—from 2019 through the date of the Court enters an order preliminarily approving the Settlement.

   iv. For Johns Hopkins—from 2021 to the date the Court enters an order preliminarily approving the Settlement.

b. Excluded from the Class are:

   i. Any Officers and/or Trustees of Defendants, or any current or former employees holding any of the following positions: Assistant or Associate Vice Presidents or Vice Provosts, Executive Directors, or Directors of Defendants'

[2] For avoidance of doubt, the Class does not include purchasers for whom the total cost they were charged by the Defendant or Defendants whose institution(s) they attended, including tuition, fees, room, or board for each undergraduate academic year, was covered by any form of financial aid or merit aid (not including loans) from one or more Defendants.

Financial Aid and Admissions offices, or any Deans or Vice Deans, or any employees in Defendants in-house legal offices; and

ii. the Judge presiding over this action, his or her law clerks, spouse, and any person within the third degree of relationship living in the Judge's household and the spouse of such a person.

d) "Class Members" means the members of the Class who do not timely and validly exclude themselves from the Settlement.

e) "Effective Date" means the date on which all of the following have occurred: (i) the Settlement is not terminated pursuant to Paragraphs 15 or 16 below; (ii) the Settlement is approved by the Court as required by Fed. R. Civ. P. 23(e); (iii) the Court enters a final approval order; and (iv) the period to appeal the final approval order has expired and/or all appeals have been finally resolved.

f) "Escrow Account" means the qualified settlement escrow account which holds the University Settlement Fund.

g) "Escrow Agreement" means an agreement in the form annexed hereto as Exhibit B.

h) "Fee and Expense Award" means award(s) by the Court to Settlement Class Counsel for reasonable attorneys' fees and reimbursement of reasonable costs and expenses incurred in the prosecution of the Action, including any interest accrued thereon.

i) "Notice Expenses" means expenses relating to providing notice, including, *inter alia*, the cost of (a) publications, (b) printing and mailing the long-form notice, (c) the Claims Administrator's costs of maintaining and administering the notice website and toll-free phone number, and (d) the Claims Administrator's costs associated with designing and administering the notice plan.

j) "Plaintiffs' Claims" means Plaintiffs' claims against the University and other Defendants as stated in the Complaint.

k) "Releasees" means the University, the Board of Trustees of the University, individually or collectively, and all of their present, future and former parent, subsidiary and affiliated corporations and entities, the predecessors and successors in interest of any of them, and each of the foregoing's respective present, former and future officers, directors, trustees, affiliates, employees, faculty members, students, agents, representatives, volunteers, attorneys, outside counsel, predecessors, successors, and assigns.

l) "Releasors" means all Plaintiffs and Class Members, and those Plaintiffs' and Class Members' agents, attorneys, representatives (and as applicable each of their past, present, and future agents, attorneys, representatives, and all persons or entities that made payments to the University or other Defendants on behalf of Plaintiffs and Class Members), the predecessors, successors, heirs, executors, administrators, and representatives of each of the foregoing.

m) "Released Claims" means any claims, demands, actions, suits, causes of action, damages, and liabilities, of any nature whatsoever, including costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that Plaintiffs ever had, now have, or hereafter can, shall or may have, directly, representatively, derivatively, as assignees or in any other capacity, to the extent arising out of or relating to a common nucleus of operative facts with those alleged in the Complaint that Plaintiffs have asserted or could have asserted in the Action. For avoidance of doubt, claims between Class Members and the University arising in the ordinary course and not relating to or arising from the facts alleged in the Complaint or any claims with a common nucleus of operative facts as those alleged in the Complaint, will not be released.

n) "Settlement Class Counsel" means the law firms Freedman Normand Friedland LLP, Gilbert Litigators & Counselors, PC, and Berger Montague PC.

o) "Settling Parties" means the University, Plaintiffs, and the Class.

p) "University Payment" means Thirteen Million, Five Hundred-Thousand Dollars ($13,500,000.00).

q) "University Settlement Fund" means the University Payment, plus interest accrued on the Settlement Fund. It is understood that, at no additional cost to the University or the University Settlement Fund, the University Settlement Fund may be combined with settlement funds from other defendants in the event that Plaintiffs achieve settlements with additional defendants in this Action.

2. Reasonable Steps Necessary to Help Effectuate this Settlement. The Settling Parties agree to undertake in good faith all reasonable steps necessary to help effectuate the Settlement, including undertaking all actions contemplated by and steps necessary to carry out the terms of this Settlement and to secure the prompt, complete, and final dismissal with prejudice of all claims in this Action against the University. The Settling Parties also agree to the following:

a) The University agrees not to oppose the Plaintiffs' motions for preliminary or final approval of the Settlement, and agrees not to appeal any Court ruling granting in full either of these motions.

b) Settlement Class Counsel represent that Plaintiffs will support the Settlement and will not object to the Settlement or opt out of the Settlement Class.

c) The University will serve notice of this Settlement on the appropriate federal and state officials under the Class Action Fairness Act, 28 U.S.C. § 1715.

d) This Settlement is reached with Settlement Class Counsel who will seek Court approval to represent all of the Class, and is intended to be binding on all persons who are within the definition of the Class, except any persons who timely and validly opt out.

3. Motion for Preliminary Approval of the Settlement. Plaintiffs shall draft a motion for preliminary approval of the Settlement and all necessary supporting documents, which shall be consistent with this Settlement Agreement and which the University shall have a right to review and approve (which approval shall not be unreasonably withheld). The University may suggest revisions, which Plaintiffs agree to consider in good faith, as long as the University

provides its suggested revisions or comments within five (5) business days of having received any such document or documents from Plaintiffs, or such other time as the Settling Parties may agree. Unless the Settling Parties agree otherwise, Plaintiffs will file the motion for preliminary approval with the Court no later than the earlier of: (i) 45 days after the execution of this Settlement Agreement, or (ii) August 14, 2023. The University understands and accepts that Plaintiffs may file for preliminary approval of this Settlement jointly with other settlements in this Action. Nothing in this Settlement Agreement shall prevent Plaintiffs from consummating settlements with other defendants in this Action or from including such settlements as part of a joint preliminary approval motion. The motion for preliminary approval shall include a proposed form of order substantially similar to Exhibit A, including:

a) requesting preliminary approval of the Settlement as fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23, and finding that dissemination of notice to the Class is warranted;

b) finding that the proposed plan of notice complies with Rule 23 and due process, and seeking approval of short- and long-form notices;

c) preliminarily approving the Plan of Allocation;

d) providing that if final approval of the Settlement is not obtained, the Settlement shall be null and void, and the Settling Parties will revert to their positions ex ante without prejudice to their claims or defenses; and

e) setting a date for a motion for final approval, a deadline for objections and exclusions, and a date for a fairness hearing.

4. Stay of Proceedings; Subsequent Litigation Class. The motion for preliminary approval shall also provide for a stay of Plaintiffs' proceedings against the University pending final approval or termination of the Settlement. The University agrees not to oppose preliminary approval of the Settlement. Plaintiffs represent that the class definition in Paragraph 1 of this Settlement Agreement is at least as broad as that for which the Plaintiffs will seek certification in their Motion for Class Certification against the remaining Defendants in the Action, except as to

the end date of the class. In the event that Settlement Class Counsel seek to certify a class or classes in their Motion for Class Certification against the remaining defendants that include any class members not included in the class definition in Paragraph 1 herein (except as to the end date), Settlement Class Counsel agree that this Settlement Agreement shall be amended to include such additional class members and that in the event an Amended Motion for Preliminary Approval of this Settlement Agreement, any amended notices must be provided to the classes, or an Amended Motion for Final Approval of this Settlement Class are necessary, Settlement Class Counsel will file such amendments and provide such notice at no expense to the University.

5. Motion for Final Approval and Entry of Final Judgment. In the event the Court enters an order preliminarily approving the Settlement, the Plaintiffs shall draft a motion for final approval of the Settlement and all necessary supporting documents, which the University shall have a right to review and approve (which approval shall not be unreasonably withheld). The University may suggest revisions, which Plaintiffs agree to consider in good faith, as long as the University provides its suggested revisions or comments within five (5) business days of having received any such document or documents from Plaintiffs, or other such time as the Settling Parties may agree. Plaintiffs will file the motion for final approval pursuant to the schedule ordered by the Court. The final approval motion shall seek entry of a final approval order, including:

a) finding that notice given constitutes due, adequate, and sufficient notice and meets the requirements of due process and the Federal Rules of Civil Procedure;

b) finding the Settlement to be fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23 and directing consummation of the Settlement pursuant to its terms;

c) finding that all Class Members shall be bound by the Settlement Agreement and all of its terms;

d) finding that the Releasors shall be bound by the respective releases set forth in Paragraphs 13 and 14 of this Settlement Agreement, and shall be forever barred from asserting any claims or liabilities against the University covered by the respective Released Claims against any of the Releasees;

e) approving expressly the provisions in Paragraph 7(e) of the Settlement Agreement allowing payment of class counsel fees and expenses before the Effective Date pursuant to the terms of that paragraph;

f) directing that the Action be dismissed with prejudice as to the University and without costs;

g) determining under Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing that the judgment of dismissal with prejudice as to the University be final;

h) retaining exclusive jurisdiction over the Settlement, including the administration and consummation of the Settlement; and

i) directing that, for a period of five years, the Clerk of the Court shall maintain the record of the entities that have excluded themselves from the Class and that a certified copy of such records shall be provided to the University.

6. Finality of Settlement. This Settlement Agreement shall become final upon the Effective Date.

7. Monetary Relief; Notice Fees and Costs

a) The University shall transfer the University Payment to the Escrow Account within the later of: (i) 30 calendar days after entry by the Court of the preliminary approval order on the docket of the Action, or (ii) 14 calendar days after Settlement Class counsel provide University counsel in writing with wiring instructions for the Escrow Account.

b) The payment provided for in subparagraph 7(a) above shall be held in the Escrow Account subject to the terms and conditions of the Escrow Agreement, and in accordance with the provisions of Paragraphs 8-11, 16 and 17 below.

c) Before the granting of final approval, and upon the direction of Settlement Class Counsel, all reasonable costs of providing notice to the Class and any costs of settlement fund administration, including taxes, will be paid out of the Escrow Account on a non-recoupable basis. Settlement Class Counsel shall attempt to defray the costs of notice by combining the administration of multiple settlements, if such settlements occur and if permitted by the Court to

do so. If multiple settlements are noticed together, the notice costs shall be divided by the number of settlements and charged to the escrow account of each settlement pari passu. Settlement Class Counsel shall provide copies to the University's counsel of any invoices paid by Settlement Class Counsel for which money is withdrawn from the Escrow Account. Any withdrawals for reasonable costs from the Escrow Account pursuant to this provision shall be non-refundable in the event that the Settlement Agreement is terminated or not approved by the Court. Settlement Class Counsel agree to arrange for provision of notice to the Class in accordance with Fed. R. Civ. P. 23 and any orders of the Court. Settlement Class Counsel agree to provide the University reasonable advance notice of the notice plan and costs.

d) Following the Effective Date, any attorneys' fees, costs and expenses and class plaintiff service awards awarded to Settlement Class Counsel and Plaintiffs by the Court will be paid from the escrow account. The University will take no position on Settlement Class Counsel's application for attorneys' fees, costs and expenses or for service awards to the Plaintiffs unless requested to do so by the Court.

e) Notwithstanding the above, subject to and following both the Court's approval in the Final Approval Order and the posting of a non-revocable letter of credit issued by Northern Trust, Bank of America, Citibank, or Chase Bank agreed to in writing in advance by the Settling Parties in an amount equal to or greater than the amount of any funds paid under this paragraph, Settlement Class Counsel's attorneys' fees and/or reimbursement of out-of-pocket expenses of Settlement Class Counsel awarded by the Court, up to a maximum of $5,000,000, shall be payable from the Settlement Fund upon being awarded by order of the Court, notwithstanding the existence of any timely-filed objections thereto, or potential appeal therefrom, or collateral attack on the Settlement or any part thereof, including on the award of attorneys' fees and costs. Any payment pursuant to this Paragraph 7(e) shall be subject to Settlement Class Counsel's obligation to make appropriate refunds or repayments to the University Settlement Fund with interest that would have accrued to the University Settlement Fund if the early payment(s) had not been made, within five business days, if and when, as a result of any appeal or further proceedings on remand, action by

or ruling of the Court, or successful collateral attack, the fee or award of costs and expenses is reduced or reversed, or in the event the settlement does not become final or is rescinded or otherwise fails to become effective. If Settlement Class Counsel fail to make the required repayments in accordance with the time period in this paragraph, the University may call the letter of credit. If the provisions of this paragraph are followed, the University shall not object to such disbursements. If the Court does not approve this provision, that disapproval will have no effect otherwise on the Settling Parties Settlement Agreement. Nothing in this paragraph is intended to serve as a cap on, or limit to, the attorneys' fees or expenses that Settlement Class Counsel or Plaintiffs may be awarded by the Court and receive following the Effective Date.

f) Aside from the payments specified in this Paragraph 7, the University shall not pay any additional amount at any time, whether for attorneys' fees or expenses, incentive awards, settlement administration costs, escrow costs, taxes due from Escrow Account, or any other cost. The University shall not be liable for any monetary payments under the Settlement Agreement other than the University Payment.

8. The University Settlement Fund. At all times prior to the Effective Date, the University Settlement Fund shall be invested as set forth in Paragraph 3 of the Escrow Agreement, in instruments backed by the full faith and credit of the U.S. Government or fully insured by the U.S. Government or an agency thereof, including a U.S. Treasury Money Market Fund or a bank account insured by the FDIC up to the guaranteed FDIC limit subject to the review and approval of the University, such approval not to be unreasonably withheld. After the Effective Date, the University Settlement Fund shall be invested pursuant to Paragraph 7 of the Escrow Agreement as directed in writing by Settlement Class Counsel. All interest earned on the University Settlement Fund shall become part of the University Settlement Fund.

9. Disbursements: After the Effective Date, the University Settlement Fund shall be distributed in accordance with the Plan of Allocation and the Court's approval of subsequent request(s) for distribution.

10. Taxes

a) Settlement Class Counsel shall be solely responsible for directing the Escrow Agent (as defined in the Escrow Agreement) to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Escrow Account. Further, Settlement Class Counsel shall be solely responsible for directing the Escrow Agent to make any tax payments, including interest and penalties due, on income earned by the Escrow Account. Subject to Paragraph 7 above, Settlement Class Counsel shall be entitled to direct the Escrow Agent to pay customary and reasonable tax expenses, including professional fees and expenses incurred in connection with carrying out the Escrow Agent's or tax preparer's responsibilities as set forth in this paragraph, from the Escrow Account. Settlement Class Counsel shall notify the University through its counsel regarding any payments or expenses paid from the Escrow Account. The University shall have no responsibility to make any tax filings relating to this Settlement Agreement, the Escrow Account, or the Settlement Payments, and shall have no responsibility to pay taxes on any income earned by the Escrow Account.

b) For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "Administrator" of the Escrow Account shall be Settlement Class Counsel, who shall timely and properly file or cause to be filed on a timely basis all tax returns necessary or advisable with respect to the Escrow Account (including without limitation all income tax returns, all informational returns, and all returns described in Treas. Reg. § 1.468B-2(1)).

c) The Settling Parties and their counsel shall treat, and shall cause the Escrow Agent to treat, the Escrow Account as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. The Settling Parties, their counsel, and the Escrow Agent agree that they will not ask the Court to take any action inconsistent with the treatment of the Escrow Account in this manner. In addition, the Escrow Agent and, as required, the Settling Parties, shall timely make such elections under § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder as necessary or advisable to carry out the provisions of this

paragraph, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-l(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties and thereafter to cause the appropriate filing to occur. All provisions of this Settlement Agreement shall be interpreted in a manner that is consistent with the Escrow Account being a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1.

11. Full Satisfaction; Limitation of Interest and Liability. Plaintiffs and Class Members shall look solely to the University Payment for satisfaction of any and all Released Claims. If the Settlement becomes final pursuant to Paragraph 6 above, the University's payment of the University Payment will fully satisfy any and all Released Claims. Except as provided by order of the Court, no Class Member shall have any interest in the University Payment, Escrow Account, or any portion thereof.

12. Attorneys' Fees, Expenses, and Costs.

a) Settlement Class Counsel shall file any motion for attorneys' fees, reimbursement of expenses and costs ("Fees and Expense Award") in accordance with the Court's preliminary approval or final approval order. Settlement Class Counsel shall receive any Fees and Expense Award relating to this Settlement solely from the University Settlement Fund. Other than as provided in Paragraph 7(e) and approved by the Court, no portion of any Fees and Expense Award shall be released from the University Settlement Fund prior to the Effective Date. The University is not obligated to take, does not take, and, unless requested to do so by the Court, will not take any position with respect to the application by Settlement Class Counsel for reimbursement of attorneys' fees, expenses, and costs.

b) The procedures for and the allowance or disallowance by the Court of Settlement Class Counsel's application for a Fees and Expense Award to be paid from the University Settlement Fund are not part of this Agreement, and are to be considered by the Court separately from consideration of the fairness, reasonableness, and adequacy of the Settlement. Any order or

proceeding relating to the Fees and Expense Award, or any appeal from any such order, shall not operate to modify or cancel this Settlement Agreement, or affect or delay the finality of the judgment approving the Settlement. A modification or reversal on appeal of any amount of the Fees and Expense Award shall not be deemed a modification of the terms of this Settlement Agreement or final approval order, and shall not give rise to any right of termination.

13. Release. Upon the occurrence of the Effective Date, the Releasors hereby release and forever discharge, and covenant not to sue the Releasees only, with respect to, in connection with, or relating to any and all of the Released Claims.

14. Additional Release. In addition, each Releasor hereby expressly waives and releases, upon the Effective Date, any and all provisions, rights, and/or benefits conferred by Section 1542 of the California Civil Code, which reads:

> Section 1542. Release. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code, notwithstanding that the release in Paragraph 13 is not a general release and is of claims against Releasees only. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims that are the subject matter of Paragraph 13. Nonetheless, upon the Effective Date, each Releasor hereby expressly waives and fully, finally, and forever settles and releases any known or unknown, foreseen, or unforeseen, suspected or unsuspected, contingent or non-contingent claim that is the subject matter of Paragraph 13, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Releasor also hereby expressly waives and fully, finally, and forever settles, releases, and discharges any and all claims it may have against the Releasees under § 17200, *et seq.*, of the California Business and Professions Code or any similar comparable

or equivalent provision of the law of any other state or territory of the United States or other jurisdiction, which claims are expressly incorporated into the definition of the Released Claims.

15. Effect of Disapproval. If the Court (i) declines to approve this Settlement Agreement; (ii) does not enter the preliminary approval order containing the elements set forth in Paragraph 3 above; (iv) does not enter the final approval order containing the elements set forth in Paragraph 5 above; (v) enters the final approval order and appellate review is sought, and on such review, such final approval order is not affirmed, then Settlement Class Counsel or the University may elect to terminate this Settlement Agreement by sending written notice to the other party within 10 business days of the event allowing for termination. For the avoidance of doubt, any order of the Court or the Seventh Circuit Court of Appeals that is based on a determination that the Settlement is not fair, reasonable, or adequate or that: (a) materially changes or does not approve the scope of the releases and covenant not to sue contemplated by this Settlement; (b) purports to impose additional material obligations on the University; or (c) declines to enter a final judgment that meets the requirements set forth in Paragraph 5 above, except as otherwise agreed in writing by Settlement Class Counsel and the University, constitutes a failure to grant final approval of this Agreement and confers on Settlement Class Counsel and/or the University the right to terminate the Agreement. A modification or reversal on appeal of the Plan of Allocation, fees or expenses, or class plaintiffs' service awards shall not be deemed a modification of the terms of this Agreement or Final Approval Order and shall not give rise to any right of termination.

16. Opt-Out and Termination Rights.

a) Should more than 650 proposed Class Members (not including employees of any of the law firms representing Defendants in this case) opt-out of this Settlement, the University has the right to terminate this Settlement, as long as the University notifies Settlement Class Counsel in writing of its decision to terminate within 5 business days of having been informed that more than 650 proposed Class Members have opted out or such other time as the Settling Parties may agree, and provided that the University has been given timely information regarding any opt-outs within a reasonable time after such opt-out requests coming to the attention of Settlement

Class Counsel. In such instance of termination, the Settling Parties would return to their respective positions as of April 19, 2023. In the event of a termination, the Settling Parties agree to work in good faith to propose a schedule to the Court to restart the litigation between Plaintiffs and the University. The University agrees that its President, Provost, Vice President and General Counsel, or outside counsel shall take no actions, publicly or privately, directly or indirectly, to encourage any proposed Class Members to opt out of this Settlement, or to encourage opting out from any other settlements that Plaintiffs may enter into with other defendants in this Action, or from any class or classes that the Court may certify in this Action.

b) Any disputes regarding the application of this Paragraph 16 may be resolved by the Court, with Plaintiffs, the University, and the opt-out(s) all having the opportunity to be heard.

17. Reimbursement of the University Settlement Fund upon Termination. If the Settlement Agreement is terminated pursuant to the provisions of Paragraphs 15 or 16 above, the Escrow Agent shall return to the University the funds left in the University Settlement Fund consistent with Paragraph 7 at the time of termination. Subject to Paragraph 8 of the Escrow Agreement, the Escrow Agent shall disburse the funds left in the University Settlement Fund consistent with Paragraph 7 to the University in accordance with this paragraph within 15 calendar days after receipt of either (i) written notice signed by Settlement Class Counsel and the University's counsel stating that the Settlement has been terminated (such written notice will be signed by the non-terminating party within three days of receiving the written notice from the terminating party), or (ii) any order of the Court so directing. If the Settlement Agreement is terminated pursuant to Paragraphs 15 or 16, (1) any obligations pursuant to this Settlement Agreement other than (i) disbursement of the University Settlement Fund to the University as set forth above and (ii) Paragraph 23, shall cease immediately and (2) the releases set forth in Paragraphs 13 and 14 above shall be null and void.

18. Preservation of Rights. Except as expressly provided for in the Releases in Paragraphs 13 and 14 above, this Settlement Agreement, whether the Settlement becomes final or not, and any and all negotiations, documents, and discussions associated with it, shall be without

prejudice to the rights of any of the Settling Parties, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or lack thereof, of any liability or wrongdoing by the University or lack thereof, or of the truth or lack thereof of any of the claims or allegations contained in the Complaint or any other pleading, and evidence thereof shall not be discoverable or used directly or indirectly, in any way other than to enforce the terms of this Settlement Agreement. The Settling Parties expressly reserve all of their rights if the Settlement does not become final in accordance with the terms of this Settlement Agreement. Upon the Settlement becoming final, nothing in this Agreement shall prevent the University from asserting any release or citing this Settlement Agreement to offset any liability to any other parties not party to the Action, including but not limited to, claims filed by federal and state governments or any governmental entity.

19. No Admission of Liability by the University; No Admission of Absence of Merit by Plaintiffs. This Settlement Agreement shall not be deemed or construed to be an admission of the University's liability in this Action. The University denies any wrongdoing in relation to the claims brought by Plaintiffs in this Action. The University's consent to the Settlement Class shall not be deemed consent to the certification of this or any other class for litigation purposes, and in the event of Termination, the University may oppose the certification of any class. This Settlement Agreement shall not be deemed or construed to be an admission that Plaintiffs' Claims in this Action lack merit as to the University or otherwise.

20. Discovery Disclosures to Plaintiffs. Other than as set forth below, or as may subsequently be agreed to by the Settling Parties, the University and its current or former employees will not be subject to any further discovery or required to provide any further responses to existing discovery relating to the University as of April 19, 2023.

a) **Data**. Through counsel, the Settling Parties will work in good faith to ensure that the undergraduate financial aid structured data produced by the University are reasonably understandable to Settlement Class Counsel and their consultants. Moreover, the University agrees that, if Plaintiffs determine after reasonable review to be completed by July 31, 2023, that there

are material missing responsive structured data in the financial aid data produced by the University to date, the University will work with Settlement Class Counsel in good faith to complete its production to cure any such defects in a timely way to the extent it is not unduly burdensome.

b) **Documents**. The University will complete its pending document productions as of April 19, 2023 from existing custodians and non-custodial sources related to the University's undergraduate financial aid practices and its participation in the 568 Group in response to Plaintiffs' First Requests for Production of Documents, subject to the existing agreements between the Settling Parties. The University agrees to provide a privilege log limited to metadata for documents that have been withheld, provided that Plaintiffs may designate up to 50 documents for which the University will provide the privilege log information specified in the ESI Protocol. In addition, until November 30, 2023, the University will consider reasonable requests from Settlement Class Counsel for additional relevant information, including documents, about Plaintiffs' claims in the Action regarding undergraduate financial aid or the University's knowledge about the practices of, any enforcement mechanisms or enforcement efforts of, and its own participation in, the 568 Group, taking into account the information the University has or will produce in discovery, and whether providing the requested information will be burdensome.

c) **Disclosures to Plaintiffs**. On or before May 10, 2023, the University's counsel shall undertake a good faith review to the extent it is not unduly burdensome and identify for Plaintiffs, insofar as counsel is aware, documents by Bates number that it produced in discovery relating to or identifying (a) information shared by participants in the 568 Group, and (b) the University's undergraduate financial aid practices while it regularly attended 568 Group meetings and after it had stopped doing so, and (c) the University's "need blind" policy. Following the entry of an Order preliminarily approving the Settlement by the Court, the Settling Parties agree that the University's counsel, upon a good faith review of existing materials and interviews with relevant current or former employees of the University as needed, will meet with Plaintiffs' counsel at mutually agreed times and places or by video-conference. These meetings or conferences shall last, cumulatively, no more than seven hours, and shall be to provide certain information described

below, and also to respond in good faith to reasonable questions from Plaintiffs' counsel with respect to the University's undergraduate financial aid practices over the time period relevant to the Complaint, its participation in the 568 Group as alleged in the Complaint, and its knowledge of the practices, procedures, and any enforcement mechanisms or enforcement efforts of, the 568 Group during the time period relevant to the Complaint to the extent the University has such knowledge. The University's counsel shall provide a reasonably detailed description of the principal facts known to the University's counsel that are relevant to the alleged conduct regarding financial aid or the University's participation in, and knowledge about, the practices, procedures, and any enforcement mechanisms or enforcement efforts of, the 568 Group at issue in, and during the time period relevant to, the Action (the "Proffer"), including by providing the Bates Numbers of relevant documents identified in preparation for the Proffer and/or documents identified and discussed during the Proffer. Further, the University agrees that if it cannot provide material responsive information to certain of Plaintiffs' counsel's reasonable questions during the Proffer for which the University's counsel reasonably believes material information exists in the University's custody and that can be obtained without undue burden to the University, the University agrees that it will work in good faith to provide answers to such questions within a reasonable time frame after the Proffer. The Settling Parties understand and agree that neither the University nor its counsel will provide any joint defense privileged information to the Plaintiffs as part of this process. All of the foregoing obligations in Paragraph 10(c) shall terminate the later of (a) October 31, 2023, or (b) forty-five days after the Court preliminarily approves the Settlement.

d) **Witness interview**. After the Court enters an order granting preliminary approval of the Settlement, and in the event that Plaintiffs ask the University to do so, the University will ask its former Director of College Aid to agree to meet with Plaintiffs' counsel for no more than three-hours by video-conference or in-person at a place convenient to the former Director of College Aid. The Settling Parties also agree that notwithstanding any provision in this Settlement Agreement, Plaintiffs may exercise any rights they have under the Federal Rules of Civil Procedure to obtain a deposition of that former employee. In the event the former employee agrees to an

interview with Plaintiffs, and in fact such interview occurs no later than sixty days before the close of fact discovery in the Action, any deposition of that former employee by the Plaintiffs shall be limited to three and one-half hours of on the record time for any questioning by Plaintiffs. Furthermore, nothing in this Settlement Agreement shall prevent Plaintiffs from seeking to cause the University's former Director of College Aid to testify at any trial in this matter.

e) **Testimony**. In the event that Plaintiffs want testimony from a University witness (employed by the University as of the date of the request from Plaintiffs) with respect to the University's undergraduate financial aid processes or participation in, or knowledge, if any, about the policies and practices of, the 568 Group, Plaintiffs and the University agree to negotiate in good faith the scope of a declaration or affidavit of no more than 10 pages cumulatively from up to three witnesses. The foregoing obligations of Paragraph 20(e) shall terminate as of December 1, 2023. Furthermore, notwithstanding this Settlement Agreement, if any other party to the Action takes a deposition of a University-related witness, the University agrees that it will not object to making that witness available for deposition questioning by Plaintiffs' counsel for an equal amount of time, subject to a combined time limit as set in Fed. R. Civ. P. 30(d)(1). In the event that Plaintiffs receive a declaration or affidavit (as provided for in this paragraph) from the University's current Executive Director of Financial Aid that is found to be inadmissible for the truth of the matters asserted at a trial of the Action, the University agrees it will not object to Plaintiffs serving a trial or deposition subpoena through University counsel on the declarant or another University-affiliated witness, as determined by the University, to seek the declarant (or affiant) or other University-affiliated witness's testimony at trial, or at a deposition during the pre-trial period (*i.e.*, after the close of fact discovery if allowed by the Court), about the subjects covered in the declaration. In the event that the University's Executive Director of Financial Aid as of April 19, 2023 is no longer an employee of the University at the time Plaintiffs request a declaration or affidavit, the University agrees it will not object to Plaintiffs' seeking a deposition of that then-former Executive Director of Financial Aid pursuant to Plaintiffs' rights under the Federal Rules of Civil Procedure.

f) **Produced documents kept in the ordinary course of business and trial witness**. The University agrees that in the event the need arises in this Action, and there is an authenticity or hearsay objection made by one or more defendants in the Action to documents or data produced by the University in this litigation, the University will provide a declaration supporting authenticity or application of the Business Records Exception to the Hearsay Rule (Fed. R. Evid. 803(6)) to those documents or data. In the event that a declaration is not sufficient to meet the requirements of Fed. R. Evid. 803(6), the University will provide a records custodian witness to testify by deposition *de bene esse* or, if necessary, at trial, for the sole purpose of providing support for the authenticity of the documents or data or the application of the Business Records Exception to the Hearsay Rule for those documents or data.

g) **Confidentiality**: All non-public data, documents, information, testimony, and/or communications provided to Plaintiffs' counsel as part of subparts (a) to (f) above, if so designated by the University, shall be treated as "Confidential" or "Attorneys' Eyes Only" under the Confidentiality Order in the Action. The University understands and accepts that Plaintiffs shall have the ability to challenge such designations, after the fact, under the terms of the Confidentiality Order.

h) **Admissibility and Privilege**: Any statements made by the University's counsel in connection with subparts (a) to (f) above, including in response to questions from Plaintiffs' counsel in connection with subpart (c), and any statements made in any fact witness interviews, shall be deemed to be "conduct or statements made during compromise negotiations about the claims" and shall be inadmissible in evidence as provided, without limitation, under Federal Rule of Evidence 408 and state-law equivalents, and otherwise shall not be used for any other purpose (including at any hearing or trial, in connection with any motion, opposition, or other filing in the Action, or in any other federal, state, or foreign action or proceeding). In the event, for whatever reason, this Settlement is rescinded, canceled, or terminated or the Settlement is not approved by the Court, such inadmissibility and other limits on use shall survive. Further, nothing herein shall require University to provide information protected by the attorney-client privilege, attorney work-

product doctrine, joint-defense privilege or similar privileges, and University shall not waive any protections, immunities, or privileges. All provisions of the Confidentiality Order and other orders governing discovery in the Action otherwise will apply, including without limitation, provisions related to inadvertent disclosure.

21. Temporary Stay of Litigation. The Settling Parties agree that it appears unlikely a temporary stay of litigation will be necessary before the Court considers the stay requested as part of the motion for preliminary approval of the Settlement Agreement. In the event that either Party to this Settlement Agreement believes in good faith that it has become necessary to seek a stay of the litigation in order for that party to avoid work not contemplated by this Settlement Agreement or some other undue burden, the Settling Parties agree that they will seek a temporary stay of the litigation.

22. Resumption of Litigation in the Event of Termination. The Settling Parties agree that in the event that the Settlement Agreement is not approved by the Court, or if the Settlement does not become final pursuant to Paragraph 6 above, or if the Settlement Agreement is terminated pursuant to Paragraphs 15 or 16 above, Plaintiffs may resume litigation of the Action against the University in a reasonable manner to be approved by the Court upon a joint application by the Settling Parties, and upon full reimbursement to the University of the University Settlement Fund as provided for in Paragraph 17 above.

23. Maintaining Confidentiality of Litigation Materials. In the event that Plaintiffs or Settlement Class Counsel receive a subpoena or other legal process that would require disclosure of material covered by any protective order entered in the Action (the "Protective Order") or covered by Federal Rule of Evidence 408, such Plaintiff or Settlement Class Counsel shall promptly notify the University and forward a copy of such subpoena or legal process so that the University may seek a protective order or otherwise seek to maintain the confidentiality of material covered by the Protective Order or Rule 408; and such Plaintiff or Settlement Class Counsel shall object to the production of such material unless and until any such motion filed by the University is resolved. In addition, Plaintiffs and Settlement Class Counsel shall abide by the

terms of the Protective Order in this Action, including with respect to the destruction of materials and the limitations on the use of any material covered by the Protective Order to this Action, unless otherwise ordered by a court of competent jurisdiction.

24. Binding Effect. This Settlement Agreement shall be binding upon, and inure to the benefit of, the Releasors and the Releasees. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Settlement Class Counsel shall be binding upon Plaintiffs and all Class Members.

25. Integrated Agreement. This Settlement Agreement, together with the exhibits hereto and the documents referenced herein, contains the complete and integrated statement of every term in this Agreement, and supersedes all prior agreements or understandings, including the Memorandum of Understanding between the Parties executed on April 19, 2023, whether written or oral, between the Settling Parties with respect to the subject matter hereof. This Settlement Agreement shall not be modified except by a writing executed by Plaintiffs and the University.

26. Independent Settlement. This Settlement Agreement is not conditioned on the performance or disposition of any other settlement agreement between the Class and any other Defendant.

27. Headings. The headings in this Settlement Agreement are intended only for the convenience of the reader and shall not affect the interpretation of this Settlement Agreement.

28. No Party is the Drafter. None of the Settling Parties shall be considered the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law, or rule of construction that might cause any provision to be construed against the drafter hereof.

29. Consent to Jurisdiction. Each Class Member and the University hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the Northern District of Illinois for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein provided

that this consent to jurisdiction shall not affect the University's right or ability to assert this Settlement Agreement or the releases contained herein as a defense in an action filed in any other jurisdiction asserting Released Claims or concerning this Settlement Agreement or this Action.

30. Choice of Law. All terms of this Settlement Agreement shall be governed by and interpreted according to federal common law or, where state law must apply, Illinois law without regard to conflicts of law principles.

31. Representations and Warranties. Each party represents and warrants that it has the requisite authority to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated herein.

32. Notice. Where this Agreement requires either Settling Party to provide notice or any other communication or document to the other Settling Party, such notice shall be in writing and provided by email and overnight delivery to the counsel set forth in the signature block below for Settlement Class Counsel, respectively, or their designees or successors. For the University, notice shall be provided by email and overnight delivery to:

Vice President and General Counsel
Office of Legal Counsel
University of Chicago
5801 S. Ellis Ave.
Suite 619
Chicago, IL 60637
legalcounsel@uchicago.edu

James L. Cooper
Michael Rubin
Arnold & Porter
601 Massachusetts Ave., NW
Washington, D.C. 60001
James.cooper@arnoldporter.com
Michael.rubin@arnoldporter.com

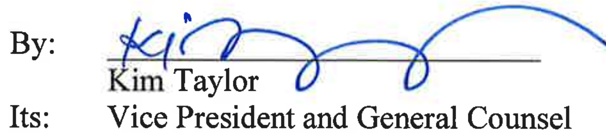
33. **Execution in Counterparts.** This Settlement Agreement may be executed in counterparts. A facsimile or .pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

34. **Confidentiality.** While the fact of settlement of the Action has been disclosed in open court, the terms of this Settlement Agreement shall remain confidential until Plaintiffs move for preliminary approval of the Settlement, unless the University and Settlement Class Counsel agree otherwise, provided that the University may disclose the terms of this Settlement Agreement to accountants, lenders, auditors, legal counsel, insurers, tax advisors, or in response to a request by any governmental, judicial, or regulatory authority or otherwise required by applicable law or court order, and Plaintiffs may disclose the terms of the Settlement Agreement to any entity that has applied to serve as Notice and Claims Administrator or Escrow Agent, who shall abide by the terms of this paragraph.

IN WITNESS WHEREOF, the parties hereto through their fully authorized representatives have agreed to this Settlement Agreement as of the date first herein above written.

Dated: August 7, 2023.

THE UNIVERSITY OF CHICAGO

By: 
Kim Taylor
Its: Vice President and General Counsel

By:
Robert D. Gilbert
Elpidio Villarreal
Robert S. Raymar
GILBERT LITIGATORS & COUNSELORS, P.C.
11 Broadway, Suite 615
New York, NY 10004
Phone: (646) 448-5269
rgilbert@gilbertlitigators.com
pdvillarreal@gilbertlitigators.com
rraymar@gilbertlitigators.com
sschuster@gilbertlitigators.com
amarquez@gilbertlitigators.com
smagnusson@gilbertlitigators.com

By:
Devin "Vel" Freedman
Edward J. Normand
FREEDMAN NORMAND FRIEDLAND LLP
99 Park Avenue
Suite 1910
New York, NY 10016
Tel: 646-970-7513
vel@fnf.law
tnormand@fnf.law
pbachyrita@fnf.law
rcipolla@fnf.law

By:
Eric L. Cramer
Caitlin G. Coslett
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: 215-875-3000
ecramer@bm.net
ccoslett@bm.net

Daniel J. Walker
Robert E. Litan
BERGER MONTAGUE PC
2001 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20006
Tel: 202-559-9745
rlitan@bm.net
dwalker@bm.net
hbrinn@bm.net

Richard Schwartz
BERGER MONTAGUE PC
1720 W Division
Chicago, IL 60622
Tel: 773-257-0255
rschwartz@bm.net

Counsel for Plaintiffs and the Proposed Class

Exhibit B

Fees of Custodian/Escrow Agent

Acceptance Fee: **Waived**

The Acceptance Fee includes the review of the Chicago Custodian/Escrow Agreement, acceptance of the role as the Chicago Custodian/Escrow Agent, establishment of the Chicago Custodian/Escrow Account(s), and receipt of funds.

Annual Administration Fee: **Waived**

The Annual Administration Fee includes the performance of administrative duties associated with the Chicago Custodian/Escrow Account including daily account management, generation of account statements to appropriate parties, and disbursement of funds in accordance with the Chicago Custodian/Escrow Agreement. Administration Fees are payable annually in advance without proration for partial years.

Out of Pocket Expenses: **Waived**

Out of pocket expenses include postage, courier, overnight mail, wire transfer, and travel fees.

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANDREW CORZO, SIA HENRY, ALEXANDER LEO-GUERRA, MICHAEL MAERLENDER, BRANDON PIYEVSKY, BENJAMIN SHUMATE, BRITTANY TATIANA WEAVER, and CAMERON WILLIAMS, individually and on behalf of all others similarly situated, Plaintiffs, v. BROWN UNIVERSITY, CALIFORNIA INSTITUTE OF TECHNOLOGY, UNIVERSITY OF CHICAGO, THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, CORNELL UNIVERSITY, TRUSTEES OF DARTMOUTH COLLEGE, DUKE UNIVERSITY, EMORY UNIVERSITY, GEORGETOWN UNIVERSITY, THE JOHNS HOPKINS UNIVERSITY, MASSACHUSETTS INSTITUTE OF TECHNOLOGY, NORTHWESTERN UNIVERSITY, UNIVERSITY OF NOTRE DAME DU LAC, THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA, WILLIAM MARSH RICE UNIVERSITY, VANDERBILT UNIVERSITY, and YALE UNIVERSITY, Defendants.	Case No.: 1:22-cv-00125 **Hon. Matthew F. Kennelly**

[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT, PROVISIONALLY CERTIFYING THE PROPOSED SETTLEMENT CLASS, APPROVING THE NOTICE PLAN, AND APPROVING THE PROCESS SCHEDULED FOR COMPLETING THE SETTLEMENT PROCESS

WHEREAS, on August 7, 2023, Plaintiffs Andrew Corzo, Sia Henry, Alexander Leo-Guerra, Michael Maerlender, Brandon Piyevsky, Benjamin Shumate, Brittany Tatiana Weaver, and Cameron Williams (collectively, "Plaintiffs"), on behalf of themselves and a proposed Settlement Class (defined below), and defendant the University of Chicago (the "University")

(Plaintiffs and the University together, the "Parties") entered into a settlement agreement that sets forth the terms and conditions of the Parties' proposed settlement and the release and dismissal with prejudice of the claims of the Plaintiffs and members of the proposed Settlement Class against the University (the "Settlement");

Whereas, on August 14, 2023, Plaintiffs filed a Motion for Preliminary Approval of the Settlement, Provisional Certification of Proposed Settlement Class, Approval of Notice Plan, and Approval of the Proposed Schedule for Completing the Settlement Process, requesting the entry of an Order: (i) granting preliminary approval of the Settlement Agreement; (ii) finding that the standards for certifying the proposed Settlement Class under Fed. R. Civ. P. 23 for purposes of Settlement and judgment are likely satisfied; (iii) appointing Andrew Corzo, Sia Henry, Alexander Leo-Guerra, Michael Maerlender, Brandon Piyevsky, Benjamin Shumate, Brittany Tatiana Weaver, and Cameron Williams as representatives of the Settlement Class ("Class Representatives"); (iv) appointing Freedman Normand Friedland LLP, Gilbert Litigators & Counselors PC, and Berger Montague PC as Settlement Class Counsel under Fed R. Civ. P. 23(g); (v) approving the proposed notice plan and authorizing dissemination of notice to the Settlement Class; (vi) appointing Angeion Group as Settlement Claims Administrator; (vii) appointing The Huntington National Bank ("Huntington Bank") as Escrow Agent; and (vii) approving the proposed Settlement schedule, including setting a date for a final Fairness Hearing;

WHEREAS, the University supports Plaintiffs' Motion; and

WHEREAS, the Court is familiar with and has reviewed the record in this case and the Settlement, and has found good cause for entering the following Order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

Jurisdiction

1. This Court has jurisdiction to enter this Order as it has jurisdiction over the subject matter of this action and over the University and Plaintiffs, including all members of the Settlement Class (defined below).

Settlement Class

2. Pursuant to Rule 23(e)(1)(B)(ii) of the Federal Rules of Civil Procedure, the Court preliminarily finds that the Court will likely find that the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) have been satisfied for settlement and judgment purposes only. As to the requirements of Rule 23(a) for settlement purposes only, (i) the Settlement Class provisionally certified herein likely exceeds 100,000 individuals, and joinder of all would be impracticable; (ii) there are questions of law and fact common to the Settlement Class; (iii) Class Representatives' claims are typical of the claims of the Settlement Class they seek to represent for purposes of settlement; (iv) Class Representatives are adequate representatives of the Settlement Class. As to the requirements of Rule 23(b)(3) for settlement purposes only, questions of law and fact common to the Settlement Class predominate over any questions affecting any individual Settlement Class Member, and a class action on behalf of the Settlement Class is superior to other available means of settling and disposing of this dispute.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court provisionally certifies, solely for purposes of effectuating the Settlement, the following "Settlement Class":

All U.S. citizens or permanent residents who have during the Class Period (a) enrolled in

one or more of Defendants'[1] full-time undergraduate programs, and (b) received at least some need-based financial aid from one or more Defendants, and (c) directly purchased from one or more Defendants tuition, fees, room, or board that was not fully covered by the combination of any types of financial aid or merit aid (not including loans) in any undergraduate year.[2] The Class Period is defined as follows:

- For Chicago, Columbia, Cornell, Duke, Georgetown, MIT, Northwestern, Notre Dame, Penn, Rice, Vanderbilt, Yale—from 2003 through the date of this Order.
- For Brown, Dartmouth, Emory—from 2004 through the date of this Order.
- For Caltech—from 2019 through the date of this Order.
- For Johns Hopkins—from 2021 through the date of this Order.

Excluded from the Class are:

- Any Officers and or Trustees of Defendants, or any current or former employees holding any of the following positions: Assistant or Associate Vice Presidents or Vice Provosts, Executive Directors, or Directors of Defendants' Financial Aid and Admissions offices, or any Deans or Vice Deans, or any employees in Defendants in-house legal offices; and
- the Judge presiding over this Action, his or her law clerks, spouse, and any person within the third degree of relationship living in the Judge's household and the spouse of such a person.

4. For settlement purposes only, the Court hereby appoints plaintiffs Andrew Corzo, Sia Henry, Alexander Leo-Guerra, Michael Maerlender, Brandon Piyevsky, Benjamin Shumate, Brittany Tatiana Weaver, and Cameron Williams as Class Representatives.

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[1] Defendants are Brown University ("Brown"), California Institute of Technology ("Caltech"); University of Chicago ("Chicago"); The Trustees of Columbia University in the City of New York ("Columbia"); Cornell University ("Cornell"), Trustees of Dartmouth College ("Dartmouth"), Duke University ("Duke"), Emory University ("Emory"), Georgetown University ("Georgetown"), The Johns Hopkins University ("Johns Hopkins"), Massachusetts Institute of Technology ("MIT"), Northwestern University ("Northwestern"), University of Notre Dame du Lac ("Notre Dame"), The Trustees of the University of Pennsylvania ("Penn"), William Marsh Rice University ("Rice"), Vanderbilt University ("Vanderbilt"), and Yale University ("Yale") (together "Defendant Universities").

[2] For avoidance of doubt, the Class does not include purchasers for whom the total cost they were charged by the Defendant or Defendants whose institution(s) they attended, including tuition, fees, room, or board for each undergraduate academic year, was covered by any form of financial aid or merit aid (not including loans) from one or more Defendants.

Preliminary Approval of Settlement

5. Pursuant to Fed. R. Civ. P. 23(e)(1)(B), based on "the parties' showing that the court will likely be able to (i) approve the proposal[s] under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal[s]," the Court hereby preliminarily approves the Settlement, as embodied in the Settlement Agreement.

6. Upon review of the record, the Court finds the Settlement was entered into after approximately sixteen months of hard-fought litigation, extensive discovery, and arm's length negotiations. Accordingly, the Court preliminarily finds that the Settlement meets all factors under Rule 23(e)(2) and will likely be granted final approval by the Court, subject to further consideration at the Court's final Fairness Hearing. The Court finds that the Settlement encompassed by the Settlement Agreement is preliminarily determined to be fair, reasonable, and adequate, and in the best interest of the Settlement Class, raises no obvious reasons to doubt its fairness, and that there is a reasonable basis for presuming that the Settlement and its terms satisfy the requirements of Federal Rule of Civil Procedure 23(c)(2) and 23(e) and due process so that notice of the Settlement should be given to members of the Settlement Class.

7. The Court has reviewed and hereby preliminarily approves the Plan of Allocation.

8. Angeion Group is hereby appointed as Settlement Claims Administrator.

9. Huntington Bank is hereby appointed as Escrow Agent pursuant to the Settlement.

10. The Court approves the establishment of the Settlement Fund under the Settlement Agreement as a qualified settlement fund ("QSF") pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder and retains continuing jurisdiction as to any issue that may arise in connection with the formation and/or administration of the QSF. In accordance with the Settlement Agreement, Settlement Class Counsel are

authorized to withdraw funds from the QSF for the payment of the reasonable costs of notice, payment of taxes, and reasonable settlement administration costs.

11. Pending further Order of the Court, all litigation activity against the University on behalf of the Settlement Class is hereby stayed, and all hearings, deadlines, and other proceedings related to the Plaintiffs' claims against the University, other than those incident to the settlement process, are hereby taken off the Court's calendar. The stay shall remain in effect until such a time that (i) the University or Plaintiffs exercise their right to terminate the Settlement pursuant to its terms; (ii) the Settlement is terminated pursuant to its terms; or (iii) the Court renders a final decision regarding approval of the Settlement, and if it approves the Settlement, enters final judgment and dismisses Plaintiffs claims against the University with prejudice.

12. In the event that the Settlement fails to become effective in accordance with its terms, or if an Order granting final approval to the Settlement and dismissing Plaintiffs' claims against the University with prejudice is not entered or is reversed, vacated, or materially modified on appeal, this Order shall be null and void.

13. In the event the Settlement is terminated, not approved by the Court, or the Settlement does not become final pursuant to the terms of the Settlement, litigation against Defendants shall resume in a reasonable manner as approved by the Court upon joint application of the Plaintiffs and the University.

Approval of Notice Plan

14. The Court approves, in form and substance, the long-form and publication notice, and the website as described herein. The class notice plan specified by Plaintiffs and supported by the Declaration of Steven Weisbrot of Ageion Group: (i) is the best notice practicable; (ii) is

reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency and status of this Action and of their right to participate in, object to, or exclude themselves from the proposed Settlement; (iii) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice of the Fairness Hearing; and (iv) fully satisfies the requirements of Fed. R. Civ. P. 23(e)(1), and constitutes due process, and is a reasonable manner of distributing notice to Settlement Class members who would be bound by the Settlement.

15. Angeion may modify the form and/or content of the targeted advertisements and banner notices as it deems necessary and appropriate to maximize their impact and reach, as long as those modifications substantially comport with the Notices attached to the Declaration of Steven Weisbrot and are approved by the Parties.

16. Defendants shall provide notice of the Settlement as required by 28 U.S.C. § 1715.

Email and Mailing Addresses for Notice

17. Pursuant to 34 C.F.R. § 99.37(a), the Court finds that mailing addresses and email addresses in education records of current students of a Defendant constitute "directory information" and may be disclosed, without consent, to the Settlement Claims Administrator for purposes of providing class notice in this litigation if (a) the Defendant has previously provided public notice that the mailing addresses and email addresses are considered "directory information" that may be disclosed to third parties including public notice of how students may restrict the disclosure of such information, and (b) the student has not exercised a right to block disclosure of mailing addresses or email addresses ("FERPA Block"). Defendants shall not disclose from education records mailing addresses or email addresses subject to a FERPA Block.

18. Pursuant to 34 C.F.R. § 99.37(b), the Court further finds that mailing addresses and email addresses in education records of former students of a Defendant constitute "directory information" and may be disclosed, without consent, to the Settlement Claims Administrator for purposes of providing class notice in this litigation, provided that each Defendant continues to honor any valid and un-rescinded FERPA Block.

Approval of Schedule

19. Angeion Group and the Parties shall adhere to the following schedule:

a. No later than 30 days after the date of this Order, Angeion Group shall begin the process of providing notice to the Settlement Class, in accordance with the Plan of Notice.

b. No later than 75 days after the date of this Order, Settlement Class Counsel shall file a motion for attorneys' fees, unreimbursed litigation costs and expenses, and/or service awards for the Class Representatives, pursuant to the terms of the Settlement Agreement.

c. By no later than 90 days after the date of this Order, Settlement Class Members may request exclusion from the Class or submit any objection to the proposed Settlement or to the proposed allocation plan summarized in the notice, or to Settlement Class Counsel's request for attorneys' fees, unreimbursed litigation costs and expenses, and/or service awards to the Class Representatives. All objections must be in writing and filed with the Court, with copies sent to the Claims Administrator, and include the following information: (1) the name of the case (*Henry, et al. v. Brown University, et al.*, Case No. 1:22-cv-00125); (2) the individual's name and address and if represented by counsel, the name, address, and telephone number of counsel; (3) proof of membership (such as, for instance, evidence of an accepted financial aid award from a Defendant University), indicating that the individual is a member of the Settlement Class; (4) a statement detailing all objections to the Settlement; and (5) a statement of whether the individual

will appear at the Fairness Hearing, either with or without counsel. All requests for exclusion from the Class must be in writing, mailed to the Claims Administrator, and include the following information: (1) the name of the case (*Henry, et al. v. Brown University, et al.*, Case No. 1:22-cv-00125); (2) the individual's name and address and if represented by counsel, the name, address, and telephone number of counsel; (3) proof of membership (such as, for instance, evidence of an accepted financial aid award from a Defendant University); (4) a statement indicating that the individual is a member of the proposed Settlement Class and wishes to be excluded from the Settlement Class; and (5) an individual signature by the Settlement Class member.

d. No later than 105 days after the date of this Order, Settlement Class Counsel shall file all briefs and materials in support of final approval of the Settlement.

e. A hearing on final approval of the Settlement shall be held before this Court on __________________________, 2023, at _________. The Fairness Hearing shall take place at least 120 days after the Court's entry of this Order.

Dated: ___________, 2023

SO ORDERED

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Matthew F. Kennelly
United States District Judge

EXHIBIT D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANDREW CORZO, SIA HENRY, ALEXANDER LEO-GUERRA, MICHAEL MAERLENDER, BRANDON PIYEVSKY, BENJAMIN SHUMATE, BRITTANY TATIANA WEAVER, and CAMERON WILLIAMS, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

BROWN UNIVERSITY, CALIFORNIA INSTITUTE OF TECHNOLOGY, UNIVERSITY OF CHICAGO, THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, CORNELL UNIVERSITY, TRUSTEES OF DARTMOUTH COLLEGE, DUKE UNIVERSITY, EMORY UNIVERSITY, GEORGETOWN UNIVERSITY, THE JOHNS HOPKINS UNIVERSITY, MASSACHUSETTS INSTITUTE OF TECHNOLOGY, NORTHWESTERN UNIVERSITY, UNIVERSITY OF NOTRE DAME DU LAC, THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA, WILLIAM MARSH RICE UNIVERSITY, VANDERBILT UNIVERSITY, and YALE UNIVERSITY,

Defendants.

Case No.: 1:22-cv-00125
Hon. Matthew F. Kennelly

THIS DOCUMENT RELATES TO:

Plaintiffs' Proposed Plan of Allocation for the Settlement Class

PLAINTIFFS' [PROPOSED] PLAN OF ALLOCATION

Plaintiffs Andrew Corzo, Sia Henry, Alexander Leo-Guerra, Michael Maerlender, Brandon Piyevsky, Benjamin Shumate, Brittany Tatiana Weaver, and Cameron Williams ("Plaintiffs"), on behalf of the Settlement Class (as defined in the Settlement Agreement), hereby submit this proposed Plan of Allocation to allocate the funds received as a result of the proposed settlement (the "Settlement") with defendant the University of Chicago ("UChicago") in the above-captioned matter, plus any interest earned on the settlement funds, and net of Court-approved attorneys' fees, any Court-approved named plaintiff service awards, and Court-approved expenses, including settlement and notice-related costs and expenses (the "Net Settlement Fund").

The proposed Plan of Allocation ("Allocation Plan") allocates the Net Settlement Fund based on an estimate of each Claimant's[1] *pro rata* share of the value of all valid claims submitted by members of the Settlement Class.

Plaintiffs' claims administrator, Angeion Group ("Angeion"), will calculate each Claimant's *pro rata* share of the Net Settlement Fund based on the formula set forth below, which is supported by Dr. Ted Tatos, an economist with the Econ One consulting group. The Allocation plan is based on (a) allegations in Plaintiffs' Second Amended Complaint, ECF 308 ("Complaint"), as well as (b) a review of documents produced to date in the litigation, and (c) economic analyses conducted by Plaintiffs' economic consultants.

By way of background, Plaintiffs allege that Defendants (as defined in the Settlement Agreement) have conspired, through various activities undertaken as members of the "568

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[1] A "Claimant" is any entity that is a member of the Settlement Class who timely submits a validly completed claim form as part of the allocation process to be described in detail at the final approval stage.

Presidents Group" (the "568 Group"), to artificially deflate the calculations of financial need of Settlement Class members, which in turn are alleged to have artificially inflated the net price Class members paid to attend Defendant institutions. *See* Complaint ¶¶ 7, 238, 241. The "Net Price," as that term is used here, includes the price of tuition, fees, room, and board minus all need-based and other forms of aid (excluding loans). *Id.* ¶ 5. The vast majority of financial aid awarded by Defendants is need-based. The artificial inflation in the Net Price represents the antitrust injury suffered by Settlement Class members due to the alleged anticompetitive conduct challenged in the Complaint. Notably, the website of the 568 Group acknowledged that one of its main goals was "to reduce much of the variance in need analysis results," to "diminish or eliminate . . . divergent results," and to calculate financial need in a "consistent manner." *Id.* ¶ 127.

At this time, Plaintiffs do not have sufficient data to determine the Net Price each individual Claimant paid for each year he or she attended a Defendant. Moreover, attempting to compute such Net Prices in the context of this Plan for each Claimant would be inefficient and unduly expensive relative to size of award likely to go to each Claimant.

Because the challenged conduct artificially inflated the Net Price Claimants paid to attend each Defendant for each term a student attended, and given that Plaintiffs allege that the challenged conduct sought to affect Net Prices in a "consistent manner," it is fair to conclude that Claimants suffered injury in rough proportion to the average Net Price charged by each school. In other words, if the overcharge due to the challenged conduct is, roughly, a fixed percentage amount of the Net Price paid by all Class Members, that would mean that Claimants were injured in rough proportion to the average Net Price each Defendant charged during each year or term a student attended during the Class Period as defined in the Settlement Agreement. As a result, a

fair and efficient way to allocate the Net Settlement Fund would be to ensure that each Claimant receives its *pro rata* share of the Net Settlement Fund in proportion to the average Net Price charged by the Defendant for each year or term a Claimant attended that institution.

In short, as described in more detail below, the Net Settlement Fund will be allocated, *pro rata*, based on estimates of the total amount in dollars that each Claimant paid to a Defendant during the Class Period. For instance, if Claimant "A" attended a school charging an average Net Price of $65,000 per year for four years, and Claimant "B" attended a school charging an average Net Price of $70,000 per year for four years, Claimant A's *pro rata* share would be somewhat more than Claimant B's *pro rata* share.

As discussed above, there are no publicly available data on the Net Price paid by each Settlement Class member, and Plaintiffs do not currently have a comprehensive set of such data available to them. Nor would it be practical to require each Claimant, many of whom attended a Defendant more than a decade ago, to have records of the Net Prices each paid. Furthermore, because of the privacy protections of the Family Educational Rights and Privacy Act ("FERPA"), the Claims Administrator will not have access to this information from Defendants.[2] Accordingly, the Allocation Plan will use publicly available average annual Net Prices charged by each Defendant or each applicable academic year during the Class Period, published by the U.S. Department of Education, as an estimate of the amounts paid by each Claimant.

In order to compute each Claimant's *pro rata* share of the Net Settlement Fund, the Claims Administrator would do calculations in the following steps:

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[2] Plaintiffs have learned through discovery that only the members of the 568 Group that joined since 2019 (Caltech in 2019 and Johns Hopkins in 2021) have student-specific Net Price data for all members of the Settlement Class that attended those universities. Other Defendants, which joined the 568 Group much earlier, do not have specific records reflecting Net Price data for the full Class Period.

First, the Claims Administrator would confirm for each Claimant for each year, or portion thereof, that the Claimant paid a Defendant during the Class Period. The Claims Administrator, on a Claimant-by-Claimant basis, would then assign to each Claimant the average annual Net Price charged by the applicable Defendant for each academic year, or appropriate fractions of a year thereof, where relevant.[3] The Claims Administrator would then sum the average Net Prices per year attended over all the years each Claimant attended and paid a Defendant, up to a maximum of four full academic years, arrive at a Total Net Price paid for that Claimant. To illustrate, for the sake of simplicity, assume that the average Net Price at one Claimant's university was $60,000 for each of four years. Under this assumption, the Total Net Price paid by this Claimant would be $240,000 ($60,000 per year summed over all four years, or equivalently, $60,000 x 4). The Claims Administrator would do this calculation for each Claimant. This result would be the numerator of each Claimant's *pro rata* allocation computation.

Second, the Claims Administrator would sum all the numerators for all Claimants to calculate the denominator. To further illustrate, again for the sake of simplicity, assume that 75,000 members of the Settlement Class file claims, and that average numerator value across the Settlement Class is $240,000 (reflecting an annual average Net Price of $60,000 multiplied by 4 years). Under these assumptions, the denominator would equal $18 billion (75,000 x $240,000).

Third, the Claims Administrator would divide the numerator from the first step, for each Claimant, by the denominator from the second step. That fraction would be the *pro rata* share for

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[3] For example, a Claimant who attended a Defendant for only one semester would be assigned half the average annual Net Price charged in that year. Using the figures in the above illustration, a Claimant who attended a Defendant for a semester where the average annual Net Price was $60,000 per year would be assigned a Net Price of $30,000 for that year.

each Claimant.

Fourth, and finally, to compute the total allocated sum for each Claimant, the Claims Administrator would multiply the fraction from the third step for each Claimant by the among of the Net Settlement Fund. The product of that calculation would be the dollar value of each Claimant's total allocation from the Settlement.

Throughout this Allocation Plan, an "academic year" or "year" refers to the period beginning in late summer or early fall of one year, when students begin their studies, through the spring of the following year when students complete their studies, for that academic year. For most Defendants, a "full academic year" consists of two semesters of roughly equal length in time. Some Defendants may divide their academic years into other shorter terms, which would be accounted for accordingly.

Claimants will each provide, among other information on their claim forms: the Defendant University attended; the academic year(s), or portions thereof, each attended and paid for educational services provided by one or more Defendants; and an attestation that each Claimant was a member of the Settlement Class and did not fit into any recognized exception set out in the Settlement Class definition.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

ANDREW CORZO, SIA HENRY, ALEXANDER LEOGUERRA, MICHAEL MAERLENDER, BRANDON PIYEVSKY, BENJAMIN SHUMATE, BRITTANY TATIANA WEAVER, and CAMERON WILLIAMS, individually and on behalf of all others similarly situated, *Plaintiffs*, v. BROWN UNIVERSITY, CALIFORNIA INSTITUTE OF TECHNOLOGY, UNIVERSITY OF CHICAGO, THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, CORNELL UNIVERSITY, TRUSTEES OF DARTMOUTH COLLEGE, DUKE UNIVERSITY, EMORY UNIVERSITY, GEORGETOWN UNIVERSITY, THE JOHNS HOPKINS UNIVERSITY, MASSACHUSETTS INSTITUTE OF TECHNOLOGY, NORTHWESTERN UNIVERSITY, UNIVERSITY OF NOTRE DAME DU LAC, THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA, WILLIAM MARSH RICE UNIVERSITY, VANDERBILT UNIVERSITY, and YALE UNIVERSITY, *Defendants*.	Case No. 1:22-cv-00125-MFK Judge Matthew F. Kennelly

DECLARATION OF STEVEN WEISBROT, ESQ. OF ANGEION GROUP LLC
RE: THE PROPOSED NOTICE PLAN

I, Steven Weisbrot, Esq., declare under penalty of perjury as follows:

1. I am the President and Chief Executive Officer at the class action notice and claims administration firm Angeion Group, LLC ("Angeion"). Angeion specializes in designing, developing, analyzing, and implementing large-scale legal notification plans.

2. I have personal knowledge of the matters stated herein. In forming my opinions regarding notice in this action, I have communicated with class counsel and reviewed relevant pleadings and

other documents relating to the case, in addition to drawing from my extensive class action notice experience, as described below.

3. I have been responsible in whole or in part for the design and implementation of hundreds of court-approved notice and administration programs, including some of the largest and most complex notice plans in recent history. I have taught numerous accredited Continuing Legal Education courses on the Ethics of Legal Notification in Class Action Settlements, using Digital Media in Due Process Notice Programs, as well as Claims Administration, generally. I am the author of multiple articles on Class Action Notice, Claims Administration, and Notice Design in publications such as Bloomberg, BNA Class Action Litigation Report, Law360, the ABA Class Action and Derivative Section Newsletter, and I am a frequent speaker on notice issues at conferences throughout the United States and internationally.

4. I was certified as a professional in digital media sales by the Interactive Advertising Bureau ("IAB") and I am co-author of the Digital Media section of Duke Law's *Guidelines and Best Practices—Implementing 2018 Amendments to Rule 23* and the soon to be published George Washington Law School Best Practices Guide to Class Action Litigation.

5. I have given public comment and written guidance to the Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail, email, broadcast media, digital media, and print publication, in effecting Due Process notice, and I have met with representatives of the Federal Judicial Center to discuss the 2018 amendments to Rule 23 and offered an educational curriculum for the judiciary concerning notice procedures.

6. Prior to joining Angeion's executive team, I was employed as Director of Class Action Services at Kurtzman Carson Consultants, an experienced notice and settlement administrator. Prior to my notice and claims administration experience, I was employed in private law practice.

7. My notice work comprises a wide range of class actions that include antitrust, data breach, mass disasters, product defect, false advertising, employment discrimination, tobacco, banking, firearm, insurance, and bankruptcy cases.

8. I have been at the forefront of infusing digital media, as well as big data and advanced targeting, into class action notice programs. Courts have repeatedly recognized my work in the design of class action notice programs. A comprehensive summary of judicial recognition Angeion has received is attached hereto as **Exhibit A**.

9. By way of background, Angeion is an experienced class action notice and claims administration company formed by a team of executives that have had extensive tenures at five other nationally recognized claims administration companies. Collectively, the management team at Angeion has overseen more than 2,000 class action settlements and distributed over $15 billion to Settlement Class Members. The executive profiles as well as the company overview are available at https://www.angeiongroup.com/our_team.php.

10. As a class action administrator, Angeion has regularly been approved by both federal and state courts throughout the United States and abroad to provide notice of class actions and claims processing services.

11. This declaration will describe the Notice Plan that, if approved by the Court, Angeion will implement in this matter, including the considerations that informed the development of the plan and why it will provide due process to the Settlement Class in an effective and efficient manner.

SUMMARY OF THE NOTICE PLAN

12. Based on the Settlement Agreement, the Settlement Class is defined as follows: All U.S. citizens or permanent residents who have during the Class Period (a) enrolled in one or more of Defendants' full-time undergraduate programs, and (b) received at least some need-based financial aid from one or more Defendants, and (c) directly purchased from one or more Defendants tuition, fees, room, or board that was not fully covered by the combination of any types of financial aid or merit aid (not including loans) from one or more Defendants in any undergraduate year. The Class Period is defined as follows:

- For Chicago, Columbia, Cornell, Duke, Georgetown, MIT, Northwestern, Notre Dame, Penn, Rice, Vanderbilt, Yale—from 2003 through the date the Court enters an order preliminarily approving the Settlement.

- For Brown, Dartmouth, Emory—from 2004 through the date the Court enters an order preliminarily approving the Settlement.
- For Caltech—from 2019 through the date the Court enters an order preliminarily approving the Settlement.
- For Johns Hopkins—from 2021 through the date the Court enters an order preliminarily approving the settlement.
- Excluded from the Class are:
  1. Any Officers and/or Trustees of Defendants, or any current or former employees holding any of the following positions: Assistant or Associate Vice Presidents or Vice Provosts, Executive Directors, or Directors of Defendants' Financial Aid and Admissions offices, or any Deans or Vice Deans, or any employees in Defendants' in-house legal offices; and
  2. The Judge presiding over this action, his or her law clerks, spouse, and any person within the third-degree of relationship living in the Judge's household and the spouse of such a person.

It is my understanding that this group includes students and former students at the seventeen elite university defendants in this case from 2003 through the date the Court enters an order preliminarily approving the Settlement. Based on my research, I am aware that this case has received substantial media coverage and is being followed by reporters from multiple national publications including the *New York Times*[1] and the *Wall Street Journal.*[2] I expect that the filing of this Settlement will be covered extensively in the press. The proposed Notice Plan intends to capitalize on this free public exposure of the case and the Settlement by implementing a comprehensive media campaign, as described below.

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[1] Stephanie Saul and Anemona Hartocolis, *Lawsuit Says 16 Elite Colleges Are Part of Price-Fixing Cartel,* https://www.nytimes.com/2022/01/10/us/financial-aid-lawsuit-colleges.html (last visited July 10, 2023).

[2] Melissa Korn, *Yale, Georgetown, Other Top Schools Illegally Collude to Limit Student Financial Aid, Lawsuit Alleges*, https://www.wsj.com/articles/yale-georgetown-other-top-schools-illegally-collude-to-limit-student-financial-aid-lawsuit-alleges-11641829659 (last visited July 10, 2023).

I do understand that Plaintiffs' Counsel has collected the names and addresses of multiple members of the Settlement Class who have asked for information about the case, and that some or all of the Defendants will provide Settlement Class Member email addresses, and possibly postal address information from their alumni databases during the relevant periods. Thus, it appears that Angeion will have available a relatively comprehensive set of email addresses for a large share of the members of the Settlement Class. For that large share of Settlement Class members for whom email address information is available, notice will be sent via email. The email will contain a "summary notice" in the form attached hereto as **Exhibit B**. To the extent that Angeion received "bounce backs" from email addresses, and postal addresses are available from those persons, Angeion will send the Long Form notice via first class mail to those persons. The Long Form Notice is attached hereto as **Exhibit C**. Settlement Class Members will also be able to download a copy of the notice from the Settlement Website, or by requesting it via email, mail, or the toll-free hotline.

13. The proposed Notice Plan provides for a relatively comprehensive direct email notice process, coupled with a robust multi-tiered media campaign strategically designed to provide notice to Settlement Class Members via a variety of additional methods, including state-of-the-art targeted internet notice, social media notice, a paid search campaign, and two press releases. The Notice Plan also provides for the implementation of a dedicated Settlement Website and a toll-free telephone line where Settlement Class Members can learn more about their rights and options pursuant to the terms of the Settlement.

14. As discussed in greater detail below, separate and apart from the direct email or mailed notice procedure, the media campaign alone is designed to deliver an approximate 75.31% reach with an average frequency of 3.22 times to an audience that we have modelled to include the vast majority of members of the Settlement Class (the "Target Audience"). What this means in practice is that 75.31% of our Target Audience (defined more specifically in paragraph 18 below) will see a digital advertisement concerning the lawsuit an average of 3.22 times each. This number is calculated using objective syndicated advertising data relied upon by most advertising agencies and brand advertisers. It is further verified by sophisticated media software and calculation engines that cross reference

which media is being purchased with the media habits of our specific Target Audience. It is important to note that the Target Audience is distinct from the class definition, and is used as a proxy audience, as is commonplace in class action notice plans.

15. The Federal Judicial Center states that a publication notice plan that reaches 70% of class members is one that reaches a "high percentage" and is within the "norm." Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, "Managing Class Action Litigation: A Pocket Guide or Judges," at 27 (3d Ed. 2010).

MEDIA CAMPAIGN

16. Angeion's comprehensive media campaign will utilize a carefully tailored mix of programmatic display advertising, social media notice, search engine marketing and two press releases to effectively and efficiently diffuse notice of the Settlement through a variety of mediums. Angeion will be sure to build upon the free media attention to the case and the significant amount of anticipated national publicity that will accompany the filing of the settlement papers.

Programmatic Display Advertising

17. Angeion will also utilize a form of internet advertising known as Programmatic Display Advertising, which is the leading method of buying digital advertisements in the United States,[3] to provide notice of the Settlement to Settlement Class Members. The media notice outlined below is strategically designed to provide notice by driving Settlement Class Members to the dedicated Settlement Website, where they can learn more about the Settlement, including their rights and options.

18. To develop the media notice campaign and to verify its effectiveness, our media team analyzed

[3] Programmatic Display Advertising is a trusted method specifically utilized to reach defined target audiences. It has been reported that U.S. advertisers spent nearly $105.99 billion on programmatic display advertising in 2021, and it is estimated that approximately $123.22 billion will be spent on programmatic display advertising in 2022. *See* https://www.emarketer.com/content/us-programmatic-digital-display-ad-spending-2022. In laypeople's terms, programmatic display advertising is a method of advertising where an algorithm identifies and examines demographic profiles and uses advanced technology to place advertisements on the websites where members of the audience are most likely to visit (these websites are accessible on computers, mobile phones and tablets).

data from 2022 comScore Multi-Platform/MRI Simmons USA Fusion[4] to profile the Settlement Class and arrive at an appropriate target group ("Target Audience") based on criteria pertinent to this Settlement. Specifically, the following syndicated research definition was used to profile potential Settlement Class Members:

- Respondent: Attended College: YES
- Loans and Mortgages: Personal Loan for Education (Student Loan) Have Personally or Jointly Utilized
- Ages 18-44

19. The Target Audience was identified and selected based on the composition of the Settlement Class based on the Settlement Class definition and Settlement Class Period(s). For example, the age group qualifier (ages 18-44) includes potential Settlement Class Members from the earliest year amongst the Settlement Class Periods (2003), while still capturing those included at the end of the Class Period (*i.e.*, close to the present). Likewise, the Target Audience specifically consists of those individuals who attended college. Here, the Settlement Class includes those who enrolled in one or more of the seventeen University Defendants full-time undergraduate programs over many years. The objective syndicated data does not allow us to measure against specific universities' student or alumni thereof; however, multiple targeting layers utilizing the Target Audience's online interests and behaviors will be used to further refine the delivery of media advertisements to those most likely to be Settlement Class Members (e.g., being a member of an alumni group of one of the seventeen Defendants on social media). Lastly, inclusion in the Settlement Class requires that the Settlement Class Members have received at least some need-based financial aid from one or more Defendants.

20. Based on the Target Audience definition used, the size of the Target Audience is approximately 12,061,000 individuals in the United States. Utilizing an overinclusive proxy audience maximizes the

[4] GfK MediaMark Research and Intelligence LLC ("GfK MRI") provides demographic, brand preference and media-use habits, and captures in-depth information on consumer media choices, attitudes, and consumption of products and services in nearly 600 categories. comSCORE, Inc. ("comSCORE") is a leading cross-platform measurement and analytics company that precisely measures audiences, brands, and consumer behavior, capturing 1.9 trillion global interactions monthly. comSCORE's proprietary digital audience measurement methodology allows marketers to calculate audience reach in a manner not affected by variables such as cookie deletion and cookie blocking/rejection, allowing these audiences to be reach more effectively. comSCORE operates in more than 75 countries, including the United States, serving over 3,200 clients worldwide.

efficacy of the Notice Plan and is considered a best practice among media planners and class action notice experts alike. Using proxy audiences is also commonplace in both class action litigation and advertising generally.[5]

21. Additionally, the Target Audience is based on objective syndicated data, which is routinely used by advertising agencies and experts to understand the demographics, shopping habits and attitudes of the consumers that they are seeking to reach.[6] Using this form of objective data will allow the Parties to report the reach and frequency to the Court with confidence that the reach percentage and the number of exposure opportunities comply with due process and exceed the Federal Judicial Center's threshold as to reasonableness in notification programs. Virtually all professional advertising agencies and commercial media departments use objective syndicated data tools, like the ones described above, to quantify net reach. Sources like these guarantee that advertising placements can be measured against an objective basis and confirm that the reporting statistics are not overstated. Objective syndicated data tools are ubiquitous tools in a media planner's arsenal and are regularly accepted by courts in evaluating the efficacy of a media plan or its component parts. Understanding the socioeconomic characteristics, interests and practices of a target group aids in the proper selection of media to reach that target. Here, the objective syndicated data from 2022 comScore Multi-Platform/MRI Simmons USA Fusion reports that the Target Audience has the following characteristics:

- 100% are ages 18-44, with a median age of 32.4 years old;
- 61.11% are female;

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[5] If the total population base (or number of class members) is unknown, it is accepted advertising and communication practice to use a proxy-media definition, which is based on accepted media research tools and methods that will allow the notice expert to establish that number. The percentage of the population reached by supporting media can then be established. *See* Duke Law School, GUIDELINES AND BEST PRACTICES IMPLEMENTING 2018 AMENDMENTS TO RULE 23 CLASS ACTION SETTLEMENT PROVISIONS, at 56.

[6] The notice plan will include an analysis of the makeup of the Settlement Class. The target audience should be defined and quantified. This can be established through using a known group of persons, or it can be based on a proxy-media definition. Both methods have been accepted by the courts and, more generally, by the advertising industry, to determine a population base. *See* Duke Law School, GUIDELINES AND BEST PRACTICES IMPLEMENTING 2018 AMENDMENTS TO RULE 23 CLASS ACTION SETTLEMENT PROVISIONS, at 56.

- 48.67 % are married;
- 46.20% have children;
- 61.33% have received a bachelor's or post-graduate degree;
- 69.54% are currently employed full time;
- The average household income is $109,820; and
- 94.79% have used social media in the last 30 days.

22. To identify the best vehicles to deliver messaging to the Target Audience, the media quintiles, which measure the degree to which an audience uses media relative to the general population, were reviewed. Here, the objective syndicated data shows that members of the Target Audience are heavy internet users, spending an average of approximately 34.9 hours per week on the internet.

23. Given the strength of digital advertising, as well as our Target Audience's consistent internet use, we recommend utilizing a robust internet advertising campaign to reach Settlement Class Members. This media schedule will allow us to deliver an effective reach level and frequency, which will provide due and proper notice to the Settlement Class.

24. Multiple targeting layers will be implemented into the programmatic campaign to help ensure delivery to the most appropriate users, inclusive of the following tactics:

- <u>Look-a-like Modeling</u>: This technique utilizes data methods to build a look-a-like audience against known Settlement Class Members.
- <u>Predictive Targeting</u>: This technique allows technology to "predict" which users will be served by the advertisements about the Settlement.
- <u>Audience Targeting</u>: This technique utilizes technology and data to serve the impressions to the intended audience based on demographics, purchase behaviors and interests.
- <u>Site Retargeting</u>: This technique is a targeting method used to reach potential Settlement Class Members who have already visited the dedicated website while they browsed other pages. This allows Angeion to provide a potential Settlement Class Member sufficient exposure to an advertisement about the Settlement.
- <u>Geotargeting</u>: The campaign will run nationally.

25. To combat the possibility of non-human viewership of digital advertisements and to verify effective unique placements, Angeion employs Oracle's BlueKai, Adobe's Audience Manger and/or Lotame, which are demand management platforms ("DMP"). DMPs allow Angeion to learn more about the online audiences that are being reached. Further, online ad verification and security providers such as Comscore Content Activation, DoubleVerify, Grapeshot, Peer39 and Moat will be deployed to provide a higher quality of service to ad performance.

Social Media

26. The Notice Plan also includes a social media campaign utilizing Facebook and Instagram, two of the leading social media platforms[7] in the United States. The social media campaign uses an interest-based approach which focuses on the interests that users exhibit while on these social media platforms.

27. The social media campaign will engage with the Target Audience desktop sites, mobile sites, and mobile apps. Additionally, specific tactics will be implemented to further qualify and deliver impressions to the Target Audience. *Look-a-like modeling* allows the use of consumer characteristics to serve ads. Based on these characteristics, we can build different consumer profile segments to ensure the Notice Plan messaging is delivered to the proper audience. *Conquesting* allows ads to be served in relevant placements to further alert potential Settlement Class Members of the Settlement. The social media ads will run nationally.

28. The social media campaign will coincide with the programmatic display advertising portion of the Notice Plan. Combined, these media notice efforts are designed to deliver approximately twenty-nine million impressions. To track campaign success, we will implement conversion pixels throughout the dedicated website to understand audience behavior better and identify those most likely to convert. The programmatic algorithm will change based on success and failure to generate conversions throughout the process to provide the most effective messaging.

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[7] In 2023, Facebook has a reported 243.58 million users, and Instagram has a reported 150.99 million users. *See* https://www.statista.com/statistics/408971/number-of-us-facebook-users/ and https://www.statista.com/statistics/293771/number-of-us-instagram-users.

Paid Search Campaign

29. The Notice Plan also includes a paid search campaign on Google to help drive Settlement Class Members who are actively searching for information about the litigation to the dedicated website. Paid search ads will complement the programmatic and social media campaigns, as search engines are frequently used to locate a specific website, rather than a person typing in the URL. Search terms would relate to not only the Settlement itself but also the subject matter of the lawsuit. In other words, the paid search ads are driven by the individual user's search activity, such that if that individual searches for (or has recently searched for) the Settlement, or other terms related to the litigation, that individual could be served with an advertisement directing them to the dedicated website.

Press Release

30. Angeion will also cause two press releases to be distributed over PR Newswire (or a similar press release distribution service) to further diffuse news of the Settlement. The press releases will help garner "earned media" (*i.e.*, other media outlets and/or publications will report the story) to supplement the comprehensive notice efforts outlined herein, which will lead to increased awareness and participation amongst members of the Settlement Class.

DIRECT NOTICE

31. Angeion is informed that all seventeen Defendants are likely to provide Angeion with email address and potentially postal address information for a large share of the members of the Settlement Class. As such, the Notice Plan provides for sending email notice containing the text from the proposed Summary Notice (**Exhibit B**) formatted into the body of the email. The Notice Plan further provides for sending the Long Form Notice (**Exhibit C**) via first class U.S. mail, postage pre-paid to potential Settlement Class Members and those Settlement Class Members who ask Angeion or Class Counsel for a mailed Long Form Notice The forms of notice will also both be available on the Settlement Website.

32. Angeion designs the email notice to avoid many common "red flags" that might otherwise cause a Settlement Class Member's spam filter to block or identify the email notice as spam. For

example, Angeion does not include attachments like the Long Form Notice to the email notice, because attachments are often interpreted by various Internet Service Providers (ISP") as spam. Angeion also accounts for the real-world reality that some emails will inevitably fail to be delivered during the initial delivery attempt. Therefore, after the initial noticing campaign is complete, Angeion, after an approximate 24- to 72-hour rest period (which allows any temporary block at the ISP level to expire) causes a second round of email noticing to continue to any email addresses that were previously identified as soft bounces and not delivered. In our experience this minimizes emails that may have erroneously failed to deliver due to sensitive servers and optimizes delivery.

33. Angeion will employ best practices to increase the deliverability rate of the mailed Notices. Angeion will cause the mailing address information for members of the Settlement Class to be updated utilizing the United States Postal Service's ("USPS") National Change of Address database, which provides updated address information for individuals or entities who have moved during the previous four years and filed a change of address with the USPS.

34. Notices returned to Angeion by the USPS with a forwarding address will be re-mailed to the new address provided by the USPS and the Settlement Class Member records will be updated accordingly with the new address information.

35. Notices returned to Angeion by the USPS without forwarding addresses will be subjected to an address verification search (commonly referred to as "skip tracing") utilizing a wide variety of data sources, including public records, real estate records, electronic directory assistance listings, etc., to locate updated addresses.

36. Notices will be re-mailed to Settlement Class Members for whom updated addresses were obtained via the skip tracing process.

37. In addition, the Long Form Notice will be emailed to anyone who requests one via the toll-free number or by email or mail. The Long Form Notice will also be available for downloading or printing at the Case Website.

SETTLEMENT WEBSITE & TOLL-FREE TELEPHONE SUPPORT

38. The Notice Plan will also implement the creation of a case-specific Settlement Website where

Settlement Class Members can easily view general information about this Settlement, review relevant Court documents, and view important dates and deadlines pertinent to the Settlement. The Settlement Website will be designed to be user-friendly and make it easy for Settlement Class Members to find information about this Settlement. The Settlement Website will also have a "Contact Us" page whereby Settlement Class Members can send an email with any additional questions to a dedicated email address. Likewise, Settlement Class Members will also be able to submit a claim form online via the Settlement Website and securely upload documentation at the appropriate time in the process after final approval. Angeion understands that Class Counsel intend to submit a detailed proposed procedure for the Allocation Plan, including proposed Claim Forms and a schedule for the Claims Process, in their brief in support of final approval.

39. A toll-free hotline devoted to this case will be implemented to further apprise Settlement Class Members of their rights and options pursuant to the terms of the Settlement. The toll-free hotline will utilize an interactive voice response ("IVR") system to provide Settlement Class Members with responses to frequently asked questions and provide essential information regarding the Settlement. This hotline will be accessible 24 hours a day, 7 days a week. Additionally, Settlement Class Members will be able to leave a request to have the Notice and/or Claim Form mailed to them at the appropriate time in the process after final approval.

DATA SECURITY & INSURANCE

40. Angeion recognizes the critical need to secure our physical and network environments and protect data in our custody. It is our commitment to these matters that has made us the go-to administrator for many of the most prominent data security matters of this decade. We are constantly improving upon our robust policies, procedures, and infrastructure by periodically updating data security policies as well as our approach to managing data security in response to changes to physical environment, new threats and risks, business circumstances, legal and policy implications, and evolving technical environments.

41. Angeion's privacy practices are compliant with the California Consumer Privacy Act, as currently drafted. Consumer data obtained for the delivery of each project is used only for the purposes

intended and agreed in advance by all contracted parties, including compliance with orders issued by State or Federal courts as appropriate. Angeion Group imposes additional data security measures for the protection of Personally Identifiable Information (PII) and Personal Health Information (PHI), including redaction, restricted network and physical access on a need-to-know basis, and network access tracking. Angeion requires background checks of all employees, requires background checks and ongoing compliance audits of its contractors, and enforces standard protocols for the rapid removal of physical and network access in the event of an employee or contractor termination.

42. Data is transmitted using Transport Layer Security (TLS) 1.3 protocols. Network data is encrypted at rest with the government and financial institution standard of AES 256-bit encryption. We maintain an offline, air-gapped backup copy of all data, ensuring that projects can be administered without interruption.

43. Further, our team stays on top of latest compliance requirements, such as GDPR, HIPAA, PCI DSS, and others, to ensure that our organization is meeting all necessary regulatory obligations as well as aligning to industry best practices and standards set forth by frameworks like CIS and NIST. Angeion is cognizant of the ever-evolving digital landscape and continually improves its security infrastructure and processes, including partnering with best-in-class security service providers. Angeion's robust policies and processes cover all aspects of information security to form part of an industry leading security and compliance program, which is regularly assessed by independent third parties. Angeion is also committed to a culture of security mindfulness. All employees routinely undergo cybersecurity training to ensure that safeguarding information and cybersecurity vigilance is a core practice in all aspects of the work our teams complete.

44. Angeion currently maintains a comprehensive insurance program, including sufficient Errors & Omissions coverage.

REACH AND FREQUENCY

45. This declaration describes the reach and frequency evidence which courts systemically rely upon in reviewing class action publication notice programs for adequacy. The reach percentage exceeds the guidelines as set forth in the Federal Judicial Center's Judges' Class Action Notice and

Claims Process Checklist and Plain Language Guide to effectuate a notice program which reaches a high degree of the members of the Settlement Class.

46. Specifically, the comprehensive media campaign is designed to deliver an approximate 75.31% reach with an average frequency of 3.22 times each. It should be noted that the 75.31% reach approximation is separate and apart from the direct notice efforts, Settlement Website, and toll-free telephone support.

CONCLUSION

47. The Notice Plan outlined herein provides for direct notice via mail to all reasonably identifiable Settlement Class Members, combined with a robust, multi-faceted media campaign. The Notice Plan also includes the implementation of a dedicated Settlement Website and toll-free hotline to further inform Settlement Class Members of their rights and options in the Settlement.

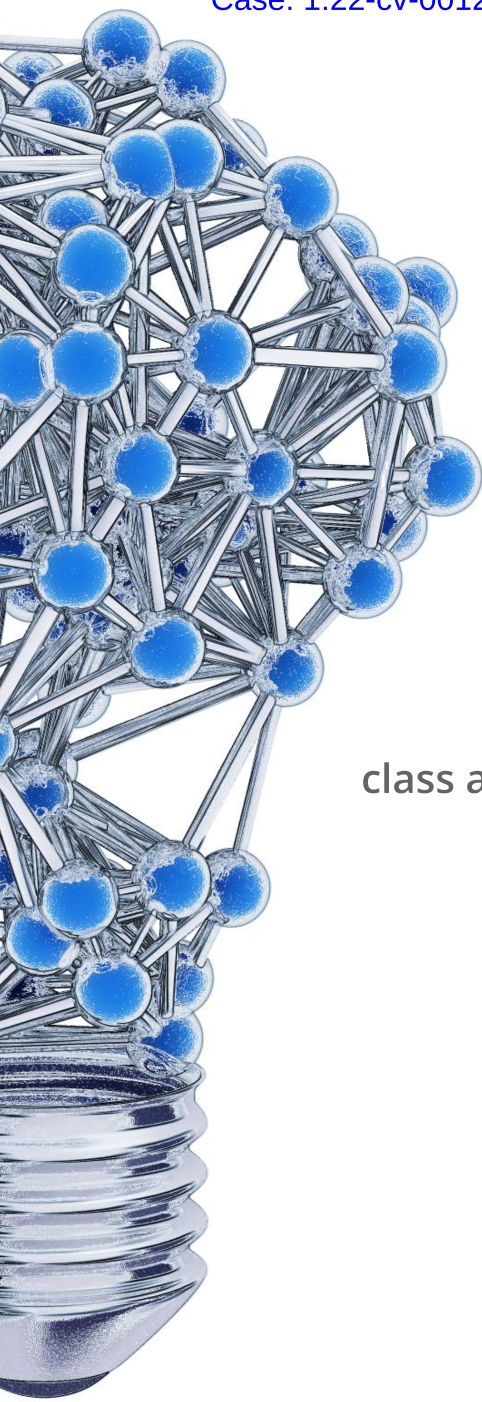
48. In my professional opinion, the Notice Plan described herein will provide full and proper notice to Settlement Class Members before the claims, opt-out, and objection deadlines. Moreover, it is my opinion that the Notice Plan is the best notice that is practicable under the circumstances and fully comports with due process, and Fed. R. Civ. P. 23. After the Notice Plan has been executed, Angeion will provide a final report verifying its effective implementation to this Court.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: August 11, 2023

STEVEN WEISBROT

Exhibit A



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IN RE: FACEBOOK, INC. CONSUMER PRIVACY USER PROFILE LITIGATION

Case No. 3:18-md-02843

The Honorable Vincent Chhabria, United States District Court, Northern District of California (March 29, 2023): The Court approves the Settlement Administration Protocol & Notice Plan, amended Summary Notice (Dkt. No. 1114-8), second amended Class Notice (Dkt. No. 1114-6), In-App Notice, amended Claim Form (Dkt. No. 1114-2), Opt-Out Form (Dkt. No. 1122-1), and Objection Form (Dkt. No. 1122-2) and finds that their dissemination substantially in the manner and form set forth in the Settlement Agreement and the subsequent filings referenced above meets the requirements of Federal Rule of Civil Procedure 23 and due process, constitutes the best notice practicable under the circumstances, and is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Action, the effect of the proposed Settlement (including the releases contained therein), the anticipated motion for Attorneys' Fees and Expenses Award and for Service Awards, and their rights to participate in, opt out of, or object to any aspect of the proposed Settlement.

LUNDY v. META PLATFORMS, INC.

Case No. 3:18-cv-06793

The Honorable James Donato, United States District Court, Northern District of California (April 26, 2023): For purposes of Rule 23(e), the Notice Plan submitted with the Motion for Preliminary Approval and the forms of notice attached thereto are approved…The form, content, and method of giving notice to the Settlement Class as described in the Notice Plan submitted with the Motion for Preliminary Approval are accepted at this time as practicable and reasonable in light of the rather unique circumstances of this case.

IN RE: APPLE INC. DEVICE PERFORMANCE LITIGATION

Case No. 5:18-md-02827

The Honorable Edward J. Davila, United States District Court, Northern District of California (March 17, 2021): Angeion undertook a comprehensive notice campaign…The notice program was well executed, far-reaching, and exceeded both Federal Rule of Civil Procedure 23(c)(2)(B)'s requirement to provide the "best notice that is practicable under the circumstances" and Rule 23(e)(1)(B)'s requirement to provide "direct notice in a reasonable manner."

IN RE: TIKTOK, INC., CONSUMER PRIVACY LITIGATION

Case No. 1:20-cv-04699

The Honorable John Z. Lee, United States District Court, Northern District of Illinois (August 22, 2022): The Class Notice was disseminated in accordance with the procedures required by the Court's Order Granting Preliminary Approval…in accordance with applicable law, satisfied the requirements of Rule 23(e) and due process, and constituted the best notice practicable…

JUDICIAL RECOGNITION

IN RE: GOOGLE PLUS PROFILE LITIGATION

Case No. 5:18-cv-06164

The Honorable Edward J. Davila, United States District Court, Northern District of California (January 25, 2021): The Court further finds that the program for disseminating notice to Settlement Class Members provided for in the Settlement, and previously approved and directed by the Court (hereinafter, the "Notice Program"), has been implemented by the Settlement Administrator and the Parties, and such Notice Program, including the approved forms of notice, is reasonable and appropriate and satisfies all applicable due process and other requirements, and constitutes best notice reasonably calculated under the circumstances to apprise Settlement Class Members…

MEHTA v. ROBINHOOD FINANCIAL LLC

Case No. 5:21-cv-01013

The Honorable Susan van Keulen, United States District Court, Northern District of California (August 29, 2022): The proposed notice plan, which includes direct notice via email, will provide the best notice practicable under the circumstances. This plan and the Notice are reasonably calculated, under the circumstances, to apprise Class Members of the nature and pendency of the Litigation, the scope of the Settlement Class, a summary of the class claims, that a Class Member may enter an appearance through an attorney, that the Court will grant timely exclusion requests, the time and manner for requesting exclusion, the binding effect of final approval of the proposed Settlement, and the anticipated motion for attorneys' fees, costs, and expenses and for service awards. The plan and the Notice constitute due, adequate, and sufficient notice to Class Members and satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and all other applicable laws and rules.

ADTRADER, INC. v. GOOGLE LLC

Case No. 5:17-cv-07082

The Honorable Beth L. Freeman, United States District Court, Northern District of California (May 13, 2022): The Court approves, as to form, content, and distribution, the Notice Plan set forth in the Settlement Agreement, including the Notice Forms attached to the Weisbrot Declaration, subject to the Court's one requested change as further described in Paragraph 8 of this Order, and finds that such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court further finds that the Notice is reasonably calculated to, under all circumstances, reasonably apprise members of the AdWords Class of the pendency of this Action, the terms of the Settlement Agreement, and the right to object to the Settlement and to exclude themselves from the AdWords Class. The Court also finds that the Notice constitutes valid, due and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice Plan fully complies with the Northern District of California's Procedural Guidance for Class Action Settlements.

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IN RE: FACEBOOK INTERNET TRACKING LITIGATION

Case No. 5:12-md-02314

The Honorable Edward J. Davila, United States District Court, Northern District of California (November 10, 2022): The Court finds that Plaintiffs' notice meets all applicable requirements of due process and is particularly impressed with Plaintiffs' methodology and use of technology to reach as many Class Members as possible. Based upon the foregoing, the Court finds that the Settlement Class has been provided adequate notice.

CITY OF LONG BEACH v. MONSANTO COMPANY

Case No. 2:16-cv-03493

The Honorable Fernando M. Olguin, United States District Court, Central District of California (March 14, 2022): The court approves the form, substance, and requirements of the class Notice, (Dkt.278-2, Settlement Agreement, Exh. I). The proposed manner of notice of the settlement set forth in the Settlement Agreement constitutes the best notice practicable under the circumstances and complies with the requirements of due process.

STEWART v. LEXISNEXIS RISK DATA RETRIEVAL SERVICES, LLC

Case No. 3:20-cv-00903

The Honorable John A. Gibney Jr., United States District Court, Eastern District of Virginia (February 25, 2022): The proposed forms and methods for notifying the proposed Settlement Class Members of the Settlement and its terms and conditions meet the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled to notice…Based on the foregoing, the Court hereby approves the notice plans developed by the Parties and the Settlement Administrator and directs that they be implemented according to the Agreement and the notice plans attached as exhibits.

WILLIAMS v. APPLE INC.

Case No. 3:19-cv-0400

The Honorable Laurel Beeler, United States District Court, Northern District of California (February 24, 2022): The Court finds the Email Notice and Website Notice (attached to the Agreement as Exhibits 1 and 4, respectively), and their manner of transmission, implemented pursuant to the Agreement (a) are the best practicable notice, (b) are reasonably calculated, under the circumstances, to apprise the Subscriber Class of the pendency of the Action and of their right to object to or to exclude themselves from the proposed settlement, (c) are reasonable and constitute due, adequate and sufficient notice to all persons entitled to receive notice, and (d) meet all requirements of applicable law.

CLEVELAND v. WHIRLPOOL CORPORATION

Case No. 0:20-cv-01906

The Honorable Wilhelmina M. Wright, United States District Court, District of Minnesota (December 16, 2021): It appears to the Court that the proposed Notice Plan described herein, and detailed in the Settlement Agreement, comports with due process, Rule 23, and all other applicable law. Class Notice consists of email notice and postcard notice when email

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addresses are unavailable, which is the best practicable notice under the circumstances…The proposed Notice Plan complies with the requirements of Rule 23, Fed. R. Civ. P., and due process, and Class Notice is to be sent to the Settlement Class Members as set forth in the Settlement Agreement and pursuant to the deadlines above.

RASMUSSEN v. TESLA, INC. d/b/a TESLA MOTORS, INC.

Case No. 5:19-cv-04596

The Honorable Beth Labson Freeman, United States District Court, Northern District of California (December 10, 2021): The Court has carefully considered the forms and methods of notice to the Settlement Class set forth in the Settlement Agreement ("Notice Plan"). The Court finds that the Notice Plan constitutes the best notice practicable under the circumstances and fully satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the requirements of due process, and the requirements of any other applicable law, such that the terms of the Settlement Agreement, the releases provided for therein, and this Court's final judgment will be binding on all Settlement Class Members.

CAMERON v. APPLE INC.

Case No. 4:19-cv-03074

The Honorable Yvonne Gonzalez Rogers, United States District Court, Northern District of California (November 16, 2021): The parties' proposed notice plan appears to be constitutionally sound in that plaintiffs have made a sufficient showing that it is: (i) the best notice practicable; (ii) reasonably calculated, under the circumstances, to apprise the Class members of the proposed settlement and of their right to object or to exclude themselves as provided in the settlement agreement; (iii) reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable requirements of due process and any other applicable requirements under federal law.

RISTO v. SCREEN ACTORS GUILD-AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS

Case No. 2:18-cv-07241

The Honorable Christina A. Snyder, United States District Court, Central District of California (November 12, 2021): The Court approves the publication notice plan presented to this Court as it will provide notice to potential class members through a combination of traditional and digital media that will consist of publication of notice via press release, programmatic display digital advertising, and targeted social media, all of which will direct Class Members to the Settlement website…The notice plan satisfies any due process concerns as this Court certified the class under Federal Rule of Civil Procedure 23(b)(1)…

JENKINS v. NATIONAL GRID USA SERVICE COMPANY, INC.

Case No. 2:15-cv-01219

The Honorable Joanna Seybert, United States District Court, Eastern District of New York (November 8, 2021): Pursuant to Fed. R. Civ. P. 23(e)(1) and 23(c)(2)(B), the Court approves the proposed Notice Plan and procedures set forth at Section 8 of the Settlement, including the form and content of the proposed forms of notice to the Settlement Class attached as Exhibits C-G to the Settlement and the proposed procedures for Settlement Class Members to exclude themselves from the Settlement Class or object. The Court finds that the proposed

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Notice Plan meets the requirements of due process under the United States Constitution and Rule 23, and that such Notice Plan—which includes direct notice to Settlement Class Members sent via first class U.S. Mail and email; the establishment of a Settlement Website (at the URL, www.nationalgridtcpasettlement.com) where Settlement Class Members can view the full settlement agreement, the detailed long-form notice (in English and Spanish), and other key case documents; publication notice in forms attached as Exhibits E and F to the Settlement sent via social media (Facebook and Instagram) and streaming radio (e.g., Pandora and iHeart Radio). The Notice Plan shall also include a paid search campaign on search engine(s) chosen by Angeion (e.g., Google) in the form attached as Exhibits G and the establishment of a toll-free telephone number where Settlement Class Members can get additional information—is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

NELLIS v. VIVID SEATS, LLC

Case No. 1:20-cv-02486

The Honorable Robert M. Dow, Jr., United States District Court, Northern District of Illinois (November 1, 2021): The Notice Program, together with all included and ancillary documents thereto, (a) constituted reasonable notice; (b) constituted notice that was reasonably calculated under the circumstances to apprise members of the Settlement Class of the pendency of the Litigation…(c) constituted reasonable, due, adequate and sufficient notice to all Persons entitled to receive notice; and (d) met all applicable requirements of due process and any other applicable law. The Court finds that Settlement Class Members have been provided the best notice practicable of the Settlement and that such notice fully satisfies all requirements of law as well as all requirements of due process.

PELLETIER v. ENDO INTERNATIONAL PLC

Case No. 2:17-cv-05114

The Honorable Michael M. Baylson, United States District Court, Eastern District of Pennsylvania (October 25, 2021): The Court approves, as to form and content, the Notice of Pendency and Proposed Settlement of Class Action (the "Notice"), the Proof of Claim and Release form (the "Proof of Claim"), and the Summary Notice, annexed hereto as Exhibits A-1, A-2, and A-3, respectively, and finds that the mailing and distribution of the Notice and publishing of the Summary Notice, substantially in the manner and form set forth in ¶¶7-10 of this Order, meet the requirements of Rule 23 and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

BIEGEL v. BLUE DIAMOND GROWERS

Case No. 7:20-cv-03032

The Honorable Cathy Seibel, United States District Court, Southern District of New York (October 25, 2021): The Court finds that the Notice Plan, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under the circumstances; (ii) was reasonably calculated to provide, and did provide, due and sufficient notice to the Settlement Class regarding the existence and nature

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of the Action…and (iii) satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.

QUINTERO v. SAN DIEGO ASSOCIATION OF GOVERNMENTS

Case No. 37-2019-00017834-CU-NP-CTL

The Honorable Eddie C. Sturgeon, Superior Court of the State of California, County of San Diego (September 27, 2021): The Court has reviewed the class notices for the Settlement Class and the methods for providing notice and has determined that the parties will employ forms and methods of notice that constitute the best notice practicable under the circumstances; are reasonably calculated to apprise class members of the terms of the Settlement and of their right to participate in it, object, or opt-out; are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and meet all constitutional and statutory requirements, including all due process requirements and the California Rules of Court.

HOLVE v. MCCORMICK & COMPANY, INC.

Case No. 6:16-cv-06702

The Honorable Mark W. Pedersen, United States District Court for the Western District of New York (September 23, 2021): The Court finds that the form, content and method of giving notice to the Class as described in the Settlement Agreement and the Declaration of the Settlement Administrator: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action…(c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clause(s) of the United States Constitution.

CULBERTSON T AL. v. DELOITTE CONSULTING LLP

Case No. 1:20-cv-03962

The Honorable Lewis J. Liman, United States District Court, Southern District of New York (August 27, 2021): The notice procedures described in the Notice Plan are hereby found to be the best means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement Agreement and the Final Approval Hearing to all persons affected by and/or entitled to participate in the Settlement Agreement, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process of law.

PULMONARY ASSOCIATES OF CHARLESTON PLLC v. GREENWAY HEALTH, LLC

Case No. 3:19-cv-00167

The Honorable Timothy C. Batten, Sr., United States District Court, Northern District of Georgia (August 24, 2021): Under Rule 23(c)(2), the Court finds that the content, format, and method of disseminating Notice, as set forth in the Motion, the Declaration of Steven Weisbrot filed on July 2, 2021, and the Settlement Agreement and Release, including notice by First Class U.S. Mail and email to all known Class Members, is the best notice practicable

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under the circumstances and satisfies all requirements provided in Rule 23(c)(2)(B) and due process.

IN RE: BROILER CHICKEN GROWER ANTITRUST LITIGATION (NO II)

Case No. 6:20-md-02977

The Honorable Robert J. Shelby, United States District Court, Eastern District of Oklahoma (August 23, 2021): The Court approves the method of notice to be provided to the Settlement Class as set forth in Plaintiffs' Motion and Memorandum of Law in Support of Motion for Approval of the Form and Manner of Class Notice and Appointment of Settlement Administrator and Request for Expedited Treatment and the Declaration of Steven Weisbrot on Angeion Group Qualifications and Proposed Notice Plan…The Court finds and concludes that such notice: (a) is the best notice that is practicable under the circumstances, and is reasonably calculated to reach the members of the Settlement Class and to apprise them of the Action, the terms and conditions of the Settlement, their right to opt out and be excluded from the Settlement Class, and to object to the Settlement; and (b) meets the requirements of Federal Rule of Civil Procedure 23 and due process.

ROBERT ET AL. v. AT&T MOBILITY, LLC

Case No. 3:15-cv-03418

The Honorable Edward M. Chen, United States District Court, Northern District of California (August 20, 2021): The Court finds that such Notice program, including the approved forms of notice: (a) constituted the best notice that is practicable under the circumstances; (b) included direct individual notice to all Settlement Class Members who could be identified through reasonable effort, as well as supplemental notice via a social media notice campaign and reminder email and SMS notices; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the nature of this Action …(d) constituted due, adequate and sufficient notice to all persons entitled to notice; and (e) met all applicable requirements of Federal Rule of Civil Procedure 23, Due Process under the U.S. Constitution, and any other applicable law.

PYGIN v. BOMBAS, LLC

Case No. 4:20-cv-04412

The Honorable Jeffrey S. White, United States District Court, Northern District of California (July 12, 2021): The Court also concludes that the Class Notice and Notice Program set forth in the Settlement Agreement satisfy the requirements of due process and Rule 23 and provide the best notice practicable under the circumstances. The Class Notice and Notice Program are reasonably calculated to apprise Settlement Class Members of the nature of this Litigation, the Scope of the Settlement Class, the terms of the Settlement Agreement, the right of Settlement Class Members to object to the Settlement Agreement or exclude themselves from the Settlement Class and the process for doing so, and of the Final Approval Hearing. Accordingly, the Court approves the Class Notice and Notice Program and the Claim Form.

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WILLIAMS ET AL. v. RECKITT BENCKISER LLC ET AL.

Case No. 1:20-cv-23564

The Honorable Jonathan Goodman, United States District Court, Southern District of Florida (April 23, 2021): The Court approves, as to form and content, the Class Notice and Internet Notice submitted by the parties (Exhibits B and D to the Settlement Agreement or Notices substantially similar thereto) and finds that the procedures described therein meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and provide the best notice practicable under the circumstances. The proposed Class Notice Plan -- consisting of (i) internet and social media notice; and (ii) notice via an established a Settlement Website -- is reasonably calculated to reach no less than 80% of the Settlement Class Members.

NELSON ET AL. v. IDAHO CENTRAL CREDIT UNION

Case No. CV03-20-00831, CV03-20-03221

The Honorable Robert C. Naftz, Sixth Judicial District, State of Idaho, Bannock County (January 19, 2021): The Court finds that the Proposed Notice here is tailored to this Class and designed to ensure broad and effective reach to it…The Parties represent that the operative notice plan is the best notice practicable and is reasonably designed to reach the settlement class members. The Court agrees.

IN RE: HANNA ANDERSSON AND SALESFORCE.COM DATA BREACH LITIGATION

Case No. 3:20-cv-00812

The Honorable Edward M. Chen, United States District Court, Northern District of California (December 29, 2020): The Court finds that the Class Notice and Notice Program satisfy the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure and provide the best notice practicable under the circumstances.

IN RE: PEANUT FARMERS ANTITRUST LITIGATION

Case No. 2:19-cv-00463

The Honorable Raymond A. Jackson, United States District Court, Eastern District of Virginia (December 23, 2020): The Court finds that the Notice Program…constitutes the best notice that is practicable under the circumstances and is valid, due and sufficient notice to all persons entitled thereto and complies fully with the requirements of Rule 23(c)(2) and the due process requirements of the Constitution of the United States.

BENTLEY ET AL. v. LG ELECTRONICS U.S.A., INC.

Case No. 2:19-cv-13554

The Honorable Madeline Cox Arleo, United States District Court, District of New Jersey (December 18, 2020): The Court finds that notice of this Settlement was given to Settlement Class Members in accordance with the Preliminary Approval Order and constituted the best notice practicable of the proceedings and matters set forth therein, including the Litigation, the Settlement, and the Settlement Class Members' rights to object to the Settlement or opt out of the Settlement Class, to all Persons entitled to such notice, and that this notice satisfied the requirements of Federal Rule of Civil Procedure 23 and of due process.

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IN RE: ALLURA FIBER CEMENT SIDING PRODUCTS LIABILITY LITIGATION

Case No. 2:19-mn-02886

The Honorable David C. Norton, United States District Court, District of South Carolina (December 18, 2020): The proposed Notice provides the best notice practicable under the circumstances. It allows Settlement Class Members a full and fair opportunity to consider the proposed settlement. The proposed plan for distributing the Notice likewise is a reasonable method calculated to reach all members of the Settlement Class who would be bound by the settlement. There is no additional method of distribution that would be reasonably likely to notify Settlement Class Members who may not receive notice pursuant to the proposed distribution plan.

ADKINS ET AL. v. FACEBOOK, INC.

Case No. 3:18-cv-05982

The Honorable William Alsup, United States District Court, Northern District of California (November 15, 2020): Notice to the class is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Tr. Co., 399 U.S. 306, 314 (1650).*

IN RE: 21ST CENTURY ONCOLOGY CUSTOMER DATA SECURITY BREACH LITIGATION

Case No. 8:16-md-02737

The Honorable Mary S. Scriven, United States District Court, Middle District of Florida (November 2, 2020): The Court finds and determines that mailing the Summary Notice and publication of the Settlement Agreement, Long Form Notice, Summary Notice, and Claim Form on the Settlement Website, all pursuant to this Order, constitute the best notice practicable under the circumstances, constitute due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices, and fully satisfies the of due process, Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and all other applicable laws and rules. The Court further finds that all of the notices are written in plain language and are readily understandable by Class Members.

MARINO ET AL. v. COACH INC.

Case No. 1:16-cv-01122

The Honorable Valerie Caproni, United States District Court, Southern District of New York (August 24, 2020): The Court finds that the form, content, and method of giving notice to the Settlement Class as described in paragraph 8 of this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clause(s) of the United States

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Constitution. The Court further finds that all of the notices are written in plain language, are readily understandable by Settlement Class Members, and are materially consistent with the Federal Judicial Center's illustrative class action notices.

BROWN v. DIRECTV, LLC

Case No. 2:13-cv-01170

The Honorable Dolly M. Gee, United States District Court, Central District of California (July 23, 2020): Given the nature and size of the class, the fact that the class has no geographical limitations, and the sheer number of calls at issue, the Court determines that these methods constitute the best and most reasonable form of notice under the circumstances.

IN RE: SSA BONDS ANTITRUST LITIGATION

Case No. 1:16-cv-03711

The Honorable Edgardo Ramos, United States District Court, Southern District of New York (July 15, 2020): The Court finds that the mailing and distribution of the Notice and the publication of the Summary Notice substantially in the manner set forth below meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process and constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled to notice.

KJESSLER ET AL. v. ZAAPPAAZ, INC. ET AL.

Case No. 4:18-cv-00430

The Honorable Nancy F. Atlas, United States District Court, Southern District of Texas (July 14, 2020): The Court also preliminarily approves the proposed manner of communicating the Notice and Summary Notice to the putative Settlement Class, as set out below, and finds it is the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfies the requirements of applicable laws, including due process and Federal Rule of Civil Procedure 23.

HESTER ET AL. v. WALMART, INC.

Case No. 5:18-cv-05225

The Honorable Timothy L. Brooks, United States District Court, Western District of Arkansas (July 9, 2020): The Court finds that the Notice and Notice Plan substantially in the manner and form set forth in this Order and the Agreement meet the requirements of Federal Rule of Civil Procedure 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

CLAY ET AL. v. CYTOSPORT INC.

Case No. 3:15-cv-00165

The Honorable M. James Lorenz, United States District Court, Southern District of California (June 17, 2020): The Court approves the proposed Notice Plan for giving notice to the Settlement Class through publication, both print and digital, and through the establishment of a Settlement Website, as more fully described in the Agreement and the Claims Administrator's affidavits (docs. no. 222-9, 224, 224-1, and 232-3 through 232-6). The Notice

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Plan, in form, method, and content, complies with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances.

GROGAN v. AARON'S INC.

Case No. 1:18-cv-02821

The Honorable J.P. Boulee, United States District Court, Northern District of Georgia (May 1, 2020): The Court finds that the Notice Plan as set forth in the Settlement Agreement meets the requirements of Fed. R. Civ. P. 23 and constitutes the best notice practicable under the circumstances, including direct individual notice by mail and email to Settlement Class Members where feasible and a nationwide publication website-based notice program, as well as establishing a Settlement Website at the web address of www.AaronsTCPASettlement.com, and satisfies fully the requirements the Federal Rules of Civil Procedure, the U.S. Constitution, and any other applicable law, such that the Settlement Agreement and Final Order and Judgment will be binding on all Settlement Class Members.

CUMMINGS v. BOARD OF REGENTS OF THE UNIVERSITY OF NEW MEXICO, ET AL.

Case No. D-202-CV-2001-00579

The Honorable Carl Butkus, Second Judicial District Court, County of Bernalillo, State of New Mexico (March 30, 2020): The Court has reviewed the Class Notice, the Plan of Allocation and Distribution and Claim Form, each of which it approves in form and substance. The Court finds that the form and methods of notice set forth in the Agreement: (i) are reasonable and the best practicable notice under the circumstances; (ii) are reasonably calculated to apprise Settlement Class Members of the pendency of the Lawsuit, of their rights to object to or opt-out of the Settlement, and of the Final Approval Hearing; (iii) constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet the requirements of the New Mexico Rules of Civil Procedure, the requirements of due process under the New Mexico and United States Constitutions, and the requirements of any other applicable rules or laws.

SCHNEIDER, ET AL. v. CHIPOTLE MEXICAN GRILL, INC.

Case No. 4:16-cv-02200

The Honorable Haywood S. Gilliam, Jr., United States District Court, Northern District of California (January 31, 2020): Given that direct notice appears to be infeasible, the third-party settlement administrator will implement a digital media campaign and provide for publication notice in People magazine, a nationwide publication, and the East Bay Times. SA § IV.A, C; Dkt. No. 205-12 at ¶¶ 13–23. The publication notices will run for four consecutive weeks. Dkt. No. 205 at ¶ 23. The digital media campaign includes an internet banner notice implemented using a 60-day desktop and mobile campaign. Dkt. No. 205-12 at ¶ 18. It will rely on "Programmatic Display Advertising" to reach the "Target Audience," Dkt. No. 216-1 at ¶ 6, which is estimated to include 30,100,000 people and identified using the target definition of "Fast Food & Drive-In Restaurants Total Restaurants Last 6 Months [Chipotle Mexican Grill]," Dkt. No. 205-12 at ¶ 13. Programmatic display advertising utilizes "search targeting," "category contextual targeting," "keyword contextual targeting," and "site targeting," to place ads. Dkt. No. 216-1 at ¶¶ 9–12. And through "learning" technology, it continues placing ads on websites where the ad is performing well. Id. ¶ 7. Put simply, prospective Class Members

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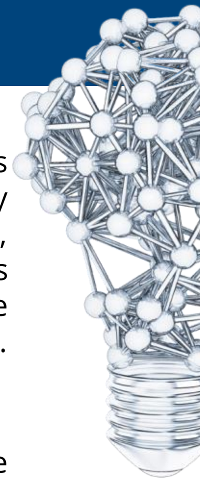

will see a banner ad notifying them of the settlement when they search for terms or websites that are similar to or related to Chipotle, when they browse websites that are categorically relevant to Chipotle (for example, a website related to fast casual dining or Mexican food), and when they browse websites that include a relevant keyword (for example, a fitness website with ads comparing fast casual choices). Id. ¶¶ 9–12. By using this technology, the banner notice is "designed to result in serving approximately 59,598,000 impressions." Dkt. No. 205-12 at ¶ 18.

The Court finds that the proposed notice process is "'reasonably calculated, under all the circumstances,' to apprise all class members of the proposed settlement." Roes, 944 F.3d at 1045 (citation omitted).

HANLEY v. TAMPA BAY SPORTS AND ENTERTAINMENT LLC

Case No. 8:19-cv-00550

The Honorable Charlene Edwards Honeywell, United States District Court, Middle District of Florida (January 7, 2020): The Court approves the form and content of the Class notices and claim forms substantially in the forms attached as Exhibits A-D to the Settlement. The Court further finds that the Class Notice program described in the Settlement is the best practicable under the circumstances. The Class Notice program is reasonably calculated under the circumstances to inform the Settlement Class of the pendency of the Action, certification of a Settlement Class, the terms of the Settlement, Class Counsel's attorney's fees application and the request for a service award for Plaintiff, and their rights to opt-out of the Settlement Class or object to the Settlement. The Class notices and Class Notice program constitute sufficient notice to all persons entitled to notice. The Class notices and Class Notice program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the Constitutional requirement of Due Process.

CORCORAN, ET AL. v. CVS HEALTH, ET AL.

Case No. 4:15-cv-03504

The Honorable Yvonne Gonzalez Rogers, United States District Court, Northern District of California (November 22, 2019): Having reviewed the parties' briefings, plaintiffs' declarations regarding the selection process for a notice provider in this matter and regarding Angeion Group LLC's experience and qualifications, and in light of defendants' non-opposition, the Court APPROVES Angeion Group LLC as the notice provider. Thus, the Court GRANTS the motion for approval of class notice provider and class notice program on this basis.

Having considered the parties' revised proposed notice program, the Court agrees that the parties' proposed notice program is the "best notice that is practicable under the circumstances." The Court is satisfied with the representations made regarding Angeion Group LLC's methods for ascertaining email addresses from existing information in the possession of defendants. Rule 23 further contemplates and permits electronic notice to class members in certain situations. See Fed. R. Civ. P. 23(c)(2)(B). The Court finds, in light of the representations made by the parties, that this is a situation that permits electronic notification via email, in addition to notice via United States Postal Service. Thus, the Court

APPROVES the parties' revised proposed class notice program, and GRANTS the motion for approval of class notice provider and class notice program as to notification via email and United States Postal Service mail.

PATORA v. TARTE, INC.

Case No. 7:18-cv-11760

The Honorable Kenneth M. Karas, United States District Court, Southern District of New York (October 2, 2019): The Court finds that the form, content, and method of giving notice to the Class as described in Paragraph 9 of this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms of the Proposed Settlement, and their rights under the Proposed Settlement, including but not limited to their rights to object to or exclude themselves from the Proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clauses of the United States Constitution. The Court further finds that all of the notices are written in simple terminology, are readily understandable by Settlement Class Members, and are materially consistent with the Federal Judicial Center's illustrative class action notices.

CARTER, ET AL. v. GENERAL NUTRITION CENTERS, INC., and GNC HOLDINGS, INC.

Case No. 2:16-cv-00633

The Honorable Mark R. Hornak, United States District Court, Western District of Pennsylvania (September 9, 2019): The Court finds that the Class Notice and the manner of its dissemination described in Paragraph 7 above and Section VII of the Agreement constitutes the best practicable notice under the circumstances and is reasonably calculated, under all the circumstances, to apprise proposed Settlement Class Members of the pendency of this action, the terms of the Agreement, and their right to object to or exclude themselves from the proposed Settlement Class. The Court finds that the notice is reasonable, that it constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and that it meets the requirements of due process, Rule 23 of the Federal Rules of Ci vii Procedure, and any other applicable laws.

CORZINE v. MAYTAG CORPORATION, ET AL.

Case No. 5:15-cv-05764

The Honorable Beth L. Freeman, United States District Court, Northern District of California (August 21, 2019): The Court, having reviewed the proposed Summary Notice, the proposed FAQ, the proposed Publication Notice, the proposed Claim Form, and the proposed plan for distributing and disseminating each of them, finds and concludes that the proposed plan will provide the best notice practicable under the circumstances and satisfies all requirements of federal and state laws and due process.

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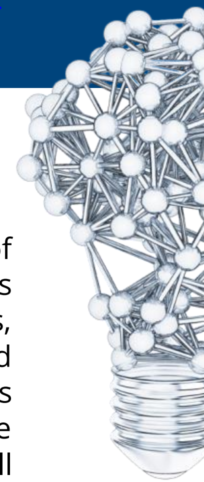

MEDNICK v. PRECOR, INC.

Case No. 1:14-cv-03624

The Honorable Harry D. Leinenweber, United States District Court, Northern District of Illinois (June 12, 2019): Notice provided to Class Members pursuant to the Preliminary Class Settlement Approval Order constitutes the best notice practicable under the circumstances, including individual email and mail notice to all Class Members who could be identified through reasonable effort, including information provided by authorized third-party retailers of Precor. Said notice provided full and adequate notice of these proceedings and of the matter set forth therein, including the proposed Settlement set forth in the Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of F.R.C.P. Rule 23 (e) and (h) and the requirements of due process under the United States and California Constitutions.

GONZALEZ v. TCR SPORTS BROADCASTING HOLDING LLP, ET AL.

Case No. 1:18-cv-20048

The Honorable Darrin P. Gayles, United States District Court, Southern District of Florida (May 24, 2019): The Court finds that notice to the class was reasonable and the best notice practicable under the circumstances, consistent with Rule 23(e)(1) and Rule 23(c)(2)(B).

ANDREWS ET AL. v. THE GAP, INC., ET AL.

Case No. CGC-18-567237

The Honorable Richard B. Ulmer Jr., Superior Court of the State of California, County of San Francisco (May 10, 2019): The Court finds that (a) the Full Notice, Email Notice, and Publication constitute the best notice practicable under the circumstances, (b) they constitute valid, due, and sufficient notice to all members of the Class, and (c) they comply fully with the requirements of California Code of Civil Procedure section 382, California Rules of Court 3.766 and 3.769, the California and United States Constitutions, and other applicable law.

COLE, ET AL. v. NIBCO, INC.

Case No. 3:13-cv-07871

The Honorable Freda L. Wolfson, United States District Court, District of New Jersey (April 11, 2019): The record shows, and the Court finds, that the Notice Plan has been implemented in the manner approved by the Court in its Preliminary Approval Order. The Court finds that the Notice Plan constitutes: (i) the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of this…, (iii) due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) notice that fully satisfies the requirements of the United States Constitution (including the Due Process Clause), Fed. R. Civ. P. 23, and any other applicable law.

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DIFRANCESCO, ET AL. v. UTZ QUALITY FOODS, INC.

Case No. 1:14-cv-14744

The Honorable Douglas P. Woodlock, United States District Court, District of Massachusetts (March 15, 2019): The Court finds that the Notice plan and all forms of Notice to the Class as set forth in the Settlement Agreement and Exhibits 2 and 6 thereto, as amended (the "Notice Program"), is reasonably calculated to, under all circumstances, apprise the members of the Settlement Class of the pendency of this action, the certification of the Settlement Class, the terms of the Settlement Agreement, and the right of members to object to the settlement or to exclude themselves from the Class. The Notice Program is consistent with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances.

IN RE: CHRYSLER-DODGE-JEEP ECODIESEL MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

Case No. 3:17-md-02777

The Honorable Edward M. Chen, United States District Court, Northern District of California (February 11, 2019): Also, the parties went through a sufficiently rigorous selection process to select a settlement administrator. See Proc. Guidance for Class Action Sett. ¶ 2; see also Cabraser Decl. ¶¶ 9-10. While the settlement administration costs are significant – an estimated $1.5 million – they are adequately justified given the size of the class and the relief being provided.

In addition, the Court finds that the language of the class notices (short and long-form) is appropriate and that the means of notice – which includes mail notice, electronic notice, publication notice, and social media "marketing" – is the "best notice…practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B); see also Proc. Guidance for Class Action Sett. ¶¶ 3-5, 9 (addressing class notice, opt-outs, and objections). The Court notes that the means of notice has changed somewhat, as explained in the Supplemental Weisbrot Declaration filed on February 8, 2019, so that notice will be more targeted and effective. See generally Docket No. 525 (Supp. Weisbrot Decl.) (addressing, inter alia, press release to be distributed via national newswire service, digital and social media marketing designed to enhance notice, and "reminder" first-class mail notice when AEM becomes available).

Finally, the parties have noted that the proposed settlement bears similarity to the settlement in the Volkswagen MDL. See Proc. Guidance for Class Action Sett. ¶ 11.

RYSEWYK, ET AL. v. SEARS HOLDINGS CORPORATION and SEARS, ROEBUCK AND COMPANY

Case No. 1:15-cv-04519

The Honorable Manish S. Shah, United States District Court, Northern District of Illinois (January 29, 2019): The Court holds that the Notice and notice plan as carried out satisfy the requirements of Rule 23(e) and due process. This Court has previously held the Notice and notice plan to be reasonable and the best practicable under the circumstances in its Preliminary Approval Order dated August 6, 2018. (Dkt. 191) Based on the declaration of Steven Weisbrot, Esq. of Angeion Group (Dkt. No. 209-2), which sets forth compliance with the Notice Plan and related matters, the Court finds that the multi-pronged notice strategy

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as implemented has successfully reached the putative Settlement Class, thus constituting the best practicable notice and satisfying due process.

MAYHEW, ET AL. v. KAS DIRECT, LLC, and S.C. JOHNSON & SON, INC.

Case No. 7:16-cv-06981

The Honorable Vincent J. Briccetti, United States District Court, Southern District of New York (June 26, 2018): In connection with their motion, plaintiffs provide the declaration of Steven Weisbrot, Esq., a principal at the firm Angeion Group, LLC, which will serve as the notice and settlement administrator in this case. (Doc. #101, Ex. F: Weisbrot Decl.) According to Mr. Weisbrot, he has been responsible for the design and implementation of hundreds of class action administration plans, has taught courses on class action claims administration, and has given testimony to the Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail, email, and digital media in due process notice. Mr. Weisbrot states that the internet banner advertisement campaign will be responsive to search terms relevant to "baby wipes, baby products, baby care products, detergents, sanitizers, baby lotion, [and] diapers," and will target users who are currently browsing or recently browsed categories "such as parenting, toddlers, baby care, [and] organic products." (Weisbrot Decl. ¶ 18). According to Mr. Weisbrot, the internet banner advertising campaign will reach seventy percent of the proposed class members at least three times each. (Id. ¶ 9). Accordingly, the Court approves of the manner of notice proposed by the parties as it is reasonable and the best practicable option for confirming the class members receive notice.

IN RE: OUTER BANKS POWER OUTAGE LITIGATION

Case No. 4:17-cv-00141

The Honorable James C. Dever III, United States District Court, Eastern District of North Carolina (May 2, 2018): The court has reviewed the proposed notice plan and finds that the notice plan provides the best practicable notice under the circumstances and, when completed, shall constitute fair, reasonable, and adequate notice of the settlement to all persons and entities affected by or entitled to participate in the settlement, in full compliance with the notice requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process. Thus, the court approves the proposed notice plan.

GOLDEMBERG, ET AL. v. JOHNSON & JOHNSON CONSUMER COMPANIES, INC.

Case No. 7:13-cv-03073

The Honorable Nelson S. Roman, United States District Court, Southern District of New York (November 1, 2017): Notice of the pendency of the Action as a class action and of the proposed Settlement, as set forth in the Settlement Notices, was given to all Class Members who could be identified with reasonable effort, consistent with the terms of the Preliminary Approval Order. The form and method of notifying the Class of the pendency of the Action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and any other applicable law in the United States. Such notice constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

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HALVORSON v. TALENTBIN, INC.

Case No. 3:15-cv-05166

The Honorable Joseph C. Spero, United States District Court, Northern District of California (July 25, 2017): The Court finds that the Notice provided for in the Order of Preliminary Approval of Settlement has been provided to the Settlement Class, and the Notice provided to the Settlement Class constituted the best notice practicable under the circumstances, and was in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, the United States Constitution, and any other applicable law. The Notice apprised the members of the Settlement Class of the pendency of the litigation; of all material elements of the proposed settlement, including but not limited to the relief afforded the Settlement Class under the Settlement Agreement; of the res judicata effect on members of the Settlement Class and of their opportunity to object to, comment on, or opt-out of, the Settlement; of the identity of Settlement Class Counsel and of information necessary to contact Settlement Class Counsel; and of the right to appear at the Fairness Hearing. Full opportunity has been afforded to members of the Settlement Class to participate in the Fairness Hearing. Accordingly, the Court determines that all Final Settlement Class Members are bound by this Final Judgment in accordance with the terms provided herein.

IN RE: ASHLEY MADISON CUSTOMER DATA SECURITY BREACH LITIGATION

MDL No. 2669/Case No. 4:15-md-02669

The Honorable John A. Ross, United States District Court, Eastern District of Missouri (July 21, 2017): The Court further finds that the method of disseminating Notice, as set forth in the Motion, the Declaration of Steven Weisbrot, Esq. on Adequacy of Notice Program, dated July 13, 2017, and the Parties' Stipulation—including an extensive and targeted publication campaign composed of both consumer magazine publications in People and Sports Illustrated, as well as serving 11,484,000 highly targeted digital banner ads to reach the prospective class members that will deliver approximately 75.3% reach with an average frequency of 3.04 —is the best method of notice practicable under the circumstances and satisfies all requirements provided in Rule 23(c)(2)(B) and all Constitutional requirements including those of due process.

The Court further finds that the Notice fully satisfies Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process; provided, that the Parties, by agreement, may revise the Notice, the Claim Form, and other exhibits to the Stipulation, in ways that are not material or ways that are appropriate to update those documents for purposes of accuracy.

TRAXLER, ET AL. v. PPG INDUSTRIES INC., ET AL.

Case No. 1:15-cv-00912

The Honorable Dan Aaron Polster, United States District Court, Northern District of Ohio (April 27, 2017): The Court hereby approves the form and procedure for disseminating notice of the proposed settlement to the Settlement Class as set forth in the Agreement. The Court finds that the proposed Notice Plan contemplated constitutes the best notice practicable under the circumstances and is reasonably calculated, under the circumstances, to apprise

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Settlement Class Members of the pendency of the Action and their right to object to the proposed settlement or opt out of the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution and Rules 23(c) and (e). In addition, Class Notice clearly and concisely states in plain, easily understood language: (i) the nature of the action; (ii) the definition of the certified Settlement Class; (iii) the claims and issues of the Settlement Class; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) that the Court will exclude from the Settlement Class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

IN RE: THE HOME DEPOT, INC., CUSTOMER DATA SECURITY BREACH LITIGATION

Case No. 1:14-md-02583

The Honorable Thomas W. Thrash Jr., United States District Court, Northern District of Georgia (March 10, 2017): The Court finds that the form, content, and method of giving notice to the settlement class as described in the settlement agreement and exhibits: (a) constitute the best practicable notice to the settlement class; (b) are reasonably calculated, under the circumstances, to apprise settlement class members of the pendency of the action, the terms of the proposed settlement, and their rights under the proposed settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Federal Rule of Civil Procedure 23, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the notice is written in plain language, uses simple terminology, and is designed to be readily understandable by settlement class members.

ROY v. TITEFLEX CORPORATION t/a GASTITE and WARD MANUFACTURING, LLC

Case No. 384003V

The Honorable Ronald B. Rubin, Circuit Court for Montgomery County, Maryland (February 24, 2017): What is impressive to me about this settlement is in addition to all the usual recitation of road racing litanies is that there is going to be a) public notice of a real nature and b) about a matter concerning not just money but public safety and then folks will have the knowledge to decide for themselves whether to take steps to protect themselves or not. And that's probably the best thing a government can do is to arm their citizens with knowledge and then the citizens can make decision. To me that is a key piece of this deal. ***I think the notice provisions are exquisite*** [emphasis added].

IN RE: LG FRONT LOADING WASHING MACHINE CLASS ACTION LITIGATION

Case No. 2:08-cv-00051

The Honorable Madeline Cox Arleo, United States District Court, District of New Jersey (June 17, 2016): This Court further approves the proposed methods for giving notice of the Settlement to the Members of the Settlement Class, as reflected in the Settlement Agreement and the joint motion for preliminary approval. The Court has reviewed the notices attached as exhibits to the Settlement, the plan for distributing the Summary Notices to the Settlement Class, and the plan for the Publication Notice's publication in print periodicals and on the internet, and finds that the Members of the Settlement Class will

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receive the best notice practicable under the circumstances. The Court specifically approves the Parties' proposal to use reasonable diligence to identify potential class members and an associated mailing and/or email address in the Company's records, and their proposal to direct the ICA to use this information to send absent class members notice both via first class mail and email. The Court further approves the plan for the Publication Notice's publication in two national print magazines and on the internet. The Court also approves payment of notice costs as provided in the Settlement. The Court finds that these procedures, carried out with reasonable diligence, will constitute the best notice practicable under the circumstances and will satisfy.

FENLEY v. APPLIED CONSULTANTS, INC.

Case No. 2:15-cv-00259

The Honorable Mark R. Hornak, United States District Court, Western District of Pennsylvania (June 16, 2016): The Court would note that it approved notice provisions of the settlement agreement in the proceedings today. That was all handled by the settlement and administrator Angeion. The notices were sent. The class list utilized the Postal Service's national change of address database along with using certain proprietary and other public resources to verify addresses. the requirements of Fed.R.Civ.P. 23(c)(2), Fed.R.Civ.P. 23(e) (l), and Due Process....

The Court finds and concludes that the mechanisms and methods of notice to the class as identified were reasonably calculated to provide all notice required by the due process clause, the applicable rules and statutory provisions, and that the results of ***the efforts of Angeion were highly successful and fulfilled all of those requirements*** [emphasis added].

FUENTES, ET AL. v. UNIRUSH, LLC d/b/a UNIRUSH FINANCIAL SERVICES, ET AL.

Case No. 1:15-cv-08372

The Honorable J. Paul Oetken, United States District Court, Southern District of New York (May 16, 2016): The Court approves, as to form, content, and distribution, the Claim Form attached to the Settlement Agreement as Exhibit A, the Notice Plan, and all forms of Notice to the Settlement Class as set forth in the Settlement Agreement and Exhibits B-D, thereto, and finds that such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court also finds that the Notice constitutes valid, due and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice is reasonably calculated to, under all circumstances, reasonably apprise members of the Settlement Class of the pendency of the Actions, the terms of the Settlement Agreement, and the right to object to the settlement and to exclude themselves from the Settlement Class. The Parties, by agreement, may revise the Notices and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

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IN RE: WHIRLPOOL CORP. FRONTLOADING WASHER PRODUCTS LIABILITY LITIGATION

MDL No. 2001/Case No. 1:08-wp-65000

The Honorable Christopher A. Boyko, United States District Court, Northern District of Ohio (May 12, 2016): The Court, having reviewed the proposed Summary Notices, the proposed FAQ, the proposed Publication Notice, the proposed Claim Form, and the proposed plan for distributing and disseminating each of them, finds and concludes that the proposed plan for distributing and disseminating each of them will provide the best notice practicable under the circumstances and satisfies all requirements of federal and state laws and due process.

SATERIALE, ET AL. v. R.J. REYNOLDS TOBACCO CO.

Case No. 2:09-cv-08394

The Honorable Christina A. Snyder, United States District Court, Central District of California (May 3, 2016): The Court finds that the Notice provided to the Settlement Class pursuant to the Settlement Agreement and the Preliminary Approval Order has been successful, was the best notice practicable under the circumstances and (1) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Action, their right to object to the Settlement, and their right to appear at the Final Approval Hearing; (2) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (3) met all applicable requirements of the Federal Rules of Civil Procedure, Due Process, and the rules of the Court.

FERRERA, ET AL. v. SNYDER'S-LANCE, INC.

Case No. 0:13-cv-62496

The Honorable Joan A. Lenard, United States District Court, Southern District of Florida (February 12, 2016): The Court approves, as to form and content, the Long-Form Notice and Short- Form Publication Notice attached to the Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement as Exhibits 1 and 2 to the Stipulation of Settlement. The Court also approves the procedure for disseminating notice of the proposed settlement to the Settlement Class and the Claim Form, as set forth in the Notice and Media Plan attached to the Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement as Exhibits G. The Court finds that the notice to be given constitutes the best notice practicable under the circumstances, and constitutes valid, due, and sufficient notice to the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution.

IN RE: POOL PRODUCTS DISTRIBUTION MARKET ANTITRUST LITIGATION

MDL No. 2328/Case No. 2:12-md-02328

The Honorable Sarah S. Vance, United States District Court, Eastern District of Louisiana (December 31, 2014): To make up for the lack of individual notice to the remainder of the class, the parties propose a print and web-based plan for publicizing notice. The Court welcomes the inclusion of web- based forms of communication in the plan. The Court finds that the proposed method of notice satisfies the requirements of Rule 23(c)(2)(B) and due process. The direct emailing of notice to those potential class members for whom Hayward and Zodiac have a valid email address, along with publication of notice in print and on the web, is reasonably calculated to apprise class members of the settlement. Moreover, the

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plan to combine notice for the Zodiac and Hayward settlements should streamline the process and avoid confusion that might otherwise be caused by a proliferation of notices for different settlements. Therefore, the Court approves the proposed notice forms and the plan of notice.

SOTO, ET AL. v. THE GALLUP ORGANIZATION, INC.

Case No. 0:13-cv-61747

The Honorable Marcia G. Cooke, United States District Court, Southern District of Florida (June 16, 2015): The Court approves the form and substance of the notice of class action settlement described in ¶ 8 of the Agreement and attached to the Agreement as Exhibits A, C and D. The proposed form and method for notifying the Settlement Class Members of the settlement and its terms and conditions meet the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled to the notice. The Court finds that the proposed notice is clearly designed to advise the Settlement Class Members of their rights.

OTT v. MORTGAGE INVESTORS CORPORATION OF OHIO, INC.

Case No. 3:14-cv-00645

The Honorable Janice M. Stewart, United States District Court, District of Oregon (July 20, 2015): The Notice Plan, in form, method, and content, fully complies with the requirements of Rule 23 and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled thereto. The Court finds that the Notice Plan is reasonably calculated to, under all circumstances, reasonably apprise the persons in the Settlement Class of the pendency of this action, the terms of the Settlement Agreement, and the right to object to the Settlement and to exclude themselves from the Settlement Class.

Exhibit B

To: Settlement Class Member Email Address
From: Claims Administrator
Subject: Notice of Proposed Class Action Settlement – *Henry, et al. v. Brown University, et al.*

Notice ID: <<Notice ID>>
Confirmation Code: <<Confirmation Code>>

Notice of Class Action Settlement
Authorized by the U.S. District Court for the Northern District of Illinois

A settlement of $13.5 million will provide payments to students who received need-based financial aid that covered some but not all costs (tuition, fees, room & board) to attend Brown University, California Institute of Technology, University of Chicago, Columbia University, Cornell University, Dartmouth College, Duke University, Emory University, Georgetown University, Johns Hopkins University, Massachusetts Institute of Technology, Northwestern University, University of Notre Dame, University of Pennsylvania, Rice University, Vanderbilt University, or Yale University (the "Defendant Universities" or "Defendants").

A federal court directed this Notice. This is not a solicitation from a lawyer.

This Notice is only a summary. Please visit URL for more information.

- The Court has preliminarily approved a proposed settlement ("Settlement") between the University of Chicago and a class of students who attended one or more of the Defendant Universities during certain time periods ("Plaintiffs"). As part of the Settlement, the University of Chicago has agreed to make a settlement payment of $13,500,000 and to provide certain additional information to plaintiffs in this antitrust class action lawsuit called *Henry, et al. v. Brown University, et al.*, 1:22-cv-00125, pending in the United States District Court for the Northern District of Illinois ("Action").

- This Action was brought by certain students who attended Defendant Universities, while receiving partial need-based financial aid. The Action alleges that the Defendant Universities violated federal antitrust laws by agreeing regarding principles, formulas, and methods of determining financial aid. The Action also alleges that as a result, the Universities provided less need-based financial aid than they would have provided had there been full and fair competition. The Defendant Universities allege that Plaintiffs' claims lack merit; that the Universities' financial aid policies were legal and pro-competitive, that financial aid awards were not artificially reduced.

Why am I receiving this notice?

The Court authorized this Notice because you are entitled to know about your rights under a proposed class action settlement with the Defendant Universities before the Court decides whether to approve the Settlement.

The Settlement Class consists of: All U.S. citizens or permanent residents who have during the Class Period (a) enrolled in one or more of Defendants' full-time undergraduate programs, and (b) received at least some need-based financial aid from one or more Defendants, and (c) directly purchased from one or more Defendants tuition, fees, room, or board that was not fully covered by the combination of any types of financial aid or merit aid (not including loans) from one or more Defendants in any undergraduate year. The Class Period is defined as follows:

- For Chicago, Columbia, Cornell, Duke Georgetown, MIT, Northwestern, Notre Dame, Penn, Rice, Vanderbilt, Yale—from 2003 through the date the Court enters an order preliminarily approving the Settlement.
- For Brown, Dartmouth, Emory—from 2004 through the date the Court enters an order preliminarily approving the Settlement.
- For Caltech—from 2019 through the date the Court enters an order preliminarily approving the Settlement.
- For Johns Hopkins—from 2021 through the date the Court enters an order preliminarily approving the Settlement.

What does this Settlement provide?

The University of Chicago has agreed to provide $13,500,000 in cash for the benefit of the Settlement Class as part of a Settlement Fund if the Court finally approves the Settlement.

Every member of the Settlement Class who (a) does not exclude themselves from the Settlement Class by the deadline described below, and (b) files a valid and timely claim during a process that will occur later will be paid from the monies from the Settlement Fund. The money in this Settlement Fund will be also used to pay the following, as approved by the Court:

- The cost of settlement administration and notice, and applicable taxes on the Settlement Fund, and any other related tax expenses;
- Money awards for the Settlement Class Representatives for their service on behalf of the Settlement Class; and
- Attorneys' fees and reimbursement of expenses for Settlement Class Counsel.

In addition, under the Settlement, the University of Chicago has agreed to cooperate with and provide certain additional information to Plaintiffs as detailed in the Settlement Agreement.

How do I ask for money from this Settlement?

If you are a member of the Settlement Class, you must submit a valid and timely claim to get money from the Settlement Fund during a process that will begin several months from now. If the Court finally approves the Settlement, as part of the Court approved distribution and allocation process, the Claims Administrator will distribute to all Settlement Class members, who do not exclude themselves from the Settlement Class, and for which there are valid addresses, a Claim Form to complete. Members of the Settlement Class may also contact the Claims Administrator or visit the Settlement Website if they do not receive a Claim Form.

The Claim Form will include the deadline for timely submission and instructions on how to submit or approve the Claim Form.

Visit URL for more information on how to submit a Claim Form.

What are My Other Options?

If you **Do Nothing**, you will be legally bound by the terms of the Settlement, and you will release your claims against the Releasees, including the University of Chicago. You may **Opt-Out** of or **Object** to the Settlement by Month, Day, Year. Please visit URL for more information on how to Opt-Out of or Object to the Settlement.

Do I have a Lawyer in this Case?

Yes. The Court appointed the following law firms to represent you and other Settlement Class Members: Freedman Norman Friedland LLP, Gilbert Litigators & Counselors, PC, and Berger Montague PC. These firms are called Settlement Class Counsel. They will be paid from the Settlement Fund upon making an application to the Court.

The Court's Fairness Hearing.

There will be a Fairness Hearing at **[TIME]** on **[MONTH, DAY, YEAR].** The hearing will take place at the United States District Court for the Northern District of Illinois, Dirksen U.S. Courthouse, Courtroom 2103, 219 South Dearborn Street, Chicago, IL 60604.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, adequate, and reasonable and should be approved. The Court will also decide whether it should give its final approval of the proposed Plan of Allocation, and to Plaintiffs' requests for attorneys' fees and expenses, service awards to the Settlement Class Representatives, and other costs. The Court will consider any objections and listen to members of the Settlement Class who have asked to speak at the Fairness Hearing.

This notice is only a summary.

For more information, visit [URL] or call toll-free 1-XXX-XXX-XXXX

Unsubscribe

Exhibit C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANDREW CORZO, SIA HENRY, ALEXANDER LEO-GUERRA, MICHAEL MAERLENDER, BRANDON PIYEVSKY, BENJAMIN SHUMATE, BRITTANY TATIANA WEAVER, and CAMERON WILLIAMS, individually and on behalf of all others similarly situated, Plaintiffs, v. BROWN UNIVERSITY, CALIFORNIA INSTITUTE OF TECHNOLOGY, UNIVERSITY OF CHICAGO, THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, CORNELL UNIVERSITY, TRUSTEES OF DARTMOUTH COLLEGE, DUKE UNIVERSITY, EMORY UNIVERSITY, GEORGETOWN UNIVERSITY, THE JOHNS HOPKINS UNIVERSITY, MASSACHUSETTS INSTITUTE OF TECHNOLOGY, NORTHWESTERN UNIVERSITY, UNIVERSITY OF NOTRE DAME DU LAC, THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA, WILLIAM MARSH RICE UNIVERSITY, VANDERBILT UNIVERSITY, and YALE UNIVERSITY, Defendants.	Case No.: 1:22-cv-00125 **Hon. Matthew F. Kennelly**

Notice of Class Action Settlement
Authorized by the U.S. District Court for the Northern District of Illinois

A settlement of $13.5 million will provide payments to students who received need-based financial aid to cover some but not all costs (tuition, fees, room, and board) attend Brown University, California Institute of Technology, University of Chicago, Columbia

University, Cornell University, Dartmouth College, Duke University, Emory University, Georgetown University, Johns Hopkins University, Massachusetts Institute of Technology, Northwestern University, University of Notre Dame, University of Pennsylvania, Rice University, Vanderbilt University, or Yale University.

A federal court directed this Notice. This is not a solicitation from a lawyer.

- The Court has preliminarily approved a proposed settlement ("Settlement") between the University of Chicago and a class of students who attended Brown University, California Institute of Technology, University of Chicago, Columbia University, Cornell University, Dartmouth College, Duke University, Emory University, Georgetown University, Johns Hopkins University, Massachusetts Institute of Technology, Northwestern University, University of Notre Dame, University of Pennsylvania, Rice University, Vanderbilt University, and Yale Universities ("Universities" or "Defendants" or "Defendant Universities") during certain time periods. As part of the Settlement, the University of Chicago has agreed to make a settlement payment of $13,500,000 and to provide certain additional information to plaintiffs in this antitrust class action lawsuit called *Henry, et al. v. Brown University, et al.*, 1:22-cv-00125, pending in the United States District Court for the Northern District of Illinois ("Action").
- This Action was brought by certain students who attended Defendant Universities, while receiving partial need-based financial aid. The Action alleges that the Universities conspired in violation of the federal antitrust laws regarding principles, formulas, and methods of determining financial aid. The Action also alleges that as a result, the Universities provided less financial aid than they would have provided had there been full and fair competition. The Universities have alleged that Plaintiffs' claims lack merit; that the Universities' financial aid policies were legal and pro-competitive, and financial aid awards were not artificially reduced; that the Universities have valid defenses to Plaintiffs' allegations; and that Plaintiffs' claims would have been rejected prior to trial, at trial, or on appeal.
- The Settlement is for the benefit of a "Settlement Class," which is composed of the following persons:

  > All U.S. citizens or permanent residents who have during the Class Period (a) enrolled in one or more of Defendants' full-time undergraduate programs, and (b) received at least some need-based financial aid from one or more Defendants, and (c) directly purchased from one or more Defendants tuition, fees, room, or board that was

not fully covered by the combination of any types of financial aid or merit aid (not including loans) from one or more Defendants in any undergraduate year.[1] The Class Period is defined as follows:

- For Chicago, Columbia, Cornell, Duke Georgetown, MIT, Northwestern, Notre Dame, Penn, Rice, Vanderbilt, Yale—from 2003 through the date the Court enters an order preliminarily approving the Settlement.
- For Brown, Dartmouth, Emory—from 2004 through the date the Court enters an order preliminarily approving the Settlement.
- For Caltech—from 2019 through the date the Court enters an order preliminarily approving the Settlement.
- For Johns Hopkins—from 2021 through the date the Court enters an order preliminarily approving the Settlement.

The time periods for attendance are collectively called the "Settlement Class Period."

Excluded from the Class are:

- Any Officers and/or Trustees of Defendants, or any current or former employees holding any of the following positions: Assistant or Associate Vice Presidents or Vice Provosts, Executive Directors, or Directors of Defendants' Financial Aid and Admissions offices, or any Deans or Vice Deans, or any employees in Defendants' in-house legal offices; and
- the Judge presiding over this Action, his or her law clerks, spouse, and any person within the third degree of relationship living in the Judge's household and the spouse of such a person are also excluded from the Settlement Class.

The Court has approved as lawyers for the Settlement Class ("Settlement Class Counsel") the following:

Edward J. Normand
FREEDMAN NORMAND FRIEDLAND LLP
99 Park Avenue
Suite 1910
New York, NY 10016
Tel: 646-970-7513

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[1] For avoidance of doubt, the Class does not include purchasers for whom the total cost they were charged by the Defendant or Defendants whose institution(s) they attended, including tuition, fees, room, or board for each undergraduate academic year, was covered by any form of financial aid or merit aid (not including loans) from one or more Defendants.

tnormand@fnf.law

Robert D. Gilbert
GILBERT LITIGATORS & COUNSELORS, P.C.
11 Broadway, Suite 615
New York, NY 10004
Phone: (646) 448-5269
rgilbert@gilbertlitigators.com

Eric L. Cramer
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19106
Telephone: (215) 875-3000

- The Settlement offers cash payments to members of the Settlement Class who submit valid and timely claim forms later in the process.
- This Notice has important information. It explains the Settlement and the rights and options of members of the Settlement Class in this class action lawsuit.
- For the full terms of the Settlement, you should look at the Settlement Agreement available at [INSERT URL].
- Please check [INSERT URL] for any updates relating to the Settlement or the Settlement approval process.

LEGAL RIGHTS and OPTIONS

If you are a member of the Settlement Class, your legal rights and options are described in this section. You may:

Exclude Yourself: You may request to be excluded from the Settlement Class. This is the only way you can preserve any right you have to be part of another potential lawsuit that you or others might bring in the future seeking money for claims arising out of the facts alleged in this Action. If you timely request exclusion ("opt out"), you will no longer be part of the Settlement Class, and you will *not* be able to get any money from this Settlement. If you would like to opt out, you must mail your exclusion request by [DD, MM, 2023]. *See* Question 12 for more information on requesting an exclusion.

Object: If you do not agree with any part of this Settlement, or you do not agree with the requested award of attorneys' fees, expenses, and/or service awards for the representative Plaintiffs you may:

- Write to the Court to explain why (*see* Question 16 for more information on filing an objection), and
- Ask to speak at the Court hearing about either the fairness of this Settlement or about the requested attorneys' fees, expenses, or service awards. (*See* Question 22).

Do Nothing: To remain in the Settlement Class, ***you need do nothing now***. However, at a later time, if the Settlement is approved, in order to receive money from the lawsuit, you will need to file a claim form. *See* Question 23 for more information.

File a Claim: This is the only way to get money from the Settlement. You must file a timely and valid claim ***at a later point in the process***. *See* Question 9 for more information.

Deadlines: *See* Questions 12 and 16 for more information about rights and options and all deadlines.

BASIC INFORMATION

1. Purpose of this Notice?

This notice explains the proposed Settlement in a class action lawsuit called *Henry, et al. v. Brown University, et al.*, Case No. 1:22-cv-00125, and the legal rights and options of the members of the Settlement Class to participate in it, or not, before the Court decides whether to give final approval to the Settlement. This notice explains the Action, the proposed Settlement, your legal rights, the benefits available, eligibility for those benefits, and how to get them. The Honorable Matthew F. Kennelly in the United States District Court for the Northern District of Illinois is overseeing this Action.

The persons or entities who started this case are called the "Plaintiffs." The Plaintiffs are Andrew Corzo, Sia Henry, Alexander Leo-Guerra, Michael Maerlender, Brandon Piyevsky, Benjamin Shumate, Brittany Tatiana Weaver, and Cameron Williams.

The Court has preliminarily certified the Settlement Class. The Court has also approved Andrew Corzo, Sia Henry, Alexander Leo-Guerra, Michael Maerlender, Brandon Piyevsky, Benjamin Shumate, Brittany Tatiana Weaver, and Cameron Williams to act as Settlement Class Representatives on behalf of the Settlement Class for purposes of this Settlement only.

The universities Plaintiffs sued in this Action are the "Defendants." Defendants are Brown University, California Institute of Technology, University of Chicago, Trustees of Columbia University in the City of New York, Cornell University, Trustees of Dartmouth College, Duke University, Emory University, Georgetown University, Johns Hopkins University, Massachusetts Institute of Technology, Northwestern University, University of Notre Dame du Lac, Trustees of the University of Pennsylvania, William Marsh Rice University, Vanderbilt University, and Yale University. **Although this Settlement resolves claims against only the University of Chicago, Settlement Class members who attended any of the Defendant Universities may be eligible to file a claim.**

2. What is this lawsuit about?

Generally, Plaintiffs allege that Defendants engaged in an anticompetitive conspiracy in violation of the Sherman Antitrust Act, 15 U.S.C. § 1. Specifically, Plaintiffs allege that Defendants conspired to fix or otherwise limit the amount of financial aid students received, and thereby to artificially inflate the net prices that Class members paid to attend the Universities during certain time periods. Plaintiffs allege that Defendants conspired through an organization called the 568 Presidents Group, of which all of the Defendants were members during some or all of the time period. Members of the 568 Presidents Group allegedly shared sensitive information regarding financial aid and financial aid principles as well as to create and implement common principles used in calculating students' "financial need" that, Plaintiffs say, all schools participating in the alleged conspiracy agreed to adopt. Absent participation in this alleged conspiracy, Plaintiffs allege that Defendants would have competed with each other to award more financial aid.

Plaintiffs allege that Defendants' participation in the alleged conspiracy artificially reduced the amount of financial aid Class member students received.

Defendants, including the University of Chicago, deny each and every one of Plaintiffs' allegations of unlawful or wrongful conduct by the University, deny that any conduct of the University challenged by Plaintiffs caused any damage whatsoever, and deny all liability of any kind. Defendants have asserted that the Universities' financial aid policies were legal and pro-competitive and financial aid awards were not artificially reduced, that the Universities have valid defenses to Plaintiffs' allegations, and that Plaintiffs' claims would have been rejected prior to trial, at trial or on appeal.

You may obtain more information regarding the specific allegations of the Action by reviewing the Second Amended Complaint, which is available at [INSERT URL].

3. Why is this lawsuit a class action?

In a class action, people or businesses sue not only for themselves but also on behalf of other people or businesses with similar legal claims and interests. Together all people or businesses with similar claims and interests form a specifically defined class and are class members. For purposes of this Settlement, the Court has certified the Settlement Class (discussed above and further in Question 5). This means that if the Court approves this Settlement, it is applicable to all members of the Settlement Class (except those who follow the appropriate process to exclude themselves).

4. Why is there a Settlement?

Plaintiffs and Settlement Class Counsel believe that the members of the Settlement Class have been damaged by Defendants' conduct, as described in the Amended Complaint. Defendants believe that Plaintiffs' claims lack merit and would have been rejected prior to trial, at trial, or on appeal. The Court has not decided which side was right or wrong or if any laws were violated. Instead, Plaintiffs and the University of Chicago agreed to settle the case and avoid the delays, costs, and risk of trial and appeals that would follow a trial.

This Settlement is the product of extensive arm's length negotiations, between experienced counsel. Settling this case allows members of the Settlement Class to receive cash payments (*see* Question 6 below). In addition, under the Settlement, the University of Chicago has agreed to cooperate with Plaintiffs by providing Plaintiffs with access to certain additional information as detailed in the Settlement Agreement.

Plaintiffs and the University of Chicago agreed to settle this case after more than a year of extensive litigation and discovery. As part of discovery, Plaintiffs have reviewed and analyzed tens of thousands of pages of documents turned over by the Defendants in the litigation.

The Settlement allows members of the Settlement Class who submit valid and timely claims to receive some compensation, rather than risk ultimately receiving nothing. The Settlement also

allows Plaintiffs to obtain information that could assist them in prosecuting the case against the remaining Defendants with whom Plaintiffs have not settled. Plaintiffs and Settlement Class Counsel believe the Settlement is in the best interests of all members of the Settlement Class.

If the Settlement is approved, Plaintiffs and the Settlement Class will dismiss and release their claims against the University of Chicago.

5. Am I part of this Settlement?

In the Court's Preliminary Approval Order of [DD, MM, 2023], the Court defined the Settlement Class as follows:

> All U.S. citizens or permanent residents who have during the Class Period (a) enrolled in one or more of Defendants' full-time undergraduate programs, and (b) received at least some need-based financial aid from one or more Defendants, and (c) directly purchased from one or more Defendants tuition, fees, room, or board that was not fully covered by the combination of any types of financial aid or merit aid (not including loans) from one or more Defendants in any undergraduate year.[2] The Class Period is defined as follows:
>
> - For Chicago, Columbia, Cornell, Duke Georgetown, MIT, Northwestern, Notre Dame, Penn, Rice, Vanderbilt, Yale—from 2003 through the date the Court enters an order preliminarily approving the Settlement.
> - For Brown, Dartmouth, Emory—from 2004 through the date the Court enters an order preliminarily approving the Settlement.
> - For Caltech—from 2019 through the date the Court enters an order preliminarily approving the Settlement.
> - For Johns Hopkins—from 2021 through the date the Court enters an order preliminarily approving the Settlement.
>
> The time periods for attendance are collectively called the "Settlement Class Period."
>
> Excluded from the Class are:
>
> - Any Officers and/or Trustees of Defendants, or any current or former employees holding any of the following positions:

[2] For avoidance of doubt, the Class does not include purchasers for whom the total cost they were charged by the Defendant or Defendants whose institution(s) they attended, including tuition, fees, room, or board for each undergraduate academic year, was covered by any form of financial aid or merit aid (not including loans) from one or more Defendants.

Assistant or Associate Vice Presidents or Vice Provosts, Executive Directors, or Directors of Defendants' Financial Aid and Admissions offices, or any Deans or Vice Deans, or any employees in Defendants' in-house legal offices; and

- the Judge presiding over this Action, his or her law clerks, spouse, and any person within the third degree of relationship living in the Judge's household and the spouse of such a person are also excluded from the Settlement Class.

If you are not sure whether you are part of the Settlement Class, contact the Claims Administrator at:

Call the toll-free number, [NUMBER].

Visit [URL].

Write to: [ADDRESS].

Email: [EMAIL].

SETTLEMENT BENEFITS

6. <u>What does this Settlement provide</u>?

The University of Chicago has agreed to provide $13,500,000 in cash for the benefit of the Settlement Class as part of a Settlement Fund.

Every member of the Settlement Class who (a) does not exclude themselves from the Settlement Class by the deadline described below, and (b) files a valid and timely claim during a process that will occur later will be paid from the monies from the Settlement Fund. The money in this Settlement Fund will be also used to pay:

- The cost of settlement administration and notice, and applicable taxes on the Settlement Fund, and any other related tax expenses, as approved by the Court,
- Money awards for the Settlement Class Representatives for their service on behalf of the Settlement Class, as approved by the Court, and
- Attorneys' fees and reimbursement of expenses for Settlement Class Counsel, as approved by the Court (*see* Question 19 below for more information relating to attorneys' fees and other costs).

The money in this Settlement Fund less the three categories of costs described just above is the Net Settlement Fund. The Net Settlement Fund will only be distributed to members of the Settlement Class if the Court finally approves the Settlement and the plan for allocating the monies in the Settlement Fund to members of the Settlement Class.

In addition, under the Settlement, the University of Chicago has agreed to cooperate with and provide certain additional information to Plaintiffs as detailed in the Settlement Agreement.

7. How do I ask for money from this Settlement?

If you are a member of the Settlement Class, you must submit a valid and timely claim to get money from the Settlement Fund during a process that will begin several months from now. If the Court finally approves the Settlement, as part of the Court approved distribution and allocation process, the Claims Administrator will distribute to all Settlement Class members, who do not exclude themselves from the Settlement Class, and for which there are valid addresses, a Claim Form to complete. Members of the Settlement Class may also contact the Claims Administrator or visit the Settlement Website if they do not receive a Claim Form. The Claim Form will include the deadline for timely submission and instructions on how to submit or approve the Claim Form. Those Settlement Class Members who submit Claim Forms are called Claimants. The Court will approve the plan of allocating the Net Settlement Fund amongst the Claimants, and will set the schedule for that process, at the time that it decides whether or not to approve the Settlement.

8. How much money will I get?

At this time, it is not known precisely how much each member of the Settlement Class will receive from the Net Settlement Fund or when payments will be made. The amount of your payment, if any, will be determined by the Plan of Allocation to be approved by the Court. The proposed Plan of Allocation can be summarized as follows:

First, the Claims Administrator would determine, for each Claimant, the number of years (or fractions thereof) that the Claimant paid a Defendant University for cost of attendance during the Settlement Class Period. The Claims Administrator, on a Claimant-by-Claimant basis, would then assign to each Claimant the average annual Net Price charged by that University for each year the Claimant attended (or fraction thereof) based on publicly available aggregated pricing data. The Net Price shall be defined for these purposes as the average price for tuition, room, and board less the average amount of financial aid (not including loans). The Net Prices assigned for each Claimant would be adjusted for fractions of years, where a student may not have attended for an entire school year. The Claims Administrator would then sum the average Net Prices over all the years for each Claimant, up to a maximum of four full academic years per Claimant. That sum would be the numerator of each Claimant's *pro rata* allocation computation.

Second, the Claims Administrator would add together all of the numerators for all Claimants, and that sum would serve as the denominator.

Third, the Claims Administrator would divide the numerator from the first step for each Claimant by the denominator from the second step. That fraction would be the *pro rata* share for each Claimant.

Fourth, and finally, to compute the total allocated sum for each Claimant, the Claims Administrator would multiply the fraction from the third step for each Claimant by the Net Settlement Fund, generating the dollar value of each Claimant's total allocation from the Net Settlement Fund.

The Claims Administrator will make decisions regarding claim submissions, including regarding their validity and amounts, with input from Settlement Class Counsel and Settlement Class Counsel's consulting economic expert.

The complete proposed Plan of Allocation is available on the Settlement website, [URL].

HOW TO FILE A CLAIM

9. How do I file a claim?

If the Court approves the Settlement (*see* "The Court's Fairness Hearing" below), the Court will at that time approve a Claim Form and set a deadline for members of the Settlement Class to submit or approve claims. At that time, to receive a payment, you must submit or approve a Claim Form. The Claim Form for Settlement Class members will be posted on the Settlement website and available by calling the toll-free number [NUMBER]. Members of the Settlement Class will be able to submit or approve claims electronically using the Settlement website or by email or through first class mail. A Claim Form will also be mailed to members of the Settlement Class for which the Claims Administrator has valid and current addresses.

10. Who decides the value of my claim?

After receiving your timely-submitted Claim Form, the Court-appointed Claims Administrator, will make decisions about the value and validity of claims with input from Settlement Class Counsel and Settlement Class Counsel's consulting economic expert.

For the Claimants, the Claims Administrator will use publicly available average annual price of tuition, fees, room, and board minus institutional grants ("Net Price") charged by Defendants for each applicable academic year to estimate each Claimant's Net Price, and thus (using the method set forth above) determine each Claimant's *pro rata* share of the Net Settlement Fund.

Some companies may offer to help you file your Claim Form in exchange for a portion of your recovery from the Settlement. While you may choose to use such companies, you should know that you can file with the Claims Administrator on your own, free of charge. Additionally, you are entitled to contact the Claims Administrator or Settlement Class Counsel for assistance with understanding and filing your Claim Form—again, at no cost to you.

11. Am I giving anything up by filing a claim or not filing a claim?

If you are a member of the Settlement Class and do not exclude yourself, you cannot sue, continue to sue, or be part of any other lawsuit seeking recovery for the claims asserted in the

Action against the University of Chicago or Releasees (defined below), even if you do not file a Claim Form. More specifically, staying in the Settlement Class means you have agreed to be bound by the Settlement Agreement and its terms including the release of claims contained therein. The Settlement Agreement is available on the Settlement website, [URL]. The claims released in the Settlement are described below.

Specifically, the Settlement Agreement provides that the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, damages, and liabilities, of any nature whatsoever, including costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that Plaintiffs ever had, now have, or hereafter can, shall or may have, directly, representatively, derivatively, as assignees or in any other capacity, to the extent arising out of or relating to a common nucleus of operative facts with those alleged in the Complaint that Plaintiffs have asserted or could have asserted in the Action. For avoidance of doubt, claims between Class Members and the University arising in the ordinary course and not relating to or arising from the facts alleged in the Complaint or any claims with a common nucleus of operative facts as those alleged in the Complaint, will not be released. The claims described as being released in this paragraph are referred to herein as the "Released Claims."

In addition, each Releasor (defined below) hereby expressly waives and releases, upon the Effective Date, any and all provisions, rights, and/or benefits conferred by Section 1542 of the California Civil Code, which reads:

> Section 1542. Release. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code, notwithstanding that the release in Paragraph 13 of the Settlement Agreement is not a general release and is of claims against Releasees only. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims that are the subject matter of Paragraph 13. Nonetheless, upon the Effective Date (defined below), each Releasor hereby expressly waives and fully, finally, and forever settles and releases any known or unknown, foreseen, or unforeseen, suspected or unsuspected, contingent or non-contingent claim that is the subject matter of Paragraph 13, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Releasor also hereby expressly waives and fully, finally, and forever settles, releases, and discharges any and all claims it may have against the Releasees under § 17200, *et seq.*, of the California Business and Professions Code or any similar comparable or equivalent provision of

the law of any other state or territory of the United States or other jurisdiction, which claims are expressly incorporated into the definition of the Released Claims.

"Effective Date" means the date on which all of the following have occurred: (i) the Settlement is not terminated pursuant to Paragraphs 15 or 16 of the Settlement Agreement; (ii) the Settlement is approved by the Court as required by Fed. R. Civ. P. 23(e); (iii) the Court enters a final approval order; and (iv) the period to appeal the final approval order has expired and/or all appeals have been finally resolved.

"Releasees" means the University, the Board of Trustees of the University, individually or collectively, and all of their present, future and former parent, subsidiary and affiliated corporations and entities, the predecessors and successors in interest of any of them, and each of the foregoing's respective present, former and future officers, directors, trustees, affiliates, employees, faculty members, students, agents, representatives, volunteers, attorneys, outside counsel, predecessors, successors, and assigns.

"Releasors" means all Plaintiffs and Class Members, and those Plaintiffs' and Class Members' agents, attorneys, representatives (and as applicable each of their past, present, and future agents, attorneys, representatives, and all persons or entities that made payments to the University or other Defendants on behalf of Plaintiffs and Class Members), the predecessors, successors, heirs, executors, administrators, and representatives of each of the foregoing.

The Scope and Effect of the Release: Upon the occurrence of the Effective Date, the Releasors hereby release and forever discharge, and covenant not to sue the Releasees only, with respect to, in connection with, or relating to any and all of the Released Claims.

12. How do I exclude myself from the Settlement Class?

If you are a member of the Settlement Class, do not want to remain in the Settlement Class, and do not want a payment from the Settlement, then you must take steps to exclude yourself from the Settlement. This is sometimes referred to as "opting out" of a class. The Court will exclude from the Settlement all members of the Settlement Class who submit valid and timely requests for exclusion.

If you exclude yourself, you will *not* be able to receive any payments from this Settlement. However, this is the only way you will retain your rights to sue the University of Chicago and the Releasees on your own based on the claims asserted in this Action.

You can exclude yourself by sending a written "Request for Exclusion" to the Claims Administrator. To be valid, your Request for Exclusion must be received by the Claims Administrator no later than MM/DD/2023 to:

Claims Administrator

[INSERT CLAIMS ADMINISTRATOR ADDRESS]

Your Request for Exclusion must: (i) be in writing by mail (you cannot exclude yourself by telephone or email); (ii) be signed by the person or entity holding the claim or by his, her or its authorized representative; (iii) state the full name, address, and phone number of the University you attended; (iv) include proof of membership in the Settlement Class; and (vi) include a signed statement that "I/we hereby request I/we be excluded from the University of Chicago Settlement in *Henry, et al. v. Brown University, et al.*, Case No. 1:22-cv-00125."

13. If I don't exclude myself, can I sue the University of Chicago and the other Releasees for the same thing later?

No. Unless you exclude yourself, you give up any right to sue the University of Chicago and the Releasees for the claims that the Settlement resolves if you qualify for membership in the Settlement Class. If you decide to exclude yourself, your decision will apply only to the University of Chicago and the other Releasees.

14. If I exclude myself from the Settlement Class, can I get money from the Settlement?

No. You will not get any money from the Settlement if you exclude yourself.

15. If I exclude myself from the Settlement, can I still object?

No. If you exclude yourself, you are no longer a member of the Settlement Class and may not object to any aspect of the Settlement.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court if I don't like any aspect of the Settlement?

If you are a member of the Settlement Class (and don't exclude yourself from that class), you can object to any part of the Settlement, the summary of the Plan of Allocation, and/or the request for attorneys' fees and litigation costs and expenses and/or the service awards request.

To object, you must timely submit a letter that includes the following: (1) the name of the case (*Henry, et al. v. Brown University, et al.*, Case No. 1:22-cv-00125); (2) your name and address and if represented by counsel, the name, address, and telephone number of your counsel; (3) proof that you are a member of the Settlement Class; (4) a statement detailing your objections to the Settlement with specificity and including your legal and factual bases for each objection; and (5) a statement of whether you intend to appear at the Fairness Hearing, either with or without counsel, and if with counsel, the name of your counsel who will attend.

You cannot make an objection by telephone or email. You must do so in writing and file your objection with the Clerk of Court and mail your objection to the following address postmarked by [MM/DD/2023].

Court

United States District Court for the Northern District of Illinois

Clerk of Court
219 S. Dearborn Street
Chicago, IL 60604

You must also send a copy of your Statement of Objections to the Claims Administrator at the following address:

Claims Administrator
[INSERT ADDRESS]

If you don't timely and validly submit your objection, your view will not be considered by the Court or any court on appeal.

17. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object to the Settlement only if you don't exclude yourself from the Settlement Class. Objecting does not change your ability to claim money from the Net Settlement Fund if the Court approves the Settlement. If you exclude yourself, you cannot object because the Settlement no longer affects your rights, and you cannot claim money from the Net Settlement Fund.

THE LAWYERS REPRESENTING YOU

18. Do I have a lawyer in this lawsuit?

The Court has appointed the lawyers listed below to represent you. These lawyers are called Settlement Class Counsel. Other lawyers have also worked with Settlement Class Counsel to represent you in this case. Because you are a Settlement Class member, you do not have to pay any of these lawyers. They will be paid from the Settlement Fund upon making an application to the Court.

Edward J. Normand
FREEDMAN NORMAND FRIEDLAND LLP
99 Park Avenue
Suite 1910
New York, NY 10016
Tel: 646-970-7513
tnormand@fnf.law

Robert D. Gilbert
GILBERT LITIGATORS & COUNSELORS, P.C.
11 Broadway, Suite 615
New York, NY 10004
Phone: (646) 448-5269
rgilbert@gilbertlitigators.com

Eric L. Cramer
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: 215-875-3000
ecramer@bm.net

If you have any questions about the notice or the Action, you can contact the above-listed Settlement Class Counsel.

Should I hire my own lawyer?

You do not have to hire your own lawyer. But you can if you want to, at your own cost.

If you hire your own lawyer to appear in this case, you must tell the Court and send a copy of your notice to Settlement Class Counsel at any of the addresses above.

19. How will the lawyers for the Plaintiffs and Settlement Class be paid?

To date, Settlement Class Counsel have not been paid any attorneys' fees or reimbursed for any out-of-pocket costs or expenses that Settlement Class Counsel expended to litigate this case. Any attorneys' fees and costs and expenses will be awarded only as approved by the Court in amounts determined to be fair and reasonable. By [MM/DD/2023], Settlement Class Counsel will move for an award of attorneys' fees not to exceed 1/3 of the Settlement Fund, plus any accrued interest, reimbursement of litigation costs and expenses not to exceed $3,500,000, and service awards of up to $5,000 for each of the eight Settlement Class Representatives to be paid out of the Settlement Fund. If the Court grants Settlement Class Counsel's requests, these amounts would be deducted from the Settlement Fund. You will not have to pay these fees, expenses, and costs out of your own pocket.

Any motions in support of the above requests will be available on the Settlement Website after they are filed on MM/DD/2023. After that time, if you wish to review the motion papers, you may do so by viewing them at [URL].

The Court will consider the motion for attorneys' fees and litigation costs and expenses, service awards at or after the Fairness Hearing.

THE COURT'S FAIRNESS HEARING

20. When and where will the Court decide whether to approve this Settlement, including the attorneys' fees and costs motion and the Plan of Allocation?

There will be a Fairness Hearing at **[TIME]** on **[MONTH, DAY, YEAR (on a date to be determined by the Court)].** The hearing will take place at the United States District Court for

the Northern District of Illinois, Dirksen U.S. Courthouse, Courtroom 2103, 219 South Dearborn Street, Chicago, IL 60604.

Important! The time and date of the Fairness Hearing may change without additional mailed or published notice. For updated information on the hearing, visit: [URL].

At the Fairness Hearing, the Court will consider whether the Settlement is fair, adequate, and reasonable and should be approved. The Court will also decide whether it should give its final approval of the Plaintiffs' requests for attorneys' fees and expenses, service awards to the Settlement Class Representatives, and other costs. The Court will consider any objections and listen to members of the Settlement Class who have asked to speak at the Fairness Hearing.

21. Do I have to come to the Fairness Hearing to get my money?

No. You do not have to go to the Fairness Hearing, even if you sent the Court an objection. But you can go to the hearing or hire a lawyer to go to the Fairness Hearing if you want to, at your own expense.

22. What if I want to speak at the Fairness Hearing?

You must file a Notice of Intention to Appear with the Court at this address:

United States District Court for the Northern District of Illinois
Clerk of Court
219 S. Dearborn Street
Chicago, IL 60604

Your Notice of Intention to Appear must be filed by [MM/DD/2023]. You must also mail a copy of your letter to Settlement Class Counsel at the addresses listed in the answer to question 18 and to Counsel for the University of Chicago at James L. Cooper, Arnold & Porter 601 Massachusetts Ave. NW, Washington, DC 20001.

Your Notice of Intention to Appear must be signed and: (i) state the name, address, and phone number of the University you attended and if applicable, the name, address, and telephone number of your attorney (who must file a Notice of Appearance with the Court); and (ii) state that you (or if applicable, your lawyer) intends to appear at the Fairness Hearing for the Settlement in *Henry, et al. v. Brown University, et al.*, Case No. 1:22-cv-00125.

IF YOU DO NOTHING

23. What happens if I do nothing?

If you do nothing, and if you fit the Settlement Class description, you will be automatically a member of the Settlement Class. However, if you do not timely file a Claim Form at the appropriate time later in the process, you will not receive any payment from the Settlement. You

will be bound by past and future rulings, including rulings on the Settlement, Released Claims, and Releasees.

GETTING MORE INFORMATION

24. How do I get more information?

This Notice summarizes the Action, the terms of the Settlement, and your rights and options in connection with the Settlement. More details are in the Settlement Agreement, which are available for your review at [URL]. The Settlement Website also has the Second Amended Complaint and other documents relating to the Settlement. You may also call toll-free [NUMBER] or write the Claims Administrator at: [ADDRESS].

Please Do Not Attempt to Contact Judge Kennelly or the Clerk of Court with Any Questions