

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

ABIGALE PFINGSTEN, and ANOKHY
DESAI, *on behalf of themselves and all others
similarly situated,*

Plaintiffs,

v.

CARNEGIE MELLON UNIVERSITY,

Defendant.

Case No. 2:20-cv-00716-RJC

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Named Plaintiffs Abigale Pfingsten and Anokhy Desai, on behalf of themselves and the Settlement Class, respectfully submit this memorandum of law in support of their motion for final approval of the \$4,800,000 settlement reached in this Action, and for approval of the manner of distribution of the Net Settlement Fund (the “Distribution”). The terms of the settlement are set forth in the Stipulation of Settlement, dated February 7, 2025 (the “Settlement Agreement” or “Agreement”). Dkt. No. 78-2.¹

INTRODUCTION

On February 19, 2025, this Court preliminarily approved the class action settlement between Plaintiffs Abigale Pfingsten and Anokhy Desai and Defendant Carnegie Mellon University (“CMU” or “Defendant”) and directed that notice be sent to the Settlement Class. Dkt. No. 79. The settlement administrator has implemented the Court-approved notice plan and direct notice has reached approximately **99.7%** of the provisionally certified Settlement Class. The reaction from the class has been overwhelmingly positive. Specifically, of approximately 13,337 class members, **only two** have requested to be excluded from the settlement, and **zero** class members filed objections to the settlement.²

The settlement’s strength speaks for itself as it exceeds many other similar COVID-19 tuition refund settlements. *See, e.g., Rosado v. Barry Univ., Inc.*, No. 1:20-cv-21813-JEM (S.D. Fla.) (\$2.4 million common fund); *Wright v. S. New Hampshire Univ.*, No. 1:20-cv-00609 (D.N.H.) (\$1.25 million common fund); *Fittipaldi v. Monmouth University*, Case No. 3:20-cv-05526-RLS (D.N.J.) (\$1.3 million common fund); *Martin v. Lindenwood Univ.*, No. 4:20-cv-

¹ The capitalized terms in this memorandum shall be construed according to their meaning as defined in the Settlement Agreement, except as may otherwise be indicated.

² The deadline for Settlement Class Members to object or request exclusion was May 19, 2025. Dkt. No. 79, ¶ 18.

01128 (E.D. Mo.) (\$1.65 million common fund); *D’Amario v. The Univ. of Tampa*, No. 7:20-cv-03744-CS (S.D.N.Y.) (\$3.4 million common fund); *Smith et al v. University of Pennsylvania*, No. 2:20-cv-02086-TJS (E.D. Pa.) (\$4.5 million common fund). As set forth in the Settlement Agreement, all Settlement Class Members who do not opt-out of the Settlement will automatically receive a payment under the Settlement.

The settlement is an excellent result for the class and the Court should grant final approval.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs and Settlement Class Members are current and/or former CMU students. Plaintiffs allege that they paid tuition and fees to CMU for the Spring 2020 semester in exchange for, in part, access to campus facilities, services, and in-person education. *See generally, Consolidated Amended Class Action Complaint* (“Complaint”), Dkt. No. 9. Plaintiffs allege that Defendant failed to provide that on-campus in-person access and education, and has “not refunded any tuition for the Spring 2020 semester. And while CMU has offered refunds of some mandatory fees, it has not committed to refunding all mandatory fees.” *Id.* ¶ 12. As such, Plaintiffs allege that Defendant breached its contract with Plaintiffs, or was otherwise unjustly enriched, by failing to provide the services and failing to provide refunds for tuition and fees. *See, e.g., id.* ¶¶ 61–67, 73.

Defendant denies that it breached any express or implied contract with its students or that it was unjustly enriched as a result of the change in learning modalities during the Spring 2020 semester. Specifically, Defendant maintains that it acted properly and reasonably in accord with all applicable laws, rules, regulations, and ordinances to protect the health, safety and well-being of its students, faculty and staff, and that it did not violate any contractual obligations to its Spring 2020 students, particularly in light of the unprecedented circumstances created by the COVID-19 pandemic. Although CMU disagrees with Plaintiffs’ claims, it determined that resolving this

lawsuit is in the best interest of its students and employees in order to remain focused on its mission to steer students along a fulfilling educational journey to earn their college degrees.

TERMS OF THE PROPOSED SETTLEMENT AGREEMENT

I. THE PROPOSED SETTLEMENT CLASS

The proposed Settlement Class that received preliminary certification for settlement purposes is defined as:

All students who were assessed tuition and/or fees to attend at least one in-person course(s) during the Spring 2020 semester at CMU but had their course(s) moved to remote learning; excluding (i) any person who properly executes and files a timely opt-out request to be excluded from the Settlement Class; and (ii) the legal representatives, successors or assigns of any such excluded person.

Dkt. No. 79, ¶ 5. As of the May 19, 2025 Objection/Exclusion Deadline, two Settlement Class Members have excluded themselves from the Settlement, and zero Class Members have filed objections to the Settlement Agreement. *See* Declaration of Stephanie M. Valerio, RG/2 Claims Administration LLC (“Valerio Decl.”), ¶¶ 12-13; Colella Decl. ¶ 17.

II. MONETARY TERMS

The proposed Settlement Amount is a non-reversionary cash payment of four million eight hundred thousand U.S. Dollars (\$4,800,000). *See* SA ¶ 38. In accordance with the Settlement Agreement, the Settlement Administrator shall make deductions from the Settlement Amount for court-approved attorneys’ fees and reasonable litigation costs, fees and expenses for the Settlement Administrator, and any court-approved Case Contribution Awards to the Plaintiffs, in recognition of the risks and benefits of their participation and substantial services they performed. *See id.* ¶ 39. The Net Settlement Fund will be allocated *pro rata* to each Settlement Class Member based on the ratio of (a) the total amount of Spring 2020 Tuition and Fees assessed to Settlement Class Members enrolled at CMU during the Spring 2020 semester to (b) the total amount of Spring 2020 Tuition and Fees assessed to each individual Settlement Class Member enrolled at CMU during the Spring

2020 semester, less financial aid provided by CMU, and less any refunds of Tuition and/or Fees already distributed related to Spring 2020 semester. To the extent the distribution formula results in an individual payment amount of less than \$50, the payment amount will be adjusted upwards so that no Settlement Class Member shall receive less than \$50. *Id.* ¶ 4.

Up until the Effective Date, the Escrow Account shall be under the control of the Escrow Agent, on behalf of the Settlement Class Representatives, the Settlement Class, and CMU. *See id.* ¶ 41. Should the Court grant final approval of the Settlement, the Settlement Administrator will send the Settlement Benefits to Settlement Class Members within sixty (60) days of the Effective Date. *See id.* ¶ 9. The Settlement Administrator will pay all legally mandated Taxes prior to distributing the settlement payments to Settlement Class Members. *See id.* ¶ 43.

Settlement Class Members shall have one hundred and eighty (180) days from the date of distribution of the checks to cash their check for the Settlement Benefit. Funds for Uncashed Settlement Checks, if less than \$250,000, shall, subject to Court approval, be designated to a scholarship fund for CMU students to be administered by CMU. If the funds for Uncashed Settlement Checks exceed \$250,000, such funds will be redistributed as a second distribution to Settlement Class Members who previously did cash their settlement check. If, after the second distribution, there are funds remaining from undeposited or uncashed checks, the funds shall, subject to Court approval, be designated to a scholarship fund for CMU students to be administered by CMU. *See id.* ¶ 9.

III. DISMISSAL AND RELEASE OF CLAIMS

Upon the Settlement becoming Final, Settlement Class Members shall be deemed to have forever released any and all suits, claims, controversies, rights, agreements, promises, debts, liabilities, accounts, reckonings, demands, damages, judgments, obligations, covenants, contracts,

costs (including, without limitation, attorneys' fees and costs), losses, expenses, actions or causes of action of every nature, character, and description, in law or in equity, that any Releasing Party ever had, or has, or may have in the future, upon or by reason of any matter, cause, or thing whatever from the beginning of the world to the Effective Date, whether known or unknown, arising out of, concerning, or relating in any way to CMU's transition to or provision of remote education with respect to the COVID-19 pandemic, or the implementation or administration of such remote education, the closing of portions of CMU's campus and the suspension of certain services due to the COVID-19 pandemic or the provision of any services whatsoever that were altered in connection with the COVID-19 pandemic during the Spring 2020 semester. This release includes but is not limited to all claims that were brought or could have been brought in the Action. *See* SA ¶ 1(r). These releases were described in the Court-approved Long Form Class Notice.

IV. RESULTS OF SETTLEMENT ADMINISTRATION AND NOTICE

Following the Court's Preliminary Approval Order, the Settlement Administrator completed the Notice plan set forth in the Settlement. *See* Valerio Decl., ¶¶ 6-15. The Notice plan was designed to reach as many Settlement Class Members as practicable. The Notice included the required description of the material Settlement terms, the deadline for Settlement Class Members to opt out of the Settlement Class; the deadline for Settlement Class Members to object to the Settlement; the Final Approval Hearing date; and the Settlement Website at which Settlement Class Members could access the Short Form Notice, Long Form Notice, Settlement Agreement, and other related documents and information. *Id.*, Ex.'s B-D.

Pursuant to the Court's Preliminary Approval Order, CMU provided RG/2 Claims with the Class List containing information sufficient to provide Settlement Class Members with direct notice. Valerio Decl., ¶ 7. The Settlement Class List contained information for 13,337 Settlement Class Members. *Id.* Thereafter, on April 4, 2025, RG/2 Claims sent 12,509 Email Notices to all

identified Settlement Class Members for whom email addresses were available. *Id.*, ¶ 8. RG/2 Claims also sent 824 Postcard Notices to Settlement Class Members with an associated physical address for whom a valid email address was not available, or for whom the Email Notice was returned as undeliverable. *Id.* As of June 16, 2025, 13,297 of the 13,337 unique, identified Settlement Class Members received direct notice of the Settlement. *Id.*, ¶ 15.

On April 4, 2025, RG/2 Claims established an informational Settlement Website, www.cmucovidsettlement.com, allowing Settlement Class Members to obtain detailed information about the Action, the Settlement, and to review important documents, including the Long Form Notice, Settlement Agreement, and other relevant documents. *Id.*, ¶ 9. Also on April 4, 2025, RG/2 Claims established a toll-free telephone number to allow Settlement Class Members to call for additional information. *Id.*, ¶ 10.

As a result of the Notice plan, approximately 99.7% of the identifiable Settlement Class members received direct notice of the Settlement. *Id.*, ¶ 15. The deadline to submit an objection or opt out of Settlement was May 19, 2025. To date, only two Settlement Class Members have submitted a request for exclusion. *Id.*, ¶ 12. Zero Settlement Class members have submitted objections to the settlement. *See id.*, ¶ 13; Colella Decl. ¶ 17.

ARGUMENT

I. STANDARD FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS.

A. The Law Favors and Encourages Settlements.

“[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged.” *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004). Additionally, “[t]he law favors settlement particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab.*, 55 F.3d 768, 784 (3d Cir. 1995). But, the

final approval of settlement is left to the discretion of the court. *Eichenholtz v. Brennan*, 52 F.3d 478, 482 (3d Cir. 1995). Further, courts in this Circuit have great discretion in such matters: “The decision of whether to approve a proposed settlement of a class action is left to the sound discretion of the district court.” *Girsh v. Jepson*, 521 F.2d 153, 156 (3d Cir. 1975); *Lazy Oil Co. v. Witco Corp.*, 166 F.3d 581, 587 (3d Cir. 1999). In order to grant final approval of a class action settlement, the Court must first determine whether a class can be certified under Rule 23(a) and at least one prong of Rule 23(b). *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

B. The Settlement Must be Procedurally and Substantially Fair, Adequate, and Reasonable.

Federal Rule of Civil Procedure 23(e) provides the applicable standard for judicial approval of a class action settlement. Rule 23(e)(2), as amended, provides that courts should consider certain factors when determining whether a class action settlement is “fair, reasonable and adequate” such that final approval is warranted:

- (A) whether the class representatives and class counsel have adequately represented the class;
- (B) whether the proposal was negotiated at arm’s-length;
- (C) whether the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of the proposed award of attorneys’ fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) whether the proposal treats class members equitably relative to each other. *See Fed. R. Civ. P. 23(e)(2).*

In addition to the foregoing factors, the Third Circuit considers additional factors, the first set of which comes from *Girsh*, 521 F.2d at 156:

- (1) the complexity, expense and likely duration of the litigation;
- (2) the reaction of the class to the settlement;
- (3) the stage of the proceedings and the amount of discovery completed;
- (4) the risks of establishing liability;
- (5) the risks of establishing damages;

- (6) the risks of maintaining the class action through the trial;
- (7) the ability of the defendant to withstand a greater judgment;
- (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and
- (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Id. Importantly, no single *Girsh* factor is dispositive. The Third Circuit has explained: “a court may approve a settlement even if it does not find that each of [the *Girsh*] factors weigh in favor of approval.” *In re N.J. Tax Sales Certificate Antitrust Litig.*, 750 F. App’x 73, 77 (3d Cir. 2018).

Although the Court must scrutinize the Settlement Agreement for fairness, “there is an overriding public interest in settling class action litigation, and it should therefore be encouraged.” *In re Warfarin*, 391 F.3d at 535. As set forth below, the settlement is fair, reasonable, and adequate and should be finally approved.

In addition to the *Girsh* factors, the Third Circuit, in *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 324 (3d Cir. 1998), elaborated on additional factors that reviewing courts should consider when deciding whether to approve a proposed class action settlement. These factors were then clarified in *In re Pet Food Prods. Liab. Litig.* 629 F.3d 333, 350 (3d Cir. 2010). These *Prudential* factors overlap with the *Girsh* factors and are non-exclusive. But, importantly, only the factors relevant to the litigation need to be addressed. *In re Prudential*, 148 F.3d at 323–24. The *Prudential* factors are:

- (1) the maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages;
- (2) the existence and probable outcome of claims by other classes and subclasses;
- (3) the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved or likely to be achieved for other claimants;

- (4) whether class or subclass members are accorded the right to opt-out of the settlement;
- (5) whether any provisions for attorneys' fees are reasonable; and
- (6) whether the procedure for processing individual claims under the settlement is fair and reasonable.

Id. As discussed in more detail below, the proposed Settlement satisfies the requirements of Rule 23, the *Girsh* factors, and the relevant *Prudential* factors, and should be finally approved.

II. THE PROPOSED SETTLEMENT IS PROCEDURALLY AND SUBSTANTIALLY FAIR, ADEQUATE, AND REASONABLE.

A. The Settlement Satisfies the Requirements of Rule 23(e)(2).

1. Plaintiffs and Class Counsel Have Adequately Represented the Settlement Class.

When analyzing whether a proposed class action settlement is fair, reasonable, and adequate, the Court must consider whether “the class representative[] and class counsel have adequately represented the class.” Fed. R. Civ. P. 23(e)(2)(A). “The adequacy requirement encompasses two distinct inquiries designed to protect the interests of absentee class members: it considers whether the named plaintiffs’ interests are sufficiently aligned with the absentees’, and it tests the qualifications of the counsel to represent the class.” *Ripley v. Sunoco, Inc.*, 287 F.R.D. 300, 309 (E.D. Pa. 2012); *see also Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 182 (3d Cir. 2012). This test “assures that the named plaintiffs’ claims are not antagonistic to the class and that the attorneys for the class representatives are experienced and qualified to prosecute the claims on behalf of the entire class.” *Beck v. Maximus, Inc.*, 457 F.3d 291, 296 (3d Cir. 2006) (citation and quotation marks omitted). Here, both prongs of the adequacy test are met. First, Plaintiffs’ interests are aligned with those of the Settlement Class as they were all students who attended CMU during the Spring 2020 semester and enrolled in in-person classes. Second, Class Counsel are highly experienced in class action litigation, especially in the tuition refund context. Class Counsel’s qualifications are set forth in the Declaration of Nicholas A. Colella (Dkt. No. 78-

1) and the Firm Resumes of Lynch Carpenter, LLP and Bursor & Fisher, P.A. (Dkt. Nos. 78-3, and 78-4) submitted in support of preliminary approval.

Additionally, Plaintiffs and Class Counsel have adequately represented the Settlement Class by zealously prosecuting this Action, including by, among other things, extensive investigation and other litigation efforts throughout the prosecution of the Action, including, *inter alia*: (1) researching and drafting the initial and amended complaint in the Action; (2) researching the applicable law with respects to the claims in the Action and the potential defenses thereto; (3) briefing motions to dismiss; (4) actively participating in similar College and University Class Actions filed across the country; and (5) engaging in extensive settlement discussions with Defendant's counsel and the exchange of information during formal discovery. *See generally* Colella Decl., ¶¶ 10, 18. Through each step of the Action, Plaintiffs and Class Counsel have strenuously advocated for the best interests of the Settlement Class. Plaintiffs and Class Counsel therefore satisfy Rule 23(e)(2)(A) for purposes of final approval.

2. The Proposed Settlement Was Negotiated at Arm's-Length.

The proposed Settlement satisfies Rule 23(e)(2)(B) because the Settlement is the product of arm's-length negotiations between the Parties' counsel overseen by an experienced mediator, Hon. Diane Welsh (Ret.). Colella Decl., ¶¶ 18, 23. Further, it is well settled that in the Third Circuit class action settlements enjoy a presumption of fairness under review when: "(1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected." *In re Nat'l Football League Players Concussion Inj. Litig.*, 821 F.3d 410, 436 (3d Cir. 2016), *as amended* (May 2, 2016). Given the above and the Declaration attached hereto, Rule 23(e)(2)(B) is satisfied.

3. The Proposed Settlement Is Adequate in Light of the Litigation Risks, Costs and Delays of Trial and Appeal.

Rule 23(e)(2)(C)(i) and both sets of factors described above overlap as they address the risks posed by continuing litigation. In fact, the first *Girsh* factor is directly analogous to Rule 23(e)(2)(C)(i). As further explained below, all these factors (to the extent relevant) weigh in favor of final approval of the Settlement.

a. The Risks of Establishing Liability.

In considering the risks of establishing liability, courts often consider the complexity of the issues and magnitude of the proposed settlement class. *In re Prudential*, 148 F.3d at 318. Here, although Plaintiffs believe their case is strong, it is not without risk. *See id.* at 319 (“The fourth and fifth *Girsh* factors survey the possible risks of litigation in order to balance the likelihood of success and the potential damage award if the case were taken to trial against the benefits of an immediate settlement.”). Here, Plaintiffs and the putative Class face risks at every juncture, including: (1) Defendant’s anticipated 23(f) petition should a class be certified; (2) Defendant’s anticipated motion for summary judgment; (3) the Parties’ competing motions to strike each other’s experts; (4) trial; and (5) appeal. Each of these steps would pose significant risks to the Settlement Class Members that could result in them recovering nothing at all. Although Class Counsel are confident in their ability to overcome these challenges, they create risks for the Class that must be weighed against the value of any potential recovery. The proposed Settlement eliminates these risks while providing relief that is fair, reasonable, and adequate.

In comparison to the risks as discussed above, the Settlement as it stands currently is an excellent result for the Settlement Class as it provides above-average benefits. *See infra* section IV(C).

b. The Risks of Establishing Damages at Trial.

The risks of establishing liability apply with equal force to the risks of establishing damages. If this litigation were to continue, Plaintiffs would rely heavily on expert testimony to establish damages, likely leading to a battle of the experts at trial and a *Daubert* challenge. If the Court were to determine that one or more of Plaintiffs' experts should be excluded from testifying at trial, Plaintiffs' case would become much more difficult to prove. Moreover, while Defendant did shift to distance learning and requested that most students leave campus, these steps were due to COVID-19 and the accompanying government orders, providing CMU with impossibility, impracticability, and/or *force majeure* defenses. Plaintiffs have never disputed the necessity of these actions; the issue is whether Plaintiffs and the Settlement Class were entitled to a refund of tuition and fees paid to CMU, and a potential impossibility defense raises a risk in establishing damages and the form of such damages (*i.e.*, compensatory or restitution). Thus, in light of the significant risks Plaintiffs faced at the time of the settlement with regard to establishing damages, including the possibility that Plaintiffs would not be able to establish damages for each student, this factor weighs heavily in favor of final approval.

c. The Settlement Eliminates the Additional Costs and Delay of Continued Litigation.

The anticipated complexity, cost, and duration of the Action would be considerable, and these factors are critical in a Court's evaluation of proposed settlements. *See Girsh*, 521 F.2d at 157 (holding that the complexity, expense, and likely duration of litigation are critical factors in evaluating the reasonableness of a settlement). Indeed, if not for the Settlement, litigation would continue, and there is a high likelihood it would be expensive, protracted, and contentious. Colella Decl., ¶¶ 8, 10-12. Costs would be significant, and Plaintiffs and the Settlement Class would be exposed to many risks and uncertainties. The preparation for what would likely be a multi-week

trial (and possible appeals thereafter) would likely cause the Action to continue for several years before the Settlement Class could potentially receive any recovery. Such a lengthy and highly uncertain process would not serve the best interests of the Settlement Class when compared to the immediate and certain monetary benefits of the Settlement. *Id.* Accordingly, this Rule 23(e)(2)(C)(i) factor, as well as the analogous *Girsh* factors, all weigh in favor of final approval.

d. The Proposed Method for Distributing Relief Is Effective.

With respect to Rule 23(e)(2)(C)(ii), Plaintiffs and Class Counsel have taken appropriate steps to ensure the Settlement Class is notified about the Settlement and the Settlement Benefits are properly distributed.

Each Settlement Class Member's Settlement Benefit will be distributed automatically, with no action required by that Settlement Class Member. The Net Settlement Fund will be allocated pro rata to each Settlement Class Member based on the ratio of (a) the total amount of Spring 2020 Tuition and Fees assessed to Settlement Class Members enrolled at CMU during the Spring 2020 semester to (b) the total amount of Spring 2020 Tuition and Fees assessed to each individual Settlement Class Member enrolled at CMU during the Spring 2020 semester, less financial aid provided by CMU, and less any refunds of Tuition and/or Fees already distributed related to Spring 2020 semester. To the extent the distribution formula results in an individual payment amount of less than \$50, the payment amount will be adjusted upwards so that no Settlement Class Member shall receive less than \$50. By default, the Settlement Administrator will send the Settlement Benefit to each Settlement Class Member by check mailed to the Settlement Class Member's last known mailing address on file with CMU.

The Settlement Administrator has also provided a form on the Settlement Website that the Settlement Class Members may visit to (a) provide an updated address for sending a check; or (b) elect to receive the Settlement Benefit by Venmo or PayPal instead of a paper check.

Funds for Uncashed Settlement Checks, if less than \$250,000, shall, subject to Court approval, be designated to a scholarship fund for CMU students to be administered by CMU. If the funds for Uncashed Settlement Checks exceed \$250,000, such funds will be redistributed as a second distribution to Settlement Class Members who previously did cash their settlement check. If, after the second distribution, there are funds remaining from undeposited or uncashed checks, the funds shall, subject to Court approval, be designated to a scholarship fund for CMU students to be administered by CMU.

***e.* Class Counsel’s Request for Attorneys’ Fees Is Reasonable.**

Rule 23(e)(2)(C)(iii) addresses “the terms of any proposed award of attorney’s fees, including timing of payment.” Fed. R. Civ. P. 23(e)(2)(C)(iii). Consistent with the fee request plainly documented in the Notice, and as discussed in Class Counsel’s fee memorandum, Class Counsel seek an award of attorneys’ fees in the amount of thirty-three and one-third percent of the Settlement Fund and expenses to be paid at the time of the award of court-approved attorneys’ fees. Such amounts are presumptively reasonable and in line with requests frequently approved in this Circuit. For example, in *In re Ravisent Techs., Inc. Sec. Litig.*, Judge Surrick noted that “courts within [the Third] Circuit have typically awarded attorneys’ fees of 30% to 35% of the recovery, plus expenses.” No. CIV.A.00-CV-1014, 2005 WL 906361 (E.D. Pa. Apr. 18, 2005) (citing *In re CareSciences. Inc. Sec. Litig.*, Civ. A. No. 01–5266 (E.D. Pa. Oct. 29, 2004)) (awarding one-third recovery of \$3.3 million settlement fund, plus expenses).

***f.* The Settlement Ensures Settlement Class Members Are Treated Equitably.**

Rule 23(e)(2)(D), the final factor, considers whether class members are treated equitably. As reflected in the Settlement Agreement, the proposed Settlement treats Settlement Class Members equitably relative to each other. The Net Settlement Fund will be allocated *pro rata* to

each Settlement Class Member based on the ratio of (a) the total amount of Spring 2020 Tuition and Fees assessed to Settlement Class Members enrolled at CMU during the Spring 2020 semester to (b) the total amount of Spring 2020 Tuition and Fees assessed to each individual Settlement Class Member enrolled at CMU during the Spring 2020 semester, less financial aid provided by CMU, and less any refunds of Tuition and/or Fees already distributed related to Spring 2020 semester. To the extent the distribution formula results in an individual payment amount of less than \$50, the payment amount will be adjusted upwards so that no Settlement Class Member shall receive less than \$50. This equal distribution approach clearly satisfies the fair and equitable treatment requirement. *See, e.g., Swinton v. SquareTrade, Inc.*, No. 18-cv-00144, 2019 WL 617791, at *8 (S.D. Iowa Feb. 14, 2019) (“There is no requirement that all class members in a settlement be treated equally. And, indeed, class members are not treated equally here. Some are entitled to cash refunds and others only benefit from a coupon and injunctive relief.”) (citation omitted).

Based on the foregoing, Plaintiffs and Class Counsel respectfully submit that each of the Rule 23(e)(2) factors support granting final approval of the settlement.

III. The *Girsh* Factors Favor Settlement.

A. The Complexity, Expense, and Likely Duration of the Litigation.

The first *Girsh* factor is satisfied. As discussed above, this Action raises complex factual and legal questions regarding the alleged non-deliverance of in-person education and services supported by the tuition and fees at issue. The Parties began formal written discovery and engaged in lengthy, hard-fought negotiations. The continued prosecution of these claims will require significant additional expenses to the class, given further discovery and expert costs. Further, no matter the outcome at the district court level, the result will likely be appealed, leading to further costs and delay of any recovery. Thus, this settlement would avoid a myriad of unnecessary

expenditures related to further litigation. This avoidance benefits all parties while providing the Settlement Class with immediate benefits, and, thus, weighs in favor of approving settlement. *In re Gen. Motors*, 55 F.3d at 812 (holding that lengthy discovery and potential opposition by the defendant were factors weighing in favor of settlement).

B. The Reaction of the Class to the Settlement.

The second *Girsh* factor to consider is the reaction of the class to the settlement. To determine such a reaction, the number of objectors to the settlements is often evaluated. *In re CertainTeed Corp. Roofing Shingle Prods. Liab. Litig.*, 269 F.R.D. 468, 485 (E.D. Pa. 2010) (citing *In re Cendant Corp. Litig.*, 264 F.3d 201, 234–35 (3d Cir. 2001)). Further, silence “constitutes tacit consent to the agreement.” *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1313 n.15 (3d Cir. 1993). Finally, a low number of objectors or opt-outs is persuasive evidence that the proposed settlement is fair and adequate. *Serrano v. Sterling Testing Sys., Inc.*, 711 F. Supp 2.d 402, 415 (E.D. Pa. 2010) (citing *In re Cendant*, 264 F.3d at 234–35).

This factor is satisfied as only two Settlement Class Members have opted out of settlement, and none have objected. *See* Valerio Decl., ¶ 12; Colella Decl. ¶ 17.

C. The Stage of the Proceedings and the Amount of Discovery Completed.

The third *Girsh* factor “captures the degree of case development that class counsel [had] accomplished prior to settlement.” *In re Cendant*, 264 F.3d at 235. In assessing this third factor, courts must evaluate the procedural stage of the case at the time of the proposed settlement to assess whether counsel adequately appreciated the merits of the case while negotiating. *See In re Warfarin*, 391 F.3d at 537. This does not require the parties to complete discovery. *See Tumpa v. IOC-PA, LLC*, No. 3:18-cv-112, 2021 WL 62144, at *8 (W.D. Pa. Jan. 7, 2021) (approving a settlement where the “limited discovery” was sufficient to provide the parties “with an appreciation of the merits of the case”). While the parties did not engage in extensive formal discovery, the

informal discovery produced via the mediation process, along with the help of Hon. Diane Welsh (Ret.), provided Class Counsel with the information needed to objectively evaluate the strengths and weaknesses of Plaintiffs' and Settlement Class Members' claims. *See* Colella Decl., ¶¶ 18, 25. At its current stage, the litigation is ripe for settlement, and, thus, this factor favors final approval.

D. The Risks of Establishing Liability and Damages and the Risks of Maintaining the Class Action through Trial.

The fourth and fifth *Girsh* factors survey the possible risks of litigation in order to balance the likelihood of success and the potential damage award if the case were taken to trial against the benefits of an immediate settlement.” *In re NFL*, 821 F.3d at 439 (citing *In re Prudential*, 148 F.3d at 319).³ While Plaintiffs and Class Counsel strongly believe in the merits of the case, they acknowledge the substantial risks they face at summary judgment and at class certification. *See Beck v. Manhattan Coll.*, No. 20 CIV. 3229 (LLS), 2023 WL 4266015, at *3 (S.D.N.Y. June 29, 2023), *appeal withdrawn*, No. 23-1049, 2023 WL 9233971 (2d Cir. Oct. 30, 2023) (granting summary judgment on tuition and fee claims in favor of college); *In re Suffolk Univ. Covid Refund Litig.*, No. CV 20-10985-WGY, 2022 WL 6819485, at *4 (D. Mass. Oct. 11, 2022) (denying student motion for class certification). While Plaintiffs and Class Counsel are confident they could overcome any summary judgment motion CMU could bring and are also confident they could certify a class, Plaintiffs' success is far from certain. Through the Settlement, Plaintiffs and

³ The risks of maintaining the class action through “measures the likelihood of obtaining and keeping a class certification if the action were to proceed to trial.” *In re Warfarin*, 391 F.3d at 537. “Because class certification is subject to review and modification at any time during the litigation, the uncertainty of maintaining class certification favors settlement,” but warrants only minimal consideration. *In re Nat. Football League Players' Concussion Inj. Litig.*, 307 F.R.D. 351, 394 (E.D. Pa. 2015) (citing *Zenith Labs., Inc. v. Carter-Wallace, Inc.*, 530 F.2d 508, 512 (3d Cir.1976)).

Settlement Class Members gain significant benefits without having to face further risk of not receiving any relief at all. As such, these factors weigh in favor of final approval.

E. The Ability of Defendant to Withstand a Greater Judgment.

The Seventh *Girsh* factor considers “whether the defendant[s] could withstand a judgment for an amount significantly greater than the settlement.” *In re Warfarin*, 391 F.3d at 537–38. This factor “is most relevant when the defendant’s professed inability to pay is used to justify the amount of the settlement.” *In re NFL*, 821 F.3d at 440. Although CMU may have the ability to withstand greater judgment, the favorable result here—a \$4.8 million settlement—compared to the risks and expenses attendant to conducting this litigation and the immediacy of the benefit to Settlement Class Members weigh in favor of settlement. *See In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 632 (E.D. Pa. 2004) (“[T]he settling defendant’s ability to pay greater amounts [may be] outweighed by the risk that the plaintiffs would not be able to achieve any greater recovery at trial.”). As such, this factor was in favor of final approval.

F. The Range of Reasonable in Light of Best Possible Recovery and All Attendant Risks of Litigation.

In evaluating the eighth and ninth *Girsh* factors, courts ask “whether the settlement represents a good value for a weak case or a poor value for a strong case.” *In re Warfarin*, 391 F.3d at 538. “The factors test two sides of the same coin: reasonableness in light of the best possible recovery and reasonableness in light of the risks the parties would face if the case went to trial.” *Id.* As such, “[t]his inquiry measures the value of the settlement itself to determine whether the decision to settle represents a good value for a relatively weak case or a sell-out of an otherwise strong case.” *In re Gen. Motors*, 55 F.3d at 813. Given that COVID-19 litigation is a relatively novel area of law, the risk of continued litigation is significant, making the instant Settlement,

which provides significant relief to the class now as opposed to years of litigation without the guarantee of recovery, even more reasonable.

IV. THE *PRUDENTIAL* FACTORS ARE SATISFIED

A. Maturity of the Substantive Issues.

“The first [*Prudential*] factor—maturity of the underlying substantive issues—substantially mirrors the third *Girsh* factor, the stage of the proceedings. Under this factor, the advanced development of the record weighs in favor of approval.” *In re Suboxone (Buprenorphine Hydrochloride & Naloxone) Antitrust Litig.*, No. 13-MD-2445, 2024 WL 815503, at *9 (E.D. Pa. Feb. 27, 2024). Here, given Class Counsel’s knowledge of the applicable law in the tuition refund context, the substantive issues in this matter are quite mature. Due to the investigation and discussion throughout the litigation of this Action and the Parties’ mediation before Judge Welsh, both Parties are in a position to fully evaluate their own strengths and weaknesses. This advanced stage lends itself in favor of final approval of the Settlement.

B. The Existence and Probable Outcome of Claims by Other Classes and Subclasses.

Since only two class members have elected to be excluded, this factor weighs heavily in favor of approval. *See* Valerio Decl., ¶ 12.

C. The Comparison between the Results Achieved by the Settlement for Individual Class or Subclass Members and the Results Achieved or Likely to be Achieved for Other Claimants

This Settlement is fair and reasonable and provides CMU students with a favorable per student settlement value. Here, this Settlement’s approximately \$360 per student value far exceeds recovery amounts in other comparable class action settlements involving COVID-19 tuition and fee refunds. *See, e.g., Staubus v. University of Minnesota et al.*, No. 27-cv-20-8546 (Minn. Dist. Ct.) (\$3.25 million settlement with a per student recovery of approximately \$60); *Pfeifer et al. v.*

Loyola University of Chicago, No. 1:20-cv-03116 (N.D. Ill.) (\$1.375 million settlement with a per student recovery of approximately \$88 per student); *Espejo et al. v. Cornell University*, No. 3:20-cv-00467-MAD-ML (N.D.N.Y.) (\$3 million settlement with a per student recovery of \$115); *Rocchio et al. v. Rutgers, The State University of New Jersey*, No. MID-L-003039-20 (N.J. Super. Ct.) (approximately \$77 per student); *Choi et al. v. Brown University*, No. 1:20-cv-00191 (D.R.I.) (approximately \$155 per student); *Smith v. University of Pennsylvania*, No. 20-2086 (E.D. Pa.) (approximately \$173 per student); *Levin v. Board of Regents of the University of Colorado*, No. 2020cv31409 (Colo. Dist. Ct., Denver Cnty.) (approximately \$75 per student).

Given the risks of litigation, this value is fair and proportional. It is unlikely that Plaintiffs could bring these claims on their own, given the imbalance between the cost of litigation and the limited ability to recover damages. These claims also would be subject to the same defenses outlined above. As such, this *Prudential* factor weighs heavily in favor of final approval.

D. Whether Class or Subclass Members Are Accorded the Right to Opt-Out of the Settlement.

“Factor four considers whether class or subclass members are accorded the right to opt out of the settlement.” *In re Suboxone*, 2024 WL 815503, at *10. Here, after the Court’s Preliminary Approval Order, Notice was provided to the Settlement Class detailing the opt-out procedure and deadline. To date, only two class members have opted out. As such, this *Prudential* factor weighs in favor of final approval.

E. Whether Any Provisions for Attorneys’ Fees Are Reasonable

As discussed above, the Settlement’s provision for attorneys’ fees is reasonable and within the range of attorneys’ fee awards commonly awarded in this Circuit, and the Notice specifically advised Settlement Class Members of the attorneys’ fees and expenses Class Counsel would request the Court to approve. As such, this *Prudential* factor weighs in favor of final approval.

F. Whether the Procedure for Processing Individual Claims under the Settlement Is Fair and Reasonable.

Under the settlement scheme, the procedure for individual claims is fair and reasonable. Each Settlement Class Member will automatically receive their settlement benefit without the need for Settlement Class Members to take any action. Thus, this *Prudential* factor weighs in favor of final approval.

V. THE MANNER OF DISTRIBUTION OF THE NET SETTLEMENT FUND IS FAIR AND ADEQUATE.

The standard for approval of a proposed distribution of settlement funds to a class is the same as the standard for approving the settlement itself, *i.e.*, that the distribution plan is fair, reasonable, and adequate. *See In re Suboxone*, 2024 WL 815503, at *11. “In general, a plan of allocation that reimburses class members based on the type and extent of their injuries is reasonable.” *Id.* (citation omitted); *see also Bradburn Parent Teacher Store, Inc. v. 3M (Minnesota Mining and Manufacturing Company)*, 513 F. Supp. 2d 322, 335 (E.D. Pa. 2007) (approving as reasonable a distribution plan that allocated settlement funds to class members based upon their *pro rata* share of the class’s total transparent tape purchases during the damage period, net of invoice adjustments and rebates paid as of the date of the settlement).

Plaintiffs and Class Counsel believe that the proposed manner of distribution is fair and reasonable and respectfully submit it should be approved by the Court. Indeed, as noted above, the manner of distribution treats the Settlement Class equitably; each Settlement Class Members will automatically receive their equal share of the Settlement Benefit, without the need for taking any action. Notably, there have been no objections to the distribution proposal, which supports approval of the distribution plan.

VI. THE COURT SHOULD FINALLY CERTIFY THE SETTLEMENT CLASS FOR PURPOSES OF EFFECTUATING THE SETTLEMENT.

In their motion for preliminary approval of the settlement, Plaintiffs requested that the Court certify the Settlement Class for settlement purposes only so that notice of the Settlement, the Final Approval Hearing, and the rights of Settlement Class Members to object to the Settlement and request exclusion from the Settlement Class could be issued. For purposes of effectuating this Settlement, the Court should finally certify the Settlement Class. As mentioned in the Court's Order, dated February 19, 2025, the Court preliminarily certified the proposed class (Dkt. No. 79). The class, as preliminarily certified, is:

All students who were assessed tuition and/or fees to attend at least one in-person course(s) during the Spring 2020 semester at CMU but had their course(s) moved to remote learning; excluding (i) any person who properly executes and files a timely opt-out request to be excluded from the Settlement Class; and (ii) the legal representatives, successors or assigns of any such excluded person.

Id. at ¶ 5. Since the Court's entry of the Preliminary Approval Order, nothing has changed to alter the propriety of the Court's preliminary certification of the Settlement Class for settlement purposes. Colella Decl., ¶ 13. Thus, for all of the reasons stated in Plaintiffs' Motion for Preliminary Approval (Dkt. No. 78) (incorporated herein by reference), Plaintiffs respectfully request that the Court affirm its preliminary certification and finally certify the Settlement Class for purposes of carrying out the settlement pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) and make a final appointment of Plaintiffs as the class representatives and Class Counsel as class counsel.

VII. NOTICE TO THE SETTLEMENT CLASS SATISFIES THE REQUIREMENTS OF RULE 23 AND DUE PROCESS.

Rule 23 requires that notice of a settlement be "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort," Fed. R. Civ. P. 23(c)(2)(B), and that it be directed to class members in a "reasonable manner." Fed. R. Civ. P. 23(e)(1)(B). Notice of a settlement satisfies Rule 23(e) and

due process where it 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.” *In re NFL*, 821 F.3d at 435 (citation omitted). The Third Circuit has also explained that “[g]enerally speaking, the notice should contain sufficient information to enable class members to make informed decisions on whether they should take steps to protect their rights, including objecting to the settlement or, when relevant, opting out of the class.” *In re Baby Prod. Antitrust Litig.*, 708 F.3d 163, 180 (3d Cir. 2013).

Here, the Notice and the method used to disseminate the Notice to Potential Settlement Class Members satisfy these standards. The Court-approved Notice amply informed Settlement Class Members of, among other things: (i) the pendency of the Action; (ii) the nature of the Action and the Settlement Class’s claims; (iii) the essential terms of the Settlement; (iv) the proposed manner of distribution of the Net Settlement Fund; (v) Settlement Class Members’ rights to request exclusion from the Settlement Class or object to the Settlement, the manner of distribution, or the requested attorneys’ fees or expenses; (vi) the binding effect of a judgment on Settlement Class Members; and (vii) information regarding Class Counsel’s motion for an award of attorneys’ fees and expenses and Case Contribution Awards for Plaintiffs. The Notice also provides specific information regarding the date, time, and place of the Final Approval Hearing, and sets forth the procedures and deadlines for: (i) requesting exclusion from the Settlement Class; and (ii) objecting to any aspect of the Settlement, including the proposed distribution plan and the request for attorneys’ fees and expenses and cash awards for Plaintiffs.

Settlement Class Members were mailed and/or emailed notices. *See* Valerio Decl., ¶ 8. RG/2 Claims sent 12,509 emails and 824 first-class mail notices to all identified Settlement Class

Members. *Id.* In total, approximately 99.7% of the Settlement Class received notice of the proposed Settlement. *See id.*, ¶ 15.

Additionally, a settlement-specific website was created where key settlement documents were posted, including the Long Form Notice. *See id.*, ¶ 9. Furthermore, a toll-free telephone number has been set up to respond to frequently asked questions and Class Member inquiries. *Id.*, ¶ 10. Settlement Class Members had until May 19, 2025, to object to the Settlement or request exclusion from the Settlement Class. To date, there have only been two opt-outs and zero objections among class members. *See* Valerio Decl., ¶¶ 12-13; Colella Decl. ¶ 17.

Notice programs, such as the one deployed by Class Counsel, have been approved as adequate under the Due Process Clause and Rule 23. *See In re CertainTeed*, 269 F.R.D. 468. And, in other COVID-19 refund actions against other universities, substantially similar methods of notice have been approved. *See, e.g., Wright v. S. New Hampshire Univ.*, No. 20-cv-609-LM, 2021 WL 1617145, at *2 (D.N.H. Apr. 26, 2021); *see also Rosado v. Barry Univ., Inc.*, No. 1:20-cv-21813-JEM, Order, (S.D.N.Y. Mar. 30, 2021). For these reasons, Notice satisfied the requirements of Rule 23 and due process.

CONCLUSION

The \$4.8 million Settlement obtained by Plaintiffs and Class Counsel represent an excellent recovery for the Settlement Class, particularly in light of the significant litigation risks the Settlement Class faces, including the very real risk of the Settlement Class receiving no recovery at all. For the foregoing reason, Plaintiffs respectfully request that the Court finally approve the proposed Settlement and the proposed manner of distribution of the Net Settlement Fund as fair, reasonable, and adequate.

Dated: June 20, 2025

Respectfully submitted,

/s/ Nicholas A. Colella

LYNCH CARPENTER, LLP

Gary F. Lynch (PA 56887)

Nicholas A. Colella (PA 332699)

1133 Penn Avenue, 5th Floor

Pittsburgh, PA 15222

Phone: (412) 322-9243

Gary@lcllp.com

NickC@lcllp.com

BURSOR & FISHER, P.A.

Philip L. Fraietta (admitted *pro hac vice*)

1330 Avenue of the Americas

New York, NY 10019

(646) 837-7150

pfraietta@bursor.com

Class Counsel

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

ABIGALE PFINGSTEN, and ANOKHY
DESAI, *on behalf of themselves and all others*
similarly situated,

Plaintiffs,

v.

CARNEGIE MELLON UNIVERSITY,

Defendant.

Case No. 2:20-cv-00716-RJC

**DECLARATION OF NICHOLAS A. COLELLA
IN SUPPORT OF PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I, Nicholas A. Colella, declare as follows:

1. I am a partner in the law firm of Lynch Carpenter LLP and am counsel of record for Plaintiffs Abigale Pfingsten and Anokhy Desai ("Plaintiffs") and the conditionally-certified Settlement Class, along with Gary F. Lynch of Lynch Carpenter, LLP, and Philip L. Fraietta of Bursor & Fisher, P.A., in the above captioned matter against Defendant Carnegie Mellon University ("Defendant" or "CMU"). I am personally involved in the prosecution of this matter.

2. The team of Class Counsel attorneys involved in the resolution of this matter possess extensive experience litigating complex class actions.

3. I have been involved in this Action from the filing of the Complaint through its resolution.

4. I make this Declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement ("Plaintiffs' Motion"), which seeks final approval of the Settlement Agreement.

5. The matters set forth herein are stated with my personal knowledge.

6. Class Counsel, on behalf of Plaintiffs and the proposed Settlement Class, have negotiated a settlement of all claims against Defendant for its transition to online only learning following the COVID-19 pandemic.

7. I am submitting this declaration to put before the Court certain documents and facts supporting final approval of the Settlement and demonstrating that the requirements of Federal Rule of Civil Procedure 23 are satisfied for purposes of finally certifying the Settlement Class and that the proposed Settlement is fair, reasonable, and adequate.

8. In my view, the Settlement represents an excellent result that will provide significant benefits to the Settlement Class Members while removing the risk and delay associated with further litigation.

9. The Settlement Amount consisting of cash in the amount of four million eight hundred thousand U.S. Dollars (\$4,800,000), less Court-approved attorneys' fees and expenses, costs of settlement administration, and Case Contribution Awards for the Plaintiffs, shall be for the benefit of the Settlement Class Members.

10. I recommend the proposed Settlement is an excellent result in light of the factual and legal risks of continued litigation. In recommending the Settlement as fair, reasonable, and adequate, Class Counsel has considered, among other things, the events underlying Plaintiffs' claims and the possible defenses to those claims, as well as the information gleaned by the extensive exchange of information conducted by the Parties in this case.

11. All of this information provided us with a thorough understanding of the strengths and weaknesses of Plaintiffs' claims and the risks associated with further litigation.

12. In short, Class Counsel believes that this Settlement is fair and reasonable because it provides a substantial monetary recovery weighed against the risks of proceeding with litigation.

13. There have been no material changes in circumstances which impact Plaintiffs' assessment of the suitability of the proposed classes for certification since the Court granted preliminary approval.

**CLASS COUNSEL BELIEVES THAT THE PROPOSED SETTLEMENT SATISFIES
THE APPLICABLE FACTORS CONSIDERED BY COURTS IN THE THIRD CIRCUIT
WHEN REVIEWING PROPOSED CLASS ACTION SETTLEMENTS**

14. Before agreeing to the proposed Settlement, Class Counsel assessed the merits using various factors typically used by counsel in this type of case including the factors used by courts in the Third Circuit to assess proposed class action settlements.

15. Class Counsel believes that the proposed Settlement is fair, reasonable, and adequate when the applicable factors are considered. Those factors include: (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

16. The complexity, expense, and likely duration of the litigation, justify final approval of the Settlement.

17. There have been zero objections to the settlement, and only two requests to opt-out of the Settlement. Further, Plaintiffs support the proposed Settlement.

18. The stage of the proceedings and the amount of discovery completed justifies approval of the Settlement. Defendant has answered Plaintiffs' Complaint and has effectively denied all of Plaintiffs' allegations. The Parties began formal written discovery and exchanged relevant information prior to and during the course of the settlement discussions. Finally, the Parties engaged in a mediation session before Hon. Diane M. Welsh (Ret.).

19. The risks of establishing liability and damages also counsel in favor of approval of the Settlement. Defendant has vigorously contested liability throughout the course of this Action, would almost certainly have contested class certification, and would have affirmatively moved for summary judgment. Thus, certification, liability, and damages would have remained highly contested issues had the settlement not been reached by the Parties.

20. The risks of maintaining the class action through the trial justifies approval of the Settlement as well. As noted above, Defendant likely would have contested certification of the Settlement Class and damages on a class-wide basis. The risks associated with maintaining a certified class therefore support Settlement.

21. The range of reasonableness of the settlement fund in light of the best possible recovery and all the attendant risks of litigation strongly favors approval of the Settlement. Here, the Settlement provides for each Settlement Class Member to receive real monetary relief.

22. The proposed Settlement treats Settlement Class Members equitably relative to each other. The Net Settlement Fund will be allocated pro rata to each Settlement Class Member based on the ratio of (a) the total amount of Spring 2020 Tuition and Fees assessed to Settlement Class Members enrolled at CMU during the Spring 2020 semester to (b) the total amount of Spring 2020 Tuition and Fees assessed to each individual Settlement Class Member enrolled at CMU

during the Spring 2020 semester, less financial aid provided by CMU, and less any refunds of Tuition and/or Fees already distributed related to Spring 2020 semester. To the extent the distribution formula results in an individual payment amount of less than \$50, the payment amount will be adjusted upwards so that no Settlement Class Member shall receive less than \$50.

23. Class Counsel is aware of no evidence of fraud or collusion behind the Settlement. Instead, this Settlement was the product of extensive negotiations between experienced counsel under the supervision of respected mediator Judge Welsh. The final parameters of the proposed Settlement were negotiated amongst counsel at arm's-length with the assistance of this mediation, and those discussions took several months.

24. Class Counsel have developed a comprehensive understanding of the merits of the case through our work on the Action. In our view, when we agreed to the proposed Settlement, we had sufficient information about the strengths and weaknesses of the claims and defenses, as well as Defendant's financial condition, to make a reasoned judgment about the desirability of settling the case according to the terms proposed.

25. In Class Counsel's view, the stage of litigation and amount of discovery weigh in favor of final approval of the Settlement.

CONCLUSION

Plaintiffs and Class Counsel respectfully submit that the Settlement is an excellent result for the Settlement Class in this case. Class Counsel recommends that the Settlement is fair, reasonable, and adequate, and requests that this Court grant final approval to the Settlement Agreement and approve dissemination of the Settlement Amount.

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

Executed on June 20, 2025 in
Pittsburgh, Pennsylvania

/s/ Nicholas A. Colella
Nicholas A. Colella

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ABIGALE PFINGSTEN and ANOKHY
DESAI *on behalf of themselves and all others*
similarly situated,

Case No. 2:20-CV-00716-RJC

Plaintiffs,

v.

CARNEGIE MELLON UNIVERSITY,

Defendant.

**DECLARATION OF STEPHANIE M. VALERIO
REGARDING NOTICE ADMINISTRATION**

1. My name is Stephanie M. Valerio, and I am over the age of eighteen (18) years. I make this declaration under the penalty of perjury, free and voluntarily, under no coercion, threat, or intimidation, and without promise of benefit or reward, based on my own personal knowledge. If called to testify, I could and would testify consistent with the matters stated herein.

2. I am the Assistant Claims Manager for RG/2 Claims Administration LLC (“RG/2 Claims”), whose address is 30 South 17th Street, Philadelphia, PA 19103, the independent third-party settlement administrator retained as Claims Administrator to handle various settlement administration activities in the above-referenced matter, including, but not limited to, mailing of settlement notification packages to Class Members, emailing settlement notification to Class Members, claimant correspondence, and distribution.

3. RG/2 Claims is a full-service class action settlement administrator offering notice, claims processing, allocation, distribution, tax reporting, and class action settlement consulting services. RG/2 Claims’ experience includes the provision of notice and administration services for settlements arising from antitrust, data security breach, consumer, civil rights, employment, negligent disclosure, and securities fraud allegations. Since 2000, RG/2 Claims has administered and distributed in excess of \$2 billion in class action settlement proceeds.

4. I have been actively involved and responsible for handling the administration of the settlement of the above-referenced matter.

5. RG/2 Claims was retained to, among other tasks, a) prepare, print and mail CAFA Notice; b) prepare, print, mail and email Notices to Settlement Class Members; c) establish and maintain the Settlement Website; d) prepare activity reports; e) handle inquiries from and correspondence to Settlement Class Members; f) re-mail Notices; g) skip-trace undeliverable addresses; h) receive and track Opt-Out requests and Objections; i) issue the Settlement Benefit to each Settlement Class Member; and j) conduct such other tasks as the Parties mutually agree or the Court orders RG/2 Claims to perform.

6. RG/2 Claims provided notice of the proposed Settlement (as outlined in the Settlement Agreement) pursuant to CAFA (the “CAFA Notice”). In particular, on February 24, 2025, RG/2 Claims caused to be served by Federal Express, Certified Return Receipt Requested First-Class mail, or electronic mail where applicable, the CAFA Notice, and the documents required under 28 U.S.C. § 1715(b)(1)-(8) to the United States Attorney General and 52 State Attorney Generals. A copy of the Notice of Proposed Settlement, excluding its exhibits, is attached hereto as **Exhibit A**.

7. On February 18, 2025, RG/2 Claims received an electronic file containing the names, last known email and postal addresses belonging to all Potential Settlement Class Members. In order to provide the best notice practicable and locate the most recent addresses for Potential Settlement Class Members, RG/2 Claims processed the Class List names and addresses received through the United States Postal Service’s (“USPS”) National Change of Address database (“NCOA”) and updated the data with corrected information. It was determined that there were 13,337 Potential Settlement Class Members.

8. On April 4, 2025, RG/2 Claims caused to be served via email to the Potential Settlement Class Members, the Short Form Notice of Proposed Class Action Settlement (“Short

Form Notice”). Of the 12,544 emailed Short Form Notices, 12,509 were delivered successfully. RG/2 Claims caused to be served via First Class mail and Air Mail, the Short Form Notice, to 824 Potential Settlement Class Members for whom emails were either invalid, unsuccessful or not provided. There were four Potential Settlement Class members for whom RG/2 Claims was not provided with a valid email or mailing address. A true and correct copy of the Short Form Notice is attached hereto as **Exhibit B**.

9. On or about April 4, 2025, RG/2 Claims made available the Settlement Website, www.cmucovidsettlement.com. The website includes the following:

- a. The “Homepage” contains a brief summary of the settlement and advises Settlement Class members of their rights under the Settlement. A copy of the Homepage is attached hereto as **Exhibit C**;
- b. The “Notice” page contains a pdf copy of the Long Form Notice;
- c. The “Election Form” page contains the form that Settlement Class Members may submit electronically to designate their preferred method for receiving the funds, including physical check, Venmo, or PayPal;
- d. The “Important Documents” page contains: the Stipulation of Settlement, the Preliminary Approval Order, Plaintiffs’ Motion for Award of Attorneys’ Fees, Costs, and Case Contribution Awards to Settlement Class Representatives, Plaintiffs’ Memorandum in Support of Motion for Award of Attorneys’ Fees, Costs and Case Contribution Awards to Settlement Class Representatives; and
- e. The “Contact” page contains the contact information of the Settlement Administrator and Class Counsel.

10. RG/2 Claims also made available a toll-free phone number at (866) 742-4955 for Class members to speak with a live operator or leave a voicemail message requesting a returned call.

11. RG/2 Claims also made available Post Office Box 59479 in Philadelphia, PA 19102-9479 to receive and process returned Notices, Opt-Outs, and Objections.

12. The Short Form Notice informed Settlement Class Members of, among other things, their right to request exclusion from the Settlement, provided the request was postmarked within forty-five (45) days from the initial mailing of the Notice or by May 19, 2025. To date, RG/2 Claims has received two Opt Out requests. Copies of the Opt Out requests are attached hereto as **Exhibit D**.

13. The Short Form Notice also informed Class Members of their right to object to the Settlement, provided the request was postmarked within forty-five (45) days from the initial mailing of the Notice or by May 19, 2025. To date, RG/2 Claims has not received or been advised of any objections to the Settlement.

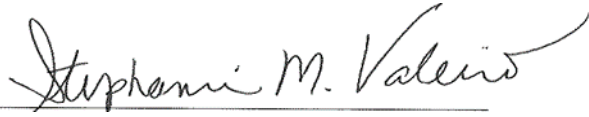
14. As of the May 19, 2025 Objection/Exclusion Deadline, the USPS returned 55 Notices as undeliverable. Of the 55 Notices returned, the USPS provided forwarding addresses for two and they were promptly remailed Notice. RG/2 Claims performed extensive skip-trace procedures for the 53 undeliverable Notices and was able to locate updated addresses for 17 Settlement Class Members and RG/2 Claims promptly mailed a new Notice to those Settlement Class Members. A total of 36 Short Form Notices remain undeliverable.

15. Therefore, in total, direct notice successfully reached 13,297 out of 13,337 Potential Settlement Class Members, or approximately 99.7% of the Settlement Class.

16. As of June 19, 2025, RG/2 Claims has received 2,850 executed Election Forms via electronic submission. Upon review, RG/2 Claims determined that 91 of the 2,850 executed Election Forms were duplicate submissions.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES THAT TO THE BEST OF MY KNOWLEDGE THE FOREGOING IS TRUE AND CORRECT.

Executed on June 19, 2025 at Philadelphia, PA

By: 

Stephanie M. Valerio, Declarant

EXHIBIT

A



February 24, 2025

Via «Via_Mail»

«First» «Last», «Esquire»
«Title»
«Street_1»
«Street2»
«City», «State1» «Zip»

Re: *Abigale Pfingsten and Anokhy Desai on behalf of themselves and all others similarly situated v. Carnegie Mellon University* Case No. 2:20-CV-00716
In the United States District Court for the Western District of Pennsylvania
Notice of Proposed Settlement

To the Honorable «First» «Last», Esq.:

Pursuant to the Class Action Fairness Act of 2005 (specifically 28 U.S.C.A. § 1715), Defendant, *Carnegie Mellon University*, through its vendor, RG/2 Claims Administration LLC, hereby gives notice in the above-captioned matter (the “Action”) of the following:

1. Pursuant to the requirements under the Class Action Fairness Act of 2005, copies of the following documents are contained on the CD-Rom included herein:
 - a. Exhibit 1: Consolidated Class Action Complaint filed on September 25, 2020;
 - b. Exhibit 2: Plaintiffs’ Unopposed Motion to Preliminarily Approve Class Action Settlement, Certify the Class, Appoint Class Counsel, Approve Proposed Class Notice, And Schedule a Final Approval Hearing filed on February 14, 2025;
 - c. Exhibit 3: Memorandum of Law in Support of Plaintiffs’ Unopposed Motion to Preliminarily Approve Class Action Settlement, Certify the Class, Appoint Class Counsel, Approve Proposed Class Notice, and Schedule a Final Approval Hearing filed on February 14, 2025;
 - d. Exhibit 4: Stipulation of Settlement filed on February 14, 2025;
 - e. Exhibit 5: [Proposed] Order Granting Plaintiffs’ Unopposed Motion to Preliminarily Approve Class Action Settlement, Certify the Class, Appoint Class Counsel, Approve Proposed Class Notice, and Schedule a Final Approval Hearing filed on February 14, 2025;



February 24, 2025

Page 2



- f. Exhibit 6: Notice of Proposed Class Action Settlement filed on February 14, 2025;
 - g. Exhibit 7: Order Granting Plaintiffs' Unopposed Motion to Preliminarily Approve Class Action Settlement, Certify the Class, Appoint Class Counsel, Approve Proposed Class Notice, and Schedule a Final Approval Hearing filed on February 19, 2025;
 - h. Exhibit 8: Approximate Class Members Per State of Residency.
2. The Settlement Class is defined as:
- “All students who were assessed tuition and/or fees to attend at least one in-person course(s) during the Spring 2020 semester at CMU but had their course(s) moved to remote learning; excluding (i) any person who properly executes and files a timely opt-out request to be excluded from the Settlement Class; and (ii) the legal representatives, successors or assigns of any such excluded person.”
- 3. It is not feasible to provide the anticipated gross settlement amount allocations at this time. The amounts recovered by each individual member may vary. Exhibit 8, on the enclosed CD-ROM, provides a table of the Approximate Class Members per State of Residency.
 - 4. There are no other settlement or other agreements between class counsel and counsel for defendants pursuant to 28 U.S.C. § 1715(b)(5).
 - 5. The Court has not yet entered a final judgment or notice of dismissal. Accordingly, no document is presently available pursuant to 28 U.S.C. § 1715(b)(6).
 - 6. Finally, there are no relevant written judicial opinions pursuant to 28 U.S.C. § 1715(b)(8).

If you have questions about this notice, the lawsuit, or the enclosed materials, please contact RG/2 Claims Administration LLC at 215-979-1620.

Sincerely,

RG/2 Claims Administration LLC

EXHIBIT B

Subject: NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

PLEASE READ THIS NOTICE CAREFULLY. If you were assessed tuition and/or fees to attend at least one in-person course(s) during the Spring 2020 semester at Carnegie Mellon University (“CMU”) but had your course(s) moved to remote learning, you may be eligible to receive a payment as part of a proposed settlement of *Pfingsten, et al. v. Carnegie Mellon University*, Civil Action No. 2:20-cv-00716 (W.D. Pa.) (the “Action”).

In this Action, Plaintiffs alleged CMU breached a contract when it transitioned to remote learning in response to the COVID-19 pandemic. Plaintiffs also alleged that CMU’s shift to remote learning gave rise to claims of unjust enrichment. Plaintiffs sought a refund of a portion of their tuition and fees for the Spring 2020 semester. CMU denies all allegations of wrongdoing and there has been no finding of liability in any court. However, considering the interest of both CMU and its students in prompt resolution of the matter, CMU and Plaintiffs have agreed that CMU will pay \$4,800,000 into a Settlement Fund to resolve the Action.

Am I a Class Member? If you were assessed tuition and/or fees to attend at least one in-person course(s) during the Spring 2020 semester at CMU but had your course(s) moved to remote learning, then **you are part of the proposed settlement class (a “Settlement Class Member”).** **If you are a Settlement Class Member, you do not have to do anything to participate in and receive the benefits of the proposed Settlement. You should, however, notify the Settlement Administrator if you have a new permanent mailing address or you wish to be paid by Venmo or PayPal.**

How Do I Get a Payment? Your payment will be sent automatically by first class U.S. Mail to your last known permanent mailing address on file with CMU. Class Members will also have the option to visit the Settlement Website at www.cmucovidsettlement.com to choose one or more of the following selections: (a) provide an updated address for sending a check; or (b) elect to receive the Settlement Benefit by Venmo or PayPal instead of a paper check. These actions must be taken no later than forty-five (45) days after the Effective Date, as defined in the proposed Settlement. That date will also be posted on the Settlement Website when it is known, but it will be some time after the Final Approval Hearing currently scheduled for JUNE 30, 2025. To elect how you would like to receive your Settlement Benefit or update your address visit www.cmucovidsettlement.com and complete the Election Form using the Class Member code and PIN number below.

Class Member Code: [Class Member code]

PIN: [PIN NUMBER]

By participating in the proposed Settlement, you release your right to bring any claim covered by the proposed Settlement, including bringing any claim related to CMU’s transition to remote learning in the Spring 2020 semester, or joining any other action against CMU related to CMU’s transition to remote learning in the Spring 2020 semester.

What Are My Other Options? If you do not want to participate in this proposed Settlement—meaning you do not want to receive the Settlement Benefit, and you do not want to be bound by any judgment entered in this case—you may exclude yourself by mailing a signed opt-out request to the Settlement Administrator, which must be postmarked no later than MAY 19, 2025. If you instead want to object to this proposed Settlement because you think it is not fair, adequate, or reasonable, you may submit an objection, which also must be postmarked no later than MAY 19, 2025. Please follow the detailed instructions outlined in the Long Form Notice and the Settlement Agreement, which can both be found at www.cmucovidsettlement.com, to properly opt-out from, or object to, the proposed Settlement.

What Happens Next? The Court has preliminarily approved the proposed Settlement, but the distribution of payments will occur only if the Court grants final approval of the proposed Settlement. The Final Approval Hearing in this case is scheduled for JUNE 30, 2025. At that hearing, the Court will consider whether to grant final approval of the proposed Settlement, and whether to approve payment from the Settlement Fund of: (1) awards to the Settlement Class Representative for their service in this litigation; and (2) Class Counsel's requested attorneys' fees, which will not exceed thirty-three and one-third percent of the Settlement Fund and will be posted on the Settlement Website after MAY 5, 2025, and reimbursement for litigation costs.

You are encouraged to review the Long Form Notice. To review the Long Form Notice, review other important documents, including the Settlement Agreement, and obtain more information about the proposed Settlement, please visit www.cmucovidsettlement.com

If you have any questions, you can contact Class Counsel: Nicholas A. Colella at Lynch Carpenter, LLP, (412) 322-9243 or Philip L. Fraietta of Bursor & Fisher, P.A., (646) 837-7142.

You can also contact the Settlement Administrator by calling toll-free 1-866-742-4955, or by emailing info@rg2claims.com.

EXHIBIT C

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT

**The United States District Court for the Western
District of Pennsylvania**

Pfingsten, et al. v. Carnegie Mellon University

Civil Action No. 2:20-cv-00716 (W.D. Pa.)

**ATTENTION: ALL STUDENTS WHO WERE ASSESSED
TUITION AND/OR FEES TO ATTEND AT LEAST ONE
IN-PERSON COURSE(S) DURING THE SPRING 2020
SEMESTER AT CARNEGIE MELLON UNIVERSITY BUT
HAD THEIR COURSE(S) MOVED TO REMOTE
LEARNING**

If you were assessed tuition and/or fees to attend at least one in-person course(s) during the Spring 2020 semester at Carnegie Mellon University (“CMU”) but had your course(s) moved to remote learning, you are part of the proposed settlement class (a “Settlement Class Member”) affected by this lawsuit.

If you are a Settlement Class Member, you do not have to do anything to participate in and receive the benefits of the proposed Settlement. You should, however, notify the Settlement Administrator if you have a new permanent mailing address or you wish to be paid by Venmo or PayPal.

WHAT IS THIS LAWSUIT ABOUT?

The class action being settled is captioned *Pfingsten, et al. v. Carnegie Mellon University*, Civil Action No. 2:20-cv-00716 (W.D. Pa.). This case is a putative class action, meaning that the Settlement Class Representatives—Abigaile Pfingsten and

Anokhy Desai—brought this action as individuals acting on behalf of a putative class of all people who paid tuition and/or fees for the Spring 2020 semester at CMU. The Settlement Class Representatives alleged claims for breach of contract and unjust enrichment. With the help of a mediator, the Parties came to the proposed Settlement.

HOW DO I KNOW IF I AM PART OF THE SETTLEMENT CLASS?

If you were assessed tuition and/or fees to attend at least one in-person course(s) during the Spring 2020 semester at CMU but had your course(s) moved to remote learning, then you qualify as a Settlement Class Member.

HOW DO I GET A PAYMENT?

Your payment will be sent automatically by first class U.S. Mail to your last known permanent mailing address on file with CMU. Class Members will also have the option to click the Election Form tab on this website to choose one of the following selections: (a) provide an updated address for sending a check; or (b) elect to receive the Settlement Benefit by Venmo or PayPal instead of a paper check. This action must be taken no later than forty-five (45) days after the Effective Date, as defined in the proposed Settlement. That date will also be posted on the Settlement Website when it is known, but it will be some time after the Final Approval Hearing, currently scheduled for **June 30, 2025**.

WHAT ARE MY OTHER OPTIONS?

If you do not want to participate in this proposed Settlement— meaning you do not want to receive the Settlement Benefit, and you do not want to be bound by any judgment entered in this case—you may exclude yourself by mailing a signed opt-

out request to the Settlement Administrator, which must be postmarked no later than **May 19, 2025**. If you instead want to object to this proposed Settlement because you think it is not fair, adequate, or reasonable, you may submit an objection, which also must be postmarked no later than **May 19, 2025**.

Please follow the detailed instructions outlined in the Long Form Notice (pdf/CMU_Long_Form_Notice.pdf) and the Settlement Agreement (pdf/Carnegie_Mellon_Settlement_Agreement.pdf) to properly opt-out from, or object to, the proposed Settlement.

WHAT HAPPENS NEXT?

The Court has preliminarily approved the proposed Settlement, but the distribution of payments will occur only if the Court grants final approval of the proposed Settlement. The Final Approval Hearing in this case is scheduled for **JUNE 30, 2025**. At that hearing, the Court will consider whether to grant final approval of the proposed Settlement, and whether to approve payment from the Settlement Fund of: (1) awards to the Settlement Class Representative for their service in this litigation; and (2) Class Counsel's requested attorneys' fees, which will not exceed thirty-three and one-third percent of the Settlement Fund and will be posted on the Settlement Website after **May 5, 2025**, and reimbursement for litigation costs.

YOU ARE ENCOURAGED TO REVIEW THE LONG FORM NOTICE

To review the Long Form Notice, review other important documents, including the Settlement Agreement, and obtain more information about the proposed Settlement please click on the appropriate tabs at the top of this page.

PLEASE DO NOT CONTACT THE COURT OR CMU CONCERNING THIS NOTICE OR THE PROPOSED SETTLEMENT.

© 2025

EXHIBIT D

APR 24 2025

I, Paulina Davison, would like to opt out of the Settlement Class for the Action Pfingsten, et al. v. Carnegie Mellon University, Civil Action No. 2:20-cv-00716 (W.D. Pa.).

Paulina Davison April 5, 2025

Name : Paulina Davison

Address : 2619 N Warner St Apartment 2
Tacoma, WA 98407

Email : paulina-davison31415@gmail.com

2619 N Warner St
Apartment 2
Tacoma, WA 98407

TACOMA WA 983
OLYMPIA WA
16 APR 2025 PM 4 L

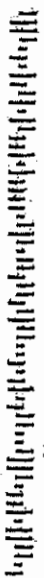
Carnegie Mellon Covid Settlement

c/o RG/2 Claims Administration LLC,

P.O. Box 59479

Philadelphia, PA 19102-9479

19102-947979



MAY 06 2025

Daniele Bellutta
5736 Holden Street
Apartment 12
Pittsburgh, PA 15232

30 April 2025

Carnegie Mellon Covid Settlement
c/o RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9479

To whom it may concern:

I request to opt out of the settlement class for the action *Pfingsten, et al. v. Carnegie Mellon University*, Civil Action No. 2:20-cv-00716 (W.D. Pa.). My information is below.

Name: Daniele Bellutta
Address: 5736 Holden Street, Apartment 12, Pittsburgh, PA 15232, United States of America
E-mail address: dbellutt@andrew.cmu.edu

Sincerely,


Daniele Bellutta

DANIELE BELLOTTA
5736 HOLDEN ST
APT 12
PITTSBURGH, PA 15232

PITTSBURGH PA 150
2 MAY 2025 PM 2 L



CARNEGIE MELLON COVID SETTLEMENT
C/O R4/2 CLAIMS ADMINISTRATION LLC
P.O. BOX 59479
PHILADELPHIA, PA 19102-9479

19102-947979

