

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

ALEC FABER, individually and on behalf of all others similarly situated; and AHNAF RAHMAN, individually and on behalf of others similarly situated,

Plaintiffs,

v.

CORNELL UNIVERSITY,

Defendant.

Case No.: 3:20-cv-00467 MAD/ML

**PLAINTIFFS' NOTICE OF UNOPPOSED MOTION TO PRELIMINARILY APPROVE  
CLASS ACTION SETTLEMENT, CERTIFY THE CLASS, APPOINT CLASS  
COUNSEL, APPROVE PROPOSED CLASS NOTICE, AND SCHEDULE A FINAL  
APPROVAL HEARING**

**PLEASE TAKE NOTICE** that upon the Joint Declaration of Roy T. Willey and (Eddie) Jae K. Kim, sworn to on March 6, 2023, and the accompanying exhibits and memorandum of law, and upon all prior proceedings, pleadings, and filings in the above-captioned action, Plaintiffs Alec Faber and Ahnaf Rahman (collectively, "Plaintiffs") will, and hereby do, move this Court at the United States District Court for the Northern District of New York, James T. Foley U.S. Courthouse, 445 Broadway, Courtroom 5, Albany, NY 12207, before the Hon. Mae A. D'Agostino, United States District Judge, for an Order under Federal Rule of Civil Procedure 23: (1) preliminarily approving the proposed Settlement on behalf of the Settlement Class Members according to the terms of the Stipulation of Settlement; (2) provisionally certifying, for purposes of the Settlement only, the following Settlement Class:

[A]ll students enrolled in a degree-bearing Cornell program for the Spring 2020 semester, with the exception of: (i) any person who withdrew from Cornell on or before March 1, 2020; (ii) any person enrolled for the Spring 2020 semester solely in a program that, at the beginning of the Spring 2020 semester, was to be delivered as an online program; (iii) any person who executes and files a proper

and timely opt-out request to be excluded from the Settlement Class; and (iv) the legal representatives, successors or assigns of any such excluded person;

(3) preliminarily appointing Plaintiffs as Settlement Class Representatives; (4) preliminarily appointing the law firms of Lynch Carpenter, LLP; Poulin | Willey | Anastopoulos, LLC (formerly known as Anastopoulos Law Firm LLC); Cherundolo Law Firm, PLLC; and Toptani Law, PLLC as Class Counsel to act on behalf of the Settlement Class and the Settlement Class Representatives with respect to the Settlement; (5) approving the Parties' proposed settlement procedure, including approving the Parties' selection of KCC, LLC, as Settlement Administrator and approving the Parties' proposed schedule; (6) entering the proposed Order Granting Preliminary Approval of the Settlement, Directing Notice to the Class, Setting a Hearing on Final Approval, and Provisionally Certifying the Proposed Class, attached as Exhibit B to the Settlement Agreement, which is attached as Exhibit 1 to the Joint Declaration of Roy T. Willey and (Eddie) Jae K. Kim; and (7) granting such other and further relief as may be just and appropriate.

Oral argument is requested to the extent desired by the Court.

Dated: March 6, 2023

Respectfully Submitted

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 6, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

*/s/ (Eddie) Jae K. Kim*  
(Eddie) Jae K. Kim

**UNITED STATES DISTRICT COURT  
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**MEMORANDUM OF POINTS AND AUTHORITIES 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**

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## INTRODUCTION

Subject to the Court’s approval, this action arising out of Cornell University’s (“Cornell”)<sup>1</sup> transition to virtual education in response to the COVID-19 pandemic is settled for the amount of \$3,000,000.00, inclusive of all administrative expenses, attorneys’ fees, and other costs of litigation (“Settlement”).

In this putative class action, Plaintiffs Alec Faber and Ahnaf Rahman (“Settlement Class Representatives”) (collectively with Cornell, the “Parties”) allege that they and other similarly situated students enrolled in an on-campus degree-bearing course of study at Cornell and paid tuition and various fees in exchange for Cornell’s promise to provide the unique benefits of an in-person, on-campus educational experience. Settlement Class Representatives further allege that this contract was breached when Cornell transitioned Spring 2020 in-person classes to remote learning in response to the COVID-19 pandemic. Further, they allege that Cornell’s shift to remote education gave rise to claims of unjust enrichment, conversion, and violations of New York General Business Law §§ 349, 350. Cornell denies all claims.

Settlement Class Representatives and Cornell have reached an agreement to settle Settlement Class Representatives’ and the Settlement Class Members’ claims, as set forth in the Settlement Agreement which is attached as Exhibit 1 to the contemporaneously filed Joint Declaration of Roy T. Willey and (Eddie) Jae K. Kim (“Joint Decl.”).<sup>2</sup> Therefore, in accordance with Fed. R. Civ. P. 23(e), the Parties request the Court enter the proposed Preliminary Approval Order that would:

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<sup>1</sup> All capitalized terms used throughout this brief shall have the meanings ascribed to them in the Settlement Agreement.

<sup>2</sup> All referenced Exhibits are attached to the Joint Decl.

1. Have the Consolidated Class Action Complaint (Dkt. No. 33), serve as the operative complaint in this Action;
2. Grant preliminary approval of the proposed Settlement;
3. Provisionally certify, for settlement purposes only pursuant to Rule 23, the Settlement Class which consists of all students enrolled in a degree-bearing Cornell program for the Spring 2020 semester, with the exception of: (i) any person who withdrew from Cornell on or before March 1, 2020; (ii) any person enrolled for the Spring 2020 semester solely in a program that, at the beginning of the Spring 2020 semester, was to be delivered as an online program; (iii) any person who executes and files a proper and timely opt-out request to be excluded from the Settlement Class; and (iv) the legal representatives, successors or assigns of any such excluded person;
4. Preliminarily appoint Plaintiffs Alec Faber and Ahnaf Rahman as Settlement Class Representatives;
5. Preliminarily appoint law firms of Lynch Carpenter, LLP; Poulin | Willey | Anastopoulo, LLC (formerly known as Anastopoulo Law Firm LLC); Cherundolo Law Firm, PLLC; and Toptani Law, PLLC as Class Counsel for the Settlement Class;
6. Approve the Parties' proposed settlement procedure, including by:
  - a. approving the Parties' selection of KCC, LLC, as Settlement Administrator;
  - b. approving the Parties' proposed schedule for the motion for final approval, the potential Settlement Class Members' opt-out statements or objections, and the Final Approval Hearing; and

- c. approving the form and content of, and directing the distribution of, the proposed Short Form Notice and Long Form Notice substantially in the form that is attached as Exhibits C and A respectively to the Settlement Agreement and Release; and

7. Enter the proposed Preliminary Approval Order attached as Exhibit B to the Settlement Agreement.

Cornell supports Settlement Class Representatives' request for preliminary approval of the proposed Settlement. Cornell also agrees to provisional certification of the proposed Settlement Class for settlement purposes only. Cornell denies Settlement Class Representatives' claims in this Action; denies all allegations of wrongdoing, fault, liability, or damage of any kind to Settlement Class Representatives and to the proposed Settlement Class; denies all class action allegations; and denies Settlement Class Representatives' factual allegations in this motion. Nevertheless, taking into account the uncertainty and risks inherent in litigation generally and the certainty of a negotiated settlement, Cornell has agreed to resolve this case because the proposed Settlement will benefit current and will avoid further expense, burden, and distraction from its educational mission.

As set forth below, the proposed Settlement is the product of fully informed, arms-length settlement negotiations, including two mediation sessions (one before Judge Randolph F. Treece and one before Judge Sidney I. Schenkier). The Settlement satisfies all of the prerequisites for preliminary approval and certification of the Settlement Class. The proposed Settlement is fair, reasonable, and adequate as it recognizes the risks of continued litigation, in light of Cornell's forthcoming summary judgment motion (for which the filing deadline was adjourned by Text Order, Dkt. 151) and Settlement Class Representatives' pending class certification motion, while providing substantial relief to the Settlement Class Members. For these reasons, and those fully

articulated below, Settlement Class Representatives respectfully request that the Court preliminarily approve the Settlement and enter the proposed Preliminary Approval Order.

### **BACKGROUND AND STATUS OF LITIGATION**

On April 23, 2020, Olivia Haynie filed this putative class action against Cornell alleging breach of contract, unjust enrichment, and conversion stemming from Cornell's decision to transition to virtual learning in response to the COVID-19 pandemic during the Spring 2020 semester, and seeking partial refunds of tuition and certain mandatory fees. *See Haynie v. Cornell University*, No. 3:20-cv-0467, Dkt. No. 1 (N.D.N.Y.). On April 25, 2020, and May 31, 2020, Settlement Class Representatives respectively filed nearly identical class action complaints against Cornell. *See Faber v. Cornell*, No. 3:20-CV-471, Dkt. No. 1 (N.D.N.Y.); *Rahman v. Cornell University*, No. 3:20-CV-592, Dkt. No. 1 (N.D.N.Y.). On August 18, 2020, Settlement Class Representatives filed a motion to consolidate these actions. *See* Dkt. No. 27. The motion to consolidate was granted, and, soon thereafter, Settlement Class Representatives filed an amended consolidated complaint. *See* Dkt. Nos. 32, 33. In the amended complaint, Settlement Class Representatives added Plaintiff Emilio Espejo to this Action. *See* Dkt. No. 33. On October 29, 2020, Plaintiff Haynie voluntarily dismissed her claim. *See* Dkt. Nos. 36, 37.

On November 10, 2020, Cornell filed a motion to dismiss. *See* Dkt. No. 38. After full briefing by the parties and oral argument before the Court, the Court issued an order dismissing Plaintiff Espejo, a parent of a student, based on lack of standing. Further, the Court denied Cornell's motion to dismiss with regards to Settlement Class Representatives' breach of contract claims relating to tuition and fees, while granting the motion as to their claims regarding room and board, unjust enrichment, conversion, and violations of New York General Business Law. *See* Dkt. No. 54. Cornell filed a motion for partial reconsideration of this order. *See* Dkt. No. 57. The Parties

then agreed to mediate the matter. *See* Dkt. No. 70. Around the same time, the Parties began exchanging discovery requests and responses.

On August 18, 2021, the Parties met for court-ordered mediation, which was not successful in resolving this case. *See* Dkt. No. 83. Thereafter, the Court issued an order on the aforementioned motion for partial reconsideration on October 25, 2021, dismissing Settlement Class Representatives' first cause of action for breach of contract with respect to the tuition claim. *See* Dkt. No. 98. After engaging in further discovery, the Parties agreed to meet again for mediation on June 9, 2022, which was also unsuccessful.

The Parties completed discovery, including depositions of Settlement Class Representative Rahman on August 13, 2022, Settlement Class Representative Faber on August 26, 2022, and multiple Cornell employees in September 2022 pursuant to Fed. R. Civ. P. 30(b)(6) (including Cornell's Director of Finance Operations in Student and Campus Life, Associate Dean for Administration and Finance in Student and Campus Life, Director of Campus Activities, Senior Director of Administrative Services in Cornell Health, and Dean of Students). Settlement Class Representatives also deposed Cornell's expert witness.

On October 3, 2022, Settlement Class Representatives moved to certify a proposed fees class. *See* Dkt. No. 132. Cornell opposed the motion for class certification on October 31, 2022. *See* Dkt. No. 137. Settlement Class Representatives filed their reply in further support of the class certification on November 14, 2022. *See* Dkt. No. 142. Following the submission of these briefs, and before the deadline for dispositive motions, the Parties reinitiated settlement discussions, negotiated, and eventually agreed to terms for a proposed class-wide settlement.

## SUMMARY OF THE TERMS OF THE PROPOSED CONTRACT

The key components of the Settlement are set forth below, and a complete description of its terms and conditions are contained in the Settlement Agreement.

### **A. The Proposed Rule 23 Class**

Through the Settlement Agreement, the Parties stipulate to the certification of the Settlement Class, which is defined as follows:

[A]ll students enrolled in a degree-bearing Cornell program for the Spring 2020 semester, with the exception of: (i) any person who withdrew from Cornell on or before March 1, 2020; (ii) any person enrolled for the Spring 2020 semester solely in a program that, at the beginning of the Spring 2020 semester, was to be delivered as an online program; (iii) any person who executes and files a proper and timely opt-out request to be excluded from the Settlement Class; and (iv) the legal representatives, successors or assigns of any such excluded person.

Should the Court grant final approval of the Settlement, by operation of law and as set forth in Paragraph 10 of the Settlement Agreement: (a) all members of the Releasing Settlement Class shall be deemed to have released any and all Released Claims against the Released Cornell Parties, and (b) shall forever be barred and enjoined from prosecuting any or all of the Released Claims against any of the Released Cornell Parties. KCC, LLC, if appointed, shall serve as the Settlement Administrator and shall be responsible for administering all aspects of the Settlement, including the distribution of notice and Settlement Fund and the establishment and maintenance of a Settlement Website.<sup>3</sup>

### **B. The Proposed Class Notice**

Within fourteen (14) days after entry of the Preliminary Approval Order, Cornell shall provide the Settlement Administrator with a list from its University Registrar's records that

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<sup>3</sup> See generally Declaration of Ana Espinoza of KCC, LLC in Support of Plaintiffs' Motion to Preliminary Approval Class Action Settlement, Certify the Class, Appoint Class Counsel, Approve Proposed Class Notice, and Schedule a Final Approval Hearing attached as Exhibit 7.

includes the names and last known email address and, if no e-mail address is available, a postal address, to the extent available, belonging to all Potential Settlement Class Members. *See* Ex. 1, at ¶ 17. Shortly after receiving the Class List, the Settlement Administrator will send the Short Form Notice (attached to the Settlement Agreement as Exhibit C) via email or U.S. Mail. *See id.*, at ¶ 18. The Short Form Notice shall advise the Potential Settlement Class Members of their rights under the Settlement, including the right to be excluded from and/or object to the Settlement or its terms. The Short Form Notice shall also inform Potential Settlement Class Members that they can access the Long Form Notice on the Settlement Website, which shall be established by the Settlement Administrator. The Long Form Notice shall advise the Potential Settlement Class Members of the procedures specifying how to request exclusion from the Settlement or submit an objection to the Settlement. *See id.*, at ¶ 19.

The Settlement Website will also include the Settlement Agreement, the Long Form Notice, any relevant Court orders regarding the Settlement, and a list of frequently asked questions mutually agreed upon by the Parties. *See id.*, at ¶ 20. Contact information for the Settlement Administrator, including a Toll-Free number, as well as Settlement Class Counsels' contact information will be provided. *Id.* The proposed Long Form Class Notice describes plainly: (i) the terms and effect of the Settlement Agreement; (ii) the time and place of the Final Approval Hearing; (iii) how the recipients of the Class Notice may object to the Settlement; (iv) the nature and extent of the release of claims; (v) the procedure and timing for objecting to the Settlement; and (vi) the form and methods by which Potential Settlement Class Member may either participate in or exclude themselves from the Settlement. *See id.*, Ex. A.

**C. Monetary Terms**

The proposed Settlement Fund is a non-reversionary cash payment of three million dollars (\$3,000,000.00). *See id.*, at ¶ 39. 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 Service Awards to the Settlement Class Representatives, in recognition of the risks and benefits of their participation and substantial services they performed. *See id.*, at ¶ 40. After all applicable fees and expenses are deducted, the Net Settlement Fund will be allocated equally on a *pro rata* basis to each Settlement Class Member. *Id.*, at ¶ 4. Within sixty (60) days after the Effective Date, the Settlement Administrator will send Settlement Class Members their portion of the Settlement Benefit by check, Venmo, or PayPal. *See id.*, at ¶¶ 7-8. The Settlement Administrator will pay all legally mandated Taxes pursuant to the Escrow Agreement prior to distributing the Settlement Benefit to Settlement Class Members. *See id.*, at ¶ 44. 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 and Uncashed Settlement Checks shall be donated, as a *cy pres* award, to the Cornell Access Funds. *Id.*, at ¶¶ 1(kk), 8.

**D. Dismissal and Release of Claims**

The Parties and Settlement Class Members who do not timely and validly opt-out of the Settlement Class will be bound by the terms of the Settlement, including the release and discharge of the Released Claims against the Released Persons. The Released Claims include any claims the Settlement Class Members have now or may have in the future with respect to the University's

moving to an online remote format in the spring semester of 2020 because of COVID-19. *See id.*, at ¶¶ 10-15. These releases are described in the proposed Long Form Class Notice. *See id.*, Ex. A.

**E. Proposed Schedule Following Preliminary Approval**

<b>EVENT TIMING</b>	
Mailing of Class Notices	<p>Within fourteen (14) calendar days after entry of Preliminary Approval, Cornell will produce a list of Potential Settlement Class Members to the Settlement Administrator (<i>Id.</i>, at ¶ 17).</p> <p>Within thirty (30) calendar days after entry of Preliminary Approval, the Settlement Administrator will send the Short Form Notice to Potential Settlement Class Members (<i>Id.</i>, at ¶ 18).</p>
Deadline for Filing Objections to or Requests for Exclusion from the Settlement	Within forty-five (45) days after the issuance of the Short Form Notice ( <i>Id.</i> , at ¶¶ 23, 29).
Final Approval Hearing	No less than seventy-five (75) days after the Short Form Notice is disseminated ( <i>Id.</i> , at ¶ 37).

**ARGUMENT**

**A. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED BY THE COURT**

It is well settled in the Second Circuit that to approve a class action settlement, the court must find that it is “fair, adequate, and reasonable, and not a product of collusion.” *Joel A. v. Giuliani*, 218 F.3d 132, 138 (2d Cir. 2000). Fairness is determined upon review of both the terms of the settlement agreement and the negotiating process that led to such agreement. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir.) (citing *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir.2001)). “A ‘presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel

after meaningful discovery.” *Id.* Indeed, the settlement of class action cases is *strongly encouraged* by the courts. *Id.* at 116–17 (citations omitted). As the Southern District of New York outlined, “[m]ost class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them.” *In re Austrian and German Bank Holocaust Litig.*, 80 F.Supp.2d 164, 174 (S.D.N.Y.2000), *aff’d*, 236 F.3d 78 (2d Cir. 2001).

In evaluating the adequacy of a settlement agreement, courts in this Circuit generally consider the factors enunciated by the Second Circuit in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir.1974). These factors are:

- 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.

*City of Detroit*, 495 F.2d at 463. Courts in the Second Circuit interpreted Rule 23 to require a determination of whether the proposed settlement fell “within the range of possible final approval.” *See In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. 05-MD-1720, 2012 WL 5989763, at \*1 (E.D.N.Y. Oct. 24, 2012) (“Preliminary approval is appropriate where the proposal appears to be the product of serious negotiation and further appears to be within the range of possible final approval.”); *Chery v. Conduent Educ. Servs., LLC*, No. 1:18-CV-75, 2022 WL 2966439, at \*2 (N.D.N.Y. July 26, 2022) (finding the proposed settlement fell within “the range of reasonableness and potential for final approval”).

Class Counsel believes the terms of the proposed settlement are fundamentally fair, reasonable, and adequate, especially when considering all the risks associated with litigating this matter further. Further, they believe the Settlement is in the best interests of the Settlement Class. Courts recognize that counsel's judgment is entitled to significant weight. *Thompson v. Cmty. Bank, N.A.*, No. 819CV919MADCFH, 2021 WL 4084148, at \*6 (N.D.N.Y. Sept. 8, 2021) (“great weight is accorded to counsel's recommendation”) (internal citations omitted).

**1. Complexity, Expense, and Likely Duration of the Litigation**

“Most class actions are inherently complex and settlement avoids the costs, delays, and multitude of other problems associated with them.” *Story v. SEFCU*, No. 118CV764MADDJS, 2021 WL 736962, at \*8 (N.D.N.Y. Feb. 25, 2021) (citing *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000), *aff'd* 236 F.3d 78 (2d Cir. 2001)). Here, this Action is part of a genre of cases involving students seeking partial refunds of tuition and mandatory fees brought against universities throughout the country which involves novel claims, include no trial verdict, and has resulted in a mixed bag of results during pre-trial litigation. The Parties have determined that the Settlement is preferable to continuing litigation in this Action since the expense for Cornell's forthcoming motion for summary judgment and the costs for Settlement Class Representative's opposition, along with any other motions that may arise after the Court enters its order on the motion for class certification, would be substantial. Given the anticipated motion practice, which could include motions for reconsideration and appeals, this Action could remain pending for some time. Accordingly, this factor favors preliminarily approving the Settlement.

**2. Reaction of the Class to the Settlement**

Settlement Class Representatives support the Settlement and its preliminary approval. There are currently no objections to the Settlement, and this factor can be addressed fully at the Final Approval Hearing. Thus, this factor favors preliminary approval.

**3. Stage of the Proceedings and the Amount of Discovery Completed**

As noted above, the Parties have engaged in significant discovery and fully briefed several issues. Indeed, Cornell produced a significant number of documents, including financial information that allowed Settlement Class Representatives to develop a comprehensive picture of the damages at issue, as well as Cornell's ability to pay. Joint Decl., at ¶ 23. Class Counsel also considered the voluminous other cases arising out of COVID-19 school related closures, of which Class Counsel are at the forefront. *See id.*, at ¶ 19. Class Counsel's unique insight to this type of litigation, combined with the information obtained from Cornell in this case, fortified Settlement Class Representatives' appreciation of the risks ahead should they proceed with further litigation.

Additionally, the Parties participated in two mediations sessions before two court approved mediators. The participation of these mediators ensured that the settlement negotiations were conducted at arm's length and without collusion between the Parties. *See D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in [...] settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure"). For these reasons, this factor also weighs in favor of approval of the Settlement.

**4. Risks of Establishing Liability and Damages**

In considering this factor, "the Court need only assess the risks of litigation against the certainty of recovery under the proposed settlement." *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 459 (S.D.N.Y. 2004); *Baudin v. Res. Mktg. Corp., LLC*, No.

119CV386MADCFH, 2020 WL 4732083, at \*8 (N.D.N.Y. Aug. 13, 2020), *on reconsideration in part*, No. 119CV386MADCFH, 2020 WL 6131758 (N.D.N.Y. Oct. 19, 2020). “In assessing the settlement, the Court should balance the benefits afforded to members of the Class and the immediacy and certainty of a substantial recovery for them against the continued risks of litigation.” *Castagna v. Madison Square Garden, L.P.*, 2011 WL 2208614, at \*6 (S.D.N.Y. June 7, 2021) (citing *Maley v. Del Global Tech Corp.*, 186 F. Supp. 2d 358, 364 (S.D.N.Y. 2002)). Indeed, courts have recognized that “[l]itigation inherently involves risks.” *Id.*

Here, class certification has been fully briefed but as the Court has yet to rule on it, there remains risks from both sides regarding the disposition of class certification. Furthermore, Cornell has begun the process of filing a motion for summary judgment, and issues of liability and damages are disputed. While Settlement Class Representatives will vigorously oppose any motion for summary judgment, if filed, they cannot discount the possibility that the Court could grant summary judgment in Cornell’s favor. Moreover, there exists competing decisions on these issues in similar cases throughout the country.

Therefore, it is Class Counsel’s considered opinion that settlement on the proposed terms at this juncture in the Action, given all the risks involved, is the most prudent course. Evaluated against these risks, \$3 million recovery now is an excellent result for the Settlement Class. Accordingly, this factor weighs in favor of preliminarily approving the Settlement.

#### **5. Maintaining Class-Action Status through Trial Presents a Substantial Risk**

Settlement Class Representatives’ ability to maintain class-action status through trial presented a substantial risk in this Action. Although Settlement Class Representatives believe they will prevail on their motion to certify the class, Cornell has opposed the motion. Moreover, even if the motion is granted, Cornell could still move to decertify the class or narrow the class before

trial or on appeal, as class certification may be reviewed at any stage of the litigation. *See Baudin*, No. 119CV386MADCFH, 2020 WL 4732083, at \*8 (“the complexity of Plaintiff’s claims ipso facto creates uncertainty”); *see also Christine Asia Co. v. Jack Yun Ma*, 2019 WL 5257534, at \*13 (S.D.N.Y. Oct. 16, 2019) (stating that this risk weighed in favor of final approval because “a class certification order may be altered or amended any time before a decision on the merits”); Fed. R. Civ. P. 23(c) (authorizing a court to decertify a class at any time). “The risk of maintaining class status throughout trial [] weighs in favor of final approval.” *McMahon v. Olivier Cheng Catering & Events, LLC*, No. 08 CIV. 8713 (PGG), 2010 WL 2399328, at \*5 (S.D.N.Y. Mar. 3, 2010).

#### **6. Ability of Defendant to Withstand a Greater Judgment**

A “defendant’s ability to withstand a greater judgment, standing alone, does not suggest that the settlement is unfair.” *Flores v. Anjost Corp.*, No. 11 Civ. 1531 (AT), 2014 WL 321831, at \* 6 (S.D.N.Y. Jan. 29, 2014) (citation omitted); *Kommer v. Ford Motor Co.*, No. 117CV0296LEKDJS, 2020 WL 7356715, at \*5 (N.D.N.Y. Dec. 15, 2020) (agreeing defendant could pay a greater judgment “[b]ut by itself, this fact has little significance.”). This factor alone is not an impediment to settlement when other factors favor the settlement. *See In re Vitamin C Antitrust Litig.*, No. 06MD–1738 (BMC)(JO), 2021 WL 5289514, at \* 6 (E.D.N.Y. Oct. 23, 2021) (acknowledging that “in any class action against a large corporation, the defendant entity is likely to be able to withstand a more substantial judgment, and [...] this fact alone does not undermine the reasonableness of the instant settlement.”).

Although Cornell may have the ability to withstand a greater judgment, the outstanding result—a \$3 million settlement—is still fair, reasonable, and adequate to compensate the proposed Settlement Class, and weighs in favor of preliminary approval. Notably, courts have approved comparable settlements in factually similar matters in regards to student body and school sizes to

be fair, reasonable, and adequate. *See Choi v. Brown University*, No. 1:20-cv-00191 (D.R.I., 2022) (Court approving settlement for \$1.5 million) (Ex. 6.); and *Fittipaldi v. Monmouth University*, No. 3:20-cv-05526, (D. N.J., 2022) (Court approving settlement for \$1.3 million).

**7. Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and all the Attendant Risks of Litigation**

“The adequacy of the amount offered in settlement must be judged “not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of Plaintiffs’ case.” *In re “Agent Orange” Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff’d*, 818 F.2d 145 (2d Cir. 1987); *Lowe v. NBT Bank, N.A.*, No. 319CV1400MADML, 2022 WL 4621433, at \*9 (N.D.N.Y. Sept. 30, 2022) (same). Here, the proposed Settlement confers a substantial and real benefit on the Settlement Class Members in one of a series of novel breach of contract cases arising out of educational institutions’ responses to the COVID-19 pandemic as opposed to unclear results and risks of ongoing litigation in this Action given Cornell’s forthcoming motion for summary judgment and the Court’s decision on class certification. Numerous similar cases have been filed across the country, including in New York, and raised issues that are currently being decided, including: what is a college student’s contract with a university and how can one accurately value the economic differences between in person, online, and hybrid-delivered educational services. As can be seen in this Court’s detailed and thoughtful motion to dismiss decision, claims in these cases may be dressed in simple breach of contract garb; but they contain novel complexities.

Achieving a meaningful return for affected Cornell students in the near term, while the Second Circuit is still mulling the metes and bounds, and ultimate viability, of these types of class claims, is especially notable in light of the fact that there exists the possibility of recovering nothing at all. The Settlement will result in Settlement Class Members receiving a *pro rata* share of the

Net Settlement Fund based on the ratio of (a) the total number of Potential Settlement Class Members to (b) the total Net Settlement Fund. Ex. 1, at ¶¶ 4-5. The resulting ratio will be multiplied by the Net Settlement Fund to determine each Settlement Class Member's Settlement Benefit. *Id.* Consequently, preliminary approval is warranted.

#### **8. The Remaining Rule 23(e)(2) Factors Support Preliminary Approval**

Rule 23(e)(2) requires adequate representation of the class, a settlement negotiated at arm's length, adequate relief to the class, and equitable treatment of class members. Fed. R. Civ. P. 23(e)(2). These factors also support preliminary approval. First, all students have the right to opt-out of this Settlement. *See* Ex. 1, at ¶ 5. Second, Settlement Class Members will receive a *pro rata* share of the Net Settlement Fund based on the ratio of (a) the total number of Potential Settlement Class Members to (b) the total Net Settlement Fund. *Id.*, at ¶¶ 4-5. Further, the Settlement does not unduly grant preferential treatment to anyone. Instead, Settlement Class Representatives are permitted to seek, subject to the Court's approval, a reasonable Service Award that recognizes their efforts in prosecuting and resolving this Action and the risks associated with bringing it. *See id.*, at ¶ 52.

Finally, the provision regarding attorneys' fees is reasonable. Pursuant to the Settlement Agreement, prior to the Objection/Exclusion Deadline, Class Counsel will file a motion seeking an amount not to exceed one-third of the Settlement Amount as a fee award, plus reimbursement of all reasonable litigation expenses incurred. *Id.*, at ¶ 53; *see Kirby v. FIC Restaurants, Inc.*, No. 519CV1306FJSML, 2020 WL 5791582, at \*4 (N.D.N.Y. Sept. 28, 2020) quoting *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) (“(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation ...; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy

considerations.”). The trend in this Circuit is toward the percentage method, which “directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation,” *In re Lloyd's Am. Tr. Fund Litig.*, No. 96 CIV.1262 RWS, 2002 WL 31663577, at \*25 (S.D.N.Y. Nov. 26, 2002), *aff'd sub nom. Adams v. Rose*, No. 03-7011, 2003 WL 21982207 (2d Cir. Aug. 20, 2003); *see In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 520 (E.D.N.Y. 2003), *aff'd sub nom. Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96 (2d Cir. 2005) (“The trend in the Second Circuit is toward the percentage method.”). Irrespective of which method is used, the “*Goldberger* factors” ultimately determine the reasonableness of a common fund fee. *Goldberger*, 209 F.3d at 50; *see, e.g., Kirby*, 2020 WL 5791582, at \*4 (“the Court is guided by the factors set out in *Goldberger*”). Importantly, this fee request is plainly documented in the proposed Short Form and Long Form Class Notices and falls within the scope of the “*Goldberger* factors” as previously stated above. As such, Class Counsel will be fully prepared to substantiate their final fee request after Settlement Class Members have had an opportunity to opine on its propriety.

Thus, all applicable factors support preliminary approval of this proposed Settlement.

**B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS FOR SETTLEMENT PURPOSES**

**1. The Rule 23 Class Should Be Certified As Provided For In The Settlement Agreement**

Settlement Class Representatives request that the Court certify the proposed Class for settlement purposes only. These proposed Settlement Class plainly satisfies the four elements of Rule 23(a), and one or more of the requirements of Rule 23(b). Importantly, courts across the country have granted certification when evaluating settlement of analogous claims. *See In re Columbia Univ. Tuition and Fee Action*, Case No. 1:20-cv-03208, Dkt. No. 115 at 3 (JMF)

(S.D.N.Y. Mar. 29, 2022) (final judgment certifying the proposed class for settlement purposes); *Choi et al v. Brown University*, Case No. 1:20-cv-00191-JJM-LDA, Dkt. No. 78 at 2 (D.R.I. Sept. 6, 2022) (preliminarily approving the proposed settlement and conditionally certifying the proposed class); *Wright v. S. New Hampshire Univ.*, 565 F. Supp. 3d 193, 210 (D.N.H. 2021) (granting preliminary approval of the parties’ proposed class action settlement and preliminarily certifying the proposed class for settlement purposes); *see also Fittipaldi v. Monmouth University*, No. 3:20-cv-05526, (D. N.J., 2022); *Smith v. Univ. Pennsylvania*, Case No. 2:20-cv-02086-TJS, Dkt. No. 113 (E.D.P.A. 2023). Moreover, Cornell does not oppose certification of the Class for settlement purposes only.

## **2. Rule 23(a) Requirements Are Satisfied**

To certify a class under Rule 23, a plaintiff must establish that the class meets each of the following four requirements: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 357-360 (2011). Here, all four elements are clearly satisfied.

### **a. 23(a)(1) - “Numerosity”**

The proposed Class is sufficiently numerous. Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23. Here, there are approximately 24,000 students in the Class. *See* Joint Decl., at ¶ 50. The numerosity requirement is therefore amply satisfied.

### **b. Rule 23(a)(2) – “Commonality”**

The Settlement Class also satisfies the commonality requirement. Rule 23(a)(2) requires that there be “questions of law or fact common to the class,” and that the class members “have suffered the same injury.” *Wal-mart Stores*, 564 U.S., at 349-50. The commonality analysis

requires the court to determine (1) whether the class members' claims "will in fact depend on the answers to common questions," *id.*, at 2554, and (2) whether classwide proceedings have the capacity to "generate common answers apt to drive the resolution of the litigation." *id.*, at 2551 (quoting Richard Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L.Rev. 97, 132 (2009)); *see also In re Nassau County Strip Search Cases*, 461 F.3d 219, 227 (2d Cir.2006).

Settlement Class Representatives easily satisfy the "low hurdle" of demonstrating commonality. Settlement Class Representatives assert common questions to the Settlement Class that include: (a) whether Cornell accepted money from Settlement Class Members in exchange for the alleged promise to provide services; (b) whether Cornell provided the services for which the Settlement Class Members allegedly contracted; and (c) whether the Settlement Class Members are entitled to a refund for that portion of the services that was allegedly not delivered. These common questions, which target the same alleged misconduct by Cornell, satisfy Rule 23(a)(2). As such, the Settlement Class raises common questions of law and fact, which arise from a common nucleus of operative facts with respect to their claims against Cornell.

**c. Rule 23(a)(3) – "Typicality"**

Rule 23(a)(3) requires that Settlement Class Representatives' claims be typical of the class. "Rule 23(a)(3) is satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 291 (2d Cir.1992).

Settlement Class Representatives' experiences were typical of all other students. Settlement Class Representatives and each member of the Settlement Class enrolled as on-campus students of Cornell, registered for in-person classes, paid money in exchange for in-person

education and access to on-campus facilities and services that were denied when Cornell closed its campus in Spring 2020. Joint Decl., at ¶ 15. Moreover, the members of the proposed Class have no individual interests in controlling the litigation because, unlike a tort claim, all of their claims share a common set of facts. As such, the Settlement Class Representatives' claims are typical of the claims of members of the proposed class.

**d. Rule 23(a)(4) – “Adequacy”**

The final requirement of Rule 23(a) requires that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Adequacy of representation requires that the class representative's attorney be qualified, and that the class representative not have interests conflicting with the class in the litigation at hand. *Sosna v. Iowa*, 419 U.S. 393, 403, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975); *Plummer v. Chemical Bank*, 668 F.2d 654, 658 (2d Cir.1982). The determination of adequacy “typically entails inquiry as to whether: (1) plaintiff's interests are antagonistic to the interest of other members of the class and (2) plaintiff's attorneys are qualified, experienced, and able to conduct the litigation.” *Cordes & Co. Fin. Servs. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 99 (2d Cir. 2007) (internal citations omitted).

Here, adequacy is readily met, and Settlement Class Representatives satisfy both prongs. First, Settlement Class Representatives have no interests adverse or antagonistic to Settlement Class Members. Settlement Class Representatives seek to hold Cornell accountable for, among other things, allegedly failing to refund the portion of tuition, fees, and room and board associated with the portion of the Spring 2020 semester its campus was restricted. Further, Settlement Class Representatives have demonstrated allegiance and commitment to the Action. Joint Decl., at ¶¶ 51, 53. As such, Settlement Class Representatives' interests are perfectly aligned with the interests of the Settlement Class, thereby meeting the first adequacy prong. Second, Class Counsel is

qualified, experienced, and competent in complex litigation, and have an established, successful track record in class litigation – including analogous cases to that here. *See* Joint Decl., at ¶ 17; *id.*, at Exs. 2-5. Further, this Court has already appointed Poulin Willey Anastopoulo and determined they were qualified as lead counsel for this action in an interim role while litigation was ongoing. Dkt. No. 32. Accordingly, the adequacy requirement is satisfied.

**e. Rule 23(b) Requirements Are Satisfied Here**

Under Rule 23(b)(3), a class action should be certified when the court finds that common questions of law or fact predominate over individual issues and a class action would be superior to other methods of resolving the controversy. Predominance “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 594, 623 (1997). “At bottom, the superiority analysis requires (1) consideration of the alternative methods of adjudication available for the claims, (2) a comparison of the fairness to all whose interests are implicated between any alternative methods and a class action, and (3) a comparison of the efficiency of each method in adjudicating the claims.” *Atakhanova v. Home Fam. Care, Inc.*, No. 16-CV-6707(KAM)(RML), 2020 WL 4207437, at \*9 (E.D.N.Y. July 22, 2020) quoting 1 Joseph M. McLaughlin, *McLaughlin on Class Actions* § 5:63 (16<sup>th</sup> ed. 2019). “Superiority requires the court “to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative methods of adjudication.” *In re Prudential Ins. Co. of Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 316 (3d Cir. 1998). Here, Settlement Class Representatives readily meet both requirements.

Rule 23(b)(3)’s “predominance requirement is satisfied if resolution of some of the legal or factual questions that qualify each class member’s case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the

issues subject only to individualized proof.” *Id.*, at 118 (internal quotation omitted). As the Supreme Court recently explained, Rule 23(b)(3) “does *not* require a plaintiff seeking class certification to prove that each element of her claim is susceptible to class proof,” only “that common questions *predominate* over any questions affecting only individual class members.” *See Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 467 (2013) (alterations omitted).

Here, the common issues that exist in this case—whether Cornell breached its contracts with Settlement Class Representatives and the Settlement Class by failing to provide them with in-person, on-campus instruction, educational services, and use of facilities after March of 2020—clearly predominate over any individual issues that may exist. Each Settlement Class Member suffered the same harm for the same amount of time due to the same actions or inactions of Cornell. Further, the alleged contractual arrangements between each of Cornell’s students and Cornell—receiving in-person, on-campus instruction, educational services, and use of on-campus facilities—are effectively identical. Similarly, the nature of Cornell’s alleged breach is the same for each member of the Settlement Class, regardless of their academic major, scholarships, or any other ancillary criteria.

Second, courts must weigh the following factors to determine whether a class action is superior to other alternative methods of adjudication: “(A) the class members’ interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.” Fed. R. Civ. P. 23(b)(3)(A)–(D).

In the present case, each factor weighs in favor of superiority. Settlement Class Representatives and the other Settlement Class Members, due to Cornell's alleged misconduct,

experienced almost identical circumstances. Seeing that these cases involve a relatively small amount of damages compared to the enormous investment of time and money that it will take to litigate them, individual Settlement Class Representatives have little interest in and gain little benefit from initiating separate actions, and individual lawsuits would needlessly waste judicial resources as each lawsuit would likely involve the same evidence concerning Cornell's alleged wrongdoing. Indeed, this proposed Settlement effectively resolves approximately 24,000 students' lawsuits. Ex. 1, at ¶ 10; *see* Joint Decl., at ¶ 41. Accordingly, the Court should enter an order certifying the Settlement Class.

**C. THE PROPOSED SETTLEMENT NOTICE TO THE CLASS SHOULD BE APPROVED**

“Rule 23(e)(1)(B) requires the Court to direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.” MANUAL FOR COMPLEX LITIGATION, §21.312. Under Rule 23(e)(1)(B), “the court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B). Where, as here, notice is to be provided to a settlement class that is proposed to be certified under Rule 23(b)(3), the Court is required to “direct to class members the best notice that is practicable under the circumstance[s].” Fed. R. Civ. P. 23(c)(2)(B). This includes “individual notice to all members who can be identified through reasonable effort.” *Id.* Notice may be made by “United States mail, electronic means, or other appropriate means.” *Id.* “The standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness.” *Wal-Mart Stores*, 396 F.3d at 113-14. The Court must also ensure that the proposed notice is substantively reasonable. “Under Rule 23(c)(2)(B), the notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv)

that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the 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).” *Richard v. Glens Falls Nat'l Bank*, No. 120CV00734BKSDJS, 2022 WL 1102451, at \*3 (N.D.N.Y. Apr. 13, 2022) quoting Fed. R. Civ. P. 23(c)(2)(B).

Here, the Short Form and Long Form Notices are clear and concise while providing all necessary information as required. *See* Ex. 1, at Exs. A and C. The Parties proposed notice plan includes email (where available), direct mail (where email is not available), and posting on Cornell’s own website a link to the Settlement Website. Information can likewise be found by calling a toll-free number or visiting the Settlement Website. This comprehensive notice plan is intended to fully inform Potential Settlement Class Members of the proposed Settlement, and the information they require in order to make informed decisions about their rights. Accordingly, this Court should approve the form of notice and the method of publication that Settlement Class Representatives propose as they satisfy the due process requirements of Fed. R. Civ. P. 23.

**D. LYNCH CARPENTER, LLP AND POULIN | WILLEY | ANASTOPOULO, LLC SHOULD BE APPOINTED AS CLASS COUNSEL**

Fed. R. Civ. P. 23(g) requires the Court to examine the capabilities and resources of counsel to determine whether they will provide adequate representation to the class. Class Counsel – Lynch Carpenter, LLP; Poulin | Willey | Anastopoulo, LLC (formerly known as Anastopoulo Law Firm LLC); Cherundolo Law Firm, PLLC; and Toptani Law, PLLC – easily meet the requirements of Rule 23(g). *See* Exs. 2-5 (firm resumes). Importantly, Settlement Class Representatives are represented by counsel experienced in class action litigation including directly analogous cases. Indeed, these firms were appointed class counsel in a substantially similar matters, as well as interim class counsel in this action. *See* Dkt. No. 32; Joint Decl., at

¶¶ 2, 17. Moreover, Class Counsel's work in this case on behalf of the Settlement Class Representatives and the proposed class and collective has been substantial. Joint Decl., at ¶¶ 19-22. As such, this Court should not hesitate in appointing the foregoing firms as Class Counsel.

### CONCLUSION

The proposed Settlement is fair, reasonable, and adequate. Thus, Settlement Class Representatives respectfully request, for all the reasons set forth above, that preliminary approval be granted, and the Court enter the Preliminary Approval Order so as to permit the Parties to effectuate notice to the Potential Settlement Class Members.

Dated: March 6, 2023

Respectfully Submitted

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 6, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ (Eddie) Jae K. Kim  
(Eddie) Jae K. Kim

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

ALEC FABER, individually and on  
behalf of all others similarly situated; and  
AHNAF RAHMAN, individually and on  
behalf of others similarly situated,

Plaintiffs,

v.

CORNELL UNIVERSITY,

Defendant.

Case No.: 3:20-cv-00467 MAD/ML

**JOINT DECLARATION OF ROY T. WILLEY AND (EDDIE) JAE K. KIM IN  
SUPPORT OF PLAINTIFFS' MOTION TO PRELIMINARILY APPROVE CLASS  
ACTION SETTLEMENT, CERTIFY THE CLASS, APPOINT CLASS COUNSEL,  
APPROVE PROPOSED CLASS NOTICE,  
AND SCHEDULE A FINAL APPROVAL HEARING**

We, Roy T. Willey and (Eddie) Jae K. Kim, declare under penalty of perjury pursuant to the laws of the United States of America, the foregoing are true to the best of our personal knowledge:

1. We are attorneys of record for the Settlement Class Representatives and the Settlement Class. If called upon as a witness, we could and would testify competently as to the matters set forth in this declaration.

2. The law firms of Lynch Carpenter, LLP;<sup>1</sup> Poulin | Willey | Anastopoulo, LLC (formerly known as Anastopoulo Law Firm LLC);<sup>2</sup> Cherundolo Law Firm, PLLC;<sup>3</sup> and Toptani Law, PLLC represent the Settlement Class Representatives, have extensive class action experience, and seek to be appointed Class Counsel.

3. Each of the firms has experience in class action litigation involving breach of contract and unjust enrichment claims, including direct experience in analogous cases. *See* n. 1-3.

4. Attached hereto as **Exhibit 1** is a true and correct copy of the Settlement Agreement.

5. Attached as **Exhibit A** to the Settlement Agreement is a true and correct copy of the Long Form Notice.

6. Attached **Exhibit B** to the Settlement Agreement is a true and correct copy of the Preliminary Approval Order.

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<sup>1</sup> Lynch Carpenter, LLP has been appointed as interim lead counsel, and as Class Counsel, in a number of analogous cases across the country: *See, e.g., Felix, et al. v. Roosevelt Univ.*, No. 20-cv-4793 (N.D. Ill. Nov. 12, 2020); *Pfingsten, et al. v. Carnegie Mellon Univ.*, No. 20-cv-00716 (W.D. Pa. Aug. 26, 2020); *Ryan, et al. v. Temple Univ.*, No. 20-cv-02164 (E.D. Pa. Aug. 21, 2020); *Polley, et al v. Northwestern Univ.*, No. 1:20-cv-04798 (N.D. Ill. Nov. 2, 2020); *Kincheloe, et al v. Univ. of Chicago*, No. 1:20-cv-3015 (N.D. Ill. Feb. 1, 2021); *Vakilzadeh, et al. v. The Trustees of The California State University*, No. 20STCV23134 (Los Angeles Sup. Ct); *Levin, et al. v. The Board of Regents of the University of Colorado*, No. 2020CV31409 (Denver Dist. Ct. Feb. 3, 2021); and *Okolo v. Maryville University of St. Louis*, No. 20SL-CC02850 (21<sup>st</sup> Judicial Circuit Ct., St. Louis County, MO Feb. 9, 2021).

<sup>2</sup> Poulin | Wiley | Anastopoulo, LLC has been appointed lead or co-lead Counsel in the *In Re Columbia University Tuition Refund Litigation*, 1:20-cv-03208-JMF (S.D.N.Y.); *Montesano v. Catholic University of America*, 1:20-cv-01496 (D.D.C.); *Bergeron v. Rochester Institute of Technology*, 6:20-cv06283-CJS (W.D.N.Y.); *Levin v. Bd. of Regents of the University of Colorado*, Case No. 20 CV31409 (St. Ct. Denver Co.); and *Ford v. Rensselaer Polytechnic Institute*, Case No. 20- cv-00470 (N.D.N.Y).

<sup>3</sup> The Cherundolo Law Firm has been appointment co-counsel and served as local counsel for the Plaintiff's in several class action lawsuits including but not limited to *Richard v. Glens Falls National Bank* 1:20-cv-734 (N.D.N.Y.) and *Story v. SFCU*, 1:18-cv-00764 (N.D.N.Y.).

7. Attached as **Exhibit C** to the Settlement Agreement is a true and correct copy of the Short Form Notice.

8. Attached as **Exhibit D** to the Settlement Agreement is a true and correct copy of the Proposed Final Judgment.

9. Attached hereto as **Exhibit 2** is a true and correct copy of the firm resume of Lynch Carpenter, LLP.

10. Attached hereto as **Exhibit 3** is a true and correct copy of the firm resume of Poulin | Wiley | Anastopoulo, LLC.

11. Attached hereto as **Exhibit 4** is a true and correct copy of the biography of John C. Cherundolo of Cherundolo Law Firm, PLLC.

12. Attached hereto as **Exhibit 5** is a true and correct copy of the firm resume of Toptani Law, PLLC.

13. Attached hereto as **Exhibit 6** is a true and correct copy of the order preliminarily approving settlement in *Choi v. Brown University*, No. 1:20-cv-00191(D.R.I., Sept. 2022).

14. Attached hereto as **Exhibit 7**, on behalf of KCC, LLC, is the Declaration of Ana Espinoza regarding Administration Qualifications and Costs of Administration Procedures in support of Plaintiffs' Motion to Preliminarily Approve Class Action Settlement, Certify the Class, Appoint Class Counsel, Approve Proposed Class Notice, and Schedule a Final Approval Hearing.

### **Background and Procedural History**

15. This case is a putative class action focused on Cornell University's ("Cornell") decision in March 2020, in response to COVID-19, to move all learning online for the remainder of the Spring 2020 semester, cancel athletic and other on-campus recreational events, cancel students' meal plans, and order students to stay away from Cornell's campuses. Settlement Class

Representatives further allege that as a result, students no longer received in-person instruction and access on-campus resources. They also allege that Cornell refused to refund any portion of the tuition or fees paid by students. Thus, the Settlement Class Representatives allege that students like them lost the benefits of the bargain for services and education for which they paid but could no longer access or use, in violation of their contract with Cornell.

16. In this contested litigation, the Parties have engaged in significant motion practice, multiple mediations, and substantial discovery.

17. Class Counsel is particularly experienced in the litigation, certification, trial, and settlement of nationwide class action cases. In negotiating this Settlement, Class Counsel had the benefit of years of experience and a familiarity with the facts of this case as well as with other cases involving tuition and/or mandatory fees.

18. Before filing suit, Class Counsel spent many hours investigating the claims of several potential plaintiffs against Cornell. Class Counsel interviewed a number of students and requested public information to gather information about Cornell's conduct and its impact upon consumers. This information was essential to Class Counsel's ability to understand the nature of Cornell's conduct, the terms of the contract with Cornell, and potential remedies.

19. In addition, Class Counsel also expended significant resources researching and developing the legal claims at issue. Class Counsel is familiar with the claims as they have litigated and resolved several similar cases against other universities and colleges involving various types of fees and tuition. Class Counsel has experience in understanding the damages at issue, what information is critical in determining class membership, and what data is necessary to calculate each Settlement Class Member's respective damages.

20. Class Counsel conducted a thorough investigation and analysis of Settlement Class Representatives' claims and engaged in extensive briefing on Cornell's Motion to Dismiss and subsequent Motion for Reconsideration.

21. Class Counsel took significant discovery, including reviewing the hundreds of pages of documents produced by Cornell, taking the depositions of multiple Cornell employees in September 2022 pursuant to Fed. R. Civ. P. 30(b)(6) (including Cornell's Director of Finance Operations in Student and Campus Life, Associate Dean for Administration and Finance in Student and Campus Life, Director of Campus Activities, Senior Director of Administrative Services in Cornell Health, and Dean of Students). Class Counsel also defended the depositions of the Settlement Class Representatives.

22. Class Counsel was well-positioned to evaluate the strengths and weaknesses of Settlement Class Representatives' claims, and the appropriate basis upon which to settle them, as a result of their litigating similar claims in courts across the country.

### **The Settlement**

23. Settlement Class Representatives settled the action with the benefit of having completed substantial, initial discovery, including their own production of documents, numerous depositions, and review of Cornell's significant document production.

24. The review of all this information positioned Class Counsel to evaluate with confidence the strengths and weaknesses of Settlement Class Representatives' claims and prospects for success at class certification, summary judgment, and trial.

25. On August 18, 2021, the Parties participated in a court-ordered mediation, which was not successful in resolving this case. After engaging in further discovery, the Parties participated in a second mediation on June 9, 2022, which was also unsuccessful.

26. After Settlement Class Representatives filed their motion for class certification and the Parties discussed Cornell's intent to file a motion for summary judgment with the Court, the Parties reopened settlement discussions and reached a class-wide settlement.

27. After reaching an agreement, the parties then turned to drafting the comprehensive Settlement Agreement. On March 6, 2023, the Settlement Agreement was fully executed.

28. The settlement in this case is the result of these intensive, arm's-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues of this action.

29. The record provides sufficient information for this Court to determine that the settlement is fair. Further, there is no reason to doubt the Settlement's fairness. Settlement Class Representatives have litigated this action for over two and a half years, and Class Counsel have been involved in similar litigation for the past several years. The litigation has been hard-fought as the parties have engaged in motion practice, fact discovery, and reviewed pertinent documents to understand the scope of the damages at issue and sustained by Settlement Class members.

#### **Terms of the Settlement**

30. The settlement value consists of the monetary settlement amount of \$3,000,000.00. The entire amount is for the direct benefit of the Settlement Class as any remaining funds after distribution will be put into a Student Access Fund for providing assistance to Cornell students who need financial assistance, including enrolled members of the Settlement Class. The settlement amount will be used to pay all settlement awards, attorneys' fees, notice, and administrative costs.

31. The Settlement provides for automatic delivery, without a claims process, to Settlement Class members of the Settlement benefits. Settlement Class members do not have to

submit claims or take any other affirmative step to receive relief under the Settlement or to receive a settlement payment.

32. Class Counsel has not been paid for their extensive efforts or reimbursed for litigation costs and expenses incurred. Class Counsel will file a request for Attorneys' Fee Award with the Court seeking an Attorneys' Fee Award in an amount no more than one-third of the Settlement Fund. Cornell will not oppose Class Counsel's application for said award.

33. The Parties negotiated and reached agreement regarding fees and costs only after agreeing on all material terms of the Settlement. Such award is subject to this Court's approval and will serve to compensate for the time, risk and expense Class Counsel incurred pursuing claims on Settlement Class's behalf.

34. Class Counsel will further request the Court set aside Service Awards of \$10,000.00 for each Settlement Class Representative (for a total of \$20,000.00) to be paid from the Settlement Fund. Any Service Award approved by the Court to Settlement Class Representatives are in addition to any benefits under the Settlement that they may receive as Settlement Class Members. The awards will compensate the Settlement Class Representatives for their time and effort and for the risks they assumed in prosecuting the Action against Cornell. Specifically, Settlement Class Representatives provided assistance that enabled Class Counsel to successfully prosecute the Action and reach the Settlement, including: (1) submitting to interviews with Class Counsel; (2) locating and forwarding responsive documents and information; (3) providing discovery documents; (4) sitting for their depositions; and (5) participating in conferences with Class Counsel. Cornell will not oppose Class Counsel's application.

35. Settlement Class Representatives concluded that the benefits of settlement in this case outweigh the risks and uncertainties of continued litigation, as well as the attendant time and

expenses associated with contested class certification proceedings, completing expert discovery, pretrial motion practice, trial, and potential final appellate review.

### **Risks of Continued Litigation**

36. Settlement Class Representatives and Class Counsel are confident in the strength of their case but are also pragmatic in their awareness of the various associated risks. This genre of cases involving students seeking partial refunds of tuition and mandatory fees brought against universities throughout the country involves novel claims, include no trial verdict, and has resulted in a mixed bag of results during pre-trial litigation. Courts across the country have granted class certification in this context, but some have also denied certification. Settlement Class Representatives also faced the risk of losing at trial. Finally, there has yet to be a definitive ruling by the Second Circuit or by New York state appellate courts.

37. Each of these risks, by itself, could have impeded Settlement Class Representatives' and the Settlement Class's successful prosecution of these claims at trial and in an eventual appeal—resulting in zero benefit to the Settlement Class. Under the circumstances, Settlement Class Representatives and Class Counsel appropriately determined that the Settlement reached with the Cornell outweighs the gamble of continued litigation. This Settlement provides substantial relief to Settlement Class Members without further delay.

38. There is no doubt that continued litigation here would be difficult, expensive, and time consuming. Recovery by any means other than settlement would require additional years of litigation in this Court, especially given the novel nature of this type of litigation.

39. Settlement Class Representatives' \$3 million recovery is outstanding given the complexity of the litigation and the significant barriers that would loom in the absence of

settlement, including motions for class certification, summary judgment, trial and appeals after a favorable verdict.

40. The claims and defenses in this Action are novel and complex, as is clear by the record and Class Counsel's efforts in other COVID-19 tuition and/or mandatory fee cases that have been ongoing for years. There is no doubt that continued litigation here would be difficult, expensive, and time consuming. The risks and obstacles in this case are just as great as those in other tuition and/or fee cases and this case would likely have taken years as well to successfully prosecute. Recovery by any means other than settlement would require additional years of litigation in this Court and the Second Circuit Court of Appeals. Under the circumstances, Settlement Class Representatives and Class Counsel appropriately determined that the Settlement reached with Cornell outweighs the gamble of continued litigation.

41. The Settlement provides immediate and substantial benefits to approximately 24,000 students comprising the Settlement Class Members. The proposed Settlement is the best vehicle for the Settlement Class to receive the relief to which they are entitled in a prompt and efficient manner.

42. Whether this action would have been tried as a class action is also relevant in assessing the fairness of the Settlement. As the Parties had fully briefed class certification at the time the Settlement Agreement was executed but no order was issued, it is unclear whether certification would have been granted. This litigation activity would have required the Parties to expend significant resources, as noted above.

43. In sum, the \$3 million Settlement is fair and reasonable in light of Cornell's defenses, and the challenging and unpredictable path of litigation Settlement Class Representatives would have faced absent a settlement.

### **Class Treatment is Appropriate**

44. As stated previously, Class Counsel has significant experience in the litigation, certification, trial, and settlement of class actions through their active roles in similar class actions throughout the country, including numerous claims against universities and colleges, many of which have settled. The experience, resources, and knowledge Class Counsel brings to this action is extensive and formidable. *See also Exhibits 2-5.*

45. Here, Class Counsel's expertise allowed them to build a novel case against such a large educational institution. Because Class Counsel has litigated so many complex consumer cases, they were able to successfully litigate and settle this matter. Employing this experience and skill, Class Counsel aggressively and swiftly worked to litigate, then resolve, this case in an efficient manner. Class Counsel is qualified to represent the Settlement Class and will, along with the Settlement Class Representatives, vigorously protect the interests of the Settlement Class. As stated previously, Class Counsel has significant experience litigating class claims, through their active roles in similar class actions throughout the country.

46. The Settlement Administrator is KCC, LLC. KCC, LLC is a leading class action administrator in the United States. All administrative costs associated with the Settlement will be paid directly from the Settlement Fund. The Settlement Administrator will oversee the Notice Program and Settlement administration.

47. The Settlement Class Notice and Notice Program constitute sufficient notice to all persons entitled to notice. The Notice Program satisfies all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and constitutional due process.

48. The proposed notice program is designed to provide the best notice practicable and is tailored to take advantage of the information the Cornell has available about the Settlement Class.

49. The proposed Notice Program satisfies these content requirements. The Settlement Class Notice will properly inform members of the Settlement Class of the substantive terms of the Settlement. It will advise members of the Settlement Class of their options for opting out of or objecting to the Settlement, and how to obtain additional information about the Settlement. The Notice Program is designed to reach a high percentage of the Settlement Class and exceeds the requirements of constitutional due process.

50. The numerosity requirement of Rule 23(a)(1) is satisfied because the Settlement Class consists of approximately 24,000 students enrolled in one of the Cornell's programs and joinder of all such persons is impracticable.

51. Settlement Class Representatives' interests are coextensive with, not antagonistic to, the interests of the Settlement Class, because Settlement Class Representatives and the absent members of the Settlement Class have the same interest in the relief afforded by the Settlement, and the absent members of Settlement Class have no diverging interests. Further, Settlement Class Representatives are represented by qualified and competent counsel who has extensive experience and expertise prosecuting complex class actions, including consumer actions similar to the instant case.

52. The Rule 23(b)(3) predominance requirement is readily satisfied because liability questions common to all members of the Settlement Class substantially outweigh any possible issues that are individual to each member of the Settlement Class. For example, each Settlement Class member's relationship with Cornell is governed by the implied contract between the students

and Cornell created through Cornell's promotional and academic materials. Further, each student was uniformly denied access to Cornell's campuses during the Spring 2020 semester.

53. Settlement Class Representatives assumed risks in filing this Action and spent considerable time providing assistance that enabled Class Counsel to successfully prosecute this matter and reach the Settlement, including: (1) submitting to interviews with Class Counsel; (2) locating and forwarding responsive documents and information; (3) sitting for their depositions; and (4) participating in conferences with Class Counsel. In so doing, the Settlement Class Representatives were integral to the case.

I declare under penalty of perjury that the foregoing is true and correct. This Declaration was executed on March 6, 2023, in Pasadena, California and Charleston, South Carolina, respectively.

/s/ (Eddie) Jae K. Kim  
(Eddie) Jae K. Kim

/s/ Roy T. Willey, IV  
Roy T. Willey, IV

# Exhibit 1

## CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into by and among the following parties, as hereinafter defined: (1) Alec Faber and Ahnaf Rahman (together, “Plaintiffs” or “Named Plaintiffs”), on behalf of themselves and the Settlement Class, by and through Class Counsel in this Action; and (2) Cornell University (“Cornell”), by and through its attorneys of record in this Action. The Named Plaintiffs and Cornell are each a “Party” and, collectively, the “Parties.”

### RECITALS

On April 23, 2020, Olivia Haynie commenced a putative class action against Cornell, entitled *Haynie v. Cornell University*, Case No. 3:20-CV-0467-MAD-ML, alleging breach of contract, unjust enrichment, and conversion stemming from Cornell’s transition to online learning in response to the COVID-19 pandemic during the Spring 2020 semester, and seeking partial refunds of tuition and certain mandatory fees. *See* Dkt. No. 1. On April 25, 2020 and May 31, 2020, Named Plaintiffs Alec Faber and Ahnaf Rahman, respectively, filed similar class action complaints against Cornell. *See Faber v. Cornell University*, No. 3:20-CV-471, Dkt. No. 1 (N.D.N.Y.); *Rahman v. Cornell University*, No. 3:20-CV-592, Dkt. No. 1 (N.D.N.Y.). On August 18, 2020, Plaintiffs thereafter filed a motion to consolidate these actions. *See* Dkt. No. 27. The motion to consolidate was granted on October 13, 2020, and Plaintiffs filed an amended consolidated complaint on October 27, 2020. *See* Dkt. Nos. 32, 33. In the amended consolidated complaint, Emilio Espejo was added as a putative class representative. *See* Dkt. No. 33. On October 29, 2020, Ms. Haynie voluntarily dismissed her claim. *See* Dkt. Nos. 36, 37.

On November 10, 2020, Cornell filed a motion to dismiss the amended consolidated complaint. *See* Dkt. No. 38. After full briefing and oral argument, the Court issued an order on

March 3, 2021, dismissing Mr. Espejo, a parent of a student, based on lack of standing. *See* Dkt. No. 54. Further, the Court denied Cornell’s motion to dismiss with regards to Plaintiffs’ breach of contract claims relating to tuition and fees, while granting the motion as to Plaintiffs’ claims regarding room and board, unjust enrichment, conversion, and violations of the New York General Business Law. *See id.* Cornell promptly filed a motion for partial reconsideration of this order. *See* Dkt. No. 57. While the Parties awaited decision on the reconsideration motion, they began exchanging discovery requests and responses.

On August 18, 2021, with the reconsideration motion still pending, the Parties participated in a court-ordered mediation, which was not successful in resolving this case. *See* Dkt. No. 83. On October 25, 2021, the Court issued an order on the aforementioned motion for reconsideration, dismissing Plaintiffs’ first cause of action for breach of contract with respect to the tuition claim, leaving only the breach of contract claim with respect to certain fees to be resolved through litigation. *See* Dkt. No. 98. After engaging in further discovery, the Parties participated in a second mediation on June 9, 2022, which was also unsuccessful.

Discovery was completed, including depositions of Plaintiff Ahnaf Rahman on August 13, 2022 and Plaintiff Alec Faber on August 26, 2022, as well as multiple Cornell employees in September 2022 pursuant to Rule 30(b)(6), including Cornell’s Dean of Students, Associate Dean for Administration and Finance in Student and Campus Life, Director of Finance and Operations in Student and Campus Life, Director of Campus Activities, and Director of Administrative Services in Cornell Health. Cornell disclosed an expert witness, who was deposed by Plaintiffs on October 27, 2022.

On October 4, 2022, Plaintiffs moved to certify a proposed class defined as “[a]ll students who enrolled at Cornell University and paid a Student Health Fee and/or Student Activity Fee for

the Spring 2020 semester.” *See* Dkt. No. 132. Cornell opposed Plaintiffs’ motion. *See* Dkt. No. 137. While the motion for class certification was fully briefed, but not yet argued or decided, the Parties reinitiated settlement discussions, and reached this class-wide settlement.

On December 9, 2020, the Parties informed the Court that they had reached a settlement in principle, *see* Dkt. No. 150, and subsequently negotiated the written terms of this Settlement Agreement and its supporting exhibits.

At all times, Cornell has continued to deny all allegations of wrongdoing and has denied and continues to deny that it committed, or attempted to commit, any breach of contract or other wrongful act or violation of law or duty that is, or was prior to motion practice dismissing certain claims, alleged in the Action. Nevertheless, taking into account the uncertainty and risks inherent in litigation generally and the certainty of a negotiated settlement, including the benefits that current and former students will receive therefrom, Cornell considers it desirable to resolve the Action on the terms and conditions stated herein to avoid further expense, burden, and distraction from its educational mission. Therefore, Cornell has determined that resolution on the terms and conditions set forth herein is in the best interests of all members of the Cornell community.

As more fully explained below, neither the Settlement nor any actions taken to carry out the Settlement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability by any person or entity, or of the validity of any claim, defense, or any point of fact or law by any Party. All such liability is expressly denied. Neither the Settlement, nor the fact of settlement, nor settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission of any fault, breach, or omission by Cornell, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by Cornell in any action or proceeding.

Although the Parties have agreed that a class may be certified for purposes of the Settlement, such certification shall not be binding or have any legal effect if the Settlement is terminated, if the Settlement is ultimately not approved, or if, through the efforts of an objecting class member, the approval is reversed or modified on appeal. Cornell reserves all of its objections to class certification for litigation purposes and does not consent to certification of the proposed Settlement Class for any purpose other than to effectuate the Settlement.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and among the Parties, by and through their respective counsel, that subject to final approval of the Court, after a hearing as provided for in the Settlement pursuant to Federal Rule of Civil Procedure 23(e), and in consideration of the benefits flowing to the Parties from the Settlement set forth herein, the Action and the Released Claims shall be fully and finally compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions set forth in the Settlement.

#### **DEFINITIONS**

1. As used in this Settlement Agreement, the following terms have the meanings specified below:

(a) **“Action”** means *Alec Faber and Ahnaf Rahman, on behalf of themselves and all other similarly situated v. Cornell University*, Civil Action No. 3:20-cv-00467 (N.D.N.Y.), and includes all actions consolidated therein.

(b) **“Administrative Expenses”** means: (a) the costs, fees, and expenses that are incurred by the Settlement Administrator in connection with providing notice to the Settlement Class and administering the Settlement, including but not limited to, distributing the Net

Settlement Fund to the Settlement Class Members; (b) fees and expenses incurred in connection with the Escrow Account; and (c) Taxes.

(c) **“Service Award”** means any payment from the Settlement Fund granted by the Court to the Settlement Class Representatives.

(d) **“Class Counsel”** means, collectively, the law firms of Lynch Carpenter, LLP; Poulin | Willey | Anastopoulos, LLC (formerly known as Anastopoulos Law Firm LLC); Cherundolo Law Firm, PLLC; and Toptani Law Offices.

(e) **“Cornell’s Counsel”** means Jenner & Block LLP.

(f) **“Court”** means the United States District Court for the Northern District of New York, the Honorable Mae D’Agostino presiding.

(g) **“Effective Date”** means the first date after which all of the following events and conditions have been met or have occurred: (i) the Parties’ counsel have executed the Settlement; (ii) the Court has entered the Preliminary Approval Order; (iii) the Court has entered the Final Judgment; and (iv) the Final Judgment becomes Final.

(h) **“Escrow Agent”** means the Settlement Administrator.

(i) **“Fee Award”** means the amount of attorneys’ fees awarded by the Court to Class Counsel from the Settlement Fund.

(j) **“Final”** (with respect to a judgment or any other court order) means: (i) if no appeal is taken, the expiration of the time to file a notice of appeal under the Federal Rules of Appellate Procedure; or (ii) if an appeal is taken from the judgment or order, the latest of: (1) the date of final dismissal of any such appeal, or the final dismissal of any proceeding on certiorari or otherwise; or (2) the date the judgment or order is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of

certiorari or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance following review pursuant to that grant.

(k) **“Final Approval Hearing”** means the hearing before the Court where the Parties will request the Final Judgment approving the Settlement to be entered by the Court and the Court will determine the Fee Award and the Service Awards, if any, and award any Litigation Expenses to Class Counsel.

(l) **“Final Judgment”** means the order (or orders) granting final approval of the Settlement and entering final judgment.

(m) **“Litigation Expenses”** means costs and expenses incurred by Class Counsel in connection with commencing, litigating, and settling the Action.

(n) **“Long Form Notice”** means the Notice of Class Action Settlement and Hearing, substantially in the form attached hereto as Exhibit A.

(o) **“Net Settlement Fund”** means the Settlement Fund less any (i) Administrative Expenses, (ii) Fee Award and Litigation Expenses, and (iii) Service Awards.

(p) **“Potential Settlement Class”** means all students enrolled in a degree-bearing Cornell program for the Spring 2020 semester, with the exception of: (i) any person who withdrew from Cornell on or before March 1, 2020; and (ii) any person enrolled for the Spring 2020 semester solely in a program that, at the beginning of the Spring 2020 semester, was to be delivered as an online program.

(q) **“Potential Settlement Class Member”** means a person who falls within the definition of the Potential Settlement Class as set forth above in Paragraph 1(p).

(r) **“Preliminary Approval Order”** means an order granting preliminary approval of the Settlement, substantially in the form attached hereto as Exhibit B.

(s) **“Released Claims”** means 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, arising out of, concerning, or relating in any way to Cornell’s transition to virtual education or other services as a result of the COVID-19 pandemic beginning in March 2020, or the implementation or administration of such virtual education or other services. This definition includes but is not limited to all claims that were brought or could have been brought in the Action.

(t) **“Released Cornell Parties”** means Cornell and all of its 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, future, and former officers, directors, trustees, academic affiliates, employees, faculty members, students, agents, representatives, attorneys, outside counsel, predecessors, successors, and assigns.

(u) **“Released Parties”** means each and any of the Released Cornell Parties and each and any of the Released Settlement Class Parties.

(v) **“Released Settlement Class Parties”** means the Settlement Class Representatives, Class Counsel, and all other Settlement Class Members, and each of their respective present, future, and former heirs, family members, guardians, executors, administrators, employees, agents, representatives, attorneys, outside counsel, predecessors, successors, assigns, and any person who has made payments to Cornell on their behalf.

(w) **“Releasing Cornell Parties”** means Cornell and all of its 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, future, and former predecessors, successors, and assigns.

(x) **“Releasing Parties”** means each and any of the Releasing Cornell Parties and each and any of the Releasing Settlement Class Parties.

(y) **“Releasing Settlement Class Parties”** means the Settlement Class Representatives, Class Counsel, and all other Settlement Class Members, and each of their respective present, future, and former heirs, family members, guardians, executors, administrators, employees, agents, representatives, attorneys, outside counsel, predecessors, successors, assigns, and any person who has made payments to Cornell on their behalf.

(z) **“Settlement”** means the settlement described in this Settlement Agreement.

(aa) **“Settlement Administrator”** means KCC, LLC.

(bb) **“Settlement Amount”** means the three million dollars (\$3,000,000.00) in total consideration, inclusive of Administrative Expenses, Service Awards, Fees, Litigation Expenses, and Settlement Benefits, to be paid by Cornell.

(cc) **“Settlement Benefit”** means each Settlement Class Member’s share of the Net Settlement Fund.

(dd) **“Settlement Class”** means all students enrolled in a degree-bearing Cornell program for the Spring 2020 semester, with the exception of: (i) any person who withdrew from Cornell on or before March 1, 2020; (ii) any person enrolled for the Spring 2020 semester solely in a program that, at the beginning of the Spring 2020 semester, was to be delivered as an online program; (iii) any person who executes and files a proper and timely opt-out request to be excluded

from the Settlement Class; and (iv) the legal representatives, successors or assigns of any such excluded person.

(ee) **“Settlement Class Member”** means a person who falls within the definition of the Settlement Class as set forth above in Paragraph (dd).

(ff) **“Settlement Class Representatives”** means Named Plaintiffs Alec Faber and Ahnaf Rahman.

(gg) **“Settlement Fund”** means the Settlement Amount plus any and all interest earned thereon.

(hh) **“Settlement Website”** means the website established by the Settlement Administrator to aid in administering the Settlement.

(ii) **“Short Form Notice”** means the notice provided for in Paragraphs 18–19, substantially in the form attached hereto as Exhibit C.

(jj) **“Taxes”** means (i) all federal, state, and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Settlement Fund; (ii) the reasonable expenses and costs incurred in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, the reasonable expenses of tax attorneys and accountants); and (iii) all taxes imposed on payments by the Settlement Fund, including withholding taxes.

(kk) **“Uncashed Settlement Checks”** means any checks sent to Settlement Class Members that remain uncashed after a period of one hundred and eighty (180) days from the date of issuance.

2. The word “or” means “and/or.”
3. The plural includes the singular and vice versa.

**MONETARY RELIEF TO SETTLEMENT CLASS MEMBERS**

4. The Net Settlement Fund will be distributed equally on a pro rata basis to the Settlement Class Members.

5. To the extent that a Potential Settlement Class Member properly executes and timely files an opt-out request to be excluded from the Settlement Class, the amount that would have been distributed to such Potential Settlement Class Member had they not filed an opt-out request will instead be distributed to Settlement Class Members, in equal amounts to each Settlement Class Member.

6. Each Settlement Class Member's Settlement Benefit will be distributed to that Settlement Class Member automatically, with no action required by that Settlement Class Member.

7. Settlement Class Members will be paid by a check issued by the Settlement Administrator, and the check will be mailed by first class U.S. Mail by the Settlement Administrator to the Settlement Class Member's last known mailing address on file with the University Registrar. The Settlement Administrator will also provide a payment election email as well as a form on the Settlement Website that Settlement Class Members may visit to (a) provide an updated address for sending a check; (b) elect to receive the Settlement Benefit by Venmo or PayPal instead of a paper check; or (c) elect to donate the Settlement Benefit into Cornell's Student Access Fund, for allocation to current Cornell students in accordance with existing guidelines and procedures. Settlement Class Members must make any such selection to the Settlement Administrator no later than forty-five (45) days after the Effective Date.

8. The Settlement Administrator will send the Settlement Benefits to Settlement Class Members within sixty (60) days of the Effective Date. Funds for Uncashed Settlement Checks shall be donated, as a cy pres award, to Cornell's Student Access Fund.

9. Any payments under this Settlement that go to Cornell's Student Access Fund—whether through elected donations or through Uncashed Settlement Checks—will not serve to reduce Cornell's ordinary contributions to that fund.

**RELEASE**

10. The Releasing Settlement Class Parties shall be deemed to have, and by operation of law and of the Final Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged all Released Claims against the Released Cornell Parties, and shall forever be barred and enjoined from prosecuting any or all of the Released Claims against any of the Released Cornell Parties.

11. The Releasing Cornell Parties shall be deemed to have, and by operation of law and of the Final Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged all Released Claims against the Released Settlement Class Parties, and shall forever be barred and enjoined from prosecuting any or all of the Released Claims against any of the Released Settlement Class Parties.

12. The Released Claims include any unknown claims that reasonably could have arisen out of the same facts alleged in the Action that the Releasing Parties do not know or suspect to exist in their favor at the time of the release, which, if known by them, might have affected their decision to agree to the Settlement, their decision to release the Released Claims, or their decision not to object to the Settlement.

13. With respect to the Released Claims, the Releasing Parties stipulate and agree that, upon the Effective Date, they shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the

provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law. Section 1542 provides:

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 THE RELEASING PARTY.

14. The Releasing Parties may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released Claims, but upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled and released any and all of the Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, for damages, injunctive relief, rescission, disgorgement, or restitution or any other right, remedy, or relief of every nature and description whatsoever, whether based on federal, state local, statutory, or common law or any other law, rule, or regulation, including the law of any jurisdiction outside the United States, that were brought or could have been brought in this Action without regard to subsequent discovery or the existence of different or additional facts.

15. The Releasing Settlement Class Parties agree not to commence any legal or administrative action against any Released Cornell Party with respect to any Released Claim, or otherwise assist others in doing so, and agree to be forever barred from doing so, in any court of law, equity, or any other forum. The Releasing Cornell Parties agree not to commence any legal or administrative action against any Released Settlement Class Party with respect to any Released Claim, or otherwise assist others in doing so, and agree to be forever barred from doing so, in any court of law, equity, or any other forum.

### **CAFA NOTICE**

16. Cornell shall provide the notice required under the Class Action Fairness Act, 28 U.S.C. § 1715(b) (“CAFA”) no later than ten (10) days following the filing of the Settlement with the Court. Cornell is solely responsible for the fees and costs associated with the CAFA notice. Prior to the Final Approval Hearing, in connection with the motion for final approval of the Settlement, Cornell shall cause to be served on Class Counsel and filed with the Court proof, by affidavit or declaration, regarding compliance with 28 U.S.C. § 1715(b).

### **CLASS NOTICE**

17. Within fourteen (14) days of the entry of the Preliminary Approval Order, Cornell will produce to the Settlement Administrator a list from the University Registrar’s records that includes the names and last known email and postal addresses, to the extent available, belonging to all Potential Settlement Class Members (the “Class List”). The Class List will be provided to the Settlement Administrator for the sole purpose of the Settlement Administrator performing its obligations pursuant to the Settlement and shall not be used for any other purpose at any time. No charge to the Settlement Class or Settlement Fund will be made by Cornell for collection and provision of this information.<sup>1</sup>

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<sup>1</sup> Consistent with the requirements of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and associated regulations, 34 C.F.R. Part 99 (collectively, “FERPA”), and Cornell’s policies, Cornell may disclose directory information to the Settlement Administrator. *See* 34 C.F.R. § 99.37; Cornell’s Student Record Privacy Statement: Annual Notification under FERPA, published in the 2019-2020 Courses of Study at <https://courses.cornell.edu/content.php?catoid=36&navoid=9245>. Moreover, any order granting preliminary or final approval of the Settlement shall constitute a judicial order within the meaning of FERPA, *see* 34 C.F.R. § 99.31(a)(9)(i), and the Settlement and the Court’s order shall constitute specific notice of Cornell’s intention to comply with that order, *see* 34 C.F.R. § 99.31(a)(9)(ii).

18. Following the entry of the Preliminary Approval Order, the Settlement Administrator shall send the Short Form Notice substantially in the form attached hereto as Exhibit C via email to persons listed on the Class List. If an email address is not available for a Potential Settlement Class Member, the Short Form Notice will be sent to the Potential Settlement Class Member's last known mailing address via U.S. mail. Unless adjusted by Court order, the sending or mailing of the Short Form Notice shall be completed within thirty (30) days after the entry of the Preliminary Approval Order.

19. The Short Form Notice shall advise the Potential Settlement Class Members of their rights under the Settlement, including the right to be excluded from and/or object to the Settlement or its terms. The Short Form Notice shall also inform Potential Settlement Class Members that they can access the Long Form Notice on the Settlement Website, which the Long Form Notice shall advise the Potential Settlement Class Members of the procedures outlined in Paragraphs 23–28 and 29-31 specifying how to request exclusion from the Settlement or submit an objection to the Settlement.

20. No later than fourteen (14) days after the entry of the Preliminary Approval Order, and before the issuance of the Short Form Notice, the Settlement Administrator shall establish the Settlement Website. The Settlement Website will allow Settlement Class Members to provide an updated mailing address to receive a paper check, to elect to receive their Settlement Benefit via Venmo or PayPal, or to elect to donate their Settlement Benefit into Cornell's Student Access Fund, for allocation to current Cornell students in accordance with existing guidelines and procedures. The Settlement Website shall include, in downloadable format, the following: (i) the Long Form Notice; (ii) the Preliminary Approval Order; (iii) the Settlement Agreement (including all of its exhibits); (iv) a Question and Answer section agreed to in good faith by the Parties

anticipating and answering Settlement related questions from prospective class members; (v) contact information for the Settlement Administrator, including a Toll Free number, and (iv) any other materials agreed upon by the Parties and/or required by the Court.

21. No later than fifteen (15) days after the entry of the Preliminary Approval Order and until the date the Final Judgment is entered, Cornell will provide a link to the Settlement Website at <https://www.Cornell.edu>. No later than thirty (30) days after the entry of the Preliminary Approval Order, Cornell will publish the Short Form Notice as an advertisement once in the Cornell Chronicle, or a publication with comparable reach.

22. Prior to the Final Approval Hearing, in connection with the motion for final approval of the Settlement, Class Counsel shall serve and file a sworn statement from the Settlement Administrator evidencing compliance with the provisions of the Preliminary Approval Order concerning the distribution of the Short Form Notice to the Settlement Class.

### **REQUESTS FOR EXCLUSION**

23. A Potential Settlement Class Member may request to be excluded from the Settlement Class by sending a written request for exclusion to the Settlement Administrator, in care of the address provided in the Long Form Notice, postmarked no later than forty-five (45) days after the issuance of the Short Form Notice (the “Objection/Exclusion Deadline”), which date shall be included in the Short Form Notice and on the dedicated Settlement Website.

24. The written request for exclusion must:

- (a) include a statement requesting exclusion from the Settlement Class;
- (b) be personally signed by the Potential Settlement Class Member; and
- (c) include the caption for the Action and the Potential Settlement Class Member’s name, address, telephone number, and email address.

25. A request to be excluded from the Settlement Class that does not include all of the foregoing information in Paragraph 24, that is sent to an address other than that designated in the Long Form Notice, or that is not postmarked or received within the time specified, shall be invalid, and any individual sending such request shall be deemed to remain in the Settlement Class and shall be bound as a Settlement Class Member by the Settlement, if approved by the Court. Any Potential Settlement Class Member who properly elects to be excluded, in compliance with the requirements set forth in Paragraphs 23–24, shall not: (a) be bound by any orders of the Court or the Final Judgment; (b) be entitled to a Settlement Benefit; (c) gain any rights by virtue of the Settlement; or (d) be permitted to object to any aspect of the Settlement.

26. A request to be excluded from the Settlement Class must be personal. Any particular Potential Settlement Class Member may not purport to opt other Potential Settlement Class Members out of the Settlement Class on a class, subclass, or other representative basis.

27. For the avoidance of doubt, a Settlement Class Member’s election to donate the Settlement Benefit to Cornell’s Student Access Fund per Paragraph 7 does not constitute a request for exclusion.

28. Cornell has the right to audit the exclusion process for evidence of fraud or error, and the Court will be the final arbiter of an exclusion’s validity.

**OBJECTIONS BY SETTLEMENT CLASS MEMBERS**

29. Any Settlement Class Member may submit a written objection to the Settlement, the Service Awards, and/or the Fee Award. The Settlement Class Member must mail their written objection(s) to the Clerk of Court with a postmark no later than the Objection/Exclusion Deadline. Copies must also be sent at the same time via mail to Class Counsel and Cornell’s Counsel at the addresses set forth below in Paragraph 72.

30. The written objection(s) must:
- (a) state that the person objecting is a Settlement Class Member;
  - (b) include the name, address, email, and telephone number of the Settlement Class Member objecting;
  - (c) be personally signed by the objecting Settlement Class Member;
  - (d) contain a statement that includes all objections, provides whether each objection applies only to the objector, to a subset of the Settlement Class, or to the entire Settlement Class, and provides the specific reasons for all objections, including any legal arguments and evidentiary support (including copies of any documents relied upon); and
  - (e) include a statement of whether the objector intends to appear at the Final Approval Hearing, with or without counsel.

31. Any Settlement Class Member who fails to comply with the terms of Paragraphs 29-30 shall not be permitted to object to the Settlement, the Service Awards, and/or the Fee Award at the Final Approval Hearing; shall be foreclosed from seeking any review of the Settlement, the Service Awards, and/or the Fee Award by appeal or other means; and shall be deemed to have waived their objection(s) and be forever barred from making any such objection(s) in the Action or any other related action or proceeding.

### **SETTLEMENT ADMINISTRATION**

32. The Settlement Administrator shall administer the Settlement and shall act under Class Counsel's supervision and subject to the jurisdiction of the Court. Class Counsel shall be responsible for supervising the administration of the Settlement and the disbursement of the Net Settlement Fund, subject to Court approval.

33. The Settlement Administration shall:

(a) send Short Form Notice to the Potential Settlement Class Members, as described in Paragraph 20;

(b) establish the Settlement Website as described in Paragraph 21;

(c) serve as Escrow Agent for the Settlement Fund;

(d) forward to Class Counsel, with copies to Cornell's Counsel, all documents and other materials received in connection with the administration of the Settlement promptly upon receipt;

(e) receive requests for exclusion and other requests from the Potential Settlement Class Members, including any requests received after the Objection/Exclusion Deadline, and promptly upon receipt provide a copy of such requests to Class Counsel and Cornell's Counsel;

(f) provide weekly reports to Class Counsel and Cornell's Counsel, including without limitation, reports regarding any requests for exclusion received;

(g) make available for inspection by Class Counsel and Cornell's Counsel any documentation related to the Settlement submitted to the Settlement Administrator, and any correspondence related to the Settlement sent or received by the Settlement Administrator, at any time upon reasonable notice;

(h) provide reports and other information to the Court as the Court may require; and

(i) undertake other administrative tasks in a rational, responsive, cost-effective, and timely manner.

34. The Settlement Administrator shall keep confidential the Class List and all personal information, including the identity and contact information of the Potential Settlement Class

Members. The Parties agree that this information may not be used for any purpose other than effectuating the terms of the Settlement or the duties or obligations arising hereunder. The parties further agree that notwithstanding anything else in this Settlement Agreement, the Settlement Administrator shall not disclose to Class Counsel any information provided to it by Cornell that is protected by FERPA, including student identifying information other than student names and email addresses which are designated pursuant to Cornell's Annual Privacy Notification as directory information.

35. The Settlement Administrator shall maintain reasonably detailed records of its activities under the Settlement, including all such records as are required by applicable law, in accordance with its normal business practices, which will be made available to Class Counsel and Cornell's Counsel for inspection upon request. Should the Court request, Class Counsel, in conjunction with the Settlement Administrator, shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator.

**SETTLEMENT APPROVAL ORDER AND FINAL APPROVAL ORDER**

36. No later than March 6, 2023, in coordination with Cornell's Counsel, Class Counsel will move for preliminary approval of the Settlement, provisional certification of the Settlement Class for settlement purposes only, appointment of Named Plaintiffs as Settlement Class Representatives, appointment of Class Counsel as counsel for the Settlement Class, and the scheduling of the Final Approval Hearing. Concurrently with the motion for preliminary approval, Class Counsel shall apply to the Court for, and Cornell shall agree to, entry of the proposed Preliminary Approval Order, substantially in the form attached hereto as Exhibit B.

37. At the time of the submission of the Settlement to the Court as described above, Class Counsel shall request that the Court hold a Final Approval Hearing, which shall be held no less than seventy-five (75) days after the Short Form Notice is disseminated.

38. After the Short Form Notice is disseminated, and no later than ten (10) days before the Final Approval Hearing, Class Counsel, in coordination with Cornell's Counsel, shall request that the Court submit a Final Judgment, substantially in the form attached hereto as Exhibit D, which will, among other things:

(a) approve the Settlement as fair, reasonable, and adequate to the Settlement Class, and direct consummation of the Settlement in accordance with the terms and provisions of the Settlement;

(b) fully and finally dismiss the Action with prejudice, and without costs (except as may be provided herein) to any Party as against any other;

(c) incorporate the releases set forth above in Paragraphs 10-15, make the releases effective as of the Effective Date, and forever discharge the Released Parties as set forth herein;

(d) approve the manner of distribution of the Net Settlement Fund and order that payments be made to Settlement Class Members only in accordance with same;

(e) award Class Counsel from out of the Settlement Fund such Fee Award and Litigation Expenses as the Court may allow;

(f) award the Settlement Class Representatives from out of the Settlement Fund such Service Awards as the Court may allow; and

(g) reserve jurisdiction over: (i) implementation of the Settlement and any distribution to Settlement Class Members, pursuant to further orders of the Court; (ii) disposition

of the Settlement Fund; (iii) the Action, until each and every act agreed to be performed pursuant to the Settlement shall have been performed, pursuant to further orders of the Court; and (iv) the Parties, for the purpose of enforcing and administering the Settlement.

### **SETTLEMENT CONSIDERATION**

39. The Settlement Amount shall be the sum of \$3,000,000. Within ten (10) business days after the Court enters the Preliminary Approval Order, Cornell shall deposit into an escrow account established by the Settlement Administrator / Escrow Agent (the “Escrow Account”), the sum of \$3,000,000. No person or entity shall be liable to pay any amount pursuant to the Settlement except as set forth in this paragraph.

### **USE OF SETTLEMENT FUND**

40. The Settlement Fund shall be used to pay: (a) any Administrative Expenses incurred in accordance with Paragraph 1(b) above and Paragraph 46 below; (b) any Fee Award and Litigation Expenses granted by the Court; and (c) any Service Awards granted by the Court. The remainder constitutes the Net Settlement Fund, and shall be distributed to Settlement Class Members according to the Settlement.

41. The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed as provided in Paragraphs 4–8.

42. 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 Cornell. The Escrow Agent shall cause the Settlement Fund to be invested exclusively in United States Treasury Bills (or a mutual fund invested solely in such instruments), except that any cash balances up to the amount that is insured by the Federal Deposit Insurance Corporation (“FDIC”)

may be deposited in any account that is fully insured by the FDIC. The Escrow Agent shall cause all interest on the Escrow Account to be collected and reinvested. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. Additionally, if short-term placement of the funds is necessary, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. The Released Cornell Parties shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions executed by the Escrow Agent. All risks related to the investment of the Settlement Fund shall be borne solely by the Escrow Agent.

43. The Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1. The Settlement Administrator, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. The Settlement Administrator shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The Released Cornell Parties shall not have any liability or responsibility for any such Taxes. Upon written request, Cornell will provide to the Settlement Administrator the statement described in Treasury Regulation § 1.468B-3(e). The Settlement Administrator, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a “relation back election,” as described in Treasury

Regulation § 1.468B-1(j)), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

44. All Taxes shall be paid out of the Settlement Fund and shall be timely paid pursuant to the disbursement instructions to be set forth in the Escrow Agreement, and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Released Cornell Parties shall have no responsibility or liability for the acts or omissions of the Settlement Administrator with respect to the payment of Taxes.

45. This Settlement is not a claims-made settlement. As of the Effective Date, all rights of Cornell in or to the Settlement Fund shall be extinguished.

46. Prior to the Effective Date, no disbursements shall be made out of the Settlement Fund except: (a) upon order of the Court; or (b) as provided in the Settlement. Prior to the Effective Date, the Escrow Agent may pay from the Settlement Fund Administrative Expenses actually incurred and paid or payable, which shall not exceed \$150,000. If, prior to the Effective Date, Administrative Expenses exceed \$150,000, such additional amounts shall be paid only after approval by both Class Counsel and Cornell's Counsel, which shall not be unreasonably withheld. After the Effective Date, the Escrow Agent may pay from the Settlement Fund any additional, unpaid Administrative Expenses only after approval by both Class Counsel and Cornell's Counsel. The Released Cornell Parties are not responsible for, and shall not be liable for, any Administrative Expenses.

47. If the Effective Date does not occur, or if the Settlement is voided, terminated, or cancelled pursuant to the terms of the Settlement, the Settlement Class Representatives and Class Counsel shall have no obligation to repay any of the Administrative Expenses that have been paid or incurred in accordance with Paragraph 1(b). Any amounts remaining in the Settlement Fund after payment of Administrative Expenses incurred in accordance with Paragraph 1(b), including all interest earned on the Settlement Fund net of any Taxes, shall be returned to Cornell. No other person or entity shall have any further claim whatsoever to such amounts.

48. The Net Settlement Fund will be distributed in the manner set forth in Paragraphs 4–8. The manner of distribution of the Net Settlement Fund, as described in Paragraphs 4–8, the treatment of Uncashed Settlement Checks, as described in Paragraph 8, and the identity of the Settlement Administrator, as described in Paragraph 1(aa), are not necessary terms of the Settlement, and it is not a condition of the Settlement that any particular manner of distribution of the Net Settlement Fund be approved by the Court. The Settlement Class Representatives and Class Counsel may not cancel or terminate the Settlement based on the Court’s or any appellate court’s ruling with respect to the manner of distribution of the Net Settlement Fund or any other plan of distribution in this Action. Any order or proceeding relating to the manner of distribution of the Net Settlement Fund or any other plan of distribution in this Action, or any appeal from any such order, shall not operate to terminate or cancel the Settlement.

49. Payment pursuant to the Final Judgment shall be final and conclusive against all Settlement Class Members. All Settlement Class Members who have not opted out of the Settlement Class shall be bound by all terms of the Settlement, including the Final Judgment to be entered in this Action, and will be permanently barred and enjoined from bringing any action against the Released Cornell Parties with respect to any and all of the Released Claims.

50. No person or entity shall have any claim or cause of action against the Settlement Class Representatives, Class Counsel, the Settlement Administrator, or any other agent designated by Class Counsel arising from distributions made substantially in accordance with the Settlement, the manner of distribution of the Net Settlement Fund as approved by the Court, or any order of the Court.

51. The Released Cornell Parties shall have no responsibility for, interest in, or liability whatsoever with respect to distribution of the Net Settlement Fund, the payment or withholding of Taxes, the Escrow Account, the Escrow Agent, the Settlement Administrator, Administrative Expenses, or any losses incurred in connection with the foregoing. No person, including the Settlement Class Representatives, Settlement Class Members, and Class Counsel, shall have any claim of any kind against the Released Cornell Parties with respect to the matters set forth in this paragraph.

**AWARDS FOR ATTORNEYS' FEES AND SETTLEMENT  
CLASS REPRESENTATIVES**

52. Settlement Class Representatives may seek, and the Court may award, reasonable case contribution Service Awards to them for their service in the case and to the Settlement Class not to exceed ten thousand dollars (\$10,000), which shall come from the Settlement Fund. This shall be in addition to any Settlement Benefit that Settlement Class Representatives may receive as Settlement Class Members. If the Court approves a request for Service Awards, the Settlement Administrator will distribute the Service Awards to the Settlement Class Representatives along with their Settlement Benefit no later than sixty (60) days after the Effective Date.

53. No later than fourteen (14) days prior to the Objection/Exclusion Deadline, Class Counsel will apply to the Court for a Fee Award to Class Counsel to be paid from (and out of) the Settlement Fund and not to exceed one-third of the Settlement Fund. In addition to the Fee Award,

Class Counsel also will apply to the Court for reimbursement of their Litigation Expenses, which may include a request for reimbursement of the Settlement Class Representatives' costs and expenses directly related to their representation of the Settlement Class, to be paid from (and out of) the Settlement Fund.

54. Any Court-approved Fee Award and Litigation Expenses shall be paid to Class Counsel from out of the Settlement Fund after entry of an order by the Court awarding such Fee Award and Litigation Expenses. In the event that there is no Effective Date, or the Settlement is terminated pursuant to the terms of the Settlement, Class Counsel shall repay to Cornell the full amount of the Fee Award and Litigation Expenses paid to Class Counsel from the Settlement Fund, including any accrued interest. In the event that the Fee Award or award of Litigation Expenses is vacated, modified, reversed, or rendered void as the result of any appeal, further proceedings on remand, or successful collateral attack, Class Counsel shall repay to the Settlement Fund the amount of the Fee Award and/or Litigation Expenses reversed, vacated, or modified, including any accrued interest. Class Counsel shall make the appropriate refund or repayment in full no later than twenty-one (21) days after: (a) receiving from Cornell's Counsel notice of the termination of the Settlement; or (b) any order reversing or modifying the Final Judgment, vacating the Final Judgment, or reducing or reversing the Fee Award or Litigation Expenses has become Final.

55. The granting by the Court of any Service Award, Fee Award, or Litigation Expenses is not a necessary term of the Settlement, and it is not a condition of the Settlement that any particular Service Award, Fee Award, or Litigation Expenses be approved by the Court. The Settlement Class Representatives and Class Counsel may not cancel or terminate the Settlement based on this Court's or any appellate court's ruling with respect to any Service Award, Fee Award, or Litigation Expenses. Any order or proceeding relating to any Service Award, Fee Award, or

Litigation Expenses, or any appeal from any such order, shall not operate to terminate or cancel the Settlement. However, distribution of all or a portion of the Settlement Fund may be delayed in the event of an appeal concerning any Service Award, Fee Award or Litigation Expenses.

**NO ADMISSION OF WRONGDOING**

56. Cornell denies any wrongdoing or culpability. Neither the Settlement, nor any document referred to herein, nor any action taken to carry out the Settlement, is, may be construed as, or may be used as an admission by or against Cornell of any fault, wrongdoing, or liability whatsoever.

57. Pursuant to Federal Rule of Evidence 408, entering into or carrying out the Settlement, the exhibits hereto, and any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or concession by Cornell, and shall not be offered or received into evidence in any action or proceeding against the Released Cornell Parties in any court or before any administrative agency or other tribunal for any purpose whatsoever, other than to enforce the provisions of the Settlement or the provisions of any related agreement or exhibit hereto.

**CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL,  
CANCELLATION, OR TERMINATION**

58. Within fourteen (14) days after the occurrence of any of the following events and upon written notice to counsel for all Parties, a Party shall have the right to withdraw from the Settlement and terminate the Settlement Agreement:

- a. If the Court declines to approve the Settlement Agreement as written without material modification or if on appeal the Court's approval is reversed or modified through material modification of the Settlement Agreement;

- b. If the Court materially alters any of the terms of the Settlement Agreement, except that a reduction in the Fee Award, Litigation Expenses, and/or Service Awards shall not be deemed to be a material alteration; or
- c. If the Preliminary Approval Order or the Final Order and Judgment is not entered by the Court without material modification of the Settlement Agreement or is reversed or modified on appeal or otherwise fails for any reason.

59. Any modification of the Settlement Agreement involving the donation procedures shall not constitute a material modification.

60. If the number of members of the Settlement Class who properly execute and timely file a request for exclusion from the Settlement reaches five (5) percent of the Settlement Class, then Cornell, in its sole discretion, may elect to withdraw from the settlement. To withdraw from the Settlement and terminate this Settlement Agreement on the basis set forth above, Cornell must notify Class Counsel in writing within fourteen (14) Days after the Opt-Out List has been served on the Parties. If Cornell exercises this right, Class Counsel shall have at their sole discretion, fourteen (14) days or such longer period as agreed to by the Parties to address the concerns of the Opt-Outs. If through such efforts the total number on the Opt-Out List subsequently becomes and remains fewer than five (5) percent of the Settlement Class, Cornell shall withdraw its election to withdraw from the Settlement and terminate the Settlement Agreement. Election of Settlement Class Members to forgo their Settlement Benefit and instead donate their Settlement Benefit as set forth in Paragraph 7 shall not be grounds for any Party to withdraw from the Settlement.

61. In the event of withdrawal by any Party in accordance with the terms set forth in this Section:

- a. the Settlement Fund shall be refunded to Cornell consistent with the terms of this Settlement Agreement, including Paragraphs 47 and 54;
- b. the Settlement Agreement shall be null and void, shall have no further force and effect with respect to any Party in the Litigation and shall not be offered in evidence or used in any litigation for any purpose, including the existence, certification, or maintenance of any proposed or existing class or the amenability of these or similar claims to class treatment;
- c. this Settlement Agreement and all negotiations, proceedings, documents prepared and statements made in connection herewith are without prejudice to any Party and shall not be deemed or construed to be an admission or confession in any way by any Party of any fact, matter, or proposition of law and shall not be used in any manner for any purpose, and
- d. the Parties to the Litigation shall stand in the same position as if this Settlement Agreement had not been negotiated, made or filed with the Court.

In such event, the Parties jointly will seek to vacate any order entered or action taken in connection with the Settlement.

#### **MISCELLANEOUS PROVISIONS**

62. Class Counsel, on behalf of the Settlement Class, are authorized to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to the Settlement to effectuate its terms. Class Counsel also are authorized to enter into any modifications or amendments to the Settlement on behalf of the Settlement Class which such counsel deem appropriate.

63. All of the exhibits attached hereto are hereby incorporated by this reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of the Settlement and the terms of any exhibit attached hereto, the terms of the Settlement control.

64. The Settlement may be amended or modified only by a written instrument signed by or on behalf of the Settlement Class Representatives and Cornell or their successors-in-interest, except to the extent that any modification would be inconsistent with any order by the Court.

65. The waiver by one Party of any breach of the Settlement by any other Party shall not be deemed a waiver, by that Party or by any other Party to the Settlement, of any other prior or subsequent breach of the Settlement.

66. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

67. The Settlement and its exhibits constitute the entire agreement among the Parties hereto, and no other agreements, representations, warranties, or inducements have been made to any Party concerning the Settlement or its exhibits other than those contained and memorialized in such documents.

68. The Settlement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the Parties shall exchange among themselves signed counterparts. Signatures may be originals, or facsimile or pdf copies.

69. The Settlement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties to the Settlement.

70. The construction, interpretation, operation, effect, and validity of the Settlement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of New York, without regard to conflicts of laws, except to the extent federal law requires that federal law govern. Any action arising under or to enforce the Settlement or any portion thereof, shall be commenced and maintained only in the United States District Court for the Northern District of New York.

71. The Parties and their counsel agree to use their best efforts, and to take all reasonable steps necessary, to obtain the entry of the Final Judgment, and to effectuate the Settlement. Any such actions taken by the Parties, and any actions taken by the Parties to comply with the Settlement, will be in accordance with federal, state, and/or local law, including but not limited to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and associated regulations, 34 C.F.R. Part 99.

72. If any Party is required to give notice to another Party under the Settlement, such notice shall be in writing and shall be deemed to have been duly given upon receipt of email transmission, with confirmation of receipt. Notice shall be provided as follows:

*If to the Settlement Class Representatives or Class Counsel:*

**LYNCH CARPENTER, LLP**

Attn: (Eddie) Jae K. Kim  
1133 Penn Avenue, 5th Floor  
Pittsburgh, PA 15222  
Email: ekim@lcllp.com

**POULIN | WILLEY | ANASTOPOULO, LLC**

Attn: Paul J. Doolittle  
32 Ann Street  
Charleston, SC 29403  
Email: pauld@akimlawfirm.com

**CHERUNDOLO LAW FIRM, PLLC**  
Attn: John C. Cherundolo  
AXA Tower II, Suite 1600  
120 Madison Street  
Syracuse, NY 13202  
Email: jcherundolo@cherundololawfirm.com

*If to Cornell:*

**JENNER & BLOCK LLP**  
Attn: Ishan K. Bhabha  
Paul B. Rietema  
353 N. Clark Street  
Chicago, IL 60654-3456  
Email: ibhabha@jenner.com  
prietema@jenner.com

73. The Parties intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Settlement Class Representatives, and any other Settlement Class Members, against the Released Cornell Parties with respect to the Released Claims. The Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties, and reflect a Settlement that was reached voluntarily after extensive negotiations and multiple mediations, and after consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Settlement to be executed, by their duly authorized attorneys, as for the date stated above:



Alec Faber

Dated: 03/06/2023

DocuSigned by:  
*Ahnaf Rahman*  
E6B557DCB45C413...

Dated: 3/4/2023

Ahnaf Rahman

**LYNCH CARPENTER, LLP**

(counsel for Plaintiffs and the putative class)

By: *Jae K. Kim*

Dated: 3-6-23

(Eddie) Jae K. Kim

**POULIN | WILLEY | ANASTOPOULO, LLC**

Dated: \_\_\_\_\_

(counsel for Plaintiffs and the putative class)

By: \_\_\_\_\_

Paul J. Doolittle

**Cherundolo Law Firm, PLLC**

Dated: \_\_\_\_\_

(counsel for Plaintiffs and the putative class)

By: \_\_\_\_\_

John C. Cherundolo

**Toptani Law Offices**

Dated: \_\_\_\_\_

(counsel for Plaintiffs)

By: \_\_\_\_\_

Edward Toptani

\_\_\_\_\_

Dated: \_\_\_\_\_

Ahnaf Rahman

**LYNCH CARPENTER, LLP**

(counsel for Plaintiffs and the putative class)

By: \_\_\_\_\_

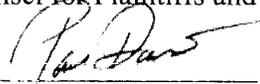
Dated: \_\_\_\_\_

(Eddie) Jae K. Kim

**POULIN | WILLEY | ANASTOPOULO, LLC**

Dated: 03/06/2023

(counsel for Plaintiffs and the putative class)

By: 

Paul J. Doolittle

**Cherundolo Law Firm, PLLC**

Dated: \_\_\_\_\_

(counsel for Plaintiffs and the putative class)

By: \_\_\_\_\_

John C. Cherundolo

**Toptani Law Offices**

Dated: 03/06/2023

(counsel for Plaintiffs)

By: 

Edward Toptani

\_\_\_\_\_

Dated: \_\_\_\_\_

Ahnaf Rahman

**LYNCH CARPENTER, LLP**

(counsel for Plaintiffs and the putative class)

By: \_\_\_\_\_

Dated: \_\_\_\_\_

(Eddie) Jae K. Kim

**POULIN | WILLEY | ANASTOPOULO, LLC**

Dated: \_\_\_\_\_

(counsel for Plaintiffs and the putative class)

By: \_\_\_\_\_

Paul J. Doolittle

**Cherundolo Law Firm, PLLC**

Dated: 3/6/2023

(counsel for Plaintiffs and the putative class)

By: \_\_\_\_\_

John C. Cherundolo

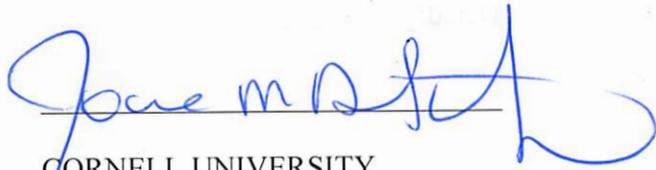
**Toptani Law Offices**

Dated: \_\_\_\_\_

(counsel for Plaintiffs)

By: \_\_\_\_\_

Edward Toptani



CORNELL UNIVERSITY

Dated: 3/6/2023

By: Joanne M. DeStefano  
Executive Vice President and CFO

# Exhibit A

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT**

*Alec Faber, et al., v. Cornell University*, Civil Action No. 3:20-cv-467

**ATTENTION: ALL STUDENTS ENROLLED IN A DEGREE-BEARING PROGRAM AT CORNELL UNIVERSITY DURING THE SPRING 2020 SEMESTER**

**The United States District Court for the Northern District of New York has authorized this notice. It is not a solicitation from a lawyer. You are not being sued. If you have received notice of this lawsuit in the mail or by e-mail, you have been identified as a person who is or may be a member of the settlement class in this lawsuit, and the proposed settlement of this lawsuit, if approved, may affect your legal rights. You should read this notice carefully.**

**If you (1) were enrolled in a degree-bearing Cornell program for the Spring 2020 semester, and (2) were not enrolled in a program that, at the beginning of the Spring 2020 semester, was intended to be delivered as an online program, and (3) did not withdraw from the University on or before March 1, 2020, you are eligible to be part of the proposed settlement class (a “Settlement Class Member”) affected by this lawsuit.**

The purpose of this notice is to inform you of a proposed Settlement relating to a class action lawsuit brought by Plaintiffs, students at the University during the Spring 2020 semester, against the University, on behalf of a putative class of students enrolled in a degree-bearing program for the Spring 2020 semester. The case is captioned *Alec Faber, et al., v. Cornell University*, Civil Action No. 3:20-cv-467 (the “Action”).

In this Action, Plaintiffs alleged the University breached a contract when it transitioned to virtual education in response to the COVID-19 pandemic. Plaintiffs also alleged that the University’s shift to virtual education gave rise to claims of unjust enrichment. Plaintiffs sought a partial refund of their tuition and fees for the Spring 2020 semester. The University denies any breach of contract and denies all other allegations of wrongdoing, and there has been no finding of liability in any court. However, considering the interests of both the University and its students in prompt resolution of the matter, the University has agreed to establish a Settlement Fund to resolve the Action.

The terms of the agreement are set forth in the proposed Settlement that must be approved by the Court. This notice includes information about the proposed Settlement, a final approval hearing scheduled by the Court, and the process for Settlement Class Members to be heard by the Court.

**SUMMARY OF THE OPTIONS AND THE LEGAL EFFECT OF  
EACH OPTION FOR SETTLEMENT CLASS MEMBERS**

<b>YOUR OPTIONS</b>	<b>INSTRUCTIONS</b>	<b>DUE DATE</b>
<p style="text-align: center;"><b>DO NOTHING AND YOU WILL BE A SETTLEMENT CLASS MEMBER; AUTOMATICALLY RECEIVE A PAYMENT</b></p>	<p>You will be paid by a check issued by the Settlement Administrator to your last known mailing address on file with the University Registrar or as provided by you. You will first be provided a payment distribution email to be sent to your last known email address on file with the University Registrar, wherein you will be provided with a number of alternative payment options, such as PayPal or Venmo, and an option to donate your portion of the Settlement Fund to Cornell’s Student Access Fund.</p>	<p>See Answer 7.</p>
<p style="text-align: center;"><b>EXCLUDE YOURSELF FROM THE PROPOSED SETTLEMENT</b></p>	<p>You can choose to “opt out” of the proposed Settlement. Opting out means that you choose not to participate in the proposed Settlement. It also means that you cannot object to the proposed Settlement since you will not be participating in the proposed Settlement (see below for more information). If you opt out, you will not receive a payment and you will keep any individual claims you may have against the University relating to the transition to virtual education in the Spring 2020 semester. For more detailed opt-out instructions, see Answer 11 below.</p>	<p>Postmarked no later than [OPT-OUT DEADLINE]</p>
<p style="text-align: center;"><b>OBJECT TO THE PROPOSED SETTLEMENT</b></p>	<p>You can file an objection with the Court explaining why you believe the Court should reject the proposed Settlement. If your objection is overruled by the Court and the proposed Settlement is approved, then you would be included in the Settlement Class. If the Court agrees with your objection, then the proposed Settlement may not be approved. If you choose to object, you cannot also opt out of the proposed Settlement, as only participating class members may object to a proposed Settlement. For more detailed objection instructions, see Answer 12 below.</p>	<p>Postmarked no later than [OBJECTION DEADLINE]</p>

These rights and options—and the deadlines to exercise them—along with the material terms of the proposed Settlement are explained further below in this notice.

### **BASIC INFORMATION**

#### **1. What is this lawsuit about?**

The consolidated class action being settled is captioned *Alec Faber, et al., v. Cornell University*, Civil Action No. 3:20-cv-467. This case is a putative class action, meaning that the Settlement Class Representatives—Alec Faber and Ahnaf Rahman—brought this action as individuals acting on behalf of a putative class of students enrolled at the University in the Spring 2020 semester. The Settlement Class Representatives alleged claims for breach of contract and unjust enrichment resulting from the cessation of in-person classes and changes to campus operations as a result of the COVID-19 pandemic. After motion practice as well as substantial class discovery, the Parties reached the proposed Settlement.

#### **2. Why did I receive notice of this lawsuit?**

If you received notice of this lawsuit, it is because the University's records indicate that you were enrolled at the University during the Spring 2020 semester. The Court directed that this notice be made available to all Potential Settlement Class Members because each member has a right to notice of the proposed Settlement and the options available to them before the Court decides whether to approve the proposed Settlement.

#### **3. How do I know if I am part of the Settlement Class?**

If you (1) were enrolled in a degree-bearing Cornell program for the Spring 2020 semester, and (2) were not enrolled in a program that, at the beginning of the Spring 2020 semester, was intended to be delivered as an online program, and (3) did not withdraw from the University on or before March 1, 2020, then you potentially qualify as a Settlement Class Member.

#### **4. Why did the Parties Settle?**

In any lawsuit, there are risks and potential benefits that come with litigating as compared to settling. It is the Settlement Class Representatives' and their lawyers' ("Class Counsel") job to identify when a proposed Settlement offer is sufficient and justifies settling the case instead of continuing to litigate. In a class action, Class Counsel determines when to recommend settling to the Class Representatives. The Class Representatives then have a duty to act in the best interests of the class as a whole when deciding whether to accept this recommendation. In this case, it is the belief of the Settlement Class Representatives and Class Counsel that this proposed Settlement is in the best interest of all Settlement Class Members.

The University denies the claims asserted and believes that its actions were proper and in accordance with the terms of its policies, agreements, and applicable law, including the Executive Orders issued by the New York State Governor. The University denies that its actions

give rise to any claim by the Settlement Class Representatives or any Settlement Class Members. Nevertheless, taking into account the uncertainty and risks inherent in litigation generally and the certainty of a negotiated settlement, including the benefits that current and former students will receive therefrom, Cornell considers it desirable to resolve the Action on the terms and conditions stated in the Settlement to avoid further expense, burden, and distraction from its educational mission.

**5. What must happen for the proposed Settlement to be approved?**

The Court must decide that the proposed Settlement is fair, reasonable, and adequate before it will give final approval of the proposed Settlement. At this time, the Court has already reviewed and decided to grant preliminary approval of the proposed Settlement, after which this notice is being disseminated to inform Potential Settlement Class Members. The Court will make a final decision regarding the proposed Settlement at a Final Approval Hearing, which is currently scheduled for [DATE].

**YOUR OPTIONS**

**6. What options do I have with respect to the proposed Settlement?**

If you are a Potential Settlement Class Member, you have three options with respect to this proposed Settlement: (1) Do nothing and be considered a Settlement Class Member eligible to participate in the proposed Settlement and receive the Settlement Benefit allocated to you according to the terms of the proposed Settlement. (2) Opt out of the proposed Settlement. (3) Participate in the proposed Settlement, but object to it. Each of these options is described further below.

**7. What are the details and deadlines related to my three options?**

- a. If you do nothing, and the proposed Settlement is approved by the Court, you will be considered a Settlement Class Member eligible to participate in the proposed Settlement and to receive the Settlement Benefit allocated to you according to the terms of the proposed Settlement, which includes an election to donate your Settlement Benefit to Cornell's Student Access Fund. You will be paid by a check issued by the Settlement Administrator to your last known mailing address on file with the University Registrar or as provided by you. You will first be provided a payment distribution email to be sent to your last known email address on file with the University Registrar, wherein you will be provided with a number of alternative payment options, such as PayPal or Venmo instead of a check by mail, and an option to donate your portion of the Settlement Fund to Cornell's Student Access Fund. **A valid email address is required to receive digital payment. If your email address on file changes or becomes invalid for any reason, it is your responsibility to provide accurate contact information to the Settlement Administrator to receive a payment.** Payments will be issued sixty (60) days after the Effective Date, as defined in the

proposed Settlement. The payment redemption period will end one hundred and eighty (180) days after the Effective Date, as defined in the proposed Settlement. The dates will also be posted on the Settlement Website at [WEBSITE] when known, but it will be some time after the Final Approval Hearing currently scheduled for [DATE].

- b. If you would like to opt out of the proposed Settlement, your request must be postmarked no later than [OPT-OUT DEADLINE]. Selecting this option means you will not be considered a Settlement Class Member, and therefore not eligible to receive the Settlement Benefit.
- c. If you would like to object to the proposed settlement, your objection must be postmarked no later than [OBJECTION DEADLINE]. Selecting this option means you will be considered a Settlement Class Member eligible to participate in but who objects to the proposed Settlement, with the right to have your objection considered by the Court at the Final Approval Hearing.

**8. How do I decide which option to choose?**

If you would prefer not to participate in the proposed Settlement, then you may want to consider opting out. If you opt out, you will not receive a payment and you will keep any individual claims you may have against the University relating to the transition to virtual education in the Spring 2020 semester.

If you believe the proposed Settlement is unreasonable, unfair, or inadequate and that the Court should reject the proposed Settlement, you may want to consider objecting to the proposed Settlement. The Court will decide if your objection is valid. If the Court agrees, then the proposed Settlement may not be approved. If your objection (or any other objection) is overruled, and the proposed Settlement is approved, then you will still receive a payment under the proposed Settlement and you will be bound by the proposed Settlement. Note that if you do not object to the proposed Settlement, and the proposed Settlement is approved, you cannot later challenge or appeal that approval order.

**9. Do I have to do anything if I want to participate in the proposed Settlement?**

No. If you are a Settlement Class Member, you are automatically entitled to a payment and will be paid pursuant to the deadlines set forth under Answer 7(a).

**OPTING OUT OF THE PROPOSED SETTLEMENT**

**10. What happens if I opt out of the proposed Settlement?**

If you opt out of the proposed Settlement, you will preserve any claims you may have against the University related to its transition to virtual education in the Spring 2020 semester. However,

you will not be entitled to receive a payment from this proposed Settlement, assuming that the proposed Settlement is approved by the Court.

**11. How do I opt out of the proposed Settlement?**

To opt out of the proposed Settlement, you must send a written request to the Settlement Administrator at: *Cornell University Covid Refund Settlement*, [Administrator Address], which must:

- a. include a statement requesting to opt out of the Settlement Class;
- b. be personally signed by you;
- c. include your name, address, telephone number, and email address;
- d. include the caption for the Action—*Alec Faber, et al., v. Cornell University*, Civil Action No. 3:20-cv-467; and
- e. be postmarked no later than [OPT-OUT DEADLINE].

A request to opt out of the proposed Settlement that does not meet the above requirements, or that is sent to an address other than that of the Settlement Administrator, will be invalid and the person sending the defective request will remain in the Settlement Class and, if the proposed Settlement is approved by the Court, will receive a payment, and will be bound by the approved Settlement.

A request to opt out of the proposed Settlement must be done on an individual basis. A Potential Settlement Class Member cannot purport to opt others out of the proposed Settlement on a class or representative basis.

**OBJECTING TO THE PROPOSED SETTLEMENT**

**12. How do I object to the proposed Settlement?**

You can object to the proposed Settlement, or any part of it, so long as you do not opt out of the proposed Settlement, as only Settlement Class Members have the right to object to the proposed Settlement, including any attorneys’ fees sought by Class Counsel and any other payments to be made from the Settlement Fund. To have your objection considered by the Court at the Final Approval Hearing, your objection must:

- a. state that you are a Settlement Class Member;
- b. include your name, address, telephone number, and email address; and
- c. be personally signed by you, the objecting Settlement Class Member;
- d. contain a statement that includes all objections, states whether each objection applies only to the objector, to a subset of the Settlement Class, or to the entire Settlement Class, and states the specific reasons for all objections, including any legal arguments and evidentiary support (including copies of any documents relied upon);
- e. state whether you wish to speak at the Final Approval Hearing; and
- f. state whether you are represented by counsel.

Your objection and any accompanying papers must be filed with the Clerk of Court. If you are represented by counsel, the objection must be filed through the Court’s electronic case filing (ECF) system. All objections must also be mailed at the same time to Class Counsel, the University’s Counsel, and the Settlement Administrator at the addresses below. All objections must be postmarked no later than [OBJECTION DEADLINE].

Clerk of Court	Settlement Administrator	Class Counsel	University’s Counsel
Clerk of the Court US District Court Northern District of New York James T. Foley U.S. Courthouse, 445 Broadway, Albany, NY 12207	[Administrator Address]	<b>LYNCH CARPENTER, LLP</b> Attn: (Eddie) Jae K. Kim 1133 Penn Avenue, 5th Floor Pittsburgh, PA 15222	<b>JENNER &amp; BLOCK LLP</b> Attn: Ishan K. Bhabha Paul B. Rietema 353 N. Clark Street Chicago, IL 60654-3456 Email: ibhabha@jenner.com prietema@jenner.com

**13. What happens if I object to the proposed Settlement?**

If you object to the proposed Settlement, the Court will consider your objection at the Final Approval Hearing. If the Court sustains your objection, or the objection of any other Settlement Class Member, the proposed Settlement may not be approved. If you object, but the Court overrules your objection and any other objections and approves the proposed Settlement, then you will be bound by the approved Settlement, and you may appeal the approval order to the extent that it overrules your objection.

**14. What is the difference between objecting and opting out of the proposed Settlement?**

Objecting to the proposed Settlement is telling the Court that you do not believe the proposed Settlement is fair, reasonable, and adequate for the Settlement Class, and asking the Court to reject it. If you object to the proposed Settlement and the proposed Settlement is ultimately approved, then you are entitled to a payment and will release any claims related to the University's transition to virtual education or other services as a result of the COVID-19 pandemic beginning in March 2020, including the implementation or administration of such virtual education and other services. Opting out of the proposed Settlement, however, is telling the Court that you do not want to be a part of the proposed Settlement if it is approved, you do not want to receive a payment, and you will not release claims you might have against the University that would otherwise have been released by participating in the proposed Settlement.

**15. Can I opt out and object to the proposed Settlement?**

No. To object to the proposed Settlement, you must participate in the proposed Settlement. Thus, you must choose between opting out or objecting to the proposed Settlement.

**THE PROPOSED SETTLEMENT PAYMENT**

**16. How much is this proposed Settlement?**

The Parties have agreed to a Settlement Fund in the total amount of \$3,000,000.00.

As discussed in more detail below, service awards for the Settlement Class Representatives, attorneys' fees and costs, and the costs and expenses of the Settlement Administrator will be paid out of the Settlement Fund. Thereafter, the remaining balance—the Net Settlement Fund—will be divided equally among all Settlement Class Members entitled to payments as outlined in the proposed Settlement and discussed further below in Answer 20.

**17. How much of the Settlement Fund will be used to pay for attorneys' fees and costs?**

Class Counsel will request that the Court approve attorneys' fees of not more than one-third of the Settlement Fund, and will request that Class Counsel be reimbursed for their out-of-pocket litigation costs incurred in litigating the Action. Class Counsel must submit their request to the Court by [DEADLINE FOR MOTION FOR FEES], at which point the amount of the requested attorneys' fees, as well as Class Counsel's motion, will be published on the Settlement Website

at [website]. The Court will then decide the amount of the attorneys' fees and costs based on a number of factors, including the risk associated with bringing the Action, the amount of time spent on the case, the magnitude and complexity of the Action, the quality of the work, and the requested fee in relation to the outcome of the Action.

**18. How much of the Settlement Fund will be used to pay the Settlement Class Representatives?**

Class Counsel will request that the Settlement Class Representatives, Alec Faber and Ahnaf Rahman, be paid an award in the amount of no more than \$10,000.00 each, in recognition for their work in connection with this case. The award must be approved by the Court.

**19. How much of the Settlement Fund will be used to pay administrative expenses?**

A third-party Settlement Administrator was retained to provide notice and administer the payments to Settlement Class Members. The expenses of the Settlement Administrator are projected to not exceed \$150,000. In the event that such expenses exceed \$150,000, such additional amounts shall be paid only after approval by both Class Counsel and the University's Counsel.

**20. How much will my payment be?**

The balance of the Settlement Fund after paying the awards to the Settlement Class Representatives, administrative costs, and attorneys' fees and costs will be known as the Net Settlement Fund. The Net Settlement Fund will be divided equally so that each Settlement Class Member receives the same amount. More specifically, the Net Settlement Fund will be allocated pro rata to each Settlement Class Member based on the ratio of (a) the total number of Potential Settlement Class Members to (b) the total Net Settlement Fund. The resulting ratio will be multiplied by the Net Settlement Fund to determine each Settlement Class Member's Settlement Benefit. If you qualify as a Settlement Class Member, and the proposed Settlement is approved, you will receive the Settlement Benefit. Should any students opt out of the proposed Settlement, the amount that would have been distributed to such Potential Settlement Class Member had they not filed an opt-out request will instead be distributed to Settlement Class Members, in equal amounts to each Settlement Class Member.

**21. When will I receive my payment?**

The Court will hold a Final Approval Hearing on [HEARING DATE] to consider whether the proposed Settlement should be approved. If the Court approves the proposed Settlement, then payments will be distributed within sixty (60) days of the date after which the proposed Settlement becomes final, as defined in the Settlement Agreement.

### **THE FINAL APPROVAL HEARING**

**22. When and where will the Court decide whether to approve the proposed Settlement?**

The Court will hold a Final Approval Hearing on [HEARING DATE] at the Northern District of New York located at the James T. Foley U.S. Courthouse, 445 Broadway, Albany, NY 12207. At this hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate. If objections have been properly submitted, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and litigation costs and the amount of the awards to the Settlement Class Representatives. The hearing will be public. The hearing may be virtual, in which case the instructions for viewing the hearing and participating will be posted on the Settlement Website at [website]. The date and time of the Final Approval Hearing may change without further notice. Please check the Settlement Website for updates.

**23. Do I have to come to the Final Approval Hearing?**

No. Class Counsel will answer any questions the Court may have. You may attend if you desire to do so. If you have properly submitted an objection, the Court will consider your objection regardless of whether you attend.

**24. May I speak at the Final Approval Hearing?**

If you are a Settlement Class Member, you may ask the Court for permission to speak at the Final Approval Hearing. If you are objecting and would like to speak at the Final Approval Hearing, you must state in your objection, as described in Answer 12 above, that you wish to be heard at the Final Approval Hearing.

### **THE LAWYERS REPRESENTING THE CLASS**

**25. Do I have a lawyer in this case?**

The Court has ordered that the law firms of Lynch Carpenter, LLP; Poulin | Willey | Anastopoulo, LLC (formerly known as Anastopoulo Law Firm LLC); Cherundolo Law Firm, PLLC; and Toptani Law Offices will serve as Class Counsel and will represent all Settlement Class Members in this matter.

**26. Do I have to pay the lawyers bringing this suit on behalf of the Settlement Class?**

No. Class Counsel will be paid directly from the Settlement Fund, subject to the Court's approval.

**27. Who determines what the attorneys' fees will be?**

The Court will be asked to approve the amount of attorneys' fees at the Final Approval Hearing. Class Counsel will file an application for attorneys' fees and costs, which shall not exceed one-

third of the Settlement Fund, plus their out-of-pocket litigation costs, and will specify the amount being sought. Class Counsel must submit their request to the Court by [DEADLINE FOR MOTION FOR FEES], at which point the amount of the requested attorneys' fees, as well as Class Counsel's motion, will be published on the Settlement Website at [website]. Settlement Class Members who would like to object to the amount of attorneys' fees sought by Class Counsel may do so by following the instructions described in Answer 12 above.

### **GETTING MORE INFORMATION**

This notice summarizes the proposed Settlement. More details are contained in the Settlement Agreement, which can be viewed or obtained online at [website]. In the event of any inconsistency between the Settlement Agreement and this notice, the Settlement Agreement will govern.

For additional information about the proposed Settlement, you should contact the Settlement Administrator as follows:

**[Administrator Address]** Toll Free: [Number]

Email: info@[website]

For more information, you may also contact Class Counsel:

#### **LYNCH CARPENTER, LLP**

Attn: (Eddie) Jae K. Kim  
1133 Penn Avenue, 5th Floor  
Pittsburgh, PA 15222  
(213) 463-4423

#### **POULIN | WILLEY | ANASTOPOULO, LLC**

Attn: Roy T. Wiley, IV  
32 Ann Street  
Charleston, SC 29403  
(843) 614-8888

#### **CHERUNDOLO LAW FIRM, PLLC**

Attn: John C. Cherundolo  
AXA Tower I, 15th Floor  
100 Madison Street  
Syracuse, NY 13202  
Tel: (315) 449-9500

**PLEASE DO NOT CONTACT THE COURT OR THE UNIVERSITY  
CONCERNING THIS NOTICE OR THE PROPOSED SETTLEMENT**

# Exhibit B

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

ALEC FABER, individually and on  
behalf of all others similarly situated; and AHNAF  
RAHMAN, individually and on behalf of others  
similarly situated,

Plaintiffs,

v.

CORNELL UNIVERSITY,

Defendant.

Case No.: 3:20-cv-00467 MAD/ML

Hon. Mae A. D'Agostino

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF THE  
SETTLEMENT, DIRECTING NOTICE TO THE POTENTIAL CLASS,  
SETTING A HEARING ON FINAL APPROVAL, AND PROVISIONALLY  
CERTIFYING THE PROPOSED CLASS**

**WHEREAS**, Plaintiffs Alec Faber and Ahnaf Rahman (collectively “Plaintiffs”), individually and as representatives of the Settlement Class, as defined below, and Defendant Cornell University (“Defendant”) (Plaintiffs together with Defendant hereinafter collectively, the “Parties”) have entered into a Settlement Agreement that was fully executed on [DATE], which if approved, would resolve this class action (“Action”);

**WHEREAS**, Plaintiffs have filed a motion for preliminary approval of the proposed settlement (“Settlement”) set forth in the Settlement Agreement, which Defendant does not oppose, and the Court has reviewed and considered the motion, the supporting brief, the supporting declarations, the Settlement Agreement, and all exhibits thereto, including the proposed class notices (hereinafter the “Notices”), and finds there is sufficient basis for granting preliminary approval of the Settlement, directing that the Short Form Notice be disseminated to the Settlement Class, and setting a hearing at which the Court will consider whether to grant final approval of the Settlement;

**NOW, THEREFORE**, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, upon the agreement of the Parties, and after consideration of the Settlement and its exhibits,

**IT IS HEREBY ORDERED** that:

1. Unless otherwise defined herein, terms used in this Order have the same meaning as defined in the Settlement.

2. The representations, agreements, terms, and conditions of the Settlement, as embodied in the Settlement Agreement and the exhibits attached thereto, are preliminarily approved pending a Final Approval Hearing on the Settlement as provided herein.

3. This Court finds that it has jurisdiction over the subject matter of this action and over all Parties to the Action.

4. The Court finds that, subject to the Final Approval Hearing, the Settlement Agreement is fair, reasonable, and adequate, within the range of possible approval, and in the best interests of the Settlement Class Members set forth below. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the class action and provides substantial relief to the Settlement Class Members without the risks, burdens, costs, or delay associated with continued litigation, trial, and/or appeal. The Court also finds that the Settlement Agreement (a) is the result of arm's-length negotiations between experienced class action attorneys; (b) is sufficient to warrant notice of the settlement and the Final Approval Hearing to be disseminated to the Settlement Class Members; (c) meets all applicable requirements of law; and (d) is not a finding or admission of liability by Defendant or any other person, nor a finding of the validity of any claims asserted in the Action, any wrongdoing, or any violation of law.

5. For purposes of the proposed Settlement only, the Court preliminarily finds and determines that the Action may proceed as a class action pursuant to Rules 23(a) and 23(b)(3) of

the Federal Rules of Civil Procedure, and provisionally certifies the following Settlement Class as proposed by the Parties:

All students enrolled in a degree-bearing Cornell program for the Spring 2020 semester, with the exception of: (i) any person who withdrew from Cornell on or before March 1, 2020; (ii) any person enrolled for the Spring 2020 semester solely in a program that, at the beginning of the Spring 2020 semester, was to be delivered as an online program; (iii) any person who executes and files a proper and timely opt-out request to be excluded from the Settlement Class; and (iv) the legal representatives, successors or assigns of any such excluded person.

6. For purposes of the proposed Settlement only, the Court preliminarily finds and determines, pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure, as follows: (a) the members of the Settlement Class are so numerous that their joinder in the Action would be impracticable; (b) there are questions of law and fact common to the Settlement Class, and those questions predominate over any individual questions; (c) the claims of Plaintiffs in the Action are typical of the claims of the Settlement Class; (d) Plaintiffs and Class Counsel will fairly and adequately protect the interests of the Settlement Class; and (e) a class action is superior to other available methods for fairly and efficiently adjudicating the Action.

7. For purposes of the proposed Settlement only, the Court preliminarily appoints Plaintiffs Alec Faber and Ahnaf Rahman as Settlement Class Representatives.

8. For purposes of the proposed Settlement only, the Court preliminarily appoints the law firms of Lynch Carpenter LLP; Poulin | Willey | Anastopoulos, LLC (formerly known as Anastopoulos Law Firm LLC); Cherundolo Law Firm, PLLC; and Toptani Law Offices as Class Counsel to act on behalf of the Settlement Class and the Settlement Class Representatives with respect to the Settlement. The Court preliminarily authorizes Class Counsel to enter into the Settlement on behalf of the Settlement Class Representatives and the Settlement Class, and to bind them all to the duties and obligations contained therein, subject to final approval by the Court of the Settlement.

9. The Court appoints the firm of KCC LLC as Settlement Administrator to administer the Notice procedure and distribute the Net Settlement Fund, under the supervision of Class Counsel.

10. Having reviewed the proposed Short Form Notice of Proposed Class Action Settlement and Hearing (“Short Form Notice”), and the proposed Long Form Notice of Proposed Class Action Settlement and Hearing (“Long Form Notice”), submitted by the Parties as Exhibits A and C to the Settlement, the Court approves, as to form and content, such Notices.

11. Within fourteen (14) days after the entry of this Order, Defendant shall produce to the Settlement Administrator a list from the University Registrar’s records that includes the names and last known email and postal addresses, to the extent available, belonging to all Potential Settlement Class Members.

12. Within fourteen (14) days after the entry of this Order, and before the issuance of the Short Form Notice, the Settlement Administrator shall establish the Settlement Website, which shall include, in downloadable format, the following: (i) the Long Form Notice; (ii) the Preliminary Approval Order; (iii) the Settlement Agreement (including all of its exhibits); (iv) a Question and Answer section agreed to in good faith by the Parties anticipating and answering Settlement-related questions from prospective class members; (v) contact information for the Settlement Administrator, including a Toll Free number, and (iv) any other materials agreed upon by the Parties and/or required by the Court.

13. No later than fifteen (15) days after the entry of this Order, and until the date the Final Judgment is entered, Defendant shall provide a link to the Settlement Website described in paragraph 12 at <https://www.cornell.edu/>.

14. Within thirty (30) days after the entry of this Order, the Settlement Administrator shall send, via email to persons listed on the Class List, the Short Form Notice substantially in the form submitted to the Court; and if an email address is not listed for a Potential Settlement Class Member on the Class List, such Short Form Notice shall be sent by the Settlement Administrator to the Potential Settlement Class Member's last known mailing address via U.S. mail.

15. No later than thirty (30) days after the entry of this Order, Defendant shall cause the Short Form Notice to be published as an advertisement in the *Cornell Chronicle*, or the student newspaper, or a publication with comparable reach.

16. Prior to the Final Approval Hearing, in connection with the motion for final approval of the Settlement, Class Counsel shall serve and file a sworn statement from the Settlement Administrator evidencing compliance with the provisions set forth above concerning the distribution of Notice by the Settlement Administrator to the Settlement Class.

17. The Court finds and determines that (a) emailing or mailing the Short Form Notice, (b) publication of the Short Form Notice, (c) posting of the Long Form Notice on the Settlement Website, and (d) posting a link to the Settlement Website on Defendant's 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 satisfy the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and all other applicable laws and rules.

18. Any person falling within the definition of the Potential Settlement Class may, upon request, "opt-out" and be excluded from the Settlement Class. No Potential Settlement Class Member may both opt-out of the Settlement and object to the Settlement; a Potential Settlement

Class Member must decide whether to opt-out of the Settlement as described herein, or to object as described [in paragraphs 25-26] below.

19. Any person who desires to opt-out and request exclusion from the Settlement Class must submit a written request for exclusion in the form and manner required by the Long Form Notice. Such written request for exclusion must be mailed to the Settlement Administrator such that it is postmarked no later than forty-five (45) days after the issuance of the Short Form Notice (the “Objection/Exclusion Deadline”).

20. The application of Class Counsel for any Fee Award, Service Awards, and reimbursement of Litigation Expenses must be filed at least fourteen (14) days prior to the Objection/Exclusion Deadline.

21. All persons who submit valid and timely written requests for exclusion as set forth in this Order and the Long Form Notice shall have no rights under the Settlement, shall not share in the distribution of the Settlement Fund, and shall not be bound by the Settlement or any Final Judgment entered in this Action.

22. Any motion for final approval of the Settlement and final certification of the Settlement Class for settlement purposes only, shall be filed by Class Counsel, in coordination with Defendant’s Counsel, no later than ten (10) days before the Final Approval Hearing.

23. No later than seventy-five (75) days after the Short Form Notice is disseminated by the Settlement Administrator, this Court will hold a hearing in the United States District Court for the Northern District of New York, 445 Broadway, Albany, NY 12207, at \_\_\_\_\_ on \_\_\_\_\_, 2023 (“Final Approval Hearing”), to determine: (a) whether the Settlement should be approved as fair, reasonable, and adequate to the Settlement Class; (b) whether the proposed manner of distribution of the Net Settlement Fund should be approved as fair, reasonable, and

adequate to the Settlement Class; (c) whether to approve the application of Class Counsel for a Fee Award and reimbursement of Litigation Expenses; (d) whether to approve the payment of a case contribution Service Award to the Settlement Class Representatives; (e) whether a Final Judgment should be entered; and (f) any other matters that may properly be brought before the Court in connection with the Settlement. The Final Approval Hearing is subject to continuation or adjournment by the Court without further notice to the Settlement Class. The Final Approval Hearing may be held in person, telephonically, or remotely via Zoom or other electronic platform without further notice. The Settlement Administrator shall post information about the Final Approval Hearing on the Settlement Website, and any interested persons should check the Settlement Website for any changes to the date of the Final Approval Hearing or the manner in which it will be held.

24. Any Settlement Class Member may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. If a Settlement Class Member does not enter an appearance, they will be represented by Class Counsel.

25. Any Settlement Class Member may object to the Settlement, the manner of distribution of the Net Settlement Fund, the application for case contribution Service Award, the Fee Award, and/or the request for reimbursement of Litigation Expenses, or may appear at the Final Approval Hearing and show cause, if any, why the Settlement should not be approved as fair, reasonable, and adequate to the Settlement Class, why a Final Judgment should not be entered thereon, why the case contribution Service Award should not be approved, or why the Fee Award or request for reimbursement of Litigation Expenses should not be approved. Any such objection must be in the form and manner required by the Long Form Notice.

26. No Settlement Class Member or other person will be heard on such matters unless they have postmarked no later than the Objection/Exclusion Deadline a written objection that: (a) states that the person objecting is a Settlement Class Member; (b) includes the name, address, email, and telephone number of the Settlement Class Member objecting; (c) is personally signed by the objecting Settlement Class Member; (d) contains a statement that includes all objections, states whether each objection applies only to the objector, to a subset of the Settlement Class, or to the entire Settlement Class, and states the specific reasons for all objections, including any legal arguments and evidentiary support (including copies of any documents relied upon); (e) includes a statement of whether the objector intends to appear at the Final Approval Hearing, with or without counsel; and (f) is otherwise in the form and manner required by the Long Form Notice. Such written objections, briefs, papers, and statements must be filed with the Court, and copies must be delivered by email, mail, hand, or overnight delivery services at the same time to the following counsel:

*If to the Settlement Class Representatives or Class Counsel:*

**LYNCH CARPENTER, LLP**

Attn: (Eddie) Jae K. Kim  
1133 Penn Avenue, 5th Floor  
Pittsburgh, PA 15222  
Email: ekim@lcllp.com

**POULIN | WILLEY | ANASTOPOULO, LLC**

Attn: Paul J. Doolittle  
32 Ann Street  
Charleston, SC 29403  
Email: pauld@akimlawfirm.com

**CHERUNDOLO LAW FIRM, PLLC**

Attn: John C. Cherundolo  
AXA Tower One 15th Floor  
100 Madison Street  
Syracuse, NY 13202  
Email: jcherundolo@cherundololawfirm.com

*If to Cornell:*

**JENNER & BLOCK LLP**

Attn: Ishan K. Bhabha

Paul B. Rietema

353 N. Clark Street

Chicago, IL 60654-3456

Email: [ibhabha@jenner.com](mailto:ibhabha@jenner.com)

[prietema@jenner.com](mailto:prietema@jenner.com)

27. If a Settlement Class Member objects to the Settlement and the Settlement is nonetheless approved by the Court, then the objecting Settlement Class Member is a member of the Settlement Class and will receive their share of the Net Settlement Fund.

28. If any Settlement Class Member does not make an objection in the form and manner set forth above and in the Long Form Notice, such Settlement Class Member shall be deemed to have waived any objections and shall be forever barred from raising such objections in this Action or any other action or proceeding, absent further order of the Court.

29. This Order shall constitute a “judicial order” within the meaning of the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g and 34 C.F.R. § 99.31(a)(9), sufficient to compel Defendant to provide the “Class List” regarding Settlement Class Members (including any directory information, as FERPA defines that term, and regardless of any limitations Cornell has placed on directory information) to the Settlement Administrator in accordance with this Order.

30. Upon the Effective Date set forth in Paragraph 1(g) of the Settlement, the Releasing Settlement Class Parties shall have fully, finally, and forever released all Released Claims against the Released Cornell Parties, and shall forever be barred and enjoined from prosecuting any or all of the Released Claims against any of the Released Cornell Parties; and the Releasing Cornell Parties shall have fully, finally, and forever released all Released Claims against the Released

Settlement Class Parties, and shall forever be barred and enjoined from prosecuting any or all of the Released Claims against any of the Released Settlement Class Parties.

31. Upon the Effective Date set forth in Paragraph 1(g) of the Settlement, only persons who are Settlement Class Members shall have rights in the distribution of the Settlement Fund created by the Settlement.

32. All funds held by the Escrow Agent shall be deemed and considered to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds are distributed pursuant to the Settlement or further order of the Court.

33. All further proceedings in the Action are ordered stayed until Final Judgment or termination of the Settlement, whichever occurs earlier, except for those matters necessary to obtain and/or effectuate final approval of the Settlement.

34. Members of the Settlement Class shall be bound by all determinations and judgments concerning the Settlement and Final Judgment as to the same, whether favorable or unfavorable.

35. The Court retains jurisdiction to consider all further applications arising out of or in connection with the Settlement. The Court may approve the Settlement with such modifications as may be agreed by the Parties, if appropriate, without further Notice to the Settlement Class.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Mae A. D'Agostino  
United States District Judge

# Exhibit C

**Subject: NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

PLEASE READ THIS NOTICE CAREFULLY. If you were enrolled in a degree-bearing program at Cornell University (“University”) for the Spring 2020 semester, you may be eligible to receive a payment as part of a proposed settlement of *Alec Faber, et al., v. Cornell University*, Civil Action No. 3:20-cv-467 (the “Action”).

In this Action, Plaintiffs alleged the University breached a contract when it transitioned to virtual education in response to the COVID-19 pandemic. Plaintiffs also alleged that the University’s shift to virtual education gave rise to claims of unjust enrichment. Plaintiffs sought a refund of a portion of their tuition and fees for the Spring 2020 semester. The University denies any breach of contract and denies all other allegations of wrongdoing, and there has been no finding of liability in any court. However, considering the interests of both the University and its students in prompt resolution of the matter, the University and Plaintiffs have agreed that the University will pay \$3,000,000 into a Settlement Fund to resolve the Action.

**Am I a Class Member?** If you (1) were enrolled in a degree-bearing Cornell program for the Spring 2020 semester, and (2) were not enrolled in a program that, at the beginning of the Spring 2020 semester, was intended to be delivered as an online program, and (3) did not withdraw from the University on or before March 1, 2020, 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.**

**How Do I Get a Payment?** You will be paid by a check issued by the Settlement Administrator to your last known mailing address on file with the University Registrar or as provided by you. You will first be provided a payment distribution email to be sent to your last known email address on file with the University Registrar, wherein you will be provided with a number of alternative payment options, such as PayPal or Venmo, and an option to donate your portion of the Settlement Fund to Cornell’s Student Access Fund. If you do not select a payment option, your check will be mailed. **A valid email address is required to receive digital payment. If the email address you have on file changes or becomes invalid for any reason, it is your responsibility to provide accurate contact information to the Settlement Administrator to receive a payment.** You must make your selection within forty-five (45) days after the Effective Date, as defined in the proposed Settlement. Payments will be issued sixty (60) days after the Effective Date, as defined in the proposed Settlement. The payment redemption period will end one hundred and eighty (180) days after the Effective Date, as defined in the proposed Settlement. The dates will also be posted on the Settlement Website at [WEBSITE] when known, but it will be some time after the Final Approval Hearing currently scheduled for [DATE].

By participating in the proposed Settlement, you release your right to bring any claim covered by the proposed Settlement, including bringing any claim relating in any way to Cornell’s transition to virtual education or other services as a result of the COVID-19 pandemic beginning in March 2020.

**What Are My Other Options?** If you do not want to participate in this proposed Settlement—meaning you do not want to receive your portion of the Settlement Fund, 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 [OPT-OUT DATE]. 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 [OBJECTION DATE]. Please follow the detailed instructions outlined in the Long Form Notice and the Settlement Agreement, which can both be found at [WEBSITE], 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 [DATE]. 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 awards to each Settlement Class Representative for their service in this litigation. The Court will also determine the amount to award the Class Representatives in service awards, the amount to award to Class Counsel in attorneys' fees and litigation costs, and the amount for Settlement Administrator costs, all of which will be paid out of the Settlement Fund. The Motion for Final Approval will be posted on the Settlement Website after [DEADLINE FOR MOTION FOR FEES] if you wish to review it before the Final Approval Hearing.

**You are encouraged to review the Long Form Notice as it provides additional information.** To review the Long Form Notice, review other important documents, including the Settlement Agreement, and obtain more information about the proposed Settlement, please visit [WEBSITE].

**You can contact the Settlement Administrator by calling toll-free 1- [NUMBER], or by emailing info@[WEBSITE].**

# Exhibit D

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

ALEC FABER, individually and on  
behalf of all others similarly situated; and  
AHNAF RAHMAN, individually and on  
behalf of others similarly situated,

Plaintiffs,

v.

CORNELL UNIVERSITY,

Defendant.

Case No.: 3:20-cv-00467 MAD/ML

Hon. Mae A. D'Agostino

**[PROPOSED] FINAL JUDGMENT**

**WHEREAS**, the Parties to the above-captioned putative class action (the “Action”) executed a Settlement Agreement dated [DATE] (the “Settlement”);

**WHEREAS**, on [DATE] the Court entered an Order Granting Preliminary Approval of the Settlement, Directing Notice to the Class, Setting a Hearing on Final Approval and Provisionally Certifying the Settlement Class (“Preliminary Approval Order”), which, *inter alia*: (i) preliminarily approved the Settlement; (ii) preliminarily determined that, for purposes of the Settlement only, the Action should proceed as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of the Settlement Class comprising:

All students enrolled in a degree-bearing Cornell program for the Spring 2020 semester, with the exception of: (i) any person who withdrew from Cornell on or before March 1, 2020; (ii) any person enrolled for the Spring 2020 semester solely in a program that, at the beginning of the Spring 2020 semester, was to be delivered as an online program; (iii) any person who executes and files a proper and timely opt-out request to be excluded from the Settlement Class; and (iv) the legal representatives, successors or assigns of any such excluded person.

(iii) preliminarily appointed Alec Faber and Ahnaf Rahman as Settlement Class Representatives;

(iv) preliminarily appointed Lynch Carpenter, LLP; Poulin | Willey | Anastopoulo, LLC (formerly

known as Anastopoulos Law Firm LLC); Cherundolo Law Firm, PLLC; and Toptani Law Offices as Class Counsel; (v) approved the forms and manner of notice of the Settlement to Potential Settlement Class Members; (vi) directed that appropriate notice of the Settlement be given to the Potential Settlement Class; and (vii) set a hearing date to consider final approval of the Settlement;

**WHEREAS**, notice of the Settlement was provided to Potential Settlement Class Members in accordance with the Court’s Preliminary Approval Order;

**WHEREAS**, on [DATE] at [TIME] at the United States District Court for the Northern District of New York, 445 Broadway, Albany, NY 12207, this Court held a hearing to determine whether the Settlement was fair, reasonable, and adequate to the Settlement Class (“Final Approval Hearing”); and

**WHEREAS**, based on the foregoing, having considered the papers filed and proceedings held in connection with the Settlement and all other files, records, and proceedings in the Action, and being otherwise fully advised.

**THE COURT HEREBY FINDS AND CONCLUDES** that:

A. This Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all the Parties and all the Settlement Class Members for purposes of the Settlement.

B. This Order incorporates the definitions in the Settlement and all terms used in the Order have the same meanings as set forth in the Settlement, unless otherwise defined herein.

C. The Short Form Notice and Long Form Notice (“the Notices”) provided to the Potential Settlement Class in accordance with the Preliminary Approval Order constituted the best notice practicable under the circumstances of this Action and constituted due and sufficient notice of the proceedings and matters set forth therein, including of the Settlement, to all persons entitled

to notice. The Notices fully satisfied the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and all other applicable laws and rules.

D. The notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, have been satisfied.

E. For purposes of the Settlement only, the Action may proceed as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure.

F. Class Counsel and the Settlement Class Representatives have fairly and adequately represented the Settlement Class, both with respect to litigation of the Action and for purposes of negotiating, entering into, and implementing the Settlement. Class Counsel and the Settlement Class Representatives have satisfied the requirements of Rules 23(a)(4) and 23(g) of the Federal Rules of Civil Procedure.

G. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court grants final approval of the Settlement, as: (i) it is in all respects fair, reasonable, and adequate to the Settlement Class; (ii) it was the product of informed, arm's-length negotiations among competent, able counsel, and the negotiations were facilitated by two experienced mediators; (iii) it was based on a record that is sufficiently developed to have enabled the Settlement Class Representatives and Cornell to adequately evaluate their positions; (iv) the relief provided to the Settlement Class is adequate, taking into account the costs, risks, and delay of continued litigation and the effectiveness of the plan of allocation as outlined in the Settlement; (v) the Settlement treats Settlement Class Members equitably relative to one another; and (vi) the Settlement was positively received by the Settlement Class.

H. The persons who have timely and validly requested exclusion from the Settlement Class, if any, are identified in Exhibit 1 attached hereto ("Excluded Persons").

I. The Settlement Class Representatives and the Settlement Class Members, and all and each of them, are hereby bound by the terms of the Settlement.

**NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED** that:

1. The Settlement is fair, reasonable, and adequate to the Settlement Class. Accordingly, the Court authorizes and directs implementation of all terms and provisions of the Settlement.

2. All Parties to this Action, and all Settlement Class Members, are bound by the Settlement and this Final Judgment. Excluded Persons, if any, identified in Exhibit 1 are no longer parties to this Action and are not bound by the Settlement.

3. Final Judgment shall be, and hereby is, entered dismissing the Action with prejudice, and without taxation or costs in favor of or against any Party.

4. The Settlement Class Representatives, Class Counsel, and all other Settlement Class Members, and each of their respective present, future, and former heirs, family members, guardians, executors, administrators, employees, agents, representatives, attorneys, outside counsel, predecessors, successors, assigns, and any person who has made payments to Defendant on their behalf (hereinafter “Releasing Settlement Class Parties”), are hereby conclusively deemed to have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived and discharged Defendant and all of its 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, future, and former officers, directors, trustees, academic affiliates, employees, faculty members, agents, representatives, attorneys, outside counsel, predecessors, successors, and assigns (hereinafter “Released Cornell Parties”), from 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, arising out of, concerning, or relating in any way to Defendant's transition to virtual education or other services as a result of the COVID-19 pandemic beginning in March 2020, or the implementation or administration of such virtual education or other services, including but not limited to all claims that were brought or could have been brought in the Action (hereinafter "Released Claims").

5. The Releasing Settlement Class Parties are hereby barred and permanently enjoined from instituting, asserting, or prosecuting any or all of the Released Claims against any of the Released Cornell Parties.

6. Defendant and all of its 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, future, and former predecessors, successors, and assigns (hereinafter "Releasing Cornell Parties"), are hereby conclusively deemed to have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged the Settlement Class Representatives, Class Counsel, and all other Settlement Class Members, and each of their respective present, future, and former heirs, family members, guardians, executors, administrators, employees, agents, representatives, attorneys, outside counsel, predecessors, successors, assigns, and any person who has made payments to Cornell on their behalf (hereinafter "Released Settlement Class Parties"), from all Released Claims.

7. The Releasing Cornell Parties are hereby barred and permanently enjoined from instituting, asserting, or prosecuting any or all of the Released Claims against any of the Released Settlement Class Parties.

8. The manner of distribution of the Net Settlement Fund as described in the Settlement and in the Notices to Potential Settlement Class Members is hereby approved, subject to modification by further order of this Court, which may, at the discretion of the Court, be entered without further notice to the Settlement Class. Any order or proceedings relating to the manner of distribution of the Net Settlement Fund, so long as they are not materially inconsistent with this Final Judgment, shall not operate to terminate or cancel the Settlement or affect the finality of this Final Judgment approving the Settlement.

9. The Court hereby decrees that neither the Settlement nor this Final Judgment nor the fact of the Settlement itself, is an admission or concession by Defendant of any fault, wrongdoing, or liability whatsoever. This Final Judgment is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. Nothing relating to the Settlement shall be offered or received in evidence as an admission, concession, presumption, or inference against Defendant or the Released Cornell Parties in any proceeding, other than such proceedings as may be necessary to consummate or enforce the Settlement.

10. Class Counsel are awarded attorneys' fees in the amount of \$ [AMOUNT] and reimbursement of litigation expenses in the amount of \$ [AMOUNT] with such amounts to be paid from the Settlement Fund in accordance with the terms of the Settlement. In addition, Administrative Expenses, which shall not exceed \$150,000, are to be paid out of the Settlement Fund to KCC LLC to perform its responsibilities as the Settlement Administrator, in accordance with the terms of the Settlement.

11. Settlement Class Representatives are each awarded a case contribution award in the amount of \$10,000.00, such amounts to be paid from the Settlement Fund in accordance with the terms of the Settlement.

12. Without affecting the finality of this Final Judgment in any way, the Court retains and reserves jurisdiction over: (a) implementation of this Settlement and any distributions from the Settlement Fund; (b) the Action, until each and every act agreed to be performed by the Parties shall have been performed pursuant to the terms and conditions of the Settlement and any further orders of the Court; and (c) the Parties, for the purpose of enforcing and administering the Settlement.

13. There is no just reason to delay the entry of this Final Judgment as a final judgment in this Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this Final Judgment in this Action and to close the case.

14. In the event that this Final Judgment does not become Final in accordance with Paragraph 1(l) of the Settlement, then this Final Judgment shall be rendered null and void to the extent provided by and in accordance with the Settlement, and this Order shall be vacated. In such event, all orders entered and releases delivered in connection with the Settlement shall be null and void, except those necessary to effect termination of the Settlement. In such event, the Action shall return to its status immediately prior to execution of the Settlement.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Mae A. D'Agostino  
United States District Judge

# Exhibit 2



# LYNCH CARPENTER

Pittsburgh ▪ San Diego ▪ Chicago  
Los Angeles ▪ Philadelphia

## **OUR MISSION**

Lynch Carpenter is a national law firm with a singular mission – to provide a voice to those who have been silenced by the disproportionate powers which too often exist in America. With lawyers based in Pittsburgh, San Diego, Los Angeles, Philadelphia, and Chicago, Lynch Carpenter has created an inclusive national community of like-minded legal talent to represent plaintiffs in complex litigation. Lynch Carpenter lawyers have developed strong collaborative working relationships with counsel throughout the nation and have been involved in numerous high-profile multidistrict litigation proceedings, frequently in leadership roles.

The Lynch Carpenter platform is self-made, without reliance upon the legacy of a long-established “repeat player” law firm, and is based upon the fundamental principle that input from a broad base of lawyers with diverse backgrounds, working together with mutual respect, will result in the strongest possible organization. At Lynch Carpenter, diversity is utilized, not tokenized. To this end, the firm strives to provide equal opportunities for promotion and leadership to its attorneys and supporting professionals. Eleven of the 22 Lynch Carpenter attorneys have been appointed to leadership positions in multidistrict or otherwise consolidated litigation, in class-action matters involving financial fraud (including securities fraud, derivative actions, and lending fraud), data breach, privacy, consumer fraud, breach of contract, labor and employment, antitrust, and civil rights, in federal and state courts throughout the country.

Lynch Carpenter represents a wide variety of clients, including individual consumers and employees, small businesses, non-profits, issue advocacy groups, and governmental entities. Over the past ten years, Lynch Carpenter lawyers emerged as national leaders in data breach and privacy litigation, and in that time have negotiated or contributed to class recoveries totaling more than \$250 million in that sector alone. Along the way, the Lynch Carpenter team has generated seminal legal authority in both trial and appellate courts. For example, in 2018, as a direct result of Lynch Carpenter’s tenacious appellate advocacy, the Pennsylvania Supreme Court became one of the first state high courts to recognize that a common-law duty of reasonable care applies to the collection and storage of sensitive electronically-stored data. This landmark opinion, *Dittman v. UPMC*, 196 A.3d 1036 (Pa. 2018), paved the way for data breach victims to bring viable negligence claims against companies whose inadequate security practices allow major breach incidents to happen.

In October 2020, *The Legal Intelligencer* named Lynch Carpenter (under its predecessor name) “Litigation Department of the Year” for general litigation in Pennsylvania. In 2021, the firm was named as a finalist for Litigation Department of the Year in the Pennsylvania region by *The American Lawyer*. Several of its partners co-author the current edition of *Class Actions: The Law of 50 States* published by Law Journal Press. Lynch Carpenter’s attorneys are recipients of numerous additional individual awards, as described in more detail in the individual biographies on the firm’s website.

Lynch Carpenter continues to grow and establish itself as a leader in representing plaintiffs in complex litigation throughout the country. The firm remains committed to developing its younger lawyers and providing them with opportunities for professional growth, both inside and outside of the firm. In leading major complex litigation, the firm draws strength from its decentralized management structure, which fosters collaboration within the firm and enables the assembly of internal litigation teams for each case. In this way, Lynch Carpenter epitomizes the synergistic benefits which result from a group of good lawyers working together to do good things.

## **REPRESENTATIVE AND NOTABLE CASES**

### **PRIVACY & DATA BREACH LITIGATION**

***Biscan v. Shields Health Care Group, Inc.***, 1:22-cv-10901-PBS (D. Mass). Jude Saris appointed Elizabeth Pollock Avery as Interim Co-Lead Counsel, and Hannah Barnett as member of the Interim Executive Committee in this data breach case against a healthcare company involving patients from several states.

***In re TikTok, Inc., Consumer Privacy Litig.***, No. 20-cv-4699 (MDL No. 2948) (N.D. Ill.). Judge Lee appointed Katrina Carroll as Co-lead Counsel in this multidistrict litigation alleging that one of the world's biggest social media platforms captured, collected, and transmitted personal data from TikTok users and their devices without their consent and/or knowledge, including private information and biometric information within the meaning of the Illinois Biometric Information Privacy Act.

***In re Equifax, Inc. Customer Data Security Breach Litig.***, MDL 2800 (N.D. Ga.). The Equifax data breach compromised the nation's entire credit reporting system. More than 400 lawsuits filed by consumers and financial institutions were consolidated in the MDL. Gary Lynch was appointed co-lead counsel for financial institution plaintiffs. After significant dispositive motions practice and initial rounds of discovery, the parties negotiated a settlement of the financial institution class action that provides up to \$7.75 million in cash benefits, plus additional injunctive relief. The court granted preliminary approval of the settlement in June 2020 and final approval in October 2020.

***In re Blackbaud, Inc. Customer Data Breach Litig.***, MDL 2972 (D.S.C.). In 2020, data security company Blackbaud, Inc. was target for a ransomware attack. In the litigation that followed, brought by Blackbaud's customers, Kelly Iverson was appointed to the Plaintiffs' Steering Committee. On October 19, 2021, the Honorable J. Michelle Childs denied Blackbaud's motion to dismiss Plaintiffs' negligence and gross negligence claims.

***In re Wawa, Inc. Data Security Litig.***, 2:19-cv-6019 (E.D. Pa.). Gary Lynch was appointed co-lead counsel for a putative class of financial institution plaintiffs in consolidated actions brought against Wawa, Inc. arising out of a 2019 payment card data breach involving the convenience store's point-of-sale systems. A consolidated amended complaint was filed in July 2020, and in 2021 the district court denied the defendant's motion to dismiss the primary claims.

***In re Marriott International Customer Data Security Breach Litigation***, MDL No. 2879 (D. MD.). Lynch Carpenter was appointed to the Plaintiffs' Steering Committee in this multidistrict litigation related to the data breach involving Starwood guest information dating back to at least 2014. The MDL includes more than 100 cases and is in pretrial litigation. The District Court certified several bellwether classes in May 2022.

***Opris v. Sincera Reproductive Medicine***, 2:21-cv-3072 (E.D. Pa.). Lynch Carpenter serves as co-lead counsel in this data breach case involving the 2020 compromise of patients' personal identifiable information and protected health information from a reproductive health services provider. In May 2022, Judge Slomsky denied the majority of the defendant's motion to dismiss, and the case is now in discovery.

***In re Anthem, Inc. Customer Data Security Breach Litig.***, No. 5:15-md-02617, MDL 2617 (N.D. Cal.). Lynch Carpenter attorneys represented customers of a national health insurer which experienced a data breach involving the personal information, including social security numbers, of up to an estimated 80 million customers. The case was consolidated and transferred to the Northern District of California in June 2015. Lynch Carpenter attorneys participated in discovery related to Highmark, the Pennsylvania-based member of the Blue Cross Blue Shield Association and a co-defendant in the MDL. The parties reached a settlement valued at \$117 million, which was approved by the Court.

***In re Home Depot Customer Data Breach Litig.***, 1:14-md-02583, MDL 2583 (N.D. Ga.). In this multidistrict litigation, Lynch Carpenter attorneys represented financial institutions in litigation related to the major data breach at the retailer which continued for almost six months in 2014 and resulted in the compromise of approximately 56 million payment card accounts. Lynch Carpenter was appointed by Judge Thrash to be one of three lead counsel managing the financial institution track of the litigation. In September 2017, the Court granted final approval to a comprehensive class settlement that provides over \$27 million in relief to the financial institution class.

***First Choice Federal Credit Union v. The Wendy's Company et al***, 2:16-cv-0506, (W.D. Pa.). This class action arose out of a malware installed on the point-of-sale systems of Wendy's franchised restaurants for the purpose of capturing and ex-filtrating customer payment card data. Approximately 18 million payment cards were exposed. The United States District Court for the Western District of Pennsylvania consolidated several proposed class actions and appointed Lynch Carpenter as Co-lead Counsel on behalf of the plaintiff financial institutions. In November 2018, after three rounds of in-person mediation, Wendy's agreed to pay \$50 million into a non-reversionary fund and to adopt and/or maintain certain reasonable safeguards to manage its data security risks. When the settlement received final approval in November 2019, the Honorable Maureen P. Kelly noted Class Counsel's "national reputation," "significant experience in these types of class actions and in data breach litigation," and "high level of skill and efficiency." Judge Kelly further explained:

This case has gone on for three and a half years...This was a very involved case and everyone brought to the table an incredible wealth of knowledge, was always prepared, really was thorough and professional in everything that was provided to the Court. And as involved as this case was, if every case I had was as well organized and professionally presented as this case has been, my life would be much easier... The briefs I got in this case and any filings were just so well-done and detailed. And my law clerks and I have discussed that a number of times. I want to thank counsel for the way you have conducted yourselves and the way you've all presented this case.

***Dittman et al v. UPMC d/b/a The University of Pittsburgh Medical Center and UPMC McKeesport***, Allegheny Cty., Pa. No. GD-14-003285; 196 A.3d 1036 (Pa. 2018). Lynch Carpenter represented several employees of the health care group UPMC in a class action stemming from a breach of UPMC's personnel files. On November 21, 2018, the Supreme Court of Pennsylvania issued a landmark decision, reversing two lower courts, regarding the viability of common law negligence claims in the wake of a data breach. The Court found that UPMC engaged in affirmative conduct by collecting and storing employee data, and that general principles of negligence support holding actors to "a duty to others to exercise the care of a reasonable man to protect [others] against an unreasonable risk of

harm to them arising out of the act.” As to the economic loss doctrine, the Court agreed with Plaintiffs’ interpretation of Pennsylvania legal precedent on the issue, finding that the question of whether the economic loss doctrine applies necessarily turns on the “source of the duty alleged,” and, accordingly, a plaintiff may seek pecuniary damages under a negligence theory if the duty sought to be enforced arises independently of any contractual relationship between the parties. After remand to the trial court, additional motions practice, and initiating discovery, the parties reached a multimillion-dollar settlement that received final approval in December 2021.

***In re Target Corporation Customer Data Breach Litig.***, 0:14-md-02522, MDL 2522 (D. Minn.). This multidistrict litigation arose out of the massive data breach that occurred in late 2013. Judge Magnuson appointed Gary Lynch to the five-member Plaintiffs’ Executive Committee that managed the litigation on behalf of all Plaintiffs’ tracks (consumer, financial institution, and shareholder). A settlement agreement which provided \$10 million to affected individual customers was granted final approval in November 2015. A separate settlement providing approximately \$39 million in relief to plaintiff financial institutions was granted final approval in May 2016.

***Greater Chautauqua Federal Credit Union et al v. Kmart Corporation et al***, No. 15-cv-02228 (N.D. Ill.). In this consolidated data breach case in which financial institutions were seeking recovery for losses sustained as a result of a 2014 data breach at one of the nation’s largest discount retail chains, Judge Lee appointed Gary Lynch to the Plaintiffs’ Executive Committee, and Katrina Carroll to serve as Liaison Counsel. A settlement was reached and approved in June 2017.

***In re Ashley Madison Customer Data Security Breach Litig.***, MDL No. 2669 (E.D. Mo.). In this well-publicized data breach case Lynch Carpenter attorneys represented individuals whose highly sensitive account information was leaked from a social media company. The case was consolidated and transferred to the Eastern District of Missouri in December 2015. Judge Ross appointed Gary Lynch and Katrina Carroll (while with her prior firm) to the Executive Committee. A class settlement for \$11.2 million was given final approval in November 2017.

***In re Vizio, Inc. Consumer Privacy Litig.***, MDL No. 2693 (C.D. Cal.). This action was filed on behalf of individuals who purchased Vizio “Smart TVs,” which contained software that collected information about the users in a manner that allegedly violates numerous consumer protection statutes. The case was consolidated and transferred to the Central District of California in April 2016, and Lynch Carpenter was appointed to the Plaintiffs’ Steering Committee. The case was settled and received final approval in 2019, providing for a \$17 million common fund.

***Veridian Credit Union v. Eddie Bauer LLC***, 2:17-cv-356 (W.D. Wash.). Lynch Carpenter served as co-lead counsel on behalf of a class of financial institutions in this class action against Eddie Bauer arising out of payment card data breach of the retailer’s point-of-sale systems in 2016, which led to the exposure of up to 1.4 million payment cards. After overcoming a motion to dismiss and engaging in substantial discovery, the parties negotiated a class action settlement, which was approved in 2019. The agreement made up to \$2.8 million available in direct cash relief to class members and provided for an addition \$7 million worth of injunctive relief and other benefits.

***In Re: Solara Medical Supplies Data Breach Litigation***, 19-cv-02284 (S.D. Cal.). In January 2020, Judge Marilyn Huff appointed Kelly Iverson to the Plaintiffs’ Steering Committee in this data

breach action that affected both the personally identifiable information as well as protected health information of Plaintiffs' and the classes.

***In re Community Health Systems, Inc., Customer Data Security Breach Litigation***, 2:15-cv-00222, MDL 2595 (N.D. Ala.). Gary Lynch served as a member of the plaintiffs' steering committee in consolidated multidistrict litigation stemming from a 2014 data breach involving one of the nation's largest hospital chains. The breach affected over 200 hospitals and the sensitive personal information of approximately 4.5 million patients was compromised. The action settled on a class basis for up to \$3.1 million.

***In re Arby's Restaurant Group***, 1:17-mi-55555 (N.D. Ga.). In October 2016, computer hackers accessed Arby's inadequately protected point-of-sale system and installed malware that infected nearly 1,000 Arby's restaurant locations. Gary Lynch was appointed by Judge Totenberg as Chair of the Financial Institution Plaintiffs' Executive Committee. The case settled and received final approval in November 2020.

***Vance v. International Business Machines Corp.***, 1:20-cv-577 (N.D. Ill.). Lynch Carpenter attorneys were appointed Co-lead Counsel in this class action claiming IBM violated Illinois's Biometric Information Privacy Act when it collected, obtained, disclosed, redisclosed, disseminated, and otherwise profited from Illinois residents' unique facial geometric measurements without providing notice or obtaining consent. In September 2020, Lynch Carpenter defeated nearly all of the arguments raised in IBM's motion to dismiss, allowing the case to proceed forward toward class certification.

***In Re: Clearview AI, Inc., Consumer Privacy Litig.***, 1:21-cv-00135 (N.D. Ill.). Lynch Carpenter attorneys served as counsel in this multidistrict litigation on behalf of a proposed class of Illinois citizens alleging that Clearview, in violation of the Illinois Biometric Information Privacy Act, scraped over 3 billion facial images from the internet, scanned the facial images' biometrics, and built a searchable database of the scanned images and biometrics, allowing users to instantly identify an unknown individual with only a photograph. Clearview then sold or otherwise gave access to these biometrics to hundreds of law enforcement agencies, private entities, and individuals.

***Lewert v. PF Chang's China Bistro, Inc.***, No. 1:14-cv-04787 (N.D. Ill.): Katrina Carroll served as Court-appointed co-lead counsel representing P.F. Chang's customers who had their personal financial information compromised in a 2014 security breach. This matter was one of the first data breach cases on record. Ms. Carroll oversaw all of the appellate briefing in ultimately obtaining a landmark ruling in the Seventh Circuit on Article III standing, hailed by Law360 as one of the "top privacy cases" of 2016.

***Salam v. Lifewatch, Inc.***, No. 1:13-cv-09305 (N.D. Ill.): In this hard-fought litigation, Lynch Carpenter partner Katrina Carroll is currently involved as court-appointed Co-lead Counsel on behalf of a certified class in this privacy matter brought under the Telephone Consumer Protection Act ("TCPA"). Ms. Carroll has been directly involved in all aspects of litigation, including discovery and motion practice which culminated in a total victory for plaintiffs in contested class certification.

**CONSUMER PROTECTION/PRODUCTS LIABILITY**

***In re Philips Recalled CPAP, Bi-Level PAP, and Mechanical Ventilator Products Liability Litig.***, MDL No. 3014 (W.D. Pa.). In February 2022, Kelly Iverson was appointed as one of four co-lead counsel from a pool of 75 applicants. The MDL includes over 300 actions involving allegations regarding the potentially harmful degradation of sound abatement foam on recalled continuous positive airway pressure (CPAP) machines and the manufacturers' conduct in marketing and ultimate recall of the machines. The actions are in the early pretrial stages.

***In re Robinhood Outage Litig.***, No. 20-cv-1626 (N.D. Cal.). In July 2020, Jamisen Etzel was appointed to the executive committee overseeing consolidated actions brought by consumers who sustained losses when the trading application Robinhood suffered severe service outages in early 2020 during a period of intense market volatility. A consolidated amended complaint was filed in August 2020, and rulings on class certification are expected in 2022.

***Morrow v. Ann Inc.***, 16-cv-3340 (S.D.N.Y.). Lynch Carpenter attorneys were co-class counsel in a case alleging deceptive pricing practices by a major national retail chain. After plaintiffs overcame a motion to dismiss, the case settled for \$6.1 million worth of class benefits. The settlement was approved in April 2018.

***Luca v. Wyndham Hotel Group, LLC***, 2:16-cv-746 (W.D. Pa.). Lynch Carpenter attorneys were co-lead counsel in a class action against the Wyndham hotel companies for violations of New Jersey consumer protection statutes. Plaintiffs alleged that Wyndham's websites deceptively masked the resort fees charged at certain hotels and forced patrons to agree to illegal terms and conditions. In 2017, plaintiffs defeated a motion to dismiss filed by two of the primary operating subsidiaries. A class settlement worth up to \$7.6 million was reached in 2019 and approved later that year.

***Van v. LLR, Inc.***, 3:18-cv-0197 (D. Ak.); 962 F.3d 1160 (9th Cir. 2020). Lynch Carpenter partners Jamisen Etzel and Kelly Iverson won a significant consumer rights ruling from the United States Court of Appeals for the Ninth Circuit. The appeals court reversed a district court dismissal for lack of standing, and, in a published decision, held that the temporary loss of money is a sufficient "injury-in-fact" under Article III of the Constitution to confer standing on a consumer to file a federal lawsuit. In September 2021, the District of Alaska certified a class of consumers asserting claims under Alaska's Unfair Trade Practices and Consumer Protection Act.

***Mednick v. Precor, Inc.***, No. 14-cv-03624 (N.D. Ill.): Lynch Carpenter partner Katrina Carroll served as court-appointed Co-lead Counsel in this products liability matter concerning the heart rate monitoring feature on Precor fitness machines. Due to Ms. Carroll's efforts, the plaintiffs defeated a contested class certification motion and obtained class certification for a multi-state consumer class. Ms. Carroll was instrumental in negotiating a class settlement providing meaningful relief for class members shortly thereafter, for which the Court recently issued final approval.

***In re Rust-Oleum Restore Marketing, Sales Practices and Prods. Liab. Litig.*** No. 1:15-cv-1364 (N.D. Ill.): In this sprawling products liability MDL relating to defective deck resurfacing products, Katrina Carroll was instrumental in negotiating a \$9.3 million settlement providing meaningful relief to consumers, which received final approval in March of 2017 by the Honorable Amy J. St. Eve of the

United States District Court for the Northern District of Illinois, now a sitting Judge of the Court of Appeals for the Seventh Circuit.

**FINANCIAL FRAUD, LENDING PRACTICES, AND SECURITIES**

***In re: FedLoan Student Loan Servicing Litigation – MDL No. 2833***, (E.D. Pa.). Lynch Carpenter serves as court-appointed co-lead counsel on behalf of student loan borrowers and federal grant recipients in this multidistrict litigation. The claims relate to widespread and systemic failures on the part of a student loan servicer and the U.S. Department of Education to adequately service the programs and advise its participant. A consolidated complaint was filed in November 2019. As of January 2022, a motion to dismiss is fully briefed and currently awaiting resolution by the Court.

***CitiMortgage SCRA Litigation***, (S.D.N.Y.). Lynch Carpenter attorneys were tri-lead counsel in this class action against CitiMortgage on behalf of Sergeant Jorge Rodriguez in the Southern District of New York. This case alleges that CitiMortgage improperly foreclosed upon Mr. Rodriguez’s home (and the homes of similarly situated individuals) while he was serving his country in Iraq, in violation of the Servicemembers Civil Relief Act. The case settled and received final approval in October 2015, securing a total recovery of \$38.2 million for members of our military service.

***In re Community Bank of Northern Virginia and Guaranty National Bank of Tallahassee Secondary Mortgage Loan Litigation***, (W.D. Pa./3d Cir.). Lynch Carpenter attorneys were co-lead class counsel in this national litigation on behalf of second mortgage borrowers under the Real Estate Settlement Procedures Act. The class was certified by the district court and affirmed by the Third Circuit, 795 F.3d 380 (2015). A class settlement was finalized in early 2017 and obtained a total recovery of \$24 million.

***In re Tenet Healthcare Corp. Securities Litigation***, 02-cv-8462 (C.D. Cal.). Prior to joining the firm, Katrina Carroll represented the State of New Jersey’s Division of Investment in this securities class action against Tenet Healthcare and its outside auditor, KPMG, related to false and misleading public statements those entities made between 2000 and 2002 about Tenet’s financial health. Katrina played a large role in drafting motions *in limine* briefing issues regarding the admissibility of plaintiff’s expert witness report. Tenet settled in 2006 for \$215 million, and KPMG settled in 2008 for \$65 million.

***In re Motorola Securities Litig.***, 03-cv-287 (N.D. Ill.). Katrina Carroll represented the State of New Jersey’s Division of Investment in this securities class action against Motorola, stemming from misrepresentations made by the company regarding a \$2 billion loan it made to a Turkish entity that was not repaid. The case settled a few days before trial for \$190 million.

***Figueroa v. Capital One***, 18-cv-692 (S.D. Cal.). Todd Carpenter and Eddie Kim served as Class Counsel in a class action challenging the unlawful assessment of multiple ATM fees in contravention of the customer account agreement, which resulted in a \$13 million settlement.

***Bingham v. Acorns Grow***, 30-2019-0150842 (Cal. Sup. Ct. Orange Cnty.). Eddie Kim served as Class Counsel in a class action on behalf of customers of a financial mobile app that automatically transferred “spare change” from each purchase using debit cards issued by customers’ banks into an Acorns Grow investment account. This action challenged the app’s failure to prevent overdrafts of

customers' checking accounts as a result of the automated transfers and the resultant assessment of overdraft fees. A \$2.5 million settlement is pending court approval.

***Schertzer v. Bank of America***, 19-cv-264 (S.D. Cal.). Lynch Carpenter attorneys represent bank customers who were assessed out-of-network ATM fees for balance inquiries transpiring from deceptive ATM prompts utilized by independent ATM operators Cardtronics and FCTI. Plaintiffs prevailed on challenges to the pleadings and a ruling on the motion for class certification is pending.

#### **COVID-19 INSURANCE LITIGATION**

***In re Generali Covid-19 Travel Insurance Litig.***, No. 20-md-2968, MDL 2968 (S.D.N.Y). In January 2021, Jamisen Etzel was appointed co-lead counsel in this MDL comprising actions brought on behalf of consumers whose travel plans were cancelled as a result of the Covid-19 pandemic, and whose travel insurance provider either denied coverage or refused to return premiums paid for post-departure risks the insurer was not required to cover.

***Business Income Insurance Coverage Litigation***, various. Lynch Carpenter attorneys represents numerous business-policyholders who were forced to close or curtail their business operations as a result of government shut down orders in the wake of the Covid-19 pandemic and who have been denied insurance coverage under their "all risks" property insurance coverage.

#### **WAGE AND HOUR & EMPLOYMENT DISCRIMINATION LITIGATION**

***Copley v. Evolution Well Services, LLC***, 2:20-cv-01442 (W.D. Pa.). In February 2022, Lynch Carpenter obtained collective certification under the FLSA of several hundred "hitch employees." These employees spent hours per week travelling to remote job sites, time for which they were unpaid. The litigation is currently in the post-conditional certification discovery phase.

***Verma v. 3001 Castor Inc.***, (E.D. Pa.). As co-class counsel, Lynch Carpenter attorneys won a \$4.59 million jury verdict in 2018 for misclassified workers at a Philadelphia nightclub. The claims were brought under the FLSA and Pennsylvania Minimum Wage Act. The trial verdict was fully affirmed by the Third Circuit in August 2019.

***Genesis Healthcare v. Symczyk*** (U.S. Supreme Court). Gary Lynch served as Counsel of Record before the United States Supreme Court in an appeal addressing the application of mootness principles in a putative collective action filed under Section 216(b) of the Fair Labor Standards Act. When defendant served the plaintiff with a Rule 68 offer of judgment for "make whole" relief, the district court dismissed the case as moot. Gary Lynch successfully argued the appeal in the United States Court of Appeals for the Third Circuit, which held that the FLSA collective action did not become moot upon the plaintiff's receipt of a Rule 68 offer of judgment for full satisfaction of her individual claim. The Supreme Court reversed in a 5-4 opinion, with Justice Kagan writing a strong dissent on behalf of our client—a position which was subsequently adopted by the majority of the Court in *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153 (2016). Plaintiff's position before the Supreme Court was supported by the United States as Amicus Curiae.

ANTITRUST

***In Re Railway Industry Employee No-Poach Antitrust Litigation, MDL 2850***, (W.D. Pa.), Chief Judge Joy Flowers Conti appointed Lynch Carpenter partner Kelly K. Iverson as Plaintiffs' Liaison Counsel on behalf of the class of employees who alleged the defendants and their co-conspirators entered into unlawful agreements to reduce and eliminate competition among them for employees and to suppress the compensation of those employees. The two defendants agreed to class settlements worth a combined \$48.95 million, and final approval was granted in August 2020.

***In Re Blue Cross Blue Shield Antitrust Litigation, MDL No. 2406***, (N.D. Ala.). Lynch Carpenter attorneys represent healthcare subscriber plaintiffs in four states in this nationwide class action challenging the anti-competitive practices of Blue Cross/Blue Shield's nationwide network of local insurers who do not compete with each other based on geographic boundaries. A \$2.7 billion settlement received preliminary approval in early 2021.

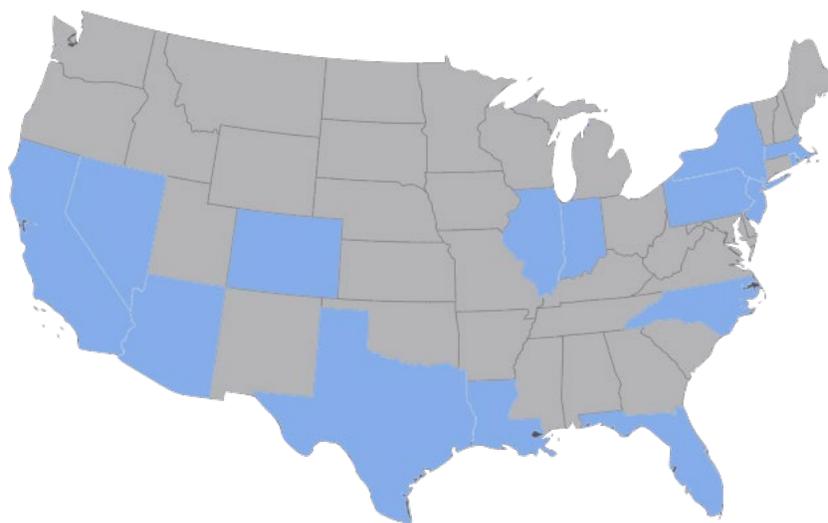
CIVIL RIGHTS

***ADA (Americans with Disabilities Act) Accessibility Litigation***. Lynch Carpenter is currently counsel for plaintiffs in a substantial number of putative class actions filed on behalf of individuals with disabilities to enforce the ADA's accessibility requirements. Over the last ten years, Lynch Carpenter attorneys have represented individuals with visual and mobility disabilities in seeking improved access to physical locations, ATMs, Point of Sale devices, and websites.

# Exhibit 3

# POULIN | WILLEY ANASTOPOULO

## COLLEGE / UNIVERSITY REFUND LITIGATION



### North Carolina

Wilmington, Charlotte

### South Carolina

Charleston, N. Charleston  
Columbia, Greenville  
Florence, Myrtle Beach

### California

Los Angeles

## **Firm Statement Relevant to This Litigation**

Poulin | Willey | Anastopoulos filed the first wave of university tuition and fee refund litigation in the nation, with the first cases being filed in early April 2020, just as announcements came from universities about their refusal to rebate or refund any money back to student consumers. Commensurate with its 25-year track record of only taking on litigation its attorneys truly believe in, Poulin | Willey | Anastopoulos is highly selective in its class and mass tort-based litigation. Currently, Poulin | Willey | Anastopoulos has more than 30 putative class action college and university tuition and fee refund cases pending in at least 15 different states. This is not just another group of cases in a portfolio for Poulin | Willey | Anastopoulos; this is a national cause to ensure that our college and university students are treated fairly and not taken advantage of.

Poulin | Willey | Anastopoulos does not hope simply to push these cases towards a quick settlement, but will prosecute the actions on behalf of the students as if they are going to trial, and will be prepared to take them to trial if resolution is not proposed on fair terms to the student consumers. This case will get specialized attention, and be fully funded. No stone will be left unturned.

## **Statement of Firm Resources**

In 2020 alone, the Poulin | Willey | Anastopoulos recovered over \$60,000,000 on behalf of its clients. The Poulin | Willey | Anastopoulos employs over 100 dedicated legal professionals, including 25+ attorneys. In addition, the Poulin | Willey | Anastopoulos is among the remaining few firms nationally that regularly tries cases to verdict. For this purpose, the Firm employs four full time investigators, and maintains an internal focus

group and mock trial program that allow it to test and develop theories and case strategies from the outset.

Notably, Poulin | Willey | Anastopoulo recovered \$12,500,000 on behalf of student consumers in *In Re Columbia University Tuition Refund Litigation*, 1:20-cv-03208-JMF (S.D.N.Y.). To date, this believed to be the largest per student settlement in Covid-19 tuition and fee refund litigation.

Poulin | Willey | Anastopoulo has assembled an in-house team of five lawyers who are working exclusively on Covid-19 tuition and fee refund litigation, and has set aside the resources necessary to grow this team as needed. Collectively, the team has already invested over 58,000 hours on research, drafting, and filings specific to the tuition refund litigation nationwide. Poulin | Willey | Anastopoulo is willing to commit whatever resources are necessary to adequately represent the Class in this matter.

## **Relevant Leadership Appointments**

The leadership team representing Poulin | Willey | Anastopoulo in this action has already been appointed Interim Lead or Co-Lead Counsel in the *In Re Columbia University Tuition Refund Litigation*, 1:20-cv-03208-JMF (S.D.N.Y.); *Montesano v. Catholic University of America*, 1:20-cv-01496 (D.D.C.); *Qureshi v. American University*, 1:20-cv-01141-CRC (D.D.C.), *Faber v. Cornell University*, 3:20-cv-00467-MAD (N.D.N.Y.); *Bergeron v. Rochester Institute of Technology*, 6:20-cv-06283-CJS (W.D.N.Y.); *In re: University of Miami COVID-19 Tuition and Fee Refund Litigation*, 20-60851-AHS (S.D. Fla.); and *Ford v. Rensselaer Polytechnic Institute*, Case No. 20-cv-00470 (N.D.N.Y.).

## **Relevant Representative Cases**

<b>Date Filed</b>	<b>University / College</b>	<b>Case</b>	<b>Court Pending</b>	<b>Case No.</b>
4/8/2020	Drexel University	<i>Rickenbaker et al. v. Drexel University</i>	Settled	20-cv-03353
4/8/2020	University of Miami	<i>In re: University of Miami Covid-19 Tuition and Fee Litigation</i>	Eleventh Circuit of Appeals	23-10299
4/23/2020	Pace University	<i>Elizabeth Tapinekis v. Pace University</i>	Second Circuit Court of Appeals; Supreme Court of the State of New York	22-1058; Index No. 652902/2022
4/23/2020	Manhattan College	<i>Czigany Beck v. Manhattan College</i>	Southern District of New York	20-cv-03229
4/25/2020	Cornell University	<i>Faber v. Cornell University</i>	Settled	20-cv-00467
4/25/2020	Rensselaer Polytechnic Institute	<i>Morgan Ford v. Rensselaer Polytechnic Institute</i>	Northern District of New York	20-cv-00470
4/29/2020	Boston University	<i>In Re: Boston University COVID-19 Refund Litigation</i>	District of Massachusetts	20-cv-10827
4/30/2020	University of Pennsylvania	<i>Smith et al. v. University of Pennsylvania</i>	Settled	20-cv-02086
5/1/2020	American University	<i>Qureshi v. American University</i>	District Court for the District of Columbia	20-cv-01141
5/1/2020	Rochester Institute of Technology	<i>Nicholas Bergeron v. Rochester Institute of Technology</i>	Western District of New York	20-cv-06283
5/5/2020	Pennsylvania College of Technology	<i>Michael James Lawson, Jr. and Tara Lawson v. Pennsylvania College of Technology</i>	Court of Common Pleas – Lycoming County	21-1134
5/5/2020	Temple University	<i>Ryan v. Temple University</i>	Third Circuit Court of Appeals	21-2016
5/6/2020	Indiana University	<i>Justin Spiegel v. The Trustees of Indiana University</i>	Monroe Circuit Court	79C01-2005-PL-000059

5/14/2020	University of Rhode Island	<i>Thomson v. Board of Trustees of the University of Rhode Island</i>	District of RI	1:20-cv-00295
5/15/2020	University of Massachusetts	<i>Spencer Holmes and Student B v. University of Massachusetts</i>	Superior Court - Suffolk County	2084-cv-01025
5/20/2020	Purdue University	<i>Elijah Seslar v. The Trustees of Purdue University</i>	Tippicanoe Circuit Court	79D02-2005-PL-000059
5/20/2020	Illinois Institute of Technology	<i>Omar Hernandez v. Illinois Institute of Technology</i>	Seventh Circuit Court of Appeals	22-1741
5/21/2020	Suffolk University	<i>Julia Durbeck v. Suffolk University</i>	First Circuit Court of Appeals	1:20-cv-10985
5/29/2020	Brandeis University	<i>Alan Thomas Omori v. Brandeis University</i>	District of Massachusetts - Boston	1:20-cv-11021
6/5/2020	Baylor University	<i>Allison King v. Baylor University</i>	Fifth Circuit Court of Appeals Reversed and Remanded	6:20-cv-00504
6/9/2020	University of Nevada	<i>Kelsie Ballas v. State of Nevada et al.</i>	Nevada District Court	CV20-00922
6/11/2020	The Catholic University of America	<i>Montesano v. The Catholic University of America</i>	District Court for the District of Columbia	1:20-cv-01496
6/16/2020	Louisiana State University	<i>Michael Miazza v. Board of Supervisors of Louisiana State University and Agricultural and Mechanical College</i>	19 <sup>th</sup> Judicial District Court – East Baton Rouge Parish, Louisiana	C-69691824
7/21/2020	St. John's University	<i>Brian Gallagher v. St. John's University</i>	Eastern District of New York	1:20-cv-3274
7/29/2020	University of Pittsburgh	<i>Hickey et al. v. University of Pittsburgh</i>	Third Circuit Court of Appeals	21-02013
8/31/2020	Long Island University	<i>Moore v. Long Island University</i>	Second Circuit Court of Appeals	22-393

10/22/2020	University of New Haven	<i>Wnorowski v. University of New Haven</i>	Connecticut District Court	3:20-cv-01589
12/14/2020	University of Delaware	<i>Russo v. University of Delaware</i>	Delaware District Court	1:20-cv-01693
1/12/2021	Manhattanville College	<i>Laudati v. Manhattanville College</i>	Southern District of New York	7:21-cv-00272
3/9/2021	Touro College and University System	<i>Yodice v. Touro College and University System</i>	Second Circuit Court of Appeals	21-2986

## **Other Class and Mass Action Experience**

The Firm's founding member, Akim Anastopoulos, has been representing Plaintiffs for the majority of his over 30 years of practice, and has extensive experience in mass and class actions.

Poulin | Willey | Anastopoulos represented over 500 potential claimants in the *In Re: Vioxx Products Liability Litigation*, 2:05-md-01657-EEF-DEK. Likewise, the Firm represented over 1,000 claimants in the *In Re Baycol Prods.. Liab.. Litig.*, MDL No. 1431, Case No. 02-0160 (MJD/SRN) and State Actions Consolidated Under THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT Master File No.: 2002-CP-43-1041, where Mr. Anastopoulos served as lead counsel on two state bellwether cases.

Mr. Anastopoulos also served as joint lead counsel on multiple state cases that were eventually consolidated to a state class action regarding *In Re OxyContin Products Liability Class Action*, and served as sole lead counsel in South Carolina's first opioid state action, *Ken Love, et al Civil Action No.: O1-CP-38-1059 (SC) vs. Purdue Pharma A, L.P, et. al.*

Mr. Anastopoulo also served on the Daubert Submissions committee for the Thimerosal Litigation MDL and represented hundreds of individual clients in *In Re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.*, 2000 U.S. Dist. LEXIS 12275, \*47-48 (D. Pa. 2000).

Mr. Anastopoulo is not alone, Mr. Roy Willey's experience in mass and class actions has also been recognized in his appointment to the Leadership Steering Committees in *In re: January 2021 Short Squeeze Tradition Litigation*, 1:21-md-02989 (S.D. Fla), and *In Re: Recalled Abbott Instant Formula Products Liability Litigation*, 1:22-cv-04148 (N.D. Ill). Most recently, Poulin | Willey | Anastopoulo was appointed Co-Lead Counsel in *Day v. GEICO Casualty Company et al*, 5:21-cv-02103 (N.D. Cal.). Mr. Doolittle, Direct of the firm's Class and Mass Action Division, was recently recognized in his appointment of class counsel in *Smith v. Univ. of Pa.*, 2:20-cv-02086 (E.D. Pa.)

## **Poulin | Willey | Anastopoulo's Roster of Attorneys**

The leadership team representing Poulin | Willey | Anastopoulo in this action leads the nation's trial bar in areas as diverse as insurance contract law and professional negligence, having recovered over \$58 million for clients in the last year alone. The team also serves in various national, state, and local leadership positions in an effort to give back to their communities.

Recognized among *America's Top 100 High Stakes Litigators*, by *Super Lawyers* and receiving top verdicts year after year in their respective jurisdictions, the attorneys of Poulin | Willey | Anastopoulo are respected legal advocates who are known for

aggressive and compassionate representation and who leave no stone unturned on behalf of their clients.



**Eric M. Poulin**

Email: [Eric@akimlawfirm.com](mailto:Eric@akimlawfirm.com)

**Education**

Presbyterian College, B.S.

Charleston School of Law, J.D., *magna cum laude*

Eric has tried multiple cases to verdict, resulting in over \$60,000,000 in single event personal injury jury verdicts. Licensed in California, Georgia, North Carolina, and South Carolina, together with many Federal District Courts, Eric has litigated hundreds or thousands of cases through settlement or verdict and has recovered over \$100,000,000 for his clients over the course of his career. Eric has also handled appellate cases in the South Carolina Court of Appeals, the South Carolina Supreme Court, and the 4th Circuit Court of Appeals.

In 2016, Eric was tapped by the South Carolina Supreme Court to record a video CLE on insurance law as part of the State Bar's "Essentials" series that is required viewing for all new admittees to the Bar.

Eric is a member of the South Carolina Association of Justice and the American Association of Justice. Eric has been featured in South Carolina Lawyers Weekly's yearly top 10 verdicts and settlements profile for 3 of the last 4 years. In 2014, Eric was featured in the U.S. Verdicts' "Top 100" national verdicts report. Eric is a Super Lawyers' Rising Star, a National Trial Lawyers' Top 40 Under 40 recipient, and two-time National Academy of Professional Injury Attorneys' Top 10 Under 40 recipient.

Eric is also a leading innovator and strong advocate for utilizing technology to further the practice of law and better represent his clients. Eric has written and lectured on the topic of utilizing technology at trial to present stronger cases to juries and has led his Law Firm's push to "go digital." This has resulted in increased efficiency across the board, lower costs, and better results for clients.

**Bar Admissions**

- State Bar of California
- State Bar of Georgia
- State Bar of North Carolina
- State Bar of South Carolina
  
- District of South Carolina
- Eastern District of North Carolina
- Middle District of North Carolina
- Western District of North Carolina
- Central District of California
- Northern District of California
- Northern District of New York
- District of Colorado
- Northern District of Illinois General Bar
- Western District of Texas  
(List Not Inclusive of *Pro Hac Vice* Admissions)
  
- 2nd Circuit Court of Appeals
- 4th Circuit Court of Appeals
- 8th Circuit Court of Appeals
- 11th Circuit Court of Appeals

### **Practice Areas**

- Complex Litigation
- Appellate Litigation
- Class Action Litigation
- Commercial Litigation
- Products Liability Litigation
- Mass Tort Litigation
- Bad Faith Insurance Litigation
- Wrongful Death Litigation

### **Cases Pending in MDL**

- Incretin Mimetics MDL (Southern District of California)
- Xarelto MDL (Eastern District of Louisiana)
- Talcum Powder MDL (District of New Jersey)
- Roundup MDL (Northern District of California)

## Selected Professional Awards & Recognition

2014	TOP 100 U.S. VERDICTS
2016-18	SC LAWYERS WEEKLY - TOP 10 JURY VERDICTS / SETTLEMENTS
2017	SC LAWYERS WEEKLY - MOST IMPORTANT COURT OPINIONS
2016-17	NAT'L ACADEMY OF PERSONAL INJURY ATTYS TOP 10 UNDER 40
2019	NAT'L TRIAL LAWYERS TOP 40 UNDER 40
2018-20	SUPER LAWYERS RISING STAR

## Presentations and Professional Education Programs

December 2017 Advanced Trial Tactics  
December 2016 Advanced Trial Tactics

Eric is most proud of the results he has garnered for his clients, including several significant seven-figure jury verdicts, more than \$60,000,000.00 in single event personal injury jury verdicts, and more than \$100,000,000.00 recovered for clients.



### Roy T. Willey IV

Email: Roy@akimlawfirm.com

#### Education

Harvard College, B.A.  
Charleston School of Law, J.D., *cum laude*

Roy has been named among America's Top 100 High Stakes Litigators, a Super Lawyers Rising Star, and in the National Top 10 Under 40, and he is well known for his community and professional involvement. He has **achieved record results for his clients** and is **fond of encouraging all at the firm to treat each client like family.**

Nationally recognized as a **leader in complex, contract based, and high stakes litigation**, Roy is the Chairman of the Insurance Law Section for the American Association of Justice (AAJ), a national co-chair of AAJ's Business Interruption Litigation Taskforce, and the state Chairman of South Carolina Equality (which is responsible for winning legalization of same-sex marriage in South Carolina). On the local level he serves on the executive board of his local Charleston County Bar Association and a host of other non-profit boards and committees.

In recoveries for clients he has had a jury verdict named among the largest verdicts in the nation, is a multi-year winner of top verdicts in South Carolina where he regularly tries complex cases, and he is regularly called on by political leadership for advice on complex issues. He is a known **problem solver, with a servant's heart.**

### **Bar Admissions**

- State Bar of South Carolina
- State Bar of Kentucky
  
- District of South Carolina
- District of Colorado
- Northern District of Illinois General Bar
- Northern District of New York
- Western District of Texas  
(List Not Inclusive of *Pro Hac Vice* Admissions)
  
- 2nd Circuit Court of Appeals
- 4th Circuit Court of Appeals
- 9th Circuit Court of Appeals
- 11th Circuit Court of Appeals

### **Practice Areas**

- Complex Litigation
- Appellate Litigation
- Class Action Litigation
- Commercial Litigation
- Products Liability Litigation
- Mass Tort Litigation
- Bad Faith Insurance Litigation
- Wrongful Death Litigation

### **Cases Pending in MDL**

- Incretin Mimetics MDL (Southern District of California)
- Xarelto MDL (Eastern District of Louisiana)
- Talcum Powder MDL (District of New Jersey)
- Roundup MDL (Northern District of California)

### **Professional and Philanthropic Involvement**

- AMERICAN ASSOC. FOR JUSTICE (AAJ) - INSURANCE SECTION  
Chairman, National Executive Board
- AAJ BUSINESS INTERRUPTION LITIGATION TASKFORCE  
National Co-Chair
- SOUTH CAROLINA EQUALITY  
Chairman of the Board
- CHARLESTON COUNTY BAR ASSOCIATION  
Executive Committee Member

### **Selected Professional Awards & Recognition**

2014	TOP 100 U.S. VERDICTS
2016-18	SC LAWYERS WEEKLY - TOP 10 JURY VERDICTS / SETTLEMENTS
2017	SC LAWYERS WEEKLY - MOST IMPORTANT COURT OPINIONS
2016-17	NAT'L ACADEMY OF PERSONAL INJURY ATTYS TOP 10 UNDER 40
2018-19	AMERICA'S TOP 100 HIGH STAKES LITIGATORS
2018-20	SUPER LAWYERS RISING STAR

### **Professional Education Programs Presented**

- South Carolina Association of Justice Annual Conference  
Topic: FLSA and Collective Actions – Focusing on Certification
- South Carolina Small Firm Business Luncheon  
Topic: FLSA and Collective Actions – Focusing on Your Practice (March 2015)
- Wrongful Death Litigation Start to Finish CLE  
Topic: Upholding Ethical Standards in Wrongful Death Cases (February 2017)
- Ultimate Guide to Evidence CLE  
Topic: Using Motions to Exclude Evidence & Legal Ethics of Evid. (August 2017)
- Advanced Trial Tactics CLE - Topic: Ethics (December 2017)
- Legal Ethics: Top Challenges CLE  
Topic: Online Ethics & Duties to Prospective Clients (February 2018)
- Top Trial Strategies the Pros Use to Win Their Cases CLE  
Topic: Effective Exhibits and Courtroom Technology (November 2018)
- Webinar: Navigating Pre-Litigation Business Interruption Bad Faith Claims CLE  
Moderator (May 2020)



## **Akim A. Anastopoulos**

Email: Akim@akimlawfirm.com

### **Education**

University of Louisville

University of South Carolina, J.D.

Akim has been practicing law for more than 30 years, representing tens of thousands of consumers and individuals who have been injured due to corporate malfeasance and negligence. He is the founder and chair of Anastopoulos Law Firm, a national law firm that has represented clients across the United States during that time.

### **Bar Admissions**

- State Bar of South Carolina
  - District of South Carolina
- (List Not Inclusive of *Pro Hac Vice* Admissions)

### **Practice Areas**

- Complex Litigation
- Class Action Litigation
- Commercial Litigation
- Products Liability Litigation
- Mass Tort Litigation
- Bad Faith Insurance Litigation
- Wrongful Death Litigation



## **Constance A. Anastopoulos**

Email: Constance@akimlawfirm.com

## Education

University of Virginia, B.A.

University of North Carolina School of Law, J.D.

Constance Anastopoulo was the **2018 Democratic Nominee for SC Attorney General and won more votes than any other woman in SC history, including former Gov. Nikki Haley.** She currently serves as an associate professor at the Charleston School of Law, where she lectures on torts, insurance law, and professional responsibility. She has been named “Professor of the Year” and an honoree of the Black Law Students’ Association for “Commitment to Bringing About Meaningful Legal and Political Change.” She is currently of counsel at Anastopoulo Law Firm, where she is a trusted mentor and advisor to the firm’s lawyers, including the firm’s College and University Litigation Team.

## Bar Admissions

- State Bar of South Carolina
- District of South Carolina  
(List Not Inclusive of *Pro Hac Vice* Admissions)
- United States Federal Court of Claims
- 4th Circuit Court of Appeals

## Practice Areas

- Complex Litigation
- Appellate Litigation
- Class Action Litigation
- Products Liability Litigation
- Mass Tort Litigation
- Catastrophic Injury Litigation
- Bad Faith Insurance Litigation

## Litigation Leadership

In Re: Oxycontin, Plaintiffs’ Class Counsel Committee (2005-2008)

Gaskins v. Southern Farm Bureau, 354 S.C. 416 (2003)

Top ten most important decisions by SC Lawyers Weekly for 2003

### **Professional and Philanthropic Involvement**

- JAMES L. PETIGRU AMERICAN INN OF COURT  
Member
- INSTITUTE OF INTERNATIONAL AND COMPARATIVE LAW at STETSON UNIV.  
Visiting Professor
- THE RILEY INSTITUTE AT FURMAN UNIVERSITY  
Diversity Fellow
- LEAGUE OF WOMEN VOTERS CHARLESTON AREA  
Vice President, Board
- COLLEGE OF CHARLESTON WOMEN AND GENDER STUDIES  
Chair, Board of Advisors

### **Professional Education Publications and Programs**

- *A New Twist on Remedies: Judicial Assignment of Bad Faith Claims*  
Indiana L. Rev., Vol. 50, No. 3 (2017)
- *Taking No Prisoners: Captive Insurance as an Alternative to Traditional or Commercial Insurance* - 8 Ohio St. Entrepren. Bus. L.J. 209 (2013)
- *Race and Gender on the Bench: How Best to Achieve Diversity in Judicial Selection*  
8 Nw. J. L. & Soc. Pol'y. 174 (2013).
- *Where's the Outrage: "Outrageous" Conduct in Analyzing the Tort of Intentional Infliction of Emotional Distress in the Wake of Snyder v. Phelps*  
19 Tex. Wesleyan L. Rev. 667 (2013)
- *Bad Faith: Building a House of Straw, Sticks, or Bricks* - Memphis L. Rev., Vol. 43, Bk. 3 (2012)
- *Teaching Privacy in the Age of Octomom –Enhancing Case/Socratic Method with Structured Class Discussion*, 44 Val. U. L. Rev. 391 (2010)
- *Bad Faith in South Carolina Insurance Contracts: From Tyger River Pine Co. v. Maryland Cas. Co. to Mitchell v. Fortis Ins. Co.* - 22 S.C. Law. 18 (July 2010).

- *Bad Faith in North Carolina Insurance Contracts: A Growing Part of Insurance Practice* - Published in June 2010 Issue of North Carolina Bar Journal.
- *How Judicial Selection Impacts the Criminal Justice System*  
*Presenter February 25, 2013*
- *The State of the Judiciary: From Research to Reality* Organizer and Moderator of Panel presented at conclusion of the League of Women Voters of South Carolina's two-year study of the judicial selection process in South Carolina. University of South Carolina School of Law, Columbia, SC. *August 10, 2012*
- *Insurance Law – Advanced Uninsured Motorist/Underinsured Motorist Law Seminar*  
*Ethics Presenter* - Presenting on “Ethical Traps to Avoid”
- *Insurance Law – “Ethical Considerations”* Presenter - *December 6, 2011*
- *Judicial Selection in South Carolina* Coastal Carolina University Moderator of panel consisting of Justice Kaye Hearn, S.C. Supreme Court; Counselor Leslie Caggiolla, counsel to Commission on Judicial Conduct; Rep. George Hearn, S.C. House of Representatives; Solicitor Ernest Finney, III; and Judge Jennifer Wilson.
- *The Impact of the Judicial Process on Citizens; Why Does Judicial Diversity and Independence Matter* Francis Marion University Panelist/Presenter
- *Ensuring Judicial Independence and Diversity in South Carolina* Organizer and moderator of Forum. *October 2010*
- *State Constitutional Reform in the New South* Panelist/moderator discussing judicial selection process in South Carolina with panelists including Chief Justice Jean H. Toal, Judge Alex Sanders, Rep James Smith, S.C. House of Representatives.

- *Judicial Selection in South Carolina – Ensuring Quality, Diversity, and Independence*



**Blake G. Abbott**

Email: [blake@akimlawfirm.com](mailto:blake@akimlawfirm.com)

## **Education**

Illinois State University, B.S., Biology  
Charleston School of Law, J.D., *cum laude*

Blake is as supervising attorney that is currently involved in class action litigation. Eager to begin practicing, Blake graduated from Charleston School of Law in two years' time, and was a recipient of the Presidential Honors Scholarship. In addition to law school, Blake interned at the Medical University of South Carolina, served as the Sergeant at Arms on the Charleston School of Law Moot Court Board, and instructed as a Legal Research and Writing Fellow.

Prior to law school, Blake was a collegiate baseball player as well as a high school valedictorian.

## **Bar Admissions**

- State of South Carolina
- State of North Carolina
  
- District of South Carolina
- Northern District of New York
- District of Colorado
- Western District of North Carolina
- Middle District of North Carolina
  
- 1<sup>st</sup> Circuit Court of Appeals
- 2<sup>nd</sup> Circuit Court of Appeals
- 7<sup>th</sup> Circuit Court of Appeals
- 11<sup>th</sup> Circuit Court of Appeals

## **Practice Areas**

- Complex Litigation
- Class Action Litigation
- Products Liability Litigation
- Mass Tort Litigation

## **Selected Professional Awards & Recognition**

2022 NAT'L TRIAL LAWYERS TOP 40 UNDER 40

### **Professional Education Programs Presented**

- Federal Bar Association Rising Professionals Program  
Topic: Knowing The Playing Field and How It Will Impact Your Class Case
- 

## **Paul Doolittle**

Email: [pauld@akimlawfirm.com](mailto:pauld@akimlawfirm.com)

### **Education**

University of South Carolina, B.A.

University of South Carolina School of Law, J.D.

Mr. Doolittle is an experienced trial attorney who has been recognized for his courtroom skills and verdicts. He feels helping ordinary people have their day in court is a great honor. He is proud to help level the playing field for individuals and is relentless in seeking justice for his clients.

Mr. Doolittle attended the University of South Carolina School of Law for his legal education where he graduated in the top 20% of his class. After law school, Mr. Doolittle worked at Foster & Foster handling a vast array of cases from auto accidents to complex automobile dealer buy/sell transactions. After gaining experience in and out of the court room, Mr. Doolittle joined Motley Rice where he eventually became partner. Mr. Doolittle co-chaired the firm's Catastrophic Injury Group which was started to handle the firm's most complex and high damage cases at the firm. He stills hold the highest verdict ever received in a Minnesota asbestos trial. Since joining Anastopoulos Law Firm, Mr. Doolittle has worked in the firm's Class & Mass Action Division.

### **Bar Admissions**

- State of South Carolina
- District of South Carolina

### **Practice Areas**

- Complex Litigation
- Class Action Litigation

- Products Liability Litigation
  - Mass Tort Litigation
- 

## **Jacqueline A. Dufour**

Email: [jacquelined@akimlawfirm.com](mailto:jacquelined@akimlawfirm.com)

### **Education**

St. Lawrence University, B.S.  
Vermont Law School, J.D.

### **Bar Admissions**

- State of South Carolina

### **Practice Areas**

- Complex Litigation
  - Class Action Litigation
  - Products Liability Litigation
  - Mass Tort Litigation
- 

## **Ralph D'Agostino III**

Email: [ralph.dagostino@akimlawfirm.com](mailto:ralph.dagostino@akimlawfirm.com)

### **Education**

Syracuse University, B.A.  
Wake Forest University School of Law, J.D.

### **Bar Admissions**

- Washington, D.C.

### **Practice Areas**

- Complex Litigation
- Class Action Litigation
- Products Liability Litigation
- Mass Tort Litigation

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## Chase Cobble

Email: [chase.coble@akimlawfirm.com](mailto:chase.coble@akimlawfirm.com)

### Education

Elon University, B.A.

University of South Carolina School of Law, J.D.

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## Herbert F. Glass

Email: [Herb@akimlawfirm.com](mailto:Herb@akimlawfirm.com)

### Education

State University of New York at Albany, B.A.

Charleston School of Law, J.D.

Herb is a Senior Associate at = Poulin | Willey | Anastopoulo and concentrates his practice in the areas of personal injury, general negligence, and products liability cases. Herb has successfully represented thousands of injured South Carolinians and recovered millions of dollars on their behalf due to the negligence of others, large corporations, and government entities. Herb recently recovered over \$350,000.00 for a client who was rear ended by a careless driver.

Over the past five years, Herb has been an active member of the Charleston County Bar. Prior to joining Poulin | Willey | Anastopoulo. Mr. Glass worked at boutique civil litigation firm and represented people and small businesses throughout South Carolina.

### Bar Admissions

- State of South Carolina

## Honors and Associations

- Charleston School of Law Dean's List
- CALI Award for Future Excellence-Business Associations
- Finalist for the National Football Foundation National Scholar-Athlete of the Year Award presented by Fidelity Investments (2011)
- Semi-Finalist for the William V. Campbell Trophy (2011)
- Academic All-Conference (2008-2011)

## Selected Publications and Presentations

*Workouts - The Various Tools in the Toolbox for Working out Troubled Real Estate*

*Loans*, January 2014, NBI (Assisted Senior Partner in drafting/uncredited)

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### Lane D. Jefferies

Email: Lane@akimlawfirm.com

#### Education

Charleston School of Law, J.D, *summa cum laude*

College of Charleston, B.S. in Biology, *summa cum laude*

St. Andrews Presbyterian College, B.A. in Business Administration

Prior to becoming an attorney, Lane spent twenty years in business, during which he founded, built, and ultimately sold several businesses in the hospitality and yachting industries. At the Poulin | Willey | Anastopoulo, Lane leads the firm's Commercial and Construction Liability Division where he takes on the nation's largest corporations and construction firms.

## Bar Admissions

- State of South Carolina
- District of South Carolina

## Honors/Achievements

- 2013 National Tax Moot Court 1st Place team
- 2013 National Tax Moot Court Best Oralist

- 2014 National Tax Moot Court 1st Place team
  - 2014 National Tax Moot Court Best Oralist
  - 15 CALI Excellence for the Future Awards
- 



## **Joshua E. Jones**

Email: Josh@akimlawfirm.com

### **Education**

University of South Carolina, B.A.  
Charleston School of Law, J.D.

Josh graduated from the University of South Carolina with a degree in Criminal Justice before beginning his legal studies at Charleston School of Law. During law school, he began working at Poulin | Willey | Anastopoulos as a law clerk while also completing pro bono work with the Charleston County Probate Court. Since passing the South Carolina Bar and being sworn in, he has been an associate attorney with the firm, assisting in cases involving auto incidents, premises liability, medical malpractice, and general negligence.

### **Bar Admissions**

- State of South Carolina
- 

## **Julia Pirillo**

Email: juliap@akimlawfirm.com

### **Education**

West Virginia University, B.A.  
West Virginia University College of Law, J.D.

### **Bar Admissions**

- State of West Virginia

### **Practice Areas**

- Complex Litigation
- Class Action Litigation
- Products Liability Litigation

- Mass Tort Litigation



## **India Shaw**

Email: [India@akimlawfirm.com](mailto:India@akimlawfirm.com)

### **Education**

North Carolina A&T State University, B.A.  
North Carolina Central University, J.D.

Dual licensed in the District of Columbia and South Carolina. India has been at Poulin | Willey | Anastopoulo in Charleston, SC since 2017. India grew up in Charleston, SC, where her desire to practice law began. She graduated from North Carolina Central University School of Law with a Certification in Taxation. Her time at the firm has involved helping clients navigate through traumatic incidents in civil litigation, as well as through financial and lien negotiations. Her goal with every client is to ensure they are on the right path to attaining justice. She also has a passion for serving the underserved, is a devoted runner, and is an active member of her church.

### **Bar Admissions**

- District of Columbia
- State of South Carolina

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## **Andrew Smith**

Email: [andrew.smith@akimlawfirm.com](mailto:andrew.smith@akimlawfirm.com)

### **Education**

College of Charleston, B.A.  
Charleston School of Law, J.D., *summa cum laude*

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## **Lisa M. Whiteleather**

Email: [lisa.whiteleather@akimlawfirm.com](mailto:lisa.whiteleather@akimlawfirm.com)

Education

Salisbury University, B.A.

University of Baltimore School of Law, J.D.

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# Exhibit 4

## CHERUNDOLO LAW FIRM, PLLC JOHN C. CHERUNDOLO, ESQ.

John Cherundolo is a nationally recognized trial lawyer and former acting New York State Supreme Court justice. As a trial attorney, Mr. Cherundolo has been responsible for obtaining many of the largest verdicts in Upstate New York and has been involved in complex cases throughout the Northeast United States.

Governor George Pataki selected Cherundolo to serve as New York State Court of Claims judge, and he was acting Supreme Court judge in Onondaga County Supreme Court, 5<sup>th</sup> Judicial District of New York for six years. Prior to joining the bench, Mr. Cherundolo was a founding partner of a Syracuse-based law firm that served victims and their families in personal injury litigation in the areas of medical malpractice, products liability, workplace accidents, automobile and aviation matters.

Mr. Cherundolo sits on numerous state and national associations of trial lawyers, and currently serves as local national board representative for the American Board of Trial Advocates. He is also a member of the coveted International Academy of Trial Lawyers, an honor that goes to the five hundred best lawyers in the United States. In addition, he was a founding member and past president of the New York State Academy of Trial Lawyers.

# Exhibit 5

### **Toptani Law PLLC Resume**

Edward Toptani, founder of Toptani Law PLLC, graduated *cum laude* from the University of Michigan Law School in 1987, and graduated with high honors from with from the Honors College at the University of Michigan in 1983.

Mr. Toptani has been licensed to practice law in the State of New York since 1988 and recently was admitted to practice law in the State of Michigan. In addition, Mr. Toptani is admitted to practice law before the United States District Courts for the Southern District of New York, the Northern District of New York, the Eastern District of New York, the District of Connecticut, as well as the Court of Appeals for the Second Circuit. Over his 35-year career, Mr. Toptani has also been admitted *pro hac vice* in courts located in Delaware, California, Texas, Illinois, Massachusetts, and Florida.

Following graduation from law school, Mr. Toptani worked as an associate in the New York offices of Shearman and Sterling for approximately 4 years, until he started his own law practice in NYC (briefly with other partners), which he has continuously and successfully operated thereafter.

During the course of his career, Mr. Toptani has worked on a broad range of commercial disputes involving banks, hedge funds, securities, partnerships, real estate, technology, intellectual property, employment, class actions and other issues. He has litigated cases in numerous federal and state courts -- both trial and appeals.

Among other things, Mr. Toptani has successfully litigated financial transactions involving complex derivative instruments, governed by ISDA, against large commercial banks and hedge funds, all of which were represented by preeminent national law firms. In addition, he has argued dozens (if not hundreds) of motions in federal and state courts and participated in several litigations, trials, and arbitrations with amounts in controversy in the millions. For example, he was one of the lead attorneys in a multiparty litigation in an adversarial proceeding in the United States Bankruptcy Court for the District of Delaware that was successful in preventing an unscrupulous hedge fund from steamrolling creditors in a pre-packaged bankruptcy that was designed to illicitly extinguish nearly all of his clients' financial interests and claims through the confirmation process. In that action, of which Mr. Toptani was the principal architect, numerous international clients who would have otherwise been entitled to receive only pennies on the dollar received a recovery of approximately \$16 million. Moreover, Mr. Toptani was the lead attorney in a contentious litigation in the District of Connecticut against another hedge fund that lasted nearly a decade, and ultimately resulted in the Second Circuit's upholding of the District Court's finding of liability. In addition, his experience also includes intellectual property matters. Among other things, he has been successful in obtaining permanent injunctions in federal copyright litigations, including cases where he has persuaded the judge to authorize US Marshals to cease infringing merchandise in civil actions. Mr. Toptani has also served as an arbitrator for the Financial Industry Regulatory Authority on numerous occasions.

Mr. Toptani also dedicates a significant amount of his time to *pro bono* matters. In this connection, he is a founding board member, officer and general counsel of the Bob Woodruff Foundation, which provides assistance to wounded service members and their families. He is also a board member, officer and general counsel of the U.N. Women for Peace Association, whose primary mission is the empowerment of women and children and the prevention of violence against them. Mr. Toptani has also served as a moot court judge on several occasions for New York University Law School and the University of Michigan Law School.

# Exhibit 6

**UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND**

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HYUN CHOI, ANNA HOUSE, and AMY PHAM,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

v.

BROWN UNIVERSITY,

Defendant.

No. 1:20-cv-00191-JJM-LDA

Chief Judge John J. McConnell, Jr.

Magistrate Judge Lincoln D. Almond

**ORDER**

WHEREAS, a class action is pending before the Court entitled *Choi, et al. v. Brown University*, Case No. 1:20-cv-00191-JJM-LDA; and

WHEREAS, Plaintiffs Hyun Choi, Anna House, and Amy Pham and Defendant Brown University (together, the “Parties”) have entered into a Class Action Settlement Agreement, which, together with the exhibits attached thereto, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice as to Defendant upon the terms and conditions set forth therein (the “Settlement Agreement”), and the Court having read and considered the Settlement Agreement and exhibits attached thereto;

This matter coming before the Court upon the agreement of the parties, good cause being shown, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS:

1. Terms and phrases in this Order shall have the same meaning as ascribed to them in the Settlement Agreement.

2. The Plaintiffs have moved the Court for an order preliminarily approving the settlement of the Action in accordance with the Settlement Agreement, which, together with the documents incorporated therein, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice, and the Court having read and considered the Settlement Agreement and having heard the parties and being fully advised in the premises, hereby preliminarily approves the Settlement Agreement in its entirety subject to the Final Approval Hearing referred to in paragraph 5 of this Order.

3. This Court finds that it has jurisdiction over the subject matter of this action and over all Parties to the Action.

4. The Court finds that, subject to the Final Approval Hearing, the Settlement Agreement is fair, reasonable, and adequate, within the range of possible approval, and in the best interests of the Settlement Class set forth below. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the class action and provides substantial relief to the Settlement Class without the risks, burdens, costs, or delay associated with continued litigation, trial, and/or appeal. The Court also finds that the Settlement Agreement (a) is the result of arm's-length negotiations between experienced class action attorneys; (b) is sufficient to warrant notice of the settlement and the Final Approval Hearing to be disseminated to the Settlement Class; (c) meets all applicable requirements of law; and (d) is not a finding or admission of liability by the Defendant or any other person, nor a finding of the validity of any claims asserted in the Action or of any wrongdoing or any violation of law.

#### I. FINAL APPROVAL HEARING

5. The Final Approval Hearing shall be held before this Court on **January 10, 2023 at 10:00 am ET** via Zoom at the United States District Court for the District of Rhode Island, 1

Exchange Terrace, Providence, Rhode Island 02903, to determine (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be given final approval by the Court; (b) whether a judgment and order of dismissal with prejudice should be entered; (c) whether to approve the payment of attorneys' fees, costs, and expenses to Class Counsel; and (d) whether to approve the payment of service awards to the Class Representatives. The Court may adjourn the Final Approval Hearing without further notice to members of the Settlement Class, and it will be conducted by remote means utilizing the following information:

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Meeting ID: 160 552 4441

Passcode: 966391

One tap mobile

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+16468287666,,1605524441#,,,,\*966391# US (New York)

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[161.199.136.10](tel:161.199.136.10) (US East)

Meeting ID: 160 552 4441

Passcode: 966391

6. Class Counsel shall file papers in support of their Fee Award and Class Representatives' Service Awards (collectively, the "Fee Petition") with the Court on or before **November 29, 2022**. Defendant may, but is not required to, file a response to Class Counsel's Fee Petition with the Court on or before **December 13, 2022**. Class Counsel may file a reply in support of their Fee Petition with the Court on or before **December 27, 2022**.

7. Papers in support of final approval of the Settlement Agreement and any supplementation to the Fee Petition shall be filed with the Court on or before **December 27, 2022**.

## II. CERTIFICATION OF THE SETTLEMENT CLASS

8. For purposes of settlement only: (a) Hagens Berman Sobol Shapiro LLP are appointed Class Counsel for the Settlement Class; and (b) Hyun Choi, Anna House, and Amy Pham are named Class Representatives. The Court finds that these attorneys are competent and capable of exercising the responsibilities of Class Counsel and that Plaintiffs will adequately protect the interests of the Settlement Class defined below.

9. For purposes of settlement only, the Court conditionally certifies the following Settlement Class as defined in the Settlement Agreement:

All students who were enrolled at Brown University for the Spring 2020 Semester as of March 6, 2020.

10. The Court finds, subject to the Final Approval Hearing referred to in Paragraph 5, that the Settlement Agreement is fundamentally fair, adequate, and reasonable, and, solely within the context of and for the purposes of settlement only, that the Settlement Class satisfies the requirements of Fed. R. Civ. P. 23, specifically, that: the Settlement Class is so numerous that joinder of all members is impracticable; there are questions of fact and law common to the

Settlement Class; the claims of the Class Representatives are typical of the claims of the members of the Settlement Class; the Class Representatives and Class Counsel will fairly and adequately protect the interests of the members of the Settlement Class; common questions of law or fact predominate over questions affecting individual members; and a class action is a superior method for fairly and efficiently adjudicating the Action.

11. If the Settlement Agreement does not receive the Court's final approval, or if final approval is reversed on appeal, or if the Settlement Agreement is terminated or otherwise fails to become effective, the Court's grant of class certification shall be vacated, and the Class Representatives will once again bear the burden of establishing the propriety of class certification. In such case, neither the certification of the Settlement Class for settlement purposes, nor any other act relating to the negotiation or execution of the Settlement Agreement shall be considered as a factor in connection with any class certification issue(s).

### III. NOTICE AND ADMINISTRATION

12. The Court approves, as to form, content, and distribution, the Notice Plan set forth in the Settlement Agreement, including all forms of Notice to the Settlement Class as set forth in the Settlement Agreement and Exhibit A thereto (the "Notice Form"). The Notice Plan shall be commenced by **September 22, 2022** as outlined in Section 6 of the Settlement Agreement. The Court finds that such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of Fed. R. Civ. P. 23. 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 this action, the terms of the Settlement Agreement, and the right to object to the settlement and to

exclude themselves from the Settlement Class. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this Action. The Parties, by agreement, may revise the Notice Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting.

13. The Court approves the request for the appointment of the Angeion Group as Settlement Administrator of the Settlement Agreement and Huntington Bank as the Escrow Agent.

14. Pursuant to Sections 6 and 9 of the Settlement Agreement, the Settlement Administrator is directed to publish the Notice Form on the Settlement Website and to send direct notice via email (or if necessary via U.S. Mail), in accordance with the Notice Plan called for by the Settlement Agreement. The Settlement Administrator shall also maintain the Settlement Website to provide full information about the Settlement.

15. This Order shall constitute a “judicial order” within the meaning of the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g and 34 C.F.R. § 99.31(a)(9), sufficient to compel Brown University to provide the “Class List” regarding Settlement Class Members (i.e., directory information, as FERPA defines that term) to the Settlement Administrator, with a copy to Class Counsel, in accordance with the Settlement Agreement. The Court further rules that the Notice Plan outlined in Section 6 of the Settlement Agreement and the Notice Form constitute a reasonable effort to notify eligible students (or their parents) of this order sufficiently in advance of disclosure to allow the student (or parent) an opportunity to seek protective action, including filing a motion to quash with this Court.

16. Within ten (10) days following the filing of the Settlement Agreement with the Court, Defendant shall serve upon the appropriate State official of each State in which a Class

Member resides and the Attorney General of the United States a notice of the proposed Settlement in compliance with the requirements of CAFA.

#### IV. REQUESTS FOR EXCLUSION FROM CLASS

17. The Court orders the Option/Exclusion deadline to be set as **December 13, 2022** (the “Option/Exclusion Deadline”).

18. Any person falling within the definition of the Settlement Class may, upon valid and timely request, exclude themselves or “opt out” from the Class. Any such person may do so if, on or before the Objection/Exclusion Deadline, they comply with the exclusion procedures set forth in the Settlement Agreement and Notice. Any members of the Class so excluded shall neither be bound by the terms of the Settlement Agreement nor entitled to any of its benefits.

19. Any members of the Settlement Class who elect to exclude themselves or “opt out” of the Settlement Agreement must file a written request with the Settlement Administrator, received or postmarked no later than the Objection/Exclusion Deadline. The request for exclusion must comply with the exclusion procedures set forth in the Settlement Agreement and Notice and include the Settlement Class member’s name and address, a signature, the name and number of the case, and a statement that they wish to be excluded from the Settlement Class for the purposes of this Settlement. Each request for exclusion must be submitted individually. So called “mass” or “class” opt-outs shall not be allowed.

20. Individuals who opt out of the Class relinquish all rights to benefits under the Settlement Agreement and will not release their claims. However, members of the Settlement Class who fail to submit a valid and timely request for exclusion shall be bound by all terms of the Settlement Agreement and the Final Judgment, regardless of whether they have requested exclusion from the Settlement Agreement.

## V. APPEARANCES AND OBJECTIONS

21. At least 21 calendar days before the Final Approval Hearing, any person who falls within the definition of the Settlement Class and who does not request exclusion from the Class may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. Any Settlement Class Member who does not enter an appearance will be represented by Class Counsel.

22. Any members of the Settlement Class who have not timely filed a request for exclusion may object to the fairness, reasonableness, or adequacy of the Settlement Agreement or to a Final Judgment being entered dismissing the Action with prejudice in accordance with the terms of the Settlement Agreement, or to the attorneys' fees and expense reimbursement sought by Class Counsel in the amounts specified in the Notice, or to the award to the Class Representatives as set forth in the Notice and Settlement Agreement. On or before **November 29, 2022**, papers supporting the Fee Award shall be filed with the Court and posted to the settlement website. Members of the Class may object on their own, or may do so through separate counsel at their own expense.

23. To object, members of the Class must sign and file a written objection no later than on or before the Objection/Exclusion Deadline. To be valid, the objection must comply with the objection procedures set forth in the Settlement Agreement and Notice. Specifically, the objection must contain a caption or title that identifies it as "Objection to Class Settlement in *Choi, et al. v. Brown University*," contact and address information for the objecting Settlement Class Member, documents sufficient to establish the person's standing as a Settlement Class Member (such as, for example, the person's Brown University Spring 2020 tuition and/or fee invoice), the facts supporting the objection, and the legal grounds on which the objection is

based, the name and contact information of any and all attorneys representing, advising, or in any way assisting him or her in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the “Objecting Attorneys”), and a statement indicating whether they intend to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with United States District Court for the District of Rhode Island’s Local Rules). If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption. Class Counsel and Defendant’s Counsel may petition the Court for discovery of any objector to determine whether the objector has standing as a Settlement Class Member.

24. Members of the Class who fail to file and serve timely written objections in compliance with the requirements of this paragraph and the Settlement Agreement shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement Agreement or to any of the subjects listed in paragraph 5, above, *i.e.* (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be given final approval by the Court; (b) whether a judgment and order of dismissal with prejudice should be entered; (c) whether to approve the payment of attorney’s fees and expenses to Class Counsel; and (d) whether to approve the payment of an incentive award to the Class Representatives.

25. To be valid, objections by persons represented by counsel must be filed electronically on the docket. *Pro se* objectors may mail their objections to the Court, Chief Judge John J. McConnell, Jr., U.S. District Court for the District of Rhode Island, 1 Exchange Terrace, Providence, RI 02903, with a copy also sent to Class Counsel (Steve W. Berman, Daniel Kurowski, and Whitney Siehl, Hagens Berman Sobol Shapiro LLP, 455 N. Cityfront Plaza Drive, Suite 2410, Chicago, IL 60611); and Defendant's Counsel (Amanda M. MacDonald, Williams & Connolly LLP, 680 Maine Avenue SW, Washington, DC 20024).

## VI. FURTHER MATTERS

26. All further proceedings in the Action are ordered stayed until Final Judgment or termination of the Settlement Agreement, whichever occurs earlier, except for those matters necessary to obtain and/or effectuate final approval of the Settlement Agreement.

27. Members of the Settlement Class shall be bound by all determinations and judgments concerning the Settlement Agreement and Final Approval of same, whether favorable or unfavorable.

28. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement Agreement. The Court may approve the Settlement Agreement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

29. Any Settlement Class Member who does not timely and validly request exclusion from the Class pursuant to Paragraphs 16–18 hereto: (a) shall be bound by the provisions of the Settlement Agreement and all proceedings, determinations, orders and judgments in the Action relating thereto, including, without limitation, the Final Judgment, and the Releases provided for therein, whether favorable or unfavorable to the Class; and (b) shall forever be barred and

enjoined from directly or indirectly filing, commencing, instituting, prosecuting, maintaining, or intervening in any action, suit, cause of action, arbitration, claim, demand, or other proceeding in any jurisdiction, whether in the United States or elsewhere, on their own behalf or in a representative capacity, that is based upon or arises out of any or all of the Released Claims against any of the Defendant and the other Released Parties, as more fully described in the Settlement Agreement.

30. Pursuant to this Order:

- a. The Notice Plan shall be commenced by **September 22, 2022** as outlined in Section 6 of the Settlement Agreement;
- b. Class Counsel shall file papers in support of their Fee Award and Class Representatives' Service Awards (collectively, the "Fee Petition") with the Court on or before **November 29, 2022**. Defendant may, but is not required to, file a response to Class Counsel's Fee Petition with the Court on or before **December 13, 2022**. Class Counsel may file a reply in support of their Fee Petition with the Court on or **December 27, 2022**;
- c. Requests for Exclusion shall be submitted in accordance with Section IV of this Order and as outlined in Section 8 of the Settlement Agreement on or before **December 13, 2022**;
- d. Objections shall be filed in accordance with Section V of this Order and as outlined in Section 7 of the Settlement Agreement on or before **December 13, 2022**;
- e. Papers in support of final approval of the Settlement Agreement and any supplementation to the Fee Petition shall be filed with the Court on or before **December 27, 2022**;
- f. The Final Approval Hearing shall be held before this Court on January 10, 2023 at 10:00 am ET at the U.S. District Court for the District of Rhode Island, 1 Exchange Terrace, Providence, RI 02903 and will be conducted by remote means utilizing the following information:

Join ZoomGov Meeting

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One tap mobile  
+16692545252,,1605524441#,,,,\*966391# US (San Jose)  
+16468287666,,1605524441#,,,,\*966391# US (New York)

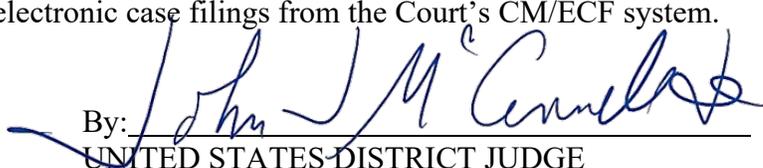
Dial by your location  
+1 669 254 5252 US (San Jose)  
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Passcode: 966391  
Find your local number: <https://www.zoomgov.com/join/1605524441>

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[161.199.136.10](tel:161.199.136.10) (US East)  
Meeting ID: 160 552 4441  
Passcode: 966391

IT IS SO ORDERED, this 2nd day of September, 2022.

IT IS FURTHER ORDERED that a copy of this Order shall be served upon all counsel registered to received notifications of electronic case filings from the Court's CM/ECF system.

By:   
UNITED STATES DISTRICT JUDGE

DATE: September 6, 2022

# Exhibit 7

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

ALEC FABER, individually and on behalf of all others similarly situated; and AHNAF RAHMAN, individually and on behalf of others similarly situated,

Plaintiffs,

v.

CORNELL UNIVERSITY,

Defendant.

Case No.: 3:20-cv-00467 MAD/ML

**DECLARATION OF ANA ESPINOZA  
REGARDING ADMINISTRATION  
QUALIFICATIONS AND COSTS OF  
ADMINISTRATION PROCEDURES**

I, Ana Espinoza, declare and state as follows:

1. I am a case coordinator with KCC Class Action Services, LLC (“KCC”), located at 222 N Pacific Coast Hwy, 3<sup>rd</sup> Floor, El Segundo, CA 90245. The purpose of this declaration is to provide information related to KCC’s qualifications and experience in class action administration.

**KCC BACKGROUND AND EXPERIENCE**

2. KCC is a leading class action administration firm that provides comprehensive class action services, including claims administration, legal notification, email and postal mailing campaign implementation, website design, call center support, class member data management, check and voucher disbursements, tax reporting, settlement fund escrow and reporting, and other related services critical to the effective administration of class action settlements. With more than thirty years of industry experience, KCC has developed efficient, secure and cost-effective methods to properly handle the voluminous data and mailings associated with the noticing, claims processing, and disbursement requirements of these matters to ensure the orderly and fair treatment of class members and all parties in interest.

3. KCC has served as the administrator across a wide range of practice types, including securities, antitrust, consumer, employment, and government, and our administrative work has included some of the largest and most complex private settlements, with individual cases that required direct notice to more than 25 million people and single case distributions of more than \$7 billion.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 6, 2023 at El Segundo, CA.

*Ana Espinoza*

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ANA ESPINOZA