

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

KRYSTIAN WNOROWSKI, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

UNIVERSITY OF NEW HAVEN,

Defendant.

No. 3:20-cv-01589 (MPS)

**PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND APPROVAL OF MANNER OF DISTRIBUTION OF NET
SETTLEMENT FUND**

PLEASE TAKE NOTICE THAT, upon the Declaration of Paul Doolittle, sworn to on September 8, 2023, and the accompanying exhibits and memorandum of law, and upon all prior proceedings, pleadings, and filings in the above-captioned action, Named Plaintiff Krystian Wnorowski will move this Court on October 3, 2023 at 10:00 AM in Courtroom Three at the United States Courthouse, 450 Main St., Hartford, CT before Judge Michael P. Shea, for an Order under Federal Rule of Civil Procedure 23: (1) certifying, for purposes of the Settlement only, the following Settlement Class:

All UNH students who were enrolled in any UNH course as of March 24, 2020, with the exception of: (i) any non-matriculated high school student who took a UNH course; (ii) UNH students who enrolled only in classes that were designated as fully online for the entire spring 2020 semester; (iii) any person who properly 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.

(2) confirmation that the notice plan approved by the Court in its June 12, 2023 Preliminary Approval Order has been fully and sufficiently executed; (3) appointing Named Plaintiff Krystian Wnorowski as Settlement Class Representative; (4) appointing the law firm Poulin | Willey |

Anastopoulos, LLC as Class Counsel to act on behalf of the Settlement Class and the Settlement Class Representative with respect to the Settlement; (5) entering the proposed final judgment; and (6) granting such other and further relief as may be just and appropriate.

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

Dated: September 8, 2023

Respectfully Submitted,

/s/ Paul Doolittle

POULIN | WILLEY | ANASTOPOULO, LLC

Eric M. Poulin*

Roy T. Willey, IV*

Blake G. Abbott*

Paul Doolittle*

32 Ann Street

Charleston, SC 29403

P. (843) 614-8888

F. (843) 494-5536

eric@akimlawfirm.com

roy@akimlawfirm.com

blake@akimlawfirm.com

pauld@akimlawfirm.com

*Admitted *Pro Hac Vice*

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

KRYSTIAN WNOROWSKI, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

UNIVERSITY OF NEW HAVEN,

Defendant.

No. 3:20-cv-01589 (MPS)

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF MANNER OF
DISTRIBUTION OF NET SETTLEMENT FUND**

TABLE OF CONTENTS

INTRODUCTION	3
FACTUAL BACKGROUND.....	4
STANDARD FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS.....	6
A. THE LAW FAVORS AND ENCOURAGES SETTLEMENT.....	6
B. THE SETTLEMENT MUST BE PROCEDURALLY AND SUBSTANTIVELY FAIR, ADEQUATE AND REASONABLE	7
C. THE PROPOSED SETTLEMENT IS PROCEDURALLY AND SUBSTANTIVELY FAIR, ADEQUATE AND REASONABLE	9
1. The Settlement Satisfies the Requirements of Rule 23(e)(2).....	9
b. The Proposed Settlement Was Negotiated at Arm’s Length	10
c. The Proposed Settlement Is Adequate in Light of the Litigation Risks, Costs and Delays of Trial and Appeal	10
i. The Risks of Establishing Liability at Trial.....	10
ii. The Risks of Establishing Damages at Trial.....	12
iii. The Settlement Eliminates the Additional Costs and Delay of Continued Litigation.....	12
d. The Proposed Method for Distributing Relief Is Effective.....	13
e. Lead Counsel’s Request for Attorneys’ Fees Is Reasonable	14
f. The Settlement Ensures Settlement Class Members are Treated Equitably	15
2. The Settlement Satisfies the Remaining Grinnell Factors	15
a. The Lack of Objections to Date Supports Final Approval	15
b. Named Plaintiff Had Sufficient Information to Make an Informed Decision Regarding the Settlement.....	16
c. Maintaining Class-Action Status Through Trial Presents a Substantial Risk.....	17

d. Defendant’s Ability to Withstand a Greater Judgment..... 18

e. The Settlement Amount Is Reasonable in View of the Best Possible Recovery and
the Risks of Litigation..... 18

D. THE MANNER OF DISTRIBUTION OF THE NET SETTLEMENT FUND IS FAIR
AND ADEQUATE 19

E. THE COURT SHOULD FINALLY CERTIFY THE SETTLEMENT CLASS FOR
PURPOSES OF EFFECTUATING THE SETTLEMENT 21

F. NOTICE TO THE SETTLEMENT CLASS SATISFIES THE REQUIREMENTS OF
RULE 23 AND DUE PROCESS..... 22

CONCLUSION 23

TABLE OF AUTHORITIES

<i>Cardiology Assocs., P.C. v. Nat’l Intergroup, Inc.</i> , 1987 WL 7030 (S.D.N.Y. Feb. 13, 1987) ...	11
<i>Castagna v. Madison Square Garden, L.P.</i> , 2011 WL 2208614 (S.D.N.Y. June 7, 2021)	10, 18
<i>Charron v. Pinnacle Grp. NY LLC</i> , 874 F. Supp. 2d 179 (S.D.N.Y. 2012)	10
<i>Charron v. Wiener</i> , 731 F.3d 241 (2d. Cir. 2013)	10
<i>Christine Asia Co. v. Jack Yun Ma</i> , 2019 WL 5257534 (S.D.N.Y. Oct. 16, 2019).....	17, 19
<i>City of Detroit v. Grinnell Corp.</i> , 495 F.2d 448 (2d Cir. 1974).....	3, 7
<i>Cordes & Co. Fin. Servs. v. A.G. Edwards & Sons, Inc.</i> , 502 F.3d 91 (2d Cir. 2007).....	9
<i>D’Amato v. Deutsche Bank</i> , 236 F.3d 78, (2d Cir. 2001)	8
<i>Fleisher v. Phoenix Life Ins. Co.</i> , 2015 WL 10847814 (S.D.N.Y. Sept. 9, 2015).....	18
<i>Gay v. Tri-Wire Eng’g Solutions, Inc.</i> , 2014 WL 28640 (E.D.N.Y. Jan. 2, 2014)	18
<i>Hicks v. Morgan Stanley</i> , 2005 WL 2757792 (S.D.N.Y. Oct. 24, 2005)	12
<i>In re “Agent Orange” Prod. Liab. Litig.</i> , 597 F. Supp. 740 (E.D.N.Y. 1984), aff’d, 818 F.2d 145 (2d Cir. 1987);.....	18
<i>In re Advanced Battery Techs., Inc. Sec. Litig.</i> , 298 F.R.D. 171 (S.D.N.Y. 2014).....	6, 12, 19
<i>In re Bear Stearns Cos., Inc. Sec., Derivative & ERISA Litig.</i> , 909 F. Supp. 2d 259 (S.D.N.Y. 2012);	16
<i>In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Practices & Prods. Liability Litig.</i> , 2019 WL 2554232 (N.D. Cal. May 3, 2019)	8
<i>In re Facebook, Inc.</i> , 343 F. Supp. 3d 394 (S.D.N.Y. 2018)	15, 19
<i>In re Glob. Crossing Sec. & ERISA Litig.</i> , 225 F.R.D. 436 (S.D.N.Y. 2004).....	8, 10
<i>In re Hi-Crush Partners L.P. Sec. Litig.</i> , 2014 WL 7323417 (S.D.N.Y. Dec. 19, 2014).....	16
<i>In re Merrill Lynch Tyco Research Sec. Litig.</i> , 249 F.R.D. 124 (S.D.N.Y. 2008)	22
<i>In re Metlife Demutualization Litig.</i> , 689 F. Supp. 2d 297 (E.D.N.Y. 2010).	19

<i>In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.</i> , 330 F.R.D. 11 (E.D.N.Y. 2019)	7, 8
<i>In re Sony SXRDRear Projection Television Class Action Litig.</i> , 2008 WL 1956267 (S.D.N.Y. May 1, 2008).....	18
<i>In re Veeco Instruments Inc. Sec. Litig.</i> , 2007 WL 4115809 (S.D.N.Y. Nov. 7, 2007)	15, 20
<i>In re WorldCom, Inc. Sec. Litig.</i> , 388 F. Supp. 2d 319 (S.D.N.Y. 2005)	19
<i>Maley v. Del Global Tech Corp.</i> , 186 F. Supp. 2d 358 (S.D.N.Y. 2002).....	10
<i>Martignago v. Merrill Lynch & Co., Inc.</i> , 2013 WL 12316358 (S.D.N.Y. Oct. 3, 2013).....	16
<i>Massiah v. MetroPlus Health Plan, Inc.</i> , 2012 WL 5874655 (E.D.N.Y. Nov. 20, 2012).....	19
<i>McMahon v. Olivier Cheng Catering & Events, LLC</i> , 2010 WL 2399328 (S.D.N.Y. Mar. 3, 2010)	6, 10
<i>Menkes v. Stolt-Nielsen S.A.</i> , 270 F.R.D. 80 (D. Conn., 2010).	7, 8
<i>Newman v. Stein</i> , 464 F.2d 689 (2d Cir. 1972);.....	18
<i>Ortega v. Uber Techs.</i> , 2018 WL 4190799 (E.D.N.Y. May 4, 2018).....	23
<i>Snyder v. Ocwen Loan Servicing, LLC</i> , 2019 WL 2103379 (N.D. Ill. May 14, 2019).....	8
<i>Stougo v. Bassini</i> , 258 F. Supp. 2d 254 (S.D.N.Y. 2003).....	12
<i>Sykes v. Mel Harris & Assocs. LLC</i> , 2016 WL 3030156 (S.D.N.Y. May 24, 2016).....	19
<i>Vargas v. Capital One Fin. Advisors</i> , 559 F. App'x 22, 26-27 (2d Cir. 2014).	22
<i>Velez v. Majik Cleaning Sev., Inc.</i> , 2007 WL 7232783 (S.D.N.Y. June 25, 2007)	11
<i>Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.</i> , 396 F.3d 96 (2d Cir. 2005)	6, 10, 22
<i>Wright v. S. New Hampshire Univ.</i> , 2021 WL 1617145 (D.N.H. Apr. 26, 2021).	23
<i>Yuzary v. HSBC Bank, USA, N.A.</i> , 2013 WL 5492998 (S.D.N.Y. Oct. 2, 2013)	8

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiff Krystian Wnorowski, on behalf of himself and the Settlement Class, respectfully submit this memorandum of law in support of their motion for final approval of the \$2,285,600 Gross Settlement (the “Settlement Amount”) reached in this action (the “Action”) and approval of the manner of distribution of the Net Settlement Fund (the “Distribution”). The terms of the Settlement are set forth in the Amended Settlement Agreement, dated June 7, 2023 (the “Settlement Agreement”). ECF No. 138-1.

INTRODUCTION

On October 22, 2020, Plaintiff Krystian Wnorowski filed a putative class action complaint in the United States District Court for the District of Connecticut styled Krystian Wnorowski, on behalf of himself and others similarly situated v. University of New Haven, Case No. 3:20-cv1589. On November 12, 2020, Plaintiff filed an Amended Class Action Complaint and Jury Demand (ECF 9) (the “Complaint”). Plaintiff’s Complaint alleged that Plaintiff and class members are entitled to refunds of certain amounts of tuition, fees, and other charges because, beginning in March 2020, UNH provided classes remotely and closed on-campus services in response to the COVID-19 pandemic. Plaintiff alleged that he, and all other University of New Haven students who paid tuition and fees for the Spring 2020 semester had express and implied contracts with UNH that entitled them to in-person instruction and services, and that, by switching to remote education and closing on-campus services in response to the pandemic without reducing or refunding tuition or fees, UNH was liable for breach of contract. The Complaint also included two claims for unjust enrichment in the alternative to Plaintiff’s breach of contract claims. On August 3, 2021, the Court denied Defendant’s Motion to Dismiss. ECF 37.

The Settlement represents a fair and reasonable result for the Settlement Class and thus satisfies each of the Rule 23(e)(2) factors, as well as the factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974). Furthermore, when compared to similar settlements in analogous cases, the Settlement at issue here is reasonable. Decl. ¶ 22. The Settlement is especially beneficial to the Settlement Class considering the substantial litigation risks Named Plaintiff faced. Named Plaintiff and Class Counsel had a thorough understanding of the strengths and weaknesses of the case before reaching the Settlement as they had conducted significant factual investigation into the merits of his claims, engaged in multiple rounds of briefing in connection with Defendant's motion to dismiss and for summary judgment, engaged in protracted settlement negotiations, and exchanged damages information with Defendant as part of the settlement process. Decl. ¶ 28.

Given the risks to proceeding with litigation and that the Settlement achieved a satisfactory resolution relative to the damages sustained, the \$2,285,600 Settlement Amount and the proposed Distribution are fair and reasonable in all aspects. Accordingly, Named Plaintiff respectfully requests the Court grant final approval of the settlement under Rule 23(e) of the Federal Rules of Civil Procedure.

FACTUAL BACKGROUND

On October 22, 2020, Plaintiff Krystian Wnorowski filed a putative class action complaint and on November 12, 2020, Plaintiff filed an Amended Class Action Complaint and Jury Demand (ECF 9). On February 1, 2021, UNH filed a Motion to Dismiss the Complaint in its entirety (ECF 18). The Court denied UNH's Motion to Dismiss on August 3, 2021. (ECF 37.) On February 16, 2022, Named Plaintiff moved to certify two putative classes comprising of:

The Tuition Class:

All persons whom paid tuition for or on behalf of students enrolled in classes at the University for the Spring 2020 Semester and were denied live in-person instruction from March 9, 2020 until the end of the Semester.

The Fees Class:

All persons whom paid fees for or on behalf of students enrolled at the University of New Haven who were charged fees for services, facilities, resources, events, and/or activities for the Spring 2020 Semester that were not provided in whole or in part.

ECF 52 at 1. Named Plaintiff also moved for the court to appoint him as class representative and to appoint the Anastopoulo Law Firm, LLC (now known as Poulin | Willey | Anastopoulo, LLC) as class counsel. *Id.* UNH filed an Opposition to Plaintiff's Motion for Class Certification on April 1, 2022. ECF 53. Plaintiff replied on April 15, 2022. ECF 57.

On July 15, 2022, Plaintiff moved for summary judgment on its two breach of contract claims. ECF 66. UNH opposed Plaintiff's Motion for Partial Summary Judgment on August 22, 2022; (ECF 82); and Plaintiff filed a reply on September 9, 2022 (ECF 90). On July 18, 2022, UNH moved for summary judgment on all counts of Plaintiff's Complaint. ECF 70. Plaintiff opposed UNH's Motion for Summary Judgment on August 22, 2022; (ECF 85); and UNH filed a reply on September 9, 2022 (ECF 91). On September 15, 2022, at the request of the Parties, the Court referred the case for mediation with the Honorable Magistrate Judge S. Dave Vatti. The Court also denied without prejudice the Plaintiff's Motion to Certify Class and indicated that the Plaintiff had the plenary right to renew the motion if the mediation did not result in settlement.

The Parties then participated in multiple mediation sessions with the Honorable Magistrate Judge S. Dave Vatti. The Parties first mediation session took place virtually on November 9, 2022 and lasted over four hours. However, the Parties were unable to reach an agreement. The Parties engaged in three more virtual mediation sessions occurring on December 16, 2022; January 10,

2023; and January 30, 2023, respectively. However, the Parties were still unable to reach an agreement. Thereafter, counsel for each Party participated multiple ex parte conversation with Judge Vatti in an effort to reach a settlement. On March 1, 2023, following their ex parte discussions with Judge Vatti, the Parties agreed upon the essential terms of a settlement and the case was reported settled, pending a fairness hearing by the Court. In light of this, the Court denied without prejudice the Parties' motions for summary judgment. ECF 126.

The Parties then worked towards drafting and finalizing the Settlement Agreement, which was originally filed on April 21, 2023. ECF 132 & 133. After a telephonic hearing with the Court, the Parties amended their Settlement Agreement, which was filed on June 7, 2023. ECF 138.

STANDARD FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS

The Law Favors and Encourages Settlement

"Courts examine procedural and substantive fairness in light of the 'strong judicial policy favoring settlements' of class action suits." *McMahon v. Olivier Cheng Catering & Events, LLC*, 2010 WL 2399328, at *3 (S.D.N.Y. Mar. 3, 2010) (citing *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005)); see also *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 174 (S.D.N.Y. 2014) ("The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost and rigor of prolonged litigation."). Thus, the Second Circuit has instructed that, while a court should not give "rubber stamp approval" to a proposed settlement, it should "stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case." *Grinnell*, 495 F.2d at 462.

As set forth below, the \$2,285,600 Settlement Amount here, particularly in light of the significant litigation risks Named Plaintiff faced, is manifestly reasonable, fair, and adequate under

all of the pertinent factors courts use to evaluate a settlement. Accordingly, the Settlement warrants final approval from this Court.

The Settlement Must Be Procedurally and Substantively Fair, Adequate and Reasonable

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

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

Fed. R. Civ. P. 23(e)(2). *See Menkes v. Stolt-Nielsen S.A.*, 270 F.R.D. 80, 101 (D. Conn., 2010).

In addition, the Second Circuit considers the following factors (the “Grinnell Factors”), which overlap with the Rule 23(e)(2) factors, when determining whether to approve a class action settlement: (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 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 of the attendant risks of litigation. *Grinnell*, 495 F.2d at 463; see also *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019) (explaining that “the new Rule 23(e) factors [] add to, rather than displace, the Grinnell Factors,” and “there is significant overlap” between the two “as they both guide a court’s substantive, as opposed to procedural, analysis”); see also *Menkes v. Stolt-Nielsen S.A.*, 270 F.R.D. 80, 101 (D. Conn., 2010).

For a settlement to be deemed substantively and procedurally fair, reasonable and adequate, not every factor need be satisfied. “[R]ather, the court should consider the totality of these factors in light of the particular circumstances.” *D’Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d Cir. 2001). Additionally, “[a]bsent fraud or collusion, courts should be hesitant to substitute their judgment for that of the parties who negotiated the settlement.” *Yuzary v. HSBC Bank, USA, N.A.*, 2013 WL 5492998, at *4 (S.D.N.Y. Oct. 2, 2013); see also *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 455 (S.D.N.Y. 2004) (courts should not substitute their “business judgment for that of counsel, absent evidence of fraud or overreaching.”). Under amended Rule 23(e)(2), courts now “must assess at the preliminary approval stage whether the parties have shown that the court will likely find that the [Rule 23(e)(2)] factors weigh in favor of final settlement approval.” *Payment Card Interchange*, 330 F.R.D. at 28. As set forth in Plaintiff’s Memorandum of Law in Support of Unopposed Motion for Preliminary Approval of the Proposed Settlement and Provisional Certification of the Proposed Settlement Class (ECF No. 85) and acknowledged by this Court’s Preliminary Approval Order (ECF No. 87), Named Plaintiff initially met all of the requirements imposed by Rule 23(e)(2). Courts have noted that a plaintiff’s satisfaction of these

factors is virtually assured where, as here, little has changed between preliminary approval and final approval. See *In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Practices & Prods. Liability Litig.*, 2019 WL 2554232, at *2 (N.D. Cal. May 3, 2019) (finding that the “conclusions [made in granting preliminary approval] stand and counsel equally in favor of final approval now”); *Snyder v. Ocwen Loan Servicing, LLC*, 2019 WL 2103379, at *4 (N.D. Ill. May 14, 2019) (noting in analyzing Rule 23(e)(2) that “[s]ignificant portions of the Court’s analysis remain materially unchanged from the previous order [granting preliminary approval]”).

The Proposed Settlement Is Procedurally and Substantively Fair, Adequate and Reasonable

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

a. *Named Plaintiff and Class Counsel have Adequately Represented the Class*

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). Here, Named Plaintiff’s interests are not antagonistic to, and in fact are directly aligned with, the interests of other Members of the Settlement Class. Additionally, Named Plaintiff and Class Counsel have adequately represented the Settlement Class by zealously prosecuting this action, including by, among other things, extensive investigation and other litigation efforts throughout the prosecution of the Action, including, inter alia: (1) researching and drafting the initial complaints in the Action and the amended complaints; (2) researching the applicable law with respect to the claims in the Action and the potential defenses thereto; (3) reviewing, researching and opposing Defendant’s motion to dismiss; (4) reviewing Defendant’s discovery; (5) reviewing, researching and opposing Defendant’s summary judgment; (6) reviewing, and researching Class Certification; (7) actively

participating in similar College and University Class Actions filed across the country and (8) engaging in extensive settlement discussions with Defendant's Counsel. Decl. ¶ 28.

b. The Proposed Settlement Was Negotiated at Arm's Length

Named Plaintiff satisfies Rule 23(e)(2)(B) because the Settlement is the product of arm's length negotiations between the parties' counsel, with no hint of collusion. Decl. ¶ 30. It is well-settled in this Circuit that "a class action settlement enjoys a strong 'presumption of fairness' where it is the product of arm's-length negotiations concluded by experienced, capable counsel." *Advanced Battery*, 298 F.R.D. at 175 (citing *Wal-Mart Stores*, 396 F.3d at 116); see also *Charron v. Pinnacle Grp. NY LLC*, 874 F. Supp. 2d 179, 195 (S.D.N.Y. 2012) ("Recommendations of experienced counsel are entitled to great weight in evaluating a proposed settlement in a class action because such counsel are most closely acquainted with the facts of the underlying litigation."), *aff'd sub nom. Charron v. Wiener*, 731 F.3d 241 (2d. Cir. 2013); *McMahon*, 2010 WL 2399328, at *4 (settlement was "procedurally fair, reasonable, adequate and not a product of collusion" where it was reached after "arm's-length negotiations between the parties"). Accordingly, this factor weighs heavily in favor of the Court granting final approval of the Settlement.

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

Rule 23(e)(2)(C)(i) and the first, fourth and fifth Grinnell factors overlap, as they address the substantive fairness of the Settlement in light of the risks posed by continuing litigation. As set forth below, these factors weigh in favor of final approval.

i. The Risks of Establishing Liability at Trial

In considering this factor, "the Court need only assess the risks of litigation against the certainty of recovery under the proposed settlement." *Glob. Crossing*, 225 F.R.D. at 459. "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.* Named Plaintiff expect, if the Action were to proceed, New Haven would continue to contest all elements of Named Plaintiff’s surviving claims. The outcome of the Action cannot be certain, and in the event it proceeded to trial, it would be a lengthy and complex affair: even if Named Plaintiff could establish liability, they would still have to prove damages on their claim for a partial refund of fees and certify a litigation class. Decl., ¶ 31. See also *Cardiology Assocs., P.C. v. Nat’l Intergroup, Inc.*, 1987 WL 7030, at *3 (S.D.N.Y. Feb. 13, 1987) (“There is a substantial risk that the plaintiff might not be able to establish liability at all and, even assuming a favorable jury verdict, if the matter is fully litigated and appealed, any recovery would be years away.”). Considering the scenarios, the risks of continuing this litigation are very substantial, even assuming some favorable facts in Plaintiff’s favor.

Evaluated against these risks, the \$2,285,600 Settlement Amount is an excellent result for the Settlement Class. The Settlement “benefits each plaintiff in that he or she will recover a monetary award immediately, without having to risk that an outcome unfavorable to the plaintiffs will emerge from a trial.” *Velez v. Majik Cleaning Sev., Inc.*, 2007 WL 7232783, at *6 (S.D.N.Y. June 25, 2007). In this Action, the Settlement Class Members will receive a meaningful and tangible present recovery from the Settlement. With final Court approval, these funds will be distributed in a matter of months, rather than years (or never), which is particularly important given the additional hardships imposed by the COVID-19 pandemic. Decl. ¶ 32.

Although Named Plaintiff and Class Counsel firmly believe that the claims asserted in the Action are meritorious and that they would prevail at trial, further litigation against Defendant posed numerous risks which made any recovery uncertain. Decl., ¶ 33.

ii. The Risks of Establishing Damages at Trial

The risks of establishing liability apply with equal force to establishing damages. If this litigation were to continue, Named Plaintiff would have had difficulty proving damages. Decl. ¶ 34. Since Plaintiff did not use any experts to assist the Court with damages calculations, Named Plaintiff's case would become much more difficult to prove. *Id.* Thus, in light of the significant risks Named Plaintiff faced at the time of the Settlement with regard to establishing damages, this factor weighs heavily in favor of final approval. *Id.*

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

The anticipated complexity, cost, and duration of the Action would be considerable. *See Advanced Battery*, 298 F.R.D. at 175 (“the complexity, expense, and likely duration of litigation are critical factors in evaluating the reasonableness of a settlement”). If not for the Settlement, there was a high likelihood of even more expensive and protracted litigation. Decl., ¶ 35. This would consume significant funds and expose Named Plaintiff and the Class to risk and uncertainty. The preparation for what would likely be a multi-week trial and possible appeals, would have caused the Action to persist for several more years before the Settlement Class could possibly receive any recovery. *Id.* Such a lengthy and highly uncertain process would not serve the best interests of the Settlement Class compared to the immediate, certain monetary benefits of the Settlement. *Id.*; *See also Stougo v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003) (“even if a [...] class member was willing to assume all the risks of pursuing the actions through further litigation . . . the passage of time would introduce yet more risks . . . and would, in light of the time

value of money, make future recoveries less valuable than this current recovery”); *Hicks v. Morgan Stanley*, 2005 WL 2757792, at *6 (S.D.N.Y. Oct. 24, 2005) (“Further litigation would necessarily involve further costs [and] justice may be best served with a fair settlement today as opposed to an uncertain future settlement or trial of the action.”). Accordingly, the Rule 23(e)(2)(C)(i) factor, as well as the first, fourth and fifth *Grinnell* factors, all weigh in favor of final approval.

d. The Proposed Method for Distributing Relief Is Effective

With respect to Rule 23(e)(2)(C)(ii), Named Plaintiff and Class Counsel have taken appropriate steps to ensure that the Settlement Class is notified about the Settlement. Pursuant to the Preliminary Approval Order (ECF No. 141), the Court directed the following:

The Court appoints the firm of JND Legal Administration as Settlement Administrator to administer the Notice procedure and distribute the Net Settlement Fund, under the supervision of Class Counsel.

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.

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.

No later than 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, when available, in downloadable format, the following: (i) the Long Form Notice; (ii) the Preliminary Approval Order (when entered); (iii) the Settlement Agreement (including all of its exhibits); (iv) a Question and Answer section agreed to 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, as well as Settlement Class Counsel; (vi) all preliminary and final approval motions filed by the Parties and any orders ruling on such motions; and (vii) any other materials agreed upon by the Parties and/or required by the Court. The Settlement Website shall allow Settlement Class Members to provide an updated mailing address to receive a paper check or to elect to receive their Settlement Benefit via Venmo or PayPal.

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

See Order (ECF No. 141) at pp. 4-6. *See also* Declaration of Heather Follensbee (“Follensbee Decl.”), submitted as Ex. A. to the Decl of Paul Doolittle. Pursuant to the terms of the Amended Settlement Agreement, on July 12, 2023, JND sent the customized, Court-approved e-mail notice (“E-mail Notice”) via e-mail from an established case inbox (info@UNewHavenSettlement.com) to 6,144 unique Settlement Class Members with a valid e-mail address (284 Settlement Class Members were excluded from the e-mail campaign as they did not have a valid e-mail address). Follensbee Decl. ¶ 8. The E-mail and Postcard Notice informed recipients that any Class Member who wished to exclude themselves from the proposed Settlement (“opt-out”) must do so by submitting an exclusion request electronically on the Settlement website or by mailing an exclusion letter to the Settlement Administrator, postmarked or submitted on or before August 26, 2023. Follensbee Decl. ¶ 18. That date has passed and there have been no objections to the Settlement and no individual opt-out requests. This factor therefore supports final approval.

e. Lead Counsel’s Request for Attorneys’ Fees Is Reasonable

Rule 23(e)(2)(C)(iii) addresses “the terms of any proposed award of attorney’s fees, including timing of payment.” Fed. R. Civ. P. 23(e)(2)(C)(iii). Consistent with the Notice, and as discussed in Class Counsel’s fee memorandum, Class Counsel seeks an award of attorneys’ fees (Dkt. No. 144) in the amount of \$500,000 of the Settlement Amount, and expenses in the amount of \$ \$15,951.45. Decl. ¶ 70, 72. As set forth in Class Counsel’s fee memorandum filed on August 11, 2023, this request is in line with recent fee awards in this District in similar common-fund cases. *Id.*, ¶ 22. Class Counsel’s fee request is reasonable, and Named Plaintiff has ensured that

the Settlement Class is fully apprised of the terms of the proposed award of attorneys' fees. Accordingly, this factor supports final approval of the Settlement.

f. The Settlement Ensures Settlement Class Members are Treated Equitably

Rule 23(e)(2)(D), the final factor, considers whether Class Members are treated equitably. As reflected in the proposed manner of distribution, *see* settlement agreement, ¶¶ 5, 6, the proposed Settlement treats Settlement Class Members equitably relative to each other, and all Settlement Class Members will be giving Columbia the same release. Named Plaintiff will be subject to the same formula for distribution of the Net Settlement Fund as every other Settlement Class Member. This factor therefore merits granting final approval of the Settlement. Based on the foregoing, Named Plaintiff and Class Counsel respectfully submit that each of the Rule 23(e)(2) factors support granting final approval of the Settlement.

2. The Settlement Satisfies the Remaining Grinnell Factors

a. The Lack of Objections to Date Supports Final Approval

The reaction of the class to the settlement “is considered perhaps ‘the most significant factor to be weighed in considering its adequacy,’” *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at *7 (S.D.N.Y. Nov. 7, 2007), such that the “‘absence of objections may itself be taken as evidencing the fairness of a settlement.’” *City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *5 (S.D.N.Y. May 9, 2014), *aff’d sub nom. Arbuthnot v. Pierson*, 607 F. App’x 73 (2d Cir. 2015). The deadline to submit objections and exclusions has passed and no objections have been received to date. Decl., ¶ 47. This positive reaction of the Settlement Class supports approval of the Settlement. *See Yuzary*, 2013 WL 5492998, at *6 (the “favorable response” from the class “demonstrates that the class approves of the settlement and supports final approval”); *In*

re Facebook, Inc., 343 F. Supp. 3d 394, 410 (S.D.N.Y. 2018) (“[t]he overwhelming positive reaction – or absence of a negative reaction – weighs strongly in favor” of final approval).

b. Named Plaintiff Had Sufficient Information to Make an Informed Decision Regarding the Settlement

Under the third Grinnell factor, “the question is whether the parties had adequate information about their claims such that their counsel can intelligently evaluate the merits of plaintiff’s claims, the strengths of the defenses asserted by defendants, and the value of plaintiff’s causes of action for purposes of settlement.” *In re Bear Stearns Cos., Inc. Sec., Derivative & ERISA Litig.*, 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012); *Martignago v. Merrill Lynch & Co., Inc.*, 2013 WL 12316358, at *6 (S.D.N.Y. Oct. 3, 2013) (“The pertinent question is ‘whether counsel had an adequate appreciation of the merits of the case before negotiating.’”). “To satisfy this factor, parties need not have even engaged in formal or extensive discovery.” *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *7 (S.D.N.Y. Dec. 19, 2014); *see also Glob. Crossing*, 225 F.R.D. at 458 (“Formal discovery is not a prerequisite; the question is whether the parties had adequate information about their claims.”). Here, Class Counsel are sufficiently well informed of the strengths and weaknesses of the claims. Class Counsel researched the potential causes of actions thoroughly, researched the facts, reviewed the underlying documents exchanged between Named Plaintiff and New Haven that comprised the alleged contract documents, drafted multiple separate pleadings and survived in part a motion to dismiss and motion for summary judgment, engaged in protracted settlement negotiations with Defendant and exchanged non-public information regarding the alleged damages. Decl., ¶ 48. Class Counsel also spoke with potential merits and damages experts concerning the strengths and weaknesses of the case, as well as the strengths and weaknesses of New Haven’s arguments and defenses. *Id.* Moreover, the information exchanged during settlement negotiations permitted Class Counsel to learn the relevant facts and

circumstances in an efficient and cost-effective manner. New Haven provided financial information detailing fees assessed all members of the Class for the Spring 2020 semester. *Id.* The Parties also exchanged further information through written correspondence and phone calls. As a result, Class Counsel was well-positioned to evaluate the strengths of Named Plaintiff's claims, New Haven's defenses, and prospects for success. *Id.*

Class Counsel also considered the many other cases arising out of COVID-19 school related closures, of which Class Counsel are at the forefront. *See* Decl., ¶ 49. Class Counsel's unique insight into this type of litigation, combined with the information obtained from New Haven in this case, fortified Named Plaintiff's appreciation of the risks ahead should they proceed with further litigation. Decl., ¶ 49. Thus, by the time of the Settlement, Named Plaintiff was well-versed in the strengths and weaknesses of the case. This factor weighs in favor of final approval.

c. Maintaining Class-Action Status Through Trial Presents a Substantial Risk

Named Plaintiff's ability to maintain class-action status through trial presented a substantial risk in this Action. Although Named Plaintiff believes he would have prevailed on a motion to certify the class and motion for summary judgment, Defendant opposed both motions and filed their own motion for summary judgment. *Id.*, ¶ 50. Moreover, even if Named Plaintiff's motions were granted, Defendant could still have moved to decertify the class or trim the class before trial or on appeal, as class certification may be reviewed at any stage of the litigation. *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*, 2010 WL 2399328, at *5.

d. Defendant's Ability to Withstand a Greater Judgment

This factor is not dispositive when all other factors favor approval. Even if Defendant could have withstood a greater judgment, however, a “defendant’s ability to withstand a greater judgment, standing alone, does not suggest that the settlement is unfair.” *Castagna v. Madison Square Garden, L.P.*, 2011 WL 2208614, at *7 (S.D.N.Y. June 7, 2011); *see also Aeropostale*, 2014 WL 1883494, at *9 (courts “generally do not find the ability of a defendant to withstand a greater judgment to be an impediment to settlement when the other factors favor the settlement”). A “defendant is not required to ‘empty its coffers’ before a settlement can be found adequate.” *In re Sony SXRDR Rear Projection Television Class Action Litig.*, 2008 WL 1956267, at *8 (S.D.N.Y. May 1, 2008).

e. The Settlement Amount Is Reasonable in View of the Best Possible Recovery and the 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); *Fleisher v. Phoenix Life Ins. Co.*, 2015 WL 10847814, at *8 (S.D.N.Y. Sept. 9, 2015) (citations omitted). The Court need only determine whether the Settlement falls within a “range of reasonableness”—a range that “recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972); *see also Global Crossing*, 225 F.R.D. at 461 (noting that “the certainty of [a] settlement amount has to be judged on [the] context of the legal and practical obstacles to obtaining a large recovery”). The Settlement here presents an excellent result, as Named Plaintiff has obtained refund for the unrefunded tuition and fees that were at issue in what remains of the Action. This

Settlement thus clearly falls within the range of recoverable damages. Additionally, the Settlement Amount provides a significant and immediate payment to the Settlement Class. *See Gay v. Tri-Wire Eng'g Solutions, Inc.*, 2014 WL 28640, at *9 (E.D.N.Y. Jan. 2, 2014) (quoting *Massiah v. MetroPlus Health Plan, Inc.*, 2012 WL 5874655, at *5 (E.D.N.Y. Nov. 20, 2012)) (“When a settlement ‘assures immediate payment of substantial amounts to class members even if it means sacrificing speculative payment of a hypothetically larger amount years down the road, settlement is reasonable under this factor.’”); *Sykes v. Mel Harris & Assocs. LLC*, 2016 WL 3030156, at *14 (S.D.N.Y. May 24, 2016). The proposed Settlement will provide “an immediate and certain benefit to” the Settlement Class, and “the substantial burdens and costs that continued and uncertain litigation would impose on the parties, non-party witnesses, and the court” would be avoided. *In re Metlife Demutualization Litig.*, 689 F. Supp. 2d 297, 332 (E.D.N.Y. 2010).

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

The standard for approval of a proposed distribution of settlement funds to a class is the same as the standard for approving the Settlement as a whole: namely, “‘it must be fair and adequate.’” *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005). “‘When formulated by competent and experienced class counsel,’ a plan for allocation of net settlement proceeds ‘need have only a reasonable, rational basis.’” *Advanced Battery*, 298 F.R.D. at 180; *see also Christine Asia*, 2019 WL 5257534, at *15-16. Here, as set forth in the Notice, the proposed manner of distribution is based on the same methodology underlying Named Plaintiff’s measure of damages. Decl., ¶ 20. *see Facebook*, 343 F. Supp. 3d at 414 (plan of allocation was fair where it was “prepared by experienced counsel along with a damages expert – both indicia of reasonableness”). This is a fair method to apportion the Net Settlement Fund among the Settlement

Class, as it is based on, and consistent with, the claims alleged. The manner of distribution is set forth as follows:

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.

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 form on the Settlement Website that Settlement Class Members may visit to (a) provide an updated address for sending a check; or (b) elect to receive the Settlement Benefit by Venmo or PayPal instead of a paper check. These remaining Settlement Class Members must provide an updated address or elect to receive the Settlement Benefit by Venmo or PayPal no later than sixty (60) days after the Effective Date.

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(ff), 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 Representative 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.

Within 14 days of the entry of the Preliminary Approval Order, UNH 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").¹ The Settlement Administrator shall use the postal addresses provided in the Class List for purposes of sending the Settlement Benefits to Settlement Class Members.

See ECF No. 138-1.

¹ 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 UNH's policies, UNH may disclose directory information to the Settlement Administrator. See 34 C.F.R. § 99.37; see also University of New Haven, Policy on Directory Information, <https://www.newhaven.edu/about/departments/registrar/ferpa/directory-information.php> (last visited April 4, 2023). 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 UNH's intention to comply with that order, see 34 C.F.R. § 99.31(a)(9)(ii).

Named Plaintiff and Class Counsel believe that the proposed manner of Distribution is fair and reasonable, and respectfully submit it should be approved by the Court. Indeed, notably, there have been no objections to the Distribution proposal to date, which supports the Court's approval. *See Veeco*, 2007 WL 4115809, at *7.

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

In their motion for preliminary approval of the Settlement, Named Plaintiff requested that the Court certify the Settlement Class for settlement purposes only so that notice of the Settlement, the Settlement Hearing, and the rights of Settlement Class Members to object to the Settlement, or request exclusion from the Settlement Class, could be issued. *See* ECF No. 132-1. In the Preliminary Approval Order, the Court addressed the requirements for class certification as set forth in Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. The Court found that Named Plaintiff had met the requirements for certification of the Settlement Class for purposes of settlement and that Named Plaintiff and Class Counsel “will fairly and adequately protect the interests of the Settlement Class.” ECF No. 141 at ¶6. Specifically, in the Preliminary Approval Order, the Court preliminarily certified a class of “All UNH students who were enrolled in any UNH course as of March 24, 2020, with the exception of: (i) any non-matriculated high school student who took a UNH course; (ii) any person who properly executes and files a proper and timely opt-out request to be excluded from the Settlement Class; and (iii) the legal representatives, successors or assigns of any such excluded person.” In addition, the Court preliminarily certified Named Plaintiff as “Settlement Class Representative” and Counsel as Class Counsel. *Id.* at ¶¶7, 8. Since the Court's entry of the Preliminary Approval Order, nothing has changed to alter the propriety of the Court's preliminary certification of the Settlement Class for settlement purposes. Decl., ¶ 57. Thus, for all of the reasons stated in Named Plaintiff's motion for preliminary approval

(incorporated herein by reference), Named Plaintiff respectfully request that the Court affirm his preliminary certification and finally certify the Settlement Class for purposes of carrying out the Settlement pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) and make a final appointment of Named Plaintiff as class representative and Class Counsel as class counsel.

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

Rule 23 requires that notice of a settlement be “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort,” Fed. R. Civ. P. 23(c)(2)(B), and that it be directed to class members in a “reasonable manner.” Fed. R. Civ. P. 23(e)(1)(B). Notice of a settlement satisfies Rule 23(e) and due process where it fairly apprises “members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.” *Wal-Mart Stores*, 396 F.3d at 114; *Vargas v. Capital One Fin. Advisors*, 559 F. App’x 22, 26-27 (2d Cir. 2014). Notice is adequate “if the average person understands the terms of the proposed settlement and the options provided to class members thereunder.” *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 133 (S.D.N.Y. 2008) (*citing Wal-Mart Stores*, 396 F.3d at 114). The Notice and the method used to disseminate the Notice to potential Settlement Class Members satisfy these standards. The Court-approved Notice (the “Notice”) amply informs Settlement Class Members of, among other things: (i) the pendency of the Action; (ii) the nature of the Action and the Settlement Class’ claims; (iii) the essential terms of the Settlement; (iv) the proposed manner of distribution of the Net Settlement Fund; (v) Settlement Class Members’ rights to request exclusion from the Settlement Class or object to the Settlement, the manner of distribution, or the requested attorneys’ fees or expenses; (vi) the binding effect of a judgment on Settlement Class Members; and (vii) information regarding Class Counsel’s motion for an award of attorneys’ fees and

expenses and incentive awards for Named Plaintiff. *Id.*, ¶ 17. The Notice also provides specific information regarding the date, time, and place of the Settlement Hearing, and sets forth the procedures and deadlines for: (i) requesting exclusion from the Settlement Class; and (ii) objecting to any aspect of the Settlement, including the proposed distribution plan and the request for attorneys' fees and expenses and case awards for Named Plaintiff. *Id.*, ¶ 18. Notice programs such as the one proposed by Class Counsel have been approved as adequate under the Due Process Clause and Rule 23. *See Ortega v. Uber Techs.*, 2018 WL 4190799 (E.D.N.Y. May 4, 2018) (approving a notice plan of notice by email, with notice by mail for class members whose emails are undeliverable and ordering the parties to create a settlement website). And in other COVID-19 refund actions against other universities, substantially similar methods of notice have found to satisfy due process and Rule 23. *See, e.g., Wright v. S. New Hampshire Univ.*, 2021 WL 1617145, at *2 (D.N.H. Apr. 26, 2021).

CONCLUSION

The \$1 million Settlement obtained by Named Plaintiff and Class Counsel represents an excellent recovery for the Settlement Class, particularly in light of the significant litigation risks the Settlement Class faced, including the very real risk of the Settlement Class receiving no recovery at all. For the foregoing reasons, Named Plaintiff respectfully request that the Court approve the proposed Settlement and the proposed manner of distribution of the Net Settlement Fund as fair, reasonable, and adequate.

Date: September 8, 2023

Respectfully Submitted,

By: /s/ Paul Doolittle
POULIN | WILLEY | ANASTOPOULO, LLC
 Eric M. Poulin**
 Roy T. Willey, IV**

Blake G.Abbott**
Paul Doolittle**
32 Ann Street
Charleston, SC 29403
P. (843) 614-8888
F. (843) 494-5536
eric@akimlawfirm.com
roy@akimlawfirm.com
blake@akimlawfirm.com
pauld@akimlawfirm.com

Attorneys for Plaintiff and Class Members

**Admitted *Pro Hac Vice*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

KRYSTIAN WNOROWSKI, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

UNIVERSITY OF NEW HAVEN,

Defendant.

No. 3:20-cv-01589 (MPS)

[Proposed] FINAL JUDGMENT

WHEREAS, the Parties to the above-captioned putative class action (the “Action”) executed a Settlement Agreement dated April 22, 2023 and an Amended Settlement Agreement dated June 7, 2023 (the “Settlement”);

WHEREAS, on June 12, 2023 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 UNH students who were enrolled in any UNH course as of March 24, 2020, with the exception of: (i) any non-matriculated high school student who took a UNH course; (ii) any person who properly executes and files a proper and timely opt-out request to be excluded from the Settlement Class; and (iii) the legal representatives, successors or assigns of any such excluded person.

(iii) preliminarily appointed Krystian Wnorowski as Settlement Class Representative; (iv) preliminarily appointed Poulin | Willey | Anastopoulo, LLC; (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 October 3, 2023 at 10:00 a.m. at the United States District Court for the District of Connecticut, Abraham Ribicoff Federal Building, 450 Main St., Hartford, CT 06103, this Court will hold a hearing to determine whether the Settlement was fair, reasonable, and adequate to the Settlement Class ("Fairness 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 an experienced professional mediator, Honorable Magistrate Judge S. Dave Vatti; (iii) it was based on a record that is sufficiently developed to have enabled the Settlement Class Representatives and University of New Haven 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 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.

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 University of New Haven 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 University of New Haven 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 (hereinafter “Released University of New Haven 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 University of New Haven's transition to remote education or other services during and following the COVID-19 pandemic through the end of the Spring 2020 semester, or the implementation or administration of such remote education or other services, including but not limited to all claims that were brought or could have been brought in the Action, any and all claims University of New Haven may have, had, or discover against the Released Settlement Class Parties arising out of or related in any way to the Released Settlement Class Parties' investigation, filing, prosecution, or settlement of this Action (including both the First Action and the Second Action, as defined in the Settlement) (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 University of New Haven Parties.

6. University of New Haven 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 University of New Haven 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 University of New Haven on their behalf (hereinafter "Released Settlement Class Parties"), from all Released Claims.

7. The Releasing University of New Haven 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 is an admission or concession by University of New Haven 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 University of New Haven or the Released University of New Haven 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 \$_____ with such amount to be paid from out of the Settlement Fund in accordance with the terms of the Settlement. In addition, Administrative Expenses, which shall not exceed \$75,000, are to be paid out of the Settlement Fund to JND Legal Administrators to perform its responsibilities as the Settlement Administrator, in accordance with the terms of the Settlement.

11. Settlement Class Representative is to be awarded a case contribution award in the amount of \$_____, such amount to be paid from out of 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 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. Michael P. Shea
Chief United States District Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

KRYSTIAN WNOROWSKI, individually and
on behalf of others similarly situated,

Plaintiff,

v.

UNIVERSITY OF NEW HAVEN,

Defendant.

Case No. 3:20-cv 01589 (MPS)

**DECLARATION OF PAUL J. DOOLITTLE IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF MANNER OF
DISTRIBUTION OF NET SETTLEMENT FUND**

I, Paul J. Doolittle, as Class Counsel, declares as follows:

1. I, Paul J. Doolittle, am the director of the Class and Mass Action Division at Poulin | Willey | Anastopoulo, and I am counsel for Plaintiff in the above captioned matter. I have been admitted Pro Hac Vice in this action (ECF No. 64).

2. This Declaration is submitted in support of the accompanying Motion for Final Approval of Class Action Settlement, Approval of Manner of Distribution of Net Settlement Fund, An Award of Attorneys' Fees and Expenses and An Award to Plaintiff, which seeks an order that, among other things, grants Final approval of the Settlement, awards fees and expenses to Class Counsel and case contribution award to the Named Plaintiff, and directs that the Claims Administrator may implement the distribution of the Net Settlement Fund ("Distribution") in the manner provided for in the Settlement.

3. The Settlement will resolve all claims asserted in above-captioned Action in this Court.

4. I have overseen all material aspects of the litigation of this Action. In addition, I was involved in the negotiation of the terms of the Settlement. Accordingly, I have personal knowledge of the facts and if called upon to testify, I could and would testify competently thereto.

5. My firm has been preliminarily appointed as Class Counsel by this Court in its Order granting Preliminary Approval to the proposed Settlement (“Preliminary Approval Order”). See ECF No. 141. The Preliminary Approval Order also provided that the Named Plaintiff was preliminarily appointed as Settlement Class Representative. *Id.* In addition, the Preliminary Approval Order also preliminarily certified the following proposed Class: “All UNH students who were enrolled in any UNH course as of March 24, 2020, with the exception of: (i) any non-matriculated high school student who took a UNH course; (ii) any person who properly executes and files a proper and timely opt-out request to be excluded from the Settlement Class; and (iii) the legal representatives, successors or assigns of any such excluded person.” *Id.*

6. In brief, Class Counsel engaged in extensive investigation and other litigation efforts throughout the prosecution of the Action, including, inter alia: (1) researching and drafting the initial complaint in the Action; (2) researching the applicable law with respect to the claims in the Action and the potential defenses thereto; and (3) engaging in extensive settlement discussions with Counsel for Defendant.

I. FACTS

7. On October 22, 2020, Plaintiff Krystian Wnorowski filed this class action complaint in the United States District Court District of Connecticut styled *Wnorowski v. University of New Haven*, Case No. 3:20-CV-01589. (ECF No. 1) This Complaint alleged that Named Plaintiff and putative class members are entitled to refunds of tuition, fees, and other charges because, beginning in March 2020, New Haven provided classes remotely in response to

the COVID-19 pandemic. The Complaint alleged, inter alia, that Named Plaintiff and all other New Haven students who paid tuition and fees for the Spring 2020 semester had an implied and express contract with New Haven that entitled them to in-person instruction, and that by switching to remote education in response to the pandemic, New Haven breached the contracts.

8. On February 1, 2021, New Haven filed its Motion to Dismiss (ECF No. 18).

9. On August 3, 2021, the Court denied New Haven's Motion to Dismiss (ECF No. 37).

10. Following this, discovery began and throughout this period, the Court adjusted and rescheduled all sorts of deadlines through scheduling orders, and Plaintiff filed their Motion for Class Certification (ECF. 52) in February of 2022.

11. Then, in July of 2022, Plaintiff filed their Motion for Partial Summary (ECF No. 66).

12. Shortly thereafter, New Haven filed their own Motion for Summary Judgment (ECF No. 70).

13. After the above filings, both Parties reached an agreement to settle.

14. Thereafter, Plaintiff filed their unopposed Motion for Preliminary Approval of Class Action Settlement (ECF No. 132).

15. The Gross Settlement amount in the above paragraph is \$2,285,600.00.

II. NOTICE WAS ISSUED AS ORDERED

16. Rule 23 of the Federal Rules of Civil Procedure ("Fed. R. Civ. P.") requires that notice of a settlement be "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort," Fed. R. Civ. P.

23(c)(2)(B), and that it be directed to class members in a “reasonable manner.” Fed. R. Civ. P. 23(e)(1)(B).

17. The Notice and the method used to disseminate the Notice to potential Settlement Class Members satisfy these standards. The Court-approved Long Form Notice (the “Notice”) amply informs Settlement Class Members of, among other things: (i) the pendency of the Action; (ii) the nature of the Action and the Settlement Class’s claims; (iii) the essential terms of the Settlement; (iv) the proposed manner of distribution of the Net Settlement Fund; (v) Settlement Class Members’ rights to request exclusion from the Settlement Class or object to the Settlement, the manner of distribution, or the requested attorneys’ fees or expenses; (vi) the binding effect of a judgment on Settlement Class Members; and (vii) information regarding Class Counsel’s motion for an award of attorneys’ fees and expenses and incentive awards for Named Plaintiff.

18. The Notice also provides specific information regarding the date, time, and place of the Settlement Hearing, and sets forth the procedures and deadlines for: (i) requesting exclusion from the Settlement Class; and (ii) objecting to any aspect of the Settlement, including the proposed distribution plan and the request for attorneys’ fees and expenses and case awards for Named Plaintiff.

19. Notice programs such as the one proposed by Class Counsel have been frequently approved by Courts around the county as adequate under the Due Process Clause and Rule 23.

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

20. As set forth in the Notice, the proposed manner of distribution is based on the same methodology underlying Named Plaintiff’s measure of damages. This is a fair method to apportion the Net Settlement Fund among the Settlement Class, as it is based on, and consistent with, the claims alleged. The manner of distribution is set forth as follows:

- a. The Net Settlement Fund will be divided and distributed equally among Settlement Class Members.
- b. 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.
- c. 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 form on the Settlement Website that Settlement Class Members may visit to (a) provide an updated address for sending a check; or (b) elect to receive the Settlement Benefit by Venmo or PayPal instead of a paper check. These remaining Settlement Class Members must provide an updated address or elect to receive the Settlement Benefit by Venmo or PayPal no later than sixty (60) days after the Effective Date.
- d. No later than seven (7) days after the Effective Date, UNH will send to the Settlement Administrator the names of the Potential Settlement Class Members. No later than thirty (30) days after the Effective Date, UNH will produce to the Settlement Administrator the address of all Settlement Class Members. No charge to the Settlement Class or Cash Settlement Fund will be made by UNH for collection, correction, and provision of this information.
- e. 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 a fund to be created by UNH for the express benefit of UNH students and to be used for the purpose of improving or adding services for UNH students at the Beckerman Recreation Center at UNH's West Haven campus and/or for the purpose of making capital improvements to the same, which improvements would benefit UNH students.

ECF No. 133-1.

21. Here, by dividing the Net Settlement Fund across every student, this Settlement creates fairness for every potential Class Member in that all Members receive the same treatment, and no biases are created.

22. The above-mentioned settlement scheme is directly in line with other settlements in directly analogous matters. Further, the payment value directly to class members is relatively high. *See Rocchio et al. v. Rutgers*, The State University of New Jersey, No. MIDL-003039-20 (N.J. Super. Ct.) (granting final approval of settlement providing each settlement class member with payment of approximately \$52); *Choi et al. v. Brown University*, No. 1:20-cv-00191 (D.R.I.) (pending final approval of settlement providing each settlement class member with payment of approximately \$104).

23. The proposed settlement is much aligned with other recent settlements. As follows, the holdings in all of the following cases all support the current proposed Settlement: *See, e.g., Fittipaldi v. Monmouth Univ.*, No. 3:20-cv-05526 (D.N.J.) (\$1,300,000 common fund); *D'Amario v. Univ. of Tampa*, No. 7:20-cv-03744 (S.D.N.Y.) (\$3,400,000 common fund); *Rosado v. Barry Univ., Inc.*, No. 1:20-cv-21813 (S.D. Fla.) (\$2,400,000 common fund); *Wright v. S. New Hampshire Univ.*, No. 1:20-cv-00609 (D.N.H.) (\$1,250,000 common fund); *D'Amario v. Univ. of Tampa*, No. 7:20-cv-03744 (S.D.N.Y.) which resulted in settlement with a common fund of \$3.4

million dollars; *Martin v. Lindenwood Univ.*, No. 4:20-cv-01128 (E.D. Mo.), which resulted in the creation of a common fund of \$1.65 million dollars.

24. Named Plaintiff and Class Counsel believe that the proposed Distribution is fair and reasonable, and respectfully submit it should be approved by the Court. Indeed, notably, there have zero opt-outs to the distribution proposal to date, which supports the Court's approval.

IV. STANDARDS FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS

a. The Settlement Must Be Procedurally and Substantively Fair, Adequate, and Reasonable

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

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

See Fed. R. Civ. P. 23(e)(2).

26. In addition, the Second Circuit considers the following factors (the “Grinnell Factors”), which overlap with the Rule 23(e)(2) factors, when determining whether to approve a class action settlement: (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 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 of the attendant risks of litigation. *Grinnell*, 495 F.2d at 463; see also *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019) (explaining that “the new Rule 23(e) factors [] add to, rather than displace, the Grinnell Factors,” and “there is significant overlap” between the two “as they both guide a court’s substantive, as opposed to procedural, analysis”); see also *In re Namenda Direct Purchaser Antitrust Litig.*, 2020 WL 2749223, at *2-3 (S.D.N.Y. May 27, 2020).

27. And, as stated by the Second Circuit, not every factor listed above need be satisfied. See *D’Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d Cir. 2001).

b. Named Plaintiff and Class Counsel Have Adequately Represented the Settlement Class

28. Named Plaintiff’s interests are not antagonistic to, and in fact are directly aligned with, the interests of other Members of the Settlement Class. Additionally, Named Plaintiff and Class Counsel have adequately represented the Settlement Class by zealously prosecuting this action, including by, among other things, extensive investigation and other litigation efforts throughout the prosecution of the Action, including, inter alia: (1) researching and drafting the initial complaint in the Action; (2) researching the applicable law with respect to the claims in the

Action and the potential defenses thereto; (3) reviewing, researching and opposing Defendant's motion to dismiss; (4) actively participating in similar College and University Class Actions filed across the country; and (5) engaging in extensive settlement discussions with Defendant's Counsel and the exchange of information pertaining to the damages suffered by the Class.

29. Through each step of the Action, Named Plaintiff and Class Counsel have strenuously advocated for the best interests of the Settlement Class. Named Plaintiff and Class Counsel therefore satisfy Rule 23(e)(2)(A) for purposes of final approval.

30. Named Plaintiff satisfies Rule 23(e)(2)(B) because the Settlement is the product of arm's-length negotiations between the parties' counsel, with no hint of collusion.

C. The Risks of Establishing Liability

31. Named Plaintiff expects that, were the Action to proceed, New Haven would continue to vigorously contest all elements of Named Plaintiff's surviving claims during the remaining stages of the Action, including during discovery, class certification and summary judgment. The outcome of the Action cannot be certain, and if it proceeded to trial, it would be a lengthy and complex affair: even if Named Plaintiff could establish liability, he would still have to prove damages on his claims and certify a litigation class.

32. Evaluated against these risks, a \$2,285,600 recovery now is an excellent result for the Settlement Class as it is an above-average settlement—when compared to comparable settlements. In this Action, the Settlement Class Members will receive a meaningful and tangible present recovery from the Settlement. With final Court approval, these funds will be distributed in a matter of months, rather than years (or never), which is particularly important given the additional hardships imposed by the COVID-19 pandemic.

33. Although Named Plaintiff and Class Counsel firmly believe that the claims asserted in the Action are meritorious and that they would prevail at trial, further litigation against Defendant posed numerous risks which made any recovery uncertain.

D. The Risks of Establishing Damages At Trial

34. The risks of establishing liability apply with equal force to establishing damages. Had litigation continued, Named Plaintiff would have had difficulty proving damages due to the lack of experts used in this case. Because no experts were used, Named Plaintiff's case would become much more difficult to prove. Thus, in light of the significant risks Named Plaintiff faced at the time of the Settlement with regard to establishing damages, this factor weighs heavily in favor of final approval.

E. The Settlement Eliminates The Additional Costs and Delay of Continued Litigation

35. The anticipated complexity, cost, and duration of the Action would be considerable. Indeed, if not for the Settlement, there was a high likelihood of even more expensive, protracted, and contentious litigation. Such would consume significant funds and expose Named Plaintiff and the Class to risk and uncertainty. The subsequent motion for class certification and summary judgment, as well as the preparation for what would likely be a multi-week trial, would have caused the Action to persist for several more years before the Settlement Class could possibly receive any recovery. Such a lengthy and highly uncertain process would not serve the best interests of the Settlement Class compared to the immediate, certain monetary benefits of the Settlement. Accordingly, the Rule 23(e)(2)(C)(i) factor, as well as the first, fourth, fifth, and eighth, Grinnell factors weigh in favor of final approval.

F. The Proposed Method For Distribution

36. With respect to Rule 23(e)(2)(C)(ii), Named Plaintiff and Class Counsel have taken appropriate steps to ensure that the Settlement Class is notified about the Settlement. Pursuant to the Preliminary Approval Order (ECF No. 141), the Court directed the following:

No later than 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, when available, in downloadable format, the following:

- (i) the Long Form Notice;
- (ii) the Preliminary Approval Order (when entered);
- (iii) (iii) the Settlement Agreement (including all of its exhibits);
- (iv) (iv) a Question and Answer section agreed to by the Parties anticipating and answering Settlement related questions from prospective class members;
- (v) (v) contact information for the Settlement Administrator, including a Toll Free number, as well as Settlement Class Counsel;
- (vi) (vi) all preliminary and final approval motions filed by the Parties and any orders ruling on such motions; and
- (vii) (vii) any other materials agreed upon by the Parties and/or required by the Court.

The Settlement Website shall allow Settlement Class Members to provide an updated mailing address to receive a paper check or to elect to receive their Settlement Benefit via Venmo or PayPal. *See also* Declaration of Heather Follensbee of JND Legal Administration (“JND”), setting forth the details concerning the notice dissemination, publication, and requests for exclusion or objections received to date (“Follensbee Declaration”).

37. In her Declaration, Heather Follensbee set forth the Notice Plan for potential class members.

38. JND provided notice via First Class Mail and/or E-mail.

39. 6,423 Class Members were e-mailed or mailed a notice that was not returned as undeliverable, representing 99.9% of total Settlement Class Members.

40. Additionally, a settlement specific website was created where key Settlement documents were posted, including the Long Form Notice; the Court’s Order and the Settlement Agreement (including all of its exhibits).

41. Settlement Class Members had until August 26, 2023 to object to the Settlement or request exclusion from the Settlement Class. To date there have been no objections to the Settlement. This factor therefore supports final approval.

42. And in addition to the above website, JND has created a toll-free number to contact regarding any questions regarding the Settlement. This system includes an option to speak to a live operator. *Id.* at ¶ 5.

43. 56. These sorts of proposed notice systems have been approved in similar matters, *See In re CertainTeed Corp. Roofing Shingle Prod. Liab. Litig.*, 269 F.R.D. 468 (E.D. Pa. 2010). And in other COVID-19 refund actions against other universities, substantially similar methods of notice have been preliminarily approved. *See, e.g., Wright v. S. New Hampshire Univ.*, No. 20-cv-609-LM, 2021 WL 1617145, at *2 (D.N.H. Apr. 26, 2021); *see also Rosado v. Barry Univ., Inc.*, No. 1:20-cv-21813-JEM, Order, (S.D.N.Y. Mar. 30, 2021).

44. 57. And, to reiterate, the sort of proposed Settlement has been approved or agreed upon in the following cases: *Fittipaldi v. Monmouth Univ.*, No. 3:20-cv-05526 (D.N.J.) (\$1,300,000 common fund); *Rosado v. Barry Univ., Inc.*, No. 1:20-cv-21813 (S.D. Fla.) (\$2,400,000 common fund); *Wright v. S. New Hampshire Univ.*, No. 1:20-cv-00609 (D.N.H.) (\$1,250,000 common fund); *D'Amario v. Univ. of Tampa*, No. 7:20-cv-03744 (S.D.N.Y.) which resulted in settlement with a common fund of \$3.4 million dollars; *Martin v. Lindenwood Univ.*, No. 4:20-cv-01128 (E.D. Mo.), which resulted in the creation of a common fund of \$1.65 million dollars.

G. The Settlement Ensures Settlement Class Members are Treated Equitably

45. Rule 23(e)(2)(D), the final factor, considers whether Class Members are treated equitably. As reflected in the proposed manner of distribution, *see* ECF No. 133-1, the proposed

Settlement treats Settlement Class Members equitably relative to each other, and all Settlement Class Members will be giving New Haven the same release. Named Plaintiff will be subject to the same formula for distribution of the Net Settlement Fund as every other Settlement Class Member. This factor therefore merits granting final approval of the Settlement.

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

H. The Settlement Satisfies the Remaining *Grinnell* Factors

47. While the deadline to submit objections and opt-outs has not yet passed, no objections or opt-outs have been received to date. And no objections or requests for exclusion been received to date. This positive reaction of the Settlement Class supports approval of the Settlement.

I. Named Plaintiff Had Sufficient Information To Make an Informed Decision Regarding The Settlement

48. Class Counsel are sufficiently well informed of the strengths and weaknesses of the claims. Class Counsel researched the potential causes of actions thoroughly, researched the facts, reviewed the underlying documents exchanged by Named Plaintiff and that comprised the alleged contract documents, drafted three separate pleadings and survived in part a motion to dismiss, engaged in protracted settlement negotiations with Defendant and exchanged non-public information regarding the alleged damages. Class Counsel also spoke with potential merits and damages experts concerning the strengths and weaknesses of the case, as well as the strengths and weaknesses of New Haven's arguments and defenses. Moreover, the information exchanged during settlement negotiations permitted Class Counsel to learn the relevant facts and circumstances in an efficient and cost-effective manner. The Parties also exchanged further information through written correspondence and phone calls. As a result, Class Counsel was well-

positioned to evaluate the strengths of Named Plaintiff's claims, New Haven's defenses, and prospects for success.

49. Class Counsel also considered the many other cases arising out of COVID-19 school-related closures, of which Class Counsel are at the forefront. See ECF Nos. 52-4 (providing Class Counsel's Firm Resume). Class Counsel's unique insight into this type of litigation, combined with the information obtained from New Haven in this case, fortified Named Plaintiff's appreciation of the risks ahead should they proceed with further litigation. Thus, by the time of the Settlement, Named Plaintiff was well versed in the strengths and weaknesses of the case. This factor weighs in favor of final approval.

J. Maintaining Class-Action Status Through Trial Presents a Substantial Risk

50. Named Plaintiff's ability to maintain class-action status through trial presented a substantial risk in this Action. Although Named Plaintiff believes he would have prevailed on a motion to certify the class, Defendant was poised to vigorously oppose the motion. Moreover, even if the motion had been granted, Defendant could still have moved to decertify the class or trim the class before trial or on appeal, as class certification may be reviewed at any stage of the litigation.

K. Defendant's Ability To Withstand A Greater Judgment

51. Although New Haven may possibly have the ability to withstand a greater judgment, the settlement is a substantial percentage of the liability for any alleged damages sustained by the proposed Settlement Class and such weighs in favor of approval.

52. As stated in the Memorandum in Support of Final Approval, this factor is often deemed irrelevant by courts within this circuit.

53. To be clear, The Second Circuit has noted, “[a] defendant is not required to ‘empty its coffers’ before a settlement can be found adequate.” *In re Sony SXRDRear Projection Television Class Action Litig.*, 2008 WL 1956267, at *8 (S.D.N.Y. May 1, 2008).

L. The Settlement Amount Is Reasonable In View Of The Best Possible Recovery And The Risks Of Litigation

54. The Settlement here presents an excellent result, as Named Plaintiff has obtained a substantial amount of the alleged potential damages in the Action. This Settlement thus falls at the very high end of recoverable damages. Additionally, the Settlement Amount provides a significant and immediate payment to the Settlement Class.

55. Notably, a few other directly analogous cases have reached settlement for less than the Proposed Settlement Amount. As such, the Settlement Amount should be considered a great recovery.

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

56. In their motion for preliminary approval of the Settlement, Named Plaintiff requested that the Court certify the Settlement Class for settlement purposes only so that notice of the Settlement, the Final Fairness Hearing, and the rights of Settlement Class Members to object to the Settlement, request exclusion from the Settlement Class, or submit new payment instructions, could be issued. In the Preliminary Approval Order, the Court addressed the requirements for class certification as set forth in Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. The Court found that Named Plaintiff had met the requirements for certification of the Settlement Class for purposes of settlement. Specifically, in the Preliminary Approval Order (ECF 141), the Court preliminarily certified a class of “All UNH students who were enrolled in any UNH course as of March 24, 2020, with the exception of: (i) any non-matriculated high school student who took a UNH course; (ii) any person who properly executes and files a proper and

timely opt-out request to be excluded from the Settlement Class; and (iii) the legal representatives, successors or assigns of any such excluded person.” *Id.* at ¶ 4

57. In addition, the Court preliminarily certified Named Plaintiff as “Settlement Class Representative” and Counsel as “Class Counsel”. *Id.* Since the Court’s entry of the Preliminary Approval Order, nothing has changed to alter the propriety of the Court’s preliminary certification of the Settlement Class for settlement purposes. Thus, for all of the reasons stated in Named Plaintiff’s motion for preliminary approval (incorporated herein by reference), Named Plaintiff respectfully requests that the Court affirm its preliminary certification and finally certify the Settlement Class for purposes of carrying out the Settlement pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) and make a final appointment of Named Plaintiff as class representative and Class Counsel as class counsel.

VI. THE REQUESTED AWARD OF FEES AND EXPENSES IS WARRANTED

58. As detailed in the accompanying Memorandum, Class Counsel believes that Class Counsel’s request for attorneys’ fees readily meets the standards set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974) and merits the Court’s approval.

59. This was a vigorously prosecuted case which involved considerable time and resources investigating the action, successfully opposing the motion to dismiss, responding to Defendants’ motion for summary judgment, briefing Plaintiff’s motion for class certification, and negotiating an excellent result for the Settlement Class.

60. The recovery of \$2,285,600 in this case was achieved through the skill, work, dedication, and effective advocacy of Class Counsel who leaned on their decades of experience with complex class action litigation of this type.

61. In this action, attorneys' fees equaling less than one third of the Settlement Fund result in a fair and reasonable fee, especially given that the monetary result provides a benefit to the Settlement Class, and society has as an interest that the breach of contract alleged is prevented in the future.

62. Plaintiff's Counsel faced substantial risk at every stage of this Action. Indeed, even having survived Defendant's motion to dismiss, most of the issues Defendant raised would likely have continued to pose hurdles at trial. Moreover, in the absence of the Settlement, Counsel would also have faced significant litigation risks on both liability and damages. In addition, various developments in the relevant case law nationwide and recently enacted legislation in other jurisdictions designed to extinguish student claims for partial refunds threatened to undercut certain of Plaintiff's theories of the case.

63. In sum, victory was far from assured at any stage, with meaningful hurdles to overcome to certify a class, overcome motions for summary judgment, win at trial, and preserve a favorable judgment on appeal. The requested fee reflects the risks that Plaintiff's Counsel undertook in pursuing this case on a contingency basis for approximately three years.

64. Moreover, any assessment of the percentage recovery must account not only for the litigation uncertainties detailed above—including with respect to class certification, summary judgment, trial, and any appeal—but also the certainty of delay as Plaintiff prepared for trial and inevitable appeals. Plaintiff's Counsel should be rewarded for achieving this excellent recovery for Class Members without imposing on them the cost of potentially years of additional litigation toward an uncertain outcome.

65. The quality of opposing counsel is also important in evaluating the quality of Lead Counsel's work. Plaintiff's Counsel faced top-flight defense attorneys, who were also able to draw

on Defendant's vast resources. The high quality of the lawyers opposing Plaintiff's efforts further proves the caliber of representation that was necessary to achieve the Settlement.

66. Furthermore, the Long Form Notice informed all members of the Settlement Class that Counsel would seek a fee award not to exceed \$500,000. *See* Long-Form Notice at 28 (ECF No. 133-2). In response to that notice and in response to the Settlement itself, not a single Class Member lodged an objection to the requested fee to date.

67. The public interest is well served by this Action, which sought to hold New Haven accountable for allegedly shifting part of their financial burden arising out of the novel coronavirus pandemic on to their students.

68. A 21.9 percent fee would, moreover, compensate Plaintiff's Counsel at a level commensurate with the benefits they have conferred on the Class, the substantial investment of time and money they devoted to litigating this unique case and bringing about the Settlement, as well as the contingent nature of their representation. Public policy favors this fee request.

69. The lodestar fee calculation method has fallen out of favor particularly because it encourages bill-padding and discourages early settlements. Accordingly, the lodestar method is used in this Circuit only as a sanity check to ensure that an otherwise reasonable percentage fee would not lead to a windfall. The primary purpose of the lodestar crosscheck is to ensure that counsel are not enjoying an unwarranted windfall.

70. The cross-check in this case makes it abundantly clear that there is no windfall. Plaintiff's Counsel has spent nearly 2000 hours on this matter. Additional time will be incurred in the future to obtain final approval and ensure the Net Settlement Fund is distributed according to this Court's orders. At customary current rates, these hours translate into nearly \$900,000 in total.

Counsel's request for \$500,000 in attorneys' fees for plaintiff's counsel thus represents a *negative* multiplier.

71. Counsel should be rewarded for settling when they did, as well as for their success in the face of great risk. As a result of Counsel's work and willingness, the Class will receive significant and immediate financial redress for wrongs they have already waited too long to see a remedy.

VII. PLAINTIFF'S COUNSEL REQUEST FOR REIMBURSEMENT OF LITIGATION EXPENSES, INCLUDED SERVICE AWARDS, SHOULD BE GRANTED

A. Plaintiff's Lead Counsel's Expenditures On The Class's Behalf Were Reasonable

72. Plaintiff's Counsel spent \$15,951.45 in out-of-pocket costs in prosecuting and resolving this Action. Relative to the Settlement amount in this matter, this is an entirely modest number. This request for reimbursement should be granted in full.

B. Service Awards To The Settlement Class Representatives Are Warranted Given Their Dedication To The Class, Which Helped Achieve This Extraordinary Result

73. The requested awards in this case are fully consistent with these recognized rationales. First, the Settlement Class Representative invested significant time providing information to Plaintiff's Counsel during the investigation of the Class's claims, reviewing case materials (pleadings, discovery responses, interrogatory responses, settlement agreement, etc.), and communicating with Counsel. Further, he assumed significant reputational risks by suing their former university and by facing the potential criticisms of their peers, professors, future employers, and future alumni. Though the Named Plaintiff was understandably fearful that there might be negative repercussions as to them personally for their participation in this Action, New Haven assures us that they would never retaliate against one of their students.

74. Finally, the amount of the requested awards is also in line with the amounts awarded in other cases in this jurisdiction.

Executed this 8th day of September 2023, in Charleston, South Carolina.

/s/ Paul J. Doolittle
PAUL J. DOOLITTLE

CERTIFICATE OF SERVICE

I hereby certify that on September 8th, 2023, I caused a true and correct copy of the foregoing to be served on counsel of record by electronic filing it with the Clerk of Court using the ECF system, which will send notification of such filing to the registered participants.

/s/ Paul J. Doolittle
PAUL J. DOOLITTLE

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

KRYSTIAN WNOROWSKI, individually and
on behalf of others similarly situated,

Plaintiff,

v.

UNIVERSITY OF NEW HAVEN,

Defendant.

Case No. 3:20-cv 01589 (MPS)

**DECLARATION OF HEATHER FOLLENSBEE REGARDING SETTLEMENT
ADMINISTRATION**

I, HEATHER FOLLENSBEE, declare and state as follows:

1. I am an Assistant Director at JND Legal Administration (“JND”). JND is a legal administration service provider with its headquarters located in Seattle, Washington. JND has extensive experience with all aspects of legal administration and has administered settlements in hundreds of class action cases.

2. JND is serving as the Settlement Administrator¹ in the above-captioned litigation (“Action”), for the purposes of administering the Amended Settlement Agreement, preliminarily approved by the Court in its Order Granting Preliminary Approval of the Settlement, Directing Notice to the Class, Setting a Hearing on Final Approval, and Provisionally Certifying the Proposed Settlement Class, dated June 12, 2023 (“Order”).

¹ Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the Amended Settlement Agreement.

3. This Declaration is based on my personal knowledge and information provided to me by experienced JND employees and, if called on to do so, I could and would testify competently thereto.

CAFA NOTICE

4. In compliance with the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, JND compiled a CD-ROM with the following documents:

- a. Class Action Complaint, filed October 22, 2020;
- b. Plaintiff’s Amended Class Action Complaint and Jury Demand, filed November 12, 2020;
- c. Plaintiff’s Unopposed Motion to Preliminarily Approve Class Action Settlement, Certify Class, Appoint Class Counsel, Approve Proposed Class Notice, and Schedule Final Approval Hearing, filed April 21, 2023;
- d. Memorandum of Law in Support of Plaintiff’s Unopposed Motion to Preliminarily Approve Class Action Settlement, Certify the Settlement Class, Appoint Class Counsel, Approve Proposed Class Notice, and Schedule a Final Approval Hearing, filed April 21, 2023;
- e. Settlement Agreement, filed April 21, 2023;
- f. [Proposed] Long Form Notice, filed April 21, 2023;
- g. [Proposed] Short Form Notice, filed April 21, 2023;
- h. [Proposed] Order Granting Preliminary Approval of the Settlement, Directing Notice to the Class, Setting a Hearing on Final Approval, and

Provisionally Certifying the Proposed Settlement Class, filed April 21, 2023; and

i. [Proposed] Final Judgment, filed April 21, 2023.

5. The CD-ROM was mailed on May 1, 2023, to the appropriate Federal and State officials identified in the attachment with an accompanying cover letter, a copy of which is attached hereto as **Exhibit A**.

CLASS MEMBER DATA

6. On June 22, 2023, JND received a spreadsheet from Defendant containing the names, mailing addresses, and email addresses for 6,428 potential Settlement Class Members.

7. Prior to mailing notices, JND analyzed the raw data to remove duplicate records. JND did not identify any duplicate records, resulting in 6,428 unique Settlement Class Member records. JND updated the Settlement Class Member contact information using data from the National Change of Address (“NCOA”) database.² The Settlement Class Member data was promptly loaded into a secure database established for this Action.

E-MAIL NOTICE

8. Pursuant to the terms of the Amended Settlement Agreement, on July 12, 2023, JND sent the customized, Court-approved e-mail notice (“E-mail Notice”) via e-mail from an established case inbox (info@UNewHavenSettlement.com) to 6,144 unique Settlement Class Members with a valid e-mail address (284 Settlement Class Members were excluded from the e-

² The NCOA database is the official United States Postal Service (“USPS”) technology product which makes changes of address information available to mailers to help reduce undeliverable mail pieces before mail enters the mail stream. This product is an effective tool to update address changes when a person has completed a change of address form with the USPS. The address information is maintained on the database for 48 months.

mail campaign as they did not have a valid e-mail address). A representative sample of the E-mail Notice is attached hereto as **Exhibit B**.

9. As of the date of this Declaration, JND tracked 119 E-mail Notices that were returned to JND as undeliverable.

MAILED NOTICE

10. Pursuant to the terms of the Amended Settlement Agreement, on July 12, 2023, JND mailed the Court-approved short-form notice (“Mailed Notice”) via USPS first-class mail to the 284 Settlement Class Members who did not receive an E-mail Notice. On July 24, 2023, JND mailed the Mailed Notice via USPS first-class mail to the 119 Settlement Class Members whose E-mail Notice was returned to JND as undeliverable. A representative sample of the Mailed Notice is attached hereto as **Exhibit C**.

11. As of the date of this Declaration, JND tracked 13 Mailed Notices that were returned to JND as undeliverable. Of these 13 undeliverable Mailed Notices, two (2) were re-mailed to forwarding addresses provided by the USPS. For the remaining 11 undeliverable Mailed Notices, JND conducted additional advanced address research through TransUnion and received updated address information for six (6) Class Members. JND promptly re-mailed Mailed Notices to these six (6) Class Members.

12. As of the date of this Declaration, 6,423 Class Members were e-mailed or mailed a notice that was not returned as undeliverable, representing 99.9% of total Settlement Class Members.

SETTLEMENT WEBSITE

13. On June 26, 2023, JND established a Settlement Website (www.UNewHavenSettlement.com), which hosts copies of important case documents, including

the Settlement Agreement, Class Notice, answers to frequently asked questions, and contact information for the Administrator. Additionally, the Settlement Website allowed Class Members to submit an Election Form electronically.

14. On August 11, 2023, Class Counsel filed Plaintiffs' Unopposed Motion for Award of Attorneys' Fees, Reimbursement of Costs, and Service Award for Plaintiff, and all papers pertaining to that Motion were uploaded to the Settlement Website on the same day.

15. As of the date of this Declaration, the Settlement Website has tracked 3,385 unique users with 28,980 page views. JND will continue to update and maintain the Settlement Website throughout the administration process.

TOLL-FREE INFORMATION LINE

16. On June 26, 2023, JND established a case-specific toll-free number, 1-855-678-0559, for Settlement Class Members to call to obtain information regarding the Settlement. Callers have the option to listen to the Interactive Voice Response ("IVR") system, or to speak with a live agent. The toll-free number is accessible 24 hours a day, seven days a week.

17. As of the date of this Declaration, the toll-free number has received 19 incoming calls. JND will continue to maintain the toll-free number throughout the settlement administration process.

REQUESTS FOR EXCLUSION

18. The E-mail and Mailed Notice informed recipients that any Class Member who wished to exclude themselves from the proposed Settlement ("opt-out") must do so by submitting an exclusion request electronically on the Settlement website or by mailing an exclusion letter to the Settlement Administrator, postmarked or submitted on or before August 26, 2023.

19. As of the date of this Declaration, JND has not received, and is not aware of, any requests for exclusion.

OBJECTIONS

20. The E-mail and Mailed Notice informed recipients that any Class Member who wished to object to the proposed Settlement could do so by filing a written objection with the Court, postmarked on or before August 26, 2023.

21. As of the date of this Declaration, JND has not received, and is not aware of, any objections.

ELECTION FORMS RECEIVED

22. The E-mail and Mailed Notice informed recipients that while Class Members do not need to do anything to receive an award, those wishing to elect the method in which they receive the payment must file an Election Form and submit it to JND electronically on or before 60 days after the Settlement Effective Date, as defined in the Amended Settlement Agreement.

23. As of the date of this Declaration, JND has received 3,159 Election Form submissions. JND is in the process of receiving, reviewing, and validating Election Form submissions.

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

Executed September 6, 2023 in Seattle, Washington.



Heather Follensbee

EXHIBIT A



May 01, 2023

United States Attorney General
and the Appropriate Officials
Identified in Attachment A

RE: CAFA Notice of Proposed Class Action Settlement

Dear Sir or Madam:

This Notice is being provided to you in accordance with the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715, on behalf of the University of New Haven ("UNH"), the defendant in the below-referenced class action ("the Action"). Plaintiff's Unopposed Motion to Preliminarily Approve Class Action Settlement, Certify Class, Appoint Class Counsel, Approve Proposed Class Notice, and Schedule Final Approval Hearing; the Settlement Agreement between the Parties to the Action; and other related settlement documents were filed with the Court on April 21, 2023.

Case Name:	<i>Krystian Wnorowski, on behalf of himself and others similarly situated v. University of New Haven</i>
Case Number:	<i>3:20-cv-01589 (MPS)</i>
Jurisdiction:	<i>United States District Court for the District of Connecticut</i>
Date Settlement filed with Court:	<i>April 21, 2023</i>

As of the date of this Notice, the Court has not scheduled an approval hearing or other judicial hearing related to the settlement in the Action.

Copies of all materials filed in the Action are electronically available on the Court's PACER website found at <https://pcl.uscourts.gov>. Additionally, the enclosed CD-ROM contains copies of the following documents filed in the Action:

01 - Complaint

Class Action Complaint, filed October 22, 2020

02 - Amended Complaint

Plaintiff's Amended Class Action Complaint and Jury Demand, filed November 12, 2020

03 - Motion for Preliminary Approval

Plaintiff's Unopposed Motion to Preliminarily Approve Class Action Settlement, Certify Class, Appoint Class Counsel, Approve Proposed Class Notice, and Schedule Final Approval Hearing, filed April 21, 2023

04 - Memo in Support

Memorandum of Law in Support of Plaintiff's Unopposed Motion to Preliminarily Approve Class Action Settlement, Certify the Settlement Class, Appoint Class Counsel, Approve Proposed Class Notice, and Schedule a Final Approval Hearing, filed April 21, 2023

05 - Settlement Agreement

Settlement Agreement, filed April 21, 2023

06 - Long Form Notice

[Proposed] Long Form Notice, filed April 21, 2023

07 - Short Form Notice

[Proposed] Short Form Notice, filed April 21, 2023

08 - Preliminary Approval Order

[Proposed] Order Granting Preliminary Approval of the Settlement, Directing Notice to the Class, Setting a Hearing on Final Approval, and Provisionally Certifying the Proposed Settlement Class, filed April 21, 2023

09 - Final Judgment

[Proposed] Final Judgment, filed April 21, 2023

At this time, it is not feasible to provide the names of Settlement Class Members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement as contemplated by 28 U.S.C. § 1715 (b)(7)(A). Therefore, in accordance with 28 U.S.C. § 1715 (b)(7)(B), to the extent addresses were available, a reasonable estimate of the number of potential Settlement Class Members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement is attached hereto as Attachment B. Further, out of an abundance of caution, this Notice is being sent to the Attorneys' General of all 50 states and the District of Columbia, and the Attorney General of the United States.

There are no other settlements or agreements made between plaintiff's counsel and UNH's counsel, and, as of the date of this Notice, no Final Judgment or notice of dismissal has been entered in this case.

If you have any questions regarding the details of the case and settlement, please contact UNH's Counsel at:

Michael A. King
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103-1919
Phone: (860) 251-5659
Email: mking@goodwin.com

For questions regarding this Notice, please contact JND at:

JND Class Action Administration
1100 2nd Ave, Suite 300
Seattle, WA 98101
Phone: 800-207-7160

Regards,

JND Legal Administration

Encl.

Krystian Wnorowski, on behalf of himself and others similarly situated

v. University of New Haven, Case No. 3:20-cv-01589-MPS (D. Conn)

CAFA Notice – Attachment A – Service List

Treg R. Taylor
Office of the Attorney General
1031 W 4th Ave
Ste 200
Anchorage, AK 99501

Steve Marshall
Attorney General's Office
501 Washington Ave
Montgomery, AL 36104

Tim Griffin
Office of the Attorney General
323 Center St
Ste 200
Little Rock, AR 72201

Kris Mayes
Office of the Attorney General
2005 N Central Ave
Phoenix, AZ 85004

CAFA Coordinator
Office of the Attorney General
Consumer Protection Section
455 Golden Gate Ave., Ste 11000
San Francisco, CA 94102

Phil Weiser
Office of the Attorney General
Ralph L. Carr Judicial Building
1300 Broadway, 10th Fl
Denver, CO 80203

William Tong
Office of the Attorney General
165 Capitol Ave
Hartford, CT 06106

Kathy Jennings
Delaware Department of Justice
Carvel State Office Building
820 N French Street
Wilmington, DE 19801

Ashley Moody
Office of the Attorney General
State of Florida
PL-01 The Capitol
Tallahassee, FL 32399

Chris Carr
Office of the Attorney General
40 Capitol Sq SW
Atlanta, GA 30334

Anne E. Lopez
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813

Brenna Bird
Office of the Attorney General
Hoover State Office Building
1305 E. Walnut Street Rm 109
Des Moines, IA 50319

Raúl R. Labrador
Office of the Attorney General
700 W. Jefferson St, Suite 210
Boise, ID 83720

Kwame Raoul
Office of the Attorney General
James R. Thompson Center
100 W. Randolph St
Chicago, IL 60601

Krzysztof Wnorowski, on behalf of himself and others similarly situated

v. University of New Haven, Case No. 3:20-cv-01589-MPS (D. Conn)

CAFA Notice – Attachment A – Service List

Todd Rokita
Office of the Attorney General
Indiana Government Center South
302 W Washington St 5th Fl
Indianapolis, IN 46204

Kris W. Kobach
Office of the Attorney General
120 SW 10th Ave
2nd Fl
Topeka, KS 66612

Daniel Cameron
Office of the Attorney General
Capitol Building
700 Capitol Ave Ste 118
Frankfort, KY 40601

Jeff Landry
Office of the Attorney General
1885 N. Third St
Baton Rouge, LA 70802

CAFA Coordinator
General Counsel's Office
Office of Attorney General
One Ashburton Pl, 20th Floor
Boston, MA 02108

Anthony G. Brown
Office of the Attorney General
200 St. Paul Pl
Baltimore, MD 21202

Aaron Frey
Office of the Attorney General
6 State House Station
Augusta, ME 04333

Dana Nessel
Department of Attorney General
G. Mennen Williams Building, 7th Fl
525 W Ottawa St
Lansing, MI 48933

Keith Ellison
Office of the Attorney General
445 Minnesota St
Suite 1400
St. Paul, MN 55101

Andrew Bailey
Attorney General's Office
Supreme Court Building
207 W High St
Jefferson City, MO 65101

Lynn Fitch
Office of the Attorney General
Walter Sillers Building
550 High St Ste 1200
Jackson, MS 39201

Austin Knudsen
Office of the Attorney General
Justice Building, Third Fl
215 N. Sanders
Helena, MT 59601

Josh Stein
Attorney General's Office
114 W Edenton St
Raleigh, NC 27603

Drew H. Wrigley
Office of the Attorney General
State Capitol, 600 E Boulevard Ave
Dept. 125
Bismarck, ND 58505

Krzysztof Wnorowski, on behalf of himself and others similarly situated

v. University of New Haven, Case No. 3:20-cv-01589-MPS (D. Conn)

CAFA Notice – Attachment A – Service List

Mike Hilgers
Attorney General's Office
2115 State Capitol
Lincoln, NE 68509

John Formella
Office of the Attorney General
NH Department of Justice
33 Capitol St.
Concord, NH 03301

Matthew J. Platkin
Office of the Attorney General
Richard J. Hughes Justice Complex
25 Market St 8th Fl, West Wing
Trenton, NJ 08611

Raúl Torrez
Office of the Attorney General
Villagra Building
408 Galisteo Street
Santa Fe, NM 87501

Aaron Ford
Office of the Attorney General
Old Supreme Court Building
100 N Carson St
Carson City, NV 89701

CAFA Coordinator
Office of the Attorney General
28 Liberty St
15th Fl
New York, NY 10005

Dave Yost
Attorney General's Office
State Office Tower
30 E Broad St 14th Fl
Columbus, OH 43215

Gentner Drummond
Office of the Attorney General
313 NE 21st St
Oklahoma City, OK 73105

Ellen F. Rosenblum
Oregon Department of Justice
Justice Building
1162 Court St NE
Salem, OR 97301

Michelle Henry
PA Office of the Attorney General
Strawberry Square 16th Fl
Harrisburg, PA 17120

Peter F. Neronha
Office of the Attorney General
150 S Main St
Providence, RI 02903

Alan Wilson
Office of the Attorney General
Rembert C. Dennis Bldg
1000 Assembly St Rm 519
Columbia, SC 29201

Marty Jackley
Office of the Attorney General
1302 E Highway 14
Ste 1
Pierre, SD 57501

Jonathan Skrmetti
Office of the Attorney General
500 Dr Martin L King Jr Blvd
Nashville, TN 37219

Krystian Wnorowski, on behalf of himself and others similarly situated

v. University of New Haven, Case No. 3:20-cv-01589-MPS (D. Conn)

CAFA Notice – Attachment A – Service List

Ken Paxton
Office of the Attorney General
300 W. 15th St
Austin, TX 78701

Sean D. Reyes
Office of the Attorney General
Utah State Capitol Complex
350 North State St Ste 230
Salt Lake City, UT 84114

Jason S. Miyares
Office of the Attorney General
202 N. Ninth St.
Richmond, VA 23219

Charity R. Clark
Attorney General's Office
109 State St.
Montpelier, VT 05609

Bob Ferguson
Office of the Attorney General
1125 Washington St SE
Olympia, WA 98501

Josh Kaul
Attorney General's Office
P.O. Box 7857
Madison, WI 53707

Patrick Morrissey
Office of The Attorney General
State Capitol, 1900 Kanawha Blvd E
Building 1 Rm E-26
Charleston, WV 25305

Bridget Hill
Office of the Attorney General
109 State Capitol
200 W 24th St
Cheyenne, WY 82002

Brian Schwalb
Office of the Attorney General
400 6th St NW
Washington, DC 20001

Merrick Garland
Office of the U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Ave NW
Washington, DC 20530

Fainu'ulelei Falefatu Ala'ilima-Utu
Department of Legal Affairs
Exec Ofc Bldg, 3rd Fl
P.O. Box 7
Utulei, AS 96799

Leevin Taitano Camacho
Office of the Attorney General
Administration Division
590 S Marine Corps Dr, Suite 901
Tamuning, GU 96913

Edward Manibusan
Office of the Attorney General
Administration Building
P.O. Box 10007
Saipan, MP 96950

Domingo Emanuelli Hernández
Dpto. de Justicia de Puerto Rico
Calle Teniente César González 677
Esq. Ave. Jesús T. Piñero
San Juan, PR 00918

Krzysztof Wnorowski, on behalf of himself and others similarly situated

v. University of New Haven, Case No. 3:20-cv-01589-MPS (D. Conn)

CAFA Notice – Attachment A – Service List

Carol Thomas-Jacobs
Office of the Attorney General
3438 Kronprindsens Gade
GERS Building 2nd Fl
St. Thomas, VI 00802

Joses R. Gallen
Department of Justice
P.O. Box PS-105
Palikir
Pohnpei State, FM 96941

Richard Hickson, Attorney General
C/O Marshall Islands Embassy
2433 Massachusetts Ave NW
Washington, DC 20008

Ernestine K. Rengiil
Office of the Attorney General
P.O. Box 1365
Koror, PW 96940

EXHIBIT B

From: Jennifer@UNewHavenSettlement.com
To: JonUNewHavenClassMember@domain.com
Re: Notice of Proposed Class Action Settlement

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Krystian Wnorowski, on behalf of himself and others similarly situated v. University of New Haven, Case No. 3:20-cv-1589 (United States District Court for the District of Connecticut)

For more information, visit www.UNewHavenSettlement.com

PLEASE READ THIS NOTICE CAREFULLY. If you were a University of New Haven (“UNH” or “University”) student enrolled in any UNH course as of March 24, 2020, and you were not a non-matriculated high school student at that time, you may be eligible to receive a payment as part of a proposed settlement of *Krystian Wnorowski, on behalf of himself and others similarly situated v. University of New Haven, Case No. 3:20-cv-1589* (the “Action”).

In this Action, Plaintiff alleged that UNH breached a contract when it transitioned to remote learning and closed on-campus services in response to the COVID-19 pandemic. Plaintiff also alleged that these changes gave rise to claims of unjust enrichment. Plaintiff sought on behalf of himself and others similarly situated, a refund of a portion of his tuition and fees for the Spring 2020 semester. UNH denies all allegations of liability on any basis and has denied and continues to deny that it committed, or threatened or attempted to commit, any wrongful act or violation of law or duty alleged in the Action and there has been no finding of liability in any court. Considering the interest of both UNH and its students in prompt resolution of the matter, UNH and Plaintiff have agreed that, to resolve this Action UNH will pay \$1,000,000 into a Cash Settlement Fund to be divided evenly among Settlement Class Members who do not opt out. UNH also will offer a one-time non-cash \$200 tuition credit to Settlement Class Members who enroll in a UNH course commencing in September 2023 or later.

Am I a Class Member?

If you were a UNH student enrolled in any UNH course as of March 24, 2020 and you were not a non-matriculated high school student at that time and you do not opt out (as described below), 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 from the Cash Settlement Fund?

If you are a Settlement Class Member, your payment will be sent automatically by first class U.S. Mail to your last known mailing address on file with the University Registrar. Settlement Class Members may visit the Settlement Website at www.UNewHavenSettlement.com to (a) provide an updated address for sending a check; or (b) elect to receive the Settlement Benefit by Venmo or PayPal instead of a paper check. These actions must be taken no later than sixty (60) days after the Effective Date, as defined in the proposed Settlement. That date will also be posted on the Settlement Website when it is known, but it will be some time after the Final Approval Hearing currently scheduled for **October 3, 2023 at 10:00 a.m. EST.**

How Do I Get the Non-Cash Tuition Credit?

If you are a Settlement Class Member and you enroll in a UNH course commencing in September 2023 or later, you are eligible for the one-time, non-cash \$200 tuition credit. Upon notifying UNH's Bursar's Office of your eligibility for the credit by email at bursar@newhaven.edu, you will receive the credit directly into your UNH student account. The non-cash tuition credit is available only to the Settlement Class Members and may not be assigned, conveyed, or otherwise transferred to anyone else.

By participating in the proposed Settlement, you release your right to bring any claim covered by the proposed Settlement, including bringing any claim related to UNH's transition to remote learning and closure of on-campus services in the Spring 2020 semester, or joining any other action against UNH related to UNH's transition to remote learning in the Spring 2020 semester.

What Are My Other Options?

If you do not want to participate in this proposed Settlement—meaning you do not want to receive the Settlement Benefit, and you do not want to be bound by any judgment entered in this case—you may exclude yourself by mailing a signed opt-out request to the Settlement Administrator, which must be postmarked no later than **August 26, 2023**. 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 **August 26, 2023**. Please follow the detailed instructions outlined in the Long Form Notice and the Settlement Agreement, which can both be found at www.UNewHavenSettlement.com, to properly opt-out from, or object to, the proposed Settlement.

What Happens Next?

The Court has preliminarily approved the proposed Settlement, but the distribution of payments will occur only if the Court grants final approval of the proposed Settlement. The Final Approval Hearing in this case is scheduled for **October 3, 2023 at 10:00 a.m. EST**. At that hearing, the Court will consider whether to grant final approval of the proposed Settlement, and whether to approve payment from the Cash Settlement Fund of: (1) an award to the Settlement Class Representative for his service in this litigation; and (2) Class Counsel's requested attorneys' fees, which will not exceed \$500,000 and will be posted on the Settlement Website after **August 12, 2023**, and reimbursement for litigation costs.

You are encouraged to review the Long Form Notice.

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

If you have any questions, you can contact Class Counsel: Paul Doolittle at Poulin | Willey | Anastopoulos, LLC, (843) 310-6210 or by emailing cmad@akimlawfirm.com.

You can also contact the Settlement Administrator, JND Legal Administration, by calling toll-free 1-855-678-0559, or by emailing info@UNewHavenSettlement.com.

EXHIBIT C

Subject: NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Unique ID: «NameNumber»

PLEASE READ THIS NOTICE CAREFULLY. If you were a University of New Haven (“UNH” or “University”) student enrolled in any UNH course as of March 24, 2020, and you were not a non-matriculated high school student at that time, you may be eligible to receive a payment as part of a proposed settlement of *Krystian Wnorowski, on behalf of himself and others similarly situated v. University of New Haven*, Case No. 3:20-cv-1589 (the “Action”).

In this Action, Plaintiff alleged that UNH breached a contract when it transitioned to remote learning and closed on-campus services in response to the COVID-19 pandemic. Plaintiff also alleged that these changes gave rise to claims of unjust enrichment. Plaintiff sought on behalf of himself and others similarly situated, a refund of a portion of his tuition and fees for the Spring 2020 semester. UNH denies all allegations of liability on any basis and has denied and continues to deny that it committed, or threatened or attempted to commit, any wrongful act or violation of law or duty alleged in the Action and there has been no finding of liability in any court. Considering the interest of both UNH and its students in prompt resolution of the matter, UNH and Plaintiff have agreed that, to resolve this Action UNH will pay \$1,000,000 into a Cash Settlement Fund to be divided evenly among Settlement Class Members who do not opt out. UNH also will offer a one-time non-cash \$200 tuition credit to Settlement Class Members who enroll in a UNH course commencing in September 2023 or later.

Am I a Class Member?

If you were a UNH student enrolled in any UNH course as of March 24, 2020 and you were not a non-matriculated high school student at that time and you do not opt out (as described below), 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 from the Cash Settlement Fund?

If you are a Settlement Class Member, your payment will be sent automatically by first class U.S. Mail to your last known mailing address on file with the University Registrar. Settlement Class Members may visit the Settlement Website at www.UNewHavenSettlement.com to (a) provide an updated address for sending a check; or (b) elect to receive the Settlement Benefit by Venmo or PayPal instead of a paper check. These actions must be taken no later than sixty (60) days after the Effective Date, as defined in the proposed Settlement. That date will also be posted on the Settlement Website when it is known, but it will be some time after the Final Approval Hearing currently scheduled for **October 3, 2023 at 10:00 a.m. EST.**

How Do I Get the Non-Cash Tuition Credit?

If you are a Settlement Class Member and you enroll in a UNH course commencing in September 2023 or later, you are eligible for the one-time, non-cash \$200 tuition credit. Upon notifying UNH's Bursar's Office of your eligibility for the credit by email at bursar@newhaven.edu, you will receive the credit directly into your UNH student account. The non-cash tuition credit is available only to the Settlement Class Members and may not be assigned, conveyed, or otherwise transferred to anyone else.

By participating in the proposed Settlement, you release your right to bring any claim covered by the proposed Settlement, including bringing any claim related to UNH's transition to remote learning and closure of on-campus services in the Spring 2020 semester, or joining any other action against UNH related to UNH's transition to remote learning in the Spring 2020 semester.

What Are My Other Options?

If you do not want to participate in this proposed Settlement—meaning you do not want to receive the Settlement Benefit, and you do not want to be bound by any judgment entered in this case—you may exclude yourself by mailing a signed opt-out request to the Settlement Administrator, which must be postmarked no later than **August 26, 2023**. 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 **August 26, 2023**. Please follow the detailed instructions outlined in the Long Form Notice and the Settlement Agreement, which can both be found at www.UNewHavenSettlement.com, to properly opt-out from, or object to, the proposed Settlement.

What Happens Next?

The Court has preliminarily approved the proposed Settlement, but the distribution of payments will occur only if the Court grants final approval of the proposed Settlement. The Final Approval Hearing in this case is scheduled for **October 3, 2023 at 10:00 a.m. EST**. At that hearing, the Court will consider whether to grant final approval of the proposed Settlement, and whether to approve payment from the Cash Settlement Fund of: (1) an award to the Settlement Class Representative for his service in this litigation; and (2) Class Counsel's requested attorneys' fees, which will not exceed \$500,000 and will be posted on the Settlement Website after **August 12, 2023**, and reimbursement for litigation costs.

You are encouraged to review the Long Form Notice.

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

If you have any questions, you can contact Class Counsel: Paul Doolittle at Poulin | Willey | Anastopoulos, LLC, (843) 310-6210 or by emailing cmad@akimlawfirm.com.

You can also contact the Settlement Administrator, JND Legal Administration, by calling toll-free 1-855-678-0559, or by emailing info@UNewHavenSettlement.com.