UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK SHAFFER, MARGARET MAULDIN, CHARAFEDDINE ZAITOUN, and MARC LESSIN, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. THE GEORGE WASHINGTON UNIVERSITY and THE BOARD OF TRUSTEES OF GEORGE WASHINGTON UNIVERSITY, Defendants.	No. 1:20-cv-01145-RJL Hon. Richard J. Leon

PLAINTIFFS' MOTION FOR FINAL APPROVAL

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I. INTRODUCTION

On December 12, 2023, this Court granted preliminary approval of the class action settlement between Plaintiffs, Plaintiffs Mark Shaffer, Margaret Mauldin, Charafeddine Zaitoun, and Marc Lessin ("Plaintiffs") and Defendants The George Washington University and The Board of Trustees of George Washington University ("GW" or "Defendant") and directed notice be sent to the Settlement Class. ECF No. 67. The settlement administrator, Epiq Class Action & Claims Solutions, Inc. ("Epiq") implemented the Court-approved notice plan and direct notice has reached 98.9% of the identified Settlement Class. Supplemental Declaration of Cameron R. Azari, Esq. ¶ 15 ("Supplemental Azari Decl."). The reaction from the Class has been overwhelmingly positive. Specifically, of the 19,875 unique, identified Settlement Class Member records that received direct, individual notice, **only three** Settlement Class Members objected (doing so only *in part* via two objections), and only one requested to be excluded.[1]

The Settlement is an excellent result for the class: it creates a $5.4 million non-reversionary common fund from which the Settlement Class Members will **automatically** receive cash payments. On a dollar-per-student basis, this Settlement falls squarely within the range of settlements that have been finally approved in COVID-19 tuition and fee refund cases. *See*, *e.g.*, *Botts v. Johns Hopkins Univ.,* No. 1-20-cv-01335 (D. Md.) ($6.6MM common fund); *Rocchio v. Rutgers, the State Univ. of New Jersey,* No. MID-L-003039-20 (Middlesex County, NJ) ($5MM common fund); *Smith v. University of Pennsylvania,* No. 20-cv-20286 (E.D. Pa.) ($4.5MM common fund); *D'Amario v. Univ. of Tampa*, No. 7:20-cv-03744 (S.D.N.Y.) ($3.4MM common fund); *Metzner v. Quinnipiac Univ*., No. 3:20-cv-00784-KAD ($2.5MM common fund); *Rosado v. Barry Univ., Inc.*, No. 1:20-cv-21813 (S.D. Fla.) ($2.4MM common fund);

[1] As of March 19, 2024. Supplemental Azari Decl. ¶¶ 9,27; Supplemental Declaration of Daniel Kurowski ¶ 4 ("Supplemental Kurowski Decl.").

Porter v. Emerson College, No. 1:20-cv-11897 (D. Mass.) ($2.06MM common fund); *Arredondo v. Univ. of La Verne,* No. 2:20-cv-7665 (C.D. Cal.) ($2.0MM common fund); *Fittipaldi v. Monmouth Univ.*, No. 3:20-cv-05526 (D.N.J.) ($1.3MM common fund); *Wright v. S. New Hampshire Univ.*, No. 1:20-cv-00609 (D.N.H.) ($1.25MM common fund); *Martin v. Lindenwood Univ.*, No. 4:20-cv-01128 (E.D. Mo.) ($1.65MM common fund); *Choi v. Brown Univ.,* No. 1:20-cv-00191 (D.R.I.) ($1.5MM common fund). For these reasons, and as explained further below, the Settlement is fair, reasonable, and adequate, and warrants this Court's final approval.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background.

Plaintiffs allege that they and Settlement Class Members paid tuition and fees for the Spring 2020 semester for courses specifically designated by Defendant George Washington University as in-person. Plaintiffs allege that they entered into a contractual agreement for specific services: an on-campus, in-person education experience at GW. Plaintiffs were to provide pre-payment, in the form of tuition and fees and Plaintiffs allege that GW, in exchange, was to provide in-person educational services, experiences, opportunities, and other related facilities to students, including Ms. Mauldin, Mr. Zaitoun, and the children of Mr. Shaffer and Mr. Lessin. Consolidated Class Action Complaint (ECF No. 17) ("Compl.") ¶¶ 12-15. They also allege they selected on-campus courses and paid for the in-class and educational experiences that only an in-person program can deliver, such as the ability to access important university facilities, services, and faculty in-person.

In registering and paying George Washington tuition and fees for the Spring 2020 semester, Plaintiffs and Class Members allege that they understood, per the Bulletin, George Washington's publications, and George Washington's usual and customary practice, that the

classes they bargained and paid for would be administered on-campus for the duration of the semester, and that they would get a full semester's worth of access to on-campus facilities, services, and resources. *Id.* ¶¶ 49-60. However, since March 10, 2020, as a result of legally mandated COVID-19 closures, Plaintiffs did not receive the on-campus experiences for which they allege they paid. *Id.* ¶¶ 3, 67-70.

Defendant denies that it breached any express or implied contract with its students or that it was unjustly enriched because of the transition to online-only education during the Spring 2020 Semester. Defendant has maintained that it acted properly, reasonably, and in accord with all applicable laws, rules, regulations, and ordinances to protect the health and safety of its students, faculty and staff, and that it violated no express or implied contractual obligations to its Spring 2020 students, particularly given the unprecedented circumstances created by the COVID-19 pandemic. Defendant also disputes that Plaintiffs would be able to meet all of the requirements necessary to certify a class. Nevertheless, GW has agreed to the settlement to avoid the time, inconvenience, costs and uncertainty of protracted litigation both for itself and its students and, most important, because it wishes to instead focus its attention and resources on its priority of continuing to provide top quality education and services to its students.

B. Procedural History.

Plaintiffs' cases were consolidated in a Consolidated Class Action Complaint filed on July 15, 2020. ECF No. 17. GW moved to dismiss, which the district court granted on March 24, 2021, fully dismissing the case. ECF Nos. 18, 41-42. Plaintiffs appealed the case to the D.C. Circuit and on March 8, 2022, the D.C. Circuit affirmed in part, reversed in part, and remanded the case for further proceedings.

Since remand, the Parties engaged in significant litigation, allowing them to be well informed regarding the risks of continued litigation. GW produced approximately 45,000 pages

of documents from its files, while Plaintiffs produced approximately 1,900 pages. The Parties conducted oral discovery of all four named Plaintiffs, one non-party, and three corporate designees of Defendant under Fed. R. Civ. P. 30(b)(6). This work culminated with Plaintiffs' Motion for Class Certification and Appointment of Class Counsel, which was supported by expert analysis by Plaintiffs' damages expert, Hal J. Singer, Ph.D. ECF No. 57. And on May 1, 2023, Defendants' counsel deposed Dr. Singer.

After Plaintiffs moved for class certification, the parties agreed to mediate. To engage in meaningful settlement negotiations, the Parties stipulated that the case be stayed for a short duration for the parties to complete mediation. ECF No. 62. The Court entered this stipulation on May 11, 2023. ECF No. 63. On May 22, 2023, the parties attended a full-day mediation with Hon. Elizabeth D. Laporte (Ret.) of JAMS Mediation Services and ultimately agreed on the pertinent key terms. The Parties then diligently collaborated to memorialize the Settlement and notice documents.

On July 31, 2023, Plaintiffs moved for preliminary approval of the class action settlement. The Court granted Plaintiffs' motion on December 12, 2023 and entered its Order Granting Preliminary Approval of Class Action Settlement Agreement, Certifying Settlement Class, Appointing Class Counsel, and Approving Notice Plan (ECF No. 67), setting a Final Approval Hearing for April 2, 2024.

III. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES REMAINS APPROPRIATE

The Court's Preliminary Approval Order conditionally certified the following Settlement Class: "All Students and Payors who paid or incurred tuition and/or fees to the George Washington University in connection with the Spring 2020 semester and whose tuition and/or fees have not been refunded in their entirety." ECF No. 67, ¶ 9 (the "Settlement Class"). That

conditional certification remains appropriate under the facts and issues presented here at final approval.

Under Fed. R. Civ. P. 23, a class action may be maintained if all the factors of Rule 23(a) are met, as well as one factor of Rule 23(b). Rule 23(a) requires: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). Rule 23(b)(3) requires the Court to find that:

> Questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficient adjudication of the controversy.

Fed. R. Civ. P. 23(b)(3). The Court should grant final approval and certification because the Settlement Class continues to meet all of the requirements of Rule 23(a) and Rule 23(b)(3). In granting preliminary approval this Court already determined that class certification for settlement purposes was warranted. *See* ECF No. 67 ¶ 9. Nevertheless, Plaintiffs readdress the requirements in support of final approval.

A. Numerosity is met with over 19,875 GW Students and Payors as Class Members.

Numerosity is satisfied when "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "There is no specified or minimum number of plaintiffs needed to maintain a class action" *Thorpe v. District of Columbia*, 303 F.R.D. 120, 144 (D.D.C. 2014). Courts in this district have found forty or more members enough to satisfy Rule 23(a)(1). *Garnett v. Zeilinger*, 301 F. Supp. 3d 199, 205 (D.D.C. 2018). Here, numerosity is readily satisfied because the conditionally certified class included over 19,875 GW Students and Payors

as members. Supplemental Azari Decl. ¶ 9. The numerosity requirement of Rule 23(a) is readily satisfied and supports final approval.

B. Commonality exists given numerous questions capable of class wide resolution.

Rule 23(a)(2) requires a plaintiff establish that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The key to commonality is class members' claims "must depend upon a common contention ... of such a nature that it is capable of classwide resolution-which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes,* 564 U.S. 338, 350 (2011). "Even a single common question" will support a commonality finding, *id*. at 359 (alterations omitted), so long as its resolution will "generate common answers for the entire class." *Thorpe v. D.C.*, 303 F.R.D. 120, 146–47 (D.D.C. 2014). Factual differences "will not defeat the commonality requirement, so long as a single aspect or feature of the claim is common to all proposed class members. *Bynum v. District of Columbia*, 214 F.R.D. 27, 33 (D.D.C. 2003).

Here, Plaintiffs easily satisfy commonality because there are many questions common to the Settlement Class. Common issues include: (1) whether GW and Class Members had a contract; (2) whether that contract obligated GW to provide in-person instruction; (3) whether the contract obligated GW to provide access to campus facilities and in-person resources; (4) whether GW breached the contract; (5) whether GW unlawfully kept funds paid; (6) whether GW was unjustly enriched by keeping the funds paid; and (7) the fact and measure of damages derived from verifiable classwide information maintained by GW. These common questions, which target the same alleged misconduct by GW, satisfy Rule 23(a)(2). This Rule 23 requirement also supports final approval.

C. The claims of the class representatives are typical of the claims of the Class Members.

The next requirement – typicality – requires that a class representative have claims that are typical of those of the putative class members. Fed. R. Civ. P. 23(a)(2). The typicality requirement exists when the claims of the representative plaintiffs are based on the same legal theory and the same course of conduct as the claims of the other class members. *Bynum*, 214 F.R.D. at 35. While "[t]he facts and claims of each member of the class need not be identical … the class representatives should have suffered injuries in the same general fashion as absent class members." *In re APA Assessment Fee Litig.*, 311 F.R.D. 8, 15 (D.D.C. 2015) (internal quotations and citations omitted).

Plaintiffs' claims are typical because they arise from the same events and alleged course of conduct by GW and are based on the same legal theories. Here, Plaintiffs allege that GW breached its implied contract with students to provide an in-person educational experience by refusing to issue partial refunds for the Spring 2020 Semester. They allege GW billed them for tuition and fees for in-person courses to be provided on campus, then stopped providing the promised in-person instruction and access to campus facilities and in-person resources for all students simultaneously. GW then allegedly retained full price for tuition and fees. Plaintiffs allege GW must refund prorated fees for the in-person courses and experiences GW did not provide when it closed campus and transitioned all courses online. Typicality is met here and also supports final approval.

D. The representative parties have fairly and adequately protected the interests of the Settlement Class Members.

The final Rule 23(a) prerequisite requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Plaintiffs satisfy the D.C. Circuit's two-part "adequacy" test: "(1) the named representative must not have antagonistic or

conflicting interests with the unnamed members of the class, and (2) the representative must appear able to vigorously prosecute the interests of the class through qualified counsel." *Twelve John Does v. District of Columbia*, 117 F.3d 571, 575 (D.C. Cir. 1997) (quoting *Nat'l Ass'n of Reg'l Med. Programs, Inc. v. Mathews*, 551 F.2d 340, 345 (D.C. Cir. 1976)). The first criterion focuses on conflicts of interest, which defeat adequacy "only if they are fundamental to the suit and ... go to the heart of the litigation." *Nat'l Veterans Legal Servs. Program v. United States*, 235 F. Supp. 3d 32, 41 (D.D.C. 2017).

Plaintiffs and Class Members have no conflicts and the same interest in obtaining a refund that will provide each with the benefit of their bargain. For approximately four years, Plaintiffs have shown their commitment to vigorously prosecuting this litigation and will continue to advocate for the best interests of the class.

Similarly, Class Counsel remains qualified and will continue to vigorously represent the class. Hagens Berman has handled countless complex class action cases, including claims of students whose colleges and universities transitioned from in-person to online-only education across the country, giving them substantial knowledge in the applicable law. Kurowski Decl. Supp. Pls. Mot. Preliminary Approval. ("Kurowski Decl.") ¶¶ 4-15 (ECF No. 66-2); *see also* Firm Resume of Hagens Berman (ECF No. 66-3). During the past four years, Class Counsel—along with co-counsel at Berger Montague PC and Levetown Law, LLP —have investigated and zealously pursued claims against GW, briefed and argued the motion to dismiss, briefed and argued a successful appeal before the D.C. Circuit, conducted discovery resulting in voluminous production, defended Plaintiffs' and non-party depositions, took multiple Rule 30(b)(6) depositions, retained and advanced costs for an expert witness, defended the deposition of their expert, and conducted substantial research under "District of Columbia law to the novel and

challenging issues" presented in this case. Kurowski Decl. ¶¶ 17; *Shaffer v. George Washington Univ.*, 27 F.4th 754, 760 (D.C. Cir. 2022).

Accordingly, since Plaintiffs and Class Counsel have continued to demonstrate their commitment to representing the Settlement Class and neither have interests antagonistic to the Settlement Class, the adequacy requirement is satisfied. This Rule 23 factor supports final approval.

E. The Proposed Settlement Class Meets The Requirements Of Rule 23(b)(3).

Rule 23(b)(3) requires that common questions of law or fact not only be present, but "predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). These elements are commonly referred to as "predominance" and "superiority." *See Barnes v. District of Columbia*, 242 F.R.D. 113, 123 (D.D.C. 2007). Both predominance and superiority are met here.

1. Common questions predominate.

Rule 23(b)(3)'s predominance requirement focuses on whether the defendant's liability is common enough to be resolved on a class basis, *Wal-Mart Stores*, 564 U.S. at 359, and whether the proposed class is "sufficiently cohesive to warrant adjudication by representation." *Amchem Prod., v. Windsor*, 521 U.S. 591,623 (1997). The predominance requirement is designed to determine whether "proposed classes are sufficiently cohesive to warrant adjudication by representation." *Id.* at 623. Plaintiffs allege a common course of conduct by GW. Common issues predominate because Plaintiffs can prove injury on a classwide basis without conducting individualized inquiries. *See In re Rail Freight Fuel Surcharge Antitrust Litig.,*–MDL No. 1869, 725 F.3d 244, 252–53 (D.C. Cir. 2013). This Rule 23 requirement continues to support final approval.

2. A class action is superior to other mechanisms, particularly individual litigation.

Rule 23(b)(3) also requires a class action to be "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b). The superiority requirement is intended to "ensure that resolution by class action will 'achieve economies of time, effort, and expense and promote … uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable consequences.'" *Vista Healthplan, Inc. v. Warner Holdings Co. III, Ltd.*, 246 F.R.D. 349, 359–60 (D.D.C. 2007) (quoting *Amchem*, 521 U.S. at 615). Class actions are superior where many individuals have small claims but it is not economically feasible to pursue them individually. *In re Livingsocial Mktg. & Sales Practice Litig.*, 298 F.R.D. 1, 10 (D.D.C. 2013). Here, Plaintiffs and the Settlement Class Members have limited financial resources with which to prosecute individual actions, and Plaintiffs are unaware of any individual lawsuits arising from the same allegations. The cost of individual litigation would far exceed the amount of any recovery individually available. A class action is the most suitable mechanism to fairly, adequately, and efficiently resolve the Settlement Class Members' claims. This final Rule 23 requirement, like the others before it, supports final approval.

IV. THE NOTICE PLAN COMPORTS WITH DUE PROCESS

In order to grant final approval, due process and Rule 23 require that the notice provided to the Settlement Class is "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); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Notice must clearly state essential information regarding the settlement, including the nature of the action, terms of the settlement, and class members' options. *See* Fed. R. Civ. P. 23(c)(2)(B).

The Federal Judicial Center notes that a notice plan is reasonable if it reaches at least 70% of the class. *See* Fed. Judicial Ctr., *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* 3 (2010). The notice plan here easily meets these standards, as individual notice efforts reached approximately 98.9% of the identified Settlement Class. *See* Supplemental Azari Decl. ¶ 7. Moreover, "[t]he reach was further enhanced by a Publication Notice in selected national newspapers, digital/internet notice and social media, internet sponsored search listings, an informational release, and a Settlement Website." *Id.*

At preliminary approval, the Court approved the Parties' proposed Notice Plan, finding it met the requirements of Rule 23 and due process. *See* ECF No. 67 ¶ 12. The notice administrator fully effectuated the Notice Plan. Pursuant to the Settlement, Defendant provided Epiq with a list of 25,948 Settlement Class Member records, which contained, where available, names, last known postal addresses, and email addresses. Supplemental Azari Decl. ¶ 9. Epiq deduplicated and rolled-up the account records and loaded the unique, identified Settlement Class Member records into its database for this Settlement. *Id.* These efforts resulted in 19,875 unique, identified Settlement Class Member records. *Id.* An Email Notice was sent to all identified Settlement Class Members for whom a valid email address was available, and a Short Form Notice was sent via USPS first class mail to all identified Settlement Class Members with a postal address for whom the Email Notice was undeliverable after multiples attempts. *Id.* As a result, Epiq sent 35,740 Email Notices (many of the identified Settlement Class Members included more than one valid email address) and 447 Short Form Notices to identified Settlement Class Members. *Id.* The Notices clearly described the case and the legal rights of the Settlement Class Members. *Id.* In addition, the Notices directed the recipients to a Settlement Website where they could access additional information. *Id.* As of March 15, 2024, an Email Notice and/or

Short Form Notice was delivered to 19,659 of the 19,875 unique, identified Settlement Class Members. *Id.* ¶ 15. This means the individual notice efforts reached approximately 98.9% of the identified Settlement Class Members. *Id.*

While such notice efforts would readily satisfy due process requirements and Rule 23, the efforts did not stop there.

- To supplement the individual notice efforts, a Publication Notice appeared in a weekday, national edition of *New York Times* and *The Washington Post*, with a combined circulation of more than 437,000. Supplemental Azari Decl. ¶17.

- The Notice Plan also included targeted Digital Notice advertising on the *Google Display Network,* as well as advertising on social media, which consisted of internet Digital Notices on *Facebook* in multiple sizes. *Id.* ¶ 18. Combined, more than 31.2 million impressions were generated by the Digital Notices, which were displayed nationwide. *Id.* ¶ 20.

- To facilitate locating the Settlement Website, sponsored search listings were acquired on the three most highly-visited internet search engines: Google, Yahoo! and Bing. *Id.* ¶ 22.

- And to build additional reach and extend exposures, on January 9, 2024, a party neutral Informational Release was issued nationwide over PR Newswire to approximately 5,000 general media (print and broadcast) outlets, including local and national newspapers, magazines, national wire services, television and radio broadcast media across the United States as well as approximately 4,500 websites, online databases, internet networks, and social networking media. *Id.* ¶ 23.

As a result, the Notice Plan provided the best notice practicable under the circumstances, conformed to all aspects of Federal Rule of Civil Procedure, Rule 23 regarding notice, comported with the guidance for effective notice articulated in the Manual for Complex Litigation, Fourth and applicable FJC materials, and satisfied the requirements of due process, including its "desire to actually inform" requirement. *Id.* ¶ 31. And the Notice Plan schedule afforded enough time to provide full and proper notice to Settlement Class Members before any opt-out and objection deadlines. *Id.* ¶ 32. Given the broad reach of the notice, and the

comprehensive information provided, the requirements of due process and Rule 23 are easily met.

V. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND WARRANTS FINAL APPROVAL BY THE COURT

Final approval of the Settlement is appropriate here because it is procedurally and substantively fair, adequate, and reasonable. *See* Fed. R. Civ. P. 23(e)(2). While the Court must "scrutinize the terms of the settlement carefully . . . the discretion of the Court to reject a settlement is restrained by the 'principle' of preference' that encourages settlements." *Pigford v. Glickman*, 185 F.R.D. 82, 103 (D.D.C. 1999), *aff'd*, 206 F.3d 1212 (D.C. Cir. 2000). A trial court "must keep in mind that private resolution of claims is strongly favored over litigation." *Equal Rights Ctr. v. Wash. Metro. Area Transit Auth.*, 573 F. Supp. 2d 205, 211 (D.D.C. 2008). This preference particularly applies in class action litigation. *See Little v. Washington Metro. Area Transit Auth.*, 313 F. Supp. 3d 27, 34 (D.D.C. 2018) (noting "courts favor the resolution of disputes through voluntary compromise, and, therefore, strongly encourage settlements," adding "[i]n the context of class actions, settlement is particularly appropriate given the litigation expenses and judicial resources required in many such suits").

In reviewing a class action settlement, "[t]he court is charged with determining that the settlement is fair, that the parties and their counsel have adequately represented all class members, and that the relief agreed upon is reasonable." *Id.* (citing *In re Vitamins Antitrust Litig.*, 305 F. Supp. 2d 100, 104 (D.D.C. 2004)). Courts consider numerous factors in determining the fairness of a class action settlement, including: "a) the terms of the settlement in relation to the strength of plaintiffs' and defendants' arguments; b) the existence of arms' length negotiations; c) the status of the litigation at the time of the Agreement; d) the representations of

experienced counsel; and e) the class reaction to the Agreement." *Id*. These factors and Rule 23(e)(2) support final approval.

A. First Factor: Terms of the Settlement in Relation to Strengths of Arguments Supports Approval.

Courts evaluating a settlement review the relief provided against the relative strength of plaintiffs' case, including their ability to obtain recovery at trial. *Equal Rights Ctr. v. Washington Metro. Area Transit*, 573 F. Supp. 2d 205, 211 (D.D.C. 2008). The Parties have analyzed the strengths and weaknesses of their respective positions and the risks, time, and expense of continued litigation. The Settlement provides certain relief to the class, while continued litigation is difficult to predict because the COVID-19 pandemic created many issues of first impression. Plaintiffs recognize that continued litigation "entails substantial risks," and that victory "certainly cannot be assumed." *In re Lorazepam & Clorazepate Antitrust Litig.*, No. MDL 1290, 2003 WL 22037741, at *4 (D.D.C. June 16, 2003). Weighing the benefits of the Settlement against the risks, the Settlement is more than reasonable. Thus, this factor supports final approval.

B. Second Factor: The Existence of Arms' Length Negotiations Supports Approval.

A "presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arms' length negotiations between experienced, capable counsel after meaningful discovery." *In re Vitamins Antitrust Litig.*, 305 F. Supp. 2d at 104 (quoting Manual for Complex Litigation § 30.42). Here, the Settlement agreement was effectuated after negotiations by experienced counsel and a full-day arm's length mediation before Judge Elizabeth Laporte. This Settlement is fair and reasonable and is well within the settlement range for COVID-19 college tuition refund litigation. *See supra* at 1-2 (collecting approved settlements of COVID-19 university refund litigation). This factor supports final approval.

C. Third Factor: Status of Litigation Supports Approval.

Courts have considered the "status of litigation at the time of settlement" as a factor in determining whether a proposed settlement warrants final approval. *See, e.g., Equal Rights Ctr.*, 573 F. Supp. 2d at 212; *Meijer, Inc. v. Warner Chilcott Holdings Co. III, Ltd.*, 565 F. Supp. 2d 49, 57–58 (D.D.C. 2008). Here, Class Counsel briefed a motion to dismiss, briefed and argued a successful appeal before the D.C. Circuit, conducted discovery resulting in voluminous productions, defended Plaintiffs' depositions, non-party depositions, and their expert's deposition, took Rule 30(b)(6) depositions of multiple designees, retained and advanced costs for an expert witness, and conducted substantial research regarding the novel legal issues raised in this case in support of briefing during the history of the case. *See* Kurowski Decl. ¶ 17. As a result, Class Counsel was well-positioned to evaluate the strengths of Plaintiffs' claims, GW's defenses, and prospects for success. This factor supports final approval.

D. Fourth Factor: The Representation of Experienced Counsel Supports Approval.

"Opinion of ... experienced and informed counsel should be afforded substantial consideration by a court in evaluating the reasonableness of a proposed settlement." *In re Lorazepam & Clorazepate Antitrust Litig.*, No. 99–0790, 2003 WL 22037741, *6 (D.D.C. June 16, 2003). Proposed Class Counsel is qualified. Hagens Berman has handled countless complex class action cases, including claims of students whose colleges and universities transitioned from in-person to online-only education across the country. This factor supports final approval.

E. Fifth Factor: The Class Reaction to the Agreement.

After the broad Notice of the Settlement issued to the Class, only three Class Members objected via two objections (ECF Nos. 70 and 71). Supplemental Kurowski Decl. ¶¶ 2-4. And as to the specific objections, the Objectors did not object to the fairness of the settlement itself, offering only objections *in part* as to (1) Plaintiffs' fee and cost reimbursement request

(Objectors Heidloff, West and Aledorf) and (2) objections to the request for service award payments for the Plaintiffs/Class Representatives (Objectors Heidloff and West but not Objector Aledort).[2] *See* ECF No. 70 (Objectors Heidloff and West: "Objectors respectfully request that the Court limit Attorneys' Fees to $1,530,000, representing 28.33% of the all-cash common fund, and deny the request for Class Representatives' service awards."); ECF No. 71 at 2, 8 (Objector Aledort: "No objection to the $10,000 service fee to the named Plaintiffs is made…Class Member Aledort respectfully requests that the Court deny plaintiffs' attorneys motion for fees in part: (1) deny attorneys' fees, costs, and expenses in the amount of one-third of the settlement fund ($1,799,820.00), and instead award a lower attorneys' fee using either loadstar or no more than 20% of the settlement fund."). Only one class member requested exclusion. This is an overwhelmingly positive reaction from a sizeable Class and the Court should grant final approval.

F. The Remainder of the Rule 23(e)(2) Factors Support Final Approval.

1. The Allocation Plan continues to be fair, reasonable and adequate.

"As with settlement agreements, courts consider whether distribution plans are fair, reasonable, and adequate." *In re Lorazepam*, 2003 WL 22037741, at *7. An allocation plan "'need not be perfect', [r]ather, it suffices if the plan has 'a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.'" *In re Fed. Nat'l Mortg. Ass'n Sec., Derivative, & "ERISA" Litig.*, 4 F. Supp. 3d 94, 108 (D.D.C. 2013). Like other COVID-19 university litigation settlements on behalf of students and payors previously approved as fair, reasonable and adequate (*see supra* at 1), the Settlement provides equal, direct and importantly ***automatic payments*** to all students who qualify, excluding students who were

[2] Contemporaneously with this Motion for Final Approval, Plaintiffs separately respond to these objections in their Response to Objections and Reply in Support of Service Awards, Attorneys' Fees & Costs.

not required to pay out of pocket for the Spring 2020 Semester. Although GW students were ultimately responsible for ensuring their tuition was paid, the Settlement allows the ability to transfer the cash award from a student to an individual (like a parent) who paid GW tuition and/or fees on behalf of a student.

2. The implemented form and method of providing Notice to the Settlement Class was appropriate, meeting all Rule 23 and due process expectations.

"The court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). Due process "does not require actual notice to all class members who may be bound by the litigation, notice is adequate . . . if it 'fairly apprise[s] the prospective 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.'" *In re Domestic Airline Travel Antitrust Litigation*, 322 F. Supp. 3d 64, 68 (D.D.C. 2018). Here, the Notice Plan included an extensive individual notice effort to the identified Settlement Class Members. Azari Decl. ¶ 38. With the address updating protocols that were used, the Notice Plan individual notice efforts reached approximately 98.9% of the identified Settlement Class Members. *Id.* The reach was further enhanced by a Publication Notice in selected national newspapers, digital/internet notice and social media, internet sponsored search listings, an informational release, and a Settlement Website. *Id.* The Federal Judicial Center's ("FJC") Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide states that "the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the Settlement Class. It is reasonable to reach between 70–95%." *Id.* (citation omitted). As a result, the Notice Plan that was developed and implemented here achieved a reach at the high end of that standard and provided the best notice practicable under the circumstances, in conformance with all aspects of Federal Rule of

Civil Procedure. *Id.* ¶¶ 38, 40. Accordingly, the Notice Plan was clearly fair, reasonable, and adequate.

3. The requested Service Awards and Attorneys' Fees and Expenses are reasonable and in-line with other similar settlements in this area of law.

As noted in their Motion for Attorneys' Fees, Costs, and Service Awards, Class Counsel's request for a Fee Award and expense reimbursement not to exceed 33% of the Settlement Fund is reasonable. *See* ECF 68; *see also Ferrer v. CareFirst, Inc.*, No. 16-CV-02162 (APM), 2019 WL 11320974, at **8 -9 (D.D.C. Sept. 30, 2019) (approving a base attorneys' fee award of 30% then awarding "an additional ten percent increase to the base award"); *Radosti v. Envision EMI, LLC*, 760 F. Supp. 2d 73, 78–79 (D.D.C. 2011) ("Finally, a 33% award is consistent with the award in other common fund cases from this district. Accordingly, the Court finds that Class Counsel's request for fees is reasonable and should be approved.") (citations omitted); *Bynum v. D.C.*, 412 F. Supp. 2d 73, 85 (D.D.C. 2006) ("A 1/3 fee is within the range of what is customarily awarded in this District" and awarding 33% of $12 million fund) (citation omitted); *In re Vitamins Antitrust Litig.*, No. MDL 1285, 2001 WL 34312839, at *12 (D.D.C. July 16, 2001) ("Moreover, the Court notes that a one-third recovery is a common percentage arrived at in contingency fee cases. Since the percentage of recovery method is meant to simulate awards that would otherwise prevail in the market, the Court finds a one-third attorneys' fees recovery in this case to be reasonable.") (citations omitted).

The service award of $10,000 for each Plaintiff is well-justified, reasonable, and less than other awards approved in this Circuit. *See, e.g., Lorazepam*, 2003 WL 22037741, at * 11 (approving $20,000 incentive awards to named plaintiffs); *Wells v. Allstate Ins. Co.*, 557 F. Supp. 2d 1, 9 (D.D.C. 2008) (approving $10,000 service award). This service award is well within the range of service awards approved in similar COVID-19 university litigation

settlements. *See In re Columbia Univ. Tuition Refund Action*, No. 1:20-cv-03208 (JMF) (S.D.N.Y. Mar. 29, 2022) (approving $25,000 service award request); *Botts v. Johns Hopkins Univ.,* 1:20-cv-01335-JRR (D. Md. April 20, 2023) (approving $12,500 service award request); *D'Amario v. Univ. of Tampa*, No. 7:20-cv-03744-CS (S.D.N.Y. Oct. 18, 2022) (approving $10,000 service award request); *Faber v. Cornell Univ.,* 3:20-cv-00467-MAD-MIL (N.D.N.Y. Dec. 13, 2023) (approving $10,000 service award request); *Wnorowski v. Univ. of New Haven,* 3:20-cv-01589 (D. Conn. Oct. 11, 2023) (approving $10,000 service award request); *Ford v. Rensselaer Polytechnic Institute,* 1:20-cv-00470-DNH-CFH (N.Y.N.D. Jan. 9, 2024) (approving $10,000 service award request). *See also* Response to Objections and Reply in Support of Service Awards, Attorneys' Fees & Costs (contemporaneously filed).

4. The Parties have no additional agreements.

Besides the Settlement Agreement itself, there are no additional agreements other than a term sheet the parties signed at the conclusion of mediation, which is consistent with (and replaced by) the Settlement Agreement. *See* Kurowski Decl. ¶ 20.

5. Proposed Settlement Class Members are treated equitably.

The final factor, Rule 23(e)(2)(D), looks at whether class members are treated equitably. The proposed Settlement treats Settlement Class Members equitably as they will receive equal awards, and in turn, all Settlement Class Members will give GW the same release.

VI. CONCLUSION

In its Preliminary Approval Order, the Court recognized that the Settlement Agreement "is fair, reasonable, and adequate, within the range of possible approval, and in the best interests of the Settlement Class… ." ECF No. 67 at ¶ 4. Following an extensive notice campaign, this conclusion remains as true today as it did in December 2023. The Settlement Agreement is fair, reasonable, and adequate, and the Court should grant final approval. Accordingly, for the

reasons set forth above, and in their related papers submitted in support of the Settlement, Plaintiffs respectfully request that the Court grant their Motion for Final Approval of the Settlement and enter the Final Approval Order. Plaintiffs further request that the Court grant them all such other relief as deemed necessary and appropriate.

Dated: March 19, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on March 19, 2024 a true and correct copy of the foregoing, together with all attachments thereto was filed electronically via CM/ECF, which caused notice to be sent to all counsel of record. In addition, a copy was posted on the settlement website at GWsettlement.com, and courtesy copies were emailed to Objectors West, Heidloff and Aledorf.

By: */s/ Daniel J. Kurowski*
Daniel J. Kurowski

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK SHAFFER, MARGARET MAULDIN, CHARAFEDDINE ZAITOUN, and MARC LESSIN, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. THE GEORGE WASHINGTON UNIVERSITY and THE BOARD OF TRUSTEES OF GEORGE WASHINGTON UNIVERSITY, Defendants.	Civil No. 1:20-cv-01145-RJL Hon. Richard J. Leon

[PROPOSED] FINAL JUDGMENT AND
ORDER OF DISMISSAL WITH PREJUDICE

WHEREAS, a class action is pending before the Court entitled *Shaffer, et al. v. The George Washington University, et al.,* No. 1:20-cv-01145-RJL; and

WHEREAS, Plaintiffs Mark Shaffer, Margaret Mauldin, Charafeddine Zaitoun, and Marc Lessin together with The George Washington University and The Board of Trustees of George Washington University have entered into a Class Action Settlement Agreement, which, together with the exhibits attached thereto, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice to Defendants upon the terms and conditions set forth therein (the "Settlement Agreement") (ECF No. 66-1);

WHEREAS, on December 12, 2023, the Court entered its Order Granting Preliminary Approval of Class Action Settlement Agreement, Certifying Settlement Class, Appointing Class Representatives, Appointing Class Counsel, And Approving Notice Plan (ECF No. 67), conditionally certifying a Class pursuant to Fed. R. Civ. P. 23(b)(3) of "[a]ll Students and Payors

who paid or incurred tuition and/or fees to the George Washington University in connection with the Spring 2020 semester and whose tuition and/or fees have not been refunded in their entirety" ECF No. 68 ¶ 9;

WHEREAS, the Court has considered the Parties' Class Action Settlement Agreement (ECF No. 66-1), as well as Plaintiffs' Motion for Final Approval of the Settlement Agreement, Plaintiffs' Motion for Attorneys' Fees, Costs and Class Representative Service Awards (ECF No. 68), Plaintiffs' Notice of Filing of the Declaration of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Settlement Notice Plan and Notices (along with the Azari Declaration itself) (ECF No. 69), two timely filed objections from three objectors (ECF Nos. 70 and 71), Plaintiffs' Reply in Support of their Motion for Attorneys' Fees, Costs and Class Representative Service Awards, together with all exhibits thereto, the arguments and authorities presented at the Final Approval Hearing held on April 2, 2024, and the record in the Action, and good cause appearing;

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

1. Terms and phrases in this Final Judgment shall have the same meaning as ascribed to them in the Parties' Class Action Settlement Agreement.

2. This Court has jurisdiction over the subject matter of the Action pursuant to 28 U.S.C. § 1332(d)(2) and personal jurisdiction over all Parties to the Action, including all Settlement Class Members, defined as: "All Students and Payors who paid or incurred tuition and/or fees to the George Washington University in connection with the Spring 2020 semester and whose tuition and/or fees have not been refunding in their entirety."[1]

[1] Excluded from the Settlement Class are (1) any Judge or Magistrate Judge presiding over this Action and members of their families; (2) Defendants; (3) Persons who properly execute and file a timely request for exclusion from the class; (4) the legal representatives, successors or assigns of any such persons; (5) GW Students or Payors who did not pay any tuition or fees for

3. The notice provided to the Settlement Class pursuant to the Settlement Agreement and order granting Preliminary Approval (ECF No. 67) – including (i) individual, direct notice to the Settlement Class via email and/or direct U.S. mail, based on the comprehensive Settlement Class List provided by Defendant, (ii) publication notice via a weekday, national edition of *New York Times* and *The Washington Post,* (iii) an internet digital notice campaign, (iv) sponsored search listings, (v) a press release issued nationwide over *PR Newswire* to approximately 5,000 general media (print and broadcast outlets as well as approximately 4,500 websites, online databases, internet networks, and social networking media; and (vi) the creation of the Settlement Website – fully complied with the requirements of Fed. R. Civ. P. 23 and due process, was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing. The Notice constituted due, adequate and sufficient notice to all Settlement Class Members, and met all applicable requirements of the Federal Rules of Civil Procedure, and the Due Process Clause of the United States Constitution.

4. One individual submitted a request for exclusion: Zaniya Lewis.

5. The Court finds that Defendant, via the settlement administrator, properly and timely notified the appropriate government officials of the Settlement Agreement, pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715. The Court has reviewed the substance of Defendant's notice, and finds that it complied with all applicable requirements of CAFA. Further, more than ninety (90) days have elapsed after Defendant provided notice pursuant

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the Spring 2020 Semester, i.e., tuition and fees were paid for by institutional aid, tuition benefits, federal/state/local grants, GI/Yellow Ribbon benefits, outside scholarships, and/or third party sponsorships; and (6) any Persons enrolled in Defendant's entirely online or continuous enrollment programs at the start of the Spring 2020 Semester.

to CAFA prior to the Final Approval Hearing. None of the officials to whom notice was given under CAFA has filed an objection to the Settlement or otherwise sought to be heard.

The Court finds that: (a) the Settlement Class is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement Class; (c) the claims of Plaintiffs are typical of the claims of the Settlement Class; (d) Plaintiffs have fairly and adequately represented the interests of the Settlement Class; (e) questions of law and fact common to class members predominate over any questions affecting only individual Class Members; and (f) a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The Court confirms as final its conditional certification of the Settlement Class as stated in the Preliminary Approval Order (ECF No. 67 ¶ 9).

6. This Court now gives final approval to the Settlement Agreement, and finds that the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class. The settlement consideration provided under the Settlement Agreement constitutes fair value given in exchange for the release of the Released Claims against the Released Parties. The Court finds that the consideration to be paid to members of the Settlement Class is reasonable, and in the best interests of the Settlement Class Members, considering the total value of their claims compared to (i) the disputed factual and legal circumstances of the Action, (ii) affirmative defenses asserted in the Action, and (iii) the potential risks and likelihood of success of pursuing litigation on the merits. The complex legal and factual posture of this case, the amount of discovery completed, and the fact that the Settlement is the result of arm's-length negotiations between the Parties support this finding. The Court finds that these facts, in addition to the Court's observations throughout the litigation, demonstrate that there was no collusion present in the reaching of the Settlement Agreement, implicit or otherwise.

7. The Court has specifically considered the factors relevant to class action settlement approval. *See* Fed. R. Civ. P. 23(e). The Court finds that:

(a) the case was complex, expensive and time consuming and with substantial risk and would have continued to be so through trial if the case had not settled, resulting in substantial delay before any Settlement Class Members would receive compensation if the litigation were successful;

(b) the Settlement was the product of informed, good-faith, arms' length, and lengthy negotiations between the Parties and their capable and experienced counsel, and was reached with the assistance of a well-qualified and experienced mediator;

(c) the Settlement Class would have faced numerous and substantial risks in obtaining certification of a litigation class, and in establishing liability and/or damages if they decided to continue litigation rather than settle;

(d) the benefits provided to Settlement Class Members under the Settlement Agreement are well within the range of reasonableness in light of the best possible recovery and the risks the parties would have faced if the case had continued;

(e) the benefits of the Settlement treat Settlement Class Members equitably relative to each other, as all Settlement Class Members are eligible for the same benefits, all Settlement Class Members made payments to GW substantially larger than the amounts recovered as part of the Settlement,

and it was not feasible to provide individualized payments;

(f) the method of distributing relief to the Settlement Class is fair and reasonable and being conducted by an experienced and neutral Settlement Administrator; and

(g) the proposed settlement was well-received by the Settlement Class.

8. The Court finds that the Class Representatives and Class Counsel adequately represented the Settlement Class for the purposes of litigating this matter and entering into and implementing the Settlement Agreement.

9. The Court held a Final Approval Hearing on April 2, 2024 at 3:00 p.m., giving the Parties and any Settlement Class Members present an opportunity to be heard if they so desired.

10. Two timely filed objections from three objectors were received. The Court denies the objections of Objectors Benjamin Heidloff and Matthew West as stated in their Objection to Plaintiffs' Motion for Attorneys' Fees, Costs, and Class Representative Service Awards (ECF No. 70) and also denies the objections from Objector Susan Aledort as stated in her Memorandum in Opposition in Part to Class Counsel's Motion for Attorneys' Fees, Costs and Class Representative Service Awards (ECF No. 71).

11. Accordingly, the Settlement is hereby finally approved in all respects.

12. The Parties are hereby directed to implement the Settlement Agreement according to its terms and provisions.

13. This Court hereby dismisses this Action, on the merits and with prejudice.

14. Upon the Effective Date of the Settlement Agreement, Plaintiffs and each and every Settlement Class Member who did not opt out of the Settlement Class, including such individuals' respective present or past heirs, executors, parents, family members, lenders, funders, payors (i.e.,

any Person who paid or incurred tuition and/or fees by or on behalf of any Plaintiff or Settlement Class Member, to any Released Party, in connection with the Spring 2020 Semester), estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, limited liability companies, partnerships and corporations shall be deemed to have released the George Washington University, the Board of Trustees of George Washington University, as well as any and all of the Defendant's current, former, and future predecessors, successors, affiliates, assigns, divisions, or related corporate entities, and all of their respective current, future, and former employees, staff, officers, directors, students, assigns, agents, trustees, administrators, executors, insurers, and attorneys (whether in their official or individual capacities) from any and all any and all causes of action, suits, claims, liens, demands, judgments, costs, damages, obligations, and all other legal responsibilities in any form or nature, including but not limited to, all claims relating to or arising out of any state, local, or federal statute, ordinance, regulation, or claim at common law or in equity, whether past, present, or future, known or unknown, asserted or unasserted, (including "Unknown Claims," as defined in the Settlement Agreement), arising out of or in any way allegedly related to tuition, fees and/or costs paid or incurred by or on behalf of any Settlement Class Member, to any Released Party, in connection with the Spring 2020 Semester, including but not limited to all claims that were brought or could have been brought in the Action.

15. Upon the Effective Date of this Final Judgment, the above release of claims and the Settlement Agreement will be binding on, and will have *res judicata* and preclusive effect on, all

pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and all other Settlement Class Members and Releasing Parties. All Settlement Class Members are hereby permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or other action or arbitration in any jurisdiction based on or arising out of any of the Released Claims. This permanent bar and injunction is necessary to protect and effectuate the Settlement Agreement, this Final Judgment, and this Court's authority to effectuate the Settlement Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments.

16. The Court has also considered Plaintiffs' Motion For Attorneys' Fees, Costs, Expenses, And Incentive Awards, as well as the supporting memorandum of law and declarations (ECF No. 68), the objections thereto (ECF No. 70-71), and Plaintiffs' reply, and adjudges that the payment of attorneys' fees and costs in the amount of 33.3% of the Settlement Fund, for a total fee and cost award of $1,799,820.00 is fair and reasonable. This award includes Class Counsel's unreimbursed litigation costs and expenses. The Court approves service awards for each of the Class Representatives in the amount of $10,000 out of the Settlement Fund, in addition to their recovery from the Settlement. The Court finds these awards to be fair and reasonable. Such payments shall be made pursuant to and in the manner provided by the terms of the Settlement.

17. All payments made to Settlement Class Members pursuant to the Settlement Agreement via checks that are not cashed within one hundred eighty (180) days of issuance, and any remaining funds in the Settlement Fund after distribution of all Cash Awards and Settlement Administration Expenses, shall be paid by the Settlement Administrator to Defendant for the direct benefit of the students of The George Washington University through the GW Cares Student Assistance Fund. Amounts deposited in any student assistance fund will not otherwise reduce or

offset GW's planned assistance to students. Except as otherwise set forth in this Order, the Parties shall bear their own costs and attorneys' fees.

18. Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Releasees; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. The Releasees may file the Settlement Agreement and/or the Judgment from this litigation in any other action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim. The Settlement Agreement may not be the subject of discovery, and may not be referred to, or offered or received in evidence against any of the Releasees in any civil, criminal or administrative action or proceeding, except by the Parties for purposes of enforcing the Settlement Agreement.

19. The Parties, without further approval from the Court, are hereby permitted to agree and adopt such amendments, modifications, and expansions of the Settlement Agreement and its implementing documents (including all exhibits to the Settlement Agreement) so long as they are consistent in all material respects with this Final Judgment and do not materially alter the rights of Settlement Class Members.

20. Without affecting the finality of this Final Judgment for purposes of appeal, the Court shall retain jurisdiction over all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement.

21. This Court hereby directs entry of this Final Judgment pursuant to Federal Rule of Civil Procedure 58 based upon the Court's finding that there is no just reason for delay of enforcement or appeal of this Final Judgment.

IT IS SO ORDERED.

Dated: _____

By: _____
HON. RICHARD J. LEON
UNITED STATES DISTRICT JUDGE