

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY**

STEVEN DOVAL, MELISSA CUELLO, and
CEANA CUELLO, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

FAIRLEIGH DICKINSON UNIVERSITY,

Defendant.

Case No. BER-L-004966-20

**[PROPOSED] ORDER GRANTING PLAINTIFFS’ MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT, FINAL JUDGMENT AND ORDER OF DISMISSAL**

WHEREAS, Plaintiffs Steven Doval, Melissa Cuello, and Ceaná Cuello (“Plaintiffs”), and Defendant Fairleigh Dickinson University (“FDU” or “Defendant”) (collectively, the “Parties”) have entered into a Class Action Settlement Agreement dated March 8, 2024, which, together with the exhibits attached thereto, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice as to Defendant upon the terms and conditions set forth therein (the “Settlement” or “Settlement Agreement”); and

WHEREAS, on May 14, 2024, the Court granted Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, conditionally certifying the Settlement Class defined below pursuant to New Jersey Court *Rule* 4:32-1 and directing that notice be provided accordingly; and

WHEREAS, on August 8, 2024, Plaintiffs moved for an Order, pursuant to New Jersey Court *Rule* 4:32-2(e), seeking final approval of the Settlement, and entry of final judgment dismissing the Amended Complaint (the “Motion”); and

WHEREAS Defendant joined in the Motion and sought the same relief; and

WHEREAS, RG2 Claims Administration, LLC (“RG2”), effectuated notice to the Settlement Class in accordance with the Preliminary Approval Order; and

WHEREAS the Court has considered the parties’ Settlement Agreement, as well as Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plaintiffs’ Motion for Attorneys’ Fees, Costs, Expenses, and Incentive Awards, together with all exhibits thereto, the arguments and authorities presented by the Parties and their counsel, and proof of completion of notice, and held a Fairness Hearing, pursuant to New Jersey Court *Rule* 4:32-2(e)(1)(C), on August 22, 2024 (the “Fairness Hearing”); and

WHEREAS the Court has found that the Parties are entitled to the relief they seek;

IT IS ORDERED that the Motion is GRANTED, subject to the following terms and conditions:

1. Terms and phrases in this Final Judgment shall have the same meaning as ascribed to them in the Parties’ Settlement Agreement.
2. This Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all Settlement Class members.
3. With respect to the Settlement Class defined below, the Court finds and concludes, for settlement purposes only, that: (a) the Settlement Class Members are so numerous as to make joinder of them impracticable; (b) there are questions of law and fact common to the Settlement Class, and such questions predominate over any questions affecting only individual Settlement Class Members; (c) Plaintiffs’ claims and the defenses asserted thereto are typical of the claims of Settlement Class Members and the defenses asserted thereto; (d) Plaintiffs and their counsel have fairly and adequately protected the interests of Settlement Class Members throughout this action; (e) common questions of law and fact predominate over questions

affecting only individual Class Members, rendering the Class sufficiently cohesive to warrant a nationwide class settlement; and (f) the certification of the Class is superior to individual litigation and/or settlement as a method for the fair and efficient resolution of this matter.

4. The Court therefore determines that this action satisfies the prerequisites for class certification set forth in New Jersey Court *Rule* 4:32-1(a), and may be maintained as a class action under New Jersey Court *Rule* 4:32-1(b)(3), with Bursor & Fisher, P.A., Antonio Vozzolo of Vozzolo LLC, and the Law Offices of Ronald A. Marron representing the following Settlement Class, which the Court hereby certifies:

All people who paid Defendant Spring 2020 Semester tuition and fees or who benefitted from the payment, and whose tuition and fees have not been refunded. Excluded from the Settlement Class will be: (a) all students who were enrolled entirely in an on-line program during the Spring 2020 Semester, (b) all students whose gift, aid (not including loans) or scholarships, regardless of source, equaled or exceeded the cost of tuition and fees for the Spring 2020 Semester, (c) persons who timely and properly exclude themselves from the Class as provided herein, and (e) the Court, the Court's immediate family, and Court staff.

The Settlement Class, which will be bound by this Order, includes all Settlement Class Members who did not submit a valid request for exclusion from the Settlement Class.

5. Notice to the Settlement Class has been provided in accordance with the Preliminary Approval Order, dated May 14, 2024. Such Notice has been provided in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances and satisfies the requirements of due process and New Jersey Court *Rule* 4:32-2(b). The Notice apprised the members of the Settlement Class of the pendency of the litigation, the nature of the action and class claims, of all material elements of the proposed settlement including the definition of the Settlement Class, of the *res judicata* effect on the members of the Settlement Class, and of their opportunity to opt out of the settlement, to comment on and object to the settlement, and to appear at the Fairness Hearing. Full opportunity has been afforded to the members of the

Settlement Class to participate in the Fairness Hearing. Accordingly, the Court determines that all members of the Settlement Class are bound by this Order and by the final judgment to be entered pursuant to this Order.

6. The Settlement Agreement was arrived at after extensive arm's length negotiations conducted in good faith by counsel for the Parties, and is supported by the majority of the members of the Settlement Class. There have been no objections to the Settlement.

7. Further, in negotiating, entering into, and implementing the Settlement, the Plaintiffs and Class Counsel have fairly and adequately represented and protected the interests of all of the Settlement Class Members.

8. Through July 12, 2024, four (4) members of the Settlement Class have timely and properly opted out of the Settlement: Allyson Schwartz, Jaclyn Grabowski, Lisa Schwartz, and Yourry Tapande-Ngombe.

9. The Settlement is fair, reasonable and adequate in light of the substantial relief obtained, the complexity, expense and duration of the litigation, and the risks inherent and involved in establishing liability and damages, and in maintaining the class action as to liability issues through trial and appeal.

10. The promises and commitments of the parties under the terms of the Settlement Agreement constitute fair value given in exchange for the releases of the Released Claims against the Released Parties (both as defined in the Settlement Agreement). The following claims are therefore released against FDU and the other Released Parties:

Any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, charges, complaints, liabilities, rights, causes of action, suits, obligations, liens, judgments, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, injunctive relief, declaratory relief, equitable relief, expenses, costs, attorneys' fees

and or obligations (including “Unknown Claims,” as defined below), and all other legal responsibilities in any form or nature, whether in law or in equity, accrued or un-accrued, direct, individual or representative, of every nature and description whatsoever, whether based on state, local or federal statute, ordinance, regulation, or claim at common law or in equity, or any other law, rule or regulation, whether past, present or future, known or unknown, asserted or unasserted, against the Released Parties, including but not limited to, any of them, arising out of any facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions, claims, liabilities, or failures to act regarding FDU’s actions or decisions in respect to the Spring 2020 academic term, including ceasing physically in-person, on-campus education and services and transitioning to a remote format for the Spring 2020 academic term, including but not limited to all claims that were brought or could have been brought in the Action relating to any and all Releasing Parties.

“Unknown Claims” means claims that could have been raised in the Action and that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object or not to object to the Settlement.

11. This Order, the Settlement Agreement, the Settlement that it reflects, the certification of the Settlement Class hereunder, and any and all acts, statements, documents, or proceedings relating to the Settlement are not, and may not be construed as, or used as, an admission by or against the above Released Parties of (1) any fault, wrongdoing or liability on their part, (2) the propriety of class certification in any other proceeding, or (3) the validity of any released claim or the existence or amount of damages.

12. The terms of the Settlement Agreement and the Final Approval Order are binding on the Plaintiffs and all other Class Members, as well as their heirs, executors and administrators, successors and assigns.

13. The Parties and each Settlement Class Member have irrevocably submitted to the jurisdiction of this Court for any suit, action, proceeding, or dispute arising out of the Settlement Agreement.

14. It is in the best interests of the parties and the Settlement Class Members, and consistent with principles of judicial economy, that any dispute between any Settlement Class Member (including any dispute as to whether any person is a Settlement Class Member) and any of the Released Parties (as defined in the Settlement Agreement) which in any way relates to the applicability or scope of the Settlement Agreement or this Order should be presented exclusively to this Court for resolution by this Court.

15. The attorneys' fees requested are reasonable in light of the factors enumerated in Rules of Professional Conduct 1.5(a), which include: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; (8) whether the fee is fixed or contingent.

IT IS FURTHER ORDERED as follows:

A. The Parties' request for final approval of the Class Action Settlement is GRANTED.

B. The Settlement Agreement submitted by the parties is finally approved as fair, reasonable, adequate, just, and in the best interests of the Settlement Class, and the parties are hereby directed to consummate the Settlement Agreement in accordance with its terms.

C. The proposed method for providing relief to Settlement Class Members, as set forth in the Settlement Agreement, is finally approved as fair, reasonable, adequate, just, and in the best interests of the Settlement Class.

E. FDU shall within thirty (30) days following the date of Final Judgment pay or cause to be paid into the Escrow Account the amount of the Settlement Fund (up to \$1,500,000.00), less: (i) any amounts previously invoiced and paid to the Settlement Administrator in accordance with §§ V and VII of the Settlement Agreement.

F. All claims asserted in this Action are hereby dismissed on the merits with prejudice.

G. Without affecting the finality of the judgment entered pursuant to this Order, this Court retains continuing jurisdiction regarding the Settlement, including the administration, consummation and enforcement of the Settlement Agreement. In addition, without affecting the finality of the judgment entered pursuant to this Order, this Court retains jurisdiction over the parties and each member of the Settlement Class, who are deemed to have submitted irrevocably to the exclusive jurisdiction of this Court for any suit, action, proceeding, or dispute arising out of or relating to this Order.

H. The Court finds that there is no reason for delay and directs the Clerk to enter judgment in accordance with the terms of this Order.

DATE:

HON. NICHOLAS OSTUNI, J.S.C.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY**

STEVEN DOVAL, MELISSA CUELLO, and
CEANA CUELLO, individually and on behalf
of all others similarly situated,

Case No. BER-L-004966-20

Plaintiffs,

v.

FAIRLEIGH DICKINSON UNIVERSITY,

Defendant.

**CERTIFICATION OF PHILIP L. FRAIETTA IN SUPPORT OF PLAINTIFFS’
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I, Philip L. Fraietta, hereby certify as follows:

1. I am a partner at Bursor & Fisher, P.A., and I am Class Counsel in this Action.¹ I am an attorney at law licensed to practice in the State of New Jersey, and I am a member of the bar of this Court. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently thereto.

2. I make this declaration in support of Plaintiffs’ Motion for Final Approval of Class Action Settlement filed herewith.

3. Attached hereto as **Exhibit A** is a true and correct copy of the Parties’ Class Action Settlement Agreement (the “Settlement Agreement” or “Settlement”).

The Litigation and Settlement History

4. On August 25, 2020, Plaintiffs Steven Doval, Melissa Cuello, and Ceana Cuello filed a putative class action on behalf of all people who paid tuition and/or fees for the Spring

¹ Unless otherwise noted, capitalized terms have the same meaning as set forth in the Class Action Settlement Agreement.

2020 Semester at Fairleigh Dickinson University (“FDU” or “Defendant”) for in-person classroom instruction, alleging that FDU breached that contract after moving to a remote learning format due to COVID-19.

5. In response to the complaint, on October 29, 2020, Defendant filed a motion to dismiss, arguing that Plaintiffs’ claims were barred by the educational malpractice doctrine and that Plaintiffs failed to plead plausible claims for relief.

6. On December 4, 2020, Class Counsel filed a memorandum of law in opposition to FDU’s motion to dismiss. Defendant filed a reply brief on December 21, 2020.

7. On February 5, 2021, following oral argument, the Court denied the motion to dismiss.

8. On February 19, 2021, Defendant filed an Answer to the Complaint and asserted a multitude of affirmative defenses.

9. The Parties then began fact discovery and engaged in significant formal discovery. Plaintiffs, through Class Counsel, engaged in written discovery. Specifically, Plaintiffs served interrogatories and requests for production of documents on Defendant, and reviewed the responses to the same. The parties also exchanged initial disclosures and met and conferred regarding a protective order and regarding an ESI protocol including search terms and custodians. Throughout these discovery efforts, the parties participated in numerous meet and confer calls. FDU produced approximately 4,788 pages of documents for Plaintiffs’ review and Plaintiffs produced 27 pages of documents for FDU’s review.

10. On June 3, 2022, the Parties requested a brief stay of all case management deadlines to allow the Parties to focus their efforts on facilitating a potential resolution.

11. On May 25, 2022, and February 15, 2023, the Parties participated in full-day

mediation sessions before a third-party neutral, Hon. Frank A. Buczynski, Jr. (Ret.) to resolve this action.

12. In preparation for the mediations, the parties exchanged informal discovery, including the total out-of-pocket amounts paid for in-person tuition and fees for the Spring Semester 2020. Plaintiffs' counsel also submitted a detailed settlement-conference statement, airing their respective legal arguments and theories on potential damages. The parties also exchanged further information in advance of the mediations, as well as various written correspondence and spoke by phone numerous times. Class Counsel also spoke with potential merits and damages experts concerning the strengths and weakness of the case, as well as the strengths and weaknesses of FDU's arguments and defenses.

13. Therefore, the parties were able to sufficiently assess the strengths and weaknesses of their cases before the mediations.

14. Although both mediation sessions proved unsuccessful, the Parties maintained an open dialogue regarding resolution. In the ensuing months, the Parties continued their settlement dialogue directly. After extensive, vigorous discussions and arm's-length negotiations, and numerous exchanges of information and settlement proposals, the Parties were able to reach an agreement on all material terms to resolve the Action and executed a term sheet. In the weeks following, the Parties negotiated and finalized the full-form Settlement Agreement, which Plaintiffs and their Counsel believe is fair, reasonable and adequate, and in the best interests of Plaintiffs and Settlement Class Members.

15. The resulting Settlement creates a \$1,500,000 common fund, which will be used to pay all approved claims by class members, notice and administration expenses, Court-approved incentive awards to Plaintiffs, and attorneys' fees, costs, and expenses to Class Counsel

to the extent awarded by the Court.

16. Pursuant to the terms of the Settlement, Settlement Class Members (which consist of 6,715 current and former FDU students or payors) may submit a claim for a *pro rata* cash payment of up to \$155 as recovery for tuition and fees he or she paid to FDU for the Spring Semester 2020. Any unclaimed funds will not revert to Defendant, but rather will revert to a scholarship fund for the benefit of students with unmet financial need as defined by the U.S. Department of Education, as *cy pres*.

17. The Class Notice advises Settlement Class Members of their right to submit a claim for a Cash Award to be paid by electronic payment (Venmo or PayPal) or by check sent to the residential address on file with FDU or any updated address identified by the Settlement Administrator, or as updated by Class Member's through their paper claim form or on the Settlement Website.

18. After finalizing and executing the Class Action Settlement Agreement, Class Counsel prepared Plaintiffs' Motion for Preliminary Approval, which was filed on April 16, 2024.

19. On May 14, 2024, the Court granted Plaintiffs' Motion for Preliminary Approval.

Factors Supporting Final Approval

20. The parties agreed to the terms of the Settlement through experienced counsel who thoroughly investigated the case, possessed all the information necessary to evaluate the case and determine all the contours of the proposed class, and reached a fair and reasonable compromise after negotiating the terms of the Settlement at arms' length and with the assistance of retired Judge Buczynski, Jr.

21. Apart from the Settlement Agreement itself, there are no additional agreements

between the parties.

22. Plaintiffs and Class Counsel recognize that despite our belief in the strength of Plaintiffs' claims, and Plaintiffs' and the Settlement Class's ability to secure an award of damages, the expense, duration, and complexity of protracted litigation would be substantial and the outcome of trial uncertain. Thus, the Settlement secures a more proximate and more certain monetary benefit to the Settlement Class than continued litigation.

23. Plaintiffs and Class Counsel are also mindful that absent a settlement, the success of Defendant's various defenses in this case could deprive the Plaintiffs and the Settlement Class Members of any relief whatsoever. Indeed, several courts across the country – including in New Jersey – have granted motions to dismiss tuition refund claims. *See, e.g., Moore v. Long Island Univ.*, 2022 WL 203988 (E.D.N.Y. Jan. 24, 2022); *Croce v. St. Joseph's College*, 73 Misc.3d 632 (Sup. Ct. Suffolk Cnty. Oct. 1, 2021); *Fedele v. Marist College*, 2021 WL 3540432 (S.D.N.Y. Aug. 10, 2021); *Hewitt v. Pratt Institute*, 2021 WL 2779286 (E.D.N.Y. July 2, 2021); *Rynasko v. New York Univ.*, 2021 WL 1565614, at *4 (S.D.N.Y. Apr. 21, 2021); *Burt v. Bd. Of Trustees of Univ. of Rhode Island*, 2021 WL 825398, at *10 (D.R.I. Mar. 4, 2021); *Alexander et al. v. Johnson & Wales Univ.*, 2021 WL 825398, at *10 (D.R.I. Mar. 4, 2021); *Simmons Telep v. Roger Williams Univ.*, 2021 WL 825398, at *10 (D.R.I. Mar. 4, 2021); *Crista v. Drew Univ.*, 2021 WL 1422935, at *12 (D.N.J. Apr. 14, 2021), *reconsideration denied sub nom.*, 2021 WL 2310094 (D.N.J. June 7, 2021); *Mitelberg v. Stevens Inst. of Tech.*, 2021 WL 2103265, at *5-6 (D.N.J. May 25, 2021); *Ryan v. Temple Univ.*, 2021 WL 1581563, at *11 (E.D. Pa. Apr. 22, 2021).

24. Other courts have denied class certification, *see De León v. New York University*, 2022 WL 2237452 (S.D.N.Y. June 22, 2022), and others have granted summary judgment in

favor of the university defendants. *See Randall v. University of the Pacific*, 2022 WL 1720085 (N.D. Cal. May 28, 2022); *Choi v. Brown University*, -- F. Supp. 3d --, 2022 WL 843762 (D.R.I. Mar. 22, 2022); *Berlanga et al v. University of San Francisco*, Case No. CGC-20-584829 (Ca. Super. Ct. San Fran. Cnty.) (July 19, 2022 Order, granting summary judgment for defendant on all counts except California's UCL); *Zwiker v. Lake Superior State Univ.*, -- N.W.2d --, 2022 WL 414183 (Mich. Ct. App. Feb. 10, 2022) (affirming trial court grant of motions for summary disposition in three consolidated matters).

25. Defendant is also represented by highly experienced attorneys who have made clear that absent a settlement, they were prepared to continue their vigorous defense of this case, including engaging in further fact and expert discovery and moving for summary judgment. Plaintiffs and Class Counsel are also aware that Defendant would continue to challenge liability as well as assert several defenses. Defendant would have also vigorously contested the certification of a litigation class. Looking beyond trial, Plaintiffs are aware that Defendant could appeal the merits of any adverse decision. Thus, there was a significant risk of delay in achieving a final resolution of this matter and of failure to obtain any recovery at all.

26. Plaintiffs and Class Counsel believe that the monetary relief provided by the Settlement weighs heavily in favor of finding that the Settlement is fair, reasonable, and adequate.

27. Ever since the Court granted preliminary approval on May 14, 2024, Class Counsel has worked with the Settlement Administrator, RG2 Claims Administration, LLC ("RG2"), to carry out the Court-ordered notice plan and monitor the claims process. Specifically, Class Counsel reviewed the final claim and notice forms, and reviewed and tested the Settlement website before it launched live. As detailed in the accompanying Supplemental

Declaration of Jessie Montague dated August 8, 2024 (“Montague Decl.”), the Court-ordered Notice Plan has been carried out in its entirety and notice was timely disseminated to Settlement Class Members in accordance with the schedule and procedure directed in the Court’s Preliminary Approval Order. The Settlement Class consists of 6,715 members identified using Defendant’s records. As reported by RG2, class notice was emailed to 6,593 Settlement Class Members and mailed to 2,600 Settlement Class Members for whom an email address was not available or where the email notices resulted in a “bounce-back” or could not be delivered. Thus, direct notice reached approximately 98% of Settlement Class Members in total.

28. Pursuant to the Preliminary Approval Order, the deadline to opt-out of the Settlement was July 12, 2024. As detailed in the Montague Declaration, there were four requests for exclusion from the Settlement.

29. Also pursuant to the Preliminary Approval Order, the deadline to object to the Settlement was July 12, 2024. As detailed in the Montague Declaration, there have been zero objections to the Settlement.

30. RG2 has reported that 1,523 claim forms have been filed as of August 8, 2024. Montague Decl., ¶ 18. With nearly two (2) months remaining to make a claim by the deadline of October 1, 2024, Class Counsel expect that the number of submitted claims will increase.

31. My firm, Bursor & Fisher, P.A., has significant experience in litigating class actions of similar size, scope, and complexity to the instant Action. My firm has also been recognized by courts across the country for its expertise and skilled and effective representation. *See, e.g.,* Ex. B; *see also Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561, 566 (S.D.N.Y. Feb. 25, 2014) (“Bursor & Fisher, P.A., are class action lawyers who have experience litigating consumer claims. ... The firm has been appointed class counsel in dozens of cases in both federal and state

courts, and has won multi-million dollar verdicts or recoveries in five class action jury trials since 2008.”²; *In re Welspun Litigation*, Case No. 16-cv-06792-RJS (S.D.N.Y. January 26, 2017) (appointing Bursor & Fisher interim lead counsel to represent a proposed nationwide class of purchasers of mislabeled Welspun Egyptian cotton bedding products). My firm has zealously represented the interests of the Settlement Class and committed substantial resources to the resolution of the class claims.

32. Vozzolo LLC is a civil litigation firm with offices in New York and New Jersey. The firm focuses on complex litigation, including consumer protection class actions, as well as securities and shareholder derivative litigation. The firm litigates cases throughout the country, including in both federal and state courts. The firm’s attorneys are experienced in, and thoroughly familiar with, all aspects of class action litigation, including the underlying substantive law, the substance and procedure of class certification, and trial. In numerous high-profile matters, Vozzolo LLC’s founder, Antonio Vozzolo, has played a principal or lead role establishing new law, obtaining groundbreaking rulings, and securing substantial recoveries for his clients.

33. Before creating the firm in 2016, Mr. Vozzolo was a partner at Faruqi & Faruqi, LLP, one of the country’s leading securities litigation firms, serving in various capacities, including Chair of the firm’s Consumer Litigation Department, and Chair of the firm’s Securities Litigation Department. Over his 20-year career, Mr. Vozzolo has recovered hundreds of millions of dollars and other significant remedial benefits on behalf of consumers and investors. In *Thomas v. Global Vision Products*, Case No. RG-03091195 (California Superior Ct., Alameda Cty.), Mr. Vozzolo served as co-lead counsel in a consumer class action lawsuit against Global

² Bursor & Fisher has since won its sixth jury verdict in *Perez v. Rash Curtis & Associates*, Case No. 4:16-cv-03396-YGR (N.D. Cal.), for \$267 million.

Vision Products, Inc., the manufacturer of the Avacor hair restoration product and its officers, directors and spokespersons, in connection with the false and misleading advertising claims regarding the Avacor product. In January 2008, a jury in the first trial returned a verdict of almost \$37 million against two of the creators of the product. In November 2009, another jury awarded plaintiff and the class more than \$50 million in a separate trial against two other company directors and officers. This jury award represented the largest consumer class action jury award in California in 2009 (according to VerdictSearch, a legal trade publication).

34. Mr. Vozzolo has considerable leadership experience in complex litigation, serving as lead or co-lead counsel in at least 20 putative consumer class action cases since 2011, including: *In re: Michaels Stores Pin Pad Litig.*, Case No. 1:11-CV-03350 CPK (N.D. Ill. June 8, 2011); *In re Haier Freezer Consumer Litig.*, No. C11-02911 (N.D. Cal. Aug. 17, 2011); *Loreto v. Coast Cutlery Co.*, No. 11-3977 (D.N.J. Sep. 8, 2011); *Astiana v. Kashi Co.*, No. 3:11-cv-01967-H BGS (S.D. Cal. Sept. 28, 2011); *Rodriguez v. CitiMortgage, Inc.*, No. 1:11-cv-04718 (S.D.N.Y. Nov. 14, 2011); *Avram v. Samsung Elecs. Am., Inc.*, No. 11-6973 (D.N.J. Jan 3, 2012); *Rossi v. Procter & Gamble Co.*, No. 11-7238 (D.N.J. Jan. 31, 2012); *Dzielak v. Whirlpool Corp.*, No. 2:12-cv-0089 (D.N.J. Feb. 21, 2012); *Jovel et al., v. i-Health, Inc.*, No 1:12-cv-05614 (E.D.N.Y. March 27, 2012); *Dei Rossi v. Whirlpool Corp.*, No. 12-125 (E.D. Cal. Apr. 19, 2012); *In re Scotts EZ Seed Litig.*, No. 7:12-cv-4727 (VB) (S.D.N.Y. Sept. 19, 2012); *Forcellati et al., v Hyland's, Inc. et al.*, No. CV 12-1983-GHK (C.D. Cal. Nov. 8, 2012); *In re Sinus Buster Prods. Consumer Litig.*, No. 12-2429 (E.D.N.Y. Dec. 17, 2012); *In re 5-Hour ENERGY Mktg. and Sales Practice Litig.*, No. 13-ml-2438 (C.D. Cal. Nov. 8, 2013); *Potzner v. Tommie Copper Inc., et al.*, No. 7:15-cv-03183 (S.D.N.Y. Jan. 4, 2016); *Inocencio, et al. v. Telebrands Corp.*, No. BER-L 4378-16 (N.J. Super. Ct. 2016); *Robbins, et al. v. Gencor Nutrients, Inc., et al.*, No.

16AC-CC00366 (Cir. Ct., Cole County, Missouri 2016); *Liptai v. Spectrum Brands Holdings Inc., et al.*, Case No. 2018CV000321 (Cir. Ct., Dane County, Wisconsin 2018); *Fried v. JPMorgan Chase & Co., et al.*, No. 2:15-cv-02512 (D.N.J. March 28, 2019); *Jimenez, et al. v. Artsana USA, Inc.*, No. 21-cv-7933 (S.D.N.Y. 2023); and *Buffington v. Progressive Advanced Ins. Co., et al.*, No. 20-cv-07408 (S.D.N.Y. 2024).

35. The Law Offices of Ronald A. Marron is a recognized class action and complex litigation firm based in San Diego, California, representing clients across the nation in both state and Federal courts. Founded in 1996 with an emphasis on consumer and securities fraud, the firm has expanded its practice to include complex cases such as electronic privacy, medical privacy, data breaches, banking regulations, antitrust, automatic renewals, Telephone Consumer Protection Act, Government Environmental Law Litigation, and false and misleading advertising and labeling. The firm has skillfully litigated hundreds of lawsuits on behalf of consumers harmed by companies under various consumer laws, winning monetary and injunctive relief for classes of consumers.

36. Based on Class Counsel's experience litigating similar consumer class actions, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate.

37. As discussed above and throughout Plaintiffs' Motion for Final Approval of Class Action Settlement, the Settlement reached in this case was the product of negotiations conducted at arms' length by experienced counsel representing adversarial parties, and there is absolutely no evidence of fraud or collusion.

38. Class Counsel have advanced and will continue to advance and fully protect the common interests of all members of the Settlement Class. Class Counsel conducted a full and thorough investigation of the claims, has zealously represented the interests of the Class, and

committed substantial resources to resolving the class claims.

39. The Plaintiffs and Class Representatives have not displayed any conflicts with members of the Settlement Class. Further, throughout the pendency of this action they have adequately and vigorously represented their fellow Class Members.

40. I believe Steven Doval, Melissa Cuello, and Ceana Cuello's active involvement in this case was critical to its ultimate resolution. Plaintiff Doval is the parent of an undergraduate student at FDU who is pursuing a degree in Psychology. Plaintiff Ceana Cuello is a student at FDU who is currently pursuing a degree in Nursing, and Plaintiff Melissa Cuello is the mother of Plaintiff Ceana Cuello. All three Plaintiffs took their roles as class representatives seriously, devoting significant amounts of time and effort to protecting the interests of the class. Without their willingness to assume the risks and responsibilities of serving as class representatives, I do not believe such a strong result could have been achieved.

41. Steven Doval, Melissa Cuello, and Ceana Cuello provided Class Counsel with critical details regarding their experiences with Defendant. They assisted my firm in investigating their claims, detailing their experiences attending FDU or dealing with FDU during the Spring 2020 Semester, supplying supporting documentation, aiding in drafting the Complaint, responding to written interrogatories, and producing documents in formal discovery. They were prepared to testify at deposition and trial, if necessary. And each of them was actively consulted during the settlement process.

42. In short, Steven Doval, Melissa Cuello, and Ceana Cuello assisted Class Counsel in pursuing this action on behalf of the class, and their involvement in this case has been nothing short of essential.

43. My firm is unaware of any individual actions that have been instituted by Class

Members.

I certify under penalty of perjury that the above and foregoing is true and accurate.

Executed this 8th day of August 2024 at New York, New York.

/s Philip L. Fraietta
Philip L. Fraietta

EXHIBIT A

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (“Agreement” or “Settlement Agreement”) is entered into on this ____ day of March, 2024, by and among Plaintiffs, Steven Doval, Melissa Cuello, and Ceana Cuello (collectively, “Plaintiffs” and/or “Class Representatives”), on behalf of themselves, individually, and the Settlement Class (as defined herein), on the one hand, and Fairleigh Dickinson University (“Defendant” or “FDU”), on the other hand. The Plaintiffs and the Defendant are collectively referred to herein as the “Parties.”

I. RECITALS

1.1 **WHEREAS**, on August 25, 2020, Plaintiffs Steven Doval¹, Melissa Cuello, and Ceana Cuello filed the above-captioned putative class action complaint in the Superior Court of New Jersey, Bergen Vicinage (the “Action”).

1.2 **WHEREAS**, the Complaint filed in the Action alleged that FDU should have refunded tuition and fees to certain individuals for a portion of the Spring 2020 academic semester, after FDU transitioned to a remote learning format in order to comply with Governor Murphy’s executive order requiring all New Jersey institutions of higher education to cease in-person instruction to reduce the spread of COVID-19.

1.3 **WHEREAS**, based on FDU’s decision to transition to remote learning, Plaintiffs have asserted claims on behalf of themselves and have sought to assert claims on behalf of others similarly situated for breach of contract, unjust enrichment, conversion, and for money had and received.

1.4 **WHEREAS**, on October 29, 2020, Defendant filed a motion to dismiss, arguing among other points, that the Complaint alleges impermissible educational malpractice claims,

¹ On May 18, 2020, Plaintiff Steven Doval filed an action in the United States District Court for the District of New Jersey. That matter was voluntarily dismissed on August 24, 2020.

and that the Complaint failed to identify any promise to provide in person instruction or any duty owed by FDU to provide a refund to students.

1.5 **WHEREAS**, on December 4, 2020, Plaintiffs filed their opposition to Defendant's motion to dismiss.

1.6 **WHEREAS**, on February 5, 2021, following oral argument, the Court denied Defendant's motion to dismiss.

1.7 **WHEREAS**, on February 19, 2021, Defendant filed an answer to the Complaint, denying the allegations and asserting 24 affirmative defenses.

1.8 **WHEREAS**, the Parties have engaged in formal discovery, including propounding and responding to requests for the production of documents and interrogatories.

1.9 **WHEREAS**, in discovery FDU produced approximately 4,788 pages of documents for Plaintiffs' review and Plaintiffs produced 27 pages of documents for FDU's review.

1.10 **WHEREAS**, during the discovery phase, Plaintiffs' Counsel and counsel for FDU initiated settlement discussions to resolve the litigation.

1.11 **WHEREAS**, on June 1, 2022, the Parties requested a brief stay of all case management deadlines to allow the Parties to focus their efforts on facilitating a potential resolution.

1.12 **WHEREAS**, on May 25, 2022 and February 15, 2023, the Parties participated in full-day mediation sessions before a third-party neutral, Hon. Frank A. Buczynski, Jr. (Ret.) in an attempt to resolve this action.

1.13 **WHEREAS**, although the two (2) mediation sessions were unsuccessful, the Parties maintained an open dialogue regarding potential resolution.

1.14 **WHEREAS**, in the ensuing months, the Parties continued their settlement dialogue directly.

1.15 **WHEREAS**, after extensive, vigorous discussions and arm's-length negotiations, and numerous exchanges of information and settlement proposals, the Parties were able to reach an agreement to resolve the Action, which Plaintiffs and their Counsel believe provides benefits to the Settlement Class, is fair, reasonable and adequate, and is in the best interests of Plaintiffs and Settlement Class Members.

1.16 **WHEREAS**, Plaintiffs believe that the claims asserted in the Action against Defendant have merit and that they would have prevailed at class certification, summary judgment, and/or trial.

1.17 **WHEREAS**, Defendant believes the claims asserted in the Action lack merit.

1.18 **WHEREAS**, Plaintiffs and Class Counsel recognize that Defendant has raised factual and legal defenses that present a risk that Plaintiffs may not prevail and they also recognize the expense and delay associated with continued prosecution of the Action against Defendant through class certification, summary judgment, trial, and any subsequent appeals.

1.19 **WHEREAS**, Plaintiffs and Class Counsel also have taken into account the uncertain outcome and risks of litigation, especially in complex class actions, as well as the difficulties inherent in such litigation, and believe it is desirable that the Released Claims, as further defined herein, be fully and finally compromised, settled, and resolved with prejudice.

1.20 **WHEREAS**, based on their evaluation, Class Counsel has concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

1.21 **WHEREAS**, at all times, Defendant has denied and continues to deny any wrongdoing whatsoever 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 maintained its opposition to certification of a litigation class.

1.22 **WHEREAS**, given the uncertainty and risks inherent in any litigation, the desire to avoid the expenditure of further legal fees and costs, the benefits that the class members will receive from a negotiated settlement, and Defendant's commitment to providing a quality and affordable personalized education experience for all students, Defendant has concluded it is desirable and beneficial that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement.

1.23 **WHEREAS**, this Agreement is a compromise, and the Agreement, any related documents, and any negotiations resulting in it shall not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing on the part of Defendant, or any of the Released Parties (defined below), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever or with respect to the certifiability of a litigation class.

1.24 **WHEREAS**, this Agreement is intended by the Parties to fully, finally and forever resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Agreement.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs, the Settlement Class, and each of them, and Defendant, by and through its undersigned counsel that, subject to final approval of the Court after preliminary approval as provided for in this Settlement Agreement, in consideration of the benefits flowing to the Parties from the Agreement set forth herein, that the Action and the Released Claims shall be finally and

fully compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

II. DEFINITIONS

As used in this Settlement Agreement, the following capitalized terms have the meanings specified below. Unless otherwise indicated, defined terms include the plural as well as the singular.

2.1 “Action” means the class action lawsuit titled *Steven Doval, et al., v. Fairleigh Dickinson University*, Docket No. BER-L-004966-20, pending in the Superior Court of New Jersey, Law Division, Bergen County.

2.2 “Alternate Judgment” means a form of final judgment that may be entered by the Court herein but in a form other than the form of Judgment provided for in this Agreement and where none of the Parties elects to terminate this Settlement by reason of such variance.

2.3 “Approved Claim” means a Claim Form submitted by a Settlement Class Member (defined below) that: (a) is submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (b) is fully and truthfully completed by a Settlement Class Member with all of the information requested in the Claim Form; (c) is signed by the Settlement Class Member, physically or electronically; and (d) is approved by the Settlement Administrator pursuant to the provisions of this Agreement.

2.4 “Cash Award(s)” means the pro rata portion of cash compensation in an amount up to \$155.00 payable by the Settlement Administrator from funds provided by Defendant, that each Settlement Class Member who has timely submitted a claim and has not opted-out of the Settlement shall be entitled to receive.

2.5 “Claimant” means any Class Member who seeks a Cash Award payment by submitting a Claim Form pursuant to this Settlement Agreement.

2.6 “Claim Form” means the document substantially in the form attached hereto as Exhibit A, to be completed and submitted by Settlement Class Members who wish to file a claim seeking to recover the Cash Award described in this Settlement Agreement. The Claim Form, which shall be available in electronic and paper format in the manner described below, may be modified by the Court in the Preliminary Approval Order, or to meet the requirements of the Settlement Administrator.

2.7 “Claim Deadline” means the date by which all Claim Forms must be postmarked or received to be considered timely and shall be set as a date no later than forty-five (45) days after the Final Approval Hearing. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form.

2.8 “Class Counsel” means Philip L. Fraietta and Alec Leslie of Bursor & Fisher, P.A., Antonio Vozzolo of Vozzolo LLC, and Ronald A Marron of the Law Offices of Ronald A. Marron, APLC.

2.9 “Class Representatives” means the named Plaintiffs in this Action, Steven Doval, Melissa Cuello, and Ceana Cuello.

2.10 “Court” means the Superior Court of New Jersey, Law Division, Bergen County.

2.11 “Defendant” means FDU.

2.12 “Defendant’s Counsel” means Angelo A. Stio III of Troutman Pepper Hamilton Sanders, LLP.

2.13 “Effective Date” or means the date ten (10) business days after which all of the events and conditions specified in Paragraph 11.1 have been met and have occurred.

2.14 “Escrow Account” means the separate, interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to all Parties at a depository institution insured by the Federal Deposit Insurance Corporation. The Settlement Fund shall be

deposited by Defendant into the Escrow Account in accordance with the terms of this Agreement and the money in the Escrow Account shall be invested in the following types of accounts and/or instruments and no other: (i) demand deposit accounts and/or (ii) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less. The costs of establishing and maintaining the Escrow Account shall be paid from the Settlement Fund.

2.15 “Fee and Expense Award(s)” means the amount of attorneys’ fees and reimbursement of costs and expenses awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

2.16 “Final” means one business day following the latest of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Judgment approving the Settlement Agreement; (ii) if there is an appeal or appeals, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.

2.17 “Final Approval Hearing” or “Fairness Hearing” means the hearing before the Court where the Parties will request the Final Judgment to be entered by the Court approving the Settlement Agreement, the Fee and Expense Award, and the Incentive Awards to the Class Representatives.

2.18 “Final Approval Order” means the Court order that approves this Settlement Agreement and makes such other final rulings as are contemplated by this Settlement Agreement.

2.19 “Final Judgment” means the Final Judgment and Order to be entered by the Court approving the Agreement after the Final Approval Hearing.

2.20 “Incentive Award(s)” means any payment to be made to the Class Representatives as set forth in this Settlement Agreement, subject to the approval of the Court, in recognition for the named Plaintiffs’ time and effort in prosecuting the Action and shall be paid out of the Settlement Fund.

2.21 “Notice” or “Class Notice” means the Court-approved form of notice of this proposed Settlement Agreement, which is to be sent to the Settlement Class substantially in the manner set forth in this Agreement², which is consistent with the requirements of New Jersey Court Rule 4:32-2(e)(1)(B) and due process, and is substantially in the forms attached hereto as Exhibits “B”, “C”, and “D,” informing them of, among other things, the (i) preliminary approval of the Settlement; (ii) scheduling of the Final Approval Hearing; (iii) opportunity to submit a claim; (iv) opportunity to submit an objection; and (v) opportunity to request exclusion.

2.22 “Notice Date” means the date by which the Notice set forth in Paragraph 5.1 is complete, which shall be no later than twenty-eight (28) days after Preliminary Approval.

2.23 “Objection” is the written communication that a Settlement Class Member may file with the Court in order to object to this Settlement Agreement as provided for in § VI of this Settlement Agreement.

2.24 “Objection/Exclusion Deadline” means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a Person within the Settlement Class must be made, which shall be designated as a date no later than sixty (60) calendar days after the Notice Date and no sooner than fourteen (14) calendar days after papers supporting the

² Notice, however, may be modified as necessary to comply with the provisions of any order of Preliminary Approval entered by the Court.

Fee and Expense Award are filed with the Court and posted to the settlement website listed in Paragraph 5.1(d), or such other date as ordered by the Court.

2.25 “Out-of-Pocket Tuition and Fees” means (1) the total amount of tuition and fees paid to FDU by or on behalf of a Settlement Class Member, discounted by any reduction in tuition, and (2) minus any unpaid balances related to the Spring 2020 term as reflected on the Settlement Class Member’s account with FDU. Out-of-Pocket Tuition and Fees does not include any payments for parking and/or room and board, including meal plans that were paid to FDU during the Spring 2020 Semester.

2.26 “Parties” means the Plaintiffs and Defendant.

2.27 “Person” means, without limitation, any individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, affiliates, parents, predecessors, successors, representatives, or assigns, subsidiaries, insurers, and their past, present and future directors, officers, shareholders, members, faculty, employees, agents, and attorneys both individually and in their capacities as directors, officers, shareholders, members, employees, agents, and attorneys. “Person” is not intended to include any governmental agencies or governmental actors, including, without limitation, any state Attorney General office.

2.28 “Plaintiffs” means Steven Doval, Melissa Cuello, and Ceana Cuello, and the Settlement Class Members.

2.29 “Preliminary Approval” means the Court has entered an order certifying the Settlement Class for settlement purposes, preliminarily approving the terms and conditions of this Settlement Agreement, including the manner of providing and content of Notice to Settlement Class Members.

2.30 “Preliminary Approval Order” means the Court’s Order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and approving the Settlement Notice Plan.

2.31 “Released Claims” means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, charges, complaints, liabilities, rights, causes of action, suits, obligations, liens, judgments, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, injunctive relief, declaratory relief, equitable relief, expenses, costs, attorneys’ fees and or obligations (including “Unknown Claims,” as defined below), and all other legal responsibilities in any form or nature, whether in law or in equity, accrued or un-accrued, direct, individual or representative, of every nature and description whatsoever, whether based on state, local or federal statute, ordinance, regulation, or claim at common law or in equity, or any other law, rule or regulation, whether past, present or future, known or unknown, asserted or unasserted, against the Released Parties, including but not limited to, any of them, arising out of any facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions, claims, liabilities, or failures to act regarding FDU’s actions or decisions in respect to the Spring 2020 academic term, including ceasing physically in-person, on-campus education and services and transitioning to a remote format for the Spring 2020 academic term, including but not limited to all claims that were brought or could have been brought in the Action relating to any and all Releasing Parties.

2.32 “Released Parties” means Defendant, FDU, as well as any and all of its respective current, former, and future heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, licensors, licensees, associates, affiliates, divisions, related corporate entities, employers, agents, consultants, independent contractors, insurers, and

all of their respective current, future, and former employees, directors, trustees, faculty, staff, administrators, board members, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, insurers, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, agents, executors, trusts, corporations, customers, and all third party service providers or entities identified as FDU's agents and/or independent contractors in this Action.

2.33 "Releasing Parties" means Plaintiffs, those Settlement Class Members who do not timely opt out of the Settlement Class, and all of their respective present or past heirs, executors, family members, lenders, funders, payors, 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.

2.34 "Request for Exclusion" means the written communication that must be sent to the Settlement Administrator and postmarked on or before the Objection/Exclusion Deadline by a Settlement Class Member who wishes to be excluded from the Settlement Class.

2.35 "Settlement Administration Expenses" means the expenses incurred by the Settlement Administrator in providing Notice, responding to inquiries from members of the Settlement Class, receiving information, mailing checks, and related services, paying taxes and tax expenses related to the Settlement Fund (including all federal, state or local taxes of any kind and interest or penalties thereon, as well as expenses incurred in connection with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants).

2.36 “Settlement Administrator” means RG/2 Claims Administration, LLC, or such other reputable administration company that has been selected by Plaintiffs and is reasonably acceptable to Defendant, and approved by the Court to perform the duties set forth in this Agreement, including but not limited to serving as escrow agent for the Settlement Fund, overseeing the distribution of Notice, handling all approved payments out of the Settlement Fund, and handling the determination, payment and filing of forms related to all federal, state and/or local taxes of any kind (including any interest or penalties thereon) that may be owed on any income earned by the Settlement Fund. Class Counsel’s assent to this Agreement shall constitute consent on behalf of each and every member of the Settlement Class as defined herein to disclose to Class Counsel and the Settlement Administrator all information required by the Settlement Administrator to perform the duties and functions ascribed to it herein, consistent with the written consent provisions of the Federal Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

2.37 “Settlement Class Members,” “Class Members,” “Class,” or “Settlement Class” means all people who paid Defendant Spring 2020 Semester tuition and fees or who benefitted from the payment, and whose tuition and fees have not been refunded. Excluded from the Settlement Class will be: (a) all students who were enrolled entirely in an on-line program during the Spring 2020 Semester, (b) all students whose gift, aid (not including loans) or scholarships, regardless of source, equaled or exceeded the cost of tuition and fees for the Spring 2020 Semester, (c) persons who timely and properly exclude themselves from the Class as provided herein, and (d) the Court, the Court’s immediate family, and Court staff.

2.38 “Settlement Fund” means the fund that shall be established by or on behalf of Defendant in the total amount of up to one million five hundred thousand dollars (\$1,500,000.00 USD) to be deposited into the Escrow Account, according to the schedule set forth herein, plus

all interest earned thereon. From the Settlement Fund, the Settlement Administrator shall pay all Cash Awards to Settlement Class Members, Settlement Administration Expenses, any Incentive Awards to the Class Representatives, any Fee and Expense Award to Class Counsel, and any other costs, fees or expenses approved by the Court. The Settlement Fund shall be kept in the Escrow Account with permissions granted to the Settlement Administrator to access said funds until such time as the listed payments are made. The Settlement Fund includes all interest that shall accrue on the sums deposited in the Escrow Account. The Settlement Administrator shall be responsible for all tax filings with respect to any earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings. The Settlement Fund shall be used to satisfy Defendant's monetary obligations under this Agreement. The payment of the sums into the Settlement Fund by Defendant fully discharges the Defendant and the other Released Parties' financial obligations (if any) in connection with the Settlement, meaning that no Released Party shall have any other obligation to make any payment into the Escrow Account or to any Class Member, or any other Person, under this Agreement. In no event shall the total monetary obligation with respect to this Agreement on behalf of Defendant exceed one million five hundred thousand dollars (\$1,500,000.00 USD).

2.39 "Settlement Notice Plan" or "Notice Plan" means the Settlement Administrator's plan to disseminate Class Notice to Settlement Class Members, as described in § V below.

2.40 "Settlement Website" means a website operated and maintained by the Settlement Administrator solely for purposes of making available to the Settlement Class Members the Class Notice, documents, information, and online claims submission process referenced in § V, below.

2.41 "Spring 2020 Semester" means the Spring 2020 academic semester at FDU, which commenced on or about January 4, 2020, and concluded on May 18, 2020.

2.42 “Unknown Claims” means claims that could have been raised in the Action and that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object or not to object to the Settlement. Upon the Effective Date, the Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Upon the Effective Date, the Releasing Parties also shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Paragraph.

III. SETTLEMENT CONSIDERATION AND RELIEF

3.1 **Payments to Settlement Class Members.** In full, complete, and final settlement and satisfaction of the Action and all Released Claims, and subject to all of the terms, conditions, and provisions of this Settlement Agreement, FDU agrees to provide the following consideration to Settlement Class Members who submit a valid and timely Claim Form to the Settlement Administrator:

(a) Defendant shall within thirty (30) days following the date of Final Judgment pay or cause to be paid into the Escrow Account the amount of the Settlement Fund (up to \$1,500,000.00), specified in Paragraph 2.38 of this Agreement less: (i) any amounts previously invoiced and paid to the Settlement Administrator in accordance with §§ V and VII.

(b) The Settlement Fund shall be applied to pay in full and in order: (i) any necessary taxes and tax expenses; (ii) all other Settlement Administration Expenses, including costs of providing notice to the Class Members and processing claims; (iii) any Fee and Expense Award made by the Court to Class Counsel; (iv) any class representative Incentive Awards approved by the Court to the Class Representatives; and (v) payments to Claimants who have filed a valid claim and any others as allowed by this Agreement and to be approved by the Court.

(c) Each Settlement Class Member seeking to receive a payment from the Settlement Fund in a pro rata amount not to exceed a total of \$155.00 per student in attendance, shall complete and submit a Claim Form to the Settlement Administrator on or before the Claims Deadline. The Claim Form shall require the Settlement Class Member to state the Settlement Class Member's name, affirm that the Settlement Class Member paid Defendant Out-Of-Pocket Tuition and Fees (that is, payments to Defendant exclusive of gift aid (not including loans), regardless of source) an amount up to \$155.00, and affirm that either (i) no other individual paid tuition and fees on the Settlement Class Members behalf during the Spring 2020 Semester for which reimbursement is being sought; or (ii) no other Settlement Class Member will submit a claim relating to the specific student in attendance. The Settlement Class Member shall verify the information on the Claim Form with a statement that the information is true and correct to the best of the Settlement Class Member's information, knowledge, and belief.

(d) Payments to all Settlement Class Members who submit a valid, timely Claim Form shall be made within fifty (50) days after the Effective Date.

(e) All Cash Awards issued to Settlement Class Members via check will state on the face of the check that funds not cashed within one hundred eighty (180) days after the date of issuance shall revert to the Defendant and be used for scholarships for the benefit of students in financial need, as a *cy pres*. Checks shall be sent to Defendant's last known or available address of record for each Class Member (or any updated address identified by the Settlement Administrator in connection with issuing Notice) and shall be valid for one hundred eighty (180) days. In the event that the Settlement Fund is not exhausted by submitted Claims or Cash Awards, Settlement Administration Expenses, Fee and Expense Awards, and Incentive Awards, the remainder of the Settlement Fund shall revert to Defendant and be used for scholarships to benefit students in need, as a *cy pres*.

(f) Plaintiffs understand and agree that Plaintiffs and Settlement Class Members would not receive the monies and/or benefits specified in this Agreement, except for Plaintiffs' execution of this Agreement and the fulfillment of the promises contained herein.

IV. RELEASE

4.1 The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims, as against all Released Parties.

4.2 Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them.

V. NOTICE TO THE CLASS

5.1 The Notice Plan shall consist of the following:

(a) *Settlement Class List*. No later than twenty-eight (28) calendar days from the execution of this Settlement Agreement, Defendant shall produce an electronic list from its records that includes the names, last known U.S. Mail addresses, and email addresses, to the

extent available, belonging to Persons within the Settlement Class. This electronic document shall be called the "Class List," and shall be provided to the Settlement Administrator for the purpose of giving notice to the Settlement Class Members and shall not be used for any other purpose. No later than five (5) business days after the Objection/Exclusion Deadline, Defendant will provide to the Settlement Administrator a list of the total amount of Out-of-Pocket Tuition and Fees paid by or on behalf of each Settlement Class Member for the Spring 2020 Semester.

(b) *Direct Notice via Email.* No later than twenty-one (21) calendar days from entry of the Preliminary Approval Order, the Settlement Administrator shall send Notice via email substantially in the form attached as Exhibit B to all Settlement Class Members for whom a valid email address is in the Class List. An additional e-mail will be sent within 30 days of the initial e-mail notice. To ensure a high degree of deliverability of the email notice and to avoid spam filters, the Claims Administrator must utilize industry-recognized best practices and comply with the Can-Spam Act. The Email Notice shall have a hyperlink that Class Member recipients may click and be taken to a landing page on the Settlement Website, prepopulated with Class Member data, if practicable. In the event transmission of email notice results in any "bounce-backs," the Settlement Administrator shall, if possible, correct any issues that may have caused the "bounce-back" to occur and make a second attempt to re-send the email notice.

(c) *Direct Notice via U.S. Mail.* No later than the twenty-eight (28) calendar days from entry of the Preliminary Approval Order, the Settlement Administrator shall send notice substantially in the form attached as Exhibit C via First Class U.S. Mail to all Settlement Class Members who did not receive an email pursuant to Paragraph 5.1(b), above. In addition to the notice required by the Court, the Parties may jointly agree to provide additional notice to the members of the Settlement Class. For any Notice that is returned by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the notice to the forwarding address, if

any, provided by the Postal Service or—if no forwarding address is provided on the returned mail—shall re-mail the notice after performing a “skip trace.”

(d) *Settlement Website.* Within ten (10) business days from entry of the Preliminary Approval Order, the Settlement Administrator shall establish and maintain a Settlement Website, that shall provide Settlement Class Members with the ability to update their mailing addresses and will: (i) notify the Settlement Class of their rights to opt out or exclude themselves from the Settlement Class; (ii) notify the Settlement Class of their right to object to this Agreement; (iii) notify the Settlement Class that no further notice will be provided to them that the Settlement has been approved; (iv) inform the Settlement Class that they should monitor the Settlement Website for further developments; (v) inform the Settlement Class of their right to attend the Final Approval Hearing conducted by the Court; (vi) include any required notice of any motion(s) made by Class Counsel for any Attorneys’ Fee and Expense Award or Incentive Awards (when available); (vii) include a copy of this Agreement, the Preliminary Approval Order, the Claim Form, and the Notice substantially in the form attached hereto as Exhibit D; (viii) include copies of the material documents that are filed publicly with the Court in connection with the Settlement or any other pertinent case documents; (ix) state the means by which Settlement Class Members may communicate with the Claims Administrator (including but not limited to the Claims Administrator’s business name, address, a toll-free telephone number, and e-mail address); (x) contain a set of Frequently Asked Questions and corresponding answers, (xi) provide instructions on how to submit a Claim Form (both electronically and by mail); and (xi) include any other information or materials that may be required by the Court and/or agreed to by the Parties. The Claims Administrator shall secure a URL for the Settlement Website selected and approved by the Parties. The Settlement Website shall remain active for 90 calendar days after the Settlement Effective Date.

(e) *Toll-Free Interactive Voice Response (“IVR”)*. On or before the Notice Date, the Settlement Administrator shall establish a Toll-Free IVR phone number with script recordings of information about this Settlement, including information about the Claim Form, utilizing the relevant portions of the language contained in the Notice and Claim Form. The phone number shall remain open and accessible through the Claim Deadline. The Settlement Administrator shall make reasonable provision for Class Counsel to be promptly advised of recorded messages left on the phone number by potential Settlement Class Members concerning the Action and/or this Settlement, so that Class Counsel may timely and accurately respond to such inquiries; provided however, the Settlement Administrator shall review the recorded messages before providing them to Class Counsel, and if one or more of the messages requests a blank Claim Form or other similar administrative assistance only, then the Settlement Administrator shall handle such administrative request(s), but the Settlement Administrator shall provide all other messages to Class Counsel for any further response to the Settlement Class Member.

5.2 The Notice shall advise the Settlement Class of their rights, including the right to be excluded from, comment upon, and/or object to the Settlement Agreement or any of its terms. The Notice shall also advise the Settlement Class of their ability to seek to quash the ordered disclosure of their Out-of-Pocket Tuition and Fees to the Settlement Administrator. The Notice shall specify that any objection to the Settlement Agreement, and any papers submitted in support of said objection, shall be considered by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice, the Person making the objection files notice of an intention to do so and at the same time (a) files copies of such papers he or she proposes to be submitted at the Final Approval Hearing with the Clerk of the Court, or alternatively, if the objection is from a Class Member represented by counsel, files any objection through the Court’s electronic filing

system, and (b) sends copies of such papers by mail, hand, or overnight delivery service to the Settlement Administrator, with copies to Class Counsel and Defendant's Counsel.

VI. EXCLUSIONS AND OBJECTIONS

6.1 Class Members shall have the right to object to the Court's granting final approval to this Agreement. To be considered, any objection must be made in writing, must be filed with the Court, must be mailed or delivered to the Settlement Administrator at the address provided in the Notice, with copies to Class Counsel and Defense Counsel, received no later than the Objection/Exclusion Deadline, and must include the following: (i) the name of the Action; (ii) the objector's full name, address and telephone number; (iii) the basis upon which the objector claims to be a Class Member (iv) a written statement of all legal and factual grounds for the objection, including copies of any documents relied upon; (v) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the objection ("Objecting Attorneys"); (vi) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; (vii) the identity of any counsel who will appear at the Final Approval Hearing on the objector's behalf; (viii) a list of any witnesses the objector wishes to call to testify, or any documents or exhibits the objector or the objector's counsel may use, at the Final Approval Hearing; (ix) the number of class actions in which the objector or his or her counsel have filed an objection in the last five (5) years; and (x) the objector's signature. If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption and amount of payment received. Any Class Member who fails to file a timely written objection and notice of his or her

intent to appear at the Final Approval Hearing pursuant to this Paragraph (6.1) or as detailed in the Notice shall not be permitted to object to the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement by appeal or other means.

6.2 Any Party shall have the right to respond to any objection by filing a response with the Court and serving a copy on the objector (or counsel for the objector) and counsel for the other Parties no later than three (3) days before the Fairness Hearing.

6.3 A Settlement Class Member may request to be excluded from the Settlement Class by sending a written request postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice. To exercise the right to be excluded, a Person in the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing their name and address, a signature, the name and number of the case, and a statement that they wish to be excluded from the Settlement Class for purposes of this Settlement. A request to be excluded that does not include all of this information, or that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and the Person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound as a Settlement Class Member by this Agreement, if approved. Any member of the Settlement Class who validly elects to be excluded from this Agreement shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. The request for exclusion must be personally signed by each Person requesting exclusion. So-called "mass" or "class" opt-outs shall not be allowed. To be valid, a request for exclusion must be postmarked or received by the date specified in the Notice.

6.4 Within five (5) business days after the Objection/Exclusion Deadline, the Settlement Administrator shall provide to Defense Counsel and Class Counsel a list of all Persons who opted out by requesting exclusion pursuant to § VI. Any Party shall have the right to challenge the timeliness and validity of any request for exclusion. The Court shall determine whether any contested request is timely and valid.

6.5 The Final Approval Hearing shall be no earlier than ninety (90) calendar days after the Notice Plan described in Paragraph 5.1 is provided.

6.6 Any Settlement Class Member who does not, in accordance with the terms and conditions of this Agreement, seek exclusion from the Settlement Class will be bound by all of the terms of this Agreement, including the terms of the Final Judgment to be entered in the Action and the Releases provided for in the Agreement, and will be barred from bringing any action against any of the Released Parties concerning the Released Claims.

VII. SETTLEMENT ADMINISTRATION

7.1 The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement in a rational, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel and Defendant's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with regular reports at weekly intervals containing information concerning Notice, administration, and implementation of the Settlement Agreement. Should the Court request, the Parties shall submit a timely report to the Court summarizing the work performed by the

Settlement Administrator, including a report of all amounts from the Settlement Fund paid to Settlement Class Members. Without limiting the foregoing, the Settlement Administrator shall:

- (a) Forward to Defendant's Counsel, with copies to Class Counsel, all original documents and other materials received in connection with the administration of the Settlement, and all copies thereof, within thirty (30) days after the Objection/Exclusion Deadline;
- (b) Provide Class Counsel and Defendant's Counsel with drafts of all administration related documents, including but not limited to Notices, follow-up class notices or communications with Settlement Class Members, telephone scripts, website postings or language or other communications with the Settlement Class, at least five (5) business days before the Settlement Administrator is required to or intends to publish or use such communications, unless Class Counsel and Defendant's Counsel agree to waive this requirement in writing on a case by case basis; and
- (c) Receive requests to be excluded from the Settlement Class and other requests and promptly provide to Class Counsel and Defendant's Counsel copies thereof. If the Settlement Administrator receives any exclusion forms or other requests after the deadline for the submission of such forms and requests, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel.

7.2 In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from Class Counsel or any Settlement Class Member.

7.3 Defendant, the Released Parties, and Defendant's Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to: (i) any act, omission, or determination by Class Counsel, or the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the

management, investment, or distribution of the Settlement Fund; (iii) the allocation of Settlement Funds to Settlement Class Members or the implementation, administration, or interpretation thereof; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in value of, the Settlement Fund; or (vi) the payment or withholding of any taxes, tax expenses, or costs incurred in connection with the taxation of the Settlement Fund or the filing of any federal, state, or local returns.

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

7.5 The Settlement Administrator shall protect the privacy of any personally identifiable information it receives in the course of administering the duties provided by this Agreement, and it shall comply with all laws regarding data privacy protection and data security.

7.6 All disputes relating to the Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and obligations contemplated by the Agreement have been fully carried out.

VIII. TERMINATION OF SETTLEMENT

8.1 Subject to Paragraphs 11.1-11.3 below, Defendant or the Class Representatives on behalf of the Settlement Class, shall have the right to terminate this Agreement by providing written notice of the election to do so (“Termination Notice”) to all other Parties hereto within twenty-one (21) days of any of the following events: (i) the Court’s refusal to grant Preliminary Approval of this Agreement in any material respect³; (ii) the Court’s refusal to grant final approval of this Agreement in any material respect; (iii) the Court’s refusal to enter the Final Judgment in this Action in any material respect; (iv) the date upon which the Final Judgment is modified or reversed in any material respect by the Appellate Division or the Supreme Court of New Jersey; or (v) the date upon which an Alternate Judgment, as defined in Paragraphs 2.2 and 11.1(d) of this Agreement is modified or reversed in any material respect by the Court of Appeals or the Supreme Court.

8.2 If more than three hundred (300) members of the Settlement Class opt out or request exclusion from the Settlement Class in accordance with Paragraph 6.3, Defendant shall have the option, in its sole discretion, to void this Agreement by providing written notice of the election to do so (“Opt Out Termination Notice”) to all other Parties hereto within twenty-one (21) days of the Objection/Exclusion Deadline.

8.3 Defendant shall bear all reasonable and necessary costs incurred in connection with the implementation of this Class Action Settlement Agreement up until its termination. Neither the Class Representatives nor Class Counsel shall be responsible for any such settlement-related costs.

³ Without limitation any alteration to the following provisions would be considered material: Sections 2.31, 2.32, 2.33, 2.38, 3.1, 4.1, 4.2, 6.3, 8.1, and 8.2.

8.4 In the event that this Agreement is not approved by the Court or the settlement set forth in this Stipulation is terminated or fails to become effective in accordance with its terms, any reasonable costs associated with the Class Action Settlement Administrator or administration incurred prior to that time will be paid by FDU.

IX. CERTIFICATION OF THE SETTLEMENT CLASS, PRELIMINARY APPROVAL ORDER, AND FINAL APPROVAL ORDER

9.1 The Parties agree, for settlement purposes only (and without any finding or admission of any wrongdoing or fault by Defendant) that the Settlement Class shall be certified and proceed as a class action under New Jersey Court Rule 4:32, with a class consisting of all Settlement Class Members, and with Plaintiffs as Class Representatives and with Class Counsel as counsel for the Settlement Class Members.

9.2 The Parties acknowledge that (a) any certification of the Settlement Class as set forth in this Agreement, including certification of the Settlement Class for settlement purposes in the context of Preliminary Approval, shall not be deemed a concession that certification of a litigation class is appropriate, or that the Settlement Class definition would be appropriate for a litigation class, nor would Defendant be precluded from challenging class certification in further proceedings in the Action or in any other action if the Settlement Agreement is not finalized or finally approved; (b) if the Settlement Agreement is not finally approved by the Court for any reason whatsoever, then any certification of the Settlement Class will be void, the Parties and the Action shall be restored to the status quo ante, and no doctrine of waiver, estoppel or preclusion will be asserted in any litigated certification proceedings in the Action or in any other action; and (c) no agreements made by or entered into by Defendant in connection with the Settlement may be used by Plaintiffs, any person in the Settlement Class, or any other person to establish any of

the elements of class certification in any litigated certification proceedings, whether in the Action or any other judicial proceeding.

9.3 Promptly after the execution of this Settlement Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement; certification of the Settlement Class for settlement purposes only; appointment of Class Counsel and the Class Representatives; and entry of a Preliminary Approval Order, which order shall set a Final Approval Hearing date and approve the Notice for dissemination substantially in the form of Exhibits B, C, and D hereto. The Preliminary Approval Order shall also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) so long as they are consistent in all material respects with the terms of the Settlement Agreement and do not limit or impair the rights of the Settlement Class or materially expand the obligations of Defendant.

9.4 At the time of the submission of this Agreement to the Court as described above, Class Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing and approve the settlement of the Action as set forth herein.

9.5 After Notice is given, the Parties shall request and seek to obtain from the Court a Final Judgment, which will (among other things):

(a) find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Agreement, including all exhibits thereto;

(b) approve the Settlement Agreement and the proposed settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members, for

purposes of New Jersey Court Rule 4:32-2(e)(1)(C); direct the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and Releasing Parties;

(c) find that the Notice implemented pursuant to the Agreement (1) constitutes the best practicable notice under the circumstances; (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object to or exclude themselves from the proposed Agreement, and to appear at the Final Approval Hearing; (3) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) complied with all laws and applicable legal requirements, including but not limited to, New Jersey Court Rule 4:32-2(e)(1)(B) and due process;

(d) find that the Class Representatives and Class Counsel adequately represent the Settlement Class for purposes of entering into and implementing the Agreement;

(e) dismiss the Action (including all individual claims and Settlement Class Claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

(f) incorporate the Release set forth above, make the Release effective as of the date of the Effective Date, and forever discharge the Released Parties as set forth herein;

(g) permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the Settlement Class from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or other action in any jurisdiction based on the Released Claims;

(h) without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose; and

(i) incorporate any other provisions, as the Court deems necessary and just.

X. CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES; INCENTIVE AWARDS

10.1 Defendant agrees that Class Counsel may apply for an award of attorneys' fees, costs, and expenses from the Settlement Fund not to exceed one-third (33.3%) of the Settlement Fund (or five hundred thousand dollars (\$500,000.00)). Payment of the Fee and Expense Award shall be made from the Settlement Fund and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this Paragraph shall remain in the Settlement Fund.

10.2 The Fee and Expense Award shall be payable by the Settlement Administrator within thirty (30) days after entry of the Court's Final Judgment, subject to Class Counsel each executing a stipulated Undertaking Regarding Attorneys' Fees and Costs (an "Undertaking") substantially in the form attached hereto as Exhibit E, and providing all payment routing information and tax I.D. numbers for Class Counsel. Each Undertaking shall be substantively identical to the stipulated undertaking approved by the Court in *Taylor v. Trusted Media Brands, Inc.*, S.D.N.Y., Case No. 16-cv-01812-KMK (Dkt. No. 70-1, Ex. E). Payment of the Fee and Expense Award shall be made from the Settlement Fund by wire transfer to Class Counsel, in accordance with wire instructions to be provided by Bursor & Fisher, P.A., and completion of necessary forms, including but not limited to W-9 forms. Notwithstanding the foregoing, if for any reason the Final Judgment is reversed or rendered void as a result of an appeal(s) then Class

Counsel shall return such funds to the Defendant. Additionally, should any parties to an Undertaking dissolve, merge, declare bankruptcy, become insolvent, or cease to exist prior to the final payment to Class Members, those parties shall execute a new undertaking guaranteeing repayment of funds within fourteen (14) calendar days of such an occurrence.

10.3 Defendant agrees that the Class Representatives may apply for an incentive award from the Settlement Fund, in addition to any settlement payment as a result of an Approved Claim pursuant to this Agreement, and in recognition of their efforts on behalf of the Settlement Class, in the amount of not more than five thousand dollars (\$5,000.00 USD) each. Should the Court award less than this amount, the difference in the amount sought and the amount ultimately awarded pursuant to this Paragraph shall remain in the Settlement Fund. Class Representatives understand and acknowledge that they may receive no monetary payment, and their agreement to the Settlement is not conditioned on the possibility of receiving monetary payment. Such award shall be paid from the Settlement Fund (in the form of a check to the Class Representatives that is sent care of Class Counsel), within five (5) business days after the Effective Date.

XI. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION

11.1 The Effective Date of this Settlement Agreement shall not occur unless and until each of the following events occurs and shall be (10) business days after the date upon which the last (in time) of the following events occurs:

- (a) The Parties and their counsel have executed this Agreement;
- (b) The Court has entered the Preliminary Approval Order;
- (c) The Court has entered the Final Approval Order and has entered the Final

Judgment, or a judgment consistent with this Agreement in all material respects; and

(d) The Final Judgment has become Final, as defined above, or, in the event that the Court enters an Alternate Judgment, such Alternate Judgment becomes Final.

11.2 If some or all of the conditions specified in Paragraph 11.1 are not met, or in the event that this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Settlement Agreement shall be canceled and terminated subject to Paragraph 8.1 unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to all of the Parties. Notwithstanding anything herein, the Parties agree that the Court's failure to approve, in whole or in part, the attorneys' fees payment to Class Counsel and/or the incentive award set forth in § X above shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination.

11.3 If this Agreement is terminated or fails to become effective for the reasons set forth in Paragraphs 8.1-8.2 or 11.1-11.2 above, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement had never been entered into. Within five (5) business days after written notification of termination as provided in this Agreement is sent to the other Parties, the Settlement Fund (including accrued interest thereon), less any Settlement Administration costs actually incurred, paid or payable and less any taxes and tax expenses paid, due or owing, shall be refunded by the Settlement Administrator to Defendant, based upon written instructions provided by Defendant's Counsel. In the event that the Final Settlement

Order and Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, Class Counsel shall, within thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's Counsel, the full amount of the attorneys' fees and costs paid to Class Counsel from the Settlement Fund, including any accrued interest. In the event the attorney fees and costs awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, Class Counsel shall within thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's Counsel, the attorneys' fees and costs paid to Class Counsel and/or Class Representatives from the Settlement Fund, in the amount vacated or modified, including any accrued interest.

11.4 Nothing shall prevent the Class Representatives and/or FDU from appealing or seeking other appropriate relief from an appellate court with respect to any denial by the Court of Final Approval of the Settlement.

XII. MISCELLANEOUS PROVISIONS.

12.1 The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement, to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement, to secure final approval, and to defend the Final Judgment through any and all appeals. Class Counsel and Defendant's Counsel agree to cooperate with one another in seeking Court approval of the Settlement Agreement, entry of the Preliminary Approval Order, and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

12.2 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiffs, the Settlement Class and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiffs or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

12.3 The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully the above and foregoing agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

12.4 Whether or not the Effective Date occurs or the Settlement Agreement is terminated, neither this Agreement nor the settlement contained herein or any term, provision or definition therein, nor any act or communication performed or document executed in the course of negotiating, implementing or seeking approval pursuant to or in furtherance of this Agreement or the settlement:

(a) is, may be deemed, or shall be used, offered or received in any civil, criminal or administrative proceeding in any court, administrative agency, arbitral proceeding or other tribunal against the Released Parties, or each or any of them, as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by the Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the definition or scope of any term or provision, the reasonableness of the settlement amount or the Fee and Expense Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them. Defendant,

while continuing to deny all allegations of wrongdoing and disclaiming all liability with respect to all claims, considers it desirable to resolve the action on the terms stated herein to avoid further expense, inconvenience, and burden, and therefore has determined that this settlement on the terms set forth herein is in Defendant's best interests;

(b) is, may be deemed, or shall be used, offered or received against any Released Party, as an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

(c) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties, or supporting the certification of a litigation class, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. Further, if this Settlement Agreement is approved by the Court, any Party or any of the Released Parties may file this Agreement and/or the Final Judgment in any action that may be brought against such Party or Parties 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 other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(d) is, may be deemed, or shall be construed against Plaintiffs, the Settlement Class, the Releasing Parties, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder

represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

(e) is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiffs, the Settlement Class, the Releasing Parties, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiffs' claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

12.5 No person or entity shall have any claim against the Class Representatives, Class Counsel, the Settlement Administrator or any other agent designated by Class Counsel, or the Released Parties and/or their counsel, arising from distributions made substantially in accordance with this Agreement. The Parties and their respective counsel, and all other Released Parties shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the determination, administration, calculation, or payment of any claim or nonperformance of the Settlement Administrator, the payment or withholding of taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

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

12.7 The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

12.8 All of the Exhibits to this Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

12.9 This Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No

representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest. Amendments and modifications may be made without additional notice to the Settlement Class unless such notice is required by the Court.

12.10 Except as otherwise provided herein, each Party shall bear its own costs.

12.11 Plaintiffs represent and warrant that they have not assigned any claim or right or interest therein as against the Released Parties to any other Person or Party and that they are fully entitled to release the same. Plaintiffs further represent and warrant that they have not filed, caused to be filed, or presently are a party to any claim against Defendant, except the Action, which will be dismissed with Prejudice pursuant to the terms of this Agreement. Plaintiffs agree to seek approval of this Agreement and dismissal of this Action with prejudice in its entirety as outlined in this Agreement.

12.12 The Parties agree that any public statement related to the settlement shall be substantially in the form attached hereto as Exhibit F. Unless otherwise agreed in writing, the parties shall limit public comment on the Settlement to the fact that there has been an amicable settlement, and in doing so may refer to the Settlement Agreement, Settlement Website, Notices, or may otherwise refer to and make representations in accordance with the Notice Plan. This Paragraph does not preclude Class Counsel from advising any Settlement Class Member.

12.13 Each counsel or other Person executing this Settlement Agreement, any of its Exhibits, or any related settlement documents on behalf of any Party hereto, hereby warrants and represents that such Person has the full authority to do so and has the authority to take

appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

12.14 This Agreement may be executed in one or more counterparts. Signature by digital means, facsimile, or in PDF format will constitute sufficient execution of this Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

12.15 This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

12.16 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

12.17 This Settlement Agreement shall be governed by and construed in accordance with the substantive laws of the State of New Jersey without giving effect to its conflict of laws provisions.

12.18 The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

12.19 Plaintiffs and Class Counsel shall continue to treat as confidential all financial and class-related materials provided to Class Counsel as part of the Parties' Settlement. Upon dismissal of this action, Plaintiffs and Class Counsel shall permanently delete from their files and/or return to Defendant's counsel any confidential files produced by Defendant in this Action. Provided, however, that nothing herein shall preclude Plaintiffs and Class Counsel from

describing those materials in public Court filings necessary to obtain Court approval of the Settlement.

12.20 This Agreement is deemed to have been prepared by counsel for all Parties, as a result of arm's-length negotiations among the Parties. Because all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

12.21 Once the Parties and their counsel execute this Agreement, the Court will resolve any and all disputes that arise as to the interpretation or enforcement of this Agreement.

12.22 Where this Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: Philip L. Fraietta, Bursor & Fisher, P.A., 1330 Avenue of the Americas, New York, NY 10019; Angelo Stio III, Troutman Pepper Hamilton Sanders, LLP, 301 Carnegie Center, Suite 400, Princeton, New Jersey 08543.

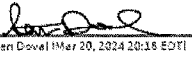
THE SIGNATORIES HAVE CAREFULLY READ THIS ENTIRE AGREEMENT WHICH CONTAINS RELEASES ON BEHALF OF THE PLAINTIFFS AND THE SETTLEMENT CLASS, THE PARTIES HAVE BEEN REPRESENTED BY COUNSEL THROUGHOUT THE NEGOTIATION OF THIS AGREEMENT, AND HAVE CONSULTED WITH THEIR ATTORNEYS BEFORE SIGNING THIS AGREEMENT. THE PARTIES FULLY UNDERSTAND THE FINAL AND BINDING EFFECT OF THIS AGREEMENT. THE ONLY PROMISES OR REPRESENTATIONS MADE TO ANY SIGNATORY ABOUT THIS AGREEMENT ARE CONTAINED IN THIS AGREEMENT.

HAVING ELECTED TO EXECUTE THIS AGREEMENT WHICH CONTAINS RELEASES ON BEHALF OF PLAINTIFFS AND THE SETTLEMENT CLASS TO FULFILL THE PROMISES SET FORTH HEREIN, AND TO RECEIVE THEREBY THE SETTLEMENT SUMS AND BENEFITS SET FORTH ABOVE, PLAINTIFFS, PERSONALLY AND ON BEHALF OF THE SETTLEMENT CLASS, FREELY AND KNOWINGLY AND AFTER DUE CONSIDERATION, ENTER INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS AS IDENTIFIED IN THIS AGREEMENT AGAINST RELEASED PARTIES. THE PARTIES ARE SIGNING THIS AGREEMENT VOLUNTARILY AND KNOWINGLY.

IT IS SO AGREED TO BY THE PARTIES:

Dated: March 20, 2024

Steven Doval

By: 
Steven Doval, individually and as representative of
the Class

Dated: _____

Melissa Cuello

By: _____
Melissa Cuello, individually and as representative
of the Class

Dated: _____

Ceana Cuello

By: _____
Ceana Cuello, individually and as representative of
the Class

Dated: _____

Fairleigh Dickenson University

By: _____


Name: _____

Title: _____

IT IS SO STIPULATED BY COUNSEL:

Dated: March 21, 2024

BURSOR & FISHER, P.A.

By: 
Philip L. Fraietta
pfraietta@bursor.com
BURSOR & FISHER, P.A.
1330 Avenue of the Americas
New York, New York 10019
Tel: (646) 837-7150
Fax: (212) 989-9163

Dated:

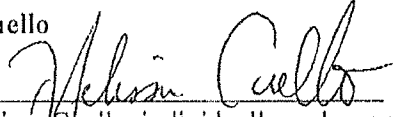
VOZZOLO LLC

By: _____

By: _____
Steven Doval, individually and as representative of
the Class

Dated: 3/21/24

Melissa Cuello

By: 
Melissa Cuello, individually and as representative
of the Class

Dated: _____

Ceana Cuello

By: _____
Ceana Cuello, individually and as representative of
the Class

Dated: _____

Fairleigh Dickenson University

By: _____

Name: _____

Title: _____

IT IS SO STIPULATED BY COUNSEL:

Dated: _____

BURSOR & FISHER, P.A.

By: _____

Philip L. Fraietta

pfraietta@bursor.com

BURSOR & FISHER, P.A.

1330 Avenue of the Americas

New York, New York 10019

Tel: (646) 837-7150

Fax: (212) 989-9163

Dated: _____

VOZZOLO LLC

By: _____

By: _____
Steven Doval, individually and as representative of
the Class

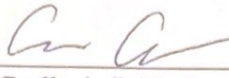
Dated: _____

Melissa Cuello

By: _____
Melissa Cuello, individually and as representative
of the Class

Dated: 3/28/24

Ceana Cuello

By:  _____
Ceana Cuello, individually and as representative of
the Class

Dated: _____

Fairleigh Dickenson University

By: _____
Name: _____
Title: _____

IT IS SO STIPULATED BY COUNSEL:

Dated: _____

BURSOR & FISHER, P.A.

By: _____
Philip L. Fraietta
pfraietta@bursor.com
BURSOR & FISHER, P.A.
1330 Avenue of the Americas
New York, New York 10019
Tel: (646) 837-7150
Fax: (212) 989-9163

Dated: _____


VOZZOLO LLC

By: _____

Antonio Vozzolo
avozzolo@vozzolo.com
Vozzolo LLC
345 Route 17 South
Upper Saddle River, New Jersey 074578
Tel: (201) 630-8820
Fax: (201) 604-8400

Dated:

LAW OFFICES OF RONALD A. MARRON, APLC

By: 
Ronald A. Marron (admitted *pro hac vice*)
ron@consumersadvocates.com
Law Offices Of Ronald A. Marron, APLC
651 Arroyo Drive
San Diego, California
Telephone: (619) 696-9006
Facsimile: (619) 564-6665

Attorneys for Class Representatives and the Settlement Class

Dated: 4/3/24

TROUTMAN PEPPER HAMILTON SANDERS LLP

By: 
Angelo Stio III
angelo.stio@troutman.com

TROUTMAN PEPPER HAMILTON SANDERS LLP
301 Carnegie Center, Suite 400
Princeton, New Jersey 08543
Tel: (609) 951-4125

Attorney for Defendant Fairleigh Dickinson University

By: _____
Steven Doval, individually and as representative of
the Class

Dated: _____

Melissa Cuello

By: _____
Melissa Cuello, individually and as representative
of the Class

Dated: _____

Ceana Cuello

By: _____
Ceana Cuello, individually and as representative of
the Class

Dated: 4/3/24

Fairleigh Dickinson University

By: 

Name: Frank Barra

Title: Senior Vice President & Chief Financial Officer

IT IS SO STIPULATED BY COUNSEL:

Dated: _____

BURSOR & FISHER, P.A.

By: _____
Philip L. Fraietta
pfraietta@bursor.com
BURSOR & FISHER, P.A.
1330 Avenue of the Americas
New York, New York 10019
Tel: (646) 837-7150
Fax: (212) 989-9163

Dated: 3-20-2024

VOZZOLO LLC

By: 

By: _____
Steven Doval, individually and as representative of
the Class

Dated: _____

Melissa Cuello

By: _____
Melissa Cuello, individually and as representative
of the Class

Dated: _____

Ceana Cuello

By: _____
Ceana Cuello, individually and as representative of
the Class

Dated: _____

Fairleigh Dickenson University

By: _____
Name: _____
Title: _____

IT IS SO STIPULATED BY COUNSEL:

Dated: _____

BURSOR & FISHER, P.A.

By: _____
Philip L. Fraietta
pfraietta@bursor.com
BURSOR & FISHER, P.A.
1330 Avenue of the Americas
New York, New York 10019
Tel: (646) 837-7150
Fax: (212) 989-9163

Dated: 3-20-2024

VOZZOLO LLC

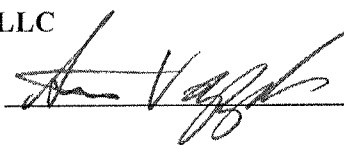
By:  _____

EXHIBIT A

Fairleigh Dickinson University Settlement Electronic Claim Form

CLAIM FORM AND INSTRUCTIONS

In order for you to qualify to receive a payment related to *Doval, et al. v. Fairleigh Dickinson University*, Docket No. BER-L-004966-20, as described in the Notice of this Settlement (the “Class Notice”), you must file a Claim Form, as set forth below, to process your claim.

Your claim will only be considered upon compliance with all of the following conditions:

1. Please review the Notice of Proposed Class Action Settlement (the “Notice”) and have the Notice with you when you complete your Claim Form. A copy of the Notice is available at www.fdusettlement.com.
2. You must select a method of payment as identified below.
3. You must sign this Claim Form.
4. By signing and submitting this Claim Form, you are certifying under penalty of perjury that you were a student at Fairleigh Dickinson University (“FDU”) and/or you paid tuition or fees to FDU for the Spring 2020 Semester that have not been refunded.
5. In order for you to receive a cash payment as part of this Settlement, you must complete and submit the form below by no later than _____, 2024.
6. Your failure to complete and submit the Claim Form by _____, 2024 will preclude you from receiving any payment in this Settlement.

ELECTION OF PAYMENT METHOD

Please choose one of the following:

OPTION ONE: RECEIVE ELECTRONIC PAYMENT

Confirm your email address below and an email will be sent from noreply@XXXX.com to the email address you provided on this Election Form, prompting you to elect your method of payment. Venmo or PayPal will be available, or you can elect to receive a check. Please ensure you have provided a current and complete email address. If you do not provide a current and valid email address, the Settlement Administrator will attempt to mail you a check to the address on file per Fairleigh Dickinson University’s records.

OPTION TWO: RECEIVE CASH PAYMENT BY CHECK

If you need to update your name or address to receive a paper check, provide the information below. It is your responsibility to notify the Claims Administrator of any changes to your contact information after the submission of your Claim Form.

I, _____, state as follows:
(PRINT FIRST AND LAST NAME)

Current Address

Current City State Zip Code

Telephone Number (Day) Telephone Number (Night)

Email Address

SIGNATURE

DATE

ACCURATE CLAIMS PROCESSING TAKES TIME. THANK YOU FOR YOUR PATIENCE.

Reminder Checklist:

1. Please select a method of payment;
2. Please sign the above Claim Form;
3. Keep print or screenshot copy of your completed Claim Form for your records;
4. If you move or your name changes, please send your new address, new name or updated contact information to the Claim Administrator via the Settlement Website, mail, or by calling the Claims Administrator's toll-free telephone number, listed in the Notice.

EXHIBIT B

From: SettlementAdminstrator@fdusettlement.com
To: JonQClassMember@domain.com
Re: Legal Notice of Class Action Settlement (FDU)

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
Doval, et al., v. Fairleigh Dickinson University, Case No. BER-L-004966-20
(Superior Court of New Jersey Law Division Bergen County)

You are receiving this notice because records show that you paid tuition or fees (excluding Room and Board) to Fairleigh Dickinson University (“FDU”) for the Spring 2020 Semester and you may be eligible for a settlement payment under the terms of a recent class action settlement.

A court has directed that this Notice be emailed to you. This is not a solicitation from a lawyer

A proposed settlement has been reached in a class action lawsuit against FDU, the defendant in a matter pending in the Superior Court of New Jersey, Law Division Bergen County (“Action”). Plaintiffs Steven Doval, Melissa Cuello, and Ceana Cuello allege that FDU breached a contract with its students to provide in-person instruction and on-campus educational services for the Spring 2020 Semester by transitioning to remote learning and services environment in March 2020 in accordance with New Jersey Governor Murphy’s Executive Order without issuing tuition and fee refunds. FDU denies all allegations of wrongdoing and liability and no Court has made any finding of liability or wrongdoing by FDU. However, in order to support its students and their families and to resolve the matter, but without admitting any wrongdoing, FDU has agreed to establish a Settlement Fund to resolve all claims in the Action (the “Settlement”).

Am I a Class Member? FDU’s records indicate you may be a Class Member. Class Members are people who paid FDU Spring 2020 Semester tuition and fees or who benefitted from the payment, and whose tuition and fees have not been refunded.

What Can I Get? Class Members who submit a timely and valid Claim Form will receive a cash benefit as set forth below. A Settlement Fund of \$1,500,000.00 has been established to pay all claims to the Settlement Class, together with notice and administration expenses, approved attorneys’ fees and costs, and incentive awards. If you are entitled to relief, you will receive a *pro rata* share of the Settlement Fund, in an amount not to exceed \$155.00, which *pro rata* share will be based on the total out-of-pocket amount of tuition and fees (excluding Room and Board) you paid for the Spring 2020 Semester (less any outstanding balance from the Spring 2020 term still owed to FDU).

YOU MUST SUBMIT A TIMELY, VALID CLAIM FORM TO RECEIVE A PAYMENT UNDER THE SETTLEMENT.

CLICK HERE TO SUBMIT A CLAIM

How Do I Get a Payment? All Class Members must submit a timely, valid Claim Form postmarked or received by [**Claim Deadline**] to receive a payment under the Settlement. Your

payment will come by check to the residential address on file with FDU. You may visit the Settlement Website at www.fdusettlement.com to update your mailing address or obtain and submit a Claim Form. You can also obtain a Claim Form by contacting the Settlement Administrator at the phone or address below. FDU has provided the Settlement Administrator with a list of the Class Members and their contact information. Also, the Court has issued an order permitting FDU, under the Family Educational Rights and Privacy Act (“FERPA”), to disclose to the Settlement Administrator, the Spring 2020 Semester out-of-pocket amount for each Class Member. FDU will release that information no later than five (5) business days after [objection/exclusion deadline]. On or before [objection/exclusion deadline], you as a Class Member have the option to request that the Court quash its order requiring such disclosure as to your information.

What are My Other Options? You may exclude yourself from the Class by sending a letter to the Settlement Administrator postmarked or received no later than [objection/exclusion deadline]. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue the FDU over the legal issues in the lawsuit. If you do not exclude yourself, you may object to the Settlement if you choose to do so. You and/or your lawyer have the right to appear before the Court and/or object to the proposed settlement. Your written objection must be filed no later than [objection/exclusion deadline]. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at www.fdusettlement.com. If you do nothing, and the Court approves the Settlement, you will be bound by all of the Court’s orders and judgments. In addition, your claims relating to the alleged breach of contract, unjust enrichment, conversion, and money had and received causes of action asserted in this case or which could have been brought in this case based upon the facts alleged regarding the Spring 2020 Semester will be released.

Who Represents Me? The Court has appointed Philip L. Fraietta of Bursor & Fisher, P.A., Antonio Vozzolo of Vozzolo LLC, and Ronald A Marron of the Law Offices of Ronald A. Marron, APLC to represent the class. These attorneys are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

When Will the Court Consider the Proposed Settlement? The Court will hold the Final Approval Hearing at _____ .m. on [date] at the Superior Court of New Jersey, Law Division, Bergen County, 10 Main St., Hackensack, New Jersey 07601. This hearing may be adjourned to a different date or may ultimately be conducted remotely. Please check the Settlement Website at www.fdusettlement.com for updates. At that hearing, the Court will: hear any objections concerning the fairness of the settlement; determine the fairness of the settlement; decide whether to approve Class Counsel’s request for attorneys’ fees, costs, and expenses; and decide whether to award the Class Representatives \$5,000 each from the Settlement Fund for their services in helping to bring and settle this case. FDU does not object to Class Counsel seeking reasonable attorneys’ fees, costs, and expenses from the Settlement Fund in an amount to be determined by the Court. Class Counsel will seek no more than one-third (33.3%) of the Settlement Fund (or Five Hundred Thousand Dollars (\$500,000.00)), but the Court may Award less than this amount.

To File a Claim or to Get More Information, including a more detailed Notice, Claim Form, a copy of the Settlement Agreement and other documents, go to www.fdusettlement.com, contact the Settlement Administrator at 1-____-____-____ or FDU Settlement Administrator, [postal address and email address], or call Class Counsel at 1-646-837-7150.

By order of the Superior Court of New Jersey Law Division Bergen County

EXHIBIT C

COURT AUTHORIZED NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

FDU Settlement
Settlement Administrator
P.O. Box 0000
City, ST 00000-0000

**FDU'S RECORDS
INDICATE YOU ARE A
PERSON WHO MAY
HAVE PAID FAIRLEIGH
DICKINSON
UNIVERSITY SPRING
2020 SEMESTER
TUITION AND FEES OR
WHO BENEFITTED
FROM THE PAYMENT,
AND WHOSE TUITION
AND FEES HAVE NOT
BEEN REFUNDED, AND
MAY BE ENTITLED TO
A PAYMENT FROM A
CLASS ACTION
SETTLEMENT.**



Postal Service: Please do not mark barcode

XXX—«ClaimID» «MailRec»

«First1» «Last1»

«C/O»

«Addr1» «Addr2»

«City», «St» «Zip» «Country»

By Order of the Court Dated: [date]

FDU SETTLEMENT

A settlement has been reached in a class action lawsuit claiming that Defendant, Fairleigh Dickinson University (“FDU”), breached a contract with its students to provide physically in-person instruction and on-campus educational services for the Spring 2020 Semester by transitioning to remote learning and services environment in March 2020 in accordance with New Jersey Governor Murphy’s Executive Order without issuing tuition and fee refunds (except for Room and Board). FDU denies all allegations of wrongdoing and liability. FDU denies all allegations of wrongdoing and liability. There has been no finding of liability by any Court. However, in order to support its students and to resolve the matter, but without admitting any wrongdoing, FDU has agreed to establish a Settlement Fund to resolve all claims in the Action (the “Settlement”). The Court has preliminarily approved the Settlement.

Am I a Class Member? FDU’s records reflect you may be a Class Member. Class Members are people who paid Defendant Spring 2020 Semester tuition and fees or who benefitted from the payment, and whose tuition and fees have not been refunded.

What Can I Get? If approved by the Court, a Settlement Fund of \$1,500,000.00 has been established to pay all claims to the Settlement Class, together with notice and administration expenses, approved attorneys’ fees and costs, and incentive awards. If you are entitled to relief, you must complete a valid, timely Claim Form in order to receive a pro rata share of the Settlement Fund, up to \$155.00, which pro rata share will be based on the total out-of-pocket amount of tuition and fees paid for the Spring 2020 Semester (except for Room and Board) (less any outstanding balance from the Spring 2020 term still owed to FDU).

How Do I Get a Payment? All Class Members must submit a timely, valid Claim Form postmarked or received by [Claim Deadline] to receive a payment under the Settlement. Your payment will come by check to the residential address on file with FDU. You may visit the Settlement Website at www.fdusettlement.com to update your mailing address or obtain and submit a Claim Form. You can also obtain a Claim Form by contacting the Settlement Administrator at the phone or address below. FDU has provided the Settlement Administrator with a list of the Class Members and their contact information. Also, the Court has issued an order permitting FDU, under the Family Educational Rights and Privacy Act (“FERPA”), to disclose to the Settlement Administrator, the Spring 2020 Semester out-of-pocket expenses and fees (excluding Room and Board) for each Class Member. FDU will release that information no later than five (5) business days after [objection/exclusion deadline]. On or before [objection/exclusion deadline], you as a Class Member have the option to request that the Court quash its order requiring such disclosure as to your information.

What are My Other Options? You may exclude yourself from the Class by sending a letter to the settlement administrator postmarked or received no later than [objection/exclusion deadline]. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue the FDU over the legal issues in the lawsuit. If you do not exclude yourself, you may object to the Settlement if you choose to do so. You and/or your lawyer have the right to appear before the Court and/or object to the proposed settlement. Your written objection must be filed no later than [objection/exclusion deadline]. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at [www.fdusettlement.com]. If you do nothing, and the Court approves the Settlement, you will be bound by all of the Court’s orders and judgments. In addition, your claims relating to the alleged breach of contract, unjust enrichment, conversion, and money had and received causes of action asserted in this case or which could have been brought in this case based upon the facts alleged regarding the Spring 2020 Semester will be released.

Who Represents Me? The Court has appointed Philip L. Fraietta of Bursor & Fisher, P.A., Antonio Vozzolo of Vozzolo LLC, and Ronald A Marron of the Law Offices of Ronald A. Marron, APLC to represent the class. These attorneys are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

When Will the Court Consider the Proposed Settlement? The Court will hold the Final Approval Hearing at [redacted] .m. on [date] at the Superior Court of New Jersey, Law Division, Bergen County, 10 Main St., Hackensack, New Jersey 07601. This hearing may be adjourned to a different date or may ultimately be conducted remotely. Please check the Settlement Website for updates. At that hearing, the Court will: hear any objections concerning the fairness of the settlement; determine the fairness of the settlement; decide whether to approve Class Counsel’s request for attorneys’ fees, costs, and expenses; and decide whether to award the Class Representatives \$5,000 each from the Settlement Fund for their services in helping to bring and settle this case. FDU does not object to Class Counsel seeking reasonable attorneys’ fees, costs, and expenses from the Settlement Fund in an amount to be determined by the Court. Class Counsel will seek no more than one-third (33.3%) of the Settlement Fund (or Five Hundred Thousand Dollars (\$500,000.00)), but the Court may Award less than this amount.

To File a Claim or to Get More Information, including a more detailed Notice, Claim Form, a copy of the Settlement Agreement and other documents, go to www.fdusettlement.com, contact the settlement administrator at 1-____-____-____ or FDU Settlement Administrator, [postal address and email address], or call Class Counsel at 1-646-837-7150.

FDU Settlement Administrator
c/o [Settlement Administrator]
PO Box 0000
City, ST 00000-0000

XXX

EXHIBIT D

SUPERIOR COURT OF NEW JERSEY LAW DIVISION BERGEN COUNTY

Doval, et al., v. Fairleigh Dickinson University, Case No. BER-L-004966-20

IF YOU ARE A PERSON WHO PAID FDU SPRING 2020 SEMESTER TUITION AND FEES OR WHO BENEFITTED FROM THE PAYMENT, AND WHOSE TUITION AND FEES HAVE NOT BEEN REFUNDED, YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

The Superior Court of New Jersey Law Division Bergen County has preliminarily approved a class action settlement that may affect your legal rights.

A court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.

- A Settlement has been reached in a class action lawsuit against Fairleigh Dickinson University (“FDU” or “Defendant”). The class action lawsuit involves whether FDU breached a contract with its students to provide physically in-person instruction and on-campus educational services for the Spring 2020 Semester by transitioning to remote learning and services environment in March 2020 without issuing tuition and fee refunds. FDU denies all allegations of wrongdoing and liability. There has been no finding of liability by any Court. However, in order to support its students and their families and to resolve the matter, but without admitting any wrongdoing, FDU has agreed to establish a Settlement Fund to resolve all claims in the Action (the “Settlement”).
- You are included if you are a person who paid FDU Spring 2020 Semester tuition and fees or who benefitted from the payment, and whose tuition and fees have not been refunded. Those included in the Settlement will be eligible to receive a *pro rata* (meaning proportional) share of the Settlement Fund, up to \$155.00, which will be based on the total out-of-pocket amount of tuition and fees paid for the Spring 2020 Semester (less any outstanding balance from the Spring 2020 term still owed to FDU).
- **TO RECEIVE PAYMENT UNDER THE SETTLEMENT, YOU MUST SUBMIT A TIMELY AND VALID CLAIM FORM.**
- **Read this notice carefully. Your rights are affected whether you act, or don’t act.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you do nothing, you will receive no payment under the Settlement. You will also give up your rights to sue FDU about the claims in this case.
SUBMIT A VALID CLAIM FORM BY [DATE]	This is the only way to receive a payment under the Settlement. Claim Forms must be postmarked or received by [Claim Deadline] .

QUESTIONS? CALL (800) 000-0000 TOLL FREE, OR VISIT WWW.FDUSETTLEMENT.COM

EXCLUDE YOURSELF BY [DATE]	If you opt out of the Settlement, you will receive no benefits, but you will retain any rights you currently have to sue FDU about the claims in this case. Any request for exclusion must be postmarked or received by [exclusion deadline] .
OBJECT BY [DATE]	If you wish, you may write to the Court explaining why you don't like the Settlement. Any objection must be filed and copies received by [objection deadline] .
GO TO THE HEARING ON [DATE]	You may ask to speak in Court about your opinion of the Settlement. Your notice of appearance must be filed and copies received by [objection deadline] .

These rights and options—**and the deadlines to exercise them**—are explained in this Notice.

BASIC INFORMATION

1. Why was this Notice issued?

A Court authorized this notice because you have a right to know about a proposed Settlement of this class action lawsuit and about all of your options before the Court decides whether to give final approval to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

If you received a Notice by email or mail, it is because records obtained in this case indicate that you were a student at Fairleigh Dickinson University (“FDU”) and/or you paid tuition or fees to FDU for the Spring 2020 Semester. As a result, you may be a Settlement Class Member (see Section 5 below for details).

The Honorable Mary F. Thurber of the Superior Court of New Jersey, Law Division, Bergen County, is overseeing this case. The case is called *Doval, et al., v. Fairleigh Dickinson University*, Case No. BER-L-004966-20. The people who sued are called the Plaintiffs. The Defendant is FDU.

2. What is a class action?

In a class action, one or more people called class representatives (in this case, Steven Doval, Melissa Cuello, and Ceana Cuello) sue on behalf of a group or a “class” of people who have similar claims. In a class action, the court resolves the issues for all class members, except for those who exclude themselves from the Class.

3. What is this lawsuit about?

This lawsuit claims that Defendant breached a contract with its students to provide physically in-person instruction and on-campus educational services for the Spring

QUESTIONS? CALL (800) 000-0000 TOLL FREE, OR VISIT WWW.FDUSETTLEMENT.COM

2020 Semester by transitioning to remote learning and services environment in March 2020 without issuing tuition and fee refunds. FDU denies it violated any law or legally enforceable commitment or promise. The Court has not determined who is right. Rather, the Parties have agreed to settle the lawsuit to avoid the uncertainties and expenses associated with ongoing litigation.

4. Why is there a Settlement?

The Court has not decided whether the Plaintiffs or FDU should win this case. Instead, both sides agreed to a Settlement. That way, they avoid the uncertainties and expenses associated with ongoing litigation, and the Class Members will get compensation and avoid the uncertainty of getting no payment if the matter proceeded to trial and a Court found FDU is not liable for the claims.

WHO'S INCLUDED IN THE SETTLEMENT?

5. How do I know if I am in the Settlement Class?

The Court decided that everyone who fits the following description is a member of the **Settlement Class**:

All people who paid FDU Spring 2020 Semester tuition and fees or who benefitted from the payment, and whose tuition and fees have not been refunded.

Excluded from the Settlement Class will be: (a) all students who were enrolled entirely in an on-line program at the beginning of the Spring 2020 Semester, (b) all students whose gift, aid or scholarship, regardless of source, equaled or exceeded the cost of tuition and fees for the Spring 2020 Semester, (c) persons who timely and properly exclude themselves from the Class as provided in the Settlement, and (e) the Court, the Court's immediate family, and Court staff.

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

Monetary Relief: A Settlement Fund has been created totaling \$1,500,000.00. Only Class Members who complete and submit a timely and valid Claim Form postmarked or received by [**Claim Deadline**] may receive monetary benefits (*see* Question 7). In addition to Class Member payments, the cost to administer the Settlement, the cost to inform people about the Settlement, attorneys' fees and expenses (inclusive of litigation costs), and an award to each of the Class Representatives will also come out of this fund (*see* Question 12).

QUESTIONS? CALL (800) 000-0000 TOLL FREE, OR VISIT WWW.FDUSETTLEMENT.COM

A detailed description of the settlement benefits can be found in the Settlement Agreement, a copy of which is accessible on the Settlement Website by clicking [here](#).
[insert hyperlink]

SUBMITTING A TIMELY, VALID CLAIM FORM IS THE ONLY WAY TO GET A PAYMENT AS PART OF THIS SETTLEMENT

7. How much will my payment be?

Each Class Member who submits a valid and timely Claim Form and who does not opt out of participating in the settlement will receive a proportionate share of the Settlement Fund, in an amount not to exceed \$155.00, which will be based on the out-of-pocket amount of tuition and fees paid by or for the Class Member for the Spring 2020 Semester (less any outstanding balance from the Spring 2020 term still owed to Defendant). Out-of-Pocket Tuition and Fees is defined in Section 2.25 of the Settlement Agreement.

8. When will I get my payment?

The hearing to consider the fairness of the settlement is scheduled for [Final Approval Hearing Date]. If the Court approves the settlement, eligible Class Members will receive their payment within 50 days after the Effective Date of the Settlement, which is no sooner than 10 business days after the Settlement has been finally approved and/or after any appeals process is complete. The payment will be made in the form of a check and all checks will expire and become void 180 days after they are issued.

HOW TO GET BENEFITS

9. How do I get a payment?

TO BE ELIGIBLE TO RECEIVE A PAYMENT FROM THE SETTLEMENT, YOU MUST COMPLETE AND SUBMIT A TIMELY AND VALID CLAIM FORM. If you are a Class Member and you want to get a payment, you must submit a timely and valid Claim Form postmarked or received no later than [**Claim Deadline**].

You can complete and submit your Claim Form online at the Settlement Website, www.fdusettlement.com. The Claim Form can be downloaded from the Settlement Website, as well. You can request a Claim Form to be sent to you by sending a written request to the Settlement Administrator by mail or by email.

MAIL: *Doval, et al., v. Fairleigh Dickinson University*, c/o XXXX Settlement Administration, P.O. Box XXXX, [ADDRESS]

EMAIL: claims@fdusettlement.com

QUESTIONS? CALL (800) 000-0000 TOLL FREE, OR VISIT WWW.FDUSETTLEMENT.COM

Your payment will come by check to the residential address on file with FDU. If you have changed addresses or are planning to change addresses prior to [insert date 50 days plus 10 business days after final approval hearing date], please click [here](#) [insert hyperlink] to complete and submit a change of address form on the Settlement Website or visit www.fdusettlement.com.

IF YOU DO NOT SUBMIT A VALID CLAIM FORM BY THE DEADLINE, YOU WILL NOT RECEIVE A PAYMENT.

REMAINING IN THE SETTLEMENT

10. What am I giving up if I stay in the Class?

If the Settlement becomes final, you will give up your right to sue FDU and other Released Parties for the claims being resolved by this Settlement. The specific claims you are giving up against FDU and other Released Parties are described in the Settlement Agreement. You will be “releasing” FDU and certain of its affiliates, trustees, faculty, employees and representatives as described in Section 2.32 of the Settlement Agreement. Unless you exclude yourself (*see* Question 13), you are “releasing” the claims, regardless of whether you submit a Claim Form or not. The Settlement Agreement is available through the “court documents” link on the website www.fdusettlement.com.

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions you can talk to the lawyers listed in Question 11 for free or you can, of course, talk to your own lawyer if you have questions about what this means.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in the case?

The Court has appointed Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A., Antonio Vozzolo of Vozzolo LLC, and Ronald A. Marron of the Law Offices of Ronald A. Marron, APLC to be the attorneys representing the Settlement Class. They are called “Class Counsel.” They believe, after conducting an extensive investigation, that the Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

12. How will the lawyers be paid?

QUESTIONS? CALL (800) 000-0000 TOLL FREE, OR VISIT WWW.FDUSETTLEMENT.COM

The Defendant has agreed that Class Counsel's attorneys' fees, expenses and costs may be paid out of the Settlement Fund in an amount to be determined by the Court. The fee petition will seek no more than one-third (33.3%) of the Settlement Fund or five hundred thousand dollars (\$500,000.00), inclusive of reimbursement of their costs and expenses (not including the administrative costs of settlement or notice). Under the Settlement Agreement, any amount awarded to Class Counsel for fees, expenses and costs will be paid out of the Settlement Fund.

Class Counsel will also request an incentive award of \$5,000 each from the Settlement Fund for their services in helping to bring and resolve this case.

The amounts to be awarded as attorneys' fees, reimbursement of costs and expenses, and incentive awards must be approved by the Court.

EXCLUDING YOURSELF FROM THE SETTLEMENT

13. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must submit a request for exclusion postmarked or received by 11:59 p.m. EST on **[objection/exclusion deadline]**. Requests for exclusion may be submitted either on the Settlement Website (via the online form accessible [here \[insert hyperlink\]](#)) or by mailing or otherwise delivering a letter (or request for exclusion) stating that you want to be excluded from the *Doval, et al., v. Fairleigh Dickinson University*, Case No. BER-L-004966-20 settlement. Your letter or request for exclusion must also include your name, your address, your signature, the name and number of this case, and a statement that you wish to be excluded. If you choose to submit a request for exclusion by mail, you must mail or deliver your exclusion request, postmarked no later than **[objection/exclusion deadline]**, to the following address:

**FDU Settlement
0000 Street
City, ST 00000**

14. If I don't exclude myself, can I sue the Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue FDU for the claims being resolved by this Settlement.

15. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, you will not receive any payment from the Settlement Fund.

QUESTIONS? CALL (800) 000-0000 TOLL FREE, OR VISIT WWW.FDUSETTLEMENT.COM

16. What information is needed from me to participate in the Settlement?

Settlement Class Members must submit a valid, timely Claim Form to receive a *pro rata* share of the Settlement Fund, in an amount up to \$155.00. FDU has provided the Settlement Administrator with a list of the Class Members and their contact information. Also, the Court has issued an order permitting FDU, under the Family Educational Rights and Privacy Act (“FERPA”), to disclose to the Settlement Administrator the Spring 2020 Semester Out-of-Pocket Tuition and Fees for each Class Member as defined in Section 2.25 of the Settlement Agreement. FDU will release that information no later than five (5) days after [objection/exclusion deadline]. On or before [objection/exclusion deadline], you as a Class Member have the option to request that the Court quash its order requiring such disclosure as to your information.

OBJECTING TO THE SETTLEMENT

17. How do I object to the Settlement?

If you are a Class Member, and you have not elected to exclude yourself from the Settlement by opting out, you can object to the Settlement if you don’t like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must file with the Court a letter or brief stating that you object to the Settlement in *Doval, et al., v. Fairleigh Dickinson University*, Case No. BER-L-004966-20 and identify all your reasons for your objections (including citations and supporting evidence) and attach any materials you rely on for your objections. Your letter or brief must also include your full name, your address, your telephone number, the basis upon which you claim to be a Class Member, the name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with your objection, a statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing, the identity of any counsel who will appear at the Final Approval Hearing on your behalf, a list of any witnesses you wish to call to testify, or any documents or exhibits you or your counsel may use, at the Final Approval Hearing, the number of class actions in which you or your attorneys have filed an objection in the last five (5) years, and your signature. If you, or an attorney assisting you with your objection, have ever objected to any class action settlement where you or the objecting attorney has asked for or received payment in exchange for dismissal of the objection (or any related appeal) without modification to the settlement, you must include a statement in your objection identifying each such case by full case caption and amount of payment received. In addition to filing your objection, you must also mail or deliver a copy of your letter or brief to the Settlement Administrator, Class Counsel and Defendant’s Counsel listed below, received no later than [objection deadline].

Class Counsel will file with the Court and post on the settlement website its request for attorneys’ fees by [two weeks prior to objection deadline].

QUESTIONS? CALL (800) 000-0000 TOLL FREE, OR VISIT WWW.FDUSETTLEMENT.COM

If you want to appear and speak at the Final Approval Hearing to object to the Settlement, with or without a lawyer (explained below in answer to Question Number 20), you must say so in your letter or brief. File the objection with the Court (or mail the objection to the Court) and mail a copy of the objection to the Settlement Administrator, Class Counsel and Defendant’s Counsel, at the addresses below, received no later than **[objection deadline]**.

Court	Class Counsel
Clerk of the Court Superior Court of New Jersey, Law Division, Bergen County 10 Main Street Hackensack, NJ 07601 OR The Court’s eCourts Civil filing system	Philip L. Fraietta Alec M. Leslie Bursor & Fisher P.A. 1330 Avenue of the Americas New York, NY 10019
Settlement Administrator	Defendant’s Counsel
FDU Settlement Administrator Attn: Objections P.O. Box 0000 City, ST 00000	Angelo Stio III Troutman, Pepper, Hamilton, Sanders, LLP 301 Carnegie Center Suite 400 Princeton, NJ 08543

18. What’s the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don’t like something about the Settlement. You can object only if you stay in the Class. Excluding yourself from the Class is telling the Court that you don’t want to be part of the Class and thus do not want to receive any benefits from the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT’S FINAL APPROVAL HEARING

19. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Final Approval Hearing at **_____ .m. on [date]** at Superior Court of New Jersey, Law Division, Bergen County, 10 Main Street, Hackensack, New Jersey 07601. The purpose of the hearing will be for the Court to determine whether to approve the Settlement as fair, reasonable, adequate, and in the best interests of the

QUESTIONS? CALL (800) 000-0000 TOLL FREE, OR VISIT WWW.FDUSETTLEMENT.COM

Class; to consider Class Counsel's request for attorneys' fees and expenses; and to consider the request for incentive awards to the Class Representatives. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement.

The hearing may be postponed to a different date or time without notice, so it is a good idea to check for updates by visiting the Settlement Website at www.fdusettlement.com or calling (800) 000-0000. No further notice will be provided if the Settlement has been approved, so monitor the Settlement Website for further developments. If, however, you timely objected to the Settlement and advised the Court that you intend to appear and speak at the Final Approval Hearing, you will receive notice of any change in the date of the Final Approval Hearing.

20. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you send an objection or comment, you don't have to come to Court to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

21. May I speak at the hearing?

Yes, as long as you do not exclude yourself from the Settlement, you may ask the Court for permission to speak at the Fairness Hearing. This is called making an appearance. You can also have your own lawyer appear in court and speak for you (instead of Class Counsel), but you will have to pay for the lawyer yourself.

If you want yourself or your own lawyer to participate or speak for you in the lawsuit, you must file with the Court a Notice of Appearance titled "Notice of Intent to Appear in *Doval, et al., v. Fairleigh Dickinson University*, Case No. BER-L-004966-20." It must include a statement that you or your lawyer wish to appear at the Fairness Hearing, your name, address, telephone number and signature, as well as the name and address of your lawyer, if one is appearing for you. If you submit an objection (see Question 17 above) and would like to speak about the objection at the Court's Fairness Hearing, you, both your Notice of Appearance and your letter or brief objecting to the settlement should include that information.

Your objection and/or notice of intent to appear must be filed with the Court and received at the addresses listed in Question 17 no later than **[objection deadline]**.

GETTING MORE INFORMATION

22. Where do I get more information?

QUESTIONS? CALL (800) 000-0000 TOLL FREE, OR VISIT WWW.FDUSETTLEMENT.COM

This Notice summarizes the Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at www.fdusettlement.com. You may also write with questions to **FDU Settlement, P.O. Box 0000, City, ST 00000**. You can call the Settlement Administrator at **(800) 000-0000** or Class Counsel at (646) 837-7150, if you have any questions. Before doing so, however, please read this full Notice carefully. You may also find additional information elsewhere on the case website www.fdusettlement.com.

QUESTIONS? CALL (800) 000-0000 TOLL FREE, OR VISIT WWW.FDUSETTLEMENT.COM

EXHIBIT E

STEVEN DOVAL, MELISSA CUELLO, and
CEANA CUELLO, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

FAIRLEIGH DICKINSON UNIVERSITY,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BERGEN COUNTY

Case No. BER-L-004966-20

STIPULATION REGARDING UNDERTAKING RE: ATTORNEYS' FEES AND COSTS

Plaintiffs Steven Doval, Melissa Cuello, and Ceana Cuello (“Plaintiffs”) and Defendant Fairleigh Dickinson University (“FDU”) (collectively, “the Parties”), by and through and including their undersigned counsel, stipulate and agree as follows:

WHEREAS, Class Counsel Philip L. Fraietta of Bursor & Fisher, P.A., Antonio Vozzolo of Vozzolo LLC, and Ronald A Marron of the Law Offices of Ronald A. Marron, APLC and their respective law firms desire to give an undertaking (the “Undertaking”) for repayment of their award of attorney fees and costs, approved by the Court, and

WHEREAS, the Parties agree that this Undertaking is in the interests of all Parties and in service of judicial economy and efficiency.

NOW, THEREFORE, the undersigned Class Counsel, on behalf of themselves and as the authorized agent for their respective law firms, hereby submit themselves and their law firms and their members to the continued jurisdiction of the Court for the purpose of enforcing the provisions of this Undertaking.

Capitalized terms used herein without definition have the meanings given to them in the Settlement Agreement.

By receiving any payments pursuant to the Settlement Agreement, Bursor & Fisher, P.A., Vozzolo LLC, and the Law Offices of Ronald A. Marron, APLC, and its shareholders, members, and/or partners consent and submit to the continued jurisdiction of the Superior Court of New Jersey, Law Division, Bergen County for the adjudication and enforcement of and any and all disputes relating to or arising out of Class Counsel's reimbursement obligation set forth herein and in the Settlement Agreement. The Final Settlement Order and Judgment shall state that the Court retains jurisdiction over such disputes.

In the event that the Final Settlement Order and Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, Class Counsel shall, within thirty (30) days repay to FDU, based upon written instructions provided by FDU's Counsel, the full amount of the attorneys' fees and costs paid to Class Counsel from the Settlement Fund, including any accrued interest.

In the event the attorney fees and costs awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, Class Counsel shall within thirty (30) days repay to FDU, based upon written instructions provided by FDU's Counsel, the attorneys' fees and costs paid to Class Counsel and/or Representative Plaintiffs from the Settlement Fund in the amount vacated or modified, including any accrued interest.

This Undertaking and all obligations set forth herein shall expire upon finality of all direct appeals of the Final Settlement Order and Judgment.

In the event Class Counsel fails to repay to FDU any attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application of FDU, and notice to Class Counsel, summarily issue orders, including but not limited to judgments and attachment orders against each of Class Counsel, and may make appropriate fines for sanctions and contempt of court.

The undersigned stipulate, warrant, and represent that they have both actual and apparent authority to enter into this stipulation, agreement, and undertaking on behalf of their law firms, Bursor & Fisher, P.A., Vozzolo LLC, and the Law Offices of Ronald A. Marron, APLC respectively.

This Undertaking may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Signatures by facsimile shall be as effective as original signatures.

The undersigned declare under penalty of perjury under the laws of the United States that they have read and understand the foregoing and that it is true and correct.

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

DATED: ____, 2024

BURSOR & FISHER, P.A.

By: Philip L. Fraietta, individually and
on behalf of Bursor & Fisher, P.A.
Attorneys for Plaintiffs

VOZZOLO LLC

By: Antonio Vozzolo, individually and
on behalf of Vozzolo LLC

Attorneys for Plaintiffs

LAW OFFICES OF RONALD A. MARRON, APLC

By: Ronald A. Marron, individually and
on behalf of Law Offices of Ronald A. Marron, APLC
Attorneys for Plaintiffs

DATED: ____, 2024

TROUTMAN PEPPER HAMILTON SANDERS LLP

By: Angelo Stio III
Attorneys for Defendant Fairleigh Dickinson University

EXHIBIT F

PUBLIC STATEMENT

Fairleigh Dickinson University has agreed to settle a class action lawsuit filed by a parent and student who sought to recover a refund of a portion of the tuition and fees they paid during the spring 2020 semester after the University transitioned to remote learning in order to comply with Governor Murphy's order requiring all New Jersey institutions of higher education to cease in-person instruction to reduce the spread of COVID-19. The settlement is without any admission of liability or wrongdoing by Fairleigh Dickinson University, but is being entered into in order to avoid the expense, risk, and uncertainty associated with continued litigation and to enable Fairleigh Dickinson University to continue to advance its commitment to providing a quality and affordable personalized education experience for all students.

In the lawsuit, the plaintiffs claimed that they were entitled to a refund of tuition and fees paid for the spring 2020 semester. Fairleigh Dickinson University denied the plaintiffs' allegations claiming that all its actions in providing a virtual educational environment were lawful, made in good faith, and enabled students to complete their education without interruption.

Under the settlement, Fairleigh Dickinson University will create a \$1.5 million fund that will be used to reimburse students and parents for up to \$155 in tuition and fees paid during the spring 2020 semester. The parties agreed that any undistributed amounts from the settlement fund will be used to establish a scholarship fund at Fairleigh Dickinson University that will be used to benefit students with unmet financial needs.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY**

STEVEN DOVAL, MELISSA CUELLO,
and CEANA CUELLO, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

FAIRLEIGH DICKINSON UNIVERSITY,

Defendant.

Case No. BER-L-004966-20

**SUPPLEMENTAL DECLARATION OF
JESSIE MONTAGUE**

I, JESSIE MONTAGUE, declare that:

1. I am the Senior Project Manager for RG/2 Claims Administration LLC (“RG/2 Claims”), whose address is 30 South 17th Street, Philadelphia, PA 19103, the independent third-party Class Action Settlement Administrator appointed by this Court to handle various settlement administration activities in the above-referenced matter. The following statements are based on my personal knowledge and information provided by other RG/2 principals and employees working under my supervision, and if called upon to do so, I could and would testify consistent with the matters stated herein.

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

and distributed in excess of \$2 billion in class action settlement proceeds.

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

4. RG/2 Claims was retained to, among other tasks: a) prepare, print, mail and email Notices to Settlement Class Members; b) create and maintain the Settlement Website that posts notices, Claim Forms and other relevant documents; c) establish a toll-free hotline; d) prepare weekly activity reports; e) handle inquiries from and correspondence to Settlement Class Members; f) re-mail Notices; g) skip-trace undeliverable addresses; h) receive and process Claim Forms; i) receive and track Opt-Outs and Objections; j) review reasonable documentation; k) calculate and issue Settlement payments to valid Claimants; l) submit a declaration attesting to the dissemination of the Class Notice and the number of claims received; and m) conduct such other tasks as the Parties mutually agree to or the Court orders RG/2 Claims to perform.

5. This declaration is submitted in supplement of the Declaration of Jessie Montague on behalf of the Settlement Administrator, RG/2 Claims Administration dated June 28, 2024 to provide an update regarding the claims, exclusions, and objections received and processed and additional information regarding notice and claims administration.

6. As set forth in my June 28, 2024 declaration, on or about May 22, 2024, RG/2 Claims received from Defendant's counsel an electronic file containing the names and known contact information for 6,715 individuals identified as Settlement Class Members. RG/2 Claims reviewed the electronic file and determined there were 6,604 unique Settlement Class Members with valid contact information.

7. On June 4, 2024, RG/2 Claims caused to be served by electronic mail, to 6,593 Class Members whose email address was provided, the Notice of Proposed Class Action

Settlement (the “Email Notice”) with links to the Settlement website that allowed Class Members to complete and submit the Claim Form online. Of the Email Notices sent, 2,589 resulted in a “bounce-back” or the email address was invalid and the Email Notice could not be delivered.

8. On June 11, 2024, RG/2 Claims caused to be served by First Class U.S. Mail the Notice of Proposed Class Action Settlement (the “Direct Mail Notice”) to 2,600 individuals identified as Settlement Class Members for whom an email address was not available or where the Email Notices resulted in a “bounce-back” or could not be delivered. The Direct Mail Notice directed Settlement Class Members to the Settlement website where Class Members could complete and submit the Claim Form online with a Claimant ID.

9. Prior to mailing the Direct Mail Notices, and in order to provide the best notice practicable and locate the most recent addresses for Settlement Class Members, RG/2 Claims processed the Settlement Class List of 6,604 names and addresses received through the United States Postal Service’s (“USPS”) National Change of Address database (“NCOA”) and updated the data with corrected information.

10. On July 2, 2024, RG/2 Claims caused to be sent by email, an additional Email Notice to the 5,643 Settlement Class Members for whom email addresses were provided and no claim form was received. Of the additional Email Notices sent, 687 Settlement Class members email addresses resulted in a “bounce-back” or the email address was invalid and the Email Notice could not be delivered. RG/2 Claims promptly sent a Direct Mail Notice to the 687 Settlement Class members.

11. As of August 5, 2024, the USPS returned 93 of the 3,287 Direct Mail Notices as undeliverable. Of the Direct Notices returned, one included a forwarding address provided by the USPS, and RG/2 Claims promptly mailed a new Direct Mail Notice to the Settlement Class

Member. For the remaining 92 Notices, RG/2 Claims performed extensive skip-trace procedures and was able to locate updated addresses for 55 Class Members. A total of 37 Direct Mail Notices remain undeliverable, thus 1% of the Direct Mail Notices sent have been deemed unsuccessfully delivered.

12. RG/2 has maintained the Settlement Website, including updating it with important documents, such as Plaintiffs' Motion for Attorneys' Fees, Costs and Incentive Awards. As of August 8, 2024, there have been 15,035 unique visitors to the Settlement Website.

13. RG/2 has maintained a toll-free number to answer Settlement Class Members Questions. As of August 8, 2024, RG/2 received 43 calls to the toll-free number, resulting in 121 minutes.

14. RG/2 has received and responded to 110 Settlement Class Member inquiries. To date, all inquires have been responded to and RG/2 remains committed to responding to all submitted inquiries.

15. Approximately 73% of Settlement Class Members opened the Email Notice within three days. The Email Notice was sent in combination with the Direct Mail Notice and less than 1% of the Direct Mail Notice sent have been deemed unsuccessfully delivered. Assuming all Direct Mail Notice not returned as undeliverable was received, RG/2 Claims estimates the overall reach of the notice was approximately 98%.

16. The Notice informed Settlement Class Members of, among other things, their right to opt-out and not participate in the Settlement, provided the request is postmarked by July 12 2024. RG/2 Claims has received four (4) valid exclusion requests, attached hereto as "**Exhibit A.**"

17. The Notice also informed Class Members of their right to object to the Settlement

provided the request is postmarked by July 12, 2024. To date, RG/2 Claims has not received or been advised of any objections to the Settlement.

18. As of August 8, 2024, RG/2 Claims has received and processed 1,523 Claim Forms. As the deadline to file a claim is forty-five (45) days after the Final Approval Hearing or October 1, 2024, the information provided regarding claim submission is subject to change and is not final. Further, in RG/2's experience, there is typically an increase in claims filing near the deadline to submit Claim Forms.

19. RG/2 Claims has incurred fees and costs associated with the Settlement Administration thus far, and will incur additional costs to process Claims, calculate and issue Settlement payments, and respond to inquiries. The total cost for the administration of this Settlement, including fees incurred and future costs for completion of the administration is estimated to be \$37,700.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 8th day of August 2024.



Jessie Montague

EXHIBIT A

Montague, Jessie T

From: RG2/Claims
Sent: Monday, June 17, 2024 2:36 PM
To: Montague, Jessie T
Subject: FW: FDU Class Action Lawsuit Exclusion

-----Original Message-----

From: Allison Schwartz <allison8@pahhc.org>
Sent: Monday, June 17, 2024 1:54 PM
To: RG2/Claims <info@rg2claims.com>
Subject: FDU Class Action Lawsuit Exclusion

Hello,

I was a student during FDU's 2020 remote learning and I would like to be officially excluded from the related class-action lawsuit. Please contact me by this email address if you need any further information from me.

Thank you,

Allison Schwartz

JUL 02 2024

Tuesday, June 25, 2024

To: FDU Settlement Administrator,

c/o RG/2 Claims Administrator

P.O. Box 59479

Philadelphia, PA 19102-9479

To FDU Settlement Administration:

I, Jaclyn Grabowski, will be excluding myself from this settlement. I have also emailed info@rg2claims.com on this date, to inform them.

Thank you,

Jaclyn Grabowski

115 Jennings Rd.

Manahawkin, NJ 08050

Montague, Jessie T

From: RG2/Claims
Sent: Monday, June 17, 2024 2:35 PM
To: Montague, Jessie T
Subject: FW: FDU Class Action Lawsuit Exclusion

-----Original Message-----

From: Lisa Schwartz <lisa@pahhc.org>
Sent: Monday, June 17, 2024 1:54 PM
To: RG2/Claims <info@rg2claims.com>
Subject: FDU Class Action Lawsuit Exclusion

Hello,

I was a student during FDU's 2020 remote learning semester, and I would like to exclude myself from the class action. If you need any further information from me regarding this matter, please do not hesitate to email me at this address (lisa@pahhc.org).

Thank you,

Lisa Schwartz

JUL 09 2024

Request for Exclusion

Yourry Tapande-Ngombe

851 21st NE APT 10

WASHINGTON,DC 20002

Yourrynyd@gmail.com

Phone: 4435592166

July 02,2024

FDU Settlement

c/o RG/2 Claims Administration

P.O. Box 59479

Philadelphia, PA 19102-9479

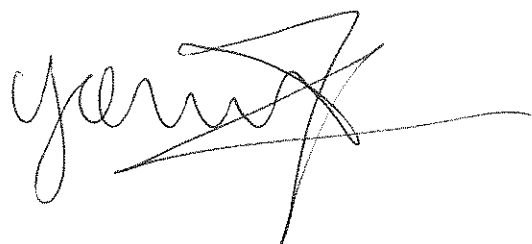
Request for Exclusion from Settlement Case Name: Doval, et al., v. Fairleigh Dickinson University, Case No. BER-L-004966-20 settlement.

I(Yourry Tapande-Ngombe) am writing to formally request exclusion from the settlement in the **Doval, et al., v. Fairleigh Dickinson University Case No. BER-L-004966-20**. I do not wish to participate in the settlement or receive any benefits from it. Please acknowledge my request for exclusion from this settlement. Thank you for your attention to this matter.

Sincerely,

Yourry Tapande-Ngombe

Signed July 2, 2024

A handwritten signature in black ink, appearing to read 'Yourry', with a large, stylized flourish extending to the right.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY**

STEVEN DOVAL, MELISSA CUELLO, and
CEANA CUELLO, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

FAIRLEIGH DICKINSON UNIVERSITY,

Defendant.

Case No. BER-L-004966-20

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

Dated: August 8, 2024

BURSOR & FISHER, P.A.

Philip L. Fraietta
Alec M. Leslie
1330 Avenue of the Americas
New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
Email: pfraietta@bursor.com
aleslie@bursor.com

VOZZOLO LLC

Antonio Vozzolo
345 Route 17 South
Upper Saddle River, New Jersey 07458
Telephone: (201) 630-8820
Facsimile: (201) 604-8400
Email: avozzolo@vozzolo.com

**LAW OFFICES OF RONALD A. MARRON,
APLC**

Ronald A. Marron (pro hac vice)
651 Arroyo Drive
San Diego, California 92103
Telephone: (619) 696-9006
Facsimile: (619) 564-6665
Email: ron@consumersadvocates.com

Class Counsel

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INTRODUCTION

On May 14, 2024, this Court preliminarily approved the class action settlement between Plaintiffs Steven Doval, Melissa Cuello, and Ceana Cuello (“Plaintiffs”) and Defendant Fairleigh Dickinson University (“FDU” or “Defendant”) (collectively, the “Parties”) and directed that notice be sent to the Settlement Class.¹ *See* Order Granting Preliminary Approval of Class Action Settlement Agreement, Certifying Settlement Class, Appointing Class Representatives, Appointing Class Counsel, and Approving Notice Plan (“Prelim. Approval Order”). The settlement administrator, RG2 Claims Administration, LLC (“RG2”), has implemented the Court-approved notice plan and direct notice has reached approximately 98% of the conditionally certified Settlement Class. The reaction from the Class has been overwhelmingly positive. Specifically, of the approximately 6,604 Settlement Class Members,² **zero** class members objected to the settlement, and only four requested to be excluded from the settlement. *See* Supplemental Declaration of Jessie Montague dated August 8, 2024 (“Montague Decl.”) ¶¶ 15-17, submitted herewith.

The Settlement is an excellent result for the Class. It creates a \$1.5 million common fund from which the Settlement Class Members may submit a claim for a *pro rata* cash payment of up to \$155 per student. On a dollar-per-student basis, this Settlement falls squarely within the range established by previous, similar settlements that have been finally approved in the COVID-19 tuition and fee refund context. *See, e.g., Fittipaldi v. Monmouth University*, No. 3:20-cv-05526, Dkt. Nos. 78-81 (D.N.J.) (\$1.3MM common fund for payment up to \$155 per student); *Smith v.*

¹ Unless otherwise noted, capitalized terms have the same meaning as set forth in the Class Action Settlement Agreement (the “Settlement Agreement” or “Settlement”), attached as Exhibit A to the Certification of Philip L. Fraietta in Support of Plaintiffs’ Motion for Final Approval of Class Action Settlement (“Fraietta Cert.”).

² In prior filings, Class Counsel estimated the class size to be approximately 8,100. Having completed the class notice process, Class Counsel has learned the correct class size is approximately 6,604.

Univ. of Pa., No. 20-2086, 2023 U.S. Dist. LEXIS 9094, at *6 (E.D. Pa. Jan. 18, 2023) (\$4.5MM common fund; 24,500 class members); *Rosado v. Barry Univ., Inc.*, No. 1:20-cv-21813-JEM, 2021 U.S. Dist. LEXIS 169196, at *7 (S.D. Fla. Sep. 7, 2021) (\$2.4MM common fund; 6,077 settlement class members); *Choi v. Brown University*, No. 1:20-cv-00191, Dkt. Nos. 80-81 (D.R.I.) (\$1.5MM common fund; 9,646 students); *Wright v. S. New Hampshire Univ.*, No. 1:20-cv-00609, Dkt. Nos. 33-1, 37 (D.N.H.) (\$1.25MM common fund; approximately 3,607 students); *Martin v. Lindenwood Univ.*, No. 4:20-cv-01128, Dkt. Nos. 46-1, 48 (E.D. Mo.) (\$1.65MM common fund; approximately 6,000 students).

Based on the excellent results achieved, and for the reasons set forth below, Plaintiffs respectfully request that the Court grant final approval of the Settlement.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

Plaintiffs and Settlement Class Members are current or former students and/or payors of tuition and fees for the Spring 2020 Semester at FDU. Plaintiffs allege that they and Settlement Class Members “entered into a contractual agreement wherein Plaintiffs [and Settlement Class Members] would provide payment in the form of tuition and fees and Defendant, in exchange, would provide in-person educational services, experiences, opportunities, and other related services.” *See* Class Action Complaint and Demand for Jury Trial (“Complaint”) filed on August 25, 2020, ¶ 2. They also allege “[t]he terms of the contractual agreement were set forth in publications from FDU, including FDU’s 2020 Spring Semester Course Catalog.” *Id.* The Complaint further alleges “[w]hen Plaintiffs and [Settlement] Class Members sought to enter into a contractual agreement with Defendant for the provision of educational services for the Spring Semester 2020, Plaintiffs and [Settlement] Class Members viewed the Course Catalog to make specific course selections prior to registering and paying for selected courses. They did not select

classes from the ‘Online courses only’ section.” *Id.* ¶ 3.

Plaintiffs allege that “[a]s a result of the closure of Defendant’s facilities, Defendant did not deliver the educational services, facilities, access and/or opportunities that Plaintiff and the [Settlement Class Members] contracted and paid for.” *Id.* ¶ 12. Specifically, Plaintiffs claim “FDU did not provide the in-person education, experiences, or related services” they and Settlement Class Members contracted and paid for “for approximately 50% of the 2020 Spring Semester.” *Id.* ¶ 13. As such, Plaintiffs allege they are “entitled to a refund of tuition and fees for in-person educational services, facilities, access and/or opportunities that Defendant has not provided.” *Id.* ¶ 14.

Defendant denies that it breached any express or implied contract with its students or that it was unjustly enriched because of the change to remote learning and services during the Spring 2020 Semester due to COVID-19.

B. Procedural Background

On August 25, 2020, Plaintiffs filed a putative class action complaint in the Superior Court of New Jersey – Bergen Civil Division. The Complaint alleges that FDU breached a contract with its students and should have refunded tuition and fees for a portion of the Spring 2020 academic semester after FDU ceased to hold in-person classroom instruction and moved to a remote learning format to comply with Governor Murphy’s order requiring all New Jersey institutions of higher education to cease in-person instruction to reduce the spread of COVID-19. *See generally* Complaint. In response to the Complaint, on October 29, 2020, Defendant filed a Motion to Dismiss arguing, among other points, that the Complaint alleges impermissible educational malpractice claims and failed to identify any promise to provide in person instruction or any duty owed by FDU to provide a refund to students. On December 4, 2020, Plaintiffs filed their

opposition to Defendant's Motion to Dismiss, and on December 21, 2020 Defendant filed a reply. On February 5, 2021, following oral argument, the Court denied Defendant's Motion to Dismiss.

Following the Order denying the Motion to Dismiss, on February 19, 2021, Defendant filed an answer to the Complaint, denying the allegations and asserting 24 affirmative defenses. The Parties then engaged in significant formal discovery, including propounding and responding to requests to produce documents and interrogatories. *See Fraietta Cert.* ¶ 9. FDU produced approximately 4,788 pages of documents for Plaintiffs' review and Plaintiffs produced 27 pages of documents for FDU's review. *See id.* During the discovery phase, Plaintiffs' Counsel and counsel for FDU initiated settlement discussions to resolve the litigation. *Fraietta Cert.* ¶ 10.

C. History of Settlement Negotiations

On June 3, 2022, the Parties requested a brief stay of all case deadlines to allow the Parties to focus their efforts on facilitating a potential resolution. *See id.* On May 25, 2022, and February 15, 2023, the Parties participated in full-day mediation sessions before a third-party neutral, Hon. Frank A. Buczynski, Jr. (Ret.) to resolve this action. *See id.* ¶ 11. In preparation for the mediations, the Parties exchanged informal discovery, including the total out-of-pocket amounts paid for in-person tuition and fees for the Spring Semester 2020. Plaintiffs' counsel also submitted a detailed settlement-conference statement, airing their respective legal arguments and theories on potential damages. *See id.* ¶ 12. Though both mediation sessions proved unsuccessful, the Parties maintained an open dialogue regarding resolution. *See id.* ¶ 14. In the ensuing months, the Parties continued their settlement dialogue directly. *See id.* After extensive, vigorous discussions and arm's-length negotiations, and numerous exchanges of information and settlement proposals, the Parties were able to reach an agreement to resolve the Action, which Plaintiffs and their Counsel believe is fair, reasonable and adequate, and in the best interests of Plaintiffs and Settlement Class Members. *See id.* ¶ 14.

D. Preliminary Approval and Settlement Administration

On April 16, 2024, Plaintiffs filed the Motion for Preliminary Approval of Class Action Settlement, and on May 14, 2024, the Court issued an Order granting Plaintiffs' Motion. The Order: (1) preliminarily approved the Settlement, (2) provisionally certified a Settlement Class, for settlement purposes only (3) appointed Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A., Antonio Vozzolo of Vozzolo LLC, and Ronald A. Marron of Law Offices of Ronald A. Marron as Class Counsel to represent the Settlement Class, (4) appointed Plaintiffs as Class Representatives, (5) approved RG2 as Settlement Administrator; (6) approved the methods for giving notice, and (7) scheduled a fairness hearing for August 22, 2024. The Order conditionally certified a class for settlement purposes of all people who paid Defendant Spring 2020 semester tuition and fees or who benefited from the payment, and whose tuition and fees have not been refunded (the "Settlement Class").

In accordance with the Order, Plaintiffs filed their Motion for Attorneys' Fees, Costs, Expenses, and Incentive Awards with the Court on June 28, 2024, which the Court granted on July 19, 2024. The Court's Order further required Plaintiffs to file this Motion for Final Approval on or before August 8, 2024.

Class Counsel has worked diligently with the Settlement Administrator to administer the notice plan and monitor the claims process. Fraietta Cert. ¶ 25. As required by the notice program approved by the Court, class notice was sent directly to 6,604 unique Settlement Class Members for whom valid contact information was available from Defendants' files. Montague Decl. ¶ 6. Specifically, on June 4, 2024, RG2 sent email notice to 6,593 Class Members for whom an email address was available. *See id.* ¶ 7. On June 11, 2024, RG2 sent notice by First Class U.S. Mail to 2,600 individuals identified as Settlement Class Members for whom an email address was not available or where the email notices resulted in a "bounce-back" or could not be delivered. *See*

id. ¶ 8. In addition, a second email notice was sent on July 2, 2024 to the 5,643 Settlement Class Members for whom email addresses were provided and no claim form was received. *See id.* ¶ 10. Further, postcard notices were mailed to 687 Settlement Class Members whose second email notice bounced-back or was not delivered. *See id.* The Settlement Administrator has also maintained a Settlement Website and set up a toll-free number, with Interactive Voice Response to answer potential questions. *See id.* ¶ 12; Settlement § 5.1(d)-(e). The Settlement Website also maintains copies of important documents, including: the Settlement Agreement; the Preliminary Approval Motion; the Preliminary Approval Order; Plaintiffs’ Motion for Attorneys’ Fees, Costs and Incentive Awards, the Long Form Notice; an online proof of claim form; a printable claim form; the date of the Fairness Hearing; the deadline to opt out; the deadline to submit an objection; and a “Frequently Asked Questions” segment. Settlement § 5.1(d).

II. THE TERMS OF THE PROPOSED SETTLEMENT

The key terms of the Settlement are briefly summarized as follows:

A. Class Definition

The “Settlement Class” or “Settlement Class Members” is defined as:

[A]ll people who paid Defendant Spring 2020 Semester tuition and fees or who benefitted from the payment, and whose tuition and fees have not been refunded. Excluded from the Settlement Class will be: (a) all students who were enrolled entirely in an on-line program during the Spring 2020 Semester, (b) all students whose gift, aid (not including loans) or scholarship, regardless of source, equaled or exceeded the cost of tuition and fees for the Spring 2020 Semester, (c) persons who timely and properly excluded themselves from the Class, and (d) the Court, the Court’s immediate family, and Court staff.

Fraietta Cert., Ex. A, Settlement § 2.37.

B. Monetary Relief in the Form of a Common Fund

The Settlement creates a \$1.5 million common fund from which will be paid cash awards to Settlement Class Members as well as Settlement Administration Expenses, any incentive awards to the Class Representatives, and any attorneys' fees or expenses awarded to Class Counsel. *Id.*, § 2.38. Each Settlement Class Member is eligible to make a claim for a *pro rata* cash payment from the Settlement Fund up to \$155 per student. *Id.*, § 3.1(c). The Notice advised Settlement Class Members of their right to submit a claim to receive a *pro rata* share of the Settlement Fund, which will be paid by electronic payment (Venmo or PayPal) or by check to the residential address on file at FDU or any updated address identified by the Settlement Administrator. *See Id.*, § 3.1(e); Exhibits A-D to the Settlement Agreement. Settlement Class Members may also update their mailing address via the paper or electronic claim form, if necessary. *See Exhibit A* to the Settlement Agreement. Once payment is made from the Settlement Fund of all Class Member claims, the costs of Notice and Settlement Administration, any Fee and Expense Award and any Incentive Awards, to the extent there are any remaining funds, they must be used to create scholarships to benefit students in need as *cy pres*. Settlement, § 3.1(e).

C. Release and Discharge of Claims

In exchange for the relief described above, the obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims, as against all Released Parties. *Id.*, § 4.1. Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them. *Id.*, § 4.2.

D. Notice and Administration

The Class Notice has been timely disseminated in accordance with the schedule and procedure directed in the Court's Preliminary Approval Order. Fraietta Cert. ¶ 27; *see generally* Montague Decl. Class Notice was timely emailed to 6,593 Settlement Class Members whose email address was provided by Defendant, and sent via First Class U.S. Mail to 2,600 individuals identified as Settlement Class Members for whom an email address was not available or where he Email Notices resulted in a "bounce-back" or could not be delivered. Montague Decl., ¶¶ 7-8; Settlement § 5.1(a); *see also supra*, § I.D (describing dissemination of notice).

In addition, the Settlement Administrator established a Settlement Website with substantial information including: (1) details regarding the lawsuit, the Settlement and its benefits, and the Settlement Class Members' legal rights and options, including objecting to or requesting to be excluded from the Settlement, filing a claim form, and/or the consequences of not doing anything; (2) instructions on how and when to submit a claim for reimbursement; (3) instructions on how to contact the Settlement Administrator and Class Counsel by e-mail, mail or telephone; (4) copies of the Complaint, the Motion for Preliminary Approval, the Order granting Preliminary Approval, the Settlement Agreement, the Long Form Notice, and the Motion for Attorneys' Fees, Costs and Incentive Awards; (5) important dates pertaining to the Settlement, including the deadline to opt-out of or object to the Settlement, the claim submission deadline, and the Fairness Hearing date, place and time; and (6) answers to Frequently Asked Questions. *See* Montague Decl., ¶ 12.

E. Claims Process

To receive a cash award under the Settlement, Settlement Class Members are entitled to submit a claim by completing and submitting a Claim Form to the Settlement Administrator on or before the Claims Deadline specified in the Class Notice, October 1, 2024. Settlement §§ 2.4-2.7.

To submit a claim, Class Members are required to select a method of payment (electronic or paper check) and to sign the Claim Form, certifying under penalty of perjury that they either were a student at FDU and/or paid tuition or fees to FDU for the Spring 2020 Semester that have not been refunded. *See* Exhibit A to the Settlement Agreement. While the claim submission deadline is not until October 1, 2024, the Settlement Administrator has received 1,523 Claim Forms as of August 8, 2024. Montague Decl., ¶ 18. With nearly two (2) months remaining to make a claim, Class Counsel expect that the number of submitted claims will increase. Fraietta Cert. ¶ 30.

F. Opt-Out Rights and Objections

Pursuant to the Settlement Agreement and Preliminary Approval Order, any Settlement Class Member who wishes to opt-out or object to the Settlement was required to do so in accordance with the procedure and deadline set forth therein. *See* Prelim. Approval Order, ¶¶ 16-18. The opt-out and objection deadline passed on July 12, 2024. As reported by the Settlement Administrator, there are only four opt-outs and zero objections to the Settlement. Fraietta Cert., ¶¶ 28-29; Montague Decl., ¶¶ 16-17.

G. Incentive Awards and Attorneys' Fees, Costs, and Expenses

The Settlement provides that the Settlement Fund will also be used to pay Class Counsel reasonable attorneys' fees and to reimburse expenses in this action, in an amount to be approved by the Court. Settlement, § 10.1. In accordance with the Settlement and the Preliminary Approval Order, on June 28, 2024, Plaintiffs moved for approval of an award of attorneys' fees, costs, and expenses not to exceed one-third (33.3%) of the Settlement Fund (or five hundred thousand dollars (\$500,000.00)). In addition, Plaintiffs moved for incentive awards for the Class Representatives from the Settlement Fund in recognition of their efforts on behalf of the Settlement Class, in the amount of five thousand dollars (\$5,000.00) each. *See id.* § 10.3. The requested fees, costs,

expenses, and incentive awards are unopposed and the Court granted Plaintiffs' separately filed motion for fees, costs, expenses, and incentive awards on July 19, 2024.

III. ARGUMENT

A. Certification of the Settlement Class Is Appropriate

In the Preliminary Approval Order, the Court preliminarily concluded that the requirements of Rule 4:32-1 have been met with respect to the Settlement Class, and preliminarily appointed Class Counsel to represent the Settlement Class and Plaintiffs as Class Representatives of the Settlement Class. *See* Prelim. Approval Order, ¶¶ 4, 8. Nothing has changed since the granting of preliminary approval that would warrant a change in these findings.

1. The Requirements of R. 4:32-1(a) Are Satisfied.

Rule 4:32-1(a) provides for class treatment where: (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. Each requirement is satisfied here.

a) Numerosity

Rule 4:32-1(a)'s first requirement, numerosity, is satisfied where "the class is so numerous that joinder of all members is impractical." R. 4:32-1(a). For purposes of numerosity, "impracticable" does not mean impossible, only that common sense suggests that it would be difficult or inconvenient to join all Class Members. *See Stewart v. Abraham*, 275 F.3d 220, 226–27 (3d Cir. 2001) (numerosity requirement satisfied "if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40"). Here, the Settlement Class consists of roughly 6,604 members. Montague Decl. ¶ 6. Therefore, the numerosity requirement is satisfied.

b) Commonality

Rule 4:32-1(a)(2) requires that there be “questions of law or fact common to the class.” Commonality is met “[w]hen the party opposing the class has engaged in a course of conduct that affects a group of persons and gives rise to a cause of action resulting in all of the members sharing at least one of the elements of that cause of action.” *Cerbo v. Ford of Englewood, Inc.*, 2006 WL 177586, at *6 (N.J. Super. Ct. Law Div. Jan. 26, 2006) (internal quotation marks and citation omitted). Even “a single common question is sufficient to satisfy the commonality requirement.” *See Delgozzo v. Kenny*, 266 N.J. Super. 169, 185 (App. Div. 1993).

Here, Class Members share many common questions, including (a) whether FDU breached its implied contract with students and/or was unjustly enriched by refusing to issue partial refunds for the Spring 2020 Semester despite failing to provide in-person educational services; (b) whether FDU provided the services for which the Settlement Class Members allegedly contracted; and (c) whether the Settlement Class Members are entitled to a refund for that portion of the services Defendant did not deliver. These common questions, which target the same alleged misconduct by FDU, satisfy Rule 4:32-1(a)(2).

c) Typicality

Rule 4:32-1(a)(3) requires that the claims or defenses of the representative parties are typical of the claims or defenses of the class and seeks to ensure that the interests of the named plaintiffs align with those of the class. To satisfy this requirement, the “claims of the representatives must ‘have the essential characteristics common to the claim of the class.’” *Matter of Cadillac V8-6-4 Class Action*, 93 N.J. 412, 425, (1983) (quoting 3B Moore’s Federal Practice ¶ 23.06-2 (1982)). Representative claims are “typical” if they are reasonably co-extensive with those of absent class members. *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 183-84 (3d Cir. 2001).

Here, Plaintiffs' claims are typical of those of the Class. Plaintiffs allege that FDU breached its implied contract with students to provide an in-person educational experience by refusing to issue partial refunds for the Spring 2020 Semester. *See* Complaint, ¶¶ 1-4, 45-60. Plaintiffs' individual circumstances are identical to those of other Settlement Class Members in that all of them paid tuition and fees to FDU predicated on in-person and on-campus education and services that were not delivered for approximately half of the Spring Semester 2020. Accordingly, Plaintiffs' claims are typical of the other Settlement Class Members' claims, and the typicality requirement is satisfied.

d) Adequacy

Rule 4:32-1(a)(4) requires that the representative parties will "fairly and adequately protect the interests of the class." The adequacy standard is satisfied where: (1) plaintiffs' attorneys are qualified, experienced and generally able to conduct the proposed litigation; and (2) plaintiffs do not have interests antagonistic to those of the class. *See Wetzel v. Liberty Mut. Ins. Co.*, 508 F.2d 239, 247 (3d Cir.), cert. denied, 421 U.S. 1011 (1975). Here, both prongs are met.

First, Plaintiffs' claims are co-extensive with those of the Settlement Class. Plaintiffs – like each one of the Settlement Class Members – paid tuition and fees to attend FDU for the Spring 2020 Semester for in-person and on-campus education and resources. *See* Complaint ¶¶ 16-18. Thus, Plaintiffs and the Settlement Class Members have the exact same interest in recovering damages from Defendant. As such, Plaintiffs do not have any interests antagonistic to those of the Settlement Class Members. Moreover, throughout the pendency of this action, the Class Representatives have adequately and vigorously represented their fellow Class Members. They have spent significant time assisting their counsel, providing information regarding Defendant's policies and practices, providing pertinent documents, and consulting with Class Counsel, including with regard to settlement. *Fraietta Cert.*, ¶¶ 39-42.

Likewise, as set forth in the Motion for Attorneys' Fees, Costs, Expenses, and Incentive Awards, Class Counsel has extensive experience litigating class actions of similar size, scope, and complexity to the Action. *See also* Fraietta Cert., ¶¶ 31-35. Class Counsel regularly engages in major complex class action litigation, has the resources necessary to conduct litigation of this nature, and has frequently been appointed lead class counsel by courts throughout the country. *Id.* Accordingly, since Plaintiffs and Class Counsel have demonstrated their commitment to advancing and fully protecting the common interests of all members of the Class, and do not have interests antagonistic to the Settlement Class, the adequacy requirement is satisfied.

2. The Requirements of Rule 4:32-1(b)(3) Factors Are Met

Rule 4:32-1(b)(3) requires 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 efficiently adjudicating the controversy. *See Cerbo*, 2006 WL 177586, at *9. Both requirements are satisfied here.

a) Common Questions Predominate

A class action is appropriate under Rule 4:32-1(b)(3) if questions of law or fact common to Class Members predominate over any questions affecting only individual members. *In re Cadillac V8-6-4 Class Action*, 461 A.2d at 742. It does not “require that all issues be identical among class members or that each class member be affected in precisely the same manner.” *Int'l Union of Operating Engineers Loc. No. 68 Welfare Fund v. Merck & Co.*, 192 N.J. 372, 383 (2007); *Iliadis v. Wal-Mart Stores, Inc.*, 191 N.J. 88, 108-09 (2007) (same). “Predominance” also does not require that the number of common issues be greater than the number of individual issues. *Carroll v. Cellco P'ship*, 313 N.J. Super. 488, 499 (App. Div. 1998) (“Predominance is not, however, determined by adding up the number of common and individual issues and determining which is greater.”). Instead, courts look to determine whether the “core” of the case concerns

common issues of law and fact relating to liability. *In re Cadillac V8-6-4 Class Action*, 93 N.J. at 435; *see also In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283 at 314 (3d. Cir. July 23, 1998).

As discussed above, the same common questions relevant to the Rule 4:32-1(a)(2) analysis predominate, including whether FDU engaged in a common course of conduct by closing its campus for approximately half of the Spring Semester 2020 after receiving tuition and fee monies from Plaintiffs and Settlement Class Members for in-person and on-campus education and resources. The common legal and factual questions are at the core of the litigation and are focused on the actions of FDU, not Plaintiffs, for breaching its contract with students for in-person educational experiences for Spring Semester 2020. Indeed, any FDU student who paid tuition or fees could be substituted into the role of plaintiff and the core issues would be the same. Accordingly, there is a “common nucleus of operative facts” in this case such that common issues predominate. *In re Cadillac V8-6-4 Class Action*, 93 N.J. at 431; *see also Miranda v. Xavier Univ.*, No. 1:20-cv-539, 2023 U.S. Dist. LEXIS 178072, at *7-8 (S.D. Ohio Oct. 3, 2023) (predominance satisfied where liability would “not rise or fall on the individualized conduct of a class member but on [university’s] conduct of stopping in-person and on-site instruction”).

b) Class Treatment Is Superior to Alternative Methods of Adjudication

Under Rule 4:32-1(b)(3), the Court should certify the Settlement Class if it finds that a “class action is superior to other available methods for fairly and efficiently adjudicating the controversy,” considering (A) the class members’ interest in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; and (C) whether it is desirable to concentrate litigation of claims in this forum. As only a settlement class is at issue

here, “manageability of a trial is not a consideration.” *Cerbo*, 2006 WL 177586, at *10. Further, class certification is superior where individual claims are small or modest. *See In re Cadillac V8-6-4*, 93 N.J. at 424; *see also Kronisch v. Howard Sav. Inst.*, 335 A.2d 587, 596 (Ch. Div. 1975) (“Having in mind the minimal financial stake of the individual members of the plaintiff class, their separate interest in conducting the suit must be regarded as altogether remote.”), remanded sub nom. *Kronisch II*, 363 A.2d 376, 379 (App. Div. 1976) to *Kronisch III*, 382 A.2d 64 (Ch. Div. 1977), *aff’d in part, rev’d in part, Kronisch IV*, 392 A.2d 178 (App. Div. 1978); *see also Varacallo v. Mass. Mut. Life Ins. Co.*, 332 N.J. Super. 31, 45 (App. Div. 2000). Further, the notion that New Jersey’s class action rule should be liberally construed has particular force where consumers are attempting to redress a common legal grievance under circumstances that would make individual actions uneconomical to pursue. *See Lusky v. Capasso Bros.*, 118 N.J. Super. 369, 372-73 (App. Div. 1972) (class action superior to individual small claims and should be permitted unless a clear showing it is improper); *see also Riley v. New Rapids Carpet Center*, 61 N.J. 218, 225 (1972) (noting that class certifications should be granted unless “clearly infeasible”).

Here, class treatment will facilitate the favorable resolution of all Settlement Class Members’ claims. Plaintiffs and the Settlement Class Members have limited financial resources with which to prosecute individual actions, and Plaintiffs are unaware of any individual lawsuits that have been filed by Settlement Class Members arising from the same allegations. Employing the class device here will not only achieve economies of scale for Settlement Class Members but will also conserve the resources of the judicial system and preserve public confidence in the integrity of the system by avoiding the expense of repetitive proceedings and preventing inconsistent adjudications of similar issues and claims. This, combined with the fact that all the Settlement Class Members’ claims are based upon the same basic operative facts and legal

standards, renders this case particularly suited for class treatment. In sum, a class action is the most suitable mechanism to fairly, adequately, and efficiently resolve the Settlement Class Members' claims. For these reasons, the superiority requirement is easily satisfied.

B. The Proposed Settlement is Fair, Reasonable, and Adequate, and Should be Approved by the Court

The Settlement Agreement should be approved by this Court. The Settlement is the result of arm's length negotiations among the Parties and their highly experienced counsel. The Settlement provides significant and immediate monetary benefits considering all the attendant risks and delays of litigation. Prior to reaching resolution, Class Counsel thoroughly investigated the case, and gathered ample information during discovery to assess the strengths and weaknesses of the Parties' positions. Having weighed the likelihood of success and the inherent risks and expense of litigation, Plaintiffs believe that the proposed settlement is "fair, reasonable, and adequate" as required by Rule 4:32-2(e).

1. Governing Law

New Jersey has a strong public policy favoring the settlement of lawsuits. *Honeywell v. Bubb*, 130 N.J. Super. 130, 136 (App. Div. 1974) (holding that, "barring fraud or other compelling circumstances, our courts strongly favor the policy that the settlement of litigation be attained, and agreements thereby reached, be honored."). In making a final approval ruling, the Court is required to assess whether the settlement is "fair and reasonable" to the members of the class. *Morris Cty. Fair Hous. Council v. Boonton Twp.*, 197 N.J. Super. 359, 369 (Law. Div. 1984). In analyzing whether a proposed class settlement is "fair and reasonable," New Jersey courts have adopted a list of factors set forth by the Third Circuit in *Girsh v. Jepsen*, 521 F.2d 153, 157 (3d Cir. 1975). *See Sutter v. Horizon Blue Cross Blue Shield of New Jersey*, 406 N.J. Super. 86 (App. Div. 2009). Those factors include:

(1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation.

Girsh, 521 F.2d at 157. The *Girsh* factors “are a guide and the absence of one or more does not automatically render the settlement unfair.” *In re Am. Fam. Enterprises*, 256 B.R. 377, 418 (D.N.J. 2000). The Settlement meets each of these factors.

2. The *Girsh* Factors Are Satisfied

a) Complexity, Expense, and Likely Duration of the Litigation

This first factor considers “the probable costs, in both time and money, of continued litigation.” *In re Cendant Corp. Litig.*, 264 F.3d 201, 233 (3d Cir. 2001) (internal quotation marks omitted). Unless the proposed settlement is clearly inadequate, its approval is preferable to the continuation of lengthy and expensive litigation with uncertain results. *See Morris County Fair Housing Council*, 197 N.J. Super. at 369.

Here, significant time, effort, and expense would be incurred to brief complex substantive motions (including a motion to certify the class), resolve discovery disputes and dispositive motions, prepare for and complete trial, and submit post-trial submissions. Even if the Class were to recover a larger judgment after trial, which is far from guaranteed, the additional delay, through summary judgment, trial, post-trial motions, and the appellate process, would deny the Class any recovery for years. *See Miranda v. Xavier Univ.*, No. 1:20-cv-539, 2023 U.S. Dist. LEXIS 178072, at *11 (S.D. Ohio Oct. 3, 2023) (noting “there would likely be intense dispute over ... [university’s] liability, and any damages” for suspending on-campus activity; “Thus, without settlement, the

parties would likely expend significant time and money litigating this case through class certification, dispositive motions, trial, and appeal. This factor weighs in favor of [settlement approval.]). This Settlement secures a substantial and certain benefit for the Class, undiminished by significant expenses, and without the delay, risk, and uncertainty of continued litigation. For these reasons, the first *Girsh* factor weighs in favor of final approval of the Settlement.

b) The Reaction of the Class to the Settlement

The second *Girsh* factor “attempts to gauge whether members of the class support the [S]ettlement.” *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 318 (3d Cir. 1998). To properly evaluate it, “the number and vociferousness of the objectors” must be examined. *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 812 (3d Cir. 1995).

Here, the reaction of the Class Members has been overwhelmingly positive. Following a nation-wide notice campaign, with a reach of approximately 99%, not a single objection has been received and there have been only four requests for exclusion. Montague Decl. ¶¶ 16-17. Generally, “silence constitutes tacit consent to the agreement.” *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1313 (3d Cir. 1993). Under *Girsh*, the absence of objections weighs in favor of approval. *See Weiss v. Mercedes-Benz of N. Am., Inc.*, 899 F. Supp. at 1301 (D.N.J) (100 objections out of 30,000 class members weighs in favor of settlement). For these reasons, the second *Girsh* factor weighs in favor of final approval of the Settlement.

c) The Parties Completed Sufficient Investigation and Discovery

The stage of the proceedings and the amount of discovery completed is another factor that courts consider in determining the fairness, reasonableness, and adequacy of a settlement. *GM Trucks*, 55 F.3d at 785. “This factor considers the degree of case development accomplished by

counsel prior to settlement.” *Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745 at *35 (D.N.J.,2011). Nevertheless, even settlements reached at a very early stage and prior to formal discovery may be appropriate if there is no evidence of collusion, and the settlement represents substantial concessions by both sides. *See, e.g., Weiss*, 899 F. Supp. at 1301 (“Admittedly, the case is still in the early stages of discovery.”).

Here, the Parties exchanged sufficient information to engage in informed negotiations and to evaluate the strengths and weaknesses of the claims. The Parties engaged in significant formal and informal discovery, including propounding and responding to requests to produce documents and interrogatories. *See Fraietta Cert.* ¶¶ 9, 12. FDU produced approximately 4,788 pages of documents for Plaintiffs’ review. *See id.* ¶ 9. As a result, Class Counsel was well-positioned to evaluate the strengths and weaknesses of the case and the appropriate basis upon which to settle it.

The Parties also engaged in significant arm’s-length negotiations with the assistance of a neutral, third-party mediator. Plaintiffs were represented in the settlement negotiations by counsel with considerable experience in complex class actions, well-versed in the legal and factual issues relevant to class action litigation. Similarly, Defendant was represented by Troutman Pepper Hamilton Sanders LLP, counsel with extensive experience defending class actions and complex litigation matters. During settlement negotiations, the Parties vigorously advocated their respective clients’ positions, and the Parties were prepared to litigate the case fully if no settlement was reached. In short, the parties were fully informed of all relevant facts when they negotiated the Settlement. The record developed while reaching an agreement to settle claims of the Plaintiffs and the Class provides sufficient information for this Court to determine that the proposed Settlement is fair.

d) Risks Of Establishing Liability, Damages, and Maintaining the Class Action Through Trial

The fourth, fifth and sixth *Girsh* factors address the risks of establishing liability, damages and maintaining the class action through trial. *Singleton v. First Student Mgmt. LLC*, 2014 WL 3865853, at *6 (D.N.J. Aug. 6, 2014). The risks of establishing liability should be considered to “examine what the potential rewards (or downside) of litigation might have been had class counsel decided to litigate the claims rather than settle them.” *In re Cendant Corp. Litig.*, 264 F.3d 201, 237 (3d Cir. 2001).

Here, Plaintiffs and Class Counsel were confident in the strength of their case, but also pragmatic in their awareness of the risks inherent to litigation and the various defenses available to FDU. In fact, several courts across the country, including in New Jersey, have granted motions to dismiss tuition refund claims. *See Fraietta Cert.* ¶ 23. Other courts have denied class certification, and others have granted summary judgment in favor of the university defendants. *See id.* Plaintiffs and Class Counsel were therefore mindful that absent a settlement, the success of Defendant’s various defenses in this case could deprive the Plaintiffs and the Settlement Class Members of any relief whatsoever. If this case were to be litigated further, the next steps would entail extensive motion practice, costly and time-consuming discovery and depositions, including expert depositions, followed by contested motions for class certification and summary judgment.

These efforts would be costly and time consuming for the Parties and the Court, and create the risk that a litigation class might not be certified, or could be decertified, and/or that there could be no recovery for the class at all. *See, e.g., Faber v. Cornell Univ.*, 2023 U.S. Dist. LEXIS 148833, at *14-15 (N.D.N.Y. Aug. 24, 2023) (noting uncertainties favor settlement in COVID refund litigation that “involves novel claims, include no trial verdict, and has resulted in a mixed bag of results during pre-trial litigation”). If FDU were to prevail at the class certification or

summary judgment stages, then it could reduce recoverable damages or eliminate them altogether. Furthermore, there is a substantial risk of losing inherent in any jury trial. Even if Plaintiffs did prevail, any recovery could be delayed for years by an appeal. The Settlement, however, provides certainty and a monetary benefit to the Class in a timely fashion that minimizes any significant commitment of future resources by the Parties and the Court. Considering Plaintiffs' chances of ultimate success on the merits, the time and expense involved in litigating the case to conclusion, and the inherent risks of litigation, the Parties believe that the Settlement Agreement is fair and reasonable under all the facts and circumstances.

Considering Plaintiffs' chances of ultimate success on the merits, the time and expense involved in litigating the case to conclusion, and the inherent risks of litigation, Plaintiffs believe that the Settlement Agreement is fair and reasonable under all the facts and circumstances and all the attendant risks of litigation.

e) The Ability of the Defendant to Withstand a Greater Judgment

Courts in New Jersey have repeatedly held that “even if Defendant could afford a greater amount, this fact provides no basis for rejecting an otherwise reasonable settlement.” *Saint v. BMW of N. Am., LLC*, 2015 WL 2448846, at *11 (D.N.J. May 21, 2015). This factor is generally neutral when the defendant's ability to pay greatly exceeds the potential liability and was not a factor in settlement negotiations. *In re CertainTeed Corp. Roofing Shingle Prod. Liab. Litig.*, 269 F.R.D. 468, 489 (E.D. Pa. 2010) (“because ability to pay was not an issue in the settlement negotiations, this factor is neutral.”). Because the Settlement is otherwise fair, adequate, and reasonable, this factor should be considered neutral.

f) The Range of Reasonableness of the Settlement in Light of the Best Possible Recovery and All Attendant Risks of Litigation

The last two *Girsh* factors assess “whether the settlement represents a good value for a weak case or a poor value for a strong case.” *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 538 (3d Cir. 2004). They “test two sides of the same coin: reasonableness in light of the best possible recovery and reasonableness in light of the risks the parties would face if the case went to trial.” *Id.* (citing *Prudential II*, 148 F. 3d at 322). The Third Circuit has cautioned against demands that a settlement approach the maximum possible recovery, noting that a settlement is, after all, a compromise. *Id.* at 316–17. Accordingly, a settlement may still be within a reasonable range, even though it represents only a fraction of the potential recovery. *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 144 (E.D. Pa. 2000); *see also Singleton v. First Student Management LLC*, No. 13-1744 (JEI/JS), 2014 WL 3865853, at *5 (D.N.J. Aug. 6, 2014) (same).

Here, the settlement is fair, reasonable, and represents an excellent result for the Class. As further explained in the Settlement Agreement, the Settlement will provide a pro-rata payment of up to \$155.00 to each Settlement Class Member who submits a valid claim. The Settlement provides for the creation of a common Settlement Fund of \$1,500,000.00 to cover payments to Settlement Class Members and all expenses associated with the litigation, as well as reasonable attorneys’ fees and incentive awards. Notably, this settlement value is in line with other COVID-19 tuition refund settlements. *See, e.g., Fittipaldi v. Monmouth Univ.*, No. 3:20-cv-05526, Dkt. Nos. 78-81 (D.N.J.) (\$1.3MM common fund for payment up to \$155 per student); *Smith v. Univ. of Pa.*, No. 20-2086, 2023 U.S. Dist. LEXIS 9094, at *6 (E.D. Pa. Jan. 18, 2023) (\$4.5MM common fund; 24,500 class members); *Choi v. Brown University*, No. 1:20-cv-00191, Dkt. Nos. 80-81 (D.R.I.) (\$1.5MM common fund; 9,646 students); *Rosado v. Barry Univ., Inc.*, No. 1:20-cv-21813-JEM, 2021 U.S. Dist. LEXIS 169196, at *7 (S.D. Fla. Sep. 7, 2021) (\$2.4MM common

fund; 6,077 settlement class members); *Wright v. S. New Hampshire Univ.*, No. 1:20-cv-00609, Dkt. Nos. 33-1, 37 (D.N.H.) (\$1.25MM common fund; approximately 3,607 students); *Martin v. Lindenwood Univ.*, No. 4:20-cv-01128, Dkt. Nos. 46-1, 48 (E.D. Mo.) (\$1.65MM common fund; approximately 6,000 students).

Without class litigation, Settlement Class Members would not have been able to achieve these benefits through individual lawsuits. The significant monetary recovery, as well as the substantial risks of continued litigation, weighs in favor of a finding the Settlement fair, reasonable, and adequate. FDU has the resources to vigorously litigate the claims in this case and has presented considered positions to oppose not only class certification, but any eventual finding of liability. Indeed, at both junctures – at class certification and at trial – the Class would face what may amount to an all-or-nothing proposition, where the “all” was not a great sum while “nothing” is what they have now. By contrast, the Settlement provides immediate and substantial cash benefits to the Class. “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” *In re AT & T Corp.*, 455 F.3d 160, 170 (3d Cir. 2006). “Rather, the percentage recovery must represent a material percentage recovery to [the] plaintiff in light of all the risks considered under *Girsh*.” *Id.*

The significant monetary recovery obtained here, as well as the substantial risks of continued litigation, weighs in favor of a finding that the Settlement is fair, reasonable, and adequate.

C. The Notice Program Satisfied the Requirements of Due Process

Rule 4:32-2(e) provides that “[t]he court shall direct notice in a reasonable manner to all class members who would be bound by a proposed settlement[.]” In actions involving classes certified pursuant to Rule 4:32-1(b)(3), Class Members must receive “the best notice practicable

under the circumstances, consistent with due process of law.” *Cerbo*, 2006 WL 177586, at *4. Further, “notice to class members must be reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mehling v. New York Life Ins. Co.*, 246 F.R.D. 467, 477 (E.D. Pa. 2007) (internal quotation marks and citations omitted).

Here, the Parties developed the Notice Plan with the assistance of RG2, a firm that specializes in the development, design, and implementation of class action notice plans. *Fraietta Cert.* ¶ 25. The program was executed in accordance with its design and the terms approved by the Court. *Id.* The form of the notices, approved by this Court, are attached to the Settlement Agreement as Exhibits B-D. The Notice Plan provided under the Settlement provides for the best practicable notice to Settlement Class Members, as 98% Settlement Class Members received direct notice via email or U.S. mail. *Montague Cert.* ¶ 15. In addition to direct notice, the Settlement Administrator also established and maintained a Settlement Website and a toll-free telephone number with script recordings of information about the Settlement. *See id.* ¶ 12. The notices provide all pertinent information and fully inform the Class Members of this litigation, the Settlement, including Class Counsel’s intent to request attorneys’ fees, expenses, and incentive awards for Plaintiffs, and what actions they may take. The language of the notices and accompanying Claim Form are plain and easily understood, providing neutral and objective information about the nature of the Settlement and enough objective information to fairly evaluate the Settlement terms.

The reach of the Notice Plan is consistent with other effective court-approved notice programs and was designed to meet due process requirements. Indeed, it provided a fair opportunity for members of the Settlement Class to obtain full disclosure of the conditions of the

Settlement Agreement and to make an informed decision regarding the proposed Settlement. Thus, the notices and the procedures embodied in the notices amply satisfy the requirements of due process.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their Motion in its entirety and enter the Final Approval Order submitted herewith.

Dated: August 8, 2024

Respectfully submitted,

By: /s/ Philip L. Fraietta

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Class Counsel

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY**

STEVEN DOVAL, MELISSA CUELLO, and
CEANA CUELLO, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

FAIRLEIGH DICKINSON UNIVERSITY,

Defendant.

Case No. BER-L-004966-20

**PLAINTIFFS' NOTICE OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Dated: August 8, 2024

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TO: ALL PARTIES LISTED IN THE CERTIFICATION OF SERVICE

PLEASE TAKE NOTICE that, on August 22, 2024, 11:00 a.m., OR AS SOON THEREAFTER AS COUNSEL MAY BE HEARD, Plaintiffs Steven Doval, Melissa Cuello, and Ceana Cuello (“Plaintiffs”), by and through their above listed attorneys will and hereby do move before The Honorable Nicholas Ostuni, Superior Court of New Jersey, Law Division, Bergen County, 10 Main Street, 2nd Floor, Hackensack, New Jersey 07601, for an order pursuant to New Jersey Court Rule 4:32-1(a), (b)(3) and 4:32-2(e): (1) certifying the Class in the Stipulation for purposes of this Settlement; (2) granting final approval of the Settlement on the terms and conditions set forth in the parties’ Class Action Settlement Agreement; (3) directing the parties and their counsel to implement and to consummate the Settlement; and (4) granting such other and further relief as the Court may deem just and proper.

The Settlement provides for the resolution of all claims brought in the above captioned action. For the reasons set forth in greater detail in the accompanying Memorandum of Law in support of this Motion, Plaintiffs believe that the proposed Class satisfies the requirements of New Jersey Court Rule 4:32-1 and that the proposed Settlement is fair, reasonable and adequate under New Jersey Court Rule 4:32-2(e).

PLEASE TAKE FURTHER NOTICE that in support of this motion, Plaintiffs shall rely upon the accompanying (1) Memorandum of Law in Support of their motion for final approval of the Class Action Settlement, (2) Certification of Philip L. Fraietta in support thereof and exhibits annexed thereto, and (3) all papers and pleadings on file.

PLEASE TAKE FURTHER NOTICE that the proposed form of an Order Granting Final Approval of the Settlement is submitted herewith.

PLEASE TAKE FURTHER NOTICE that this motion is unopposed by Defendant.

PLEASE TAKE FURTHER NOTICE that pursuant to R. 1.6-2(c), the Court has scheduled a Settlement Hearing for 11:00 a.m. on August 22, 2024.

PLEASE TAKE FURTHER NOTICE that the undersigned hereby requests oral argument.

Dated: August 8, 2024

Respectfully submitted,

By: /s/ Philip L. Fraietta

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Class Counsel and Attorneys for Plaintiffs

CERTIFICATION OF SERVICE

The undersigned hereby certifies that on this 8th day of August, 2024, an original and one copy of: (1) Plaintiffs' Notice of Motion for Final Approval of Class Action Settlement; (2) Plaintiffs' Memorandum of Law In Support Of Plaintiffs' Motion for Final Approval of Class Action Settlement; (3) Certification of Philip L. Fraietta in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement; and (4) Proposed Form of Order Granting Plaintiffs' Motion for Final Approval of Settlement, were caused to be filed via hand delivery with:

Clerk of the Superior Court
Bergen County Law Division
10 Main Street
Hackensack, New Jersey 07601

The Honorable Nicholas Ostuni, J.S.C.
Superior Court of New Jersey
Law Division, Bergen County
10 Main Street
Hackensack, New Jersey 07601

And that copies of each of the aforementioned documents were caused to be served via e-mail and regular mail upon the following:

Angelo A. Stio III
Troutman Pepper, PC
301 Carnegie Center
Suite 400
Princeton, NJ 08540
Telephone: (609) 452-08084829

Dated: August 8, 2024

By: /s/ Alec Leslie
ALEC LESLIE