UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

JULIA JIN-WOLFSON, *on behalf of herself and all others similarly situated*, Plaintiff, v. LAFAYETTE COLLEGE, Defendant.	Case No. 5:23-cv-04005-JMG

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Named Plaintiff Julia Jin-Wolfson ("Named Plaintiff"), on behalf of herself and the Settlement Class, respectfully submits this memorandum of law in support of her motion for final approval of the settlement reached in this Action, and for approval of the manner of distribution of the Net Settlement Fund (the "Distribution"). The terms of the settlement are set forth in the Stipulation of Settlement, dated March 21, 2025 (the "Settlement Agreement" or "Agreement"). ECF 57-3.[1]

INTRODUCTION

Named Plaintiff brought this putative class action alleging that she and other similarly situated students are entitled to refunds of certain amounts of tuition and fees because, beginning in March 2020, Lafayette College (hereinafter "Lafayette" or "College") provided classes remotely in response to the COVID-19 pandemic. Named Plaintiff alleges she and all other Lafayette students who paid tuition and/or mandatory fees for the Spring 2020 semester had implied contracts with Lafayette that entitled them to in-person instruction, and that by switching to remote education in response to the COVID-19 pandemic, Lafayette was liable for breach of implied contract or, in the alternative, unjust enrichment. Lafayette denies those allegations.

The Agreement represents a fair, reasonable, and adequate result for the Settlement Class and thus satisfies each of the Rule 23(e)(2) factors, as well as the factors set forth by the Third Circuit in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975) and *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283 (3d Cir. 1998). When compared to similar settlements in the COVID-19 tuition refund context, the Agreement here provides above-average benefits. *See infra* Section IV(C). The Agreement is especially beneficial to the Settlement Class considering the substantial litigation risks Named Plaintiff faced. Named Plaintiff and Class Counsel had a

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

thorough understanding of the strengths and weaknesses of the case before reaching the settlement, as they had conducted significant factual investigation into the merits of the claims, engaged in protracted discovery and settlement negotiations, and exchanged detailed enrollment and financial information with Defendant as part of the settlement process. *See* Declaration of Nicholas A. Colella ("Colella Decl."), ¶¶ 10, 11, 14.

Given the risks of proceeding with litigation and the fact that the Agreement achieved a satisfactory resolution relative to the damages sustained, the $456,750 Settlement Amount and the proposed Distribution are fair, reasonable, and adequate in all aspects. Accordingly, Named Plaintiff respectfully requests the Court grant final approval of the Settlement Agreement under Rule 23(e) of the Federal Rules of Civil Procedure.

FACTUAL AND PROCEDURAL BACKGROUND

On October 17, 2023, Named Plaintiff filed a class action Complaint in the United States District Court for the Eastern District of Pennsylvania styled *Jin-Wolfson v. Lafayette College*, No. 5:23-cv-04005 (ECF 1) (the "Action"). On her own behalf, and on behalf of a putative class, Named Plaintiff asserted claims for breach of implied contract and unjust enrichment. *Id.*

On December 7, 2023, Lafayette filed its Answer and Affirmative Defenses (ECF 9), in which it denied that it breached any contract with Named Plaintiff or was unjustly enriched, and asserted that its actions were compelled by governmental shut-down orders. The Parties participated in a Rule 16 Conference before the Court on February 29, 2024 (ECF 20). Thereafter, the Parties engaged in extensive class, merits, and expert discovery, participated in multiple depositions, and exchanged detailed information relating to the merits of the case. While discovery was ongoing, the Parties engaged in potential early resolution discussions. On July 10, 2024, the Parties moved to stay the Action pending mediation (ECF 26), which was granted on July 24, 2024

(ECF 27). On August 21, 2024, the Parties held a mediation session before the Hon. Thomas J. Rueter (Ret.). The Parties ultimately reached an impasse (ECF 28), and the Court lifted the stay (ECF 29).

On November 7, 2024, Named Plaintiff moved to certify a class consisting of "[a]ll Lafayette College students whose payment obligation of tuition and/or fees was satisfied for the Spring 2020 semester and who were enrolled in at least one in-person on-campus class." (ECF 39). The proposed definition of the class excluded students who received full Lafayette-funded scholarships covering all payment obligations for the Spring 2020 term. Class certification was fully briefed as of December 12, 2024, and no decision has yet been issued by the Court.

While continuing to engage in merits discovery, the Parties again began discussing early resolution. After numerous demands and counter-offers, the Parties reached an agreement in principle, and signed a term sheet on February 3, 2025. Over the ensuing weeks, the Parties negotiated the final terms of the Settlement and its supporting exhibits, which was presented to the Court on March 21, 2025 (ECF 57), and which received preliminary approval on March 24, 2025 (ECF 58).

Based upon their independent analysis, and recognizing the risks of continued litigation, counsel for Named Plaintiff believe that the proposed settlement is fair, reasonable, and in the best interest of Named Plaintiff and the Class. Although Lafayette denies liability, Lafayette decided to enter into this Settlement on the terms and conditions stated herein to avoid further expense, inconvenience, and burden, and the uncertainty and risks of litigation. For those reasons, and because the Settlement is contingent on Court approval, the Parties submit their Settlement Agreement to the Court for its review.

TERMS OF THE PROPOSED SETTLEMENT AGREEMENT

I. THE PROPOSED SETTLEMENT CLASS

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

> All Lafayette College students whose payment obligation of tuition and/or fees was satisfied for the Spring 2020 semester, and who were enrolled in at least one in-person on-campus class as of March 16, 2020.
>
> Excluded from the Settlement Class are all Lafayette College students who received scholarships, grants, or credits that equaled or exceeded their total payment obligations to Lafayette for the Spring 2020 semester, or who were otherwise not obligated to make contributions, payments or third-party arrangements towards tuition or fees for the Spring 2020 semester.

ECF 58, ¶ 5. As of the Objection/Exclusion Deadline, and as of the date of this motion, there have been no Settlement Class Members who have objected, and only two who have opted to exclude themselves from the Settlement Agreement. *See* Declaration of RG/2 Claims Administration LLC ("RG/2") ("RG/2 Decl."), ¶¶ 12-13.

II. MONETARY TERMS

The proposed Settlement Amount is a non-reversionary cash payment of Four Hundred Fifty-Six Thousand Seven Hundred Fifty Dollars ($456,750.00). *See* SA ¶ 39. In accordance with the Settlement Agreement, the Settlement Administrator shall make deductions from the Settlement Amount for court-approved attorneys' fees and reasonable litigation costs, fees and expenses for the Settlement Administrator, and any court-approved Case Contribution Award to the Named Plaintiff, in recognition of the risks and benefits of her participation and the substantial services she performed. *See* SA ¶ 40. After all applicable fees, expenses and awards are deducted, the Net Settlement Fund will be distributed equally to each Settlement Class Member pursuant to the Settlement Agreement. *See* SA ¶ 4.

Following the Court's Preliminary Approval Order, and pursuant to the terms of the Settlement Agreement, Lafayette paid $456,750 into an escrow account with the Settlement Administrator. *See* SA ¶ 39. Within sixty (60) days after the Effective Date, the Settlement Administrator will send Settlement Class Members their Settlement Benefit by either check, Venmo, or PayPal. *See* SA ¶¶ 7, 9. The Settlement Administrator will pay all legally mandated taxes prior to distributing the settlement payments to Settlement Class Members. *See* SA ¶ 44.

Settlement Class Members shall have one hundred eighty (180) days from the date of distribution of the checks to cash their check for the Settlement Benefit. SA ¶¶ 1(nn). All funds for Uncashed Settlement Checks shall, subject to Court approval, be returned to Lafayette for a scholarship fund for Lafayette students. SA ¶ 9.

III. NON-CASH BENEFIT

In addition to the monetary Settlement Benefit, each Settlement Class Member will be entitled to receive five (5) complimentary tickets to a regular season Lafayette basketball (men's or women's) or football game on Lafayette's campus to be used between July 1, 2026 and June 30, 2027, subject to the following conditions: (i) Settlement Class Members may request their complimentary tickets for specific games after Lafayette begins its sale of single-game tickets for the relevant season; (ii) complimentary tickets requested by Settlement Class Members will be issued only when available seating exists for a game (the location of which is subject to availability within the venue), and will not displace already-sold tickets; (iii) complimentary tickets cannot be sold or transferred for cash; and (iv) all games between Lafayette and Lehigh University are excluded. The Settlement Administrator will provide instructions on how to redeem the Non-Cash Benefit via email and through the Settlement Website. *See* SA ¶¶ 1(t), 10.

IV. DISMISSAL AND RELEASE OF CLAIMS

Upon the Settlement becoming Final, Settlement Class Members shall be deemed to have forever released any and all suits, claims, controversies, rights, agreements, promises, debts, liabilities, accounts, reckonings, demands, damages, judgments, obligations, covenants, contracts, costs (including, without limitation, attorneys' fees and costs), losses, expenses, actions or causes of action of every nature, character, and description, in law, contract, tort or in equity, that any Releasing Party ever had, or has, or may have in the future, upon or by reason of any matter, cause, or thing whatever from the beginning of the world to the Effective Date, arising out of, concerning, or relating in any way to Lafayette's transition to or provision of remote education with respect to the COVID-19 pandemic, or the implementation or administration of such remote education, the closing of its campus due to the COVID-19 pandemic or the provision of any services whatsoever that were altered in connection with the COVID-19 pandemic during the Spring 2020 semester. This definition includes but is not limited to all claims that were brought or could have been brought in the Action. These releases were described in the Long Form Class Notice.

V. RESULTS OF SETTLEMENT ADMINISTRATION AND NOTICE

Following the Court's Preliminary Approval Order, the Settlement Administrator completed the Settlement Notice plan set forth in the Settlement. *See generally* RG/2 Decl. The Settlement Notice plan was designed to reach as many Settlement Class Members as practicable. The Notice included the required description of the material Settlement terms; the deadline for Settlement Class Members to opt-out of the Settlement Class; the deadline for Settlement Class Members to object to the Settlement; and the address of the Settlement Website at which Settlement Class Members could access the Long Form Notice, Settlement Agreement, and other related documents and information. RG/2 Decl., ¶ 8 and Ex. B.

Pursuant to the Court's Preliminary Approval Order, Lafayette provided RG/2 with the Class List containing information sufficient to provide Settlement Class Members with direct notice. The Settlement Class List contained information for 2,175 Settlement Class Members. RG/2 Decl., ¶ 7. RG/2 then processed the Class List names and addresses through the United States Postal Service ("USPS") National Change of Address database and updated the data with corrected information. *Id*. Thereafter, on May 8, 2025, RG/2 sent the email notice to the 2,175 Settlement Class Members for whom email addresses were available. RG/2 Decl., ¶ 8. Of those 2,175 Settlement Class Members who were sent email notice, 970 had email addresses that did not confirm as delivered. *Id*. Those 970 Settlement Class Members were then sent notice via First Class mail. *Id*. For those 970 Settlement Class Members that were sent First Class mail, 25 were returned as undeliverable. RG/2 Decl., ¶ 14. RG/2 was provided with forwarding addresses for 2 Settlement Class Members, and performed an extensive skip-trace on the remaining 23 Settlement Class Members before resending notice. *Id.* A total of 11 notices remain undelivered. *Id.*

Further, on May 8, 2025, RG/2 established an informational Settlement Website, www.lcrefundsettlement.com, allowing Settlement Class Members to obtain detailed information about the Action and the Settlement, and to review important documents, including the Long Form Notice, the Settlement Agreement, and other relevant documents. RG/2 Decl., ¶ 9.

As a result of the Settlement Notice plan, approximately 99.5% of the Settlement Class Members received direct notice of the Settlement. *Id.* ¶ 15. The deadline to submit an objection to, or opt out of, the Settlement was June 23, 2025. To date, no Settlement Class Member has objected to the Settlement, and only two Settlement Class Members have submitted a request for exclusion. RG/2 Decl., ¶¶ 12-13.

ARGUMENT

I. STANDARD FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS.

A. The Law Favors and Encourages Settlements.

"[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged." *In re Warfarin Sodium Antitrust Litig*., 391 F.3d 516, 535 (3d Cir. 2004). Additionally, "[t]he law favors settlement particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab.*, 55 F.3d 768, 784 (3d Cir. 1995). But the final approval of settlement is left to the discretion of the court. *Eichenholtz v. Brennan*, 52 F.3d 478, 482 (3d Cir. 1995). Courts in this Circuit have great discretion in such matters: "The decision of whether to approve a proposed settlement of a class action is left to the sound discretion of the district court." *Girsh*, 521 F.2d at 156; *Lazy Oil Co. v. Witco Corp.*, 166 F.3d 581, 587 (3d Cir. 1999). In order to grant final approval of a class action settlement, the Court must first determine whether a class can be certified under Rule 23(a) and at least one prong of Rule 23(b). *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

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

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

> (A) whether the class representatives and class counsel have adequately represented the class;
> (B) whether the proposal was negotiated at arm's-length;
> (C) whether the relief provided for the class is adequate, taking into account:
> (i) the costs, risks and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
(iii) the terms of the proposed award of attorneys' fees, including timing of payment; and
(iv) any agreement required to be identified under Rule 23(e)(3); and
(D) whether the proposal treats class members equitably relative to each other.

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

In addition to the foregoing factors, the Third Circuit considers additional factors, the first set of which comes from *Girsh*:

(1) the complexity, expense and likely duration of the litigation;
(2) the reaction of the class to the settlement;
(3) the stage of the proceedings and the amount of discovery completed;
(4) the risks of establishing liability;
(5) the risks of establishing damages;
(6) the risks of maintaining the class action through the trial;
(7) the ability of the defendant to withstand a greater judgment;
(8) the range of reasonableness of the settlement fund in light of the best possible recovery; and
(9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

521 F.2d at 156. No single *Girsh* factor is dispositive. The Third Circuit has explained that "a court may approve a settlement even if it does not find that each of [the *Girsh*] factors weigh in favor of approval." *In re N.J. Tax Sales Certificate Antitrust Litig.*, 750 F. App'x 73, 77 (3d Cir. 2018).

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

(1) the maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear

on the ability to assess the probable outcome of a trial on the merits of liability and individual damages;
(2) the existence and probable outcome of claims by other classes and subclasses;
(3) the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved or likely to be achieved for other claimants;
(4) whether class or subclass members are accorded the right to opt-out of the settlement;
(5) whether any provisions for attorneys' fees are reasonable; and
(6) whether the procedure for processing individual claims under the settlement is fair and reasonable.

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

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

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

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

When analyzing whether a proposed class action settlement is fair, reasonable, and adequate, the Court must consider whether "the class representative[] and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). "The adequacy requirement encompasses two distinct inquiries designed to protect the interests of absentee class members: it considers whether the named plaintiffs' interests are sufficiently aligned with the absentees', and it tests the qualifications of the counsel to represent the class." *Ripley v. Sunoco, Inc.*, 287 F.R.D. 300, 309 (E.D. Pa. 2012); *see also Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 182 (3d Cir. 2012). This test "assures that the named plaintiffs' claims are not antagonistic to the class and that the attorneys for the class representatives are experienced and qualified to prosecute the claims on behalf of the entire class." *Beck v. Maximus, Inc.*, 457 F.3d 291, 296 (3d Cir. 2006) (citation and quotation marks omitted).

Here, both prongs of the adequacy test are met. First, Named Plaintiff's interests are aligned with those of the Settlement Class, as they were all students who attended Lafayette during the Spring 2020 semester and enrolled in in-person classes. Second, Class Counsel are highly experienced in class action litigation, especially in the tuition refund context.[2]

Additionally, Named Plaintiff and Class Counsel have adequately represented the Settlement Class by zealously prosecuting this Action, via extensive investigation and other litigation efforts including, *inter alia*: (1) researching and drafting the complaint in the Action; (2) researching the applicable law with respects to the claims in the Action and the potential defenses thereto; (3) engaging in class, merits, and expert discovery; (4) briefing class certification; and (5) engaging in extensive settlement discussions with Defendant's counsel. *See generally* Colella Decl. At each step of the Action, Named Plaintiff and Class Counsel have strenuously advocated for the best interests of the Settlement Class. Named Plaintiff and Class Counsel therefore satisfy Rule 23(e)(2)(A) for purposes of final approval.

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

The proposed Settlement satisfies Rule 23(e)(2)(B) because the Settlement is the product of arm's-length negotiations between the Parties' counsel, overseen, in part, by an experienced mediator, the Hon. Thomas J. Rueter (Ret.). Colella Decl., ¶ 24. It is well settled in the Third Circuit that class action settlements enjoy a presumption of fairness under review when: "(1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected." *In re Nat'l Football League Players Concussion Inj. Litig.*, 821 F.3d 410, 436 (3d Cir. 2016), *as*

[2] Class Counsel's qualifications are set forth in the Declarations of Nicholas A. Colella (ECF 57-2) and Anthony M. Alesandro (ECF 57-5) and the Firm Resumes of Lynch Carpenter, LLP and Leeds Brown Law, P.C. (ECFs 57-4, 57-6), previously submitted in support of preliminary approval.

amended (May 2, 2016). In light of the above and the Declaration attached hereto, Rule 23(e)(2)(B) is satisfied.

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

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

***a.* The Risks of Establishing Liability.**

In considering the risks of establishing liability, courts often consider the complexity of the issues and the magnitude of the proposed settlement class. *In re Prudential*, 148 F.3d at 318. Here, while Lafayette initially answered Named Plaintiff's Complaint, if the current action were to proceed, it is likely that Lafayette would have contested the propriety of Named Plaintiff's claims at summary judgment, which could have resulted in the dismissal of the case. *See Bergeron v. Rochester Inst. of Tech.*, No. 20-CV-6283 (CJS), 2023 WL 1767157, at *11 (W.D.N.Y. Feb. 3, 2023), *aff'd sub nom*. *Bergeron v. Rochester Inst. of Tech*., No. 23-271, 2024 WL 5054841 (2d Cir. Dec. 10, 2024) (granting university's motion for summary judgment as to breach of implied contract and unjust enrichment and dismissing case). Lafayette also has contested whether Plaintiff could certify a class. *Omori v. Brandeis Univ.*, 673 F. Supp. 3d 21, 29 (D. Mass. 2023) (denying student's motion for class certification as to tuition and fees). This sort of contention between the parties would continue to be complicated and lengthy. Additionally, any recovery from trial would be subject to a jury's opinion and likely appeal from either party. Considering the scenarios, the risks of continuing this litigation are very substantial, even assuming favorable facts in Plaintiff's favor.

Moreover, issues regarding responsibility for university closure are very apparent given the governmental orders for class cancellation and campus closure. Lafayette likely would have filed a motion for summary judgment in which it would argue that (1) the descriptions of the fees at issue cannot support a contract claim; (2) there was never a promise to provide in-person education in exchange for tuition; (3) it was impossible to perform under Covid-19 governmental orders; and (4) Named Plaintiff and members of the Class still received education and obtained credits. Lafayette also filed a comprehensive opposition to class certification in which it argued that Named Plaintiff is not able to show a material class-wide breach or unjust enrichment. Lafayette has argued that: (1) Named Plaintiff could not satisfy Rule 23(a)'s typicality requirement for several reasons; (2) Named Plaintiff's proposed Rule 23(b)(3) class was not ascertainable; (3) Named Plaintiff could not show causation or the existence or terms of a contract on class-wide bases; and (4) that common issues did not predominate. While Named Plaintiff does not concede the validity of any of Lafayette's arguments, Named Plaintiff acknowledges that Lafayette raised, or could have raised, legitimate arguments at both class certification and summary judgment as demonstrated by the cases above.

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

b. **The Risks of Establishing Damages at Trial.**

The risks of establishing liability apply with equal force to the risks of establishing damages. If this litigation were to continue, Named Plaintiff would continue to rely heavily on expert testimony to establish damages, likely leading to a *Daubert* challenge and/or a battle of the experts at trial. If the Court were to determine that one or more of Named Plaintiff's experts should be excluded from testifying at trial, Named Plaintiff's case would become much more difficult to

prove. Moreover, while Lafayette did shift to distance learning and requested that most students leave campus, these steps were due to Covid-19 and the accompanying government orders, providing Lafayette with an impossibility defense. Named Plaintiff has never disputed the necessity of these actions; the issue is whether Named Plaintiff and the Settlement Class were entitled to a refund of tuition and fees paid to Lafayette, and a potential impossibility defense raises a risk of failing to establish damages and the form of such damages (*i.e.*, compensatory or restitution). Thus, in light of the significant risks Named Plaintiff faced at the time of the Settlement with regard to establishing damages, including the possibility that Named Plaintiff would not be able to establish damages for each student, this factor weighs heavily in favor of final approval.

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

The anticipated complexity, cost, and duration of the Action would be considerable, and these factors are critical in a Court's evaluation of proposed settlements. *See Girsh*, 521 F.2d at 157 (holding that the complexity, expense, and likely duration of litigation are critical factors in evaluating the reasonableness of a settlement). Indeed, if not for the Settlement, litigation would continue, and there is a high likelihood it would be expensive, protracted, and contentious. Colella Decl., ¶¶ 16, 19-20. As stated previously, this would consume significant funds and expose Named Plaintiff and the Settlement Class to many risks and uncertainties. The preparation for what would likely be a multi-week trial and possible subsequent appeals, would cause the Action to persist for likely several more years before the Settlement Class could possibly receive any recovery. Such a lengthy and highly uncertain process would not serve the best interests of the Settlement Class when compared to the immediate and certain monetary benefits of the Settlement. *Id*. Accordingly,

this Rule 23(e)(2)(C)(i) factor, as well as the analogous *Girsh* factors, all weigh in favor of final approval.

d. **The Proposed Method for Distributing Relief Is Effective.**

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

After all applicable fees, expenses and awards are deducted, the Net Settlement Fund will be distributed equally to each Settlement Class Member pursuant to paragraph 4 of the Settlement Agreement. Each Settlement Class Member's Settlement Benefit will be distributed to that Settlement Class Member automatically, with no action required by that Settlement Class Member.

By default, the Settlement Administrator will send the Settlement Benefit to each Settlement Class Member by check mailed to the Settlement Class Member's last known mailing address on file with Lafayette. The Settlement Administrator has also provided a form on the Settlement Website that the Settlement Class Members may visit to provide an updated address for sending a check, or to elect receiving payment by Venmo or PayPal. Funds for Uncashed Settlement Checks shall, subject to Court approval, be returned to Lafayette for a scholarship fund for Lafayette students.

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

Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). Consistent with the fee request plainly documented in the Notice, and as discussed in Class Counsel's fee memorandum, Class Counsel sought an award of attorneys' fees in the amount of thirty-three and one-third percent (33.33%) of the Settlement Fund, plus expenses, to be paid from the Settlement Fund. *See* ECF 61. Such amounts are presumptively reasonable and in line with requests frequently approved in

this circuit. For example, in *In re Ravisent Techs., Inc. Sec. Litig.*, Judge Surrick noted that "courts within [the Third] Circuit have typically awarded attorneys' fees of 30% to 35% of the recovery, plus expenses." No. CIV.A.00-CV-1014, 2005 WL 906361 (E.D. Pa. Apr. 18, 2005) (citing *In re CareSciences. Inc. Sec. Litig.*, Civ. A. No. 01–5266 (E.D. Pa. Oct. 29, 2004)) (awarding one-third recovery of $3.3 million settlement fund, plus expenses).

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

Rule 23(e)(2)(D), the final factor, considers whether class members are treated equitably. As reflected in the Settlement Agreement, the proposed Settlement treats Settlement Class Members equitably relative to one another, as each Settlement Class Member will recover an equal payout, and each has the ability to receive the Non-Cash Benefit. This approach clearly satisfies the fair and equitable treatment requirement. "A district court's 'principal obligation' in approving a plan of allocation 'is simply to ensure that the fund distribution is fair and reasonable as to all participants in the fund.'" *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 326 (3d Cir. 2011) (quoting *Walsh v. Great Atl. & Pac. Tea Co., Inc.*, 726 F.2d 956, 964 (3d Cir. 1983)).

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

III. THE *GIRSH* FACTORS FAVOR SETTLEMENT.

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

The first *Girsh* factor is satisfied. As discussed above, this Action raises complex factual and legal questions regarding the alleged non-deliverance of in-person education and services supported by the tuition and fees at issue. The matter at hand has had a thorough preliminary investigation and discovery and lengthy, hard-fought negotiations. The continued prosecution of these claims would require significant additional expenses to the class, given further discovery and

experts. Further, no matter the outcome at the district court level, the result would likely be appealed, leading to further costs and the delay of any realized recovery. Thus, this Settlement will prevent a myriad of unnecessary expenditures related to further litigation. This benefits all parties while providing the Settlement Class with immediate benefits, and, thus, weighs in favor of approving the Settlement. See *In re Gen. Motors*, 55 F.3d at 812 (holding that lengthy discovery and potential opposition by the defendant were factors weighing in favor of settlement).

B. The Reaction of the Class to the Settlement.

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

This factor is satisfied, as, after being given notice of the Settlement, there have been only two opt-outs and no objections by class members. *See* RG/2 Decl., ¶¶ 12-13.

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

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

settlement where the "limited discovery" was sufficient to provide the parties "with an appreciation of the merits of the case"). Here, the Parties engaged in extensive formal discovery, as well as informal discovery produced via the mediation process. This provided Class Counsel with the information needed to objectively evaluate the strengths and weaknesses of Named Plaintiff's and Settlement Class Members' claims. *See* Colella Decl., ¶¶ 10, 11, 14. At its current stage, the litigation is ripe for settlement, and thus this factor favors final approval.

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

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

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

certify a class, Named Plaintiff's success is far from certain. Through the Settlement, Named Plaintiff and Settlement Class Members gain significant benefits without having to face the risk of not receiving any relief at all. As such, these factors weigh in favor of final approval.

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

The seventh *Girsh* factor considers "whether the defendant[s] could withstand a judgment for an amount significantly greater than the settlement." *In re Warfarin,* 391 F.3d at 537–38. This factor "is most relevant when the defendant's professed inability to pay is used to justify the amount of the settlement." *In re NFL*, 821 F.3d at 440. Although Lafayette may have the ability to withstand greater judgment, the favorable result here—a $456,750 settlement with additional Non-Cash Benefits—compared to the risks and expenses attendant to conducting this litigation and the immediacy of the benefit to Settlement Class Members weigh in favor of settlement. *See In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 632 (E.D. Pa. 2004) ("[T]he settling defendant's ability to pay greater amounts [may be] outweighed by the risk that the plaintiffs would not be able to achieve any greater recovery at trial."). As such, this factor weighs in favor of final approval.

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

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

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

IV. THE *PRUDENTIAL* FACTORS ARE SATISFIED

A. Maturity of the Substantive Issues.

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

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

Since only two class members have elected to be excluded, this factor weighs heavily in favor of approval. *See* RG/2 Decl., ¶ 12.

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

This Settlement is fair and reasonable and provides Lafayette students with a favorable per student settlement value. Here, this Settlement's $210 per student value[4] is comparable to, if not better than, other tuition refund settlements that have been litigated for years. *See, e.g.*, *Staubus v. University of Minnesota et al.*, No. 27-cv-20-8546 (Minn. Dist. Ct.) ($3.25 million settlement with

[4] Value based on the final Class List, which identified 2,175 Settlement Class Members.

a per student recovery of approximately $60); *Pfeifer et al. v. Loyola University of Chicago*, No. 1:20-cv-03116 (N.D. Ill.) ($1.375 million settlement with a per student recovery of approximately $88 per student); *Espejo et al. v. Cornell University*, No. 3:20-cv-00467-MAD-ML (N.D.N.Y.) ($3 million settlement with a per student recovery of $115); *Rocchio et al. v. Rutgers, The State University of New Jersey*, No. MID-L-003039-20 (N.J. Super. Ct.) (approximately $77 per student); *Choi et al. v. Brown University*, No. 1:20-cv-00191 (D.R.I.) (approximately $155 per student); *Smith v. University of Pennsylvania*, No. 20-2086 (E.D. Pa.) (approximately $173 per student); *Levin v. Board of Regents of the University of Colorado*, No. 2020cv31409 (Colo. Dist. Ct., Denver Cnty.) (approximately $75 per student). The approximately $210 per person settlement benefit here is greater than all of those settlements, before even taking into account the value of the Non-Cash Benefit.

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

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

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

E. Whether Any Provisions for Attorneys' Fees Are Reasonable

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

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

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

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

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

Named Plaintiff and Class Counsel believe that the proposed manner of distribution is fair, reasonable, and adequate, and respectfully submit it should be approved by the Court. Indeed, as noted above, the manner of distribution treats the Settlement Class equitably: each Settlement Class Member will automatically receive their *pro rata* Settlement Benefit pursuant to paragraph

4 of the Settlement Agreement, without the need to take any action. Notably, there have been no objections to the distribution proposal to date, a fact which supports approval of the distribution plan.

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

In her motion for preliminary approval of the settlement, Named Plaintiff requested that the Court certify the Settlement Class for settlement purposes only so that notice could be issued regarding the Settlement, the Final Approval Hearing, and the rights of Settlement Class Members to object to the Settlement and request exclusion from the Settlement Class. For purposes of effectuating this Settlement, the Court should finally certify the Settlement Class. As mentioned in the Court's Order, dated March 24, 2025, the Court preliminarily certified the proposed class. The class, as preliminary certified is:

> All Lafayette College students whose payment obligation of tuition and/or fees was satisfied for the Spring 2020 semester, and who were enrolled in at least one in-person on-campus class as of March 16, 2020.
>
> Excluded from the Settlement Class are all Lafayette College students who received scholarships, grants, or credits that equaled or exceeded their total payment obligations to Lafayette for the Spring 2020 semester, or who were otherwise not obligated to make contributions, payments or third-party arrangements towards tuition or fees for the Spring 2020 semester.

ECF 58, ¶ 5. Since the Court's entry of the Preliminary Approval Order, nothing has changed to alter the propriety of the Court's preliminary certification of the Settlement Class for settlement purposes. Colella Decl., ¶ 13. Thus, for all of the reasons already stated, as well as those previously laid out in Named Plaintiff's Motion for Preliminary Approval (ECF 57) (incorporated herein by reference), Named Plaintiff respectfully requests that the Court affirm its preliminary certification and finally certify the Settlement Class for the purpose of carrying out the settlement pursuant to

Fed. R. Civ. P. 23(a) and 23(b)(3), and make a final appointment of Named Plaintiff as the Settlement Class representative and of Class Counsel as counsel for the Settlement Class.

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

Rule 23 requires that notice of a settlement be "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort," Fed. R. Civ. P. 23(c)(2)(B), and that it be directed to class members in a "reasonable manner." Fed. R. Civ. P. 23(e)(1)(B). Notice of a settlement satisfies Rule 23(e) and due process where it is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *In re NFL*, 821 F.3d at 435 (citation omitted). The Third Circuit has also explained that "[g]enerally speaking, the notice should contain sufficient information to enable class members to make informed decisions on whether they should take steps to protect their rights, including objecting to the settlement or, when relevant, opting out of the class." *In re Baby Prod. Antitrust Litig.*, 708 F.3d 163, 180 (3d Cir. 2013).

Here, the Notice and the method used to disseminate the Notice to Potential Settlement Class Members satisfy these standards. The Court-approved Notice amply informed Settlement Class Members of, among other things: (i) the pendency of the Action; (ii) the nature of the Action and the Settlement Class's claims; (iii) the essential terms of the Settlement; (iv) the proposed manner of distribution of the Net Settlement Fund; (v) Settlement Class Members' rights to request exclusion from the Settlement Class or to object to the Settlement, the manner of distribution, or the requested attorneys' fees or expenses; (vi) the binding effect of a judgment on Settlement Class Members; and (vii) information regarding Class Counsel's motion for an award of attorneys' fees and expenses and a Case Contribution Award for Named Plaintiff. The Notice also sets forth the

procedures and deadlines for: (i) requesting exclusion from the Settlement Class and (ii) objecting to any aspect of the Settlement, including the proposed distribution plan and the request for attorneys' fees and expenses and a Case Contribution Award for Named Plaintiff.

Settlement Class Members were mailed and/or emailed notices after a thorough address validation process. *See* RG/2 Decl., ¶¶ 7, 8, 14. Emails were sent to 2,175 Settlement Class Members, with 1,205 confirmed as delivered. RG/2 Decl., ¶ 8. The 970 Settlement Class Members whose email was not delivered or bounced back, instead received Notice via first-class mail (with the exception of 11 Settlement Class Members). *See* RG/2 Decl., ¶¶ 8, 14. In total, approximately 99.5% of the Settlement Class received notice of the proposed Settlement. *Id.* ¶ 15.

Additionally, a settlement-specific website was created where key Settlement documents were posted, including the Long Form Notice. *See* RG/2 Decl., ¶ 9. Settlement Class Members had until June 23, 2025, to object to the Settlement or request exclusion from the Settlement Class. To date, there have been no objections to the settlement, and only two requests for exclusion. RG/2 Decl., ¶¶ 12-13.

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

CONCLUSION

The $456,750 Settlement Amount plus additional Non-Cash Benefit obtained by Named Plaintiff and Class Counsel represents an excellent recovery for the Settlement Class, particularly

in light of the significant litigation risks the Settlement Class faces, including the very real risk of receiving no recovery at all. For the foregoing reasons, Named Plaintiff respectfully requests that the Court finally approve the proposed Settlement and the proposed manner of distribution of the Net Settlement Fund as fair, reasonable, and adequate.

Dated: July 21, 2025

Respectfully submitted,

/s/ Nicholas A. Colella
Nicholas A. Colella (PA 332699)
LYNCH CARPENTER, LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222
Phone: (412) 322-9243
NickC@lcllp.com

Michael Tompkins, Esq.*
Anthony Alesandro, Esq.*
LEEDS BROWN LAW, P.C.
1 Old Country Road, Suite 347
Carle Place, NY 11514
Phone : (516) 873-9550
mtompkins@leedsbrownlaw.com
aalesandro@leedsbrownlaw.com

**Pro Hac Vice*

Attorneys for Named Plaintiff and the Settlement Class