

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

DANIEL CARSTAIRS, *on behalf of himself
and all others similarly situated,*

Plaintiff,

v.

UNIVERSITY OF ROCHESTER,

Defendant.

Case No. 6:20-cv-06690-CJS

**NAMED PLAINTIFF'S MOTION FOR ORDER
FINALLY APPROVING CLASS ACTION SETTLEMENT**

Named Plaintiff Daniel Carstairs, by undersigned Class Counsel and pursuant to the Court's June 24, 2025 Order Preliminarily Approving Class Settlement and Authorizing Class Notice, ECF 87, moves this Honorable Court to affirm its earlier preliminary findings and finally approve the Class Action Settlement as fair, reasonable, and adequate, entering the Proposed Order filed herewith. In support whereof, Named Plaintiff submits the attached Memorandum of Law and its exhibits.

Dated: October 30, 2025

Respectfully submitted,

DANIEL CARSTAIRS,
on behalf of himself and the Settlement Class,

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**MEMORANDUM OF LAW IN SUPPORT OF NAMED PLAINTIFF'S
MOTION FOR ORDER FINALLY APPROVING CLASS ACTION SETTLEMENT**

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In support of his Motion for Order Finally Approving Class Action Settlement, Named Plaintiff¹ Daniel Carstairs, by Class Counsel, submits the following Memorandum of Law.

I. INTRODUCTION

As detailed in Class Counsel's prior submissions,² the proposed Settlement resolves the claims of Named Plaintiff and all 9,982 other Settlement Class Members for breach of implied contract and unjust enrichment arising from Defendant University of Rochester's transition from in-person classes to remote learning in response to the COVID-19 pandemic beginning in the spring 2020 semester and continuing through the summer 2020 and fall 2020 semesters. If finally approved, the \$3,500,000.00 Settlement Fund will provide for an average monetary award of \$225 per Settlement Class Member and pay for all administrative expenses, attorneys' fees and costs of litigation, and a Service Award for Named Plaintiff.

As set forth below, the settlement is fair, reasonable, and adequate, was the product of arm's-length and contentious negotiations, and provides significant relief. The Court should therefore finally approve the settlement, consistent with other courts that have finally approved similar settlements.³

¹ Capitalized terms are defined in Section II of the parties' Settlement Agreement and Release ("Settlement Agreement"), ECF 86-1.

² See ECF 86, Plaintiff's Motion for Order Preliminarily Approving Class Action Settlement and Directing Notice to Settlement Class; ECF 89, Plaintiff's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses and for a Service Award for Plaintiff.

³ See, e.g., *incheloe v. niv. of Chicago*, No. 1:20-cv-3015 (N.D. Ill.) (\$4,950,000 settlement for 19,818 students); *Shaffer v. eor e ashin ton niv.*, No. 1:20-cv-1145 (D.D.C.) (\$5,500,000.00 settlement for over 19,875 students); *Smith v. niv. of ennsylvania*, No. 2:20-cv-2086-TJS (E.D. Pa.) (\$4.5 million settlement fund for approximately 24,500 students); *orter v. merson Colle e*, No. 1:20-cv-11897-RMZ (D. Mass.) (\$2.06 million settlement for 4,262 students); *feifer v. oyola niv. of Chicago*, No. 1:20-cv-3116 (N.D. Ill.) (\$1,375,000 settlement fund for 14,496 students); *Choi v. ro n niv.*, No. 1:20-cv-00191-JJM-LDA (D.R.I.) (\$1,500,000 settlement fund for 9,646 students); *noros i v. niv. of e aven*, No. 3:20-cv-1589 (D. Conn.) (\$2,285,600 settlement fund for 6,144 students); *Staubus v. niv. of Minnesota*, Court File No. 27-cv-20-8546 (4th Jud. Dist., Hennepin Cnty., Minn.) (\$3.25 million settlement fund for 54,000 students); *occhio v. ut ers, he State niv. of e Jersey*, No. MID-L-003039-20 (N.J. Super. Ct.) (\$5 million settlement with a per student recovery of \$77.48); *Martin v.*

II. HISTORY OF THE LITIGATION AND MEDIATION

On September 10, 2020, Named Plaintiff filed this matter on behalf of himself and others who paid tuition and fees to Rochester for in-person services and education not provided when Rochester closed its campus during the COVID-19 pandemic. *See* ECF 1.

On December 4, 2020, Rochester filed a motion to dismiss the Complaint. ECF 10. Pursuant to a stipulation, ECF 11, Named Plaintiff filed an Amended Complaint on January 8, 2021. ECF 12. On February 5, 2021, Rochester filed a motion to dismiss the Amended Complaint, which the parties fully briefed. *See* ECFs 15, 19, 24. While the motion was pending, the parties submitted a significant number of notices of supplemental authority concerning decisions rendered by other courts overseeing similar COVID-19 college campus closure matters in suit across the country. *See* ECFs 26, 27, 29, 30, 31, 32, 33, 38, 41, 43, 45. On May 25, 2023, the Court denied Rochester's motion to dismiss the Amended Complaint, ECF 46, and Rochester filed its Answer to the Amended Complaint on June 26, 2023. ECF 48.

The parties then began conducting written discovery. *See* ECFs 50, 51, 52, 53, 62. Rochester responded to interrogatories and produced thousands of pages of documents, and Class Counsel worked together to analyze these as well as thousands of additional pages of market studies and reports in assessing proof of class-wide damages. Class Counsel also prepared for the deposition and the production of documents from Named Plaintiff.

inden ood niv., No. 4:20-cv-01128-RLW (E.D. Mo.) (\$1.65 million common fund for more than 5,800 students); *Amario v. he niv. of ampa*, No. 7:20-cv-03744-CS (S.D.N.Y.) (\$3.4 million common fund for more than 9,000 students); *Met ner v. uinnipiac niversity*, No. 3:20-cv-00784-KAD (D. Conn.) (\$2.5 million common fund for more than 9,000 students); *Fittipaldi v. Monmouth niversity*, No. 3:20-cv-05526-MAS-RLS (D.N.J.) (\$1.3 million common fund for 4,200 students); *spe o v. Cornell niversity*, Case No. 3:20-cv-00467-MAD-MIL (N.D.N.Y.) (\$3 million for more than 24,000 students).

As discovery continued, the parties were referred to mediation, *see* ECF 53, and on March 21, 2024, the parties participated in a day-long mediation with the Hon. Diane Welsh (Ret.) of JAMS, ultimately agreeing in principle to settle all claims on a classwide basis.

Afterwards, the parties continued to meet and confer over confirmatory discovery necessary to finalize their settlement. Notably, because some students continued to receive in-person education after Rochester's COVID-related transition to remote instruction and some students enrolled in courses that were to be provided online even before the pandemic, this process included multiple, time-consuming queries of Rochester's enrollment and payment data and related productions. These complex datasets required several months to compile and produce, despite the parties' best efforts to streamline the scope of data needed. Ultimately, Rochester produced the agreed-upon data on December 23, 2024. Following unexpected health-related delays and unexpected matters requiring the University's attention during the first half of this year, the parties finalized the settlement in May, 2025.

On June 24, 2025, Named Plaintiff filed his Motion for Order Preliminarily Approving Class Action Settlement and Directing Notice to Settlement Class, ECF 86, which this Court granted on June 24, 2025. ECF 87. The Settlement Administrator duly carried out the Notice Plan in August, *see infra* § IV, and Named Plaintiff filed his Motion for an Award of Attorneys' Fees and Reimbursement of Expenses and for a Service Award for Plaintiff on September 29, 2025. ECF 89. Having received no objections and no requests for exclusion from the settlement, Named Plaintiff and Class Counsel now move for an order finally approving the settlement.

III. HIGHLIGHTS OF THE PROPOSED SETTLEMENT

A. Monetary Relief for Settlement Class Members

The Settlement Agreement, ECF 86-1, creates a Settlement Fund of three million five hundred thousand dollars (\$3,500,000.00) that, less any amount the Court awards in attorneys'

fees and costs, a Service Award, and class notice and administration expenses, will be automatically distributed on a proportionate, *pro rata* basis to all 9,982 Settlement Class Members without the need to file a claim. ECF 86-1 at §§ 4.2, 4.2.1, 5.1, 5.3, 5.3.1.

Cash awards will be determined according to a uniform calculation that accounts for the amount each Settlement Class Member paid Defendant out-of-pocket (that is, exclusive of scholarships or other financial aid provided directly to Class members by Defendant) for tuition and fees related to the spring 2020, summer 2020, and fall 2020 semesters for courses where the Defendant did not provide in-person education. ECF 86-1 at § 4.2.1. Each Settlement Class Member is entitled to a *pro rata* distribution of the Settlement Fund, based on the Fall 2020, Summer 2020, and Spring 2020 Amounts Paid,⁴ less the sum of any amount the Court awards in attorneys' fees and costs, a Service Award, and notice and administration expenses.

Thus, if the Court grants Class Counsel's requests for attorneys' fees and costs, a Service Award, and notice and administration expenses, and every Class Member cashes his or her check or claims his or her settlement distribution electronically, Class Counsel estimates that the average payment to each Class member will be approximately \$225.27, with Settlement Class Members

⁴ The Settlement Class Member's Fall 2020 Amount Paid and Summer 2020 Amount Paid is the amount of tuition plus mandatory fees the Settlement Class Member paid for that semester, multiplied by the "In-Person Ratio" corresponding to that semester. *See below*. The Settlement Class Member's Spring 2020 Amount Paid is the amount of tuition plus mandatory fees the Settlement Class Member paid for the Spring 2020 semester, multiplied by the Semester In-Person Ratio for the Spring 2020 semester, multiplied by 50% (representing the portion of the Spring 2020 semester that Defendant did not provide the promised in-person classes.)

The Settlement Class Member's Spring 2020 In-Person Ratio, Summer 2020 In-Person Ratio, and Fall 2020 In-Person Ratio are the credit hours for in-person courses the Settlement Class Member enrolled in (and did not withdraw from) for that semester, divided by the total credit hours the Settlement Class Member enrolled in (and did not withdraw from) for that semester. . . ., a student enrolled in 15 credit hours for the Spring 2020 semester, where only 12 of those credit hours were for in-person courses, has a Spring 2020 In-Person Ratio of 0.8.

that paid higher amounts in tuition and fees receiving a proportionately higher amount than those who paid less.⁵

In the event that some Class members fail to cash their checks or claim their distribution electronically before the expiration of 60 days after the date of issuance, the Settlement Administrator shall automatically distribute any money remaining in the Settlement Fund *pro rata* to Class Members who cashed their check if the amount of such check would be at least ten dollars (\$10.00). ECF 86-1 at § 5.3.1.

Only after this second distribution would the Settlement Administrator make any distribution to a proposed *cy pres* recipient, the University of Rochester's Student Emergency Fund. ECF 86-1 at § 5.3.1. Any funds distributed to the Student Emergency Fund will not revert back to Defendant and will not diminish Rochester's regular contributions to the fund. *d.*

B. Attorneys' Fees and Service Award for Representation of the Settlement Class

The Settlement Agreement also provides for Class Counsel's application to this Court for an award of attorneys' fees and litigation costs of up to one-third (1/3) of the Settlement Fund. ECF 86-1 at § 5.3. Class Counsel made their application for \$1,166,666.67, which is well within the range of what courts within the Second Circuit have approved for counsel fees in Rule 23(b)(3)

⁵ This is \$0.97 less than Class Counsel's original estimate of the average distribution in this matter. See ECF 86 at 6. The difference results from the need to reserve additional funds to offset the slightly higher costs associated with making payments to the approximately 20% of Settlement Class Members who now reside outside the United States.

settlement fund cases,⁶ on September 29, 2025. ECF 89. Class Counsel’s fee application was promptly published to the Settlement Website’s “Important Documents” page.⁷

The Settlement Agreement also provides that Class Counsel may make an application to this Court for a service award to Named Plaintiff Carstairs of five thousand dollars (\$5,000.00) in recognition of his efforts in service to the Class. ECF 86-1 at § 5.3. Class Counsel made that request in conjunction with their application for an award of attorneys’ fees and reimbursement of expenses. *See* ECF 89-1 at 14-15.

C. Distribution Schedule Following Final Approval

If the Court finally approves the settlement, the timeline for payments to Settlement Class Members, Named Plaintiff, and Class Counsel will be as follows:

Event	Timeline
Attorneys’ Fees and Costs to Class Counsel and Service Award to Named Plaintiff	No later than 36 days after entry of final approval order
Initial Distribution of Payments to Settlement Class Members	No later than 66 days after entry of final approval order

⁶ *See, e.g.,* *napp v. ad er echs. nc.* No. 12-CV-6637-CJS-MWP, 2015 WL 3745303, at *6 (W.D.N.Y. June 15, 2015) (“a one-third award is typical in class action settlements in the Second Circuit”) (quoting *uippone v. S oldin s C*, No. 09-cv-01029-CM, 2011 WL 5148650, at *8 (S.D.N.Y. Oct. 28, 2011)); *Spicer v. ier Si ty C*, No. 08-cv-10240-PAE, 2012 WL 4364503, at *4 (S.D.N.Y. Sept. 14, 2012) (“Class Counsel’s request for one-third of the settlement fund is also consistent with the trend in this Circuit.”); *n re loyd s Am. rust Fund iti .*, No. 96 Civ. 1262 (RWS), 2002 WL 31663577, at *26 (S.D.N.Y. Nov. 26, 2002) (noting “scores of common fund cases where fees . . . were awarded in the range of 33-1/3% of the settlement fund.”). The same percentage has been approved in other COVID-19 tuition refund actions. *See e. . ri ht v. S. e ampshire niv.*, No. 1:20-cv-00609-LM, ECF 37 (D.N.H. Aug. 22, 2021); *osado v. arry niv. nc.*, No. 1:20-cv-21813-JEM, ECF 84 (S.D. Fla. Aug. 7, 2021).

⁷ In addition to Plaintiff’s Motion for Attorneys’ Fees, Costs and Service Award, the Amended Complaint, Preliminary Approval Order, Settlement Agreement, and Notice were also published to the Settlement Website. *See* <https://www.ursettlement.com/documents.aspx>.

IV. IMPLEMENTATION OF THE NOTICE PLAN

In his earlier submission, Named Plaintiff proposed a robust Notice Plan, which the Court approved, appointing Continental DataLogix (“CDLx”) as the Settlement Administrator charged with carrying out the Notice Plan. ECF 87 at ¶ 6. On June 9, 2025, the Settlement Administrator provided notice of the settlement pursuant to the requirements of the Class Action Fairness Act (“CAFA”). Ex. 1, Declaration of Charles Marr Regrading Objections & Requests for Exclusion (“Marr Decl.”), at Ex. A, Declaration of Charles Marr Re: Implementation of CAFA Notice.

In connection with the Notice Plan, Rochester provided the Settlement Administrator with a mailing list containing names, contact information, and mail and email addresses, if available, for the 9,982 Settlement Class Members (the “Class List”). ECF 90, Declaration of Frank Barkan in Connection with Notice Dissemination (“Barkan Decl.”), at ¶ 4. On August 11, 2025, the Settlement Administrator arranged for the transmission of the email Notice to 9,955 Settlement Class Members and the mailed Notice to 27 Settlement Class Members for whom email addresses had not been provided. *d.* at ¶ 5. The Notice emailing resulted in a total of 1,111 undeliverable email Notices. *d.* at ¶ 6. Mailed Notices were subsequently mailed on August 26, 2025, to the 1,099 Settlement Class Members with an available mailing address, as 12 records did not have mailing addresses. *d.* Even though 78 mailed Notices returned by the USPS as undeliverable with no forwarding address, the Settlement Administrator was able to perform address research and remail 20 of these to updated addresses. *d.* at ¶ 7. Netting these figures against each other reveals that more than 99% of Settlement Class Members were sent the email or mail Notice pursuant to the Notice Plan.⁸

⁸ The total Notices presumed delivered is 9,912, representing 99.3% of the 9,982 Settlement Class Members. Of these, 8,844 Settlement Class Members are presumed to have received Notice via email (9,955 emails sent less 1,111 returned undeliverable) and 1,068 Settlement Class Members are presumed to have

Additionally, the Settlement Administrator published the Settlement Website on August 5, 2025, which is available at www.URSettlement.com. *d.* at ¶ 9. The Settlement Website provides answers to frequently asked questions and contains the following important documents: the Amended Complaint; the Settlement Agreement; the Preliminary Approval Order; the Notice; and Plaintiff's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses and for a Service Award for Plaintiff. *d.*; *see also* <https://www.ursettlement.com/documents.aspx>. Additionally, Settlement Class Members could visit the Settlement Website to select a payment method, contact the Settlement Administrator, and review important dates related to the Court-approval process, such as the date, time, and location of the final approval hearing. *See* ECF 90, Barkan Decl., at ¶ 9. As of the close of business on September 25, 2025, the Settlement Administrator had received 130 email inquiries and 7 telephone inquiries. *d.* at ¶ 10.

The Notice and the Settlement Website included information about how Settlement Class Members could opt out of the settlement, including apprising them of the October 14, 2025 deadline for submitting an objection or request for exclusion from the settlement. *See id.* at Ex. A. The Settlement Administrator received no objections to the settlement and no requests for exclusion. Ex. 1, Marr Decl., at ¶¶ 4-5. The Settlement Administrator did not receive any responses to the CAFA notice. *d.* at ¶ 3.

V. ARGUMENT

A. The Court Should Grant Final Certification of the Settlement Class

In his Motion for an Order Preliminarily Approving Class Action Settlement and Authorizing Class Notice, ECF 86, Named Plaintiff requested that the Court certify the Settlement

received Notice via mail (27 in first mailing, 1,099 in second mailing to those with undeliverable emails, and 20 sent after address research).

Class for settlement purposes only, so that notice of the settlement, the fairness hearing, and Settlement Class Members' rights to object to or exclude themselves from the settlement could be disseminated. This Court granted that Motion. ECF 87. Since then, nothing has changed to influence the propriety of the Court's earlier decision under Rule 23. Indeed, the Court-approved Notice has been disseminated to members of the Settlement Class according to the Notice Plan, and the Settlement Administrator has received no requests for exclusion from the settlement or objections. Ex. 1, Marr Decl., at ¶¶ 4-5.

Now therefore, the Court should affirm its earlier decision and, for the purposes of effectuating the parties' settlement, finally certify the Settlement Class, which includes:

Any student or learner who paid or caused to be paid tuition and/or Academic Service Fees, Activity Fees, Campus Health Fees, and/or course fees ("Mandatory Fees") to Defendant to attend in-person courses at the University of Rochester in the Spring 2020 Semester, Summer 2020 Semester, and/or Fall 2020 Semester for a degree- or certificate-bearing University of Rochester program and whose courses were not provided in-person.

ECF 86-1 at § 2.3; *see also id.* at § 4.2.1 (noting exclusions); ECF 87 at ¶ 5 (certifying Settlement Class as defined in Settlement Agreement).

B. The Court Should Finally Approve the Settlement as Fair and Adequate

There is a "strong judicial policy in favor of settlements, particularly in the class action context." *Wal-Mart Stores, Inc. v. Dukes*, 550 U.S. 181, 196 (2007) (quoting *In re Airline Emissions Litigation*, 147 F.3d 132, 138 (2d Cir. 1998)). In connection with final approval, this Court assesses the fairness, reasonableness, and adequacy of the settlement with reference to the traditional *Rinehart* factors as well as the amended FED. R. CIV. P. 23(e)(2). *Moses v. Williams Co.*, 79 F.4th 235, 244 (2d Cir. 2023). The *Rinehart* factors include:

- (1) the complexity, expense and likely duration of the litigation;
- (2) the reaction of the class to the settlement;

- (3) the stage of the proceedings and the amount of discovery completed;
- (4) the risks of establishing liability;
- (5) the risks of establishing damages;
- (6) the risks of maintaining the class action through the trial;
- (7) the ability of the defendants to withstand a greater judgment;
- (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and]
- (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974). As set forth in greater detail within, the settlement should be finally approved because it satisfies Rule 23(e)(2) and the totality of the *Grinnell* factors.

1. *The Complexity, Expense and Delay of the Litigation*

“Most class actions are inherently complex and settlement avoids the costs, delays, and multitude of other problems associated with them.” *Story v. SFC*, No. 1:18-cv-764-MAD-DJS, 2021 WL 736962, at *8 (N.D.N.Y. Feb. 25, 2021) (citing *In re Austrian Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000), *aff’d* 236 F.3d 78 (2d Cir. 2001)). This matter is one of a novel body of cases brought against colleges and universities throughout the country by students seeking partial refunds of tuition and mandatory fees, none of which has gone to trial, and many of which have resulted in mixed outcomes at the motion to dismiss and class certification stages. Named Plaintiff’s claims having survived dismissal, the parties have determined that the settlement is preferable to continuing litigation. Absent the settlement here, this case would have proceeded to contested class certification briefing and likely seen further discovery on the merits and dispositive motions being filed by one or both parties, not to mention the possibility of appeals. While Named Plaintiff believes he would prevail on all issues, they

would nevertheless be expensive and time-consuming. This factor favors final approval of the settlement. *in re aine ebber td. ships iti .*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997), *aff'd* 117 F.3d 721 (2d Cir. 1997) (“Absent a settlement, [litigation] costs will only escalate as a result of discovery proceedings, motion practice, trials, and likely appeals.”).

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

“It is ‘well-settled’ that the reaction of the class to a settlement is considered perhaps ‘the most significant factor to be weighed in considering its adequacy.’” *in re eeco nstruments nc. Sec. iti .*, No. 05-MDL-1695, 2007 WL 4115809, at *7 (S.D.N.Y. Nov. 7, 2007). “[T]he absence of object[ors] may itself be taken as evidencing the fairness of a settlement.” *in re aine ebber*, 171 F.R.D. at 126.

Named Plaintiff supports the settlement and its final approval, and the Settlement Administrator received no objections to the settlement or requests to be excluded from it. Ex. 1, Marr Decl., at ¶¶ 4-5. This very positive reaction to the settlement underscores its value and provides strong support for final approval.

3. *the State of the proceedings and the Amount of discovery Completed*

To approve the settlement, “the Court need not find that the parties have engaged in extensive discovery,” *Maley v. el lob. echs. Corp.*, 186 F. Supp. 2d 358, 363 (S.D.N.Y. 2002), but as noted above, the Parties engaged in significant discovery and fully briefed several issues. *Sees supra* § II. In discovery, Rochester produced a significant number of documents, including detailed financial information that allowed Class Counsel to develop a comprehensive picture of the damages at issue, as well as Rochester’s ability to pay. These data and documents provided Class Counsel, who have extensive experience in consumer protection class action litigation, with a full understanding of the pros and cons of proceeding with the action in lieu of settlement at this juncture. This factor also weighs in favor of approval of the settlement.

4. *he is s of stablshin iability and ama es*

In considering these factors, “the Court need only assess the risks of litigation against the certainty of recovery under the proposed settlement.” *n re lob. Crossin Sec. SA iti .*, 225 F.R.D. 436, 459 (S.D.N.Y. 2004). “In assessing the settlement, the Court should balance the benefits afforded to members of the Class and the immediacy and certainty of a substantial recovery for them against the continued risks of litigation.” *Casta na v. Madison S uare arden . .*, No. 09-cv-10211-LTS-HP, 2011 WL 2208614, at *6 (S.D.N.Y. June 7, 2021) (citing *Maley*, 186 F. Supp. 2d at 364).

Here, there remain risks to both sides regarding establishing liability and damages. Named Plaintiff’s theories have not been tested at any trial, and colleges and universities across the country faced with similar claims have disputed them vigorously, giving rise to numerous appellate decisions that have highlighted the challenges plaintiffs face in this context. Moreover, establishing damages will require extensive, contested expert evidence. In contrast, the settlement provides a substantial, immediate recovery for Settlement Class Members. Accordingly, this factor weighs in favor of finally approving the settlement.

5. *he is s of Maintainin the Class Action throu h the rial*

“The risk of maintaining class status throughout trial [] weighs in favor of final approval.” *McMahon v. livier Chen Caterin vents C*, No. 08-cv-8713-PGG, 2010 WL 2399328, at *5 (S.D.N.Y. Mar. 3, 2010). Although Named Plaintiff believes that he would prevail on a contested class certification motion, it would certainly require extensive discovery and briefing. Even if the Court agreed with Named Plaintiff and granted a contested class certification motion, Rochester could seek interlocutory review of that decision pursuant to FED. R. CIV. P. 23(f) and/or move to decertify, which would require additional rounds of briefing. The Settlement eliminates the risk, expense, and delay inherent in this process. *See Christine Asia Co. v. Jac un Ma*, 2019

WL 5257534, at *13 (S.D.N.Y. Oct. 16, 2019) (stating that this risk weighed in favor of final approval because “a class certification order may be altered or amended any time before a decision on the merits”) (quoting FED. R. CIV. P. 23(c)(1)). This factor favors final approval as well.

6. *The Ability of the Defendant to Withstand a Greater Judgment*

Although Rochester may have the ability to withstand a greater judgment, the outstanding result here—a \$3.5 million Settlement Fund—is still fair, reasonable, and adequate to compensate the Settlement Class, and weighs in favor of granting final approval. Indeed, several courts across the country have finally approved comparable settlements in similar matters regarding COVID-19 campus closures, finding them to be fair, reasonable, and adequate. *See supra* n. 3. Moreover, “that a defendant is able to pay more than it offers in settlement does not, standing alone, indicate the settlement is unreasonable or inadequate.” *In re Aineebber* 171 F.R.D. at 129; *Commer v. Ford Motor Co.*, No. 1:17-cv-0296-LEK-DJS, 2020 WL 7356715, at *5 (N.D.N.Y. Dec. 15, 2020) (agreeing defendant could pay a greater judgment but noting that, “by itself, this fact has little significance.”). Accordingly, the Court should find that this element of the *Rinnell* test does not weigh against approval of the settlement.

7. *The Adequacy of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and All the Attendant Circumstances*

“The adequacy of the amount offered in settlement must be judged ‘not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of Plaintiffs’ case.’” *In re Agent Orange Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984) (quoting *Rinnell*, 495 F.2d at 455), *aff’d*, 818 F.2d 145 (2d Cir. 1987). With respect to this element, “the court may give credence to the opinions of experienced attorneys[.]” *Ross v. Washington Mut. Bank F.A.*, No. 02-cv-4135-RML, 2006 WL 318814, at *5 (E.D.N.Y. Feb. 9, 2006).

This case arises from an unprecedented factual context and presents novel issues that have been widely litigated—with mixed results—across the country and within New York. Here, the proposed settlement confers a substantial and real benefit on the Settlement Class Members in one of a series of novel breach of contract cases arising out of educational institutions’ responses to the COVID-19 pandemic as opposed to unclear results and risks of continuing this litigation. Numerous similar cases have been filed across the country, including in New York, and raised issues that are also at issue in this matter, including: what is a student’s contract with a university and how can one accurately value the economic differences between in person, online, and hybrid-delivered educational services. Moreover, as Rochester’s motions to dismiss demonstrate, although cases like this one may present familiar claims, they contain myriad complexities. *See* ECFs 10, 15.

Here, the anticipated average Settlement Class Member payment is expected to be approximately \$225.27 per student, which places the financial recovery provided by the settlement solidly within—and in some cases above—the relief provided by other settlements that have been approved by courts around the country on the same claims, which have ranged \$59 per student to around \$800 per student. *Seeocchio v. Rutgers*, Case No. MID-L-003039-20 (N.J. Super. Ct.) (approving recovery of less than \$80 per student as an average); *Martinez v. Univ. of San Diego*, No. 3:20-CV-01946-RBM-VET, 2025 WL 886970, at *3, *14 (S.D. Cal. Mar. 21, 2025) (granting final approval with a recovery of approximately \$93.46 per student); *Speo v. Cornell Univ.*, No. 3:20-cv-467-MAD-ML (N.D.N.Y.) (approving recovery of less than \$150 per student); *Jones v. Tulane*, No. 2:20-cv-02505, ECF 230 (E.D. La. April 30, 2025) (order approving settlement with average recovery of approximately \$203 per student); *Pinchloe*, No. 1:20-cv-3015 (N.D. Ill. May 23, 2024) (granting final approval on the proposed settlement with an average recovery of \$261.90

per student); *Amey v. The Pennsylvania University*, No. 2:20-cv-753 (W.D. Pa.) (ultimately approving recovery with the average recovery of \$225 to \$250 per student); *see Leonard v. La Salle Univ.*, Case No. 2:24-CV-62, ECF 31-1 (E.D. Pa.) (collecting cases); *see also supra* note 3.

Given the considerable risk that continued litigation could result in no recovery for the class at all, Named Plaintiff and his counsel believe that the settlement is well within the range of reasonableness because it confers a substantial, certain, and immediate benefit upon the Class in the form of monetary relief. *In re Rudential Sec. Inc. Litig.*, 163 F.R.D. 200, 210 (S.D.N.Y. 1995) (“Instead of the lengthy, costly, and uncertain course of further litigation, the settlement provides a significant and expeditious route to recover for the Class.”) (citation omitted). This is particularly true when taking account of the potential expense and duration of continuing to litigate this case, including the time and expense associated with litigating this case through trial against Defendant and through possible appeals, could take several more years. *See In re Currency Conversion Fee Antitrust Litig.*, 2006 WL 3247396, at *6 (determining settlement was within reasonable range where “the expense and delay of continued litigation could be substantial”).

8. *The Settlement Itself Satisfies Federal Rule 23(e)*

This Court must also consider the requirements of FED. R. CIV. P. 23(e)(2), which was amended in 2018 to codify factors that should guide the final approval process, namely whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

- (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
- (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

FED. R. CIV. P. 23(e)(2). The Second Circuit has found that these “largely overlap” with the traditional *rinnell* factors. *Moses*, 79 F.4th at 244.

The Rule 23(e)(2) factors are satisfied. Named Plaintiff and Class Counsel have adequately represented the Settlement Class, as the Court has already recognized. *See* ECF 87 at ¶ 5. Following robust discovery, including detailed interrogatories responses and substantial document production, the settlement was negotiated at arm's length during a day-long mediation session with retired United States Magistrate Judge Diane M. Welsh of JAMS. The Settlement is adequate for the reasons set forth above and because Settlement Class Member will receive automatic payments, Class Counsel's fee request is reasonable, and there are no agreements required to be identified under Rule 23(e)(3). Finally, Settlement Class Members are treated equitably relative to each other because all will benefit from automatic distributions from the Settlement Fund proportional to their out-of-pocket payments to Defendant.

C. Members of the Settlement Class Received Sufficient Notice

“Rule 23(e)(1)(B) requires the court to direct notice in a reasonable manner to all class members who would be bound by a proposed settlement[.]” F.J.C., *Manual for Complex Lit.* § 21.312. The best practicable notice 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.” *Mullane v. Cent. anover an rust Co.*, 339 U.S. 306, 314 (1950).

As discussed in § IV, above, the Settlement Administrator's implementation of the Class Notice Plan satisfied all these criteria. *See* ECF 86-1 at § 4.1, Ex. C; *see also* ECF 90, Barkan

Decl., at Exs. A, B. The Notice informed Settlement Class Members of the substantive terms of the settlement, presented their options for opting out of or objecting to the settlement, and provided options for obtaining additional information about the settlement, including via the Settlement Website. Moreover, more than 99% of Settlement Class Members may be presumed to have received Notice. *Supra* n. 8.

This Court should find that sufficient notice was provided to the Settlement Class Members and finally approve the settlement.

VI. CONCLUSION

For the foregoing reasons, this Court should finally approve the settlement as fair, reasonable, and adequate and enter the proposed Order Finally Approving Settlement submitted herewith.

Dated: October 30, 2025

Respectfully submitted,

DANIEL CARSTAIRS,
on behalf of himself and the Settlement Class,

By: /s/James A. Francis
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John Soumilas*
Jordan M. Sartell*
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ygolan@tgfirm.com

Attorneys for Named Plaintiff and the
Settlement Class

*admitted *pro hac vice*

Exhibit 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DANIEL CARSTAIRS, on behalf of himself
and all others similarly situated,

laintiff,

v.

Case No. 6:20-cv-06690-CJS

UNIVERSITY OF ROCHESTER,

efendant.

**DECLARATION OF CHARLES MARR
REGARDING OBJECTIONS REQUESTS FOR EXCLUSION**

I, CHARLES MARR, declare the following to be true and correct:

1. I am the Director of Client Services of Continental DataLogix LLC (“Continental”), which the Court appointed Settlement Administrator in its June 24, 2025, Preliminary Approval Order.

2. This declaration supplements my June 16, 2025 declaration regarding Implementation of CAFA Notice, attached as Exhibit A. As of October 21, 2025, Continental received no responses to the CAFA Notice.

3. This declaration supplements Frank Barkan’s September 25, 2025 Declaration in Connection with Notice Dissemination.

4. The postmark deadline for submitting an Objection was October 14, 2025. As of October 21, 2025, Continental received no Objections.

5. The postmark deadline for submitting an Opt-Out request was October 14, 2025. As of October 21, 2025, Continental has received no Opt-Out requests.

/// /// ///

I declare under the penalty of perjury that the foregoing is true and correct. Executed on this 21st day of October 2025.



Charles Marr

Exhibit A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DANIEL CARSTAIRS, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

UNIVERSITY OF ROCHESTER,

Defendants.

NO. 6:20-cv-06690-CJS-MJP

**DECLARATION OF CHARLES MARR RE:
IMPLEMENTATION OF CAFA NOTICE**

I, Charles Marr, hereby declare as follows:

1. My name is Charles Marr and I make this declaration in Multnomah County, Oregon.

The statements that follow are all made of my personal knowledge.

2. I am the Director of Client Services at Continental DataLogix LLC ("Continental"), a provider of class action settlement administration services with an office in Lansdale, Pennsylvania.

3. The facts in this Declaration are based on what I personally know, as well as information provided to me in the ordinary course of my business.

CAFA NOTICE IMPLEMENTATION

4. At the direction of counsel for the Defendant, 57 federal and state officials (the Attorney General of the United States and the Attorneys General of each of the 50 states, the District of Columbia, and the United States Territories) were identified to receive CAFA notice. A list of these federal and state officials with contact information is maintained for the purpose of providing CAFA notice.

5. On June 9, 2025, 57 CAFA Notice Packages ("Notice") were sent. The Notice was mailed

1 via USPS Priority Mail to 53 officials (the Attorneys General of 47 states, the District of
2 Columbia, and the United States Territories). As per the direction of the Office of the
3 Nevada, New York, and Connecticut Attorneys General, the Notice was sent to the
4 Nevada, New York, and Connecticut Attorneys General electronically via email. The
5 Notice was also sent via United Parcel Service (“UPS”) to the Attorney General of the
6 United States. The CAFA Notice Service List (USPS Priority Mail, Email, and UPS) is
7 included as Attachment 1.
8

9
10 6. The materials sent to the federal and state officials included a cover letter, which
11 provided notice of the proposed settlement of the above-captioned case. The cover
12 letter is included as Attachment 2.

13 7. The cover letter was accompanied by a CD, which included the following:

14 a. Per 28 U.S.C. § 1715(b)(1) – Complaint and Any Amended Complaints:

15 Plaintiff’s Amended Complaint (January 8, 2021).

16 b. Per 28 U.S.C. § 1715(b)(3) – Notification to Class Members:

17 Long Form Notice (

18);

19 c. Per 28 U.S.C. § 1715(b)(4) – Class Action Settlement Agreement:

20 Plaintiff’s Motion for Order Preliminarily Approving Class Action

21 Settlement;

22 Class Settlement Agreement and Release;

1 Proposed Order Preliminarily Approving Class Settlement
2 and Authorizing Class Notice (Exhibit 1 to the Class
3 Settlement Agreement and Release).

4
5 Proposed Final Approval Order (Exhibit 2 to the Class
6 Settlement Agreement and Release).

7 Declaration of James A. Francis in Support of Plaintiff's Motion for
8 Order Preliminarily Approving Class Action Settlement;

9 Declaration of Yvette Golan in Support of Plaintiff's Motion for
10 Preliminary Approval of Class Action Settlement; and

11 Proposed Order Preliminarily Approving Class Settlement and
12 Authorizing Class Notice.
13

14 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and
15 correct. Executed on this 16th day of June 2025.
16

17 
18 _____
19 Charles Marr
20
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27

Attachment 1

CAFA Notice Service List

USPS Priority Mail

Appropriate Official	FullName	Address1	Address2	City	State	Zip
Office of the Attorney General	Treg Taylor	1031 W 4th Ave	Suite 200	Anchorage	AK	99501
Office of the Attorney General	Steve Marshall	501 Washington Ave		Montgomery	AL	36104
Office of the Attorney General	Tim Griffin	323 Center St	Suite 200	Little Rock	AR	72201
Office of the Attorney General	Kris Mayes	2005 N Central Ave		Phoenix	AZ	85004
Office of the Attorney General	CAFA Coordinator	Consumer Protection Section	455 Golden Gate Ave Suite 11000	San Francisco	CA	94102
Office of the Attorney General	Phil Weiser	Ralph L Carr Colorado Judicial Center	1300 Broadway Fl 10	Denver	CO	80203
Office of the Attorney General	Brian Schwalb	400 6th St NW		Washington	DC	20001
Office of the Attorney General	Kathy Jennings	Carvel State Bldg	820 N French St	Wilmington	DE	19801
Office of the Attorney General	James Uthmeier	State of Florida	The Capitol PL-01	Tallahassee	FL	32399
Office of the Attorney General	Chris Carr	40 Capitol Square SW		Atlanta	GA	30334
Department of the Attorney General	Anne E Lopez	425 Queen St		Honolulu	HI	96813
Iowa Attorney General	Brenna Bird	Hoover State Office Building	1305 E Walnut St	Des Moines	IA	50319
Office of the Attorney General	Raul Labrador	700 W Jefferson St Ste 210	PO Box 83720	Boise	ID	83720
Office of the Attorney General	Kwame Raoul	500 South Second Street		Springfield	IL	62701
Office of the Indiana Attorney General	Todd Rokita	Indiana Government Center South	302 W Washington St Rm 5	Indianapolis	IN	46204
Office of the Attorney General	Kris Kobach	120 SW 10th Ave 2nd Fl		Topeka	KS	66612
Office of the Attorney General	Russell Coleman	700 Capitol Ave Suite 118		Frankfort	KY	40601
Office of the Attorney General	Liz Murrill	PO Box 94005		Baton Rouge	LA	70804
Office of the Attorney General	Andrea Campbell	1 Ashburton Pl 20th Fl		Boston	MA	02108
Office of the Attorney General	Anthony G Brown	200 St Paul Pl		Baltimore	MD	21202
Office of the Attorney General	Aaron Frey	6 State House Station		Augusta	ME	04333
Department of Attorney General	Dana Nessel	PO BOX 30212	525 W. Ottawa St.	Lansing	MI	48909
Office of the Attorney General	Keith Ellison	445 Minnesota St Ste 1400		St Paul	MN	55101
Missouri Attorney General's Office	Andrew Bailey	207 West High Street	PO Box 899	Jefferson City	MO	65102
Mississippi Attorney General	Lynn Fitch	PO Box 220		Jackson	MS	39205
Office of the Attorney General	Austin Knudsen	215 N Sanders 3rd Fl	PO Box 201401	Helena	MT	59620
Attorney General's Office	Jeff Jackson	9001 Mail Service Ctr		Raleigh	NC	27699
Office of the Attorney General	Drew H Wrigley	600 E Boulevard Ave Dept 125		Bismarck	ND	58505
Nebraska Attorney General	Mike Hilgers	2115 State Capitol	PO Box 98920	Lincoln	NE	68509
Office of the Attorney General	John Formella	NH Department of Justice	33 Capitol St	Concord	NH	03301
Office of the Attorney General	Matthew J Platkin	25 Market Street	PO Box 080	Trenton	NJ	08625
Office of the Attorney General	Raul Torrez	408 Galisteo St	Villagra Bldg	Santa Fe	NM	87501
Office of the Attorney General	Dave Yost	30 E Broad St Fl 14		Columbus	OH	43215
Office of the Attorney General	Gentner Drummond	313 NE 21st St		Oklahoma City	OK	73105
Office of the Attorney General	Dan Rayfield	Oregon Department of Justice	1162 Court St NE	Salem	OR	97301
Office of the Attorney General	Dave Sunday	16th Fl Strawberry Square		Harrisburg	PA	17120
Office of the Attorney General	Peter F Neronha	150 S Main St		Providence	RI	02903
Office of the Attorney General	Alan Wilson	PO Box 11549		Columbia	SC	29211
Office of the Attorney General	Marty Jackley	1302 E Hwy 14 Ste 1		Pierre	SD	57501
Office of the Attorney General	Jonathan Skrmetti	PO Box 20207		Nashville	TN	37202
Office of the Attorney General	Ken Paxton	PO Box 12548		Austin	TX	78711
Office of the Attorney General	Derek Brown	Utah State Capitol Complex	350 North State Street Ste 230	Salt Lake City	UT	84114
Office of the Attorney General	Jason S Miyares	202 N 9th St		Richmond	VA	23219
Office of the Attorney General	Charity R Clark	109 State St		Montpelier	VT	05609
Office of the Attorney General	Nick Brown	800 5th Ave Ste 2000		Seattle	WA	98104
Office of the Attorney General	Josh Kaul	PO Box 7857		Madison	WI	53707
Office of the Attorney General	JB McCuskey	State Capitol Complex Bldg 1 Room E 26	1900 Kanawha Blvd E	Charleston	WV	25305
Office of the Attorney General	Bridget Hill	109 State Capital		Cheyenne	WY	82002
Department of Legal Affairs	Gwen Tauiliili-Langkilde	GHC Reid Building, Pago Plaza, 2d flr, Room 220	Territory of American Samoa	Pago Pago	AS	96799
Attorney General Office of Guam	Douglas Moylan	ITC Bldg.	590 S Marine Corps Dr Ste 901	Tamuning	GU	96913
Office of the Attorney General	Edward Manibusan	PO Box 10007		Saipan	MP	96950
PR Department of Justice	Janet Parra-Mercado	PO Box 9020192		San Juan	PR	00902
Department of Justice	Gordon C. Rhea	3438 Kronprindsens Gade	GERS BLDG 2nd Floor	St Thomas	VI	00802

CAFA Notice Service List**Email**

Appropriate Official	Contact Format	State
Office of the Attorney General for Connecticut	All documents sent to CT AG at their dedicated CAFA email inbox.	CT
Office of the Attorney General for Nevada	All documents sent to NV AG at their dedicated CAFA email inbox.	NV
Office of the Attorney General for New York	All documents sent to NY AG at their dedicated CAFA email inbox.	NY

CAFA Notice Service List**UPS**

Appropriate Official	FullName	Address1	Address2	City	State
US Department of Justice	Pamela Bondi	950 Pennsylvania Ave NW		Washington	DC

Attachment 2



Nixon Peabody LLP
One Citizens Plaza, Suite 500
Providence, RI 02903-1345

Steven M. Richard
Partner

Attorneys at Law
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srichard@nixonpeabody.com

June 9, 2025

VIA UPS OR USPS PRIORITY MAIL

Class Action Fairness Act – Notice to Federal and State Officials

Dear Federal and State Officials:

Pursuant to the Class Action Fairness Act of 2005 (“CAFA”), codified at 28 U.S.C. § 1715, please find enclosed information from Defendant University of Rochester (“Rochester”) relating to the proposed settlement of a class action lawsuit. Rochester has agreed to enter into a settlement of this lawsuit to avoid the uncertainties and costs of further litigation, without any admission or acknowledgement of any of the allegations and claims pled in Plaintiff’s Amended Complaint or any liability relating thereto.

- **Case:** *Daniel Carstairs, on behalf of himself and all others similarly situated v. University of Rochester*, Case No. 6:20-cv-06690-CJS
- **Court:** United States District Court for the Western District of New York (“W.D.N.Y.”)
- **Defendant:** University of Rochester
- **Documents Enclosed:** In accordance with CAFA’s requirements at 28 U.S.C. § 1715, please find copies of the following documents associated with this action on the enclosed CD:
 - 1) Plaintiff’s Amended Complaint filed on January 8, 2021 (Doc. No. 12)
 - 2) A complete set of the filings by Plaintiff, with Rochester’s assent, on May 30, 2025, in connection with the request that W.D.N.Y. Federal District Court review and approve the terms of the proposed settlement and approve of the issuance of notice to class members, including:
 - Plaintiff’s Motion for Order Preliminarily Approving Class Action Settlement and Directing Notice to Settlement Class (Doc. No. 86)
 - The Settlement Agreement and Release with Exhibits 1-3 (Doc. No. 86-1)
 - Exhibit 1: Proposed Order Preliminarily Approving Class Settlement and Authorizing Class Notice
 - Exhibit 2: Proposed Final Approval Order

- Exhibit 3: Notice of Proposed Class Action Settlement
- Declaration of James A. Francis in Support of Plaintiff's Motion for Order Preliminarily Approving Class Action Settlement and Directing Notice to Settlement Class (Doc. No. 86-2)
- Declaration of Yvette Golan in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement (Doc. No. 86-3)
- Proposed Order Preliminarily Approving Class Settlement and Authorizing Class Notice (Doc. 86-4)

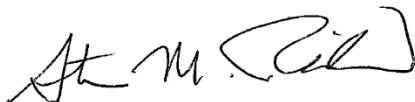
There are no other settlement documents or agreements between the parties other than the above-listed and enclosed documents that were filed on May 30, 2025.

Pursuant to 28 U.S.C. § 1715(b)(7), CAFA requires a defendant, "if feasible," to provide the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement, or if not feasible, a reasonable estimate thereof. At this time, it is not feasible to provide a list of class members by state of residence, a reasonable estimate of the number of class members residing in each state, or a reasonable estimate of the proportionate share of claims. Class member data is still being aggregated and validated. The parties will make this information available to the appropriate state or federal official upon request when it becomes available as the data collection process progresses.

As of this date, the W.D.N.Y. Federal District Court has not scheduled a hearing to address the request for preliminary approval of the proposed settlement, a final approval hearing date, or any other proceeding or hearing concerning the proposed settlement, nor has the W.D.N.Y. Federal District Court issued any order or opinion relating to the proposed settlement.

Please contact the undersigned counsel if you have questions or concerns about this notice or the enclosed materials.

Sincerely,

A handwritten signature in black ink, appearing to read "St M. Richard", written in a cursive style.

Steven M. Richard
Counsel for the University of Rochester

Enclosures

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

DANIEL CARSTAIRS, *on behalf of himself
and all others similarly situated,*

Plaintiff,

v.

UNIVERSITY OF ROCHESTER,

Defendant.

Case No. 6:20-cv-06690-CJS

FINAL APPROVAL ORDER

This matter, having come before the Court on Plaintiff's Motion for Final Approval of Class Action Settlement with Defendant University of Rochester (hereafter Defendant), and the Court, having considered all papers filed and arguments made with respect to the settlement, having granted preliminary approval to the settlement by Order of June 24, 2025, ECF 87, and being fully advised finds that:

1. On November 13, 2025, the Court held a final approval hearing, at which time the parties were afforded the opportunity to be heard in support of or in opposition to the settlement. The Court received no objections to the settlement.

2. Notice to the Settlement Class¹ required by Rule 23(e) of the Federal Rules of Civil Procedure has been provided in accordance with the Court's Order Preliminarily Approving Class Settlement and Directing Notice to Settlement Class Members, ECF 87. Such notice was given in an adequate and sufficient manner constitutes the best notice practicable under the circumstances, including the dissemination of individual notice to all members who can be identified through reasonable effort and satisfies Rule 23(e) and due process.

¹ Capitalized terms are defined in Section II of the parties' Class Settlement Agreement and Release (Agreement). ECF 86-1.

3. Defendant has timely filed notification of this settlement with the appropriate officials pursuant to the Class Action Fairness Act of 2005 (CAFA), 28 U.S.C. 1715.

4. The terms of the parties' Agreement, ECF 86-1, are incorporated fully into this Order by reference. The Court finds that the terms of the settlement are fair, reasonable, and adequate in light of the complexity, expense and duration of litigation and the risks involved in establishing liability, damages, and in maintaining the class action through trial and appeal.

5. The Court has considered the factors enumerated in Rule 23(e)(2) and finds they counsel in favor of final approval.

6. The Court finds that the relief provided under the settlement constitutes fair value given in exchange for the release of claims.

7. The parties and each class member have irrevocably submitted to the jurisdiction of this Court for any suit, action, proceeding, or dispute arising out of the settlement agreement.

8. The Court finds that it is in the best interests of the parties and the Settlement Class and consistent with principles of judicial economy that any dispute between any class member (including any dispute as to whether any person is a class member) and any released party 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.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

9. This action is a class action against Defendant on behalf of the following Class as defined in section 2.3 of the Settlement Agreement, namely:

Any student or learner who paid or caused to be paid tuition and or Academic Service Fees, Activity Fees, Campus Health Fees, and or course fees (Mandatory Fees) to Defendant to attend in-person courses at the University of Rochester in the Spring 2020 Semester, Summer 2020 Semester, and or Fall 2020 Semester for a degree- or certificate-bearing University of Rochester program and whose courses were not provided in-person.

Pursuant to section 4.2.1 of the Settlement Agreement, excluded from the Settlement Class are:

(1) students who did not enroll in in-person classes at Rochester for the Spring 2020 Semester, Summer 2020 Semester and or Fall 2020 Semester (2) students who received exclusively in-person classes at Rochester for all classes enrolled during the Spring 2020 Semester, Summer 2020 Semester and or Fall 2020 Semester (3) students who received a refund, Gift Aid, or Rochester scholarship covering all tuition and Mandatory Fees for each of the Spring 2020 Semester, Summer 2020 Semester and or Fall 2020 Semester in which they enrolled in in-person classes but did not receive in-person classes (4) any District Judge or Magistrate Judge presiding over this Action and members of their families (5) the Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees (6) persons who properly execute and file a timely request for exclusion from the Class and (7) the legal representatives, successors or assigns of any such excluded persons.

10. The Agreement submitted by the parties for the Class is finally approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure as fair, reasonable, and adequate and in the best interests of the class. The Agreement, including the monetary relief set forth therein, shall be deemed incorporated herein and shall be consummated in accordance with the terms and provisions thereof, except as amended or clarified by any subsequent order issued by this Court.

11. As agreed by the parties in the Settlement Agreement, upon the Effective Date, the Released Parties shall be released and discharged in accordance with the Settlement Agreement.

12. As agreed by the parties in the Settlement Agreement, upon the Effective Date, each Settlement Class Member who has not opted out of the settlement is enjoined and permanently barred from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit that asserts Class Released Claims.

13. Upon consideration of Class Counsel's application for fees and costs and other expenses, the Court awards 1,666,666.67 as reasonable attorneys' fees and reimbursement for reasonable out-of-pocket expenses, which shall be paid from the Settlement Fund.

14. Upon consideration of the application for an individual settlement and service award, the Named Plaintiff Daniel Carstairs is awarded the sum of five thousand dollars (\$5,000), to be paid from the Settlement Fund, for his services for and on behalf of the Class.

15. Neither this Order nor the Agreement shall be construed or used as an admission or concession by or against the Defendant or any of the Released Parties of any fault, omission, liability, or wrongdoing, or the validity of any of the Released Claims. This Order is not a finding of the validity or invalidity of any claims in this lawsuit or a determination of any wrongdoing by the Defendant or any of the Released Parties. The final approval of the Settlement Agreement does not constitute any opinion, position, or determination of this Court, one way or the other, as to the merits of the claims and defenses of Plaintiff, the Settlement Class Members, or the Defendant.

16. Without affecting the finality of this judgment, the Court hereby reserves and retains jurisdiction over this settlement, including the administration and consummation of the settlement. In addition, without affecting the finality of this judgment, the Court retains exclusive jurisdiction over Defendant and each member of the Class for any suit, action, proceeding or dispute arising out of or relating to this Order, the Settlement Agreement or the applicability of the Agreement. Without limiting the generality of the foregoing, any dispute concerning the Agreement, including, but not limited to, any suit, action, arbitration or other proceeding by a Participating Settlement Class Member in which the provisions of the Settlement Agreement are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, shall constitute a suit, action or proceeding arising out of or relating to this Order. Solely for purposes of such suit, action or proceeding, to the fullest extent possible under applicable law,

the parties hereto and all Participating Settlement Class Members are hereby deemed to have irrevocably waived and agreed not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of this Court, or that this Court is, in any way, an improper venue or an inconvenient forum.

17. This action is hereby dismissed on the merits, in its entirety, with prejudice and without costs.

18. The Court finds, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay, and directs the Clerk to enter final judgment.

19. There having been no requests for exclusion from the Settlement Class, the Court finds that no Settlement Class Member is excluded from the terms of this Order.

Dated:

Hon. Charles J. Siragusa
United States District Judge