IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CLAIRE VAN TREECK, *on behalf of herself and all others similarly situated*,

Plaintiff,

v.

ROBERT MORRIS UNIVERSITY,

Defendant.

CIVIL DIVISION – CLASS ACTION

No. GD-24-000927

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CLASS CERTIFICATION, AND FOR AUTHORIZATION OF CLASS NOTICE

Filed on behalf of Plaintiff: CLAIRE VAN TREECK

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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CLASS CERTIFICATION, AND FOR AUTHORIZATION OF CLASS NOTICE

Plaintiff Claire Van Treeck ("Plaintiff"), individually and on behalf of all others similarly situated, by and through her counsel, hereby respectfully moves the Court for preliminary approval of the proposed class action settlement ("Settlement") set forth in the Settlement Agreement and Release ("Settlement Agreement" or "SA") (attached as **Exhibit 1**). Plaintiff, with consent of Defendant Robert Morris University ("RMU," the "University," or "Defendant"), respectfully moves this Court for an order: (1) granting preliminary approval of the Settlement; (2) authorizing and approving the form and content of the Notice to be sent to the members of the Potential Settlement Class[1] pursuant to the plan detailed in the Settlement Agreement; and (3) scheduling a final fairness hearing.

Plaintiff, on behalf of herself and a proposed class of individuals, has agreed to settle all claims against RMU as to tuition and fees paid during the Spring 2020 semester. Plaintiff alleges

[1] All capitalized terms used throughout this brief shall have the meanings ascribed to them in the Settlement Agreement.

that RMU contracted with, charged, and collected from its students funds for in-person education and on-campus access and services, but that RMU failed to deliver an in-person education and on-campus access and services when, in response to the Covid-19 pandemic, RMU moved all classes to online-only and constructively closed the campus. As set forth in the Settlement Agreement, the Net Settlement Fund will be allocated as follows: 80% of Settlement Class Members and 20% to RMU for use for the benefit of RMU students. All Settlement Class Members will receive an automatic distribution, which will be allocated *pro rata* to each Settlement Class Member based on the ratio of (a) the total amount of Spring 2020 Tuition and Fees assessed to Settlement Class Members enrolled at RMU during the Spring 2020 semester to (b) the total amount of Spring 2020 Tuition and Fees assessed to each individual Settlement Class Member enrolled at RMU during the Spring 2020 semester, less Financial Aid and any unpaid balances related to the Spring 2020 term as reflected on the Settlement Class Member's account with RMU, and any refunds already distributed related to Spring 2020 semester.

As set forth below, the proposed Settlement is the product of fully informed, arm's-length settlement negotiations, including a mediation session with Hon. Thomas J. Rueter (Ret.) of JAMS. Given these factors, and those more fully discussed below, the Settlement meets the requirements for the issuance of notice. Plaintiff therefore respectfully requests that the Court preliminarily approve the Settlement and enter the proposed Preliminary Approval Order.[2]

BACKGROUND AND STATUS OF THE LITIGATION

On January 24, 2024, Plaintiff Claire Van Treeck filed a class action Complaint in the Court of Common Pleas of Allegheny County styled *Van Treeck v. Robert Morris University*, Case

[2] While RMU denies liability, it does not oppose this Motion, and supports preliminary approval of the Settlement Agreement, certification of the proposed class for settlement purposes only, and dissemination of the Class Notice to the students.

No. GD-24-000924 (the "Action") (Doc. 1) (the "Action"). Following the filing of the Complaint, the Parties engaged in preliminary discussions regarding the merits and potential early resolution.

Thereafter, in anticipation of mediation, the Parties exchanged detailed information related to the amount of tuition and fee payments made by or on behalf of the putative class members, the size of the putative class, and RMU's tuition and fee refund policies and practices during the Spring 2020 semester. The Parties also provided each other and the mediator with detailed pre-mediation submissions setting forth their views on the merits of the case, the likelihood the case could be certified as a class action, the bona fides of the Named Plaintiff to represent the putative class, and positions on the factual support for and viability of the claims asserted in the Complaint. Finally, the Parties exchanged demands and offers in an effort to reach a settlement of the Action.

On August 29, 2024, the Parties held a mediation session in front of Hon. Thomas J. Rueter (Ret.). With the guidance of Judge Rueter, the Parties reached a settlement in principle and began to negotiate the terms of the Settlement. The Parties thereafter executed a Term Sheet on October 11, 2024, encompassing the resolution. Over the ensuing months, the Parties negotiated the final terms of the Settlement and its supporting exhibits.

Based upon their independent analysis, and recognizing the risks of continued litigation, counsel for Plaintiff believe that the proposed settlement is fair, reasonable, and in the best interest of Plaintiff and the Class. Although RMU denies liability, RMU decided to enter into this Settlement on the terms and conditions stated herein to avoid further expense, inconvenience, 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.

SUMMARY OF THE TERMS OF THE PROPOSED SETTLEMENT

The key components of the Settlement are set forth below, and a complete description of its terms and conditions are contained in the Settlement Agreement.

A. Class Definition

Through the Settlement Agreement, the Parties stipulate to the following Class definition:

> All Robert Morris University students who satisfied their payment obligations to RMU for Spring 2020 for tuition and/or Mandatory Fees (including any University Services Fee, Residence Hall Association Fee, Student Government Fee, and/or Student Recreation & Fitness Fee) and who were enrolled in at least one in-person, on-campus class.

Excluded from this definition are: (i) all students who had their tuition and fee obligations completely funded by Robert Morris University for the Spring 2020 semester; (ii) Defendant; Defendant's officers, directors, agents, trustees, parents, children, corporations, trustees, representatives, employees, principals, servants, partners, joint venturers, and/or entities controlled by Defendant; and/or (iii) Defendant's heirs, successors, assigns, or other persons or entities related to or affiliated with Defendant and/or Defendant's officers. SA ¶ 1(dd). The Parties estimate that there are approximately 3,434 individuals in the Settlement Class. Should the Court grant final approval of the Settlement, by operation of law and as set forth in Paragraph 10 of the Settlement Agreement: (a) all members of the Releasing Settlement Class Parties shall be deemed to have released any and all Released Claims against the Released RMU Parties, and (b) shall forever be barred and enjoined from prosecuting any or all of the Released Claims against any of the Released RMU Parties.

B. The Proposed Class Notice

The Settlement Agreement provides for dissemination of a Short Form Notice. The Short Form Notice will provide potential Settlement Class Members with pertinent information

regarding the Settlement as well as directing them to the Long Form Notice, the Settlement Website, and the contact information for Class Counsel. Within thirty (30) days after entry of the Preliminary Approval Order, RMU shall provide the Settlement Administrator with a list from the University Registrar's records that includes the names and last known email address and postal address, to the extent available, belonging to all potential Settlement Class Members. *See* SA ¶ 15.

Shortly after receiving the Class List, the Settlement Administrator will send the Short Form Notice (attached to the SA as **Exhibit A-1**) via email or U.S. Mail. *See* SA ¶ 16. The Short Form Notice shall advise the potential Settlement Class Members of their rights under the Settlement, including the right to be excluded from and/or object to the Settlement or its terms. The Short Form Notice shall also inform potential Settlement Class Members that they can access the Long Form Notice on the Settlement Website. The Long Form Notice shall advise the potential Settlement Class Members of the procedures specifying how to request exclusion from the Settlement or submit an objection to the Settlement. *See* SA ¶ 17.

Before the issuance of the Short Form Notice, the Settlement Administrator shall also establish a Settlement Website, which will include the Settlement Agreement, the Long Form Notice, any relevant Court orders regarding the Settlement, and a list of frequently asked questions mutually agreed upon by the Parties. *See* SA ¶ 18. Contact information for the Settlement Administrator, including a Toll-Free number, as well as Settlement Class Counsel's contact information will be provided. No later than sixty (60) days after entry of the Preliminary Approval Order, RMU will provide a link to the Settlement Website on its website. *See* SA ¶ 19. The form and method of Class Notice agreed to by the Parties satisfies all due process considerations and meets the requirements of Pennsylvania law. The proposed Long Form Notice describes plainly: (i) the terms and effect of the Settlement Agreement; (ii) the time and place of the Final Approval

Hearing; (iii) how the recipients of the Class Notice may object to the Settlement; (iv) the nature and extent of the release of claims; (v) the procedure and timing for objecting to the Settlement; and (vi) the form and methods by which potential Settlement Class Members may either participate in or exclude themselves from the Settlement.

C. Monetary Terms

The proposed Settlement Amount is a cash payment of Nine Hundred Forty-Seven Thousand Seven Hundred Eighty-Four Dollars ($947,784.00). *See* SA ¶ 38. 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 Plaintiff, in recognition of the risks and benefits of her participation and substantial services she performed. *See* SA ¶ 39. After all applicable fees, expenses and awards are deducted, the Net Settlement Fund will be allocated as follows: 80% of Settlement Class Members and 20% to RMU for use for the benefit of RMU students. The allocation to Settlement Class Members shall be *pro rata* to each Settlement Class Member based on the ratio of (a) the total amount of Spring 2020 Tuition and Fees assessed to Settlement Class Members enrolled at RMU during the Spring 2020 semester to (b) the total amount of Spring 2020 Tuition and Fees assessed to each individual Settlement Class Member enrolled at RMU during the Spring 2020 semester, less Financial Aid and any unpaid balances related to the Spring 2020 term as reflected on the Settlement Class Member's account with RMU, and any refunds already distributed related to Spring 2020 semester. SA ¶ 4. To the extent that a potential Settlement Class Member properly executes and files a timely request to be excluded from the Settlement Class, the amount that would have been distributed to such potential Settlement Class Member had they not filed an opt-out request will instead be distributed *pro rata* to the remaining Settlement Class Members. SA ¶ 5.

Should the Court grant preliminary approval of the Settlement, RMU shall pay $50,000 into the Settlement Fund within thirty (30) days, with the remainder of the Settlement Fund to be paid within thirty (30) days of final approval. *See* SA ¶ 38. Within sixty (60) days after Final Approval, the Settlement Administrator will send Settlement Class Members their portion of the Settlement Benefit by check, Venmo, or PayPal. *See* SA ¶¶ 7-8. The Settlement Administrator will pay all legally mandated Taxes prior to distributing the settlement payments to Settlement Class Members. *See* SA ¶ 43.

Settlement Class Members shall have one hundred and twenty (120) days from the date of distribution of the checks to cash their check for the Settlement Benefit. If the funds for Uncashed Settlement Checks exceed the remaining Administrative Expenses, such funds will be redistributed as a second distribution to Settlement Class Members who previously did cash their settlement check. If the funds for Uncashed Settlement Checks still exceed the remaining Administrative Expenses after the second distribution, the Uncashed Settlement Checks from the second distribution will be redistributed as a third distribution to Settlement Class Members who previously did cash their settlement check. If, after the third distribution, there are any funds remaining from Uncashed Settlement Checks, the funds shall, subject to Court approval, be treated as residual funds pursuant to Pa. Rule 1716 and disbursed to the Pennsylvania Interest on Lawyers Trust Account. *See* SA ¶¶ 1(ll), 9.

D. 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, liens, 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, known or unknown, asserted or unasserted, 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 (i) tuition, fees, or other similar amounts charged to, paid by, and/or incurred by or on behalf of any Settlement Class Member at RMU in connection with, relating to, or concerning the Spring 2020 Semester, and/or (ii) the Action, and/or (iii) RMU's transition to remote education with respect to the COVID-19 pandemic, the closure or limitations on access to its campus and campus facilities, or the implementation or administration of such remote education during the Spring 2020 semester. This includes all claims that were brought or could have been brought in the Action. These releases are described in the proposed Long Form Notice.

E. Proposed Schedule Following Preliminary Approval

EVENT TIMING	
Mailing of Class Notices	Within thirty (30) calendar days after entry of Preliminary Approval, RMU will produce a list of potential Settlement Class Members to the Settlement Administrator (SA ¶ 15). Within forty-five (45) calendar days after entry of Preliminary Approval, the Settlement Administrator will send the Short Form Notice to potential Settlement Class Members (SA ¶ 16).
Deadline for Filing Objections to the Settlement	Within forty-five (45) days after the issuance of the Short Form Notice (SA ¶¶ 21, 26).
Deadline for Submitting Requests for Exclusion from the Settlement	Within forty-five (45) days after the issuance of the Short Form Notice (SA ¶ 21).

Final Approval Hearing	No less than seventy-five (75) days after the Short Form Notice is disseminated (or 120 days from Preliminary Approval) (SA ¶ 36).

I. ARGUMENT

A. The Requirements for a Class Action are Satisfied.

Under Pennsylvania's Rules of Civil Procedure, the proponent of class certification must demonstrate that the prerequisites under Rule 1702 are met. Pa. R. Civ. P. 1702; *see also Samuel-Bassett v. Kia Motors America, Inc.*, 34 A.3d 1, 16 (Pa. 2011). The prerequisites to certifying a class action are set forth in Pennsylvania Rule of Civil Procedure 1702: numerosity, commonality, typicality, adequacy of representation, and fairness and efficiency. Pa. R. Civ. P. 1702; *see also Kelly v. Cty. of Allegheny*, 546 A.2d 608, 610 (Pa. 1988). Additionally, Rules 1708 and 1709 specify the factors considered in determining the last two requirements of Rule 1702 (adequacy of representation and fairness and efficiency). *Id.* The Court may conditionally certify a class pending a final order on the merits. Pa. R. Civ. P. 1710(d).

In deciding whether to certify a class action, the court is vested with broad discretion. *Cambanis v. Nationwide Ins. Co.*, 501 A.2d 635 (Pa. Super. Ct. 1985) ("Pennsylvania Rules of Civil Procedure . . . grant the court extensive powers to manage the class action."). Decisions in favor of maintaining a class action should be liberally made. *D'Amelio v. Blue Cross of Lehigh Valley*, 500 A.2d 1137, 1141 (Pa. Super. Ct. 1985). As explained below, Plaintiff satisfies Rule 1702, and this Court should conditionally certify this class action for settlement purposes.[3]

[3] Because Settlement Class Members are given the right to opt out of the Settlement Class, this Court may certify a nationwide class under Pa. R. Civ. P. 1711. *See Parsky v. First Union Corp.*, No. 771, 2001 WL 987764, at *1 (Pa. Com. Pl. Aug. 17, 2001); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985).

1. The Class is so Numerous that Joinder of all Members is Impracticable.

Rule 1702(1) requires that the proposed class be "so numerous that joinder of all members is impracticable." Pa. R. Civ. P. 1702(1). While there is no specific minimum number needed for a class to be certified, there is a general presumption that numerosity is satisfied where the potential number of plaintiffs exceeds 40. *See Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 595 (3d Cir. 2012). Ultimately, whether a class is sufficiently numerous is based on the circumstances surrounding each individual case. *Janicik v. Prudential Ins. Co. of. Am.*, 451 A.2d 451, 456 (Pa. Super. Ct. 1982). And the Court should inquire "whether the number of potential individual plaintiffs would pose a grave imposition on the resources of the Court and an unnecessary drain on the energies and resources of the litigants should such potential plaintiffs sue individually." *Temple Univ. v. Pa. Dept. of Public Welfare*, 374 A.2d 911, 996 (Pa. Commw. Ct. 1977). Here, the Settlement Class is sufficiently numerous, as there are approximately 3,500 students who were enrolled in in-person courses during the Spring 2020 semester at RMU.

2. There are Questions of Law or Fact Common to the Settlement Class.

Rule 1702(2) requires common questions of law and fact to exist. Pa. R. Civ. P. 1702(2). Pennsylvania courts have explained that this requirement is generally met "'if the class members' legal grievances are directly traceable to the same practice or course of conduct on the part of the [defendant].'" *Sommers v. UPMC*, 185 A.3d 1065, 1076 (Pa. Super. Ct. 2018) (quoting *Clark v. Pfizer Inc.*, 990 A.2d 17, 24 (Pa. Super. Ct. 2010)). "The common question of fact means precisely that the facts must be substantially the same so that proof as to one claimant would be proof as to all. That is what gives the class action its legal viability." *Allegheny Cty. Housing Auth. v. Berry*, 487 A.2d 995, 997 (Pa. Super. Ct. 1985).

Here, commonality is satisfied because numerous common issues exist, including: (a) whether RMU engaged in the conduct alleged herein; (b) whether there is a difference in value

between online distance learning and live in-person instruction; (c) whether RMU breached its contracts with Plaintiff and the other members of the Class by retaining tuition and fees without providing the services the tuition and fees were intended to cover; (d) whether certification of the Class proposed herein is appropriate; (e) whether Class members are entitled to declaratory, equitable, or injunctive relief, and/or other relief; and (f) the amount and nature of relief awarded to Plaintiff and the other Class Members

Because these common questions, and others alleged in Plaintiff's Complaint, are central to the causes of action brought here, will generate common answers, and can be addressed on a class-wide basis, Rule 1702(2)'s commonality requirement is satisfied.

3. The Claims of the Named Plaintiff are Typical of the Claims of the Settlement Class.

Rule 1702(3) requires that the "claims or defenses of the representative parties are typical of the claims or defenses of the class." Pa. R. Civ. P. 1702(3). This requirement is intended to ensure that "the class representative's overall position on the common issues is sufficiently aligned with that of the absent class members to ensure that her pursuit of her own interests will advance those of the proposed class members." *Samuel-Bassett*, 34 A.3d at 30–31 (quoting *D'Amelio*, 500 A.2d at 1146). The typicality requirement is satisfied where the plaintiff's and class members' claims arise "out of the same course of conduct and involve the same legal theories." *Samuel-Bassett*, 34 A.3d at 30–31 (citing *Dunn v. Allegheny County Prop. Assessment Appeals & Review,* 794 A.2d 416, 425 (Pa. Commw. Ct. 2002)). This does not mean that the plaintiff's and class members' claims must be identical; only that the claims are similar enough to determine that the representative party will adequately represent the interests of the class. *Klusman v. Bucks Cty. Court of Common Pleas*, 564 A.2d 526, 531 (Pa. Commw. Ct. 1989), *aff'd*, 574 A.2d 604 (Pa.

1990). A finding that a named plaintiff is atypical must be supported by a clear conflict and be such that the conflict places the Class members' interests in significant jeopardy. *Id.*

Here, Plaintiff's claims are typical of those of the Settlement Class Members because they were all enrolled as on-campus students at RMU, registered for in-person classes, complied with RMU's policy and procedures, satisfied their tuition and/or fee obligations for in-person and on-campus facilities and services, were denied the same when RMU closed its campus in Spring 2020, and did not receive a *pro rata* tuition and fee refund. Moreover, Plaintiff and Settlement Class Members will receive the same benefits under the Settlement. Therefore, Plaintiff's legal theories do not conflict with those of absentee Settlement Class Members, and Plaintiff will represent the interests of absentee Settlement Class Members fairly, because such interests parallel to her own. As such, Rule 1702(3)'s typicality requirement is satisfied.

4. The Named Plaintiff Will Fairly and Adequately Represent the Interests of the Settlement Class.

Rule 1702(4) requires that the "representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709." Pa. R. Civ. P. 1702(4). In turn, Rule 1709 lists three requirements:

> (1) whether the attorney for the representative parties will adequately represent the interests of the class;
> (2) whether the representative parties have a conflict of interest in the maintenance of the class action; and
> (3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

Pa. R. Civ. P. 1709. The proposed class meets these requirements.

a. Counsel for Plaintiff Have Adequately Represented the Interests of the Settlement Class and Will Continue to Do So.

Plaintiff here has retained competent counsel experienced in consumer class action litigation. Unless proven otherwise, courts will generally assume that members of the bar are

adequately skilled in the legal profession. *Janicik*, 451 A.2d at 458. "Courts may also infer the attorney's adequacy from the pleadings, briefs, and other material presented to the court, or may determine these warrant further inquiry." *Id.* at 459. Plaintiff seeks to have Nicholas A. Colella and Patrick D. Donathen of Lynch Carpenter, LLP,[4] and Michael Tompkins and Anthony M. Alesandro of Leeds Brown Law, P.C.[5] appointed as Class Counsel. As evidenced by their resumes, Plaintiff's counsel have the requisite skill and experience to serve as Class Counsel. Indeed, Class Counsel and their firms have worked on dozens of university tuition refund cases and have been appointed class counsel in substantially similar matters.

b. There Are No Conflicts of Interests Between the Named Plaintiff and the Settlement Class.

As with the adequacy of counsel requirement, the Court "'may generally presume that no conflict of interest exists unless otherwise demonstrated.'" *Haft v. U.S. Steel Corp.*, 451 A.2d 445, 448 (Pa. Super. Ct. 1982) (quoting *Janicik*, 451 A. 2d at 459). Plaintiff is not aware of any "hidden collusive circumstances," *Haft*, 451 A.2d at 448, that could pose conflicts of interest between Plaintiff and members of the Settlement Class. Plaintiff and the Settlement Class have aligned interests: they seek to hold RMU accountable for, among other things, failing to refund the portion of tuition and fees associated with the part of the Spring 2020 semester during which it failed to provide in-person education and on-campus access and services. If Plaintiff succeeds in obtaining the proposed Settlement, the benefits will inure to Plaintiff and all Settlement Class Members in a manner calculated to equitably correspond to the harm suffered by each individual. For these reasons, no conflicts of interest between Plaintiff and the Settlement Class exist.

[4] Lynch Carpenter's Resume is attached as **Exhibit 2**.
[5] Leeds Brown's Resume is attached as **Exhibit 3**.

c. The Interests of Settlement Class Members Have Not Been Harmed by Lack of Adequate Resources.

The requirement that the representative plaintiff demonstrate access to adequate financial resources to ensure that interests of the class are not harmed may be met if "the attorney for the class representatives is ethically advancing costs." *Haft*, 451 A.2d at 448; *see also Janicik*, 451 A.2d at 459–60. That is the case here: Class Counsel undertook this litigation pursuant to a standard contingent fee agreement, and up through this point in the litigation, counsel have advanced all costs required to maintain the litigation, such as initial filing fees and the costs for the mediation. In connection with the final approval process, Class Counsel will ethically seek reimbursement of its costs and fees as described in the parties' Settlement Agreement, and Class Counsel's application will be filed and available for Settlement Class Members to review prior to the Objection Deadline, and subject to ultimate approval by the Court.

For these reasons, the requirements of Rule 1702(4) are satisfied.

5. A Class Action is a Fair and Efficient Method of Adjudicating the Controversy.

Rule 1702(5) requires that the court determine whether a class action provides a "fair and efficient method of adjudicating the controversy," with reference to additional factors in Rule 1708. Pa. R. Civ. P. 1702(5). In turn, Rule 1708 lists the following factors for courts to consider:

> In determining whether a class action is a fair and efficient method of adjudicating the controversy, the court shall consider among other matters the criteria set forth in subdivisions (a), (b) and (c).
>
> (a) Where monetary recovery alone is sought, the court shall consider
> (1) whether common questions of law or fact predominate over any question affecting only individual members;
> (2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;
> (3) whether the prosecution of separate actions by or against individual members of the class would create a risk of

(i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;
(ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudication;
(4) the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues;
(5) whether the particular forum is appropriate for the litigation of the claims of the entire class;
(6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions;
(7) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.

(b) Where equitable or declaratory relief alone is sought, the court shall consider
(1) the criteria set forth in subsections (1) through (5) of subdivision (a), and
(2) whether the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making final equitable or declaratory relief appropriate with respect to the class.

(c) Where both monetary and other relief is sought, the court shall consider all the criteria in both subdivisions (a) and (b).

Pa. R. Civ. P. 1708.

a. Common Questions of Fact and Law Predominate.

The predominance inquiry under Rule 1708(a)(1), while "more demanding" than the commonality standard, requires "merely" that the "common questions of fact and law . . . predominate over individual questions." *Samuel-Bassett*, 34 A.3d at 23. "[A] class consisting of members for whom *most* essential elements of its cause or causes of action may be proven through simultaneous class-wide evidence is better suited for class treatment than one consisting of individuals form whom resolution of such elements does not advance the interests of the entire class." *Id.* Where class members can demonstrate they were subjected to the same harm and they

identify a "common source of liability," individualized issues such as varying amounts of damages will not preclude class certification. *See id.* at 28 (citations and quotation marks omitted).

Here, the common issues—whether RMU breached its contracts with Plaintiff and the members of the Class by failing to provide them with in-person, on-campus instruction, educational services, and use of facilities after March of 2020, yet retaining the tuition and fees paid for the same—clearly predominate over any individual issues that may exist. Each Class Member suffered similar harm for the same amount of time due to the same actions or inactions of RMU. Further, the alleged contractual arrangements between RMU and each of its students—receiving in-person, on-campus instruction, educational services, and use of facilities—are substantively identical. Similarly, the nature of RMU's alleged breach is the same for each member of the Class, regardless of their academic major, scholarships, or any other ancillary criteria. Thus, predominance is met here.

b. The Size of the Settlement Class and Manageability of the Case Weigh in Favor of Class Certification.

Rule 1708(a)(2) requires the Court to consider "the size of the class and the difficulties likely to be encountered in the management of the action as a class action." Pa. R. Civ. P. 1708(a)(2). There are approximately 3,434 Settlement Class Members, and proceeding as a class action here for settlement purposes is fully manageable. Class Members can be identified from Defendant's records, and the parties have agreed to a settlement structure that allows a straightforward and simple determination of the amount each Settlement Class Member will receive under the Settlement, and automatic distribution of such amounts. In these circumstances, there are no potential manageability problems weighing against class certification. *See Janicik*, 451 A.2d at 462 (finding no manageability problems where class member information is readily available from defendant).

c. Prosecution of Separate Individual Actions Creates a Risk of Inconsistent Rulings.

Rule 1708(a)(3) requires the Court to consider whether prosecution of separate individual actions, as opposed to a class action, would create risks of inconsistent or varying rulings which would confront the defendant with incompatible standards of conduct, and whether adjudications with respect to individual members of the class would as a practical matter be dispositive of the interests of others or impair their ability to protect their interests. Pa. R. Civ. P. 1708(a)(3). Where, as here, the Plaintiff and Settlement Class Members share an identical claim stemming from the same conduct on the part of the defendant, a class action "affords the speedier and more comprehensive statewide determination of the claim," and is "the better means to ensure recovery if the claim proves meritorious or to spare [defendant] repetitive piecemeal litigation if it does not." *Janicik*, 451 A.2d at 462–63. Indeed, because Plaintiff sought to establish RMU's liability under a breach of contract and quasi-contract theory for the same conduct that impacted Plaintiff and all members of the Settlement Class, there is a substantial risk that individual actions would lead to varying outcomes. *Id.* at 462 ("Courts may, and often do, differ in resolving similar questions."). Therefore, this factor weighs in favor of class certification.

d. The Extent and Nature of Litigation by Other Settlement Class Members Weighs in Favor of Class Certification and this Court is an Appropriate Forum.

Rule 1708(a)(4) requires the Court to consider "the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues." Pa. R. Civ. P. 1708(a)(4). This factor weighs in favor of certification because there are no other actions against RMU related to the conduct alleged in the Complaint, so there is no risk that class certification would impair the rights of other litigants in other actions.

Additionally, this court is the most appropriate forum to concentrate the litigation because RMU resides and does substantial business in the County, and the alleged conduct took place in this County. As a result, there is "no one common pleas court which would be better to hear the action." *Baldassari v. Suburban Cable TV Co.*, 808 A.2d 184, 195 (Pa. Super. Ct. 2002) (quoting *Cambanis*, 501 A.2d at 641 n.19).

e. The Amounts at Issue, Complexities of the Issues, and Expenses of Litigation Justify a Class Action Rather Than Individual Actions.

Rule 1708(a)(6) requires the Court to consider whether, in light of the complexity of the issues and expenses of litigation, the separate claims of individual class members are insufficient in amount to support separate actions. Relatedly, Rule 1708(a)(7) requires the Court to consider whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.

Here, both factors support class certification. Continued litigation would require Plaintiff to prove RMU breached a contract or was otherwise unjustly enriched, and to determine the amount of damages for Plaintiff and the Settlement Class. Such determination would inevitably require complex discovery into RMU's marketing, policies, and financials, as well as a battle of experts. Trying to establish liability and damages on an individual basis would far exceed the amount to be recovered for each individual.

Importantly, the Settlement provides a reasonable compromise, that if approved, will accomplish a desirable outcome in one proceeding. Settlement Class Members will be entitled to automatic compensation if this action is certified and the Settlement is approved. When weighed against the prospects of individual litigation, the proposed Settlement here offers all the potential advantages of class certification—eliminating the possibility of numerous, duplicative claims and

redundant work for counsel and the courts, while providing a recovery for a large group without requiring each individual Settlement Class Member to shoulder the burden of litigation expenses despite potentially small recovery.

For these reasons, the factors described in Rule 1708(a)(6) & (7) both support certification.

B. The Court Should Preliminarily Approve the Settlement.

Plaintiff requests that the Court preliminarily approve the proposed Settlement on the grounds that the proposal falls within the range of reasonableness and that approval on these terms will secure an adequate recovery in exchange for the releases of the claims raised in the action.

The approval of a class action comes in two stages. First, the proposal is submitted to the Court for a preliminary fairness evaluation. *Brophy v. Phila. Gas Works and Phila. Facilities Mgmt. Corp.*, 921 A.3d 80, 88 (Pa. Commw. Ct. 2007). If approval is granted, notice is given to the class members and a formal fairness hearing is scheduled where the Court can receive arguments and evidence in support of or in opposition to the proposal. *Id.* The "range of reasonableness" standard requires the Court to examine whether the proposed settlement secures an "'adequate' (and not necessarily best possible) advantage for the class in exchange for the surrender of the members' litigation rights." *Dauphin Deposit Bank and Trust Co. v. Hess*, 727 A.2d 1076, 1079 (Pa. 1999). Factors relevant to the ultimate approval of the settlement (after the final fairness hearing) include:

1. the risks of establishing liability and damages;
2. the range of reasonableness of the settlement in light of the best possible recovery;
3. the range of reasonableness of the settlement in light of all the attendant risks of litigation;
4. the complexity, expense and likely duration of the litigation;
5. the state of the proceedings and the amount of discovery completed;
6. the recommendations of competent counsel; and
7. the reaction of the class to the settlement.

Id. at 1079–80. A preliminary review of these factors demonstrates that the Settlement is within the range of reasonableness and should be preliminarily approved.

1. The Risks of Establishing Liability and Damages.

"In evaluating the likelihood of success, a court should not attempt to resolve unsettled issues or legal principles but should attempt to estimate the reasonable probability of success." *Dauphin Deposit Bank & Tr. Co. v. Hess*, 698 A.2d 1305, 1309 (Pa. Super. Ct. 1997*)*, *aff'd*, 727 A.2d 1076 (Pa. 1999). While Plaintiff is confident of the strength of her claims, Plaintiff and Settlement Class Members face risks to establishing liability and ultimately recovering, especially in light of RMU's impossibility defense. Should litigation continue, Plaintiff has to survive RMU's anticipated preliminary objections and, later, a motion for summary judgment in order to proceed with the litigation, which is not guaranteed. *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). It is also likely that RMU would have contested whether Plaintiff could ultimately 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).

While Plaintiff is confident in the strengths of her case, Plaintiff acknowledges that their success at trial is far from certain. Through the Settlement, Plaintiff and Settlement Class Members gain significant benefits without having to face further risk of not receiving any relief at all. As such, this factor weighs in favor of preliminary approval.

2. The Range of Reasonableness in Light of the Best Possible Recovery and in Light of the Attendant Risks of Litigation.

The next two factors require a court to analyze the range of reasonableness of the settlement. "In deciding whether the settlement falls within a 'range of reasonableness,'" a court needs "to examine whether the proposed settlement secures an 'adequate' (and not necessarily the best possible) advantage for the class in exchange for the surrender of the members' litigation rights." *Dauphin Deposit Bank*, 727 A.2d at 1079. "In this light, a court need not inquire into whether the 'best possible' recovery has been achieved. Rather, in view of the stage of the proceedings, complexity, expense and likely duration of further litigation, as well as the risks of litigation, the court is to decide whether the settlement is reasonable." *Id.*

The strength of the settlement here is demonstrated, in part, by comparison with monetary recoveries in other university settlements involving tuition refunds following transition from in-person to remote online learning caused by the Covid-19 pandemic and resulting governmental orders. *See, e.g., Smith et al v. University of Pennsylvania*, Case No. 2:20-cv-02086-TJS (E.D. Pa.) ($4.5 million settlement with a per student recovery of $173.08); *Choi et al v. Brown University*, Case No. 1:20-cv-001914-JJM-LDA (D.R.I.) ($1.5 million settlement with a per student recovery of $155.44); *Fittipaldi v. Monmouth University*, Case No. 3:20-cv-05526-RLS (D.N.J.) ($1.3 million settlement with a per student recovery of $206.50); *Rocchio v. Rutgers, The State University of New Jersey*, No. MID-L-003039-20 (N.J. Super. Ct.) ($5 million settlement with a per student recovery of $77.48); *Espejo et al v. Cornell University*, Case No. 3:20-cv-00467-MAD-ML (N.D.N.Y.) ($3 million settlement with a per student recovery of $115); *Carpey v. Board of Regents of the University of Colorado*, No.: 2020cv31409 ($5 million settlement with a per student recovery of $83.33). Here, the gross per student recovery is approximately $270.

This Settlement is particularly strong in light of the risks and delay-related downsides of continued litigation against RMU. But as discussed above, the risks of continuing litigation are substantial because Plaintiff has no assurance of establishing liability or any entitlement to monetary relief. As such, these factors weigh in favor of preliminary approval of the Settlement.

3. The Complexity, Expense, and Duration of the Litigation.

The complexity, expense, and duration factor "captures the probable costs, in both time and money, of continued litigation." *In re Cedant Corp. Litigation*, 264 F.3d 201, 233 (3d Cir. 2001). "Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them." *Milkman v. Am. Travellers Life Ins. Co.*, 61 Pa. D. & C.4th 502, 543 (Pa. Com. Pl. Ct. 2002) (citing *In re NASDAQ Market-Makers Antitrust Litigation*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998) ("[C]lass actions have a well deserved reputation as being most complex.")).

If litigation continues, Plaintiff and Class Members would need to overcome a number of issues, including obtaining class certification, briefing motions for summary judgment, defending expert opinions, and maintaining certification through trial. *See In re CertainTeed Fiber Cement Siding Litig*., 303 F.R.D. 199, 216 (E.D. Pa. 2014) ("[I]f the parties were to continue to litigate this case, further proceedings would be complex, expensive and lengthy, with contested issues of law and fact . . . . That a settlement would eliminate delay and expenses and provide immediate benefit to the class militates in favor of approval."); *Craig v. Rite Aid Corp*., No. 4:08-cv-2317, 2013 WL84928, at *9 (M.D. Pa. Jan. 7, 2013) (preliminarily approving settlement where "[n]ot only would continued litigation of these cases result in a massive expenditure of Class Counsel's resources, it would likewise place a substantial drain on judicial resources.").

By reaching a favorable settlement at this stage of the litigation, the Parties will avoid significant litigation risks and expenses, while providing immediate and tangible relief to the Settlement Class. As such, this factor weighs in favor of preliminary approval.

4. The State of the Proceedings and Amount of Discovery Completed.

"The purpose of the state of the proceedings and discovery completion factor is to ascertain the 'degree of case development that class counsel have accomplished prior to settlement. Through this lens, courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating.'" *Milkman*, 61 Pa. D. & C. 4th at 544 (quoting *In Re General Motors Corp. Pick Up Truck Fuel Tank Product Liability Litig.*, 55 F.3d 768, 813 (3d Cri. 1995)). This ensures that "a proposed settlement is the product of informed negotiations" by providing for "an inquiry into the type and amount of discovery the parties have undertaken." *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 319 (3d Cir. 1998).

As described above, Class Counsel had more than sufficient information to assess the Settlement in light of the strengths and weaknesses of the case and determine that the Settlement is fair, reasonable, and adequate. *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"). Further, the Parties participated in an all-day mediation session before Retired Judge Rueter. The participation of Judge Rueter ensured that the settlement negotiations were conducted at arm's-length and without collusion between the Parties. *See e.g.*, *In re NFL Players' Concussion Inj. Litig.*, 301 F.R.D. 191, 198 (E.D. Pa. 2014) ("noting that a presumption of fairness exists where parties negotiate at arm's length, assisted by a mediator"). Under the circumstances, the fact that the parties did not engage in comprehensive formal discovery is not an impediment to approving the settlement. *See Fulton-Green v. Accolade, Inc.*, No. CV 18-274, 2019 WL 316722, at *3 (E.D. Pa. Jan. 24, 2019).

For these reasons, this factor also weighs in favor of preliminary approval.

5. The Recommendations of Competent Counsel.

"The opinion of experienced counsel is entitled to considerable weight." *Fischer v. Madway*, 485 A.2d 809, 813 (Pa. Super. Ct. 1984). Here, Class Counsel and Defendant's Counsel have been negotiating the early resolution of this action at arm's length for months, and Class Counsel is satisfied that this Settlement provides a more than adequate benefit to the Settlement Class and is in the best interest of the Settlement Class as it provides them with relief intended to address the principal harms caused by the incident—*pro rata* refunds of tuition and fees. Thus, this factor weighs in favor of preliminary approval of the Settlement.

6. The Reaction of the Settlement Class to the Settlement.

A court will inquire into the reaction of the Settlement Class in its determination of the reasonableness of the settlement. *Dauphin Deposit Bank*, 727 A.2d at 1080. This is a factor more properly addressed at final approval, after notice and an opportunity for the Settlement Class to be heard. While notice of Settlement has yet to be sent out, Class Counsel is confident there will be few, if any, Settlement Class Members who will opt out or object to the Settlement as the relief provided is in line with that provided by similar Covid tuition refund settlements that have received approval. As such, this factor weighs in favor of preliminary approval.

In the end, the issues of law and fact have been thoroughly investigated, and continued litigation would further delay relief to the Settlement Class and consume substantial resources of both the Parties and the Court. The relief afforded by the Settlement is excellent, when balanced against the risk faced by Plaintiff on the merits of the case, and the time, risks, and expenses of further litigation. Nothing in the course of the settlement negotiations or the substance of the Settlement itself suggests any grounds to doubt its fairness. To the contrary, the arm's-length nature of the negotiations, the participation of experienced lawyers and an able and attentive

mediator, as well as the value of aggregate relief support a finding that the Settlement is fair, reasonable, and more than adequate to justify notice to the Settlement Class and a hearing on final approval.

C. The Court Should Approve Notice to the Settlement Class.

Finally, as previously described, the proposed Notice Plan should be approved. Rule 1714(c) provides that after a class has been certified, notice of any proposed settlement "shall be given to all members of the class in such manner as the court may direct." Pa. R. Civ. P. 1714(c). "Notice in a class suit must present a fair recital of the subject matter and proposed terms and inform the class members of an opportunity to be heard." *Tesauro v. Quigly Corp.*, No. 1011 AUG.TERM 2000, 2002 WL 1897538, *3–4 (Pa. Com. Pl. Ct. Aug 14, 2002) (citing *Fischer*, 485 A.2d at 811). The proposed Notice Plan in this case is robust, designed to individually reach as many individual Settlement Class Members as possible, and therefore comports with the requirements of Pa. R. Civ. P. 1712 and 1714.

As described above, Notice will be sent to all Settlement Class Members identified in the Class List, the Settlement Administrator is to take reasonable steps to identify Settlement Class Members' current addresses, and the Settlement Administrator is to place Notice on the Settlement Website. As such, nearly all Settlement Class Members will be provided with direct mail notice of the Settlement and is reasonably calculated to inform them of the Settlement. Further, the Settlement Notice includes a description of the material terms of the Settlement and the forms of relief available to Settlement Class Members; a date by which Settlement Class Members may object to or opt out of the Settlement; the date upon which the Final Approval Hearing will occur; and the address of the Settlement Website at which Settlement Class Members can access the Settlement Agreement and other related documents and information. This Notice Plan meets or

exceeds all requirements under Pennsylvania law and satisfies all constitutional considerations of fairness and due process. *See Shutts*, 472 U.S. at 812 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 70, 314–315 (1950) ("[N]otice must be the best practicable, '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.'")); *Fulton-Green*, 2019 WL 316722, at *4 (approving notice provided by direct notice and notice on the settlement website).

II. CONCLUSION

For the reasons discussed above, Plaintiff respectfully requests that the Court grant her motion and enter the proposed order preliminarily approving the Settlement, conditionally certifying the Settlement Class for settlement purposes, and authorizing Settlement Notice to be sent to Settlement Class Members.

Dated: August 13, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via email on August 13, 2025 upon the following:

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