

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

ELENA BOTTS, *on behalf of herself and all
others similarly situated,*

Plaintiff,

v.

THE JOHNS HOPKINS UNIVERSITY,

Defendant.

Civil Action No. 1:20-cv-01335-JRR

**PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT ADDENDUM AND ORDER
DIRECTING NOTICE TO ADDITIONAL CLASS MEMBERS**

Named Plaintiff and Class Representative Elena Botts, by Class Counsel, hereby moves this Court for preliminary approval of the Addendum to Class Settlement Agreement and Release, which is attached as Exhibit 1 to her concurrently filed Memorandum of Law, and for an Order directing notice to 1,915 additional class members identified by Defendant after the filing of the initial motion for preliminary approval and the scheduling of a final fairness hearing.

Defendant does not oppose the relief sought herein.

Dated: July 31, 2023

Respectfully submitted,

ELENA BOTTS, *by her attorneys,*

/s/John Soumilas

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Counsel for the Class

CERTIFICATE OF SERVICE

The undersigned certifies that he filed the foregoing document and its exhibits using the Court's CM/ECF system, which shall provide notice of same to all counsel of record.

Dated: July 31, 2023

/s/John Soumilas
John Soumilas

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF SETTLEMENT ADDENDUM
AND ORDER DIRECTING NOTICE TO ADDITIONAL CLASS MEMBERS**

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including the Additional Students*

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In support of her Unopposed Motion for Preliminary Approval of Settlement Addendum and Order Directing Notice to Additional Class Members, Named Plaintiff¹ and Class Representative Elena Botts, by Class Counsel, submits the following Memorandum of Law.

I. INTRODUCTION

In a continuation of this class action matter, which this Court certified for settlement purposes on April 20, 2023, ECF 96, Named Plaintiff Elena Botts (“Botts” or “Plaintiff”) seeks the Court’s approval of an Addendum to the parties’ Settlement Agreement (“Addendum”), *see* Exhibit 1, that provides an additional \$1,469,138.67 in relief for 1,915 Additional Students that Defendant Johns Hopkins University (“JHU”) identified during the administration of the first phase of the parties’ settlement. The parties’ settlement is now worth more than \$8 million.²

This Court previously held that the parties’ settlement is fair, reasonable, and adequate and otherwise satisfies the requirements of FED. R. CIV. P. 23(a), 23(b)(3), 23(e)(2), and applicable Fourth Circuit law. ECF 96 at 1. Further, the Court ordered that this matter be kept open for the purpose of notifying Settlement Class members who had been inadvertently omitted from the original class list. *Id.* at 2.

The parties have now completed that effort and identified those Additional Students. Because the relief provided to the Additional Students in the Addendum is identical in form and

¹ Unless otherwise noted, definitions of capitalized terms are found in Section 2 of the Addendum to Class Settlement Agreement and Release, attached hereto as Exhibit 1.

² *See, e.g., Porter v. Emerson College*, No. 1:20-cv-11897-RWZ, ECF 87 (D. Mass. Nov. 29, 2022) (final approval of \$2.06MM common fund); *Fittipaldi v. Monmouth Univ.*, No. 3:20-cv-05526, ECF 79 (D.N.J. Sept. 22, 2022) (preliminary approval of \$1.3MM common fund); *D’Amario v. Univ. of Tampa*, No. 7:20-cv-03744, ECF 76 (S.D.N.Y. Oct. 18, 2022) (final approval of \$3.4MM common fund); *Rosado v. Barry Univ., Inc.*, No. 1:20-cv-21813, ECF 84 (S.D. Fla. Sept. 7, 2021) (final approval of \$2.4MM common fund); *Wright v. S. New Hampshire Univ.*, No. 1:20-cv-00609, ECF 37 (D.N.H. Sept. 7, 2021) (final approval of \$1.25MM common fund); *Martin v. Lindenwood Univ.*, No. 4:20-cv-01128, ECF 48 (E.D. Mo. May 11, 2022) (final approval of \$1.65MM common fund).

substance to that provided the Group of 8,603, this Court should find that the Addendum falls within the range of reasonable approval and that notice should be directed to the Additional Students.

Thus, Plaintiff respectfully requests that the Court (1) grant preliminary approval of the Addendum; (2) approve the Class Notice Plan; and (3) schedule a Final Approval Hearing.

II. RECENT HISTORY OF THE LITIGATION

The full history of this litigation, including details concerning the parties' mediation efforts, is detailed in Plaintiff's original Motion for Preliminary Approval, ECF 85-1, at 2-4. After this Court's Order of April 20, 2023, the parties engaged in substantial additional discovery and negotiations, as detailed below.

A. Identifying the Additional Students

In their Motion for Final Approval, Class Counsel alerted the Court to the existence of 1,652 students who had not been included in the original class list. *See* ECF 91-1 at 15-16. Discovery undertaken after this Court's Order of April 20, 2023, ECF 96, confirmed the existence of 263 more such students. Ex. 2, JHU's Responses and Objections to Plaintiff's Third Set of Interrogatories, at 3. The parties refer to these 1,915 additional members of the Settlement Class as the "Additional Students." *Id.*

According to its verified interrogatory responses, Ex. 2, and the Declaration of Thomas P. McDermott, III, JHU's Associate Vice Provost of Financial Aid, Ex. 3, JHU prepared the original class list³ using data extracted from its Student Information System ("SIS"), Ex. 2 at 3, the system

³ In the Addendum, this group is referred to as the "Group of 8,603," *see* Ex. 1 at § 2.15, that JHU identified and connection with the preparation of the parties' Class Settlement Agreement and Release dated December 9, 2022 (ECF 85-2) and to which the Court referred in its December 20, 2022 Order Preliminarily Approving Settlement and Directing Notice to Settlement Class. ECF 89 at 2.

of record for all student academic and financial activity. Ex. 2 at 3, 5. SIS contains an individual student account for each JHU student that “serves as an electronic ledger, tracking receipt of financial aid, personal payments, and other third-party payments.” *Id.* at 5.

Using the SIS data, JHU’s Office of Institutional Research⁴ produced a list of students who took at least one in-person class during the Spring 2020 term. *Id.* at 6-7. The extracted data had been “frozen” during the second week of the Spring 2020 semester on the “census date,” when the university “Registrar officially records enrollment.” Ex. 3 at ¶ 10. This list included 10,518 students from all nine JHU schools. *Id.* at ¶ 9.

The list of 10,518 students was then sent to JHU’s Student Financial Services to determine whether and how much those students had paid JHU for the Spring 2020 term. Ex. 2 at 7. To do this, the Student Financial Services cross referenced the registration data with a report of transaction codes⁵ associated with payment activity in SIS that posted to student accounts between January 1, 2020 and June 12, 2020.⁶ *Id.* at 7. The resulting list was then sent back to the Office of Institutional Research to gather student contact information for notice purposes. *Id.*

⁴ The Office of Institutional Research is JHU’s central resource for institutional data analysis and business intelligence, charged with gathering and analyzing data about the university and its peers to inform strategic initiatives and decision-making for the President, the Provost, and other university administrators. Ex. 3 at ¶ 8. The OIR also compiles information on students, faculty, and staff for federal, regional, and state reporting requirements, participation in national educational consortia and for national and international rankings. *Id.*

⁵ According to JHU’s Associate Vice Provost of Financial Aid, “[e]ach time data memorializing a student financial transaction is stored in SIS, it is assigned a transaction code type, which is also referred to as a ‘transcode,’ based upon the nature of the transaction. For example, tuition charges for undergraduates for the Arts & Sciences campus are assigned the transcode ‘PT1FUx- Tu Fall UG A/S’ and tuition payments from the proceeds of federal student loans are assigned the transcode ‘LLFP24- FedDLSub.’” Ex. 3 at ¶ 5.

⁶ JHU selected June 12, 2020 “as the end of the date range for the report of payment transcode types because it is the latest end date of the spring semester at [its] nine schools.” Ex. 3 at ¶ 14.

While the initial transaction code report successfully identified the majority of Settlement Class members, namely the Group of 8,603, limitations on the parameters used to prepare it did not include some Settlement Class members' payments and thus led to their inadvertent exclusion in the first round of notice.

Indeed, after notice was disseminated to the Group of 8,603, a small number of JHU students who had not received notice contacted the Settlement Administrator asking about their membership in the Settlement Class. Thomas P. McDermott, III, JHU's Associate Vice Provost for Financial Aid, reviewed these students' account records and noticed payments received before January 1, 2020 as well payments processed using transaction codes that had not been included in the report prepared by the Office of Student Accounts with reference to the January 1, 2020 to June 12, 2020 period. Because January 1, 2020 was used as the earliest of the data parameters used to prepare the list, Student Financial Services did not incorporate 38 other transaction codes corresponding to payments from college savings plans, third-party wire payments, trust fund payments, and escrow payments as well as payments made prior to January 1, 2020. Ex. 2 at 3.

In collaboration with Rachael Pollard in the Student Accounts Department, Mr. McDermott went about remedying this issue and determined that additional payment transaction codes would need to be included in the parameters used to comprehensively identify Settlement Class members. *Id.* at 8. Mr. McDermott also determined that the date parameter would need to be enlarged to encompass payments made between October 15, 2019, the earliest date that spring charges were applied to students' accounts, and June 12, 2020.⁷ Once the expanded parameters were employed,

⁷ Although student bills for the Spring 2020 term were not available to the majority of students at JHU's eleven schools, including its largest campus, until mid-December 2019 or later, charges for some schools began posting to student accounts in SIS as early as October 15, 2019. Ex. 2 at 4-5, 11 (chart of bill availability dates).

Student Financial Services generated a report of all payments that posted to student accounts between October 15, 2019 and June 12, 2020, irrespective of transaction code type and including division-specific naming conventions.⁸ Ex. 2 at 8-9. This revised report led to the comprehensive identification of 1,915 Additional Students. Ex. 2 at 8-9; Ex. 3 at ¶ 16.

Adding an extra degree of confidence, JHU's Executive Vice Provost for Academic Affairs Stephen Gange validated Mr. McDermott's analysis in consultation with JHU's Office of Institutional Research and Student Financial Services, concluding that the 1,915 Additional Students fall within definition of the Settlement Class. Ex. 2 at 9.

B. Preparation of the Addendum

Contemporaneous with their efforts to identify the Additional Students and confirm the comprehensiveness of JHU's efforts, the parties prepared the Addendum, which involved the exchange of several red-lined versions and multiple follow up conferences among counsel over a period of many weeks.

Plaintiff Botts now respectfully requests that this Court direct notice of the Addendum to the Additional Students.

III. THE TERMS OF THE ADDENDUM

A. Identical Monetary Relief for the Additional Students

Pursuant to the Addendum, JHU agrees to provide an additional \$1,469,138.67 for the Additional Students. Ex. 1 at 4.2. This amount was determined by dividing \$6,600,000, the grand total to which the parties agreed to settle this matter when their understanding was that there were

⁸ These refer to "additional transaction code types that were not included in the list of payment transaction codes that posted to student accounts between January 1, 2020 and June 12, 2020. There are many such naming conventions, and the queries JHU performed to identify the Additional Students included all of the ones that were used during the period between October 15, 2019 and June 12, 2020." Ex. 3 at ¶ 15.

only 8,603 Settlement Class members, by 8,603, which yields a per-Class member amount of \$767.17, and multiplying it by the number of Additional Students, namely 1,915. JHU will deposit this sum into the Settlement Fund, which, 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 the Additional Students without the need for the submission of any claims. Ex. 1 at §§ 4.2.1, 5.1, 5.3, 5.3.1.

As before, the actual cash award to the Additional Students will be based upon the amount each 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 Semester. Ex. 1 at § 4.2.1. Calculating the precise amounts of Class member cash awards is a simple ministerial effort derived by dividing the net Settlement Fund by the sum of all amounts for tuition and fees (including student and parent loan payments) that Class members paid to Defendant for the Spring 2020 Semester and multiplying that quotient, expressed as a percentage, by the amount each Class member paid. This calculation can also be represented as follows:

$$\frac{\text{net Settlement Fund}}{\text{total tuition/fees paid by all Class members}} \times \text{tuition/fees paid by individual Class member} = \text{Class member payment}$$

Thus, if the Court grants Class Counsel’s anticipated 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 amount that each Class member will receive will be approximately \$500, with Class members that paid 100% of Spring 2020 Semester tuition receiving a proportionately higher amount and Class members that paid less receiving a proportionately smaller amount.

In the event that some Class members fail to cash their checks before the expiration of 60 days after the date of issuance by the Settlement Administrator, 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).

Only after this second distribution would the Settlement Administrator make any distribution to a charitable *cy pres* recipient, which the parties will propose for the Court's approval in conjunction with the anticipated Motion for Final Approval. Ex. 1 at § 5.3.1.

B. Identical Release for the Additional Students

The scope of the release here is narrowly tailored to the time period relevant to this matter, the Spring 2020 Semester, the harm identified, namely the expectation of in-person educational services, and the sums sought, namely tuition and fees. Ex. 1 at § 4.3. Class members do not release any other claims they may have against Defendant unrelated to the subject matter of the Litigation.

C. Identical Settlement Administration and Notice Plan for the Additional Students

The Addendum provides that the costs of the Class Notice Plan and administration of the Addendum are to be borne by the Settlement Fund. Ex. 1 at § 4.1.6. Importantly, the Addendum's Class Notice Plan does not impose any disproportionate costs for notice and/or administration upon the Additional Students as it caps the amount for such expenses that can be drawn from the Settlement Fund at an amount not to exceed the per-student notice and administration expenses incurred in the initial phase of this Settlement. *Id.* at § 5.3.1.

The proposed Class Notice Plan, which is also identical to that which the Court previously approved, *see* ECF 89 at 3, calls for direct, personal notice to the Additional Students, who have already been identified from Defendant's records, to apprise them of the benefits available under the Addendum and their rights under FED. R. CIV. P. 23 to opt out of the Class if they so choose. Ex. 1 at Ex. C.

D. Identical Attorneys' Fees and Service Award

The Addendum provides that Defendant will not oppose an application to this Court by Class Counsel for an award of attorneys' fees and litigation costs in an amount of up to one-third (1/3) of the replenished Settlement Fund, namely \$489,712.89. Ex. 1 at § 5.3. This is the same proportion that this Court previously approved, *see* ECF 96 at 1, and is well within the range of what courts within the Fourth Circuit have approved for counsel fees in Rule 23(b)(3) settlement fund cases. Moreover, it is the same portion of the Settlement Fund that Class Counsel sought as attorneys' fees and costs with respect to the Group of 8,603, ensuring parity between the two groups of Settlement Class members.

Further, Defendant will not oppose an application to this Court by Class Counsel for a service award to Named Plaintiff Botts of \$2,782.46 in recognition of her efforts in service to the Additional Students. Ex. 1 at § 5.3. This amount, too, is directly proportionate to the additional settlement value created by the inclusion of the Additional Students.

IV. THE ADDITIONAL STUDENTS SHOULD BE CERTIFIED FOR SETTLEMENT

Because the Additional Students described in the Addendum differ from the Group of 8,603 only in the way they were ministerially identified, this Court's decisions to preliminarily and finally approve the Settlement Agreement apply with equal force here.⁹

A. The Proposed Settlement Class Satisfies the Requirements of Rule 23(a)

Under Rule 23(a), one or more members of a class may sue as representative parties on behalf of a class if: (1) the class is so numerous that joinder of all members is impracticable; (2)

⁹ Since this Court finally approved the first phase of the Settlement, two more courts have certified similar matters as class actions on contest. *See, e.g., Barry v. University of Washington*, No. 20-2-13924-6-SEA (Sup. Ct. Wash. June 28, 2023) (certifying class of students under Washington state equivalent of FED. R. CIV. P. 23); *Schultz v. Emory University*, No. 1:20-cv-2002-TWT, ECF 98 (N.D. Ga. June 15, 2023) (certifying a class of payors of tuition and fees).

there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

1. *Numerosity*

Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” Where the class numbers 25 or more, joinder is usually impracticable. *Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass’n*, 375 F.2d 648, 653 (4th Cir. 1967).

Encompassing 1,915 individuals, the Additional Students are sufficiently numerous.

2. *Commonality*

Rule 23(a)(2) requires that the court find that “there are questions of law or fact common to the class.” FED. R. CIV. P. 23(a)(2).

Here, the facts and legal issues that this Court found were common among Plaintiff Botts and members of the Settlement Class apply equally to the Additional Students. Factually, all Additional Students were enrolled at Defendant during the Spring 2020 Semester and paid tuition and fees in connection with their enrollment for that semester. Defendant’s conduct with respect to Additional Student was uniform: it shifted all their classes to a remote, online format in March 2020 and closed its campus facilities for the duration of the semester. Legally, all Additional Students have the same claim for breach of contract (Count I), or in the alternative, for unjust enrichment (Count II). The commonality requirement of Rule 23(a)(2) remains satisfied.

3. *Typicality*

In the typicality analysis, “[a] class representative must be part of the class and possess the same interest and suffer the same injury as the class members.” *Lienhart v. Dryvit Sys., Inc.*, 255 F.3d 138, 146 (4th Cir. 2001).

Here, Named Plaintiff Botts's claims are identical to those of the Additional Students just as this Cour found they were with respect to the Settlement Class writ large. ECFs 89, 96.

4. *Adequacy of Representation*

“Finally, under Rule 23(a)(4), the class representatives must adequately represent the interests of the class members, and legal counsel must be competent to litigate for the interests of the class.” *Jeffreys v. Commc 'ns Workers of Am., AFL-CIO*, 212 F.R.D. 320, 323 (E.D. Va. 2003).

Named Plaintiff Botts remains qualified to “fairly and adequately” represent the Additional Students because she has no interests that are antagonistic to their interests and is unaware of any actual or apparent conflicts of interest between her and the Additional Students.

Class Counsel are nationally recognized class action practitioners. Ex. 2 (Francis Mailman Soumilas, P.C. firm biography). Attorney Courtney Wiener is similarly qualified.

Thus, the Additional Students satisfies the requirements of Rule 23(a) as to numerosity, commonality, typicality, and adequacy, and is appropriate for certification under Rule 23(a) for settlement purposes.

B. The Additional Students Group Satisfies the Requirements of Rule 23(b)(3)

1. *Common Questions of Law and Fact Predominate*

In addition to meeting the requirements of Rule 23(a), the Addendum must meet the requirements of Rule 23(b)(3), namely, that (1) “the questions of law or fact common to the members of the class predominate over any questions affecting only individual members,” and (2) “a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” FED. R. CIV. P. 23(b)(3). As before, so now: the Additional Students satisfy these requirements.

Resolution of the common issues of fact and law in this case will not only promote the efficient adjudication of these matters, it will dispose of them entirely. In identical fashion, Plaintiff

alleges on behalf of the Additional Students that Defendant breached its contract with them or, in the alternative, was unjustly enriched when it transitioned its in-person classes to a remote learning format and closed its campus in Spring of 2020 without any corresponding rebate of tuition and/or fees. Even if any individual issues of significance existed to complicate a trial in this matter (they do not), because the Class is being certified for settlement purposes and not for trial, this Court “need not inquire whether the case, if tried, would present intractable management problems ... for the proposal is that there be no trial.” *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

2. *A Class Action Settlement Is a Superior Method for Resolving the Additional Students’ Claims*

As to superiority, class settlement is the most efficient means of adjudicating the disputes raised here. Separately litigating the common issues that bind the classes would be a practical impossibility, even assuming that all the Additional Students had notice of their claims and it were economically feasible for them to pursue these claims independently. Simply put, “there is a strong presumption in favor of a finding of superiority” where, as here, “the alternative to a class action is likely to be no action at all for the majority of class members.” *Cavin v. Home Loan Ctr., Inc.*, 236 F.R.D. 387, 396 (N.D. Ill. 2006). Furthermore, even if just a small fraction of the 1,915 Additional Students were to bring individual suits, the resolution of common issues in a single proceeding here would be infinitely more efficient than would be the separate adjudication of individual claims in separate lawsuits.

V. THE ADDENDUM IS FAIR AND ADEQUATE

After the analysis of the Rule 23(a) and (b) elements, the Court must then decide whether the proposed settlement is fair, reasonable, and adequate. Although pretrial settlement of class actions is favored, “Rule 23(e) provides that ‘a class action shall not be dismissed without the approval of the court.’” *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991) (citations

omitted). “To this end, ‘the role of the Court reviewing the proposed settlement of a class action under Fed. R. Civ. P. 23(e) is to assure that the procedures followed meet the requirements of the Rule and . . . to examine the settlement for fairness and adequacy.’” *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 663 (E.D. Va. 2001).

“[T]he Fourth Circuit [has] adopted a bifurcated analysis, separating the inquiry into a settlement’s ‘fairness’ from the inquiry into a settlement’s ‘adequacy.’” *Id.* These safeguards ensure that “a proposed class has sufficient unity so that absent members can fairly be bound by decisions of class representatives.” *Amchem*, 521 U.S. at 621; *see also In re Jiffy Lube*, 927 F.2d at 158 (“The primary concern addressed by Rule 23(e) is the protection of class members whose rights may not have been given adequate consideration during the settlement negotiations.”). In this case, each set of factors weighs in favor of approving the Addendum.

A. The Addendum Is Fair

Factors to be used in analyzing a class settlement for fairness include: (1) the posture of the case at the time the proposed settlement was reached, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the settlement negotiations, and (4) counsel’s experience in the type of case at issue. *Jiffy Lube*, 927 F.2d at 158-59. Analysis of these factors favors approval of the Addendum for the same reasons it favored approval of the Settlement Agreement initially presented to this Court for approval.

The Parties have litigated and negotiated these claims for considerable time. Plaintiff had a complete understanding from formal and informal discovery as to what process and procedures were used and what defenses as to liability and as to class certification would be faced. As argued above, each of the remaining elements of “adequacy” under *Jiffy Lube* are more than met. The negotiations were arm’s-length, with settlement made possible only through the efforts of an

experienced mediator. Class Counsel are as experienced and accomplished in this field as likely any team in the nation.

Given this analysis and the possibility that Plaintiff and class members ultimately will not prevail on their claims at trial or on appeal, the *Jiffy Lube* factors weigh heavily in favor of the fairness of the Addendum.

B. The Addendum's Terms Are Adequate and Reasonable

Factors used to analyze the adequacy and reasonableness of a proposed settlement include: (1) the relative strength of the case on the merits, (2) any difficulties of proof or strong defenses the plaintiff and class would likely encounter if the case were to go to trial, (3) the expected duration and expense of additional litigation, (4) the solvency of the defendants and the probability of recovery on a litigated judgment, and (5) the degree of opposition to the proposed settlement, (6) the posture of the case at the time settlement was proposed, (7) the extent of discovery that had been conducted, (8) the circumstances surrounding the negotiations, and (9) the experience of counsel in the substantive area and class action litigation. *See In re Jiffy Lube*, 927 F.2d at 159. Analysis of these factors favors approval of the Addendum.

1. *Plaintiff's Claims Are Disputed and Would Encounter Substantial Defenses*

Defendant has disputed Plaintiff's claims since the inception of this case. Colleges and universities across the country faced with similar claims have as well, giving rise to numerous appellate decisions that have highlighted the challenges plaintiffs in these contexts face. In addition, if Named Plaintiff chose to litigate her claims, she would be faced with the more difficult task of certifying a class for trial purposes. In any case, final resolution of this matter, regardless of which party prevails, would likely require several more years of protracted adversarial litigation and appeals at substantial risk and expense.

Thus, other courts considering similar tuition and fee class action settlements have found that settlement is appropriate in similar contexts. *See supra* note 2 (settlement), note 9 (contested).

This Court should find that this factor favors preliminarily approving the Addendum.

2. *Continuing This Litigation Will Result in Significant Additional and Unjustifiable Burdens on the Class, Defendants, and the Court*

Aside from the potential that either side will lose at trial, the parties anticipate incurring substantial additional costs in pursuing this litigation further. Minimally, these would include the expense and costs associated with a contested class certification motion and, if successful, a response to a motion for permissive appeal under Rule 23(f). The high likelihood of substantial future costs favors approving the Addendum.

3. *Data Concerning the Additional Students' Reaction to the Addendum Is Not Yet Available*

Because the Additional Students have yet to receive notice of the Addendum, their reaction cannot yet be gauged. However, the reaction of the Group of 8,603 was overwhelmingly in favor of the settlement, as evidenced by only one objection, which this Court overruled, and 3 valid requests for exclusion. *See Ex. 4* Moreover, notwithstanding their inadvertent exclusion from the original class list, no Additional Student has filed or is pursuing his or her own individual lawsuit for the claims that the Addendum would resolve here.

VI. THE PROPOSED NOTICE PLAN SATISFIES RULE 23

Rule 23(e)(1) requires that the court “direct notice in a reasonable manner to all class members who would be bound by the proposal.” FED. R. CIV. P. 23(e)(1). The manner of the settlement notice need only comply with due process “reasonableness” requirements, which will vary based on the circumstances of the case. *See Fowler v. Birmingham News Co.*, 608 F.2d 1055, 1059 (5th Cir. 1979). Specifically, the court must direct “the best notice that is practicable under the circumstances” to a Rule 23(b)(3) class, which includes “individual notice to all members who

can be identified through reasonable effort.” FED. R. CIV. P. 23(c)(2)(B). Thus, where the names and addresses of individual class members are available or can be found without imposing an excessive burden or cost, due process requires that those class members receive direct notice.

The content of the notice “must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).” *Id.*

The Settlement Administrator executed the initial Class Notice Plan and determined that notice had been delivered to all but 6 members of the Group of 8,603. *See* ECF 91-2, Supp’l Declaration of Shandarese Garr, at ¶ 11. As of July 27, 2023, the Settlement Administrator had delivered payments to 8,600 members of the Group of 8,603. Ex. 4 at 1. Class Counsel now proposes to execute an identical Class Notice Plan, which provides for individual, direct email and postal notice to each Additional Student. Ex. 1 at § 4.1.3. This Court found that the Class Notice Plan satisfied due process, ECF 96, joining a chorus of others that have universally accepted direct email and postal notice as an appropriate form of notice for class action settlements involving a monetary fund. *See, e.g., Brunson v. Louisiana-Pacific Corp.*, 81 F. Supp. 2d 922, 925-26 (D.S.C. 2011) (mailed and published notice were the “best notice practicable under the circumstances,” satisfying both state and federal class-action rules of procedure and constitutions); *In re MicroStrategy*, 148 F. Supp. 2d at 669-70 (mail and publication notice program was “tailored to reach as many members of the class as practicable and therefore meets the due process requirements of Rule 23”).

The proposed form of Notice, while nearly identical to the previous version approved by this Court, contains additional explanatory language addressing why the Additional Student was not included among the Group of 8,603 and how they were subsequently identified. *See* Ex. 1 at Ex. C, FAQ No. 1.

This Court should find once again that the Class Notice Plan satisfies the requirements of Rule 23(e)(1)(B) and should adopt the procedures and deadlines set forth in the proposed Preliminary Approval Order for (i) opting out of the Addendum, (ii) objecting to the settlement, and (iii) entering a written notice of appearance if a class member intends to appear at the Final Approval Hearing.

VII. CONCLUSION

The Addendum provides a cash award to the 1,915 Additional Students affected by Defendants' decision to transition from in-person education to remote learning and to close its campus during the Spring 2020 Semester without providing appropriate tuition and fee refunds. In exchange, these Additional Students release all claims that may arise from Defendant's conduct during that period.

The requirements of Rule 23(a) and (b) are and remain satisfied here, and the Class Notice Plan complies with Rule 23(e).

Accordingly, Named Plaintiff Botts respectfully requests that the Court (1) grant preliminary approval of the Addendum; (2) approve the Class Notice Plan; and (3) schedule a Final Approval Hearing.

Dated: July 31, 2023

Respectfully submitted,

ELENA BOTTS, *by her attorneys,*

/s/John Soumilas

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John Soumilas (*pro hac vice*)

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*Counsel for Plaintiff and the Settlement Class,
including the Additional Students*

CERTIFICATE OF SERVICE

The undersigned certifies that he filed the foregoing document and its exhibits using the Court's CM/ECF system, which shall provide notice of same to all counsel of record.

Dated: July 31, 2023

/s/John Soumilas
John Soumilas

EXHIBIT 1

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

ELENA BOTTS, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

JOHNS HOPKINS UNIVERSITY,

Defendant.

Case No. 1:20-cv-01335-JRR

ADDENDUM TO CLASS SETTLEMENT AGREEMENT AND RELEASE

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This Addendum to the certain Class Settlement Agreement and Release (“Settlement Agreement”)¹ dated December 9, 2022 and filed at ECF 85-2 in the matter captioned *Elena Botts v. Johns Hopkins University*, No. 1:20-cv-01335-JRR, pending in the United States District Court for the District of Maryland (“Addendum”), is made and entered into by the Parties and their counsel as of July 31, 2023, and it is submitted to the Court for approval pursuant to Rule 23 of the Federal Rules of Civil Procedure.

1. RECITALS

WHEREAS, on May 29, 2020, Named Plaintiff Elena Botts filed a class action complaint in the United States District Court for the District of Maryland, alleging breach of contract, unjust enrichment, and violation of the Maryland Consumer Protection Act by Defendant Johns Hopkins University, arising from its failure to refund certain sums received for tuition and fees with respect to in-person tuition for the Spring Semester 2020;

WHEREAS, Defendant denied and continues to deny all allegations and claims asserted against it, but entered into the Settlement Agreement and enters into this Addendum to avoid the risk, burden and expense of continued litigation;

WHEREAS, the Settlement Agreement was reached after the Parties exchanged voluminous discovery and documents and information, and is the product of sustained, arm’s-length settlement negotiations and formal mediation;

WHEREAS, the Settlement Agreement contemplated the settlement and release of the Class Released Claims by the Settlement Class, which the Parties understood to comprise 8,603 students at the time they entered into the Settlement Agreement (the “Group of 8,603”);

¹ Capitalized terms are defined in Section 2, *infra*.

WHEREAS, the Parties submitted the Settlement Agreement to the Court for preliminary approval on December 13, 2022 at ECF 85-87;

WHEREAS, the Court preliminarily approved the Settlement Agreement on December 20, 2022 and directed notice to the Group of 8,603 via the entry of an Order at ECF 89;

WHEREAS, the Settlement Administrator sent notice of the Settlement Agreement to the Group of 8,603 in accordance with the Settlement Agreement's Class Notice Plan;

WHEREAS, subsequent to entering into the Settlement Agreement, Defendant reported the discovery of an additional 1,652 members of the Settlement Class to whom notice had not been sent;

WHEREAS, on March 27, 2023, Class Counsel moved the Court for final approval of the Settlement Agreement as to the Group of 8,603 and apprised the Court of the discovery of the Group of 1,652 in their moving papers at ECF 91-1;

WHEREAS, the Court held a final approval hearing on April 17, 2023 and, on April 20, 2023, finally approved the Settlement Agreement as to the Group of 8,603 via the entry of an Order at ECF 96;

WHEREAS, Class Counsel requested, and Defendant provided confirmatory discovery concerning the discovery of additional class members;

WHEREAS, confirmatory discovery undertaken by the Parties has confirmed a verified population of 1,915 additional individuals that had previously gone unidentified and that should be added to the Settlement Class (the "Additional Students");

WHEREAS, Defendant identified the 1,915 additional individuals through the use of expanded search parameters, including the addition of new payment codes and an extended date range for payment activity that began on October 15, 2019, the earliest date that spring 2020

charges were applied for one of JHU's campuses, instead of January 1, 2020, which had been used previously;

WHEREAS, Defendant's Executive Vice Provost for Academic Affairs validated the analysis performed to identify the 1,915 additional students through consultation with Defendant's Institutional Research and Student Financial Services, concluding and confirming that an additional 1,915 individuals fall within the parameters of the Settlement Class;

WHEREAS, the Parties recognized and continue to recognize that the outcome of this matter is uncertain, and that a final resolution through the litigation process would require protracted adversarial litigation and appeals; substantial risk and expense; and

WHEREAS, the Parties believe that this Addendum to the Settlement Agreement is fair, reasonable, and adequate in its resolution of the claims brought because it provides for a monetary payment to the members of the Additional Students in exchange for releases that also are tailored to the specific claims made against Defendant, which payment and releases are identical in form and proportionate in substance to that provided to and by members of the Group of 8,603;

NOW, THEREFORE, it is hereby stipulated and agreed by the undersigned on behalf of Named Plaintiff, the Additional Students, and the Defendant that this matter and all claims of the Additional Students be settled, compromised, and dismissed on the merits and with prejudice as to Defendant, subject to Court approval, as required by Rule 23 of the Federal Rules of Civil Procedure, on the terms and conditions set forth herein.

The recitals above are true and accurate and are a part of this Addendum.

2. DEFINITIONS

For the purposes of this Addendum, including the recitals stated above, the following terms will have the following meanings, which are independent of and do not supersede the definitions set forth in Section 2 of the Settlement Agreement unless otherwise noted:

2.1 “Additional Students” means the 1,915 members of the Settlement Class identified by Defendant after the parties entered into their Settlement Agreement.

2.2 “CAFA Notice” means notice of this settlement to the appropriate federal and state officials, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and as further described in Section 4.1.5.

2.3 “Class Counsel” means James A. Francis, John Soumilas, Kevin C. Mallon, and Jordan M. Sartell of Francis Mailman Soumilas, P.C. and Courtney Weiner of the Law Office of Courtney Weiner PLLC, representing the Named Plaintiff and the Settlement Class.

2.4 “Class” or “Settlement Class” means the students who paid Johns Hopkins Spring Semester 2020 tuition and/or fees for in-person educational services, whose tuition and fees have not been refunded. The Settlement Class does not include counsel of record (and their respective law firms) for any of the Parties, employees of Defendants, or employees of the Federal judiciary.

2.5 “Class Notice Plan” means the plan for providing notice of this settlement to the Additional Students under Federal Rules of Civil Procedure 23(c)(2)(A) and (e)(1), as set forth in Section 4.1.

2.6 “Class Released Claims” means those claims that the Settlement Class is releasing against the Released Parties, as set forth in Section 4.3.

2.7 “Settlement Website” means the Internet website established by the Settlement Administrator as described in Section 4.1.4.

2.8 “Court” means the United States District Court for the District of Maryland.

2.9 “Defendant” means Johns Hopkins University.

2.10 “Effective Date” means the date 30 (thirty) days after this Court’s entry of the Final Approval Order granting final approval of this Addendum.

2.11 “Escrow Account” means an interest-bearing account at a financial institution previously identified by Class Counsel and approved by Defendant in which the Settlement Fund shall be deposited.

2.12 “Funding Date” means the date three (3) business days after the Effective Date.

2.13 “Final Approval Hearing” is the hearing the Court schedules to make a final determination as to whether this Addendum is fair, reasonable, and adequate.

2.14 “Final Judgment” or “Final Judgment and Order” means a final judgment and order of dismissal entered by the Court in this Litigation, in the form of **Exhibit B** hereto, granting final approval of this Addendum (including addressing Class Counsel’s request for attorneys’ fees, costs, and other expenses and Named Plaintiff’s request for a Service Award), and entering a judgment according to the terms in this Addendum.

2.15 “Group of 8,603” means the subset of the Settlement Class to whom the Court directed notice, to whom the Settlement Administrator thereafter sent notice, and for whom the Court finally approved the Settlement Agreement; the Group of 8,603 does not include the Additional Students.

2.16 “Litigation” means the matter captioned *Elena Botts v. Johns Hopkins University*, No. 1:20-cv-01335-JRR, which is currently pending in the United States District Court for the District of Maryland.

2.17 “Named Plaintiff” means Elena Botts.

2.18 “Notice” means the notice (in a form substantially similar to that attached as **Exhibit C** and approved by the Court) that will be emailed or mailed to the Additional Students, as further described in Section 4.1.3.

2.19 “Party” and “Parties,” as used below, mean the Named Plaintiff, the Additional Students, and the Defendant.

2.20 “Preliminary Approval” and “Preliminary Approval Order” mean the Court’s order in the form attached hereto as **Exhibit A**, preliminarily approving the proposed Addendum, approving and directing the Class Notice Plan, to be executed by the Settlement Administrator.

2.21 “Released Parties” means the Defendant and its respective past and present employees, parents and subsidiaries and affiliate corporations or other business entities, including but not limited to their current members, officers, directors, employees, agents, representatives, contractors, vendors, resellers, suppliers, insurers, attorneys, successors and assigns.

2.22 “Service Award” means the one-time payment to the Named Plaintiff, for the time and resources that she has put into representing the Additional Students, as set forth in Section 5.3.

2.23 “Settlement Administrator” means, subject to Court approval, JND Legal Administration.

2.24 “Settlement Agreement” means the Class Settlement Agreement and Release, including all attached Exhibits, filed with the Court on December 9, 2022 at ECF 85-2.

2.25 “Settlement Fund” means the monetary relief which Defendant has agreed to provide for the benefit of the Additional Students, as further described in Sections 4.2.1 and 5.1.

2.26 “Spring 2020 Semester” means the period January 2, 2020, to June 12, 2020 and refers to the academic programming offered by Defendant during that period.

3. PRELIMINARY APPROVAL

3.1 Preliminary Approval Order

Concurrently with this Addendum, the Named Plaintiff shall file with the Court a Motion for Preliminary Approval of the Addendum; Approval and Direction of the Class Notice Plan; and Appointment of the Settlement Administrator. The motion shall seek entry of an Order, attached as **Exhibit A**, that would:

- a) preliminarily approve this Addendum;

b) approve the proposed Class Notice Plan, including the form of Notice substantially similarly to that attached as **Exhibit C**; and

c) appoint the Settlement Administrator.

3.2 Certification for Settlement Purposes Only

Nothing in this Addendum shall be construed as an admission by Defendant that this Litigation or any similar case is amenable to class certification for trial purposes or prevent Defendant from exercising its right(s) to terminate this Addendum in accordance with Section 7.

4. CLASS SETTLEMENT TERMS

4.1 Class Notice Plan

4.1.1 Class List

Defendant shall provide a list of the Additional Students to the Settlement Administrator. The Named Plaintiff, Class Counsel, and Additional Students hereby acknowledge and agree that Defendant is providing the information referenced in this Section to the Settlement Administrator solely for the purpose of effecting the terms of this Addendum, and that such information shall not be used, disseminated, or disclosed by or to any other person for any other purpose. If the settlement is terminated for any of the reasons identified in Section 7, the Settlement Administrator shall immediately destroy any and all copies of the information referenced in this Section. The provisions regarding the compilation and treatment of the list referenced above are material terms of this Addendum. The Parties and the Settlement Administrator also agree to treat the list as “Confidential” under the terms of the existing Stipulated Confidentiality Order filed at ECF 22.

4.1.2 Court Appointment and Retention of Settlement Administrator

At the Preliminary Approval hearing, the Parties will propose that the Court appoint the Settlement Administrator, as defined above. The Settlement Administrator’s responsibilities shall include, but are not limited to, giving notice, obtaining new addresses for returned mail,

maintaining the Settlement Website and toll-free telephone number, fielding inquiries about the Addendum, directing the mailing of payments to the Additional Students, and any other tasks reasonably required to effectuate this Addendum. The Settlement Administrator will provide monthly updates on the status of disbursements and cashed checks to counsel for the Parties.

4.1.3 Class Notice

Named Plaintiff, Defendant, and the Settlement Administrator have agreed that they will jointly recommend the Notice, substantially in the form attached as **Exhibit C**, to the Court for approval. Within twenty-eight (28) days after Preliminary Approval, the Settlement Administrator will send the Notice via electronic mail to the last known email address reflected in the Class List, if there is an email address associated with the Additional Students.

If there is no email address associated with the Additional Students, or if an email bounce back is received upon attempted transmission, then the Settlement Administrator will send the Notice to the Additional Students via U.S. mail, postage prepaid, also requesting either forwarding service or change service to the last known address reflected in the Class list. Prior to mailing, the Settlement Administrator shall utilize the U.S. Postal Office's National Change of Address System.

For those Additional Students whose notice is ultimately delivered by U.S. Mail, and for up to forty-five (45) days following the mailing of the Notice via U.S. Mail (if applicable), the Settlement Administrator will re-mail the Notice via standard U.S. Mail, postage prepaid, to those Additional Students whose notices were returned as undeliverable to the extent an alternative mailing address can be reasonably located. The Settlement Administrator will first attempt to re-mail the Notice to the extent that it received an address change notification from the U.S. Postal Service. If an address change notification form is not provided by the U.S. Postal Service, the

Settlement Administrator may attempt to obtain an updated address using reasonable and appropriate methods to locate an updated address.

No later than forty-five (45) days before the Final Approval Hearing, the Settlement Administrator will file proof of the mailing of the Notice with the Court.

Neither the Parties nor the Settlement Administrator will have any further obligation to send notice of the settlement to the Additional Students other than the requirements that are outlined in this agreement.

4.1.4 Settlement Website

The Settlement Administrator also will maintain the Settlement Website prior to the mailing of the Notice described above. The URL for the website will be: www.JHUSpring2020Settlement.com. The Settlement Website will post important settlement documents, such as the operative Complaint, the Notice, the Settlement Agreement, the preliminary and final approval orders concerning the Group of 8,603, this Addendum, and Class Counsel's filing relating to the preliminary and final approval thereof. In addition, the Settlement Website will include a section for frequently asked questions, and procedural information regarding the status of the Court-approval process, such as an announcement when the Final Approval Hearing is scheduled, when the Final Judgment and Order has been entered, when the Effective Date is expected or has been reached, and when payment will likely be mailed.

The Settlement Administrator will terminate the Settlement Website either: (1) one hundred and eighty (180) days after the Effective Date; or (2) thirty (30) days after the date on which the settlement is terminated or otherwise not approved by the Court. This section supersedes the Settlement Website termination timeline set forth in the Settlement Agreement.

4.1.5 CAFA Notice

The Parties agree that the Defendant has already provided notice of the settlement that meets the requirements of CAFA, 28 U.S.C. § 1715 on the appropriate federal and state officials. No government entity sought to intervene or otherwise participate in this matter.

4.1.6 Costs and Expenses

Subject to Section 4.1.5, under no circumstances will Defendant have any payment obligations to the Named Plaintiff, the Additional Students, or Class Counsel pursuant to this Addendum that exceed one million four hundred sixty-nine thousand one hundred thirty-eight dollars and sixty-seven cents (\$1,469,138.67).

Within fourteen (14) days after Preliminary Approval, Defendant will advance twenty thousand dollars (\$20,000.00) to the Settlement Administrator to effectuate the Class Notice Plan, through a deposit at the same financial institution which will hold the Escrow Account. Defendant shall receive a full credit for this payment if and when the Settlement Fund is funded, as discussed in Section 5.

4.2 Settlement Consideration

The Settlement Fund shall consist of one million four hundred sixty-nine thousand one hundred thirty-eight dollars and sixty-seven cents (\$1,469,138.67). The Settlement Fund shall be used to make automatic payments to each of the Additional Students as set forth in this Addendum.

4.2.1 Calculation of Distributions to the Additional Students

Each of the Additional Students is entitled to a portion of the total amount in the Settlement Fund (less the sum of any amount the Court awards in attorneys' fees and costs, a Service Award, and notice and administration expenses described in section 4.1.6) proportionate to the amount he or she paid Defendant in tuition and fees (including student and parent loan payments) for the Spring 2020 Semester.

This amount shall be calculated by dividing the above Settlement Fund by the sum of all amounts for tuition and fees (including student and parent loan payments) that Class members paid to Defendant for the Spring 2020 Semester. That quotient, expressed as a percentage, shall be multiplied by the amount each Class member paid to determine the appropriate distribution.

The distributions to Additional Students described in the foregoing paragraph shall be made pursuant to the structure and payment schedule set forth in Section 5.3.1.

4.3 Class Release

4.3.1 Release of Claims

Upon the Effective Date, each of the Additional Students who has not validly excluded himself or herself from the Settlement Class, on behalf of themselves and their respective spouses, heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors, assigns, and all those acting or purporting to act on their behalf, acknowledge full satisfaction of, and shall be conclusively deemed to have fully, finally, and forever settled, released, and discharged all the Released Parties of and from all claims, rights, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys' fees of any nature whatsoever arising before the effective date of the settlement, whether known or unknown, matured or unmatured, foreseen or unforeseen, suspected or unsuspected, accrued or unaccrued which he or she ever had or now has resulting from, arising out of, or regarding Defendant's Spring 2020 Semester, including, but not limited to, Defendant's ceasing in-person education and transitioning to a remote format.

Subject to the Court's approval, the Additional Students shall be bound by the settlement and all their Class Released Claims shall be dismissed with prejudice and released as against the Released Parties, even if the Additional Students never received actual notice of the settlement prior to the Final Approval Hearing, or never cashed a check received.

4.3.2 Waiver of Unknown Claims; General Release

The Additional Students acknowledge that they are aware that they may hereafter discover facts in addition to or different from those that they or Class Counsel now know or believe to be true with respect to the subject matter of this Litigation and the Class Released Claims, but it is their intention to, and they do upon the Effective Date of this Addendum, fully, finally, and forever settle and release any and all Class Released Claims, without regard to the subsequent discovery or existence of such different additional facts, whether known or unknown.

4.3.3 Binding Release

Upon the Effective Date, no default by any person in the performance of any covenant or obligation under this Addendum or any order entered in connection with such shall affect the dismissal of the Litigation, the *res judicata* effect of the Final Judgment and Order, the foregoing releases, or any other provision of the Final Judgment and Order; provided, however, that all other legal and equitable remedies for violation of a court order or breach of this Addendum shall remain available to all Parties.

4.3.4 Opt-Out from Class

4.3.4.1 Requests for Exclusion

All Additional Students shall be given the opportunity to opt out of the Class by submitting a “Request for Exclusion.” All Requests for Exclusion must be in writing, sent to the Settlement Administrator and postmarked no later than thirty (30) days before the Final Approval Hearing. To be valid, a Request for Exclusion must be personally signed and must include: (1) the individual’s name, mailing address, and telephone number; and (2) a statement substantially to the effect that: “I request to be excluded from the Settlement Class in the matter of *Elena Botts v. Johns Hopkins University*.”

Notwithstanding the foregoing, no person within the Settlement Class, or any person acting

on behalf of or in concert or participation with that person, may submit a Request for Exclusion of any other person within the Class.

4.3.4.2 Verification of Opt-Outs by Settlement Administrator

The Settlement Administrator shall provide copies of the Requests for Exclusion to the Parties no later than three (3) days after they are received by the Settlement Administrator. No later than fourteen (14) days before the Final Approval Hearing, the Settlement Administrator shall provide to Class Counsel (with a copy to Defendant), who shall file it with the Court, a declaration verifying that notice has been provided to the Additional Students as set forth herein and listing all of the valid opt-outs received.

4.3.4.3 Effect of Opt-Out from Class

All individuals within the Additional Students who timely submit a valid Request for Exclusion will, subject to Court approval, exclude themselves from the Settlement Class and preserve their ability to independently pursue, at their own expense, any individual claims he or she claims to have against Defendant, subject to any further defenses that can be advanced by Defendant. Any such individual within the Additional Students who so opts out will not be bound by further orders or judgments in the Litigation as they relate to the Class. Because the settlement is being reached as a compromise to resolve this litigation, including before a final determination of the merits of any issue in this case, no individual who opts out of the Class shall be able to invoke the doctrines of *res judicata*, collateral estoppel, or any state law equivalents to those doctrines in connection with any further litigation against Defendant in connection with the claims asserted by the Class.

4.3.5 Objections

Any Additional Student who has not opted-out in accordance with the terms above and who intends to object to this Addendum must file the objection in writing with the Clerk of Court

no later than thirty (30) days prior to the Final Approval Hearing and must concurrently serve the objection on the Settlement Administrator, Class Counsel, and counsel for Defendant. The objection must include the following: (1) the Additional Student's full name, mailing address, and current telephone number; (2) if the individual is represented by counsel, the name and telephone number of counsel, if counsel intends to submit a request for fees and all factual and legal support for that request; (3) all objections and the basis for any such objections stated with specificity, including a statement as to whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class; (4) the identity of any witnesses the objector may call to testify; (5) a listing of all exhibits the objector intends to introduce into evidence at the Final Approval Hearing, as well as true and correct copies of such exhibits; and (6) a statement of whether the objector intends to appear at the Final Approval Hearing, either with or without counsel.

Any Additional Student who fails to timely file and serve a written objection pursuant to this Section shall not be permitted to object to the approval of the settlement or this Addendum and shall be foreclosed from seeking any review of the settlement or the terms of the Addendum by appeal or other means.

5. SETTLEMENT FUND

5.1 Settlement Fund

By the Funding Date, Defendant shall fund the Settlement Fund by depositing one million four hundred sixty-nine thousand one hundred thirty-eight dollars and sixty-seven cents (\$1,469,138.67), less the amount provided for in Section 4.1.6, in the Escrow Account.

The Settlement Fund includes all potential amounts awarded by the Court as the total monetary consideration to the Additional Students, inclusive of any and all payment of attorneys' fees and costs, Service Award, notice and administration expenses, and any other expenses described herein.

Defendant shall not be ordered or required to pay any other award or any other fees, costs, or expenses in addition to the above pursuant to this Addendum.

5.2 Settlement Fund Tax Status

5.2.1 The Parties agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. In addition, the Settlement Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this Subsection, including the “relation back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Settlement Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

5.2.2 For the purpose of Treasury Regulation § 1.468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Settlement Administrator. The Settlement Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)). Such returns shall be consistent with this Subsection and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the respective settlement fund as provided herein.

5.2.3 All (a) Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund do not qualify as a “qualified settlement fund” for federal or state income tax purposes (“Taxes”), and (b) expenses and costs incurred in

connection with the operation and implementation of this Subsection (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns (“Tax Expenses”)), shall be paid out of the respective settlement fund for which the income was earned or expense or cost incurred; in no event shall the Released Parties have any responsibility for or liability with respect to the Taxes or the Tax Expenses. The Settlement Administrator shall indemnify and hold the Released Parties harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order from the Court, and the Settlement Administrator shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(l)); the Released Parties are not responsible therefore nor shall they have any liability with respect thereto. The Parties hereto agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out this Section.

5.3 Attorneys’ Fees and Costs, Service Award, and Other Expenses

No later than forty-five (45) days prior to the Final Approval Hearing, Class Counsel shall make an application to the Court for an award of attorneys’ fees and costs for their representation of the Additional Students. That application will be posted to the Settlement Website by the Settlement Administrator within one (1) business day of its filing with the Court. The amount that will be requested by Class Counsel shall be no greater than one-third of the Settlement Fund, namely four hundred eighty-nine thousand seven hundred twelve dollars and eighty-nine cents (\$489,712.89), which application Defendant agrees not to oppose. No later than the time Class

Counsel files the application above, Class Counsel shall provide to the Settlement Administrator a properly completed W-9 Form pertaining to Class Counsel.

No later than forty-five (45) days prior to the Final Approval Hearing, Named Plaintiff shall make an application to the Court for the Court's approval of a Service Award of two thousand seven hundred eighty two dollars and forty six cents (\$2,782.46) to be paid from the Settlement Fund, which award Defendant agrees not to oppose. No later than the time Class Counsel files the application above, Class Counsel shall provide to the Settlement Administrator a properly completed W-9 Form pertaining to the Named Plaintiff.

5.3.1 Payment Schedule

Attorneys' fees and costs and the Service Award, subject to Court approval, shall be paid in the amount approved by the Court within three (3) business days after the Funding Date.

In addition, before commencing distribution to the Additional Students, the Settlement Administrator shall determine the funds necessary to cover the remaining costs of notice and administration that the Settlement Administrator has already incurred, and reasonably expects to incur, in completing the Class Notice Plan set forth in this Section. The Settlement Administrator shall submit that estimate to Class Counsel and Defendant's counsel for approval. Once approved, the Settlement Administrator should withhold the estimated amount from further distribution from the Settlement Fund to cover costs of notice and administration except that in no event shall the Settlement Administrator withhold more than an amount proportionate to the average, per-Class member amount expended in connection with notice and administration of the Settlement Agreement as to the Group of 8,603 multiplied by the number of Additional Students. Solely by way of example and for the avoidance of doubt, if the total cost of notice and administration as to the Group of 8,603 was \$86,030.00, *i.e.*, the average, per-Class member cost of notice and administration was \$10.00, then the Settlement Administrator shall not withhold more than

\$19,150.00 from the Settlement Fund for notice and administration as to the Additional Students. Each of these costs, expenses, and distributions above should be borne from the Settlement Fund.

Within thirty (30) days after the Funding Date, the Settlement Administrator shall send the Class Member Payments out of the Settlement Fund to each of the Additional Students to the last known mailing address reflected in the Class List or the updated address previously used during the Class Notice Plan set forth in Section 4.1.3, or (b) upon the Additional Student's affirmative election via the Settlement Website, electronically to the email address provided by the Additional Student with his or her electronic payment election. The payment notices accompanying any paper checks shall notify the recipients that the checks must be cashed within sixty (60) days from the date on enclosed check and that the enclosed check shall not be valid after that date.

If funds remain after the initial round of automatic *pro rata* payments, a second distribution shall be made on a *pro rata* basis to the Additional Students who cashed their initial check, unless the second distribution would result in a payment of less than Ten Dollars (\$10.00) per Additional Student. The payment notices accompanying the second check shall notify the recipients that the checks must be cashed within sixty (60) days from the date on the enclosed check and that the enclosed check shall not be valid after that date.

Any checks from the second distribution that are not cashed by the stale date referenced above or that were returned as undeliverable shall revert to the Escrow Account. These remaining funds shall be paid to a charitable organization to be agreed upon by the parties and submitted for the court's approval at the time of final approval as a *cy pres* award. The funds shall be distributed within fifteen (15) days of the final stale date referenced above.

6. ENTRY OF FINAL JUDGMENT AND ORDER

The Parties shall jointly seek entry by the Court of a Final Judgment and Order in the form of **Exhibit B** hereto, which includes the following provisions (among others):

- a) granting final approval of this Addendum, and directing its implementation pursuant to its terms and conditions;
- b) ruling on Class Counsel's applications for attorneys' fees and costs;
- c) ruling on Named Plaintiff's application for a Service Award;
- d) discharging and releasing the Released Parties, and each of them, from the Class Released Claims, as provided in Section 4.3;
- e) permanently barring and enjoining all Additional Students from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit that asserts Class Released Claims;
- f) directing that the Litigation be dismissed with prejudice and without costs;
- g) stating pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the Final Judgment and Order is a final, appealable order; and
- h) reserving to the Court continuing and exclusive jurisdiction over the Parties with respect to the Addendum and the Final Judgment and Order as provided in Section 8.3.

7. TERMINATION

Either Party has the right to terminate this Addendum, declare it null and void, and have no further obligations under this Addendum if any of the following conditions subsequent occurs:

- a) more than 10% of the Additional Students opt out of the Settlement Class;
- b) the Court fails to enter a Final Judgment and Order substantially consistent with the provisions of this Addendum;

- c) the settlement of the Class claims, or the Final Judgment and Order, is not upheld on appeal, including review by the United States Supreme Court;
- d) the Named Plaintiff, Class Counsel, or Defendant commit a material breach of the Addendum before entry of the Final Judgment and Order; or
- e) the entry of an order by any court that would require either material modification or termination of the Addendum.

If the Addendum is not finally approved, is not upheld on appeal, or is otherwise terminated due to the reasons set forth in this Section 7, then the Addendum and all negotiations, proceedings, and documents prepared, and statements made in connection therewith, shall be without prejudice to any Party and shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law; and all Parties shall stand in the same procedural position as if the Addendum had not been negotiated, made, or filed with the Court.

8. MISCELLANEOUS PROVISIONS

8.1 Best Efforts to Obtain Court Approval

Named Plaintiff and Defendant, and the Parties' counsel, agree to use their best efforts to obtain Court approval of this Addendum, subject, however, to Defendant's rights to terminate the Addendum, as provided herein.

8.2 No Admission

This Addendum, whether or not it shall become final, and any and all negotiations, communications, and discussions associated with it, shall not be:

- a) offered or received by or against any Party as evidence of, or be construed as or deemed to be evidence of, any presumption, concession, or admission by a Party of the truth of any fact alleged by Named Plaintiff or defense asserted by Defendant, of the validity of any claim that has been or could have been asserted in the Litigation, or the deficiency of any defense that

has been or could have been asserted in the Litigation, or of any liability, negligence, fault, or wrongdoing on the part of Named Plaintiff or Defendant;

b) offered or received by or against Named Plaintiff or Defendant as a presumption, concession, admission, or evidence of any violation of any state or federal statute, law, rule, or regulation or of any liability or wrongdoing by Defendant, or of the truth of any of the allegations in the Litigation, and evidence thereof shall not be directly or indirectly admissible, in any way, (whether in the Litigation or in any other action or proceeding), except for purposes of enforcing this Addendum and the Final Judgment and Order including, without limitation, asserting as a defense the release and waivers provided herein;

c) offered or received by or against Named Plaintiff or Defendant as evidence of a presumption, concession, or admission with respect to a decision by any court regarding the certification of a class, or for purposes of proving any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against Defendant, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Addendum; provided, however, that if this Addendum is finally approved by the Court, then Named Plaintiff or Defendant may refer to it to enforce their rights hereunder; or

d) construed as an admission or concession by Named Plaintiff, the Additional Students, or Defendant that the consideration to be given hereunder represents the relief that could or would have been obtained through trial in the Litigation.

8.3 Court's Jurisdiction

The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Addendum. The Court also shall retain exclusive jurisdiction over any determination of whether a subsequent suit is released by the Addendum.

8.4 Settlement Notices

Except for the Class Notice Plan, as provided for in Section 4.1 above, all other notices or formal communications under this Addendum shall be in writing and shall be given, with a copy by email: (1) by hand delivery; (2) by registered or certified mail, return receipt requested, postage pre-paid; or (3) by overnight courier to counsel for the Party to whom notice is directed at the following addresses:

For Named Plaintiff and the Settlement Class:

John Soumilas
FRANCIS MAILMAN SOUMILAS, P.C.
1600 Market Street, Suite 2510
Philadelphia, PA 19103
Tel. (215) 735-8600
Fax. (215) 980-8000
jsoumilas@consumerlawfirm.com

For Defendant:

Shon Morgan
QUINN EMANUEL URQUHART & SULLIVAN, LLP
865 S. Figueroa St., 10th Floor
Los Angeles, CA 90017
Tel. (213) 443-3000
Fax (213) 443-3100
shonmorgan@quinnemanuel.com

Counsel may designate a change of the person to receive notice or a change of address, from time to time, by giving notice to all Parties in the manner described in this Section.

8.5 Taxes

Named Plaintiff and Class Counsel shall be responsible for paying all federal, state, and local taxes due on any payments made to them pursuant to the Addendum.

8.6 Parties' Costs

Except as otherwise provided for herein, Named Plaintiff and the Defendant shall be solely responsible for their own costs and expenses.

8.7 Confidentiality of Discovery Materials and Information

The Parties, their counsel, and any retained or consulting experts in this Litigation, agree that they remain subject to the Court's Stipulated Confidentiality Order, as appropriate.

8.8 Communications with Students, Community, and Members of the Public

Defendant reserves the right to communicate with its students, community, and members of the public about the Addendum in the ordinary course of its business. The Parties further agree to cooperate with each other and the Settlement Administrator in connection with any mass communications to the Additional Students or others, as may be necessary to effectuate the terms of this Addendum. Otherwise, Named Plaintiff and Class Counsel agree not to make any public statements regarding the settlement or the Litigation as to any matters not contained in the public record of the Litigation that are inconsistent with the Class Notice or this Addendum.

8.9 Complete Agreement

This Addendum is the entire, complete agreement of each and every term agreed to by and among Named Plaintiff, the Additional Students, and Class Counsel. In entering into this Addendum, no Party has made or relied on any warranty or representation not specifically set forth herein. This Addendum shall not be modified except by a writing executed by all the Parties.

Nothing in the Settlement Agreement shall be deemed to invalidate any provision of this Addendum and vice versa. To the extent that there is any conflict between this Addendum and the Settlement Agreement with respect to Defendant's obligations to the Named Plaintiff, the Additional Students, and Class Counsel thereunder, the terms of this Addendum shall control.

8.10 Headings for Convenience Only

The headings in this Addendum are for the convenience of the reader only and shall not affect the meaning or interpretation of this Addendum.

8.11 Severability

In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, with the exception of the release in Section 4.3,

this Addendum shall continue in full force and effect without said provision to the extent Defendant does not exercise its right to terminate under Section 7.

8.12 No Party Is the Drafter

None of the Parties to this Addendum shall be considered to be the primary drafter of this Addendum or any provision hereof for the purpose of any rule of interpretation or construction that might cause any provision to be construed against the drafter.

8.13 Binding Effect

This Addendum shall be binding according to its terms upon, and inure to the benefit of, the Named Plaintiff, the Additional Students, the Defendant, the Released Parties, and their respective successors and assigns.

8.14 Authorization to Enter Addendum

The individual signing this Addendum on behalf of the Defendant represents that he or she is fully authorized by the Defendant to enter into, and to execute, this Addendum on its behalf. Class Counsel represent that they are fully authorized to conduct settlement negotiations with counsel for Defendant on behalf of Named Plaintiff, and to enter into, and to execute, this Addendum on behalf of the Additional Students, subject to Court approval pursuant to Federal Rule of Civil Procedure 23(e). The Named Plaintiff enters into and executes this Addendum on behalf of herself, and as a representative of and on behalf of the Additional Students, subject to Court approval pursuant to Federal Rule of Civil Procedure 23(e).

8.15 Execution in Counterparts

Named Plaintiff, Class Counsel, Defendant, and Defendant's counsel may execute this Addendum in counterparts, and the execution of counterparts shall have the same effect as if all Parties had signed the same instrument. Facsimile, electronic and scanned signatures shall be considered as valid signatures as of the date signed, although the original signature pages shall

thereafter be appended to the Addendum. This Addendum shall not be deemed executed until signed by Named Plaintiff, by Class Counsel, and by counsel for and a representative of Defendant.

8.16 Governing Law

This Addendum and the Exhibits hereto will be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of Maryland, and the rights and obligations of the parties to the Addendum will be construed and enforced in accordance with, and governed by, the substantive laws of the State of Maryland.

9. SIGNATURES

Named Plaintiff




Elena Botts

Defendant Johns Hopkins University


By: Terri L. Turner
Title: Senior Associate General Counsel
Terri L. Turner

Class Counsel



John Soumilas
FRANCIS MAILMAN SOUMILAS, P.C.

Counsel for Defendant



Shon Morgan
QUINN EMANUEL URQUHART & SULLIVAN, LLP

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

ELENA BOTTS, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

JOHNS HOPKINS UNIVERSITY,

Defendant.

Case No. 1:20-cv-01335-JRR

**[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT ADDENDUM
AND DIRECTING NOTICE TO ADDITIONAL CLASS MEMBERS**

Upon consideration of Named Plaintiff¹ Elena Botts’s Unopposed Motion Preliminary for Approval of Settlement Addendum and Order Directing Notice to Additional Class Members (the “Motion”), IT IS HEREBY ORDERED:

1. The terms of this Court’s December 20, 2022 Order Preliminarily Approving Settlement and Directing Notice to Settlement Class, ECF 89, remain in effect and are fully incorporated herein by reference.

2. The terms of this Court’s April 20, 2023 Order finally approving the settlement and granting Class Counsel’s Motion for an Award of Attorneys’ Fees and Litigation Costs and for a Service Award, ECF 96, remain in effect and are fully incorporated herein by reference.

3. The Settlement Class, defined as “all people who paid Defendant Johns Hopkins University tuition and/or fees for the Spring Semester 2020, which tuition and fees have not been refunded,” appropriately encompasses the Additional Students who may assert the claims alleged

¹ Capitalized terms are defined in Section 2 of the parties’ Addendum to Class Settlement Agreement and Release, ECF 99-2.

in Counts I and II of Named Plaintiff Elena Botts's Amended Complaint against Defendant Johns Hopkins University, *see* ECF 35.

4. The Addendum to the Class Action Settlement Agreement and Release entered into between the parties as of July 31, 2023 (the "Addendum"), ECF 99-2, appears, upon preliminary review, to be fair, reasonable, and adequate to the Additional Students, *i.e.*, those members of the Settlement Class not previously provided notice. The terms of the Addendum are fully incorporated herein by reference.

5. Accordingly, for settlement purposes only, the proposed Addendum is preliminarily approved, pending a Final Approval Hearing, as provided for herein.

6. The Court finds that the Addendum concerns 1,915 members of the Settlement Class, the Additional Students.

7. The Court affirms (1) its earlier findings that Named Plaintiff Elena Botts has and will continue to adequately represent the Settlement Class and (2) her appointment as class representative.

8. The Court affirms its earlier findings that (1) the attorneys for Named Plaintiff, James A. Francis, John Soumilas, Kevin C. Mallon, and Jordan M. Sartell of Francis Mailman Soumilas, P.C. and Courtney Weiner of the Law Office of Courtney Weiner PLLC, have and will continue to adequately represent the Settlement Class and (2) their appointment as Class Counsel.

9. The Court affirms its earlier appointment of JND Legal Administration as the Settlement Administrator.

10. The Court will hold a Final Approval Hearing pursuant to FED. R. CIV. P. 23(e) at ____ .m. on _____, 2023, in Courtroom ____ of the United States District Courthouse located at 101 West Lombard Street, Baltimore, Maryland for the following purposes:

A. To determine whether the proposed Addendum is fair, reasonable, and adequate and should be granted final approval by the Court;

B. To determine whether a final judgment should be entered dismissing the claims of the Additional Students with prejudice, as required by the Addendum;

C. To consider the application of Class Counsel for an award of attorney's fees and costs; and

D. To consider the application of Class Counsel for a Service Award to the class representative.

11. As set forth in Section 4.1.1 of the Addendum, Defendant shall provide a list of Settlement Class members to the Settlement Administrator, who shall send the agreed upon Notice to the Settlement Class members in accordance with the terms of the Addendum.

12. The Court approves the parties' Notice, which is attached to the Addendum as Exhibit C. To the extent the parties or Settlement Administrator determine that ministerial changes to the Notice are necessary before disseminating it to the Settlement Class, they may make such changes without further application to the Court.

13. The Court approves the parties' Class Notice Plan, as set forth in Section 4.1.3 of the Addendum. The Court finds this manner of giving notice fully satisfies the requirements of FED. R. CIV. P. 23 and due process.

14. If an Additional Student chooses to opt-out of the Settlement Class, such Class member is required to submit a request for exclusion to the Settlement Administrator, post-marked on or before the date specified in the Notice, which shall be no later than thirty (30) days before the date of the Final Approval Hearing. The request for exclusion must include the items identified in section 4.3.4.1 of the Addendum. An Additional Student who submits a valid request for

exclusion using the procedure identified above shall be excluded from the class for all purposes. No later than fourteen (14) days prior to the Final Approval Hearing, the Settlement Administrator shall prepare a declaration listing all the valid opt-outs received and shall provide the declaration and list to Class Counsel and Defendant's counsel, with Class Counsel then reporting the names appearing on this list to the Court before the Final Approval Hearing.

15. An Additional Student who does not file a timely and valid request for exclusion shall be bound by all subsequent proceedings, orders, and judgments in this action.

16. Any Additional Student who wishes to be heard orally at the Final Approval Hearing, and/or who wishes for any objection to be considered, must file a written notice of objection to be filed with the Court no later than thirty (30) days prior to the Final Approval Hearing. The notice of objection shall be sent by First Class United States Mail to the Settlement Administrator, the Clerk of the Court, Class Counsel, and counsel for Defendant. The objection must include the following:

- A. the Additional Student's full name, address and current telephone number;
- B. if the individual is represented by counsel, the name and telephone number of counsel, if counsel intends to submit a request for fees, and all factual and legal support for that request;
- C. all objections and the basis for any such objections stated with specificity, including a statement as to whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class;
- D. the identity of any witnesses the objector may call to testify;
- E. a listing of all exhibits the objector intends to introduce into evidence at the Final Approval Hearing, if any, as well as true and correct copies of such exhibits; and

F. a statement of whether the objector intends to appear at the Final Approval Hearing, either with or without counsel.

Any Additional Student who fails to timely file and serve a written objection pursuant to the terms of this paragraph shall not be permitted to object to the approval of the settlement or the Addendum and shall be foreclosed from seeking any review of the settlement or the terms of the Addendum by appeal or other means.

17. All briefs, memoranda, petitions, and affidavits to be filed in support of an individual service award to the Named Plaintiff and/or in support in support of Class Counsel's application for attorneys' fees and costs, shall be filed not later than forty-five (45) days before the Final Approval Hearing. All other briefs, memoranda, petitions, and affidavits that Class Counsel intends to file in support of final approval shall be filed not later than twenty-one (21) days before the Final Approval Hearing.

18. Neither this Preliminary Approval Order, nor the Addendum, 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 Class Released Claims. This Preliminary Approval 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 preliminary approval of the Addendum 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 (including the Additional Students), or the Defendant.

19. If the Addendum is not finally approved, is not upheld on appeal, or is otherwise terminated, the Addendum and all negotiations, proceedings, and documents prepared, and statements made in connection therewith, shall be without prejudice to any party and shall not be

deemed or construed to be an admission or confession by any party of any fact, matter, or proposition of law; and all parties shall stand in the same procedural position as if the Addendum had not been negotiated, made, or filed with the Court.

20. The Court retains exclusive jurisdiction over this action to consider all further matters arising out of or connected with the Addendum.

Dated: _____

BY THE COURT:

HONORABLE JULIE R. RUBIN
UNITED STATES DISTRICT JUDGE

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

ELENA BOTTS, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

JOHNS HOPKINS UNIVERSITY,

Defendant.

Case No. 1:20-cv-01335-JRR

[PROPOSED] FINAL APPROVAL ORDER

This matter, having come before the Court on Plaintiff's Motion for Final Approval of the Settlement, the Court, having considered all papers filed and arguments made with respect to the settlement and being fully advised, finds that:

1. On _____, 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 Addendum to the Class Action Settlement Agreement and Release entered into between the parties as of July 31, 2023 (the "Addendum"), ECF 99-2. The Court received _____ objections regarding the Addendum.

2. Notice to the Class required by Rule 23(e) of the Federal Rules of Civil Procedure has been provided in accordance with the Court's Preliminary Approval Order. Such Notice has been 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.

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. The

Court has reviewed such notification and accompanying materials and finds that the notification complies fully with the applicable requirements of CAFA.

4. The terms of the Addendum, ECF 99-2, are incorporated fully into this Order by reference. The Court finds that the terms of Addendum 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 Addendum constitutes fair value given in exchange for the release of claims.

7. The class representative and Class Counsel have adequately represented the Settlement Class, including the Additional Students.

8. The parties and the Settlement Class, including the Additional Students, have irrevocably submitted to the jurisdiction of this Court for any suit, action, proceeding, or dispute arising out of the Addendum.

9. The Court finds that it is in the best interests of the parties and the Settlement Class, including the Additional Students, and consistent with principles of judicial economy that any dispute between any Settlement Class member (including any dispute as to whether any person is a Settlement Class member) and any Released Party which, in any way, relates to the applicability or scope of the Addendum or the Final Judgment and Order should be presented exclusively to this Court for resolution by this Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

10. This action is a class action against Defendant Johns Hopkins University on behalf of a class of individuals that has been defined as follows (the “Settlement Class”):

All people who paid Defendant Johns Hopkins University tuition and/or fees for the Spring Semester 2020, which tuition and fees have not been refunded.

11. The Addendum 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 Settlement Class. The Addendum, 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.

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

13. As agreed by the parties in the Addendum, upon the Effective Date, each Settlement Class member is enjoined and permanently barred from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit that asserts Class Released Claims.

14. Upon consideration of Class Counsel's application for attorneys' fees and costs, the Court awards \$489,712.89 as reasonable attorneys' fees and reimbursement for reasonable litigation costs incurred, which shall be paid from the Settlement Fund.

15. Upon consideration of the application for a Service Award, the Named Plaintiff, Elena Botts, is awarded the sum of \$2,782.46, to be paid from the Settlement Fund, for the service she has performed for and on behalf of the Settlement Class.

16. The Court overrules any objections to the settlement. After carefully considering each objection, the Court concludes that none of the objections create questions as to whether the settlement is fair, reasonable, and adequate.

17. Neither this Final Judgment and Order, nor the Addendum, 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 Class Released Claims. This Final Judgment and 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 Addendum 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.

18. 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 Addendum or the applicability of the Addendum. Without limiting the generality of the foregoing, any dispute concerning the Addendum, including, but not limited to, any suit, action, arbitration or other proceeding by a Class member in which the provisions of the Addendum 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 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.

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

20. 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.

21. The persons listed on **Exhibit 1** hereto have validly excluded themselves from the Class in accordance with the provisions of the Addendum and Preliminary Approval Order and are thus excluded from the terms of this Order. Further, because the settlement is being reached as a compromise to resolve this litigation, including before a final determination of the merits of any issue in this case, none of the individuals reflected on Exhibit 1 may invoke the doctrines of *res judicata*, collateral estoppel, or any state law equivalents to those doctrines in connection with any further litigation against Defendant in connection with the claims settled by the Settlement Class.

Dated: _____

BY THE COURT:

HONORABLE JULIE R. RUBIN
UNITED STATES DISTRICT JUDGE

EXHIBIT C

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

ELENA BOTTS, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

JOHNS HOPKINS UNIVERSITY,

Defendant.

Case No. 1:20-cv-01335-JRR

NOTICE OF CLASS ACTION SETTLEMENT

This Notice is about a proposed settlement of the above class action litigation. It has been authorized by the United States District Court for the District of Maryland and contains important information about your right to participate in the settlement or exclude yourself. The following pages summarize your options, your rights, and frequently asked questions.

**You can find more information about the settlement on the Settlement Website:
www.JHUSpring2020Settlement.com**

INTRODUCTION

Elena Botts (“Named Plaintiff”) was a student at The Johns Hopkins University (“Defendant”) during the Spring 2020 Semester when Defendant transitioned to remote learning and services as a result of the COVID-19 pandemic. In May 2022, she filed this lawsuit (the “Litigation”), alleging that, among other things, Defendant breached the terms of the contract entered into with Plaintiff and similarly situated individuals when it stopped providing in-person and on-campus educational services, as well as access to certain campus services and facilities in March 2020. Named Plaintiff sought, for herself and all others similarly situated, a pro-rated refund of tuition and fees for the period that Defendant switched to remote learning and services.

Defendant contests the claims in the Litigation and denies any and all liability and wrongdoing. The Parties have decided to settle the Litigation to avoid the expense, inconvenience, and distraction of litigation. With the assistance of JAMS mediator David Geronemous, the Parties reached an agreement to resolve the claims in the Litigation on a class-wide basis, providing class-wide relief in exchange for a class-wide release of claims. The Court has not decided who is right and who is wrong or whether this case could, in the absence of settlement, proceed as a class action.

The Parties have agreed to settle the Litigation subject to the approval of the Court via a signed Addendum to Class Settlement Agreement and Release (the “Addendum”). Defendant has agreed to pay \$1,469,138.67 into a Settlement Fund that will provide compensation to Settlement Class members, pay for notice and administration, provide for any approved Service Award to Named Plaintiff, and compensate Class Counsel for any approved attorneys’ fees and costs.

The Parties reached this Settlement through negotiations and mediation sessions and have presented it to the Court. As determined through that process, you are entitled to participate, and your legal rights may be affected. These rights and options are summarized below and explained in detail throughout this Notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING	To participate, you do not need to do anything. If the Court approves the Settlement, you will receive an electronic payment or check, at your election. You will be bound by the Final Approval Order and will release the Class Released Claims, meaning that you will not be allowed to pursue the claims raised in this Litigation against Defendant separately.
EXCLUDE YOURSELF	If you wish to exclude yourself (“opt out”) from the Litigation, you must follow the directions in response to Question 7 below. If you opt out, you will not be bound by the settlement and may be able to sue Defendant yourself at your own expense.
OBJECT TO THE SETTLEMENT	If you choose to remain in the Settlement Class, you may write to the Court about why you believe the Settlement is unfair or unreasonable according to the directions in response to Question 12 below. You may request to speak to the Court about your objection at the Final Approval Hearing. If the Court overrules your objection, you will still be bound by the terms of the Settlement Agreement, but you will also receive any proceeds due to you under it.

FREQUENTLY ASKED QUESTIONS

Question 1. Why did I receive this notice?

You received this Notice because Defendant’s records show that you were enrolled as a student at Defendant in the Spring 2020 Semester affected by the COVID-19 pandemic and made a payment of tuition and/or fees. This makes you a “Settlement Class member.” You are receiving this notice now because you were identified as an “Additional Student” to whom notice of this settlement was not previously provided. The Court ordered notice to be sent to you and other Additional Students.

Question 2. What is a class action?

A class action is a lawsuit where one or more persons sue not only for themselves, but also for other people who have similar claims. These similarly situated people are known as Settlement Class members. In a class action, one court resolves the issues for all class members, except for those who exclude themselves from the Class. The Honorable Julie R. Rubin, United States District Judge, is presiding over the Litigation.

Questions? Visit www.JHUSpring2020Settlement.com

Question 3. Why is there a settlement?

Based upon Class Counsel's analysis and evaluation of the merits of the claims made against Defendant in the Litigation and the substantial risks associated with continued litigation, including the possibility that the Litigation, if not settled now, might not result in any recovery whatsoever, or might result in a recovery that is less favorable and that would not occur for several years, Plaintiff and Defendant entered into this proposed settlement. Class Counsel is satisfied that the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate, and that the Settlement is in the best interest of Settlement Class members.

Question 4. How much will I get receive if I join the Settlement?

Each Settlement Class member who does not opt out of the Litigation will receive a proportionate share of the Settlement Fund depending upon how much in tuition and fees they paid to Defendant for the Spring 2020 Semester. These amounts include out-of-pocket payments and payments financed by student loans. Scholarships provided by Defendant do not count toward the amount considered paid, so someone who received little or no scholarship support would receive more under the Settlement Agreement than someone who received substantial scholarship support from Defendant.

Solely by way of example, a Settlement Class member who paid Defendant the full amount for tuition and fees for the Spring 2020 Semester would receive approximately \$____ under the Settlement Agreement.

Question 5. Who brought this lawsuit and are they being compensated?

This lawsuit was brought by Named Plaintiff Elena Botts, who took a lead role in the Litigation and assisted in its resolution. In addition to her proportional share as described in Question 4, Class Counsel will request that the Court award her an additional \$2,782.46 to reflect the time and energy she expended on behalf of herself and Settlement Class members. The Court may choose to award a different amount.

Question 6. What do I have to do to be included in the Settlement?

You do not need to do anything to participate in the settlement. If you do not respond, you will receive an electronic payment or paper check payment after the Court approves the Settlement.

Additionally, the Litigation will be dismissed with prejudice and Settlement Class members who do not opt out will fully release and discharge Defendant. This means that you cannot sue, continue to sue, or be party of any other lawsuit against Defendant regarding the claims brought in this case. It also means that all of the Court's orders will apply to you and legally bind you. The specific claims you are giving up against Defendant are described in Section 4.3.1 of the Settlement Agreement, which can be found on the Settlement Website, www.JHUSpring2020Settlement.com.

Question 7. How do I exclude myself from the Settlement?

Settlement Class members who elect to opt out of the settlement as set forth in this Agreement must submit a written, signed statement that he or she is opting out of the settlement (a “Request for Exclusion”) and mail it to the Settlement Administrator as follows:

Botts, et al. v. The Johns Hopkins University
c/o Settlement Administrator
P.O. Box _____
CITY_, ST_ ZIP__

A Request for Exclusion must include (1) your name, mailing address, and telephone number; and (2) a statement substantially to the effect that: “I request to be excluded from the Settlement Class in the matter of *Elena Botts v. Johns Hopkins University*.” All Requests for Exclusion must be postmarked no later than _____. If you exclude yourself from the Litigation, you will NOT be allowed to object to the Settlement as described in Question 12.

Question 8. If I remain in the Settlement Class, can I sue the Defendant for the same thing later?

No. Unless you exclude yourself, you give up any rights to sue the Defendant for claims brought in this case or which could have been brought in this case. If you have a pending lawsuit, speak to your lawyer in that case immediately to see if the Settlement will affect your other case. Remember, the exclusion deadline is _____.

Question 9. If I exclude myself, can I get money from the Settlement?

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

Question 10. Do I have a lawyer in this case?

Yes. The Court appointed the following attorneys as “Class Counsel” to represent you and the other Settlement Class members:

James A. Francis
John Soumilas
Jordan M. Sartell
FRANCIS MAILMAN
SOUMILAS, P.C.
1600 Market St., Ste. 2510
Philadelphia, PA 19103
(215) 735-8600

Kevin C. Mallon
FRANCIS MAILMAN
SOUMILAS, P.C.
One Liberty Plaza, Ste. 2301
New York, NY 10006
(646) 759-3663

Courtney Weiner
LAW OFFICE OF COURTNEY
WEINER PLLC
1629 K Street NW, Ste. 300
Washington, DC 20006
(202) 827-9980

You will not be charged for these lawyers. You will not be charged for calling, emailing, or speaking confidentially to Class Counsel. You are permitted to call Class Counsel with any questions and such communications will be confidential and protected. Class Counsel’s fees are being paid from the total settlement fund as part of the Settlement and are subject to the approval

Questions? Visit www.JHUSpring2020Settlement.com

of the Court. If you want to be represented by your own lawyer, you may hire one at your own expense.

Question 11. How will the lawyers be paid?

Class Counsel will ask the Court to approve a payment of attorney’s fees and costs of no more than \$489,712.89, which represents one-third of the Settlement Fund. This payment is to compensate Class Counsel for the work they have performed in the Litigation including filing pleadings and briefs, investigating the facts, conducting discovery, attending court conferences, participating in settlement discussions, and negotiating and overseeing the settlement.

Question 12. How do I tell the Court that I don’t like the Settlement?

If you wish to present your objection to the Court, you must state your intention to do so in a written statement. Your statement should be as detailed as possible, otherwise the Court may not allow you to present reasons for your objection that you did not describe in your written objection. The statement must include: (1) the Settlement Class member’s full name, mailing address, and current telephone number; (2) if the individual is represented by counsel, the name and telephone number of counsel, if counsel intends to submit a request for fees and all factual and legal support for that request; (3) all objections and the basis for any such objections stated with specificity, including a statement as to whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class; (4) the identity of any witnesses the objector may call to testify; (5) a listing of all exhibits the objector intends to introduce into evidence at the Final Approval Hearing, as well as true and correct copies of such exhibits; and (6) a statement of whether the objector intends to appear at the Final Approval Hearing, either with or without counsel. Your objection may not be heard unless it is submitted timely or postmarked by _____, and mailed to the Settlement Administrator at:

Botts, et al. v. The Johns Hopkins University
c/o Settlement Administrator
P.O. Box _____
CITY_, ST_ ZIP_

The Settlement Administrator will share your objection with Class Counsel and Defendant’s counsel and file your objection statement with the Court, and may request an opportunity to speak with you before any conference or hearing with the Court. You may not object to the Settlement if you submit a letter requesting to exclude yourself or opt out of the Settlement.

Question 13. What’s the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the settlement. You can object only if you stay in the Class. Excluding yourself from the settlement (“opting out”) is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

If you send an objection, it is not necessary for you to come to Court to talk about it, but you may do so at your own expense or pay your own lawyer to attend. As long as you mailed your written objection on time, the Court will consider it. If you do attend the hearing, it is possible that you

Questions? Visit www.JHUSpring2020Settlement.com

will not be permitted to speak unless you timely object in writing as described above and notify the Court of your intention to appear at the fairness hearing.

Question 14. Has the Court approved the Settlement?

The Court has granted preliminary approval of the Settlement and anticipates making a final determination after Notices are sent. The Court will ultimately consider whether the terms of the settlement are fair, reasonable, and adequate – after reviewing submissions by the Parties, which are publicly available via Pacer.gov and will be posted on the Settlement Website, www.JHUSpring2020Settlement.com.

However, if you wish to raise a valid concern, you should alert the attorneys and they can appear at a Final Approval Hearing conference before the Court on _____, 2023, at ___:___ am/pm, in Courtroom ___ of the United States Courthouse located at 101 West Lombard Street, Baltimore, Maryland, 21201 if your issue is not resolved to your satisfaction with the attorneys. If there are objections, the Court will consider them. The Judge will decide whether to listen to any issues that are properly raised.

Question 15. Are there more details about the Settlement?

This Notice summarizes the proposed settlement Addendum. More details are in the Addendum, which can be found on the Settlement Website, www.JHUSpring2020Settlement.com.

EXHIBIT 2

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

ELENA BOTTS, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

JOHNS HOPKINS UNIVERSITY,
Defendant.

Case No. 1:20-cv-01335-JRR

**RESPONSES AND OBJECTIONS TO PLAINTIFFS' THIRD SET OF
INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendant Johns Hopkins University hereby responds to Plaintiff Elena Botts' Interrogatories.

GENERAL OBJECTIONS

Defendant makes the following general objections to the Interrogatories, reserving the right to add or amend the objections or responses as the factual inquiry continues.

1. Defendant objects to the Interrogatories on the grounds and to the extent that they purport to impose any obligations or burdens on defendant different from or in addition to what is required by the Federal Rules of Civil Procedure, the Local Rules of this Court, or any other governing law.

2. Defendant objects to the Interrogatories to the extent they seek electronically stored information from sources that are not reasonably accessible in light of the burdens or costs required to locate, restore, review, and produce whatever responsive information may be found. The production of information from sources that are not reasonably accessible may also be unreasonably cumulative and duplicative because information that might be obtained is also obtainable, to the extent it exists, from other sources that are more convenient, less burdensome,

or less expensive. Defendant further objects to the Interrogatories to the extent they require defendant to search sources that are not reasonably accessible.

3. Defendant objects to the Interrogatories on the grounds and to the extent that they seek to compel Johns Hopkins to generate or create information or documents that do not already exist, including, without limitation, documents created or received after receipt of the Interrogatories.

4. Defendant objects to the Interrogatories on the ground and to the extent they call for information subject to the attorney-client privilege, the attorney work product doctrine, or any other applicable privileges. Such information will not be produced. The inadvertent production of privileged information by defendant shall not constitute waiver of any applicable privilege nor shall the production of any information be construed as a waiver of any objection to the admissibility of such information.

5. Defendant objects to the Interrogatories to the extent they are duplicative of each other or of other discovery requests propounded by plaintiff.

6. Defendant objects to the Interrogatories to the extent they call for the information protected by third parties' rights to privacy or documents containing confidential commercial, business, financial, proprietary, or competitively sensitive information, or documents that are subject to non-disclosure agreements or confidentiality undertakings. Defendant is not authorized to and cannot waive these privacy rights by the production of such information.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 9:

Describe the circumstances under which You discovered the existence of the Additional Students.

RESPONSE TO INTERROGATORY NO. 9:

Johns Hopkins objects to this Interrogatory on the grounds and to the extent that it is vague and ambiguous as to the term “Additional Students.” Johns Hopkins further objects to this Interrogatory to the extent it is overbroad and unduly burdensome in that it seeks information from time periods not likely to lead to the discovery of relevant information. Johns Hopkins further objects to this Interrogatory to the extent it seeks information that is not relevant to any party’s claim or defense, not proportionate to the needs of the case, or is otherwise beyond the scope of permissible discovery. Johns Hopkins further objects to this Interrogatory to the extent it seeks information subject to attorney-client privilege, attorney work product immunity, or other privilege or immunity against disclosure. Johns Hopkins further objects to this Interrogatory to the extent it seeks specific student’s financial information which is protected by their rights to privacy and is confidential under the Family Educational Rights and Privacy Act (FERPA).

Subject to and without waiving these objections, Johns Hopkins responds as follows:

In the course of implementing the parties’ settlement agreement (Dkt. 85-2), JHU identified additional individuals who met the Class definition. These individuals included those who paid for the Spring 2020 term through additional payment methods, including college savings plans, third-party wire payments, trust fund payments and escrow payments, and those who paid outside the originally searched date range. In total, 1,915 additional individuals were added to the suit through the use of expanded search parameters, including the addition of 38 new payment codes and an extended date range for payment activity, beginning October 15, 2019 (the earliest date that spring 2020 charges were applied for one of JHU’s campuses, *see Exhibit 1*).

INTERROGATORY NO. 10:

Concerning students who paid JHU Spring Semester 2020 tuition and/or fees for in-person educational services whose tuition and fees have not been refunded, identify the earliest date(s) on which each was able to make a payment of tuition and/or fees for Spring Semester 2020.

RESPONSE TO INTERROGATORY NO. 10:

Johns Hopkins objects to this Interrogatory on the grounds and to the extent that it is vague and ambiguous as to the phrase “able to make a payment.” Johns Hopkins further objects to this Interrogatory to the extent it is overbroad and unduly burdensome in that it seeks information from time periods not likely to lead to the discovery of relevant information. Johns Hopkins further objects to this Interrogatory to the extent it seeks information that is not relevant to any party’s claim or defense, not proportionate to the needs of the case, or is otherwise beyond the scope of permissible discovery. Johns Hopkins further objects to this Interrogatory to the extent it seeks information subject to attorney-client privilege, attorney work product immunity, or other privilege or immunity against disclosure. Johns Hopkins further objects to this Interrogatory to the extent it seeks specific student’s financial information which is protected by their rights to privacy and is confidential under the Family Educational Rights and Privacy Act (FERPA).

Subject to and without waiving these objections, Johns Hopkins responds as follows:

Please see **Exhibit 1**, previously shared with plaintiff’s counsel on March 28, 2023. For the majority of JHU’s eleven schools, student bills were not available until mid-December 2019 or later. In any event, for all students, most spring payments are received after January 1, 2020. Students at six of JHU’s campuses, including the largest campus, did not receive their spring 2020 bills until December 12, 2019 or later. The earliest date on which any school (solely the Advanced Academic Programs department at the Krieger School of Arts and Sciences) at JHU released

Spring 2020 charges was October 15, 2019. For this reason, October 15, 2019 as adopted as the beginning date parameter for the Class.

INTERROGATORY NO. 11:

Concerning students who paid JHU Spring Semester 2020 tuition and/or fees for in-person educational services whose tuition and fees have not been refunded, identify the system(s) of record in which You recorded the date(s) and amount(s) of payments You received from them.

RESPONSE TO INTERROGATORY NO. 11:

Johns Hopkins objects to this Interrogatory on the grounds and to the extent that it is vague and ambiguous as to the term “system(s) of record.” Johns Hopkins further objects to this Interrogatory to the extent it is overbroad and unduly burdensome in that it seeks information from time periods not likely to lead to the discovery of relevant information. Johns Hopkins further objects to this Interrogatory to the extent it seeks information that is not relevant to any party’s claim or defense, not proportionate to the needs of the case, or is otherwise beyond the scope of permissible discovery. Johns Hopkins further objects to this Interrogatory to the extent it seeks information subject to attorney-client privilege, attorney work product immunity, or other privilege or immunity against disclosure. Johns Hopkins further objects to this Interrogatory to the extent it seeks specific student’s financial information which is protected by their rights to privacy and is confidential under the Family Educational Rights and Privacy Act (FERPA).

Subject to and without waiving these objections, Johns Hopkins responds as follows:

At Hopkins, the Student Information System (SIS) is the system of record for all academic and financial activity for students. Every student has an individual student account that serves as an electronic ledger, tracking receipt of financial aid, personal payments, and other third-party payments. Financial aid payment activity is always associated with a specific term; however, personal and other third-party payments are associated with a fiscal year, e.g., FY20. Payments of

this type are not officially allocated to a specific term, which is why a range of dates was used to identify eligible payments for claimants. For this reason, October 15, 2019 – the earliest date on which Spring 2020 charges began posting to any student accounts – was ultimately selected as the beginning date parameter.

INTERROGATORY NO. 12:

Set forth, in detail, the process by which You identified the individuals in the Original Settlement Class and, without limitation on the foregoing, identify: the person(s) principally responsible for and/or who supervised the process; the data source(s) and/or system(s) of record upon which You relied in connection with the process; and the parameters of the queries, filters, search criteria, and/or transaction code(s) You used in the process.

RESPONSE TO INTERROGATORY NO. 12:

Johns Hopkins objects to this Interrogatory to the extent it is overbroad and unduly burdensome in that it seeks information from time periods not likely to lead to the discovery of relevant information. Johns Hopkins further objects to this Interrogatory to the extent it seeks information that is not relevant to any party's claim or defense, not proportionate to the needs of the case, or is otherwise beyond the scope of permissible discovery. Johns Hopkins further objects to this Interrogatory to the extent it seeks information subject to attorney-client privilege, attorney work product immunity, or other privilege or immunity against disclosure. Johns Hopkins further objects to this Interrogatory to the extent it seeks specific student's financial information which is protected by their rights to privacy and is confidential under the Family Educational Rights and Privacy Act (FERPA).

Subject to and without waiving these objections, Johns Hopkins responds as follows:

The Original Settlement Class was identified through two main steps. First, the Office of Institutional Research produced a base list of registered students who took at least one class in-

person during the Spring 2020 term, using data extracted from the Student Information System (SIS) that was frozen on the 2nd week of the semester (census date). That list was then sent to Student Financial Services in order to determine payment information and define the Class based on transaction codes. Using the cohort identified by the Office of Institutional Research, as well as a list of payment transaction codes provided from the Student Accounts Office (generated by running a report of all payment transcode types that posted to student accounts between 1/1/2020 and 6/12/2020), Student Financial Services identified students who made payments and/or received loans to pay Spring 2020 tuition and fees. The final list was then sent back to Institutional Research to gather student contact information (addresses, email) from SIS. Tom McDermott, Associate Vice Provost for Financial Aid, supervised this process.

INTERROGATORY NO. 13:

Set forth, in detail, the process by which You identified the Additional Students and, without limitation on the foregoing, identify: the person(s) principally responsible for and/or who supervised the process; the data source(s) and/or system(s) of record that You upon which You relied in connection with the process; and the parameters of the queries, filters, search criteria, and/or transaction code(s) You used in the process.

RESPONSE TO INTERROGATORY NO. 13:

Johns Hopkins objects to this Interrogatory on the grounds and to the extent that it is vague and ambiguous as to the term “Additional Students.” Johns Hopkins further objects to this Interrogatory to the extent it is overbroad and unduly burdensome in that it seeks information from time periods not likely to lead to the discovery of relevant information. Johns Hopkins further objects to this Interrogatory to the extent it seeks information that is not relevant to any party’s claim or defense, not proportionate to the needs of the case, or is otherwise beyond the scope of permissible discovery. Johns Hopkins further objects to this Interrogatory to the extent it seeks

information subject to attorney-client privilege, attorney work product immunity, or other privilege or immunity against disclosure. Johns Hopkins further objects to this Interrogatory to the extent it seeks specific student's financial information which is protected by their rights to privacy and is confidential under the Family Educational Rights and Privacy Act (FERPA).

Subject to and without waiving these objections, Johns Hopkins responds as follows:

In response to inquiries from certain Class Members who had not received notice of the settlement, Tom McDermott, Associate Vice Provost for Financial Aid, reviewed the class members' individual student account records and noticed payments received earlier than 1/1/2020 (the initial date used to develop the original list of claimants) as well payments processed using transaction codes that were not on the earlier list from the Office of Student Accounts. Tom McDermott revisited the original count of 8,603 Class Members in collaboration with Rachael Pollard in the Student Accounts department. Each student's payment to JHU is associated with one of several payment codes, denoting transaction types. Mr. McDermott determined that additional payment codes could yield additional students that would fit within the Class definition. One subset of these codes represented college savings plan payments that were not included in the original Class list; they were included in the revised list. Further, date parameters for payments were expanded by Tom McDermott from January 1, 2020 to December 1, 2019. These changes to the search parameters generated 1,652 additional individuals who fall within the Class. Exercising an abundance of caution, the date parameter was further expanded back to October 15, 2019 (the earliest date that spring charges were applied). This resulted in an additional 263 individuals. This list of 1,915 individuals (generated by running a report of all payment transcode types that posted to student accounts between 10/15/2019 and 6/12/2020, querying all known payment transcode types and searching using division specific naming conventions) was sent back

to Institutional Research for the addition of contact information via the Student Information System (SIS), which serves as the official record of all academic and financial activity for students.

INTERROGATORY NO. 14:

Describe the measures You took to assure Yourself that you conducted a thorough search to identify Additional Students.

RESPONSE TO INTERROGATORY NO. 14:

Johns Hopkins objects to this Interrogatory on the grounds and to the extent that it is vague and ambiguous as to the term “Additional Students.” Johns Hopkins further objects to this Interrogatory to the extent it is overbroad and unduly burdensome in that it seeks information from time periods not likely to lead to the discovery of relevant information. Johns Hopkins further objects to this Interrogatory to the extent it seeks information that is not relevant to any party’s claim or defense, not proportionate to the needs of the case, or is otherwise beyond the scope of permissible discovery. Johns Hopkins further objects to this Interrogatory to the extent it seeks information subject to attorney-client privilege, attorney work product immunity, or other privilege or immunity against disclosure. Johns Hopkins further objects to this Interrogatory to the extent it seeks specific student’s financial information which is protected by their rights to privacy and is confidential under the Family Educational Rights and Privacy Act (FERPA).

Subject to and without waiving these objections, Johns Hopkins responds as follows:

Once the analysis described in response to Interrogatory 13 was completed, and Tom McDermott compiled the updated list based on the queries presented, Executive Vice Provost for Academic Affairs Stephen Gange validated the analysis performed through consultation with Institutional Research and Student Financial Services, concluding and confirming that an additional 1,915 individuals fall within the parameters of the Class. The outcome differed from

the Original class list because of the additional codes and expanded date range that had not been applied previously.

DATED: May 11, 2023

/s/ Crystal Nix-Hines

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*Attorneys for Defendant,
Johns Hopkins University*

EXHIBIT 1

School	Spring 2020 Charges Began Posting to Student Accounts	Spring Bill Avail	Method*
ASEN	12/1/2019	12/12/2019	Email
AAP/EP	10/15/2019	11/14/2019	Email
Carey	10/28/2019	11/14/2019	Email
Education	10/30/2019	11/14/2019	Email
Medicine	1/7/2020	1/9/2020	Email
Nursing**	12/2/2019	12/12/2019	Email
Peabody	11/1/2019	11/14/2019	Email
PH	11/13/2019	11/14/2019	Email
SAIS DC***	12/2/2019	12/12/2019	Email
SAIS HNC	12/2/2019	12/12/2019	Email
SAIS EU	1/9/2020	Manually charged, no auto bills are ever created; EU directs students to review account history and balances SIS or email/stop by the EU business office for a printed statement	SIS/Email

***Unless otherwise noted, all students are notified via their JHU email address when their bills are available to review in SIS**

****Nursing non-degree pre-req students spring 20 charges began posting 10/1/2019**

*****SAIS Spring 20 MAGP cohort billed on 1/10/2020**

VERIFICATION

I, Stephen J. Gange, Interim Provost and Senior Vice President for Academic Affairs at Johns Hopkins University, have reviewed the above Responses and Objections to Plaintiff's Third Set of Interrogatories, and the facts stated therein regarding Johns Hopkins University are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 11, 2023, at Baltimore, Maryland.

A handwritten signature in black ink, appearing to read "Stephen Gange", is written over a horizontal line.

Stephen J. Gange

Certificate of Service

I hereby certify that the foregoing Responses and Objections to Plaintiff's Third Set of Interrogatories was served on all counsel of record on May 11, 2023.

/s/ Marina Lev

Marina Lev

EXHIBIT 3

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

ELENA BOTTS, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

JOHNS HOPKINS UNIVERSITY,

Defendant.

Civil Action No. 1:20-cv-01335-JRR

DECLARATION OF THOMAS P. MCDERMOTT, III

I, Thomas P. McDermott, III, pursuant to 28 U.S.C. § 1746, hereby make the following declaration based upon my personal knowledge under the penalty of perjury.

1. My employer is Johns Hopkins University (“JHU”). I have worked for JHU continuously since 1997. My current job title is Associate Vice Provost for Financial Aid. I have held this position since 2022.
2. During my time as an employee of JHU and in my capacity as AVP for Financial Aid, I have become familiar with the capabilities of JHU’s Student Information System (“SIS”), including the categories of data stored within SIS and the means by which specific information may be queried and retrieved from it.
3. My understanding is that among the categories of data that JHU stores in SIS are student academic records, including data memorializing the classes in which students are enrolled in a given semester and the format by which those classes are delivered (*e.g.*, in-person or online). JHU has used SIS as the system of record for student academic activity since 2007.
4. Also among the categories of data that JHU stores in SIS are student financial activity records, including data memorializing JHU’s charges for tuition and fees and students’ payments of same. JHU has used SIS as the system of record for student financial activity since 2004-2005.
5. Each time data memorializing a student financial transaction is stored in SIS, it is assigned a transaction code type, which is also referred to as a “transcode,” based upon the nature of the transaction. For example, tuition charges for undergraduates for the Arts & Sciences campus are assigned the transcode “PT1FUx- Tu Fall UG A/S” and tuition payments from the proceeds of federal student loans are assigned the transcode “LLFP24- FedDLSub.”

6. I understand that JHU has undertaken to identify the students who paid Johns Hopkins Spring Semester 2020 tuition and/or fees for in-person educational services, whose tuition and fees have not been refunded.
7. I have reviewed and am familiar with JHU's May 11, 2023, responses to Plaintiff Elena Botts' Third Set of Interrogatories.
8. JHU's Office of Institutional Research ("OIR") is the university's central resource for institutional data analysis and business intelligence. OIR is charged with gathering and analyzing data about the university and its peers to inform strategic initiatives and decision-making for the President, the Provost, and other university administrators. OIR also compiles information on students, faculty, and staff for federal, regional, and state reporting requirements, participation in national educational consortia and for national and international rankings.
9. The "base list of registered students who took at least one class in-person during the Spring 2020 term" referenced in JHU's May 11, 2023, response to Plaintiff's Interrogatory No. 12 included 10,518 students from all nine JHU schools.
10. The "census date" referenced in JHU's May 11, 2023 response to Plaintiff's Interrogatory No. 12 refers to the date the Registrar officially records enrollment (two weeks after the start of the term).
11. Based upon my experience with SIS and personal knowledge of JHU's administrative procedures, "census date" data represents the most comprehensive available memorialization of which students have registered for classes for the given term.
12. JHU's Office of Student Accounts ("OSA") is the university's central billing service for tuition, fees, and other campus-related student charges.
13. OSA's "report of all payment transcode types that posted to student accounts between 1/1/2020 and 6/12/2020" referenced in JHU's May 11, 2023, response to Plaintiff's Interrogatory No. 12 contained 91 transaction code types.
14. June 12, 2020 was selected as the end of the date range for the report of payment transcode types because it is the latest end date of the spring semester at our nine schools.
15. The "division specific naming conventions" referenced in JHU's response to Plaintiff's Interrogatory No. 13 refers to additional transaction code types that were not included in the list of payment transaction codes that posted to student accounts between January 1, 2020 and June 12, 2020. There are many such naming conventions, and the queries JHU performed to identify the Additional Students included all of the ones that were used during the period between October 15, 2019 and June 12, 2020.

16. Based upon my experience with SIS and personal knowledge of JHU's administrative procedures, querying all payment transaction code types between two dates will typically produce a comprehensive list of all payments received by JHU during that period.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on July 28, 2023

A handwritten signature in black ink, appearing to read "T. P. McDermott, III", is written above a horizontal line.

Thomas P. McDermott, III

Exhibit 4



Elena Botts v. Johns Hopkins University
July 27, 2023

NOTICE	
EMAILED CLASS ACTION NOTICE	
Initial Notices Emailed:	8,602
Undeliverable Emails:	175

FOLLOW UP CLASS ACTION NOTICE	
Follow Up Class Action Notice Mailed:	175
Undeliverable Mailed:	21

		Inception to 07/27/23
Undeliverable Notice Packets:		22
Undeliverable without Forwarding Address Information:		21
Remained to Forwarding Address:		9

COMMUNICATION		
SETTLEMENT WEBSITE		
		Inception to 07/27/23
Unique Visitors:		9,620
Page Views:		34,159

SETTLEMENT EMAIL		Inception to 07/27/23
Emails Received:		711

SETTLEMENT TOLL-FREE NUMBER		Inception to 07/27/23
Incoming Calls:		182

SUBMISSIONS	
PAYMENT ELECTION FORMS	
Total Online Payment Elections:	1,981
Selected Check:	414
Selected PayPal:	1,567

OBJECTIONS	
Total Objections:	1

OPT-OUTS	
Total Valid, Timely Opt-Outs:	3
Total Invalid Opt-Outs:	2

DISTRIBUTION	
Total Class Member Payments Sent:	8,600



Elena Botts v. Johns Hopkins University
(United States District Court, District of Maryland, Case No. 1:20-cv-01335-JRR)

Objections Received

	<u>JND ID NUMBER</u>	<u>NAME</u>	<u>CITY/STATE</u>	<u>POSTMARK DATE</u>	<u>OBJECTION OR COMMENT</u>
1.	D92KQ5DS47	Shannon Bernier	Ijamsville, MD	3/8/23	Ms. Bernier object to the settlement because 1) the Plaintiffs claim that the Defendant benefited unjustly from retention of tuition, in a way that did not also benefit members of the Class, is erroneous and 2) the proposed terms of the settlement are insufficient to address harms caused and will have a net negative effect on both the Class and other affected individuals.



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(United States District Court, District of Maryland, Case No. 1:20-cv-01335-JRR)

Timely and Valid Exclusions

	<u>JND ID NUMBER</u>	<u>NAME</u>	<u>CITY/STATE</u>	<u>POSTMARK DATE</u>	<u>STATUS</u>
1.	DLJSMEGZCX	Rupa Kambhampati	North Potomac, MD	January 30, 2023	Valid
2.	DDG95YFJNE	Grace Jull	Lenox, MA	March 18, 2023	Valid
3.	DMCBY97WUF	Cyril Imbert	Paris, France	March 12, 2023	Valid