IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

DAVE MCCORMICK, T'LANI ROBINSON, DENNIS MAGANA, SCOTT SWINDELL, DAVID TOROSYAN, and ROBBY BROWN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ADTALEM GLOBAL EDUCATION, INC., formerly known as DEVRY EDUCATION GROUP, INC., a Delaware corporation, DEVRY UNIVERSITY, INC., a Delaware corporation,

Defendants.

Case No.: 2018-CH-04872

Hon. Michael T. Mullen

PLAINTIFFS' MEMORANDUM IN SUPPORT OF
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Supreme Court Cases:

United States Circuit Court of Appeals Cases:

United States District Court Cases:

State Supreme Court Cases:

State Appellate Court Cases:

State Trial Court Cases:

Rules and Statutory Provisions:

Other Authorities:

I. INTRODUCTION

When Plaintiffs were prospective students considering which post-secondary school to attend, they were each exposed to two claims made by Defendants Adtalem Global Education Inc. and DeVry University, Inc. (collectively "DeVry") as part of a nationwide advertising campaign: (i) that 90% of DeVry's graduates who were actively seeking employment found jobs in their field of study within six months of graduation ("90% Placement Claim") and (ii) that DeVry graduates obtained jobs with incomes on average 15% higher than graduates of other colleges or universities (the "Higher Income Claim"). For any student considering what school to attend, employment and compensation statistics like these are critical pieces of information. Plaintiffs, like tens of thousands of other students, relied on these representations to enroll in one of DeVry's higher education programs, collectively paying it millions in the process. Only after their payments were made did Plaintiffs learn that DeVry's Claims were not accurate. Had they known as much from the outset, Plaintiffs and the putative class members they seek to represent certainly would not have agreed to pay DeVry what they did or would not have enrolled in the first instance.

With that as the backdrop, Plaintiffs filed lawsuits in jurisdictions across the country seeking to hold DeVry accountable for its alleged misrepresentations and in hopes of recovering the portion of tuition that they overpaid on account of their reliance on the Claims. After years of litigation and attempts at resolution, in late 2019 the parties agreed to once again give settlement a try through private mediation with the Hon. Layn R. Phillips (Ret.), a well-respected third-party neutral. With Judge Phillips' assistance, the parties were ultimately able to agree in principle to resolve the claims at issue here, as well as those of similarly situated students around the country. In the months that followed, they memorialized that understanding in the form of the

Agreement now before the Court.

The Settlement is an extraordinary result. It requires that DeVry create a $44.95 million Settlement Fund from which students will be compensated based on the number of credit hours for which they paid.[1] Notably, this is the largest private settlement that DeVry has entered into regarding the 90% Placement and Higher Income Claims,[2] and is second only to its relatively recent settlement with the Federal Trade Commission.[3] All told and even assuming higher than usual participation, Plaintiffs reasonably expect that participating Settlement Class Members will receive on average hundreds (if not thousands) of dollars each from the Settlement. Moreover, for those Settlement Class Members who completed a degree program at DeVry but were not employed in their fields of study within six months, there will be an additional Graduate Payment.

The non-monetary benefits of the Settlement are equally noteworthy. DeVry has agreed to provide those Settlement Class Members that graduated, but did not find jobs in their fields of study within six months of graduation, career counseling services in an effort to help them obtain employment now. DeVry will also request that any negative credit events it reported to major credit bureaus be wiped from Settlement Class Members' credit reports. Importantly, the Settlement accomplishes all of this while at the same time preserving Settlement Class Members' rights to seek additional loan forgiveness from the Department of Education through its

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1 Unless otherwise specified, all capitalized terms are defined in the parties' Settlement Agreement and Release (the "Settlement"), which is attached as Exhibit 1.

2 DeVry has reached several other settlements related to the Claims in other contexts as well. *See, e.g.*, *Pension Trust Fund for Operating Engineers v. DeVry Education Group, Inc., et al*., No: 1:16-cv-05198, dkt. 151 (N.D. Ill. Nov. 1, 2019) (settling securities lawsuit regarding the Claims and creating a $27.5 million settlement fund).

3 In that 2016 settlement, $49.5 million was distributed to individual students. *See Federal Trade Commission v. DeVry Education Group, Inc., et al*., No. 2:16-cv-00579, dkt. 97 (C.D. Cal. Dec. 15, 2016).

Borrower Defense to Repayment program.

For all of these reasons and as detailed further below, Plaintiffs are of the view that the proposed Settlement is well within the range of approval and is otherwise deserving of preliminary approval. Thus, they respectfully request that the Court grant the instant motion in its entirety, including by directing Notice of the proposed Settlement to the Settlement Class and setting a hearing to consider whether the Settlement is deserving of final approval.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. DeVry, the 90% Placement and Higher Income Claims, and the Underlying Allegations.

DeVry is one of the country's largest for-profit colleges. (Third Amended Complaint ("TAC") ¶ 18.) Beginning in at least 2008, DeVry began a nationwide advertising campaign centered on the 90% Placement and Higher Income Claims. (*Id.* ¶¶ 3, 48–49.) DeVry touted these Claims in print, television, radio, and internet ads. (*Id.* ¶ 49.) They publicized the Claims in their admissions materials. (*Id.* ¶¶ 51–52, 58–60, 65, 69–70, 78–79.) And they even built the Claims into admissions pitches that recruiters gave to high school students. (*Id.* ¶ 2.) The wide dissemination of these Claims had a singular goal: to induce prospective students to enroll at DeVry over other colleges, and to pay a premium over other schools. (*Id.* ¶ 3.) The advertising campaign worked: students, including Plaintiffs, relied on the Claims when enrolling and paying tuition to DeVry. (*Id.* ¶¶ 4, 54, 63, 65, 69, 78, 87.)

Unbeknownst to Plaintiffs and the Settlement Class, DeVry's 90% Placement and Higher Income Claims were not accurate. (*Id.* ¶¶ 4, 25, 28.) The 90% Placement Claim was built on heavily-manipulated statistics, arrived at by, *inter alia*, including graduates into the equation who should have been excluded, and by counting jobs as being in graduates' fields of study notwithstanding the fact that they were often unrelated. (*Id.* ¶¶ 33–34.) The Higher Income

Claim was also allegedly manipulated, and DeVry artificially inflated the average annual compensation of its graduates to create the Claim. (*Id.* ¶¶ 39–40.) That the 90% Placement and Higher Income Claims were inaccurate came to light in early 2016, when governmental regulators began investigating the issues. (*Id.* ¶ 29 n.4.) These investigations, which evolved into lawsuits against DeVry, subsequently uncovered how the Claims were created. (*Id.* ¶¶ 29, 36.)

Plaintiffs here were each students who enrolled at DeVry based on the 90% Placement and Higher Income Claims, and who learned after the fact that these Claims were false. (*Id.* ¶¶ 54, 63, 67, 75, 82, 92.) Had they known as much when they were first considering whether to enroll at DeVry, they would not have been willing to pay the same amounts in tuition, or perhaps would not have enrolled at all. (*Id.* ¶¶ 55, 63, 67, 76, 85, 94.)

B. Procedural Posture of the Instant Case and the Related Actions.

While several Plaintiffs were recently added to this lawsuit in an effort to consolidate litigation across the country into a single forum for purposes of the Settlement, litigation regarding the 90% Placement and Higher Income Claims has been proceeding for several years in numerous forums. Thus, the procedural posture of this action and those that have been consolidated here (the "Related Actions") are briefly summarized below:

1. *McCormick, et al. v. Adtalem Global Education, Inc., et al.*, 2018-CH-04872 (Cir. Ct. Cook Cty., Ill.)

This case was originally filed with a different named Plaintiff, Nicole Versetto. After an initial mediation with the Hon. Layn R. Phillips, that while productive did not result in a negotiated resolution, the parties returned to litigation. Ms. Versetto was substituted for Mr. McCormick in early 2019, after which the parties briefed and argued a motion to dismiss. The Court granted DeVry's motion without prejudice in July 2019. (July 29, 2019 Order Granting Defendants' Motion to Dismiss). Plaintiffs subsequently filed a second amended complaint

addressing the deficiencies the Court identified. DeVry filed another motion to dismiss the claims, which the parties fully briefed and scheduled for argument. After the briefing was completed, but before argument was heard, the parties requested that the Court hold off on ruling on the pending motion to dismiss while they returned to the negotiating table, aided once again by Judge Phillips, in December 2019. As described below in Section II.C, this process ultimately resulted in an agreement in principle that would later become the Settlement now before the Court. In order to effectuate this global Settlement, this action was amended to add Plaintiffs Robinson, Brown, Magana, Swindell, and Torosyan as putative Class Representatives. Finally, it's worth noting that addition to this case being the earliest, active matter against DeVry filed by any of the Plaintiffs, Illinois is DeVry's corporate home. (TAC ¶ 16.)[4]

2. *Brown v. Adtalem Global Education, Inc., et al.*, No. 19-00250 (W.D. Mo.)

Plaintiff Robby Brown filed his case in the Western District of Missouri in March 2019. DeVry moved to dismiss the Complaint in its entirety, which Plaintiff Brown opposed. While the motion to dismiss was pending, Brown issued formal discovery to DeVry requesting documents regarding the substantiation of the 90% Placement and Higher Income Claims, and asked DeVry to identify the methodology it used to calculate the Claims. The Court ultimately granted in part and denied in part the motion to dismiss, allowing Brown's key fraud claims to proceed past the

[4] Notably, proposed Settlement Class Counsel also previously litigated the matter *Robinson, et al. v. DeVry Education Group, Inc. et al.*, No. 1:16-cv-07447 (N.D. Ill.) in the Northern District of Illinois. As Plaintiff McCormick described in his opposition to Defendants' motion to dismiss, the dismissal order in Robinson led Plaintiffs Robinson, Magana, and Brown to file in the jurisdictions in which they lived, rather than where DeVry was headquartered. *See Robinson v. DeVry Educ. Grp., Inc.*, No. 16 CV 7447, 2018 WL 828050, at *3 (N.D. Ill. Feb. 12, 2018). Nevertheless, prior to dismissal in Robinson, the Plaintiffs issued Freedom of Information Act requests in connection with the action, and were able to gain important insights from the dismissal that allowed them to successfully defeat DeVry's attempts at dismissal in later actions, as described herein.

pleading stage. *Brown v. Adtalem Global Education, Inc.*, No. 19-00250, dkt. 28 (W.D. Mo. Oct. 9, 2019). Following the ruling on the motion to dismiss, Plaintiff Brown also participated in the December 2019 mediation with Judge Phillips and was added to this action as a Representative of the proposed Settlement Class.

3. *Robinson v. Adtalem Global Education, Inc., et al.*, No. 19-cv-01505 (N.D. Ga.)

In April 2019, Plaintiff T'lani Robinson filed her complaint against DeVry in the Northern District of Georgia. DeVry promptly moved to dismiss the Complaint, a motion which the parties fully briefed. Following the *Brown* court's lead, the *Robinson* court granted in part and denied in part DeVry's motion, again allowing the main fraud claims to move forward. *Robinson v. Adtalem Global Education, Inc.*, No. 19-cv-01505, dkt. 28 (N.D. Ga. Nov. 25, 2019). Following the December 2019 mediation with Judge Phillips, Ms. Robinson also signed onto the Settlement and was added here as a proposed Settlement Class Representative.

4. *Magana, et al. v. Adtalem Global Education, Inc., et al.*, No. 19-cv-01505 (E.D. Cal.)

Plaintiffs Dennis Magana, Scott Swindell, and David Torosyan filed their Complaint against DeVry in August 2019 in the Eastern District of California. After filing, the parties agreed to hold DeVry's deadline to answer or otherwise plead in abeyance while they attempted to resolve their dispute through the mediation with Judge Phillips. After that proved successful, Plaintiffs Magana, Swindell, and Torosyan joined the instant action as prospective Settlement Class Representatives.

C. Negotiation and Settlement.

As the forgoing makes clear, the parties have been actively litigating these claims for several years now. The parties first discussed the possibility of a resolution in mid-2018, as the

first motion to dismiss in this case was pending. (Declaration of Benjamin H. Richman, attached as Exhibit 2, ¶ 4.) As part of this process, the parties spent several months—in the context of Plaintiffs' pending written discovery—exchanging information and relevant data relating to the makeup of a potential settlement class, including a decade's worth of data regarding the number of DeVry students at issue, the total amount in tuition that they were charged, and the total amount of loan funding that was provided to DeVry students. (*Id.*) The parties' representatives had several in-person meetings and telephone conferences to discuss this information and to preliminarily discuss settlement structures. (*Id.*) After completing that process and being satisfied that they had obtained the information necessary to evaluate any proposed resolution, the parties agreed to attend a private, in-person mediation with respected third-party mediator, Hon. Layn R. Phillips (Ret.) in New York. (*Id.* ¶ 5.) Importantly, Judge Phillips already had experience in mediating disputes regarding DeVry's 90% Placement and Higher Income Claims in other contexts—particularly securities and derivative litigation—thus affording him a unique familiarity with the case's factual underpinnings and related legal issues from the start. (*Id.*) In advance of the mediation, the parties also submitted detailed mediation briefs that set forth their respective views of the case, their perceived strengths and weaknesses, and potential frameworks for a resolution, all of which they had been discussing at length throughout the preceding months of informational exchanges. (*Id.* ¶ 6.) They likewise participated in several teleconferences with Judge Phillips to discuss their submissions and answer any questions about them. (*Id.*)

The parties attended the mediation in late 2018, during which they spent a full day engaged in a back-and-forth, arms'-length mediation, with Judge Phillips' oversight. (*Id.* ¶ 7.) These efforts were productive, and the parties left the mediation with Plaintiffs tendering a settlement proposal that DeVry was deliberating over. (*Id.*) As DeVry was considering the

proposal, a court in a different putative class action regarding the 90% Placement and Higher Income Claims granted DeVry's motion to dismiss the plaintiff's case. *See Polly v. Adtalem Global Educ., Inc.*, No. 16-cv-9754, 2019 WL 587409, at *2–3 (N.D. Ill. Feb. 13, 2019). With this opinion in hand, DeVry determined not to proceed with any settlement at that time and the parties returned to active litigation. (Richman Decl. ¶ 7.)

The *Brown*, *Magana*, and *Robinson* actions were then filed, and this Court proceeded to render a decision on DeVry's motion to dismiss. (*Id.* ¶ 8.) As described above, the *Brown* and *Robinson* courts subsequently denied in part DeVry's motions to dismiss and allowed the fraud claims in those cases to proceed. By that time, Plaintiff McCormick had filed an amended complaint in this case, which DeVry moved to dismiss. (*Id.* ¶ 9.) After this motion to dismiss was fully briefed and argument scheduled, the parties broached the possibility of restarting negotiations on a potential settlement. (*Id.*) To this end, they agreed to schedule a second in-person mediation with Judge Phillips. (*Id*.)

Leading up to the second mediation, DeVry supplemented and updated the discovery it had previously produced, and the parties otherwise shared their views on a potential resolution in light of the then-current posture of the litigation. (*Id.* ¶ 10.) As with the first mediation, the parties also held several teleconferences with Judge Phillips to discuss all of this in advance of the mediation. (*Id.*) With this information, the parties' representatives met with Judge Phillips again for a full day in December 2019. (*Id*.)

After multiple rounds of individual caucuses with Judge Phillips and meetings between the parties and their representatives, the parties were ultimately able to reach an agreement in principle on a proposed global settlement of all claims regarding the 90% Placement and Higher Income Claims. (*Id.* ¶ 11.) The parties have since spent the intervening months exchanging

multiple drafts of the actual Settlement Agreement and supporting documents, all of which are now before the Court. (*Id*.)

III. TERMS OF THE SETTLEMENT AGREEMENT

The detailed terms of Settlement are set forth in the parties' Settlement Agreement and Release, but are briefly summarized here as well:

A. Class Definition.

The Settlement Class is defined as "all individuals in the United States who purchased or otherwise paid for any part of a DeVry or Keller education program between January 1, 2008, and December 15, 2016." (Settlement § 1.29.)[5] Discovery has revealed that there are approximately 323,000 Settlement Class Members. (*Id*.)

B. Monetary Relief.

DeVry has agreed to create a Settlement Fund amounting to $44,950,000.00. (*Id.* § 1.34.) Each Settlement Class Member that submits an Approved Claim Form will receive a *pro rata* portion of the Settlement Fund—after first deducting Graduate Payments, Notice and Administration Costs, the Fee Award, and Incentive Awards—based on the number of DeVry credits for which they paid. (*Id.* § 2.1.a.i.) In addition, Settlement Class Members who graduated from DeVry but were unable to find jobs in their fields of study within six months of graduation will be entitled to Graduate Payments amounting to $500 for associate's and master's degree graduates and $1,000 for bachelor's degree graduates. (*Id.* § 2.1.a.ii.) These Graduate Payments

[5] Excluded from the Settlement Class are (i) the Judge presiding over this action (or the Judge or Magistrate presiding over the action through which this matter is presented for settlement), and members of their families; (ii) the Defendants, Defendants' subsidiaries, parent companies, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest and its current or former officers, directors, and employees; (iii) Persons who properly execute and file a timely request for exclusion from the Settlement Class; and (iv) the legal representatives, successors or assigns of any such excluded Person. (Settlement § 1.29.)

will be made in addition to the per-credit-hour payment that Settlement Class Members are entitled to. (*Id*.) If a Settlement Class Member previously received a payment as part of a prior governmental settlement, or any previous debt forgiveness or Borrower Defense to Repayment relief, DeVry shall be entitled to deduct such amount from any payments that same Settlement Class Member is entitled to under this Settlement, and may credit such amount against the Settlement Fund. (*Id.* § 2.1.b.i.) The total amount that DeVry is entitled to under this offset, however, shall not exceed one third of the total Settlement Fund. (*Id.* § 2.1.b.iv.)

C. Non-Monetary Relief.

DeVry has also agreed to provide significant non-monetary benefits as part of the Settlement. DeVry will provide career counseling services to all Settlement Class Members that graduated but did not obtain jobs within their fields of study within six months of graduation. (*Id.* § 2.2.) No Claim Form will be required to receive this service. In addition, DeVry will request the deletion of negative credit events that it reported to major credit institutions from Settlement Class Members' credit reports that it reported to the major credit bureaus. (*Id.* § 2.3.) This will also be accomplished without a Claim Form.

D. Payment of Settlement Notice and Administrative Costs.

The parties have agreed that Notice and Administrative Costs will be paid out of the Settlement Fund. (*Id.* § 1.34.) Subject to the Court's approval, the parties agree that Heffler Claims Group, LLC will oversee Notice to the Settlement Class, the processing of Claim Forms, and payment to Settlement Class Members. (*Id.* § 1.28.)

E. Payment of Attorneys' Fees, Costs, and Incentive Awards.

The parties have agreed that proposed Settlement Class Counsel is entitled to a reasonable Fee Award in an amount to be determined by the Court. This amount will be to be

paid from the Settlement Fund. (*Id.* § 9.1.) Proposed Settlement Class Counsel has agreed to limit their request for attorneys' fees and expenses to no more than thirty-five percent of the Settlement Fund. (*Id.*) The Settlement does not prevent DeVry from opposing the requested fees. (*Id.*) Any difference between the amount requested and the amount awarded will remain in the Settlement Fund to be distributed to claiming Settlement Class Members. (*Id.*) In recognition of their time and effort serving as putative Class Representatives, the parties have further agreed that each Plaintiff should receive a reasonable Incentive Award in an amount determined by the Court, to be paid from the Settlement Fund. (*Id.* § 9.4.)

F. Release of Claims and Preservation of Right to Assert Borrower Defense to Repayment.

In exchange for the relief described above and if the settlement is finally approved by the Court, Settlement Class Members shall be deemed to have released DeVry from any and all claims relating to the 90% Placement and Higher Income Claims. (*Id.* §§ 1.24, 3.) Notwithstanding, all Settlement Class Members shall retain the right to seek Borrower Defense to Repayment relief from the Department of Education based in whole or in part on the Claims. (*Id.* § 1.24.)

IV. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

Before granting preliminary approval of the proposed Settlement, the Court must determine that the proposed settlement class is appropriate for certification. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). A party seeking class certification must demonstrate that the proposed settlement class satisfies the factors enumerated in 735 ILCS 5/2-801 by showing that (1) the class is so numerous that joinder of all members is impracticable, (2) common questions of law or fact predominate over any questions affecting only individual interests of the class members, (3) the representative parties fairly and adequately protect the

interests of the class, and (4) class treatment is an appropriate method for the fair and efficient adjudication of the controversy. 735 ILCS 5/2-801; *see Cruz v. Unilock Chicago, Inc.*, 383 Ill. App. 3d 752, 760–61 (2d Dist. 2008). When determining whether a settlement class should be certified, courts accept the allegations in the operative complaint as true. *Ramirez v. Midway Moving & Storage, Inc.*, 378 Ill. App. 3d 51, 53 (1st Dist. 2007). Although not identical, Section 2-801 is modeled on Federal Rule of Civil Procedure 23, and federal cases interpreting that rule are persuasive authority in Illinois. *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 125 (2005) (citations omitted).

As explained below, the proposed Settlement Class satisfies each of Section 2-801's prerequisites and can appropriately be certified for settlement purposes.

A. The Numerosity Requirement Is Satisfied.

Section 2-801's first requirement—numerosity—is satisfied where the class is so numerous that joinder of all members is "impracticable[,]" *Bueker v. Madison Cty.*, 2016 IL App (5th) 150282, ¶ 23, and attempting to do so would "render the suit unmanageable[,]" *Gordon v. Boden*, 224 Ill. App. 3d 195, 200 (1st Dist. 1991). While there is no magic number at which joinder becomes unmanageable, courts have typically found that numerosity is satisfied when the class comprises forty or more people. *Wood River Area Dev. Corp. v. Germania Fed. Sav. & Loan Ass'n*, 198 Ill. App. 3d 445, 450 (5th Dist. 1990). Here, the Settlement Class readily satisfies the numerosity requirement in that it includes some 323,000 Members. *See Cruz*, 383 Ill. App. 3d at 771 (finding that a proposed class of nearly 200 plaintiffs was sufficiently numerous to proceed as a class action).

B. Common Issues of Fact and Law Predominate.

The second requirement for class certification asks whether "questions of fact or law

common to the class . . . predominate over any questions affecting only individual members." 735 ILCS 5/2-801(2). To that end, a plaintiff must demonstrate that "successful adjudication of the purported class representative[']s individual claims will establish a right of recovery in other class members." *Midway Moving*, 378 Ill. App. 3d at 54 (quoting *Hall v. Sprint Spectrum, L.P.*, 376 Ill. App. 3d 822, 830–32 (5th Dist. 2007)). Common questions typically predominate when a defendant has engaged in standardized conduct towards members of the proposed class. *See Miner v. Gillette Co.*, 87 Ill. 2d 7, 17 (1981); *McCarthy v. LaSalle Nat'l Bank & Tr. Co.*, 230 Ill. App. 3d 628, 634 (1st Dist. 1992).

Here, common issues of law and fact clearly predominate. Plaintiffs' and the proposed Settlement Class's claims are based upon the same common contentions and course of conduct by Defendants: that Defendants engaged in an advertising campaign nationwide that falsely inflated their graduates' job and salary prospects in order to induce prospective students to enroll. (*See* TAC ¶¶ 2–4, 30–32, 37–39.) This course of conduct raises several issues of law and fact common to the Settlement Class, including, *inter alia*: (1) whether DeVry's representations regarding the 90% Placement and Higher Income Claims were inaccurate; (2) whether DeVry knew the 90% Placement and Higher Income Claims were inaccurate; (3) whether DeVry intended that Settlement Class Members would rely on the 90% Placement and Higher Income Claims when deciding whether to enroll at DeVry; (4) whether, as prospective students, Settlement Class Members were likely to rely on DeVry's employment and graduate outcome statistics when choosing a post-secondary institution to attend; (5) whether Settlement Class Members paid more than they otherwise would have based on DeVry's 90% Placement and Higher Income Claims; and (6) whether Settlement Class Members are entitled to the difference in price between the amount that they paid in reliance on the 90% Placement and Higher Income

Claims and what they otherwise would have paid absent those Claims. (*See id.* ¶ 101.)

Since each of these questions will have a common, class-wide answer, the commonality and predominance requirements are also satisfied.

C. The Adequacy Requirement Is Satisfied.

The third prerequisite for certification is that "[t]he representative parties will fairly and adequately protect the interest[s] of the class." 735 ILCS 5/2-801(3). This requirement "ensure[s] that all class members will receive proper and efficient protection of their interests in the proceedings." *Ramirez v. Smart Corp.*, 371 Ill. App. 3d 797, 810 (3d Dist. 2007). To adequately represent a class, a proposed class representative must (1) be a member of the class and (2) establish that she is not seeking relief potentially antagonistic to the absent class members. *Id.* Doing so demonstrates that the action is not "collusive" or "friendly." *Steinberg v. Chicago Med. Sch.*, 69 Ill. 2d 320, 339 (1977). Attorneys seeking to represent the proposed class must also be adequate. *Id.* at 338–39. Counsel are deemed adequate if they are "qualified, experienced and generally able to conduct the proposed litigation." *Id.* at 339. Notably, that a firm has been found to be adequate class counsel in numerous other cases is "persuasive evidence" that they will be adequate again. *Gomez v. Illinois State Bd. of Educ.*, 117 F.R.D. 394, 401 (N.D. Ill. 1987); *see Matthews v. United Retail, Inc.*, 248 F.R.D. 210, 215 (N.D. Ill. 2008) ("Experience as class counsel in similar cases weighs in favor of finding that class counsel here is adequately competent and experienced.").

Here, Plaintiffs and proposed Settlement Class Counsel will adequately represent the Settlement Class. In this case, all Plaintiffs are Members of the proposed Settlement Class because—like each and every one of the other Settlement Class Members—they enrolled at DeVry based on its 90% Placement and Higher Income Claims, contend that these Claims were

false, and further allege that they paid more than they would have had they known as much. (TAC ¶¶ 54, 55, 63, 67, 75–76, 82, 85, 92, 94.) Because Plaintiffs suffered the same alleged injury as every other Settlement Class Member, their interests in redressing DeVry's alleged misconduct are identical to the interests of all other Settlement Class Members. *See Ploss as Tr. for Harry Ploss Tr. DTD 8/16/1993 v. Kraft Foods Grp., Inc.*, No. 15 C 2937, 2020 WL 43013, at *3 (N.D. Ill. Jan. 3, 2020) ("The proposed representatives' claims target the same conduct, and seek relief . . . based on the same legal theories and on the same facts."). Further, Plaintiffs do not have any interests antagonistic to those of the proposed Settlement Class.

Proposed Settlement Class Counsel are likewise adequate representatives of the Settlement Class. For their part, proposed Settlement Class Counsel at Edelson PC have extensive experience litigating class actions of similar size, scope, and complexity to the instant action. (*See* Richman Decl. ¶ 12, Firm Resume of Edelson PC, Exhibit A to the Richman Decl.) They regularly engage in major complex litigation involving consumer protection, have the resources necessary to conduct litigation of this nature, and have frequently been appointed lead class counsel by state and federal courts in Illinois and throughout the country. (Richman Decl. ¶ 12); *see, e.g.*, *Patel v. Facebook, Inc.*, No. 18-15982, 2019 WL 3727424 (9th Cir. Aug. 8, 2019) (affirming adversarial class certification of claims under Illinois' Biometric Information Privacy Act and appointing Edelson PC class counsel; case recently settled on a class wide basis for $550 million cash); *see also Wakefield v. ViSalus, Inc.*, No. 3:15-CV-1857-SI, 2019 WL 2578082, at *1 (D. Or. June 24, 2019) (granting adversarial class certification and appointing Edelson PC class counsel; class wide trial verdict in favor of plaintiffs amounting to $925 million); *Mocek v. AllSaints USA Limited*, No. 2016-CH-10056 (Cir. Ct. Cook Cty. July 17, 2018) (appointing Edelson PC as class counsel in Fair and Accurate Credit Transaction Act class action settlement

concerning disclosure of consumers' credit card numbers); *Birchmeier v. Caribbean Cruise Line, Inc.*, 302 F.R.D. 240, 252 (N.D. Ill. 2014) (granting adversarial class certification and appointing Edelson PC class counsel; matter ultimately resolved for $76 million in the largest ever settlement under the TCPA).

More generally, Edelson PC is a nationally recognized leader in plaintiffs' class, mass and government enforcement actions. The firm has substantial experience investigating and litigating a wide range of high-impact matters—representing government clients, individuals and classes alike—and a depth of experience litigating (and negotiating settlements) in complex and multi-party matters. (Richman Decl. ¶ 12.) Since its founding in 2007, it has become one of the country's preeminent class, mass, and government action law firms. Law360 has called it a "Titan of the Plaintiffs Bar"[6] and a "Plaintiffs Class Action powerhouse,"[7] and recognized it as having a "Consumer Protection Group of the Year"[8] and "Cybersecurity & Privacy Group of the Year."[9] In a nod to the firm's headquarters in Chicago, for the last two years it has also been named one of six "Illinois Powerhouse" firms, alongside Kirkland & Ellis, Sidley Austin, Mayer Brown, Dentons, and Jenner & Block.[10] Edelson was the only plaintiff's firm, as well as the only

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[6] *Titan of the Plaintiffs Bar: Jay Edelson*, Law360 (Oct. 1, 2014), available at https://www.law360.com/articles/581584/titan-of-the-plaintiffs-bar-jay-edelson.

[7] *Privacy Class Action Growth Fuels New California Gold Rush*, Law360 (November 5, 2015), available at https://www.law360.com/articles/723888/privacy-class-action-growth-fuels-new-california-gold-rush.

[8] *Consumer Protection Group of the Year: Edelson*, Law360 (January 21, 2020), available at https://www.law360.com/consumerprotection/articles/1233384/consumer-protection-group-of-the-year-edelson; *Consumer Protection Group Of The Year: Edelson PC*, Law360 (January 16, 2018), available at https://www.law360.com/articles/998982/consumer-protection-group-of-the-year-edelson-pc.

[9] *Cybersecurity & Privacy Group of the Year: Edelson*, Law360 (January 24, 2020), available at https://www.law360.com/articles/1233410/cybersecurity-privacy-group-of-the-year-edelson.

[10] *Ill. Powerhouses State On Top Of Chicago's Trends*, Law360 (October 3, 2017), available at https://www.law360.com/articles/968074/ill-powerhouses-stay-on-top-of-chicago-s-trends.

firm with fewer than 500 attorneys, to make the list.

Additional proposed Settlement Class Counsel Robert L. Teel has extensive experience in complex and consumer protection litigation, including class actions of similar size, scope, and complexity to the instant action. *See Jackson v. The 3M Company, et al.*, Case No. 19-cv-00167 (D.S.C.) (participating in multi-district litigation involving toxic contamination of water supplies and attendant personal injury claims from hazardous chemicals); *Fox, et al. v. Iowa Health System, Inc.*, Case No. 18-cv-00327 (W.D. Wis.) (seeking damages for a HIPAA data breach involving 1.4 million class members); *Owino, et al. v. CoreCivic, Inc.,* Case No. 17-cv-1112 (S.D. Cal.) (appointing Mr. Teel as class counsel to represent more than 100,000 civil immigration detainees allegedly subjected to unlawful state and federal forced labor practices); *Romero, et al. v. Securus Technologies, Inc.*, Case No. 16-cv-01283 (S.D. Cal.) (appointing Mr. Teel as class counsel in litigation concerning the recording of telephone calls between persons in the custody of law enforcement and their attorneys). Over the course of his career—which has involved first-chairing multiple jury and bench trials, as well as handling regulatory and compliance matters before governmental agencies—Mr. Teel has obtained nearly $100,000,000 in relief for his clients. Mr. Teel has brought his significant experience and resources to bear here for the Settlement Class's benefit, including by, *inter alia*, researching and investigating Plaintiffs' claims; initially filing claims on their behalves in multiple forums; engaging in discovery, including from third-parties; participating in motion practice; interfacing with opposing counsel; and otherwise vigorously prosecuting the Plaintiffs' claims against Defendants. He will continue to devote the time and resources needed throughout the remainder of this case.

Accordingly, because Plaintiffs will fairly and adequately protect the interests of the

Settlement Class, and because they and the Settlement Class are amply represented by qualified counsel, the adequacy requirement is satisfied.

D. The Appropriateness Requirement Is Satisfied.

The fourth requirement for class certification is that a "class action is an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2-801(4). In making that determination, courts consider "whether a class action can best secure the economies of time, effort, and expense or accomplish the other ends of equity and justice that class actions seek to obtain." *Midway Moving*, 378 Ill. App. 3d at 56. Importantly, "[w]here the first three requirements for class certification have been satisfied, the fourth requirement may be considered fulfilled as well." *Id*.

Here, a class action is the most appropriate method of resolving this controversy because it allows the Court to swiftly evaluate common issues surrounding DeVry's allegedly fraudulent recruiting tactics, generating a uniform result that will apply to all similarly situated persons. *Suchanek v. Sturm Foods, Inc.*, 764 F.3d 750, 759 (7th Cir. 2014) (stating that "promot[ing] uniformity of decision as to persons similarly situated" is a goal of class actions) (quoting *Amchem Prods.*, 521 U.S. at 615). A class action is also appropriate here because it allows the thousands of Settlement Class Members to aggregate relatively modest individual claims. By comparison, the cost of litigating these claims on an individual basis—including the cost of discovery, motion practice, trial, and any appeals—would be prohibitively expensive. Finally, individual claims would clog the courts with an influx of separate—but otherwise identical—actions that would require needless duplication of effort, further delaying the possibility of relief and undermining Section 5/2-801's judicial efficiency goals. *See Cruz*, 383 Ill. App. 3d at 780; *see also CE Design Ltd. v. C & T Pizza, Inc.*, 2015 Ill. App (1st) 131465, ¶ 28 ("There is no

doubt that certifying the class in this case, where there are potentially thousands of claimants, is an efficient and economical way to proceed and will prevent multiple suits and inconsistent judgments."). Indeed, one purpose of consolidating the Related Actions for settlement before this Court is to most efficiently resolve these claims.

Because the requirements of Section 2-801 are satisfied, the proposed Settlement Class should be certified for settlement purposes.

V. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL

Proposed class action settlements are reviewed in a well-established three-step process. 4 Newberg on Class Actions § 13:10 (5th ed. 2011). During the first step—a preliminary, pre-notification hearing—the Court assesses whether the proposed settlement falls "within the range of possible approval," and determines whether to notify the class members of the proposed settlement and to proceed with a fairness hearing. *Id.* (quoting *Manual for Complex Litigation* (Third) § 30.41 (1995)); *see also Steinberg v. Sys. Software Assoc., Inc.*, 306 Ill. App. 3d 157, 169 (1st Dist. 1999). The preliminary approval process allows for an initial evaluation of the fairness of the proposed settlement, relying on written submissions and informal presentations from the settling parties, but withholds stricter review until the final fairness hearing. *See Manual for Complex Litigation* (Fourth) § 21.632 (2004); *see also Rosen v. Ingersoll-Rand Co.*, 372 Ill. App. 3d 440, 454–55 (1st Dist. 2007). Once the Court finds that a proposed settlement falls "within the range of possible approval," the parties proceed to the second step, and notice is sent to the proposed settlement class. The case then proceeds to the third step in the review process: the final fairness hearing. 4 Newberg on Class Actions § 13.10.

"Review of class action settlements necessarily proceeds on a case-by-case basis." *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 493 (1st Dist. 1992). Nevertheless,

certain factors are recognized as relevant to determining whether a settlement is fair, reasonable, and adequate, including: (1) the strength of the case, compared to the relief offered in settlement; (2) the defendant's ability to pay;[11] (3) the complexity, length, and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of class members to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed. *Id.* (citing *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 971–72 (1st Dist. 1991)).[12] Here, each relevant factor supports approval of the Settlement.

A. The Strength of Plaintiffs' Case Compared with the Relief Afforded Under the Settlement Supports Granting Preliminary Approval.

"The strength of plaintiff's case on the merits balanced against the settlement amount is the most important factor in determining whether a settlement should be approved." *Sys. Software Assoc.*, 306 Ill. App. 3d at 170. Here, although Plaintiffs are confident that they ultimately would have prevailed had this matter continued in litigation, there were not-insignificant obstacles to doing so. In light of those obstacles, the significant monetary and prospective relief available to the Settlement Class, are a strong result for the Class, to say the least. This factor thus weighs in favor of preliminary approval.

1. The relief the Settlement provides is exceptional.

The Settlement reached here provides outstanding relief to the Settlement Class on a

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[11] Defendants have represented that they will be able to fully meet their obligations under the Settlement—monetary and otherwise—should the Court grant preliminary approval. (Richman Decl. ¶ 15.)

[12] The fourth and sixth factors—the amount of opposition to the Settlement and the reaction of the Settlement Class Members—are of less import at this stage, as the Court will not have the information necessary to assess them until the Final Approval Hearing, once Notice of the Settlement has been disseminated and Settlement Class Members have had an opportunity to respond.

number of different fronts. First and foremost, it provides for the establishment of a $44,950,000.00 Settlement Fund. (Settlement § 1.34.) In terms of DeVry settlements involving the 90% Placement and Higher Income Claims, this cash fund is second only to a settlement DeVry entered into with the Federal Trade Commission. *Federal Trade Commission v. DeVry Education Group, Inc., et al*., No. 2:16-cv-00579, dkt. 97 (C.D. Cal. Dec. 15, 2016) (requiring DeVry to provide $49.5 million in cash to be redistributed to students). It is substantially larger than other settlements that DeVry entered into with other governmental regulators. *See In the Matter of Investigation by Eric T. Schneiderman, Attorney General of the State of New York, of DeVry Education Group, Inc., et al.*, Assurance No. 17-009 (requiring DeVry to pay $2.25 million for, among other items, consumer restitution); *In the Matter of DeVry University, Inc.*, No. 17-cv-2073-H, (Suffolk Superior Court Jun. 30, 2017) (requiring DeVry to pay $435,000 for, in part, consumer restitution). And it is nearly twenty million more than other non-governmental class action settlements that DeVry has agreed to regarding the 90% Placement and Higher Income Claims. *See Pension Trust Fund for Operating Engineers v. DeVry Education Group, Inc., et al*., No: 1:16-cv-05198, dkt. 151 (N.D. Ill. Nov. 1, 2019) (settling securities lawsuit regarding the Claims and creating a $27.5 million settlement fund). The amount of the Settlement Fund here is also notable compared to the relief provided in other settlements resolving claims that for-profit institutions used misleading tactics to get prospective students to enroll, which often include some partial debt relief rather than providing students cash. *See Attorney General Madigan Reaches $493.7 Million Settlement With For-Profit Education Company*, Illinois Attorney General (Jan. 3, 2019), https://illinoisattorneygeneral.gov/pressroom/2019_01/2019103.html (reporting that a total of forty-nine Attorneys General reached settlement with Career Education Corporation to provide Illinoisans approximately $48 million in debt

relief).

This Settlement Fund will be used to pay each Settlement Class Member who submits an Approved Claim. (Settlement § 2.1.a.i.) After first deducting Notice and Administration expenses, Fee Award, Incentive Awards, and Graduate Payments, each such Settlement Class Member will be entitled to a *pro rata* payment of the Fund based on the number of credit hours that they paid for while attending DeVry's institutions. (Settlement § 2.1.a.i.) Assuming even higher than usual Settlement Class Member participation, and based on the average number of credit hours that DeVry students paid for, participating Settlement Class Members can expect to receive hundreds (if not thousands) of dollars each. Rather than a one-size-fits all approach, however, the Settlement ensures that Class Members will be repaid proportionally to the total number of credits that they paid for; those that paid for more credits will be entitled to a larger settlement payment than those who paid for fewer credits. (*Id.*) In addition, Settlement Class Members that graduated from DeVry, but were unable to find a job in their field of study within six months of graduation are entitled to an additional Graduate Payment. (*Id.* § 2.1.a.ii.) These Graduate Payments will amount to $500 for DeVry's associate's or master's degree graduates, and $1,000 for DeVry's bachelor's degree graduates.[13] (*Id.*) This added Graduate Payment provides another level of reimbursement to those students who arguably suffered the most damage—those who bought into the representations from DeVry and attended until they graduated, only to find afterwards that DeVry could not meet its promises.[14]

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[13] These amounts are also proportionate to one another, in that graduates of DeVry's bachelor's degree programs took roughly twice as many credits, and paid twice as much, as graduates of DeVry's associate's and master's degree programs. (Richman Decl. ¶ 11 n.2.)

[14] If a Settlement Class Member previously received a settlement payment through a governmental settlement, or previous debt forgiveness or Borrower Defense to Repayment relief, that Settlement Class Member will have such amount subtracted from their total payment and credited to DeVry. (*Id.* § 2.1.b.) However, these offsets are subject to a cap such that no more

Besides the monetary relief, the Settlement secures substantial non-monetary benefits for the Settlement Class as well. DeVry is required to provide Settlement Class Members who graduated from DeVry and did not obtain a job in their field of study within six months of graduation assistance from its career services department, regardless of whether these Settlement Class Members submit a Claim Form. (*Id.* § 2.2.) The cost in providing these career counseling services shall be borne entirely by DeVry and will be paid separate and apart from the Settlement Fund. (*Id.*) In addition, DeVry will request that negative credit events that it reported to major credit institutions— Experian, Equifax, TransUnion, and Innovis—regarding DeVry's accounts receivable or DeVry-issued loans be deleted from Settlement Class Members credit reports. (*Id.* § 2.3.) Any cost associated with this will also be paid for by DeVry separately from the Settlement Fund, and this relief will be provided to all Settlement Class Members without the need for a Claim Form.

In addition to this relief, Settlement Class Members also retain their rights to seek forgiveness of their federal student loans through a Borrower Defense to Repayment application with the Department of Education. (*Id.* § 1.24.) The Borrower Defense to Repayment process allows students to apply for "forgiveness of the federal student loans that [they] took out to attend a school if that school misled [them] . . ." *Borrower Defense to Repayment*, Federal Student Aid, https://studentaid.gov/manage-loans/forgiveness-cancellation/borrower-defense#who-qualifies. If a student's application is granted, he or she "may be able to have all or part of [their] outstanding federal student loan debt forgiven, and [they] also may be reimbursed for amounts [they] have already paid on those loans." *Id.* Thus, the Settlement's narrow release allows Settlement Class Members to receive critical relief now, while still preserving their right

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than one third of the total Settlement Fund can be returned to DeVry. (*Id.* § 2.1.b.iv.)

to obtain additional loan forgiveness in the future.

Standing alone, the monetary and non-monetary relief that the Settlement provides is noteworthy. That such relief was achieved in the face of significant, looming litigation risks is all the more extraordinary and weighs heavily in favor of preliminary approval.

2. This case presents significant obstacles to class-wide recovery.

Were this litigation to continue, the Plaintiffs faced a number of major obstacles that might substantially or fully deprive them of any relief whatsoever. First, at the time the parties reached the Settlement, a motion to dismiss was pending in this action. Second, in both this case as well as the Related Actions, the Plaintiffs had yet to brief the issue of class certification. While, for the reasons described herein, Plaintiffs are confident that they would have defeated DeVry's motion to dismiss here and prevailed on a contested class certification motion, there was nonetheless a real chance that the Court could have either granted the motion to dismiss or found that a class could not be certified.

On the motion to dismiss front, the Court already granted DeVry's request to dismiss the initial complaint in this matter, giving Plaintiffs leave to replead. (*See* July 29, 2019 Order Granting Motion to Dismiss.) While Plaintiffs took the opportunity to amend their Complaint and are confident that they sufficiently addressed each of the deficiencies that the Court identified when it first granted dismissal, the risk existed that the Court would nevertheless dismiss the Complaint once more—this time with prejudice. While motions to dismiss in the *Robinson* and *Brown* cases were denied with respect to Plaintiffs' fraud claims, *see Robinson*, No. 1:19-cv-01505, dkt. 28 (N.D. Ga. Nov. 25, 2019); *Brown*, No. 19-00250, dkt. 28 (W.D. Mo. Oct. 9, 2019), the Court could still have found that Plaintiffs failed to adequately allege with the required specificity which representations they contend are fraudulent, or to allege measurable

damages, as other courts have done in similar situations, *see Polly*, 2019 WL 587409, at *3; *Robinson*, 2018 WL 828050, at *5.

Regarding class certification, Plaintiffs' ability to certify a fraud class was by no means guaranteed, particularly on a nationwide basis. Such classes have, of course, been certified, *see Pella Corp. v. Saltzman*, 606 F.3d 391, 393 (7th Cir. 2010) (discussing that, "while consumer fraud class actions present problems that courts must carefully consider before granting certification, there is not and should not be a rule that they never can be certified[,]" and upholding nationwide certification); *Clark v. TAP Pharm. Prod., Inc*., 343 Ill. App. 3d 538, 553 (2003) (affirming certification of nationwide class in fraud case). Nevertheless, the Court could have required a choice-of-law analysis and found that differences between the states' formulations of fraud precluded any nationwide class, *see Siegel v. Shell Oil Co.*, 256 F.R.D. 580, 586 (N.D. Ill. 2008), *aff'd*, 612 F.3d 932 (7th Cir. 2010) (denying certification of nationwide consumer fraud case); *Fisher v. Bristol-Myers Squibb Co.*, 181 F.R.D. 365, 374 (N.D. Ill. 1998) (same). Alternatively, even state-specific classes faced certification difficulties, as the Court may have found that individual inquiries regarding reliance on the fraudulent statements or whether they caused injury predominated over any common questions. *See Oshana v. Coca-Cola Bottling Co.*, 225 F.R.D. 575, 586 (N.D. Ill. 2005) (finding class members' varying degree of knowledge regarding the alleged falsification, and exposure to a variety of different formulations of the fraudulent statement precluded certification). Or the Court could have found that damages could not be redressable on a class-wide basis. *Harnish v. Widener Univ. Sch. Of Law*, 833 F.3d 298, 308 (3d Cir. 2016) (finding class-wide proof of injury lacking in case alleging law school published inaccurate graduate employment statistics).

If Plaintiffs successfully cleared these hurdles, defeating DeVry's motion to dismiss and

certifying a class, there would still be a risk that DeVry would prevail on the merits, establishing that its graduate outcome and employment statistics were as advertised, or were otherwise not fraudulent. Even if Plaintiffs overcame DeVry's arguments and ultimately prevailed at trial, given the likely substantial damages that would be awarded, DeVry would undoubtedly appeal, further delaying any relief to the class.

Between the significant relief the Settlement provides and the risk of complete non-recovery should litigation proceed, the Settlement is deserving of preliminary approval.

B. The Settlement Is Reasonable in Light of the Complexity, Length, and Expense of Further Litigation.

The next factor in assessing whether a court should grant approval asks whether the settlement is fair and reasonable given how lengthy, complex, and expensive further litigation is likely to be. *See Korshak*, 206 Ill. App. 3d at 972; *GMAC Mortg*., 236 Ill. App. 3d at 498 ("One of the principal purposes of an early settlement is to avoid costly and lengthy discovery."). This Settlement warrants approval because it provides immediate relief to the Settlement Class while avoiding potentially years of complex, uncertain litigation and appeals. *Goldsmith v. Tech. Sols. Co.*, No. 92 C 4374, 1995 WL 17009594, at *4 (N.D. Ill. Oct. 10, 1995) ("As courts recognize, a dollar obtained in settlement today is worth more than a dollar obtained after a trial and appeals years later."). As foreshadowed above, absent the Settlement, the parties would have to litigate the issue of class certification, the merits, and the inevitable appeals, with each step involving its own unique challenges. Although Plaintiffs believe in the strength of their claims and that they would ultimately prevail, the process would be by no means risk-free.

Protracted litigation would also consume significant resources, including the time and costs associated with additional formal written and oral discovery, motion practice, trial, and any appeals. If any of the possible risks identified above came to pass, then the parties would be

forced to return to a state-by-state class litigation strategy, further multiplying the costs in time, money, and judicial resources. In short, it is possible that "this drawn-out, complex, and costly litigation process . . . would provide [Settlement] Class Members with either no in-court recovery or some recovery many years from now . . ." *In re AT&T Sales Tax Litig.*, 789 F. Supp. 2d 935, 964 (N.D. Ill. 2011). Because the proposed Settlement offers immediate—and substantial—monetary relief to the Settlement Class and provides ongoing relief in assisting graduates to find jobs all while avoiding the need for extensive and drawn-out litigation, preliminary approval is more than appropriate. *See, e.g.*, *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) ("Settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation.").

C. The Settlement Was Reached Without Collusion and As a Result of Arm's-Length Negotiations Between the Parties.

The next factor looks to whether the parties colluded in negotiating the settlement. *See Korshak*, 206 Ill. App. 3d at 972. The answer here is easy: no. After litigating this case for nearly a year, the parties engaged in settlement negotiations with the assistance of an experienced neutral, only to break off those discussions and return to litigation. The parties subsequently litigated in several different cases across several states for another year, before eventually returning to the negotiating table. In the end, the parties were only able to reach agreement on the Settlement's principal terms following an in-person, private mediation conducted by Judge Phillips (Ret.). *See Sys. Software Assoc.*, 306 Ill. App. 3d at 168–69 (finding that class action settlement was reached fairly as it was a product of "adversarial give-and-take overseen by an experienced mediator"). And even then, it would take months more of additional arms'-length negotiations to finalize the detailed Settlement Agreement now before the Court. (Richman Decl. ¶ 11.) Furthermore, the Settlement was reached in an uncertain environment with respect to

significant legal issues: class certification was never decided, and there were multiple motions to dismiss pending in the Related Actions. In short, far from a quick, collusive resolution, the many months of settlement negotiations in this case consisted of nothing less than "hard bargaining." *Korshak*, 206 Ill. App. 3d at 973. The Court should not hesitate to find that this factor weighs strongly in favor of approving the Settlement. *See Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 50 (finding there was no collusion where the record showed nothing but "good-faith, arm's-length negotiation").

D. Proposed Settlement Class Counsel Firmly Believes that this Settlement Is in the Best Interests of the Settlement Class.

The Court should also consider whether counsel believes that the Settlement is fair to the Settlement Class. *See Korshak*, 206 Ill. App. 3d at 972. Here, proposed Settlement Class Counsel is well versed in the law and facts of this litigation and are recognized leaders in complex, consumer class action litigation. *See GMAC Mortg.*, 236 Ill. App. 3d at 497 (finding that this factor weighed in favor of approval because counsel, who believed the settlement to be fair and reasonable, had previously litigated a number of similar class actions). As a result of that experience and for the reasons explained above, proposed Settlement Class Counsel firmly believes that the instant Settlement—which provides significant monetary relief to DeVry students, including Graduate Payments to those graduates who faced difficulty finding jobs in their fields of study, provides career counseling services, and requests from major cred bureaus to removal of any DeVry-initiated negative credit events from their credit reports, all while preserving Settlement Class Members' rights to seek debt forgiveness from the government—is fair, reasonable, adequate, and deserving of preliminary approval. (Richman Decl. ¶ 14.)

E. The Stage of Litigation and Amount of Discovery Completed Ensures the Settlement Is Fair, Reasonable and Adequate.

The final factor looks to the state of proceedings and the amount of discovery completed before the parties entered into the settlement. *See Korshak*, 206 Ill. App. 3d at 972. Here, Plaintiffs' counsel has conducted substantial investigation into DeVry, its 90% Placement and Higher Income Claims, the composition of the Settlement Class (i.e., the number of students that graduated, the average number of credit hours taken by any given Settlement Class Member, etc.), and the amount of tuition DeVry charged the Settlement Class. (Richman Decl. ¶¶ 4, 8, 10, 11 13.) Much of this took place through informal discovery that occurred in parallel as the parties litigated motions to dismiss in this case and the Related Actions. In those Related Actions in which Plaintiffs defeated DeVry's motions to dismiss, formal discovery was propounded, which largely sought similar information to what was provided in the leadup to settlement negotiations. (*Id.* ¶ 8.) In addition, Plaintiffs obtained responses from Freedom of Information Act requests to the Department of Education, that provided further information regarding Defendants' graduate and employment statistics which Plaintiffs allege were inflated. (*Id.*) Throughout this process, Plaintiffs' counsel engaged with Defendants' counsel numerous times to discuss the data that was produced and to seek follow-up information, which was provided. (*Id.* ¶¶ 4, 6, 10–11.)

At the same time these information exchanges were taking place, the parties litigated multiple motions to dismiss across several forums, allowing them to at least preliminarily test their legal theories. In this action, the Plaintiffs had their initial complaint dismissed and were given leave to replead. (July 29, 2019 Order Granting Motion to Dismiss.) In the *Brown* and *Robinson* actions, however, the Plaintiffs defeated DeVry's motions to dismiss and, as mentioned, began engaging in discovery. *Robinson*, No. 1:19-cv-01505, dkt. 28 (N.D. Ga. Nov. 25, 2019); *Brown*, No. 19-00250, dkt. 28 (W.D. Mo. Oct. 9, 2019). Altogether, the issues in this

case crystalized sufficiently for the parties to assess the strengths and weaknesses of their negotiating positions (based upon the litigation to date, discovery and other informational exchanges, and additional motion practice) and to evaluate the appropriateness of any proposed resolution. *See Bayat v. Bank of the West*, No. 13-cv-2376, 2015 WL 1744342, at *6 (N.D. Cal. Apr. 15, 2015) (concluding that sufficient discovery had been completed to evaluate the settlement notwithstanding settlement early in the litigation).

For all of the foregoing reasons, Plaintiffs and proposed Settlement Class Counsel firmly believe that the total relief provided by the Settlement weigh heavily in favor of a finding that the Settlement is fair, reasonable, and adequate, and well within the range of approval.

VI. THE PROPOSED PLAN TO DISTRIBUTE NOTICE TO THE SETTLEMENT CLASS SHOULD BE APPROVED

Finally, once a court has found that an action may proceed on behalf of a class—and, in this context, that the Settlement is fair, reasonable and adequate, and within the range of approval—it has the discretion to "order such notice that it deems necessary to protect the interests of the class and the parties." 735 ILCS 5/2-803; *see also Client Follow-Up Co. v. Hynes*, 105 Ill. App. 3d 619, 625 (1st Dist. 1982). Although the Illinois Code of Civil Procedure requires only notice as the court deems appropriate, courts must also take into consideration the requirements of due process. *Hynes*, 105 Ill. App. 3d. at 625; *Carrao v. Health Care Serv. Corp.*, 118 Ill. App. 3d 417, 429 (1st Dist. 1983). Due process requires that a court "direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Amchem Prods.*, 521 U.S. at 617 (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974) (explaining that "[i]ndividual notice must be sent to all class members whose names and addresses may be ascertained through reasonable effort.")).

Here, the parties have agreed to a comprehensive plan for Notice to be sent directly to Settlement Class Members. (Settlement § 4.) Under the Notice plan, Defendants are to provide the Settlement Administrator with a Settlement Class List containing all names, last known U.S. Mail addresses (if known), and last known email addresses (if known) of the Settlement Class Members that they have in their records. (*Id.* § 4.1.) The Settlement Administrator will then send Notice via First Class U.S. Mail to each mailing address on the Settlement Class List in the form of a postcard, along with an accompanying Claim Form with prepaid return postage.[15] (*Id.* § 4.2.) For any mail returned as undeliverable, the Settlement Administrator will take all reasonable steps to obtain those Settlement Class Members' correct addresses and attempt remailings. (*Id.*) Contemporaneously with the U.S. mail campaign, the Settlement Administrator will send Notice, along with an electronic link to the Claim Form and Settlement Website, via email to all individuals in Settlement Class for whom an email address is available in the Settlement Class List. (*Id.*) Each form of Notice will contain the Settlement's key details and deadlines; inform them how to submit a Claim Form, object, or opt-out; and will direct Settlement Class Members to the Settlement Website. (*See* Exhibits A–D to Settlement.) All of this information will be provided in plain, easy-to-understand language. *(Id.*) The Settlement Website will provide Settlement Class Members 24-hour access to further information about the case, including important Court documents, and a further detailed "long form" Notice document. (Settlement §§ 1.35, 4.3.) The Settlement Website will also allow Settlement Class Members to submit a claim form. (*Id.* § 1.35.)

Because the proposed Notice plan effectuates direct Notice to all Settlement Class

[15] Prior to sending the Notice via mail, the Settlement Administrator will update the addresses of individuals on the Settlement Class List using the National Change of Address database and other available resources to help ensure Notice is accurately delivered. (*Id.*§ 4.2.)

Members reasonably identified by Defendants' records and fully apprises Settlement Class Members of their rights, it comports with the requirements of due process and Section 5/2-801. *See, e.g.*, *Currie v. Wisconsin Cent., Ltd.*, 2011 IL App (1st) 103095, ¶ 55. Consequently, the Court should approve the parties' proposed Notice plan.

VII. CONCLUSION

For the foregoing reasons, Plaintiffs Dave McCormick, T'Lani Robinson, Dennis Magana, Scott Swindell, David Torosyan, and Robby Brown respectfully request that this Court enter an Order (1) certifying the Settlement Class for settlement purposes, (2) naming Plaintiffs Dave McCormick, T'Lani Robinson, Dennis Magana, Scott Swindell, David Torosyan, and Robby Brown as Settlement Class Representatives, (3) appointing Jay Edelson, Benjamin H. Richman, and Michael W. Ovca of Edelson PC, and Robert L. Teel of the Law Office of Robert L. Teel as Settlement Class Counsel, (4) granting preliminary approval of the Settlement, (5) approving the proposed plan for Notice, (6) ordering the issuance of Notice, (7) scheduling the Final Approval Hearing, and (8) providing such other and further relief as the Court deems reasonable and just.

Respectfully submitted,

DAVE MCCORMICK, **T'LANI ROBINSON**, **DENNIS MAGANA**, **SCOTT SWINDELL**, **DAVID TOROSYAN**, and **ROBBY BROWN**, individually and on behalf of all others similarly situated,

Dated: May 10, 2020

By: /s/ Benjamin H. Richman
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CERTIFICATE OF SERVICE

I, Benjamin H. Richman, an attorney, hereby certify that I served the above and foregoing ***Plaintiffs' Memorandum in Support of Preliminary Approval of Class Action Settlement,*** by causing true and accurate copies of such paper to be emailed to the persons shown below on May 10, 2020.

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