**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 MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

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## I. INTRODUCTION

Defendants Adtalem Global Education Inc. and DeVry University, Inc. (collectively "DeVry") are operators of one of the largest for-profit colleges in the country. For years, they crafted a nationwide advertising campaign centered on two claims: (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," together the "Claims"). The alleged goal of touting these Claims was to drive increased enrollment and, with it, revenues for DeVry. For their part, Plaintiffs were prospective students considering which post-secondary schools to attend when they were exposed to the Claims. They, like the many thousands of other Settlement Class Members, relied on the Claims when deciding to enroll in a DeVry program.[1] But after they enrolled, they learned the Claims were not accurate. Had Plaintiffs known sooner, they and other prospective students like them would not have agreed to pay DeVry what they did in tuition or would not have enrolled at all.

Almost four years ago, Plaintiffs first began litigating their claims against DeVry, seeking as damages the portion of tuition that they overpaid on account of their reliance on what they contend was an advertising campaign built on misrepresentations. Years later, after motions to dismiss were won and lost on both sides, after discovery was propounded and answered, and after previous unsuccessful attempts at resolution, the parties agreed to attend another mediation in late 2019 with the Hon. Layn R. Phillips (Ret.), a well-respected third-party neutral. With Judge Phillips' assistance, the parties eventually reached a global Settlement resolving Plaintiffs'

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

underlying claims, and the claims of the Settlement Class.

The Settlement provides significant relief at a time when, for many Settlement Class Members, it may be needed most. If finally approved, the $44.95 million Settlement Fund that DeVry has established will compensate participating students based on the number of credit hours for which they paid, and provide additional payments to students who graduated from a DeVry program. This is the largest private settlement that DeVry has entered into regarding the Claims,[2] and is second only to a settlement with the Federal Trade Commission.[3] There are also significant non-monetary benefits, including career counseling services for graduates that did not find a job in their field of study, and the deletion of DeVry-reported negative credit events from Settlement Class Members' credit reports. Critically, the relief under the Settlement is secured while also preserving Settlement Class Members' rights to seek additional loan forgiveness from the Department of Education through its Borrower Defense to Repayment program.

After the Court preliminarily approved the Settlement, the approved Notice plan was implemented. Notice was disseminated to the Settlement Class, with approximately 98.59% receiving direct Notice through U.S. Mail and email. (Declaration of Michael E. Hamer ("Hamer Decl."), attached as Exhibit 2, ¶ 11.) The strength of the Settlement and the success of the Notice efforts are reflected in the overwhelmingly positive response by the Settlement Class. While class action settlement claim rates are often well under 5%, the claims rate here is significantly

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[2] DeVry has reached several other settlements related to the Claims in other contexts. *See, e.g.*, *Pension Trust Fund for Operating Eng'rs v. DeVry Educ. 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). It's also worth noting that the one other piece of class action litigation asserting claims nearly identical to those at issue here was dismissed at the pleadings stage, appealed, and appears to have resolved on an individual basis. *See Polly v. Adtalem Glob. Educ., Inc.*, No. 16 CV 9754, 2019 WL 587409, at *1 (N.D. Ill. Feb. 13, 2019); *Polly v. Adtalem Glob. Educ., Inc.*, No. 19-1472, dkt. 15-1 (7th Cir. July 9, 2020) (voluntarily dismissing claims with prejudice).

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

higher: approximately 11.97% of Settlement Class submitted claims. (*Id.* ¶ 13.) On the other hand, less than .2% opted out of participation in the Settlement (the vast majority of which are ostensibly represented by objector Valderrama's counsel, Mr. Stoltmann), and just a handful of Settlement Class Members voiced any opposition—none of which, as discussed below, militates against final approval.[4]

With this in mind, the Court should not hesitate to finally approve the Settlement. It is the product of years'-worth of adversarial litigation, reached after multiple mediation attempts, and with the aid of a well-respected mediator. The litigation and discovery gave the parties a realistic perspective of the strengths and weaknesses of their claims and defenses, and their likelihood of succeeding at the class certification and merits stages. And—most importantly—it provides substantial relief to the Settlement Class on a number of fronts now, while preserving their right to recover additional loan forgiveness in the future. The Settlement Class Members' positive responses and the near-total lack of opposition provide further support that the Settlement is fair, reasonable, and adequate. As such, Plaintiffs respectfully request that the Court enter an Order granting final approval.

## II. FACTUAL AND PROCEDURAL BACKGROUND

While Plaintiffs have set out the background of this litigation in their earlier papers, they reiterate it below for ease of the Court's review.[5]

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[4] Of the 866 total requests for exclusion received, more than 500 are represented by objector counsel Mr. Stoltmann. (Hamer Decl. ¶ 12.) Of the remaining opt-outs, more than 200 are represented by separate counsel and are currently plaintiffs in separate mass actions proceeding in Texas and California—neither the attorneys nor any of their clients in the Texas and California actions have asserted an objection here. (*Id.*)

[5] This background is also discussed in Plaintiffs' Memorandum in Support of Preliminary Approval of Class Action Settlement and Plaintiffs' Memorandum of Law in Support of Motion for Attorneys' Fees, Expenses, and Incentive Awards.

### 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.* ¶ 48.) 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, 55, 63, 67, 73, 85, 91.)

Unbeknownst to Plaintiffs and the Settlement Class at the time they enrolled, 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 all 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.

DeVry's allegedly deceptive practices kicked off litigation around the country by public and private actors alike. Several Plaintiffs, as well as their counsel, were at the forefront of this effort.[6] Thus, while some Plaintiffs were recently added to this suit for purposes of consolidation to effectuate the global Settlement, they have long been involved in litigation against DeVry in numerous fora. 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, issuing discovery requests in parallel. (Declaration of Benjamin H. Richman ("Richman Decl."), attached as Exhibit 3, ¶ 3.) The Court granted DeVry's motion without prejudice in July 2019.

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[6] For example, Settlement Class Counsel previously litigated the matter *Robinson, et al. v. DeVry Education Group, Inc.*, 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 regulators' pursuits of DeVry, and were able to gain important insights from the initial *Robinson* dismissal that allowed them to successfully defeat DeVry's more recent dismissal attempts.

(*See* 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. 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, in 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.)

**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 pleading stage. *Brown v. Adtalem Glob. Educ., Inc.*, 421 F. Supp. 3d 825 (W.D. Mo. 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 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 Educ., Inc. et al.*, No. 19-cv-01505, dkt. 28 (N.D. Ga. Nov. 25, 2019). After the December 2019 mediation with Judge Phillips, Ms. Robinson also signed onto the Settlement and was added here as a 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 Settlement Class Representatives.

**C. Negotiation and Settlement.**

As the forgoing makes clear, the parties have been actively litigating these claims for several years now. They first discussed the possibility of a resolution in mid-2018, as the first motion to dismiss in this action was pending. (Richman Decl. ¶ 3.) As part of this process, the parties spent several months—in the context of Plaintiffs' pending written discovery in this matter—exchanging information and relevant data relating to the makeup of a potential settlement class, including a decade's worth of data regarding the approximate 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.* ¶ 4.) 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.* ¶ 5.) They likewise participated in several teleconferences with Judge Phillips to discuss their submissions and a potential resolution. (*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.* ¶ 6.) 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*, 2019 WL 587409, at *2–3. 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. ¶ 6.)

The *Brown*, *Magana*, and *Robinson* actions were then filed, and this Court proceeded to render a decision on DeVry's motion to dismiss. 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 his Second Amended Complaint in this case, which DeVry moved to dismiss. (*Id.* ¶ 7.) After this motion to dismiss was fully briefed and argument scheduled, the parties broached the possibility of restarting negotiations regarding a potential settlement. (*Id.* ¶¶ 7–8.) To this end, they agreed to schedule a second in-person mediation with Judge Phillips. (*Id.* ¶ 8.)

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.* ¶ 9.) 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 (this time in California). (*Id.*)

Following several rounds of individual caucuses with Judge Phillips and meetings between the parties and their representatives, the parties ultimately reached an agreement in principle on a proposed global settlement of all claims regarding the 90% Placement and Higher Income Claims. (*Id.* ¶ 10.) Thereafter, the parties spent months drafting and finalizing the actual Settlement Agreement and supporting documents that the Court preliminarily approved. (*Id.*) This finalization process included reaching out to other counsel involved in litigating similar lawsuits and arbitrations against DeVry to give them an opportunity to participate. (*Id.*) Ultimately, Settlement Class Counsel secured preliminary approval of the Settlement from this Court. (May 28, 2020 Preliminary Approval Order ("Prelim. App. Ord.").)

### D. The Successful Notice, Remarkable Claims Rate, and Defense of the Settlement from Objectors.

In accordance with the Court's Preliminary Approval Order, Settlement Class Counsel has worked with DeVry and the Settlement Administrator to effectuate its terms. Specifically, Settlement Class Counsel has ensured that timely Notice went out to the Settlement Class. (Richman Decl. ¶ 11.) The Settlement Administrator obtained the Class List from DeVry, sending approximately 438,918 postcards through the U.S. Mail and approximately 441,936 emails to Settlement Class Members. (Hamer Decl. ¶¶ 9–10.) There were approximately 69,631 postcards that were initially returned as undeliverable. (*Id.* ¶ 10.) Of those, the Settlement Administrator was able to find updated address information to resend the Notice in approximately 53,709 instances. (*Id.*) In addition, 7,299 of the Settlement Class Members for whom postcard Notice was returned were also sent an email Notice. (*Id.*) Of the total email Notices sent, 125,780 were returned as undeliverable. (*Id.* ¶ 9.) Of these, 119,516 received Notice via postcard. (*Id.*) Altogether, the direct Notice campaign was remarkably successful, reaching approximately 98.59% of the Settlement Class. (*Id.* ¶ 11.) Besides the direct Notice component, a Settlement Website was established, which included important dates, deadlines, and instructions, digital copies of briefing in the case and the Claim Form, and which allowed for electronic submission of claim forms. (*Id.* ¶ 6.) A dedicated phone line was also set up, which fielded hundreds of calls from Settlement Class Members. (*Id.* ¶ 5.) And an email address was established and monitored, where Settlement Class Members could send Claim Forms, exclusion requests, and questions. (*Id.* ¶ 4.)

Settlement Class Counsel and their colleagues have spoken with dozens of Settlement Class Members that reached out to them directly regarding the Settlement, the benefits it secures, how to obtain relief under it, and the scope of the Release. (Richman Decl. ¶ 13.) Settlement

Class Counsel also helped Settlement Class Members access important case documents and assisted in the submission of Claim Forms electronically and through the mail. (*Id.*)

Settlement Class Counsel have also defended the Settlement from objectors, including successfully opposing a motion to substitute judge. (*See* Aug. 31, 2020 Order Denying Objector Jose Valderrama's Motion for Substitution of Judge.) The granting of such motion would have invariably interfered with deadlines and the scheduling of the Final Approval Hearing. This would have prevented the Court from timely addressing the Final Approval Motion, thus possibly delaying relief to Settlement Class Members. Settlement Class Counsel have similarly taken steps to combat efforts by an objector's counsel, Mr. Andrew Stoltmann, to drive down the claims rate and encourage opt-outs. (*See* Aug. 3, 2020 Motion for Protective Order.) While that motion has not been decided, it appears Mr. Stoltmann's efforts were in vain.[7]

The Settlement Class's response has been nothing short of exceptional. Nearly 11.97% submitted a Claim Form, representing more than 53,000 claimants. (Hamer Decl. ¶ 13.) Conversely, only a small number of Settlement Class Members, 866, representing approximately .19% of the Settlement Class opted out. (*Id.* ¶ 12.) And only four Settlement Class Members took any sort of affirmative step of filing an objection or writing a letter to assert their disagreement with the Settlement. (Richman Decl. ¶ 12.) This amounts to approximately .0009% of the Settlement Class. And, in any event, as discussed below, the objections do not present grounds that would warrant denying approval of the Settlement.

With all of this as backdrop, Plaintiffs now move for final approval of the Settlement.

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[7] Given the exceptional claims rate, low opt-out rate, and that Mr. Stoltmann has not issued any further misleading statements regarding the Settlement, at this point, Plaintiffs suggest that their pending Motion for Protective Order be denied as moot. To be clear, this would be without prejudice to Plaintiffs seeking to enjoin any further attempts by Mr. Stoltmann, or anyone else, to interfere with any additional Court-approved Notice that may take place in connection with this action.

## 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.)[8] There are approximately 444,000 Settlement Class Members.[9]

### 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 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

[8] 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) 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.)

[9] This is higher than the original estimate provided in advance of preliminary approval, as the final Class List DeVry provided to the Settlement Administrator included the contact information for additional Keller Graduate students that had not first attended a DeVry undergraduate or associate degree program. Nevertheless and as described further below, the claims and anticipated individual payments to participating Settlement Class Members remain consistent with the conservative estimates provided at the preliminary approval stage. As also noted below, the Settlement Administrator is continuing to review the claims received and Class Counsel will be prepared to present detailed figures—*e.g.*, in terms of individual per-credit hour payments and the total number of Graduate Payments—to the Court at the final approval hearing.

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 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. (*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.) Pursuant to the Settlement and the Court's Preliminary Approval Order, Heffler Claims Group, LLC has overseen Notice to the Settlement Class and the processing of Claim Forms, and, should the Settlement be finally approved, will oversee payment to Settlement Class Members. (*Id.* § 1.28.)

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

The parties have agreed that 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.) 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 CLASS NOTICE FULLY SATISFIED DUE PROCESS

After determining that an action may be maintained as a class action, a court may order such notice that it deems necessary to protect the interests of the class. 735 ILCS 5/2-803. "[W]hether notice is to be given at all and the kind of notice which may be required are matters for the trial court's discretion." *Carrao v. Health Care Serv. Corp.*, 118 Ill. App. 3d 417, 429 (1st

Dist. 1983). This discretion is subject only to the limits of due process, *see id.*, which requires that "members of the plaintiff class have an opportunity to be heard and to participate in the litigation, an opportunity to 'opt out' of the litigation, and adequate representation of absent class members' interests." *Sec. Pac. Fin. Servs. v. Jefferson*, 259 Ill. App. 3d 914, 921 (1st Dist. 1994). "The question of what notice must be given to absent class members to satisfy due process necessarily depends upon the circumstances of the individual action." *Miner v. Gillette Co.*, 87 Ill. 2d 7, 15 (1981). Here, virtually everyone in the Settlement Class was sent individual Notice, and the Notice therefore more than satisfies the requirements of due process. *See Carrao*, 118 Ill. App. 3d at 429–30 (noting that while due process may require individual notice to class members whose identity and address can be readily obtained from defendant's files, it does not require individual notice in all circumstances); Federal Judicial Center, *Judges' Class Action Notice & Claims Process Checklist & Plain Language Guide*, at 3 (2010), available at https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf (concluding that a class notice plan that reaches at least 70% of the class is reasonable).

The Court-approved Notice Plan, which the parties implemented faithfully, called for direct Notice to the Settlement Class via both U.S. Mail and electronic mail. (Prelim. App. Ord. ¶ 7; Settlement § 4.) Each form of Notice used plain language calculated to accurately describe the Settlement's terms and the relief that it provides in order to allow Settlement Class Members to make informed choices about what course of conduct might be right for them. (*See* Hamer Decl., Ex. A.)

Pursuant to the Notice Plan, DeVry sent a Class List to the Settlement Administrator, which included the available U.S. Mail and email addresses that DeVry had on file as associated with Settlement Class Members. Once the Class List was provided to the Settlement

Administrator, it updated the physical mailing addresses through the National Change of Address database, and sent Notice by U.S. Mail to approximately 438,918 Settlement Class Members. (Hamer Decl. ¶ 10.) Only 69,631 were returned as undeliverable, of which Notice was resent to new address in approximately 53,709 instances. (*Id.*) And of the Settlement Class Members associated with addresses that mail was returned from, 7,299 were sent Notice through email. (*Id.*) Notice was also sent to each email address in the Class List, amounting to 441,936 email addresses. (*Id.* ¶ 9.) Of these, approximately 316,156 were delivered without a bounce-back. (*Id.* ¶ 9.) Altogether, direct Notice was provided to approximately 98.59% of the Settlement Class. (*Id.* ¶ 11.)

These summary Notices also directed Settlement Class Members to the Settlement Website, http://www.devryuniversitysettlement.com, where during the claims period they were able to submit claims electronically and where they are still able to access the long-form Notice and important court filings, including Plaintiffs' Motion and Memorandum of Law for Attorneys' Fees, Expenses, and Incentive Awards, as well as deadlines and answers to frequently asked questions. (Settlement § 4.3.) Supporting the direct Notice and Settlement Website was a toll-free telephone line through which Settlement Class Members could contact Class Counsel to obtain additional information about the Settlement.

Overall, the Notice Plan was highly successful and well exceeds that required to satisfy due process. *See Carrao*, 118 Ill. App. 3d at 429–30.

## V. THE SETTLEMENT WARRANTS FINAL APPROVAL

The procedural and substantive standards governing final approval of a class action settlement are well-settled in Illinois. *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 493 (1st Dist. 1992). The proposed settlement "must be fair and reasonable and in the best

interest of all those who will be affected by it." *Id.* Because a proposed settlement is the result of compromise, "the court in approving it should not judge the legal and factual questions by the same criteria applied in a trial on the merits[,] … [n]or should the court turn the settlement approval hearing into a trial." *Id.*

"Although review of class action settlements necessarily proceeds on a case-by-case basis, certain factors have been consistently identified as relevant to the determination of whether a settlement is fair, reasonable and adequate[.]" *Id.* These factors—referred to as the *Korshak* factors—are:

> (1) The strength of the case for plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant's ability to pay; (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 members of the class 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. 1990)).

Here, examination of each of the *Korshak* factors demonstrates that the Settlement is exceedingly fair, reasonable, and adequate, and deserving of final approval.

### A. The Relief Offered in the Settlement Weighs Strongly in Favor of Final Approval.

The first *Korshak* factor—the strength of Plaintiff's case on the merits balanced against the relief offered in settlement—"is the most important factor in determining whether a settlement should be approved." *Steinberg v. Sys. Software Assocs., Inc.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999). Though Plaintiffs are confident that they would ultimately have prevailed had this matter continued in litigation, there were significant obstacles in doing so. In light of those obstacles, the substantial relief the Settlement provides to the Settlement Class Members (while preserving their right to obtain *additional* relief later) is outstanding. This "most

important" factor therefore weighs strongly in favor of final approval.

**1. The relief the Settlement provides is excellent.**

The Settlement reached here provides outstanding relief to the Settlement Class by a number of measures. First and foremost, it provides for the establishment of a $44,950,000.00 Settlement Fund. (Settlement § 1.34.) In terms of a cash fund, this amount is second only—and not by much—to a settlement DeVry entered into with the Federal Trade Commission involving the 90% Placement and Higher Income Claims. *Federal Trade Commission v. DeVry*, No. 2:16-cv-00579, dkt. 97 (requiring DeVry to provide $49.5 million in cash to be redistributed to students). This amount is also multiples higher than other settlements that DeVry entered into with governmental regulators. *See, e.g.*, *In the Matter of Investigation by Eric T. Schneiderman, Attorney General of the State of New York, of DeVry Educ. 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 June 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, e.g.*, *Pension Trust Fund for Operating Engr's*, No: 1:16-cv-05198, dkt. 151 (settling securities lawsuit regarding the Claims and creating a $27.5 million settlement fund). The Settlement Fund here is likewise notable when 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). As explained below, this Settlement provides cash payments in addition to preserving Settlement Class Members' rights to seek loan forgiveness based on the Claims through the Department of Education later.

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 Settlement Fund based on the number of credit hours that they paid for while attending DeVry's institutions. (*Id.*) While the Settlement Administrator is still in the process of verifying the validity of Claim Forms submitted, collecting the total number of credits associated with those valid Claim Forms, and determining the per-credit-hour payment—based on the average number of credit hours that DeVry students paid for—Settlement Class Counsel reasonably estimate that participating Settlement Class Members will receive hundreds (if not into the thousands) of dollars each, particularly with the additional Graduate Payments of $500 or $1,000, depending on the degree earned.[10] (*Id.* § 2.1.a.) This approach ensures that the relief that Settlement Class Members receive is tailored to the number of credit hours that they paid for, as opposed to everyone receiving the exact same payment no matter what. (*Id.* § 2.1.a.i.)

In addition to monetary relief, the Settlement secures substantial non-monetary benefits for the Settlement Class. DeVry must provide Settlement Class Members who graduated from

[10] 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. (*Id.* § 2.1.b.) However, these offsets are subject to a cap such that no more than one third of the total Settlement Fund can be returned to DeVry. (*Id.* § 2.1.b.iv.)

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 will 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 without the need for submission of a Claim Form.

Besides this relief, Settlement Class Members retain their rights to seek forgiveness of their federal student loans—and a significant portion of Settlement Class Members have such 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 rights to obtain additional loan forgiveness in the future.[11]

[11] Litigation has been successfully undertaken to spur the Department of Education to action on such applications. For example, a proposed settlement in *Sweet et al. v. DeVos et al.*, No. 3:19-cv-03674 will, if approved, require the Department of Education to issue decisions regarding Borrower Defense to

Standing alone, the relief package that the Settlement provides is significant, to say the least. That such monetary and non-monetary relief was achieved in the face of litigation risks that could have left the Settlement Class with nothing is all the more noteworthy and heavily supports granting final approval to the Settlement.

**2. Plaintiffs faced meaningful obstacles to securing a recovery.**

Plaintiffs faced a number of major obstacles that might have substantially or fully deprived them and the Settlement Class of any relief whatsoever absent the Settlement. First, when the Settlement was agreed to, a motion to dismiss was pending in this action and another was ready to be filed in another of the Related Actions. Second, the parties had yet to argue class certification in this action, as well as each Related Action. While remaining confident that they had the better side of the arguments in each instance, as described below, 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. And even then, Plaintiffs and the Settlement Class would need to prevail at trial and in any appeals before obtaining relief.

Regarding the motions to dismiss, this Court already granted one motion to dismiss in this matter, with Plaintiffs granted leave to replead. (*See* July 29, 2019 Order Granting Motion to Dismiss.) A second motion to dismiss an amended complaint was fully briefed and awaiting argument when the Settlement was reached. While Plaintiffs 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 matter once more—this time with prejudice. That is, the Court could have disagreed with reasoning in the *Brown* and *Robinson*

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Repayment applications that were filed as of April 7, 2020 within 18 months of the proposed settlement's final approval. And in *Vara et al. v. DeVos et al.*, No. 1:19-cv-12175, dkt. 58 (June 25, 2020 D. Mass.), a court ordered the Department of Education to cancel the federal loans of approximately 7,200 former students of a failed for-profit institution included in a Borrower Defense to Repayment claim.

matters denying DeVry's motions to dismiss, *see Robinson*, No. 1:19-cv-01505, dkt. 28; *Brown*, 421 F. Supp. 3d at 835, and held that Plaintiffs still 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. Indeed, as Settlement Class Counsel and the Class Representatives were negotiating the Settlement, an appeal of the dismissal of nearly identical claims against DeVry was pending. The appeal was ultimately dropped, suggesting that at least one other set of plaintiffs' attorneys felt the claims were risky enough not to proceed any further. *See Polly*, No. 19-1472, dkt. 15-1 (voluntarily dismissing claims with prejudice).

With respect to class certification, Plaintiffs' ability to certify a fraud class was not 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 (5th Dist. 2003) (affirming certification of nationwide class in fraud case). But 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 were not 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).

Should Plaintiffs have successfully overcome these barriers, 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 such that Plaintiffs were entitled to damages. This would have undoubtedly involved a costly battle of experts, with competing methodologies of how to quantify the increased price premium that the Claims allegedly allowed DeVry to charge. Even if Plaintiffs successfully countered 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.

While Plaintiffs believe the arguments above could be defeated, they have nevertheless recognized the uncertainty in the path ahead and have factored in the risks and delays that would necessarily accompany further litigation in the trial and appellate courts. Even accounting for these risks of non-recovery, the Settlement provides substantial monetary and non-monetary relief, while carving out the opportunity for important debt-relief. When considered in light of the potential hurdles faced in obtaining relief through continued litigation, and the delay that would entail, the Settlement is well deserving of this Court's approval. Consequently, the first and most important *Korshak* factor weighs strongly in favor of finally approving the Settlement.

### B. Defendants' Ability to Pay Is a Neutral Factor.

The second *Korshak* factor considers a defendant's ability to pay. Here, there is no reason to believe that DeVry cannot fulfill its financial obligations under the Settlement. To the contrary, DeVry has represented that it will be able to fully fund the Settlement Fund and bear the cost of providing career counseling services and of obtaining the deletion of DeVry-reported negative credit events. (Richman Decl. ¶ 17.) At the same time, however, a complete victory at trial for the Settlement Class could result in a larger judgment. *See Kleen Prod. LLC v. Int'l Paper Co.*, No. 1:10-CV-05711, 2017 WL 5247928, at *2 (N.D. Ill. Oct. 17, 2017) (finding that "the size of the potential recovery weighs in favor of the [s]ettlement[,]" even though defendants had substantial ability to pay). In any event, the fact that DeVry might have the ability to pay a larger amount is not relevant when the proposed Settlement is otherwise fair, reasonable, and adequate and a judgment could be larger and represent a significantly more negative impact on the company's financials. *See Glaberson v. Comcast Corp.*, No. CV 03-6604, 2015 WL 5582251, at *7 (E.D. Pa. Sept. 22, 2015) (collecting cases). Thus, given DeVry's ability to pay the Settlement amount and the potential for a larger damages amount at trial, this factor favors approving the Settlement. *Id.* at *8.

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

The third *Korshak* factor—the complexity, length, and expense of further litigation—supports final approval of the Settlement as well. "As courts recognize, a dollar obtained in settlement today is worth more than a dollar obtained after a trial and appeals years later." *Goldsmith v. Tech. Sols. Co.*, No. 92 C 4374, 1995 WL 17009594, at *4 (N.D. Ill. Oct. 10, 1995). The Settlement here allows Settlement Class Members to receive immediate relief, avoiding the risk, time, and cost that additional litigation would necessarily entail, while (again) preserving

their ability to recover yet additional debt relief in the future.

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 Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 964 (N.D. Ill. 2011). On the other hand, the "Settlement allows the [Settlement C]lass to avoid the inherent risk, complexity, time, and cost associated with continued litigation." *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (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, final approval is more than appropriate *See Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co*., 2016 IL App (2d) 150236, ¶ 19 (affirming trial court's finding that third *Korshak* factor was satisfied where further litigation would have "require[d] the parties to incur additional expense, substantial time, effort, and resources").

**D. The Positive Reaction to the Settlement Supports Final Approval.**

The fourth and sixth *Korshak* factors—the amount of opposition to the Settlement and

Class Members' reaction to the Settlement—are closely related and often examined together. *See, e.g.*, *Korshak*, 206 Ill. App. 3d at 973. Here, the Settlement Class's reaction to the Settlement has been overwhelmingly positive and weighs strongly in favor final approval.

As detailed above, the Court-approved Notice Plan was enacted, with Notice being sent directly to the Settlement Class. Over 53,000 Settlement Class Members, or approximately 11.97% of the Settlement Class submitted a Claim Form. (Hamer Decl. ¶ 13.) This claims rate is nearly three times the weighted average claims rates when compared to other consumer class action settlements. *See* Federal Trade Commission, *Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns* (Sept. 2019), at 11, available at https://www.ftc.gov/system/files/documents/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns/class_action_fairness_report_0.pdf (finding weighted average claims rate of 4%). Suffice it to say, courts have approved class action settlements with far lower claims rates. *See, e.g.*, *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 239 (N.D. Ill. 2016) (finally approving consumer class action settlement of alleged TCPA violations with claims rate of 1.08%); *Bayat v. Bank of the W*, No. C-13-2376 EMC, 2015 WL 1744342, at *1 (N.D. Cal. Apr. 15, 2015) (finally approving consumer class action settlement of alleged TCPA violations with claims rate of 1.9%). Anecdotally, and as reflected in the excellent claims rate, Class Counsel spoke with numerous Settlement Class Members who reported that they were pleased with the Settlement. (Richman Decl. ¶ 13.)

Conversely, only 866 Settlement Class Members requested to opt out of the Settlement. (Hamer Decl. ¶ 12.) Of this figure, 218 were represented by one firm engaged in a parallel lawsuit against DeVry. (*Id.*) And approximately 568 were ostensibly represented by Mr. Stoltmann. (*Id.*) Setting aside the inappropriateness of Mr. Stoltmann's efforts to drive opt-

outs—(*see* Aug. 3, 2020 Mot. for Protective Order); *In re Mexico Money Transfer Litig. (W. Union & Valuta)*, 164 F. Supp. 2d 1002, 1020 (N.D. Ill. 2000) (according "some skepticism about the significance of these opt-outs" following campaign organized by objector's attorney)—the fact that even after his multiple attempts, the total opt-out rate was less than one quarter of one percent, (*see* Hamer Decl. ¶ 12), is telling of the Settlement's strengths. *See Mars Steel Corp. v. Cont'l Illinois Nat. Bank & Tr. Co. of Chicago*, 834 F.2d 677, 680 (7th Cir. 1987) ("Only 1.5 percent of the class members had opted out, a surprisingly small fraction if the settlement is as bad as [objectors] argue[].").

On the objection front, only four Settlement Class Members lodged complaints. (Richman Decl. ¶ 12.) A fulsome rebuttal of each is included in Section VI, *infra*. Setting aside the fact that none of the objections credibly challenges the Settlement, that only four Settlement Class Members objected—.0009% of the Settlement Class—is yet another indication that the Settlement Class as a whole overwhelmingly supports the Settlement. *See Shaun Fauley*, 2016 IL App (2d) 150236, ¶ 20 (affirming trial court's finding that where opposition to class settlement was "de minimis[,]" this fact weighed in favor of settlement approval).

Altogether, the Settlement's outstanding claims rate, coupled with infinitesimal opt-out and objection rates, provide strong evidence of the Settlement's favorability. *See In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d. at 1020–21 (acceptance rate of 99.9% of class members "is strong circumstantial evidence in favor of the settlement[]"). These two *Korshak* factors thus strongly support granting final approval to the Settlement.

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

The next *Korshak* factor—the presence or absence of collusion in reaching a settlement—also weighs in favor of final approval. *See Korshak*, 206 Ill. App. 3d at 972. Where the record

shows "good-faith, arm's-length negotiation," there was no collusion. *Shaun Fauley*, 2016 IL App (2d) 150236, ¶ 50; *see also Korshak*, 206 Ill. App. 3d at 973 (affirming trial court's finding of no collusion where case "was hard fought by both counsel . . . and . . . settlement was reached after vigorously contested litigation and hard bargaining"). That is precisely what occurred here.

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. It took another year of litigation in multiple different cases brought in several fora before the parties eventually returned to negotiations. And even then, the parties could only reach agreement on the Settlement's key terms after a second in-person, private mediation conducted by Judge Phillips. *See Steinberg*, 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"). Even with the principal terms agreed to, months more of additional arms'-length negotiations were necessary to finalize the detailed Settlement Agreement that is the subject of the Final Approval Motion. (Richman Decl. ¶ 10.) What's more, the Settlement was reached with looming uncertainty as to several significant legal issues, as addressed above. In short, far from a quick, collusive resolution, the 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*, 2016 IL App (2d) 150236, ¶ 50 (finding there was no collusion where the record showed nothing but "good-faith, arm's-length negotiation").

### F. Settlement Class Counsel Firmly Believe the Settlement Is in the Settlement Class's Best Interests.

The seventh *Korshak* factor, which weighs the opinion of competent counsel, favors final approval of this Settlement. First, Class Counsel from Edelson PC are competent to give their

opinion on this Settlement, as they are well-versed in the facts of this litigation and have been recognized as leaders in consumer class actions in courts around the country. *See Wakefield v. ViSalus, Inc.*, No. 3:15-CV-1857-SI, 2019 WL 2578082, at *1 (D. Or. June 24, 2019) (securing jury verdict equating to $925 million in favor of the class against multi-level marketing company for nearly two million violations of the Telephone Consumer Protection Act); *Patel v. Facebook, Inc.*, 932 F.3d 1264, 1277 (9th Cir. 2019) (affirming adversarial certification of class of millions of Facebook users alleging violations of Illinois' Biometric Information Privacy law; case settled for $650 million in cash and is awaiting final approval); *Mocek v. AllSaints USA Ltd.*, No. 2016-CH-10056 (Cook Cty. Ill. Cir. Ct. 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); *Aranda v. Caribbean Cruise Line, Inc.*, No. 12 C 4069, 2017 WL 818854, at *4 (N.D. Ill. Mar. 2, 2017) (Kennelly, J.), *aff'd* 896 F.3d 792 (7th Cir. 2018) ("It is undisputed that class counsel are experienced and respected members of the plaintiff's class action bar. Attorneys at Edelson PC have extensive experience litigating consumer class actions[.]"); *see also* Lauraann Wood, *Illinois Powerhouse: Edelson*, Law360 (Sept. 3, 2019), https://www.law360.com/illinois/articles/1193728/illinois-powerhouse-edelson (naming Edelson PC an "Illinois Powerhouse" based largely on its consumer-protection work); (Richman Decl., Ex. A (Edelson PC Resume)).

Likewise, Class Counsel Robert L. Teel is deeply knowledgeable of the facts and claims in this case, having investigated and litigated this and the Related Actions from their outset, dating back to 2016. (Declaration of Robert L. Teel ("Teel Decl."), attached as Exhibit 4, ¶ 2.) In addition to his involvement in litigation against DeVry, he has extensive experience litigating other complex class action cases, and has regularly been appointed as class counsel. (*Id.* ¶¶ 3–7

(listing representative actions and appointments as class counsel)). Thus, he too is more than competent to provide his opinion on the strength of the Settlement. *See GMAC Mortg.*, 236 Ill. App. 3d at 497 (noting class counsel's competency due to class action experience and familiarity with the litigation).

Based on this experience and their evaluation of the Settlement, Class Counsel believes the Settlement warrants final approval. The monetary component includes the creation of the largest private Settlement Fund that DeVry has doled out in relation to the Claims—it is only fractionally shy of the amount made available to individuals through the FTC settlement—and stands to pay claiming Settlement Class Members hundreds of dollars each even before accounting for the additional Graduate Payments. The non-monetary components incorporate career counseling services and the deletion of DeVry-initiated negative credit events. And Settlement Class Members receive these benefits while still retaining the right to seek federal debt forgiveness from the Department of Education. Put simply, Settlement Class Counsel firmly believes this Settlement is fair, reasonable, adequate, and deserving of final approval. (Richman Decl. ¶ 16; Teel Decl. ¶ 8.) Consequently, this factor weighs in favor of approval.

### G. The Stage of Litigation and Amount of Discovery Completed Confirms the Settlement Is Fair, Reasonable and Adequate.

The final factor looks to the stage 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 and litigation related to DeVry, its 90% Placement and Higher Income Claims, the composition of the Settlement Class, and the amount of tuition DeVry charged the Settlement Class. (Richman Decl. ¶¶ 3, 5, 7, 9–10.) These efforts included both formal discovery—including discovery propounded while the parties were litigating motions to dismiss in both this matter as well as Related Actions—and informal

discovery that took place in parallel over the course of years.[12] Additional discovery took place outside the litigation process, including a Freedom of Information Act request propounded on the Department of Education, the response to which provided further insight regarding the graduate and employment statistics which Plaintiffs allege were inflated. (*Id.* ¶ 7.) All of this information was in hand when the parties began negotiating the Settlement. (*Id*. ¶ 9.) 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.* ¶¶ 5, 7, 9, 10.)

While these information exchanges were taking place, the parties continued to litigate on an adversarial basis, including through multiple motions to dismiss across several fora. This allowed the parties 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; *Brown*, 421 F. Supp. 3d at 835. Altogether and as a result of the efforts across these various actions, the issues 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*, 2015 WL 1744342, at *6 (concluding that sufficient discovery had been completed to evaluate the settlement notwithstanding settlement early in the litigation); *Langendorf v. Irving Tr. Co.*, 244 Ill. App. 3d 70, 80 (1st Dist. 1992), *abrogated on other grounds by Brundidge v. Glendale Fed. Bank, F.S.B.*, 168 Ill. 2d 235 (1995) (in case where no formal discovery conducted at all, court found that "the parties exchanged

[12] The parties also negotiated confidentiality orders and protocols to govern the discovery of Electronically Stored Information.

informal discovery, evaluated the case's strengths and weaknesses, and obtained a favorable settlement without any expense to the class").

This factor, like all the others (save the neutral second factor), strongly supports final approval of the Settlement.

## VI. THE OBJECTIONS TO THE SETTLEMENT ARE MERITLESS

Of the hundreds of thousands of former students who received Notice of the Settlement, only four took any steps to formally object to the Settlement. None of these objections provide grounds warranting the denial of final approval. The primary objector—and apparently the only one who actually filed his objection with the Court per the instructions set out in the Preliminary Approval Order—is represented by the same counsel, Stoltmann Law, who sought to drive opt-outs, secure other clients for himself and otherwise interrupt the orderly progression of this process. (*See* June 12, 2020 Valderrama Objection ("Valderrama Obj.").) Setting aside his motives—and it isn't clear that's what the Court should do, *see Clark v. Gannett Co.*, 2018 IL App (1st) 172041, ¶¶ 69–71 (considering objector's intent in lodging objection)—the objection is founded on misunderstandings of how the Settlement works, and is otherwise legally baseless. The other objections share some of these misconceptions of the Settlement, or request relief that was never at issue in the lawsuit to begin with. (*See* Richardo Peart Objection ("Peart Obj."), Ex. B to the Richman Decl.; Destiny Glean-Sealey Objection ("Glean-Sealey Obj."), Ex. C to the Richman Decl.; Gurudeva. B. Kalledevarpurada Objection ("Kalledevarpurada Obj."), Ex. D to the Richman Decl.)[13] The Court should deny each objection.

[13] Neither the Peart, Glean-Sealey, nor Kalledevarpurada objections appear to have been filed with the Court in accordance with the Preliminary Approval Order's requirements. (*See* Richman Decl. ¶¶ 19–21; Prelim. App. Ord. ¶ 12.) Courts are entitled to demand compliance with orders of this type, and they are permitted to reject objections from class members who fail to comply. *See Rosen v. Ingersoll-Rand Co.*, 372 Ill. App. 3d 440, 447 (1st Dist. 2007); *Shaun Fauley*, 2016 IL App (2d) 150236, ¶¶ 40-42.

### A. Objector Valderrama Is the Only One of Mr. Stoltmann's More than Five Hundred Clients Who Chose to Remain in the Settlement Class.

The thrust of Mr. Valderrama's objection is that his counsel, Mr. Stoltmann, apparently entered into an agreement with DeVry regarding the selection of a forum to litigate his clients' claims and that by proceeding with the Settlement and including his clients (*i.e.*, former DeVry students) within the Settlement Class, DeVry breached that agreement. But there is no need to litigate a breach-of-contract action under the guise of an objection, nor does this provide grounds to decertify the Settlement Class or deny final approval, as Valderrama requests. The solution is hardly complicated: every single Settlement Class Member—whether Mr. Stoltmann's client or not—had the option to exclude themselves from the Settlement and proceed to litigate any and all claims against DeVry in whatever forum they pleased. Mr. Stoltmann himself surely recognized this as an option when he assisted in excluding each and every other one of his more than 550 clients from the Settlement Class. (*See* Hamer Decl. ¶ 12.)[14]

It is difficult to understand how a process that allows Settlement Class Members to freely exclude themselves constitutes "forc[ing] Claimants to litigate their claims" here. (Valderrama Obj. at 2.) But if Mr. Stoltmann wants to litigate that question, he should not seek the Court's approval of a retroactive mass opt-out, something that is specifically foreclosed by the Settlement. (Settlement § 4.2 (prohibiting "mass" or "class" opt-outs).)

In any event, the "problem" Mr. Valderrama identified is not truly a problem at all. And Mr. Valderrama presents no authority at all supporting his contention that decertification or denial of final approval is appropriate in this situation. As Mr. Stoltmann's actions demonstrated,

[14] Similarly, more than 200 Settlement Class Members represented by the Carlson Law Firm in mass actions in Texas and California requested to be excluded from the Settlement Class without issue, (*see* Hamer Decl. ¶ 12), and are continuing to pursue their claims in their chosen fora. They, unlike Mr. Stoltmann, however, have not chosen to intercede here—by way of objection or otherwise.

his clients could have—and apparently did—excluded themselves from the class with little difficulty. Unfortunately for Mr. Valderrama, who chose to object instead of opt-out to pursue his claims in arbitration, it seems that he is now the only one of the Stoltmann group who stands to be bound by the Settlement, should it be finally approved.

**B. The Requirements to Request Exclusion Were Simple and Clear.**

Mr. Valderrama next argues that the steps that Settlement Class Members had to take to exclude themselves were too onerous, and the instructions on how to do so were contradictory. (Valderrama Obj. at 4–6.) Moving past the question of whether Mr. Valderrama—who does not profess that he tried to or wanted to opt-out, or that he himself found the process difficult or confusing[15]—has any grounds to attack the opt-out provision, his contentions are wrong.

First, given the global pandemic, the parties were particularly sensitive to ensuring that Settlement Class Members could easily request exclusion. As a result, the Settlement allowed opt-out requests to be sent in via email, (Settlement, Exs. B-D), with Settlement Class Members either using a document signature platform like "DocuSign" to sign the request, or simply taking a picture of a handwritten, signed exclusion request and attaching it to an email. Indeed, many Settlement Class Members—including more than 550 represented by Mr. Stoltmann—took advantage of this flexibility. Additionally, Settlement Class Members had more than two months to decide whether they wanted to opt-out. The exclusion process was by no means "unreasonably difficult" or a "herculean task"—as Mr. Stoltmann's own actions demonstrate. (Valderrama Obj. at 5–6.)

Second, the Court-approved instructions provided to Settlement Class Members

[15] Like the argument regarding Stoltmann Law Offices' purported agreement with DeVry regarding forum-selection, this argument appears driven not by Mr. Valderrama, but by his attorney. (*See* Valderrama Obj. at 5 ("[T]his provision would require Stoltmann Law Offices to obtain over 500 original signatures from its clients[.]").)

explaining how they could opt out were not contradictory or confusing. The Settlement, (Settlement § 5.2), the Notices that were sent and published, (*see* Hamer Decl., Ex. A), and the Preliminary Approval Order, (Prelim. App. Ord. ¶ 13), all require that an exclusion request be signed by the person requesting exclusion.[16] As for the purported "additional requirement" that a request to exclude include a statement by the requester stating that they are a member of the Settlement Class, this is hardly controversial. If one is not a Settlement Class Member, they cannot be excluded from the Settlement Class.

Altogether, the exclusion requirements in this case are no different than any other class action settlement and are not grounds to deny final approval. *See, e.g.*, *Prelipceanu v. Jumio Corp.*, No. 2018-CH-15833, Dec. 23, 2019 Prelim. App. Order ¶¶ 14–16 (Cir. Ct. Cook Cty. Dec. 23, 2019) (Mullen, J.).

### C. Objectors Misunderstand the Settlement's Payment Mechanism and the Relief That Might Have Been Won at Trial.

Several of the objections take issue with the merits of the Settlement, contending that Settlement Class Members will not receive sufficient compensation, and that the provision aimed at offsetting amounts DeVry has already paid Settlement Class Members are unfair. Additionally, objectors claim the Settlement is deficient because it does not repay the balance of their student loan. None of these arguments are persuasive. Instead, they evince a misunderstanding of how the Settlement functions, and the relief that was actually sought and could have been recovered even if complete victory at trial was to be had.

At the outset, it should be reiterated that complete repayment of Settlement Class Members' loans through this action, as the Objectors demand, was neither tenable nor being

[16] Lest Objector Valderrama somehow attempt to take credit for any sort of change in the framing of the exclusion requirements, the Court's Preliminary Approval Order—which requires an exclusion request be physically signed by the Settlement Class Member requesting exclusion—predated the objection.

sought. (*See* Valderrama Obj. at 6–7; Kalledevarpurada Obj.; Glean-Sealey Obj.)[17] As described in the Complaint and argued extensively in briefing regarding the motions to dismiss, Plaintiffs' damages theory is focused on the value of the Claims, not on the value of a DeVry education in a vacuum. In other words, by making the Claims, DeVry was able to charge a tuition premium over and above what it otherwise would have for its educational programs. Thus, the measure of damages in this case has always been that price premium attributable to the Claims. *See Sheth v. SAB Tool Supply Co.*, 2013 IL App (1st) 110156, ¶ 94 ("[W]here fraud resulted in an inflated sale price, the proper calculation for damages is the difference between what the defrauded party paid and what it would have paid had there been no fraud."). Determining the exact amount of the premium would undoubtedly involve a costly battle of expert economists, with Plaintiffs asserting the Claims allowed DeVry to charge vastly more than they otherwise would have, while DeVry would argue any benefit was minimal at most. What is not credible, however, is to argue that the appropriate value of the Claims amounts to *all* tuition a student paid—*i.e.*, that absent the Claims, DeVry couldn't have charged anything in tuition for its programs.

Objectors' "complete refund" theory is also unsound from a practical standpoint.[18] Even if this theory could have won a complete victory at trial, a fact that Objectors Valderrama, Kalledevarpurada, and Glean-Sealey simply assume, DeVry cannot possibly repay to the penny nearly a decade's worth of tuition. For example, if each Settlement Class Member paid just $5,000 in total for his or her DeVry tuition, DeVry would be facing a verdict of around $2.2 billion. While Plaintiffs' damages theory faced risks, Objectors' proposed theory is a near

[17] Despite paying for two classes, a total of six credit hours at DeVry, Objector Kalledevarpurada seeks as damages more than $3.5 million, including losses tied to a condominium purchase, tuition and boarding paid to a separate school, and from loss of his citizenship and green card. (Kalledevarpurada Obj. at 4–5.)

[18] For their part, Objectors provide no citation where this complete refund theory has been endorsed in a similar context.

impossibility. The Settlement takes account of these risks, while still providing exceptional and immediate relief to Settlement Class Members. *Reynolds v. Beneficial Nat. Bank*, 288 F.3d 277, 284 (7th Cir. 2002) ("To most people, a dollar today is worth a great deal more than a dollar ten years from now."); *accord* William B. Rubenstein, 4 Newberg on Class Actions § 13:51 (5th ed.) (explaining that courts value settlements by discounting the possible relief that could be obtained at trial by the risks of continuing with litigation).

Turning to more specific critiques of the Settlement, Objector Valderrama misunderstands that Settlement Class Members are not just entitled to a *pro rata* payment equal to the amount that all other Settlement Class Members are receiving. (Valderrama Obj. at 7.) First, as explained above in Section V.A.1, Settlement Class Members' payments depend on the number of credit hours that a student paid for. After the combined total amount of credits that claiming Settlement Class Members paid for is determined, the value of a credit hour will be determined. This will be multiplied by the number of credit hours that a particular Settlement Class Member paid for to get that individual's total per-credit-hour payment. For example, a person that paid for 40 credits will receive twice as much for their per-credit-hour payment as one who paid for 20 credits. In this way, the payment is not one-size-fits-all, but is tailored to each Settlement Class Member. Objector Valderrama also bases his objection on the idea that every single Settlement Class Member will submit a claim. (Valderrama Obj. at 7, 10.) As exceptional as the claims rate is in this Settlement, it was far from 100%. *See Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 493 (N.D. Ill. 2015) (finding objector's argument "misleading because it is premised on the assumption that every class member will submit a valid claim. The reality is that in a class action settlement like this one, there is never a one-hundred percent claim rate or anything close to it").

Objectors Valderrama and Peart similarly misunderstand the function and calculation of

the offset. Critically, the offset only impacts individual Settlement Class Members who have already received payment regarding the Claims. (*See* Section V.A.1, *infra*.) And it is capped such that DeVry cannot offset more than one-third of the Settlement Fund. (*Id.*) The offset will in no way affect or impact any payments to Settlement Class Members who have not previously received payments regarding the claims, like Mr. Valderrama. (*See* Valderrama Obj. at 9 ("Mr. Valderrama did not receive any money from the FTC or any debt relief.").) Mr. Peart suggests that any offsets should be redistributed to other Settlement Class Members who did not receive per-credit hour payments. (Peart Obj. at 4–5.) But this would *actually* create the type of intra-class conflict—wherein the per-credit-hour payment is increased for Settlement Class Members who were not already paid—that Mr. Peart argues, incorrectly, are present here. Objector Peart's other suggestion, that Settlement Class Members impacted by the offset "receive additional relief" also would treat Settlement Class Members differently. (*Id.* at 3.) The Settlement payment mechanism treats everyone identically and is not grounds to deny final approval.[19]

Further evidencing Objector Peart's misunderstanding of the offset provision is his assertion that anyone affected by the offset "has a strong interest in pursuing their claims for debt cancellation[.]" (Peart Obj. at 4.) While, as discussed above, this damages theory in litigation is questionable at best, the Settlement preserves a route to achieve debt cancellation through a process specifically designed to provide such relief. (*See* Section V.A.1, *infra*.) Notably, this is available to all Settlement Class Members, including Objector Peart, regardless of whether

[19] Objector Peart misunderstands the intra-class conflict at issue in *Remijas v. Neiman Marcus Grp., LLC*, 341 F. Supp. 3d 823, 826–27 (N.D. Ill. 2018). There, malware was installed on a company's computer system. *Id.* at 826–27. The proposed settlement included a class of individuals making purchases during the malware period, some of whom would receive monetary payment, and others not. *Id.* at 826. The settlement included a separate class of individuals who made purchases *outside* of the Malware period and thus did not have more than a di minimis claim. *Id.* This created a problematic conflict. On the other hand, the Court saw "no adequacy problem as between the recovering and non-recovering class members who made their purchases within the malware period." *Id.* at 827.

they've previously been paid under governmental settlements. And if Mr. Peart wanted to pursue his claims in court or arbitration, he could have opted out. He chose not to.

**D. Settlement Class Counsel's Requested Fee Award Is Appropriate.**

Objectors Valderrama and Peart briefly take issue with Settlement Class Counsel's request for attorneys' fees. (Valderrama Obj. at 14; Peart Obj. at 5–6.) Neither diminishes the reasonableness of Settlement Class Counsel's requested 35% fee award.

Objector Peart argues that the offset cannot be considered part of the common fund. (Peart Obj. at 5–6.) This is nothing more than an attempt to artificially reduce the amount of the common fund. Consistent with the Settlement, Defendants deposited the entirety of the $44.95 million Settlement Fund into the Escrow Account following Preliminary Approval. (Settlement § 1.34.) This is the "actual cash value" of the Settlement Fund, which Settlement Class Counsel bases their fee request on. (*See* Peart Obj. at 5.)

Objector Peart also asserts that the amount of work Settlement Class Counsel did in connection with this case does not justify their requested fee. (*Id.* at 6.) Settlement Class Counsel's four years' worth of litigation in state and federal courts across the country, involving formal discovery and informational exchanges, extensive motion practice, and several mediation attempts, speaks for itself. Suffice it to say that Objector Peart's contention that Settlement Class Counsel "did not undertake any serious litigation risk[s,]" (*id.*) is factually baseless and belied by the extensive record in these matters. Nor is it supported by any legal authority. For example, *Brundidge* confirmed that courts have discretion to apply the percentage-of-fund method in determining attorneys' fees from a common fund. 168 Ill. 2d at 246. Even Objector Peart argues that the method should be used here, albeit awarding a lower percentage. (Peart Obj. at 6.) In any event, Objector Peart does not provide grounds to depart from the requested 35% fee award,

particularly as this award is lower than the percentage awarded in other cases with less work accomplished. (*See generally*, Plaintiffs' Motion for Attorneys' Fees, Expenses, and Incentive Award); *Prelipceanu*, No. 2018-CH-15833 (Cir. Ct. Cook Cty. Jul. 21, 2020) (Mullen, J.) (awarding 40% of settlement fund as requested in Feb. 5, 2020 filing).

For his part, Objector Valderrama baselessly suggests that the requested fee award is the result of "improper collision" (sic). (Valderrama Obj. at 14.) Here again, Objector Valderrama's argument is underdeveloped, lacks any citation to any facts or legal authority, and otherwise ignores the years of adversarial litigation, and the involvement of Judge Phillips as mediator across multiple mediation sessions, required to get to the Settlement in the first place. Settlement Class Counsel's requested fee award should be approved.

**E. Objectors' Remaining Miscellaneous Arguments Are Inconsequential.**

Objector Valderrama makes a handful of other minor points that are easily dispatched.

First, looking to Federal Rule of Civil Procedure 23, Objector Valderrama argues that certification of the Settlement Class was inappropriate because a choice-of-law analysis was not conducted. (Valderrama Obj. at 13.) This overlooks that certification was taking place in the context of a settlement, not on an adversarial basis, and that a choice-of-law analysis is not necessary. "[V]ariations in state laws are not obstacles to certification in the settlement context." *In re Nat'l Collegiate Athletic Ass'n Student-Athlete Concussion Injury Litig.*, 314 F.R.D. 580, 596 n.15 (N.D. Ill. 2016) (collecting cases). Indeed, as described above, the difficulty in obtaining certification of a nationwide class is one risk of continuing the litigation, not in resolving it. If Objector Valderrama's view were correct, it is difficult to imagine hardly any nationwide settlements being successfully approved, given that parties attempting to settle would have to provide a 50-state survey of the laws governing the claims and demonstrate that no

material differences exist between any of them. As Objector Valderrama's cited authority regarding adversarial class certification recognizes, this is a tall order. This would needlessly force litigants who want to resolve their claims to file and settle multiple state-wide class actions.

Next, Valderrama contends that allowing hundreds of thousands of Settlement Class Members to bring their own individual or mass-action claims in their chosen forum is more efficient. (Valderrama Obj. at 9.) This is not a serious argument. Individual JAMS arbitrations for any sizeable number of the Settlement Class would realistically stretch on for years. Even the mass actions that Objector Valderrama references only addressed the claims of 221 students. More than 2,000 mass actions of that size would be needed to account for the remainder of the Settlement Class's claims. This class action is aggregating the Settlement Class's claims on a larger, and more efficient, scale. Forcing individual actions also puts the onus on Settlement Class Members to step forward and affirmatively litigate, rather than needing to do nothing more than fill out a Claim Form to receive relief. Of course, should Settlement Class Members have wanted to litigate individually, they had the option to opt out and the two groups Valderrama identifies—the 221 students in the mass actions identified and Mr. Stoltmann's own clients—did just that. The efficiencies gained by the Settlement favor its final approval.

Finally, Objector Valderrama argues that the Notice misled Class Members as to the Settlement's value. (*Id.* at 10.) Besides making the same misguided assumption about a 100% claims rate and misunderstanding the per-credit-hour payments, he suggests that a specific dollar amount should have been included to allow Settlement Class Members "to make an informed decision[.]" (*Id.*) But this ignores that "[t]he e-mail and mail notices, which did not need to and could not provide an exact forecast of how much each class member would receive, gave class members enough information so that those with 'adverse viewpoints' could investigate and

'come forward and be heard.'" *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 946 (9th Cir. 2015). This, like each of the other objections, does not seriously question the appropriateness of final approval.

## 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 finally approving the parties' Settlement and 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 the Settlement Class,

Dated: September 16, 2020

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

I, Benjamin H. Richman, an attorney, hereby certify that on September 16, 2020, at Chicago, Illinois, I filed ***Plaintiffs' Memorandum of Law in Support of Motion for Final Approval*** by electronic means with the Clerk of the Circuit Court of Cook County, and that I served same upon counsel of record using the Odyssey File & Serve Electronic Filing System.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this certificate of service are true and correct.

/s/ Benjamin H. Richman